Call for a progressive ILO Convention and Recommendation on Ending Violence and Harassment in the World of Work

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 ILO ‘Yellow Report’ published in March 2018 reflecting the input to the ILO from states, employers, unions and civil society until then on whether to introduce such (a) new instrument(s) and, if so, in what form. The International Labour Conference, which is taking place from 28 May - 8 June 2018 and brings together governments, employers and workers’ representatives, will now discuss what the Yellow Report sets out: a proposed ILO Convention and Recommendation.

CARE has welcomed the provisions of the draft ILO Convention and Recommendation in the Yellow Report and sets out here some remaining concerns which must be addressed by governments, employers’ representatives and workers’ representatives in the lead up to, and during, the 2018 International Labour Conference (ILC). CARE will continue to put forward its positions and respond to negotiations and reports to help ensure the best global agreement and national action possible to bring an end to violence and harassment at workplaces worldwide.

Key messages:

**Governments must vote for a Convention and a Recommendation.** The International Labour Office has suggested that the ILC endorse a Convention and a Recommendation: a Convention and Recommendation is the strongest combination of instruments available for ensuring legal accountability and providing guidance for how legal commitments can be implemented. Over 50 governments have already indicated support for an ILO Convention and it is time for more countries to step up with their support for such a legally binding treaty.

**The ILO Convention must define “Workers” and “Workplaces” comprehensively.** Worker groups who are currently poorly protected against violence and harassment (including unpaid care workers, domestic workers, sex workers, workers in the informal sector and workers in politics) should be included within the Convention, explicitly listed as part of an inclusive agreement that clearly supports worker ‘types’ most at risk.

**The ILO Convention must include unpaid care workers.** Unpaid care workers – who are largely women - should have the same protections against violence and harassment as other workers and there is much that governments can do to ensure that is the case. The legislative and administrative frameworks of an ILO Convention would help progress such action. There should be explicit acknowledgement of unpaid care workers as a group that should be covered by these instruments.

**The ILO Convention must cover corporate value chains.** Missing from the Yellow Report and the proposed ILO Convention and Recommendation is the concept of corporate value chains or supply chains. CARE recommends recognition of the UN Guiding Principles on Business and Human Rights (UNGPs) in the Preamble to the ILO Convention as the Guiding Principles place value chains in the sphere of the responsibility of companies. Including such a reference to the UN Guiding Principles on business and human rights helps establish that companies should adhere to these standards throughout their supply chains.

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1. Report V (2) Ending violence and harassment in the world of work
2. Ending violence at work: CARE welcomes wide government support for global ILO treaty
Introduction
CARE International strongly supports a new ILO Convention (with an associated Recommendation) on ‘Ending violence and harassment in the world of work’, with a strong focus on the gender dimension of violence and the inclusion of the informal sector in the world of work. CARE considers the Convention and Recommendation essential to signal without ambiguity that violence and harassment in the world of work is the antithesis of decent work and demands serious and urgent attention. The approach to dealing with violence and harassment in the world of work at both international and domestic level is often fragmented and limited in scope. The development of international standard(s) would fill important gaps at international and domestic levels by taking a comprehensive and integrated approach in addressing all forms of violence and harassment across all occupations and sectors.

There is no internationally agreed definition of the term “violence and harassment in the world of work”. Whilst several ILO instruments refer to violence and/or harassment, none of these instruments address violence and harassment as their primary aim, none define what is meant by violence and harassment, nor do they indicate the steps that governments, employers and workers’ organisations should take to prevent, address and redress violence and harassment in the world of work. Further, these instruments tend to refer to only certain forms of violence or harassment and only cover specific groups or categories of workers.

For an integrated approach to violence and harassment at work, the ILO Convention should provide that member States: include a prohibition in law of all forms of violence and harassment in the world of work; ensure that relevant policies address violence and harassment; adopt a comprehensive prevention strategy; establish enforcement and monitoring mechanisms; provide remedies and support for victims; provide sanctions for perpetrators; and develop tools and guidance to address violence and harassment.

Reference to Gender-Based Violence. CARE suggests that explicit reference is made to gender-based violence in the instruments. Whilst violence and harassment in the world of work affects everyone, women are at greater risk. For CARE, physical, psychological and sexual violence can be considered gender-based if it stems from unequal power relationships between men and women (or people of other gender identities) or if it is perpetrated against people because they do not conform to socially accepted gender norms or roles. The majority of people affected by gender-based violence are women and girls, most often at the hands of men and boys.

Definitions and scope. Violence and harassment is highly contextual and is often driven by dynamics operating both in the world of work and in greater society, including, but not limited to, power relations, gender norms, cultural and social norms, and discrimination. Whilst violence and harassment affects every sector and occupation, negative power relations, discrimination based on the intersectionality of various factors (such as gender and race), circumstances and conditions of work and psychosocial hazards can increase the risk of exposure to violence and harassment in the world of work.

For CARE, violence and harassment in the world of work can take several forms such as physical abuse including assault, battery, attempted murder and murder; sexual violence including rape and sexual assault; verbal abuse; bullying; psychological abuse and intimidation; sexual harassment; threats of violence and stalking. Whilst there are extreme forms of violence that are easily recognised, other seemingly less extreme forms of intimidation and harassment, sometimes taking place over extensive
periods, can have equally devastating effects but are not always recognised in measures to address violence in the world of work.

The scope of violence and harassment in the world of work should also cover situations occurring in the domestic sphere, where these impact on the world of work. Domestic abuse/intimate partner violence can, for example, cause disrupted work histories, high rates of absenteeism, lower personal incomes, and frequent changes in jobs and loss of employment. The scope of the ILO Convention should also extend to measures to prevent and address violence from third parties, such as clients and family members of the public. Family members and friends/relatives of employers should be included in the list of third parties, where private homes are workplaces.

**Sectors and places of work.** CARE considers that the instrument(s) should explicitly include a wide concept of the world of work, a notion that would extend beyond the physical workplace and would include commuting to and from work, work-related social events and domestic violence where it impacts on the world of work.

The instrument should include homes and public places. It is important to frame public places as a workplace in order to protect informal workers who are especially vulnerable to violence. Political workplaces including parliaments and political parties should be included as workplaces within the ILO Convention, given the global prevalence of violence against women standing for national and local office. This notion should also include events related to the exercise of freedom of association, including especially the right to organize and collective bargaining.

CARE recommends that homes are included in the wider understanding of the world of work in order to consider unpaid care work, work in family enterprises, home-based workers and teleworkers. CARE suggests to also include the employer’s residence as a workplace in the case of live-in domestic workers. Unpaid care workers should be explicitly mentioned considering that such workers have not usually been under the coverage of ILO instruments.

Whilst no workplace, group, sector or occupation is intrinsically vulnerable to violence and harassment, some could be at a higher risk. For example, workers in frontline services such as public emergency services, social care, health and education, as well as in the transport and hospitality sectors, have reported relatively higher incidence. Working alone, in isolated or intimate spaces or at night can also increase risk of exposure to violence and harassment, as can working in highly segregated occupations (for instance women working in male dominated sectors such as construction and transport). Workers in informal, precarious and non-standard forms of employment and workers who cannot effectively exercise their rights to freedom of association and collective bargaining are also likely to be more at risk of violence and harassment. Domestic and sex workers also have a higher exposure to violence.

An initial reading of the International Labour Office’s explanation of how it presently sees the wording of the Convention working implies that these groups will be covered by the Convention. The Office says: “international labour Conventions and Recommendations use the verb ‘include’ or the terms ‘including’, ‘such as’, or ‘inter alia’ to introduce a non-exhaustive list of items or considerations. Therefore, in the text, the terms ‘including’, ‘that includes’ or ‘should include’, wherever they appear in the proposed Conclusions, should be understood as referring to a non-exhaustive list.” (ILO Yellow Report, p. 4)

The proposed Convention, notes that “worker’ should cover persons in all sectors, both in the formal and informal economy, and whether in urban or rural areas” while the workplace” is defined to include “public and private spaces where they are a place of work”. These definitions appear wide enough to cover the workers CARE and others consider particularly vulnerable.
However, while this wording implies coverage of vulnerable categories of workers, the fact that they historically have had little protection and little voice may mean that the fight to have their rights recognized is simply being postponed until later in the process when states have to ratify, legislate and implement the Convention. To get the best results for these most vulnerable workers, they must be explicitly recognized in the Convention.

**Unpaid care workers.** As above, one group that remains neglected are unpaid care workers. Unpaid care work is largely carried out by women and its critical role in supporting the economy is poorly recognised. Unpaid care work, whether in regard to children, the elderly, the sick or the disabled, is too often not seen as part of ‘the world of work’.

There should be acknowledgement of unpaid care workers as a group that is covered by the instrument or instruments. Although the instrument or instruments would be applicable to ‘the physical workplace, including public and domestic spaces where they are a place of work’ this category of workers should be explicitly mentioned considering that such workers have not usually been under the coverage of ILO instruments. The Yellow Report, however, does not discuss the issue, merely mentioning requests to include it. Given this, unpaid care requires discussion and inclusion in the Convention and Recommendation.

The structure of unpaid care work may not fit easily into the ILO tripartite structure of government, employers and unions and it can be difficult to see who the ‘employer’ is in unpaid care work. Yet, the role of ILO instruments is to ensure that governments put in place the legislative and administrative frameworks and processes to ensure worker rights. From this perspective there is much that governments can do to ensure that unpaid care workers have the same protection as other workers.

**Global value chains.** The importance of global value chains and their impact on the conditions faced by workers, not only in formal situations such as Tier 1 factories, but throughout the value chain, including home-based and informal workers, must be addressed in the instruments. For instance, many garment value chains include sub-contracting to Tier-2 factories and to homeworkers, often via agents. This complexity adds to the risk of poor conditions for workers including violence and harassment. Companies at the top of value chains drive, via demanding purchasing practices, pressure down the value chain giving rise to significantly increased risks of violence and harassment at work.

CARE calls on the ILC to have the ILO Convention recognise the United Nations Guiding Principles on Business and Human Rights (UNGP), and preferably build on their Respect and Remedy requirements of businesses with obligations to pay particular attention to the risks of violence and harassment at work within their Human Rights Due Diligence processes; to publish their risk analyses and mitigation plans; and to provide specialised remedies which recognise the particularly sensitive nature of the impact of violence and harassment at work. Responsibility for violence and harassment in the workplace should not only extend to supply chains but should also extend to distribution and retail channels where a brand or manufacturer plays a major role in the value chain.

The concept of corporate value chains or supply chains is missing from the ILO Yellow Report and the current suggested the ILO Convention and Recommendation. As above, CARE suggests referencing the UNGP in the Preamble to the ILO Convention. The Guiding Principles set out that, for companies, “The responsibility to respect human rights requires that business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur”; (b) “Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships […]” (Paragraph 13).

The proposed Convention text is clear that “violence and harassment in the world of work is a human rights violation”, therefore there is an overlap with the UNGP. Yet, despite listing in the proposed Convention Preamble a large number of other international instruments, the UNGP is not mentioned.
This leaves open the possibility that companies can argue that they do not have responsibility for violence and harassment in the world of work in their value chains, and may even, on a negative reading, undermine the UNGP in that a Convention has greater legal status than the UNGP.

The policies and practices of companies at the top of value chains drive levels of violence and harassment across the chains, impacting workers in many countries. For instance, research by CARE in the garment industry in Cambodia showed that nearly one in three women garment factory workers report experiencing sexually harassing behaviours in the workplace over the last 12 months. The Ethical Trade Initiative (ETI) Guide to Buying Responsibly shows the link from poor purchasing practices by companies at the top of the value chain to “harassment and abuse [of workers] from management”. Reference to these situations are missing in the suggested ILO Convention.

This is a significant gap in the suggested ILO Convention, especially given the ILO’s engagement elsewhere with the issues of ‘transnational’ enterprises. For example, the ILO “Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy” explicitly recognises the role of the UNGP and that “Governments should ensure that both multinational and national enterprises… provide adequate safety and health standards… This would include steps to combat workplace violence against women and men.” As such, this should be rectified as negotiations proceed.

**Dispute resolution mechanisms.** The ILO Convention should provide that each member State should ensure that all workers have easy access to safe, fair and effective dispute resolution mechanisms including: complaint and investigation mechanisms which, both within and external to the economic unit, should recognise the role of trade unions in dispute resolution; access to courts or tribunals; and dispute resolution mechanisms external to the economic unit.

In many instances the only ‘remedy’ available to workers experiencing violence and harassment is to leave the job. In cases of sexual or physical assault the only remedy available may be through the criminal system, which can be slow and expensive, and requires a high burden of proof. Although violence and harassment can lead to physical and mental illness, only a small number of countries consider the health consequences of work related violence and harassment as compensable occupational illnesses under workers’ compensation insurance. In cases in which keeping the job entails significant risks of further violence or harassment in retaliation, programs should be put in place for victims to easily find alternative possibilities of employment.

**Prevention measures.** In addition to developing and implementing workplace policies on violence and harassment and establishing prevention programmes with measurable objectives, CARE suggests employers publish key (anonymised) data, disaggregated by sex as well as reporting on risks identified and the plans established to mitigate those risks, and to provide remedy in cases of actual harassment and violence. Such publication should cover not only direct employees but also workers further up and down the value chain. Employers should also be required to publish their analysis of the risks of workplace violence and harassment throughout their value chain and the steps they are taking to mitigate these risks and to provide remedies to victims of workplace violence and harassment. Such workplace policies should extend to the entire value chain, bearing in mind companies’ responsibilities under the UN Guiding Principles on Business and Human Rights.

CARE believes it to be of utmost importance that workers and their representatives take part in the design, implementation and monitoring of workplace policies.

**Women’s participation in the ILO process and beyond.** Women should be encouraged and supported in becoming worker representatives in order to play a key role in consultations both in the ILO Convention process, and 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 and trade unions should consult widely with women's groups and CSOs in their national contexts in 2018 and beyond to bring in their experience.

**Support and guidance at the national level.** Member States should develop and implement gender sensitive guidelines and training to assist judges, labour inspectors, police officers and other public officials in fulfilling their mandate regarding violence and harassment as well as to assist employers in preventing and addressing violence and harassment and also in terms of enforcement and access to justice. Labour inspectors, judges and others involved in the enforcement and administration of justice are seldom provided with training on identifying risks of violence and harassment. This is especially relevant for gender based violence, where there is often a gap in the knowledge, expertise and sensitivity of those entrusted with the enforcement of protections against such conduct.

The Recommendation should also outline the rights and responsibilities of workers and employers and ensure workers and their representatives are consulted, informed and trained. Training should be extended to labour inspectors and to those involved in taking measures to prevent and control hazards and risks of violence and harassment, such as occupational health and safety officers, human resources personnel, managers and supervisors. Moreover, companies should be required to ensure appropriate and adequate training of employees / employer councils or boards who investigate from within the company. All individuals engaged in inspecting for, and addressing violence and harassment in the workplace, including labour inspectors and internal corporate staff, need to be specifically trained to identify ways in which intersecting identities (such as gender, race, class, caste and sexual orientation) can play a role in exacerbating the risk and/or effects of violence and harassment for some employees disproportionately when compared to others. Training programmes and materials for journalists and other media personnel on gender-based violence should include identifying corporate responsibilities on transparency, risk analysis and mitigation, and effective remedies throughout the value chain.

The Recommendation should call for Member States to provide resources and assistance for informal economy workers and their associations to prevent and address violence and harassment, including gender-based violence, in the informal economy. This would be consistent with the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), which calls for the adoption of an integrated policy framework to facilitate the transition to the formal economy that addresses, among others, the promotion of equality and the elimination of all forms of discrimination and violence, including gender-based violence, at the workplace. Such integrated strategies should combine a broad range of policy areas to achieve the transition to formality, including improving national legal frameworks, strengthening occupational safety and health (OSH) and labour inspection, organising informal workers and extending the coverage of social protection.

**Conclusion.** A progressive new 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.

A new ILO Convention would 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. **Further information is available online on the CARE Insights web pages “Ending violence and harassment at work”**.