

A New Global Mandate to End Violence and Harassment in the World of Work: A Gender-Responsive Approach

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Introduction

In 2019, the International Labour Organization (ILO) celebrated one hundred years of promoting social justice and decent work. The ILO marked its centenary in a particularly meaningful and enduring manner, with a focus on ending violence and harassment in the world of work, including gender-based violence and harassment.

On June 21, 2019, the ILO's constituents—representatives of governments, workers, and employers—adopted the first, comprehensive international instruments aimed at addressing and preventing violence and harassment in the world of work. The Violence and Harassment Convention, 2019 (No. 190),¹ which has treaty status in international law, and its accompanying Recommendation (No. 206),² which provides guidance to help implement the Convention, provide a clear framework for action. Adopted on the same day as these instruments, the ILO Centenary Declaration for the Future of Work sets out a firm commitment to a world of work free from violence and harassment.³

The ILO instruments are significant additions to international law in many ways. The Convention is the first international instrument to articulate “the right of everyone to a world of work free from

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1. See Int'l Lab. Org. [ILO], Violence and Harassment Convention (C190), June 21, 2019, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190 [perma.cc/8NTN-WFH5].

2. See Int'l Lab. Org. [ILO], Violence and Harassment Recommendation (R206), June 21, 2019, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R206 [perma.cc/J3UE-KWZS].

3. See Int'l Lab. Org. [ILO], *ILO Centenary Declaration for the Future of Work*, at 2 (June 21, 2019), https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_711674.pdf [perma.cc/S77P-MRSJ].

violence and harassment, including gender-based violence and harassment”, and it requires ratifying States to respect, promote and realize this right.⁴ It also recognizes that violence and harassment in the world of work can constitute a human rights violation or abuse. Furthermore, it provides, for the first time, a common definition of violence and harassment,⁵ it gives a broad scope to the concept of “the world of work” going well beyond the traditional workplace,⁶ and it extends protection to all those who work, irrespective of their contractual status and whether they work in the formal or informal economy. Another innovative aspect of the instruments is that they address the impact of domestic violence in the world of work.

Of these many innovations, this paper will focus on how the Convention and Recommendation reinvigorate the concept of gender-based violence and harassment, what rights and protections are afforded in this regard, and what action needs to be taken.⁷

The ILO’s unique structure must be considered in this context, as it shapes not only the way international labor standards are adopted but also their content. The ILO is the oldest organization in the UN family, and the only specialized agency of the United Nations that is tripartite, which means that representatives of governments, employers, and workers fully participate in its governance structures. The ILO’s members are composed of representatives from 187 member States from around the world. It is these representatives from the world of work who negotiate and adopt the ILO’s international labor standards, ensuring that the standards are practical, reflect a range of national realities, and stand the test of time.

Convention No. 190 and Recommendation No. 206 are the result of an extensive process of dialogue between the ILO’s tripartite members. The members negotiated the texts during two discussions at the ILO’s annual International Labour Conference (ILC) in June 2018 and June 2019. The discussions were informed by a series of technical reports produced by the International Labour Office (the secretariat of the

4. See C190, *supra* note 1, pmbll., Art. 4(1).

5. For the elements of the definition of *violence and harassment*, see *infra*, Table 1.

6. The Convention applies to violence and harassment occurring in the course of, linked to or arising out of work: in the workplace, including public and private spaces where they are a place of work; in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities; during work-related trips, travel, training, events or social activities; through work-related communications, including those enabled by information and communication technologies; in employer-provided accommodation; and when commuting to and from work.

C190, *supra* note 1, Art. 3.

7. For further information and analysis of the preliminary stages leading to the Conference discussion of the instruments, and the ILO’s standard-setting process in more detail, see generally Eric Stener Carlson, *The International Labour Organization’s Innovative Approach to Ending Gender-Based Violence and Harassment: Toward a New International Framework for the World of Work*, 33 ABA J. LAB. & EMP. L. 163 (2018).

Organization),⁸ which set out the law and practice in this area and reflect the views of the constituents regarding the way forward. At each stage since 2015, when the ILO's Governing Body placed the issue on the Conference agenda, the ILO's tripartite constituents were involved in this process—conceiving, drafting, and negotiating the Convention and Recommendation.

When the texts were voted on by the tripartite members at the ILO's annual International Labour Conference on June 21, 2019 (the ILO's Centenary Session), the Convention was adopted with 439 votes in favor, seven against, and with thirty abstentions; the Recommendation was adopted with 397 votes in favor, twelve against, and with forty-four abstentions.⁹ Having received such strong international endorsement, there is a clear global mandate to end violence and harassment in the world of work, including gender-based violence and harassment.

I. Gender Equality and Gender-Based Violence and Harassment: Core Concepts of ILO Convention No. 190 and Recommendation No. 206

Gender equality is at the heart of the ILO's mandate to promote social justice and decent work, and figures prominently in its instruments. The ILO has a suite of key gender equality Conventions, starting from the 1919 Convention on Maternity Protection,¹⁰ and including

8. As a key part of the standard-setting process, the International Labour Office produced a series of technical reports that reflected the opinions, laws, and practices of its constituents regarding violence and harassment. These reports are as follows: Int'l Lab. Org. [ILO], *Report V(1), Ending Violence and Harassment Against Women and Men in the World of Work*, ILO Doc. ILC.107/V/1 (2017) [hereinafter ILO, *Ending Violence and Harassment* (2017)], https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_553577.pdf [perma.cc/GC7Y-NUDV]; Int'l Lab. Org. [ILO], *Report V(2), Ending Violence and Harassment in the World of Work*, ILO Doc. ILC.107/V/2 (2018) [hereinafter ILO, *Ending Violence and Harassment V(2)* (2018)], https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_619730.pdf [perma.cc/EJX3-YSCK]; Int'l Lab. Org. [ILO], *Report V(1), Ending Violence and Harassment in the World of Work*, ILO Doc. ILC.108/V/1 (2018) [hereinafter ILO, *Ending Violence and Harassment V(1)* (2018)], https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_637108.pdf [perma.cc/2G3K-P3SC]; Int'l Lab. Org. [ILO], *Report V(2A), Ending Violence and Harassment in the World of Work*, ILO Doc. ILC.108/V/2A (2019) [hereinafter ILO, *Ending Violence and Harassment V(2A)* (2019)], https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_675567.pdf [perma.cc/FLU5-264B]; Int'l Lab. Org. [ILO], *Report V(2B), Ending Violence and Harassment in the World of Work* (2019) [hereinafter ILO, *Ending Violence and Harassment V(2B)* (2019)], https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_673728.pdf [perma.cc/JYK5-2P73].

9. Int'l Lab. Org. [ILO], *Plenary Sitting—Outcomes of the Work of the Standard-Setting Committee on Violence and Harassment in the World of Work*, ILC Doc. PR13 (July 25, 2019), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_713904.pdf [perma.cc/JJB4-VT7N].

10. See Int'l Lab. Org. [ILO], *Maternity Protection Convention (C3)*, Nov. 29, 1919, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C003 [perma.cc/VE93-5UWY].

other instruments on non-discrimination, equal pay, maternity protection, and workers with family responsibilities.¹¹ The Declaration of Philadelphia, adopted in 1944, which is part of the ILO Constitution, states that “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.”¹² These words are quoted in the Preamble to Convention No. 190, demonstrating how Convention No. 190 is a continuation of the ILO’s century-long work to promote equality in the world of work.

Furthermore, the Preamble of Convention No. 190 firmly grounds the standard-setting process in gender equality by

[a]cknowledging that gender-based violence and harassment disproportionately affects women and girls, and recognizing that an inclusive, integrated and gender-responsive approach, which tackles underlying causes and risk factors, including gender stereotypes, multiple and intersecting forms of discrimination, and unequal gender-based power relations, is essential to ending violence and harassment in the world of work.

A core obligation of Convention No. 190 is the adoption of an “inclusive, integrated and gender-responsive approach” to prevent and eliminate violence and harassment in the world of work.¹³ This approach is reflected throughout the Convention and Recommendation, and gender issues figure prominently in both instruments. While issues underpinning gender equality in the world of work had been addressed previously in ILO Conventions, Convention No. 190 is the first ILO Convention to actually use the word “gender.”¹⁴ In fact, the

11. See Int’l Lab. Org. [ILO], Equal Remuneration Convention (C100), June 29, 1951, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C100 [perma.cc/9N5V-W2XA]; Int’l Lab. Org. [ILO], Discrimination (Employment and Occupation) Convention (C111), June 25, 1958, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C111 [perma.cc/UUL4-GBEP]; Int’l Lab. Org. [ILO], Workers with Family Responsibilities Convention (C156), June 23, 1981, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C156 [perma.cc/4S7Y-FS7A]; Int’l Lab. Org. [ILO], Maternity Protection Convention (C183), June 15, 2000, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:C183 [perma.cc/FU78-DB6L].

12. Int’l Lab. Org. [ILO], Declaration Concerning the Aims and Purposes of the International Labour Organization (Declaration of Philadelphia), Part II(a) (May 10, 1944), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/normative_instrument/wcms_698995.pdf [perma.cc/9HYL-PMGM].

13. C190, *supra* note 1, Art. 4.

14. That being said, the ILO Discrimination (Employment and Occupation) Convention refers to “sex”, C111, *supra* note 11, Art. 1(1)(a), which, in the context of the application of the Convention, is understood to go beyond distinctions based on biological characteristics, and includes “unequal treatment arising from socially constructed roles and responsibilities assigned to a particular sex (gender)”: Int’l Lab. Org. [ILO], *Giving Globalization a Human Face*, ¶ 782, ILO Doc. ILC.101/III/1B (2012), <https://www.ilo.org>

word *gender* is mentioned fifteen times in the Convention and fourteen times in the Recommendation, in addition to specific references to women workers, and to domestic violence, which predominantly affects women.¹⁵ In the context of Convention No. 190, *gender* is used in a range of contexts—“gender-responsive,” “gender stereotypes,” “gender-based power relations,” “sex or gender”—but most often in the context of “gender-based violence and harassment.”

As discussed in more detail below, the Convention establishes protection for a wide range of persons, and, within this overall protection, its vision of gender is neither just focused on women, nor is it necessarily binary. The initial title of the standard-setting item that, in 2015, the ILO’s Governing Body placed on the agenda for the first discussion at the 107th Session of the International Labour Conference in June 2018 was “Violence against women and men in the world of work.”¹⁶ However, following input from constituents, it was noted that the proposed title could have been problematic “because its scope is not sufficient to cover the gender diversity that exists in member States.” It was, therefore, suggested that the term *against women and men* be removed.¹⁷ The Resolution of the Conference, after the first discussion of the Conference Standard-Setting Committee on Violence and Harassment in the World of Work, determined that “an item entitled ‘Violence and harassment in the world of work’ shall be included in the agenda of its next ordinary session for second discussion. . . .”¹⁸

The change in the titles of these emerging standards was not merely semantic. Rather, it reflected a process that continually valued the importance of gender issues and also acknowledged that unacceptable behaviors and practices affected everyone. In concrete terms, this meant that gender-based violence and harassment was not being siloed from other forms of violence and harassment and that the focus was not only on women.

/wcmssp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_174846.pdf [perma.cc/YL6D-CDZW].

15. Ten other ILO Recommendations use the word, including the HIV and AIDS Recommendation, which refers to “gender” seven times. Int’l Lab. Org. [ILO], HIV and AIDS Recommendation (R200), June 17, 2010, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R200 [perma.cc/FT66-3W93].

16. See Int’l Lab. Org., *Second Item on the Agenda, Agenda of the International Labour Conference*, ILO Doc. GB.325/INS/2, add. 1 (Nov. 12, 2015), https://www.ilo.org/wcmssp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_424647.pdf [https://perma.cc/UWP4-3C8A].

17. See ILO, *Ending Violence and Harassment V(2)* (2018), *supra* note 8, at 4.

18. See Int’l Lab. Org. [ILO], *Resolution to Place on the Agenda of the Next Ordinary Session of the Conference an Item Entitled “Violence and Harassment in the World of Work”* (June 8, 2018), https://www.ilo.org/wcmssp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_633141.pdf [https://perma.cc/W8U9-L2QQ].

II. Placing Gender-Based Violence and Harassment within the Range of Violence and Harassment

A number of ILO standards refer to some manifestations of violence and harassment or refer to particular groups affected by them. However, prior to the adoption of Convention No. 190 and Recommendation No. 206, no international instruments had ever defined “violence and harassment in the world of work” or detailed what States should do to prevent and respond to it. The same is true for the more specific form of “gender-based violence and harassment”.

The ILO’s Indigenous and Tribal Peoples Convention, 1989 (No. 169) was the first international instrument to refer to sexual harassment.¹⁹ While sexual harassment is not mentioned specifically in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the ILO Committee of Experts on the Application of Conventions and Recommendations, the ILO’s regular supervisory mechanism, has made it clear that sexual harassment is a serious form of sex discrimination and thus covered by the Convention.²⁰ The HIV and AIDS Recommendation, 2010 (No. 200) refers to the need to ensure actions “to prevent and prohibit violence and harassment in the workplace” to reduce HIV transmission and alleviate its impact.²¹ Gender-based violence is referred to specifically in the context of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), though it does not provide a definition.²²

At the national level, countries have multiple, and varying, definitions for *violence* and *harassment*. As such, a significant challenge facing the drafters of these new ILO instruments was to develop a definition of violence and harassment in the world of work that would be broad enough to reflect the diversity of the ILO members’ experiences

19. See Int’l Lab. Org. [ILO], Indigenous and Tribal Peoples Convention (C169), Art. 20(3)(d) (June 27, 1989), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169 [<https://perma.cc/AZG4-D2WB>].

20. See Int’l Lab. Org. [ILO], *Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A)*, at 111 (2009), https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_103484.pdf [<https://perma.cc/ZX38-X7HV>].

21. See R200, *supra* note 15, ¶ 14(c). Forms of violence and harassment are also addressed in instruments concerning domestic workers, maritime labor, and in the context of conflicts or disasters. See: Int’l Lab. Org. [ILO], Domestic Workers Convention (C189), Art. 5, June 16, 2011, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189 [<https://perma.cc/BJH7-GZ3H>]; Int’l Lab. Org. [ILO], Amendments of 2016 to the Code of the Maritime Labour Convention, 2006, June 7, 2016, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_488452.pdf; Int’l Lab. Org. [ILO], Employment and Decent Work for Peace and Resilience Recommendation (R205), ¶¶ 13(b), 15(e), June 16, 2017, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R205 [<https://perma.cc/PT3F-57Z5>].

22. See Int’l Lab. Org. [ILO], Transition from the Informal to the Formal Economy Recommendation (R204), ¶ 11(f), June 15, 2015, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R204 [<https://perma.cc/TMB2-SBPX>].

and contexts, and, at the same time, specific enough to be applied concretely and meaningfully at the national level. Therefore, the ILO constituents undertook an intensive process of dialogue to ensure that the definition finally adopted would form a bridge connecting a variety of legal systems and languages.

In 2016, the ILO held a Tripartite Meeting of Experts on Violence against Women and Men in the World of Work. In this meeting, experts from all regions of the world met to provide guidance on a standard-setting item on violence. As a basis of their discussions, they concluded that the term *violence and harassment*, instead of just violence, should be used, “to ensure the range of unacceptable behaviour is adequately understood and addressed.”²³ The experts also suggested viewing violence and harassment as a “continuum”—a word later changed to “range” in the text of Convention No. 190—as “an unacceptable behaviour or practice could contain elements of both harassment and violence.”²⁴ Within the discussion of the “violence and harassment” rubric, the experts concluded that a “particular focus needs to be placed on gender-based violence.”²⁵

During the first Conference discussion in 2018, a number of constituents highlighted the importance of addressing gender-based violence, acknowledging that it remained a significant problem.²⁶ Through the amendment process, they introduced an expanded concept, namely “gender-based violence and harassment”²⁷ (emphasis added) for consistency with the concept of violence and harassment as a range. This term continued to be used in the discussions and appears in the final instruments that were adopted in 2019.

The resulting definition of *violence and harassment in the world of work* in Article 1(1)(a) of Convention No. 190 is as innovative as it is comprehensive, drawing on good practices from around the world:

the term “violence and harassment” in the world of work refers to 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;

23. Int'l Lab. Org. [ILO], *Report of the Meeting of Experts on Violence Against Women and Men in the World of Work*, app., ¶ 33, ILO Doc. MEVWM/2016/7 (2016), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/meetingdocument/wcms_546303.pdf.

24. *Id.* ¶ 206.

25. *Id.*, app., ¶ 3.

26. Int'l Lab. Org. [ILO], *Fifth Item on the Agenda: Violence and Harassment Against Women and Men in the World of Work, Reports of the Standard-Setting Committee on Violence and Harassment in the World of Work: Summary of Proceedings, Provisional Record*, ¶ 42, ILC Doc. PR8B(Rev.1) (Oct. 10, 2018), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_631807.pdf [<https://perma.cc/P6WV-GRKU>].

27. *Id.* ¶ 221.

The key elements of this definition are set out in Table 1 below and placed within the context of Articles 1(1)(b) and 1(2), as they should be read together as a whole. It is important to note that, within this overall framework of “violence and harassment in the world of work,” Article 1(1)(a) includes “gender-based violence and harassment.” Therefore, it is understood that the elements of this overarching definition of violence and harassment are equally applicable to gender-based violence and harassment.

But the Convention goes even further. Gender-based violence and harassment is explicitly part of the Convention’s historic recognition—the first time that an international instrument has done so—of “the right of everyone to a world of work free from violence and harassment, *including gender-based violence and harassment*” (emphasis added), along with the obligation to respect, promote, and realize this right.²⁸ Pursuant to Article 7 of Convention No. 190, States are to “adopt laws and regulations to define and prohibit violence and harassment in the world of work, including gender-based violence and harassment.”

Table 1: Elements of the definition of “violence and harassment in the world of work”

Article 1(1)(a): *the term “violence and harassment” in the world of work refers to 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;*

Article 1(1) (b): *the term “gender-based violence and harassment” means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.*

Article 1(2): *Without prejudice to subparagraphs (a) and (b) of paragraph 1 of this Article, definitions in national laws and regulations may provide for a single concept or separate concepts.*

28. See C190, *supra* note 1, pmbll., Art. 4(1).

Table 1: Elements of the definition of “violence and harassment in the world of work” (continued)

- 1: The Convention provides a definition of “violence and harassment”, allowing for an inclusive understanding - it covers a broad range of situations, and gives room for flexibility when designing national responses.²⁹ It is also sufficiently flexible to respond to new challenges and risks.³⁰
- 2: The notion of a “range” takes into account that a particular behaviour or practice may be considered harassment or violence, or both, in a particular national context, and can encompass independent behaviours or a combination of behaviours, including escalating conduct.³¹
- 3: While Article 1(1) refers to “violence and harassment” in the singular, Article 1(2) clarifies that Members can adopt a unitary concept of violence and harassment or define them as separate concepts.
- 4: The definition takes into account that a single occurrence may be sufficient to be considered violence and harassment, or there may be repeated conduct, and it is the nature and effect of the conduct which is key to determining if it is violence and harassment.³²
- 5: While the definition refers to the perpetrator’s intent [“aim at”], intent is not required, since the result, or likely result, of the behaviour or practice is sufficient.
- 6: The definition focuses on the result or impact (or likely result) of the conduct and not the conduct itself.³³ The harm produced (or the likely harm) is enumerated—namely physical, psychological, sexual or economic harm. It does not set out specific categories or forms of violence and harassment, such as “physical violence”, “psychological harassment” or “mobbing and bullying”. The only exception to this is “gender-based violence and harassment”, which is integrated into the overall definition, and is then defined in Article 1(1)(b) as including “sexual harassment”. The general absence of specific categories of violence and harassment, or a list of behaviors, adds to the breadth and flexibility of the definition. This is important, as terminology in different jurisdictions can vary to describe the same behaviour, and new manifestations of violence and harassment may emerge over time.
- 7: As “economic” harm is sometimes key in cases of gender-based violence and harassment, this is an important element of the definition in this context.³⁴
- 8: The definition explicitly states that, within this overarching range of “violence and harassment in the world of work”, gender-based violence and harassment is an integral component. This reflects the comprehensive, integrated nature of the definition, ensuring that the importance of gender-based violence and harassment in the world of work is given a particular focus.

29. See ILO, *Ending Violence and Harassment V(1)* (2018), *supra* note 8, at 4–5.

30. See ILO, *Report of the Meeting of Experts on Violence Against Women and Men in the World of Work*, *supra* note 23, app., 39–42 (containing “Conclusions of the Tripartite Meeting of Experts on Violence against Women and Men in the World of Work”).

31. *Id.*

32. *Id.*; see also ILO, *Ending Violence and Harassment V(1)* (2018), *supra* note 8, at 97.

33. See ILO, *Ending Violence and Harassment* (2017), *supra* note 8, at 6.

34. In a multi-country study undertaken by the ILO, the ILO noted “a small number of countries prohibit economic domestic violence or coercive control as a form of domestic

III. Protecting “Persons” Against Gender-Based Violence and Harassment in the World of Work

After presenting an overall definition of violence and harassment in Article 1(1)(a), Convention No. 190 then defines the specific form of “gender-based violence and harassment” in Article 1(1)(b) as follows:

the term “gender-based violence and harassment” means violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment.

The ILO definition had the benefit of a number of earlier trailblazing international and regional instruments and documents referring to gender-based violence, including the following: General recommendation 19 of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW)³⁵ in 1992; the UN Declaration on the Elimination of Violence against Women adopted by the UN General Assembly in 1993;³⁶ the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (“Convention of Belém do Pará”) in 1994;³⁷ and the Council of Europe Convention on preventing and combating violence against women and domestic violence (“Istanbul Convention”) in 2011.³⁸

A challenge in applying these definitions to groups of potential victims is that they closely—if not exclusively—associate gender-based violence with violence against women. For example, General recommendation 19 defines gender-based violence as “violence that is directed against a woman because she is a woman or that affects women disproportionately.”³⁹ The other definitions are similarly self-referencing

violence which prevents victims from entering and remaining in the workforce, and can deprive victims of the economic means to leave an abusive relationship.” *Id.* ¶ 385.

35. See U.N. Comm. on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 19: Violence Against Women (CEDAW/C/GC/19) (1992), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf [<https://perma.cc/498W-KPTL>]. The General Recommendation was updated in 2017. CEDAW, General Recommendation No. 35 on Gender-Based Violence Against Women, Updating General Recommendation No. 19 (CEDAW/C/GC/35) (2017), https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf [<https://perma.cc/GZ7K-5AX9>].

36. See G.A. Res. 48/104, Declaration on the Elimination of Violence against Women (Feb. 23, 1994), <https://undocs.org/en/A/RES/48/104> [<https://perma.cc/RF6E-2UG5>].

37. See Organization of American States, Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, June 9, 1994, <https://www.oas.org/en/mesecvi/docs/belemdopara-english.pdf> [<https://perma.cc/V3P3-GYKU>].

38. See Council of Europe, Convention on Preventing and Combating Violence Against Women and Domestic Violence (210), Nov. 5, 2011 [hereinafter Istanbul Convention], <https://rm.coe.int/168008482e> [<https://perma.cc/7GX4-8XWB>].

39. General Recommendation No. 19, *supra* note 35, at 1. The same definition is used in the update to General Recommendation No. 19, namely General Recommendation No. 35 on Gender-Based Violence Against Women. General Recommendation No. 35 also states that “the *opinio juris* and State practice suggest that the prohibition of

and, while not conflating violence against women with gender-based violence, they generally define the former as a subset of the latter, as shown in comparative Table 2.

Table 2: Definitions of violence against women/gender-based violence

<p>General Recommendation 19 of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW), 1992</p>	<p>Paragraph 6: “The Convention [on the Elimination of all Forms of Discrimination against Women] in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.”</p>
<p>UN Declaration on the Elimination of Violence against Women adopted by the UN General Assembly, 1993</p>	<p>Article 1: “For the purposes of this Declaration, the term ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”</p>
<p>Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, 1994 (“Convention of Belém do Pará”)</p>	<p>Article 1: “For the purposes of this Convention, violence against women shall be understood as any act or conduct, based on gender, which causes death or physical, sexual or psychological harm or suffering to women, whether in the public or the private sphere.”</p>
<p>Council of Europe Convention on preventing and combating violence against women and domestic violence, 2011 (“Istanbul Convention”)</p>	<p>Article 3(a): “‘violence against women’ is understood as a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life;”</p> <p>Article 3(d): “‘gender-based violence against women’ shall mean violence that is directed against a woman because she is a woman or that affects women disproportionately;”</p>

Regarding domestic violence, the Istanbul Convention notes that both men and women may be victims,⁴⁰ but it defines gender-based violence only in terms of violence against women. This regional

gender-based violence against women has evolved into a principle of customary international law.” General Recommendation No. 35, *supra* note 35, ¶ 2.

40. See Istanbul Convention, *supra* note 38, pmbl.

instrument represents a broadening out of the understanding of gender-based violence, in terms of the types of harm (such as economic harm) that may result.⁴¹ ILO Convention No. 190 can be seen as inheriting this broader approach and then taking the concepts to the next level, and applying them globally.

Violence against women is, undeniably, a form of gender-based violence, and it is understandable that several instruments focusing solely on violence against women have defined gender-based violence through the experience of women. However, what was lacking—and this is a gap filled by the ILO Convention—was an instrument that included everyone. This is important, because the same patriarchy that uses gender-based violence and harassment to maintain its control on women in society uses violence and harassment against men and against persons who do not necessarily identify themselves within that binary construct, such as some trans persons⁴² or non-gender conforming persons.

While the Convention acknowledges that gender-based violence and harassment disproportionately affects women and girls, it does not limit the protection to them.⁴³ That is what makes the Convention's use of the word *persons* in its definition of gender-based violence and harassment in Article 1(1)(b) particularly innovative. Using “persons” ensures that women are included, but without the automatic assumption that *only* women can experience gender-based violence and harassment. This is a shortcoming of some national legislation on sexual harassment that refers exclusively to women as victims.⁴⁴ Moreover, as the reference to “women and men” was removed early on in the standard-setting process, Convention No. 190 contains no built-in assumption that, for example, trans persons are not provided the same protection. This broad scope of the definition aligns with the broad scope of the obligation in Article 4(1) to “respect, promote and realize the right of *everyone* to a world of work free from violence and harassment.”⁴⁵

Convention No. 190 explicitly provides protection for a broad category of persons against violence and harassment in the world of work, including gender-based violence and harassment in the world of work. As Article 2 states:

41. Since its entry into force in 2014, thirty-four states have ratified or acceded to the Istanbul Convention, a majority of European countries. See *Chart of Signatures and Ratifications of Treaty 210*, COUNCIL OF EUR. (Mar. 22, 2021), <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures> [<https://perma.cc/79DR-DSDF>].

42. This article uses the umbrella term *trans* to refer to a variety of gender identity expressions, such as “transsexual,” “transgender,” and “transvestite”.

43. See C190, *supra* note 1, pmbl.

44. The ILO's Committee of Experts on the Application of Conventions and Recommendations has observed that “[t]he scope of the protection against sexual harassment should cover all employees, male and female, with respect not only to employment and occupation, but also vocational education and training, access to employment and conditions of employment.” See ILO, *Giving Globalization a Human Face*, *supra* note 14, ¶ 793.

45. C190, *supra* note 1, Art. 4(1) (emphasis added).

- (1) This Convention protects workers and other persons in the world of work, including employees as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers whose employment has been terminated, volunteers, job-seekers and job applicants, and individuals exercising the authority, duties or responsibilities of an employer.
- (2) This Convention applies to all sectors, whether private or public, both in the formal and informal economy, and whether in urban or rural areas.

The Convention covers persons in a variety of work arrangements and situations, including those who might not otherwise be covered because of gaps in legislation, and where abuses may be prevalent because of skewed power relations. It also recognizes that workers in some sectors or occupations and work arrangements are more exposed to violence and harassment, including in a number of female-dominated sectors—including health, social services, domestic work, and education—and that special attention needs to be given to protecting such workers.⁴⁶ Specific attention also needs to be given to ensuring the right to equality and non-discrimination, including for women workers and others disproportionately affected by violence and harassment in the world of work.⁴⁷ During the 2019 International Labour Conference discussion, it was made clear that a key objective of the constituents

46. See *id.* Art. 8; R206, *supra* note 2, ¶ 9.

47. See C190, *supra* note 1, Art. 6. During the International Labour Conference in 2019, the delegates discussed in detail whether the Recommendation should contain a list of vulnerable groups or groups in vulnerable situations, including a reference to lesbian, gay, bisexual, transgender, intersex, and gender-nonconforming persons, that should be ensured the right to equality and non-discrimination. Some delegates submitted that any list of groups would not be exhaustive and could change over time and, therefore, would be too limiting. Other delegates considered that the absence of a list would be exclusionary. However, what appeared to be clear was that constituents were seeking the broadest possible coverage. In the end, a list was not included, and Paragraph 13 of Recommendation No. 206 was amended to read, “The reference to vulnerable groups and groups in situations of vulnerability in Article 6 of the Convention should be interpreted in accordance with applicable international labour standards and international instruments on human rights.” The Deputy Representative of the Secretary-General to the Conference responded to a question from delegates related to the removal of the list, in particular in relation to LGBTI persons, and, instead, a reference to applicable international labor standards and international human rights instruments. She noted comments of the ILO supervisory body referencing sexual orientation and gender identity in the context of the Discrimination (Employment and Occupation) Convention, C111, *supra* note 11, and that references to sexual orientation are found in three ILO Recommendations: Private Employment Agencies Recommendation (R188), June 19, 1997; HIV and AIDS Recommendation (R200), *supra* note 15; and Employment and Decent Work for Peace and Resilience Recommendation (R205), *supra* note 21. Regarding international human rights instruments, she pointed out that “while none used the terms ‘sexual orientation’ or ‘gender identity’, the United Nations supervisory bodies had determined that discrimination against LGBTI persons violated the provisions of a number of human rights treaties.” Int’l Lab. Org. [ILO], *Fifth Item on the Agenda: Violence and Harassment in the World of Work, Reports of the Standard-Setting Committee on Violence and Harassment in the World of Work: Summary of Proceedings*, ¶ 1292, ILC Doc. PR7B(Rev.) (Aug. 13, 2019),

was to ensure the broadest possible protection, as no one should be subjected to violence and harassment in the world of work.⁴⁸

IV. Concrete Steps to Ending Gender-Based Violence and Harassment

The focus on gender-responsiveness is set out explicitly throughout each part of the Convention, from protection and prevention, to enforcement and remedies, and guidance and training. Convention No. 190 also places an emphasis on gender-based violence and harassment and sets out specific measures to address it. Importantly, it acknowledges that, to end violence and harassment, the underlying causes must be addressed, and not just the symptoms. The Preamble to the Convention refers to the importance of tackling underlying causes and risk factors of gender-based violence and harassment “including gender stereotypes, multiple and intersecting forms of discrimination, and unequal gender-based power relations”.

ILO Recommendation No. 206 then sets out a series of concrete steps to be considered when addressing gender-based violence and harassment, including addressing its underlying causes. Paragraph 8(c) of the Recommendation notes in carrying out workplace risk assessments, “Particular attention should be paid to the hazards and risks that . . . arise from discrimination, abuse of power relations, and gender, cultural and social norms that support violence and harassment.” Also, Paragraph 23(a) of the Recommendation refers to “programmes aimed at addressing factors that increase the likelihood of violence and harassment in the world of work, including discrimination, the abuse of power relations, and gender, cultural and social norms that support violence and harassment.”

The Convention also lists specific measures regarding gender-based violence and harassment, in the context of enforcement and remedies. Article 10(e) states that “Each Member shall take appropriate measures to . . . provide that victims of gender-based violence and harassment in the world of work have effective access to gender-responsive, safe and effective complaint and dispute resolution mechanisms, support, services and remedies”. Article 10(f) goes on to explain that measures should be taken to “recognize the effects of domestic violence and, so far as is reasonably practicable, mitigate its impact in the world of work”. As an indication of how this could happen in practical terms, Paragraphs 16, 17, and 18 of the Recommendation detail the kinds of measures that these mechanisms, support, services and remedies “should” or “could” include, as indicated in Table 3:

https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meeting_document/wcms_711386.pdf [https://perma.cc/V9C9-DALK].

48. ILO, *Fifth Item on the Agenda*, *supra* note 47, ¶ 18.

Table 3: Paragraphs 16, 17, and 18 of ILO Recommendation No. 206

Paragraph 16	<p>The complaint and dispute resolution mechanisms for gender-based violence and harassment referred to in Article 10(e) of the Convention should include measures such as:</p> <ul style="list-style-type: none"> (a) courts with expertise in cases of gender-based violence and harassment; (b) timely and efficient processing; (c) legal advice and assistance for complainants and victims; (d) guides and other information resources available and accessible in the languages that are widely spoken in the country; and (e) shifting of the burden of proof, as appropriate, in proceedings other than criminal proceedings.
Paragraph 17	<p>The support, services and remedies for victims of gender-based violence and harassment referred to in Article 10(e) of the Convention should include measures such as:</p> <ul style="list-style-type: none"> (a) support to help victims re-enter the labour market; (b) counselling and information services, in an accessible manner as appropriate; (c) 24-hour hotlines; (d) emergency services; (e) medical care and treatment and psychological support; (f) crisis centres, including shelters; and (g) specialized police units or specially trained officers to support victims.
Paragraph 18	<p>Appropriate measures to mitigate the impacts of domestic violence in the world of work referred to in Article 10(f) of the Convention could include:</p> <ul style="list-style-type: none"> (a) leave for victims of domestic violence; (b) flexible work arrangements and protection for victims of domestic violence; (c) temporary protection against dismissal for victims of domestic violence, as appropriate, except on grounds unrelated to domestic violence and its consequences; (d) the inclusion of domestic violence in workplace risk assessments; (e) a referral system to public mitigation measures for domestic violence, where they exist; and (f) awareness-raising about the effects of domestic violence.

These detailed measures found in the Recommendation draw from good practices, such as specialized courts with expertise on gender-based violence and harassment, hotlines in the community and

at work, shifting of the burden of proof in civil proceedings, and providing leave for victims of domestic violence.

With the broad protection provided by Convention No. 190, and with the specific measures set out in the Recommendation, the ILO instruments go beyond addressing the effects of gender-based violence and harassment and actually go to the root causes, pointing the way for a transformation of society. As such, Convention No. 190 and Recommendation No. 206 work in concert to delineate rights and ensure practical protection and remedies for everyone experiencing gender-based violence and harassment in the world of work, as well as concrete prevention measures.

Conclusion

At the time that Convention No. 190 and Recommendation No. 206 were adopted, an ILO Conference Resolution was also adopted.⁴⁹ This Resolution acknowledges the historic opportunity provided by the adoption of the new instruments “to shape a future of work based on dignity and respect, free from violence and harassment” and invites member States to ratify the Convention and implement the Convention and Recommendation. Following the Conference, the UN Human Rights Council adopted a Resolution that welcomes the Convention and also invites Members to ratify it.⁵⁰ As for most ILO Conventions, Convention No. 190 enters into force twelve months after two member States have ratified it, namely June 25, 2021, and it will come into force for a particular member State twelve months after its ratification is registered.⁵¹ But the Convention and Recommendation can have an impact prior to ratification.

49. See Int'l Lab. Org. [ILO], *Eliminating Violence and Harassment in the World of Work: ILO Convention No. 190, Recommendation No. 206, and the Accompanying Resolution*, at 23 (2019), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_721160.pdf [https://perma.cc/KY52-S7MG]. The Resolution also calls for the development of a comprehensive strategy for the wide ratification of the Convention and the effective implementation of the instruments. Such a strategy was approved by the ILO Governing Body in October 2019, at its 337th Session. See Int'l Labour Org. [ILO], *Matters Arising out of the Work of the 108th Session (2019) of the International Labour Conference, Follow-up to the Resolution Concerning the Elimination of Violence and Harassment in the World of Work*, ILO Doc. GB.337/INS/3/1 (Oct. 7, 2019), https://www.ilo.org/gb/GBSessions/GB337/ins/WCMS_723164/lang--en/index.htm [https://perma.cc/67Y2-FPKW].

50. See U.N. Human Rights Council, Res. 41/17, *Accelerating Efforts to Eliminate all Forms of Violence against Women and Girls: Preventing and Responding to Violence Against Women and Girls in the World of Work*, U.N. Doc. A/HRC/41/L.5/Rev.1, at 2, 6, (July 12, 2019), <https://undocs.org/A/HRC/RES/41/17> [https://perma.cc/MGB6-MH59].

51. C190, *supra* note 1, Arts. 14(2), 14(3). The first two ratifications registered were from Uruguay (June 12, 2020) and Fiji (June 25, 2020). *ILO Violence and Harassment Convention Will Enter into Force in June 2021*, INT'L LAB. ORG. (June 25, 2020), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_749148/lang--en/index.htm [https://perma.cc/47VB-JUJU].

All member States, pursuant to the ILO Constitution, have one year to bring the Convention and the Recommendation to the attention of the competent authorities.⁵² This means that, even if a State does not ratify the Convention immediately, and, indeed, these processes take time, the Convention and Recommendation need to be discussed and debated; this ensures that the issues are given visibility, and steps can already be taken to align laws and policies with the Convention. In a number of countries, representatives of governments are working together with workers' and employers' organizations with a view to moving toward ratification of the Convention. Related to this, the ILO has a specific, and widely ratified, governance Convention requiring effective tripartite consultation in this process, namely the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).⁵³

As with other international instruments, Convention No. 190 and Recommendation No. 206 reflect their time and the context in which they were created. They have benefitted from instruments that came before them and have built on them to address a dynamic and changing world of work. In terms of its gender lens, the ILO Convention and Recommendation draw from previous ILO instruments, as well as other sources, such as CEDAW General Recommendation No. 19, the UN Declaration on the Elimination of Violence against Women, the Convention of Belém do Pará, and the Istanbul Convention.⁵⁴

ILO Convention No. 190 provides a comprehensive international definition of gender-based violence and harassment that is not conceived of as a subset or an annex to women's human rights. Rather, gender-based violence and harassment is understood as a part of the overall range of violence and harassment in the world of work, which can apply to women, men, and persons who do not necessarily identify in that way. The Convention, supported by the Recommendation, fills a significant gap in international law, and there is now a much-needed global mandate to prevent and address violence and harassment in the world of work, including gender-based violence and harassment.

52. Article 19(5)(b) of the ILO Constitution provides that Members are to “within the period of one year at most from the closing of the session of the Conference . . . bring the Convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.” Article 19(6)(b) of the ILO Constitution sets out a similar requirement for the Recommendation. Int'l Lab. Org. [ILO] Constitution art. 19(6)(b), https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO.

53. *Ratifications of C144—Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)*, INT'L LAB. ORG., https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312289:NO [<https://perma.cc/E66L-DNF6>]. As of June 2, 2021, the Convention had been ratified by 156 ILO member States.

54. See *supra* notes 35–38.

In concrete terms, the Convention and Recommendation provide a clear and practical framework for action, along with a suite of options for implementation, to put an end to gender-based violence and harassment. With the Convention's inclusive, integrated, and gender-responsive approach, the world of work now has the elements to tackle the root causes of gender-based violence and harassment, including addressing power inequalities, and gender, social, and cultural norms that underpin it.

The goal of making the right to a world of work free from violence and harassment, including gender-based violence and harassment, a reality for all—a right first recognized by Convention No. 190—is truly within our grasp.