VIOLENCE DOESN'T WORK

Ratification and implementation of ILO Convention 190 in the Netherlands and internationally

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Mondiaal FNV

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FOREWORD

In 2019, the International Labour Organization (ILO) celebrated its 100th anniversary. The Declaration, which was adopted on this occasion, stated, among other things, that the member states and employers' and employees' representatives were committed to 'a world free of violence and harassment'. In the same year, the general assembly of the ILO (the ILO conference) also adopted the significant Convention 190 on the eradication of violence and harassment in the workplace, which had been preceded by some 30 years of lobbying and campaigning activities by trade unions and women's organisations. By the end of the 1980s, in the Netherlands, the FNV had already founded 'Stichting Handen Thuis', a hotline for reporting sexual harassment in the workplace. Subsequently, in 1990, the Dutch Labour Foundation adopted a recommendation on preventing and combatting – what was then referred to as – 'unwelcome intimacies' at work. This marked the beginning of over three decades of attempts to identify and tackle these issues within companies and sectors, including setting up complaints procedures and appointing confidential counsellors. Unfortunately, these measures have apparently proved to be largely ineffective given the various scandals that have come to light over the past few years, including in the world of sports and the media.

This means that the ratification and implementation of ILO Convention 190 and the associated Recommendations are also of considerable importance for the Netherlands. We are currently still waiting for the Bill announced by the Dutch Minister of Social Affairs and Employment to approve adoption of the Convention, which she would send to the Dutch Parliament's House of Representatives in the spring of 2023.

We hope the government will also take this opportunity to announce a far-reaching and firm policy and action in this field. This brochure explains what the terms 'violence and harassment' in the workplace actually mean, as well as the current situation in the Netherlands concerning the ratification and implementation of the Convention. Furthermore, experiences on the ground in other parts of the world are shared. Women in particular appear to be subjected to forms of violence, harassment, and sexual harassment on a daily basis, both at work and while commuting to and from work. Moreover, it is explained under what circumstances violence and harassment occur more often, such as situations of highly unequal balances of power in the workplace and uncertain and informal labour relations, and which groups are extra vulnerable, such as gay men, lesbians, and people who are transgender. At the end of the brochure, building blocks for a strategy are provided.

The examples demonstrate the important role of trade unions in supporting victims and taking action together with them to expose incidents of misconduct and to remedy the situation at both the local and the international level.

The brochure ends with the statement: 'The comprehensive, broad-based, and decisive convention that the trade union world had hoped for before 2019 is now here. The aim of this publication is to contribute to the transformation of words into action, an achievement that hopefully will be on the horizon in the near future for the entire world.'

I wholeheartedly support this call.

Catelene Passchier
Chairperson of the Workers' Group and Vice-Chairperson of the Governing Body of the International Labour Organization

INTRODUCTION

One would expect employees in the culture and media sector to have a worldly-wise and assertive attitude. After all, do they not have a way with words, and are they not able to stick up for themselves? However, since the start of the **#MeToo** trend, cesspools have been exposed, and the well-known tangle of sexual harassment and other forms of abuse of power have also begun to surface in this sector. American Fox News anchors, journalists with the popular Dutch 'De Wereld Draait Door' talk show, and people active in art institutions have all fallen victim to the harmful practices of powerful men, sometimes even women.

It is happening everywhere, whether in countries with or without protective laws, countries with or without complaints procedures, labour inspectorates, and legally guaranteed equality between men, women, and other gender identities, and in countries with or without trade union freedom.

Worldwide, almost 23 percent of all workers over the age of 15 have been exposed to at least one form of violence and harassment at work. This is more than one in five.[1] In Europe, this percentage is an estimated 5 to 10 percent of the working population.[2] In the Netherlands, just over 10 percent of workers have had bad experiences with colleagues and supervisors, and about 30 percent with 'third parties' at work, such as clients, patients, students, or passengers.[3] The victims are not only women and members of vulnerable groups such as LGBTIQ+ communities but also men.

There is reason enough to continue developing the means to do something about the problem. This is an excellent undertaking for the trade union movement, which indeed has not been sitting on its hands. For example, the FNV and Mondiaal FNV have been actively and effectively involved in the preparation of ILO Convention 190 (C190), which was issued in 2019.[4,5] The C190 is a treaty focused on the eradication of violence and harassment in and around the workplace, agreed between the governments as well as employers' and employees' organisations in the 187 states affiliated with the ILO. The fact that they have reached agreement on the far-reaching standards and scope of this convention represents a considerable achievement. To date, 27 countries have ratified the treaty, which is not a bad score according to an insider.

However, in particular the number of European signatories remains below expectations. This has been a great disappointment, since ILO Director-General Guy Ryder stated in 2019, 'I am sure that, given the co-operation and solidarity we have seen on this issue, and the public demand for action, we will see speedy and widespread ratifications and action to implement."

There is considerable work to be done, and this publication, initiated by Mondiaal FNV and the FNV, aims to contribute to this.

CHAPTER 1
VIOLENCE AND HARASSMENT IN THE WORK-PLACE: WHAT DOES IT INVOLVE

Violence and harassment in and around the workplace cause fear and anguish, increase inequality, and undermine productivity. They harm individuals, families, companies, and communities. In order to prevent and eradicate these elements, the international community ratified ILO Convention 190 (C190) in 2019, a treaty that aims to put an end to violence and harassment in the world of work. It is a groundbreaking treaty, not least because it puts violence and harassment in the context of both equality and health and safety. Moreover, the broad definition of 'violence and harassment', 'the world of work', and 'workers' extends its implementation significantly.

VIOLENCE AND HARASSMENT

C190 defines 'violence and harassment' as a wide range of unacceptable behaviours and practices – and related threats – that, deliberately or not, result in physical, psychological, sexual, or economic damage. This definition therefore includes inappropriate jokes, daily bullying, stalking, cyber bullying, yelling, hitting, rape, forced labour, confinement, and murder. You name it.

In 2022, the results of a revealing global survey commissioned by the ILO were published regarding experiences involving violence and harassment in the workplace. It was the first ever survey of this magnitude.[6] The researchers differentiated between physical, psychological, and sexual forms of violence and harassment, and observed that 23 percent of the workers fell victim to at least one of them. For one in ten of the workers, it involved physical harm; for one in five it was psychological; and for one in fifteen it was sexual harassment, with of course some overlapping. Men more often than women reported the non-sexual physical form, while women more often than men reported the sexual variant.[7] Moreover, it is a persistent issue, with most victims reporting that they had been subjected to the behaviour more than once, even recently.

GENDER-RELATED VIOLENCE

The end of the definition of violence and harassment in C190 explicitly states: '…and includes gender-based violence and harassment', which is described next as '…violence and harassment directed at persons because of their sex or gender, or affecting persons of a particular sex or gender disproportionately, and includes sexual harassment'. Unlike the term 'sex', which indicates biological sex, 'gender' refers to social-cultural gender roles, about which society has varied and deeply ingrained views. It is for good reason that feminists in the past, dissatisfied with the place allocated to women in society, played a major part in prying loose the purely biologically determined gender roles. As Simone de Beauvoir wrote, 'One is not born, but rather becomes, a woman'. Globally, and because of their neutrality, the terms gender and gender-based violence (GBV) are often excellent excuses for not having to call a spade a spade – or in other words a man and a woman – or to deal with the multi-coloured patchwork of sexual identities and practices in between.[8]

THE WORLD OF WORK AND WORKERS

C190 provides not only a broad definition of violence and harassment but also of the world of work and workers. It defines the sectors or work situations in which this behaviour occurs frequently, such as night shifts, isolated work, healthcare, the hospitality sector, social services, emergency services, domestic work, transport, education, and entertainment: 'the usual suspects'. More surprisingly, the treaty also includes all public and private locations where people work, which includes places where people work remotely from home. This applies not only to slum-dwelling Indian seamstresses at the end of long fashion chains sewing buttons onto our shirts but also to the army of office workers who ended up working at their PC in a bedroom during the pandemic lockdown. These people are more prone to domestic violence, which C190 also acknowledges as a phenomenon with many ramifications relating to work, and therefore it should be addressed by employers. Furthermore, people who work remotely from home are especially vulnerable to online harassment or abuse: '…work-related communica-

tions, including those enabled by information and communication technologies'.[9] Commuting to and from work also comes under the world-of-work umbrella, as do work-related trips, travel, training sessions, events, or social activities.

According to C190, the term 'workers' applies not only to people with regular jobs but also to workers without a contract, to trainees and volunteers, to job applicants, and to workers whose employment has been terminated. This convention applies to all sectors, whether private or public, both in the formal and the informal economy, and whether in urban or rural areas. It is an ambitious and extensive area description, with corresponding major tasks. In India, for example, 90 percent of the workers make their living in the informal economy, outside all legal frameworks, unrecognised, unregistered, unprotected, unorganised, and with no say whatsoever in their work circumstances.

HIGH-RISK GROUPS

The extensive definitions provide C190 with substantial scope, and also mean that the convention can be a buoy for workers who are at higher risk than others. High-risk groups that emerged from the survey – and with a great deal of common ground – include young people, migrants, workers in paid employment (vis-à-vis self-employed workers), and people who are also discriminated against outside work situations. In each of these groups, women are seen to be more vulnerable than men.[10] As regards age, young people in the 15-24 age bracket turn out to be most at risk, with the danger gradually decreasing beyond this age. Female migrants report sexual harassment almost twice as often as non-migrant females. The difference between men in paid employment and self-employment is negligible.

Women in paid employment encounter violence and harassment six percent more often than those who are self-employed, and also run a two and a half percent higher risk than men in paid employment.

Finally, people who were discriminated against earlier in their lives and up to the present are more often subjected to violence and harassment because of gender, physical or mental disabilities, nationality or ethnicity, skin colour, and religion. In particular, gender discrimination appears to be a good predictor: almost half of those who suffer from it also experience violence and harassment in the workplace.

CAUSES

Violence and harassment, the gender-related variant in particular, are embedded deeply in social structures that serve as a breeding ground, with some occurring in all realms of society: politics, the economy, culture, social life, family, and so on. The patriarchal culture is a major structure in this regard. Centuries old and widespread, it still prescribes the subordination of women to men. In its extreme forms, women have no control whatsoever over their life and wellbeing, let alone over possessions or political matters. Less extreme forms, such as the old boys' network that prevents women from achieving leading positions and prefers them to stick to making the coffee are only slightly less toxic. It's all about 'Shut up and be pretty', and what woman has not been down this dead-end street? Extra vulnerable are those women who break through the rigid parochial man-woman attitude, or have a sexual orientation different to the one prescribed by heterosexual standards. A patriarchal culture does not know how to handle these individuals, and therefore they are not seen to exist. And if they do exist, they must become invisible by way of social pressure that subdues people, by 'healing' or even through legislation. In this respect, Uganda is at the top of the list, with legislation that imposes a ten-year prison sentence for homosexuality, or, in a worst-case scenario, the death penalty.

However, the world of work has provided an additional breeding ground for violence: namely, the power imbalance between employers and employees, between the haves and the have nots, between bosses and servants, and between managers and subordinates. Today's economic reality has become extremely complex and tiered owing to mechanisation, automation, globalisation, digitisation, and, not to forget, the vast, non-transparent influence of financial markets. The imbalance of power, however, still remains a constant. Its impact is greater in countries where the powerless are unable to organise and where no laws are in place to protect them against the consequences of unrestricted financial gain. In such work situations, occasions for violence and harassment are always close by.

THE BIG HUSH

One of the reasons that current malpractices are so persistent is that people do not talk about them. According to the survey, only a little less than 50 percent of the victims confided in someone else, and usually not until they had been victimised more than once. The role of embarrassment and feelings of guilt is a well-known fact in this respect. 'I asked for it', victims think, or they are afraid to tarnish their family's honour when they are found out. Survey questions relating to grounds for remaining silent led to remarkable results.

The investigators specified seven reasons for remaining silent and asked people to list them in order of importance, which resulted in the following ranking:

- It serves no purpose to talk about it;
- Fear of reputational damage;
- Procedures at work are not clear;
- No trust in the police, community leaders, or the labour inspectorate;
- Fear that colleagues will learn about it;
- Uncertainty about what to do;
- Fear of punishment.

Another very relevant aspect – especially for trade unions – is the ranking of answers in regard to the question of to whom could the victims turn for help. Number one were family and friends, number two were colleagues, and number three were employers and supervisors. The police, community leaders, and labour inspectors were mentioned less frequently, followed by trade unions, social services, and NGOs.

CHAPTER 2
C190 AND DUTCH LEGISLATION

A worldwide phenomenon such as violence and harassment in and around the workplace demands a global answer. Indispensable in this respect is international law and legislation that sets standards regarding decent work, labour rights, and the balance of power.

In addition to the OECD Guidelines for Multinationals[11] and the UN Guiding Principles on Business and Human Rights,[12] conventions are in place issued by the International Labour Organization (ILO), the only tripartite specialized agency of the United Nation in which employers, employees, and governments are represented. Its mission is to promote labour rights, decent work, and social protection, and to strengthen the dialogue on work-related themes. In this context, international labour standards are important tools, laid down in legally binding conventions that the 187 member states are able to ratify, and in non-binding recommendations that provide concrete applications.

CONVENTION 190: HOW IT WORKS

Once a convention has been adopted, member states must submit it to the competent authorities (usually a parliament) within twelve months. This body needs to decide whether to ratify or not. After ratification, the convention needs to be implemented in the state's own laws and practice, which need to be reported on at frequent intervals. If countries fail to meet these requirements, procedures are in place to get them on track. Convention 190 (C190) is the first international, legally-binding, statutory tool regarding the specific problem of violence and harassment in the world of work, and may serve as a minimum international legal framework. Individual citizens do not directly benefit from the convention, because its provisions are not individual rights but are orders to the states that sign it. However, if these states do not meet their obligations, they can be called to account by employers' and employees' organisations.

C190 refers not only to the devastating consequences of violence for individuals and communities but also to the negative impact on companies and the economy. The treaty anchors the right to a work situation free of violence and harassment firmly in the context of human rights, specifically the right to equal treatment and non-discrimination, and of fundamental labour rights.[13]

COMPREHENSIVE APPROACH

Countries are required to take a comprehensive approach, which should prevent gaps in the protection of employees: for example, when it comes to physical, social, or domestic violence. This comprehensive approach includes:

- national laws and regulations (legislation on equal treatment,[14] law and legislation governing working conditions, and criminal law);
- government policy relating to health and safety in the workplace, equality and non-discrimination, and migration;
- mechanisms to enforce and monitor compliance with laws and regulations;
- access to compensation and support for victims;
- sanctions;
- training programmes and tools for employers, employees, and the relevant authorities;
- means to inspect and investigate compliance.

In implementing the comprehensive approach, governments, employers, and employees have different but complementary functions. C190 needs to become a shining beacon for national laws, collective labour agreements, and measures in the field of health and safety in the workplace. It is an ambitious programme of requirements, but it is hopeful that, almost four years after it was adopted in the ILO, already 27 countries have signed the treaty.[15] The integrated approach that C190 stands for goes a step further than the directives of the European Union in relation to this topic. Moreover, the concrete recommendations form a richer arsenal of means than the EU has to offer. As a result, the European Committee propagates ratification of the convention by EU Member States.

NATIONAL ACTION PROGRAMME

Following the high-profile **#MeToo** scandals over the past few years, the Netherlands launched the *Nationaal Actieprogramma Aanpak seksueel grensoverschrijdend gedrag en seksueel geweld* [National Action Programme on sexual harassment and sexual violence] at the beginning of 2023. These terms are more explicit but also more limited than the 'gender-based violence and harassment' referred to in C190: after all, not all gender-based forms of violence or harassment are sexually tinted. In this respect, consider the glass ceiling. For the purpose of this brochure, we therefore apply C190 terminology, which

has become commonplace in many countries where Mondiaal FNV has partner organisations.[17]

The Action Programme of the Dutch Labour Foundation *[Stichting van de Arbeid]* relates to labour and companies mainly where legislation is concerned. It discusses the current Bill relating to confidential counsellors, the possibility of compulsory codes of conduct and complaint procedures, and a broader definition of sex crimes and increasing the level of sentences in criminal law. An adequate whistleblower scheme is not discussed.[18] However, power imbalances are discussed as a backdrop for violence and intimidation, but only in connection with recent abuses in the media is the structural background discussed, such as flexible contracts. Chain responsibility, the obligation of multinationals to eradicate violence and harassment throughout the chain, is not addressed anywhere in the Action Programme.

The FNV applauds the obligatory confidential counsellor, codes of conduct, and complaints procedure in the National Action Programme, but would also like sanction policy to be made mandatory. Without clear consequences for both supervisors and employees, policy may remain vague.[19] In addition, gagging clauses in contracts and settlements should be prohibited because they silence employees. The FNV underlines the significance of the programme of the Dutch Labour Foundation on a number of items, as supporting employers and employees should not be isolated initiatives but form an integral part of the programme developed by the Foundation. It should also include the major role of 'bystanders in the workplace', as they can make a difference in the eradication of unacceptable behaviour. Finally, the FNV commends the Dutch Central Government for its intention to be a model employer, citing its collaboration with the trade union movement and affiliation with the programme of the Labour Foundation as indispensable.

WHERE DOES THE NETHERLANDS STAND?

At the time this publication was written, the Netherlands had not yet ratified C190. When it is signed, the question is whether it will become a policy-poor or a policy-rich ratification. In other words, to what extent will the government adapt Dutch law and regulations to C190's extensive scope, and where will it be needed? The FNV, the CNV, and the Labour Foundation have already looked into the final question, which is: where will the loopholes be when C190 – including the guidelines of the corresponding Recommendation 206 – is placed on top of Dutch law and regulations?

THE DUTCH WORKING CONDITIONS ACT AND SELF-REGULATION

In the context of C190, the Dutch Working Conditions Act *[Arbowet[20]]* is obviously an important tool, because it obliges labour organisations to pursue a policy to prevent undesirable behaviour. It is referred to as a target regulation. The law sets the objective but does not specify how an employer should give it shape and implement it.[21] The underlying idea is that self-regulation will result in a tailored approach.[22] As we already know, the results of this approach to eradicating violence and harassment in the workplace are not particularly impressive. What also does not help is the fragmentation of the relevant laws and regulations concerned across the Dutch Working Conditions Act, the Equal Treatment Act [Algemene wet gelijke behandeling, abbreviated to AWGB], and the Criminal Law. For example, the Working Conditions Act has no definition of sexual harassment, but refers for that to the Equal Treatment Act. Furthermore, the Dutch Penal Code *[Wetboek van Strafrecht]* does not explicitly apply the term sexual harassment, with only a limited number of its manifestations being punishable.[23] To put an end to this legal Tower of Babel, trade union confederations FNV and CNV and gender platform Wo=men have urged the Dutch Ministry of Social Affairs and Employment to ratify C190 and, in particular, to transpose it into regulations and policy. In 2021, for example, they argued for better legislation in regard to work situations and groups of workers who often slip through loopholes in the law: for instance, the informal sector, home-based workers, flex workers, and self-employed contractors.[24] In addition, they called attention to three underexposed aspects: equating harassment in the workplace with physical dangers; the impact of domestic violence, and requiring internationally operating companies to comply with national standards.

LOOPHOLES IN LAW AND REGULATIONS

In the meantime, the Ministry of Social Affairs and Employment has called on the Dutch Parliament's House of Representatives *[Tweede Kamer]* for ratification, and has published an implementation scheme in

preparation for this. In a joint comment on that schedule, the FNV and the CNV state that the ministry appears to consider the current law and regulations to be sufficient and therefore sees no need for amendment.[25] The trade union confederations fully disagree. In practice, they observe many shortcomings both in laws and regulations as well as in their enforcement, and argue that this could and should be remedied on the basis of C190.

They have noted, for instance, that in the absence of standards in the Working Conditions Act regarding what is a 'safe work environment', courts are quick to decide that employers have met their obligation to provide one, which leads to arbitrariness. Clear standards are needed not only for employers but also for complaint investigators, labour inspectors, and courts, supported by the development of expertise and independent positioning. Furthermore, the Working Conditions Act also falls short when it comes to mandatory access to help for victims of violence and harassment in the workplace. It suggested that staff welfare services take on this responsibility, but labour organisations are not required by law to have this in-house service. In addition, the officers concerned have not been trained for this type of work.

Confidential counsellor and complaint procedures
The number of confidential counsellors also leaves much to be desired. The Working Conditions Act does not contain any obligation with regard to counsellors. In 2018, only 50 percent of the Dutch labour organisations had a confidential counsellor on their staff. In addition, the FNV has heard that employers are putting pressure on them, or that they are too closely connected to management. Monitoring by the works council would be beneficial, but not all companies have one in place. The FNV therefore argues in such cases for an external confidential counsellor to be called in, whether through sectoral organisations or otherwise, and for protection against dismissal for internal confidential counsellors.[27]
The current 'proposed confidential counsellor Bill' does not contain quality requirements and its future is still uncertain.[28] Studies have shown that only one third of the current counsellors have had specific training. It is necessary to embed quality requirements such as independent and expert investigation, hearing both sides of the argument, confidentiality, proportionality, and processing the complaint within a reasonable time in the Working Conditions Act by way of a legal basis. This will also provide the labour inspectorate with a framework for assessing confidential counsellors.

The same applies to complaint committees and procedures, which are also missing as an obligation in the Dutch Working Conditions Act. Unacceptable behaviour is currently not often addressed at the roots, and remains limited to responding to incidents.[29] The lack of a set of legal standards for handling complaints and reports creates a patchwork of regulations. Moreover, sanctions are also subject to arbitrariness and rapid change, and sometimes are even in conflict with civil law. In addition, employees in what is referred to as the 'flexible shell' often cannot even make use of grievance mechanisms.

ENFORCEMENT

The consequences of shortcomings in the law are made worse by enforcement-related issues, often due to capacity shortages at the labour inspectorate. For example, the mandatory Risk Identification and Assessment (RI&A; in Dutch referred to as: Risico-inventarisatie en -evaluatie), intended to be able to pursue a policy that, among other things, prevents and limits psychosocial workload, is not well enforced. The labour organisations that have an RI&A in place (studies have shown only 50 percent have one[30]) usually do not have a plan of action, and have paid little or no attention to the problem of undesirable behaviour. The risk of gender-based violence and harassment is not an explicit component of the RI&A.[31] All in all, a huge gap exists in the field of handling reports and complaints.

C190 AS A YARDSTICK

Consequently, according to the FNV, the CNV, and Wo=men, effective legal protection against violence and harassment in the workplace is still lacking in the Netherlands. In order to take care of victims, and to prevent and protect against unacceptable behaviour in the workplace[32] in an adequate manner, they advocate uniform and mandatory standards, complemented with the development of expertise and the independent positioning of the professionals involved, as well as training for employers and employees on this subject. In this respect, with their extensive definitions of work, workers, and violence, C190 and R206 form an effective yardstick against which to measure our law and regulations, including collective labour agreements. From then on, employers can be required to develop preventive policies, victims can count on the independent and professional handling of complaints, and labour inspectors and courts will be able to implement legislation effectively.

CHAPTER 3
EXPERIENCES FROM PRACTICE

In this chapter, we provide examples of unacceptable behaviour in the world of work, based on the experiences of Mondiaal FNV's partner organisations. They also explain how they address this issue and how C190 may help in this respect.

MENA REGION

In 2011, during the Arab Spring, Lina became a founding member of her profession's independent trade union; she later became general secretary.[33] Independent trade unions were then a new phenomenon in her country; unions had always been required to affiliate with the government-controlled federation. When the first brave unions stepped out of that fence, their numbers increased fast, but after the initial bloom democracy got into trouble again, says Lina. "Under pressure from international institutions such as the ILO and global trade union federations such as IndustriAll, ITUC and PSI, our country adopted a new Labour Code that gave independent unions the right to exist. Unfortunately, the practice lags behind. When unions had to re-register, only a small number were recognised. We now face all sorts of obstacles in recruiting members, collecting dues and electing union leaders."

NATIONAL LAWS AND REGULATIONS

In this context, pushing for ratification of C190 is not easy. This actually applies to all countries in the MENA region (Middle East and North Africa) according to Hind Hamdan, consultant for Mondiaal FNV for the region. "These countries generally do not ratify quickly due to a combination of bureaucracy, authoritarian rule and instability, and governments really have a long way to go if they want to implement C190. On the way to ratification, we are doing a C190 project in several countries with the trade union federation Public Services International (PSI). We are trying to create momentum with the affiliated unions via two routes. Along the one we scrutinize national laws; along the other we build awareness." First, PSI investigates whether there are relevant laws and regulations on violence and harassment in the countries concerned. If so, the question is whether they are adequate, and where the gaps are. How can you arrive at legislation that is in line with C190? In 2019, PSI commissioned an overview of laws and practices regarding violence and intimidation in the world of work for a series of African countries.[34] In Lina's country the government has endorsed international conventions against discrimination against women, but women nevertheless suffer in large numbers and from serious forms of violence and intimidation at home, at work and in the public space. When cases of serious gender-based violence occurred during and after the Arab Spring – and in part as a result of it – the government responded with tougher penalties for such crimes. In the meantime, the women themselves weren't idle; especially since 2018, inspired by the global **#MeToo** movement, they are filing lawsuits against their assailants, despite the public taunt that may befall them.

THE BEAUTY OF C190

National laws and regulations provide starting points for the introduction of C190. For example, the Constitution obliges the state to protect women against all forms of violence. The penal code contains provisions that protect women against sexual harassment (a minor offence) and serious forms of violence such as genital mutilation and rape. There is no explicit policy on gender-related violence in the workplace, according to the PSI study – that is where C190 can mean a lot. C190 is not only about violence against women and that, Lina believes, is precisely the beauty and strength of this Convention. "We have organised five workshops on C190 for trade unionists, and I always start with the statement: This treaty is about everyone. The idea that everyone everywhere in the world of work, even in the home, is under the protection of C190 is fantastic. The Recommendation is also extremely valuable; with those guidelines we can get started even without ratification having taken place. We inform our trade unions that they can introduce guidelines from the Recommendation in their own organisation and in negotiations with employers. At the same time, we keep ratification of C190 on the agenda. For the government, the broad scope of the Convention is a tough one, and that does not make negotiations any easier. In that context, we gave two workshops to trade unions on campaigning and lobbying governments and the media." "Ratification still seems a long way off," says Najwa Hannah, regional

secretary of PSI in the MENA region, "but we are not standing still. We fight for concrete steps such as more gender hotlines and helpdesks, not only in capitals but everywhere. PSI annually organises the global event 16 Days of Activism, in which trade unions organize activities to raise awareness about gender-based violence and C190. We slowly build up momentum in this way to be able to push through with ratification later on."

VIOLENCE IN THE INFORMAL AGRICULTURAL SECTOR

This puts us in the middle of the second route of the PSI project: awareness building. In addition to the workshops, a number of unions affiliated with PSI organised an outreach meeting with unorganised female agricultural workers in a town in the south of the country. Lina: "Our agricultural sector is largely informal. The women do temporary work for subcontractors, they have no contracts, they move from one farm to another. Wages are low, hours long, protection against exploitation and violence nil. Verbal aggression is normal for them, something like 'Good morning'. There is a culture of looking down on women. At harvest time, they go to work very early in the morning, in vehicles that resemble livestock transport. Sometimes they sleep in the fields, without sanitary facilities. This environment is pre-eminently suitable for sexual violence. Perpetrators are often the subcontractors and supervisors, the men who determine whether you have work that day. Reporting them is almost impossible because sexual abuse is a scandal for the woman, not for the perpetrator. She could even die because the family honour has been damaged. The women mostly told us about the lighter forms of aggression, but I saw in their eyes that the worst also happened.
We told them about the existence of a hotline, a telephone number they can call to tell their story and where someone can refer them to psychological and legal assistance."

DATA COLLECTION AND RESEARCH

Data collection and research can bring ratification of C190 a step closer. Lina mentions the PSI study into the costs of violence and harassment in the world of work for society and the economy.[35] The study shows how violence against women leads to loss of productivity and working hours, high costs of physical and mental health care and legal services. "Employers are not that sensitive to a story about rights and justice, but they do listen if you make it clear how much something costs them. Unfortunately, no concrete amount of money could be given, but the estimates are telling.[36] The employment rate of women in the formal economy is low; and low-skilled women in particular often do not leave the house due to the patriarchal

culture and the lack of safety of many workplaces. Imagine the gains if women worked as much as men. And not only for the Gross Domestic Product, but also in terms of the Human Development Index, which also includes quality of life and education."

INFORMALIZATION OF WORK

Informal work is on the rise in all sectors of the economy. "The countries of the MENA region have suffered from severe economic crises," said Najwa Hannah, regional secretary of PSI. First the crisis that led to the Arab Spring, then COVID 19, then the war in Ukraine. Everyone suffered from the pandemic, but women more so. In the health sector, for example, male and female workers suffered from big workloads and aggressive family members of patients, but when women came home, they also had to contend with children studying online and unemployed husbands who sometimes turned violent. Millions of people lost their jobs, and if they could come back, they got bad contracts and precarious working conditions."

The size of the region's informal sector is alarming, says Najwa, and the majority of its workers are women and migrants. "Informalisation in our corner of the economy, public services, has begun with the privatisation of infrastructure sectors. Government officials generally have good contracts, but if a ministry wants to build a bridge, it hires a company that makes migrants work on bad contracts. We see the same with waste processing in cities, and in hospitals more and more people work via a service company. In such situations you cannot control gender-related violence. Informal workers are not allowed to organise themselves, and other forms of protection do not exist or they are not aware of them. We encourage our member unions to also involve informal workers in negotiations with employers."

FUTURE

What is on the agenda for the future, and what do the unions need to work towards C190? Lina wants to continue on the chosen path: raising awareness within and outside the unions, campaigning and lobbying, networking with relevant organisations, collecting data and conducting research. This requires more freedom of movement, almost literally: in the current political constellation it is even difficult to rent a room for a conference on gender. Given the problems in collecting contribution, a lack of money is also problematic; in some unions even survival is at stake, making C190 just a little less important. "Networking with other unions and organisations is useful and necessary," she says. "Support doesn't have to be only financial, we also benefit greatly from research, training, knowledge, the exchange of know-how, for example in building a database of violence and harassment at work. In training courses, it will provide us with concrete examples and figures we can use to illustrate the seriousness of the problem."

Najwa Hannah also mentions the role of multinationals and Corporate Social Responsibility. "Trade unions have a fundamental role in urging corporates and multinationals to provide their contracts with social clauses that respect national laws and international labour standards, including Convention 190. In that manner they can mean something, especially in countries where privatisation is the order of the day and the number of multinationals is growing."

SRI LANKA

IIn 2022, a special news snippet landed on a desk of Mondiaal FNV: a trade union for transgenders is being set up in Sri Lanka. "But we haven't reached that stage yet," says Paba Deshapriya, "in December a first meeting of a core group was held. Most transgender people work in the informal sector and are therefore difficult to organise."
Paba works in Sri Lanka for the NGO The Grassrooted Trust. "We provide a safe place for marginalised communities: addicts, sex workers, people living with HIV, people with diverse sexual orientations and gender identities.[37] We try to represent their interests and look for bottom-up solutions for the prevention of violence."

HARD NUMBERS

A study from 2021 shows that these communities could use some protection.[38] Due to the small numbers of respondents (193 LGBTIQ+ employees from different professional sectors and 45 decision makers, managers and/or representatives of enterprises), the research results are not representative; they are significant nevertheless. The majority of employees surveyed had completed tertiary level education, but most worked at entry level. In the workplace, 42% were not out; half of them thought that openness would lead to more stigmatisation and discrimination. Nearly 40% found the work environment discriminatory and unsupportive. Over 15% had experienced discrimination during job interviews, 10% had never received a raise, promotion or transfer, and 3% had been fired due to sexual orientation and/or gender identity/-expression.

In reality, these percentages are probably higher, because many did not dare to be open. That same fear prevented 56% of those surveyed from filing complaints about incidents where their rights were violated. Nearly 60% had experienced verbal harassment and 31% sexual harassment, including invitations to have sex and messages with sexual content. A quarter of those surveyed had left work due to psychological and emotional harassment. Employers and managers broadly endorsed the results of the employee survey. Only 38% of the enterprises had complaints procedures for harassment and discrimination; 53% did not implement gender-related and inclusive policies.
And of course not only people from the LGBTIQ+ community are affected. In 2011 one in four women suffered from sexual harassment on public transport; by 2015 that number had increased to more than 90%.[39]

LAWS AND REGULATIONS

The Sri Lankan Constitution guarantees the right to equality before the law and equal protection of all persons. It prohibits discrimination on the grounds of race, religion, language, caste, sex, political opinion and place of birth.[40] In 2016, the government published the Gender Recognition Circular, a kind of certificate for transgender people. It seems that the legal conditions for equal treatment are in place, but when it comes to actually granting rights to and protecting members of the LGBTIQ+ community, the government has so far largely failed to do so.

Ominous in this context is the penal code, which dates back to colonial times. But while English law has since been modernised, Sri Lankan law still groans under nineteenth-century ideas. For example, the law prohibits "carnal intercourse against the order of nature " (for which you can get 10 years) and "gross indecency or procurement or attempts to procure the commission by any person of acts of gross indecency" (two years). The terms are so vague that anything that doesn't fall under male-female relationships can be included, and law enforcement in fact uses them as such. The same applies to articles in the penal code regarding "cheating by impersonating someone else" and "acts of public indecency", which are used against transgenders and homosexuals.[41] It doesn't happen often, but it does contribute to the widespread antipathy towards LGBTIQ+ people.[42]
There are no specific laws to prevent discrimination and harassment in the workplace, and if companies have policies on sexual harassment, sexual orientation and gender identity/expression are not mentioned. After C190 was adopted, unions and other organisations pushed for ratification, but not much progress has been made.

THE USEFULNESS OF C190

"In this country, there is an absolute lack of political will to ratify and implement C190," says Paba Deshapriya. "Politicians say that the Convention prohibits men from looking at women, and despite

promises by some to submit ratification to the cabinet and parliament, nothing has come of it." Nevertheless, C190 can certainly be useful, she says. "Its content sparks discussions. Because the definitions of workplace, workers and violence and harassment are so broad, we can use them to capture many different situations. I was one of those who prepared the trade union team that went to the ILO in Geneva for the formulation and adoption of C190. After that I worked with mainstream unions in the public sector to make them aware that violence and harassment not only comes from above but also from colleagues, which some find difficult to accept. The extensive definition of violence in C190 shows that it includes things like verbal harassment and unwanted looks. In addition, we encourage unions to collect data on violence and harassment at work and to develop mechanisms to work in a gender-sensitive manner. In this way we hope to build a case that we can eventually present to the government."

IN THE FREEZER ROOM

There is no shortage of examples of violence and intimidation in the workplace. Paba mentions two. 'A female worker in a garment factory noticed that her sewing machine was broken. The technician wouldn't fix it unless she had sex with him. She refused. When she failed to reach her target with that broken machine, the boss scolded her. She reported nothing and continued to work there."

"A transgender who worked in the catering at the international airport was pushed into the freezer room by colleagues. She had to show what she had 'down there'. She did not file a complaint, but when the opportunity arose, she left. She now works for the National Transgender Network."

To combat these kinds of abuses, Paba sees more in raising awareness than in new laws. "Our government can promulgate progressive laws and not enforce them; they do it to get good marks internationally. In addition, our legal system is so inefficient that even rape cases may have to wait 8 to 12 years for a verdict. Of course laws need to change; of course we fight for decriminalisation of homosexuality and sex workers. But we set up Grassrooted Trust to initiate change in attitudes and behaviour from the bottom up. We want everyone to respect each other. We also use C190 for this, because it states that everyone has the right to respect in the workplace."

AWARENESS

Efforts to bring about change meet with a lot of obstacles these days. "The current political infighting leaves little scope for addressing issues. We see more and more democratic institutions collapsing. We believe education is essential, but we still work too isolated. Those who address violence against women, child protection, environmental protection – we need to come together to re-imagine the education system. For this we talk to authorities, to the business community, we

visit schools, village committees, rural women's groups, factories, trade unions. We have made YouTube videos about C190.[43] We try to connect people. No community is immune to violence and intimidation, it cuts through everything. To change education, grassroots communities must take it up. We need to talk to each other about how patriarchy works, how power imbalances lead to violence. We also need to gain a better understanding of human rights and fundamental labour rights." The massive protests against the Rajapaksa government in 2022 were a hopeful event. "Two million people in the streets of Colombo who protested non-violently, that was new and special. There is now a widespread discussion about nonviolent change."

THE NETHERLANDS

Lina, who spoke earlier about the MENA region, was surprised that the Netherlands had not yet signed C190. 'You have good labour legislation and legal protection and meet all the requirements, don't you?' We learn from Ellen that this is not the case. She currently has a great employer, she says. 'A year ago, I became a Quality, Labour and Environment staff member with an organisation that maintains sports centres, swimming pools, and children's farms. It is a reintegration position[44]; I'm given the opportunity to gradually build up a normal life again.

That opportunity was urgently needed after the traumatic experiences with her first employer. Fifteen years earlier, after completing her training in automotive engineering, she got a job in the process industry, at a plant that produces suspension systems for lorries and trailers. 'I started as a machine operator and worked my way up to the position of supervisor. I had a 40-hour contract, worked three shifts, and supervised a production line with twenty robots and a team of seven men. For a long time, however, I hadn't been happy with who I officially was in terms of my gender: a man. It felt wrong. When I was alone, I would dress in women's clothing, and when I saw my image in the mirror, it felt right. I had to make a choice. When I sought help, it was indicated to me fairly quickly that I was a trans woman and would be able to undergo the transition process. From that moment, my life was turned on its head. It started at home, with my oldest child saying, "Dad, to me you are dead. I never need to see you again".'

HEAVY METAL

'Initially, things weren't too bad at work. I had asked my supervisors to support me and to prepare the organisation for what was going to happen to me. It was not visible at the time because I was taking things slowly, in small steps. Sometimes I would put on a bit of make-up or dress in a more feminine manner. People thought I was a feminine homosexual, which is actually also not accepted in such a man's world where testosterone is dripping from the machines, so to speak. When my transition became more visible, the supervisors' attitude began to change. The HR supervisor said that she too wouldn't want to change clothes in the same dressing room with someone like me, while direct colleagues told me that for religious reasons they couldn't accept me. I immediately went from a two to a zero in the transition process. Things were even worse in the workplace. I was told by colleagues straight to my face that they didn't accept me. I was ignored during breaks, emails weren't answered, and I was shut out during conversations. At one point, six colleagues surrounded me and said that I should act normal. At a given moment I felt so unsafe that I would only eat in my car, sitting alone with the doors locked and music on. I'm a heavy metal fan. Perhaps it's hard to understand, but the music relaxed me! LOL I still work with my headphone on, which is a result of what happened in the past. I've even stood next to a railway line, and the only thing that stopped me ending it all was the thought of how my action would affect the train driver.'

DUTCH ELIGIBILITY FOR PERMANENT INVALIDITY BENEFIT (RESTRICTIONS) ACT

'I wanted to continue doing my own job. Of course, I was perfectly capable of doing it, because physically there was nothing wrong with me. However, I could no longer work shifts as I had become mentally exhausted. I was offered a temporary position in the Quality, Labour and Environment Department. I really liked the job as well as the department itself. Then, out of the blue, I was told I had to carry out production work, and that if I declined it would be considered a refusal to work. The head of the Quality, Labour and Environment Department dropped me like a hot potato. My position wasn't "a structural one", wasn't official, but became vacant after I had left. That's how things were played. Next, through the Dutch Eligibility For Permanent Invalidity Benefit (Restrictions) Act [Wet Verbetering Poortwachter][45], they forced me to do work they considered suitable.[46] It meant a loss of 1,500 euros in monthly income and doing unskilled labour at the level of a sheltered workshop. The

production manager said that after my transition she would assess whether I had the same supervising capacities that I previously had. In the meantime, I was not allowed to enter the women's dressing room and had to change in the first-aid room. They were going to create a separate room for me.'

POST-TRAUMATIC STRESS DISORDER

'I reported sick, which wasn't accepted because I did so by email. They claimed I just didn't feel like working, and withheld my wages because I refused the reintegration opportunity that they offered: unskilled work. The company doctor, who was also my confidential counsellor, felt that the issue simply involved a labour dispute with my employer. Five hours later I ended up in a psychiatric institution. After that, engaging with them was no longer possible. After being "sick" for two years, I was dismissed. I didn't file an objection; I just could no longer work there. Now I am 80 percent to 100 percent incapacitated for work, have a 16-hour contract, and work 12 hours. With these hours, and with the allowance and an occupational disability insurance that supplements my income to 75 percent of my former salary, I can make ends meet and look after my house again. However, I also queued at the Food Bank for a couple of years. I'm glad this was possible, but it is horrible to have to do that. During a recent reassessment by the Dutch Employee Insurance Agency [Uitvoeringsinstituut Werknemersverzekeringen; abbreviated to UWV], I was diagnosed with post-traumatic stress disorder. I still have panic attacks if things don't go well at work. The medical insurance physician wants to protect me from my own work drive. That gives me some peace of mind, but I find it hard to deal with how I am then portrayed.'

HUMAN RIGHTS COUNCIL

'After my dismissal, I contacted Transgender Netwerk Nederland (TNN) and then called on the local anti-discrimination agency, which provides concrete help. We started a procedure with the company whereby both parties were heard, and which lasted almost two years. The opposite party would often not respond or didn't feel like answering. When it became clear we had reached a deadlock, I went to the Human Rights Council (HRC) and sued the company for discrimination. Legally speaking, a ruling by the HRC does not mean much, but you can take it to court and ask for compensation. However, that was not what I was after. All I wanted was for the company to be held responsible and to realise what they had done and are still doing to me. The entire process was challenging. The company hid itself behind the Wet Verbetering Poortwachter and my charge was denied. Nevertheless, I feel I have won. I stood up for my rights, and stayed loyal to what I stand for and who I am.'

THE WAY BACK

Returning into the labour market took quite some doing. Ellen worked as a volunteer with a reintegration agency for transpersons, completed an 'integral safety officer' training, was a LGBTI+ project manager with a telecom company, stayed at home, and wrote two safety plans during the corona period before she was able to start with her current employer. She still needs to be careful not to overburden herself, as the slightest provocation will have a negative impact on her. 'The employer has set up a reintegration 'hour bank'. The hours I do not manage to work, I can transfer to this bank so that they are not deducted from my spare time. Apparently, it'll take a while before I'm a bit steady on my feet again, which disappoints me. I don't know whether things will ever get back to normal. I would like to move towards having my own place in society.'

Ellen was not a trade union member. 'I never thought I would need one or that an employer would treat me like this. Transgender Netwerk Nederland, the reintegration agency for transpersons, as well as the anti-discrimination agency were very helpful to me. In addition, sport is important to me. I'm a semi-professional windsurfer and among the top 15 of the fastest women in the world. I would no longer be here if I hadn't had my surfboard. That feeling of freedom … That board is my safe little island, even when I'm surfing on the water at 70 kilometres an hour.'

TRANSGENDER NETWERK NEDERLAND

Together with nine other part-timers and about thirty volunteers, Lis Dekkers works for Transgender Netwerk Nederland (TNN), the organisation that has represented the interests of transgender and non-binary people and their environment since 2008. They conduct research, provide advice, and engage in political lobbying activities.

'Research and data are badly needed. Not until we can prove in writing how extreme certain situations may be will we be invited to tell our story. For example, we learnt from the 2022 LHBT Monitor (available in Dutch with an English summary) by the Dutch Social and Cultural Planning Office [Sociaal Cultureel Planbureau] that the socio-economic position of transgender

persons is lagging considerably behind that of the population at large. Fifty-two percent of transgender persons fall into the lowest income category compared to 27 percent of the population at large. They more often receive an occupational disability benefit (8 percent compared to 4 percent), a social security benefit (11 percent compared to 4 percent), or another allowance (11 compared to 3 percent).'[47]

These numbers are often more dramatic than TNN itself expected. 'In cooperation with LGBTI+ organisations in Hungary and Croatia, an Italian university, and a Spanish women's organisation, we have conducted an EU-financed study into discrimination at work. In the study, 45 percent of transgender and non-binary people stated that they were bullied and discriminated against by colleagues. This is many more than the number of reports suggest.[48] Sixty percent of non-binary people stated they are constantly portrayed as male or female, and the numbers for "misgendering" are also high among binary transgender individuals. Against all expectations, discrimination occurs equally often in all these countries. Dutch people have more rights than Hungarians, but rights alone are apparently not sufficient. Moreover, many transgender and non-binary people are not aware of their rights. They do not know what a confidential counsellor is, and do not know about the trade unions and anti-discrimination agencies out there that defend their rights.'

CONSULTANCY

'We also have interviewed officers in Human Resources (HR) departments to find out what they know about the topic, and what it is like to support transpersons in the workplace. In 2019, the term "gender" was further defined in Article 1 of the Dutch Equal Treatment Act [Algemene Wet Gelijke Behandeling], in the sense that in determining grounds for non-discrimination, no distinction may be made on the basis of gender identity or gender expression; previously it only involved people's sex (gender at birth).[49] One third of the HR managers weren't aware of this.'

Companies increasingly often ask TNN for advice, which is a positive development according to Lis Dekkers. 'There are at least a few inquiries each month. They want to develop an inclusive policy and, for example, introduce gender-transition leave. In 2020, Unilever introduced this, while PricewaterhouseCoopers and Lush, among other companies, have put inclusivity on their agendas. HR officers often know too little about the topic but are still motivated. We provide advice, monitor, and try to put companies in touch with each other. The FNV has included gender-transition leave in collective labour agreements, which is a good thing.'

TNN has developed a guide with good examples for employers as well as training for HR officers with scenarios they can practise with. 'For example, if an employee objects to a transwoman making use of the ladies' toilet, this usually ends badly for transpersons. Therefore, we always recommend protecting the discriminated person and engaging with the person who complains. Is it ignorance? Resentment? That person has to change; a separate toilet for transgender employees doesn't solve the problem.'

POLITICAL LOBBYING

In addition to research and providing advice, TNN also engages in political lobbying activities. 'We consult with municipalities, provinces, and members of parliament', says Lis. 'We advocate a statutory regulation for gender-transition leave, because if this is only arranged per collective labour agreement, you may suddenly lose this right when you change jobs. Small companies cannot afford it, so the government has to arrange this. Everybody should have access to it.'

'Furthermore, we are working on a transgender law that ensures that people can change their gender without unnecessary obstacles. There is more and more focus on this, in a negative as well as in a positive sense. We observe progress in the world of work. Many companies want to focus on inclusion. Perhaps they realise that, from an economic point of view, it is not sensible to exclude an entire group of people, because they will lose talent and money. If Ellen's company had supported her, she probably would still be working there, and all those working years would not have been lost.'

However, is this actually possible in a company 'where testosterone is dripping from the machines'? 'I think so. It's all about their standards. Do you accept suppressing someone's identity or do you state that the organisation accepts differences among people? It's actually quite simple; it's all about supporting people. Of course, training as well as dialogue will be needed, but a great deal has already changed. Ten years ago, gender-transition leave was still unheard of.'

CONVENTION 190

Training HR officers and confidential counsellors is one of the recommendations in Convention 190. 'If knowledge about transgender and non-binary people is part

of it and applied, C190 can be useful for them', says Lis. 'In work situations, they often miss someone who is on their side, and who knows what they are going through. Transgender employees often have to explain to the confidential counsellor why discrimination is terrible. In addition, I would like to stress that companies often dismiss transpersons because of their gender identity or they make up other reasons to do so. That is why the victims do not report discrimination; they think there is no point in it. However, they should report it because it helps with regard to visibility and to numbers.'

KENYA

The screen shows the silhouette of a young woman. Her toneless, soft voice says, "It's torture. He wants to sleep with you, then you get a job." The documentary Sex for Work: The true cost of our tea reveals how sexual abuse is the order of the day on Kenyan tea[50] plantations owned by multinationals Unilever and James Finlay. Of the 100 women the documentary makers spoke to, 75 say they were abused. Several women have contracted an HIV infection. Only ten women dare to speak in front of the camera, but only if they remain unrecognizable: they fear unemployment, separation and ostracism if the abuse becomes known. They no longer trust anyone. The documentary focuses on four plantation managers who acted as subcontractors – one is a Unilever department manager. For decades they have been able to continue their heinous practice of demanding sex in exchange for a job. When an undercover journalist, working on the Unilever plantation in the hardest possible job, asks the manager for a lighter one, he answers: "Will there be any honey to lick?" When she reports this to the sexual harassment officer, he tells her to refuse; he promises help that never comes.

At Finlay, employees live on site, the rent is deducted from their wages. If they have a back pain, they are given painkillers and ordered to continue working. Women are raped in the fields by several men at the same time.
Now, 70 women have filed a complaint.

HYPOCRITICAL

The documentary evoked shocked reactions . MP Beatrice Elachi said it has become painfully clear to her that slavery still exists in Kenya. In a press release, the Ministry of Labour and Social Protection calls the revealed practices a violation of labour rights. Sexual assault and harassment are punishable under the Employment Act, the Penal Code and the Sexual Offenses Act. The Ministry announces an investigation; it proclaims that it aims to promote decent work and the development of a personnel policy that not only defines the rights and obligations of employers and employees, but also guards the well-being of employees.

While filming for the documentary, Unilever sold its plantation to venture capital company CVC, now it's called Lipton Teas and Infusions. Unilever and Finlay confess their horror at the crimes, suspend the four managers and promise an investigation. The English supermarkets Tesco and Sainsbury are outraged and claim that such practices have no place in their supply chain; Starbucks freezes its tea purchase from the plantations – but that is of no use to the women, and also hypocritical. As early as 2011, a report was published that made it clear that sexual exploitation in the sector went beyond all limits.[51] At the time, Unilever announced a zero tolerance policy for sexual harassment, but given the harsh practices to date that was an empty gesture. A gesture that, moreover, did not change the powerlessness of employees that lies at the root of the abuse.
In Kericho County, where the plantations are located, jobs are scarce. Manual tea-picking is one of the few opportunities to earn an income, and that opportunity is disappearing. Harvesters are taking over, the district governor says 50,000 people have been laid off in the last 10 years; one in three adults in the district is unemployed. Desperate people have set fire to eleven harvesters.

C190

Caroline Khamati Mugalla is Executive Secretary of the Secretariat of EATUC, the East-African Trade Union Confederation that works in Kenya, Tanzania, Zanzibar, Uganda, Burundi and Rwanda.[52] The documentary, she says, backs up the request for ratification of C190 that the Kenyan trade union federation COTU already submitted to President Ruto in December 2022 (after he failed to follow through on his commitment to ratify on 3 December). A new petition has been filed, this time from the Kenya Plantation & Agricultural Workers' Union. This is asking the government for immediate ratification and integration of C190 in collective labour agreements. In addition, Finlay and Unilever must employ their workers themselves rather than through

subcontractors, and stop torpedoing unions. They must compensate victims of sexual abuse, and in general offer their workers contracts and obey Article 41 of the Constitution: fair pay for work, decent working conditions, the right to organise and collective bargaining. "In February, at a meeting with representatives of all Kenyan trade union federations, the president reiterated that Kenya is committed to signing," says Caroline Mugalla, "but presidential statements are often politically motivated. How fast it goes depends, among other things, on the pressure we can exert. We are now asking the government to ratify on Labour Day. We have also contacted Parliament to make them aware of the need to sign.'

INFORMAL LABOUR AND THE PLANTATION SECTOR

Because the women on the tea plantations are not organised and were not allowed to organise themselves, they are extra vulnerable to abuse of power. But these practices are much more common, says Caroline. "During Covid, the informal economy has grown in all countries and in all sectors and this development has not been reversed since. Currently, more than 80% of jobs in East Africa are in the informal economy; in Burundi and Uganda even more than 90%. East Africans who go to the Gulf region, mostly for domestic work, completely disappear from the radar. Informal work has been rampant in the plantation sector for a long time: in coffee, tea and not to forget flowers, often companies with Dutch owners or buyers. They use a lot of temporary and informal labour during planting, pesticide application and harvesting." Do unions collect data on violence and intimidation?
"They do receive notifications and reports through the shop stewards, but there are gaps. For example, because companies flatly deny that transgressive behaviour takes place in their workplace, and because unions themselves do not take up cases because the victims are not organised."

STIGMA

"The plantation union has active shop stewards and study circles. A study circle is an old trade union concept for training people at workplace level: they sit in a circle, share their experiences and investigate how they can solve problems. Violence and intimidation are also often on the table. The main problem, even among organised workers, is that victims only want to report anonymously. I've seen it in Uganda, in Rwanda, in Tanzania and in Kenya. Reporting violence gives you a stigma. In addition, some do not even realise that what is happening to them is sexual harassment. It is presented as a joke, on a light note. When I raise the various forms of sexual violence in study circles, I often hear: Oh yes, my supervisor always does that too! And what isn't helpful either: the bosses warn each other against

someone who opens her mouth. Even if you sue someone and the judge rules in your favour, it may haunt you as an employee. You won't get a job anywhere."

BEST PRACTICES

"Some unions have occupational health and safety committees; they now also include measures against sexual violence and intimidation in their policy. They do this together with employees. The result is not just new policy; the process itself leads to awareness. From now on, all participants know what behaviour is considered violence and harassment, and also that it is punished. Some trade unions include policies against sexual harassment in the collective labour agreement, and are already using parts of C190. Employees participate in this process, it is not just HR officers who put something on paper."

Should laws in East Africa be adapted to C190?
"I think so, but we have yet to dive into that. What are the gaps in our legislation? While advocating for ratification of C190, we consulted with some of our affiliates. Their Ministries of Labour who were also present, stated that their existing laws already covered what C190 is proposing, why ratify? This is a big challenge. We still have a long way to go on the road to sensitize our governments to the real meaning of C190, and convince them to ratify without hidden agendas."
In preparation for the adoption of C190 in the ILO and beyond, EATUC has organised workshops for national trade union federations to raise awareness about the importance of the Convention and its implications for trade unions. There will be a regional conference on C190 in May, says Caroline Mugalla. "We need to understand where each country stands in the process of ratification, develop a strategy to take them forward and build capacity. We will be contacting South Africa and Namibia shortly; they have already signed and we can learn from their experiences."

INTERNATIONAL CORPORATE RESPONSIBILITY

Can multinationals be useful for ratifying and implementing C190?
"They are powerful and protected by their governments. But applying pressure in the country they come from is effective. A Swedish company in Kenya didn't allow workers to organise; when a colleague Swedish trade union raised the matter with the parent company, it had to concede. They use double standards, they behave differently at home than in Africa; look at the Totals and the Shells. Our unions need to document and share these experiences with colleagues in the north, where the companies come from. We must work in solidarity."

CHAPTER 4
BUILDING BLOCKS FOR A STRATEGY

The 187 countries affiliated with the ILO are demonstrating every possible stage in the process of signing and implementing C190. While some countries have signed it and are making significant progress, others have merely put their signatures to it. In other countries, it is still just a dot on the horizon.

Many of Mondiaal FNV's partners state that a speedy ratification is not to be expected anytime soon, despite the distressing experiences involving violence and harassment in workplaces. However, the partners are not sitting idle. While they continue to press their governments for ratification, in practice they are paving the way for C190 with training projects for trade union members and unorganised workers, awareness-raising campaigns, political lobbying activities, research, and data collection. In the previous chapter, we presented a few examples of this. A summary is below.

In the **MENA region,** Public Services International is trying to create momentum with the affiliated unions via two routes: by measuring national laws against C190 and by raising awareness. In this respect, topics are being addressed, such as gender hotlines and helpdesks; the global event 16 Days of Activism; outreach meetings with unorganised female agricultural workers; workshops for trade union members and leaders; a study into the economic costs of violence and harassment in and around the workplace; and the need for international corporate responsibility.

In **Sri Lanka,** the ratification of C190 is still nowhere near. Staff members of The Grassrooted Trust strongly advocate a bottom-up change, for which they use C190. They have produced YouTube videos about C190 and use the convention in discussions with mainstream unions to make them aware that violence and harassment also come from colleagues, and that verbal bullying and prying eyes are part of it. In this way, they hope to build a case that they can eventually present to the government. However, they first try to change attitudes and behaviour, and, for this purpose, to revamp the education system in collaboration with other grassroot groups, for which they organise meetings throughout the community.

In **the Netherlands**, the FNV, the CNV, and Wo=men and the Labour Foundation are striving for the ratification of C190 (see Chapter 2). They keep the momentum going at government level and among politicians, and have worked hard on tracing voids in law and legislation. Transgender Netwerk Nederland, which represents the interests of transgender and non-binary persons, also considers C190 to be a supplement to the toolbox, in particular for advocating a statutory regulation for gender-transition leave and training courses for HR officers and confidential counsellors.

In **East Africa,** trade union confederation EATUC and affiliated unions have on several occasions through petitions requested their governments to ratify, but without results so far. Before and after the adoption of C190 in the ILO in 2019, the EATUC organised workshops for national trade union federations to raise awareness regarding the importance of the Convention and its implications for trade unions. A regional conference on C190 will be held in May 2023. Some Kenyan unions have occupational health and safety committees, and they now also include measures against sexual violence and harassment in their policy.

They do this together with employees, which will not only result in new policy but also lead to awareness. Some trade unions include policies against sexual harassment during collective bargaining rounds, and are already using components of C190 in this respect.

There are more useful examples from other Mondiaal partners. A random selection from early 2022 relating to different countries[53] includes a monthly 'spotlight' that highlights parts of C190 and provides relevant global news; a 'tracker' for gender-based violence; a toolbox with information, topics for discussion, campaign material and important data; a social-media campaign; and publicity in mainstream media such as a talk show on television. Also included are tripartite discussions with employers, employees, and the government; strengthening the position of women within trade unions; networking; calling on embassies, mainly where subsidies are involved; bringing pressure to bear on multinationals; implementing C190 in collective bargaining; and exchanging knowledge pertaining to labour law between countries.

Other building blocks for a strategy can be found in the concrete measures of Recommendation 206 (R206) that goes hand in hand with C190. Please refer to the ILO site[54] for a complete list. Some important recommendations that may bring C190 closer to realisation but can also be advocated without ratification, include:

- Training of management, supervisors, HR officers, works councils, employees, and active trade unionists in the field of violence and harassment in and around the workplace, in particular relating to gender-based violence as well as to risks if 'third parties' such as clients, patients, and service providers are involved and to risks associated with discrimination, abuse of power, and social, cultural, and gender norms;
- Remedies for victims: the right to resign with compensation; reinstatement; appropriate compensation for damages; the possibility for employees to withdraw immediately from potentially threatening situations without risks;
- Reporting to and an investigation by labour inspectorates;
- Protection of privacy in complaints procedures for victims and whistleblowers;
- A ban on gagging clauses in contracts and settlements;
- 24-hour hotlines;
- Courts with expertise in cases of gender-based violence and harassment;
- Legal advice for victims and the possibility of shifting the burden of proof in proceedings other than criminal cases;
- Support to help victims re-enter the labour market;
- In the case of domestic violence: leave for victims; flexible work arrangements; temporary protection against dismissal; the inclusion of domestic violence in workplace risk assessments; disseminating information about the impact of domestic violence on the company;
- Explicit authorisation of labour inspectorates to address violence and harassment with appropriate measures, such as cessation of work when life, health, or safety are jeopardised;
- Development of model codes of conduct for a safe workplace;
- Collect and publish statistics on violence and harassment in the world of work disaggregated by sex, form of violence and harassment, sector of economic activity, and vulnerable groups. The ILO is currently developing a 'conceptual and methodological measurement framework' to support countries in this respect;
- Public awareness-raising campaigns in the various languages of vulnerable groups such as migrants.

The comprehensive, broad-based, and decisive convention that the trade union world had hoped for before 2019 is now here.

The aim of this publication is to contribute to the transformation of words into action, an achievement that hopefully will be on the horizon in the near future for the entire world.

FOOTNOTES

[1]Experiences of violence and harassment at work: a first survey. ILO, Lloyd's Register Foundation, Gallup 2022.
[2]https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604949/IPOL_STU(2018)604949_EN.pdf
[3]Inspectie SZW (Dutch Inspectorate for Social Affairs and Employment), BasisInspectieModule (BIM) Intern ongewenst gedrag, 1 September 2000; Inspectie SZW, BasisInspectieModule (BIM) Agressie en geweld, 21 September 2020.
[4]The International Labour Organization (ILO) is a UN agency that focuses on advancing decent work, social security, and the dialogue between employers, employees, and the government. It does so by, among other things, drawing up treaties (conventions) and recommendations that affiliated states can sign, after which they are obliged to implement them in their own countries. Wherever we refer to C190, the corresponding Recommendation 206 is included. https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190.
[5]Also refer to: https://www.fnv.nl/getmedia/470cade4-4556-4b07-b3c0-0d0dfb622664/Mondiaal-Geweld-en-intimidatie-op-de-werkvloer-Compleet-NL.pdf
[6]Experiences of violence and harassment at work: a first survey. ILO, Lloyd's Register Foundation, Gallup, 2022. The results present an overview of the scope and frequency of the problem distributed over different demographic groups. They provide an insight into the main forms of violence and the reasons that people do not talk about them.
[7]NB: Questions about belonging to the LGBTIQ+ community are absent in this survey.
[8]In 2019, the term 'gender' was further defined in Article 1 of the Dutch Equal Treatment Act [Algemene Wet Gelijke Behandeling], in the sense that in determining grounds for non-discrimination, no distinction may be made on the basis of gender identity or gender expression; previously it only involved people's sex (gender at birth).
[9]https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190 This refers to any communication facilitated by the Internet, such as social media, internet-conferencing software, and so on.
[10]Experiences of violence and harassment at work: a first survey. ILO, Lloyd's Register Foundation, Gallup, 2022.
[11]https://mneguidelines.oecd.org/ The OECD Guidelines for Multinationals state clearly what the governments of the 50 affiliated countries expect from multinational companies in the field of socially responsible entrepreneurship (SRE). They provide companies with tools to address issues such as chain responsibility, human rights, child labour, the environment, and corruption in a responsible manner.
[12]https://unglobalcompact.org/library/2 The UN Guiding Principles on Business and Human Rights comprise 31 principles distributed over the three 'pillars' of Protect, Respect, and Remedy, which define the states' obligation and companies' responsibility to guarantee human rights, and provide effective access to obtaining means and methods to eradicate human rights violations by companies.
[13]The fundamental labour rights are: freedom of association and the right to collective bargaining; elimination of forced or compulsory labour; abolition of child labour; the elimination of discrimination, promotion of decent work, and the right to a safe and healthy working environment.
[14]From: ILO-Conventie 190: een 'geïntegreerde aanpak' van geweld en intimidatie? Bas Rombouts, in Arbeidsrechtelijke Annotaties 2021 (15) 1 doi: 10.5553/ArA/156866392021015001001:
'Article 1 of the Dutch Constitution forms the basis of equal treatment legislation, which includes a general ban on discriminating civilians, in the first place by the government. The right to equal treatment, between civilians and in the relationship between civilians and the government, has been worked out in detail in a number of specific laws and provisions (...). A particularly important tool in relation to violence and harassment is the Equal Treatment Act [Algemene wet gelijke behandeling, abbreviated to AWGB]. The Act may include prohibited distinction related to "religion, philosophy of life, political beliefs, race, gender, nationality, heterosexual or homosexual orientation, or marital status". Distinction based on "sexual characteristics, gender identity, and gender expression" also include "pregnancy, birth, and motherhood". Furthermore, the Equal Treatment Act also states explicitly that harassment and sexual harassment involve a prohibited distinction. (...) Together with the Inspectie SZW, the Human Rights Council (HRC) form (...) an important route to give substance to "ensuring effective means of inspection and investigation of cases of violence and harassment" as referred to in Article 4 of C190. Nevertheless, the CRM is receiving relatively few complaints relating to harassment or sexual harassment. Embarrassment, fear (for example, of losing one's job), and issues relating to burden of proof probably play a major role in this respect.'
[15]The reason European countries are so slow to ratify may also be because EU Member States need to get permission to amend their legislation, and ratification was delayed for a considerably long period because the process was obstructed by conservative countries such as Hungary and Poland. Furthermore, most European countries will not ratify ILO Conventions until their law and regulations have been put into alignment with it, which may take considerable time. (Private conversation with Catelene Passchier, Chair of the ILO Employees' Group and Vice-Chair of the ILO Management Board, and Jessica van Ruitenburg, policy consultant for the FNV.)
[16]ILO-Conventie 190: een 'geïntegreerde aanpak' van geweld en intimidatie? Bas Rombouts, in Arbeidsrechtelijke Annotaties 2021 (15) 1 doi: 10.5553/ArA/156866392021015001001.
[17]In these countries, gender-based violence is usually only understood to be against women because they are more often subjected to this type of violence. However, this does not mean men are safeguarded against it. The previously mentioned survey shows that five percent of men also experience sexual violence.
[18]Current legislation governing whistleblowers is undergoing amendment.
FNV's response to the draft Nationaal Actieplan Seksueel grensoverschrijdend gedrag en Seksueel geweld, 11 November 2022.
[19]Arbo is an abbreviation of ArbeidsOmstandigheden (Working Conditions). This refers to the Arbowet, the law that states that every employee has the right to a safe and healthy work environment.
[20]Niet dubbel de dupe. ILO-verdrag nieuwe stap in aanpak geweld en intimidatie op het werk. Alie Kuiper, in Arbo 5/2020.
[21]De aanpak van seksuele intimidatie 'in the world of work'. Een onderzoek naar lacunes in de Nederlandse wet- en regelgeving en een wenselijke en adequate wijze van implementatie van het ILO-Verdrag No. 190.
[22]R. Speklé, Vrije Universiteit, Faculteit der Rechtsgeleerdheid, 18 November 2022.
[23]De aanpak van seksuele intimidatie 'in the world of work', p. 12.
[24]21-002 letter CNV-WOMEN-FNV Committee debate on Gezondheid en veilig werken [Health and safety at work] dated 24 June 2021.
[25]Gezamenlijk commentaar FNV en CNV op implementatieschema van SZW ter voorbereiding op ratificatie van C190, January 2023.
[26]ILO-Conventie 190: een 'geïntegreerde aanpak' van geweld en intimidatie? Bas Rombouts, in Arbeidsrechtelijke Annotaties 2021 (15) 1 doi: 10.5553/ArA/156866392021015001001.
[27]Amendment of the Working Conditions Act in connection with making a confidential counsellor mandatory, letter of the FNV to the Chair and members of the Standing Committee for Social Affairs and Employment of the Dutch Parliament's House of Representatives [Vaste Kamercommissie Sociale Zaken en Werkgelegenheid van de Tweede Kamer der Staten-Generaal], 19 September 2022.
[28]The Dutch Parliament's House of Representatives will include quality requirements in the discussion on the draft Bill.
[29]Interne onderzoeken naar klachten over ongewenste omgangsvormen: tijd voor regulering en professionalisering. Alie Kuiper, Tijdschrift voor Compliance No. 4 – November 2021.

[30]ILO-Conventie 190: een 'geïntegreerde aanpak' van geweld en intimidatie? Bas Rombouts, in Arbeidsrechtelijke Annotaties 2021 (15) 1 doi: 10.5553/ArA/156866392021015001001.
[31]De aanpak van seksuele intimidatie 'in the world of work'; Geweld en intimidatie op het werk, Alie Kuiper, in OR Magazine, February 2022.
[32]The classification of prevention, protection, and support is derived from C190.
[33]For the safety of those involved, their real names are not used.
[34]Current law and practice concerning violence and harassment in the world of work focusing on convention 190 and recommendation 206, Sandra van Niekerk, Public Services International November 2019. The publication examines the state of affairs in South Africa, Botswana, Kenya, Uganda, Tunisia, Algeria, Egypt, Senegal and Chad.
[35]Economic and Social Costs of Violence and Harassment In the World of Work, An Approach for Elimination, Dr. Howaida Adly, Public Services International, February 2022.
[36]Figures are known for some countries; about Egypt, for example, Fatma Mostafa writes in The Washington Report, 9/30/2019: 'If women were treated equally as men in the workforce, according to the International Monetary Fund (IMF), Egypt's GDP would increase by about 34% and average household income would rise by some 25%, pushing many families out of poverty.' https://www.wrmea.org/egypt/as-more-egyptian-women-become-breadwinners-are-labor-rights-keeping-up. html
[37]Figures are scarce, but it is estimated that there are approximately 35,000 to 47,000 female sex workers and 24,000 to 37,000 men who have sex with men in Sri Lanka. From: Disrupting the Binary Code: Experiences of LGBT Sri Lankans Online, December 2017 (c) Women and Media Collective.
[38]A study on workplace discrimination: Challenges faced by LGBTIQ employees and the perspectives of employers in Sri Lanka, Chowdhury, S.A. (2021), © Equal Ground 2021.
[39]Disrupting the Binary Code: Experiences of LGBT Sri Lankans Online December 2017 (c) Women and Media Collective.
[40]Note: The term "sex" in the Constitution does not cover "sexual orientation and gender identity/expression.
From: Sri Lanka: Ensuring equality and non-discrimination for lesbian, gay, bisexuals and transgender people. Mathuri Thamilmaran, International Commission of Jurists, Advocates for Justice and Human Rights 2021. Also: Gap Analysis, One Country, Many Arbitrary Laws - Rethinking Laws and Policies that Leave LGBTIQ+ Sri Lankans Behind, Westminster Foundation for Democracy 2021.
[41]Section 365, 365A and 399 of the Penal Code 1883, and Section 7 of the Vagrants Ordinance 1841.
[42]Human Rights Watch. www.hrw.org/report/2016/08/15/all-five-fingers-are-not-same/discrimination-grounds-gender-identity-andsexual.
[43]https://www.youtube.com/watch?v=jsC0hYbYQIc&list=PLrdUd-_3I8r-B-zMETELGPZDSW6yaNEka&index=1
[44]People who have been out of work for a long time - or want to start working again - can get support for their return to work. In Dutch this is referred to as re-integratie (reintegration) and provided by the UWV or their municipality.
[45]The Dutch Eligibility For Permanent Invalidity Benefit (Restrictions) Act [Wet verbetering poortwachter] obliges employers to take a number of steps within a certain period of time to make sure their employee can get back to work as soon as is reasonably possible.
[46]According to this law, you report sick and an occupational assessor from the UWV will visit you after one year. If returning to your old job is impossible, they will look for other suitable positions in or outside the organisation. In Ellen's case this did not happen. She still comes under the Dutch Sickness Benefits Act [Ziektewet] and first received a benefit by virtue of the Return to Work (Partially Disabled Persons) Regulations [Werkhervatting Gedeeltelijk Arbeidsgeschikten, abbreviated to WGA] and next under the Work and Income According to Work Capacity Act [Wet werk en inkomen naar arbeidsvermogen, abbreviated to WIA].
[47]https://www.scp.nl/publicaties/publicaties/2022/07/05/lhbt-monitor-2022
[48]The study is exploratory and not representative, and, therefore, the figures are indicative.
[49]If Ellen had taken her case to court in 2019, she would probably have won.
[50]Sex for Work: The true cost of our tea. A BBC Africa Eye/Panorama documentary. Premiere February 20, 2023. https://www.youtube.com/watch?v=1wMdnCx6eUc
[51]Certified Unilever Tea, Small Cup, Big Difference. ICN and SOMO 2011, published by the Kenyan Human Rights Commission.
[52]DRC will join and possibly South Sudan as well.
[53]An outline of activities in the field of FNV Mondiaal partners: C190 interview results, Tara Scally, 16-02-2022. [Document for Internal Use Only.]
[54]https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R206

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