



UNIVERSITY OF PRETORIA
Transformation Office

ANTI-DISCRIMINATION AND HARASSMENT POLICY

Policy on the prevention of unfair discrimination, hate speech, harassment, violence based on prohibited grounds, retaliation, and the promotion of substantive equality

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CONTENTS

1. PURPOSE	2
2. SCOPE.....	2
3. CONSEQUENCES OF NON-COMPLIANCE	3
4. POLICY STATEMENT	3
5. DEFINITIONS.....	3
6. ROLES AND RESPONSIBILITIES.....	11
7. RELATIONSHIP WITH OTHER POLICIES.....	11
8. OPERATIONS MANUAL	11
9. CONFIDENTIALITY	12
10. FUNDING	12
11. ASSOCIATED DOCUMENTS.....	12
12. SUPPORTING DOCUMENTS.....	13
13. RESPONSIBILITY FOR IMPLEMENTATION.....	13
14. POLICY LIFE CYCLE.....	13
15. DOCUMENT METADATA	13

1. PURPOSE

The aim of this policy is to promote the achievement of procedural and substantive equality to prevent the following actions being taken by (i) University of Pretoria (UP) staff members, (ii) UP students, and (iii) third parties to the extent provided for in the Operations Manual; and to provide support and remedies where they occur:

- 1.1 Unfair discrimination
- 1.2 Hate speech
- 1.3 Harassment or bullying or sexual harassment
- 1.4 Violence

where any of these actions are based on one or more of the following grounds: race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth; or other comparable grounds including¹ country of origin, HIV status, socio-economic status, albinism, family responsibility, gender identity, gender expression, intersex status, sex characteristics, class, political opinion, year of study, physical appearance, body shape, mental health status, health status, or occupation (further in this policy referred to as prohibited grounds); and

- 1.5 Retaliation

Insofar as this document relates to violence, it focuses specifically on violence based on prohibited grounds; it does not in any way condone or diminish culpability for violent conduct that is not based on prohibited grounds.

The policy is also aimed at ensuring that the University and University community condemn unfair discrimination in all its manifestations and take proactive steps to promote a culture of inclusivity.

While the University's legal competence to hold third parties to this policy is limited, it commits itself to take all reasonable steps to communicate and enforce the ethos of this policy in this regard.

2. SCOPE

The policy is applicable to all UP staff and students. The policy is applicable to service providers, contractors, visitors, and other third parties present on any of the UP campuses or other facilities, to the extent set out in the Operations Manual.

¹ The use of the word "including" indicates that this list of prohibited grounds is not a closed list. Additional prohibited grounds may be recognised by following the criteria set out in the Policy.

3. CONSEQUENCES OF NON-COMPLIANCE

Failure to comply with the policy will result in investigation if the matter is reported to the Transformation Office. Should the Transformation Office determine that there is a prima facie case against the alleged perpetrator the matter will be referred to Employee Relations for Staff and Legal Services for Students for a disciplinary process following the University disciplinary codes.

4. POLICY STATEMENT

Mindful of its past, and taking cognisance of the vision and mission and underlying values enshrined in the University of Pretoria's Strategic Plan, the University seeks to build an inclusive, affirming and transformed institutional culture, curriculum and campus and residence life.

The University of Pretoria rejects and condemns racism, sexism, homophobia, transphobia, xenophobia, ethnic chauvinism, religious intolerance, unfair discrimination, hate speech, sexual harassment and harassment based on other prohibited grounds, gender-based violence and violence based on other prohibited grounds; and retaliation, in all its forms.

The University of Pretoria commits itself to the eradication of these practices.

This policy aims to create an enabling framework to ensure the establishment and maintenance of a positive and transformed institutional culture and to prevent and redress individual, structural and systemic forms of discrimination and exclusion and to ensure procedural as well as substantive justice.

It mandates the establishment of University structures with a UP-wide reach to offer forms of redress to individual complainants which are just, fair and transparent; and to pro-actively prevent unfair discrimination.

This policy recognises that the work of building an inclusive, affirming and transformed University cannot be achieved merely through the adoption of measures such as new policies and the establishment of institutions. However important such steps are, realising the vision of a transformed university will ultimately depend on the persistent, day-to-day individual and collaborative efforts of all who work and study at the University.

5. DEFINITIONS

5.1 Unfair Discrimination

5.1.1 In circumstances where the Employment Equity Act applies, the Employment Equity Act provides that no person may unfairly discriminate, directly or indirectly against an employee, in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, birth or any other arbitrary ground. All applicable

Codes of Good Practice issued in terms of national labour legislation must be read with this definition.

- 5.1.2 For all other cases (outside of the scope of the Employment Equity Act), discrimination is any act or omission that directly or indirectly imposes a burden or withholds a benefit from a person based on one or more prohibited ground or based on the perceived membership of the complainant of group(s) identified by one or more prohibited ground.

Burden includes any mental, psychological, physical or economic harm.

Prohibited grounds

- (a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, and birth; or other comparable grounds, including² country of origin, HIV status, socio-economic status, albinism, family responsibility, gender identity, gender expression, intersex status, sex characteristics, class, political opinion, year of study, physical appearance, body shape, mental health status, health status, or occupation (further in this policy referred to as prohibited grounds).
- (b) Any other ground where discrimination based on that other ground –
 - (i) causes or perpetuates systemic disadvantage;
 - (ii) undermines human dignity; or
 - (iii) adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on a ground in paragraph (a).

As part of the University's commitment to achieving substantive equality, it is not unfair discrimination to take measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination or the members of such groups or categories of persons.

Whether discrimination is "fair" or "unfair" is established by making a value judgment as set out below. All relevant factors must be considered in a holistic way.

The factors to be considered include the following:

- (a) The context;
- (b) Whether the discrimination impairs or is likely to impair dignity;
- (c) The impact or likely impact of the discrimination on the complainant;
- (d) The position of the complainant in society and whether they suffer from patterns of disadvantage or belongs to a group that suffers from such patterns of

² The use of the word "including" indicates that this list of prohibited grounds is not a closed list. Additional prohibited grounds may be recognised by following the criteria set out in the Policy in the (b) definition of prohibited grounds.

³The more vulnerable a person is, the more exposed a person has been to discrimination, the more likely it is that further discrimination imposed on that person will be unfair discrimination. Privileged members of South African society may be required to bear a burden to alleviate the disadvantages that remain from the past and such additional burden may then be fair discrimination in appropriate cases.

disadvantage;³

- (e) The nature and extent of the discrimination;
- (f) Whether the discrimination is systemic in nature;
- (g) Whether the discrimination has a legitimate purpose;
- (h) Whether the discrimination entails an inherent job requirement;
- (i) Whether and to what extent the discrimination achieves its purpose;
- (j) Whether there are less restrictive and less disadvantageous means to achieve the purpose; and
- (k) whether and to what extent the respondent has taken reasonable steps to address the disadvantage which arises from or is related to one or more of the prohibited grounds.

Subject to section 15 of the Employment Equity Act 55 of 1998, as part of the University's commitment to achieving substantive equality, it is not unfair discrimination to take measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination or the members of such groups or categories of persons.

5.1.3 Disability discrimination

As part of the university's commitment to achieving substantive equality, all students and staff with disclosed disabilities will have access to reasonable accommodations that will allow them to meaningfully participate in all processes outlined in this policy.

Disability is imposed by society when a person with a physical, psychosocial, intellectual, neurological and/or sensory impairment is denied access to full participation in all aspects of life, and when society fails to uphold the rights and specific needs of individuals with impairments. Persons with disabilities experience three main types of interrelated barriers: social (including high cost, lack of disability awareness, and communication difficulties); psychological (such as fear for personal safety); and structural (including infrastructure, operations and information).

Reasonable accommodations:

Any modification or adjustment to the environment that will enable a student or staff member with a disability to have access to or to participate or advance in academia and campus life. These measures ensure that persons with disabilities enjoy equal opportunities and are equitably represented in the UP community to the extent that it does not cause the University unjustifiable hardship.

Unjustifiable hardship:

Significant difficulty or expense being incurred by UP with respect to the provision of

reasonable accommodation to a particular student or staff member with a disability. It means that an accommodation would be unduly costly, expensive, substantial, or disruptive to the detriment of UP in the context of UP's environment, overall budget and spending.

- 5.1.4 The complainant must present the forum referred to in paragraph 3.4(a) with all relevant information on the conduct that in their view amounts to discrimination. The complainant will then be assisted to establish whether or not this policy was breached. If discrimination is proven, the respondent must then, to escape penalty, prove that the discrimination was fair⁴

5.2 Hate Speech

- 5.2.1 Hate speech is any communication (consisting of, for example, words, images, chants, songs, flags, symbols, slogans or pictures) that could reasonably be construed to demonstrate a clear intention to:
- (a) harm or incite harm against; and
 - (b) promote or propagate hatred against any person or group of persons belonging to or assumed to belong to a group identified by one or more prohibited grounds.
- 5.2.2 Hate speech may include the flying of flags, singing of songs, offensive logos on clothing, written or graphic material that is placed on walls or notice boards or elsewhere on University premises, or circulated in the workplace or educational setting including by email, text messaging, social media and voicemail.
- 5.2.3 The complainant must present the forum referred to in paragraph 3.4(a) with all relevant information on the conduct that in their view amounts to hate speech. The complainant will then be assisted to establish whether or not this policy was breached. If hate speech is proven, the respondent must then, to escape penalty, prove the existence of a ground of justification.
- 5.2.4 The grounds of justification are bona fide engagement in artistic creativity, academic and scientific inquiry, and fair and accurate reporting in the public interest.
- 5.2.5 No defence of "fair" hate speech may be raised.

5.3 Harassment or Bullying and Sexual Harassment

- 5.3.1 Harassment, including acts of violence, will not be tolerated and will be dealt with through the University disciplinary procedures.
- 5.3.2 Harassment on a prohibited ground is a form of unfair discrimination which infringes the rights of the complainant and constitutes a barrier to equality in UP academic life, UP as a place of higher learning and the UP workplace.
- 5.3.3 Harassment related to any prohibited ground will not be permitted, tolerated, or

⁴ The list of factors listed in the Policy above is used to determine the fairness or unfairness of the impugned discrimination.

condoned in academic life and the workplace.

- 5.3.4 Grievances about harassment will be investigated and handled in a confidential manner.
- 5.3.5 Complainants in harassment matters have the right to follow the procedures in the policy and manual and UP must take appropriate action.
- 5.3.6 It will be a disciplinary offence to victimise or retaliate against a complainant who, in good faith, lodges a grievance about harassment, bullying or sexual harassment, whether in respect of themselves or another complainant.
- 5.3.7 Harassment or bullying is:
- (a) Any conduct which demeans, humiliates, or intimidates, where a reasonable person, informed by the values of the Constitution, would also have felt demeaned, humiliated or intimidated in the same circumstances, or creates a demeaning or hostile or intimidating environment, where a reasonable adjudicator, informed by the values of the Constitution, would also come to the conclusion that a demeaning or hostile or intimidating environment was created, and which is based on a person belonging to or assumed to belong to a group identified by one or more prohibited ground;
 - or
 - (b) any conduct which is calculated to induce submission by actual or threatened adverse consequences or implied or expressed promise of reward; and which is based on a person belonging to or assumed to belong to a group identified by one or more prohibited ground.
- 5.3.8 Sexual harassment is direct or indirect unwelcome conduct of a sexual nature. A single incident of unwelcome sexual conduct may constitute sexual harassment. For sexual harassment to have occurred:
- (a) the recipient must have indicated⁵ that the behaviour is unwelcome or
 - (b) the harasser/perpetrator knew the conduct of the type engaged in is generally considered to be unacceptable;
 - or
 - (c) a reasonable person, informed by the values of the Constitution, would have concluded that the perpetrator should have known that the behaviour is regarded as unacceptable.

Harassment, bullying and sexual harassment may vary in degree of severity or complexity. This must be taken into consideration when dealing with the complaint.

- 5.3.9 Sexual harassment includes actions such as grabbing, groping, kissing, fondling, inappropriately long hugs, suggestive touching, leering, making gestures, stalking; flashing; grading or rating of appearance by verbal comment, or wolf whistling, or other

⁵ See 5.2 in the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace,

noises; repeated, unwanted requests for dates; repeated, unwanted comments on a person's appearance; derogatory comments, including in relation to person's gender non-conformity; sexual intimidation, grooming, requests or demands for sexual activities in exchange for improved marks or other undue benefits such as accommodation in residences, enrolment, appointments, advancement in the workplace, promotions or other needs and benefits; spying, or intruding upon persons in residences while bathing or dressing; and streaking. Sexual harassment includes actions such as non-consensual recording or broadcasting of sexual activity; non-consensual distribution of photographs or other images of or information about another person's sexual activity, nakedness or intimate parts; and non-consensual voyeurism.

- 5.3.10 Harassment and sexual harassment include written or graphic material that is placed on walls or notice boards or elsewhere on University premises or circulated in the workplace or educational setting including by email, text messaging, social media and voicemail.
- 5.3.11 The complainant must present the forum referred to in paragraph 3.4(a) with all relevant information on the conduct that, in their view, amounts to harassment or bullying or sexual harassment. The complainant will then be assisted to establish whether or not this policy was breached. Relevant information may include the particulars of the conduct complained of; if the respondent should have known that the conduct is regarded as unacceptable; the dynamic and nature of the relationship between the parties, if any; the degree to which the conduct affected the education or employment of the parties; the nature, scope, frequency, duration and location of the incident(s); the identity, number and relationships of the persons involved.
- 5.3.12 No defence of "fair" harassment may be raised.
- 5.3.13 The Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace, 2022, must be read with this policy and manual.

5.4 **Consent**

- 5.4.1 To create a campus community free from Sexual and Gender Based Violence (SGBV), the campus community must have a full and complete understanding of what constitutes consent.
- 5.4.2 In any instance of sexual activity, it is the responsibility of both parties to ascertain whether the other person consents freely and without coercion.
- 5.4.3 Consent to one type or instance of sexual activity does not imply consent to other types or instances of sexual activity.
- 5.4.4 Past consent to sexual acts or sexual contact does not imply future ongoing consent.
- 5.4.5 The fact that two persons are in an ongoing relationship does not preclude the possibility that sexual misconduct might occur within that relationship, nor does it preclude the possibility that consent may be withheld.

- 5.4.6 Silence does not imply consent.
- 5.4.7 Consent should be explicit and not implied.
- 5.4.8 A verbal “no,” even if it may sound indecisive or insincere, constitutes a lack of consent.
- 5.4.9 Considerations of whether consent has been given need to take into account unequal power dynamics/relationships and how these relationships weaken the victim’s ability to indicate lack of consent clearly and unambiguously.
- 5.4.10 Relenting and submitting does not equate to consent.
- 5.4.11 Consent is not implicit in a person’s manner of dress.
- 5.4.12 Accepting a social invitation is not consent, nor does it imply consent.
- 5.4.13 Consent will not be effective when obtained from a person whose capacity to consent is diminished because they are asleep, unconscious or in an altered state of consciousness resulting from the use of alcohol, medicines or drugs to the extent that it adversely affects their judgment.
- 5.4.14 Consent is undermined under the following circumstances:
 - (a) If the alleged perpetrator uses force or intimidation against the complainant.
 - (b) If there is a threat of harm, real or perceived, by the alleged perpetrator against the complainant.
 - (c) If an abuse of power or authority occurs and the complainant is inhibited from expressing their resistance or unwillingness to participate in the act.
 - (d) If false pretences or fraudulent means are used to induce consent.

5.5 Violence Based on Prohibited Grounds

- 5.5.1 The University rejects violence in all its forms, which is prohibited in various policies of the University, and the law of South Africa.
- 5.5.2 That said, this policy focuses specifically on violence based on prohibited grounds.
- 5.5.3 Gender-based violence includes sexual harassment, sexual assault, intimate partner violence and rape, and may occur in teaching and learning spaces, in workspaces, in residential spaces and in public spaces on the university’s campuses, involving staff, students, contractors and visitors. It includes actions such as physical assaults by intimate partners; or actions against individuals perceived as gender nonconforming; or preventing or interfering with a partner’s studies by, for example, withholding fees.
- 5.5.4 Other forms of violence based on one or more prohibited grounds include an offence recognised under any law, the commission of which by a respondent is motivated by the respondent’s prejudice, bias or intolerance towards the complainant and which is related to the complainant belonging to or being assumed to belong to a group identified by one or more prohibited ground.

- 5.5.5 All reports of sexual assault, rape and attempted rape must be treated with the appropriate level of confidentiality and all complainants treated with respect and dignity. The same principles apply to complainants physically injured by unknown assailants or their intimate partners, or any person assaulted on the basis of gender, sexuality or gender expression. The University should pursue the resolution of complaints irrespective of the initiation or outcome of criminal proceedings. Complainants are not required to pursue a public prosecution or disciplinary process solely on the basis that they have reported an incident of rape to the SAPS or the University. Neither may they be dissuaded from pursuing public prosecution or University disciplinary processes.
- 5.5.6 Taking into account the complainant's state of mind, the complainant must present the forum referred to in paragraph 3.4(a) with relevant information, to the extent that they can provide, to enable investigators and counsellors to investigate the conduct complained of, and to support the complainant. The information should focus on the conduct that in the complainant's view amounts to gender-based violence or other forms of violence based on one or more prohibited ground. The complainant will then be assisted to establish whether or not this policy was breached. Relevant information may include the particulars of the conduct complained of; the dynamic and nature of the relationship between the parties, if any; the degree to which the conduct affected the education or employment of the parties; the nature, scope, frequency, duration and location of the incident(s); the identity, number and relationships of the persons involved.
- 5.5.7 No defence of "fair" gender-based violence or other forms of violence based on one or more prohibited grounds may be raised.

5.6 **Retaliation**

- 5.6.1 Retaliation is conduct, including threats, intimidation, reprisals, adverse employment or educational actions taken against any other person (such as a complainant, witness or other party) related to a good faith complaint or belief that a complaint had been lodged.
- 5.6.2 The complainant must present the forum referred to in paragraph 3.4(a) with all relevant information on the conduct that in their view amounts to retaliation. The complainant will then be assisted to establish whether or not this policy was breached. Relevant information may include the particulars of the conduct complained of; the dynamic and nature of the relationship between the parties, if any; the degree to which the conduct affected the education or employment of the parties; the nature, scope, frequency, duration and location of the incident(s); the identity, number and relationships of the persons involved.

6. ROLES AND RESPONSIBILITIES

6.1 Executive

- The Vice-Chancellor and Principal is responsible for providing leadership to ensure cooperation and compliance from all role players and for attaining the objectives of this policy.
- The Registrar has overall accountability and responsibility for ensuring that all institutional policies are managed responsibly within the University.
- The Executive Responsible for Transformation is responsible for oversight of this policy. UP management should ensure resources are made available for the institution to enact the principles as set out in this policy.

6.2 Student Responsibilities

- All students must be made aware of this Policy and the consequences of any transgression.
- Student leaders are obliged to attend training on this policy.

6.3 Staff responsibilities

- It is the responsibility of all staff, both existing and new recruits, to familiarise themselves with this Policy, and the consequence of transgression.
- All staff are obliged to attend training on this Policy.

7. RELATIONSHIP WITH OTHER POLICIES

To the extent that this policy cannot be reconciled with UP policies, this policy must be given preference and must be given effect until such time as conflicting UP policies have been amended to conform to this policy.

8. OPERATIONS MANUAL

- 8.1 The University is obliged to make appropriate and accessible institutional arrangements for the effective implementation of this policy.
- 8.2 The [Operations Manual](#) accompanying this policy sets out the procedures to be followed to implement this policy. The Operations Manual is enforceable through this Policy.
- 8.3 The Executive may amend the Operations Manual as may be required from time to time, as circumstances change.
- 8.4 The Operations Manual must, at least, set out the following matters:
 - (a) The applicable forum(s) that is responsible for the implementation of this policy and how its effectiveness will be ensured (its resourcing; its visibility and accessibility;

its marketing).

- (b) How an independent complaint investigating procedure will be ensured.
- (c) Counselling, support, protection and advice to complainants.
- (d) Promoting an inclusive culture, recommendations about structural reforms, and liaison with transformation committees.
- (e) The various complaint resolution mechanisms open to the parties.
- (f) Definitions and clarification of terms and phrases used in this policy (including the test for the recognition of further prohibited grounds; how this policy applies to service providers, contractors, visitors, and other third parties; the test for fair/unfair discrimination; how measures for redress of past disadvantage must be considered; reasonable accommodation for persons living with disabilities; and examples of conduct that amounts to harassment, sexual harassment, sexual assault, intimate partner violence and rape).
- (g) Detailed guidance on the burden of proof.
- (h) An explanation of and detailed guidance on how appropriate confidentiality must be ensured.
- (i) Staffing, resources, data collection, reports on the implementation and utilisation of the policy, the provision of training, standing to lodge a complaint, and support to minors.
- (j) Marketing of this policy to the broader University community – all reasonable steps that the University must take to create awareness of the policy and the processes to be followed in addressing complaints arising from non-compliance with this policy.

8.5 The Operations Manual may contain any other provisions that relate to the implementation of this policy.

9. CONFIDENTIALITY

Complaints are investigated and dealt with in a manner that ensures the appropriate confidentiality of parties and the nature of the complaint.

10. FUNDING

Adequate funding and resources must be progressively allocated towards the implementation of this policy, and allocated funds and resources must be efficiently utilised.

11. ASSOCIATED DOCUMENTS

This policy should be read in conjunction with the following:

- Constitution of the Republic of South Africa, 1996

- Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000
- the Employment Equity Act 55 of 1998
- Labour Relations Act 66 of 1995
- Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007
- Protection from Harassment Act 17 of 2011
- Domestic Violence Act 116 of 1998
- Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace 2022
- October 2017 Draft Policy and Strategy Framework: Addressing Gender-based Violence in the Post-School Education and Training Sector
- Hate Crimes Bill
- Code of Good Practice on Employment of Persons with Disabilities
- Code of Conduct for Members of Council
- Sexual and Gender-Related Misconduct Guidelines for the Post-Schooling Education and Training (PSET) Sector with accompanying protocols.
- Whistle-blowing and anti-fraud policy
- All relevant UP institutional policies as published on the policies pages on the staff and student intranet platforms

12. SUPPORTING DOCUMENTS

[Operations Manual to implement the policy](#)

13. RESPONSIBILITY FOR IMPLEMENTATION

Transformation Office

14. POLICY LIFE CYCLE

This policy should be reviewed every five years.

15. DOCUMENT METADATA

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UNIVERSITY OF PRETORIA
Transformation Office

OPERATIONS MANUAL ANTI-DISCRIMINATION AND HARASSMENT POLICY

Operations Manual on the prevention of unfair discrimination, hate speech, harassment, violence based on prohibited grounds, retaliation, and the promotion of substantive equality

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TABLE OF CONTENTS

1. PURPOSE	16
2. ORGANISATIONAL SCOPE	16
3. RELATIONSHIP WITH OTHER POLICIES.....	17
4. IMPLEMENTATION MECHANISM	17
5 FIRST RESPONDER PSYCHOLOGICAL FIRST AID.....	19
6 DEFINITIONS AND CLARIFICATIONS	21
7. LODGING OF COMPLAINTS AND PROCEDURE TO ADDRESS COMPLAINTS	26
8 DISCIPLINARY SANCTIONS	29
9 BURDEN OF PROOF	30
10 WHO MAY LODGE A COMPLAINT?	30
11 ADDITIONAL SICK LEAVE.....	31
12 SOCIAL ASSISTANCE	32
13 FUNDING	32
14 PROMOTION OF SUBSTANTIVE EQUALITY.....	32
15 CONFIDENTIALITY	36
16 RESPONSIBILITY FOR IMPLEMENTATION OF THE OPERATIONS MANUAL	37
17 OPERATIONS MANUAL LIFE CYCLE.....	37

1. PURPOSE

This Operations Manual must be read with the Anti-Discrimination and Harassment Policy. This manual operationalises the policy and it provides the mechanism for implementation of the Anti-Discrimination and Harassment Policy.

2. ORGANISATIONAL SCOPE

2.1 The policy and manual apply to:

- UP in all its manifestations, including all its committees, all its Faculties and departments and support services;
- All UP programmes and short courses and activities on and off campus and abroad;
- All UP staff and all UP students; and
- Third parties (e.g. service providers, contractors, visitors, parents) to the extent set out in this manual.

2.2 UP must communicate the policy and manual to contractors and ensure compliance by agreement with contractors that they will abide by the policy and manual while working on the university's premises.

2.2 Visitors, and other third parties present on any of the University campuses or other facilities, are expected to abide by the policy and manual and any applicable laws in this regard, and the University reserves the right to take appropriate steps, should infractions occur.

2.4 Where the alleged perpetrator is an intimate partner, family member, friend, neighbour, acquaintance or other community member or unknown to the complainant, the UP-Transformation Office's role will predominantly be supportive where the ethos that the University has committed to, must be conveyed to third parties, where reasonably practicable.

2.5 The University Council and its Executive are legally obliged to ensure that all complaints lodged in terms of the policy are investigated and, where appropriate, remedied insofar as is reasonably possible in terms of the policy and this manual.

2.6 If a complaint is lodged against a member of Council the matter must be referred to the Human Resources Committee of Council to investigate and to finalise the matter on behalf of Council. The Committee shall determine its own procedures taking into account the rules of natural justice. Should a member of the Human Resources Committee of Council be implicated, such member must be recused from this process.

3. RELATIONSHIP WITH OTHER POLICIES

- 3.1 The policy and manual must be read with existing institutional policies and procedures.
- 3.2 Subject to 3.3, to the extent that the policy and manual cannot be reconciled with other UP and Faculty policies, the policy and manual must be given preference and must be given effect until such time as conflicting institutional and Faculty policies have been amended to conform to the policy and manual.
- 3.3 Where a policy that arose from a collective bargaining agreement cannot be reconciled with this policy and manual, such other policy will be given effect to until such time as such other policy is amended through appropriate channels.

4. IMPLEMENTATION MECHANISM

- 4.1 The policy and manual are envisaged to be implemented by the following staff and student members collectively referred to as the “UP Transformation Office”:
- UP Transformation Director;
 - A full-time capacity building specialist;
 - A full-time diversity and inclusion specialist;
 - A full-time investigator;
 - A full-time counsellor (post to be created);
 - Where appropriate and if required, additional psychologists and counsellors currently appointed through UP Health and Wellness;
- 4.2 The UP-Transformation Office coordinates the implementation of this policy; collates data and reports on the implementation and utilisation of the policy; receives complaints; counsels, supports and advises complainants; ensures speedy resolution of complaints; promotes this policy; and liaises with all transformation committees across the University.
- 4.3 The Transformation Director is the head of the UP Transformation Office. The Transformation Director takes responsibility for the overall coordination of the tasks assigned to the UP Transformation Office in this manual. The Transformation Director is responsible for the overall management and coordination of the University Transformation Office, including its budget, marketing and awareness raising, development of protocols, and reporting functions.
- 4.4 The Transformation Director should develop detailed job specifications for each of the staff members in the Transformation Office as soon as reasonably possible after their appointment. All staff should be appropriately qualified and appropriately trained.

- 4.5 The counsellor(s) should preferably be trained as a social worker or psychologist and is responsible for making initial contact with complainants and providing ongoing psycho-social support to the complainant throughout the process.
- 4.6 The investigator(s) should have appropriate Human Resources, Psychology or Legal training and be responsible for investigating complaints. This function may overlap with existing Employee Relations (ER) functions or line manager functions and, in some instances, may involve external attorneys. The investigator cannot play the role of counsellor.
- 4.7 The Transformation Office should, in collaboration with the Department of Institutional Advancement, develop and implement advocacy and awareness raising activities surrounding the policy and manual, aimed at creating an inclusive culture and preventing the prohibited conduct outlined in this policy.
- 4.8 The Transformation Director must put appropriate training programmes in place for the entire UP community on the policy and relevant national legislation as well as in race, sexualities (femininities, masculinities), gender (encompassing the wide range of gender identities and belonging), sexual cultures among students, disability, cultural and racial issues and issues that arise from sexual, cultural and racial identities, so that all staff are able to appreciate the social, political, and racial context(s) of human behaviours.
- 4.9 Transformation Office staff must pay particular attention to the following considerations:
- (a) that the complainant may have a lack of trust in university structures, including the fear of retaliation;
 - (b) that the complainant may be dissuaded from pursuing formal complaints;
 - (c) that the complainant may be reluctant to engage with processes seen to be lengthy and which offer inadequate support and protection to complainants;
 - (d) that the complainant may experience feelings of confusion, guilt and uncertainty over the incident(s), including self-blame, or concerns about possible complicity;
 - (e) that the complainant may fear being labelled and stigmatised;
 - (f) that the complainant may experience complex feelings of respect and admiration for the alleged perpetrator, including not wanting to adversely affect their future and career;
 - (g) that the complainant may have received inadequate psycho-social support to date;
 - (h) that the complainant may believe that ignoring the behaviour will cause it to stop; and
 - (i) complainants may interpret institutional silence around the complaints prohibited in this policy as indicating that their concerns are not taken seriously whereas it may simply be a reflection of treating the matter with appropriate confidentiality.
- 4.10 The Transformation Office must develop comprehensive protocols guiding the provision of support to complainants and should for example, include:

- (a) the provision of advice and assistance;
- (b) supportive measures, including crisis counselling; assistance with access to SAPS where requested; assistance with access to emergency medical care; and other relevant services;
- (c) protective measures to mitigate the impact of the attack or the reporting thereof upon the complainant. These may include change of student residence, where requested; change of academic classes and academic relief, where appropriate; and/or special leave (staff) or leave of absence (students), where appropriate; and
- (d) measures to protect the complainant from the alleged perpetrator when not arrested or on bail including exclusion of the alleged perpetrator from campus in appropriate circumstances, no contact orders, or (depending on the circumstances) protection orders in terms of the Domestic Violence Act or Protection from Harassment Act.

4.11 A brochure should be developed on the referral systems that are in place. The brochure should set out the avenues that a complainant may pursue, as well as all contact details (e.g. criminal courts; CCMA; equality courts).

4.12 Complainants must have free access to different forms of emotional and social support regardless of whether or not proceedings are instituted. Complainants must be advised on the criminal justice system, as well as civil remedies in the ordinary courts and equality courts.

4.13 Some of the forms of prohibited conduct outlined in the policy also amount to crimes in terms of South African law. Complainants may therefore lodge complaints in terms of this manual as well as lay a criminal charge at a police station. The two processes run independently of each other and the progress made and outcome of the one process has no bearing on the progress made and outcome of the other process.

5 FIRST RESPONDER PSYCHOLOGICAL FIRST AID

5.1 Counsellors at the Transformation Office and selected staff members at every Faculty, Residence and Support Service Department should preferably be trained as first responders and after such training should be capable of providing psychological first aid in cases of rape and sexual assault. The training should deal with at least the following topics:

- (a) the need to and how to establish contact with the complainant;
- (b) the need to and how to ensure that the complainant has been referred to crisis counselling;
- (c) the need to and how to ascertain whether the complainant has made a complaint to SAPS and if not, encourage and assist them to do so in appropriate cases, taking into account that the SAPS processes are often slow, unwieldy and in some cases can be re-traumatising;
- (d) the need to and how to ensure that complainants have received medical attention;

- (e) the need to and how to provide information on the availability of longer-term support and to ensure that the counsellor follows up within 24 hours;
- (f) in the follow up to the initial report, how to provide an appropriate environment for the complainant to make their statement to the institution if such statement is necessary (ie when the alleged perpetrator is part of the institution), and offer assistance in making the statement;
- (g) how to provide information on the criminal justice process and explain the support role that can be provided by UP;
- (h) how to inform the complainant about the differences between the criminal justice process and the Transformation Office processes (where relevant);
- (i) how to inform the complainant of the supportive and protective measures available to them; and
- (j) how to provide a referral for the complainant to receive medium term support or counselling.

6 DEFINITIONS AND CLARIFICATIONS

6.1 HATE SPEECH

Based on *Qwelane v South African Human Rights Commission and Another* (CCT 13/20) [2021] ZACC 22; 2021 (6) SA 579 (CC); 2022 (2) BCLR 129 (CC), the following guiding principles to the definition of hate speech in the Policy are provided:

“words”	The ideas behind the words themselves and both verbal and non-verbal expressions are included. Speech, ideas, ideologies, belief, meaning, instructions, etc are included.
“communicate”	Private conversations are excluded from the hate speech prohibition.
“against any person”	Hate speech may be directed at an individual but impact not just that individual, but the group to which that individual belongs.
“that could reasonably be construed to demonstrate a clear intention”	This is an objective standard that requires a reasonable person test that considers the facts and circumstances surrounding the expression, and not mere inferences or assumptions that are made by the targeted group. The effect of the text, not the intention of the author, that is assessed. The abstract reasonable person test requires the adjudicator to be mindful of our diverse and dynamic society.
“harm” and “harmful”	This means deep emotional and psychological harm that severely undermines the dignity of the targeted group. The prohibition of hate speech postulates prohibiting expression that either harms or evokes a reasonable apprehension of harm to the target group. There is no requirement for an established causal link between the expression and actual harm committed.
“hatred”	This should be restricted to manifestations of emotion described by the words ‘detestation’ and ‘vilification’. Repugnant and offensive expressions do not constitute hate speech. The expression must incite a level of abhorrence, delegitimisation and rejection that risks causing discrimination or other harmful effects. Inciting hatred does not necessarily entail a call for an act of violence.

General guiding principles taken from the *Qwelane* judgment

- Hate speech is destructive of democracy.
- The expression of unpopular or even offensive beliefs does not constitute hate speech.
- A healthy democracy requires a degree of tolerance towards expression or speech that shocks or offends.

- Hate speech is the extreme detestation and vilification which risks provoking discriminatory activities against that group.
- Representations vilifying a person or group will seek to abuse, denigrate or delegitimise them, to render them lawless, dangerous, unworthy or unacceptable in the eyes of the audience. Expression exposing vulnerable groups to detestation and vilification goes far beyond merely discrediting, humiliating or offending the victims.
- Factors to consider while adjudicating a hate speech complaint include
 - i. the prevailing social and political context;
 - ii. the status of the speaker in relation to the audience;
 - iii. the existence of a clear intent to incite;
 - iv. the content and form of the speech;
 - v. the extent and reach of the speech and
 - vi. the real likelihood and imminence of harm and propagating hatred.

6.2 WORDS OR CONDUCT THAT HUMILIATE OR DEGRADE OR INSULT

Based on the principles relating to hate speech set out above, private communication does not constitute hate speech, and words or conduct that merely insult or humiliate does not constitute hate speech.

Insulting or degrading, or humiliating words or conduct, whether expressed in private or publicly, can still constitute the common law *actio iniuriarum* that may be lodged in the ordinary South African courts.

Insulting or degrading or humiliating words or conduct, whether expressed in private or publicly, can still in appropriate circumstances amount to a claim of harassment as set out in the Policy.

6.3 COMPLAINANT

Any person who may lodge a complaint of unfair discrimination, harassment, violence based on prohibited ground(s), hate speech or retaliation in terms of clause 10 of this manual.

6.4 COMPLAINT

A complaint of unfair discrimination, harassment (including sexual harassment) or bullying, violence based on prohibited ground(s), hate speech or retaliation as may be lodged in terms of the policy.

6.5 “THE POLICY”

The Anti-Discrimination and Harassment Policy

6.6 GENDER

Gender is a term that refers to social or cultural distinctions imposed on individuals and which are associated with being male or female.

6.7 GENDER EXPRESSION

Gender expression refers to every person's outward presentation of gender, typically through appearance, dress, and behaviour. Usually the outward presentation is a reflection of that person's gender identity, but this is not always the case. In some cases, a person's gender expression may result in assumptions about their gender identity or sexual orientation which are inaccurate.

6.8 GENDER IDENTITY

Gender identity is a person's gendered sense of self. Those who identify with roles, behaviours and expectations that are different from their biological sex (for example, they were born with male sex characteristics, were assigned male, but identify today as a girl, woman, or some other gender altogether) are often referred to as transgender.

6.9 HARM OR HARMFUL.

Includes any mental, psychological, physical or economic harm.

6.10 MANAGER OR LINE MANAGER

Any UP staff member with managerial, supervisory or warden responsibilities.

6.11 RACE

Race is a social construct that draws on visible physical characteristics and invisible, socially defined cultural competencies that are imposed on individuals and groups to categorise, classify and rank them for the purposes of producing racialised hierarchies of power and social worth.

6.12 ALLEGED PERPETRATOR (RESPONDENT)

A UP student, UP staff member, UP contractor or visitor to any UP campus, alleged to have engaged in unfair discrimination, harassment, gender-based violence, hate speech or retaliation either in their personal or official capacity, acting alone or in concert, or acting as part of an executive committee or faculty or departmental or residence committee or any other

decision-making body within the university context.

6.13 SEX

Sex refers to a person's biological status, assigned at birth, and typically categorized as male, female, or intersex (i.e., atypical combinations of features that usually distinguish male from female). There are a number of indicators of biological sex, including sex chromosomes, gonads, internal reproductive organs, and external genitalia.

6.14 UP CONTRACTOR

Any person contracted by UP, or in the employ of a company contracted by UP to perform services, whether academic, training, support, utilities, security, or any other services.

6.15 UP STAFF MEMBER(S)

All persons appointed by Council in the employ of the University; all staff appointed against external funds working on university premises; guest lecturers; invigilators; extraordinary and honorary professors and lecturers; all student appointments such as tutors, markers and research assistants; and any person who has agreed to be bound by the rules and policies of the University relating to staff. For all these categories it is irrelevant if the appointment is fixed-term, full-time or part-time.

6.16 UP STUDENT(S)

All persons registered as undergraduate or postgraduate students in terms of the regulations of the University; all participants in short courses presented by Enterprises@UP; any person who has agreed to be bound by the rules and policies of the University relating to students, including visiting students.

6.17 GENDER-BASED VIOLENCE

Where people do not comply with gender expectations, violence, abuse and discrimination may be employed to force conformity, to punish, or to assert dominance. As a consequence, while both men and women experience violence, the nature of the violence they experience is distinctively gendered.

Gender-based violence (GBV) is most often directed at women and girls as the obvious bearers of the female and feminine. Lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) individuals may also experience GBV, including on the basis of being gender non-conforming and/or not practising heterosexuality. Violence may also be used to feminise men, or undermine their masculinity; hence they are not exempt from some forms of GBV.

The use of violence to institute and maintain particular forms of gender relations is also

influenced in complex ways by perpetrators' ideas about the complainant's race, disability, social class and citizenship status, amongst other factors. These factors similarly influence how others respond to instances of GBV, as well as complainants' access to support. GBV takes different forms in different societies and at different historical points. These forms may include the physical, sexual, emotional and psychological, as well as the social and the economic.

6.18 SEXUAL ASSAULT

Sexual assault refers to different forms of unwanted touching and sexual contact as defined in the Criminal Law (Sexual Offences and Related Matters) Amendment Act (SOA), 32 of 2007.

6.19 INTIMATE PARTNER VIOLENCE

Intimate partner violence is one of the forms of family violence dealt with by South Africa's Domestic Violence Act, 116 of 1998. Those to whom the law applies include people who, "are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration" irrespective of whether these relationships are heterosexual or same-sex. The Act defines domestic violence as including, among other things, harassment, abuse of a physical, sexual, emotional, verbal and/or physical nature, stalking and intimidation, as well as any other form of controlling behaviour.

6.20 RAPE

Rape is an unlawful and intentional act of sexual penetration with another person without that person's consent. Sexual penetration can be vaginal, anal and oral. While acts of oral penetration are only considered rape when penetration is accomplished by a genital organ, in the case of vaginal and anal penetration, both penetration by any body part, or an object, constitutes rape. South African law recognises that consent must be freely given and thus distinguishes between submission and consent.

Where coercive circumstances are present, the law treats these as undermining of consent. Coercive circumstances may include the use of force or intimidation by the alleged perpetrator against the complainant, another person or the property of these persons; a threat of harm, real or perceived, by the alleged perpetrator against the complainant, another person or the property of these persons; an abuse of power or authority such that the complainant is inhibited from expressing their resistance or unwillingness to participate in the act; false pretences or by fraudulent means; the inability of the complainant to appreciate the nature of the act of sexual penetration, including where the complainant is at the time of the commission mentally disabled, asleep or unconscious, in an altered state of consciousness, including, but not limited to, under the influence of any medicine, drug, alcohol or other substance, to the extent that their ability to consent is adversely affected.

7. LODGING OF COMPLAINTS AND PROCEDURE TO ADDRESS COMPLAINTS

- 7.1 Should one of the complaints recognised in the policy occur, the complainant may approach any of the following:
- HR business partner (for staff)
 - Line manager (for staff)
 - Academic Success Coaches (for students)
 - Head of Residence (for residence students)
 - Other residence staff (for residence students)
 - A lecturer (for students)
 - An SRC member (for students)
 - Security staff (for staff and students)
 - The Transformation Director
 - The UP Portal (Anti-discrimination Case)
 - UP Ethics Hotline (Wisecall Confidential)
- 7.2 On receipt of a complaint, the role-players listed above should offer initial support and guidance but must bring the complaint to the attention of the Transformation Office as soon as reasonably possible. A complainant may also approach the Transformation Office as the first point of contact.
- 7.3 Reporting Sexual and Gender Based Violence (SGBV) cases is mandatory for all members of the campus community who become aware of such misconduct. Anyone with a strong suspicion of SGBV or who has received a disclosure of SGBV should report the incident to the Transformation Office, who will investigate the allegations being made.
- 7.4 There is no threshold for reporting a complaint or concern of SGBV as described in this policy. Any concern, however minor, should be reported.
- 7.5 In terms of the Sexual Offences Act, if any person, including the Transformation Office, has knowledge that a sexual offence, being rape, sexual assault or sexual intimidation has been- committed against a female student or staff of under twenty-five (25) years of age, they are obliged to report such offence to the SAPS. Failure to report the offence can lead to either a fine or imprisonment.
- 7.6 Upon receiving the complaint, the Transformation Office staff:
- (a) ascertains if supplementary information is required;
 - (b) ensures appropriate confidentiality;
 - (c) refers the complainant to appropriate support and counselling;
 - (d) determines the nature and severity of the complaint;
 - (e) identifies the alleged perpetrator and arranges for a written response from them;
 - (f) informs the alleged perpetrator of their rights and explains the process fully;

- (g) in case of a complaint against a staff member, fully informs and consults with the line manager and with Employee Relations (ER).
- 7.7 All complaints pertaining to an employee must, with due allowance for the seriousness of the complaint, be referred to Employee Relations (ER) as soon as reasonably possible.
- 7.8 Allegations of sexual harassment must immediately (as soon as is reasonably possible in the circumstances, and without undue delay, taking into account the nature of sexual harassment, issues of sensitivity, a fear of reprisals, and the relative positions of the complainant and alleged perpetrator) be brought to the attention of the Transformation Director.
- 7.9 The Transformation Director must, as soon as is reasonably possible after a complaint has been lodged and the requirements listed in 7.4 above have been completed, conduct a preliminary investigation or arrange for a preliminary investigation to make a *prima facie* assessment of the complaint's soundness.
- 7.10 The Transformation Director / investigator has the right to:
- (a) consult all relevant parties;
 - (b) take the necessary steps to address the complaint in accordance with this manual and the policy;
 - (c) take the necessary steps to resolve the complaint;
 - (d) advise the complainant of the informal and formal procedures available to deal with the complaint, as set out in this manual and explain these procedures;
 - (e) where reasonably practicable, refer the complainant for advice, assistance and counselling, including during any disciplinary investigation that may be instituted;
 - (f) if the investigation discloses a *prima facie* case, advise the complainant that they may choose which procedure should be followed by the University, except that in certain limited circumstances as set out below under "Formal Procedure", the University may choose to follow a formal procedure even if the complainant does not wish to do so; and
 - (g) re-assure the complainant that they will not face job loss or any adverse consequences if they choose to follow either the formal or informal procedure.
- 7.11 Should the Transformation Director be of the opinion that no *prima facie* case exists in favour of the complainant, the complaint is dismissed, and the Transformation Director furnishes reasons in writing for the dismissal of the complaint.
- 7.12 Should the complainant, after receipt of written reasons, still be of the opinion that the policy has been breached, an appeal may be lodged with the Registrar, who may deal with the matter at their discretion, including arranging for the establishment of a panel to consider the appeal. The Registrar or appeal panel considers the matter afresh, and if, in the panel's view, the policy was breached, must dispose of the matter in terms of 7.13 or 7.14 below.

7.13 Should the investigation indicate that the complainant maliciously lodged a complaint, they may be subjected to a disciplinary investigation in accordance with the applicable Disciplinary Code for Staff or Students, as the case may be.

7.14 Subject to 7.10(f) above, should the Transformation Director be of the opinion that a prima facie breach of the policy has been established, they must, with the consent of the complainant, follow one of the following procedures:

7.15 Informal Procedure

A complainant may choose to follow either of the following informal procedures:

- (a) the complainant, another appropriate person or the Transformation Director explains to the alleged perpetrator that the conduct in question is not welcome, that it offends the complainant, makes them feel uncomfortable and that it interferes with their work or studies; or
- (b) an appropriate person approaches the alleged perpetrator, without revealing the identity of the complainant, and explains to the alleged perpetrator that certain forms of conduct constitute a breach of the policy, are offensive and unwelcome, make the employee/student feel uncomfortable and interfere with their work or studies.
- (c) An appropriate restorative justice process if an appropriately trained restorative justice practitioner is available.

7.15.1 The person facilitating the process writes a report on the outcome of the informal procedure and files it at the Transformation Office.

7.16 Formal Procedure

A complainant may choose to follow a formal procedure, either with or without first following an informal procedure.

- a) Should the complainant decline to follow an informal procedure, or should the informal procedure be unsuccessful, the complainant may request that the Transformation Director refer the complaint to Legal Services via the Registrar who must further treat the complaint as a disciplinary matter in terms of the existing disciplinary codes and practices of the University.
- b) Should the Transformation Director be of the opinion that a person is reluctant to lay a complaint or to proceed with it as a result of possible intimidation or victimisation, the Transformation Director may, on own initiative, refer the matter to Legal Services via the Registrar, who must further treat the complaint as a disciplinary matter in terms of the existing disciplinary codes and practices of the University.
- c) The preliminary investigation referred to above serves *mutatis mutandis* as a preliminary investigation as intended in the Disciplinary Code for Staff or Students as the case may be.

- 7.17 If it appears that there is a significant risk of harm to other persons, a formal procedure must be followed, irrespective of the wishes of the complainant, and the complainant and/or their representative must be informed accordingly.
- 7.18 The Transformation Director may, with the permission of the complainant, in addition to the informal procedure and disciplinary action, submit proposals to the Registrar in terms of which problems emanating from the complaints could be resolved.
- 7.19 Should the matter not be satisfactorily resolved by the procedures set out above, a complainant may refer the dispute to a relevant forum outside of the University such as the Commission for Conciliation, Mediation and Arbitration (CCMA) or the equality court. Similarly, an alleged perpetrator may refer a dispute arising from disciplinary action taken by the University to the CCMA or another appropriate forum.
- 7.20 It will be misconduct to victimise or retaliate against a complainant who lodges a grievance of sexual harassment in good faith.
- 7.21 The Code of Good Practice on the handling of Sexual Harassment as contained in the Labour Relations Act 66 of 1995 must be adhered to.
- 7.22 The Transformation Office staff must ensure that no unreasonable delays occur during the investigation, continuation or conclusion of any complaint.
- 7.23 The Transformation Director must keep the complainant updated on the process as often as is reasonably practicable.
- 7.24 All Transformation Office staff must take all reasonable precautions to ensure the safety of the complainant.

8 DISCIPLINARY SANCTIONS

In the event of disciplinary action conducted in terms of the Disciplinary Code for staff or students, the following aspects must be considered but the outcome remains in the presiding officer's discretion:

- 8.1 The sanction must be proportionate to the seriousness of the breach of the policy.
- 8.2 The sanction must be reconcilable with all relevant applicable national legislation such as the Employment Equity Act.
- 8.3 Innovative sanctions may be imposed in furtherance of UP's values and the spirit, purport and objects of the policy.

9 BURDEN OF PROOF

- 9.1 For complaints of unfair discrimination where the Employment Equity Act applies, if unfair discrimination is alleged on the grounds listed in section 6(1) of the Act, the employer against whom the allegation is made must prove, on a balance of probabilities, that such discrimination did not take place as alleged or is rational and not unfair, or is otherwise justifiable; if unfair discrimination is alleged on an arbitrary ground, the complainant must prove, on a balance of probabilities that the conduct complained of is not rational; that the conduct complained of amounts to discrimination and the conduct is unfair.
- 9.2 For complaints of unfair discrimination where the Employment Equity Act does not apply, the onus is on the complainant to establish that the conduct complained of amounted to discrimination and the onus is on the alleged perpetrator to establish that the discrimination was fair.
- 9.3 For complaints of hate speech, the complainant is required to establish that the communication complained of breaches the policy either by the communication's normal meaning, or as inferred from the circumstances. The alleged perpetrator is required to establish that a ground of justification is available in the circumstances. No defence of "fair" hate speech may be raised. The following grounds of justification may be raised to a complaint of hate speech: (a) good faith engagement in artistic creativity; (b) good faith academic or scientific inquiry;⁵ (c) fair and accurate reporting in the public interest; or (d) any of the common law defences available to a defendant in claims based on insult.
- 9.4 For complaints of sexual harassment, the complainant is required to establish the particulars of the conduct complained of and that the alleged perpetrator should have known that the conduct was unwelcome. The complainant and alleged perpetrator must provide as much relevant information as they can reasonably provide, such as evidence of the dynamic and nature of the relationship between the parties; the degree to which the conduct affected the education or employment of the parties; the nature, scope, frequency, duration and location of the incident(s); the identity, number and relationships of the persons involved to substantiate their claims.

10 WHO MAY LODGE A COMPLAINT?

- 10.1 A complaint in terms of this policy may be lodged by:
- (a) any person acting in their own interest;
 - (b) any person acting on behalf of another person who cannot act in their own name;
 - (c) any person acting as a member of, or in the interests of, a group or class of persons;
 - (d) any person acting in the public interest; and
 - (e) any association or staff association or student society acting in the interests of its members.

- 10.2 The whistle-blowing procedure as contained in the UP Whistle Blowing Policy may be used by third parties to report incidents of unfair discrimination, hate speech, harassment, sexual harassment, retaliation, and violence based on one or more prohibited ground.

11 ADDITIONAL SICK LEAVE

- 11.1 Where an employee's existing sick leave entitlement has been exhausted, the University should give due consideration to granting additional paid sick leave in cases of serious unfair discrimination, harassment, hate speech or retaliation, where the employee, on medical advice, requires trauma counselling.
- 11.2 If unfair discrimination, harassment, hate speech or retaliation results in an employee being ill for longer than two weeks, the employee may be entitled to claim illness benefits in terms of section 20 of the Unemployment Insurance Act, 2001.
- 11.3 In appropriate circumstances, the University may give consideration to assisting with the cost of the medical advice and trauma counselling, where such amounts are not covered by any applicable medical aid scheme.

⁵ On the same basis that this defence applies in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000.

12 SOCIAL ASSISTANCE

Should it be deemed necessary by the Transformation Director, any complaint, or related intimidation or victimisation may be referred to the Student Counselling Unit (SCU) of the University in the case of students, or to EAP at UP (the employee assistance program) in the case of staff members, for counselling, attention and support. These ameliorative measures may for example include change of student residence, where requested; change of academic classes and academic relief, where appropriate; and/or special leave (staff) or leave of absence (students), where appropriate.

13 FUNDING

13.1 Adequate funds and resources must be allocated towards the implementation of this policy and allocated funds and resources must be efficiently utilised to ensure:

- (a) the provision of coordinated, sensitised, specialised, professional, integrated and multi-disciplinary complainant-centred services;
- (b) the appropriate and targeted training of all staff and students involved in implementing any aspect of the policy, including informal or formal complaints procedures, support and assistance to complainants; and
- (c) effective awareness programmes around the policy, including preventative programmes.

13.2 The allocated resources must be regularly monitored to ensure collective accountability.

13.3 The Department of Institutional Advancement (DIA) must support the Transformation Director in identifying and sourcing sustainable donor funding for the management of complaints lodged in terms of this policy.

14 PROMOTION OF SUBSTANTIVE EQUALITY

14.1 The UP community has a duty to promote and advance the achievement of substantive equality and the creation of a campus environment where difference and diversity are celebrated.

14.2 The UP community has a duty to proactively create an institutional culture that is inclusive, affirming and fair and where everybody is treated with dignity.

14.3 The Transformation Office must collate all relevant information for legislative reporting purposes, such as:

- (a) the number of cases dealt with, distinguishing between those perpetrated on-campus and those off-campus;
- (b) the profile of complainants and respondents;

- (c) the nature of the complaints lodged;
- (d) the outcome of complaints;
- (e) how many cases were settled;
- (f) the manner in which cases were settled;
- (g) training provided to staff and volunteers responsible for implementing the policy;
- (h) the nature and extent of efforts made to provide information about the various policies to staff and students; any programmes or other interventions undertaken to improve safety and reduce incidents of conduct prohibited in this policy;
- (i) budget and expenditure on addressing conduct prohibited in this policy;
- (j) time taken to resolve the cases; and
- (k) actions taken to mitigate obstacles to resolution of cases.

14.4 The Transformation Office must submit bi-annual reports to the Institutional Transformation Committee; copied to the Director: HR, the Registrar and the Vice-Principal: Student Affairs. The bi-annual reports must be collated into an annual report that must be addressed to the Vice-Chancellor and Principal and must be tabled before Council. These reports must be discussed at the Institutional Transformation Committee and Council and actionable items minuted and followed up.

14.5 The Transformation Office must, in its annual report to the Vice-Chancellor and Principal and Council, make recommendations on how the promotion of substantive equality may best be achieved, including proposals on amendments to existing university and faculty policies. The annual report should include proposals on how best to provide complainants with appropriate access to the mechanisms of justice, and, as provided for in national legislation, to just and effective remedies for the harm they have suffered; how to inform complainants of their rights in seeking redress through such mechanisms of justice; how to create or strengthen institutional mechanisms so that complainants can report complaints in a safe and confidential environment, free from the fear of penalties or retaliation; how to create, improve or develop and fund training programmes for judicial, legal, medical and security personnel to sensitise such personnel to the nature of the behaviour prohibited in this policy so that fair treatment of complainants can be assured; proposals on how to develop and implement strategies for familiarising staff and students with this policy and protocols developed in terms of this policy; how to develop and implement curriculum development strategies as well as programmes aimed at responding to and preventing conduct prohibited in this policy.

14.6 All line managers, heads of departments and others in positions of authority must ensure that they are well educated in the ways in which conduct prohibited in this policy may manifest itself and how to work with staff and students to ensure an open and trusting environment. They need to be familiar with this policy and the processes of how to report on and lodge complaints. They must ensure that:

- (a) complainants feel safe and supported to make complaints;

- (b) the Faculties', Residences', and Professional Service Departments' transformation committees and UP Transformation Office are well-known and respected; and
- (d) if the complaint is made to them, they make effective and efficient referrals and report the matter as soon as possible.

14.7 Assessment of line managers' implementation of this policy must form part of their annual performance plan and performance appraisal.

14.8 All members of the University community should create and maintain a working environment in which the dignity of all affected individuals is respected. A climate in the University community should also be created and maintained in which complainants will not feel that their grievances are ignored or trivialised, or fear retaliation. Implementing the following guidelines can assist in achieving these ends:

- (a) The employer, management, employees and students are required to refrain from committing acts prohibited in this policy.
- (b) All employers, management, employees and students have a role to play in contributing to creating and maintaining a working environment in which the conduct prohibited in this policy is unacceptable. They should ensure that their standards of conduct do not cause offence and they should discourage unacceptable behaviour on the part of others.
- (c) The employers and management should attempt to ensure that persons such as customers, suppliers, job applicants and others who have dealings with the University are not subjected to unfair discrimination, harassment, hate speech and retaliation by the employer or its employees.
- (d) The employers and management should take appropriate action in accordance with this policy where instances of unfair discrimination, harassment, hate speech and retaliation occur in the university environment.

14.9 The Transformation Office must establish links with both the local police station, as well as the local health facility to which SAPS take complainants who report rape.

14.10 The Transformation Office must develop a protocol for campus security, clinic staff and wardens of residences around responding to rape and other assaults in their immediate aftermath. This must include training such staff as first responders.

14.11 The Transformation Office, in collaboration with DIA, must take a range of additional steps to create awareness of the policy and to support its use. These could include:

- (a) Display of a plain language summary of this policy (or relevant posters) at strategic points where students are likely to congregate on campuses (such as fees offices) and residences. This includes making the policy and plain language summaries available online;
- (b) Raising awareness of this policy during residence programmes and staff and student orientation and development. Attention to conduct prohibited in terms of this policy must be a feature of orientation activities for first-year students who may

be particularly vulnerable to exploitative and abusive behaviour. As part of their orientation, students could for example be required to complete a module on this policy, which may include testing around its contents, especially in relation to defining complaints and reporting any such incidents;

- (c) Develop plain language summaries of the policy and manual and place them on the UP web and send an annual reminder to all staff and students to familiarise themselves with the policy and manual;
- (d) Providing comprehensive and ongoing training around conduct prohibited in terms of this policy to all personnel involved in the implementation of the policy, from campus security, to investigators/reporting officers. Workshops should also be conducted with student bodies, including the SRC and Faculty Houses;
- (e) Ongoing awareness-raising of this policy's existence and the university's condemnation of all forms of conduct prohibited by this policy. Faculties and departments must ensure that their class schedules allow for at least one discussion of this policy per semester. This should be unannounced to ensure that it is not made an occasion for skipping class;
- (f) Measures to increase awareness and knowledge of this policy; to be addressed to academic staff, service workers, unions, campus security, contractors, students, and visitors;
- (g) Safety audits aimed at identifying either those situational contexts, or parts of campus, where students and staff feel unsafe, or where abuse could easily occur. Where environmental design provides opportunities for abuse, or security is inadequate, taking steps to address these deficiencies. Such measures may include providing adequate lighting at night, help lines and staff and students accompaniment by security personnel to residences, offices or other places. Situational contexts, which often arise in residences, may be addressed by the adoption of new rules and procedures, or through workshops;
- (h) Campus-wide workshops and discussions, including in residences, that allow for critical exploration of gender and heteronormativity, sex, intimacy and ethical conduct. These should aim to address the norms, behaviours, attitudes and practices that condone conduct prohibited in this policy. These initiatives should also allow for and encourage the implementation of other programmes demonstrating efficacy in the prevention of conduct prohibited in this policy, such as bystander interventions and self-defence training. Documenting and evaluating these and any other programmes that are developed to enable broader sharing of effective interventions with other universities;
- (i) Discussions and interventions should also attend to the relationship between campus drinking cultures and conduct prohibited in this policy. While alcohol, per se, does not cause violence, it can facilitate and excuse its expression, as local university-based studies and reports suggest. Liquor outlets in the vicinity of university campuses should be approached to ensure the responsible sale of alcohol, amongst other measures; and
- (j) Encouraging and supporting staff and student activism on conduct prohibited in this policy. Given the violence that staff and students experience off-campus, the Transformation Office should look beyond the university's immediate

environment to engage in localised community-based initiatives and campaigns addressing conduct prohibited in this policy.

- 14.12 The Transformation Office must address residence cultures to create a safe and open climate to address issues such as sexual harassment, violence, racism and culture. The Transformation Office must develop and implement information and education campaigns that are specific to residence cultures, behaviours and activities.
- 14.13 The Transformation Office must support research into campus practices and cultures that are inimical to this policy.
- 14.14 The Transformation Office must support ongoing innovative and creative prevention and promotion campaigns that are vibrant, changing and address issues in ways that fully engage students on the matters addressed in this policy.
- 14.15 The Transformation Director must annually report fully on the activities of the Transformation Office and express a view on the effectiveness of the policy. The report
- 14.16 must be addressed to the Vice-Chancellor and Principal and should be tabled before Council.

15 CONFIDENTIALITY

- 15.1 All responses to complaints must maintain the appropriate confidentiality and privacy of the complainant whose safety and physical and psychological needs must be prioritized in line with the relevant legislation and the University's Privacy Policy. In some instances, it may not be possible to maintain absolute confidentiality. The University discloses to parties and their representatives such information as may be reasonably necessary. The University may also be compelled to disclose information in terms of legislation or a court order.
- 15.2 Complaints are investigated and dealt with during the investigation phase, in a manner that ensures the appropriate confidentiality of parties and the nature of the complaint.
- 15.3 In cases of harassment based on sex and gender, gender identity, gender expression and transgender status, management, employees, students and the parties concerned must endeavour to ensure confidentiality in the disciplinary investigation. Only appropriate members of management as well as the complainant, representatives, alleged perpetrator, witnesses and interpreter, if required, should be present during the disciplinary investigation and process.
- 15.4 The University will be required to disclose to the complainant, the alleged perpetrator and/or their representatives, such information as may be reasonably necessary to enable the parties to prepare for any proceedings in terms of the policy.

16 RESPONSIBILITY FOR IMPLEMENTATION OF THE OPERATIONS MANUAL

Transformation Office

17 OPERATIONS MANUAL LIFE CYCLE

The Transformation Director reviews this manual at least once a year and, through the Registrar's Office, tables proposed changes to the manual to the Executive when required.