

SEXUAL HARASSMENT POLICY FOR THE FLOWER SECTOR IN KENYA

This Policy was sponsored and developed by the following partners.



List of Abbreviations

CEDAW	UN Convention on Elimination of all form of Discrimination Against Women
CEO	Chief Executive Officer
FGD	Focused Group Discussion
GC	Gender Committee
HRD	Human Resource Department
HRM	Human Resource Managers
ILO	International Labor Organization
OSHA	Occupational Safety and Health Act
SH	Sexual Harassment
WWW	Women Working Worldwide

Definition of terms.

Accused – The person against whom an accusation is made.

Appeal – A proceeding to have a case examined by a higher court to see if a lower court's decision was made correctly according to law.

Complainant – A plaintiff; a person who commences a civil lawsuit against another known as the defendant, in order to remedy an alleged wrong.

Consent – the voluntary agreement or acquiescence by a person of age or with requisite mental capacity who is not under duress or coercion and usually who has knowledge or understanding.

Ratified – the intentional act by which the State has signified its consent to be bound by a treaty and has accepted, approved and ascended where the treaty so provides.

Retaliation – when an employer punishes an employee for engaging in legally protected activity.

Executive Summary

This Policy borrows heavily on the plight of workers and the need to have a comprehensive workplace Sexual Harassment Policy that is tailor-made for the ever growing and constantly changing work environment that is the flower farm sector.

In 2015 WRW and WWW co-developed a Model Anti SH-Policy in partnership with the Kenya flower council (KFC) and Fairtrade Africa (FTA), which was then validated by 40 flower farms. Thereafter, Hivos contracted WRW to ensure that the Policy was adopted in at least 10 farms or more.

This adoption process resulted in WRW engaging with different farms with the aim of getting comments on the said Policy with the aim of improving it. The farms supported this exercise by ensuring that the HRMs, Supervisors, GCMs, Compliance Officers and general workers (GWs) were available for interviews, trainings sessions, FGDs and virtual meetings. Both the qualitative and quantities methods of data collection were administered to these key informants. The methods were incorporated in the preparation of the final Model Sexual Harassment Policy through phone interviews, FGDs, trainings sessions and a virtual HRM meetings with the HRM, Hivos and representatives from the certification bodies.

This policy is therefore developed to create awareness on what amounts to sexual harassment but most importantly, to provide a reporting mechanism that is meant to offer redress. It is expected to be a useful framework for all flower farms, the workers in these farms and third-party contractors in as far as prevention and redress for acts amounting to sexual harassment and bullying are concerned.

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1.0 Policy Statement

The Company is committed to providing a work environment that is free of any form of harassment including sexual harassment. Sexual harassment is sanctioned by the Laws of Kenya and is against the Company's values. The Company applies a zero-tolerance policy with respect to any form of sexual harassment in the workplace and will take prompt and appropriate action when it determines that an allegation of sexual harassment is credible. The Company shall also take action to promote, develop workplace structures and a culture for preventing and redressing incidents of sexual harassment, guided by the Laws of Kenya. All employees are expected to understand the contents of this Policy and abide by its requirements.

This policy intends to make the Company and its spaces safe by encouraging reporting of all incidents of sexual harassment experienced as a result of their work engagement. In return, all employees and third-party contractors are required to take all reasonable measures to prevent and promptly address such incidents in a confidential and discreet manner. Where allegations of sexual harassment are substantiated, the accused shall be sanctioned in strict accordance with this policy.

The policy does not preclude the reporting of complaints to any other body or institution that has legal authority to address complaints of this nature.

Signature:

Chief Executive Officer (CEO)

2.0 Purpose

The purpose of this Policy is to promote a conducive work environment that is free from all forms of sexual harassment and in which all persons are treated with respect and dignity at the workplace. This is a commitment by the Company to define workplace sexual harassment, prohibit it in all forms, provide procedures for lodging complaints about conduct that violates this Policy, investigate sexual harassment allegations and carry out appropriate measures in case of violations.

3.0 Scope of the Policy

This Policy applies to:

- a) All categories of employees of the Company including permanent and temporary staff, general workers, independent contractors, suppliers, consultants, union representatives, supervisors, managers, executive and non-executive directors.
- b) Prospective employees; and,
- c) All third parties dealing with the company including; suppliers, service providers, clients or any other business associates. All contractors shall be responsible for providing their representatives, employees, agents and/or officials with a copy of this Policy.

Definition of Areas of Operation

The workplace includes any physical space under the control or management of the Company including all offices or other premises where the Company's business is conducted including pack houses, greenhouses, canteens, rest/changing rooms, company transport vehicles, other transportation vessels, grading halls, dispensaries/clinics, training halls and conference venues.

4.0 Meaning Of Sexual Harassment

For the purpose of this Policy, sexual harassment is defined to include:

- 1. Any unwanted conduct of a sexual nature in the workplace or in connection with work which makes a person feel offended, humiliated and/or intimidated.
- 2. A situation where an individual is asked to engage in sexual activity as a condition of that person's employment or in exchange for special treatment during employment.

4.1 Forms of Sexual Harassment

Sexual harassment may take various forms, including conduct, which is either, inappropriate or contributes to a hostile work environment. They include, but are not limited to:

Behaviors that constitute sexual harassment include:

- **Verbal**

It includes sexually suggestive remarks, obscene or insulting sounds, unwelcome and offensive names or terms of endearment. Examples of this form of sexual harassment include:

- i. Repeatedly referring to a person as doll, babe, honey when she/he has indicated that s/he feels offended by this language;
- ii. Cat calling, kissing sounds, howling and smacking lips;
- iii. Unwanted sexual teasing, jokes, remarks, or questions;
- iv. Comments about a person's anatomy or looks;
- v. Sexual innuendos or stories;
- vi. Spreading rumours about a person's personal sex life;
- vii. Repeatedly asking for dates when the person has indicated that s/he is not interested; and
- viii. Unwanted telephone calls and cyber stalking.

- **Visual**

It occurs when someone exposes his or her private parts or repeatedly stares at another person's body parts in a way that is offensive or uncomfortable for that person. Examples of visual sexual harassment include:

- i. Obscene or unwanted sexual looks or gestures with hands or through body movements;
- ii. Being made to look at sexually explicit images;
- iii. Sexually demeaning or offensive pictures or phrases;
- iv. Cyber stalking and threats via all types of electronic communication, including instant messaging, social network websites, text messaging, voice mail and email; and
- v. Unwanted letters and/or electronic messages (e-mail, text/picture/video messages, intranet/on-line postings, blogs, Face book and Twitter messages).

- **Physical**

It is the act of being brushed against, hugged, kissed or touched in any way that is unwelcome and discomforting. It could also refer to being forced to touch someone.

Examples of sexual harassment include:

- i. Unwanted kissing, hugging, patting, leaning over, cornering, pinching;
- ii. Brushing;
- iii. Touching an employee's clothing, hair or body in an inappropriate and non-consensual manner.

What is not sexual harassment: Generally, sexual harassment does not involve mutually enjoyed relationships or interactions that occur between co-workers.

4.2 Legal Framework on Sexual Harassment.

4.2.1 The Employment Act

Section 6 of the Employment Act provides for sexual harassment as defined in this policy and specifically the steps that are required to secure workers from sexual harassment.

The section states that:

“an occupier shall not discriminate an employee, injure the employee or discriminate against or disadvantage an employee in respect of the employee's employment or alter the employee's position by reason any that the employee:

- a) Makes a complaint about a matter which the employee considers is not safe or is a risk to his health;
- b) Is a member of a safety and health committee established pursuant to the Act; or
- c) Exercises any of his functions as a member of the safety and health committee.

4.2.2 Further legal provisions

Further to the above proviso of the Employment Act, Kenya has enacted legal provisions and Articles which protect the rights of all individuals and in particular rights of workers and accused persons. The Constitution 2010 provides for the protection of all citizens and calls for the fair labour practices under Article 41. In line with this requirement, the Sexual Offences Act provides that anyone who, in a position of authority uses this position to sexually harass someone is guilty of sexual harassment under Section 23(1). In addition to this, The Fair Administrative Actions Act provides for any accused persons to be notified of their right to appeal to a decision that has adversely affected them. Other laws that protect workers include the Occupational

Safety and Health Act, The UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW), The UN Declaration against Elimination of Violence against Women, 1993 and the International Labor Organization (ILO).

5.0 Complaint/Grievance Procedure

5.1 Guiding Principles

The following principles apply to this Policy:

1. Confidentiality. All inquiries, complaints and investigations shall be treated in a confidential manner. Information shall be revealed strictly to persons designated to investigate and adjudicate sexual harassment cases under this Policy. The identity of a complainant may be released to the accused and witnesses. All parties and witnesses are expected to keep the identity of the persons involved and details of the complaint confidential. All parties involved shall be required to enter into binding agreements whose violation will lead to appropriate disciplinary action being taken by the Company.
2. Protection for parties and witnesses The Company is committed to ensuring that no employee who brings forth a complaint is subjected to any form of reprisal or threats of reprisals. Any breach of this principle will attract disciplinary action. The Company will take adequate steps to ensure that the complainant or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment.
3. Non-Discrimination. All decisions rendered under this Policy shall uphold the highest degree of professionalism. All such decisions shall not be based on personal agenda, relationship or sexual orientation.
4. Expediency. All parties involved in the investigation and determination of a complaint are expected to treat all cases with prudence and expediency and in line with the timeframes provided under this Policy or where justifiable under special circumstances, within a reasonable timeframe.

5.2 Complaints Procedure

An employee who observes or believes that he or she has been or is being sexually harassed is encouraged to take the following steps:

1. Inform the offending person that his or her conduct is unwelcomed and to cease immediately, or report the matter to the appropriate person as designated under this policy;

2. Where appropriate, record each incident - noting what was said or done, date(s), times, location/places, and the names of any witnesses, complainant's response. Nonetheless, a complainant need not have a record of events to file a complaint;
3. Enlist witnesses where possible;
4. In case the harassment is repeated or is of a severe nature, follow the complaints process under this Policy.

An employee may lodge an anonymous complaint under this Policy. However, due to the serious implications of sexual harassment incidents and difficulties associated with their investigation, employees are encouraged to fully disclose all information related to the incident.

5.2.1 Informal Complaints Process

Where a complainant alleges sexual harassment, he or she may request that the matter be handled informally. He or she may discuss the complaint with:

1. A section representative of the gender committee;
2. A counselor, if present; and,
3. A member of the Human Resources Department.

Any of the persons listed above to whom the complaint is made, shall:

- Request for a meeting with both the complainant and the accused. To ensure that the complainant is comfortable enough to disclose the details of his/her complaint, the designated person shall initially request for separate meetings;
- Ensure that both the complainant and the accused understand the informal complaints process and possible outcomes;
- Hear the complainant's allegation and obtain any relevant information from him/her and/or from any witnesses;
- Give an opportunity to the accused and/or his/her witnesses to respond to the complaint;
- Facilitate discussion between both parties to achieve an informal resolution which is acceptable to the complainant;
- Keep a confidential record of the process and resolution. In the event that the complaint is resolved to the satisfaction of both parties, the record of the complaint may not be filed in the employee's official records kept by the Human Resources Department;
- Follow up after the resolution to ensure that the offensive conduct has ceased;

- Ensure that the informal complaints process is completed promptly, within one (1) week of the complaint being made.

5.2.2 Formal Complaints Process

A complainant may choose to make a formal complaint if he/she has been/is being sexually harassed. A complainant may also elect to use this formal complaints process if the informal process fails to meet their expectations or if the harassment continues in spite of the resolution made at the end of the informal process.

A complainant may lodge a formal complaint using the following procedure:

1. File a written complaint with either of the following persons:
 - Section representative of the Gender Committee;
 - Union Committee representative;
 - Company nurse or counselor;
 - Line manager or supervisor; or
 - Any member of the Human Resources Department.
2. The complainant is encouraged to file a complaint within 24 hours of the incident;
3. The recipient of the complaint will refer the matter to the Gender Committee immediately. The Gender Committee is required to use the following procedure when conducting the investigation and resolving the claim:
 - Request for a meeting with both the complainant and the accused for the purpose of obtaining information about the complaint. To ensure that the complainant is comfortable enough to disclose the details of his/her complaint, the Committee may request for separate meetings;
 - Ensure that both the complainant and accused understand the formal complaints mechanism and the possible outcomes;
 - Interview any witnesses or third parties separately;
 - Make a determination regarding whether or not there was an incident of sexual harassment within two (2) weeks of receiving the complaint. The determination shall be made by a simple majority vote of the members of the Gender Committee adjudicating the matter;
 - Prepare a report detailing the investigations, findings and recommendations containing remedial action for the Company's consideration through the Human Resources Department. The Gender Committee shall be guided by Section 5.4 of

- this Policy in making its recommendations to Management; and
- Keep a confidential record of all claims brought before the Committee.
4. The Human Resources Department (HRD) in consultation with Management will consider the Gender Committee's report and proceed as follows:
- If in agreement with the recommendations of the Gender Committee, the Human Resources department shall within one (1) week of receipt of the Gender Committee's report, notify the complainant, accused and the Gender Committee of the measures the Company intends to apply. The Human Resources Department shall provide both parties with a right to respond before making the final determination;
 - In the event that the Human Resources Department disagrees with the findings or recommendations of the Gender Committee, the Human Resources Department shall convene a meeting within five (5) days of receipt of the findings with the Gender Committee to review and discuss the evidence gathered. The Human Resources Department and the Gender Committee shall endeavor to reach an agreeable outcome. The final determination shall remain with the Human Resources Department. The Human Resources Department shall notify the complainant and accused of the measures the Company intends to apply within one (1) day of the meeting with the Gender Committee and provide both parties with a right to appeal their final position before making the final determination.
 - Unless special circumstances demand otherwise, the Human Resource Department shall implement its decision within two weeks of arriving at the final determination of the complaint.
 - Both the Gender Committee and Human Resources Department will keep a confidential file of the proceedings and final decision taken thereof.

5.2.3 Special Panel

Where appropriate, the Complaints Procedure in 5.2.2 shall apply to all situations, except where a complaint of sexual harassment is brought in relation to or by an employee of the rank of Senior Manager or of a higher rank, or in respect of a complaint brought by or against any other person who not in the employment of the Company but have a contractual engagement with the Company. A Special Panel shall be constituted to adjudicate over the complaint in respect of a Senior Manager or an employee of a higher rank. The Special Panel shall be constituted as per the Company's Human Resource Policy on disciplinary matters and as per the contract between the Company and the senior staff or a third-party contractor under the '*Dispute Resolution*' clause.

This provision relating to the Special Panel shall not prevent recourse to the informal complaints process provided for under section 5.2.1, as a matter of first instance, where both parties to the complaint agree to pursue the informal process.

5.3 Alternative Redress Mechanisms

None of the complaints processes under this Policy preclude an individual from pursuing a resolution through judicial channels.

In addition to and in the event that the complainant or a party to a complaint is not satisfied with the outcome of the complaints process, or where he/she has not received any notification from the Human Resources Department, four (4) weeks after the date of filing the complaint, the Complainant may pursue alternative redress mechanisms such as through the Trade Union, the Labor Office in accordance with the provisions of the Laws of Kenya, formal or informal alternative dispute resolution, or through judicial process.

5.4 Remedial Measures

The Company will treat all sexual harassment incidents with due urgency. Any person found to have committed sexual harassment shall be subject to disciplinary action in accordance with Company Policy. The Company is at liberty to take any appropriate action including: verbal or written warning; transfer; demotion; suspension; summary dismissal; revocation of contract in the case of service providers and independent contractors; reporting the matter to the police for further investigation; or, any other appropriate action. The nature of the Company's action shall

depend on the gravity and extent of the harassment. The Company shall also take such measures as are necessary to deter occurrences of sexual harassment at the workplace.

The Company will support any victim of sexual harassment by applying appropriate measures including arranging for counseling services, making provision for compassionate leave, medical treatment where necessary, or any other necessary measures required under the circumstances.

6.0 Roles & Responsibilities

6.1 Chief Executive Officer

The Chief Executive Officer (CEO) has the ultimate responsibility for the implementation of the Sexual Harassment Policy. The CEO shall also perform the following functions under this Policy:

- Ensuring that there are broad-based policies containing preventive and redress measures reflecting the Company's zero tolerance on sexual harassment;
- Ensure that the Company has adequate mechanisms to meet the standards under this Policy;
- Provide leadership and direction to the Company in implementing this Policy.

6.2 Heads of Departments

All Heads of Department and Managers are responsible for the wellbeing of employees under their authority. The Heads of Department and Managers shall:

- Ensure that all employees under their supervision understand this Policy and fulfill their responsibilities.
- Ensure that all employees under their supervision are trained and supported to fulfill their role in preventing and dealing with sexual harassment.
- Take appropriate action where any employee under their supervision breaches this Policy.

6.3 Human Resources Department

The Human Resources Department is responsible for promoting a conducive work environment that is free from sexual harassment. The Human Resources Department shall be responsible for:

- Educating all employees on the Company's zero tolerance policy on sexual harassment and the procedures and requirements that fall within the Policy;
- Ensuring that all new employees are properly inducted on the Company's policy on sexual harassment by providing copies them with copies of this Policy and training on sexual harassment;
- Providing periodic training sessions (at least once a year) to the Gender Committee and Management on sexual harassment;
- Posting the Policy in conspicuous places at the workplace in a simplified format and in a language that is easy for workers and other visitors to the premises, to understand;
- Ensuring that all reported incidents of sexual harassment are addressed in a professional and confidential manner, promptly and transparently;
- Ensuring that reported incidents are handled sensitively and with respect for the dignity of the persons involved;
- Ensuring fair remediation for the complainant;
- Ensure that complainants and/or witnesses are not victimized for reporting or testifying in respect of a sexual harassment allegation;
- Reporting any incidents of sexual harassment observed, both, within and outside of their unit to the Gender Committee or to designated members of the Human Resources Department;
- Periodically, review the effectiveness of the policy in deterring sexual harassment and update the Policy at least every two years after consultation with groups of all employees;
- Providing logistical support to the structures for implementing this Policy, including ensuring that an inclusive and well-resourced Gender Committee is constituted and allowed sufficient time and leeway to undertake its mandate; and,
- Ensuring that processes and activities in all departments respect the provisions relating to this policy and that compliance is enforced in a synchronized and complementary manner.

6.4 Supervisors

Supervisors are responsible for the day-to-day oversight of the implementation of the Policy. They are responsible for:

- Ensuring that all the employees under their supervision understand this Policy and the

procedures for reporting and addressing allegations of sexual harassment;

- Providing appropriate assistance to any complainant who wishes to report a sexual harassment case; and,
- Reporting to the Gender Committee or Human Resources Department any incident of sexual harassment which has been reported to him/her or which he/she has personally observed.

6.5 Gender Committee

The Gender Committee is responsible for receiving and handling complaints of sexual harassment on behalf of the Company.

The individuals designated to receive complaints of sexual harassment on behalf of the employer will:

- a) Document receipt of any complaints;
- b) Conduct prompt, neutral investigation into the allegations and write a report of the information gathered and of the findings upon the initial investigation;
- c) Observe the timelines of investigating and finalizing a sexual harassment case under this Policy;
- d) Prepare a report with recommendations to Management following investigation of a sexual harassment case;
- e) Follow-up to ensure that the agreed corrective action is implemented;
- f) Keep the complaint confidential to the extent practicable under the circumstances;
- g) Render advice to the Human Resources Department on preventing and redressing sexual harassment;
- h) Support the Human Resources Department in sensitizing workers on sexual harassment;
- i) Monitor that there is no retaliation against the complainant;
- j) Monitor that there is no re-occurrence of inappropriate behavior sanctioned under this Policy.

The Chairperson of the Gender Committee shall be responsible for convening the Gender Committee and instituting an investigation as soon as a complaint is received. The Chairperson shall also prepare quarterly reports for the Human Resources Department containing: the number and nature of the complaints received; steps taken upon receipt of complaint; outcome/resolution of the complaint; action taken by HRD; duration of the investigation and of

other action taken to prevent sexual harassment at the workplace and the effectiveness of such actions.

6.6 Company Employees

All employees and persons present on Company premises are expected to:

- a) Refrain from any behavior that constitutes sexual harassment;
- b) Promote a culture of mutual respect;
- c) Maintain confidentiality concerning any complaint or investigation on sexual harassment of which he/she is aware;
- d) Consult with and/or report any incident of sexual harassment of which he/she may be aware, to the persons designated to handle sexual harassment complaints under this Policy.

7.0 Communication of the Policy

The Company will organize periodic training for Senior Managers on their legal duties and specific responsibilities to ensure prompt and adequate corrective action to complaints of sexual harassment. Senior Management will be required to attend these training sessions.

The Company will organize training sessions for Management and Supervisors on how to recognize and handle allegations of sexual harassment brought to their attention, either informally, or as part of the formal grievance procedure, which they will be required to attend.

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;
- Employee's handbook;
- Employment contract;
- By distributing the policy to employees;
- By affixing the policy on Departments and HR boards; and
- By including the issue of SH in employees' orientation programmes.

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

8.0 Awareness Creation

As a preventative measure, the Company will conduct communication, education and training programs on sexual harassment. All new staff will be required to undergo a comprehensive sexual harassment induction coordinated and/or conducted by the Human Resources Manager and the Gender Committee. In addition, all workers shall undergo sensitization exercises routinely and no less than once a year on sexual harassment. The Company shall allocate sufficient time for the Gender Committee to undertake its duties under this policy separate from the time spent adjudicating over complaints of sexual harassment. The Company shall give the Gender Committee reasonable time for them to conduct these sensitization forums.

The Gender Committee, supervisory and managerial staff, shall during the course of their employment with the company, undergo special periodic training sessions on early warning and reporting mechanism on sexual harassment problems and how to address them as and when they arise. These training sessions shall be facilitated at least once a year.

9.0 Remedial Action towards the harasser

Misconduct constituting harassment or retaliation will be dealt with appropriately. Depending on the severity of the case, such action may include warning, reprimand, reassignment, temporary suspension with half pay (if the farm is unionized) or as per the terms in their contract or dismissal. The disciplinary action shall be reached by Human Rights Managers in consultation with the Gender Committee.

10.0 Right of Appeal

If the complainant is not satisfied with the measures notified by the HRD, or no proposal is notified to the individual within four weeks from the filing of the complaint, the complainant shall submit his/her grievance to the Chief Shop Steward for independent investigation.

The Chief Shop Steward will:

- Conduct an investigation
- Draw up a report comprising a summary of the allegations, the findings from the investigation and the suggested remedial action.
- His/her decision will be transmitted to the HRD, within 4 weeks of the assignment of the case, except where, in the investigator's opinion, exceptional circumstances require

additional time.

If the claimant is not satisfied with the decision taken by the Chief Shop Steward /Trade Union, or if s/he is not a member of a trade union, the claimant has the right to refer the matter to the sub-county labour officer, for mediation in accordance with the provisions of the Labour Disputes Act.

11.0 Counseling

Management may seek appropriate professional advice and arrange for counseling for the complainant, during and after the investigation of the complaint, as required.

Leave of absence may also be necessary, and Management will give permission for this, and if the complainant's compassionate leave entitlement is exhausted, additional compassionate leave may be granted.

12.0 Confidentiality

Confidentiality will be maintained throughout the investigatory process to the extent consistent with adequate investigation. All parties and witnesses are expected to keep the identities of the persons involved confidential.

13.0 Retaliation

Retaliation against any individual who reports an incident of sexual harassment or who participates in an investigation of a claim of sexual harassment is prohibited and represents a serious violation of this policy. It constitutes separate grounds for disciplinary action.

A claim of retaliation by a complainant, accused or witness may be pursued using the steps set out in the disciplinary procedures. If the Company determines that evidence exists to support that retaliation occurred, an appropriate action will be taken, regardless of the outcome of the underlying sexual harassment complaint.

14.0 False or malicious complaint

The Company shall not tolerate false or frivolous sexual harassment allegations against any person, so filing a false or malicious complaint of SH or of retaliation is a violation of this policy. Such conduct shall be pursued using the steps set out in the disciplinary procedures. However, a complaint made in good faith which cannot be proven shall not be considered as either false or frivolous.

Annexures

List of documents

- 1.0 Checklist for self assessment;
- 2.0 Guidelines for Sexual Harassment;
- 3.0 Internal self audit checklist;
- 4.0 Policy Implementation Plan To Discuss With Individual Farms; and
- 5.0 Sexual harassment training guide;

Statutes and International Conventions.

- 1.0 Constitution of Kenya 2010,
- 2.0 Employment Act;
- 3.0 Fair Administration Act;
- 4.0 Occupational Safety and Health Act;
- 5.0 Sexual Offences Act; and
- 6.0 UN Convention on Elimination of all form of Discrimination Against Women.

Detailed legal Framework.

1.0 The Constitution

The Constitution of Kenya guarantees rights and freedoms of every person in Kenya including:

- i. Right to fair labor practices under Article 41;
- ii. Right to freedom and security of the person under Article 29;
- iii. Right to Fair administrative Action under Article 47;
- iv. Right to fair hearing under Article 50;
- v. Freedom of conscience, religion and opinion under Article 32;
- vi. Right to human dignity under Article 28; and
- vii. Freedom from discrimination under Article 27.

2.0 The Employment Act

Section 6 of the Employment Act provides for sexual harassment as defined in this policy and specifically the steps that are required to secure workers from sexual harassment.

The section states that:

“an occupier shall not discriminate an employee, injure the employee or discriminate against or disadvantage an employee in respect of the employee’s employment or alter the employee’s position by reason any that the employee:

- d) Makes a complaint about a matter which the employee considers is not safe or is a risk to his health;
- e) Is a member of a safety and health committee established pursuant to the Act; or
- f) Exercises any of his functions as a member of the safety and health committee.

3.0 The Fair Administrative Actions Act

Section 4 (3) of the Act states that:

Where an administrative action is likely to adversely affect the rights and freedoms of any person, the administrator shall give the person affected by the decision:

- a) Prior notice of the nature and reasons for the proposed administrative action;
- b) An opportunity to be heard and to make presentations in that regards;
- c) Notice of a right to review, on an internal appeal against the administrative decision where applicable;
- d) A statement of reasons pursuant to section 6. Etc.

4.0 The Sexual Offences Act

Section 23 of the Sexual Offences Act provides as follows:

1. “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 and shall be liable to imprisonment for a term of not less than three years or to a fine of not less than one hundred thousand shillings or to both.
2. It shall be necessary to prove in a charge of sexual harassment that:

- a) The submission or rejection by the person to whom advances or requests are made is intended to be used as basis of employment or of a decision relevant to the career of the alleged complainant or of a service due to a member of the public in the case of a public officer;
- b) Such advances or requests have the effect of interfering with the alleged complainant 's work or educational performance or creating an offensive working or learning environment for the alleged complainant or denial of a service due to the member of the public from a public office.

5.0 Occupational Safety and Health Act (OSHA)

The Occupational Safety and Health Act generally provides for a conducive work environment. Section 8 of the Act provides as follows: -

“An occupier shall not dismiss an employee, injure the employee or discriminate against or disadvantage an employee in respect of the employee’s employment, or alter the employee’s position to the detriment of the employee by reason only that the employee”:

- a) Makes a complaint about a matter which the employee considers is not safe or is a risk to his health;
- b) Is a member of a safety and health committee established pursuant to this Act; or
- c) Exercises any of his functions as a member of the safety and health committee.

6.0 Ratified international laws

While recognizing that both men and women can be/ are complainants of sexual harassment, owing to the recognition that women are disproportionately affected by sexual harassment, it has been recognized as a form of discrimination and violence against women in violation of global, regional and international human rights standards.

By virtue of Articles 2(5) and (6) of the Constitution of Kenya, international law forms part of the Laws of Kenya. Some of the applicable international instruments in sexual harassment are:

- i. The UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW). This Convention directs State Parties to take appropriate measures, to eliminate discrimination against women (including sexual harassment) in all fields including the workplace.

Article 11 directly addresses sexual harassment and provide as follows;

“Article 11 paragraph 17 - Equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.”

“Article 11 paragraph 18 - Sexual harassment includes such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.

- ii. The International Labour Organization’s Discrimination (ILO) (Employment and Occupation) Convention, 1958 (No.111)
The Convention prohibits sexual harassment, which is a form of sex discrimination and to provide a conducive work environment.

- iii. The UN Declaration against Elimination of Violence against Women, 1993
The Declaration prohibits three categories of violence against women:
 - a) Violence perpetrated by the state;
 - b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; and
 - c) Violence in the family and in the private sphere.