



THE SOUTH AFRICAN JUDICIARY

SEXUAL HARASSMENT POLICY OF THE SOUTH AFRICAN JUDICIARY

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Foreword from the Chief Justice of the Republic of South Africa

South Africa is a democratic State founded on, among others, the values of human dignity, the achievement of equality, the advancement of human rights and freedoms, non-racialism and non-sexism, the supremacy of the Constitution and the rule of law. South Africa adopted its Constitution, Act 108 of 1996, as its supreme law to heal the divisions of the past and establish a society based on democratic values, social justice and fundamental rights.

South African Judges and Magistrates are respectively bound by the oath or solemn affirmation of judicial officers outlined in Schedule 2 of the Constitution and relevant national legislation – to uphold and protect the Constitution and the human rights entrenched in it.

South Africa has further incorporated the Bangalore Principles of Judicial Conduct into its legal framework. The principles, which have been endorsed by the United Nations, are international standards which serve as a framework for regulating judicial conduct and promoting ethical behaviour within the Judiciary and provide guidance to judicial officers in their professional conduct and a benchmark to the public for evaluating the Judiciary's performance. They highlight core values such as independence, impartiality, **integrity**, **propriety**, equality, competence and diligence.

The Bangalore Principles are reflected in the South African Code of Judicial Conduct for Judges (adopted in terms of section 12 of the Judicial Service Commission Act 9 of 1994) and the Code of Judicial Conduct for Magistrates (provided in section 54A of the Magistrates Act 90 of 1993 Regulations). Both Codes require every judicial officer to act honourably and, in a manner, befitting judicial office. Thus, members of the South African Judiciary (SAJ) must hold themselves to high standards of ethical and professional conduct at all times, act in a manner that enhances public trust in, and respect for, the judicial system, and avoid impropriety or the appearance of impropriety in all their activities.

The SAJ recognises that sexual harassment in general and sexual harassment in the workplace, in particular, represents violation of most, if not all, the fundamental values upon

which our democratic State is founded. It acknowledges that sexual harassment constitutes unfair discrimination on the bases of sex, gender and gender expression, and sexual orientation and is inherently demeaning and harmful to individual victims, the broader judicial working environment, and society as a whole.

The SAJ further recognises that sexual harassment not only undermines the health and safety of the judicial working environment but threatens the foundational legitimacy and integrity of the institution as a custodian of the Constitution of South Africa, justice, and the rule of law.

Members of the SAJ are firmly committed to creating and maintaining a safe working environment in which all judicial officers, employees and other persons who have dealings with the Judiciary are treated with respect and dignity. They stand united against all forms of sexual harassment and adopt a zero-tolerance approach to its commission by, or against, them. They embrace their positive legal duties, under domestic and international law, to eliminate systemic and other barriers to meaningful redress for victims of sexual harassment in the judicial working environment.

They acknowledge that all reports and complaints of sexual harassment, by or against them, are serious, and undertake to respond in every instance promptly, professionally, fairly and confidentially, in accordance with this Policy and applicable law.

This Policy has been created to re-affirm the core values of the SAJ – integrity, accountability, equality, dignity and respect. It provides mechanisms to protect against victimisation or retaliation under any and in all circumstances. It is expected that it will be fully enforced and that appropriate disciplinary action will be taken against any transgressor thereof. All members of the SAJ are thus expected to acquaint themselves with its provisions fully and ensure that appropriate measures are taken to prevent the prohibited conduct.

It is hoped that the implementation of this Policy will result in increased efforts to promote gender equity and safety in the judicial workplace, and to eradicate all forms of sexual harassment within the SAJ.

Acronyms

GDOCJ Gender Desk in the Office of the Chief Justice

[in the process of establishment]

MC Magistrates Commission

JSC Judicial Services Commission

OCJ Office of the Chief Justice

SAJ South African Judiciary

SAJEI South African Judicial Education Institute

Definitions

Members of the South African Judiciary means—

- judges, or acting judges, of the Constitutional Court, the Supreme Court of Appeal and the High Courts;
- judges of any other court established by an Act of Parliament;
- regional or district magistrates, or acting magistrates, of the Magistrates' Courts;
- judges or magistrates released from active service, but who are liable to be called upon to perform judicial duties.

Victim means any person, including any member of the public, who has experienced sexual harassment, regardless of whether they have chosen to make a report, request informal resolution, or initiate a complaint under this Policy.

Complainant means any person, including any member of the public, who has chosen to initiate a complaint in terms of section 12 of this Policy.

Vulnerable person means any person who is vulnerable as defined in section 40 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act of 2007, including—

- a child or a person with a mental disability;
- certain females under the age of 25;
- a person who is being cared for or sheltered in a facility that provides services to victims of crime;
- certain persons with a physical, intellectual or sensory disability; and

- certain persons who are 60 years of age or older.

1. Policy Statement

- 1.1. The SAJ is united against sexual harassment in all its forms, and committed to zero tolerance of its perpetration by, or against, its members.
- 1.2. The SAJ recognises that its members, its staff, temporary staff, court users, partners, contractors, and all other persons who have dealings with the SAJ and its members have the right to be free from sexual harassment.
- 1.3. The oath or solemn affirmation of judicial officers, contained in Schedule 2 of the Constitution of 1996, enjoins every judicial officer to uphold and protect the Constitution and the human rights entrenched in it.
- 1.4. The Code of Judicial Conduct for Judges and the Code of Judicial Conduct for Magistrates require every judicial officer to act honourably and in a manner befitting judicial office. Members of the SAJ must, at all times, behave in their professional and private lives in a manner that enhances public trust in, and respect for, the judicial system, and must avoid impropriety or the appearance of impropriety in all their activities.
- 1.5. The SAJ recognises that sexual harassment violates the fundamental human rights to equality, dignity, freedom and security of the person, and bodily and psychological integrity. It also constitutes unfair discrimination on the bases of sex, gender and gender expression, and sexual orientation. It is inherently demeaning and harmful to individual victims, to the broader judicial working environment, and to society as a whole.
- 1.6. The SAJ further recognises that sexual harassment not only undermines the health and safety of the judicial working environment but also threatens the foundational legitimacy and integrity of the SAJ as a custodian of the Constitution of South Africa, justice, and the rule of law.
- 1.7. The SAJ acknowledges that each of its members are in positions of considerable power, authority, and influence in relation to staff in the judicial working environment, members of the legal profession, and the general public. Sexual harassment is an abuse of power, and for this reason, it is the responsibility of every member of the SAJ to remain vigilant of how their conduct may be received, or perceived, by those with whom they do not share the same power, authority, and influence.

- 1.8. The SAJ embraces its positive legal duties, under local and international law, to create and maintain a safe and respectful working environment, and to eliminate systemic and other barriers to meaningful redress for victims of sexual harassment in the judicial working environment.
- 1.9. The SAJ acknowledges that all reports and complaints of sexual harassment, by or against its members, are serious, and commits to acting as required by this Policy in every instance, without hesitation or delay.

2. Principles for taking action: a victim-centred approach

Any action under this Policy should be victim-centred, and guided by the following principles:

2.1. Confidentiality and privacy

It is imperative that all reports and complaints of sexual harassment be responded to with the utmost care to maintain confidentiality and privacy, as far as legally possible. Failure in this regard risks the re-victimisation of a complainant or victim, and discourages victims from coming forward, ultimately undermining the accountability of perpetrators, and the ability of the SAJ to meet its positive legal obligations.

2.2. Due diligence and accountability

All role-players must be properly prepared and resourced to receive reports and complaints of sexual harassment, and to respond competently, efficiently, and speedily to resolve or escalate the matter.

2.3. Equality and non-discrimination

The SAJ recognises that sexual harassment is ultimately an abuse of power, informed by intersectional social identities and complex socio-cultural dynamics. While sexual harassment disproportionately affects women, any person can be a victim or a perpetrator, regardless of:

- 2.3.1. their position, role, seniority or lack thereof, in the judicial working environment;
- 2.3.2. their race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth;
- 2.3.3. their general social or economic status; or
- 2.3.4. any other aspect of their identity.

2.4. Respect and compassion

All parties involved in sexual harassment incidents, particularly complainants and victims, should always be treated with respect and compassion.

2.5. Substantive and procedural fairness

Role-players who are responsible for implementing this Policy, are also responsible for ensuring that any action taken under this Policy is fair in all respects to both victims and alleged perpetrators.

2.6. Protection against victimisation and retaliation

The victimisation of, or retaliation against, any person who in good faith reports or complains of sexual harassment, requests for informal resolution, or provides help or support to a complainant or victim, is strictly prohibited. The SAJ will take proactive and reactive steps to address victimisation or retaliation in this context.

2.7. Safeguarding of victims and vulnerable persons

The SAJ recognises its heightened duty to ensure the protection of victims and vulnerable persons in the judicial working environment. The SAJ will implement services and protocols to empower and safeguard victims of sexual harassment, including access to psycho-social support, and appropriate referrals. The SAJ further recognises the importance of comprehensive training on the content of this Policy, for its members as an integral component of safeguarding.

2.8. False reporting

The SAJ recognises that false reports and complaints of sexual harassment are exceedingly rare and rejects the stereotype of complainants and victims as opportunistic, vengeful, or malicious. However, any report or complaint that is made in bad faith, and that is found to be deliberately false, shall be subject to disciplinary action.

3. Application and scope of the Policy

3.1. Any person has recourse to this Policy when:

3.1.1. a member of the SAJ is an alleged perpetrator of sexual harassment;

3.1.2. a member of the SAJ has been subjected to sexual harassment.

3.2. The Policy is applicable in the following places and circumstances:

3.2.1. all public and private places where the business of the SAJ is being conducted and work is performed, including court buildings;

- 3.2.2. places where members of the SAJ take rest or meals, or use sanitary, washing, changing, breastfeeding, or medical facilities;
 - 3.2.3. any communications by members of the SAJ, including all telephonic, electronic, and web-based platforms;
 - 3.2.4. all professional trips, travel, training, events and functions, or social activities, performed at any other site, including under the auspices of another professional body like the SAJ; and
 - 3.2.5. any other place where the conduct in question is by members of the SAJ, and has an impact on another member, or staff's professional life.
- 3.3. This Policy and its mechanisms apply to all incidents of sexual harassment, regardless of how much time has passed since the incident took place. The SAJ recognises that there are many valid reasons why a complainant or victim may delay in reporting or lodging a complaint, as recognised by the Constitutional Court. Members of the SAJ accept that no negative inference should be drawn from the fact that a complainant or victim delayed filing their report or complaint.

4. Definition of sexual harassment

- 4.1. The SAJ regards sexual harassment to be unwelcome conduct of a sexual nature. See **Annexure A**.
- 4.2. The SAJ accepts that the following factors may be relevant to establish whether sexual harassment has taken place:

4.2.1. Was the conduct unwelcome?

- 4.2.1.1. A person may indicate that sexual conduct is unwelcome in verbal and non-verbal ways, including, but not limited to ignoring the conduct; laughing it off; being vague, ambiguous, or evasive; changing the subject; or removing themselves from the presence of, or avoiding, the perpetrator.
- 4.2.1.2. If a person does not outright object to, or indicate, that sexual conduct is unwelcome, that sexual conduct will still be regarded as harassment if the perpetrator, due to their position of power, role, seniority, and/or training, ought to know that such conduct would be unacceptable or unwelcome.
- 4.2.1.3. A person's previous consensual participation in sexual conduct that was welcomed at one time, does not mean that the sexual conduct continues to be consensual and welcome to that person.

4.2.2. Was the conduct sexual in nature?

- 4.2.2.1. Sexual conduct can be verbal, non-verbal, or physical. **Annexure A** contains an open list of examples to show what verbal, non-verbal, and physical conduct may constitute sexual harassment.
- 4.2.2.2. Sexual conduct can be aimed directly or indirectly at a person, or at a group of people, based on their sex, gender, gender expression or sexual orientation.

4.2.3. What was the impact of the conduct on the person targeted?

- 4.2.3.1. Unwanted conduct of a sexual nature violates a person's rights to equality and dignity, and may create an uncomfortable, degrading, humiliating or hostile situation or environment.
- 4.2.3.2. In determining the impact of the conduct on the person, the following factors should be considered:
 - 4.2.3.2.1. the circumstances of the targeted person; and
 - 4.2.3.2.2. the respective social and/or cultural positions of the person and the perpetrator in the context of the SAJ.
- 4.2.3.3. A targeted person may experience actual harm, or the perpetrator may have inspired a belief in the person that they or someone else will be harmed.
- 4.2.3.4. The absence of physical harm or emotional displays does not mean that sexual harassment has not taken place.

4.3. Unwanted sexual conduct does not have to be repetitive or persistent to be sexual harassment. A single incident of unwanted sexual conduct can constitute sexual harassment.

4.4. The following forms of conduct are often related to sexual harassment and are subject to the same reporting and complaints procedures set out in this Policy for sexual harassment:

- 4.4.1. victimisation;
- 4.4.2. intimidation;
- 4.4.3. penalisation;
- 4.4.4. less favourable treatment; or
- 4.4.5. any similarly prejudicial treatment,

of any person for reporting sexual harassment, requesting informal resolution, initiating a complaint, or otherwise implementing or participating in the implementation of this Policy.

- 4.5. The SAJ recognises that the effects of the conduct referred to in section 4.4 above can be equally or more serious than sexual harassment, and any reference made in this Policy to sexual harassment should be interpreted to include a reference to conduct referred to in section 4.4.

5. Sexual harassment by members of the SAJ

- 5.1. The SAJ regards sexual harassment as a violation of:

- 5.1.1. Article 5, Article 6, Article 7, and Article 12(c) of the Code of Judicial Conduct for Judges; or
- 5.1.2. Article 5, Article 6, Article 7, and Article 12(c) of the Code of Judicial Conduct for Magistrates.

- 5.2. If a member of the SAJ is found to have engaged in conduct described in section 4.4, the SAJ will regard this as a violation of the Code of Conduct relevant to them.

6. Sexual Harassment as a criminal offence

- 6.1. Certain forms of sexual harassment may constitute a criminal offence under South African law, including but not limited to the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007, the Protection from Harassment Act 17 of 2011, the Cyber Crimes Act 19 of 2020, the Prevention and Combating of Hate Crimes and Hate Speech Act 16 of 2023 and the Children's Act 38 of 2005.

- 6.2. The SAJ recognises that if a person is sexually harassed under this Policy in a manner that also constitutes a criminal offence, they will have the right to lay a charge with the South African Police Service at any time. The SAJ recognises that it is not justified:

- 6.2.1. to draw a negative inference if a person chooses not to exercise this right;
- 6.2.2. to draw a negative inference if a person delayed, or delays their exercising of this right, regardless of the length of the delay;
- 6.2.3. to draw a negative inference if the National Prosecuting Authority declines to prosecute a person's charge, or a criminal court acquits an alleged perpetrator; or
- 6.2.4. to force any person to exercise this right.

- 6.3. Process and procedures under this Policy must continue, regardless of the initiation, progress, or outcome of a corresponding criminal prosecution or any other investigation or hearing, except at the behest of the victim or by an order of court.
- 6.4. The SAJ expects any member who knows or reasonably suspects that sexual harassment in the form of a sexual offence has been committed against a vulnerable person:
 - 6.4.1. to initiate a complaint under this Policy; and
 - 6.4.2. to comply with their legal duty to report their knowledge or suspicion to the South African Police Service.

7. Professionalism and decorum

- 7.1. The members of the SAJ recognise that court buildings and office spaces are public spaces that call for the utmost consideration, decorum, and professional respect for all who share these spaces.
- 7.2. Consensual sexual or physically intimate activity between two or more persons in a court building or at office premises is strictly prohibited.
- 7.3. The SAJ recognises that members of the SAJ hold positions of power and that romantic, sexual, and physically intimate relationships with others, including members of staff, in the judicial working environment may create risk for, or the perception of, an abuse of power. The SAJ discourages its members from entering into such relationships where there is any imbalance of power.

8. Initiating a report, requesting informal resolution, or lodging a complaint

- 8.1. A member of the SAJ or any other person who believes they have been sexually harassed by a member of the SAJ may:
 - 8.1.1. initiate a report;
 - 8.1.2. request informal resolution; or
 - 8.1.3. lodge a complaint,

through the Gender Desk in the Office of the Chief Justice using the mechanisms outlined below.

- 8.2. Any person who knows or reasonably suspects that a member of the SAJ has sexually harassed another person, may initiate a report or a complaint using the mechanisms outlined below. If the victim is a vulnerable person, section 6.4 will apply and the SAJ expects its members to initiate a complaint.
- 8.3. All members of the SAJ are reminded of their obligations under Article 16 of their respective Codes of Conduct, which require them to inform the relevant professional body or a Director of Public Prosecutions, if they have clear and reliable evidence of any serious misconduct by a legal practitioner or public prosecutor.

9. The Gender Desk in the Office of the Chief Justice

- 9.1. The Gender Desk in the Office of the Chief Justice (GDOCJ) may receive reports, requests for informal resolution, and complaints of sexual harassment from any person in terms of the Policy.
- 9.2. The GDOCJ shall have the following mandates under this Policy:
 - 9.2.1. To ensure that complainants and victims receive sufficient information about this Policy and related processes.
 - 9.2.1.1. To oversee the plain-language dissemination of this Policy among members of SAJ, its staff, and the general public.
 - 9.2.1.2. To advise individual complainants and victims of their rights, practical steps and options available to them under this Policy.
 - 9.2.1.3. To advise complainants and victims of any other applicable legal recourse they may have beyond this Policy.
 - 9.2.2. To provide complainants with regular communication and updates about their complaints.
 - 9.2.2.1. To create and maintain safe and secure electronic records in respect of all reports and complaints received, in line with the Protection of Personal Information Act 4 of 2013 and the principles of confidentiality and privacy.
 - 9.2.2.2. To refer complainants and victims to the appropriate statutory bodies for formal complaints of sexual harassment, including but not limited to the Judicial Services Commission (JSC), the Magistrates Commission (MC) and their processes.

- 9.2.2.3. To monitor the progress and prompt finalisation of all complaints, and requests for informal resolution, and keep complainants and victims updated on any developments in their matters.
- 9.2.3. Where a victim is a member of the SAJ but the perpetrator is not a member of the SAJ, to assist the victim to pursue an appropriate complaint with the relevant employer or the professional standards body to which the perpetrator may belong.
- 9.2.4 To offer complainants and victims access to psycho-social support and make appropriate referrals, in accordance with section 2.7.
 - 9.2.4.1 To develop referral relationships with, or retain, appropriate psycho-social support and legal advice services specifically for victims of sexual harassment.
 - 9.2.4.2 To identify training and sensitisation service providers for Heads of the Superior Courts, Regional Court Presidents, and Chief Magistrates.
 - 9.2.4.3 To create and maintain a fit-for-purpose referral database for these purposes.
- 9.2.5 To serve as an accountability mechanism for complainants and victims when they encounter administrative, systemic, or other barriers.
 - 9.2.5.1 To monitor the processes and procedures of the JSC and the MC in addressing sexual harassment complaints, for administrative, systemic, and other barriers in the investigation or hearing of matters.
 - 9.2.5.2 To record administrative, systemic and other barriers faced by victims while reporting matters, lodging complaints, and the investigation or hearing of matters.
 - 9.2.5.3 To refer or escalate such barriers to the appropriate institution and level to be addressed.
 - 9.2.5.4 To keep record of all judicial officers who have completed the standardised anti-sexual harassment training course for judicial officers described in section 14 below.
- 9.2.6 To collaborate with any statutory or professional body that plays a role in the implementation of this Policy.

9.2.7 To prepare and deliver quarterly reports to the Chief Justice, Heads of the Superior Courts, and the leadership of the Magistracy on:

- 9.2.7.1 the number of sexual harassment reports, requests for informal resolution, and complaints received by the GDOCI, the MC, and the JSC;
- 9.2.7.2 progress in the resolution and finalisation of matters;
- 9.2.7.3 the time taken to complete investigations and tribunal hearings;
- 9.2.7.4 the rate of completion of the standardised anti-sexual harassment course for judicial officers, including individual failure to complete the course; and
- 9.2.7.5 jurisdictional, thematic, and prevalence trends or patterns that may require further investigation and targeted training or resources.

9.2.8 To assist role-players in the review of any rules or regulations which would strengthen their ability to implement this Policy.

9.2.9 To engage all role-players in a review:

- 9.2.9.1 of the implementation of this Policy, to establish what may not be effective and to co-create solutions, within one year after its commencement; and
- 9.2.9.2 of this Policy, five years after its commencement.

10. Reporting an incident of sexual harassment

10.1. This reporting mechanism is only for victims who:

- 10.1.1. want to remain anonymous; and
- 10.1.2. who do not want to request informal resolution or make a complaint.

10.2. **A report is not a complaint.** A report can only serve the purpose of notifying the GDOCI of an incident, for monitoring purposes. A report severely limits the action the GDOCI can take, because it is treated as anonymous, and it does not allow the GDOCI to intervene except as set out in sections 10.4, 10.5 and 10.6 below, escalate the matter in any way, or refer the matter for an investigation by the JSC or the MC. A report has no disciplinary consequences.

10.3. A report to the GDOCI must include relevant information regarding the identity of the victim, the identity of the alleged perpetrator, and a full description of the alleged

incident. The identity of the victim will be kept strictly confidential and will not be divulged to the alleged perpetrator or any other third parties.

10.4. The GDOCJ must, within three court days of receipt of the report, contact the victim and:

- 10.4.1. advise the victim of their rights and practical steps and options available to them under this Policy, including the option of informal resolution or laying a complaint;
- 10.4.2. advise the victim of any other applicable legal recourse they may have beyond what is contained in this Policy;
- 10.4.3. offer the victim access to psycho-social support and make appropriate referrals; and
- 10.4.4. record the report in line with the Protection of Personal Information Act 4 of 2013 and the principles of confidentiality and privacy.

10.5. When a report implicating a member of the SAJ as an alleged perpetrator is made, the GDOCJ must inform that member of the SAJ in writing that a report implicating them has been made, without disclosing the identity of the victim who made the report. This serves to protect fairness, and to encourage the relevant member to be mindful of their conduct.

10.6. The GDOCJ may, on receipt of a report, request the relevant Head of a Superior Court, Regional Court President or Chief Magistrate, to repeat anti-sexual harassment training in the jurisdiction wherein the alleged perpetrator is appointed.

10.7. When a report is made, the GDOCJ has no authority to:

- 10.7.1. investigate or intervene directly with the alleged perpetrator;
- 10.7.2. request any informal resolution or intervention, directly or indirectly, with the alleged perpetrator by their senior judicial officer, or statutory or professional body;
- 10.7.3. initiate any investigation or complaint with the relevant statutory or professional body, on behalf of the victim.

11. Requesting informal resolution

11.1. This mechanism is only for **victims** who:

- 11.1.1. are comfortable with their identity being made known to the alleged perpetrator; and

- 11.1.2. are of the opinion that the conduct of the alleged perpetrator does not amount to misconduct warranting a complaint in terms of:
 - 11.1.2.1. Section 14(4) of the Judicial Service Commission Act 9 of 1994; or
 - 11.1.2.2. Regulation 25 in terms of the Magistrates Act 90 of 1993; and
- 11.1.3. are seeking informal, restorative resolution with the alleged perpetrator.
- 11.2. The purpose of this mechanism is to support a victim to openly address their discomfort regarding the alleged perpetrator's conduct, with a focus on sensitisation, education, and mutual understanding. The mechanism is not disciplinary or punitive in nature.
- 11.3. A request for informal, restorative resolution with an alleged perpetrator must include the relevant information regarding the identity of the victim, the identity of the alleged perpetrator, and a full description of the alleged incident.
- 11.4. The GDOCJ must, within three court days of receipt of the request, contact the victim and:
 - 11.4.1. advise the victim of their rights and practical steps and options available to them under this Policy;
 - 11.4.2. advise the victim of any other applicable legal recourse they may have beyond what is contained in this Policy;
 - 11.4.3. offer the victim access to psycho-social support and make appropriate referrals;
 - 11.4.4. record the request in line with the Protection of Personal Information Act 4 of 2013 and the principles of confidentiality and privacy; and
 - 11.4.5. engage the victim on their choice between:
 - 11.4.5.1. an informal conversation between the victim and the alleged perpetrator, regarding the unwanted nature of the latter's conduct, facilitated by a suitable person identified by the GDOCJ; or
 - 11.4.5.2. a request by the GDOCJ to the alleged perpetrator's immediate superior, on the victim's behalf, to engage the perpetrator informally on the unwanted nature of their conduct.
- 11.5. If the victim chooses a facilitated, informal conversation in terms of section 11.4.5.1, the GDOCJ will be responsible for ascertaining the willingness of the alleged

perpetrator to participate and making the necessary practical arrangements that are mutually convenient to the victim, the alleged perpetrator, and the facilitator.

11.6. If the alleged perpetrator is not willing to participate in an informal conversation in terms of section 11.4.5.1 the GDOJ may, in consultation with the victim, proceed with a request in terms of section 11.4.5.2.

11.7. If the victim is dissatisfied with the informal resolution, or the alleged perpetrator subsequently subjects the victim to conduct outlined in section 4.4, the victim retains the right to lodge a complaint.

11.8. The GDOJ will respect a victim's choice to request informal resolution as far as possible.

11.9. However, the SAJ recognises the need to balance the necessity to eradicate sexual harassment and to protect members with the needs and wishes of any victim. The SAJ has zero tolerance for sexual harassment, a legal duty to protect the legitimacy and integrity of the Judiciary, and a legal duty to create a safe and healthy judicial working environment for all. For these reasons, the GDOJ must refer the matter to the JSC or the MC when:

11.9.1. the alleged incident constitutes a criminal offence; or

11.9.2. a pattern of repeated reports in terms of section 10 or requests for informal resolution in terms of section 11 about the same alleged perpetrator has emerged from the reporting system over time, and informal resolution would therefore be inappropriate.

11.10. If the GDOJ becomes obliged to act in terms of section 11.9, it shall:

11.10.1. initiate a complaints process in consultation with the victim, with the relevant statutory or professional body, which will result in an investigation of the matter;

11.10.2. ensure access to legal advice and protective measures for the victim; and

11.10.3. provide the same support that is available to any person pursuing a complaint.

12. Initiating a complaint of sexual harassment

12.1. This complaints process is for:

- 12.1.1. a victim who wants to initiate an investigation and disciplinary process against the alleged perpetrator; and
 - 12.1.2. any other person who is expected to initiate a complaint in terms of section 8 of this Policy.
- 12.2. A complaint is the first step in a formal, statutory process. A complaint cannot be made anonymously. A complaint must be communicated to the GDOCJ in writing, under oath or affirmation, and must contain relevant information regarding the identity of the victim, the identity of the alleged perpetrator, and a full description of the alleged incident.
- 12.3. A complaint can be initiated electronically, or physically in writing to the offices of the GDOCJ.
- 12.4. The GDOCJ must:
- 12.4.1. within three court days of receiving a complaint:
 - 12.4.1.1. contact the victim, if the complainant is not the victim, to determine if they want to pursue the complaint;
 - 12.4.1.2. advise the victim of their rights and practical steps and options available to them, under this Policy;
 - 12.4.1.3. advise the victim of any other applicable legal recourse they may have beyond what is contained in this Policy; and
 - 12.4.1.4. offer the victim access to psycho-social support and make appropriate referrals if necessary; and
 - 12.4.2. within 14 court days of receiving a complaint, assist the victim to lodge their complaint with the appropriate statutory bodies for formal complaints of sexual harassment, including but not limited to the JSC and the MC.
- 12.5. The GDOCJ must:
- 12.5.1. keep a record of all complaints in line with the Protection of Personal Information Act 4 of 2013, and the principles of confidentiality and privacy;
 - 12.5.2. monitor the progress and prompt finalisation of all complaints; and
 - 12.5.3. keep complainants updated on any developments in the matter.
- 12.6. Upon receipt of a complaint, the GDOCJ does not have the authority to:
- 12.6.1. intervene directly with the alleged perpetrator; or

- 12.6.2. request an informal intervention with the alleged perpetrator by their senior judicial officer, or statutory or professional body.
- 12.7. When a member of the SAJ reports or lodges a complaint of sexual harassment against an alleged perpetrator who is not a member of the SAJ, the GDOJ must assist the member by facilitating the pursuit of an applicable complaint procedure. This may include but not be limited to:
 - 12.7.1. referring the member to the appropriate employer, oversight body, or professional body for resolution;
 - 12.7.2. where appropriate, referring the member for psycho-social services or legal advice; and/or
 - 12.7.3. monitoring the handling of the complaint to ensure a speedy and satisfactory resolution.
- 12.8. A victim may choose to lodge a complaint of sexual harassment directly with the appropriate statutory bodies, including but not limited to the JSC and the MC, but will not be precluded from also approaching the GDOJ to access psycho-social support, and legal advice.

13. Disciplinary Processes

- 13.1. A complaint of sexual harassment against a member of the SAJ, whether it is referred to the relevant statutory body by the GDOJ or lodged with the relevant statutory body directly by a complainant, must be dealt with in terms of:
 - 13.1.1. the Judicial Service Commission Act 9 of 1994, the Rules to Regulate Procedures Before Judicial Conduct Tribunal (made in terms of section 25(1) of the Judicial Service Commission Act 9 of 1994), and the Code of Judicial Conduct in terms of the Judicial Service Commission Act 9 of 1994; or
 - 13.1.2. the Magistrates Act 90 of 1993, and Regulations made in terms thereof, and the Code of Judicial Conduct in terms of the Magistrates Act.
- 13.2. It is recommended that the relevant statutory body offer appropriate protective measures, in matters of sexual harassment, to mitigate secondary trauma and victimisation. These may include, but are not limited to:
 - 13.2.1. treating the matter with utmost confidentiality, and only making known the identity of the complainant or victim, details relating to the incident, and the identity of the respondent insofar as it is strictly necessary for the disciplinary process;

- 13.2.2. conducting disciplinary processes *in camera*, unless the complainant elects otherwise;
- 13.2.3. facilitating a complainant's oral testimony through a virtual platform, or via an intermediary; and/or
- 13.2.4. permitting the complainant to elect any support person of their choice to accompany them throughout each stage of the disciplinary process.

13.3. If the victim elects not to make use of some, or all, of the protective measures provided, they or someone on their behalf must inform the relevant statutory body of their decision in writing.

13.4. The SAJ recognises that sexual harassment is a specialist area and that disciplinary processes relating to sexual harassment require expertise and particular insight to be dealt with in a competent and efficient manner. Therefore, experts in the field of sexual harassment, gender-based violence, or discrimination, may be engaged to assist investigations and tribunals under the following provisions:

- 13.4.1. Section 22, read with section 23 of the Judicial Service Commission Act 9 of 1994, which provides for a person who is not a judicial officer to be included in a tribunal. An expert may be included in such a tribunal.
- 13.4.2. Regulation 26(1) of the Magistrates Act, which provides for a magistrate, or an appropriately qualified person to conduct a preliminary investigation. An expert could be such a qualified person.

14. Training, awareness, and resources

- 14.1. Appropriate training and awareness are cornerstones in preventing sexual harassment in the judicial working environment.
- 14.2. Every judicial officer, regardless of seniority, must complete the standardised, online anti-sexual harassment training course for judicial officers, before their appointment as permanent or acting judicial officers.
- 14.3. Judicial officers who are already permanently appointed, or acting members of the SAJ, or who are released from active service but liable to be called upon to perform judicial duties, at the time that this Policy commences, must complete the standardised, online anti-sexual harassment training course within six months of the course becoming available.
- 14.4. The online course must be approved by the South African Judicial Education Institute (SAJEI).

- 14.5. Failure to complete the course before assuming any duty will result in a report of recalcitrance from the GDOJ to the relevant Head of a Superior Court, Regional Court President, or Chief Magistrate.
- 14.6. Members of the SAJ are specifically reminded of their obligations under the Judicial Code of Conduct for Judges or the Judicial Code of Conduct for Magistrates, to strive to be aware of and to understand the socio-cultural dynamics between persons, and to remain informed about changing social attitudes and values.
- 14.7. It is the responsibility of every Head of a Superior Court, Regional Court President, and Chief Magistrate to ensure that sexual harassment training takes place annually for the members of the SAJ in their jurisdiction, which must include:
- 14.7.1. training on the content and operation of this Policy; and
 - 14.7.2. training on social and cultural context, that includes discussions of power and privilege.
- 14.8. It is also the responsibility of every Head of a Superior Court, Regional Court President, and Chief Magistrate, in collaboration with the SAJEI and the GDOJ, to inculcate awareness of this Policy, and the SAJ's zero tolerance of sexual harassment in the judicial working environment. This can include, but is not limited to:
- 14.8.1. communication and information campaigns in court buildings, chambers, offices, and where members of the SAJ have an online presence;
 - 14.8.2. the development of plain-language literacy materials for display in workspaces and public spaces occupied by court users and other members of the public; and
 - 14.8.3. addresses and information sessions in staff meetings, tea rooms, and work-related social media platforms.
- 14.9. The SAJ regards the provision of support by the SAJEI to the GDOJ, Heads of the Superior Courts, Regional Court Presidents, and Chief Magistrates in their training and awareness initiatives, to be included in the SAJEI's functions in terms of section 5 of the South African Judicial Education Institute Act 14 of 2008.

15. Implementation

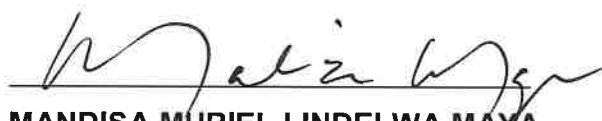
- 15.1. All role-players must plan for their implementation of the Policy within six months of the commencement of this Policy. Each role-player shall submit implementation plans to the GDOJ, which shall include at least the following information:

- 15.1.1. the specific provisions that have practical implications for the specific role-player as an institution, body, or organisation;
- 15.1.2. the administrative systems that will be used, or created, to meet its obligations;
- 15.1.3. how the Policy will be disseminated in its jurisdiction, or among its members, and members of the public, and whether it will collaborate with the GDOCJ in this regard;
- 15.1.4. the training requirements of its various members and its staff, including the training intervals;
- 15.1.5. outlining resource requirements and cost implications, and how these will be met;
- 15.1.6. the incorporation of duties under this Policy as Key Performance Indicators for relevant staff; and
- 15.1.7. the information of a designated official who will act as liaison with the GDOCJ in respect of the implementation of this Policy.

15.2. The role-players who are responsible for the submission of these reports include:

- 15.2.1. Heads of the Superior Courts, Regional Court Presidents, and Chief Magistrates;
- 15.2.2. the GDOCJ;
- 15.2.3. the Secretary General of the OCJ;
- 15.2.4. the JSC;
- 15.2.5. the MC; and
- 15.2.6. the SAJEI.

Dated and signed in Johannesburg on the 9th day of August 2025.



MANDISA MURIEL LINDELWA MAYA

CHIEF JUSTICE OF THE REPUBLIC OF SOUTH AFRICA

Annexure A

*Open list of examples of verbal, non-verbal, and physical conduct that **may** be sexual harassment, if done in manner that is sexual and unwelcome.*

Unwelcome non-verbal conduct that may be sexual harassment

- Gestures
- Staring, leering
- Indecent exposure
- The display, or sending by electronic or any other means, of:
 - sexually explicit pictures, videos, or messages;
 - sexually suggestive pictures, videos, or messages (including emojis, emoticons, stickers, and other electronic visuals)

Unwelcome verbal conduct that may be sexual harassment

- Innuendos, suggestions, or hints of a sexual or sensual nature
- Sexual advances, such as requests for dates
- Sexual threats and sexual intimidation as defined in section 14A of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32 of 2007
- Demands or requests for sexual favours, also known as *quid pro quo* (whether or not in return for career advancement and/or benefits and perks)
- Sexual favouritism, whereby a person rewards those who respond to their sexual advances
- Comments with sexual overtones
- Sex-related or sexist jokes or insults
- Shaming or teasing of a sexual nature
- Comments about a person's body
- Enquiries about a person's body, love life, sex life, sexual orientation, or gender identity
- Whistling, catcalling, lip-smacking or other noises indicating sexual admiration or sexual advances
- Compelled rape, compelled sexual assault, and compelled self-sexual assault as defined in section 4, section 6, and section 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32 of 2007

Unwelcome physical conduct that may be sexual harassment

- Touch without consent, such as lingering hugs and handshakes; massages; resting hands on a person's arm, leg, lower back, shoulder, or other part of their body
- Kissing of any part of a person's body, including a kiss on the hand or on the cheek as a greeting
- Disregard for personal space, such as leaning over someone or pressing one's body, or any part thereof, against someone

- Sexual assault and rape as defined in section 3 and section 5 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32 of 2007

Grooming

Where an action, or series of actions over time, is taken in a professional context with the overall aim of befriending and establishing a relationship of trust and dependency with a person in order to facilitate sexual harassment.

Sexual harassment may, depending on the facts of a particular case and without limitation:

- Take the form of conduct not listed above
- Combine various forms of conduct
- Be conduct repeated over time which has the cumulative effect of qualifying as sexual harassment
- Be conduct that occurs in a single instance