



SEXUAL HARASSMENT POLICY

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Executive Summary

Kagaki School is a learning institution with zero tolerance for Sexual Harassment. Sexual harassment has been conceptualized as a form of gender-based violence with significant and long lasting ramifications on victims. It may either be in physical, verbal or written form.

Learning institutions are not spared from the scourge of sexual harassment. Therefore, it is imperative that the Kagaki School fraternity provides direction on how to prevent and address the vice. Kagaki School, as an equal opportunity employer, is mandated to ensure a safe working environment for its employees and the learners in its care.

Therefore, this policy is developed to create awareness on what amounts to sexual harassment, and to provide a reporting mechanism that is meant to offer redress for victims of sexual harassment within the Kagaki School fraternity.

Objectives of the Sexual Harassment Policy

- I. To create a working and learning environment that is free from sexual harassment and where all members are treated with courtesy, dignity and respect.
- II. To promote appropriate standards of conduct at all times.
- III. To implement strategies to ensure that all members of the school community know their rights and responsibilities in this area.
- IV. To encourage the reporting of prohibited behaviour.
- V. To provide an effective complaints procedure based on principles of natural justice.
- VI. To treat all complaints in a serious, sensitive, fair, timely and confidential manner.
- VII. To guarantee against victimisation or reprisals.

Statement of Policy

Kagaki School affirms its commitment to ensure a safe environment for all its learners and employees. In addition to that, a work and learning environment that is fair, humane, conducive, respectful and free from sexual harassment or other form of work place abuse. Kagaki School further affirms its commitment to see that no employee is subjected to sexual harassment and to take appropriate steps to ensure that no employee is subjected to sexual harassment.

Scope of the Sexual Harassment Policy

This policy covers all employees of Kagaki School. Any employee of the school in the course of their engagement, may initiate a complaint under this policy.

A copy of this policy shall be sent via electronic mail to all employees and members of staff upon appointment.

Definition of Sexual Harassment

For the purposes of this Policy, sexual harassment is defined to mean;

(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) Uses language whether written or spoken of a sexual nature;

(c) Uses visual material of a sexual nature; or

(d) Shows physical behaviour of a sexual nature which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee's employment, job performance, or job satisfaction."

Legal Framework

The Constitution, 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) Freedom of conscience, religion, belief and opinion under article 32;
- (iv) Right to human dignity under Article 28; and
- (v) Freedom from discrimination under Article 27.

The Employment Act, 2007

Section 6 of the Employment Act provides for sexual harassment as defined in this policy and specifically the steps that are required to secure workers from sexual harassment. Members of staff are not exempt.

The Sexual Offences Act

Section 23 of the Sexual Offences Act 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. It shall be necessary to prove in a charge of sexual harassment that:

- (a) the submission or rejection by the person to whom advances or requests are made is intended to be used as basis of employment or of a decision relevant to the career of the alleged victim or of a service due to a member of the public in the case of a public officer;
- (b) such advances or requests have the effect of interfering with the alleged victim’s work or educational performance or creating an offensive working or learning environment for the alleged victim or denial of a service due to the member of the public, from a public office.

The Occupational Safety and Health Act

The Occupational Safety and Health Act generally provides for a conducive work environment. Section 8 of the Act provides as follows: -

“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:
(a) Makes a complaint about a matter which the employee considers is not safe or is a risk to his health.

International Law

By dint of Articles 2(5) and (6) of the Constitution of Kenya, international law forms part of the Laws of Kenya.

Complaints Procedure

Any person subjected to sexual harassment should, if possible, inform the alleged harasser that the conduct is unwanted and unwelcome. Kagaki School recognises that sexual harassment may occur in unequal relationships for instance between a supervisor and a supervisee and that it may not be possible for the victim to inform the alleged harasser.

If a victim cannot directly approach an alleged harasser, they can approach one of the designated officers responsible for receiving complaints of sexual harassment. This person could be a member of the administration, or any one of the directors.

The complaint must be in writing, whether in the form of a letter, typed or handwritten or via electronic mail.

When the designated person receives a complaint of sexual harassment, they will:

- I. immediately record the dates, times and facts of the incident(s)
- I. ascertain the views of the victim as to what outcome he/she wants
- II. ensure that the victim understands the school’s procedures for dealing with the complaint
- III. discuss and agree the next steps: either informal or formal complaint, on the understanding that choosing to resolve the matter informally does not preclude the victim from pursuing a formal complaint if he/she is not satisfied with the outcome

- IV. keep a confidential record of all discussions
- V. respect the choice of the victim
- VI. Ensure that the victim knows that they can lodge the complaint outside of the Kagaki School fraternity through the Kenyan Legal System.

Informal complaints mechanism

If the victim wishes to deal with the matter informally, the designated person will:

- I. give an opportunity to the alleged harasser to respond to the complaint
- II. ensure that the alleged harasser understands the complaints mechanism
- III. facilitate discussion between both parties to achieve an informal resolution which is acceptable to the complainant
- IV. ensure that a confidential record is kept of what happens
- V. follow up after the outcome of the complaints mechanism to ensure that the behaviour has stopped
- VI. ensure that the above is done speedily and within fourteen (14) days of the complaint being made

Informal complaints mechanism shall not be employed in instances of serious sexual harassment allegations such as rape, or where the alleged harasser has been the subject of a prior formal sexual harassment complaint.

Disciplinary/Remedial Action

Remedial actions will depend on the severity of the incident, but violations of this policy may, in appropriate cases, result in warnings and dismissal from employment, professional and criminal law sanctions. Certain serious cases, including those involving physical violence, will result in the immediate dismissal of the harasser.

Non -Disclosure and Confidentiality

All sexual harassment complaints shall be dealt with utmost confidentiality.

The Kagaki School's Administrators undertake not to disclose the name of a complainant, witnesses or the circumstances related to the complaint to any person except where disclosure is necessary for the purpose of investigating the complaint or taking disciplinary measures in relation to legal action.

Frivolous Complaint

This policy shall not be used to bring frivolous or malicious complaints against fellow employees or employers. Disciplinary action under gross personal misconduct shall be taken against any person who brings a charge of sexual harassment without basis.

Retaliation

No person under the Kagaki School fraternity shall be subject to reprisal for any actions taken in good faith to seek advice, report or investigate, as regards sexual harassment. Acts of retaliation shall be considered a violation of this policy and consequently attract the sanctions outlined in this policy.

Policy Review

This policy shall be subject to review every five years, or earlier when the need arises.