



Republic of Malawi

**GUIDELINES FOR PUBLIC SERVICE WORKPLACE ANTI-SEXUAL
HARASSMENT POLICY**

2023

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List of Acronyms and Abbreviations

ASHDO	Anti-Sexual Harassment Desk Officer
DHRMD	Department of Human Resource Management and Development
PSWASHP	Public Service Workplace Anti-Sexual Harassment Policy
GEA	Gender Equality Act

Definitions

In these Guidelines, the following words shall mean:

Anti-Sexual Harassment Desk Officer	an officer appointed by the Controlling Officer to receive and report sexual harassment cases to relevant authorities and whom a person who has been subjected to sexual harassment may approach for confidential advice and counselling.
Complainant	A person who raises a sexual harassment grievance, the person may or may not be the victim of sexual harassment.
Controlling Officer	any person who is the head or principal person in-charge of a Government institution.
Disciplinary Committee	structures put in place by Government institutions to handle disciplinary cases relating to Government employees.
Discrimination	Any distinction, exclusion or restriction which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise, by any person of human rights, and fundamental freedoms in the political, economic, social, cultural, civil or any other field.
Employee	Any person employed in the Malawi Public Service.
Employer	Any person, body corporate, undertaking, public authority or body of persons who or which employs an employee and includes heirs, successors and assignees of the employer;
Perpetrator	A person who is alleged to have committed an act of sexual harassment.
Public Service	Any service that is provided by government directly or indirectly using public resources or

	any public interest activity that is under the authority of government.
Responsible officer	any person in the civil service who is authorized or has the authority to make decisions affecting the interests of persons employed in the Public Service.
Sexual harassment	Unwanted act of verbal, non-verbal or physical conduct of a sexual nature in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.
Survivor	A person who is subjected to sexual harassment, abuse or exploitation.
Victim	A person who has been subjected to any form of Sexual Harassment and comes to feel helpless and passive.
Whistleblowing	The process of exposing sexual harassment misconduct to relevant offices or authorities in public institutions.
Workplace	A place of work, whether inside a building or outdoors, where public officers perform their duties. It may include usual place of work, where a public officer is working remotely or attending conferences, trainings, workshops and work-related social events.

Chapter1

1.0 Introduction

The Gender Equality Act (GEA) under section 7(1) requires Government to take active measures to ensure that employers develop and implement appropriate policies aimed at eliminating sexual harassment in the workplace. The Guidelines for the Public Service Workplace Anti-Sexual Harassment Policy are a comprehensive guide to the implementation of the Public Service Workplace Anti-Sexual Harassment Policy (PSWASHP). They provide the procedure for managing sexual harassment in the workplace from the time they are reported through to hearing processes and the resolution of the case and further rehabilitation of sexual harassment survivors. Users of these Guidelines include but not limited to Anti-Sexual Harassment Desk Officers (ASHDO), Disciplinary Committee, Human Resources Officers, Gender officers, Heads of Departments, Controlling/Responsible Officers and others.

The Guidelines also outline institutional reporting structures for Sexual Harassment as a monitoring mechanism of occurrences of sexual harassment in the Public Service Workplace. The key broad areas of the Guidelines include; Categorisation of Sexual Harassment Cases, Management of Sexual Harassment Cases, Rehabilitation and protection of Sexual Harassment Survivors and Sexual Harassment Safeguards.

1.1 Background

The GEA, provides for implementation of policies and procedures for addressing sexual harassment in the workplace. The Public Service is committed and takes responsibility to ensure that the work environment for its employees, clients and service providers is safe and free from all forms of sexual harassment by developing the PSWASHP. It is important to note that most policies fail to operationalise due to lack of implementing guidelines and procedures. The Public Service Workplace Anti Sexual Harassment Policy Guidelines shall provide guidance and serve as a reference for preventing and effectively responding to sexual harassment. The Guidelines provide step-by-step procedures for addressing sexual harassment in the Public Service workplace. The Guidelines will therefore, be used as an instrument to seriously, expeditiously, sensitively and confidentially deal with

all allegations of sexual harassment and protect employees, and all third parties against victimization, retaliation for lodging grievances and from false accusations.

1.2 Objectives

- i) To standardize handling of sexual harassment grievances in the Public Service;
- ii) To provide clear redress mechanisms for sexual harassment cases;
- iii) To ensure that all incidents of sexual harassment are handled with the seriousness they require.

Chapter 2

2.0 Key Broad Areas

The Policy Guidelines provide the following as key broad areas:

2.1 Categorisation of Cases

Sexual harassment cases shall be treated based on the categories as provided under section 6(1) of the Gender Equality Act, where it is indicated *that a person commits an act of sexual harassment if he or she engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated.*

Sexual harassment can further be categorized as:

- i) **Quid Pro Quo** (This for That) where job benefits or continued employment are made to an individual upon satisfaction of sexual demands.
- ii) **Hostile work environment** where Sexual Harassment has an effect of unreasonably interfering with a victim's work performance or creating an intimidating, hostile or offensive working environment that affects the victim's psychological well-being.

2.1.1 Forms of Sexual Harassment

Sexual harassment can occur in different forms such as visual, verbal, non-verbal and physical as described below.

- i) **Visual form:** A person may harass another by exposing themselves or their bodies to the other individual who does not appreciate the exposure. In addition, visual harassment can also be demonstrated through cartoons, drawings, pictures, messages and video clips that are considered offensive and or insulting to another person.
- ii) **Verbal form:** Remarks or comments that are disrespectful, insults or slurs may also be considered as verbal harassment towards an individual. Verbal form of sexual harassment can occur in different ways as follows:
 - a) Referring to an adult as a girl, hunk, doll, babe, or honey;
 - b) Whistling at someone, cat calls;
 - c) Making sexual innuendos;
 - d) Turning work discussions to sexual topics;

- e) Telling sexual jokes or stories;
 - f) Asking about sexual fantasies, preferences, or history;
 - g) Asking personal questions about social or sexual life;
 - h) Making kissing sounds, howling, and smacking lips;
 - i) Making sexual comments about a person's clothing, anatomy, or looks;
 - j) Repeatedly asking out a person who is not interested;
 - k) Telling lies or spreading rumours about a person's personal sex life.
- iii) **Non-verbal forms:** This involves actions such as expressions, gestures and paralinguistics. Other examples include the following:
- a) Intentionally blocking a person's path;
 - b) Stalking;
 - c) Giving unwelcome personal gifts;
 - d) Leering;
 - e) Displaying sexually suggestive visuals;
 - f) Making sexual gestures with hands or through body movements;
 - g) Making facial expressions such as winking, throwing kisses, or licking lips.
- iv) **Physical form:** physical form is exercised through unwelcome physical contact of sexual nature such as:
- a) Rubbing up against a person;
 - b) Physically interfering with another's movements;
 - c) Giving a massage around the neck or shoulders;
 - d) Touching the person's clothing, hair, or body;
 - e) Hugging, kissing, patting, or stroking;
 - f) Touching or rubbing oneself sexually around another person;
 - g) Standing close or brushing up against another person;
 - h) Rape.

NB: It is important to note that the examples of sexual harassment above are not exhaustive.

2.1.2 Categories of Gross and Minor Cases of Sexual Harassment

	Form of sexual harassment	Minor sexual harassment cases to be handled administratively	Gross sexual harassment cases to be referred for civil or criminal proceedings.
i)	Visual	All forms of visual sexual harassment.	Where the degree of visual conduct is extreme, that is, in cases where there is exposure of private body parts, sending pornographic material among others.
ii)	Verbal	All forms of verbal sexual harassment.	Except where it's so extreme, for instance, it affects the employee's work and where the employee suffers the consequences of not reciprocating.
iii)	Non-Verbal	All forms of non-verbal.	Except in extreme cases for instance, persistently blocking a person's path and stalking.
iv)	Physical	All physical forms that are not extreme for instance, tapping someone.	All extreme physical sexual harassment cases for example rape.

Note: According to Section 7 (2) of the GEA, anyone who is subjected to sexual harassment need not to exhaust internal procedures (administrative processes), because they are at liberty to proceed with civil proceedings.

2.2 Management of Sexual Harassment Cases

Effective management of sexual harassment cases in the Public Service requires well-coordinated and vibrant system of receiving, processing and resolving cases. Designated officials for handling sexual harassment cases shall be the ASHDO and the committee responsible for disciplinary matters. Considering the nature of sexual harassment cases, designated officers responsible for handling sexual harassment cases shall deal with such cases, seriously, sensitively, confidentially and expeditiously as required by the Gender Equality Act.

2.2.1 Roles of the Controlling/Responsible Officer in Handling Sexual Harassment Cases

The Controlling/Responsible Officer shall:

- i) Receive sexual harassment reported cases from ASHDO;
- ii) Serve the alleged sexual harassment perpetrator with charges placed against him or her;
- iii) Refer sexual harassment cases to relevant authorities such as police or health facility among others;
- iv) Constitute sexual harassment investigation team;
- v) Receive investigation reports from the investigation team;
- vi) Refer sexual harassment cases to a disciplinary committee for hearing;
- vii) The Controlling/Responsible Officer shall act on the recommendations by the Disciplinary Committee, where necessary the he/she shall submit the cases to appropriate authorities such as ADC, Service Commissions or Board for their decision;
- viii) Take active measures in addressing sexual harassment by non-employees.

2.2.2 Roles of the Disciplinary Committee in Handling Sexual Harassment Cases

The committee shall:

- i) Conduct hearing of sexual harassment cases;
- ii) Mediate between the two parties depending on severity of the case;
- iii) Deliberate and make determinations of sexual harassment cases;
- iv) Recommend disciplinary actions to the Controlling/Responsible officer;
- v) Compile a comprehensive report of cases resolved and submit to the Controlling /Responsible Officer.

2.2.3 Appointment of the Anti-Sexual Harassment Desk Officer

The ASHDO shall be appointed by the Controlling Officer. ASHDO shall be a gender officer, where available, but where not available, any officer from the human resource department or any other department/ division/section at middle management level shall be appointed. The appointment of the ASHDO shall be guided by the following criteria:

- i) Have knowledge and good understanding of the policy and its implementation;
- ii) Be psychologically and emotionally stable;
- iii) Have integrity and of good moral standing;
- iv) Have good communication skills;
- v) Should have ability to maintain utmost confidentiality;
- vi) Have good counselling skills;
- vii) Be trustworthy and approachable;
- viii) Have respect for others.

2.2.4 Roles of the Anti-Sexual Harassment Desk Officer

The ASHDO shall be the first line of contact for the sexual harassment complainant. The following shall be his or her roles:

- i) Receive sexual harassment complaints;
- ii) Submit sexual harassment complaints to the Controlling/Responsible Officer;
- iii) Conduct informal resolution of sexual harassment cases;
- iv) Maintain sexual harassment database;
- v) Compile comprehensive reports to DHRMD through the Controlling Officer;
- vi) Coordinate awareness and implementation of the PSWASHP and the Guidelines;
- vii) Monitor and report on the trends of sexual harassment within the institution and advise on the necessary actions to be taken;
- viii) Facilitate provision of psycho-social support to the sexual harassment survivor;
- ix) Disseminate the Policy and the Guidelines to all employees, clients and service providers in the workplace.

2.2.5 Submission of complaints

In order to facilitate proper documentation, quick investigation and resolution of the case, any person who lodges sexual harassment grievance shall follow the guidelines stipulated below:

- i) Complete a sexual harassment complaint form, within a reasonable time;
- ii) Submit the complaint to the ASHDO;
- iii) If the ASHDO is the perpetrator or compromised in any way, the complaint shall be submitted to the Controlling/Responsible Officer;
- iv) Where the Controlling/Responsible Officer is the perpetrator, the complaint shall be submitted to those responsible for overseeing the Controlling/ Responsible Officer.

2.2.6 Whistle Blowing

Controlling/Responsible officers shall ensure that reporting of sexual harassment cases is enhanced through whistle blowing by:

- i. Putting in place whistle blowing mechanisms such as toll free number, under door slot mail or suggestion box to receive anonymous alerts or information on sexual harassment acts.
- ii. Keeping the identity of the whistle blower confidential.
- iii. Properly investigating the reported cases to establish authenticity and avoid malicious reports.

2.2.7 The Disciplinary Process

a) Investigations

- i) Upon receipt of a sexual harassment complaint which suggests that an officer for whom he/she is responsible may have been guilty of a misconduct of sexual harassment, the Controlling/Responsible Officer shall appoint a team to conduct preliminary investigations;
- ii) The appointed team shall thoroughly investigate the complaint and report their findings to the Controlling/Responsible Officer within fourteen (14) days;
- iii) The Controlling/Responsible Officer shall interdict the alleged sexual harassment perpetrator where the preliminary investigations findings suggest that the allegations of sexual harassment may have been committed;
- iv) The Controlling/Responsible Officer shall formally charge the alleged sexual harassment perpetrator and ensure that the charges, after being vetted by Ministry of Justice, are properly served on the officer and that there is proof of service.
- v) The alleged perpetrator shall be given 21 days within which to respond to the charges in writing. Failure to respond to the charges within the

- prescribed period, it shall be presumed that the alleged perpetrator has waived his/her right to be heard in writing;
- vi) The Controlling/Responsible Officer shall refer the case to the Disciplinary Committee for oral hearing at the expiry of 21 days regardless of whether the alleged perpetrator responded to the charges in writing or not.

b) Oral Hearing

- i) Oral hearing of the disciplinary case shall take place after investigations of the alleged sexual harassment;
- ii) The Disciplinary Committee shall ensure that hearing of the case is done within 21 days after it has been referred to it by the Controlling/Responsible Officer;
- iii) The Disciplinary Committee with the help of secretariat, to be provided by the MDA concerned, shall set the date and appropriate venue for the hearing;
- iv) Members of the Disciplinary Committee shall recuse themselves if they have an interest in the case;
- v) The Disciplinary Committee, through the secretariat, shall by way of written communication summon the complainant, the accused (defendant) and, if available, any witnesses to the hearing.
- vi) The Disciplinary Committee shall provide the complainant with a chance to state his or her case;
- vii) The complainant shall be allowed to call his/her witnesses and/ or produce any evidence in support of the case;
- viii) The defendant shall be allowed to cross-examine the complaint and his/her witness, if any;
- ix) The Disciplinary Committee shall proceed to allow the accused to provide his/her defence on the allegations levelled against him/her;
- x) The defendant shall be permitted to call witnesses and to produce evidence in his/her defence;
- xi) The complainant shall be allowed to cross-examine the defendant and his/her witness if any;
- xii) The Disciplinary Committee shall examine the complainant and the alleged perpetrator;
- xiii) The Disciplinary Committee shall ensure that all witnesses have signed confidentiality form and have committed to abide by it;
- xiv) Failure to comply with confidentiality pledge shall attract disciplinary measures;
- xv) Where necessary, the Disciplinary Committee shall consult a legal counsel on legal matters that may arise in the course of the hearing.

This will be done for guidance when making final determination or referrals to ensure compliance with existing laws and regulations.

Factors to be Taken into Account by the Disciplinary Committee as it Arrives at its Verdict

The Disciplinary Committee shall, among other factors take into account the following:

- i) The circumstances under which the incident(s) of sexual harassment allegedly occurred;
- ii) The context in which the alleged incident(s) occurred;
- iii) The frequency of the offensive conduct;
- iv) The severity of the conduct;
- v) The physical, psychological, emotional and financial impact that the alleged conduct has had on the complainant.
- vi) Any other relevant factors the Disciplinary Committee may consider necessary.

2.2.8 Case Resolution

Sexual harassment cases may be resolved through formal or informal processes.

a) Informal Resolution

The informal resolution shall be considered on condition that, the complainant and the alleged sexual harassment perpetrator have expressed their willingness and desire to participate in such a process. ASHDO shall play the role of mediation. The ASHDO shall consider all factors to determine whether to pursue the informal or formal resolution processes. Failure to resolve the complaint, the ASHDO shall refer the case to the Controlling/Responsible Officer to start processes of formal resolution. Informal processes shall not apply where the case constitutes a crime.

b) Formal Resolution

Formal resolution begins where a sexual harassment case has been referred to the Responsible/Controlling Officer. Where it has been deemed necessary to invoke formal resolution processes, the following measures shall be taken:

- i) Where possible, the alleged sexual harassment victim and alleged sexual harassment perpetrator should not directly work together to avoid tension, intimidation or victimisation;
- ii) If the Committee finds the alleged harasser guilty of sexual harassment, it may take into consideration all extenuating and

- aggravating factors to the case and may order the guilty party in line with the relevant legal frameworks;
- iii) Where the suspect is found not guilty, the Committee shall recommend to relevant authorities that he/she be cleared of the charges levelled against him/her; and
 - iv) Where the Committee finds that the sexual harassment complaint was based on malice, the complainant shall be disciplined in line with relevant legal frameworks.

2.2.9 Sexual Harassment by Non-Employees

All non-employees found or suspected to have committed acts of sexual harassment shall be subjected to disciplinary measures which may include but not limited to:

- i) Report the matter to their employer and other relevant authorities such as Police and Malawi Human Rights Commission;
- ii) Refusal to work with them or their representatives in future activities;
- iii) Demand their employer to take disciplinary measures against them.

2.2.10 Referral to Other Service Providers

Depending on the gravity of the sexual harassment case, the Controlling/Responsible Officer may refer sexual harassment cases to relevant authorities such as the Police, or a Health facility. Reports from such authorities shall be used by the Disciplinary Committee in their deliberations. The Committee may also make recommendations to the Controlling/Responsible Officer to refer the sexual harassment survivor to a psycho-social counselling facility.

2.3 Rehabilitation and Protection of Sexual Harassment Survivors

The Controlling/Responsible Officer shall ensure that sexual harassment survivors are protected and provided with effective rehabilitation services through:

- i) Provision of psycho-social support to survivors of sexual harassment;
- ii) Building capacity of officers in handling sexual harassment cases on the provision of psycho-social support to sexual harassment survivors;
- iii) Referring survivors to other service providers for medical assistance and psycho-socio support where necessary;
- iv) Provision of proper office space that can offer confidentiality to the complainant of sexual harassment;
- v) Conducting awareness programs for all officers on avoidance of stigmatizing sexual harassment survivors;

- vi) Protecting sexual harassment survivors against retaliation and victimisation by sanctioning perpetrators.

2.4 Sexual Harassment Safeguards

Safeguarding against sexual harassment requires putting deliberate measures and efforts that will prevent sexual harassment from happening.

2.4.1 Role of Controlling/Responsible Officer on safeguarding against Sexual Harassment

The Controlling/Responsible Officer shall ensure prevention of sexual harassment in the workplace by:

- i) Ensuring that officers handling sexual harassment cases are trained;
- ii) Ensuring that officers, student trainees and interns are aware of the Policy as well as the Guidelines;
- iii) Exercise due diligence in allocation of work and job-related opportunities, redeployment and deployment among others;
- iv) Ensure that they promote engagement of contractors or service providers that have sexual harassment policies;
- v) Developing sector specific anti-sexual harassment policies.

2.4.2 Rights and Responsibilities of Public Servants

All persons working in or with the Public Service shall have the following rights and responsibilities in relation to acts of sexual harassment:

Rights

- i) The right to non-discrimination;
- ii) The right to dignity;
- iii) The right to privacy;
- iv) The right to a safe work environment;
- v) Freedom from sexual violence and harassment.

Responsibilities

- i) To adhere to the Code of Conduct and Ethics for Malawi Public Service;
- ii) To maintain a harmonious working environment by ensuring that the workplace is free from any form of sexual harassment;
- iii) To treat fellow employees with respect and dignity;
- iv) To report any acts of sexual harassment against them or fellow workers;

- v) To know and understand the Policy and the Guidelines;
- vi) To maintain a professional relationship with fellow employees, clients and all third parties;
- vii) To exercise due diligence in discharging their duties;
- viii) To keep confidential reports of sexual harassments in their custody;
- ix) To refrain from having sexual relationships at the workplace and avoid all types of conduct which may constitute sexual harassment;
- x) To avoid abuse of the provisions of the Policy and Guidelines for personal gains and interest.

Chapter 3

3.0 Institutional Reporting of Sexual Harassment Cases

a) Public institutions

All public institutions shall keep record of sexual harassment complaints, all efforts made to address sexual harassment and shall submit reports to DHRMD on an annual basis that will contain:

- i) How they adhered to the Policy and Guidelines;
- ii) Measures taken to educate officers about sexual harassment;
- iii) The number of sexual harassment related complaints received;
- iv) Number of days between receiving the complaint and resolving the case;
- v) Outcomes of investigations and actions taken.

b) DHRMD

DHRMD shall consolidate all sexual harassment reports from public institutions within the Public Service and submit a report to Malawi Human Rights Commission once a year.