SEXUAL HARASSMENT POLICY AND PROCEDURE

A major impediment to women who wish to join the national workforce is sexual harassment at the workplace. Those who gain employment are often harassed and society in general, inappropriately blames the women themselves. Thus, the issue becomes stigmatized, making it very difficult for the women to report or even talk about it.

We understand that in Pakistan most of the sexual harassment is faced by women. However, to be fair to all employees, sexual harassment can be experienced by men also. Therefore, to make sure that it is the inappropriate behavior that remains the focus, this Code is for both men and women. It focuses on sexual harassment experienced at the workplace by employees and facilitates the transformation of the work environment, so that it is free of sexual harassment, intimidation and abuse.

In early 2010 Pakistan Government passed a Law called 'Protection against Harassment of Women at Workplace Act 2010. The intention of the Law is to provide an opportunity to all organizations, public, private and civil society, to develop a self regulatory mechanism whereby organizations could handle the problems related to sexual harassment internally. Adoption of this Code has become mandatory for all organizations. It requires management to take charge of the transformation of their institutional culture and make it dignified for both women and men.

The Code follows the theme and provisions identified in the national policies for equality of citizens by the government.

Therefore, recognizing the principles of equal opportunity for men and women and their right to earn a livelihood with dignity, without fear of abuse and harassment,

In cognizance of the provisions of the Constitution of Pakistan where non-discrimination on the basis of sex in public and workplace is stated in Article 25, 26 and 27,

Acknowledging the government's commitment to international conventions including ILO Conventions 100 and 111 and the United Nations Convention for Elimination of all forms of Discrimination against Women (CEDAW),

Henceforth, in addition to existing provisions, the objective of this Code of Conduct is to create a safe and dignified working environment for men and women workers that are free of sexual harassment, abuse and intimidation and with a view to enable higher productivity and a better quality of life at work.

Now, therefore, in accordance with the Law of this country, which mandates every organization to have this Code implemented in letter and spirit, this Code of Conduct is being issued as a part of the implementation of the 'Protection Against Harassment of Women at Workplace Act 2010'.

The Code provides a guideline for behavior of all employees, including management and the owners of an organization to ensure a work environment free of sexual harassment and intimidation;

DEFINITIONS

Specific terms used in this Code have been defined here:

(a) "Accused" means an employee or employer of an organization against whom complaint has been made under this Code;

(b) "Act" refers to the "Protection against Harassment of Women at Workplace Act 2010"

(c) CBA means Collective Bargaining Agency as provided in the Industrial Relations Act 2008 or any other law for the time being in force.

(d) "Code" means the Code of Conduct prescribed in this document;

(e) "Competent Authority" the authority as may be designated by the management for the purposes of this Code;

(f) "Complainant" means a woman or a man who has made a complaint to the Inquiry Committee on being aggrieved by an act of harassment;

(g) "Employee" means a regular or contractual employee whether employed on daily, weekly, monthly or hourly basis, and includes an intern or an apprentice;

(h) "Employer" in relation to an organization, means any person or body of persons whether incorporated or not, who or which employs workers in an organization under a contract of employment or in any other manner whosoever and includes –

i) An heir, successor or assignee, as the case may be, of such person or, body as aforesaid;

ii) Any person responsible for the direction, administration, management and control of the management;

iii) The authority, in relation of an organization or a group of organization run by or under the authority of any Ministry or department of the Federal Government or a Provincial government, appointed in this behalf or, where no authority is appointed, the head of the Ministry or department as the case may be;

iv) The office bearer, in relation to an organization run by or on behalf of the local authority, appointed in this behalf, or where no officer is so appointed, the chief executive officer bearer of that authority;

v) The proprietor, in relation to any other organization, of such organization and every director, manager, secretary, agent or office bearer or person concerned with the management of the affairs thereof.

vi) A contractor or an organization of a contractor who or which undertakes to procure the labour or services of employees for use by another person or in another organization for any

purpose whatsoever and for payment in any form and on any basis whatsoever; and

vii) Office bearers of a department of a Division of a Federal or a Provincial or local authority who belong to the managerial, secretarial or directional cadre or categories of supervisors or agents and those who have been notified for this purpose in the official Gazette;

(i) "sexual harassment" means any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made a condition for employment;

(j) "Inquiry Committee" means the Inquiry Committee established under this Code and under the "Protection Against Harassment of Women at Workplace Act 2010"

(k) "Management" means a person or body of persons responsible for the management of the affairs of an organization and includes an employer;

(l) "Ombudsperson" means the Ombudsperson appointed under section 7 of the Act;

(m) "organization" means a Federal or Provincial Government Ministry, Division or department, a corporation or any autonomous or semi-autonomous body, Educational Institutions, Medical facilities established or controlled by the Federal or Provincial Governments or District Governments or registered civil society associations or privately managed a commercial or an industrial establishment or institution, a company as defined in the Companies Ordinance, 1984 and includes any other registered private sector organization or institution;

(n) "Workplace" means the place of work or the premises where an organization or employer operates and includes building, factory, open area or a larger geographical area where the activities of the organization or of employer are carried out and including any situation that is linked to official work or official activity outside the office.

THE UNACCEPTABLE BEHAVIOUR

Sexual Harassment, the behavior described in Clause 1 (i), i.e. any unwelcome sexual advance, request for sexual favors or other verbal or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish

the complainant for refusal to comply to such a request or is made a condition for employment, is unacceptable behavior in the workplace, including any interaction or situation that is linked to official work or official activity outside the office. It constitutes a violation of this Code. For further explanation of such behavior see Annex I.

The management of organizations mentioned in clause 1 (m) is required to incorporate this Code of Conduct as part of their workplace policy.

INFORMAL PROCEDURE OF COMPLAINT

An informal approach to resolve a complaint of harassment may be through mediation between the parties involved and by providing advice and counseling on a strictly confidential basis;

i) A complainant or a staff member designated by the complainant for the purpose may report an incident of harassment informally to his/her supervisor, or a member of the Inquiry Committee, in which case the supervisor or the Committee member may address the issue at her discretion in the spirit of this Code. The request may be made orally or in writing;

ii) If the case is taken up for investigation at an informal level, a senior manager from the office or the head office will conduct the investigation in a confidential manner. The alleged accused will be approached with the intention of resolving the matter in a confidential manner;

iii) If the incident or the case reported does constitute sexual harassment of a higher degree and the officer or a member reviewing the case feels that it needs to be pursued formally for a disciplinary action, with the consent of the complainant, the case can be taken as a formal complaint;

iv) A complainant does not necessarily have to take a complaint of harassment through the informal channel. S/he can launch a formal complaint at any time;

v) The complainant may make formal complaint through her supervisor, CBA nominee or worker's representative, as the case may be, or directly to any member of the Inquiry Committee. The Committee member approached is obligated to initiate the process of investigation. The supervisor shall facilitate the process and is obligated not to cover up or obstruct the inquiry;

vi) Assistance in the inquiry procedure can be sought from any member of the organization who should be contacted to assist in such a case;

vii) The employer shall do its best to temporarily make adjustments so that the accused and the complainant do not have to interact for official purposes during the investigation period. This would include temporarily changing the office, in case both sit in one office, or taking away any extra charge over and above their contract which may give one party excessive powers over the other's job conditions. The employer can also decide to send the accused on leave, or suspend the accused in accordance with the applicable procedures for dealing with the cases of misconduct, if required;

viii) Retaliation from either party should be strictly monitored. During the process of the investigation work, evaluation, daily duties, reporting structure and any parallel inquiries initiated should be strictly monitored to avoid any retaliation from either side;

ix) The harassment usually occurs between colleagues when they are alone; therefore usually it is difficult to produce evidence. It is strongly recommended that staff should report an offensive behavior immediately to someone they trust, even if they do not wish to make a formal complaint at the time. Although not reporting immediately shall not affect the merits of the case;

FORMAL INQUIRY PROCEDURE

Working of the Inquiry Committee

The Inquiry Committee set up under clause (5) will determine a chairperson among themselves and will fix the time and place for its meetings.

The Inquiry Committee after the receipt of a written complaint, shall–

(a) Within three days communicate in writing the charges and statement of allegations to the accused;

(b) Require the accused, within seven days from the day the charge is communicated to him, to submit a written defense and on his failure to do so without reasonable cause, the Committee shall proceed ex-parte;

(c) Enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defense of the accused as the Committee may consider necessary and each party shall be entitled to cross-examine the witnesses against him/her.

The Inquiry Committee shall have the power to:

(a) Summon and enforce attendance of any person and examine him on

oath;

(b) Require the discovery and production of any document;

(c) Receive evidence on affidavits; and

(d) Record evidence.

(e) Get the complaint or the accused medically examined by authorized doctor, if necessary,

The Inquiry Committee shall have the power to inquire into the matters of harassment under this Code, and may recommend appropriate penalty against the accused. The following provisions *inter alia* shall be followed by the Committee in relation to the inquiry (more elaborate guidelines are provided in Annex II):

(a) The statements and other evidence acquired in the inquiry process shall be considered as confidential;

(b) The Inquiry Committee can instruct to treat the whole proceedings confidentially, if necessary.

(b) An officer in an organization, if considered necessary, may be nominated to provide advice and assistance to both parties;

(c) Both parties, the complainant and the accused, shall have the right to be represented or accompanied by a Collective Bargaining Agency representative, a friend or a colleague;

(d) Adverse action shall not be taken against the complainant or the witnesses;

(e) The Inquiry Committee shall ensure that neither the employer nor the accused shall initiate any action that would create a hostile environment for the complainant so as to pressurize him/her from freely pursuing his/her complaint; and

(f) The Inquiry Committee shall give its findings in writing by recording reasons thereof.

Findings, Recommendations and Penalties

The Inquiry Committee shall submit its findings and recommendations to the Competent Authority within thirty days of the initiation of inquiry. If the Inquiry Committee finds the accused to be guilty it shall recommend to the Competent Authority for imposing one or more of the following penalties:

(i) Minor penalties:

(a) Censure;

(b) Withholding, for a specific period, promotion or increment;

(c) Hold, for a specific period, at an efficiency bar in the time-scale;

(d) Recovery of the compensation payable to the complainant from pay or any other source of the accused;

(ii) Major penalties:

(a) Reduction to a lower post or time-scale, or to a lower stage in a time-scale;

(b) Compulsory retirement;

(c) Removal from service; and
(d) Dismissal from service.
(e) Payment of a Fine. A part of the fine can be used as compensation for the complainant. In case of the owner, the fine shall be payable to the complainant.

Implementation of the Decision
The Competent Authority shall impose the penalty recommended by the Inquiry Committee under clause (18) within one week of the receipt of the recommendations.

The Inquiry Committee shall meet on a regular basis and monitor the situation regularly until they are satisfied that their recommendations subject to decision, if any of Competent Authority and Appellate Authority, if applicable, have been implemented.

In case the complainant is in trauma the organization will arrange for *psycho-social* counseling *or medical treatment* and for additional medical leave.

The organization may also offer compensation to the complainant in case of loss of salary or other damages.

Appeal
Any party on whom minor or major penalty is imposed and is dissatisfied by the decision of the Competent Authority may within thirty days of written communication of the decision file an appeal to the Ombudsperson established for this purpose by the respective Governments at the Federal and Provincial levels.

The Appellate Authority may, on consideration of the appeal and any other relevant material, confirm, set aside, vary or modify the decision within thirty days in respect of which such appeal is made. It shall communicate the decision to both the parties and the employer.

Until such time that the Ombudsperson is appointed, the District Court shall have the jurisdiction to hear appeals against the decisions of Competent Authority.

Mala Fide accusation
The Inquiry Committee may recommend to Ombudsperson for appropriate action against the complainant if allegations leveled against the accused are found to be false and made with mala fide intentions.

COMPLAINTS TO OMBUDSPERSON

Any employee shall have the option to file a complaint either to the Inquiry Committee or the Ombudsperson. In case of filing a complaint with the Ombudsperson the management will respond to any inquiries that the

Ombudsperson might have regarding information related to the case (as per clause 10). It will be mandatory for the management to abide by the decision of the Ombudsperson. For details on the powers and procedures that will be followed by the Ombudsperson see Annex III.

ANNEX I

DETAILED DEFINITION OF SEXUAL HARASSMENT

(Referred to in clause 2 of the Code)

Sexual harassment can include but is not limited to: verbal harassment or abuse, subtle pressure for sexual acts, sexual advances in the pretext of narrating sexual incidents, touching, patting or pinching, leering at a person's body, demanding sexual favors accompanied by subtle or overt threats concerning employment or advancement; and physical assault including rape.

There are three significant manifestations of sexual harassment in the work environment:

(a) Abuse of authority

A demand by a person in authority, such as a supervisor, for sexual favors in order for the complainant to keep or obtain certain job benefits, be it a wage increase, a promotion, training opportunity, a transfer or the job itself.

(b) Creating a hostile environment

Any unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature, which interferes with an individual's work performance or creates an intimidating, hostile, abusive or offensive work environment.

The typical "hostile environment" claim, in general, requires finding of a pattern of offensive conduct, however, in cases where the harassment is particularly severe, such as in cases involving physical contact, a single offensive incident will constitute a violation.

(c) Retaliation

The refusal to grant a sexual favor can result in retaliation, which may include limiting the employee's options for future promotions or training, distorting the evaluation reports, generating gossip against the employee or other ways of limiting access to his/her rights. Such behavior is also a part of the harassment.

Passing on pornographic material in print or electronic form, or passing on written offensive messages of a sexual nature would also be considered sexual harassment.

Any expression that suggests superiority of one gender over the other should be avoided. Such expressions may include jokes that demean one gender, and unwelcome references to a person's appearance or body, where they cause psychological harassment and serve to deny colleagues their dignity and respect and contribute to an atmosphere in which inequality is emphasized. Such expressions, if persistent, may constitute sexual harassment.

ANNEX II
HELPFUL GUIDELINES FOR THE INQUIRY PROCESS
(Referred to in clause 17 of the Code)

(1) The Inquiry Committee members should make the environment of the inquiry process conducive and unintimidating. The members should not reflect any bias in their attitude or their questioning. It is acknowledged that the society mostly blames women for whatever happens to her and usually makes an assumption that sexual harassment happens to women who are immoral or have encouraged an innocent man to provoke this behavior. The Committee members need to be careful not to exhibit such biases and should remain neutral.

(2) 'Abuse of authority' cases are complex because of power imbalance between complainant and accused, and may require severe disciplinary actions. Such cases could be linked with hiring and firing of employee, promotion, work duties, relocation, leave, training and other aspects affecting employment. In such cases the Committee members need to be aware that a reaction from the victim is not easy at the time when the offensive behavior takes place because of fear or power of a senior person over a junior employee. Therefore, strict measures of why the victim let it happen or why s/he didn't scream etc. might not be relevant.

(3) Cases which create a 'hostile work environment' could range from patterns of offensive behavior over a period of time or single severe incidents of harassment.

(4) Annex I describes types of harassment but these are not always distinct from each other and can occur simultaneously. Additionally, sexual harassment can happen to men and women at all levels of job hierarchy and between all relationships of equal and unequal power.

(5) The harassment can occur outside working hours and workplace. It is the access that a perpetrator has to the person being harassed by virtue of a job situation or relation that is relevant here.

(6) To constitute sexual harassment, the conduct must be 'unwelcome'. Exploration of a case must consider whether the person indicated to the other

that the advances were unwelcomed or not. It is possible that initially the victim might have considered the behavior permissible, but later, due to personal reasons, personal choices or due to escalating advances, may want the person to stop that behavior. In such situations, it is helpful to keep in mind that the initial permission should not be taken as a license for life. Or a welcomed response for a friendly advance should not be taken as an assumed door opener for physical links. Whenever a person feels that her/his personal limits are being crossed and chooses not to go any further, s/he has to right to convey this to the other person, and if that person does not stop that behavior, it should be considered sexual harassment.

(7) Supervisory employees and co-workers should be asked about their knowledge of alleged harassment. When witnesses are not identified, testimony may be obtained from persons who observed change in demeanor of the charging party after alleged incident. Other persons who the charging party discussed the incident with should be interviewed.

(8) It is acknowledged that sexual harassment usually occurs between colleagues when they are alone; therefore usually it is difficult to produce evidence. It is strongly recommended that staff should report an offensive behavior immediately to someone they trust, even if they do not wish to launch a formal complaint at the time; Although not reporting immediately should not affect the merits of the case.

a) Detailed account of the complainant and the accused form a part of the evidence.
b) Witness statements
c) Statements of persons with whom the complainant might have discussed the incident, statements of persons from whom advice may have informally been sought, should be considered as evidence.
d) Any other documentary, audio or video records can be submitted. Expert technical advice can be sought for such submissions.

(9) The complainant should inform the accused about conduct constituting sexual harassment. It is advisable that records should be maintained in writing, all incidents noting dates, places, descriptions of acts, notifications to the accused and names of those to whom the incident may have been mentioned.

(10) In some cases, sexual harassment determination can be based solely on the credibility of complainant's allegation, if the account is sufficiently detailed and internally consistent.

(11) Lack of corroborative evidence where such evidence should exist could undermine the allegations. By the same token, a general denial by the accused will carry little weight when contradicted by other evidence.

(12) When dealing with harassment through a series of incidents, the investigator should not consider the series of incidents as separate specific incidents, but should consider the pattern. The cumulative impact of such incidents on the victim can make the work environment hostile.

(13) Any person who aids or abets and covers the commission of any such act perpetrated by another, without which it could not have been committed might also, be considered liable under this Code.

(14) While probing the matter of sexual harassment, if the investigation results in the involvement of any close relative or any associated person to the owner or management in committing that act of sexual harassment, the Committee could recommend commencing legal proceedings against them at the cost of the management.

(15) If other matters surface during the inquiry, they may be reported in an inquiry report if relevant; otherwise these should be reported to separate authorities.

(16) In case the complainant is in trauma, the organization will arrange for counseling and for additional medical leave. This may be suggested as a part of the decision.

(17) The organization can also offer compensation to the complainant in the case of loss of salary or other damages resulting from the harassment. The complainant can also be offered compensation if the employer has failed in the duty to prevent the sexual harassment of the complainant.

ANNEX III
OFFICE OF THE OMBUDSPERSON
(Referred to in para 27 of the Code)

It is acknowledged that not every organization might have a sturdy mechanism as prescribed for addressing sexual harassment. At times, the perpetrator is too senior or is the owner of the organization. In such a case, it might not be possible for the Inquiry Committee to hold the person accountable. Similarly, if the Committee is not made of credible people and an employee does not develop trust for them, there is a provision in the Law for directly approaching the Office of the Ombudsperson.

The Office of the Ombudsperson will be set up at the Federal level and later at the Provincial level to deal with the complaints of sexual harassment. This office will be headed by a person with the same qualifications as that of a Judge of a High Court.

Functions of the Ombudsperson

This office will deal with:

- Appeals from the persons who are aggrieved by the decision of the

Inquiry Committee.

- Complaints made directly for cases of sexual harassment at the workplace of formal organizations.
- Complaints from the management of an organization, in case it believed that a complainant has made a mala fide attempt to intentionally defame someone.

Powers of the Ombudsperson

The Ombudsperson shall for the purpose of the "Protection Against Harassment of Women at Workplace Act 2010", have the same powers as are vested in a Civil Court under the Code of Civil Procedures, 1908 (Act V of 1908), in respect of the following matters, namely:

i. Summoning and enforcing the attendance of any person and examining him on oath;
ii. Compelling the production of evidence;
iii. Receiving evidence on affidavits; and
iv. Issuing commission for the examination of witnesses
v. Entering any premises for the purpose of making any inspection or investigation, enter any premises where the Ombudsperson has a reason to believe that any information relevant to the case may be found; and
vi. The Ombudsperson shall have the same powers as the High Court has to punish any person for its contempt.

Inquiry Procedures for the Ombudsperson

(1) The Ombudsperson shall within 3 days of receiving a complaint issue a written show cause notice to the accused. The Accused after the receipt of the written notice shall submit a written defense to the Ombudsperson within five days and his failure to do so without reasonable cause would allow the Ombudsperson to proceed ex parte. Both the parties can represent themselves before the Ombudsperson.

(2) The Ombudsperson shall conduct an inquiry into the matter according to the rules made under the Protection Against Harassment of Women at Workplace Act 2010, and conduct proceedings as the Ombudsperson deems proper.

(3) For the purposes of an investigation under the Act, the Ombudsperson may require any office or member of an organization concerned to furnish any information or to produce any document which in the opinion of the Ombudsperson is relevant and helpful in the conduct of the investigation.

Decision of the Ombudsperson

(1) When making the decision on the complaint, the Ombudsperson may impose any of the minor or major penalties specified for the Inquiry Committee within the organization.

(2) The Ombudsperson shall record his/her decision and inform both parties and the management of the concerned organization for implementation of the orders. The management of the organization is bound to abide by the decision of the Ombudsperson. It the decision is not implemented, the management shall be charged with the contempt of high court.

Provision for Appeal

When a case is taken directly to the Ombudsperson instead of an inquiry Committee and the complainant or the accused is aggrieved by a decision of Ombudsperson, within thirty days of decision, could make a representation *to* the President or Governor, as the case may be, who may pass such order thereon as s/he may deem fit.

ANNEX IV

FILING COMPLAINTS OF SEXUAL HARASSMENT THROUGH THE POLICE

The Protection against harassment of women at workplace Act 2010 was passed with the intention that self-regulatory mechanisms within organizations could provide women and men working in an organization with a culturally sensitive platform for raising any complaints of sexual harassment. Through the operation of an internal Inquiry Committee within each organization, employees could comfortably communicate their grievance and find a resolution. This mechanism where a Code of Conduct within an organization and a three member Committee provides an effective mode for addressing and dealing with complaints of sexual harassment.

However, the employees should know that on 29th of January, 2010 the Government passed an amendment to the Pakistan Penal Code, section 509, which makes sexual harassment at any place, including a workplace, a crime. It is punishable by a fine up to Rupees 500,000 or imprisonment up to 3 years or both.

If there is a case of sexual harassment of an employee, the management of the organization would prefer that the complaint is filed within the organization, but it is obligated to educate its employees that they do have an option to go to the police and file a police report against the perpetrator under section 509.