

*Protocol of the framework
for action on the prevention
and penalisation of sexual
and gender-based harassment*

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Introduction/

The right to equality, non-discrimination, the safeguarding of dignity and the right to moral integrity, privacy and the free development of personality are rights essential to a Social and Democratic State governed by the Rule of Law, and as such, they are included in and guaranteed by the Spanish Constitution in keeping with European Union regulations and the Law for the achievement of effective equality between men and women.

The University of Vigo is a public institution, and as laid down by its Statutes, its function is to serve society, for the main purpose of providing adequate training to facilitate the acquisition of knowledge by the student body, conveying knowledge and values to society, as well as promoting cultural, scientific and technological development. To carry out this mission, the University must be a place of study and work that is respectful of the dignity of human beings – a place where discriminatory behaviour of any kind for any reason or under any personal or social circumstances is inadmissible.

Precisely one of the behaviours that infringes most on human dignity is sexual and gender-based harassment, which sometimes occurs at the workplace and, in general, in any context involving human relations, and therefore in the university community as well.

For this reason, our University has made a commitment to eradicate and prevent situations that constitute sexual or gender-based harassment occurring in the university environment in order to guarantee the fundamental rights of all persons who make up the university community. In addition to causing distress to harassment victims themselves, it also affects other students who are part of their environment and is detrimental to the image of the university. In this context and in compliance with the current regulations on fundamental rights, the University of Vigo will attempt to consolidate an environment that

is respectful of the human dignity of all persons comprising the university community, and in this environment no type of sexual or gender-based reaction shall be tolerated.

For this purpose and by means of this Protocol, the University of Vigo has taken a step forward to combat these behaviours by establishing a series of measures whose goal is to prevent these situations through information campaigns promoting awareness raising, education and assessment on sexual and gender-based harassment. However, the success of this Protocol clearly depends on the involvement of the collective consciousness and the commitment of the entire university community and each individual member to eradicate this type of behaviour, as far as possible.

However, the content of this Protocol is not restricted to the provision of prevention measures. Rather, it further establishes an additional procedure to process and resolve the complaints and grievances reported by the victims. Thus, it is considered advisable to offer a solution to these types of violent and discriminatory behaviours within the university with the application of due process and taking into account community, constitutional and internal regulations related to the rights of all persons involved.

Despite the current regulations on the rehabilitation of all behaviours that infringe on the human dignity and physical and mental integrity of any person, at the present time, gender based issues are still the cause of a large number of discrimination incidents in general and in the university environment as well. For this reason, all institutions, including the universities, must form a united front and become engaged in the prevention of these behaviours and take appropriate action, by implementing all the necessary measures to eradicate said behaviour, in order to guarantee the rights described above.

It is precisely this commitment to the protection of the rights of all persons belonging to the university community and zero tolerance of any type of violence in this environment, which has led the University of Vigo to approve this Protocol.

This Protocol complies with the action “To draw up and approve, with top priority, a protocol of the framework for action on the prevention and penalisation of sexual and gender-based harassment with the powers assigned to the Equality Unit”. Operative objective 5 of Axis 4 “Social relations and work conditions in an environment based on gender equality” of Plan I of the University of Vigo to promote equality between men and women (2012-2014) passed in the government council session on November 12, 2012.

1. Declaration of principles relating to sexual and gender-based harassment/

The University of Vigo is committed to abiding by the following principles relating to sexual and gender-based harassment:

1. All persons have the right to carry out their activities with full respect for their human dignity, privacy and physical and moral integrity.
2. The University of Vigo considers sexual and gender-based harassment as a manifestation of discrimination that is intolerable in the university environment.
3. The University of Vigo shall ensure that the university environment is kept free of sexual and gender-based harassment.
4. In its capacity as a public Administration, the University of Vigo shall try to foresee any kind of behaviour of sexual and gender-based harassment, guaranteeing the provision of effective protection against such misconduct to the entire university community.
5. The University of Vigo is committed to providing the necessary human and material resources to prevent and eradicate, where appropriate, these types of misconducts and their consequences.
6. The University of Vigo aims to achieve an environment free of sexual and gender-based harassment by adopting the necessary measures (actions to provide information, education, organisation and assessment) in order to prevent situations of sexual and gender-based harassment.

7. This Protocol presents a procedure that shall be applied with caution and confidentiality to prevent, take action and, where appropriate, penalise sexual and gender-based harassment, safeguarding the rights of the persons involved.

8. Any person who considers him or herself to be a victim of sexual or gender-based misconduct has the right to file a grievance that shall be clarified by a body of this University through the procedure established in this Protocol.

9. The actions provided for in this Protocol do not affect the possibility of adopting other judicial actions the victim may exercise.

2. Regulatory framework/

The basic regulations for reference on this matter are as follows:

- _ Directive 2006/54/EEC, dated 5 July 2006, of the European Parliament and Council regarding the application of the principle of equal opportunity and treatment between men and women in employment.
- _ Organic Law 3/2007, of 22 March for effective equality between men and women (hereinafter referred to as LOI).
- _ The Spanish Constitution of 1978.
- _ Basic Statute on Public Employment, law 7/2007, of 12 April 2007.
- _ Organic Law 4/2007, of 12 April, which modifies Organic Law 6/2001, of 21 December, of Universities.
- _ Royal Legislative Decree 1/1995, of 24 March, through which the text consolidated in the Law of the Statute of Workers was passed.
- _ Law 7/2004, of 16 July, of Galicia for equality between men and women.
- _ Statutes of the University of Vigo, passed by Decree 7/2010, of 14 January.
- _ First Plan for equality between men and women of the University of Vigo (2012-14).
- _ Strategic Plan of the University of Vigo (2008-12).
- _ Protocol of action against sexual and gender-based harassment within the General Administration of the State and in its associated Public Agencies.

3. Protocol/

Chapter I: General Topics.

Chapter II: Prevention of situations of sexual and gender-based harassment.

Chapter III: Competent bodies.

Chapter IV: Procedures.

Chapter I: General Topics

Article 1. Protocol objectives

The objectives of this Protocol are as follows:

1. To prevent situations of sexual and gender-based harassment that may occur in the environment of the University of Vigo in accordance with the terms defined in the LOI.
2. To provide information promoting awareness-raising, education and assessment to the entire university community on matters related to sexual and gender-based harassment.
3. To adopt the necessary measures to resolve situations of sexual and gender-based harassment.

The rights of all the parties involved must be respected, safeguarding the physical and moral integrity, of the complainant, and the presumption of innocence of the accused and the preservation of human dignity and privacy of both throughout the procedure started for the investigation and, where necessary, appropriate measures must be taken according to each specific case.

Art. 2. Scope of Application

This Protocol is subject to application when the subjective, objective and spatial requirements established in the following articles are fulfilled.

Art. 3. The subjective scope

This Protocol shall be applicable to the following persons:

1. Faculty and research staff of the University of Vigo.

2. Administrative and Service staff of the University of Vigo.
3. The student body of the University of Vigo and other persons who carry out studies, regardless of their nature, at the University of Vigo.
4. Other personnel related to the University of Vigo regardless of the type or legal nature of their relation to the University.
5. Personnel having outside contracts or subcontracts with the University of Vigo and free-lance workers. Alleged situations of sexual or gender-based harassment will not be applicable under this Protocol when both the person accused of harassment and the victim belong to the groups described in this item.
6. Any person having an administrative or private contract formalised with the University of Vigo except when the alleged situation of sexual or gender-based harassment takes place between two persons who are affiliated with the University under this type of contract.
7. Any person, as established in the foregoing paragraphs, who undergoes a situation of sexual or gender-based harassment is protected under this Protocol, even though his or her direct or indirect link with the University of Vigo has ended provided that the person has filed within two months from the date of the termination of labour relations.

Art. 4. Objective scope

Notwithstanding the provisions of art. 184 of the Penal Code¹, this Protocol shall apply to those behaviours considered to be sexual or gender-based harassment pursuant to art. 7 of the LOI.

¹ “1. Persons soliciting sexual favors for themselves or for a third party in a work-related context, teaching situation or rendering of services on a continuous or habitual basis and who, with such behavior, would cause the victim to experience an objective situation that is seriously intimidating, hostile or humiliating, shall be punished as perpetrators of sexual harassment, with a sentence of three to five months in prison or a or a fine charged over a period of six to ten months.

It is specifically understood that “sexual harassment refers to any type of behaviour -verbal or physical- of a sexual nature whose purpose or effect is to infringe upon a person’s dignity, particularly when an intimidating, degrading or offensive environment is created”.

It is understood that “gender-based harassment refers to any type of behaviour carried out in relation to a person’s gender whose purpose or effect is to infringe upon a person’s dignity, particularly when an intimidating, degrading or offensive environment is created”.

In addition, gender-based discriminatory behaviours defined in the following terms in articles 8 and 9 of the above-mentioned LOI shall also be applicable:

“Any type of unfavourable treatment to women related to pregnancy and maternity shall be considered an act of gender-based direct discrimination”.

“Moreover, any type of adverse treatment or negative effect that is caused to a person as a consequence of said person filing a complaint, grievance, report, accusation or appeal of any kind, aimed at preventing discrimination and demanding the effective compliance with the principle of equality between men and women shall be considered an act of gender-based direct discrimination”.

2. If the person found guilty of sexual harassment committed the offence taking advantage of a situation of superiority in terms of labour, teaching or hierarchical relations, or having expressly or tacitly announced his or her intention to do the victim harm as regards his or her legitimate expectations in the environment of said relation, said person shall be punished with a sentence of five to seven months in prison or a or a fine charged over a period of 10 to 14 months.

3. In cases where the victim is especially vulnerable, on account of age, illness or situation, punishment shall be a prison sentence of five to seven months or a or a fine charged over a period of 10 to 14 months for the alleged cases established in section 1, and a prison sentence of six months to one year for the alleged cases established in section 2 of this article”.

Art. 5. Spatial scope

This Protocol shall only be applicable when the misconducts listed in art. 4 take place in:

1. Any building located on any of the three campuses of the University of Vigo.
2. Centres based at the University of Vigo.
3. Any University of Vigo research centre located off-campus.
4. Public and private institutions where the students carry out practical work organized by the University of Vigo.
5. Any other location outside the grounds of the University of Vigo provided that the presence of university community members in said location is due to an activity organised and authorised by the University of Vigo.

Art. 6. Provision of mandatory information and Protocol compliance

1. In order to make the necessary information and knowledge of this Protocol available to all persons, companies and institutions included within its scope of application, the University of Vigo agrees to provide its widespread dissemination, highlighting the need for strict compliance.
2. Included in the schedules of the specific administrative clauses or specifications as a condition for the execution of the contract, is a clause regarding compliance by tenders of the provisions in this Protocol. Moreover, in the list of penalties, a clause written as follows shall be included: "Failure to comply with the obligations established in this Protocol of the framework for action on the prevention and penalisation of sexual and gender-based harassment of the University of Vigo shall be considered a serious offence".

Chapter II: Prevention of situations of sexual and gender-based harassment

Art. 7. Prevention of situations of sexual and gender-based harassment

The University of Vigo agrees to adopt measures to prevent situations of sexual and gender-based harassment in the university environment. In order to do so, the following activities, among others, shall be carried out: campaigns to raise awareness and provide education on this issue, in addition to courses to learn how to prevent such situations and how to act should they occur.

Chapter III: Competent bodies

Art. 8. Commission to combat sexual and gender-based harassment of the University of Vigo (CAS)

The application of this Protocol comes under the jurisdiction of the Commission to combat sexual and gender-based harassment of the University of Vigo (hereinafter referred to as CAS).

Art. 9. Makeup of the CAS

The CAS shall be comprised of:

1. The Director of the Equality Unit of the University of Vigo, who will preside over the Commission.
2. A Representative of the Chancellor.
3. A representative of Faculty and Research Staff (PDI).
4. A representative of Administrative and Service Personnel (PAS).

5. A student representative.

6. A representative of the Management who will act as secretary.

The CAS may be assisted by a specialist who will be designated by the CAS chairperson as he or she deems necessary upon the consensus of the CAS.

The appointment of the de PDI, PAS and student representatives to the CAS shall be decided by the Government Council upon the proposal of the Equality Commission of the University of Vigo. Their mandate shall last a maximum of three years with the possibility of only one renewal.

The CAS makeup must include an equal number of men and women, pursuant to current regulations.

Art. 10. Training of CAS members

The Equality Unit of the University of Vigo shall be responsible for providing each CAS member with the necessary training on sexual and gender-based harassment so that they will be able to duly carry out the functions entrusted to them under this Protocol. Said training shall focus on matters of equality between men and women, sexual and gender-based harassment, helping victims and the development of communication skills on the contents of this Protocol.

Art. 11. CAS Action

For the CAS to have a valid quorum, a minimum attendance of 4 members is required, with the mandatory presence of the chairperson and secretary.

For the resolutions to be validly adopted, at least 4 of the members must vote in favor. In the event of a tie, voting will be repeated and the chairperson will have the casting vote.

Delegating of votes, early voting and abstention are not allowed.

However, the CAS cannot include persons having the exceptional circumstances of abstention or objection as established in articles 28 and 29 of Law 30/1992, of 26 November, of the Judicial System of the Public Administration and Common Administrative Procedure.

Art. 12. CAS functions

The following are CAS functions:

1. Inform the competent body on the adoption of appropriate preventive measures to avoid possible situations of sexual or gender-based harassment that may occur in the university environment.
2. Analyse the complaints of possible situations of sexual and gender-based harassment that may be filed with said commission and decide whether or not to open the formal investigation procedure outlined in this protocol.
3. Process the complaint cases that have been accepted and write up a report on the reported grievance.
4. Make a request to the Chancellor's office to implement measures deemed necessary to protect the victim during the processing of the procedure as stipulated in this Protocol.
5. Monitor the application of this Protocol to ensure its correct functioning and effectiveness and, if necessary, make a proposal for modification to the Government Council.
6. Draw up a yearly report on the application of this Protocol to be presented to the Government Council.

Chapter IV: Procedure

Art. 13. Procedure Principles and guarantees

During the processing of the procedure outlined in this Protocol, the following principles and guarantees must be respected:

1. The dignity and privacy of the persons involved, as well as equal treatment must be guaranteed. All actions shall be carried out with respect for both complainant and accused.
2. All verbal or written information submitted during the procedure shall be treated with due reservation. And, in particular, the appropriate steps shall be taken to preserve the identity of the persons who are the alleged victim and harasser.
3. All persons involved in the procedure are sworn to secrecy regarding all the information collected on the case and the actions taken.
4. The procedure shall be processed promptly, avoiding undue delays, from start to finish, so that it may be resolved in the shortest possible time frame.
5. During the procedure the persons involved in the situation of grievance shall be guaranteed the right to an interview where they will be able to make all the allegations as they see fit to defend their position.
6. The application of this Protocol shall not prevent the use of any judicial actions established by law.
7. The necessary steps will be taken to avoid any kind of retaliation against the persons who file a complaint to report a situation of sexual or gender-based harassment or who appear as witnesses at the procedure established by this Protocol.

Art. 14. Filing a complaint

1. Any person included within this Protocol's scope of application who considers him or herself to be a victim of sexual or gender-based harassment, may file a grievance with the chair of the CAS.
2. A complaint may also be filed by a third party who is aware of the situation of harassment, including heads of centres or departments and workers' or students' representatives. In these cases the CAS chair will forward a copy of the complaint to the alleged victim so that he or she may ratify it, if appropriate.
3. The complaint, which in all cases must include the identification of the complainant, may be presented either in writing or verbally.

Written complaints must be presented at the registries of the University of Vigo by any of the means established in Law 30/1992, of 26 November, of the Judicial System of the Public Administration and Common Administrative Procedure.

For the purposes of ensuring the right to privacy of the persons affected, the form shown here as annex I to this Protocol along with the details of the events reported with the identification of the accused must be submitted in a sealed envelope accompanied by a request form as per the model shown in annex II addressed to the CAS chair.

If the complaint is filed verbally at the Equality Unit, a document will be drawn up and it must be signed by the complainant for the record.

4. The complaint must be presented within a period of 3 months from the date the incident took place. In cases of repeated acts of harassment over time, this period will be counted from the date the last harassment took place.

Art. 15. A person's duty to report harassment

1. Any member of the university community has the duty to report to their supervisors, heads of centres or departments or to the CAS chairperson any situation of possible sexual or gender-based harassment that they may be aware of.

2. All academic or administrative officers of the University of Vigo shall be obliged to forward immediately any verbal or written complaints that they may receive regarding any situation of possible sexual or gender-based harassment to the CAS.

Art. 16. Start of the procedure

Once the CAS has received the complaint, all of the Commission's members will be summoned to convene within a period of five working days from the date of the reception of said complaint or, if deemed appropriate, from the date the alleged victim ratified the complaint.

During this first meeting the CAS will analyse the events reported and thereafter shall agree as follows:

1. To dismiss and not proceed with the complaint in the following cases:
 - a. When it is clear that the events reported or the persons involved are not included within this Protocol's scope of application.
 - b. When the complaint was presented by a third party and the alleged victim does not ratify it.

c. When the complaint was filed after the period established in article 14.

The decision not to proceed with the grievance must be grounded on reason and the person who reported the incident, in the case of a third party, and the victim must be notified in writing.

2. To process the complaint and start the procedure established in the following articles.

The acceptance of the complaint for processing shall be done writing and all persons involved shall be notified. The Chancellor's Office will also be informed of the start of the procedure for their information.

Art. 17. Implementation of the procedure

1. Once the complaint has been accepted for processing, the CAS must designate one of its members as the case investigator, who will be in charge of the procedure in the terms expressed in this article. For these purposes, the investigator will be assisted by the CAS secretary.

2. Whoever is responsible for the investigation must collect all the information that he or she deems appropriate and include all the testimonial evidence and documents that he or she considers necessary to be able to clarify the events reported.

3. In any case, the person who is in charge of the investigation will grant an interview to each of the parties involved in the alleged act of harassment. The parties may appear at said interview accompanied by another member of the university community, having given previous notice to the investigator, and they will be able to make the allegations they deem appropriate.

4. If the investigator considers it necessary, he or she may ask the CAS to request the collaboration of the different University of Vigo services (Occupational Harzard Prevention Services, Psychopedagogy Unit, among others). As an exception, he or she may also request the intervention of a body outside the University.

5. All the actions aimed at clarifying the events must be carried out with due reservation, caution and with the utmost sensitivity and respect for the rights of the parties involved in said events.

6. The person in charge of the investigation will have 20 working days from the date the complaint was accepted to take all the actions as established under this provision.

7. After finishing the investigation, the person in charge will submit a detailed report to the CAS specifying the actions carried out and the results obtained.

Art. 18. Conclusion of the procedure

1. Within 5 working days from the date the report was submitted by the investigator referred to in the previous article, the CAS must come to an agreement with reasons regarding the situation reported in the complaint, which must then be forwarded to the Chancellor's Office by the Chairperson.

2. In this agreement the CAS may propose the following:

a. A proposal to close the case of the actions started as per the following:

i. When there is not sufficient evidence of the occurrence of the situation reported.

If the CAS considers that there is proof that a false report was made and presented in manifest bad faith by the complainant, the Commission may decide to propose that the Chancellor's Office initiate disciplinary proceedings against said complainant.

ii. When the situation is not included in the scope of application of this Protocol.

In this case, if the CAS finds evidence that the acts committed may constitute another type of offence, it may decide to request that the Chancellor's Office open a confidential inquiry.

b. A proposal to initiate disciplinary proceedings against the accused when the actions carried out show sufficient evidence that acts constituting sexual or gender-based harassment were committed.

c. When the alleged harasser is a person included in section 5 of article 3 of this Protocol, it will be proposed that the Chancellor's Office submit to the employer of said person the report drawn up by the CAS on the situation reported in the complaint for the appropriate measures to be taken.

3. This report will be sent to the Chancellor's Office and to the persons directly involved in this procedure.

Art. 19. Chancellor's Decision

1. Within 5 working days from the reception of the CAS report with reasons, the Chancellor shall issue a decision, thus terminating the procedure and said decision shall be notified to the parties involved.

2. Appeals may be made against the Chancellor's decision as laid down by the rules in force.

Art. 20. Protective measures for the victim

From the date the complaint was accepted for processing by the CAS, in extremely grave circumstances that may cause harm to the victim, after previous consultation with its members, the CAS may propose that the Chancellor's Office provide protection, depending on the case, that may consist of moving

the victim to a different administrative unit, service, department, shift, centre or campus, accordingly. In all cases, the victim must give his or her consent to be protected from harassment.

Art. 21. Obligations of Confidentiality

1. All information related to sexual and gender-based harassment grievances will be treated confidentially, respecting, in all cases, the right to privacy and dignity of the persons involved.

2. Any person involved in any of the actions outlined in this Protocol shall be bound by obligations of confidentiality.

Art. 22. Obligation to collaborate with the CAS

All persons, companies or institutions included within this Protocol's scope of application are bound to collaborate with the CAS in the investigation of situations of sexual and gender-based harassment.

Art. 23. Closure of the Case before the CAS

The start of a judicial procedure on the events filed in a complaint and presented to the CAS will determine the closure of the actions started pursuant to this Protocol.

Art. 24. Follow-up to the application of this Protocol

1. The CAS shall monitor the application of this Protocol in order to analyse its effectiveness in the prevention, detection and eradication of situations of sexual and gender-based harassment at the University of Vigo.

2. The CAS must draw up a yearly report on the application of this Protocol and present it to the Government Council. Moreover, said commission may propose to modify this Protocol, if it were to find any shortcomings therein when addressing situations of sexual and gender-based harassment.

Final provision

This protocol shall enter into effect the day after it has been passed by the Government Council of the University of Vigo.

ANNEX I

COMPLAINT FORM TO REPORT A POSSIBLE SITUATION OF SEXUAL OR GENDER-BASED HARASSMENT¹

Commission to combat sexual and gender-based harassment of the University of Vigo (CAS)
University de Vigo
36310 Vigo

I,, with Spanish Identification Card No. and address for notification purposes at
Tel. and e-mail address

Association with the University of Vigo (Administration and Services, Faculty and Research Staff, student ...):

In the capacity of:

Victim :

Witness: Academic or administrative officer:

Other:

In view of the events reported in the attached document REQUEST the initiation of the corresponding procedure, on the basis of the Protocol of the framework for action on the prevention an penalisation of sexual and gender-based harassment of the University of Vigo dated if there is evidence of an alleged case of sexual or gender-based harassment

In....., on....., 20...

¹This complaint form and the attached account of the events reported with the identification of the accused must be submitted in a sealed envelope.

ANNEX II

I,, with Taxpayer Identification No. and address for notification purposes at
Tel. and e-mail address

REQUEST:

The reception of this sealed envelope containing confidential information addressed to the CAS.

In....., on....., 20...

Signature
