



# **SEXUAL HARASSMENT AND ANTI-BULLYING POLICY 2019**

A black and white photograph of a person's hand held up in a 'stop' gesture, palm facing forward. The hand is the central focus, with the fingers spread. The background is a blurred, dark grey. Overlaid on the hand in red, bold, sans-serif capital letters is the text "STOP SEXUAL HARASSMENT & BULLYING".

**STOP  
SEXUAL  
HARASSMENT  
&  
BULLYING**

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## EXECUTIVE SUMMARY

The Law Society of Kenya (LSK) Code of Standards of Professional Practice and Ethical Conduct (SOPPEC); under its overriding Principle 12, requires every lawyer to uphold the profession's honesty and integrity even in their private life. Standard 12 at Paragraph 151 of SOPPEC lists sexual harassment as professional misconduct warranting disciplinary action. The Code places a duty on lawyers to lead by example. Sexual harassment has been conceptualized as a form of gender-based abuse, which has significant effects on complainants.<sup>1</sup> It is a source of humiliation or intimidation in the work place and may either be physical, verbal or written.<sup>2</sup> During public participation by members in the development of this policy, bullying emerged as a significant challenge in the workplace, which needed to be addressed. Standard 12 paragraph 152(c) requires Advocates to demonstrate civility, personal dignity, candour, respect and courtesy in their dealings with others at all times. This includes those over whom they have authority and control, such as staff members and those serving as pupils.

The legal profession is not spared from the scourge that is sexual harassment and bullying in the workplace. It is imperative that the LSK provides direction on how the vices can be prevented and addressed within the profession. Employers are required to put in place policies to curb these vices and to protect their employees to ensure that they work in a safe environment. Further, LSK is mandated to represent, protect and assist members of the legal profession in Kenya in matters relating to the conditions of practice and welfare. LSK also has a duty to formulate policies that promote the restructuring of the legal profession by embracing the spirit, principles, values and objectives of the Constitution of Kenya.

During LSK's annual conference in 2018, members agreed that there was need to develop a policy document on sexual harassment. The duty to spearhead the process was placed on the Gender Committee of LSK; a committee mandated to assist the society in the achievement of its gender related objectives and the Council of LSK to implement its gender related policies. This policy is therefore developed to create awareness on what amounts to sexual harassment and bullying but most importantly, to provide a reporting mechanism that is meant to offer redress. It is expected to be a useful framework for all law firms, people working in law firms and all advocates in the country in as far as prevention and redress for acts amounting to sexual harassment and bullying are concerned.

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<sup>1</sup><https://www.sciencedirect.com/science/article/abs/pii/S0001879183710031>

<sup>2</sup> <https://www.humanrightscommission.vic.gov.au/the-workplace/sexual-harassment-at-work>.

## ACKNOWLEDGEMENT

We wish to acknowledge and thank the Gender Committee of the Law Society of Kenya chaired by Ms. Carolyne Kamende Daudi and co-chaired by Ms. Roseline Odede who worked tirelessly to ensure that the Society adopts a Sexual Harassment and Anti-Bullying Policy.

We would also like to express our special thanks to the Council of the Law Society of Kenya led by President Allen Waiyaki Gichuhi, EBS, C.Arb, the Vice President, Ms. Harriette Chiggai, Council members; Ms. Herine Kabita, Ms. Maria Mbeneka, Mr. Borniface Akusala, Ms. Aluso Ingati, Ms. Ndinda Kinyili, Mr. Bernhard Ng'etich, Mr. David Njoroge, Ms. Jane Masai and Mr. Eric Nyongesa.

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Appreciation to the Secretariat Staff specifically Ms. Mary Mwathi Kitonga and Ms. Esther Njeri Mutitu for their support to the Gender Committee.

Finally, we thank the members who turned out in large numbers during the consultative sessions and contributed immensely to the final document.

We believe this policy shall go a long way in making law firms and other places where our members work, safe workplaces that are free from sexual harassment and bullying.

Sincerely,



**MERCY K. WAMBUA, OGW**  
**CEO/SECRETARY, LSK**

## ABBREVIATIONS

<b>Abbreviation</b>	<b>In Full</b>
SOPPEC	Code of Standards of Professional Practice and Ethical Conduct
LSK	Law Society of Kenya
CEDAW	UN Convention on the Elimination of All Forms of Discrimination Against Women
MAPUTO PROTOCOL	The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa
UNGA	UN General Assembly
HRC	Human Rights Council
CSW	Commission on the Status of Women
IBA	International Bar Association

# **CHAPTER 1: BACKGROUND INFORMATION**

## 1.1: INTRODUCTION

This policy addresses Sexual Harassment and Bullying in law firms and all spaces where lawyers practice.

## 1.2: Definition of Sexual Harassment

For purposes of this Policy, Sexual Harassment is defined to include;

- a) Any direct or indirect requests for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express:
  - (i) promise of preferential treatment in employment;
  - (ii) threat of detrimental treatment in employment; or
  - (iii) threat about the present or future employment status of the employee.
- b) Any behaviour that is unwelcome or offensive, of a sexual nature that includes physical conduct, display of visual material and communication whether written, verbal or non-verbal and includes electronic material.

### 1.2.1: Examples of Sexual Harassment

Sexual Harassment can take various forms and may include but not limited to:

- Unwelcome and unnecessary physical contact;
- Transmission of sexual material including photos, videos, pinups;
- Making suggestive comments, jokes or taunts with sexual connotations;
- Unwanted persistent invitations to go out on dates;
- Persistent requests for sex;
- Unsolicited demands or request for sexual favours;
- Intentionally exposing your private parts;
- Sexually explicit letters, faxes, emails, text messages or any other electronic content; or
- Unsolicited and intrusive comments or questions about a person's body, sexuality, sexual orientation, gender identity or gender expression.
- Demands for sexual favours in exchange for employment advantages, promises of employment advantages, or threats of withdrawal of advantages.



### 1.3: Definition of Bullying

For purposes of this policy, bullying means repeated actions of an individual or a group that is offensive, intimidating and malicious and/or insulting, through any means intended to undermine, humiliate, malign and/or injure the recipient.

#### 1.3.1: Examples of Bullying

- **Physical bullying** which entails hitting, pushing, shoving or physically hurting another person.
- **Verbal bullying** which entails name calling, insulting someone about an attribute, quality in personal characteristics, yelling, screaming and using profanity.
- **Emotional bullying** which entails malicious exclusion, spreading rumours, intruding on a person's privacy by pestering, spying or stalking, ridiculing a person, belittling a person's opinion, unreasonably denying applications for training, leave or promotion, tampering with personal belongings or work equipment and threats.
- **Cyber bullying** which entails any form of bullying that occurs online or via any electronic device.

### 1.4: POLICY STATEMENT

This sexual harassment and Bullying policy intends to make Law Society of Kenya, Law Firms and spaces where Lawyers practice safe; and encourages the reporting of all incidents of sexual harassment experienced by any individual as a result of his or her engagement within the legal circles. In return, the Law Society and Law Firms are required to commit to promoting equality in the workplace by taking all reasonable measures to prevent such incidents and to deal promptly and fairly with any reports of sexual harassment in a confidential and discreet manner. Where allegations of sexual harassment are substantiated, the offender will be sanctioned in strict accordance with this policy, regardless of his or her status at the firm.

This policy does not preclude the reporting of sexual harassment complaints to The Law Society of Kenya, the Disciplinary Tribunal, the Judicial Service Commission, or if the matter is perceived to be of a criminal nature, to the police.

## **1.5: PURPOSE**

1.3.1: The purpose of this policy is to create safe spaces free of sexual harassment for all; to inculcate a culture of zero tolerance to sexual harassment; and to explain the expected standard of behaviour.

## **1.6: SCOPE:**

**1.6.1:** This policy:

- a) applies at every level, and extends to all partners, employees (including full-time, part-time, temporary, probationary, and casual and contract staff), pupils and students of law firms and the Law Society of Kenya.
- b) applies to the physical offices.
- c) extends outside of the offices (such as to off-site client meetings, business travel, and firm-sanctioned and Law Society of Kenya social events, and to electronic communications)

## **1.7: GUIDING PRINCIPLES**

### **1.7.1: Non-Retaliation**

Retaliation means taking an adverse action against an individual as a consequence of reporting, for expressing an intent to report, for assisting another employee in an effort to report, for testifying or assisting in a proceeding involving sexual harassment and bullying.

Retaliation for raising a concern about a violation of this policy or participating in an investigation relating to a violation of this policy is discouraged.

### **1.7.2: Non-disclosure & Confidentiality**

Every effort shall be made to maintain confidentiality during any process required under this policy. Where necessary, parties and persons involved in the investigation may be required to sign a confidentiality deed to protect the names of the parties, witnesses or the circumstances related to the complaint; except where disclosure is necessary for the purpose of investigating the complaint or taking disciplinary measures in relation to legal action.

### **1.7.3: Good faith, Honesty & Integrity.**

Reports of workplace sexual harassment and bullying must be made in good faith. Any person determined to have intentionally made a false claim, acts maliciously, offers false statements or refuses to cooperate with an investigation regarding any process in this policy will be treated as having committed an act of professional misconduct.

### **1.7.4: Professionalism**

All complaints shall be handled with professionalism. Remedial actions will depend on the severity of the incident. Disciplinary recommendations will be imposed according to the internal disciplinary policies and procedures set by the firm/organization as guided by the Employment Act, Advocates Act and any other applicable laws.

Employers shall take measures that will deter recurrence of sexual harassment and bullying in the firm/organization. The remedial action should be taken within reasonable time.

Any party aggrieved by any process, decision or remedial action under this policy, shall have the right to challenge it and seek relevant redress.

## **CHAPTER 2: SITUATIONAL ANALYSIS**

## 2.1: INTRODUCTION

This chapter undertakes a legal and policy analysis, as well as the exiting situational analysis of sexual harassment and bullying within the Law Society.

## 2.2: LEGISLATIVE & POLICY FRAMEWORK

### 2.2.1: The Constitution of Kenya 2010

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

- i. Right to fair labour 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.

### 2.2.2: The Advocates Act

Section 60 of the Advocates Act defines **professional misconduct as including disgraceful or dishonourable conduct incompatible with the status of an advocate**. Sexual harassment is dishonourable conduct and can thus be pursued before the Disciplinary Committee and the Advocates Complaints Committee as a professional misconduct complaint.

### 2.2.3: The Employment Act

Section 5(3) of the Employment Act provides that there shall be no discrimination in employment. It prohibits employers from discriminating either directly or indirectly against an employee or prospective employee or harassing an employee or prospective employee: -

- On grounds of race, colour, **sex**, language, religion, political or other opinion, nationality, ethnic or social origin, disability, **pregnancy, marital status or HIV status**.
- in respect of recruitment training, promotion, and terms and conditions of employment.

Section 6 of the Employment Act prohibits sexual harassment in the workplace and sets out the steps that are required to secure workers from sexual harassment. The Act requires establishments with 20 or more employees to have a Workplace Sexual Harassment Policy. The Act gives the employer leeway to decide what to include in the policy but requires that it contains:

- A definition of Sexual Harassment;
- A statement that every employee is entitled to employment that is free of sexual harassment;
- A statement that the employer shall take steps to ensure that no employee is subjected to sexual harassment;
- A statement that the employer shall take such disciplinary measures as the employer deems appropriate against any person under the employer's direction, who subjects any employee to Sexual Harassment;
- A statement explaining how complaints may be brought to the attention of the employer;
- A statement on confidentiality and non-disclosure to third parties.

#### 2.2.4: The Sexual Offences Act

The Sexual Offences Act criminalizes Sexual Harassment with the offence set out in Section 23 which provides as follows: “Any person, who **being in a position of authority, or holding a public office, who persistently makes any sexual advances or requests which he or she knows, or has reasonable grounds to know, are unwelcome, is guilty of the offence of sexual harassment** 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.**”

#### 2.2.5: The Fair Administrative Actions Act

The Fair Administrative Actions Act, requires that all administrative actions that are likely to affect an individual, including employment rights and opportunities, must be made in a fair, transparent, expeditious, efficient and lawful manner. It stresses the need to provide written reasons for any administrative action taken against an individual, including an employee, and to provide every person an opportunity to be heard before a decision is made.

### 2.2.6: The Occupational Safety and Health Act

The Occupational Safety and Health Act provides for a conducive work environment. Section 8 of the Act provides that “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 makes a complaint about a matter which the employee considers is not safe or is a risk to his health.” This can include complaints about Sexual harassment in the workplace.

### 2.3: International Law

The Constitution of Kenya 2010 at Article 2 recognises International Law and provides that all International Law that has been ratified forms part of National Law whether domesticated or not.

#### 2.3.1: The UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979 (CEDAW)

Sexual Harassment is defined in Article 11 as:

- unwelcome sexually determined behavior physical contact and advances,
- sexually coloured remarks,
- showing pornography,
- sexual demand whether by words or actions.

***Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when an employee has reasonable grounds to believe that their objection would disadvantage them in connection with their employment, including recruitment or promotion, or when it creates a hostile working environment.***

CEDAW recognizes that ***Equality in employment can be seriously impaired when employees are subjected to gender-specific violence, such as sexual harassment in the workplace.***

### **2.3.2: The International Labour Organization's Discrimination (Employment and Occupation) Convention, 1958 (No.111)**

The Convention requires employers to provide a conducive workplace and prohibits sexual harassment which is identified as a form of sex discrimination.

### **2.3.3 The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003 (Maputo protocol)**

Kenya has ratified the Maputo Protocol with two reservations; these are in relation to reducing military spending in favour of women and development; and in relation to termination of pregnancy. The protocol protects women from all forms of abuse including sexual harassment. The African Commission on Human and Peoples' Rights charged with the mandate of implementing the Maputo Protocol have developed Guidelines for Combating Sexual Violence and its Consequences which address the eradication of all forms of sexual violence, including sexual harassment.

### **2.3.4: The UN Declaration against Elimination of Violence against Women, 1993**

The Declaration prohibits three categories of violence against women:

- violence perpetrated by the state;
- 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
- Violence in the family and in the private sphere.

Additionally, Governments have adopted a number of resolutions on the elimination of violence against women through the UN General Assembly (UNGA), the Human Rights Council (HRC) and the Commission on the Status of Women (CSW).

These include a specific resolution<sup>3</sup> on preventing and eliminating sexual harassment in the workplace, calling on States to take a range of measures.

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<sup>3</sup>Commission on the Status of Women (CSW) - Report on the sixty-first session (24 March 2016 and 13-24 March 2017) - Resolution 61/1. Preventing and Eliminating Sexual Harassment in The Workplace <https://undocs.org/E/2017/27>



## 2.4: SEXUAL HARASSMENT IN THE PROFESSION

Studies carried out confirm that there are increasing incidences of sexual harassment in the profession which often go unreported, due to several factors such as fear, intimidation, shame and embarrassment. According to a report '*The Legal Profession: The Case for a Sexual Harassment Policy*' by *Mercy K. Wambua (2013)*, a study conducted on the 'Challenges Facing Women Legal Practitioners' concluded that sixty-five percent (65%) of the respondents reported to have been sexually abused in their place of work with fifty percent (50%) reporting that the sexual harassment happened more than once. Fifty-five percent (55%) reported that the perpetrators were employers, twenty-five percent (25%) reported sexual harassment by judicial officers and fifteen percent (15%) reported to have been sexually harassed by clients who would insist on sexual favours so as to continue giving the advocate work.

*The 2018 International Bar Association's (IBA) Landmark Report on Bullying and Sexual Harassment in the Legal Profession* draws on data collected from nearly 7,000 surveyed legal professionals from 135 countries. The findings from the survey are that one in three (3) women and one in fourteen (14) men have been sexually harassed. The IBA reports that seventy-eight percent (78%) of sexual harassment cases were not reported and the main reasons for non-reporting include: profile/status of the perpetrator, fear of victimisation/victim repercussions, incidents being endemic to the workplace and a lack of confidence in protocols. The IBA made recommendations to aid the legal profession in addressing sexual harassment and bullying: creating awareness, implementing and revising policies and standards, improving trainings, improving dialogue and greater accountability.

## 2.5: EXISTING GAPS

There is no framework for handling sexual harassment complaints within the profession and therefore it continues unabated. National Laws and statutory law are insufficient to provide protection at the law firm level. There is need for development of a policy which provides for sensitization and awareness, redress mechanisms, and monitoring and evaluation to fill the gap and help in addressing the scourge.

## **CHAPTER 3: POLICY OBJECTIVES**

### **3.1: INTRODUCTION**

Sexual harassment can have detrimental effects on people and businesses. It can create an unsafe working environment, result in a loss of trained and talented workers, the breakdown of teams and individual relationships and reduced efficiency. People who are sexually harassed can become distressed, anxious, withdrawn, depressed and can lose self-esteem and confidence.

The Society and its members are committed to providing a working environment in which all employees, agents and visitors to the company are free from sexual harassment.

#### **3.1.1: OBJECTIVE 1: AWARENESS & SENSITIZATION**

**3.1.1.1:** The Law Society is keen on sensitizing and creating awareness amongst its members, legal professionals, students, interns and the general public on the vice of Sexual Harassment.

The intended outputs are:

- To improve members' knowledge and awareness of sexual harassment and bullying.
- To set standards of acceptable behavior for all of its members.
- To provide protection from any victimization or reprisals.

#### **3.1.2: OBJECTIVE 2: ZERO TOLERANCE TO SEXUAL HARASSMENT & BULLYING IN LAW FIRMS & IN THE LAW SOCIETY OF KENYA**

**3.1.2.1:** The Law Society intends to create an atmosphere of zero tolerance to sexual harassment and bullying within the profession and amongst its clientele. The intended outputs of this objective are:

- To create an environment where all employees, agents and visitors are treated with dignity, courtesy and respect.
- To enable law firms, provide their employees with sexual harassment and bullying awareness training.
- To encourage law firms to adopt and establish Sexual Harassment and Bullying Policies with prevention, complaints and redress mechanisms.

### **3.1.3: OBJECTIVE 3: REDRESS & SUPPORT TO VICTIMS**

**3.1.3.1:** The Law Society shall establish and encourage Law firms to establish redress and support systems; provide counselling; and an avenue for victims concerns to be addressed in a clear, fair and transparent manner. The systems should address possible retaliation; and false and malicious complaints.

The intended outputs are:

- To provide an effective procedure for complaints based on the principles of natural justice.
- To encourage the reporting of behavior which breaches this policy.
- To deal effectively with conflict arising from sexual harassment.

### **3.1.4: OBJECTIVE 4: MONITORING & EVALUATION**

**3.1.4.1:** The Law Society shall establish systems for monitoring and evaluating the effectiveness of this policy, through data collection and analysis, whilst observing confidentiality. The intended output is:

- To inform the regular review of this policy, the complaint handling procedures and training needs.
- To advise and inform recommendations for national legislation.

## **CHAPTER 4: IMPLEMENTATION OF POLICY**

## **4.1: INTRODUCTION**

Sexual harassment and bullying is against the law and will not be tolerated under any circumstances. This includes whether it occurs in the workplace or in any work-related context such as conferences, work functions and business trips.

Prompt action should be taken by the Law Society and Law Firms within the framework outlined below to ensure any sexual harassment and bullying within the workplace ceases.

## **4.2: INSTITUTIONAL FRAMEWORK**

### **4.2.1: LAW FIRM/ WORKPLACE INTERNAL PROCESSES**

Law firms and other employers who subscribe to this policy are encouraged to set up internal mechanisms to facilitate the hearing and resolution of complaints of Sexual Harassment and bullying. The internal process must ensure to accord the complainant a fair transparent, efficient, effective and expeditious process.

The process must be developed through a consultative process and must be clearly explained to all employees. An employee or any other person who is sexually harassed and/or bullied in the workplace is not bound to use the internal processes and can opt to pursue any other avenue available to them.

*Appendix 1: is a template of an internal dispute resolution process.*

### **4.2.2: LAW SOCIETY OF KENYA ADVOCATES DISCIPLINARY COMMITTEE**

The Advocates Disciplinary Committee is created under the provisions of the Advocates Act and receives and determines complaints of professional misconduct against Advocates. Complaints may be made by any person and are initiated by way of affidavit by the complainant setting out the allegations of professional misconduct. Professional misconduct is defined as disgraceful or dishonourable conduct, incompatible with the status of an advocate, and includes sexual harassment.

Where an Advocate is found guilty of professional misconduct, the Disciplinary Committee may make any of the following orders:

- i. That such advocate be admonished;

- ii. That such advocate be suspended from practice for a specified period not exceeding five (5) years;
- iii. That the name of such advocate be struck off the Roll of Advocates;
- iv. That such advocate does pay a fine not exceeding one million shillings, or such combination of the above orders as the Committee thinks fit.
- v. That such advocate pays to the aggrieved person compensation or reimbursement not exceeding five (5) million shillings.

Every advocate is subject to the jurisdiction of the Disciplinary Committee. The Secretary of the Law Society of Kenya serves as its Secretary. Complaints forwarded to the Society are received, investigated, and where a complaint appears valid, the matter is forwarded for hearing and disposal by the Committee.

Any person who wishes to make a complaint of Sexual Harassment against an Advocate through the Committee may do so by forwarding an affidavit setting out the details, to the Secretary of the Law Society of Kenya. The Law Society shall investigate the claim having due regard to confidentiality and respecting the dignity of the persons involved. The Law Society shall endeavour to investigate and conclude the matter timeously.

#### **4.2.3: ADVOCATES COMPLAINTS COMMISSION**

The Advocates Complaints Commission is obligated under Section 53 of the Advocates Act to receive and consider a complaint made by any person, regarding the conduct of any advocate, firm of advocates, or any member or employee thereof. If it appears to the Commission whether before or after instruction, that there is substance in a complaint and that the matter complained of constitutes or appears to constitute a disciplinary offence, the Commission is empowered to call upon the person to answer to the complaint and can refer the matter to the Advocates Disciplinary Committee or even to Court for appropriate action. The Commission may resolve the matter through mediation or may prosecute it at the Advocates Disciplinary Committee.

Any person who wishes to make a complaint of Sexual Harassment and/or Bullying against an Advocate through the Commission may do so by, visiting them at their offices, writing a letter, or forwarding an affidavit setting out the details, to the Chairperson of the Commission. The

Commission shall investigate the claim having due regard to confidentiality and respecting the dignity of the persons involved. The Commission shall endeavour to investigate and conclude the matter timeously.

### **4.3: ACTORS, THEIR ROLES & RESPONSIBILITIES**

Every person to whom this policy refers has a duty to undergo sexual harassment and bullying awareness training as part of their orientation and at other times during their employment to ensure an understanding of and compliance with this Policy.

#### **4.3.1: Role of the Law Society of Kenya**

The Law Society has a responsibility to:

- i. Monitor and evaluate compliance with this Policy.
- ii. Ensure all its members and the public are aware of and understand this Policy.
- iii. Ensure availability of appropriate complaints and redress mechanisms for its members and any other persons who interact with its members.
- iv. Receive complaints on sexual harassment and bullying;
- v. Document sexual harassment and bullying;
- vi. Report annually to the Annual General Meeting on sexual harassment and bullying in the profession.

On receipt of a complaint, LSK shall take the following steps:

- i. write to the accused informing them of the complaint and direct them to respond;
- ii. notify the accused employer/ the firm's partners/proprietor/human resource manager/supervisor of the complaint and direct them to respond;
- iii. obtain from the respondent's firm a written report of their investigation and decision on the complaint (if any);
- iv. forward the complaint to the Advocates Complaints Commission and/or Advocates' Disciplinary Committee;
- v. continuously monitor the process and to ensure that measures are being taken by the employer throughout the investigation period, to protect the complainant and witnesses and prevent interference; and thereafter; and
- vi. ensure that the matter is concluded expeditiously, and the decision communicated to the parties in writing.



### 4.3.2: Management Roles and Responsibilities

While every member is responsible for maintaining and contributing to an environment that is free from sexual harassment and bullying in the workplace, those in positions of authority over staff carry more responsibility. Every employer must make reasonable effort to establish and maintain a workplace free of sexual harassment and bullying related to this Policy. Their responsibilities include but are not limited to:

- i. Adopt clear, written sexual harassment and anti-bullying policies.
- ii. Foster an organizational culture that does not tolerate sexual harassment and bullying.
- iii. Conduct workplace trainings to raise awareness and promote respect among employees.
- iv. Ensuring that employees have full access to information, regarding employer policies and standards.
- v. Make an effort to maintain employees' confidentiality throughout the investigation.
- vi. Enforcement of corrective and/or disciplinary measures.
- vii. Provide a mechanism for employees to declare consensual relationships in the workplace.
- viii. Monitor the working environment to ensure that acceptable standards of conduct are observed at all times.
- ix. Model appropriate behaviour themselves, including ensuring they do not engage in sexual harassment and bullying or otherwise breach this policy.
- x. Treat all complaints seriously and take appropriate action in response to complaints.

### 4.3.3: Employee Roles

All employees including members of the Law Society have a responsibility to support the implementation of this Policy by:

- i. Conducting themselves in a manner which demonstrates professional conduct, mutual respect for others and which upholds dignity in the workplace;
- ii. Not engaging and/or condoning sexual harassment and/or bullying of others;
- iii. Participating fully and in good faith in any process, or formal complaint and investigation process where they have been identified as having potentially relevant information;

- iv. Reporting any sexual harassment and bullying which they experience or observe which may be in violation of this Policy;
- v. Respecting the rights to personal dignity, privacy and confidentiality pertaining to this policy.
- vi. Offering support to anyone who is being harassed and letting them know where they can get help and advice.

#### **4.4: CO-ORDINATION FRAMEWORK**

Law Firm Managers, The Law Society of Kenya, The Advocates Disciplinary Committee and the Advocates Complaints Commission shall co-ordinate implementation of this policy as per their roles set out above.

#### **4.5: MONITORING & EVALUATION**

The Law Society shall gather data relating to the implementation of this policy and make annual reports. The data collection will have regard to confidentiality, integrity and dignity of the involved persons.

# **APPENDICES**

## APPENDIX ONE: SEXUAL HARASSMENT AND ANTI-BULLYING POLICY FOR LAW FIRMS- TEMPLATE

### Sexual Harassment and Anti- Bullying Policy

This sexual harassment policy template is ready to be tailored to your Law Firm's needs and should be considered a starting point for setting up your Sexual Harassment and Anti- Bullying policies.

#### Policy brief & purpose

Our sexual harassment and anti- bullying policy aims to protect men and women in our company from unwanted sexual advances and give them guidelines to report incidents. We will also explain how we handle claims, punish sexual harassment and bullying and help victims recover.

We won't tolerate sexual harassment and bullying in our workplace in any shape or form. Our culture is based on mutual respect and collaboration. Sexual harassment and bullying is a serious violation of those principles.

#### Scope

This policy applies to every person in our company regardless of gender, sexual orientation, level, function, seniority, status or other protected characteristics. We are all obliged to comply with this policy. We will not tolerate sexual harassment and bullying from inside or outside of the company. Employees, contractors, clients, interns and everyone interacting with our Law Firm are covered by this policy.

#### What is sexual harassment?

Sexual harassment and bullying has many forms of variable seriousness. A person sexually harasses or bullies someone when they: ***(refer to the definition in this policy)***

- i. Insinuate, propose or demand sexual favors of any kind.
- ii. Invade another person's personal space (e.g. inappropriate touching.)
- iii. Stalk, intimidate, coerce or threaten another person to get them to engage in sexual acts.
- iv. Send or display sexually explicit objects or messages.
- v. Comment on someone's looks, dress, sexuality or gender in a derogatory or objectifying manner or a manner that makes them uncomfortable.

- vi. Make obscene comments, jokes or gestures that humiliate or offend someone.
- vii. Pursue or flirt with another person persistently without the other person's willing participation. Also, flirting with someone at an inappropriate time (e.g. in a team meeting) is considered sexual harassment, even when these advances would have been welcome in a different setting. This is because such actions can harm a person's professional reputation and expose them to further harassment.

**The most extreme form of sexual harassment is sexual assault. This is a serious crime and our company will fully support employees who want to press charges against offenders.**

**Our company's rules on sexual harassment:**

- i. **No one has the right to sexually harass or bully our employees.** Any person in our company who is found guilty of serious harassment or bullying will be terminated. Further, if representatives of our contractors or vendors sexually harass and/or bully our employees, we will demand that the company they work for takes disciplinary action and/or refuse to work with them in the future.
- ii. **Sexual harassment and bullying is never too minor to be dealt with.** Any kind of harassment can wear down employees and create a hostile workplace. We will hear every claim and punish offenders appropriately.
- iii. **Sexual harassment is about how we make others feel.** Many do not consider behaviour like flirting or sexual comments to be sexual harassment, thinking they are too innocent to be labelled that way. However, if something you do makes your colleagues uncomfortable or makes them feel unsafe, you must stop.
- iv. **We assume every sexual harassment and bullying claim is legitimate unless proven otherwise.** We listen to victims of sexual harassment and bullying and always conduct our investigations properly. Occasional false reports do not undermine this principle.
- v. **We will not allow further victimization of harassed or bullied employees.** We will fully support employees who were sexually harassed or bullied and will not take any

adverse action against them. For example, we will not move them to positions with less pay or benefits i.e. demote or allow others to retaliate against them.

- vi. **Those who support or overlook sexual harassment and bullying are as much at fault as offenders.** Managers are obliged to prevent sexual harassment and bullying and act when they have suspicions or receive reports. Letting this behaviour go on or encouraging it will bring about disciplinary action. Anyone who witnesses an incident of sexual harassment and bullying or has any other kind of proof should report.

### **How to report sexual harassment**

If you are being sexually harassed or bullied (or suspect another person is being harassed or bullied), please report it to your supervisor. In serious cases like sexual assault, please call the police and inform the firm that you plan to press charges.

We acknowledge it's often hard to come forward about these issues, but we need your help to build a fair and safe workplace for you and your colleagues.

If you want to report sexual harassment and/or bullying within our company, there are two options:

- i. **Ask for an urgent meeting with your supervisor.**

Once in the meeting, explain the situation in as much detail as possible. If you have any hard evidence (e.g. emails), forward it or bring it with you to the meeting.

- ii. **Send your complaint via email.**

Address it to your supervisor and attach any evidence or information that can be used in the investigation. Your supervisor will discuss the issue and contact you as soon as possible. If you report assault to the police, our company will provide any possible support until the matter is resolved. In any case, we will ensure you are not victimized and that you have access to relevant evidence admissible in court, like security video footage or emails (without revealing confidential information about other employees).

## **Inadvertent harassment**

Sometimes, people who harass or bully others do not realize that their behaviour is wrong. We understand that this is possible but, that doesn't make the perpetrator any less responsible for their actions. If you suspect that someone doesn't realize their behaviour is sexual harassment or bullying under the definition of this policy, let them know and ask them to stop. Do so preferably via email so you can have records. Please do not use this approach when:

- a. Your manager, an upper manager, investor or customer is the perpetrator.
- b. Sexual harassment or bullying goes beyond the boundaries of off-hand comments, flirting or jokes.

In the above two cases, report to your immediate supervisor or other senior member of staff as soon as possible.

## **Disciplinary action and repeat offenders**

Employees who are found guilty of sexual assault will be terminated after the first complaint and investigation.

- (i) Employees who are found guilty of sexual harassment (but not assault) or bullying the first time may:
  - (a) Be reprimanded and fined.
  - (b) Get a "below expectations" performance review.
  - (c) See expected promotions and/or salary increment freeze for [*a year.*]
  - (d) We may also transfer harassers or take other appropriate action to protect their victims. We will terminate repeat offenders after the second claim against them if our investigation concludes they are indeed guilty.
- (ii) We apply these disciplinary actions uniformly. Employees of any sexual orientation or other protected characteristics will be penalized the same way for the same offenses.

## **Supervisor responsibilities**

First and foremost, supervisors and managers should try to prevent sexual harassment and bullying by building a culture of respect and trust. However, when sexual harassment or bullying occurs and an employee makes a complaint, both supervisors and managers must act immediately. Managers should talk to supervisors to explain the company's procedures to their team member who made the complaint.

When a supervisor receives a complaint that an employee has harassed or bullied another employee, they will:

- (i) Ask for as many details and information as possible from the person or people making the complaint.
- (ii) Keep copies of the report with dates, times and details of incidents and any possible evidence in a confidential file (separate from the personnel file). The supervisor should update this file with all future actions and conversations regarding this complaint.
- (iii) Launch an investigation. If the matter is complex, the supervisor can defer to a more senior manager.
- (iv) Check if there have been similar reports on the same person/employee. If there are, the supervisor should contact the alleged perpetrator's manager to let them know that their team member, if found guilty, may get fired when the investigation is over.
- (v) Inform the harassed employees of the company's procedures and their options to take legal action if appropriate.
- (vi) Take into account the wishes of the harassed or bullied employee. Some might want the matter to be resolved informally and discreetly, while others might expect more radical actions (e.g. transferring the perpetrator). The supervisor should consider the circumstances and decide on appropriate action.
- (vii) Contact the harasser and set up a meeting to explain the complaint and explicitly ask for this behavior to stop; or
- (viii) Arrange for mediation sessions with the two employees (harasser and perpetrator) to resolve the issue, if the harassed employee agrees; or
- (ix) Launch a disciplinary process depending on the severity of the harassment or bullying.

In cases of sexual assault or coercing someone to sexual favours under threats, the company will terminate the harasser immediately. The company will terminate employees who are found guilty in a court of law of sexually assaulting another employee, even it has not conducted its own investigation.

**Under NO circumstances, may the supervisor blame the victim, conceal a report or discourage employees from reporting sexual harassment and bullying.**



If a supervisor behaves that way, please send an email to their manager or a senior member of staff explaining the situation. The company welcomes any feedback or complaints about our procedures and how the employees handled each case.

### **Helping harassment and/or bullied victims**

Apart from investigating claims and punishing perpetrators, the company wants to support the victims of sexual harassment and bullying. If an employee experiences trauma, stress or other symptoms because of harassment or bullying consider:

- a. Taking a few days of sick leave to restore their mental health.
- b. Asking their insurance provider whether they cover mental health services.
- c. Speaking to the company's designated counsellors.

The employees' job and benefits will not be jeopardized or altered if they choose any of those options or other means to recovery.

### **Speak up, we listen**

Sexual harassment and bullying can exhaust those who endure it. Speaking up about this issue is often tough for fear of not being heard, upsetting managers and challenging corporate culture. Please don't let these fears deter you. The company will do everything possible to stop sexual harassment, bullying and any other kind of harassment from happening, while supporting harassed and bullied employees. The company needs to know what's going on they can act on it. By raising your voice on this issue, you help the company create a happy workplace and thrive.

***Disclaimer: This policy template is meant to provide general guidelines and should be used as a reference. It may not take into account all relevant facts and circumstances. The Law Society of Kenya will not assume any legal liability that may arise from the use of this policy.***

## APPENDIX TWO: INTERNAL RESOLUTION OF DISPUTES

A complaint under the internal resolution mechanism must be determined within 30 days and shall be in writing. Where the circumstances permit, a complaint of sexual harassment and bullying shall be handled at the first instance through the firms' or organisations' internal mechanism or as provided hereunder.

### Informal Procedure

- a) Once a complaint is received, the complainant has a choice (as a matter of right) to seek investigation of the matter or opt for conciliation to resolve the complaint. In case the complainant opts for conciliation, parties will be facilitated to have a discussion and resolve the issue, in the presence of relevant internal staff. If the conciliation succeeds, the terms of the same will be recorded. No investigation will be initiated.
- b) If conciliation fails or if either party declines or opts out of conciliation the formal process will be initiated.

### Formal Complaint

- a. A complaint will be made to the relevant staff in writing. The firm/organization shall provide a formal complaint form and where the same is not provided, a letter will suffice as a form of complaint. The formal complaint form should include the following information:
  - i. Name(s) of the person who has allegedly experienced sexual harassment or bullying and their contact information.
  - ii. Name of the alleged perpetrator (s), position and contact information (if known).
  - iii. Names of the witness(es) (if any) or other person(s) with relevant information to provide about the incident (if any) and contact information (if known).
  - iv. Details of what happened including date(s), frequency and location(s) of the alleged incident(s) and any supporting documents/evidence the person who complains of harassment and/or bullying may have in his/her possession that are relevant to the complaint.
  - v. List any documents a witness, another person or the alleged harasser may have in their possession that are relevant to the complaint.

- b. A copy of the complaint duly made by a complainant shall be served upon the Law Society of Kenya and particularly at a desk that shall be designated at the Secretariat for this purpose.
- c. Once documented, an assessment is made to determine whether the complaint is admissible or not and a decision is given in writing to the complainant, within two working days. No action will be taken against the complainant as long as the complaint is made in good faith.
- d. If the complaint is found to be admissible, the alleged perpetrator is informed of the allegation, and an investigation immediately commenced.
- e. The reporting authority will investigate the complaint and consider all the evidence before it. If the facts as recited constitute sexual harassment and bullying, the reporting authority shall proceed as follows:
  - i. Where the facts suggest sexual harassment or bullying, but the complainant does not wish to pursue the matter, the reporting authority may pursue it without the co-operation of the complainant;
  - ii. If the parties wish to resolve the problem mutually, then the reporting authority may meet with them to facilitate a mutually agreeable solution. If the parties reach a settlement, the settlement must be approved by the firm/organisation in writing.
  - iii. Where no settlement has been reached, or should there be no attempt by the parties to settle, all the evidence will be considered and a decision will be made on whether the allegation has been proven.
  - iv. If the complaint has merit disciplinary action shall be taken.
  - v. Where a complaint is not upheld, and is found to have been made in bad faith and/or maliciously, the complainant will be subject to disciplinary action.
- f. The proceedings, findings and conclusion of the investigations must be contained in a written report and shared to the parties and the Law Society of Kenya.
- g. Where a party is not satisfied by the decision of the Reporting Authority, an appeal shall be filed to the Law Society of Kenya under its reporting procedure as provided.

**APPENDIX THREE: COMPLAINT FORM**

**Sexual Harassment and Bullying Complaint Form**

I..... [Name of complainant], working at .....[Name of firm/organization], of..... [Address of firm/organization] have reasonable grounds to believe that ..... [full name of alleged perpetrator], working at..... [Name of firm/organization], of..... [Address of firm/organization] has engaged in sexual harassment/bullying at..... [Address (es) of place(s) where the suspected incident took place on or about..... [Dates of alleged harassment/bullying] in contravention of the Law Society of Kenya Sexual Harassment and Anti-Bullying Policy and the Law.

**The particulars of sexual harassment/bullying are as follows:**

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

**Witnesses (if any)**

**(i)**.....  
**(ii)**.....

**Attached evidence (if any)**

**(i)**.....  
**(ii)**.....

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

Complainant’s Signature:

Telephone Number:

E-mail address:

*\*The complainant should sign three copies; one copy to remain with the complainant; one to be forwarded to the Law Society of Kenya, and one to be forwarded to the person against whom the complaint is made.*