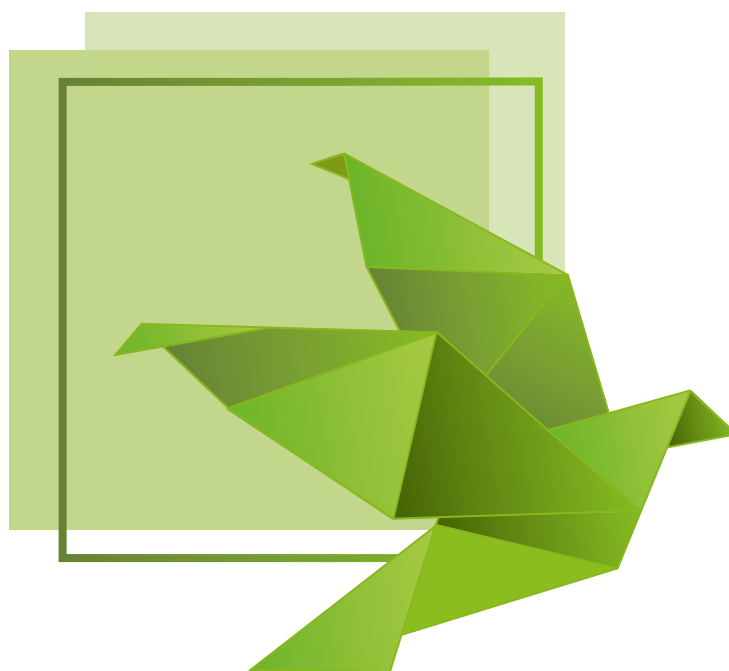




International
Labour
Office
Geneva

Report V (1)

Ending violence and harassment against women and men in the world of work



**International
Labour
Conference**

107th Session, 2018

ATTENTION

This report contains a questionnaire which, in accordance with Article 39 of the Standing Orders of the International Labour Conference, calls for a reply from Governments, after consultation with the most representative organizations of employers and workers. **The replies to this questionnaire must reach the Office no later than 22 September 2017.** They will form the basis of the background report for the ILC discussion.

International Labour Conference, 107th Session, 2018

Report V(1)

Ending violence and harassment against women and men in the world of work

Fifth item on the agenda

International Labour Office, Geneva

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Introduction

1. The Declaration of Philadelphia (1944), states that “all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”.¹ In 2016, the participants at the ILO Meeting of Experts on Violence against Women and Men in the World of Work recalled the Declaration, as they developed guidance on the standard-setting item on violence to be discussed at the International Labour Conference in June 2018 (ILO, 2016a, paragraphs 7–8). Through their extensive and wide-ranging discussions, the experts observed that violence and harassment in the world of work is unacceptable and, indeed, incompatible with decent work and that it must be addressed. The experts concluded that violence and harassment “is a human rights issue and affects workplace relations, worker engagement, health, productivity, quality of public and private services, and enterprise reputation. It affects labour market participation and, in particular, may prevent women from entering the labour market, especially in male-dominated sectors and jobs, and remain therein. Violence may undermine democratic decision-making and the rule of law” (ILO, 2016a, Appendix I, paragraph 1).
2. Given this, the experts agreed that the issue of violence in the world of work must be tackled “as a matter of urgency” (ILO, 2016a, Appendix I, paragraphs 1–2).

Context

3. There is mounting awareness of, and calls for, urgent action to address violence and harassment against women and men in the world of work. The issue has been brought into sharp focus at the global level, with the recent adoption of the 2030 Agenda for Sustainable Development, which calls for: the achievement of full and productive employment and decent work for all women and men under target 8.5; the reduction of inequality within and among countries under Goal 10; ensuring healthy lives and promoting well-being for all under Goal 3; and the achievement of gender equality and empowerment of all women and girls under Goal 5.
4. Goal 5 of the 2030 Agenda includes as targets: ending “all forms of discrimination against all women and girls everywhere”; eliminating “all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation”; undertaking “reforms to give women equal rights to economic resources, as well as access to ownership and control over land and other forms of property, financial services, inheritance and natural resources”; and adopting and strengthening “sound policies and enforceable legislation for the promotion of gender equality and the empowerment of all women and girls at all levels”.² As such, Goal 5 of the 2030 Agenda

¹ Declaration concerning the aims and purposes of the International Labour Organization ([Declaration of Philadelphia](#)), 1944, Part II(a).

² Targets 5.1, 5.2, 5.a and 5.c.

is closely linked to the goal of eliminating violence and harassment in the world of work, as both depend on ending discrimination, promoting equality and extending economic security.

5. The impetus of the initial proposal for a standard on violence was to give effect to the resolution concerning gender equality at the heart of decent work. This resolution was adopted by the International Labour Conference at its 98th Session (2009), calling for the prohibition of gender-based violence in the workplace and for policies, programmes, legislation and other measures to be implemented to prevent it.³ The proposal was put forth seven times to the Governing Body and was considered at its 316th, 317th, 319th, 320th, 322nd, 323rd and 325th Sessions.⁴ At the 323rd Session, the Governing Body expressed considerable support for the agenda item (ILO, 2015b, paragraphs 12, 13 and 28, and Appendix III, paragraphs 14–21).

6. At the 325th Session, the Office summarized that “[w]hile virtually all speakers had expressed support for the item on violence against women and men in the world of work ... [e]mployers, among others, had suggested that before being discussed as a standard-setting item, there should be further discussion as to its scope” (ILO, 2015a, paragraph 20). The Governing Body, therefore, 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 Conference” and “to convene a tripartite meeting of experts to provide guidance on which basis the Governing Body will consider, at its 328th Session (November 2016), the preparations for the first discussion of possible instruments by the Conference” (ILO, 2015a, paragraph 33(a)–(b)).

7. A background report was prepared for the tripartite Meeting of Experts on Violence against Women and Men in the World of Work, outlining the scope, definitions, prevalence and impact of violence and harassment, and highlighting some responses undertaken at the international, regional and domestic levels (ILO, 2016b).⁵ The Meeting of Experts took place on 3–6 October 2016, producing a set of conclusions (ILO, 2016a) that were subsequently authorized for publication and dissemination by the Governing Body at its 328th Session, and which included replacing the term “violence” with “violence and harassment” in the title of the item to ensure the range of unacceptable behaviour is adequately understood and addressed (ILO, 2016a, paragraph 12, and Appendix I, paragraph 33).⁶ In addition to the conclusions, a report of the meeting was prepared by the Office (ILO, 2016c).⁷ This current law and practice report does not repeat all the information in the background report, nor does it reproduce all the information contained in the meeting report of the Meeting of Experts. As such, the background report – and the meeting report and the meeting’s conclusions – could be read as a complement to the information in the current report.

8. During the Meeting of Experts, there was extensive discussion on the nature of violence and harassment, its causes, effects and action needed. The Meeting agreed that a significant body of evidence demonstrates that violence and harassment in the world of work persists against workers and others. However, there was a recognition of the need

³ Para. 5. See also para. 54 of the [resolution](#).

⁴ See ILO: 2012b, paras 67–76; 2013c, Appendix I, paras 20–29; 2013b, Appendix IV; 2014a, Appendix II(2), paras 14–21; 2014d, paras 8–15; 2015b, paras 12, 13 and 28, and Appendix III, paras 14–21.

⁵ http://www.ilo.org/gender/Informationresources/Publications/WCMS_522932/lang--de/index.htm.

⁶ http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_533534.pdf.

⁷ http://www.ilo.org/gender/Informationresources/Publications/WCMS_546303/lang--en/index.htm.

for more data and, in particular, data with greater comparability. The experts looked to this current report to provide further information on national practice, including which elements States consider to constitute violence and harassment and how world of work actors are taking action (ILO, 2016a).

9. The experts discussed how the experience of violence and harassment sometimes crosses set categories and definitions. This relates to their conclusion that violence and harassment in the world of work should be addressed as part of a continuum of unacceptable behaviours and practices, which can include physical, psychological and sexual aspects (ILO, 2016a, Appendix I, paragraph 3).

10. The experts observed that a number of existing international labour standards provide protection against some forms of workplace violence and harassment or for specific groups of workers, and that others provide some essential elements of a regulatory framework, even though they do not mention violence and harassment explicitly. However, they recognized that these instruments do not define “violence and harassment”, do not provide guidance on how to address its various manifestations and cover only specific groups of workers.

11. Therefore, the experts agreed on the need for an integrated approach to address violence and harassment in the world of work, delineating clear responsibilities for public and private employers, workers and their respective organizations, and governments, and joint strategies and collaboration (ILO, 2016a, Appendix I, paragraphs 16–29, and Chapter 8). The experts also agreed on the need for a new instrument or instruments that could address different socio-economic realities, enterprises, forms of violence and contexts (ILO, 2016a, Appendix I, paragraphs 17–18).

Purpose and methodology of the current report

12. This current report is intended to facilitate the standard-setting discussion of violence and harassment against women and men in the world of work at the Conference. It provides information on law and practice across the world that may also be useful in replying to the questionnaire appended to it. The issue of violence and harassment is multifaceted, and not all dimensions can be discussed in this report. For example, this report does not focus on the law and practice of countries regarding some specific areas of violence and harassment, such as child labour and forced labour, which have been addressed in detail in fundamental labour standards (see section 3.1.1 for coverage of violence and harassment in the ILO fundamental Conventions on forced labour and child labour).

13. As violence and harassment in the world of work affects all occupations and sectors of economic activity around the world, including the private and public sectors and the formal and informal economies, the report examines the issue from the perspective of rights, protection and prevention for all; however, it also takes into account the diverse experiences of workers and sectors affected. The report focuses on the types of violence and harassment in the world of work where international standards are absent or limited, particularly on: work-related physical violence, such as assault; psychological violence, such as mobbing, bullying and harassment; and sexual violence, such as sexual harassment.

14. In preparation for this report, the Office undertook a systematic legal analysis of 80 countries’ regulatory frameworks to address violence and harassment in the world of work. The Office chose the 80 countries with a view to representing all regions, subregions and income groups, and based on availability of information. Using a standard set of

questions, the team of researchers looked at legislation, collective agreements, national policies and a variety of initiatives within each country. Non-work-specific regulations on violence and harassment (such as criminal law provisions on assault and sexual assault) were considered to be outside the scope of this report and have not been considered in the 80-country study.

15. The data generated from this legal analysis aims to paint a picture of the regulatory landscape and to inform constituents of options that currently exist, as well as to help develop an integrated approach to tackle violence and harassment in the world of work. Quantitative indicators are provided where the provisions are comparable. Where this is not the case, qualitative examples have been provided to demonstrate the direction that various countries have taken to tackle the issue. Unless otherwise indicated, the sample for each figure consists of 80 countries: 20 countries from Africa; 15 from the Americas; four from the Arab States; 15 from Asia and the Pacific; and 26 from Europe and Central Asia. Totals in figures may not add up to 100 per cent, because of rounding.

Instructions for the appended questionnaire

16. The Conference will deal with this item according to the double-discussion procedure set out in paragraph 5.1.4 of the Standing Orders of the Governing Body and article 39 of its own Standing Orders. In accordance with article 39, the Office has prepared this report and questionnaire as a basis for preliminary discussion at the Conference. The attention of governments is drawn to article 39(1) of the Standing Orders of the International Labour Conference, in which they are requested “to consult the most representative organizations of employers and workers before finalizing their replies”. The results of this consultation should be reflected in the governments’ replies. Governments are requested to indicate in their replies which organizations have been consulted. In accordance with the programme of reduced intervals for reports approved by the Governing Body, the deadline for the receipt by the Office of replies to the questionnaire is 22 September 2017 (ILO, 2016a, Appendix II).

Chapter 1

Understanding violence and harassment in the world of work: What, who, where

17. There is currently no universally accepted definition of the terms “harassment” or “violence” in the world of work (Chappell and Di Martino, 2006, page 30; de Haan, 2008, page 28), and this stems, in part, from the fact that the world of work is still in the process of standardizing a vocabulary to describe these concepts.

18. However, in spite of differences, there is a general consensus that violence and harassment in the world of work includes not just physical, but also psychological and sexual aspects (CCOHS, 2016; American Academy of Experts in Traumatic Stress, 2014; Chappell and Di Martino, 2006; see also section 1.1.1). As one source observes:

As the attention to the issue has grown, occupational safety specialists and other analysts have broadly agreed that responding to workplace violence requires attention to more than just an actual physical attack. Homicide and other physical assaults are on a continuum that also include domestic violence, stalking, threats, harassment, bullying, emotional abuse, intimidation, and other forms of conduct that create anxiety, fear, and a climate of distrust in the workplace. All are part of the workplace violence problem. (United States Department of Justice, 2004, page 13.)

19. Therefore, in order to avoid becoming enmeshed in the linguistic or semantic differences of particular terms, the current report will use the rubric of “violence and harassment” to describe the continuum of behaviours that result in physical, psychological and sexual harm, in line with the conclusions of the Meeting of Experts, as discussed below (ILO, 2016a, Appendix I).

1.1. What constitutes violence and harassment in the world of work?

20. While several ILO international labour standards refer to various forms of violence and harassment, none defines any of its forms, as violence and harassment is not the focus of any of the instruments.

21. A definition of violence in the context of the service sectors was adopted in 2003 by an ILO tripartite Meeting of Experts which produced the code of practice *Workplace violence in services sectors and measures to combat this phenomenon* (ILO, 2004). The code defines violence as “[a]ny action, incident or behaviour that departs from reasonable conduct in which a person is assaulted, threatened, harmed, injured in the course of, or as a direct result¹ of, his or her work”. In 2016, the ILO Meeting of Experts on Violence against Women and Men in the World of Work considered the 2003 understanding of

¹ The code notes that: “The reference to ‘direct result’ is understood to mean that there is a clear link with work, and that the action, incident or behaviour occurred within a reasonable period afterwards.”

violence and opted for a broader framework. As referred to previously, the Meeting of Experts chose to refer to the “rubric of ‘violence and harassment’” which they understood as “includ[ing] a continuum of unacceptable behaviours and practices that are likely to result in physical, psychological or sexual harm or suffering”. They also emphasized that “it is important to distinguish between the various forms of violence and harassment and the context in which they occur, as different responses may be needed” (ILO, 2016a, Appendix I).

22. From the 80-country study undertaken for this report, it was found that 60 countries regulate physical and psychological forms of violence and harassment in the world of work under a variety of terms, such as “harassment”, “bullying”, “mobbing”, “violence”, “abuse” and “maltreatment” (see section 4.2). It was found that 65 countries also specifically regulate sexual violence and harassment in the world of work (see section 4.1).

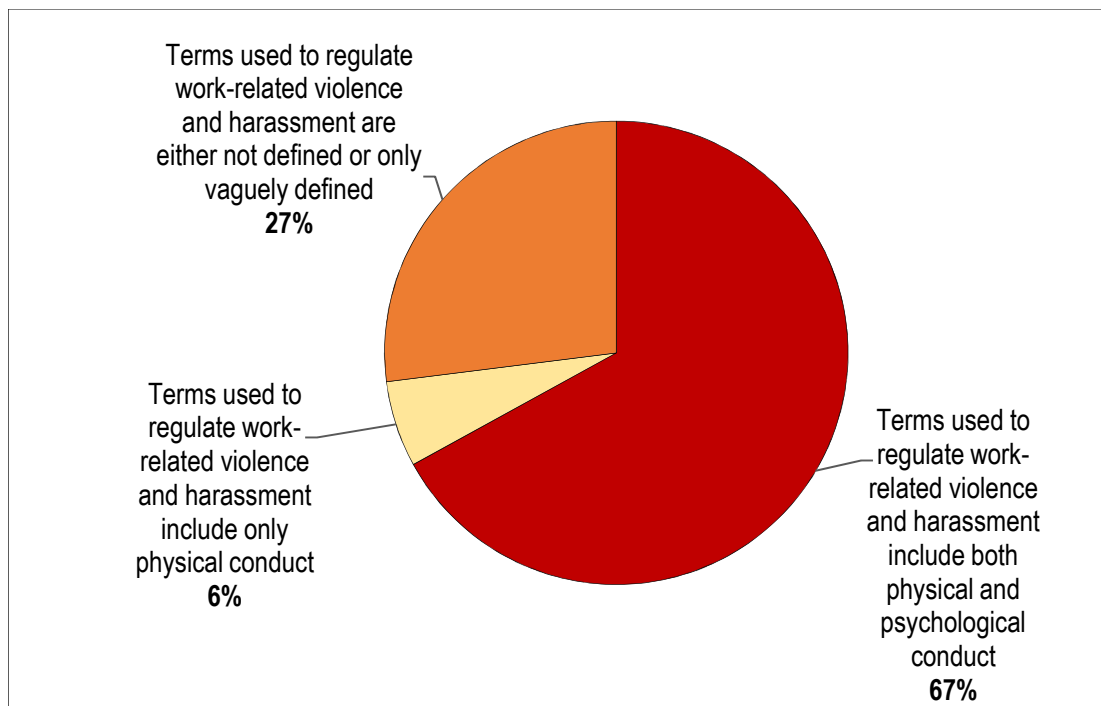
23. No universal definitions of violence and harassment emerge from this survey, as many of the various terms, such as “violence”, “harassment” and “bullying”, are used synonymously, or the same terms are used to mean different things.

24. Despite having no universal definition, two components are shared among the vast majority of terms used to address psychological and physical violence and harassment, as detailed below:

- Of the 80 countries studied, the definitions of the various forms of violence and harassment more often include both physical and psychological conduct:
 - in 40 countries, the terms used for referring to work-related violence and harassment include both physical and psychological conduct;
 - in four countries, the terms used for referring to work-related violence and harassment include only physical conduct;
 - in 16 countries, work-related violent and harassing conduct is addressed, but the terms used are either not defined or are only vaguely defined, so that it is not clear whether physical or psychological conduct is referred to (see figure 1.1).

- Of the 80 countries studied, the definitions of the various forms of violence and harassment more often focus on the result or effect of the conduct (such as harm, or loss of dignity), as opposed to the conduct itself (such as hitting, insulting, spitting and yelling):
 - in 36 countries, work-related violence and harassment is defined by the effect of the action and do not describe the nature of the conduct itself;
 - in five countries, work-related violence and harassment is defined by the nature of the conduct without specifying the effect;
 - in six countries, work-related violence and harassment is defined by the nature of the act and the effect;
 - in 13 countries, the terms used to define work-related violence and harassment are either not defined or are only vaguely defined with regard to the nature and effect of the conduct (see figure 1.2).

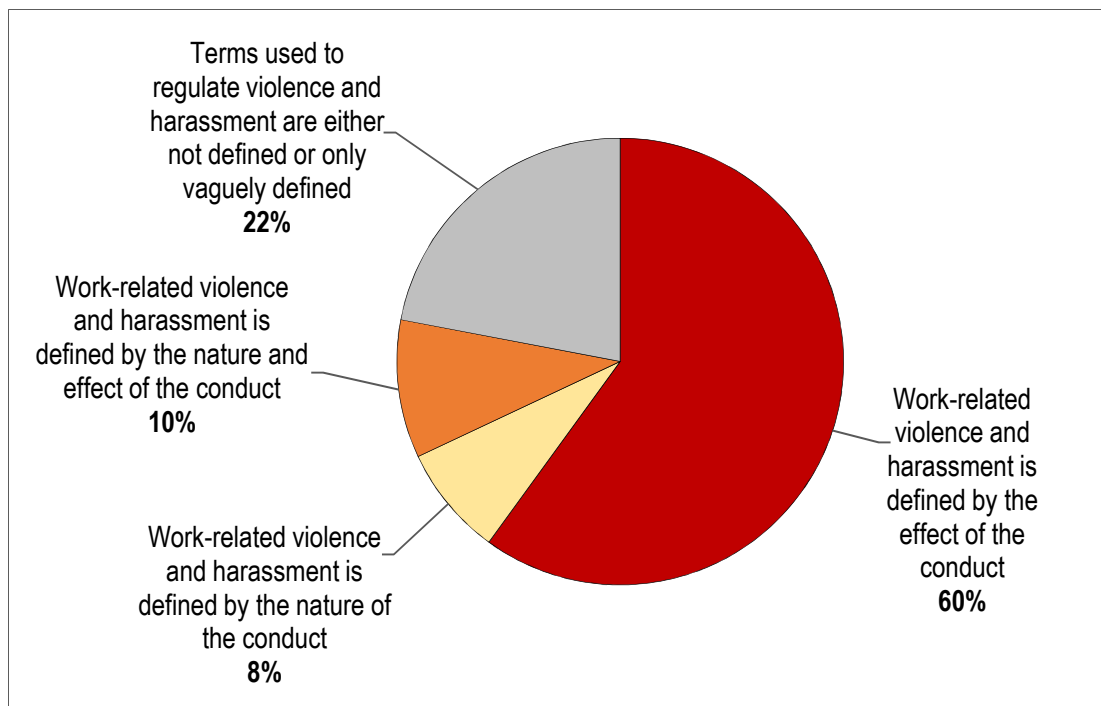
Figure 1.1. Components of violence and harassment



Note: The sample consists of 60 countries: 15 countries from Africa; 11 from the Americas; two from the Arab States; ten from Asia and the Pacific; and 22 from Europe and Central Asia.

Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

Figure 1.2. Components of violence and harassment



Note: The sample consists of 60 countries: 15 countries from Africa; 11 from the Americas; two from the Arab States; ten from Asia and the Pacific; and 22 from Europe and Central Asia.

Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

25. Leaving the exact nature of the conduct open allows for the complete range of actions that can cause physical, psychological and sexual harm to be covered, including emerging manifestations of violence and harassment. This is in line with the conclusions of the Meeting of Experts, that the instrument(s) should be flexible enough to be able to address the “different forms of violence and harassment, as well as different contexts” and that the instrument(s) should “also be able to respond to the new challenges and risks which might lead to violence and harassment in the world of work, such as those arising from changing forms of work and technology” (ILO, 2016a, Appendix I, paragraph 18).

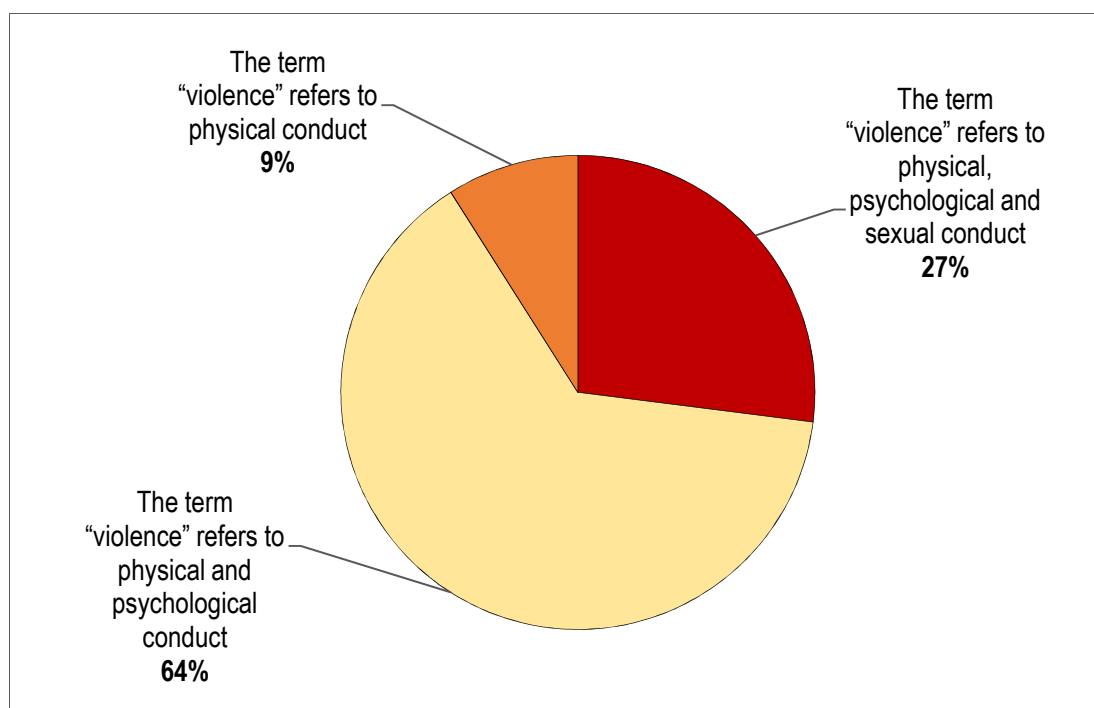
26. The most common terms used to regulate violence and harassment in the world of work are discussed in further detail in the following section.

1.1.1. Violence

27. Twenty-five countries included in the 80-country study use the specific term “violence” within their regulatory frameworks on violence and harassment in the world of work.

28. Where, in relation to the world of work, the specific term “violence” is defined, it most often encompasses physical and psychological violence and harassment, and sometimes sexual violence and harassment (see figure 1.3). In total, the survey found that ten countries describe work-related violence as including both physical and psychological components, and three of those also include sexual components (see box 1.1).

Figure 1.3. Components of a definition of violence



Note: The sample consists of 11 countries: five countries from Africa; three from the Americas; zero from the Arab States; one from Asia and the Pacific; and two from Europe and Central Asia.

Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

Box 1.1
Legislative definitions of workplace violence

- ❑ According to Order No. 1504 of 2015 on work-related violence outside working hours, issued by the Danish Working Environment Authority, work-related violence is perpetrated by persons such as clients and customers, and entails exposing employees to physical attacks, making threats against employees and exercising offensive behaviour, including harassment against employees.
- ❑ Under the 2014 Labour Code of Guinea, workplace violence consists of every situation in which an employer or worker is persecuted, threatened or assaulted, psychologically or physically, during the execution of his/her work in the workplace.
- ❑ In El Salvador, the Special Comprehensive Act on a life free from violence for women (Decree No. 520 of 2010) considers the types of violence that can happen in a “labour environment” to be: economic, physical, psychological, emotional and sexual violence. It also defines violence “at work” as “actions or omissions against women, repeatedly exerted and that persist in time, in centres of public or private work, that constitute physical or psychological aggression that infringes on their integrity or personal and professional dignity, hindering their access to employment or their promotion or stability in it, or that violate the right to equal pay for equal work”.
- ❑ The Employment Rights Act, No.33, of 2008 of Mauritius defines violence at work as including sexual harassment, harassment, assaults, verbal abuse, bullying and use of aggressive gestures, words or acts in the course of, or as a result of, work.
- ❑ The Labour Code of 2008 of Burkina Faso states that the employer must prohibit all forms of physical and mental violence in the workplace.
- ❑ The Law Regulating Labour Law in Rwanda, No. 13/2009, defines gender-based violence as “any kind of physical, psychological or sexual gestures or actions directed at a person or an assault on their property on the grounds of their sex”, which deprives them of their rights and negatively affects them.
- ❑ In Mexico, the Federal Regulations on Safety, Health and Work Environment of 2014 define workplace violence as acts of mobbing (*hostigamiento*), harassment (*acoso*) or ill-treatment against the worker that can damage their integrity or health.
- ❑ In Belgium, the Act of 4 August 1996 on the well-being of workers in the performance of their work defines violence at work as any act whereby a worker is psychologically or physically threatened or attacked during the execution of his/her work.
- ❑ The Labour Code (Law No. 2012-45) of Niger puts an obligation on the employer to prohibit all forms of physical or psychological violence due to labour relations.
- ❑ Under the Canada Labour Code (RSC, 1985, c. L-2), “workplace violence” constitutes any action, conduct, threat or gesture of a person towards an employee in their workplace that can reasonably be expected to cause harm, injury or illness to that employee.

29. Only one country in the survey was found to describe “violence” as solely physical conduct. This is the Republic of Korea, where the prohibition on “violence” forbids employers from physically abusing a worker.²

30. Another 14 countries use the term “violence” in work-related law, but do not define it.

31. A survey of the definitions of violence in the 80 countries studied showed that six countries define violence by the effect it has on the victim, four countries define violence strictly by the nature of the conduct and one country defines violence by both the nature of the conduct and the effect it has on the victim.

² Labour Standards Act No. 5309 of 1997 (as amended), of the Republic of Korea.

1.1.2. Gender-based violence

32. Physical, psychological and sexual violence can be considered gender-based if it stems from unequal power relationships between men and women (WHO, 2009, page 3) or if it is perpetrated against people because they do not conform to socially accepted gender roles (van der Veur et al., 2007, page 43).

33. Gender-based violence is not synonymous with violence against women; however, women and girls are the “primary targets” for gender-based violence, and the perpetrators are mostly men (UNFPA, 2009, page 7; EIGE, n.d.). Gender-based violence can be committed by or against both women and men, such as violence against non-gender-conforming men, including men who are or who are perceived to be gay, bisexual or trans.³

34. The Committee on the Elimination of Discrimination against Women (CEDAW), in its General Recommendation 19, defines gender-based violence as “violence that is directed against a woman because she is a woman or that affects women disproportionately” and includes “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty” including “sexual harassment”. The UN Declaration on the Elimination of Violence against Women adopted by the UN General Assembly in 1993 defines violence against women as any act of gender-based violence “that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women” and includes, “[p]hysical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work”.⁴ A similar definition is embraced under the Council of Europe Convention on preventing and combating violence against women and domestic violence (commonly referred to as the Istanbul Convention) and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, also known as the Convention of Belém do Pará (OAS, 2012, page 19).

35. When defining forms of gender-based violence, the UN *Handbook for Legislation on Violence against Women* recommends that the definition should apply to all forms including, but not limited to: domestic violence, sexual violence (including assault and harassment), harmful practices, trafficking and sexual slavery (United Nations, 2010, page 23).

36. “Gender-based violence” is sometimes regulated in domestic law;⁵ but more commonly, specific forms of work-related gender-based violence are addressed through labour or discrimination law. The forms of gender-based violence that are commonly addressed in the world of work context are sexual violence (particularly sexual harassment), sex-based violence and harassment, and domestic violence in or linked to the workplace.

37. The ILO Meeting of Experts in 2016 concluded that, in tackling violence in the world of work, the “gender dimensions of violence need to be addressed specifically” (ILO, 2016a, Appendix I, paragraph 2). As such, this report looks at forms of violence and harassment that are gender based, (that is to say, directed at men or women because of their gender), as well as the unique ways that men and women experience violence.

³ The term “trans” refers to a variety of expressions of gender identity included in the terms “transsexual”, “transgender” and “transvestite”.

⁴ UN General Assembly, Declaration on the Elimination of Violence against Women, 20 Dec. 1993, [A/RES/48/104](#).

⁵ For example, Republic Act No. 9262, of the Philippines.

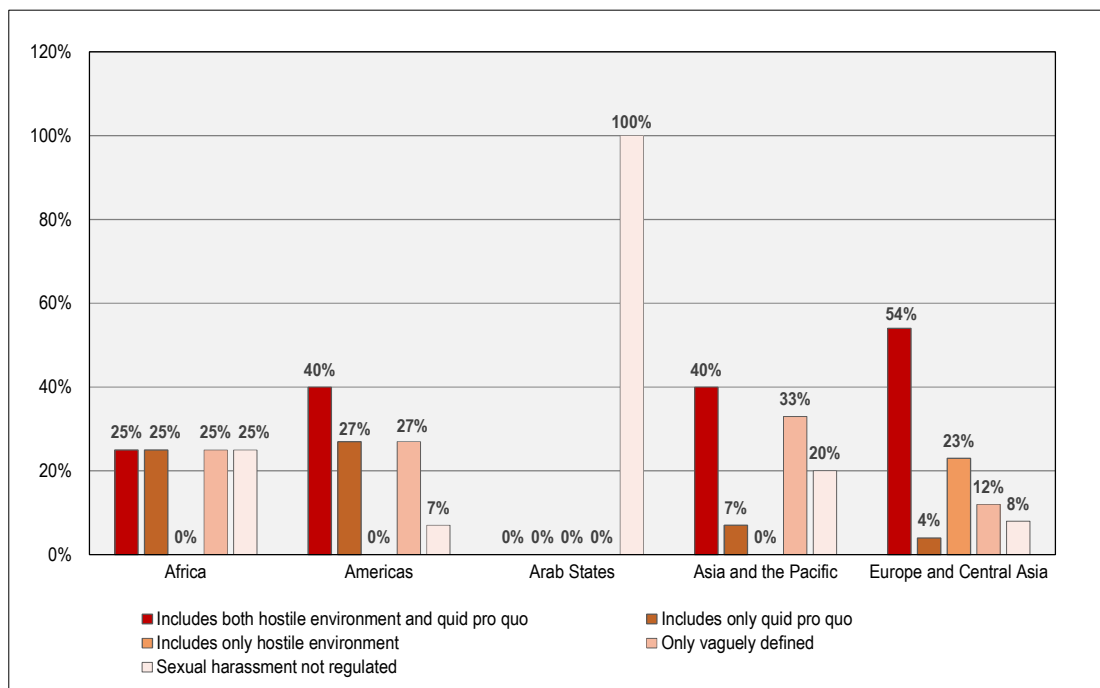
1.1.2.1. Sexual violence and harassment

38. Sexual violence in the world of work is a form of sex discrimination that can combine elements of physical and psychological violence and can include a range of behaviour, such as unwanted comments or advances, “jokes”, brief physical contact and sexual assault (McCann, 2005, page 2). As with gender-based violence in general, men and boys can be victims of sexual violence and harassment, but the great majority of reported cases relate to women and girls.

39. Sexual harassment is a form of sexual violence that commonly occurs in the world of work, and it is frequently categorized in two ways: “quid pro quo” or “hostile working environment”. “Quid pro quo” sexual harassment is when a worker is asked for a sexual favour, and submitting to or rejecting that request is used to make a decision about that worker’s job. “Hostile working environment” harassment covers conduct that creates an intimidating, hostile or humiliating working environment. The Committee of Experts on the Application of Conventions and Recommendations (CEACR), in its General Survey on the fundamental Conventions “considers that without a clear definition and prohibition of both quid pro quo and hostile work environment sexual harassment, it remains doubtful whether the legislation effectively addresses all forms of sexual harassment” (ILO, 2012a, paragraph 791) (see section 3.1.1).

40. In the 65 countries analysed for this report that regulate sexual harassment, the most common way to define it was to include both the quid pro quo and the hostile working environment categories. In total, 31 countries (48 per cent) define sexual harassment as including hostile working environment and quid pro quo sexual harassment. The regional distribution of these 31 countries is: 14 countries (54 per cent) from Europe and Central Asia; six countries (40 per cent) from Asia and the Pacific; six countries (40 per cent) from the Americas; five countries (25 per cent) from Africa; and zero countries from the Arab States (see figure 1.4).

Figure 1.4. Definition of sexual harassment, by region (within group percentage)



Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

41. In total, six countries include only hostile environment in the definition of sexual harassment, and 11 countries include only quid pro quo. Another 16 had only limited or vague definitions, most of which focus on unwanted sexual advances directed at another worker. In 16 countries, sexual harassment is not regulated in the workplace (see section 4.1.1).

42. Hostile environment sexual harassment can include conduct that is either directed at an individual or directed at nobody in particular, such as displaying pornographic materials at a workstation.⁶

43. In some countries, definitions of sexual harassment include gender-based harassment, or harassment based on gender identity (see section 1.1.2.2). According to the Ontario Human Rights Commission:

[g]ender-based harassment is “any behaviour that polices and reinforces traditional heterosexual gender norms”. ... “It is often used to get people to follow traditional sex stereotypes (dominant males, subservient females). It is also used as a bullying tactic, often between members of the same sex.” ... “Unlike some other forms of sexual harassment, gender-based harassment is not generally motivated by sexual interest or intent. It is more often based on hostility and is often an attempt to make the target feel unwelcome in their environment. In some cases, gender-based harassment may look the same as harassment based on sexual orientation, or homophobic bullying.” (Ontario Human Rights Commission, 2011.)

1.1.2.2. Violence and harassment based on sex and gender

44. According to the CEACR, in the various jurisdictions, discrimination based on sex, including violence and harassment, may refer strictly to “biological characteristics”, or it may also include “socially constructed roles and responsibilities assigned to a particular sex (gender)” (ILO, 2012a, paragraph 782).

45. A common form of violence and harassment based on sex is “maternity harassment” or “the practice of harassing a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth, or a worker because of family responsibilities” (ILO, 2016d, page 57). Similarly, sex-based harassment can take the form of hostile environments created for women due to their sex, such as derogatory or demeaning “jokes” about women (this can often take the form of sexual harassment).

46. A common form of violence and harassment based on gender is violence and harassment against gender-non-conforming men and women because they are, or are perceived as being, gay, lesbian, bisexual or trans.

1.1.2.3. Domestic violence

47. Domestic violence is a rapidly-expanding area of regulation with regard to the world of work. The term “family”, or “domestic relationship” is usually confined to those in a traditionally-understood family relationship, such as those related through blood or marriage, or intimate partners. However, increasingly, countries are including domestic workers, and other persons living in the household, under the scope of application due to their exposure to violence and harassment in the “domestic sphere” (see section 5.4 on regulating working conditions for domestic work).

⁶ For example, Germany’s Act implementing European Directives putting into effect the principle of equal treatment (General Act on Equal Treatment of 14 August 2006, as amended).

48. According to a study by the World Bank of the 127 countries that have laws on domestic violence (World Bank, 2015), the definition of domestic violence is commonly understood to include physical, sexual, psychological and, increasingly, economic violence.⁷

49. In 20 of the 80 countries (25 per cent) surveyed for this report, economic violence is defined to include preventing a person from entering into or remaining in employment. In Nepal for example, the definition of domestic violence includes “economic abuse”, defined as depriving a partner from accessing employment opportunities and economic resources.⁸ The Law on Domestic and Family Violence of Brazil, known as the Maria da Penha Law,⁹ establishes that “patrimonial violence”, such as the retention and partial or complete destruction of the victim’s working tools, is a form of domestic violence. In the Dominican Republic¹⁰ and France,¹¹ economic violence takes the form of acts that result in an impossibility or inability to work for a period of time.

50. The United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), in its recommendations for drafting legislation on violence against women and girls, recommends including in a definition of “domestic violence”, physical and sexual violence, and “coercive control”, which is defined as:

an act or pattern of acts of assault, sexual coercion, threats, humiliation, and intimidation or other abuse that is used to harm, punish or frighten a victim. This control includes a range of acts designed to make victims subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behavior.¹²

51. According to UN Women, “by substituting the term ‘coercive control’ for ‘psychological violence’ and ‘economic violence’, States can target truly harmful behaviour and avoid the unintended consequences of the law”.¹³

1.1.3. Physical violence and harassment

52. Useful understandings of physical violence include “the use of physical force against another person or group, that results in physical, sexual or psychological harm” (ILO et al., 2002, page 4) or “any attempt at physical injury or attack on a person including actual physical harm” (Chappell and Di Martino, 2006, page 30).

53. There is sometimes a tendency to focus on mass shootings at the workplace, particularly those resulting in homicides, as the defining type of physical violence (Denenberg and Denenberg, 2012). Deadly violence is certainly of great concern for some workplaces;¹⁴ however, available statistics indicate that homicides only account for a

⁷ The World Bank defines financial or economic family violence as “any conduct or behaviour involving the use or misuse of the partner’s consent regarding their financial resources or assets, including the deprivation, retention or subtraction of money or property or by other means making or attempting to make a woman financially dependent by maintaining control over financial resources” (World Bank Group, 2015, pp. 20–21).

⁸ Nepalese Domestic Violence (Crime and Punishment) Act 2009. See also the Kenya Protection Against Domestic Violence Act (No. 2 of 2015).

⁹ Federal Law No. 11.340/2006.

¹⁰ Law on Intra-Family Violence, No. 24 of 1997, of the Dominican Republic.

¹¹ Art. 222-33-2-1, of the French Penal Code.

¹² <http://www.endvawnow.org/en/articles/398-definition-of-domestic-violence.html?next=399>.

¹³ *ibid.*

¹⁴ For example, reports of the recent murder of a medical doctor in China in the workplace, which has been described as “the latest fatality in a plague of violence afflicting the country’s hospitals” (Buckley, 2016).

small minority of cases of physical violence in the world of work at the national level (United States Department of Justice, 2001, page 2).

54. It is also important to note that the various forms of physical violence are generally reported less frequently in the world of work in comparison with psychological violence, as discussed in further detail below (Riedel and Welsh, 2016; United States Department of Justice, 2004; Eurofound, 2016, page 68).

55. Workplace-specific laws rarely regulate strictly physical forms of violence and harassment. Where they do, they tend to use the terms “physical assault” or “assault”, without defining the term (see section 4.2.1).¹⁵

1.1.4. Psychological violence and harassment

56. Psychological violence and harassment is the most widely reported form of violence and harassment in the world of work and covers a range of verbal and non-verbal abuse, psychological and sexual harassment, bullying, mobbing and threats (Forastieri, 2012, page 114). This can include manipulating a person’s reputation, isolating the person, withholding information, assigning tasks that do not match capabilities or giving impossible goals and deadlines (Leymann, 1990; Milczarek, 2010, page 22).

57. The concept of “psychological”, in the term “psychological violence and harassment” refers to the prejudicial effects such conduct has on the psychological integrity of the victim.¹⁶ This understanding is reflected in the term “moral harassment” in France, where the Labour Code defines it as repetitive acts that have the aim or effect of degrading the employees’ working conditions in a manner likely to impair their right to dignity, to alter their physical or mental health or to compromise their professional future.¹⁷

58. In national laws, psychological violence and harassment can be either defined broadly, protecting all workers, under the terms “mobbing”,¹⁸ “bullying”,¹⁹ “harassment”,²⁰ (see box 1.2) and “violence” (see box 1.1), or can be “discrimination-based”, with legislation only protecting a person who is harassed on the basis of a certain real or perceived difference, such as race, colour, sex, religion, political opinion, national extraction or social origin, age, disability, sexual orientation or gender.²¹

¹⁵ For the purposes of the 80-country study, if the term “assault” is used, without a qualification such as “psychological assault”, it is presumed to refer to strictly physical conduct.

¹⁶ Psychological harm and suffering can also lead to physical symptoms.

¹⁷ See also: Act of 4 August 1996 on the well-being of workers in the performance of their work, of Belgium; and 2014 Labour Code, of Guinea.

¹⁸ For example: the Labour Law of the Federation of Bosnia and Herzegovina; and Resolution No. 472/2012 on Mobbing, of Paraguay.

¹⁹ For example: the Polish Labour Code; Labour Code, of Chile; and Employment Rights Act of 2008, of Mauritius.

²⁰ For example, the Employment Relationship Act of 2013, of Slovenia.

²¹ For example: the South African Employment Equity Act of 1998; and the Croatian Anti-Discrimination Act of 2009.

Box 1.2
Legislative examples of mobbing, bullying and harassment

- ❑ Mobbing is defined in the Polish Labour Code of 1974, as amended, as including persistent and long-term harassment or intimidation of an employee, resulting in a decreased evaluation of his/her professional abilities, or which is aimed at, or results in, the humiliation or ridicule of the employee, or in the isolation or elimination of the employee from the group of co-workers.
- ❑ The Employment Relationship Act of 2013 of Slovenia defines mobbing as any repeated or systematic wrong or clearly negative and offensive treatment or behaviour directed at individual workers at the workplace in connection with work.
- ❑ In Australia, a worker is bullied at work if: “while the worker is at work, an individual or a group of individuals, repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member; and that behaviour creates a risk to health and safety”.¹
- ❑ In Turkey, bullying is defined as discouraging a person from work and excluding a person, and includes deliberate actions aimed at annoying someone.²
- ❑ Under the Employment Relationship Act of 2013 of Slovenia harassment is defined as any undesired behaviour associated with any personal circumstance with the effect or intent of adversely affecting the dignity of a person or of creating an intimidating, hateful, degrading, shaming or insulting environment.
- ❑ In Papua New Guinea, harassment is defined as unwanted or uninvited behaviour that is offensive, intimidating and humiliating; common forms of harassment are bullying, physical attack and threats.³

¹ The Australian Fair Work Act 2009.

² Law on Human Rights and Equality Institution, Law No. 6701 of 6 April 2016.

³ General Order No. 20: Engagement in business activities outside public service employment and other important provisions governing conduct, 2014.

59. The terms “mobbing” and “bullying”, and sometimes “harassment”, have come to be used interchangeably in some countries, regardless of who initiates these acts (Einarsen, 2005, page 3; Einarsen and Skogstad, 1996, page 187; Zapf and Leymann, 1996, page 162). This is the case for the 80 countries surveyed for this report.

60. The terms “harassment”, “bullying” and “mobbing”, do not generally differentiate between physical and non-physical conduct²² (see figure 1.1). The definition of these terms leaves the nature of the conduct open, using language such as “conduct” or “behaviour” or “act”, which is broad enough to capture both physical and psychological acts. The terms “harassment”, “bullying”, and “mobbing” tend to be defined by the effects of such “conduct”, such as “physical or psychological harm or suffering” or a “hostile environment” or the “loss of dignity” that results from actions.

61. A survey of the definitions of “harassment”, “mobbing” and “bullying” in the 36 countries that define such conduct showed that 30 countries (83 per cent) define violence by the effect it has on the victim, five countries (14 per cent) define violence by both the nature of the conduct and the effect it has on the victim, and one country (3 per cent) defines violence strictly by the nature of the conduct.

²² The only country found to define violent and harassing behaviour as psychological only was Bosnia and Herzegovina, which defined the term “mobbing” in the Law on Prohibition of Discrimination, BiH *Official Gazette* No. 59/09, as “non-physical harassment”. Harassment is defined identically but does not specify that the behaviour is non-physical.

62. In 11 of the 36 countries (31 per cent) that define “mobbing”, “bullying” or “harassment”, the behaviour must be “repeated” or “persistent”, or occur frequently. In 25 countries (69 per cent) the behaviour can include a repeated or a single act. Where the behaviour must be “repeated”, it is most often in relation to bullying²³ or mobbing,²⁴ although sometimes in relation to harassment;²⁵ however, there is not usually a requirement for harassment to be repeated.

63. During the Meeting of Experts, the experts acknowledged that “[v]iolence and harassment can be a one-off occurrence or repeated” (ILO, 2016a, Appendix I, paragraph 7).

1.1.5. Psychosocial risks

64. The most common understanding of psychosocial hazards and risks is the structural or organizational features of a person’s work. Psychological, physical and sexual violence and harassment are also considered psychosocial risks in a number of jurisdictions. The European Framework Agreement on Work-related Stress of 2004 acknowledges violence and harassment as potential work-related stress factors, as is exposure to abusive behaviour. Legislation in Italy,²⁶ El Salvador,²⁷ and the Netherlands,²⁸ also addresses work-related stress which includes forms of violence and harassment.

65. There is also a growing acceptance that certain psychosocial hazards relating to the organization of work could be so harmful as to amount to a form of violence and harassment in their own right, where they affect the dignity, security, health and well-being of the victim. In academic literature, these psychosocial hazards are termed “structural violence”, as it is the organization or structure of work that exposes workers to violence (Heiskanen, 2007, page 24). Heavy workloads, low levels of decision-making autonomy, low status, rigid working routines and insufficient relational care could be, in some circumstances, considered forms of structural violence (Banerjee et al., 2012, page 391; Bowie, 2012, page 2). In the Bolivarian Republic of Venezuela, for example, working conditions, including the degradation of the work environment, isolation and failure to provide workers with positions matching their skills, can be considered a form of harassment.²⁹ In New Zealand, “institutional bullying” is described as occurring when an organization’s norms, culture and practice allow behaviour that causes offence or undue stress or work structures, practices, policies or requirements which unreasonably burden staff without concern for their well-being. Examples of organizations’ norms amounting to unfair practices include setting impossible targets and imposing unmanageable caseloads or unrealistic deadlines.³⁰

²³ For example, the Fair Work Act 2009, of Australia (as amended in 2014).

²⁴ For example, the Law on Prohibition of Discrimination, of Bosnia and Herzegovina, BiH *Official Gazette* No. 59/09.

²⁵ The Occupational Health and Safety Act, RSO 1990, C. 01, of Ontario (Canada).

²⁶ Italian Legislative Decree No. 81 of 9 April 2008, the Consolidated Law on health and safety in the workplace.

²⁷ Legislative Decree No. 254 of 2010 on the General Law on Prevention of Risks in Workplaces, of El Salvador.

²⁸ For example, the Working Conditions Act 1999, of the Netherlands.

²⁹ The Occupational Law on Prevention, Conditions and Workplace Environment, of the Bolivarian Republic of Venezuela.

³⁰ WorkSafe New Zealand: *Best practice guidelines: Preventing and responding to workplace bullying*, Feb. 2014, p. 13.

1.2. Who is involved in violence and harassment in the world of work?

66. Potentially, anyone can experience, or commit, acts of violence and harassment in the world of work. The conclusions of the Meeting of Experts in 2016 noted that, “Violence and harassment can be horizontal and vertical, from internal and external sources (including clients and other third parties and public authorities) – in the public or private sector, or in the formal or informal economy”³¹ (ILO, 2016a, Appendix I, paragraph 4). In fact, research indicates that horizontal violence and harassment is common. A recent survey on sexual harassment undertaken by the United Kingdom Trades Union Congress (TUC) found that 54 per cent of respondents who stated they were subjected to sexual harassment identified the perpetrators as colleagues, and 3 per cent as junior colleagues. This is in comparison to 17 per cent of respondents who stated that the perpetrator was a “direct manager or someone else with direct authority over them” (TUC, 2016b, page 15).

67. A number of ILO instruments that address violence indicate a broad scope of application.³²

1.2.1. Who is covered under national laws addressing violence and harassment in the world of work?

68. Labour, occupational safety and health (OSH), non-discrimination and other laws that address violence in the world of work often apply work-related violence and harassment provisions only to persons in an employment relationship. This is the case in the majority of the 80 countries included in the study undertaken for this report. Usually, this implicitly includes those in non-standard forms of employment,³³ but not interns, apprentices and other employee-like relationships, or third parties.

69. Some countries explicitly exclude workers in non-standard forms of employment from labour protections against violence and harassment. For example, in five of the 80 countries surveyed, casual employees are explicitly excluded from the laws addressing violence and harassment.

70. There are some countries that expressly cover those outside of the generally-understood employment relationship, such as interns, apprentices, independent contractors and subcontractors. For example, in 31 of the 80 countries surveyed, interns are explicitly included in provisions addressing violence and harassment.

71. A number of countries include potential employees and applicants under labour protections against violence and harassment.³⁴

72. Frequently, although decreasingly, particular categories of workers are excluded from the scope of labour laws and are not covered by, or are covered by less-stringent, regulations. For some categories, such as domestic workers (who are frequently excluded from labour laws and the majority of whom are women), the gap in protection may affect

³¹ “Horizontal” or “lateral” violence refers to violence that occurs between supervisors or between workers, and “vertical” violence refers to violence that occurs between individuals in a relationship of hierarchy.

³² See, for example: the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), (174 ratifications as of 9 February 2017); and the HIV and AIDS Recommendation, 2010 (No. 200).

³³ With the exception of persons in disguised employment, dependent self-employment, sham or misclassified self-employment.

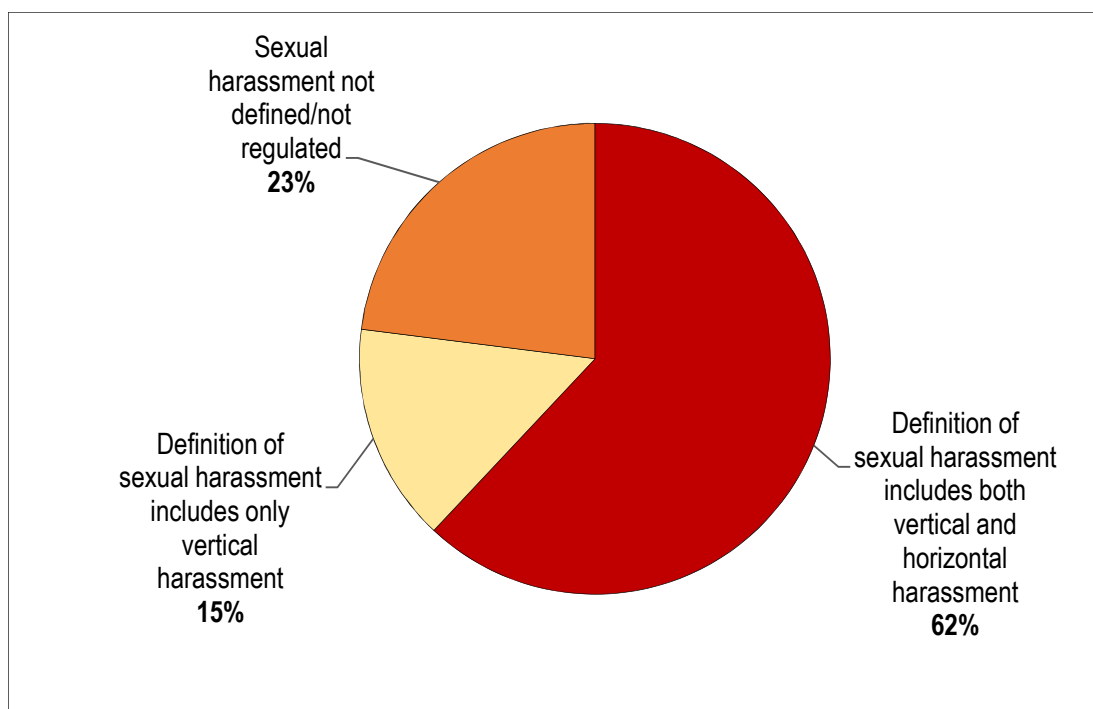
³⁴ For example: the Labour Law of the Federation of Bosnia and Herzegovina; Philippines Anti-Sexual Harassment Act of 1995; and Employment and Labour Relations Act of the United Republic of Tanzania No. 6 of 2004.

women disproportionately. In 20 of the 80 countries studied, domestic workers are excluded from the labour laws, and in eight countries contributing family workers are excluded.

73. Sometimes the scope of legislation protects only women and not men against sexual harassment, as is the case in seven of the countries studied for this report. The CEACR considers that the scope of the protection against sexual harassment should cover all employees, male and female, with respect not only to employment and occupation, but also to vocational education and training, access to employment and conditions of employment (ILO, 2012a, paragraph 793).

74. Most countries cover both vertical and horizontal sexual harassment. Some laws addressing workplace sexual harassment define it as perpetrated only by an employer, thus leaving a gap in protection for sexual harassment perpetrated by co-workers. With regard to sexual harassment, 50 of the 80 countries analysed (62 per cent) protect against both horizontal and vertical sexual harassment, and 12 (15 per cent) protect employees against only vertical sexual harassment (see figure 1.5).

Figure 1.5. Definition of sexual harassment, by region (within group percentage)



Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

75. Third-party violence is a relatively common phenomenon, particularly in the health, education, hospitality and transport sectors, both from third-party clients and from members of the general public, with whom workers may come into contact. In the recent TUC study, 7 per cent of women who reported experiencing harassment³⁵ said that the perpetrator was a third party (in retail, this figure was 11 per cent, and in medical and health services, 9 per cent) (TUC, 2016b, page 15). The risk of third-party harassment may be compounded for night workers and those who perform work in isolated situations. A

³⁵ In total, 52 per cent of all women polled had experienced some form of sexual harassment in a work-related situation (TUC, 2016b, p. 33).

number of countries include “third-party violence” within the scope of “workplace violence”.³⁶

1.3. Where does violence and harassment occur in the world of work?

76. The ILO’s current standard-setting discussion is framed as “Violence and harassment against women and men in the world of work”. In the Meeting of Experts, it was concluded that: “The world of work is considered to cover not only the traditional physical workplace, but also commuting to and from work, work-related social events, public spaces including for informal workers such as street vendors, and the home, in particular for homeworkers, domestic workers and teleworkers” (ILO, 2016a, Appendix I, paragraph 5).

77. The world of work also includes spaces that link workers to the workplace through technology. The Meeting of Experts concluded that “inappropriate use of technology is also ... a source of concern” and that any new instrument “should also be able to respond to the new challenges and risks which might lead to violence and harassment in the world of work, such as those arising from changing forms of work and technology” (ILO, 2016a, Appendix I, paragraphs 3 and 18).

78. The use of the term “world of work” is relevant for the realities of workers around the world. For example, in a recent study by the TUC, of the persons who stated they experienced sexual harassment:

... a significant minority (fourteen percent) also reported that harassment had taken place at a work-related social event such as a Christmas party.

One in twenty women reported that the harassment had taken place when in another location for work, such as at a conference.

Younger women (aged 18–24) were significantly more likely to report experiencing sexual harassment on their way to and from work than other women (11 per cent compared to 3 per cent of all women responding). (TUC, 2016b, pages 17–18.)

79. The substantive field of application of a number of ILO instruments which address OSH is broad, going beyond the physical place where work is done, including, for example, applying to:

- an occurrence arising not only “in the course of”, but also “arising out of” work;³⁷
- “commuting accidents”, defined as occurring on the direct way between the place of work and the worker’s home, the place where the worker takes meals or where the worker receives remuneration;³⁸
- any accidents “regardless of their cause, sustained during working hours”, at “any place where the worker would not have been except for his employment”.³⁹

³⁶ See, for example: Order on work-related violence outside working hours, No. 1504 of 2015, issued by the Danish Working Environment Authority; and Employment Relations Act of 2000, of New Zealand.

³⁷ Protocol of 2002 to the Occupational Safety and Health Convention, 1981, Article 1, referring to the term “occupational accident” (12 ratifications, as of 9 February 2017).

³⁸ *ibid.*

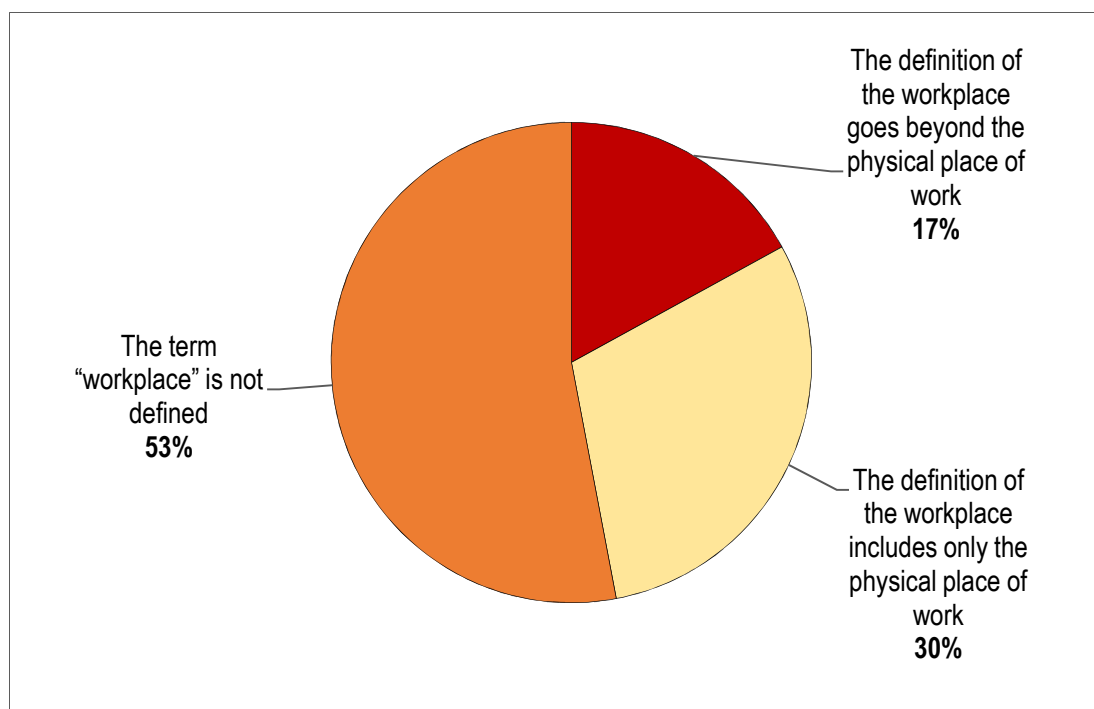
³⁹ Paragraph 5(a) of the Employment Injury Benefits Recommendation, 1964 (No. 121).

1.3.1. “Workplace” under national laws addressing world of work violence and harassment

80. The scope of protection is defined within national legislation under terms such as “workplace”, or “in the course of, or in connection with, work”. Many countries do not necessarily define the concept of “workplace” in legislation. Increasingly, however, countries are expanding the scope of the term “workplace” to meet the realities of where violence and harassment occurs. Where the scope of “workplace” is wider than just the physical place of work, it often includes additional venues, like work retreats or after-work social events, and commuting.⁴⁰

81. In at least 14 of the 80 countries (17 per cent) studied in this report, the scope of “workplace” in legislation addressing workplace violence and harassment is explicitly wider than just the physical place of work. However, in 24 of the 80 countries (30 per cent) studied, labour laws explicitly apply only to the physical place of work.⁴¹ In 42 countries (53 per cent), the term “workplace” is either undefined or defined too vaguely to draw conclusions (see figure 1.6).

Figure 1.6. Definitions of workplace in laws addressing violence



Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

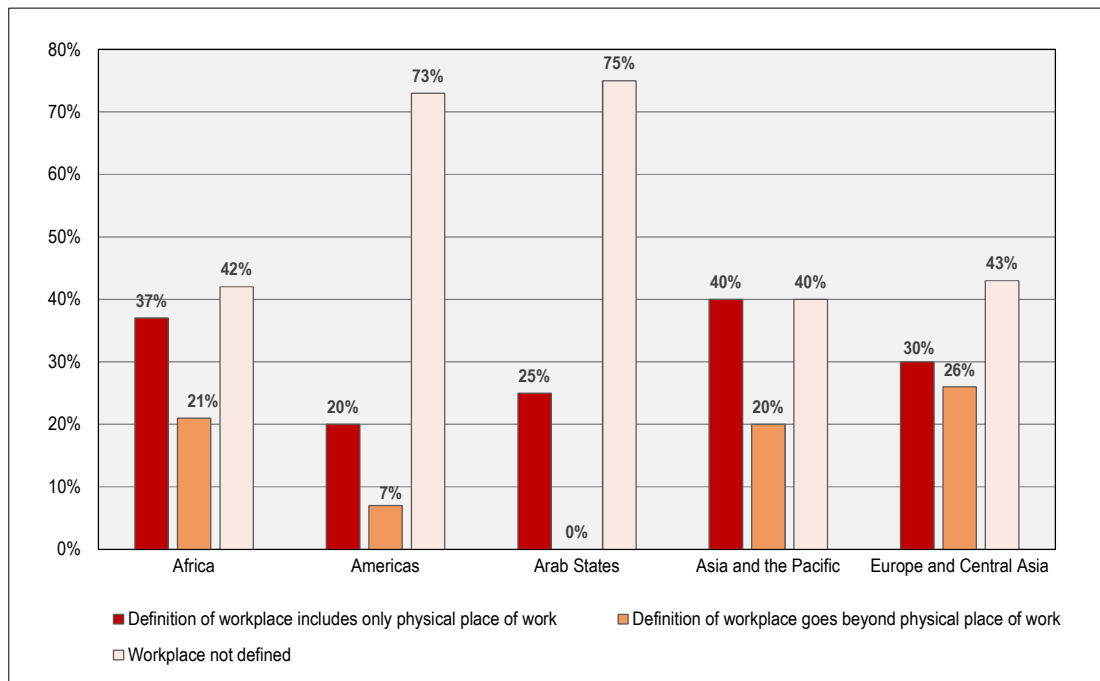
82. From a regional point of view, the scope of the workplace is explicitly wider in legislation than just the physical place of work in six countries in Europe and Central Asia (26 per cent), four countries in Africa (21 per cent), three countries in Asia and the Pacific

⁴⁰ See, for example: the Protection against Harassment of Women at the Workplace Act 2010, of Pakistan; and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013, of India.

⁴¹ This would discount, for example, workplace social events held off-property and commuting. It may, subject to judicial or other interpretation in the individual countries, exclude or include work social events held on work property, travelling for work, homeworking, or public spaces for workers who work in such spaces.

(20 per cent), one country in the Americas (7 per cent), and none of the countries in the Arab States included in the study (see figure 1.7).

Figure 1.7. Definitions of workplace in laws addressing violence, by geographic region
(within group percentage)



Note: The sample for this figure consists of 76 countries: 19 countries from Africa; 15 from the Americas; four from the Arab States; 15 from Asia and the Pacific; and 23 from Europe and Central Asia.

Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

83. In some cases, the meaning of “workplace” is specified in case law, which in common law countries is binding. For example, US courts have held that harassment committed at a professional training course, a company-sponsored party, a non-workplace parking lot and anywhere else co-workers may socialize and interact, can create a hostile working environment.⁴²

84. Bullying through electronic technology (cyberbullying) is a new expression of psychological and sexual violence and harassment. The results of a study of employees from selected universities in the United Kingdom indicate that “[c]yberbullying through email, text and web posts is as common in the workplace as conventional bullying” (University of Sheffield, 2012). Moreover, in the recent TUC study, one in 20 women reported that sexual harassment had taken place by email or online (TUC, 2016b, page 18).

85. Cyberbullying is challenging to address, because it is often anonymous and can be carried out inside or outside the physical workplace, leading to confusion over whether the cyber-harassment is related to the world of work or not.

86. Few countries – Australia, Bosnia and Herzegovina, France, India, Pakistan and South Africa – have addressed cyberbullying through legislation, and little of this is workplace specific. The Sex and Age Discrimination Legislation Amendment Act 2011

⁴² *Lapka v. Chertoff*, 517 F.3d 974 (7th Cir. 2008); *Ferris v. Delta Airlines, Inc.*, 277 F.3d 128, 135 (2nd Cir. 2001); *Doe v. Oberweis Dairy*, 456 F.3d 704, 715–16 (7th Cir. 2006); *Moring v. Arkansas Department of Correction*, 243 F.3d 452 (8th Cir. 2001); *Dowd v. United Steelworkers of America*, 253 F.3d 1093 (8th Cir. 2001).

of Australia addresses cyber-harassment by expanding the protection against sexual harassment to include harassment conducted through new technologies, such as over the Internet, through social media or by texting.⁴³

⁴³ See also the Information Technology Act, No. 21 of 2000 (as amended in 2008), of India; and the Protection from Harassment Act No. 17 of 2011, of South Africa.

Chapter 2

Understanding violence and harassment in the world of work: Impact, drivers, risk factors and particular groups

87. Violence and harassment is highly contextual and is often driven by dynamics operating in the world of work and the greater society, including, but not limited to, power relations, gender norms, cultural and social norms, and discrimination.

88. A power imbalance in the workplace is considered a “core dimension” of bullying and can be seen when a manager uses formal power to bully a worker (Einarsen, 2005). Violence and harassment can also stem from the informal power of a dominant group in a workplace, such as “upward workplace mobbing”, where workers harass supervisors (Herscovis and Barling, 2010, page 28; Shallcross, 2003, page 52). Power dynamics are also influenced by factors such as gender, race and class, as is the case of “contrapower sexual harassment”, where, for example, a male student harasses a female senior faculty member, or a secretary harasses a supervisor of a different race or ethnic group that does not enjoy a position of privilege in society (Rospenda et al., 1998, page 40; Lampman et al., 2009).

89. Gender¹ is deeply intertwined with power relations, with the traditional balance of power favouring men (Holmes and Flood, 2013). The arrival of a woman in a traditionally male-dominated industry can upset existing power relations (Ness, 2012, page 664), and some men reassert their power through sexual harassment (McLaughlin et al., 2012). Such enforcing of gender roles is also carried out against non-gender-conforming men, given that “the dominant [heterosexual] culture exacts a tremendous price from those deemed less than fully manly” (Kimmel, 2004, page 193).

90. Workplace cultures can either promote or challenge negative power and gender norms (Holmes and Flood, 2013, page 5). As such, the Meeting of Experts noted the importance of this issue, concluding that the prevention of violence and harassment “should address negative societal and workplace culture” (ILO, 2016a, Appendix I, paragraph 21).

91. Within certain cultural and social frameworks, violence and harassment can become “normalized” – seen as a normal, or unquestioned, part of daily work (Baby et al., 2014; Hillis, 2013; Matulewicz, 2015; Rasmussen et al., 2013; Keogh and Byrne, 2016, page 32; Baines and Cunningham, 2011). Recognizing this dynamic, the Meeting of Experts concluded that: “Violence and harassment should not be seen ‘as part of the job’, as is too

¹ “While our sex roles are imposed on us by nature (through the basic physiological and anatomical differences between women and men), our gender roles are usually defined by society (e.g. there are behaviour/roles which are deemed as either *masculine* or *feminine* by society)”, in UNESCO Zambia: *Gender Sensitivity*, Module 5, Doc. ED.99/WS/14, Feb. 2000.

often the case for teachers, health and transport workers, among others” They also highlighted the fact that “workers, in particular women workers, are at risk when they are expected to provide sexual services or endure harassment in exchange for getting a job or promotion, in order to keep a job or in order to access their wages” (ILO, 2016a, Appendix I, paragraph 11).

92. Discrimination on the basis of difference, or perceived difference, can be another substantial driver of violence and harassment. This is seen when perpetrators create “in-groups” and “out-groups”² to identify targets in the workplace they feel “deserving” of violence and harassment (Baxter and Wallace, 2009; Monks and Coyne, 2011; Omari and Paull, 2016; Public Broadcasting System, 2003; Luo, 2016; Mistry and Latoo, 2009; Mason, 2002). Therefore, it can be said that “certain forms of violence – racist violence, homophobic violence and gendered violence ... are inevitably, if loosely, linked to each other, in the sense that they are all undergirded by hierarchical constructions of difference” (Mason, 2002, pages 43–44).

2.1. Prevalence of violence and harassment in the world of work

2.1.1. Sexual violence and harassment

93. Sexual violence and harassment is a prominent aspect of workers’ lives – particularly women workers – around the world and sexual harassment is the most reported form. In a South African study, 77 per cent of women reported experiencing sexual harassment at some point during their working lives (ITUC, 2008a). An unpublished 2013 study by the Global Horticultural Workers and Environmental Rights Network in Ethiopia³ referred to high reported levels of sexual harassment in farms across East Africa, including the United Republic of Tanzania, where 89 per cent of women interviewed from 20 farms had witnessed at least one incident of sexual harassment, and Kenya, where 90 per cent of interviewees in a study described sexual harassment as the most difficult problem facing women in the cut-flower sector (Jacobs et al., 2015, page 401).

94. A 2016 study on sexual harassment at work by the TUC reported that hearing:

comments of a sexual nature about other women was the behaviour that the most respondents reported (35 per cent). Unwelcome jokes and comments of a sexual nature were also reported (32 per cent and 28 per cent, respectively). Nearly one quarter of respondents had experienced unwanted touching and one fifth had experienced unwanted sexual advances. One per cent of respondents overall reported that they had experienced a serious sexual assault or rape at work. Just under one in ten women reported seeing displays of pornographic material in the workplace. (TUC, 2016b, page 14.)

95. A study drawing from interviews with 428 men from five countries in Central America and the Dominican Republic and Panama describes how men’s sense of “ownership” or “conquering” women sets the stage for sexual harassment at work (ILO, 2013a, page 12). Furthermore, research indicates that men with greater peer support to commit sexual violence are more likely to do so (Humphrey and Kahn, 2000).

² Ferrante (2015) defines an “in-group” as “a group to which a person belongs, identifies, admires, and/or feels loyalty” and an “out-group” as “any group to which a person does not belong” (pp. 370 and 372).

³ Global Horticultural Workers’ and Environmental Rights Network: *Best practices for combating sexual harassment at the workplace in the horticulture industry in the East African Region* (Kampala, 2013), unpublished report.

96. A study of eight countries in Africa suggests that a lack of female representation in workers' groups can help explain why issues of equality between men and women are largely absent in collective bargaining initiatives relating to workplace violence and harassment (Shindondola-Mote and Kalusopa, 2011). A 2015 study from Portugal found that the incidence of sexual harassment is higher among those on contracts with "little job security or stability" (categories included under this umbrella concept were: casual labour on a no-contract basis, paid or unpaid interns, and fixed-term contracts) (Torres et al., 2016, page 13).

2.1.2. Sex and gender-based violence and harassment

97. Evidence from around the world shows that pregnant workers, as well as women and men returning from maternity, paternity or parental leave, can experience harassment by co-workers, subordinates or superiors (ILO, 2016d). Requests for breastfeeding breaks or other family-friendly working arrangements can also result in humiliating treatment, emotional abuse, relocation of the place of employment and other pressures aimed at isolating workers and forcing them to resign (Giunti, 2015; Addati et al., 2014; Masselot et al., 2012).

98. Lesbian, gay, bisexual, trans and intersex (LGBTI) workers report a considerably greater incidence of violence in the workplace compared with non-LGBTI workers. A survey in the United Kingdom found that whereas only 6.4 per cent of heterosexuals reported being bullied at work, 13.7 per cent of gay men, 16.9 per cent of lesbians and 19.2 per cent of bisexuals were bullied (Hoel et al., 2014, page 11). Data from Argentina, Costa Rica, France, Hungary, India, Indonesia, Montenegro, South Africa and Thailand indicate that LGBT persons frequently experience discrimination and harassment in education, access to employment and throughout the employment cycle (ILO, 2015c, page 1).

2.1.3. Physical violence and harassment

99. Physical violence and harassment is frequently reported in occupations where workers deal directly with the public, such as education, healthcare, social work, public administration, accommodation and food services. In Quebec, Canada, during the period 2007–08, exposure to physical violence across a broad sample of 69,000 workers from a range of economic sectors was recorded as 1.9 per cent; however, the health-care and education sectors reported a much higher prevalence (Vézina et al., 2011). A 2012 study in Germany found that 56 per cent of health-care and welfare staff experienced physical violence (Schablon et al., 2012). According to the 2016 Eurofound Sixth European Working Conditions Survey, 2 per cent of workers in 28 European countries were exposed to physical violence over the 12 months prior to the survey, with some occupations and sectors reporting higher percentages, such as 5 per cent in the service and sales sector and 7 per cent in the health sector (Eurofound, 2016, pages 68–70).

2.1.4. Psychological violence and harassment

100. Currently, the most widely reported form of adverse social behaviour⁴ in the workplace across 28 countries in Europe is "bullying/harassment" (5 per cent within the last 12 months) (Eurofound, 2016, page 68).

⁴ Eurofound's term "adverse social behaviour" includes behaviour "such as violence and bullying/harassment at work" (p. 64).

101. A 2014 study in the United States by the Workplace Bullying Institute estimated that more than 36 million people (27 per cent of American workers) experienced “abusive conduct” at work during their lifetime (Workplace Bullying Institute, 2014, page 3).

102. In Belgium, between 2000 and 2010, studies found that some 10 to 15 per cent of workers reported that they had been harassed (van der Plancke, in press). In France, in 2005, 8 per cent of women and 7 per cent of men reported that they had experienced moral harassment at work (Lerouge, 2010, pages 109–110). Studies of workers in the services sectors in Argentina and in the health-care sector in Rwanda also report a greater incidence of psychological rather than physical violence (Wlosko et al., 2014; Newman et al., 2011). A representative survey of 4,580 enterprises in Japan in 2012 shows the depth of the problem, with 45.2 per cent of workers reporting “power harassment” (another term for psychological harassment) (Lerouge and Naito, 2016). In Australia, one source estimates the prevalence of bullying at work to be between 22 and 33 per cent (Parliament of the Commonwealth of Australia, 2012, page 9).

2.2. Impact of violence and harassment in the world of work

103. At the Meeting of Experts, the experts concluded that violence and harassment “affects workplace relations, worker engagement, health, productivity, quality of public and private services, and enterprise reputation” and it also “affects labour market participation and, in particular, may prevent women from entering the labour market, especially in male-dominated sectors and jobs, and remaining therein”. The experts noted, furthermore, that violence and harassment “may undermine democratic decision-making and the rule of law” (ILO, 2016a, Appendix I, paragraph 1).

2.2.1. Impact on workers

104. Physical violence and harassment can leave obvious physical, but also emotional, scars, requiring rehabilitation and counselling. Psychological and sexual violence and harassment can produce effects such as anxiety, depression, headaches and sleep disorders, negatively impacting job performance (Caponecchia and Wyatt, 2011; Cihon and Castagnera, 2011, page 177).

105. A Eurofound survey (2013) found that, following physical violence, workers were three times more likely to experience depression and twice as likely to report stress. After being bullied or harassed, workers were four times more likely to experience depression, three times more likely to report problems sleeping and twice as likely to report stress. Witnesses to violent events, as well as friends and family members of those targeted for violence and harassment, can also experience severe stress and psychological trauma (EverSafe, 2015).

106. In economic terms, sexual violence and harassment is an obstacle to women entering and remaining in the workforce, and therefore “undermines the long-term earning capacity of women workers and contributes to the gender wage gap” (Equal Rights Advocates, 2014, page 7). This is illustrated by the dilemma faced by women tipped-wage workers. Refusing to tolerate sexual harassment from supervisors or from clients can jeopardize their ability to earn tips to support themselves and their families (Jayaraman, 2013). Even where the violence and harassment is not gender-based, the impact on women can be felt disproportionately. An Italian study found that 16 per cent of workers resigned after being targeted for violence. The same study found that women were twice as likely to resign as men (Eurofound, 2015, page 36).

107. Indeed, violence and harassment may ultimately result in workers leaving a particular workplace or the workforce altogether (Milczarek, 2010, page 80) or, in the most extreme cases, can lead to self-harm. It has been estimated that 10–15 per cent of suicides in Sweden each year are a result of mobbing (Leymann, 1990).

108. Domestic violence can impact the world of work, with a negative impact on workers' lives and on the productivity of enterprises (Mollica and Danehower, 2014, page 2). Experts at the Meeting of Experts concluded that: "Domestic violence and other forms of violence and harassment are relevant to the world of work when they impact the workplace" (ILO, 2016a, Appendix I, paragraph 6). The public service General Order of Papua New Guinea⁵ affirms that domestic violence often has an impact on the victim's workplace, including his/her work performance, stating that "domestic violence can cause absenteeism due to injuries or ill health caused by extreme stress, which can further result in poor performance at work and a perpetrator may abuse the person at work through abusive phone calls, stalking outside the office or refusing to allow the victim to attend work".

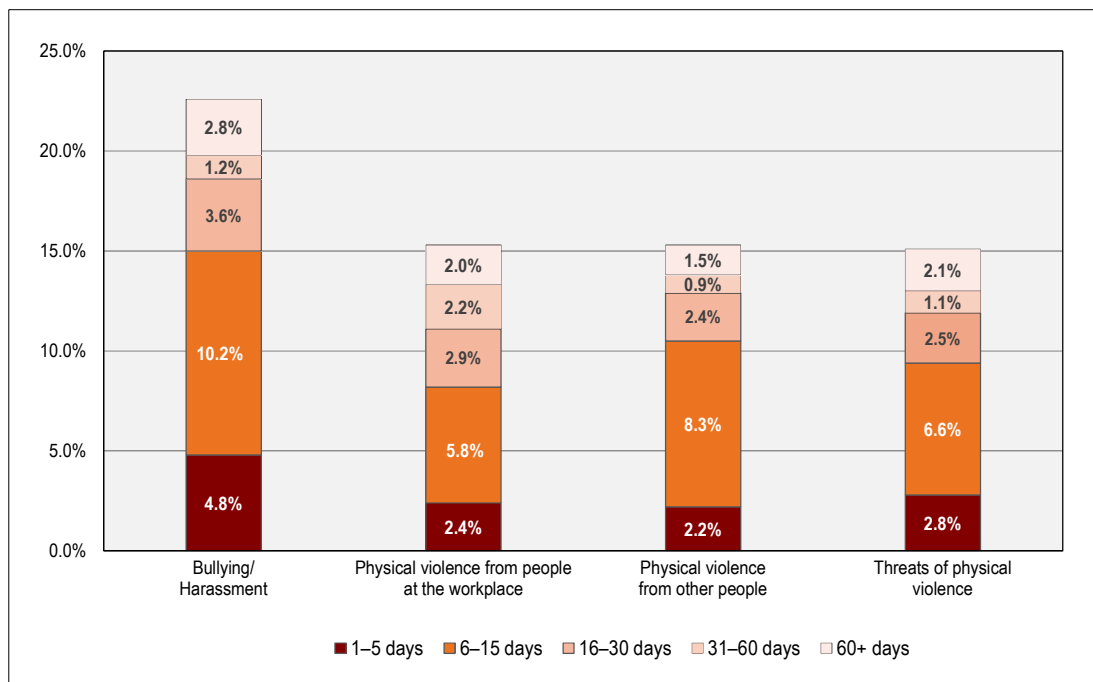
109. It was estimated that in the United States, based on data for 1995, targets of severe intimate partner violence lost "a total of nearly 8.0 million days of paid work – the equivalent of more than 32,000 full-time jobs – and nearly 5.6 million days of household productivity as a result of the violence" (National Center for Injury Prevention and Control, 2003, page 1). In the case of Viet Nam, women workers who experience intimate partner violence earn 35 per cent less than those not experiencing such violence (UN Women, 2012, page iv).

110. The lack of paid leave or healthcare to treat the consequences of violence and harassment can result in stress, and lengthy legal action can add emotional and financial costs to already traumatized workers (Parliament of the Commonwealth of Australia, 2012, page 13). Compensation systems, such as unemployment and social security, vary widely, often cover only a portion, if any, of the costs (Milczarek, 2010, page 80), and are not available to all workers.

2.2.2. Impact on enterprises and economies

111. There are direct financial costs arising from violence and harassment in the world of work, such as absenteeism (see figure 2.1), turnover, litigation and compensation. There are also indirect costs of reduced productivity, and knock-on effects, which can harm the enterprise's reputation, image and competitiveness (Rayner et al., 2001).

⁵ General Order No. 20: Engagement in business activities outside of public service employment and other important provisions governing conduct, 2014, of Papua New Guinea.

Figure 2.1. Percentage of workers absent and number of absence days due to work-related health problems caused by violence and harassment

Source: Milczarek (2010), based on 2005 data from the Fourth European Working Conditions Survey. Countries surveyed are the EU27 (Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom), plus Croatia, Norway, Switzerland and Turkey.

112. Violence and harassment increases absenteeism and results in increased sick pay and administration expenses (Rayner et al., 2001). It is estimated that in 2007 in the United Kingdom, “33.5 million days were lost by UK organisations due to bullying-related absenteeism, almost 200,000 employees would have left organisations and the equivalent of 100 million days productivity were lost as a result of bullying”, which resulted in an estimated cost of around £13.75 billion (Giga et al., 2008, page 3). In Australia, estimates of the annual cost of bullying to both employers and to the economy in general, range from 6 billion Australian dollars (AUD) to AUD36 billion (Australian Government Productivity Commission, 2010, page 279).

113. Several studies indicate that employee turnover due to violence and harassment entails even more significant costs than absenteeism, as it is expensive to recruit and train new workers (Rayner et al., 2001). It was estimated that in 1988 sexual harassment cost the US army over US\$250 million, with more than US\$190 million of that being in replacement (recruitment, training and transfer) costs (Faley et al., 1999, page 475). Moreover, if abused workers (or witnesses) remain in a company without proper support, their productivity is often compromised due to negative health effects, further increasing enterprise costs (Zapf and Gross, 2001; Einarsen et al., 2003; Giga et al., 2008, page 16; Parliament of the Commonwealth of Australia, 2012, page 11).

114. Data from the joint ILO–International Finance Corporation (IFC) Better Work Programme suggests that where sexual harassment is more prevalent, average business profits are negatively impacted. In garment factories in Jordan and Viet Nam, there was a strong negative correlation “between the average profits (total revenues less expenses) reported by managers and the average level of concern with sexual harassment reported in the workplace” (Brown et al., 2016). Data also suggests that less violence and harassment

correlates with greater profitability. In Viet Nam, garment factories with lower levels of verbal abuse have proven more profitable than those with higher levels (ILO, 2014e).

115. The impact of intimate partner violence, measured at the level of national economies, is substantial. The annual cost of domestic violence to the Australian economy during the period 2002–03 was estimated at AUD8.1 billion (Access Economics Pty Ltd, 2004, page vii). In the United Kingdom, the cost has been estimated at approximately £16 billion in economic output, services, and human and emotional costs (Walby, 2009, page 2).

2.3. Risk factors for violence and harassment in the world of work

116. Circumstances and conditions of work, as well as psychosocial conditions, have an impact both on the prevalence of violence and harassment at work and on the ability of victims to seek remedies. It is important to note that: “No risk factor, or combination of risk factors, guarantees that violence will occur or that its incidence will increase. However, the presence of these risk factors, particularly of several in combination, increases the likelihood that violence will occur” (Washington State Department of Labor and Industries, n.d., page 6).

117. The Meeting of Experts concluded that “violence and harassment in the world of work often reflects wider societal violence and, in order to prevent and address it, there needs to be an understanding of the situations in which workers find themselves, and how this might increase the risk of such conduct”. They also identified a set of “circumstances that could in themselves or in combination expose workers to violence and harassment” (see box 2.1).

Box 2.1
Circumstances that could expose workers to violence and harassment (alone or in combination)

- working in contact with the public;
- working with people in distress;
- working with objects of value;
- working in situations that are not, or not properly, covered or protected by labour law and social protection;
- working in resource-constrained settings (inadequately equipped facilities or insufficient staffing can lead to long waits and frustration);
- unsocial working hours (for instance, evening and night work);
- working alone or in relative isolation or in remote locations;
- working in intimate spaces and private homes;
- the power to deny services, which increases the risk of violence and harassment from third parties seeking those services;
- working in conflict zones, especially providing public and emergency services; and
- high rates of unemployment.

Source: ILO: 2016a, Appendix I, para. 9.

118. The Meeting of Experts also concluded that: “Poor human resources management, poor organization of work, including lack of clear rules and responsibilities, inadequate assignment of tasks, unrealistic production targets, poor communication, and poor labour

relations and discriminatory practices are also factors that could increase the risk of violence and harassment” (ILO, 2016a, Appendix I, paragraph 10).

2.4. Specific groups, sectors and occupations that may experience greater exposure to violence and harassment

119. In the following chapters, this report will provide examples of particular groups, sectors and occupations – for example, persons with disabilities, persons living with HIV, health-care workers, teachers and others – that report greater exposure to violence and harassment in the world of work than others. Because exposure to violence and harassment is highly contextual and results from a convergence of drivers of violence and harassment, such as discrimination, conditions and risk factors, it is important not to reduce the analysis to a list of who is “most vulnerable” to violence and harassment. Doing so could mistakenly imply that *who* people are or *what* they do makes them victims.

120. It is, however, important to understand the intersection, or combination, of factors, such as gender, race, age or disability, that makes violence and harassment more possible, and, in fact, makes this experience of violence and harassment unique, “[b]ecause the intersectional experience is greater than the sum of racism and sexism” (Crenshaw, 1989, page 140). Indeed, studies have shown that: “Minority women were significantly more harassed [at work] than minority men, majority women, and majority men, when both ethnic and sexual harassment were combined into an overall measure of harassment” (Berdahl and Moore, 2006, page 432). Young women workers, for example, can be particularly exposed to sexual violence at work, especially those beginning their professional careers, compared with older women workers (Canadian Labour Congress, 2015).

121. The Meeting of Experts approached the role of intersectionality in the following way in their conclusions:

Violence and harassment can potentially affect everyone, but it affects specific groups disproportionately, where certain conditions exist. Imbalanced power relationships, including due to gender, race and ethnicity, social origin, education and poverty could lead to violence and harassment. Discrimination based on these and other grounds, including disability, HIV status, sexual orientation and gender identity, migrant status and age, are also important factors. Workplaces where the workforce is dominated by one gender or ethnicity might be more hostile to people not conforming to established gender norms or individuals coming from under-represented groups. Where grounds of discrimination intersect, such as gender and race or disability, the risk of violence and harassment is exacerbated. A key additional risk factor is a culture of impunity (ILO, 2016a, Appendix I, paragraph 12).

122. Intersectionality is important to keep in mind when considering economic sectors that often report higher levels of violence and harassment, such as the services sectors (Eurofound, 2015; Milczarek, 2010), where discrimination and risk factors intersect, leading to greater exposure to violence and harassment. Eurofound notes in its study of European workplaces, that: “In terms of occupation, almost all adverse social behaviours are most commonly reported by service and sales workers. ... This happens partly because the service and sales occupation is dominated by women, who, in general, tend to experience these behaviours more, and because there is relatively more exposure to third parties (such as clients)” (Eurofound, 2016, page 68).

123. It is also important to keep in mind that the true prevalence of violence and harassment, and the availability of data do not always coincide. Some sectors, such as nursing, are highly organized and carry out extensive data collection and, thus, they are

able to document their experience of violence and harassment. Some other sectors have not developed these capacities for organizing around violence and harassment issues and, moreover, they can face problems with under-reporting of violence and harassment due to fear of talking about the topic, lack of reporting and monitoring systems, and the “normalization” of violence (Milczarek, 2010; Van De Griend and Messias, 2014).

124. As such, all workers and employers, regardless of their personal traits and the work they carry out, can, given certain situations, risk factors and sources, be exposed to violence and harassment.

Chapter 3

International and regional frameworks addressing violence and harassment in the world of work

3.1. ILO standards that address violence and harassment in the world of work

125. Neither the Preamble of the ILO Constitution, nor the 1944 Declaration of Philadelphia, which is an integral part of the Constitution, refer to, or provide a definition of, “violence and harassment at work”. Notwithstanding this, the idea of protection against injury and harmful working conditions is central in both texts.

126. Throughout its history, the ILO has adopted a number of standards that have the objective of protecting workers in general, or certain categories of workers, against certain situations in which violence and harassment is present, such as night work.

127. In addition, a number of ILO Conventions and Recommendations either refer directly to some manifestations of violence and harassment at work, or the CEACR has considered that some ILO standards cover certain manifestations of violence and harassment; in both instances the instruments cover certain groups and certain occupations. Due to the scope of the instruments that refer to violence and harassment, they are either not applicable to the majority of workers around the world, or they only refer to certain types of violence or harassment.

128. Several OSH instruments have the objective of protecting workers’ safety and health. While these instruments do not mention violence and harassment explicitly, such conduct is an obvious health risk and OSH guidance is relevant to its prevention and management.

129. The large gap in protection therefore stems from: the scope of current protections, where only some workers, such as night workers or domestic workers, are covered; the lack of a definition of any forms of violence and harassment in any instrument; and the lack of guidance on how to address violence, even where it is referred to in instruments. Similarly, guidance on how to adapt OSH management to prevent violence and harassment in the workplace is missing from OSH instruments.

3.1.1. ILO fundamental Conventions

130. Addressing violence and harassment is a component of many of the ILO fundamental Conventions. The illegal forms of work dealt with in some ILO core Conventions, such as forced labour and child labour, inherently relate to violence. While these forms of work are not foreseen to be covered under a new instrument, it is useful to discuss these forms of violence in order to give a clearer understanding regarding the potential parameters of (a) new instrument(s).

131. The Forced Labour Convention, 1930 (No. 29), and its 2014 Protocol,¹ and the Abolition of Forced Labour Convention, 1957 (No. 105),² aim to guarantee to all human beings freedom from forced labour, irrespective of the nature of the work or the sector of activity in which it may be performed. Convention No. 29 defines forced or compulsory labour as “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily” (Article 2(1)). Physical violence and psychological coercion are at times used to compel a person to engage in forced labour, as defined by Convention No. 29 (ILO, 2012a, page 111). The credibility and impact of the threat used to compel labour must be evaluated from the worker’s perspective, taking into account his or her personal characteristics and situation. Abusing a position of vulnerability is a form of psychological coercion often employed to induce consent of victims of forced labour (ILO, 2012a, paragraphs 270–271 and 293–297).

132. With respect to child labour, although physical, psychological and sexual abuse of children is only explicitly referenced with respect to the use of children in armed conflict and for illicit activities,³ hazardous work⁴ and work which can damage a child’s physical or psychological health⁵ can be construed to encompass acts of violence and harassment. The worst forms of child labour inherently include physical and psychological violence and harassment.⁶

133. Although ILO instruments on freedom of association⁷ do not include an explicit prohibition of violence against trade union activities, the CEACR has consistently stressed the interdependence between civil liberties and trade union rights, and in particular the importance for trade unions to operate in a climate free from violence, pressure and threats of any kind (ILO, 2012a, paragraph 59).

134. Under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), ratifying member States undertake to declare and pursue a national equality policy with a view to eliminating any discrimination in employment and occupation based on race, colour, sex, religion, political opinion, national extraction or social origin.⁸ The CEACR considers sexual harassment to be a serious form of sex discrimination falling within the scope of the Convention. The Committee refers to two forms of sexual harassment, both of which need to be addressed:

... (1) (*quid pro quo*): any physical, verbal or non-verbal conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient; and a person’s rejection of, or submission to, such conduct is used explicitly or implicitly as a basis for a decision which affects that person’s job; or (2) (*hostile work environment*): conduct that creates an intimidating, hostile or humiliating working environment for the recipient. (ILO, 2012a, page 330, footnote 1979.)

¹ 178 ratifications and the Protocol of 2014 received 13 ratifications.

² 175 ratifications.

³ Article 3(a) and (c) of the Worst Forms of Child Labour Convention, 1999 (No. 182).

⁴ Article 3(1) of the Minimum Age Convention, 1973 (No. 138).

⁵ Article 3(d) of Convention No. 182.

⁶ Article 3(a)–(c) of Convention No. 182, and see, for example, [2012 General Survey](#), paras 951 and 953.

⁷ 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); 154 and 164 ratifications, respectively.

⁸ Articles 1(1)(a) and 2 of Convention No. 111.

135. Harassment based on other grounds enumerated in Article 1(1)(a) has also been addressed by the CEACR.⁹ While violence, other than harassment, based on the protected grounds set out in the Convention is covered by Convention No. 111, the CEACR has most commonly addressed this form of discrimination in the context of measures, or the lack of such measures, to address gender-based violence or violence against women.¹⁰ Violence against certain ethnic or religious groups, including migrant workers, has been addressed on few occasions (Greece – observation, 2015; and Papua New Guinea – observation, 2015).

3.1.2. Other ILO standards

136. Other ILO Conventions and Recommendations contain direct references to violence and harassment, or have been, or may potentially be, considered as covering some forms of violence and harassment at work. The personal scope of application is however limited, as it is restricted to specific groups of people – such as indigenous peoples – or occupations or sectors – such as domestic work or informal economy workers. Moreover, where violence and harassment is addressed directly in the text of the instrument only certain types of violence and harassment are addressed.

3.1.2.1. *Protection of specific groups or occupations*

137. The Indigenous and Tribal Peoples Convention, 1989 (No. 169), is the only ILO instrument that explicitly refers to sexual harassment, providing that workers belonging to indigenous peoples should enjoy protection from sexual harassment (Article 20(3)). On a number of occasions, the CEACR has addressed specifically the use of violence and harassment against indigenous peoples' communities,¹¹ including for the removal of indigenous communities from the land they traditionally occupy.¹²

138. More recent instruments have covered a wider range of violent and harassing conduct. Article 5 of the Domestic Workers Convention, 2011 (No. 189),¹³ requires member States to take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence. The requirements of this provision are further detailed in the Domestic Workers Recommendation, 2011 (No. 201), which in Paragraph 7 refers to the establishment of mechanisms to protect domestic workers from abuse, harassment and violence, including creating accessible complaint mechanisms, ensuring that all complaints are appropriately investigated and prosecuted, and establishing programmes for the relocation and rehabilitation of domestic workers subjected to abuse, harassment and violence.

⁹ For example: Bosnia and Herzegovina – Convention No. 111, observation, 2013; Montenegro – Convention No. 111, direct request, 2014; Slovenia – Convention No. 111, direct request, 2015; Nicaragua – Convention No. 111, direct request, 2010; Canada – Convention No. 111, direct request, 2014; Angola – Convention No. 111, direct request, 2013.

¹⁰ For example: Burundi – Convention No. 111, observation, 2016; Cambodia – Convention No. 111, observation, 2016; Central African Republic – Convention No. 111, observation, 2016; United Arab Emirates – Convention No. 111, direct request, 2016. In one country, the CEACR has urged the Government to take the necessary measures to address the inferior position of women in society, which is reflected in sexual violence committed against them and in discriminatory legislation, which the Committee considered had a serious impact on the application of the principles of the Convention (Democratic Republic of the Congo – Convention No. 111, observation, 2016).

¹¹ Central African Republic – Convention No. 169, observation, 2016; Guatemala – Convention No. 169, observation, 2015; Colombia – Convention No. 169, observation, 2014.

¹² For example: Argentina – Convention No. 169, observation, 2012; Brazil – Convention No. 169, observation, 2012.

¹³ 23 ratifications.

139. Amendments to the Maritime Labour Convention, 2006 (MLC, 2006),¹⁴ were approved in 2016 to protect seafarers against harassment and bullying. These two forms of violence and harassment are now addressed in Guideline B4.3.1, which requires the competent authority to ensure that the implications of harassment and bullying for health and safety are taken into account, and in Guideline B4.3.6, which provides that, with respect to investigations, consideration should be given to the inclusion of problems arising from harassment and bullying.

140. The HIV and AIDS Recommendation, 2010 (No. 200), requires measures to be taken in or through the workplace to reduce the transmission and alleviate the impact of HIV by, among other things, “ensuring actions to prevent and prohibit violence and harassment in the workplace”.¹⁵

141. The Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), calls for the adoption of a comprehensive policy framework, which should include “the promotion of equality and the elimination of all forms of discrimination and violence, including gender-based violence, at the workplace”.¹⁶ The Recommendation also calls on member States to take “immediate measures to address the unsafe and unhealthy working conditions that often characterize work in the informal economy; and promote and extend occupational safety and health protection to employers and workers in the informal economy”.¹⁷

142. The Committee on Employment and Decent Work for the Transition to Peace at the 105th Session (2016) of the International Labour Conference initiated the first discussion on a new instrument to substitute the Employment (Transition from War to Peace) Recommendation, 1944 (No. 71). The discussion is scheduled to be completed in 2017. The proposed new Recommendation would require member States to prevent and punish rape, sexual exploitation and harassment, in responding to discrimination associated with, or exacerbated by, crisis situations (ILO, 2016e, page 141).

143. Although not specifically referring to violence or harassment, the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143),¹⁸ could be used to address certain acts of violence, abuse or harassment against migrant workers covered by the instruments. Convention No. 97 requires member States to ensure that no less favourable treatment is applied to migrant workers lawfully in the country with respect to certain areas, including conditions of work (Article 6). Convention No. 143 requires member States to ensure respect of basic human rights of all migrant workers (Article 1), to take measures to detect and address labour migration in abusive conditions (Articles 2 and 3), and to declare and pursue a national policy designed to promote equality of opportunity and treatment for migrant workers lawfully in the country (Article 10). However, until now, the CEACR has commented only on a few occasions on cases of violence or harassment against migrant workers in the context of these instruments.¹⁹

¹⁴ 81 ratifications.

¹⁵ Para. 14(c) of Recommendation No. 200.

¹⁶ Para. 11(f) of Recommendation No. 204.

¹⁷ Para. 17(a)–(b).

¹⁸ For Convention No. 97 – 49 ratifications, and one notification for Hong Kong, China, as well as being applicable to six territories; 23 ratifications for Convention No. 143.

¹⁹ For example, Israel – Convention No. 97, observation, 2012; Spain – Convention No. 97, observations, 2001–04; Italy – Convention No. 143, observations, 2009–13.

144. The Private Employment Agencies Convention, 1997 (No. 181), also has the potential to address violence and harassment, in particular by private employment agencies against migrant workers. Article 8(1) of the Convention calls for the adoption of measures to provide adequate protection for, and prevent abuses of, migrant workers recruited or placed in a member State's territory by private employment agencies.

3.1.2.2. *Occupational safety and health*

145. Although ILO OSH instruments do not address violence and harassment explicitly, such conduct forms an obvious health risk. ILO OSH instruments cover both physical and mental health, including work-related stress, and also provide useful tools and concepts that have been applied at the national level to tackle violence and harassment at work.

146. The Occupational Safety and Health Convention, 1981 (No. 155), requires the adoption of a national OSH policy including training, the adaptation of work to the physical and mental capacities of workers, and protection from reprisals against complainants. The CEACR has noted on a number of occasions how the implementation of these provisions by stakeholders at the domestic level has included initiatives regarding third-party violence,²⁰ work-related stress²¹ and psychosocial problems in the workplace.²²

147. According to Paragraph 3(e) of the Occupational Safety and Health Recommendation, 1981 (No. 164), the prevention of physical and mental stress due to conditions of work is also one of the aspects in respect of which measures should be taken in pursuance of the national OSH policy. Moreover, Article 1(a) of the Occupational Health Services Convention, 1985 (No. 161),²³ foresees the establishment and maintenance of a safe and healthy working environment facilitating optimal physical and mental health in relation to work, and the adaptation of work to the capabilities of workers based on the state of their physical and mental health.

148. In addition, the List of Occupational Diseases Recommendation, 2002 (No. 194), was amended in 2010 to include post-traumatic stress disorder and other mental or behavioural disorders whose direct link with the exposure to risk factors arising out of work activities is scientifically established.²⁴

149. OSH concerns, which implicitly encompass violence and harassment hazards, are also foreseen in Article 9 of the Night Work Convention, 1990 (No. 171),²⁵ which requires the provision of appropriate social services for night workers. The Night Work Recommendation, 1990 (No. 178), specifies that such services include travel arrangements aimed at improving the safety of workers travelling at night (Paragraph 13) and that the employer should take the necessary measures to maintain at night the same level of protection against occupational hazards as during the day, in particular to avoid, as far as possible, the isolation of workers (Paragraph 12).

²⁰ Finland – Convention No. 155, observation, 2010.

²¹ Republic of Korea – Convention No. 155, direct request, 2014.

²² Sweden – Convention No. 155, observation, 2014.

²³ 33 ratifications.

²⁴ [Recommendation No. 194, Annex, List of Occupational Diseases](#), item 2.4.

²⁵ 15 ratifications.

3.1.2.3. *Social security*

150. The ILO social security instruments provide for medical care in the event of any morbid condition, whatever its cause, as well as for periodical payments in the event of loss of earning capacity in the case of sickness. The main ILO standards on employment injury benefits are: Part VI of the Social Security (Minimum Standards) Convention, 1952 (No. 102),²⁶ the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121),²⁷ the Employment Injury Benefits Recommendation, 1964 (No. 121), and Recommendation No. 194.

151. Both Part VI of Convention No. 102 and Convention No. 121 provide for benefits for the consequences of occupational accidents and diseases. Article 32 of Convention No. 102, in combination with Article 1(1)(a), provides for an open definition of occupational accidents. Article 8(a) of Convention No. 121 requires ratifying States to prescribe a list of occupational diseases, comprising at least those enumerated in Schedule I thereto. This Schedule, as amended in 1980, does not, however, include any diseases that could be caused by violence and harassment at work and the CEACR has not yet addressed any diseases caused by violence and harassment.

3.2. ILO conclusions and frameworks

152. The ILO has also developed a number of non-binding conclusions and frameworks to address violence and harassment at work. Like the existing legal standards, many of these address violence and harassment in a fragmentary way with respect to occupations and forms of violence and harassment addressed.

153. In 2002, the ILO cooperated with the World Health Organization, the International Council of Nurses and Public Services International to develop the *Framework guidelines for addressing workplace violence in the health sector* (ILO et al., 2002). The following year, the code of practice *Workplace violence in services sectors and measures to combat this phenomenon* was adopted (ILO, 2004). In 2011, the ILO adopted the code of practice *Safety and health in agriculture*, which also addresses workplace violence, harassment and bullying (ILO, 2011c, page 169).

154. The need to address violence and harassment in the workplace, including with respect to specific groups of workers, has received increasing attention in the context of recurrent item discussions or general discussions held at the International Labour Conference. The conclusions concerning the recurrent discussion on social protection (labour protection) held during the International Labour Conference in June 2015 stated that the need to tackle new emerging risks associated with new ways of working and the changing world of work, such as psychosocial risks and violence at work, has been recognized as an urgent concern requiring concrete measures and tripartite commitment. The conclusions identify that one of the priorities for ILO action in the area of development cooperation is the development of methods to assist employers and workers in responding to changes in work organization and working conditions that are causing psychosocial risks, stress and mental health problems related to work.

²⁶ 55 ratifications.

²⁷ 24 ratifications.

155. The conclusions concerning decent work in global supply chains highlighted that in many sectors, “women represent a large share of the workforce in global supply chains ... and are too often subject to discrimination, sexual harassment and other forms of workplace violence”.²⁸

156. The need to tackle violence and harassment has also been addressed in the *ILO Multilateral Framework on Labour Migration*, which provides for the intensification of measures aimed at detecting and identifying abusive practices against migrant workers, including physical or sexual harassment or violence, particularly in sectors that are outside the usual avenues of regulation and protection, such as domestic work (Guideline 11.2). The *ILO General principles and operational guidelines for fair recruitment*, 2016, provide that “labour recruiters should have in place policies and processes, including due diligence, to ensure that their recruitment activities are conducted in a manner that treats workers with dignity and respect, free from harassment or any form of coercion or degrading or inhuman treatment” (Guideline 21.1).

3.3. United Nations instruments and supervisory mechanisms

157. A number of United Nations human rights treaties include provisions explicitly referring to violence or harassment. These instruments are, however, limited to specific groups of people (persons with disabilities, migrant workers and women) and do not provide specific guidance on how to address violence and harassment in the world of work.

158. Under the Convention on the Rights of Persons with Disabilities (Article 27(1)(b)), States parties are required to promote the right to work of persons with disabilities by providing them with favourable, safe and healthy working conditions, including protection from harassment (the term “harassment” is undefined).

159. Article 16(2) of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families requires States to effectively protect migrant workers and members of their family against violence, physical injury, threats and intimidation, whether perpetrated by public officials, private individuals, groups or institutions.

160. The Committee on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), considers workplace sexual harassment as a form of gender-specific violence which can seriously impair equality in employment and can constitute a health and safety problem.²⁹

161. The Committee on Economic, Social and Cultural Rights stressed that the right to favourable and just working conditions (Article 7) implicitly includes freedom from physical and mental harassment, including sexual harassment.³⁰

162. Two of the special procedures of the UN Human Rights Council have mandates that address violence and harassment at work. The mandate of the UN Special Rapporteur on Violence against Women, its Causes and Consequences includes the collection of information, including individual complaints, on violence against women and the adoption

²⁸ ILO: *Provisional Record* No. 14-1, International Labour Conference, 105th Session, Geneva, 2016, para. 4.

²⁹ CEDAW, general comment on Art. 11 of General Recommendation No. 19 (11th Session, 1992).

³⁰ UN Economic and Social Council, 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), E/C.12/GC/23.

of recommendations on how to eliminate it.³¹ Similarly, the position of Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity was created in 2016 (A/HRC/32/L.2/Rev.1). The Independent Expert will raise awareness and identify and address the causes of violence and discrimination against LGBT persons, and support national efforts to combat them. The Human Rights Council has also called on the private sector to cooperate with the Independent Expert for the fulfilment of these goals.

163. While such efforts to address violence and harassment in the world demonstrate a growing interest in the issue, there remains a gap at the international level where binding principles on addressing violence and harassment in the world of work are absent.

3.4. Other United Nations' initiatives

164. Violence in the world of work has been tackled from various perspectives and by different means within the UN system.

165. The agreed conclusions of the 2013 UN Commission on the Status of Women on the elimination and prevention of all forms of violence against women and girls refer to the need to respond to, prevent and eliminate all forms of discrimination and violence, including sexual harassment at the workplace.³²

166. The UN General Assembly designated 25 November as the International Day for the Elimination of Violence Against Women. The premise of the day is to raise awareness of all forms of gender-based violence that women are subjected to including in the world of work. Between 25 November and Human Rights Day on 10 December, there is a "16 Days of Activism against Gender-Based Violence" campaign to raise public awareness and mobilize people everywhere to bring about change on this issue.

167. With a view to raising public awareness and increasing political will to prevent and eliminate all forms of violence against women, the UN Secretary-General launched the campaign "UNiTE to End Violence against Women" in 2008. UNiTE identifies violence against women as a human rights violation that can take various forms, including intimate partner violence, discrimination and sexual harassment.

168. The World Health Organization has conducted studies on bullying, sexual harassment, threats, intimidation and other forms of psychological violence (Krug, 2002, pages 18–19), as well violence against women (including intimate partner violence) and, more generally, violence and harassment in the workplace (WHO, 2016).

169. The relationship between gender-based violence and the workplace has also been examined by UN Women (UN Women, 2011). UN Women administers the Global Database on Violence against Women, which collects information on laws, regulations and other measures taken by governments to address all forms of violence against women, including sexual harassment and intimate partner violence.³³ UN Women also manages the UN Trust Fund to End Violence against Women, on behalf of the UN system. The Trust has supported over 400 organizations over the past 20 years, and focuses on the prevention of violence, the implementation of laws and policies, and improving access to vital services for survivors.

³¹ See <http://www.ohchr.org/Documents/Issues/Women/15YearReviewofVAWMandate.pdf>.

³² UN Commission on the Status of Women, agreed conclusions on the elimination and prevention of all forms of violence against women and girls, *E/2013/27–E/CN.6/2013/11* (2013).

³³ <http://evaw-global-database.unwomen.org/en/about>.

170. UN Women and the United Nations Global Compact have developed a set of principles for business, providing guidance on how to empower women in the workplace, marketplace and community, called the Women's Empowerment Principles.³⁴ The third principle, "Ensure the health, safety and well-being of all women and men workers", includes the establishment of a zero-tolerance policy towards all forms of violence at work, including verbal and/or physical abuse, and the prevention of sexual harassment. The principles also include identifying and addressing, in consultation with workers, security issues for women commuting to and from work, and the training of security staff and managers to recognize signs of violence against women.

171. The Beijing Platform for Action is an action plan to achieve the UN Goals of gender equality, development and peace. It was adopted at the Fourth World Conference on Women (4–15 September 1995) by representatives from 189 countries.³⁵ The Platform recognizes that violence against women, and sexual harassment in particular, is an affront to a worker's dignity and prevents women from making a contribution commensurate with their abilities. It calls on governments to: "Enact and/or reinforce penal, civil, labour and administrative sanctions in domestic legislation to punish and redress the wrongs done to women and girls who are subjected to any form of violence ... in ... the workplace."

3.5. Regional instruments

172. Regional instruments in respect of violence and harassment in the world of work, of declaratory or binding nature, exist on all continents, and variously address violence, sexual or moral harassment in the workplace or psychosocial risks by providing rights and imposing duties on States parties to prevent or prohibit such conduct.

173. The most comprehensive and effective regional framework is present in Europe, where two supranational institutions, the Council of Europe and the European Union (EU), have required the adoption of rules on violence and harassment in the world of work through various means.

174. Article 26(1) and (2) of the Council of Europe European Social Charter (Revised) of 1996, requires the States parties to work together with employers' and workers' representatives to promote awareness, provide information and prevent both sexual and moral harassment in the workplace. It should, however, be noted that despite the high level of ratification of the Charter by Council of Europe Member States, a third of the States parties do not consider themselves bound by one or both paragraphs of Article 26.³⁶

175. In 2011, the Council of Europe Convention on preventing and combating violence against women and domestic violence, known as the Istanbul Convention, was adopted, obliging ratifying member States to prohibit, prevent, prosecute and eliminate violence against women, including sexual harassment, and all forms of domestic violence, including economic violence. The Convention, ratified by 22 member States, also provides for the design of a comprehensive framework, policies and measures for the protection of, and provision of assistance to, all victims of violence against women and domestic violence,³⁷ as well as providing detailed obligations to create civil and criminal offences

³⁴ <http://www.weprinciples.org/Site/PrincipleOverview/>.

³⁵ *Report of the Fourth World Conference on Women*, Beijing, 4–15 Sep. 1995 (UN publication, A/CONF.177/20/Rev. 1), Chapter I, Resolution 1, Annexes I and II.

³⁶ http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163/declarations?p_auth=PIi9C6A.

³⁷ *Council of Europe Convention on preventing and combating violence against women and domestic violence*, Chapter IV.

for violence against women and domestic violence, including remedies and sanctions, for victims and perpetrators, respectively.³⁸

176. The national legislation of EU Members has been heavily influenced by the transposition of EU OSH and equal treatment Directives, which contain provisions on the prevention and prohibition of various forms of violence and harassment. As far as prevention is concerned, OSH Directive 89/391/EEC imposes on employers the duty to ensure the safety and health of workers in every aspect of work (Article 5(1)), which the European Agency for Safety and Health at Work (EU-OSHA) considers as encompassing the duty to protect workers against external violence and bullying (EU-OSHA, 2002). With respect to the prohibition of violence and harassment, Directives 2000/43/EC and 2000/78/EC consider harassment based on protected characteristics (racial or ethnic origin, religion, belief, disability, age and sexual orientation) to be a prohibited form of discrimination in employment and occupation. Similarly, under Directive 2006/54/EC, harassment based on sex, including both hostile working environment and *quid pro quo* forms of sexual harassment, is considered to be sex discrimination.

177. In the Americas, 32 of the 35 member States of the Organization of American States are party to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, also known as the Convention of Belém do Pará. The Committee of Experts in charge of monitoring the implementation of the Convention noted that the Convention of Belém do Pará has prompted the adoption by a number of countries in the Americas of laws on violence against women (OAS, 2012, page 19).

178. In 2003, the African Union adopted the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, also known as the Maputo Protocol. States parties to the Maputo Protocol are required to take measures to combat and punish sexual harassment in the workplace (Article 13(c)). The Maputo Protocol has prompted the adoption of laws prohibiting domestic violence and sexual harassment in the majority of ratifying States (Asuagbor, 2016, pages 3–6). Moreover, the States parties to the 2008 Protocol on Gender and Development adopted by the Heads of State and Government of the Southern African Development Community, undertook to enact and enforce legislation by 2015 against all forms of gender-based violence, as well as policies, strategies and programmes to prohibit sexual harassment in all spheres. It also undertook to stipulate sanctions for perpetrators and to ensure the equal representation of women and men in bodies competent to hear sexual harassment cases.

3.6. Initiatives of international, regional and sectoral, workers' and employers' organizations

179. At the international level, trade unions and employers' federations have increasingly taken action against violence and harassment in the world of work, including through framework agreements, manuals, policy documents, guidelines and campaigns.

180. In 2008, the International Trade Union Confederation (ITUC) issued a manual on gender equality for trade unions, which included guidance for unions on how to deal with sexual harassment in the workplace (ITUC, 2008b, page 43). In 2014, the International Organisation of Employers (IOE) addressed the issue of violence at work in a policy brief. According to the brief, employers have a duty to ensure a safe workplace for all their employees and workplace violence is not only a human rights issue but also an economic one, as it impairs productivity, hampers job performance and results in higher absenteeism,

³⁸ *ibid.*, Chapter V.

turnover and accidents. The brief also acknowledges the gender dimension that is often intrinsic to violence at work and the interest of the employer in combating such conduct (IOE, 2014, page 6).

181. Social dialogue on the issue of violence and harassment at work has been particularly fruitful at the European level, where social partners have come together on multiple occasions to adopt instruments that provide practical guidance on preventing and managing various forms of violence and harassment. For example, the Framework Agreement on Work-related Stress was adopted in 2004 and the European Framework Agreement on Harassment and Violence at Work in 2007. In 2010, European social partners from various sectors adopted guidelines to prevent third-party violence and harassment at work.³⁹

182. Global and regional trade unions have launched campaigns on violence and harassment at work. For instance, UNI Global Union promotes a campaign on gender-based violence called “Break the Circle” which has variously focused on sexual harassment, violence in the media and violence at work.⁴⁰

183. Violence and harassment in specific sectors and occupations is addressed by global sectoral organizations worldwide, in such areas as the education sector,⁴¹ health sector,⁴² commerce sector (EuroCommerce, 2009), for domestic workers,⁴³ for journalists,⁴⁴ for call centre workers,⁴⁵ and for the transport sector.⁴⁶ In 2016, the International Transport Workers’ Federation (ITF) adopted an Informal Transport Workers’ Charter, which seeks to put an end to harassment from public authorities and to violence and sexual harassment against women workers in the informal transport industry. The same year, the ITF launched the “Take Action Toolkit” as part of its “End workplace violence against women” campaign, for affiliates wanting to run workshops and campaigns, and those involved in collective bargaining and other action to end violence against women transport workers.

³⁹ https://www.csee-etuice.org/images/attachments/FINAL_ESSDE_WP_2016-2017.pdf.

⁴⁰ <http://en.breakingthecircle.org/>.

⁴¹ Education International (EI), a global teachers’ union, in 2015 adopted a resolution calling on governments to adopt an appropriate legal and policy framework to prevent and protect pupils and teachers from school-related gender-based violence. Available at: <https://www.ei-ie.org/en/detail/14749/resolution-on-school-related-gender-based-violence>.

⁴² Concerted action has been taken by the International Council of Nurses, Public Services International, the World Health Organization and the ILO, which collaborated on the adoption of framework guidelines on workplace violence in the health sector (ILO et al., 2002).

⁴³ In 2015, the International Domestic Workers Federation launched the “My Fair Home” campaign, inviting employers to take the pledge to uphold the principles of the ILO Domestic Workers Convention, 2011 (No. 189), by actively ensuring a work environment that is free from abuse, harassment and violence. Available at: <http://www.idwfed.org/en/campaigns/my-fair-home>.

⁴⁴ The International Federation of Journalists promotes a yearly campaign for the elimination of violence against women journalists, which in 2015 focused on cyberbullying and threats.

⁴⁵ The Call Centre Charter, drafted by UNI Global Union, sets minimum standards for work in call centres, including protection from work-related stress and bullying, and protection from violence at work perpetrated by abusive callers. Available at: <http://www.uniglobalunion.org/sites/default/files/attachments/pdf/EN%20-%20UNI%20Global%20Call%20Centre%20Charter.pdf>.

⁴⁶ Protecting seafarers from harassment is also the focus of the *Guidance on eliminating shipboard harassment and bullying* adopted by the International Chamber of Shipping and the International Transport Workers’ Federation; the International Air Transport Association (IATA) also adopted the *Guidance on unruly passenger prevention and management* in 2012 (IATA, 2015).

3.7. Initiatives of international and regional OSH and labour inspection bodies

184. International and EU OSH institutions have also tackled the issue of violence and harassment in the world of work through studies, campaigns, guidelines and training.

185. At the international level, the International Commission on Occupational Health ⁴⁷ has published a *Guide to Occupational Health and Safety for Entrepreneurs, Owners and Managers* which advocates the adoption, by employers, of an “anti-violence” policy prohibiting physical violence, threats, harassment, hazing, bullying and verbal abuse, as well as retaliatory harassment (ICOH, 2014).

186. Regionally, EU–OSHA has worked extensively on combating work-related violence and harassment, including publishing studies and guidelines on these issues, ⁴⁸ and has promoted awareness-raising training and campaigns. Among the initiatives promoted by EU–OSHA is an e-guide to managing stress and psychosocial risks designed for employers and employees working in small enterprises. ⁴⁹

187. In the EU, an inspection toolkit for psychosocial risks at work was developed by the Senior Labour Inspectors’ Committee (SLIC) ⁵⁰ in 2011 (SLIC, 2012, pages 5–7). The SLIC also promotes an exchange programme for labour inspectors. Preventing psychosocial risks was one of the topics of the labour inspection programme in 2014 (SLIC, 2015, page 40).

⁴⁷ An international non-governmental professional society whose aims are to foster the scientific progress, knowledge and development of OSH in all its aspects. Available at: <http://www.icohweb.org/site/about-icoh.asp>.

⁴⁸ For example: *Workplace violence and harassment: A European picture*, 2010; Factsheet No. 23, *Bullying at work*, 2002; Factsheet No. 47, *Prevention of violence to staff in the education sector*, 2003; Factsheet No. 22, *Work-related stress*, 2002; Factsheet No. 24, *Violence at work*, 2002.

⁴⁹ <https://osha.europa.eu/en/tools-and-publications/e-guide-managing-stress-and-psychosocial-risks>.

⁵⁰ A body set up by the European Commission and composed of one representative of the labour inspection services of each EU Member State, with a mandate to provide its opinion to the Commission on all issues relating to the enforcement by Member States of EU law on health and safety at work.

Chapter 4

National regulatory framework for protecting against violence and harassment in the world of work

188. The entitlement to a world of work free from violence and harassment and the prohibition of violence and harassment in the world of work are common features of legislation, case law and collective agreements around the world. For the purposes of this report, rights and prohibitions are assessed separately from prevention measures (considered in Chapter 5). This is because prevention measures are often regulated under separate legislation using an OSH approach, while rights and prohibitions are more often found in labour, criminal and non-discrimination law.

189. To ensure that violence and harassment against all workers in differing situations is addressed, the prevention and prohibition of violence and harassment are often provided for in tandem, in line with an integrated approach for addressing violence and harassment. Where either is missing, it may lead to gaps in protection for some workers.

4.1. Gender-based violence in the world of work

Violence against women and girls is a human rights violation, public health pandemic and serious obstacle to sustainable development. It imposes large-scale costs on families, communities and economies. The world cannot afford to pay this price. (Ban Ki-moon, Eighth UN Secretary-General.)¹

190. A number of countries have legislation addressing gender-based violence, particularly in Africa, where regional instruments require action to address the topic.² Laws addressing gender-based violence tend to include violence and harassment that happens in the world of work, including sexual exploitation and trafficking,³ sexual violence and harassment, sex-based violence and harassment, and domestic violence. However, these are not the only forms of gender-based violence that affect the world of work. For example, female genital mutilation, forced marriage, and “honour” crimes, while not occurring in the workplace, can have serious effects on the victim’s health and safety, be significant obstacles to a woman’s ability to enter or remain in the workforce and can compromise her earning potential. Therefore, whether gender-based violence takes place within, or outside, the workplace, it is a world of work issue, and world of

¹ <http://www.un.org/en/events/endviolenceday/>.

² For example, the Anti-Gender-Based Violence Act No. 01 of 2011, of Zambia.

³ Sexual exploitation and trafficking, while not addressed under the scope of this report, are extremely harmful forms of gender-based violence.

work actors can, and do, take action to combat it (see section 6.4.3 on supporting victims and section 7.3 on training and awareness-raising).

191. This section will outline legislation, case law and collective agreements that address forms of gender-based violence and that make a direct link with the world of work. Legislation that addresses forms of gender-based violence but that does not make a link to the world of work has not been included in the 80-country study.

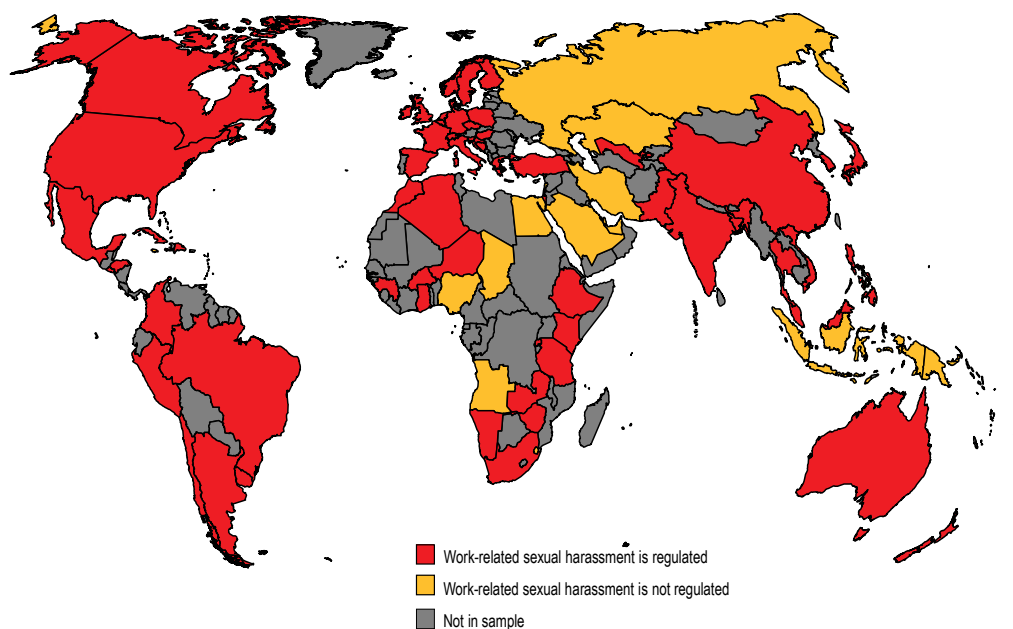
4.1.1. Protecting against sexual violence and harassment

192. Sexual assault, like physical assault, is a criminal offence in the laws of most countries, and the police and criminal courts will be the appropriate source of sanctions and remedies. The world of work can, however, be an entry point for tackling assault through training and awareness raising. OSH management systems (OSH-MSs) can eliminate hazards and risks for assault, and support can be provided through the workplace. Unfortunately, sexual assault, similar to physical assault, is rarely regulated in a work-related context, leaving a gap in the prevention of such conduct and support for victims.

193. The most commonly addressed form of work-related violence and harassment in legislation is sexual harassment. According to a World Bank study, 114 of the 173 countries examined had legislation regulating sexual harassment in employment. In all regions of the world, except the Middle East and North Africa, a majority of countries have some form of law regulating workplace sexual harassment (World Bank, 2015).

194. In the 80-country study undertaken for this report, 65 countries (81 per cent) regulate sexual harassment in the world of work (see figures 4.1 and 4.2).

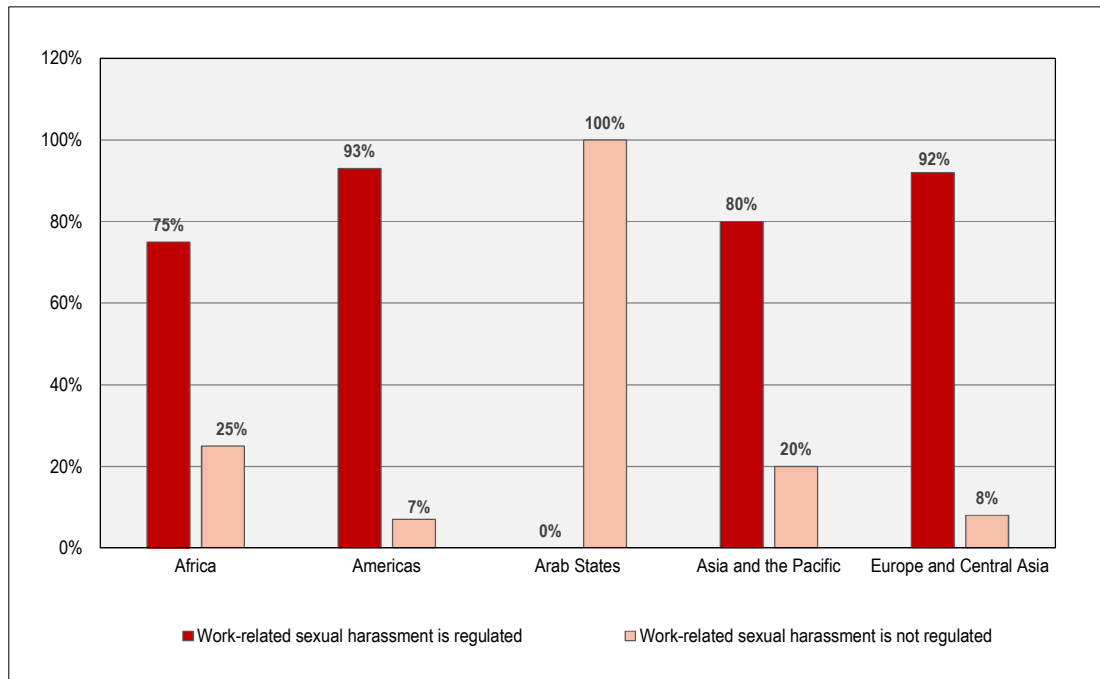
Figure 4.1. Workplace sexual harassment regulations



Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

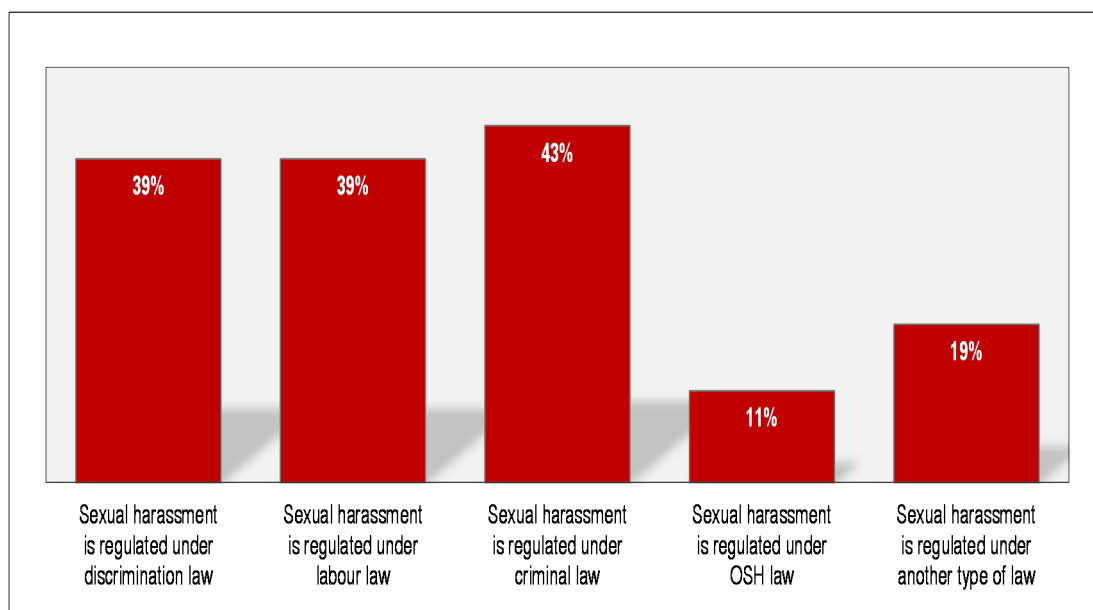
195. Regionally, of the 80 countries studied, regulations on work-related sexual harassment are found in 15 countries in the Americas (93 per cent); 25 countries in Europe and Central Asia (92 per cent); four countries in Asia and the Pacific (80 per cent); 15 countries in Africa (75 per cent); and none of the countries in the Arab States (see figure 4.2).

Figure 4.2. Work-related sexual harassment regulations, by region (within group percentage)



Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

196. Sexual harassment is defined differently according to jurisdiction (see section 1.1.2.1), and is often found in labour laws (in 31 countries (39 per cent)), anti-discrimination law (in 31 countries (39 per cent)), in criminal law (in 34 countries (43 per cent)), in OSH laws (in nine countries (11 per cent)) or in a separate statute (in 15 countries (19 per cent)) (see figure 4.3). Fourteen countries (18 per cent) regulate sexual harassment in both criminal and labour law.

Figure 4.3. Sexual harassment regulations (type of law)

Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

197. Prohibiting sexual harassment in criminal law can be useful for extreme cases of violence and harassment. However, it has been found that “addressing sexual harassment only through criminal proceedings is normally not sufficient, due to the sensitivity of the issue, the higher burden of proof, which is harder to meet, especially if there are no witnesses (which is often the case), and the fact that criminal law generally focuses on sexual assault or ‘immoral acts’, and not the full range of behaviour that constitutes sexual harassment in employment and occupation” (ILO, 2012a, paragraph 792). Prohibiting sexual harassment in labour, OSH, criminal and non-discrimination law allows victims to seek a variety of remedies depending on the nature of the act, and the type of work relationship and conditions they are working under.

198. Laws regulating sexual harassment most often prohibit workers, managers and/or third parties from engaging in sexual harassment (in 63 of the 80 countries studied), provide an accessible and transparent means of issuing a complaint and attach a sanction to the perpetrator or employer and/or remedy to the victim (see section 6.4). In a number of countries, a prohibition is paired with prevention obligations for employers. In two countries, the Czech Republic⁴ and Canada,⁵ the right to a workplace free from sexual harassment is provided for in law.

4.1.2. Protecting against violence and harassment based on sex and gender

199. Sex is invariably listed as a protected category under discrimination legislation in countries around the world, and increasingly gender is also included under such legislation. According to the CEACR, in recent years, “the concept of gender has been included in the national legislation of a number of countries, including the Plurinational State of Bolivia, Burundi, Comoros, Fiji, Finland, Latvia, Russian Federation, Rwanda, Serbia, Seychelles

⁴ Anti-Discrimination Act, No. 198/2009 Coll.

⁵ The Labour Code (RSC, 1985, c. L-2).

and Sweden, as a prohibited ground of discrimination in employment” (ILO, 2012a, paragraph 782.) Where it is regulated under discrimination, it will usually provide a right to be free from violence and harassment based on sex, or prohibit such conduct. Sometimes specific forms of sex-based or gender-based violence are regulated, such as maternity harassment, or homophobic or transphobic violence and harassment.

200. Harassment based on pregnancy or family status tends to be covered under general discrimination provisions, sometimes specifically,⁶ but often falling under the category of sex-based discrimination.⁷

201. Harassment based on sexual orientation is generally prohibited in Europe by anti-discrimination laws.⁸ Belgium and Norway also prohibit harassment based on gender identity and expression.⁹ Furthermore, under the Equality Act 2010 of the United Kingdom, workplace harassment related to gender reassignment is prohibited. There is often a gap in protection against violence and harassment against LGBTI workers in other regions; however, some exceptions exist. In the Plurinational State of Bolivia, for example, maltreatment and aggression based on sexual orientation is prohibited in private and public institutions.¹⁰ In South Africa, the Promotion of Equality and Prevention of Unfair Discrimination Act No. 4 of 2000 prohibits harassment based on sexual orientation and gender.

4.1.3. Responding to domestic violence through the world of work

202. Domestic violence impacts on the world of work when third parties (or co-workers who are also family members) commit violent acts against former or current partners or other family members at, or through, the workplace, by physically assaulting them or by stalking or harassing them by telephone or email.

203. Where domestic violence takes place at the workplace, countries are increasingly requiring employers to take steps to protect employee-victims. In seven of the 80 countries (9 per cent) included in the study for this report, employers are required or empowered to take steps to prevent or protect against domestic violence in the workplace. The legislation in Puerto Rico establishes that employers can request a protection order in favour of their employees against visitors or any other person found in the workplace if one of their employees has been a victim of domestic violence in the workplace.¹¹ The Intra-Family Violence Law No. 20,066 of 2005 of Chile requires the employer to take protective measures when the victim and the perpetrator work in the same workplace.

⁶ As in the Employment Equity Act, No. 55 of 1998, of South Africa.

⁷ For instance, under the Canadian Human Rights Act (RSC, 1985, c. H-6) and in the United States under California’s Fair Employment and Housing Act (FEHA), California Government Code, S.12900.

⁸ See for example: the Law on Prohibition of Discrimination, of Bosnia and Herzegovina, Bosnia and Herzegovina *Official Gazette* No. 59/09; the Anti-Discrimination Act, No. 189/2009 Coll., of the Czech Republic; the General Act on Equal Treatment of 14 August 2006, of Germany.

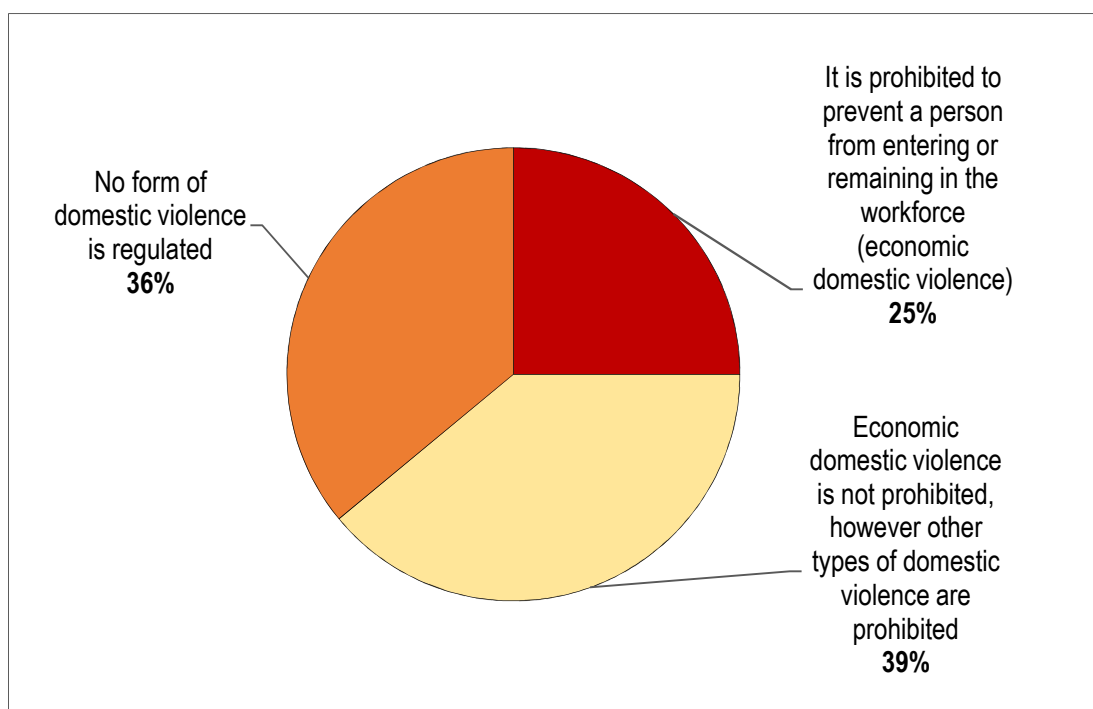
⁹ The Act of 4 August 1996 on the well-being of workers in the performance of their work, of Belgium; and the Act relating to a prohibition against discrimination on the basis of sexual orientation, gender identity and gender expression (the Sexual Orientation Anti-Discrimination Act), No. 58/2013, of Norway.

¹⁰ The Law No. 45 against Racism and All Forms of Discrimination 737/2010 of 10 October 2010, of the Plurinational State of Bolivia.

¹¹ Domestic Abuse Prevention and Intervention Act, Act No. 54 of 15 August 1989, of Puerto Rico. See also the Domestic Violence Act 14/2006 of Zimbabwe, and the Protection against Domestic Violence Act, No. 2 of 2015, of Kenya.

204. Domestic violence can also relate to the world of work, where the aim of the conduct is to prevent a person from accessing or remaining in the workforce (economic violence) (see section 1.1.2.3 for a definition of economic violence). The 80-country study undertaken for this report revealed that, in at least 20 countries (25 per cent of countries sampled), preventing a family member from entering or remaining in the workforce is considered a form of domestic violence (economic domestic violence) and is prohibited. Another 31 countries (39 per cent of countries sampled) regulate other forms of domestic violence (physical, psychological and sexual), and 29 countries (36 per cent of countries sampled) do not regulate domestic violence at all (see figure 4.4).

Figure 4.4. Provisions on preventing workforce participation

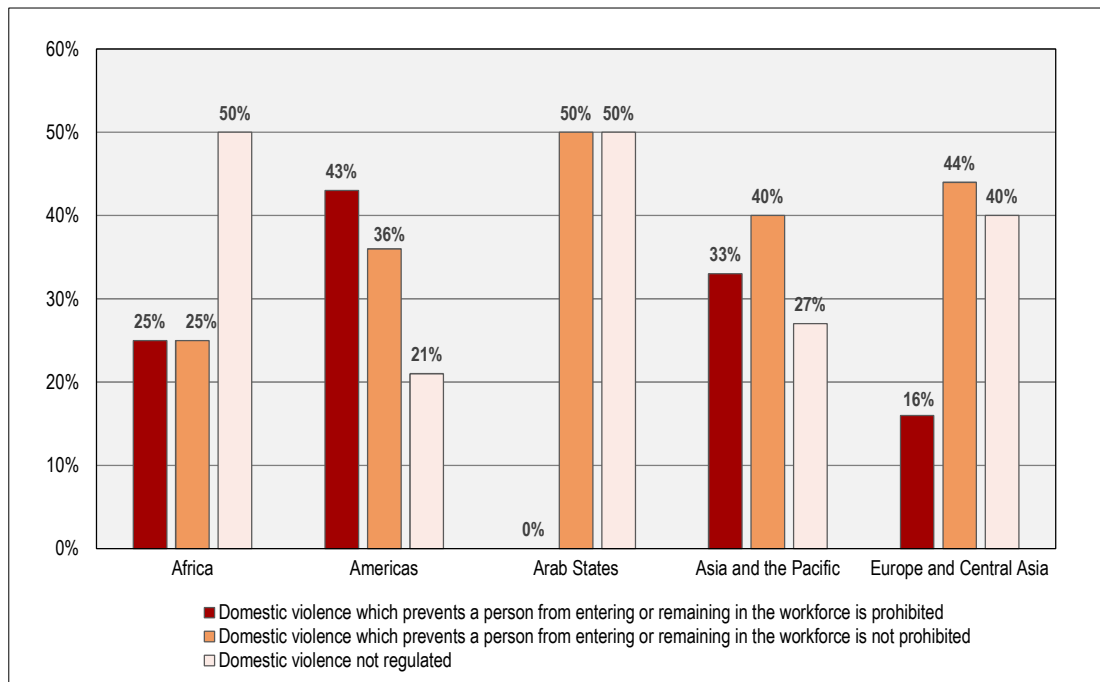


Note: The sample for this figure consists of 78 countries: 20 countries from Africa; 14 from the Americas; four from the Arab States; 15 from Asia and the Pacific; and 25 from Europe and Central Asia.

Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

205. Of the 80 countries studied, preventing a family member from entering or remaining in the workforce is prohibited in six countries in the Americas (43 per cent), five countries in Asia and the Pacific (33 per cent), five countries in Africa (25 per cent), four countries in Europe and Central Asia (16 per cent), and none of the countries in the Arab States (see figure 4.5).

Figure 4.5. Prohibition of domestic violence includes preventing workforce participation
(within group percentage)



Note: The sample for this figure consists of 78 countries: 20 countries from Africa; 14 from the Americas; four from the Arab States; 15 from Asia and the Pacific; and 25 from Europe and Central Asia.

Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

206. Whether it occurs outside work or originates at work “[w]orkplaces are increasingly prominent sites for domestic violence prevention and intervention” (Holmes and Flood, 2013, page 15). The Meeting of Experts concluded that collective agreements could address the effects of domestic violence and that: “The workplace provides an entry point to mitigate the effects [of domestic violence], and employers could be allies to address such violence, though they are not responsible for it.” They further elaborated that “Clauses [on domestic violence] could, for example, include provision of support for and leave to victims, and connect victims to community services” (ILO, 2016a, Appendix I, paragraph 27).

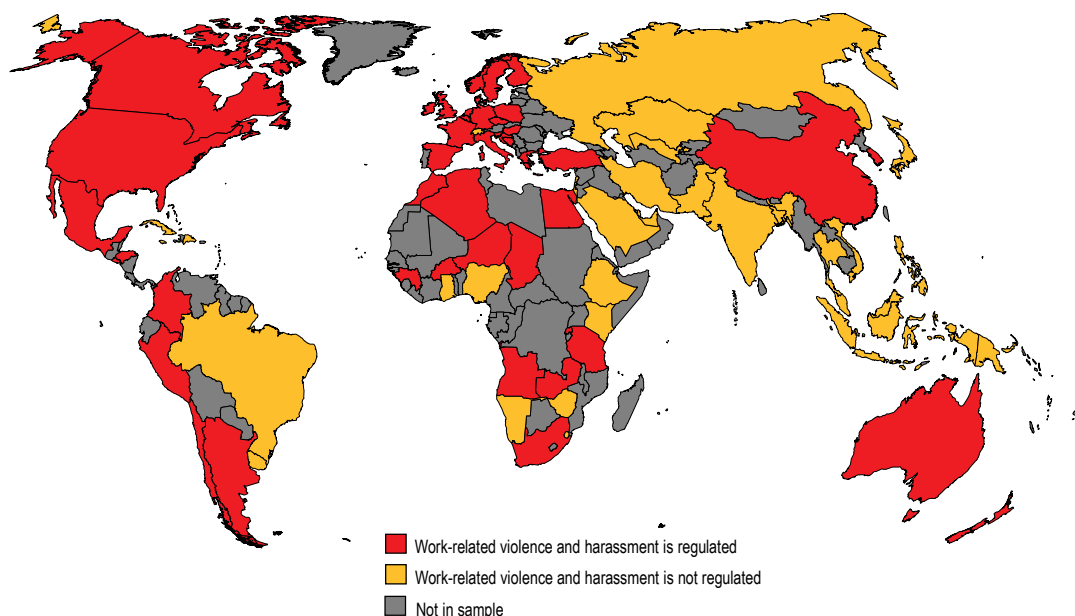
207. Countries are increasingly acknowledging this role of the workplace as a privileged entry point for addressing domestic violence, for example, by requiring or allowing workers (and workers’ organizations) and employers to assume a positive role in identifying and protecting victims. In Namibia, for example, an employer may lay a charge and apply for a protection order for an employee against their domestic abuser.¹² Federal Law No. 11.340/2006 concerning domestic and family violence, known as the Maria da Penha Law, authorizes the judge to order the employer to maintain the employment relationship of a victim of domestic violence and, when necessary, to grant the victim leave from work for a maximum of six months.

¹² Combating of Domestic Violence Act No. 4 of 2003, of Namibia. See also the Protection against Domestic Violence Act No. 2 of 2015, of Kenya, and the Domestic Violence Law, 27.12.2015, of China.

4.2. Physical and psychological violence and harassment in the world of work

208. World of work physical and psychological violence and harassment is regulated in 60 countries (see figure 4.6) and under a number of terms. It is rare (four of the 80 countries studied) that countries define violence and harassment as only including physical conduct or harm. The vast majority of jurisdictions do not make the distinction between physical and psychological conduct, but rather refer to “conduct” or “behaviour”, terms wide enough to encompass physical and psychological conduct (see section 1.1 for definitions of violence and harassment).

Figure 4.6. Regulations on workplace violence and harassment

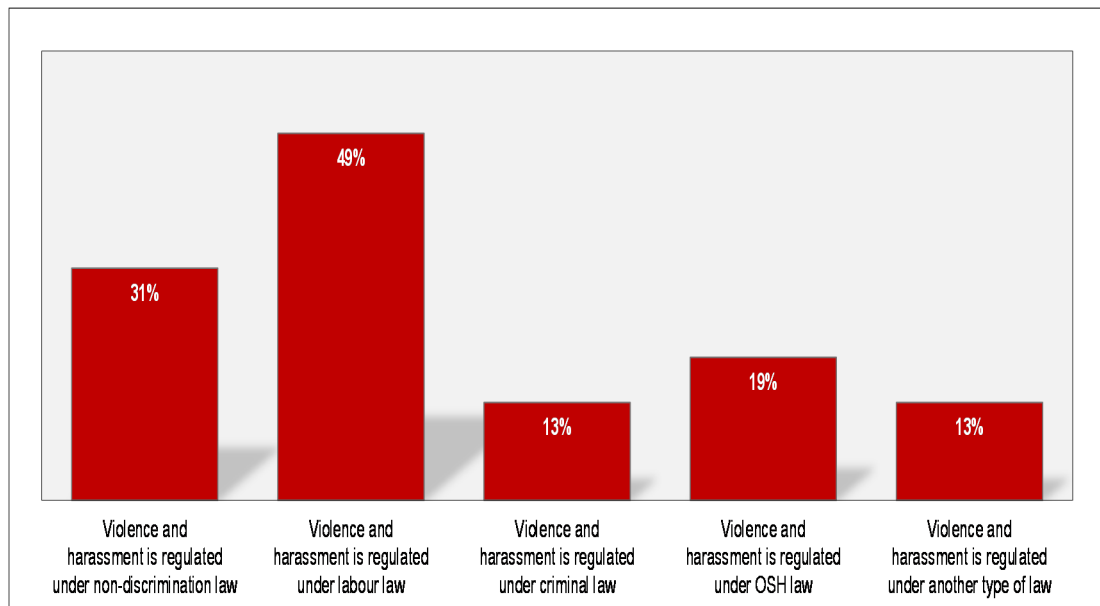


Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

209. The various forms of physical and psychological violence and harassment are most often addressed in labour law (in 40 countries (49 per cent)), and non-discrimination law (in 25 countries (31 per cent)). They are also often addressed in OSH law (in 15 countries (19 per cent)), and occasionally under criminal law (in ten countries (13 per cent)) or another type of law (in ten countries (13 per cent)) (see figure 4.7).¹³

¹³ Note that work-related violence and harassment can be regulated in various forms of legislation.

Figure 4.7. Under what type of legislation is violence and harassment regulated
(total sample)



Note: “Violence and harassment” refers to all of the forms of work-related violence and harassment regulated in the sampled countries, except sexual violence and harassment (see figure 1.5). It includes bullying, mobbing, abuse and mistreatment, among others.

Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

4.2.1. Protecting against physical violence and harassment

210. Four countries in the 80-country study were found to regulate only physical violence in the world of work.

211. The Labour Standards Act, No. 5309 of 1997, of the Republic of Korea prohibits employers from only the physical abuse of workers. In Lebanon,¹⁴ the United Arab Emirates¹⁵ and Indonesia,¹⁶ the only “protection” against violence and harassment is to permit an employee who has been assaulted at work to terminate his or her employment relationship without notice and paid dismissal indemnities. The CEACR considers, however, that legislation under which the sole redress available to victims is termination of the employment relationship, while retaining the right to compensation, does not afford sufficient protection since it, in fact, punishes them and could dissuade victims from seeking redress (ILO, 2012a, paragraph 792)¹⁷ (see section 6.4.2 on remedies).

212. In some countries, particular sectors or occupations, such as first responders, are protected through increased sanctions for assault or interference in their work. The Emergency Workers (Scotland) Act 2005 (EWA) makes it a specific offence to assault, obstruct or hinder someone providing an emergency service – or someone assisting an

¹⁴ Labour Code of 23 September 1943, as amended, of Lebanon.

¹⁵ Labour Law, Federal Law No. 8 of 1980 and its amendments, of the United Arab Emirates.

¹⁶ Act of the Republic of Indonesia No. 13 of 2003 concerning manpower.

¹⁷ See Gambia – CEACR, direct request, 2012; Honduras – CEACR, direct request, 2012; and Mexico – CEACR, observation, 2009.

emergency worker in an emergency situation (ACAS et al., n.d.).¹⁸ In the United States, all 50 States have laws that protect health-care workers against assault and other forms of violence and harassment.¹⁹ In many sectors, however, regulations focus on prevention (see section 5.4).

213. Another 40 countries regulate work-related physical violence and harassment alongside psychological violence under terms such as “mobbing”, “bullying”, “violence” or “harassment”, where the nature of the conduct is left open (using descriptions such as “conduct” or “behaviour”) and is wide enough to include both physical and psychological actions. These regulations are not necessarily intended, despite being broad enough, to protect against physical assault (which is generally covered under criminal law) but are instead more likely to protect against physical and psychological violent and harassing conduct which results in psychological harm. As the effect of mobbing, bullying and harassment is generally psychological harm (and physical harm that may result from psychological distress), this report considers those forms of violence and harassment to be “psychological”.

214. In most countries, even where not regulated under labour law, acts of physical violence in the workplace causing physical harm can be dealt with under general criminal provisions, such as assault or battery.

4.2.2. Protecting against psychological violence: Harassment, bullying and mobbing

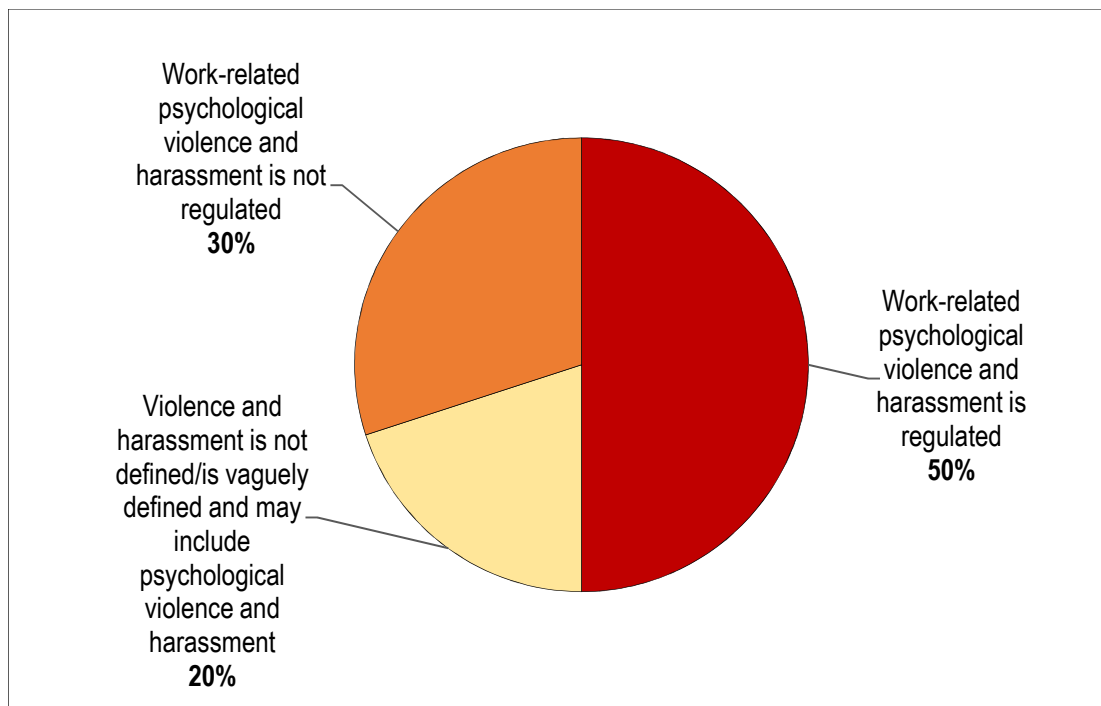
215. In 40 of the 80 countries studied (50 per cent), workplace psychological violence and harassment is regulated under terms such as “mobbing”, “bullying”, “violence” or “harassment” (see figure 4.8).

216. Psychological violence and harassment in the world of work is regulated most commonly in Europe and Central Asia (21 countries (84 per cent)), followed by the Americas (nine countries (64 per cent)), Africa (seven countries (58 per cent)), and Asia and the Pacific (two countries (18 per cent)). None of the countries in the Arab States included in the sample regulates psychological violence (see figure 4.9).

¹⁸ See also the Health Services Act 1997 (NSW, Australia); Illinois (United States) Bill No. 3184; Tamil Nadu (India) Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage or Loss to Property) Act, No. 48 of 2008.

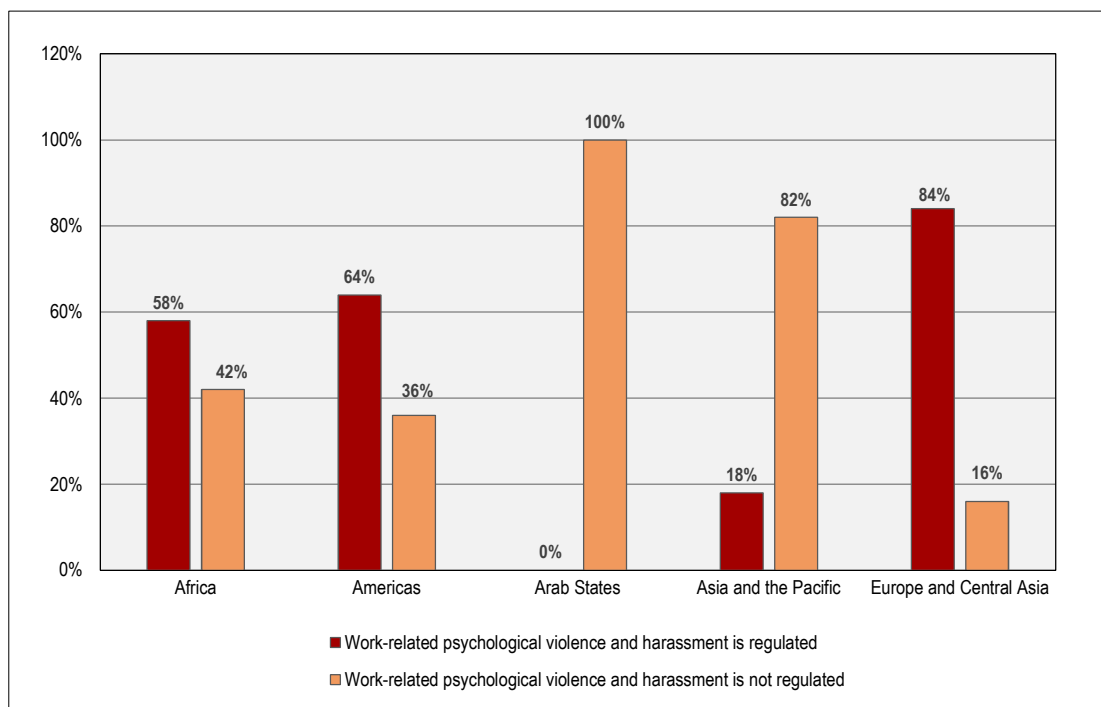
¹⁹ According to the Emergency Nurses Association: <https://www.ena.org/government/State/Documents/StateLawsWorkplaceViolenceSheet.pdf>.

Figure 4.8. Regulations on psychological violence and harassment



Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

Figure 4.9. Regulations on workplace violence, by geographic region (within group percentage)



Note: The sample for this figure consists of 64 countries: 12 countries from Africa; 14 from the Americas; two from the Arab States; 11 from Asia and the Pacific; and 25 from Europe and Central Asia.

Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

217. Provisions addressing violence and harassment vary depending on which type of legislation they fall under. Labour laws often make provision for: prohibitions; protections from reprisals for complainants and witnesses; complaints mechanisms; and sanctions for perpetrators. The French Labour Code prohibits harassment, forbids retaliation against those who have testified or reported it, provides for the shift of the burden of proof to the respondent in proceedings dealing with harassment, and indicates possible sanctions (disciplinary and criminal).

218. OSH law generally focuses on prevention and complaints mechanisms, and sanctions for non-compliance with prevention duties (see Chapter 6). There is often an overlap, however, between labour and OSH laws, as some labour laws provide for violence and harassment prevention duties for employers.²⁰

219. Anti-discrimination laws often provide a right to be free from violence and harassment (based on protected grounds under the law) or a prohibition against such action, as well as criminal sanctions and civil remedies for such acts.²¹

220. To ensure that violence and harassment against all workers in differing situations is addressed, a number of countries prohibit violence and harassment under multiple laws. In Rwanda,²² workplace violence and harassment is prohibited in both labour law and criminal law. In Canada,²³ workplace violence and harassment is prohibited in labour and anti-discrimination law. In Malta, workplace violence and harassment is prohibited in labour, criminal and anti-discrimination law.²⁴

221. Violence can also be regulated through tort and civil law (such as the US tort of intentional infliction of emotional distress, or the UK tort of harassment). The tort of negligence, as well as the breach of the duty of care of employers towards employees can also constitute a valid basis for claims in common law courts (Squelch and Guthrie, 2010).²⁵ In Japan, courts have recognized the existence of the tort of power harassment, which is meant to protect employees from those with greater power within an organization and which is based on the obligation of compensating harm done to others (Hsiao, 2015, pages 82 and 84).

222. Contract law may also allow for claims related to workplace violence and harassment, with violence considered a breach of the employer's contractual obligations. Italian jurisprudence considers the occurrence of mobbing to be a breach of the employer's contractual obligation, under article 2087 of the Civil Code, to adopt measures to safeguard the physical and moral integrity of employees.²⁶

4.2.3. Measures for specific groups

223. Certain groups of workers may be more likely to be targeted for violence and harassment than others (see section 2.4). These groups are often targeted because of real or perceived differences. The perpetrator perceives them as being "outsiders" or "others",

²⁰ For example: the Polish Labour Code of 1974, as amended; and the Canada Labour Code (RSC, 1985, c. L-2).

²¹ The Anti-Discrimination Act No. 189/2009, of the Czech Republic.

²² Law Regulating Labour Law No. 13/2009 and Penal Code of 2012, of Rwanda.

²³ Canadian Human Rights Act (RSC, 1985, c. H-6) and Canada Labour Code (RSC, 1985, c. L-2).

²⁴ Employment and Industrial Relations Act, No. XXII of 2002 (as amended in 2004); Criminal Code, Chapter 9 of the Laws of Malta; and Equal Treatment in Employment Regulations, Subsidiary Legislation 452.95, Legal Notice 461 of 2004 (as amended in 2007), of Malta.

²⁵ *Connes v. Molalla Transport System, Inc.*, 831 P.2d 1316 (1992).

²⁶ For example, the Italian Supreme Court of Cassation, Labour Section, Judgment No. 4774 of 6 March 2006.

the definition of which can change from culture to culture. Such conduct is a form of discrimination and is regulated by countries around the world.

224. At least 24 of the 80 countries studied in this report address work-related violence and harassment based on specific grounds as a form of discrimination. Many more countries have general anti-discrimination laws, which, while not explicitly referring to violence and harassment, may be interpreted as including such conduct under the general prohibition on discrimination in the workplace. This is the case for sexual harassment, which is often understood to be a form of sex discrimination under general discrimination provisions (see section 4.1 on gender-based violence).

225. Sometimes discriminatory harassment provisions exist in tandem with other workplace violence protections to ensure that all workers are protected in practice from such conduct. The labour laws of Bosnia and Herzegovina prohibit sexual harassment, harassment based on protected grounds, gender-based violence and mobbing.²⁷

226. The following section looks at protections for certain groups that often have a greater exposure to violence and harassment.

4.2.3.1. *Persons with disabilities*

227. Persons with disabilities report relatively higher levels of violence and harassment in the workplace than persons without disabilities, even though they are less represented in the labour market. Data from the United Kingdom indicate that persons with disabilities and persons with long-term illnesses are “over twice as likely as other employees to report experiencing discrimination, bullying or harassment in the workplace” (Equality and Human Rights Commission, 2011, page 86). Moreover, persons with disabilities face systematic physical, psychological and sexual violence in hospitals or psychiatric institutions, where perpetrators can often be those working there (Human Rights Watch, 2016; Disability Rights International – Guatemala, 2015; OHCHR, 2013; WHO and the World Bank Group, 2011).

228. Australia and the United Republic of Tanzania have adopted specific statutes protecting persons with disabilities from harassment and discrimination in employment.²⁸ Other jurisdictions provide that disability-based harassment, similarly to sexual harassment, can take the form of a hostile working environment, for example, in the United States,²⁹ Honduras³⁰ and Europe.³¹

4.2.3.2. *Migrant workers*

229. Migrant workers, particularly those in an irregular situation, are vulnerable to violence and harassment in the world of work (United Nations Office on Drugs and Crime, 2015; Husn et al., 2015). Violence can occur at all stages of the migration cycle, with studies showing that recruiters, agents and employers can be sources of, and contributors to, violence (Husn et al., 2015). Bilateral agreements on migrant workers sometimes contain provisions affirming that migrant workers should be treated in accordance with

²⁷ Labour Law of the Federation of Bosnia and Herzegovina, Federation of Bosnia and Herzegovina *Official Gazette* No. 26/16, and Labour Law of the Republika Srpska, Republika Srpska *Official Gazette* No. 1/16.

²⁸ Australian Disability Discrimination Act of 1992; Tanzanian Persons with Disabilities Act of 2010.

²⁹ Americans with Disabilities Act as interpreted in *Flowers v. Southern Regional Physician Services, Inc.*, 247 F.3d 229 (5th Cir. 2001); *Fox v. General Motors Corporation*, 247 F.3d 169 (4th Cir. 2001).

³⁰ Honduras Law on Equity and Comprehensive Development for Persons with Disabilities, Decree No. 160-2005.

³¹ [Council Directive 2000/78/EC](#).

the laws of the host State or expressing their human rights as migrant workers³² (Wickramasekara, 2015, pages 40–41).

230. Particularly at risk of violence and harassment are migrant workers entering the Arab States under the *kafala* (sponsorship) system (ITUC, 2014; Wickramasekara, 2015). The CEACR has expressed concern on a number of occasions regarding the lack of effective protection of migrant workers and migrant domestic workers from abuse.³³ The CEACR recalled the importance of taking effective action to ensure that systems governing the employment of migrant workers, especially migrant domestic workers, do not place the workers concerned in a situation of increased vulnerability to violence and harassment (ILO, 2016f, paragraphs 468–469). The CEACR has also been mindful of the fact that migrant workers in an irregular situation may be employed in hazardous conditions and subject to harassment, including sexual harassment (ILO, 2016f, paragraph 280).

4.2.3.3. *Indigenous and tribal peoples*

231. Indigenous and tribal peoples' homes, natural surroundings and traditional areas are often sources of livelihoods and an essential source of identity, culture and tradition. Land alienation and restrictions on accessing natural resources could be considered acts of violence that threaten their traditional occupations and livelihoods (Dhir, 2015, page 152). Therefore, legislation that protects indigenous peoples' land rights – and that ensures consultation and participation – is an important tool for preventing violence and harassment.³⁴ The 2001 Land Law in Cambodia, for example, embraces the concept of communal land rights, allowing the granting of collective land titles to indigenous communities by the State while recognizing traditional land management systems (Dhir, 2015, page 34).

232. In at least ten of the 80 countries studied, specific protections exist for land ownership or access to land for indigenous peoples. On a number of occasions, the CEACR has addressed the use of violence and harassment against indigenous peoples' communities,³⁵ including in the removal of indigenous communities from the land they traditionally occupy.³⁶

4.2.3.4. *Members of certain castes*

233. It is recognized that indigenous peoples and those discriminated against on the grounds of their social origin (“caste” or “class”) face increased violence and harassment for various historical, social and economic reasons. Caste discrimination affects an estimated 250 million people worldwide, with the highest numbers of affected communities in South Asia, but also in Africa, the Middle East, and the Asia and the Pacific region, as well as in the diaspora communities.³⁷ Caste discrimination leads to exclusion and dehumanization of caste-affected communities. Those at the bottom of the

³² For instance, one such provision is contained in the Agreement for bilateral cooperation on labour migration between Italy and Sri Lanka of 2011 (Article 5).

³³ For Convention No. 111: Qatar – observation, 2014; Saudi Arabia – observation, 2014; Bahrain – observation, 2009.

³⁴ Convention No. 169 provides guidance on measures that should be undertaken to safeguard such rights.

³⁵ For example: Central African Republic – Convention No. 169, observation, 2016; Guatemala – Convention No. 169, observation, 2015; Colombia – Convention No. 169, observation, 2014.

³⁶ For example: Argentina – Convention No. 169, observation, 2012; Brazil – Convention No. 169, observation, 2012.

³⁷ *Report of the Special Rapporteur on minority issues*, A/HRC/31/56, 28 Jan. 2016, p. 7, para. 31; International Dalit Solidarity Network (IDSN): *IDSN Annual Report 2015*, p. 17.

caste system (known as “untouchables” or Dalits in South Asia) are subjected to so-called “untouchability practices”, one of the most extreme forms of violence and harassment against a particular group of workers because of their social origin. According to the Report of the UN Special Rapporteur on Violence against Women, its Causes and Consequences “violence and the threat of violence against them frequently go unreported, allowing a culture of invisibility, silence and impunity” (OHCHR Press Release, 21 March 2016).

234. In response, the Indian Parliament has taken a number of legislative measures to improve the situation of the scheduled castes and tribes,³⁸ including the 1989 Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and 1995 Rules. The Act establishes criminal liability for a number of specifically defined atrocities, and special courts and other mechanisms have been set up to oversee the effective implementation of the law.

4.2.3.5. *People living with HIV*

235. Violence and harassment against people living with HIV is widespread in employment, education and healthcare and ranges from beatings to sexual assault and murder. In Cambodia, it has been observed that poor working conditions and sexual harassment in the formal economy may push young women workers to pursue sex work, which can increase their vulnerability to HIV (ILO, 2011a). Data from Argentina suggest that barriers to obtaining formal work may force people living with HIV, especially trans women, to sell sex as a survival strategy (ILO, 2014c). A number of countries have adopted legislation prohibiting harassment on the basis of HIV status.³⁹

4.3. Collective agreements which protect against violence and harassment in the world of work and support victims of domestic violence

236. Sectoral or company-level collective agreements approach the issue of violence and harassment in a variety of ways, including by defining and prohibiting multiple forms.⁴⁰ The National Collective Agreement for Croatian Seafarers on Board Ships in the International Shipping Trade (2015–17) entitles all seafarers to work and live in an environment free of harassment and bullying, whether motivated sexually, racially or otherwise, and requires on-board complaint procedures to be made available and known to all seafarers.

237. At the national level, a number of collective agreements contain clauses aimed at protecting against sexual harassment. These clauses usually reference legislative provisions that define sexual harassment⁴¹ and state that it is prohibited or

³⁸ An official designation recognized under the Constitution referring to indigenous peoples in India.

³⁹ For example: the Employment Rights Act No. 33 of 2008, of Mauritius; and the Employment Equity Act of 1998, of South Africa.

⁴⁰ For example, the Memorandum of Understanding between the Commonwealth of Massachusetts Department of Transportation and the National Association of Government Employees Local R1 292 Unit A for a Successor Agreement (United States, 2014).

⁴¹ For example, the Kaiarahi i te Reo, Therapists’, ATSSD and Special Education Assistants’ Collective Agreement, 6 June 2014–5 Dec. 2016 (New Zealand).

unacceptable.⁴² A number of collective agreements require the involvement of workers in combating sexual harassment.⁴³

238. Within Europe, some collective agreements have reproduced at the national level the Framework Agreement on Harassment and Violence at Work of the European Social Partners, which requires binding sector-based implementation (European Commission, 2015, pages 78–79).

239. Legislation in some countries requires that collective agreements include clauses addressing workplace violence and harassment. In Quebec (Canada), under the Act Respecting Labour Standards, collective agreements must include a clause stating the right of every employee to be free from psychological harassment.⁴⁴ Under the Labour Code of Zimbabwe, a “collective bargaining agreement may provide for measures to combat and handle cases of workplace violence”.⁴⁵

240. Global unions have entered into framework agreements addressing workplace violence and harassment with various multinational companies. In the garment industry, IndustriALL Global Union and Inditex, the world’s largest fashion retailer, renewed their global framework agreement in 2014.⁴⁶ Annex I, section 5, entitled “No harsh or inhumane treatment” prohibits physical punishment, sexual or racial harassment, verbal or power abuse or any other form of harassment or intimidation.⁴⁷

241. Sectoral collective agreements in a number of countries provide paid leave and other entitlements to victims of domestic violence. Examples include Australia (where over 1 million employees are covered by more than 1,000 agreements containing clauses on domestic violence (McFerran 2016)), the United Kingdom (UNISON, 2014, page 16), Yukon (Canada)⁴⁸ and Brazil.⁴⁹ In Brazil, under the collective agreement signed by the postal company Correios, women employees who are victims of domestic violence have priority for being transferred to another unit, city or state.⁵⁰

242. In 2009, the French Ministry of Labour and PSA Peugeot Citroën signed a protocol on preventing and combating intimate partner violence, aimed at encouraging a public–private partnership on the matter. With the protocol, the Peugeot Citroën group agreed: to provide employees with information on national campaigns on domestic violence;

⁴² For example, in Spain, the collective agreement signed between Vodafone and UGT/CCOO in 2013 provides that the company will draft an equality plan which will include a harassment policy and a prohibition on sending emails with erotic or obscene content that may entail sexual or moral harassment – VI Convenio Colectivo de Vodafone España, SAU. See also Memorandum of Agreement between Alltex (EPZ) Limited and Tailor and Textile Worker Union, 27.07.2012 to 30.10.2014 (Kenya).

⁴³ Action Protocol on cases of harassment at work, sexual harassment and harassment on grounds of sex of the Telefónica Móviles España (2012).

⁴⁴ See also the Labour Code of Gabon and the Labour Act of Zimbabwe.

⁴⁵ Labour Act [Chapter 28:01] of 1984.

⁴⁶ <http://www.industriall-union.org/inditex>.

⁴⁷ IndustriALL concluded a similar global framework agreement with the garment retailer H&M and the Swedish trade union IF Metall in 2015: <http://www.industriall-union.org/industriall-global-union-and-hm-sign-global-framework-agreement>.

⁴⁸ Collective agreement between the Government of Yukon and the Yukon Teachers’ Association, effective 01.07.2012 to 30.6.2015, Art. 19.03.

⁴⁹ For example, the Brazilian Metallurgists’ collective agreements, both of the ABC/SP region (01.09.2013 to 31.08.2015) and of the city of Sao Paulo (01.11.2014 to 31.10.2015). See also the Brazilian Eletrobras collective agreement (01.05.2013 to 30.04.2015).

⁵⁰ Correios collective agreement (01.08.2015 to 31.07.2016).

sensitize and train the company's human resources, social and medical services professionals to deal with situations of domestic violence; and to welcome, listen to and guide victims of domestic violence.⁵¹

⁵¹ <http://media.groupe-psa.com/fr/psa-peugeot-citroën/communiqués-de-presse/social/protocole-de-prévention-et-de-lutte-contre-les>.

Chapter 5

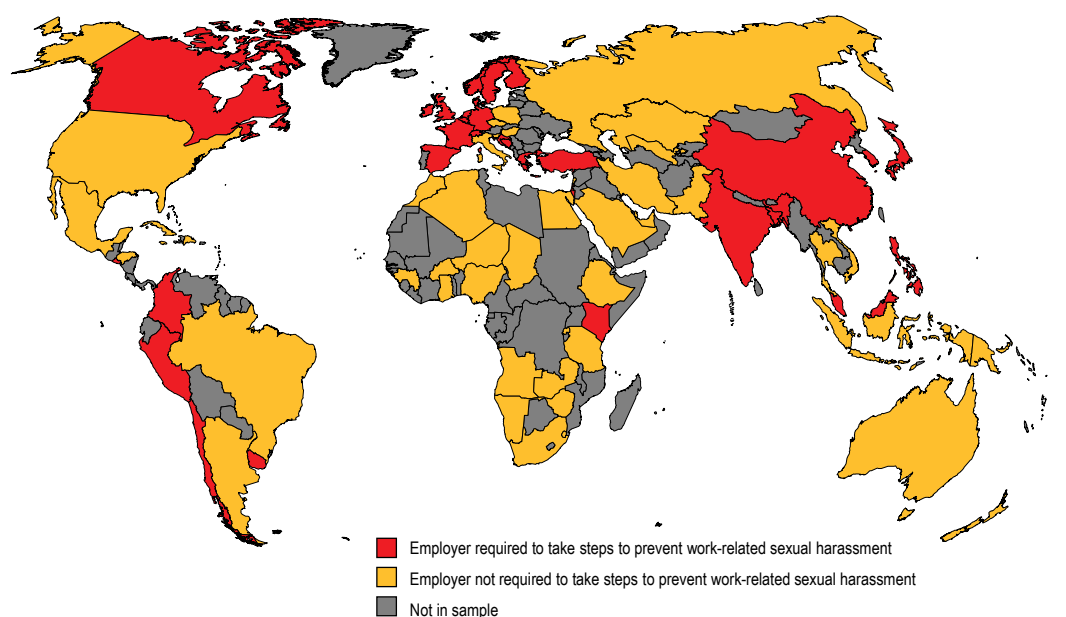
National regulatory framework preventing violence and harassment in the world of work

243. This chapter focuses on the regulatory measures that countries have introduced to prevent workplace violence and harassment. Many of the 80 countries included in the survey undertaken for this report require the employer to take preventive steps for one or more forms of violence and harassment. This requirement may stand on its own, or be introduced as part of a systematic OSH-MS.

5.1. Preventing sexual harassment

244. Of the 80 countries studied for this report, 32 (40 per cent) put responsibility on the employer to take steps to prevent or protect workers against sexual harassment (see figures 5.1 and 5.2).

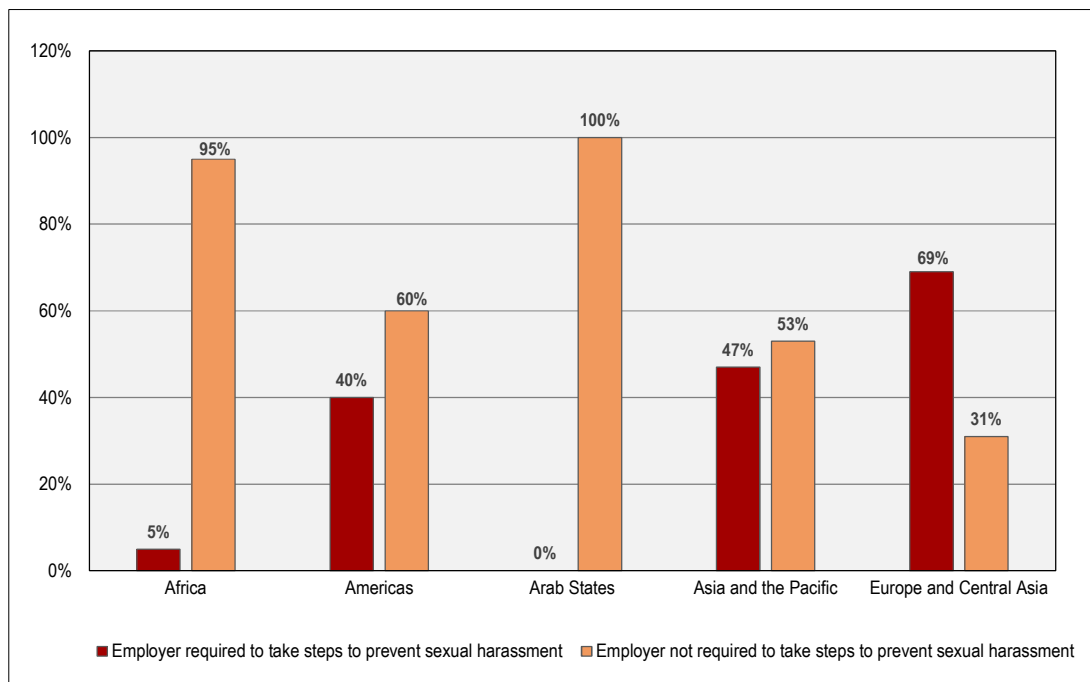
Figure 5.1. Where are employers required to take steps to prevent work-related sexual harassment



Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

245. Of the 80 countries studied, employers have a duty to take steps to prevent sexual harassment in 18 countries in Europe and Central Asia (69 per cent), seven countries in Asia and the Pacific (47 per cent), six countries in the Americas (40 per cent), and in one country in Africa (5 per cent), and none of the countries in the Arab States (see figure 5.2).

Figure 5.2. Preventing work-related sexual harassment by region
(within group percentage)



Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

246. The required steps vary, but can include the adoption of a sexual harassment policy (13 of the 80 countries studied). The policy is often required to be posted prominently in the workplace, spelling out the rights and obligations of workers and management, and outlining the complaints mechanism.¹ An example of this is the Zero Tolerance for Sexual Harassment Code of Conduct, which has to be adopted by every employer in Pakistan, pursuant to the Protection against Harassment of Women at the Workplace Act of 2010.

247. Mandatory training on sexual harassment at the workplace level is also a common feature of many workplaces and is required in ten of the 80 countries studied.²

5.2. Preventing physical violence and harassment

248. Several countries have laws that protect against the occurrence of physical violence by regulating risk factors. These are generally sector-specific or OSH regulations, such as

¹ Employment Act No. 11 of 2007, of Kenya. See also Canada Labour Code (RSC, 1985, c. L-2); Israeli Prevention of Sexual Harassment Law, 5758-1998; Chilean Labour Code of 2012.

² For example, the Equal Employment Opportunity and Work-Family Balance Assistance Act, No. 8781 of 2007 (as amended), and its Enforcement Decree, of the Republic of Korea.

for night work (Indonesia,³ Finland,⁴ Ireland⁵ and Croatia⁶) and working in isolated areas (Denmark,⁷ Finland,⁸ Norway⁹ and Sweden¹⁰). In British Columbia (Canada), employers are required under Work Safe Regulation 4.22.1 to develop a procedure to ensure the safety of workers handling money if working in isolation at late-night retail premises. For sector-specific regulations see section 5.4.

5.3. Preventing psychological violence: Harassment, bullying and mobbing

249. The majority (65) of the 80 countries analysed in this report have legislation that imposes a general duty of care on employers to take steps to protect the health and safety of workers in the workplace. In 49 of those countries, health and safety includes both physical and psychological health.

250. The duty to take steps to protect the safety and health of workers is sometimes interpreted to include protection against threats to workers' health and safety that result from psychological violence and harassment in the workplace. Certain agencies in charge of the enforcement of OSH statutes, such as the Occupational Safety and Health Administration (OSHA) (United States Department of Labor, 2002) and Safe Work Australia (2016), have issued non-binding guidelines affirming that the duty should, in fact, be interpreted this way. The result of not fulfilling the obligation is that the employer is held liable for the actions of the perpetrator of the violence.

251. The employer's duty of care for employees may also extend to psychological violence and harassment via judicial interpretation. In Argentina, labour courts have found in harassment cases that, in the event of breaches of the obligation to ensure dignified working conditions or safety and hygiene in the workplace, employers may be held responsible for their own acts and/or those of others and, as such, have a duty to repair the harm caused.¹¹

252. Increasingly, jurisdictions are opting to introduce a duty on employers to take steps to prevent, and protect explicitly against, various forms of psychological violence and harassment. This is the case in 22 of the 80 countries (28 per cent) studied for this report (see figure 5.3).

³ Act of the Republic of Indonesia No. 13 of 2003 concerning manpower.

⁴ Occupational Safety and Health Act, No. 738/2002, of Finland.

⁵ Statutory Instrument (S.I.) No. 299/2007 – Safety, Health and Welfare at Work (General Application) Regulations 2007, of Ireland.

⁶ Occupational Health and Safety Act of 2014, of Croatia.

⁷ Executive Order on the Performance of Work, No. 559 of 2004, issued by the Danish Working Environment Authority.

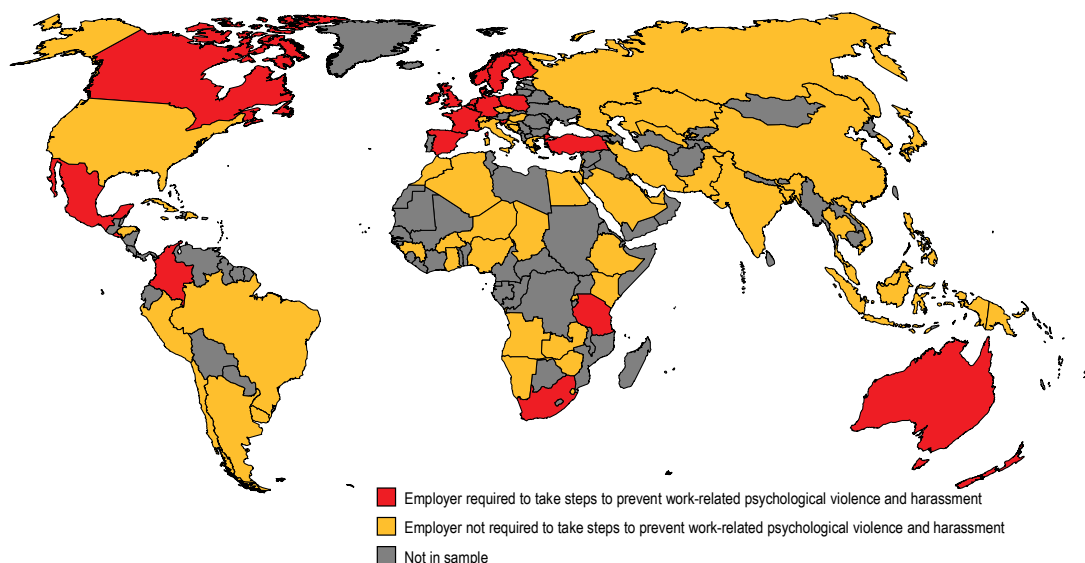
⁸ Occupational Safety and Health Act, No. 738/2002, of Finland.

⁹ Act relating to working environment, working hours and employment protection, etc. (Working Environment Act), No. 62 of 2005, of Norway.

¹⁰ Work Environment Act, SFS 1977:1160, of Sweden.

¹¹ For example, the National Employment Appeals Chamber, Sala II Expte N° 31.939/09 Sent. Def. N° 100.146 del 16/02/2012 “R. F., P c/Citytech SA s/mobbing” (González – Maza).

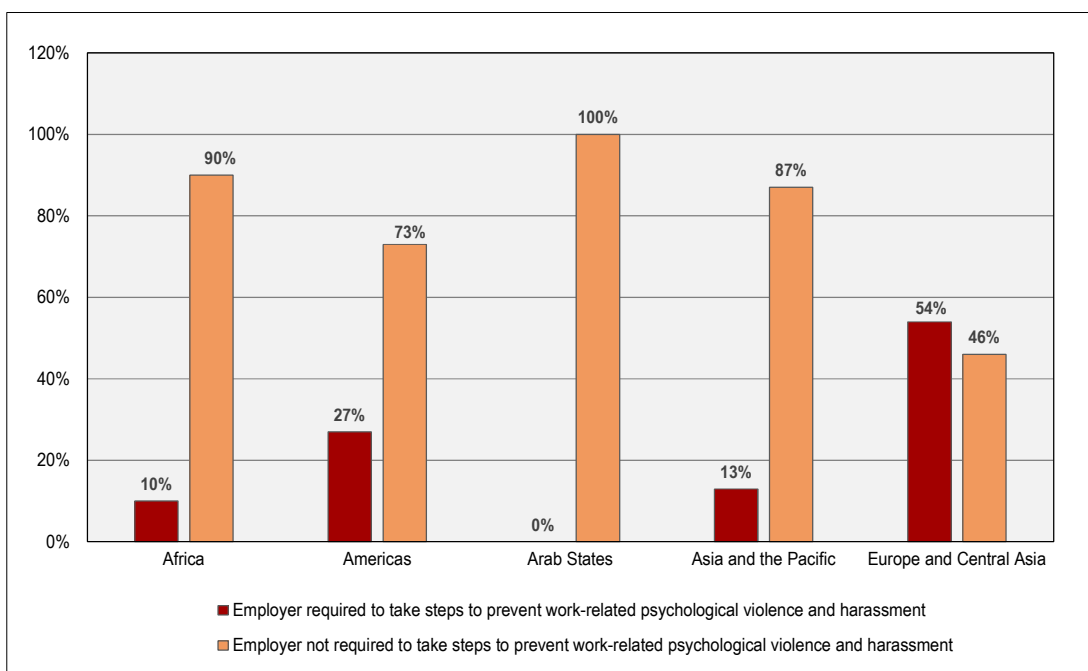
Figure 5.3. Where are employers required to take steps to prevent work-related psychological violence and harassment



Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

253. Of the 80 countries studied, there is a duty on employers to take steps to prevent various forms of psychological violence and harassment in 14 countries in Europe and Central Asia (54 per cent), four countries in the Americas (27 per cent), two countries in Asia and the Pacific (13 per cent), two countries in Africa (10 per cent) and none of the countries in the Arab States (see figure 5.4).

Figure 5.4. Employer required to take steps to prevent work-related psychological violence and harassment, by region (as within group percentage)



Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

254. Some countries indicate precisely which preventive measures must be adopted. In ten of the 80 countries studied, employers must adopt a policy on one or more forms of violence and harassment.¹² Similarly, sometimes there exists a duty on employers to adopt internal rules, guidelines or codes of practice on workplace violence.¹³

255. A number of jurisdictions require employers to undertake a risk-assessment procedure in order to identify specific risks to workers' health and safety, and/or warn them if there are risks of violence. This is the case in 15 of the 80 countries studied. In 12 of the 80 countries, legislation requires training on workplace violence to be provided to either managers, workers or both.¹⁴

256. Sometimes the steps required by legislation to prevent violence and harassment are provided for on their own and sometimes they are a part of an OSH-MS, which allows for a systematic approach to preventing occupational injury and harm. Under the OSH legislation of Colombia, the employer has a duty to: adopt a clear prevention policy that identifies unacceptable behaviours in the company; conduct awareness-raising activities on harassment; and provide training on conflict resolution. The employer must also assess occupational psychosocial hazards, conduct regular monitoring and surveillance, and establish a confidential complaints procedure for workplace harassment.

257. Many countries require, or permit, the participation of workers and their representatives in the development of preventive measures to protect the health and safety of employees against workplace violence.¹⁵

5.4. Regulating working conditions in specific sectors and economies

258. No industries, sectors or occupations are inherently violent, and any job can expose a worker to violence and harassment where risks are present. Sexual violence and harassment has been found to be prevalent in low-paid factory work and supply chains (Truskinovsky et al., 2014; Fair Wear Foundation et al., 2013; Larson, 2013), but also in traditionally high-income, male-dominated occupations such as science, technology, engineering and mathematics (Holland and Cortina, 2016; Grinberg, 2015).

259. Despite the existence of violence and harassment in all sectors, risk factors, especially where they converge, as is the case in certain industries and occupations, can result in violence and harassment, unless risks are assessed and mitigated. Even where prevention strategies are in place, larger societal violence and harassment can spill into the workplace, harming workers.

260. A number of countries have special regulations for sectors or occupations that have a higher exposure to risk factors for violence and harassment. Under the 2012 Labour Law of the State of New York (United States), employers are obliged to carry out a specific risk assessment, taking into account the possibility of assault against employees because they work as teachers, public transport drivers, health-care workers, night workers or

¹² This figure does not include mandatory policies on sexual harassment, which employers in 13 countries are required to adopt (see section on protecting against sexual violence and harassment).

¹³ For example, under the Chilean Labour Code.

¹⁴ For example, the French Labour Code; El Salvadorian Decree No. 86/2012 approving the regulation concerning the management of risk prevention in the workplace.

¹⁵ For example: the Australian model Work Health and Safety Act; and El Salvadorian Decree No. 86/2012.

workers who handle money. In Ireland, the employer must carry out a risk assessment that takes into account the specific effects and hazards of night work.¹⁶

261. Other sectors and occupations which are heavily exposed to workplace violence, such as the garment industry,¹⁷ benefit, in principle, from general workplace violence laws; however, in practice, enforcement and access to complaints mechanisms can be impossible, particularly in countries where unions are suppressed and labour inspectors lack the resources or mandate to enforce violence policies and requirements.

5.4.1. Health-care sector

262. Compared to other industries and sectors, health-sector workers report some of the highest levels of violence (see table 5.1). In the United States, rates of violence from clients against health-care workers were estimated to be 16 times higher than any other service profession (Campbell, 2014). In Rwanda, a 2007 study found that 39 per cent of health workers had experienced some form of workplace violence in the previous year (Newman et al., 2011). In the EU, the health sector ranked highest among all sectors with regard to exposure to violence and harassment (EU–OSHA, 2014).

Table 5.1. Violence experienced by health-care personnel in seven countries
(percentage of sample in previous 12 months)

Country	Physical attack	Verbal abuse	Bullying/mobbing
Australia	12.0	67.0	10.5
Brazil	6.4	39.5	15.2
Bulgaria	7.5	32.2	30.9
Lebanon	5.8	40.9	22.1
South Africa (private sector)	9.0	52.0	20.6
South Africa	17.0	60.1	–
Thailand	10.5	47.7	10.7

Note: – = data not available.

Source: Chappell and Di Martino, 2006 (data from 2002).

263. Specific regulation for the health sector concerning violence and harassment exists in a number of countries. In Israel, United States (New Jersey),¹⁸ India (Tamil Nadu),¹⁹ and Turkey (Kaplan et al., 2013, pages 8–9), specific laws have been adopted addressing violence against health-care workers. These laws require the employer to take preventive measures regarding violence and harassment in the health-care sector, including by

¹⁶ S.I. No. 299/2007 – Safety, Health and Welfare at Work (General Application) Regulations 2007, of Ireland.

¹⁷ A recent impact assessment of the ILO–IFC Better Work Programme illustrates the extent of sexual harassment against workers in garment factories. In Haiti, Indonesia, Jordan and Nicaragua, over 20 per cent of garment workers interviewed expressed a concern about sexual harassment, although the actual percentage of workers affected may be higher (Brown et al., 2016; see also Garcia-Rivera et al., 2014).

¹⁸ New Jersey Violence Prevention in Health Care Facilities Act.

¹⁹ Tamil Nadu Medicare Service Persons and Medicare Service Institutions (Prevention of Violence and Damage or Loss to Property) Act, No. 48 of 2008, India.

establishing a violence prevention committee²⁰ and providing the power to remove unruly parties from the premises (ACAS et al., n.d.).²¹

5.4.2. Public emergency services

264. In comparison with other occupations, public emergency service workers – police officers, armed forces, medical staff, firefighters and other front-line staff – are at high risk of experiencing violence and harassment, as well as job-related incidents, such as death, serious injuries and life-threatening situations that can cause serious psychological effects, including post-traumatic stress disorder.

265. Some jurisdictions require employers to take steps to mitigate risks for specific dangerous work situations. In the Norwegian case of *Dennis v. Norwegian Refugee Council*,²² a worker was kidnapped and shot in Dadaab refugee camp, Kenya. The court held that the employer, the Norwegian Refugee Council, was negligent for not mitigating the risks of violence before the kidnapping and awarded the complainant monetary damages.

5.4.3. Education sector

266. This sector is particularly exposed to violence and harassment (Kelleher et al., 2011; ILO, n.d.). In Canada, in 2011, 80 per cent of teachers reported encountering violence at least once in their career (Wilson et al., 2011). Studies of primary and secondary teachers in Turkey and the Republic of Korea found that the most prevalent form of workplace violence (students targeting teachers) was psychological (49 per cent in Turkey and 67 per cent in the Republic of Korea) (Moon et al., 2015; Ozdemir, 2012).

267. Many laws regarding violence in educational institutions revolve around students bullying other students, but some are broader.²³ The UK Education Act 1996 (Chapter 56) makes it an offence to cause nuisance or disturbance on school premises and allows a person authorized by a local education authority to remove anyone committing the offence.

5.4.4. Transport services

268. Violence in public transport services is a major concern, such as for bus and taxi drivers who are reportedly more likely to experience violence than other groups within this sector (ITF, n.d.). In maritime transport, bullying and harassment may be exacerbated by workers' inability to leave their workplace at the end of their shift.

269. To combat violence against transport workers, some jurisdictions (particularly local municipalities in charge of local transport) have passed regulations or collective agreements requiring specific protections for workers in the transport sector. Local 100 (a chapter of the Transport Workers Union of America) secured – as part of its contract with MTA/New York City Transit – the installation of preventive Plexiglas barriers throughout the system's entire bus fleet, as well as DNA kits, which help to identify criminals for prosecution.

²⁰ New Jersey Violence Prevention in Health Care Facilities Act.

²¹ See, for instance, the UK Criminal Justice and Immigration Act 2008.

²² Oslo District Court, Case No. 15-032886TVI-OTI R/05.

²³ Law No. 18,561 of 2009 on the prevention and punishment of sexual harassment at work and in student–teacher relations, of Uruguay.

5.4.5. Domestic work

270. Violence in the domestic work sector is ubiquitous, but domestic workers are often excluded from the legal coverage of labour law regimes. Where domestic workers are protected by labour law, they may not benefit from it in practice, as they often work informally (ILO, 2013d, page 43).

271. A number of countries address violence against domestic workers, including Brazil,²⁴ Peru,²⁵ Indonesia,²⁶ Philippines²⁷ and the Netherlands.²⁸ A number of countries also recognize the risk of domestic workers being exposed to domestic violence directly or indirectly, because the domestic sphere is also their workplace. In Indonesia, live-in domestic workers are considered as members of the household for which they work and are, as such, protected against physical, psychological, sexual and economic domestic violence.²⁹ In Brazil, domestic workers can terminate their contract for just cause by fault of the employer, if the employer physically abuses them or commits any form of domestic violence against any other person in the household.³⁰

5.4.6. Agriculture and the rural economy

272. Agricultural workers, particularly migrant workers and women, reportedly face high exposure to discrimination and psychological and sexual harassment.³¹ In a study of 400 women employed in commercial agriculture in Kenya, 90 per cent had experienced or observed sexual abuse at their workplace (International Labor Rights Forum, 2002). The situation is compounded by limited labour law coverage and poor labour inspection services.

273. There is a dearth of laws regulating agriculture and rural farm work. General workplace violence prevention laws do not necessarily protect workers where there is a convergence of risk factors, such as working in isolation and being migrant workers unable to report abuse. In response to a journalistic investigation uncovering widespread sexual abuse in California's agricultural sector, in 2014 California enacted Senate Bill 1087 (amending the Labour Code), to protect farmworkers from sexual abuse, including the provision of training to counter sexual harassment for labour contractors, supervisors and all farm employees. The State can now also revoke the licence of a labour contractor who has harassed an employee or if they hire a supervisor who has engaged in sexual harassment.

²⁴ Brazilian Complementary Law No. 150 of 2015 on domestic workers.

²⁵ Supreme Decree No. 010-2003-MIMDES of 2003 concerning the Regulation of the Prevention and Punishment of Sexual Harassment Act No. 27942, of Peru.

²⁶ Act of the Republic of Indonesia No. 23 of 2004 regarding the Elimination of Violence in the Household.

²⁷ Domestic Workers Act No. 10361 of 2012, of the Philippines.

²⁸ Regulation on Domestic Workers of 2007, of the Netherlands.

²⁹ Act of the Republic of Indonesia No. 23 of 2004 regarding the Elimination of Violence in the Household.

³⁰ Complementary Law No. 150/2015 concerning domestic workers (referencing the Maria da Penha Law), of Brazil.

³¹ See *Safety and health in agriculture* (ILO, 2011c), which has an extensive section on addressing violence in agriculture.

5.4.7. Temporary agency work and other non-standard forms of employment

274. For temporary agency workers, who are employed by an agency but work on the premises of a user firm, confusion may arise regarding OSH responsibilities, including in respect of violence and harassment. For this reason, a number of jurisdictions impose legal obligations on user firms regarding temporary agency workers. For example, Council Directive 91/383/EEC provides for equal treatment of temporary agency workers compared with those hired directly by the user firm, in respect of OSH. Under the Directive, safety, hygiene and health at work are the responsibility of the user firm.³²

275. Research indicates that other non-standard forms of employment can, in some cases, increase the risk of exposure to violence. Studies from Japan suggest that temporary workers are at a higher risk of workplace bullying (Tsuno et al., 2015) and verbal abuse (McCurry, 2015). Research from Canada observed that temporary workers were “most exposed to sexual harassment and physical violence, as compared to those in permanent jobs” (Vézina et al., 2011, page 10). Similarly, in Australia, temporary workers, part-time workers and those with limited, short-term contracts were found to be more vulnerable to unwanted sexual advances (LaMontagne et al., 2009).³³ Despite these findings, the 80-country survey did not uncover any laws or policies addressing violence and harassment specifically towards those in non-standard forms of employment.

5.4.8. Workers in the informal economy

276. The term “informal economy” refers to “all economic activities by workers and economic units that are – in law or in practice – not covered or insufficiently covered by formal arrangements”.³⁴ Specific groups that report greater exposure to violence and harassment (see section 4.2.3) are over-represented in the informal economy and, as such, often cannot access dispute mechanisms or benefit from labour inspection.

277. In Malawi, sexual abuse of women workers and young girls by supervisors and male co-workers is reportedly widespread in tobacco fields. In response, the Tobacco and Allied Workers’ Union of Malawi developed a policy on sexual harassment, ratified by the Malawi Congress of Trade Unions and the Malawi Human Rights Commission in 2015.

278. The Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), recognizes the importance of an integrated policy framework for the transition to formality which should address the promotion of equality and the elimination of all forms of discrimination and violence, including gender-based violence, at the workplace (see section 3.1.2.1). Such integrated strategies should take the approach of combining a broad range of policy areas to achieve the transition to formality, including improving national legal frameworks, strengthening OSH and labour inspection, organizing informal workers and extending the coverage of social protection.³⁵

³² EU Directive 91/383/EEC of 25 June 1991 supplementing the measures to encourage improvements in the safety and health at work of workers with a fixed duration employment relationship or a temporary employment relationship.

³³ See also ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, 2016.

³⁴ ILO: *Resolution and conclusions concerning decent work and the informal economy*, International Labour Conference, 90th Session, Geneva, 2002, para. 3.

³⁵ ILO: *Policy brief on facilitating transition from the informal to the formal economy: Towards integrated strategies*, Employment Policy Department (forthcoming).

5.5. Addressing psychosocial hazards and risks

279. According to EU–OSHA, psychosocial risks arise from poor work design, organization and management, as well as a poor social context of work. Psychosocial risks include excessive workloads, conflicting demands, and lack of role clarity, lack of involvement in making decisions that affect the worker, and lack of influence over the way the job is done, poorly managed organizational change, job insecurity, ineffective communication, lack of support from management or colleagues, violence and harassment.³⁶ In addition, a number of countries regulate work organization in order to prevent violence and harassment (see box 5.1).

Box 5.1

A human-centred approach to work management

Some jurisdictions approach violence prevention through the management of social and psychosocial factors within the organization of work. Many European countries take such an approach largely due to the national implementation of Council Directive 89/391/EEC.¹ Among the general principles of prevention to be followed by the employer, the Directive lists “developing a coherent overall prevention policy which covers technology, organization of work, working conditions, social relationships and the influence of factors related to the working environment”, and “adapting the work to the individual, especially as regards the design of work places, the choice of work equipment and the choice of working and production methods”. This concept is defined in Slovenian legislation as the “humanization of work”.²

This human-centred approach to the organization of work and the work environment is also prominent in Sweden, where the “systematic work environment management” includes organizational and social factors. This approach requires preventing and handling victimization (term used as a synonym for bullying), specifically by counteracting the conditions of the work environment that could lead to it.³

The impact of workloads on the physical and mental health of workers is recognized in Japan, where the concept of death from overwork encompasses not only cerebrovascular or heart disease causing death, but also suicide due to mental disorders caused by heavy workloads.⁴

¹ European Agency for Safety and Health at Work: [Directive 89/391/EEC](#) of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work – Framework Directive.

² Slovenian Health and Safety at Work Act (ZVZD-1) of 2011.

³ Swedish Work Environment Authority regulations and general recommendations on organizational and social work environment, AFS 2015:4.

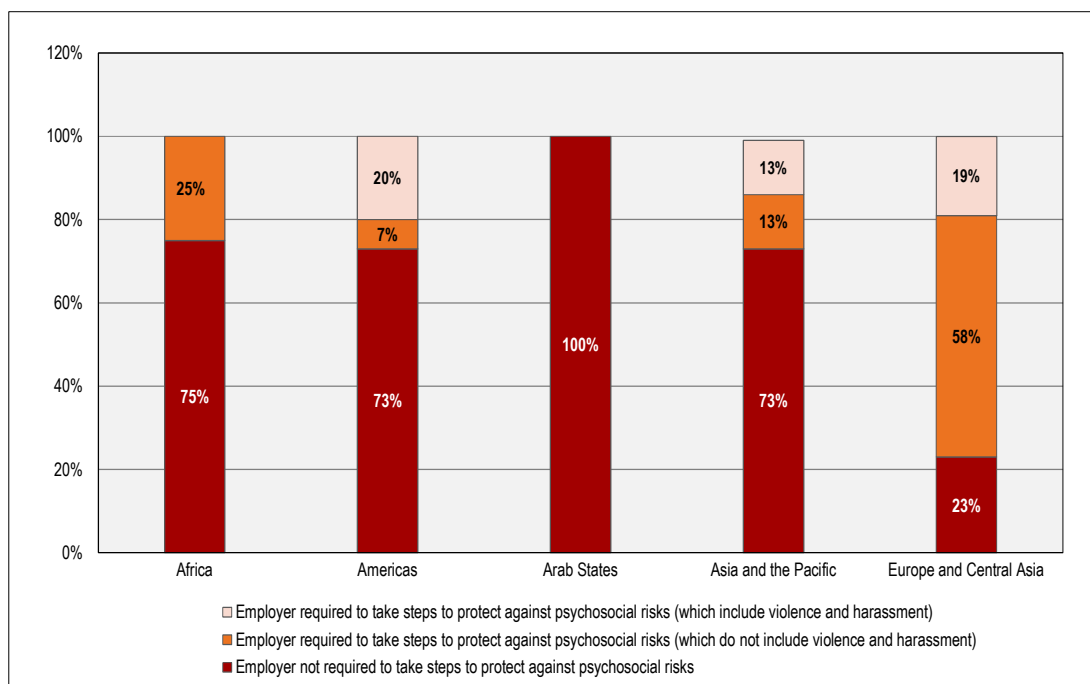
⁴ Promotion of Measures to Prevent Death from Overwork Act No. 100 of 27 June 2014, of Japan.

280. In 33 of the 80 countries (41 per cent) analysed for this report, legislation requires employers to undertake preventive measures regarding work-related psychosocial risks or hazards (see figure 5.5).

281. In ten countries, one or more forms of violence and harassment are explicitly listed as psychosocial risks for stress and burnout (see figure 5.5).

³⁶ <https://osha.europa.eu/en/themes/psychosocial-risks-and-stress>.

Figure 5.5. Employer required to take steps to protect against psychosocial risks, by geographic region (within group percentage)



Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

282. In many regulations, the steps required to mitigate psychosocial risks are explicitly outlined. In 26 of the 80 countries, the employer has an obligation to assess, communicate and eradicate or mitigate work-related psychosocial risks. This assessment is often a part of a more general OSH-MS.

5.5.1. OSH management systems and psychosocial risks

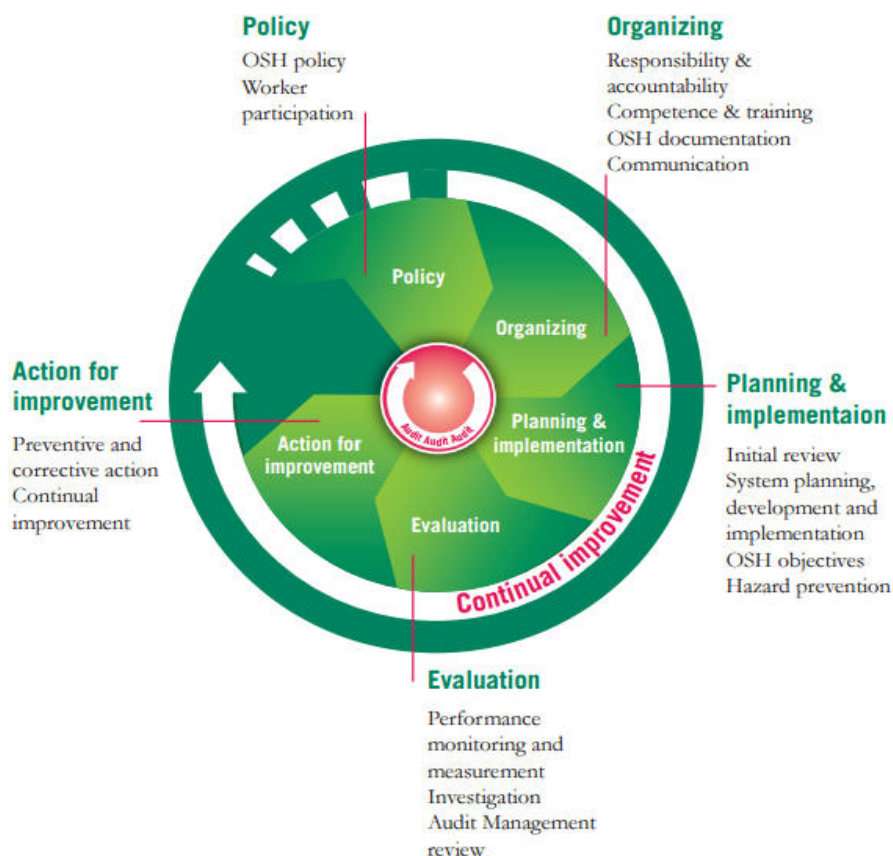
283. OSH-MSs have become common features of the workplace (Jespersen et al., 2015). OSH-MSs detail how the workplace will anticipate, recognize, evaluate and control hazards arising in, or from, the world of work that could impair the physical and mental health and social well-being of workers (ILO, 2011b, page 1), including psychosocial risks that make workplace violence and harassment more likely (Jespersen et al., 2015). OSH-MSs are often required of organizations under domestic OSH laws, and are invariably the “responsibility and duty of the employer”.³⁷

284. Although OSH-MSs vary in complexity, every system will include a set of actions and processes that establish, monitor and evaluate the organization’s efforts to keep workers safe and healthy, and comply with national laws. Even voluntary OSH-MSs, when not required by national legislation, have been embraced by employers for decades (ILO, 2011b). This has led to the establishment of several worldwide standards for OSH-MSs, such as the British Standards Institution OHSAS 18001 and ISO standards.

³⁷ ILO: *Guidelines on occupational safety and health management systems: ILO-OSH 2001* (Geneva), p. 5, available at: http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---safework/documents/normativeinstrument/wcms_107727.pdf.

285. The ILO *Guidelines on occupational safety and health management systems: ILO-OSH 2001* (see figure 5.6) embrace the essential elements common to most systems.³⁸

Figure 5.6. The ILO Guidelines on OSH management systems: The continual improvement cycle



Source: ILO: 2011b, p. 6.

286. Sometimes, however, existing international standards and their accompanying OSH-MS are insufficient to address some forms of violence and harassment, such as bullying and mobbing. This is because some jurisdictions:

focus on objectively measurable and easy-to-see issues, causing a bias toward the safety and physical risks by which “conformity” or “non-conformity” with the requirements can be more easily assessed. Consequently, other aspects, especially psychosocial risks (the antecedents of psychological violence) tend to be neglected (Jespersen et al., 2015).

287. The difficulty with psychosocial risks is that the effects can be different:

... psychosocial hazards effects can sometimes be negative and sometimes positive. For example, autonomy or control over our work is generally believed to be good for our psychological health, but having too much autonomy can indicate a lack of role clarity or little management support – both considered to be potential hazards (Rick and Briner, 2000).

³⁸ *ibid.*

288. In light of this, several OSH institutes have developed OSH–MS to address forms of psychological violence and harassment. The standard for psychological health and safety management systems for Canadian enterprises takes into account various factors of the work environment that may not be considered in a traditional OSH–MS (BNQ–CSA Group, 2013). These factors include: psychological support; organizational culture; clear leadership and expectations; recognition and reward; workload management; work–life balance; and psychological protection from violence and harassment (BNQ–CSA Group, 2013). Safe Work Australia’s (2016) *Guide for preventing and responding to workplace bullying* suggests organizations should review records for: absenteeism; occurrence of organizational change; prevalence of non-standard forms of employment; number of young and new workers, interns and minority groups; disability and gender or sexual preference; and so on, when completing the OSH–MS risk assessment.

289. The ILO’s SOLVE: Integrating health promotion into workplace OSH policies training package (2012) covers the management of health promotion at the workplace on nine topics, including stress and violence (which includes under the definition: sexual harassment, bullying, mobbing, harassment, abuse, threats). SOLVE advocates for a comprehensive OSH–MS, including the assessment and control of psychosocial risks for violence.

5.6. Collective agreements on the prevention of violence and harassment in the world of work

290. In some instances, collective agreements include clauses mandating measures to prevent sexual harassment, such as the development of an internal policy,³⁹ the training of employees and/or supervisors,⁴⁰ and awareness-raising activities.⁴¹ Global framework agreements also contain similar clauses.⁴² A Joint commitment to prevent workplace sexual harassment was signed by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF), IndustriALL and Unilever in 2016.⁴³

291. Collective agreements may also contain clauses mandating preventive measures to address a range of other forms of violence and harassment.⁴⁴ The Collective Agreement for Employees on Mobile Offshore Units and Drilling and Catering on Permanently Placed Facilities on the Norwegian Continental Shelf (2014–16) provides that a 40-hour-long training course on factors such as ergonomics, psychosocial matters, bullying and sexual

³⁹ For example, the Collective Bargaining Agreement between Tanzania Mines, Energy, Construction and Allied Workers Union (TAMICO) and TanzaniteOne Mining Ltd; and the Collective Bargaining Agreement between Signatory Members of Uganda Flower Exporters’ Association and Uganda Horticultural and Allied Workers’ Union (UHAWU) of 2010.

⁴⁰ For example, the Collective Agreement for Employees on Mobile Offshore Units and Drilling and Catering on Permanently Placed Facilities on the Norwegian Continental Shelf, 1 June 2014 to 31 May 2016 (Norway).

⁴¹ For example, in Brazil, Dominican Republic and Paraguay (Pillinger et al., 2016, p. 5).

⁴² For instance, the appendix added in 2013 to the Regional Framework Agreement between Chiquita and IUF–COLSIBA (the Coordinating Body of Latin American Banana and Agro-industrial Unions), containing a joint understanding on sexual harassment. See IUF: “[Bananas: New agreement on zero tolerance of sexual harassment in Chiquita operations](#)”, in *Uniting Food, Farm and Hotel Workers Worldwide*, 16 Aug. 2013.

⁴³ See <http://www.industriall-union.org/joint-commitment-to-prevent-workplace-sexual-harassment-by-industriall-iuf-and-unilever>.

⁴⁴ For example, workplace agreements from Volkswagen and Opel address mobbing, discrimination and sexual harassment, and specify preventive measures and the consequences of prohibited conduct (Graham, 2003, p. 58).

harassment should be provided to employees' representatives on working environment committees, safety delegates and first-line supervisors.

292. In Italy, the collective agreement signed at FIAT in 2015 provides for the establishment of an Equal Opportunity Commission composed of members of the trade unions and representatives of the management. The Commission is in charge of preventing all forms of harassment or discrimination relating to race, sex (including sexual harassment) or other characteristics, which have the purpose or effect of violating a worker's dignity.⁴⁵

293. Collective agreements can also address psychosocial risks. In Europe, this is often a result of the implementation of the Framework Agreement on Work-related Stress of 2004, which has been transposed in many European countries through collective agreements entered into at the national, sectoral and company levels (ETUC–CES et al., 2008, pages 18–23). The Framework Agreement recognizes workplace harassment and violence as work-related stressors.

294. In the Republic of Korea, the prevention of the most acute forms of work-related stress prompted the adoption in 2012 of an agreement between the Korean Metal Workers' Union and Hyundai abolishing the night shift, which caused severe sleep disorders and even *gwarosa*, a Korean term for death from overwork.⁴⁶

⁴⁵ Collective Bargaining Agreement of 7 July 2015 between FCA NV/CNH Industrial NV, and FIM–CISL, UILM–UIL, FISIMIC.

⁴⁶ <http://www.industriall-union.org/hyundai-stops-night-shifts-in-korea>.

Chapter 6

Monitoring and enforcement

6.1. Monitoring violence and harassment

295. Collecting data on violence and harassment is important for developing informed law and policy. The Meeting of Experts recognized the need for greater comparability of data across countries, in order to fully understand the impact of violence and harassment in the world of work (ILO, 2016a, paragraph 4).

296. Comparability of data can be problematic, because different concepts, definitions and methods are used to measure violence and harassment and because statistics are often collected for a specific occupation, industry or group of victims (ILO, 2013f, page 44). Under-reporting is also a problem, due to stigmatization, the lack of reporting and monitoring systems, and the “normalization” of violence and harassment (Milczarek, 2010; van de Griend and Messias, 2014). Having recognized these challenges, however, the experts concluded that “a significant body of evidence indicates that violence and harassment in the world of work persists against workers and others, such as jobseekers and interns” (ILO, 2016a, Appendix I, paragraph 2).

297. Generally, statistics on work-related violence and harassment are collected either through administrative sources, such as police records, compensation records of insurance companies, crime records, court records and hospital records, or household-based or establishment-based surveys. The scope of administrative sources is too limited to represent all forms of violence, and usually it is cases of physical violence that are captured (ILO, 2013f).

298. Surveys on work-related violence and harassment are often conducted on an ad hoc basis, and only a few countries systematically collect statistical data. The Norwegian Working environment, survey on living conditions includes an assessment of psychosocial factors at work, including exposure to violence, threats of violence and harassment.¹

299. Some countries also collect statistics on workplace violence and harassment complaints. These include, for instance, Uruguay (Sociedad Uruguaya de Gestión de Personas, n.d.), Argentina,² El Salvador³ and Malta.⁴

¹ <https://www.ssb.no/en/arbeid-og-lonn/statistikker/arbmiljo/hvert-3-aar/2014-07-03?fane=om#content>. See also: the Netherlands periodic Working Conditions Survey; the Work Environment Survey conducted by the Swedish Work Environment Authority every two years; and the Survey of Working Life conducted every three years in New Zealand.

² Through the Argentine Advisory Office on Workplace Violence (OAVL).

³ Through the National Institute for Women’s Development.

⁴ The annual report of the Maltese National Commission for the Promotion of Equality contains information about discrimination investigations and complaints lodged (including harassment and sexual harassment).

300. Data on the incidence of violence in the world of work are increasingly collected by workers' organizations, such as the National Survey on the Impact of Domestic Violence on Workers and in Workplaces in the Philippines, conducted in 2015 by the International Trade Union Confederation–Asia Pacific (ITUC–AP).

6.2. Dispute resolution mechanisms

301. A dispute resolution mechanism is a judicial or non-judicial process that can be used by individuals, workers' organizations, and/or civil society organizations that are being negatively affected (or on behalf of those affected) by certain actions or omissions. Often the process is established by statute, but it may also be voluntarily established by the workplace. Collective agreements may also establish complaints procedures to deal with cases of violence and harassment.⁵

6.2.1. Workplace grievance procedures for violence and harassment

302. Workplace dispute resolution mechanisms are an essential part of an OSH–MS and are effective at tackling less extreme forms of violence and harassment where a workplace solution (as opposed to a civil or criminal court, or outside arbitration) may be more appropriate. Where such mechanisms are not adequate, fail to resolve the issue or where such systems do not exist, recourse to enforcement bodies is essential.

303. In the world of work, there are a number of ways that workers can lodge complaints. For some countries, the required first step, by OSH or labour legislation, is to raise a complaint informally, followed by a formal, internal complaint if necessary.⁶

304. Internal dispute resolution mechanisms often require the complaint to be made by the supervisor or, where the supervisor is the perpetrator, someone else.⁷ In 11 of the 80 countries studied in this report, employers are required by law to have a formal internal dispute mechanism for physical or psychological violence and harassment. Similar complaints mechanisms exist for victims of sexual harassment. For example, 20 of the 80 countries (25 per cent) studied require the employer to have an internal dispute resolution mechanism for sexual harassment.

305. A formal investigation may follow the lodging of a grievance. This is a requirement in six countries for complaints of physical or psychological violence and harassment, and in 16 countries for complaints of sexual harassment. Conciliation or mediation may be available or required when a workplace complaint is lodged, or the employer or manager may take action to remedy the situation.

⁵ For example: the Protocol for action in cases of harassment at work, sexual harassment and sexual harassment at work adopted by Spanish company Telefónica Móviles España in 2012; the National Collective Agreement for Croatian Seafarers on Board Ships in the International Shipping Trade (2015–17); and the Agreement on sexual harassment in the workplace adopted by the South African Safety and Security Sectoral Bargaining Council in 2011.

⁶ For example, Paraguay, Resolution No. 472/2012 on Mobbing.

⁷ For example, under the Occupational Health and Safety Act, RSO 1990, C. 01 of Ontario, Canada.

Box 6.1
Restorative justice approaches to workplace conflicts

Restorative justice approaches, which aim at rebuilding social relationships by focusing on addressing the harm caused and making amends instead of blaming and punishing the offender, are deemed particularly effective with respect to certain cases of workplace violence and harassment (Hutchinson, 2009, pages 148–150).

Sweden has been a forerunner in adopting a restorative, non-punitive approach to workplace violence and harassment, by inviting employers to find solutions to victimization (term used for bullying in Sweden). Measures to respond to victimization include inviting the victimized employee to consult a psychologist, private talks between the victim, the employer and other employees to discuss possible reasons for what happened and to try to find ways to improve and change the work environment, or taking measures such as training or transfer to other duties in the case of “acute disagreements and intractable interpersonal problems”.¹

In Colombia, employers have a duty to establish an internal, confidential, conciliatory and effective procedure to overcome cases of harassment in the workplace,² and training activities and group therapy can be carried out in the workplace to improve the relationship among the colleagues.

¹ Guidance on sections 5 and 6 of the Ordinance of the Swedish National Board of Occupational Safety and Health containing provisions on measures against victimization at work of 1993.

² Harassment in the Workplace Act No. 1010 of 2006, of Colombia.

6.2.2. Dispute resolution and enforcement bodies

306. The enforcement of legislation and policies on violence and harassment acts as a deterrent for perpetrators and helps break cultures of impunity that facilitate violence and harassment. It can also remedy harm and suffering, provide support and recognize the wrong suffered by the victim.

307. Enforcement bodies may be quasi-judicial or judicial in character, or be mandated to issue interim orders to protect the health and safety of workers. Complaints can often be lodged through the ministry responsible for labour or labour inspectors,⁸ equality boards,⁹ other enforcement bodies such as the ombudsperson,¹⁰ human rights bodies,¹¹ tribunals,¹² or judicial bodies, such as labour or other courts.¹³ These mechanisms are part of civil, as opposed to criminal, proceedings. In many countries, complaints can be issued through a number of bodies, and the courts will serve as a final recourse or for appeals of decisions made by, for example, labour inspectors. In a few countries, the courts are the first step for lodging a complaint.

⁸ The Canada Occupational Health and Safety Regulations (SOR/86-304); the Employment Act 2006, of Uganda.

⁹ In Denmark, the Equality Board can award compensation to victims of discrimination in employment and overrule dismissal.

¹⁰ For example, the Non-discrimination Act No. 1325/2014 of Finland allows the Non-Discrimination Ombudsman to receive complaints.

¹¹ For example, the Australian Human Rights Commission.

¹² For example: the National Non-Discrimination and Equality Tribunal of Finland; and the Human Rights Tribunal of Ontario (Canada).

¹³ For example, under Title VII of the Civil Rights Act of 1964, US district courts are competent to adjudicate discrimination complaints brought under the Act, including those regarding sexual harassment.

308. In 65 of the 80 countries studied where sexual harassment is regulated, 51 countries (78 per cent) have an external, non-criminal dispute resolution mechanism for work-related sexual harassment.

309. In 60 of the 80 countries studied where physical and psychological forms of workplace violence and harassment are regulated, 44 countries (73 per cent) have an external, non-criminal dispute mechanism for physical and psychological forms of workplace violence and harassment.

310. Once a complaint of violence and harassment is lodged, the enforcement body is often required to undertake investigative or other procedures within specific timelines.¹⁴

311. Conciliation, mediation or arbitration may also be available or required when a complaint is lodged through an enforcement body, through in-court conciliation, extrajudicial conciliation through autonomous procedures and by public administration systems. Workers subjected to sexual harassment in Pakistan can benefit from an informal approach to resolving complaints through mediation between the parties or counselling.¹⁵ In South Africa, sexual harassment cases can be addressed through an internal dispute resolution mechanism or can be referred to the Commission for Conciliation, Mediation and Arbitration.¹⁶ Should conciliation fail, parties can opt for litigation before the labour courts.

6.2.3. Protections for complainants, witnesses and whistle-blowers

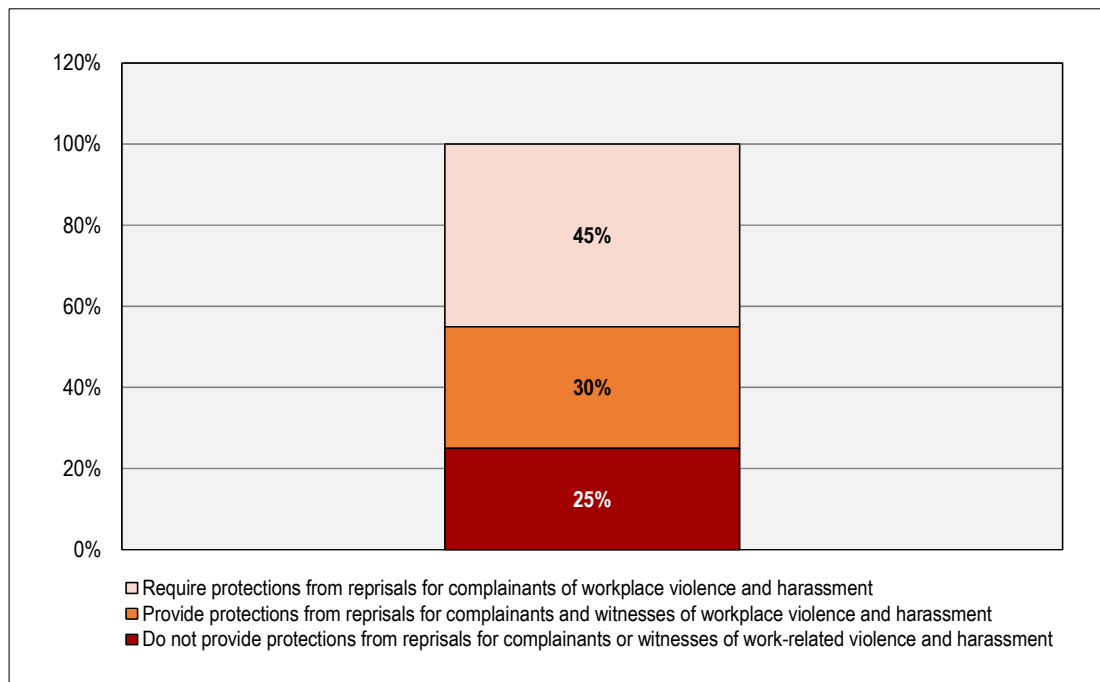
312. In order to protect employees who are victims or witnesses of violence and harassment and also to encourage them to come forward, some laws require complaints to be confidential. Nine out of the 80 countries studied explicitly require complaints to be treated anonymously.

313. Protection for the worker from retaliation/reprisals from employers or co-workers for filing a workplace violence and harassment complaint is a fundamental part of a comprehensive protection regulation. Of the 80 countries studied, 36 stipulate protections against reprisal for complainants, and 24 include protections for both complainants and witnesses (see figure 6.1).

¹⁴ See, for example, the guidance provided to labour inspectors in Colombia under Act No. 1010 of 2006 in the manual for labour inspectors published by the Ministry of Labour.

¹⁵ The Protection against Harassment of Women at the Workplace Act No. IV of 2010, of Pakistan. See also the Act of 4 August 1996 on the well-being of workers in the performance of their work, of Belgium.

¹⁶ Employment Equity Act No. 55 of 1998, art. 10(2). See also the Labour Code of Chile.

Figure 6.1. Protections from reprisals (percentage of total sample)

Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

314. Similarly, a number of countries have “whistle-blower” protection legislation, meaning protection for any persons (not only complainants and witnesses) who make a “protected disclosure”, from being subject to disciplinary action. In South Africa, a protected disclosure is one made in good faith “in accordance with any procedure prescribed, or authorized by the employee’s employer for reporting the impropriety concerned”.¹⁷

315. In many countries, workers have a general right to be free from undue consequences (such as termination of contract) when stopping work in a situation that puts their health at risk.¹⁸ In Germany, for example, employees have the right to refuse to work if the employer does not take suitable measures to stop harassment in the workplace.¹⁹

6.3. The proactive role of the labour inspectorate and other enforcement bodies

316. One of the roles of labour inspectors is to undertake workplace inspections to assess compliance with legal obligations. In some jurisdictions, the duties of labour inspectors in dealing with work-related violence and harassment are explicit. Of the 80 countries studied for this report, at least 15 give labour inspectors the power to stop work in the case of work-related violence and harassment. In ten countries, labour inspectors have the power

¹⁷ Protected Disclosures Act No. 26 of 2000 of South Africa. See *Grieve v. Denel* [2003] 4 BLLR366 (LC) where the Labour Court of South Africa found that an employee, who was employed as a Safety and Security Manager and had forwarded a report of alleged misconduct by a senior director, was protected under the Act. The employee had been spokesperson for a group which had compiled information relating to the misconduct.

¹⁸ Such protection is found in many OSH regulations and is a requirement under the Occupational Safety and Health Convention, 1981 (No. 155).

¹⁹ The General Equal Treatment Act of 14 August 2006, of Germany.

to issue interim orders towards employers and/or workplaces where they see a risk of, or actual, work-related violence and harassment. In certain countries, labour inspectors are instructed to raise awareness during inspections regarding workplace violence and harassment.²⁰

317. In an increasing number of countries, inspectors are provided with special task forces, training, guidelines or special powers regarding workplace violence and harassment. This is the case in at least 12 of the countries analysed (see box 6.2).²¹

Box 6.2
Special mandate for labour inspection on violence and harassment

- ❑ The Ministry of Labour and Social Security of El Salvador has developed a national training module for labour inspectors on discrimination and sexual and other forms of harassment at work.¹ Labour inspectors conduct preventive inspection visits aimed at identifying all types of violence against women, including harassment, sexual harassment, violence and ill-treatment.²
- ❑ In Spain, labour inspectors are given specific instructions on workplace violence and harassment. They can investigate cases of sexual harassment following a complaint or on the basis of other criteria, such as whether a company had previously been under inspection for sexual harassment or where collective agreements contain clauses establishing the obligation to adopt preventive measures against harassment.³ Spanish labour inspectors also carry out campaigns in the sectors most vulnerable to violence and harassment (such as schools, hospitals, shops) (Velázquez, 2010).⁴
- ❑ In 2007, the Danish Work Environment Authority developed 24 sector-specific guidance tools for labour inspectors to help them assess in each sector the most important risk factors for work-related violence, traumatic experiences, night and shift work, bullying and sexual harassment (Rasmussen et al., 2011).
- ❑ In Finland, during visits, labour inspectors can submit the Valmeri questionnaire to staff, which includes a section in which workers are asked whether their health and safety is endangered by violence or the threat of violence at work, and whether someone is currently subjected to harassment in their work unit. The survey is carried out before an inspection, so that the answers can be used by the inspectors to focus the visit, and inspectors can give the employer instructions on how to correct abuses in the workplace.⁵
- ❑ In 2012, the Ministry of Employment and Labour of the Republic of Korea developed a smartphone application for Androids and iPhones called “law-breaking workplace reporting app”, through which workers can report the occurrence of sexual harassment. The application connects the complainant to a labour inspector at the nearest local employment and labour office and allows him/her to receive counselling via email.
- ❑ In the context of the Joint German OSH Strategy (2013–18), the “Protection and fortification of health in case of work-related mental load” programme was launched, which includes the provision of training to all labour inspectors about psychological stress and strain at work. Between 2015 and 2017 at least 10,000 enterprises will be reviewed concerning the integration of mental load assessment of working conditions, long working hours, night work and the risk of traumatization by violence.

²⁰ In Namibia, brochures defining sexual harassment and outlining remedies for victims are distributed at labour offices nationwide and at trade fairs. CEACR: Namibia – Convention No. 111, direct request, 2013.

²¹ In Kenya, written guidance is provided to labour inspectors on specific matters relating to discrimination, including sexual harassment. CEACR: Kenya – Convention No. 111, direct request, 2011.

¹ CEACR: El Salvador – Convention No. 111, direct request, 2012.

² Ministry of Labour and Social Security: “MTPS carries out preventive inspections in workplaces for working women” (San Salvador, 25 May 2016).

³ Instruction No. 3/2011 on labour inspection activities and social security for the monitoring of gender equality in enterprises, of Spain.

⁴ See Spanish code of practice for labour inspectors on harassment and violence at work No. 69/2009. The code covers both internal and third-party violence, both physical and psychological in nature.

⁵ Information available on the website of the Finnish Occupational Safety and Health Administration: http://www.tyosuojelu.fi/documents/95118/1478089/Valmeri_questionnaire/65c29937-f06e-4253-a7d2-042f6fcc77fc.

318. Many countries have an independent national body in charge of monitoring and implementing human rights and anti-discrimination legislation.²² While some of these bodies serve as dispute resolution mechanisms (see section 6.2.2), many have purely advisory powers, carry out investigations into human rights abuses and provide advice²³ and legal assistance to victims in court proceedings.²⁴

319. Some countries have bodies that focus on specific groups or issues; this is especially common for work-related violence and harassment against women. The Institute for the Equality of Men and Women of Belgium can assist persons who have suffered discriminatory harassment, act as a mediator between the parties, represent victims in court, start or intervene in court proceedings and issue non-binding decisions and recommendations.²⁵

6.4. Sanctions, remedies, and victim support and protection

6.4.1. Sanctions

320. For civil cases addressed through courts or tribunals, sanctions will often be a fine. Where criminal prohibitions on violence exist in legislation, violence is often sanctioned by the court with a fine or imprisonment or both.

321. A criminal sanction, even if it is in a comparable sum of money as a civil damages award, carries a public social stigma that many companies and individuals wish to avoid. In some legal systems, a criminal condemnation for discrimination is accompanied by additional requirements to publicize the sanction.²⁶

322. Sanctions for violations of prevention and protection duties of employers can range from fines²⁷ or retraction of licences, to imprisonment.²⁸ Moreover, in a number of countries including Ireland, Germany and the United Kingdom, the doctrine of vicarious

²² For a list of equality bodies in Europe see: <http://equineteurope.org/-Member-organisations->; for a list of human rights bodies in the Asia and the Pacific region see: <http://www.asiapacificforum.net/>.

²³ In Brazil, for example, the Secretariat’s Ombudsperson’s Office for Women’s Affairs provides a free hotline for women.

²⁴ For example, the Equal Employment Opportunity Commission of Israel.

²⁵ See: <http://igvm-iefh.belgium.be/fr/institut>. See also the National Commission for Women, of India.

²⁶ For example, the Criminal Code of France.

²⁷ For example: the Working Conditions Act of 1999, of the Netherlands; the Prevention of Sexual Harassment Law No. 5758-1998, of Israel; the Protection against Harassment of Women at the Workplace Act of 2010, of Pakistan.

²⁸ Criminal Code of Niger; Criminal Code of Saint Lucia.

liability results in the employer being held liable for harassment²⁹ or mobbing (Fischinger, 2010, page 166) 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 from the Supreme Federal Tribunal has been used to hold employers civilly liable for the acts of employees who physically or sexually harass their colleagues. This occurs when the employer has failed to take protective measures.³⁰

323. Collective agreements may also contain disciplinary measures ensuing from the work-related violence and harassment, such as dismissal of the culprit following due process.³¹

6.4.2. Remedies

324. Where the complaint remains internal to the workplace, employers may remedy cases of violence and harassment by requiring training for the perpetrator, seeking an agreement between the parties through conciliation or mediation, or other measures to resolve the issue. In the more serious cases, disciplinary action may be taken, including suspending or terminating the contract of the perpetrator. The Regulation on Law No. 27,942 on the Prevention and Punishment of Harassment of 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.³² Where workplace dispute resolution procedures do not lead to a satisfactory result for either party, often there is recourse to external procedures, such as courts or tribunals.

325. Where the complaint is to an external body, judicial, administrative or quasi-judicial bodies may award damages to victims and oblige the perpetrator or employer to make up for the harm caused to the victim.

326. Some civil courts have awarded damages as compensation for psychological harassment as an occupational illness.³³ In Japan, courts allow for compensation to be paid by the company to the families of workers who committed suicide for having been victims of “power harassment” (Hsiao, 2015). In Finland, compensation is extended to aggressions committed by third parties, where appropriate steps were not taken by the employer to mitigate risks (Eurofound, 2015, page 38). Damages awarded in civil lawsuits arising from harm caused by workplace violence may include compensation for medical expenses, economic harm and psychological harm,³⁴ as well as punitive damages.³⁵

327. Such enforcement bodies may also make other non-monetary awards, such as requiring training or policies, or suspension and dismissal of the perpetrator.³⁶

²⁹ Employment Equality Act No. 21 of 1998, as amended in 2015, of Ireland; Equality Act 2010, of the United Kingdom.

³⁰ Superior Labour Court of Brazil, RR – 725-28.2012.5.09.0863, date of judgment: 09.03.2016, Minister Rapporteur: Luiz Philippe Vieira de Mello Filho, 7th Chamber, date of publication: DEJT 11.03.2016.

³¹ Collective Bargaining Agreement between Signatory Members of Uganda Flower Exporters’ Association and Uganda Horticultural and Allied Workers’ Union (UHAWU) of 2010.

³² See also the Employment Act of 1980, of Swaziland.

³³ For example, the French Court of Cassation’s Social Chamber, *Pourvoi No. 05-41489*, 15 Nov. 2006.

³⁴ For example, the German Act implementing European Directives putting into effect the principle of equal treatment.

³⁵ For example, US Title VII of the 1964 Civil Rights Act.

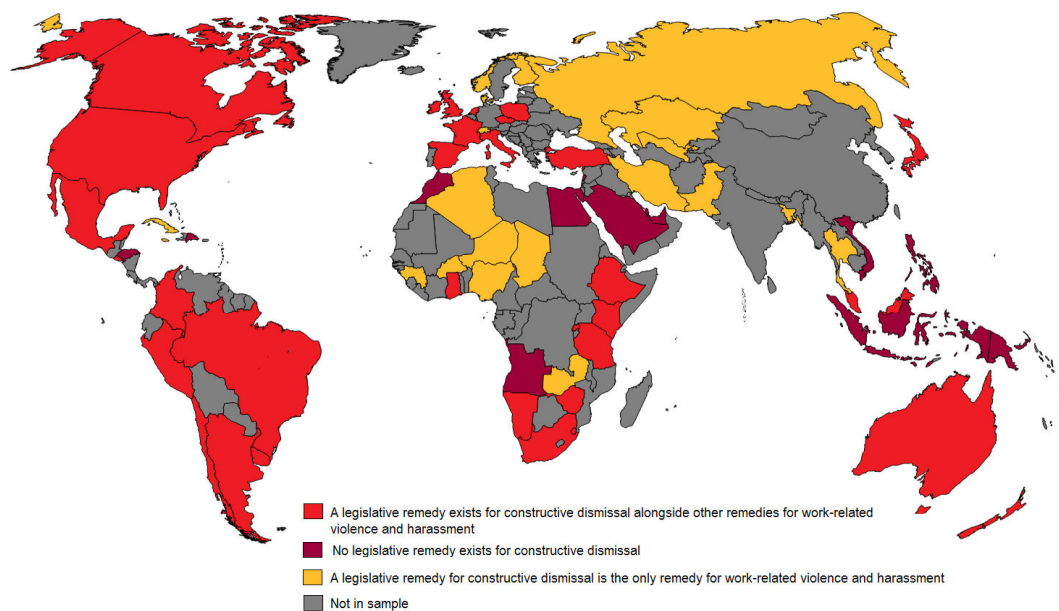
³⁶ For example, the Human Rights Tribunal of Ontario.

328. The importance of adequate remedies and sanctions has been stressed regularly by the CEACR, including providing for reinstatement where appropriate (ILO, 2012a, paragraph 886).³⁷ The CEACR considers that in the “context of protection against victimization, where someone has been dismissed due to raising a complaint, reinstatement is normally the most appropriate remedy” (ILO, 2012a, paragraph 886).³⁸

329. Constructive dismissal, the harassment of a worker or the substantial changing of a worker’s job or working conditions leading to their resignation, may result in a claim leading to compensation or reinstatement for unfair dismissal. In at least 47 of the 80 countries (59 per cent) studied, constructive dismissal provides a right to compensation for unfair dismissal either in legislation or case law.³⁹

330. However, in 13 of the 47 countries (28 per cent) that regulate constructive dismissal, the right to compensation for unfair dismissal is the only remedy for workplace violence and harassment (see figure 6.2). The CEACR considers that “legislation under which the sole redress available to victims of sexual harassment is termination of the employment relationship, while retaining the right to compensation, does not afford sufficient protection for victims of sexual harassment, since it in fact punishes them and could dissuade victims from seeking redress” (ILO, 2012a, paragraph 792).⁴⁰

Figure 6.2. Where are workers protected against constructive dismissal?



Note: The sample for this figure consists of 68 countries: 20 countries from Africa; 15 from the Americas; four from the Arab States; 12 from Asia and the Pacific; and 17 from Europe and Central Asia. Countries listed as having a sole remedy of constructive dismissal refer to general violence and harassment remedies. Several of these countries have specific remedies for sexual harassment.

Source: ILO 80-country study on the law and practice addressing violence and harassment against women and men in the world of work.

³⁷ See ILO: 1996, para. 233; 1988, paras 226–230.

³⁸ See ILO: 1988, para. 226; CEACR: Luxembourg – Convention No. 111, observation, 2008.

³⁹ For example, in Kenya, *Anthony Mkala Chitavi v. Malindi Water & Sewerage Company Ltd*, Cause No. 64 of 2012 (originally Nairobi Cause No. 754(N) of 2009).

⁴⁰ See: Gambia – CEACR, direct request, 2012; Honduras – CEACR, direct request, 2012; and Mexico – CEACR, observation, 2009.

331. Workers' compensation is a form of insurance that often covers all employees, and it may provide wage replacement and medical benefits to those sustaining work-related injuries. In only eight ⁴¹ of the 80 countries (10 per cent) included in the study, is workers' compensation available to workers injured due to work-related violence or harassment, either because the law explicitly provides so or because courts have interpreted it this way. ⁴²

332. Workers' compensation may also be available to workers injured due to violence and harassment in an additional 35 countries (44 per cent), although the listed sources for compensable injuries are vague or undefined. Of the 80 countries in the sample, 33 countries (41 per cent) do not compensate work-related injuries resulting from violence and harassment.

6.4.3. Burden of proof and victim support and protection

333. Even when legislation on workplace violence and harassment does exist, its implementation may not be effective. The burden of proof can be a significant obstacle (Gamonal and Ugarte, 2012, page 28). The CEACR considers that shifting the burden of proof to the employer "is a useful means of correcting a situation that could otherwise result in inequality" (ILO, 2012a, paragraph 885). In recent years, a number of countries have amended their legislation to provide for the shifting of the burden of proof to the employer in discrimination and harassment cases. ⁴³

334. To protect victims of domestic violence and other forms of gender-based violence, the State may require employers to accommodate requests for changes in working arrangements. ⁴⁴ This is the case of Spain, where women workers who are victims of gender-based violence are entitled to a reduction and reorganization of working time, and the use of flexible time and other forms of organization of their working time. ⁴⁵ The State may also use existing workplace benefits, such as paid leave, which is available to victims of gender-based violence in Italy. ⁴⁶ Paid or unpaid leave for victims of domestic violence, sexual assault and stalking is provided in the United States under the laws of some States, including California, ⁴⁷ Massachusetts, ⁴⁸ Oregon ⁴⁹ and Washington, ⁵⁰ and in the District of Columbia. ⁵¹ Paid leave is also granted to victims of intimate partner violence in the

⁴¹ Australia, Belgium, Canada, Finland, Netherlands, New Zealand, Spain and United Kingdom.

⁴² For example, the Australian workers' compensation system: <http://www.safeworkaustralia.gov.au/sites/SWA/about/Publications/Documents/769/The-Incidence-Accepted-WC-Claims-Mental-Stress-Australia.pdf>; courts in Spain (Velázquez, 2010) and Canada (Lippel and Sikka, 2010) have interpreted workers' compensation legislation this way.

⁴³ For example: the Israeli Employment (Equal Opportunities) Law No. 5748-1988; EU Directive 2006/54/EC; Labour Code of Comoros; Employment Equity Act, of South Africa.

⁴⁴ Australian Fair Work Act 2009.

⁴⁵ Royal Legislative Decree No. 1/1995 on the Law on the Workers' Statute.

⁴⁶ Italian Legislative Decree No. 80 of 15 June 2015.

⁴⁷ California Labor Code.

⁴⁸ Section 52E of the Massachusetts General Laws.

⁴⁹ Oregon Family Leave Act.

⁵⁰ Chapter 49.76 of the Revised Code of Washington.

⁵¹ 2012 District of Columbia Code.

Philippines⁵² and in the Canadian Province of Manitoba.⁵³ Leave is also provided to women who suffer sexual harassment at work in India.⁵⁴

335. Specialized courts are emerging as an important avenue for ensuring that domestic and gender-based violence cases are dealt with on a priority basis.⁵⁵ According to the *UN Handbook for Legislation on Violence against Women*, “such courts have been effective in many instances as they provide a stronger possibility that court and judicial officials will be specialized and gender-sensitive regarding violence against women, and often include procedures to expedite cases of violence against women” (United Nations, 2010, page 20).

336. The first fast-track court for cases of gender-based violence in the southern Africa region was launched in Zambia at the beginning of 2016.⁵⁶ Gender-based violence fast-track courts also exist in Australia (Phillips and Vandenbroek, 2014, page 15) and Spain, where the law requires the training of judges, magistrates, prosecutors, court clerks, national law enforcement and security agents and coroners on sexual equality, non-discrimination on the basis of sex, and issues of gender-based violence with a focus on the vulnerability of the victims.⁵⁷ In the Dominican Republic, Resolution No. 1472 of 2005 of the Supreme Court establishes specialized courts to hear cases of domestic violence.

337. Some countries have also opened “one-stop-shops” for victims who need counselling, shelter, legal advice and any other support.⁵⁸ In some countries, gender-based violence laws which include domestic violence prescribe specific steps that the police and judiciary must take according to a given timeline, to ensure that such crimes are dealt with consistently and efficiently.

6.4.4. The role of the social partners

338. The social partners also play an essential role in negotiating, enforcing and monitoring collective agreements that implement, or go beyond, legislative requirements. In 2011, a collective agreement was signed by nine of the largest banks in Brazil, obliging them to combat any act of harassment, make periodical evaluations of the programme, including by collecting statistics on prevalence, and create indicators to evaluate their performance. In addition, they are required to establish an internal mechanism that includes complaint, investigation and sanctioning procedures.⁵⁹

339. Some collective agreements establish bodies charged with addressing violence. In Argentina, the General Collective Agreement for the National Public Administration established a Commission for Equal Treatment and Opportunities, which aims to create and promote policies and actions to eradicate violence in the workplace.

⁵² Anti-Violence against Women and Their Children Act, Republic Act No. 9262 of 2004, of the Philippines.

⁵³ Manitoba Employment Standards Code Amendment Act (Leave for Victims of Domestic Violence, Leave for Serious Injury or Illness and Extension of Compassionate Care Leave).

⁵⁴ Indian Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013.

⁵⁵ See, for example, Argentinian Law No. 26.485/2009 on comprehensive protection to prevent, punish and eradicate violence against women in areas where they develop their interpersonal relationships.

⁵⁶ http://www.ilo.org/addisababa/countries-covered/zambia/WCMS_449854/lang--en/index.htm.

⁵⁷ Organic Act 1/2004 of 28 December on Integrated Protection Measures against Gender Violence, of Spain.

⁵⁸ For example: the Government of Bangladesh, Ministry of Women and Children Affairs, National Women Development Policy 2011, March 2011; and Ministry of Gender and Family Promotion of Rwanda, National Scale Up of Isange One Stop Centre Joint Program.

⁵⁹ Contraf-CUT and FEBRABAN, Protocol on the Prevention of Conflicts in the Workplace (2011), of Brazil.

340. Measures to support victims of violence and harassment in the world of work may also be introduced in collective agreements. The Collective Agreement concluded between the Government of the Northwest Territories (Canada) and the Union of Northern Workers (2012–16) requires the employer to immediately make available critical incident stress debriefing and/or post-traumatic counselling to employees who have suffered as a result of workplace violence.⁶⁰

⁶⁰ <http://www.hr.gov.nt.ca/unw-collective-agreement/article-55-violence-workplace>.

Chapter 7

Policies, guidelines, training and awareness raising

7.1. National policies and programmes

341. Many countries, at least 61 of the 80 countries studied (76 per cent), have national policies relating to combating world of work violence and harassment. However, few countries look holistically at the issue, often including only certain forms of violence, such as sexual harassment.

342. Work-related violence and harassment is often included under broader national policies on gender-based violence/violence against women. Of the 51 countries that have a national policy on gender-based violence, 40 include work-related violence and harassment under the policy.

343. Similarly, work-related violence and harassment is often part of broader workplace safety policies. Of the 26 countries that have a national policy on workplace safety, 17 specifically deal with work-related violence and harassment and/or psychosocial risks.

344. Finally, work-related violence may be included under broader equality and non-discrimination policies. At least 14 countries include work-related violence and harassment under anti-discrimination policies.¹

Box 7.1
Examples of violence and harassment policies and actions
for the world of work

- ❑ In a number of Latin American countries, governments have launched programmes to award certificates to companies that have taken specific steps to tackle sexual and other forms of violence and harassment. These certification systems include the IGUALA Seal in Chile, the Equipares Seal in Colombia, the Equating Certificate in the Dominican Republic, and the Quality with Equity Certificate in Uruguay.
- ❑ In Brazil, the National Policy on Workers' Health and Safety addresses psychological harassment as one of the causes of sickness and death of workers, and calls attention to the health issues caused by aggression and violence in the workplace.¹

¹ See, for example: the Ethiopian Ministry of Labour and Social Affairs, National Plan of Action for Inclusion of Persons with Disabilities 2010–20; the LGBT and Gender Equality Policy Plan of the Netherlands (2011–15).

- ❑ In Nigeria, the revised *National workplace policy on HIV and AIDS with Implementation Guidelines* and an *Action Plan* (2014) calls for workplace programmes to prevent gender-based violence, and education programmes to break stereotyped norms about masculine behaviour which may lead to unsafe and/or non-consensual sex.²
- ❑ The 2009–12 Norwegian Government's Action Plan *Improving quality of life among lesbians, gays, bisexuals and trans persons* included research on how social exclusion and the bullying of LGBT persons takes place and how it relates to the psychosocial environment at the workplace, with a view to proposing strategies for the creation of a more inclusive work environment.
- ❑ In 2015, the Japanese Government adopted a Charter on measures for the prevention of death from overwork, which calls for the action of local governments, employers, trade unions, private organizations and citizens to prevent death from overwork. The Charter also states the need for the prevention and resolution of workplace harassment.
- ❑ In Argentina, the Ministry of Labour, Employment and Social Security has created the Advisory Office on Violence in the Workplace to sensitize, train and disseminate information on the issue of violence and harassment in the workplace.³

¹ Ministry of Labour and Ministry of Social Security and Health, National Policy on Workers' Health and Safety, established by Interministerial Ordinance No. 153/2004, para. 27 (Nov. 2004).

² See also the National Policy on HIV/AIDS and the World of Work, of India.

³ General Resolution 5/07 of the Ministry of Labour, Employment and Social Security (5/1/2007), of Argentina.

7.2. National and sectoral guidelines and codes of practice

345. The issue of violence and harassment in the world of work has been addressed by OSH agencies through studies, campaigns, guidelines and training.

346. Some national OSH institutions, including in Australia, Canada, Singapore, the United Kingdom and the United States, have enacted guidelines dealing with harassment or bullying at work (Safe Work Australia, 2016; CCOHS, 2016; Ministry of Manpower, Singapore, 2015; HSE, United Kingdom, 2006; National Institute for Occupational Safety and Health, United States, 2012; United States Department of Labor, 2009 and 2011).

347. Other OSH institutions have focused on specific occupations or workplaces, such as work-related violence in small businesses (HSE, 2002) and guidance on the prevention of violence in the retail sector (HSE, 1995) in the United Kingdom.

348. In some jurisdictions, guidelines issued by OSH agencies can also have legal significance. This is the case in Ireland, where codes of practice issued by the Health and Safety Authority, such as the code of practice on sexual harassment and harassment at work and the code of practice for employers and employees on the prevention and resolution of bullying at work, can be admitted as evidence in criminal proceedings brought under the Safety, Health and Welfare at Work Act, 2005.

349. Government institutions, beyond those dealing with OSH, often provide guidance on violence and harassment against workers in general² or against specific groups of workers

² For example, the *Human Rights and Business Country Guide: South Africa*, developed by the South African Human Rights Commission together with the Danish Institute for Human Rights, addresses harassment and explains how victims can access remedies, file grievances and seek redress.

(as a form of discrimination), such as against persons with disabilities in South Africa,³ and on violence and harassment related to particular occupations, such as domestic workers in Brazil and social service and health-care sectors in the United States (Ministry of Labour and Social Security of Brazil, 2015; United States Department of Labor, 2010). Particularly common are codes of good practice or guidelines addressing work-related sexual harassment.⁴

350. Guidance tools have also been developed by workers' and employers' organizations at the national level. The Canadian Union of Public Employees produced a Workplace Violence and Harassment Prevention Kit, which includes information on relevant legislation, preventive guidelines and a sample inspection checklist. Similarly, UNISON, the UK public service union, issued a guide for safety representatives on bullying and another on supporting and representing the rights of trans workers under anti-discrimination legislation (UNISON, 2015, page 7). The TUC recently issued a guide aimed at its union representatives to combat violence, harassment and abuse based on race in the workplace. (TUC, 2016a, page 6.)

351. In the United States, the Fair Food Program, launched by the Coalition of Immokalee Workers, concluded a human-rights-based code of conduct prohibiting violence as a form of discrimination, which the participating growers have agreed to comply with.⁵ The Zambia Federation of Employers in 2011 issued a code of conduct for employers of domestic workers in Zambia, which advises employers of domestic workers not to subject the employee to, or allow the employee to be subjected to, "any abuse, either physical, psychological, sexual or verbal in the work environment".

7.3. Training, awareness-raising and workplace policies

7.3.1. Initiatives of government bodies and institutes

352. Once a legal framework has been established, governments can take several steps to prevent and address violence and harassment (United Nations, 2010). With respect to violence against women, specific measures include awareness-raising activities regarding women's human rights, gender equality and the right of women to be free from violence. An example of this is the Spanish Organic Act on Integrated Protection Measures against Gender Violence (2004), which provided for the launch of a National Sensitization and Prevention Plan regarding Violence against Women, targeting both men and women to raise awareness of values based on respect for human rights and the equality of men and women.⁶ In Finland, under the Equality is Priority project coordinated by the Ministry of the Interior, more than 600 work communities have joined the "Discrimination-free zone" campaign, aimed at combating any form of discrimination, bullying and harassment. Under the project, work communities complete an online declaration form and receive in exchange a "discrimination-free zone" sign to be displayed on the work premises.⁷

³ South African Code of Good Practice on Employment of Persons with Disabilities.

⁴ Botswana: *Code of good practice on sexual harassment in the workplace* (2002); National Institute of Women of Uruguay: *Procedural guide to approaching sexual harassment in the workplace* (2009); Ministry of Human Resources of Malaysia: *Code of practice on the prevention and eradication of sexual harassment in the workplace* (2000).

⁵ <http://www.fairfoodstandards.org/resources/fair-food-code-of-conduct/>.

⁶ See also the Guatemalan Law against Femicide and other Forms of Violence against Women, 2008.

⁷ http://www.yhdenvertaisuus.fi/welcome_to_equality_fi/campaigns/discrimination-free-zone/.

353. Educational curricula can be used to modify discriminatory social and cultural patterns of behaviour, as well as derogatory gender stereotypes. The Mexican Law on Access of Women to a Life Free of Violence (2007) requires the development of educational programmes at all levels of schooling that promote gender equality and a life free of violence for women.

354. Sensitization of the media regarding violence and harassment is also important. In Uruguay, the *Guide on gender-based violence in media coverage* (2015), part of the national project “Uruguay united to end violence against women and adolescents”, gives advice to journalists on how to address gender-based violence, such as domestic violence and sexual harassment in the workplace (United Nations, 2010, page 28).

355. Workplace training and awareness raising, on masculinities for example,⁸ can also play a powerful role in challenging stereotypes and transforming culture inside and outside work (Holmes and Flood, 2013). A joint private-sector and civil society initiative from the United States is “Men and Women as Allies”, a workplace behaviour-change model that “address[es] the impact of domestic violence in the workplace with links to male-to-male violence and workplace bullying” (Wagner, Yates and Walcott, 2012, page 107).⁹

356. In the Republic of Korea, the Institute for Gender Equality Promotion and Education, created by statute in 2003, provides sexual harassment prevention and counselling education to public officials.

357. Some OSH bodies also offer training on workplace violence and harassment. The Canadian Centre for Occupational Health and Safety has developed an e-learning platform which offers courses on topics that include bullying in the workplace, dealing with difficult or hostile customers, and domestic violence in the workplace,¹⁰ and it broadcasted a series of podcasts on violence and harassment in the workplace.¹¹ Similarly, the French National Institute of Research and Safety for the Prevention of Professional Diseases and Accidents at Work has a YouTube channel containing short informative videos on various aspects of health and safety at work, including a playlist on psychosocial risks addressing work-related stress and third-party violence.¹²

7.3.2. Employers’ initiatives: Workplace policies

358. Employers are responding to violence and harassment in a variety of ways. One important workplace response is drafting a zero-tolerance workplace policy covering workers and clients (Safe Work Australia, 2016). Another example is the prohibition of workplace violence and harassment throughout the IKEA supply chain to the IKEA Way on Purchasing Products, Materials and Services (IWAY) Standard. The IWAY Standard applies to any seller, vendor or service provider supplying materials or services to the IKEA Group and covers all own-hired workers, on-site temporary workers, piece-rate workers and contracted workers, including migrant workers, trainees and workers on trial

⁸ Masculinity, or masculinities, in the context of gender equality, is understood as a social, cultural and temporal construct, rather than a biological one. The term relates to perceived notions and ideals about how men should or are expected to behave in a given setting.

⁹ Inaugurated by the joint labor/management Work/Family Committee of the Communications Workers of America (CWA) District 1, IBEW 2213, Verizon, CONNECT and Cornell University.

¹⁰ http://www.ccohs.ca/topics/hazards/psychosocial/violence/#ctgt_wb-auto-4. See also United States: National Institute for Occupational Safety and Health online course on workplace violence prevention for nurses: http://www.cdc.gov/niosh/topics/violence/training_nurses.html.

¹¹ http://www.ccohs.ca/topics/hazards/psychosocial/violence/#ctgt_wb-auto-7.

¹² <https://www.youtube.com/playlist?list=PL3B68DC1F451D9D46>.

or probation. Under the IWAY Standard, section 14, suppliers must implement policies and routines on preventive and corrective measures against various forms of violence and must not engage in such conduct in the workplace and living (domestic) space.

Box 7.2
Preventing sexual harassment at the workplace in Jordan

In 2013, the joint ILO–IFC Better Work Programme encouraged implementation of anti-harassment policies and provided training to managers, supervisors and workers in garment factories in Jordan. As a result, workers’ understanding of the implications of sexual harassment increased by over 40 per cent. Likewise, the ability of supervisors and managers to deal with sexual harassment increased by over 40 per cent. Participation in the Better Work Programme and its prevention activities has resulted in an 18 percentage point decline in workers’ sexual harassment concerns.

Source: Brown et al. (2016); ILO (2014e).

7.3.3. Workers’ organization initiatives: Awareness campaigns and training programmes

359. A number of national trade unions have launched campaigns and programmes to combat violence and harassment at work.

360. The UK Union of Shop, Distributive and Allied Workers has launched the “Freedom from Fear” campaign to protect shopworkers from violence, threats and abuse, which includes a yearly Respect for Shopworkers Week. The theme of the 2016 Respect for Shopworkers Week was “Keep Your Cool”, inviting the public to remember that Christmas shopping period stress is not an excuse for violence against retail workers.¹³

361. In Canada, the Women’s Advocate Programme launched by Unifor (the largest private-sector trade union in Canada) represents an example of a joint union–management workplace initiative aimed at creating a safe and healthy workplace. A Women’s Advocate is a trained workplace representative who assists women who have faced harassment, violence or abuse in the workplace or at home, in accessing workplace or community services and supporting them in this process. As a result, women who receive assistance and support from the Women’s Advocate are more likely to be able to remain at work (Unifor, 2013).

362. A number of unions have been at the forefront of addressing the impact of domestic violence at the workplace. The UK National Union of Rail, Maritime and Transport Workers has created a Model Domestic Violence Policy which protects people against reprisals for absenteeism due to domestic violence, provides special leave to victims, and requires that all reasonable steps against the threat of domestic violence which may carry over into the workplace shall be taken, including by preventing unauthorized people from entering the workplace or by allowing workers to use pseudonyms on badges if employees fear being identified by perpetrators.¹⁴

363. FIU–Equality, the joint internal equality training programme of the Danish Metalworkers’ Union (Dansk Metal), the National Federation of Trade Unions in the Service Sector (Serviceforbundet) and the United Federation of Danish Workers (3F), has focused on training shop stewards and colleagues to identify co-workers who are victims of domestic violence, on how to support these co-workers, and on eliminating taboos

¹³ <https://www.usdaw.org.uk/Campaigns/Freedom-From-Fear>.

¹⁴ <http://www.rmtlondoncalling.org.uk/files/rmt-model-domestic-violencepolicy.pdf>.

regarding domestic violence, making it easier for victims to seek help at the workplace and for union representatives and colleagues to help them (FIU, n.d., pages 19–20).

Chapter 8

Towards (an) international standard(s) on violence and harassment against women and men in the world of work

364. As detailed in this report, violence and harassment in the world of work produces devastating effects on individuals, enterprises, economies and societies.

365. Countries have sought to rectify the situation through a variety of means – such as through criminal, labour, anti-discrimination and OSH regulations, supported by policies, training and other initiatives. However, only a few of the 80 countries reviewed in this report have used an integrated approach to respond to violence and harassment, with the rest introducing piecemeal protection and prevention measures, if any at all, resulting in gaps in protections for many workers.

366. The importance of an inclusive and integrated approach was highlighted by the Meeting of Experts on Violence against Women and Men in the World of Work in 2016. Such an approach would ensure that practical protections against work-related violence and harassment reach all workers, including those working in private homes, in the informal economy, and in small and medium-sized enterprises.

367. Currently, there is no international legal standard that addresses violence and harassment in the world of work and that provides a definition and scope for it. The Meeting of Experts expressed the urgent need for the adoption of (an) international instrument(s) on this subject, which could provide a clear, comprehensive and integrated approach for preventing and addressing violence and harassment.

368. Such (an) instrument(s) would be timely and relevant, given the mounting impetus to address violence and harassment in the private and public spheres, including under the mandate of the Sustainable Development Goals of good health and well-being, gender equality, decent work and economic growth, and reduced inequalities (Goals 3, 5, 8 and 10).

369. This section summarizes the main gaps in national and international law addressing violence and harassment against women and men in the world of work, and outlines a possible way forward towards (a) new international standard(s) on this subject matter through an inclusive or comprehensive and integrated approach.

8.1. Analysis of gaps in the regulation of violence and harassment against women and men in the world of work

370. *Gaps in addressing violence and harassment under international instruments.* The ILO has long recognized that decent work is incompatible with violence and harassment

in the world of work. One of the first ILO Conventions, the Night Work (Women) Convention, 1919 (No. 4), now shelved and proposed for abrogation,¹ adopted in the ILO's first year, 1919, was designed to protect women from violence. As the Worker Vice-Chairperson reminded the Meeting of Experts, Convention No. 4 was:

aimed at protecting women, not only from long working hours but also against the dangers of sexual harassment and violence occurring in the workplace and on the way to, and from, the workplace. One hundred years on, she continued, there was an understanding that it is violence (not women) that should be banned from the workplace, and governments and social partners have an important role to play in achieving this. (ILO, 2016c, paragraph 28.)

371. The ILO has adopted numerous standards which refer to specific forms of violence and harassment (see section 3.1 for an overview); however, none addresses violence and harassment as its primary aim, none defines such conduct, and none provides detailed guidance on how to address the problem. Similarly, only certain forms of violence and harassment are mentioned, and only in relation to certain groups of workers or certain sectors or occupations, such as domestic workers, workers living with HIV and indigenous persons. The targeted nature of the protections leave a gap for those not covered under these instruments, which constitute the vast majority of workers around the world.

372. Convention No. 111 covers workers in employment and occupation based on the grounds covered in Article 1(1)(a) of the Convention, or any additional grounds, determined by the member State, after consultations with workers' and employers' organizations. Convention No. 111, however, does not refer specifically to any form of violence and harassment, and the CEACR, while extensively commenting on sexual harassment as a form of sex discrimination, has had far less occasion to address harassment or violence based on the other grounds set out in the Convention.

373. In the wider UN system, two international instruments refer to violence and harassment in the world of work. However, similar to ILO instruments, they only cover certain groups of people (persons with disabilities and women); they do not define the concept, and do not provide any guidance on how to address it.

374. The absence of any international guidance on how to tackle violence and harassment in the world of work is reflected in, or perhaps has resulted in, the wide gaps that exist in protection at the domestic level. This corroborates the need and urgency for (a) dedicated international standard(s), which point(s) to a fundamental set of principles making up an inclusive and integrated approach and further provide(s) direction on how to implement these principles.

375. *Scope and definition.* While countries are increasingly opting for more inclusive labour laws, a major gap in legislation regulating workplace violence and harassment relates to the scope, namely who is covered, and where and when they are covered. Domestic workers, for example, often have greater vulnerabilities to workplace violence and harassment because they work in their employers' home, but they are not always covered by relevant legislation. Contractual arrangements may also limit coverage. In only a few cases do violence and harassment provisions cover jobseekers, despite the fact that they can face harassment, particularly sexual harassment.

376. Similarly, while a number of countries have an expanded definition of workplace, some labour laws define the concept of "workplace" very narrowly, often limiting it to the physical place of work. As discussed in this report, violence and harassment can occur

¹ ILO: *Abrogation of four and withdrawal of two international labour Conventions*, Report VII(1), International Labour Conference, 106th Session, Geneva, 2017.

while commuting to and from work, at work-related social events, and via technology that blurs the line between workplaces, “domestic” places and public spaces.

377. An important gap is that, where regulated, it is often only certain forms of violence and harassment that are covered by definitions. In practice, this can lead to the exclusion of other forms of violence and harassment from prevention strategies and prohibitions, and does not allow for remedies for victims of other forms of violence and harassment. A comprehensive definition of “violence and harassment”, covering all conduct that results in physical, psychological and sexual harm or suffering, or that affects the dignity of workers or creates a hostile environment, could help resolve this, as well as help overcome stereotypes about perpetrators and victims. While relatively rare, legislation that only prohibits sexual harassment against women effectively bars male victims from seeking remedies. Also, where the definition of violence and harassment recognizes only managers as possible perpetrators, bullying between co-workers or employees bullying managers is not covered.

378. *Prohibiting violence and harassment in the world of work.* A number of countries take a criminal justice approach to addressing violence and harassment, but this can lead to a gap in dealing with more “normalized” forms of work-related violence and harassment, such as sexual harassment and bullying, regarded as being of lesser gravity because they are so commonplace, but whose long-term effects are equally devastating. To avoid gaps in protection, many countries have taken a broader approach, prohibiting and protecting against the various forms of violence and harassment within labour, OSH, and equality and non-discrimination laws.

379. *Groups in situations of greater exposure to violence and harassment.* World of work violence and harassment affects all people in all sectors and occupations; a general coverage of all workers is therefore essential. However, for prevention of, and protection against, violence and harassment in the world of work to be effective, there is a need to identify, and take into account, the specific needs and circumstances of members of such groups who may experience violence more frequently, or in unique ways. These include, but are not limited to, women, LGBTI workers, indigenous persons, persons with disabilities, persons living with HIV and persons who belong to marginalized groups, such as caste-affected communities and ethnic minorities. While in Europe and North America violence and harassment towards particular groups is often regulated as a form of discrimination, there is a gap in legislation in many other regions.

380. *Prevention.* Another substantial gap concerns prevention and management of violence and harassment in the workplace. Although employers in most countries have a general duty to protect the health and safety of workers, this duty does not always include protection against the various forms of violence and harassment.

381. Even in countries where employers are required, often in consultation with workers, to take steps to prevent and manage violence and harassment, the specific requirements are left open, leading to a lack of understanding of obligations, and of ways to give practical effect to them, for employers and enforcement bodies.

382. Violence and harassment is a psychosocial hazard for stress and burnout. Similarly, other forms of psychosocial hazards linked to the environmental and organizational structure of the workplace, to culture and to negative power relations, can lead to violence and harassment where not eliminated or mitigated. Despite this understanding, few countries include forms of violence and harassment as psychosocial risks, or require that risk assessment should include psychosocial risks for violence and harassment. Explicitly including risks of violence and harassment under OSH management, particularly in occupations or sectors where a number of risk factors for violence and harassment

converge, could ensure safer workplaces. Similarly, addressing specific circumstances and conditions of work that can increase exposure to violence and harassment could have a considerable influence in preventing violence.

383. *Domestic/intimate partner violence impact on the world of work.* Employers are not responsible for the domestic violence which their employees may be subjected to where it does not occur in the workplace. However, because of the demonstrated impact of domestic violence (in human and financial terms) on the world of work, a small number of countries require employers to take steps to protect and support victims.

384. The workplace can be an entry point for prevention of domestic violence, even where domestic violence does not occur at the workplace, through awareness raising on gender equality, and identification of and support to victims, who may face obstacles to remaining in paid employment. An increasing, though still modest, number of laws and collective agreements address the consequences of domestic violence through work-related measures, including through leave and support provisions.

385. Moreover, a small number of countries prohibit economic domestic violence or coercive control as a form of domestic violence which prevents victims from entering and remaining in the workforce, and can deprive victims of the economic means to leave an abusive relationship.

386. *Dispute resolution mechanisms.* A gap in coverage occurs in the event that where neither OSH nor labour law comprehensively addresses violence and harassment in the world of work, including a safe and accessible complaints mechanism, often the only recourse for employee-victims is to resign and seek compensation through the courts based on tort, contract or civil law. Without a restorative or transformative process for the individual or enterprise, this does little to change workplace culture and, thus, prevent ongoing or future violence and harassment.

387. Establishing internal and external dispute resolution mechanisms allows workers a variety of avenues for complaints, depending on the form the violence and harassment takes, who commits it, how it has been handled in the workplace, and the need for sanctions and remedies. Creating various dispute resolution mechanisms also allows employers, workers' organizations, labour inspectors, human rights bodies, courts and tribunals to monitor and enforce legislation on violence and harassment in the world of work.

388. Moreover, where dispute resolution mechanisms exist, only few specify that complaints should remain anonymous, despite the fact that complainants can face victimization by managers and co-workers for lodging complaints. Similarly, while many countries provide specific legislative protection against victimization for complainants of violence and harassment, few also protect witnesses and whistle-blowers, who can also face similar conduct.

389. *Sanctions and remedies, and victim support and protection.* Only a small number of countries consider the health consequences of work-related violence and harassment as compensable occupational illnesses under workers' compensation insurance. This often leaves workers with incapacitating physical and/or mental health conditions to pay substantial expenses out of pocket. This is especially the case for workers holding contracts that limit access to social security benefits.

390. *Enforcement bodies and data collection.* With some notable exceptions, labour inspectors, judges and other stakeholders are rarely provided with training on identifying risks of violence and harassment and are not always given powers to stop work, or give interim orders, where those risks exist. This is particularly relevant for gender-based

violence, where there is often a gap in the knowledge, expertise and sensitivity of those entrusted with the enforcement of protections against such conduct. Adding to this, data on the prevalence of workplace violence and harassment is not widely collected and often not sex-disaggregated, yet it is needed to inform law and policy.

391. *National policies.* National policies form a necessary basis upon which to implement plans for, and mark progress in, eradicating world of work violence and harassment. Many countries have national plans and policies that include combating specific forms of work-related violence such as sexual harassment, but most lack comprehensive national policies that target all forms of violence and harassment in the world of work.

392. *The role of the social partners.* Many workers' and employers' organizations are responding to violence and harassment in the world of work through campaigns, workplace OSH–MSs, and awareness-raising initiatives. Collective agreements, however, which can solidify and enhance practical mechanisms to prevent and address violence and harassment, are not common. Where collective agreements do refer to violence and harassment, many are only aspirational in nature, without providing clear rights and duties for the parties.

8.2. The value added of (a) new international instrument(s)

393. The current body of ILO standards allows for some international monitoring of violence and harassment in the world of work. However, a clear, international legal framework addressing violence and harassment in the world of work is lacking. (A) new instrument(s) could reaffirm the limited international protections against violence and harassment to which workers are already entitled and could add value by including all workers and forms of violence and harassment, as well as by addressing the issue in a comprehensive and integrated manner.

8.3. An inclusive and integrated approach

394. According to the conclusions of the Meeting of Experts: “An integrated approach to addressing violence and harassment in the world of work is needed” (ILO, 2016a, Appendix I, paragraph 17). The experts agreed that to address violence and harassment there is a need for:

- protection against all forms of violence and harassment in the world of work, and strong equality and non-discrimination policies;
- prevention and support mechanisms which address negative societal and workplace culture, psychosocial risks and the design of the workplace, as well as the extension of coverage of OSH and other legal protection relevant to violence and harassment in the world of work to excluded workers, groups and sectors by identifying and closing gaps;
- compliance and enforcement by governments, employers and workers and their organizations, and better data on prevalence of violence and harassment;
- accessible, confidential and expedited procedures to lodge complaints that ensure non-retaliation for witnesses and complainants, as well as judicial, administrative and disciplinary remedial action and support for victims where violence and harassment has occurred;
- appropriate tools and policy frameworks and other initiatives that enable effective action against violence and harassment. (ILO, 2016a, Appendix I, paragraphs 16–29.)

8.4. Proposed key elements of an ILO Convention and Recommendation

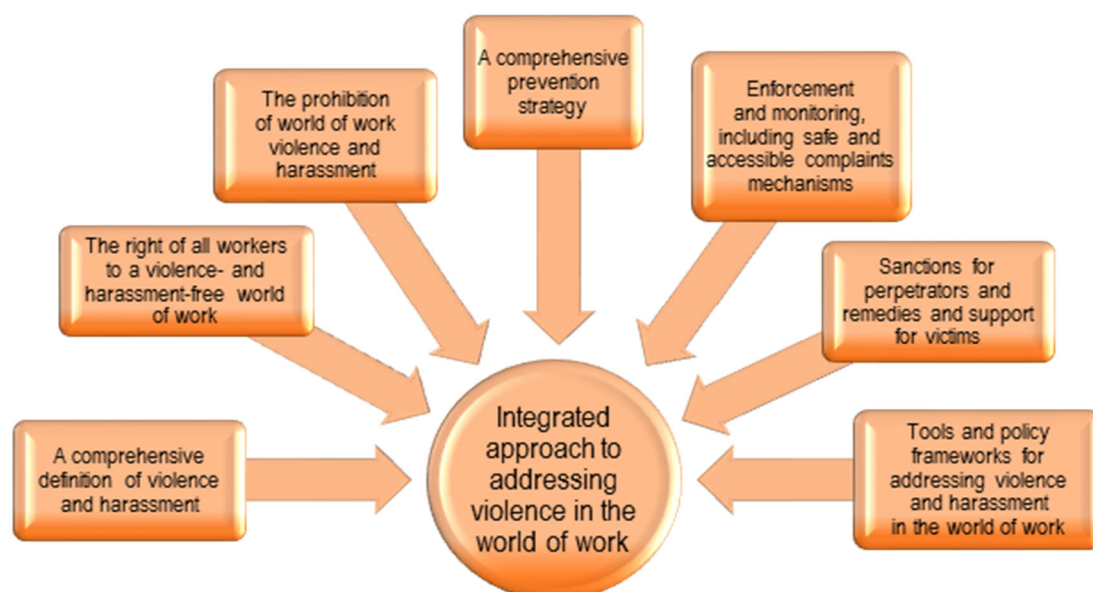
395. While neither the Meeting of Experts nor the Governing Body debate provided guidance on the number and forms of possible new instruments, the above review points to the desirability of a Convention and a Recommendation.

396. A Convention would be essential to signal without ambiguity that violence and harassment is unacceptable and the antithesis of decent work, and that therefore it demands serious and urgent attention.

397. A Recommendation would complement the Convention by providing more detailed and practical guidance on how to translate the principles embedded in the Convention into action.

398. To achieve an inclusive and integrated approach, basic and clear principles could be set out in general terms in a Convention, so as to be universally applicable. These would include the following: comprehensively defining violence and harassment; stating the right of all workers to a violence and harassment-free world of work; calling for the prohibition in national law of all forms of violence and harassment in the world of work, including all forms of gender-based violence; calling for the establishment in national law of systematic prevention measures and the inclusion of psychosocial risks and violence and harassment under OSH–MSs; calling for the establishment in national law of enforcement and monitoring mechanisms, including safe and accessible complaints mechanisms for violence and harassment; and calling for the establishment of sanctions for perpetrators, and remedies and support for victims. Each principle could then be outlined in detailed provisions and expanded guidance set out in a Recommendation. Should (an) instrument(s) be adopted, a strategy to promote the ratification should be designed and implemented.

Figure 8.1. Principles for an inclusive and integrated approach to addressing violence and harassment against women and men in the world of work



399. An alternative possible option to a Convention supplemented by a Recommendation as two separate instruments could be a single instrument which would bring binding and non-binding provisions together. The substance of such a single instrument would be the same as that of a Convention supplemented by a Recommendation. What would differ is its presentation and structure. In a single legal instrument, the non-binding provisions – offering guidance as to the implementation of binding provisions – would appear immediately after those provisions. This would help understand more readily the relationship and complementarities between these two different sets of provisions. This new format would follow, in a simplified manner, the innovative structure of the Maritime Labour Convention, 2006 (MLC, 2006), and could mark a fresh approach to setting integrated, better articulated and more coherent international labour standards. Should the tripartite constituents express their preference for this option, the Office would prepare, ahead of the first Conference discussion, more detailed explanations on the practical modalities of incorporating binding and non-binding provisions into a single consolidated instrument.

400. Below is a list of potential provisions of both instruments, based on the findings and analysis of this report. However, the list is not intended to be exhaustive, and other provisions may also be considered.

Convention	Recommendation
Setting out the components of violence and harassment, focusing on the effects of violence and harassment, including physical, psychological and sexual harm;	
setting out the components of the term “world of work”;	
setting out a wide scope of application, so as to apply to all workers, in all forms of employment, in any employment or occupation and in all sectors of the economy – formal or informal – including interns and apprentices, volunteers, jobseekers and laid-off and suspended workers;	
setting out the right to a world of work that is free from all forms of violence and harassment, and setting out the need to adopt an inclusive and integrated approach to addressing violence and harassment;	
setting out the need to respect the fundamental principles and rights at work:	<ul style="list-style-type: none"> □ recognizing that 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), are key to enabling workers and employers to establish violence- and harassment-free workplaces;
providing for the adoption of prohibitions of all forms of violence and harassment, and in particular gender-based violence, in the world of work:	<ul style="list-style-type: none"> □ prohibiting violence and harassment in labour, occupational safety and health, equality and non-discrimination law, as well as in criminal law, where appropriate; □ developing legislation for women migrant workers in origin, destination and transit countries, to prohibit violence and harassment, including gender-based violence and harassment;

Convention	Recommendation
<p>developing laws, regulations and equality policies for groups of workers that are disproportionately affected by violence and harassment, including, but not limited to, women workers, young workers, migrant workers, workers with disabilities, indigenous and tribal peoples, LGBTI workers, workers living with HIV, and workers from marginalized groups, such as caste-affected communities, and ethnic minorities;</p>	
<p>developing a systematic approach to the prevention of all forms of violence and harassment, including in sectors, occupations and work arrangements where workers are more exposed, through: the adoption of workplace policies that promote zero-tolerance for all forms of violence and harassment; mandatory risk and hazard assessments by employers; the elimination, where reasonably possible, of work-related hazards and risks; a duty to inform workers of risks of violence and harassment; and workplace training on work-related violence and harassment, where relevant:</p>	<ul style="list-style-type: none"> ❑ drawing on other international safety and health instruments and guidelines, such as those promoting OSH–MSs; ❑ adopting specific measures for sectors, occupations and work arrangements, including for night work, work in isolation, health care, emergency services, domestic work, services, transport, education and entertainment; ❑ developing workplace policies, in consultation with workers, that: define and prohibit all forms of world of work violence and harassment; outline the responsibilities of workers and employers; and provide information on issuing complaints and the investigation procedure; ❑ outlining that risk assessments should be undertaken in participation with workers and should take into account psychosocial hazards and risks, including risks from third parties (such as clients and the public), and the presence of negative power relations, gender norms, cultural and social norms, and discrimination, which increase the likelihood of violence and harassment;
<p>ensuring effective monitoring and enforcement of national laws and regulations regarding violence and harassment, including through ensuring access to dispute resolution mechanisms for violence and harassment, both within the workplace and outside the establishment. Such mechanisms should be confidential, safe, fair and effective, and should protect complainants, witnesses and whistle-blowers from reprisals, and provide victims with support;</p>	

Convention	Recommendation
<p>promoting the provision of appropriate remedies for victims of violence and harassment, and sanctions for perpetrators:</p>	<p>outlining that “appropriate remedies” include:</p> <ul style="list-style-type: none"> <input type="checkbox"/> reinstatement; <input type="checkbox"/> compensation for moral and material damages; <input type="checkbox"/> injunctive relief, ordering the employer to ensure that certain conduct is stopped or requiring policies or practices to be changed; <input type="checkbox"/> legal fees and costs; <input type="checkbox"/> compensation in case of a psychosocial or physical disability or an inability to work due to work-related violence and harassment;
<p>promoting specific measures and services to support victims of gender-based violence:</p>	<p>outlining the measures and services that should be provided to victims of gender-based violence:</p> <ul style="list-style-type: none"> <input type="checkbox"/> courts with expertise in gender-based violence; <input type="checkbox"/> gender-sensitive training for labour inspectors, judges, police and other public officials, to identify and address violence and harassment; <input type="checkbox"/> specific task forces or units within enforcement bodies to manage complaints of violence and harassment, and particularly gender-based violence; <input type="checkbox"/> courts or tribunals with expedited procedures for cases of gender-based violence; <input type="checkbox"/> the shifting of the burden of proof in gender-based violence cases; <input type="checkbox"/> gender-based violence crisis centres; <input type="checkbox"/> hotlines for complainants to get free advice; <input type="checkbox"/> flexible work hours and support to re-enter the labour market; <input type="checkbox"/> emergency services, and medical care and treatment, including counselling; <input type="checkbox"/> employment leave for victims of gender-based violence; <input type="checkbox"/> linguistically and culturally accessible services for women migrant workers who are victims of gender-based violence;
<p>providing the right to workers to remove themselves in case of a reasonable belief that there is an imminent and serious danger of violence and harassment without suffering undue consequences:</p>	<ul style="list-style-type: none"> <input type="checkbox"/> promoting the gender-sensitive training of labour inspectors; <input type="checkbox"/> promoting the inclusion in the mandates of the various national bodies of the issue of addressing violence and harassment; <input type="checkbox"/> promoting the systematic collection of statistics on violence and harassment, including gender-based violence, against women and men in the world of work;

Convention	Recommendation
<p>calling for the development, in cooperation with workers and employers and their organizations, of policies, guidelines, codes of practice, awareness-raising campaigns and other initiatives aimed at eliminating violence and harassment in the world of work, including gender-based violence. Initiatives could include:</p>	<ul style="list-style-type: none"> <li data-bbox="868 271 1417 394">❑ promoting programmes aimed at addressing negative power relations, gender norms, cultural and social norms, and discrimination that increase the likelihood of violence and harassment; <li data-bbox="868 394 1417 573">❑ promoting gender-sensitive guidelines and training to assist workers and employers and their organizations, as well as judges, labour inspectors, police and other stakeholders, in complying with their mandates regarding violence and harassment under labour, OSH and other law; <li data-bbox="868 573 1417 875">❑ promoting model general and sector-specific codes of practice, workplace policies and risk-assessment tools, for all forms of violence and harassment in the world of work, which take into account the specific needs of workers who may experience greater exposure to violence, including women workers, young workers, migrant workers, workers with disabilities, indigenous and tribal peoples, LGBTI workers, persons living with HIV, and workers from marginalized groups such as caste-affected communities, and ethnic minorities; <li data-bbox="868 875 1417 1055">❑ promoting awareness-raising campaigns that convey the unacceptability of violence and harassment, and particularly gender-based violence, and that address discriminatory attitudes which perpetuate violence and harassment and which stigmatize complainants and victims of violence; <li data-bbox="868 1055 1417 1155">❑ promoting initiatives to prevent violence and harassment through gender-sensitive curricula at all levels of education; <li data-bbox="868 1155 1417 1335">❑ promoting the training of journalists and other media personnel on women's human rights and the root causes of gender-based violence, in order to influence the way in which gender-based and other forms of violence and harassment are reported and influence societal attitudes; <li data-bbox="868 1335 1417 1408">❑ promoting joint campaigns aimed at fostering positive, and violence- and harassment-free, workplaces.

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:

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.

² GB.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:

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:

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

Comments:

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:

-
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:

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:

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

Comments:

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:

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:

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

Comments:

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:

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

Comments:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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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:

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, health care, 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:

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:

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:

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:

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:

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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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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:

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