

UNIVERSITY OF CAPE TOWN

DISCIPLINARY POLICY ON ANTI-RACISM, RACIAL DISCRIMINATION AND RACIAL HARASSMENT

This policy was approved by Council on 18 June 2022 and repeals and replaces the *Racial Discrimination and Racial Harassment Policy (2009)*.

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Policy Custodian	Office for Inclusivity & Change	
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1. PREAMBLE

Racism is a social phenomenon. Only racial discrimination and racial harassment are legally prohibited acts. Racism is a wider phenomenon than these acts and it is not defined in the legislation.

Racism is understood to be an ideology that either explicitly or implicitly asserts that one race group is inherently superior to others. Racist ideology can be openly manifested in racial slurs, jokes or hate crimes. However, it can be more deeply rooted in attitudes, values and stereotypical beliefs. Racism differs from simple prejudice in that it has also been tied to the aspect of power, i.e. the social, political, economic and institutional power that is held by the historically dominant group in society. Racism often manifests in negative beliefs, assumptions and actions. However, it is not only perpetuated by individuals. It may be evident in organisational or institutional structures and programmes, as well as in individual thought or behaviour patterns. Therefore, acts of racism may manifest at a few levels, in particular (1) individual (2) institutional or systemic, and (3) societal (also described as cultural / ideological). Racism in its more entrenched forms is often unconsciously applied and its operation is often unrecognized, even by those practising it. Failing to recognize the complex, subtle and systemic nature of racism impedes effective action against it.

This policy has been written in accordance with South African laws: The Bill of Rights enshrined in The Constitution of the Republic of South Africa 1996 (which affirms the democratic values of human dignity, equality and freedom), the Employment Equity Act 55 of 1998, the Labour Relations Act 66 of 1995, the Promotion of Access to Information Act of 2000, the Promotion of Administrative Justice Act of 2009 and the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000. The provisions of this policy should be interpreted in the context of the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace, gazetted in terms of the Employment Equity Act on 18 March 2022.

The University (as an institution and as a collective of individuals) stands firmly against racial discrimination and/or racial harassment. Manifestations of racial harassment and/or racial discrimination are understood to be acts that, individually, socially, collectively and systemically, are prejudicial, unfairly discriminatory, or otherwise violent. These acts cause harm and distress, and impede human dignity. The University undertakes to ensure that all members of the University community may participate in its institutional life, free from the fear of racial harassment and racial discrimination.

The University is committed to creating and maintaining an institutional environment in [UCT Disciplinary Policy on Anti-racism, Racial Discrimination and Racial Harassment](#)

which the dignity of its employees, students, job applicants, clients, visitors, service providers, suppliers and others having dealings with the institution are respected. In such an environment, all may pursue their studies, careers, duties and activities free from any form of misconduct pertaining to harassment, including racial harassment and/or racial discrimination. All complaints of racial harassment and racial discrimination shall be taken seriously and treated with respect, and all parties involved will be afforded the benefits of due process and fairness. An appropriate response to unacceptable behaviour and related actions will remain a leadership priority.

The purpose of this policy is to prevent the violation of human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice. Acknowledging and understanding racism as an historical and current reality in South Africa and in the Higher Education landscape is important for a policy of this nature. This policy seeks to eliminate racial harassment and racial discrimination through education and engagement programmes or through disciplinary measures.

2. DEFINITIONS

- 2.1 'Advisor' is a staff member of the University who has been trained and appointed by the Office for Inclusivity & Change (OIC) for the role of providing confidential advice and assistance, including first-responder support and supporting complainants under this policy.
- 2.2 'Advisory panel' is a panel consisting of staff members, students and/or experts in the field of anti-oppression and/or anti-racism. An advisory panel can be utilised in either an informal or a formal process.
- 2.3 'Anonymity' is recognised as an important de-identification function in case reporting. The case reporting tool currently allows for anonymous reports to be logged. The anonymous reporter can also continue to communicate with the OIC via the case reporting tool. Anonymity may limit UCT's ability to take a matter to disciplinary tribunal. If there is sufficient evidence in a case, a complainant may be asked to relinquish anonymity, as they will need to be present during the disciplinary tribunal process.
- 2.4 Anti-racism, as a term, is used to describe a person's beliefs - or an institutional process, principle or position - that demonstrates an active stance against racism. It also describes systemic changes made by individuals who go out of their way to address racism. To be anti-racist is to believe that racism exists and to actively oppose it through individual or institutional actions. The Anti-Racism Network of South

Africa, which is supported by national government, universities and philanthropic foundations, describes Anti-racism as the “opposition in our daily practice and activism to racism in the structures, institutions and culture of organisations and society” (<https://www.arnsa.org.za/home>).

- 2.5 ‘Bullying’ is defined in detail in the UCT Bullying Policy and is paraphrased in this policy for the sake of brevity. Bullying means unwanted conduct in the workplace - either persistent or a single incident - which insults, demeans, humiliates, lowers self-esteem or self-confidence, or creates a hostile or intimidating environment. Bullying includes behaviour that is calculated to induce submission by actual or threatened adverse consequences.
- 2.6 ‘Case officer’ means a person who has been trained by the Office for Inclusivity and Change or by the Special Tribunal, or whose qualifications to act have been recognised as appropriate by the OIC. Case officers are assigned to assist complainants and respondents by providing support and guidance.
- 2.7 ‘CCMA’ means the Commission for Conciliation, Mediation and Arbitration, established in terms of Section 112 of the Labour Relations Act.
- 2.8 ‘Complainant’ means a staff member or a student who has lodged a written or verbal complaint under this policy with the OIC, either in person or by means of the online reporting system. The complaint may be against a person, department, faculty group or third-party service provider who has allegedly committed an act of racial harassment or racial discrimination, or an act that may reasonably have been believed to fit the prescribed definition.
- 2.9 Confidentiality’ means any information disclosed by one party to another party, either directly or indirectly, in writing or orally, which is designated as ‘Confidential. The information disclosed is securely stored and only an approved list of persons has access to this information. The University can only be responsible for maintaining the privacy and confidentiality of information that is within its control.
- 2.10 Employee’ means an employee of the University or a person who has agreed to be bound by the University’s staff rules and policies.
- 2.11 ‘Evidence leader’ means a legally qualified person with suitable experience assigned to prepare and present the University’s case in formal internal disciplinary proceedings. Such a person may also be assigned to investigate the case.

- 2.12 'Formal process' is a disciplinary process for staff and/or students that is managed by the Special Tribunal and may be initiated upon a complainant's request.
- 2.13 'Informal process' is a capacity development and/or education and/or awareness process for staff and/or students that is initiated upon a complainant's request.
- 2.14 'Institutional racism' can only be responded to through the informal process. This is to allow governance committees the opportunity to respond and effect change where necessary. However, disciplinary outcomes from racial harassment or racial discrimination cases dealt with through formal processes may produce recommendations for institutional change, which may be tabled at the appropriate governance committees. Institutional racism is understood as an inequality based on race that exists within public and private institutions. The effect of institutional racism is the same as, or similar to, the effect of racial discrimination and/or racial harassment. This is because institutionalised racism entails acts aimed at excluding the oppressed group from the workings of the institution so that those holding power in the institution can maintain their power, and thus their governance over the oppressed and/or previously oppressed.
- 2.15 'Manager' means any employee of the University with managerial and supervisory responsibilities, including academic staff responsible for supervisory activities.
- 2.16 'Misconduct' means conduct as defined in the UCT Code of Conduct for Employees, the Employee Disciplinary Procedure and the General Rules and Policies (Handbook 3) for students.
- 2.17 'OIC' means the Office for Inclusivity & Change as the first office of report, response and monitoring for all cases of racial harassment and racial discrimination.
- 2.18 'Prohibited grounds', as defined in the Promotion of Equality and Prevention of Unfair Discrimination Act, refers to race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth, or any other ground where discrimination based on that ground causes or perpetuates systemic disadvantage. 'Other grounds' include, but are not limited to, discrimination based on socio- economic status/class and nationality.

Discrimination on other grounds undermines human dignity and/or adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on the grounds listed in the Promotion of Equality and Prevention of Unfair Discrimination Act.

2.19 'Racism' is an ideology that either explicitly or implicitly asserts that one race group is inherently superior to others.

2.20 'Racial discrimination' means any prejudicial distinction, conduct or action, whether intentional or not, that is based on a person or a group's racial identity. 'Racial discrimination may be demeaning and/or may have the effect of imposing burdens or lack of benefits on individuals or groups by virtue of their identity. Such burdens or lack of benefits are not imposed upon people with other identities. 'Racial discrimination' does not include action taken to redress the legacies of racism, that are based on the Employment Equity Act and similar legislation. Race need only be one factor among several in order for there to be a finding of racial discrimination. Related grounds of racial discrimination include, language, ethnic origin, ancestry, place of origin, citizenship and religion.

2.21 'Racial Harassment' means unwanted conduct, whether persistent or a single incident, that demeans, humiliates or creates a hostile or intimidating environment, or is calculated to induce submission by actual or threatened adverse consequences. Such conduct is related to a person's racial identity, or presumed racial identity, or a characteristic associated with a racial identity. Racial Harassment may occur as direct or indirect behaviour and includes verbal and non- verbal conduct such as:

- i) Remarks and abusive language.
- ii) Racist name calling and /or negative stereotyping that impacts dignity.
- iii) Offensive behaviour, gestures, cartoons, memes or innuendos.
- iv) Racially offensive written or visual material.
- v) Racism expressed through any form of social media or online communication.
- vi) Hostility to persons of a specific racial or ethnic group.
- vii) Subtle or blatant exclusion and or marginalisation from workplace interaction and activities, or from online participation.
- ix) Threatening behaviour, which intimidates a person and creates a hostile environment.

2.22 'Reporting person' means a person reporting on behalf of the complainant because the complainant is unable/unwilling to lodge the complaint in person.

- 2.23 Respondent' means a person against whom a written or verbal complaint has been lodged under this policy, and who is alleged to have committed an act of racial discrimination and/or racial harassment.
- 2.24 SAPS' means South African Police Service.
- 2.25 'Special Tribunal' refers to an independent panel of suitably qualified persons who preside over hearings of disciplinary matters in formal processes for staff and students.
- 2.26 Student' means a registered student of the University or a person enrolled as a student or postdoctoral student and with student privileges who has agreed to be bound by the University's rules and policies for students. Where a student has been deregistered or granted leave of absence, special provision may be granted by the Registrar in consultation with the Director of the OIC to grant access to the services rendered by the OIC.
- 2.27 'Stereotyping' can be described as the inappropriate use of social categories in acquiring, processing and recalling information about others. The categories include, and are not limited to, race, colour, ethnic origin, place of origin and religion. Stereotyping typically involves attributing the same characteristics to all members of a group, regardless of their individual differences. It is often based on misconceptions, incomplete information and/or false generalisations.
- 2.28 'Structural racism' is manifested through the maintenance of systems (laws, rules, policies) that result in and support a continued unfair advantage to some people and unfair or harmful treatment of others, based on race.
- 2.29 'Transformation Officer' is a member of the Transformation Committee in a Faculty or Department who actively participates in attaining the University's transformation benchmarks.
- 2.30 Unconscious bias' is unfair prejudice enacted without the conscious awareness of the perpetrator.
- 2.31 University' means the University of Cape Town.

2.32 'Xenophobia' means negative assumptions and prejudicial actions in relation to a person or a group of people on the grounds of nationality.

3. OBJECTIVES

- 3.1** The purpose of this policy is to prevent the violation of human dignity and freedom through the imposition of disadvantage, stereotyping or political or social prejudice based on race. Racism is a social phenomenon, which can manifest through institutional and structural processes. Racial harassment and racial discrimination are legally prohibited acts.
- 3.2** This policy is intended to contribute to a culture of inclusivity and respect at the University, in a manner that is fair to students and staff, by providing education, unifying spaces of understanding and, where necessary, ensuring that disciplinary responses are enacted when racial harassment and racial discrimination occur.
- 3.3** This policy is designed to ensure that the University has both informal and formal processes available in response to racial harassment and racial discrimination.
- 3.4** Where institutional racism or structural racism have occurred, this policy is intended to ensure that the University has non-punitive, educative, preventative and remedial measures in place that prioritise education, training, capacity building and building leadership competencies among all staff and students.
- 3.5** The University recognises the intersectional nature of racial harassment and racial discrimination. This policy should therefore be read in conjunction with: the *UCT Employment Equity Policy*; the *UCT Inclusivity Policy for Sexual Orientation*; the *UCT Sexual Misconduct Policy* and related procedures; the *UCT Disability Policy*; the *UCT Disciplinary Policy*; the *UCT General Rules and Policies (Handbook 3)*; and the *UCT Mediation Policy*. In addition to the constitutional protections against unfair discrimination, specific legislation governing equality and labour practice should be taken into account when applying this Policy.
- 3.6** This policy provides a framework to enable a fair process regarding the implementation, structures, mechanisms and processes for the proactive management of, and response to, misconduct pertaining to racial harassment and racial discrimination at the University.
- 3.7** This policy provides for a comprehensive training and education programme aimed at raising awareness to dismantle racial harassment and racial discrimination within the University community.

4. INSTITUTIONAL SCOPE

4.1 This policy is the sole policy and procedure applicable to address acts of misconduct pertaining to racial discrimination and racial harassment at UCT. This policy provides non-punitive measures for instances of institutional and structural racism to allow for remedial action by the University, where necessary. Other policies that reference misconduct in respect of racial harassment and racial discrimination will be updated to direct the reader to this policy.

4.2 The policy will apply to all members of the University community, including but not limited to:

- i. the University's Employees,
- ii. the University's students, and
- iii. those not employed by the University who undertake official duties for the University.

Any third-party service provider whose work requires interactions with staff or students of the University, in person or online, must familiarise themselves with this policy and its principles. The University will ensure that all contracts with third parties for the supply of services will specify the requirement for adherence to this policy. The OIC will keep a record of complaints and reported violations of this and related policies by third party service providers and will report these to appropriate procurement offices so that the information can be taken into account when considering whether to continue to contract for services. Visitors to the University are expected to abide by the rules and conditions for students and staff.

4.3 The scope of this policy extends to all University community premises, including but not limited to the:

- i. campuses;
- ii. managed employee accommodation;
- iii. managed student accommodation;
- iv. sporting and recreational clubs and facilities to the extent that they fall within the university community;
- v. activities and situations related to University business that are not conducted on University premises, including but not limited to, field trips, conferences, student camps, inter-university events, parties and other social functions;

vi. all online forms of communication, including managed virtual environments, email exchanges, all forms of social media and any form of remote interaction.

4.4 If a member of the University community, whilst engaged in official University-related duties, experiences racial discrimination and racial harassment on premises outside of the University community, the University will liaise with the responsible authority to ensure that proper procedures are followed. The University will provide support services to the complainant.

4.5 If a member of the University community is subjected to racial discrimination and racial harassment in a digital environment managed by the University, they will fall within the scope of this policy.

4.6 If traceable racial discrimination and racial harassment is conducted in a digital environment not managed by the University and a respondent is an employee or student of the University, the University will exercise discretion in deciding whether to pursue an investigation. Considerations to be taken into account would include factors that hinder identification of the respondent(s), the ability to access evidence, and whether the conduct impacts on an individual's safety within the University community.

4.7 If the racial discrimination and racial harassment is conducted in a physical environment not managed by the University and a respondent is an employee or student of the University, the University will exercise discretion in deciding whether to pursue an investigation. Factors to be taken into consideration would be the ability to access evidence and whether the conduct impacts on the individual's safety within the University community.

5. IMPLEMENTATION AND ROLES

5.1 The University acknowledges that the existence, development, and promotion of leadership on campus will be pivotal in all strategies pertaining to an effective response to racial discrimination and racial harassment. The Vice-Chancellor and the University leadership team are accountable for this policy and shall actively promote its implementation, with the support of Transformation Committees and other appropriate bodies. In addition, all line-managers have a responsibility to promote improvement in understanding, responding to, managing and preventing racial discrimination and racial harassment in the University.

5.2 The following role-players shall be responsible for the implementation of this policy:

- a. The Vice-Chancellor, University leadership team and Transformation Committees are responsible for:
 - i. Regular communication with the campus community about the existence, management and prevention of racial discrimination and racial harassment as a major risk in the University.
 - ii. Regular briefings with the University's broader leadership on the policy and on various committees and structures tasked with managing and monitoring racial discrimination and racial harassment.
 - iii. Ensuring that appropriate and effective training programmes are implemented throughout the University.
- b. The University's broader leadership team, including Human Resources, Directors and Heads of Departments, all managers of staff, and students in leadership positions shall furthermore be responsible for:
 - i. Highlighting an anti-racism ethos as an integral part of all leadership development programmes and other initiatives aimed at promoting leadership skills.
 - ii. As part of all managers' performance contracts, creating, maintaining and managing performance indicators that include managing and handling racial harassment and racial discrimination reports and preventative measures.

- iii. Taking all reasonable steps to educate themselves on every aspect of this policy and the impact of racial harassment and racial discrimination in the University.
 - iv. Exercising leadership by knowing and understanding the terms of this policy, and by assuming responsibility for implementing the processes within this policy.
 - v. Creating and maintaining a culture and an enabling environment that is conscious of the existence, threat and impact of racial harassment and racial discrimination.
 - vi. Cultivating a University culture through anti-racist teaching and learning practices, research, and University operations.
 - vii. Making all reasonable efforts to maintain measures that are intended to reduce, eliminate and dismantle racism, racial harassment and racial discrimination in the University.
 - viii. Attending training and educational sessions on this policy offered and/or coordinated by the OIC and other University stakeholders.
 - ix. Communicating the policy to all employees and students in their respective areas of responsibility.
 - x. Ensuring that all new staff and students have been informed about the policy and are given the opportunity to discuss its implications.
 - xi. Connecting with the Organisational Development and Employee Relations Departments in Human Resources and with the OIC in order to manage the work environment effectively.
- c. Managers are required to take appropriate action when instances of racial harassment and racial discrimination occur, and to act in accordance with the reporting and disciplinary processes laid down in this policy. Managers are specifically required to do the following:
- i. Treat all complaints as confidential and all parties concerned with dignity and respect.
 - ii. Refer all complaints to the OIC.
 - iii. When conduct in breach of this policy is observed and no complaint is lodged, report the matter to the OIC.
 - iv. When appropriate, take steps in consultation with the OIC to prevent racial harassment and racial discrimination from occurring.

- d. The OIC, where possible in collaboration with other University stakeholders, shall be responsible for:
- i. Providing a comprehensive response to racial harassment and racial discrimination for the University. This will include the provision of educational initiatives focused on prevention and mitigation to the University community.
 - ii. The OIC will provide supportive and protective services to complainants, whether disciplinary proceedings are instituted or not. It will also provide for a support structure that will deliver respondent support and through which rights and procedures are explained.
 - iii. Preventive measures, which may be implemented in collaboration with University partners. These will include education and capacity development to reduce and prevent incidences of racism.
 - iv. Capacity building for responding to and dealing with racism through classroom engagement and learning, and through staff inclusivity interventions.
 - v. Training and providing general support and guidance to University leadership, line managers, all staff members and students through appropriate training programmes.
- e. **Training and awareness-raising:**
- i. The University commits to training and awareness-raising on anti-racism for the University community.
 - ii. The OIC shall take primary responsibility for the design and content management and/or coordination and/or implementation of training and awareness programmes for anti-racism programmes.
 - iii. Training for staff and students on this policy will be an ongoing endeavour and shall be provided on a continuous basis through online and on-site workshops, scheduled via the Staff Learning Centre.
 - iv. The objective of the training shall be to provide initial exposure to, knowledge of and information about the policy and the challenges relating to education around racial harassment and racial discrimination.

f. Monitoring and Evaluation

The Institutional Forum shall review the Annual Report on Racial Discrimination and Racial Harassment (see 6.3 below) and submit recommendations to Council that improve the implementation and efficacy of the policy and related programmes.

5.3 Support Measures

There will be a clear separation in the OIC structure providing for support in dealing with complainants and respondents. Case officers, trained through the OIC, will contribute to the support measures available for complainants and respondents through the provision of case updates, policy education and guidance.

5.3.1 Complainant Support

Survivor Support for complainants shall provide counselling, advice and assistance to complainants in racial harassment and racial discrimination matters.

5.3.2 Respondent Management

A respondent may approach or be approached by the OIC for advice and assistance. Such approach may happen at any stage following an allegation of conduct that has become the focus of this policy.

6. COMMUNICATION

- 6.1** The University shall take all reasonable steps to communicate this policy to all employees and students on a regular basis and to raise awareness about the need to prevent racial harassment and racial discrimination.
- 6.2** The University shall make this policy available on its Web pages and provide regular and current information on its implementation via its Web pages.
- 6.3** A consolidated Annual Report on Racial Discrimination and Racial Harassment shall be submitted to the Institutional Forum for review and comment before being submit to Council or to the appropriate committee of Council.

7. CASE MANAGEMENT PROCEDURES

The following process guideline outlines the steps to be followed in the event of alleged misconduct that involves racial discrimination and racial harassment.

7.1 Reporting Processes

Complaints of racial discrimination and racial harassment must be brought to the attention of the OIC as soon as is reasonably possible. Reports may be logged via the online reporting system or by making direct contact with the OIC.

- i. Racial discrimination and racial harassment may be brought to the attention of the OIC by the complainant or any other person aware of the racial discrimination and racial harassment. The complainant is however encouraged to inform the OIC in person.
- ii. Any complaint of racial discrimination and racial harassment will be recorded in writing by a duly delegated person appointed by the OIC.
- iii. The OIC will assign a case officer to the case as and when required.

7.2 Complainant Support

Complainant support provided by a duly delegated member of the OIC on receipt of a complaint may include, but is not limited to, the following:

- i. Advising the complainant that there are formal and informal procedures that can be followed for racial discrimination and racial harassment.
- ii. Explaining the formal and informal procedures to the complainant where an incident of racial discrimination and racial harassment has occurred.
- iii. Advising the complainant that the assisting case officer may not be called as a witness during any formal procedure.
- iv. Advising the complainant that they are not bound by the outcome of an informal procedure and will retain the right to proceed by the formal process.
- v. If the complaint is a member of staff, advising that Human Resources will be notified of the matter.
- vi. Advising the complainant that the matter will be dealt with confidentially.
- vii. If applicable, advising the complainant that no negative inference about credibility will be made as a result of late reporting.
- viii. Providing the complainant with information about available counselling and with information on how to access independent counselling services.

- ix. Advising the complainant of their right to refer any matter to the South African Police Service (SAPS) or the South African Human Rights Commission (SAHRC) and to obtain further legal advice and/or legal representation.
- x. Advising the complainant of the right to have their identity protected until it is necessary to relinquish anonymity.
- xi. Referring the complainant to psychological services, emergency medical services, paralegal advice and other relevant services.
- xii. Referring the complainant to supportive measures to mitigate the psychological impact of racial harassment and racial discrimination.

7.3 Respondent Support

Respondent support that is provided by a duly delegated member of the OIC on receipt of a complaint may include, but is not limited to, the following:

- i. Advice on the need to obtain legal or other representation.
- ii. Advice on referral for psychological counselling services.
- iii. Advice on the nature of, and differences between, formal and informal procedures.
- iv. Advice on the possibility that the University may choose to follow the disciplinary process even if the complainant does not wish to do so, or in the event of an unsuccessful engagement with the informal procedure.
- v. An explanation of the protective measures available to the complainant.
- vi. Information on the availability of respondent management services.
- vii. Information about programmes where the respondent can learn more about how behaviour manifests as racism.

7.4 Informal Procedures

An informal procedure is a process managed by the OIC that draws on the principles of restorative justice and aims to educate and find equitable resolutions for both parties. Participation in the informal process is subject to the consent of all parties. The identity of the complainant may or may not be disclosed to the respondent, depending on the complainant's wishes.

- 7.4.1 In instances of racial discrimination and racial harassment, complainants have the right to choose an informal procedure administered by the OIC. Informal proceedings require the consent of both the complainant and the respondent.

- 7.4.2 An informal procedure may or may not finalise the matter, and may still be followed by a formal procedure. The complainant has the right to pursue formal proceedings, regardless of the choice to engage with informal proceedings.
- 7.4.3 The respondent has the right to refuse to participate in informal proceedings and may exercise this right during any stage of the informal process. No negative inferences shall be drawn from decisions to refuse to consider, or to participate in, or to withdraw from the informal process.
- 7.4.4 In an informal procedure, only the following information is recorded:
- i. Biographical information and incident description of the complainant and respondent.
 - ii. The outcome of the informal procedure. A report of 'constructive outcome' or 'unsuccessful outcome' is released to identified persons, with the consent of the participating parties.
- 7.4.5 Alternative restorative justice education programmes will be considered the equivalent of informal proceedings as set out in this policy.
- 7.4.6 In cases where the objective is one or more of the following, informal procedures may include a discussion between a duly delegated person from the OIC and the respondent:
- i. To give the respondent an opportunity to apologise if the complainant requests it. Such an apology will be facilitated by the duly appointed OIC representative.
 - ii. Where the terms, conditions and acceptance of such an apology are complex, a discussion may be facilitated by OIC. In this instance, the matter may be presented to a panel of not more than three people who will consider suggestions and discussions, and make recommendations. This panel will not 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 nature of the complaint will determine the choice of panellists.
 - iii. To establish a facilitated discussion between the complainant and the respondent where the emphasis is to educate the respondent on the nature and form of the harm.
 - iv. A request to the respondent to desist from the behaviour that the complainant finds offensive. This may be articulated in a written agreement, signed by the duly delegated OIC representative and the respondent, and will remain confidential.

- v. An invitation to the respondent to engage in an alternative restorative justice programme, which may include various forms of education, training and/or mediation. Such programmes are informal processes, as referred to in the University's *Mediation Policy*. Engagement with mediation will happen on receipt of written consent from the respondent and complainant.
- 7.4.7 An informal procedure must be concluded, where reasonably possible, within fourteen (14) days of the incident being reported to the OIC.
- 7.4.8 Strict confidentiality will be maintained regarding informal processes, those who participate, and reporting.
- 7.4.9 A written report containing a summary and the outcome of the informal procedure shall be kept by the OIC and shall not be made available to anyone except, upon their request, to the Vice-Chancellor or their nominee, should this become necessary in their consideration of the need for further action.

7.5 Advisory Panels in Informal Procedures

Where the matter is complex, the Director of the OIC may be assisted by an ad hoc advisory panel. 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 through either the formal or informal route remains the prerogative and choice of the complainant.

- 7.5.1 The function of the advisory panel will be to:
- i. Voluntarily participate on the panel at the invitation of the Director of the OIC.
 - ii. Provide information and expert advice to enable the complainant to make an informed decision.
 - iii. Advising complainants who have decided to follow the informal process.
 - iv. Participate in a process that is enabling, supportive and educational for the staff and structure of the OIC.
 - v. Assist the OIC in the formulation of a memorandum of complaint based on the complainant's written statement.
 - vi. Advise and assist the OIC to take the necessary steps to eliminate racial discrimination and racial harassment.

7.5.2 The Director of the OIC, in consultation with an advisory panel, shall consider all relevant information, including, but not limited to, the following:

- i. The risk of retaliation or victimization of other persons in the University.
- ii. The risk to the University's reputation.
- iii. The severity of the case.
- iv. The respondent's history in terms of previous cases/complaints of racial discrimination and harassment.
- v. If it appears that there is a significant risk of harm, retaliation, victimization, or institutional damage, the panel may consider a referral to a formal procedure, irrespective of the wishes of the complainant, who must then be advised accordingly. In such an event, the OIC, assisted by the advisory panel, shall prepare a written report and recommendation to the Vice-Chancellor or their nominee. The statement shall include, but not be limited to, the following:
 - a. The complainant's reasons for choosing not to pursue the matter and not to be called as a witness in the matter.
 - b. Compelling reasons in support of the pursuit of a formal procedure.
 - c. The likelihood of conviction in the absence of the complainant as a witness.

This report and recommendation shall be forwarded to the Vice-Chancellor or their nominee as soon as possible. A copy of the statement shall also be given to the complainant. If the Vice-Chancellor decides that the matter must be pursued, it shall proceed as per the formal procedures detailed in this policy

7.5.3 An advisory panel may consist of the following:

- i. The case officer, if so requested, to support the complainant.
- ii. The case officer, if so requested, to support the respondent.
- iii. If the complainant or respondent is a student, a person from the Department of Student Affairs, who could be a staff member or student, depending on the complainant's choice.
- iv. Any other person chosen by the complainant, except their legal representative.
- v. If the complainant or respondent is a staff member, a person representing the Human Resources Department.
- vi. The manager of the Special Tribunal.

- vii. A person (not necessarily a staff member of the University) with expert knowledge in the field, if required.

8. ANALYSIS PROCESS FOR STRUCTURAL RACISM

Structural processes that have been identified as enabling one or more forms of racial harassment or racial discrimination are to be analysed by the OIC and shared with the Deputy Vice Chancellor for Transformation, who will refer the matter to the appropriate executive and/or governance committee. Where the executive and/or governance committee is implicated in structural racism, then the matter will be escalated to the line manager of the Executive or in the case of governance committees, to their reporting line or to the Ombud. The objective of the analysis and referral is to ensure that systemic changes are considered and recommendations are implemented to ensure that systemic change is achieved. All reports of structural racism will form part of the monitoring and evaluation report to the Institutional Forum and Council.

9. FORMAL PROCEDURES

The Special Tribunal initiates formal procedures for the University. Where a complainant (staff member or student) decides to proceed with a case formally, the matter will be referred by the OIC to the Evidence Leader of the Special Tribunal as the applicable disciplinary structure of the University. If a staff member is a party in a case, a representative from the Human Resources Employee Relations Department will be included in the matter. For staff who are respondents in a case, this policy is read together with the UCT *Disciplinary Policy*. For students who are respondents in a case, the UCT *General Rules and Policies (Handbook 3)* apply.

9.1 Initiation of the Formal Procedure

If the complainant (staff or student) wishes to proceed with a formal procedure, the Evidence Leader will be informed accordingly and provided with a written statement containing full details of the alleged racial harassment and/or racial discrimination as defined. In these instances:

- i. The OIC will report the matter to the Evidence Leader in terms of Rule DJP1.1 and the matter will be dealt with in terms of the DJP rules.
- ii. Where either of the parties is a member of staff, Employee Relations will be informed and a representative will be appointed to serve on the Special Tribunal.
- iii. The powers of the Tribunal will be extended to permit the University Student Disciplinary Tribunal, acting in terms of Rule DJP 5, to include in any sanction a no-contact order of such duration as it may decide.
- iv. The Special Tribunal Manager will ensure that Chairs presiding over cases are trained to handle racial harassment and/or racial discrimination matters and will not assign a case to a Chair who has not been appropriately trained. These Chairs may be internal to UCT or externally appointed.

9.2 The Role of the Evidence Leader

The Evidence Leader shall oversee, monitor and manage all aspects of the formal procedure pertaining to reports and/or incidences of racial discrimination and racial harassment. This includes the following:

- i. Managing and monitoring the process of investigation into reports of racial discrimination and/or racial harassment in violation of this Policy.
- ii. Preparing and presenting all racial discrimination and/or racial harassment cases for the University, at all disciplinary levels.
- iii. Pre-trial preparation of complaints.
- iv. Overseeing and initiating training on investigations and disciplinary processes of cases, where necessary.
- v. Preparatory interviews conducted by the Evidence Leader with the respondent and/or with any other person or persons who may provide information to assist with the formal process.
- vi. If a complainant does not wish to pursue the matter, and the complaint is of a serious nature, the Special Tribunal may refer recommendations to the Vice-Chancellor or their duly appointed delegate.

The Evidence Leader will prepare and present the case for the University within the Special Tribunal. The administrative correspondence for staff is channelled through the Employee Relations Office and for students, through the Student Tribunal.

9.3 Evaluation Panel

In complex cases and/or where the complainant is incapacitated, reluctant and/or requests that the University take the matter forward on their behalf, the Evidence Leader may be assisted by an evaluation panel to determine recommendations for the Vice-Chancellor or the Vice-Chancellor's delegate. The evaluation panel must comprise a minimum of three people, including a staff member, the manager of the Special Tribunal, and either a representative from the University Employee Relations Department in a staff matter, or, in a student-related case, a student member. The evaluation panel shall consider all relevant information, including, but not limited to, the following:

- i. Risk to other persons in the University.
- ii. The severity of the racial harassment or racial discrimination.
- iii. The history of the respondent in terms of previous cases and complaints of racial harassment or racial discrimination.

9.4 Evaluation Panel Recommendation of a Formal Procedure

If the recommendation of the evaluation panel is in favour of pursuing a formal procedure irrespective of the wishes of the complainant, the matter must be referred to the Vice-Chancellor or the Vice-Chancellor's delegate for a final decision. The recommendation shall include (but not be limited to) the following:

- i. A description of the alleged racial discrimination or racial harassment.
- ii. The complainant's reasons for their unwillingness to pursue the matter further or to be called as a witness.
- iii. The evaluation panel's recommendation.
- iv. Compelling reasons in support of a formal procedure.
- v. Incapacity of the complainant.

9.5 Investigations

Investigations in the University are conducted by the Special Tribunal. Investigation has two phases: it begins with a preliminary investigation and concludes, where applicable, with a formal investigation.

9.5.1 Preliminary Investigation

- i. The preliminary investigation is conducted by the Evidence Leader.
- ii. As indicated above, an evaluation panel may be constituted to consider whether an allegation meets the required standard of proof. If it does not, no further action will be taken.
- iii. The Evidence Leader must ensure that principles of procedural fairness are observed and take care not to pre-judge either party or to dismiss a matter without applying due consideration to the allegation.
- iv. Where a preliminary inquiry determines that an allegation has sufficient substance, the matter will proceed according to the formal procedures detailed in this policy.

9.5.2 Formal Investigation

The complaint is formally investigated by the Evidence Leader. If a complainant does not wish to pursue a formal process, the matter will progress no further unless the evaluation panel considers the nature and seriousness of the charge to be a threat to the campus community and/or a risk to the University's reputation. The

complainant will be informed about the sensitivity of evidence that may not be available if they chose to pursue the matter at a later date.

- i. All parties to an investigation will be granted procedural fairness and have the right to be accompanied by someone to support them.
- ii. In an alleged incident of racial discrimination or racial harassment by a student or a member of staff, the Evidence Leader may direct the Campus Protection Office to assist with aspects of an investigation. An external investigator may be appointed if appropriate.
- iii. The Executive Director of Human Resources will consider the recommendations of the Special Tribunal in determining whether to suspend an employee respondent during an investigation. This will be in keeping with the UCT *Disciplinary Policy*.
- iv. The Special Tribunal will liaise with the DVC Transformation in determining whether to suspend a student respondent. This will be in keeping with the UCT *General Rules and Policies (Handbook 3)*.

10. SANCTION

Sanctions may include, but are not limited to:

10.1 Students

- a. Appropriate campus community service.
- b. Rehabilitative/education/restorative programmes.
- c. A period of suspension from the residence and/or University.
- d. Expulsion from the residence and/or the University.
- e. Any other appropriate sanction as considered by the Special Tribunal.

10.2 Staff members

- a. Community service.
- b. Rehabilitative programmes.
- c. Warning.
- d. Dismissal.
- e. Any other appropriate sanction as considered by the Special Tribunal.

Respective sanctions will include a consideration of the relevant legislation and institutional policies and procedures as applicable to the status of the respondent, whether as student or staff member. (Sanctions may be read together with UCT *General Rules and Policies (Handbook 3)* for students, or UCT's *Disciplinary Procedures* for staff).

11. APPEAL

- 11.1** A student complainant who is unhappy with a decision can appeal the decision as per the process set out in the accompanying *UCT Disciplinary Procedures for Racial Harassment and Racial Discrimination*.
- 11.2** A student respondent who is unhappy with a decision regarding an allegation of racial harassment or racial discrimination should refer to the appeal process as set out in the accompanying *UCT Disciplinary Procedures for Racial Harassment and Racial Discrimination*.
- 11.3** Members of staff who are displeased with an outcome can appeal the matter with the Commission for Conciliation, Mediation and Arbitration (CCMA).
- 11.4** Any party (respondent or complainant) who is dissatisfied with the university processes may directly approach the University Ombudsman for assistance.

12. MONITORING AND EVALUATION

The University recognises the importance of establishing a monitoring committee to monitor the implementation of this policy. For this reason, the Institutional Forum, as the statutory body for matters related to race, receives the *Annual Report on Racial Discrimination and Racial Harassment* and provides advice to Council.

The OIC, as the reporting office, will collate annual data for submission to the Institutional Forum and Council.

Supervisors, managers and those responsible for dealing with cases will report annually on compliance with this policy, including the number of incidents, how they were dealt with, and any recommendations made.

The University will use this monitoring report to evaluate the effectiveness of this policy and make any changes needed.

UNIVERSITY OF CAPE TOWN

DISCIPLINARY PROCEDURES FOR ANTI-RACISM, RACIAL DISCRIMINATION AND RACIAL HARASSMENT

1. Purpose

The purpose of these disciplinary procedures is to ensure a fair trial to all parties to a hearing and to be more purposeful about addressing cases of racism and discrimination expediently and effectively.

To ensure expediency and best outcomes, a Tribunal that is specialised and appropriately trained to deal with racial discrimination and racial harassment, as defined in UCT Policy on Anti-racism, Racial Discrimination and Racial Harassment, will handle all formal cases of Racial Discrimination and Racial Harassment. This Tribunal is referred to as the “Special Tribunal” in this document.

- 1.1 The purpose of a separate disciplinary procedure for racial discrimination and racial harassment is to distinguish the process from the academic infringement cases in the student disciplinary system and the general misconduct cases in the Human Resources Department. A separate procedure and separate Special Tribunal dealing specifically with racial discrimination and racial harassment is consistent with the University’s undertaking to effectively address all forms of racism and discrimination.

This procedure supports the revised UCT Disciplinary Policy on Anti-racism, Racial Discrimination and Racial Harassment, which encourages and supports reporting and dealing with all forms of racial discrimination and racial harassment. It also ensures respondents of fair disciplinary enquiries. Discrimination based on a person’s race is considered as harassment in terms of the Equality Act 2010 (s26): “*unwanted conduct related to [race], which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual*”.

Racial discrimination and racial harassment, whether overt or displayed in other nuanced mannerisms, are subject to disciplinary action by the University. No single utterance of racial or other discriminatory behaviours will be tolerated in the workplace and the teaching, learning and social environment of the University community.

- 1.2 The objectives of the policy and this procedural guideline are to ensure that the University’s disciplinary process for such cases follows an administrative procedure based on the balance of probabilities, rather than a criminal process. This standard of proof informs the process and procedure. These procedural rules will assist all stakeholders in Human Resources and the Student Discipline structures in addressing incidents of racial discrimination and racial harassment. This procedure also serves to ensure that all members of the Special Tribunal panel are suitably qualified and trained.

Complainants in racial discrimination and racial harassment cases must be protected from further harassment and/or discrimination when a case is reported or pending.

- 1.3 Any member of the University community, whether staff or student, who contravenes the UCT Anti-Racism, Racial Discrimination and Racial Harassment Policy and any other disciplinary rules or policies for staff and students - the Human Resources Disciplinary Policy for Misconduct for staff, and the General Rules and Policies: Handbook 3 for students - shall be subject to disciplinary action, which may include suspension and dismissal/expulsion, where appropriate.

2. Preliminary Steps

- 2.1 All allegations of racial harassment and racial discrimination must be reported to the Office for Inclusivity and Change (OIC).
- 2.2 If the complainant in a case of Racial Harassment and Racial Discrimination chooses an informal process, the process will adhere to the prescripts of 9.4 of the Anti-Racism, Racial Discrimination and Racial Harassment Policy.
- 2.3 If the formal process is selected, the OIC refers the matter to the Special Tribunal, where the Evidence Leader will conduct and direct investigations and evaluate the evidence.
- 2.4 If the complainant does not wish to proceed and the case is complex and/or requires further expert input, the matter may be referred to an Evaluation Panel. The Evaluation Panel will consider the seriousness, nature and complexity of the charge and refer the matter, either to the Special Tribunal to progress, or back to the OIC if the preliminary evidence or credible allegations cannot progress the investigation. The Evidence Leader may also refer appropriate cases to the Evaluation Panel for recommendations on how to proceed based on an evaluation of the evidence. If the matter involves a member of staff, then the Evaluation Panel will include a member appointed by Human Resources.
- 2.5 Where there is a credible basis for a disciplinary hearing, this will be directed for a disciplinary adjudication before the Special Tribunal.
- 2.6 Formal cases involving staff members will include an appointed Human Resources/Employee Relations (HR/ER) officer working with the Evidence Leader. This HR/ER officer must attend all hearings where the respondent is a staff member.
- 2.7 The Evidence Leader must ensure that investigations are complete and that preliminary procedures of notification to the respondent, complainant and University witnesses have been complied with.
- 2.8 In preparations for a disciplinary hearing, the complainant must be consulted on their preference for the method of leading evidence.
- 2.9 A pre-hearing meeting with the respondent/s will be scheduled once the charges are drafted and the investigation is completed.

- 2.10 The respondent/s must be given the evidence bundle and informed of their rights prior to the pre-hearing process.
- 2.11 The respondent/s will be given an opportunity to confirm both their intention to plead to the charges and their decision with regards to representation at the formal hearing. Ideally, the decision to be represented and any necessary application in this regard should be concluded prior to the pre-hearing meeting.
- 2.12 Where the complainant chooses not to proceed with a case prior to the hearing, the Advisory Panel will be constituted to consider whether to proceed with the case or not. The constituting and composition of the Advisory Panel is as per paragraph 9.5 of the policy.
- 2.13 In such a case, the Advisory Panel's decision on whether or not to proceed must include, but is not limited to:
 - 2.13.1 The seriousness of the charges.
 - 2.13.2 Any pending and or previous convictions.
 - 2.13.3 The impact on the campus community.

3. Jurisdiction

- 3.1 The Special Tribunal shall have jurisdiction to hear all racial discrimination and racial harassment cases directed for a formal disciplinary hearing for:
 - 3.1.1 Staff members and students facing any such allegations.
 - 3.1.2 Any offence committed during a staff member's period of employment.
 - 3.1.3 Any offence committed by a student while the student is registered at the University.
 - 3.1.4 Any offence committed within the precincts of the University, including all University residences and at University-related events, work activities and study activities conducted off campus.
- 3.2 In the event of an offence committed by a student off campus, the Special Tribunal will have discretion on whether to proceed with the matter. Considerations will include whether there is a risk to the University community, and/or it is deemed to be serious, and/or it contravenes any institutional rules and policy.
- 3.3 In the event of an offence committed by a staff member off campus, the Special Tribunal will have discretion on whether to proceed with the matter. Considerations will include whether there is a risk to the University workplace, and/or it is deemed to be serious, and/or is in contravention of any institutional rules and policy.

4 Representation

- 4.1 The respondent has an automatic right to be assisted/represented by a University staff member or student of their choice.

- 4.2 The respondent may bring a support person to all hearings. The support person may not be a party to the proceedings.
- 4.3 Should the respondent wish to engage the services of an external legal representative, a written application must be forwarded to the Disciplinary Chair (DC) of the Special Tribunal before the pre-hearing meeting.
- 4.4 The DC will decide on the suitability of granting an application for an external legal representative based on:
 - 4.4.1 The seriousness of the offence.
 - 4.4.2 The complexity and nature of the offence.
 - 4.4.3 The reasonableness and fairness of such an application.
- 4.5 If the application for external representation is granted, this should be limited to a single legal representative.
- 4.6 The University will be represented by the Evidence Leader, who will present the complainant's case.
- 4.7 During the disciplinary hearing a complainant may be supported by a Case Support Officer (CSO) from the OIC or any person the complainant chooses for this purpose.
- 4.8 The respondent has a right to be supported throughout the process, including the disciplinary hearing, by any person they chose for such purposes. The support person cannot be party to the proceedings.
- 4.9 The complainant has the right to apply to the DC for external legal representation.
- 4.10 External representation for the complainant is limited to:
 - 4.10.1 Acting as a watching brief on behalf of the complainant.
 - 4.10.2 Ensuring that the rights and interests of the complainant are protected. This does not include representation on the merits of the case.
 - 4.10.3 Assisting the Evidence Leader with the case preparation.
 - 4.10.4 Providing legal advice to the complainant.
 - 4.10.5 Attending pre-hearings, complainant consultations and the disciplinary hearings.
 - 4.10.6 Directing submissions to the DC when it appears that any of the complainant's rights or interests are being infringed.
 - 4.10.7 Advising and assisting the complainant with external remedies.

5. Notification

- 5.1 A respondent must be notified in writing of the scheduled disciplinary hearing. The Evidence Leader must send this notification.
- 5.2 The notification must be sent to the respondent using the respondent's University email address and/or served on the respondent in person by an authorised University member. This notification must reach the respondent within 7 working days before the hearing.

- 5.3 The evidence bundle, pre-hearing minute and charge sheet must accompany the hearing notification.
- 5.4 The date, venue and time must be clearly communicated in the notification. If the respondent is unable to attend the hearing, a written submission with reasons for non-attendance must be given to the Evidence Leader within 48 hours of having received the hearing notification.
- 5.5 The assigned DC may decide on whether or not the hearing proceeds in the absence of the respondent, taking into account any extenuating circumstances and the reasonableness of the reasons for non-attendance,
- 5.6 Where the DC decides that the matter should proceed without the respondent, the respondent must be invited to submit a written response to the allegations contained in the evidence bundle for the Tribunal's consideration.
- 5.7 The respondent failure to submit a response will not stop the disciplinary hearing from proceeding.
- 5.8 Should the DC deem reasonable the reasons for the respondent's non-attendance, the hearing date is to be rescheduled for as soon as possible, having regard to the complainant's right to have the matter heard sooner rather than later.
- 5.9 The office of the Evidence Leader must notify the complainant of the hearing date, time and venue as soon as the hearing date is confirmed.
- 5.10 The Evidence Leader must ensure that the complainant receives the necessary trial preparation within a reasonable time before the scheduled hearing.
- 5.11 The Special Tribunal members shall receive notification of the confirmed hearing date at least 7 days before the hearing. The evidence bundles, charge sheet, pre-hearing minutes and all witness statements must be given to the Tribunal members in order to ensure adequate preparation for the hearing.
- 5.12 Witnesses and the complainant shall receive notification of the hearing 7 days before the hearing. Such notification will indicate the date, time and venue of the hearing.
- 5.13 The respondent must ensure that their witnesses are present at the hearing.

6. Composition of the Special Tribunal

- 6.1 The Special Tribunal may be composed of three panel members and must include a DC and two assessors.
- 6.2 The DC should be drawn from a pre-approved list of suitable members appointed by the Vice-Chancellor or their nominee. DCs may be internal staff members or external candidates. If one of the parties is a member of staff, the Special Tribunal panel must include an HR representative.
- 6.3 All appointed DCs must:

- 6.3.1 be legally qualified, and
 - 6.3.2 have had training in racial discrimination and racial harassment, and/or
 - 6.3.3 have extensive knowledge or a background in addressing racial discrimination and racial harassment.
- 6.4 Notwithstanding any experience in racial discrimination and racial harassment matters, continuous training for disciplinary DCs and Tribunal members is mandatory.
- 6.5 Assessors:
- 6.5.1 The DC shall hear a case with a student assessor and a staff assessor in any matter related to a student respondent.
 - 6.5.2 The staff assessor must be selected from a pre-approved list of assessors appointed by the Vice-Chancellor or their nominee. This list of assessors may include externally appointed members deemed to be suitably qualified and/or experienced in racial discrimination and racial harassment misconduct matters. Where the respondent is a staff member, an HR appointed assessor must be included in the panel.
 - 6.5.3 Student assessors will be appointed by the Vice-Chancellor:
 - 6.5.3.1 from names submitted by the Student Representative Council (SRC),
and
 - 6.5.3.2 approved by the SRC, and
 - 6.5.3.3 approved by the Vice-Chancellor.
 - 6.5.4 All student assessors must receive racial discrimination and racial harassment training before sitting in on any hearing.
 - 6.5.5 When adjudicating a staff matter, the DC shall hear a matter together with at least two assessors appointed by the Vice-Chancellor or their nominee. This should include a legally qualified, suitable academic staff member or Senate-appointed member, and any other suitably trained and/or experienced staff member.
 - 6.5.6 Where any assessor is unable to begin a hearing session or continue with a hearing, the Proctor shall assume the role and vote of the missing assessor. The decision to continue without a second assessor will depend on the seriousness and complexity of the case and take in consideration fairness to both the respondent and the complainant.
- 6.6 A DC may sit alone in any matter where the sanction, on conviction, will not include the rustication, expulsion, or dismissal of a respondent.
- 6.7 Once selected for a hearing, the DC and assessors must disclose any conflict of interest where any party to the hearing:
- 6.7.1 is related to or has/had an existing relationship to them in a way that may compromise the partiality of an outcome, and/or
 - 6.7.2 was part of any prior case investigation and/or adjudication against the same respondent, and/or

6.73 has any other reason that is to be reasonably considered as a conflict of interest.

6.8 Where either the complainant or the respondent objects to any member of a Special Tribunal, reasons must be provided. Where the withdrawal of an assessor is requested, the DC shall consider whether there are reasonable grounds for such withdrawal. Where there is an objection to the DC, the Vice-Chancellor or their nominee shall consider the appropriateness of the request for the withdrawal of the DC. If deemed necessary, another DC shall be selected.

7. The Disciplinary Hearing

7.1 The Special Tribunal will hear evidence from both the complainant and the respondent. Further and/or corroboratory evidence from witnesses may be led by both the Evidence Leader and the respondent or the respondent's representative.

7.2 All parties to the proceedings must have a copy of the evidence, charges, and list of witnesses to be called.

7.3 The format and procedures to be followed in a hearing are at the DC's discretion. These procedures must comply with fairness, reasonableness and natural justice.

7.4 In presenting the case for the complainant, the onus of proof rests with the University.

7.5 The standard of proof remains on a balance of probabilities.

7.6 An objection to the proceedings may be recorded where the Evidence Leader believes that the proceedings do not conform to the parameters of an administrative process, in compliance with the requisite standard of proof. This objection must be considered by the Special Tribunal and a decision on conformity must be made before continuing.

7.7 The charges must be read to the respondent and the intended plea of 'guilty' or 'not guilty' is recorded. Should an unrepresented respondent plead 'guilty', the Special Tribunal must question the respondent to ascertain that the respondent is, in fact, correctly pleading 'guilty'.

7.8 Where the respondent pleads 'not guilty', the procedure for leading evidence must be confirmed by the Special Tribunal at the start of the proceedings.

8. Evidence

8.1 The complainant's evidence must be led, and the complainant may elect to provide evidence in any of the following ways:

8.1.1 face-to-face at the hearing;

8.1.2 remotely, via any appropriate online method;

8.1.3 at the hearing from behind a screen;

- 8.1.4 in camera at the University premises; and/or
- 8.1.5 by written submission.
- 8.2 Where the complainant chooses any option from 8.1.1 to 8.1.5, the Special Tribunal may decide to put questions to the complainant with or without the respondent being present. The Special Tribunal may also question the respondent in the absence of the complainant. This should be done in a manner that protects the complainant from unnecessary trauma and in a way that balances the rights of the respondent.
- 8.3 Should the respondent object to any of the alternative means of leading evidence, the Tribunal must consider:
 - 8.3.1 the reasonableness of such an objection, and
 - 8.3.2 how, if at all, such manner of leading evidence compromises the respondent's right to a fair trial.
- 8.4 Where no reasonable grounds exist for such an objection, the hearing must proceed as decided by the Special Tribunal.
- 8.5 Additional evidence in the form of, but not limited to, e-mails, photographs and social media posts must be accepted as evidence.
- 8.6 Corroboratory witnesses may be given the option of alternative means of giving evidence, especially where such witnesses indicate that they are afraid or uncomfortable to be in the presence of a respondent.
- 8.7 Where there is no evidence to support an impingement of the respondent's rights, the request to give evidence outside of the hearing venue shall be granted.
- 8.8 The Special Tribunal must ensure that the complainant has a support person with them, unless otherwise decided by the complainant.
- 8.9 Irrespective of whether or not the complainant is present in person, the Special Tribunal must ensure that questions put to the complainant are neither aggressive nor deliberately intimidating.
- 8.10 Questions must be formulated for rebuttal or for purposes of clarity. The Special Tribunal should, as far as necessary, consider directing the respondent's questions to the complainant via the Tribunal members.
- 8.11 The respondent may submit evidence by way of their own testimony and witnesses. The Evidence Leader and the Special Tribunal members may ask questions for purposes of clarity, and the respondent may submit any documentary evidence approved by the DC.
- 8.12 The Special Tribunal has the discretion to decide on what evidence is or is not admissible.
- 8.14 Racial discrimination and racial harassment cases may include the evidence of a racial discrimination and racial harassment expert or a suitable trauma counsellor. This is at the discretion of the DC, on Evidence Leader's application.

- 8.15 Evidence Leader must keep a recording of the proceedings. Should any party to the proceedings request a transcript of the proceedings, this request must be directed to the office of the Evidence Leader. A respondent is responsible for the costs of any transcription requested.
- 8.16 At the conclusion of all evidence presentations, both parties may submit closing statements.
- 8.17 A verdict is decided by a two-third majority of the Special Tribunal members. The DC has a casting vote.
- 8.18 If the Special Tribunal reaches a verdict of 'guilty', the respondent is entitled to submit mitigating factors that favour a less harsh sentence.
- 8.19 The University is entitled to lead evidence in aggravation of sentence, including any previous convictions against the respondent.
- 8.20 The Special Tribunal will consider both mitigating and aggravating factors before passing an appropriate sanction.

9. Sanctions

Sanctions may include, but are not limited to:

9.1 Students:

- a. Campus community service conducted at the direction of OIC.
- b. Rehabilitative/education/restorative programmes with the OIC.
- c. A period of suspension from the residence and/or University.
- d. Expulsion from the residence and/or the University.
- e. Any other sanction the Special Tribunal considers appropriate.

9.2 Staff members:

- a. Community service conducted at the direction of the OIC.
- b. Rehabilitative/education/restorative programmes with the OIC.
- c. Warning.
- d. Dismissal.
- e. A first offender may be dismissed for conduct that entails racial discrimination and /or racial harassment.
- f. A single utterance of racism and/or discrimination may include a sanction of suspension or dismissal.
- g. Where dismissal is not appropriate, the staff member may be demoted from the position they hold at the time of the sanction.
- h. Any other sanction the Special Tribunal considers appropriate.

Sanctions will include a consideration of the relevant legislation and institutional policies and procedures as applicable to the respondent's status, whether as student or staff member.

10. Appeal

- 10.1 If a respondent believes there are grounds for appeal, this must be noted with the office of the Evidence Leader or HR (as applicable) within 10 working days.
- 10.2 The grounds for appeal must be reasonable and based on a procedural or substantive irregularity at the initial hearing.
- 10.3 The Appeal Tribunal must include a DC and members who are suitably qualified and trained and/or experienced.
- 10.4 Appeals by student respondents:

Heads of argument supporting the grounds for appeal must follow within 14 working days. The procedures for such appeals will be as per the prescribed rules of procedure in the General Rules and Policies: Handbook 3 and the University Disciplinary Student Tribunal Procedural Handbook.
- 10.5 Appeals by staff respondents:
 - 10.5.1 The HR policy for appeals must be followed. Applications for external review may be made only after all internal remedies have been exhausted. The CCMA is the external appeal structure.
 - 10.5.2 Any appeal by a staff respondent must be made before a panel that is suitably qualified and experienced in racial discrimination and racial harassment. The panel must include an HR-appointed person.
 - 10.5.3 In addition to the HR-appointed panel member, an HR representative may be present for appeal hearings. The HR representative must ensure that the hearing is recorded.

11. Interim Orders

- 11.1 Any complainant who experiences any offence related to racial discrimination and racial harassment may request that a No Contact Order be issued as a protective measure.
- 11.2 Student complainants: The process and considerations for the No Contact Order will be consistent with the procedure contained in *Handbook 3: General Rules and Procedures* pertaining to students. The DC has discretion to apply these processes in cases of racial discrimination and racial harassment.
- 11.3 Where a respondent's continued presence in the work environment, student residences and/or the University poses a threat to the complainant/s or to the maintenance of good order, the VC or their Nominee may grant a suspension order.

- 11.4 Where the respondent is a staff member, they may be suspended pending conclusion of an investigation of the allegations. The suspension procedure must be consistent with the *University Staff Disciplinary Procedures*.
- 11.5 The process and procedure will be consistent with the procedure as contained in *Handbook 3: General Rules and Procedures* and the HR policy for suspensions. The suspension notice will contain an instruction that the respondent refrain from making contact, directly or indirectly, with the complainant.
- 11.6 Breach of the No Contact order may result in an automatic suspension order coming into effect. This will be considered by a DC.

Procedures and considerations for interim measures are to be read together with the *General Rules and Policies: Handbook 3 for Students* and the *UCT Disciplinary Procedures for Staff*.