



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

Policy brief following the publication of ILO 'Blue Report' (8 March 2019) and ahead of the 2019 International Labour Conference (10-21 June)

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

At the 2018 International Labour Conference in June (#ILC2018) governments, employers' and workers' representatives agreed to move forward with an ILO Convention and Recommendation to end violence and harassment in the world of work. CARE has been campaigning on this issue and applauded the tripartite constituents' decision in principle to adopt the world's first treaty to end workplace violence and harassment, including gender-based violence.

The proposed instruments were set out for consultation by the International Labour Office ('the Office') in the August 2018 'Brown Report'¹ with governments requested to submit their response. CARE engaged stakeholders during this period to advocate for the adoption of a strong and progressive Convention and set out its position on key points of policy.

Now the latest iteration of the proposed text has been released in the 'Blue Report' published on 28 February 2019² with a commentary by the Office explaining changes made released on 8 March 2019³. The 'Blue Report' forms the basis of the final negotiations at the 2019 International Labour Conference (#ILC2019) from 10 to 21 June. This meeting also marks the ILO's 100th anniversary and will be a high-profile event.

CARE will continue to put forward its positions leading up to and during the negotiations 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.

This brief is intended to inform and assist governments as well as employers' and workers' representatives as they prepare for the final negotiations on the new Convention and Recommendation at #ILC2019. The references in this document refer to the text contained in the 'Blue Report'.

¹ [Report V \(1\) Ending violence and harassment in the world of work](#)

² [Report V\(2B\) Ending violence and harassment in the world of work](#)

³ [Report V \(2A\) Ending violence and harassment in the world of work](#)

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.** At #ILC2018 all parties agreed that there should be a Convention and a Recommendation - the strongest combination of ILO instruments available for ensuring legal accountability and providing guidance for how legal commitments can be implemented. Governments should retain a firm focus on finalizing the text with a view to reaching agreement on a strong and inclusive treaty at #ILC2019.
- 2. Governments, employers and trade unions should continue to consult widely with women's groups and civil society organisations (CSOs) in their national contexts in the lead-up to #ILC2019 and beyond to ensure women's views and perspectives are meaningfully included in the ILO and national processes.** Women should play a key role 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 recognize that the proposed texts in the 'Blue Report' provide a strong basis for the second discussion at the Conference in 2019 and avoid reopening discussions on issues on which agreement has already been reached.** As they currently stand, the texts have already gone through considerable input, consultation and process, including significant expert opinion. Moreover, a number of issues still need to be negotiated as there was not enough time at #ILC2018 to deal with all points (the text in between square brackets in both the 'Brown Report' and now the 'Blue Report'). Government and other amendments at #ILC2019 should therefore be focused solely on enhancing the text in the few areas where this might be possible, avoiding ground on which agreement has already been reached at #ILC2018 or unnecessarily revisiting what has been explained with expert opinion.
- 4. Governments should support the agreed definition of 'violence and harassment'.** The ILO's constituents, particularly governments and employers, should not reopen discussion around the single definition of violence and harassment as "...a range of unacceptable behaviours and practices, or threats thereof...". The word 'range' in the definition signifies a recognition that an unacceptable behaviour or practice could contain elements of both harassment and violence. It is of utmost importance

that the multiplicity and diverse forms of violence and harassment are included. The present proposed wording ensures the definition is future-proof and fit for purpose to cover the full range of behaviors that should be forbidden including emerging or new forms of violence and harassment as the world of work changes. A new clause, without prejudice to definition (Article 1), clarifies that ‘violence and harassment may be defined in laws and regulations as a single concept or separate concepts’ which removes the main objection of some employers and governments to the proposed use of a single definition. There is therefore no reason to reopen this matter.

5. **Governments and employers should support an inclusive approach to who is covered in the Convention.** A broad definition of ‘worker’ agreed at #ILC2018 has been replaced in the ‘Blue Report’ with an inclusive description of who is covered under the Scope of the Convention. Whether a definition of worker is explicitly outlined as previously or, whether now, as the ‘Blue Report’, there is a broad and inclusive description of who is covered under the Scope of the Convention, it must be ensured that workers in all sectors most in need of protection are not excluded from the provisions of the Convention and Recommendation, whether they work in the formal or informal economy, in rural or urban areas, and irrespective of contractual status. This is fundamental to a ‘leave no-one behind’ approach when it comes to ending violence and harassment in the world of work. The standards must be future-proofed in this way for the necessary protection to be in place in the context of a rapidly-changing world of work and workers.
6. **Governments and employers should support the agreed scope of the ‘world of work’.** ILO constituents, particularly governments and employers, should not reopen discussions around the proposed text as it (Article 3) provides a welcome, necessary and implementable broad scope of the ‘world of work’ which recognises that situations of workplace violence and harassment can happen beyond the physical workplace. This comprehensive understanding of the nature of work is appropriate for the instruments, in order to be “relevant to the realities of workers around the world”, as stated in the ‘White Report’⁴.
7. **Governments and national parliaments should prepare for ratification.** The #ILC2019 is only weeks away, and it is by no means too early to ensure that preparations are underway for early ratification. Once the Convention is adopted at #ILC2019, it is open for ratification by all member States. Most conventions enter 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

⁴ [Report V \(1\) Ending violence and harassment against women and men in the world of work](#)

State ratifies a Convention, it has to ensure its national legislation meets 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.

- 8. Governments, employers and workers should ensure gender balance in delegations to #ILC2019.** ILO evidence shows women are not equally represented in the national tripartite delegations to the International Labour Conference. As a result, women do not have an equal voice in the process of developing and adopting international labour standards, like the one on violence and harassment. We call upon governments, employers' and workers' organisations to ensure that they go significantly beyond the required 30% minimum of women in their delegations so that the goal of gender parity in delegations at the ILO can be achieved as soon as possible.

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

- Specifically recognize gender-based violence and harassment, including sexual harassment, as part of the 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."
- Ensured an inclusive definition of the term 'worker' so the Convention covers persons working across all sectors, including in the informal economy and irrespective of their contractual status. [That inclusive language is now in the Blue Report under Scope as Article 2.]
- Define the 'world of work' 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. [Now Article 3 in the 'Blue Report'.]

However, 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 (shown in square brackets in the 'Blue Report') also remain unresolved as the 2018 Conference ran out of time and these will be taken up for the first time in the second discussion during #ILC2019 on 10–21 June 2019.

Here we provide further detail on CARE's recommendations on specific points or issues within the proposed Convention that appear to have been a major focus of debate or contention among ILO members in the lead-up to the negotiations ahead.

The aim of this document is to contribute to increased consensus in favor of adoption of a strong and inclusive binding global standard accompanied by high quality non-binding guidelines to address violence and harassment in the world of work.

The definition of 'violence and harassment' (I. DEFINITIONS Article 1(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 that violence is normally covered by criminal law whereas harassment might involve subjective judgment. CARE does not agree that there is a need to consider under which legal framework violators would be held to account since this would be determined at national level, given that national law would take precedent (as with all ILO Conventions). Instead, CARE argues that the focus should remain on having both violence and harassment (and the range of behaviours captured within those concepts) covered by the Convention, recognising that an unacceptable behaviour or practice could contain elements of both harassment and violence.

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 2016⁵, which concluded that the rubric of violence and harassment should be understood as "involving a continuum of unacceptable behaviors and practices 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 have consistently called on the ILO's constituents, particularly governments and employers, to not reopen discussions on this definition. 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 and would not include emerging or new forms of violence and harassment as the world of work changes.

The 'Blue Report' introduces a new clause (Article 1(2)) which, without prejudice to the definition (in paragraph 1(a) of Article 1) states that 'violence and harassment may be defined in laws and regulations as a single concept or separate concepts'. This should allay concerns by some governments and the employers and not require further amendment.

Defining 'worker' and who is covered (II. SCOPE Article 2)

The definition of 'worker' included in the text proposed in the 'Brown Report' (Article 1(c)) has been replaced in the current draft with a new Article 2 which describes the Scope of the Convention and Recommendation. The question of who will be covered by the new legal instruments is of utmost concern to CARE. CARE works with women around the world who work in jobs marked by high rates of violence and harassment. This includes home-based and domestic workers, people working in public spaces such as street vendors and beer sellers, and the many millions of women working in the informal sector, often in insecure jobs where they have few rights and little power. As a result, CARE's campaign in support of

⁵ [Final report of ILO Meeting of Experts on Violence against Women and Men in the World of Work \(3–6 October 2016\)](#)

the new Convention and Recommendation has focused on ensuring that the new global instruments are robust and inclusive in order to protect those most vulnerable to violence and harassment at work.

We interpret the proposed Scope as making it clear that the Convention and Recommendation will protect all workers, everywhere, in both the formal and informal sectors and in all places of work. On this basis, unless the workers present a case for returning to a definition, we urge all parties to the negotiations to accept the proposed wording and to not reopen discussions around this topic as much else remains to be agreed during the limited time available for negotiations at #ILC2019.

We do, however, note the insertion of the words ‘and other persons’ in the new Article 2. This may create confusion as to who workers are and other persons are and this may not be helpful for focus and implementation.

The ‘world of work’ (II. SCOPE Article 3 (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 such as 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. However, the proposed definition of the ‘world of work’ does not allocate responsibility: it simply describes the environments which may be considered to be within the world of work (i.e. sufficiently linked to or arising out of work) and where it could therefore reasonably be expected that action can be taken to prevent and redress violence and harassment. The fact that governments and workers also have a responsibility was well acknowledged by representatives during the negotiations. 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.” Employers can also demonstrate leadership recognising the impact that harassment more broadly has on workers’ capacity to be productive and fit employees. A safer community is a good outcome for everybody.

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 7; RECOMMENDATION, II. PROTECTION AND PREVENTION paragraph 13, (a)-(i))

A major area of contention arose during the negotiations around 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 protection under the Convention.

The debate eventually resulted in the removal of 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.”

There was a 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 in Paragraph 13, (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 Convention at #ILC2019, 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. One potential compromise position that could help ensure inclusion of LGBTI workers is to avoid listing any specific categories of vulnerable workers in the Convention, while acknowledging that some groups of workers are disproportionately affected by inequality, discrimination, violence and harassment.

In this regard, it is also worth underlining that the listing of ‘groups in situations of vulnerability’ is now in the proposed Recommendation (Paragraph 13), which is guidance to Member States, and is non-binding and complementary to the Convention text referring to workers belonging to one or more vulnerable groups or groups in situations of vulnerability that are disproportionately affected by violence and harassment in the world of work.

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 a positive outcome at the International Labour Conference on 10-21 June 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. We acknowledge that #ILC2018 was the first time a standard-setting discussion had taken place in a shorter two-week conference and recognise the ambition; however, to ensure that negotiations are constructive and the process achieves a positive outcome, there are many logistical and procedural improvements that need to be made.

We urge negotiating parties to continue to engage in informal consultations before the second discussion. Likely impasses can be identified ahead of #ILC2019 and appropriate mechanisms found for tripartite dialogue to move towards consensus and discover potential 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

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.

At the ILO governments, employers and 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. They have a unique opportunity to adopt a landmark treaty to change the story for women and others in situations of vulnerability in countries across the world.

A strong and inclusive ILO Convention and accompanying Recommendation are needed as the first step to building global accountability on this issue. In CARE's view, the scope of the ILO Convention and Recommendation must reflect the needs of the women we support,

recognizing 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 currently under consideration does just this and, as such, the parties should be looking to only strengthen the instruments where this can be done rather than reopen debate on points already agreed.

A 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 organisations, 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 greatly added to that. We are weeks away from the world's first treaty to end violence and harassment in the world of work. The task now to have the constructive dialogue needed and to finalize the text, forge agreement and move quickly to the widest possible ratification.

Comment and feedback on this CARE Policy Brief can be sent to the following contacts:

- **Glen Tarman**, Head of Global Advocacy, CARE International
tarman@careinternational.org
- **Milkah Kihunah**, Deputy Director, Global Advocacy, CARE USA (global advocacy lead for CARE International on life free from violence) milkah.kihunah@care.org
- **Katherine Nightingale**, Head of Advocacy and Policy, CARE International UK (global advocacy lead for CARE International on women's economic empowerment)
nightingale@careinternational.org

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