

# UNITED STATES INTERNATIONAL UNIVERSITY-AFRICA

## SEXUAL AND GENDER BASED VIOLENCE POLICY 2020

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## **FOREWORD**

United States International University-Africa (USIU -Africa) has a dual responsibility as both an employer and an institution of higher learning. The University therefore provides a teaching, learning and a working environment that focuses on equal opportunity where all individuals are protected from any form of mistreatment or discrimination. The University management is committed to preventing abuse of personal authority or power in interpersonal relationships in all its dealings and amongst all stakeholders.

In order to ensure that people within any community relate with each other in acceptable ways without infringing on others rights, rules and regulations have to be established and communicated in a clear manner to all members. USIU-Africa has established the need for crafting a fair process of handling sexual harassment which focuses on the offenders as well as those affected. A clear definition of what constitutes sexual harassment, gender based violence or discrimination is adequately and clearly spelt out for ease of understanding by all members of the University community. With this policy, the University has codified various provisions on sexual harassment contained in the Student Handbook, Faculty Handbook, Employee Handbook and Human Resource Policies and Procedures Manual.

Various governments including Kenya have prescribed stiff penalties for sexual offences including sexual harassment. It is imperative that all students, staff and faculty strive to avoid any behavior that is prohibited and should accord appropriate respect to the fundamental rights and dignity of all people regardless of their culture, gender, race, ethnicity, nationality, sexuality, religion, ability, and socio-economic status.

This policy is a clear fulfillment of an obligation to protect, prevent and manage sexual and gender based violence within the university. Sexual harassment will therefore not be tolerated under any circumstances in all the operations of the University. The University is committed to providing all possible assistance in understanding these issues and helping individuals to make informed decisions. In line with this commitment a Gender Equity and Protection Office was established in 2019 to carry out the mandate of implementing this policy. Regular training and awareness campaigns will be conducted by the Gender Equity and Protection Officer in order to ensure a safe environment for all stakeholders. It is important to understand that, while the University will treat information it has received with appropriate sensitivity; individuals may nonetheless need to share certain information with those responsible for stopping or preventing sexual offences. This will ensure that sexual harassment is dealt with effectively to the satisfaction of all stakeholders of the university.

I thank the members of the taskforce that developed this policy in 2016 and those who have undertaken its review.

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# **CHAPTER ONE: POLICY STATEMENT AND DEFINITIONS**

## **Section 1.0: Introduction**

This chapter gives a brief introduction to the policy and offers definition of various terms applicable to the policy.

## **Section 1.1: Policy Statement**

United States International University-Africa prohibits and strongly condemns Sexual and Gender Based Violence (SGBV) committed by students or employees, whether on or off campus, or by any individual on campus or within its programs or activities. The University has zero tolerance to sexual harassment and violence.

This Policy addresses the University's aim to provide an environment that is free of any form of sexual and gender-based violence. Through this Policy, USIU-Africa intends to provide broader protections from sexual harassment within the framework of the laws of Kenya. USIU-Africa will take disciplinary or corrective actions pursuant to this policy. The ultimate goal is to prevent SGBV through education. Should sexual offences occur, the university will respond firmly, fairly, and in a timely manner. All students, staff and faculty are called upon to understand their rights, roles and responsibilities with regard to SGBV.

This policy is a manifestation of the University's effort to prevent sexual harassment & violence and deal with such cases when they arise. There are clear provisions for support of victims and fair interrogation of incidents to avoid false allegations. The entire USIU-Africa community is asked to play its role in making sure that this policy is implemented. We recognize that USIU-Africa is well positioned to confront the immense challenge of SGBV in order to achieve an environment in which every community member is respected, safe, and fully supported. This policy prohibits any form of sexual harassment in recruitment of students, employees, award of scholarships, teaching, awarding marks and offering of any service to the university.

Harassment - the principle of this policy is to have a work environment where all are treated respectfully and professionally. Any unprofessional or disrespectful behaviour, even if not illegal, interferes with that goal and will not be tolerated.

Discrimination - the objective of this policy is to have a work environment where we all treat each without discriminating the other. No one should behave in an unfair way or take unfair decision or influence/ get influence while taking the decision against anyone. In both the above cases, the University reserves the right to respond to inappropriate behavior/ unfair decision even where no one has complained or indicated they have been offended.

## **Section 1.2: DEFINITIONS**

This section offers the definition of terms applicable to this policy.

### **Section 1.2.1: Employee**

An employee is defined as anyone who has a working relationship with the University including all permanent, contract, temporary or casual employees and administrators, whether academic or non-academic.

### **Section 1.2.2: Student**

A student is any individual who is officially registered at the University to pursue a course under the guidance of a Faculty member or staff in the University.

### **Section 1.2.3: Gender Equality**

Refers to the equal treatment of women and men, so that they can enjoy the benefits of development including equal access to and control of opportunities and resources.

### **Section 1.2.4: Gender Equity**

Refers to the practice of fairness and justice in the distribution of benefits, access to and control of resources, responsibilities, power, opportunities and services. It is essentially the elimination of all forms of discrimination based on gender.

### **Section 1.2.5: Gender-Based Violence**

Gender-based violence is an umbrella term for any harm that is perpetrated against a person as a result of gender power inequalities that exist among males and females. It refers to any violence act inflicted on the survivor primarily because of their gender.

### **Section 1.2.6: Gender Discrimination**

Refers to unequal or preferential treatment of individuals or groups on the basis of their gender that results in reduced access to or control of resources and opportunities.

### **Section 1.2.7: Sexual Discrimination**

Sexual discrimination is the prejudiced treatment against a person on grounds of gender, sexual orientation, or gender identity.

### **Section 1.2.8: Sexual Harassment**

Sexual harassment is the persistent unwelcome sexual advances, request for sexual favor, and other verbal, visual or physical conduct of a sexual nature. It can also take the form of a person being in a position of authority, holding a public office or not, persistently making any 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:

- a) Submission to such conduct is made either expressly or impliedly given as a term or condition of an individual's employment or education;
- b) Submission to or rejection of such conduct by an individual is used as a basis for employment or academic decisions affecting such individual; and
- c) 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.

### **Section 1.2.9: Elements of Sexual Harassment**

- a) The behavior should be unwelcome. This will depend on how the conduct in question was perceived and experienced by the recipient rather than the intention behind it;
- b) It should be of a sexual nature;
- c) It is offensive, humiliating and/or intimidating;

- d) It may either be a one-time or repeated action;
- e) Spreading gossip or rumors which may expose any involved student, staff or faculty to defamation action and the breach of the sexual harassment policy.

### **Section 1.2.10: Circumstances in which Sexual Harassment can occur**

Sexual harassment can occur in a variety of circumstances including but not limited to the following: -

- a) The victim or perpetrator may be a woman or a man. An older man/woman harassing younger women/men, seniors harassing juniors: The victim does not have to be of the opposite sex;
- b) The perpetrator can be a 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;
- c) Where there is inequality of power between a victim and the perpetrator that strongly suggests that the victim engages in sexual relation out of fear;
- d) The victim does not have to be the person harassed but could be anyone affected by the offensive conduct; and
- e) Sexual harassment is unlawful not only 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 as long as it involves students, staff and faculty.

### **Section 1.2.11: 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 the same or opposite sex. Sexual harassment can take different forms.

### **Section 1.2.12: 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: -

- a) Leering at a person or parts of their body in a sexually suggestive manner;



- b) 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;
- c) Blocking the victim's path in an aggressive way;
- d) Standing very close to the victim which makes him/her uncomfortable;
- e) Non-consensual kissing or kissing attempts;
- f) Rubbing one's genitals on a person;
- g) Attempt or actual sexual assault;
- h) Indecent exposure of one's genitalia;
- i) Stalking with an intention to sexually harass the victim;
- j) Obscene gestures;
- k) Groping;
- l) Subtle pressure for sexual activity; and
- m) Unwelcome/uninvited physical contact such as massaging a person without invitation, hugging, pinching, patting, grabbing in a sexual manner.

### **Section 1.2.13: Verbal Sexual Harassment**

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

- a) Demeaning references to either the male or female gender;
- b) Comments that are sufficiently offensive to cause discomfort and interfere with work or learning;
- c) Disparaging remarks about one's gender or physical appearance;
- d) Sex based insults, taunts, teasing or name calling;
- e) Verbal sexual abuse disguised as humor;
- f) Making promises or threats in return for sexual favors;
- g) Requests or demands for sex or repeated unwanted requests to go out on dates after prior refusal;
- h) Suggestive sexually demeaning remarks, comments or jokes;
- i) Dirty jokes or comments about the victim's body or clothing;
- j) Catcalls;
- k) Comments or questions about the victim's social or sexual life;
- l) Intrusive questions or insinuations about an individual's private life;
- m) Demands for sexual favors and threats of firing if the demands are not met; and
- n) Obscene communication and unwanted sexual innuendos.

### **Section 1.2.14: Visual Sexual Harassment**

This is the use of different forms of visual media to suggest inappropriate sexual advances. Examples include but are not limited to: -

- a) Displaying sexually graphic materials including posters, magazines, cartoons, graffiti or messages left on notice boards, desks or common areas;
- b) Sending or forwarding sexually explicit emails or text messages or emailing offensive “jokes” and pornographic material;
- c) Inappropriate advances on social networking sites;
- d) “Flashing” or making obscene sexual gestures;
- e) Accessing sexually explicit internet sites, downloading offensive screen savers and loading them into a colleagues’ computer or shared university computers; and
- f) Technological sexual harassment is the inappropriate use of photography, email and internet.

### **Section 1.2.15: Gender Harassment**

This involves generalized sexist statements and behavior that convey insulting or degrading attitudes about both men and women. Examples include insulting remarks, offensive graffiti, obscene jokes or humor about either sex.

### **Section 1.2.16: Seductive Behavior**

This includes unwanted, inappropriate and offensive sexual advances. Examples include repeated unwanted sexual invitations, insistent requests for dinner, drinks or dates, persistent letters, phone calls and other invitations.

### **Section 1.2.14: Sexual Bribery**

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

### **Section 1.2.15: Sexual Coercion**

Coercion of sexual activity or other sex-linked behavior by threat of punishment; examples include negative performance evaluations and grading, withholding of promotions, and threat of termination.

### **Section 1.2.16: 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 to the other person, the ingestion of drugs or alcohol, or the person's intellectual or other disability.

Sexual violence is any 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, anal or oral penetration by genital organs of another or penetration with a foreign object).

### **Section 1.3 Office of Gender Equity & Protection**

The Office of Gender Equity & Protection is housed under the Office of the Deputy Vice Chancellor Academic and Student Affairs; and is responsible for ensuring adherence to the current legislation and international conventions on matters gender equity and protection within the university. Further, it provides prompt responses to and effectively stops gender negative & discriminatory practice, prevent its recurrence and remedies its effects as per the provided guidelines. The office generally serves to eliminate, prevent and redress known instances of gender-based misconduct or violence with fair and efficient processes that are intended to support the entire University Community.

The office is abbreviated in sections of this policy as 'GEP'.

## **CHAPTER 2: POLICY FRAMEWORK**

### **2.0 Introduction**

The Constitution of the Republic of Kenya guarantees the right to equality and the right to equal protection under the law. These rights are guaranteed for all people regardless of race, gender, sex, pregnancy, marital status, ethnic or social origins, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth. The Employment Act (2007) prescribes that the working environment should be free of discriminatory practices, including sexual and other forms of harassment.

United States International University-Africa (USIU-Africa) has zero tolerance to sexual and gender based violence. The University is committed to providing an institutional environment where all may pursue their studies, careers, duties and activities free from harassment, intimidation or exploitation. Harassment is considered to be a form of unlawful discrimination and is therefore prohibited. This Policy prohibits and strongly condemns acts of sexual harassment committed either by students or employees whether on or off campus, or by any individual on campus or within its programs or activities.

USIU-Africa appreciates the complexity of handling sexual harassment issues especially those related to sex for grades as they tend to happen in confidence of those involved. Indeed, sexual harassment happens where there is a difference in power and the individual being harassed may succumb to the pressure due to fear of detrimental treatment or to gain a favor. To ensure that this does not happen, USIU-Africa has established a Gender Equity and Protection Office whose sole mandate is to create awareness, encourage openness and report as well as mainstream gender equity and equality to the entire university community. The ultimate goal is to provide an environment that is secure, inclusive, free and conducive for academic and service excellence.

The Bill of Rights contained in the Constitution of the Republic of Kenya ensures that all persons have the right to equality, human dignity, freedom and security of the person and privacy and any form of harassment encroaches on these human rights. All persons covered by this policy ought to treat one another with respect.

Harassment constitutes serious misconduct and may result in disciplinary action. Reports of harassment will be taken seriously and will be dealt with promptly, but in a fair and objective manner. The nature and gravity of each instance will dictate the specific action to be taken, which may include intervention, mediation, investigation, and the initiation of grievance or disciplinary procedures.

Harassment is proven with sufficient and credible evidence. A false claim of harassment is a serious offence.

## **2.1 Rationale**

The rationale of this Policy is the prevention and management of harassment in the University. The purpose is to formalize the University's position on harassment, to implement a zero-tolerance approach to such activities, to afford victims of harassment an effective remedy against such behaviour and to ensure that all allegations of harassment are investigated; avenues are provided for persons to lodge complaints in complete confidentiality; complainants are reassured that they will be protected from reprisals or victimization for lodging complaints in good faith.

## **2.2 Goal and Objective of the Policy**

The goal of this policy is to create and maintain a conducive learning and working environment for USIU-A community so as achieve the University mission of promoting the discovery and application of knowledge, the acquisition of skills and the development of intellect and character in a manner which prepares students to contribute effectively and ethically as citizens of a changing and increasingly technological world.

### **2.2.1 Specific Objectives of the Policy**

In implementing this policy, the university will be guided by the following specific objectives:

- a) Create a working, teaching and learning environment which is free from sexual and gender based violence and where all members of the university and its stakeholders are treated with dignity, courtesy and respect;
- b) Training and creating awareness to ensure that all staff, faculty, students and all other stakeholders know their rights and responsibilities;
- c) Provide an effective procedure for complaints based on the principles of natural justice;
- d) Treat all complaints in a sensitive, fair, timely, and confidential manner;

- e) Guarantee protection from any victimization or reprisals;
- f) Encourage the reporting of sexual and gender based violence; and
- g) Promote appropriate standards of conduct at all times.

### **2.2.2 Scope of the Policy**

This policy covers all members of USIU-Africa (see section 1.0 on definitions) community that include:

- a) Faculty (fulltime, on contract, Part-Time and visiting)
- b) Staff (permanent, temporary and casual)
- c) Administrators including management
- d) Students (All students including residents and non-residents).
- e) All stakeholders who engage with the University.

#### **This policy applies to conduct that occurs:**

- On campus or University property;
  - In the context of any University-related or sponsored education program or activity, regardless of the location (including travel, sports, research, or internship programs);
  - By a USIU-A student, regardless of location;
  - By a USIU-A employee, regardless of location;
  - Through the use of University-owned or provided technology resources; or
- When the conduct has a nexus to the University, such as continuing adverse effects or the creation or continuation of a hostile environment on campus.

In cases where the University does not have disciplinary authority over the accused, the University will still take reasonably available steps to support a complainant through provisional remedial actions and will support a complainant in identifying external reporting mechanisms including the Police.

### **2.3.0 Policy Provisions**

This Policy makes the following provisions that prohibit conduct

While determining whether reported conduct violates this policy, the University will consider the totality of the facts and circumstances involved in the incident, as well as the nature of the reported conduct and the context in which it occurred. Individuals of any sex can commit any of

the prohibited conduct defined in this policy, and it can occur between individuals of the same sex or different sexes. It can occur between strangers or acquaintances, as well as persons involved in intimate relationships.

This policy prohibits the following forms of conduct, including attempts to commit the prohibited conduct that constitute sexual harassment or any form of gender based discrimination and/or violence.

### **2.3.1 Sexual and Gender-Based Harassment**

#### **Sexual Harassment:**

Sexual harassment is any unwelcome sexual advance, request for sexual favors, and/or other verbal or physical conduct of a sexual nature when one of the conditions outlined in (1), (2), or (3), below, is present.

**Gender-Based Harassment:** Gender-based harassment includes harassment based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve contact of a sexual nature, when one of the conditions outlined in (1), (2), or (3), below, is present.

- 1) Submission to, or rejection of, such conduct is made implicitly or explicitly a term or condition of a person's instruction, academic standing, employment, or participation in any University program, activity, or benefit.
- 2) Submission to, or rejection of, such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions.
- 3) Such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from University-related educational, employment, campus, and/or residential experiences when viewed through both a subjective and objective standard.

This policy specifically prohibits acts that constitute the following among others:

- a) unwelcome sexual attention from a person who knows or ought reasonably to know that such attention is unwelcome;

- b) unwelcome explicit or implicit behaviour, suggestions, messages or remarks of a sexual nature that have the effect of offending, intimidating or humiliating the complainant or a related person in circumstances;
- c) implied or expressed promise of reward for complying with a sexually oriented request; or
- d) Implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually oriented request.
- e) If such forms of conduct come from a person in a position of power over the person against whom the conduct is directed, that abuse of power will be judged to be sexual misconduct.
- f) *quid pro quo* harassment occurs in the academic context if a lecturer undertakes or attempts to influence any academic decision making process about good marks, academic honours, employment, promotion, training, or any other benefits, in exchange for sexual favours.
- g) Occasional compliments of a socially acceptable nature accompanied by mutual consent do not constitute sexual harassment, and nor do acceptable teaching methods aimed at eliciting debate and discussion.

### **2.3.1 Conduct between Employee and Students**

The Kenyan Sexual Offences Act (2006) in section 43(2c) while describing how consent is voided, prohibits unlawful acts committed by persons in position of authority to the extent that the person in respect of who an act is committed is inhibited from indicating his or her resistance to such an act, or his or her unwillingness to participate in such an act.

As result, the University recognizes the potential abuse or the appearance of abuse and the distinctive disparity in authority, this policy prohibits any employee from engaging in any sexual conduct, romantic and/or sexual relationship with any student enrolled at USIU-A. Such relations are inappropriate, unethical and compromise the professional standing of all members of USIU-A community.

Faculty members of staff should never be involved in any harassment, exploitation or other discriminatory treatment of students. They ought to nurture honest academic conduct and safeguard that, any evaluation of students reflects each student's true merit. Any employee, who



specifically takes advantage of students with disability or those with special conditions will among other disciplinary measures, be expelled from the University community.

A student shall not coerce any employee of the University community into any sexual relationship or exhibit behaviours that may compromise the integrity of any member of the University. Mutual attraction between people also does not constitute sexual harassment. However, romantic relationships that may be unduly influenced by the power differential between employees and the students are not allowed. Even if the relationship is consensual, if it involves any position of authority (such as that of a lecturer who is responsible for the supervision or evaluation of the student's work), such a relationship is not acceptable until after their formal teaching relationship has ended.

### **2.3.2 Student-Student Relationships**

The policy covers all USIU-A students and applies to student-student relationships including relationships in which a female student acts as the harasser. With regards to the behaviours of students, no student shall coerce another student into a sexual relationship or exhibit behaviours that may compromise the integrity of any other student. Any student, who specifically takes advantage of fellow students with disability or any special conditions will among other disciplinary measures, be expelled from the University community.

### **2.3.3 Employee - Employee Relationships**

No employee shall coerce another employee or any member of the University community into a sexual relationship or exhibit behaviours that may compromise the integrity of any member of the University. Because of the potential for abuse or the appearance of abuse and the inherent differential in authority, the University prohibits any staff member from engaging in any sexual conduct, romantic and/or sexual relationship with another member of staff employed at the University.

The University prohibits any member of staff involved in any sexual relationship with another member of staff from having any direct responsibility for making decisions regarding the promotion, tenure or compensation of the other party in the relationship.

All employees are expected to uphold the dignity of the University office to which they have been entrusted to. It shall be against this policy for any staff to discriminate against another staff because of their gender.

#### **2.3.4 Retaliation**

No person may be subjected to any form of retaliation for reporting an incident of alleged harassment or testifying, assisting or participating in any proceeding, investigation or hearing relating to such allegation of harassment.

#### **2.3.5 Confidentiality**

UISU-A recognises that confidentiality is important. In sexual harassment disciplinary inquiries, all parties endeavour to ensure confidentiality and only appropriate members of management, the complainant, the accused, their representatives, witnesses and interpreters may be present.

The Gender Equity and Protection Officer and all other interested parties shall respect the confidentiality and privacy of the complainant and the accused to the extent that is reasonably possible. The University may, however, in some instances be unable to maintain confidentiality; for example, if it is compelled by an order of court to disclose information, or if public interests outweigh individual ones.

#### **2.3.6 Penalties**

Any offences listed in this policy must be handled in accordance with the provisions of the University's Disciplinary Code.

Employees may be summarily dismissed if found guilty of an offence, but a lesser penalty may be imposed if the degree of the offence is less serious.

### **2.4 Guiding Principles**

This policy is alive to the fact that abusive behaviour thrives in secrecy and that the University is not immune to this problem, consequently, the guiding principles in this policy are as follows:

- i. The principle of zero tolerance to SGBV shall be upheld
- ii. Transparency, accountability, confidentiality and sensitivity in the implementation of this policy shall be upheld
- iii. The principles of gender equity and equality shall be upheld

- iv. Equal participation of male and female employees and students in the implementation of this policy shall be upheld
- v. Partnership and collaboration between employees and students are essential to the realization of a conducive learning and working environment free from SGBV
- vi. Gender empowerment is central to the achievement of the goals and objectives of this policy

## CHAPTER 3: THE LAW ON SEXUAL HARASSMENT

The legal underpinnings for this policy lie in the following laws: -

### Section 3.1: Laws of Kenya

#### Section 3.1.1: The Constitution of Kenya

The constitution of Kenya guarantees rights and freedoms of every person in Kenya including: freedom from discrimination under Article 27; right to human dignity under Article 28; and right to freedom and security under Article 29.

#### Section 3.1.2: The Sexual Offences Act No.3 of 2006

This Act stipulates various sexual offences and the penalties for persons found guilty under the Act. Sexual offences under the Act include: -

- sexual harassment which attracts imprisonment for a term of not less than three years or a fine of not less than one hundred thousand shillings or both.
- Sexual offenses relating to position of authority and persons in position of trust which attracts Imprisonment for a term not less than 10 years.
- Rape, attempted rape, sexual assault, gang rape, deliberate transmission of HIV or any other life threatening STD.

The Sexual Offences Act (2006) considers the following forms of sexual offences as criminal: Rape (in the case of adults) and Defilement (in the case of children); Attempted rape, sexual assault, incest, attempted defilement, gang rape, indecent act with child or adult, promotion of sexual offences with a child, child trafficking, child sex tourism, child prostitution, child pornography, exploitation of prostitution, *Sexual offences relating to position of authority and persons in position of trust*, Deliberate transmission of HIV or any other life threatening sexually transmitted disease, administering a substance with intent to commit sexual offense and Indecent Act such as unlawful intentional contact between the genital organs of a person, his or her breasts and buttocks with that of another person, exposure or display of any pornographic material to any person against his or her will. In the Criminal Law Amendment Act, which came into effect in July 2003, men and boys were brought into the bracket of persons who require protection against sexual abuse.

Penalties for sexual offences have been made stronger as follows:

- Rape –Imprisonment for a term not less than 10 years but which can be enhanced to imprisonment for life.
- Attempted rape- Imprisonment for a term not less than 5 years but which can be enhanced to imprisonment for life.
- Sexual assault - Imprisonment for a term not less than 10 years but which can be enhanced to imprisonment for life.
- Compelled or induced indecent act - Imprisonment for a term not less than 5 years.
- Defilement:
  - With a child 11 years or less – Imprisonment for life.
  - With a child between 12 and 15 years – Imprisonment for a term not less than 20 years.
  - With a child between age of 16 and 18 years – imprisonment for a term not less than 15 years.
- Gang rape - Imprisonment for a term not less than 15 years but which can be enhanced to imprisonment for life.
- Indecent act with a child - Imprisonment for a term not less than 10 years.
- Indecent act with an adult- Imprisonment for a term not exceeding 5 years or a fine of not less than Kes.100,000 or both.
- ***Sexual harassment*** - Imprisonment for a term of not less than 3 years or a fine not exceeding Kes.50,000 or both.
- ***Sexual offenses relating to position of authority and persons in position of trust*** - Imprisonment for a term not less than 10 years.
- Deliberate transmission of HIV or any other life threatening STD - Imprisonment for a term not less than 15 years but which may be enhanced to imprisonment for life.

(SOA, 2006)

### **Section 3.1.3: The Employment Act of 2007**

The Employment Act defines sexual harassment under section 6(1) with the following provisions.

- 6. (1)** An employee is sexually harassed if the employer of that employee or a representative of that employer or a co-worker?
- a) Directly or indirectly requests that employee for sexual intercourse, sexual contact or any other form of sexual activity that contains an implied or express?
    - i) Promise of preferential treatment in employment;
    - ii) Threat of detrimental treatment in employment; or
    - iii) Threat about the present or future employment status of the employee;
  - b) Uses language whether written or spoken of a sexual nature;
  - c) Uses visual material of a sexual nature; or
  - d) Shows physical behaviour of a sexual nature which directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee and that by its nature has a detrimental effect on that employee's employment, job performance, or job satisfaction.

### **Section 3.2: International Law**

By dint of Article 2(5) and (6) of the Constitution of Kenya, international law forms part of the laws of Kenya. Some of the applicable international instruments for this policy are:

#### **Section 3.2.1: The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)**

This Convention directs State Parties to take appropriate measures to eliminate discrimination against women in all fields, specifically including equality under law, in governance and politics, the workplace, education, healthcare, and in other areas of public and social life.

#### **Section 3.2.2: The International Labour Organization Discrimination (Employment and Occupation) Convention (No.111)**

The ILO prohibits sex discrimination which is a form of sexual harassment.

### **Section 3.2.3: The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa**

The Protocol obligates State Parties to take appropriate measures to eliminate all forms of discrimination against women and guarantee equal opportunity and access in the sphere of education and training; and protection of women from all forms of abuse (including sexual harassment).

### **Section 3.3: American Law**

USIU-Africa has dual accreditation, from the American WASC Senior College and University Commission (WSCUC) and the Kenyan Commission for University Education (CUE). The University therefore applies the provisions of Title IX which is a law applicable in the United States.

Title IX of the Education Amendments of 1972 ("Title IX"), 20 U.S.C. §1681 et seq., is a Federal civil rights law in the USA, that prohibits discrimination on the basis of sex in education programs and activities. Under Title IX, discrimination on the basis of sex, sexual harassment sexual assault (rape), sexual violence (battery) and other sexual misconduct, such as sexual coercion is prohibited.

Under this law, the Title IX Coordinator/Officer, employed by the institution, is mandated to ensure compliance with the rules. His/her efforts are 'critical to the development, implementation, and monitoring of meaningful efforts to comply with Title IX.' Universities are obligated to do the following:

- Designate at least one (1) employee to serve as its Title IX coordinator;
- Inform all its students and employees, of the name, office, address, and telephone number of the employee(s) designated to serve as the Title IX Coordinator;
- Clearly delineate and communicate to all levels of the university the functions and responsibilities of the Title IX coordinator;
- Ensure that the Title IX coordinator is provided with all information and authority or access necessary to enforce compliance requirements.

On the other hand, the Title IX Coordinator has the following responsibilities:

- Coordinates any investigations of complaints received;
- Implements regulations;
- Handles all tasks and responsibilities relating to the implementation and administration of the grievance process.



## CHAPTER 4: REPORTING, INVESTIGATION AND ADJUDICATION

### Section 4.1: Reporting an Incident

- a) All students, staff and faculty members are called upon to be aware of and report acts of violation of this policy without fear of retaliation. A complaint may be submitted by an employee or student. All members of the USIU-Africa community who experience or witness sexual harassment are encouraged to report such incidents.
- b) A complaint may be filed against any person in the USIU-Africa community: faculty, adjunct faculty, staff, students, alumni, consultants, contractors, visitors and guests. In certain cases, the University may pursue an investigation without a formal complaint being lodged.
- c) Reports shall be lodged preferably through the ***Complaint Form***. The Form may be downloaded from the University website or obtained at any of the following offices:
  - i. *The Gender Equity and Protection Office* – for any student, employee, or concerned party.
  - ii. *The Director of Administration or the designee*-for staff and faculty. If the matter involves the Director of Administration, then the matter will be reported to the Vice Chancellor; and
  - iii. *The Deputy Vice Chancellor-Academics and Student Affairs or the designee*-for students. If the matter involves the Deputy Vice Chancellor-Academic and Student Affairs, then the matter will be reported to the Vice Chancellor.
- d) Reports of sexual violence may be reported to the Gender Equity and Protection Officer through the following ways; visiting the Gender Office, calling or messaging 0782 539 361 or by email – [gep@usiu.ac.ke](mailto:gep@usiu.ac.ke) of the USIU-Africa Security Department on 0730 116 266/0730 116 461.
- e) If you need emergency assistance from police or medical personnel, call 999 or 112 from a mobile phone. If you need medical attention, you may visit the USIU-Africa Health Center 0730 116 762 / 0730116760. If you are away from campus, seek attention from the nearest emergency room or medical provider.
- f) The highest level of anonymity and confidentiality will be maintained at all times for people who report cases of sexual harassment.

- g) Everyone is encouraged to immediately report cases of sexual violence, as delayed reporting may hinder proper investigations. The University undertakes to respond promptly to all reported cases.
- h) In case of sexual assault, the University will assist the victim to notify the relevant authorities if they choose to do so.

#### **Section 4.1.2: How Do I File a Sexual Harassment Complaint?**

If you feel that you are the victim of sexual harassment, it's essential that you notify the Gender Equity and Protection Office immediately. The following steps can help ensure that a complaint is properly filed:

- a) Write down the details of the incident including the date, time and location, and the names of possible witnesses. Use these details to fill-in the provided complaint form.
- b) Keep evidence of the harassment, especially if the harassment occurs through text messages and emails;
- c) Report the incident to GEP office, human resource department and your supervisor; and
- d) Ask that the harassment report is documented in your employee or student file.

Although it may be difficult to file a complaint about the sexual harassment that you are experiencing, it's important to do so. Failing to report the sexual harassment can result in the harassment persisting and may also impede your ability to file an effective legal claim in a civil lawsuit where necessary.

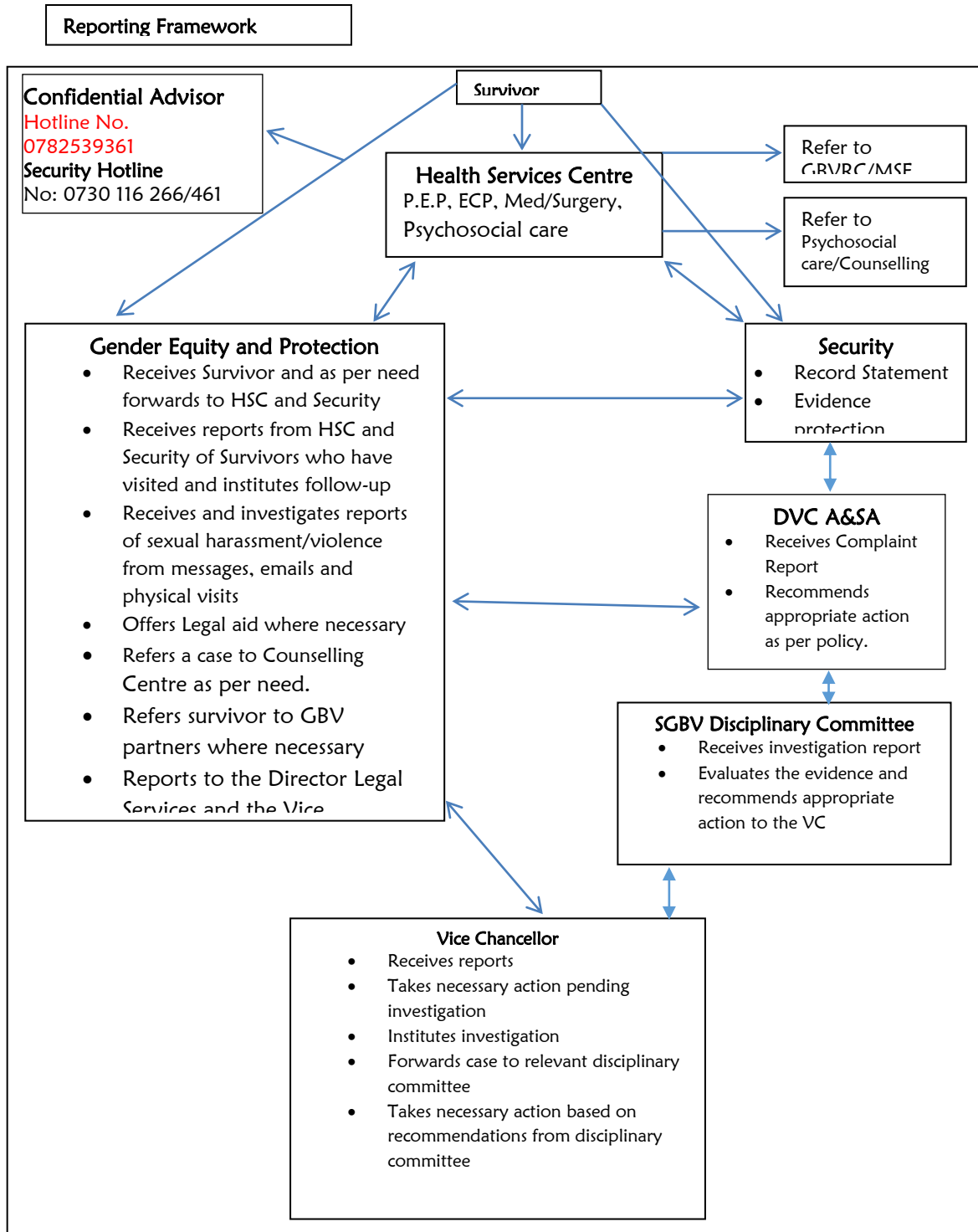
### **Section 4.1.3 Anonymous Complaints**

Anonymous complaints may be made to the Gender Equity and Protection Office, although one is encouraged to disclose their identity to this person who will keep your identity confidential. However, there are significant limits on the University's ability to act on or investigate anonymous complaints. For example, if an anonymous complaint leaves out key facts or information then the University might be unable to pursue investigation without taking the risk that other people may realize a complaint has been raised and discover who has made it. There is also the inherent difficulty in resolving disputes about factual matters when the other person has not had a fair chance to explain themselves.

If your complaint does not involve conduct affecting you, you can make a complaint on the basis that your identity is disclosed to the GEP Officer and any person investigating the complaint, but not disclosed to the person against whom the complaint is made. The University will do what it reasonably can to preserve your anonymity in such a case (but you will appreciate that sometimes this is not always practicable if the source of the complaint is fairly obvious).

On receipt of an anonymous complaint, the GEP Officer will consider appropriate actions and may refer the complaint to the University's Vice Chancellor to consider investigation.

The flow chart below represents the reporting mechanism which should be followed by all the stakeholders within the University.



**PLEASE NOTE:** Victims in cases of sexual violence and assault have a right to directly report to the police. This right cannot be limited and remains the victim's prerogative; reporting to the police may be done alongside the University's internal adjudication procedures.

In the event the alleged perpetrator is arrested by the police; the rights of arrested persons enshrined under Article 49 of the Constitution of Kenya shall take effect as enumerated below:

- a) the right to be informed promptly, in language that the person understands, of—
  - i. the reason for the arrest;
  - ii. the right to remain silent; and
  - iii. the consequences of not remaining silent;
- b) the right to remain silent;
- c) the right to communicate with an advocate, and other persons whose assistance is necessary;
- d) the right not to be compelled to make any confession or admission that could be used in evidence against the person;
- e) the right to be held separately from persons who are serving a sentence;
- f) the right to be brought before a court as soon as reasonably possible, but not later than—
  - i. twenty-four hours after being arrested; or
  - ii. if the twenty-four hours ends outside ordinary court hours, or on a day that is not an ordinary court day, the end of the next court day;
- g) the right, at the first court appearance, to be charged or informed of the reason for the detention continuing, or to be released; and
- h) the right to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.

An arrested person shall not be remanded in custody for an offence if the offence is punishable by a fine only or by imprisonment for not more than six months.

### **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(s) and the alleged perpetrator(s), *to wit:* -

- a) the university shall ensure the victim is protected as outlined in various provisions of this policy;
- b) the university shall ensure the alleged perpetrator is accorded a fair hearing as outlined in this policy, including the right to adduce and challenge evidence;
- c) the alleged perpetrator shall have the right to appeal;
- d) the reporting and adjudication as against the perpetrator shall adhere to the substantive and procedural provisions of the policy; and
- e) the alleged perpetrator shall remain innocent until proven guilty.

#### **Section 4.1.4: Duty of Good Faith**

- a) The university shall not tolerate false claims.
- b) A person who knowingly makes false allegations, or who knowingly provides false information in an investigation or proceeding, shall be subject to disciplinary action, up to and including termination or expulsion.

#### **Section 4.1.5: Protection from Retaliation**

- a) The University shall not in any way retaliate against any individual who makes a report of sexual harassment nor permit any employee or student to do so.
- b) Retaliation is a serious violation of this policy and is unlawful, and should be reported immediately.
- c) Any person found to have retaliated against another individual for reporting sexual harassment shall be subject to disciplinary action, up to and including dismissal or expulsion.

#### **Section 4.1.6: Support Services and Resources**

A victim of sexual harassment may seek support services from the USIU-Africa Counseling Centre **(0730116750)** The support services are strictly confidential. Unless required under the law, confidential information will not be shared by the Counselors.

### **Section 4.1.7: What you should do if you are a Victim of Sexual Violence**

Many victims of sexual violence do not know where to turn for help, or what to do. They may be afraid or ashamed to talk to anyone, or they may try to act as if nothing has happened.

#### **If you have been sexually assaulted:**

Call the Gender Equity and Protection Officer on 0782539361 or call the police at 999 or 112 on your mobile phone, or our Health and Counseling Service at 760,763,759,762,748,746,791,797 or 750. Sexual assault should be considered an emergency. Even if you do not have a single cut or bruise you should report the assault.

#### **What to do when you are raped:**

**Step 1:** Ensure your personal safety by going to a safe place (Hospital, school, police station).

#### **Step 2:**

- Do not take a shower or bath; do not clean your genitalia as this will destroy the evidence.
- Do not throw away your clothes or burn them. Preserve evidence; if you change clothes wrap them in a brown paper bag/newspaper (not a plastic bag).
- Avoid passing urine; if you have to, put the urine in a container. In case of penetration caused to the anus and there is need to pass stool before evidence is collected, also put the stool in a container and carry it to a hospital. This will preserve evidence e.g. presence of spermatozoa.
- Do not brush your teeth or cut your nails.

#### **Step 3:**

- Seek medical assistance at the nearest health facility. The medical examination has several purposes, which include caring for your needs (check for internal and external trauma/injuries and test for sexually transmitted diseases) collecting medical evidence, which will be used in court when an arrest has been made. It is essential that the examination be performed as soon as possible after the assault.

- It is also prudent that you request for a toxicology report to be produced alongside the medical report.
- Get preventive treatment for HIV/AIDS, sexually transmitted infections, pregnancy and treatment for physical injuries within 72 hours.
- Ensure that the Post Rape Care form is filled and take original and duplicate copies with you.

**Step 4:** Report the matter to the security within the university and to the police.

**Step 5:** It is important that you seek psychological support (counseling) to help you deal with the impact of the assault on your life.

**Step 6:** Seek independent legal redress (get legal advice).

## **Section 4.2: Investigation**

- a) When a report on violation of this Policy is made, the Gender Equity and Protection Office will conduct investigations into the matter. Investigations by the University are distinct from any government or other investigation and these investigations do not preclude the University from conducting its independent investigations into any matter.
- b) Involved parties will be notified in writing of the investigations and of their rights in the process.
- c) Members of the University are expected to cooperate in the investigations of any alleged violation of this Policy.
- d) The University may take provisional safety restorative and preventative measures during an investigation as it may deem fit.
- e) Once investigations are concluded then a charge will be brought against a person.
- f) At any point during the investigations, the University may resolve some matters through a non-hearing resolution involving and with agreement of the parties. This will however not apply to cases of sexual violence.



### **Section 4.3: Adjudication**

The adjudication of complaints, application of appropriate sanctions and appeal procedures shall follow the laid down practice outlined in the University's Human Resource Policies and Procedure Manual, particularly for staff and faculty.

The disciplinary process stipulated in the Student Handbook shall be adhered to with regard to complaints related to students. These policies and handbooks shall interact with and complement other existing University rules, and statutory labour regulations.

# **CHAPTER 5: DUTIES AND RESPONSIBILITIES OF THE UNIVERSITY TO PREVENT SEXUAL HARASSMENT**

## **Section 5.1: Role of the Management**

- a) The Management will oversee implementation of this policy, provide ongoing consultation regarding policy requirements and ensure all new staff, faculty and students are oriented on the policy and monitor its effectiveness.
- b) All managers and supervisors will have the responsibility to:
  - i. Model appropriate standards of professional conduct at all times;
  - ii. Promote this policy within their work area and this can be done through discussing and reinforcing the policy during student, staff and faculty meetings;
  - iii. Monitor the working 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 (for example if there is conflict of interest or if the complaint is particularly complex or serious); and
  - vi. Be responsible for removing offensive, explicit or pornographic calendars, literature, posters and other materials from official university communication. This responsibility is however shared by all persons in the University community.

## **Section 5.2: Students, Staff and Faculty**

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

- a) Be aware of inappropriate behavior 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 an inquiry or investigation;
- b) Comply with the University's Sexual and Gender Based Violence policy;
- c) It will be important that all students, staff and faculty attend trainings on this policy and sign the *Declaration Form* acknowledging they have received and understood the policy;
- d) Report early concerns about unwelcome behavior before it becomes a serious complaint;
- e) Offer support to anyone who is being harassed or discriminated and let them know where they can get help and advice (they should not, however approach the perpetrator themselves); and
- f) Maintain complete confidentiality if they provide information during the investigation of a complaint.

## **CHAPTER 6: DISSEMINATION OF THE POLICY**

### **Section 6.1: Dissemination Obligation**

- a) All members of the University shall obtain this Policy from the University website and on EDMS – the electronic document management system.  
The declaration form shall be signed and returned to the appropriate office within one week of obtaining the Policy.

### **Section 6.2: Creating Awareness**

To minimize the risk of sexual and gender based violence the university shall endeavor to use all means to create awareness to its fraternity. The Gender Equity and Protection Officer will endeavor to sensitize all employees and students including all management organs in the university. This will include holding an annual awareness week. However, the chairpersons of the following offices shall aim to continuously create awareness at least once in a year.

- a) The Student Affairs Council; b) The Faculty Council; c) The Staff Council; d) The Management Board.

### **Section 6.3: Education and Training**

The following are forms of education and training are to be reinforced by the university:

- a) Faculty members to integrate this policy in course content where applicable.
- b) Offices of the Deputy Vice Chancellor Academic and Student Affairs, and Director of Administration to organize training and education programs.
- c) Training of staff in order to enhance effective policy implementation. The training shall be done biannually to assist the trainees deal with issues on sexual harassment within the university.
- d) All new students and employees should go through orientation about this policy.

## **CHAPTER 7: MONITORING AND EVALUATION**

United States International University- Africa recognizes the importance of monitoring and evaluating this policy. This will be done through anonymous surveys to establish the effectiveness of this policy. Issues of relevance, effectiveness, ethical considerations, efficiency and reliability will be coherent in the evaluation process. This will be aimed at tracking significant positive changes about sexual harassment.

Divisional Heads will be called upon to give reports on compliance with this policy for their respective areas. The reports will be analyzed and submitted to the Vice Chancellor for evaluation and direction as may be necessary to ensure effectiveness and efficiency.

## **CHAPTER 8: REVIEW OF THE POLICY**

- a) A comprehensive review of this policy shall be done after every 3 years. Part review of this Policy could however be undertaken if the same is necessitated by changes in law.
- b) Any amendments to this Policy shall be consistent with the aims and objectives of USIU-Africa.
- c) The University Council shall be the final approving body of any amendments to this Policy.

# SEXUAL AND GENDER BASED VIOLENCE POLICY

## DECLARATION FORM

I, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, a (tick appropriately)  
Surname Middle Name First Name

Student  Faculty  Staff  Other (specify) \_\_\_\_\_

Of United States International University-Africa, and of USIU-Africa ID No. \_\_\_\_\_,

Do hereby declare the following:

1. I confirm that I have received a copy of the United States International University-Africa Sexual and Gender Based Violence (hereinafter “the policy”) and received sufficient opportunity to peruse it;
2. I affirm that I have read and understood the provisions of the Policy;
3. I undertake to abide by the letter and spirit of the Policy;
4. I understand that USIU-Africa may take disciplinary action for any act or omission on my part that contravenes the Policy;
5. I affirm that I have an obligation to ensure that USIU-Africa is a safe place to learn and work in;
6. I append my name and signature onto this form, of my own free will and agree to be bound by it.

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**FOR OFFICIAL USE ONLY:**

**For Students:** Academic & Student Affairs Division –

Entry by: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**For Faculty/Staff:** Administration Division –

Entry by: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ Personnel File No: \_\_\_\_\_

**Others:** Administration Division –

Entry by: \_\_\_\_\_ Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

## SEXUAL AND GENDER BASED VIOLENCE POLICY COMPLAINT FORM

**1. Please Note:**

- (a) THAT this form can be filled by anyone who wishes to report a case of sexual harassment/discrimination/violence faced by themselves or another member of the University community
- (b) THAT by filling this form you commit to assist the University in the investigation and adjudication of the complaint
- (c) THAT the investigation process will involve interviewing the complainant and individual(s) complained against.
- (d) THAT complainants are encouraged to peruse the Policy to better understand their rights and obligations, and the procedures of reporting/investigating/adjudicating complaints.

**2. I / We (name/s),**

- (a) .....
- (b) .....
- (c) .....

(tick appropriately)

Student(s)                       Faculty                       Staff                       Other (specify) \_\_\_\_\_  
of USIU-Africa ID No. \_\_\_\_\_,

**3. Wish to make a complaint against the following person(s):**

- (a) .....
- (b) .....
- (c) .....

Please include the title and relationship (e.g. lecturer, supervisor)

**4. Please describe the nature of your complaint:**

.....  
.....

**5. Please explain what happened:** (include as much detail as possible e.g. dates, locations etc.)  
Attach separate sheet if space is not sufficient.

.....  
.....  
.....  
.....  
.....  
.....  
.....  
.....

**6. Witnesses/person(s) who may be interviewed/person(s) with knowledge of matter being complained of:** (where possible explain why such person(s) should be contacted)

- (a) .....
- (b) .....
- (c) .....

.....  
.....

**7. Have you filed this complaint elsewhere?** (Either internally or externally – the Police/OB No.)

.....  
.....

**8. Briefly outline any additional information about the complaint which the Gender Equity and Protection Officer needs to note:**

.....  
.....

**9. I certify that:**

- (a) The information provided is true and correct;
- (b) I shall cooperate fully in the investigation of the complaint;
- (c) I have the right to expect highest level of confidentiality as relates to this complaint; and



(d) The university may take disciplinary action against me should the complaint be proven to be frivolous or malicious.

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**FOR OFFICIAL USE ONLY:**

**For Students:** Deputy Vice Chancellor Academic & Student Affairs

Date of lodging complaint: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Complaint lodged by: \_\_\_\_\_

**For Faculty/Staff:** Director of Administration

Date of lodging complaint: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Complaint lodged by: \_\_\_\_\_

**Others:** Director of Administration

Date of lodging complaint: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

Complaint lodged by: \_\_\_\_\_

*Note: While complainants are encouraged to use the complaint form, complaints made outside this format or reported to offices other than those stipulated in the policy, will be taken seriously and duly investigated.*