

**BY-LAWS RELATING TO SEXUAL AND GENDER-BASED VIOLENCE
(SGBV) SABARAGAMUWA UNIVERSITY OF SRI LANKA - BELIHULOYA**

Given below are the by-laws relating to Prevention and Response to Sexual and Gender – based Violence declared by the Council of Sabaragamuwa University, Sri Lanka under Section 135 of the Universities Act No: 16 of 1978 as amended by Acts No 7 of 1985 and No 26 of 1988 and enforced with effect from 27th February, 2016.

General Principles

The Sabaragamuwa University of Sri Lanka is committed to maintaining a learning environment and workplace that are free of sexual harassment to all persons, irrespective of gender. Based on the fundamental values of human dignity, gender equality and respect for due process, these by laws seek to spell what sexual harassment means, prevent the occurrence of sexual harassment within Sabaragamuwa University of Sri Lanka, and provide suitable procedures for inquiring into, and punishing acts of sexual harassment.

In Sri Lanka, sexual harassment is a criminal offence under Section 345 of the Penal Code and is criminalized in the context of Higher Education under Section 2(2) of the Prohibition on Ragging and All Forms of Violence in Education Institutions Act No 20 of 1998. Furthermore, the Constitution guarantees the right to equality and equal protection of the law including the prohibition of discrimination on the basis of sex (Article 12 (1) & (2)), and guarantees the freedom to engage in a lawful occupation (Article 14(1) (g)). Sri Lanka’s international legal obligations under CEDAW (the Convention on the Elimination of All forms of Discrimination Against Women) and the ILO (International Labour Organization) Convention 111 titled ‘Discrimination in Respect of Employment and Occupation’ also require the prevention of sexual harassment in the workplace and the provision of remedies for victims of sexual harassment.

Objectives Of the By Laws

- (i) To promote a culture at Sabaragamuwa University of Sri Lanka in which the dignity and equality of all persons are respected
- (ii) To prevent the occurrence of sexual harassment through targeted, preventative interventions
- (iii) To adopt zero tolerance on acts of sexual harassment and enforce mechanisms to provide for the resolution of complaints through mediation and/or disciplinary action.

Persons and Places Governed By These By-Laws

- (i) All those who derive their authority under the University Act and who act under the aegis of Sabaragamuwa University of Sri Lanka are governed by these by laws (Ex. University administration and academic staff, temporary and visiting academic staff, students, internal and external students, external supervisors and examiners, evaluation panelists, academic support staff, non-academic staff, contract staff, employees of outsourced service providers).
- (ii) All acts carried out under the aegis of the authority of the University are governed by these by-laws whether within or outside the University premises.

This by-law may be cited as the Sexual and Gender-Based Violence By Law No 1 of 2019

General

1. Sabaragamuwa University, Sri Lanka (herein referred to as “the University”) hereby adopts these by-laws as approved by the Council of the University (herein referred to as “the Council”) at its 256th meeting held on 22nd November 2019 being prepared under the provisions of the section 135 of the Universities Act No. 16 of 1978, as amended by the Universities (Amendment) Act No 07 of 1985 and No 26 of 1988,” herein after referred to as “the Act”). These by-laws supersede any other by-laws or regulation that may have been issued earlier.
2. Notwithstanding anything to the contrary in any of the provisions of these by-laws, the Vice-Chancellor shall take appropriate action deemed necessary to maintain discipline at the University and nothing in these by-laws shall be construed in a manner to detract from the powers, duties, and functions conferred on or imposed upon the Vice-Chancellor by the Universities Act No. 16 of 1978 (herein referred as the “Act”) or by any other instrument.
3. Upon coming into operation of these by-laws, there shall be established a Standing Committee (referred to as the “Committee”) constituted as provided in paragraph 4.
4. The Standing Committee shall consist of the following members, who shall hold office for a period of 03 (three years) with effect from the date of appointment.
 - Two members of the Council nominated by the Council from among its appointed members (one male & one female)
 - Registrar
 - Deans of Faculties of SUSL
 - Proctor

- Representative of SUSL at the UGC Standing Committee on Gender Equity and Equality (GEE)
 - Senior Student Counsellor
 - Director - Centre for Gender Equity and Equality of SUSL
 - Director/Staff Development Centre
 - Director/Career Guidance Unit
 - 2 Academic Wardens (one male & one female)
 - 2 Wardens of the Hostel (one male & one female)
 - Chief Marshal or his nominee
 - A Gender Specialist appointed by the Vice-Chancellor
 - 2 representatives from among the administrative staff (one male & one female)
 - 2 representatives from among the non-academic staff (one male & one female)
 - 2 representatives from among the students (one male & one female)
 - Assistant Registrar / Senior Assistant Registrar (Legal and Documentation Division and Student Affairs)
5. The Committee shall elect a Chairperson amongst the two Council members who shall preside at all meetings of the Committee.
 6. The Assistant Registrar/Senior Assistant Registrar of Legal and Documentation Division shall be the ex-officio secretary to the Committee and the Coordinator. The Coordinator is responsible for complying with and carrying out the responsibilities under the Policy Framework for Gender Equity and Equality and these by-laws.
 7. The quorum of the meeting of the Committee shall be 12 members.
 8. An 'Investigating Committee' of 3-5 members, (one of standing of this document) shall be appointed by the Council on the recommendation of the Vice-Chancellor for investigations and meting out punishments.
 9. Subject to the provision to the Act, and of any other appropriate instrument the Committee shall work under the directive of the Vice-Chancellor who is responsible for the maintenance of discipline in the university and have the following powers, duties and functions;
 - to advice the Vice-Chancellor on all matters concerning the maintenance of staff and student discipline within the University;
 - to make recommendations to the Vice-Chancellor on the amendments to the by-laws on sexual and gender- based violence and guidelines pertaining to staff and students discipline;
 - to provide the necessary support to the 'Investigating Committee'

- to do all other acts incidental to the powers aforesaid as may be required in order to further the objectives of these by-laws;
- any questions regarding the interpretation of the by-laws shall be referred to the Council whose decision thereon shall be final.

10. The code of conduct for the Committee on SGBV includes:

- Treating victims with compassion, sensitivity, respect and patience
- Being impartial
- Not blaming the victims
- Investigating thoroughly
- Being patient
- Not compromising cases/offences
- Being professional
- Being supportive

Strategies to Prevent and Address SGBV

11. Disseminate information on GEE policies, SGBV and related grievance handling procedures to staff and students through interactive dialogue, brochures, handbooks, flyers etc.
12. Leadership from the highest and at all levels is required in order to give the staff the responsibility for implementing the by-laws, the authority and mandate to carry out the relevant measures effectively.
13. Work place policy/Code of conduct which sets out acceptable behavior for staff and students; the by-laws enforced and appropriate mechanism for doing so establish and ensure consistency in addressing misconduct.
14. The University takes gender issues into account in planning infrastructure development so as to ensure that gender sensitive infrastructure and facilities are in place.
15. Create capacity building programmes to gender-sensitize all staff and students.
16. Promote gender and diversity research; especially on SGBV in the University.
17. Create widespread awareness about the grievance mechanism to address complaints of SGBV and create suitable conditions for its implementation and encourage those affected to file complaints.
18. Create awareness and encourage students and staff towards zero tolerance of SGBV within the University.

19. Establish a special fund for student victims that are mandated to provide medical services, legal assistance and professional counselling from the point of making the initial complaint and throughout the inquiry.
20. Train student counsellors to handle victims of SGBV and establish victim support programmes and a network of victim volunteers to offer support to complainants.
21. Provide institutional avenues for offenders to meet trained counsellors and deal with the root causes of offenders.
22. Compile a database of reported incidents of SGBV within the University.
23. Recognize and reward “champions” who are active in promoting gender equity/equality and eliminating SGBV;
24. Ensure that the gender concerns conflict resolution, gender related problem solving, SGBV etc. are mainstreamed into staff development and other training programmes.
25. Train volunteer groups of students to raise consciousness on SGBV among their peers.
26. Facilitate the provision of psychosocial support to victims of SGBV.
27. Systematize data collection to strengthen the evidence based on the extent of SGBV experiences of staff and students and maintain disaggregated data in relation to SGBV.

Prevention of Sexual Harassment

28. These by-laws shall be accessible to the entire university community and be published in student handbooks, the university calendar and the university website.
29. A clause on these by-laws and the General Code of Conduct should be included in all staff contracts and letters of appointment.
30. These by-laws shall be discussed at all relevant staff development and orientation programs conducted by the university.
31. The Staff Development and Training Programs of the University for academic and non-academic staff shall include a component designed for promoting gender equality and equity and for developing gender sensitivity in the workplace. Such programs shall include a session on these by-laws.
32. Any constitution of Student Associations of the University shall include a reference to these by-laws and to the Prohibition on Ragging and All Forms of Violence in Education Institutions Act.
33. All service contracts entered into by the University with providers of outsourced services shall include a provision which states the obligation of any party entering into such contract to adhere to these by-laws.

34. The University shall provide a trained counselling service to address prevention and consequences of sexual harassment. This service shall also be made available to any of the parties to a complaint made under these by-laws.

Procedure for Investigation

35. All complaints, allegations, and reports of inappropriate behavior under these by-laws should be made to the Coordinator/Secretary of the Standing Committee on SGBV.
36. Any person included within the scope of these by-laws, who considers him or herself to be a victim of SGBV may file a grievance with the Secretary of the Committee on SGBV;
37. A complaint may also be filed by a third party who is aware of a situation of harassment, including heads of departments and worker's or student's representatives. In these cases the Coordinator/Secretary of the Committee on SGBV will forward a copy of the complaint to the alleged victim so that he or she may ratify it, if appropriate;
38. Every member of the university community has the duty to report to their Heads/Deans/Supervisors or to the Coordinator/Secretary of the Committee on SGBV of any situation of possible SGBV that they may be aware of;
39. The complaint must be presented by the complainant to the Coordinator/Secretary of the committee within a period of one month from the date of the incident in a sealed envelope or verbally;
40. If the complaint is filed verbally to the Coordinator/Secretary a document will be drawn up and it must be signed by the complainant for the record and submitted to the Coordinator/Secretary.
41. Upon receiving notice of a "Complaint" the Coordinator/Secretary shall promptly assess the situation.
42. Once the complaint has been accepted by the Secretary for processing, it will be forwarded to the Vice-Chancellor to submit the complaint to the Investigating Committee. The investigating Committee may be supported by the Standing Committee on SGBV with respect to documentation.
43. Mechanisms should ensure that all complaints are addressed with due regard to key principles including confidentiality, impartiality, objectivity, timelines, accuracy and thoroughness. Investigations should be brought to a close within a stipulated time (as early as possible and not exceeding four weeks)

44. Ensure proper documentation of evidence provided during investigations;
45. Complaints once made cannot be withdrawn. The university ensures that victims are provided with information about their rights when laying charges to discourage withdrawal of SGBV cases.
46. Investigation of the complaint will be carried out independently by an Investigation Committee appointed by the Council for this purpose in accordance with paragraph 8.
47. Coordinator/Secretary to the Committee on SGBV should keep all records on SGBV cases confidential. All the files/documents should be kept secure and uploaded to the online system.
48. The final outcome and decisions of the Investigating Committee will be informed to the Vice-Chancellor for information to the Council and to take necessary appropriate action. UGC shall be informed of the case and the outcomes.
49. The parties involved in SGBV proceedings are protected from any intimidation, threats or reprisals once an incident has been reported.
50. Any student or staff (perpetrator) on whom punishment has been imposed by the Council on the recommendation of the Investigating Committee may appeal against such punishment or penalty within a period of one month from the date of communication to him/her of such punishment.
51. Upon the receipt of an appeal the Vice-Chancellor shall refer such appeals to an Appeals Committee at the UGC.

Dissemination of the By-Laws

52. To ensure effective dissemination of the by-laws to all members of the University community:
 - Utilize education and awareness campaigns and small group discussions to raise awareness of the GEE policy and SGBV by-laws.
 - Encourage media outlets to provide in-depth reporting about gender-based violence.
 - Incorporate the by-laws in the orientation of new students and in mentoring programmes.

- Develop pamphlets, booklets and radio broadcasts in all three languages explaining steps to follow when faced with SGBV and official procedures for relevant service provision.

Monitoring and Evaluation

53. To appraise the steps taken and the success of the implementation of the policy:

- Establish a committee and mechanisms to monitor and evaluate the performance of the University in implementing these by-laws.
- Put in place monitoring indicators with time frames to measure the implementation process.
- Put in place a forum for receiving views of members of the university regarding the by-laws.
- Review the by-laws periodically to take into account the emerging issues and trends through research.

Definitions

In these by-laws the definitions of the following words shall be

Complaint

“Complaint” means a complaint that is lodged with the University in the form of a letter, a complaint Pro-forma Form, an email or verbally of;

- (i) Direct discrimination;
- (ii) Indirect discrimination;
- (iii) Sexual harassment;
- (iv) Racial or religious vilification
- (v) Victimization;
- (vi) Authorizing and assisting any of the above behaviours;
- (vii) Breach of freedom of association (ie. people have the right to freely associate with others and to form and join trade unions); and/or
- (viii) Bullying/harassment

The written complaint must be marked “Private and Confidential”, if a complaint is received verbally, the complainant will be asked to sign the record of interview.

Complainant

A complainant is the person who lodges a complaint.

[Any Academic, administrative, non-academic person, student (Internal and external), all service constructors and their workers].

Criminal Behaviour

Some types of sexual harassment and other behaviours may be criminal offences and therefore may be referred to the Police. These types of behaviour include:

- Physical molestation or assault
- Indecent exposure
- Sexual assault
- Stalking
- Obscene communications (telephone calls, letters etc.)
- Serious racial or religious vilification
- Victimization

Defamation

A complaint of sexual harassment, harassment and discrimination which is brought to the attention of a respondent can sometimes result in the respondent threatening to take action for defamation.

Defamation is the publication of a statement about a person which causes that person's reputation with other people to be lowered, which causes them to be shunned, avoided or brought into ridicule.

It is not defamatory to make a complaint to a person who has a legitimate interest in knowing about the incident (ie. to a Contact Officer, Conciliator or Investigator) in order to seek redress under these Guidelines. Where the duties of persons such as Contact Officers, Conciliators and Investigators, involve receiving information and documenting it for reporting to appropriate people, they are, under normal circumstances, protected from liability for defamation by the deference of "qualified privilege".

Discrimination

Direct discrimination means treating someone less favourably than someone without that attribute or someone with a different attribute in the same or similar circumstances. Indirect discrimination occurs if a person imposes or proposes to impose an

unreasonable requirement, condition or practice that someone with a protected attribute does not or cannot comply with and a higher proportion of people without that attribute or with a different attribute can comply with.

Racial and / or Religious Vilification

The Victorian Racial and Religious Tolerance Act 2001 makes it unlawful to vilify another persons or class of persons on the grounds of race or religion. The Act prohibits conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, another person or class of persons. Examples of conduct include badges or insignia and making racist speeches at a public rally.

The Act generally excludes private conduct except where it occurs in circumstances in which the conduct could reasonably be expected to be heard or observed by a third party. Section 11 of the Racial and Religious tolerance Act 2001 states that a person does not contravene the Act if the conduct was engaged in reasonably and in good faith.

- (a) In the performance, exhibition or distribution of an artistic work:
- (b) In the course of any statement, publication, discussion or debate made or held, or any other conduct engaged in for any genuine academic, artistic, religious or scientific purpose, or any purpose that is in the public interest;
- (c) In making or publishing a fair and accurate report of any event or matter of public interest.

Respondent

Respondent is the person against whom a complaint has been lodged.

Sexual Harassment

Sexual harassment is defined as any behaviour of a sexual nature that is unwelcome and occurs in circumstances where a reasonable person would anticipate that the person who was harassed would be offended, humiliated, or intimidated. Sexual harassment can take various forms and could include any of the following:

- Unwelcome touching, hugging, or kissing
- Suggestive comments or jokes
- Unwanted invitations to go out on dates or requests for sex
- Sexually explicit e-mails, telephone calls or SMS etc.
- Use of university computer systems for the retention and distribution of sexually explicit material
- Display of sexually explicit posters , screen savers, or pictures

- Accessing sexually explicit internet sites
 - Intrusive questions or comments about a person's private life, body, or sex/gender
- (i) Unwelcome sexual advances and unwanted sexually oriented comments in the form of verbal, non-verbal, or physical conduct (Ex. lewd comments, lurid stares, sexually loaded insults, slander, remarks, gestures, jokes, letters, phone calls, email, SMS, MMS, and communications on social media)
 - (ii) Showing of pornography, making, or attempting to make physical contact or molestation, stalking, sounds including whistling, or display of a sexual nature
 - (iii) Requests for sexual favours
 - (iv) Sexualized requests or demands for favours accompanied by explicit or implicit promised rewards or threatened punishment
 - (v) Sexual assault or threatened sexual assault
 - (vi) False allegations of any of the above

Acts of Intimidation Connected With Complaints

Acts of harassment (Ex. slander, intimidation, discrimination, victimization, threats, indirect harassment) against any person who has complained of conduct covered by these by-laws, or who is a witness, or who assists in the investigation of such a complaint shall constitute conduct subject to disciplinary action by the Council of the University.

The Form of the Complaint and Procedures

- (i) A person governed by these by-laws may seek resolution through a written or oral complaint to the Vice Chancellor, and/or the Chair of the Committee, and/or the Faculty Grievance Committee. In the case of the complaint of sexual harassment being made to the Vice Chancellor or the Faculty Grievance Committee the latter shall forward it to the Chair of committee for a preliminary investigation and thereafter where necessary an inquiry.
- (ii) Any complaint should be made in writing and signed, or if the complaint is oral, the oral complaint shall be recorded in writing by the authority receiving the complaint (Ex. Rector, Director of Institute, Dean, Head of Department, Student Counsellor, and Coordinator of Programs) and signed by the complainant.
- (iii) A complainant may seek resolution through mediation and/or formal procedure.

- (iv) Such procedures do not in any way prevent the complainant from, at any point, seeking redress under any law that may apply.

Mediation

- (i) A complainant may opt for mediation to bring closure to the matter/and or prevent its recurrence. Use of the mediation process in no way precludes the complainant from using the formal adjudicative procedure.
- (ii) By this mediation procedure, the complainant formally requests ameliorative action on the part of the accused by a written communication.
- (iii) In consultation with the Vice Chancellor, the committee shall appoint two mediators, acceptable to all parties to the complaint, consisting of one internal and one external member, who should also represent the genders of the parties to the complaint. An observer (non-legal) who represents the interests of each of the parties to the complaint, and a representative of committee may be present at the mediation proceedings. The committee has the responsibility to ensure that the mediation process is carried out in a collegial and non-threatening environment.
- (iv) If the mediation procedure is concluded to the satisfaction of both parties the matter is reported to the Vice Chancellor and closed.
- (v) Confidentiality should be maintained regarding all complaints. Interview recordings if any, communications, documentations, and reports shall be divulged only to authorized persons.

Formal Procedure

- (i) The formal procedure shall be initiated by a party to a complaint through a written communication to the committee through the Vice Chancellor and/or the Faculty Grievance Committee in the following instances:
 - a. Where the mediation process fails (either during its process or at its conclusion) to satisfy either party
 - b. Where either party chooses to adjudicate the complaint through the formal process
- (ii) Where the Vice Chancellor initiates a formal process at his/her discretion and refers the complaint to the committee for the same.

- (iii) The committee should complete its preliminary investigation and, if prima facie evidence is found, its inquiry and submit its report and recommendations to the Vice Chancellor within two months of receiving the complaint. The Vice Chancellor shall thereafter, make his or her recommendations on the report and forward it to the Council of the University for necessary action.
- (iv) Members of the committee who serve on the preliminary investigation should not serve on the subsequent inquiry
- (v) If the committee finds that a malicious false complaint has been made, it shall be reported to the Vice Chancellor who shall consider the matter and refer it to the Council of the University for necessary action. However, inability to prove a complaint of sexual harassment should not be designated a false complaint.
- (vi) The sexual history and/or sexual orientation of the complainant shall be deemed irrelevant to a complaint of sexual harassment at any given time.
- (vii) When a complaint is being considered for resolution, the parties to the complaint shall not be permitted to continue with, or undertake any activity, that can intimidate or unduly influence the complainant to withdraw the complaint or discontinue the process in any way. During this time, the parties shall, in general, be required to maintain minimum contact.
- (viii) Nothing in these by-laws shall prevent the Vice Chancellor from initiating a formal disciplinary procedure in respect of conduct that comes within the scope of these by-laws and constitutes grave misconduct for the purpose of disciplinary action under the University Establishment Code.
- (ix) Any findings or conclusions arrived at through the procedure do not preclude the application of any law that may apply.

Unlawful Harassment

Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of that person's (or that person's relatives', friends', or associates') race, skin colour, religion, gender, national origin, age, or disability, which:

- Has the purpose or effect of creating an intimidating, hostile, or offensive work environment
- Has the purpose or effect of unreasonably interfering with the individual's work performance
- Otherwise adversely affects the individual's employment opportunities.

Victimization

It is unlawful to victimize (treating less favourably) someone because they have exercised their rights under workplace anti-discrimination policies or the law because they have:

- Made an inquiry about their rights under workplace policies, equal opportunity or occupational health and safety laws;
- Made a complaint of or sexual harassment
- Been a witness to, or participated in, and discrimination, harassment investigation of complaint.

Sexual and Gender-based Violence (SGBV)

Sexual and gender-based violence refers to acts that inflict physical, mental, or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty, whether occurring in public or in private life based on one's gender and /or sexuality. It includes sexual harassment, domestic violence (DM) and intimate partner violence (IPV) amongst other practices (United Nations Declaration on the Elimination of Violence Against Women, 1993).