MILLENNIUM
CHALLENGE CORPORATION
UNITED STATES OF AMERICA

Guidance Note to MCAs on Sexual Harassment

1. Introduction

The Millennium Challenge Corporation (MCC) recognizes that sexual harassment is a global problem that can harm the integrity and performance of both people and organizations and their potential to achieve their objectives. MCC is committed to supporting workplaces [1] where all staff can work together with respect, accountability, and trust. The purpose of this guidance note is to provide the Millennium Challenge Accounts ("*MCA*s") in our partner countries with initial guidance on addressing sexual harassment. MCC recommends that MCAs review policies and procedures currently in place, develop new policies and procedures when they are absent, and ensure that their anti-sexual harassment policies and procedures are based on the principles described in this guidance note.

This guidance is aligned with the International Finance Corporation's ("*IFC*") Performance Standard 2 on Labor and Working Conditions, which MCC has adopted as part of its Environment and Social Performance requirements. [2] MCC plans to incorporate these principles into any future human resources requirements for MCAs.

2. Understanding Sexual Harassment

There is no specific universal definition of sexual harassment. However, the United Nations General Recommendation 19 to the Convention on the Elimination of all Forms of Discrimination against Women, Article 11, [3] defines sexual harassment as including "such unwelcomed sexually determined behavior as physical contact and advances, sexually colored remarks, showing pornography and making sexual demands, whether by words or actions."

Sexual harassment can be a serious problem in the workplace. Sexual harassment can be humiliating and may also cause health or safety problems for victims and witnesses. A sexual harassment complaint can lead to retribution, for example, when a victim suffers adverse employment consequences by objecting to the harassment. The existence of sexual harassment can also create a hostile working environment for all staff.

A few specific examples of sexual harassment include [4] :

- Unwanted pressure for sexual

- Unwanted touching of a person's clothing, hair, or
- Deliberately becoming physically close to a person's
- Unwanted letters, telephone calls, or materials of a sexual
- Unwanted and persistent pressure for
- Unwanted sexual teasing, jokes, remarks, or
- Turning work discussions to sexual
- Unwanted or invasive questions about an individual's personal
- Questions about an individual's sexual
- Unwanted comments about a person's anatomy or
- Making sexual gestures with hands or through body
- Discrimination based on an individual's perceived deviation from presumed appropriate gender roles, identity, and behaviors.

It is important to note that sexual harassment is determined by behavior, both the victim and the harasser [5] can be either a woman or a man, and the victim and harasser can be of the same sex. Men who don't match standard gender norms can be victims of sexual harassment. Women can be perpetrators of sexual harassment. The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as an MCA contractor or sub-contractor (an "*MCA Contractor*"). [6]

Types of behavior that are illegal within the partner country may be one aspect of sexual harassment, and all MCAs should understand and comply with the relevant laws and policies within their countries. However, international best practice may exceed legal requirements for preventing and addressing sexual harassment.

3. Addressing Sexual Harassment in the Workplace: Key Principles

In recognition of the global occurrence of sexual harassment and its potential impact on programs funded by MCC, MCC recommends that MCAs develop an anti-sexual harassment policy and procedures that reflect the principles described herein. MCC also recommends that each MCA consult with local legal counsel in the development of its sexual harassment policy in order to ensure that proposed procedures do not conflict with local law and function to prevent and address sexual harassment.

The purpose of an anti-sexual harassment policy is to provide every worker with protection and a positive work environment in which to perform their best. Anti-sexual harassment operational procedures should be designed to ensure that the workplace culture is well- informed, safe and supportive, that harassment complaints are impartially and thoroughly investigated, and that there are appropriate consequences for harassing behaviors.

The following principles guide MCC's approach for addressing sexual harassment and should be the basis for MCAs to review and strengthen or develop their own anti-sexual harassment policies and procedures.

4. Prevention Principles

4.1. Cultivate a workplace culture of respect, accountability and trust.

Everyone in the MCA is responsible for creating and fostering a workplace culture of respect, accountability and trust. MCA management, particularly senior management, should take the lead in embodying and promoting this workplace culture among all employees, contractors, and implementing partners. Incidents of disrespectful behaviors, even when they do not involve sexual harassment, should not be tolerated by anyone, and performance reviews should take into account how well employees and managers maintain the culture of respect, accountability and trust in their daily work behaviors.

Key Principles for Preventing and Addressing Sexual Harassment

Prevention Principles

1. Cultivate a workplace culture of respect, accountability and trust.
2. Review, develop and institutionalize a specific policy on sexual harassment that is based on international best practices.
3. Provide expert-developed training early, during on-boarding, and on a periodic basis to ensure a thorough understanding of sexual harassment and its consequences.

Implementation Principles

4. Encourage victims to report sexual harassment by providing a safe and confidential environment for them to do so.
5. Maintain confidentiality for all participants throughout the investigation and resolution of a
6. Do not punish the alleged victim for reporting sexual harassment.
7. Ensure impartial, timely and thorough investigation of sexual harassment
8. Take appropriate corrective action, including reporting to appropriate authorities when the alleged sexual harassment could be a criminal act.

Accountability Principles

9. Hold senior leadership and management accountable for workplace
10. Encourage staff to speak up and report harassing conduct if witnessed.
11. Get help from experts, including some at MCC, in addressing harassment and in ensuring that appropriate personnel decisions are made.

4.2. Review, develop and institutionalize a specific policy on sexual harassment that is based on international best practices.

MCC recommends that all MCAs review policies and procedures currently in place, develop new policies and procedures when they are absent, and ensure that these policies and procedures are based on the principles described in this guidance note. The MCAs should institutionalize a specific policy on sexual harassment that is based on the international best practices embodied in these principles, while acknowledging the context of local law. This policy should be part of the MCA's human resources policy and should be sufficiently detailed to provide clarity on what constitutes sexual harassment, responsibilities for reporting incidents, procedures for investigation and protection of participants, and the range of penalties for a finding of sexual harassment (See Annex II for an example of a policy outline).

The policy should include procedures for ensuring freedom from retaliation that include safety and confidentiality for victims and witnesses, and the prompt, thorough and impartial investigation of complaints. It should also make clear that appropriate actions will be taken as consequences for harassing behaviors, irrespective of the position of the alleged harasser in the organization. The policy should also include a commitment that the investigation process will be led by an impartial and expert third-party [7] and MCAs should work to identify these resources as soon as possible. [8]

4.3. Provide expert-developed training early, during on-boarding, and on a periodic basis to ensure a thorough understanding of sexual harassment and its consequences.

Upon employment with an MCA, MCC recommends that all hires are provided with sufficient written materials that include: (1) the standards for behavior expected by MCA leadership; (2) information about what constitutes sexual harassment; (3) a detailed description of the anti- sexual harassment policy, procedures, and consequences for harassing behaviors and (4) any applicable laws. Within three months of their employment, all MCA employees should also participate in a training that includes how to identify sexual harassment, understanding the consequences of sexual harassment, and how to report it.

MCC recommends that MCAs provide this expert-developed anti-sexual harassment training on a periodic basis. Periodic training not only ensures that MCA employees are well-educated on sexual harassment, but can also serve as a deterrent for harassing behaviors in the workplace. This is especially important in contexts where sexually-harassing behaviors may be unrecognized because they have been normalized. Training is also a tool to cultivate a workplace culture of respect, accountability and trust. CEOs and managers should be the first to participate in training and require others to do the same. MCC

will explore ways to assist MCAs, such as providing them with a list of pre-qualified trainers and curricula.

5. Implementation Principles

5.1. Encourage victims to report sexual harassment by providing a safe and confidential environment for them to do so.

One of the challenges in addressing sexual harassment is that victims tend to be reluctant to report it. Victims may fear retaliation from the individual or the MCA or they may not think that they will be listened to or believed, especially in contexts where sexually harassing behaviors have been normalized. Victims rarely have sufficient information about their rights and are often concerned that they will be further victimized if they report incidents of sexual harassment. Another barrier to reporting is social and organizational hierarchy; if a victim is in a lower-status position than the harasser, that victim may be so intimidated by the harasser's position that they are fearful of reporting.

It is very important that MCAs identify multiple options for reporting incidents of sexual harassment. This could include designating someone in the Human Resources Department and ensuring that they have sufficient skills and information to address these issues. In addition, MCA management can establish an anonymous channel for reporting sexual harassment, although this should not be deemed a substitute for formal reporting.

Sometimes, the alleged harasser is a direct supervisor or in the "chain of command" of the alleged victim. These circumstances can lead to a potential conflict of interest for management in the investigation of a complaint, and also a perception from victims that they will not be treated fairly. Issues of safety are paramount in claims of sexual harassment. Concerns about safety and fairness (such as maintaining anonymity) can be alleviated by ensuring that a neutral and experienced third party conducts the investigation.

5.2. Maintain confidentiality for all participants throughout the investigation and resolution of a complaint.

All persons interviewed in an investigation should be held accountable for maintaining confidentiality, as well as, those conducting the investigation. Personnel records must also be held in strictest confidence.

Because sexual harassment is an expression of power through behaviors that are related to sex and gender, and because issues pertaining to sex and gender are both culturally powerful and rarely discussed in the public sphere, it is especially important to protect the confidentiality of both parties implicated in a sexual harassment complaint. In some societies, for example, men and women who are harassed are often blamed for "inciting" the sexual harassment, even when the findings clearly identify them as victims.

No person should be assumed guilty of sexual harassment until a prompt, thorough and impartial

investigation has been completed.

5.3. Do not punish the alleged victim for reporting sexual harassment.

In many instances, victims of sexual harassment are in less powerful positions in their organization than their harassers. Even if the alleged harasser has a critical function in the organization, management should ensure that their first and paramount concern is the protection of the person making the complaint and others who may also be at risk from a potential harasser.

Management should consider temporary reassignment of either the alleged victim or alleged harasser until the issues are resolved, although the reason for re-assignment should remain confidential. The decision to reassign either the alleged victim or alleged harasser should be based on a concern for the protection of the alleged victim as well as other employees. Reassignment during an investigation should neither result in less remuneration nor diminished seniority.

5.4. Ensure impartial, timely and thorough investigation of sexual harassment allegations.

Investigating a sexual harassment charge requires expert knowledge, understanding and experience in conducting an investigation, as well as unquestionable impartiality. This presents challenges for most managers and human resource professionals. Consequently, MCC advises that our partners contract with a third party who can be readily available to conduct an investigation in an impartial, timely and thorough manner. MCC intends to work with partners to help them identify potential resources.

If this expertise proves difficult to identify, MCC can work with partners to identify expert training on how to investigate sexual harassment claims.

5.5. Take appropriate corrective action including reporting to appropriate authorities when the alleged sexual harassment could be a criminal act.

If the investigation establishes a probability of sexual harassment, management should take prompt and appropriate corrective action. Generally, the appropriate corrective action depends on a variety of factors including the severity and frequency of harassing conduct, the impact on the victim or victims, and the harasser's prior record.

In no instance should corrective action be influenced by management perspectives on the importance of the harasser's position in the organization. Also, in no instance should a person found to have engaged in sexual harassment be rewarded with discretionary funds (e.g. performance bonuses). All personnel decisions should be based on the protection of the victim and other potential victims.

6. Accountability Principles

6.1. Hold senior leadership and management accountable for the workplace

Management at every level should ensure that all employees and MCA Contractors [9] understand that sexual harassment is unacceptable; it is an offense against not only the individual, but the entire organization as well.

MCA employees should have the mechanisms to hold their management chain accountable for ensuring that the workplace culture discourages sexual harassment and other forms of harassment, and that claims are investigated and concluded in a fair and timely manner.

MCA management should not tolerate dismissive or insensitive messages from an employee about behaviors that could be, or could lead to, sexual harassment, and there should be consequences for managers who do not demonstrate their full support for the policy.

6.2. Encourage staff to speak up about sexual harassment and report harassing conduct if witnessed.

Management should create a safe environment and encourage staff to report experiences of sexual harassment and/or any incidents of sexual harassment witnessed. Victims are generally uncomfortable and sometimes fearful of reporting harassing behavior. Other employees may not report witnessing harassment unless the workplace culture or their supervisors encourage them to do so and the situation is a safe one.

In some organizations, like MCC, a supervisor is required to proactively report harassing behavior even without the consent of the alleged victim. This is because sexual harassment prevents management from ensuring a safe and supportive workplace and therefore, affects the institution as well as the individual. MCAs should consider a similar requirement.

6.3. Get help from experts, including some at MCC, in addressing sexual harassment and in ensuring that appropriate personnel decisions are made.

For many of our partners, developing a policy and institutional procedures to address sexual harassment in the workplace is a new challenge, and it may be difficult to easily identify appropriate resources. MCC can assist by offering advice based on internal expertise or by recommending external resources.

7. ANNEX I: ADDRESSING SEXUAL HARASSMENT IN CONTRACTS

MCC has incorporated a "Prohibition of Sexual Harassment" clause into the Standard Bidding Documents (SBDs) for potential MCA Contractors. [10] The clause, included in SBDs "Template for Procurement of Large Works with Prequalification" ("Large Works") and for "Template for Procurement of Small Works", ("Small Works") require the contractor to "implement a policy prohibiting sexual harassment." The SBDs for "Small Works" and "Large Works" explain that the policy to be implemented should be "in form and substance satisfactory to the Employer and MCC". The SBD "Template for Procurement of Consulting Services", states "the consultant shall prohibit sexual harassment behaviors directed at Compact beneficiaries, MCA Entity employees or MCA Entity consultants."

MCAs should ensure that contractors are well-informed about existing anti-sexual harassment policies and procedures, and that contractors meet the requirements in the SBDs. In addition, contractors should be aware that MCAs expect their own employees to report any potential incidents involving contractors to the MCA and that MCAs will follow up with contractors. Contractors are also required to establish grievance redress mechanisms that can help to address and respond to information on incidents of sexual harassment and to satisfactorily resolve any incidents of sexual harassment investigated by the MCA.

The "Prohibition of Sexual Harassment" clause in SBDs for "Small Works" and "Large Works" is as follows:

The Contractor shall implement a policy prohibiting sexual harassment, including an incident referral and reporting plan, in form and substance satisfactory to the Employer and MCC. The Contractor shall be responsible for ensuring that all subcontractor's and Contractor's personnel understand and operate in accordance with the principles and requirements of the policy.

The "Prohibition of Sexual Harassment" clause in the SBD for "Procurement of Consulting Services" is as follows:

The Consultant shall prohibit sexual harassment behaviors directed at Compact beneficiaries, MCA Entity employees or MCA Entity consultants. Examples of sexual harassment include, but are not limited to, the following behaviors: unwelcome sexual advances; requests for sexual favors; verbal or physical harassment of a sexual nature; or offensive remarks about a person's sex, sexual orientation or non-conformity with gender stereotypes. The MCA Entity may investigate allegations of sexual harassment as it determines appropriate. The Consultant shall fully cooperate with any investigation conducted by the MCA Entity regarding breach of this provision. The Consultant will ensure that any incident of sexual harassment investigated by the MCA Entity has been resolved to the MCA Entity's satisfaction.

8. ANNEX II: ANTI-SEXUAL HARASSMENT POLICY OUTLINE

This guidance note in its entirety should serve as a reference when an MCA is reviewing its current

policies and procedures, developing new policies and procedures when they are absent, and ensuring that these policies and procedures are based on the principles described in this guidance note. In some instances, an anti-sexual harassment policy may be incorporated into a larger human resources policy for the MCA, in other instances, an anti-sexual harassment policy may exist independent of a human resources policy for the MCA. Regardless of the format of the anti-sexual harassment policy, it is important that the policy contains sufficient clarity and detail to ensure that all parties understand behavioral expectations, responsibilities procedures, and consequences.

Below is a possible policy outline, with reference to specific principles and additional clarification notes:

9. ANTI-SEXUAL HARASSMENT POLICY

1. **PURPOSE:** *[This section should include a brief statement on the purpose of the]*

- Explain that the purpose of the policy is to provide institutional requirements for the prevention of, and responses to, sexual harassment within the Explain why sexual harassment is harmful and unacceptable for both individuals and the organization.

SCOPE: *[This section should include a statement on the scope of the]*

- Describe which individuals and entities are subject to the policy (e.g. MCA full-time, part-time, and temporary employees.).
- Explain that while the MCA does not have direct responsibility for staff and consultants outside of its personnel authority, it is responsible for protecting its workforce and, as such, encourages the reporting of unacceptable behaviors by those employed by other entities or organizations.
- Explain that all employees, no matter their status and position within the organization, will be held equally responsible under this policy.
- Explain that, depending on a country's laws, sexual assault and other forms of sexual harassment must be reported to authorities.

AUTHORITIES: *[This section should set forth any statutory and regulatory authorities or other MCA policies that relate to this policy. If any of the following sub-sections are not applicable, please]*

- **3.1 Laws or Acts**

a. [insert]
b. [insert]

3.2 Government Regulations, Standards, and Other Guidance

a. [insert]
b. [insert]

3.3 Related MCA Policies and Procedures

a. [insert]

KEY DEFINITIONS *[This section should include key terms and their definitions for the purpose of this]*

- Carefully define:
  - What constitutes sexual harassment
  - " harasser"
  - "victim"
  - "workplace"
- Add any other definitions as appropriate.

PREVENTION *[This section should describe measures aimed at preventing sexual harassment in the]*

- Describe measures that will be implemented to cultivate a climate of respect, accountability, and trust throughout the regular operations of the MCA.
- Carefully describe training requirements and early on-boarding processes that will help ensure a thorough understanding of sexual harassment and its consequences.

RESPONSIBILITIES *[This section should list the basic responsibilities of those involved in the operation of the Start with the most senior-level person at the MCA and move to the most junior-level person.]*

- Describe any specific requirements for managers to report alleged harassment.
- Describe any alternative channels for reporting that protect a potential victim.
- Ensure that it is clear that everyone will be held responsible for their behaviors, including management at all levels.

INCIDENT REPORTING *[This section should describe procedures for reporting an incident of sexual]*

- Describe how the MCA will encourage victims to report and provide a safe environment for them to do so.

INVESTIGATION *[This section should describe how impartial, timely and thorough investigation of sexual harassment allegations will be]*

- Carefully describe how confidentiality and safety will be ensured for all participants in a complaint.
- Describe the process that will be used to ensure impartiality (e.g. use of third-party investigator).

DISCIPLINARY ACTIONS *[This section should describe the corrective and disciplinary actions that will be implemented if an investigation confirms sexual harassment has taken]*

- Describe how appropriate corrective action will take place, including reporting to appropriate authorities when the alleged sexual harassment could be a criminal act.
- Describe measures that will be put in place to ensure that the alleged victim is not "punished" for

reporting sexual harassment.

AMENDMENTS TO THIS POLICY *[This section should include procedures for amending the policy, such as set forth in the example]*

- "This policy may be modified or amended at any time in writing with the approval of [*insert title(s) of appropriate approver(s)*]."

EFFECTIVE DATE *[This section should include activation and duration language, such as set forth in the example]*

"This policy is effective immediately and will remain in effect until such policy is modified."

Endnotes

1. The term "workplace" includes work-related circumstances. Given that MCA operations might be at the MCA, or on a field visit to a project site, a narrow understanding of "workplace" will not cover all relevant circumstances.
2. In the United States, sexual harassment is illegal under Title VII of the Civil Rights Act of 1964. Even in countries where legal prohibitions on sexual harassment in the workplace do not exist, these behaviors can be identified as a form of sex discrimination prohibited under IFC Performance Standard 2.
3. http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm
4. Based on examples noted from http://www.un.org/womenwatch/osagi/pdf/whatissh.pdf
5. Unless indicated otherwise, all references to "harasser" refer to a harasser that is a member of the MCA staff.
6. For additional information on addressing sexual harassment with MCA contractors see Annex I.
7. In this context, "third-party" refers to an entity or organization outside/independent of the MCA.
8. When possible, MCC will assist our partners in identifying these resources.
9. Please refer to Annex I.
10. See https://www.mcc.gov/resources/standard-bidding-documents