

# *The First International Standard on Violence and Harassment in the World of Work*

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## I. INTRODUCTION

In June 2019, the International Labour Organization (ILO) marked its 100th anniversary with the adoption of the first international standard that establishes the right of everyone to a world free from violence and harassment.<sup>1</sup> After a ten-year trade union campaign, significantly boosted by the #metoo global outcry against violence and harassment, ILO Convention No. 190 on Violence and Harassment and its accompanying Recommendation No. 206<sup>2</sup> were adopted with supporting votes by an overwhelming majority of the ILO's tripartite constituents.<sup>3</sup> The instruments<sup>4</sup> are built on a broad international consensus that violence and harassment in the world of work is a human rights issue affecting workplace relations, worker engagement, health, productivity, quality of public and private services, and enterprise reputation.<sup>5</sup>

For the first time, international labour standards define what constitutes violence and harassment in the workplace, and what preventative and protective measures governments and employers must undertake in collaboration with workers' organizations to address it. By providing for widest personal scope of application under international labour standards, the instruments offer protection to millions of workers, including those most marginalized and working in insecure, low-paid, unsafe

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<sup>1</sup> International Labour Organization, 'New International Labour Standard to Combat Violence, Harassment, at Work Agreed' (21 June 2019), [https://www.ilo.org/ilc/ILCSessions/108/media-centre/news/WCMS\\_711321/lang-en/index.htm](https://www.ilo.org/ilc/ILCSessions/108/media-centre/news/WCMS_711321/lang-en/index.htm) (accessed 15 April 2020).

<sup>2</sup> ILO Conventions create legal obligations upon ratification whereas their accompanying Recommendations provide further guidance on implementation without creating legal obligations. However, both instruments create reporting obligations for ILO member states. International Labour Organization Constitution, ILO Doc 15 UNTS 40 (adopted on 1 April 1919, entered into force on 28 June 1919), art 19.

<sup>3</sup> Of the 476 delegates given voting rights, 439 voted for the adoption of the standard, seven voted against, and 30 abstained. International Labour Organization, 'Final record vote on the adoption of the Convention concerning the elimination of violence and harassment in the world of work' (2019), [https://www.ilo.org/wcmsp5/groups/public/-ed\\_norm/-relconf/documents/meetingdocument/wcms\\_711349.pdf](https://www.ilo.org/wcmsp5/groups/public/-ed_norm/-relconf/documents/meetingdocument/wcms_711349.pdf) (accessed 15 April 2020).

<sup>4</sup> Description of the legal nature of ILO instruments. International Labour Organization, *Manual for Drafting ILO Instruments* (Geneva: ILO, 2006).

<sup>5</sup> International Labour Organization, *Meeting of Experts on Violence Against Women and Men in the World of Work* (Geneva: ILO, 2016).

jobs and in the informal economy. This article examines how the new instruments are addressing previous gaps in ILO standards with regard to violence and harassment in the world of work, highlighting their key features. Moreover, it outlines the distinct role and functions for governments, employers and workers and their respective organizations in combating violence and harassment, as well as the critical steps needed to make their objectives a reality in the world of work.

## II. VIOLENCE AND HARASSMENT IN THE WORKPLACE AND THE GENDER DIMENSION

Violence and harassment, with its varying forms of manifestations depending on the context, is pervasive throughout all countries, occupations and workplaces. Sexual violence and harassment are common for many workers, in particular women.<sup>6</sup> This was confirmed by the consultations of the United Nations (UN) Working Group on Business and Human Rights, within the context of its thematic project to unpack the gender dimension of the UN Guiding Principles on Business and Human Rights (UNGPs). The consultations revealed, for example, that demands for sexual favours in return for better work conditions were common, and that sexual violence by security guards in the extractive industry was an endemic problem.<sup>7</sup> Pregnancy and maternity/paternity and parental leave can also create the context for harassment. Requests for breastfeeding breaks and flexible work arrangements have led to humiliating treatment, emotional abuse, relocation of the place of employment and other pressures aimed at isolating workers and forcing them to resign.<sup>8</sup>

Lesbian, gay, bisexual, trans and intersex workers are often subject to a considerably greater incidence of violence and harassment in the workplace, as are other workers marginalized due to personal characteristics such as race or disability. Physical violence and harassment frequently occur in occupations where workers deal directly with the public, such as education, healthcare, social work, public administration, accommodation and food services. Bullying and harassment are the most widely reported forms of adverse conduct in the workplace across the European Union (EU).<sup>9</sup>

Until the adoption of Convention No. 190 and Recommendation No. 206, there were numerous gaps in international labour standards about workplace violence and harassment. Several standards referred to various forms of violence and harassment, but none specifically defined any of the conduct that might be classified as such, as violence and harassment were not the focus of any of the instruments. For example, ILO Convention No. 29 on Forced Labour defines forced or compulsory labour as 'all work or service which is exacted from any person under the menace of any penalty and for which

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<sup>6</sup> International Labour Organization, *Report V(1): Ending Violence and Harassment Against Women and Men in the World of Work* (Geneva: ILO, 2018).

<sup>7</sup> Human Rights Council, *Gender Dimensions of the Guiding Principles on Business and Human Rights*, A/HRC/41/43 (2019).

<sup>8</sup> ILO, *Women at Work Trends* (Geneva, Switzerland: ILO, 2016).

<sup>9</sup> European Foundation for the Improvement of Living and Working Conditions, *Sixth European Working Conditions Survey: Overview Report* (Luxembourg: Publications Office of the European Union, 2016) 68.

the said person has not offered himself voluntarily' [article 2(1)] but does not elaborate what forms a 'menace' can take.<sup>10</sup>

Previously, there was also an absence of guidance on how to address violence and harassment. For example, existing instruments relating to occupational health and safety refer to the broad objective of the protection of workers' safety and health, without mentioning or elaborating on violence and harassment explicitly as a health risk, requiring specific prevention and management measures.<sup>11</sup> Moreover, most workers around the world were excluded from the coverage of relevant instruments due to the limited scope of application to specific groups of people. For example, the only ILO instrument that explicitly referred to sexual harassment was limited to the protection of indigenous peoples [article 20(3) Indigenous and Tribal Peoples Convention, 1989 (No. 169)].<sup>12</sup>

The newly adopted instruments tackle these gaps by requiring governments to take measures to prevent and protect people from violence and harassment, and to provide enforcement mechanisms and remedies for victims, including compensation. A wide-ranging set of specific standards affirming the complexity of the issue as well as continuous changes in the world of work are featured.

### III. OVERVIEW OF THE KEY FEATURES OF THE NEW CONVENTION AND RECOMMENDATIONS

The new ILO Convention and Recommendation include a variety of elements designed to address the gaps and ambiguities in existing treaties meant to protect worker rights. These include:

- The definition of violence and harassment as a range of unacceptable behaviours and practices with a focus on the harm that may be caused, whether physical, psychological, sexual or economic [article 1(a), Convention No. 190]. This broad and pragmatic approach with regard to the definition ensures that very different forms and manifestations of violence and harassment, such as physical abuse, verbal abuse, bullying and mobbing, sexual harassment, threats and stalking, are all captured.
- A strong focus on inclusivity. The instruments extend protection to everyone, irrespective of contractual status, including interns, volunteers, job applicants and persons exercising the authority of an employer (article 2, Convention No. 190).

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<sup>10</sup> Another example includes art 3(a) and (c) of the Worst Forms of Child Labour Convention, 1999 (No. 182), which prohibits the physical, psychological and sexual abuse of children in armed conflict. ILO Convention on the Worst Forms of Child Labour, No. 182 (adopted 17 June 1999, entered into force 19 November 2000), art 3(a) and (c).

<sup>11</sup> ILO, 'Report V(1) Ending Violence and Harassment Against Women and Men in the World of Work', 33, presented at the International Labour Conference, 107th Session, organized by the International Labour Organization (2018), note 6.

<sup>12</sup> Other examples that call for comprehensive policies for workers in the informal economy, including with regard to gender-based violence. Transition from the Informal to the Formal Economy Recommendation, ILO Doc No. 204 (adopted 12 June 2015), para 11(f).

They apply to the public and private sectors, the formal and informal economy, and urban and rural areas. This broad definition of who should be considered as a worker is very important given that under the labour law regimes in many countries, the majority of workers facing rampant discrimination as well as violence and harassment, are excluded from the scope of protection. These categories of workers include domestic workers, agricultural workers (particularly migrant workers and women), temporary workers with insecure and precarious contracts, and workers in the informal economy.

- Expansion of the concept of world of work beyond a physical workplace (article 3, Convention No. 190). The instruments do not only cover situations at the immediate workplace but also those that are linked to arise out of work, such as work-related trips, travel or social activities, home and care work, and cyber-bullying.
- Recognition of the spillover impact of domestic violence into the workplace [article 10(f) Convention No. 190]. The Recommendation calls for several practical measures governments and employers should undertake, such as providing leave from work for victims or flexible work arrangements and awareness-raising (article 18, Recommendation No. 206).

The different and complementary roles and functions of governments, employers and workers and their respective organizations are clearly outlined [article 4(3), Convention No. 190], mirroring the approach of the UNGPs. Ratifying governments are obliged to adopt laws and regulations requiring employers to have workplace policies addressing violence and harassment, risk assessments, prevention measures, and training (article 9, Convention No. 190). These measures are expected to extend to third parties and to include complaint and investigation procedures with adequate protections for victims reporting abuse. Workers and their representatives need to be part of the design, implementation and monitoring of such a workplace policy. There are therefore clear parallels with the expectations set out under Pillar II of the UNGPs with regard to the corporate responsibility to respect human rights: a risk-based approach, focus on preventative measures, provision of remedy and the need for communication and engagement.

The instruments are therefore particularly suited to provide the necessary normative guidance for both governments and businesses in their respective roles when it comes to the violence and harassment in the business context. The UNGPs already include a reference to violence but only in the context of conflict. Principle 7 stipulates that States should provide adequate assistance to business enterprises operating in conflict affected areas ‘to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence’. However, there is no guidance on gender-based violence more broadly, and no reference to harassment, which is persistent in most countries.

In recognition of the fact that all workers may become subject to violence and harassment, the ILO instruments have a broad coverage. At the same time, throughout the texts of both instruments, there is explicit recognition and clear guidance when it comes to gender-based violence and harassment. For example, the instruments require an

inclusive, integrated and gender-responsive approach for the prevention and elimination of violence and harassment in the world of work [article 4(2) and effective access to gender-responsive, safe and effective complaint and dispute resolution mechanisms, support, services and remedies (article 10(e)).

The preamble acknowledges that gender-based violence and harassment disproportionately affect women and girls, and makes it clear that an inclusive, integrated and gender-responsive approach, which tackles underlying causes and risk factors, including gender stereotypes, multiple and intersecting forms of discrimination, and unequal gender-based power relations, is essential to ending violence and harassment in the world of work. The ILO's newly adopted instruments can therefore reinforce and complement the guidance provided by the UN Working Group when it comes to ensuring that adequate attention to the differentiated impacts of business-related human rights abuses on women is considered in the implementation of the UNGPs.<sup>13</sup>

This is also relevant when it comes to ensuring effective access to remedy. For example, the instruments require:

- Governments to ensure easy access to appropriate and effective remedies and safe, fair and effective reporting and dispute resolution mechanisms, and procedures in cases of violence and harassment in the world of work [article 2(4)(e), article 10 Convention No. 190, paragraph 14, Recommendation No. 206].
- Victims of gender-based violence and harassment should have effective access to gender-responsive, safe and effective complaint and dispute resolution mechanisms, support, services, and remedies [article 10(e), Convention No. 190].
- Remedies should leave the choice between the right to resign with compensation or reinstatement to the victim [article 14(a), Recommendation No. 206]. The ILO supervisory bodies considered that legislation under which the sole redress available to victims of sexual harassment is termination of the employment relationship, while retaining the right to compensation, does not afford sufficient protection for victims of sexual harassment, as it in fact punishes them and could dissuade victims from seeking redress.<sup>14</sup>
- Shifting of the burden of proof in proceedings other than criminal proceedings [paragraph 16(e), Recommendation No. 206]. Even when legislation on workplace violence and harassment does exist, its implementation is often hampered by an employee needing to meet a high burden of proof, which can be a serious obstacle for victims seeking remedies.<sup>15</sup> Reducing barriers to justice in civil cases and shifting the burden of proof in labour cases relating to discrimination, including harassment, is necessary in light of the unequal power relations that exist between the employer and employee.

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<sup>13</sup> HumanRights Council (2019), note 7.

<sup>14</sup> International Labour Organization, *Report III (Part IB): Giving Globalization a Human Face, General Survey on the Fundamental Conventions Concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalization* (Geneva: ILO, 2008).

<sup>15</sup> Sergio Gamonal and Jose Luis Ugarte, *General Report Theme II: Sexual and Moral Harassment in the Workplace* (Santiago de Chile: World Congress of Labour and Social Security Law, 2012).

#### IV. CONCLUSION AND WAY FORWARD

The newly adopted ILO standards undoubtedly have the potential of not only closing longstanding gaps in the labour standards, but also for integrating a gender perspective in the implementation of the UNGPs. They send a clear signal from the international community, acknowledging the pervasiveness and unacceptability of violence and harassment and at the same time outlining the lines of responsibility for governments and businesses as well as the rights for all workers.

Several companies have already started to put the processes in place in order to combat gender-based violence and harassment throughout their operations and activities. For example, Unilever has entered into an agreement with the trade unions IndustriALL Global Union and the IUF covering all its employees, including those hired through third-party labour suppliers, jointly setting out procedures for identifying, raising awareness and grievances related to sexual harassment.<sup>16</sup> More recently, trade unions and women's rights groups, major fashion brands and international worker rights organizations concluded two binding agreements with Nien Hsing Textiles in Lesotho, covering 10,000 garment workers in five factories that produce jeans and knitwear for the global market. The agreements provide for education and awareness training for workers and managers, an independent reporting and monitoring system, and remedies for gender-based violence and harassment at work.<sup>17</sup> These joint agreements, while still few in number, demonstrate how companies, including in relation to their cross-border operations and activities, can take action to combat violence and harassment by drawing on the guidance in the instruments.

However, broad-scale impact requires guarantee rights and responsibilities of all actors, and will therefore depend on the universal ratification and implementation of Convention No. 190. At this point in time, Uruguay seems set to become the first ratifying country, but at least two countries are required to ratify the Convention for it to come into force [article 14(2)].

Ratification will be crucial for ensuring universal application in the world of work. The ratification process itself offers the opportunity to undertake a review of national laws, policies and institutions that need to be established to ensure compliance with the instruments. Moreover, ratification will also mean that the application of the instruments will come under the ILO supervisory bodies. ILO instruments do not allow for any reservations by ratifying states. Instead, they include flexibility clauses, which allow a ratifying state's discretion when it comes to implementation.<sup>18</sup> To ensure a comprehensive and coherent application of the instruments globally, it is critical that the supervisory bodies will be able to offer the necessary recommendations so that these discretions are not applied in a manner that undermines the objective of the instruments.

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<sup>16</sup> 'IUF – IndustriAll – Unilever Joint Commitment on preventing sexual harassment', [http://www.iuf.org/w/sites/default/files/SIGNED\\_IUF-IA-UnileverSexualHarassmentJointCommitment-e\\_0.pdf](http://www.iuf.org/w/sites/default/files/SIGNED_IUF-IA-UnileverSexualHarassmentJointCommitment-e_0.pdf) (accessed 15 April 2020).

<sup>17</sup> 'Lesotho Plan has all Elements to End GBV at Work', *Solidarity Center* (20 August 2019), <https://www.solidaritycenter.org/lesotho-plan-has-all-elements-to-end-gbv-at-work/> (accessed 15 April 2020).

<sup>18</sup> International Court of Justice, *Reports of Judgements, Advisory Opinions and Orders: Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide* (ICJ, 1951). See also, International Labour Organization (2006), note 4.

Furthermore, a number of important provisions, in particular related to access to justice, are featured in the Recommendation rather than in the Convention. Given that Recommendations are not legally binding, there is often less awareness and attention to these provisions. However, the Convention and Recommendation must be seen as an integrated set of standards that should be transposed into national law and practice cohesively when it comes to their implementation by national governments.

Finally, a significant challenge to overcome in the implementation of the instruments will be the application of the broad scope of application provided for in the instruments at the national level. More than 2 billion workers are employed in the informal economy, who in many jurisdictions are excluded from the scope of labour laws. Insecure employment in its various forms, including temporary, part-time, agency and on-call work, is on the rise and indeed the main characteristics of the business model in global supply chains and the gig-economy. Again, most of these workers are either fully or partially covered by labour laws in many jurisdictions.<sup>19</sup> Women are disproportionately represented in informal and insecure work and are therefore at a higher risk of exposure to violence and harassment. In addition to the specific measures called for, a faithful implementation of the instruments will require governments to broaden the scope of labour protection to informal and precarious workers and for companies to adjust their business models.

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<sup>19</sup> ILO, *Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects* (Geneva, Switzerland: ILO, 2016).