

Questionnaire

At its 325th Session (October 2015), the Governing Body decided to place a standard-setting item on violence against women and men in the world of work on the agenda of the 107th Session (June 2018) of the International Labour Conference for a double discussion. At its 328th Session (October 2016), following the Meeting of Experts on Violence against Women and Men in the World of Work (October 2016),¹ the Governing Body decided to replace the term “violence” with “violence and harassment” in the title of the item placed on the agenda of the 107th Session (June 2018) of the Conference.²

The purpose of the questionnaire is to request the views of member States on the scope and content of the proposed instrument or instruments, after consultation with the most representative organizations of employers and workers. Replies received should enable the International Labour Office to prepare a report for the Conference. The Office would be grateful if the replies could reach the Office by 22 September 2017. Respondents are encouraged, where possible, to complete the questionnaire in electronic format and to submit their replies electronically to the following email address: VIOLENCEHARASSMENT@ilo.org. Respondents may also submit their replies in hard copy to the Conditions of Work and Equality Department (WORKQUALITY) at the International Labour Office in Geneva.

I. Form of the international instrument or instruments

1. *Should the International Labour Conference adopt an instrument or instruments concerning violence and harassment in the world of work?*

Comments:

Yes, the International Labour Conference should adopt instruments concerning violence and harassment in the world of work. Sex workers -female, male and transgender- clearly fall within the definition "world of work". Sex work needs to be viewed as decent work within the understanding of ILO definition. Violence and harassment faced by sex workers impact their working conditions and need to be addressed under the instrument.

¹ILO: *Final report*, Meeting of Experts on Violence against Women and Men in the World of Work (3–6 October 2016), available at: http://www.ilo.org/gender/Informationresources/Publications/WCMS_546303/lang--en/index.htm; and Background paper for discussion at the Meeting of Experts on Violence against Women and Men in the World of Work (3–6 October 2016), available at: http://www.ilo.org/gender/Informationresources/Publications/WCMS_522932/lang--de/index.htm.

²GB.328/PV, para. 357(b); and GB.328/INS/17/5, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_533534.pdf.

2. *If so, should the instrument or instruments take the form of:*
- (a) *a Convention?*
 - (b) *a Recommendation?*
 - (c) *a Convention supplemented by a Recommendation, as two separate instruments or a single instrument comprising binding and non-binding provisions?*

Comments:

A Convention which is supplemented by a Recommendation - comprising binding and non-binding provisions.

II. Preamble

3. *Should the Preamble of the instrument or instruments recall that the Declaration of Philadelphia affirms that all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity?*

Comments:

Yes, the Preamble should recall that the Declaration of Philadelphia affirms that all human beings have the right to pursue their material well-being in conditions of freedom and dignity, of economic security and equal opportunity, and free from violence and harassment. The preamble must also contain the provision that all human beings have a right to be protected from violence and their right to access justice upheld, regardless of the nature of their work.

4. *Should the Preamble of the instrument or instruments reaffirm the relevance of the fundamental Conventions of the International Labour Organization?*

Comments:

The Preamble should reaffirm the relevance of the fundamental Conventions of ILO.

5. *Should the Preamble of the instrument or instruments state the right of everyone to a world of work free from violence and harassment, including gender-based violence?*

Comments:

The Preamble should state the right of everyone to a world of work free from violence and harassment, including gender-based violence.

6. *Should the Preamble of the instrument or instruments recall that violence and harassment in the world of work:*
- (a) *is a human rights violation, is unacceptable and is incompatible with decent work; and*
 - (b) *affects workplace relations, worker engagement, health, productivity, quality of public and private services and enterprise reputation, and may prevent access to, and remaining and advancing in, the labour market, particularly for women?*

Comments:

The Preamble should recall that violence and harassment in the world of work is a human rights violation, is unacceptable and affects workplace relations, productivity, worker engagement, health and may well prevent access and advance in the labour market particularly for women and transgender individuals.

7. *Should the Preamble of the instrument or instruments recognize that an inclusive and integrated approach, tackling underlying causes and risk factors, is essential to ending violence and harassment in the world of work?*

Comments:

The Preamble should recognize that an inclusive and integrated approach is essential to ending violence and harassment in the world of work.

8. *Should other considerations be included in the Preamble of the instrument or instruments? If yes, please specify.*

Comments:

The Preamble should make it amply clear that sex workers clearly fall within the ambit of the world of work.

III. Definitions and scope

9. *For the purposes of the instrument or instruments should the expression “violence and harassment” be understood as a continuum of unacceptable behaviours and practices – whether a single occurrence or repeated – having the aim or effect of causing physical, psychological or sexual harm?*

Comments:

The expression "violence and harassment" should be understood as a continuum of unacceptable behaviours and practices, whether a single occurrence or repeated, having the aim or effect of causing physical, psychological and sexual harm.

10. *For the purposes of the instrument or instruments should violence and harassment in the world of work cover situations occurring:*

- (a) *in the physical workplace, including public and domestic spaces where they are a place of work;*
- (b) *in places where the worker is paid or takes meals;*
- (c) *when commuting to and from work;*
- (d) *during work-related trips or travel, at work-related events or social activities, and during work-related training; and*
- (e) *through work-related communications enabled by information and communication technologies?*

Comments:

The instruments should cover all of the above situations and also include situations where the worker is stigmatized due to the nature of their work, for eg sex work.

11. *For the purposes of the instrument or instruments should the term “employer” include intermediaries?*

Comments:

"Employer" should include intermediaries and third parties

12. *For the purposes of the instrument or instruments should the term “worker” cover persons in any employment or occupation, irrespective of their contractual status, and in all sectors of the economy – formal or informal – including:*

- (a) *persons in training, internships and apprenticeships;*
- (b) *volunteers;*
- (c) *jobseekers; and*
- (d) *laid-off and suspended workers?*

Comments:

"Worker" should cover persons in any employment or occupation, and cover all the above categories.

13. *Should any other terms be defined by the instrument or instruments? If yes, please specify.*

Comments:

The term "occupation" should be defined to clearly include sex work.

IV. Content of a Convention

14. *Should the Convention provide that each Member should recognize the right to a world of work free from violence and harassment and adopt, in consultation with representative employers' and workers' organizations, an inclusive and integrated approach for the elimination of violence and harassment in the world of work that includes:*

- (a) *prohibition in law of all forms of violence and harassment in the world of work;*
- (b) *ensuring that relevant policies address violence and harassment;*
- (c) *adoption of a comprehensive prevention strategy;*
- (d) *establishment of enforcement and monitoring mechanisms;*
- (e) *provision of remedies and support for victims;*
- (f) *provision of sanctions for perpetrators; and*
- (g) *development of tools and guidance?*

If others please specify.

Comments:

The Convention should provide that each Member should recognize an integrated and inclusive approach that should include all of the above.

Violence and harassment by State actors prevalent in the context of sex work should be included.

A. Fundamental principles and rights at work and protection

15. *Should the Convention provide that, with a view to eliminating violence and harassment in the world of work, each Member should respect, promote and realize the fundamental principles and rights at work, namely freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation?*

Comments:

The Convention should provide that each Member should respect, promote and realize the fundamental principles and rights at work enumerated above.

16. *Should the Convention provide that each Member should adopt national laws and regulations prohibiting all forms of violence and harassment in the world of work, and in particular all forms of gender-based violence?*

Comments:

The Convention should provide that each Member should adopt national laws and regulations prohibiting all forms of violence and harassment in the world of work,

including gender-based violence. In this context, sex work must be decriminalized in order to address violence and harassment especially from law enforcers.

17. *Should the Convention provide that each Member should develop laws, regulations and policies ensuring the right to equality and non-discrimination for all workers, including for women workers as well as workers belonging to one or more groups disproportionately affected by violence and harassment, including:*

- (a) young workers;*
- (b) migrant workers;*
- (c) workers with disabilities;*
- (d) workers from indigenous and tribal peoples;*
- (e) lesbian, gay, bisexual, transgender and intersex workers;*
- (f) workers living with HIV; and*
- (g) workers from marginalized communities, such as caste-affected persons, and members of ethnic minorities?*

If others please specify.

Comments:

The Convention should provide that each Member should should develop laws, regulations and policies ensuring the right to equality and non-discrimination for all of the above category of workers.

Sex workers should be added as a distinct category to ensure equality and non-discrimination and sex work should be decriminalized.

B. Prevention measures

18. *Should the Convention provide that each Member should:*

- (a) take measures to ensure the prevention of violence and harassment in the world of work;*
- (b) identify sectors, occupations and work arrangements in which workers are more exposed to violence and harassment; and*
- (c) take measures to ensure that such workers are effectively protected?*

Comments:

The Convention should provide that each Member should take measures to ensure prevention of violence and harassment; identify areas of more risk of violence and harassment and take measures for effective protection.

19. *Should the Convention provide that each Member should adopt national laws and regulations requiring that employers take steps to prevent all forms of violence and harassment in the world of work, and in particular to:*
- (a) *include violence and harassment and psychosocial risks under existing occupational safety and health management systems;*
 - (b) *adopt a policy, in consultation with workers and their representatives, outlining a zero-tolerance stance on all forms of violence and harassment;*
 - (c) *identify hazards and assess the risks of violence and harassment, with the participation of workers and their representatives, and take measures for their prevention and control; and*
 - (d) *inform and train workers on the identified hazards and risks of violence and harassment and the associated prevention and protection measures?*

Comments:

The Convention should provide that each Member should adopt national laws and regulations mandating the taking of preventive steps with regard to all forms of violence and harassment, including those specified above.

C. Enforcement, monitoring and victim support

20. *Should the Convention provide that each Member should take appropriate measures to ensure the monitoring and enforcement of national laws and regulations regarding violence and harassment in the world of work?*

Comments:

The Convention should provide that each Member should take measures to ensure monitoring and enforcement of national laws and regulations regarding violence and harassment in the world of work.

21. *Should the Convention provide that each Member should ensure that all workers have easy access to safe, fair and effective dispute resolution mechanisms in cases of violence and harassment, including:*
- (a) *complaint and investigation mechanisms at the level of the economic unit;*
 - (b) *access to courts or tribunals;*
 - (c) *dispute resolution mechanisms external to the economic unit;*
 - (d) *protection against victimization of complainants, witnesses and whistle-blowers;*
 - (e) *appropriate remedies;*

- (f) *legal, social and administrative support measures for complainants; and*
- (g) *sanctions for perpetrators?*

Comments:

The Convention should provide that each Member should ensure that all workers have easy access to dispute resolution mechanisms including the areas specified above.

22. *Should the Convention provide that each Member should adopt additional measures to ensure that victims of gender-based violence in the world of work, whether in urban or rural areas, should have effective access to specialized and expeditious dispute resolution mechanisms as well as to specialized support, services and remedies?*

Comments:

The Convention should provide that each Member should adopt additional measures tailored to the requirements of the field. Sex work is an area requiring application of mind to evolving mechanisms, and sex-workers' rights groups must lead the process of the evolution of such mechanisms.

23. *Should the Convention provide that workers have the right to remove themselves from a work situation which they have reasonable justification to believe presents an imminent and serious danger of violence and harassment, without suffering undue consequences?*

Comments:

The Convention should provide that workers have the right to remove themselves if the situation presents an imminent danger of violence and harassment, without suffering undue consequence.

D. Support and guidance at the national level

24. *Should the Convention provide that each Member should, in consultation with representative employers' and workers' organizations, take measures to ensure that:*

- (a) *violence and harassment in the world of work is addressed in relevant national policies, such as occupational safety and health, equality and non-discrimination, including gender equality, and migration policies;*
- (b) *guidance, resources and other tools are provided to workers, employers and their representatives, and to enforcement authorities regarding violence and harassment in the world of work; and*
- (c) *awareness-raising campaigns and other initiatives are developed with the aim of eliminating violence and harassment in the world of work, including gender-based violence?*

Comments:

The Convention should provide that each Member should in consultation with representative employers' and workers organisations and collectives take measures with regard to all of the above areas.

Sex workers collectives should be specifically mentioned as organisations to be consulted by each Member.

E. Means of implementation

25. *Should the Convention provide that each Member should implement its provisions through laws and regulations, as well as through collective agreements or other measures consistent with national practice, including by extending existing occupational safety and health measures to cover violence and harassment or adapting them and developing specific measures where necessary?*

Comments:

The Convention should provide that each Member should implement provisions through laws and regulations as well as through collective agreements or other measures where necessary.

V. Content of a Recommendation

A. Fundamental principles and rights at work and protection

26. *Should the Recommendation provide that in adopting an inclusive and integrated approach to end violence and harassment in the world of work, Members should address all forms of violence and harassment in the world of work in labour, occupational safety and health, and equality and non-discrimination law, as well as in criminal law where appropriate?*

Comments:

The Recommendation should provide that Members should adopt an inclusive and integrated approach to end violence and harassment in the world of work in labour, safety and health, equality and non-discrimination as well as in criminal law.

27. *Should the Recommendation provide that Members should ensure that workers in sectors, occupations and work arrangements with a higher incidence of violence and harassment fully enjoy freedom of association and the right to collective bargaining in accordance with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)?*

Comments:

The Recommendation should provide that Members should that workers in sectors and work arrangements like sex work enjoy freedom of association and collective bargaining.

28. *Should the Recommendation provide that Members should take measures to:*
- (a) *encourage collective bargaining at all levels as a means of preventing and addressing violence and harassment in the world of work; and*
 - (b) *facilitate such collective bargaining through the collection and dissemination of information on trends and good practices regarding the negotiation process and the content of collective agreements?*

Comments:

The Recommendation should provide that each Member should take measures to encourage, facilitate collective bargaining including dissemination of information on trends and good practices with regard to negotiation process and collective agreements.

29. *Should the Recommendation provide that with a view to eliminating violence and harassment in the world of work, Members should recognize the effects of domestic violence on the world of work and take measures to address them?*

Comments:

The Recommendation should provide that each Member should recognize the effects of domestic violence on the world of work and take measures to address them.

30. *Should the Recommendation provide that Members should take legislative or other measures to protect migrant workers, and particularly women migrant workers, in origin, destination and transit countries, against violence and harassment, including gender-based violence?*

Comments:

The Recommendation should provide that Members should take legislative and other measures to protect migrant workers, including sex workers against violence and harassment including gender based violence.

B. Prevention measures

31. *Should the Recommendation provide that occupational safety and health provisions on violence and harassment in national laws, regulations and policies should take into account occupational safety and health instruments of the International Labour Organization, including the Occupational Safety and Health Convention, 1981 (No. 155), and Recommendation, 1981 (No. 164); the Occupational Health Services Convention, 1985 (No. 161); the Night Work Convention, 1990 (No. 171), and Recommendation, 1990 (No. 178); and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)?*

Comments:

The Recommendation should provide should provide that occupational safety and health provisions on violence and harassment should take into account the instruments of the ILO including those specified.

32. *Should the Recommendation provide that, in developing and implementing workplace policies on violence and harassment, employers should:*
- (a) establish violence and harassment prevention programmes with measurable objectives;*
 - (b) outline the rights and responsibilities of workers and employers;*
 - (c) ensure that workers and their representatives are consulted, informed and trained;*
 - (d) provide information on complaint and investigation procedures; and*
 - (e) ensure that all internal and external communications related to violence and harassment are duly considered and acted upon?*

Comments:

The Recommendation should provide that each Member should in developing and implementing workplace policies on violence and harassment, employers should take measures in the areas specified.

33. *Should the Recommendation provide that workplace risk assessments should take into account factors that increase the likelihood of violence and harassment, in particular psychosocial hazards and risks, including those arising from third parties such as clients and the public, and the presence of negative power relations, gender norms, cultural and social norms, and discrimination?*

Comments:

The Recommendation should provide that workplace risk assessments should take into account factors that increase the likelihood of violence and harassment, in particular psychosocial hazards and risks arising from third parties such as clients and the public. The risks and hazards pertaining to state actors should also be taken on board.

34. *Should the Recommendation provide that Members should:*

- (a) adopt specific measures for sectors, occupations and work arrangements which are more exposed to violence and harassment, including night work, work in isolation, services, healthcare, emergency services, domestic work, transport, education and entertainment; and*
- (b) ensure that these measures do not in any manner exclude or restrict the participation of women or other groups of workers?*

Comments:

The Recommendation should provide that each Member should adopt specific measures for the areas specified above including the arena of sex work.

C. Enforcement, monitoring and victim support

35. *Should the Recommendation provide that appropriate remedies in cases of violence and harassment referred to in question 21 should include, among others:*

- (a) *reinstatement;*
- (b) *compensation for material and non-material damages;*
- (c) *injunctive relief ordering the employer to ensure that certain conduct is stopped or requiring that policies or practices be changed; and*
- (d) *legal fees and costs?*

Comments:

The Recommendation should provide that appropriate remedies in case of violence and sex work should include the above areas. Injunctive reliefs restraining risky clients in the context of sex work should find specific mention.

36. *Should the Recommendation provide that victims of violence and harassment should have access to compensation in cases of psychosocial or physical disability or incapacity to work?*

Comments:

The Recommendation should provide that victims of violence and harassment should have access to compensation in cases of psychosocial or physical disability or incapacity to work.

37. *Should the Recommendation provide that specialized and expeditious dispute resolution mechanisms for gender-based violence referred to in question 22 should include:*

- (a) *courts with expertise in cases of gender-based violence;*
- (b) *fast-track processes;*
- (c) *shifting the burden of proof;*
- (d) *legal advice and assistance for complainants; and*
- (e) *guides and other information resources available in the widely spoken languages of the country?*

If others please specify.

Comments:

The Recommendation should provide that measures include the areas mentioned above, except shifting the burden of proof. Any civilized jurisprudence mandates the burden of proof being placed on the party making the allegations.

38. *Should the Recommendation provide that specialized support, services and remedies for victims of gender-based violence referred to in question 22 should include:*

- (a) *leave for victims of domestic violence;*

- (b) *flexible work hours for victims of stalking and domestic violence;*
- (c) *support to help victims re-enter the labour market;*
- (d) *counselling and information services, including at the workplace;*
- (e) *24-hour hotlines;*
- (f) *emergency services;*
- (g) *medical care and treatment;*
- (h) *crisis centres, including shelters; and*
- (i) *special police units to support victims?*

If others please specify.

Comments:

The Recommendation should provide specialized support, remedies and services in the areas enumerated above.

39. *Should the Recommendation provide that perpetrators of violence and harassment should be assisted through counselling or other appropriate measures with a view to preventing the reoccurrence of violence and harassment and facilitating their reintegration into work?*

Comments:

The Recommendation should provide that perpetrators of violence and harassment should be assisted through counselling or other appropriate measures. This would go some way in establishing restorative justice rather than only retributive justice

40. *Should the Recommendation provide that labour inspectors should have the mandate to address violence and harassment and be empowered to issue:*
- (a) *interim orders of non-compliance in cases of violence and harassment; and*
 - (b) *orders to stop work in cases of violence and harassment or an imminent and serious danger of violence and harassment?*

If others please specify.

Comments:

The Recommendation should provide that labour inspectors should have the power to address violence and harassment and pass interim orders in case of non-compliance.

41. *Should the Recommendation provide that labour inspectors should undergo gender-sensitive training with a view to identifying and addressing violence and harassment, psychosocial hazards and risks, gender-based violence, and discrimination against particular groups?*

If others please specify.

Comments:

The Recommendation should provide that labour inspectors should undergo gender-sensitive training with a view to identify areas of risk, harassment, violence and in the areas of discrimination against particular groups.

42. *Should the Recommendation provide that the mandate of national bodies responsible for occupational safety and health or equality and non-discrimination, including gender equality, should include violence and harassment in the world of work?*

Comments:

The Recommendation should provide that the mandate of national bodies for occupational safety and health or equality and non-discrimination should include violence and harassment in the world of work.

43. *Should the Recommendation provide that Members should collect and publish sex-disaggregated statistics on violence and harassment in the world of work, including gender-based violence?*

Comments:

The Recommendation should provide that Members should publish sex-disaggregated statistics on violence and harassment in the world of work including gender-based violence.

D. Support and guidance at the national level

44. *Should the Recommendation provide that national policies on occupational safety and health, equality and non-discrimination, including gender equality, and gender-based violence, including violence against women, should address violence and harassment in the world of work?*

Comments:

The Recommendation should provide that national policies on occupational safety and health, equality and non-discrimination, including gender based violence should address violence and harassment in the world of work.

45. *Should the Recommendation provide that Members should develop, implement or disseminate, as appropriate:*

(a) *programmes aimed at addressing factors that increase the likelihood of violence and harassment, including negative power relations, gender norms, cultural and social norms, and discrimination;*

(b) *gender-sensitive guidelines and training to assist judges, labour inspectors, police officers and other public officials in fulfilling their mandate regarding violence and harassment as well as to assist employers in preventing and addressing violence and harassment;*

- (c) *model codes of practice, workplace policies and risk assessment tools, either general or sector-specific, for all forms of violence and harassment, taking into account the specific situations of disproportionately affected workers;*
- (d) *awareness-raising campaigns that convey the unacceptability of violence and harassment, in particular gender-based violence, and address discriminatory attitudes and stigmatization of complainants and victims;*
- (e) *gender-sensitive curricula at all levels of education;*
- (f) *training programmes and materials for journalists and other media personnel on gender-based violence, including its underlying causes and risk factors; and*
- (g) *campaigns aimed at fostering safe, healthy and harmonious workplaces free from violence and harassment?*

Comments:

The Recommendation should provide that Members should develop, implement or disseminate in the areas specified (a) to (g) above.

46. *Should the Recommendation provide that Members should provide resources and assistance for informal economy workers and their associations to prevent and address violence and harassment, including gender-based violence, in the informal economy?*

Comments:

The Recommendation should provide that each Member should provide resources and assistance for informal economy workers including sex workers and their associations and collectives to address violence and harassment.

VI. Special problems

47. *Are there unique features of national law or practice that are liable to create difficulties in the practical application of the instrument or instruments?*

Comments:

Laws criminalizing a number of acts around sex work are liable to create difficulties in the practical application of the instruments. The Instrument should mandate members to scrap laws criminalizing sex work.

48. *(For federal States only) In the event of an instrument or instruments being adopted, would the subject matter be appropriate for federal action or, wholly or in part, for action by the constituent units of the federation?*

Comments:

The subject matter would be appropriate partly for federal action and partly for action by the constituent units of the federation.

49. *Are there any other relevant problems or issues not covered by the present questionnaire that ought to be taken into consideration when drafting the instrument or instruments?*

If yes, please specify.

Comments:

The criminalization of acts around sex work ought to be taken into consideration when drafting the instruments. Given the stigma and resistance to sex work as work, care should be taken to specifically mention sex work as being included within the ambit of the instruments.