

# SOLIDARITY FUND SAFEGUARDING, SEXUAL AND RACIAL HARASSMENT POLICY

Target audience	All Board members, employees, vendors, donors and beneficiaries	
Responsible Person	Chief Financial Officer of the Fund	
Current Version	V1	
Other relevant policies		

## TABLE OF CONTENTS

Clause number and description	Page
1. DEFINITIONS.....	3
2. INTRODUCTION .....	3
3. WHAT IS SAFEGUARDING?.....	4
4. WHAT IS SEXUAL HARASSMENT?.....	5
5. FORMS / EXAMPLES OF SEXUAL HARASSMENT .....	5
6. WHAT IS RACIAL HARASSMENT?.....	6
7. FORMS / EXAMPLES OF RACIAL HARASSMENT .....	7
8. THE FUND'S COMMITMENT AND APPROACH.....	7
9. SANCTIONS.....	10
10. CRIMINAL AND CIVIL LITIGATION.....	10
11. CONFIDENTIALITY.....	10

## 1. DEFINITIONS

<b>“Board”</b>	The Governing Board of the Fund
<b>“Constitution”</b>	The Constitution of the Republic of South Africa, 1996
<b>“employee/s”</b>	All employees working at all levels and grades (whether permanent, fixed-term or temporary), including directors, senior managers, officers, trainees, seconded staff, home-based staff, casual staff, agency staff, volunteers and interns
<b>“Fund”</b>	The Solidarity Response Fund NPC
<b>“Fund Manager”</b>	The fund manager appointed by the Board to manage the operations of the Fund
<b>“Fund Manager representative / designated Fund Manager representative”</b>	The individual designated by the Fund Manager as being responsible for the administration of this Policy
<b>“Policy”</b>	This Safeguarding, Sexual and Racial Harassment Policy
<b>“vendor”</b>	A third party that supplies the Fund with goods or services

## 2. INTRODUCTION

### 2.1. Purpose

- 2.1.1. The Fund is committed to its workplace, and any engagement within and outside it, being safe, productive and inclusive.
- 2.1.2. Integral to this commitment is the Fund's commitment to the values enshrined in South Africa's Constitution, and in particular, the right to dignity.
- 2.1.3. The purpose of this Policy is to realise these values by providing a commitment and framework for the protection of all persons who work, engage and come into contact with the Fund and its employees, inside and outside the work environment, from harm and abuse, harassment and bullying.

### 2.2. Overarching Principles

- 2.2.1. This Policy gives a description of what conduct is unacceptable and can be described as harmful, abusive harassing and bullying, what is safeguarding, and the responsibilities and what is expected of those working or engaging with the Fund, and the reporting requirements and remedies for any breach of this Policy.

- 2.2.2. All employees, job applicants and other persons who have dealings with the Fund have the right to be treated with dignity and not to be unfairly discriminated against. Sexual and racial harassment are forms of unfair discrimination.
- 2.2.3. The aim of this Policy is to ensure safeguarding, and to eliminate any form of harassment both in the workplace and in the Fund's dealings with third parties, and to ensure that adequate measures and procedures are readily available to deal with any form of harassment and to prevent its re-occurrence.
- 2.2.4. This Policy seeks to encourage the development and implementation of practises which create a working environment that is free of sexual or racial harassment and in which the integrity, dignity, privacy and the right to equality of all employees, job applicants and persons dealing with the Fund, is respected.
- 2.2.5. This Policy in its design, development, implementation and review phases, is guided and underpinned by the principle of fairness and has to be read together with relevant applicable legislation.
- 2.2.6. Should the Policy be in conflict with any applicable legislation or regulations, then the legislation or regulations, including the Constitution, shall take precedence.

### 2.3. Scope

- 2.3.1. This Policy applies to all Fund Board members, employees, associated personnel whilst engaged with work or activities related to the Fund, and other providers and persons who are contractually obligated by the Fund to comply with this Policy.

## 3. **WHAT IS SAFEGUARDING?**

- 3.1. Safeguarding is the protection of peoples' health, wellbeing and human rights to enable them to live free from harm, abuse and neglect when coming into contact with the Fund.
- 3.2. Safeguarding applies consistently and without exception across the programmes, interventions, activities, partners and employees of the Fund.
- 3.3. Safeguarding requires proactively identifying, preventing and guarding against all risks of harm, exploitation and abuse and having mature, accountable and transparent systems for response, reporting and learning when risks materialise.
- 3.4. Those systems must protect survivors of such abuse, and ensure due, fair process to determine the validity of such claims and ensure the rights of alleged perpetrators are also protected.



#### 4. **WHAT IS SEXUAL HARASSMENT?**

- 4.1. Sexual harassment is unwelcome conduct of a sexual nature that violates the rights of an individual and constitutes a barrier to equity in the workplace, taking into account all of the following factors:
  - 4.1.1. whether the harassment is on the prohibited grounds of sex and/or gender and/or sexual orientation;
  - 4.1.2. whether the sexual conduct was unwelcome;
  - 4.1.3. the nature and extent of the sexual conduct; and
  - 4.1.4. the impact of the sexual conduct on the individual.
- 4.2. There are different ways in which an individual may indicate that sexual conduct is unwelcome, including non-verbal conduct such as walking away or not responding to the perpetrator.
- 4.3. Previous consensual participation in sexual conduct does not necessarily mean that the conduct continues to be welcome.
- 4.4. All Board members, employees, and contractors of the Fund, but particularly those in positions of authority, are required to display common sense and sound judgment insofar as any sexual conduct in the workplace is concerned and will reasonably be expected to know when such conduct would not be welcome. This is particularly so insofar as the display of such conduct towards subordinate, more junior or otherwise vulnerable employees are concerned.

#### 5. **FORMS / EXAMPLES OF SEXUAL HARASSMENT**

Conduct which may constitute sexual harassment include, but is not limited to, physical conduct, verbal conduct, non-verbal conduct, quid pro quo harassment and sexual favouritism. The aforesaid is explained in more detail below:

- 5.1. physical conduct of a sexual nature includes all unwanted physical contact ranging from touching to sexual assault, attempted rape and rape, and includes, but is not limited to, a strip search by or in the presence of the opposite sex, hugging, invading another's personal space, attempted or actual kissing or fondling, petting or pinching;
- 5.2. verbal forms of sexual harassment include, but are not limited to, unwelcome innuendoes or taunting, suggestions and hints, sexual advances, comments with sexual overtones, sex-related jokes or insults or unwelcome graphic comments about a person's body made in their presence or to them, unwelcome and inappropriate enquiries about a person's sex life, and

unwelcome whistling at a person or group of persons, wolf-calling or kissing sounds, derogatory or patronising name calling and telephone calls with sexual overtones;

- 5.3. non-verbal forms of sexual harassment include, but are not limited to, unwelcome gestures, indecent exposure, and the unwelcome display of sexually explicit pictures and objects;
- 5.4. victimisation occurs where an employee is victimised or intimidated for failing to submit to sexual advances;
- 5.5. quid pro quo harassment occurs where a person such as a supervisor, member of management or co-staff member undertakes or attempts to influence or influences the process of employment, promotion, training, discipline, dismissal, salary increments or other benefits of a staff member or job applicant by coercing or attempting to coerce the individual to surrender to sexual advances; and/or
- 5.6. sexual favouritism exists where a person who is in a position of authority rewards only those who respond to his/her sexual advances, while other deserving staff members who do not submit to sexual advances are denied promotions, merit rating or salary increases.

## 6. **WHAT IS RACIAL HARASSMENT?**

- 6.1. Racial harassment means an incident or a series of incidents intended, or likely to, intimidate, offend or harm an individual or group because of their ethnic origin, colour, race, religion or nationality, and a racist incident is any incident involving the use of remarks, gestures and other verbal or non-verbal, physical or non-physical conduct that is perceived to be racist by the victim or any other person and that results in the creation of a hostile working environment
- 6.2. In determining whether remarks, comments or gestures are racist the test is whether objectively, the words or gestures are reasonably capable of conveying to the reasonable person that the phrase had a racist meaning.
- 6.3. Such behaviour may include:
  - 6.3.1. derogatory name calling;
  - 6.3.2. verbal threats, insults and racist jokes;
  - 6.3.3. display of racially offensive material;
  - 6.3.4. exclusion from normal workplace conversation or activities;
  - 6.3.5. physical attacks; and/or
  - 6.3.6. encouraging others to commit any such acts.

- 6.4. The conduct causes, encourages or incites disharmony or feelings of hostility, hatred or ill-will between different racial groups or persons belonging to different racial groups.
- 6.5. Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment.
- 6.6. Racial harassment occurs *inter alia* when:
  - 6.6.1. submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual (such as the process of employment, promotion, training, discipline, dismissal, salary increments or other benefits of a staff member); and/or
  - 6.6.2. such conduct has the purpose or effect of interfering with work performance or creating an intimidating, hostile or offensive working environment.

## 7. **FORMS / EXAMPLES OF RACIAL HARASSMENT**

Forms or examples of racial harassment include but are not limited to:

- 7.1. physical assault;
- 7.2. verbal forms including but not limited to inappropriate remarks, racist jokes, gestures, innuendos or taunting about a person's racial or ethnic background; and/or
- 7.3. Non-verbal forms including, but not limited to, the displaying of racist pictures, graffiti or other material, refusing to talk to or work with a staff member because of his/her ethnic or racial background.

## 8. **THE FUND'S COMMITMENT AND APPROACH**

- 8.1. The Fund is committed to treating all persons with dignity and to contribute to a safe, productive and inclusive environment for everyone, regardless of their race, age, gender identity, disability, sexual orientation, ethnic origin or beliefs. This includes actively safeguarding all persons against any form of abuse, harm, neglect, exploitation and bullying.
- 8.2. The Fund recognises that certain groups in our society are particularly vulnerable to harm, harassment and bullying, particularly persons who is or may be in need of care by reason of mental or other disability, age or illness; and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation. These persons are referred to as at-risk adults, or vulnerable adults.



- 8.3. The Fund commits to addressing the responsibilities of safeguarding, and allegations and incidents of sexual harassment and racial harassment throughout its work, through the three pillars of prevention, reporting and response.

8.4. Pillar 1: Prevention

8.4.1. The Fund will:

- 8.4.1.1. take every reasonable precaution to minimise risk of harassment, bullying or other harmful conduct to employees, any persons that access our services, beneficiaries of funding, service providers and other persons that come into contact with the Fund;
- 8.4.1.2. design and undertake its programmes, interventions and activities in a way that protects people from any risk of harm that may arise from their coming into contact with the Fund. This includes the way in which information about individuals is gathered, used and communicated;
- 8.4.1.3. implement safeguarding procedures when recruiting, managing and deploying employees and associated personnel;
- 8.4.1.4. follow up on reports of safeguarding concerns, or sexual or racial harassment, promptly and according to due process; and
- 8.4.1.5. ensure that employees have access to, are familiar with, and know their responsibilities regarding the implementation of this Policy.

8.4.2. The Fund employees and associated personnel must not:

- 8.4.2.1. sexually or racially abuse or exploit any person;
- 8.4.2.2. subject any person to physical, emotional or psychological abuse, or neglect any person;
- 8.4.2.3. exchange money, employment, goods or services for sexual activity. This includes any exchange of assistance that is due to beneficiaries of assistance;
- 8.4.2.4. engage in any sexual relationships with beneficiaries of assistance, since they are based on inherently unequal power dynamics.

8.4.3. Additionally, the Fund employees and associated personnel are responsible for implementing and complying with this Policy. This includes:



- 8.4.3.1. contribute to creating and maintaining an environment that prevents safeguarding violations and promotes the implementation of the Policy; and
- 8.4.3.2. report any concerns or suspicions regarding safeguarding violations by a Fund employee or associated personnel to the appropriate employee.

## 8.5. Pillar 2: Reporting

- 8.5.1. The Fund will ensure that safe, appropriate, accessible means of reporting safeguarding concerns are made available.
- 8.5.2. Any concerns or complaints made by employees, associated personnel, external service providers or members of the public against any Fund employee or associated personnel will be investigated. This may include:
  - 8.5.2.1. **An informal procedure:** the complainant will have an opportunity to explain to the person engaging in the unwanted conduct, that the behaviour in question is not welcome, is offensive, makes them uncomfortable, and/or that it interferes with their work. This may be done personally or through another person or representative.
  - 8.5.2.2. **A formal procedure:** A formal investigation is initiated which may include sourcing an independent specialist to investigate whether there is a basis to the allegations, and to make recommendations as to an appropriate remedy.
  - 8.5.2.3. The Fund shall, in consultation with the complainant/s, determine the appropriate process to follow to investigate and address the allegations made.
- 8.5.3. Complaints, allegations or reports can be submitted to the Fund Manager representative.

## 8.6. Pillar 3: The Fund's Response

- 8.6.1. The Fund commits that it will:
  - 8.6.1.1. take all allegations seriously and in good faith and in the interests of all parties address the matter immediately;

8.6.1.2. follow up safeguarding reports and concerns according to policy and procedure, and legal and statutory obligations;

8.6.1.3. apply appropriate disciplinary measures to employees found in breach of this Policy.

8.6.2. The Fund will offer support to survivors of harm caused by employees or associated personnel, regardless of whether a formal internal response is carried out (such as an internal investigation). Decisions regarding support will be led by the survivor.

## **9. SANCTIONS**

9.1. The range of disciplinary sanctions to which employees found guilty of sexual or racial harassment or other misconduct contemplated in this Policy may be subjected to, include but are not limited to counselling, in addition or as an alternative to a disciplinary penalty. As a general rule, harassment will be regarded as serious misconduct warranting a serious penalty. Allegations of sexual or racial harassment should be dealt with in a formal disciplinary hearing in accordance with the Fund's Human Resources Policy.

9.2. Should a complaint of alleged harassment not be satisfactorily resolved by the internal procedures set out above, the victim may within 6 months of the dispute having arisen, refer the matter to the CCMA for conciliation in accordance with the provisions of the Employment Equity Act No. 55 of 1998. Should the dispute remain unresolved, either party may refer the dispute to the CCMA or the Labour Court for arbitration or adjudication in accordance with the provisions of the Employment Equity Act No. 55 of 1998.

9.3. An alleged perpetrator of sexual harassment may refer a dispute arising from any disciplinary action taken by the employer to the CCMA in accordance with the provisions of the Labour Relations Act No. 66 of 1995

## **10. CRIMINAL AND CIVIL LITIGATION**

A victim of harassment has the right to press separate criminal and/or civil charges against an alleged perpetrator, and the legal rights of the victim are in no way limited by reason of the provisions of this policy and procedure.

## **11. CONFIDENTIALITY**

It is essential that confidentiality is reasonably maintained at all stages of the process when dealing with safeguarding, or sexual or racial harassment concerns. Information relating to the concern and subsequent case management should be shared on a need to know basis only and should be kept secure at all times.

Policy agreed to by the Solidarity Fund Board on 27 May 2020

SIGNED:

A handwritten signature in black ink, appearing to be 'J. H. H. H.', written above a dotted line.

CHAIR OF SOLIDARITY FUND BOARD