

National Enterprise Development Authority (NEDA)

**Policy against Gender-based Discrimination & Sexual Harassment and
Procedural Steps for Enforcement**

1. Overview

1.1. Definition

Gender-based discrimination and Sexual harassment is a violation of the fundamental rights of employees. It is a form of sex-based discrimination in the work place and it is also an issue of safety and health, as well as an issue that creates and unacceptable working conditions. The cost of such sexual and other forms of harassment is very high and efficient and productive outputs cannot be delivered if people cannot work with dignity.

1.2. Need of sexual harassment policy at NEDA

The Gender Gap Assessment report compiled by ADB has clearly identified that NEDA does not have a specific focus on **mechanism against gender-based discrimination and sexual harassment** in its organizational policies and therefore, has strongly recommended to introduce and practice such a policy to provide the women staff with a safe and dignified environment at work.

Further, although the Volume II of the Establishment Code of 1999 and its subsequent Revisions cover the General conduct and Disciplinary procedures of employees, it does not carry specific provisions on gender-based discrimination and sexual harassment.

In light of the above, NEDA; as a government entity that is committed to promote the fundamental values of human dignity, gender equality, and a workplace that is free of sexual harassment; this Policy is introduced to identify the acts of sexual harassments, provide suitable procedures for inquiring and punishing the acts of sexual harassment and prevent the occurrence of such harassments.

1.3. Objectives

1. To promote a culture at the NEDA in which the dignity and equality of all persons are respected.
2. To prevent the occurrence of sexual harassment through targeted, preventative interventions.
3. To adopt a zero tolerance on acts of sexual harassment and mechanisms to provide for the resolution of complaints through mediation and/or disciplinary action.

1.4. General Principles

Sexual harassment is a criminal offence under section 345 of the penal code of Sri Lanka. Furthermore, the Constitution guarantees the right to equality and equal protection of the law including the prohibition of discrimination on the basis of sex (Article 12 (1) & (2)), and guarantees the freedom to engage in a lawful occupation (Article 14(1)(g)). Sri Lanka's international legal obligations under CEDAW (the Convention on the Elimination of All forms of Discrimination Against Women) and the ILO (International Labor Organization) Convention 111 titled 'Discrimination in Respect of Employment and Occupation' also require the prevention of sexual harassment in the workplace and the provision of remedies for victims of sexual harassment.

1.5. General Conduct

All persons governed by this Policy are required to follow accepted ethical standards in their conduct and are required to refrain from committing acts of sexual harassment, abstain from promoting sexual harassment or encouraging it, desist from concealing acts of sexual harassment, contribute to efforts undertaken by the NEDA to prevent sexual harassment, and promote a culture of respect for all persons irrespective of gender.

Such persons shall,

- (i) Refrain from making reference to sexuality explicitly or implicitly a term or condition of an individual's employment or academic advancement, work benefits or activity;
- (ii) Refrain from using the rejection, or non-acceptance of sexual advances by an individual, as a basis for employment or academic decisions affecting or concerning such an individual;
- (iii) Refrain from conduct that has a negative impact, on the basis of rejection or non-acceptance of sexual advances, on an individual's work or academic performance, or creates, or solicits others to create an intimidating, hostile, or offensive working and academic environment;
- (iv) Refrain from concealing formal or informal complaints of sexual harassment; and
- (v) Refrain from using ICT for acts of sexual harassment.

1.6. Definition of Sexual Harassment:

Sexual Harassment refers to any act (physical, verbal, gestural, visual, tacit or written) that inflicts physical, mental or other harm or annoyance based on another person's gender and/or sexuality. Such acts constitute sexual harassment, which applies when all members of the NEDA engage in any of the above acts.

1.7. Persons and Places governed by this policy

All staff of NEDA including the Development Officers attached to District and Divisional Secretariats.

2. Acts Subject to Disciplinary Action

Sexual harassment, perpetrated individually, or as a group, against an individual or a group for the purposes of disciplinary action by the NEDA constitutes the following kinds of behavior, but are not limited to:

2.1. Specific Acts of Sexual Harassment

1. Unwelcome sexual advances and unwanted sexually oriented comments in the form of verbal, non-verbal, or physical conduct (Eg. Using obscene and offensive language, directing work discussions to sex topics, lewd comments, lurid stares, sexually loaded insults, slander, remarks, gestures, jokes, letters, phone calls, electronic mail (email), SMS, MMS, and communications on social media continuous invitation to dinner or date despite rejection, intentional dissemination of hearsay with a sexual nature, enquiring for or sharing sexual experience, request for sexual acts, unnecessary physical contact, forced sexual acts).
2. Showing of pornography, making, or attempting to make physical contact or molestation, stalking, sounds including whistling, or display of a sexual nature.
3. Requests for sexual favors.
4. Sexualized requests or demands for favors accompanied by explicit or implicit promised rewards or threatened punishment.
5. Sexual assault or threatened sexual assault.
6. False allegations of any of the above.

2.2. Acts of Intimidation Connected with Complaints

Acts of harassment (Eg. slander, intimidation, discrimination, victimization, threats, indirect harassment) against any person who has complained of conduct covered by this Policy, or who is a witness, or who assists in the investigation of such a complaint shall constitute conduct subject to disciplinary action by the NEDA.

3. Complaints of Sexual Harassment and Procedures

3.1. Who May Complain

All persons governed by this policy shall complain, as well as a visitor to the NEDA and/or a third party who has a personal or professional link to the alleged victim or who has witnessed the alleged harassment (Eg. family member, member of the staff).

3.2. The Form of the Complaint and Procedures

1. A person governed by this Policy may seek resolution through a written or oral complaint to the Chairman or Director of NEDA or the Chair of the CISH.
2. Any complaint should be made in writing and signed, or if the complaint is oral, the oral complaint shall be recorded in writing by the authority receiving the complaint (Eg. Chairman, Director, Head of Department) and signed by the complainant.
3. A complainant may seek resolution through mediation and/or formal procedure.
4. Such procedures do not in any way prevent the complainant from, at any point, seeking redress under any law that may apply.

3.3. Formal Inquiry Procedure

1. The Chairman or Director of NEDA shall appoint a committee to conduct a preliminary investigation to gather prima facie evidence, and thereafter inquire into complaints of sexual harassment that will, following its inquiry, recommend in appropriate cases disciplinary action to the Board of Directors. This committee shall be known as the Committee of Inquiry on Sexual Harassment (CISH).
2. The CISH shall comprise minimum of 02 members, and have gender parity, reflect the diversity of the NEDA community and can have external members if necessary. The CISH will also have the authority to act themselves as mediators, or appoint mediators in consultation with the parties concerned, towards an informal resolution process where necessary.
3. If the CISH finds that a malicious false complaint has been made, it shall be reported to the Chairman or Director who shall consider the matter and refer for necessary action. However, inability to prove a complaint of sexual harassment should not be designated a false complaint.
4. The sexual history and/or sexual orientation of the complainant shall be deemed irrelevant to a complaint of sexual harassment at any one given time.
5. When any complaint is being considered for resolution, the parties to the complaint shall not be permitted to continue with, or undertake any activity, that can intimidate or unduly influence the complainant to withdraw the complaint or discontinue the process in any way. During this time, the parties shall, in general, be required to maintain minimum contact.
6. Nothing in this Policy shall prevent the NEDA initiating a formal disciplinary procedure in respect of conduct that comes within the scope of this Policy and also constitutes grave misconduct for the purpose of disciplinary action under the provisions of the Establishment Code.
7. Any findings or conclusions arrived at through the procedure do not preclude the application of any law that may apply.

3.4. Mediation

1. A complainant may opt for mediation to bring closure to the matter and/or prevent its recurrence. Use of the mediation process in no way precludes the complainant from using the formal adjudicative procedure.
2. By this mediation procedure, the complainant formally requests ameliorative action on the part of the accused by a written communication.
3. The CISH has the responsibility to ensure that the mediation process is carried out in a collegial and non-threatening environment.
4. If the mediation procedure is concluded to the satisfaction of both parties, the matter is reported to the Chairman or Director, and closed.
5. Confidentiality should be maintained regarding all complaints. Interview recordings if any, communications, documentations, and reports shall be divulged only to authorized persons.

4. Prevention of Sexual Harassment

1. This Policy shall be accessible to the entire NEDA community and made available in NEDA handbooks and the website.
2. A clause on this Policy is to be included in all staff contracts and letters of appointment.
3. This Policy shall be discussed at all relevant staff development and orientation programs conducted by the NEDA.
4. Staff Development and Training Programs of the NEDA shall include a component designed for promoting gender equality and equity and for developing gender sensitivity in the workplace. Such programs shall include a session on this Policy.
5. The NEDA is to provide a trained counselling service to address prevention and consequences of sexual harassment. This service shall also be made available to any of the parties to a complaint made under this Policy.
6. Detailed punishments to employees who exercise sexual harassment.
7. Deal with irregularities in a timely and appropriate manner.
8. Amend this Policy wherever necessary.

