

A POLICY AND STRATEGY FRAMEWORK TO ADDRESS GBV IN THE PSET SECTOR

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THE PROBLEM

- Long-standing problem subject to episodic, rather than sustained intervention – scandal, protest
- Responses either altogether absent, or under-resourced/inadequate and lacking in authority
- Noted as a problem in DHET policy for 20 years without any concrete changes resulting
- Lack of implementation – staff and students unfamiliar with the contents of their particular institution's policy; limited awareness of what constitutes sexual harassment; incidents are under-reported and responses fragmented; staff not trained .
- Lack of accountability
- Activism which so often provides the impetus for change remains confined to a few universities, limiting the extent to which change has been achieved. Experiences of students and staff within the technical and vocational education and training (TVET) sector remain almost entirely unknown.
- Lack of trust in structures
- **How do we ensure that current initiative does not repeat these patterns?**

GBV: WHAT ARE WE TALKING ABOUT?

- Grading or rating of appearance by verbal comment, or wolf whistling, or other noises
- Stalking and repeated, unwanted requests for dates
- Derogatory comments, including in relation to people's gender non-conformity
- Rape
- Sexual assault
- Physical assaults by intimate partners, or against individuals perceived as gender nonconforming.
- Requests/demands for sex in exchange for improved marks, or accommodation in residences
- Spying, or intruding upon women in residences while bathing or dressing
- streaking and flashing
- In the case of abusive relationships, preventing, or interfering with, a partner's studies, including by withholding fees

DUTIES AND OBLIGATIONS: LAW AND POLICY THE CONSTITUTION

- Section 9: Everyone is equal before the law and has the right to equal protection and benefit of the law. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. No person may unfairly discriminate directly or indirectly against anyone.
- Section 10: Everyone has the right to human dignity and the right to have their dignity respected and protected.
- Section 12(1): Everyone has the right to freedom and security of the person, which includes the right to be free from all forms of violence from either private or public sources.
- Section 12(2): Everyone has the right to bodily and psychological integrity, which includes the right: to security in and control over the body; and not to be subject to medical and scientific experiments without their informed consent.

THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT (PEPUDA)

- Addresses discrimination and harassment to give effect to Section 9 of the Constitution.
- Not limited to an employment context, but extends to all citizens, and prohibits discrimination of any kind on the grounds of sex, gender or sexual orientation. It specifically prohibits gender-based violence and any form of harassment that:
 - Causes or perpetuates systemic disadvantage;
 - Undermines human dignity; or
 - Adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on the aforementioned ground. Section 8 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000

CODE OF GOOD PRACTICE ON THE HANDLING OF SEXUAL HARASSMENT IN THE WORKPLACE (S230(I) LRA)

- The Code defines sexual harassment as unwanted conduct of a sexual nature and recognises that sexual harassment can be physical, verbal and non-verbal. It is noted that sexual attention becomes sexual harassment if:
 - The behaviour is persisted in, although a single incident of harassment can constitute sexual harassment; and/or
 - The recipient has made it clear that the behaviour is considered offensive; and/or
 - The perpetrator should have known that the behaviour is regarded as unacceptable.

Code recommends that all persons designated to support and assist complainants have the appropriate skills and experience; are appropriately trained; and given adequate resources to carry out these duties.

Suggests that employers maintain an environment where the dignity of all employees is respected, complainants are taken seriously and complainants do not fear reprisals. Where employers are aware of incidents of sexual harassment and fail to take action against it, they may be held vicariously liable for its occurrence by the courts.

THE MULTIPLE ROLES OF PSET INSTITUTIONS

- GBV a problem of equality and discrimination – a problem of labour law.
- BUT PSET institutions more than workplaces - also educational institutions required to promote a positive learning environment.
- Includes a fiduciary duty towards students that obligates institutions to protect students from harm while on campus and from persons employed or associated with the institution.
- PSET institutions also required to uphold rights to freedom and security of the person, which incorporate the right to be free from all forms of violence, and take note of the civil and criminal laws emanating from these provisions in the Bill of Rights.

CRIMINAL LAW (SEXUAL OFFENCES AND RELATED MATTERS) AMENDMENT ACT (SOA), 2007

- Rape, flashing and various forms of unwanted touching (sexual assault) are sexual offences.
- Section 11 of the SOA states that “engaging the services of a person 18 years or older for financial or other reward, favour or compensation” is in violation of the law.
- Sets out a supportive structure aimed at ensuring implementation: establishment of an Inter-Sectoral Committee, and the adoption of a National Policy Framework (NPF) for the Management of Sexual Offences. NPF also places certain duties on DHET in relation to sexual offences:
 - developing policy, standards and guidelines for the management of sexual offences;
 - training educators on the management of sexual offences and supporting staff dealing with victims of sexual offences; and
 - monitoring and evaluation of interventions, including by submitting quarterly and annual progress reports to the Directors-General Intersectoral Committee for tabling in Parliament

CIVIL LAW

- Domestic Violence Act – adopts a broad approach to “domestic relationships” and includes within these people who, “are or were in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration.”
- The Act defines domestic violence as including, among other things, harassment, abuse of a physical, sexual, emotional, verbal and/or physical nature, stalking and intimidation.
- Protection from Harassment Act - “...directly or indirectly engaging in conduct that the respondent knows or ought to know causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably:
 - following, watching, pursuing or accosting the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies or happens to be;
 - engaging in verbal, electronic or any other communication aimed at the complainant or a related person, by any means, whether or not conversation ensues; or
 - sending, delivering or causing the delivery of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant or a related person or leaving them where they will be found by, given to, or brought to the attention of, the complainant or a related person.

SOME QUESTIONS

- How should the policy framework define GBV?
- What contributes to under-reporting?
- What needs to be done to encourage reporting?
- How can policy be popularised?
- What would you (not) like to see in complaints procedures?
- What support should be available to complainants? And offenders?