

# SEXUAL HARASSMENT, SEXUAL MISCONDUCT AND SEXUAL VIOLENCE POLICY

## 1. PREAMBLE

- 1.1. The University of the Free State (UFS) strongly believes in the principle of human dignity as embedded in the Constitution of South Africa (1996) and resolves to ensure a safe working and study environment where all may pursue their studies, careers, duties and activities free from discrimination, sexual misconduct, sexual harassment and sexual violence, all of which is aimed at ensuring full access to the opportunities that an institution of higher education provides.
- 1.2. Beyond the institution, we recognise that all forms of unfair discrimination, harassment and violence may have lasting physical and psychological effects. They violate UFS values and compromise the success of both the Human Project and the Academic Project. Consequently, the UFS will not tolerate sexual harassment, sexual misconduct or sexual violence, and firm action will be taken against any person proven guilty thereof.
- 1.3. To meet these ends, the University has formulated a policy that should be understood in the context of other University policies and statements, including the UFS Code of Conduct, for staff and students respectively, policies on the prevention of and protection against unfair discrimination, laws governing equality and fair labour practices.
- 1.4. This policy will cover matters concerning formal or informal complaints of sexual harassment, sexual misconduct and sexual violence, aiming to provide appropriate support effectively and efficiently to victims and perpetrators.

## 2. DEFINITION OF TERMS

In this policy, unless the context clearly indicates otherwise:

**“Alleged perpetrator”** means the person alleged to have committed a transgression of this policy.

**“Complainant”** refers to a person who is/was subjected to alleged sexual harassment, sexual misconduct or sexual violence.

**“Confidentiality”** means ensuring that information is accessible only to those who are authorised to have access to it. **“Consent”** is a voluntarily and affirmatively communicated willingness to participate in a particular sexual activity or behaviour, expressed either by words or clear, unambiguous actions (voluntary or uncoerced agreement).

**“Employee/staff”** means a person who is permanently or temporarily, part-time or full-time employed by the UFS, or who is in terms of common law or labour law regarded as employed by the UFS.

**“Off-campus violations”** refer to sexual harassment, sexual violence or sexual misconduct of any nature that:

- i) Occurs outside of the three UFS campuses, namely the Bloemfontein Campus, the South Campus and the Qwaqwa Campus, or wherever the UFS is undertaking its business;
- ii) Occurs during a UFS or UFS-recognised programme or activity (including online activities), which may also refer to University-sponsored/initiated events or student organisation-sponsored/initiated activities;
- iii) Involves undesired conduct of a sexual nature that is directed at a UFS student or staff member;
- iv) Occurs while a student or staff member, whilst off-campus, is acting in an official capacity on behalf of the UFS; and/or
- v) Poses harm or serious threat to any member of the University community and/or creates a hostile educational or work environment.

**“On-campus violations”** refer to sexual harassment, sexual violence or sexual misconduct that occurs anywhere on the three UFS campuses, namely the Bloemfontein Campus, the South Campus and the Qwaqwa Campus, or on any other premises owned or leased by the UFS, whether inside or outside a building.

**“PAIA”** means the Promotion of Access to Information Act, No 2 of 2000 (as amended).

**“Reporting officer”** refers to any UFS employee or person in authority to whom sexual harassment is reported.

**“Sexual assault”** refers to sexual misconduct that represents a range of behaviour, from forceful intercourse to non-physical forms of pressure that cause a person to engage in sexual activity without

his/her consent, which can also be referred to as compelled sexual assault or compelled self-sexual assault.

**“Sexual exploitation”** involves taking non-consensual, unjust or abusive sexual advantage of another person. Examples can include, but are not limited to, the following behaviour:

- i) Electronically recording, photographing or transmitting intimate or sexual utterances, sounds, or images without the knowledge and consent of all parties involved;
- ii) Voyeurism (spying on others who are in intimate or sexual situations or in compromising positions);
- iii) Distributing intimate or sexual information about another person without that person's consent; and/or
- iv) Prostituting or trafficking another person.

**“Sexual harassment”** includes, but is not limited to, any form of unwanted or unwelcome conduct of a sexual nature, whether verbal in the form of unwelcome comments, unwelcome or inappropriate nicknames, derogatory or obscene remarks, unwelcome comments or enquiries about a person's sexual habits, unwelcome telephone calls or e-mails with sexual undertones, unwelcome sex-related jokes or insults, unwelcome graphic comments about a person's body made in their presence and/or directed towards them, non-verbal behaviour such as unwelcome whistling, unwelcome gestures with a sexual meaning, indecent exposure of private parts, persistent and unwelcome flirtation, unwelcome physical contact, a strip-search by or in the presence of the opposite sex, unwelcome display of pornographic or other offensive, derogatory and/or sexually explicit photos, caricatures, designs, objects, slides, movies or other material, quid pro quo harassment aimed at influencing a process of employment, promotion, training, discipline, dismissal, salary increments, test/exam marks, qualification for graduation or other educational benefits in exchange for sexual favours, and sexual favouritism where rewards are reserved only for those who respond to sexual advances.

**“Sexual intimidation”** refers to threatening another person by committing a sexual act against him/her or engaging in indecent exposure.

**“Sexual misconduct”** refers to any unwelcome or unwanted conduct of a sexual nature, including sexual harassment, assault or violation, whether physical, verbal or non-verbal, by a person of the same or opposite sex; committed without consent or by force, intimidation, threat, coercion or manipulation.

**“Sexual violation”** includes, but is not limited to, the following non-consensual/forced behaviour:

- i) Direct or indirect contact between the:
  - a. genital organs or anus of one person or, in the case of a female, her breasts, and

any part of the body of another person or animal, or any object, including any object resembling or representing the genital organs or anus of a person or animal;

b. mouth of one person and:

- i. the genital organs or anus of another person or, in the case of a female, her breasts;
- ii. the mouth of another person;
- iii. any other part of the body of another person, other than the genital organs or anus of that person or, in the case of a female, her breasts, which could:
  1. be used in an act of sexual penetration;
  2. cause sexual arousal or stimulation; or
  3. be sexually aroused or stimulated thereby; or
- iv. any object resembling the genital organs or anus of a person or animal and, in the case of a female, her breasts; or

c. mouth of the complainant and the genital organs or anus of an animal;

ii) The masturbation of one person by another person; or

iii) The insertion of any object resembling or representing the genital organs of a person or animal, into or beyond the mouth of another person.

**“Student”** refers to a Student as per the Definition of a Student contained in the General Rules of the University of the Free State, as amended from time to time.

**“UFS invitee”** means any guest, staff, professor, associate, visitor, event attendee or user of UFS services, including any applicant for admission or registration.

### **3. PURPOSE OF THE POLICY**

This policy’s objectives are to:

- i) Establish a safe and enabling environment, free from sexual harassment, sexual misconduct and sexual violence, for all UFS community members;
- ii) Facilitate a common understanding of what constitutes sexual harassment, sexual misconduct and sexual violence that aligns with the University’s vision, mission, values and related policy documents;
- iii) Ensure that all staff and students have applicable and appropriate information about what constitutes sexual harassment, sexual misconduct and sexual violence and ensure that the procedures in resolving matters are known and appropriate reporting lines are followed;
- iv) Ensure support for victims;
- v) Clarify disciplinary procedures for perpetrators; and

vi) Clarify institutional accountability and effective implementation of this policy.

When appropriate, the University will take steps to prevent the recurrence of sexual harassment, sexual misconduct and sexual violence and correct any discriminatory effects of contraventions on the complainant and others.

#### **4. POLICY STATEMENT**

- 4.1 Although, broadly speaking, this policy prohibits sexual harassment, sexual misconduct and sexual violence involving students and staff of the UFS both on-campus and off-campus, the policy recognises that perpetrators and victims of sexual harassment, sexual misconduct and sexual violence may include the following members of the University community:
- 4.1.1 Job applicants;
  - 4.1.2 Clients;
  - 4.1.3 Suppliers;
  - 4.1.4 Contractors;
  - 4.1.5 Members of Council;
  - 4.1.6 University invitees; and
  - 4.1.7 Others who have dealings of any nature with the University.
- 4.2 Nothing in clause 4.1 confers a right on the University to initiate disciplinary proceedings against a non-employee or non-student for breach of this policy. However, the University reserves the right to take any remedial steps, which may include termination of the relationship, in terms of any agreement regulating the relationship between the University and the party involved.
- 4.3 This policy prohibits the following conduct, but is not limited to them:
- 4.3.1 Sexual harassment, sexual misconduct or sexual violence by or between any faculty member, staff member or student, including individuals of the same sex, in all academic, educational, extracurricular, athletic and/or other activities of the University, whether those programmes take place at University facilities, at a class or training programme sponsored by the University at another location, or elsewhere;
  - 4.3.2 Sexual harassment, sexual misconduct or sexual violence by any faculty member, staff member or student while assigned to duties or academic programmes within the UFS (regardless of their work location) against any individual who is not a faculty member, staff member or student, including University invitees;
  - 4.3.3 Sexual harassment, sexual misconduct or sexual violence by any vendor or individual external to the UFS against any faculty member, staff member, student or UFS invitee

during the transaction of business with the UFS, during any programme or activity organised by the UFS and/or while on UFS premises;

- 4.3.4 Retaliation by any faculty member, staff member or student against any individual who, in good faith, has made any allegation of sexual harassment, sexual misconduct or sexual violence or who has testified, assisted or participated in any way in any investigation, proceeding or hearing conducted under this policy or any legal proceeding;
  - 4.3.5 Knowingly making false accusations or allegations of sexual harassment, sexual misconduct or sexual violence, or knowingly making false statements regarding alleged sexual harassment, sexual misconduct or sexual violence in any investigation, proceeding or hearing conducted under this policy or any external, formal or legal procedure;
  - 4.3.6 Gender-based harassment, which may include acts of verbal, non-verbal or physical aggression, intimidation or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature;
  - 4.3.7 Requesting or coercing someone into sexual intercourse or sexual favours, or attempting to engage or actually engaging in a sexual assault;
  - 4.3.8 Inappropriate and unwelcome sexual attention or touching, including, but not limited to, leering, patting, fondling, pinching and attempted or actual kissing;
  - 4.3.9 Making actual or implied threats to impede or interfere with employment or educational opportunities or benefits for failing to agree to or engage in sexual activity;
  - 4.3.10 Making actual or implied promises of an employment or educational opportunity or benefit in exchange for sexual activity;
  - 4.3.11 Inferring or displaying favouritism that benefits or adversely affects another person based on sexual involvement or a sexual relationship; and
  - 4.3.12 Making sexually explicit or suggestive gestures or sounds.
- 4.4 Prohibited conduct does not include:
- 4.4.1 Consensual relationships;
  - 4.4.2 Verbal expression, written or other material that is relevant and appropriately related to the subject matter of a UFS module/course/curriculum or to an employee's duties.

## **5. IMPLEMENTATION OF THE POLICY**

- 5.1. Human Resources Department is responsible for the administration and enforcement of the policy as it relates to UFS employees.

- 5.2. Human Resources Department is responsible for the education of all employees about the Sexual Harassment, Sexual Misconduct and Sexual Violence Policy. It is also responsible for facilitating the implementation of the policy, offering advice regarding the policy and monitoring adherence to the policy by employees.
- 5.3. The Directorate for Student Discipline and Mediation is responsible for the administration and enforcement of the policy where it relates to students and student conduct.
- 5.4. The Dean: Student Affairs is responsible for the education of all students about the policy and is also responsible for facilitating the implementation of the policy, offering advice regarding the policy and monitoring adherence to the policy by students.
- 5.5. Heads of department (academic and support services) and line managers are accountable for the continuous monitoring and implementation of the policy.
- 5.6. The reporting officers, in close collaboration with other relevant institutes, units, centres, faculties and departments within the University and beyond the University, are obliged to facilitate initiatives that will assist in preventing incidents of sexual harassment, sexual misconduct and sexual violence and in educating students, staff and the University community about these.
- 5.7. The reporting officers will coordinate a programme for the Vice-Rector: Institutional Change, Student Affairs & Community Engagement or his/her delegate or nominee, annually at the beginning of the first semester, and present a report at the end of the second semester in this regard.

## **6. FACTORS TO ESTABLISH SEXUAL HARASSMENT, SEXUAL MISCONDUCT OR SEXUAL VIOLENCE**

The following factors serve as a guideline to establish sexual harassment, sexual misconduct and sexual violence:

- i) **Whether the sexual conduct was unwelcome:**
  - a) Consideration must be given to the fact that there are different ways in which an employee or student may indicate that sexual conduct is unwelcome, including non-verbal conduct such as walking away or not responding to the perpetrator;
  - b) Previous consensual participation in sexual conduct does not necessarily mean that the conduct continues to be welcome;
  - c) Where a complainant has difficulty indicating to the alleged perpetrator that the conduct is unwelcome, such a complainant may seek the assistance and intervention of another person such as a co-worker, fellow student, superior, counsellor, human resources official, SRC representative, family member, friend or Protection Services Officer;

d) People who are unable to give consent include those who are asleep, unconscious or involuntarily restrained physically; people who are incapacitated due to the influence of drugs, alcohol or medication; people who are unable to communicate consent due to a mental or physical condition; and people who are not of legal age of consent according to South African law.

**ii) The nature and extent of the sexual conduct:**

a) Unwelcome conduct must be of a sexual nature, including sexual assault, sexual exploitation, sexual harassment, sexual intimidation and sexual violence as defined above.

b) A single incident of unwelcome sexual conduct does constitute sexual harassment.

**iii) The impact of the sexual conduct on the employee or student:**

a) The conduct might constitute an violation of the employee's or student's right to dignity, taking into account the circumstances of the employee or student and the respective positions of the alleged perpetrator in the workplace or within the University community.

## **7. REPORTING**

7.1. Anyone who has experienced or witnessed any act as stated in paragraph 4.3 or any contravention of the provisions of this policy is encouraged to report, as soon as possible, such behaviour to any of the following reporting offices:

7.1.1 The Office of Gender and Sexual Equity;

7.1.2 The Centre for Human Rights;

7.1.3 Student Affairs;

7.1.4 Protection Services;

7.1.5 Residence Heads;

7.1.6 Human Resources;

7.1.7 Sexual Harassment Hotline; and/or

7.1.8 Directorate for Student Discipline and Mediation.

7.2. Reports submitted according to paragraph 7.1 above should be made in writing.

7.3. The whistle-blowing procedure as per the whistle-blowing provisions of the University may be used by third parties to report transgressions of this policy.

7.4. Reported incidents will be appropriately investigated and conducted in a way that upholds the privacy, dignity and rights of all individuals involved as far as possible.

7.5. Confidentiality must be maintained by all persons involved in any of the proceedings, irrespective



of the context.

## **8. INVESTIGATIONS AND PROCEDURES**

### **8.1 INVESTIGATION**

- 8.1.1 Once a complaint is received in accordance with paragraph 7 above, the reporting office will inform the relevant investigating officer nominated to perform an investigation. Any matter in which the alleged perpetrator is a student must immediately be reported to the duty room of Protection Services and the Directorate for Student Discipline and Mediation.
- 8.1.2 The investigating officers will gather all relevant information and evidence and give all parties involved an equal opportunity to provide a written statement and provide any supporting evidence relevant to the complaint.
- 8.1.3 The investigating officers will subsequently write an investigation report and submit this report with all statements and supporting documentation and/or evidence to the Director: Human Resources in cases involving staff, to the Directorate for Student Discipline and Mediation in cases involving students, or to both offices should both students and staff be involved. The Directorate for Student Discipline and Mediation will keep the Dean: Student Affairs informed of the progress should the matter be related to students.

### **8.2 IMMEDIATE SUPPORT AND INTERIM INTERVENTIONS**

- 8.2.1 The investigating officer in the above-mentioned capacities will, immediately after a report of sexual misconduct has been received, inform the Directorate for Student Discipline and Mediation and the Dean: Student Affairs or the Director: Human Resources in alleged transgressions against/involving staff, or in alleged transgressions involving University community member(s)/invitee(s) Thereafter, the investigating officer will submit a written report every 12 working hours for the first 48 hours after the reporting of an incident.
- 8.2.2 Immediately after the UFS has received information about an incident of sexual harassment, sexual misconduct or sexual violence, the reporting officers will arrange that appropriate support is offered to both the complainant and alleged perpetrator (as well as other person(s) if necessary), and that they are notified about the applicable institutional policies (see sections 3 and 4 above).
- 8.2.3 The reporting officers will put immediate measures in place to prevent/address retaliatory conduct. If the reporting officers perceive that certain behaviour may be harmful to an individual, certain members of the University community, or the orderly functioning of the University, they may refer to the relevant office for interim arrangements. In cases where

a student is the alleged perpetrator, the Directorate for Student Discipline and Mediation will take the necessary steps for interim arrangements highlighted below in terms of the relevant institutional rules, policies and/or procedures.

- 8.2.4 The following are examples of interim arrangements that the reporting officers could put in place:
- 8.2.4.1 Secure access to certain spaces in order to protect evidence for investigation;
  - 8.2.4.2 No-contact orders;
  - 8.2.4.3 Change in accommodation arrangements or the suspension of University accommodation;
  - 8.2.4.4 Academic modifications or suspension from academic activities;
  - 8.2.4.5 Limiting access to certain University facilities; and/or
  - 8.2.4.6 Suspension from certain co-curricular activities.
- 8.2.5 These interim interventions could be kept intact until the end of the disciplinary process.
- 8.2.6 The reporting officers and/or investigating officer, in the case where a student is the alleged perpetrator, will immediately perform an initial assessment of the information received in order to determine what the most appropriate way towards a resolution would be. If the complainant indicates that s/he is willing to participate in the investigation process, the UFS will proceed accordingly. However, if issues of anonymity/confidentiality are raised, or requests are made to not participate in an investigation or to not follow the UFS's disciplinary process, the reporting officers and/or investigating officer will consult with a constituted advisory panel.
- 8.2.7 The advisory panel will consist of the following offices:
- a) Student Affairs: staff representing the interests of the UFS;
  - b) The Directorate for Student Discipline and Mediation;
  - c) The Human Resources Office of the UFS;
  - d) Survivors of sexual harassment, sexual misconduct and sexual violence; and
  - e) Other offices applicable and appropriate to the specific context.
- 8.2.8 This panel will advise the reporting officers and/or the investigating officer if the UFS should continue with the investigation, (if so) in which way(s), and to what extent the investigation should proceed.
- 8.2.9 The reporting officers and/or investigating officer in the case where a student is the alleged perpetrator will, after receiving advice from the advisory panel, implement the necessary plan of action towards a resolution.
- 8.2.10 A resolution could be reached formally or informally, depending on the context of each

incident.

### **8.3 INFORMAL RESOLUTION PROCESS**

- 8.3.1 The informal resolution to allegations of sexual harassment, sexual misconduct and sexual violence involving students is done through a process of mediation.
- 8.3.2 In the case of the alleged offender being a student, the process in 8.3 and 8.4 hereunder should be conducted in terms of Annexure B to the UFS General Rules. The Manager: Directorate for Student Discipline and Mediation will be responsible for the process relating to students.
- 8.3.3 In the case where a student is the alleged perpetrator, the complainant and alleged perpetrator must both provide written consent to the reporting officers and/or investigating officer that they prefer to find an informal resolution through the process of mediation.
- 8.3.4 In the case where a student is the alleged perpetrator, the reporting officers and/or investigating officer will submit this request to the advisory panel, as indicated in section 8.2.6.
- 8.3.5 Upon approval, the Directorate for Student Discipline and Mediation (in the case of an alleged student perpetrator) and the Human Resources Office (in the case of alleged staff perpetrator) will inform a mediator, who will then contact both the complainant and alleged perpetrator to set a date and time for pre-mediation meetings.
- 8.3.6 Pre-mediation meetings should take place within 48 hours after the mediator has been informed by the Directorate for Student Discipline and Mediation (in the case of an alleged student offender) and the Human Resources Office (in the case of alleged staff offender).
- 8.3.7 A date and time for the mediation conversation will be set during the pre-mediation meetings, with the understanding that the mediation should happen within one week (i.e. seven calendar days) after the last pre-mediation meeting.
- 8.3.8 The goal of the mediation is for the complainant and alleged perpetrator to reach a mutually satisfactory resolution. If a mutually satisfactory agreement cannot be reached through a mediation conversation, the case will be referred back to the Directorate for Student Discipline and Mediation (in the case of an alleged student perpetrator) and the Human Resources Office (in the case of alleged staff perpetrator) and will be channelled towards a formal resolution process (as described in section 8.4 below).
- 8.3.9 The content and information that relate to the mediation process may not be used during the formal resolution process.

## **8.4 FORMAL RESOLUTION PROCESS**

- 8.4.1 The Directorate for Student Discipline and Mediation, in the case of an alleged student perpetrator, and the Human Resources Office, in the case of alleged staff perpetrator, will, after receipt of the investigation report, conduct a formal disciplinary hearing within 10 working days, or as soon as possible after they receive the relevant documentation regarding the alleged incident of sexual harassment, sexual misconduct or sexual violence. The disciplinary officer will notify the alleged perpetrator about the date of the disciplinary hearing.
- 8.4.2 The disciplinary hearing will be conducted in accordance with the institutional disciplinary procedures and codes applicable to students and employees (whichever is applicable in the circumstances).
- 8.4.3 Once the disciplinary hearing outcome is received, the reporting office will be informed that the matter is finalised and/or furnished with further information appropriate in the circumstances.

## **9. EVALUATION OF THIS POLICY**

The implementation of this policy will be monitored by the office of the Vice-Rector: Institutional Change, Student Affairs & Community Engagement or his/her delegate or nominee. The advisory panel will meet as required to evaluate the reports from the reporting officers and/or investigating officer in the case where a student is the alleged perpetrator. If applicable, this panel will subsequently make recommendations to the Vice- Rector: Institutional Affairs or his/her delegate or nominee, on the ways in which this policy should be amended. Vice- Rector: Institutional Affairs, Student Affairs & Community Engagement or his/her delegate or nominee will be responsible for submitting these recommendations to the necessary University structures to obtain formal approval in this regard.

## **10. CRIMINAL AND CIVIL CHARGES**

Nothing in this policy shall prohibit a victim of sexual harassment, sexual misconduct or sexual violence from independently, in his/her private capacity, pressing separate criminal and/or civil charges against an alleged perpetrator, and the legal rights of the victim are in no way limited by the contents or procedures of this policy. Any individual may report any criminal activity to the South African Police Service at any time.

## **11. COUNSELLING AND PREVENTION SERVICES**

The UFS must provide counselling for the victim. Should an alleged perpetrator of sexual harassment, sexual misconduct or sexual violence request counselling, the UFS will assist in providing such help. Detailed information about these services is available on the UFS website.

Contact information for the appropriate Office and Police Service is listed below for reporting sexual

assault and accessing available assistance for victims at the UFS:

Protection Services Bloemfontein Campus: +27 51 401 2911/2634

Protection Services QwaQwa Campus: +27 58 718 5000

Protection Services South Campus: +27 51 401 2911/2634

SA Police Service: 10111

## **12. DISPUTE RESOLUTION**

### **12.1 EMPLOYEES/STAFF**

Any complaint of alleged sexual harassment, sexual misconduct or sexual violence that in the complainant's view has not been satisfactorily resolved by the internal procedures set out above may be referred to the relevant dispute resolution mechanisms as laid out in the respective collective agreements between the UFS and unions.

### **12.2 STUDENTS/UNIVERSITY COMMUNITY**

A student's rights to seek and pursue whichever legal remedy is available to him/her, in cases where s/he is of the view that a complaint of alleged sexual harassment, sexual misconduct or sexual violence has not been satisfactorily resolved by the internal procedures, is not in any way limited by the provisions of this policy.

**Consultation process for policies intended for adoption:**

<b>Anti-Discrimination, Promotion of Equality and Social Justice Policy and Procedures</b>	10/03/2017	Draft document sent to PHi for comment and development
	17/05 - 15/06/2017	Draft document distributed to university population for comment
	19/05/2017	Draft document referred to Student Affairs HOD's policy summit
	04 - 06/08/2017	Draft document discussed and developed at Student Consultative policy summit
	16/08/2017	Draft document referred to student parliament secretariat for discussion through student parliament channels
	07/02/2018	Referred to UMC for noting and comment via round robin
<b>Sexual Harassment, Sexual Misconduct and Sexual Violence Policy</b>	16/03/2017	Draft document sent to PHi for comment and development
	17/05 - 15/06/2017	Draft document distributed to university population for comment
	19/05/2017	Draft document referred to Student Affairs HOD's policy summit
	04 - 06/08/2017	Student Consultative policy summit
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