



POLICY ON UJ BULLYING, HARASSMENT, SEXUAL HARASSMENT AND RAPE

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1. INTRODUCTION

- 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 Employment Equity Act, 55 of 1998, prescribes that the working environment should be free of discriminatory practices, including sexual and other forms of harassment.
- 1.3 The University is committed to providing an institutional environment where all may pursue their studies, careers, duties and activities free from bullying, harassment, sexual harassment, rape, intimidation or exploitation. 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 that encroaches on these human rights. All persons covered by this Policy ought to treat one another with respect.
- 1.4 Bullying, harassment, sexual harassment and rape constitute serious misconduct and may result in disciplinary action. Furthermore, rape is a criminal offence as per the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. Reports of bullying harassment, sexual harassment and rape will be taken seriously and will be dealt with promptly, but in a fair, sensitive and objective manner. The nature and gravity of each instance will dictate the specific action to be taken, which may include intervention, mediation, investigation, and the initiation of grievance or disciplinary procedures.
- 1.5 Bullying, harassment, sexual harassment and rape are proven with sufficient and credible evidence, assessed on a balance of probabilities. This Policy applies to complaints of alleged bullying, harassment, sexual harassment and rape that may have taken place both on-campus, off-campus, or through communication media, digital, or social media.
- 1.6 A false claim of bullying, harassment, sexual harassment and rape is a serious offence.
- 1.7 This Policy is to be read and applied in conjunction with the Standard Operating Procedure: bullying, harassment, sexual harassment and rape.

2. PURPOSE

- 2.1 The purpose of this Policy is to prevent, eliminate and manage bullying, harassment, sexual harassment and rape within the University.
- 2.2 The purpose is furthermore to formalise the University's position on bullying, harassment, sexual harassment and rape, to implement a zero-tolerance approach to such activities, to afford victims of bullying, harassment, sexual harassment and rape an effective remedy against such behaviour and to ensure that:

- a) All allegations of bullying, harassment, sexual harassment and rape reported are dealt with.
- b) Avenues are provided for persons to lodge complaints in complete confidentiality.
- c) Complainants are reassured that they will be protected from reprisals or victimisation for lodging complaints in good faith.
- d) Speedy resolution of complaints so that the accused may be fairly and swiftly dealt with or exonerated.

3. OBJECTIVE

- 3.1 The objective of this Policy is to create a safe environment free from bullying, harassment, sexual harassment and rape.

4. SCOPE AND APPLICATION

- 4.1 This Policy has institution-wide application and applies to all employees and students regardless of date, time, or location.
- 4.2 The Policy applies to visitors (for employment or for admission as students), while on campus.
- 4.3 Persons other than students, employees or visitors (as defined above) shall be entitled to lodge a complaint in terms of this Policy against a student or employee of the University over whom the University has jurisdiction.

5. DEFINITIONS AND ABBREVIATIONS

- 5.1 In this Policy, unless the context clearly indicates otherwise:
 - 5.1.1 "**Applicant**" means any person who is applying for admission as a student at the University or for employment with the University.
 - 5.1.2 "**Accused**" means the person alleged to have committed an act of harassment, sexual harassment and/or rape and "Respondent" bears the similar meaning.
 - 5.1.3 "**Bullying**" means any abuse of real or perceived power that targets individuals or groups of people unfairly. This includes actions like physical attacks, purposeful alienation, spreading false rumours, verbal abuse and various forms of emotional mistreatment, as well as including any form of cyber-bullying.
 - 5.1.4 "**Complainant**" means either the person who is, or was, subject to alleged act(s) of bullying harassment, sexual harassment and/or rape, namely the survivor, or a person who lodges a complaint under this Policy on behalf of a survivor.
 - 5.1.5 "**Compelled Rape**" The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 defines compelled rape as:
 - a) Any person (A) who unlawfully and intentionally compels a third person (C), without the consent of C, to commit an act of sexual penetration with a complainant (B), without the consent of B, is guilty of the offence, compelled rape.

- 5.1.6 "**Counsellor**" means a person appointed by the University to provide psychological and psychosocial services to students and/or staff.
- 5.1.7 "**Employee**" means a staff member of the University, including students employed by the University, or any person who agreed to be bound by the rules and policies of the University.
- 5.1.8 "**ER**" means Employee Relations.
- 5.1.9 "**GBV**" means gender-based violence.
- 5.1.10 "**GBV case manager**" means the person appointed by the University and is responsible for the receipt of all GBV cases, managing and providing support to students and staff. Responsibilities include overseeing and implementing the UJ Harassment, Sexual Harassment and Rape Policy.
- 5.1.11 "**Harm**" is defined, in terms of the Protection Against Harassment Act, Act 17 of 2011, as any mental, psychological, physical or economic harm.
- 5.1.12 "**Harassment**" is defined, in terms of the Protection Against Harassment Act, Act 17 of 2011, as a behaviour characterised by the making of unwelcome and inappropriate sexual remarks or physical advances in a workplace or other professional or social situation. 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.
 - 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 it amounts to sexual harassment of the complainant or a related person.
- 5.1.13 "**Investigative Officer**" means the person appointed by the University to investigate harassment, sexual harassment and rape reported cases.
- 5.1.14 "**PAIA**" means the Promotion of Access to Information Act 2 of 2000 (as amended).
- 5.1.15 "**LRA**" means Labour Relations Act.
- 5.1.16 "**POPIA**" means the Protection of Personal Information Act, Act 4 of 2013.
- 5.1.17 "**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.
- 5.1.18 "**Survivor**" means a person against who an act of harassment, sexual harassment and rape has allegedly been perpetrated.
- 5.1.19 "**Rape**" The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 defines rape as:

- a) Any person (A) who unlawfully and intentionally commits an act of sexual penetration with a complainant (B) without the consent of B, is guilty of the offence of rape.
 - b) Rape includes using any kind of objects such as fingers, pens, sex toys, etc. used to penetrate complainant without consent.
 - c) Rape is not limited to sexual penetration but include the act of sexual intercourse without consent.
- 5.1.20 "**Sexual Assault**" The Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 defines sexual assault as:
- a) A person (A), who unlawfully and intentionally sexually violates a complainant (B), without the consent of B, is guilty of the offence of sexual assault.
 - b) Another way sexual assault may occur, is if a person (A), who unlawfully and intentionally inspires the belief in a complainant (B), that B will be sexually violated, is guilty of the offence of sexual assault.
- 5.1.21 "**Sexual Harassment**" is defined, in terms of the Protection Against Harassment Act, Act 17 of 2011, as:
- a) Unwelcome sexual attention from a person who knows or ought reasonably to know that such attention is unwelcome.
 - b) 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, which a reasonable person having regard to all the circumstances would have anticipated that the complainant or related person would be offended, humiliated or intimidated.
 - c) Implied or expressed promise of reward for complying with a sexually oriented request.
 - d) Implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually oriented request.
- 5.1.22 "**Staff**" means a collective group of employees as outlined by the employer's definition.
- 5.1.23 "**Student**" means registered (full- or part-time) student at the University and prospective students applying to study at UJ regardless of date, time, or location.
- 5.1.24 "**Therapist**" means a person appointed by the University to provide psychological and psychosocial services to students and/or staff.
- 5.1.25 "**Victim**" means a person against whom an act of harassment, sexual harassment and rape has allegedly been perpetrated.
- 5.1.26 "**Visitor**" refers to any person that is not an employee or registered student with the University.
- 5.1.27 "**Workplace bullying**" according to the draft code of good practice on the prevention of violence and harassment in the world of work, workplace bullying is unwanted conduct, which is persistent, or a single incident, which is serious and demeans, humiliates, or creates a holistic or intimidating environment, or

is aimed to induce, through submission or through actual or threatened adverse consequences. It includes any unfavourable or offensive conduct, which has the effect of creating a hostile workplace environment.

- a) Section 6 (3) of the EEA should be interpreted in the light of the broader prohibition of unfair discrimination intended by section 9 (3) of the Constitution to include workplace bullying.
- b) Section 186 (2) of the LRA covers unfair conduct relating to promotion, demotion, training or relating to the provision of benefits which may be areas of manifestations of workplace bullying.
- c) Workplace bullying includes either physical, verbal, or psychological acts.
- d) The terms "harassment", "bullying" or "mobbing" are interpreted interchangeably and do not differentiate between physical, psychological, and non-physical conduct.
- e) Workplace bullying as a form of psychological violence and harassment may be perpetrated through repeated behaviour, of a type, which alone may be relatively minor, but which cumulatively can become a very serious form of violence and harassment.
- f) Workplace bullying and mobbing include the abuse of coercive power by either an individual or a group of employees/colleagues in the internal or external workplace.
- g) Workplace bullying includes a wide range of insulting, demeaning or intimidating behaviour that lowers the self-esteem or self-confidence of an employee including:
 - i) **Harassing, offending, professionally or socially excluding** someone or negatively affecting someone's work tasks.
 - ii) **Physical bullying:** Examples of physical bullying include physical attack, simulated violence, or gestures (such as raising a fist as if to strike or throwing objects near a person).
 - iii) **Tangible/material bullying:** Using formal power (i.e. title, position, or supervisory control) or material leverage (i.e. financial, informational, resource or legal) as forms of intimidation, threat, harassment, and/or harm or to dominate and control the complainant.
 - iv) **Verbal bullying:** May include threats, shaming, hostile teasing, insults, constant negative judgment and criticism, or racist, sexist, or LGBTIQ+ phobia language.
 - v) **Passive-aggressive or covert bullying:** Examples of passive-aggressive and covert bullying include negative gossip, negative joking at someone's expense, sarcasm, condescending eye contact, facial expression or gestures, mimicking to ridicule, deliberately causing embarrassment and insecurity, invisible treatment, marginalisation, social exclusion, professional isolation, and deliberately sabotaging someone's

- dignity, wellbeing, happiness, success and career performance.
- h) Examples of this form of violence and harassment may include but are not limited to:
- i) Slandering or maligning an employee.
 - ii) Deliberately withholding work-related information or supplying incorrect information.
 - iii) Deliberately sabotaging or impeding the performance of work.
 - iv) Ostracising, boycotting, or disregarding the employee.
 - v) Persecution in various forms, threats, and the inspiration of fear and degradation.
 - vi) Deliberate insults, being hypercritical or negative response or attitude or ridicule.
 - vii) Supervision or surveillance of an employee without their knowledge and with harmful intent.
 - viii) Offensive administrative punitive sanctions without objective cause, explanation, or efforts to problems solving.
 - ix) Intolerance of psychological, medical, disability or personal circumstances.
 - x) Demotion without justification.
 - xi) Humiliation and demeaning conduct.
 - xii) Abuse of disciplinary proceedings.
 - xiii) Wrongful conduct causing harm.
 - xiv) Pressure to engage in illegal activities.
 - xv) Recommendation to resign.
 - xvi) Spreading of rumours maliciously.

6. RIGHTS

- 6.1 Complainants have the right to lodge a complaint in accordance with the Standard Operating Procedure: bullying, harassment, sexual harassment and rape.
- 6.2 Apart from such right, nothing precludes the complainant from enforcing his/her/their rights in terms of the Protection Against Harassment Act, 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 that infringes someone's property. **The Complainant may further initiate a civil claim for damages, at his/her own cost.**
- 6.3 Complaints by employees and students:
- a) Should a complaint of alleged bullying, harassment, sexual harassment and rape, where the Complainant is an employee, not be satisfactorily resolved by the internal procedures as set out above, either party may, within 10 working days of the dispute having arisen, refer the matter to the CCMA for conciliation in accordance with section 135 of the LRA.

- 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. SUBJECTION TO OCCUPATIONAL/ACADEMIC/FINANCIAL DETRIMENT AND VICTIMIZATION

- 7.1 No person may be subjected to any form of occupational/academic/financial detriment and victimization for reporting an incident of alleged bullying, harassment, sexual harassment and rape or testifying, assisting or participating in any proceeding, investigation or hearing relating to such allegation of bullying, harassment, sexual harassment and rape.
- 7.2 No retaliatory acts may be engaged in against any person who reports an incident of alleged bullying, harassment, sexual harassment and rape, or any person who testifies, assists or participates in any proceeding, investigation or hearing relating to such allegation of bullying, harassment, sexual harassment and rape.

8. ROMANTIC OR SEXUAL RELATIONSHIPS

- 8.1 The University strongly discourages romantic or sexual relationships between employees, or between students and employees, even if the relationships:
 - a) Are consensual.
 - b) Do not involve any position of authority (such as that of a lecturer who is responsible for the supervision or evaluation of the student's work).
 - c) Do not involve any position of authority (such as that of a line manager who is responsible for supervising the subordinate's work).
 - d) It is mandatory that all parties entering into such relationships declare this to their respective Executive Leadership Group (ELG)/Management Executive Committee (MEC). The custodian of this process will be the Human Resources Division.

9. CONFIDENTIALITY

- 9.1 In bullying, harassment, sexual harassment and rape disciplinary inquiries, all parties endeavour to ensure confidentiality and only appropriate members of management, the Complainant, the accused, their representatives, witnesses and interpreters may be present.
- 9.2 The GBV case manager and all other interested parties respect the confidentiality and privacy of the Complainant and the accused to the extent that is reasonably possible.
- 9.3 The University may, however, in some instances be unable to maintain confidentiality; for example, if it is compelled by an order of a court to disclose information, or if communal interests outweigh individual ones.
- 9.4 The University discloses to either party or their representatives such information as may be reasonably necessary on a professional level.

9.5 The relevant provisions of the PAIA, POPIA and any other applicable legislation apply to the disclosure of information.

10. CRIMINAL AND CIVIL CHARGES

10.1 The Complainant's right to initiate criminal or civil proceedings is not limited by this Policy.

10.2 The GBV case manager should ascertain whether the victim or survivor has made a complaint to the South African Police Service (SAPS) and provide support where she/he/they choose to do so.

10.3 All victims or survivors will be advised of the support resources that are available to them should they wish to report or lay charges with the SAPS.

11. TURNAROUND TIME

11.1 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.

11.2 The time outlined excludes the University June/July and December/January holidays since the University is not completely operational.

11.3 If time limits are not adhered to strictly, they 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).

11.4 Delayed reporting by a complainant may not detract from the duty of the University to deal with the complaint brought forth.

11.5 Time limits may be waived if all parties agree to this but bearing in mind that the case should be resolved as quickly as possible.

11.6 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.

12. OFFENCES

12.1 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:

- a) Engaging in any form of bullying, harassment, sexual harassment and rape.
- b) Intentionally making a false report of bullying, harassment, sexual harassment and rape.
- c) Engaging in any form of a retaliatory act.
- d) Failure on the part of a person in an oversight position to report bullying, harassment, sexual harassment and rape 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 GBV case manager and parties involved to treat a report of bullying, harassment, sexual harassment and rape as confidential.

- f) Failure to comply with any other duty as set out in this Policy and that of the UJ Bullying, Harassment, Sexual Harassment and Rape Policy.
- g) Witnessing an act of bullying, harassment, sexual harassment and rape, and failure to report it or failure to cooperate with an investigation when it is objectively clear that the survivor of the alleged bullying, harassment, sexual harassment and rape wants to proceed with the disciplinary or criminal enquiry.

13. DISCIPLINE AND DISMISSAL

- 13.1 Any offences listed in this Policy must be handled in accordance with the guidelines as prescribed by the University Disciplinary Code and other applicable policies.
- 13.2 The intention to suspend an alleged perpetrator should be communicated to them in the event where there is a potential danger to the Complainant and/or the broader University community, and in turn, the alleged perpetrator is afforded a certain period to respond and state reasons why they should not be suspended pending investigation, thereafter a final decision is taken by the Vice-Chancellor (VC) regarding the way forward. Where time is of the essence such that this is not feasible or practical, the VC (or his/her designate) may suspend the alleged perpetrator without first affording him or her the opportunity of making representations against suspension. In such an event, the alleged perpetrator shall have the right of making representations as to why the suspension should be uplifted.
- 13.3 A student and/or member of staff accused of bullying, harassment, sexual harassment and rape may be temporarily and immediately suspended if believed to endanger the safety of other students or staff at the University.
- 13.4 Students and/or members of staff may be summarily expelled or dismissed if found guilty of an offence, but a lesser penalty may be imposed if the degree of the offence is less serious.

14. EX GRATIA LEAVE

- 14.1 The University may grant, at the University's discretion, ex gratia leave to a complainant upon receipt of a valid medical certificate.

15. POLICY AVAILABILITY AND COMMUNICATION

- 15.1 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 an 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. Copies will be made available to staff members who have no access to the Internet or intranet.

16. UNIVERSITY EFFECTIVE RESPONSE TO GENDER-BASED VIOLENCE

- 16.1 For the University and Policy to effectively respond and address the gender-based violence phenomenon, the institution should operate on the following structure, consisting of various experts. Such a structure will assist the institution to mainstream all GBV cases into a single unit/division:
- a) Gender Equity Unit manager/case manager.
 - b) Case investigator or legal personnel.
 - c) Counsellor/therapist.
 - d) Forensic nurse once the office can handle medical support.

17. CONTACT DETAILS

- 17.1 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.

18. POLICY REVIEW

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

Approved by Council on 22 September 2021

STANDARD OPERATING PROCEDURES (SOP)

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1. INTRODUCTION

- 1.1 This document should be read with and applied in conjunction with the *Policy on Bullying, Harassment, Sexual Harassment and Rape* as well as with established Human Resource and Student Affairs procedures and policies. Any allegations of bullying, harassment, sexual harassment and rape that may result in disciplinary action against an employee or a student shall be dealt with in terms of the pre-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 processes to be employed.

2. PURPOSE

- 2.1 The purpose of the SOP is to provide guidance to employees, students, alumni and external third parties for reporting and investigating allegations of bullying, harassment, sexual harassment and rape.

3. INCIDENT REPORTING AND CASE MANAGEMENT PROCEDURE

3.1 Reporting Incidents

- 3.1.1 Bullying, harassment, sexual harassment and rape incidents can be reported to the University through several methods:
- a) Through reporting directly to the Gender Equity Unit.
 - b) Through a telephone call directed to the Gender Equity Unit or 24-hour emergency and crisis response departments/divisions (Protection Services and PsyCaD).
 - c) Complainants will have an option to report incidents via the UJ GBV app once it has been installed by the University.
 - d) Complainants can report the incidents to any support department/divisions and faculties. All cases will be referred to the Gender Equity Unit.
- 3.1.2 Gender Equity Unit and partners' response
- a) All cases logged at the Gender Equity Unit will be attended to accordingly by the GBV case manager.
 - b) All relevant stakeholders will be requested to support the Complainant and alleged perpetrator when the need arises.
- 3.1.3 Advisory panel
- a) The Gender Equity Unit should establish an advisory panel consisting of various experts, such as specialists from ER, legal, health and mental health.
 - b) The advisory panel will be responsible for advising the GBV response team and University regarding complicated GBV cases, with the aim to resolve cases promptly and accurately.
- 3.1.4 Disciplinary committee

- a) The Gender Equity Unit should establish a disciplinary committee consisting of various experts, such as specialists from ER, legal, health and mental health.
- b) The Disciplinary Committee will be responsible for executing disciplinary matters regarding all UJ GBV-related cases.
- c) Disciplinary measures are and will continue to be conducted by ER on cases concerning staff and Student Affairs on cases related to students in the absence of a University Disciplinary Committee.

3.2 Procedures to be followed when responding to a case of rape

- a) Once a rape incident has been lodged at the Gender Equity Unit, the case will be addressed accordingly. In a case where the incident has been reported to a particular support department/division/faculty, the individual receiving the case should refer the case to the Gender Equity Unit or Protection Services or Campus Health depending on the need.
- b) The GBV case manager/Protection Service and Campus Health personnel should assess and refer the complainant to a hospital for medical attention.
- c) The Complainant will be provided with sufficient information, to help the Complainant to make an informed decision regarding reporting the case to the South African Police Services (SAPS).
- d) Regardless whether the case is reported or not reported to SAPS, internal processes and procedures will be followed.
- e) The GBV case manager will assess the Complainant's need and provide support accordingly. These include referring the Complainant for psychological services, communicating with faculties in case the Complainant requires ex gratia leave.
- f) All rape and sexual assault cases concerning visitors will be referred to the SAPS and to external support services unless the University has the capacity to avail support services.

3.3 Procedures to be followed when responding to a harassment and sexual harassment incident

- a) Once the bullying, harassment or sexual harassment incident has been lodged at the Gender Equity Unit, the case will be addressed accordingly. In a case where the incident has been reported to a particular support department/division/faculty, the individual receiving the case should refer the case to the Gender Equity Unit or Protection Services depending on the need.
- b) The GBV case manager, Protection Services and Employee Relations Department personnel will initiate preliminary investigations.
- c) The GBV case manager and Employee Relations representative will, together with the Complainant, explore whether the case needs to follow a formal procedure or an informal procedure. The preferences of the Complainant should be taken into account; however, the University may

ultimately choose to follow a formal procedure even if the Complainant does not wish to do so.

- d) An informal procedure is done through discussions (verbal or written) and, if appropriate, should be used as an initial attempt before pursuing the formal procedure. If the Complainant chooses to follow an informal procedure, a mediation meeting will be arranged between the parties involved. In a case where the Complainant opts to pursue a formal procedure, or whether this is determined by the University as the appropriate course of action, the case will be dealt with according to the UJ Bullying, Harassment, Sexual Harassment and Rape Policy processes and procedures.
- e) The complainant will be provided with sufficient information, to help the Complainant to make an informed decision regarding reporting the case to SAPS.
- f) In a case where the matter is either reported or not reported to SAPS, internal processes and procedures will be followed.
- g) The GBV case manager will assess the Complainant's needs and provide support accordingly. These include referring the complainant for psychological services, and communicating with faculties in case the complainant requires ex gratia leave.
- h) All harassment, sexual harassment and rape cases concerning visitors will be dealt with according to the UJ Bullying, Harassment, Sexual Harassment and Rape Policy. These include providing sufficient information to the Complainant to make an informed decision to report to the SAPS. Furthermore, the Complainant will be referred to access external support services, except if the University has the capacity to avail support services at that moment.
- i) In a case where a visitor violates a UJ staff or student, the matter will be reported to SAPS or to the company where the visitor is employed or contracted.

4. REPORTING

- 4.1 An incident reporting structure and case response are attached in Annexure A.
- 4.2 Any *UJ employees or students, service provider or visitor* who believe that they have experienced or witnessed bullying, harassment, sexual harassment and rape are encouraged to report such behaviour promptly to the Gender Equity Unit or to the relevant line manager or manager, as the University cannot take any action against the accused unless it is aware of such incidents. Depending on the status of the victim/survivor, the report should be lodged with the GBV case manager.
- 4.3 Incidents must be reported preferably within 30 working days or as soon as reasonably possible to ensure prompt investigation and action.

- 4.4 Any line manager who experiences, witnesses or receives a written or oral report or complaint of bullying, harassment, sexual harassment and rape or related retaliation must promptly report it to the Gender Equity Unit.
- 4.5 The GBV case manager and stakeholders involved must treat all reports of bullying, harassment, sexual harassment and rape as confidential. The information will only be disclosed on a need-to-know basis, in order to investigate and resolve the matter.
- 4.6 The GBV case manager must inform complainants that they may elect to resolve the problem on a formal or an informal basis, but that in certain circumstances the University may choose to follow a formal procedure even if the Complainant does not wish to do so. Where appropriate, the GBV case manager may also recommend or refer victims/survivors for counselling or other appropriate support services to provide the Complainant with assistance. If necessary, the Complainant, in the case of an employee, may also be transferred to another work environment in the University **depending on availability of a position** and the University's operational requirements, in the case of a student, may be transferred to another supervisor or lecturer.
- 4.7 Although it is for the Complainant to decide whether to follow either the formal or the informal route, the University has the right to act as Complainant itself and to institute formal proceedings against an accused by vicariously assuming the position of the Complainant. The GBV case manager must ensure that whichever option has been elected is followed to its full and logical conclusion.
- 4.8 Regardless of whether the formal or informal route is followed, it is 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.
- 4.9 The GBV case manager through the assistance of the Protection Services investigator and Employee Relations practitioner in the absence of a dedicated investigative officer within the Gender Equity Unit (or a delegate of the Gender Office) will conduct 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.

5. INVESTIGATION

- 5.1 The University's Employee Relations Officer or Protection Services investigator, as the case may be, in consultation with the relevant GBV case manager, undertakes a preliminary investigation to establish whether there is enough *prima facie* evidence to substantiate the allegation.
- 5.2 This investigation begins within 10 working days after the allegation was reported to the relevant GBV case manager and is completed in the shortest

reasonable period of time, but not later than 10 working days after the investigation has begun.

- 5.3 Any failure to comply with these time periods shall not be construed as a waiver or novation of the University's right to take disciplinary action against the alleged offender, nor shall it bar the taking of disciplinary action.
- 5.4 The preliminary investigation report becomes part of the record and may be used in either the informal or formal proceedings as defined below.
- 5.5 If the relevant GBV case manager and related stakeholder determine through the preliminary investigation that the allegations of bullying, harassment, sexual harassment and rape cannot be substantiated, the involved stakeholder may decide that a formal hearing process under the disciplinary code is not justified. It is, however, still possible to pursue the matter through the informal resolution process.
- 5.6 If Complainants wish to appeal against the relevant GBV case manager and stakeholder decision not to use the formal hearing process, they may direct their appeal to the Director of the Transformation Division or the Chief Operating Officer who will discuss the decision with the relevant GBV case manager. The resulting decision is final.

6. THE PROCESS

- 6.1 In some instances, it is more effective to deal with a harassment complaint informally than formally.
- 6.2 The informal process involves either intervention by the Head of Department, Head of Division or the Faculty Executive Dean and ER practitioner and Business Partner, or a mediation session arranged by the GBV case manager.
- 6.3 If the Complainant opts for an informal process, the GBV case manager will have private meetings with the accused and advise them of the details of the complaint lodged.
- 6.4 If the parties agree to mediation, the relevant GBV case manager arranges for an unbiased and impartial, objective mediator. The mediator consults with and advises both the parties about the mediation process. If the mediation results in a mutually acceptable agreement, copies of the agreement are forwarded to the Executive Director: Human Resources or Director of Student Affairs as the case may be and to the relevant GBV case manager for review and monitoring. If the mediation does not result in an agreement, or if such agreement is unacceptable to the Director: ER (where the alleged offender is an employee) or the Head of Student Discipline (where the alleged offender is a student) the case is returned to the relevant GBV case manager at the earliest opportunity for a formal hearing.
- 6.5 Every effort must be made to finalise the mediation process within 20 working days from the day of first referral, and all the parties' cooperation is imperative.
- 6.6 Complainants may file a formal written complaint immediately after an incident, after a preliminary investigation by the GBV case manager and stakeholders.

- 6.7 The complaint is lodged on the confidential form provided by the GBV case manager.
- 6.8 The GBV case manager and related stakeholder schedule a meeting or send 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.
- 6.9 In accordance with the University's disciplinary or grievance codes, the Student Ethics and Judiciary Head/practitioner and Employee Relations practitioner in the absence of the disciplinary committee set a date for a disciplinary or a grievance hearing.
- 6.10 In spite of any other provision in the University's disciplinary or grievance codes, the disciplinary hearing is completed as soon as practically possible and based on the merit of the case unless the exigencies of the matter warrant a later completion date, but in such event the disciplinary hearing must be completed as soon as practically possible.
- 6.11 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.
- 6.12 A Complainant's failure to cooperate with the process in a timely manner may negate the University's obligation to continue with the proceedings.
- 6.13 The GBV case manager 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.
- 6.14 Where the Complainant, survivor or accused of the alleged harassment, sexual harassment and rape is a minor, the parents and/or guardian is informed of the allegations and the processes implemented by the University.
- 6.15 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. DEPARTMENT/DIVISIONAL ROLES

7.1 Gender Equity Unit: The Gender Equity Unit is responsible for overseeing and implementing the UJ Bullying, Harassment, Sexual Harassment and Rape Policy. This includes:

- a) Manage all harassment, sexual harassment and rape incident cases reported within the University.
- b) Provide relevant support to all individuals directly or indirectly affected by bullying, harassment, sexual harassment and rape.
- c) Refer victims/survivors to relevant support departments, both internally and externally.
- d) Conduct preliminary investigations together with relevant partners (Protection Services and Employee Relations), in the absence of a dedicated investigative officer within the office.

- e) Manage information and data, including data reporting.
- f) Guide victims/survivors regarding the incident reporting procedures.
- g) Provide information and rehabilitation sessions to individuals who were not found guilty to eradicate reoffending.
- h) Work collaboratively with partners to implement gender-based violence and femicide preventative programmes.
- i) Assign and invite the advisory panel.

7.2 Employee Relations Office: The Employee Relations Office is responsible for working in Collaboration with the Gender Equity Unit in response to the staff bullying, harassment, sexual harassment and rape incident reports involving University staff. This includes:

- a) Directly receive and attend to employee cases in collaboration with the GBV case manager.
- b) Undertake, in consultation with the GBV case manager, a preliminary investigation to establish whether there is enough *prima facie* evidence to substantiate the allegation, in the absence of a dedicated investigative office from the Gender Equity Unit.
- c) Conduct mediation sessions in collaboration with the GBV case manager, where necessary, before the submission of a formal complaint.
- d) Conduct a formal investigation once a formal complaint has been submitted.
- e) Formalise the process of discipline as per the outcomes from the investigations, guided by the various Harassment and Labour Act and other applicable policies in the absence of the disciplinary committee.
- f) Request the VC to temporarily or immediately suspend the alleged perpetrator if believed to endanger the safety of the victim/survivor, other students and staff. This includes the authority to issue a no-contact order.
- g) Form part of the advisory committee as per invite and relevance of the case.

7.3 Student Affairs (Student Ethics and Judiciary): The Student Ethics and Judiciary Office is responsible for working in collaboration with the Gender Equity Unit in responding to bullying, harassment, sexual harassment and rape incident reports involving University students. This includes:

- a) Directly receive and attend to student cases in collaboration with the GBV case manager.
- b) Conduct mediation sessions in collaboration with the GBV case manager, where necessary, before the submission of a formal complaint.
- c) Conduct formal investigations once a formal complaint has been submitted.
- d) Formalise the process of discipline as per the outcomes from the investigations, guided by the University student regulation and other applicable policies in the absence of the disciplinary committee.

- e) Request the VC to temporarily or immediately suspend the alleged perpetrator if believed to endanger the safety of the victim/survivor, other students and staff. This includes the authority to issue a no-contact order.
- f) Form part of the advisory committee as per invite and relevance of the case.

7.4 Protection Services: The Protection Services is responsible for working in collaboration with the Gender Equity Office in responding to bullying, harassment, sexual harassment and rape incident reports involving students and staff. This includes:

- a) Provide support to the student/staff community after the University working hours, which includes receiving and capturing bullying, harassment, sexual harassment and rape incidents.
- b) Provide transport to victim/survivor in case they have to access the hospital for rape care, Police Station, place of safety or accommodation/home.
- c) Support and collaborate with the GBV case manager to conduct student bullying, harassment, sexual harassment and rape incident reports investigations in the absence of a dedicated investigative office from the Gender Equity Unit.

7.5 Wellness Divisions (PsyCaD, Employee Wellness, Campus Health, IOHA): The Health and Wellness Divisions are responsible for working in collaboration with the Gender Equity Unit in providing health and wellness services to victims/survivors. This includes:

a) PsyCaD:

- i) Provide 24-hour crisis interventions to student victims/survivors.
- ii) In the case of rape, refer victim/survivor to receive appropriate medical attention through the support of Protection Services after working hours.
- iii) In the case of harassment and sexual harassment, contain and refer accordingly to the Gender Equity Unit during working hours. Where the survivor does not feel safe after working hours, make arrangements to provide safety at the UJ safe house.
- iv) Document and refer cases to the Gender Equity Unit.
- v) Avail ongoing psychological support services to student victims/survivors.

b) Employee Wellness:

- i) Document and refer cases to the Gender Equity Unit.
- ii) In the case of rape, refer victim/survivor to receive appropriate medical attention through the support of Protection Services and Gender Equity Unit.
- iii) In the case of harassment and sexual harassment, contain and refer accordingly to the Gender Equity Unit.
- iv) Avail ongoing psychological, HIV care and support services to staff victims/survivors.

- v) Support the alleged perpetrator if allegations are proven to be false (offering trauma counselling).
- c) Campus Health:**
 - i) Document and refer cases to the Gender Equity Unit.
 - ii) In the case of rape, refer victim/survivor to receive appropriate medical attention through the support of Protection Services and Gender Equity Unit.
 - iii) In the case of harassment and sexual harassment, contain and refer accordingly to the Gender Equity Unit.
 - iv) Avail ongoing medical support services to student victims/survivors where necessary.
- d) IOHA:**
 - i) Document and refer cases to the Gender Equity Unit.
 - ii) In the case of rape, refer victim/survivor to receive appropriate medical attention through the support of Protection Services and Gender Equity Unit.
 - iii) In the case of harassment or sexual harassment, contain and refer accordingly to the Gender Equity Unit.
 - iv) Avail HIV care and support services to student victims/survivors where necessary.
 - v) Support Gender Equity Unit in implementing GBV prevention programmes.

7.6 Division for Internationalization: The Division is responsible for working in collaboration with the Gender Equity Unit in responding to bullying, harassment, sexual harassment and rape incident reports involving international students and staff. This includes:

- a) Supporting victims or survivors to extend study visa in case the student did not complete studies due to experiencing any form of bullying, harassment, sexual harassment and rape.
- b) Liaising with all South African institutions (Embassies, High Commissions, Consulates, Trade Missions) and the South African Department of Home Affairs when relevant.

7.7 Faculty/Academic Divisions: The academic divisions are responsible for working in collaboration with the Gender Equity Unit in responding to bullying, harassment, sexual harassment and rape incident reports involving students and staff. This includes:

- a) Document and refer cases to the Gender Equity Unit.
- b) In the case of rape, refer victim/survivor to receive appropriate medical attention through the support of Protection Services and Gender Equity Unit.
- c) In the case of bullying, harassment and sexual harassment, contain and refer accordingly to the Gender Equity Unit.
- d) Lecturers, supervisors, Head of Faculty Administration (HAFA) should work in collaboration with the GBV case manager to explore necessary

academic support required by both victim/survivor and individual not found guilty.

- e) Explore mechanisms to support students requiring additional support due to the bullying, harassment, sexual harassment and rape or when the Complainant cannot attend class or when the alleged perpetrator is suspended for reasons pending case outcomes.
- f) Find alternatives in supervisor reallocation or change of classes or assessor where necessary.

7.8 Disciplinary committee: The disciplinary committee is responsible for responding to bullying, harassment, sexual harassment and rape incidents reports involving students and staff. This includes:

- a) The disciplinary committee should attend all University bullying, harassment, sexual harassment and rape cases and provide discipline as guided by the University disciplinary procedures and relevant Acts.
- b) Respond to all bullying, harassment, sexual harassment and rape appeal cases.

8. PRACTITIONER'S ROLES

8.1 GBV case manager: The GBV case manager is responsible for overseeing and implementing the UJ Bullying, Harassment, Sexual Harassment and Rape Policy. This includes:

- a) Provide a comprehensive bullying, harassment, sexual harassment and rape response for the University. It includes the provision of supportive and protective measures to the Complainant, whether or not disciplinary proceedings are instituted.
- b) Protective and supportive measures may include but are not limited to:
 - i) Refer and arrange for victim/survivor to receive emergency medical services, counselling services, and paralegal support.
 - ii) Arrange for alternative accommodation together with Student Affairs (Residence Life) where necessary and appropriate.
 - iii) Explore how victim/survivor can be supported academically in collaboration with relevant faculty/academic divisions, including changing of academic classes, supervisors and academic concessions, where appropriate.
 - iv) Be a reference when special leave or leave of absence is requested where appropriate.
 - v) Assist the victim/survivor to obtain a protection order where necessary.
- c) While the primary aim of the Policy is to assist victims/survivors, an alleged perpetrator may at any stage approach the GBV case manager to advise on the application and interpretation of the Policy. In such an instance, the GBV case manager shall:
 - i) Provide the alleged perpetrator with a copy of the Policy and University disciplinary rules.

- ii) Advise the alleged perpetrator with regard to the right to obtain legal representation and availability of counselling services.
 - iii) Advise the alleged perpetrator that the University may choose to follow the University disciplinary rules even if the Complainant does not wish to.
- d) In the case where the alleged perpetrator is found not to be guilty due to the lack of evidence or any matters at hand, the GBV case manager shall:
 - i) Provide information and rehabilitation sessions to individuals who were not found guilty to eradicate reoffending.
 - ii) Arrange for academic support together with the relevant faculty/academic divisions in case academic assessments were missed.
- e) In the instance where the harassment, sexual harassment and rape case follows criminal or civil proceedings or follows UJ formal grievance proceedings, the GBV case manager may be:
 - i) Summoned to testify in court;
 - ii) Write witness reports as per court order; or
 - iii) Summoned to testify during the UJ disciplinary proceedings.
- f) The GBV case manager must develop and effectively implement appropriate integrated gender sensitive strategies, including training and awareness programmes to eliminate bullying, harassment, sexual harassment and rape.
 - i) Assessing the impact of bullying, harassment, sexual harassment and rape within the institution.
 - ii) By assessing the environment involving the institution, including risk profiling and resource implications.
 - iii) Developing and implementing policies and programmes that are free from unfair discrimination and promote human rights and dignity.
 - iv) Executing education, training, and information sharing seminars concerning bullying, harassment, sexual harassment and rape within the University.

8.2 Advisory panel: The advisory panel is responsible for advising the Gender Equity Unit with regard to the UJ bullying, harassment, sexual harassment and rape cases and implementation of the Policy. This includes:

- a) Advise the University and practitioners involved in the harassment, sexual harassment and rape cases, whenever there is a complicated case.
- b) Support the University in drafting and reviewing the UJ Bullying, Harassment, Sexual Harassment and Rape Policy.

- 8.3 Investigative Officer:** The investigative officer is responsible for investigating the UJ bullying, harassment, sexual harassment and rape cases. This includes:
- a) Support GBV case manager with investigating cases reported within the University.
 - b) Share and provide recommendations to disciplinary offices in the absence of a University disciplinary committee.
 - c) In the instance where the bullying, harassment, sexual harassment and rape case follows criminal or civil proceedings or follows UJ formal grievance proceedings, the investigator may be:
 - i) Summoned to testify in court.
 - ii) Summoned to testify during the UJ disciplinary proceedings.
- 8.4 Counsellor/Therapist:** The counsellor/therapist is responsible for providing psychological and psychosocial support to individuals affected by bullying, harassment, sexual harassment and rape. This includes:
- a) Support victim/survivor with psychological and psychosocial support.
 - b) Refer victim/survivor to other support structures, in the case where additional support is needed.
 - c) Avail counselling to the alleged perpetrator or individual not found guilty whenever needed.
 - d) In the instance where the bullying, harassment, sexual harassment and rape case follows criminal or civil proceedings, the counsellor or therapist might be:
 - i) Summoned to testify in court.
 - ii) Write witness reports as per court order.
- 8.5 Employee Relations Practitioner:** The Employee Relations practitioner is responsible for working in collaboration with the Gender Equity Unit in response to the staff bullying, harassment, sexual harassment and rape reports involving University staff. This includes:
- a) Directly receive and attend employee cases in collaboration with the GBV case manager.
 - b) In consultation with the GBV and case manager, undertake a preliminary investigation to establish whether there is enough evidence to substantiate the allegation, in the absence of a dedicated investigative office from the Gender Equity Unit.
 - c) Conduct mediation sessions in collaboration with the GBV case manager where necessary, before the submission of a formal complaint.
 - d) Conduct formal investigation once a formal complaint has been submitted.
 - e) Formalise the process of discipline as per the outcomes from the investigations, guided by the various Harassment and Labour Act and other applicable policies in the absence of the UJ disciplinary committee.
 - f) Temporarily or immediately suspend the alleged perpetrator if believed to endanger the safety of the victim/survivor, other students and staff.

- g) In the instance where the bullying, harassment, sexual harassment and rape case follows criminal or civil proceedings, the ER practitioner may be:
 - i) Summoned to testify in court.
 - ii) Write witness reports as per court order.

8.6 Student Ethics and Judiciary Head/Practitioner: The Student Ethics and Judiciary Head/Practitioner are responsible for working in collaboration with the Gender Equity Unit in responding to bullying, harassment, sexual harassment and rape reports involving University students. This includes:

- a) Directly receive and attend student cases in collaboration with the GBV case manager.
- b) Conduct mediation sessions in collaboration with the GBV case manager, where necessary, before the submission of a formal complaint.
- c) Conduct formal investigation once a formal complaint has been submitted.
- d) Formalise the process of discipline as per the outcomes from the investigations, guided by the University student regulation and other applicable policies.
- e) Temporarily or immediately suspend the alleged perpetrator if believed to endanger the safety of the victim/survivor, other students and staff.
- f) In the instance where the bullying, harassment, sexual harassment and rape case follows criminal or civil proceedings, the Student Ethics and Judiciary Head/Practitioner may be:
 - i) Summoned to testify in court.
 - ii) Write witness reports as per court order.

9. BURDEN OF PROOF

9.1 Bullying, harassment, sexual harassment and rape are proven on a balance of probabilities to discharge the burden of proof.

10. REVIEW

10.1 The procedures will be reviewed regularly to support the need of the University.

Approved by the UJ Council on 22 September 2021

ANNEXURE A – Lodging a Complaint of Bullying, Harassment, Sexual Harassment and Rape

ANNEXURE A	
LODGING A COMPLAINT OF BULLYING, HARASSMENT, SEXUAL HARASSMENT AND RAPE	
<ul style="list-style-type: none"> • A written complaint is not necessary as a first step, but is required for a full investigation. • The report will be treated confidentially, so as to protect the confidentiality and privacy of the complainant and the accused to the full extent that is reasonably possible. 	
DETAILS OF PERSON REFERRING THE COMPLAINT	<p>As the referring party, are you:</p> <p> <input type="checkbox"/> An employee <input type="checkbox"/> A student <input type="checkbox"/> An party </p> <p>Name:.....</p> <p>ID Number:</p> <p>Student/Staff Number:</p> <p>Postal Address:</p> <p style="padding-left: 150px;">.....</p> <p>Postal Code:</p> <p>Tel:.....</p> <p>Cell:.....</p> <p>Fax:.....</p> <p>Email:</p> <p>Alternate contact details:</p> <p>Name:.....</p> <p style="text-align: center;">Preferred method of contact:</p>
	<p> <input type="checkbox"/> Telephone <input type="checkbox"/> Email <input type="checkbox"/> Cell </p>

**DETAILS OF
PERSON
AGAINST
WHOM THE
COMPLAINT
IS LODGED**

The other party, against whom the complaint is lodged is:

An employee

A student

Faculty/Department:.....

Name:

ID Number:

Postal Address:

.....

Postal Code:

Tel:.....Cell:.....

Fax: Email:.....

Alternate contact details:

Name:.....

Postal Address:

.....

Postal Code:.....

Tel:.....Cell:.....

Fax: Email:.....

<p>NATURE OF COMPLAINT</p>	<p>Please describe the nature of your complaint:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>Please summarise the facts surrounding your complaint:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>The complaint arose on:</p> <p>.....</p> <p>(day, month, year)</p> <p>The complaint arose where:</p> <p>.....</p> <p>(place, city, town)</p>
<p>DETAILS OF DISPUTE PROCEDURES FOLLOWED PRIOR TO LODGING THIS COMPLAINT</p>	<p>Have you followed any other procedures? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>If YES, please describe what steps have been taken:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>SPECIAL FEATURES:</p>	<p>Briefly outline any special features/additional information the GCO needs to note:</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

Consent to process Personal Information in terms of the Protection of Personal Information Act:

I, the undersigned, hereby confirm that the personal information (“PI”) contained herein was furnished by myself directly and personally, and that it is accurate, true and in no way misleading.

I acknowledge and confirm that the PI is specifically required and necessary to comply with obligations imposed by Law and in order to act in my interest and that the processing of such PI is therefore necessary for proper performance of duties and governance and therefore adequate, relevant and not excessive under the circumstances.

I understand that, under the circumstances, the furnishing of the PI is mandatory and that failure and/or refusal to supply the PI may result in the Complaints Office/Ombud not being able to assist me. I further understand that the PI will be treated confidentially.

I confirm that I am aware of my right to object to the collection of PI; the right to

SIGNATURE	<p>Confirmation of above details:</p> <p>Signature of party referring the complainant:</p> <p>.....</p> <p>Signed at.....on this</p> <p style="text-align: center;">(place) (date)</p>
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