THE GOVERNING COUNCIL, ON 13 FEBRUARY 2014, HAS APPROVED THE UNIVERSITY OF BARCELONA’S PROTOCOL FOR PREVENTION, DETECTION AND ACTION AGAINST SEXUAL HARASSMENT AND HARASSMENT BASED ON GENDER OR SEXUAL ORIENTATION
The University of Barcelona’s Protocol for Prevention, Detection and Action against Sexual Harassment and Harassment Based on Gender or Sexual Orientation

BACKGROUND

Prior to the development of this protocol, several of the University of Barcelona’s faculties had approved their own protocols on sexual harassment. The following protocols are in effect at the University: a) the Protocol for Prevention, Detection and Action against Sexual Harassment, approved by the board of the Faculty of Economics and Business on 4 November 2011; b) the Protocol of the Faculty of Law of the University of Barcelona for Prevention, Detection and Action against Sexual Harassment and Harassment Based on Gender or Sexual Orientation, approved by the board of the Faculty of Law on 16 November 2011; c) the Protocol of the Faculty of Fine Arts of the University of Barcelona for Prevention, Detection and Action against Sexual Harassment and Harassment Based on Gender, Sexual Orientation or Gender Identity, approved on 26 February 2012; and d) the Protocol for Prevention, Detection and Action against Sexual Harassment, approved by the board of the Faculty of Biology on 21 March 2013.

This protocol includes much of the content of these protocols and is intended to serve for the entire University.

I. EXPLANATORY STATEMENT AND JUSTIFICATION OF THE PROTOCOL

The Declaration on the Elimination of Violence against Women, adopted by the United Nations to complement the Convention on the Elimination of All Forms of Discrimination against Women, affirmed (for the first time with universal scope) that all forms of gender-based violence constitute flagrant violations of fundamental rights, and urged states to apply all necessary measures to eradicate violence against women.

Regulations governing fundamental rights at the international level, and in Spain and Catalonia, prohibit conduct that is contrary to the dignity of the individual and affirm the right to equality and non-discrimination based on sex. Specifically, the Spanish Constitution obliges public authorities to pursue more than mere formal equality, promoting conditions which ensure that equality is real and effective (Articles 14 and 9[2]).

Organic Law 1/2004 of 28 December, on comprehensive protection measures against gender-based violence, was the first legislation to provide for a comprehensive system for protecting individuals from gender-based violence. The Law implemented a broad range of legislative measures and included actions related to awareness-raising, prevention and detection in educational settings, intended to prevent and eradicate gender-based violence.
As regards sexual harassment, Organic Law 3/2007 of 22 March on effective equality between men and women stipulates that public institutions must promote working conditions that prevent sexual and gender-based harassment and establish specific procedures to prevent harassment and deal with any allegations or complaints made by individuals who may have been victims of such conduct (Article 48[1] and the Sixth Final Provision of the said Organic Law).

One of the primary objectives of Catalan universities is to convey the civic and social values of a democratic society (Article 3 of the Law on Catalan Universities), and they must offer society a model of real, effective respect for fundamental rights. Universities must anticipate and eradicate sexual or gender-based harassment in order to progress towards the full participation of members of the university community in academic activity and ensure respectful and harmonious relations between all members of that community.

Universities must protect the rights of people involved in situations of harassment, including the right to the free development of one’s personality, the right to physical and moral integrity, the right to non-discrimination based on gender or any other personal or social circumstance, and the right to privacy and honour, all of which are governed by international law, the Spanish Constitution, the Statute of Autonomy of Catalonia, and the Statute of the University of Barcelona (see Annex 1).

In its statute, the University of Barcelona undertakes to ensure “respect for the dignity of individuals in the performance of their activities” and to defend their safety and integrity in the exercise of these tasks (Article 4[2]). The University of Barcelona also seeks to ensure that all members of the university community respect and internalize the UB’s values; namely, “freedom, democracy, justice, equality and solidarity” (Article 4[1]).

This protocol on prevention, detection and action against sexual harassment is intended to further advance the University’s commitment to eradicating gender-based violence in the university setting. Such conduct will not be tolerated or regarded as justifiable in any circumstances.

The University of Barcelona therefore undertakes to act decisively to protect individuals affected by sexual harassment, prevent such conduct, and ensure that there are institutional channels for lodging complaints and responding to incidents. The UB offers the university community a procedure for taking action should any situation involving the kind of harassment defined in this protocol be detected.

One of the main aims of this protocol is to prevent harassment and provide support and counselling for victims. It is intended to ensure rigorous and confidential attention for affected individuals, and to offer them responsive, effective mechanisms for resolving any issues that arise and obtaining support.

It is also essential that the University of Barcelona seek to prevent this form of violence through its educational activity and by carrying out awareness-raising actions that focus on the value of equality and the need to combat the sexist behaviours and social stereotypes that lead to inequality between women and men, as provided in Article 25 of Organic Law 3/2007 of 22 March on effective equality between men and women, and Article 17 of Law 5/2008 of April 24 on the right of women to eradicate gender-based violence.

This protocol should serve to prevent, identify and respond to conduct that constitutes sexual harassment or harassment based on gender or sexual orientation, and to clarify models for action and the responsibilities of the individuals and/or bodies involved when such situations are detected at the University of Barcelona.

II. AIMS OF THE PROTOCOL

The aims of the protocol are:

— to inform, educate and sensitize all members of the University of Barcelona about sexual harassment and harassment based on gender or sexual orientation, and to provide guidelines for identifying and preventing such conduct
— to establish a specific organizational structure and define flexible intervention and support procedures so that situations involving harassment can be dealt with and resolved as rapidly as possible, within the time limits established in this protocol

— to ensure the safety, integrity and dignity of affected individuals; to apply, at all times, the measures that are appropriate in each case to protect victims and end harassment; and, if necessary, to apply punitive measures

— to ensure that the confidentiality of affected individuals is maintained.

III. PRINCIPLES AND GUARANTEES RELATED TO THE PROCEDURE

The procedure must ensure that all the principles set out below are observed.

Respect and protection. Steps should be taken with the discretion required to protect the privacy and dignity of affected individuals. Actions and inquiries must be conducted in a manner that ensures the utmost respect for all persons involved.

Everyone involved in the procedure must be informed of the content of this protocol and consent to its application (see Annex 4).

Confidentiality. All queries or complaints related to possible incidents of harassment should be treated as strictly confidential.

The anonymity of affected individuals must be maintained. Anyone involved in the procedure described in the protocol - whether as an investigator, adviser or witness - is bound by a duty of secrecy to maintain the privacy of those involved. Anyone who submits a complaint, affected individuals, and those accused must also maintain the confidentiality of the case.

All information related to complaints of sexual harassment or harassment based on gender or sexual orientation is highly sensitive and must be handled in a way that protects the confidentiality and right to privacy of all individuals involved.

Documents related to the complaint or investigation may not be disseminated except where necessary to initiate a complaint or judicial or administrative proceedings. In any event, circulation of documents must be strictly restricted to these domains.

Diligence and promptness. Cases must be investigated and resolved in a professional and diligent manner and without undue delay. The procedure should be completed as quickly as possible while respecting the guarantees that apply. Information obtained in the course of this procedure must be incorporated in the record of the administrative inquiry undertaken or commissioned by the authority concerned.

In any event, the procedure described in this protocol must be completed within 60 teaching days, except when more time is required due to the complexity of a case.

Impartiality and the principle of audi alteram partem. The procedure must ensure that all individuals involved receive a fair hearing and are treated fairly. All persons involved must act in good faith in seeking the truth and clarifying the incident(s) that led to the complaint.

Protecting the dignity of affected individuals. The University of Barcelona must take appropriate steps to ensure the right to protection of dignity of affected persons, including both alleged victims and perpetrators of harassment.

Protection from reprisals. In accordance with the provisions of applicable regulations, the University of Barcelona will not countenance any reprisals against individuals who lodge complaints, witnesses, or anyone involved in investigations into sexual harassment or harassment based on gender or sexual orientation.
IV. INSTITUTIONAL COMMITMENT

The University of Barcelona regards sexual harassment and harassment based on gender or sexual orientation as improper conduct and undertakes:

— to formally declare and disseminate its rejection of sexual harassment and harassment based on gender or sexual orientation, whatever form it takes, and however it is expressed

— to promote a culture oriented towards preventing sexual harassment and harassment based on gender or sexual orientation through activities aimed at the entire university community that provide training and information and raise awareness of this issue

— in accordance with the provisions of this protocol, to report, investigate and, where appropriate, penalize any conduct that may constitute sexual harassment or harassment based on gender or sexual orientation

— to support and advise victims of sexual harassment or harassment based on gender or sexual orientation.

These commitments are public and are communicated to all members of the university community.

V. DEFINITION OF HARASSMENT AND SCOPE OF APPLICATION

V.1 Definition of harassment

Harassment is defined as unwanted verbal or physical conduct of a sexual nature that infringes on the dignity of another person and creates an intimidating, hostile, degrading, offensive or uncomfortable environment for them (Article 5 of Law 5/2008 of 24 April on the right of women to eradicate gender-based violence, approved by the Parliament of Catalonia).

In any social context, abuse can occur due to the physical or psychological power the perpetrator has over the person subjected to harassment. The perpetrator need not hold a higher position in a hierarchy. Therefore, such conduct can occur in any group within the university community (see Annex 2).

V.2 Scope of application

This protocol applies to any situation related to any activity that takes place in the university setting.

It applies to all members of the University of Barcelona; namely, all students, teaching and research staff (PDI), trainee research staff, and all administrative and service staff (PAS) (Article 7 of the Statute of the University of Barcelona). It also applies to anyone who carries out activities or provides services at the University of Barcelona, even if such activity is performed under the supervision of a third party.

When an individual employed by an external company is involved in a harassment incident, coordination mechanisms will be applied in accordance with the provisions of Article 24 of Law 31/1995 of 8 November on prevention of occupational risks, which is developed in Royal Decree 171/2004 of 30 January. There must therefore be reciprocal communication between the University of Barcelona and the external company concerning the incident so that each party may apply the procedure it has in place and take whatever preventive and corrective measures it deems appropriate.

Anyone who has a legal relationship with the University when they lodge a complaint will be protected by this protocol, even after that relationship has ended.
VI. LODGING OF COMPLAINTS AND INITIATION OF PROCEEDINGS

VI.1 Persons entitled to lodge a complaint

A complaint may be lodged by:

a) the affected person(s)

b) anyone with academic and/or administrative responsibilities at the University, including members of the UB’s representative bodies, union or staff representatives, and works councils

c) others who have direct or indirect knowledge of inappropriate conduct.

Complaints lodged by anyone other than the person directly affected must include the affected individual’s express consent to initiate proceedings under this protocol.

Only in cases that are especially serious or involve more than one victim will it be possible to proceed without the consent of those affected.

VI.2 Lodging a complaint

Complaints may be lodged with:

— the equality committee of any faculty
— the Equality Unit of the University of Barcelona.

If a complaint is lodged with any other university authority, that authority must refer the complaint to the equality committee of its faculty or the Equality Unit of the University of Barcelona.

Complaints may be made verbally or in writing. If a complaint is made verbally to the person responsible for the Equality Unit of the University of Barcelona or a member of the equality committee of a UB faculty, a written report must be drawn up and signed by those present (see the complaint form provided in Annex 4).

Whether a complaint is lodged verbally or in writing, the basic details must be recorded digitally in accordance with the provisions of the Data Protection Law.

VI.3 Initiation of proceedings

If a complaint is submitted to the equality committee of a faculty, the committee must inform the Equality Unit of the University of Barcelona of its content.

Depending on the seriousness of the incident(s) described in the complaint, it will be dealt with by the equality committee of the faculty or referred to the Equality Unit of the University of Barcelona.

Once a complaint has reached the Equality Unit (whether lodged directly or referred by the equality committee of a faculty or school), the person in charge of the Unit may, depending on its seriousness, deal with the complaint itself or refer it to the Committee against Gender-Based Violence.

Equality committees of faculties or schools and the person in charge of the Equality Unit must follow the procedure described in this protocol.

The handling of a complaint via this procedure shall in no case prevent the persons concerned from initiating administrative or judicial proceedings simultaneously or at a later time.

To initiate the procedure, the informed consent of the person who lodges the complaint must be obtained.
VII. THE COMMITTEE AGAINST GENDER-BASED VIOLENCE OF THE UNIVERSITY OF BARCELONA

The Committee against Gender-Based Violence of the University of Barcelona is composed of:

— the person in charge of the Equality Unit of the University of Barcelona (or his/her designated representative), who acts as the chair of the Committee

— a person designated by the equality committee of the faculty or school involved in the complaint or, alternatively, a specialist in equality and harassment from the Office of Health, Safety and Environmental Issues (OSSMA)

— a legal specialist designated by the General Secretary’s Office.

The Committee may add more members when necessary to deal with a particular case. New members must have some experience in equality issues and may be selected from among prevention representatives who serve on the Safety and Occupational Risks Committee.

At any stage in the procedure, the Committee may require the participation of one or more experts because of the nature of the issues involved.

VIII. CONDUCT OF THE PROCEDURE

VIII.1 Investigation of the facts

During the conduct of the procedure, the body responsible must request as much information as possible to make an initial assessment of the case.

Information must be gathered as quickly as possible while taking all possible steps to maintain confidentiality and ensure sensitivity and respect for the rights of those affected. The persons affected (the alleged perpetrator and the alleged victim or victims) and any witnesses or others connected to the case must be interviewed.

Throughout the procedure, which must respect the principle of audi alteram partem, those involved may be accompanied by individuals of their choice (including legal or union representatives) if they so request.

All members of the university community are obliged to cooperate with the Committee during the investigation process.

VIII.2 Burden of proof

Pursuant to Law 3/2007, in proceedings in which the allegations made by the complaining party relate to actions involving gender-based discrimination in the form of sexual or gender-based harassment, it is incumbent on the responding party to prove the absence of discrimination in his/her action and the proportionality of his/her acts.

It is incumbent on the complaining party to previously provide the necessary evidence of harassment to justify the reversal of the burden of proof.

VIII.3 Final report with recommendations

When an investigation has been completed, the body responsible must issue an assessment report indicating the conclusions reached and its recommendations, which must be approved by a majority of members (see Annex 3 for details of what the report should contain.) The report will be sent to the rector so that he/she may decide on the matter. When a complaint has been handled by the equality committee of a school or faculty, the report will be sent to the dean of that institution.
The report must be accompanied by all information concerning the steps taken and must propose one of the following courses of action:

a) Close the complaint. A proposal to close the case that led to the complaint must be justified on one of the following grounds:

- Withdrawal of the complaint by the person who made it. (In any event, the investigation of the complaint must continue if evidence of harassment is detected.)
- Devoid of subject-matter or clear lack of sufficient evidence.

b) If analysis of the case leads to the conclusion that a non-criminal offence has been committed (i.e. an offence other than sexual or gender-based harassment) according to current legislation, the report must propose the initiation of the appropriate disciplinary proceedings.

c) Initiation of disciplinary proceedings and remedial action. If the report clearly indicates that sexual or gender-based harassment has occurred, the issuing body must propose the initiation of disciplinary proceedings and appropriate steps to remedy the situation.

The parties involved must be informed of the decision taken.

IX. PRECAUTIONARY MEASURES

Once the procedure has been initiated (when a complaint is lodged), if the circumstances so warrant, and considering the seriousness of the harm that may be caused to the victim and the need to protect his/her rights, the body responsible shall propose to the rector that precautionary measures be taken.

Without prejudice to administrative provisions concerning sanctions, the rector or dean, acting within his/her competence, may implement appropriate measures to ensure that the harassment ceases, that the conduct is not repeated, and that the rights of the parties involved are protected.

Such measures may include transferring the victim to another unit, service, department or group.

Precautionary measures, which shall in no way prejudice the outcome of the procedure, must be justified as a means of ensuring that the parties involved are protected, and as an exercise in responsibility on the part of the institution where the incident was reported.

X. DISSEMINATION AND ASSESSMENT OF THE PROTOCOL AND MEASURES TO PREVENT SEXUAL HARASSMENT AND HARASSMENT BASED ON GENDER OR SEXUAL ORIENTATION

X.1 Dissemination of the protocol

Members of the UB community must be informed of the existence of this protocol and of its content. The protocol must be disseminated by means of documents that provide information and publicize the protocol and its main features, and through information sessions and specific campaigns aimed at explaining its content. The protocol must also be featured prominently on the websites of the University, the Equality Unit, and all UB faculties.

The protocol, and the need for strict compliance, must be communicated to collaborating companies, suppliers, and companies or organizations where students undertake work placements.
X.2 Assessment and revision of the protocol

Following its approval, the protocol may be modified to improve its effectiveness. If necessary, it will also be amended to adapt it to the regulations and policies of the University of Barcelona.

Each year, the Equality Unit of the University of Barcelona will submit a report on the activity carried out to the rector (ensuring that the confidentiality of affected persons is maintained in all cases).

X.3 Prevention policies

The University of Barcelona, acting through its Equality Unit, may design and apply strategies as required to inform, educate and train students and teaching, research, administrative and service staff in the prevention, detection and reporting of violence against women, sexual harassment, and harassment based on gender or sexual orientation (as defined in section V.1).

The University of Barcelona must also carry out monitoring and assessment activities to prevent harassment and influence the attitudes and behaviours of members of the university community. Specifically, the University must take the following steps:

a) Produce and disseminate a guide to university resources aimed at combating gender-based violence, including tools oriented towards prevention and early detection of any situation involving discrimination or gender-based violence.

b) Carry out information campaigns aimed at PDI, PAS and students.

c) Include specific content aimed at preventing harassment in training plans for PDI and PAS.

d) Carry out a study, at least once every three years, of a representative sample of the various groups that make up the university community.

The Equality Unit of the University of Barcelona, the Student Support Service, and the Office of Health, Safety and Environmental Issues (OSSMA) must work together to carry out this study, which will focus on investigating i) perceptions and knowledge of the conduct that constitutes sexual or gender-based harassment in the university setting, and ii) any training and preventive measures that have been implemented. The anonymity of replies to surveys, questionnaires or interviews must be ensured.

The results of this study will be regarded as indicators for two purposes:

— to assess the need to intensify, quantitatively and/or qualitatively, the application of preventive measures

— to obtain reference statistical data that can be used to analyse changes in the effectiveness of the training and preventive measures implemented over time.

e) Within one year, the University must engage specialists on gender-based violence who have been trained specifically for this role. These specialists will be responsible for promoting and carrying out the preventive and training actions described in this protocol, advising and supporting the committees of faculties and schools when they require assistance, and dealing with and resolving serious complaints.
In the latter task, they will perform the functions assigned to the Committee against Gender-Based Violence in this protocol.

XI. RECOGNITION OF STAFF INVOLVEMENT

Provided teaching needs are covered, the University of Barcelona will recognize and facilitate, through the mechanisms available, the involvement of PDI and PAS in the measures and activities referred to in this protocol.

XII. TEMPORARY MEASURES

Under this protocol, the equality committees of faculties and schools and the Equality Unit of the University of Barcelona are responsible for taking action in response to incidents that may involve harassment. However, this system will be regarded as temporary, to remain in effect while, for economic reasons, the University of Barcelona is unable to hire specialists in this area.

XIII. REVIEW AND ASSESSMENT OF THE PROTOCOL

Following its approval, the protocol may be amended if necessary to adapt it to the regulations and policies of the University of Barcelona.
Annex 1. Applicable regulations

1. International and European regulations and declarations

   • Universal Declaration of Human Rights, United Nations General Assembly, resolution 217 A (III) of 10 December 1948
   • Declaration on the Elimination of Discrimination against Women, United Nations General Assembly, resolution 2263 (XXII) of 7 November 1967
   • Declaration on the Elimination of Discrimination against Women, United Nations General Assembly, resolution 48/104 of 20 December 1993
   • C111 - Discrimination (Employment and Occupation) Convention, 1958
   • Discrimination (Employment and Occupation) Recommendation, 1958 (No. 111)
   • Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11 May 2011
   • European framework agreement on harassment and violence at work of 26 April 2007, COM(2007) 686 final

2. Regulations of Spain, Catalonia and the University of Barcelona

   • Spanish Constitution (Articles 14, 15, 18 and 35)
   • Organic Law 6/2006 of 19 July on the reform of the Statute of Autonomy of Catalonia (Articles 4, 19 and 41)
   • Organic Law 3/2007 of 22 March on effective equality between women and men (Articles 7, 8, 48 and 62)
   • Organic Law 10/1995 of 23 November on the Penal Code (Article 184)
   • Law 7/2007 of 12 April on basic regulations relating to public servants (Articles 14, 93-98)
   • Law 5/2008 of 24 April on the right of women to eradicate gender-based violence (Article 5)
   • Law 31/1995 of 8 November on prevention of occupational risks (Articles 4, 14, 15)
   • Royal Legislative Decree 1/1995 of 24 March, approving the consolidated text of the Law on the Workers’ Statute (Articles 4, 54 and 95)
   • Royal Legislative Decree 5/2000 of 4 August, approving the consolidated text of the Law on infringements and penalties in the social order (Article 8)
   • Law 29/1998 of 13 July, governing administrative courts (Article 19[1])
   • Royal Legislative Decree 1/1995 of 24 March, approving the consolidated text of the Law on the Workers’ Statute (Articles 4, 17, 54-56, 58, 60, 93-96)
• Law 36/2011 of 10 October, governing labour courts (Articles 3-4, 95-96, 151-152, 177-184)
• Law 14/1986 of 25 April, General Health (Article 18[9])
• Decree 246/2003 of 8 October, approving the Statute of the University of Barcelona (Articles 3, 4 and 7)
• Decree of 8 September 1954, regulating the system of academic discipline
• Royal Decree 898/1985 of 30 April on the system governing university teaching staff (Articles 15-19)
• Royal Decree 33/1986 of 10 January, approving regulations governing the disciplinary regime for public officials in the state administration

Annex 2. Examples of harassment

The following behaviours are considered harassment:

— making sexual advances or sexist remarks that are demeaning or obscene, or remarks related to someone’s sexual orientation
— pressuring someone to arrange a date or sexual encounter inside or outside the university environment
— writing letters, notes, emails or any kind of text message that includes sexual content or is offensive
— cornering someone or deliberately seeking to be alone with them when there is no need, thus creating an intimidating or uncomfortable environment
— requesting sexual favours
— deliberately making unwanted physical contact with another person (pinching, touching, kissing, giving unwanted massages)
— intentionally touching the sexual parts of another person’s body
— forcing sexual relations under pressure or through coercion.

Annex 3. Basic elements of reports

Reports on conclusions must include, at minimum, the following information:

— a list of the members of the competent committees that issued the report and identification of the alleged victim and perpetrator of the harassment, using the corresponding numerical code
— background to the case, complaint and circumstances
— steps that have been taken by the competent committees
— other steps taken: witnesses, evidence, summary of key facts, etc.
— conclusions reached and concrete measures proposed
— stipulation of a date, in the short or medium term, to oversee and review the implementation of measures and ensure the absence of sexual harassment or harassment based on gender or sexual orientation.
Annex 4. Complaint form

PERSONAL DETAILS

NAME:

SURNAME(S):

ID/PASSPORT NO.: NIUB:

EMAIL: CONTACT PHONE:

USUAL ADDRESS (for notification purposes):

Teaching and research staff (PDI) ☑ Administrative and service staff (PAS) ☑

(Indicate the name of the faculty, department or service where you work)

Department, unit or service (PDI, PAS)

Workplace address:

Indicate the program name

Trainee researcher:

Bachelor’s degree:

Master’s degree:

DESCRIPTION OF WHAT HAPPENED TO THE REPORTING PERSON (Any evidence must be noted):

NAMES & POSITIONS OF THOSE INVOLVED:

PLACE WHERE THE INCIDENT(S) OCCURRED:

DATE OR ACADEMIC YEAR WHEN THE INCIDENT(S) OCCURRED (subject and program in the case of students):

PERSONAL IMPACT / REPRISALS

Work-related impacts

Academic impacts

Personal impacts
City and date:

Signed:

The body receiving this report has been informed of the incident(s) described and has signed and stamped a copy of this letter as proof of receipt.

City and date:

Signed:

Send the form to the equality committee of the appropriate school, to the UB’s Equality Unit (Baldiri Reixac, 2, 08028 Barcelona), or send it by email (igualtat@ub.edu) by clicking on SEND.