

**Briefing Document on
Proposed ILO Convention on
The Elimination of Violence and Harassment in the World of Work¹**
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I. Background:

The global trade union movement has been lobbying for an ILO Convention on gender-based violence (GBV) for many years. As a result, the ILO Governing Body at its 325th Session (November 2015) placed a standard-setting item on ‘Violence against women and men in the world of work’ on the agenda of the 2018 International Labour Conference (ILC), as a double discussion.

In the lead up to the 2018 ILC, the ILO Governing body also convened a tripartite meeting of experts to provide guidance. There have been a number of studies, surveys, consultations and opportunities for governments, employers and workers’ organisations to provide inputs and comment on the various versions. The latest report is called the Brown report and contains the **proposed Convention Concerning ‘The Elimination Of Violence And Harassment in the World of Work’**, and a **proposed Recommendation Concerning ‘The Elimination Of Violence And Harassment in the World of Work’** which are expected to be deliberated upon and finalised at the ILC’s 108th Session in June 2019.

A majority of governments and workers organisations are in favour of a **binding instrument** in form of an **ILO Convention, supplemented by a Recommendation**, as this is considered fundamental to ending violence and harassment in the world of work and to signal without ambiguity that violence and harassment is unacceptable.

This Briefing document tries to lay down the salient features of the proposed convention, what its implications are for workers, especially informal sector workers and what should be the key minimal as well as desirable demands/lobbying points.

II. The salient features of the proposed **CONVENTION CONCERNING THE ELIMINATION OF VIOLENCE AND HARASSMENT IN THE WORLD OF WORK**, as given in the Brown Report are given below. The text in {blue brackets} are commentaries.

- Recognition that everyone has the right to a world of work free from violence and harassment, including gender-based violence and harassment, and that violence and harassment at work is a human rights violation, a threat to equal opportunities and is unacceptable and incompatible with decent work.
- Acknowledgment that violence and harassment in the world of work affects a person’s psychological, physical and sexual health, dignity, and family and social environment, as well as the quality of public and private services, and may prevent persons, particularly women, from accessing, remaining and advancing in the labour market.
- Noting that violence and harassment is incompatible with the promotion of sustainable and healthy

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- Acknowledgment that gender-based violence and harassment disproportionately affects women and girls, and recognising 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
- It also notes that domestic violence can affect employment, productivity and health and safety, and that the world of work, its institutions and governments can help, as part of other national measures, to recognise, respond to and address domestic violence.

{The rationale and need for a Convention as well as a Recommendation are clearly and appropriately articulated}

Definitions and Scope:

Article 1 (a) “Violence and harassment” in the world of work refers to a **range** of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment. {It is good that the terms ‘violence’ and ‘harassment’ are being taken together and not separately as it captures the full range of behaviours that should be proscribed and could have elements of both harassment as well as violence - this should not be reversed}

- **Article 1 (b)** “Gender-based violence and harassment” means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment {This is essential because women workers and LGBTI+ workers face disproportionate violence and harassment}
- **Article 1 (c)** “Worker” covers persons in all sectors, both in the **formal and informal economy**, and whether in urban or rural areas, including employees as defined by national law and practice, as well as persons working **irrespective of their contractual status**, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, jobseekers and job applicants. {Quite comprehensive and clear and should not be diluted}
- **Article 2** This **Convention applies** to violence and harassment in **the world of work** occurring - **in the course of, linked with or arising out of work: in the workplace, including public and private spaces** where they are a place of work; in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities; when **commuting** to and from work; during work-related trips or travel, training, events or social activities; through work-related communications enabled by information and communication technologies; and in employer-provided accommodation. {The broad scope of this definition is good and must not be diluted – it will include all informal workers like street vendors, home-based workers, domestic workers, waste pickers, construction workers etc. who work in public and private spaces.}
- **Article 3** Victims and perpetrators of violence and harassment can be employers and workers, and their respective representatives, and third parties, including clients, customers, service providers, users, patients and the public. {There is no definition of employer anywhere in the text – it needs to be included. The word ‘intermediaries’ should also be included, as a non-negotiable, as often informal workers have an interface only with intermediaries like contractors and sub-contractors and have very limited or no contact with the principle employer.}

Core Principles

- **Article 4** Once a Member ratifies this Convention, it **shall** adopt, in accordance with national law and circumstances and in consultation with representative employers' and workers' organisations, an **inclusive, integrated and gender-responsive approach**, including appropriate laws and policies for the elimination of violence and harassment in the world of work that includes prohibiting in law all forms of violence and harassment; adopting a comprehensive strategy for this; establishing and strengthening enforcement and monitoring mechanisms, access to remedies and support for victims. It shall also - provide for sanctions; develop tools, guidance, education and training; and ensure effective means of inspection and investigation of cases of violence and harassment through labour inspectorates or other competent bodies.
- **Article 6** Each Member shall adopt **laws, regulations and policies** ensuring the right to equality and non-discrimination **in employment and occupation**, including for women workers as well as for workers belonging to one or more vulnerable groups or groups in situations of vulnerability that are disproportionately affected by violence and harassment in the world of work.
 - {1. Good construction as it will include the self-employed/ own account workers and unpaid family workers.
 - 2. However could consider replacing “vulnerable groups” with “groups in situations of vulnerability.”
 - 3. On balance, it is felt that it is better not to include a list containing specific groups of workers disproportionately affected by violence and harassment here (regarding which there was a lot of discussion) but include such a list in paragraph 12 of the Recommendations}

Protection and Prevention

- **Article 8** Each Member shall also take appropriate measures to prevent violence and harassment in the world of work, including: identifying, in consultation with the employers' and workers' organizations, sectors, occupations and work arrangements in which workers are more exposed to violence and harassment and take measures to effectively protect such workers. {Scope here to identify more vulnerable informal workers like agriculture workers, domestic workers, home-based workers, street vendors and waste pickers etc. and protect them.}
- **Article 9** Each Member shall adopt **laws and regulations requiring employers** to take steps, **so far as is reasonably practicable**, to prevent violence and harassment in the world of work, and in particular to: adopt and implement, a workplace policy on violence and harassment; take into account violence and harassment and associated psychosocial risks in the management of occupational safety and health; identify hazards and assess the risks of violence and harassment, and take measures to prevent and control them; and raise awareness of workers on these issues and the prevention and protection measures. {The term “so far as is reasonably practicable” gives member states and employers an excuse, to evade their responsibilities. The Government should make it **mandatory** for employers to protect workers from harassment and violence, as recommended by the Equality and Human Rights Commission. The primary responsibility for creating an environment free from violence and harassment and for addressing such issues rests with the employers.}

Enforcement and Remedies

- **Article 10** Each Member has the responsibility to **monitor and enforce** national laws and regulations in this connection and ensure that all persons concerned have **easy access** to appropriate and effective remedies and **safe, fair and effective reporting and dispute resolution**

mechanisms in cases of violence and harassment, including: where appropriate, dispute resolution mechanisms both at the workplace level and external to the workplace; courts or tribunals; **protection against victimization** of or retaliation against complainants, victims, witnesses and whistle-blowers; and legal, social, medical and administrative **support measures** for complainants and victims.

- **Article 10 (f)** The State shall also recognize the **effects of domestic violence on the world of work** and take measures to address them; ensure that workers have the right to remove themselves from a work situation which is against their interests. {Here there is scope for employers and workers' organisations and governments to work together to minimise the effects of domestic violence (which affects two thirds of women workers) not just on the individual workers but on the working environment and productivity as well.}
- **Article 10 (h)** The Member state shall ensure that labour inspectorates and other relevant authorities are **empowered to deal with violence and harassment**, including by issuing orders requiring measures with immediate effect, and orders to stop work in cases of an imminent danger to life or health.

Guidance, Training and Awareness Raising

- **Article 11** Each Member, shall seek to ensure that: violence and harassment in the world of work is addressed in relevant national policies; guidance, resources, training or other tools are provided to employers and workers; and awareness-raising campaigns, are held. {This is crucial to create a gender sensitive environment in traditionally male bastions}

Methods of Application

- **Article 12** The provisions of this Convention shall be applied by means of national laws and regulations, as well as through collective agreements or other measures consistent with national practice, including by extending or adapting existing occupational safety and health measures to cover violence and harassment and developing specific measures where necessary. {Should not be left open ended but rather should have a time frame – e.g. Within a year of the member state ratifying the Convention}

III. Proposed Recommendation Concerning the Elimination of Violence and Harassment in the World of Work. The proposed Recommendations are not being highlighted here as there is nothing too controversial in them except the point of including LGBTI+ in paragraph 12 of the recommendations, detailed below.

IV. Demands/lobbying points

A. Minimal and non-negotiable demands:

1. The word '**intermediaries**' should also be included, in article 3, as most often, informal workers have an interface only with intermediaries like contractors and sub-contractors and have very limited or no contact with the principle employer.
2. The **burden of proof** must rest with the perpetrator and not with the victim. This is crucial for specialised dispute mechanisms to address gender-based violence in very unequal and male dominated work environments. Male domination in certain jobs and management positions often results in a workplace culture where women are under pressure to prove their competence - making

speaking up about harassment and other forms of violence they face, at work or at home, even more challenging.

3. In Article 9, the term “**so far as is reasonably practicable**” gives member states and employers an excuse, to evade their responsibilities. The Government should make it **mandatory** for employers to protect workers from harassment and violence, as recommended by the Equality and Human Rights Commission. The primary responsibility for creating an environment free from violence and harassment and for addressing such issues rest with the employers.
4. Article 12 is silent about the **time frame** for operationalizing the provisions of the Convention. This should not be left open ended and there must be a time-frame. For example, ‘within a year of the member state ratifying the Convention’.
5. The inclusion of an **indicative and not-exhaustive list of behaviours and actions** illustrating how violence and harassment can be manifested or setting out generally recognised categories or forms of violence and harassment should be included in the Recommendation.
6. Para 12 of the recommendation should include **vulnerable groups including LGBTI+** and should read: “*Members should ensure that measures to prevent violence and harassment do not result in the restriction of the participation in specific jobs, sectors or occupations, or their exclusion therefrom, of women and vulnerable groups, including: (a) younger and older workers; (b) pregnant and breastfeeding workers, and workers with family responsibilities; (c) workers with disabilities; (d) workers living with HIV; (e) migrant workers; (f) workers from indigenous and tribal peoples; (g) workers who are members of ethnic or religious minorities (h) caste-affected workers; and (i) lesbian, gay, bisexual, transgender, intersex and gender-nonconforming workers*”. □

Even though some governments oppose their inclusion, it is essential to include certain categories of women workers and LGBTI+ workers who face disproportionate violence and harassment.

7. It’s important that the recommendation provides **appropriate remedies** in case of violence and harassment, and the compensation for material and non-material damages should include **compensatory damages** for lost wages, social security benefits, bonus/promotion, pain and suffering caused.

B. Desirable Demands:

1. There is no definition of ‘**employer**’ anywhere in the text – this needs to be included.
2. Violence and harassment in the world of work remain an invisible problem because of the data vacuum and thus it’s important that the member collect and publish **statistics on violence and harassment** in the world of work disaggregated by sex in particular in respect of the groups referred to in paragraph 12 of Recommendation. It is important to demonstrate the impact of violence at work, to build collective research with statistics and workers stories on violence against women and men in the world of work.
3. In Article 6, reconsider the use of “vulnerable groups” and, instead, to simply refer to “groups in situations of vulnerability.”
4. A possible new Article to be included between Articles 4 and 5 clarifying that responsibility may vary, and that coordination and cooperation among those involved is important to maximise the impact of their respective actions. The new provision could read as follows:

“In adopting and implementing an inclusive, integrated and gender-responsive approach for the

- elimination of violence and harassment in the world of work, Members shall:*
- (a) recognize that governments, employers and workers and their respective representatives, have different and complementary roles and responsibilities in preventing and addressing violence and harassment in the world of work; and*
 - (b) promote coordination and cooperation between them.”*

C. Some issues that have already been agreed upon or are part of the draft Recommendation, but which the employer’s group or governments may try to overturn and which we should stick to are flagged below:

1. The **single definition of Violence and harassment**. The employers claim that this would lead to legal uncertainty and present a barrier to ratification of the convention. It is in fact good, that the terms violence and harassment are being taken together and not separately as it captures the full range of behaviours that should be proscribed and could have elements of both harassment as well as violence; and should not be reversed.
2. The understanding and **scope of the world of work** is detailed in Article 2. The employers group and some governments want to limit the definition to the physical workplace only as they feel, the present broad definition is outside the employers ‘sphere of control.’ The counter to this argument is that, this definition does not allocate responsibility; it simply describes the environments which are considered within the world of work and therefore calls for no change in the proposed formulation.
3. One issue that has proved particularly controversial and is likely to be brought up again is point 5 of the conclusions under which the employers group seek to **include damage caused by industrial action** as acts of violence and/or harassment. This should not be included in this Convention as there are already many existing legal and other provisions for industrial action and their accesses.

References:

1. ILO’s Brown Report - https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_637108.pdf
2. ILO: Ending violence and harassment against women and men in the world of work, Report V(1), International Labour Conference, 107th Session, Geneva, 2018.
3. ILO: Ending violence and harassment in the world of work, Report V(2), International Labour Conference, 107th Session, Geneva, 2018.
4. ILO: Reports of the Standard-Setting Committee: Resolution and proposed Conclusions submitted for adoption by the Conference, in Provisional Record No. 8A, International Labour Conference, 107th Session, Geneva, 2018.
5. ITUC Lobbying Kit for an ILO convention and Recommendation to end violence and harassment in the world of work.
6. ITF Briefing paper on Proposed ILO Convention on violence and harassment at work
7. ITF Circular dated 1 October 2018, on Proposed ILO Convention on violence and harassment at work