



# **MFK Anti Sexual Harassment Policy**

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## 1. Introduction

The Millennium Foundation Kosovo (MFK) is committed to providing a safe environment for all its employees free from discrimination on any grounds and from harassment at work including sexual harassment. All employees and contractors are required to work in a manner that prevents sexual harassment in the workplace. Sexual and other forms of harassment hurts employees both physically and psychologically. Such behavior prevents employees from fully exercising their skills and performing their duties, which can cause risks to MFK and its ability to achieve its mission. This policy is one component of MFK's commitment to a discrimination-free workplace. Employees who suffer or witness sexual harassment are encouraged to report it quickly to persons designated in this policy. MFK will treat incidents seriously and promptly investigate all allegations of sexual harassment. Reports will be kept confidential and information only shared on a need-to-know basis.

## 2. Scope

1. Employees of MFK at all levels, as well as consultants, contractors, sub-consultants and subcontractors, interns, visitors or anyone else who is providing services to MFK is covered by and expected to obey this policy.
2. Everyone, whether acting in their professional or private capacity, should abide by this policy at all times to prevent risks to MFK's reputation.
3. Anyone who sexually harasses another employee (as defined below) will be treated in accordance with this policy. Employees will be accorded due process and must cooperate with MFK's protocols, including fact-findings.
4. While MFK does not have direct responsibility for employees engaged by contractors, subcontractors, sub-consultants, this policy will be shared with such entities and expectations for compliance sought via the inclusion of specific clauses on prevention of sexual harassment in each contract. Adherence to these clauses is closely monitored as part of contract management.
5. This Anti-Sexual Harassment Policy will be shared with all consultants and contractors, who must align their organizational policies with it; subsequently share it with their sub-consultants and sub-contractors; and ensure they are implemented and monitored.
6. An intimate relationship between a supervisor or manager and a subordinate is a *de facto* conflict of interest. Because of the inherent power differential, it may lead to an allegation of sexual harassment, and therefore should be avoided. Because managers/supervisors have a duty to set high standards, if a relationship does develop between him/her and a subordinate, the person in the higher-level position has a duty to report it to HR and management. Not to do so could be grounds for disciplinary action. HR and management will change the reporting relationship in a way that does not negatively impact the career of the subordinate.

### 3. Definitions

**Sexual Harassment** - Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct of a sexual nature, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive workplace. Anyone can be a victim of sexual harassment, regardless of their sex and of the sex of the harasser. MFK recognizes that sexual harassment may also occur between people of the same sex. Discrimination based on sex, sexual orientation, or gender identify is prohibited.

**Harasser** -The person who perpetuates the act of Sexual Harassment or violence. Impact on the victim, not intent, determines sexual harassment.

**Victim** -The person who is offended, uncomfortable, a target, disadvantaged and is the complainant of sexual harassment.

**Sexual assault** - Whoever touches a person for a sexual purpose or induces such person to touch the perpetrator or another person for a sexual purpose, without the consent of such person.

**Victimization (Retaliation)** - Occurs when a person suffers an adverse or negative consequence in response to a complaint (started procedures) or actions in order to apply the principle of equal treatment.

**Workplace** - All sexual harassment is prohibited whether it takes place within MFK premises or outside at project sites, including at social events, business trips, training sessions or conferences sponsored by MFK.

### 4. Relevant Kosovo Legal Framework Related to Sexual Harassment

*a) The Constitution of the Republic of Kosovo , incorporating UN Convention on the Elimination of all Forms of Discrimination (CEDAW)*

Often described as an international law of rights for women, CEDAW calls for the equality of women and men in terms of human rights and fundamental freedoms in the political, economic, social, cultural and civil spheres. It underlines that discrimination and attacks on women's dignity violate the principle of equality of rights. Further, Art.11 of CEDAW, General Recommendation No. 19 describes sexual harassment as "Unwelcome sexually determined behavior [such] as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions."

*b) Criminal Code of Kosovo*

According to the recent adopted Criminal Code of Kosovo sexual harassment is criminal offence, Article 183 Sexual Harassment states among other:

- Para. 1 "Whoever sexually harasses another person, in particular a person who is vulnerable due to age, illness, disability, addiction, pregnancy, a severe physical or mental disability, shall be punished by a fine or imprisonment of up to three (3) years". - Para 2. "Sexual harassment shall mean any form of unwanted verbal, non-verbal or physical conduct of a sexual nature

which aims at or effectively constitutes a violation of the dignity of a person, which creates an intimidating, hostile, degrading or offensive environment.” - Para 3. “When the offence provided for in paragraph 1. of this Article is committed by a perpetrator who is a teacher, a religious leader, a health care professional, a person entrusted with such person’s upbringing or care or otherwise in a position of authority over the person, the perpetrator shall be punished of imprisonment of six (6) months to three (3) years.”

*c) Law on the Protection from Discrimination (2015)*

Art. 4, para. 1.3 Harassment - “unwanted conduct (including but not limited to unwanted conduct of sexual and/or psychological nature), which has the purpose or effect of violating the dignity of the person and of creating an intimidating, hostile, degrading, humiliating or offensive environment based on the grounds set out in Article 1 of this Law”;

Art. 9 para.1. The Ombudsperson is state institution for equality, for promotion and protection of human rights. The Ombudsperson shall handle cases related to discrimination under the relevant Law on Ombudsperson.

Article 12 para. 1 “Any person or group of persons may file a complaint to the Ombudsperson regarding the discriminatory behavior on the grounds mentioned in Article 1 of this law.

Art.13 para.1. “Any person or group of persons, who claim that they have been discriminated on the grounds mentioned in Article 1 of the Law, may submit a lawsuit in the competent court.”

*d) Kosovo Law on Gender Equality (2015)*

Arti. 2 par. 1” This Law applies to men, women and persons who have a protected characteristic of gender identity or sex determination, and guarantees equal opportunity and treatment in public and private areas of social life, including political and public life, employment, education, health, economy, social benefits, sport and culture and other areas set out by the present or other law.”

Art.3; para. 1.12. Sexual harassment – “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature occurs, with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.”

Article 3, para.1.19; Victimization- “occur when a person suffers an adverse or negative consequence in response to a complaint (started procedures) or actions in order to apply the principle of equal treatment, as defined in Article 1 of this law, and/or when such person provides information, evidence or assistance in relation to the complaint procedure in case of discrimination;”

Article 4, para.4.6 “There will be no victimization of persons involved in filing or processing of complaints of discrimination, harassment or sexual harassment filed based on this law.”

## 5. Related MCC/MFK Policies and Procedures

- a) MCC Guidance Note on Sexual Harassment
- b) MFK Code of Business Ethic and Standards of Conduct
- c) MFK Confidentiality Policy
- d) MFK Social and Gender Integration Plan (SGIP)

## 6. Policy

1. This policy provides direction and guidance on the conduct of employees to ensure a work place free from the sexual harassment.
2. MFK has adopted a zero-tolerance policy for any form of sexual harassment in the workplace. “Zero tolerance” means MFK will treat all incidents seriously, promptly conduct a fact-finding for all allegations of sexual harassment, and discipline any staff member found to have committed sexual harassment, regardless of position.
3. Disciplinary actions may include written warning, performance monitoring, counseling, suspension without pay, demotion, up to termination.
4. Reporting incidents of sexual harassment in accordance with this policy does not and will not prevent alleged victims of sexual harassment from using other legal remedies, which are available under applicable laws in Kosovo. The applicable laws of Republic of Kosovo shall apply accordingly in such cases.
5. Sexual harassment is form of discrimination which is prohibited by applicable law in Kosovo and persons who claim that they have been discriminated against may submit a complaint to the Ombudsperson Institution in Kosovo and could bring the case in the competent court.
6. Retaliation Prohibition: No person covered by this policy shall be subject to adverse action because of reporting sexual harassment, providing information, being called as a witness, or otherwise assists in any fact-finding. Anyone who retaliates against a person involved in a sexual harassment fact-finding will be subject to disciplinary actions up to and including termination.
7. MFK will conduct a prompt and through fact-finding that ensures due process for all parties, whenever management receives a complaint about sexual harassment or otherwise knows of possible sexual harassment. MFK will keep the fact-finding confidential to the extent possible. All employees, including supervisors and managers, covered by this policy are required to cooperate with any internal fact-finding of sexual harassment.
8. Anyone who experiences or witnesses sexual harassment is encouraged to promptly report any harassment that violates this policy. Employees can report to human resources (HR), specifically the MFK Director of Administration and Finance, or any other designed resource noted in the incident reporting section.
9. Anyone who experiences or witnesses sexual harassment should let the harasser know that the behavior is unwelcome and ask for it to stop, provided they feel safe doing so.

## 6.1 Sexual harassment

MFK recognizes that sexual harassment is often a manifestation of power relationships and occurs within unequal relationships in the workplace, for example between manager or supervisor and employee.

Sexual harassment can involve one or more incidents and actions constituting harassment. Examples of conduct or behavior which constitute sexual harassment include, but are not limited to:

### Physical conduct

- Unwelcome physical contact including patting, pinching, stroking, kissing, hugging, fondling, or inappropriate touching
- Physical violence, including sexual assault
- Physical contact, e.g. touching, pinching
- The use of job-related threats or rewards to solicit sexual favours

### Verbal conduct

- Comments on a worker's appearance, age, private life, etc.
- Sexual comments, stories and jokes
- Sexual advances

### The use of job-related threats or rewards to solicit sexual favours

- Repeated and unwanted social invitations for dates or physical intimacy
- Insults based on the sex of the worker
- Condescending or paternalistic remarks
- Sending sexually explicit messages (by phone or by email)

### Non-verbal conduct

- Display of sexually explicit or suggestive material
- Sexually-suggestive gestures
- Whistling
- Leering

## 7. Prevention

This policy must be shared with all MFK employees and contractors. All existing employees must be made aware of the content of this policy, and all new employees are required to read and sign that they understand and comply with this policy when they sign their employment contract.

MFK will prepare and roll out a training program aimed in raising awareness among all employees on the content of this policy. MFK management has committed to implement and enforce this

policy, by embodying and promoting a safe workplace for all employees, contractors, and implementing partners.

Further, contractors and implementing partners are obliged to train their employees in this policy and make them aware of reporting procedures and assured confidentiality.

## 8. Responsibilities

MFK senior management is committed to taking all steps to prevent sexual harassment in the workplace. MFK senior management must actively promote the policy and be role models to lessen the risk of sexual harassment occurring. All managers must immediately take action and respond appropriately when harassment does occur. This includes being a role model, not allowing harassing behaviors among their staff, and including a discussion about non-professional behaviors as part of performance management.

Managers and supervisors must treat any report of harassment seriously and sensitively, avoid rushing to judgment, and/or excusing the behavior.

Managers must report any allegation of sexual harassment they receive immediately to HR. They may not investigate the matter, however, they must take measures to ensure the safety of any of their staff who are harassed.

MFK management must communicate the anti-sexual harassment policy to all employees and ensure it is effectively implemented and will ensure that all employees, consultants and contractors working with MFK are aware of the policy and understand it.

The policy will be distributed and promoted at all levels of the organization. The policy is easily accessible on the organization's website, under **Documents**. The policy will be translated into all official languages.

## 9. Incident Reporting

MFK views sexual harassment as a serious offence and will take action to stop it and hold any harasser accountable. However, MFK can only take action if harassment is reported.

Any MFK employee, consultant, contractor, or subcontractor who believes that he or she has been or is being subjected to sexual harassment, may immediately inform the harasser that the conduct is unwelcome and needs to stop.

Anyone who has been informed that their behavior is unwelcome or harassing in nature should stop and apologize and never retaliate against that person.

If the inappropriate conduct does not cease, or if the employee is unable to or uncomfortable with addressing the alleged harasser directly, he or she should report the matter to any one of the following MFK officials:

- his or her own manager
- senior manager (if the manager is the harasser)
- Human Resources
- It is helpful, but not required, to provide a written record of the date, time and nature of the incident(s) and the names of any witnesses.

Management must be made aware of the situation so that it can conduct an immediate and impartial fact finding and take appropriate action to remediate or prevent the prohibited conduct from continuing.

Managers and supervisors must deal expeditiously and fairly when they have any knowledge of sexual harassment within their departments, whether or not there has been a written or formal complaint. They must:

- Take all complaints or concerns of alleged or possible harassment seriously no matter how minor or who is involved.
- Report all incidents to HR immediately so that a prompt investigation can occur.
- Take any appropriate action to prevent victimization (retaliation) or prohibited conduct from recurring during and after any investigations or complaints. Anyone who retaliates can be subject to disciplinary decisions as specified in the Code Business Ethic and Standards of Conduct.

Any staff who witnesses sexual harassment should also report it to any of the above authorities. MFK prohibits any negative behavior toward an employee who reports harassment.

When a report is made to an MFK official, all parties have an obligation to maintain confidentiality. If a fact-finding is launched, details may be shared on a need-to-know basis but only to persons involved in the process. Persons interviewed, panel members and those who conduct investigation are held accountable for maintenance of the confidentiality during and after the incident has been addressed.

It is important to report any incident as soon as possible after it happens. If harassed, it is a good idea to write down a description of the incident while it is still fresh in one's mind. The note should include time, place, circumstances, person(s) involved, any witnesses, the unwelcome behavior, the impact it had, any physical or electronic evidence, and any actions taken afterward. The person can send this note to HR for record.

While it is possible to make an anonymous report, that makes it hard for MFK to fully resolve the matter. The fact-finding requires that a person accused has a right to know what the allegation is so they can respond. That is why there is "need-to-know" confidentiality.

Staff should also be aware that knowingly making false allegations may be considered misconduct and can be the subject of disciplinary measures.

## 10. Fact-Finding

All allegations of sexual harassment will be handled fairly and confidentially according to the MFK grievance procedure as disrobed below.

Once case is reported to HR, he/she is responsible for:

- Ensuring that both the individual filing the complaint (complainant) and the accused individual (respondent) are aware of the seriousness of a sexual harassment complaint.
- HR will determine if a panel will be appointed to complete the fact finding. All complaints involving senior management at the senior staff level or above will be handled by an external third party.
- Explaining MFK sexual harassment policy and fact-finding procedures to all parties involved.
- Exploring informal means of resolving sexual harassment complaints.
- Notifying the police if criminal activities are alleged.
- HR will appoint a panel to lead the fact finding. The panel will have to be composed of an impartial team with at least one member being the same sex as the person reporting the harassment. One member of panel could be a representative of civil society in Kosovo active in protection of human rights.
- Arranging for a fact finding of the alleged harassment and the preparation of a written report.
- Submitting a written report summarizing the results of the fact finding and making recommendations to designated panel.
- Notifying the complainant and the respondent of the decision by panel on corrective actions to be taken, if any, and administering those actions.

All allegations regarding the reports on sexual harassment will be treated with strict confidence and complaints will be assured of protections against any form of discrimination or retaliation/victimization. HR will consult with the MFK legal advisor during the entire process once the case is reported.

A fact-finding will proceed according to the following order:

- Intake
- Review
- Fact-finding
- Report writing
- Disciplinary actions
- Closure

### 10.1 Intake

Members of the panel who conduct intake interviews will be trained to be professional, respectful, non-judgmental, and impartial. MFK will ensure confidentiality of all materials and documentation obtained in the course of the fact-finding. Notes will be taken during the interview and the reporter, a person who will be a member of the panel and will be nominated by the group for this role, can review the notes and amend them before signing off on them. The members of the panel may bring in any evidence that might aid in the fact-finding. The members of the panel will ask the complainant what they would like to see happen. Often, the person simply wants the behavior to stop. In that case, members will work with the alleged harasser to ensure the behavior stops, and that will be monitored to ensure there is no retaliation.

### 10.2 Review

The panel members who conducted the intake will decide whether to launch a fact-finding or if the matter can be resolved through other means. They will also decide if any interim measures are needed to protect the reporter, such as separating the harasser from routine contact from the reporter, assigning administrative leave, or other measures. This will be done in such a way that the reporter will not be prevented from performing his or her duties.

### 10.3 Fact-Finding

If the panel determines that the allegation appears to meet the definition of sexual harassment, the panel team could initiate a fact-finding. The steps in this process include selecting the fact-finders(s), creating a plan, developing interview questions, conducting interviews, reviewing evidence, and determining whether the evidence substantiates the allegation. If the accused harasser is a senior staff member of MFK the fact-finding will be conducted by an outside entity, to be appointed by MFK, with expertise in sexual harassment and employment law. This is to remove any doubt about impartiality.

All interviews will be conducted with sensitivity and respect. Any staff, who is called for an interview must appear and tell the truth. Failure to do so is a violation of the staff rules.

### 10.4 Report Writing

After all interviews are finished, the panel will compile and review all their notes and evidence to look for consistency and credibility and write a report of their findings. The purpose of the report is to document the methodology and outcome of the fact-finding so that management can determine whether or not to impose disciplinary actions or take other actions. The report should state whether or not the allegation is substantiated by the interviewees' testimony and any evidence they might have provided. If there are conflicting stories, the fact-finders will weigh each party's credibility including factors like plausibility, motive to falsify, corroboration, physical or electronic evidence and/or past record.

## 11. Disciplinary Actions

After the report is finished, the panel will make the final decision based on the fact finding report and a determination on whether this policy has been violated. If it was determined that the allegation is substantiated by the evidence and there has been a violation of this policy, then disciplinary measures should be considered along with any other strategies to address issues the

fact-finding might have revealed. The decision on disciplinary measures should provide advice for other avenues for reporting allegations of sexual harassment and/or pursuing in accordance with applicable law in Kosovo. Disciplinary measures may include any of the following depending on the severity of the harassment:

- Written censure
- Suspension without pay for a specified period
- Fine
- Demotion of the position
- Dismissal from the work

Once a decision has been made, HR will notify in writing both the complaining employee and the accused of the outcome. The parties that are not satisfied with the decision of the panel may proceed the case to the local authority responsible by the applicable law in Kosovo. It is important to let the complainant know that the organization took the complaint seriously and took appropriate action. HR will remind all parties to preserve confidentiality. HR should set a time frame to follow up with the complainant to ensure there are no other issues and that he or she is settling back into the work environment. HR will also conduct periodic checks of employment actions for the reporter to ensure there is no retaliation.

Whether or not the allegation was substantiated, communications to the accused should clearly state that any retaliation could be grounds for misconduct. Retaliation may include hostility towards victim by the harasser, poor performance reviews and other forms of victimization, adverse employment decision, marginalization, gossip, rumors, and other negative behaviors.

In some cases a fact-finding could prove inconclusive. It should be stated that does not mean the incident did not occur. If there is any doubt, the notice to the accused should state that if there are any further allegations, another fact-finding could take place and evidence found in this one could give added credibility to the new allegation. As a preventative measure, HR would meet with the harasser and his or her manager and set up a performance improvement plan for the harasser. The incident would be documented in the performance review and monitored by the manager and HR quarterly.

## **11. Amendments to this Policy**

This policy may be modified or amended at any time, should the need arise, with modifications to the policy subject to approval by MCC. MFK CEO will approve amendments upon request from the MFK Director of Administration and Finance.

## **12. Effective Date**

This policy is effective from 3 May 2019, the date of its approval and will remain in effect until policy it is modified or amended.