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AI's Policy on Sexual Harassment: standards, procedures and practical steps

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Summary

This document sets out AI's policy on sexual harassment. The policy identifies the relevant standards that AI should abide by in respect to prevention of and response to sexual harassment and sets out recommended procedures and practical steps. The policy is re-issued for and will be followed at the ICM. However, its standards are to apply in all sections, structures and on the occasions of international meetings.

Distribution

This is an internal circular which is being sent to all sections and structures.

Recommended Actions

Please circulate this document to all people in your section/structure who are involved in ICM preparations. Heads of delegations should discuss this policy with ICM delegates and ensure that each is aware of these behavioral standards, of their rights under this policy and the expectation that all ICM participants will abide by this policy.

AI'S POLICY AGAINST SEXUAL HARASSMENT

This document sets out AI's policy against sexual harassment for observance by all members, volunteers and staff, and identifies standards for establishing procedures in AI sections and structures for management of complaints of sexual harassment.

The policy recognizes that some legal jurisdictions will have standards defined under law related to sexual harassment that create duties and obligations for a local AI entity. It is also recognized that many sections/structures already have relevant policies in place. If there are in place superior standards to those outlined here, these should be observed. This policy is not intended to contradict those standards but to compliment them as appropriate.

The policy includes statements of procedures to be considered in the investigation of complaints and practical steps that can be taken.

1. AI's Policy

Respect for people, their dignity and their moral and personal integrity is a fundamental principle underpinning all human rights.

Sexual harassment offends human dignity and in some circumstances is a form of discrimination against an individual because of their sex.

Amnesty International (AI) has a mission to prevent and end grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of its work to promote all human rights. AI's members form a global community of human rights defenders whose goals include building mutual respect and fighting discrimination. In accordance with its mission and core values, AI recognizes the right of all its members, staff and volunteers to be treated with respect and dignity and without discrimination.

Sexual harassment, of any kind, is a denial of these rights and therefore unacceptable.

The aim of AI's policy against sexual harassment is to:

- create within AI an harassment-free environment,
- provide support for individuals who have been subjected to sexual harassment, and
- set out the principles for the establishment of fair and transparent procedures for dealing with allegations of sexual harassment.

AI's leadership and management are responsible for maintaining an environment in which mutual respect and equality are valued and any forms of harassment are discouraged. They must take prompt action to deal with reported incidents of sexual harassment.

This policy applies to all in AI as they carry out their everyday work or take part in the activities of the organization. It covers their conduct in meetings and conferences and while travelling on behalf of AI. It concerns their rights and responsibilities towards other people inside and outside AI. This policy informs the formulation of sexual harassment policy by AI sections and structures at the national level.

1. What is sexual harassment?

Sexual harassment is any behaviour of a sexual nature that is offensive to the recipient or creates a hostile and intimidating environment.

Sexual harassment may involve people of the opposite or the same sex. It may be part of a pattern of behaviour or occur only once. It may be directed at an individual or at a group of

people. It may take place during face to face contacts, but can also be inflicted by means of telephone calls, letters or e-mails. Most seriously, it may involve abuse of authority.¹

Although forms of sexual harassment vary, an element of intimidation or abuse of power is a common ingredient.²

Forms of sexual harassment

Many types of behaviour may constitute sexual harassment, depending on the circumstances in which they occur, including:

- deliberate and unsolicited physical or sexual contact or unnecessarily close physical proximity
- repeatedly making suggestive comments or innuendos that, while perhaps minor in themselves, gain in offensiveness as they accumulate
- displaying materials of a sexually oriented nature at a work place
- using crude or obscene language or gestures, or telling risqué or obscene jokes or stories
- making repeated or exaggerated compliments about someone's personal appearance, or comments about their physical features
- persistently inviting a person to social activities or "dates" after the recipient has made it clear that such invitations are not welcome

Sexual harassment is particularly objectionable when it is linked with direct or implied threats or promises about advancement or special treatment within the organization. This situation typically arises when one person takes advantage of a position of power or authority to elicit sexual favours from another, but it may also take place between peers or in other work relationships.

Determining whether someone's conduct amounts to sexual harassment requires consideration not only of their intent but also of the perception of their behaviour by others. An action may be sexual harassment, whether intentional or not, if somebody else found it offensive or intimidating.

Another important element in defining sexual harassment is the extent to which the conduct interferes with the working atmosphere. Mildly offensive comments or behaviour can rise to the level of harassment if they are repeated or have become pervasive. At the same time, a single incident will be considered harassment if it is so severe that it poisons the overall working environment.

Conduct that would not be considered sexual harassment

There is a wide range of ambiguous behaviour that might offend some people but not necessarily others: comments on dress, compliments about appearance, unintentionally offensive jokes that many others would find acceptable.

In an organization as diverse as AI, individuals will have different views about what is offensive. AI's core values, however, do not allow any cultural value or practice to legitimize behaviour which harasses, intimidates, threatens or humiliates others.³

Intimate personal relationships between colleagues do not in themselves constitute harassment. However, such relationships between those in positions of authority and

¹ For further definitions of sexual harassment, see the international human rights standards applicable to sexual harassment in Appendix 1.

² "Tell Someone". A Discussion of Sexual Harassment. Harvard Business School, 2003.

³ Article 2 of AI's Statute states "Amnesty International forms a global community of human rights defenders with the principles of international solidarity, effective action for the individual victim, global coverage, the universality and indivisibility of human rights, impartiality and independence, and democracy and mutual respect".

“subordinates” may create perceptions of unequal treatment, favouritism or a conflict of interests or conflicts of duties.

Such relationships, past or present, must not affect the way the individuals concerned carry out their responsibilities. They must be careful to avoid behaviour towards each other that disrupts the working environment, or creates difficulties or discomfort for others. Anyone who believes that a conflict of interest might arise from their relationship with another person is responsible for seeking advice from their manager and for taking steps to avoid or remedy any such conflict. Such a relationship could also give rise to complaints by one of the participants if the relationship ends.⁴

2. Responsibilities of individuals, leadership and management

Each person in AI, whether a member, volunteer or paid member of staff, is required to behave in a manner that is consistent with the core values of the organization. Each has a part to play in:

- ensuring that AI is free of intimidation, hostility, offensive behaviour and any form of harassment;
- not tolerating behaviour within AI which undermines or attacks the integrity and dignity of another person;
- supporting the reporting of complaints of sexual harassment to an appropriate person and respecting the confidentiality of anyone involved in a sexual harassment complaint; and
- co-operating when asked to provide information relevant to the resolution of a sexual harassment case.

Both leadership and management play a key role in creating and maintaining an environment that is free of sexual harassment and intimidation. They are responsible for:

- endeavouring to create an atmosphere in which members, volunteers and staff feel free to express concerns about inappropriate behaviour and to use, without fear of reprisal, available channels for conflict resolution and redress;
- setting and exemplifying the highest standards of conduct;
- communicating this policy and its procedures to their constituencies;
- ensuring that any incident of sexual harassment is dealt with promptly;
- making themselves available to those who may wish to raise concerns in confidence and dealing with such concerns in a timely, impartial and sensitive manner;
- encouraging pro-actively a positive meeting/working environment of dignity and mutual respect while maintaining “zero tolerance” towards sexual and other forms of harassment.

3. Preventive measures

The most effective deterrents to sexual harassment – or litigation arising from complaints of sexual harassment – are raising awareness among members, volunteers and staff of this policy, and providing an effective preventive or corrective procedure for complainants.

This policy should be made known to all members, volunteers and staff of AI sections and structures, and to newcomers as part of the induction process. New members, volunteers and staff should be asked whether they accept the policy. Leadership and management should thoroughly understand the policy and their responsibilities to uphold it.

⁴ Please refer to IEC document on “Conflicts of Interest and Conflicts of Duty – Policy and Rules”, AI Index: ORG 20/002/2004.

4. Monitoring implementation and effectiveness

It is recommended that AI sections and structures set up a monitoring group or clearly assign responsibility to an existing body to ensure adherence to this policy and to provide feedback and recommendations on the understanding and acceptance of the policy and on compliance with its provisions.

PROCEDURES FOR DEALING WITH ALLEGATIONS OF SEXUAL HARASSMENT

The principles set out in this part establish minimum standards that should be met in the procedures followed by AI sections and structures and at the international level to address complaints of sexual harassment.

1. Minimum standards

Any allegation of sexual harassment involving AI members, volunteers or staff should be addressed promptly. In addition it must be recognized that a complainant may opt for litigation under the law to resolve the matter.

The AI procedures and practices for dealing with such allegations should be fair, transparent and compliant with the local laws governing such allegations so long as to do so conforms with AI's core values.

2. Fairness

All allegations of sexual harassment of any form must be resolved promptly and fairly. All people involved in a complaint must be treated fairly. Both parties (complainant and alleged harasser) should be kept informed of the status of any investigation. Retribution or retaliation against the person making a complaint or against anyone who assists the investigation cannot be tolerated. Any attempt to influence a complainant or an alleged harasser is victimization and unacceptable.

3. Confidentiality

All complaints must be treated confidentially throughout the process and once the case is closed in order to protect the rights of all parties, to ensure that claims of defamation of character are not created, and to ensure that no damage is done to the reputation of AI locally or globally. Anyone who is aware of a sexual harassment complaint or involved in its resolution must respect this need for sensitivity and strict confidentiality.

The entire complaints process should be conducted in complete confidentiality by the complainant, the alleged harasser and AI. All information provided in the course of the complaint should be kept confidential, and should not be released unless the complainant, the alleged harasser and AI agree to it.

4. Impartiality

All sexual harassment complaints will be thoroughly and impartially investigated. Any investigator or panel of investigators must be comprised of people with no links to the complainant or the alleged harasser. Investigators must interview the complainant, the alleged harasser and any witnesses. Investigators must undertake in writing to maintain full confidentiality and to act impartially.

5. Promptness and timeliness

Timelines must be designed for the quick resolution of complaints. Complainants should be encouraged to file a complaint as soon as possible after the incident. It is important to ensure that no obstacles inhibit the filing of a complaint. Once a complaint is made to AI, it must be addressed promptly and in a timely manner and steps taken immediately to ensure the personal security of all involved.

6. The rights of complainants

Anyone filing a complaint about sexual harassment must be treated fairly and have their complaint dealt with promptly and without fear of exposure or reprisal. The complainant:

- should be provided with access to confidential advice including as appropriate from relevant external support services;
- has the right to be accompanied by a person of their choice throughout the process;
- is entitled to know the procedures that will be followed, the progress of the case, and the measures and actions that may result from the process;
- has the right to know what record of the complaint will be kept and, where relevant, to ensure that no record of the complaint is placed on their personal file, should the investigation find that the complaint was made in good faith.

7. The rights of the alleged harasser

The alleged harasser has the right to be treated fairly and be informed of the complaint and the identity of the person filing the complaint. The alleged harasser:

- must know in detail what allegations have been made and where appropriate be given a written statement of the allegations, and have the opportunity to respond to them;
- has the right to be accompanied by a person of their choice, throughout the process;
- is entitled to know the procedures that will be followed, the progress of the case, and the measures and actions that may result from the process;
- has the right to ensure that no record of the complaint is kept or, where relevant, placed on their personal file, should the complaint be found to be unsubstantiated.

8. Responsibilities of those receiving complaints, investigators and witnesses

People who have the responsibility to receive complaints should be identified and made known to members, staff and volunteers. In the case of a residential meeting for example, these people should be announced at the outset and the methods for contacting them explained. Investigators of complaints should be trained to undertake their duties and be given guidance on the fulfillment of their duties, which are to:

- interview the complainant, the alleged harasser and any witnesses.
- interview the alleged harasser, separately and impartially. They must state exactly what the alleged harasser is accused of, and confirm that they intend to make a full inquiry.
- give the alleged harasser the opportunity to respond fully to the allegations, and advise them of the confidential advice available from the relevant support services.
- identify witnesses if appropriate and ensure that their involvement in the procedure is kept to a minimum so that confidentiality is maintained. Witnesses are only required to substantiate the facts of the case.

The investigator should write a report and submit it to the person responsible for the management of the complaint. The report should state who was interviewed, who else was present at the interview, what questions they were asked, what conclusions the investigator came to about the alleged harassment, and what possible action may be appropriate in the particular case. Both parties should be given the opportunity to provide comments on the investigation report before it is finalized, and to have their comments included with the report.

9. Disciplinary and corrective actions

Any AI member, volunteer or staff member who is found responsible for sexual harassment will be subject to disciplinary action, up to and including termination of participation in AI activities in the case of volunteers and members, or employment and/ or termination of AI membership. The severity of the disciplinary action will be based upon the circumstances and

nature of the findings. For example, where appropriate, the harasser may be required to attend anti-sexual harassment training.

10. Remedies for the complainant

If the complaint is substantiated, the complainant should receive a verbal and a written apology. Assistance with the impact of the incident/s should be considered, for example, payment of medical or counselling fees. Transfer out of the environment in which the incident/s occurred could be offered. During investigation of the complaint, compassionate leave may be granted.

11. Remedies for the alleged harasser

If after investigation the complaint is found to be unsubstantiated, there should be no record kept or reference or documentation identifying the alleged harasser.

12. False and unfounded allegations

Allegations of sexual harassment can have serious consequences. Making such an allegation knowing that it is false is unacceptable and can be subject to disciplinary action.

PRACTICAL STEPS TO BE TAKEN

This part provides further guidance for the step by step procedures to be established by all sections and structures and on the occasion of international meetings in accordance with local legislation and staff terms and conditions.

1. Promote the policy and nominate a person to receive complaints

In every circumstance in which it is possible that sexual harassment may occur (the workplace, a meeting, a residential conference, etc.) it is essential that all members, staff and volunteers/participants are made aware of AI's policy.

In each setting, AI will nominate an appropriate person (if the incident occurs in the course of a meeting) to receive complaints, or make known that this is a responsibility of line managers/supervisors or another person designated by the leadership or management as being responsible for receiving such complaints.

2. Reporting a complaint

Members, volunteers and staff may bring a complaint of sexual harassment to the nominated person (if the incident occurs in the course of a meeting), or their line manager/supervisor or any other manager they trust or a person designated by the leadership or management as responsible for receiving such complaints, who may be a nominated investigator or ombudsperson.

The complainant should be asked to make a detailed record of all incidents, their reactions and concerns, dates, places and witnesses. This will be important in the event of a formal investigation.

3. Receiving the complaint

The person nominated to receive the complaint will discuss it with the complainant and explain the options for pursuing the complaint. Following consultation, a complainant may decide to take no further action. However, if there is risk of violence or to health, for example, the person receiving the complaint should initiate action as soon as possible.

4. Notifying the alleged harasser

The person nominated to receive the complaint or another appropriate official will formally inform the alleged harasser of the complaint and which procedure the complainant has decided to follow.

5. Informal procedures

An informal process may solve the matter and may be suitable depending on the gravity of the complaint. The aim of such an approach should be to identify the underlying issues and eliminate the cause of the offensive behaviour as quickly as possible. Where informal procedures may be appropriate and proportionate to the complaint, these should be offered to the complainant whose choice should determine the course of action. Informal courses of action that may be taken by a complainant include the following:

- The complainant may choose to make a direct approach to the alleged harasser, in person (alone or accompanied) or in writing, and ask for the behaviour to stop. A copy of any letter should be retained. The person approached may be unaware that their behaviour is inappropriate or objectionable, or that their words or actions may have been misinterpreted. In either case, any misunderstanding needs to be cleared up. Even where the behaviour was intentional, a swift and clear indication that it is objectionable may prove sufficient to stop it.
- An appropriate AI official may make a direct approach to the alleged harasser, acting as spokesperson for the complainant.
- The complainant and alleged harasser may agree to pursue mediation, in which case a mediator who is mutually acceptable to both parties will be appointed. If the mediation does not result in an agreement, a formal procedure may be initiated.

6. Formal procedures

If an informal procedure is unsuccessful or unsuitable for resolving the issue, or if the complainant prefers at the outset, a formal procedure may be followed.

- The formal procedure may only be invoked when a complaint in writing is received and acknowledged by a person nominated to receive the complaint.
- A written complaint should specify as far as possible the act(s) or behaviour that constitute the alleged harassment, and their time, location and circumstances. It should include any other information or evidence relevant to the complaint. The complaint should identify the alleged harasser, any witnesses and any other person who has been informed of the alleged harassment.
- Once a formal complaint is filed, an investigator (an individual or a team of two or three people) should be designated to conduct a preliminary inquiry verifying the facts and establishing the basis for further investigation. It is important for there to be no conflict of interest on the part of any investigator in respect to either the complainant or the alleged harasser as a detailed and objective documentation of the investigation is essential.
- The complainant and the alleged harasser must be interviewed separately and are entitled to nominate their respective witnesses.
- The alleged harasser must be given the full details of the complaint and the opportunity to respond in writing to the allegations.
- Throughout the process, both parties have the right to be accompanied at each stage of the formal procedure by a colleague of their own choosing. While the investigations are being carried out, the complainant and the alleged harasser should not be in close proximity with each other.
- The findings and recommendations of the investigation should be presented to the authority empowered to take action on the basis of its findings (i.e. a Board member nominated for this purpose, the relevant manager/supervisor, the convenor of the meeting)

and become the basis of the formal conclusion and decision on action to be taken on the case.

- The conclusion and decision on action to be taken should formally be made known to the complainant and the alleged harasser, in person in separate meetings, by the manager or ombudsperson. A written copy of the conclusion and decision on action to be taken will be given to both.

7. Appeals

Both parties may appeal against the conclusion and decision on action to be taken of the board or management or the meeting's convener. The appeal should be heard by a person in the organization who is senior to those involved in the preceding procedure and who has not previously been involved in the complaint.

APPENDIX 1: SEXUAL HARASSMENT AND HUMAN RIGHTS STANDARDS

Several fundamental human rights and international law principles have been applied to prohibit sexually harassment, for example, the right not to be subject to sex discrimination, the right to dignity in the workplace and the right to a healthy and safe work environment.

The issue of dignity is enshrined in Article 3 of the **Universal Declaration of Human Rights** (UDHR): *“Everyone has the right to life, liberty and security of person.”* The related right to “liberty and security of the person” is in Article 9 (1) of the **International Covenant on Civil and Political Rights** (ICCPR): *“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”*

The issue of freedom from “*cruel, inhuman and degrading treatment*” is also enshrined in some general international standards, including Article 7 of the ICCPR, which states: *“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”*

The UN Special Rapporteur on violence against women has recognized sexual harassment in the workplace as one of the principal forms of violence against women around the world.⁵

General Recommendation 19 to the **Convention on the Elimination of all Forms of Discrimination Against Women** (CEDAW) defines sexual harassment as including:

“... such unwelcome sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and sexual demands, whether by words or actions. Such conduct can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable ground to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.” (Item 18)

The Recommendation also states that “[e]quality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace.”(Item 17) It recognizes that sexual harassment may also “*constitute a health and safety problem.*”

⁵ “Report of the Special Rapporteur on violence against women, its causes and consequences, Radhika Coomaraswamy”, 53rd Session of the UN Commission on Human Rights , E/CN.4/1997/47, 2 February 1997.

In 1993, the UN General Assembly adopted the **Declaration on the Elimination of Violence Against Women** (DEVAW). This landmark document was the result of efforts of the UN Commission on the Status of Women and the UN Economic and Social Council to address violence against women. Although DEVAW, as a General Assembly declaration, does not have the binding legal authority of a convention or treaty, it is a statement of principle upheld by the international community on violence against women, and became the basis of subsequent international commitments to eradicate violence against women, including in the Beijing Declaration and Platform for Action. DEVAW explicitly includes "*sexual harassment and intimidation at work, in educational institutions or elsewhere*" in its definition of violence against women, and states have made commitments to take a set of measures for its eradication.

The **International Labour Organization** (ILO) has addressed sexual harassment as a prohibited form of sex discrimination under the Discrimination (Employment and Occupation) Convention (No. C111). The ILO has made clear that sexual harassment is a problem of health and safety and unacceptable working conditions, and upheld the DEVAW's assertion that it is a form of violence that primarily affects women because of their gender.

At the regional level, both the European Union (EU) and the Council of Europe (CoE) address sexual harassment as illegal behaviour. **The Council and Parliament of the European Union** define harassment related to sex and sexual harassment as follows:

Harassment related to sex is "conduct related to the sex of a person [that] occurs with the purpose of or effect of violating the dignity of a person, and of creating an intimidating, hostile, degrading, humiliating or offensive environment."

Sexual harassment is "any form of unwanted verbal, non-verbal, or physical conduct [that] 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."

*"Harassment [based on sex] and sexual harassment within the meaning of [the] Directive shall be deemed to be discrimination on the grounds of sex and therefore prohibited. A person's rejection of or submission to, such conduct may not be used as a basis for a decision affecting that person."*⁶

Despite major gains in getting sexual harassment accepted as an offence, there is no single definition of what constitutes *prohibited behaviour* and makes the search for a universal definition applicable in all contexts very challenging. Prohibited behaviour tends to be very context-specific as it includes behaviour that may be taken as "normal" or "acceptable" in today's social context, as well as that which falls within the definition of many legally recognized sexual offences. The Special Rapporteur on violence against women asserts that prohibited behaviour in the context of sexual harassment includes:

- a conduct unwanted by the recipient, in other words, unwelcomed and unreciprocal
- a conduct which, from the recipient's point of view, is offensive or threatening.⁷

Sexual harassment remains uncodified as a criminal offence in many countries although recent trends indicate a greater willingness on the part of governments to criminalize it. Government strategies to curtail sexual harassment include recognizing sexual harassment,

⁶ Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the **Implementation of the Principle of Equal Treatment for Men and Women as Regards Access to Employment, Vocational Training and Promotion, and Working Conditions**, Official Journal L269/15, 05/10/2002 P. 0001-0006.

⁷ Op.cit . pp 12-18.

especially in educational institutions and the workplace, as a violation of the constitutional and legislative provisions governing gender equality.

The ILO Committee of Experts on the Application of Conventions and Resolutions recommends that countries adopt measures to address sexual harassment and in doing so asks them to include the following information in their reports to the Committee:

- how sexual harassment has been prohibited;
- the definition of sexual harassment used;
- the scope of who is protected;
- the scope of the protection;
- the scope of liability;
- administrative mechanisms in place;
- enforcement mechanisms and procedures;
- court decisions;
- educational and awareness-raising measures; and
- cooperation with employers' and workers' organizations in addressing sexual harassment through policies and collective agreements.

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