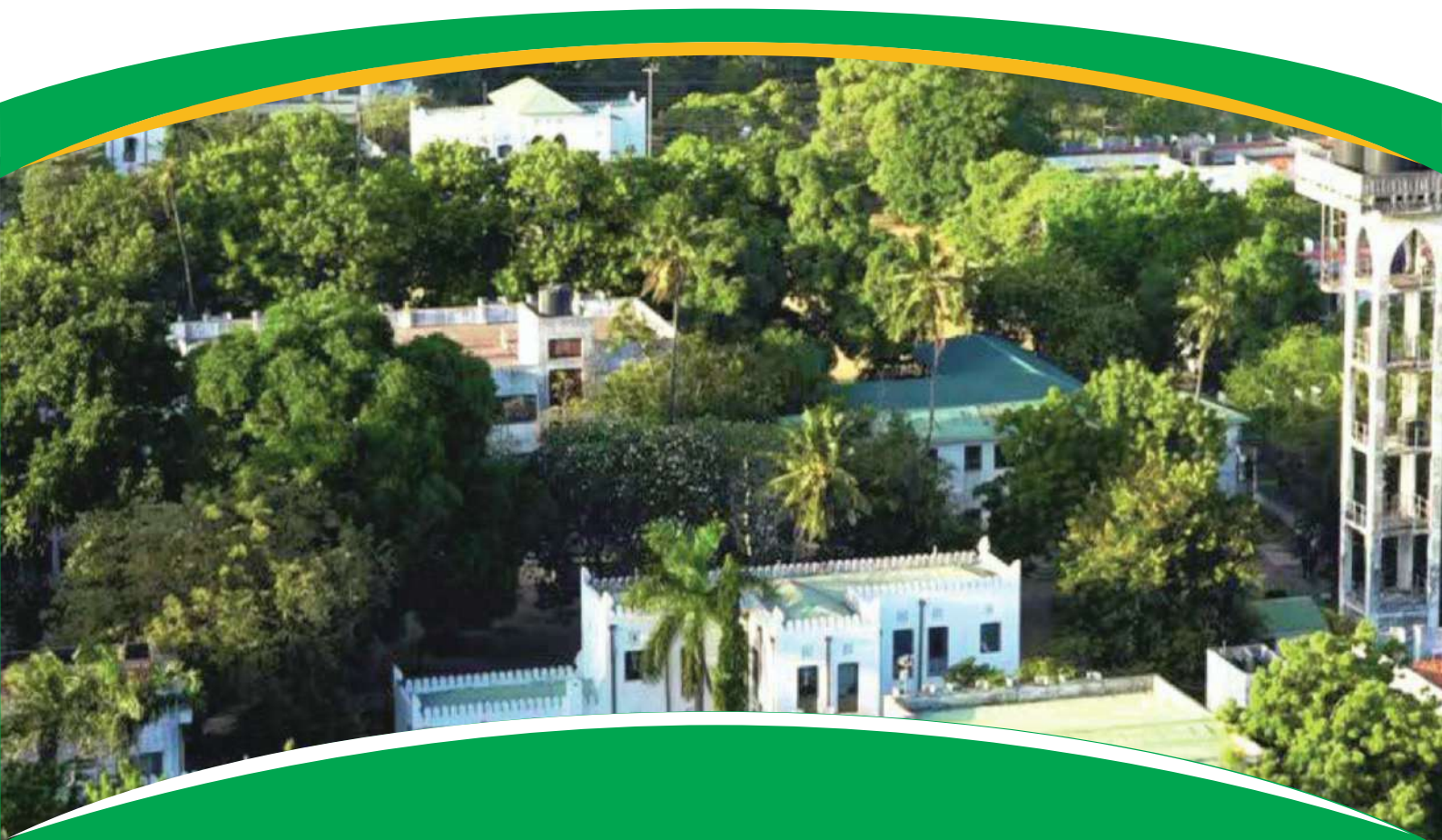




TECHNICAL UNIVERSITY OF MOMBASA

A Centre of excellence

SEXUAL HARASSMENT POLICY



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TECHNICAL UNIVERSITY OF MOMBASA

SEXUAL HARASSMENT POLICY

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ABBREVIATIONS AND ACRONYMS

AIDS	Acquired Immunodeficiency Syndrome
HIV	Human Immunodeficiency Virus
HOD	Head of Department
TUM	Technical University of Mombasa

DEFINITIONS

“**Catcall**” means a loud, sexually suggestive call or comment directed at someone publicly (as on the street)

“**Groping**” means to fondle (someone) for sexual pleasure roughly or clumsily, or without the person's consent.

“**Leering**” means to look or gazing in a lascivious or unpleasant way.

“**Perpetrator**” means the person who undertakes the sexual harassment.

“**Sexual Discrimination**” means the prejudiced treatment against a person on grounds of gender, sexual orientation, or gender identity.

“**Student**” means a registered student of the Technical University of Mombasa.

“**Staff**” means a staff of the Technical University of Mombasa.

“**University Stakeholders**” means any person with an interest in the Technical University of Mombasa.

“**University**” means Technical University of Mombasa.

“**Victim**” means the person to whom the sexual harassment is directed at.

PREFACE

The Constitution of Kenya provides the Bill of Rights under Chapter Four. The Bill of Rights under clause 27 provides the right to equality and freedom from discrimination. Sexual Harassment is a form of discrimination prevalent in institutions of higher learning that often goes unnoticed. Staff and students are the most affected of the University community and many of them are unaware of the provisions of law regarding this form of discrimination.

The Government of Kenya promotes the need to sensitise the public about this vice and how the same can be avoided. The unfortunate thing about sexual harassment is that some of the perpetrators practice it without knowing that the same is actually a form of discrimination. This policy provides the framework for how the University will address this form of discrimination as well as defines the actions that amount to sexual harassment at TUM.

The University Council believes that this policy will address cases of sexual harassment within the institution and provide the avenue for redress to those who are affected by the vice. On behalf of the Council, I wish to thank all those who participated in making the policy.



Dr Robert Arunga

Chairman of Council

FOREWORD

The University is home to staff and students who spend most of their days in the campuses. Their interaction must, therefore, be governed by policies that protect the University community as well as its stakeholders while on campus. The sexual harassment policy is one such policy created to address the vice of sexual harassment in public institutions.

This vice may often go unnoticed as it mostly happens behind closed doors however the policy addresses the types of harassment prevalent in public universities and provides the way in which the University can work towards the eradication of the same. This policy is anchored on best practices in the fight against discrimination which is a constitutional right and further ensures that all University stakeholders while interacting in the institution are protected from this form of discrimination.

I believe that this policy will provide the framework of addressing issues of discrimination of a sexual nature and further provide an avenue for redress to the victims affected by this vice.

This Sexual Harassment policy would not have been possible without the concerted efforts and insights of several individuals. The policy has been prepared as an initiative of the Human Resource Department and the Deputy Chief Legal Officer through the consultation of the University Management Board.



Prof. Laila U. Abubakar
Vice-Chancellor

EXECUTIVE SUMMARY

Technical University of Mombasa recognises the prevalence of sexual harassment in the workplace and in particular institutions of higher learning. Therefore, it identifies the need to have the policy to govern how the University responds to such cases as well as what the University considers as Sexual Harassment within the confines of its campuses.

Therefore, this policy identifies the legislative and administrative framework in place concerning sexual harassment in Kenya. It defines what constitutes sexual harassment and identifies the forms of sexual harassment. It provides the response mechanisms of sexual harassment as well as apportions responsibilities to management as well as the university community on how to prevent such forms of harassment. It outlines the implementation and review process that this policy shall be subjected to.

1.0 INTRODUCTION

Technical University of Mombasa (TUM) is an institution of higher learning established by the Universities Act No. 42 of 2012 and University Charter, 2013. Core among her mandate is to undertake technological, professional and scientific education and training to disseminate knowledge while ensuring access, equity, quality and relevant education.

The purpose of this policy is to outline the principles, guidelines, practices that the university will embrace in the fight against sexual harassment. In implementing the policy, the university will protect its staff and students from all forms of discrimination most specifically sexual harassment.

This policy is guided by the following:

1.1 Vision

A Technical University of Global Excellence in Advancing Knowledge, Science and Technology

1.2 Mission

To advance knowledge and its practical application through teaching, research and innovation to serve both industry and the community

1.3 Core Values

The Council, Senate, Management, staff and students of TUM will endeavour to institutionalize and inculcate values fostering a strong corporate culture while promoting quality service delivery, cohesion in our diverse community and achieving the targeted goals. These will be realized by espousing the following values:

- i) *Excellence.* We strive for excellence in quality teaching, learning and research, and customer focus by continuously assessing ourselves, applying our own and international benchmarks.
- ii) *Integrity and Professionalism.* We expect high standards of integrity, ethics and respect from one another across the institution and honour collegiality and a climate of critical professionalism among staff and students.
- iii) *Equity.* We are committed to equity, diversity and fairness, and seek to nurture and build on our diverse cultural heritage
- iv) *Teamwork.* We place a high premium on teamwork and shared responsibility working with each other and with external groups in ways that are mutually beneficial.
- v) *Creativity, innovativeness and environmental sustainability.* We embrace innovative problem solving and promote creative value-based solutions. We cultivate a socially secure, responsive and sustainable green environment.

1.4 Motto

Jiddu Tajidu (Endeavour and Achieve)

1.5 Statement of Purpose

TUM strongly condemns and prohibits sexual harassment within its campus and even its environs.

1.6 Guiding Principles

- i) To promote and provide an environment that is free of sexual harassment;
- ii) To ensure the protection of victims of sexual harassment;
- iii) To ensure that issues to do with sexual harassment are adequately addressed and handled with the utmost confidentiality and expeditiously.

1.7 Policy Objectives

The objectives of the Sexual Harassment Policy are to:

- i) Promote awareness of sexual harassment within TUM;
- ii) Create a working, learning environment free from sexual harassment;
- iii) Provide an effective procedure for sexual harassment complaints;
- iv) Treat matters pertaining to sexual harassment in a sensitive, fair, timely and confidential manner; and
- v) Guarantee protection of victims from reprisals.

1.8 Legislative and Administrative Requirements

The following, but not limited to, legal instruments and institutional policies shall be applicable to this policy:

- i) The Constitution of Kenya, 2010;
- ii) The Sexual Offences Act of 2006;
- iii) The Employment Act, 2012;
- iv) The Universities Act, 2012;
- v) Technical University of Mombasa Code of Conduct and Ethics, 2017;
- vi) Commission on Administrative Justice Act, 2011

1.9 Responsibilities

- i) The Vice-Chancellor shall ensure the overall implementation of this policy.
- ii) The Public Complaints Committee shall ensure the implementation of this policy.
- iii) The Head of Human Resources shall address sexual harassment claims by staff on behalf of the Vice-Chancellor.
- iv) The Dean of Students shall address sexual harassment claims by students on behalf of the Vice-Chancellor.

1.10 Scope/Applicability

This policy shall apply to all members of staff and students of TUM.

2.0 SEXUAL HARASSMENT POLICY

2.1 Introduction

Sexual Harassment entails persistent and unwelcome sexual advances, request for sexual favours, and verbal, visual or physical conduct of a sexual nature that is non-consensual. It can also take the form of a person being in a position of authority, holding a public office or not, persistently making sexual advances or requests which he or she knows, or ought to have known, are unwelcome. Whether conduct is sexual harassment does not depend on the gender of either the victim or the perpetrator. This occurs when:-

- i) submission to such conduct is made either expressly or impliedly given as a term or condition of an individual's employment or education;
- ii) submission to or rejection of such conduct by an individual is used as a basis for employment or academic decisions affecting such an individual;
- iii) such conduct has the purpose or effect of unreasonably interfering with an individual's learning or work performance or creating an intimidating, hostile, or offensive academic or working environment.

2.2 Elements of Sexual Harassment

Sexual Harassment is composed of the following elements.

- i) The behaviour should be unwelcome and non-consensual;
- ii) It should be of a sexual nature;
- iii) It is offensive, humiliating and/or intimidating; and/or
- iv) It may either be a one-time or repeated action.

2.3 Circumstances/ Incidences in Which Sexual Harassment Can Occur

For there to be an incident of sexual harassment there must be a perpetrator and a victim. The perpetrator can be the victim's manager, lecturer, a student, supervisor, a supervisor in another department, a co-worker, fellow student, an agent of the employer, a non-employee such as a supplier, a contractor or any service provider, client or customer. The victim may also be drawn from the above list. The circumstances in which sexual harassment may occur are as follows:

- i) Where there is inequality of power between a victim and the perpetrator that strongly suggest that the victim engages in sexual relation out of fear;
- ii) Sexual harassment may not only take place during working/teaching/learning hours but also in any University-related context including conferences, work functions, sports, university trips and parties but also off the University so long as it involves students and staff.

2.4 Forms of Sexual Harassment

Sexual harassment can be obvious or indirect, physical or verbal, repeated or one-off and perpetrated by males or females against people of different or similar sexes. Sexual harassment can take the following forms:

2.4.1 Physical Sexual Harassment

This occurs when a victim has been touched in an inappropriate way against his or her own will. Examples include but are not limited to:

- i) Leering at a person or parts of their body in a sexually suggestive manner;
- ii) Touching or fiddling with a person's clothing including lifting up of skirts or shirts, flicking bra straps or putting hands in a person's pocket;
- iii) Non-consensual kissing attempts or kissing attempts;
- iv) Rubbing one's genitals on a person;
- v) Attempt or actual sexual assault;
- vi) Indecent exposure of one's genitalia;

- vii) Stalking with an intention to sexually harass the victim;
- viii) Obscene gestures;
- ix) Groping;
- x) Subtle pressure for sexual activity; and
- xi) Unwelcome/uninvited physical contact such as massaging a person without invitation, hugging, pinching, patting, grabbing in a sexual manner.

2.4.2 Verbal Sexual Harassment

Verbal sexual harassment may be oral or written and may include and not limited to:

- i) Demeaning references to either the male or female gender;
- ii) Disparaging remarks about one's gender and physical appearance;
- iii) Sex-based insults, taunts, teasing or name-calling;
- iv) Verbal sexual abuse disguised as humour;
- v) Making promises or threats in return for sexual favours;
- vi) Requests or demands for sex or repeated or unwanted requests to go out on dates after the prior refusal;
- vii) Suggestive sexually demeaning remarks;
- viii) Smutty jokes or comments about the victims clothing or body;
- ix) Catcalls;
- x) Demand for sexual favours and threats of firing if the demands are not met; and
- xi) Obscene communication and unwanted sexual innuendo.

2.4.3 Visual Sexual Harassment

This is the use of visual media to suggest inappropriate sexual advances. The following are some examples:

- i) Displaying sexually graphic materials or posters, magazines, cartoons, graffiti or messages left on notice boards, desks or common areas;

- ii) Sending or forwarding sexually explicit emails or text messages or emailing offensive jokes and pornographic materials;
- iii) Inappropriate advances on social networking sites;
- iv) Flashing or making obscene sexual gestures; and
- v) Accessing sexually explicit internet sites, downloading offensive screen savers and loading them into a colleague's computer or shared university computers.

2.4.4 Gender Harassment

This involves generalised sexist statements and behaviour that convey insulting or degrading attitudes about both men and women. Examples include insulting remarks, offensive graffiti, obscene jokes or humour about both genders.

2.4.5 Sexual Bribery

Solicitation of sexual activity or another sex-linked behaviour by the promise of reward; the proposition may be either overt or subtle.

2.4.6 Sexual Coercion

Coercion of sexual activity or another sex-linked behaviour by the threat of punishment; examples include negative performance evaluations, withholding of promotions and threat of termination as a result of noncompliance.

2.4.7 Sexual Violence

This is a sexual act (including sexual assault) that is perpetrated against a person's will or without a person's consent, or when a person is incapable of giving consent due to his or her age, family relation, ingestion of drugs or alcohol, or the person's intellectual or other disability.

Sexual assault is any involuntary sexual act in which a person is coerced or physically forced to engage in sexual acts against their will. It includes rape (such as forced vaginal or oral penetration, penetration with a foreign object).

3.0 REPORTING, INVESTIGATION AND DISCIPLINARY ACTION

3.1 Reporting an Incident

- i) All staff and students are advised to report all incidences of sexual harassment to the University without fear. A complaint may be submitted by a student or staff. In general, all members of the TUM community are encouraged to report incidences of sexual harassment.
- ii) The University also reserves the right to pursue an investigation without a formal complaint being lodged.
- iii) Reports shall be lodged to the Public Complaints Handling Committee in the prescribed form downloaded from the University website www.tum.ac.ke. The complaint can also be forwarded through any HOD.
- iv) If you need emergency assistance from police or medical personnel, call 999 from a mobile phone. If you need medical attention, you may visit the TUM Health facility. If you are away from campus, seek attention from the nearest emergency room or medical provider.
- v) The highest level of anonymity and confidentiality will be maintained at all times for people who report sexual harassment.
- vi) In cases of sexual assault, the University shall assist the victim to notify the authorities if they choose to do so. Reporting of sexual offences is a right accorded to the victim. The right cannot be limited and remains the victim's prerogative, reporting to the police may also be done along the University disciplinary process.

3.2 Duty of Care

In case the victim and the alleged perpetrator are both members of the University, the University shall maintain a duty of care toward the victim and alleged perpetrator in the following ways:

- i) Ensure that the victim is protected as outlined in this policy;
- ii) Ensure that the perpetrator is accorded a fair hearing including the right to adduce and challenge evidence;
- iii) Ensure that the perpetrator shall have the right to appeal;
- iv) Ensure that procedure is followed during the investigation of the case and subsequent disciplinary hearing; and
- v) Ensure that the perpetrator shall remain innocent until proven guilty.

3.3 Duty of Good Faith

- i) The University shall not tolerate false allegations;
- ii) Any person who makes false allegations or knowingly provides false information in an investigation shall be subject to disciplinary action including termination and expulsion.

3.4 Protection from Retaliation

- i) The University shall not in any way retaliate against any individual who makes a report of sexual harassment nor permits any employee or student to do so.
- ii) Retaliation is a serious violation of this policy and should be reported immediately through the prescribed reporting channels.
- iii) Any person found to have retaliated against another individual for reporting sexual harassment shall be subject to disciplinary action.

3.5 Support Services and Resources

A victim of sexual harassment may seek support services from TUM Counselling office. The support is strictly confidential. The information is privileged and will not be shared by the counsellors.

3.5 Investigation

- i) When a report on any violation of this policy is made, the receiving officer will conduct investigations into this matter. The University reserves the right to conduct independent investigations in this matter even if the same has been reported to the appropriate authorities.
- ii) Parties involved will be notified in writing of the investigations and of their rights in the process.
- iii) Members of the University are expected to cooperate in the investigations and any member of staff or student with knowledge of the matter is required to inform the investigating officer of the same.
- iv) The University may take provisional safety restorative and preventive measures during an investigation as it may deem fit.
- v) Once investigations are concluded then a charge will be brought against a person.
- vi) At any point during the investigations, the University may resolve some matters through a non-hearing resolution involving and with the agreement of the parties. This will however not apply to cases of sexual violence.

3.6 Disciplinary Process

- i) Cases involving students shall be forwarded to the Student Disciplinary Committee while those involving staff shall be forwarded to the staff disciplinary committee.
- ii) Cases involving Senior Management as per the University Statutes shall be forwarded to the Human Resource Committee of Council for deliberation.
- iii) The Disciplinary Committee shall be convened as soon as investigations are complete and shall not rely on the normal calendar for disciplinary committee hearings to enable the matter to be dispensed with at the earliest opportunity.
- iv) The verdict of the Disciplinary Committee is subject to Appeal within 14 days of receiving the verdict as per the University Statutes and other corresponding policies.

4.0 SPECIFIC DUTIES AND RESPONSIBILITIES

4.1 Management Responsibility

The management will oversee the implementation of this policy, provide ongoing consultation regarding policy requirements and ensure all new staff and students are oriented on the policy and monitor its effectiveness.

All Managers shall have the following responsibility:

- i) Model standards of professional conduct at all times;
- ii) Promote this policy in their work area and this can be done through discussing and reinforcing the policy during meetings;
- iii) Monitor work environment to ensure that acceptable standards are observed at all times;
- iv) Treat all complaints seriously and take immediate action to investigate and resolve the matter in accordance with this policy and university regulations;
- v) Refer complaints to an alternative proper office if they do not feel that they are the best person to deal with the case; and
- vi) They will be responsible for removing offensive, explicit or pornographic calendars, literature, posters and other materials from the University. This is a responsibility that will be collectively shared with both staff and students.

4.2 Staff and Student Responsibility

All staff and students have a role in the University's culture of compliance, attending training and reporting violations of this policy. They are encouraged to take the necessary steps to prevent sexual harassment from occurring. All students and staff have the following responsibilities:

- i) Be aware of inappropriate behaviour that contravenes this policy and that they have a duty to use reasonable care to warn, inform the proper authorities, protect and report any acts of sexual harassment committed

towards them or towards others and shall be fully cooperative in the event of inquiry or investigations;

- ii) Comply with the University Sexual Harassment Policy;
- iii) It will be important that all student and staff attend training on this policy;
- iv) Report early concerns about unwelcome behaviour before it becomes a serious complaint;
- v) Offer support to anyone who is being harassed or discriminated and then let them know where they can get help and advice; and
- vi) Maintain complete confidentiality if they provide information during the investigation of a complaint.

5.0 POLICY IMPLEMENTATION AND REVIEW

5.1 Policy Implementation

The University Management headed by the Vice-Chancellor shall be responsible for implementing this Policy. The University Council shall be key in its monitoring and evaluation.

5.2 Policy Review

The Policy shall be reviewed after five years or when an urgent need arises.

**THIS SEXUAL HARASSMENT POLICY IS EFFECTIVE FROM THIS 15TH DAY
OF APRIL 2019.**

SIGNED.....

COUNCIL CHAIRPERSON

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