



**The ILO Global Standard to End Violence
and Harassment in the World of Work,
Including Gender-Based Violence and Harassment:**

THE FIRST-EVER COMPREHENSIVE LEGAL STANDARD



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EXECUTIVE SUMMARY

In June 2019, delegates representing unions, employers and governments are conducting final negotiations for a global International Labor Organization (ILO) standard to end violence and harassment at work, including gender-based violence (GBV) and harassment. These important negotiations culminate many years of advocacy by women union leaders around the world who increased awareness and visibility about the root causes, scope and incidents of GBV and persuasively demonstrated the need for a global binding standard to address it.

As the following analysis of international, regional and national laws and policies demonstrates, an ILO standard (“convention”), supplemented by a recommendation, is necessary because no global binding instrument exists that comprehensively addresses violence and harassment in the world of work, including gender-based violence and harassment, widely recognized as an extremely prevalent human rights abuse that harms individuals, workplaces, communities and the global economy.

This report’s key findings include:

- Although numerous international human rights treaties have addressed violence against women, sex discrimination and sexual harassment, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), these instruments do not specifically define or prevent GBV at work.
- Regional human rights conventions and the principles developed by their associated courts and commissions have made great strides in making clear that states are legally obliged to address gender-based violence. However, these norms and standards are not global in application and do not address the specifics of GBV in the world of work.
- Governments have failed to adopt comprehensive national legislation to address GBV at work. In many cases, legislation is either entirely absent or, if it exists in criminal or labor codes, addresses only some forms of GBV, such as sexual harassment or violence against women, or is framed in the context of the preservation of female modesty.
- Because international, regional and national treaties, laws and policies fall short of the stated goals of a binding ILO Convention to end violence and harassment in the world of work, including GBV, the convention is essential to end gender-based violence in the world of work, one of the most effective tools of oppression preventing gender equality.

What is Gender-Based Violence and Harassment in the World of Work?

Gender-based violence and harassment is violence or harassment directed at an individual because of the person's actual or perceived sex or gender, or disproportionately affecting individuals of a particular sex or gender. It is rooted in unequal gender-based power relations between (and among) women and men, which both reflects and reinforces the subordinate status of women in many societies. Intersecting identities shape where and how individual workers experience GBV. Socioeconomic status, race, ethnicity, religion, sexual and gender identity and expression, age and immigration status all increase the likelihood that a worker will experience GBV. For some, it is these multiple identities that place them at risk of GBV. In addition, economic insecurity, especially precarious employment and low wages, makes workers especially vulnerable to GBV.

Consequently, the definition of who is protected from GBV and harassment, and the definition of worker and the world of work are critical in drafting legal protections. As a result, an integrated and gender-inclusive approach that addresses underlying causes and risk factors, including gender stereotypes, multiple intersecting forms of oppression, and unequal gender-based power relations is necessary to effectively end gender-based violence and harassment in the world of work.¹

While both men and women may be victims of GBV at work, women are most frequently targeted. GBV is considered one of the primary barriers to achieving gender equality since it reflects and perpetuates the skewed gender power relations at the root of much social and economic inequality. The presence of GBV in the workplace silences not only those who are targeted but also those who reasonably fear retribution or retaliation if they speak up against the abuse and violence they witness. In this way, GBV is one of the most effective tools of intimidation, limiting freedom of association among workers. It is also costly for employers and undermines national economic growth.

The eradication of GBV in the workplace requires transformative change in workplaces and unions led by workers who are disproportionately impacted. Effective and sustainable solutions—including strategies to address the social norms that legitimate gender inequalities—require the collective input of those most impacted. Only through solidarity and collective action can it be overcome.

Proposed Language in ILO Binding Convention Comprehensively Addresses Gender-Based Violence and Harassment in the World of Work

The draft text of the convention, with final negotiations taking place at the ILO's International Labor Conference in June 2019 by representatives of employers, governments and workers, provides a single definition of "violence and harassment," and includes gender-based violence and harassment. It then separately defines GBV and harassment as "violence and harassment directed at persons because of their sex or gender or affecting persons of a particular sex or gender disproportionately."² In addition, the protections from GBV and harassment and corresponding responsibilities to prevent and address GBV and harassment in the world of work, cover all workers, "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, jobseekers and job applicants, in all sectors, both in the formal and informal economy, and whether in urban or rural areas."³

This is critical because it recognizes that all workers regardless of job area or form of connectivity to the formal workplace experience GBV and harassment, including domestic workers, garment-sector workers and trash collectors, as well as volunteers and apprentices. In fact, workers in the informal economy and those who are unpaid or have limited-term contracts are at greater risk of experiencing GBV and harassment because of the power imbalances related to their relative economic insecurity. Further, the convention as drafted would apply to incidents occurring in the course of, linked with, or arising out of work:

- **At the workplace**, including public and private spaces that are areas of work;
- In locations where workers are paid, take a rest break or a meal, or use sanitary, washing and changing facilities
- **During work-related trips or travel**, training, events or social activities
- **Through work-related communications** enabled by information and communication technologies
- **In employer-provided accommodation** and
- **When commuting to and from work**, so far as is reasonably practicable⁴

This application of the binding convention to the world of work is critical because workers have reported experiencing violence and harassment, including GBV and harassment, in all of the places linked to and arising out of work, including on breaks, in restrooms and during their commute to and from work.

No Global Standard Specifically Addresses GBV in the World of Work

An ILO binding convention, supplemented by a non-binding recommendation that offers implementation guidelines to end violence and harassment in the world of work, including GBV and harassment, is necessary because there is no other global treaty or instrument that specifically addresses GBV and harassment in the world of work. While numerous international human rights treaties have interpreted human rights mechanisms as addressing some forms of GBV, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention Against Torture (CAT), these instruments do not specifically address GBV in the world of work. In addition, regional human rights instruments, such as the Belém do Pará Convention and the Istanbul Convention (described below), have made important strides in addressing gender-based violence broadly but do not address the responsibilities of governments, employers and workers to prevent and end GBV in the world of work. Nor do they address specific issues raised at work and are by definition not global in application.

INTERNATIONAL INSTRUMENTS

1. Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW): GBV as Discrimination

The UN adopted CEDAW in 1979. The text does not explicitly address GBV in the world of work. In CEDAW General Recommendation No. 19 of 1992, CEDAW interpreted the convention as including gender-based violence, that is, **“violence that is directed against a woman because she is a woman** or that affects women disproportionately.”⁵ It states that sexual harassment includes:

1. Quid pro quo harassment, in which submission or rejection of harassment is used as the basis for recruitment or promotion or other employment decisions AND
2. Hostile work environment, where the harassing conduct interferes with the individual's job performance or creates an intimidating, hostile or offensive work environment⁶

This definition is consistent with the definition of sexual harassment in many national laws, but it does not clearly address other forms of GBV linked to an individual's gender identity rather than sexual identity.

In 2016, the CEDAW Committee adopted General Recommendation No. 35 to update General Recommendation No. 19. It replaced the term “violence against women” used in the recommendation with the term “gender-based violence against women” to “make explicit the gendered causes and impacts of violence” and to strengthen the understanding of GBV as a “social rather than an individual problem, requiring comprehensive responses beyond specific events, individual perpetrators and victims.”⁷

General Recommendation 35 renders state parties responsible for failure to take all appropriate measures to prevent, investigate, prosecute and provide reparation for acts or omissions of non-state actors that result in GBV against women. However, unlike the proposed ILO convention, the phrase “gender-based violence against women” in CEDAW suggests that it protects only women and, by implication, not men from gender-based violence. Also, General Recommendation 35 does not specifically reference the world of work.

Currently, 187 countries have ratified CEDAW. The important protections elaborated in General Recommendation No. 35 (and previously No. 19) are far-reaching but are limited because they do not provide specific guidance to governments, employers or workers on how to prevent and address GBV in the world of work.

2. International Labor Organization Conventions

None of the existing ILO binding conventions or recommendations define “sexual harassment,” “gender-based discrimination” or GBV and harassment in the world of work. However, some existing instruments address some forms of GBV and harassment at work. The ILO Committee of Experts on the Application of Conventions and Recommendations has interpreted ILO Convention 111, which deals broadly with non-discrimination, including on the basis of sex, to regulate state law and practice concerning sexual harassment.⁸ ILO Convention 169 prohibits gender-based discrimination against indigenous and tribal peoples in independent countries and requires states to take measures to ensure workers are free from sexual harassment.⁹ Convention 189, Decent Work for Domestic Workers, prohibits “all forms of abuse, harassment and violence.”¹⁰ The companion recommendation, Recommendation 201, also provides instructions to member states on how to protect domestic workers against abuse, harassment and violence and urges states to establish “accessible complaint mechanisms,” investigate and prosecute complaints of abuse, and establish programs for relocation and rehabilitation.¹¹ ILO Recommendation 200 on HIV and AIDS and the World of Work prohibits “violence and harassment in the workplace” as a means of reducing transmission of HIV and alleviating its impact.¹²

3. The International Covenant on Economic, Social and Cultural Rights (ICESCR) and Violation of Just Conditions at Work

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted by the UN General Assembly in 1996, is binding on ratifying countries and contains extensive provisions on worker rights.¹³ In General Comment 23 (2016) of the ICESCR, the ESCR Committee adopted an approach to GBV based on an interpretation of Article 7 of the ICESCR provision on Just Conditions at Work. According to the General Comment, all workers in all settings—including agricultural, migrant and unpaid workers—should be free from physical and mental harassment, including sexual harassment.¹⁴ The comment states that the right should be legislated in anti-discrimination law, labor law and penal codes, which should

“define harassment broadly, with explicit reference to sexual and other forms of harassment, such as on the basis of sex, disability, race, sexual orientation, gender identity and intersex status.”¹⁵ Further, a national policy should be applied in both public- and private-sector workplaces.

The comment notes that at minimum, states hold a core obligation to guarantee through law the exercise of the right to just conditions at work, without any discrimination. Through the law, states should define and prohibit harassment, including sexual harassment at work, ensure appropriate complaint procedures and mechanisms, and establish criminal sanctions for sexual harassment. The comment also addresses the regulation of enterprises extraterritoriality. When the state controls an enterprise operating in another state, it should respect the host country legislation to the extent that it complies with the ICESCR. However, when the home country has stronger legislation, it should seek to maintain similar minimum standards in the host country. Although ICESCR addresses harassment, including sexual harassment, it does not comprehensively define or address GBV in the world of work.

4. Convention Against Torture (CAT): Moving away from a discrimination framework

The United Nations Committee against Torture has recognized that violence against women can be a form of torture under the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT).¹⁶ Initially, CAT only addressed violence against women by state actors. In General Comment No. 2 (2007), the Committee against Torture addressed gender-based violence and made clear that the state carries responsibility if it knows or has reasonable grounds to believe that acts of torture or ill-treatment are being committed by private actors.¹⁷ The General Comment establishes that officials should be considered as “authors, complicit or otherwise responsible under the Convention for consenting or acquiescing to such impermissible acts.”¹⁸ It further explains that “the contexts in which women are at risk include deprivation of liberty, medical treatment, particularly involving reproductive decisions, and violence by private actors in communities and homes.”¹⁹ The Committee has applied this principle to state parties’ failure to prevent and protect victims from gender-based violence such as rape, domestic violence, female genital mutilation and human trafficking.²⁰

In 2016, the UN Special Rapporteur on torture said, “States are responsible for the acts of private actors when States fail to exercise due diligence to prevent, stop or sanction them, or to provide reparations to victims.”²¹ This would require a due diligence approach to protect women from gender-based violence that amounts to inhumane, degrading or torturous treatment. The rapporteur has emphasized the custody or control dimensions that render women more vulnerable to torture. This notion can be extended to the world of work which, in certain contexts, equally shares the “custody or control” aspect with associated loss of deprivation of liberty. Although CAT addresses violence against women, which is a form of GBV, CAT does not provide specific standards addressing or defining GBV in the world of work.

REGIONAL CONVENTIONS FALL SHORT OF ADDRESSING GBV AT WORK

In many respects, it is at the regional level that the most progressive and binding standards for addressing GBV have been achieved. Yet, these too have fallen short of addressing GBV in the world of work. Regional human rights conventions, such as the Belém do Pará Convention in the Americas and the Istanbul Convention in Europe, and the principles developed by their associated courts and commissions, have made great strides in establishing progressive jurisprudence on due diligence obligations of states regarding gender-based violence, which are broadly applicable to all contexts. However, these norms and standards are not global in application and do not address the specifics of GBV in the world of work.

A. The Americas

The Organization of American States (OAS) adopted the inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, known as the Belém do Pará Convention in 1994. It is the first regional convention to specifically address violence against women as a form of gender-based violence and is the most ratified instrument in the Inter-American System.²² The convention is premised on the right of women to be free from violence in the public and private spheres and, under Article 7, obliges states to “apply due diligence principles to prevent, investigate and punish violence against women; and ensure effective access to effective remedies.” It explicitly recognizes that violence against women is a manifestation of historically unequal power relations between men and women.²³

In the groundbreaking 2009 case of *González et al v. Mexico*, the Inter-American Court found that states have a positive obligation to “respect and ensure” human rights, that the state will be considered to have acquiesced to such violence against women by private actors if it has allowed the violence to take place without exercising “due diligence” to prevent, investigate, punish and compensate human rights violations.²⁴ While *González* and other cases do not directly address GBV in the world of work, they set out due diligence obligations and adopt a gendered “transformative” approach to remedy that contemplates that reparation should aim to transform rather than restore the victim to her previous situation. While these principles are readily applicable to the world of work, the court and commission have not engaged with the particularities of the work context. Thus, a gap remains to be addressed by the binding ILO convention supplemented by a recommendation to end violence and harassment in the world of work including GBV.

B. The European Union

In 2002, the European Union (EU) passed a binding anti-discrimination directive that prohibits sex discrimination, including sexual and gender harassment.²⁵ The directive lifted any cap on damages for victims of discrimination generally and required victims not bear the burden of proof in discrimination cases.²⁶ It also required EU member states to adopt or modify national laws against sexual harassment by October 2005.²⁷ The directive has significant gaps, including absence of clarity about which perpetrators are covered and where such harassment must take place, and it leaves the issue of prevention, implementation and enforcement to state discretion.²⁸

In 2011, the Council of Europe passed the Istanbul Convention to address violence against women, which refers explicitly to sexual harassment. According to Article 40, “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of the person ... is subject to criminal or other legal sanction.”²⁹

The 2009 case *Opuz v. Turkey* concerned the failure of the Turkish government to protect the applicant and her mother from domestic violence.³⁰ The European Court found that Turkey had violated Article 2 (right to life), Article 3 (prohibition on torture and inhumane treatment) and Article 14 (prohibition of discrimination under the European Convention on Human Rights). In subsequent decisions, the court established that state authorities must intervene in the private sphere when individuals face clear and real danger.³¹

C. Africa

The African Union adopted the Protocol on the Rights of Women in Africa (the Maputo Protocol), which came into effect in 2005 and is binding on ratifying countries. It defines violence against women as “all acts perpetrated against women which cause or could cause them physical, sexual, psychological and economic harm, including the threat to take such acts”³² in both public and private spheres. In the case of *Egyptian Initiative for Personal Rights and Interights v Egypt*, the African Commission on Human and Peoples’ Rights held that Egypt had failed to protect four women journalists from violence during a protest, and that this omission constituted a violation of equality, dignity, expression and protection from cruel inhuman and degrading treatment³³ Most recently, the African Commission passed Guidelines on Combatting Sexual Violence and its Consequences in Africa,³⁴ which regards workplace violence as the major cause for economic marginalization and sets standards for governments to design their laws and administrative measures to protect women from any form of sexual violence that occurs in the home, the street or the workplace.

National Responses to Gender-based Violence at Work are not Comprehensive

Globally, national governments have failed to adopt comprehensive national legislation to address GBV and harassment in the world of work. In many cases, legislation is either entirely absent, or it exists in criminal or labor codes, only addresses some forms of GBV and harassment, such as violence against women or sexual harassment, or is framed in the context of the preservation of female modesty.³⁵ In other countries, sexual harassment is addressed in labor and criminal codes but only in the limited form of quid pro quo and hostile work environment harassment, and it fails to hold the employer accountable.³⁶ There is no legislation against sexual harassment in the workplace in 59 countries³⁷ Of the 125 countries that have a law against sexual harassment, only six apply only to women.³⁸ Although more women than men experience sexual harassment, by only addressing women in these laws, sexual harassment is framed as a women’s issue rather than a workplace issue and gender equality issue. When defined in more comprehensive terms, there are no provisions for sanctions against violators.³⁹ Or, workplace policies are codified in voluntary codes that bind only large companies.⁴⁰

Where there is a total absence of legislation on addressing any form of GBV in the world of work, such as in India and Bangladesh, progressive judges have filled in the legal gap using CEDAW or ILO observations. While these judgments are laudable, they often are limited in their application, and reliance on judicial intervention is ad hoc, resource intensive and does not necessarily lend itself to systematic change.⁴¹ In jurisdictions that have enacted comprehensive laws like South Africa or Mexico, there are still significant gaps in coverage and work codes on sexual harassment at work are nearly always voluntary, rather than mandatory.

The three examples of national legislative responses below demonstrate the failure to address all forms of GBV in the world of work. Each—Mexico, South Africa and Indonesia—represent different regions and diverse approaches to address a form of GBV and harassment in the world of work: sexual harassment. South Africa views harassment as a violation of non-discrimination and equality rights; while the Mexican approach, influenced by the Belem Convention and its core principle of the “right to be free from violence,” has focused on criminalization. In contrast, Indonesia has failed to adopt a comprehensive legislative framework to address GBV and harassment in the world of work.

A. Mexico

Mexico ratified CEDAW and the ICESCR in 1981 and the Belém do Pará Convention in 1998. Its Federal Labor Law was amended in 2012 to define and prohibit sexual harassment in the workplace.

The Federal Labor Law covers hierarchical and nonhierarchical harassment, and establishes that employees engaging in sexual harassment may be terminated with cause, that is without severance pay, in addition to facing criminal action, if initiated, by the victim.⁴² Additionally, the law imposes fines on employers who tolerate sexual harassment in the workplace—between 250 and 5,000 times the daily wage.

The Federal Labor Law supplements provisions in Mexico's Federal Penal Code, which are limited to quid pro quo harassment, require repeated harassment and provide no recourse for claiming civil law damages or require prevention of sexual harassment.

The Intervention Protocol for Responding to Cases of Sexual Harassment⁴³ was developed in 2009 by the National Institute for Women (INMUJERES)⁴⁴ after a 2008 study revealed that more than 25,000 workers in the public administration had been targets of sexual harassment yet only 7,000 workers had begun a complaints procedure.⁴⁵ The protocol, which is limited to public-sector workers,⁴⁶ establishes a confidential complaint procedure for reporting abuses in each state or federal agency, and requires implementation of a training strategy directed at civil servants on sexual harassment and how to prevent and report it in the workplace.⁴⁷

It is important to note that in Mexico, despite the recently strengthened Federal Labor Law and the trend toward criminalization of sexual harassment in the states—all 31 states criminalize sexual harassment—INMUJERES reports that sexual harassment in the workplace is widespread, victims are reluctant to come forward and cases are difficult to prosecute.

The adoption of the current draft of the proposed ILO binding convention would require expanding protections beyond the formal workplace to places related to work, as well as work-related communications, employer provided accommodations and during work commutes, as “reasonably practicable.” In addition, the current protocol only applies to public-sector workplaces, but the effect of the ILO Convention would be to expand its application to include the private sector as well. In fact, in the wake of the #MeToo movement, there have been proposed reforms to the Federal Labor Law. Proposed Article 994 contemplates punishment for an employer who commits or tolerates discriminatory acts against their workers with fines of 21,000 to 422,000 pesos. According to Article 132, companies will be obliged to implement an internal protocol to prevent discrimination and address violence and harassment cases.⁴⁸

B. South Africa

South Africa ratified CEDAW in 1995 and the ICESCR in 2015. The South African constitution has far-reaching protection for gender equality that includes constitutional entrenchment of the right to be free from public or private violence as well as equality provisions. The issue of harassment at work, including gender, is addressed in both labor and human rights legislation.⁴⁹ A more recent statute, the Protection from Harassment Act of 2011, provides the remedy of a protection order for harassment, when it occurs.

South Africa's Employment Equity Act, the Labor Relations Act and the Promotion of Equality and Prevention of Unfair Discrimination Act⁵⁰ all prohibit harassment based on sex, gender and sexual

orientation. Under the Labor Relations Act, sexual harassment is a form of misconduct, and the employer “may” take disciplinary action against the harasser, who may be fairly dismissed. Section 6(1) of the Employment Equity Act prohibits discrimination in the workplace, either directly or indirectly, on the grounds of “race, gender, sex, pregnancy, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth.” Section 6(3) sets out unequivocally that “harassment of an employee” is a form of unfair discrimination and is prohibited on a combination of grounds of unfair discrimination in Subsection (1). The voluntary Code of Good Practice on the Handling of Sexual Harassment in the Workplace of 1998 supplements the Labor Relations Act and the Employment Equity Act and defines sexual harassment as unwelcome conduct of a sexual nature.

The subsequent Code on Good Practice on the Handling of Sexual Harassment in the Workplace of 2005 expands the scope of sexual harassment policies to employers, employees and individuals dealing with business. In addition, persistent sexual advances required by the 1998 code are no longer required in the 2005 version.⁵¹ Under the 2005 code, an employee may indicate that the sexual conduct is unwelcome in many ways, including walking away and not responding to the perpetrator.⁵² Similarly, the definition of verbal sexual harassment includes digital forms such as seeing explicit texts.⁵³

Some of the important impacts of the passage of a global binding ILO Convention to end violence and harassment including GBV and harassment in South Africa would center on issues of prevention and application. While the 2005 Code of Good Practice broadens the application of sexual harassment policies to employers, employees and individuals dealing with businesses, the code is a “guide” and binding if adopted by a particular workplace, although used as a reference point under both the Labor Relations Act and the Employment Equity Act. In fact, there is very little in South African law on prevention of sexual harassment outside of this code. Also, the code’s understanding of sexual harassment as conduct of a sexual nature is narrower than the conception of gender-based violence envisaged by the draft ILO convention. In addition, provisions in the draft ILO Convention recognizing that GBV takes place in the broader spaces arising out of work would require adaptation of current laws to protect workers in spaces including employer provided accommodations and when commuting to and from work, where reasonable. As the South African Commercial, Catering and Allied Workers Union (SACCAWU) has highlighted, problems persist in the retail sector, where women are frequently compelled to work late and face the risk of rape, gang rape and even murder on their commute home from work.⁵⁴

C. Indonesia

Indonesia ratified CEDAW in 1984 and the ICESCR in 2006. In Indonesia, the primary provisions addressing gender-based violence are in its Penal Code and the Domestic Violence Act. There are also anti-discrimination provisions in the Labor Code and the Human Rights Act.⁵⁵ However, there is no law that addresses sexual harassment at work, an issue recognized by the CEDAW Committee in 2012. Similarly, the Criminal Code contains no provision that directly prohibits sexual harassment.⁵⁶

A criminal court case on public disturbance defines workplace harassment as a form of “public disturbance.”⁵⁷ However, since Indonesia is a civil law system, this only is binding on the parties to the case and creates no binding precedent. In 2011, the Ministry of Manpower and Transmigration, together with the ILO, issued a non-binding Circular Note on Sexual Harassment Prevention at the Workplace, which encourages employers to follow these policies.⁵⁸ Indonesia’s National Commission on Violence Against Women (Komnas Perempuan) advocates for a national bill on the eradication of sexual violence,⁵⁹ but a draft law on the Eradication of Sexual Violence has languished in parliament since 2014 and was recently drastically cut back from 155 articles to just 59.⁶⁰

The absence of comprehensive legislation addressing sexual harassment at work has had in at least one case the effect of criminalizing a victim of sexual harassment who sought redress.⁶¹ Bail Nuril's case is instructive. She is an Indonesian schoolteacher and recorded a phone conversation in which she was verbally sexually harassed by the headmaster of the school where she worked. Her colleague reported the sexual harassment to authorities, but ultimately it was Bail, and not the headmaster, who was dismissed from her job. On appeal, Bail was found guilty by the Supreme Court of Indonesia for distributing indecent material electronically and was sentenced to six months in jail and a \$35,000 fine.

The impact of the adopting of draft text of the binding ILO convention to end violence and harassment in the world of work including GBV and harassment on Indonesia would require it to pass comprehensive laws that legally prohibit all forms of violence and harassment, including gender-based violence at work, and adopt a gender-responsive approach to the elimination of such violence at work.

Conclusion: The Need for a Binding ILO Convention

Through their hard work and persistence, women leaders of the global labor movement have raised awareness about the need for a global binding standard to end GBV and harassment in the world of work, efforts that were bolstered by the #MeToo movement in 2017. Together, they have illustrated the depth of the problem and the limitations of existing national, regional and global law and policy to effectively end it. While CEDAW and CAT, as well as the jurisprudence of regional human rights bodies, have significantly advanced progressive principles and standards for addressing GBV, they do not directly address the specifics of GBV and harassment in the world of work, including the experiences of men and workers who do not identify as women. Similarly, regional conventions, such as the Belém do Pará and Istanbul Conventions, and the related case law, are geographically restricted and fall short in their application to all forms of GBV and harassment in the world of work.

The absence of international legal standards on GBV and harassment in the world of work have arguably enabled the dearth of adequate national legislation on GBV and harassment in the world of work, with the associated lack of access to effective remedies. Consequently, a global, binding ILO Convention to end violence and harassment in the world of work, including GBV and harassment, is essential to addressing gender-based violence and harassment in the world of work.

Endnotes

- 1 The ILO uses the term “world of work” to encompass paid and unpaid work in the productive and reproductive spheres and in related contexts, such as public transportation to and from work. GBV at work includes: physical abuse; sexual violence, including rape and sexual assault; verbal abuse and threats of violence; bullying, psychological abuse and intimidation; sexual harassment (quid pro quo and hostile environment); threats of violence; economic and financial abuse; stalking; mobbing; human trafficking; forced labor; and forced prostitution. See Adrienne Cruz and Sabine Klinger, *Gender-Based Violence in the World of Work: Overview and Selected Annotated Bibliography*, ILO Working Paper, March 2011, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_155763.pdf (accessed on May 23, 2019).
- 2 Report V(2B), “Ending Violence and Harassment in the World of Work,” International Labor Conference, 108th Session, 2019, Definitions I, Article I(b).
- 3 Ibid, Scope, Article 2.
- 4 Ibid Scope, Article 3.
- 5 CEDAW Recommendation 19 of 1992 at 18.
- 6 According to CEDAW GC 19, gender-based violence at work “can be humiliating and may constitute a health and safety problem; it is discriminatory when the woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile work environment.”
- 7 GR 35, para 9.
- 8 CEAR, General Observation Concerning Convention 111, 2002.
- 9 Indigenous and Tribal Peoples Convention, 1991 (No 169).
- 10 Article 5 of Domestic Workers Convention, 2011 (No.189).
- 11 Article 7 of Domestic Workers Recommendation, 2011 (NO. 201).
- 12 International Labor Conference, “Recommendation Concerning HIV and AIDS and the World of Work,” adopted by the conference at its ninety-ninth session, Geneva, June 17, 2010.
- 13 169 countries have ratified this Covenant.
- 14 II (1) of General Comment 23.
- 15 Para 48 of General Comment 23.
- 16 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (entered into force June 26, 1987).
- 17 General Comment No. 2 Implementation of Article 2 by State Parties, January 24, 2008, CAT/C/GC/2
- 18 Para 18 of General Comment 2.
- 19 Para 18 of General Comment 2.
- 20 Para 18-22 of General Comment 2.
- 21 UN Doc A/HRC/31/57.
- 22 Antigua & Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panamá, Paraguay, Peru, St. Kitts & Nevis, St. Lucia, St. Vincent & Grenadines, Suriname, Trinidad & Tobago, United States, Uruguay, Venezuela.
- 23 Preamble, Article 6, Belem do Para.
- 24 *González et al (“Cotton Field”) v. Mexico*, Inter-American Court of Human Rights (ACtHR), November 16, 2009.
- 25 See paragraph 236 of Directive 2002/73/EC of the European Parliament and of the Council of September 23, 2002, amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women regarding access to employment, vocational training and promotion, and working conditions.
- 26 Article 6 of Directive 2002/73/EC.
- 27 Article 2 of Directive 2002/73/EC.
- 28 See Katherine Zippel, “Gender Equality Politics in the Changing European Union: The European Union Anti-Discrimination Directive and Sexual Harassment,” Center for European Studies, Working Paper Series No 134.
- 29 The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, 2014 (Istanbul Convention).
- 30 App. No 33401/o2 (European Court of Human Rights, June 9, 2009).
- 31 See *Kontrova v Slovakia*, App No 7510/04 (European Court of Human Rights, May 2007).
- 32 The Protocol on the Rights of Women in Africa, 2003. See definition section.
- 33 *Communication No. 334/06 (2011), Egyptian Initiative for Personal Rights and Interights v. Egypt* (accessed on June 4, 2019).
- 34 ACHPR, “Guidelines on Combatting Sexual Violence and Its Consequences in Africa,” http://www.achpr.org/files/instruments/combating-sexual-violence/achpr_eng_guidelines_on_combating_sexual_violence_and_its_consequences.pdf (accessed on June 4, 2019).
- 35 Guatemala is an example of a country that does not explicitly prohibit sexual harassment or GBV in either its labor or criminal codes. Article 172 of Cambodian Labor Law imposes an obligation on managers and employers to “watch over the good behavior and decency of women” and prohibits “sexual violation.”
- 36 See for example S147(A) of the Penal Code of Honduras which defines sexual harassment at work as involving the “taking advantage of a position of superiority; retaliates against a person who refuses indecorous acts or sexual favors ...”
- 37 https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_553577.pdf (accessed on June 4, 2019).
- 38 World Policy Center, 2016, <https://www.worldpolicycenter.org/policies/is-sexual-harassment-explicitly-prohibited-in-the-workplace> (accessed on June 6, 2019). Source: <https://www.worldpolicycenter.org/policies/is-sexual-harassment-explicitly-prohibited-in-the-workplace>
- 39 See for examples S6 of the Kenyan Employment Act 2007.
- 40 See Kenyan Employment Act, 2007, which requires an establishment with 20 or more workers to issue a policy statement on sexual harassment. Under the South African Employment Equity Act, a “designated employer” is “a person who employs 50 or more employees ...” and is obliged to prepare and implement an employment equity plan.
- 41 See Sandra Freedman, “Human Rights Transformed,” 2008, p. 190.
- 42 Ibid., Art. 47.
- 43 An English-language version of the protocol could not be located. Therefore, information pertaining to the protocol comes principally from a short case study on the measure, “Tackling Institutional Violence: The Intervention Protocol for Harassment and Sexual Harassment in the Mexican Federal Public Administration,” published by Fundar.

44 INMUJERES is “the federal government entity that coordinates compliance with national policy on substantive equality and contributes to the eradication of violence against women.” <https://www.gob.mx/inmujeres/que-hacemos> (accessed on June 5, 2019).

45 “Tackling Institutional Violence: The Intervention Protocol for Harassment and Sexual Harassment in the Mexican Federal Public Administration,” Fundar, p. 3, available at: <http://fundar.org.mx/mexico/pdf/Brief-TacklingInstitutionalViolence-InterventionProtocolHarassment.pdf> (accessed on May 28, 2019).

46 Ibid.

47 Tackling Institutional Violence, p. 4.

48 “Mexico: Preliminary Analysis of The Project to Reform the Federal Labor Law,” Mondaq Business Briefing, May 1, 2019.

49 Under South African common law, an employer can also be held vicariously liable for sexual harassment and also has a separate duty to provide an employee with a work environment safe from harassment. See Mohamed Alli Chicktay, “Sexual Harassment and Employer Liability: A Critical Analyses of the South African Legal Position” *Journal of African Law*, Vol. 54, No 2, 2010.

50 Similarly, Section 11 of the Promotion of Equality and Prevention of Unfair Discrimination Act 2000 (PEPUDA or the Equality Act No. 4 of 2000) provides that no person may subject any person to harassment. Harassment is defined as “unwanted conduct which is persistent or serious and demeans or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to (a) sex, gender or sexual orientation; (b) a person’s membership or presumed membership in a group identified by one or more of the prohibited grounds or a characteristic associated with such group.” Note that the remedy for breach of this act lies in the Equality Court, and an employer could be held vicariously liable.

51 Section 5.3.3 of the Amendment to the Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace (General Notice 1357) amended on August 4, 2005. The 2005 Code did not, however supersede the 1998 Code and both Codes were applicable until December 19, 2018 when the 1998 Code was formally repealed by the Minister of Labor and replaced with the 2005 Code.

52 Section 5.2.1 of the Amendments to the Code of Good Practice, 2005.

53 Section 5.3.1.2 of the Amendment to the Code of Good Practice, 2005.

54 Pillinger, J., “Psychosocial Risks and Violence in the World of Work: A Trade Union Perspective,” *International Journal of Labor Research*, (2016), p. 35.

55 In addition, Law Number 21 of 2007 on the Elimination of People Trafficking is an umbrella law for preventing and resolving cases of human trafficking.

56 <https://www2.ohchr.org/english/bodies/cedaw/docs/co/CEDAW-c-IDN-CO-6-7.pdf> (accessed on May 28, 2019).

57 Article 281 of Indonesia’s Criminal Code prohibits indecent public acts and serves as the basis for criminal complaints stemming from sexual harassment, with penalties of up to two years and eight months imprisonment and a small fine. See U.S. Department of State, Indonesia Human Rights Report, 2017.

58 CNV International, “Violence Against Women at the Workplace,” 2015. https://www.cnvinternationaal.nl/Resources/Persistent/46610795dae021d92b67c15edcb896c7f3a59a0c/CNV-0037_20151012_Survey_Violence_against_women_at_the_workplace_DEF.pdf (accessed on June 4, 2019).

59 Ibid.

60 Kate Walton, “Pushing Indonesia to Protect Women from Violence,” December 7, 2017 <https://newnaratif.com/journalism/pushing-indonesia-to-protect-women-from-violence/> (accessed on May 28, 2019).

61 “She Recorded Her Boss’s Lewd Call. Guess Who Went to Jail?” January 12, 2019, (accessed on May 29, 2019). <https://www.nytimes.com/2019/01/12/world/asia/indonesia-sexual-harassment.html> (accessed on May 29, 2019).



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