



POLICY ON ANTI-XENOPHOBIA

Policy Owner	Chief Operating Officer
Division/Unit/Department	Human Capital Management (HCM); Protection Services; Psychological Services and Career Development (PsyCaD); Student Affairs; Division for Internalisation; Faculties.
Date of Initial Approval	22 September 2021
Approved by	Council
Approval Dates of Revisions/Amendments	
Next Review Date	2026
Platform to be published on	UJ Intranet and Blackboard

Contents

1. INTRODUCTION.....	2
2. PURPOSE.....	3
3. OBJECTIVE	3
4. SCOPE AND APPLICATION.....	3
5. DEFINITIONS AND ABBRIVIATIONS	3
6. RIGHTS	6
7. DISPUTES AND DISPUTE-RESOLUTION PROCEDURES	6
8. SUBJECTION TO OCCUPATIONAL/ACADEMIC/FINANCIAL DETRIMENT AND VICTIMISATION.....	7
9. CONFIDENTIALITY	7
10. POLICY PROVISIONS.....	8
11. CRIMINAL AND CIVIL CHARGES	9
12. TURNAROUND TIME.....	9
13. OFFENCES.....	9
15. IMPLEMENTATION	10
16. MONITORING.....	10
17. EX GRATIA LEAVE	10
18. POLICY AVAILABILITY AND COMMUNICATION	11
19. ANNUAL REPORT	11
21. POLICY REVIEW	11
22. REPORTING CASES OF XENOPHOBIA	11

1. INTRODUCTION

- 1.1 The Constitution, Act No. 108 of 1996, being the supreme law of the Republic of South Africa, warrants the right to equality and equal protection under the law for all people living in the Republic. It guarantees these rights regardless of ethnic or social origins, gender, sexual orientation, pregnancy, marital status, disability, age, religion, belief, conscience, language, birth or culture.
- 1.2 The Employment Equity Act, No. 55 of 1998, stipulates that all working environments should be free from unfair discrimination and other forms of prejudices.
- 1.3 Therefore, we the community of the University of Johannesburg (UJ):
 - (a) Value and **promote diversity**;
 - (b) Believe in engaging in a safe academic and work environment, where **fair treatment and respect** for each person's dignity and individual identity is upheld by our University community;
 - (c) Commit to eliminating all forms of xenophobic incidents, and strive to achieve a shared vision, which includes endorsing the **Commitment Against Xenophobia** adopted by UJ.
- 1.4 We further commit to:
 - (a) Timeously address all occurrences of unfair discrimination to create a safe and enabling university environment;
 - (b) Educate our community to be understanding and aware of the impact of their thoughts and actions;
 - (c) The dignified and fair treatment of everyone within the UJ community, irrespective of nationality, race, culture, language, gender, birth, or on any other arbitrary ground.
 - (d) Respect everyone's human rights and fundamental freedoms as mandated in the 1996 Constitution of the Republic of South Africa and the 2019 **National Action Plan** (NAP) to Combat Racism, Racial Discrimination, **Xenophobia** and Related Intolerance which commits to combat racism, racial discrimination, **xenophobia** and related intolerance such as bullying.
- 1.5 South Africa's 2019 National Action Plan to Combat Racism acknowledges that forms of prejudices such as **xenophobia**, hate crimes, and hate speech continue to be felt in its society, and therefore prescribes that it urgently combat them. The National Action Plan is intended to complement existing legislation, policies, and programmes that address equality, equity, and discrimination.
- 1.6 **Xenophobia** is a serious misconduct that may result in disciplinary action. Reports of xenophobic incidents will be taken seriously, and will be dealt with timeously. The nature and gravity of each reported case will determine the appropriate action to be taken, which may include investigation, intervention, mediation, and the instigation of a complaint and disciplinary procedures.
- 1.7 This policy applies to complaints of alleged **xenophobic incidents** that may have taken place at the University or off campus; through writings, drawings (including graffiti), or verbal means; through digital or social media; or through any other form of communication.
- 1.8 A **false claim** of xenophobic attack is a serious offence.
- 1.9 This policy is to be read and applied in conjunction with the **Standard Operating Procedure: Anti-xenophobia**.

2. PURPOSE

- 2.1 The aim of the **Anti-xenophobia Policy** is to prevent or address all forms of xenophobia and related intolerance such as hate speech, hate crime, unfair discrimination, bullying, and victimisation within the University.
- 2.2 Furthermore, the purpose of the policy is to create fairness, unity, and a safe, healthy, and respectful institutional environment conducive to working, teaching, learning, and research, where all can develop and serve to their fullest potential and to ensure that:
- (a) All allegations of **xenophobia** are reported and effectively and urgently dealt with;
 - (b) The victim is granted an effective and prompt remedy against such behaviour;
 - (c) Complainants are reassured that they will be protected from victimisation or retribution for lodging complaints in good faith; and
 - (d) Appropriate avenues are provided for persons to lodge complaints in complete confidentiality.

3. OBJECTIVE

The objective of this policy is to create a safe and **xenophobia-free** institutional environment.

4. SCOPE AND APPLICATION

- 4.1 The scope of the policy is to guide all policy and procedural documents and principles that relate to **xenophobia**, unfair discrimination, and victimisation at the University of Johannesburg.
- 4.2 This policy is institution-wide, and applies to all UJ stakeholders, **regardless of nationality, status, location, date, and time**.
- 4.3 The policy applies to visitors (for admission as students or for employment) while on campus.
- 4.4 The policy also applies to any other person or entity engaging in any activity on any property under UJ's jurisdiction or any university-related activity.
- 4.5 This policy further applies wherever **xenophobic incidents** might impact negatively on the University or its staff, students, or any other person or entity, and when and wherever any behaviour relating to xenophobia, or the publication and reporting thereof, might have a negative impact on, or possess a reasonable potential to harm, a fellow student or staff member of the University or any other person or entity, or adversely affect UJ's reputation.

5. DEFINITIONS AND ABBRIVIATIONS

- 5.1 In the context of this policy:
- 5.1.1 "**Advisory panel**" refers to the panel of preliminary enquiry who conduct investigations after the advisers have filed official complaints and referred these to an advisory panel; there are two advisory panels for **xenophobia**—one dealing with staff, and the other with students.
- 5.1.2 "**Afrophobia**" means showing unjustified negative behaviour towards and/or fear of black people or people of African descent. It seeks to dehumanise black people and deny them their dignity through verbal abuse and physical violence. While

xenophobia is an irrational fear of non-nationals, **Afrophobia** is a form of xenophobia that targets a specific racial group of non-South African Africans from the rest of the continent and the Diaspora, or non-South African black people in general, using Afrophobic abusive words and phrases or degrading language.

- 5.1.3 “**Alleged perpetrator, accused, or respondent**” refers to the person against whom a complaint has been lodged regarding an alleged violation of this policy.
- 5.1.5 “**Applicant**” means any individual who is applying for admission as a student to the University of Johannesburg.
- 5.1.6 “**Bullying**” means any unwanted aggressive behaviour, often a sustained attack on one or more persons by another person(s) using actions that are emotionally and psychologically harmful.
- 5.1.7 “**Complainant**” means the person who has lodged a complaint regarding an alleged violation of this policy according to the terms of the policy. An anonymous complaint does not satisfy the definition of Complainant.
- 5.1.8 “**Counsellor**” means a trained person appointed by UJ to provide psychological and psycho-social services to students and/or staff.
- 5.1.9 “**Diversity**” means understanding that each person is unique, and recognising their individual differences. It includes exploring these differences in a positive and safe institutional environment, and moving towards embracing the substantial dimension of diversity in each individual. These dimensions can be defined by nationality or country of origin, social status, race, physical abilities, colour, ethnicity, gender, sexual orientation, religious beliefs, and/or other ideologies.
- 5.1.10 “**Employee**” refers to a staff member of the University of Johannesburg, including students employed permanently or temporary by the University, or any individual irrespective of status, who has agreed to be bound by the rules and policies of the University.
- 5.1.11 “**Foreigner**” is any person born in, or coming from, a country other than South Africa. This includes those who have attained South African citizenships and/or Permanent Residence, but are of foreign descent.
- 5.1.12 “**Harassment**” is a form of **xenophobia**. In terms of South Africa’s Protection Against Harassment Act, No. 17 of 2011, harassment is any behaviour such as stalking, that violates the constitutional provisions of the right to privacy and dignity of individual persons. This can reasonably mean:
Any unwanted conduct that humiliates, demeans or creates a hostile or intimidating environment, or induces submission by actual or threatened adverse consequences, and which may be a once-off event, or serious or persistent behaviour, and may relate to:
- (a) nationality, ethnicity, race, and/or culture; or
 - (b) a person belonging or presumed to belong to a group identified by one or more of the prohibited grounds of discrimination or characteristics associated with such a group.

Harassment inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably:

- (a) following, watching, or pursuing the complainant or a related person, or loitering outside of, or near to, the building or premises where the complainant or a related person resides, works, studies, or happens to be;

- (b) engaging in verbal, written, electronic, or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; and/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.
- 5.1.13 **“Harm”** refers to any mental, psychological, physical, or economic injury, in terms of South Africa’s Protection Against Harassment Act, No. 17 of 2011.
- 5.1.14 **“Hate crime”** is an offence recognised under the law. It is motivated by a person’s prejudice or intolerance towards the victim of the crime in question, due to perceived characteristics of the victim or the victim’s family, or the victim’s association or support for, a group of persons who share the said characteristics on the basis of one of the grounds listed under **Hate speech**.
- 5.1.15 **“Hate speech”** is any kind of communication in writing, speech, and/or behaviour that attacks or uses discriminatory language to a person based on one or more grounds, including nationality or descent; age; ethnic or social origin; colour; sexual orientation; disability; religion; conscience; belief; culture; language; and birth. Hate speech could reasonably be interpreted to demonstrate a clear intention to:
- (a) be harmful or to incite harm; or
 - (b) to promote or propagate hatred.
- 5.1.16 **“Investigative officer”** refers to the person appointed by the University of Johannesburg to investigate xenophobia-related cases that have been reported.
- 5.1.17 **“Mediator”** refers to a person – identified by the UJ Division of Human Resources - who helps to settle a dispute or facilitate agreement when there is conflict between two or more people (member of staff or students) in relation to **xenophobia**, unfair discrimination, and for alleged bullying in terms of this policy, and provided that the person has received adequate accredited training to act in such a capacity.
- 5.1.18 **“Phobia”** is defined as showing hostility or prejudice towards, or having an irrational fear or mistrust of, another person.
- 5.1.19 **“PAIA”** refers to South Africa’s Promotion of Access to Information Act, No. 2 of 2000 (as amended).
- 5.1.20 **“POPI”** refers to South Africa’s Protection of Personal Information Act, No. 4 of 2013.
- 5.1.21 **“Protected disclosure”** refers to a disclosure or report made in good faith and considered in accordance with the procedure described in this policy aimed at reporting the relevant misconduct.
- 5.1.22 **“Staff”** means a collective group of personnel irrespective of ones’ status or nationality, as outlined by the **employee definition** in this section.
- 5.1.23 **“Student”** means a person registered (as full-time or part-time) to take up studies at UJ, or prospective students applying to study at the University, regardless of time, date, and location.
- 5.1.24 **“Unfair discrimination”** is defined as the prejudicial or unjust treatment of different categories of people, on the grounds of nationality, race, age, sex, ethnicity, social origin, or any rights provided for in terms of the Constitution of South Africa, Act No. 108 of 1996.
- 5.1.25 **“Victim”** means a person who is reportedly at the receiving end of an act of xenophobia or someone who has reportedly been subjected to xenophobia.

- 5.1.26 “**Victimisation**” is any harmful consequences (or threat of such consequences) visited upon a person because he or she has lodged, intends to lodge, or has helped someone else lodge, a complaint of **xenophobia** under this policy, or because the person in question has provided information about a complaint (such as by whistleblowing) or has acted as a witness regarding a complaint of **xenophobia**.
- 5.1.27 “**Violence**” is defined as any verbal, physical, psychological, or mental harm to a person.
- 5.1.28 “**Visitor**” means any person that is not an employee or registered student at UJ.
- 5.1.29 “**Xeno**” means being foreign or strange or different in origin.
- 5.1.30 “**Xenophobia**” is an aversion or prejudice against a perceived foreigner or non-South African, based primarily on the person’s country of origin, culture, ethnicity, race, language, or any form of unfair discrimination defined in this section. South Africa’s Promotion of Equality and Prevention of **Unfair Discrimination Act**, No. 4 of 2000, prohibits unfair discrimination. Therefore, xenophobia could reasonably be interpreted to demonstrate a clear intention to:
- (a) discriminate unfairly and/or harm a perceived foreign national or stranger.

6. RIGHTS

- 6.1 Complainants have the right to lodge a complaint in accordance with the **Standard Operating Procedure: Anti-xenophobia**.
- 6.2 Apart from such rights, the complainant has the right to oblige his or her rights in terms of the Protection from Harassment Act, No. 17 of 2011; these rights which 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 that infringes someone’s property. The complainant may further initiate a civil claim for damages.
- 6.3 Complaints by employees:
- (a) Should a complaint of alleged **xenophobia**, where the complainant is a staff member, not be satisfactorily resolved by the internal procedures as set out above, either party may, within 30 working days of the dispute having arisen, refer the matter to the South African Commission for Conciliation, Mediation and Arbitration (CCMA) for resolution in accordance with section 135 of the Labour Relations Act (LRA), No. 66 of 1995.
- (b) Should the dispute still remain unresolved, either party may refer the dispute to the Labour Court within 30 days of receipt of the certificate of the commissioner in terms of section 135(5).

7. DISPUTES AND DISPUTE-RESOLUTION PROCEDURES

7.1 Mediation

Mediation constitutes a voluntary procedure whereby either parties or groups of parties in a dispute involving any allegation of **xenophobia** must agree to it. The purpose of the mediation is to avoid the time and expense of further litigation by settling an alleged violation of this policy early in the process. An agreement to undergo mediation will not commit the complainant to pursue disciplinary or criminal charges, nor deprive them of the right to do so. Therefore, formal complaint and/or

grievance procedures remain available to complainants in circumstances where the mediation process breaks down or collapses.

- 7.2 A request for mediation may arise from various grounds, including:
- (a) Directly from a complainant or victim;
 - (b) The **mediator** whom the complainant has approached for advice or assistance; and/or
 - (c) A managerial staff member of the University who is aware of a real or potential conflict situation between staff and/or students, which falls within the scope of this policy.
- 7.3 If the alleged perpetrator does not agree to mediation, the complainant will be advised that mediation cannot take place and that she/he has the option to initiate a formal complaint procedure at the **Employment Relations Office of UJ** (in the event that the alleged perpetrator is an employee) or the **Directorate for Student Discipline and Mediation** (in the event that the alleged perpetrator is a student) in accordance with the rules of the University of Johannesburg.
- 7.4 In the event that the Mediator is satisfied that the parties in the dispute agree freely and voluntarily to mediation, these proceedings will commence, the details of which will be communicated by the Mediator to the parties involved in the dispute.
- 7.5 No formal complaint or disciplinary proceedings may commence or be pursued during the course of the mediation process.
- 7.6 The Mediator may, during any stage of the mediation process, declare that the mediation has been terminated for the following reasons:
- (a) If either party withdraws their consent to mediation.
- 7.7 In such a case where the mediation is terminated, the matter will be referred to the **UJ Employment Relations Office** or the **UJ Directorate for Student Discipline and Mediation** (as the case may be) for formal procedures to be initiated if the complainant so desires.

8. **SUBJECTION TO OCCUPATIONAL/ACADEMIC/FINANCIAL DETRIMENT AND VICTIMISATION**

- (a) No person may be subjected to any form of **occupational/academic/financial harm** and **victimisation** for reporting an incident of alleged xenophobia or testifying, assisting and/or participating in any proceeding, investigation, or hearing relating to an allegation of xenophobia.
- (b) **No retaliatory or sabotage acts** may be engaged in against any person who reports an incident of alleged xenophobia or any person who testifies, assists, or participates in any proceeding, investigation, or hearing relating to an allegation of xenophobia.

9. **CONFIDENTIALITY**

- (a) In **disciplinary inquiries** and **mediation processes on xenophobia-related issues**, all parties endeavour to ensure confidentiality and that only appropriate members of management, the complainant, the accused, their representatives, witnesses, and interpreters are present.

- (b) The case manager as an advocate for the mediation process, and all other interested parties should respect the confidentiality and privacy of the complainant and the accused to the extent that is reasonably possible.
- (c) The University of Johannesburg may, however, in some instances be unable to maintain confidentiality; for example, if it is compelled by an order of court to disclose information, or if communal interests outweigh individual ones.
- (d) UJ may disclose to either party or their representatives such information as may be reasonably necessary on a professional level.
- (e) The relevant provisions of the PAIA, POPI, and any other applicable South African government legislation apply to the disclosure of information.

10. POLICY PROVISIONS

- 10.1 UJ promotes provisions that prohibit xenophobia, unfair discrimination, prejudice and victimisation, and which enhance the creation of a diverse and inclusive university community.
- 10.2 All persons to whom this policy applies must refrain from engaging in any form of direct or indirect xenophobic attacks, or victimisation as defined herein.
- 10.3 The University Management will take reasonable steps to create a diverse institutional environment which is **free from all forms of xenophobia** and victimisation by:
 - (a) adopting appropriate policies, plans, and programmes to protect or advance groups that have been disadvantaged by prejudice or unfair discrimination, or members of such groups;
 - (b) reviewing all institutional policies and practices regularly to ensure that they comply with the principles and provisions set out in this policy;
 - (c) adopting appropriate **educational strategies** and **awareness campaigns** to educate and sensitise UJ stakeholders about issues relating to xenophobia and all unfair discrimination and victimisation, and to promote a diverse, inclusive, university environment.
 - (d) all faculties and divisions at UJ are required to promote and support **anti-xenophobia and equity policies** on campus.
- 10.4 As part of their induction at the University, all **employees (permanent, temporary and fixed-term)** are required to undergo some awareness training about the Employment Equity Act, and the Six Codes of Good Practice must be included, as per the Employment Equity Plan (prescribed by the Employment Equity Act, No. 55 of 1998).
- 10.5 All line managers are obliged to take all reasonable measures to:
 - (a) **Monitor the working environment** to ensure that it is free from all forms of xenophobia, and to take appropriate remedial action in accordance with this policy should unfair discrimination, or the threat thereof, occur in their environment.
 - (b) Ensure that their own behaviour is appropriate and that no one engages in conduct that may contravene the policy and procedures set out herein, which includes **refraining from any form of victimisation** of staff and/or students.

- (c) Ensure that all persons to whom this policy applies, and who resort under their line management, **understand the policy and procedures** set out herein.

11. CRIMINAL AND CIVIL CHARGES

- 11.1 The University of Johannesburg acknowledges that certain kinds of offences are **not suited to being mediated**, for example, in cases where the alleged contravention is serious. Care must also be taken to ensure that resolutions, even when agreed to by both parties, are appropriate and fair. Therefore:
 - (a) The complainant's right to initiate criminal or civil proceedings is not limited by this policy.
- 11.2 The case manager should ascertain whether the victim has made a complaint to the South African Police Service (SAPS), and provide support where she or he chooses to do so.
- 11.3 **All victims of xenophobia** will be advised of support resources that are available to them should they wish to report or lay charges with the SAPS.

12. TURNAROUND TIME

- 12.1 All time limits outlined in this policy are aimed at the prompt investigation of the complaints so as to reach a resolution to protect the interests of all concerned parties. Parties to a complaint are entitled to receive advice and support, as appropriate, and to be kept informed of the progress regarding a complaint.
- 12.2 In cases where students are involved, the time outlined excludes UJ's first and second semester breaks for June/July and December/January holidays, respectively, since the University is not in full operation during these times.
- 12.3 If time limits are not strictly adhered to, this may not be used by any party to justify objections to, or an appeal against, findings, unless a form of prejudice can be demonstrated (for example, prejudice to a party's abilities to present a case).
- 12.4 Delayed reporting by a complainant may not detract from the duty of the University to deal with the complaint brought forth.
- 12.5 Time limits may be waived if all parties agree to this, but bearing in mind that the case should be resolved promptly.
- 12.6 The turnaround time will adhere to existing South African legislation, but with the intention to address all reported cases as practically and efficiently as possible.

13. OFFENCES

- 13.1 Any offences, as listed herein, must be handled in accordance with the provisions of the **University's Disciplinary Codes and Guidelines**. The following constitute offences under this policy:
 - (a) Engaging in any form of **xenophobia**;
 - (b) Intentionally making a **false report** of xenophobia;
 - (c) Engaging in any act of **reprisal**;
 - (d) Failure on the part of a person in an oversight position to **report alleged incidents of xenophobia** 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

- (e) Failure by the case manager and parties involved to treat a report of alleged xenophobia as **confidential**;
- (f) **Failure to comply** with any other duty as set out in this policy and that of UJ regulations related to anti-discrimination;
- (g) **Witnessing an act of xenophobia**, and failure to report it, or failure to cooperate with an investigation when it is objectively clear that the victim of the alleged xenophobic incident/s wants to proceed with disciplinary or criminal enquiry.

14. DISCIPLINE AND DISMISSAL

- 14.1 Any offences listed in this policy must be handled in accordance with the guidelines as prescribed by **UJ's Disciplinary Code and Guidelines** and other applicable policies.
- 14.2 The intention to **suspend or expel** an alleged perpetrator should be communicated to them in the event that there is potential for victimisation of the complainant; and, in turn, the alleged perpetrator is afforded a reasonable period to respond and state reasons why they should not be suspended or expelled pending investigation; thereafter, a final decision is taken by the UJ Vice-Chancellor regarding the way forward.
- 14.3 A student and/or member of staff accused of xenophobia may be temporarily and immediately suspended if it is believed she or he could endanger other students or staff of the University.
- 14.4 Students and/or members of staff may be summarily suspended or expelled if found guilty of an offence; however, a lesser penalty may be imposed if the degree of the offence is less serious.

15. IMPLEMENTATION

- 15.1 The custodian is responsible for the implementation of the policy from the effective date or the review date. The stipulations of this policy become effective as soon as the University Council has approved it.

16. MONITORING

- 16.1 The owners of the policy are accountable, and the custodian is responsible for establishing the necessary controls to monitor adherence to this policy.

17. EX GRATIA LEAVE

The University may grant, at its discretion, ex gratia sick leave to a complainant upon receipt of a medical certificate.

18. POLICY AVAILABILITY AND COMMUNICATION

- 18.1 The policy must be made available in the following ways: once approved, the full policy must be published on both the UJ Intranet and UJ Internet, Blackboard, and in abbreviated form in study guides and on public posters; an accessible and understandable form of the core contents of the policy must be communicated through appropriate avenues to both students and staff. In addition, each student on registration and every new staff member must be provided with a copy of the policy. Hard copies of the policy will be made available to staff members who have no access to the Internet or Intranet.

19. ANNUAL REPORT

- 19.1 The owners of the policy are accountable, and the custodian is responsible, for reporting on the policy which includes submitting an annual report to the management team. Statistical feedback on alleged incidents of xenophobia and a case management profile must be submitted to the management team once a semester.

20. RELEASE

- 20.1 The custodian, advised by the UJ Director: Legal Services, must disseminate information regarding completed cases.

21. POLICY REVIEW

- 21.1 This policy will be reviewed every five years or earlier, if circumstances so dictate – or as deemed necessary.

22. REPORTING CASES OF XENOPHOBIA

- 22.1 Cases of **xenophobia** must be reported via the following means and contacts:

(a) **The UJ Ethics Hotline:**

Tel: 0800 872 846

Email: uj@tip-offs.com

Website: www.tip-offs.com

(b) **Transformation Unit:**

Director:

Tel: +27 11 559 7441

Ga Batho Building, Room 235, APK Campus

Senior Manager:

Tel: +27 11 559 3592

Ga Batho Building, Room 154, APK Campus

Manager:

Tel: +27 11 559 4343

Ga Batho Building, Room 154, APK Campus

Coordinator:
Tel: +27 11 559 4307
Ga Batho Building, Room 154, APK Campus

Approved by Council on 22 September 2021