

DEVELOPMENT OF A NEW UNIVERSITY OF PRETORIA ANTI-DISCRIMINATION POLICY:

OVERVIEW OF THE RELEVANT GLOBAL AND REGIONAL INSTRUMENTS

1.1 Global (United Nations)

- Universal Declaration of Human Rights [UDHR], Article 2
"Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."
- International Covenant on Civil and Political Rights [ICCPR], Article 26
"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."
- International Convention on the Elimination of All forms of Racial Discrimination [ICERD], Article 5
"States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law..."
- Convention on the Elimination of All Forms of Discrimination Against Women [CEDAW], Article 5
"States Parties shall take all appropriate measures:
(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the

superiority of either of the sexes or on stereotyped roles for men and women;

- (b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases."*

- Convention on the Rights of Persons with Disabilities [CRPD], Article 5

Article 5(2): *"States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds."*

Article 5(3): *"In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided."*

Article 5(4): *"Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention."*

1.2 **United Nations Protocols, Declarations and Regulations**

- Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief [1981], Articles 2, 3 & 4

Article 2

Article 2(1): *"No one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other beliefs."*

Article 2(2): *"For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis."*

Article 3

"Discrimination between human beings on grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations."

Article 4

Article 4(1): "All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life."

Article 4(2): "All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter."

- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities [1992] Articles 2 and 3

Article 2(1): "Persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination."

Article 3(1): "Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination."

Article 3(2): "No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration."

- The Beijing Declaration and Platform for Action (September 1995)

1.3 United Nations resolutions

- Protection against violence and discrimination based on sexual orientation and gender identity¹ [2016]

The Council resolved to appoint, for a period of three years, an Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity. The Expert's mandate would include addressing the multiple, intersecting and aggravated forms of violence and discrimination faced by persons on the basis of their sexual orientation and gender identity.

- Human rights, sexual orientation and gender identity² [2011]

The Council resolved to convene a panel discussion during the nineteenth session of the Human Rights Council, informed and transparent dialogue on the issue of discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity.

1.4 **Regional Standards: Africa**

- African Charter on Human and Peoples' Rights, Articles 2 & 28

Article 2: "Every individual shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or any status."

Article 3(1): "Every individual shall be equal before the law."

Article 3(2): "Every individual shall be entitled to equal protection of the law."

Article 28: "Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance."

- Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

Article 2: "States Parties shall combat all forms of discrimination against women through appropriate legislative, institutional and other measures."

¹ http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/RES/32/2.

² <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/148/76/PDF/G1114876.pdf?OpenElement>.

- Resolution 275: Resolution on Protection against Violence and other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity:

"...Alarmed that acts of violence, discrimination and other human rights violations continue to be committed on individuals in many parts of Africa because of their actual or imputed sexual orientation or gender identity;

Condemns the increasing incidence of violence and other human rights violations, including murder, rape, assault, arbitrary imprisonment and other forms of persecution of persons on the basis of their imputed or real sexual orientation or gender identity;

Specifically condemns the situation of systematic attacks by State and non-state actors against persons on the basis of their imputed or real sexual orientation or gender identity;..."

1.5 **United Nations cases and sources**

- *Toonen v Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D488/1992(1994)
- Sarah Joseph & Melissa Castan, "The International Covenant on Civil and Political Rights Cases, Materials, and Commentary" 3rd Edition 2013 (OUP)

1.6 **Regional Cases: Africa**

- Centre for Human Rights' African Human Rights Case Law Database
- Zimbabwe Lawyers for Human Rights & Associated newspaper of Zimbabwe v Zimbabwe
- Purohit and Another v the Gambia (2003) AHLRLR 96 (ACHPR 2003)

1.7 **Other Sources**

- The right to equality and non-discrimination in the administration of justice, OHCHR
- Handbook on European non-discrimination law, ECHR

1.8 **Domestic law outside South Africa**

- Racial Discrimination Act 1975, Australia
- Sex Discrimination Act 1984, Australia
- Australian Human Rights Commission Act 1986, Australia
- Disability Discrimination Act 1992, Australia
- Age Discrimination Act 2004, Australia
- Human Rights Code, Ontario, Canada, Part I of "Freedom From Discrimination"
- Anti-Discrimination Act, New South Wales, Australia
- Anti-Discrimination Act, Tasmania, Australia

1.9 **National Policies outside South Africa**

- Policy on Preventing Discrimination Because of Identity and Gender Expression, Ontario, Canada (2021): Draft, South Africa
- Report on the Ministerial Committee on Transformation and Social Cohesion and the Elimination of Discrimination in Public Higher Education Institutions, 2008

1.10 **University Policies outside UP**

- Anti-Discrimination Policy & Procedures, University of Witwatersrand
- Individuals with Disabilities, University of Witwatersrand
- Sexual Orientation and Gender Identity Advocacy Programmes, University of Witwatersrand
- Statement on Prohibited Discrimination and Discriminatory Harassment, University of Toronto
- Bullying, Harassment and Discrimination Prevention Policy 2015, University of Sydney
- Bullying, Harassment and Discrimination Resolution Procedures 2015, University of Sydney
- Statement on Equity, Diversity, and Excellence, University of Toronto
- Statement on Human Rights, University of Toronto