



# MOI UNIVERSITY

*ISO 9001:2008 Certified Institution*

## SEXUAL HARASSMENT AND DISCRIMINATION POLICY

**MARCH, 2010**



## MOI UNIVERSITY

### MU/OP/DVC(R&E)/055-PROCEDURE FOR DEVELOPING OF QUALITY UNIVERSITY POLICIES

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## **FOREWORD**

Harassment at work place is a form of violence that is discriminatory, exploitative, thriving in atmosphere of threat, terror and reprisal. Moi University is committed to providing a safe and conducive work environment to each employee and student. To this end it is essential that each employee and student deals with their colleagues with full fairness and respect.

Our quest for competitive excellence consists of our commitment to ethical conduct and adhering to our core values of integrity, honesty and respect for others. In Moi University, harassment of any kind including sexual harassment is not condoned. Every employee has the right to be protected against harassment, regardless of whether the accused considers his or her own behaviour to be normal or acceptable and of whether the harassed person has the opportunity to avoid the harassment.

This Sexual Harassment Policy has been developed to prevent or deter acts of sexual harassment at workplace and to provide the procedure for the redress of complaints pertaining to sexual harassment.

We are grateful for the support given to the committee by the University Council, Senate and Management. We also appreciate the leadership of the Vice-Chancellor, Prof. Richard K. Mibey, that facilitated the production of this Policy. Finally, appreciation is given to the members of the committee for their contribution towards the production of this policy.

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**PROF. B.E.L WISHITEMI**  
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## **EXECUTIVE SUMMARY**

One of the main sexual offences that is rampant in institutions of higher learning is the offence of sexual harassment. This offence is addressed in Section 21 of the Public Officers Ethics Act (2003), Employment Act 2008 and is criminalized in Section 23 of the Sexual Offences Act (2006). The burden of preventing sexual discrimination and harassment in institutions of higher learning rests primarily on the management of each institution. For this reason Moi University Council has taken the initiative to try to eliminate sexual discrimination and harassment through development of this policy. The primary objective of the policy is to change attitudes and influence behavior of students and staff of the University to individually and collectively take responsibility for the prevention of the vices within the University. The policy provides for the establishment of three main units: (1) an effective sexual discrimination and harassment prevention and complaints mechanism; (2) an investigative and monitoring process; and (3) a record-keeping system. It gives guidelines to both staff and students to enable them to understand sexual discrimination and harassment and to take preventative measures against the vice.

## **DEFINITION OF TERMS**

Attempted Assault	-	Means any intention and an unlawful action
Attempted defilement	-	Means any attempt to intentionally sexually molest a child
Attempted rape	-	Means any intention and an unlawful sexual action
Bestiality	-	Means any sexual act with an animal.
Child sexual tourism	-	Means any involvement in organizing or facilitating contact between a child and another person for any sexual favours
Defilement	-	Means intentional sexual molestation to a child (less than 18 years)
Deliberate Transmission of HIV and other STDs	-	Means any intentional action of transmitting HIV or any other STD in any way.
Gang rape	-	Means any act of sexual molestation by a group.
Homosexuality	-	Means any sexual act between two persons of the same sex.
Incest	-	Means any intentional and unlawful sexual act with close relatives in full knowledge that they are close relatives.
Lesbianism	-	Means any sexual act between women.
Pornography	-	Means any act of consuming sexually offensive features
Prostitution	-	Means buying or selling of sexual services
Rape	-	Means an intentional and unlawful penetration of one person by another with his/her genital organs without the other's consent.

## **LIST OF ABBREVIATIONS AND ACROYNMS**

AIDS	-	Acquired Immunodeficiency Syndrome
AAU	-	Association of African Universities
CACO	-	Chief Academic Officer
CADO	-	Chief Administrative Officer
CMO	-	Chief Medical Officer
CSO	-	Chief Security Officer
DVC (R&E)	-	Deputy Vice-Chancellor, Research and Extension
FAWE	-	Forum for African Women Educationists
GOK	-	Government of Kenya
HIV	-	Human Immunodeficiency Virus
IGERD	-	Institute of Gender, Equity, Research and Development.
KUDHEIA	-	Kenya Union of Domestic, Hotels, Educational Institutions and Allied workers union
MOH	-	Ministry of Health
MU	-	Moi University
MUSO	-	Moi University Student Organization
PEP	-	Post Exposure Prophylaxis
RCC	-	Rape Crisis Centre
SDHO	-	Sexual Discrimination and Harassment Officer
SMS	-	Short Messaging Service
STD	-	Sexually Transmitted Diseases
STI	-	Sexually Transmitted Infections
UASU	-	University Academic Staff Union
UNTESU	-	University Non-Teaching Staff Union
VC	-	Vice-Chancellor



## **1.0 INTRODUCTION**

Moi University is a public university that, as set out in the Moi University Act, Part II 3(2), is a body corporate with perpetual succession and capable of taking, purchasing or otherwise acquiring, holding, charging and disposing of movable or immovable property. The functions of the University, as set out in Part II 4 (1) include, to provide university education aimed at producing mature and conscientious graduates with skills, and develop and transmit knowledge and skills through research and training. Part III (13) of the Act vests in the University Council general governance of the University, and the right to administer property and funds of the University. This includes reception and disbursement of donations, endowments, gifts, grants or other monies.

The Government of Kenya provides the bulk of the funds to run academic programmes and research at the University. However, the population of undergraduate and postgraduate students, and teaching and research staff, increases over the years, thus putting a great strain on funds received from the government. It is thus necessary to solicit additional funds from other sources, including endowment, to support general or special training programmes, research and special teaching positions.

The Moi University Research Endowment Fund shall provide the additional financing for research and training, within the wider guiding principles of the Moi University Endowment fund. The specific objectives of the Research Endowment Fund shall be:

To solicit for endowment money from donors, Invest the donations in profit-making ventures, Use the profit in financing; research projects of interest to the University workshops and conferences emoluments for not more than one eminent professor at a time in what shall be termed “endowment Chair”. A board of trustees that shall be reporting to the Moi University Council shall have oversight over the Research Endowment Fund.

### **1.1 Vision**

To be the University of choice in nurturing innovation and talent in science, technology, and development.

### **1.2 Mission**

To preserve, create and disseminate knowledge and conserve and develop scientific, technological and cultural heritage through quality and relevant teaching and research; to create a conducive working and learning environment; and work with government and private sector for the betterment of society.

### **1.3 Core Values**

- i) Promote and defend academic freedom, scholarship and relentless search for truth.
- ii) Foster teamwork, collaboration, creativity and innovation, effective communication, tolerance, perseverance and a culture of peace.
- iii) Embrace excellence, openness, consultation and consensus building, efficiency and effectiveness.
- iv) Practise professionalism, meritocracy, exemplary leadership, equality, integrity and social justice.

- v) Maintain a sense of self respect, discipline, responsibility, Institutional loyalty and national patriotism.

#### **1.4 Objectives**

- i) To pursue excellence in teaching, research and outreach
- ii) To produce well informed, practical, and self-reliant graduates capable of contributing to development in rural and urban areas.
- iii) To produce well informed, practical, and self-reliant graduates capable of contributing to development in rural and urban areas.
- iv) To offer expertise in area of national development.
- v) To promote science and technology for national development.
- vi) To participate fully in the promotion of culture and develop individuals who are responsive to the needs and well being of others.
- vii) To offer a range of opportunities for training through continuing education.
- viii) To secure and manage resources to achieve the above goals efficiently.

#### **1.5 Quality Policy Statement**

Moi University is committed to providing quality education and services that meet the needs of its customers and stakeholders through quality and relevant teaching, research and community service and outreach. The University is committed to a quality work and learning environment that is grounded in intellectual and academic freedom, teamwork, quest for excellence, professionalism, discipline and continuous improvement of its products (programmes/activities) and services so as to achieve client/customer satisfaction. To be able to realise this commitment, the University will continually review its products (programmes/activities) and services to conform to the Quality Management Systems based on the ISO 9001 - 2008 Standards.

#### **2.0 BACKGROUND**

Sexual harassment and gender discrimination occurs in an environment that is favorable to their existence and therefore, ensuring the safety of all students and staff at all times is critical. Establishing a sexual harassment and discrimination policy at Moi University should be seen as a complementary step towards equality of opportunity for all staff and students. Having a policy does not stop all harassment, but it does sensitize potential harassers to the unacceptable and punishable nature of their behavior and sensitizes potential victims to the means of prevention and redress. Effective implementation of the policy, in part, depends on the review of other university policies and procedures governing welfare issues such as safety on residences, accessibility to facilities such as libraries by female students at night or disabled students, counseling services and prompt action where cases are reported.

In Kenya, the Sexual offences were spread in different laws, namely, the Penal Code, Criminal Procedure Code, and the Evidence Act. This made it difficult for victims to access the law and punishment for sexual crimes. For example, these laws did not recognize that

men and boys can be victims of rape and there was no minimum prescribed sentence, leaving this to the discretion of the magistrate. Besides, there were no provisions that regarded infection of another with a Sexually Transmitted Diseases (STDs) as a crime.

The Sexual Offences Act (2006) in Kenya consolidated all the laws that related to sexual offences while making it easier to access justice. It also broadens rape to include male individuals as possible victims and women as perpetrators. It prescribes the minimum sentences and also stipulates that it was an offence for a person to knowingly infect another with HIV or other sexually transmitted diseases.

Like other universities, Moi University has a Senate Disciplinary and Grievances Committee that deals with all offences (including sexual harassment) for both students and staff. Students are governed by the rules and regulations which categorize rape and sexual harassment as criminal offences and are dealt with as such. Staff members are under the code of conduct as stipulated in the terms of service. Whereas the University deals with these administrative issues by meting out appropriate punishments, the laws of Kenya also apply simultaneously if pursued by the aggrieved parties.

## **2.1 Rationale for Sexual Harassment Policy**

Universities play a leading role in human resource development and should thus be key players in legislation of rules and regulations that promote healthy work and learning environments. Reports of sexual violence have increased in the period between 2002 and 2006 in Kenya. For example, cases of female children as young as 5 months and grandmothers as old as 82 years being raped and male victims sodomized have been reported. However, many more cases go unreported.

At the work place, cases of sexual harassment have been reported involving men and women and in most cases senior staff members harassing their juniors of the opposite sex. This causes friction and long-drawn conflict that affects productivity of the employees. For students, issues of sex for marks have been reported in the local media and this has created grave doubt about the ability of universities to provide quality education. Students who are academically weak have also used this to portray academic staff as aggressors whereas the reverse has been the case. Learning at the university should be about competence and not craftiness as such forms of sexual offences affect the integrity (academic or not) of an institution.

It is with this background in mind that this Sexual Harassment Policy is being instituted with the hope that will primarily motivate students and staff alike, to take individual and collective responsibility to prevent HIV and AIDS at the University and its surrounding community while not only meting out punishment on the aggressors but also protecting those who are

accused falsely. The policy is therefore in line with our vision as the University of choice, where core values, self respect, discipline, responsibility, institutional loyalty and national patriotism are practiced.

### **3.0 DEFINITIONS**

#### **3.1 Sexual harassment**

Shall mean the persistent making of unwelcome, unwanted, unsolicited, offensive, intimidating or inappropriate sexual advances or requests or the exposure or display of any pornographic material to any person against his/her will with a view to using the same as a basis for employment or advancement in career of a victim or with the effect of interfering with a victim's work or educational performance or with the effect of creating an offensive working, learning or living environment.

#### **3.2 Sexual discrimination**

Shall mean the unfair treatment of a person because of their sex, sexual orientation or sexual features.

## 4.0 POLICY STATEMENT

### 4.1 Components

- i. Moi University reaffirms that it does not condone harassment directed toward any person or group within its community—students, employees, or visitors. Every member of the University ought to refrain from actions that intimidate, humiliate or demean persons or groups, or that undermine their security or self-esteem.
- ii. The University strictly prohibits sexual discrimination and harassment as defined in Chapter II of this policy and prohibits making submission to harassment either explicitly or implicitly a condition for an individual’s employment, promotion, or passing examinations; and forbids any act of harassment that interferes with an individual’s performance or that creates an intimidating, hostile, or offensive environment.
- iii. All members of the University community are responsible for the maintenance of a social environment in which people are free to work and learn without fear of discrimination and abuse. Failure of University managers at any level to remedy harassment violates this policy as seriously as that of the Sexual Offences Act (2006).
- iv. The University strongly discourages romantic and sexual relationships between staff and student or between supervisor and employee even when such relationships appear, or are believed to be, consensual except where the relationship is between legally married persons. The lines of power and authority that exist between the parties may undermine freedom of choice.
- v. Any person who believes that she or he is being harassed or otherwise subjected to discrimination is encouraged to consult the Office of the Sexual Discrimination and Harassment Officer (hereafter referred to as SDHO), or his/her representative on campus. The Office is located at the main administration building in each campus. Deans, Directors, Departmental Heads, and Supervisors receiving complaints shall alert the SDHO as to the nature of the incident, and may refer the inquirer to the Officer, or seek information on the inquirer’s behalf to resolve the complaint.
- vi. The anonymity of complainant and accused may be maintained during the reporting and consultation processes. Each office and person involved in advising complainants must avoid comments that might dissuade victims from pursuing their rights. Such behavior in itself is discriminatory and is a violation of this policy.
- Vii Non-disclosure of sexual harassment: If a person has full knowledge of any of the acts covered in this policy as sexual harassment and does not disclose it, he/she is guilty of abetting the offence.
- viii) Consideration of Persons with Special Needs: Persons with special needs (such as the blind and the disabled) shall receive special protection from the University to ensure that acts necessitated by their special conditions are not misconstrued to mean sexual

harassment. For example, a blind person seeking someone to hold his/her hands. However, persons with special needs are subject to this policy and bear responsibility like any other person.

All forms of sexual harassment and discrimination are considered serious offences by the University, especially when unequal power relations are involved.

#### **4.2. Individual Responsibility**

Every member of the University has a right to an environment free of sexual harassment. The University Management is responsible for ensuring that every individual member of the University community and all associated with the University feel safe in the University environment. It is the responsibility of every student, member of staff and visitor to the University to conduct himself or herself in a manner that contributes to an environment free of sexual discrimination and harassment. Each individual must:

- a. Understand what constitutes discrimination and harassment under the Moi University sexual discrimination and harassment policy,
- b. Not expose himself/herself to sexual discrimination, harassment and/or offences by way of talking, dressing, acting or sharing of pornographic material.
- c. Report any case of sexual discrimination, harassment and/or offences within the shortest time possible, and
- d. Follow the laid down procedures of reporting cases of sexual discrimination and harassment.

#### **4.3. Who is covered Under the Policy?**

As an institution, Moi University takes responsibility by developing and implementing a sexual discrimination and harassment policy to set an example to the wider society that sexual harassment is not acceptable. In this context, the Moi University Sexual Discrimination and Harassment Policy applies to all University students and staff irrespective of their location on and off campus and all visitors to the University' campuses.

#### **4.4. Reprisal**

This Policy encourages students and employees of Moi University to freely and responsibly express their opinions and feelings about any problem or complaint of sexual harassment. Any act of reprisal, interference, discrimination, coercion or harassment -- overtly or covertly -- against a student or employee for responsibly using the Policy and its procedures violates this Policy and calls for prompt and appropriate disciplinary action.

#### **4.5. Abuse of this Policy**

Because of the nature of the problem, complaints of sexual harassment often cannot be substantiated. Lack of corroborating evidence should not discourage complainants from seeking relief through procedures outlined in this Policy. Charges found to have been intentionally dishonest or made in wilful disregard of the truth, however, will be appropriately punished.

#### **4.6. Freedom and Sexual Harassment**

##### **4.6.1 Academic freedom**

Moi University is committed to the principles of free inquiry and freedom of expression. Vigorous discussion and debate are fundamental to this commitment, and this Policy is not intended to restrict teaching methods, academic consultation or freedom of expression during teaching sessions, nor will it be permitted to do so. Sexual harassment is not a form of academic freedom; instead it compromises the University's integrity, as well as its tradition of intellectual freedom.

##### **4.6.2 Freedom of Professional association**

The University is committed to promoting ethical conduct among various professionals working at the University. It is unethical and therefore illegal under this policy for staff or students to be denied services that they are entitled to such as training opportunities, on the basis of their sex or sexual orientation.

##### **4.6.3 Freedom of Social Interaction**

This policy is not meant to curtail free social interaction on the campuses of Moi University but is meant to enhance and expand freedom of interaction between sexes with increased responsibility.

#### **4.7. Confidentiality**

Confidentiality is an extremely important issue for people who have concerns about sexual discrimination and offences. Administrators responsible for implementing this Policy will respect the privacy and confidentiality of individuals reporting or accused of sexual offences to the fullest extent possible. However, the University is obligated to investigate all allegations that might be serious enough to constitute sexual offences as defined in Section 23 of the Sexual Offences Act (2006) and thus confidentiality cannot be guaranteed unless a legally protected relationship exists.



Confidential consultations may be available from individuals who, by law, have special professional status, such as mental health counsellors, physicians, chaplains, church ministers, and/or personal attorneys. In these cases, the level of confidentiality depends on what legal protections are held by specific persons receiving the information. Whichever person the complaining or accused parties elect to discuss their concerns with, the issue of confidentiality should be addressed with them before specific facts or identities are disclosed.

To avoid and minimize malicious allegations, there is no provision for anonymous complaints under this Policy and Procedures. In any investigation of sexual discrimination and harassment allegations, the accused must promptly be made aware of the complaint and of the identity of the complainant(s).

In most situations, it is possible to consult with these individuals initially without disclosing one's name or department. It is important to understand, however, that when a University administrator knows what constitutes sexual discrimination or harassment, he or she has an obligation to start to investigate the matter immediately. An investigation requires that the complainant be identified so that the person accused of harassment can be assured of fairness.

#### **4.8. Important Time Considerations**

Four options are available to University employees or students who believe they have been victims of sexual discrimination and harassment and who choose to attempt to resolve the matter under this Policy: Peer Advice, Review Panel, Grievance procedure, and Reporting to the Police. The procedures associated with these options have strict time limits for bringing and addressing complaints and to aid the process of collecting and preserving any evidence. All time limits are explained under the various options outlined in this Policy, and questions concerning any of these may be addressed to any of the resources listed in this Policy.

For Peer Advice the complaint must be made as soon as possible but in any event not later than 7 calendar days of the last alleged harassment offence and/or discrimination incident and must be resolved by the University within 7 calendar days after receipt of a complaint through submission of a final report by the Peer Advisor to the SDHO. Under this option, the complainant will have the option to choose a peer advisor from a list of three who are trained and appointed by the University.

For the Review Panel option, the University considers a timely response to be within 30 calendar days from receipt of a complaint through submission of a final report to the SDHO. The complaint must be filed within 15 calendar days of the last alleged harassment and/or discrimination incident (except under circumstances of rape or other medical outcome).

Under the Grievances procedure a report must be filed within 30 calendar days of the last alleged harassment and/or discrimination incident (except under medical cases such as rape). Relevant forms and additional information about filing complaints under the student or staff grievance procedure are available from the SDHO, Institute for Gender Equity, Research and Development (herein after referred to as IGERD), University Health Services, Security, Dean of Students Office, Deans of Schools, and Moi University website. The process will proceed according to established rules set forth in Statute XX of Moi University Statutes with regard to university employees. The University has 15 calendar days from receipt of the signed written complaint to make a written report to the complainant on the progress of the grievance procedure and 30 calendar days from the day of receipt of the written complaint within which to convene the relevant disciplinary committee.

The option of reporting alleged incidents of discrimination and harassment directly to the police is available to the complainant irrespective of where the incident occurred. In some instances, reporting of alleged incidents of discrimination and harassment can be done simultaneously, meaning, to both the University and police. The laws of the land will take their course.

#### **4.9. Resources for Information and Assistance**

Prevention is considered the action of choice as opposed to reactive response to sexual discrimination and harassment. Preventative actions include avoiding dark and isolated places, carrying a protective device such as Pepper spray, providing improved lighting on campus, raising an alarm, whistle blowing, fighting off advances in the first instance, avoiding the use and sharing of pornographic material, and knowledge of the provisions of this policy, including key telephone contacts to report, and seeking help early.

All members of the Moi University community should feel free at any time to seek advice from any of the resources listed here when attempting to deal with behaviour they believe is sexually offensive. Questions concerning this Policy may be addressed to the University's SDHO or the Dean of Students. These individuals are prepared to help all members of the campus community understand the Policy. They are able to explain the options available for resolving concerns related to sexual harassment in academic or work settings at the University.

Additional copies of this Policy and forms are available from the SDHO, Dean of Students, IGERD, Deans of Schools, Security, Health Services and Moi University website.

## **5.0 CONDITIONS UNDER WHICH CONDUCT IS CONSIDERED HARASSING OR DISCRIMINATIVE**

In determining whether the alleged conduct constitutes sexual discrimination or harassment, the record as a whole will be considered, as well as the totality of the circumstances, such as the nature of the alleged conduct and the context in which it occurred.

### **5.1 Sexual discrimination and harassment at the workplace**

In general, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature by one in an official University position, a visitor to the University or by a fellow University employee or student constitute sexual harassment when

- i. Submission to such conduct is made either explicitly or implicitly as a condition for an individual's appointment, promotion or passing examinations,
- ii. Rejection of such conduct by an individual is used as the basis for an appointment, promotion or academic decision affecting that individual, or
- iii. Such conduct has the purpose or effect of adversely interfering with an individual's work or academic performance or creating intimidating, hostile, or offensive environment.

Examples of sexual harassment in the work place may include all activities that attempt to extort sexual favours, inappropriate touching, suggestive comments, and public display of pornographic or suggestive calendars, posters, signs, pictures, short messaging service (SMS) or emails. Such behaviour is particularly offensive when uneven power relationships are involved. The University strongly discourages romantic and sexual relationships between staff and students even when such relationships appear, or are believed to be, consensual.

### **5.2 Sexual discrimination and harassment directed at students**

In specific instances, between staff and students, for conduct to constitute sexual discrimination or harassment the complainant(s) must show that:

- (i) the behaviour substantially interfered with a student's academic performance, class participation, or educational opportunity,
- (ii) the behaviour implies special favour shown by a member of staff to a student as in the award of unwarranted marks
- (iii) the behaviour would be regarded as offensive by any other reasonable person in the same context, and
- (iv) the behaviour was persistent, pervasive, and not relevant to the academic subject matter.

Any student who believes that she/he is being harassed or otherwise subjected to discrimination because of sex, sexual orientation or sexual features is encouraged to consult the Office of the SDHO, Dean of Students, Departmental Heads or Deans of School.

### **5.3 The cultural context of sexual discrimination and harassment**

There are definitional problems involved and varied gendered and cultural constructions of sexual discrimination and harassment among various communities in the world. Culturally based interpretations and/or misinterpretation of sexual discrimination and harassment should not be used as an excuse for sexual harassment.

### **5.4 Treatment of sexual discrimination and harassment reports**

Each office and person involved in advising complainants on sources of assistance or investigating a reported incident must avoid comments that might dissuade victims from pursuing their rights or constitute threats of retaliation. Threats may include “fear of being embarrassed”, “fear of retaliation” and “lack of assertiveness”. Such behaviour by an adviser or investigator is in itself discriminatory and is a violation of this policy.

## **6.0 RESPONDING TO SEXUAL DISCRIMINATION AND HARASSMENT CONCERNS**

### **6.1 Introduction**

All members of the University community should feel free at any time to seek advice from any of the resources listed above in clause 3.9 when attempting to deal with behaviour they believe is sexually harassing and discriminatory. In most situations, it is possible to consult with these individuals initially without identifying the person or their department. It is important to understand, however, that when a University administrator knows the conduct that might constitute sexual discrimination and harassment, he or she has an obligation to investigate the matter and this requires that the complainant be identified so that the person accused of discrimination and harassment can be assured of fairness.

The identity of all parties involved as well as all discussions and decisions of those participating in the resolution of a case in sexual harassment or discrimination are confidential. All persons involved in the handling of a complaint shall take an oath of secrecy and shall hold in the strictest confidence all the information they deal with. An officer who breaches an oath of secrecy shall face disciplinary action.

### **6.2. Procedures and options for reporting /filing complaints and investigation**

#### *6.2.1 Staff harassed or discriminated against by Staff*

A staff member (academic or non-academic) who believes he or she has been a victim of sexual harassment or discrimination may attempt to resolve the matter initially through Peer Advisory/ mediation procedures by informing the Peer mediator most directly concerned, unless this is the person accused of sexual discrimination or harassment) within 7 calendar days of the last incident of alleged harassment or discrimination. During the period a staff complainant is under review by peer advisors, the time limits for filing an internal grievance will be suspended. Information about Peer Advisory procedures may be found in clause 5.4 of this Policy. Additional information about this process is available from the SDHO. In the event that the Peer Advisory/mediation procedure fails, a staff is encouraged to pursue the Review Panel procedure or the Grievance procedure as provided in clause 5.3.2 and 5.3.3 hereof.

#### *6.2.2 Staff Harassed or discriminated against by Students*

A member of staff who believes he or she has been harassed by a student, but not in the course of the student's University employment, if any, may resolve the matter through

Review Panel, through disciplinary and grievance procedures or the police as discussed in clause 5.3.

*6.2.3 Students Harassed or discriminated against by University staff*

A student at the University, who believes he or she has been the victim of sexual harassment or discrimination by a member of staff in the course of their official duties, is encouraged to attempt to resolve the matter initially through Review Panel by informing the SDHO within 30 calendar days of the alleged harassment. During the period a student complainant participates in Review Panel procedures, any time limit for filing an Internal Grievance will be suspended. Information about Review Procedures may be found in clause 5.3. A student who chooses not to use Review Panel Procedures may instead proceed directly to the University Disciplinary and Grievance Committee, as specified in clause 5.3.

*6.2.4 Students Harassed or discriminated against by Other University Student*

If a student believes he or she has been a victim of sexual harassment or discrimination by another student, and the harassment or discrimination has not occurred in the course of the latter student's University employment, the student complainant may proceed according to the Peer Advisory/Mediator, Review Panel, and University Disciplinary committee or report the incident to the Police. Information concerning the complaint and investigation procedures is given under clause 5.3 of this Policy.

*6.2.5 University staff or Students Harassed or discriminated against by Visitor(s)*

A member of staff or student who believes that, in the course of employment or study at the University, he or she has been a victim of sexual harassment or discrimination by someone other than another University staff or student should contact the SDHO, Dean of School, Dean of Students, Director of IGERD, or the Police for information and assistance as listed in clause 3.9.

Non-staff, non-students and visitors who might be involved in sexual harassment or discrimination that may fall under this Policy include, but are not limited to, agents working under contract for the University such as suppliers, catering and security personnel; patrons or patients using University facilities or services'; or supervisors of internships, practicals, preceptors, visiting students, relatives of staff and supervisors of students on industrial and field placements.

### **6.3 Complaint and Investigation Process in Cases of Sexual Offences**

This policy outlines four approaches and institutional structures to deal with sexual harassment complaints. A sexual harassment or discrimination complainant has the right of access to all the four levels of options and according to the law of the land the complainant has the right to report cases to the police.

The four structures are:

1. Peer Advisors or mediators
2. Review Panel
3. University Disciplinary Structures
4. Reports to Police

A complainant of sexual harassment or discrimination may consult with trained peer advisors who are students or staff as the case may be.

#### *6.3.1 Peer Advisors*

A complaint should ideally be reported first to an Advisor, who is a volunteer student or identified staff trained in dealing with such complainants. The role of the Advisor is to listen and discuss possible procedures with the complainant, take a signed statement to the SDHO for further advice on the request of the complainant. The complainant will have the option of selecting a Peer advisor from a list of three. The selected Peer Advisor will then follow up, mediate and ensure that the complainant receives adequate support and make a formal report to the SDHO within 7 calendar days from receipt of the complaint. If the complainant is not satisfied with the outcome of this service, s/he shall be free to use other options as provided under clauses 5.3.2 and 5.3.3.

#### *6.3.2 Review Panel*

##### *Composition*

This panel comprises the following persons depending on who the complainant and offender are.

- Coordinator of Discrimination and Harassment Advisors
- Dean of Students /The relevant Dean of School/CACO, CADO
- University Chief Medical Officer (CMO)
- Director of Institute for Gender Equity, Research and Development ( IGERD)
- Representative of Counseling Services
- 3 Student Representatives (MUSO and MUGSA)
- Legal Officer
- Union Representatives (UASU/ UNTENSU/KUDHEIA)
- Peer Advisor

### 6.3.3 Roles and Functions

The Review Panel shall have investigative and advisory roles and functions:

- i. Investigative: investigate any formal complaint;
- ii. Advisory:
  - Listen to and advise the individuals involved in each case accordingly
  - Recommend revisions in complaint and investigation procedures where these are found to be necessary
  - Make recommendations for disciplinary action if necessary.
- iii. Mediate where requests to do so are made and found to be appropriate;
- iv. Liaise with Peer Consultant Advisors;
- v. Report all cases to the Proctor and to Security and seek advice from them when necessary;
- vi. Organize education programmes, including workshops, drama, awareness campaigns to challenge negative and stereotypical attitudes towards sexual harassment and related gender issues.
- vii. Provide legal advise

### 6.3.4 Procedures

A student or staff who chooses to use the Review Panel procedure must inform the administrative official most directly concerned, excluding the person accused of sexual harassment, within 30 calendar days of the alleged harassment. If a member of staff or student wishes to reserve his/her rights to proceed under the grievance policy, he/she must file a grievance within 30 calendar days of the alleged harassment. Reports to the Police may be made independently and/or through advice from the Review Panel. The review panel shall conclusively handle the matter within 30 days and shall make a report to the DVC(R&E) within the said 30 days.

#### *Steps for investigating complaints*

- a. gathering information about a complaint including interviewing the complainant
- b. investigating a claim
- c. interviewing the accused
- d. interviewing witnesses
- e. resolving the complaint
- f. filing a formal report

Under Review Panel procedures, a panel conducts an investigation and determines appropriate action, if the findings of the investigation warrant.



If a complainant initially chooses Review Panel procedures to attempt to resolve the matter and is not satisfied with the resolutions of the panel, he/she shall be free to file a grievance.

#### *6.3.5 University Grievance and Disciplinary Procedure*

A student, staff or visitor who chooses not to use Review Panel may proceed instead as indicated in this grievance procedure by filing his or her complaint in writing with the SDHO not later than 30 calendar days of the last alleged harassment or discrimination incident. Formal complaints must be lodged as soon as possible after an offence in order to facilitate investigation.

If the complainant chooses, or the peer advisor or review panel recommends that the case be dealt with by the disciplinary structures, the matter shall be referred to the VC who shall act as follows:

(i) In the case of a student offender, the VC shall determine whether or not to refer the matter to the Students Disciplinary Committee of Senate which shall handle the matter in accordance with its disciplinary procedures PROVIDED that both the complainant and the offender shall have a right to be accompanied by a friend and an offender below the age of 25 years shall in addition be accompanied by his parent or guardian.

(ii) In the case of a staff offender, the VC shall determine whether or not to refer the matter to the Chief Administrative Officer who shall handle the matter in accordance with the Staff Disciplinary Provisions contained in Statute XX of the Moi University Statutes and the provisions of Section 21 of the Public Officers Ethics Act.

#### **Procedure**

The procedure shall be as per the disciplinary procedures provided in the Moi University Statutes. PROVIDED ALWAYS that the procedure shall be concluded within 21 days.

#### *6.3.6 Reports to the Police*

The decision to file or pursue a sexual discrimination and/or harassment complaint with the Police rests with the complainant. The University will not be precluded from reporting a rape incidence to the police among other serious sexual offences. The Laws of the land will take due process.

### ***6.3.7 Rape and Medical Intervention***

Rape and all forms of sexual violence often result in serious physical injuries, social and psychological trauma, unwanted pregnancy, and infection with Sexually Transmitted Infections (STIs) including Human Immuno Deficiency Virus /Acquired Immuno Deficiency Syndrome (HIV and AIDS).

For purposes of preserving evidence, victims of rape are advised to take the following measures:

- DO NOT bathe before seeing a medical officer
- DO NOT discard clothing and other items used during the incident, for example, condoms
- DO NOT disturb the scene of the incident
- SEEK immediate medical attention preferably within 24 hours
- MAKE an immediate report of the incident to the police and Chief Security Officer or Dean of Students or Chief Medical Officer

The care for victims of such crimes must be timely and expeditious. Those providing such care must do so with compassion and respect and observe confidentiality in handling evidence, examination, documentation and treatment to minimize any additional distress to the victim.

The University Health Services operating under the Chief Medical Officer is responsible for setting up hotlines for rape victims on each campus. It is envisaged that a Rape Crisis Center (RCC) will also be set up, on the main campus, as recommended under the University's HIV and AIDS policy document. The CMO shall ensure an effective collaboration between Moi University and private as well as public health facilities for purposes of expeditious referral of rape victims and clients who need Comprehensive Care Clinics is paramount for both staff and students.

### ***6.3.8 When to seek a medical intervention***

Sexual contact is assumed to have occurred in the following circumstances:

- a. Where a complainant suffers psychological trauma, risk of pregnancy, infection with STIs including HIV following any coerced sexual contact such as rape by person(s) known or

unknown to him or her. Sexual contact includes touching of perineum, penis, vagina, anus or penetration of vagina or anus with a penis or other object; or rubbing of mouth or tongue on a person's penis, vagina or anus; or rubbing of a penis, hand or other object against another person's perineum.

- b. Where a complainant reports physical injury (whether minor or major) alleged to have arisen from a condition defined in this policy.
- c. Where a complainant suffers physical or psychological trauma following an offence of sexual harassment or discrimination
- d. Where the peer advisor, SDHO or other person advises on need for medical intervention.

### **Procedures**

Clinical staff handling of victims of sexual violence must be familiar with and closely follow the National Guidelines on Medical Management of Rape and Sexual Violence by the Ministry of Health (2004). The core services include: medical management of physical injuries, pregnancy, HIV and Hepatitis B prevention; counseling for trauma, HIV testing, crisis prevention, and Post Exposure Prophylaxis (PEP) adherence; history taking, examination, documentation and laboratory analysis (legal/forensic).

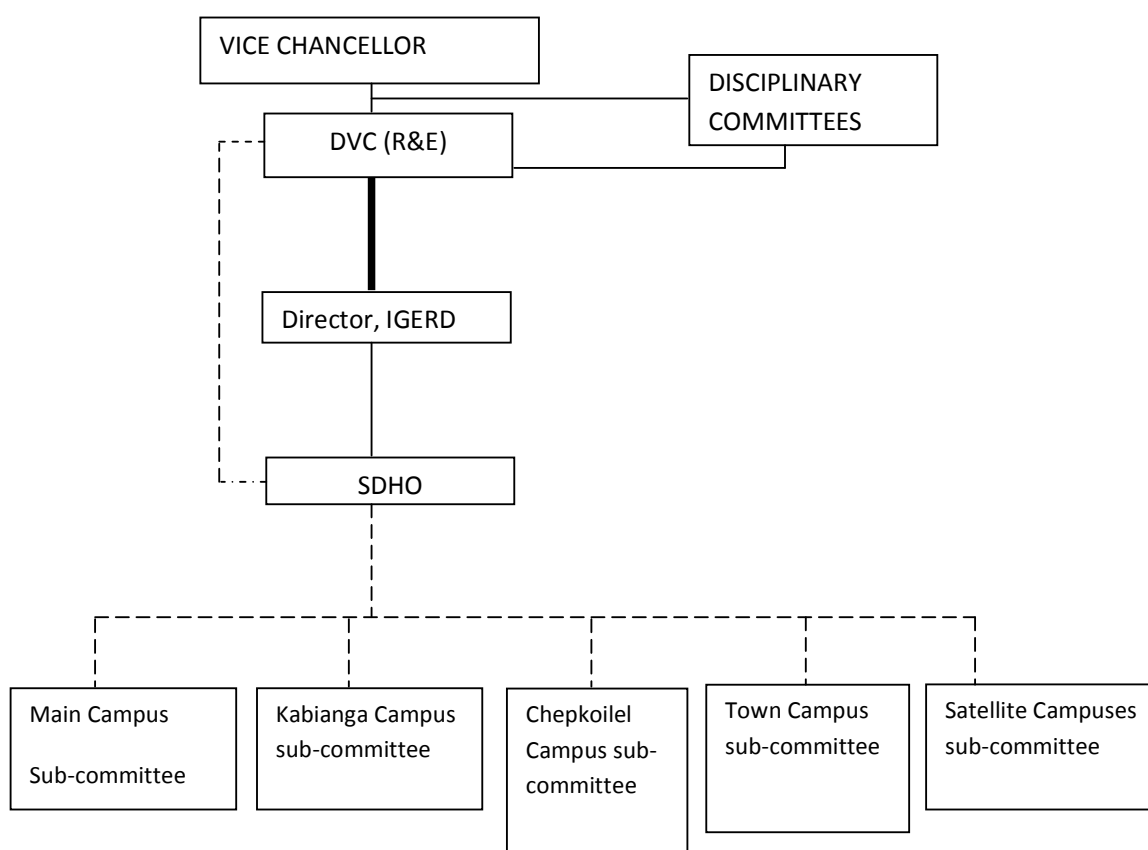
The steps include:

- a. Formal complaints must be lodged as soon as possible after an alleged offence preferably not later than 24 hours in order to facilitate investigation.
- b. If the complainant chooses to have the case dealt with by the Police, the matter is referred immediately by the person on-campus who receives the alarm, peer advisor, SDHO or clinical staff among.
- c. Filing the relevant medical forms on reporting at the clinics
- d. Complainant will be seen by the medical practitioner with reproductive health experience and training in handling victims of sexual violence.

## 7.0 ADMINISTRATIVE RESPONSIBILITY

### 7.1 Organogram and responsibility at each level

This organogram represents effective coordination between the University Management and other university organs dealing with the student and staff welfare such as health services, counseling services, student associations, legal services and the Dean of Students. All members of the University community are responsible for establishing and maintaining an environment in which people are free to work and learn without fear of discrimination and exploitation. The failure of University Managers at any level to remedy harassment violates this policy.



The SDHO's office will be established under the DVC (R and E) and headed by a person at the level of Grade 14 and above. To maintain confidentiality and expedite implementation of decisions at this level, the SDHO shall report directly to the DVC(R and E). However, for administrative purposes she/he will be housed at the IGERD. This will not be a new position, but rather a University staff who meets the criteria shall be assigned the responsibilities of SDHO with reduced teaching load to allow for efficient and effective functioning of the office and service provision to staff and students.

The primary role of the SDHO is to oversee the effective implementation, monitoring, and review of this policy. She/he will chair a steering committee comprising Dean of Students, University Chaplain, Chief Medical Officer, Legal Officer, Union Representatives, MUSO and MUGSA Representatives and Coordinators of campus-based sub-committees. The composition of the campus-based sub-committee is as follows: Dean of Students who shall also chair the sub-committees, 2 student peer counselors, 2 staff peer counselors, representatives of Security and Health Services.

## **7.2 Roles and Functions of SDHO**

The proposed roles and functions of the office shall be:

1. Oversee the implementation, monitoring and review of the policy
2. Network and liaise with stakeholders to build a supportive environment
3. Plan, budget and coordinate office functions
4. Oversee the effective functioning of campus-based sub-committees,
5. Appoint, train and monitor activities of peer mediators/counselors,
6. Chair Review Panels and act on recommendations,
7. Report monthly to the Vice Chancellor through DVC (Research and Extension).

## **8.0 RECORDS AND POLICY REVIEW PROCEDURES**

### **8.1 Records**

Records and complaints filed, and action taken to remedy the problem, names of those involved and the outcome will be kept under confidential cover in the Sexual Discrimination and Harassment Office. Records will not be maintained on the individual's personal file when s/he is still under investigation.

To protect the integrity of the SDHO's office and the rights of those who complain as well as the accused, anonymous complaints will not be entertained or acted upon.

The SDHO who will serve a three-year term will report annually to University Management on all incidents that have been reported under this policy.

### **8.2 Policy review procedures**

The Office of the SDHO will continuously monitor the implementation of the policy and make suggestions for revision. Every four years the policy, programmes, procedures, committees and panels will be reviewed, assessed and all the necessary amendments made. The rationale is to ensure unbiased decision-making by the Discrimination and Harassment panel and to continue effective functioning of the systems.

### **8.3. Effective date**

This policy shall be effective immediately it is approved by Council but before September 1, 2008.

## **ACKNOWLEDGEMENT**

This Policy document is the result of consultation and teamwork involving staff, students and other key stakeholders of Moi University. We are grateful for the support and cooperation given to us by the University Council, Senate, and University Management. We also appreciate the Vice-Chancellor, Prof. Richard K. Mibey, for his leadership in appointing us to carry out this task. Special thanks go to Jacqueline Manani for the legal perspective as a key facilitator in finalizing this document.

The input and active participation by all stakeholders including students and staff of Moi University, UASU, UNTESU and KUDHEIHA representatives, MUSO officials and peer counsellors is highly appreciated. Special gratitude to all groups and individuals who contributed in anyway to ensure that this policy document is completed. Finally, congratulations and appreciation to the members of the Committee who attended meetings and contributed to the discussions hence culminating in the document that we now present. We also appreciate the role of Prof. Kembo-Sure in editing of this document.

### Committee Members

Prof. Bobby E. L. Wishitemi	-	Coordinator / Convenor
Dr. Mabel Nangami	-	Chair
Mr. John Ayieko	-	Member
Dr. Julius A. Mumia	-	Member
Prof. Eunice Kamaara	-	Member
Mr. Philip OloIngojine	-	Member
Mrs. Mary G. Wosyanju	-	Member
Mrs. Anne Maiyo	-	Member
Ms. Elizabeth Cheptoo	-	Member
Mr. Anthony M. Nyakoni	-	Member
Mr. Peter M. Mutinda	-	Member
Mr. S. K. K. Kottutt	-	Member
Mr. N. K. Tuiyot	-	Member
Mr. Eshmael A. Endusa	-	Member
Mr. Samuel K. Langa't	-	Member

### Key Resource Person

Mrs. Jacqueline Manani	-	Moi University Legal Officer
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6. The Sexual Offences Act, (2006), Kenya. Government Printer, Nairobi July 2006 Kenya Gazette Supplement No. 52 (Acts No. 31)
7. The Public Officers Ethics Act (2003), Kenya. Government Printer, Nairobi
8. University of Cape Town: Sexual Harassment Policy
9. Employment Act 2007



## **Annexes**

### ***ANNEX 1: GUIDELINES FOR INVESTIGATING A REPORTED OFFENCE***

1. A staff member or student who believes s/he has been a victim of sexual discrimination or harassment should lodge a written complaint with a peer advisor or Sexual Discrimination and Harassment Officer (SDHO) within seven (7) calendar days. Anonymous complaints shall not be entertained.

In case of rape, the complainant should seek medical assistance from the nearest medical facility immediately. A medical officer or his/her representative receiving the complaint will take the necessary action as provided in the Moi University Sexual Discrimination and Harassment Policy.

2. The complainant has a right to four (4) levels of recourse:
  - a. Peer Advisors/mediators
  - b. Review Panel
  - c. University disciplinary structures (staff and students)
  - d. Police

Where the complainant has not made a decision on the level of recourse, the peer advisor or SDHO shall proceed to gather information about a complain as follows.

- a. Interview the complainant
  - b. Interview the accused /perpetrator
  - c. Interview the witnesses, if any
  - d. Making a decision on the appropriate level of recourse
  - e. resolve the complaint
  - f. refer as appropriate (according to the 4 levels)
3. The outcome of any written complaint must be documented and communicated within the time specified for each level of recourse as provided in the policy.

**ANNEX 2: FORMS FOR FILING A SEXUAL HARASSMENT COMPLAINT**



**SEXUAL DISCRIMINATION, HARASSMENT AND OFFENCES**

**REPORTING FORM A**

**A: BIO-DATA**

**NAME OF COMPLAINANT**.....

**SEX**..... **AGE**..... **MARITAL STATUS**.....

**B: POSITION**

i) **STUDENT**..... **REG. NO**.....

ii) **STAFF**..... **PF. NO.** .....

iii) **VISITOR**..... **ID /PASSPORT NO**.....

iv) **OTHER**..... **ID/PASSPORT NO**.....

**C: NATURE OF INCIDENT:**

.....  
.....

**D: NAME(S)/IDENTITY OF ACCUSED:**

.....  
.....

**E: LOCATION OF INCIDENT**

.....

**F: TIME OF OCCURANCE**

.....

**G: TIME OF REPORTING**

.....

**H: TIME OF SEEKING MEDICAL ATTENTION (IF ANY)**

.....

**I: ACTION TAKEN PRIOR TO FILLING THE FORM**

.....

**J: PERSONS INVOLVED IN ACTIONS (WITNESSES/MEDIATOR)**

.....

.....

**K: COMPLAINANTS PREFERED LEVEL OF RECOURSE**

i) PEER MEDIATION.....

ii) REVIEWPANEL.....

iii) UNIVERSITY DISCIPLINARY  
STRUCTURES.....

iv) POLICE.....

**L: NAME AND DESIGNATION OF OFFICER RECEIVING REPORT**

NAME .....

DESIGNATION .....

SIGNATURE OF COMPLAINANT .....

SIGNATURE OF OFFICER RECEIVING REPORT.....

DATE.....TIME.....

**ANNEX 3: MEDICAL FORMS FOR FILING A HARASSMENT COMPLAINT**



**RAPE AND VIOLENCE MEDICAL FORM B**

**A: BIO-DATA**

**NAME OF COMPLAINANT**.....

**SEX**..... **AGE**..... **MARITAL STATUS**.....

**B: POSITION**

i) **STUDENT**..... **REG. NO.**.....

ii) **STAFF**..... **PF. NO.** .....

iii) **VISITOR**..... **ID /PASSPORT NO.** .....

iv) **OTHER**..... **ID/PASSPORT NO.** .....

**C: HISTORY:**

.....

**D: MEDICAL EXAMINATION:**

.....

**E: INVESTIGATIONS**

.....

**F: DIAGNOSIS:**

.....

**G: TREATMENT:**

.....

**H: REFER WHEN APPROPRIATE:**

.....

**I: COMPLAINANTS PREFERRED LEVEL OF RECOURSE**

- i) PEER MEDIATION .....
  - ii) REVIEW PANEL .....
  - iii) UNIVERSITY DISCIPLINARY STRUCTURES .....
  - iv) POLICE .....
- ALL RAPE CASES SHALL BE REPORTED TO THE POLICE

**J: MEDICAL PRACTITIONER NAME.....**

**DESIGNATION .....**

**SIGNATURE OF PRACTITIONER .....**

**DATE .....TIME .....**

**NB:**

- THE MEDICAL PRACTITIONER WILL REFER TO THE MINISTRY OF HEALTH NATIONAL GUIDELINES ON MEDICAL MANAGEMENT OF RAPE AND SEXUAL VIOLENCE
  
- ALL RAPE CASES MAY BE REFERRED TO SPECIALIZED UNITS OR TO THE NEAREST HOSPITAL FOR FURTHER MANAGEMENT IF NECESSARY