

**BULLYING IN THE WORKPLACE:  
A CASE STUDY OF THE UNIVERSITY OF CAPE TOWN**

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In partial fulfilment of the requirements of the Degree of Master of Philosophy (MPhil)

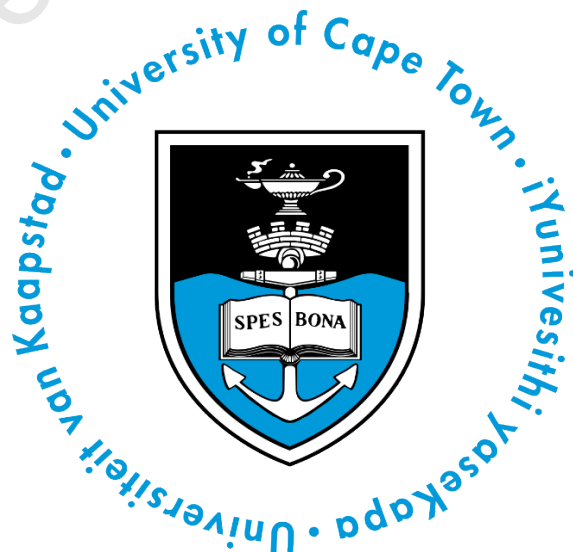
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In the Department of Public Law



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## DECLARATION

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## **ABSTRACT**

Workplace bullying likely started after the Industrial Revolution, with the development of formal workplaces like factories and offices, and has increasingly become a problem in workplaces, particularly for victims on whom the impact can be lifelong and debilitating. This minor dissertation explores global and South African prevalence to demonstrate the extent of this harmful practice. It further reviews global and South African legislation and introduces bullying in academia as a backdrop to the Case Study on Bullying at the University of Cape Town.

While research on workplace bullying had primarily focussed on the personality traits of victims and perpetrators, this minor dissertation attempts to draw on themes drawn from a review of Criminological Theory (Routine Activities and Normalisation Theory) and Transformational Theory to present a case study on Bullying at the University of Cape Town. These themes include the normalisation of deviant behaviour in workplaces, the impact of guardians failing employees in their protective role in organisations, the impact of life-changing events on both the individual and the organisation, and finally, how dysfunctional organisational structure contributes to workplace bullying with particular reference to the University of Cape Town. Finally, it explores whether workplace bullying can be addressed by legislation and implementation of workplace policies.

## **DEDICATION**

My late parents, Peter and Cynthia Whittaker, instilled in me the values and sense of responsibility to keep on going, fighting, and giving it my all, whether there are rewards or not. Thank you, Mom and Dad, for your constant support, believing in me, and giving me the strength to continue. You celebrated all my achievements, albeit meaningless to the rest of the world. My biggest regret is that you are no longer here to celebrate this big win, the end of an arduous journey. I felt your encouragement, your nods of approval when I “got it,” and your disapproval when I wanted to throw in the towel! You are the reason I succeeded in this season.

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# CHAPTER 1

## INTRODUCTION

### 1.1 Introduction

'Bullying' conjures up images of children in a school playground, being mean (in one way or another) to their peers. According to Ishmael and Alemoru (1999), exposure to bullying in the schoolyard, whether as perpetrator, victim, or bystander, can influence the trajectory of human development. Smit and Viviers (2017) reinforces this by stating:

'... just like us – the school bully also grows up and goes to work. This bully could be your colleague or your manager, continuing his or her negative conduct over time' (Smit and Viviers, 2017:3).

Changing the behaviour of schoolyard bullies is considered critical to eradicating the practice of bullying in society. Even a cursory look at the literature reveals that considerable research has been undertaken to examine incidences of violence and bullying at South African schools, establish risk profiles for perpetrators and victims, map the broader contextual specific factors within which bullying at schools needs to be located; devise innovative interventions at the micro and macro level to make schoolyards safer and, defining the responsibilities for action and prevention of multiple stakeholders. In South Africa, the contribution of pioneering research undertaken for the Centre for Justice and Crime Prevention (CJCP) deserves mention. Based on the victim crime survey research tool, CJCP has provided the evidence required for substantive policy engagements endorsed by, for example, the Department of Education and other governance structures. Burton (2008), Leoschut and Burton (2006), Leoschut and Makota (2016). More recently, cyber-bullying too has become a focus of attention for those eager to enhance school safety. Research and the development of action-based policy on school safety in South Africa provide considerable food for thought and interventions for those interested in violence, harassment, and bullying in domains other than school yards. Chapter 2 of this minor dissertation highlights the work of the International Labour Organisation (ILO) towards the creation of safer workplaces through the development of both protective legislation and programme initiatives.

This dissertation is concerned with the topic of 'workplace bullying.' Academic interest in adult bullying is of a more recent hue. While the links between schoolyard and workplace bullying cannot be ignored, the critical difference, as pointed out by Schindeler (2014), is that workplace bullying involves legally responsible adults.

Workplace bullying has come to be described as a 'pervasive problem' (Carbo and Hughes, 2010:387) that can no longer be ignored. From the 1980s onwards, research has explored incrementally facets of workplace bullying. Scandinavian research by Leymann (1990) was instrumental in creating awareness of the issue in other jurisdictions. The first phase of international research effort focused on mapping incidences and types of workplace bullying; investigating the broader contexts within which such behaviour flourished; exploring the impact on both targets (of victims) and the broader organisation. The development of interventions and programmes aimed at addressing workplace violence followed as more clarity around incidences, patterns, and types of workplace bullying emerged.

## **1.2 Workplace bullying: Subjective experiences and Objective analysis**

Workplace violence is a worthy topic to explore in a research project such as the present one. However, I would be amiss *not* to acknowledge that my initial interest in workplace bullying was not of an intellectual nature. My concern had much to do with personal experiences as a target *and* survivor of workplace bullying while employed at the University of Cape Town. During a two-year period, I experienced firsthand the many invidious practices associated with workplace bullying and the debilitating and long-term impact thereof on targets or victims. I, too, got caught up in the messy dynamics so characteristic of abusive relationships. Before long, the workplace itself had become a source of stress and a place to be feared. I experienced the constant self-questioning of competence in my personal and professional life. I became overly cautious in just about every aspect of my life. I suffered much self-doubt and had to contend with cycles of depression and ill health. My relationship with the bullies, I realised afterward, was ambiguous. At times, I withdrew as far as possible from work-based interactions, hoping to be invisible. At other times, I tried hard to be accepted into the very circles that excluded and ostracised me. During the stretched-out nightmare, I often wished to reclaim my rightful place in a workplace that offered safety and dignity. Suffering from low self-esteem and high levels of stress and simply trying to stay afloat in a hostile work environment meant that it took more than three years to break out of the cycle.

The challenge for this research inquiry, I learned over time, was not to dismiss my personal experiences and subjective views but rather to see my exposure to workplace bullying as a resource that I could call on as I embarked on a more detached and critical engagement with workplace bullying more generally, and workplace bullying at academic institutions more specifically. The research presented here is the outcome of this inquiry in which I embarked on a journey into the research and policy literature on workplace bullying.

### **1.3 Problem Statement**

International statistics suggest that bullying has increasingly become a problem in workplaces. As Viljoen (2013) puts it

‘Although not a new phenomenon, workplace harassment, including acts of bullying, discrimination, and sexual harassment, have been identified as one of the most rapidly increasing workplace harmful practices throughout the world’. (Viljoen, 2013)

This minor dissertation aims to focus on workplace bullying, a form of harassment and discrimination, from a victimological and applied perspective. Fattah (2020) captures the victimological concern with the experiences of victims of crime as follows:

‘Theoretical victimology is the study of crime victims, their characteristics, their relationship to, and their interactions, with their victimizers, their role, and their actual contribution to the genesis of the crime. It is also the study of the impact of crime on victims, in particular, the traumatic effects of victimization, victims’ response to victimization, and the coping mechanisms they use for healing and recovery. Applied victimology is the application of knowledge acquired from the study and research on victims and victimization in practice to help and assist those victimized by crime and prevent victimization.’(Fattah, 2020:1)

A desktop review of the literature will allow me to identify the key research themes that emerge from this field of inquiry before considering workplace bullying in the tertiary environment. Using the University of Cape Town as a case study, I will describe recent debates and initiatives on workplace bullying at the institution and conclude by offering critical reflections on the formulation, adoption, and application of an Anti-Bullying policy at UCT.

### **1.4 Research Questions**

The primary research questions in this study are:

- How does workplace bullying impact individuals and organisations?
- How prevalent is workplace bullying?

- Which conditions enable workplace bullying to thrive in academia and UCT in particular?

## **1.5 Note on Methodology**

This minor dissertation will review existing literature drawing on books, journal articles, legislation, survey data, minutes of meetings, newspaper articles, and other documentation in the public domain. As a desktop-based study, the minor dissertation did not gather data through qualitative fieldwork involving human subjects.

This inquiry will present a case study on the prevalence of bullying at the University of Cape Town. To develop this case study, recent studies like the Institutional Survey, the Reports from the UCT Ombud, the findings of the Institutional Reconciliation and Transformation Commission, and other inquiries into staff well-being will be considered. The documentation used for the purposes of this desktop enquiry include data collected from surveys, questionnaires, interviews and reports from staff throughout the institution between 2014 and 2024. The decision was to utilise existing information and not embark on further surveys.

## **1.6 Structure of the Minor Dissertation**

This dissertation is divided into 6 Chapters and is structured as follows:

Chapter One introduced the topic of inquiry.

Chapter Two is structured around a Literature review of workplace bullying. The review will focus on, inter alia, the concept of workplace bullying and what is known about its prevalence, nature, and forms. I will briefly consider criminological theories of bullying before exploring what the literature has to say about the impact of bullying on victims and organisations.

Chapter Three, Legislative Framework, reviews international and South African legislation related to workplace bullying. It concludes with a section on mechanisms in workplaces to manage and prevent workplace bullying, highlighting the responsibilities of the state, employers, unions, and staff associations. Given the applied focus of this minor dissertation, familiarity with the development of anti-bullying policy and other intervention strategies will allow me to think comparatively and critically about UCT's Anti-Bullying Policy.

Chapter Four focuses on Workplace Bullying at Tertiary Institutions to ascertain the link between the academy as a workplace and the problem of bullying. This discussion provides a background to Chapter 5, entitled Workplace Bullying – the Case Study of UCT, which reviews recent discussions and debates on workplace bullying on UCT campuses. This chapter provides a chronology of key events, discussions, and contestations relating to bullying and maps subsequent efforts to draft, adopt, and roll out an anti-bullying policy. For this discussion, I draw on annual reports from the UCT Ombud, the findings of Institutional Surveys conducted amongst UCT staff to track staff morale and job satisfaction, a couple of other reports, the Minutes of Senate meetings, and newspaper reports.

In Chapter Six (Conclusion), the key findings of this exploratory inquiry into research on workplace bullying will be summarised before some recommendations for addressing staff perceptions and experiences of workplace bullying at the University of Cape Town (and other tertiary institutions) will be offered.

# CHAPTER 2

## A REVIEW OF THE LITERATURE

### 2.1 Introduction

While research on workplace bullying and its associated consequences is a relatively new field of study (Leymann, 1990), ill-treatment of workers has, of course, existed for centuries. According to Tehrani (2012), while it is challenging to identify when the problem of workplace bullying presented itself, it likely started after the Industrial Revolution, with the development of formal workplaces such as factories and offices.

While society and the world of work have changed throughout the twentieth century, resulting in the introduction of legislation and mechanisms to protect workers from harm and exploitation, workplace bullying continues to be a problem. Saunders, Huynh, and Goodman-Delahunty (2007) assert that before the 1990s, racial and sexual harassment were the primary foci of research on the workplace, and other forms of harassment were rarely investigated.

This chapter aims to explore the concepts of workplace violence and harassment and to show how bullying fits into them.

### 2.2 Comparing workplace bullying to domestic violence

There are websites and Facebook pages dedicated to spreading awareness of bullying and supporting victims. An extract from a website compares workplace bullying to domestic violence:

'In so many ways the two phenomena uncannily mirror each other. With bullying and partner violence, the abuser's motive to control and dominate the victim starts the process and determines the nature and extent of the sick, twisted relationship that follows. The perpetrator objectifies the victim. In 98% of domestic violence cases, the perpetrator is the man. In bullying, the majority of abusers, 62%, are male; women are famously perpetrators, too. So, regardless of gender, the bully-abuser dehumanises her or his prey. She can have such contempt for the target that she refuses to grant even minimal respect to a fellow human being. Dehumanisation enables severe mistreatment. When the recipient is not seen as an equal, it is easy to denigrate, belittle and humiliate. The target is a lesser-than object not deserving decent treatment.'

[\(https://www.workplacebullying.org/bullying-domestic-violence/\)](https://www.workplacebullying.org/bullying-domestic-violence/)

Yamada (2011) adds to this argument, asserting that while workplace bullying bears similarities to schoolyard bullying, comparing workplace bullying with domestic

violence may be more accurate. He supports his assertion by stating that victims of domestic violence, like victims of bullying, remain in relationships or workplaces, hoping for change. He further points out that harm to victims of bullying is seen as a personality conflict and disregarded in the same way that society ignored the harm done to victims of domestic violence. Both victims of bullying and domestic violence may feel trapped in the work and domestic environment.

Yamada's (2011) comparison of workplace bullying to domestic violence serves to highlight the seriousness of this harmful practice. This comparison also adds weight to Schindeler's (2014) inquiry as to whether bullying, like domestic violence and other serious offences, should be criminalised. Because bullying, according to studies conducted by the International Labour Organisation (ILO, 2022), has been proven to be the most prevalent form of harassment in workplaces, organisations, at the very least, should be compelled to address bullying with the same importance as sexual and racial harassment.

### **2.3 Workplace Violence and Harassment**

The International Labour Organisation (ILO), the labour arm of the United Nations, comprises 101 member states and operates on the principles of social justice. A primary aim of the ILO is the prevention of violence and harassment in workplaces. In an article entitled *Ending Violence and Harassment against women and men in the world of Work*, the International Labour Office (2018) defines workplace violence as

'Any action, incident or behaviour that departs from reasonable conduct in which a person is assaulted, threatened, harmed or injured in the course of, or as a direct result of his or her work' (International Labour Office, 2018:11)

The ILO (2022) identifies two types of workplace violence: physical and psychological violence. Physical violence describes the use of physical force against an individual or group, leading to physical, sexual, or psychological harm. On the other hand, psychological violence, also known as emotional abuse, refers to the intentional use of power, including threats of physical force, against another individual or group, resulting in harm to their physical, mental, spiritual, moral, or social well-being and development. Workplace bullying is a type of psychological abuse and is defined below.

### **2.4 Defining the Concept of Workplace Bullying**

While there is no single definition internationally, the terms 'workplace violence' (Steinman, 2008), 'mobbing' (Leymann, 1990), and 'harassment' (le Roux et al. 2010) all refer to workplace bullying. The rationale for citing multiple definitions is to draw

attention to the fact that different terms are used to describe this phenomenon, all indicating that workplace bullying is a harmful practice that needs to be understood to protect victims, deter perpetrators, and provide safer working environments. It further draws attention to the ILO (2022) statement that the terms used reflect the demographic, cultural, and societal norms pertinent to the society from which the definition is drawn.

Finding an all-encompassing definition of workplace bullying was challenging, as research on the workplace was initially primarily in psychology. However, according to Leymann (2011), studies have diversified into sociology, communications, law, industrial relations, and the health sciences.

Adams (1992) first coined the term 'workplace bullying:

'to describe a category of harassing behaviour that employees may be subjected to at any stage of their career, regardless of their membership in a protected class based on gender, ethnicity, age, etc.' (Saunders, Huynh and Goodman-Delahunty, 2007:1).

Defining workplace bullying is a starting point for understanding this practice. Cobb (2017) provides a helpful definition of workplace bullying by quoting Milczarek and Irastorza (2012):

'Despite the somewhat different definitions of bullying and harassment used by individual European countries, European researchers widely share the view that **harassment (or bullying)** (bold in the original) at work is the systematic mistreatment of a subordinate, a colleague, or a superior, which if continued and long-lasting, may cause severe social, psychological and psychosomatic problems in the target' Cobb (2017:7).

This definition of workplace bullying is supported by the list of behaviours from the Australian Fair Work Commission, as cited in Cobb (2017)

- 'Aggressive or intimidating conduct.
- Belittling or humiliating comments.
- Spreading malicious rumours.
- Teasing, practical jokes, or "initiation ceremonies".
- Exclusion from work-related events.
- Unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level.
- Displaying offensive material.

- Pressure to behave inappropriately' Cobb (2017: 141).

In addition to this list, Cobb (2017) points out:

'for behaviour to be considered as bullying it must be "repeated and unreasonable and must create a risk to health and safety' (Cobb, 2017:114).

Leymann (1990), in his article 'Mobbing and Psychological Terror at Work' (1990), states that despite the existence of legislation in Norway, bullying has increased. He defines this negative workplace phenomenon as 'mobbing,' explained as 'ganging up on someone or psychic terror' (Leymann,1990:119).

Ishmael and Alemoru (1999) defines bullying as:

'persistent, offensive, abusive, intimidating, malicious or insulting behaviour, which amounts to an abuse of power and makes the recipient feel upset, threatened, humiliated or vulnerable. Bullying undermines a target's self-confidence and may cause them to suffer stress' (Ishmael and Alemoru 1999:60).

Steinman, a South African internationally renowned author of the aptly named publication *Don't Take SH\*T from Hyenas in the Workplace* (2017) and CEO of the Workplace Dignity Institute, describes workplace bullying as follows:

'Workplace violence takes many forms both physical and emotional including bullying and mobbing (collective bullying), verbal abuse, racial and sexual harassment, and the use of open or hidden threats. It has become a global problem crossing borders, work settings, and occupational groups. Violence at work has dramatically gained momentum in recent years and is now a priority concern in both industrialised and developing countries. A heightened awareness of the seriousness of workplace violence and bullying is growing.' (Steinman, 2008:1)

To provide a holistic definition of workplace violence, Steinman further states that:

'Workplace violence is the occurrence of single or cumulative incidents where employees are physically assaulted or attacked, and/or emotionally abused, pressurised, harassed or threatened (overtly, covertly, directly or indirectly) in work circumstances with the likelihood that it will impair the right to dignity, physical or emotional safety, well-being, work performance, and social development.' (Steinman, 2008:2)

Le Roux, Rycroft and Orleyn (2010) suggest that while there is no explicit definition of workplace bullying in South African legislation, it is incorporated under the term

harassment, which is included in several pieces of labour legislation. They define workplace bullying as:

‘persistent and unwelcome conduct which is hostile or offensive to a reasonable person and induces a fear of harm and demeans, humiliates or creates a hostile or intimidating environment, or is calculated to induce submission by actual or threatened adverse consequences’ (le Roux, Rycroft and Orleyn, 2010:53).

The definitions cited are drawn from various jurisdictions, from Norway, where extensive studies have been undertaken for several decades, to South Africa, where studies in this area are relatively recent. Steinman's (2008) South African definition is distinctly different from the other definitions in that it makes specific reference to violence and race, resonating with the assertions by Smit and Viviers (2017) that bullying in the South African workplace must be seen in the context of a deeply divided and violent society and how it impacts workplaces.

Despite different terms and definitions used to describe this phenomenon, the definitions cited speak to the fact that the action is unwelcome, unreasonable, and repeated, can be direct or indirect and linked to power differentials in workplaces. This type of sustained hostile behaviour by one or several persons within workplaces can harm employees and organisations.

Anti-bullying policies cannot be meaningfully designed or implemented unless workplace bullying is understood. Notwithstanding the importance of policy implementation, it must be noted that it is ineffective without transforming workplace culture.

## **2.5 What does not constitute workplace harassment and/or bullying?**

Conflict occurs in all workplaces, but not every conflict can be construed as bullying. It is, therefore, essential to include this detail in anti-bullying policies and educate the workforce on the distinction between what constitutes bullying and what does not. The behaviours listed below do not constitute bullying as published in *The Irish Code of Practice for Employers and Employees on the Prevention and Resolution of Bullying at Work (2021)*:

- ‘expressing differences of opinion strongly,
- offering constructive feedback, guidance, or advice about work-related behaviour, which is not of itself welcome,
- ordinary performance management,

- reasonable corrective action taken by an employer or supervisor relating to the management and direction of employees (for example, managing a worker's performance, taking reasonable disciplinary actions, or assigning work), or
- workplace conflict where people disagree with or disregard the others' point of view.'

Smit and Viviers (2019) reference Salin (2013), who stated that acts must be repeated and continuous and emphasised that single acts do not constitute bullying. They further point out that bullying must happen within the context of the same workplace, and negative behaviours from persons outside of the workplace do not constitute bullying. While the list above indicates what does not constitute bullying, the authors point out that these behaviours can escalate into bullying if they repeatedly happen in a hostile and demeaning manner intended to humiliate employees.

## **2.6 Types of Bullying**

### **2.6.1 An overview of the types of workplace bullying**

Sections 2.4 and 2.5 outlined definitions of bullying and behaviour excluded from the definition of workplace bullying. Identifying types of bullying is critical to understanding the impact and consequences of bullying on the individual and the organisation.

Rayner and Hoel (1997) identify types of bullying that threaten individuals, and their professional status based on personal attributes such as age, sexual orientation, physical appearance, culture, and race. These types of behaviours encourage the cycle of bullying in various forms, including witnesses isolating themselves from victims for fear of reprisals by the perpetrator.

Cunniff and Mostert (2012) (referencing Ross, 1996) assert that bullying manifests in two ways: direct and indirect. According to the authors, both direct and indirect forms of bullying behaviours can be perpetrated by both peers and managers. According to research, the prevalence of indirect bullying far outweighs direct bullying. Furthermore, research by Smit and Viviers (2017) shows that bullying between colleagues happens more often than supervisory bullying. Additionally, Busby, Patrick and Gaudine (2022) refer to upward bullying, which entails bullying of management or supervisors by subordinates. According to the authors, this type of bullying occurs frequently in academia, an issue we return to in Chapter 4.

## 2.6.2 Direct Bullying

According to Smit and Viviers (2017), direct bullying is experienced in person and, in most cases, is perpetrated by the direct line manager or supervisor of the victim, who is seen as weaker within the hierarchical structure of the organisation. Hadeed (2014) references Rayner and Höel (1997), who identified types of direct bullying that lend support to the definitions listed earlier in this chapter and group them as follows:

- 'threat to professional status (e.g., belittling opinion, public professional humiliation, and accusation regarding lack of effort);
- threat to personal standing (e.g., name-calling, insults, intimidation, and devaluing with reference to age, sexual orientation etc.);
- isolation (e.g., preventing access to opportunities, physical or social isolation, and withholding of information);
- overwork (e.g., undue pressure, impossible deadlines, and unnecessary disruptions);
- destabilization (e.g., failure to give credit when due, meaningless tasks, removal of responsibility, repeated reminders of blunders, and setting up to fail)' (Hadeed, 2014:3).

Smit and Viviers reference Quigg (2015), who describes overtly bullying as follows:

'...aggressive, sarcastic, domineering and unpleasant [and]... often humiliate people in public, insult, criticise and mock colleagues, aggressively abuse staff for trivialities, shout instructions rudely, undermine others publicly by sarcasm [and] use aggressive body language to intimidate' (Smit and Viviers, 2017:160).

These threats to individuals fall outside the confines of the regulation of a safe and humane working environment enshrined in the IOL *Convention concerning the elimination of violence and harassment in the world of work* (2016), the Constitutions and Workplace Regulations of all its member states.

## 2.6.3 Indirect/Covert Bullying

This type of bullying is less obvious, and according to Cunliffe and Mostert (2012) referencing (Björkqvist, et 1992),

'Indirect bullying is more subtle. It aims to harm people on an emotional level and to manipulate relationships intentionally' (Cunliffe and Mostert, 2021:3).

They list the acts that constitute this type of bullying by referencing (Einarsen et al., 2009; Escartin et al., 2009) as follows:

- 'gossiping

- spreading rumours
- excluding victims from social events
- not informing victims of decisions that directly influence their departments or people.
- intentionally sitting as far away from the victims as possible
- manipulating the information victims receive
- neglecting the working conditions of victims' (Cunliffe and Mostert, 2012:3).

Hadeed (2014) quotes Bjorkqvist et al. (1994), who refer to relational bullying (indirect bullying), which results in breakdowns in relationships between colleagues and the isolation of victims. These forms of bullying often happen with the employee being unaware thereof, as they appear to be within the confines of a typical working relationship when, in reality, it is an alienating experience for victims, resulting in isolation and uncertainty within the work environment.

It is my understanding that the concept of *gaslighting* falls into the category of indirect bullying. Sweet (2019) uses examples from domestic abuse cases to illustrate the concept of *gaslighting*, where the dominant partner manipulates the other partner into doubting themselves and questioning their abilities. In the 1944 movie *Gaslighting*, an abusive husband manipulates his wife into doubting her reality, convincing her that she is insane. Gaslighting translated into the workplace is a perpetrator manipulating the victim into doubting their competence and sanity and eroding their self-confidence.

#### **2.6.4 Cyberbullying**

Cyberbullying has been cited as increasing in workplaces internationally by Zhang et al. (2022), who report findings of between 2.6% and 17% of employees reporting experiences of cyberbullying in the workplace is defined as:

‘an incident in which an employee enacts work-related negative acts toward her or his supervisors, coworkers, or subordinates by means of information and communication technologies’(Zhang et al., 2022:1).

Smit (2021), from a South African context, asserts that ‘in the digital age, workplace bullying also occurs in cyberspace through social media and other platforms.’ (Smit, 2021:9). Cyberbullying is cited as ‘the misuse of communication technology (email, SMS texts, social networks, Internet forums, etc) for conducting campaigns of hatred.’ Shukla and Singh (2020:37)

According to Zhang et al. (2022), there are two distinct differences between workplace bullying and cyberbullying: the intent to harm is not implicit in the action, and cyberbullying transcends into the homes of targets via the use of shared emails inside

and outside of working hours. In reference to 'campaigns of hatred' (Shukla and Singh, 2020:37), the intent to harm is evident in some instances. This is particularly evident in copying multiple recipients into private emails, inviting participation in exposing and humiliating targets.

Limited research exists on cyberbullying in the workplace, and Zhang et al. (2022) recommended that further research be done to establish why this type of bullying occurs and how to address it. In recent years, interest in cyberbullying has grown exponentially.

## **2.7 Measuring Workplace Bullying**

Bullying is a form of violence in workplaces. Measuring the scale of workplace bullying, as well as the impact thereof, has been complicated by the issue of under-reporting, as indicated in the ILO reports and the search for appropriate measurement tools.

### **2.7.1 A Global Overview of the Frequency of Workplace Bullying**

In 2021, the ILO conducted a global survey to assess the exposure to physical, psychological, and sexual harassment in workplaces. Much significance has been attached to the findings of this international survey. It found that:

'more than one in five (22.8 percent or 743 million) of persons in employment had experienced at least one form of violence and harassment at work during their working life. Among people who had experienced violence and harassment at work, about one-third (31.8 percent) said they had experienced more than one form, with 6.3 percent having faced all three forms in their working life' (ILO, 2022:8).

The study found that 'psychological violence and harassment' (ILO, 2022:8) was the most prevalent form of harassment in workplaces, affecting at least 17,9% or 583 million workers globally. The figures cited in the ILO report indicate that this form of harassment far outweighs the reported incidents of workplace sexual and physical harassment and violence.

The ILO report is clear that this is the first survey of its kind and that the results must be read in the local context as the ILO also found that 'what constitutes violence and harassment in one country may be considered merely "bad" or "impolite" behaviour in others'(International Labour Organisation, 2022: 11).

### **2.7.2 An Overview of the Frequency of Workplace Bullying in South Africa**

In the absence of reliable data on the extent of bullying in South Africa, Cunliffe and Mostert (2012) conducted a study in 2012 that found that 31,1% of South African

workers in a range of sectors, including financial, government and education, had reported experiences of workplace bullying. Further studies conducted by Coetzee and van Dyk (2017) on the impact of bullying and staff turnover quote leading authors that workplace bullying is relatively high, with about 70% of participants in international studies reporting having been exposed to bullying. It is important to preface this figure by noting that findings were drawn from internet surveys rather than actual studies and may not reflect actual prevalence. The statistics provided by Cunliffe and Mostert (2012) may be a more reliable indicator of the frequency of bullying in the South African context when comparing them with the results of the ILO study, which found that 31.8% of workers globally had experienced a form of harassment/workplace bullying.

When measuring workplace bullying, it is essential to note that many incidents of bullying are unreported due to fear of reprisals, ignorance of what constitutes workplace bullying, and the trauma experienced by victims within the work environment.

## **2.8 Why do people bully?**

Much of the research on workplace bullying has focused on victims rather than bullies. Authorities on the topic of bullying, including Einarsen et al. (2011) and Ishmael and Alemoru (1999), indicate that bullies have had challenging relationships in their formative years. As a result, being reared in punitive and abusive homes that encourage violent behaviour and where criticism and humiliation are the norm, they struggle to express emotion, resulting in suppressed feelings and a sense of lack of belonging. Hadeed (2014) adds that personality was established as an indicator of why this happens, resulting in less confident and quiet people being more likely to be bullied, while more extroverted people who are seen as leaders are less likely to be bullied. The emphasis on personality traits, however, has been challenged by those who have focused far more on the organisational settings in which bullying takes place.

## **2.9 Climates in which bullying thrives**

Sepler (2015) describes a bullying culture as follows:

‘A bullying culture (an organizational culture conducive to bullying) can be characterized by certain basic factors, such as internal competitiveness, strong hierarchy, a high level of dissatisfaction with work (i.e. low engagement), unearned privilege and low behavioural accountability. When this culture is made unstable by organizational change, restructuring, or changes in leadership, the propensity for bullying becomes even higher’ (Sepler, 2015:4).

In workplaces with 'strong hierarchy' (Sepler, 2015:4), the power imbalance in workplaces is exacerbated by bullying; bullies are promoted as management perceives them to be efficient. In workplaces where the experiences of victims are ignored, the isolation, fear, and desperation already felt by victims are exacerbated. This resonates with the sentiments of Shahtahmasebi (2004), who writes that bullying can only take place in work environments where the management culture encourages and condones acts of bullying that negatively affect the mental and physical state of employees, resulting in bullying behaviour becoming 'normalised'. This is true in highly competitive organisations with an individualistic culture combined with an emphasis on authoritarian management that discourages participation. Bullying can, therefore, be said to thrive in environments where employee well-being is regarded as less important than productivity.

Shahtahmasebi (2004) further asserts that in the face of a bullying management culture, the true nature of bullying is not acknowledged. This creates an unhealthy work environment filled with broken people who cannot contribute holistically to the organisation. The authors also state that when managers or leaders are disengaged, a climate conducive to bullying will likely exist. This is particularly true of workplaces managed by professionals with expertise in their fields but without management experience.

The literature review (Hadeed,2014; Leymann, 2019; Harrington, Warren and Rayner, 2015; Cunliffe and Mostert, 2012) considered thus far and the UCT reports still to be discussed make frequent references to 'toxic' and 'hostile' management environments when describing workplace bullying. According to Dictionary.com, the term *toxic* means 'causing unpleasant feelings; harmful or malicious: toxic criticism.

' (<https://www.dictionary.com/browse/toxic>) ) while hostile is described as 'opposed in feeling, action, or character; antagonistic' <https://www.dictionary.com/browse/hostile> These words accurately depict the behaviour, environments, and reality to which victims are exposed.

## **2.10 Impact of Bullying**

### **2.10.1 An overview of the impact of Workplace bullying**

It is widely acknowledged that the consequences of workplace bullying in its various forms lead to traumatised individuals and dysfunctional workplaces. The lack of understanding of bullying presents challenges for both reporting and strategies aimed at prevention. With increased studies into this field and the implementation of policies

to create healthier workplaces, bullying has been highlighted as a significant problem impacting both employee and organisational wellness.

In toxic organisations across the world, people are negatively impacted professionally, mentally, and socially through either overt or covert bullying. This has far-reaching implications for the organisation and society. Organisationally, these individuals will demonstrate less engagement with their jobs and the organisation's goals. According to Ada, et al (2016) , societally, these individuals could take out their frustrations on their families (domestic abuse), engage in the use of illicit substances, dabble in crime, or, in extreme instances, commit suicide.

### **2.10.2 On the Individual**

How do we know that workplace bullying is happening, and what should be done about it? Hadeed's (2014) response to this question is,

'Once a person is affected by negative acts by a person or a group of persons and it is affecting their job performance, then bullying has taken place' (Hadeed, 2014:2).

Hadeed (2014) further explains that these symptoms manifest in various forms, including an increase in weight, people suffering from low self-esteem, a marked increase in illness (both physical and psychological), individuals isolating themselves, and aggression. The reactions, mental or physical, vary across victims. However, invariably, the resultant effect is that the employee becomes vulnerable to victimisation by other organisational stakeholders, including peers and supervisors.

Adams (1992) describes the effects of bullying on individuals, stating,

'Workplace bullying is a type of disease that you don't realise is there and which the side effects are not always noticeable' (Adams, 1992).

Typically, competent people, in many instances high performers, are traumatised to the extent that they feel inadequate and disempowered due to being systematically abused by 'workplace terrorists.' This term, coined by Einarsen (2010), may be considered extreme. However, one must take cognisance of the fact that victims have committed suicide as acts of desperation to escape the violence. Ada, et al (2016) found that when perpetrators act with impunity in workplaces where bullying has become the norm without fear of sanction, victims feel powerless and believe that they have no recourse other than leaving the workplace or, in extreme circumstances, committing suicide.

The lack of understanding of bullying also constrains the development of ameliorative interventions. This further results in victims suffering in silence and being afraid of reporting the bullying, fearing that it will result in further abuse, potential loss of employment, and harm to career prospects.

Furthermore, according to the authors referenced, bullying results in humiliation, acute anxiety, and distress to individuals and affects work performance. This behaviour on the part of perpetrators, who are most often immediate line supervisors, is invariably manifested in the form of negative behaviour and includes behaviours such as setting unreasonable deadlines, unmanageable workloads, and the excessive (micro) management of individuals.

According to Steinman (2008), bullying is a violation of the individual's human rights, and linking bullying to the personality traits of individuals is like blaming a woman who stands up for herself and gets beaten by her partner. In these instances, Steinman (2008) points out that perpetrators must take responsibility for their actions. Blaming victims adds to feelings of powerlessness and lack of self-worth.

### **2.10.3 On the organisation**

The consequences of hostile behaviour directed systematically at one or more individuals over a period result in humiliation, acute anxiety, and distress to individuals. This impacts the broader organisation as victims become withdrawn and are seen as uncooperative. The victimisation of one individual, therefore, has a ripple effect and impacts colleagues, resulting in division, low team morale, and low productivity, which negatively affect the organisation's goals.

Shahtahmasebi (2004) refers to the loss of productivity, talented human resources, revenue, and the loss of promising and loyal employees' impact on the growth of organisations. The financial costs to the organisation due to absenteeism, reduction in productivity, high staff turnover, creation of a climate of fear, and higher levels of stress are but a few of the negative impacts of workplace bullying. Other factors cited by Shahtahmasebi (2004) that impact organisational performance include a decrease in loyalty and a lack of commitment to organisational goals and values. In addition, the organisation has to spend financial and human resources to assist employees in dealing with the impact of bullying, as well as interventions that include investigation, court actions, and the treatment of individuals. The amount of time consumed by hearings related to grievances and disciplinary proceedings, movement and dismissal of employees, and a total loss of faith in the organisation by the victims, bystanders to

the victimisation, and the public could be better utilised for education and prevention programmes.

Regrettably, all of this takes place after the fact; the symptoms were there, and management failed to intervene at this point. This results in the utilisation of resources that would have been better used to build synergy and cohesion. These resources could have been better utilised to educate the workforce on the harmful consequences of bullying in the workplace, in an attempt to avoid the aftermath, which is highly traumatic to those directly affected, unsettling for those indirectly affected (colleagues) and costly for the organisation in terms of human, financial and legal resources. Proactive measures on how to deal with bullying in the workplace are discussed in Section 2.11.

The damage to the organisation, whether reputational or financial, must not be underestimated. The organisation is negatively impacted when employees leave or are regularly ill and out of the office.

In addition to all these costs, the public image of the workplace could be tarnished due to court cases and bad publicity in various media outlets. The recent investigation into governance failure at the University of Cape Town, as reported in Mpati et al. (2023), is just one example of how delays in dealing with allegations of bullying have caused reputational damage.

This growing phenomenon must be interrogated and challenged by workplace policies supported by legislation in which perpetrators are seen as legal entities and employers as the custodians of any policies related to workplace violence. My understanding of the authors reviewed is that this can only be done if the concept of bullying is defined to include the action (bullying), the impact of the action (physical, mental, and psychological trauma), and clear identification of all those involved in the action (victim, perpetrator, employer). Only then can meaningful discussions around solutions/interventions to the problem/phenomenon occur.

## **2.11 How to deal with workplace bullying**

The question of how best to address workplace bullying has given rise to various debates and intervention strategies. How best to contain the problem and govern the workplace so that workplace bullying is defined as unacceptable and preventative strategies can be devised to address the problem proactively and focused. According to Ishmail (1999), organisations need to define the problem and set out to develop and implement strategies to reduce workplace bullying. Perpetrators of bullying will resist

changes to organisational culture, and reducing their power is critical. Employers who continue to overlook workplace incivility in favour of perceived efficiency and productivity must be taken to task.

The guidelines from the ILO (2019) provide clear directions for implementing legislation that makes employers responsible for dealing with this harmful practice. In my opinion, this can only be done if the concept of bullying is defined to include the action (bullying), to recognise the impact of the action (physical, mental, and psychological trauma), to identify all those involved in the act (victim, perpetrator, employer), and to specify all stakeholders involved in the governance of workplace bullying.

Organisations must employ creative measures, including consulting with all stakeholders and encouraging staff to engage with and take ownership of policy development and implementation. One suggestion has been to measure compliance with workplace bullying policy, much like employment equity targets are measured in organisations.

A professional human resources department must lead the process within workplaces. Ishmael & Alemoru (1999) recommend implementing educational programmes after thoroughly exploring the issues and the impact on organisational culture. Education is critical in reducing workplace bullying. Both victims and perpetrators should appreciate that harm is being done and trauma experienced.

The ILO (2024) states that preventative measures cannot be done in isolation. Dealing with workplace bullying requires a multiple-stakeholder approach. The key to this process is the government, which should lead in formulating and implementing legislation. In addition, action in the workplace too is required, including implementing workplace policies, creating suitable dispute resolution practices, and investing in education and training of management and employees in organisations.

## **2.12 Theories**

This section will reflect on social theory to provide perspectives on workplace bullying and identify key themes to be explored in the case study of workplace bullying at the University of Cape Town. Roscigno and Lopez (2009) state that while research on workplace bullying had focussed on the personality traits of victims and perpetrators, limited studies exist around the 'social and organisational foundations of bullying' (Roscigno & Lopez (2009:1561). In an attempt to explore theoretical perspectives on bullying, this section will examine the contribution of three approaches: Routine Activities Theory, Transformational, and Normalisation Theory.

The primary purpose of viewing workplace bullying through criminological perspectives (Routine Activities Theory and Normalisation Theory) and Transformational Theory is to gain insight into how deviant behaviour becomes normalised and its impact on individuals and the workplace.

### **2.12.1 Routine Activities Theory**

Routine Activities Theory in Criminology has shifted the long-standing focus from offenders to a consideration of the deviant act and the impact of environment (place). According to Roscigno and Lopez (2009), for deviant acts such as bullying to occur, the victim and offender- come together while carrying out their routine activities and the organisation's daily functions. To illustrate the seriousness of workplace bullying, the authors drew on the Routine Activities Theory, initially developed to study crime, as a framework for their research on workplace bullying. They describe the theory as a:

'framework that conceives of harmful conduct as emerging out of the routine activities of suitable targets (victims) and motivated offenders (perpetrators), and as conditioned by the presence or absence of capable guardians.' (Roscigno, Lopez and Hodson, 2009:1562).

According to Roscigno, Lopez, and Hodson (2009), the most likely victims are persons:

'occupying structural positions in the workplace with little power will be at greater risk of being bullied' (Roscigno et al., 2009:1564),

while perpetrators are:

'enabled by certain workplace organisational features, including systems of control based on direct personal supervision and organisational chaos' Roscigno et al., 2009:1564).

How do routine activities in an organisation enable perpetrators? According to the authors, two kinds of routine activities, managerialism (excessive supervision and control) on the one hand and disorganised workspaces on the other, create supportive environments for bullying. Fairness and equity exist in ideal workplaces, and respect and dignity prevail. However, in workplaces where these norms are routinely violated due to poor management practice and organisation, incivility and lack of professionalism prevail, resulting in managers resorting to bullying to ensure productivity.

According to Roscigno, Lopez, and Hodson (2009), workplaces with 'failed organizational structures' (Roscigno, Lopez, and Hodson, 2019:1578), in which

systems have collapsed, resulting in confusion and tension, create a climate for bullying in various forms to thrive. This includes structural problems, like understaffing, poor management practices, and failures to manage staff diversity and inclusion. The absence of capable guardians will exacerbate the potential for bullying to thrive. Over time, a workplace culture of conflict, discrimination and harassment may become entrenched. In such spaces, workers are often unaware that they are being bullied, having internalised abusive behaviour as the norm. Contrary to the protective role of guardians (trade unions, employee relations structures and so forth), the authors state that few guardians can eliminate incidences of workplace bullying in such contexts. This is particularly true when the workplace is disorganised, with a culture that is not conducive to providing a workplace free of harm. Guardians are cited as unions, employee relations structures, Ombuds, workplace policies, and supervisory accountability.

While the authors do not discount the fact that bullying occurs also between peers and may target superiors, they indicate that targets of supervisory abuse are more likely to be those who are seen as weaker belonging to minority groups. Some victims are seen as not deserving of empathy and support because they do not demonstrate the characteristics of the 'ideal victim' as conceptualised by Nils Christie (1986).<sup>1</sup>

In instances where aggressive leadership exists, the harm done to employees is compounded, resulting in severe workplace distress, high staff turnover, and absenteeism. Where policies and guidelines are absent or poorly implemented, chaotic work environments exist, enabling perpetrators to continue to victimise targets with impunity. Responsible and effective guardians instituted to act in the best interests of all stakeholders will reduce the occurrence of human rights violations, resulting in a less hostile work environment, neutralising the impact of workplace bullying by taking perpetrators to task and supporting victims rather than labelling victims as the source of the problem.

The power dynamics in workplaces and the extent to which the organisation permits supervisors to abuse their power by ill-treating employees directly impact employees'

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<sup>1</sup> The ideal victim can be seen as the most vulnerable employee in the organisation, similar to the little old lady described by Christie (1986), referenced by Berrend (2020) as follows: 'Christie proposes five characteristics of the ideal victim: (1) the victim is weak (old or very young), (2) the victim was carrying out an innocent and respectable task, (3) the incident took place in a location the victim could not be blamed for being, (4) the offender was physically stronger, and (5) the victim did not know or have any kind of personal relationship to the offender.' (Berrend, 2020:7)

dignity. The role of the guardian is critical in either combatting or permitting supervisors' abuse of power.

The authors suggest that bullying be prevented rather than addressed after the fact and acknowledge that while bullying is a novel field of research in sociology, there is scope for research to provide answers to questions about why bullying continues unabated in workplaces globally.

### **2.12.2 Normalisation Theory**

Schindeler (2014) suggests viewing bullying through the lens of Normalisation Theory. She references Brief et al. (2001) who states that:

'organizations embody a number of processes through which employees are socialized into accepted and standardized ways of thinking and acting that can constitute a kind of organizational moral microcosm. This context can produce an isolated style of moral thinking and action, which formal regulations may in part embody' (Schindeler, 2014:379).

It can be argued that normalisation is the process through which actions and behaviour (bullying/hostile behaviour) become a part of the workplace and are deemed acceptable. In organisations where it has become standard practice to ignore policies and the harm done to individuals and where the power is held in the hands of those in management positions, victims of bullying will not receive justice within the current structures, and organisations will not be held to account for failing to protect individuals from harm. Moreover, hyenas will continue to prowl workspaces; even though legislation and policies are in place, and those responsible for implementing it continue to rationalise deviant behaviour, resulting in the further normalisation of bullying within organisations. This is borne out by Ishmael and Alemoru (1999), quoting from the MSF guide for tackling bullying.

'Bullying may be part of the culture of an organisation. It is even condoned and even encouraged. In some organisations there may be a deliberate policy of employing or promoting bullies to certain positions as an effective way of getting tasks done' (Ishmael and Alemoru (1999: 70).

Employers hide behind efficiency to avoid addressing bullying, thereby normalising a culture of bullying in the organisation and creating toxic workspaces which continue to harm employees. Scenarios where bullying is covert and less easy to identify as bullying need to be labelled as such so that victims can recognise these behaviours, seek assistance and recognise that it is not normal. This helps targets of bullying to

make sense of their experiences and identify what is happening to them. Normalising incivility, autocratic management, poor management practices, and aggressiveness is a ploy to avoid dealing with bullies in workplaces.

Schindeler (2014) takes issue with the language used to describe workplace violence and states that:

'Terminology such as 'bullying' and 'mobbing', reinforces the construction and discursive framing of workplace violence as a behavioural issue, rather than as a harm with consequences' ((Schindeler, 2014:378).

The author expresses the view that there is no question that physical violence in workplaces falls under the auspices of criminal law, meaning that physical violence in the workplace will invoke criminal sanctions to address the harm inflicted. However, there are many uncertainties around the impacts of bullying, which is seen as psycho-social violence. The responsibility for reporting incidents of bullying is placed on the victim, who is operating in an environment of fear and is, therefore, most likely *not* to report incidents. The responsibility is, therefore, removed from the organisation. In the absence of taking such harms seriously, workplace bullying may be rationalised; once such behaviours become part of 'business as usual', i.e. part and parcel of institutional culture, the quest for prevention will be much more challenging.

### **2.12.3 Transformational Theory**

Hadeed (2014) references Mezirow's Transformational Theory to provide us with an understanding of how bullying affects victims.

Shukla and Singh (2020) lend support to this theory by stating that:

'Transformational theory exists when a life changing event has occurred in someone's life, altering the way and perspective of that person's mind-frame. Being bullied is considered as life changing because of the extent of damage it has caused that person mentally and physically. For instance, some persons might seek psychological assistance from professionals in the field, while some others might fall into a deep depression (Shukla and Singh, 2020:38).

The transformation for victims happens because of 'a reaction to a stimulus' (Shukla and Singh, 2020: 34). The stimulus is bullying, and the reaction is physical and psychological harm to employees, impacting bystanders, and the organisation. Both Hadeed (2014) and Shukla and Singh (2020) use Transformational theory to explain how an event (bullying) that happens in someone's life can change the worldview of the victim and that the change in perspective is a negative one. They cite instances of

absenteeism or abscondment due to bullying that impacts other employees, placing pressure on the organisation and its human resources.

Hadeed (2014) lists neglectful and disengaged managers and ineffective human resources as factors that result in dysfunctional organisations. This lack of attention and inaction, when bullying occurs perpetuates bullying in organisations. He references Einarsen et al. (2011), who, in their definition of bullying, cite "frequency, persistence, hostility and power imbalance" (Hadeed, 2014:2) as attributes that encourage bullying at all levels in the organisation.

Notwithstanding power imbalances that would seem to indicate that bullying happens only between managers and subordinates, Hadeed (2014) states that bullying occurs at all levels of the organisation (top-down, bottom-up, and horizontal), resulting in isolation and ostracism of victims by perpetrators and bystanders who either join in the bullying behaviour or become disengaged, resulting in an increasingly dysfunctional workplace.

While the impact on the victims, bystanders, and organisations cannot be underestimated, it does, however, provide organisations faced with the resultant stresses with an opportunity to address and prevent workplace bullying.

The theories reviewed up to this point focussed on viewing workplace bullying from the perspective of the individual and personality traits. Overarching themes that arose from the review of the theories include the normalisation of deviant behaviour in workplaces, the impact of guardians failing employees in their protective role in organisations, the impact of life-changing events on both the individual and the organisation and finally, how structural inequalities in organisations contribute to workplace bullying. This minor dissertation intends to draw on these themes when presenting the case study of bullying at the University of Cape Town.

## **2.13 Conclusion**

This chapter explored the concepts of workplace violence and harassment and demonstrated how bullying fits into these concepts. It further reviewed the literature on bullying from the perspective of personality traits. The reflection on social theory provided a further dimension on workplace bullying. The key themes identified in the reflection on social theory will be explored in the case study of workplace bullying.



# CHAPTER 3

## LEGISLATIVE FRAMEWORK

### 3.1 Introduction

This chapter focuses on existing legislation and measures to be implemented to govern workplace bullying in South Africa. Smit (2021) introduces the issue as follows:

'Human history has been marked by interpersonal violence from the very start. Yet, while interpersonal violence has grown into a global problem affecting the whole of society, including the employment sphere, its prevalence in the workplace has until very recently not received the attention it deserves from employers, employees, and society at large. Bullying, as a form of interpersonal violence, has until recently not even formed the subject matter of claims in South Africa. Worldwide, however, the phenomenon of bullying has been investigated and laws have been passed to regulate bullying as a separate cause of action. In South Africa, for the most part, work on bullying was limited and fragmented but increased after the publication of the International Labour Organisation (ILO) 2019 report on violence and harassment at work.' (Smit, 2021:25)

Cunliffe and Mostert (2012) report that while there are limited statistics on workplace bullying in South Africa, the findings of a recent study indicate that 31% of participants stated that they had experienced workplace bullying. This correlates with the ILO statistics presented in Chapter 2 of this minor dissertation.

This chapter will offer a selective overview of legal frameworks in Sweden, the USA, and France designed to address workplace bullying and outline the International Labour Organisation (ILO) recommendations.

Like South Africa, the USA provides limited protection and consistently shows a high prevalence compared to the European Union countries. Sweden, one of the first countries to implement legislation, and France which has gone to the extent of criminalising workplace bullying, still face challenges with implementation. It is further pointed out that in countries where businesses are against implementing workplace policies, bullying will be rife, and the State must implement the recommendations of ILO Convention 190.

In the case of South Africa, the extent to which the ILO recommendations have been implemented and whether this has made a difference to the implementation of legislation and its impact on South African employees will be reviewed. Additionally, a

brief discussion on implementing what Smit and Viviers (2019) refer to as ‘soft law’ (Smit and Viviers, 2019:35), which includes anti-bullying policies and other solutions, will be presented.

### **3.2 Recommendations from the International Labour Organisation**

#### **3.2.1 An Overview of the International Labour Organisation**

The ILO aims to create a fair and just work environment for employees globally. Sahan (2020) reports that on its 100th anniversary in 2019, the ILO hosted a Violence and Harassment Convention and adopted ILO Convention No. 190 on Violence and Harassment (V & H) and its accompanying recommendation No.206. According to Sahan (2020), this came after a campaign led by international trade unions and marked the:

‘adoption of a first international standard that established the right of everyone to a world free from violence and harassment’ (Sahan, 2020:1).

A framework was drafted to contribute towards the eradication of all forms of harassment in workplaces. Smit,(2021) references the ILO Convention 109/2019 which states that:

‘all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity’ (Smit, 2021:26).

An extract from the Executive Summary of the report titled ILO (2024) reads as follows:

‘ILO Convention No. 190 stresses the need to adopt an inclusive, integrated and gender-responsive approach to the prevention and elimination of V&H in the world of work (Article 4). The Convention further specifies preventive measures (Article 9), highlighting (among other things) the need to address psychosocial risks at work. V&H at work and psychosocial risks are mutually reinforcing while V&H can be induced by several individual, social, and organizational factors, evidence shows that there is a vicious circle as psychosocial risks become a contributory cause of V&H, and vice versa. V&H is situated at the intersection of individual (subjective) factors and collective (work organization) factors. Given this interrelation, until organization-level factors and other underlying causes of V&H in workplaces are addressed, V&H will continue to pose a challenge to the world of work.’ (ILO, 2024:12)

The IOL Convention provided a clear definition of workplace violence and harassment (bullying is just one example) and a roadmap to address the actions that signatories to the ILO Convention 190 needed to take. The ILO (2024) noted the importance of

providing all stakeholders in the employment relationship with the tools to facilitate the implementation and regulation of these laws. A survey conducted by the ILO in 2022 found that although signatories had made inroads in terms of implementation, much of the work focussed on the adoption of legal frameworks rather than prevention and noted that preventative measures could be best addressed through Occupational Health and Safety measures. The ILO acknowledged the fact that while violence and harassment are covered by legislation, the burden of prevention is carried by the employer. It further noted the impact of discrimination on workplace harassment and stressed the need for an 'integrated' approach to prevention and policy implementation. This means that implementing legislation would not impact the prevalence of bullying alone. Conducting regular studies on workplace violence globally to inform policy around prevention, consistent updating of existing systems, awareness campaigns, and the provision of resources within organisations in working towards eradicating bullying and providing support to victims are cited by the ILO (2024) as crucial requirements in making a difference worldwide.

### **3.2.2 A Summary of Convention No.190**

Sahan (2020) states that before the adoption of the Convention, there were several shortcomings in global legislation protecting worker's rights. The Convention attempts to address these gaps to protect workers and eliminate existing legislation ambiguities. The author further indicates that the definition now includes all manifestations of workplace violence, including bullying, and covers all types of workers, all work-related events, as well as cyberbullying. Furthermore, the Convention clearly outlines the roles and responsibilities of all stakeholders in the process; governments, employers, workers, and related organisations, in terms of the implementation of legislation, workplace policies to address violence and harassment, monitoring, education, and prevention plans, including complaint and investigation reporting processes. While it acknowledges the seriousness and prevalence of gender-based violence in workplaces, it recognises, that all workers, regardless of gender, can be subject to workplace violence. Therefore, the regulations provide protection for all workers from all types of harassment.

While several governments and businesses worldwide have started to put systems in place to deal with workplace violence, there is much work still to be done. Based on the submissions of Sahan (2020), the reports from the ILO, and the views of Smit and Viviers (2017) (to be discussed later), I concur that an integrated approach is required

between governments, businesses, and other role-players (unions, employer and civil organisations) to make inroads into workplace harassment.

### **3.4 International Laws and Conventions**

A global study conducted by the ILO in 2021 (ILO, 2024) with 125,000 interviews in 121 countries to provide details on the prevalence of the problem, identify vulnerable persons, and provide best practices for countries to make meaningful inroads toward improving workplace safety. The Experiences of Violence and Harassment at Work (2022) report on the ILO Global survey undertaken in 2021 found that one in five employees, the equivalent of 23% of employees worldwide, have been exposed to a form of violence in workplaces. While these figures differ by region and categories of employment, the report found that harassment in workplaces was most prevalent in the Americas, followed by Africa, Europe, and, after that, Asia. The following section will briefly review legislation in Sweden, France, and the USA.

#### **3.4.1 Sweden**

Hoel et al. (2018) report that studies on workplace bullying began in Sweden in the 1980s. Laws prohibiting this practice were passed in the 1990s, making Sweden the first jurisdiction to address this problem via legislation. According to Yamada (2010), the Swedish Ordinance on Victimisation first came into being in 1993 and was lauded worldwide as flagship legislation on workplace bullying. Based on this, several countries followed suit and implemented legislation in varying forms. The Ordinance refers to victimisation as:

‘adult bullying, mental violence, social rejection, and harassment – including sexual harassment’ (Yamada, 2010:474).

The Ordinance requires the employer to take responsibility for, and to prevent workplace bullying. This includes educating employees about their rights and obligations, integrating them into the workplace, and ensuring zero tolerance for workplace bullying. Preventive strategies and taking immediate action if bullying is detected are critical elements considered part of the employers’ responsibilities. Despite the rigorous legislation, Yamada (2010) cites Einarsen et al.(2009), whose criticisms of the Ordinance are shortcomings related to a focus on prevention and lacking in terms of enforcement measures, resulting in the legislation failing workers. Notwithstanding these shortcomings, the Swedish legislation provided other countries with an example for implementing legislation. It is important to note that with the adoption of Convention 190, Sweden, as a signatory state, is obligated to

implement the recommendations made by the IOL. This is one way to educate stakeholders to comply with the legislation, as the state is responsible for ensuring education and adherence.

### **3.4.2 France**

According to Hoel et al (2008):

'In France, workplace bullying, known as 'moral harassment', is regulated under both the Labour Law (2008, amended 2016) and the Criminal Code (2009). The Labour Law applies to private and public employees, and addresses moral harassment, discrimination, and professional equality between men and women. The Criminal Code imposes a criminal sanction for bullying.'(Hoel et al., 2008: 47).

According to Akella (2020) France is currently the only country to have criminalised workplace bullying. Employers can, therefore, be held legally responsible, and criminal sanctions can be implemented should they be found guilty of failing to protect employees from workplace bullying. In 2019, a newspaper article highlighted the destructive impact of workplace bullying on BBC(2019), where executives from a French telecommunications company were jailed after 39 cases were brought before the French court. According to the dockets of the 39 cases, 19 resulted in suicide, 12 were attempted suicides, with the rest being incapacitated due to severe depression. My reading of the case suggests that the employer had created a hostile work environment, resulting in suicide and attempted suicides, as employees saw no other way out of their circumstances.

### **3.4.3 United States of America**

According to Yamada (2010), there is limited protection for victims of workplace bullying under current US federal laws. In addition, he states that, unlike several countries that have implemented legislation explicitly dealing with workplace bullying, the US laws are less specific regarding the prohibition of bullying and the duty of care to be exercised by employers. Employees, however, have recourse under federal discrimination laws. Hébert (2018) cites Title VII of the Civil Rights Act of 1964 which:

'prohibits discrimination on the basis of race, sex, religion, and national origin, and the United States Supreme Court has concluded that harassment on one of those grounds can constitute discrimination with respect to terms and conditions of employment, if certain requirements are met' (Hébert, 2018:182).

This means that American employees, just like South African employees, who are bullied outside of grounds covered in the legislation, do not have recourse in terms of

the laws against discrimination as cited in the act. In these instances, the onus is on the employee to prove that bullying has occurred.

Hébert (2018) further asserts that while the Occupational Safety and Health Act requires US employers to provide safe working environments, bullying is not seen as a matter for consideration under the Health and Safety Act as it does not comply with the requirement to cause physical harm. It is, therefore, seen as an issue to be dealt with in other forms of legislation. Yamada (2010) considers legislation related to workplace bullying in the USA as inadequate. While there has been much opposition to the introduction of the Workplace Bill by businesses in several states, the USA is a signatory to the IOL Convention and is obligated to implement the instruments as per the Convention.

### **3.5 South African Laws Governing Workplace Bullying**

#### **3.5.1 Introduction**

According to Smit and Viviers (2017), workplace bullying in the South African context is indicative of the broader South African climate of violence. Their suggestion that addressing workplace bullying from a multi-disciplinary perspective – including social, psychological, and legal aspects - is a sensible approach and aligns with a study conducted by others (Matthiesen and Einarsen, 2010) My understanding of these recommendations is forming partnerships between government, business, employees, civil society, and other stakeholders in the employment context is required.

Smit (2021) points out that South Africa was slow to conduct research and develop policy before the release of the ILO report on violence and harassment. Calitz (2022) suggests that South Africa should draw lessons from best practices in other international jurisdictions.

As a signatory to the ILO Convention, South Africa must implement ILO conventions to address and prevent workplace bullying. Smit (2021) further references the South African National Development Plan - reinforcing the rights of workers and the obligation of the state and, in turn employers – that:

‘confirms that everyone has the right to a working life that is conducive to productivity and embraces principles of liberty, equality, dignity and security’ (Smit, 2021:4).

As in many other countries, no specific South African law prohibits workplace bullying. Rycroft (2009) wrote that:

'There is no definition of workplace bullying in South African labour legislation. Some guidance is however implicit in the several legislative definitions, in quite different contexts, of the term 'harassment' (Rycroft,2009:1434).

### **3.5.2 Protection against Bullying in South African Law**

According to an ILO study (2022), psychological violence and harassment (of which bullying is just one example) are the most prevalent forms of harassment, surpassing sexual and racial harassment in workplaces. It is, therefore, concerning that the level of protection for employees against this form of harassment is lacking, as the existing legislation governing harassment in workplaces in South Africa does not make specific reference to bullying.

According to le Roux, Rycroft and Orleyn (2010), the South African legal provisions against workplace harassment can be found in the following areas: anti-harassment protection, under the provisions of the unfair labour practice regulations, health and safety legislation, delictual claims, and constructive dismissals. These are briefly reviewed below.

#### **3.5.2.1 Anti-harassment protection**

According to Rycroft (2009), the Employment Equity Act 55 of 1998 and the Promotion of Equality and the Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA) could offer protection against workplace bullying. While bullying is not explicitly named or defined in the statutes, bullying could be included under the provisions of the Employment Equity Act 55 of 1998. The Act prohibits all forms of unfair discrimination and harassment and applies to all employers and employees in South African Workplaces. The author points out that while bullying is not named in any of the legislation, it is implied in the following extract from the Employment Equity Act 55 of 1998 as follows:

'Harassment of an employee is a form of unfair discrimination and is prohibited on any one or a combination of grounds of unfair discrimination listed in subsection (1.' (Rycroft,2009:1445).

The Employment Equity Act, however, provides little protection to victims of bullying on grounds other than race, sex, sexual orientation, and age, as specified in the legislation. Hence, victims of bullying only have recourse under this act if the act falls within one of the grounds specified in the Act.

Similarly, according to Rycroft (2009), the legislation does not govern such incidents where unfair discrimination occurs by persons other than the employer in workplaces.

Workplace bullying could fall under the definition of harassment, which is defined as follows in the PEPUDA:

Rycroft (2009) further asserts that bullying can be defined as:

‘unwanted conduct in the workplace which is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences.’ (Rycroft, 2009:1436).

However, this law only applies when persons are not protected under the specified grounds of the Employment Equity Act.

For Smit and Viviers (2017), the Protection from Harassment Act is the most recent and effective avenue to pursue a claim of workplace bullying in South Africa. While this law does not explicitly refer to employment law, the definitions of harassment, just as in the case of PEPUDA, are broad enough to cover workplace bullying. Smit and Viviers (2017) draw parallels between similar laws in South Africa and the United Kingdom, where victims use the Protection of Harassment Act of 1999 to access justice and remedy the harm experienced in workplaces. The authors indicate that remedy under the auspices of this act is via a protection order granted by the Courts.

### **3.5.2.2 Unfair Labour Practice**

Rycroft (2009) considers the unfair labour practice option as the best possible route for victims of bullying to follow, as it makes provision for unfair labour practices which include areas that most often are linked to workplace bullying. According to the Labour Relations Act 66 of 1995

‘Unfair labour practice’ means any unfair act or omission that arises between an employer and an employee involving - (a) unfair conduct by the employer relating to the promotion, demotion, probation (excluding disputes about dismissals for a reason relating to probation) or training of an employee or relating to the provision of benefits to an employee; (b) unfair suspension of an employee or any other unfair disciplinary action short of dismissal in respect of an employee; (c) a failure or refusal by an employer to reinstate or re-employ a former employee in terms of any agreement; and (d) an occupational detriment, other than dismissal, in contravention of the Protected Disclosures Act, 2000 (Act No. 26 of 2000), on account of the employee having made a protected disclosure defined in that Act’ (Labour Relations Act 66 of 1995 (LRA) under s 186(2)).

If bullying can be linked to the categories listed in the Act, the employee can take the matter to the Commission for Conciliation Mediation and Arbitration (CCMA) or a

bargaining council. Rycroft further states that this route can improve the working relationship or, in the worst-case scenario, may result in other forms of bullying.

### **3.5.2.3 Occupational Health and Safety Act**

The Occupational Health and Safety Act 85 OHSA) of 1993 in Section 8 states that:

'every employer shall provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of employees' (OHSA, 1993:Section 7).

In terms of this, the employer must provide a workplace in which employees are protected from psychological harm, covering workplace bullying. According to Rycroft (2009), employers must produce and implement policies to ensure employees' safety; therefore, this is one way of dealing with workplace bullying. The Act provides for lack of compliance, including a fine or imprisonment. Also, it enables employees to claim for work-related illnesses by proving that they became ill while in employment.

### **3.5.2.4 Delictual Claims**

Smit and Viviers (2017) assert that all employers must provide employees with safe workplaces. An employer violating this obligation can be liable for damages under the Common Law. This breach is called a delict, which, in plain language, is a violation of the law. When the work environment becomes unbearable for employees due to bullying or other forms of harassment, employees have the right to bring a claim of bullying and compensation. There is no preventative action under this law; it is merely a remedial action seeking compensation for harm done.

### **3.5.2.5 Constructive Dismissal**

Rycroft (2009) points out that when the employment relationship has become intolerable, the employee has no recourse but to end the employment relationship by resigning. According to Rycroft (2009), this is the solution most frequently taken by employees. The problem, however, is that the outcome is compensation and fails to address corrective measures, improve the environment, or provide support for the damaged employee. Smit and Viviers (2017) concur with Rycroft that while this option appears to be an option with positive outcomes if it can be proven, it happens once the damage has been done and impacts the employment security of the victim. One such case is that of the *Centre for Autism Research and Education CC v Commission for Conciliation, Mediation and Arbitration and Others* (2020) 41 ILJ 2623 (LC), in which

the employer sought to have the CCMA decision found in favour of the employees set aside. The Labour Court upheld the constructive dismissal award because the employees had proven that the employer had created a hostile work environment, leaving them with no option but to resign as teachers at the Centre for Autism Research and Education. The employer had created an untenable working environment, characterised by verbal abuse, sexual harassment, public humiliation, discrimination on the grounds of sexual preference, excessive control, and unlawful deductions from salaries. The judge concurred with the CCMA commissioner that the employees had exhausted all avenues available to reconcile with the employer with no success. The behaviours displayed by the employer are consistent with the bullying behaviours identified in Chapter 2 of this minor dissertation.

### **3.5.2.6 2022 Code of Good Practice on the Prevention and Elimination of Harassment - South Africa's response to the recommendations from the International Labour Organisation**

The Constitution of the Republic of South Africa (1996) requires that international law be considered when interpreting the Bill of Rights. Based on this, it is crucial that the Conventions from the International Labour Organisation that make provisions for workplace bullying, albeit not specifically named, be implemented by South Africa as a member state of the ILO. Calitz (2022) points out that the South African response to the ILO Convention on the Harassment Convention No. 190 was the introduction of the new and improved 2022 Code of Good Practice on the Prevention and Elimination of Harassment, which falls under the Employment Equity Act, 55 of 1998. The author further states that this Act applies to all stakeholders in an employment relationship and provides support to persons who experience harassment of any form in the workplace. She points out that employers, under the guidance of the state, are expected to approach harassment with zero tolerance and take responsibility for adopting a harassment policy. These Workplace Policies must be developed and implemented through a participatory process with an outcome that provides clear steps for the employer and employee to follow. According to Calitz (2022), the Code seemingly addresses certain aspects of the Convention, such as offering a clear definition of harassment, developing legislation and guidelines on a national level, and specific workplace policies through consultation. As she says

'It seems as if the drafters of the 2022 Code endeavoured to sever the link between bullying and unfair discrimination to ensure that the Code addresses as wide an array of types of harassment as possible' (Calitz, 2022:23).

The code describes bullying as follows:

'Bullying – where harassment involves the abuse of coercive power by an individual or group of individuals in workplaces. Intimidation –is intentional behaviour that would cause a person of ordinary sensibilities to fear injury or harm. Workplace bullying may involve aggressive behaviour in which someone repeatedly causing another person injury or discomfort' (Code for Good Practice on Harassment, Item 4.7.7).

It provides examples of bullying that are consistent with the definitions and types outlined in Chapter 2 of this minor dissertation. These include isolation, exclusion, and sabotage. Under the code, as in the past, victims of bullying, in instances where there is no discrimination under the specified grounds (race, sex, disability), still must seek recourse under the Common Law and existing anti-harassment laws, which are outlined in Section 3.5.2.1 of this minor dissertation. Therefore, little has changed for victims in terms of the legislation in incidences where discrimination does not happen.

### **3.6 Comparatively speaking, what is missing from South African Law?**

Rycroft, as early as 2009, suggested that existing legislation did not make workplace bullying illegal, as it did in other forms of harassment, including on sexual and racial grounds, because it was not specified as a ground for harassment in the statutes, hence offering limited protection for victims of bullying. He notes that while delictual claims are possible avenues for victims of bullying, it has proven to be expensive and has the potential to destroy the relationship between parties. He further states that while seeking compensation via Health and Safety legislation is possible, it does not protect employees. Before the implementation of the ILO Convention No. 190, his commentary suggests the development of comprehensive legislation to protect workers.

For Smit and Viviers (2017), resistance to implementing new laws specific to bullying may be because society has become increasingly litigious and there may be perceptions that may result in petty lawsuits causing economic harm to companies and the economy. They point out workplace bullying is seen as the sole responsibility of employers in countries where bullying is prohibited in terms of the law and assert that this may not be the best route to follow in the South African case. They refer to

examples of Sweden, as cited by Einarsen et al. (2011)) where legislation has been used by employees who may feel aggrieved regardless of whether they are bullied or not, resulting in instances of reported bullying increasing since the implementation of the legislation. In contrast to the Swedish experience, Smit and Viviers (2017) refer to the Canadian experience, where bullying decreased after implementing bullying legislation. They cite the reason for the difference in that Canadian legislation emphasised the reality of workplace bullying, focusing on an effective complaint process for which the employer was held accountable. It is clear from the different experiences that implementing specific bullying legislation does not have the same outcome across jurisdictions. Smit and Viviers (2017), therefore, suggest that South Africa considers the experiences of other countries and the South African context, which is focussed on job creation in a developing country with a different legal regime. They further suggest that a way forward for South Africa is creating awareness around workplace bullying and implementing robust reporting protocols while holding employers vicariously liable.

Further suggestions around what is missing in the South African legislation are made by Calitz (2022), who recommends amending the Occupational Health and Safety Act to make specific references to the creation of safe workspaces free from any type of harm, physical or psychological. While the Code of Good Practice on the Prevention and Elimination of Harassment attempts to address the recommendations from the Violence and Harassment Conference of the ILO, the author believes that more work must be done to protect victims adequately. Calitz (2021) identifies several shortcomings of the code, including the amendment of the definition of workplace bullying as follows:

'Bullying means conduct in the workplace by one or more persons which demeans, humiliates, lowers self-confidence and which would be so perceived by a reasonable person in the same circumstances, or which creates a hostile or intimidating environment, or poses a danger to the health and safety of a person, but excludes any reasonable action taken by an employer relating to the management of the workplace. (Calitz, 2021:26)

Akella (2020) points out that while South Africa's existing legislation could potentially protect employees from workplace harassment, cognisance must be taken of the diversity of workplaces when reviewing the legislation. She suggests that changes to legislation, which may include specific references to bullying, should be made to reduce instances of workplace harassment with a focus on the well-being of employees. The

development of workspaces in which South African workers' safety should be prioritised within the context of the South African economy and society.

Leading commentators on workplace bullying (Rycroft (2009); Calitz (2021); Smit and Viviers (2017) argue in favour of changes to South African legislation to provide more protection for employees.

### **3.7 Workplace Policies and Other Remedies**

Notwithstanding the recommendations for changes to the South African legislation as indicated in Chapter 3.6, Calitz (2022) and Smit and Viviers (2017) agree on the importance of implementing workplace policies and other remedies arising from the ILO recommendations.

In addition to the ILO Convention, which states that countries adopt national policies, employers are also required to implement workplace policies with a focus on preventing harassment. Calitz (2020) references the Violence and Harassment Convention, which requires employers to consider the 'psychosocial risks in the management of occupational safety and health' (International Labour Organization, 2019). According to Rayner and Lewis (2011), policies implemented without consultation with multiple stakeholders, including human resources, line managers, employees, and, if required, external experts, will have little impact on bullying. The assertion of Smit (2017) that workplace policies can only succeed if management support is strong, with the experiences of France, Sweden, and the USA lending support to it; that shortcomings in the Swedish Ordinance highlighted by Hoel and Einarsen (2009) include a lack of management support for policies, the court case in France which highlighted non-compliance by management and the resistance by business in the USA to implement policies.

According to Tehrani (2012), a solution to obtaining buy-in from employees and management on how to deal with workplace bullying is the implementation of workplace policies with processes that clearly define and address the problem. This will provide all role-players in the organisation with a clear understanding of what constitutes bullying, and what action needs to be taken, as a prelude to the development of policy moving toward safer workspaces.

### **3.8 Conclusion**

This chapter outlined the role of the International Labour Organisation in setting a model framework for regulating violence and harassment in workplaces. It provided a brief description of policies in three international jurisdictions. Implementing the ILO

Convention, which focuses not only on prevention but also includes guidelines for advocacy and education, training programmes, and systems for reporting and monitoring incidences, could address shortcomings in the legislation.

The review of the work of at least three South African researchers in the field of workplace harassment who concur that the existing legislation should be reviewed to provide adequate protection to victims of workplace bullying is a direct response to the research question as to whether existing legislation protects employees adequately under South African Law. In addition to reviewing the legislation, employers must be assisted in implementing workplace policies. My understanding of the commentaries provided by the authors suggests that even though policies exist, there must be a concerted effort to enhance awareness of workplace bullying so that both victims and employers have a sound understanding of the phenomenon.

It is recommended that workplace bullying be afforded the same importance in the law and the same protection offered to victims of sexual or racial harassment. It is further critically important that the legislation about workplace bullying takes cognisance of the violent and socially unequal society in which we live. The workplace is a microcosm of the society in which we live, and behaviour that is deemed normal in society will likewise be deemed normal in workplaces.

# CHAPTER 4

## WORKPLACE BULLYING AT TERTIARY INSTITUTIONS

### 4.1 Introduction

The preceding chapters discussed and defined workplace harassment, of which bullying is just one example. They also outlined the legislation governing workplace bullying, identified its origins, prevalence, and consequences, and reflected on remedies to combat this harmful practice.

Zabrodska et al. (2013) state that research on bullying in academia started twenty years ago when researchers began investigating how the unique nature of the academic environment encouraged workplace bullying. While research has been done primarily in Western countries, authors have made contributions in several countries, supporting the assertion that this is a universal problem that could be rising due to managerial reform and high work stress brought upon by various factors discussed below.

This chapter will highlight culture, leadership, and specific types of bullying in academia to demonstrate how the unique features of the academic environment shape and facilitate bullying.

### 4.2 Prevalence of Bullying in the University Environment

According to Tight (2022) referencing studies undertaken in the USA over twelve months in 2019 by Keashly (2019), at least 25% of academics in higher education reported experiencing bullying, while at least 50 to 75% reported exposure to bullying. Similarly, Hollis (2020) reports that 58 to 62% of university employees in 175 US universities had reported experiences of bullying. These figures far exceed the ILO figures of 17,9% in the 2022 survey for global workplace bullying, But what is known about bullying at South African universities? Research on the topic is sparse, and studies undertaken by Ngwane (2019) at Nelson Mandela Metropolitan University and Conco et al. (2021) at the Health Sciences Faculty at the University of the Witwatersrand found that the statistics from South African studies, with 55% of respondents experiencing bullying and 64% witnessing bullying, correlate with

international studies. Organisational culture was cited to be a determining factor contributing to bullying in South African Universities.

### **4.3 Culture of Academia**

Keashly (2019) describes the culture of academia as follows:

‘There is a pervasive belief that academe in general and universities in particular are hotbeds of conflict and, by extension, bullying (Barsky, 2002; Berryman-Fink, 1998; Twale, 2017). Academe has been characterized as a “culture of cruelty” (Farley & Sprigg, 2014), and academics, in particular, have been labelled as “mean and nasty” (Hiatt, 2008). The implication is that bullying is inevitable (and by implication unmanageable) given the nature (structure, processes, values, norms) of academe, its occupants, and the (neo-liberal) university administration and (corporate) management’ (Keashly, 2019:2).

She describes the academic environment as centres for ‘free and unfettered thought’ (Keashly, 2019:3) with universities traditionally seen as institutions that contribute to the development of society. Central to this tradition is the concept of academic freedom, which Mahmoudi (2022) describes as:

‘the ability to express one’s opinions and debate intellectual concepts without fear of reprisal, including a safe space in which to conduct research in any field and draw new conclusions’ (Mahmoudi, 2022:2).

However, according to Mahmoudi (2022), academic bullying with similar characteristics to workplace bullying (indirect, direct, and cyberbullying) can occur when academic freedom is misused. Impacts specific to academic bullying are listed as ‘violations of intellectual property, unfair crediting of authors and coercion to sign away authorship and/or intellectual property rights’ (Mahmoudi, 2022:17). Keashly and Neuman (2012) reporting on studies conducted in an American university environment in 2008 found that ‘faculty were more vulnerable to bullying from colleagues whereas staff were more vulnerable to bullying from their direct supervisors’ (Keashly and Neuman, 2012:12). The sections below demonstrate how the unique nature of the academic environment impacts bullying.

#### **4.3.1 Academic Freedom and Organisational Norms**

Keashly (2019) states that while academic freedom provides academics with the space to research and share views without sanction, academics, as experts in their fields, can create and enforce norms in their workplace. However, when they assert themselves

in a hostile manner to demean and silence those who do not conform to these norms, academic bullying is said to take place.

My interpretation of the debates (Keashly (2019); Cortina (2008), Martin, Sharp-Grier, and Piper-King (2015) and Simpson and Cohen (2004)) is that when there are threats to academic freedom, the academic claws come out and favourable conditions are created for bullying. This is manifested in an environment where funding for research is determined by outputs, and competition for funding and/or promotion results in people, criticising, ostracising, and bullying colleagues who are perceived as threats.

#### **4.3.2 Neoliberalism and Managerialism in the Education Sector**

According to Taylor (2017):

‘In the past three decades, the administration of many institutions of higher education has progressed towards a corporate style management structure. What has been a collegial, collaborative approach to managing the institution has given way to a top-down, corporate style management intensely focused on revenues, and directing rather than collaborating with faculty’ (Taylor, 2017:2).

The concepts of academic freedom and leadership in academia, coupled with the pressure to deal with changes in the way universities are managed, have placed considerable strain on relationships between stakeholders within the academic environment, and these changes may have engendered an increase in bullying.

#### **4.4. Leadership in Academia**

As discussed in Chapter 2 of this minor dissertation, the type of leadership impacts organisational culture and the treatment of employees. Hollis (2020) describes leadership in academia as follows:

‘Leadership in academia typically comes from academic expertise, the ability to secure external funding, or a national or international profile that brings notoriety to an institution. In my twenty-five-plus years in higher education, I have seldom met a colleague who holds a certificate in conflict management or has a background as a hostage negotiator. The ability to stay calm in the face of aggression while convincing the aggressor to stand down is an expertise that is not woven into the volumes of science, literature, or theory that brought us to the academy. Typically, academic leaders lack the formal training to diffuse these hostilities (Hollis, 2020:2).

This statement embodies the leadership culture of the academic environment, although poor leadership is not unique to academia. However, when coupled with the unique

nature of the university environment, which is characterised by academic freedom, it contributes to the high prevalence of bullying, as reported by Hollis (2020).

In summary, the management of departments by academics who have little or no management experience and competition over funding and resources creates conditions within which adversarial relationships and, by extension, bullying,

#### **4.5 Types of Bullying in Academia**

The bullies are easily identifiable; they yield power, and in academia, the powerful are academics. According to Keashly (2019), forms of bullying include undermining staff and their work, placing barriers in their path when it comes to promotion or opportunities, exclusion from incentives, learning opportunities, or participation in seminars, and excessive workloads.

Zapf et al. (2003) assert that men, who traditionally are more powerful in academia, bully more frequently than women. This would further be equally true for white men who would be senior to black people in most academic environments.

Commonalities across the literature review found that personalities were vital in playing a role in bullying by perpetrators, cases of poor management and leadership, ideological disagreements, and unresolved conflict.

Given the unique nature of the academic environment, common bullying behaviours in academia are briefly discussed below. The focus on these types of bullying does not preclude the existence of bullying behaviours previously addressed in the literature review.

##### **4.5.1 Ostracism and Incivility in Academia**

Sherratt (2021) refers to a type of covert bullying that is particularly damaging when targets are ostracised, resulting in exclusion and isolation by dominant individuals or groups who assert their power. In academic workplaces, ostracism is inevitable, with persons who do not conform to the dominant group's norms excluded from access to information, training, and promotion opportunities.

##### **4.5.2 Upward Bullying**

Chapter 2 of this minor dissertation introduced the concept of upward bullying, indicating that it is particularly prevalent in academic environments. According to Busby, Patrick and Gaudine (2022) this type of bullying has received little attention in the literature, and they indicate the importance of labelling it so that it can be understood and dealt with. The authors cite Bolling (2017), who defines upward

bullying as 'a subordinate staff member covertly or overtly bullying their manager'(Busby, Patrick and Gaudine, 2022:4). The authors additionally cite student incivility and entitlement as examples of upward bullying. These types of unacceptable behaviour in both the classroom and beyond are further explored in the case study in Chapter 5. The authors link upward bullying by subordinates to poor management practices, organisational politics, personality, and incivility. Busby, Patrick and Gaudine (2022) report that the 2020 pandemic shifted traditional workspaces to remote workplaces, which increased all types of workplace bullying, including upward bullying, and particularly the practice of cyberbullying.

### **4.5.3 Cyberbullying**

Cyberbullying was briefly introduced in the literature review, and according to Noakes et al. (2021):

'In an academic context, cyberbullying is one of several forms of cyber harassment that might be used to intimidate scholars for expressing unorthodox, dissident, and non-mainstream views' (Noakes, et al, 2021: 2).

The authors report that targets and perpetrators have challenges in recognising the extent and impact of this negative behaviour. Little research has been done in this area, resulting in no clear definition of the practice. They use the Routine Activities Theory to explain the impact, consequences, and resultant risks to targets, perpetrators, and academic institutions to provide remedies for this harmful practice. Online platforms are unregulated and provide perpetrators with anonymity, and according to Noakes et al.(2021), lend themselves to an abuse of academic freedom, where bullying can take place without fear of censure. He further points out that the footprint of cyberbullying will remain in cyberspace long after the action has occurred, resulting in harm to both the individual and the organisation and impact on funding, reputational and other risks to the institution.

### **4.6 What is the impact of bullying in academia?**

Ada et al. (2016), writing from a Nigerian perspective, lists the impact of bullying as victims experiencing a loss of confidence and risks of financial insecurity. In addition to this, individuals are silenced, fearing retaliation and the risk of unemployment, individuals wanting to leave their jobs, increased vulnerability for persons completing degrees while employed on either a part-time or full-time basis, negative impacts on the social behaviour of victims, i.e., anti-social and violent behaviour including road rage and partner abuse.

Keashly (2019) further discusses the levels of loss for all stakeholders in academia, highlighting the negative impact on the quality of teaching, institutional reputation, funding, attracting excellent staff and students, accreditation of qualifications, and a range of other factors impacting education as key risks in the academic environment.

An important factor to consider around the impact of bullying in academia is the duration of the bullying, with Keashly (2012) pointing out that staff in academia tend to remain in employment for lengthy periods given the nature of academia and the concept of lifelong employment, restricting opportunities for movement and remaining in abusive environments. Keashly (2012) references Zapf and Gross (2001), who alludes to bystander involvement, either joining in bullying behaviour or becoming targets contributing to the escalation of bullying, resulting in dysfunctional work environments and a loss of trust amongst stakeholders in the organisation.

Einarsen et al. (2011) observe that the most vulnerable in academic institutions are recent employees or those who spent most of their careers in their current workplace. While tenure and educational qualifications offer some protection to staff, they are not immune to bullying, resulting in disgruntled employees and reduced loyalty to the organisation. In addition, those perceived as having less status or seen as not belonging (for example, students and staff from disadvantaged backgrounds, academics with qualifications from less prestigious universities, and temporary and administrative staff) are most often targets of bullying. Issues of structural inequality cannot, therefore, be ignored when dealing with bullying in academia. The majority of bullies have more power and social status resulting from privilege that is not shared with previously disadvantaged persons.

Whether they sit in administration or academic departments, this destructive practice impacts not only the individual and the institution but also on victims' families and society at large. The risks to institutions, in terms of loss of staff, dysfunctional workplaces, and reputational risk, can no longer be ignored.

#### **4.7 The student as both victim and perpetrator**

Students can be both victims and perpetrators of bullying in academic environments. Keashly (2019) asserts that with the transition to a neo-liberal university, students increasingly see themselves as customers who demand 'value for money.' The power dynamics have, therefore, changed from the compliant and respectful student who held academics in high esteem to the empowered and challenging student. When empowerment is abused, resulting in challenges to institutional authority in a hostile

manner, it is deemed as bullying. Examples are lawsuits, disruptive behaviour in class, and harassment of lecturers. Bullying in academic institutions is multi-faceted and may occur in multiple ways up, down, and across the stratification order.

In addition to the student as a customer, Price (2023) points out that student protests have increased globally in the last decade and have created conditions within which conflict, aggression, and violence may ensue. The reasons for protests are diverse: access to funding, delays in paying fees and curriculum reform, and living and study conditions. While the reasons for the protests may be valid, the behaviour of students participating in protests is often disruptive, aggressive, a direct challenge to authority, and in extreme circumstances, criminal.

#### **4.8 Conclusion**

There is an expectation that institutions characterised by free thinking and populated by educated individuals; would have systems and procedures in place to deal with harmful practices such as bullying. Research tells us that realities on the ground are different. Common themes emerging from the literature relate to poor leadership and management practices in academia, a lack of will or the inability of management and leadership to deal with bullying, the abuse of positional power, and the impact of student protests on inter-relations.

Mahmoudi (2022) points out that bullying has become normalised in universities, with institutions failing to address allegations of bullying. This is further explored in the University of Cape Town case study. The implementation of workplace policies to address bullying is repeatedly raised in the literature, and research is needed to investigate the impact and guide institutional responses to bullying. Conco et al. (2021) and Ngwane (2019) emphasise the importance of implementing measures to address the consequences of bullying behaviour. As they point out, remedies for prevention should include changes to organisational culture and the development of educational and advocacy programmes. Hollis (2020) advocates for the use of civility champions. All commentators agree that anti-bullying policies must be preventative rather than simply reactive.

## **CHAPTER 5**

# **WORKPLACE BULLYING AT THE UNIVERSITY OF CAPE TOWN: A CASE STUDY**

### **5.1 Introduction**

Previous chapters asserted that workplace bullying is both complex and diverse. While policy formulation is necessary, it is not sufficient to address workplace bullying on its own. This chapter will track the debates on workplace bullying at one tertiary institution, the University of Cape Town, as those emerged in recent years. For this investigation, various in-house reports are considered to provide a chronology and social history of the compilation of an anti-bullying policy at UCT. In writing up the social history reflective use will be made of some theoretical ideas associated with routine activities, normalisation and transformation theories.

This minor dissertation will attempt to measure to what extent UCT has complied with the guidelines for policy implementation as recommended by the International Labour Organisation Convention 190 (2019). These guidelines speak to the need for consultation, proper risk assessments, documenting experiences of harassment in workplaces, devising measures for prevention, training for all stakeholders, and the provision for enforcement and monitoring of policies at national and workplace levels.

This chapter will briefly outline governance, management structure, and offices that support staff and students to provide a backdrop to the policy-making process, particularly the Policy to Address Bullying.

### **5.2 Background into the history of the organisation**

The development of the University of Cape Town (UCT) from a Boy's High School in 1829 to the establishment of a university reserved for white males and focussed on the sciences to meet the demand for skills in the growing mining industry by private funders in the 1880s is documented on the UCT Website (UCT, 2024). Changes to legislation between 1887 and the 1920s resulted in the admission of females and a small number of black students in the 1920s. After the introduction of the Extension of the University Education Act, as Price (2023) indicates, few permits for admission of black students to white universities were granted, resulting in low numbers of black students registered

at UCT until the late 1970s when UCT circumvented the law to enrol more black students.

UCT's opposition to Apartheid rule is well documented. Notwithstanding concerted activism at UCT, according to Price (2023), it remained a white liberal institution and 'did not recognise how they had historically manifested, and continued to manifest, subtle forms of exclusion and discrimination' (Price, 2023: 30).

With the advent of democracy in the 1990s, there were several changes in the University governance structures, the appointment of the first black female Vice-Chancellor (1996 to 1999), a focus on employment equity in line with the legislative requirements to address the skewed staffing and student profile, and several academic initiatives including curriculum review. This period saw changes to the structure of the university with the restructuring of faculties, with changes to the roles and responsibilities of Deans and the Senior Leadership team. This period marked the introduction of a 'much more managerial style of leadership' (Price, 2023:30).

From 2000 to 2008, during the tenure of Professor Ndebele, there was steady growth in student numbers, financial stability, and an improvement in critical academic focus areas. However, racial disparities in loyalty to the institution and sense of belonging continued as the results of institutional surveys were made clear and the Fees Must Fall movement was reiterated. UCT continues to grapple with challenges in diversifying the staffing demographic and transformation within the organisation. These challenges were again confronted during the student protests of 2015-2017 and highlighted in the reports from the Ombud, Institutional Surveys, and other investigations into organisational culture. Against this broader background, this dissertation tracks debates and initiatives on workplace bullying.

### **5.3 Governance and Decision-Making at the UCT**

The University of Cape Town, a public institution, is accountable to the State according to the Higher Education Act of 1997 provisions. Price (2023) summarises the governance structures: the Council of the University of Cape Town, the Vice Chancellor, and the Senate are responsible for ensuring that the University of Cape Town Statute exercises sound governance and fiduciary practices in line with the Higher Education Act. The Council is comprised of thirty members appointed by the provisions of the Higher Education Act. The University Senate comprises the Vice Chancellor, the Deputy Vice Chancellors, Deans and Deputy Deans of the six faculties, Heads and Acting Heads of Departments, full Professors of the University, twelve

members elected by the academic staff, six representatives of the Professional, Administrative, Support and Service (PASS) Staff, six representatives of the Student Representative Council, two members of Council and members of the academic staff appointed to balance diversity on Senate. The Institutional Forum, constituted under the provisions of the Higher Education Act of 1997, is an advisory body responsible for advising the University Council on regulations as outlined in the Act. This forum comprises members appointed by the Council, the Senate or the Vice-Chancellor, members appointed by staff bodies, and the Student Representative Council.

The critical role players in the decision-making process at UCT are the University Council, the University Senate, and the Institutional Forum. These role-players are instrumental in informing decisions around student-related matters, academic policy, and staffing policy issues, including transformation. The Senate and Council approve all University Policies. This section shows the role players involved in the consultation process and final approval of the Policy Addressing Bullying. In applying the Routine Activities Theory these role-players have a protective role towards employees within the organisation. The case study will attempt to show that bullying thrives in an environment where guardians fail in their protective role.

#### **5.4 Strategic and Functional Management of UCT**

UCT Marketing (2024) summarises the role of the UCT Leadership Lekgotla as responsible for strategic and functional leadership within the organisation. This group comprises the Vice-Chancellor, the Deputy Vice Chancellors, the Chief Operating Officer, the Registrar, the Deans of the six faculties (Commerce, Engineering, Health Sciences, Humanities, Law, and Science), and Executive Directors of key functioning areas within the university (Development and Alumni Relations, Student Affairs, Research, Properties and Services, University Libraries, Information, and Technology Services, Communication and Marketing, and Human Resources) All staff within the organisation, academic or Professional Administrative Support Staff (PASS) report to members of this group. 4984 staff members provided academic, administrative, and support services to approximately 30,000 students in the 2021 academic year.

#### **5.5 Other Key Role Players Supporting members of the University**

Two key offices, the Office of the Ombudsman and the Office for Inclusivity and Change, were established to provide advisory and support services to staff, students, and, in some instances, persons external to the university.

The Office for Inclusivity and Change (OIC) was established in 2017 and reports directly to the Deputy Vice Chancellor for Transformation. This office is a crucial driving force in the university's transformation agenda, and its primary role is to facilitate collaboration to change the institution's culture. The Inclusivity Report commissioned by the OIC provides vital information in this minor dissertation to determine the prevalence of bullying at UCT.

Conflict is inevitable amongst role players in large academic institutions, of which UCT, with its large staff and student complement, is no exception. Resolving conflict in the traditional ways via the formal routes of grievances and hearings can be costly and lengthy. Hence, the Office of the Ombud is crucial in resolving conflicts more quickly and cost-effectively to reduce litigation. The Office of Ombud was established in 2011 and operates independently. It provides impartial and confidential service to members of the University and reports directly to the University Council. The reports from the Ombud in the reporting periods 2014 to 2019 provide statistics relevant to our understanding of bullying.

## **5.6 UCT's Stance on Employment Equity and Discrimination**

The 2030 Vision, spearheaded by the previous Vice-Chancellor, Professor Phakeng includes initiatives to transform the organisation's demographic and create a 'culture of belonging' for all staff. The UCT Employment Equity Policy states:

'The policy is designed to provide decision-makers with the guiding principles to make defensible decisions in a reasonable, fair, and justifiable manner, but even more importantly to ensure that transformation takes place in pursuit of the vision of becoming the leading African university proud of its new inclusive identity that reflects the interests and aspirations of all its staff and students. The University's EE policy is unequivocal in its stance on antiracism, non-sexism, and any other forms of unfair discrimination. Integral to this policy is not only compliance but also commitment to redress, inclusivity, and diversity. At the heart of our policy is transformation, of which decolonization is a central tenet.' (UCT Employment Equity Plan 2023-2026).

This vision is supposed to be a roadmap for a safe environment for the University of Cape Town's employees and students.

## **5.7 Reports from the Ombud**

From 2014 until her departure in 2021, the UCT Ombud repeatedly recommended implementing an anti-bullying policy. Interestingly, she had experienced bullying firsthand, as set out in the 2023 investigations into governance failures in the institution.

Table 1 summarises the information on bullying received by the Ombud between 2014 and 2019.

**Table 1: Summary of Reported Incidents of Bullying 2014-2018 (UCT Ombud)**

| Category  | 2014 | 2015 | 2016 | 2017 | 2018 |
|---|------|------|------|------|------|
| Evaluative Relationships – Questions, concerns, issues, or inquiries arising between people in relationships (i.e., super-employee, faculty-student, colleague-colleague)   | 39   | 46   | 68   | 104  | 143  |
| Peer and Colleague Relationships – Questions, concerns, issues, or inquiries arising between people in relationships (e.g., manager-employee, supervisor-student, faculty-student, faculty-PASS, faculty/PASS-outsourced, colleague-colleague, student-student) | 8    | 13   | 41   | 89   | 61   |
| Total reports on Bullying/Mobbing   | 57   | 59   | 109  | 193  | 204  |

The figures show an upward trend in bullying incidents reported to the Ombud from 2014 to 2019. While the Ombud does not provide a breakdown of figures for 2019, she reports an upward trend in reports of Bullying in the Evaluative, Peer, and Colleague Relationship Categories: 213 and 153, respectively. For this reason, I have omitted these figures from the table as they could potentially skew the data specific to bullying incidents.

The Ombud quotes Namie and Namie’s (2009) definition of bullying as follows:

‘repeated, health-harming mistreatment of a person by one or more workers that take the form of verbal abuse; conduct or behaviours that are threatening, intimidating, or humiliating’ (UCT Ombud, 2018:21)

The UCT Ombud (2020) reported with concern UCT’s failure to implement a policy to address bullying to provide protection and recourse for employees from this harmful practice. She also implored the UCT Council to intervene in the finalisation of the anti-bullying policy. The Ombud asserted that bullying seemed to have permeated all levels of the organization. The Ombuds Reports from 2014 to 2019 highlighted a range of

concerns, such as deficits in leadership and management capacity, the absence of a clear policy on bullying, and victims (visitors) presenting with stress.

The 2019 report from the Ombud highlighted thirty-seven reports of bullying leveled against the then-incumbent Vice-Chancellor, prompting the Ombud to reiterate her concerns about the continued failure to implement an anti-bullying policy. Accusations of bullying against the highest officeholder would soon find their way into the media.

## **5.8 Inclusivity Survey: 2019**

The UCT Staff Inclusivity Survey (2019) was conducted to measure staff perceptions of inclusivity in the organisation. The project made use of a staff survey as well as focus group discussions. According to the UCT Staff Inclusivity Survey (2019), the 40% participation rate was higher than previous exploratory surveys. As such, there is more confidence in the findings of the study. While the Survey explored a wide range of issues, we consider findings relating to bullying and organisational culture for purposes of this discussion. On this score, the Survey reports in no uncertain terms:

‘UCT has a culture of bullying that amplifies the legacy of systemic demographic inequalities, both inside and outside of the university’ (UCT Staff Inclusivity Survey, 2019:6).

The report echoes the Ombud's findings, highlighting leadership and management shortcomings and, according to respondents, the apparent lack of will on the part of management and HR to deal with bullying complaints.

The report refers to the creation and perpetuation of enabling environments for bullies by senior management. The fact that, in the absence of an anti-bullying policy in this reporting period, bullying continued unabated. Challenges in reporting bullying and seeking redress are highlighted in the report. In the absence of clear policies, there is little clarity on the monitoring structures, i.e., where reports should be registered and the process for investigation and adjudication.

The lack of reporting incidents of bullying, isolation, and exclusion and the perception that bullies are rewarded and more valued for perceived efficiency speaks to the values and culture of the institution. The report, which was an inquiry into inclusivity at UCT, of which bullying was just one indicator, draws attention to the fact that bullying is normalised in the culture of academic institutions, with UCT being no exception. This resonates with the assertion by Hollis (2020) that university environments lend themselves to workplace bullying.

The Institutional Survey (2019) found that 76% of UCT staff had experienced bullying and harassment during a six-month reporting period. While bullying is experienced across racial, gender, and sexual groups, it is most prevalent in line management relationships, with managers bullying staff reporting directly to them and members of the academic staff bullying members of the administrative staff. The report clearly states that perceived and actual bullying are treated equally in the data sets, indicating that perceptions of bullying may be inaccurate in some incidences. However, the high incidences of bullying reported by respondents in the Inclusivity Survey resonates with the report from the Ombud that the prevalence of bullying in the institution was increasing.

The report further asserts that bullying at UCT far outweighs available statistics for the rest of South Africa, cited as 31% by Cunliffe and Mostert (2012). This highlights the institution's failure to deal with bullying and harassment, which has had a detrimental effect on the mental and psychological well-being of employees, resulting in absenteeism, resignations, and disengagement from the workplace. This places the institution at risk and undermines the core principles of Vision 2030: excellence, transformation, and sustainability.

## **5.9 Report from the Institutional Reconciliation and Transformation Commission (IRTC)**

In 2018, the IRTC was established to Investigate:

”institutional culture and practices, including decolonisation and any that entail unjust discrimination, domination or violence including sexual violence (IRTC Report, March 2019: 1).

The IRTC was in response to an agreement between student bodies and the University Executive after the student protests of 2015 and 2016. The demonstrations highlighted the systemic inequalities within the organisation, perpetuated in higher learning institutions in South Africa. The proceedings and recommendations of the IRTC were based on the principles of restorative justice. While the details extracted from this report related to workplace bullying corroborate the Ombud and the Institutional Survey reports, several concerns were raised in response to this report. Markedly is the reaction from the UCT Executive (UCT Exec, 2019), which includes comments that the report did not respond to the terms of reference of the IRTC, that participation levels were low, that statements made to the IRTC by participants opened up themselves to contestation, that the report was superficial in some instances, resulting in challenges

in the implementation of recommendations and that the IRTC had failed to acknowledge that work had already been done in some areas.

The Executive response, however, acknowledged the existence of 'behaviours that perpetuate a culture of dominance and victimisation' (UCT Exec: 2019:7). This acknowledgment and the assertion by the executive that it was challenging to find 'tangible evidence of bullying and victimisation' (UCT Exec: 2019:7), is concerning in that the Ombud had repeatedly reported on the prevalence of bullying in the organisation and had long requested the implementation of a bullying policy. Regrettably, the inability and or unwillingness of management to act on the recommendations of the Ombud has resulted in immeasurable harm to victims of bullying, institutional health, and the reputation of the university.

For this minor dissertation, issues from the report of the IRTC relating to workplace bullying include poor management practices, assertions that UCT is an inherently racist institution, the considerable gap between highly skilled academics who are predominantly white and black South Africans who occupy mostly unskilled and more menial positions, the importance of developing and implementing policies to address discrimination and harassment of all types within the institution, ineffective communication strategies between all stakeholders in the university. The report speaks explicitly to bullying practices in the institution in a section titled '*An atmosphere of fear and mistrust*' (IRTC Report, 2019:64). The detail of the report resonates with the reports from the UCT Ombud and the Institution Survey Report, highlighting examples of bullying which include experiences of staff members reporting that they felt bullied by students, of students being bullied by supervisors, staff experiencing depression, taking sick leave due to toxic work environments, and fear of coming to work.

The trauma experienced from bullying by students, academics, and members of the PASS staff has resulted in a workplace filled with fear and mistrust which has a profound impact on productivity and feelings of inclusivity within the organisation. The experiences of PASS staff were highlighted as this constituency of the university reported the highest prevalence of bullying. It is within this culture that people are reluctant to report incidents of bullying for fear of reprisals, resulting in the under-reporting of workplace bullying. References to the toxic culture of the UCT environment are drawn from the comments from members of staff who provided input into the 2023 Independent Investigation into UCT Governance.

## 5.10 Investigations into Governance Failures in the Institution

In November 2023, the University Council communicated to the University Community as follows:

‘Council acknowledges the past governance failures. We regret not acting sooner and apologise unreservedly. We are considering the report recommendations and will act to fix the areas concerned, course correct, and restore the public’s confidence in UCT. We thank current and former staff as well as Council and Senate members who acted with courage and integrity’ (UCT Council, November 2023).

This public acknowledgment of the University’s failure to address repeated reports of bullying and incivility from the university community came in the wake of the report from an Independent Investigation into UCT Governance made available to the University in October 2023. The investigation was initiated in response to the resignations of senior members of staff and reports of bullying, incivility, and governance failures by high-ranking members of the University Community. It was led by an independent panel appointed by the UCT Council, commenced on 3 April 2023, and was concluded on 8 August 2023. The panel had been constituted in response to a motion by the Senate to appoint a ten-member subcommittee of the Senate to investigate the circumstances surrounding the departure of Deputy Vice-Chancellor Lis Lange and the reasons and circumstances relating to the resignations of senior members of staff from 1 January 2018 until 31 December 2022. The Council did not accept the Senate’s motion. Instead, the latter resolved that an independent task team be appointed.

The reports from the Ombud and the Institutional Survey related to bullying within the organisation had previously reported on some of the issues raised in this report. The Mpati et al. (2023) report dealt primarily with organisational governance failures. Various matters were listed: bullying in the upper echelons of the organisation; poor management practices; public humiliation of some members of staff; abuse of power by individuals; undermining of the independent office of the Ombud; the departure of senior members of the executive and their claims of ‘intolerable’ working conditions; lack of adherence to human resource management policy; racial profiling; and the unprecedented use of non-disclosure agreements for senior staff that exited UCT.

While we may disagree with some aspects of the Benatar chronicles, one cannot disregard his statement that UCT is a

‘very dysfunctional and unhappy place’ (Benatar, 2021:332).

These reported governance failures highlight the impact of poor management practices and lack of leadership capacity on bullying in the institution. It is helpful at this point to draw on criminological theory in the form of the Routine Activities theory to show how management at UCT has failed their constituents by citing Roscigno et al. (2009) and using a:

“framework that conceives of harmful conduct as emerging out of the routine activities of suitable targets (victims) and motivated offenders (perpetrators), and as conditioned by the presence or absence of capable guardians.” (Roscigno, Lopez and Hodson, 2009:1562)

In the case of UCT, management cited as the guardian repeatedly ignored the recommendations of the Ombud to compile and implement a policy to address bullying despite the prevalence of bullying cited in several reports, to address the hostile culture in which employees (suitable targets) performing their duties (routine activities) resulting in immeasurable harm being done to individuals, the organisation’s functioning and reputation. In addition to this, the failure of employee relations and challenges faced by worker organisations in dealing with management reluctant to acknowledge the impact of the harm on both individuals and the organisation contributed to the perpetuation of bullying and the creation of a hostile working environment. These findings suggested that aggressive leadership and bullying became ‘normalised’ and in its wake the workplace became ‘disorganised’ and ‘dysfunctional’.

## **5.11 Other Responses to Bullying from sources internal and external to the institution**

### **5.11.1 Publications by Prof. David Benatar and Dr. Max Price**

David Benatar, a professor in the Department of Philosophy, references negative behaviors practiced within the institution raised by the Ombud and in the Institutional Survey in his book, *The Rise, and Fall of the University of Cape Town* (2021). He raises issues of employees and students being allowed to bully and persecute each other within the institution without fear of sanction. He describes a culture in which bullying had become the norm, a culture of intolerance of people with different views and opinions, and an environment in which people have become silent for fear of being publicly shamed and ostracised.

At the time of Benatar's publication, the UCT Policy to Address Bullying in the Workplace had not yet been implemented. While one may not necessarily agree with the

sentiments and the tone of Benatar's publication, he raises pertinent issues relating to staff unhappiness within the organisation. In a review of Benatar's book, Carolissen (2022) points out that the text failed to consider the impact of Neoliberalism on Higher Education, indicating how '

'Neoliberalism deeply tests the humanity of academics. Destructive competition (for resources), selfishness, backbiting and bullying amongst many academics, in local and international universities, is rife. Collaboration, support and genuine delight in others' achievements is less common than we would expect. (Carolissen, 2022).

This resonates with the sentiments expressed by Taylor (2017) in the discussion on Bullying in Academia (Chapter 4) in that the pressures resulting from a more managerial system of leadership, coupled with the pressures to transform and an increasing focus on management and competition for resources, increase incidences of bullying.

Nhlapo et al. (2020), investigating the circumstances of the high-profile death of Professor Bongani Mayosi, the late Dean of the Faculty of Health Sciences, reported that Mayosi was a leader in his field, a well-respected member of the academic community who became the Dean of the Faculty of Health Science in 2015. Prof Mayosi was inducted into his role at the height of the student protests. The decline of Professor Mayosi's mental health - due to a range of factors that included incivility by both students and staff resulted in stress and humiliation. He attempted to resign from the post of Dean on at least two occasions. Regrettably, the institution failed to act on the impact of 'hostile, abrasive, aggressive and rude' behaviour (Nhlapo et al., 2020) on the mental health of Professor Mayosi. While the report does not explicitly mention the word bullying, the actions of the students, his peers, subordinates, and line managers display key characteristics of bullying as cited by Cobb (2017); 'Aggressive or intimidating conduct, belittling or humiliating comments, unreasonable work expectations' (Cobb, 2017: 114) In addition to this, the actions were repeated, and presented a risk to Professor Mayosi's health and mental stability, ultimately leading to his death by suicide, an extreme response to workplace bullying.

Hadeed (2014) referenced Mezirow's Transformation Theory as follows 'when someone's viewpoint has changed because of a life-changing event' (Hadeed, 2014:1). Professor Mayosi's life was altered by how the institution handled the student's protests, and staff responses to it. UCT failed to provide him with the necessary support. Nhlapo et al. (2020) make several references to the word *toxic* when describing the work environment and behaviour of students and colleagues with whom

Professor Mayosi interacted. UCT failed to provide him and several others with a safe working space, a requirement for employers in terms of the South African Constitution of 1996. The death of Professor Mayosi is just one example of the personal costs incurred in hostile work environments. The circumstances of his death, viewed through the lens of the Routine Activities Theory, clearly show that UCT management failed to fulfil its role as a capable guardian by implementing steps to support Professor Mayosi.

The Benatar chronicles resonate with the Ombud and Institutional Survey Reports. Benatar (2021) points out that while the institutional survey had shortcomings, it highlighted the unhappiness of staff and students in the organisation and documented the culture of bullying.

Benatar (2021) pulls no punches in condemning student behaviour during the protest period and its impact on 'The Rise and Fall of UCT'. Student behaviour and actions, and how they relate to bullying in the organisation, cannot be ignored because students are critical stakeholders in the university environment.

In Chapter 4 of this minor dissertation, reference is made to the fact that students could be both victims and perpetrators of bullying in academic environments. In the protest era, this was demonstrated by students disrupting the institution and challenging institutional culture by using violence and aggression toward fellow students and university staff members. While the reasons for the protests were indeed pertinent and included key issues of fees, institutional racism, decolonising the curriculum, and conditions under which they studied and lived, some elements of their behaviour can be described as bullying and, in extreme instances, criminal.

Students also refer to bullying by Staff and Academics in the Report from the Institutional Reconciliation and Transformation Commission IRTC (2019). This will not be addressed in this minor dissertation but is noted as concerning as it impacts the institutional culture and further highlights the assertion that bullying has permeated all areas of the institution with limited sanction.

Benatar's (2021) depiction of UCT 'very dysfunctional and unhappy place' Benatar, 2021:332) resonates with the picture painted by Price in a publication titled *Statues and Storms Leading Through Change* (2023) in which he depicts a deeply divided university, a campus torn apart by violent protests, marred by incidents of bullying and intimidation and concludes his memoirs with:

'the final word must highlight the resilience of the institution that has survived the Fallist protests, financial downturns and other subsequent leadership challenges, and says

much about UCT's innate strength and the great people that work there' (Price, 2023: 291).

Notwithstanding the positive note on which Price concludes his memoirs, the consequences in the aftermath of the student protests is an organisation deeply divided on racial grounds, an environment filled with mistrust and blame. UCT, without doubt, has severe problems in terms of governance and institutional culture, but we cannot lose sight of the fact that it has a responsibility to provide a safe working space for staff. It is within this context that the implementation of the Anti-Bullying Policy will be discussed.

### **5.11.2 An Overview of Incidents of Bullying and Policies at Tertiary Institutions in South Africa**

In an article entitled '*Bullying is 'rife' at higher education institutions*, 'Mangolothi (2020) states that claims of bullying at several higher institutions in South Africa, including the University of Cape Town, had been made. She referenced the report of the Ombud at UCT, in which she reported 37 allegations of bullying against the Vice Chancellor and similar reports against the Vice Chancellor of UNISA, claiming that the UNISA Council had ignored those allegations.

Mangolothi (2020) pointed out that few higher institutions had workplace policies to protect staff against this harmful practice. In contrast to the article by Mangolothi (2020), Naidu's (2020) article entitled *Universities Say Policies Protect Victims* reported that several universities in South Africa have established anti-bullying policies and developed mechanisms to deal with bullying. A summary of the article indicates that policies in various forms were in place; some policies were specific to bullying, others dealt with bullying under their general discrimination policies, and others were developing policies specific to bullying to protect employees. Institutional responses to the newspaper survey largely concur with the report from Mangolothi (2023), indicating that few universities had policies specific to bullying, and some were implementing these policies. UNISA has had a policy in place since 2013 and has reported 26 bullying incidents between 2019 and 2020, while UCT was developing a policy and has only reported four bullying incidents. This indicates that there is no correlation between the existence of policies and a reduction in incidents of bullying. At least two universities indicate that training around bullying formed part of their staff education campaigns. There is no evidence that the University of Cape Town had implemented training to educate staff on bullying, except for a link to a video on the LinkedIn Social

Media Platform. In some instances, actions taken by institutions that report bullying include referral to disciplinary tribunals, resulting in dismissals, mediation, education campaigns, and dismissal of incidents due to lack of evidence. It is clear that universities in South Africa have different approaches to dealing with bullying, but all of them profess zero tolerance for bullying.

## **5.12 The Implementation of the Anti-Bullying Policy**

### **5.12.1 Introduction**

The reports reviewed in this Chapter are unanimous in their recommendations for implementing policies to eradicate all types of discrimination in the institution. One of these policies is the Anti-bullying policy. When the UCT anti-bullying policy was first introduced in 2021, Declan Dyer, the then SRC president, welcomed the introduction of the policy, stating that the 'policies would ensure that all stakeholders of the institution were safeguarded from bullying and would contribute to the efforts of shifting the institutional culture' (IOL, 2021).

### **5.12.2 Approval of the Policy: Debates in the Senate**

The UCT Senate (2020, 2021) reviewed the policy to address bullying thrice, from November 2020 to March 2021. Twice, the Senate referred it back to Human Resources to address shortcomings before recommending it to the Council for approval. The key concerns raised by the Senate included the lack of consultation and engagement within the wider university community, the lack of clarity about key definitions, the exclusion of the Office of the Ombud and the OIC in the Policy, the failure to specify processes to be followed in instances of Bullying by the Vice Chancellor, Chair of Council or Head of Human Resources. After review by Human Resources, the policy was approved by the Senate on 11 June 2021, with the following additions to the policy:

'There may be circumstances in which members of the university seek advice from or the assistance of the Ombud in addressing instances of alleged bullying whilst preserving their anonymity. If members of the university approach the Ombud, they should be aware that any subsequent intervention by the Ombud may not lead to disciplinary action' (Senate Minutes, 11 June 2021:9).

This addressed the Senate's concerns about the omission of offices like the Ombud and the IOC, which play an essential role in mediating conflict, expediting the resolution of complaints cost-effectively and expeditiously, and avoiding litigation.

Issues of unclear definitions and vague language that could impact interpretation and implementation were resolved to the satisfaction of the Senate. Specific references to the processes that should be followed in instances where the Vice-Chancellor, Chair of the Council, and the Director of Human Resources were involved in bullying were also resolved to the satisfaction of the Senate. In addition to these amendments, the Senate was satisfied that the Policy addressing bullying articulated with the existing policies within the organisation and recommended the policy to the Council for approval.

Senate's engagement in the Policy to Address Bullying came in the wake of the release of the 2019 Ombud's report in which there were 37 allegations of bullying levelled against the Vice-Chancellor, the questioning of the independence of the Ombud's office, an overall increase in the number of reports of bullying within the organisation, a further appeal for a comprehensive policy to address bullying, questions around management and leadership competency, and an increasingly hostile climate which provided a breeding ground for workplace bullying.

As highlighted in several reports, engagement with the policy's shortcomings failed to address the deteriorating institutional climate at UCT. This climate received much media attention and negatively impacted the university's reputation.

### **5.13 Unpacking the UCT Anti-Bullying Policy**

The UCT Bullying Policy (attached as Appendix 2) was circulated to all staff by the University COO, Dr Reno Morar. It is located on the Human Resources website along with all other policies related to employee relations. The Policy, on paper, is aligned with the UCT Vision, which promotes inclusivity and a safe working environment. It has incorporated recommendations from the Senate to include access to the Ombud and a statement that this process is separate from the formal disciplinary processes.

The policy's purpose and the processes to be followed are clearly outlined. It demarcates the roles and responsibilities of all stakeholders and includes a statement on the confidentiality of the process. It distinguishes between what constitutes bullying and what does not, explaining the roles and responsibilities of managers and employees in detail.

Every employee within the organisation, including the Vice-Chancellor, can be held accountable for unacceptable behaviour in terms of the policy. It very importantly outlines both the formal and informal procedures, makes provision for counselling and training of all stakeholders in the organisation, and provides the option for litigation.

While researching for this minor dissertation, no evidence of training and awareness campaigns around the Policy to Address Bullying finalised in 2021 was found, except for two videos linked to the LinkedIn social media platform. While the videos are informative, they are voluntary and contain self-study modules without UCT context. Other than Senate approval for the policy, there was, at the time, no evidence of management support or endorsement for this policy.

## **5.14 Conclusion**

The case study has highlighted the findings of reports, surveys, and contributions from internal and external sources relevant to our understanding of workplace bullying at UCT.

The lack of engagement on the Policy to Address Bullying with the University community was a shortcoming raised in the Senate meeting on 26 November 2020. This is concerning when one considers recommendations from leading authorities in workplaces, including Tehrani (2012), who states that for bullying policies to be effective, there should be consultation with the community for whom it intends to provide protection. Therefore, the question arises as to whether a policy that has not been consulted on and rolled out to the community it is meant to protect will be able to fulfil the protective role of a guardian in the University Community. When applying the Routine Activities Theory to workplace bullying, Roscigno, Lopez, and Hodson (2019) indicate that policies rarely impact bullying in disorganised and chaotic organisations. These further question the protective role of Human Resources as a capable guardian, in that despite the existence of a policy, it was poorly implemented in an environment where bullying had become normalised.

Can the questioning of the independence and mandate of the Ombud's Office by the Vice-Chancellor, against whom thirty-seven allegations of bullying were made, towards the Ombud after she had published her 2019 report, be attributed to an abuse of academic freedom, the culture of academia, or a lack of management or leadership capacity? Applying the tenets of the Routine Activities Theory to the experiences of the Ombud, it can be said that the Ombud had been thwarted in her protective role as a guardian in the organisation, by the lack of role clarity at both the management and council level. Despite the persistent pleas for a policy to address bullying in the organisation, the tensions between her office and that of the Vice Chancellor had resulted in unresolved conflict escalating into bullying behaviour with the intent to both

silence and humiliate the Ombud. Elements of cyber-bullying with the intent to humiliate her publicly are evident from the report into governance failures in the Institution (2023). This incident and other reported incidents of bullying at UCT created much interest in the media with headlines in the Daily Maverick (31 October 2022) titled 'Bullying and Dirty Tricks at UCT- the cost of being in the Vice-Chancellor's black book' and 'UCT Law Staff want the truth to be told about the former dean' (Sunday Times, 2018). In both articles, the issue of the failure of the institution to acknowledge that bullying was prevalent in the institution was highlighted. In both the reports, the staff made references to a 'hostile work environment and bullying culture' (Sunday Times, 2018) and how they 'felt bullied, silenced, undermined.' (Daily Maverick, 2022) These bullying claims are supported by the figures presented in the Ombud's reports and the public acknowledgment of the University Council in 2023.

Applying the tenets of Normalisation Theory to the context of the University of Cape Town, the evidence presented in the Inclusivity report, with references to bullying and hostile behaviour, has become a 'part of the culture' of the institution and deemed acceptable and 'the norm' by which people's actions are measured. It can be said that bullying has been normalised within the institution.

The fact that incidents raised by the Ombud, and the findings of the Inclusivity Report had been largely ignored until resignations and complaints from high-ranking members of the executive had come to the fore and could no longer be ignored, raises questions about the University's duty of care or ability to act as a capable guardian to staff within the organisation. In the case of the University of Cape Town, two routine activities, managerialism (excessive supervision and control) and the dysfunctional nature of the workplace, created an ideal environment for bullying, resulting in disrespect and a violation of acceptable norms.

It is essential to question whether an anti-bullying policy will prevent bullying at UCT? While the policy seemingly ticks all the boxes regarding an anti-bullying policy, it is critical to acknowledge that a policy on paper is insufficient to prevent workplace bullying. The issues of incivility, an institutional culture of intimidation, intolerance, and bullying need to be addressed in meaningful ways before staff will formally report and seek redress for incidents of bullying. In a culture where mistrust and fear of reprisal exist, victims of bullying will continue to be reluctant to report incidences of bullying.

A partnership between Human Resource Management, the Office of Inclusivity and Change, the Ombud, the Unions, and the Leadership Lekgotla should be forged to implement the anti-bullying policy within the organisation effectively. It is critical to acknowledge that bullying at UCT can no longer be tolerated and rewarded and that the risks to the organisation must be mitigated by working to improve the institutional culture and management, leadership, and human resource competencies.

Employees must feel safe and valued and have a sense of belonging within the organisation, and it is the employer's legal responsibility to provide a safe working environment. It is critically important that the institution transforms; a priority for transformation initiatives as outlined in the UCT Vision be properly understood and implemented by all stakeholders to avoid these initiatives being misunderstood or misrepresented and used as a vehicle for bullying at all levels within the organisation.

While researching for this minor dissertation, there was no evidence of training and awareness campaigns around the Policy to Address Bullying other than a video linked to the LinkedIn social media platform. While the video is informative, it is a voluntary and self-study module that does not refer to the UCT context. It is recommended that the Human Resource Development Unit embarks on a rollout of the policy, championed by respected staff members within the organisation. Small group discussions should be included in the rollout, and departments must be mandated to provide staff training within their sections. Bullying happens at all levels, but mainly to employees at the lower levels. No one volunteers to be a victim of bullying, so training and awareness should be mandatory. Bullying has been cited to be the most prevalent form of harassment in workplaces, and therefore, it should be given the same priority as campaigns around Sexual and Racial Harassment.

It is interesting to note that at UCT, targets of bullying extended beyond the notion of Christie's (1986) 'ideal victim' (Berrend, 2020:7), with members of the Executive Council, the Independent Ombud, and academics experiencing bullying. The letters of apology from the University council to the 37 unnamed complainants and members of the Executive are an affront to the unnamed victims who have been reporting or not reporting workplace bullying to the Office of the Ombud, the Office of Inclusivity and Change and Human Resources for many years. This apology must be extended to all victims of bullying in the organisation.

# CHAPTER 6

## CONCLUSION

### 6.1 Reflections on the aims of the study

This minor dissertation set out to explore workplace bullying by reviewing scholarly literature as well as relevant legislation. The role of the International Labour Organisation in defining workplaces, acknowledging the harms associated with such practices, and setting policy guidelines for addressing the issue in workplaces was duly recognised. The discussion then investigates the specificities of workplace bullying in academia. This provided a context for exploring workplace bullying as a case study at the University of Cape Town. It further considered the impact of effective legislation and the implementation of workplace policies on such detrimental practices.

Drawing on the writings of various scholars and experts, this minor dissertation found that workplace bullying is a global problem. It is also a complex and multi-faceted problem. However, measuring the scale and impact of bullying at the national, regional, and global levels has been hampered by various challenges. A concerted effort is required to address, contain, and prevent workplace bullying. While legislation and workplace policies are necessary tools, they are not sufficient to reduce the prevalence of bullying in workplaces. Workplace policies should be a starting point for understanding bullying and allowing employees and employers to reflect on such practices. Policies can also provide a means to transform workplaces reliant on input from multiple stakeholders.

### 6.2 Findings of the Study

#### 6.2.1 Prevalence

Drawing on studies, including the International Labour Organisation (2021), it was found that workplace harassment, of which bullying is just one example, was on the increase in workplaces globally. A key finding of the ILO in measuring prevalence studies should consider national, regional, and cultural perspectives. The prevalence of bullying in South Africa was found to be higher than that of several international jurisdictions and even higher in universities in South Africa.

#### 6.2.2 Harmful Impact of Bullying

Using Transformation theory and select Criminological Theories one can map the harmful impact of bullying on individuals and organisations.

### **6.2.3 Impact of legislation and other measures to reduce workplace bullying**

Reflections on the legislation and other measures to address workplace harassment demonstrated that the shortcomings in global legislation needed to be addressed to make inroads into this harmful practice. It is recommended that workplace bullying be afforded the same importance as sexual or racial harassment in the law and that a place be found in the appropriate pieces of legislation to afford victims the same protection offered to victims of sexual or racial harassment.

The findings from the literature reviewed and the University of Cape Town's case study suggests that policy alone is insufficient to reduce the prevalence of workplace bullying. Transforming workplace culture, holding perpetrators to account, creating capable guardians at different levels, and providing adequate support to victims are all critical ingredients for creating safer workspaces.

The recommendations by Hollis (2020) for crafting positive policies and using civility champions are practical suggestions that support the assertion that policies alone are insufficient in workspaces. These policies must be preventative rather than merely reactive as dealing with the harm inflicted on individuals and organisations has proven costly. Changes to organisational culture and educational and advocacy programmes focusing on diversity and management training are required.

The workplace is a microcosm of society, and behaviour deemed normal in society will likewise be considered normal in workplaces. Therefore, legislation governing workplace bullying must be duly situated in national contexts.

### **6.2.4 Findings arising from the Case Study of the University of Cape Town**

The University of Cape Town case study found conclusively that bullying at the University of Cape Town was not a marginal issue. It can, therefore, not be disputed that the University of Cape Town is an institution in crisis and that there is an urgency in addressing the resultant harm inflicted on victims of bullying. This study found that characteristics of poor leadership, management practices, the normalisation of incivility, a lack of will or the inability of management and leadership to deal with bullying, and the abuse of positional power within academic environments contributed to the prevalence of bullying,

The University's lack of will or inability to deal with bullying, despite repeated recommendations from the Office of the Ombud and findings of surveys on institutional health, compounded the challenges in addressing bullying and institutional climate. The University of Cape Town was depicted as an institution in crisis, demonstrating

poor management, human resource capacity, and leadership. Public acknowledgment by the University Council of its failure to address bullying and incivility is the first step in a longer process of addressing institutional culture and workplace bullying.

#### **6.2.4 Release of the Ombud's Report for 2023**

A few days before submitting this minor dissertation, the Ombud's report for 2023 was released. Incorporating the recommendations of the Ombud supports the findings of this minor dissertation. The Ombud's Report (2023) includes a summary of the 2021 and 2022 reporting period, indicating concern for the non-publication of these reports. Crucial elements of the 2023 report highlight continued reports of bullying, the negative impacts on individuals and the organisation, and the barriers faced by visitors in terms of support and resources in addressing bullying. She highlights the urgency of addressing bullying in the organisation.

She further indicates that the release of the Mpati report, dealing with governance failures in the institution, resulted in a surge of visitors reporting ongoing bullying in the organisation. Her report recommends addressing institutional racism and starting conversations around the power dynamics within the university, which resonates with the findings of this minor dissertation for a review of policies and training on workplace bullying. She points out issues of stress, anxiety, and a decrease in job satisfaction that impact individual and organisational performance and culture. This resonates with this minor dissertation's findings and the previous Ombud's reports.

Notwithstanding the policies and procedures in place to address bullying, she reports that there is little support for victims of bullying who follow these procedures, stressing the importance of systems to protect victims of bullying. Training is critical in educating staff and students on recognising and dealing with bullying. Another shortcoming raised by the Ombud is the lack of post-complaint support for victims, resulting in challenges in rebuilding confidence and relationships. The Ombud further recommends the importance of inclusivity, respect, and transformational leadership within the organisation.

#### **6.2.5 Practical Suggestions to deal with bullying at the University of Cape Town**

It is suggested that human resource and general management capacity be improved through competent recruitment and retraining of individuals, who hold key positions within the organisation. The harm has been done, it has been acknowledged, and challenging conversations should be held; mandatory training should be held to

educate all stakeholders in an organisation where bullying far outweighs incidents of sexual harassment. A practical suggestion would be to set up a Tribunal similar to the Sexual Offences Tribunal. This Tribunal should report directly to the Office of the Vice Chancellor and work closely with the Office for Inclusivity and Change.

As a research-led institution plagued by bullying and incivility, UCT is now presented with an opportunity to contribute to the body of knowledge on this under-researched area and produce remedies and interventions to this harmful practice that has continued unabated within the organisation.

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# APPENDIXES



## Policy Addressing Bullying

### UNIVERSITY OF CAPE TOWN POLICY ADDRESSING BULLYING

#### Content

1. Purpose of the Policy
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11. What does not constitute workplace harassment and/or bullying?
12. Breach of policy / rules
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## 1. Purpose of policy

- 1.1 The University of Cape Town ('UCT') is committed to creating and maintaining a safe, welcoming and inclusive working, learning and research environment:
  - (a) that is free from any form of harassment and/or bullying; and
  - (b) in which the integrity, dignity and privacy of all employees is respected.
- 1.2 Employees ('complainant') who have been or are being subjected to harassment and/or bullying in the workplace have the right to refer a dispute in terms of this policy. If harassment and/or bullying is found to have taken place, appropriate action will be taken by UCT in accordance with this policy (namely, either the mediation policy or the applicable disciplinary policy).
- 1.3 The purpose of this policy is to give practical guidance to all employees on the types of conduct which constitute harassment and/or bullying, to ensure that adequate measures are readily available to deal with any form of harassment and/or bullying and to prevent its recurrence.
- 1.4 For purposes of clarity, sexual and racial harassment are covered under the sexual harassment, racism and racial harassment policies respectively.

## 2. Application of policy

- 2.1 This policy applies to all employees of UCT and extends beyond working hours and primary places of work.
- 2.2 While UCT has no jurisdiction over third parties who are not employees, UCT intends that this and related policies will be upheld and respected by all who work **at or** visit UCT or who partake in UCT activities at any premises regardless of its locations, irrespective of working hours. This includes academic visitors and visiting researchers, tutors/teaching assistants, contractors, suppliers and their staff, or members of the public. This list is not exhaustive. Human Resources will keep a record of all complaints and reported violations it receives, and this information will be produced to the appropriate procurement office so that it can be taken into account in terms of its impact on service level agreements or contracts with such third parties.
- 2.3 All members of the University community have a personal responsibility to comply with this policy and procedure and demonstrate active commitment to it by:
  - 2.3.1 treating others with dignity and respect.

- 2.3.2 discouraging any form of discrimination, harassment and/or bullying by challenging inappropriate behaviour making it clear that such behaviour is unacceptable (and raising concerns with managers where appropriate so that these can be dealt with).
- 2.3.3 supporting any member of the University who feels they have been subject to discrimination and/or harassment or bullying including supporting them to make a formal complaint if appropriate.
- 2.3.4 managers have a particular responsibility for setting standards and ensuring appropriate workplace behaviours are demonstrated and maintained. They should set a good example and ensure concerns raised are acted upon timeously.
- 2.3.5 any person against whom a complaint has been made has the right to know the nature and sufficient details of the complaint in order to respond. It is important that no decision is taken until the complaint has been investigated and the person against whom the complaint has been made has had an opportunity to respond.
- 2.3.6 In order to safeguard individuals, confidentiality must be strictly respected and information limited to those who have a need to know (and only to the extent necessary) for the purposes of the operation of these procedures and for the maintenance of good order at the University. The University reserves the right to seek advice from or involve appropriate external authorities if it believes that it is under an obligation to do so. Any breach of confidentiality may result in disciplinary action being instigated.

### 3. DEFINITIONS OF TERMS

- 3.1 In this policy, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and equivalent expressions bear corresponding meanings:
  - 3.1.1 “**Employee**” means anyone regardless of remuneration, who works for UCT excluding independent contractors.
  - 3.1.2 “**Complainant**” means anyone who works at or visits UCT or who partakes in UCT activities at any of its locations, irrespective of working hours. This includes academic visitors, visiting researchers, tutors/teacher assistants, contractors, suppliers and their staff, or members of the public.

#### 4. What constitutes harassment and/or bullying?

- 4.1 Harassment and/or bullying comprises persistent unwelcome conduct which is hostile or offensive to a reasonable person and induces a fear of harm, demeans, humiliates or creates a hostile or intimidating environment. It is conduct which can be direct or indirect, which may be calculated to induce submission by actual or threatened adverse consequences and includes both physical and psychological risks and abuse.
- 4.2 The intention of the alleged bully/harasser (**'perpetrator'**) is irrelevant when determining if bullying and/or harassment has occurred. While bullying and/or harassment can occur unintentionally, where actions are not intended to victimise, it can have the effect of being humiliating, undermining or threatening to a colleague.
- 4.3 Examples of unacceptable behaviour (in no order of severity or importance) are as follows:
- 4.3.1 Persecution in any form whatsoever, threats or the instilling of fear;
  - 4.3.2 Behaviour or language that frightens, humiliates, belittles or degrades, including criticism that is delivered with yelling or screaming;
  - 4.3.3 Unfair treatment and intimidation as retribution for rejecting overtures;
  - 4.3.4 Unreasonable work expectation;
  - 4.3.5 Rumourmongering or badmouthing an employee and/or that employee's family;
  - 4.3.6 Sabotaging or impeding the performance of work;
  - 4.3.7 The use of social media or social platforms to intimidate, humiliate, harass or otherwise impair an employee's dignity; inappropriate comments about an employee's appearance, sexuality, gender, lifestyle, race, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language, or any other arbitrary grounds; teasing or making someone the centre of pranks or practical jokes;
  - 4.3.8 Interfering with an employee's personal property or work equipment;
  - 4.3.9 Harmful or offensive initiation practices;
  - 4.3.10 Denying access to resources or workplace benefits and entitlements unreasonably;
  - 4.3.11 Changing work arrangements, such as rosters and leave arrangements to inconvenience a particular employee or employees;

4.3.12 Unreasonably Isolating a particular employee or employees from normal work activities;  
or

4.3.13 Unreasonably withholding information that is necessary for effective work performance  
and/or the resolution of disputes.

4.4 The above examples do not represent a full list of examples of unacceptable behaviour. UCT reserves the right, in its discretion, to treat any conduct it deems unacceptable in accordance with this policy.

## 5. **Eliminating, preventing and reporting harassment and/or bullying**

5.1 Each employee should commit themselves to upholding the UCT Statement of Values and to reflect these values in their institutional and personal relationships in alignment with this policy.

5.2 Every employee has the right (whether as a complainant or observer) to report behaviour which contravenes this policy to their line manager or an appropriate member of management. UCT will not tolerate reprisal against an employee who, in good faith, reports or provides information in terms of this policy. Any such reprisal will constitute a violation of this policy for which UCT may invoke its disciplinary policy.

5.3 Any allegations of bullying should be reported to the line manager, an appropriate member of management, or Human Resources (HR) within a reasonable period.

5.4 UCT will endeavour to address the allegations of bullying within fourteen (14) days of receipt of the complaint.

5.5 All allegations of harassment and/or bullying will be dealt with expeditiously, sensitively, confidentiality and with the seriousness which allegations of this nature deserves.

5.6 UCT recognises that harassment and/or bullying is a sensitive issue and that a complainant may in certain circumstances, feel unable to approach the perpetrator or follow a formal process to address the matter. In this regard, UCT reserves the right to assess the risk of not following a formal procedure and could decide to do so irrespective of the wishes of the complainant (in which case the complainant will be informed of this decision) – where a perpetrator could be subjected to progressive discipline in terms of the relevant disciplinary policy, for example. Matters of this nature will be handled with due sensitivity and care.

## 6. Procedure

### 6.1 Informal procedure:

- 6.1.1 The purpose of this step is for the complainant, if they so desire, to attempt to discuss the complaint with the perpetrator on an informal basis.
- 6.1.2 The complainant may elect to approach the perpetrator to explain to them that their conduct is not welcome, that the conduct is offensive or that it makes the complainant uncomfortable and interferes with their work.
- 6.1.3 The complainant may choose to make this approach to the perpetrator either on their own or with the line manager or (it is recommended) with the assistance of a human resources practitioner, trade union representative or colleague of choice.
- 6.1.4 The complainant may, in their sole discretion, choose to skip this step altogether.

### 6.2 Formal procedure:

#### 6.2.1 Formal Procedure: Step one

- 6.2.1.1 The complainant shall report the alleged bullying and/or harassment ('**complaint**') to the line manager. If the alleged bullying and/or harassment has been perpetrated by the line manager, the complainant shall report the complaint to the relevant human resources practitioner ('**recipient**', as the case may be).
- 6.2.1.2 The recipient shall inform the complainant of the next steps, as set out below. The recipient shall inform the HR client services manager, as well as the HR employee relations manager, of the complaint as soon as possible.
- 6.2.1.3 HR client service manager should request both the complainant and the alleged perpetrator to provide a statement relating to the alleged incident not later than seven (7) days of receipt of the complaint.

#### 6.2.2 Formal procedure: Step two

- 6.2.2.1 The relevant HR client services manager tasked with assessing the complaint will determine whether the matter should be referred to mediation or to an internal investigation which could result in disciplinary action. The assessment will be based on the statements provided by both the complainant and the accused employee.
- 6.2.2.2 The HR client services manager will endeavour to communicate their recommendation to the recipient and complainant, not later than fourteen days from the date of receipt of the complaint

following which, relevant steps will be taken to either initiate the mediation process or the investigation process.

6.2.2.3 In the event of the HR client services manager being unable to determine the process to follow, for any reason whatsoever, an advisory panel will be constituted by the Executive Director: Human Resources (or nominee) to make a recommendation in this regard.

### 6.2.3 **Formal procedure: Step three**

6.2.3.1 The final step will be for either the mediation or the investigation process to take place. Both of the aforesaid processes are guided by the UCT terms of the Mediation and/or Disciplinary Policy.

6.2.3.2 The outcome of either of the above processes will signify the end of the matter in terms of UCT processes.

6.2.3.3 In the event the complainant is not satisfied with the outcome of mediation or disciplinary process, the complainant may if so wishes refer the matter to the CCMA in terms of the dispute resolution mechanism provided for under the Labour Relations Act.

## 7. **Advisory panel**

7.1 Following on from step two above, an advisory panel may be constituted in order to assist the relevant HR client services manager to determine the process which will be followed, i.e. whether to proceed to mediation or to commence with an investigation which could result in disciplinary action.

7.2 The advisory panel will be convened only as determined by the Executive Director: Human Resources (or nominee), at his/her discretion.

7.3 The composition of the advisory panel is in the discretion of Executive Director: Human Resources (or nominee) and may comprise representative from Employee Relations, Legal or Law faculty.

7.4 The decision of the advisory panel shall be treated as a recommendation to the Executive Director: Human Resources (or nominee) which decision will be communicated to the relevant HR client services manager for action.

## 8. Further assistance – counselling support

- 8.1 Consideration should be given to whether or not counselling support is recommended at any stage of the process.
- 8.2 Should this be found to be necessary, the complainant will be given access to counselling support in line with UCTs staff wellness programme.
- 8.3 The staff wellness department should follow up with the complainant to determine if the wellness programme has assisted the complainant.

## 9. Communication and awareness

- 9.1.1 This policy will be duly communicated in such form as deemed appropriate by UCT. In this regard the policy shall be:
  - 9.1.2 Included in the induction process for all new employees;
  - 9.1.3 Available on the UCT website; and
  - 9.1.4 Shared with representative trade unions.

## 10. Review of this policy

- 10.1 To evaluate its effectiveness and/or to take cognisance of changes to legislation, UCT reserves the right to amend this policy from time to time.

## 11. What does not constitute workplace harassment and/or bullying?

- 11.1 Line managers have the right, and are obliged, to manage their staff. This includes directing the way in which work is performed, undertaking performance reviews and providing feedback (even if negative) and disciplining and counselling staff. These activities would not typically constitute harassment and/or bullying.
- 11.2 Examples of acceptable management practices include:
  - 11.2.1 setting and managing reasonable performance goals, standards and deadlines in consultation with employees and after considering their respective skills and experience;
  - 11.2.2 allocating work fairly;
  - 11.2.3 fairly rostering and allocating working hours;
  - 11.2.4 transferring employees for legitimate and explained operational reasons;

- 11.2.5 selecting employees for promotion, following a fair and due process;
- 11.2.6 informing employees about unsatisfactory work performance in a constructive way;
- 11.2.7 informing employees about inappropriate behaviour in an objective and confidential way;
- 11.2.8 implementing organisational changes or restructuring, following a fair and due process; or
- 11.2.9 disciplinary action, following a fair and due process.

## 12. **Breach of policy / rules**

- 12.1 Any transgression of this policy will constitute misconduct (in some instances gross misconduct) and will be subject to disciplinary action, including the possibility of dismissal in appropriate circumstances.
- 12.2 If it is found that through a formal investigation that an employee makes a false complaint, or frivolous or vexatious claims of bullying (e.g. making up a complaint to get someone else into trouble or making a complaint where there is no foundation for the complaint), that employee may be disciplined. Employees who are falsely accused of harassment and/or bullying will be protected and formal steps may be taken against the perpetrator of baseless allegations of this nature.

## 11. **Criminal and civil litigation**

- 11.1 A victim of harassment has the right to pursue separate criminal and/or civil charges against an alleged perpetrator, and the legal rights of the victim are in no way limited by reason of the provisions of this policy and procedure. Such referral will be at the cost of the complainant.

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1.

# UCT Policy Addressing Bullying

## 1. Preamble

1. The University of Cape Town (UCT) is committed to creating, promoting, and maintaining a safe, welcoming and inclusive working, learning and research environment that is free from any form of harassment or bullying that respects the integrity, dignity and privacy of all employees and student.
2. Any employee (“complainant”) who believes that he or she has been or is being subjected to harassment or bullying by any person employed by or under the jurisdiction of UCT has the right to submit a complaint in terms of this policy.
3. There may be circumstances in which members of the university seek advice from or the assistance of the Ombud in addressing instances of alleged bullying, whilst preserving their anonymity. If members of the university approach the Ombud, they should be aware that any subsequent intervention by the Ombud may not lead to disciplinary action.

## 2. Purpose of the policy

1. The purpose of this policy is to give practical guidance to all employees on the types of conduct which constitute harassment or bullying, to ensure that adequate measures are readily available to redress any form of harassment or bullying and to prevent its recurrence.
2. This policy does not cover cases of sexual harassment and racial harassment as these falls under the sexual misconduct and racism policies.

## 3. Application of the policy

1. This policy applies to all employees of UCT irrespective of the level of employment and authority and extends beyond working hours and primary places of work.
2. While UCT has no jurisdiction over third parties who are not employees, UCT intends that this and related policies will be upheld and respected by all who work at or visit UCT or who take part in UCT activities at any premises regardless of location, and irrespective of working hours. This includes academic visitors and visiting researchers, tutors/teaching assistants, contractors, suppliers and their staff, and members of the public. This list is not exhaustive. Human Resources will keep a record of all complaints and reported violations it receives, and this information will be communicated to the appropriate procurement office so it can be taken into account in terms of its impact on service level agreements or contracts with such third parties. Students may also lodge complaints against staff. such complaints must be submitted via the Office for Inclusivity and Change (OIC) which shall provide appropriate assistance to the complaining student.

3. All members of the university community have a personal responsibility to comply with this policy and its related procedures and demonstrate active commitment to it by:
  1. treating others with dignity and respect
  2. discouraging any form of harassment and/or bullying by challenging inappropriate behaviour, making it clear that such behaviour is unacceptable (and raising concerns with managers where appropriate so that these can be dealt with)
  3. supporting any member of the university who feels they have been subjected to harassment or bullying, including supporting them in making a formal complaint if appropriate.
4. Managers have a particular responsibility for setting standards and ensuring that appropriate workplace behaviours are demonstrated and maintained. They should set a good example and ensure concerns raised are acted upon timeously.
5. The respondent must be made aware of the nature and details of the complaint in order to respond. It is important to note that no decision will be taken against the respondent until the complaint has been investigated and the respondent has been afforded an opportunity to respond to the allegations.
6. In order to safeguard individuals, confidentiality must be strictly respected, and information limited to those who have a need to know (and only to the extent necessary) for the purposes of the operation of these procedures and for the maintenance of good order at the university. The university reserves the right to seek advice from or involve appropriate external authorities if it believes it is under an obligation to do so. Any breach of confidentiality may result in disciplinary action.

#### **4. Definition of terms**

1. In this policy, unless the context indicates a contrary intention, the following words and expressions bear the following corresponding meanings:
  1. "Complainant" include any person who works at, studies, visits UCT or participates in UCT activities at any of its locations, irrespective of working hours. This includes academic visitors, visiting researchers, tutors/teacher assistants, contractors, suppliers and their staff, and members of the public.
  2. "Confidentiality" means any information disclosed by either party to another party, either directly or indirectly, in writing or verbally, which is designated as 'Confidential'. The information disclosed is securely stored with only an approved list of persons having access to this information. The University can only be responsible for keeping information private and confidential which is within its control.
  3. "Day" means any day other than a Saturday, Sunday, or public holiday, and when any particular number of days is prescribed for the doing of any act, the number of days must be calculated by excluding the first day and including the last day.

4. "Employee" means any person, regardless of remuneration or level of authority or responsibility, who works for UCT excluding independent contractors.
5. "Respondent" means any person against whom a complaint has been lodged in terms of this policy.

**5. What constitutes harassment and/or bullying**

1. Harassment or bullying is conduct that is persistent or isolated, hostile or offensive to a reasonable person, and induces fear of harm, demeans humiliates or creates a hostile or intimidating environment. Such conduct can be direct or indirect, physical or psychological and can be committed by a single individual or a group.
2. The intention of the alleged bully/harasser ("Respondent) is irrelevant when determining if bullying and/or harassment has occurred.
3. Examples of unacceptable behaviour (in no order of severity or importance) are as follows:
  1. Persecution in any form whatsoever, threats or the instilling of fear.
  2. Behaviour or language that frightens, humiliates, belittles or degrades, including criticism that is delivered with yelling or screaming.
  3. Unfair treatment and intimidation as retribution for rejection.
  4. Unreasonable work expectations.
  5. Rumour mongering or bad-mouthing an employee and/or that employee's family.
  6. Sabotaging or impeding an employee in the performance of their work.
  7. The display of material or the use of social media or social platforms to intimidate, humiliate, harass or otherwise impair an employee's dignity; inappropriate comments about an employee's appearance, sexuality, gender, lifestyle, race, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, beliefs, political opinion, culture, language, or any other arbitrary grounds; teasing or making someone the target of pranks or practical jokes.
  8. Interfering with an employee's personal property or work equipment.
  9. Harmful or offensive initiation practices.
  10. Unreasonably denying access to resources or workplace benefits and entitlements.
  11. Arbitrarily changing work arrangements, such as rosters and leave arrangements, that has the effect of inconveniencing a particular employee or group of employees.
  12. Unreasonably isolating a particular employee or employees from normal work activities.
  13. Unreasonably withholding information that is necessary for effective work performance and/or the resolution of disputes.

Note: The above examples do not represent a full or closed list of examples of unacceptable behaviour.

**6. What does not constitute workplace harassment and/or bullying?**

1. Line managers have the right, and are obliged, to manage their staff. This includes directing the way in which work is performed, undertaking performance reviews, and providing feedback (even if negative), and disciplining and counselling staff. These activities would not constitute harassment and/or bullying.
2. Examples of acceptable management practices include:
  1. Setting and managing reasonable performance goals, standards and deadlines in consultation with employees and after considering their respective skills and experience.
  2. Allocating work fairly.
  3. Fairly rostering and allocating working hours.
  4. Transferring employees for legitimate and explained operational reasons.
  5. Selecting employees for promotion, following a fair and due process.
  6. Informing employees about unsatisfactory work performance in a constructive way.
  7. Informing employees about inappropriate behaviour in an objective and confidential way.
  8. Implementing organisational changes or restructuring, following a fair and due process.
  9. Disciplinary action, following a fair and due process.

**7. Eliminating, preventing and reporting harassment and/or bullying**

1. All employees should commit themselves to upholding the UCT Statement of Values and to reflecting these values in their institutional and personal relationships in alignment with this policy.
2. Every employee has the right (whether as a complainant or observer) to report behaviour which contravenes this policy to their line manager or an appropriate member of management. Reprisal by the line manager or any employee against an employee who, in good faith, reports or provides information in terms of this policy will constitute a violation of this policy and may result in disciplinary action in terms of UCT's disciplinary policy.
3. Any allegations of bullying and/or harassment should be reported to the line manager or human resources business partner ("HRBP") responsible for the area in which the complainant is employed/situated. Where a complaint is against the highest executive authority, i.e. the Vice-Chancellor, then it should be reported to the Chair of Council who is the line manager in this instance, or nominee, to be addressed in terms of clause 8 of this policy.
4. All allegations of harassment and/or bullying will be dealt with expeditiously, sensitively, confidentially and with the seriousness which allegations of this nature deserve.

**8. Procedures**

1. Informal procedure

1. The purpose of this step is for the complainant, if they so desire, to attempt to discuss the complaint with the respondent on an informal basis within five (5) days of the incident occurring.
  2. The complainant may elect to approach the respondent to explain to them that their conduct is not welcome, that the conduct is offensive or that it makes the complainant uncomfortable and interferes with their work.
  3. The complainant may elect to follow this approach against the respondent either on their own or with the line manager or with the assistance of a human resources business partner, trade union representative or colleague of choice.
  4. The complainant may also elect to approach the Office of the Ombud for advice. The Office of the Ombud will provide guidance in respect of the various approaches the complainant may take in addressing the complaint.
  5. Failure by the complainant to comply with the required timelines to report the complaint will not prejudice the process of addressing the complaint by UCT. However, once a complaint has been initiated, then the complainant should comply with the timelines in order to avoid undue prejudice to the respondent.
2. Formal procedure
1. Formal procedure: Step one
    1. The complainant should report the alleged bullying and/or harassment ("complaint") to the line manager. If the alleged bullying and/or harassment has been perpetrated by the line manager, the complainant should report the complaint to the HRBP responsible for the area in which the complainant is employed/situated within five (5) days of the incident occurring or at the end of the informal process should the complainant elect to follow the informal process.
    2. The line manager/HRBP will then inform the complainant of the next steps, as set out below. The line manager/HRBP must inform the Employee Relations Manager, of the complaint as soon as possible.
    3. The complainant and the respondent will be required to provide a statement relating to the incident within five (5) days of receipt of the complaint. Should the complainant fail and/or refuse to provide a written statement, this may have an impact on the complaint not proceeding due to lack of evidence. If the respondent fails and/or refuses to provide a written statement, the evidence will be assessed without the version of the respondent on record. Each case will be determined on its own merits.
  2. Formal procedure: Step two
    1. The relevant HR personnel tasked with assessing the complaint will determine whether the matter should be referred to mediation or to an internal investigation which

could result in disciplinary action. The assessment will be based on the statements provided by both the complainant and the respondent.

2. The recommendation will be communicated to the respondent and complainant within 7 days from the date of receipt of the complaint, following which relevant steps will be taken to either initiate the mediation process or the investigation process.
  3. In the event that a process to follow has not been determined for any reason whatsoever, an advisory panel will be constituted to make a recommendation in this regard. If the complaint has been lodged against the ED:HR, the advisory panel will be constituted by the line manager of the ED: HR.
3. Formal procedure: Step three
1. The final step will be for either the mediation or the investigation process undertaken in terms of UCT's mediation and disciplinary policy.
  2. The outcome of either of the above processes will signify the end of the matter in terms of UCT processes.
  3. In the event that the complainant is not satisfied with the outcome of the mediation or disciplinary process, the complainant may, if they so wish, refer the matter to the Commission for Conciliation, Mediation and Arbitration (CCMA) in terms of the dispute resolution mechanism provided for under the Labour Relations Act and/or Employment Equity Act for further intervention.

## 9. Advisory panel

1.

1. An advisory panel may be constituted in order to assist the relevant HR personnel to determine the process which will be followed, i.e. whether to proceed to mediation or to commence with an investigation which could result in disciplinary action.
2. The advisory panel will be convened by the Executive Director: Human Resources (ED:HR) (or nominee). If the complaint is against the ED:HR or the Vice-Chancellor, then advisory panel will be constituted by the relevant line manager.
3. The composition of the advisory panel will comprise representatives from the following:
  1. a member of the academic staff with a qualification in law, nominated by the ED: HR (or nominee) or Chair of Council (or nominee).
  2. a member of the PASS staff with a qualification in law, nominated by the ED: HR (or nominee) or Chair of Council (or nominee).
  3. a representative from HR in the employee relations department nominated by the ED: HR (or nominee) or Chair of Council (or nominee).

4. The decision of the advisory panel will be treated as a recommendation to the ED: HR (or nominee), which decision will be communicated to the HRBP responsible for the department/faculty which the complainant is employed/situated for action.

#### **10. Further assistance – counselling support**

1. Counselling support will be offered at any stage of the process to all parties.
2. The parties will be given access to counselling support in line with UCT HR's Employee Health and Wellness Programme.
3. The health and wellness office should follow up with the parties to determine if the wellness programme has assisted the complainant.

#### **11. Communication and awareness**

1. This policy will be duly communicated as follows:
  1. training and awareness sessions will be provided to all employees and union representatives.
  2. included in the induction process for all new employees.
  3. available on the UCT website
  4. shared with representative trade unions.
  5. shared with all suppliers/contractors of the university.

#### **12. Review of this Policy**

1. To evaluate its effectiveness and/or to take cognisance of changes to legislation, UCT reserves the right to amend this policy every three years.

#### **13. Breach of policy/rules**

1. Any transgression of this policy will constitute misconduct (in some instances gross misconduct) and will be subject to disciplinary action, including the possibility of dismissal in appropriate circumstances.
2. If it is found through a formal investigation that an employee has made a false complaint, or frivolous or vexatious claims of bullying (e.g., making up a false complaint or making a complaint where there is no foundation for the complaint), that employee may be disciplined. Employees who are falsely accused of harassment and/or bullying will be protected, and formal steps will be taken against the complainant of baseless allegations of this nature.

#### **14. Criminal and civil litigation**

1. A victim of harassment has the right to pursue separate criminal and/or civil charges against a respondent, and the legal rights of all parties are in no way limited by reason of the provisions of this policy and procedure. Such referral will be at the cost of the complainant.