

REPUBLIC OF KENYA

MAKUENI COUNTY GOVERNMENT



**MAKUENI COUNTY GOVERNMENT**

**MAKUENI COUNTY GOVERNMENT SEXUAL  
HARASSMENT AT THE WORKPLACE POLICY**

**2022**

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## **PREFACE**

The development of the sexual harassment policy has been necessitated by the challenges faced by staff in day to day service delivery endeavours. This is premised on the understanding that for county officers to realize their full potential, a safe and conducive working environment is a requisite.

This policy is harmonized with other relevant documents formulated on workplace harassment, and takes into account the fundamental issues that have arisen from past public sector. The policy will go a long way in ensuring fairness, equality and equity. It takes cognizance of the dynamics of gender and sexual harassment issues at the workplace and provides formal and informal problem solving while safeguarding the dignity of the aggrieved and the aggressors.

Employer/ employee and stake holders' relations adversely affect service delivery. This policy therefore ensures that all stakeholders relate with utmost respect and dignity. Strategies outlined in chapter three will ensure that all the parties involved have their rights and obligations and that the County Government will ensure that education and sensitization is done to all stakeholders.

## **FOREWORD**

The leadership of the Government of Makueni County is committed to zero tolerance to any form of harassment and specifically sexual harassment at workplace. Harassment at workplace imparts negatively on performance and commitment of officers to duty. The malpractice is against basic human rights and creates an unlevelled ground for staff performance. The County Government is therefore devoted to providing an enabling working environment to ensure that the wellbeing and productivity of its staff, interns, attachees and volunteers is maintained.

The County Government with its stakeholders has undertaken to formulate the Sexual Harassment policy, which is aligned with the Constitution of Kenya, 2010, the Sexual Offenses Act of 2006 and the Employment Act, 2007 among other existing legal and policy frameworks to address sexual harassment concerns. The policy and its guidelines provide scope, strategies and implementation procedures applicable to the Executive arm of the government.

The policy offers guidelines for handling sexual harassment cases and empowers the Sexual harassment handling and HR Advisory committees in implementing the policy. Further, the employer has a duty of ensuring compliance and conformity in investigating and referring cases to relevant committees.

When the policy is fully implemented, it will ensure that the County Government of Makueni upholds and promotes a conducive and safe workplace for effective quality service delivery.

All County staff and stakeholders are therefore, advised to implement this policy and align it to their specific mandates and needs.

**Deputy Governor (Policy Patron)**  
**Government of Makueni County**

## **ACKNOWLEDGEMENT**

I wish to thank the Governor, Deputy Governor and County Executive Committee Members for their exemplary leadership, support and commitment in ensuring a safe and conducive working environment that is free from any form of harassment. I gratefully acknowledge the members of the County Executive Committee for their role and contribution towards development of this policy.

Special thanks to the NGECC, UN Women, GVRC and the Makueni County Public Service Board for technical support towards the preparation of this policy. I wish to acknowledge the tireless commitment of the technical working committee under the leadership of the Director Human Resource for their sacrifice, diligence and teamwork in drafting this policy I also thank all County staff whose participation and contributions during the Governor's and Deputy Governor's forums necessitated the development of this policy.

Special appreciation to all County employees and stakeholders who through the public participation forums gave their useful input that has made Makueni County to be the first county to develop a policy on Sexual harassment which will go a long way in making the working environment conducive for all.

Thank you all for a job well done!

**County Secretary,  
Government of Makueni County.**

## **ABBREVIATIONS AND ACRONYMS**

CEDAW	Convention on the Elimination of all Forms of Violence against Women
GBV	Gender Based Violence
GBVRC	Gender Based Violence Recovery Centre
HoDs	Heads of Departments
ILO	International Labour Organization
NGEC	National Gender & Equality Commission
SOA	Sexual Offences Act
HR	Human Resources

## **DEFINITIONS:**

**Allegation:** An assertion of facts that one intends to prove through an investigation procedure, hearing or trial.

**Alleged perpetrator:** A person alleged to have committed an act of sexual harassment.

**Child:** Any individual under the age of 18.

**Code of conduct:** A set of standards about behaviour that staff of Government of Makueni County are obliged to adhere to.

**Complaint:** Specific grievance of anyone who has been negatively affected by the actions of an individual, group or organisation.

**Complainant:** The person making the allegation of conduct that violates the provisions of this policy, including the alleged victim or survivor of the sexual harassment and abuse or another person who becomes aware of the wrongdoing.

**Confidentiality:** An ethical principle that restricts access to and dissemination of information. In investigations on sexual harassment, it requires that information is available only to a limited number of authorised people for the purposes of concluding the investigation.

**Consent:** When someone unambiguously and voluntarily agrees to do something without coercion, and fully understanding the consequences of their decision.

- In any instance of sexual activity, it is the responsibility of both parties to ascertain whether the other person consents freely and without coercion;
- Consent to one type or instance of sexual activity does not imply consent to other types or instances of sexual activity;
- Silence does not imply consent;
- Consent should be explicit and not implied and must take into account power dynamics;
- Relenting and submitting do not equate consent;
- A previous or present consensual sexual or other relationship between the parties does not imply subsequent or future consent;
- Consent is not implicit in a person's manner of dress;
- Accepting a social invitation is not consent nor does it imply consent;
- Consent will not be effective when it is obtained from a person whose capacity to consent is diminished because they are asleep, unconscious or in an altered state of consciousness resulting from the use of alcohol, medicines or drugs to the extent that it adversely affects their judgement;

**Coercion:** The use of force or threats to persuade someone to do something they are unwilling to do.

**Sexual harassment:** Sexual harassment is bullying or coercion of a sexual nature or the unwelcome or inappropriate promise of rewards in exchange for sexual favours. It is the unwanted sexual advances or remarks, including both verbal and non-verbal conduct. Examples include but are not limited to non-consensual physical touching, lewd or obscene sexual jokes, whistling, rude gestures, questioning someone about their sex life or sexual orientation or their gender identity, requests for sex, promising someone rewards in exchange for sexual favours, staring at someone's body, commenting on someone's state of dress or gender-based slurs.



## **CHAPTER ONE: INTRODUCTION**

Sexual harassment is a form of discrimination that occurs when unwelcome sexual advances or a wide range of verbal or physical sexual conduct unreasonably interferes with a person's job or creates an intimidating or offensive work atmosphere.

Men and women are likely to experience and perceive sexually harassing behaviors differently because of gender inequality and culturally prescribed expressions of sexuality. Both women and men suffer sexual violence and harassment but current statistics show that women are more disadvantaged than men and with more consequences respectively.

In many instances, women are significantly less tolerant of harassment and are thus more likely to see these behaviors as coercive and harmful. They are more likely to perceive the harasser negatively. To men, their masculinity encourages them to perceive of themselves as predators or protectors rather than targets (victims) of such harassment behavior and in most cases will not report the incident.

The harassment syndrome in general is found in all age and sex groups but never the less, young women remain the most frequent targets. Sexual violence and harassment in the work place has become critical and threatens to tear apart the organizational fabric in many countries today. Too often sexual harassment has been viewed as *'just a woman's issue'* however, men also fall victims of sexual harassment and violence.

The Government of Makueni County has laid emphasis on the need to provide a harassment-free workplace and adoption of a clear policy on sexual harassment. Consequently, the objective of this policy is to eliminate sexual harassment. It provides appropriate procedures to deal with the problem and prevent its recurrence. The policy aims at developing a workplace that is free of sexual harassment where employees respect one another's integrity, dignity, privacy and right to equality in the workplace.

Therefore, it is the policy of Makueni County Government that no officer, intern, attachee and volunteer may sexually harass another or any member of the public in line with the County vision of a prosperous value-based county with high quality of life.

The government takes cognizance of the fact that harassment undermines the full and free participation of officers and stakeholders, thus negatively impacting on their performance on day-to-day interactions by creating an intimidating, hostile and offensive work environment. This policy affirms the county government's position of "zero-tolerance to sexual harassment".

**Definition of Sexual Harassment:**

Sexual harassment can be defined as any unwelcome sexual advance, request for sexual favor or other verbal, non-verbal, or physical conduct of a sexual nature which unreasonably interferes with work, alters or is made a condition of employment, or creates an intimidating, hostile, or offensive environment.

Sexual harassment includes: unsolicited requests for sexual favors, requests for sexual favors linked to career prospects, unwanted physical contact, visual displays of degrading sexual images, sexually suggestive conduct, or offensive remarks of a sexual nature. Sexual harassment may occur between persons of the opposite sexes or of the same sex. Unwelcome sexual behavior may be obvious, or it may be subtle and persistent. While typically involving a pattern of behavior, it can take the form of a single incident.

The most obvious form of sexual harassment in the workplace is a direct or implicit request for, or offer to provide sexual favors in exchange for favorable career treatment. For purposes of this policy and its application, sexual harassment is defined in accordance with the Sexual Offenses Act, 2006 (Section 23) as follows;

*Any person, who being in a position of authority, or holding a public office, who persistently makes any sexual advances or requests which he or she knows, or has reasonable grounds to know, are unwelcome, is guilty of the offence of sexual harassment.*

In addition, section J.18 of the County Human Resource manual states that; Sexual harassment will not be tolerated. The County condemns sexual harassment as a direct and unacceptable contravention of its core values. As such, all county government of Makueni employees are prohibited from harassing other employees or stakeholders, whether or not the incidents of harassment occur on employer premises and whether or not the incidents occur during working hours.

The County Government of Makueni recognizes that an aggregation of a series of incidents or acts that form a pattern of behavior may constitute sexual harassment, even when some or all of those acts, when considered in isolation may appear to be minor or trivial. In addition, acts of sexual harassment may occur between individuals of same or different status, and both men and women can be subject to sexual harassment.

The government further recognizes that sexual harassment can take the form of sexual coercion or sexual annoyance and can occur in various forms, including; verbal, non-verbal, visual,

psychological or physical sexual harassment. In this policy sexual harassment includes and is not limited to:

- a) Sexual solicitation, advances or propositions;
- b) Demanding dates or hugs;
- c) Bragging about sexual prowess, deficiencies or sexual teasing;
- d) Invading personal space;
- e) Making unnecessary physical contact;
- f) Verbal sexual harassment, including the use of sex specific derogatory and body language, the repetition of suggestive comments or innuendoes, or gender-related comments to bully someone;
- g) Inappropriate comments about one's physical appearance, characteristics or mannerisms;
- h) Leering or inappropriate staring;
- i) Using communication and media platforms to show or send pornographic messages, sexual pictures, sexually explicit graffiti or other sexual images;
- j) the use of crude or obscene language or gestures, or the telling of risqué or obscene jokes;
- k) Spreading sexual rumours;
- l) Asking questions about sexual activities;
- m) Fiddling with one's clothing, including putting hands in one's pocket;
- n) Giving gifts that are sexually suggestive
- o) Reprisal or making threats to penalize or otherwise punish a person for refusing to comply with sexual advances
- p) invitations to social activities if they persist after the recipient has made clear that they are not welcome;

**Forms of Sexual Harassment:**

Sexual harassment can take various forms. Broadly, there are five forms of sexual harassment:

- i. Physical harassment includes unwelcome touching in a sexual manner such as kissing, patting, pinching, glancing or staring full of lust;
- ii. Verbal harassment includes unwelcome comments about private life or body part or person's appearance, sexually suggestive jokes and comments;
- iii. Gestural harassment includes sexually suggestive body language and or gestures, repeated winks, gestures with fingers, and licking lips;

- iv. Written or graphic harassment includes display of pornographic materials, sexually explicit pictures, screen savers or posters, or harassment via emails and other modes of electronic communication and;
- v. Psychological/emotional harassment consists of persistent proposals and unwelcome requests unwanted invitations to go out on dates, insults, taunts or innuendo of a sexual nature.
- vi. *Quid pro quo* harassment which involves undertaking, threat, or attempt by a person to influence another person's employment circumstances (for example engagement, promotion, training, discipline, dismissal, salary increments, career progress, or other benefits by coercing or attempting to coerce the person to surrender to sexual advances.
- vii. Sexual favouritism which happens when a person who is in a position of authority rewards only those who respond to their sexual advances, whilst other deserving persons who do not submit themselves to any sexual advances are denied promotions, merits rating, salary incentives, or opportunities as the case may be.
- viii. Victimization: This occurs where a person is victimised or intimidated for failing to submit to sexual advances.

### **SITUATIONAL ANALYSIS:**

Generally, sexual harassment is regarded as a form of discrimination as well as a violation of the rights of those that have been subjected to the vice including an assault on their dignity.

As already indicated, Sexual harassment at the workplace is legally prohibited in Kenya.

Under section 23 of the Sexual Offences Act (2006), sexual harassment is deemed as a persistent unwelcome sexual advance, request for sexual favour and other verbal, visual or physical conduct of a sexual nature by a person in a position of authority.

Further, under section 6 of the Employment Act, sexual harassment at the work place is defined as an instance where an employer, a representative of that employer or a co-worker directly or indirectly requests an employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express promise of preferential treatment in employment, a threat of detrimental treatment in employment or a threat about the present or future employment status of the employee. It also describes sexual harassment at the workplace as the use of language whether written or spoken of a sexual nature, the use of visual material of a sexual nature or showing physical behaviour of a sexual nature which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee's employment, job performance, or job satisfaction. This law also demands that all employers with more than twenty (20) employees must formulate a sexual harassment policy for purposes of regulation of the work environment including fostering understanding of what constitutes sexual harassment and how to deal with the same at the work place.

In recognition of its responsibilities under the law, the Government of Makueni County through the Directorate of Gender, Youth, Sports and Social services in collaboration with the office of the Deputy Governor organized two fact finding forums for all female and male employees, interns, attachees and volunteers working across the County Government. The forums were held in July 2016 at ACK guest house in Malili. The broad objective of the forums was mainly to share challenges encountered in the workplace amongst the county work force though with specific focus on sexual harassment and its impact on productivity and performance on both women and men.

During these interactive meetings, it became evident that a number of female officers and particularly young female staff, interns, attaches and volunteers have silently suffered the ignominy of being subjected to sexual harassment in favor of job opportunities and other benefits at the workplace. In terms of value, the forums provided the county officers with an opportunity to break their silence on sexual gender-based violence at the workplace.

Additionally, the Governor convened a meeting in May 2017 at ATC Kwa-Kathoka where issues of sexual harassment were raised as being rife within the rank and file of the County Government's workforce.

It is evident that there is a high prevalence of sexual harassment in the workplace within the county. Several cases have also been reported to the Human Resource Directorate for intervention. It is noteworthy that the county government must strive to provide a workplace that is equally appealing for both women and men.

The increased spate of sexual harassment at the workplace within the county has largely been attributed to the following factors.

- a. The absence of a clear policy and regulatory framework that aptly provides for sexual harassment including the resolution of complaints thereto.
- b. The unwillingness of victims of the vice to come forth including reporting their unfortunate experiences.
- c. The belief nurtured out of culture and other social considerations that men can never be victims of sexual harassment.
- d. Though not legally excusable, it is also quite evident that a good portion of the county staff do not fully appreciate or understand what constitutes sexual harassment at the workplace. And this applies to both victims and perpetrators.
- e. Those that are subjected to the vice also suffer the fear of victimization or reprisals and as such a majority are not willing to make their experiences known.

#### **Legal framework for Sexual Harassment:**

**The Universal Declaration of Human rights** which is the foundation of Human rights world-wide strictly prohibits any form of discrimination including on the grounds of sex or gender.

**The International Labour Organization (ILO)** also defines the scope of sexual harassment as any insult or inappropriate remark, joke, insinuation and comment on a person's dress, physique, age, family situation, amounts to sexual harassment; Further a condescending or paternalistic attitude with sexual implications undermining dignity; any unwelcome invitation or request, accompanied by threats; any lascivious look or other gesture associated with

sexuality; and any unnecessary physical contact such as touching, caresses, pinching or assault also amount to sexual harassment.

Similarly, the **Convention on the Elimination of all Forms of Violence against Women (CEDAW)** takes note that equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.

In the Regional Sphere, the **African Charter on Human and Peoples' Rights** reiterates the international principles by obligating all States Parties to take all appropriate measures to protect women, especially the girl-child from all forms of abuse, including sexual harassment, to provide for sanctions against the perpetrators avail access to counseling and rehabilitation services to women who suffer abuses and sexual harassment and to integrate gender sensitization and human rights education at all levels.

In our Kenyan Context, the Constitution 2010 under **Article 2(5)** provides for the inclusion of International law as part of the Kenyan law while **Article 27 (4)** strictly prohibits discrimination on any grounds including sex, pregnancy, and marital status, among others.

Under our statutory provisions, the **Sexual Offences Act** provides in **Section 23** that any person, in a position of authority, who makes any sexual advances or requests which he or she knows are unwelcome, is guilty of the offence of sexual harassment is liable to imprisonment for a term of not less than 3 years or to a fine of not less than Ksh100, 000 or both.

**Section 6(2)** of the **Employment Act** stipulates that an employer who employs twenty or more employees shall, after consulting with the employees or their representatives if any, issue a policy statement on sexual harassment.

It further expounds on this issue by providing that an employee is harassed if an employer, or a representative of that employer or a co-worker-requests an employee for sexual intercourse, sexual contact, or any other form of sexual activity in exchange for a promise of preferential treatment in employment; or threat about the present or future employment status of the employee. The employee is also harassed if the employer or colleague uses language of a sexual nature whether written or spoken, uses visual material of a sexual nature; or shows physical behaviour of a sexual nature, which is unwelcome, or offensive to that Employee.

**Section J.18 of the County Human Resource manual** states that; Sexual harassment will not be tolerated. The County condemns sexual harassment as a direct and unacceptable contravention of its core values. As such, all county government of Makueni officers are prohibited from harassing other officers or stakeholders, whether or not the incidents of harassment occur on employer premises and whether or not the incidents occur during working hours.

## **CHAPTER TWO: POLICY RATIONALE, SCOPE, AND OBJECTIVES:**

### **Policy Rationale**

This policy document is necessary to provide a framework for addressing sexual harassment cases in the County Government. It is also a legal requirement as stipulated under *Section 6(2)* of the Employment Act 2007 which requires that an employer who employs twenty (20) or more staff shall, after consulting with the employees or their representatives if any, design a policy statement on sexual harassment.

### **Policy Scope:**

This policy shall apply to all employees of the County Government of Makueni including job applicants, suppliers, clients, contractors, inter alia. Whereas the County Government has no jurisdiction over third parties who are not employees of the County, the County Government of Makueni intends that this and related policies will be upheld and respected by all who work at, or visit, the County Government or who take part in the County's activities at any location.

### **Policy Goal:**

To promote and uphold a safe and conducive working environment free from all forms of sexual harassment for all staff and stakeholders.

### **Policy Objective:**

The objective of this policy is to provide a preventive and redress mechanism for sexual harassment at the workplace within the County Government of Makueni.

Specifically, this policy seeks;

- a. To provide the definition of workplace sexual harassment;
- b. To prohibit all forms of sexual harassment.
- c. To provide an effective complaint handling procedure, based on the principles of natural justice;
- d. To guarantee protection from any victimization or reprisals; and
- e. To promote appropriate standards of conduct at all times.

### **Guiding Principles:**

This policy shall be based on the following guiding principles;

#### **1. Confidentiality**

Strict confidentiality shall be maintained by all parties to whom information is availed regarding on-going or previous harassment cases.

#### **2. Equality & Equity**

This policy applies to all employees, irrespective of position held, sex, disability, race, ethnic background, religion, culture, language or place of birth.



### **3. Integrity & Impartiality**

For the purposes of implementation for this policy, all parties shall provide truthful and accurate information. In addition, all decisions shall be objective and unbiased.

### **4. Freedom of expression**

The Government of Makueni County is committed to the principles of free inquiry and free expression. As such, all officers have a right to self-representation and to formal and informal communication on all matters regarding sexual harassment.

### **5. Accountability**

All parties with implementation responsibility under this policy shall remain accountable and uphold all principles of good governance.

## **POLICY OBJECTIVES:**

### **1. Formulation of the regulatory framework for sexual harassment:**

- a. This policy shall be implemented by the Government of Makueni County within the existing operational legal and policy frameworks.
- b. The policy provides for a framework for the handling of all matters pertaining to sexual harassment including complaint redress mechanisms and sanctions as shall be appropriate.
- c. Suitable deterrent sanctions will be applied to ensure that incidents of sexual harassment are not treated as trivial.
- d. This policy shall not be used to bring frivolous or malicious charges against fellow employees or employers. Disciplinary action under the appropriate policies concerning personal misconduct shall be taken against any person bringing a charge of sexual harassment without basis.

### **2. To provide education and training to staff on the policy:**

- a. It is necessary to ensure that employees and third parties are aware of the contents of this policy and are able, as appropriate, to implement it and to prevent engagement in activities that fall within the ambit of sexual harassment.
- b. All new employees of the County Government shall be trained on the content of this Policy as part of their induction. Employees shall be required to sign a register on receipt of this Policy and after any additional training.
- c. All contracts between the County Government and individual contractors as well as service providers shall incorporate reference to this Policy.

- d. The County Government commits to ensuring that within three months of the adoption of this policy, all existing staff of the County Government shall be trained appropriately.
  - e. The sensitization will be done by the Gender Committee, Head of Directorates and supervisors through media mix (county website, Social and electronic media), publications, workshop, mentorship programmes among other means.
3. **Mass communication, publicity and public sensitization.**
- a. The County Government shall take all reasonable steps to communicate this policy to all employees and third parties on a regular basis and to raise awareness about the need to prevent sexual harassment.
  - b. The County Government shall make this policy available on its Web pages, and provide regular and current information on its implementation via its Web pages.
4. **Formation of the county sexual harassment grievance handling committee**
- a. The county government shall set up the necessary sexual harassment handling committee(s).
  - b. There will a formal induction on their roles and responsibilities before assuming their mandate.
  - c. Periodical training for the committee, managers and supervisors will be conducted. Benchmarking with relevant commissions, ministries/Directorate will be done.

### **CHAPTER THREE: COMPLAINTS HANDLING PROCEDURE:**

This section covers complaints handling procedures and channels of reporting. Generally, the aggrieved party may report sexual harassment either directly to the office of the County Secretary, supervisor/manager or HoD's in confidence.

Section J.18 of the County Human Resource manual contemplates that hearings will be conducted fairly with both parties given equal opportunity to put their case forward. Complaints on sexual harassment will be handled confidentially and with sensitivity and due respect to both parties. Care will be taken to protect the careers and reputations of both parties. Sexual harassment is a gross misconduct and where the offender is guilty, he/she will be liable to instant dismissal. However, the Sexual harassment handling Committee may recommend other disciplinary actions to be taken against the aggressor.

**Informal Resolution Procedure:**

A complainant may choose to handle a sexual harassment case informally, where no written complaint will be required. The procedure shall remain strictly confidential and shall be carried out without prejudice.

The informal process is intended to provide a means for solving problems before parties become adversarial, through avenues which enable an officer experiencing harassment to communicate with the person who is offending him/her in an open, honest and non-threatening manner. It is hoped that through discussion or mediation, parties will understand each other's point of view, and the provocative behavior will cease. A complainant has a right to choose to pursue the formal complaints procedure at any time prior to the conclusion of the matter.

Informal actions will include;

- a) The complainant may communicate concerns to the alleged perpetrator indicating that the behavior is unwelcome and should stop immediately. In this case, the office of the Director of Human Resources shall:
  - i. act as a neutral, independent, confidential source of advice on individual situations, rules, options, strategy;
  - ii. intervene directly to ensure due process, fair treatment, through diplomacy and informal agreements;
  - iii. If necessary, refer the offended/or both to other sources of conflict resolution.
- b) The Office of the Director HR shall promote diversity & gender equality through policy formulation and direct assistance to staff.
- c) Parties concerned may enter into mediation which is defined as a voluntary, confidential structured process for disputing parties facilitated by a neutral mediator. Parties are the decision makers in this process.

Should the informal resolution process as prescribed above be successful in resolving the matter, no disciplinary action shall be taken against the alleged perpetrator. No formal record of the informal procedure shall be entered in any employee file. As such, no party shall provide

evidence or introduce documents from the process of an informal procedure unless all parties involved in the informal procedure consent to that disclosure.

A complaint form will be kept in confidence in the office of the Director Human Resources.

**Formal Resolution Procedure:**

A complaint form will be kept in confidence in the office of the Director Human Resources.

If the matter is not suitable for mediation, or if one or both parties refuse mediation, the complainant can fill a formal complaint form.

Investigations will be pursued as a harassment complaint only when it appears that:

- a) the complaint relates to sexual harassment as defined in this policy;
- b) the complaint appears to have merit

The complainant will be informed if the incident does not constitute harassment, and therefore will not be investigated. In such cases, they will be advised of the different avenues that can be taken to resolve the situation (e.g. a confidential review of the situation by Human Resources to determine if there is something that might be interfering with objectives and positive operations in the work unit).

**Responsibilities:**

Under the formal resolution procedure, the following are responsible.

**a) The Office of the County Secretary shall:**

- i. Seek advice from the Directorate of Human Resource on actions that may constitute misconduct.
- ii. Cause investigations of officers' misconduct.
- iii. Refer the matter to the respective committee for necessary action.

**b) The Sexual Harassment Handling Committee shall:**

- i. be constituted of a nonpartisan panel
- ii. provide a hearing for sexual harassment grievances
- iii. carry out any further investigation as may be necessary
- iv. recommend disciplinary action to the County/Directorate of human resource advisory committee

**c) Human Resource Advisory Committee shall:**

- i. review the recommendations from the Sexual Harassment Handling Committee.
- ii. institute appropriate disciplinary action or
- iii. recommend appropriately

Members of the above committees shall be required to declare conflict of interest and exempt themselves from participating in the deliberations. The SHH committee shall hold quarterly

meetings to review progress on the policy implementation. However, the committee can hold regular meetings which shall be dictated by the number of cases.

**Sexual Harassment Reporting Procedure:**

The complainant shall submit to office of the County Secretary, supervisor/manager or HoD's in confidence a written statement of complaint that will include;

- a) The names of the parties involved,
- b) A detailed description of the behavior that forms the basis of complaint,
- c) A request to initiate a formal complaints procedure.

Any formal complaint must be filed within 6 months of the last alleged instance of the action or conduct. The Secretary to the Sexual harassment handling Committee will write to the perpetrator informing him/her of the accusation, who shall respond in writing within five working days. The Sexual harassment handling Committee shall conduct preliminary investigations about the complaint within 15 working days on receipt of the response from the accused.

A comprehensive investigation report detailing the statement of complaint, the alleged perpetrator's written response, facts gathered and opinions formed by the investigator shall be submitted to the relevant committee. The committee shall review the report and decide appropriate remedial and/or disciplinary actions, in accordance with applicable disciplinary processes as deemed appropriate.

All parties involved shall at all times protect the complainant and alleged perpetrator from further embarrassment in the course of reporting and investigations. In case of sexual harassment, where the complainant suffered a loss, such as demotion or denial of promotion, the victim shall be restored to their proper position and compensated for any monetary losses suffered out of the denial of employment related benefits which were rightfully due.

This policy does not affect the rights of a complainant to pursue the complaint under the Sexual Offences Act, 2006.

**Additional Conflict Resolution Resources:**

- a) Human Resource staff: Advises staff on rights and obligations under Staff Rules and how complaints might be best resolved.
- b) Staff Associations: Assist staff to raise their grievances.
- c) Staff support Services: Offers confidential counselling on personal problems; provides consultation services for managers on how to help staff who have personal problems. Referrals, psycho-social support, formation of county support groups.
- d) Gender Committee: Provides advocacy and sensitization on gender issues

**Third Party Observers:**

There may be situations where a staff member/stakeholder observes or is aware of a situation where harassment has occurred. In such situations, it is highly desirable for the observer to contribute to stopping the harassment for several reasons. Helping a colleague in need is good practice. Also, the person who is harassing a colleague could, over time, also harass others, including the observer. The harassment may create an environment of hostility that interferes with the work of the larger group.

The observer may act in several ways. She or he might talk to the person who is being harassed and encourage the person to seek advice. If the observer actually witnesses the offensive behavior, she or he could tell the person responsible that the behavior made the observer uncomfortable.

The observer of harassment should inform a manager/supervisor. It would not however, be appropriate for the observer to directly lodge a formal complaint on behalf of a person who is subjected to harassment. In cases where the person who is being harassed does not wish to lodge a formal or informal complaint, the observer could seek advice from one of resources for conflict resolution without disclosing the names of the parties involved.

Witnessing an incident of harassment can be traumatic to the observer. Observers can talk informally with the conflict resolution resources without disclosing the names of the parties involved.

If the Third-Party Observer is harassed by the actions and behaviours of the alleged perpetrators, he/she can lodge a formal complaint.

**Follow-Up on Complaints**

Once a complaint is resolved, HoDs and supervisors will monitor the situation closely to ensure that all parties to the complaint make the transition back to their assigned work as smoothly and as quickly as possible. The HoDs and supervisors will also monitor their work environment closely to ensure that there is no potential for repeating the improper behavior.

**Freedom from Retaliation**

Retaliation is any unwelcome attempt to discriminate against an officer or deleteriously affect the terms and conditions of a staff member's employment or work environment which is motivated by the officer's having made a complaint of harassment. Adverse actions taken against a complainant that appear to stem from the registering of a complaint or from using the grievance procedures will be thoroughly investigated.

Retaliation or the threat of retaliation at any stage of the formal or informal complaints process is prohibited. As such, there shall be no retaliation against any person on account of a complaint

or an expressed intention to complain or on account of evidence or assistance given with respect to a complaint or a proposed complaint under this policy. Retaliation in itself constitutes misconduct subject to disciplinary action.

**False Allegation**

Any officer who makes a false allegation or a bad faith complaint, against another to the effect that the accused is a perpetrator of sexual harassment, shall be liable to disciplinary action equal to that which could have been subject to the alleged perpetrator; consistent with article 38 of the Sexual Offenses Act, 2006.

**Records Management**

All documents created in the course of handling a sexual harassment case shall be treated as confidential and shall be retained by the Director, Human Resource in accordance with the County government's policy on confidential records, except when required by law to be released to third parties.

**CHAPTER FOUR: POLICY IMPLEMENTATION:**

An operational coordination and accountability mechanism is key for the effective implementation of this policy. This chapter provides details of how the actors and structures should work together to ensure collaboration in the implementation and realization of the objectives of this policy.

The Directorate responsible for Human Resource in the County will coordinate the implementation of this policy. It will also lead in coordination of all activities related to the realization of the policy.

### **Institutional Roles and Responsibilities:**

The following entities have specific roles and responsibilities to undertake towards the successful implementation of this policy.

#### **1. Office of the Governor**

- a. Appointment of the Sexual Harassment Handling Committee.
- b. Capacity build and facilitate operations of the Sexual Harassment Handling Committee as regards the implementation of this policy.
- c. Oversee the operations of all committees and institutions involved in handling matters pertaining to Sexual Harassment.

#### **2. Makueni County Public Service Board**

- a. Ensure compliance with the policy on the part of the county workforce and third parties as may be applicable.
- b. Take such disciplinary measures as may be deemed appropriate against any person for the cases referred to them.
- c. Ensure a conducive working environment for all county employees in terms of office space, provision of working tools and equipment.

#### **3. Office of the County Attorney**

- a. Ensure that all decisions arrived at in the course of handling sexual harassment complaints are in tandem with the law and county policy.
- b. Provide secretarial services to the Sexual Harassment Handling Committee.
- c. Advise aggrieved parties who choose to go to court on appropriate legal mechanisms.

#### **4. County Staff**

- a. Familiarize themselves with the contents of this policy and uphold the principles provided herein.
- b. Be respectful to colleagues and maintain the highest standards of conduct, ethics and confidentiality.
- c. Maintain a harmonious work environment for other colleagues by adopting behaviour that is free from any form of sexual harassment
- d. Refrain from all forms of retaliation stemming from sexual harassment complaints.
- e. To report any form of sexual harassment.

#### **5. Heads of Directorate and Supervisors:**

- a. Monitor the working environment to ensure that acceptable standards of conduct are observed at all times.



- b. Set positive examples in their daily actions and communications with staff including making it clear that sexual harassment will not be tolerated at the workplace.
- c. Promote the County Government's sexual harassment policy within their Directorates
- d. Treat all complaints or concerns of alleged or possible sexual harassment seriously and take immediate action including reporting as may be provided for.
- e. Take any appropriate action to prevent retaliation or prohibited conduct from recurring during and after any investigations or complaints.
- f. Make themselves available to officers who may wish to raise concerns in confidence, and shall deal with such concerns in an impartial and sensitive manner.
- g. Endeavour to create an atmosphere at the workplace in which staff feel free to express concerns about inappropriate behaviour and to use, without fear of reprisal, the existing institutional channels for conflict resolution.
- h. Heads of Directorates /Supervisors who knowingly allow/cover up incidences of sexual harassment will be held accountable and shall be subject to disciplinary action.

**6. Director Human Resource:**

- a. Ensuring that both the complainant and the alleged perpetrator are aware of the seriousness of a sexual harassment complaint.
- b. Exploring formal resolution procedures of resolving sexual harassment complaints
- c. Notifying the police if criminal activities are alleged.
- d. Arranging for investigations of alleged sexual harassment and the preparation of a written report.
- e. Submission of a comprehensive written report of the investigation to the Human Resource Advisory Committee.

**7. Sexual Harassment Handling Committee:**

- a. It shall provide a platform hearing for hearing sexual harassment complaints.
- b. Carry out investigations as may be necessary.
- c. Take relevant actions with respect to sexual harassment complaints.
- d. Study and deliberate investigation reports/cases and recommend appropriate actions.

This committee shall be appointed through the Office of the Governor, which office shall also oversee its operations. It shall comprise of the following:

- a. Director HR-Chairperson.
- b. Director Gender
- c. Counselor.
- d. Legal officer-Secretary.
- e. HR representative from County Public Service Board
- f. The committee may coopt other members as may be necessary in the fulfilment of its operations.

In carrying out its responsibilities, the committee shall ensure that it ascribes to the constitutional principle of not more two third membership of either gender.

**Role of County Human Resource Advisory Committee**

- a. Review of recommendations received from the Sexual Harassment Committee
- b. Institute appropriate disciplinary action or recommend appropriate actions to sexual complaints matters referred to them.

**Policy Communication:**

Communication is important in order to enhance performance, transparency and accountability with clear understanding of roles and responsibilities, build trust and ownership of the interventions by the stakeholders including communities, and to ensure timely feedback and adherence to established policies and guidelines. A clear communication strategy minimizes exclusion errors and ensures that the various actors are fully aware of their rights and responsibilities.

The County Government shall organize periodic training for senior staff members on their legal duties and specific responsibilities to ensure prompt and adequate corrective action to complaints of sexual harassment.

All new and existing employees, regardless of their employment status and job position will be trained on how to recognize and report incidents of sexual harassment. They will be made aware of this policy by means of:

- Training.
- Employment contract,
- By distributing the policy to employees
- By including the issue of Ssexual harassment in employees’ orientation programmes.

All county employees are encouraged to ask questions and to seek clarification on any aspect of the policy that they may find unclear.

**Monitoring and Evaluation:**

The implementation of the policy will be monitored on a continuous basis. Monitoring will be based on performance indicators on areas identified in the policy, whose implementation will be measured to assess performance by all players with responsibilities as outlined by this policy.

The Directorate responsible for Human Resource will coordinate all other key actors, county Directorates and agencies in all matters pertaining to sexual harassment.

**Progress Reports:**

The Directorate responsible for Human Resource shall prepare annual M&E reports on implementation of the Policy. The Directorate shall also commission a midterm evaluation, to be conducted by an independent agency to measure outcomes and impacts of the Policy and inform its review. Monitoring and Evaluation studies will be jointly undertaken with relevant stakeholders.

**Accountability:**

Accountability in management is necessary for building trust and confidence with the community and stakeholders. Lack of accountability can lead to inefficiencies and compromises service delivery, entrenches negative organizational culture, waste of resources, erodes stakeholder trust and compromises the sustainability of projects.

Accountability is done by establishing controls (legal frameworks, policies, and systems) to ensure accountability, participatory project planning, timely implementation and periodic project reviews.

**Learning and Knowledge Management:**

Learning and knowledge management is a vital part of response, prevention and management of sexual harassment in the County. It enables program actors to document good practices and enable information sharing on perspectives, ideas that inform decision-making, planning, take corrective actions and make program adjustments. This contributes to improved service delivery, productivity, effectiveness and innovation.

Learning and knowledge management platforms shall be adopted to advance sexual harassment programs in the county by leveraging on technology to document processes and enable transfer of information, ideas and replication of good practices. Trainings, mentoring, and coaching provide an avenue for continuous capacity building.

**Feedback Mechanisms and Stakeholder Consultation:**

The Directorate responsible for Human Resources shall provide feedback to stakeholders through various platforms

**Policy Review:**

The Directorate shall from time to time, in collaboration with all key stakeholders, review the policy to ensure that it remains relevant and addresses the emerging issues and trends at international, national and county level.