



## 107<sup>th</sup> Session of the International Labour Conference (May-June 2018)

### Agenda item V

#### Briefing Note for Workers' Delegates

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## Violence and Harassment in the World of Work

First year discussion with a view to the adoption of a Convention supplemented by a Recommendation

### BACKGROUND

At its 325<sup>th</sup> Session (November 2015), the ILO Governing Body decided “to place a standard-setting item on ‘Violence against women and men in the world of work’ on the agenda of the 2018 International Labour Conference, as a double discussion. The second discussion will take place during the Centenary International Labour Conference in 2019.

The decision follows a sustained campaign by the international trade union movement and received the unanimous support of the Workers’ Group of the ILO Governing Body. The decision was supported by a number of government representatives who emphasised the crucial importance of addressing violence and harassment, through ILO standards, as a key step to the realisation of fundamental principles and rights at work. However, other governments remain to be convinced of the need for a Convention supplemented by a Recommendation. Employers expressed reservations on an instrument and favoured a general discussion. However, in their reply to the ILO questionnaire a simple majority of employers favoured standard-setting in the form of a Recommendation (See also section 5 A below).

The 325<sup>th</sup> session of the Governing Body also decided “to convene a tripartite meeting of experts to provide guidance on which basis the Governing Body [would] consider, at its 328<sup>th</sup> Session (November 2016), the preparations for the first discussion of possible instruments by the Conference”. The tripartite meeting of experts, which took place in October 2016, was tasked to:

- Review existing understanding of what is considered to be violence in the world of work, related trends, forms and incidence
- Examine the gender dimensions of violence in the world of work
- Review the impact of violence in the world of work on workers and enterprises, including on workers’ well-being and productivity, and firms’ performance
- Identify groups of workers, enterprises, sectors and occupations more at risk, of being subject to violence
- Review responses to prevent and address violence in the world of work in national and international laws and regulations, collective agreements and enterprises policies; and
- Provide on the basis of the above, guidance for the standard-setting item on violence against women and men in the world of work that has been placed on the agenda of the International Labour Conference in June 2018. Guidance could include identifying forms of violence warranting priority consideration and responses thereto.

The conclusions of the meeting of experts included a suggestion to replace the term “violence” with “violence and harassment” in the title of the discussion “to ensure the range of unacceptable behaviour is adequately understood and addressed”.<sup>1</sup>

## 2. The rationale for standard-setting on violence and harassment in the world of work

Violence and harassment in the world of work constitutes a serious human and labour rights violation. It impinges on the ability to exercise other fundamental labour rights and is incompatible with decent work. Violence in the world of work is a threat to the dignity, security, health and well-being of everyone. It affects all occupations and sectors of economic activity around the world, including the private and public sectors and the formal and informal economies. It has an impact not only on workers and employers, but also on their families, communities, economies and society as a whole.

Whilst several ILO instruments refer to various forms of violence and harassment, none addresses violence and harassment as its primary aim, none defines such conduct, and none provides clear guidance on how to address the problem. Similarly, only certain forms of violence and harassment are mentioned, and only in relation to certain groups of workers or certain sectors or occupations, such as domestic workers, workers living with HIV and indigenous persons. The targeted nature of the protections leave a gap for those not covered under these instruments, which constitute the vast majority of workers around the world.

Developing international labour standards to address violence and harassment in the world of work would therefore fill an important gap in the promotion of decent work for all and represent an important contribution to fulfilling the objectives of the Declaration of Philadelphia of 1944<sup>2</sup>.

The impetus of the initial proposal for a standard on violence was to give effect to the resolution concerning gender equality at the heart of decent work, adopted by the International Labour Conference at its 98<sup>th</sup> Session (2009)<sup>3</sup>. The resolution called for the prohibition of gender-based violence in the workplace and for policies, programmes, legislation and other measures to be implemented to prevent it.

Since then, the issue of violence and harassment, and particularly gender-based violence and harassment, has received increasing international attention. In September 2015, the European Economic and Social Committee published an opinion in support of an ILO standard on gender-based violence at work. The UN Committee on Economic, Social and Cultural Rights, in its General Comment 23 of April 2016, has again underscored that freedom from violence and harassment, including sexual harassment, is amongst the fundamental elements to guarantee just and favourable conditions of work. The 2030 Agenda on Sustainable Development calls for the elimination of “all forms of violence against all women and girls in the public and private spheres”.

International labour standards will provide timely guidance on possible legislation and practice to eradicate violence and harassment from the world of work.

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<sup>1</sup> ILO: [Report of the Meeting of Experts on Violence against Women and Men in the World of Work \(Geneva, 3–6 October 2016\)](#)

<sup>2</sup> ILO: [Background paper for discussion at the Meeting of Experts on Violence against Women and Men in the World of Work \(3-6 October 2016\)](#).

<sup>3</sup> Resolution concerning gender equality at the heart of decent work - ILC 2009: [http://www.ilo.org/gender/Events/WCMS\\_187671/lang--en/index.htm](http://www.ilo.org/gender/Events/WCMS_187671/lang--en/index.htm)

### 3. The Office Reports

The Office has prepared two reports to serve as a basis for the first year discussion. Report V(1), *Ending violence and harassment against women and men in the world of work*<sup>4</sup> documented the law and practice in 80 ILO member states. The Report was accompanied by a questionnaire that governments and social partners were requested to fill in.

These replies have been summarised in the second report, Report V(2) *Ending violence and harassment in the world of work*<sup>5</sup>. This report also contains the “Proposed Conclusions” prepared on the basis of the replies received. These proposed conclusions are intended to serve as a basis for discussion in June.

The final drafting of the instrument(s) will take place at the 2019 ILO Conference on the basis of draft instrument(s) which will be prepared after the first discussion in 2018. The instruments will be amended as necessary and proposed for adoption to the Conference plenary in 2019. A two third majority will be required for their adoption.

This "double discussion" gives Conference participants time to examine the draft instrument(s) and propose amendments with a view to strengthen them.

### 4. Proposed Conclusions

The “Proposed Conclusions” can be found on page 97 of the English version of Report V(2). A summary of the replies received to the questionnaire is contained on pages 5 to 96. The Office commentary, following immediately after the replies to each question, provides information as to how the Office treated each question based on the comments received and how it reflected them in the proposed conclusions. In preparing the proposed conclusions, the Office also took into consideration the input and views expressed during the aforementioned tripartite meeting of experts.

The proposed conclusions are divided in 4 parts:

- A. Form of the Instruments
- B. Definitions
- C. Proposed Conclusions with a view to a Convention
- D. Proposed Conclusions with a view to a Recommendation

Based on the Office Commentary it is fair to say that there was a wide agreement on many questions among the three groups. This provides a solid basis to engage in a dialogue with a view to improve the proposed text, develop instruments that effectively address violence and harassment in the world of work and receive the widest possible ratification by ILO Member States.

However a number of areas such as the definition of employer, the scope of the world of work, the impact of domestic violence, use and content of (non-exhaustive) descriptive lists, remain sensitive. Many governments who expressed support for a Convention supplemented by a Recommendation also expressed concern that the Convention should not be so prescriptive as to be unratifiable, indicating preference for a “framework” Convention. We can expect these issues to be subject of debate in June.

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<sup>4</sup> [http://www.ilo.org/ilc/ILCSessions/107/reports/reports-to-the-conference/WCMS\\_553577/lang--en/index.htm](http://www.ilo.org/ilc/ILCSessions/107/reports/reports-to-the-conference/WCMS_553577/lang--en/index.htm)

<sup>5</sup> [http://www.ilo.org/ilc/ILCSessions/107/reports/reports-to-the-conference/WCMS\\_619730/lang--en/index.htm](http://www.ilo.org/ilc/ILCSessions/107/reports/reports-to-the-conference/WCMS_619730/lang--en/index.htm)

## 5. Comments on the proposed conclusions

Some preliminary comments are provided on the proposed conclusions for further discussion by the Workers' Group in June.

### A. FORM OF THE INSTRUMENTS (POINTS 1 AND 2)

As indicated in the table below, a majority of governments who responded to the questionnaire are in favour of a binding instrument in the form of a Convention supplemented by a Recommendation. Workers also overwhelmingly favour a Convention supplemented by a Recommendation. This is a positive outcome and it is important to continue lobbying governments to encourage them to maintain their position and enlist additional support. A Convention would be essential to signal without ambiguity that violence and harassment is unacceptable and the antithesis of decent work, and that it therefore demands serious and urgent attention. A Recommendation would complement the Convention by providing more detailed and practical guidance on how to translate the principles embedded in the Convention into action.

| GLOBAL       | Convention | Recommendation | Convention supplemented by a Recommendation as two separate instruments or a single instrument comprising binding and non-binding provisions | Other | TOTAL      |
|--------------|------------|----------------|--|-------|------------|
| Governments  | 2          | 30             | 48   | 5     | 85         |
| Employers    | 1          | 11             | 4  | 10    | 26         |
| Workers      | 9          | 5              | 164  |       | 178        |
| <b>Total</b> | 12         | 46             | 216  |       | <b>289</b> |

### B. DEFINITIONS AND SCOPE (POINT 3)

Workers would wish to have an inclusive instrument, that takes an integrated approach to addressing violence and harassment in the world of work and protects all workers regardless of sector and whether in the formal or informal economy. Workers would also wish to see a strong focus in the instruments on gender dimension of violence and harassment. This is why the definition and scope of "violence and harassment in the world of work" will be an important point of discussion. The overall strategy needs to aim at the adoption of inclusive instruments that ensure that all workers are covered, regardless of employment status. Within this context it would be important to avoid defining specific groups or categories of workers to whom the instruments apply, as this would risk the possible exclusion of certain categories of workers.

3 (a): the definition of violence and harassment as "a continuum of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, having the aim or effect of causing physical, psychological, sexual or economic harm, and includes gender-based violence" is welcomed. The concept of a continuum recognises that violence and harassment are often intertwined and difficult to differentiate.

The notion of a continuum of violence and harassment is also sufficiently broad to capture violence and harassment in its multiple and diverse forms, including, for example, physical abuse and assault, sexual violence, verbal abuse, bullying, mobbing, psychological abuse and intimidation, sexual harassment, and threats of violence and stalking, without the risk of inadvertently excluding particular forms of behaviour.

The inclusion of practices, alongside behaviour, recognises that violence and harassment can result from the structural or organisational features of a person's work, as well as from individual or group behaviour. Whether a behaviour or practice is unacceptable is to be determined by reference to specified impact(s), including economic impact, on the person experiencing it. Importantly, the definition explicitly includes gender-based violence.

The proposed definition also allows for the inclusion of forms of violence and harassment that may not yet have emerged or be widely acknowledged, as the world of work evolves.

3 (b): the definition of gender-based violence builds on and expands definitions in existing international instruments<sup>6</sup>.

3 (c): the broad definition of employer is welcomed. The definition would capture, for example, those who engage workers through triangular relationships, through informal contractual arrangements, or through ill-defined/disguised employment relationships.

3 (d): the broad definition of "worker" is welcomed and complements the definition of employer to ensure an inclusive approach. Jobseekers, interns, apprentices, volunteers and others in employee-like relationships feature amongst those who are most at risk of experiencing violence and harassment, yet are often excluded from the scope of labour protections, including protections against violence and harassment. It is therefore vital that they are expressly included in the definition of worker for the purposes of the instrument(s).

4 (a-e): the broad scope of the "world of work" is to be welcomed. Public spaces are often the workplace for informal economy workers, whilst domestic workers, home care workers, home-based workers and teleworkers perform work in domestic spaces. As can be seen in an occupational health and safety approach, steps can be taken to prevent violence and harassment in circumstances related to the world of work, whether within the direct control of the employer or not. Thus, whilst not always within the direct control of employers, there are measures that employers can and do take to minimise the risk of violence and harassment on the commute to and from work and in relation to work-related trips, travel, training, events, or social activities. The Workers' Group might wish to consider the addition of "employer-provided accommodation" to the scope of the world of work. Many workers are required to reside in dormitories or other employer-accommodation, blurring the distinction between work and home and often increasing the risk of violence and harassment. The tripartite meeting of experts recognised the growing phenomenon of cyber-bullying and harassment, through inappropriate use of technology, stating that any new instruments "should also be able to respond to the new challenges and risks which might lead to violence and harassment in the world of work, such as those arising from changing forms of work and technology".

5. The inclusion of violence and harassment perpetrated by third parties is important, as is the recognition that violence and harassment can be horizontal as well as vertical.

## C. PROPOSED CONCLUSIONS WITH A VIEW TO A CONVENTION

### Preamble (Points 6 (a) to (j))

While the preamble has no legally binding effect as such and can never take precedence over operative provisions, the preamble is of value for the interpretation of the instrument. With a view to ensuring a broad coverage of workers, including those in vulnerable situations, the Workers'

<sup>6</sup> See for example the UN Convention on the Elimination of all Forms of Discrimination against Women (General Recommendation 19) and Article 3 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention).

Group might wish to consider adding other relevant instruments such as the Private Employment Agencies Convention, 1997 (No. 181); the Employment Relationship Recommendation, 2006 (No. 198); the HIV and AIDS Recommendation, 2010 (No. 200); and the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204).

Noting the need for the Convention to have a strong focus on the gender-dimension of violence and harassment, points 6 (d) – 6 (j) of the preamble should be strongly supported. However, the Workers' Group may wish to consider reference to "multiple and intersecting forms of discrimination" as a means to strengthen 6 (i).

Point 7 affirms the need for an integrated approach, in consultation with representative employers' and workers' organisations, which is essential to effectively address violence and harassment in the world of work.

### **Fundamental principles and rights at work and protection (Point 8)**

Respect for freedom of association and collective bargaining is particularly important to enable the realisation of other rights, including the right to work free from (the threat of) violence and harassment. The denial of freedom of association is a significant factor in increasing the risk of experiencing violence and harassment. The conclusions of the tripartite meeting of experts recognise that, "*Workers who cannot exercise their rights to freedom of association and collective bargaining, due to the inappropriate use of contractual arrangements leading to decent work deficits, including the misuse of self-employment, are also likely to be more at risk of violence and harassment*".

The core Conventions relating to equality and the elimination of discrimination in respect of employment and occupation are essential to an integrated approach, whilst the worst forms of child labour and forced labour and trafficking inherently include physical and psychological violence and harassment.

Point 9 reaffirms the need for a particular focus on all forms of gender-based violence, in adopting national laws and regulations to prohibit all forms of violence and harassment.

Point 10 recognises that inequality and discrimination based on the grounds listed in 10 (a)-(i) often lie at the root of violence and harassment. Where grounds of discrimination intersect, such as gender and race or disability, the risk of violence and harassment is exacerbated. It is important to note that this list of personal characteristics is indicative and non-exhaustive, and aimed at ensuring that certain groups are not excluded from the scope of equality and non-discrimination measures. The Workers' Group should seek to ensure that, as a minimum, this list is adopted in its entirety. An important omission from the list relates to discrimination based on the ground of race. The Workers' Group might therefore wish to propose alternative language for 10 (g) which would incorporate "workers marginalised through racism, ethnicity or religion". Point 10 does not aim at sectors of work or of the economy, nor at categories of workers or types of work arrangements.

### **Prevention measures (Point 11)**

Points 11 (a) and (b) require governments to identify, in consultation with the social partners, occupations and arrangements in which workers are more exposed to violence and harassment, in order to ensure that such workers are effectively protected. Point 25 (Recommendation) provides examples of sectors, occupations and work arrangements that might be considered high risk. Consideration might be given to moving Point 25 to the Convention, bearing in mind that the sectors listed here are indicative and non-exhaustive. Notwithstanding, the Workers' Group might wish to add "media" to the list of high-risk occupations, given the particular exposure of journalists to

violence and harassment from a wide variety of perpetrators and occupational/work arrangements. Point 25 of the Recommendation could then give examples of the types of measures that might be taken. Point 26 of the Recommendation is important to ensuring that groups of workers are not penalised through the adoption of measures to eliminate violence and harassment in high risk sectors or occupations. This is fundamental to the promotion of equality and non-discrimination and such a penalty would be incompatible with the overall aims of the instruments. The Worker's Group might therefore also wish to consider addressing this through the Convention.

Point 12 sets out the measures that employers should be required to take to prevent all forms of violence and harassment, including through addressing psychosocial risks. Measures should be developed in consultation with workers and their representatives. Further detail is provided in Points 23 and 24 of the Recommendation, including that workers and their representatives should take part in the design, implementation and monitoring of policy on violence and harassment adopted by the employer. The Workers' Group might wish to consider moving this requirement to the Convention.

### **Enforcement, monitoring and victim support (Point 13)**

Safe, fair and effective dispute resolution mechanisms, including access to appropriate and effective remedies are central to successfully addressing violence and harassment in the world of work. Importantly, 13 (d) refers to access to specialised dispute resolution mechanisms, remedies and services for victims of gender-based violence. Points 27, 28, 29 and 30 of the Recommendation add further detail to measures that might be taken to ensure that remedies are appropriate and effective. Given that resignation is the only remedy often available in practice to workers who experience violence and harassment in the world of work, the Workers' Group might wish to consider moving to the Convention the requirement that remedies not be limited to the right to resign with compensation.

In relation to effective dispute resolution mechanisms, the Convention should make reference to the right of the worker "to participate directly in the grievance procedure and to be assisted or represented during the examinations of his grievance by a representative of a workers' organisation, by a representative of the workers in the undertaking, or by any other person of his own choosing, in conformity with national law or practice", in line with the Examination of Grievances Recommendation, 1967 (No. 130), Article 13 (1).

Point 13 (e) deals with the need to address the impacts of domestic violence on the world of work, whilst Point 31 of the Recommendation sets out measures that can be taken to address those impacts.

Points 13 (f) and (g) are welcome inclusions, and consistent with the ILO's Occupational Health and Safety and Labour Inspection instruments.

### **Support and Guidance (Point 14)**

Point 14 (and Point 36 of the Recommendation) contains important provisions concerning an integrated approach to violence and harassment, including education, training and awareness-raising.

### **Means of implementation (Point 15)**

Point 15 allows a degree of flexibility to member States to determine the means of implementation.

**D. PROPOSED CONCLUSIONS WITH A VIEW TO A RECOMMENDATION**

Contrary to a Convention, a Recommendation provides additional guidance to member States of a non-binding nature. Its provisions are therefore related and complementary to the Convention's text.

Some very preliminary comments are provided as the content of the Recommendation will largely depend upon the content of the Convention negotiated in June.

Point 20 is important and should apply regardless of the status of the migrant worker, consistent with the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and the ILO Multilateral Framework on Labour Migration 2006.

Point 27: consideration could be given to adding language specifying that compensation should include, for example, compensatory damages for lost wages, social security benefits, bonus/promotion, pain and suffering.

Point 29 (e) refers to the shifting the burden of proof in relation to specialised dispute resolution mechanisms, addressing gender-based violence. This point is important and consistent with the way discrimination cases are handled in many national jurisdictions.

Point 36: the acknowledgement of the impact of "discrimination, unequal power relations, and gender, cultural and social norms that support violence and harassment" is important. (See also Point 24 of the Recommendation).

17.05. 2018