



Agreeing a progressive ILO Convention and Recommendation on Ending Violence and Harassment in the World of Work in June 2019

This policy brief sets out CARE International's top line positions and comments on the suggested new International Labour Organization (ILO) Convention and Recommendation on Ending Violence and Harassment in the World of Work.

This brief follows the International Labour Conference (#ILC2018) on 28 May - 8 June 2018 at which governments, employers and workers' representatives agreed to move forward with an ILO Convention and Recommendation. CARE applauded the decision to have an ILO Convention and Recommendation. Here CARE responds to the texts of the proposed instruments as set out by the International Labour Office ('the Office') in the 'Brown Report' issued on 8 August 2018.

These comments and recommendations are intended to assist governments in their submissions to the Office as requested by 8 November 2018, as well as the employers and workers' representatives governments must consult with, and those that are seeking to ensure that the tripartite constituents of the ILO adopt the world's first treaty to end violence and harassment related to the world of work at the 2019 International Labour Conference (#ILC2019) with its contents and guidelines for national action as strong and widely ratifiable as the issue requires. The references in this document refer to the text of the 'Brown Report'.

CARE will continue to put forward its positions and respond to the next report, the so-called 'Blue Report' due by early March 2019, and the negotiations towards and at the #ILC2019 to help ensure the best global agreement and national action possible to bring an end to violence and harassment at workplaces worldwide.

Key Messages The following are key messages for governments in particular as well as employers and trade unions.

1. **Governments must vote for a Convention and a Recommendation.** The #ILC 2018 endorsed that there should be a Convention and a Recommendation - the strongest combination of instruments available for ensuring legal accountability and providing guidance for how legal commitments can be implemented. With governments now supporting an ILO Convention and the text agreed in 2018 being strong, governments need to be active now on improving the text and head to #ILC2019 with a view to reaching agreement on such a legally binding treaty.
2. **Governments, employers and trade unions should consult widely with women's groups and CSOs in their national contexts to #ILC2019 and beyond to ensure women's participation in the ILO and national processes.** Women should play a key role in consultations in the ILO Convention process, in the long-term implementation of the ILO Convention in national law and regulations, and in engagement with implementation, enforcement and remediation authorities and employers. Governments, employers and

trade unions should consult widely with women's groups and CSOs at national level in the coming months and beyond to bring in their experience and expertise.

3. **Governments should confirm to the Office by 8 November the proposed texts do provide a strong basis for the second discussion at the Conference in 2019 and have constructive dialogue from now with other parties to the negotiation.** The dialogue ahead of and the discussions at #ILC2019 both have limited time and the texts have gone through considerable input, consultation and process. This has included significant expert opinion. As such government suggestions, comments and/or amendments should be with a view to enhancing the text, if possible, and avoiding ground that has been sufficiently covered by negotiations and/or expert opinion being unnecessarily revisited.

4. **Governments should support the agreed definition of violence and harassment.** The ILO's constituents, particularly governments and employers, should not reopen this definition and respect the agreement reached during the first discussion. The word 'range' covers that there is a continuum of violence and harassment and it is of utmost importance that the multiplicity and diverse forms of violence and harassment are included. Many illustrations have been given as to why attempts to rework this definition do not work now and will undermine the definition being future-proof and fit for purpose to include emerging or new forms of violence and harassment as the world of work changes.

5. **Governments should continue to support a broad definition of 'worker'.** A broad definition of 'worker' was agreed at #ILC2018 and this should be left to stand as it is fundamental to a 'leave no one behind' approach when it comes to ending violence and harassment in the world of work. It is essential that such a definition is in place so that workers in all sectors most in need of protection are not excluded whether they work in the formal or informal economy, in rural and urban areas, and irrespective of contractual status. Defining worker as the present text future-proofs the standards.

6. **Governments should support the agreed scope of the world of work.** ILO constituents, particularly governments and employers, should not reopen the proposed Convention text which provides a welcome, necessary and implementable broad scope of the 'world of work' and thereby recognise that it is appropriate for the instruments and for them to be 'relevant to the realities of workers around the world' (as the White Report put it).

7. **Governments should respond constructively and positively to the specific questions raised by the Office in the 'Brown Report'.** In relation to the issues arising in connection with some of the provisions adopted by the Conference and proposals formulated in the Office commentary, which are not integrated into the proposed texts, the following comments can inform the fourth and final report (i.e. the 'Blue Report' ahead of #ILC2019):

On the Convention:

- The Preamble text (6) states that violence and harassment is "a form of human rights violation" and the Office asks whether this could be improved upon in relation to references. **We suggest that reference to Article 11 of the CEDAW convention might be useful here** to make it clear that state parties should take appropriate

measures to eliminate discrimination against women in employment and the right to protection of health and safety in working conditions. We believe that violence and harassment in the world of work is a human rights violation and, we would add, a threat to the dignity and the security of individuals, as well as is a threat to 'equal opportunities' at work.

- On Article 1(a) Point 3(a) - the inclusion of an indicative, non-exhaustive list of behaviours illustrating how violence and harassment can be manifested or setting out generally recognized categories or forms of violence and harassment should be considered. We are not convinced it is necessary to include an indicative list of behaviours illustrating violence and harassment, both to avoid lengthy discussion on this and lists of vulnerable groups and to ensure the Convention is future-proofed. We suggest that instead the provision include language underlining the point that **harassment occurs when a person engages in unwanted conduct which has the purpose or effect of violating another person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.**
- On a possible new Article after Article 4, if concerns by some delegates on the concepts of 'violence and harassment', 'worker' and 'world of work', and the rights and obligations of the relevant actors, in particular the obligations of the employers, can be allayed by a new Article (between Articles 4 and 5) clarifying that responsibility may vary, and that coordination and cooperation among those involved is important to maximize the impact of their respective actions, **then the possible text of such a new provision that would have consensus around it should be explored.**
- On Article 6 (Point 10 of the Conclusions) **"groups in situations of vulnerability" is preferable to "vulnerable groups"** given, as the Office describes, the latter may be read as if these groups are inherently vulnerable and could be stigmatizing. Using "groups in situations of vulnerability" should not restrict the scope of protection of this provision and avoids potential stigmatization. It is clearer that a group can be placed in a situation of vulnerability to violence and harassment.
- On Article 10 (Point 13 of the Conclusions), the remedial action proposals should be supported. As to any improvement, we suggest that Article 10(g) which covers workers' right to remove themselves from situations of violence and harassment without suffering undue consequences should specifically reference **ensuring availability of compensation and the right to state benefits including unemployment benefits, if the worker removes themselves from employment.**
- On Paragraph 11 (Point 37 of the Conclusions) specific reference should also be made to resources and assistance for other actors in the **informal economy**. For example, we suggest that paragraph 11 of the Recommendation refer to the provision of "resources and assistance for informal economy workers and their associations **and /or their representatives**", rather than just 'associations'. This would cover situations where informal economy workers are represented via civil society groups or other entities that are not themselves associations of the workers.

On the Recommendation:

- As Article 1(a) of the proposed Convention above, a new provision could be added containing an indicative, non-exhaustive list of behaviours illustrating how violence and harassment can be manifested or setting out generally recognized categories or forms of violence and harassment. Please refer to the related bullet point above.
- On Paragraph 11 (Point 37 of the Conclusions) specific reference should also be made to resources and assistance for other actors in the informal economy. Please see bullet point on Article 10 (Point 13 of the Conclusions) above.
- On Paragraph 12 (Point 26 of the Conclusions), as the Office has pointed out, the Committee included a reference to “vulnerable groups” and a non-exhaustive list of such groups through the amendment process (from what had been deleted from point 10 of the Conclusions) and, in so doing has muddled provisions with a different focus and intent (perhaps understandably, as both deal with groups disproportionately affected by violence and harassment. Point 26, under “Prevention measures” was to avoid that measures aimed at preventing violence and harassment would result in the restriction or exclusion of women or groups disproportionately affected by violence and harassment from specific jobs, sectors or occupations. Point 10, under “Fundamental principles and rights at work and protection”, was to ensure that laws, regulations and policies on the right to equality and non-discrimination would address the situation of workers belonging to such groups.

We agree with the Office that a provision that focuses on avoiding the unintended consequences of excluding such groups from the labour market is essential to addressing violence and harassment, and that the inclusion of subparagraphs (a) to (i) in point 26 changes this focus, so an alternative wording in the Recommendation could better serve the original purpose of each point and provide a good basis for the second discussion. We recognise that this will be challenging given some views on a list, but this can be worked through.

8. Governments and national parliaments should prepare for ratification Whilst the #ILC2019 is a number of months away, it is by no means too early to ensure preparation are underway for early ratification. Once the Convention is adopted by the #ILC2019, it is open for ratification by all member States. A Convention enters into force one year after two Member States have ratified it. Given the ratification process can be lengthy and member States can take years to decide to ratify or not to ratify a Convention, early attention will increase momentum. After a member State ratifies a Convention, it has to adapt its national legislation to meet the (generally higher) level of the Convention provisions, and then implement them at the national level. We urge national parliaments to be actively engaged in the ILO process this year and to be ready to play a supportive role in early ratification and subsequent implementation.

Further background on CARE's positions

In June 2018, governments, employers and workers representatives at the 107th session of the International Labour Conference (#ILC2018), reached agreement to develop a new global Convention, supplemented by a Recommendation, to address violence and harassment in the world of work, for adoption at the next ILC in 2019 ((#ILC2019).

CARE has applauded this decision and welcomes much of the language agreed on by parties during the negotiations as laid out in the Conclusions of the meeting. In particular, we welcome provisions that:

- Specifically recognize gender-based violence and harassment, including sexual harassment, as part of scope of the Convention, while also defining violence and harassment in the world of work, as “...a range of unacceptable behaviors and practices, resulting in physical, psychological, sexual and economic harm. [Article 1 (a)]
- Ensure an inclusive definition of the term “worker”, to cover persons working across all sectors, including in the informal economy and irrespective on their contractual status [Article 1 (b)] .
- Define the workplace comprehensively to protect workers in all situations linked with or arising out of work, including in private and public spaces where these are places of work. [Article 2 (a)-(f)] .

Of note however, is that while the Conference produced agreement on the need for adoption of a Convention and Recommendation, the scope and language of the proposed instruments remains up for debate, as some member States, have expressed reservations or opposition to some of the language agreed on during the negotiations. Some parts of the text of the proposed Convention and Recommendation also remain unresolved as the Conference ran out of time and these will be taken up for the first time in negotiations at the second discussion during the ILC taking place on 10–21 June 2019.

This policy brief sets out CARE's recommendations on specific points or issues within the proposed Convention that appear to be a major focus of debate or contention to date among ILO members leading into the next round of negotiations.

The aim of this document is to contribute to increased consensus in favor of adoption of an effective and binding global standard with high quality non-binding guidelines to address violence and harassment in the world of work.

The commentary here is based on the so-called ‘Brown Report’ issued on 8 August 2018 by the International Labour Office (‘the Office’).

The definition of violence and harassment (I. DEFINITIONS AND SCOPE *Article 1 (a)*)

Some reservations have been expressed by employers and some governments about the definition of “violence and harassment” in the world of work in the proposed Convention text: i.e. “...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.”

Employers have argued that this definition lacks conceptual clarity and would result in challenges to implementation and accountability. Among other things they have previously proposed separately defining the terms “violence” and “harassment” arguing (among other things) that violence is normally covered by criminal law, whereas harassment might involve subjective judgment.

While there is currently no universally accepted definition of the terms violence and harassment in the world of work, there is a very good rationale for viewing violence and harassment as a range of behaviors, as set out in the proposed Convention text. CARE understands violence and harassment in the world of work as ranging from physical abuse and sexual violence to verbal abuse; bullying; psychological abuse and intimidation; sexual harassment; threats of violence and stalking. Such violence and harassment often has a gender dimension, with women disproportionately affected due to unequal power relationships and the influence of cultural and social norms.

The definition of violence and harassment in the proposed Convention is also in line with the conclusions of the ILO’s Meeting of Experts on Violence against Women and Men in the World of Work in 2016, which concluded that the rubric of violence and harassment should be understood as “involving a continuum of unacceptable behaviors and practices which that are likely to result in physical, psychological or sexual harm or suffering, including gender based violence”. The experts concluded that violence and harassment can be a one-off occurrence or repeated, and the nature and the effect of such conduct are key criteria to establishing whether it qualifies as violence and harassment.

This definition also has support in many national laws, as per the findings of the 80-country survey conducted by the ILO for the so-called White Report, which found that in the majority of countries, violence and harassment in the world of work was defined to include both physical and psychological conduct. The study also found that definitions of the various forms of violence most often focus *on the result or effect of the conduct* (e.g. harm, loss of dignity) as opposed to the *nature of the act or conduct*.

We call on the ILO's constituents, particularly governments and employers, to not reopen this definition - the word ‘range’ covers the that there is a continuum of violence and harassment and it is of utmost importance that the multiplicity and diverse forms of violence and harassment are included. Many illustrations have been given as to why attempts to rework this definition do not work now and also would not be include emerging or new forms of violence and harassment as the world of work changes.

Scope of the World of Work (I. DEFINITIONS AND SCOPE Article 2 (a-f))

CARE supports the wide definition of the concept of the world of work as outlined in the proposed Convention text, which covers situations occurring in the course of, linked with or arising out of work. This aligns with the conclusions of the Tripartite Meeting of Experts, where it was noted that the term “world of work” is relevant for the 21st century realities of workers around the world, as it covers not only the traditional physical workplace, but also

commuting to and from work, work-related social activities, as well as public and private places where these are places of work, including the home, for homeworkers, domestic workers and teleworkers.

During the negotiations, employers argued against the use of the term 'world of work' on grounds that it was too broad, and sought to replace it with the term 'workplace', arguing that this was where employers had control and influence, without which they could not be held accountable for violence and harassment. However, this appeal to a narrow definition of workplace risks excluding millions of workers around the world, including some of the groups that CARE works most closely with, including domestic workers, home-based workers and workers in the informal economy (e.g. street vendors).

The employers' concerns that they could not, and should not, be held liable for all harm caused in environments outside their sphere of control is important and was well acknowledged by workers and governments during the negotiations (i.e. governments and workers representative also have a responsibility). However, employers can take steps to minimize the risk of violence and harassment in the world of work, even when this is not in their direct control. As noted by the worker representative during the negotiations, "the concept of the 'world of work' is often taken into account when addressing occupational safety and health risks or the duty of care owed by employers." There are also ample examples of the use of 'world of work' in national laws and policies, as evidenced in the White Report.

We call on the ILO's constituents, particularly governments employers, to not reopen the proposed Convention text which provides a welcome broad scope of the 'world of work' and to recognise that it is appropriate for the instruments and "the realities of workers around the world" as the White Report put it.

Protections for vulnerable groups (CONVENTION, Article 6; RECOMMENDATION, II. PROTECTION AND PREVENTION 12, a-i)

A major area of contention arising during the negotiations was about whether to identify categories of workers disproportionately affected by violence and harassment, with some governments opposing the explicit inclusion of LGBTI and gender non-conforming persons as part of a proposed list of vulnerable groups requiring protections under the Convention.

The debate eventually resulted in the removal all references to specific vulnerable groups in the Convention text, including LGBTI workers, and language agreed requiring member states to "*ensure the right to equality and non-discrimination for all workers, including women workers, as well as workers belonging to one or more vulnerable groups or groups in situations of vulnerability.*"

The Office has suggested deleting the reference to "vulnerable groups" while maintaining the reference to "groups in situations of vulnerability" to avoid any potential stigmatization, and we agree that this makes sense as any group is not inherently vulnerable to violence and harassment, but can be placed in a situation of vulnerability.

There was a further proposal that the list of vulnerable groups be instead included under the proposed Recommendation, but this text was not discussed (it is part of the wording left

in square brackets in the text after the first discussion at #ILC2018, and now at 12, a-i) and so, as such, the parties have yet to reach consensus on whether or not and, if so, how to include explicit references to vulnerable groups, including LGBTI workers, within the text of the proposed Recommendation.

With the discussions around this issue deferred to the second discussion of the Conference in 2019, CARE calls on parties on all sides of the debate to stay in dialogue on this issue, with the aim of finding inclusive language that recognizes and protects the rights of all workers, including those most vulnerable to violence and harassment, while also creating space for governments to adapt the standards to their national contexts.

In this regard, it is also worth underlining that the listing of “groups in situations of vulnerability” is now in the proposed Recommendation i.e. it is guidance to member States and non-binding, complementary to a Convention that does refer to workers belonging to one or more vulnerable groups in situations of vulnerability that are disproportionately affected by violence and harassment in the world of work.

CARE encourages parties to become familiar with how these matters have been successfully addressed in the UN where sexual orientation and gender identity language has been taken forward in key statements.

Towards more productive negotiation and an outcome Conference in 2019

As an Observer INGO in the negotiations, CARE shares many of the concerns that have been raised in various fora at the ILO and elsewhere on challenges in how discussions have taken place to date. We call on the ILO and its tripartite members as well as the Governing Body and Office to ensure a more productive way forward. Notwithstanding the ambition and that 2018 was the first time a standard-setting discussion had taken place in a shorter two-week Conference, there are many logistical and procedural improvements to make in order that the process going forward is better and how negotiations are conducted achieves the outcome.

Informal consultations are needed before the second discussion. Likely impasses can be identified ahead and appropriate mechanisms found for tripartite dialogue to find consensus and proposed solutions. Amendments and sub-amendments that do not have support should be avoided including those for which expert, Office and/or other evidence has already been provided.

Conclusion.

A progressive ILO Convention and Recommendation are needed. In CARE’s view, the scope of the ILO Convention and Recommendation must reflect the needs of the women we support: that violence and harassment at work includes not just physical, but also psychological and sexual aspects; that practical protections against work-related violence and harassment reach all workers, including those working in private homes, in the informal economy, and in small and medium-sized enterprises; and that the world of work is considered to cover not only the traditional physical workplace, but also commuting to and

from work, public spaces including for informal workers such as street vendors, and the home, in particular for homeworkers and domestic workers. The text before governments does just this, and, as such, the parties should be looking to only strengthen the instruments where this can be done.

A new meaningful ILO Convention will require governments to pursue an integrated approach to address violence and harassment in the world of work, delineating clear responsibilities for public and private employers, workers and their respective organizations, and governments, and joint strategies and collaboration. An integrated approach is necessary not only for prevention, but also for protection, rehabilitation, compensation and other remedial action.

There is wide agreement across governments, employers and workers in this negotiation and the first discussion has greatly added to that. We are now months away from the world's first treaty to end violence and harassment in the world of work.

Violence and harassment has risen in public profile across the world in recent years, particularly gender-based violence and harassment. The task now is to have the dialogue needed and to improve the text, forge agreement and move quickly to the widest possible ratification.

Everyone, everywhere has the right to work free from violence and harassment. Abuse isn't in any woman's job description. Yet almost half of women around the world experience sexual harassment at work. This is not working. It's time to make work safe for women.

Gender inequality, discrimination, sexual harassment and violence are so appallingly common that these are the most prevalent human rights abuses in the world. At this momentous time in history, women around the world are speaking up about sexual harassment in the workplace. CARE works in many countries where there are no laws protecting vulnerable women from harassment when are at work.

At the ILO governments and employers, with trade unions, have the opportunity to act boldly to end this crisis by adopting robust international standards on violence and harassment in the world of work – the first step to building global accountability on this issue – a landmark treaty to change the story for women and others in situations of vulnerability in countries across the world.

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Further information is available online on the CARE Insights web pages '[Ending violence and harassment at work](#)'.