

By-laws Promulgated under the Policy on Sexual or Gender-based Harassment and Sexual Violence University of Peradeniya

These by-laws are made by the Council of the University of Peradeniya under Section 135 (1) (h) read with Sections 29, 35(6), 45, 46 and 135 (3) of the Universities Act No. 16 of 1978 as amended by the Universities (Amendment) Act No. 7 of 1985.

1. Title and scope of application

These by-laws may be cited as the “Procedural By-laws governing investigation of complaints of conduct prohibited by the Policy on Sexual or Gender-based Harassment and Sexual Violence”

These by-laws shall *mutatis mutandis* apply to all pending preliminary and formal inquiries on sexual or gender-based harassment and sexual violence.

2. The Committee to Monitor Sexual or Gender-based Harassment and Sexual Violence (CMSGBV)

2.1. Composition:

2.1.1 There shall be established for the purposes of these By-laws a body called “The Committee to Monitor Sexual or Gender-based Harassment and Sexual Violence (CMSGBV)”. (Hereinafter referred to as CMSGBV or the Committee”)

2.1.2 The Committee shall consist of Fifteen (15) members appointed by the University Council. In making such appointments, the University Council shall ensure the following representation;

- a. Two (02) persons from among the members of the Council,
- b. Ten (10) persons drawn from the permanent and senior members of the academic community,
- c. Three (03) persons external to the University, from among the retired academic or administrative staff of the University.

2.1.3 In making appointments, the University Council Members shall ensure, as far as practicable, that the persons being appointed are from among those who have demonstrated gender-sensitivity, proven interest in working on issues of gender equality and equity, and trained to investigate and inquire into cases of sexual or gender-based harassment and sexual violence.

- 2.1.4 Every member of the Committee appointed under sub-paragraph (2) shall hold office for a period of Three (03) years except if the office of a member becomes vacant for any reason specified under 2.2 of these By-laws.
- 2.1.5 A member appointed under sub-paragraph (2) shall be eligible to be re-appointed for one further term of Three (03) years only.
- 2.1.6 The Committee shall, at its first meeting, nominate from among its members a person as the Chair. Where there is lack of consensus or interest, the Vice Chancellor will request the most senior member of the Committee to function as Chair.
- 2.1.7 The Legal Officer/SAR Legal and Documentation Unit shall act as the secretary to the Committee.

2.2. Disqualification or vacation of office by other means:

- 2.2.1 The office of a member shall become vacant-
- (a) upon the death of such member;
 - (b) upon such member resigning such office by writing addressed to the Vice Chancellor;
 - (c) upon such member being disqualified from office on any ground specified in 2.2(9) hereof;
 - (d) upon such member being absent from 3 consecutive meetings of the Committee without an explanation to the Chair; or
 - (e) on the expiration of such member's term of office.
- 2.2.2 A member of the Committee shall be disqualified from serving on the Committee where such member;
- a) Has a complaint of any prohibited conduct defined under this Policy pending against him/her; or
 - b) If she/he has been found guilty of prohibited conduct defined under this Policy; or
 - c) Is found to have an undeclared conflict of interest, which conflicts with his/her duties as a member of the CMSGBV; or
 - d) Is unfit to continue in office by reason of infirmity of mind or body; or
 - e) Is declared to be of unsound mind by a court of competent jurisdiction; or
 - f) Has breached the confidentiality of proceedings of the Committee
- 2.2.3 The chairperson or any other member of the Committee may resign from such office at any time by tendering her/his resignation in writing to the Vice Chancellor and the resignation shall become effective from the date of its acceptance by the Vice Chancellor in writing.

2.2.4 In the event of the vacation of office, the University Council shall follow the same procedure set out in sub-paragraph 2.1.2 and appoint another person to hold such office for the unexpired term of office of the member whom he/she succeeds.

2.3. Meetings of the Committee:

2.3.1 The Committee shall meet at least 05 times every year or at such intervals as may be necessary provided however the interval between two successive meetings does not exceed 60 days.

2.3.2 The Chairperson of the Committee shall preside at all meetings of the Committee and in the absence of the Chairperson at any such meeting, the members present shall elect from amongst them, a member to preside at such meeting.

2.3.3 Minutes of all meetings shall be recorded, confirmed and adopted.

2.3.4 The quorum for any meeting of the Committee shall be one third of the members of the Committee.

2.4. The powers, duties and functions of the Committee shall be to:

2.4.1 Assist the Vice Chancellor and the Council to inquire into complaints of prohibited conduct defined under this Policy.

2.4.2 To participate in the task of redressal of complaints under this policy and by-laws of the university.

2.4.3 Assist in the mediation of situations arising out of incidents of prohibited conduct defined under this Policy on campus.

2.4.4 Make recommendations to the Vice Chancellor and the Council on the implementation of the Policy to prevent sexual or gender-based harassment and sexual violence with all persons and all places that come within the aegis of the University.

2.4.5 Ensure that the University gives prominence to the policy, the prevention mechanism, and complaints procedure in all residence halls, faculties, administrative buildings, institutes, health center, library, gymnasium, canteens, etc.

2.4.6 Assist the University to set up a Gender Equity and Equality [GEE] Unit to research and raise awareness on gender-based discrimination, sexual or gender-based harassment, and sexual violence.

- 2.4.7 Monitor the work of the GEE Unit and assist the Unit to support victims of sexual or gender-based harassment and sexual violence (including legal, counselling and medical assistance), if and when needed.
- 2.4.8 Work with the GEE Unit to activate an adequately representative team of volunteers through a notice at the beginning of each semester to work on issues of gender-based discrimination, sexual or gender-based harassment, and sexual violence on the university campus.
- 2.4.9 Widely publicize the contact details (both official and personal) of all its members and volunteers.

3. Inquiry Procedure

3.1. Complaints

- 3.1.1 Any person desirous of lodging a complaint relating to the occurrence of conduct prohibited by the Policy on Sexual or Gender-based Harassment and Sexual Violence by engaging in any act described in Schedule I of these By-laws may make a complaint;
 - a) To the Vice Chancellor; and/or
 - b) To the Chair of the CMSGBV; or
 - c) Via the UGC online complaints system

When the Vice Chancellor receives a complaint, he/she shall as expeditiously as possible forward it to the Chair of the CMSGBV.

- 3.1.2 Every person governed by the Policy and these By-laws is entitled to report any prohibited conduct defined under this Policy or these By-laws to the SMSGBV if it has come to his/her knowledge that such act has been committed by any person governed by the Policy and these By-laws.
- 3.1.3 Complaints may be either in oral form or in writing and initial complaints may be anonymous. When a complaint is made orally, it shall be the responsibility of the authority receiving the complaint, to cause such complaint to be recorded in writing and signed by the complainant/s.
- 3.1.4 Where the initial complaint is anonymous, the CMSGBV shall forthwith verify the contents of the complaint without prejudice to the person/s named and, where probable cause exists to proceed further with the investigation, inform the Vice Chancellor to enable him to appoint a Committee of Inquiry to conduct a Preliminary Investigation.
- 3.1.5 The Authority receiving the complaint shall direct the complainant to medical, legal, counselling or other assistance if deemed necessary due to the exigencies of the situation. Such procedures shall not preclude the

complainant, at any point, from seeking redress under any law in operation, for the time being.

3.2. Preliminary Investigation

Unless otherwise provided for in these By-laws, the Vice Chancellor shall hold a preliminary investigation irrespective of the fact that the complainant/s is known or unknown,

- 3.2.1 The preliminary investigation shall be a confidential investigation. Where these By-laws do not provide for matters connected with the conduct of the preliminary investigation sub-paragraph 8:1:1 of Chapter XXII of the University Establishment Code shall *mutatis mutandis* apply.
- 3.2.2 The Vice Chancellor shall appoint a preliminary Investigation Committee (PIC) in consultation with the Council. Section 6 of Chapter XXII of the University Establishment Code shall *mutatis mutandis* apply in relation to appointing persons to conduct a Preliminary Investigations.
- 3.2.3 At least one member of the PIC shall be drawn from among the members of the CMSGBV appointed under categories (a) and (b) mentioned in 2.1.2. of these By-laws.
- 3.2.4 The PIC shall ensure adequate gender balance and represent the genders of the parties to the complaint.
- 3.2.5 The Senior Assistant Registrar, Legal & Documentation Unit, shall inform the complainant in writing of the date fixed for the preliminary investigation and request the complainant/s to produce *prima facie* evidence to establish the need for a formal inquiry.
- 3.2.6 If the PIC is satisfied that *prima facie* evidence exists to inquire further into the complaint, the PIC shall inform the Vice Chancellor and the University Council of such fact in writing.
- 3.2.7 Upon the finding of the PIC that *prima facie* evidence exists to inquire further into the complaint, a complainant shall be given the option of seeking redress through mediation in lieu of a Formal Inquiry. Provided however, a formal inquiry shall be launched, in the circumstances provided for in 3.4.1.

3.3. Mediation

- 3.3.1 A complainant may seek mediation to bring closure to the matter and/or to prevent its recurrence.
- 3.3.2 A complainant desirous of availing him/herself of mediation shall make a request for mediation in writing to the Vice Chancellor.
- 3.3.3 Upon receiving such request, the Vice Chancellor shall as expeditiously as possible furnish the respondent with a written statement containing the charges against him/her, the fact that the complainant has chosen mediation as the preferred redress mechanism, and the date by which the respondent is required to inform the University of his/her choice of mediators, which date shall be no later than Seven (07) working days of furnishing the statement. Sub-paragraph 8:2:1 of Chapter XXII of the University Establishment Code shall *mutatis mutandis* apply to the form and delivery of this Statement.
- 3.3.4 On furnishing the above statement, the Vice Chancellor, in consultation with the CMSGBV, shall appoint two mediators, with the concurrence of all parties to the complaint.
- 3.3.5 The panel of mediators shall consist of one internal mediator and one external mediator, who shall also represent the genders of the parties to the complaint.
- 3.3.6 The mediation proceedings shall take place on the appointment of the mediators at a venue mutually agreed upon by the parties to the complaint.
- 3.3.7 Following representation before mediators are allowed;
- a) An observer representing the interests of each of the parties to the complaint; and
 - b) A representative of CMSGBV.
- 3.3.8 The representative of CMSGBV shall ensure that the mediation process is carried out in a collegial and non-threatening environment.
- 3.3.9 Where the parties agree to a settlement, the terms of the settlement shall be reduced to writing and be signed by the mediators and the parties, and the mediators shall at earliest possible forward a copy thereof to the Vice Chancellor, who shall formally endorse the settlement and declare the matter closed therewith.

3.3.10 Where the parties do not agree to a settlement, the mediators shall, forthwith, forward a report to the Vice Chancellor, stating that the complaint cannot be settled by mediation.

3.3.11 The use of mediation shall not preclude the complainant from seeking redress under any law in operation for the time being.

3.4. Formal Inquiry

3.4.1 A formal inquiry shall be initiated;

- i. Where the parties failed to agree on the mediators
- ii. Where the parties have not agreed to a settlement at a mediation hearing; or
- iii. Where either party chooses to adjudicate the complaint through a formal inquiry;
- iv. Where the Vice Chancellor, pursuant to 3.4.23 of these By-laws, initiates a formal disciplinary inquiry

3.4.2 The Vice Chancellor, in consultation with the University Council, shall appoint a Committee of Inquiry (CIQ) upon receiving the report of the preliminary inquiry committee that a complaint may proceed to formal inquiry. Section 6 of Chapter XXII of the University Establishment Code shall *mutatis mutandis* apply in relation to appointing persons to conduct a Formal Inquiry.

3.4.3 The CIQ shall be appointed as stipulated in the existing disciplinary procedures of the University, however ensuring adequate gender balance and represent the genders of the parties to the complaint.

3.4.4 Unless otherwise provided for in these By-laws, the Vice Chancellor shall fix a date for the first hearing of the formal inquiry and communicate such date to the parties in writing.

3.4.5 The respondent shall be informed in writing of the nature of the complaint. The University shall ensure that the letter is delivered to the respondent giving adequate time and ensure that the respondent has access to all the evidence upon request. Sub-paragraph 8:2:1 of Chapter XXII of the University Establishment Code shall *mutatis mutandis* apply to the form and delivery of this letter.

3.4.6 The parties to the complaint shall provide a list of witnesses upon receiving notice in writing of the Inquiry.

- 3.4.7 The parties to the complaint may be accompanied by a member of staff, a family member, friend, representative of the Students' union or any other person of each party's choosing and the name and other identification information of the person shall be notified to the Committee, through the SAR, Legal and Documentation Unit, in writing.
- 3.4.8 If either of the parties is a lawyer, the CIQ may permit the other party to the inquiry to be represented by a lawyer if it deems it necessary to do so.
- 3.4.9 Each party shall have the right to summon witnesses and to present other relevant evidence.
- 3.4.10 The CIQ may permit cross-examination of either party to the complaint.
- 3.4.11 Cross-examination shall only refer to matters directly related to the case.
- 3.4.12 The CIQ shall pose the questions to the other party and record the responses. The CIQ has the right to disallow questions it deems irrelevant provided, however, the CIQ shall provide reasons for disallowing a question where the cross-examining party requests for reasons.
- 3.4.13 A person summoned to produce a document does not become a witness by the mere fact that he produces it, and cannot be cross-examined unless and until he is called as a witness.
- 3.4.14 The CIQ will respect requests of witnesses for confidentiality of evidence they give if it could be accommodated without prejudice to either party to the complaint.
- 3.4.15 An inquiry can span multiple days and parties to the complaint can be summoned multiple times to depose if necessary.
- 3.4.16 Parties to the complaint have the right to ask for a full written version of their deposition and for a copy of the deposition of the other party to the complaint.
- 3.4.17 The sexual history and/or sexual orientation of the complainant shall not be deemed relevant to a complaint unless under exceptional circumstances in which case prior notification of such intention must be given to the CIQ.
- 3.4.18 The past sexual history of the respondent may be cited where relevant to the complaint.

- 3.4.19 Where either party to the complaint requests an adjournment, it shall be granted if the CIQ deems the request reasonable.
- 3.4.20 The CIQ shall have the right to terminate the proceedings and to give an ex-parte decision on the complaint, should the respondent fail, without valid ground, to present herself/himself for three consecutive hearings fixed by the CIQ.
- 3.4.21 Where the CIQ does not see grounds in the complaint to continue with a formal inquiry, they may, in consultation with the Vice Chancellor, recommend mediation to resolve the issue with the express consent of the Complainant.
- 3.4.22 At the conclusion of the formal inquiry, the CIQ shall, as soon as possible, submit its findings to the Vice Chancellor with recommendations for disciplinary action as per Chapter XXII of the University Establishments Code.
- 3.4.23 Nothing in this Policy shall prevent the Vice Chancellor and/or the Council initiating a formal disciplinary procedure in respect of conduct that comes within the scope of this Policy and constitutes grave misconduct for the purpose of disciplinary action under the Student By-laws on Discipline of the University of Peradeniya or the University Establishment Code.
- 3.4.24 Any findings or conclusions arrived at through the inquiry shall not preclude the complainant from seeking redress under any law in operation for the time being.
- 3.4.25 The CIQ may recommend and support the complainant to pursue legal action in a court of law, if, in the opinion of the CIQ, the conduct complained of is of a nature warranting such action.
- 3.4.26 Where these By-laws do not provide for matters connected with the conduct of the formal inquiry, Sections 9 and 11 of Chapter XXII of the University Establishment Code shall *mutatis mutandis* apply to such matters.

3.5. Appeals

- 3.5.1 Any person aggrieved by:
- a) The University not taking action on a complaint; or
 - b) The manner in which the investigation was conducted at the preliminary investigation; or

- c) The manner in which the inquiry was conducted at the formal inquiry;

may appeal to the Appeals Committee appointed under 3.5.2

3.5.2 The University Council shall appoint a Committee to consider the appeal on receipt of the appeal

3.5.3 The Appeals Committee shall report to the University Council its findings and recommendations on the nature of the action to be taken on the appeal. The decision of the Appeals Committee shall be final.

3.6. Procedural Safeguards

3.6.1 All proceedings under these By-laws shall be conducted in the language/s that the parties to the complaint choose/s. The services of translators shall be provided where necessary.

3.6.2 All authorities under these By-laws, including, but not limited to the CMSGBV, the PIC, CIQ, the Appeals Committee, the Vice Chancellor, and the University Council shall provide reasons for their decisions. Where no reasons are provided, the affected person/s has the right to request for reasons.

3.6.3 Notwithstanding anything to the contrary in the Policy, these By-laws, or any other law in operation within the University of Peradeniya, every member, and/ or officer, shall preserve and aid in preserving confidentiality with regard to the proceedings in relation to complaints made under these By-laws. These include, but not limited to, the identities of the parties, interview recordings, communications, documentation, and reports, which shall only be divulged to authorized persons or in accordance with the provisions of the Right to Information Act No.12 of 2016.

3.6.4 No proceedings initiated under these By-laws or findings, recommendations, or orders made under these By-laws shall be invalid by reason only of any informality, or the non-observance of any provisions herein, if these have not resulted in a failure of justice.

3.7. Withdrawal of complaints

3.7.1 A complaint, once lodged, shall not be withdrawn except at the discretion of the CMSGBV. The CMSGBV, in consultation with the Vice Chancellor, may permit the complaint to be withdrawn if it is satisfied that reasonable grounds exist for such withdrawal.

3.7.2 Where the CIQ finds that a malicious, false, or vexatious complaint has been made, it shall report such fact to the Vice Chancellor. The Vice Chancellor shall forthwith refer such matter to the Council of the University for disciplinary action.

3.7.3 The inability to establish wrongful conduct on the part of the Respondent/s shall not be designated a false complaint without other evidence.

4. In the event By-laws are silent

Where these By-laws are silent in respect of any matter or procedure, the University Council may decide on the procedure as appropriate for any specific matter.

5. Revision of By-laws

These By-laws shall regularly be updated and/or revised by the CMSGBV with the consent of the Vice Chancellor subject to approval by the Council of the University of Peradeniya. The Council shall approve the updates and/or revisions if such are not inconsistent with the objectives of the Policy and of these By-laws. In the event the proposed updates and/or revisions are, in the opinion of the Council, inconsistent with the objectives of the Policy and of these By-laws, the Council shall request the CMSGBV through the Vice Chancellor to review the proposed updates and/or revisions.

6. Interpretation

In these By-laws-

Unless the context otherwise requires:

‘Hostile environment’ exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits or deprives an individual from participating in or benefiting from the university’s educational, employment, and/or campus-residential experience when viewed through both a subjective and objective standard. A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe.

‘Policy’ shall mean the Policy on Sexual or Gender-Based Harassment and Sexual Violence.

‘Sexual or gender-based Harassment’ includes, in the case of sexual harassment, any unwelcome sexually determined conduct (physical, verbal, gestural, visual or written) that inflicts physical, psychological, or other harm or annoyance on the person subjected to such conduct, and in the case of gender-based harassment, any harassment based on gender, sex-stereotyping, sexual orientation, gender identity or gender expression, which may include acts of threatening, coercion, aggression, intimidation or hostility, whether verbal or non-verbal, graphic, physical or otherwise, but not involving conduct of a sexual nature, when such harassment leads to a hostile environment.

‘Sexual Violence’ includes assaults and violence of a physical nature, such as rape, sexual battery, molestation, domestic violence or attempts to commit such acts as well as intentional physical conduct which is sexual in nature.

‘Retaliation’ includes threats, intimidation, reprisals, and/or adverse employment or educational actions against a person based on their report of conduct prohibited under this Policy or participation in the investigation, report, remedial, or disciplinary processes provided for in this Policy.

7. Disciplinary Action

Where a person has been found to have engaged in any prohibited conduct defined under this Policy, the Council may determine and impose an appropriate penalty as per Chapter XXII of the University Establishments Code.

SCHEDULE I

Acts of sexual harassment, gender-based harassment, sexual violence, and retaliation include but are not limited to;

- a. Unwelcome sexual advances and unwanted sexually oriented comments in the form of verbal, non-verbal, or physical conduct, in writing, via the telephone, electronic mail or other forms of communication over the worldwide web, social media, etc. particularly when they are of a repetitive nature;
- b. Recording, photographing, transmitting, showing, viewing, streaming, or distributing nude, intimate or sexual images without the prior knowledge and consent of all parties involved;
- c. Requests for sexual favours;
- d. Requests or demands for sexual favours accompanied by explicit or implicit promised rewards, threats, or retaliation;
- e. Touching or groping an intimate body part, unclothed or clothed;
- f. Rape, sexual assault, or molestation or attempts/threats to commit such acts;
- g. Assault, threats, harassment, physical abuse or violence within the university premises by a current or former spouse or intimate partner that intentionally, or recklessly, causes mental or bodily injury or places the complainant in reasonable fear of serious bodily injury;
- h. Any harassment based on gender, sex-stereotyping, sexual orientation, gender identity or gender expression, which may include acts of threatening, coercion, aggression, intimidation or hostility, whether verbal or non-verbal, graphic, physical or otherwise, but not involving conduct of a sexual nature, when such harassment leads to a hostile environment.
- i. False allegations of any of the above (see 3.7 for difference between false allegation and inability to prove a complaint).
- j. Acts of intimidation related to Complaints including penalizing or threatening to penalize with regard to grades, classes, conferment of degree, work allocation and recruitment decisions.