

ILO Documents:

Report V(1): Ending violence and harassment in the world of work - Deadline 8 November 2018

https://www.ilo.org/ilc/ILCSessions/108/reports/reports-to-the-conference/WCMS_637108/lang--en/index.htm

Available in English – Spanish – French – Arabic

Report of the Standard Setting Committee on Violence and Harassment in the World of Work: Resolution and proposed Conclusions submitted for adoption by the Conference which contains the draft conclusions in the form of a Convention and Recommendation as adopted in June 2018

https://www.ilo.org/ilc/ILCSessions/107/committees/violence-harassment/WCMS_631787/lang--en/index.htm

Available in English – Spanish – French – Arabic

Report of the Standard-Setting Committee on Violence and Harassment in the World of Work: Summary of proceedings which provides information on the position of your government and/or region

https://www.ilo.org/ilc/ILCSessions/107/committees/violence-harassment/WCMS_631807/lang--en/index.htm

Available in English – Spanish – French

For your reference, the reports published before the ILC in June 2018:

Report V(1): Ending violence and harassment in the world of work

https://www.ilo.org/ilc/ILCSessions/107/reports/reports-to-the-conference/WCMS_553577/lang--en/index.htm

Available in English – Spanish – French – Arabic

Report V(2): Ending violence and harassment in the world of work

https://www.ilo.org/ilc/ILCSessions/107/reports/reports-to-the-conference/WCMS_619730/lang--en/index.htm

Available in English – Spanish – French – Arabic

Report V (1) on Ending violence and harassment in the world of work (the brown report) contains the first draft text of a proposed Convention and Recommendation and includes proposals from the ILO Office (office commentary) for adjustments to the Conclusions that were adopted in June 2018. Governments are asked to inform the ILO by **8 November 2018** whether they have any amendments to suggest or comments to make after consulting the most representative organisations of employers and workers. Governments are further asked to state whether they consider that the proposed texts provide a satisfactory basis for the second discussion in 2019.

Mindful of the fact that consultations with workers' organisations may not always take place, trade unions are hereby urged also to submit their comments by the deadline, directly by email, to VIOLENCEHARASSMENT@ilo.org, with copy to equality@ituc-csi.org and genevaoffice@ituc-csi.org. The comments received will be reflected in the fourth and final report, which will be prepared by the Office for the consideration of the Conference at its 108th Session (June 2019).

General comments:

The ITUC considers the proposed texts for a Convention and Recommendation as a satisfactory basis on which to resume the negotiations next June.

In Report V(1) the Office is mainly proposing changes which aim to provide greater clarity and consistency, align the French and English versions, harmonise certain provisions and ensure coherence with terminology used in other ILO instruments. A few changes, however, are more substantial and require our attention. These are listed below.

Where no specific comments are provided on issues raised in the brown report, it indicates that the changes proposed by the Office can be supported.

Beyond the changes proposed by the Office, governments can make comments or suggest amendments. It is expected that several governments will argue that the proposed texts are too prescriptive or would require too many substantial changes in national legislation. A strategy they may pursue is to propose the removal of articles from the draft Convention and their inclusion in the draft Recommendation. Generally, trade unions should oppose these changes on the basis that the right to a work environment free from violence and harassment should never be a lottery. In order to create a level playing field, the basic rights and principles should therefore be properly addressed in a Convention.

The conclusions referred to below can be found here:

https://www.ilo.org/ilc/ILCSessions/107/committees/violence-harassment/WCMS_631787/lang--en/index.htm

PROPOSED CONVENTION

Preamble (point 6 of the Conclusions)

The ITUC supports the Office proposal, provided that the remainder of paragraph 6 of the Preamble is retained. The right to life and security of person, the right to equality, and the prohibition against torture are recognised in several international human rights treaties, including the Universal Declaration on Human Rights of 1948 and the International Covenant on Civil and Political Rights of 1966. Article 3 of Council of Europe Convention on preventing and combating violence against women and domestic violence describes violence against women as “a violation of human rights and a form of discrimination against women”. Further references to violence against women as a human rights violation can be found in the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Maputo Protocol) and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belém do Pará Convention).

Definitions and scope

Article 1 (a)

Point 3 (a) of the Conclusions

Definition of “violence and harassment”

The ITUC supports maintaining a single definition of violence and harassment. The original title for the proposed standard-setting discussion referred only to violence. However, the Meeting of Experts held 3-6 October 2016 in Geneva in order to inform the standard-setting discussion proposed that the word “violence” be replaced with “violence and harassment” in order to capture the full range of behaviours that should be proscribed. Recognising that an unacceptable behaviour or practice could contain elements of both harassment and violence, the Experts suggested the usefulness of thinking of them as points along a continuum, where elements could overlap. The word “continuum” was replaced by “range” during the discussion. Whilst this does not fully capture the notion of a continuum, the workers’ group deemed it an acceptable compromise.

Treating violence and harassment in this way is consistent with several instances of national law and practice. A relevant example can be found in the Ontario Occupational Health and Safety Act. Whilst that Act provides for a definition of “workplace violence” and one for “workplace harassment”, the [official guidance](#) to the Act states that *“A continuum of inappropriate or unacceptable behaviours can occur at the workplace. This can range from offensive remarks to violence. Workplace harassment may escalate over time. Where harassment, including sexual harassment, in the workplace involves threats, attempts or acts of physical force, this would be considered to be workplace violence under the Act.”*

An illustrative, non-exhaustive list in the Recommendation could provide useful guidance. However, care should be taken that this does not become a definitive list in practice. Such an illustrative list should include examples of practices, as well as behaviours.

Article 1 (c)

Point 3 (c) of the Conclusions

Definition of “worker”

The ITUC can support the modifications to the definition of “worker” proposed by the Office. The ITUC, however, does not agree that there is a useful correlation between the definition of “worker” and the proposed new Article after Article 4 (see below for further comments relating to this point).

A broad definition of “worker” is essential to ensuring that “no one is left behind” in eliminating violence and harassment from the world of work. As stated in Article 3, all workers can become vulnerable to violence and harassment. There is therefore no justification for exemptions. The ITUC recalls that under Convention 181 on Private Employment Agencies, the term “worker” includes jobseekers. Further,

Recommendation 200 on HIV and AIDS covers all workers working under all forms or arrangements, and at all workplaces, including (i) persons in any employment or occupation; (ii) those in training, including interns and apprentices; (iii) volunteers; (iv) jobseekers and job applicants; and (v) laid-off and suspended workers in all sectors of economic activity, including the private and public sectors and the formal and informal economies, and armed forces and uniformed services.

The ITUC concurs with the findings of a recent United Kingdom Parliamentary inquiry into sexual harassment and violence¹, which concluded that *“Everyone in the workplace should be protected from sexual harassment, regardless of whether they have a contract of employment or similar contract for services or who the harasser is”*. The inquiry recommended that protection should be extended *“to interns and volunteers so that they are entitled to the same protections as the wide range of individuals in the workplace who are already protected”*.

It is vital that prevention measures to protect workers include workers in the informal economy, who may not have an employer, but for whom violence and harassment might be a regular occurrence. Such workers should also have effective access to remedy. ILO Recommendation 204 of 2014 urges member States to ensure that an integrated policy framework to facilitate the transition from the informal to the formal economy includes measures to promote equality and the elimination of all forms of discrimination and violence, including gender-based violence, but that Recommendation does not outline what such measures might be.

Possible new Article after Article 4 (Point 7 of the Conclusions)

The ITUC views the introduction of the proposed Article as problematic and cannot support it. The proposed new Article appears to draw on Article 8 of the Occupational Health Services Convention, 1985 (No. 161), which states, *“The employer, the workers and their representatives, where they exist, shall cooperate and participate in the implementation of the organisational and other measures relating to occupational health services on an equitable basis.”*

The ITUC is mindful that the proposed new Article would interact not only with Articles 1 (c) and 2 as the Office suggests, but would interact closely with Article 3 (point 5 of the Conclusions). Additionally, paragraph 7 of the preambular text reads *“Recalling that Members have an important responsibility to promote a general environment of zero tolerance to violence and harassment in order to facilitate the prevention of such behaviours, and that all actors in the world of work must refrain from, prevent and address violence and harassment...”*

In this regard, the new Article could result in the instrument overly and inequitably expanding the obligations of individual workers to prevent and address violence and harassment. Further, the preventive measures necessary at the level of the enterprise under Article 9 do not lie within the competence of the individual worker.

¹ <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/725/72502.htm>

The new article is therefore an unhelpful contortion. Whilst employers, managers, co-workers or third parties can all be perpetrators or victims of violence and harassment, this does not suggest that all are exposed to violence and harassment on the same scale or in equal measures – nor that all have an equal, if different, responsibility for preventing violence and harassment. **Ultimately, the primary responsibility for creating a work environment where violence and harassment is prevented rests with employers.** It is for employers, in consultation with workers' representatives, to put in place the necessary codes of conducts, risk assessments, practices, policies, procedures, training schemes, etc. to prevent and redress violence and harassment. Workers have a responsibility to cooperate and comply.

The ITUC recalls and concurs with the findings of the recent UK parliamentary inquiry into sexual harassment:

- Mandatory requirements, sanctions for breaches and proactive enforcement reflect the importance of an issue, its impact on society and how seriously employers are expected to take it.
- In the absence of comprehensive action by employers and of a stringent regulatory regime, the burden of tackling sexual harassment at work rests with individual workers.
- Employers must have greater and clearer responsibilities for protecting workers from sexual harassment.
- We support the recommendation of the Equality and Human Rights Commission that the Government should place a mandatory duty on employers to protect workers from harassment and victimisation in the workplace.

The same inquiry also concluded (with the support of the Confederation of British Industry) that it was necessary to place a clear duty on employers to protect workers from third-party harassment.

Such an approach is by no means clear in the suggested new Article when read together with other provisions. Should it be deemed necessary for the sake of clarity and equity to introduce a new Article, the ITUC suggests that Article 8 of the Occupational Health Services Convention, 1985 (No. 161) be reproduced so that the new Article would read *“The employer, the workers and their representatives shall cooperate and participate in the implementation of the organisational and other measures relating to violence and harassment on an equitable basis.”*

Article 6

(Point 10 of the Conclusions)

Connection between inequality, discrimination and violence and harassment

The Office proposal to replace “for all workers” with “in employment and occupation” is supported by the ITUC. The ITUC equally supports the proposal to delete the reference to “vulnerable groups”, for the reasons given by the Office.

The discussion on point 10 of the Conclusions was extremely difficult, with the Worker's Group expressing a strong preference to keep the list of categories of workers. Extremely reluctantly, the Worker's Group eventually agreed to the compromise language that appears in Article 6.

The ITUC would suggest that the language could be further improved and the intent behind this Article made clearer by adding "to discrimination and inequality" immediately after "groups in situations of vulnerability".

Article 9
(Point 12 of the Conclusions)

Workplace policy

The Office proposes to replace "a policy on all forms of violence and harassment" with "a workplace policy on violence and harassment". This would be consistent, for example, with the approach in the HIV and AIDS Recommendation, 2010 (No. 200). Recommendation 200 uses the concept of the "world of work" throughout, but refers to "measures taken to implement workplace policies and programmes related to HIV and AIDS". A similar approach can be found in the ILO's Occupational Safety and Health instruments. The ITUC therefore supports the proposal.

Article 10
(Point 13 of the Conclusions)

Privacy and confidentiality – new subparagraph (c)

The ITUC agrees with the office proposal to move this subparagraph from Article 8 (point 11 (c) of the Conclusions) to Article 10. We note the Office proposal to modify the text in order to clarify that privacy is to be respected in relation to "individuals", while confidentiality may concern, for example, data, procedures or information. The ITUC is, however, concerned that the proposed modification does not go far enough.

During the 2018 discussion, the Workers' Group expressed concern that measures to protect privacy and confidentiality should not amount to the misuse of "gagging" clauses or non-disclosure agreements, as this can have a chilling effect on reporting and addressing violence and harassment. In other words, such measures should not be used for the purpose of silencing victims of violence and harassment and preventing cases being brought into the public eye for fear of bad publicity. The ITUC would suggest adding a new sub-point to this effect under Article 10(b) or adding a new subparagraph (c).

Article 11
(Point 14 of the Conclusions)

The ITUC supports the modification made by the Office. The ITUC suggests that language should be added to Article 11 (b), or as a new Article 11 (c), to include guidance, resources, training, etc., *specifically on gender based violence and harassment*. This would better align the text with Article 10 (e), which recognises the

need for “effective access to gender-responsive [...] dispute resolution mechanisms support, services and remedies”. A lack of such targeted training, etc., can be a significant barrier to obtaining remedy for gender-based violence. It would also align with the relevant provisions in paragraph 22 of the Recommendation (e.g., 22(b)).

PROPOSED RECOMMENDATION

The Office has mainly made minor changes throughout the text of the proposed Recommendation, with some drafting changes aimed at ensuring coherence and consistency with the proposed Convention.

Paragraph 4 (Point 17 of the Conclusions)

The ITUC supports the change from “encourage” to “promote”. The ITUC concurs with the explanation given by the Office with reference to “collective bargaining at all levels”.

Paragraph 5 (Point 20 of the Conclusions)

The ITUC could support moving this paragraph to sit within the section dealing with “Protection and prevention”.

Paragraph 9 (Point 24 of the Conclusions)

The ITUC welcomes the division into subparagraphs (a) and (b), as this improves both readability and comprehensibility. The ITUC strongly supports the language in paragraph 9 in its entirety.

Paragraph 11 (Point 37 of the Conclusions)

The ITUC strongly agrees with the Office proposal to place this paragraph under “Protection and prevention”.

Paragraph 12 (Point 26 of the Conclusions)

The ITUC strongly supports the suggestion from the Office to restore the original meaning of point 26 by deleting the list of groups and agrees with the explanation provided by the Office. Point 26 contained provisions aimed at ensuring that specific measures to prevent violence and harassment in sectors, occupations and work arrangements where there is a greater risk do not further penalise or stigmatise groups that are already disproportionately affected by discrimination and inequality (for example, by prohibiting women from working at night, or by further excluding women from already male-dominated sectors). Adding the list to the end of point 26 renders the text incoherent. The ITUC agrees with the view 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”. Indeed, the ITUC considers this issue sufficiently critical to warrant inclusion within the text of the Convention – for example, by including it immediately after Article 6.

As concerns a specific new provision of the Recommendation aimed at supplementing Article 6 of the proposed Convention, the ITUC is mindful that re-opening the discussion on the list could again risk polarising the discussion. Prior to and during the 2108 discussion, the ITUC and the Workers' Group have expressed their strong support for an indicative and non-exhaustive list that would explicitly recognise that certain factors or characteristics can lead to heightened risk of – or exposure to – violence and harassment. The Workers' Group was highly disappointed and disheartened that controversy arose over the inclusion of LGBT workers in this list. Indeed this controversy seriously disrupted the work of the Committee. LGBTI+ workers rank amongst the most discriminated and amongst the most exposed to bullying, assault and other forms of violence and harassment. They count amongst workers most in need of protection from and remedy against violence and harassment. The ITUC is therefore not prepared to countenance a list, albeit non-exhaustive, which would not include LGBTI+ workers. Extremely reluctantly, the Workers' Group agreed to work towards compromise language that would not list specific categories of workers but would nonetheless go to the crux of the matter, by acknowledging that some groups of workers are disproportionately affected by inequality, discrimination and violence and harassment.

The ITUC considers that the crucial issue is to ensure that the instruments cover all workers, without distinction or discrimination, and the instruments recognise that particular efforts may be needed in the case of certain groups disproportionately affected by violence and harassment due to prevailing inequality and discriminatory attitudes. The ITUC does not consider that attempts to reinsert a list would be helpful.