

PROCEDURE FOR THE PREVENTION, DETECTION AND TREATMENT OF HARASSMENT SITUATIONS

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DECLARATION OF PRINCIPLES

The Catalan Institute of Nanoscience and Nanotechnology, ICN2, declares **RESPECT FOR PEOPLE** as a cornerstone that defines our culture, and an essential condition for individual and professional development within our institution.

This respect for people is most immediately reflected in the principles of “respect for the law” and “respect for human rights”, which must co-exist in relationships between people and in work relationships, with appropriate, respectful and decent behaviour being an essential requirement at our institution; behaviour that guarantees the employment rights of people, their personal privacy, equal opportunities and respect for cultural diversity.

Through this procedure, the ICN2 undertakes to establish a methodology to deal with potential situations of mobbing, sexual harassment and sexist harassment in the workplace. This methodology is applied to prevent, through training, responsibility and by providing information, and to resolve complaints and claims made by victims. It also includes the appropriate guarantees and takes into consideration European, regional and employment legislation concerning the right of employees to enjoy a working environment that is free of gender-based abuse.

SCOPE OF APPLICATION

ICN2 must guarantee the health and safety at work of all the people who work at the centre, and ensure the existence of working environments that are free of risks to physical and psychological wellbeing. Consequently, these procedures shall be applied to all people who work at the institute, the personnel of contractors or subcontractors and self-employed workers connected to the centre. ICN2 also assumes the obligation to inform external collaborators and suppliers about the policy of the institute in order to combat sexual and sexist harassment, and therefore about the existence of this protocol and mandatory compliance with the same.

REGULATORY REFERENCES

- **The Spanish Constitution, 1978.** This recognises the dignity of people and their inviolable rights as fundamental inherent rights, as well as the free expression of personality (Article 10.1), equality and non-discrimination based on gender in the broadest sense (article 14), the right to life and to physical and psychological wellbeing, and not to be subjected to degrading treatment (Article 15), the right to honour, personal and family privacy and own image (Article 18.1). Article 35.1 of the Constitution establishes the right to non-discrimination on the grounds of gender within the scope of workplace relations.
- **Directive 2006/54/EC** by the European Parliament and Council of 5th July 2006 concerning the application of the principle of equal opportunities between men and women in matters of employment and occupation defines sexist and sexual harassment and establishes that said situations shall be considered as discriminatory and, therefore, shall be prohibited and penalised appropriately, proportionally and as a deterrent.
- **Organic Law 3/2007**, of 22nd March, on the effective equality of men and women establishes in its Art. 7 that:
 1. *Without prejudice to the provisions of the Criminal Code, for the purposes of this Law any behaviour, whether verbal or physical, of a sexual nature that has the intention or produces the effect of attacking the dignity of a person, particularly when this creates an intimidating, degrading or offensive environment, constitutes sexual harassment.*
 2. *Any behaviour based on the gender of a person, that has the intention or produces the effect of attacking their dignity and of creating an intimidating, degrading or offensive environment, constitutes gender-based harassment.*
 3. *Sexual harassment and gender-based harassment shall, without exception, be considered as discriminatory.*
 4. *The conditioning of a right or of an expectation right to the acceptance of a situation that constitutes sexual harassment or gender-based harassment shall also be considered as an act of gender-based discrimination.*

In its Art. 48 it establishes that: *businesses must create working conditions that avoid sexual harassment and gender-based harassment and establish specific procedures for their prevention and channel any complaints or claims that might be made by those who have been subject to it, and must negotiate the actions to be taken with workers' representatives.*

- **The 5/2008 Act**, of 24th April, on the right of women to the eradication of gender-based abuse.
- **The Spanish Criminal Code.**
- **The consolidated text of the Workers' Statute Act.**
- **Resolution of 28th July 2011, by the State Department for Public Administration**, which approves and publishes the Resolution of 27th July 2011 of the General Negotiation Board of the Civil Service concerning the procedures for sexual harassment and gender-based harassment in the scope of the Civil Service and of public organisations connected to it.
- **The 8/1988 Act** of 27th April, on Social Order Offences and Penalties (LISOS).
- **The 31/1995 Act** of 8th November, on Health and Safety at Work.
- **Organic Law 15/1999**, of 13th December, on the Protection of Personal Data.

Guides and manuals:

- [NTP 507: Acoso sexual en el trabajo](#), of the Spanish Institute of Safety and Hygiene at Work (INSHT).
- [Guia per a l'eradicació de l'assetjament sexual, per raó de sexe i/o orientació sexual a la Generalitat de Catalunya.](#)
- [Guia per al tractament i la prevenció de l'assetjament psicològic a la Generalitat de Catalunya.](#)
- [Manual de referencia para la elaboración de procedimientos de actuación y prevención del acoso sexual y del acoso por razón de sexo en el trabajo.](#) Department for Health, Social Services and Equality.

DEFINITIONS

a) Mobbing¹:

This is understood as any abusive behaviour or psychological aggression that is carried out over an extended period of time against a person in the workplace, expressed through repeated behaviour, acts, orders or words whose purpose is to discredit, degrade or isolate a person in order to force them out of their job by causing progressive and continual harm to their dignity or psychological wellbeing. If the person who carries out this harassment holds a position of hierarchical authority over the victim within the company, this shall be considered an aggravating factor.

b) Sexual harassment²

Sexual harassment is considered a situation in which there is verbal, non-verbal or physical behaviour of a sexual nature the intention or effect of which is to attack the dignity of a person, particularly when it creates an intimidating, hostile, degrading, humiliating or offensive atmosphere.

c) Gender-based harassment³

This is a situation in which there is behaviour related to gender stereotypes and which, through its repetition or systemisation, attacks the dignity and physical or psychological wellbeing of a person, degrading the working conditions of the victim, and which can also endanger their jobs, especially when these actions are related to situations of maternity, paternity or the acceptance of other family care duties.

This behaviour can express itself in three ways:

- i. Downward, when the person who carries out the harassment occupies a more senior position than that of the alleged victim of the harassment.
- ii. Horizontally, when it takes place between people on the same hierarchical level, with the person who carries out the harassment usually seeking to hinder the work of the person suffering the harassment in order to damage their professional image and even to take credit for the other person's work.
- iii. Upward, when the person who carries out the harassment is someone who occupies a more junior position than that of the alleged victim.

¹ NTP 854, Spanish Institute of Safety and Hygiene at Work (INSHT)

² Art. 2.1-d of 54/2006 Directive of 5th July and Art. 7 of Organic Law 3/2007 of 21st March

³ Art. 43 of the 4/2005 Act of 18th February on Equality between Men and Women

All the people included within the scope of application of these procedures must respect the dignity of people and avoid any behaviour that constitutes mobbing, sexual harassment or sexist harassment. Any employee may submit a written or verbal report concerning sexual or sexist harassment in accordance with the procedure established below.

PROCEDURE

Principles of the procedure.

The procedure shall be governed by the following principles, which must be observed at all times:

- A guarantee of confidentiality and protection of the privacy and dignity of the people involved, guaranteeing the preservation of the identity and personal circumstances of the person making the complaint at all times.
- Priority and urgent processing.
- An exhaustive investigation of the facts, which is objective and impartial, and led by specialised professionals if necessary.
- A guarantee of action, by taking the necessary measures, including, as appropriate, those of a disciplinary nature against the person or persons whose harassment behaviour has been proven, and also in relation to any person who maliciously makes a false allegation or complaint.
- Protection against reprisals, guaranteeing that there shall be no adverse treatment or negative effects for a person as a consequence of said person making a complaint or statement of any kind in order to stop a harassment situation and to initiate this procedure, (without prejudice to any disciplinary measures that may be established for situations of proven false complaints).
- A guarantee that the victim of the harassment can continue in their job under the same conditions if they so wish.

Reporting a harassment situation.

Any person within the scope of application of this procedure who is considered a victim of mobbing or of sexual or sexist harassment, or any other person who is aware of harassment situations, must report this to the people appointed as **mediators** by using the procedure described below.

The procedure shall be initiated through the reporting of the mobbing, sexual or gender-based harassment situation, and may be carried out in the following ways:

1. Direct reporting by the affected person.
2. Reporting by any employee who suspects that there is a harassment situation.

This reporting shall be complemented, in all cases, by an essential report using a form established for this purpose and called a [Harassment report](#).

This document must be personally delivered to the *mediators*, either by e-mail to the e-mail address mediation@icn2.cat, which is exclusive for such reports. Only the *mediators* shall have access to this address.

All the staff of the centre shall be informed of the identity of the *mediators* and of how they can contact them.

At the time of drafting these procedures the people appointed as *mediators* at the institution are:

- **José Pérez** (Health & Safety Officer)
- **Rocío Pérez** (Head of Human Resources)

If either of these two people are replaced, the Human Resources Department must notify the workforce.

The mediators shall keep a register of communications received in a system designed for this purpose.

Once a communication is received and the form is recorded, the harassment procedure described below shall be implemented.

Instruction

The management of the procedure shall always be the responsibility of the people appointed as *mediators* at the institution, and they shall be responsible for initiating the procedure and ensuring that the guiding principles included in the procedure are respected throughout.

The people who participate in this process are subject to the obligation of professional secrecy concerning any information to which they have access during the processing of the procedure. A breach of this obligation may be subject to penalisation.

During the processing of the case, the parties involved may be assisted and accompanied by a person of trust, who must maintain confidentiality concerning any information to which they have access. This person of trust may be present at any of the taking of statements and at any of the communications that the instructing party makes to the persons involved.

Internal Procedure

a) Opening the file

An internal procedure, the purpose of which is to resolve the problem immediately through dialogue between the parties, shall begin automatically as soon as a harassment situation has been reported and formally communicated, unless the seriousness of the allegations makes an internal procedure inadvisable.

b) Development and conclusion

In this stage of the procedure, the *mediators* shall interview the parties in order to clarify the facts and reach a solution that is accepted by both parties. The *mediators* must record everything concerning the instruction, (interviews, documents provided by the parties, etc.) in the [Instruction Investigation](#) form.

Under no circumstances shall the internal procedure take more than 10 working days to resolve.

c) Resolution and closing the file

Following the result of the procedure, the *mediators* shall have the authority to:

- Close the internal procedure as a consequence of the resolution of the dispute, issuing a report that presents their conclusions and the commitments adopted by the parties.
- Begin an external procedure, if they consider that there is a harassment situation that has not been possible to resolve in the internal procedure.

The *mediators* of the procedure may recommend and apply urgent precautionary measures until the procedure has been resolved. Under no circumstances shall these measures represent a detriment to the working conditions of the persons involved.

External Procedure

a) Development

The external procedure shall begin with delegating the management of the dispute to external consultants with accredited experience in the resolution of disputes in organisations.

The institution shall follow the external recommendations with regard to taking actions that are considered necessary for the clarification of the reported acts.

In as short a time as possible, and under no circumstances exceeding a time limit of 30 calendar days, the external consultants must draft a report that contains a description of the reported acts, the concurrent circumstances, their seriousness, the repetition of the behaviour, the degree of impact on the employment obligations and working environment of the alleged victim, their decision on whether the reported acts have been committed or not, and their definition of these as harassment or not, as well as their proposal concerning penalties and/or actions to be taken as appropriate.

The report shall be sent to the *mediators* at the institution.

b) Resolution and closure of the procedure

If it is determined that there is harassment

The *mediators*, taking into consideration the report by the external consultancy, and within a time limit of 15 calendar days, shall assess the corrective or penalty measures suggested by the external consultants and shall apply those that they consider appropriate, bearing in mind the circumstances of the institution. This decision must be justified in all cases.

If it is determined that there is no harassment

If it is determined that there is no harassment in any of its forms, the complaint will be closed. If there is evidence of malicious intent by the person who made the complaint, the relevant disciplinary measures shall be applied.

In both cases

In any case, the *mediators* may contact the Human Resources Department concerning the application of alternative measures in the institution, such as the organisation of talks, etc. in order to raise awareness amongst the entire workforce in general and the parties in particular regarding the significance and the implications of harassment situations.

DISSEMINATION

It is necessary to guarantee awareness of this procedure among all staff. The distribution instruments shall be, among any others that are considered appropriate, to present the procedure in an internal event to all staff and to publish it on the centre's intranet. The dissemination document shall include the names of the mediators and the e-mail address for communications and to report harassment. Similarly, all the external collaborators of the institute must be made aware of and must respect the centre's policy on this issue.

ANNEXES

EXAMPLES OF HARASSMENT

a. *Types of sexual harassment*⁴:

Verbal conduct

- ⇒ Offensive sexual jokes and comments about the physical appearance or sexual orientation of a worker.
- ⇒ Obscene sexual comments.
- ⇒ Questions, descriptions or comments about sexual fantasies, preferences and skills/abilities.
- ⇒ Degrading or obscene ways of addressing people.
- ⇒ The spreading of rumours about people's sex lives.
- ⇒ Communications (telephone calls, e-mails, etc.) with a sexual content and of an offensive nature.
- ⇒ Behaviour that seeks to harass or humiliate a worker due to their sexual orientation.
- ⇒ Invitations or pressure to accept dates or sexual encounters.
- ⇒ Invitations, requests or demands for sexual favours when they are related, either directly or indirectly, to a worker's career, an improvement in working conditions or to job security.
- ⇒ Persistent invitations to participate in social or leisure activities, even though the person receiving them has made it clear that these are not welcome or are inappropriate.

Non-verbal conduct

- ⇒ The use of graphic images, sketches, photographs or drawings with a sexually explicit or suggestive content.
- ⇒ Obscene gestures, whistles, lewd or obscene looks.
- ⇒ Letters, notes or e-mails with an offensive sexual content.
- ⇒ Behaviour that seeks to harass or humiliate a worker due to their sexual orientation.

⁴ Reference manual for the drafting of action and preventive procedures concerning sexual harassment and gender-based harassment in the workplace, Department of Health, Social Services and Equality.

Physical behaviour

- ⇒ Deliberate, unrequested physical contact (pinches, touches, unwanted massages, etc.) or excessive or unnecessary physical closeness.
- ⇒ Cornering or deliberately seeking to be alone with a person unnecessarily.
- ⇒ Touching a person's sexual organs intentionally or "accidentally".

b. Type of gender-based harassment⁴

- ⇒ Use of discriminatory behaviour due to the fact of being a man or a woman.
- ⇒ Jokes and comments about people who assume tasks that have traditionally been performed by people of the other sex.
- ⇒ The use of degrading or offensive ways of addressing people of a certain gender.
- ⇒ The use of sexist humour.
- ⇒ Ridiculing and denigrating the abilities, skills and intellectual potential of women.
- ⇒ The above types of conduct with lesbian, gay, transsexual or bisexual people.
- ⇒ Denigrating the work of people unfairly and in a biased way, due to their gender or sexual orientation.
- ⇒ Assigning tasks or work that is below the professional ability or skills of a person.
- ⇒ Discriminatory treatment due to pregnancy or maternity.
- ⇒ Explicit or implicit types of conduct aimed at taking restrictive or limiting decisions concerning access to employment of a person or their continuance in a position, access to professional training, remunerations or any other matter related to working conditions.

c. Types of gender-based harassment due to pregnancy or maternity⁴

- ⇒ Assigning work with a responsibility that is below a person's ability or professional category.
- ⇒ Assigning meaningless tasks, or tasks that are impossible to achieve or have unreasonable deadlines.
- ⇒ Deliberately blocking access to the resources required to carry out work (information, documents, equipment, etc.).
- ⇒ Arbitrarily denying permits or licences that a person is entitled to.

d. Types of mobbing

- ⇒ Actions used to exclude or isolate a person from their professional activity.
- ⇒ Persistent, negative attacks in order to damage personal or professional performance.

- ⇒ Attacks on the social relationships of the victim through social isolation.
- ⇒ The manipulation of the personal or professional reputation of a person through rumours, slander, denigration or ridicule.
- ⇒ The abuse of power through the persistent denigration of a person's work, by setting objectives with unreasonable or unachievable deadlines, or the assignment of impossible tasks.

- ⇒ The inexplicable and unfounded denial of licences and training opportunities.

- ⇒ The gradual erosion of the exercise of the duties inherent to a person's job.
- ⇒ The attempt to harm a person by imposing administrative actions that represent personal exclusion or detriment.
- ⇒ Continuous criticism of a person's work.
- ⇒ Attacks on the attitudes, political and/or religious beliefs of the victim.