

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 (CMSGBHSV)

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 (CMSGBHSV)". (Hereinafter referred to as CMSGBHSV 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 Assistant Registrar/Senior Assistant Registrar/Deputy Registrar, Legal and Documentation of the University 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 2.2.2 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 CMSGBHSV; 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.

- 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 CMSGBHSV 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 Assistant Registrar/Senior Assistant Registrar/Deputy Registrar, Legal & Documentation, 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 CMSGBHSV, 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 CMSGBHSV.
- 3.3.8 The representative of CMSGBHSV 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.