Government Gazette
Staatskoerant

REPUBLIC OF SOUTH AFRICA
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Contents

government printing
Department:
Government Printing Works
REPUBLIC OF SOUTH AFRICA

HIGH ALERT: SCAM WARNING!!!

TO ALL SUPPLIERS AND SERVICE PROVIDERS OF THE GOVERNMENT PRINTING WORKS

It has come to the attention of the *GOVERNMENT PRINTING WORKS* that there are certain unscrupulous companies and individuals who are defrauding unsuspecting businesses disguised as representatives of the *Government Printing Works* (*GPW*).

The scam involves the fraudsters using the letterhead of *GPW* to send out fake tender bids to companies and requests to supply equipment and goods.

Although the contact person's name on the letter may be of an existing official, the contact details on the letter are not the same as the *Government Printing Works*'. When searching on the Internet for the address of the company that has sent the fake tender document, the address does not exist.

The banking details are in a private name and not company name. Government will never ask you to deposit any funds for any business transaction. *GPW* has alerted the relevant law enforcement authorities to investigate this scam to protect legitimate businesses as well as the name of the organisation.

Example of e-mails these fraudsters are using:

PROCUREMENT@GPW-GOV.ORG

Should you suspect that you are a victim of a scam, you must urgently contact the police and inform the *GPW*.

GPW has an official email with the domain as **@gpw.gov.za**

Government e-mails DO NOT have org in their e-mail addresses. All of these fraudsters also use the same or very similar telephone numbers. Although such number with an area code 012 looks like a landline, it is not fixed to any property.

GPW will never send you an e-mail asking you to supply equipment and goods without a purchase/order number. *GPW* does not procure goods for another level of Government. The organisation will not be liable for actions that result in companies or individuals being resultant victims of such a scam.

Government Printing Works gives businesses the opportunity to supply goods and services through RFQ / Tendering process. In order to be eligible to bid to provide goods and services, suppliers must be registered on the National Treasury's Central Supplier Database (CSD). To be registered, they must meet all current legislative requirements (e.g. have a valid tax clearance certificate and be in good standing with the South African Revenue Services - SARS).

The tender process is managed through the Supply Chain Management (SCM) system of the department. SCM is highly regulated to minimise the risk of fraud, and to meet objectives which include value for money, open and effective competition, equitability, accountability, fair dealing, transparency and an ethical approach. Relevant legislation, regulations, policies, guidelines and instructions can be found on the tender's website.

Fake Tenders

National Treasury's CSD has launched the Government Order Scam campaign to combat fraudulent requests for quotes (RFQs). Such fraudulent requests have resulted in innocent companies losing money. We work hard at preventing and fighting fraud, but criminal activity is always a risk.

How tender scams work

There are many types of tender scams. Here are some of the more frequent scenarios:

Fraudsters use what appears to be government department stationery with fictitious logos and contact details to send a fake RFQ to a company to invite it to urgently supply goods. Shortly after the company has submitted its quote, it receives notification that it has won the tender. The company delivers the goods to someone who poses as an official or at a fake site. The Department has no idea of this transaction made in its name. The company is then never paid and suffers a loss.

OR

Fraudsters use what appears to be government department stationery with fictitious logos and contact details to send a fake RFQ to Company A to invite it to urgently supply goods. Typically, the tender specification is so unique that only Company B (a fictitious company created by the fraudster) can supply the goods in question.

Shortly after Company A has submitted its quote it receives notification that it has won the tender. Company A orders the goods and pays a deposit to the fictitious Company B. Once Company B receives the money, it disappears. Company A's money is stolen in the process.

Protect yourself from being scammed

- If you are registered on the supplier databases and you receive a request to tender or quote that seems to be from a government department, contact the department to confirm that the request is legitimate. Do not use the contact details on the tender document as these might be fraudulent.
- Compare tender details with those that appear in the Tender Bulletin, available online at **www.gpwonline.co.za**
- Make sure you familiarise yourself with how government procures goods and services. Visit the tender website for more information on how to tender.
- If you are uncomfortable about the request received, consider visiting the government department and/or the place of delivery and/or the service provider from whom you will be sourcing the goods.
- In the unlikely event that you are asked for a deposit to make a bid, contact the SCM unit of the department in question to ask whether this is in fact correct.

Any incidents of corruption, fraud, theft and misuse of government property in the *Government Printing Works* can be reported to:

Supply Chain Management: Ms. Anna Marie Du Toit, Tel. (012) 748 6292.
Email: **Annamarie.DuToit@gpw.gov.za**

Marketing and Stakeholder Relations: Ms Bonakele Mbhele, at Tel. (012) 748 6193.
Email: **Bonakele.Mbhele@gpw.gov.za**

Security Services: Mr Daniel Legoabe, at tel. (012) 748 6176.
Email: **Daniel.Legoabe@gpw.gov.za**

Closing times for **ORDINARY WEEKLY** *GOVERNMENT GAZETTE* 2024

*The closing time is **15:00** sharp on the following days:*

- **28 December 2023,** Thursday for the issue of Friday **05 January 2024**
- **05 January,** Friday for the issue of Friday **12 January 2024**
- **12 January,** Friday for the issue of Friday **19 January 2024**
- **19 January,** Friday for the issue of Friday **26 January 2024**
- **26 January,** Friday for the issue of Friday **02 February 2024**
- **02 February,** Friday for the issue of Friday **09 February 2024**
- **09 February,** Friday for the issue of Friday **16 February 2024**
- **16 February,** Friday for the issue of Friday **23 February 2024**
- **23 February,** Friday for the issue of Friday **01 March 2024**
- **01 March,** Friday for the issue of Friday **08 March 2024**
- **08 March,** Friday for the issue of Friday **15 March 2024**
- **14 March,** Thursday for the issue of Friday **22 March 2024**
- **20 March,** Wednesday for the issue of Thursday **28 March 2024**
- **27 March,** Wednesday for the issue of Friday **05 April 2024**
- **05 April,** Friday for the issue of Friday **12 April 2024**
- **12 April,** Friday for the issue of Friday **19 April 2024**
- **19 April,** Friday for the issue of Friday **26 April 2024**
- **25 April,** Thursday for the issue of Friday **03 May 2024**
- **03 May,** Friday for the issue of Friday **10 May 2024**
- **10 May,** Friday for the issue of Friday **17 May 2024**
- **17 May,** Friday for the issue of Friday **24 May 2024**
- **24 May,** Friday for the issue of Friday **31 May 2024**
- **31 May ,** Friday for the issue of Friday **07 June 2024**
- **07 June,** Friday for the issue of Friday **14 June 2024**
- **13 June,** Thursday for the issue of Friday **21 June 2024**
- **21 June,** Friday for the issue of Friday **28 June 2024**
- **28 June,** Friday for the issue of Friday **05 July 2024**
- **05 July,** Friday for the issue of Friday **12 July 2024**
- **12 July,** Friday for the issue of Friday **19 July 2024**
- **19 July,** Friday for the issue of Friday **26 July 2024**
- **26 July,** Friday for the issue of Friday **02 August 2024**
- **01 August,** Thursday for the issue of Thursday **08 August 2024**
- **08 August,** Thursday for the issue of Friday **16 August 2024**
- **16 August,** Friday for the issue of Friday **23 August 2024**
- **23 August,** Friday for the issue of Friday **30 August 2024**
- **30 August,** Friday for the issue of Friday **06 September 2024**
- **06 September,** Friday for the issue of Friday **13 September 2024**
- **13 September,** Friday for the issue of Friday **20 September 2024**
- **19 September,** Thursday for the issue of Friday **27 September 2024**
- **27 September,** Friday for the issue of Friday **04 October 2024**
- **04 October,** Friday for the issue of Friday **11 October 2024**
- **11 October,** Friday for the issue of Friday **18 October 2024**
- **18 October,** Friday for the issue of Friday **25 October 2024**
- **25 October,** Friday for the issue of Friday **01 November 2024**
- **01 November,** Friday for the issue of Friday **08 November 2024**
- **08 November,** Friday for the issue of Friday **15 November 2024**
- **15 November,** Friday for the issue of Friday **22 November 2024**
- **22 November,** Friday for the issue of Friday **29 November 2024**
- **29 November,** Friday for the issue of Friday **06 December 2024**
- **06 December,** Friday for the issue of Friday **13 December 2024**
- **12 December,** Thursday for the issue of Friday **20 December 2024**
- **18 December,** Wednesday for the issue of Friday **27 December 2024**

LIST OF TARIFF RATES

FOR PUBLICATION OF NOTICES

COMMENCEMENT: 1 APRIL 2018

NATIONAL AND PROVINCIAL

Notice sizes for National, Provincial & Tender gazettes 1/4, 2/4, 3/4, 4/4 per page. Notices submitted will be charged at R1008.80 per full page, pro-rated based on the above categories.

Pricing for National, Provincial - Variable Priced Notices		
Notice Type	**Page Space**	**New Price (R)**
Ordinary National, Provincial	1/4 - Quarter Page	252.20
Ordinary National, Provincial	2/4 - Half Page	504.40
Ordinary National, Provincial	3/4 - Three Quarter Page	756.60
Ordinary National, Provincial	4/4 - Full Page	1008.80

EXTRA-ORDINARY

All Extra-ordinary National and Provincial gazette notices are non-standard notices and attract a variable price based on the number of pages submitted.

The pricing structure for National and Provincial notices which are submitted as **Extra ordinary submissions** will be charged at R**3026.32** per page.

GOVERNMENT PRINTING WORKS - BUSINESS RULES

The **Government Printing Works** (**GPW**) has established rules for submitting notices in line with its electronic notice processing system, which requires the use of electronic *Adobe* Forms. Please ensure that you adhere to these guidelines when completing and submitting your notice submission.

Closing Times for Acceptance of Notices

1. The *Government Gazette* and *Government Tender Bulletin* are weekly publications that are published on Fridays and the closing time for the acceptance of notices is strictly applied according to the scheduled time for each gazette.

2. Please refer to the Submission Notice Deadline schedule in the table below. This schedule is also published online on the Government Printing works website www.gpwonline.co.za

   All re-submissions will be subject to the standard cut-off times.
   All notices received after the closing time will be rejected.

Government Gazette Type	Publication Frequency	Publication Date	Submission Deadline	Cancellations Deadline
National Gazette	Weekly	Friday	Friday 15h00 for next Friday	Tuesday, 15h00 - 3 working days prior to publication
Regulation Gazette	Weekly	Friday	Friday 15h00 for next Friday	Tuesday, 15h00 - 3 working days prior to publication
Petrol Price Gazette	Monthly	Tuesday before 1st Wednesday of the month	One day before publication	1 working day prior to publication
Road Carrier Permits	Weekly	Friday	Thursday 15h00 for next Friday	3 working days prior to publication
Unclaimed Monies (Justice, Labour or Lawyers)	January / September 2 per year	Last Friday	One week before publication	3 working days prior to publication
Parliament (Acts, White Paper, Green Paper)	As required	Any day of the week	None	3 working days prior to publication
Manuals	Bi- Monthly	2nd and last Thursday of the month	One week before publication	3 working days prior to publication
State of Budget (National Treasury)	Monthly	30th or last Friday of the month	One week before publication	3 working days prior to publication
Extraordinary Gazettes	As required	Any day of the week	*Before 10h00 on publication date*	*Before 10h00 on publication date*
Legal Gazettes A, B and C	Weekly	Friday	One week before publication	Tuesday, 15h00 - 3 working days prior to publication
Tender Bulletin	Weekly	Friday	Friday 15h00 for next Friday	Tuesday, 15h00 - 3 working days prior to publication
Gauteng	Weekly	Wednesday	Two weeks before publication	3 days **after** submission deadline
Eastern Cape	Weekly	Monday	One week before publication	3 working days prior to publication
Northern Cape	Weekly	Monday	One week before publication	3 working days prior to publication
North West	Weekly	Tuesday	One week before publication	3 working days prior to publication
KwaZulu-Natal	Weekly	Thursday	One week before publication	3 working days prior to publication
Limpopo	Weekly	Friday	One week before publication	3 working days prior to publication
Mpumalanga	Weekly	Friday	One week before publication	3 working days prior to publication

GOVERNMENT PRINTING WORKS - BUSINESS RULES

Government Gazette Type	Publication Frequency	Publication Date	Submission Deadline	Cancellations Deadline
Gauteng Liquor License Gazette	Monthly	Wednesday before the First Friday of the month	Two weeks before publication	3 working days **after** submission deadline
Northern Cape Liquor License Gazette	Monthly	First Friday of the month	Two weeks before publication	3 working days **after** submission deadline
National Liquor License Gazette	Monthly	First Friday of the month	Two weeks before publication	3 working days **after** submission deadline
Mpumalanga Liquor License Gazette	Bi-Monthly	Second & Fourth Friday	One week before publication	3 working days prior to publication

Extraordinary Gazettes

3. *Extraordinary Gazettes* can have only one publication date. If multiple publications of an *Extraordinary Gazette* are required, a separate Z95/Z95Prov *Adobe* Forms for each publication date must be submitted.

Notice Submission Process

4. Download the latest *Adobe* form, for the relevant notice to be placed, from the **Government Printing Works** website www.gpwonline.co.za.

5. The *Adobe* form needs to be completed electronically using *Adobe Acrobat* / *Acrobat Reader*. Only electronically completed *Adobe* forms will be accepted. No printed, handwritten and/or scanned *Adobe* forms will be accepted.

6. The completed electronic *Adobe* form has to be submitted via email to submit.egazette@gpw.gov.za. The form needs to be submitted in its original electronic *Adobe* format to enable the system to extract the completed information from the form for placement in the publication.

7. Every notice submitted **must** be accompanied by an official **GPW** quotation. This must be obtained from the *eGazette* Contact Centre.

8. Each notice submission should be sent as a single email. The email **must** contain **all documentation relating to a particular notice submission**.

   8.1. Each of the following documents must be attached to the email as a separate attachment:

      8.1.1. An electronically completed *Adobe* form, specific to the type of notice that is to be placed.

         8.1.1.1. For National *Government Gazette* or *Provincial Gazette* notices, the notices must be accompanied by an electronic Z95 or Z95Prov *Adobe* form

         8.1.1.2. The notice content (body copy) **MUST** be a separate attachment.

      8.1.2. A copy of the official **Government Printing Works** quotation you received for your notice. *(Please see Quotation section below for further details)*

      8.1.3. A valid and legible Proof of Payment / Purchase Order: **Government Printing Works** account customer must include a copy of their Purchase Order**. Non-Government Printing Works** account customer needs to submit the proof of payment for the notice

      8.1.4. Where separate notice content is applicable (Z95, Z95 Prov and TForm 3, it should **also** be attached as a separate attachment. *(Please see the Copy Section below, for the specifications)*.

      8.1.5. Any additional notice information if applicable.

GOVERNMENT PRINTING WORKS - BUSINESS RULES

9. The electronic *Adobe* form will be taken as the primary source for the notice information to be published. Instructions that are on the email body or covering letter that contradicts the notice form content will not be considered. The information submitted on the electronic *Adobe* form will be published as-is.

10. To avoid duplicated publication of the same notice and double billing, Please submit your notice **ONLY ONCE.**

11. Notices brought to **GPW** by "walk-in" customers on electronic media can only be submitted in *Adobe* electronic form format. All "walk-in" customers with notices that are not on electronic *Adobe* forms will be routed to the Contact Centre where they will be assisted to complete the forms in the required format.

12. Should a customer submit a bulk submission of hard copy notices delivered by a messenger on behalf of any organisation e.g. newspaper publisher, the messenger will be referred back to the sender as the submission does not adhere to the submission rules.

QUOTATIONS

13. Quotations are valid until the next tariff change.

    13.1. ***Take note:*** **GPW**'s annual tariff increase takes place on ***1 April*** therefore any quotations issued, accepted and submitted for publication up to ***31 March*** will keep the old tariff. For notices to be published from 1 April, a quotation must be obtained from **GPW** with the new tariffs. Where a tariff increase is implemented during the year, **GPW** endeavours to provide customers with 30 days' notice of such changes.

14. Each quotation has a unique number.

15. Form Content notices must be emailed to the *eGazette* Contact Centre for a quotation.

    15.1. The *Adobe* form supplied is uploaded by the Contact Centre Agent and the system automatically calculates the cost of your notice based on the layout/format of the content supplied.

    15.2. It is critical that these *Adobe* Forms are completed correctly and adhere to the guidelines as stipulated by **GPW**.

16. **APPLICABLE ONLY TO GPW ACCOUNT HOLDERS**:

    16.1. **GPW** Account Customers must provide a valid **GPW** account number to obtain a quotation.

    16.2. Accounts for **GPW** account customers **must** be active with sufficient credit to transact with **GPW** to submit notices.

        16.2.1. If you are unsure about or need to resolve the status of your account, please contact the **GPW** Finance Department prior to submitting your notices. (If the account status is not resolved prior to submission of your notice, the notice will be failed during the process).

17. **APPLICABLE ONLY TO CASH CUSTOMERS:**

    17.1. Cash customers doing **bulk payments** must use a **single email address** in order to use the **same proof of payment** for submitting multiple notices.

18. The responsibility lies with you, the customer, to ensure that the payment made for your notice(s) to be published is sufficient to cover the cost of the notice(s).

19. Each quotation will be associated with one proof of payment / purchase order / cash receipt.

    19.1. This means that **the quotation number can only be used once to make a payment.**

GOVERNMENT PRINTING WORKS - BUSINESS RULES

Copy (Separate Notice Content Document)

20. Where the copy is part of a separate attachment document for Z95, Z95Prov and TForm03

20.1. Copy of notices must be supplied in a separate document and may not constitute part of any covering letter, purchase order, proof of payment or other attached documents.

The content document should contain only one notice. (You may include the different translations of the same notice in the same document).

20.2. The notice should be set on an A4 page, with margins and fonts set as follows:

Page size = A4 Portrait with page margins: Top = 40mm, LH/RH = 16mm, Bottom = 40mm; Use font size: Arial or Helvetica 10pt with 11pt line spacing;

Page size = A4 Landscape with page margins: Top = 16mm, LH/RH = 40mm, Bottom = 16mm; Use font size: Arial or Helvetica 10pt with 11pt line spacing;

Cancellations

21. Cancellation of notice submissions are accepted by **GPW** according to the deadlines stated in the table above in point 2. Non-compliance to these deadlines will result in your request being failed. Please pay special attention to the different deadlines for each gazette. Please note that any notices cancelled after the cancellation deadline will be published and charged at full cost.

22. Requests for cancellation must be sent by the original sender of the notice and must accompanied by the relevant notice reference number (N-) in the email body.

Amendments to notices

23. With effect from 01 October 2015, **GPW** will not longer accept amendments to notices. The cancellation process will need to be followed according to the deadline and a new notice submitted thereafter for the next available publication date.

Rejections

24. All notices not meeting the submission rules will be rejected to the customer to be corrected and resubmitted. Assistance will be available through the Contact Centre should help be required when completing the forms. (012-748 6200 or email info.egazette@gpw.gov.za). Reasons for rejections include the following:

24.1. Incorrectly completed forms and notices submitted in the wrong format, will be rejected.

24.2. Any notice submissions not on the correct *Adobe* electronic form, will be rejected.

24.3. Any notice submissions not accompanied by the proof of payment / purchase order will be rejected and the notice will not be processed.

24.4. Any submissions or re-submissions that miss the submission cut-off times will be rejected to the customer. The Notice needs to be re-submitted with a new publication date.

GOVERNMENT PRINTING WORKS - BUSINESS RULES

Approval of notices

25. Any notices other than legal notices are subject to the approval of the Government Printer, who may refuse acceptance or further publication of any notice.

26. No amendments will be accepted in respect to separate notice content that was sent with a Z95 or Z95Prov notice submissions. The copy of notice in layout format (previously known as proof-out) is only provided where requested, for Advertiser to see the notice in final Gazette layout. Should they find that the information submitted was incorrect, they should request for a notice cancellation and resubmit the corrected notice, subject to standard submission deadlines. The cancellation is also subject to the stages in the publishing process, i.e. If cancellation is received when production (printing process) has commenced, then the notice cannot be cancelled.

Government Printer Indemnified Against Liability

27. The Government Printer will assume no liability in respect of—

27.1. any delay in the publication of a notice or publication of such notice on any date other than that stipulated by the advertiser;

27.2. erroneous classification of a notice, or the placement of such notice in any section or under any heading other than the section or heading stipulated by the advertiser;

27.3. any editing, revision, omission, typographical errors or errors resulting from faint or indistinct copy.

Liability of advertiser

28. Advertisers will be held liable for any compensation and costs arising from any action which may be instituted against the Government Printer in consequence of the publication of any notice.

Customer inquiries

Many of our customers request immediate feedback/confirmation of notice placement in the gazette from our Contact Centre once they have submitted their notice – While **GPW** deems it one of their highest priorities and responsibilities to provide customers with this requested feedback and the best service at all times, we are only able to do so once we have started processing your notice submission.
GPW has a 2-working day turnaround time for processing notices received according to the business rules and deadline submissions.
Please keep this in mind when making inquiries about your notice submission at the Contact Centre.

29. Requests for information, quotations and inquiries must be sent to the Contact Centre ONLY.

30. Requests for Quotations (RFQs) should be received by the Contact Centre at least **2 working days** before the submission deadline for that specific publication.

GOVERNMENT PRINTING WORKS - BUSINESS RULES

Payment of cost

31. The Request for Quotation for placement of the notice should be sent to the Gazette Contact Centre as indicated above, prior to submission of notice for advertising.

32. Payment should then be made, or Purchase Order prepared based on the received quotation, prior to the submission of the notice for advertising as these documents i.e. proof of payment or Purchase order will be required as part of the notice submission, as indicated earlier.

33. Every proof of payment must have a valid **GPW** quotation number as a reference on the proof of payment document.

34. Where there is any doubt about the cost of publication of a notice, and in the case of copy, an enquiry, accompanied by the relevant copy, should be addressed to the Gazette Contact Centre, **Government Printing Works**, Private Bag X85, Pretoria, 0001 email: info.egazette@gpw.gov.za before publication.

35. Overpayment resulting from miscalculation on the part of the advertiser of the cost of publication of a notice will not be refunded, unless the advertiser furnishes adequate reasons why such miscalculation occurred. In the event of underpayments, the difference will be recovered from the advertiser, and future notice(s) will not be published until such time as the full cost of such publication has been duly paid in cash or electronic funds transfer into the **Government Printing Works** banking account.

36. In the event of a notice being cancelled, a refund will be made only if no cost regarding the placing of the notice has been incurred by the **Government Printing Works**.

37. The **Government Printing Works** reserves the right to levy an additional charge in cases where notices, the cost of which has been calculated in accordance with the List of Fixed Tariff Rates, are subsequently found to be excessively lengthy or to contain overmuch or complicated tabulation.

Proof of publication

38. Copies of any of the *Government Gazette* or *Provincial Gazette* can be downloaded from the **Government Printing Works** website www.gpwonline.co.za free of charge, should a proof of publication be required.

39. Printed copies may be ordered from the Publications department at the ruling price. The **Government Printing Works** will assume no liability for any failure to post or for any delay in despatching of such *Government Gazette*(s)

GOVERNMENT PRINTING WORKS CONTACT INFORMATION

Physical Address:	**Postal Address:**	**GPW Banking Details:**
Government Printing Works	Private Bag X85	**Bank:** ABSA Bosman Street
149 Bosman Street	Pretoria	**Account No.:** 405 7114 016
Pretoria	0001	**Branch Code:** 632-005

For Gazette and Notice submissions: Gazette Submissions:	**E-mail:** submit.egazette@gpw.gov.za
For queries and quotations, contact: Gazette Contact Centre:	**E-mail:** info.egazette@gpw.gov.za
	Tel: 012-748 6200
Contact person for subscribers: Mrs M. Toka:	**E-mail:** subscriptions@gpw.gov.za
	Tel: 012-748-6066 / 6060 / 6058
	Fax: 012-323-9574

DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT

NO. 4827 **17 May 2024**

INVITATION TO SUBMIT APPLICATIONS FOR A DALRRD QUOTA IMPORT PERMIT IN TERMS OF THE REBATE ITEM 460.03/0207.14.9/01.07 FOR REBATE OF THE FULL ANTI-DUMPING DUTY ON BONE-IN-CUTS OF THE SPECIES GALLUS DOMESTICUS, FROZEN, CLASSIFIABLE IN TARIFF SUBHEADING 0207.14.9 IMPORTED FROM OR ORIGINATING IN THE UNITED STATES OF AMERICA (USA)

Interested parties are hereby invited to submit their applications for Department of Agriculture, Land Reform and Rural Development (DALRRD) import quota permits in terms of the following rebate provision as prescribed in the Government Gazette Notice No.42203 of 1 February 2019 for the period 01 April 2024 to 31 March 2025. Applications must be submitted in the format as set out in the application forms attached as an Annexure A. Completed application forms must be submitted to DALRRD during the following time periods:

a) For the First Quarter of the Quota Year valid for importation during the period 01 April to 30 June: Within two weeks from the date of publication of this notice.

b) For the Second Quarter of the Quota Year valid for importation during the period 01 July to 30 September: From 01 to 15 May.

c) For the Third Quarter of the Quota Year valid for importation during the period 01 October to 31 December: From 01 to 15 August.

d) For the Fourth Quarter of the Quota Year valid for importation during the period 01 January to 31 March: From 01 to 15 November.

The quota will be allocated on a quarterly basis in equal amounts per quarter.

Applicants must provide bills of entry of quantity imported over the past 3 years (2021, 2022 and 2023). Failure to submit may have a negative effect on the quantities allocated.

A Tax Compliance Status Pin is compulsory to all applicants/clients applying for preferential market access permits. A Tax Compliance Status Pin has to confirm that the company is in good standing with South African Revenue Services (SARS). A company not in good standing with SARS will be disqualified.

Companies with the same directors/owners will not be allowed to apply separately; only one application will be accepted.

The request for an extension must be made during a period commencing on the 1st day of the corresponding qualifying quarter (Q2 & Q4) and ending 12 working days of the corresponding qualifying quarter (Q2 & Q4). Where the last day of such period falls on a weekend or a public holiday, the final day to request an extension is the immediately preceding working day. To be verifiable, Applicants must submit bills of entry to document how much of a quota remains unused. Failure to comply with these requirements shall result in the denial of a request for an extension.

Applicants applying for an extension must submit a quarterly quota utilisation report obtainable from SARS.

The applications must be hand delivered to the following address from 08H00 – 16H00 Monday to Friday:

Sefala building, Room No. 128,
503 Belvedere Street, Arcadia, Pretoria,
Contact person: Ms. Elizabeth Matlala
Contact number: (012) 319 8076
Email: ElizabethMA@dalrrd.gov.za

Only hand delivered or couriered applications will be accepted. Applications sent via email or fax will not be processed.

FEES FOR THE DALRRD QUOTA ALLOCATION IMPORT PERMIT

A fee of R1 600.00 per permit will be payable for permits, replacement permits and extension permits issued from the 01 April 2024.

All application forms should be accompanied by proof of payment (bank deposit slip or cashier receipt).

Payment is to be made as follows:

Payment to Department of Agriculture, Land Reform and Rural Development bank account

Bank:	Standard Bank
Branch:	Arcadia
Branch No.:	01-08-45
Account No.:	013024175
Account Name:	NDA:Marketing Administration–Trade Incentives
Reference:	Company Name

OR

Payment in cash: Department of Agriculture, Land Reform and Rural Development cashier

Pretoria:
Agricultural Place, 20 Steve Biko Drive, Arcadia,
Block P: Room GF 15

Payment must be made per application period and no payments should be made in advance for another period.

There will be no refunds to applicants who pay more than the stipulated import permit fee and those who submit incomplete application.

MR. M. RAMASODI
DIRECTOR-GENERAL: AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT
DATE:

agriculture, land reform & rural development
Department:
Agriculture, Land Reform and Rural Development
REPUBLIC OF SOUTH AFRICA

ANNEXURE A

APPLICATION FORM FOR A DALRRD QUOTA ALLOCATION IMPORT PERMIT FOR A QUARTERLY QUOTA UNDER REBATE ITEM 460.03/0207.14.9/01.07

1. **NAME OF IMPORTER:**……

2. **POSTAL ADDRESS:**…… **CODE:** ……..

3. **PHYSICAL ADDRESS:**…….....**CODE:**……

4. **RESPONSIBLE PERSON:**……..

5. **TELEPHONE NUMBER: CODE:** ……. **NUMBER:** ……. **CELL NO.:**……

6. **FAX NUMBER: CODE:** ……. **NUMBER:** ……

7. **E-MAIL ADDRESS:** …….....

8. **LOCATION OF THE BUSINESS**

PROVINCE	LOCAL MUNICIPALITY	DISTRICT

9. **COMPANY/CC REGISTRATION NUMBER:** ……
(NB: First time applicants: Please include a copy of the registration certificate (obtainable from the Companies and Intellectual Property Commission (CIPC)

10. **CUSTOMS CODE NO:**……
(NB: First time applicants: Please include a copy of the Customs Code Certificate (obtainable from SARS)

11. **SARS TAX COMPLIANCE STATUS PIN AND EXPIRY DATE:** ……
(NB: Please attach the copy of the applicant's Tax Compliance Status Pin letter-applicable to all applicants)

12. **INDICATE PRINCIPAL BUSINESS THAT YOU UNDERTAKE:**

AGENT	MANUFACTURER	PROCESSOR	RETAILER	OTHER

IF other please specify……..

13. For classification please complete:-

ENTERPRISE CLASSIFICATION	
LARGE	
QSE	
EME	
HDI	
Investment (Financial and Human)	
Turnover in Rand	R
Capital Investment	R
Number of permanent employees	
Number of part-time employees	

14. APPLICATION – SUBMISSION FOR THE PERIOD …….

TARIFF HEADING OF PRODUCT	DESCRIPTION OF PRODUCT	QUANTITY APPLYING FOR: Tonnes

15.Summary of BILLS OF ENTRY IMPORT

Quantity imported over the past 3 years.

TARIFF HEADING	TOTAL FOR 2021	TOTAL FOR 2022	TOTAL FOR 2023

16. INDICATE PAYMENT OPTION IN ACCOUNT NO. 013024175 AND ATTACH PROOF OF PAYMENT	**BANK**	**CASH RECEIPT NO ……..**

17. PLEASE ATTACH THE FOLLOWING DOCUMENTS TO THIS APPLICATION FORM:

17.1 A copy of the applicant's valid South African identity document (if the applicant is a natural person) or a valid certificate of registration or incorporation in South Africa (if the applicant is a juristic person);

17.2 A copy of the applicant's valid veterinary import permit as required by section 13(1)(a) of the Meat Safety Act, 40 of 2000;

17.3 A copy of the applicant's Tax Compliance Status Pin letter; and

17.4 Proof that the applicant is registered with SARS as an importer.

18. **IN ADDITION TO THE DOCUMENTS LISTED IN PARAGRAPH 17 ABOVE PLEASE ATTACH THE FOLLOWING:**

18.1 **Please attach the following documents if the applicant is a HI:**

18.1.1 Documents for the last three (3) years or an otherwise motivated timeframe, which will prove that the entity applying is an established company and not a dormant company or a company that is not in a financially sound position (e.g. Imports by Bill of Entry number, Balance Sheet, Income and Cash Flow statements); and

18.1.2 Documentation to prove its BBBEE status in terms of the BBBEE Act and Code.

18.2 **Please attach the following documents if the applicant is an HDI:**

18.2.1 A Curriculum Vitae/profile of the applicant;

18.2.2 If a company applies, proof that it is wholly owned by HDIs, including certified copies of share certificates and a BBBEE verification certificate by an accredited rating agency to confirm its BBBEE status;

18.2.3 If a company in partnership with an HDI applies, proof that the HDI is the majority shareholder of this company, including certified copies of share certificates and share registers and a BBBEE verification certificate by an accredited rating agency, or similar document, to confirm its BBBEE status; and

18.2.4 Letter/s of intent from the buyers of imported meat.

AFFIDAVIT IN RESPECT OF AN APPLICATION FOR A DALRRD QUOTA ALLOCATION IMPORT PERMIT IN TERMS OF REBATE ITEM 460.03/0207.14.9/01.07 OF SCHEDULE 4 TO THE CUSTOMS AND EXCISE ACT, 1964

NB: The obligation to complete and submit this affidavit cannot be transferred to an external authorised representative, auditor or any other third party acting on behalf of the applicant.

I, the undersigned_____
(Full names) with identity number _____;
_____; _____;
_____ in my capacity as _____
of _____ (herein after referred to as the applicant) do hereby make oath / affirmation and declare that:

1. I am duly authorised to depose to this affidavit;
2. I am related to: _____, and the nature of the relationship is _____;
3. The particulars contained in the application form are true and correct to the best of my knowledge and belief;
4. I have satisfied myself that the preparation of the application has been done in conformity with the Guidelines in respect of the above-mentioned rebate provision, with which I have fully acquainted myself and to which I unconditionally agree;
5. I accept that the decision by the Department of Agriculture, Land Reform and Rural Development will be final and conclusive and that the said Department may at any time conduct or order that an investigation to verify information furnished in the application form be conducted; and
6. The applicant or any one of its associates, or related party is not a subject of an investigation by any organ of State or other regulatory authority.

SIGNED at _____on this _____ day of _____ 20__

_____
DEPONENT

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understand the contents of this affidavit, which was signed and sworn before me at _____ on this the _____ day of _____20__,

the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

COMMISSIONER OF OATHS
FULL NAMES:
BUSINESS ADDRESS:
DESIGNATION:
CAPACITY:

DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT

NO. 4828 **17 May 2024**

PAYMENT PROCEDURES FOR IMPORT AND EXPORT PERMITS UNDER THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) AND EUROPEAN UNION (EU) ECONOMIC PARTNERSHIP AGREEMENT (EPA), SOUTHERN CUSTOM UNION AND MOZAMBIQUE (SACUM) AND UNITED KINGDOM (UK) EPA, WORLD TRADE ORGANIZATION AGREEMENT (WTO) AND AFRICAN GROWTH OPPORTUNITY ACT AGREEMENT (AGOA) FOR THE FINANCIAL YEAR 2024/5

FEES FOR THE DALRRD QUOTA ALLOCATION OF IMPORT AND EXPORT PERMITS

A fee of R1 600.00 per permit will be payable for permit and replacement permits issued from the 01 April 2024.

All application forms should be accompanied by proof of payment (bank deposit slip or cashier receipt).

Payment is to be made as follows:

Payment to Department of Agriculture, Land Reform and Rural Development bank account
Bank: Standard Bank
Branch: Arcadia
Branch No: 01-08-45
Account No.: 013024175
Account Name: NDA: Marketing Administration-Trade Incentives

OR

Payment in cash: Department of Agriculture, Land Reform and Rural Development
Agricultural Place, 20 Steve Biko Drive,
Arcadia, Pretoria
Block S: Room GF 14

Payment must be made per application period and no payments should be made in advance for another period.

There will be no refunds to applicants who pay more than the stipulated permit fee and those who submit incomplete application.

DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT

NO. 4829 **17 May 2024**

GENERAL NOTICE IN TERMS OF THE RESTITUTION OF LAND RIGHTS ACT, 1994 (ACT 22 OF 1994) AS AMENDED

Notice is hereby given in terms of section 11(1) (c) of the Restitution of Land Rights Act, 1994 as amended) that a claim has been lodged for restitution of land rights on:

REF NO	CLAIMANT	PROPERTY DESCRIPTION & CLAIMED EXTENT	CURRENT LANDOWNERS	BONDS / NO BONDS	DEED OF TRANSFER	INTERESTED PARTIES
Z 0368 (KRP 953)	Mr. Thularo Johannes Masemola	Portion 4 of farm Rooipoort 440 JR Claimed Extent = 107.1499 hectares	National Government of the Republic of South Africa	None	T35233/1985MPU T1988/2009MPU	Land Claimant, the current landowners, and the City of Tshwane Metropolitan Municipality

Take further notice that the Commission on Restitution of Land Rights will investigate the claim in terms of the provisions of Rule 5 of the Rules Regarding Procedure of Commission Established in terms of section 16 of Restitution of Land Rights Act as amended. Any interested party on the claim is hereby invited to submit, representations in terms of section 11A of the Restitution of Land Rights Act 22 of 1994 as amended within 90 (ninety) working days from the publication date of this notice, any comments/information may be send to:

Chief Directorate: Land Restitution Support Gauteng Province
Private Bag X03
ARCADIA
0007
Tel: (012) 310-6500
Fax: (012) 324-5812

MR. LH MAPHUTHA
REGIONAL LAND CLAIMS COMMISSIONER
DATE: 2024/03/27

DEPARTMENT OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT

NO. 4830 **17 May 2024**

AMENDMENT OF GAZETTE NOTICE 696 OF 2016 AS CONTAINED IN GOVERNMENT GAZETTE NUMBER 40058 BY REMOVING PORTIONS 8 (RE) & 16 (RE) OF THE FARM ONVERWACHT 509 JR IN A, IN TERMS OF THE RESTITUTION OF LAND RIGHTS ACT, 1994 (ACT NO. 22 OF 1994) AS AMENDED

Notice is hereby given in terms of section 11(4) of the Restitution of Land Rights Act, 1994 as amended that land claim on portions 8 (RE) and 16 (RE) of the farm Onverwacht 509 JR has been removed:

REF NO.	CLAIMANT	PROPERTY	DISTRICT	CURRENT LAND OWNER	BONDS / NO BONDS	DEED OF TRANSFER	INTERESTED PARTIES
Z 0086	Mr. Mapupane Joseph Mnyakeni	Portion 8 (RE) of the farm Onverwacht 509 JR	City of Tshwane Metropolitan Municipality	Heyman Stephanus Johannes	B37438/2017	T55564/1990	Land Claimants and the current land owners
		Portion 16 (RE) of the farm Onverwacht 509 JR	City of Tshwane Metropolitan Municipality	Danbred Al Pty Ltd	B1520/2022	T2203/2022	

Chief Directorate: Land Restitution Support Gauteng Province
Private Bag X03
ARCADIA
0007.
Tel: (012) 310-6500
Fax: (012) 324-5812

L H MAPHUTHA
REGIONAL LAND CLAIMS COMMISSIONER
DATE: 24/03/27

DEPARTMENT OF HEALTH

NO. 4831 **17 May 2024**

HAZARDOUS SUBSTANCES ACT 15 OF 1973

DECLARATION OF LEAD IN PAINT AS A GROUP II HAZARDOUS SUBSTANCE

The Minister of Health, hereby intent in terms of section 2 (1) of the Hazardous Substances Act, 1973 (Act No. 15 of 1973), declare leaded paint or coating material to be a Group II hazardous substance.

SCHEDULE

Definitions

1. In this Notice any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and, unless the context indicates otherwise indicates:

"Coating material" means a product, in liquid, paste or powder form, that, when applied to a substrate, forms a layer possessing protective, decorative and/or other specific properties;

"Leaded paint or coating material" means paint or similar coating material used for any purpose with a total lead content above 0.009 percent (90 ppm) or 90mg/kg, based on the weight of the total non-volatile content;

"Paint" means a pigmented coating material which, when applied to a substrate, forms an opaque dried film having protective, decorative or specific technical properties.

"the Act" means the Hazardous Substances Act, 1973 (Act No. 15 of 1973).

Hazardous Substance Declaration

2. (1) Leaded paint or coating material is hereby declared as a Group II hazardous substance.

(2) The declaration contemplated in subparagraph (1) applies to all paints and coating materials.

Repeal

3. The declaration of leaded paint as Group I hazardous substance, published in Government Notice No. R 801, Gazette Number 32455 of 31 July 2009 is hereby repealed.

Commencement date

4. This notice comes into operation one year after the date of final publication.

DR M.J PHAAHLA, MP

MINISTER OF HEALTH

DATE: 17/03/2024

DEPARTMENT OF HEALTH

NO. 4832 **17 May 2024**

HAZARDOUS SUBSTANCES ACT, 1973

(ACT No. 15 OF 1973)

REGULATIONS RELATING TO LEAD IN PAINT OR COATING MATERIALS

The Minister of Health hereby, in terms of section 29 (1) of the Hazardous Substances Act, 1973 (Act No. 15 of 1973), make Regulations in the Schedule.

DR M.J PHAAHLA, MP
MINISTER OF HEALTH
DATE: 17/03/2024

SCHEDULE

Definitions

1. In these Regulations a word or expression to which a meaning has been assigned in the Act, has the meaning so assigned and, unless the context indicates

"coating material" means a product, in liquid, paste or powder form, which, when applied to a substrate, forms a layer possessing protective, decorative and or other specific properties;

"Globally Harmonized System " means an internationally adopted harmonized hazard communication system for identifying and evaluating all the physical, toxicological and ecotoxicological properties of a substance or mixture, to determine the classification of the substance or mixture using specified criteria;

"manufacturer" means any person who undertakes the physical or chemical transformation of substances into a new product, performed either by power-driven machines or by hand, and markets the new product under his or her name, trademark or private label;

"material change" means a change that the manufacturer or importer makes to the design, manufacturing process or source of component parts, for the paint or similar coating material, which the manufacturer or importer, exercising due care, knows or should know could affect compliance with the 90ppm total lead limit standard;

"paint" means a pigmented coating material which, when applied to a substrate, forms an opaque dried film having protective, decorative or specific technical properties; and

"the Act" means the Hazardous Substances Act, 1973 (Act No. 15 of 1973).

Scope of application

2. These Regulations apply to the manufacture, sale, distribution, import and export of all paints or similar coating materials.

Permissible lead concentration

3. The total lead concentration applicable to paints or similar coating materials must not be more than 0.009 percent (90 ppm) or 90mg/kg total lead (calculated as lead metal), based on the weight of the total non-volatile content of the paint or weight of the dried paint film.

Compliance declaration certification

4. (1) Manufacturers and importers of paint or similar coating materials must before commercial distribution and importation, issue a lead content standard compliance declaration certificate for the first production batch or lot of paint or similar coating material of all manufactured and imported products and in the event of a material change.

(2) The required compliance declaration certificate under these Regulations must correspond with the form prescribed in **Annexure A**.

(3) The compliance declaration certificate must be in English, be legible and may also be accompanied by a translation in another language.

(4) Manufacturers and importers of paints or similar coating materials must submit or produce a copy of the compliance declaration certificate, in hard or electronic copy to inspectors and to the Department of Health upon request, and in the event of material change, manufactures and importers must submit or produce such certificate within three months and must make the compliance certificate available on their website.

(5) The compliance declaration certificate must be made available immediately following the effective date of the Regulations and in the event of a material change, manufacturers and importers must submit such certificate within three months.

Sampling and analysis for compliance monitoring

5. (1) An inspector must, for purposes of compliance and monitoring sample paint or similar coating materials for laboratory lead concentration analysis as prescribed in *Government Gazette* Notice R. 453 of 25 March 1977, Group I Hazardous Substances Regulations under the Act.

(2) An inspector may use a calibrated portable analysing device to instantly determine an indication of the presence and level of lead in dried samples of paint or similar coating materials for the purposes of testing compliance with the 90-ppm total lead limit.

(3) The results of the calibrated portable analysing device must be used by the inspector to detain and seize paint or similar coating materials that is not in compliance with the permissible 90-ppm total lead concentration limit and subject such paint or similar coating materials to laboratory testing and analysis.

(4) Analysts must use internationally recognised sampling procedures, quality assurance principles and analytical methods that are prescribed in the standards published by the International Standards Organization (ISO) or ASTM International, including but not limited to the list in **Annexure B**.

Labelling

6. (1) The labels of all paint or similar coating materials that are offered for sale shall include, but not be limited to the—

(a) trade name;

(b) manufacturer or importer's name, address, and telephone number;

(c) production date;

(d) batch number;

(e) paint or similar coating material product uses; and

(f) statement: "Complies with the South African legal lead limit of 90ppm or less".

(2) The labels of all paints or similar coating materials must further include pictograms and precautionary labelling statements as per Globally Harmonized system of classification and labelling of chemicals.

Importation of paint or similar coating materials

7. (1) Paint or similar coating materials may only be imported if in compliance with the relevant provisions of these Regulations and only through the ports of entry prescribed in **Annexure C**.

(2) In the event the name of the port of entry changes, the new substituting name shall apply.

Prohibitions

8. (1) Paints or similar surface coating materials that do not conform to these Regulations must not be manufactured, offered for sale, distributed, or imported and shall not be allowed to be donated or exported for sale.

(2) The use of the label statement to indicate endorsement by the National Department of Health or reference to the Act or Regulations is prohibited.

(3) The use of the label statement: "No Lead" or "Lead Free" or "Lead Safe" or any statement that provides an impression that the product does not have any traces of lead is prohibited.

Offences and penalties

9. (1) Any person who fails to furnish a compliance declaration certificate is guilty of an offence and on conviction liable to a fine of not less than R500 000.00 or imprisonment or to both fine and imprisonment.

(2) Any person who issues or presents a false compliance declaration certificate is guilty of an offence and liable to a fine of not less than R250 000.00 or imprisonment or to both fine and imprisonment.

(3) Any person who exercises or attempts to exercise undue influence on any laboratory in respect of testing or reporting of the results of the testing of any product is guilty of an offence and liable on conviction to a fine of not less than R1 000 000.00 or imprisonment or to both fine and imprisonment.

(4) Any manufacturer, importer, distributor, exporter, or retailer who contravenes any provisions and prohibitions applicable to these Regulations is guilty of an offence and liable to a fine or imprisonment as determined in the Act.

(5) Any manufacturer and importer who repeatedly contravenes provisions of regulation 3, may in addition to the above penalties have his or her business premises closed or suspended.

Short title

10. These Regulations are called the Regulations Relating to Lead in Paint or Coating Materials, 2024.

COMMENCEMENT

11. The Regulations shall come into effect 1 (one) year after the date of publication, with the exception of regulations 6(1) (*a*), (*b*), (*c*), (*d*), (*e*), (*f*) and (2), which shall come into effect 2 (two) years after the date of publication.

8

Annexure A

Manufacturer or importer's logo

Certificate of Compliance Declaration in terms of Regulation 4

I ..... (person in charge of the paint and coating materials manufacturing or importing company) hereby certify that the following paint and coating materials, (manufactured or imported [select]) by, ... (the trade name and physical address of the manufacturer or importer), are in compliance with the prescribed 0.009 percent (90 ppm) or 90mg/kg total lead limit..

Paint or coating material product name	Paint or coating material product type	Production date

I further affirm that the abovementioned information is to the best of my knowledge true, correct and complete.

.....(Signature)

.....Full names (person in charge of the paint and coating materials manufacturing or importing company)

Date:.....

Annexure B

Standards on analytical methods for measuring lead in paint as prescribed in Regulation 5(4)

(a) ISO 1513;

(b) ISO 1514;

(c) ASTM E1645-16;

(d) ASTM E1979-17;

(e) ISO 6503;

(f) ASTM D3335-85a (2014);

(g) ASTM E1613-12;

(h) ASTM F2853-10; and

(i) US CPSC Test Method CPSC-CH-E1003-09.1

Annexure C

Ports of entry through which paint or similar coating materials may only be imported as prescribed in Regulation 7

1. Sea Ports
   - *(a)* Cape Town;
   - *(b)* Durban;
   - *(c)* East London;
   - *(d)* Port Elizabeth; and
   - *(e)* Richards Bay.
2. Airports
   - *(a)* OR Tambo;
   - *(b)* Cape Town; and
   - *(c)* King Shaka.
3. Land Border
   - *(a)* Beit Bridge;
   - *(b)* Maseru;
   - *(c)* Oshoek;
   - *(d)* Lebombo;
   - *(e)* Nakop ; and
   - *(f)* Golela.

DEPARTMENT OF HEALTH

NO. 4833 **17 May 2024**

DENTAL TECHNICIANS ACT (ACT 19 OF 1979)

REGULATIONS RELATING TO REGISTRATION OR DE-REGISTRATION OF INFORMALLY TRAINED DENTAL LABORATORY ASSISTANTS

The Minister of Health intends to make the Regulations in the Schedule, in terms of Section 50 (1) (r) read with Section 28 (3) of the Dental Technicians Act, 1979 (Act No.19 of 1979), on the recommendation of the South African Dental Technicians Council.

Interested persons are invited to submit substantiated comments or representations in writing on the proposed amendments to the regulations, to the Director-General: Health, Private Bag X828, Pretoria, 0001 (for the attention of the Director: Public Entities Governance, Ms M Mushwana, mihloti.mushwana@health.gov.za and paul.tsebe@health.gov.za), within three month of the date of the publication of this Notice.

DR M.J PHAAHLA, MP
MINISTER OF HEALTH
DATE: 11/03/2024

SCHEDULE

Definitions

1. In this Regulations any word or expression to which a meaning has been assigned in the Act shall bear such meaning and, unless the context otherwise indicates-

"employer" means the owner of a Dental Laboratory who employs an informally trained person; and

"**the Act**" means the Dental Technicians Act, 1979 (Act 19 of 1979).

Procedure for application

2. (1) Any person who wishes to register as a dental laboratory assistant must lodge an application with the Registrar of the Council on a Form attached to these Regulations accompanied by: -

(a) a certified qualification or equivalent qualification if available from an approved institution or as determined by the Council;

(b) certificate of employment assistant outlining the duties performed during the period of employment;

(c) an affidavit or written confirmation by a dental technician or technologist or a dentist who is the owner of a registered dental laboratory that he or she has been employed by the relevant employer as a dental laboratory assistant outlining the duties performed during the period of employment; and

(d) proof of payment of the application fee as determined by the Council from time to time.

Registration

3. (1) The Registrar must on receipt of the application for registration as a dental laboratory assistant refer the application to the Council or a

committee of the Council with the delegated authority to consider such applications.

(2) Applicants trained by dentists may be subject to a written or oral and/or practical assessment as recommended by the Education Committee and approved by Council to prove their level of knowledge and competence as will any applicant who cannot satisfactorily prove a minimum of three years consecutive and uninterrupted employment in a lawfully registered dental laboratory.

(3) The Registrar must, upon approval of such application record the name of the person registered on the relevant register as a dental laboratory assistant and issue a registration certificate.

(4) Any such certificate issued must be returned to the Council upon the erasure of the name of such person in terms of the Act or must be deemed to have been cancelled on the date of erasure.

Deregistration and Disciplinary Process and Procedures

4. (1) A laboratory assistant failing to attend properly, in a professional manner and to the best of their ability, to dental technology work entrusted to them may be subject to disciplinary procedures which may result in deregistration.

(2). The Council may institute any inquiry into any complaint, charge or allegation of improper and disgraceful conduct against any registered dental laboratory assistant in accordance with the powers vested in the Council as defined in the Act.

General

5. A registered dental laboratory assistant working in a registered dental laboratory must work under the constant supervision of a qualified dental technologist.

Short Title

6. These Regulations are called Regulations relating to registration or de-registration of informally trained dental laboratory assistants, 2024.

DEPARTMENT OF HIGHER EDUCATION AND TRAINING

NO. 4834 17 May 2024

higher education & training

Department:
Higher Education and Training
REPUBLIC OF SOUTH AFRICA

Report of the Ministerial Task Team Appointed to Advise the Minister of Higher Education, Science and Innovation on Matters of Sexual Harassment and Gender-Based Violence and Harm in South African Universities

PREPARED FOR THE MINISTER OF
HIGHER EDUCATION,
SCIENCE AND INNOVATION

FEBRUARY 2024

MINISTER'S FOREWORD

Gender-based violence and harm is recognised as one of South Africa's most significant social problems affecting all areas of society. It is a persistent problem that cuts across all demographic categories defining the diversity of our nation. It does not only violate human rights but also engraves deep psychological and emotional scars which may pose a challenge to public health and economic and social development. It is a complex problem in all communities in the country and educational institutions are not immune.

This violence has its roots in the gendered power inequities that have many of its historical roots in the structural oppression and exploitation of women and inter-generationally girls, dating back to colonial and apartheid times with enduring effects into the present. The brutal murder of female students in both universities and TVET colleges spaces highlights once again the specific vulnerability of students to gender-based violence. Most women experience physical and/or sexual intimate partner violence and many have died at the hands of their intimate partners. Sadly, there is a long list of students murdered or violated in the past few years.

Combatting and eliminating gender-based violence is critical to matching the constitutional ideals of gender equality, human dignity and the right to life with realities in the material lives of our people. I therefore appointed a Ministerial Task Team (MTT) in 2019 to advise on issues of sexual harassment and gender-based violence within the university sector.

The MTT, with the support of the Department of Higher Education and Training, conducted a comprehensive analysis of policy and processes in place at all public universities, with a view to advise on policy gaps and minimum standards for policy, processes and support systems in place to manage and prevent gender-based violence within the higher education system.

As part of its work, the MTT recognised that it was important to seek the views of a wider range of individuals and stakeholders in the higher education sector and thus convened engagements with various stakeholders across the higher education sector to receive inputs from those whose experiences, voices, ideas, proposals and testimonies could enrich the understanding of the Task Team's work and provide additional inputs for reflection and analysis. Given the complexity of the legal issues involved in this area of work , legal advice was sourced from experts in higher education.

The report also contains a comprehensive literature review providing an overview of the current and historical context of sexual harassment (SH) and gender-based violence and harm (GBVH) in the South African university system. Many of the procedures in place to investigate and prosecute gendered forms of violence have not only deterred individuals from reporting but also caused distress and, in many instances, led to unjust outcomes.

The report provides an overview of findings from stakeholder dialogues, a literature review, analysis of institutional policies and legal advice obtained all of which recognise the heterogeneity of institutions within the sector and acknowledges that certain concerns remain regarding institutional inertia, incompetence, failure and unresponsiveness to complaints; security issues relating to infrastructure; and the effect of SH and GBVH on academic integrity.

Detailed recommendations are made on a range of areas including communities of practice; complaints mechanisms and support systems; safety and security infrastructure; governance and accountability; funding and resourcing; academic interventions and the development of a knowledge and practice base; awareness raising, advocacy and interventions for social change; and academic corruption and gendered abuse of power.

I appreciate the work of the Task Team and would like to thank the Chairperson of the MTT, Professor Sibongile Muthwa, all task team members, and departmental officials who contributed to the development of this report.

Dr BE Nzimande
Minister of Higher Education, Science and Innovation
February 2024

TABLE OF CONTENTS

TABLES

ACRONYMS

Commission for Conciliation, Mediation and Arbitration	CCMA
Commission for Gender Equality	CGE
Community of Practice	COP
Council on Higher Education	CHE
Department of Higher Education and Training	DHET
Discrimination and Harassment Office	DISCHO
Durban University of Technology	DUT
Gender-based violence	GBV
Higher Education Institution	HEI
Historically advantaged institution	HAI
Historically disadvantaged institution	HDI
Intimate partner violence	IPV
Lesbian, Gay, Bisexual, Transgender, Intersex, Questioning (Queer) and Asexual	LGBTIQA+
Mangosuthu University of Technology	MUT
Ministerial Task Team	MTT
National Register for Sex Offenders	NRSO
North-West University	NWU
Post-School Education and Training	PSET
Promotion to Access to Information Act	PAIA
Protection of Personal Information Act	POPIA
South African Police Service	SAPS
Sexual Violence Task Team	SVTT
Students Representative Council	SRC
Tshwane University of Technology	TUT
United Nations	UN
Universities South Africa	USAf
University of Cape Town	UCT
University of Johannesburg	UJ
University of KwaZulu-Natal	UKZN
University of Limpopo	UL
University of Pretoria	UP
University of the Western Cape	UWC
University of the Witwatersrand	WITS
Walter Sisulu University	WSU

DEFINITIONS

In the course of drafting this report the MTT came across varying definitions of the same terms. Understanding and appreciating the dynamic nature and interpretations of Gender-based violence the MTT deemed it appropriate to offer its own definitions of various terms in this Report. This has been done for clarity and consonance and, hopefully, to facilitate a shared understanding in the sector.

Where there are already legal definitions these have been adopted but, in instances where new terms have emerged, these are defined having harnessed collective knowledge and wisdom.

Contrapower harassment is the harassment of a person with formal power by someone with less formal power.

Deadnaming is explained as calling (a transgender person) by their birth name when they have changed their name as part of their gender transition.

Domestic violence, in line with the Domestic Violence Act No 116 of 1998 (and its amplifications), means physical abuse; sexual abuse; emotional, verbal and psychological abuse; economic abuse; intimidation; harassment; stalking; damage to property: entry into the complainant's residence without consent, where the parties do not share the same residence; or any other controlling or abusive behaviour towards a complainant, where such conduct harms, or may cause imminent harm to, the safety, health or wellbeing of the complainant.

Gender-based violence (GBV) (in line with the definition of the United Nations High Commissioner for Refugees – UNHCR) refers to harmful acts directed at an individual based on their gender. Where GBV is used in this text, it is used as a hold-all term for GBV or Harm and Sexual Harassment (SH).

Gendered forms of violence. The concept of gender has undergone significant development since 1993 and now includes the related aspects of sexual orientation, gender identity and expression, as well as sex characteristics. In referring to "gendered forms of violence" this report reflects this historical trajectory in thinking, reflecting greater contemporaneity and evidencing broadened thinking around the substantive content of gender as concept. **Gender-based harm** as defined by the University of the Witwatersrand, and used in the context of this report, is: Sexism or unfair discrimination based on gender or sexual orientation; sexual harassment, sexual assault and rape; and abuse of power and conflict or interest based on sexual/romantic relationships. Given its consonance with the definition of gender-based violence, in this report the catch-all **gender-based violence and harm** (GBVH) has been used. **Heterosex** means people of the opposite sex only. The presumption that GBV occurrs only in a heterosexual context is outmoded in the current context of gendered forms of violence and is being addressed in current amendments to GBV legislation.

Sexual harassment, in line with the Employment Equity Act 55 of 1998, is defined as unwanted conduct of a sexual nature which makes a person feel offended, humiliated or intimidated. This is not limited to sexual harassment of the opposite gender and includes homosexual and bisexual harassment.

Sex for marks means coercion within a power relationship into exchanging sexual favours for marks.

Sex for jobs means the exchange of sexual favours for job security.

(Both of the preceding definitions are aspects of the “sex-as-currency” phenomenon that is discussed in this report).

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Sibongile Muthwa, PhD

Chair: Ministerial Task Team - Sexual Harassment and Gender-Based Violence and Harm in South African Universities

CHAIRPERSON'S INTRODUCTION

> *"The darkness that has befallen us is affecting the emotional state and wellbeing of people and the country. We are at war with ourselves; a woman is murdered every three hours in South Africa. As a nation and a university community we stand ashamed and distraught …*
>
> *"It is eating away at our humanity. And, while this is happening, we are experiencing the failure of law and order, a breakdown and near collapse of policing, safety and security. We are in deep trouble; as a people we are in distress. These afflictions come from our societies, our communities, our institutions, and we need to own up to them, and act." (Muthwa, Fraser-Moleketi and January-Bardill, 2019)*

I am honoured and humbled to present this report of the Ministerial Task Team appointed to advise the Minister of Higher Education, Science and Innovation on sexual harassment and gender-based violence and harm in the South African public higher education system. The work of the MTT was unfortunately delayed by the COVID-19 pandemic, which forced us into online forms of engagement. However, I hope that this report provides a critical reflection on where our higher education system is positioned in relation to sexual harassment and gender-based violence and harm. I also hope that it provides a set of strong recommendations designed to propel us into a transformed future, where universities can truly be safe and comfortable spaces, free of gender violence.

Gender-based violence and harm (GBVH) and sexual harassment (SH) are some of the most significant and enduring challenges facing higher education in South Africa. As this report shows, despite policy developments, increasing visibility and substantial protest action, South African universities have not succeeded in shifting the prevalence of GBVH and SH. It remains a stubborn blight on our democracy, with devastating effects for those who experience violence and harm. There is no place in higher education for gender violence. As the report outlines, it affects the very core of the academic project and the work that universities are charged with.

As Graça Machel said at the memorial event for Uyinene Mrwetyana, a young South African university student brutally murdered in 2019: "We are a society where women, and children by the way, are not safe anywhere. Something absolutely and deeply wrong is happening in our society ... The problem is not the consequences of what's happening – it's the root cause of why and how we got where we are as a society."

While GBV is endemic in broader South African society, and universities are part of that society, there is reason to hope that universities can be violence-free, and can offer leading solutions to enduring social problems. If we are to truly dedicate ourselves to the elimination of GBV in our university system and society, there is much hard work to be done over and above that currently taking place at national

level, which we acknowledge with appreciation[1]. We hope, as the MTT, that this report will provide a foundation for this work, and a framework for action.

My sincere thanks go to the members of the MTT for their dedicated participation. All members have contributed generously to this project and helped to frame the ideas reflected in it. I would like to thank the writing team in particular for their hard work in shaping the report. Thank you to the community of scholars and activists, students and staff of our institutions and their broader communities who contributed their experiences and ideas to the work of the MTT.

[1] Additional to this report, efforts made at national level could provide opportunities for more collaborative work with the higher education sector and support. For example, at Presidency level, there is the GBVF Response Fund1 launched by the President in February 2021, which aims to play a critical role to make change happen and provide practical support to organisations actively involved in the fight against GBV (www.gbvfresponsefund1.org). In addition, on 28 January 2022, President Cyril Ramaphosa signed three new GBV laws aimed at strengthening efforts to end GBV in South Africa: the Criminal Law (Sexual Offences and Related Matters) Amendment Act, the Criminal and Related Matters Amendment Act, and the Domestic Violence Amendment Act.

EXECUTIVE SUMMARY

The MTT, working through the PSET Framework, was tasked to advise the Minister and the Department on the following matters:

- The effective introduction and implementation of the Policy Framework (PF) to address GBV, with a specific focus on universities;
- A possible inquiry into sexual harassment, GBV and gender-based harm in the university sector, considering work already carried out;
- Measures to ensure that sexual offenders do not escape justice and repeat offences in other institutions;
- Appropriate levels of support to be put in place at public universities;
- The identification of good practices in reporting and managing GBV and support mechanisms that could be replicated in the sector;
- The identification of policy weaknesses across institutions that may be contributing to failures of institutions to adequately manage sexual harassment and other forms of GBV;
- Mechanisms and processes to report on sexual offences in the sector, in line with the Policy Framework, with a view of improving monitoring and reporting; and
- Other possible interventions to improve institutional responses to GBV.

To this end, and cognisant of higher education institutions' fiduciary duty of care towards staff and students, this report focused on measures intended to:

- Strengthen justice;
- Promote the duty of care; and
- Encourage meaningful, transformative conversations and other interventions aimed at changing the social norms that enable masculine domination and its violence.

Five steps were taken to achieve these goals, namely:

- Monthly MTT meetings;
- A literature review aimed at establishing context and past and prevailing conditions;
- A review of the substantive context of existing policy documents;
- Legal research intended to address procedural lacunae in the law; and
- Sectoral consultations with different communities in the higher education sector.

It is pleasing to note that MTT engagements, and participation in consultations, were well attended and robust. There was a similar responsiveness in complying with requests for policy documents, and together this generated a rich body of knowledge from which commonalities, anomalies and well-founded insights and recommendations were derived.

It should be noted that while the MTT was not tasked to look at the whole PSET system, including private HEIs (which are showing rapid growth), the provisions of the Policy Framework (DHET, 2020) apply as much to private institutions as they do to all public PSET institutions.

The MTT also notes that the experiences of staff and students with disabilities are unique, and that this issue was not raised during the consultations. Unfortunately, the sad reality is that there is a dearth of literature on individuals with disabilities in relation to GBV and SH. Consequently, the MTT has made recommendations in this regard.

The consultations also raised complex questions around how best to conceptualise, for policy purposes, some of the unique and specific challenges faced by transgender and non-binary persons, and careful thought is required around how best to craft avenues of recourse that will best address these challenges. This was beyond the MTT's remit, and recommendations have also been made in this regard.

The report is structured as follows:

- Chapter 2 : A review of the South African literature, media articles, investigations and other reports, both historical and recent.
- Chapter 3 : A focus on institutional policies or texts submitted to the DHET at the request of the Minister in 2019.
- Chapter 4 : An overview of the MTT's four consultations, which largely describe the landscape of complaints mechanisms.
- Chapter 5 : A response to concerns identified through the consultations, literature review and policy text analysis. Focusing on relevant, recent decisions, the section outlines possible measures to address the concerns of those working within the higher education sector.
- Chapter 6 concludes the MTT's brief by setting out recommendations.

The literature review in **Chapter Two** aimed first to research and take stock of the sectoral GBV context, and then to break down and analyse the ongoing protests. This was aimed at providing a textured rationale for resolution of the protests, while recognising the heterogeneity of universities, as well as their institutional histories and complex economies of power.

The chapter set out to explore why policies that had grown out of gendered struggles ultimately became a source of opposition. One answer was found in a thin conception of policy and its workings, where the possession of a policy document and a few complaints was taken as evidence of implementation and success. This perception however reinforced the institutional neglect and disregard of gendered forms of violence on campus, and the role that this has played in forms of protest on our campuses. The theme of compliance without appropriate redress is a thread that weaves through this report.

The heterogeneity of HEIs was also evident throughout, with apartheid legacy inheritances revealing different patterns of violence that call for different approaches to resolving them. This implies that the universe of experience on which policy arrangements are based needs to be expanded, and this should include recognising violence's material dimension. Ultimately, gendered forms of violence need to be thought about in complex ways. They are spatially organised, shaped within the crucible of composite institutional cultures, both old and new, and inflected by multiple social relations of power. The challenge to each university is to understand how these come together on their own campus. These understandings then need to be harnessed for a unified and effective sectoral approach which facilitates appropriate support.

An analysis of the literature highlights the challenges in applying this principle, however. This showed that, while superficially similar, contexts differ in terms of location and focus. Three issues, rather than one, emerged as being at stake:

- Justice, denied by institutional deafness to complaints;
- Safety, called into question by HEIs' security infrastructures; and
- The integrity of the academic project, undermined by demands for sex in exchange for academic or employment advantages.

The central point to be taken from the literature study is that a number of universities, whose institutional histories are different, lie outside the realm of experience currently informing policymaking around GBV. This means that any reforms or dispensation of justice are likely to be less successful in such institutions, despite any strides made in the legislative and regulatory frameworks (past and present) to that end.

It was also noted that the mere existence of policy does not encourage the laying of complaints. Evidence shows that while many staff and students were aware of a GBV policy, the majority were not *au fait* with policy content, nor with the avenues available to lodge complaints. This is borne out by the fact that most universities recorded very few complaints until fairly recently, due more likely to deficient complaints mechanisms rather than being model campuses where no gender violence takes place.

Several factors hamper complaints mechanisms at most universities. These include diverse avenues for reporting, confusion around first lines of resort, policy opaqueness, structurally gendered perceptions and practices in regard to reporting (which sometimes shape attitudes towards the "victim" and the "perpetrator"), cultural and linguistic barriers, and a lack of financial resources and capacity.

Campus security emerged as a key area of concern with growing anger and protest dissent in the wake of the increase in GBV against students and, more especially, rape. At first glance, the protests around stranger rapes and the demands they give rise to – more closed-circuit television cameras, improved security services, fencing, and lighting – seem only distantly related to these concerns. Indeed, conceiving of sexualised violence as chiefly a problem of technologies of security may seem a distraction from questions of social values and the ways these shape gendered relations of power (Collins, 2014).

However, questions about universities' safety infrastructure encompass not only the material realities of lighting, fencing, closed circuit television cameras and security personnel but also practices and processes around the control, management and organisation of space. These are all invested by gendered discourses around safety and risk, danger and fear, and care and belonging, both on and off campus. The question of boundaries is made even more acute in relation to students in off-campus residences who are repeatedly and persistently targeted for rape and robbery, not least because security does not seem available there. On- and off-campus accommodation has in fact made female students more vulnerable to stranger rape and other crimes and, in so doing, has circumscribed their safety, security, and importantly, their freedoms.

This is further exacerbated by the fact that "sex-as-currency" is a very real phenomenon on our campuses, which has garnered much media attention in recent years. The 2019 open letter by academics has been the only protest to explicitly ground itself within the material conditions that support violence and exploitation. Young black women, the academics wrote, are in the minority among teaching and instruction staff, and occupy precarious junior or contract positions. These factors render them situationally vulnerable to demands for sex in exchange for job security.

Similarly, student susceptibility to demands for sex in exchange for academic advantages is shaped by their economic circumstances and their impoverishment specifically (Academics, 2019). Sex and forms of harassment as currency are however not limited to the lecturer: student dynamic, but are also discerned in the student: staff and in contrapower relationships (the harassment of a person with formal power by someone with less formal power). All of these are addressed in the report but a key observation is that they are areas which require further dedicated research.

The need for research was a common thread through the engagements. This applied to the generation of new knowledge through a critically reflexive approach to knowledge itself. In addition, it was felt that much more must be done to capture institutional memories and histories, as well as to extend knowledge and praxis beyond the disciplines of health and social sciences, humanities and law, currently the producers of all knowledge in this area. These various specific knowledges are important to developing social interventions for individual universities that go beyond one-size-fits-all generalities.

Social interventions as projects beyond the lecture hall remain largely under-developed within the university setting. Two projects have sought to address elements of this context in very different ways. The "Girl-led policy from the ground up" based at Mandela University and DUT, and Ntombi Vimbela! each has adopted a different approach to empowerment. One focuses on informing and the other on self-defence. While each has its place and value, they both simultaneously provide clear evidence of the heterogeneity of our higher education institutions.

Chapter 3 reports on the review of the current status of GBV policies in HEIs as at 2019, with these having been obtained from the HEIs at the request of former Minister, Dr Naledi Pandor. The chapter starts with a brief contextualistion of the HE policy environment within which public HEIs function. This matrix of law and policy, along with socio-economic and political arrangements and dynamics, offers some insight into the complex environment in which individual HEIs operate. A key part of complying with efficiency and effectiveness is to ensure an agile, relevant and effective institutional policy regime, including policy relating to GBV.

Of South Africa's 26 universities, 21 responded to the Minister's call for their policy documents. Submission analyses focused on the key areas of**: terminology; policies; offices; formal procedures; monitoring and reporting, and repeat offenders.**

The policy documents exhibited a range of strengths and weaknesses. Areas generally well addressed[2] were:

- The definition of sexual harassment and harassment;
- Policy objectives and scope were clearly articulated, as was alignment with other institutional policies or codes;
- Reporting structures and formal procedures for reporting; and
- Support for complainants (psychosocial and sometimes medical).

Policies submitted by institutions largely focused on the regulation of conduct and their associated complaints mechanisms. There was a lack of coherence and consonance in regard to policies and their implementation (or absence of implementation) submitted, which means that more work needs to be done by HEIs before GBV can be dealt with in a multi-layered and comprehensive fashion. Such work must include the related and essential aspects of awareness raising and advocacy, monitoring and evaluation, and transparency around accountability. Two-thirds (14 of 21) of the universities did not appear to have an institutionalised advocacy and awareness programme that would familiarise the university community with the policy.

While it is not expected that policies should be identical given the diversities that characterise universities, there are certain standard provisions that all policies should contain, including comprehensive definitions of different forms of GBV. Furthermore, none of the policies is costed and it is not clear whether there is institutional capacity to implement them. Finally, none of the policies mentions shared services among institutions in the same region.

There is work to be done within and between universities to establish effective ways of dealing with GBV so that there is national consistency. This will not only create a more responsive environment for those currently experiencing, or at risk of, GBV, but will also mean that staff and student perpetrators who escape detection in one institution will not be able to continue this behaviour at other HEIs.

The importance of policy consonance is increasingly evident when it to comes to providing options to GBV victims/survivors (as well as perpetrators) that may resonate more closely with their contexts and personal circumstances. At present criminal charges are the only legal redress or recourse for those affected, although other means and options for redress are offered and implemented in other countries. For this to be considered in South Africa, there would have to be a very solid policy platform to accommodate the various options and, most importantly, to implement them.

The prevailing institutional policy environment and the substance of other forms of, and options for, redress are discussed in depth in Chapter 5.

The DHET secretariat together with MTT members invited various universities to take part in virtual consultations on GBV across the country. This was in addition to a comprehensive literature review, a legal and policy analysis on the history, and the contextualisation and survey of the scholarly work on GBV and SH in SA higher education. These virtual consultations, discussed in **Chapter 4**, were designed to give voice to, and solicit input from, stakeholders across the sector. They formed part of a holistic

[2] There may be a few institutions where there is a lack of clarity but most policies were well-articulated.

approach aimed at advising the Minister on the nature and scope of GBV and SH in South African public universities. They were categorised according to the following themes:

- The situation facing complainants of GBV/SH and harm in South African universities;
- The specialised responses of universities to GBV/SH and harm;
- Assessing GBV/SH and harm within university communities; and
- The management of GBV/SH responses in universities.

The following aspects are addressed in the report:

Gendered Power Relations and Institutional Cultures, which re-emphasised the paucity of research on GBV and the urgent necessity for future research into this area to give a full sense of its extent across the sector.

Leadership, Accountability, and Resourcing. The full participation of leadership and governance in higher education institutions was suggested as critical in the transformation of institutional cultures towards creating safe campuses. Notably, it was suggested during plenaries that a budget be allocated via a top leadership directive for this work. Cross-sector standardised practices in resourcing and capacitation of the offices involved in GBV/SH work were recommended as this could help different offices to coordinate, institutionalise and share information. It became clear that across the sector there was no single office in charge of the GBV/SH cases, with several institutions (UJ, Wits, and UWC) indicating that the Gender Equity offices were responsible for handling GBV/SH cases. Participants suggested that institutionalisation of the GBV/SH work on campuses could be coordinated within a single office, linked with stakeholders spread across the institution. Other participants, however, warned of the danger of overburdening the small number of staff in GBV/SH offices and a possible shift of accountability away from all other parties in an institution.

A National Register. It became apparent, especially with students, that, with the current reporting mechanisms, confidentiality in case management is a big challenge. The notion of a national register to keep track of perpetrators of GBV was raised, so that names would be known should perpetrators attempt to register with another institution of higher learning. Too often perpetrators resign or transfer to another university without being prosecuted and punished, which leads to reticence on the part of survivors to report cases. Centralisation of the case management processes and improved ICT tracking systems could help to standardise national responses to GBV while measuring the impact of the programmes.

Participants in the consultations reported that institutionalising anti-GBV work needs a coordinated effort. This would involve intensive training and education across institutions, and promoting a nationwide basic minimum training standard across the sector.

Innovations in reporting of GBVH and sexual harassment cases. Some institutions have already innovated around reporting sexual harassment and other forms of GBV, by developing online reporting tools. Furthermore, it is necessary for universities to consider resourcing easily accessible online training for all stakeholders on GBV responses and initiatives.

Case management and confidentiality. Limitations in reporting procedures and the silencing of victims/survivors in higher education have resulted in some resorting to other avenues to seek public justice. Unfortunately, some students resort to sharing allegations and naming perpetrators on social media platforms. While there is criticism of, and legal consequences for, the use of these channels to counter institutional denialism and distrust of the victims, Salter (2013: 226) notes it has provided victims with "unparalleled opportunities to form and participate in counter-publics in which allegations of sexual violence are being received, discussed, and acted upon in ways contrary to established social and legal norms". Based on the views shared in the consultations and legal considerations, the MTT makes recommendations on this phenomenon.

Encouraging use of existing reporting mechanisms: Participants urged universities to refrain from perceiving the reporting of GBV as damaging to their brand or public image. Institutions of higher learning should understand they have a pivotal role to play in fighting the scourge of GBV. It was further suggested that, through the DHET, there should be measures in place to ensure institutions account periodically. The MTT has made a recommendation in this regard.

Language and psychosocial support. It is essential to address the issue of securing temporary safe spaces or havens for victims while other arrangements are made. Similarly, the issue of language in counselling facilities is important in creating safe and intentional spaces for victims/survivors.

LGBTQIA+, naming and communications. The participants noted the potential tensions between gender identities, sexuality, and naming in the official communication by the universities. It was argued that trans-communities and those who do not identify with titles and nouns sometimes felt discriminated against. Consideration was given to whether this needs to be raised within the broader gender transformation agenda of higher education. From the consultations, it became clear that higher education must provide leadership and guidance on how issues of naming and identity are to be classified (for example, discrimination, or GBV), taking into account the broader gender transformation project of the academy. This could be part of the policy definitions to guide institutions on how to address some of these questions.

Education and training of campus stakeholders. The main challenges around advocacy programmes raised by most institutions related to funding, resources and staff dedicated to such efforts. As noted, in most institutions the offices responsible for dealing with incidents of sexual harassment, rape and GBV are often under-resourced and have limited funding. It was recommended that, given the lack of resources and coordination at national level, a GBV target should be linked to various DHET grants.

Legal questions raised in the consultations. Legal questions included the following:

- The resignation of accused to avoid prosecution, which then allowed them to move on and possibly repeat the behaviours;
- The need for background checks and the possibility of an offenders' register;
- Different legal strategies applied at different campuses;
- Labour law applied to staff and administrative law to students;
- Continued access to campus of alleged perpetrators, with the possibility of re-traumatising the victim; and
- Staff and students who continue to perpetuate GBV and harm on- and/or off-campus.

These concerns are addressed comprehensively in **Chapter 5.**

Given the significance of this work with regard to GBV in the sector, the kinds of legal policies, systems and practices available at our HEIs and the unsatisfactory handling of cases of GBV came under intense scrutiny. The team engaged in strong debates on questions of justice for victims of GBV and the nature of such justice in our sector, understanding that these also reside at the heart of the integrity and credibility of disciplinary systems. Encouragingly, these questions (and others) are being considered well beyond the MTT and universities, ensuring that legal and quasi-legal responses to GBV contribute meaningfully to this evolving field.

In line with its brief, the MTT appointed legal experts familiar with the university sector and who possessed legal expertise in relation to labour law as it applied to sexual harassment and other forms of GBV. The legal experts were tasked to consider specific questions, including:

- What are the legal considerations in relation to the naming of perpetrators of GBV or harm?
- What are the legal considerations in relation to a sexual offenders register for the higher education sector?
- What are the legal considerations in relation to the management of GBV and harm, for both staff members and students?
- What are the legal considerations regarding third-party reporting and/or evidence of GBV incidents?

Chapter 5 thus opens with a brief discussion around how justice may be theorised in the context of our campuses. Thereafter it turns to common fault-lines emerging from the MTT's engagements around reporting GBV; managing disciplinary proceedings, and the different forms of sanctions that may be considered. In addition to matters of discipline, the chapter proposes protective mechanisms for individual complainants as well as for the broader university community. Ideally, universities would want to prevent harm altogether. Accordingly, the role, design, and legality of registers or background checks in serving this purpose are outlined next. The chapter concludes by setting out policy considerations that address relationships between staff and students.

The following aspects were discussed in detail:

- A matter of justice (criminal, restorative and reparative);
- Reports of GBV by third parties;
- Disciplinary hearings in the absence of a complainant;
- Evidentiary challenges (hearsay evidence);
- Pursuing a disciplinary hearing against an employee who has resigned or is absent (employees who resign with notice or where there is no notice period);
- Interim protective measures;
- Suitable sanctions for matters where dismissal or expulsion is not recommended;
- When convictions are overturned on technical or procedural grounds;
- Naming those found guilty of GBV;
- A register for the higher education sector;
- Background checks on potential employees; and
- Addressing relationships between staff and students.

Many of the procedures to investigate and prosecute gendered forms of violence can legitimately be criticised. They have not only deterred individuals from reporting but also caused distress and led to unjust outcomes. The MTT notes some universities' efforts to pioneer approaches that are different and strongly recommends that these be shared with others to build a body of just, equitable practice around complaints. Recent case law adds further to this, pointing to a range of new directions that can be applied to some of their most vexing, and until now intractable, problems. What will be important in taking this forward is a supportive community of practice that can enable shared learning as these recommendations are evaluated and applied.

In **Chapter 6,** the concluding chapter of the report, the findings and analyses of the literature review, policy analysis, sector consultations and legal considerations have been distilled and a series of recommendations to address these issues proposed. These proposals are clustered within eight areas of focus, with responsibility for their implementation distributed among HEIs, the DHET, Universities South Africa (USAf), Higher Health and the CHE.

As the MTT's various investigations show, universities' responses to GBV lie on a spectrum and it cannot be assumed that all will be in a position to comply immediately with the Policy Framework's provisions and these recommendations. Indeed, if pre-existing disadvantages are not acknowledged and addressed, they will only accumulate in the face of additional demands. Our recommendations are thus rooted in the principles of heterogeneity and collaboration and mutual learning.

RECOMMENDATIONS

The MTT's recommendations summarised below centre around the following areas:

- The formalisation of a community of practice (recommendations 1-4);
- Complaints mechanisms, systems of support, and processes and procedures (recommendations 5-24);
- Universities' safety and security infrastructure (recommendations 25-29);
- Institutional governance and accountability (recommendations 30-33);
- Funding and resourcing (recommendations 34-39);
- Academic interventions and the development of a knowledge and practice base (recommendations 40-43);
- Awareness raising, advocacy and other interventions for social change (recommendations 44-46); and
- Academic corruption and the gendered abuse of entrusted power (recommendations 47-49).

Recommendations around the formalisation of a community of practice

1. In the course of our investigations, the MTT identified the organic emergence across HEIs of a community of practice (COP) responding to GBV. Given the way this initiative embodies collaboration and mutual learning, the **COP is to be strongly encouraged and supported.** Formalising its functions will likely require developing guidelines around the structure and functioning of the COP, including outlining how the COP will relate to USAf.

It is recommended that the COP and USAf finalise these arrangements within six months to one year of the release of the MTT's report.

It is further recommended that the COP be tasked with the following:

2. **A comparative review of institutional policies to identify gaps and areas of misalignment**, including in relation to the Policy Framework. The intent of this recommendation is not to ensure that all institutional policies are the same, but to ensure that all complainants have access to a similar quality of justice regardless of institutional location.

3. To ensure that the use of terminology is consistent across all institutions and that terminology and definitions in use across the system are relevant and up to date, **a centralised glossary of terms applicable to all forms of GBV should be developed for use by all institutions**. This could be updated annually, as part of the central repository to be established (see later recommendation). Part of the review recommended by point 2 should also focus on the use of terminology with a view towards standardisation.

4. **An audit of individual universities' needs is crucial** to reducing the disparities between HEIs' capacity to respond to GBV. This should identify the budget currently available to each university for this work, the number of staff providing the university's response, and the training being provided to each member of staff.

It is recommended that the COP complete these activities within 12 months of the report's release.

Recommendations around complaints mechanisms, systems of support, and processes and procedures

A just and responsive complaints mechanism is a central component of attempts to address GBV. This mechanism is responsible for the application of a range of processes and procedures dealing with the correction and sanctioning of misconduct, and it must be linked to healthcare and psycho-social support services. Given the differences between universities, we recognise the need for different approaches to the design of such mechanisms. While a centralised structure may be both possible and feasible for some universities, those with multiple campuses may find devolved structures better adapted to their circumstances. The MTT does **not** make a specific comment on which design should be adopted. We do, however, recommend the following:

5. **All systems of complaint must be centrally coordinated** for reporting, case management, case monitoring, and resource mobilisation. Possible options include anything from an office to an institutional coordinating committee. Regardless of design, a key learning from chapters 2 and 4 is that this central point must enjoy institutional authority, including the ability to readily access university management at the highest levels.

6. The **roles, responsibilities and powers of each element of any complaints mechanism must be clearly defined** in relation to the central coordination point. The literature reviewed in Chapter 2 emphasised how a lack of collaboration confused lines of reporting.

The following recommendations deal with the substantive content of policy documents and the processes and procedures they give rise to.

7. Given the finding that institutional policy relevant to different forms of GBV is often dispersed across different policy documents, the MTT recommends that **each institution has an overarching policy framework addressing all forms of GBV**. This may take different forms at different institutions, but it is important for policies to be integrated to enable cross-referencing, as well as to align processes and systems to manage different aspects of GBV, and to improve how advocacy, communication and training take place.

8. Following the conclusions on differing content across institutional policies, the MTT recommends that **institutional policies (or combination of policies) must, at a minimum, include the following**:

    a. Provisions dealing with **intimate or sexual relationships between students and staff, and staff and staff.** The literature review pointed to such relationships' potential for undermining the integrity of the academic project, including how they may provide a "cover" for sex for marks. Principles guiding such a policy are contained in Chapter 5, section 5.13.
    b. The literature review in Chapter 2 noted the institutional silence surrounding contrapower harassment. The MTT recommends that **each institution develop a policy around the harassment of staff by students** and that this be incorporated within the framework of policies dealing with GBV. Policy should address how this will be communicated to students, and measures available to address it. In the context of this policy, attention must also be paid to the methods by which students assess and evaluate lecturers.
    c. Both the review of HEIs' policy documents, as well as the body of literature, show intimate partner violence (IPV) to be neglected by institutional policy, as well as overlooked by students as an issue of concern. The complicated and ambivalent emotional attachments between intimate partners may deny help and support to students experiencing such abuse. The MTT recommends that each university's policy **make specific mention of IPV** as an issue of concern and set out a range of measures for its redress.
    d. HEIs are likely to have already developed policy around the use of information and communication echnologies (ICT). These must either be adapted to **recognise and respond to all forms of digital harassment of staff and students,** or a provision inserted into the GBV policy that will address online forms of abuse.

9. The MTT recommends that **all institutional policies be reviewed to ensure harmony and alignment with GBV policy.** This is necessary to prevent contradictions and gaps in policy.

10. Incidents of GBV may also need to be addressed through the interface with policies addressing disability, sexual orientation, gender identity and expression, and race. These various policies **must reference each other and give guidance on the management of simultaneous breaches of multiple policies.** It is especially necessary to provide guidance around who will be responsible for the overall management of such complaints.

The consultations raised a number of legal and practical considerations around disciplinary process and procedure, with the responses to these detailed in Chapter 5. Drawing from these, the MTT proposes the following:

11. While the MTT is not in support of mandatory reporting, it does recommend that institutions **investigate every report by a third-party to evaluate its merits and ascertain the scope of the GBV-related incident, and to determine the nature of evidence available.** If the third-party's report and the subsequent investigation do not yield concrete evidence (such as the identity of the parties involved), then the institution cannot proceed with any formal process. This means that third-party reporting must be included as part of the reporting policy of institutions. Chapter 4 includes suggested practical steps and critical considerations to be made in incorporating third-party reporting into institutional policy and practice.

12. Universities can examine staff and students following physical assault and document their findings accordingly. These records will have evidentiary value in criminal proceedings. Universities cannot, however, conduct the clinical forensic examination, nor collect forensic evidence in cases of rape and sexual assault. The MTT thus recommends that **all policies set out the interface between criminal justice system procedures and those of the university.**

13. The MTT recommends that **institutions must put in place formal procedures for conducting disciplinary hearings in the absence of a complainant,** where this relates to an institution's responsibility for ensuring a safe working environment. Specific conditions to be considered in implementing this recommendation are included in Chapter 5, where the MTT details the legal considerations relating to evidence.

14. The MTT recommends that **each institution must provide clear procedures within policy relating to how disciplinary hearings will be pursued against employees who are absent or resign during disciplinary procedures.** This includes ensuring that disciplinary processes are implemented timeously. Further detail on the legal considerations relating to this are contained in Chapter 5.

15. The MTT recommends that **interim protective measures must be put in place and outlined in institutional policy** to ensure that the institution can ensure a safe environment for reporting, investigation and resolution of cases; to allow processes to take place without interference; to protect the integrity of processes; to avoid tampering with evidence; to prevent intimidation of witnesses and complainants, and to prevent the recurrence of alleged conduct. Further information on this recommendation is contained in Chapter 5.

16. The MTT recommends that **policies and disciplinary procedures must set out possible sanctions for offences clearly**, taking into account the different nature of offences and any mitigating or aggravating factors. Further detail on this recommendation is contained in Chapter 5. The policy frameworks must include reflection on approaches that could be taken, including restorative approaches where necessary. However, it must be noted that in the absence of a strong policy framework with clear disciplinary and reporting procedures, this may not be effective.

17. The MTT recommends that **institutional policy and disciplinary procedure must clearly outline the disciplinary provisions relating to employees in line with employment law.** (Guidelines on matters related to this are contained in chapter 5).

18. The MTT recommends that **institutions must outline in policy the rights and responsibilities of the institution and parties involved in complaints relating to the protection of confidential information.** Institutions also need to outline in policy **when and under what circumstances information can be publicly released** about people who have been found guilty of offences. This clarity is required for the legal protection of complainants and accused, as well as to protect institutions, while balancing this with the need for accountability and transparency. (Further information and guidelines on these matters are contained in chapter 5).

19. The MTT recommends **the establishment of an offenders' register specific to public higher education institutions.** Such a database would serve to create a community and network among institutions of higher learning, and to guard against institutions employing candidates who have been found guilty of GBV. In this way, we foster a culture of responsibility among institutions to protect every campus, student, employee and any other person on campus from perpetrators of GBV. At the very least, such a database would allow institutions to make an informed decision when hiring a candidate or admitting a student. Specific considerations are outlined in chapter 5.

20. The MTT recommends that **institutions include a clause in their employment contracts to the effect that the institution reserves the right to publish the name of a person who has been found guilty of GBVH, including registering the details on a national register.**

21. The MTT recommends that **institutions clearly communicate their screening process for new employees in institutional policy**, which would include the right of the institution to consult the national register. Potential applicants for any position ought also to be alerted to this screening process by the job advertisement. This is little different to the way advertisements note their adherence to the principles of employment equity.

22. Some HEIs have established an office of the Ombud to deal with complaints and conflicts within the university. The Ombud may be helpful in dealing with appeals and complaints about how GBV matters have been handled by the university. Given that an office of the Ombud is not a routine feature of all universities' structure the MTT does not make a recommendation in this regard. **The MTT does, however, suggest that this option be explored and evaluated within settings that include an Ombud with an eye towards the potential value of this option in future.**

These revisions to policy should be finalised within 15 months of the release of the MTT's report. Further, the COP must take these recommendations into account while reviewing institutional policies in terms of Recommendation 2.

The DHET must also conclude its investigations into the content, location and management of a register within 15 months. These investigations should also consider the feasibility of USAf maintaining a closed database of offenders which could be managed along the lines of the South African Fraud Prevention Services' database.

All complaints mechanisms must be integrated with psycho-social and other support to complainants. Indeed, in some instances such support may be all that staff and students request. This is particularly likely in circumstances where experiences of GBV are historical or where the investigation and prosecution of matters fall outside the university's jurisdiction. Our recommendations are as follows:

23. In the course of its consultations the MTT discovered that some complaints mechanisms included emotional support to staff while others did not. Recognising that the inclusion of such staff support is almost always dependent on funding, the MTT recommends that the central coordination point **establish strong systems of referral and follow-up between all elements of the complaints mechanism and student counselling structures, as well as those for staff**. As these are general counselling and support structures, they must be trained on the contents of GBV policy, as well as the nuances and specificities of counselling and other forms of psycho-social support required in the context of GBV.

24. The central coordination point must **establish systems of referral to campus health and wellness structures.** These structures should treat the consequences of assault within the context of IPV, as well as attend to the reproductive rights of those who have experienced rape. As post-exposure prophylaxis to prevent HIV infection after rape is generally only available from designated health facilities, the central coordination point must identify the closest such facility to the university. It is not necessary for any person to lay criminal charges before they can receive post-exposure prophylaxis from any designated facility to prevent HIV.

The MTT recommends that universities entrench these systems of referral and follow-up within six months of the release of the MTT's report. The availability and functionality of these services should be assessed by the COP and their requirements included with the audit of needs.

Recommendations around universities' infrastructure of safety and security

Chapter 2, as well as aspects of the consultations, highlighted how elements of safety and security infrastructure have been overlooked in attempts to combat GBV. These must be attended to, especially in relation to HDIs where the backlog in improvements to infrastructure are both long-standing and urgent. The MTT makes its specific recommendations below.

25. **HEIs must ensure that GBV policy pays specific attention to student housing.** In particular, they must ensure that those responsible for student residences understand that they have a duty to prevent opportunities for GBV and must take action when it occurs.

26. All staff responsible for the day-to-day running of residences, as well as their overall management, must be trained around GBV policies. They must also receive training to equip them in receiving and addressing complaints.

27. The MTT was extremely concerned to discover the very limited nature of security arrangements made available to accredited off-campus residences. **All universities entering into agreements with agencies offering accredited off-campus residences must ensure that security services are a non-negotiable feature of contracts.**

28. Complaints about the quality of security services emerged from both the literature review and consultations. The MTT recommends that **all security personnel should receive training around GBV which should also equip them with first responder skills**. Where security services are outsourced, contracts with service providers must stipulate that personnel are appropriately trained.

29. The literature review highlighted how students are raped on their way to campus, as well as in residences and their immediate surrounds. In the aftermath of these attacks, students may be extremely fearful of using public transport to campus or of remaining in their residences. To address this, **the MTT recommends that universities develop relationships with a local shelter for victims of crime and violence, typically run by non-profit organisations.** If students cannot be relocated onto campus for a period or placed in a different residence, arrangements can be made to temporarily house students at these facilities.

Recommendations relating to institutional governance and accountability

30. As part of the annual reporting processes of institutions, the MTT recommends that **a specific report be tabled to Council outlining the work done in the implementation and support of institutional policy relating to GBV.** The reports should cover reporting; disciplinary processes undertaken; training conducted; advocacy and communication, and policy developments and changes. This should be considered when the reporting regulations are reviewed.

31. The MTT recommends that institutions should **include specific plans, monitored at Council level, to outline mandatory training and available institutional support on policy and procedures relating to GBV.** This should include specific plans for training or support to different groups of staff and students (for example, SRC and students in leadership positions, security and other contractors, academic staff, HR officials, student development/affairs professionals and residence wardens).

32. The MTT recommends that institutions **develop advocacy and communication plans in line with policy.** These should include orientation processes for staff and students to ensure widespread understanding of policy frameworks relating to GBV. The implementation of these plans must be reported on in the report to Council, as well as the reporting tool recommended below.

33. As part of the accountability linked to the national Policy Framework, **an online reporting tool should be developed for higher education institutions**, to allow for standardised reporting. This should be carefully developed to ensure alignment in how institutions report. At the moment there is no standard and, given the complexity of these issues, the reporting system needs careful consideration. The MTT recommends that this system be collaboratively developed by the COP with the goal of being a standardised system with easy-to-understand terminology.

Recommendations relating to funding and resourcing

Inadequate funding has hobbled attempts by universities to address GBV. The MTT is deeply concerned that this largely remains the case, despite protests and policy reforms. It is likely that case management will continue to suffer, complainants will remain unhappy with case outcomes and the vicious cycle of protest, followed by yet more policy reform, will continue. The MTT therefore recommends the following:

34. **Attention to GBV is essential to transform the higher education sector and funds should be allocated towards GBV initiatives as part of this transformation.** However, the change agenda is substantial and there is a risk that GBV may be subsumed within it, as has happened previously (see Chapter 2). To prevent this, the MTT recommends that actions to address GBV should be reported on in their own right and that their budgets also be reported on separately.

35. **USAf should undertake fundraising** for its member institutions guided by the audit of needs proposed by recommendation 4. These funds should be aimed at building the higher education sector's response by prioritising training of university staff responsible for implementing processes and procedures. This will also have the effect of sharing skills and encouraging mutual learning.

36. USAf must use the audit of need produced by the COP in terms of recommendation 4 to **establish a baseline informing the development of norms and minimum standards, as well as cost effective and functional responses.** This will assist universities to budget appropriately.

37. The MTT recommends that, in line with the institutional policy recommendations, institutions **ensure that budgets are made available to support the minimum requirements for policy implementation as outlined in the policy frameworks.**

38. The MTT recommends that these minimum norms and standards be submitted to **the DHET which must consider making a grant available to enable universities to employ key staff for their GBV response**. These funds should prioritise support for HDIs.

39. Skill and experience are built over time through exposure to multiple cases, and this expertise is not built where only a few matters proceed to a hearing. Disciplinary tribunals often rely on the availability of academic staff whose other commitments may mitigate against their participation. The MTT recommends that USAf **fundraise for shared regional services in relation to disciplinary proceedings**. At a minimum, this could enable the appointment of a legally qualified chairperson, rotating this function across universities.

Recommendations 34 to 39 need to be prioritised to prevent efforts to address GBV from being rendered ineffective from the outset. Recommendation 38 is a long-term goal and the MTT recommends that USAF and the COP work towards this over a period of one to three years, evaluating and adapting approaches as these are tested.

Recommendations around academic interventions and the development of a knowledge and practice base

Chapter 2 highlighted the limited and uneven body of knowledge developed by different HEIs around the functioning of complaints mechanisms, institutional histories and memories. Given that their core function is the production of knowledge, universities are well-positioned to create both the knowledge for, and knowledge of, transformation outlined by Chapter 2. Our recommendations in this regard are as follows:

40. Much remains unknown about the range of experiences of GBV within the setting of the university. **Universities must seek to understand the experiences of staff and students with disabilities, as well as LGBTQAI+ students and staff, to ensure that these are effectively responded to by policy.** This reflects one aspect of knowledge for transformation.

41. The literature review in Chapter 2 suggests that violence may be differently patterned across universities. To get to grips with this, **the MTT recommends that HEIs take a critical, in-depth look at their institutional histories and the ways their economies of power function and are distributed.** When these sorts of research exercises are comparative, they contribute significantly to mutual learning and enhance understanding of the conditions that facilitate or constrain violence. This further contributes to collaborating around the development of knowledge for transformation.

42. It is crucial that HEIs build and maintain a body of knowledge and practice around their different kinds of interventions; better understanding of the university context is key. **The MTT strongly recommends that HEIs document and critically assess their interventions on an ongoing basis.** This should not be for the sake of compliance but with the aim of ongoing learning. When undertaken in this spirit, such research initiatives offer insight into knowledge of transformation, or what it is that the universities' various endeavours are effecting in practice.

43. The MTT recommends that the **CHE scans the capacity of the undergraduate curriculum to challenge and develop students' thinking around transformation**. This exercise should not be confined to the Humanities, Social Sciences and Law but must also be extended to the STEM fields as well as those of Accounting and Economics.

Recommendations around awareness raising, advocacy and other interventions for social change

Both the literature review and the consultations made it clear that social interventions intended to transform gender relations are under-developed, with most attention having been paid to complaints mechanisms and disciplinary processes. Yet even where the latter are concerned, the lack of awareness of their existence limits their use. The MTT makes the following recommendations:

44. The COP must **collectively develop educational and informative materials around GBV and collaborate to share methods around their distribution.** The COP could consider developing such materials in partnership with Higher Health.

45. Universities could partner with Higher Health around the **presentation of dialogues and other standardised interventions around GBV**. However, as Chapter 2 suggested, they will also need to develop more specific interventions around GBV based on an analysis of their institution's history and its economies of power. This more specific work will need to be guided and informed by the research suggested in recommendation 6.6.

46. Universities must translate the research proposed by recommendation 6.6 into **interventions attentive to disability, sexual orientation, gender identity and expression**. They must evaluate their effectiveness with an eye towards sharing these with one another.

Recommendations around academic corruption and the gendered abuse of entrusted power

Sex for academic advantage or employment benefits constitutes *quid pro quo* harassment and may also qualify as rape in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. When it occurs within the context of broader corruption within an HEI it may be especially difficult to report and address.

47. The MTT recommends that these **gendered abuses of entrusted power be routinely probed in investigations, including in instances where HEIs are placed under administration.**

48. **The DHET must consider a whistle-blowing mechanism able to receive and respond to reports of academic corruption**. An online reporting tool may be particularly suited to this. The DHET should also proactively follow up on such reports, whether these appear in the media or investigative and other reports.

49. The MTT's investigations show that sex for marks and other gendered abuses of entrusted power have received negligible attention. As this is a form of abuse that is readily sensationalised and misunderstood (especially in ways that rely on retrogressive gender stereotypes), **we recommend that the DHET consider developing, in partnership with the COP, a thoughtful campaign challenging the practice. This could be introduced in tandem with launch of a practical intervention such as the proposed register and/or whistle-blowing mechanism.**

1. INTRODUCTION TO THE MINISTERIAL TASK TEAM REPORT

1.1. INTRODUCTION AND BACKGROUND

Struggles over the recognition and redress of gendered forms of violence and abuse in university settings have been a feature of the higher education landscape in South Africa since at least 1984, reaching a peak in 2016, and prompting the Department of Higher Education and Training (DHET) to intervene with two strategic initiatives. The first of these entailed the development of policy guiding responses by the post-school education and training (PSET) sector to such violence and abuse. The second, a strategic initiative in 2019, entailed the appointment of a Ministerial Task Team (MTT) to advise on matters relating to sexual harassment (SH) and gender-based violence (GBV) at public universities in South Africa. The establishment of the MTT had been prompted by an open letter endorsed by more than 84 academics from various South African universities, that called on the former Minister of Higher Education and Training, Dr Naledi Pandor, to consider instituting further measures to address sexual harassment and other gendered forms of violence on campus. The MTT's Terms of Reference (TOR), outlined below, provide a framework for the collation of work done on the mentioned initiatives, to maximise their overall impact and benefit.

1.1.1. Terms of Reference

The Ministerial Task Team was tasked to advise the Minister and the Department on the following matters:

- The effective introduction and implementation of the PSET Policy Framework (PF) to address GBV, with a specific focus on universities;
- A possible inquiry into sexual harassment, GBV and gender-based harm in the university sector, considering work that has already been carried out;
- Measures to ensure that sexual offenders do not escape justice and repeat offences in other institutions;
- Appropriate levels of support needing to be put in place at public universities;
- The identification of good practice in reporting and managing GBV and support mechanisms that could be replicated in the sector;
- The identification of policy weaknesses across institutions that may be contributing to their failures to adequately manage sexual harassment and other forms of GBV;
- Mechanisms and processes to report on sexual offences in the sector, in line with the Policy Framework, with a view of improving monitoring and reporting; and
- Other possible interventions to improve institutional responses to GBV.

1.2. RATIONALE: WHY UNIVERSITIES MUST FOCUS ON GENDERED FORMS OF VIOLENCE

Expanding access to higher education has been an important policy goal in democratic South Africa. This goal appears to have been achieved where women are concerned. In 1994, women comprised 43% of university enrolments. Five years later, in 1999, they exceeded men's enrolments for the first time (Council on Higher Education, 2004). By 2019, women accounted for 59.6% of all those enrolled in public higher education (DHET 2021: 10). Female students are also in the majority at private institutions of higher education, their proportion increasing from 52.6% in 2011, to 58.4% by 2019 (DHET 2021: 26). Of the approximately 1% of students enrolled in 2019 in public higher education institutions reporting a disability, 54.1% were female (DHET 2021: 18).

Access to higher education, however, cannot be measured by referring to aggregate numbers alone.

The proportion of women students in contact education varies by institution, from a low of 46.6% at Vaal University of Technology to a high of 62.5% at Sefako Makgatho Health Sciences University in 2019 (DHET 2021: 98)[3]. These figures are also skewed by race, with white women making up 14% of the female student body, African women 75.5%, coloured women 7.4%, and Indian women 3.9% (DHET 2021: 10).[4]

Achieving gender representivity has been less successful among staff where women continue to dominate administrative positions, with only the University of Venda (UV) and Sol Plaatjie University (SPU), at 50.1% and 50.7% respectively, demonstrating gender parity in 2019 (DHET 2021: 99). Slightly more universities employ 50% or more women in teaching and instruction positions: Nelson Mandela University (50.0%); University of the Free State (51.3%); University of the Western Cape (51.9%); Unisa (52.5%); Sefako Makgatho (53.2%); and University of Pretoria (54.8%). When it comes to staffing, white women are over-represented in teaching and instruction positions, at 22.1%. So too are Indian women, although to a much smaller extent (4.5%). African and coloured women, indicated at 17.1% and 3.9% respectively, are markedly under-represented in academic teaching positions (DHET 2021: 99).[5]

More importantly, as a Council on Higher Education (CHE) report noted in 2011, "the expansion of access to females, however, does not seem to be accompanied by the provision of a supportive and welcoming environment for female students" (CHE 2011a: 11). As is the case globally, gendered forms of violence and abuse are a key and longstanding feature of that unsupportive and unwelcoming environment.

[3] Percentage calculation by authors.
[4] Percentage calculation by authors.
[5] Percentage calculations by authors.

1.3. DEFINING THE FOCUS OF THE MTT'S WORK

Gender-based violence (GBV) is the central focus of the MTT's work. However, while the term GBV currently enjoys widespread use, it is not always clear what it refers to or encompasses. As is the case with any attempt at ordering messy realities, the notion of GBV also raises definitional boundary obfuscation when it comes to what to include or exclude, and defensible bases for these decisions.

These questions became more acute as the MTT's work proceeded. Close attention to policy documents, for example, showed fairly narrow definitions of violence at Higher Education Institutions (HEIs), and the aligned use of different terminologies, while the consultations highlighted the inclusion of acts not traditionally found in definitions of GBV. The MTT thus turned to the global departure point for thinking about GBV, that is, the 1993 United Nations' General Assembly Declaration on the Elimination of Violence Against Women (DEVAW). The DEVAW emerged out of two decades of activism by women's movements, which first made itself felt at the inaugural United Nations Conference on Women in Mexico City in 1975. The DEVAW thus reflects a conceptualisation of violence, grounded in a particular historical period focusing on violence against women, which was defined as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life" (United Nations, 1993).

The DEVAW definition is a generous one that treats GBV as an umbrella term for a range of acts disproportionately experienced by women whose shared inheritance is the historical inequality between men and women. The acts may assume numerous forms, including physical, sexual, emotional and psychological, as well as economic, and vary across societies and at different historical points. Drawing from this definition, the MTT has used the term GBV when referring to gendered forms of violence in general. However, it is also apparent from the literature that rape has often been made synonymous with GBV to the extent that it obscures or precludes other forms of gendered violence from discussion. This has implications both for what is recognised as a wrong, as well as recourse offered to right the wrong. To prevent these oversights and erasures, this report also offers specific discussions of different forms of GBV.

A product of its time, the DEVAW foregrounds violence in a heterosexual gender binary. The concept of gender has, however, undergone significant development since 1993 and now includes the related aspects of sexual orientation, gender identity and expression, as well as sex characteristics. This report reflects this historical trajectory in thinking, with the literature review as a retrospective analysis focusing on the violence of heterosexual relations (or heterosex, as Shefer, Strebel and Foster (2000) termed it). The consultations, part of the process of engagement, reflect greater contemporaneity and broadened thinking around the substantive concept of gender.

This report also employs the gendered terminology of the articles reviewed, reflecting how this has evolved over time. In other sections, a mix of language has been used that reflects gender diversity but is also gender-specific. Since women have historically borne the brunt of the violence of heterosex and other gendered forms of violence, we have sought not to dissolve this recognition entirely by only using gender-neutral language.

1.4. THE EXTENT OF GENDERED FORMS OF VIOLENCE: AN OVERVIEW OF THE AVAILABLE DATA

Despite the paucity of current studies, they do sketch the contours of the problem of gendered forms of violence in higher education, and they highlight abuses that have attracted little public discussion, especially in relation to staff.

With the exception of reported rape, there is no national data quantifying the extent of gendered violence experienced by staff and students. However, in 2012 (the only year for which data is available) students reported 10% of all adult rapes recorded by the South African Police Service for that year. Disaggregated by gender, this showed 10.6% of the rapes were reported by female students and 3.3% by male students. An insignificant percentage, 0.3%, of these reported rapes occurred on educational premises (Machisa *et al.,* 2017). As the study did not record perpetrator information, it is impossible to know how students or staff figured in the commission of these crimes.

Mokgatle and Menoe's survey (2014) at the University of Limpopo's Medunsa campus explored the extent of sexual coercion reported by a sample of 335 female students. Defining sexual coercion to include both its physical and emotional forms, they found just over a quarter (27.2%) of the sample had experienced at least one incident of sexual coercion in the previous 12 months. This percentage is identical to the 27% reported in Machisa *et al.*'s 2021 survey of sexual violence, but only in relation to students from the six technical and vocational education and training colleges participating in the research.

A significantly smaller proportion of students (15%) from the three universities in the study reported an experience of sexual violence during the previous 12 months. Overall, one in five (20%) participants had experienced sexual violence in the past year, 7.5% at the hands of someone who was not a partner, and 17% at the hands of a partner. The proportion of students reporting physical violence by an intimate partner was somewhat higher at 19.2%, while the proportion of students reporting emotional abuse by their intimate partner was the highest of all at 34% (Machisa *et al.,* 2021). Forty-three per cent of study participants overall had experienced at least one of these forms of intimate partner violence (IPV) (Mahlangu *et al.,* 2021).

Machisa *et al.* (2021) focused on individual characteristics placing female students at risk of sexual violence by intimate partners and non-intimates, thus rendering the institution incidental to the violence.

Finchilescu and Dugard's survey (2018), by contrast, foregrounded the institution by seeking to distinguish between violence committed by either Wits staff and students and that committed by individuals not forming part of the Wits community. Their online survey of 1 350 staff and students largely focused on rape and different types of sexual harassment experienced in the two to three years prior to the survey.

Overall, 26.9% of students, 13.2% of the administrative staff, and 17.0% of the academic staff reported at least one form of GBV, most frequently sexual harassment (Finchilescu and Dugard, 2018). Women were the majority of those reporting an experience of GBV, comprising 74.2% of the students, 90.5% of the administrative staff and 84.3% of the academic staff. Contrapower harassment, or sexual

harassment by a subordinate of a target who enjoys higher status and power in an institution (Finchilescu and Dugard 2018: 4), was also in evidence. Where some one in three (34%) of the staff who experienced harassment reported its source to be a student, only about one in 14 (6.7%) of the students who were harassed indicated that a staff member was responsible (Finchilescu and Dugard, 2018).

In the main, the great majority of all incidents of GBV were perpetrated by individuals neither employed by, nor studying at, the university, with Wits staff and students accounting for 24.0% of incidents reported by students, 26.7% of those reported by academic staff, and 32.6% of incidents experienced by administrative staff (Finchilescu and Dugard, 2018).

However, when three different rape scenarios were presented, along with asking who the perpetrator(s) in each had been, a more nuanced picture emerged. Where Wits perpetrators comprised 22.4% and 12.0% respectively in scenarios described as “being threatened with force to have sex” and “being made to have sex through the use of force”, they constituted 52.0% of perpetrators in the scenario “being sexually taken advantage of while under the influence of alcohol and/or drugs” (Finchilescu and Dugard, 2018). This is the clearest indication that rape may well take a distinctive form within institutions of higher education (HEIs).

Offering academic advantages in exchange for sex is also a form of violence specific to HEIs. While nine Wits students reported this, far more (49) reported being offered financial advantages for sex. In relation to staff, eight reported being offered promotions in exchange for sex (Finchilescu and Dugard, 2018). A University of Zululand survey (Adams, Mabusela and Dlamini, 2013) presented a different picture, with just over one in four (28%) female students in the education faculty reporting being asked to exchange sexual favours for marks (or something else). Twelve per cent of students stated they had been failed for refusing a lecturer’s advances (Adams, Mabusela and Dlamini, 2013).

These studies begin to point to how gendered forms of violence, as the expression of masculine domination, corrupt the academic project, including by hindering the inclusion and full participation of women academics in higher education. Students have deregistered from courses, left campus or abandoned their academic aspirations altogether where they have failed and been unable to obtain study loans again (Dastile, 2004; see also Russell, 1993).

Those who have still attempted to pursue their academic goals have sought to cope in a range of ways: locking themselves in their rooms; moving to different residence rooms so as not to sleep in the room where a rape occurred; sleeping with the lights on; avoiding the library at night; or spending all their time in class or the library to keep themselves occupied (Dastile, 2004). At its most extreme, IPV has cost female students their lives (Hames, 2009). Students describe feeling as if they do not belong, are not listened to or cared for – and are perhaps even despised by university administrators (Collins *et al.,* 2009). Indeed, the failure to deal with complaints effectively creates long-term bitterness as much towards the university, as the perpetrator (Bennett *et al.,* 2007). It is on this basis that Gqola has concluded that "… the spectre of violence against women as institutional culture is not the university's deviance but in line with the very history of the university" (2021: 146).

1.5. AIMS OF THE REPORT AND WORKING METHOD

Universities have a duty of care towards their students due to the fiduciary relationship between universities and students. No less a duty exists in relation to staff in terms of the Employment Equity Act 55 of 1998. To support universities in establishing safer campuses for all, this report focused on measures intended to strengthen justice, promote the duty of care, and encourage meaningful, transformative conversations and other interventions aimed at changing the social norms that enable masculine domination and its violence. Five steps were taken to achieve these goals:

- The MTT started monthly meetings in June 2019. These led to robust discussions which are reflected in the report as debates since the issues did not always lend themselves to simple clear-cut resolution.
- A literature review aimed at establishing context and conditions. There is a history of work addressing gendered forms of violence on campus, including attempts to develop and implement policy documents. This history has been reviewed critically, not so much to suggest that history repeats itself in any uncomplicated way but to examine how the new remembers and forgets from the old, and what it re-enacts and overlooks in the process.
- A review of the substantive context of existing policy documents, based on responses received from 21 universities to former Minister Pandor's request for information issued in April 2019.
- Legal research intended to address procedural lacunae in the law.
- Sectoral consultations with different communities in the higher education sector.

In March 2020 the World Health Organisation declared COVID-19 a global pandemic, resulting in the introduction of a stringent lockdown to curb the spread of the coronavirus. The MTT was forced to pause its work and reconsider its approach, altering the intended day-long regional consultations to four online sectoral engagements open to all 26 public universities. The themes guiding each consultation are summarised below, held over four separate three-hour meetings:

- On 5 November 2020, Nelson Mandela University hosted the MTT and engaged students and student organisations on the theme "The situation facing complainants of sexual harassment and gender-based violence and harm in South African universities".
- On 6 November 2020, Wits University hosted the MTT and engaged staff (Transformation Units/Gender Offices) on the theme "The specialised responses of universities to sexual harassment and gender-based violence and harm".
- On 16 November 2020, North West University hosted the MTT to engage staff, staff associations and gender units on the theme "Sexual harassment and gender-based violence and harm within university communities".
- On the 17 November 2020, the University of the Free State hosted the last of the four engagements. This conversation was with senior management members of different universities, titled "The management of sexual harassment and gender-based violence responses in universities".

The MTT then turned to analysing its sources of data, with a smaller team drafting the report and its recommendations. Various versions were presented to the full MTT for discussion and then revised accordingly.

1.6. CONSTRAINTS ON THE PROCESS AND LIMITATIONS OF THE REPORT

Each virtual consultation was well-attended with close to 100 participants, and there was meaningful engagement that provoked rich debates. However, given the limited time for engagement (only three hours for discussion, rather than a full day), all issues could not be explored in full. Further, while some universities attended all four discussions, and others at least one, some universities did not participate in a single consultation, much to the MTT's disappointment.

Universities are not homogenous and, as the literature review shows, do not share problems in the same way. Apartheid legacies position HEIs in different ways to one another, ensuring that they have very uneven access to the kinds of resources required to establish and staff specialised structures. Moreover, they possess divergent histories of response to gendered forms of violence and enjoy varying degrees of familiarity with policy on the issues. For all these reasons, the MTT considered it vital to develop recommendations capable of taking these differences into account while still ensuring that all complainants receive both justice and care. The MTT did not want to create a situation where very little change was likely to take place because the standards set reflected unrealistic assumptions about universities' access to resources.

Unfortunately, the institutions that did not participate were, for the most part, those with under-developed policy and long-standing problems of gendered forms of violence. In the conclusions, the MTT makes recommendations in this regard. The MTT was also cognisant of the limitations of access to digital tools and data during the consultation period.

The MTT was not tasked with a focus on private HEIs. However, the Policy Framework makes clear that its provisions apply as much to private institutions as they do to public institutions (DHET 2020). The experiences of staff and students in private HEIs should not be overlooked as these constitute a rapidly expanding feature of the educational landscape, with student enrolments more than doubling between 2011 and 2019, from 103 036 to 208 978 (DHET 2021: 26).

Finally, the MTT notes that the experiences of staff and students with disabilities are unique and specific. There is, however, almost no literature on their circumstances, which were also not raised during the consultations. The MTT thus makes recommendations in this regard.

The consultations also raised complex questions around how best to conceptualise, for policy purposes, some of the unique and specific challenges faced by transgender and non-binary persons. Careful thought is required around how best to craft avenues of recourse that will best address these situations. This was beyond the MTT's remit, and recommendations have been made in this regard.

1.7. STRUCTURE OF THE REPORT

The report is structured as follows:

- Chapter 2 presents a review of the South African literature, both historical and recent. Uneven in focus and largely produced by historically white or advantaged institutions, it has been supplemented with media articles, investigations and other reports to ensure that a wider spread of experience and more recent issues are reflected by the chapter.
- Chapter 3 focuses on institutional policies and texts submitted to the DHET at the request of the Minister in 2019. A review of these supports many of the limitations observed in Chapter 2.
- Chapter 4 reports on the MTT's four consultations and largely describes the landscape of complaints mechanisms, enriching and further extending Chapters 2 and 3.
- Chapter 5 responds to the many concerns identified through the consultations, as well as the literature review and policy text analysis. The chapter also draws on the legal advice obtained by the MTT. By focusing on relevant, recent decisions, the section outlines possible measures to address the concerns of those working within the higher education sector.
- Chapter 6 concludes the MTT's brief by setting out its various recommendations.

2. GENDER-BASED VIOLENCE IN HIGHER EDUCATION

2.1. INTRODUCTION

In 2016, protests calling for an end to rape culture swept across universities and social media, capturing public imagination. These protests centrally implicated university administrations in upholding the social norms and values that provide the "cultural scaffolding of rape" (Gavey, 2005). They also compelled universities to focus on the problem of rape in ways not seen previously (Du Preez, Simmonds, and Chetty, 2017; Gouws, 2018; Orth, Van Wyk and Andipatin, 2020). What had precipitated such unprecedented resistance to universities' policies and practices? This question is deeply embedded within a history of unhappiness.

In 1984, the Students Representative Council (SRC) of Rhodes University had already discussed the absence of channels for women to report incidents of sexual violence (De Klerk, Klazinga and McNeill, 2007) while in 1987, staff and students at the University of the Western Cape (UWC) set up structures to act against discrimination and sexism (Hames, Beja and Kgosimmele, 2005). Over the next decade, a number of HEIs adopted policy texts addressing sexual harassment, with the imperative to do so entrenched in White Paper 3 of 1997, *A Programme for the Transformation of Higher Education* (Department of Education, 1997). However, while these documents may have represented formal recognition of the problem, and a call to address them in a more manifest manner, the ways in which they were put into effect, interpreted and administered, arguably created at least some of the conditions that gave rise to the more recent protests.

The first task of this chapter is to mine and take stock of this history, while the second is to break apart and texture the protests. Closer reading of these showed that while superficially similar, they differed in terms of their location and focus. Three issues, rather than one, emerged as being at stake: justice, denied by institutional deafness to complaint; safety, called into question by HEIs' security infrastructures; and the integrity of the academic project, undermined by demands for sex in exchange for academic or employment advantages.

Part one of the chapter, focused on institutional deafness to complaint, is most obviously attentive to universities' formal policies and procedures, particularly their complaints mechanisms. Parts two and three, that is, infrastructures of safety and security, and the corruption of the academic project, expand the focus by adding further texture and depth to the problem of gendered forms of violence. Part four sketches those forms of violence and abuse that have been largely overshadowed by rape culture discourse, paying particular attention to contrapower harassment. Part five returns to the demand to end rape culture by examining campus-based attempts to transform gendered relations of power.

In compiling this chapter, the MTT sought to be attentive to the heterogeneity of universities, their institutional histories and their complex economies of power. The challenges in applying this principle became immediately apparent on collation of the literature. Between 1991 and 2021, some 13 universities published at least one article about GBV in their particular institution, with UWC and UKZN standing out for their contribution to this body of knowledge. By contrast, only one University of Technology – Durban (DUT) – appeared to have published in this area. Writing reflecting on the

implementation of policy emanated from just six universities – UCT, Wits, Stellenbosch, Rhodes, UWC and UKZN.

To compensate for these silences and absences, the chapter was supplemented by media reports, as well as the findings of various investigations and enquiries, which also inadvertently revealed which universities' actions were likely to attract national attention and which not. As a student pointedly observed during a University of Zululand strike over safety in 2019: "Students at the University of Zululand are dying daily but nobody is helping because it's in the rural areas unlike UCT and Wits" (Lindwa, 2019).[6] The central point to be taken from this is that a number of universities, whose institutional histories are different, lie outside the realm of experience currently informing policymaking around GBV.

These processes of policymaking introduce the next discussion on institutional deafness.

2.2. INSTITUTIONAL DEAFNESS AND UNIVERSITY COMPLAINTS MECHANISMS

The process of making policy around gendered forms of violence at HEIs is neither logical and linear, nor tidy and contained. Indeed, as the protests illustrate, policy is co-produced at multiple levels of scale through multi-layered and transversal politics. Three years emerge as pivotal: 1989, 2016 and 2019, with these periods significant in how they aligned and connected to processes across and between universities and, ultimately, at national level.

In both 1989 and 2016, the impetus for reform derived from an identical action, that is, the distribution on campus of anonymously authored lists of men named as rapists. The first of these lists was issued at UCT and led to the university instituting a commission of enquiry into sexual harassment (Sutherland, 1991). This promoted a number of similar initiatives at other universities, as well as attempts to collaborate around these in the 1990s.

Important legal changes to the ways in which workplace relations were regulated also enabled reforms. UCT's intervention was influenced by the first decision to recognise sexual harassment in the workplace (Sutherland, 1991), also in 1989[7]. The Employment Equity Act of 1998 enabled Stellenbosch University to eventually ensure the adoption of sexual harassment policies in 2001, following six years of advocacy (Gouws and Kritzinger, 2007). Coinciding as it did with the country's political transition to democracy, this first period of reforms also saw sexual violence being taken up in policy as part of the broader transformation of higher education.

However, the broader transformation project appears to have ultimately overshadowed these attempts to address violence. Bennett *et al.* even suggest that the modest gains of the 1990s created the impression that "gender is over; the gender issue has been dealt with; we have other issues to deal with now" (2007: 99), a perspective underscored by some universities dropping degrees or

[6] A similar point has been made in relation to protests against university fees in democratic South Africa. While a feature of historically black universities for a number of years, it was the novelty of their appearance in elite, historically white institutions in 2015 that captured media attention both that year and the next (Langa, 2017).
[7] J v M Ltd (1989), Industrial Law Journal 10, pp755 – 762.

courses in gender or women's studies (see also Goba-Malinga, 2011; Collins, 2014). The Ministerial Committee on Transformation and Social Cohesion, and the Elimination of Discrimination in Public Higher Education Institutions came to similar conclusions in 2008, noting that gender, like disability, had become an afterthought of the transformation project (see also Webbstock 2016: 22; and Gouws and Kritzinger, 2007). The consequence of this backgrounding was the evaporation of policy arrangements and the creation of conditions ripe for protest.

Student activism challenging this state of affairs emerged in 2014 with the Unashamed Campaign which began at Stellenbosch University (Unashamed, 2017). Its 2016 offshoot, the Chapter 2.12 campaign[8], was subsequently taken up by UCT and Rhodes (Du Preez, Simmonds, and Chetty, 2017). While some of this activism took place within the context of the Fallist movements which emerged in 2015 around the cost of higher education, as well as its decolonisation, these protests existed in their own right and included a dense circuitry of hashtag activism (Bashonga and Khuzwayo, 2017; Gouws, 2018; Orth, Van Wyk and Andipatin, 2020).

However, it was the release of the #RUReferenceList at Rhodes in 2016, the protests and temporary closure of the university, that appears to have been decisive in securing a second instance of national intervention. Following these disruptions, the then-Deputy Minister of Higher Education and Training established a task team focused on creating a national policy framework intended to guide the post-school education and training (PSET) sector's response to gendered forms of violence (see Dipa, 2016; Government Communication Information Service, 2016). This was finally issued in 2020.

But these protests came at a price, leading to the permanent expulsion of two activists from Rhodes after they were found guilty of assault, kidnapping, insubordination and defamation (Dywaba, 2022). The nature of Rhodes' response also had a chilling effect, leading to the dissipation of the networks providing the collective impetus behind the #EndRapeCulture and #PatriarchyMustFall protests (Krige, 2021). Even so, protests over injustice and institutional deafness were still in evidence in 2018 and 2019 at Mandela University (for example, Ngqakamba, 2019) and UFH (Majanagaza, 2018b; 2019).

The third intervention to prompt a national intervention into policy was the open letter written by concerned academics to the Minister of Higher Education and Training in 2019 (Retief, 2019). What made this action different was that academic staff, rather than students, initiated it, emphasising both staff and student issues, and paying attention to universities' economies of power (as we discuss in greater detail later).

2.2.1. Complaints mechanisms in operation

Policymakers cannot have intended to incite opposition and resistance to their processes and procedures. However, a burning sense of injustice which left students feeling like inconveniences to be brushed aside in the name of the institution's reputation (Bennett, 2009; Chengeta, 2017; Norton Rose Fulbright and Centre for Applied Legal Studies, 2013; UCT, 2015), appears to have been policies' chief accomplishment. How did this come about?

[8] This took its name from that section of the Constitution which deals with the right to freedom and security of the person.

Policy is most usefully conceived of as a complex endeavour requiring the ongoing arrangement of multiple elements and processes around a shared regulatory purpose. Policies are facilitative and not usefully reduced to the document(s) bearing their names, for while policy texts mandate investigations, disciplinary hearings, education programmes and the like, these achieve proper compliance through deliberate implementation and action. The point may seem obvious, but much in the literature suggests that HEIs operate on the assumption that merely being in possession of such a document is sufficient to ward off gendered forms of violence, or, worse, that the chief purpose of policy texts is to demonstrate compliance with instructions to develop policy. When either attitude is in evidence policy texts offer little more than isomorphic mimicry, allowing form to be conflated with function and "looks like" to substitute for "does" (Andrews, Pritchett and Woolcock 2017: 31).

Joubert, Van Wyk, and Rothmann's 2011 survey is a particularly good illustration of "looks like". Published in 2011, the study reported that almost all (97.4%) of the 161 members of staff who responded to the survey agreed that their institution possessed a policy on sexual harassment. A total of 85.1% of the respondents believed sexual harassment was infrequent on their campus and a similar percentage (81.2%) considered the policy effective in combatting such behaviour. Three-quarters of staff (74.7%) were confident of their ability to recognise sexually harassing conduct, and yet only about one-third (34.2%) stated they were aware of the policy's contents. About the same proportion (35.5%) knew what steps to follow when reporting a complaint and a quarter (24.3%) agreed with the statement that they had received training or guidance around the policy (Joubert, Van Wyk, and Rothmann, 2011). In other words, two-thirds of the sample did not know what was in the policy nor what steps to follow in the event of a complaint, while three-quarters had not received training around the document's content and application. Nonetheless, they still felt highly confident of the policy text's efficacy.

This faith in the mere existence of a document to effect change is one part of an explanation for why HEIs may have thought the gender issue had been dealt with. A second is the disappearance of research, the small body of surveys specifically. Although students at Rhodes had been unsuccessful in using the results of their 1991 survey to convince university management of the need for policy (De Klerk, Klazinga, and McNeill, 2007), this tactic was used to greater effect at Stellenbosch (Gouws and Kritzinger, 2007) and UWC (Hames, Beja and Kgosimmele, 2005). These surveys (Braine, Bless, and Fox, 1995; Gouws and Kritzinger 1995; Mayekiso and Bhana, 1997)[9] are noticeably absent from more recent activism.

A proposal for a baseline survey on GBV, developed in 2011 by the Commission for Gender Equality (CGE), UKZN and UWC and intended to inform the drafting of a national policy framework, was simply unable over a period of three years to attract support for its execution, including from the DHET (Ford Foundation, 2014). As a consequence, the gendered ways in which violence was expressing itself, as well as its extent on campus, remained opaque but for the records kept by complaints structures. Presented next, they show very few complaints to have been made, leading university administrators,

[9] These include UCT's, and a 1992 survey by the Student Counselling Centre at the University of Natal (see Kathree 1992).

in the absence of countervailing evidence, to conclude that the absence of reports equalled the absence of violence (Bennett *et al.*, 2007).

As universities do not routinely make figures available for the number of complaints received in relation to gendered violence, Tables 1 and 2 rely instead on data obtained through two sets of parliamentary questions to the Minister of Higher Education and Training. The first, asked in 2014, requested information about the number of rape, sexual harassment, and domestic violence complaints received between 2012 and 2014, as well as their outcome (Bozzoli, 2014), while the second, asked in 2018, requested information about the number of rapes reported in 2017 only (Parliamentary Monitoring Group, 2018). Fifteen universities responded to the first question and 20 to the second, with both sets of responses collated in Table 1. The data for 2014 must be treated as an undercount, however, as the question was put to the Minister in early 2014 and the response was provided in August of the same year. Further, as the table shows, UFH provided the total, rather than annual, number of complaints made during the period in question. To adjust for this, these totals have been divided by three and the results apportioned accordingly in the row providing the total number of complaints made annually for each category of complaint.

Most universities recorded minimal complaints, with Mangosuthu University of Technology (MUT) recording no complaints at all between 2012 and 2014. As the CHE's 2011 investigation at MUT made explicit reference to the sexual abuse of female students at the university (CHE, 2012), this zero count more likely reflects an unused reporting mechanism, rather than a model campus free from all forms of gendered abuse. Overall, domestic violence accounted for the greatest number of complaints, with just four universities being the source of almost all of these, Fort Hare in particular. While rape contributed the smallest number of complaints, it is notable that the number of rapes reported doubled annually between 2012 and 2014. However, much of the increase in 2014 is accounted for by Wits. In 2017, the number of rapes increased to forty-seven with four universities accounting for 27 rapes, or 57.4%, of this total, that is, UCT (9), WSU (7), TUT (6), and Mandela University (5).

This highly skewed and fluctuating distribution of the number of complaints is more likely an artefact of reporting practices than an accurate reflection of the prevalence of rape across all campuses. It may not be coincidental that the universities recording the greatest number of complaints (UCT, Stellenbosch and UKZN) have a history of reflexive praxis around policy in this area (see, for example, Bennett, 2009; UCT, 2015; Gouws and Kritzinger, 1995; Gouws and Kritzinger, 2007; Collins *et al.,* 2009; Collins, 2014). UFH, is of, course, the exception to this observation.

Table 1: Complaints received, 2012-2014 and 2017

University	2012			2013			2014			2017	Institutional Total
	Rape	Sexual harassment	Domestic violence	Rape	Sexual harassment	Domestic violence	Rape	Sexual harassment	Domestic violence	Rape	
Cape Peninsula University of Technology	0	4	0	2	5	0	1	1	0	1	14
University of Cape Town	0	4	1	0	2	0	0	5	2	9	23
Central University of Technology	0	1	0	0	1	0	0	0	0	0	2
Durban University of Technology										1	1
University of Free State	0	1	0	0	2	0	0	0	0		3
University of Fort Hare	Cumulative totals for all 3 years						8	0	70		78
University of Johannesburg	2	1	0	1	1	0	0	3	0	4	12
University of KwaZulu-Natal	1	5	5	3	1	13	1	5	4		38
University of Limpopo										0	0
Mangosuthu University of Technology	0	0	0	0	0	0	0	0	0	0	0
University of Mpumalanga										0	0
Nelson Mandela University	0	0	0	0	1	0	1	0	0	5	7
North-West University										1	1
University of Pretoria	0	5	0	0	4	0	0	2	1	1	13
Rhodes University	0	0	7	0	0	2	0	0	0	2	11
Sol Plaatje University										0	0
University of South Africa										1	1
Stellenbosch University	1	0	27	1	0	8	3	0	11	0	51

Tshwane University of Technology										6	6
University of Venda										0	0
Walter Sisulu University										7	7
University of Western Cape	0	0	0	0	0	0	0	6	0	2	8
University of the Witwatersrand	0	0	0	0	3	0	9	1	2	1	16
University of Zululand	0	1	0	2	0	0	3	1	0		7
Totals	**6**	**22**	**55**	**12**	**20**	**38**	**21**	**24**	**35**	**47**	

The MUT data provides the first concrete indication of a mismatch between what was being reported versus what was being experienced. Finchilescu and Dugard's survey (2018) makes it clearer still that reporting an incident of violence to campus authorities is the exception rather than the rule. Of the 240 students who experienced one or other gendered form of violence at Wits, only 20 (8.3%) reported approaching a lecturer or staff member for assistance or instituting a complaint. In relation to the 72 staff members who had experienced violence, 17 (23.6%) complained to their supervisor or laid a grievance. Overall, just one staff member laid criminal charges.[10]

Wits also illustrates how changes to institutional practices shape reporting. In February 2014, following a comprehensive investigation into the university's complaints mechanism, Wits established its Gender Equity Office (GEO). In contrast to the three complaints recorded in 2012 and 2013, the GEO recorded 216 complaints between February 2014 and May 2016, 140 committed by people external to Wits (such as family members, intimate partners, strangers, staff of companies unconnected to Wits, or students from a different university) and 76 by Wits students and staff (CGE, 2016). This increase was influenced by the number of education and information sessions conducted to publicise the GEO's services during this period: 71 lectures to students, 11 presentations to non-academic staff offices, and 13 to faculties (University of the Witwatersrand, 2016).

Table 2 summarises outcomes for the complaints received between 2012 and part of 2014. The data is incomplete because three universities (UCT, UFH, and SU) provided no information whatsoever to

[10] Under-reporting is not unique to universities. One population-based estimate is that only one in nine women who had been raped and had physical force used against them reported the attack to the police (Jewkes and Abrahams, 2002). Research undertaken in Gauteng in 2009 found that almost one in 12 women in the province had been raped, but that only one in 13 women raped by a non-partner reported the matter, while a scant one in 25 of women raped by their partners went on to approach the SAPS (Machisa *et al*., 2010).

DHET regarding the outcomes for any of the complainants lodged.[11] As these universities accounted for 156 (60.5%) of the 258 complaints, information about case outcomes is correspondingly limited.[12]

In relation to the 102 cases for which information is available, one in five (19.6%) concluded with the decision to remove the perpetrator from the university community either by way of dismissal and other means of terminating employment or, in the case of students, through expulsion and exclusion. A slightly lower percentage of complaints (17.6%) resulted in fines, warnings, and corrective programmes or actions (such as writing a paper on the trauma of sexual harassment in the workplace). This sanction was most likely for domestic violence.

Table 2: Summary of outcomes of complaints, 2012 – 2014

Outcome	Rape (n=39)	Sexual harassment (n=66)	Domestic violence (n= 153)	Totals (N= 258)
No outcome provided	21	14	121	156
Case still pending	6	5		11
Withdrawn by complainant	5	5	4	14
Insufficient evidence	2	4		6
Resignation/early retirement		4		4
Expulsion/dismissal/exclusion	3	17		20
Suspension	1	2	9	12
Warnings/fines/corrective programmes		6	12	18
Mediation		3	6	9
Not guilty	1	3		4
Other		3	1	4

Tables 1 and 2, read with the findings of Joubert, Van Wyk and Rothmann's survey (2011), illustrate how the illusion of an effective response came into being and why activist disruption became necessary to disturb institutional complacency.

The next section turns to the inner workings of complaints mechanisms.

[11] This could either reflect poor recording practices and/or disjointed case management (ithat is, the structure receiving the complaints is entirely separate from the structure responsible for managing the complaints and there is limited communication between the two); or the failure to take any form of action at all in these matters. A third possibility, that not one of the perpetrators were members of the university community, seems highly unlikely.

[12] Information subsequently provided to the CGE by UCT reported 109 complaints lodged between 2006 and June 2016, with 25 referred to disciplinary tribunals (CGE, 2016).

2.2.2. Becoming a complainant

The complainant typically lies at the moral heart of policy arrangements, both legitimising and authorising institutional arrangements, as well as bringing complaints mechanisms to life. "The complainant" is also an institutional identity crafted around the assumed characteristics of a figure who has been wronged and is in need of redress. As such, it is not an identity automatically adopted by individuals, but one acquired through a series of consequential processes that socialise individuals into ways of understanding themselves and giving name to their experiences (Loseke, 2007).

Anyone who has experienced violence must, as a first step, define the acts they have been subjected to as abusive. This is not a straight-forward exercise, with the literature finding that confusion surrounds sexual harassment and neither staff nor students sharing a mutual understanding of its different manifestations (Chauke *et al*., 2015; Gouws and Kritzinger, 2007; Mayekiso and Bhana, 1997; Gouws and Kritzinger, 1995). Rape too, may not be immediately categorised as such (for example, Chengeta, 2017), while love may act as the condition making intimate partner violence tolerable, evidence even, of the extent of a partner's deep attachment (Singh and Myende, 2017). And even if someone defines conduct as harassing, institutional silence around the issue may suggest that it is not something to be raised (Norton Rose Fulbright and Centre for Applied Legal Studies, 2013).

Second, potential complainants need to assess the remedies on offer as suitable to their circumstances. For some, ignoring the conduct in the belief this will cause it to stop is preferable to reporting (Gouws and Kritzinger, 1995; Norton Rose Fulbright and Centre for Applied Legal Studies, 2013). Others may simply not trust university structures enough to complain (Norton Rose Fulbright and Centre for Applied Legal Studies, 2013), or are deterred by the prospect of protracted processes that offer inadequate support and protection, especially when victimisation is feared (News24, 2016).

Complex feelings of respect and admiration for the perpetrator, including not wanting to adversely affect their future, may also paralyse individuals, even when they recognise they have been treated abusively (Norton Rose Fulbright and Centre for Applied Legal Studies, 2013). Forgiveness may even be preferred to making a complaint (Singh, Mudaly and Singh-Pillay, 2015). For others, whatever possible benefits may accrue from becoming a complainant are outweighed by the risks of losing credibility, employment or academic credentials (Norton Rose Fulbright and Centre for Applied Legal Studies, 2013), especially if the person accused is perceived as untouchable and having the power to influence appointments and promotions (News24, 2016).

Finally, individuals need to be willing to identify as complainants, a process which both potentially comes into conflict with important aims, values and goals and needs to be accommodated with other self-understandings (such as being "forgiving" and "loving") (Singh and Myende, 2017). These processes are also closely related to adopting the cultural identity of victim/survivor. The latter emerges out of a long and stigmatising history of understanding rape victims as helpless, pitiable and psychologically damaged. "Survivor" seeks to redefine these debilitating social representations by drawing attention to the ways in which women used personal strengths to withstand the experience and continue with their lives (Kelly, 1988). "Survivor" is also a political identity, with the act of speaking out, mobilising others and creating public networks of social activism capable of producing social change around ongoing patterns of violence (Collins 2014: 288). Negotiating and navigating these multiple identities, as well as their goals, produces complex tensions, illustrated by Padmanabhanunni

and Edwards' interviews (2015) with students and staff who had been raped and participated in Rhodes' Silent Protest.

For some, the identities of "victim" and "survivor" evoked ambivalence, being associated with feelings of shame, concerns with being stigmatised, or having the complexity of oneself reduced to the single fact of having been raped (Padmanabhanunni and Edwards, 2015). Participation in Silent Protests was sometimes prompted by feelings of guilt about not doing so, and while a few women felt significantly supported and validated by their participation, the majority reported feeling worse. Both self-blame and avoidant coping strategies had been exacerbated, with survivors also displaying elevated levels of post-traumatic stress disorder (Padmanabhanunni and Edwards, 2015). Victim and survivor are thus not helpfully conceived of in dichotomised ways, with implications for the expectation that all should translate personal experience into collective action.

Singh and Myende's discussions (2017) also hint at the possibility of still other complex interactions around identities, this time in relation to "student" and "victim". For some of their female study participants the university was a special and life-changing context that transformed girls into knowledgeable and empowered students capable of independent decision-making, which also made them different to women who did not attend university (2017: 30). A positive self-representation of personal strength and efficacy, this version of student identity raises intriguing questions around how those who define in this way are likely to grapple with the confusion, uncertainty and indecisiveness than can accompany experiences of victimisation.

In general, the ambivalent and uncertain victim does not make for a "good" survivor. Activists, complaints officers and bystanders can, in turn, demonstrate ambivalence towards the person of the victim, especially in relation to the stickiness and apparent irrationality of intimate relations (for example, Singh, Mudaly and Singh-Pillay, 2015). On at least two occasions, these complex politics of victimisation and its deeper questions, such as who owns an experience and how it may it be used, have come to the surface.

In 2016, activists took to social media to mobilise around a rape at one of Wits' residences, #RapeAtJunction. The complainant appears to have been uncertain about what occurred and thus ambivalent about proceeding, a situation not helped by inept responses to the complaint by some of the university's structures. #RapeAtJunction activism exposed these larger weaknesses in procedure and prevented them from disappearing into the bureaucracy (Bashonga and Khuzwayo, 2017; Habib, 2016). At the same time, according to the investigator appointed to assess Wits' handling of the matter (Habib, 2016), some mobilisation tactics resulted in personal information about the complainant entering the public domain in ways that had not placed her individual wishes and well-being at their centre. Ultimately, the matter was discontinued following discussions with the complainant (The Citizen, 2016).

A variation of this mismatch between activist goals and individual complainants' preferences was also in evidence during a protest at Mandela University, prompted in 2018 by a student laying a criminal complaint of rape against her boyfriend. Some hours later she withdrew the complaint. If one's eye is on the individual complainant and victim-centred processes, then the decision was one that seemed appropriate to her circumstances at the time, but if one's eye is toward the larger cause, then the withdrawal of charges was indeed "a setback" (Chirume, 2018).

Both examples point to how identity is not made in the abstract by solitary individuals but created collectively through social processes invested with meaning and value (such as transcendence, courage and the overcoming of injustice). They also illustrate the tensions that may emerge between political goals and individual wishes, as well as the interplay between identities. These tensions are imported into policy and institutionalised through practices such as third party or mandatory reporting (for example, Higher Health, 2021).

The institutional identity of complainant cannot only be claimed, but it must also be conferred and recognised by a complaints mechanism. And just as there are those who are made complainants even when do not wish to identify as such, so are there those who are denied and refused the identity of complainant.

2.2.3. Crafting (dys)functional mechanisms of complaint

A complaints mechanism is a complex system of multiple, interconnected parts, whose components may include campus security, human resources, student affairs, legal offices, equity and transformation units, counselling, and support services, as well as health services, among others. As there is no necessary connection between these heterogenous elements, which are self-subsisting and independent of one another, the condition of any complaints mechanism is its relations, drawn by various agents required to set the mechanism in motion. Such agents include complainants and investigators, respondents, and the chairpersons of disciplinary panels.

It is precisely because the relation between these parts is exterior, needing to be put together, joined and connected by agents (or operators) that these arrangements are conceptualised as those of a mechanism, rather than an organic whole. As relations between parts can range from the transient to the permanent, any number of combinations is possible, enabling complaints mechanisms to both expand and contract, as well as to become attached to other policy arrangements. It is this multiplying and fragmenting of relations that give policy arrangements their dynamism and mutability, as well as their contingency. Understanding any policy thus requires attention not only to the policy text, but what the arrangement of parts does in practice (Nail, 2017).

A policy text is the guide to the operation of these arrangements. Little-known and often located in obscure, hard-to-find places (Wilken and Badenhorst, 2003; News24, 2016; Omar, 2019) texts may also exist in the plural and be dispersed across multiple sites. They sometimes require complainants (and complaints officers) to assess whether they have experienced discrimination, racial harassment, or sexual harassment, or all, or some combination of the three (Bennett, 2009; UCT, 2015). Additionally, for some situations, such as relationships between staff and students, no policy text would appear to exist at all (Omar, 2019). Staff and students may be covered by the same text in some instances, while in others they may be differentiated texts (UCT, 2015).

Where the entry points to the system lie is not always clear; policy texts have not always crisply delineated these and other points in the process (Wilken and Badenhorst, 2003; Norton Rose Fulbright and Centre for Applied Legal Studies, 2013; UCT, 2015; News24, 2016). Staff approached for help are not always reliable guides either. Some have been reported as seeking to dissuade students from reporting, warning them to rather stay out of trouble and avoid lecturers' offices (Dastile, 2004). Staff who wish to be supportive have reported the increasing corporatisation of universities as mitigating

against their assistance to students. This time is not treated as valued work but as an unproductive distraction, thus implicitly discouraging such assistance (Hames, 2009; Collins *et al*., 2009; Norton Rose Fulbright and Centre for Applied Legal Studies, 2013).

Some points also provide entry only which means that complainants must be directed elsewhere (Norton Rose Fulbright and Centre for Applied Legal Studies, 2013; UCT, 2015; Collins, 2014). While having more than one reporting point is not inherently dysfunctional it becomes so when the relations between parts are compartmentalised, blurred and disconnected. The arcane technicalities of procedures and processes are also obscure to many complainants who may be left mystified by the different roles played by multiple offices. For example, splitting functions across multiple offices such that the receiving office mediates complaints but does not refer, investigate and conduct formal enquiries both confuses complainants and results in the loss of cases for follow-up purposes (Norton Rose Fulbright and Centre for Applied Legal Studies, 2013; UCT, 2015). The outcomes for complainants may be a disconnection from services, along with delays in allocating appointments, whether these be for case consultations or counselling support (Collins, 2014).

While these offices should function as an integrated system, they generally do not, for a range of reasons. Key among these is the quality and nature of their relationships which can be collaborative and cooperative but are just as likely to be discordant and competitive, with complaints serving as a territory to guard, as much to keep these out, as to own their management (Norton Rose Fulbright and Centre for Applied Legal Studies, 2013; Collins, 2014; UCT, 2015). At their worst, systems are undermined by hostilities and conflict over the purpose and aims of complaints mechanisms. Rather than being oriented around a shared unity of purpose, they are marked by competing rationales and their designated role in a system of response is left vague.

Because all components are embedded within a university's larger systems they may also be divided by conflicting interests. A legal office, for example, may be called on to provide support and protection to a complainant, assist a respondent to vindicate his innocence, and ensure the university's reputation is protected (Norton Rose Fulbright and Centre for Applied Legal Studies 2013: 14). Shaped by the adversarial and legalistic milieu in which they operate, legal officers bring this style to their interactions with complainants and running disciplinary processes. The experience has not been appreciated by many complainants (Chengeta, 2017; Norton Rose Fulbright and Centre for Applied Legal Studies, 2013). Human Resources offices may face similar conflicts of interest with regard to staff. Human resources offices, legal offices, and student support services, moreover, are generalist, rather than specialist in approach, making them ill-equipped to deal with the subtleties and specificities of sexualised violence (Bennett, 2009; Collins *et al*., 2009; Norton Rose Fulbright and Centre for Applied Legal Studies, 2013).

SRCs also play an important, mixed and complicated role in disciplinary proceedings. While some have played an important role in initiating and supporting protests and suspending members accused of rape (Kinnear, 2015; Chengeta, 2017; eNCA, 2017; Charles, 2021), others have been accused of protecting individuals from such charges (Dastile, 2004; Norton Rose Fulbright and Centre for Applied Legal Studies, 2013; Collins, 2014).

In the attempt to overcome some of these difficulties, UCT and Wits created single sexual harassment officer posts or structures, and then undermined their potential effectiveness in unintended ways.

One was to physically isolate the office from the body of the university (UCT, 2015), or situate it in a back office (Norton Rose Fulbright and Centre for Applied Legal Studies, 2013). These spatial arrangements alone defined these offices and their work as hidden, invisible, and separate from the core business of the university. A second was to freight the post or structure with a wide mandate that included receiving complaints; liaising with other structures in the system around these; educating and training around the policy text; and other initiatives intended to reduce violence and abuse. The effect was to render them unable to accomplish any of these effectively by a lack of funding, as well as a lack of sufficient personnel (Norton Rose Fulbright and Centre for Applied Legal Studies, 2013; UCT 2015).

When Wits became the subject of media reports in 2013 regarding lecturers' sexual harassment of students and the university's failure to address these complaints decisively (some of which were more than two years old and included a rape), there was just one sexual harassment adviser for a population of 30 000 students and 11 000 staff (permanent and fixed-term contracts) while not one rape reported in the previous five years had resulted in a conviction. Self-defined as "ineffective and powerless" (UCT 2015: point 6.3.14) the structures appeared to have taken on the characteristics of the issues they represented: lowly; lacking in institutional authority; out-of-sight, and under-resourced.

Taken as a whole, this literature provides an unintended guide to designing complaints mechanisms in ways that will ensure few complaints are made. The literature also warns against investing too much faith in the changes made to policy texts over the last few years when it is far from clear if the underlying conditions leading to the ineffectiveness of complaints mechanisms have been addressed. Where a low level of reporting has been the norm, those who work in complaints mechanisms will still be only minimally familiar with the complexity and nuances of cases involving gendered forms of violence. The introduction of new policy does not alter that inexperience.

There is also no evidence of universities having made additional resources available for the effective functioning of complaints mechanisms, while the DHET policy is vague on any such financial support. Historically, there has been little collaboration between universities and thus little opportunity to build a shared knowledge base of reflexive praxis. The Network of Higher Education Institutions Challenging Sexual Harassment/Sexual Violence, formed in Botswana in 1997 and comprising members from seven different countries (Bennett *et al*., 2005; Bennett, 2009), ceased functioning in 2002 when funding came to an end. It also seems to have included only three South African universities (UCT, UWC and Stellenbosch). Further, only one handbook ever appears to have been issued to guide university's responses to gendered forms of violence (Bennett, 2009). On this basis it can be concluded that protest has been better described and understood than the effective functioning of HEIs' complaints mechanisms.

2.3. WHEN UNIVERSITIES BECOME UNSAFE

Table 3 collates an illustrative sample of protests directly addressed to universities' response to GBV between 2015 and 2020. Compiled from media reports, Table 3 does not capture the full range of these protests but focuses only on opposition and resistance to universities' response to incidents of sexualised violence. Its purpose is not to offer an exhaustive, all-inclusive overview of protest but to demonstrate the point made at the outset of the chapter, namely, that university students were protesting about more than rape culture.

Some tentative, preliminary observations can be made about the patterning of these gendered struggles. While these initially occurred against the backdrop of larger protests around fees and the decolonisation of universities, by 2019 the protests had broadened to focus on violence towards female students beyond the university, especially when it culminated in murder. Overall, at least 15 of a possible 26 universities appear to have embarked on some form of opposition to sexualised violence, nine on three or more occasions.

In the protests categorised as challenging policy intent and implementation, seven of the nine universities (Wits, UCT, Rhodes, Stellenbosch, UWC, UKZN, and UFH) are recorded as having at least some history in institutionalising policy addressing gendered forms of violence. Moreover, seven of the nine universities are classified as historically white, or advantaged institutions (HAI). The landscape shifts in relation to the protests around the sexualised violence committed by outsiders to campus, as well as sex for marks.

While 2016 generated the greatest number of protests around #EndRapeCulture, the rape and murder of Uyinene Mrwetyana in 2019 by Luyanda Botha generated the greatest number of solidarity actions, with at least seven different universities participating in these. Some of these vigils and solidarity actions also mourned the rape and murder of UWC student Jesse Hess, whose violent death occurred in the same week (see News24, 2019). Slightly more universities (13) featured in the protests against sexual violence by outsiders to the university, with five featuring only in these demonstrations.

Table 3: Illustrative sample of protests 2015 to 2020

Year	University	Event
Challenging policy intent and implementation		
2015	**UCT**	Protest over Michaelis Art School's decision to alter the sentence recommended by a disciplinary panel (Young, 2016)
	Stellenbosch	"Shaken Silence" campaign initiated by SRC (Kinnear, 2015); #OpenStellenbosch organises march against sexual assault at the University (African News Agency, 2015)
2016	**UCT**	Clothesline demonstration demanding release of report reviewing office dealing with sexual harassment complaints (Kelly, 2016); Chapter 2.12 campaign initiated (Kelly, 2016)
	Rhodes	Chapter 2.12 campaign adopted and instituted (Kelly, 2016); #RUReferenceList released, and university closed following associated protests (Pather, 2016); Deputy Minister Manana denied opportunity to speak during August event (Macgregor, 2016)
	UWC	#4Girls3Days campaign launched around university's failure to act on four rape complaints (Fredericks, 2016)
	Stellenbosch	Memorandum of demands to end rape culture handed over by SRC (Adriaanse, 2016); five-day silent protest #RedtAPE (Stellenbosch University, 2016); Chapter 2.12 Campaign initiated (Kelly, 2016); march to, and disruption of, *Woordfees* event (Stellenbosch University, 2017)

Year	University	Event
	Wits	April protest in solidarity with Rhodes (eNCA, 2016); #RapeAtJunction social media campaign in November against university's handling of a rape complaint (Petersen, 2016)
2017	**UP**	"UP safety is a lie" campaign launched following non-response to students' memorandum (Chauke and Keppler, 2017)
2018	**Mandela University**	Protest following rape of one student by another, memorandum of grievances submitted to university administration (Chirume, 2018)
	Rhodes	Shutdown following suicide by student Khensani Maseko, raped some months previously by her boyfriend (Sobuwa, 2018)
	UKZN	Protest over the two months taken by the university to complete an investigation into one student's rape by another (Pillay, 2018)
	Fort Hare	University's women empowerment group conducts vigil and hands over statement calling on policy to be adopted following rape of one student by another (Majangaza, 2018d)
2019	**Mandela University**	Silent protest staged at graduation ceremony over university's failure to deal with a number of rape complaints (Ngqakamba, 2019)
	Fort Hare	Students march to pressurise UFH into adopting its GBV policy following revelations that lecturer who had been found guilty of demanding sex for marks had resigned before being sentenced and charged with a second case (Majangaza, 2019)
Strangers		
2016	**Wits**	Students submit a petition protesting sexual harassment by security guards contracted by the university to control fees protests (Gumede, 2016)
	Mandela University	March protesting rape of two students by a taxi driver (O'Reilly and Capa, 2016)
2017	**Mandela University**	Protests over rape of two students by intruder who broke into computer laboratories (Macupe, 2017)
2018	**WSU**	Protest following rape of a student by an intruder who gained entry to her room via holes in the residence's roof (Majangaza, 2018c)
	TUT	Occupation of library to demand it remain open on a 24-hour basis following attempted rape of student, coupled to other demands around increasing safety (Keppler, 2018)
	University of Zululand	Strike over student safety generally in off-campus residences, including rapes of students (Lindwa, 2019)
	UCT	Murder of Uyinene Mrwetyana in Clareinch Post Office, leading to protests at UCT, vigils and solidarity actions at Wits, Rhodes, Mandela University, UP and UWC (Sobuwa and Mahlangu, 2019) and UJ (Ndongo, 2019).
	UWC	University arranges vigil following rape and murder of student Jesse Hess, with this incident occurring in same week as Uyinene Mrwetyana's killing (Sobuwa and Mahlangu, 2019)

Year	University	Event
	CPUT	Protest and class disruptions following kidnapping of student nurse outside hospital (Ludidi, 2019; Pijoos, 2019)
2020	**Sefako Makgatho**	Protest following sexual assault of student near off-campus residence (Tlabhye, 2020)
Sex for marks		
2019	**84 academics**	Letter to Minister requesting intervention into sex for marks scandal, endorsed by over 89 academics; Minister appoints MTT (Retief, 2019)

The primary concerns of the #EndRapeCulture protests were behaviours such as: gender discrimination, sexism, victim blaming, sexual objectification, "slut shaming", trivialising rape, denial of widespread rape, refusal to acknowledge the harm caused by sexual violence, be that implicit or explicit, or some combination of these (Stellenbosch University 2017: 9).

At first glance, the protests around stranger rapes and the demands they give rise to – more closed-circuit television cameras, improved security services, fencing, and lighting – seem only distantly related to these concerns. Indeed, conceiving of sexualised violence as chiefly a problem of technologies of security may seem a distraction from questions of social values and the ways these shape gendered relations of power (Collins, 2014). But questions about universities' infrastructures of safety and security are more interesting than they might at first appear, encompassing not only the material realities of lighting, fencing, closed circuit television cameras and security personnel, but practices and processes around the control, management and organisation of space – all invested by gendered discourses around safety and risk, danger and fear, care and belonging.

2.3.1. The discursive construction of rape: fear and strangers

The pervasive fear of rape in South Africa, frequently labelled the rape capital of the world, produces frightened, vulnerable femininity and its corollary, dangerous, fearsome masculinity. While sometimes generalised to all men, interviews with students found most of this fear to concentrate around the stranger (Dosekun, 2013; Singh, Mudaly, Singh-Pillay, 2015; Collins, 2014). Shaped in and through South Africa's history of racialised embodiment, he is typically imagined as black or, somewhat less often as coloured (Dosekun, 2013; Ngabaza *et al*., 2015) and very occasionally as white (Dosekun, 2013). His classing as poor also enables middle class students to keep rape both socially and spatially distant (Dosekun, 2013).

The constraining effects of this fear are well-documented, leaving female students afraid to sleep alone in their rooms at residence (Gopal and van Niekerk, 2018); as carefully managing drinking and socialising with men; making themselves "mean" and "intimidating" (Gordon and Collins, 2013); of circumscribing their routes through the world, avoiding parking lots, or travelling by train, or walking in the forest (Dosekun, 2007), and living, in many ways, in anticipation of the inevitable (Gordon and Collins, 2013). But this emphasis on women's fear and vulnerability is highly ambiguous in effect. On the one hand, it performs the necessary function of drawing attention to women's victimisation and the ways it is actively enabled through systems of neglect and the trivialisation of abusive experiences. On the other, vulnerability frequently registers through old tropes of women's violability and their special need of (masculine) protection.

Universities' responses to actual incidents of stranger rape may reinforce these discursive constructions, as Boonzaier, Carr, and Matutu (2019) show, using the example of the series of rapes committed in and around the Rhodes Memorial in early 2016. While UCT's notifications about the attacks were well-intended, the authors argued that they also increased women's fear by repeatedly alerting them to their vulnerability and the ways they were expected to constrict their lives to remain safe. The warnings, moreover, focused fear in a way that normalised, or rendered invisible, sexual violence committed by those who were known and familiar (Boonzaier, Carr, and Matutu, 2019).

By focusing on the stranger – the outside threat needing to be kept out – the warnings obscured the abuses of insider students and staff whose conduct passed unmentioned. Students also assessed the university's response as demonstrating a lack of concern for their safety, the notifications notwithstanding. This perception was based in the decision by UCT to employ private security in response to the student protests, but not to protect students walking at Rhodes memorial (UCT Survivors, 2016a; 2016b).

Campus security takes on particular significance in the context of stranger rape. Complaints abound about its quality, however, including in relation to situations where a student is the perpetrator (Collins, 2014; Linden and Majangaza, 2018a; Gopal and Van Niekerk, 2018; Ludidi, 2019; Tlhabye, 2020). Security officers themselves have been reported as a source of harm (Collins, 2014; Mthethwa, 2020) and as colluding with students accused of rape or assault, either by informing individuals of the allegations against them, rather than detaining them, or by continuing to provide such students with access to campus or residences (Dastile, 2004).

Where any university's boundaries lie, and thus, where security is to extend, was a question raised not only by the rapes at Rhodes memorial. When two students at Mandela University were raped by a taxi driver in 2016 after leaving the university, students demanded that their safety be guaranteed both on and off campus (O'Reilly and Capa, 2016). The question of boundaries is made even more acute in relation to students in off-campus residences who are repeatedly and persistently targeted for rape and robbery, not least because security does not seem available at these.

2.3.2. Violence and the materiality of infrastructure

Safety is a way for students to assess their sense of belonging on campus (Ngabaza *et al*., 2015; Ngabaza, Shefer and Clowes, 2018). Their fear not only relates to human threats, but it is also encoded in regard to parking lots, dimly-lit passageways, student recreation sites and residences (Ngabaza *et al*., 2015; Singh, Mudaly and Singh-Pillay, 2015; De Lange, Mitchell, and Moletsane, 2015; Magudulela, 2017; Gopal and Van Niekerk, 2018; Ngabaza, Shefer and Clowes, 2018).

In 2011, the Minister of Higher Education highlighted the role student accommodation played in students' success, especially those from rural and poor backgrounds. However, many of those students were enrolled at historically black institutions where living conditions were particularly poor (DHET, 2011) and backlogs in infrastructural funding most severe (see also Parliamentary Monitoring Group, 2020; South African Government News Agency, 2020). Indeed, the state of student housing had prompted 39 protests in the five years before the establishment in 2010 of a Ministerial Committee to review provision of student housing at universities (DHET, 2011).

In 2010, the Ministerial Committee averred that only 20% of enrolled students could be accommodated in existing university residences. There was clearly insufficient capacity to meet students' growing accommodation needs. This was confirmed when, in 2011, it was declared that the proportion of students requiring accommodation had risen to between 50% to 80% of enrolments (DHET, 2011).

The shortage and lack of accommodation in residences (both on and off campus) resulted in overcrowding, as well as squatting, and included instances where a student with a legitimate right to a bed might lease it out to up to six others (including excluded students or even non-students), thus compromising female students' sense of safety. In 2011, a CHE audit report in fact noted the impact of these practices on female students' sense of safety (CHE, 2011b).

The unavailability of rooms also placed students at risk of IPV, according to female students participating in a qualitative study undertaken at the University of Venda. In the context of extremely limited student housing, sharing a room with an abusive partner might be the only option (Ross *et al*., 2021; see also Dastile, 2004). The Ministerial Committee found overcrowding in residences to also be associated with several forms of violence and crime, including rape and sexual harassment. Even in custom-designed student accommodation built through public-private partnerships, sexual harassment and physical assaults continued to feature.

Access to on-campus residences is not well-controlled (CHE, 2011a; Gopal and Van Niekerk, 2018), and some also have no toilets, requiring students to use outside facilities in parts of the campus that are not enclosed by fencing (Linden and Majangaza, 2018b). Where male and female students share showers and ablution facilities this may facilitate sexual harassment, as may policies that do not limit visiting hours to after morning, or before evening, ablutions (CHE, 2011a; De Lange, Mitchell, and Moletsane, 2015). Intimate partner violence is also on full display in residences (Clowes *et al*., 2009; Collins, 2014; Singh, Mudaly and Singh-Pillay, 2015). These realities notwithstanding, the Ministerial Committee noted that many staff in charge of accommodation had not received training adequate to their responsibilities, which resulted in inept practices or inaction. Further compounding difficulties was the ratio of residence staff to students. At its most extreme, student accommodation had just one person responsible for 535 students (DHET, 2011).

Off-campus accommodation has provided one solution to the shortage of student housing, but such accommodation is often located in areas that expose students to rape and other crimes on the walk to and from the university, and it appears to have heightened students' risk of exposure to violence (DHET, 2011; see also Tlhabye, 2020). This remains a reality as recent newspaper reports suggest in regard to off-campus residences for the universities of Zululand (Lindwa, 2019), Venda and Limpopo, which have been specifically and repeatedly targeted by syndicates over multiple years for their laptops and cell phones. In truly gendered fashion, these robberies have on occasions been accompanied by the rape of female students and the shooting of male students (Moloto, 2012; News24, 2017a; Review Online, 2019; Review Online, 2021).

As the data in Chapter 1 showed, female students experience a great deal of sexual victimisation, much of which is perpetrated by individuals who are not part of a university community. This suggests that universities' safety and security infrastructure (or its lack/inadequacy) may in fact be contributing to the figures. The risk would also not seem to be equally distributed among universities. Material

disparities in security infrastructure in HEIs contributes to persistent, rather than isolated, instances of vulnerability. Addressing these requires paying attention to more than complaints mechanisms and their associated processes and procedures. This is one point addressed in this section.

The second point relates to the ways stranger rape functions discursively, framing what is "real" rape and what is something lesser, shaping what is feared and what is not, and defining the parameters of everyday freedoms in the process. The challenge to universities, therefore, is to attend to the material conditions that enable violence, but without doing so in ways that reproduce fear or create a hierarchy of seriousness.

2.4. WHEN SEX IS MADE CURRENCY

The 2019 open letter by academics has been the only protest to explicitly ground itself within the material conditions that support violence and exploitation. Young black women, the academics wrote, are in the minority among teaching and instruction staff, and occupy precarious junior, contract positions. These factors rendered them situationally vulnerable to demands for sex in exchange for job security. Students' susceptibility to demands for sex in exchange for academic advantages was similarly shaped by their economic circumstances and their impoverishment specifically (Academics, 2019).

Employment data lends further credence to the academics' observations about students. Graduates are consistently more likely to be employed in South Africa, even when unemployment rates rise. In the first quarter of 2012, the rate of unemployment for those with less than a matric was 29.2%, rising to 35.2% in the same quarter of 2020. For graduates, the proportion of those who were unemployed increased from 5.5% to 9.5% over the same period (Statistics South Africa 2020: 13). A degree is highly prized under these circumstances.

In theory, sex for marks could be taking place at all universities. However, a search of investigative reports, as well as media articles, highlighted its occurrence at the following eight universities:

- University of Limpopo: this was strongly suspected by a CHE audit and referenced again during a meeting of Parliament's relevant portfolio committee in 2014 (CHE, 2010; Parliamentary Monitoring Group, 2014).
- Walter Sisulu University: reported in 2007, with the lecturer rehired in 2008 (Fengu, 2011). In 2010 a lecturer was suspended for the same practice with a further three lecturers reported to be facing disciplinary enquiries in 2011 (Mjangaza, 2011). Research interviews with female staff during the same period very strongly implied that sex with their male seniors was an unwritten requirement of female staff's employment. Repeated reference was made to the absence of alternative employment and the economically deprived nature of the area (Goba-Malinga, 2011).
- Mangosuthu University of Technology (MUT): suspected in 2011 (CHE, 2011b) and formally reported in 2016. The enquiry was halted due to the student witness' graduation from the university, with the same lecturer reported again in 2021 (Makwakwa, 2021; Motha, 2021).
- Tshwane University of Technology: reported in 2008 and again in 2012 (Magome and Ngoepe, 2012) with a third matter reported in 2013 (Pretoria News, 7 June 2013).

- University of Fort Hare: reported in early 2018 when a former tutor, attempting to pass himself as a current tutor, demanded sex for marks (Majangaza, 2018a) and later in the same year in relation to a law lecturer (Majangaza, 2018b; Checkpoint, 2019).
- University of Venda: reported by research participants in the early 2000s (Dastile, 2004) with a lecturer dismissed for three incidents in 2012[13] (University of Venda v Maluleke and Others).
- Vaal University of Technology: female staff reported in 2019 that their promotions were dependent on making themselves sexually available to senior male managers at staff getaways. This was not probed further as this did not form part of the investigators' mandate (Pityana and Ralebipi-Simela, 2019).
- University of Zululand: reported by researchers in 2013 (Adams, Mabusela, Dlamini, 2013) and by journalists in 2016 (Cowan and wa Africa, 2016). In 2017, the university suspended an investigation into a student's allegation that she had firstly, been raped twice in 2015 by her honours supervisor and secondly, been warned against continuing with the complaint by the head of the department in 2016 during an incident where he also attempted to strangle her (News24, 2017b).

The list of these universities does perhaps suggest that the continuance of the legacy deficits and inheritances already mentioned in this report (which encompass location, capacities and institutional infrastructure and efficiencies) may continue to facilitate forms of violence against students. This exacerbates their already vulnerable circumstances, perhaps more so than their fellow students at traditionally better-endowed institutions. However, any such inferences are speculative and require further investigation and conclusive evidence and research. Sex and forms of harassment as currency, are however not limited to the lecturer: student dynamic but are also discerned in the student: staff dynamic. This is discussed briefly below.

2.5. CONTRAPOWER HARASSMENT

Rape, as the exemplar of gendered forms of violence, has been the primary object of struggle in the protests. Sexual harassment has attracted far less opposition and intimate partner violence very little at all, except where it takes the form of rape. Furthermore, while physical and emotional forms of IPV mark students' lives (Dastile, 2004; Hames, 2009; Collins, 2014; Singh, Mudaly and Singh-Pillay, 2015; Singh and Myende, 2017), the fact that they may sometimes withdraw their complaints also appears to limit social support. In the words of one student: "People don't like to get involved when GBV is between intimate partners on campus because in most cases the victim forgives the perpetrator" (Singh, Mudaly and Singh-Pillay, 2015).

The experiences of students with disabilities attracted very limited attention in the literature. Fleeting as discussion may be, it suggests that exploitative and abusive encounters for these students will be uniquely shaped by their status as objects of sexual curiosity, rather than as the subjects of sexual desire (Kasiram and Subrayen, 2013).

Given the focus and reflection on student priorities and preoccupations, the protests understandably paid less attention to the experiences of staff, of which there is also limited understanding. Munyuki

[13] University of Venda v Maluleke and Others (JR2125/13) [2017] ZALCJHB 72; (2017) 38 ILJ 1376 (LC) (28 February 2017)

(2018) does however, offer rare insight into contrapower harassment, or the harassment of a person with formal power by someone with less formal power.

White men have traditionally embodied the authoritative academic norm in universities. Female lecturers, especially those who are younger and black, or lecturing older male students in traditionally male-dominated subjects, depart from this norm and appear as "bodies out of place" to some of their male students (Munyuki 2018: 230). One form of student response has been to challenge female lecturers' place and competence, including by going directly to the lecturers' seniors to request remarking of their work. A second response did recognise lecturers' authority, but as a kind of substitute maternal figure. The third deployed sexualisation as a means of subverting academics' authority. Methods of doing so included male students circulating the lecturer's photographs on Facebook to provoke discussion about their "hotness" with other students; completing course evaluations in terms of their lecturer's attractiveness, rather than her teaching skills; online harassment, including stalking; asking the lecturer out on dates, as well as commenting on their appearance, including during class; or even offering sex for the betterment of their girlfriend's marks (Munyuki, 2018).

As contrapower harassment is largely a matter of institutional silence, the lecturers interviewed had individualised responses to its occurrence. In some instances, they used their institutional authority to directly challenge students' conduct in class, including instructing them to leave. In other instances it became "something you kind of get used to" (Munyuki, 2018), but in ways that included a great deal of self-surveillance, especially in relation to dress and the degree of formality applied to interactions with students. For those who had been stalked or followed by students, fear and avoidance of parts of the campus were the results, along with loss of job satisfaction (Munyuki, 2018).

As most of Munyuki's respondents reported, they had been left to deal with this harassment alone, and had given some thought to how it could be addressed at institutional level. Their recommendations included the formal recognition in policy of contrapower harassment and its redress; changes to the way students assessed lecturers (such as asking students not to reflect on the lecturer, but on what they had learnt); and active engagement with, and discussion, of the phenomenon at institutional level.

2.6. BEYOND COMPLAINTS MECHANISMS

Work on gendered forms of violence is animated by an emancipatory vision which sees this violence decisively ended, including in South Africa's HEIs. While complaint mechanisms are key to this vision, signalling as they do the unacceptability of violence, they need to be coupled with other vectors of change. Collins *et al.* (2009: 37) proposed the following combination of modalities and structures:

- Academic interventions;
- Attention to safety, emphasising the provision of security services;
- Complaint mechanisms including staff and student support services;
- Broad-based social interventions; and
- A networking centre co-ordinating and overseeing the various interventions.

Having unpacked safety and complaints mechanisms above, the following section will focus on academic and social interventions.

2.6.1. Academic interventions

The last three decades have generated a rich record of attempts to respond to GBV on campus, some of which have been documented, but most of which have been lost.[14] However, the literature discussed in this chapter provides clear evidence of the value and necessity of academic contributions to understanding the problem of GBV in HEIs. Lange and Luescher-Mamashela's (2016: 131) thinking around the two kinds of knowledge required for transformation is helpful in suggesting how this contribution can be extended and deepened.

Bringing about change, they suggest, requires knowledge *for* transformation, as well as knowledge *of* transformation. Such knowledges need to be generated around the institution, its history, culture and practices, and in relation to the social and cultural diversity of its staff and students. Taken together, these define the changes that are necessary, the ways these can be made possible, and how change is taking place (Lange and Luescher-Mamashela 2016: 131). These investigations, in turn, ought to have a critically reflexive approach to knowledge, by looking at who is producing this knowledge where they are doing so, and what methods of knowing they are using (Lange and Luescher-Mamashela 2016: 131).

Elements of these knowledges are evident in the literature. Postgraduate students' theses and dissertations have provided important insights into staff and student experiences (Goba-Malinga, 2011; Johnson, 2016; Munyuki, 2018), as have academics (Ngabaza *et al*., 2015; Singh, Mudaly, Singh-Pillay, 2015). A small but important body of literature reflects on how the curriculum can be developed to incorporate attention to violence (Ngabaza *et al*., 2013; Clowes, 2013; Ngabaza *et al.*, 2015). UWC, for example, has used its research methodologies' courses to encourage students to investigate safety (Ngabaza *et al*., 2015; Ngabaza, Shefer and Clowes, 2018), as well as love and relationships (Ngabaza *et al*., 2013). Another small body of case studies deepens understanding of how policy is made and applied (Hames, Beja and Kgosimmele, 2005; Gouws and Kritzinger, 2007; Collins *et al*., 2009; Collins, 2014). Much more must be done to capture institutional memories and histories, as well as to extend knowledge and praxis beyond the health and social sciences, humanities and law, which are currently the producers of all knowledge in this area.

These various specific knowledges are important to developing social interventions for individual universities that are tailored for their unique position.

[14] While articles (Gouws and Kritzinger, 1995; Bennett, 2009) made fleeting in-text references to Fort Hare, the University of the North (now Limpopo), and the Rand Afrikaans University (now the University of Johannesburg) these forgotten histories could not be retrieved.

2.6.2. Social interventions

Social interventions, as projects beyond the lecture hall, remain largely under-developed within the university setting. While universities could, of course, simply adopt one or other existing programme around gendered violence (Jewkes *et al*., 2006) is it moot as to whether these can be equally effective in HEIs? The answer to this depends on the extent to which universities can be treated as coterminous with South African society more generally.

HEIs are certainly populated by staff and students drawn from a broader social context that is marked by pervasive violence, and the values that contribute to violence will be present to some degree in at least some staff and students. To that extent, universities can be treated as microcosms of society. However, they are not miniaturised versions of society either. Rather, they are a particular social institution, serving a distinctive purpose – higher education – which they fulfil in particular ways. As the literature review has shown, this produces a specific context for the emergence of gendered forms of violence through the ways of being, habits, histories and relations of power that are brought together and refracted by educational spaces. Behavioural norms will not be independent of this context.

One distinctive feature of universities is their transitional and isolated nature, largely designed around young people making the transition from adolescence to adulthood. Many are away from home for first time, making their own decisions. Going to university also remains a very racialised experience and for black students attending historically white institutions, universities may be perceived as alien and unwelcoming. Students may be the first in their families to go to university and under a great deal of pressure to succeed (Swartz *et al*., 2017). They may have come from small, homogenous, rural communities to find themselves dislocated by unfamiliar, urban and heterogenous environments. Class differences may be very apparent, ensuring that some students will feel as if they neither belong nor fit in. And some students will have neither enough to eat nor a place to stay (Swartz *et al*., 2017).

Universities and colleges are also highly sexualised spaces, with both male and female students expected to be sexually active (Clowes *et al*., 2009), often in a context where a great deal of alcohol may be available (*ibid*; Dastile, 2008; Collins *et al*., 2011; SVTT, 2016). Power in these contexts is derived in a range of ways in addition to gender and may include having a car, having money, being able to write good assignments, being a member of structures such as the SRC, and being older (Clowes *et al*., 2009).

Two projects have sought to address elements of this context in very different ways. The “girl-led policy” from the ground up based at Mandela University and DUT focused on developing an activist orientation in students through activities such as engaging in demonstrations, panel discussions and policy advocacy (De Lange, Mitchell, and Moletsane, 2015; Magudulela, 2017).

Ntombi Vimbela!, by contrast, aimed to reduce young women’s personal vulnerability to sexual violence by strengthening their ability to resist sexual aggression. Factors understood as inhibiting women’s capacity for resistance included the use of alcohol in ways that impair judgement and mobility, low levels of sexual assertiveness and self-efficacy, and fear of embarrassment and rejection in situations where the offender is known (Mahlangu *et al*. 2021: 2). To address these, a 10-session programme was devised to provide information about gendered forms of violence, as well as students’

rights and recourse; enable students to assess risk and resist emotional and material pressure; and engage in emotional wellness practices. Two sessions were devoted to self-defence training (Mahlangu *et al*., 2021).

These are both projects in feminine subject formation which offer somewhat different understandings of how violence is to be addressed. "Girl-led policy-making" is a project seeking to enrol young women in programmes of governance and founded in the notion that opposition and resistance, coupled with placing young women at the forefront of policy development, is effective in addressing gendered forms of violence. It could be understood as the programmatic version of the #EndRapeCulture protests and their associated processes of policymaking. While Ntombi Vimbela! also aimed at creating a resistant feminine subject, it is more individualising in effect and has been criticised for placing the onus of prevention on women, rather than men (Boonzaier, Carr and Matatu, 2019) and encouraging women's self-blame if their resistance is unsuccessful (Mardorossian, 2002).

It has been argued in response that these programmes both complement work with men and represent a pragmatic compromise with the fact that no strategy has, as yet, shown itself capable of eradicating gendered forms of violence (Mahlangu *et al.*, 2021). Self-defence training would also appear acceptable to at least some students, and it featured in the demands issued during a protest following Uyinene Mrwetyana's murder (Postman, 2019).

Self-defence can be thought about in more theoretical terms however, and in relation to feminine embodiment specifically. In a context where women embody vulnerability, such training could reimagine women as possessing fearsome, rather than fearful, bodies (Marcus, 1992). In this guise, it could fit within the kind of corporeality represented by the female protesters who went bare-chested and carried sjamboks in direct challenge to the representation of feminine bodies as frail and frightened (Gouws, 2018).

"Girl-led policy-making" and Ntombi Vimbela!, read in conjunction with the earlier discussion around complainant identities, point to some of the ways in which people are gendered in different ways and at different times. The literature around masculinities, by contrast, is sparse and under-developed.

2.6.3. Men and Masculinities

Clowes (2013), reflecting on her teaching at UWC, noted that her male students seldom perceived gender equity as benefiting men, approaching it instead as a zero-sum game in which only women gained. How, she asked, could men be invested in this project? This is a concern also investigated by those interested in how men can be made allies in struggles against violence (Johnson, 2016). A different tack is taken by those who largely focus on how men should be addressed to ensure they are made responsible for violence and its prevention (Boonzaier, Carr and Matatu, 2019). Still another approach cautions against reducing complex realities to fixed masculinities that are either good or bad, and where internal contradictions, historical complexities, and processes of translation from discourse to lived experience are insufficiently explored (Oxlund 2008: 62). The existing literature seems to support this last point.

There is a suggestion in some articles that "being academic" has gendered meanings. For Singh and Myende's (2017) female interviewees, being at university held positive connotations. This may be

more contradictory for men, as seen in Langa's work (2020) with young black men in townships which revealed that “being academic” was not a prized route to masculinity for school boys. For those who sought popularity, being academic had to be supplemented by other attributes, unless boys could reconcile themselves to being considered socially odd (Langa, 2020). This attitude may hold into the university context. Oxlund’s (2008) fieldwork at the University of Limpopo highlighted how one of the candidates for the SRC presidency had been “written off” by his rivals precisely because he was academically successful and unsuccessful with female students.

Schooling shapes university students in other ways. Collins' (2013) article on young white men at elite boys' schools examined how one school’s initiation rituals produced young men who both valorised and idealised bullying, as well as those who rejected it outright. How this idealisation of aggression and aggressive institutions then lands within a university context is unknown. Why this bears further consideration in a university context is suggested by one of Munyuki's (2018) interviewees (who was also white). She highlighted young men from elite boys’ schools as a group who brought a particular "baggage" to university and the group most overt in their challenge to her authority.

Bullying, being bullied, as well as being academic, are not the only histories young men bring to universities. “Sam”, interviewed for a study examining men’s participation in the Silent Protest (Johnson, 2016), reported that both his mother and his girlfriend had experienced rape. He had also witnessed his father assault his mother. While “Sam” had participated in three protests, one in the attempt to understand his mother's experience, such insight had not come. Instead, he had become progressively more despairing and helpless, as well as sceptical of the possibility of change over the three years he had participated in in the Silent Protests (Johnson, 2016).

“Sam” offers one illustration of how university programmes interact with and shape masculinity and its relationship to violence at the level of the individual. Other studies examine how university contexts induct young men into the kinds of struggle masculinity with which the institution has historically been associated. Struggle masculinity has had a highly complicated relationship with feminist aims and objectives, treating these as divisive of political struggles during much of the struggle for liberation (Hames, Beja, and Kgosimmele, 2005; Kathree, 1992). These arguments around the place of feminism in struggles came to the fore again in strands of the Fallist movements (see Mugo 2015; Ndlovu, 2017), while incidents of violence towards women activists also resurfaced (Bashonga and Khuzwayo, 2017; Xaba, 2017). At the same time, Oxlund’s (2008) ethnography of the SRC elections at the University of Limpopo also illustrates how it can be reworked in complex ways.

Like other historically black universities such as Fort Hare, the University of Limpopo is a site of struggle and, as the University of the North (or Turfloop), it had a particularly important connection to the Black Consciousness Movement. Students remained acutely aware of this history, to the extent that it was mandatory for SRC members and activists to draw from this rhetoric. At the time of Oxlund’s fieldwork, SRC elections were a thoroughly masculine affair, with one of the contenders written off by his rivals because he demonstrated none of the characteristics of “successful” masculinity, as he was academically successful, short, and unsuccessful with women. Nonetheless, he drew very effectively on that struggle legacy to win.

Struggle masculinity is not homogenous in its expression, nor do all men subscribe to it. Men who participated in the Silent Protest, for example, reported doing so out of the desire to make a difference

by opposing rape and thus offering a different model of masculinity to other men, as well as to demonstrate solidarity with women (Johnson, 2016). For men with less difficult personal histories than that of "Sam", the Silent Protests were emotionally overwhelming, evoking guilt over not doing more, coupled with shock, anxiety, pain and sadness, as well as discomfort at being grouped with rapists.

Under-developed as these sketches of masculinities within a university context may be, they remain suggestive of the possibilities of change. Masculinity is not monolithic but sifted through experiences of schooling and its meaning; relations of violence, whether towards oneself or others; the histories of other people, other places and other times; the strictures of race, the standards of heterosexuality and the advantages of class; and the cultures and practices of institutions. How these understandings can be gathered to create knowledge for transformation within the context of HEIs is the challenge.

2.7. CONCLUSION

Taking three sets of protests as its lens, this chapter set out to explore why policies that had grown out of gendered struggles ultimately became a source of opposition. One answer was found in a thin conception of policy and its workings, where the possession of a policy document and few complaints was taken as evidence of success. This reinforced the institutional neglect and disregard of gendered forms of violence on campus. The effect was to incite opposition and a politics of protest that was better developed and understood than harnessing agents, elements and processes around a shared unity of purpose.

The review has also emphasised the heterogeneity of HEIs, with the differences between HAIs and HDIs manifested by a different patterning of violence. The universe of experience on which policy arrangements are based needs to be expanded, and violence's material dimension needs to be recognised.

Ultimately, gendered forms of violence need to be thought about in complex ways: as being spatially organised, shaped within the crucible of composite institutional cultures comprising both old and new, and inflected by multiple social relations of power. Gender features centrally among those but is not the only factor at play. The challenge to universities is to understand how these come together on their particular campus, and how these understandings can be harnessed for a unified and effective sectoral approach that facilitates appropriate levels of support where needed.

3. REVIEW OF POLICY DOCUMENTS

3.1. INTRODUCTION

Policy is fundamental to the governance function of both the state and the higher education sector in that it provides rules, guidelines and procedures that articulate and formalise expectations and, in so doing, brings some semblance of order and continuity to institutional operations. Policies (and their concomitant procedures) are designed to inform, shape and provide a determining framework for the decisions and activities they circumscribe. Policy and procedure aim to ensure that the intentions of the institution translate into outcomes that support such intentions.

Chapter 2 revealed that the policy environment is dense, complex and nuanced, with multiple internal and external touchpoints. Morover, policies derived from the same legislative and regulatory framework are often imperfect and do not necessarily resonate with all contexts or circumstances. This is particularly evident in the higher education sector, whose policy environment is multi-layered and intra- and extra- sectoral. This policy dissonance is particularly evident when it comes to HEIs' institutional policy arrangement for forms of GBV. It highlights the imperative to work towards a GBV policy environment in the HEI sector which is more uniform in terms of its understanding, articulation, application and transmissibility.

To gain some understanding of the current status of GBV policies in HEIs the MTT undertook a review of a variety of policies as at 2019, obtaining these from the HEIs at the request of former Minister, Dr Naledi Pandor.

In introducing the review, the broader normative framework in which universities' GBV policies are set, will be briefly summarised.

3.2. THE LEGAL AND POLICY FRAMEWORK PERTINENT TO GENDERED FORMS OF VIOLENCE

The Constitution of the Republic of South Africa (1996) is the supreme law of the country. Chapter two of the Constitution (known as the Bill of Rights)[15] enshrines the rights of all people in South Africa and affirms the democratic value of human dignity, equality and freedom. While all rights are significant when it comes to GBV, of particular significance, and especially for HEIs, are the rights to freedom and security of the person, including the right to be free from all forms of violence from either private or public sources. The right to bodily and psychological integrity rounds out this scaffolding and provides a strong impetus and framework for the development of laws and policies that give effect to the values and rights enshrined in the Constitution. Legislation most directly relevant to addressing gendered forms of violence are:

- The Domestic Violence Act, No 116 of 1998 (DVA).
- The Criminal Law (Sexual Offenses and Related Matters Act, No 32 of 2007 (SOA).

[15] https://www.gov.za/documents/constitution/chapter-2-bill-rights#7

- The Employment Equity Act, No 55 of 1998 (EEA).
- The Promotion of Equality and Prevention of Unfair Discrimination, Act No 4 of 2000 (PEPUDA).
- The Labour Relations Act, No 66 of 1995 and the associated Code of Good Practice on the Handling of Sexual Harassment in the Workplace (In Section 54 (1) (b) of the Employment Equity Act, 1998 (Act No 55 of 1998)).
- The Protection from Harassment Act, No 17 of 2011.

The DHET functions within its own legal and regulatory framework and is governed primarily by the Higher Education Act 101 of 1997 (as amended) and a host of aligned white papers and policies that formalise aspects such as quality assurance and language provision, among many others.

In 2013 the White Paper for Post-School Education and Training (WP PSET) (2013) aimed to ensure that a wide range of high-quality options is provided throughout the system, and to improve articulation between higher education institutions, and between universities and other post-school institutions. Importantly, the WP PSET (2013) notes that the victimisation of female students by patriarchal practices and sexual harassment is an impediment to these goals.

Most recently, the Policy and Strategy Framework Addressing Gender-Based Violence in the Post-School Education Sector (2020) was issued to guide PSET institutions in developing policies addressing GBV. In the foreword to the Policy, the Minister, Dr Blade Nzimande, asserts:

> *"With this Policy Framework we want to trigger the PSET system to identify effective responses and solutions to what is clearly a deeply complex social challenge for South Africa. It is our vision that this Policy Framework will become part of the solution, not only to address gender-based violence in our institutions, but also to engage society and communities in curbing gender-based violence"* (2020: 5).

President Cyril Ramaphosa, in turn, states simply but powerfully:

> *"We have to empower every woman in the PSET system to lead a life of dignity and freedom"* (2020: 4).

All PSET institutions are required to comply with the prescripts of this policy and strategy framework, which includes both institutional and departmental guidelines and measures aimed at assessing its implementation (and optimally measuring subsequent performance). This matrix of law and policy, and socio-economic and political arrangements and dynamics, offers some insight into the complex environment in which individual HEIs operate. A key part of doing so in compliance, and with efficiency and effectiveness, is to ensure an agile, relevant and effective institutional policy regime, which includes policy relating to GBV.

3.3. TOWARDS A MORE UNIFORM POLICY APPROACH TO GENDER-BASED VIOLENCE IN THE PSET SECTOR

In April 2019, the Minister wrote to all Council chairpersons at every public university requesting the following information:

- What are the policies relating to sexual harassment, GBV and gender-based harm in your institution? When were these policies adopted and/or reviewed? Please provide copies of the relevant policy documents.
- Which offices in your institution have responsibility for dealing with these matters and what is the nature of support offered for policy implementation, support to victims of gender-based harm, and formal processes related to managing these issues? Please provide detail in this regard.
- What institutional reporting is in place on sexual harassment, sexual offences and gender-based harm in your institution? What reports are received by Council on these matters and how often? What is the status of record-keeping on GBV, sexual harassment and gender-based harm?
- Concerning the establishment of the charter of ethics and sexual harassment, what mechanisms are already in place at your institution that constitute a form of code of conduct around leadership positions (both staff and students)?

Of South Africa's 26 universities, 21 responded to the Minister's call, focusing on these key areas:

- **Terminology**: What are the key terms on GBV used and how are they defined in the policies?
- **Policies**: What policies are in place relating to sexual harassment, GBV and gender-based harm, and what aspects do they cover?
- **Offices**: Which offices in the institution are responsible for dealing with these matters and what is the nature of support offered for policy implementation, support to victims of gender-based harm and formal processes related to managing these issues?
- **Formal procedures**: Do policies have a clear procedure for dealing with GBV and misconduct on campus?
- **Monitoring and reporting**: What reporting mechanisms, structures and procedures are in place?
- **Repeat offenders**: Do policies make provision for registers of offenders?

The analyses do not provide a comprehensive account of the merits or demerits of each policy. They do however provide a more nuanced overview of the current status on policies on GBV at our HEIs than has hitherto been the case. It should also be noted that some universities also submitted related policies, not all of which could be reviewed thoroughly or contextualised in more detail. This observation underscores the policy fragmentation and lack of coherence, already highlighted in this report.

3.4. OVERALL OBSERVATIONS REGARDING AVAILABLE POLICY TEXTS

The policy documents exhibited a range of strengths and weaknesses. Areas generally well addressed[16] were:

- The definition of sexual harassment and harassment;
- Policy objectives and scope were clearly articulated, as was alignment with other institutional policies or codes;
- Reporting structures and formal procedures for reporting; and
- Support for complainants (psychosocial and sometimes medical). The rights of complainants to pursue separate criminal and/or civil processes while institutional procedures are underway was also regularly noted.

These are discussed in greater detail below.

3.4.1. Terminology and definitions

To varying degrees, all universities in the sample analysed considered forms of GBV such as rape, sexual assault and sexual harassment in their policies. However, the extent to which these forms were mentioned varied, with some institutions more comprehensive than others.

As indicated in Table 4, most policies were sexual harassment policies, these being the terms universities defined most frequently. However, “sexual harassment” was sometimes conflated with rape or GBV rather than explaining sexual harassment as another form of GBV.

The following definitions and statements illustrate diverse understandings and interpretations of he concept of “sexual harassment” despite the definition of Sexual Harassment in the Employment Equity Act as: … “a form of unfair discrimination on the basis of sex and/or gender and/or sexual orientation which infringes the rights of the complainant and constitutes a barrier to equity in the workplace”. Some of these definitions may be outmoded and require attention in the policy development process.

- Sexual harassment is defined as when “the perpetrator should have known that the behaviour would be regarded as unacceptable”.
- “It is necessary to distinguish between sexual attention which is wanted and sexual attention which is unwanted. An occasional compliment, mutually accepted flirtation or banter does not constitute sexual harassment." While the first part of this statement is correct, the second one is problematic. If these aspects are unwanted, as the previous statement specifies, then the conduct does constitute sexual harassment.
- Indecent assault consists of unlawfully and intentionally assaulting, touching, or holding another in circumstances in which either the act itself or the intentions with which it is committed is indecent.

[16] There may be a few institutions where there is a lack of clarity but most were well-articulated.

- GBV – “Any act of violence that results in, or is likely to result in physical, sexual, psychological harm or suffering to women". Elsewhere, a different definition is re-emphasised whereby GBV is referred to as "impairing a women's enjoyment of human rights and fundamental freedoms". Notably, GBV does not affect only women, and treating it as such could lead to a lack of infrastructure and procedures to deal with GBV directed at men.
- One institution distinguished sexual harassment and same-sex sexual harassment. This statement comes across as discriminatory to same-sex relationships and sends the wrong message about that institution’s position on gender equality and rights. Other universities’ policy texts state that sexual harassment can be directed at anyone and thus avoids any confusion.

Affirming the observation made in Chapter 2 regarding the neglect of IPV, 17 policy texts offered no definition of this gendered form of violence. Institutional silence blends with student silence to make doubly sure that IPV remains unspoken of and hence, tolerated.

Table 4 below highlights the terms commonly identified and defined, as well as the number of universities not defining these terms.

Table 4: Terminology not defined in all policy texts

Term	Number of HEIs not defining the term
Verbal sexual harassment	3
Non-verbal sexual harassment	3
Quid pro quo harassment	4
Sexual assault	9
Rape	11
Gender-based violence	13[17]
Intimate partner violence	17
Sexual violations	17
Sexual misconduct	18
Sexual exploitation	19
Sexual intimidation	19
Grooming	20
Safety infrastructure	19
Complaint facilitator	16
Reporting officer	17
Alleged perpetrator	9
Confidentiality	14
Consent	12
Off-campus violations	17
Alternative dispute resolution	17[18]

[17] Most of the institutions without comprehensive GBV policies would not define GBV.
[18] These institutions did not define alternative dispute resolution, even though informal processes are based on this principle.

It is a matter of concern that despite an Employment Equity Act (1998) that defines sexual harassment and incorporates a gazetted and amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace, such "thin" and diverse sexual harassment policies and policy interpretations are in place in so many of our HEIs. This raises questions around institutional appetites for ensuring that appropriate and effective sexual harassment policies are in place, and calls into question institutional commitment to compliance with the regulatory environment and keeping abreast of policy developments in this critical area of student and staff wellbeing.

3.4.2. Policy Objectives and Scope

Most policies had a wide scope and addressed students, employees (including third-party service providers), visitors to the universities, and prospective students and employees. Some universities were explicit in asserting that their jurisdiction or mandate extended beyond university campuses, while others considered that the involvement of policies in addressing GBV only occurred during university events. Some universities, particularly those with discrete policies, were vague and did not specify the scope of their policies. Notably, although scope may have been specified in one document, it may not have been clear in all the other documents, raising the assumption that those working with the policies were obligated to read all policies, which may not be the case. This observation emphasises the lack of coherence on GBV and aligned institutional polices noted elsewhere in this report. It also brings to the fore the paralysing effect this has on effectively applying GBV policies.

Twelve universities had consolidated policies on GBV, and the other nine had policies that addressed parts of GBV, such as sexual harassment or discrimination. The policies that relate to, or support the GBV policies, or policies that dealt with GBV, were mostly human resources policies on staff and student discipline and disciplinary procedures.

The extent of related policies seemed to depend on how comprehensive and consolidated the GBV policy was. Some institutions had at least one related policy, while others had up to five. Most institutions had two to four related policies, which signaled the fragmentated nature of their GBV policy arrangements. For example, one institution had separate policies for students and staff, whereas an integrated policy that refers to different components would have simplified engagement with the policy[19]. It is evident that policy integration for consonance needs to be addressed to streamline the policy context at universities.

Few policy texts explicitly recognised how hierarchical and unequal power relationships contributed to gendered forms of violence. Those which did were also likely to recognise IPV and romantic relationships between staff and students or among staff (six universities) and grooming (one university).

[19] A fragmented policy may be difficult to implement especially if there is a division of labour among units and departments and offices, for example, where HR only has the disciplinary code, but not the policy prescripts for GBV, or campus security only has the procedure addendum but does not understand the full implications of the policy, and so on. It is important for all units responsible for attending to GBV issues to have a holistic view of the policy prescripts, not just the view of what the entity is responsible for.

Six universities submitted policy documents that addressed intimate or sexual relationships between staff and students. One university took a prohibitive stance, requiring full disclosure, and indicating that romantic or sexual relationships between staff and undergraduate and honours students were not allowed, regardless of any supervisory or teaching relationship. An exemption applied where the concerned parties were already involved in a relationship 12 months prior to the passing of the policy, or if they were married. Further, any intimate or sexual relationship between people with a supervisory or oversight relationship with each other had to be reported, although it is not clear what the consequences of non-reporting would be.

Five universities took a regulatory stance towards romantic and intimate relationships, stating that staff members had to report such relationships so that the university could, as far as possible, regulate the amount of leverage of the dominant party. For example, a student should not have their work graded by a tutor or lecturer with whom they were in a relationship.

Not all policies were explicit about the matrices of vulnerabilities (race, religion, sexual orientation, religion, citizenship, colour, and so on) that provide fertile ground for GBV. These are important to foreground, particularly in regard to education and awareness-raising campaigns, and may be considered for inclusion in policies in future.

3.4.3. Reporting Structures and Formal Procedures for Reporting

Policy analysis revealed variation in the availability of centralised or distributed offices dealing with GBV matters. This most likely had to do with whether institutional resources and capacities were available or not. However, it is also possible that a lack of appreciation of the gravity of GBV in institutions and of the concomitant need for a rigorous policy regime to address it, may have also contributed. Although the policies did not make it clear, it appeared that 10 institutions had centralised offices while others had multiple entities which dealt with GBV. Some institutions appeared to have bodies or committees rather than physical offices. The roles and responsibilities of the various offices, entities or committees dealing with GBV were, however, well-articulated in the policies.

Without understanding more comprehensively the pros and cons of centralised versus distributed offices, it becomes difficult to make recommendations on the ideal configuration for the location of the GBV policy and its oversight, and further research may be required. However, it remains critical to have adequate human resource capacity for the oversight and administration of GBV matters in our HEIs. This is necessary for quick turnaround in dealing with cases, to resolve the painful experiences of victims/survivors and give them swift closure on the institutional process.

Notably, it was not clear from most policies or higher education institutions what capacity was required in designated GBV offices. Only one institution indicated that there was limited capacity because of vacant posts that the institution was working on filling. The MTT is of the view that best practice models must be shared across the sector to inform policy and practice so that GBV may be addressed more effectively.

3.4.3.1. Formal procedures

All institutions, with one exception, had clear formal procedures for addressing GBV on campus, with procedures for investigating reported cases also detailed in the policies. Moreover, all universities made it clear in their policies that approaching the South African Police Service (SAPS) and laying charges did not exclude implementing institutional processes.

Eleven policies indicated that universities enacted interim measures where the situation called for them. These included issuing non-contact orders to the accused, changing the complainant's residence (should they request this), and "special leave" for the complainants. No university was clear on whether hearing procedures were differentiated by rank in the university, or if they were all the same. The only clear difference addressed by some universities was that there were various bodies that facilitated the hearings, depending on who the respondent was.

Moreover, most institutions were not specific when it came to how the rights of complainants were protected during a hearing. It was also unclear as to who heard interim protection hearings. Only three universities outlined hearing processes in their policies. Most policies were also unclear about who appointed disciplinary hearing panels. Very few policies detailed formal procedures for sexual and reproductive justice care, including post-exposure prophylaxis and referrals to places where survivors/victims could seek additional help.

These kinds of omissions and lack of clarity can be addressed within and between universities to develop transparent, clear formal procedures that enable justice for victims/survivors of GBV.

3.4.4. Support for complainants

In terms of support, while policies were clear about trauma counselling and providing information (advocacy and awareness) as alternative services, only one university implied that sexual and reproductive justice care was addressed – the others did not explicitly address this. Most policies for example, did not address post-exposure prophylaxis.

Most policies fell short on how to address reporting, punishment and record-keeping. Twelve universities did not seem to have reliable and available channels for reporting in their policies. Moreover, none of the universities indicated whether they had a secure online system for recording data or whether there was a database. Also, none of the policies listed consequences if these offices did not fulfil their mandates.

Unfortunately, only five universities explicitly stated the consequences, in detail, for varying offences. This may be due to this information being in other documents. However, it would be better to integrate this into consolidated GBV policies so that all information is in one document, even if abridged, with references made to the full document source. Without clear reporting, record-keeping and accountability on implementation of policies and enforcement of rules to deter GBV, any response becomes secretive, specialised and individualised. This works against the justice-enabling environment needed to address GBV on campuses. Again, best practices could be shared between institutions to provide victims/survivors and GBV whistle-blowers with a sense of safety, trust and confidence in reporting.

3.4.4.1. Advocacy and Awareness

Fourteen universities did not have advocacy strategies or plans indicated in their policies. Other institutions primarily informed people about GBV through workshops, initiatives or presentations during orientation weeks and at various times of the year for students. Some presented staff workshops organised by HR, or used roadshows to inform the university community. Additionally, some universities indicated that they used brochures, pamphlets and institutional websites to inform the university community on GBV awareness work, to access the GBV policy and for guidance on reporting structures. One university policy specified that there was a dedicated portfolio in the institution that headed a gender awareness programme. Again, good practices around advocacy and awareness could be shared between universities to ensure that this important aspect of the matrix of addressing GBV is emphasised on all campuses.

3.4.4.2. Monitoring and evaluation

Reporting structures and procedures were clear in all policies. However, it did not appear that institutions had secure online systems for recording, monitoring, evaluating and analysing data. Going forward, it will be important to establish good monitoring and evaluation processes across campuses so that the effectiveness of programmes, policies and their implementation can be tracked and revised where necessary.

3.4.4.3. Mechanisms for enforcement and protection

Many of the policies did not have explicit mechanisms for enforcement, nor did they specify the consequences for offences (these were often specified in the disciplinary procedures, usually a separate document). Policies largely did not include costing and resourcing of the offices or entities in charge of enacting policies. Many policies were vague around disclosure, for example, around the prohibition of non-disclosure and disclosure of perpetrators (many universities have confidentiality clauses, but it is not clear how long these are in effect for). It appeared that none of the universities disclosed information regarding perpetrators.

There was also a lack of clarity on whether whistleblowers were protected. Although five universities stated in their policies that whistleblowing was a legitimate form of reporting that would be investigated, the issue of protection was not discussed in these policies. On the issue of protection for complainants, three policies did not indicate whether they investigated anonymous complaints, two-stated that these complaints were not investigated, and 11 were unclear on whether they investigated cases where the complainant did not wish to be involved with the investigative process.

While some universities may have scopes that extend outside of campus or campus-related activity, it is not clear what the procedure is for individuals who find themselves victims of GBV off campus. It should also be noted that the procedure for complaints against students and staff from different HEIs, and complaints against students from staff and students at other HEIs, is unclear. There is also a lack of clarity on support to survivors of GBV that happens off campus. Many universities were not clear on whether there were collaborative ties with specific intersectoral institutions or departments, such as clinics. They were also not clear whether students could access services within institutions where they have experienced GBV if this was not on their campus. There was also no mention of whether institutions shared information of incidents involving cases of GBV with the broader university community.

The rights of complainants to pursue separate criminal and civil processes while institutional procedures are underway was noted regularly.

3.5. CONCLUSION

The policies submitted by institutions largely focused on the regulation of conduct and their associated complaints mechanisms. There is a lack of coherence and consonance within and between policies and their implementation (or lack thereof), which means that more work needs to be done by HEIs before GBV can be dealt with in a multi-layered and comprehensive fashion. Such work must include the related and essential aspects of awareness raising and advocacy, monitoring and evaluation, and transparency around accountability.

Two-thirds (14 out of 21) of the universities did not appear to have an institutionalised advocacy and awareness programme that would familiarise the university community with the policy.

The lesson from Rothmann, Joubert and van Wyk's survey (2011) suggests that staff and students in these institutions will not be familiar with the contents of the policy and that its complaints mechanism will be largely unused. In relation to IPV, it would appear that there is no explicit complaints mechanism available to students at most institutions.

While it is not expected that policies should be identical given the specific diversities that characterise universities, there are certain standard provisions that all policies should contain, including comprehensive definitions of different forms of GBV. Furthermore, none of the policies are costed and it is not clear whether or not there is the institutional capacity to implement these.

Finally, none of the policies mention shared services among institutions in the same region. There is work to be done within and between universities to establish effective ways of dealing with GBV so that there is national consistency. This will not only create a more responsive environment for those currently experiencing, or at risk of, GBV, but will also mean that staff and student perpetrators who escape detection in one institution will not be able to continue this behaviour at other HEIs.

The importance of policy consonance is increasingly evident when to comes to providing options to GBV victims/survivors (as well as perpetrators), that may resonate more closely with their given contexts and personal circumstances. At present, criminal charges are the only means of legal redress or recourse for those impacted, but other means and option for redress are being offered and implemented in other countries. For this to be considered in South Africa, there would have to be a solid policy platform to accommodate the various options and, most importantly, their implementation.

The prevailing institutional policy environment and the substance of other forms of, and options for, redress are discussed in-depth in Chapter 5.

4. FINDINGS OF THE GENDER-BASED VIOLENCE AND SEXUAL HARASSMENT (GBV/SH) VIRTUAL CONSULTATION WORKSHOPS

4.1. INTRODUCTION

In addition to a comprehensive literature review, a legal and policy analysis on the history, and the contextualisation and survey of the work on GBV and Sexual Harassment (GBV/SH) in South African higher education, the DHET secretariat together with MTT members invited various universities to take part in virtual consultations on GBV across the country. These online consultations were designed to give voice to and solicit input from stakeholders across the sector. The consultations formed part of a holistic approach aimed at advising the Minister on the nature and scope of GBV in SA public universities.

There were four three-hour virtual consultations that included three breakaway sessions co-facilitated by MTT members, staff and students from various universities as per delegated groupings. The consultations were attended by students (and their affiliate organisations); staff working with GBV/SH related matters (such as Gender Offices and health care workers); Human Resource and Employee Relations staff, and middle to senior university management accountable for addressing GBV/SH matters in their respective universities. More than 123 participants registered for the student consultations.

The MTT recorded and categorised the virtual consultations according to the following themes:

- The situation facing complainants of GBV/SH and harm in South African universities;
- The specialised responses of universities to GBV/SH and harm;
- Assessing GBV/SH and harm within university communities; and
- The management of GBV/SH responses in universities.

4.2. SHARED EXPERIENCES EMANATING FROM THE CONSULTATIONS

In this section, we highlight the shared experiences of stakeholders who attended the consultations on four separate days in November 2020.

Several participants shared frustrations on policy ineffectiveness in dealing with GBV/SH; while others suggested practical ways of improving institutional cultures towards the creation of safe campuses (this included a shared national community of practice to share information, and the capacitation of personnel involved in the GBV/SH work); using centralised technologies to improve the turnaround times on the GBV/SH cases; confidentiality and the broader building of trust in the institutional processes towards improved reporting, and better-coordinated proactive programmes to prevent GBV/SH across the sector.

Throughout the consultations with stakeholders, participants took on an advisory tone with practical approaches on how universities can prioritise GBV/SH related work in the resource-competitive, complex and multilayered higher education landscape.

From the participation, it was clear that a one-size-fits-all approach would not work as the contextual and historical background of each university informs the approach and investment in its GBV/SH related work.

Sectoral collaborations; sharing resources and information; training and education; investment on research and curriculum; changing institutional cultures, and accountable leadership were consistent themes that dominated the consultations.

Most of the workshop consultations provided a space to share practices for dealing with GBV/SH while simultaneously facing resource limitations.

Most participants appreciated the space and opportunity to share and learn from one another. They encouraged a centralised and co-ordinated approach to the formation of a community of practice (COP) that would continue the conversations at a national level. It became apparent from the consultative workshops that staff and students shared many common ideas on how to improve the institutional cultures, linking to a broad societal culture of violence and masculinist domination outside the university. In this regard, the idea of ongoing COP consultations could make a useful contribution to determining commonalities.

As the MTT seeks to advise the Minister on how to create safe campuses and equitable institutional cultures that value diversity, participants suggested training and educational awareness programmes, fast-tracking case management processes, investing resources into GBV/SH work, providing leadership accountability, and regular reports for auditing to shift gender power relations that perpetuate GBV/SH.

Below, we categorise the responses of the attendees into themes intended to help us make recommendations to the Minister.

4.2.1. Gendered Power Relations and Institutional Cultures

Swartz *et al*. (2017) argues that GBV exists because of contextual structures and systems, and therefore GBV as a system cannot be separated from the ongoing problem of how a privileged few reproduce a world around their bodies (Ahmed, 2015). As such, any framework that seeks to address GBV would need to depart from the recognition of contextual norms, structures, and cultures which solidify gender biases and discrimination. In the virtual consultations, the participants raised concerns about links between the institutional cultures and societal norms that perpetuate GBV/SH broadly.

The link of GBV to broader discrimination is highlighted below by a participant from UCT:

> *"Our society is constructed in a certain way that puts men in a different place from women, who are supposed to be submissive to men as our superiors, while we must love them and understand that they must be aggressive and in control. Our patriarchal society is what causes GBV to be maintained and perpetuated."*

The emphasis on linking GBV with broader diverse forms of discrimination was emphasised without isolating it from the societal violence. The recognition of the interlinked nature of societal violence and institutional cultures does not justify the perpetuation of discrimination and violence on campus.

Academic institutions have a duty to create safe campuses towards broader gender transformation and dignity for all, as enshrined in the constitution. According to Swartz *et al*., "the paucity of literature on gender dynamics in South African higher education points to the limited analysis of intersectionality, [and] there is a necessity for a more nuanced exploration of the interlocking mechanisms between gender, race, and class where such varied experiences are acknowledged and affirmed" (Swartz *et al.*, 2017). It is argued that deeply embedded structural inequalities in our society, patriarchal dominance, and a host of other sociological problems are responsible for the unending cycle of violence.

One CPUT participant shared how this intersectional approach is needed to tackle GBV:

> *"An intersectional approach is taken to GBV at CPUT, in terms of which an understanding of how the interconnected inequality markers such as disability, race, sexual orientation and culture intersect with GBV."*

The literature shows clearly that institutional factors influence the likelihood of victims/survivors reporting incidents of GBV. Where an institution does not provide clarity on what constitutes GBV, staff and students are less likely to report incidents (Gouws & Kritzinger, 2007). Where gender equality is widely understood and embraced, this is likely to inhibit incidences of GBV and empower survivors to report incidences. Where rape culture and norms around victim-blaming are challenged, there is also likely to be an increase in reporting incidents and in individuals seeking assistance post-victimisation.

Culture is not only bred from university campuses. Most participants highlighted the role of local communities and basic education in dealing with the patriarchal cultures that endorse hierarchies and male superiority. One participant from Rhodes University notes that:

> *"Gender inequality that is rooted in patriarchy is an issue in societies, hence we have a culture of violence. We have seen in our communities that there is a normalisation of male superiority which increases male violence, which is also normalised in our cultures. Back at home, most women still believe that if their partner hits them, it is a sign of love. It is even more heartbreaking for children who grow up in that culture of violence, which makes them believe that it is normal."*

This means that in dealing with some of the shared experiences of the students of entrenched masculinised entitlements and lack of understanding of consent, we may need a systematic approach in governance, norms and values that is communicated daily to change misogynistic histories of the academy. One of the participants from UP noted that:

> *"Students are a moving population as students graduate. This makes it difficult to embed the cultural changes around consent and dating. Working with opinion makers and leaders, in residences and student societies and structures, could help to keep these conversations alive and start to shift practice and conversations."*

Gqola (2021: 145) reminds us that "the history of entering science and the academy through genitalia, hysteria, measured brains and scrutinised labia is the very fabric of the contemporary university's institutional cultures". While government and institutions are becoming more aware of the issue of GBV at HEIs in South Africa, there is an astounding paucity of national research that should provide a clearer understanding of the nature and extent of this phenomenon.

As noted by Donaldson and Warren (2015), this investment in research on GBV and Sexual Harassment will also advise on the LGBTQIA+ specific challenges to avoid over-generalisation based on mostly heterosexual cultures in higher education. At the end of this report, the MTT makes a recommendation on future research into this area to give a full sense of the scope and extent of GBV across the sector.

4.3. LEADERSHIP, ACCOUNTABILITY, AND RESOURCING

According to Toni and Moodly (2019), higher education institutional cultures have contributed strongly to the poor representation of women executives in the top leadership of those institutions. Using an autobiographical reflective approach, both authors seem to lean towards Ramphele's (2017) analysis of South African higher education leadership as embedded in "authoritarianism and sexism" (Toni & Moodly 2019: 179). These sexist cultures, also observed by the participants in the virtual consultations, need strong and effective leaders at all levels of the university to make system-wide changes towards an optimal climate and culture in higher education. In the consultations it was noted that leaders of the universities should undergo training to sensitise them on sexual harassment, rape, and other forms of GBV and its broader impact on gender transformation project.

A participant from the University of Limpopo suggested that:

> *"VCs and councils should be held accountable for the implementation of the policy, and the ministry should ensure that they compel this directive as part of key performance areas for VCs. This will ensure that VCs promote coordinated efforts amongst departments."*

The full participation of leadership and governance in higher education institutions was suggested as critical in transforming institutional cultures towards creating safe campuses. According to various stakeholders, institutionalisation of the GBV work needs leadership from each stakeholder on campus but also buy-in from the highest levels of management to ensure advocacy, awareness and accountability.

Although the participants agreed on the institutionalised nature of GBV, they also emphasised the need for increased research and teaching, and innovation, to keep everyone accountable for changing institutional cultures and practices in HEIs. This was favoured over an uncoordinated siloed approach. A UFH participant also noted that:

> *"The reporting procedures have been discussed a lot, but the research that I have read says that often reporting does not occur for a range or reasons, including fear of retaliation. We need a more proactive approach, such as surveys or proactive engagement, instead of focusing so much on the reporting procedure only."*

Most participants in the consultation workshops noted the need to resource and capacitate GBV offices across the sector. Notably, it was suggested during plenaries, that a budget be allocated via a top leadership directive. Cross-sector standardised practices in resourcing and capacitation of the offices involved in GBV work were recommended as this could help them to coordinate, institutionalise and share information.

It became clear across the sector that there was no single office in charge of GBV cases, with several institutions (UJ, Wits, and UWC) indicating that their Gender Equity offices were responsible for handling GBV and sexual harassment cases.

The Gender Equity Office at UJ was established following an audit by the Human Rights Commission in 2016/17. The audit also identified gaps in the policies that were in place for equity and GBV issues. A single policy was therefore drafted, based on a structure that consists of different pillars, which include Gender Equity and Equality, GBV and femicide, LGBTQIA+ issues, information and knowledge management, marketing and communication, and partnerships and collaboration. The office focuses on equipping students with everything they might need when faced with GBV and sexual harassment.

The Wits Gender Equity Office was established in 2013 following a scandal of improper behaviour by senior staff members in the university. Prior to this, the Human Resources and Legal office dealt with these matters.

UWC participants indicated that it has opted for a collaborative approach, with several offices:

> *"There is a Gender Equity Office which has become a safe space for students to report not only GBV and harm, but all sorts of discrimination based on gender. However, over time the need for more points of reporting has emerged. Various offices exist where students can report cases, such as the Thuthuzela Care Centres. The internal procedure is guided by a Sexual Violence Policy, which aims to cover all forms of sexual violence between students and students, students and staff, and staff and staff."*

Participants also noted fragmentation around reporting structures. At UWC, several structures exist, including an HIV/Aids programme, Gender Equity, Student Support Services, and these structures also have communication and advocacy campaigns. The Sports Department, for example, has a component addressing men and masculinities. In other institutions, the presence of social workers in residences has become an important reporting structure.

In institutions which have several campuses, institutional cultures may vary, which makes coordination across campuses difficult and leads to uneven implementation of the programmes. A participant from UKZN noted the challenges of the spread of campuses even within one institution, noting that each possesses an individual identity and culture. At the end, participants suggested that institutionalisation of the GBV/SH work on campuses can be coordinated within a single office with lots of different stakeholders across the institution linked to the office. Likewise, other participants also warned of overburdening the few staff members in GBV/SH offices and the possible shift of accountability away from all other parties in an institution.

4.4. RESOURCING OF THE GENDER EQUITY OFFICE AND IMPLICATIONS FOR SUCCESSFUL HANDLING OF GBV CASES

The capacitation of the Gender Equity Office and various University structures or units that have been tasked with handling cases of GBV on campus seems to be limited in most institutions. For instance, UP reported only one person in the Transformation Office dealing with students and staff complaints. UCT reported that in March it began consolidating various resources for dealing with GBV through a survivor-centred approach. Although these structures are not housed under the same entity or in the same office, there is a single contact person in the Office for Inclusivity and Change who offers counselling support to victims, and through whom the survivor consults with all the other services.

The capacitation and resourcing of units dealing directly with GBV are sometimes compromised by contract appointments. The example was cited of security staff, often the first responders in a case of GBV, who may be appointed on a contract and be replaced after a few years, leaving a gap in terms of capacity.

CPUT noted that it was considering establishing a high-level GBV Committee, chaired by the VC, to ensure that leadership is involved which could speed up the finalisation of cases. It was envisaged that this panel would rely on technical committees working on the ground along with the Transformation Forum, consisting of people from different faculties and units. These units tend to collaborate with SAPS, Health and Wellness Centres, NPA, Security Offices, Human Resources Management, as well as other relevant community organisations including Legal Clinics, Thuthuzela Centres and Rape Crisis, to assist in reporting and managing cases of GBV/SH. Leadership capacity-building programmes for the SRC, house committees and other student leadership positions must be aware of the policy and how incidents must be reported.

It is clear that GBV offices and structures operate with limited resources. Where offices are centralised, they consist of one, or at most five, individuals. In most cases, the emphasis is on student complaints. Where there are two structures to deal with staff and student complaints, one would be associated with Employment Relations processes, while the other would either fall under the Dean of Students or under Student Services where a collective of individuals, including Campus Health, Student Counselling or Student Governance, would take responsibility for resolving cases. This often results in uncoordinated structures which in turned affected turnaround times.

It was further noted that counselling services are often stretched beyond capacity. It was suggested that the Department of Social Development and civil society organisations may need to be invited to assist universities in providing counselling and social work support for students, both on- and off-campus. An issue was raised about the effective use of external stakeholders such as SAPS, Thuthuzela Care Centres and local lawyers to resolve cases. It is often the case that victims/survivors have to repeatedly re-tell their stories to different SAPS personnel, and this can lead to the attrition of cases as well as expose survivors to secondary victimisation.

4.5. COLLABORATION OF DIFFERENT STAKEHOLDERS ON GBVH AND SEXUAL HARASSMENT

Processing GBV/SH cases is time-consuming. Although a few institutions have made strides in advancing awareness in terms of GBV/SH cases, the challenge in effectively addressing and finalising cases is the turnaround time. A few ideas and initiatives were suggested to address this, focusing on a coordinated effort between institutions, internal stakeholders and external partners to fast-track case management processes. Participants also advocated bringing in the CGE and the South African Human Rights Commission to enhance accountability by all who are involved in addressing GBV. In engaging external partners, participants also suggested signing of MoUs with SAPS, the Department of Health and Department of Social Development to hasten case resolution.

In many cases, these offices collaborate with different stakeholders on campus to help the investigation process. These include health services, security services, SAPS, the NPA and external stakeholders. However, there are visible misalignments among different universities.

Some reported that high-level panels tended to investigate cases involving extreme violence. The University of the Free State (UFS) reported that it has a sexual assault response team, which comprises role players such as a social worker, psychologist and representatives of the Gender and Equity Office, Student Affairs, and Protection Services. UFS students can report cases at any of these offices, which are linked to each other. UFS reported that students can report cases via email and a toll-free number. The university has also put in place a mechanism to ask either the perpetrator or the victim to move to another space to ensure that the individuals do not have to encounter one another.

Nelson Mandela University reported an online system which is also used to keep track of GBV cases, which could eventually link to an app. This system tracks incidents reported by staff and students and can be accessed from a smartphone as well as a computer. It noted that complaints can also be reported by a third party or the survivor themselves, and a unique identifier code is issued for the complainant to keep track of the progress in the case. When a complaint is lodged, a GBV counsellor and case coordinator are alerted to liaise with the complainant, who will start an investigation and/or alternate dispute resolution mechanisms.

At UJ, it became clear that the Protection Services Department, where cases are reported, forms an integral part of the process. Protection Services then communicates with the other structures that need to be alerted such as the Transformation Division, Campus Health, counselling services and others. UJ also reported developing an app to capture details of individuals who have been reported as being involved in a sexual harassment or GBV case, even if the case has not been brought to conclusion. The app also assists any person dealing with such a case to access live data about the number of cases and their progress. At UJ, it was noted that capacity challenges are mitigated by the involvement of the SRC and house committees, who are informed about how they should deal with a student reporting a case of GBV and sexual harassment. Some inconsistencies in case management processes were reported, although many universities dealt with staff and student complaints through the same mechanisms.

From the various institutions it became clear that some have a centralised response mechanism, while others have dispersed response mechanisms, often with multiple entry points. Other institutions have

a centralised online reporting structure that is dependent on budget. The opinion was expressed that a matrix of reporting systems that funnel into a centralised space might lead to more efficient case management.

Universities are large structures, often with multiple campuses, and a central management system might be a better way to deal with GBV and sexual harassment as such a system would provide greater efficiency and confidentiality. A centralised reporting system was suggested as a possibility to mediate secondary victimisation and ensure confidentiality.

It became apparent, especially with the students, that confidentiality in the case management process is a big challenge with the current reporting mechanisms. The notion of a national register to keep track of perpetrators of GBV was raised, so they may be identified if they attempted to register at another institution of higher learning. Too often perpetrators can resign or transfer to another university without being prosecuted and punished, which leads to reticence on the part of survivors to report cases. Centralisation of case management processes and improved ICT tracking systems could assist in the standardisation of the national responses to GBV while measuring the impact of programmes.

Consultation participants reported that institutionalising anti-GBV work needs a coordinated effort with intensive training and education of the individuals across the institutions, promoting a nationwide basic minimum training standard across the sector.

4.6. WHAT IS THE PROCESS FOLLOWED ONCE A CASE HAS BEEN REPORTED?

Universities follow different processes once a case of GBVH or sexual harassment has been lodged.

Wits University, for instance, reported its process as follows:

> *"An initial consultation is conducted by a social worker and an investigations officer. If a sexual assault has occurred, the victim is referred to Milpark Hospital, followed by follow-up consultations. The victim is asked whether they wish to opt for a formal or informal route, depending on the nature of the offence. This could include a mediated session, counselling, moving students out of residences or classes, or moving staff from offices."*

Some universities take a central approach. UCT, for example, has a single person to deal with complaints, who will then put the survivor in touch with all the other services. According to UCT staff, this is an effective way of centralising all the services that must come into operation to deal with GBV complaints.

Disciplinary processes to deal with GBV/SH were also noted. These include liaison between security services and SAPS, internal disciplinary processes, and the suspension of perpetrators in serious cases of GBV.

In response to a question about structures for dealing with staff and students, it was noted that the process took some time to establish. Mandela University, Wits and UFS indicated that they deal with

the staff and student disciplinary process holistically. UWC revised its policy to deal with everything from complaints to investigation through an inquiry panel and, once the evidence has been considered, the panel sends a recommendation to Legal Services. The challenge is that staff, if found guilty, can appeal through the CCMA. The current student disciplinary process also includes an appeals procedure, although this is limited to the defendant, and is not applicable to the complainant. The procedures for disciplinary action should be aligned to the intent of the policy framework. The majority of the office-bearers handling GBV/SH cases mentioned the need to engage the Human Resource department and update policies on how to synchronise the process between the student and staff case management processes.

In relation to prosecution, Wits reported that its process is inquisitorial rather than adversarial, and the hearing panel contains a gender expert. Legal representation is not automatic but must be applied for. There is a social worker on standby to provide counselling if the complainant or defendant should need this. Unless the complainant prefers otherwise, the complainant and the defendant sit in separate rooms, and video links are used. Cross-examination also does not happen directly between the perpetrator and the complainant. Rather, the questions are discussed with the hearing panel who then put these to the parties. According to Wits, this process has been evaluated and has stood up to inquiry. This practice is not outside of the law.

UKZN reported that, in 2018, it developed a practice of using the suspension procedure to deal with serious GBV cases, because of the potential violation of rights by the perpetrator. In the case of rape, for example, the file would be received from Student Services, a student suspension application would be lodged within two days based on the available information and the severity of the offence. The UKZN office would liaise closely with SAPS if the survivor opted to report the case to SAPS. However, there often is a reluctance on the part of survivors to report GBV as a criminal case. In the case of student housing, there is also a mechanism to suspend perpetrators for a period of five days in serious cases.

UCT reported a process similar to that of Wits. It has developed a new process with procedural rules for the hearing panel to lead evidence. This may take the format of evidence given face-to-face, online, on camera or through a written submission. In discussions during the workshops, participants noted that in instances where a person has been found guilty by the university, the possibility of placing the person on a list of sexual offenders or sharing information among universities should be considered. In this regard, it was noted that if a person is found guilty, there is no reason the university cannot disclose the information where there has been a process of appeal to balance their rights and interests. The identity of the victim may however not be disclosed.

In summary, while different universities use different approaches, most follow a HR or student discipline approach, in which several role players are involved. The question of jurisdiction is also important because the extent to which a victim of GBV outside of the university can be assisted is limited.

4.6.1. Innovations in reporting GBVH and sexual harassment cases

The engagements revealed that some institutions were already innovating around the reporting of sexual harassment and other forms of GBV, as they had developed online reporting tools. The

University of Johannesburg, for example, has developed an app to capture the details of individuals who have reported any form of GBV, even if the case was not concluded. The app will also assist any person dealing with such a case to access live data about the number of cases and their progress. Some UCT participants shared the benefits of using the ICT system in recording the case. Confidentiality can be offered since the person reporting a case can choose whether they wish to be known or not.

Moreover, institutions such as Mandela University have online systems that help to ensure confidentiality for incidents reported by either students or staff. Once a complainant has opened a case online, a GBV counsellor and case coordinator will make contact with the complainant and investigate. Thereafter, users can use a unique code to access the system and track their case via computer or smartphone.

UFH and UFS recommended that universities conduct a baseline assessment among students and staff to test their familiarity with the different procedures to be followed when reporting a complaint. To a certain extent, there is a tendency to situate GBV and sexual harassment within certain faculties such as Gender Studies or Humanities, and not beyond those faculties. This leads to a misalignment between students and lecturers, who may feel that incidents should be dealt with by somebody outside their faculty. For these reasons, and to ensure that everybody becomes an active part of the response, training and awareness creation about the processes to follow, it is essential for all stakeholders to have GBV training and development. It will also be necessary for universities to consider resourcing easily accessible online training for GBV responses and initiatives.

There are restorative approaches and those that require more formal and informal approaches. It was argued that a great deal of expertise is needed, and that different approaches should be explored, dependent on the nature of the complaint. GBV change agents in institutions should possess excellent ethical behaviour and should be sensitised to the issues in this field.

The consultations were a platform to share ideas and practices and, for many participants, the sessions turned out to be extremely generative. Wits Gender Equity Office, for example, is already working on this, highlighting the need to explore a more permanent mechanism such as a national database or repository.

4.6.2. Case Management and Confidentiality

It is important to review universities' approaches to reporting procedures, and whether they should be multi-phased or centralised. Consultative engagements show procedures to be on a continuum that ranges from centralised dedicated offices with staff, to a segmented response dispersed across a a variety of distinct functions in the university. According to participants, a centralised system ensures a more focused approach, limits the number of people engaging with the victim and prevents secondary victimisation. However, some universities pointed out that centralised reporting may not always be practical for institutions with multiple campuses. Participants identified challenges linked to the existing reporting system on their campuses. For instance, it was noted that:

> *"At CPUT we have found that there is no confidentiality about cases that are reported and that cases which are reported will spread across all five campuses. There has to*

be a way to protect victims' confidentiality until they are ready to speak about their cases so that others do not speak about their cases."

According to a participant, the legal framework within HR and university policies needs to be reviewed to address confidentiality clauses that end up silencing victims of sexual harassment, rape and GBV within the higher education sector. Participants noted that:

"There is a need to address the issue of confidentiality for staff and students who are hindered by the confidentiality clause. There needs to be a national directive on how to address such concerns that silence victims/survivors of GBV or sexual harassment."

Limitations in reporting procedures and the silencing of victims/survivors in higher education have led to some resorting to other channels to seek public justice. Unfortunately, some students resort to sharing allegations and naming perpetrators on social media platforms. While there is criticism, and legal consequences, for using social media to counter institutional denialism and distrust of the victims, Salter (2013: 226) notes it has provided victims with "unparalleled opportunities to form and participate in counter-publics in which allegations of sexual violence are being received, discussed, and acted upon in ways contrary to established social and legal norms". Based on the consultations and legal considerations, the MTT makes recommendations towards this phenomenon.

4.6.3. Encouraging use of the system

It is well documented in literature that sexual harassment and other forms of GBV are often under-reported due to deep distrust in how the cases are handled. The feelings of guilt, fear and mistrust in victims/survivors, who also are victimised by telling and retelling the story several times, may discourage reporting. Poor case management processes have a negative effect and several participants referred to the secondary victimisation that victims/survivors are often exposed to if they report their cases. Participants noted that numerous victims/survivors on campuses were not using reporting systems, and the fear of reporting was worse when the perpetrators were people with authority and influence. Often survivors/victims either remain silent or risk not being believed when they report their cases. It was also noted from the consultations that while we may want people to report and follow procedures, this may not necessarily be what the complainants themselves want.

A further question put to the MTT was the feasibility of third party or whistle-blower reporting on behalf of the victim. It was noted that anonymous reporting instilled a sense of trust in the system and that such complainants eventually relinquished their anonymity once the relationship of trust was established.

To encourage reporting, some participants felt there should be transparency in dealing with successful cases with regular reporting on these cases. Participants discussed the importance of continuous institutional research, monitoring and evaluation of sexual harassment and other forms of GBV on campuses. It was noted that this would help to track trends in reporting and case management. This would assist in evaluating the effectiveness and limitations of existing systems.

Furthermore, participants noted that universities need to commit themselves to developing sustainable solutions by encouraging incident reporting at their campuses, making information

accessible to inform the discourse on GBV and SH. To build trust in the system, they argued that it would be helpful to make available the number of cases reported, as well as their outcomes.

Participants urged universities to refrain from perceiving GBV reporting as damaging to their image or "brand". Institutions of higher learning should understand they have a pivotal role in fighting the scourge of GBV and SH. It was further suggested that, through the DHET, there should be measures in place to ensure institutions periodically account. MTT makes a recommendation in this regard in Chapter 6.

4.7. LANGUAGE AND PSYCHO-SOCIAL SUPPORT

There needs to be a balance between ensuring sufficient support and follow-up while respecting and protecting the survivor's right to privacy. Psycho-social support services on campus are one way to do this. However, it became clear in the consultations that these have limitations. A participant from Rhodes University asked about how the language barrier in the psycho-social (student services unit) could be taken seriously and addressed. This entails ensuring that language does not continue to be a barrier for complainants when seeking psycho-social support for traumatic events. The lack of long-term follow-up, tracking and sufficient effective support for survivors of sexual violence is a common challenge at HEIs in South Africa.

One CPUT student put it thus:

> *"There is also no adequate psychosocial support for students, even those who go for counselling stop going because it is not doing what it is supposed to do for them."*

Students' response to the impact of trauma is sometimes delayed and only a few months down the line can the full impact on overall functioning be observed, including the impact on their academic functioning. UCT has instituted a 24-hour help-line to avoid delaying case management and psycho-social support. According to UCT, this intervention has helped to ensure that students and survivors are encouraged to report more cases.

For this reason, a participant from UFH has noted the need "to align in terms of national guidelines and long-term provisions for these students concerning their schoolwork". Notably, the issue of securing temporary safe spaces or havens for victims while other arrangements are made is essential. Furthermore, the issue of language in counselling facilities is important in creating safe and intentional spaces for victims/survivors.

4.8. LGBTQIA+, NAMING, AND COMMUNICATIONS

The participants noted potential tensions between gender identities, sexuality and naming in official university communication. It was argued that trans-communities and those who do not identify with titles and nouns at times feel discriminated against, and this may need to be discussed within the broader gender transformation agenda of higher education. It was suggested that the naming and identity around LGBTQIA+ Communities tends to be ignored instead of putting policies in place to deal with individual preferences. Narrating a reported experience of the LGBTQIA+ community, a participant from Wits stated:

> *"It is quite violent to be constantly misgendered, with their degree certificates often reflecting some dead names rather than their chosen name and identity, which is viewed as gender harm."*

From the consultation it became clear that higher education must provide leadership and guidance on how issues of naming and identity are to be classified (discrimination, or GBV?), taking into account the broader gender transformation project of the academy. This can be part of the policy definitions to guide how practitioners address some of these questions.

4.9. EDUCATION AND TRAINING FOR CAMPUS STAKEHOLDERS

Training campus stakeholders on sexual harassment and other forms of GBV, as well as their allied policies, is fundamental to the successful implementation of policies and creation of safe campuses. In the consultations with university stakeholders, training was highlighted as key to the prevention and eradication of GBV and SH on South African university campuses.

Most participants mentioned the importance of coordination in developing standardised training modules which can be shared by university stakeholders across the country. According to participants, the university community needs to share knowledge and effective practices when developing training modules. The emphasis on coordinated efforts also requires the universities to be purposeful in their training, as opposed to existing practices, which participants felt were erratic, and lacked targets and measures of effectiveness. One of the UFH participants also noted that:

> *"Training about GBV is also often sporadic, and not proactive – there should be some national standards and principles about what should be included as a minimum in training sessions."*

The discussion with participants suggested that training on sexual harassment and GBV should be consistent throughout the year with intentional targeting of different cohorts within the university community. For instance, executive management and line managers need to understand the nature and extent of sexual harassment in higher education, particularly within their specific campus. This type of targeted training may influence how resources are allocated in the university to address GBV problems.

Similarly, training for other stakeholders (academics, administrators, general workers on campus and students) is critical in raising awareness about GBV and SH on campuses. Discussions with participants emphasised the forms and frequency of training for these stakeholders. Participants were generally critical of practices at most universities, where training on sexual harassment and GBV are mostly addressed during orientation season, or when a major incident happens on campus. It was noted that this approach is not sufficient. Participants suggested universities should develop compulsory modules for students as a requirement for completing degrees. They also suggested development of module content should be coordinated across universities to ensure that deeper conversations on critical content are addressed and incorporated.

More focused awareness raising among boys and men was supported. A Rhodes University participant shared that:

> *"In 2016, some fascinating discussions were initiated by men in Rhodes University residences, where students were holding each other accountable for GBV on campus. Some of the residences invited people to come and talk to them in their common rooms, where conversations around consent were quite disturbing. At one point, one man put up his hand and said that they could all be viewed as rapists, because the line between coercion and seduction was so uncertain, and that the acts that form part of dating could be construed as part of rape culture."*

It was noted that the Grade 12 life skills curriculum does include a section on GBV and that this needs to be continued at university. Training and education programmes on consent should be prioritised from first year. One CPUT participant reported that the university had begun to implement a compulsory module dealing with GBV as part of the first-year curriculum. Most participants asked for awareness of GBV and SH to be more broadly incorporated into the curriculum, and for this to be championed by the various faculties.

Participants pointed to how HIV had been incorporated into the curriculum and suggested a similar approach for GBV and SH. This coordinated and holistic approach to awareness raising needed to go beyond the gender work which came mostly from the Humanities, Social Sciences and Law, and not from Engineering and the Sciences.

Institutionalising work opposing GBV needed the active involvement all the stakeholders if cultures were to shift. Institutional practices of silence and secrecy in dealing with reported cases do not always encourage victims to come forward and report their cases. According to most participants, such practices seek to protect the image of institutions, and project the assumption that any case was an isolated incident.

Another crucial area raised in the consultations was the need for direct training for security personnel and campus staff who are often the first to respond when victims call for help. Reference was made to the importance of linking this training to the legal framework, which required statements to be recorded in such a way that they would stand up to scrutiny in court. For this reason, participants said it was important to include SAPS and NPA officials in training campus personnel on how to take statements.

Advocacy programmes are another area pivotal to raising awareness within the university community, and in communicating its stand on sexual harassment, rape, and GBV. According to Boonzaier, Carr, and Matutu (2019) advocacy programmes also reflect the institutionalised discourse. However, during engagements with students, the institutional language used in campaigns and information on sexual harassment, rape and GBV is not always easy for them to process. Most participants said multi-media and youth-centred approaches to raise awareness are needed to ensure that campaigns and communication on GBV reach targeted recipients on campus.

Several universities in our engagements reported on initiatives developed to help conscientise men on these issues. Various institutions, such as UFH, Wits and UCT, have the assistance of change champions, peer helpers and SRC support to raise awareness at institutional and departmental level. The University of the Western Cape (UWC) established a sportsman forum in 2018 aimed at providing a free space to men to discuss matters that affect them. These sessions cover different themes

including GBV issues. This intervention holds men accountable and seeks to shift the cultures on campuses.

It was noted that since student organisations have better access to students, and deeper knowledge of student culture and behaviour, university advocacy programmes should be developed in collaboration with the SRC and faith-based organisations which tend to attract a diverse group of students. Again, the argument about thoughtfully planned campaigns with measurable targets was emphasised. Participants expressed the need for coordinated campaigns across institutions to amplify their impact. There was strong support for consistency across institutions in terms of advocacy programmes, raising awareness, and making sure that information was easily accessible and transparent for all students on all campuses.

The main challenges around advocacy programmes related to funding, resource availability, and staff capacity. As noted, in most institutions the offices responsible for dealing with sexual harassment, rape, and GBV are often under-resourced with limited funding. It was recommended that, given the lack of resources and coordination at national level, a GBV target should be linked to the various grants provided by the DHET to make resources available to address these issues.

4.10. LEGAL QUESTIONS RAISED IN THE CONSULTATIONS

Participants consistently raised legal questions during the consultations. We have summarised these below:

- Some staff who are accused of GBV and sexual harassment simply resign before disciplinary hearings start and then move to other institutions where they continue with their misconduct.
- HR officers, including part-time or contract staff, need to be trained in how to do background checks. The question was asked if the creation of such a register would require universities to report cases of GBV to the SAPS.
- In the education sector, there is a process and a register enabling schools to check if potential candidates have ever been found guilty of GBV or sexual harassment before they are appointed. The possibility of establishing such a system in place is recommended.
- Different legal strategies apply to how student and staff GBV cases are dealt with on campus. Participants highlighted how labour law applied to staff and administrative law to students. This raised complex questions in cases involving staff members and students, particularly as labour law requires complainants to testify a second time when matters go through to the CCMA or a Bargaining Council. This is different to how student cases are managed.
- In some instances, perpetrators continue to have access to campus while a case is being investigated, which re-traumatises victims/survivors. While some institutions immediately suspend perpetrators while the matter is under investigation, others do not, and guidance was requested around a legal process to limit the access of the alleged perpetrator to campus while the case is being investigated.
- Another challenge remains staff and student perpetrators who continue to perpetuate GBV and harm on- or off-campus.

4.11. CONCLUSION

The MTT consultations aimed to give stakeholders a voice on the nature and scope of sexual harassment and other forms of GBV in South African public universities. These consultations were clustered around themes that included gendered power and institutional culture, accountable leadership and resource allocation, and training and education to prevent systematic violence. The chapter also shared a few examples of case management and reporting mechanisms to show the innovation and limitations of current reporting systems.

Universities' core business is knowledge production through research and teaching, and there was a consistent concern around the limited research in this area, especially around LGBTQIA+ experiences. This paucity of research also serves to limit the extent of recommendations in other areas, including "sex for marks", which did not feature extensively in the consultations.

One of the key consultation findings is that the MTT cannot advise the Minister on a one-size-fits-all approach in dealing with GBV and sexual harassment in higher education. There are different resources and contextual peculiarities at each university. In effect, the complexity of histories, geographies and economic resources needs national guidance with flexibility to accommodate individual universities.

5. LEGAL CONSIDERATIONS

5.1. INTRODUCTION

As noted, the MTT has reviewed a range of policies in place at public universities in South Africa. Our review has revealed inconsistencies in existing policies and how these are implemented at various institutions, with implications for the nature and extent of justice. The misapplication of existing law to GBV matters, as well as lacunae and uncertainties in the law, has generated profound questions around the nature of justice, as well as its practice and methods. It also calls for consideration to be given to what policy regime may best respond to GBV.

Given the significance of this work in the sector, the legal policies, systems and practices available at our HEIs and the unsatisfactory handling of cases of GBV came under intense scrutiny. The team engaged in strong debates on questions of justice for victims of GBV and the nature of such justice in our sector, understanding that these also reside at the heart of the integrity and credibility of disciplinary systems. Encouragingly, these questions, and others, are being considered well beyond the MTT and universities, ensuring that legal and quasi-legal responses to GBV contribute meaningfully to this evolving field.

In line with its brief, the MTT appointed legal experts familiar with the university sector who possessed labour law expertise as it applies to sexual harassment and other forms of GBV. It tasked these legal experts to consider specific questions, including:

- What are the legal considerations in relation to the naming of perpetrators of GBV or harm?
- What are the legal considerations in relation to a sexual offenders register for the higher education sector?
- What are the legal considerations in relation to the management of GBV and harm, for both staff members and students?
- What are the legal considerations regarding third-party reporting and/or evidence of GBV incidents?

This chapter focuses on our legal experts' review of these questions. It opens with a brief discussion around how justice may be theorised in the context of our campuses, after which it turns to the common fault-lines emerging from the MTT's engagements around the reporting of GBV; the management of disciplinary proceedings; and the different forms of sanctions that may be considered.

In addition to matters of discipline, the chapter proposes protective mechanisms for individual complainants, and for the university community more broadly. Ideally, universities would want to prevent harm altogether. Accordingly, the role, design and legality of registers or background checks in serving this purpose are outlined next. The chapter concludes by setting out policy considerations that address relationships between staff and students.

5.2. A MATTER OF JUSTICE

Chapter Two of this report provides an historical overview on GBV in our higher education institutions and an exposition of the limitations of the justice system in the campus context. Questions about the nature of justice, as well as who define this, for whom, and by what standards, have been the catalyst for protest in some institutions. Concerns have also been expressed that HEIs' policies and procedures do not provide the various forms of justice that people who experience sexual violence require. For example, where mediation with individual accused has been imposed upon complainants this has been experienced as disregard and even a form of trivialisation.

In their review of restorative justice in regard to sexual violence, Koss and Achilles (2008) have noted consensus in published studies "that complainants need to tell their own stories about their experiences, obtain answers to questions, experience validation as a legitimate victim, observe offender remorse for harming them, receive support that counteracts isolation and self-blame, and above all have choice and input into the resolution of their violation" (2008: 2). Taking these concerns into account, the report produced by Rhodes' Sexual Violence Task Team (2017) proposes a three-pronged approach to justice, understood as comprising the retributive, the restorative, and the reparative. Of the three, retributive justice is most closely associated with punishment and the criminal justice system, as well as disciplinary tribunals. Given our arguably greater familiarity with this form of criminal justice, we will not dwell on it in detail in this section of the report, suffice to say that it is an established avenue for justice and recourse on our campuses.

The goals of restorative and reparative justice are different and are summarised below. A full text and exposition of these concepts in the South Africa higher education context, may be accessed in the report titled "We Will Not Be Silenced", A Three-pronged Justice Approach to Sexual Offences and Rape Culture at Rhodes University/UCKAR, produced by the Sexual Violence Task Team in 2016. It should be noted however, that while these concepts are firmly established and supported by a rich body of literature, they are not definitive. They remain a work-in-progress as they are yet to meet fully and satisfactorily, and in compliance with appropriate institutional policy, the goals and aims of justice for those who have experienced sexual harassment, GBV and harm in South African universities.

5.2.1. The Concept of Restorative Justice

While retributive justice has punishment as its primary aim, which punishment is deemed to be sufficient compensation for the victim, restorative justice does not require an accused person to admit guilt. Admitting responsibility for causing harm, coupled with remorse for doing so, is however fundamental to restorative justice.

The Department of Justice and Constitutional Development of South Africa (DOJCD), asserts [that]:

> *"In Conventional Criminal and Civil Justice Processes, the victim and offender are positioned as adversaries, and expected to remain passive whilst all the key decisions are made by professionals (judges, lawyers, social workers, correctional officers et cetera). In Restorative Justice approaches, the victim and offender are part of the process/programme and the key decisions that are taken are influenced by them."*

The DOJCD further elucidates:

> *"Restorative Justice is an approach to justice that aims to involve the parties to a dispute and others affected by the harm (victims, offenders, families) in collectively identifying harms, needs and obligations through accepting responsibilities, making restitution, and taking measures to prevent a recurrence of the incident and promoting reconciliation. Restorative Justice sees crime as an act against the victim and shifts the focus to repairing the harm that has been committed against the victim and community. It believes that the offender also needs assistance and seeks to identify what needs to change to prevent future re-offending."*

In the university or campus setting, it is suggested that restorative justice involves "collective problem solving … to seek restitution in the extent that this is possible … while nevertheless being able to give voice to moral outrage and disapproval in regard to the perpetrator" (Karp & Frank, 2016).

Restorative justice requires that the accused accepts responsibility, is genuinely remorseful and contributes in a demonstrable, collaborative, measurable and meaningful way to repairing the harm done. It also includes restoring to the best possible extent the dignity of the person (and family) harmed, as well as their own rehabilitation. Demonstrable and meaningful expressions or actions and validation of, and remorse for, the victim's experience on the part of the offender may include: accepting accountability, verbal (including public) and written apologies, offering forms of reparations, performing community service, and undergoing rehabilitative conscientising courses or treatment to better understand the causes, nature and impact of the offence(s) to prevent future occurrences.

It should be noted that in the South Africa context and definition, restorative justice does not preclude recourse to retributive justice. That said, there is increasing evidence that restorative justice is garnering growing acceptance and application in cases of sexual violence globally (McGlynn, Westmarland and Godden, 2012; Van Wormer, 2009). On an equally positive note, restorative justice is purported to reduce repeat offending (Sherman, Strang, Mayo-Wilson, Woods and Ariel, 2015).

In this view restorative justice could offer an additional avenue of recourse to justice and dignity on our campuses for those who have been harmed, as well as an apparently viable way of educating and rehabilitating the offender. The challenge, currently, would be to mainstream and integrate restorative justice into hugely disparate (and even non-existent) institutional policy frameworks such that it becomes an accepted, optional, legally compliant and applicable practice.

5.2.2. The Concept of Reparative Justice

Reparative justice, by its own definition, seeks to repair, in as much as is possible and in a variety of forms, the harm done to individuals or communities whose human rights and dignity have been violated. Such violation may take on a variety of forms, including historical, criminal and post-conflict violation, and reparative justice thus requires that any reparations respond to both the context and the lived reality of victims. It is important to note that reparative justice need not necessarily imply criminal liability, especially in the case of sexual violence where criminal liability is often difficult, and sometimes impossible, to prove within current legal approaches to sexual violence (Thompson, 2002).

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Gender sensitivity is also an integral part of reparative justice because the consequences of human rights violations in victims' lives are often inextricably linked with victims' gender (Muddle and Hawkins, 2018).

Reparative justice is especially pertinent when it comes to forms of sexual violence perpetrated against women and gender non-conforming people whose vulnerability is rooted in social and structural inequalities. Reparative justice therefore involves forms of repair that extend beyond individual restitution, to include social forms such as material/objective conditions and symbolic/subjective, identity-based conditions (Fraser 2003; Verdeja 2008).

Reparative justice is therefore an additional, or complementary, option for justice and recourse in cases of GBV in the campus setting, especially where complainants do not believe that they would be adequately served by retributive or restorative justice. Here too, reparative justice would need to be incorporated in institutional policy frameworks such that it becomes an accepted, optional, legally compliant and applicable practice.

5.3. REPORTING GENDER-BASED VIOLENCE: REPORTS BY THIRD PARTIES

The under-reporting of GBV is well-documented, as are the many reasons for not reporting, ranging from not recognising a particular act as GBV, to fearing the consequences for doing so, distrust in how the process will be handled (as noted above) and other reasons. Third parties may step into these silences, either because they have witnessed an act of GBV, or have heard about it directly from the complainant or another party. What they report also varies. In some instances, these reports are a rich source of detail while in others, they may be no more than a single, anonymous tip-off providing limited information. How to pursue these reports is not clear, while doing so presents two challenges: the first is to recognise the agency and autonomy of complainants, and the second, evidentiary.

In line with a victim-centred approach, institutions should aim to work with the third party to reach out to the victim, where possible. The following practical steps are encouraged:

- If the third party enjoys the trust of the victim, every effort must be made to encourage the third-party to embolden the victim to come forward of their own accord.
- Advise the third party of the legal process and what can be expected (including the undertaking of confidentiality), so that the third party can pass on this information to the victim to help alleviate fears and concerns around coming forward.
- The appropriate person dealing with the third-party report is advised to provide his/her/their name and contact details to the third party to pass on to the victim should they decide to reach out personally.
- If the third party is willing to share the contact details of the victim, the person dealing with the report is advised to reach out to the victim via email, which is a less intrusive form of communication compared to a telephone call. The aim should be to gently reassure the victim that the institution is committed to taking the matter seriously and confidentially, encourage the victim to reach out, enquire whether the victim needs medical assistance and/or

psychological support, advise the victim of his/her/their rights, and provide the victim with the necessary procedural information on the way forward.

- Ascertain from the third party and/or the victim whether there is the potential for harm to any other person by the perpetrator, and assess the risk accordingly.
- Finally, does the third party need support themselves? Witnessing or dealing with the aftermath of GBV, whether enacted upon a friend or stranger, can leave the third party feeling both distressed and helpless.

The following should also be considered:

- What is the nature of the GBV, and is intervention by the police services needed?
- Does the third party know the identity of the perpetrator, and is the person a student, member of staff, or an outsider?
- Is the third party simply relaying what the victim disclosed (and did not personally witness the GBV incident)?
- Where did the incident take place?
- When did the incident take place?
- Does the third party know the name and contact details of any other person who may have further information?
- Is the third party willing to assist further in the investigation?

Third-party reports fulfil contrasting functions. It is, for example, useful for universities to understand the extent of the problem of GBV – including its under-reporting – and such reports provide the opportunity to support victims/survivors who do not wish to pursue formal complaints. Third-party reports also can be the impetus towards disciplinary proceedings. In this case, institutions should investigate exhaustively every report by a third party to evaluate its merits, ascertain the scope of the GBV-related incident and determine the nature of the evidence available.

If the third party's report and the subsequent investigation do not yield concrete evidence (such as the identity of the parties involved), then the institution cannot proceed with any formal process.[20] The institution also cannot proceed with any formal process if the evidence from the third party is no more than hearsay, nor may they approach the accused person in the absence of concrete evidence. They must, however, continue with following up on any leads, where possible, and take reasonable steps to eliminate possible risk to others.

[20] See section 3 of the Law of Evidence Amendment Act 45 of 1988 set out above.

5.4. DISCIPLINARY HEARINGS IN THE ABSENCE OF A COMPLAINANT

While complainants may report incidents of GBV this is not necessarily with the intention of participating in formal disciplinary proceedings.[21] Fear of scrutiny or intimidation, victim-blaming, not wanting to endure often harsh cross-examination, not wanting to relive the ordeal, and not wanting to see the accused again[22] are powerful disincentives. In stakeholder consultations, the possibility was discussed of having the complainant and the accused in different rooms, with testimony provided by way of audio-visual equipment. This could provide a measure of protection and justice for the complainant and the accused. In this regard, the MTT takes note of the amendments to section 51C of the Criminal and Related Matters Amendment Act, 12 of 2021 which make provision for witnesses to give evidence through audio-visual link in proceedings other than criminal proceedings. This clearly opens the door for universities to utilise platforms such as Skype or Zoom as a mode of testifying.

Nonetheless, well-designed victim-centred procedures may still not be enough to convince a complainant to pursue disciplinary proceedings. Faced with such situations, institutions need to understand the sensitive nature of the matter, and the impact on the victim, who may have legitimate reasons for being reluctant to participate in the formal proceedings.

That said, the MTT notes that universities are under a common law duty to provide and maintain a safe learning and working environment. They should thus evaluate the risk of not proceeding,[23] with this assessment considering factors such as risk to other persons, the seriousness of the offence, and whether there is a history of GBV by the alleged perpetrator.[24] If there is a risk of harm, the university, as the employer, is permitted to follow a formal procedure despite the complainant's decision not to

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[21] Item 8.5.1.5 of the Amended Code.

[22] In *Rustenburg Platinum Mines Limited v UASA obo Pietersen and Others* (2018) 39 *ILJ* 1330 (LC) para 51, the court set out various reasons for why a complainant may not report an incident:

'a) Being "frozen", and disbelieving what they are experiencing, and not having the human tools to respond immediately. This state of paralysis may be accompanied by guilt, confusion, self-anger, self-blame, shame, victimhood, unusual calm, being distraught and incapable of expression, withdrawal, helplessness, or outright terror. (The "paralysis mode" syndrome).

b) Many fear backlash if they complain, especially where the incident took place in a power/subordinate relationship. There is fear of being hounded out of a job or being victimised at various levels. Thus, a complaint of sexual harassment against that "bright blue-eyed boy/girl" in the office; or a senior employee/executive, may be a career-ending or -limiting move, to be regretted dearly.

c) There is a fear of causing a fuss or disharmony in the workplace, with allegations that may not be taken seriously or believed, especially in the absence of corroborating evidence (most incidents of sexual harassment take place where there are no witnesses).

d) Fear of consequential and negative labelling once an incident is reported. Aligned to the fear that the complainant might be perceived to have "asked for it" (because there is a view that she was flirtatious, et cetera), there is also the possibility of being labelled by colleagues as a person with loose or low morals, and being named and shamed is not remote.

e) Feeling pity for the harasser for whatever reason, irrespective of the reprehensible conduct.

f) Enduring the ordeal with the hope that it will go away, or that it was a once-off incident never to be repeated (The "quit or endure" syndrome), coupled with carrying a sense of guilt for not reporting the matter.

g) The fear of publicity and/or having to substantiate the allegations in public proceedings under relentless and unsympathetic cross-examination.'

The court acknowledged that this is not a closed list (para 52). These reasons also apply to a complainant not wanting to participate in formal proceedings.

[23] See also section 5 of the EEA.

[24] Item 8.7.2 of the Amended Code.

and even if the parties indicate that they have resolved their dispute. In this instance, the employer must inform the complainant of the decision to proceed with a formal procedure.[25]

In opting for this route, the MTT does note the potential for the perpetrator's rights to be undermined on the following grounds:

- The alleged perpetrator has the right to be heard[26] and to present a defence. The purpose of a disciplinary hearing is to ensure that an accused employee has an opportunity to face his/her/their accuser (and other witnesses), lead evidence in rebuttal of the charge, and challenge the assertions of his/her/their accuser/s before an adverse decision is taken by the chairperson. Having the complainant absent from the process may potentially compromise the accused's right to rebut the complainant's claims, including the right to cross-examine the complainant. Cross-examination is a central part of our adversarial legal system. A party must therefore be allowed to exercise his/her/their right to question the evidence through cross-examination. Therefore, one's witnesses should be present to corroborate the evidence so that it is not deemed hearsay and therefore inadmissible.
- Certain rules of evidence apply when we consider a complainant who is absent but who wishes to submit evidence in the form of a signed and sworn written statement or recording. Here, one needs to consider the admissibility of hearsay evidence.[27]

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[25] Items 8.5.1.3 and 8.7.2 of the Amended Code.

[26] *Audi alteram partem* rule.

[27] Section 3 of the Law of Evidence Amendment Act 45 of 1988 provides as follows:

(1) Subject to the provisions of any other law, hearsay evidence shall not be admitted as evidence at criminal or civil proceedings, unless:

(a) each party against whom the evidence is to be adduced agrees to the admission thereof as evidence at such proceedings.

(b) the person upon whose credibility the probative value of such evidence depends, himself testifies at such proceedings; or

(c) the court, having regard to:

(i) the nature of the proceedings.

(ii) the nature of the evidence.

(iii) the purpose for which the evidence is tendered.

(iv) the probative value of the evidence.

(v) the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends.

(vi) any prejudice to a party which the admission of such evidence might entail; and

(vii) any other factor which should in the opinion of the court be considered, is of the opinion that such evidence should be admitted in the interests of justice.

(2) The provisions of subsection (1) shall not render admissible any evidence which is inadmissible on any ground other than that such evidence is hearsay evidence.

(3) Hearsay evidence may be provisionally admitted in terms of subsection (1)(b) if the court is informed that the person upon whose credibility the probative value of such evidence depends, will himself testify in such proceedings: Provided that if such person does not later testify in such proceedings, the hearsay evidence shall be left out of account unless the hearsay evidence is admitted in terms of paragraph (a) of subsection (1) or is admitted by the court in terms of paragraph (c) of that subsection.

(4) For the purposes of this section:

"hearsay evidence" means evidence, whether oral or in writing, the probative value of which depends upon the credibility of any person other than the person giving such evidence;

"party" means the accused or party against whom hearsay evidence is to be adduced, including the prosecution.

At the same time, the MTT notes that the strict procedural standards applicable to criminal trials do not always necessarily apply to disciplinary hearings. There may be room to deviate from the procedural and evidentiary requirements in very exceptional circumstances without flouting Schedule 8 of the LRA and the law of evidence. We discuss these questions of evidence next.

5.5. EVIDENTIARY CHALLENGES

GBV cases often boil down to a "he said, she said" context with little other independent evidence, making the complainant's evidence of paramount importance. A case without a complainant thus presents significant evidentiary challenges. Even if the complainant is not willing to attend the hearing, but is willing to provide documentary evidence, records, and make a signed written statement, the challenge remains that the accused and the chairperson do not have an opportunity to verify the evidence and examine the source of the evidence to establish its credibility.

If a witness is not present to corroborate the evidence, the presiding officer must deal with those portions of the evidence in accordance with the rules of evidence. Such evidence would then be hearsay evidence, which is inadmissible as a rule. Section 3 of the Law of Evidence Amendment Act 45 of 1988 would need to be considered.

If the employer has other compelling evidence (even circumstantial evidence) and can provide a compelling explanation as to why the complainant is not present, then it becomes easier to discharge the burden of proof on a balance of probabilities. Such evidence may include:

- Other credible witness accounts;
- Independent documentary evidence which can be verified in the hearing;
- Email exchanges obtained independently from the server, which can be verified without the complainant;
- Video footage from security cameras on-site; and
- An expert witness as to the impact of the GBV on the complainant.

If the employer is not able to discharge its burden of proof, the employer must nonetheless explore other, proactive, measures and strategies to eliminate any possibility of harm (thereby maintaining a safe working environment).[28]

5.5.1. Hearsay evidence

Hearsay evidence is generally not admissible. Although the parties in a civil matter can agree to admit hearsay evidence, removing the challenges of having the matter being adjudicated by the presiding officer, the probability of the accused consenting to this is slim. Section 3 of the Law of Evidence Amendment Act 45 of 1998 identifies those exceptional circumstances wherein a court or tribunal or forum will allow such evidence. The recent Labour Appeal Court judgment in *Exxaro Coal (Pty) Ltd v Chipana & Others* (2019) 40 *ILJ* 2485 (LAC), which dealt with the admissibility of documentary evidence

[28] Section 5 of the EEA.

and affidavits as hearsay evidence in a misconduct case, provided clear guidance on the principles applicable when dealing with hearsay evidence:

- One must have careful consideration for the interests of justice bearing in mind that this is not a catch-all licence to admit hearsay evidence.
- The commissioner must ensure that the requirement for fairness in proceedings is not compromised in any way.
- At the start of the proceedings, the party seeking to rely on such evidence must make his/her/their intention known so that consideration can be applied.
- The commissioner must carefully explain section 3 to the parties in the context of the requirement for fairness.
- The commissioner must timeously rule on the admission of the hearsay evidence to ensure fairness in the proceedings (and avoid potential prejudice to the other party).

Further guidance around hearsay evidence emerges from *Minister of Police v M & Others* (2017) 38 *ILJ* 402 (LC). This case is relevant as it deals with the dismissal of an employee of the police who raped and sexually abused his minor daughter for four years. The dismissal was appealed and referred to the Safety and Security Sectoral Bargaining Council. Having already testified once the daughter refused to put herself through a second such ordeal. The commissioner subsequently ruled that the disciplinary hearing records constituted hearsay and the evidence as a whole insufficient to prove the case. The employee was reinstated, but the matter was appealed in the Labour Court.

The Labour Court ruled that the Commissioner erred by attaching insufficient weight to the transcripts, considering the sensitive nature of the matter. The court also employed the notion of "hearsay of a special type" and set out guidelines on when, in arbitration proceedings conducted in terms of the LRA, a single piece of hearsay might constitute *prima facie* proof.[29] The hearsay evidence should:

- Be contained in a record which is reliably accurate and complete;
- Be tendered on the same factual dispute;
- Be bilateral in nature, that is, it should constitute a record of all evidence directly tendered by all contending parties;
- In respect of allegations, demonstrate internal consistency and some corroboration at the time the hearsay record was created;
- Show that the various allegations were adequately tested in cross-examination; and
- Have been generated in procedurally proper and fair circumstances.[30]

The court also acknowledged that our legal system in labour proceedings envisages vulnerable classes of victims testifying at least twice before an accused can be dismissed with finality. The consequence of victims feeling unable to bear the trauma a second time is that "employees who committed very

[29] Para 45.
[30] Ibid.

serious misconduct escape accountability and are reinstated to the very positions of trust they earlier abused".[31]

It is argued that the court's guidelines allow for a level of flexibility in, and deviation from, the often-strict rules of evidence and procedural practice. This means that several factors under section 3 suggest that hearsay evidence may be admissible in the interests of justice. The presiding officer ought to have regard to the sensitive nature of the case, the impact on the complainant, legitimate reasons for why the complainant refused to be present, and the guidelines set out by the Labour Court and the Labour Appeal Court.

While this is a new legal territory, these cases do offer guidance that may be especially applicable to matters appealed at the CCMA. One clear lesson for universities is to develop and conduct very thorough and well-documented disciplinary processes whose transcripts could be handed in, thus preventing complainants from needing to testify a second time.

It may also be possible for universities to develop and conduct very thorough internal GBV processes (pre-disciplinary hearings), and to have the same placed on record for possible later use. In this way, the transcripts from such processes could be used in disciplinary hearings. It would, however, be imperative for institutions to bolster their policies to make provision for thorough pre-disciplinary hearing processes and good record-keeping.

5.6. PURSUING A DISCIPLINARY HEARING AGAINST AN EMPLOYEE WHO HAS RESIGNED OR IS ABSENT

One of the challenges reported to the MTT was staff members' tactical resignations prior to the commencement of disciplinary proceedings. These resignations with immediate effect ensure that such staff members' disciplinary record appears unblemished. With no consequences for their actions, such individuals freely resume their behaviour once installed in a new university which has no knowledge of their history. While responsibility should not be so easily evaded, pursuing disciplinary action against an employee who has resigned is a complex affair that has exercised the courts for several years. The MTT has made its recommendations concerning two scenarios: employees who resign *with notice;* and employees who resign *without notice*.

5.6.1. Employees who resign with notice

The landmark case of *Standard Bank of South Africa Ltd v Nombulelo Chiloane* (case no. JA85/18), decided on 10 December 2020, confirmed an employers' right to discipline an employee during the employee's notice period, irrespective of whether an employee has resigned with immediate effect.

The decision noted that an employee's contract of employment ends only once his resignation takes effect at the end of his notice period. An employee's resignation with immediate effect does *not* terminate the employment relationship where their contract of employment instructs a period of notice. In the instance where an employee resigns with immediate effect, *notwithstanding the*

[31] Para 49.

employee's contractual obligation to serve a notice period, the employment relationship will terminate at the election of the employer, who may elect to waive the employees' obligation to serve a notice period, or elect not to enforce it.

Where an employer opts to enforce its right to have an employee work out the contractual notice period, the employer may proceed with disciplinary action against that employee during that notice period, irrespective of whether that employee has resigned with immediate effect. Resignation with immediate effect is of no consequence.[32] This important decision guards against the situation of an employee's resigning suddenly to circumvent any form of responsibility. Being entitled to proceed with the disciplinary hearing in the face of a resignation by the employee places the employer in a stronger legal position to name the employee once there has been a finding of guilt.

The MTT strongly recommends that institutions of higher learning put watertight systems in place to allow for the swift execution of investigations and internal processes, without undue delay.

5.6.2. Where no notice period exists

Where parties have not agreed to a notice period, the Basic Conditions of Employment Act (BCEA)[33] will apply to the employment relationship. This means that the contractual term providing for the notice period remains valid and binding, and, where no such term has been included in the employment contract, the parties are still required to give notice under the BCEA.

5.7. INTERIM PROTECTIVE MEASURES

The MTT's consultations and research highlighted the importance of interim protective measures. These accomplish the following objectives:

- Fostering a stable and safe environment during the process of reporting, investigation and resolution;
- Allowing the investigation and processes to take place unhindered by any possible interference;
- Protecting the integrity of the process;
- Preventing tampering with evidence;
- Preventing the intimidation of the complainant or other witnesses;
- Preventing a recurrence of the alleged conduct;
- Eliminating room for the victimisation of, or retaliation against, the complainant or any other witness; and
- Protecting the broader campus community.

In deciding on the need for such measures, the MTT recommends evaluating risk in the same way that an accused's application for bail in criminal law is evaluated. The objectives may vary depending on the facts. Interim protective measures must be designed and implemented with a direct link to a

[32] Standard Bank of South Africa Ltd v Nombulelo Chiloane (case no. JA85/18). See especially para 15.
[33] Sections 37-38.

purpose and must not be implemented to punish the accused in any way. Specific interim measures implemented will vary depending on the circumstances of each case. To this end, an institution can be as creative as possible, and act with wide latitude, bearing in mind that the measures ought not to be unreasonably burdensome on either of the parties. The measure must be fair, reasonable and appropriate to the context. The measures must be linked to a period or event (not indefinite). Interim protective measures must make provision for the instance where the accused fails to comply with the measures.

In the context of suspensions, there is extensive case law guiding when, why and how long to meet the requirements of fairness. Section 186(2)(b) of the LRA states that the unfair suspension of an employee or any other disciplinary action short of dismissal would constitute an unfair labour practice. Here is a summary of the legal principles applying to suspension:

- Suspension is permissible to enable the employer to investigate the charges;
- While a formal hearing is not required prior to suspension pending a disciplinary hearing, the *audi alteram partem* (the right to be heard) principle should be considered. The suspension notice, prior to a disciplinary hearing, should make provision for the employee to make any submission regarding her/his/their suspension by a certain date or time;
- The period of suspension set out in a collective agreement, or any other agreement, may not continue beyond such a period;
- Suspension pending a disciplinary hearing must be with pay;
- Summary suspension with pay may be fair if the employer has a reasonable concern that a legitimate business interest would be harmed with the employee's continued presence in the workplace;
- If there is no good reason for the suspension, or if the employee is not given an opportunity to be heard, it will be unfair; and
- Should the suspension be unreasonably long or extended, the effect would be disciplinary in nature.

The following criteria have been set out for evaluating the fairness of a suspension:

> *The employee is entitled to a speedy and effective resolution of the dispute. Employers must not be allowed to abuse the process. The investigation must be concluded within a reasonable time taking all relevant factors into consideration and the employee must be informed without undue delay about the process or steps that the employer is initiating. This may take the form of allowing the employee to return to his or her work or furnish this individual with a charge sheet summoning the individual to a properly constituted disciplinary hearing. The disciplinary hearing must be initiated within a reasonable time of the individual being suspended.*[34]

As mentioned in the section above, suspension without pay can be imposed as a sanction. This is to be distinguished from suspension pending a disciplinary hearing.

[34] Mabilo v Mpumalanga Provincial Government & others (1999) 20 ILJ 1818 (LC) para 17.

Possible forms of interim protective measures for a student (the accused/respondent):

- A no-contact order prohibiting contact with the complainant and all witnesses through any medium whatsoever, directly or indirectly, where appropriate (the order ought to be mutual);
- Immediate suspension with removal from campus and disabling of student card access, where appropriate;
- Change of campus residence and arrangements for alternative accommodation, where appropriate;
- Change of academic classes/courses and academic concessions such as change of assessment dates, provision for remote learning, provision of an academic tutor and extending deadlines, where appropriate, without negatively impacting on the accused's academic progress;
- Suspension from student committees and structures, or other leadership roles;
- Special leave of absence, where appropriate; and
- Provision for psycho-social support before, during and after proceedings.

Possible forms of interim protective measures for a staff member (accused/respondent):

- Special leave, where appropriate;
- Suspension from work with full pay and disabling of staff card access, where appropriate;
- Limiting access to the workplace during the investigation, where appropriate;
- Lecturing schedule changes;
- A no-contact order prohibiting contact with the complainant, all witnesses, or any other person at the workplace through any medium whatsoever, directly or indirectly, where appropriate (the order ought to be mutual);
- Change of staff accommodation, where appropriate; and
- Provision for psychological support, where appropriate.

Policies must make extensive provision for possible interim protective measures (along with periods and consequences for failure to comply), as these documents are used authoritatively by the chairperson in a disciplinary hearing.

5.8. SUITABLE SANCTIONS FOR MATTERS WHERE DISMISSAL OR EXPULSION IS NOT RECOMMENDED

Institutions' policies and disciplinary codes must set out possible sanctions comprehensively and consistently for offences. Once an accused has been found guilty of GBV, the chairperson in this quasi-tribunal has the latitude to be as creative as possible to meet the objectives in imposing the appropriate sanction for GBV considering the following:

- Precedent (previous similar cases);
- Guiding policies and the overall bounds of the legal framework;
- Mitigating factors; and
- Aggravating factors.

Punitive measures in the form of dismissal or expulsion may not always be appropriate. The context may dictate that a more rehabilitative approach be adopted, one which includes elements such as education, awareness, community service and apologising. It is relevant to consider subjective elements relating to the perpetrator. For example, in the instance of a student, one ought to consider factors such as:

- How old is the student?
- Did the student show genuine remorse?
- Has the student had exposure to education and awareness material?
- What was the nature of the GBV?

As a point of illustration, a junior student who grew up with little or no exposure to educational and awareness programmes on GBV may not know that catcalling someone is not acceptable. Here, expulsion from the institution may be too harsh for the nature of the offence.

In the event of a student being found guilty, the following possible forms of punishments can be imposed:

- A suspended sentence subject to the perpetrator not being found guilty of another offence during a specific period of time;
- A record logged on the student's academic record;
- Withhold the student's "fit and proper" certificate;
- A formal apology to the complainant;
- Banning the student from living in, or visiting university residences (depending on the facts of the case);
- Ensuring that the complainant and the perpetrator do not work jointly on projects, tutorials, practicals or committees;
- Ensuring that the complainant and the perpetrator are not in the same class (where there are different slots in a course), where possible;
- Removing the perpetrator from leadership positions such as, for example, the SRC, residence sub-warden, or Law Students Council;
- Banning the student from holding leadership positions;
- Not bringing the complainant into disrepute through public or private statements;
- Community service;
- Compulsory clinical psychological counselling as part of the process of self-reflection and awareness; and
- Compulsory gender-sensitisation training.

In the event of a staff member being found guilty, the following possible forms of punishments can be imposed:

- A final written warning that is valid for a specified period;
- A record logged on the employee's file;
- A formal apology to the complainant;

- Relocating the perpetrator to another workspace (for example, offices), department, or campus (and not relocating the complainant, as is often the case, unless he/she/they opt to be relocated);
- Ensuring that the complainant and the perpetrator do not work jointly on tasks, projects, courses or committees;
- Removing the perpetrator from leadership positions such as, for example, warden of a residence;
- Community service;
- Compulsory clinical psychological counselling as part of the process of self-reflection and awareness;
- Not bring the complainant into disrepute through public or private statements; and
- Compulsory gender-sensitisation training.

Case law is clear that suspension without pay is an acceptable disciplinary sanction depending on the facts. The court has held that the prohibition of deductions from an employee's salary in terms of section 19 of the Basic Conditions of Employment Act 75 of 1997 does not prevent an employer from imposing a penalty of suspension without pay.[35]

An employee can be suspended without pay in circumstances where dismissal would be justifiable save for mitigating factors. The requirements for substantive and procedural fairness must still be satisfied.[36] It is important to note that this sanction may only be imposed upon the agreement of the employee, as he/she/they may withhold consent if the suspension is unreasonable.

Imposing a sanction short of dismissal or expulsion is in line with restorative approaches to misconduct, depending on the context of a case and the wishes of the complainant. Opting for a more inventive and resourceful approach also creates room for rehabilitation of the perpetrator, where defensible and appropriate.

Item 3 of Schedule 8 – Code of Good Practice: Dismissal provides that the courts have embraced the concept of "corrective or progressive discipline". This approach regards the purpose of discipline as a means for employees to know and understand what standards are required of them. Efforts should be made to correct employees' behaviour through a system of graduated disciplinary measures such as counselling and warnings. Progressive modes of discipline should be used according to the circumstances.

What must also be considered is whether the employer has discharged its duty to educate staff on GBV as part of an organisation's induction training. If so, a greater level of responsibility must be placed on the employee. The sanction must be proportionate to the offence and context.

[35] *Koka v Director-General: Provincial Admin North West Government* (1997) BLLR 874 (LC).
[36] Schedule 8 of the LRA.

5.9. WHEN CONVICTIONS ARE OVERTURNED ON TECHNICAL/ PROCEDURAL GROUNDS

Section 188 of the LRA provides that a dismissal is automatically unfair if the employer fails to prove:

(a) That the reason for dismissal is a fair reason related to the employee's misconduct, incapacity, or operational requirements;

(b) That the dismissal was effected in accordance with a fair procedure.

This means that a dismissal must be *both* substantively fair and procedurally fair to meet the requirement of fairness in labour law. If a dismissal is substantively fair (good reason), but the fair procedure was not followed by the employer then the entire dismissal is considered unfair.

In this instance, it is important to understand the remedies available to an employee for an unfair dismissal. Section 193 of the LRA makes provision for these remedies, and section 193(1) states that if the Labour Court or an arbitrator finds that a dismissal is unfair, the Labour Court or arbitrator may:

(a) Order that the employer reinstate the employee from any date not earlier than the date of dismissal;

(b) Order the employer to *re-employee* the employee, either in the work in which the employee was employed before the dismissal or in other reasonably suitable work on any terms and from any date not earlier than the date of dismissal; or

(c) Order the employer to pay *compensation* to the employee.

Section 193(2) states that the Labour Court or arbitrator must require the employer to reinstate or re-employ the employee in question unless any of the following reasons apply:

(a) The employee does not wish to be reinstated or re-employed;

(b) The circumstances surrounding the dismissal are such that a continued employment relationship would be intolerable;

(c) It is not reasonably practicable for the employer to reinstate or re-employ the employee;

(d) The dismissal is unfair only because the employer did not follow a fair procedure.

The answer to the question lies in section 193(2)(d). This means that if an employee is dismissed for misconduct and, on appeal, the dismissal is found to be unfair only on the basis that the employer did not follow a fair procedure, then that employee cannot be reinstated or re-employed. Instead, the appropriate remedy is for the employer to simply pay compensation in terms of section 194 of the LRA. In this way, labour law recognises that there were good grounds (fair reason) for dismissing the employer while compensating the employee for the procedural flaws in the manner in which the dismissal was effected.

5.10. NAMING THOSE FOUND GUILTY OF GENDER-BASED VIOLENCE

The question of naming those accused of GBV has been raised repeatedly. The MTT notes that such naming can take different forms and serve different purposes. There are two aspects to this question, the first relates to the naming of someone prior to an investigation and finding of guilt; and the second with naming someone once an enquiry has been completed.

Naming individuals accused of GBV is not new, with the first such incident recorded in 1989 at UCT (Sutherland, 1991). The ethical and legal complexities of doing so came to the fore again in 2016 with the release of the #RUReferenceList. There have been other examples since, almost always prompted by frustration with the way universities have dealt with complaints. This is an evolving area of law that is especially relevant to complainants and those who support them. Within the university setting, and depending upon the particulars of such naming, the MTT suggests that it be treated as a form of third-party reporting and investigated in accordance with the recommendations proposed in section A: 1 .

The rights to be presumed innocent, along with the rights to dignity and privacy, find expression in common law, labour law, the law of defamation, and the Protection of Personal Information Act 4 of 2013. These all need to be considered in determining whether or not a university can name someone found guilty of GBV, as well as the manner in which they may do so.

5.10.1. The law of defamation

In a university context, naming an alleged perpetrator without due legal process would be potentially defamatory (and unconstitutional). However, naming the perpetrator following a finding of guilt at a disciplinary process would certainly be protected speech in terms of the truth and public interest defence. Further, provided that a legal process has been followed, it is argued that the public has a *material interest* in knowing the identity of a perpetrator.

5.10.2. The position around naming in labour law

Labour law is aimed at protecting the confidentiality of parties during a disciplinary hearing. However, no legal principle exists expressly prohibiting the employer from issuing a statement to the internal university community and the media naming the perpetrator after a finding of guilt internally. There is a clear argument for identifying the perpetrator of GBV-related misconduct, provided a formal legal process has been carried out and the person has been found guilty as the truth and public interest defence, or the defence of fair comment, would apply.

Further, it is anticipated that this approach will:

- Encourage other victims of the same perpetrator to come forward;
- Reduce the chances of repeat offenders by lifting this veil of secrecy and silence;
- Encourage victims of other perpetrators to come forward secure in the knowledge that institutions of higher learning have a zero-tolerance approach to GBV and are acting accordingly; and

- Create a community culture of responsibility and transparency among institutions of higher learning.

The purpose of a disciplinary hearing in a GBV-related case is to put forward charges to an employee to hold that employee accountable within the scope of its policies and labour law. It also aims to mitigate further risk to the workplace, and protect others who have dealings with the organisation. In a GBV-related case, keeping the identity of the perpetrator private protects the perpetrator beyond what is reasonable in the context, creates a risk to the workplace and could lead to greater harm. There is an argument to be made that disclosure could assist and protect other employees, workers, students, and anyone else having dealings with the institution.

One must have regard to the duty of care that institutions of higher learning have towards their community. This duty of care extends beyond a disciplinary hearing.

An internal disciplinary hearing is not an exhaustive legal process. The perpetrator still has remedies available under labour law in the form of an appeal to the CCMA, Labour Court, and Labour Appeal Court processes, which may yield a finding in favour of the perpetrator. Publishing the name of the perpetrator in the public domain will have long-lasting and permanent consequences for his/her/their reputation if he/she/they are/are found not guilty on appeal. Therefore, if an institution of higher learning (or any employer) has published the name of an employee found guilty of a GBV in an internal disciplinary hearing, the institution should publish an update on the case with the same level of attention that the first publication took – for example, if a media statement was made indicating that X was found guilty of a GBV in a disciplinary hearing then a media update ought to be published. It is incumbent upon the institution to follow suit with a media statement to this effect to clear the employee's name.

If an employee resigns following the start of the disciplinary hearing, it is not legally recommended for the employer to publish the name of the alleged perpetrator on the employer's own accord until such proceedings are concluded. At most, it is cautiously recommended that disclosure be made to a prospective new employer (if the previous employer knows who the prospective employer is).

If the disclosure is made to a prospective new employer, the appropriate legal defence would be privileged occasion in the law of defamation,[37] provided that the disclosure is not made to more people than is necessary (confidentiality remains a priority to balance the rights of the employee). The previous employer could argue that there is a duty to inform the prospective employer about the alleged charges because it relates directly to the person's common-law duties in employment as well as competence and ethical reliability. In doing so, the previous employer must keep the account purely factual to avoid liability in the law of defamation.

[37] De Waal v Ziervogel 1938 AD 112.

5.10.3. Naming the perpetrator who is a student

It is recommended that the following key factors be considered when deciding whether to name a student who is a perpetrator:

- Whether the public has a material interest in knowing the identity of the student perpetrator;
- Whether a disciplinary process has been concluded;
- The sanction;
- The age of the perpetrator;
- Level of seniority of the student;
- The nature and extent of the GBV;
- Impact on the victim; and
- Any other relevant surrounding circumstances.

5.10.4. Forms of naming

Institutions must not only do the right thing in cases of gender-based harm but also be seen to be doing the right thing. Naming a perpetrator, within the limits of the law, has the additional advantages of:

- Creating a safe space for other victims of the same perpetrator who has been named to come forward (staff and students);
- Creating a culture of culpability by lifting the lid on the silence traditionally fostered;
- Potentially encouraging victims of other perpetrators to come forward; and
- Serving as a deterrent to potential offenders who may not be aware that their actions amount to GBV (for example, a first-year student). Even if the potential offender is aware of the nature of the GBV, knowing that their identity will be released in the public domain and potentially hinder their career/academic path may potentially serve as a deterrent. We note, however, that deterrence, as a theory, is not necessarily effective when dealing with serial offenders.

The ways in which an institution could legally name a perpetrator who has already been found guilty of a GBV in a disciplinary process, and foster a culture of accountability, are as follows:

- **A timeously released media statement:** Releasing a media statement once a perpetrator has been found guilty *with the caveat that the process is subject to an appeal process.*
- Establishing a good relationship with reputable media houses is essential. In the past, institutions of higher learning and the media have not often worked symbiotically. Institutions have treated the media as being information-mongers, and the media have pitched institutions as being intent on sweeping cases under the carpet to protect their reputation and guard against bad publicity, while failing their obligations in the fight against GBV.
- For staff offenders, full names should be published subject to the above discussion on the law of delict.
- For student offenders, the factors outlined above ought to be considered when deciding whether to publish the names of students.
- By the institution making the media statement:

  - The institution takes control of the information that is, and is not, officially released in the public domain thereby avoiding media leaks, rumour mongering and reputational damage.
  - It actively demonstrates transparency and accountability on issues of GBV.
- Publication of the link to the media statement on the institution's Gender Equity Office's (or equivalent office) website page with the necessary qualifications that the process is subject to an appeal.
- For institutions without a Gender Equity Office, the publication can be made via the main website with a specific link or page for such publications.
- The publication should be made in a prominent place to indicate intentional publication.
- In the instance of staff offenders, full names should be published subject to the above discussion on the law of delict.
- In the instance of student offenders, the factors outlined above ought to be considered when deciding whether to publish the names of students.
- It is imperative to indicate whether the finding is subject to an appeal process.

An additional measure that institutions could adopt to foster a culture of openness, accountability, and transparency around GBV is to publish **quarterly statistical updates** internally and among other institutions. Such record-keeping ought to be a standard practice among institutions. Unfortunately, that is not the case at present. These quarterly updates should also be shared with the Department of Higher Education and Training, and the Commission for Gender Equality. Such a quarterly update need not include the names and identities of the perpetrators (as that would be recorded on the proposed registers).

5.11. A REGISTER FOR THE HIGHER EDUCATION SECTOR

The MTT's terms of reference included investigating the feasibility of establishing a register of those found guilty of GBV in university settings. In considering this the MTT took into account that at least three registers currently exist to limit the employment of particular individuals. The banking sector, for example, maintains a register to counter the recruitment of persons found guilty of banking fraud, while the Department of Social Development maintains a national Child Protection Register. The third – and most relevant of the three – is the National Register for Sex Offenders (NRSO) mandated by the Sexual Offences Act.

The NSRO aims to ensure that those convicted of sexual offences committed against a child or a mentally disabled person receive no opportunity to work with either children or mentally disabled people. To this end, it requires that all those convicted of such crimes have their names recorded on the register and obliges employers in the public or private sectors (such as schools, crèches and hospitals) to check that the person being hired is fit to work with children or mentally disabled people.[38]

Amendments to the Act in 2021 introduced the category of "vulnerable person" which includes female students under the age of 25 years. As a consequence of bringing this category within the ambit of the

[38] Ibid.

NRSO, higher education colleges, higher education institutions, university colleges, training institutes providing vocational training or workplaces providing training as part of such young women's employment, will be required to check the details of prospective employees against the NRSO.

The MTT contends that the NRSO is too narrow to serve universities effectively. In the experience of the MTT, complainants in GBV very seldom lay criminal charges but pursue their matters through labour and disciplinary tribunals. As inclusion on the register is conditional upon a conviction in the criminal courts for a sexual offence it will never include the details of those found guilty by university processes and procedures. The NRSO is not adequate to the task of ensuring that those dismissed for GBV are not re-employed in positions of trust.

Given the serious limitations of such a register, the MTT recommends the establishment of a register specific to institutions of higher learning. Such a database would serve to create a community and network among institutions of higher learning and to guard against institutions employing candidates who have been found guilty of gender-based harm. In this way, we foster a culture of responsibility among institutions to protect every campus, student, employee, and any other person on campus from perpetrators of gender-based harm. At the very least, such a database would allow institutions to make an informed decision when hiring a candidate or admitting a student.

5.11.1. What needs to be considered in developing a register

The development of a register will need to be informed by the rights of the offender under the law of defamation, privacy law and the Constitution, as well as the Protection of Personal Information Act (POPIA), 4 of 2013. Institutions would fall under section 3 as the body that will be processing the personal information.

The exclusions are set out in sections 6-7. It would be important to consider these exclusions.

Chapter 3 sets out the conditions for the processing of personal information. Section 26 of Chapter 3 sets out the prohibition on the processing of special personal information (for instance, information on one's sex life, which is not yet defined). However, section 27 of Chapter 4, which deals with the exemptions from conditions for processing personal information, sets out the instances where there would be general authorisation for the processing of this special information – for example, consent was obtained from the party, or the processing of the special personal information is necessary for the establishment, exercise or defence of a right or obligation in law.

A register for the higher education sector recording the outcomes of administrative proceedings at universities can be created under the auspices of the Minister of Higher Education and Training. Determining its parameters would require the principles of the Promotion to Access to Information Act 2 of 2000 (PAIA) to be balanced against that of POPIA to determine the scope of application of

each legislation. The information Regulator – tasked with implementation and monitoring of POPIA – would need to issue an exemption for the processing of that personal information under section 37.[39]

An institution must include a clause in its contracts to the effect that the institution reserves the right to publish the name of any person (staff, independent contractors, suppliers, students, and others) who has been found guilty of a GBV, and to include their details on the register. In the event of legislative intervention, then the clause above will become superfluous. It is nonetheless useful to bring this to the attention of all contracting parties.

The register must flag the level at which the person was found guilty – for example, internal disciplinary hearing, CCMA, Labour Court, High Court.

If the offender successfully appeals at the CCMA, then the offender's details must be timeously removed from the register and archived. An archive is recommended as it will be useful if there is a repeat offence by the same offender, which is common. This is useful if the dismissal is found by the CCMA or Labour Court to be substantively fair (good reason), but procedurally unfair. In this instance, whether the GBV took place is not in question, but simply the process in which the offender was dismissed. Having a record of such cases would therefore be important.

If the offender successfully appeals the finding of the disciplinary hearing on both substantive and procedural grounds, it is strongly recommended that the details of the matter be removed from the register. A failure to do so will potentially infringe the rights of the former employer in labour law, constitutional law, the law of defamation, and privacy law.

Ensuring confidentiality and limiting access to the register is key to balancing the rights of all parties. A victim's identity should never be registered under any circumstances. As recommended above, a

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[39] Section 37 states:
A regulator may exempt processing of personal information.
(1) The Regulator may, by notice in the Gazette, grant an exemption to a responsible party to process personal information, even if that processing is in breach of a condition for the processing of such information, or any measure that gives effect to such condition if the
The regulator is satisfied that, in the circumstances of the case:
(a) the public interest in the processing outweighs, to a substantial degree, any interference with the privacy of the data subject that could result from such processing; or
(b) the processing involves a clear benefit to the data subject or a third party that outweighs, to a substantial degree, any interference with the privacy of the data subject or third party that could result from such processing.
(2) The public interest referred to in subsection (1) includes:
(a) the interests of national security;
(b) the prevention, detection, and prosecution of offences;
(c) important economic and financial interests of a public body;
(d) fostering compliance with legal provisions established in the interests referred to under paragraphs (b) and (c);
(e) historical, statistical, or research activity; or
(3) The public interest referred to in subsection (1) includes:
(a) the interests of national security;
(b) the prevention, detection, and prosecution of offences;
(c) important economic and financial interests of a public body;
(d) fostering compliance with legal provisions established in the interests referred to under paragraphs (b) and (c);
(e) historical, statistical, or research activity; or
(f) the special importance of the interest in freedom of expression.
(4) The Regulator may impose reasonable conditions in respect of any exemption granted under subsection (1).

limited number of persons should have access to the register, for example, the Gender Equity Office (or equivalent representative) and senior delegated Human Resources personnel.

It is common for an employer to enter into a mutual separation agreement with an employee accused of GBV. These agreements are rooted in confidentiality, binding both parties to silence without exception. Employers opt for this route as a conservative approach to avoid dealing with the problem as it can potentially tarnish its brand and reputation, has financial implications and lead to a lengthy legal battle. The challenge here is that there will be no such record of the GBV if an institution is hiring such a person. The perpetrator is then free to move on to another organisation without any accountability.

In respect of students, there are no direct legal impediments to registering offenders. It is however recommended that certain factors be considered. For students found guilty of GBV, it is recommended that the following be considered when registering their names:

- The age of the student;
- The nature and extent of the GBV;
- Impact on the victim;
- The sanction;
- The level of seniority of the student; and
- Any other relevant surrounding circumstances (see above for further discussion on these factors).

It is recommended that only students found guilty of serious cases of GBV be listed on the register. The level of seniority of the student is also relevant. Here, it is recommended that a more rehabilitative approach is adopted where the nature of the GBV is less serious and where the student is in his/her/their earlier years of study.

The reason for a more conservative approach in this instance is that often younger students do not fully understand the range of harms that constitute GBV (often through background, lack of education and awareness programmes, a patriarchal culture, upbringing, for example, students often do not know that catcalling is a form of harassment). This approach ought to be adopted only when the nature of the GBV is less serious.

Having the student listed on the register limits the scope for rehabilitation, has far-reaching consequences, and will be damaging for the student's career and future.

Having all student offenders listed on the register (irrespective of the level of seniority and nature of the GBV) may have an adverse effect of discouraging victims from coming forward. For example, complaints do not necessarily conclude in expulsion, or even a formal process, as the victims often opt for an informal remedy of an apology.

In the instance of a younger student in a case of a less serious case of GBV, it is recommended that the finding of guilt (without the name of the student) still be logged on the register to gather statistics in institutions of higher learning.

Failure to check the database before contracting with an employee/supplier/independent contractor or before admitting a student ought to constitute non-compliance. There must be a level of accountability for staff, as a failure to check the register could potentially expose the institution to the risk of litigation by a future victim.

Considering the rights of the perpetrator and to allow for the possibility of rehabilitation, particularly for minor offences, such a database ought to be kept *strictly confidential*, and not widely distributed or shared.

Access to the database should only be accessed by a limited number of personnel with clearance – for example, the Gender Equity Office (or equivalent office or representative) and senior delegated HR personnel.

It is proposed that for every candidate shortlisted, the HR director or manager ought to run a check with the Gender Equity Office (or equivalent office or representative) to ascertain whether any candidates are registered on the database.

A challenge to be considered is whether those who have access to the register will know how to interpret and use the information that is registered. It is recommended that a colour coding system be used to indicate the following:

- A distinction between staff, students and others (independent contractors, suppliers);
- The level of severity of the GBV;
- The sanction; and
- Whether the case has been appealed.

It is proposed that this system be used for candidates who are seeking to be hired in *any* capacity by the institution (permanent employee, fixed-term employee, part-time employee, independent contractor, researcher, manager, director, head of school or administrator). This will ensure that institutions adopt a consistent and effective approach in the fight against GBV.

Likewise, this would also apply to students admitted to an institution of higher learning. Admission centres would be tasked to run a check on students who are applying to be transferred from another institution. As a standard practice, a Certificate of Conduct is included on the academic transcript.

When it comes to the students found guilty of GBV, the factors listed above ought to be considered, particularly the far-reaching consequences of publishing their identity in the public domain.

It is important to acknowledge that a register of this nature would be a considerable administrative burden on institutions. It would therefore require firm commitment from the governmental sector in terms of resources, policy drafting and implementation, staff training, development, technological infrastructure, and support, and execution.

A register of this nature would not however serve its objectives in instances where an employee is dismissed from an institution of higher learning and is then employed in the private or public sector (not in an institution of higher learning). The same would apply if a person leaves the private or public sector and is thereafter employed by an institution of higher learning. A background check by the new

employer (who can and should contact the old employer) is the only option in the absence of not having access to the National Gender-Based Violence Offender Register for Institutions of Higher Learning. Often, however, employers and institutions of higher learning do not conduct a thorough background check.

The objectives of the register would also not necessarily be served if a student were expelled from an institution for GBV and was then employed in the private or public sector. When a student, who has not bn charged with a disciplinary offence, leaves the university at any level of study, their academic records are endorsed with the following message: *The student has fulfilled the requirements for a Certificate of Conduct.* If a student has been found guilty of a disciplinary offence, the academic record indicates a message such as the following: *The student has not fulfilled the requirements for a Certificate of Conduct* or *Certificate of Conduct – Refer to University Registrar.* The challenge, however, is that not all employers know the significance of this note, nor do they would have access to the register. Also, it is not clear whether the endorsement of students' academic records is a consistent practice among all institutions of higher learning (public and private).

A register of this nature will only be effective on a national scale if it is implemented consistently at both private and public institutions of higher learning. This would prevent a staff or student perpetrator who was dismissed or expelled from a public institution simply moving on to a private institution. What is required here is a legislative intervention for public and private institutions of higher learning to ensure a consistent and concerted national approach to fighting GBV. This requires resources and financial commitment from the government, and cannot happen in a vacuum.

It is imperative in the interim for employers, organisations and institutions to include a clause in all contracts with potential staff, contractors, suppliers and students to the effect that they reserve the right to publish the identity of any person found guilty of a GBV in a disciplinary process. Once agreed to, this will certainly limit the scope of liability on the part of the institution. Furthermore, once legislated on, such a clause would be superfluous.

While the focus here is on employees and students as perpetrators, it is recommended that such registers be used for *any* person who has dealings with an institution – for example, clients, suppliers and contractors. This means that before enlisting the services of a person in any capacity an institution (or other organisation) ought to first check the national register. One of the simple, yet operational, ways in which an institution can take a strong stance against GBV is to not associate in any way, or do business, with a person found guilty of such an offence. There must be tangible consequences to one's actions.

Advising future employers or academic institutions:

- This form of naming is not recommended for practical reasons as it may be burdensome for employers and academic institutions to track and trace the movements of former employees and students.
- Of course, if approached by a new employer or an academic institution, the previous organisation ought to transparently disclose the required information to authorised personnel.

- A more feasible option is for new employers and academic institutions to run background checks as standard practice.

5.12. BACKGROUND CHECKS ON POTENTIAL EMPLOYEES

It is a well-accepted practice that an employer may conduct a background check on applicants. It is, in fact, a necessity to determine a candidate's reliability, integrity, skills, employment history, qualifications, and background, and can mean the difference between a successful working relationship and a disaster. Where a candidate submits a *curriculum vitae,* the employer may take reasonable and lawful measures to verify its contents.[40]

The employer must communicate its screening process to candidates to ensure that the process always remains professional and ethical. An employer should expressly request job applicants to disclose during the application and recruitment process whether the candidate has ever been found guilty in any forum, whether civil and/or criminal. This is particularly important where there a potential risk of GBV – for example, working in a university, which involves interaction with students, or supervising junior staff. Having the candidate fill out a consent form for this purpose is common practice. Obtaining consent from the candidate is important to balance the competing interests of the PAIA and POPIA.

Then, once the employer completes background checks on the candidate and discovers that the applicant has failed to disclose his/her/their history in respect of GBV, then that speaks to the lack of integrity of the application which impacts the relationship of trust from the onset. Even if the applicant's past offence is only discovered at a later stage, once service has commenced, that non-disclosure may constitute a ground for dismissal based on misconduct and speaks to the breakdown in trust between the parties.[41]

While there is nothing expressly prohibiting an employer from talking to colleagues who are not referees, the challenge is in how much value and weight to place on an unofficial account by that colleague. One would need to consider their credibility and the evidence provided. Anecdotal accounts can be tainted by elements of subjectivity and hearsay. The question is, would be it fair to hold that unverified information against a candidate, without hearing "the other side"? It is recommended that only verifiable evidence be used as part of the background check. If the candidate is shortlisted for the interview round, it is also recommended that such information be put to the candidate for comment.

The court has been clear that there is a responsibility on prospective employees to make full disclosure of all circumstances that may reasonably influence the prospective employment relationship.[42] The

[40] It is a criminal offence to lie about material aspects of one's curriculum vitae. Section 32B(3) of the National Qualifications Framework Amendment Act 12 of 2019 makes it an offence for someone to falsely or fraudulently claim that they possess a qualification or part-qualification that is registered with the National Qualification Framework or any accredited or recognised body. See further for a summary https://businesstech.co.za/news/business/335027/ramaphosa-has-just-signed-3-new-major-laws-heres-everything-you-need-to-know/# (last accessed on 29 November 2020).
[41] Nogcanti v Mnguma Local Municipality & Others (2017) 38 ILJ 595 (LAC).
[42] MEC for Education, Gauteng v Mgijima & Others (2011) 32 ILJ 640 (LC).

court has also been clear that employers have recourse if candidates are not frank and open about their backgrounds.[43]

5.13. ADDRESSING RELATIONSHIPS BETWEEN STAFF AND STUDENTS

Romantic and sexual relationships occur within university settings, including between students and staff. However, how these relationships affect the lecturer-student relationship has significant potential to undermine the academic project. As Omar (2019) argues, universities are pre-eminently spaces of learning, with this process facilitated through relationships of trust and respect. The substance of that relationship is conducted within the context of the power relationship between lecturer and student. Any breaches of trust and conflicts of interest may interfere with the learning environment, especially if the relationship breaks down.

The adverse effects of such relationships may be felt by the student, the lecturer, the broader community of students and the university. These may include hostile treatment of the student by classmates who perceive themselves as treated less favourably than the student, and these classmates may also mistrust the lecturer. The lecturer's ability to teach and assess are impugned if there are perceptions of bias. If the relationships sours, the student's intellectual career may be harmed if he/she/they drop classes or leave university, while the lecturer may become the subject of a sexual harassment enquiry.

As Chapter 2 has illustrated, the open tolerance of unregulated relationships between staff and students is centrally implicated in academic corruption. As Chapter 3 noted, a minority of universities' policy texts address the inter-relatedness of sexual harassment and relationships between staff and students. Of those that do, three approaches are in evidence: outright prohibition; mandatory disclosure only for the intimate or sexual relationship between people with a supervisory or oversight relationship with each other; and regulation of romantic and intimate relationships, largely to limit the staff member's influence in matters concerning the student.

Universities have a legitimate interest in eliminating the possibility of coercion (whether intended or not), favouritism, or the appearance of bias, which has the potential to affect the academic integrity of the institution (Omar 2019: 132). Because of its fiduciary obligation, the university has the responsibility to ensure that students are protected from people in its employ, particularly where those people oversee a student's intellectual and academic development. As academic institutions, they are also permitted to establish their community standards.

On this basis, the MTT has considered approaches that distinguish between consensual relationships and sexual harassment. Their inter-relatedness lies in the lecturer who consistently and sequentially engages in relationships with students; the consequences that may follow when such relationships are not ended by mutual agreement, and how such relationships may act as a cover for academic corruption. Drawing from Omar (2019) the principles that a regulated approach would adopt include:

[43] Ibid.

- Discouraging relationships between staff and students based on the power differential between the two.
- An obligation to disclose any such relationship, preferably to the office designated to address sexual harassment. This would also allow the student to discuss and explore any doubts they have about the coerciveness of the relationship. The risks that potentially accrue in a staff-student relationship must be clear to the staff member and the student to ensure that both parties have taken an informed decision. Information about the relationship is not made public.
- Preventing interference with the learning environment. Where there is a direct academic relationship between the staff member and student, measures must be put in place to remove assessment or supervision from the staff member's ambit. The policy text must also address situations involving academic and non-academic staff, with measures perhaps being less stringent where the staff member is not a member of the academic staff or is in a different faculty.
- Preventing the creation of a hostile campus environment for the student when any relationship between a staff member and a student ends badly. Where the student seeks to terminate the relationship, this decision could be discussed with the sexual harassment office to discuss how this could be managed to prevent opportunities for retaliation and victimisation. Should this occur, the office should support the student with a sexual harassment complaint.
- Policy texts must clarify how the policy can be breached, including a possible stand-alone sanction for non-disclosure. Guidelines should also be offered around intervening with a staff member routinely engaging in relationships with students. In this instance, a prohibition should be placed on future relationships.

5.14. CONCLUSION

Many of the procedures followed in investigating and prosecuting gendered forms of violence can be legitimately criticised. They have not only deterred individuals from reporting but also imposed distress and led to unjust outcomes. The MTT notes some universities' efforts to pioneer approaches that are different and strongly recommends that these be shared with others to build a body of just, equitable practice around complaints. Recent case law adds further to this armature and points to a range of new directions that can be applied to some of their most vexing and, up until now intractable, problems. What will be important in taking these forward is a community of supportive practice that can enable shared learning as these recommendations are evaluated and applied.

6. CONCLUSIONS AND RECOMMENDATIONS

6.1. INTRODUCTION

The preceding chapters of the MTT's report diagnose the current state of responses to GBV by HEIs, highlighting the persistence and repetition of particular difficulties. Indeed, while Chapter 2 drew from literature that was often describing the situation at some universities a decade and more ago, there is a great deal of continuity between these observations and the more recent situation described through the consultations. Moreover, while Chapter 2 noted that only a few universities had documented their particular efforts, the consultations confirmed that the difficulties experienced were more broadly in evidence and thus could be said to be characteristic of complaints mechanisms in general. In this, the concluding chapter of the report, we distil the findings and analyses of the literature review, policy analysis, sector consultations and legal considerations to propose a series of recommendations to address these issues. These proposals are clustered within eight areas of focus, with responsibility for their implementation distributed among HEIs, the DHET, Universities South Africa (USAf), Higher Health and the Council on Higher Education (CHE).

As the MTT's various investigations show, universities' responses to GBV exist on a spectrum and it cannot be assumed that all will be in a position to immediately comply with the Policy Framework's provisions and these recommendations. Indeed, if pre-existing disadvantages are not acknowledged and addressed, they will only accumulate in the face of additional demands. Our recommendations are thus rooted in the following principles:

- **Heterogeneity** – each of South Africa's HEIs possesses a unique and distinctive history that is also marked by the legacy of apartheid. As a result, HEIs are simultaneously grappling with questions that face the sector as a whole, as well as challenges specific to their individual context. For this reason, ideal-type models and single solutions are not preferred. What we encourage instead is interventions informed by deep understanding of individual universities' circumstances.
- **Collaboration and the mutual learning** – while each university has its specificity, the heterogeneity of HEIs also offers rich opportunities for mutual learning which, if taken up, could lead to the lessening of disparities between universities over time. Policies and interventions developed collectively are also more likely to reflect this diversity of experience. Further, the higher education sector currently faces significant financial constraints. Different forms of collaboration have the potential to share costs and multiply the reach of interventions.

6.1.1. Scope of the recommendations

The MTT's recommendations are framed within its terms of reference, as well as the *Policy Framework to Address Gender-Based Violence in the Post-School Education and Training Sector* (DHET, 2020). As a reminder to readers, the MTT was asked to consider the following:

- The effective introduction and implementation of the policy framework to address GBV, with a specific focus on universities.

- A possible inquiry into sexual harassment, GBV, and gender-based harm in the university sector, considering work that has already been carried out.
- Measures to ensure that sexual offenders do not escape justice and repeat offences in other institutions.
- Appropriate levels of support needing to be put in place at public universities.
- The identification of areas of good practice in reporting and managing GBV and support mechanisms that could be replicated in the sector.
- The identification of policy weaknesses across institutions that may be contributing to failures to adequately manage sexual harassment and GBV.
- Mechanisms and processes to report on sexual offences in the sector, in line with the Policy Framework, with a view to improving monitoring and reporting.
- Other possible interventions to improve institutional responses to GBV and sexual harassment.

The *Policy Framework to Address Gender-Based Violence in the Post-School Education and Training Sector* is organised around three strategic objectives. These may be summarised as follows (DHET 2020: 15).

Strategic objective 1: Creating an environment enabling of the implementation of the Policy framework, its actions and programmes. There are three components to this objective:

- The development and adoption of regulations, norms, standards and guidelines intended to support the Policy Framework;
- The establishment of structures and mechanisms intended to support the implementation of the Policy Framework; and
- The identification of funding mechanisms to support the implementation of the Policy Framework.

Strategic objective 2: Promoting the safety of students and staff through a range of prevention and awareness programmes. Interventions intended to accomplish this goal include:

- Programmes and other measures intended to curb GBV and promote familiarity with policies and services addressing the problem;
- Attention to the conduct of third parties on campuses (such as visitors and contractors); and
- Attention to the safety of staff and students required to work or otherwise be present in off-campus environments (such as health facilities and schools).

Strategic objective 3: Providing support and assistance to any complainant reporting an experience of GBV. The focus of this objective is complaints mechanisms, disciplinary processes and procedures, and various forms of support.

The Policy Framework provides a comprehensive programme of actions intended to realise these objectives. Our recommendations seek to build on, strengthen and enrich this programme.

6.2. RECOMMENDATIONS AROUND THE FORMALISATION OF A COMMUNITY OF PRACTICE

In the course of our investigations the MTT identified the organic emergence across HEIs of a community of practice (COP) responding to GBV. Given the way this initiative embodies collaboration and mutual learning, the community of practice **is to be strongly encouraged and supported.** Formalising its functions will likely require the following:

1. **The development of guidelines around the structure and functioning of the COP,** with these also outlining how the COP will relate to USAf. As the body representing public universities, USAf is well-positioned to drive the various interventions required at sectoral level. Its mission is no less well-aligned with the goals of the Policy Framework.

It is recommended that the COP and USAf finalise these arrangements within six months to one year of the release of the MTT's report.

It is further recommended that the COP be tasked with the following:

2. **A comparative review of institutional policies to identify gaps and areas of misalignment**, including in relation to the Policy Framework. It should be noted that the intent of this recommendation is not to ensure that all institutional policies are the same, but to ensure that all complainants have access to a similar quality of justice regardless of institutional location.
3. To ensure that the use of terminology is consistent across all institutions and that terminology and definitions in use across the system are relevant and up to date, **a centralised glossary of terms applicable to all forms of GBV should be developed for use by all institutions**. This could be updated annually, as part of the central repository to be established (see later recommendation). Part of the review recommended by point 2 should also focus on the use of terminology with a view towards standardisation.
4. **An audit of individual universities' needs is crucial** to reducing the disparities between HEIs' capacity to respond to GBV. This should identify the budget currently available to each university for this work, the number of staff providing the university's response, and the training provided to each member of staff.

It is recommended that the COP complete these activities within 12 months of the report's release.

6.3. RECOMMENDATIONS AROUND COMPLAINTS MECHANISMS, SYSTEMS OF SUPPORT, AND PROCESSES AND PROCEDURES

As some of the protests made very clear, a just and responsive complaints mechanism is a central component of any university's attempts to address GBV. This mechanism is responsible for the application of a range of processes and procedures dealing with the correction and sanctioning of misconduct, and it must be linked to healthcare and psycho-social support services. Given the differences between universities we recognise the need for different approaches to the design of such mechanisms. While a centralised structure may be both possible and feasible for some universities, those with multiple campuses may find devolved structures better adapted to their circumstances.

The MTT does **not** make a specific comment on which design should be adopted. We do, however, recommend the following:

5. **All systems of complaint must be centrally coordinated** for reporting, case management, case monitoring, and resource mobilisation. Possible options include anything from an office to an institutional coordinating committee. Regardless of design, a key learning from Chapters 2 and 4 is that this central point must enjoy institutional authority, including an ability to readily access university management at the highest levels.

6. **The roles, responsibilities and powers of each element of any complaints mechanism must be clearly defined** in relation to the central coordination point. The literature reviewed in Chapter 2 emphasised how a lack of collaboration confused lines of reporting

The series of recommendations that follow next deal with the substantive content of policy documents and the processes and procedures they give rise to.

7. Given the finding that institutional policy relevant to different forms of GBV is often dispersed across different policy documents, the MTT recommends that **each institution has an overarching policy framework addressing all forms of GBV**. This may take different forms at different institutions, but it is important for policies to be integrated to enable cross-referencing, as well as to align processes and systems to manage different aspects of GBV, and to improve how advocacy, communication and training take place.

8. Following the conclusions on differing content across institutional policies, the MTT recommends **that institutional policies (or combination of policies) must, at a minimum, include provisions dealing with intimate or sexual relationships between students and staff, and staff and staff.** The literature review pointed to such relationships' potential for undermining the integrity of the academic project, including how they may provide a "cover" for sex for marks. Principles guiding such a policy are contained in Chapter 5, section 5.13.

   Chapter 2, the literature review, noted the institutional silence surrounding contrapower harassment. The MTT recommends that **each institution develop policy around the harassment of staff by students** and that this be incorporated within the framework of policies dealing with GBV. Policy should address how this will be communicated to students, and measures available to address it. In the context of this policy, attention must also be devoted to the methods by which students assess and evaluate lecturers.

   Both the review of HEIs' policy documents, as well as the body of literature, show intimate partner violence (IPV) to be neglected by institutional policy, as well as overlooked by students as an issue of concern. The complicated and ambivalent emotional attachments between intimate partners may deny help and support to students experiencing such abuse. The MTT recommends that each university's policy **make specific mention of IPV** as an issue of concern and set out a range of measures for its redress.

   HEIs are likely to have already developed policy around the use of information and communication technologies (ICT). These must either be adapted to **recognise and respond to all forms of digital harassment of staff and students,** or a provision inserted into the GBV policy that will address online forms of abuse.

9. The MTT recommends that all **institutional policies be reviewed to ensure harmony and alignment with the GBV policy.** This is necessary to prevent contradictions and gaps in policy.

10. Incidents of GBV may also need to be addressed through the **interface with policies addressing disability, sexual orientation, gender identity and expression, and race**. These various policies must reference each other and give guidance on the management of simultaneous breaches of multiple policies. It is especially necessary to provide guidance around who will be responsible for the overall management of such complaints.

The consultations raised a number of legal and practical considerations around disciplinary process and procedure, with the responses to these detailed in Chapter 5. Drawing from these, the MTT proposes the following:

11. While the MTT is not in support of mandatory reporting, it does recommend that institutions **investigate every report by a third party to evaluate its merits, ascertain the scope of the GBV-related incident, and determine the nature of evidence available.** If the third party's report and the subsequent investigation do not yield concrete evidence (such as the identity of the parties involved), then the institution cannot proceed with any formal process. This means that third-party reporting must be included as part of the reporting policy of institutions. Chapter 4 includes suggested practical steps and critical considerations to be made in incorporating third-party reporting into institutional policy and practice.

12. Universities can examine staff and students following physical assault and document their findings accordingly. These records will have evidentiary value in criminal proceedings. Universities cannot, however, conduct the clinical forensic examination, nor collect forensic evidence in cases of rape and sexual assault. The MTT thus recommends that **all policies set out the interface between criminal justice system procedures and those of the university.**

13. The MTT recommends that institutions must **put in place formal procedures for conducting disciplinary hearings in the absence of a complainant**, where this relates to an institution's responsibility for ensuring a safe working environment. Specific conditions to be considered in implementing this recommendation are included in Chapter 5, where the MTT details the legal considerations relating to evidence.

14. The MTT recommends that each institution must provide clear procedures within policy relating to how disciplinary hearings will be pursued against employees who are absent or resign during disciplinary procedures. This includes ensuring that disciplinary processes are implemented timeously. Further detail on the legal considerations relating to this are contained in Chapter 5.

15. The MTT recommends that **interim protective measures** must be put in place and outlined in institutional policy to ensure that the institution can **ensure a safe environment for reporting, investigation and resolution of cases**; to allow processes to take place without interference; to protect the integrity of processes; to avoid tampering with evidence; to prevent intimidation of witnesses and complainants, and to prevent the recurrence of alleged conduct. Further information on this recommendation is contained in Chapter 5.

16. The MTT recommends that policies and disciplinary procedures must **clearly set out possible sanctions for offences**, taking into account the different nature of offences and any mitigating or aggravating factors. Further detail on this recommendation is contained in Chapter 5. The policy frameworks must include reflection on approaches that could be taken, including restorative

approaches where necessary. However, it must be noted that in the absence of a strong policy framework with clear disciplinary and reporting procedures, this may not be effective.

17. The MTT recommends that institutional policy and disciplinary procedure must clearly outline the **disciplinary provisions relating to employees in line with employment law**. (Guidelines on matters related to this are contained in chapter 5).

18. The MTT recommends that institutions must outline in policy **the rights and responsibilities of the institution and parties involved in complaints relating to the protection of confidential information.** Institutions also need to outline in policy when and under what circumstances information can be publicly released about people who have been found guilty of offences. This clarity is required for the legal protection of complainants and accused, as well as to protect institutions, while balancing this with the need for accountability and transparency. (Further information and guidelines on these matters are contained in chapter 5).

19. The MTT recommends the **establishment of an offenders' register specific to public higher education institutions.** Such a database would serve to create a community and network among institutions of higher learning, and to guard against institutions employing candidates who have been found guilty of GBV. In this way, we foster a culture of responsibility among institutions to protect every campus, student, employee and any other person on campus from perpetrators of GBV. At the very least, such a database would allow institutions to make an informed decision when hiring a candidate or admitting a student. (Specific considerations are outlined in chapter 5).

20. The MTT recommends that institutions include **a clause in their employment contracts to the effect that the institution reserves the right to publish the name of a person who has been found guilty of GBVH,** including registering the details on a national register.

21. The MTT recommends that institutions **clearly communicate their screening process for new employees** in institutional policy, which would include the right of the institution to consult the national register. Potential applicants for any position ought also to be alerted to this screening process by the job advertisement. This is little different to the way advertisements note their adherence to the principles of employment equity.

22. Some HEIs have established an office of the Ombud to deal with complaints and conflicts within the university. The **Ombud may be helpful in dealing with appeals and complaints about how GBV matters have been handled by the university**. Given that an office of the Ombud is not a routine feature of all universities' structure the MTT does not make a recommendation in this regard. The MTT does, however, suggest that this option be explored and evaluated within settings that include an Ombud with an eye towards the potential value of this option in future.

These revisions to policy should be finalised within 15 months of the release of the MTT's report. Further, the COP must take these recommendations into account while reviewing institutional policies in terms of Recommendation 2.

The DHET must also conclude its investigations into the content, location and management of a register within 15 months. These investigations should also consider the feasibility of USAf maintaining a closed database of offenders which could be managed along the lines of the South African Fraud Prevention Services' database.

23. **All complaints mechanisms must be integrated with psycho-social and other support to complainants.** Indeed, in some instances such support may be all that staff and students request. This is particularly likely in circumstances where experiences of GBV are historical or where the investigation and prosecution of matters fall outside the university's jurisdiction.

    Our recommendations are as follows: In the course of its consultations the MTT discovered that some complaints mechanisms included emotional support to staff while others did not. Recognising that the inclusion of such staff support is almost always dependent on funding, the MTT recommends that the central coordination point **establish strong systems of referral and follow-up between all elements of the complaints mechanism and student counselling structures, as well as those for staff**. As these are general counselling and support structures, they must be trained on the contents of GBV policy, as well as the nuances and specificities of counselling and other forms of psycho-social support required in the context of GBV.

24. The central coordination point must **establish systems of referral to campus health and wellness structures.** These structures should treat the consequences of assault within the context of IPV, as well as attend to the reproductive rights of those who have experienced rape. As post-exposure prophylaxis to prevent HIV infection after rape is generally only available from designated health facilities, the central coordination point must identify the closest such facility to the university. It is not necessary for any person to lay criminal charges before they can receive post-exposure prophylaxis from any designated facility to prevent HIV.

The MTT recommends that universities entrench these systems of referral and follow-up within six months of the release of the MTT's report. The availability and functionality of these services should be assessed by the COP and their requirements included with the audit of needs.

6.4. RECOMMENDATIONS AROUND UNIVERSITIES' INFRASTRUCTURE OF SAFETY AND SECURITY

Chapter 2, as well as aspects of the consultations, highlighted how elements of universities' infrastructure of safety and security have been overlooked in attempts to combat GBV. These must be attended to, especially in relation to HDIs where the backlog in improvements to infrastructure are both long-standing and urgent. The MTT makes its specific recommendations below.

25. HEIs must **ensure that GBV policy pays specific attention to student housing**. In particular, they must ensure that those responsible for student residences understand that they have a duty to prevent opportunities for GBV and must take action when it occurs.

26. **All staff responsible for the day-to-day running of residence, as well as their overall management, must be trained around GBV policies.** They must also receive training to equip them with receiving and addressing complaints.

27. The MTT was extremely concerned to discover the very limited nature of security arrangements made available to accredited off-campus residences. **All universities entering into agreements with agencies offering accredited off-campus residences must ensure that security services are a non-negotiable feature of contracts.**

28. Complaints about the quality of security services emerged from both the literature review and consultations. The MTT recommends that **all security personnel should receive training around GBV which should also equip them with first responder skills.** Where security services are

outsourced, contracts with service providers must stipulate that personnel are appropriately trained.

29. The literature review highlighted how students are raped on their way to campus, as well as in residences and their immediate surrounds. In the aftermath of these attacks, students may be extremely fearful of using public transport to campus, or of remaining in their residences. To address this, the MTT recommends that **universities develop relationships with a local shelter for victims of crime and violence**, typically run by non-profit organisations. If students cannot be relocated onto campus for a period or placed in a different residence, arrangements can be made to temporarily house students at these facilities.

6.5. RECOMMENDATIONS RELATING TO INSTITUTIONAL GOVERNANCE AND ACCOUNTABILITY

30. As part of the annual reporting processes of institutions, the MTT recommends that **a specific report be tabled to Council outlining the work done in the implementation and support of institutional policy relating to GBV.** The report should cover reporting, disciplinary processes undertaken, training conducted, advocacy and communication, and policy developments and changes. This should be considered when the Reporting Regulations are reviewed.

31. The MTT recommends that institutions should include **specific plans, monitored at Council level, to outline mandatory training and available institutional support on policy and procedures relating to GBV.** This should include specific plans for training or support to different groups of staff and students (for example, SRC and students in leadership positions, security and other contractors, academic staff, HR officials, student development/affairs professionals, residence wardens).

32. The MTT recommends that institutions **develop advocacy and communication plans in line with policy.** These should include orientation processes for staff and students to ensure widespread understanding of policy frameworks relating to GBV. The implementation of these plans must be reported on in the report to Council, as well as the reporting tool recommended below.

33. As part of the accountability linked to the national Policy Framework, **an online reporting tool should be developed for higher education institutions**, to allow for standardised reporting. This should be carefully developed to ensure alignment in how institutions report. At the moment there is no standard and, given the complexity of these issues, the reporting system needs careful consideration. The MTT recommends that this system be collaboratively developed by the COP with the goal of being a standardised system with easy-to-understand terminology.

6.6. RECOMMENDATIONS RELATING TO FUNDING AND RESOURCING

Inadequate funding has hobbled attempts by universities to address GBV. The MTT is deeply concerned that this largely remains the case, despite protests and policy reforms. It is likely that case management will continue to suffer, complainants will remain unhappy with case outcomes and the vicious cycle of protest, followed by yet more policy reform, will continue. The MTT therefore recommends the following:

34. **Attention to GBV is essential to transform the higher education sector and funds should be allocated towards GBV initiatives as part of this transformation.** However, the change agenda is substantial and there is a risk that GBV may be subsumed within it, as has happened previously (see Chapter 2). To prevent this, the MTT recommends that actions to address GBV should be reported on in their own right and their budgets also be reported on separately.

35. **USAf should undertake fundraising** for its member institutions guided by the audit of needs proposed by recommendation 4. These funds should be aimed at building the higher education sector's response by prioritising training of university staff responsible for implementing processes and procedures. This will also have the effect of sharing skills and encouraging mutual learning.

36. USAf must use the audit of needs produced by the COP in terms of recommendation 4 to **establish a baseline informing the development of norms and minimum standards, as well as cost effective and functional responses.** This will assist universities to budget appropriately.

37. The MTT recommends that, in line with the institutional policy recommendations, institutions must **ensure that budgets are made available to support the minimum requirements for policy implementation as outlined in the policy frameworks.**

38. The MTT recommends that these minimum norms and standards be submitted to **the DHET which must consider making a grant available to enable universities to employ key staff for their GBV response**. These funds should prioritise support for HDIs.

39. Skill and experience are built over time through exposure to multiple cases, and this expertise is not built where only a few matters proceed to a hearing. Disciplinary tribunals often rely on the availability of academic staff whose other commitments may mitigate against their participation. The MTT recommends that USAf **fundraise for shared regional services in relation to disciplinary proceedings**. At a minimum, this could enable the appointment of a legally qualified chairperson, rotating this function across universities.

Recommendations 33 to 35 need to be prioritised to prevent efforts to address GBV from being rendered ineffective from the outset. Recommendation 37 is a long-term goal and the MTT recommends that USAF and the COP work towards this over a period of one to three years, evaluating and adapting approaches as these are tested.

6.7. RECOMMENDATIONS AROUND ACADEMIC INTERVENTIONS AND THE DEVELOPMENT OF A KNOWLEDGE AND PRACTICE BASE

Chapter 2 highlighted the limited and uneven body of knowledge developed by different HEIs around the functioning of complaints mechanisms, institutional histories and memories. Given that their core function is the production of knowledge, universities are well-positioned to create both the knowledge for, and knowledge of, transformation outlined by Chapter 2. Our recommendations in this regard are as follows:

40. Much remains unknown about the range of experiences of GBV within the setting of the university. **Universities must seek to understand the experiences of staff and students with**

disabilities, as well as LGBTQAI+ students and staff, to ensure that these are effectively responded to by policy. This reflects one aspect of knowledge for transformation.

41. The literature review in Chapter 2 suggested that violence may be differently patterned across universities. To get to grips with this, **the MTT recommends that HEIs take a critical, in-depth look at their institutional histories and the ways their economies of power function and are distributed.** When these sorts of research exercises are comparative, they contribute significantly to mutual learning and enhance understanding of the conditions that facilitate or constrain violence. This further contributes to collaborating around the development of knowledge for transformation.

42. It is crucial that HEIs build and maintain a body of knowledge and practice around their different kinds of interventions; better understanding of the university context is key. **The MTT strongly recommends that HEIs document and critically assess their various interventions on an ongoing basis.** This should not be for the sake of compliance but with the aim of ongoing learning. When undertaken in this spirit, such research initiatives offer insight into knowledge of transformation, or what it is that the universities' various endeavours are effecting in practice.

43. The MTT recommends that the **CHE scans the capacity of the undergraduate curriculum to challenge and develop students' thinking around transformation**. This exercise should not be confined to the Humanities, Social Sciences and Law but must also be extended to the STEM fields as well as those of Accounting and Economics.

6.8. RECOMMENDATIONS AROUND AWARENESS RAISING, ADVOCACY AND OTHER INTERVENTIONS FOR SOCIAL CHANGE

Both the literature review and the consultations made it clear that social interventions intended to transform gender relations are under-developed, with most attention having been paid to complaints mechanisms and disciplinary processes. Yet even where the latter are concerned, the lack of awareness of their existence limits their use. The MTT makes the following recommendations:

44. The COP must **collectively develop educational and informative materials around GBV and collaborate to share methods around their distribution.** The COP could consider developing such materials in partnership with Higher Health.

45. Universities could partner with Higher Health around the **presentation of dialogues and other standardised interventions around GBV**. However, as Chapter 2 suggested, they will also need to develop more specific interventions around GBV based on an analysis of their institution's history and its economies of power. This more specific work will need to be guided and informed by the research suggested in recommendation 6.6.

46. Universities must translate the research proposed by recommendation 6.6 into **interventions attentive to disability, sexual orientation, gender identity and expression**. They must evaluate their effectiveness with an eye towards sharing these with one another.

6.9. RECOMMENDATIONS AROUND ACADEMIC CORRUPTION AND THE GENDERED ABUSE OF ENTRUSTED POWER

Sex for academic advantage or employment benefits constitutes *quid pro quo* harassment and may also qualify as rape in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007. When it occurs within the context of broader corruption within an HEI it may be especially difficult to report and address.

47. The MTT recommends that these **gendered abuses of entrusted power be routinely probed in investigations, including in instances where HEIs are placed under administration.**

48. **The DHET must consider a whistle-blowing mechanism able to receive and respond to reports of academic corruption**. An online reporting tool may be particularly suited to this. The DHET should also proactively follow up on such reports, whether these appear in the media or investigative and other reports.

49. The MTT's investigations show that sex for marks and other gendered abuses of entrusted power have received negligible attention. As this is a form of abuse that is readily sensationalised and misunderstood (especially in ways that rely on retrogressive gender stereotypes), **we recommend that the DHET consider developing, in partnership with the COP, a thoughtful campaign challenging the practice. This could be introduced in tandem with launch of a practical intervention such as the proposed register and/or whistle-blowing mechanism.**

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SOUTH AFRICAN RESERVE BANK

NO. 4835 17 May 2024

SOUTH AFRICAN RESERVE BANK

Directive in respect of cybersecurity and cyber-resilience within the national payment system

Directive No. 01 of 2024

Contents

1. Definitions

1.1 In this directive,

1.1.1 **critical service provider** means a service provider that provides critical services to a payment institution in the NPS;

1.1.2 **compromise** means a violation of the security of an information technology (IT) system;

1.1.3 **cyber-attack** means malicious attempt(s) to exploit vulnerabilities through the cyber medium to damage, disrupt or gain unauthorised access to assets;

1.1.4 **cyber-event** means any observable occurrence in an information system. Cyber-events sometimes provide an indication that a cyber-incident is actually occurring;

1.1.5 **cyber-incident** means a cyber-event that adversely affects the cybersecurity of an information system and/or the information that the system processes, stores or transmits, or which violates the security policies, security procedures and/or acceptable use policies of the payment institution, whether resulting from malicious activity or not;

1.1.6 **cyber-resilience** means the ability of a payment institution or an operator to continue carrying out its mission by anticipating and adapting to cyber-threats and other relevant changes in the environment and by withstanding, containing and rapidly recovering from cyber-incidents;

1.1.7 **cyber-risk** means the combination of the probability of cyber-incidents occurring and their impact;

1.1.8 **cybersecurity** means the preservation of confidentiality, integrity and availability of information and/or information systems through the

cyber-medium. In addition, other properties such as authenticity, accountability, non-repudiation and reliability can also be involved;

1.1.9 **cyber-threat** means a circumstance with the potential to exploit one or more vulnerabilities that adversely affects cybersecurity;

1.1.10 **information asset** means any piece of data, device or other component of the environment that supports information-related activities;

1.1.11 **information system** means a set of applications, services, information technology assets or other information-handling components, which includes the operating environment and networks;

1.1.12 **information technology system** means a set of hardware, software, network or other information technology components which is part of an IT infrastructure;

1.1.13 **multi-factor authentication** means the use of two or more authentication factors to verify the identity of a user or system;

1.1.14 **payment institution** means persons designated, authorised, registered or regulated under the National Payment System Act 78 of 1998 (NPS Act), including but not limited to clearing system participants, settlement system participants, third-party payment providers and system operators;

1.1.15 **payment system Financial Market Infrastructure** means a multilateral system among payment system participants, including the operator of the system, used for the purposes of clearing, settling or recording payments, and includes a systemically important payment, clearing or settlement system and a prominent payment, clearing or settlement system

1.1.16 **operator** means an operator of a payment system, including payment clearing house system operators, operators of settlement systems and the operator(s) of payment system financial market infrastructures (FMIs);

1.1.17 **senior management** means the chief executive officer or the person who is in charge of a payment institution;

1.1.18 **sensitive information** means information where loss, misuse, or unauthorised access to or modification of could adversely affect the public interest, a payment institution or the privacy to which individuals are entitled;

1.1.19 **vulnerability assessment** means a systematic examination of an IT system, including its controls and processes, to determine the adequacy of security measures, identify security deficiencies, provide data from which to predict the effectiveness of proposed security measures and confirm the adequacy of such measures after implementation.

2. Background

2.1 In terms of section 10(1)(c) of the South African Reserve Bank Act 90 of 1989, as amended (SARB Act), the South African Reserve Bank (SARB) is required to perform such functions, implement such rules and procedures, and, in general, take such steps as may be necessary to establish, conduct, monitor, regulate and supervise payment, clearing and settlement systems. Furthermore, the NPS Act provides for the management, administration, operation, regulation and supervision of payment, clearing and settlement systems in the Republic of South Africa, and for connected matters. The power to perform the functions as provided in the SARB Act and the NPS Act is performed by the National Payment System Department (NPSD) within the SARB. The SARB plays an important role in ensuring the safety, efficiency and resiliency of the national payment system (NPS).

2.2 The NPS encompasses the entire payment process, from payer to beneficiary, and includes settlement between banks. The process includes all the tools, systems, instruments, mechanisms, institutions, agreements, procedures, rules or laws applied or utilised to effect payment. The NPS is a primary component of the country's monetary and financial system as it enables the circulation of money and assists transacting parties in making payments and exchanging value.

2.3 In terms of section 12 of the NPS Act, the SARB is empowered to issue directives, after consultation with the payment system management body(PSMB), to any person regarding a payment system or the application of the provisions of the NPS Act. Currently, in terms of section 3 of the NPS Act, the Payments Association of South Africa is recognised by the SARB as a PSMB to organise, regulate and manage its members in the payment system.

2.4 The payment landscape has evolved significantly over the past two decades, with digitisation, financial technology (fintech), automation and artificial intelligence (AI) changing the manner in which payments are effected. The rapid growth in digitisation and automation has introduced alternative payment solutions that are faster, more cost-effective and more efficient. However, these technologies also increase cyber-risk in the NPS as payment institutions become more dependent on computer networks and third-party IT service providers. This requires an increased level of resilience against cyber-incidents, as cyber-attacks on IT infrastructures, particularly those that are critical, could lead to a disruption that might develop into systemic events in the NPS, thus impacting negatively on the soundness, integrity, safety and efficiency of the NPS.

2.5 The cyber-environment exposes payment institutions, operators as well as payment, clearing and settlement systems to potential operational, legal and reputational risks, including business interruptions, data loss, fraud, breach of privacy and network failures, which may result in financial losses. Cybersecurity and cyber-resilience contribute positively to the operational resilience of payment institutions , operators, as well as payment, clearing and settlement systems and payment system FMIs, and further contribute to the overall resilience of the broader NPS.

2.6 The resilience of payment institutions, operators as well as payment, clearing and settlement systems will minimise disruptions within the NPS and contribute to maintaining the confidence of consumers in payment systems and services. Furthermore, it is vital that payment system FMIs, as essential platforms in the NPS, are also secure from, and resilient to, cyber-threats and cyber-attacks. A lack of security controls and recovery from cyber-attacks and

cyber threats may lead to low levels of cybersecurity protection and the failure to settle obligations in the settlement system by the end-of-value date, trigger a systemic event and/or cause financial instability.

3. Purpose

3.1 The SARB, acting pursuant to its powers in terms of section 12 of the NPS Act, hereby issues this directive to impose cybersecurity and cyber-resilience requirements on payment institutions; payment, clearing and settlement systems; payment system FMIs; and operators within the NPS.

4. Application of this directive

4.1 This directive applies to payment institutions, operators and payment system FMIs.

5. Directive

5.1 Payment institutions and operators must develop and maintain cybersecurity and cyber-resilience frameworks that include the following:

5.1.1 **Cyber-governance**

5.1.1.1 Payment institutions, and operators must have written effective cyber-governance arrangements that:

a. define the cybersecurity and cyber-resilience objectives;
b. outline the people, processes and technology requirements for protecting information systems, managing cyber-risks, and providing timely communication and effective responses to, and recovery from, cyber-attacks;
c. require the board of directors (board) or senior management of the payment institution and the operator to:
    i. determine the cyber-risk tolerance levels of the payment institution, operator, a payment, clearing or settlement system, or payment system FMI;
    ii. approve the cybersecurity policies and strategy, and cybersecurity and cyber-resilience framework;

iii. oversee the development and implementation of the cybersecurity policies and strategy, and cybersecurity and cyber-resilience framework;

iv. ensure that there is an annual review of the cybersecurity policies and strategy, and cybersecurity and cyber-resilience framework;

v. ensure that the cybersecurity and cyber-resilience framework is aligned to the operational risk management framework, operational resilience plan and business continuity plan of the payment institution or operator;

vi. ensure that the cybersecurity and cyber-resilience framework is based on industry standards and international best practices, and complies with legislative and regulatory requirements;

vii. ensure that the cybersecurity and cyber-resilience framework clearly articulates the identification of cyber-risks and the required controls to manage and mitigate the cyber-risks;

viii. ensure the appointment of a senior executive and technical experts with the relevant skills, expertise and experience accountable for cybersecurity and cyber-resilience; and

ix. ensure that the cybersecurity and cyber-resilience framework makes provision for information sharing and collaboration, where necessary, with the SARB and other relevant payment industry stakeholders in terms of applicable laws.

d. require the senior management of the payment institution, the operator to:

i. regularly keep the board informed and updated on the cybersecurity and cyber-resilience status of the payment institution, operator or payment system FMI, and report any material developments relating to cyber-threats within the NPS;

ii. ensure that the payment institution, the operator or payment system FMI complies with this directive and any other applicable cyber-resilience legislation and regulations;

iii. ensure that the payment institution or operator conducts due diligence on the entities they introduce or sponsor, or admit as participants in

the NPS;

iv. ensure that the payment institution conducts third-party risk assessments on third-party service providers prior to onboarding as well as on an annual basis; and

v. ensure that the roles and responsibilities in respect of cybersecurity and cyber-resilience are clearly outlined in agreements entered into with third-party service providers.

5.1.2 **Identification of critical operations and information assets**

5.1.2.1. Payment institutions and operators must:

a. identify critical technology, operations, processes, supporting information and assets that require protection against cyber-compromise;

b. identify internal processes, procedures, information assets and external dependencies that will strengthen the security and resilience to cyber-threats of the payment institution or operator, including:

i. the identification , classification, prioritisation of technology, processes and information assets in terms of criticality and sensitivity and functions in a risk-based approach to ensure that protective, detective response and recovery efforts are facilitated in a timely manner;

ii. the identification of technology, information assets, system configurations and access rights to information assets;

iii. the regular review and updating of critical business processes that will ensure that information remains current and accurate;

iv. the identification of cyber-risk interconnectedness within the NPS; and

v. the identification of access rights to information assets by third-party service providers.

5.1.3 **Cybersecurity measures**

5.1.3.1. Payment institutions and operators must ensure that cybersecurity frameworks include security controls, processes and systems that effectively protect and safeguard the confidentiality, integrity and availability of services provided as well as the information handled by payment institutions, operators,

payment, clearing or settlement systems, or payment system FMIs. These measures should, however, be proportionate to the threat landscape, risk tolerance and systemic role of the payment institution, operators, payment, clearing or settlement systems or payment system FMIs in the NPS, and must include the following:

a. the embedding of protective controls that minimise the likelihood and impact of a successful cyber-attack on identified critical business functions and information assets;
b. the development and implementation of measures to protect critical and sensitive information, which should, at a minimum, include access control, multi-factor authentication (MFA) or encryption;
c. the development and implementation of protective measures to mitigate risks arising from the interconnectedness with other payment institutions, operators, payment, clearing or settlement systems, or payment system FMIs within the NPS;
d. the development and implementation of measures that mitigate cyber-risk and address anomalous behaviour by staff with access to the system;
e. the continuous training of all relevant staff to develop and maintain awareness and to ensure that staff are knowledgeable in detecting and addressing cyber-risk;
f. the development and design of cyber-secure and cyber-resilient payment instruments and services that ensure that software, network configurations and hardware supporting or connected to critical systems are tested against security standards and cyber-attacks;
g. the development and implementation of cyber-hygiene measures that include the following:
    i. ensure that access management policies and processes include strong password security controls, access rights and privileges, MFA and periodic access reviews;
    ii. ensure that third-party service providers that have access to information assets payment institutions, operators, payment, clearing and settlement systems, or payment system FMIs are

subject to access restrictions and monitoring;

iii. establish processes to manage access to privileged accounts and monitor the use of IT systems for suspicious and unauthorised activities;

iv. implement MFA for access to critical systems and for accounts used to access payments institutions' or operators' sensitive information through the internet;

v. ensure the implementation of network perimeter defense controls;

vi. implement multiple-layer security controls to curb the effect of security compromises;

vii. ensure the application of security patches to address vulnerabilities of systems;

viii. ensure that security patches are tested and compatible with existing IT systems;

ix. ensure there are security standards applicable to software, systems and devices;

x. develop processes to monitor the application of security standards and ensure that the standards are continually reviewed for relevance to an evolving threat landscape;

xi. implement malware protection through defense and response mechanisms, and

xii. ensure regular scanning of information assets for malicious activities.

h. the development and implementation of data security measures that include the following:

i. data loss prevention policies which should include measures that will enable the payment institutions or operators to detect and prevent the unauthorised access and transmission of sensitive data;

ii. ensuring the encryption of data storage systems and endpoint devices to protect sensitive data; and

iii. ensuring that IT systems that are managed by third-party service providers are protected and subject to security standards.

5.1.4 Detection

5.1.4.1. Payment institutions and operators must ensure that cyber-resilience frameworks include cyber-attack trigger points and detection measures to continuously detect and monitor anomalous events and activities. The cyber-attack detection measures must include the following:

a. multi-layered trigger indicators and detection controls that accommodate processes, people and technology, ensuring that each layer serves as a safety net; and
b. security measures that identify and facilitate the analysis of irregular behaviour by persons with access to the payment institution or operator's information assets and network.

5.1.5 Response and recovery

5.1.5.1. Payment institutions or operators must have arrangements in place designed to enable the resumption of critical operations safely and swiftly, including:

a. early detection of cyber-attack attempts and/or successful cyber-attacks;
b. immediate initiation of recovery efforts to restore operations upon detection of a successful cyber-attack;
c. incident response processes to ensure that there is efficient recovery from incidents that could not be prevented;
d. adequate measures in place, including the design and testing of systems, to enable the return and resumption of critical operations within two (2) hours or any extended timelines with the prior approval of the SARB for payment, clearing and settlement systems and payment system FMIs; within the timelines specified by the PSMB for the payment institutions that are members of, registered or authorised by the PSMB, or as per the timelines specified by operators of payment, clearing and settlement systems for payment institutions that participate in such systems, which shall not, without prior approval by the SARB, exceed eight (8) hours of recovery/resumption time for all payment institutions;
e. recovery measures, upon detection and investigation of a cyber-attack, are in place that enable compliance with payment and settlement obligations to minimise the likelihood of a systemic event;
f. planning for extreme scenarios, including an analysis of critical functions

and interdependencies to prioritise resumption and recovery actions in a contingency mode while remedial efforts are in progress where the resumption of critical operations may not be possible within two (2) hours;

g. developing and testing response, resumption and recovery plans on a quarterly basis;

h. continuous update of plans based on information sharing, current cyber-threat intelligence and information from previous cyber-events;

i. the inclusion of third-party management plans in their cyber-resilience frameworks to provide for the following:

i. extensive due diligence to evaluate the cyber-resilience measures that relevant third parties have in place*;*

ii. an assessment of the criticality of processes that may be outsourced prior to entering into envisaged outsourcing contracts;

iii. obtaining independent security attestation reports from third parties as an additional layer of assurance of the security posture of the third-party service providers; and

iv. implementing and testing their business continuity plans and ensuring coordination with the third-party service providers for their business continuity.

j. in the event of outsourcing to a cloud service provider (CSP), ensure compliance with any regulatory requirements imposed by the SARB relating to cloud computing and data offshoring in the NPS, including adherence to the following principles:

i. identify, monitor and mitigate any jurisdiction risk relating to the data transmitted, stored and processed in the cloud; and

ii. the payment institution shall remain accountable for the data stored and processed, and for the overall security and resilience of the solutions developed on the cloud.

5.1.6 Testing

5.1.6.1. Payment institutions or operators must develop and implement cyber--resilience testing programmes and methodologies which include the following:

a. different test scenarios and simulations of various cyber-attacks;

b. internal and external penetration testing on systems and processes through the simulation of cyber-attacks on their systems with relevant stakeholders, including critical service providers in order to identify the vulnerabilities in their systems;
c. testing of systems after implementation of significant system changes to identify any security vulnerabilities due to a system change; and
d. regular vulnerability assessments that enable the identification and assessment of security vulnerabilities in the systems.

5.1.7 Information sharing

5.1.7.1. Payment institutions or operators must:

a. include access, collection and the sharing or exchange of cyber threat, and cyber risk information with regulators and cybersecurity agencies, and trusted internal and external parties in the cybersecurity and cyber-resilience frameworks;
b. plan arrangements for information sharing through trusted channels;
c. participate in information-sharing groups and organisations such as the Cybersecurity Hub and Computer Incident Response Teams to assist the payment institution or operator in gathering, distributing and assessing information about cyber-practices, cyber-threats and early warning indicators relating to cyber-threats;
d. ensure that information-sharing arrangements comply with the Protection of Personal Information Act 4 of 2013 and/or any other applicable data protection legislation, and that the personal data of clients of payment institutions or operators is protected and not compromised during the information-sharing process; and
e. ensure that information-sharing arrangements comply with relevant provisions of the Cybercrimes Act 19 of 2020 relating to the disclosure of information.

5.1.8 Situational awareness

5.1.8.1. Payment institutions or operators must:

a. understand the cyber-threat landscape of the environment within which they operate, and the adequacy of their risk mitigation measures;
b. develop cyber-threat intelligence processes that include gathering and analysing cyber-threat information to identify the potential impact of cyber-threats on the payment institution or systems, payment, clearing or settlement systems, or payment system FMIs and promote cyber-situational awareness; and
c. ensure that the scope of the cyber-threat information gathering process includes the collection and interpretation of information about cyber-threats arising from other payment institutions, operators, payment clearing or settlement system, or payment system FMIs, to enable the identification of cyber-threats emanating from other payment institutions, operators, payment, clearing or settlement systems, or payment system FMIs and the development of relevant detection, protection and recovery measures.

5.1.9 Learning and evolving

5.1.9.1. Payment institutions or operators must:

a. ensure that cybersecurity and cyber-resilience frameworks are adaptive and evolve with the dynamic nature of cyber-risk, to identify, assess and manage security threats;
b. ensure continuous learning from previous cyber-incidents and events to ensure that their security systems are improved to increase resilience;
c. keep abreast of new cyber-risk management processes and continually monitor technological developments that effectively counter existing and emerging forms of cyber-attacks; and
d. ensure there are reasonable measures to include predictive and anticipatory capabilities that extend beyond reactive controls and include proactive protection against future cyber-events in the risk management practices.

5.2 Cyber-incident reporting requirements

5.2.1 Payment institutions or operators must report material cyber- incidents to the

SARB within 24 hours and provide the SARB with a report within 48 hours of the cyber-attack. The report must include the:

a. date and time of the incident;
b. cause and source of the incident;
c. type and nature of the incident;
d. impact on the provision of services;
e. expected recovery period;
f. impact on stakeholders;
g. improvement action plan;
h. possible systemic effect of the incident on other payment institutions, operators, payment, clearing or settlement systems, or payment system FMIs; and
i. any other information as may be requested by the SARB relating to the cyber-incident.

5.2.2 Payment institutions or operators must provide regular updates to the SARB, as well as further details once the incident has been remediated and operations have resumed.

6 Supervision and compliance monitoring

6.1. The SARB may at any time conduct a supervisory onsite or offsite inspection on payment institutions or operators, in a form and manner that the SARB may determine, to promote compliance with this directive.

6.2. Subject to subparagraph 6.4.3, the SARB must provide written notification to the payment institution or operator whose business premises will be inspected, prior to conducting the supervisory onsite inspection.

6.2.1. The supervisory onsite inspection notification will specify:

a. date(s) of the intended supervisory onsite inspection;
b. names of the SARB representatives;
c. the period under review; and
d. any other information/documentation required for inspection purposes.

6.3. Each SARB representative must produce a letter of authority and identity document upon entry at the premises of a payment institution or operator, which officials must view for verification purposes and are prohibited to produce copies thereof.

6.4. The SARB representatives may enter any premises:

6.4.1. without prior consent in the case of business premises operated by payment institutions or operators; or

6.4.2. with prior consent in the case of a private residence, where the business of the payment institution is reasonably believed to be conducted at the private residence, or

6.4.3. without prior consent and without prior notice to any payment institution or operator:

6.4.3.1. if the entry is authorised by a warrant in terms of paragraph 6.10;or

6.4.3.2. with the prior authority of a senior staff member of the SARB, if the senior staff member on reasonable grounds believes that:

6.4.3.2.1. a warrant will be issued if applied for, in terms of paragraph 6.10;

6.4.3.2.2. the delay in obtaining the warrant is likely to defeat the purpose for which entry of the premises is sought; and

6.4.3.2.3. it is necessary to enter the premises to conduct the inspection and search the premises.

6.5. While on the premises, the SARB representatives, for the purpose of conducting the inspection, have the right of access to any part of the premises and to any document or item on the premises, and may do any of the following:

6.5.1. open or cause to be opened any strongroom, safe, cabinet or other container in which the SARB representatives reasonably suspects there is a document or item that may be relevant to the inspection;

6.5.2. examine, make extracts from and copy any document on the premises;

6.5.3. question any person on the premises to find out information relevant to the inspection;

6.5.4. require a person on the premises to produce to the SARB representatives any document or item that is relevant to the inspection and is in the possession or under the control of the person;

6.5.5. require a person on the premises to operate any computer or similar system or available through the premises to:

a. search any information in or available through that system; and

b. produce a record of that information in any format that the SARB representatives reasonably requires;

6.5.6. if it is not practicable or appropriate to make a requirement in terms of subparagraph 6.5.5, operate any computer or similar system on or available through the premises for a purpose set out in that subparagraph; and

6.5.7. take possession of, and take from the premises, a copy of any document or item that may afford evidence of a contravention of this directive or may be relevant to the inspection.

6.6. The SARB representatives must give the person apparently in charge of the premises a written and signed receipt for the copies of documents or items taken as mentioned in paragraph 6.5.

6.7. A payment institution or operator from whose premises a document or item was taken as mentioned in paragraph 6.5, or its authorised representative, may, during normal office hours and under the supervision of the representatives of the SARB, examine, copy and make extracts from a document or item.

6.8. A person who is questioned, or required to produce a document or information, during a supervisory onsite inspection contemplated may object to answering the question or to producing the document or the information on the grounds that the answer, the contents of the document or the information may tend to incriminate the person.

6.9. On such an objection, the SARB representative conducting the supervisory onsite inspection may require the question to be answered or the document or information to be produced, in which case the person must answer the question or produce the document.

6.10. The judge or magistrate may issue a warrant in terms of this paragraph:

6.10.1. on written application by the SARB setting out under oath or affirmation why it is necessary to enter and inspect the premises; and

6.10.2. if it appears to the magistrate or judge from the information under oath or affirmation that:

a. there are reasonable grounds for suspecting that a contravention of the directive has occurred, may be occurring or may be about to occur;

b. entry and search of the premises is likely to yield information pertaining to the contravention; and

c. entry and search of those premises is reasonably necessary for the purposes of the investigation.

6.10.3. A warrant issued in terms of this paragraph must be signed by the judge or magistrate issuing it.

6.11. SARB representatives that enter the premises under the authority of a warrant must:

6.11.1. if there is apparently no one in charge of the premises when the warrant is executed, fix a copy of the warrant on a prominent and accessible place on the premises; and

6.11.2. on reasonable demand by any person on the premises, produce the warrant or a copy of the warrant.

7. Effective date and non-compliance

7.1. This directive will be effective three months after its publication. The SARB reserves the right to amend any requirements in this directive.

7.2. Payment institutions or operators must comply with the requirements or conditions as stipulated in this directive.

7.3. Contravention of this directive is an offence in terms of section 12(8) of the NPS Act.

8. Conclusion

8.1. Any enquiries or clarification concerning this directive may be addressed to the following email address: NPSDIRECTIVES@resbank.co.za.

GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF EMPLOYMENT AND LABOUR

NOTICE 2499 OF 2024

AMENDMENT GAZETTE FOR ORTHOTICS &PROSTHETICS, DOCTORS AND SOCIAL WORKER 2024-2025

DEPARTMENT OF EMPLOYMENT AND LABOUR

NOTICE 4575 OF 2024

AMENDMENT GAZETTE OF NOTICE PUBLISHED ON 28 MARCH 2024

NO: 50403 PROSTHETICS AND ORTHOTICS GAZETTE

ADDITIONAL AND CORRECTION OF DESCRIPTION OF TARIFF CODES AND AMOUNTS

TARIFF OF FEES AS FROM 01 April 2024			
Code	**Description**		**Rand (excl. VAT)**
A80933	Castor stem dust cap	ea	16.34
A80934	Front cross bar -16	ea	372.45
A80935	Rear cross bar -16	ea	372.45
A80936	Front cross bar -18	ea	372.45
A80937	Ear cross bar -18	ea	372.45
A80938	Inner double cross bar -20(heavy duty 18)	ea	555.42
A80939	Outer double crossbar -20 (Heavy duty 18)	ea	555.42
A80940	Front crossbar-aluminium wheelchair	ea	1796.92
A80941	Rear crossbar-patriot	ea	1796.92
A80942	Front crossbar-patriot (20%)	ea	2613.70
A80943	Rear crossbar-patriot(20%)	ea	2613.70
A80944	Crossbar bolt and nut	ea	49.01
A80945	Crossbar bolt and nut for double crossbar	ea	58.81
A90127	Crossbar (including hardware)	ea	2 530.00
A80946	Inner rail top	ea	45.74
A80947	Inner rail bottom	ea	45.74
A80948	Seat guide-removable	ea	29.41
A80949	Seat guide-fixed arm	ea	29.41
A80950	Front post guide	ea	147.02
A80951	Front guide-20, bariatric	ea	277.71
A80952	Front post insert	ea	22.87
A80068	Aluminium standing *special criteria		135 355.00
A80490	Footrest (single plate / 2x individual, angle adjustable / re-movable, aluminium/titanium/carbon composite)		7 225.40
A33080	BE Harness		2 930.30
A16220	Lumbo-sacral corset - male 11" Imported		3 239.33
A80875	Swing away foot rest hanger left	ea	980.14
A32010	Above elbow prosthesis - passive (hand & cosmetic cover incl)	ea	66 898.31
A80154	Actuator	ea	20 311.88
A80238	Colsol castor 200x50 no fork Imported	ea	1303.59

REMOVED/DELETED/DISCONTINUED TARIFF CODES

Harness (Section)

Code	Description		Rand (excl. VAT)
A33070	AE triple center harness complete	ea	6959.98
A80060	Standing wheelchair*special criteria	ea	135 355.00
A90111	Footrest	ea	7 225.40

NOTICE 4580 OF 2024

AMENDMENT GAZETTE OF NOTICE PUBLISHED ON 28 MARCH 2024

NO: 50408 DOCTOR'S GAZETTE

CORRECTION OF TARIFF CODES DESCRIPTIONS AND AMOUNTS

		Specialist		General Practitioner		Anaesthetic		
		U	R	U	R	U	R	T
CODE	**PROCEDURES**							
0506	Harvesting of graft: Cartilage graft, costochondral.	91.1	**2 833.21**	*91.1*	**2 833.21**	*6*	**871.86**	+T
0244	Repair of nail bed	30	**933.00**	*30*	**933.00**	*3*	**435.93**	+T
0605	Arthrodesis: Stabilization of foot (triple-arthrodesis)	*180*	**5 598.00**	*144*	**4 478.40**	*3*	**435.93**	+T+M
0855	Excision: Compound palmar ganglion or synovectomy	*128*	**3 980.80**	*120*	**3 732.00**	*3*	**435.93**	+T
3.8.3	**Hands: (Note: Skin: See Integumentary system)**							
0992	Open reduction and fixation of central mid-third facial fracture with displacement: Le Fort I Osteotomy Not to use with tariff code 0989 to 0991	*970*	**30 167.00**	*776*	**24 133.60**	*4*	**581.24**	+T+M
0996	Open reduction and fixation of central mid-third facial fracture with displacement: Fracture of maxilla without displacement Not to use with tariff code 0989 to 0991 and 0994 to 0995		**Φ**		**Φ**			
4910	Laryngectomy: Hemi laryngectomy, antero-lateral-vertical May not be used with tariff codes 1471	*414.2*	**12 881.62**	*331.4*	**10 305.30**	*7*	**1017.17**	+T

			Specialist		General Practitioner		Anaesthetic		
4923	Tracheostomy: Revision, with flap rotation, complex May not be used with tariff code 4922		*167.3*	**5 203.03**	*133.8*	**4 162.42**	*9*	**1307.79**	+T
4.7.2.1	**Intensive Care: Category 1: Intensive Monitoring**								
1209	**Category 3:** Cases with multiple organ failure or Category 2 patients that may require multidisciplinary intervention. **First day** (per involved medical doctor)		*58*	**1 803.80**	*58*	**1 803.80**			Fees as for specia list
4825	USN TT5 (2,8 ATA x 135 min): TECHNICAL COMPONENT		*214.18*	**6 661.00**	*214.18*	**6 661.00**			
6115	Craniotomy/craniotomy: Supratentorial exploration		487.1	**15 148.81**	389.68	**12 119.05**	*11*	**1598.41**	+T

NOTICE 4570 OF 2024

AMENDMENT GAZETTE OF NOTICE PUBLISHED ON 28 MARCH 2024

NO: 50398 SOCIAL WORK GAZETTE

CORRECTION OF DESCRIPTION

Rule	Rule Description
001	Social Workers services account must be accompanied by a referral letter from the treating principal doctor indicating the condition of the employee and the need for such services. An overall event limit of ten (10) social worker consultations including group therapy is allowed and only one session /visit is allowed per day. More than 10 social worker consultations sessions will require pre-authorisation.

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NOTICE 2500 OF 2024

COMPETITION TRIBUNAL
NOTIFICATION OF DECISION TO APPROVE MERGER

The Competition Tribunal gives notice in terms of rules 34(b)(ii) and 35(5)(b)(ii) of the "Rules for the conduct of proceedings in the Competition Tribunal" as published in Government Gazette No. 22025 of 01 February 2001 that it approved the following mergers:

Case No.	Acquiring Firm	Target Firm	Date of Order	Decision
LM183Mar24	RMB Investments Sand Advisory (Pty) Ltd	Azrapart (Pty) Ltd	17/04/2024	Approved Subject to Conditions
LM174Feb24	VCAP1 Alliances (Pty) Ltd	Utilities World (Pty) Ltd	18/04/2024	Approved Subject to Conditions
LM196Mar23	Engen Ltd	Vitol Emerald Bidco (Pty) Ltd	25/04/2024	Approved Subject to Conditions

The Chairperson Competition Tribunal

DEPARTMENT OF TRANSPORT

NOTICE 2501 OF 2024

TRANSPORT APPEAL TRIBUNAL REGULATIONS, 2024

TRANSPORT APPEAL TRIBUNAL ACT, 1998 (ACT NO. 39 of 1998)

The following draft Regulations are hereby published for public comment. All interested persons are invited to submit their comments within 30 days from the date of publication hereof to:

The Director-General
Department of Transport
Private Bag X193
PRETORIA
0001

Attention: Mr KS Mudau

Room 3058, Third Floor

Forum Building, Struben Street, Pretoria

E-mail MudauKS@dot.gov.za

Tel: 012 309 3449

I, Lydia Sindisiwe Chikunga, the Minister of Transport, after consultation with the Transport Appeal Tribunal hereby, in terms of section 17 of the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998) ("the Act") make the regulations in the Schedule hereto.

Ms L S Chikuga MP

Minister of Transport

Schedule

Contents

Definitions

1. In these Regulations, any word or expression which is defined in the Act, the National Land Transport Act or the Cross-Border Road Transport Act has the same meaning and, unless the context indicates otherwise—

"Act" or **"the Act"** means the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998).

"appeal" means any appeal lodged with the Tribunal in terms of the National Land Transport Act, Cross-Border Road Transport Act or Transport Appeal Tribunal Act;

"appeal fee" means the fee prescribed in Annexure 2;

"appellant" means any person appealing to the Tribunal in terms of the National Land Transport Act, Cross-Border Road Transport Act or Transport Appeal Tribunal;

"chairperson" means the chairperson of the Tribunal appointed under section 5 of the Act and includes any member thereof who is acting as chairperson under that section;

"Cross-Border Road Transport Act" means the Cross-Border Road Transport Act, 1998 (Act No. 4 of 1998);

"day" means any day which is not a Saturday, Sunday, public holiday or falls between the date of 15 December to15 January;

"decision" means when an appeal has been finalised and appellant either gets or forfeits the appeal lodging fees.

"deliver" means use of electronic mail, registered post and manually.

"designated official" means an officer in the Department of Transport whom the Director–General has designated in terms of section 16(1) of the Act to perform the administrative and secretarial work of the Tribunal or to undertake investigations;

“directive notice” means a directive issued to a party to an appeal in terms of regulation 4(1);

“directive reply” means a reply submitted to the Tribunal by a party to an appeal in terms of regulation 4(2);

“entity” means the regulatory entity as defined in the National Land Transport Act or the Regulatory Committee as defined in the Cross-Border Road Transport Act, as the case may be, against whose act, direction or decision an appeal has been lodged;

“Integrated Transport Plans” means an integrated transport plan contemplated in section 36 of the National Land Transport Act;

“National Land Transport Act” means the National Land Transport Act, 2009 (Act No. 5 of 2009);

“party to the appeal” means and includes the following persons:

(a) the appellant;
(b) the aggrieved applicant in the application relating to the act, direction or decision of the regulatory entity in question, if not the appellant;
(c) the holder of any operating licence or permit affected by the act, direction or decision of the regulatory entity if not the appellant or aggrieved applicant;
(d) any other person interested in or affected by such act, direction or decision, and
(e) any person who was a party to or participated in the process leading up to the act, direction or decision which is the subject matter of the appeal, either as an applicant, objector or a person who submitted representations,

who has been identified as the appellant or a respondent in the notice of appeal or has been recognised as such by the Tribunal;

"planning authority" means a municipality that is a planning authority as defined in the National Land Transport Act;

“ruling” means the appeal is still pending before the tribunal.

"serve" means delivered to the person concerned by−

(a) delivering a copy to the person personally;

(b) leaving a copy at the place of residence or business of the person with a person apparently in charge of the premises who is apparently not less than 16 years of age;

(c) delivering a copy to the place of employment of the person to a person who is apparently not less than 16 years of age;

(d) in the case of a corporation, company or other juristic person by delivering a copy to a responsible employee thereof at its registered office or principal place of business or by affixing a copy to the main door of such office or place of business, or

(e) by delivering a copy to an agent or representative appointed by the person to represent him, her or it at the proceedings before the regulatory entity, or

(f) by sending a copy to the person by electronic mail to an e-mail address provided by the receiving person or his, her or its agent or representative.

Lodging of appeal

2. (1) An appeal in terms of section 92 of the National Land Transport Act, section 34 of the Cross-Border Road Transport Act or section 1 of the Transport Appeal Tribunal, as the case may be, must be lodged in writing with the Tribunal after:

(a) being served on all parties to the appeal within 30 days of the date of the written notice whereby the relevant act, direction or decision of the relevant entity was communicated to the appellant or

(b) 30 days from the date when an appellant became aware of decision in the absence of written notice

(c) but not more than 90 days when the act, direction or decision was made.

(2) The appellant must attach to the notice of appeal as an annexure a typed document setting out the grounds on which the appeal is based, which must refer to the applicable legislation where appropriate.

(3) An appellant lodging such an appeal must first pay the appeal fee and then submit proof of payment to the Tribunal with the original and nine copies of the completed notice of appeal form TAT 01 in Annexure 1, together with the information and documents specified in that Form and proof of service to the parties in the lodged appeal.

(4) An appellant must deliver a copy of the notice and accompanying documents by electronic mail, registered post, and manually to the other parties to the appeal and forward the proof of service to the Tribunal.

(5) The appellant must also submit a copy of the notice of appeal and accompanying documents, to the planning authority or authorities in whose areas of jurisdiction the relevant road transport services are or will be provided and to any person who made representations or lodged an objection to the application to which the appeal relates, and provide proof of such service to the Tribunal.

(6) Should the notice of appeal or lodging of the appeal not comply with the Act or these Regulations, the designated official receiving them must within 10 days of receipt of the notice of appeal send a notice to the appellant specifying details of the non-compliance and asking the appellant to comply within seven days of sending of the notice.

(7) If the appellant does not comply with the notice referred to in sub-regulation (6) the Tribunal may, subject to the right of the appellant to apply for condonation in terms of section 13 (a) of the Act, remove the appeal from the appeal register if−

(a) in its view substantial information is missing from the notice of appeal;

(b) any of the required documents have not been attached to the notice of appeal, or

(c) the appeal fee has not been paid.

(8) Where an appeal has not been removed from the appeal register in terms of sub-regulation (7), the designated official must allocate a reference number to the appeal and start the appeal proceedings.

(9) Application for suspension of an act, direction or decision of the entity in terms of Section 13(b) of the Act, must be made in accordance with Regulation 7(2) hearing.

Appeal procedure: entity

3.(1) The designated official must send a notice of the appeal to the relevant entity and attached documents by electronic mail, registered post, and manually within 10 days after date of receipt of the notice of appeal.

(2) The relevant entity receiving such a notice of appeal must within 21 days after the date of receipt of the notice of appeal, forward to the Tribunal and to all parties to the appeal: —

(a) copies of all documents relating to the act, direction or decision appealed against;

(b) a copy of the original application form submitted to the entity;

(c) a copy of the portion of the Government Gazette wherein the application was published, if applicable;

(d) any written representations or objections lodged with it in regard to the application;

(e) any recommendations or comments received from planning authorities;

(f) any maps and route descriptions that were considered;

(g) a reference to any applicable ITPs that were considered, or reasons why applicable ITPs were not considered;

(h) a transcript of the proceedings before it;

(i) if applicable, copies of agreements relating to the application, and

(j) any further documents that were considered during the application process.

(3) The relevant entity receiving such a notice of appeal must also within 21 days after the date of receipt of the notice of appeal, forward to the Tribunal and to all parties to the appeal its reasons in writing for the act, direction or decision appealed against.

(4) The chairperson may, in any particular case, extend the period contemplated in sub-regulation (2) or (3) on the written request of the entity concerned, but not for more than 14 days.

(5) The designated official must on receipt of documents contemplated in sub-regulations (2) and (3), verify with the parties as to whether they received the said documentation and if not, forward copies thereof to any person who made representations or lodged an objection to the application to which the appeal relates.

(6) Thereafter, the designated official must request parties to the appeal to make and forward their comments on the response documentation received from the entity within 10 days and to serve their comments to the Tribunal and to all the parties to the appeal.

(7) If the entity fails to provide the information set out in sub-regulations (2) or (3) within the period of 21 days prescribed in those sub-regulations, or any extended period granted in terms of sub-regulation (4), the Tribunal may:

(a) proceed to hear the appeal on the basis of the lodged notice of appeal and attached documents, or

(b) issue summons in the form of Form TAT 03 shown in Annexure 1 to be served on the chairperson of such entity in accordance with section 14(1)(b) of the Act calling upon him or her to appear before the Tribunal and produce the documents referred to in sub-regulation (2) or (3), as the case may be.

Appeal procedure: parties

4. (1) The chairperson or a designated official may at any time after the filing of a notice of appeal in terms of regulation 2, issue a directive notice directing one or more of the parties to the appeal to send a directive reply that complies with sub-regulations (4) and (5).

(2) The directive notice referred in subsection (1) should state and curtail issues for consideration at the appeal hearing, being such issues as determined by the chairperson or a delegated official and set out in the directive notice.

(3) Must deliver such a reply if he or she or wishes to raise or rely on any grounds or issues at the appeal hearing, and must set out those grounds or issues in the directive reply.

(4) A party who has been issued with a directive notice must respond to the directive reply to the Tribunal in writing within 10 days from the date of issue of the directive notice, provided that any party to the appeal may deliver such a directive reply despite not having received a directive notice from the Tribunal.

(5) An appellant may at a hearing of an appeal rely only on the grounds and issues stated in the notice of appeal and may give only such evidence as was given before the relevant entity.

(6) Parties to the appeal may at the hearing of the appeal also rely on the grounds and issues stated in writing in their directive reply and any grounds or issues that were given as evidence before the relevant entity.

(7) An appellant who did not participate in the application, the outcome of which is the subject of an appeal, may at the hearing of the appeal rely only on the grounds stated in his or her notice of appeal and may give relevant evidence not given before the entity that considered the application.

(8) Any party not cited or joined in the appeal proceedings and have an interest in the outcome of the appeal, may apply to be joined in the appeal proceedings at the discretion of the Tribunal.

(9) A directive reply:

(a) must respond to the questions in the directive notice and state the facts which are in dispute, admitted or rejected that are material to the appeal;

(b) must set out any other facts on which the parties propose to rely that are material to the appeal;

(c) must provide details of witnesses if any, that the parties intend to call during the appeal hearing;

(d) may attach a settlement agreement signed between the parties and;

(e) may provide for any other issues for consideration by the Tribunal.

Appeal procedure: Tribunal

5. (1) The Tribunal may at any stage of the appeal proceedings, in its own discretion and on application by the appellant or any other party to the appeal, allow any document submitted by any party to be amended upon such terms as the Tribunal considers just.

(2) The Tribunal may allow, in special circumstances and on good cause shown, evidence not given before the relevant entity to be admitted.

(3) The designated official must send any directive notice or directive reply sent to a party to the appeal or filed by such a party with the Tribunal, as the case may be, to all other parties to the appeal by electronic mail, registered post, and manually if they have not already received the same.

(4) The Tribunal may grant an order on any point which appears to be an issue in the appeal to be determined as a preliminary issue, and may, in appropriate circumstances, decide on or dismiss the appeal in terms of section 12 of the Act based on its decision on such a preliminary issue.

(5) If in the opinion of the Tribunal, the determination of a preliminary issue will substantially dispose of the entire appeal, the Tribunal may treat the hearing of the preliminary issue as the hearing of the appeal and may grant such an order by way of disposing of the appeal as it deems fit.

(6) Any notice or reply filed by the parties to an appeal with the Tribunal must first be served on all other parties and proof of service must be furnished to the Tribunal.

(7) A party who is in default of any of the provisions of these Regulations shall not be heard in respect of any issue raised in such Regulations except on good cause shown to the Tribunal for its failure to comply.

(8) In the event a sitting of the Tribunal has partly heard the merits of an appeal and further hearings are needed to finalise the appeal, the Secretariat must ensure that the members who constituted the Tribunal continue to participate in subsequent sittings until the partly heard matters are finalised.

(9) The exception to sub-regulation 8 above, would be circumstances wherein a member is permanently or temporarily unable to participate in Tribunal hearings.

(10) Sub-regulation (8) does not apply to the hearing of preliminary issues.

(11) A preliminary issue contemplated in sub-regulation (4) may be raised by any party to the appeal.

(12) The Tribunal may in its discretion postpone the hearing of an appeal or alter the place of any hearing of the appeal.

(13) If the Tribunal decides on or dismisses an appeal in terms of section 12 of the Act, or postpones an appeal or alters the place of any hearing in terms of sub-regulation (12), the designated official must notify all parties to the appeal of the Tribunal's decision in writing not later than 10 days after such decision.

(14) Any irregularity resulting from a failure to comply with any provision of these Regulations before the Tribunal has reached its decision does not in itself render the proceedings void.

(15) Any clerical mistake or error in any document recording a decision of the Tribunal, or any error arising in such a document from an incidental error or omission may be corrected by the person presiding at the proceedings in which the decision was made.

(16) Before the commencement of any hearing of an appeal, members of the Tribunal must disclose any direct or indirect financial or personal interest that any of them may have in any matter before the Tribunal that may affect the impartiality of the member concerned.

(17) The chairperson may at his or her discretion after consideration of all disclosures, if any, contemplated in sub-regulation (16) make a ruling for the member to be recused from such hearing or make any other ruling that will ensure the impartiality of the Tribunal.

Time limit for appeal and condonation

6. (1) A notice of appeal must be lodged with the Tribunal within 30 days from the date of the written notice whereby the act, direction or decision of the relevant entity was communicated to the Appellant, or

(2) In the case of an appellant who did not receive such written notice, within 30 days of the date when the appellant became aware of the decision but not later than 90 days from the date on which the act, direction or decision appealed against was taken.

(3) An appellant who fails to lodge an appeal within the period contemplated in sub-regulation (1) may apply to the Tribunal for condonation of the late filing of the notice of appeal in terms of section 13(a) of the Act, provided that:

(a) the application for condonation is in writing and is lodged simultaneously with a duly completed notice of appeal with supporting documentation;

(b) the application for condonation is accompanied by a supporting affidavit setting out the reasons for the late filing of the notice of appeal, with supporting documentation, if any, and

(c) the notice of appeal, application for condonation and supporting affidavit, are received by the Tribunal not later than 90 days as contemplated in sub-regulation (1).

(4) The Tribunal must consider an application for condonation prior to the hearing of the appeal whether the application is opposed or not.

(5) A ruling by the Tribunal to condone an appellant's late filing of a notice of appeal allows the appeal to proceed as if it was properly filed.

Suspension of the operation of the act, direction or decision appealed against

7. (1) An appeal lodged before the TAT within a period of 30 days**,** after the date on which such an act, direction or decision was communicated to the appellant and the entity’s decision is suspended automatically in accordance with the rules of common Law.

(2) An application in accordance with Section 13(b) of the Act to suspend the operation of an act, direction or decision must be in writing and accompanied with:
(a) a copy of the notice of appeal;

(b) a copy of the application for condonation for late filing of the appeal made under regulation 6(3) where applicable;

(c) an affidavit by the appellant showing good cause for suspending the decision appealed against, and

(d) proof that the appellant has delivered a copy of the application to all parties to the appeal, either by means of an affidavit showing that the copy was delivered by hand to the relevant party or by proof that it was sent by registered post or e-mail.

(3) Any party to an appeal may give written notice to the Tribunal that he, she or it opposes an application contemplated in sub-regulation (2), except where the chairperson has already granted or refused such an application in terms of section 13(b) of the Act, and the chairperson may set down the question of such suspension for hearing by the Tribunal as a preliminary hearing before hearing the merits of the main appeal.

Appearance before Tribunal

8. (1) The Tribunal may summon any person to appear before it in terms of section 14(1)(b) of the Act by completing Form TAT 03 in Annexure 1.

(2) A summons contemplated in sub-regulation (1) must be signed by the chairperson or a delegated member and must be served by a sheriff contemplated in the Sheriffs Act, No. 90 of 1986 or an authorised officer as defined in section 1 of the National Land Transport Act, no. 5 of 2009.

(3) The sheriff or authorised officer must transmit a return of service or non-service, as the case may be, to the designated official.

(4) Any person who fails to comply with a summons is guilty of an offence as contemplated in section 15 of the Act.

Right to Representation

9.(1) A party to an appeal has the right to appear in person or to be legally or otherwise represented in proceedings before the Tribunal.

(2) A party may be represented by either an attorney or advocate registered with the Legal Practice Council established by section 4 of the Legal Practice Act, 2014 (Act No. 28 of 2014), or any other person appointed by the party to the appeal that

is named and appointed by the power of attorney shown as Form TAT 02 in Annexure 1 or a similar document authorising such appointment.

(3) The represented party must notify the Tribunal of any withdrawal or change in representation and provide new details for communication and service of documents.

Notification of hearing

10.(1) The designated official sends a notice of a hearing at least 10 days before the hearing or such shorter period as may be agreed upon by all of the parties to the appeal, by electronic mail to:

(a) The appellant or the representative of the appellant on record with the Tribunal;

(b) the relevant entity;

(c) all other parties to the appeal and

(d) any person who has formally joined the proceedings.

(2) A notice contemplated in sub-regulation (1) must reflect—

(a) the names of the appellant, the respondents and other party who has formally joined the proceedings;

(b) the citation of the appeal, and

(c) the date, time and venue of the hearing.

Postponement of proceedings, removal of appeal from roll and withdrawal of appeal

11.(1) The chairperson may on application by any party to the appeal grant a written request for postponement of a hearing, and such a request must contain reasons for the request and must reach the Tribunal at least 10 days before the scheduled date of the hearing.

(2) The chairperson may grant a postponement of the proceedings or remove the appeal from the roll upon good cause shown, either before or on the date of the hearing and may refuse the application for postponement or removal.

(3) If a postponement is opposed, the chairperson may request the parties to the hearing to make representations within three days before ruling on the matter.

(4) If the chairperson makes a decision to postpone proceedings or to remove the appeal from the roll, the designated official must give notice of such postponement or removal to all parties to the appeal, either telephonically or by e-mail, not later than three days after the Tribunal has taken that decision.

(5) If an appellant requests withdrawal of the appeal less than 10 days before the date of the hearing of the appeal, the appeal fee shall be forfeited.

Proceedings at hearings

12. (1) Save in the case of a preliminary issue raised in terms of sub-regulation 5(4), the chairperson must allow the appellant to present his, her or its case first, and thereafter the Tribunal must allow any other parties to the appeal to present their case, whereafter the appellant must be afforded an opportunity to respond to issues raised by such other parties.

(2) The relevant entity, having filed the reasons for its decision in writing, may not make further representations unless requested to clarify a particular issue by the Tribunal as it is *functus officio* during the appeal proceedings.

(3) The chairperson may allow any party to the appeal to tender evidence and to call witnesses, and the parties may be allowed to put questions to such witness at an appropriate time determined by the chairperson.

(4) The chairperson may request any of the parties to an appeal to confirm documentation in their possession that they intend using during the hearing by sending a notice to that party, who or which must respond within five days of receipt of that notice.

Hearing of appeal in absence of parties

13.(1) Where a notice of a hearing has been served in terms of regulation 10, the Tribunal may hear an appeal in the absence of the appellant or any other party to the appeal if:

(a) The Tribunal is satisfied that the reasons provided to it by the appellant or other party are not of such a nature as to necessitate his or her attendance;

(b) The appellant or other party has indicated to the Tribunal that he or she does not does not wish to be present at the hearing;

(c) The appellant or any other party fails to attend the hearing without providing reasons at all or provides reasons that are unacceptable to the Tribunal;

(d) the issues involved are of such a nature that the Tribunal may take a decision without hearing the appellant or other party;

(e) the appellant or other party has submitted documents of a vexatious or frivolous nature,

(f) the appellant or other party has applied for unwarranted or unnecessarily repetitive postponements of the hearing, or

(g) the appeal was removed from the roll on two or more previous occasions and the Tribunal considers it in the interests of justice to dispose of the matter.

(2) Where the Tribunal proceeds with a hearing in the absence of the appellant or any other party to the appeal, the Tribunal may consider and deal with the appeal on the strength of the information available to it at the time of the hearing.

Combined hearings

14. The Tribunal may decide that two or more appeals must be heard together where the parties to the appeal have so agreed, and where:

(a) some common question of fact or law will arise, and

(b) in the opinion of the Tribunal it will be practical and appropriate to proceed with the appeals at the same time,

Records of proceedings

15. (1) The Tribunal must keep a record of every appeal lodged, every document relating thereto and a summary of the proceedings and minutes of its hearings relating thereto, by means of shorthand notes or electronically.

(2) The records referred to in this regulation must be disposed in accordance with the National Archives and Record Service of South Africa Act, 1996 (Act No. 43 of 1996).

(3) Records may be kept as hard copy, microfilm or in electronic format: provided that no such record may be stored in a format that can be changed from the original format without the use of encryption codes.

Decisions of Tribunal

16. (1) The Tribunal must within 21 days after the parties to the appeal have closed their cases or such extended period as may be determined by the Tribunal, finalise the decision of the hearing, but not later than 30 days after the parties have closed their cases.

(2) The Tribunal must within 10 days from the date the Tribunal has finalised its decision, notify the relevant entity and the parties to the appeal about the decision of the Tribunal.

(3) A decision of the Tribunal must be conveyed in writing by e-mail to the parties to the appeal and must include full particulars of the Tribunal's decision with reasons and set out whether the appeal fee or any part thereof is to be refunded or forfeited by the appellant.

(4) Where the Tribunal issues a directive to an entity in terms of section 12(5) of the Act, it must notify the Director-General in terms of section 12(6) of the Act by completing and sending Form TAT 04 in Annexure 1 and requesting the Minister, MEC or municipal council, as the case may be, to intervene in the matter.

Fees

17. (1) The appeal fees contemplated in section 11 of the Act are prescribed in Annexure 2.

(2) Where the Tribunal:

(a) dismiss an appeal in terms of section 12(1)*(a)* of the Act, the appeal fee will be forfeited;

(b) upholds an appeal in terms of section 12(1)*(b)* of the Act, the appeal fee or any part thereof as decided by the Tribunal must be refunded to the appellant;

(c) partially upholds an appeal in terms of section 12(1)*(c)* of the Act, the appeal fee or any part thereof, may be refunded to the appellant at the discretion of the Tribunal.

(3) Where an appeal lodged with the Tribunal is withdrawn by the appellant less than 10 days before the hearing date, the appeal fee will be forfeited.

(4) Where the chairperson of the Tribunal refuses an application for condonation of the late filing of an appeal in terms of section 13*(a)* of the Act, the appeal fee must be refunded to the appellant.

(5) Where any act, direction or decision of the entity against which an appeal is lodged is set aside and referred back to the entity for reconsideration by the Tribunal in terms of section 12(1)*(b)*(ii) of the Act, the appeal fee must be refunded to the Appellant.

(6) Any person summonsed in terms of section 14(1)*(b)* of the Act to appear before the Tribunal in order to give evidence or to produce a book, plan or other document or object must be paid the witness fees that are paid to any witness attending or summonsed to give evidence in a civil case before a magistrate's court, subject to sub-regulation (7).

(7) No witness fees are payable to a state employee who attends a hearing in the course of his or her duties.

Repeal of Regulations

18. The Transport Appeal Regulations, 2012 published under Notice No. 26 of 17 January 2013 are hereby repealed.

Short title and commencement

19. These Regulations are called the Transport Appeal Tribunal Regulations, 2024, and come into operation on the date of their publication in the *Government Gazette*.

ANNEXURE 1: FORMS

FORM TAT 01	**NOTICE OF APPEAL**
FORM TAT 02	**SPECIAL POWER OF ATTORNEY**
FORM TAT 03	**SUMMONS**
FORM TAT 04	**DIRECTIVE TO REGULATORY ENTITY OR REGULATORY COMMITTEE IN ACCORDANCE WITH SECTION 12(5) OF THE ACT**
FORM TAT 05	**WITHDRWAL OF APPEAL**

transport
Department:
Transport
REPUBLIC OF SOUTH AFRICA

TRANSPORT APPEAL TRIBUNAL ACT 39 0F 1998

FORM TAT 01: NOTICE OF APPEAL

(**PLEASE NOTE:** The notice of appeal recorded on this form TAT 01 must be completed in full, a clear answer must be furnished to each question and the Form must be submitted to the Tribunal in compliance with the Transport Appeal Tribunal Regulations, 2024, and to comply with the General Provisions in clause 8 below.)

(PLEASE TICK WHERE APPROPRIATE)

Provincial Regulatory Entity (PRE)	National Public Transport Regulator (NPTR)	Municipal Regulatory Entity (MRE)	Regulatory Committee of the Cross-Border Road Transport Agency (C -BRTA)	Other (specify)

IN RESPECT OF: (PLEASE TICK WHERE APPROPRIATE)

MINIBUS	**MIDIBUS**	**BUS**	**OTHER (SPECIFY)**

OPERATING LICENCE NUMBER & EXPIRY DATE	DATE OF DECISION	DATE DECISION COMMUNICATED	REASONS PROVIDED
STATE IF THE APPLICATION NEW			YES / NO
APPLICATION FOR ADDITIONAL ROUTES			YES / NO
OTHER			YES / NO

2. DETAILS OF APPELLANTS (PLEASE TICK WHERE APPROPRIATE)

SURNAME AND NAMES

_____

REGISTERED NAME OF COMPANY/CLOSE CORPORATION (CC) OR OTHER ENTITY

_____

Identity/passport number (Attach copy of identity document/card/passport)

_____

Registration number (Attach copy of the company's Certificate of Incorporation, proof of registration of close corporation, certificate of registration of trust or other)

_____

Street address

_____

_____

_____

Postal address

_____

_____

_____

Business tel. no.

_____

Cell no.

_____

E-mail address

_____

Vehicle Type (type of vehicle involved in the act, direction or decision appealed against):

_____

N.B: (If there is more than one appellant, details must be set out in an annexure clearly marked as an annexure and attached*)*

3. NAME OF THE ENTITY THAT GAVE THE ACT, DIRECTION OR DECISION APPEALED AGAINST (FIRST RESPONDENT) AND OTHER RESPONDENTS

2.1 Name of entity: _____

2.2 Names of other respondents:

1. _____

2. _____

3. _____ (Add more if applicable)

4. APPLICATION FOR CONDONATION AND/OR SUSPENSION – WHERE APPLICABLE (PLEASE TICK WHERE APPROPRIATE)

CONDONATION		**SUSPENSION**	
YES	**NO**	**YES**	**NO**
(It is essential that the condonation and/or suspension application/s are set out in full with reasons as an annexure clearly marked "Annexure to Condonation/Suspension Application" (whichever is applicable, or both) and attached hereto.)			
Was the Appeal to the Tribunal lodged within 30 days from the date of act, direction or decision notice to the appellant?		**YES**	**NO**
If not, how many days is the appeal outside the 30 days required to lodge an Appeal?			
Was the Appeal to the Tribunal lodged within 30 days of the appellant being aware of the act, direction or decision by the entity?		**YES**	**NO**
If not, how many days is the appeal outside the 30 days required to lodge an Appeal?			

5. TYPED GROUNDS OF APPEAL INCLUDING REFERENCES TO APPLICABLE LEGISLATION MUST BE ATTACHED AS AN ANNEXURE AND MARKED "ANNEXURE: GROUNDS OF APPEAL"

6. DETAILS OF THE APPELLANT'S REPRESENTATIVE: SURNAME AND NAME

_____

Note: An appointment letter must be attached on FORM TAT02 or a similar letter, as well as a resolution appointing the representative in the case of a company or other juristic person.

Contact Details of representative:

Telephone number: _____Cell phone number: _____

E-mail address: _____

7. **DECLARATION**

I HEREBY CONFIRM THE CONTENTS OF THE NOTICE OF APPEAL.

SIGNED:…… NAME IN PRINT:……..

DATE:…… CAPACITY: ……

8. GENERAL REQUIREMENTS:

The Notice of Appeal to comply with the following requirements:

1.1. The Appellants must include an index of the Notice of Appeal and all attached annexures and bind the documents together.

1.2. Page numbers must be inserted in clear, bold black ink e.g. 1, 2, 3, 4, etc.

2 All information must be completed and where not applicable this must be clearly indicated.

3 All documents must be typed and neatly bound.

4 Failure to comply with the provisions contained herein may result in the Appeal being removed from the Appeal Register in terms of regulation 2(7) of the Regulations.

5. Details of the parties' representatives must be clearly indicated inclusive of their capacity, with a resolution in the case of a juristic person, as provided in clause 6 above.

6. A completed Power of Attorney on Form TAT 02 for the representative must be attached if applicable.

PLEASE NOTE: IF THE SPACE PROVIDED IN THIS FORM IS INSUFFICIENT, FURTHER DETAILS MUST BE SET OUT IN AN ANNEXURE CLEARLY MARKED AS TO THE RELEVANT SECTION AND ATTACHED.

APPEAL LODGING FEE PAYMENT DETAILS

Account Name	Department of Transport
Account Number	4053620095
Bank	ABSA
Reference Number	13033034 or the Identity Number of the Appellant or company/CC/Trust registration number

TRIBUNAL CONTACT DETAILS

Physical Address	Secretariat, Transport Appeal Tribunal Department of Transport Forum Building 159 Struben Street, Corner Struben & Bosman Streets, Pretoria
Postal Address	Private Bag X 193, Pretoria, 0001
Email Address:	Tribunal@dot.gov.za
Tel Nos.	(012) 309 3690/3526//3499/3975/3861

transport
Department:
Transport
REPUBLIC OF SOUTH AFRICA

TRANSPORT APPEAL TRIBUNAL ACT 39 0F 1998

FORM TAT 02: SPECIAL POWER OF ATTORNEY

I/We, the undersigned

_____

_____

(If the appellant/respondent is a company, close corporation, trust, or association with a constitution, a resolution of the directors, members, trustees, or committee of such body, authorizing the said person to sign the Power of Attorney on its behalf, must be attached) hereby nominate, constitute and appoint

_____

_____

To act on my/our behalf as our duly appointed agent and representative throughout the proceedings of the appeal against the act, direction, or decision of the _____(Name of Entity) dated _____20_____I/We, furthermore authorize my/our said representative to appoint in his or her name, place and stead, an advocate or attorney registered with the Legal Practice Council in terms of the Legal Practice Act, 2014 (Act No. 28 of 2014) or other person appointed in terms of regulation 9 of the Transport Appeal Tribunal Regulations, 2024, to represent me/us at any hearing of the said Appeal by the Transport Appeal Tribunal.

_____

Signature of the Appellant/Party

Date:

Witnesses:

1. _____ [Signature and full names]
2. _____ [Signature and full names]

Signature of the Representative _____Date:

transport
Department:
Transport
REPUBLIC OF SOUTH AFRICA

TRANSPORT APPEAL TRIBUNAL ACT 39 0F 1998 ("the Act")

FORM TAT 03: SUMMONS (in terms of section 14(1)*(b)* of the Act)

In the appeal of _____ Appellant

Before the Transport Appeal Tribunal to be held at_____

TAT No_____of 20_____

Physical Address

_____

TO:

1. Regulatory Entity (First Respondent) of _____
2. Second Respondent of _____ _____
3. Third Respondent of _____
4. Fourth Respondent of _____

You are hereby required to appear in person before the Transport Appeal Tribunal on the _____ day o_____ 20_____

at_____(time) and at _____ (venue) at the abovementioned hearing to give evidence and bring with you and then produce to the Tribunal the books, papers or documents specified below.

LIST OF BOOKS, PAPERS OR DOCUMENTS TO BE PRODUCED:

(Attach relevant documents)

Date	Description	Original or Copy

Failure to comply with this summons is an offence in terms of section 15 of the Transport Appeal Tribunal Act, 1998 (Act No. 39 of 1998)

Dated at_____on this_____ day of_____20_____

_____

Signature of the Tribunal Chairperson or Delegated Member

transport
Department:
Transport
REPUBLIC OF SOUTH AFRICA

TRANSPORT APPEAL TRIBUNAL ACT 39 0F 1998 ("the Act")

FORM TAT 04: DIRECTIVE TO REGULATORY ENTITY OR REGULATORY COMMITTEE
(in accordance with section 12(5) of the Act)

DIRECTIVE TO COMPLY WITH THE DECISION OF THE TRIBUNAL

FROM: THE TRANSPORT APPEAL TRIBUNAL (TRIBUNAL)

TO: THE DIRECTOR GENERAL OF THE DEPARTMENT OF TRANSPORT

IN THE MATTER OF: (DESCRIPTION OF THE PARTY/IES)

……upon hearing the appeal lodged by the Appellant on _____ and heard by the Tribunal on _____;

the following order was made by the Tribunal on _____

(DESCRIPTION OF THE ORDER) [The Full Decision of the Tribunal is attached]

……The entity has to date failed to comply with or implement the above Tribunal Order as contemplated by section 12 of the Act.

The Director-General is requested to ensure implementation of the Decision of the Tribunal through invoking the provisions of the Intergovernmental Relations Framework Act 13 of 2005 and/or related processes and to notify the Minister/MEC/council in terms of section 12(5) of the Act with a request for them to intervene in the matter in terms of that subsection.

Thereafter, the Director-General is requested to advise the Tribunal within 30 days of receipt of whatever interventions will be undertaken herein leading to compliance with the Tribunal Order by the Entity.

Signed _____

Name: _____

Capacity: Chairperson of the Tribunal or Delegated Member

Date: _____

transport

Department:
Transport
REPUBLIC OF SOUTH AFRICA

TRANSPORT APPEAL TRIBUNAL ACT 39 0F 1998 ("the Act")

FORM TAT 05: WITHDRAWAL OF APPEAL

Date of lodgment of the Appeal:_____

Appeal Reference number:_____

Full names of the Appellants /Association representative:

_____

Contact details of the appellants:_____

Reason/s for the withdrawal of Appeal: _____

_____

_____

_____

_____

I hereby confirm that the above-mentioned information is true and correct and I'm duly authorized to file this withdrawal and hereby give consent to the TAT to remove this matter on its appeal register and close its file regarding the appeal.

Signed: at _____ on this _____day of _____ 20

_____

Full names of the Appellant:

Signature:_____

ANNEXURE 2: FEES

[Note: Vehicle and service types are as defined in the National Land Transport Act, 2009]

DESCRIPTION	FEE
Appeal fee – Scheduled service: any vehicle	R2000,00
Appeal fee – Minibus taxi-type service: midibus	R1500,00
Appeal fee – Minibus taxi-type service: minibus or motor car	R1000,00
Appeal fee - Charter service: any vehicle	R1000,00
Appeal fee - Tourist transport service: any vehicle	R1000,00
Appeal fee – Accreditation of tourist transport operator	R1 500,00
Appeal fee - Metered taxi service: any vehicle	R1000,00
Appeal fee – Other service: any vehicle	R1000,00
Appeal fee – Administrative decision (e.g. against a decision to postpone)	R1 000,00

BOARD NOTICES • RAADSKENNISGEWINGS

BOARD NOTICE 593 OF 2024

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No 44 of 2000 ("The Act") of the finding and sanction imposed by the Disciplinary Tribunal in the disciplinary hearing held on 4 December 2023 and the Tribunal order issued on 4 December 2023, into alleged improper conduct of the registered person.

Name of Person: Mr. Robert S. Scott

Registration Number: PrArch 6469

Nature of the offence

Guilty of contravention of Rule 4.1. (g) and (h) of the Code of Conduct for registered persons promulgated under Board Notice 7 of 2021 Government Gazette No 44190 of 19 February 2021.

Sanction:

- The sanction for the charge is a fine of R5 000.00 (Five thousand Rand only) in terms of section 32(3)(a)(ii) of Act 44 of 2000.

BOARD NOTICE 594 OF 2024

SOUTH AFRICAN COUNCIL FOR THE ARCHITECTURAL PROFESSION

Publication in terms of section 32(5) of the Architectural Profession Act No 44 of 2000 ("The Act") of the finding and sanction imposed by the Disciplinary Tribunal in the disciplinary hearing held on 7 December 2023 and the Tribunal order issued on 7 December 2023, into alleged improper conduct of the registered person.

Name of Person: Mr. Lotangamwaki Mollel

Registration Number: PrArch58559450

Nature of the offence

Guilty of contravention of Rule 2.1 of the Code of Conduct for registered persons promulgated under Board Notice 7 of 2021 Government Gazette No 44190 of 19 February 2021.

Sanction:

- The sanction for the charge is a fine of R6 000.00 (Six thousand Rand only) in terms of section 32(3)(a)(ii) of Act 44 of 2000.

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Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
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