

CONGRESS OF SOUTH AFRICAN TRADE UNIONS



COSATU POLICY AND PROCEDURE FOR THE HANDLING, PREVENTION AND ELIMINATION OF SEXUAL HARASSMENT

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1. Background

- 1.1. COSATU committed itself to “fight against sexual harassment in whatever form it occurs” at its Inaugural Congress in December 1985. The COSATU Women’s Conference in 1989 noted that “women workers are sexually harassed within the union, at work and in the community” and resolved to “encourage firmness and self-discipline within the unions, at work and in the community” in order to “restore women’s dignity” and “protect them from sexual harassment.”
- 1.2. The COSATU Congress in 1989 confronted the issue of sexual harassment in greater depth, including the thorny issue of sexual politics in unions (which refers to sexual relationships within unions fraught with unequal and oppressive gender power relations). This laid the basis for the development of a COSATU Code of Conduct on Sexual Harassment, which was further discussed in the 1994 Congress and finally adopted in 1995.
- 1.3. COSATU also recognised that sexual harassment must be codified in legislation as an offence, and thus COSATU was the initiator and one of the main drafters of the NEDLAC Code of Good Practice on the handling of cases of Sexual Harassment in the Workplace, which was adopted in 1998 as an addendum to the Labour Relations Act, and later amended and attached to the Employment Equity Act of 2005.
- 1.4. The report of the September Commission in 1997 on the Future of Unions acknowledged that Sexual Harassment remains a hidden problem in COSATU. It further acknowledged the adoption of the COSATU Code of Conduct on Sexual Harassment (1995) had created conditions to make the issue an organisational one, rather than a private or individual matter. The issue of sexual harassment was further discussed in subsequent COSATU Congresses and Gender Conferences and included in its Gender Policy of 2000 (amended in 2015).
- 1.5. On the basis of COSATU’s resolutions, campaigns and experience in the struggle against sexual harassment, this policy is informed by a three-fold approach to sexual harassment, which includes:
 - 1.5.1. The responsibility to ensure the effective **handling** of cases of sexual harassment through decisive action and clear procedures,
 - 1.5.2. Measures to **prevent** sexual harassment (including awareness raising and clear policies), and
 - 1.5.3. The commitment to work towards the **elimination** of sexual harassment in COSATU, Affiliates, workplace and in society.
- 1.6. This Policy serves to consolidate and update previous policies and resolutions of COSATU and shall, in the event of any dispute arising, take precedence.

2. South African Legislative framework

2.1. This policy is further supported by the South African legislative framework which outlaws sexual harassment, through the following:

- The Constitution of South Africa, 1996
- The Employment Equity Act, No 55 of 1998
- The Amended Code of Good Practice on Handling of Sexual Harassment Cases in the Workplace addendum to EEA, 2005
- The Protection from Harassment Act, Act No 17 of 2011
- Criminal Law (Sexual Offences and Related Matters) Amendment Act, No 32 of 2007

2.2. This policy is further supported by international policies and legislation such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the ILO Convention 111 on non-discrimination, amongst others.

2.3. This policy should be read in conjunction with the COSATU Constitution.

3. Purpose

The purpose of this Policy and Procedure is to:

- 3.1. Promote a safe and secure work environment in which the dignity of all persons is respected and which is free from sexual harassment;
- 3.2. Ensure that no COSATU leader, staff member or member of an Affiliate implicitly or explicitly demands sexual favours in return for representation, employment, retention of employment, promotion or to secure a wage increase, amongst others;
- 3.3. Provide clear procedures for dealing with issues and complaints of sexual harassment which may arise and to prevent its recurrence;
- 3.4. Ensure that sexual harassment cases are dealt with in a sensitive, honest, speedy and confidential manner;
- 3.5. Meet the requirements of the Constitution of South Africa, the Employment Equity Act, Labour Relations Act and the 2005 Amended Code of Good Practice on the Handling of Sexual Harassment Cases; and
- 3.6. Comply with the letter and spirit of the COSATU Constitution, COSATU Resolutions and COSATU Gender Policy.

4. Scope of this policy and procedure

- 4.1. This policy applies to all members, shop stewards, office bearers, appointed officials, and staff of COSATU and its Affiliates.
- 4.2. The Federation encourages Affiliates to develop and adopt their own sexual harassment policies suited to their particular conditions, guided by this policy. In cases where Affiliates have not yet adopted a policy, the COSATU policy and procedure will apply and shall be used to deal with cases of sexual harassment where they arise, and prevent their future occurrence.
- 4.3. This policy also covers third parties e.g. job applicants, vendors, suppliers and service providers, and any other organisations and/or persons having dealings with COSATU and its Affiliates. This is notwithstanding the fact that where the third party is the perpetrator, COSATU may not have disciplinary authority. However, COSATU can require that service providers commit contractually that their representatives will not engage in any form of sexual harassment.

5. What is sexual harassment?

5.1. Definition of sexual harassment

- 5.1.1. Any conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, demeaning, compromising, embarrassing, threatening, humiliating and/or offensive to the recipient.
- 5.1.2. Where a person's rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person's job or position in the union.
- 5.1.3. Conduct that creates an intimidating, hostile or humiliating working and/or organisational environment for the recipient.
- 5.1.4. This can include unwelcome **physical, verbal** or **non-verbal** harassment.
- 5.1.5. Sexual harassment is most commonly perpetrated by men towards women as a result of sexism and the unequal power relations that exist between them, however it is also possible that men may experience sexual harassment.

5.2. Same-sex harassment

- 5.2.1. Sexual Harassment can occur between people of the same sex, and is also covered by this policy and procedure.

5.3. Forms of harassment

There are various forms of sexual harassment that range from subtle attention to the most extreme forms of violence, like rape.

Examples of sexual harassment may include the following, but are not limited to the listed examples:

5.3.1. Physical form

Touching, and any other bodily contact, such as patting, pinching, fondling, grabbing a person around the waist, interfering with a person's ability to move, molestation, assault, attempted rape or rape.

5.3.2. Verbal form

Sexual advances, repeated requests for a date that are turned down, unwanted flirting, telephone calls, text messages, emails or other forms of written and/or electronic transmission with sexual overtones, sex related jokes or insults, inappropriate enquiries about a person's life, whistling, and comments about a person's clothing and/or body.

5.3.3. Non-verbal form

Leering/staring, winking, public display or posting/transmitting of emails or pictures of an offensive, sexually suggestive or derogatory nature, playing sexually suggestive music and indecent exposure.

5.3.4. Quid pro quo harassment

Transactional sex (the demand for sexual favours) in return for, amongst others, a job, a promotion, favourable working conditions, retention of employment, improved benefits, or to secure a salary increase. This is also referred to as ***quid pro quo sexual harassment***. This could also apply to the demand for sexual favours in return for representation by the union.

5.3.5. Sexual Favouritism

Sexual favouritism occurs when a person who is in a position of power rewards only those who submit to his/her sexual advances. Other employees who do not submit to sexual advances are unfairly treated in the union or at work, for example, being denied promotions, salary increases, or victimised through unfair disciplinary measures being instituted against them.

5.3.6. Hostile work and organisational environment

- 5.3.6.1. Where there is unfair treatment of a person who refuses sexual advances, or a current or former sexual partner, this creates a hostile work and organisational environment and constitutes sexual harassment.
- 5.3.6.2. Similarly, unfair treatment of a current or former sexual partner, or a person refusing sexual advances, which may be interpreted as creating the conditions for that person to resign from the job or the union, also constitutes sexual harassment.
- 5.3.6.3. Staff or union members can experience indirect sexual harassment as a consequence of witnessing the sexual harassment of others. This has the effect of creating an intimidating and hostile work and organisational environment, since they may fear facing the same treatment.
- 5.3.6.4. Harassment and/or ridicule of lesbians, gays, bisexuals, transgendered and intersex individuals on the basis of their sexual orientation and/or identity also contributes towards a hostile work and organisational environment and is considered an offence under this policy.

5.4. Conditions under which sexual attention becomes sexual harassment

- 5.4.1. Where the behaviour is persisted in, although a single incident of harassment can constitute sexual harassment; and/or
- 5.4.2. Where the recipient has made it clear that the behaviour is unwelcome and/or considered offensive. There are various ways in which this can be communicated, including stating that the behaviour is unwelcome, walking away and/or not responding; and/or
- 5.4.3. Where the perpetrator should have reasonably known that the behaviour is regarded as unacceptable.
- 5.4.4. The existence of a consensual sexual relationship does not imply that sexual harassment or sexual assault is not possible, since consent is a matter for continual negotiation and can be withdrawn at any time.

5.5. A note on Consensual Sexual Relationships

- 5.5.1. COSATU discourages union leaders and officials from becoming sexually involved with subordinates (including employees and union members) given the unequal power relationships that continue to exist.
- 5.5.2. Members of COSATU and Affiliates who decide to engage in consensual relationships must familiarise themselves with this policy and ensure that both parties are indeed engaged in the relationship consensually.

5.5.3. Both parties have the responsibility to ascertain consent, particularly those in positions of power. They must ensure that consent is explicitly and clearly communicated before proceeding with any form of sexual relationship. However, it must be recognised that a subordinate may feel pressured to consent because of fear of retaliation, and this does not constitute consent.

5.5.3.1. Consent must be clear and unambiguous for each participant at every stage of a sexual encounter. The absence of “no” should not be understood to mean there is consent.

5.5.3.2. A prior relationship does not indicate consent to future activity.

5.5.4. Both parties to be mindful that any sexual relationship should not impact on the organisation or working relationships.

6. Problem Statement

6.1. COSATU recognises that sexual harassment, sexual aggression and rape are forms of gender based violence, which constitute discrimination and abuse of women.

6.2. Gender-based violence is rife all over the world, as a result of patriarchy and the oppression of women. Violence against women is endemic in South Africa, partly as a result of the legacy of the brutality of slavery, colonialism and Apartheid, which also institutionalised gender based violence. It is further compounded by the extreme poverty and vulnerability experienced under neo-liberal capitalism.

6.3. The Federation further acknowledges that sexual harassment is an abuse of power, privilege, and control that makes the complainant feel intimidated and degraded. It is a barrier to equal rights and an unfair labour practice (in an employment relationship). The employer (in this case COSATU and its Affiliates) has a responsibility to ensure a workplace free from sexual harassment.

6.4. COSATU recognises that sexual harassment is, above all, a manifestation of power relations. Women are more likely to be subjected to sexual harassment because they are in more vulnerable and insecure positions in the economy and in society. This is mirrored in the trade union movement as a workplace and organisation. This means that COSATU and its members need to actively address unequal gender power relations and the manifestation of patriarchy within the Federation, where leadership remains dominated by men. This further perpetuates a climate of silencing and oppression of women. It is acknowledged that men may also experience sexual harassment.

6.5. COSATU and members realise that the threat of gender-based violence serves to reinforce unequal power relations, and contributes towards the fear of confronting and reporting sexual harassment and abuse.

- 6.6. Women who experience sexual violence and sexual harassment usually blame themselves (as does the society, for instance questioning their clothing, lifestyle and conduct that is assumed to have caused this). It is patriarchy and sexism which are to blame for sexualising, objectifying and demeaning women and then blaming them for it.
- 6.7. Sexual harassment is often invisible because the victims fear further humiliation and retaliation by those in power (who are often the perpetrators) and are therefore silenced. There is also a fear of lack of support (or victimisation) from comrades and/ or colleagues amongst victims of sexual harassment, because the perpetrators are often powerful in the workplace or organisation.
- 6.8. Victims of sexual harassment are also often intimidated from speaking up because they tend to be in more vulnerable socio-economic positions, and fear reprisals.
- 6.9. COSATU is concerned that in cases where victims do manage to speak out, they often succumb to emotional and psychological stresses resulting from a lack of support or pressure to withdraw, and end up abandoning complaints and/or cases and thus allowing the perpetrators to avoid being held accountable for their abusive behaviour.

7. Policy Statement

- 7.1. We, the leaders, Affiliate members and staff of the Congress of South African Trade Unions (COSATU) commit to taking decisive action to eliminate sexual harassment in all its forms within the Federation, society, and more particularly, in the workplace.
- 7.2. COSATU is completely opposed to all forms of oppression and exploitation whatever the basis, and expressly committed to the struggle against the oppression of women. COSATU will continue to fight for the complete transformation of society to eradicate patriarchy and gender discrimination, racial discrimination, and class exploitation.
- 7.3. COSATU commits itself to re-building and strengthening democratic, worker controlled structures where the voices of all workers – women and men, are heard; believing that this will help to create conditions for the elimination of women's oppression and sexual harassment.
- 7.4. COSATU commits itself to the implementation of this policy and procedure in order to create a workplace and organisational environment that is free from sexual harassment, where worker leaders, elected officials and staff respect one another's integrity and dignity and their right to equity in the workplace and organisation.
- 7.5. COSATU and its Affiliates have the obligation to take firm action against any form of sexual harassment, and to take preventative measures, including programmes to

sensitise and educate members on sexual harassment and the creation of a climate which encourages victims to speak out against sexual harassment.

- 7.6. COSATU and its members shall ensure that no union official, worker leader or union member shall victimise or jeopardise the job security of any person raising a complaint of sexual harassment.
- 7.7. The Federation and its structures must necessarily work to remove the causes of sexual harassment, in addition to taking resolute steps to deal with cases of sexual harassment. This includes addressing unequal gender power relations within the Federation, in particular, male domination in leadership structures and positions, and a largely gender-blind implementation of policies.
- 7.8. COSATU further commits itself to recognising and valuing the contribution of women staff within the Federation, who remain in predominately administrative occupations.

8. Guiding Principles of the COSATU Procedure for Cases of Sexual Harassment

- 8.1. **Confidentiality** is key in the handling of sexual harassment cases. Any individual charged with the responsibility of handling a sexual harassment case is bound by this principle of confidentiality and non-disclosure in relation to any detail (other than to communicate the finding and the process of a hearing and not the details/content of the case and the witness statements). The two parties at the centre of a sexual harassment case are also bound by this principle. The Federation is not entitled to reveal the identity of the complainant without their express permission.
- 8.2. **Sensitivity** to the complainant in a case of sexual harassment is critical. This means that the committee members must ensure that s/he is supported through the hearing process such as ensuring that the complainant is not unduly exposed to the perpetrator or exposed to secondary harassment and/or pressure to withdraw the allegations by the alleged perpetrator or his/ her allies.
- 8.3. The **employment security** of the complainant shall be guaranteed.
- 8.4. **Protection against victimisation** of the complainant shall be assured. COSATU will permit no retaliation of any form against anyone who brings a complaint of sexual harassment or who speaks as a witness in the investigation and/or hearing of a complaint of sexual harassment.
- 8.5. **Conflict of interest.** Individuals who are handling a Sexual Harassment Case must recuse themselves if they believe that they have a conflict of interest which may be unfair to either the complainant or the alleged perpetrator of sexual harassment.

8.6. Fairness is key to the implementation of the COSATU sexual harassment policy and procedure. The complainant shall be treated fairly and without prejudice, in spite of the authority that the alleged perpetrator may wield in the union or in the workplace. The alleged perpetrator will be treated as innocent until found otherwise.

9. Sexual Harassment Prevention Commissions (SHPC)

9.1. Composition of the Sexual Harassment Prevention Commissions

9.1.1. COSATU and its Affiliates shall appoint standing Sexual Harassment Prevention Commissions at national, provincial and local levels. The commission should comprise of 4-6 members and there should be a gender balance (with at least 50% women).

9.1.2. The SHPC members shall include the following:

- 9.1.2.1. COSATU Gender Co-ordinator
- 9.1.2.2. COSATU Office bearers
- 9.1.2.3. Independent experts
- 9.1.2.4. COSATU staff member/s

9.1.3. Commissioners should be recommended by the COSATU National Gender Committee and endorsed by the COSATU Central Executive Committee. COSATU staff would also be entitled to recommend names through the staff representative structure. The proposed Commissioners should undergo a screening process through an independent institution such as the Commission for Gender Equality.

9.1.4. The commission members shall be trained as Sexual Harassment officers. They should be made known to members of the union and Federation.

9.2. Roles and Responsibilities of the Sexual Harassment Prevention Commissions

9.2.1. Be available, accessible and known to COSATU staff and Affiliate members as sources of support in cases of sexual harassment.

9.2.2. Be guided by principles of confidentiality, sensitivity, fairness, protection against victimisation, and act against any conflict of interest in dealing with sexual harassment (as elaborated in Section 8).

9.2.3. Provide support and advice directly (where they are able to do so), and refer for counselling and legal advice (where needed).

9.2.4. Support and assist in the resolution of cases of sexual harassment through the informal procedure (where appropriate).

- 9.2.5. Support the complainant to report cases requiring a formal disciplinary procedure to the relevant office bearers and the sexual harassment disciplinary committee (as described in Section 10).
- 9.2.6. Make sure that all allegations of sexual harassment are promptly investigated and that the formal disciplinary process is adhered to.
- 9.2.7. Raise awareness on sexual harassment through education throughout the Federation for both members and staff (working in collaboration with the COSATU Gender, Campaigns and Education Departments/committees).
- 9.2.8. Make representation to the Federation constitutional structures where the policy and procedure are not properly followed.
- 9.2.9. Report regularly to the relevant COSATU Office bearers, constitutional structure and gender committee on progress in the handling, prevention and elimination of sexual harassment.
- 9.2.10. Commission research on sexual harassment where needed (in consultation with the gender structure).

10. Sexual Harassment Disciplinary Committees

10.1. Composition of the Sexual Harassment Prevention Commissions

- 10.1.1. COSATU and its Affiliates shall appoint standing Sexual Harassment Disciplinary Committees at national, provincial and local levels (where possible). At local level the local office bearers may constitute gender-balanced ad-hoc committees.
- 10.1.2. The Sexual Harassment Disciplinary Committee members at all levels shall be trained to handle cases of sexual harassment.
- 10.1.3. The committees should comprise of 4-6 members and there should be a gender balance (with at least 50% women).
- 10.1.4. The members of the Sexual Harassment Disciplinary Committee shall include:
 - 10.1.4.1. An independent chairperson (from outside of the Federation)
 - 10.1.4.2. COSATU Office bearers (including office bearers designated to Gender)
 - 10.1.4.3. COSATU Gender committee chairperson
 - 10.1.4.4. Affiliate office bearers

10.2. Roles and Responsibilities of the Sexual Harassment Disciplinary Committees (SHDC)

- 10.2.1. Ensure that an independent investigation has been conducted for presentation at the hearing.

- 10.2.2. Conduct a hearing in line with the COSATU disciplinary code.
- 10.2.3. Ensure that the complainant is not subjected to secondary harassment, by communicating with the alleged perpetrator (in writing) to ensure that s/he does not interfere with the complainant in any way, including using other people to intimidate the complainant. Inform the alleged perpetrator that third party harassment of the complainant would be attributed to him/her.
- 10.2.4. Arrive at a finding and present this finding in writing to the complainant and alleged perpetrator, and the relevant constitutional structure.
- 10.2.5. Ensure that the SHDC and the Federation structures adhere to the letter and spirit of this Policy and Procedure.

11. Duties of COSATU Office Bearers and Heads of Departments

National, Provincial and Local Office Bearers and Heads of Departments are expected to familiarise themselves with this policy and are required to:

- 11.1. Create and maintain a safe environment that will not support or tolerate any form of sexual harassment;
- 11.2. Ensure that Federation staff members and Affiliates members are familiar with the policy and procedure;
- 11.3. Distribute the policy to every new staff member or Affiliate members and shop stewards as part of their shop steward kit or appointment document in a case of a new employee;
- 11.4. Take appropriate action in relation to complaints regarding sexual harassment in the trade union environment and workplace for which they are responsible;
- 11.5. Provide resources to put in place preventative measures to ensure that Federation staff members and Affiliate members are familiar with the Sexual Harassment Policy, through intensive training and awareness-raising through various means e.g. visual and audio-visual material;
- 11.6. Ensure the establishment of Sexual Harassment Prevention Commissions with specially trained Sexual Harassment Commissioners, and Sexual Harassment Disciplinary Committees to deal with cases of sexual harassment at all levels (as outlined in the procedure above).
- 11.7. Align the COSATU disciplinary procedure with this procedure within four months of the adoption of this procedure.

12. Procedures for the handling of cases of sexual harassment

12.1. When a person has been sexually harassed

- 12.1.1. Sexual harassment is a sensitive issue and a complainant may feel unable to approach the perpetrator, lodge a formal grievance straight away, or turn to colleagues for support.
- 12.1.2. COSATU will designate Sexual Harassment Prevention Commissioners whom complainants may approach for support and practical advice on a confidential basis (as described in Section 9).
- 12.1.3. The Commissioners must have the appropriate skills, training and experience to fulfil their responsibilities (as outlined in Section 9.2).
- 12.1.4. The Commissioners will assist the complainant by providing and/or arranging counselling; they will support the complainant to approach the Federation to report the case (as outlined below); and also provide advice and support in following either the informal or formal procedure (outlined below).

12.2. Options for handling sexual harassment cases

- 12.2.1. COSATU staff and members should be advised that there are two options for resolving a problem relating to sexual harassment.
- 12.2.2. Either an attempt can be made to resolve the problem in an informal manner or a formal procedure can be embarked upon.
- 12.2.3. The complainant should not be placed under duress to accept one or other option (noting 12.3.5 below).

12.3. Informal procedure

- 12.3.1. It may be sufficient for the complainant to have an opportunity to explain to the person engaging in the unwanted behaviour that the behaviour in question is not welcome, that it offends them or makes them uncomfortable, and that it interferes with their work.
- 12.3.2. The complainant could do any of the following, or a combination:
 - 12.3.2.1. Approach the alleged perpetrator.
 - 12.3.2.2. Write a letter to the alleged perpetrator.
 - 12.3.2.3. Ask a Sexual Harassment Prevention Commissioner or an Office Bearer or staff representative or any other person to mediate or approach the alleged perpetrator on the complainant's behalf.
- 12.3.3. The complainant and the alleged perpetrator shall be referred for counselling should they so wish.
- 12.3.4. Should the informal approach described in 12.3.2 above not have provided a satisfactory outcome; if the case is severe; or if the conduct continues, it may be more appropriate to embark upon a formal procedure.

12.3.5. The informal approach should not be used for severe cases that involve sexual assault, quid pro quo or persistent harassment.

12.3.6. Should the informal procedure described above be successful in resolving the matter, no disciplinary action needs to be taken against the alleged perpetrator.

12.4. Formal disciplinary procedure

12.4.1. Reporting a formal case of sexual harassment

12.4.1.1. When a COSATU staff member or union member or any other person wishes to lodge a grievance with the Federation about sexual harassment, the complainant or proxy (representative)¹ must report the grievance to one of the following:

- 12.4.1.1.1. General Secretary, Deputy General Secretary or President when the case occurs at head office or national level;
- 12.4.1.1.2. Provincial Secretary or Chairperson at provincial level;
- 12.4.1.1.3. And/or the Chairperson of the Sexual Harassment Disciplinary Committee (SHDC) referred to in Section 10.
- 12.4.1.1.4. At local level, the grievance may be lodged with the local gender chairperson, local chairperson or any Local Executive Committee member.

12.4.1.2. The above-mentioned would then be required to initiate the processes outlined below and to deal with the complaint quickly and confidentially.

12.4.1.3. In the event that the relevant person with whom the complaint must be lodged is implicated in the case, or the complainant is uncomfortable with reporting to him/her, then the complaint may be lodged with any member of the Sexual Harassment Disciplinary Committee.

12.4.1.4. COSATU staff and members have an obligation to report cases of sexual harassment to the organisation.

12.4.2. The complainant shall submit her/ his complaint in writing detailing the incidents that constitute sexual harassment.

12.4.3. Independent investigation

12.4.3.1. The relevant authority to whom the case has been reported (mentioned under Section 12.4.1.1) should request a third party trained in the handling of cases of sexual harassment to conduct an investigation for presentation at the hearing.

¹ Taking into account the sensitive nature of sexual harassment and power relations; the complainant may also use the option to have the matter reported to the relevant person through the a sexual harassment officer, gender co-ordinator, fellow staff member, union member or shop steward at the request of the complainant.

12.4.3.2. The alleged perpetrator may be suspended during the course of the handling of the case if it is of a severe nature (as contemplated in clause 12.5.2); and/or if the alleged perpetrator may jeopardise the case by interfering, intimidating, manipulating or place the wellbeing or safety of the complainant and/or witnesses at risk.

12.4.3.3. The complainant may on his/her own request and the discretion of the independent investigator be granted special leave during the course of the handling of the case. Such special leave may not in any way be portrayed as suspension.

12.4.4. Disciplinary Hearing

12.4.4.1. The SHDC shall constitute a hearing on the matter within 10 days.

12.4.4.2. The SHDC Chairperson shall provide the parties concerned with notice of the hearing in writing not more than 3 days after the misconduct was reported and not less than 7 days in advance of the hearing. Such notice shall state the substance of the charge; and the date, time and venue for the hearing.

12.4.4.3. The notice shall advise the parties of the right to representation at the hearing by a fellow employee, a union representative or by any other person of their choosing.

12.4.4.4. The notice shall be issued directly to the person being charged. In the event where such person has not reported for work (or is on any kind of leave) the notice shall be sent by registered mail to the last known address of that person or by hand with acknowledgement of receipt.

12.4.4.5. The report of the independent investigator will be shared with both parties at least 48 hours before the date of commencement of the hearing. This is only to inform the complainant and alleged perpetrator, since it will be subjected to a rigorous inquiry where both parties can be heard through a fair process.

12.4.4.6. The alleged perpetrator and complainant will have the right to call and question witnesses.

12.4.4.7. The outcome of the disciplinary inquiry will be in writing and shall be communicated to the affected parties within 5 (five) working days, unless otherwise agreed to.

12.4.4.8. The SHDC Committee shall make recommendations where it applies for remedial action, and/or dismissal of staff /removal from office of elected worker leaders /expulsion of members to the PEC or CEC as the case may be and these structures can ratify recommendations before it can be enforced. Suspension may however be applied until ratification.

12.4.4.9. Disciplinary measures as per Section 12.5 shall be enforced by the SHDC and copies of the disciplinary measures shall be placed in the staff

record file and for elected worker leaders and members in the said file and shall be kept for five years.

12.4.5. Upon failure by the Federation to hold a disciplinary inquiry, the complainant has the right to apply to the Commission for Conciliation, Mediation and Arbitration for redress. This is notwithstanding the fact that an employee has the right to approach the CCMA irrespective of whether the Federation takes action or not, since it is the responsibility of the employer to provide a safe working environment.

12.4.6. Where the perpetrator is found not guilty, there shall be no negative consequences for an employee who has filed a grievance in good faith.

12.4.7. Should a complaint be clearly proven to be vexatious and malicious, the Federation may decide to pursue disciplinary action against the complainant.

12.5. Disciplinary Measures

12.5.1. Disciplinary measures against the perpetrator could include the following, but shall not be limited to:

12.5.1.1. Counselling and Education

12.5.1.2. Community Service

12.5.1.3. Verbal warning

12.5.1.4. Recorded Verbal Warning

12.5.1.5. Written Warning

12.5.1.6. Final written warning

12.5.1.7. Dismissal/removal from office

12.5.2. For any form of sexual assault such as rape, attempted rape, molestation or quid pro quo harassment the following shall apply:

12.5.2.1. Summary dismissal for union officials;

12.5.2.2. Removal from office for elected worker leaders; and

12.5.2.3. Expulsion from union activities for elected worker leaders and members.

12.5.3. Repeated harassment after warnings constitutes a dismissible offence.

12.6. Criminal and Civil charges

12.6.1. The right of the complainant to institute criminal and/or civil action against the alleged perpetrator is in no way limited by this policy.

12.7. Victimisation of the complainant

12.7.1. It is a disciplinary offence to victimise, intimidate, attempt to intimidate, retaliate, or in any other manner prejudice an employee who in good faith

lodges a grievance of sexual harassment. Any attempt to pressurise or manipulate the complainant to withdraw or change their complaint will also be considered a disciplinary offence.

12.8. Appeals

12.8.1. The CEC must establish a Standing Appeals Committee at National level to deal with appeals from all levels. The Committee should be comprised of affiliates with an independent chairperson, with between 4-6 members.

12.8.2. Should any of the parties be unhappy with the finding and/or sanction of the

NOTE FOR CONSIDERATION: The COSATU Constitution provides for the right to appeal to Congress for elected leaders. However, we believe that this would delay the process to such an extent that justice would effectively be denied. Therefore we propose that the COSATU constitution should be amended.

SHDC they may appeal to the Standing Appeals Committee.

12.9. Dispute Resolution

12.9.1. Where the complainant or alleged perpetrator is an employee and is not satisfied with the outcome of the appeal, the complainant or alleged perpetrator shall refer the matter to the Commission for Conciliation, Mediation and Arbitration (CCMA) for arbitration. Should the dispute not be resolved through arbitration, either party has the right to refer the matter to the Labour Court.

12.9.2. In the case of worker leaders (who are not in an employment relationship with COSATU) they would have the unfettered right to approach a court of law.

12.10. Sick Leave

12.10.1. In cases where the complainant has suffered emotional or physical stress, (and is an employee of the Federation) the Federation shall grant additional paid sick leave. In the case where the complainant is a COSATU member then the Affiliate shall negotiate with the relevant employer additional paid leave at the request of COSATU.

13. Sexual Harassment in the workplace and in society

13.1. COSATU and COSATU Affiliates will ensure that no-one is subjected to sexual harassment in the workplace and in society. Where sexual harassment cases are

identified outside of the jurisdiction of the Federation, COSATU members, officials and shop stewards will address these cases in line with the legislation of the RSA. They will also strive for their workplaces and any other societal institutions in which they participate to have anti-sexual harassment policies and procedures.

14. Monitoring/ Analysis

- 14.1. The National Gender Committee together with the COSATU National Office Bearers and the Sexual Harassment Prevention Commissioners shall develop approaches to evaluation and monitoring, including regular reports on the extent of reported cases and how they were dealt with; and key indicators with regard to implementation of the policy.
- 14.2. The Secretariat Reports at National and Provincial level shall contain a section reporting on outcomes of Sexual harassment cases and detailing preventative measures that have been taken during the period under review.

15. Awareness and ongoing education

- 15.1. COSATU members and officials will ensure that in their unions ongoing education is conducted for office-bearers and membership at all levels. The aim of these awareness and education programmes will be to ensure that all officials (elected and appointed) are educated about sexual harassment and how it contributes to the oppression of women (and to a lesser extent affects men) and to ensure commitment to a COSATU that is free of sexual harassment. COSATU members and officials will ensure that ongoing education is conducted in their workplaces and any other societal institutions in which they participate.
- 15.2. This policy and procedure must be widely circulated. A popular version of this policy in poster form must be displayed prominently in all public places of COSATU and Affiliates' offices in order for all members and officials (as well as vendors and service providers) to see it and familiarise themselves with it. Such a poster should also publicise the names and contact details of the relevant Sexual Harassment Prevention Commissioners and the relevant persons to contact in cases of sexual harassment.
- 15.3. At meetings and gatherings of the Federation, such as Congresses, Central Committees and Conferences, the meeting shall formally adopt procedures for the prevention of sexual harassment in line with this policy and procedure that will be binding on all present.