



Sexual Harassment Policy at the University of Nairobi

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Outline



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*** University of Nairobi Gender
(Sexual Harassment) Policy**



DEFINITION



Sexual harassment connotes unwanted conduct of a sexual nature which has the effect of or has the intention to violate one's dignity or to create an intimidating, hostile, degrading, humiliating or offensive environment.



CONTEXT



- * Sexual harassment in the public domain i.e. workplace, institutions of learning is prevalent.
- * Sexual harassment occurs against both women and men; predominantly against women.
- * Increased women's population in the public domain (increased competitiveness, affirmative action, changing labour dynamics, increased education levels, breaking down of patriarchal and cultural barriers, progressive laws etc.).
- * Hence, increasing reports of sexual harassment.
- * Power dynamics - women at the lower rungs/echelons at the workplace suffer more harassment of a sexual nature



LEGAL & POLICY FRAMEWORK



* Sexual harassment as an equality issue:

- i. Treaties and conventions ratified form part of the law in Kenya (art. 2(6), Constitution of Kenya); provisions of CEDAW are therefore binding.
 - ii. Constitution offers protection against discrimination (art. 27(Constitution of Kenya)
- * Redress for violation of rights and fundamental freedoms is determined by the High Court.
 - * Complaints to the National Gender and Equality Commission (s.26(c) National Gender and Equality Commission Act).



LEGAL & POLICY FRAMEWORK



* Sexual harassment as a criminal offence

“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” (s.23(1) SoA).



LEGAL & POLICY FRAMEWORK



* Sexual Harassment as an offence

It must be proven:

- (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 victim 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 victim's work or educational performance or creating an offensive working or learning environment for the alleged victim or denial of a service due to the member of the public from a public office



LEGAL & POLICY FRAMEWORK



Sexual harassment in the workplace:

- * All organisations with more than 19 employees to have in place sexual harassment policies at the workplace Employment Act 2007,s.6(1).
- * Such policies must be brought to the attention of every employee and include: information that every employee has a right to sexual harassment-free environment



LEGAL & POLICY FRAMEWORK



- * The employer is required to:
 - Take disciplinary action against perpetrators of sexual harassment at the workplace;
 - Provide information on how to bring to the attention of the employer cases of harassment;
 - Keep names included in reports on sexual harassment confidential save where disclosure is necessary to facilitate investigations
- * Failure to put in place a policy is an offence attracting a fine (s.6(2&3) & s.88, Employment Act 2007; *C A S v C S Limited* [2016] eKLR)
- * Liability to pay damages (*P O v Board of Trustees, A F & 2 others* [2014]eKLR; *M W M v M F S* [2014] eKLR)



UON GENDER POLICY



- * The University of Nairobi (UoN) has a Gender Policy and a Gender Mainstreaming Policy 2008 as Revised in 2015 that proscribes all forms of sexual harassment (funded by Ford Foundation).
- * Sexual harassment is defined in the Policy as unwelcome acts of a sexual nature that cause discomfort to the targeted person and may include words, persistent request for sexual favours, gestures, touch, suggestions, coerced sexual intercourse and rape.
- * Wide definition
- * Unwelcome? – consent problematic in view of the power dynamics (panel investigating allegations of sexual harassment).



UON GENDER POLICY



- * Sexual harassment is considered a form of gender violence.
- * Undertaking to put in place measures designed to eliminate sexual harassment and all forms of gender-based violence including developing rules to protect staff and students from sexual harassment(para 4.10).
- * Undertaking to establishment of sexual harassment centre and counselling services;



UON GENDER POLICY



Other Measures:

- * treat reported cases with confidentiality;
- * develop and enforce rules aimed at protecting both students and staff from sexual harassment;
- * strict enforcement of rules against cohabitation and visitation hours in the halls of residence among students;
- * treat instances of sexual offences including harassment as crimes under Sexual Offences Act and report the same to police/lead to dismissal and/or automatic expulsion.



CONCLUDING REMARKS



- * Beyond documentation – implementation requires goodwill; cases of “sex for marks”; harassment in the halls etc exist in spite of gender policy (Muasya, 2014); harassment of members of staff. Goodwill – disciplinary case at the SoL pre-gender policy.
- * Awareness – members of staff and students unaware of the gender policy and or the reporting procedure.
- * Linkage to examinations – tightening examination processes including external examinations- examinations are usually used as leverage.
- * Non-compliance with the Employment Act.