

# **Policy on Sexual or Gender-Based Harassment and Sexual Violence**

## **University of Peradeniya**

This Policy provides for the prevention of sexual or gender-based harassment and sexual violence; and a complaints mechanism for persons affected by sexual or gender-based harassment and sexual violence. It shall replace the Policy on Sexual Harassment and Sexual Violence adopted on 25.05.2019. This Policy applies to persons or places that come under the aegis of the University of Peradeniya.

### **I. General Policy Statement**

The University of Peradeniya is committed to maintaining a learning environment and workplace that are free of sexual or gender-based harassment and sexual violence to all persons, irrespective of gender. Sexual or gender-based harassment and sexual violence go against both University policy and law. Based on the fundamental values of human dignity, gender equality and respect for due process, this policy defines sexual or gender-based harassment and sexual violence, addresses the prevention of the occurrence of sexual harassment, gender-based harassment, sexual violence, and retaliation stemming from such complaints at the University of Peradeniya, and provides suitable procedures for inquiring into and punishing acts of sexual or gender-based harassment and sexual violence.

In Sri Lanka, harassment and violence of a sexual nature are criminal offences under Sections 345 and 363 of the Penal Code (as amended in 1995) and is also criminalized in the context of Higher Education under Section 2(2) of the *Prohibition on Ragging and All Forms of Violence in Educational Institutions Act* No 20 of 1998. The Constitution guarantees the right to equality and equal protection of the law, including non-discrimination on the basis of sex (Article 12 (1) & (2)) and the guarantee of freedom to engage in a lawful occupation (Article 14(1)(g)). Sri Lanka's international legal obligations also require the prevention of sexual or gender-based harassment and sexual violence in the workplace and the provision of remedies for victims of sexual or gender-based harassment and sexual violence.

### **II. Purpose and Scope**

- (a) To promote and maintain a culture at the University of Peradeniya in which the dignity and equality of all persons are respected;
- (b) To prevent the occurrence of sexual or gender-based harassment and sexual violence;
- (c) To implement prompt, effective, and fair mechanisms to provide for the inquiry and resolution of complaints;
- (d) To facilitate adequate and appropriate support for victims of sexual or gender-based harassment and sexual violence.

### III. Definitions

**Consent** is informed, affirmative, voluntary, conscious, revocable, actively given permission to sexual activity/conduct. Lack of protest, lack of resistance, or silence cannot alone be interpreted as consent. Consent can be given by words or actions, in so far as those words or actions create mutually understandable clear permission regarding willingness to engage in the sexual activity. A person is unable to give consent if the person is incapacitated due to drugs, alcohol, physical or intellectual disability, or unconsciousness. Consent cannot be freely given by a person under 16 years of age.

**Gender-Based Harassment** is 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.

**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.

**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.

**Sexual Harassment** is any unwelcome sexually determined conduct (physical, verbal, gestural, visual or written) that inflicts physical, mental, psychological, or other harm or annoyance on the person subjected to such conduct.

**Sexual Violence** is assaults and violence of a physical nature, such as rape, sexual battery, molestation, or attempts to commit such acts or any other intentional physical conduct which is sexual in nature inflicted on a person without his/her consent.

### IV. Conduct

#### General

All persons who are governed by this Policy are required to uphold the norms of ethical behavior that underline the Policy and refrain from committing acts of sexual or gender-based harassment, sexual violence, and retaliation against complainants; abstain from promoting sexual or gender-based harassment, sexual violence, or retaliation against complainants; desist from concealing acts of sexual or gender-based harassment, sexual violence, and retaliation against complainants; contribute to efforts undertaken by the University to prevent sexual or gender-based harassment, sexual violence, and retaliation against complainants; and promote a culture of respect for all persons irrespective of gender, gender identity, gender expression, sexual orientation or sexuality.

## **Prohibited Conduct**

This Policy prohibits persons governed by this policy to engage in any form of sexual or gender-based harassment, sexual violence, and/or retaliation against complainants as defined in Section III and morefully enumerated in Schedule I of the By-laws promulgated under this Policy.

No person governed by this policy shall;

- i. make the submission to any prohibited conduct in terms of this Policy explicitly or implicitly a term or condition of an individual's employment or academic advancement, work benefits, or activity;
- ii. use the rejection, or non-acceptance, of any prohibited conduct in terms of this Policy, as a basis for employment or academic decisions affecting or concerning that individual;
- iii. cause a negative impact, on the basis of rejection or non-acceptance of any prohibited conduct in terms of this Policy, on an individual's work or academic performance, or create, or solicit others to create a hostile environment for that individual;
- iv. conceal formal or informal complaints of sexual or gender-based harassment, sexual violence and/or retaliation against complainants; and
- v. use Information and Communication Technology (ICT) for acts of sexual or gender-based harassment, sexual violence, or retaliation.

Sexual or gender-based harassment and/or sexual violence and/or retaliation against complainants, perpetrated individually, or as a group, against an individual or a group, shall be subject to disciplinary action by the Council of the University of Peradeniya.

The University will respond promptly and effectively to reports of prohibited conduct and will take appropriate action to prevent, to correct, and when necessary, to discipline behaviour that violates this policy on sexual or gender-based harassment and sexual violence.

## **V. Persons and Places governed by this Policy**

- (i) All those who derive their authority under the Universities Act and who act under the aegis of the University of Peradeniya are governed by this Policy. They include university administrative, academic, academic support and non-academic staff, whether temporary, contract or visiting, students, volunteers, and employees of outsourced service providers;
- (ii) All acts carried out under the aegis of the University are governed by this Policy whether carried out within or outside the University premises. University premises for the purposes of this policy include places where the complainant and respondent are present in their official capacity such as training, research and accommodation facilities, clinics and hospitals, field sites, field visits, and hotels;
- (iii) Acts of sexual or gender-based harassment and sexual violence covered by this Policy include incidents:

- a. between any members of the University community, including academic and academic support staff, non-academic staff, students, student employees, coaches, research assistants, interns, and non-student or non-employee participants in University programmes;
- b. in hierarchical relationships or between peers; and
- c. between individuals of any gender, gender identity, or gender expression.

Consideration will be given to the totality of the circumstances in which the conduct occurred in assessing wrongful behaviour.

This Policy shall be implemented in a manner that recognizes the importance of the right to freedom of speech and expression, particularly within academic institutions. It shall not be interpreted to prohibit expressive conduct that is protected by the freedom of speech and expression guaranteed in Art.14 (1)(a) of the Constitution of the Democratic Socialist Republic of Sri Lanka and undertaken in the pursuit of legitimate teaching, learning, and scholarship including public commentary of an individual faculty member or the educational, political, artistic, or literary expression of students in classrooms and public fora.

## **VI. Mechanisms**

### **Responsible Authorities**

The Council of the University of Peradeniya shall appoint a committee known as the Committee to Investigate Sexual or Gender-based Harassment and Sexual Violence (CMSGBHSV). The committee shall comprise 15 members, have gender parity, reflect the diversity of the university community, and have 3 external members one of whom shall preferably have a legal background. Members should be drawn, as much as possible, from among those who have demonstrated gender-sensitivity and interest in working on issues of gender equality and equity and be trained to investigate and inquire into cases of sexual harassment and sexual violence. The CMSGBHSV will have the authority to appoint mediators in consultation with the Vice-Chancellor and the parties concerned, towards an informal resolution process where necessary.

The Committee will receive and screen complaints relating to sexual or gender-based harassment and sexual violence, participate in preliminary investigations at the request of the Vice-Chancellor to gather *prima facie* evidence, and recommend appropriate courses of action to the Vice-Chancellor in relation to complaints.

### **Who May Complain**

All persons governed by this policy (see Section V of this policy) may complain, as well as visitors to the University and/or third parties who have a personal or professional link to the alleged victim or who have witnessed the alleged conduct.

## **Required Procedures**

The form and procedure to be followed in making a complaint and the procedures to be followed at the preliminary inquiry, mediation, and/or formal inquiry are governed by the By-laws promulgated under this Policy.

All procedures followed pursuant to this policy shall be impartial, fair, prompt, and confidential, having regard to due process requirements including safeguarding the rights of the person/s accused of prohibited conduct.

## **Appeals**

In the event of the University not taking action on a complaint, or if the complainant or respondent is dissatisfied with the disciplinary action taken by the University authorities, she/he shall have the right of appeal. On receipt of the appeal, the Council shall appoint a Committee to hear the appeal, in line with existing disciplinary procedure. The Appeals Committee shall report to the Council its findings and recommendations on the nature of the action to be taken on the appeal.

## **Confidentiality**

Confidentiality shall be maintained regarding all complaints. Interview recordings, if any, communications, documentations, and reports shall be divulged only to authorized persons. If any person involved in the investigation is found to have breached the confidentiality requirement, s/he shall be reported to the Vice-Chancellor with a recommendation for removal from the investigation.

## **Timelines for Making Reports**

There is no time limit for reporting but complaints should be made within a reasonable timeframe. The CMSGBHSV, taking into consideration the circumstances of the complaint, shall determine what constitutes a reasonable timeframe in consultation with the Vice-Chancellor. The reasons shall be made available to the concerned parties.

## **Disciplinary Action**

Any member of the academic, academic support, administrative or non-academic staff, student, service provider, or resident found guilty of sexual or gender-based harassment and sexual violence shall be liable for disciplinary action. A subsequent offence of a similar nature found to be perpetrated by the same offender/s shall carry an enhanced penalty. The Council of the University of Peradeniya may determine and impose an appropriate penalty on the person/s found guilty, in accordance with Chapter XXII of the University Establishments Code.

## **VII. Preventive Measures**

- i. This Policy shall be accessible to the entire university community and shall be made available in Sinhala, Tamil, English and Braille, and be included in student handbooks, the university calendar and the university website. The University shall prepare a

one-page leaflet that draws attention to the Policy and the contact information of persons to be contacted in an emergency and display it on noticeboards at Student Canteens, Common Rooms, Residence Halls, Gymnasium, University Health Centre and University Guesthouses in addition to faculty premises;

- ii. A clause on this Policy shall be included in all staff contracts and letters of appointment;
- iii. The Policy shall be discussed at all relevant student orientation programs conducted by the University;
- iv. Staff Development and Training Programmes of the University for academic, academic support, administrative, and non-academic staff shall include a component designed for promoting gender equality and equity and for developing gender sensitivity in the workplace. Such programs shall include a session on this Policy. Special training sessions on the Policy shall be conducted for wardens and sub-wardens of residential halls;
- v. The Constitutions of Student Associations of the University shall include a reference to this Policy and to the Prohibition on Ragging and All Forms of Violence in Educational Institutions Act;
- vi. All service contracts entered into by the University with providers of outsourced services shall include a provision which states the obligation of any party entering into such contract to adhere to this Policy;
- vii. The University shall provide a trained counselling service to address prevention and consequences of sexual or gender-based harassment or sexual violence. This service shall also be made available to any of the parties to a complaint made under this Policy;
- viii. The University shall assist in pursuing a complaint in a court of law by the aggrieved party if she or he so wishes.

### **VIII. Savings**

All action taken including preliminary inquiries and investigations commenced pursuant to the Policy on Sexual Harassment and Sexual Violence shall be deemed to have been taken under this Policy and shall continue as if such action had been taken pursuant to this Policy.