

University of Cape Town

Sexual Offences Policy

PREAMBLE

The University is committed to providing an institutional environment where all may pursue their studies, careers, duties and activities in an atmosphere free of any threat of unwelcome sexual attention. Rape and sexual assault constitute serious misconduct and will result in disciplinary action. The University will not tolerate rape or sexual assault.

The University is committed to ensuring that contractors providing services on the campus of the University adopt similar policies and make these binding on all their employees and agents; and to ensuring that all future contracts between UCT and third parties for the supply by the third party of services on campus require this of contractors.

The University recognises:

- The unique social environment of a university;
- the spirit of South African law relating to sexual offences;
- that women are particularly vulnerable to rape and sexual assault;
- the high incidence of rape in South Africa and the higher risk of acquaintance- rape in a university context;
- the connection between the transmission of HIV and rape;
- that the University's role is to ensure a safe learning and working environment for its community, while the criminal justice system aims to protect society generally;
- the reluctance of complainants of sexual assault and rape to lay criminal charges;
- that the University has a positive duty to respond to reports of sexual assault or rape which come from or relate to its members;
- that whether or not a complainant chooses to lay charges with the criminal justice system relating to rape or sexual assault, the University has the right to take action, among other reasons because of the substantive difference between the criminal justice system and the procedures created under this policy.

It is the purpose of this policy to:

- deter rape and sexual assault;
- encourage the reporting of such incidents;
- provide for a comprehensive complainant-centred rape and sexual assault response;
- regulate procedures for addressing violations of this policy; and
- better inform the University community about rape and other forms of sexual assault.

To this end the University is committed to applying systems and structures through which rape or any other form of sexual assault may be reported and dealt with sensitively, to working with the criminal justice system and to following the procedures set out in this policy fairly and consistently.

In this context the University's highest concern is for the emotional and physical well-being of rape and sexual assault complainants and victims.

The focus of this policy is the management of rape and sexual assault; it should be understood and implemented in the context of other relevant University policies and statements, including those related to sexual harassment and racism; and it should be understood that one act may be in conflict with more than one University policy or rule, may constitute more than one disciplinary offence and may be dealt with accordingly.

In accordance with our commitment to deal decisively with rape and sexual assault occurring in the University community, any such act will be met with the strongest available sanctions, following due process which ensures fairness to all involved.

1 DEFINITIONS

- 1.1 **'CJS'** means the criminal justice system.
- 1.2 **"Case officer"** means the person assigned to present the University's case in formal internal disciplinary proceedings, who may also be the person assigned to investigate the case;
- 1.3 **'Complainant'** means any person alleging a rape or sexual assault, whether he or she is a member of the University or not;-
- 1.4 **'Consent'** means free and informed agreement between the parties to participate in a sexual act. In deciding whether such agreement was present at the time of the alleged violation of this policy the University will be guided by considerations, which may include, but are not limited to, the following:
 - a) Parties must be able to communicate and agree on the type of sexual activities that will be shared. Either party has the right to change her/his mind, at any time, and is responsible for communicating that change.
 - b) It is the responsibility of the person who initiates any type of sexual activity to obtain the other person's consent.
 - c) Consent to one type of sexual act does not necessarily imply consent to other forms of sexual activities.

- d) Silence does not imply consent.
 - e) A previous or present sexual or other relationship between the parties does not imply consent.
 - f) Consent is not implicit in a person's manner of dress.
 - g) Accepting a social invitation is not consent, nor does it imply consent.
 - h) Consent will not be effective when it is obtained, or perceived to be obtained, from a person whose capacity to consent is diminished;
- 1.5 'CPS' means Campus Protection Services;'
- 1.6 '**No-Contact Order**' means a protective measure issued by the University to prohibit the alleged perpetrator from coming into contact with the complainant;
- 1.7 '**Alleged Perpetrator**' means a person alleged to have committed a rape or sexual assault;
- 1.8 '**Sexual assault**' means an unlawful and intentional act of sexual contact with another person without that person's consent;
- 1.9 '**Rape**' means an unlawful and intentional act of sexual penetration with another person without that person's consent, specifically including:
- i. acquaintance, spousal and date rape;
 - ii. where the complainant submits or is subjected to an act of sexual penetration as a result of:
 - 1. the use of force or intimidation by the alleged perpetrator against the complainant, another person or the property of these persons;
 - 2. a threat of harm, real or perceived, by the alleged perpetrator against the complainant, another person or the property of these persons;
 - 3. an abuse of power or authority such that the complainant is inhibited from expressing her/his resistance or unwillingness to participate in the act;
 - 4. false pretences or by fraudulent means;

5. 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:
 - i) asleep or unconscious;
 - ii) 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 her/his ability to consent is adversely affected;
 - iii) mentally disabled;
 - iv) a child below the age of 12 years.
- 1.10 **‘The RO’** means the Reporting Office, as may be designated by the Vice-Chancellor from time to time;
- 1.11 **‘SAPS’** means the South African Police Service;
- 1.12 **‘Sexual penetration’** means an act which causes penetration to any extent by the penis or an object used by the alleged perpetrator into the anus, mouth or vagina of the victim;
- 1.13 **‘SRC’** means the Students’ Representative Council;
- 1.14 **‘Staff’** means an employee of the University or a person who has agreed to be bound by the rules and policies of the University relating to staff;
- 1.15 **‘Student’** means a registered student of the University or a person who has agreed to be bound by the rules and policies of the university relating to students; and
- 1.16 **‘The University’** means the University of Cape Town.

2. JURISDICTION

This policy applies to staff and students and to any act of rape or sexual assault by a staff member or student on or off the campus of the University.

This policy applies to any complainant alleging rape or sexual assault by a staff member or a student, whether the complainant is a staff member or student or not.

While the University has no jurisdiction over third parties (those who are neither students nor employees of the University) the University intends that this and related policies will be upheld and respected by all who work at, or visit, the

University or who take part in the University's activities at any other location. Visitors who are neither registered at the University as students nor employed by the University may be invited to and may agree to abide by the rules and conditions for students and staff. Any individual agreeing to abide by student and staff rules and conditions will be deemed to have consented to be subject to the University's disciplinary jurisdiction. Where such third parties are not subject to the rules or procedures for staff or students, or the provisions of the Code of Conduct, the RO will keep a record of complaints and reported violations of this and related policies, and will report these to appropriate procurement office so that the information can be taken into account in considering whether to contract for services.

3. **GENERAL PROVISIONS**

- 3.1 A student or staff member of the University who commits rape or sexual assault is in violation of this policy.
- 3.2 The University will treat all reports of rape as confidential and all complainants and victims with respect and dignity.
- 3.3 The University will endeavour to ensure the safety, health, dignity and well-being of any complainant.
- 3.4 Complainants are not required to pursue a public prosecution or a University disciplinary process solely on the basis that they have reported an incident of rape to SAPS or the University.
- 3.5 University action upon a complaint will be independent of the initiation or outcome of criminal proceedings.
- 3.6 The University will deal with all cases expeditiously.
- 3.7 The University will record all decisions taken under this policy and will keep comprehensive, up-dated and accurate information on all reported incidents of rape and sexual assault.
- 3.8 The University will ensure that the RO remains accessible to all in need of support services.
- 3.9 This policy prohibits retaliation against individuals for bringing a rape complaint.
- 3.10 A rape or sexual assault may also constitute an act of sexual harassment. In such cases the complaint may be dealt with under both policies. Under no circumstances, however, will a complaint of rape or sexual assault be dealt with solely under the sexual harassment policy.

- 3.11 The University shall conduct appropriate rape response training.
- 3.12 The University shall review this policy regularly and ensure its wide distribution to members of the University community.

4. REPORTING AND FIRST RESPONSE

- 4.1 A complaint of rape or sexual assault made to any member of the University must be brought to the attention of the RO, as soon as is reasonably possible to do so. A Case Officer to whom a complaint is made must consult the RO before proceeding with the complaint.
- 4.2 Such complaint may be made in person, through a third party or anonymously.
- 4.3 Any member of staff must, at the scene of the rape or as soon thereafter as is reasonably possible, or when an incident of rape is reported, render such assistance to the victim as may be required in the circumstances, and immediately notify the RO.
- 4.4 When an incident of rape has been reported, the complainant must be informed of the necessity of receiving immediate medical attention, including post-exposure prophylaxis (PEP) for HIV, sexually transmitted infections and pregnancy. All reasonable efforts must be made to transport the complainant promptly to the Groote Schuur Hospital or other appropriate medical facility as determined by the RO.
- 4.5 Such immediate medical attention does not obligate the complainant to initiate criminal or disciplinary proceedings.
- 4.6 Delayed reporting by a complainant may not detract from the duty of the University to deal with the complaint in terms of this policy.
- 4.7 The RO will encourage and support the complainant in reporting all incidents of rape to SAPS.

5. FURTHER ADVICE AND ASSISTANCE

- 5.1 Once the RO has been informed of a report of rape or sexual assault, it must establish contact with the complainant and
 - a) assign an appropriate support person to the complainant;
 - b) ensure that s/he has received medical attention as stated in 4.4;

- c) ensure that s/he has been informed of available crisis counselling;
- d) ascertain whether s/he has made a complaint to SAPS and if not, encourage and assist her/ him to do so.
- e) provide an appropriate environment for the complainant to make her/his statement if such statement is necessary, and offer assistance in making the statement;
- f) provide information on the criminal justice process and explain the support role that can be fulfilled by the support person of the RO;
- g) inform the complainant about the differences between the criminal justice process and the University disciplinary process;
- h) inform the complainant of her/his right to legal representation in disciplinary proceedings, and where requested, provide the victim with a list of appropriate legal representatives obtained by the RO from the Cape Law Society or Cape Bar Council;
- i) inform the complainant of the possibility of University disciplinary proceedings and assure her/him that the support person or the RO may not be called as a witness during any such proceedings;
- j) inform the complainant of the supportive and protective measures available to him/her;
- k) provide a referral for the complainant to receive longer term counselling;
- l) offer to maintain regular contact with the complainant through a schedule of regular meetings/ email correspondence;
- m) reassure the complainant that s/he will not face job loss (in the case of employees and part-time student employees) or any adverse consequences if she/he chooses to participate in disciplinary proceedings;
- n) advise the complainant that she/he retains the right to decline to testify or otherwise participate in disciplinary proceedings initiated under this policy;
- o) advise the complainant that the ultimate decision whether to institute disciplinary proceedings lies with the University, which may choose to follow a formal University procedure even if she/he does not wish to do so.

5.2 While the primary aim of this policy is to assist alleged victims of rape or sexual assault, an alleged perpetrator may at any stage approach the RO for advice on the application and interpretation of this policy. In such instances the RO shall:

- a) provide the alleged perpetrator with a copy of this policy and of the University's disciplinary rules;
- b) advise the alleged perpetrator of her/his right to obtain legal representation and the availability of counselling;
- c) advise the alleged perpetrator that the University may choose to follow the University disciplinary rules even if the complainant does not wish to do so; and
- d) explain to the alleged perpetrator the protective measures available to the complainant

6. COMPREHENSIVE RAPE RESPONSE

6.1 The University, through the RO, will provide a comprehensive rape response to members of the University community. This response will include access to:

- a) advice and assistance;
- b) supportive measures, including crisis counselling, emergency medical services, para-legal advice and other relevant services;
- c) protective measures to mitigate the impact of rape or the reporting thereof upon the complainant.

6.2 The University's supportive and protective measures will be available to the complainant regardless of the institution of criminal or disciplinary proceedings.

6.3 Protective measures may include, but are not limited to:

- a) No-contact orders:
 - i. which are valid for an initial period of six months; and
 - ii. which may be reviewed and renewed until such a time as:
 1. the RO, after consultation with the complainant, no longer deems it necessary; or
 2. any disciplinary hearing has concluded;

- iii the precise terms of which may vary depending on the individual circumstances of the case.
- iv Where violation of a no-contact order constitutes serious misconduct subject to disciplinary action;
- b) Change of University student residence, where appropriate;
- c) Change of academic classes and academic relief, where appropriate; and/or
- d) Special leave (staff) or leave of absence (students) , where appropriate.

7. THE REPORTING OFFICE

7.1 In order to provide the maximum response, protection and support services, the RO will maintain its neutrality in all cases of rape.

7.2 The RO shall:

- a) establish protocol-based relationships with all relevant agencies which may include SAPS, the National Prosecuting Authority, Department of Social Development, Groote Schuur Hospital, and the UCT Law Clinic;
- b) maintain at the RO updated referral lists and information on support groups and services active in the area, make these available on the UCT website and disseminate them on campus;
- c) make and maintain a record of every reported case of rape or sexual assault;
- d) make and maintain a record of all decisions taken under this policy;
- e) ensure effective communication and dissemination of this policy.

7.3 With respect to any rape report made under this policy, the RO may appoint an Advisory Panel that may consist of the following persons:

- a) The RO support person assisting the complainant;
- b) The Case Officer assigned to the matter;

- c) A person representing the Executive Director, Student Affairs, if either the complainant or alleged perpetrator is a student;
- d) A person representing the Executive Director, Human Resources, if either the complainant or alleged perpetrator is a staff member;
- e) A person, not necessarily a staff member of the University, with expert knowledge in the field,

7.4 The RO shall encourage rape and sexual assault complainants to make an official report to the South African Police Service, but respect their right not to do so. Where the victim chooses to make an official report to SAPS, the RO will assist her/him in this respect, by:

- a) where possible, arranging for an investigating officer from the relevant police station to come to the RO to take the victim's statement; or
- b) arranging University transport for the victim and a maximum of two support persons to go to the appropriate police station.
- c) liaising with the police, prosecution services and victims to ensure that the case is, as far as is practicable, dealt with expeditiously.
- d) With the consent of the victim, keeping duplicates of all important documents, including the victim's statement and the J88 (medico-legal report).
- e) providing or referring the complainant to a suitable organisation for court preparation and support.
- f) monitoring the progress of criminal proceedings and keep the complainant informed thereof.

8. UNIVERSITY DISCIPLINARY PROCEDURE

8.1 Students

The RO will report the matter to the Vice-Chancellor's nominee in terms of Rule DJP1.1 and the matter will be dealt with in terms of the DJP rules. The RO will provide such assistance to the Vice-Chancellor's nominee and the officer appointed to present the case to the Tribunal as they may require.

The Senior Proctor will ensure that proctors are trained to handle sexual offences matters and will not assign a case to a proctor who has not been so trained.

8.2 Staff

The existing (negotiated or Council-approved) disciplinary procedures for staff will be used. The procedures for staff are under revision, but will be used until revised. The RO must be consulted by the Case Officer. The RO will assist the Case Office (the management representative) where this assistance is required. For PASS staff Line Managers shall ensure that the line managers appointed to chair the disciplinary committee have been trained to handle sexual offences matters. For PICs and Committees of Inquiry, the Vice-Chancellor or nominee will where possible ensure that in constituting the panel the panel contains at least one person who has been trained to handle sexual offences matters.

8.3 Employees or agents of contracted-in Third parties

The disciplinary procedures agreed between the University and the contracting-in third party will be used by the contracting-in third party. The RO will offer such assistance to the management of the third party concerned as may be required.

30 January 2008

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