



Ending Violence and Harassment at Work

The Case for Global Standards



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Introduction

The “Me Too” movement—coined in 2006 by Tarana Burke for a grassroots social movement in the US against sexual harassment, and which exploded as the hashtag #MeToo in October 2017—highlights the pervasiveness of gender-based violence in the world of work in both well-known and powerful industries and marginalized sectors often invisible to public scrutiny. While women and girls are often the main victims of sexual harassment, men and boys also experience such violence and harassment.

The World Bank’s “Women, Business and the Law 2018” report found that 59 out of 189 economies had no specific legal provisions covering sexual harassment in employment.¹ More broadly, the International Labour Organization (ILO), in its 2016 meeting of experts, noted that gaps in legal protections relating to violence and harassment in the world of work include: lack of coherence in laws; lack of coverage of workers most exposed to violence; and an overly narrow definition of “workplace.” It also observed that criminal justice approaches are not sufficient for responding to sexual harassment and bullying and that an employer’s general duty to protect the health and safety of workers often excludes protection from violence.²

The ILO is working toward a new standard to combat violence and harassment in the world of work. In June 2018, the International Labour Conference, meeting in Geneva, adopted a resolution for a second discussion in 2019 with a view to the adoption of a Convention supplemented by a Recommendation. This provides a unique opportunity to help end all forms of violence and harassment in the world of work. It deserves support by governments, employers, and employees. We urge the Japanese government to give its full support for a Convention, accompanied by a Recommendation, bearing in mind the following elements.

The Case for a Binding International Standard

While regional human rights treaties and authoritative interpretations of existing international human rights treaties establish sexual harassment at work as a human rights

¹ World Bank, “Women, Business and the Law 2018,” <http://wbl.worldbank.org/en/reports> (accessed May 18, 2018).

² International Labour Organization (ILO), “Meeting of Experts on Violence against Women and Men in the World of Work (3–6 October 2016),” 2016, http://www.ilo.org/gender/Informationresources/Publications/WCMS_546303/lang-en/index.htm (accessed May 18, 2018).

violation, there is little by way of international law specifically addressing violence and harassment in the world of work.³ An ILO convention, accompanied with a recommendation, would address this gap and could lead the development of effective national laws and policies.

Moreover, an ILO convention, accompanied with a recommendation would help to direct the responses to violence and harassment at work, including sexual harassment, as states more actively grapple with these issues. The proposed instruments, through taking an integrated approach, could recognize the interactions between anti-discrimination laws, labor laws, occupational safety and health laws, and other civil laws to provide essential protections for workers, and complement the penalties under criminal provisions, which often focus solely on the most extreme forms of violence and harassment. Civil laws can strengthen prevention and monitoring as well as remedies for a broader range of violence and harassment, offer victims greater participation, and reduce barriers for access to justice.

Definitions and Coverage

Violence and Harassment in the World of Work

Human Rights Watch has documented psychological, physical, and sexual violence in the world of work, including in relation to domestic workers, farmworkers, fishers, garment

³ United Nations General Assembly Resolution 48/104 on the Declaration on the Elimination of Violence Against Women, art. 2(b), A/RES/48/104, <http://www.un.org/documents/ga/res/48/a48r104.htm> (accessed May 18, 2018); UN Committee on Discrimination against Women (CEDAW Committee), General Recommendation No. 19, Violence Against Women, (Eleventh session, 1992), art. 24, http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_3731_E.pdf (accessed May 18, 2018); CEDAW Committee, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, UN. Doc. CEDAW/C/GC/35, July 26, 2017, <http://tbinternet.ohchr.org/lavouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en> (accessed May 18, 2018); UN Committee on Economic, Social and Cultural Rights, General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), <http://tbinternet.ohchr.org/lavouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f23&Lang=en> (accessed May 18, 2018); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, September 13, 2000, CAB/LEG/66.6, entered into force November 25, 2005, art. 13(c); Southern African Development Community Protocol on Gender and Development, art.22; Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Belem do Para)art. 2; Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), art. 40; European Council Directive 2004/113/EC, 13 December 2004, art. 4(3), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:373:0037:0043:EN:PDF> (accessed May 18, 2018).

workers, miners, and military personnel in many countries around the world.⁴ The impact includes physical, psychological, sexual, and economic harm.

Domestic workers, for instance, described to Human Rights Watch psychological abuse where their employers humiliated, insulted, and shouted at them daily, leading some to experience mental health problems. They also reported physical violence ranging from slaps to severe beatings with sticks, household items, belts, and shoes, or burnings with hot water or food, irons, and chemicals. In some cases, physical abuse is so severe it has led to paralysis, blindness, and death, while others described chronic pain such as back pain.

Women workers and gender non-conforming workers are particularly vulnerable to sexual harassment at the workplace. The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has addressed sexual harassment primarily as a form of discrimination in the workplace. CEACR has categorized sexual harassment in employment and occupation in two ways: “*quid pro quo*” or “hostile working environment.”⁵ “*Quid pro quo*” sexual harassment is when there is “any physical, verbal or non-verbal conduct of a sexual nature” 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.” “Hostile working environment” harassment covers conduct that creates an intimidating, hostile, or humiliating working environment.⁶

Human Rights Watch has documented both forms of harassment. In a “*quid pro quo*” example, Teresa G., a woman in North Carolina in the US who works on a tobacco farm, told Human Rights Watch that in 2011 a supervisor told two of her co-workers they had to have sex with him in order to get the job. When Teresa found one of the women crying, she asked why she had done it, and she replied, “My husband doesn’t have work. I don’t have work.”⁷

⁴ See for instance, Human Rights Watch, “Gender-based Violence in the Workplace,” <https://www.hrw.org/tag/gender-based-violence-workplace>.

⁵ See International Labour Organization (ILO), “Report of the Committee of Experts on the Application of Conventions and Recommendations, (articles 19, 22 and 35 of the Constitution) General Report and observations concerning particular countries,” General observation, Convention No. 111, 2003, p. 463, [http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2003\)1A.pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(2003)1A.pdf) (accessed May 18, 2018).

⁶ Ibid.

⁷ Human Rights Watch, *Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment*, May 2012, <https://www.hrw.org/report/2012/05/15/cultivating-fear/vulnerability-immigrant-farmworkers-us-sexual-violence-and-sexual>.

Domestic workers—who live in the homes of their employers—described to Human Rights Watch both situations of “*quid pro quo*” and “hostile working environment.” Domestic workers—adult and children—recounted how their male employers or their relatives groped them, exposed themselves, chased them around the house, attempted to rape, and raped them. When they tried to complain, they said they were blamed, told to avoid it, or fired. Others fled their employers’ homes for fear of further harm.

In addition, some employers fail to take action against such perpetrators, or retaliate against workers who report sexual harassment or violence. For instance, Human Rights Watch found that both male and female US military personnel who report sexual assault are 12 times as likely to experience some form of retaliation as to see their attacker convicted of a sex offense. Retaliation against survivors ranges from new assaults, threats, and harassment to poor work assignments, loss of promotion opportunities, disciplinary action including discharge, and even criminal charges.⁸

Garment workers across different countries told Human Rights Watch that when they complained about working conditions, including violence and harassment, their managers or supervisors applied “pressure” on them to demoralize and harass them. Workers described how their employers denied them overtime work; forced them to work longer hours with higher production targets; or transferred them to a different department or manufacturing site further away from home. Such measures often forced them to quit their jobs.⁹

Workers at Heightened Risk of Harassment and Violence

Some workers may be at greater risk of harassment and violence at work because of the sectors they work in, or because of the discrimination they face because of their gender, sexual orientation, immigration status, race, ethnicity, or other status.

⁸ Human Rights Watch, *Embattled: Retaliation against Sexual Assault Survivors in the US Military*, May 2015, <https://www.hrw.org/report/2015/05/18/embattled/retaliation-against-sexual-assault-survivors-us-military>, *Booted: Lack of Recourse for Wrongfully Discharged US Military Rape Survivors*, May 2016, <https://www.hrw.org/report/2016/05/19/booted/lack-recourse-wrongfully-discharged-us-military-rape-survivors>.

⁹ See for example Human Rights Watch, “*Work Faster or Get Out*”: *Labor Rights Abuses in Cambodia’s Garment Industry*, March 2013, <https://www.hrw.org/report/2015/03/11/work-faster-or-get-out/labor-rights-abuses-cambodias-garment-industry>; “*Whoever Raises their Head Suffers the Most*”: *Workers’ Rights in Bangladesh’s Garment Factories*, April 2015, <https://www.hrw.org/report/2015/04/22/whoever-raises-their-head-suffers-most/workers-rights-bangladeshs-garment>.

Domestic workers, farmworkers, and those in precarious employment may not have equal protections against workplace violence under labor laws as other workers. For example, domestic workers may be excluded entirely from some countries' labor laws, or in other cases are not entitled to sexual harassment protections because their workplace does not cross a threshold for a minimum number of workers, as in the United States.

Children—whether above the legal minimum age of employment or engaged in child labor—may be at particular risk of sexual harassment and abuse, as employers may perceive them as easier to intimidate. Because of their young age and relative lack of maturity, children may also be less able to resist sexual harassment or lodge complaints.

Human Rights Watch's reporting on garment workers has found that workers on short-term contracts, daily wages, and other casual forms of employment are more vulnerable to violence and harassment than workers who have employment security and legal protections against arbitrary dismissals.¹⁰ A lack of effective grievance redress mechanisms and whistleblower protections can also leave workers exposed to risks.

Migrant workers, refugees, and asylum seekers may face barriers due to their status, language barriers, and unfamiliarity with local laws. Migrant workers with undocumented status may be afraid to approach authorities to report abuse for fear of arrest or deportation. Migrant workers whose legal status is tied to their employers are more likely to face abusive situations because their employers know that they cannot leave without losing their status.

Lesbian, gay, bisexual, and transgender (LGBT) workers also face particular risks of violence and harassment and barriers to accessing justice. For instance, lack of privacy for sanitation facilities may expose transgender or gender non-conforming people to harassment or violence. Alina, a transgender woman in Ukraine, told Human Rights Watch in 2014 that on one occasion, an employer discovered her identity as transgender because he observed her urinating. He subsequently sexually harassed her, leading her to quit her job.¹¹

¹⁰ Aruna Kashyap (Human Rights Watch), "Tackling Sexual Harassment in the Garment Industry" commentary, *Just-Style*, December 11, 2017, <https://www.hrw.org/news/2017/12/11/tackling-sexual-harassment-garment-industry>.

¹¹ Human Rights Watch, "Allegation letter regarding the legal gender recognition procedure in Ukraine, as specified in Order No. 60 of the Ministry of Health of Ukraine," April 27, 2015, <https://www.hrw.org/news/2015/04/27/allegation-letter-regarding-legal-gender-recognition-procedure-ukraine-specified>.

What Is the Workplace?

It is important to include a variety of spaces which relate to the world of work when it comes to violence and harassment. Several ILO instruments consider the notion of the workplace to go beyond the physical place where work is done to include situations arising out of, or in the course or connection to, employment including commuting to and from work.¹² Failure to include such language in an ILO standard or national laws can leave workers exposed to violence and harassment. For instance, an employee who harasses a colleague on the commute to work or in a restroom outside of the physical workplace may not be liable for their actions if the law does not deem it their physical place of work.

Employers should also take into account factors that can increase the likelihood of violence and harassment against employees even where it may be committed by a member of the public. For instance, requiring workers to work late at night but without offering them transport home can leave female workers more vulnerable to harassment or violence on public transport in their commute home.

The Impact of Domestic Violence on the World of Work

Domestic violence is the most common form of violence experienced by women globally. The World Health Organization (WHO) in its 2013 report found that 35 percent of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence.¹³ Domestic violence affects a range of human rights and impedes economic growth and development.

Survivors can be at further risk of violence if their employer does little to help protect them or retaliates against them for actions such as missing work to attend a court hearing.

Employers can take measures that would help to keep survivors of domestic violence at work—sometimes a place of safety—and that would help their economic security. Without

¹² For instance, ILO Convention No. 155, article 11 refers to “in the course of or in connection with work,” and the ILO Protocol of 2002 to Convention No. 155, article 1, notes that the term “occupational accident” covers an occurrence arising not only in the course of work, but “arising out of” work. The definition proposed for “industrial accidents” in Paragraph 5(a) of ILO Recommendation No. 121 covers any accidents “regardless of their cause, sustained during working hours”, at “any place where the worker would not have been except for his employment”. Paragraphs 5(b) and (c) call for the inclusion of commuting accidents that occur while the worker prepares for work and on the way to and from work.

¹³ World Health Organization (WHO), “Global and regional estimates of violence against women, Prevalence and health effects of intimate partner violence and non-partner sexual violence,” 2013, <http://www.who.int/reproductivehealth/publications/violence/9789241564625/en/> (accessed May 18, 2018).

such measures, survivors may remain trapped and economically dependent on their abuser. In some cases, employers retaliate against survivors who take time off to recover, come to work with visible injuries, or if their abuser turns up to their place of work.

“Armine” told Human Rights Watch how in 2015 she lost her job in a medical center in Armenia after her then-husband twice came to her workplace. She said, “I worked a 24-hour shift. He came one night and was drunk. He said ‘I came to see if you are actually working or if you are doing something with some lover. I won’t let you work anywhere. I will slit your throat!’ After that the director came and told me I shouldn’t come to work anymore. He said, ‘It’s not ok for your husband to come here and sort out your family problems.’” The medical center director did not offer Armine any assistance.¹⁴

Shifting the Burden of Proof

Reducing barriers to justice in civil cases and shifting the burden of proof in labor cases relating to discrimination, including harassment, would acknowledge the unequal power relations that exist between the employer and employee, as well as the obligations that the employer has to take measures, both preventative and disciplinary, to combat workplace discrimination, including harassment.

The ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) considers, in relation to labor discrimination cases, that once the complainant has produced plausible or prima facie evidence of discrimination, then shifting the burden of proof to the employer “is a useful tool of correcting a situation that could otherwise result in inequality.”¹⁵

The CEACR in its 2017 report on Albania welcomed “the allocation of the burden of proof contained in the amendments [to the Labour Code], namely that the complainant has the burden of proving the conduct that is alleged to constitute harassment. Thereafter the burden falls on the perpetrator/employer to prove that the harassment was not intended

¹⁴ Human Rights Watch, “Armenia: Little Protection, Aid for Domestic Violence Survivors,” January 12, 2018, <https://www.hrw.org/news/2018/01/12/armenia-little-protection-aid-domestic-violence-survivors>.

¹⁵ ILO, “Special survey on the application of Convention No. 111 on Discrimination in Employment and Occupation, Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution),” 1996, para. 231, [http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(1996-83-4B\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(1996-83-4B).pdf) (accessed May 18, 2018).

(objectively determined).” The committee also welcomed “the emphasis placed on dignity and a safe working environment as the animating values in determining the allocation of the burden of proof in sexual and moral harassment cases.” In particular, that the “employer has a responsibility to take all reasonable measures, both preventative and disciplinary, for ensuring that the workplace environment is free from harassment—in other words a work environment that is not hostile, intimidating, degrading or humiliating.”¹⁶

Good Practices

Definitions and Coverage

- Belgium prohibits “violence, harassment and sexual harassment” against apprentices, interns and non-employees performing work under the authority of another person (subcontractors and similar professional categories).
- Australia and Tanzania have adopted specific statutes protecting persons with disabilities from harassment and discrimination in employment. United States, Honduras, and the EU provide that disability-based harassment, similarly to sexual harassment, can take the form of a hostile working environment.
- India’s law governing sexual harassment extends workplace protection against such harassment to a wide variety of women including students, those “visiting a workplace” (such as customers or clients), and those directly or indirectly employed (including trainees, apprentices, volunteers, employed through an agent). The law applies both to the organized and unorganized sectors.
- Malaysia provides that workplace sexual harassment includes any employment-related sexual harassment “arising out of and in the course of employment” extending beyond the confines of a physical office.

Procedural Clarity and Protections

- North America, the EU, and many Latin American countries provide protections for the worker from retaliation/reprisals from employers or co-workers for filing or participating in a workplace violence complaint.

¹⁶ ILO, Direct Request (CEACR) - adopted 2016, published 106th ILC session (2017); Discrimination (Employment and Occupation) Convention, 1958 (No. 111) - Albania (Ratification: 1997), http://www.ilo.org/dyn/normlex/en/?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:3301428 (accessed May 18, 2018).

- Germany provides that employees have the right to refuse to work if the employer does not take suitable measures to stop harassment in the workplace.
- EU laws, that apply in all member states, require that the burden of proof is shifted to the defendant, after facts are established that they may presume that there has been discrimination. This includes harassment as a specific form of discrimination.
- Peru allows the employer to take precautionary measures, including moving the harasser or the victim, if the latter so requests, the temporary suspension of the harasser, psychological assistance to the victim, and the issuance of restraining orders against the harasser.

Penalties, Sanctions, Compensation, and Other Remedies

- Ireland, Germany, and the UK provide for a doctrine of vicarious liability that results in the employer being held liable for harassment or mobbing (collective harassment) perpetrated by an employee, unless the employer proves that reasonable steps had been taken to prevent the employee from engaging in harassment. In Brazil, binding case law has been used to hold employers civilly liable for the acts of employees who physically or sexually harass their colleagues where the employer has failed to take protective measures.
- In India, the law governing sexual harassment at the workplace carries penalties for employers who do not discharge their responsibilities under the law.
- In Finland, compensation is extended to aggressions committed by third parties, where appropriate steps were not taken by the employer to mitigate risks.
- Australia and courts in Spain and Canada provide compensation for work-related injuries resulting from violence and harassment.

Domestic Violence

- Australia requires employers to accommodate requests for changes in working arrangements to protect domestic violence or gender-based violence victims.
- Puerto Rico allows an employer to request a protection order in favor of her/his employees against visitors if one of her/his employees has been a victim of domestic violence in the workplace.
- Spain provides women workers who are victims of gender-based violence to a reduction and reorganization of working time, and the use of flexible time and other forms of organization of their working time.

- Italy, New Zealand, the Canadian Province of Manitoba, and the US states of Oregon and California and the District of Columbia, provide for statutory paid leave for victims of domestic violence.
- Brazil authorizes judges to order employers to maintain the employment relationship of victims of domestic violence and, when necessary, to grant victims leave from work for a maximum of six months.

Recommendations

Human Rights Watch recommends that any ILO convention on ending violence and harassment in the workplace includes:

Definitions, Coverage, and Equal Protection

- An inclusive definition of all forms of violence and harassment including sexual harassment.
- Recognition that gender-based violence is a form of discrimination.
- A broad definition of workplace and work-related environment, to include situations arising out of, in the course, or in connection to, employment such as commuting to and from work.
- Equal application to individuals of any gender identity, while requiring gender-sensitive implementation in light of the unequal power relations between men and women and widespread discrimination against women.
- A wide array of work-based relationships, including supervisors, co-workers, customers, and clients.
- Equal protections for at-risk groups, including migrant workers, refugees and asylum seekers, irregular migrants, LGBT people, members of racial/ethnic/caste/religion/language minorities, pregnant women, younger workers, workers with precarious employment contracts, and people with disabilities.
- All employment sectors, including public and private sectors and the informal economy.

Prevention and Response

- Provisions ensuring that national policies and other guidance include prevention measures such as training, clear human resources policies and procedures, and awareness-raising campaigns.
- Provisions to develop training, model best practices, and support for employer guidelines on investigating and handling complaints.
- Protection of freedom of association and encouragement of collective bargaining and union activities to help prevent and address violence and harassment, with full participation of women workers.
- Multiple grievance-redress mechanisms and channels that are accessible to all workers.

Procedural Clarity and Protections

- Judicial and administrative procedures that respect privacy of survivors.
- Clarity on burden of proof for civil and administrative or other non-judicial complaints.
- Protections against retaliation for workers and worker representatives (e.g. unions) who report violence or harassment.
- Due process for all parties.

Penalties, Sanctions, Compensation, and Other Remedies

- Combination of civil (remedial and disciplinary) and criminal penalties for the perpetrator.
- Compensation, reparations, and other forms of support and remedies for victims.
- Development of model codes of conduct and protocols for employers on remedial and disciplinary measures.

Enforcement, Monitoring, and Reporting

- Enforcement and monitoring body/bodies with power to investigate, enforce law, assist victims, collect data, publish periodic reports, and identify and address patterns of non-enforcement of violence and harassment, including sexual harassment, laws and policies by institutions.
- Mandatory, regular reporting obligations to such bodies on private and public employers.

Domestic Violence

- Protections for workers who are also victims of domestic violence from retaliation from their employers including dismissals.
- Provisions for reasonable accommodation for domestic violence survivors (for example to seek medical treatment, attend court hearings).