

University of Cape Town

POLICY ON RACISM AND RACIAL HARASSMENT

1. Preamble

The University of Cape Town is committed to:

- The elimination of racism at every level of institutional governance;
- Engendering, through its policies, procedures, practices and structures, an anti-racist and rights-based culture, which includes respect for human dignity and diversity;
- Implementing measures to redress the disadvantages experienced by designated groups, in order to ensure their equitable representation and treatment in all spheres of university life.
- Ensuring that complainants do not feel that their grievances are ignored or trivialised, and that they will not suffer any retaliation or victimisation.
- Pursuing these commitments in ways that value all members of staff, students and the broader community whom we serve and with whom we collaborate.

The University prohibits all forms of racism and racial harassment, and will act against both through staff and student procedures outlined in this policy and other disciplinary procedures.

2. The scope of the policy

All employees, students and third parties are subject to this policy and must comply with it.

Subject to the exhaustion of available internal remedies, all parties retain their rights relating to or arising from a complaint in a court of law.

3. Interpretation and definitions

In this policy, unless the context indicates otherwise, the following terms shall bear the meaning stated:

- **ADA** means Anti-discrimination Advisor.
- **Advisory Panel** means the panel appointed in terms of clause 9 of this policy.
- **Complainant** refers to the person alleging that conduct constituting racism or racial harassment has occurred. This person may or may not be the person directly affected by racism or racial harassment and is not necessarily a student or employee of the University.
- **Complaint** means a complaint brought in terms of this policy concerning allegations of racism or racial harassment.
- **Employee** means an employee of the University.

- **Director** means the Director of Discho.
- **Discho** means the Discrimination and Harassment Office at the University of Cape Town.
- **HOD and managers** refer to employees with line-function responsibilities.
- **Mediation Policy** means the policy of the University dealing with the availability of mediation services.
- **Racism** means the advocacy or expression in any manner of the belief or attitude that any person, by virtue of his or her skin colour or ethnicity is to be treated as inferior or superior to others.
- **Racist** means that which is characterised by racism.
- **Racial harassment** means conduct or expression which is racist in nature and which is calculated to demean, humiliate, distress, or create a hostile or intimidating environment.
- **'Respondent'** refers to the person against whom the complaint has been made.
- **'Student'** means a registered student of the University.
- **'Third Party'** refers (a) to an individual or company who is neither a student nor an employee of the University but with whom the University has concluded a contractual arrangement in terms of which the binding nature of this Policy is accepted; (b) to the employees of a third party who render services at the University.
- **'University'** means the University of Cape Town.
- **'University community'** refers to staff, students, and Council members.

4. The role of managers and staff with supervisory and line-management responsibilities

University employees with supervisory managerial responsibilities must take all reasonable steps to create and maintain a working and learning environment free from racial harassment, discrimination and prejudice. In their respective areas of responsibility, managers are required to:

- 4.1 familiarise themselves with the terms of this policy;
- 4.2 attend training and educational sessions on this policy offered by the University;
- 4.3 act by example with respect to behaving in inclusive, affirming and enabling ways and refraining from committing acts of racial harassment;
- 4.4 take appropriate action in accordance with this policy when instances of racial harassment, prejudice and discrimination occur;
- 4.5 ensure that complaints of racial harassment remain confidential outside of appropriate channels of communication
- 4.6 take measures, when appropriate, and in consultation with Discho, to prevent racism and racial harassment, from recurring by, for instance, altering workplace or student

arrangements, whilst at the same time observing the rights of such employees and students;

- 4.7 report on issues arising from the above requirements when requested to do so by Discho and/or a more senior manager.

5. Required conduct of University employees and students

In terms of the University's Disciplinary Procedure a staff member is required to maintain good conduct, including not contravening this policy. In terms of this policy it is misconduct for any staff member to engage in racism or racial harassment. In terms of student disciplinary rules RCS7.6, RCS7.7 and RCS9.12 racism and racial harassment is similarly prohibited.

6. Dissemination

- 6.1 The University, in meeting its legal requirements in terms of the Employment Equity Act 55 of 1998 to disseminate this policy effectively, must take all reasonable steps to communicate and create a continuing awareness of its contents to all employees and students. In order to achieve this, the University must allocate a website to this policy and related issues.

- 6.2 Discho shall have the following responsibilities:

- 6.1.1 To ensure that this policy and the seriousness of racism and racial harassment are effectively communicated throughout the University;

- 6.1.2 To ensure that those responsible for communicating information on the policy do so in an accurate and consistent manner;

- 6.1.3 To ensure that contact details of ADAs are easily accessible and disseminated to all sections of the University community;

- 6.1.4 To raise awareness about this policy through continuing education and training;

- 6.1.5 To monitor the implementation of this policy;

- 6.1.6 To ensure, facilitate and manage the effective functioning of investigations, informal and formal procedures;

- 6.1.7 To submit annual reports to the Institutional Forum, Council, Senate, the Vice-Chancellor and the relevant Deputy Vice-Chancellor on the implementation of this policy and cases of racism and racial harassment administered.

7. Anti-Discrimination Advisors

- 7.1 Discho must appoint and train Anti-Discrimination Advisors (ADAs), drawn from academic and administrative employees and must take reasonable steps to ensure their availability.

- 7.2 The general task of the ADA is to provide support and advice for the complainant and respondent. The ADA is not tasked with psychological counselling but may inform the complainant about the availability of such services.

- 7.3 ADAs must be formally contracted by Discho, and must reflect the University's diversity. An annual honorarium will be paid to all ADAs.

- 7.4 While the complainant will be entitled to ask, on reasonable grounds related to bias or the reasonable perception of bias, that another ADA be assigned to the matter, every effort should be made to ensure that the same ADA deals with the matter throughout.

- 7.5 An ADA shall have the following responsibilities:

- 7.5.1 To receive complaints of racism or racial harassment assigned by Discho;

- 7.5.2 To support, consult and liaise with complainants, respondents, and/or those initiating complaints of racism or racial harassment throughout the process, in consultation with the Director or designated officer of Discho;
 - 7.5.3 To provide reports and records to Discho on all referred cases;
 - 7.5.4 To provide relevant information and represent the complainant (or respondent, if requested) at the Advisory Panel, established in terms of clause 9);
 - 7.5.5 In the event of the matter having been referred to the Advisory Panel by the Director, to provide feedback and advice from the Advisory Panel to the complainant within 10 working days of the complaint having been lodged with Discho;
 - 7.5.6 In the event of the matter not having been referred by the Director to the Advisory Panel, the ADA must provide the complainant with advice with respect to his/her options, including the pursuit of either the formal or informal route. This must be done within five working days of the complaint having been lodged with Discho;
 - 7.5.7 To advise, support and accompany the complainant at any formal disciplinary hearing;
 - 7.5.8 In consultation with the Discho, liaise with the complainant, defendant and witnesses in relation to disciplinary hearings or the informal procedure, where necessary;
 - 7.5.9 To support the educational work of Discho where practical and reasonable.
- 7.6 The Director of Discho, or a person delegated by the Director, must:
- 7.6.1 provide general support and guidance to the ADAs;
 - 7.6.2 monitor cases;
 - 7.6.3 ensure that the ADAs are appropriately trained.

8. Procedures

- 8.1 Complaints of racial harassment and/or discrimination must be brought to the attention of Discho as soon as is reasonably possible in the circumstances.
- 8.2 A complainant (or person acting on behalf of the complainant) must report only instances where there is a bona fide belief that an act of racism or racial harassment has occurred.
- 8.3 Anonymous complaints will not be accepted..
- 8.4 The rights of both complainants and respondents must be protected.
- 8.5 Discho must follow the procedures indicated by this policy in a fair manner.
- 8.6 Complaints may be reported to Discho by the complainant, or by any other person aware of such racism or racial harassment acting at the request of the complainant.
- 8.7 Any complaint must be recorded in writing by Discho, and as soon as is possible assigned to an ADA.
- 8.8 In instances where the complaint is brought to the attention of a supervisor or manager, that person must refer the complaint to Discho immediately.
- 8.9 When a complaint of racism or racial harassment has been brought to the attention of Discho, the Director must take all reasonable steps to ensure that such a complaint is dealt with expeditiously and appropriately.

- 8.10 The steps to be taken by Discho on receipt of a complaint must include, but are not limited to Discho (and/or the ADA assigned to assist) advising the complainant:
- 8.10.1 of the formal and informal procedures, and that he/she can choose either;
 - 8.10.2 that the University may, in certain circumstances, be obliged to follow the formal procedure, even if the complainant does not wish to pursue this route;
 - 8.10.3 that the ADA assisting him/her may not be called as a witness during any formal procedure;
 - 8.10.4 that she/he retains the right to withdraw from any stage of the process;
 - 8.10.5 that she/he is not bound by the outcome/recommendation of the informal procedure, and retains the right to make an appeal directly to the Vice Chancellor or his/her nominee, within 14 days of the conclusion of that process;
 - 8.10.6 that the matter shall, as far as is possible, be dealt with confidentially;
 - 8.10.7 that late reporting shall not necessarily have negative consequences for the process of decision-making relating to the merits of the complaint;
 - 8.10.8 of the availability of psychological, medical, legal or trauma counselling (including during any disciplinary enquiry that may be instituted) as well as how to access independent counselling services; and
 - 8.10.9 of her/his right to obtain his or her own legal advice outside of the University, should he or she wish to do so.
- 8.11 While the aim of this policy is to assist a complainant, a respondent may at any stage approach an ADA for advice. If the ADA is the same person as assigned to the complainant, the respondent shall be referred to another ADA. The ADA shall advise the respondent that:
- 8.11.1 the matter shall be dealt with confidentially;
 - 8.11.2 there are formal and informal procedures which could be followed;
 - 8.11.3 the complainant may choose the procedure to be followed, except in certain limited circumstances, where the University may choose to follow a formal procedure even if the complainant does not wish to do so;
 - 8.11.4 the ADA assisting him/her and the complainant may not be called as witnesses during any formal procedure;
 - 8.11.5 the procedures indicated by this policy shall be followed in a fair manner.

9. Advisory Panel

- 9.1 The Director may be assisted by an ad hoc Advisory Panel, whose function will be to:
- 9.1.1 provide information and expert advice to enable the complainant to make an informed decision;
 - 9.1.2 provide information and support for a complainant ;
 - 9.1.3 participate in a process that is enabling, supportive and educational for the staff and structure of Discho;
 - 9.1.4 assist Discho in the formulation of a memorandum of complaint based on the written statement of the complainant);
 - 9.1.5 advise and assist Discho in taking the necessary steps to eliminate racism and racial harassment.
- 9.2 An Advisory Panel may consist of the following persons:
- 9.2.1 the ADA representing the complainant;
 - 9.2.2 an ADA, if so requested, to represent the respondent;
 - 9.2.3 a person (who could be a staff member or student, depending on the choice of the complainant) representing the Department of Student Affairs, if the complainant or respondent is a student;

- 9.2.4 any other person chosen by the complainant, other than his or her legal representative;
 - 9.2.5 an appropriately trained person representing the Human Resources Department, if the complainant or respondent is a staff member;
 - 9.2.6 a person (not necessarily a staff member of the University) with expert knowledge in the field, as deemed desirable by the Director.
- 9.3 The purpose of an Advisory Panel will not be to make decisions on behalf of the complainant, or to give advice in a manner that may be construed as being prescriptive to, binding on, or unduly influencing the complainant. The choice to proceed with a complaint in either the formal or informal route remains the prerogative and choice of the complainant.
- 9.4 An Advisory Panel will meet at the request of the Director.
- 9.5 If a complainant, after consultation with the ADA, does not wish to pursue the matter at all, and the complaint appears to be of a serious nature, the Director must refer the matter to an Advisory Panel.
- 9.6 The Director, in consultation with an Advisory Panel, shall consider all relevant information, including but not limited to the following:
- 9.6.1 the risk of retaliation or victimization of other persons in the University;
 - 9.6.2 the risk to the reputation of the University;
 - 9.6.3 the severity of the case;
 - 9.6.4 the history of the respondent with regard to previous cases/complaints of racial discrimination and harassment.
- 9.7 If it appears that there is a significant risk of harm, retaliation, victimization, or institutional damage, an Advisory Panel may advise the University to follow a formal procedure, irrespective of the wishes of the complainant, who must then be advised accordingly.
- 9.8 In such an event Discho, assisted by the Advisory Panel, shall prepare a written report and recommendation to the Vice-Chancellor or his/her nominee. The statement shall include (but not be limited to) the following:
- 9.8.1 The complainant's reasons for choosing not to pursue the matter, and not to be called as a witness in the matter;
 - 9.8.2 Compelling reasons in support of the pursuit of a formal procedure;
 - 9.8.3 The likelihood of conviction in the absence of the complainant as a witness.
- 9.9 This report and recommendation shall be forwarded to the Vice-Chancellor or his/her nominee, as soon as is possible. A copy of the statement shall also be given to the complainant. The matter shall thereafter proceed in terms of clause 11 of this policy.

10. Informal procedures

- 10.1 A complainant may wish to pursue the informal process as the preferred intervention to resolve a complaint, provided that all parties directly involved in the complaint have expressed consent.

- 10.2 The availability and appropriateness of the informal process shall be clearly and comprehensively explained to the complainant by the appointed ADA before proceeding with this process.
- 10.3 Preparatory interviews may be held with the respondent and with any other person or persons that may provide information to assist any mediator appointed in terms of the Mediation Policy with the informal process. These interviews may be conducted in the absence of the complainant, but require his/her consent.
- 10.4 The structure, procedure and facilitation of any informal procedure will normally be in accordance with the Mediation Policy but will be agreed upon beforehand by the complainant, respondent, ADA and the Director or his/her nominee.
- 10.5 Informal interventions may include one or more of the following:
 - 10.5.1 With the consent of the complainant, an appropriate person assigned by Discho, may approach the respondent/s to explain the context and nature of the complaint with a view to obtaining an amicable resolution. The identity of the complainant may or may not be disclosed to the respondent, depending on the wishes of the complainant.
 - 10.5.2 Where the respondent acknowledges responsibility for his/her conduct, a process will be facilitated to allow an opportunity for him/her to offer an apology. The terms, conditions and acceptance of such an apology will be facilitated, determined and agreed upon in a manner that is appropriate to the circumstances.
 - 10.5.3 Where the terms, conditions and acceptance of such an apology are of a more complex nature, a discussion may be facilitated by Discho. In this instance, the matter may be presented to a panel of not more than three persons to consider suggestions and discussions, and to make a recommendation(s). This panel will not in any way be construed as a disciplinary hearing, nor will its recommendations be binding. The aim of this process is to achieve a resolution based on agreement. The choice of panellists will be at the discretion of the Director or his/her delegate.
 - 10.5.4 Mediation may take place in terms of the Mediation Policy.
- 10.6 The complainant shall retain her/his right to pursue the formal route. This right will remain intact and available throughout the informal procedure. The complainant's choice to pursue the informal route shall not in any way diminish her/his original complaint.
- 10.7 The respondent shall have the right to refuse participation in the informal route, and no adverse inference shall be drawn from such refusal in any subsequent procedures.
- 10.8 A written report containing a brief summary and outcome of the informal procedure shall be kept by the Discho, and shall not be made available except to the Vice Chancellor or his/her nominee upon his/her request, should this become necessary in his/her consideration of the need for further action.
- 10.9 Every endeavour must be made to conduct the informal procedure within 14 days of the complaint being referred to the ADA.
- 10.10 Confidentiality regarding the process, participants and report will be maintained throughout this process or any other process that may have ensued as a result of the informal process.

- 10.11 No part of the informal procedure, whether verbal or written, may be adduced as evidence in a subsequent hearing.
- 10.12 At the end of the informal process, Discho should ascertain whether the complainant requires any further advice, counselling or support.

11. Formal Procedures

- 11.1 A complainant may choose to follow the formal route with or without having first followed an informal procedure. The purpose of formal proceedings is to ensure that appropriate disciplinary action is taken against any violation of this policy.
- 11.2 If the complainant wishes to proceed with a formal procedure, he or she must clearly advise the ADA of this, and prepare and sign a written statement providing full particulars of the alleged racial harassment.
- 11.3 An Advisory Panel will be convened by Discho to discuss all relevant information. This Advisory Panel should provide advice and support for the complainant, and assist in the formulation of a memorandum of complaint based on the written statement of the complainant. The memorandum of complaint shall be forwarded to the Vice Chancellor or his/her nominee, for information, and to the Director of Discho.
- 11.4 The University shall take all reasonable steps possible to ensure that all complaints of racism or racial harassment are considered seriously and dealt with in a manner that is fair, urgent, expeditious and consistent.
- 11.5 A violation of this policy, either through commission or omission, and failure of supervisory or managerial employees to observe and implement its terms, shall be regarded as serious misconduct.
- 11.6 Any person found guilty of racism or racial harassment may be discharged from employment (in the case of a staff member) or expelled from the University (in the case of a student). In the case of a third party, the termination of a contract may ensue.
- 11.7 Where the formal procedure is to be followed in respect of students Discho 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. Discho will provide such assistance to the Vice-Chancellor's nominee and the case officer appointed to present the case to the Tribunal as they may require. The Senior Proctor must ensure that proctors are trained to handle racial harassment matters and will not assign a case to a proctor who has not been so trained.
- 11.8 Where the formal procedure is to be followed in respect of employees the existing negotiated or approved disciplinary procedures for staff must be used. Management representatives are advised to consult Discho before instituting and during disciplinary proceedings.
- 11.9 The disciplinary procedures agreed between the University and the contracting-in third party must be used by the contracting-in third party. Discho must offer such assistance to the management of the third party concerned as may be required.

12. **Additional measures to be applied where a respondent is found to have contravened this policy**

All reasonable options for redressing harm suffered as a result of racism or racial harassment must be considered by the person(s) presiding over the disciplinary hearing.