



**POLICY ON
PREVENTION AND
MANAGEMENT OF
STUDENT SEXUAL
HARASSMENT AND
RAPE**

Document Number	
Custodian	DVC: Employees and Student Affairs, and Registrar
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Review Date	2021

RELATED DOCUMENTS

UJ documents	Other
<ul style="list-style-type: none"> • UJ Vision, Mission and Values; • Standard Institutional Statute • Code of Academic and Research Ethics; • UJ Student Regulations • UJ Student Regulations for Student Discipline; • UJ Conditions of Service. • UJ Grievance Procedure • UJ Disciplinary Code • Policy: Handling of Student Complaints • Policy: Eradication and reporting of Improper Activities 	<ul style="list-style-type: none"> • Constitution of the Republic of South Africa: Act 108 of 1996; • Higher Education Act (Act 101 of 1997); • Protected Disclosures Act no 26 2000 • All legislation pertaining to Labour • Civil Proceedings Evidence Act 25 of 1965 as amended • Criminal Procedure Act 51 of 1977 as amended • Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000. • Intimidation Act 72 of 1982 • Protection Against Harassment Act, Act 17 of 2011

Divisions, Constituents and/or Individuals affected by the Policy	<ul style="list-style-type: none"> • Executive Deans; • Heads: Academic Departments; • Lecturers (Part time & Full Time); • Student Affairs
	<ul style="list-style-type: none"> • Executive Directors: Divisions • Wardens of student residences • All registered students • Council Members • All University Employees • External Stakeholders
Website address of this document:	UJ Intranet & Blackboard

POLICY ON PREVENTION AND MANAGEMENT OF STUDENT SEXUAL HARASSMENT AND RAPE

1. PREAMBLE

- 1.1 The Constitution of the Republic of South Africa guarantees the right to equality and the right to equal protection under the law. These rights are guaranteed for all people regardless of race, gender, sex, pregnancy, marital status, ethnic or social origins, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth.
- 1.2 The University is committed to providing an institutional environment where all may pursue their studies and activities free from sexual harassment and rape. Harassment is considered to be a form of unlawful discrimination and is therefore prohibited. The Bill of Rights contained in the Constitution of the Republic of South Africa ensures that all persons have the right to equality, human dignity, freedom and security of the person and privacy and any form of harassment encroaches on these human rights. All persons covered by this policy ought to treat one another with respect.
- 1.3 Sexual Harassment and Rape constitute serious misconduct and may result in both criminal and disciplinary action. Reports of harassment including sexual harassment and rape will be taken seriously and will be dealt with promptly, but in a fair and objective manner. The nature and gravity of each instance will dictate a specific action to be taken, which may include intervention, mediation, suspension, investigation, criminal and disciplinary procedures.
- 1.4 Sexual Harassment is proven with sufficient and credible evidence.
- 1.5 This policy applies to complaints of alleged sexual harassment and rape that may have taken place both on-campus, off-campus, or through communication, digital or social media.
- 1.6 A false claim of sexual harassment and rape is a serious offence.
- 1.7 This Policy should be read and applied in conjunction with the laws of the country, Student Regulations, Policy on Harassment and Standard Operating Procedure on Sexual Harassment and Rape.

2. PURPOSE

- 2.1 The purpose of this Policy is the prevention and management of sexual harassment and rape in the University.
- 2.2 The purpose is furthermore to formalise the University's position on sexual harassment and rape, to implement a zero-tolerance approach to such activities, to afford survivors of sexual harassment and rape an effective remedy against such behaviour and to ensure that:
 - 2.2.1 all allegations of sexual harassment and rape are investigated;

- 2.2.2 avenues are provided for persons to lodge complaints in complete confidentiality;
- 2.2.3 complainants are reassured that they will be protected from reprisals or victimisation for lodging complaints in good faith.
- 2.2.4 speedy resolution of complaints so that the accused may be fairly and swiftly dealt with or exonerated.

3. OBJECTIVE

The objective of this Policy is the prevention and management of sexual harassment and rape in the University, including the provision of institutional support to survivors and swift due process.

4. SCOPE AND APPLICATION

This policy applies to all students, staff and prospective students applying to study at UJ, regardless of date, time, or location.

5. DEFINITIONS AND INTERPRETATION

In this policy, unless the context clearly indicates otherwise:

- 5.1 “Applicant” means any person who is applying for admission as a student of the University.
- 5.2 “Accused” means the person alleged to have committed an act of sexual harassment and/or rape and “Respondent” bears the similar meaning.
- 5.3 “Complainant” means either the person who is, or was, subject to alleged act (-s) of sexual harassment, namely the survivor, or a person who lodges a complaint under this policy on behalf of a survivor.
- 5.4 “Harassment” is defined, in terms of the Protection Against Harassment Act, Act 17 of 2011, as either directly or indirectly engaging in conduct that the harasser knows or ought to know:
 - 5.4.1 it causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably:
 - (a) following, watching, pursuing or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, studies or happens to be;
 - (b) engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or
 - (c) sending, delivering or causing the delivery of letters, messages, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to or brought to the attention of, the

- complainant or a related person; or
- 5.4.2 that it amounts to sexual harassment of the complainant or a related person.
- 5.5 “Harm” is defined, in terms of the Protection Against Harassment Act, Act 17 of 2011 as any mental, psychological, physical or economic harm.
- 5.6 “PAIA” means the Promotion of Access to Information Act, No. 2 of 2000 (as amended).
- 5.7 “POPI” means the Protection of Personal Information Act, Act 4 of 2013.
- 5.8 “Protected Disclosure” means a report or disclosure made by a person in good faith and substantially in accordance with the procedure prescribed herein aimed at reporting.
- 5.9 “Sexual Harassment” means any form of unwanted or unwelcome conduct of a sexual nature, whether physical, verbal or non-verbal, by a person of the same or opposite sex towards another.
- 5.10 “Sexual Harassment Officer” means the persons appointed by the University and who are responsible for the receipt of, investigation of, management of and resolution of sexual harassment complaints. In this case a Sexual Harassment Officer should be a senior member of staff in the unit or office established to deal with sexual harassment and rape, including issues of Gender-based Violence.
- 5.11 “Student” means any person who is registered as a student of the University.

6. RIGHTS

- 6.1 Complainants have the right to lodge a complaint in accordance with the Standard Operating Procedure: Sexual Harassment and Rape.
- 6.2 Apart from such right, nothing precludes the complainant from enforcing his or her rights in terms of the Protection Against Harassment Act and the Policy on Harassment, which rights may include the right to a protection order and warrant of arrest; and the right to lodge a criminal complaint of crimen injuria, assault, trespass, extortion or any other offence which infringes on someone’s person or property. The complainant may further initiate civil claim for damages.

7. FORMS OF SEXUAL HARASSMENT

- 7.1 “Sexual Harassment” is defined, in terms of the Protection Against Harassment Act, Act 17 of 2011, as any:
- 7.1.1 unwelcome sexual attention from a person who knows or ought reasonably to know that such attention is unwelcome;
- 7.1.2 unwelcome explicit or implicit behaviour, suggestions, messages or remarks of a sexual nature that have the effect of offending, intimidating or humiliating the complainant or a related person in

- circumstances;
- 7.1.3 implied or expressed promise of reward for complying with a sexually oriented request; or
 - 7.1.4 implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually oriented request.
 - 7.2 If such forms of conduct come from a person in a position of institutional power over the person against whom the conduct is directed, that abuse of power will be judged to be an aggravating circumstance.
 - 7.3 Examples of sexual harassment may include the following as a guideline and should in no way whatsoever be construed as exhaustive:
 - 7.3.1 physical conduct of a sexual nature, which includes all unwanted physical contact, ranging from touching to sexual assault and rape, or frisking or strip searches by another person;
 - 7.3.2 verbal forms of sexual harassment, which include innuendoes, suggestions and hints, sexual advances, comments with sexual overtones, sexual-related jokes directed at a specific person or persons or insults or unwelcome graphic comments about a person's body made in their presence or directed at them, unwelcome and inappropriate enquiries about a person's sex life, unwelcome and inappropriate comments about a person's sexual orientation, and unwelcome whistling or any other physical movement directed at a person or group of persons which in the context could be reasonably interpreted as having a sexual undertone;
 - 7.3.3 non-verbal forms of sexual harassment, which include unwelcome gestures, indecent exposure, and unwelcome displays of sexually explicit pictures and objects;
 - 7.3.4 any form of communication of a sexual nature, including exerting pressure on a person for dates and sexual favours;
 - 7.3.5 quid pro quo¹ harassment occurs in the academic context if a lecturer undertakes or attempts to influence any academic decision making process about good marks, academic honours, or any other benefits, in exchange for sexual favours;
 - 7.3.6 sexual favouritism in that a person who is in a position of authority rewards only those who respond to her/his sexual advances, whereas other students who do not submit themselves to any sexual advances are denied good marks, academic honours or any other benefits;
 - 7.3.7 sending or sharing jokes, pictures or other information by e-mail, the internet, or through any other information or communication medium in which the information is sexually explicit or ridicules a person's sexual orientation, or contains sexual innuendos.
 - 7.4 Occasional compliments of a socially acceptable nature do not constitute sexual harassment, and nor do acceptable training methods aimed at eliciting debate and discussion.
 - 7.5 Mutual attraction between people and the expression thereof also does not constitute sexual harassment. Given that romantic relationships may be unduly influenced by the power differential

between lecturers and the students who fall under the purview of their teaching or consequential jurisdiction (a student and his or her supervisor and a head of department and all the students in that department) should be declared to the Management Executive Committee of the University.

8. ROMANTIC OR SEXUAL RELATIONSHIPS

- 8.1 Romantic or sexual relationships between employees and students in which there is insufficient professional distance should be declared to the Management Executive Committee of the University
- 8.2 Romantic and sexual relationships of employees and students should always be consensual;
- 8.3 Relationships involving any position of authority (such as that of a lecturer who is responsible for the supervision or evaluation of the student's work) should also be declared to the Management Executive Committee of the University;

9. PROHIBITION ON RETALIATORY ACTS

No retaliatory acts may be engaged in against any person who reports an incident of alleged sexual harassment, or any person who testifies, assists or participates in any proceeding, investigation or hearing relating to such allegation of sexual harassment.

10. CONFIDENTIALITY

- 10.1 The University recognises that confidentiality is important.
- 10.2 In sexual harassment disciplinary inquiries, all parties endeavour to ensure confidentiality and only appropriate members of the university management, the complainant, the accused, their representatives, witnesses and interpreters may be present.
- 10.3 The Sexual Harassment Officer and all other interested parties respect the confidentiality and privacy of the complainant and the accused to the extent that is reasonably possible.
- 10.4 The University may, however, in some instances be unable to maintain confidentiality; for example, if it is compelled by an order of court to disclose information.
- 10.5 The University discloses to either party or their representatives such information as may be reasonably necessary.
- 10.6 The relevant provisions of the PAIA, POPI and any other applicable legislation apply to the disclosure of information.

11. CRIMINAL AND CIVIL CHARGES

The complainant's right to initiate criminal or civil proceedings is not limited by this policy.

12. TIME LIMITS

- 12.1 All time limits outlined in this policy are aimed at speeding up the resolution of complaints in order to protect the interests of all concerned.
- 12.2 If time limits are not adhered to strictly, the lack of adherence may not be used by any party to justify objections to or appeal against findings unless a form of prejudice can be demonstrated (for example prejudice to a party's abilities to present a case).
- 12.3 Bearing in mind that the case should be resolved as quickly as possible, time limits may be waived if all parties agree to this.

13. OFFENCES

Any offences as listed herein must be handled in accordance with the provisions of the University's Disciplinary Codes. The following constitute offences under this Policy:

- 13.1 engaging in any form of sexual harassment;
- 13.2 intentionally making a false report of sexual harassment and/or rape;
- 13.3 engaging in any form of retaliatory act;
- 13.4 failure on the part of a person in an oversight position to report sexual harassment when such accusation has been brought to his or her attention by a complainant with the intention that he or she should act upon it;
- 13.5 failure by the Sexual Harassment Officer to treat a report of harassment as confidential;
- 13.6 failure to comply with any other duty as set out in this Policy and that of Harassment Policy;
- 13.7 witnessing an act of sexual harassment and/or rape, and failure to report it or failure to co-operate with an investigation when it is objectively clear that the survivor of the alleged sexual harassment and rape wants to proceed with disciplinary or criminal enquiry.

14. MAXIMUM PENALTIES

- 14.1 Any offences listed in this policy must be handled in accordance with the provisions of the University Student Regulations and other applicable policies.
- 14.2 A student and/or member of staff accused of sexual harassment and/or rape may be temporarily and immediately suspended if he or she is believed to endanger the safety of other students or staff of the University.
- 14.2 Students and/or members of staff may be summarily suspended or expelled if found guilty of an offence, but a lesser penalty may be imposed if the degree of the offence is less serious.

15. ADDITIONAL SICK LEAVE

The University may grant, at the University's discretion, additional sick leave to a complainant upon receipt of a medical certificate.

16. POLICY AVAILABILITY AND COMMUNICATION

The policy must be made available in the following ways: the full policy on both the Intranet and Internet, and the core contents of the policy in abbreviated, maximum accessible and understandable form via appropriate communication avenues with students and/or staff. In addition, each student on registration and/or a new staff member must be provided with a copy of the policy.

17. INTERVENTIONS AIMED AT ELIMINATING SEXUAL HARASSMENT AND/OR RAPE

- 17.1 The University commits to, within reasonable time and means, establish a Unit or Office to deal solely with sexual harassment and rape including issues of gender-based violence.
The Unit should be independent or autonomous of any faculty or support division to ensure objectivity and effective way of applying policies and measures to deal with sexual harassment and rape including issues of gender-based violence.
- 17.2 The Unit or Office to deal solely with sexual harassment and rape, including its personnel will be financed or funded by the University.
- 17.2 The established Unit or Office should also deal with issues of programming, prevention, monitoring and evaluation of progress, and awareness.
- 17.3 It is mandatory for the Unit/Office, Student Affairs, Institutional Office for HIV and AIDS, Campus Health, PsyCad, Protection Services, Transformation Office, Operations and Community Engagement to be part of the initiatives of the University to deal with issues of programming, prevention, monitoring and evaluation of progress, and awareness.
- 17.4 The forum must ensure that it facilitates annual programs aimed at addressing issues of sexual harassment and rape, prevention, support and rehabilitation beyond just programs of awareness, socializing, gender identities, sexual orientation, religion and culture.

18. CONTACT DETAILS

The contact details of all relevant functionaries must be made easily available on the UJ Intranet, UJ Web, Blackboard, and in abbreviated form in study guides and on public posters.

19. POLICY REVIEW

This policy will be reviewed in its entirety every five years (or earlier if an urgent need arises).

STANDARD OPERATING PROCEDURE: PREVENTION AND MANAGEMENT OF STUDENT SEXUAL HARASSMENT AND RAPE

REPORTING AND INVESTIGATING ALLEGATIONS OF STUDENT SEXUAL HARASSMENT AND RAPE

1. PREAMBLE

This document should be read with and applied in conjunction with the Policy on Prevention and Management of Student Sexual Harassment and Rape as well as with the Policy on Harassment, and the institutionally established procedures and processes. Any allegations of sexual harassment and/or rape that may result in a disciplinary action against a student and/or member of staff shall be dealt with in terms of the existing disciplinary policies and procedures. In all instances, the management of the University retains the prerogative to determine when a matter warrants an investigation and, in compliance with this policy and applicable laws and regulations, to decide on the appropriate investigative process to be employed.

2. PURPOSE

The purpose of the Standard Operating Procedure is to provide guidance to students and staff for reporting and investigating allegations of sexual harassment and rape.

3. REPORTING

- 3.1 Any student who believes that he or she has experienced or witnessed sexual harassment and/or rape is encouraged to report such behaviour promptly to the Sexual Harassment Officer as the University cannot take any action against the accused unless it is aware of such incidents.
- 3.2 Incidents must be reported preferably within 30 working days or as soon as reasonably possible to ensure prompt investigation and action.
- 3.3 The Sexual Harassment Officer must treat all reports of sexual harassment and/or rape as confidential.
- 3.4 Where appropriate, the Sexual Harassment Officer may also recommend counselling or other appropriate support services to the complainant and/or survivor.
- 3.5 The University reserves the right to institute proceedings against an accused by vicariously assuming the position of the complainant. The Sexual Harassment Officer must ensure that the disciplinary process is followed to its full and logical conclusion.

- 3.6 It should be recorded that the intention is to stop the offending behaviour, resolve the complaint, protect all parties' rights and reputations until a decision has been reached, and to resolve the matter in a manner that is timely and equitable to all parties concerned.
- 3.7 The Sexual Harassment Officer [or a representative of the Sexual Harassment Officer] does a preliminary investigation of anonymous complaints to determine whether any justification exists for a full investigation. Such an investigation is done with the utmost care to protect the rights and reputations of everyone involved.

4. INVESTIGATION

- 4.1 The Sexual Harassment Officer, undertakes a preliminary investigation to establish whether there is enough evidence to substantiate the allegation.
- 4.2 This investigation begins within 10 working days after the allegation was reported to the relevant Sexual Harassment Officer and is completed in the shortest reasonable period of time, but not later than 10 working days after the investigation had begun.
- 4.3 The preliminary investigation report becomes part of the record and may be used in the formal proceedings as defined below.
- 4.4 If the relevant Sexual Harassment Officer determines through the preliminary investigation that the allegations of harassment cannot be substantiated, the Officer may decide that a formal hearing process under the disciplinary code is not justified.
- 4.5 If complainants wish to appeal against the relevant Sexual Harassment Officer's decision not to use the formal hearing process, they may direct their appeal to the Deputy Vice-Chancellor: Employees and Student Affairs, who will discuss the decision with the relevant Sexual Harassment Officer. The resulting decision is final.

6. THE PROCESS

- 6.1 Complainants may file a formal written complaint immediately after an incident, after a preliminary investigation by the Sexual Harassment Officer.
- 6.2 The complaint is lodged on the confidential form provided by the Sexual Harassment Officer.
- 6.3 The Sexual Harassment Officer sends a copy of the complaint, signed by the complainant, to the accused and any official interested party within five working days of the finalisation of the investigation.
- 6.4 In accordance with the University's disciplinary or grievance codes, the Sexual Harassment Officer sets a date for a disciplinary or a grievance hearing within 10 working days of

- receipt of the complaint.
- 6.5 In spite of any other provision in the University's disciplinary or grievance codes, the disciplinary hearing is completed within 10 working days after its commencement, unless all the parties agree otherwise in writing.
 - 6.6 The accused's silence at or absence without good reason from a disciplinary or grievance hearing does not prevent the hearing from proceeding. The accused's failure or refusal to respond may result in the hearing proceeding solely on the basis of the complainant's testimony.
 - 6.7 Subject to paragraph 3.5 above, a complainant's failure to cooperate with the process in a timely manner may negate the University's obligation to continue with the proceedings.
 - 6.8 The Sexual Harassment Officer makes every effort to cooperate closely with the complainant to ensure due process, but may administratively close a complaint if the complainant fails to cooperate or participate fully in the process.
 - 6.10 Where the complainant, survivor or accused of the alleged sexual harassment is a minor, the parents and/or guardian is informed of the allegations and the processes implemented by the University.
 - 6.11 The minor is entitled to be represented by her or his parent and/or guardian. The parties may make use of external legal representation..

7. BURDEN OF PROOF

Sexual Harassment is proven on a balance of probabilities.

8. REVIEW

This Standard Operating Procedure will be reviewed in accordance to the review of the Prevention and Management of Student Sexual Harassment and Rape Policy.