

INSTITUTIONAL REGULATORY CODE

Policy Framework		Regulations/rules	
Policy	✓	Constitution	
Procedure (Manual)		Local document	
Guidelines		Other (name)	

Title: Policy on harassment, sexual harassment and gender-based violence (GBV)

Category: Governance

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Responsible Officer: Vice-Chancellor and Principal

Designated Officers:

Executive Manager in charge of the Human Resources (HR) portfolio

Senior Manager in charge of the HR portfolio

Dean: Student Affairs

Deputy Director: Protection Services

Faculty administrators

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POLICY ON HARASSMENT, SEXUAL HARASSMENT AND GENDER-BASED VIOLENCE (GBV)

1. POLICY STATEMENT

- 1.1 The Constitution of the Republic of South Africa (“the Constitution”) guarantees the right to equality and equal protection under the law. The Bill of Rights contained in the Constitution ensures that all persons have the right to equality, human dignity, freedom and security of the person and privacy, and any form of harassment encroaches on these human rights.
- 1.2 The rights enshrined in the Bill of Rights are guaranteed for all people, regardless of race, gender, pregnancy, marital status, ethnic or social origins, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth.
- 1.3 The Employment Equity (Act No. 55 of 1998) (“the EEA”) prescribes that the working environment should be free of discriminatory practices, including sexual and other forms of harassment.
- 1.4 The Central University of Technology, Free State (CUT) seeks to provide a working and learning environment that is supportive of scholarship and research, where the basis for interaction amongst all members of the CUT community is mutual respect, cooperation and understanding.
- 1.5 CUT rejects and condemns any and all forms of racism, sexism, homophobia, transphobia, xenophobia, ethnic chauvinism, religious intolerance, unfair discrimination, hate speech, sexual harassment, harassment based on other prohibited grounds, GBV, violence based on other prohibited grounds, and retaliation.
- 1.6 CUT views any act of harassment, sexual harassment and GBV in a serious light, as CUT has zero tolerance for the aforesaid acts of misconduct.
- 1.7 CUT commits itself to eradicating all practices mentioned in 1.1 by, amongst other things:
 - introducing both institutional and individual change through awareness workshops and other forms of interventions to transform gender norms on campus;
 - communicating all policies relating to harassment, sexual harassment and GBV to all contractors and their employees, and committing to soliciting commitment from them to the institution’s code of conduct while working on the university premises;
 - exercising control over all visitors to the university, to avoid contact that could lead to any form of harassment, sexual harassment and GBV;
 - providing a budget, and monitoring, reporting and evaluating the implementation of the policy, procedure and its related programmes on an annual basis;
 - monitoring the university’s progress of projects, programmes and policy, to establish the extent to which planned goals have been achieved;
 - conducting safety audits of university premises, to identify issues of concern to both students and employees, and to take mitigating actions.
- 1.8 The university will develop and implement action plans to address harassment, sexual harassment and GBV on an annual basis.
- 1.9 This policy aims to create an enabling framework to address individual, structural and systemic forms of discrimination and exclusion.

2. DEFINITIONS AND ABBREVIATIONS

- 2.1 **Accused:** The individual named by the complainant who lodges a complaint or reports an incident.
- 2.2 **Assault:** Any violent physical act, for example hitting or strangling.
- 2.3 **Complainant:** The individual who may have been a victim of an assault, a rape or a related offence, and who lodges a complaint or reports an incident.
- 2.4 **Applicant:** Any person who is applying for any position of employment, or admission as a student of CUT.
- 2.5 **Contractor:** A non-employee of CUT who has business dealings with CUT.

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- 2.6 Sexual assault:** Any unlawful and intentional act of sexually violating the complainant without his or her consent
- 2.7 Informed consent:** A voluntary or uncoerced agreement to engage in sexual activity. It does not include consent obtained by use of force, intimidation, abuse of power or authority, or where the complainant is under law not capable of appreciating the nature of the sexual act due to, *inter alia*, intoxication, mental illness or unconsciousness. Consent may be withdrawn at any stage.
- 2.8 Compelled rape:** Any unlawful and intentional act of compelling a third person without his or her consent to commit an act of sexual penetration, without the informed consent of the complainant.
- 2.9 Harmful conduct:** Any mental, psychological, physical or economic harm.
- 2.10 Consent:** An explicit, clear agreement to engage in, and continue to engage in an activity. It implies that, at any time in the course of that activity, consent may be withdrawn. Consent is affirmative and freely given.
- 2.11 Contact person:** Any of a number of designated campus individuals who, as a result of their position and appropriate training, serve to make the complainant aware of available options and alternatives, to aid the complainant in making an informed decision as to a course of action, and to enable the complainant to follow through with that decision.
- 2.12 Gender-based violence (GBV):** Any act of violence, whether persistent or isolated, perpetrated against any person on the basis of his/her gender, which results or may result in physical, sexual or psychological harm or suffering. It includes, but is not limited to, sexual harassment, assault, rape, and other related offences.
- 2.13 Formal reporting:** Filing a grievance or formal charge with campus agencies designated to adjudicate complaints, for purposes of taking action.
- 2.14 Harassment:** In general, harassment constitutes unwanted or unsolicited attention based on one or more of the prohibited grounds. It affects the dignity of the affected person, or creates a hostile working or learning environment. Harassment includes acts of victimisation and workplace bullying. It is a form of unfair discrimination, and is prohibited on any one or a combination of grounds of unfair discrimination listed in Subsection (6)1 of the Employment Equity Act (Act No. 55 of 1998), and further includes direct or indirect harmful conduct, as defined in the Protection from Harassment Act (Act No. 17 of 2011).
- 2.15 Human Resources Committee (HRC):** The committee overseeing the implementation of the policy addressing GBV.
- 2.16 Independent panel of investigators:** The panel of persons investigating alleged transgressions related to GBV.
- 2.17 Institutional Forum (IF):** An advisory committee to the CUT Council, established in terms of the Higher Education Act (Act No. 101 of 1997).
- 2.18 Informal reporting:** The process whereby a member of the CUT community notifies a contact person of an incident on or off campus. Informal reporting is designed to provide a vehicle through which a member of the CUT community can obtain information, support, etc.
- 2.19 Rape:** An act in which a person forces another person to have sexual intercourse with him/her against his/her will, and without his/her consent. Assent shall not constitute consent if it is given by a person who, due to youth, mental disability or intoxication, is unable to make a reasonable judgement concerning the nature or harmfulness of the activity.
- 2.20 Related offence:** Any act in which a person forces another to engage in sexual activity against that person's will and without consent, for example fondling.
- 2.21 Sexual harassment:** CUT defines sexual harassment as requests for sexual favours, unwelcome sexual advances, or verbal or other expressive behaviour of a sexual nature when, *inter alia*:
- 2.21.1** submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment at CUT, or his/her status as student;
- 2.21.2** submission or rejection by an individual is used as a basis for making academic decisions affecting him/her, or for awarding or withholding employment or academic opportunities, evaluations, or assistance;

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- 2.21.3 its purpose or effect is interference with the individual's performance at work, or in his/her studies, by creating an intimidating, hostile or offensive environment in which to work or learn;
or
- 2.21.4 its purpose or effect is the degradation, humiliation, intimidation or victimisation of an individual.

3. PURPOSE OF THE POLICY

3.1 The aim of this policy is to promote the achievement of procedural and substantive equality; to prevent the following actions being taken by CUT staff members, students and third parties (to the extent provided for in the procedures (manuals) for staff and students); and to provide support and remedies where they occur:

- Harassment
- Sexual harassment
- GBV
- Other forms of violence

3.2 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, including country of origin, HIV status, socio-economic status, albinism, gender identity, gender expression, intersex status, class, political opinion, year of study, physical appearance, body shape, mental health status or occupation.

3.3 The purpose of the policy is to, *inter alia*:

- 3.3.1 establish a safe, enabling environment that is free of harassment, sexual misconduct and GBV for all employees of CUT, and any member of the CUT community;
- 3.3.2 clarify and facilitate an understanding of what constitutes sexual harassment, sexual misconduct or GBV in the workplace, so that employees and all persons who have dealings or engagements with the institution know and understand the standard that is expected of them;
- 3.3.3 ensure the effective and efficient investigation and prosecution of perpetrators;
- 3.3.4 give proper recognition to the needs of the victims of sexual harassment, sexual misconduct and GBV through timeous, effective and non-discriminatory investigations and prosecutions;
- 3.3.5 introduce both institutional and individual change through awareness workshops and other forms of interventions to transform gender norms on campus;
- 3.3.6 communicate all policies relating to harassment, sexual harassment and GBV to all contractors and their employees, and commit to soliciting commitment from them to the institution's code of conduct while working on the CUT premises;
- 3.3.7 exercise control over all visitors to the university, to avoid contact that could lead to any form of harassment, sexual harassment and GBV;
- 3.3.8 monitor, report and evaluate the implementation of the policy, procedure and its related programmes on an annual basis; and
- 3.3.9 enable CUT to conduct safety audits of university premises, to identify issues of concern to both students and employees, and to implement appropriate measures.

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4. SCOPE AND APPLICATION

- 4.1 This policy is applicable to all CUT employees and students, as appropriate for the requirements of the university. All managers/heads of department (HoDs)/divisional heads/supervisors/staff members and students are responsible and accountable for providing a safe working environment free of harassment, sexual harassment, GBV and other forms of violence against one another.
- 4.1.1 The policy shall also apply to curbing all forms of romantic or sexual relationships between employees at the institution and/or students (i.e., a romantic or sexual relationship between a staff member and a student), including relationships where conduct is consensual or involves any employee in a position of authority, unless declared in writing by both parties within a reasonable time.
- 4.1.2 All employees and students are responsible and accountable for providing a safe working environment free of harassment, sexual harassment, GBV and other forms of violence against one another.
- 4.1.3 CUT believes that it is the responsibility of every individual associated with the institution, whether a student or an employee, to combat harassment at all levels at the university.
- 4.1.4 Employees and/or students found to be in contravention of this policy shall be disciplined in accordance with the terms of this policy, and/or any other appropriate code of conduct.
- 4.1.5 This policy shall not deter and/or limit any complainant's right to initiate criminal or civil proceedings against a perpetrator.
- 4.1.6 No person may be subjected to any form of victimisation or occupational detriment for reporting an incident of alleged harassment, sexual harassment or GBV, or for assisting or participating in an investigation or disciplinary hearing.
- 4.1.7 CUT is to appoint a suitably qualified panel of independent investigators to investigate alleged transgressions related to GBV in a fair and transparent manner.
- 4.1.8 The role of the IF includes, but is not limited to, advising Council, and reporting twice per annum on the status of policies addressing GBV at the university.
- 4.1.9 The HRC is to oversee the implementation of the policy and procedure addressing GBV, and to provide progress reports quarterly and annually to the relevant governance structures.

5. APPROACH AND PHILOSOPHY/PRINCIPLES

This policy and the procedures for managing complaints of harassment, sexual harassment and GBV were developed to ensure that CUT is committed, and in a position, to eradicate all forms of the following:

5.1 Harassment

- 5.1.1 CUT is committed to maintaining a learning and working environment for all students, faculty and staff that is fair, humane and responsible – an environment that supports, nurtures and rewards career and educational advancement based on ability and performance.
- 5.1.2 Harassment undermines the character and purpose of CUT, and therefore will not be tolerated.
- 5.1.3 In order to decide whether an action constitutes harassment, the following criteria must be considered:
- Whether submission to the conduct is made either an explicit or implicit term or condition of employment, or a basis for participation or advancement in a programme or benefit.
 - Whether submission to, or the rejection of, the conduct is used as a basis for a decision affecting an individual's employment status or academic standing.

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- Whether the conduct has the purpose or effect of interfering with an individual's work or classroom performance by creating an intimidating, hostile or offensive work or educational environment.
- 5.1.4 The frequency of the conduct is also a factor to be considered in determining whether conduct amounts to harassment.
- 5.1.5 The standard to be used in order to determine whether conduct amounts to harassment, is that of the reasonable victim of the same gender, race, political affiliation, religious conviction etc. as the complainant.
- 5.1.6 Harassment is subject to disciplinary actions within CUT. The following are examples of conduct considered to be harassment:
- Degrading references to a person's race, faith, disability, sexuality, sexual orientation, ethnic or social origin, political opinions, culture, language, etc.
 - Unnecessary physical contact.
 - Strong, deliberate threats that could be perceived as real, as well as racial slurs, comments, offensive jokes, insults meant to provoke, and continuous staring.
 - Ridicule, demeaning comments that hurt the individual personally, and malicious rumours.
 - Rape or attempted rape.
- 5.1.7 CUT believes that it is the responsibility of every individual, whether a student or an employee, to combat harassment at all levels at CUT.
- 5.1.8 Employees or students found to be in contravention of this policy will be disciplined in accordance with it.

5.2 Sexual harassment

- 5.2.1 CUT considers sexual harassment as defined in the Employment Equity Act (Act No. 55 of 1998) and the Protection Against Harassment Act (Act No. 17 of 2011). The following shall be regarded as acts of sexual harassment:
- Unwelcome conduct of a sexual nature that violates the rights of the complainant, and constitutes a barrier to equity in the workplace and educational institution.
 - Unwelcome sexual attention from a person who knows, or ought reasonably to know, that such attention is unwelcome.
 - Unwelcome explicit or implicit behaviour, suggestions, messages or remarks of a sexual nature that have the effect of offending, intimidating or humiliating the complainant.
 - Implied or expressed promise of reward for complying with a sexually oriented request; or implied or expressed threat of reprisal, or actual reprisal, for refusal to comply with a sexually oriented request.
- 5.2.2 The following are examples of conduct considered to be acts of sexual harassment:
- Physical conduct of a sexual nature, which includes all unwanted physical contact, ranging from touching to sexual assault and rape, or frisking or strip searches by a person of the opposite sex.
 - Verbal forms of sexual harassment, which include innuendoes, suggestions and hints; sexual advances; comments with sexual overtones; sexual-related jokes or insults, or unwelcome graphic comments about a person's body made in his/her presence, or directed at him/her; unwelcome and inappropriate enquiries about a person's sex life; unwelcome and inappropriate comments about a person's sexual orientation; and unwelcome whistling directed at a person or group of persons.

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- Non-verbal forms of sexual harassment, which include unwelcome gestures, indecent exposure, and unwelcome displays of sexually explicit pictures and objects.
- Any form of communication of a sexual nature, including exerting pressure on a person for dates and sexual favours.
- *Quid pro quo* harassment occurs within the academic context or CUT community whenever a lecturer or a person of authority undertakes, or attempts to influence, any academic decision, academic honours, employment, promotion, training or any other benefits in exchange for sexual favours for a student, co-worker or service provider.
- Sexual favouritism, in that a person who is in a position of authority rewards only those who respond to his/her sexual advances, whereas other deserving employees or students who do not submit themselves to any sexual advances are denied promotion, higher marks, merit ratings, remuneration increases or promotions.
- Sending or viewing jokes, videos pictures or other information by e-mail, the internet, social media, or any other information or communication medium in which the information is sexually explicit, ridicules a person's sexual orientation, or contains sexual innuendos or advances.

5.2.3 The following may not be construed as acts of sexual harassment, unless the complainant and the facts of the allegations provide otherwise:

- Occasional compliments of a socially acceptable nature, accompanied by mutual consent.
- Acceptable teaching methods aimed at eliciting debate, analysis and discussion within the classroom or assessments.

5.2.4 CUT defines sexual harassment as requests for sexual favours, unwelcome sexual advances, or verbal or other expressive behaviour of a sexual nature when, *inter alia*:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment at CUT, or his/her status as a student;
- submission or rejection by an individual is used as a basis for making academic decisions affecting him/her, or for awarding or withholding employment or academic opportunities, evaluations or assistance;
- its purpose or effect is interfering with the individual's performance at work or in his/her studies by creating an intimidating, hostile or offensive environment in which to work or learn; and
- its purpose or effect is the degradation, humiliation, intimidation or victimisation of an individual.

5.2.5 Whether conduct qualifies as sexual harassment will be determined on the basis of the experience of the reasonable victim of the same gender as the complainant.

5.3 Gender-based violence

5.3.1 GBV includes sexual harassment, sexual assault, intimate partner violence, rape and attempted rape involving staff, students, contractors and visitors. It may occur in teaching and

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learning spaces, in workspaces, in residential spaces, and in public spaces on the university's campuses.

5.3.2 It includes actions such as physical assaults by intimate partners, actions against individuals perceived as gender non-conforming, or preventing or interfering with a partner's studies by, for example, withholding fees.

5.3.3 GBV includes physical, verbal, emotional, economic and sexual abuse, as well as stalking and intimidation, or any other form of controlling behaviour involving staff, students, contractors and/or visitors. It may occur in teaching and learning spaces, in workspaces, in residential spaces, and in public spaces on the university's campuses.

5.3.4 GBV may further manifest in the following ways, for example:

- Stalking, and repeated, unwanted requests for visitations, outings and/or social dates.
- Derogatory comments, including in relation to people's gender non-conformity.
- The use of work or study (either academic or administrative) as an excuse for inappropriate private meetings.
- Cyber-bullying.
- Physical assaults against individuals perceived as gender non-conforming.
- Requests and/or demands for sex in exchange for improved marks, accommodation in residences, or other needs and benefits.
- Spying on, or intruding upon, women and men in residences while they are bathing or dressing.
- Streaking and flashing.
- In the case of abusive romantic relationships, preventing or interfering with a partner's studies.
- GBV manifests in the following ways:
 - Grading or rating of appearance by derogatory comment, wolf-whistling or other noises.
 - Stalking, and repeated, unwanted requests for dates.
 - Derogatory comments, including in relation to people's gender non-conformity.
 - The use of work (either academic or administrative) as an excuse for inappropriate private meetings.
 - Rape.
 - Attempted rape.
 - Sexual assault.
 - Physical assault by intimate partners, or against individuals perceived as gender non-conforming.

6. ROLES AND RESPONSIBILITIES

Roles and responsibilities are outlined in the procedure.

7. REVIEW OF THE POLICY

7.1 The policy will be reviewed every three years, in accordance with CUT policy, and will take place in consultation with the following stakeholders:

7.1.1 Senior Director: Human Resources

7.1.2 Dean: Student Affairs

7.1.3 Deputy Director: Protection Services

7.1.4 Students' Representative Council (SRC)

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8. RELATED DOCUMENTS AND INFORMING LEGISLATION

- 8.1 Constitution of the Republic of South Africa, 1996
- 8.2 Higher Education Act (Act No. 101 of 1997)
- 8.3 Code of Conduct for Students
- 8.4 Disciplinary Rules for Students
- 8.5 General Administrative Rules for Students
- 8.6 General Rules for Students
- 8.7 Regulations on how the Bill of Rights is to be implemented within CUT
- 8.8 Policy Framework to Address Gender-Based Violence in the Post-School Education and Training System, 2020 (all legislation that has informed that has informed the policy framework would apply)
- 8.9 2005 amended Code of Good Practice on Handling Sexual Harassment Cases in the Workplace

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