The International Labour Organization’s Innovative Approach to Ending Gender-Based Violence and Harassment: Toward a New International Framework for the World of Work

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Introduction

Ending violence and harassment in the world of work is a top international objective. The International Labour Organization (ILO)\(^1\) has launched a process that could lead to the first international treaty to end violence and harassment in the world of work.\(^2\) As a part of this effort, the ILO emphasizes gendered aspects of violence and harassment, including the power imbalance between men and women and the harmful gender stereotypes that underpin violence and harassment.\(^3\)

For nearly a century, the ILO has created international labour standards.\(^4\) These standards take the form of Conventions—binding international treaties open to ratification by member States—and Recommendations that provide non-binding guidelines.\(^5\) ILO standards are created not just for the benefit of a target group, but also by

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2. See infra Part I.
3. See infra Part I.
that group. Representatives from 187 ILO member states, workers’ organizations, and employers’ organizations—which the ILO calls its “tripartite” partners—actively debate and draft these standards with equal standing and voice. This dialogue creates international labour standards grounded in the reality of work, proposed and agreed to by those most affected.

The content and form of a potential standard or standards to end violence and harassment in the world of work—whether a Recommendation, Convention, or both—will be decided through a “double discussion” by the tripartite partners. The first discussion was held at the ILO’s annual International Labour Conference (ILC) in June 2018. A second discussion will be held at the ILC in 2019. To support these discussions, the International Labour Office prepared technical reports exploring core concepts for debate and highlighting the tripartite partners’ concrete responses to violence and harassment. In addition, the ILO held a Meeting of Experts in October 2016 that produced tripartite conclusions on the topic.

Several ILO international labour standards already address violence and harassment. These include the mention of sexual harassment in the Indigenous and Tribal Peoples Convention and the amendments to the Maritime Labour Convention concerning bullying and harassment. However, these existing international labour standards cover only specific worker groups and do not define “violence and harassment” or provide guidance on responsive measures. While other international human rights instruments speak to issues of vio-

10. See infra Part I.
11. See infra Part I.
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violence and harassment, including gender-based violence and harassment, none offers solutions specifically designed for the world of work. 

An international labour standard could change and revitalize national and international approaches to violence and harassment in the world of work. For example, the Domestic Workers Convention promotes consultation with organizations of domestic workers on matters affecting them and has made a significant impact in shaping national legislation. Further, national and regional courts have referred to the ILO’s Recommendation Concerning HIV and AIDS and the World of Work, which provides guidance relating to HIV-based discrimination and harassment. Therefore, a new international labour standard or standards on violence and harassment in the world of work could be a game changer, filling in a normative gap and providing much-needed guidance to governments, workers, and employers on how to end gender-based violence and harassment.

This Article provides an overview of the ILO’s standard-setting process that emerged from the Meeting of Experts and describes how gender is conceived of within it. Part I explains the continuum of violence and harassment in the world of work. Part II situates gender within the continuum. Part III addresses sexual harassment as a specific form of gender-based violence and harassment. Part IV describes an emerging good practice for ending sexual harassment in the garment sector through the shifting of power relations.


I. The Continuum of Violence and Harassment

The ILO’s Governing Body\textsuperscript{20} placed a standard-setting item on the ILC’s 2018 agenda entitled “Violence against women and men in the world of work,” and convened a tripartite Meeting of Experts to provide guidance on the subject.\textsuperscript{21} The word “harassment” was not referred to in either the title of the agenda item or of the meeting, but was folded into the overall discussion on violence.\textsuperscript{22} For example, the background paper prepared for the Meeting of Experts considered sexual harassment under the topic of gender-based violence.\textsuperscript{23}

However, at the October 2016 meeting, the Experts, from all regions of the world, proposed that the word “violence” be replaced by “violence and harassment.”\textsuperscript{24} The Governing Body approved renaming the standard-setting item as “Violence and harassment against women and men in the world of work.”\textsuperscript{25} Importantly, the Meeting of Experts proposed an innovative conceptual framework to illustrate this inclusiveness, called the “continuum” of violence and harassment.\textsuperscript{26}

The background paper prepared for the Meeting of Experts details the challenges in defining one universally accepted definition of violence in the world of work because of legal, cultural, and linguistic differences around the world.\textsuperscript{27} The Experts did not define violence and harassment.\textsuperscript{28} However, they noted that “for the purposes of the standard-setting discussion, violence and harassment should be treated as a continuum of unacceptable behaviours and practices.”\textsuperscript{29}

Because “an unacceptable behaviour or practice could contain elements of both harassment and violence,” the Experts suggested conceptualizing them as points along a continuum where elements could

\textsuperscript{20} The Governing Body is the ILO’s executive body that determines the agenda of the International Labour Conference. \textit{About the Governing Body}, \textsc{Int’l Labour Org.}, \url{http://www.ilo.org/gb/about-governing-body/lang--en/index.htm} (last visited Feb. 25, 2018).


\textsuperscript{22} See generally id.


\textsuperscript{25} \textit{Id}.

\textsuperscript{26} \textit{Report of the Meeting}, supra note 16, at 32. At the time of this Article’s publication, the first ILC discussion had just taken place. The ILC delegates had proposed amendments to this language, including replacing “continuum” with “range.”

\textsuperscript{27} \textit{Background Paper}, supra note 23, at 2.

\textsuperscript{28} \textit{Report of the Meeting}, supra note 16, at 33.

\textsuperscript{29} \textit{Id.} at 32.
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This approach is reflected in the European framework agreement on harassment and violence at work and in examples from national legislation around the world. The Experts specifically mentioned the example of sexual harassment, which could contain elements of physical, sexual, and psychological violence, as illustrated in the accompanying figure.

Gender-based violence and harassment are not the only behaviours and practices included within the continuum. Among others, the Experts discussed “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.”

Moreover, not all forms of violence were addressed at the Meeting of Experts. The meeting’s background paper clarified that its discussion was “focus[ed] on the types of violence in the world of work where international standards are absent or limited,” and that there was a particular emphasis on psychological and sexual violence. Therefore, the background paper and the subsequent meeting did not discuss

30. Id.
31. Id. at 5.
32. Id. at 3.
33. Id. at 6. These were some of the forms of violence and harassment mentioned by the Worker Vice-Chairperson at the Meeting of Experts. Id.
topics such as forced labour, child labour, or trafficking, as these are covered by existing international labour standards.

II. Understanding “Gender” Within Gender-Based Violence and Harassment

Regarding the continuum of violence and harassment, the Meeting of Experts concluded: “A particular focus needs to be placed on gender-based violence.” To understand the Experts’ position and properly situate gender-based violence and harassment within this continuum, one must understand the ILO’s vision of gender equality.

The Meeting of Experts’ agenda included “examin[ing] the gender dimensions of violence in the world of work.” This approach reflects the importance gender equality has within the ILO’s guiding concept of decent work. For example, the ILO’s resolution concerning gender equality at the heart of decent work states: “Sexual harassment and other forms of harassment are serious forms of discrimination across the world that undermine the dignity of women and men, negate gender equality and can have significant implications. Gender-based violence in the workplace should be prohibited . . . .”

Gender “refers to the social attributes and opportunities associated with being male and female and the relationships between women and men and girls and boys, as well as the relations between women and those between men.” Gender is expressed through socially assigned roles for how men and women are expected to behave, and these roles carry over to the world of work. For example, while gender roles are changing, society has traditionally viewed women as playing a support role to men at work, and while men have been expected to play active roles as leaders, women have been expected to follow passively. In addition, women traditionally have been cast in the role of

35. Id. The Worker Vice-Chairperson mentioned trafficking during the Meeting of the Experts when she remarked that “economic vulnerability and poverty can lock women into dependence on exploitative employers, unethical recruitment agents[,] and traffickers.” See Report of the Meeting, supra note 16, at 25.
42. See id.
unpaid care providers, while men have been expected to be remunerated workers. These restrictive roles are the result of complex power relations between and among men and women, and they are arranged, predominantly, to perpetuate male domination (also referred to as patriarchy).

The ILO’s Meeting of Experts made a link between these power relations (based on gender and other factors) and mistreatment in the world of work. “Imbalanced power relationships,” they wrote, “including due to gender, race and ethnicity, social origin, education and poverty, could lead to violence and harassment.” Perpetrators use their power to enforce negative gender roles and to police men and women to maintain these roles. This can happen, for example, when a woman worker enters a predominantly male workplace and her colleagues use sexual harassment to assert their power. As the Experts noted: “Workplaces where the workforce is dominated by one gender or ethnicity might be more hostile to people not conforming to established gender norms or individuals coming from under-represented groups.”

While most reported cases of gender-based violence are perpetrated by men against women, the underpinning elements are socially constructed power imbalances, and not the sex of the victim or perpetrator. As the background paper to the Meeting of Experts notes, “[G]ender-based violence can be committed by or against both women and men, such as violence against non-gender conforming men, including men who are or who are perceived to be gay, bisexual or trans.” According to this view, a homophobic attack against a gay man and the harassment of a heterosexual man perceived as being “too effeminate” are all forms of gender-based violence and harassment.

From this perspective, “violence and harassment against women” and “gender-based violence and harassment” are not synonymous.

46. See Fact Sheet: Homophobic and Transphobic Violence, U.N. Human Rights Officer of the High Comm’r, Homophobic and Transphobic Violence (May 2017), https://www.unfe.org/wp-content/uploads/2017/05/Homophobic-and-Transphobic-Violence.pdf. (“Attacks on people because of their sexual orientation or gender identity are often driven by a desire to punish those seen as defying gender norms and are considered a form of gender-based violence. You do not need to be lesbian, gay, bisexual, transgender or intersex to be attacked: the mere perception of homosexuality or of transgender identity is enough to put people at risk.”).
Rather, violence and harassment against women is a specific form of gender-based violence and harassment. As mentioned above, violence and harassment against men because they are men or because of their gender roles is gender-based. Thus, the ILO delegates at a meeting in 2009 rejected the phrase “violence against women” in favor of “gender-based violence” “to avoid being gender-biased.”

III. Sexual Harassment as a Specific Form of Gender-Based Violence and Harassment

The Meeting of Experts discussed many manifestations of violence and harassment. However, the only forms they referred to directly in their final conclusions were gender-based violence, in general, and domestic violence and sexual harassment, specifically. This section explains the ILO’s understanding of sexual harassment as a form of gender-based violence and, at the same time, provides critical context for the following section on an emerging good practice.

Although sexual harassment in the world of work has been documented since at least the 1800s, and probably occurred for centuries earlier, there was no vocabulary to describe it until the 1970s. The modern women’s rights movement brought an understanding of sexual harassment against women workers, defined generally as “the unwanted imposition of sexual requirements in the context of a relationship of unequal power.” The 1993 UN Declaration on the Elimination of Violence against Women includes sexual harassment at work within its understanding of violence against women. In its General Recommendation 19 in 1992, the Committee on the Elimination Against Women (CEDAW) refers to “sexual harassment in the workplace” as an example of “gender-specific violence.”


48. Report of the Meeting, supra note 16, at 39–42. The Experts additionally noted their concern about “[i]nappropriate use of technology,” although they did not mention it as a separate form of violence. Id. at 40. The Experts concluded that domestic violence is “relevant to the world of work when [it] impact[s] the workplace” and also described how the workplace “provides an entry point to mitigate the effects.” Id. at 35.


The ILO’s Committee of Experts on the Application of Conventions and Recommendations (CEACR)\(^\text{53}\) has identified two key elements of definitions of sexual harassment in the world of work: “quid pro quo” and “hostile working environment.”\(^\text{54}\) “Quid pro quo” sexual harassment is understood as:

any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient; and a person’s rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person’s job.\(^\text{55}\)

“Hostile working environment” describes “conduct that creates an intimidating, hostile or humiliating working environment for the recipient.”\(^\text{56}\)

Sexual harassment is one of the forms of violence and harassment in the world of work most commonly addressed by legislation.\(^\text{57}\) The ILO’s review of eighty countries’ legislation found that sixty-five address sexual harassment in the world of work.\(^\text{58}\) Of those sixty-five, the most common approach to sexual harassment (forty-eight percent) was to include both quid pro quo and hostile working environment sexual harassment.\(^\text{59}\) Because negative power relations and negative gender roles are at the root of sexual harassment, an effective solution will shift these power relations to transform gender roles.

### IV. An Emerging Good Practice: Ending Sexual Harassment in the Garment Sector by Recalibrating the Balance of Power

The Meeting of Experts noted: “Women are disproportionately represented in low-wage jobs, especially in the lower tiers of the supply chains, and are too often subject to discrimination, sexual harassment and other forms of workplace violence and harassment.”\(^\text{60}\) This

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55. Id.

56. Id.


58. Id.

59. Id. at 11.

makes especially appropriate the ILO’s effort to design an innovative response to sexual harassment against women in supply chains within the export-oriented garment industry.

Sexual harassment has been identified as a “prevalent form of violence at work in the export-oriented garment industry.” This prevalence is not intrinsic to the work itself; rather, it comes from a complex convergence of risk factors and psychosocial hazards. For example, most garment factory workers are young women, often migrants who have moved far from their families and may not even speak the local language. Lacking support networks, and unfamiliar with their rights, they encounter decidedly negative power relations with (typically male) supervisors who monitor their productivity and determine bonuses. Consequently, “[s]upervisors can use their position to sexually harass them, and disempowered workers may interpret such conduct as a condition to their employment or promotion.”

The ILO, in partnership with the International Finance Corporation, has a programme called “Better Work” to improve application of labour standards and competitiveness in the global garment supply chain. The programme, present in seven countries, includes approximately 1,500 factories. At the factory level, the programme provides services such as assessing application of national and international labour standards; facilitating dialogue between workers and employers; and providing training to managers, supervisors, and workers.

In recent years, Better Work has placed particular emphasis on preventing and addressing sexual harassment. Through targeted training to managers, line supervisors, and workers, Better Work has raised awareness of sexual harassment and established policies and procedures that significantly reduced workers’ concerns about sexual

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62. See Meeting of Experts, supra note 45, at 17–20.

63. See Rossi, supra note 61, at 37.

64. Id.

65. Id.


67. Id. The seven countries are Bangladesh, Cambodia, Haiti, Indonesia, Jordan, Nicaragua, and Vietnam. Id.


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harassment. The Better Work Supervisory Skills Training has been implemented in multiple countries.

One study of twenty-four Bangladesh garment factories estimated that women were only four per cent of line chiefs and four per cent of line supervisors, while constituting seventy-eight per cent of line operators. Supervisors and managers overwhelmingly are men. Within the factories surveyed, ninety-three per cent of supervisors hired in 2013 were men. Moreover, data suggest that most supervisors were hired from outside the factories, meaning that women currently working in those factories have less of a chance to grow into managerial positions. To address the power imbalance between supervisors and workers that often underlies sexual harassment, the ILO, within its broader framework programme, “Improving Working Conditions in the Ready-Made Garment Sector in Bangladesh,” is:

• Training mid-level management on how to select, promote, and retain women workers;
• Building capacity of women machine operators so that they gain more confidence in their abilities; and
• Encouraging workers to learn how to advance colleagues’ skills, balance production lines, and calculate worker efficiency.

Training and capacity building is being rolled out as a pilot project at twenty-nine factories. As of October 2017, 169 women sewing operators from these factories had taken part in skills training to prepare for supervisory positions. Certainly, beyond promoting women there must be significant cultural change, but anecdotal evidence suggests that new women supervisors feel more empowered.

The hope is that a critical mass of women supervisors and managers will lead to a shift in power relations and a reduction in sexual harassment. At the very least, placing women in positions of greater

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73. Id.
74. Id.
75. Id.
77. Id.
78. Id.
79. See Babbitt, supra note 71, at 44.
power should help address the “negative societal and workplace culture, and psychosocial risks, as well as the design of the workplace” as a way to prevent violence and harassment. As with any action to correct gender inequalities, policy and legislative changes are needed to end sexual harassment. In this regard, the possible ILO standard or standards could provide a framework for how to respond to violence and harassment in the world of work, including those forms that are gender-based.

**Conclusion**

The first discussion of the ILO’s standard-setting process on violence and harassment took place at the June 2018 International Labour Conference. ILO representatives from governments and organizations of workers and employers from all over the world discussed a range of issues, including the responses to a questionnaire sent out to all ILO member states “on the scope and content of the proposed instrument or instruments.” The first discussion was an important step toward an international labour standard or standards for the elimination of violence and harassment in the world of work. The topic of gender-based violence and harassment has been integral to the discussion thus far, and it has been placed within the broader understanding of violence and harassment.

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