



# SEXUAL HARASSMENT WORKPLACE POLICY

FEBRUARY 2021  
FIRST EDITION



## CONTENTS

Foreword.....	01
List of Acronyms and Abbreviations.....	02
Introduction.....	03
1. Preamble.....	03
Definition.....	03
2.2 Context of Sexual Harassment.....	04
3. Committee on Sexual Harassment.....	04
4. Structure.....	05
5. Complaint procedure general.....	05
6. Appeals.....	07
7. Disciplinary action.....	07
8. Confidentiality of records.....	07
9. Rights of complainant and of the respondent.....	08
Annex 1: Sexual harassment complaint form.....	09

## FOREWORD

The Malawi Human Rights Commission (The Commission) has developed this Sexual Harassment (SH) Work Place Policy document, hereinafter referred to as the “Policy” which aims at safeguarding employees and people seeking services at the Commission, from unwelcome sexual advances and provide them with reporting guidelines. The Policy provides ways of handling complaints, action taken against perpetrators and strategies for assisting survivors, including accessing legal remedies.

The Commission has prepared and issued this Sexual Harassment Policy as provided for under section 8 of the Gender Equality Act, of which the Commission has been entrusted to oversee the enforcement of its provisions. The policy is the authoritative and a comprehensive guide to tackling sexual harassment at the Commission. It provides real and relevant examples for both management including at Commission and Secretariat level and employees of the Commission in a user-friendly and accessible way so that practical steps can be taken by all to eliminate sexual harassment in the workplace. This sexual harassment policy is also intended for use by private and public employers in Malawi to help them develop their own sexual harassment policies.

The enactment of the 2013 Gender Equality Act (GEA), with specific provisions on the prohibition of sexual harassment in the work place is a progressive step towards the realization of gender equality and ending sexual harassment in work places. The Commission is committed to see the enforcement of the Gender Equality Act, and in this particular regard, the provision and enforcement of sexual harassment work place policies in both the public and private sectors.

With its broad mandate of investigating cases of human rights violations of which sexual harassment is one of them, the Commission can and will take institutions and individuals to task and hold them accountable, including before a court of law in a quest to see justice prevail for all survivors of sexual harassment.

All complaints of sexual harassment will be taken seriously and treated with respect and in confidence. The safeguarding of workers, particularly female workers, starts within the Commission itself as custodian of the GEA with this policy which is now in place.

The Commission remains committed to ensure that sexual harassment is addressed within the Commission and in all public and private institutions. The efficacy of this policy therefore is to ensure that Human rights, in particular rights of women and girls are safeguarded and upheld. This will also contribute to the realization of gender equality and women empowerment as outlined in many international instruments that Malawi is party to and the global Sustainable Development Goals



**STELLA TWEA**

Chairperson for Gender and Women's rights Committee

---

## LIST OF ACRONYMS AND ABBREVIATIONS

EA	Employment Act
GEA	Gender Equality Act
TORs	Terms and Conditions of Service
UADC	Upper Appointments and Disciplinary Committee

## INTRODUCTION

This policy is an expression of the Human Rights Commission's (herein referred to as 'the Commission') commitment to provide a workplace that is free from sexual harassment and its consequences. Sexual harassment is prohibited under sections 6 and 7 of the Gender Equality Act (GEA), 2013. Further, sections 8, 9 and 10 of the GEA also provides the Commission with extra mandate to enforce the provisions of the Act. We therefore aim to maintain and ensure a work environment that is free from sexual harassment, intimidation and discrimination. The Commission shall therefore endeavor to take prompt action where allegations of sexual harassment are made

## 1. PREAMBLE

- 1.1 The Constitution of the Republic of Malawi provides that one of the goals and principles of national policies is the recognition and promotion of gender equality and non-discrimination.
- 1.2 Furthermore, the Gender Equality Act (No. 3 of 2013), provides inter alia that every person who is an employee has a right to be protected from sexual harassment in the workplace.
- 1.3 In line with its duties and mandates under the Constitution, the Commission has a responsibility to ensure the protection of rights provided for in the Constitution and in the GEA.
- 1.4 The Commission recognizes that all members of staff are entitled to a working environment which is pleasant, professional and promotes due respect of and regard for the rights and feelings of all and whereas romantic or sexual relationships between staffs, colleagues and superiors are not prohibited;

The Commission affirms that sexual harassment is prohibited and constitutes a violation of the fundamental rights, dignity and integrity of a person and creates an environment unsuitable for effective discharge of duties and work responsibilities.

## 2. DEFINITION

- 2.1 Sexual harassment has been defined, including the contextual wording under the Gender Equality Act, as:
  - a) unwanted sexual attention from a person who knows or ought reasonably to know that such attention is unwanted; or
  - b) implied or expressed promise of reward for complying with a sexually oriented request; or
  - c) implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually oriented request; or
  - d) a sexual relationship which constitutes an abuse of power in a relationship of trust; or
  - e) a sexually oriented remark or behaviour, which may reasonably be perceived to create a negative psychological and emotional environment for work or study.
  - f) a sexual harassment could be verbal, non-verbal, physical or non-physical.

## 2.2 Context of Sexual Harassment

- 2.2.1 Behaviours such as conditioning promotions, awards, training or other job benefits upon acceptance of unwelcome actions of a sexual nature are always wrong.
- 2.2.2 Unwelcome actions such as the following are inappropriate and depending on the circumstances, may in and of themselves meet the definition of sexual harassment or contribute to a hostile environment in the world of work:
- a) Sexual pranks or repeated sexual teasing, jokes, or innuendo, in person or via e-mail or other communication mode;
  - b) Verbal abuse of a sexual nature;
  - c) Touching or grabbing of a sexual nature;
  - d) Repeatedly standing too close to or brushing up against a person;
  - e) Repeatedly asking a person to socialise during off-duty hours when the person has said no or has indicated he or she is not interested;
  - f) Giving gifts or leaving objects that are sexually suggestive;
  - g) Repeatedly making or posting sexually demeaning or offensive pictures, cartoons, or other materials in the workplace;
  - h) Off duty, unwelcome conduct of a sexual nature that affects the work environment. A victim of sexual harassment can be a man or a woman. The victim can be the same sex as the harasser or the opposite sex. The harasser can be a supervisor, co-worker, other directorate employee, or a non-employee who has a business or formal relationship with the Commission.

## 3. COMMITTEE ON SEXUAL HARASSMENT

- 3.1 A Committee on Sexual Harassment is hereby established.
- 3.2 The Committee shall be responsible for the coordination of an education and awareness program on sexual harassment.
- 3.3 The committee shall receive complaints on sexual harassment and promptly investigate any such complaints or allegations.
- 3.4 The Committee shall provide a hearing platform for any of such allegations both to the person making the allegations and to the harasser. Evidence of any nature shall be produced during such hearings. Notice of such hearing shall be made to both parties in line with the Employment Act (EA) and other relevant applicable laws in Malawi.
- 3.5 The Committee shall upon making a decision refer the matter to the Upper Appointments and Disciplinary Committee (UADC) who shall be responsible for imposing a penalty on anyone who is found guilty of sexual harassment including disciplinary action provided for in the Disciplinary Code of the Commission's Terms and Conditions of Service (TORs). However, subject to Section 7 (2) of the Gender Equality Act, a person who makes an allegation of sexual harassment need not exhaust internal procedures before prosecution of the offence can be instituted or civil proceedings can be instituted.

3.6 All complaints received shall be handled with confidentiality and the records of the Committee shall remain confidential at all times. The Secretary shall keep the records of the Committee.

3.7 The Committee shall submit reports of its activities as per issues happening to the UADC of the Commission to be shared with the full Commission.

## **4. STRUCTURE**

4.1 The Committee shall comprise of five (5) members of staff. Members of this committee shall be members of staff who have attained a certain level or grade of seniority and have reputable standing within the Commission. The Committee shall comprise of two (2) human resource personnel, one (1) member from the Gender and Women's Rights Directorate, two (2) members of from any directorate, one (1) of whom shall be a female member of staff with a reputable standing within the Commission who shall be the focal contact person for all female staff in the Commission appointed by the UADC in consultation with management.

4.2 The Committee shall have a Chairperson and a Secretary to be chosen by members of the Committee.

4.3 Appointments to this Committee shall be for a period of three (3) years.

4.4 Where a member of this Committee is accused of sexual harassment, he or she shall immediately step down and shall not sit in any Committee meeting in which his or her allegation is to be discussed or decided. Subsequently, the Committee shall investigate the allegations made against that member and report to the UADC for their action.

## **5. COMPLAINT PROCEDURE GENERAL**

5.1 The Secretary of the Committee or the focal contact person shall have the primary responsibility to receive all complaints. All complaints shall be written. Where a complainant is unable to write effectively, the secretary of the Committee or the focal contact person shall assist such complainant to reduce the complaint into writing. The focal contact person shall provide advice and support on matters relating to conduct and discipline, including the timeframes for processes to a complainant and respondent.

5.2 A complaint may be made by either the individual or individuals who have been directly affected by the alleged sexual harassment or by any person who has actual knowledge that sexual harassment has taken place.

5.3 The Secretary must, within five working days of the receipt of complaint, arrange a meeting with the complainant in order to obtain information to confirm and clarify the circumstances giving rise to the complaint, and shall refer the matter to the next sitting of the Committee. Where the Committee will not be sitting within ten working days, the officer shall arrange an ad-hoc meeting of the Committee to hear the matter.



- 5.4 The Secretary shall send a copy of the complaint, any additional information obtained from the complainant and a request that the respondent reply to the complaint in writing within five working days. Respondent refers to the person against whom the allegation is made.
- 5.5 If a response is received, the Secretary shall forward a copy of such response to the complainant and the complainant has five working days to reply in writing.
- 5.6 Where the response and reply remains unsatisfactory and the complainant still feels aggrieved, the Secretary shall forward the Complaint to the Chairperson of the Committee on Sexual Harassment.
- 5.7 The Complaint shall be accompanied by a copy of all documentation exchanged between the parties with respect to the complaint.
- 5.8 The parties to the allegations shall be notified that the allegation has been submitted to the Committee.
- 5.9 The Committee shall with due notice, invite the complainant and the respondent to appear before it to submit any additional pertinent documentation and make oral submissions. Such meeting will be held on a mutually convenient date, but in any event within twenty working days of the submission of the Complaint to the Committee.
- 5.10 The Committee shall determine whether the acts complained of constitute sexual harassment in line with the Gender Equality Act and, if so:
  - a) recommend appropriate disciplinary action, if any including the penalties in the GEA, the Commission's TORs and any other relevant applicable laws in Malawi.
  - b) recommend any other measures it considers appropriate for remedying or mitigating any harm or disadvantage suffered by any person as a result of sexual harassment;
  - c) recommend prosecution of the offence or civil proceedings be instituted by the complainant in line with section 7 (2) of the GEA.
- 5.11 The report of the Committee must be in writing and a copy sent to the UADC within five (5) working days of their recommendation being made. The report shall include:
  - a) a summary of the relevant facts;
  - b) a determination as to whether the acts complained of constitute sexual harassment; and,
  - c) recommendations as to appropriate disciplinary action and other measures, which in its opinion are necessary in the circumstances.
- 5.12 The UADC shall deliberate and make a determination on the matter thereafter such determination shall then be communicated through the Secretary to both the parties within ten (10) working days of the report being submitted to it by the Committee.

## 6. APPEALS

- 6.1 Where either of the parties is unsatisfied with the decision of the Committee, such party has the right to appeal such a decision by forwarding to the Secretary of the Committee a notice to that effect within ten working days of the receipt of the Committee's report.
- 6.2 The notice of appeal must clearly set out all of the factors relied on by the party in disputing the recommendation made.
- 6.3 The appeal shall be directed to the UADC, copy the Executive Secretary if he/she is not a party in the matter.
- 6.4 The UADC shall review all the material considered by the Committee as well as all other material filed to determine whether the grounds of appeal reasonably establish that the Committee was in error in making its recommendation.
- 6.5 The UADC shall notify the parties in writing of its decision within five working days.
- 6.6 If the UADC confirms the Committee's recommendation, the complaint file will be closed and no further action may be taken by the complainant pursuant to this policy save for judicial recourse by instituting legal proceedings against the harasser.
- 6.7 Nothing in this policy prevents a complainant from seeking redress in any court in addition to or instead of following the procedures outlined above. The investigations and framework conducted pursuant to this Policy is independent of any other investigation carried out by an outside agency.

## 7. DISCIPLINARY ACTION

- 7.1 For the purpose of this policy, disciplinary action includes but is not limited to an apology, reprimand, suspension, expulsion or dismissal, depending on the seriousness of the conduct, the respondent's position, the respondent's prior record and any mitigating factors. The Complainant is at liberty to institute civil proceedings to claim remedies for sexual harassment.

## 8. CONFIDENTIALITY OF RECORDS

- 8.1 Any complaint received pursuant to this policy must be considered strictly confidential and all committee members are under a duty to take all necessary steps to maintain such confidentiality. In particular, but without limiting the generality of the foregoing, the Committee must ensure that:
  - a) any reports of the Secretary or reports of the Committee required to be made public be amended to protect the identity of the complainant and of the respondent;
  - b) all procedures and deliberations of the Committee and the UADC be held in camera.

---

## 9. RIGHTS OF COMPLAINANT AND OF THE RESPONDENT

9.1 The filing of a complaint of sexual harassment is the right of every member of staff or person accessing the Commission's services or any service provider and may be exercised without fear of reprisal or threat thereof.

9.2 The mere fact that a complaint has been filed against an individual does not, in and of itself, constitute grounds for disciplinary action against that individual unless sexual harassment claims have been proved against such individual.

The rights of a complainant include section 7 (2) of the Gender Equality Act, which provides that a person may skip internal disciplinary procedures and commence criminal prosecution or institute civil proceedings against the harasser.

## ANNEX 1: SEXUAL HARASSMENT COMPLAINT FORM

### Sexual Harassment Complaint Form

#### 1. REPORTING PERSON

1.1 Name

.....

1.2 Directorate- If complainant is an employee of the Human Rights Commission in Malawi

.....

1.3 Name of Complainant-If other than above

.....

1.4 Address

Village: .....

Traditional Authority:.....

District:.....

Physical Address: .....

Postal Address:.....

.....

.....

Phone Number(s):.....

E-mail address:.....

#### 2. RESPONDENT

2.1 Name of the person who harassed you

.....

2.2 Directorate he or she is attached to

.....

2.3 Position of the Respondent

.....

#### 3. STATEMENT OF EVENTS PROVIDED BY COMPLAINANT OR REPORTING PERSON

3.1 Please provide a detailed statement of the incident, including dates, what happened, the place(s) the incident took place and the number of times it has occurred. Please attach additional sheets as needed.



3.5 How has this situation or incident affected you at work or expected service delivery at the Human Rights Commission?

.....  
.....  
.....  
.....  
.....

**4. COMPLAINT RECORDER**

4.1 Name

.....  
.....

4.2 Designation

.....  
.....

4.3 Date and time of Complaint Intake

.....  
.....



**MALAWI HUMAN RIGHTS COMMISSION,**  
Along Paul Kagame Road,  
H.B. House, P/Bag 378, Lilongwe 3;  
Tel 01 750 900; Fax 01 750 943 | Email: [info@mhrmw.org](mailto:info@mhrmw.org)