



ADDRESSING GENDER-BASED VIOLENCE AND HARASSMENT IN THE WORLD OF WORK:

An Analysis of Nigeria's Legal Framework for Conformity with ILO Convention 190



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BACKGROUND

Women make up almost 50% of the total population of Nigeria, and almost 45% of the labour force, according to gender statistics compiled by the World Bank.¹ It is estimated that Nigeria's gross domestic product could grow by up to 23% by 2025 if women were given equal opportunities to participate fully and freely alongside their male counterparts.² Unfortunately, gender inequality remains a major stumbling block to women's full participation in the workforce. This unequal power relationship is a reflection of the patriarchal structure of society, and manifests in discrimination and gender-based violence and harassment (GBVH). According to a recent survey conducted by a group of women from the Nigerian Labour Congress, an alarming 57.5 percent of women workers interviewed across various sectors reported they experienced gender-based violence and harassment (GBVH) in the world of work.³ More than one-third of respondents said that justice was rarely upheld even when violations were reported.⁴

Historically, GBVH and other forms of harassment at work have not been adequately addressed in legislation or policy in Nigeria. Professor Amucheazi aptly summed up the issue in these words: "Sexual harassment and discrimination at the workplace are problems which have not been addressed by legislation, governmental policies or employers' policies despite repeated outcry by civil society groups, women rights organizations and other labour stakeholders. The lack of appetite to address this issue by the government and employers reflects the wider perception of a male-dominated workplace where these issues are considered a "normal" occurrence at the workplace. Women being subjected to repeated sexual harassment and discrimination is a common occurrence without consequences for perpetrators."⁵

However, the recent ratification of International Labour Organization (ILO) Convention 190 (C190) on eliminating violence and harassment in the world of work⁶ represents a positive wind of

¹ World Bank, Gender Statistics, DATABANK <https://databank.worldbank.org/source/gender-statistics> (last visited Feb. 27, 2023).

² Economic Inclusion and Global Growth Project, Women and Foreign Policy Program, Growing Economies Through Gender Parity, COUNCIL ON FOREIGN RELATIONS (2018), https://www.cfr.org/womens-participation-in-global-economy/?utm_medium=direct&utm_source=postcards&utm_campaign=gender-parity-postcards.

³ Solidarity Center & Nigerian Labour Congress, BREAKING THE SILENCE: GENDER-BASED VIOLENCE IN NIGERIA'S WORLD OF WORK (2021) <https://www.solidaritycenter.org/publication/breaking-the-silence-gender-based-violence-in-nigerias-world-of-work/>.

⁴ Id.

⁵ Offornze D. Amucheazi, *Reforming the Adjudication of Sexual Harassment, Workplace Discrimination and Child Labour Nigeria: Role of International Law at the National Industrial Court of Nigeria* in THE NATIONAL INDUSTRIAL COURT OF NIGERIA AND PROGRESSIVE DEVELOPMENT OF LABOUR AND EMPLOYMENT LAW IN NIGERIA- ESSAYS IN HONOUR OF HON. JUSTICE BABTUNDE ADENIRAN ADEJUMO, OFR 414 (Offornze D. Amucheazi & Bimbo Atilola eds., 2019).

⁶ Convention (No. 190) Concerning the Elimination of Violence and Harassment in the World of Work, (June 21, 2019), 58 I.L.M. 1170 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:3999810:NO [herein-after C190].

change. After sustained campaigning by trade unionists and feminists,⁷ the Nigerian government ratified C190 on November 8, 2022.⁸ C190 is a visionary treaty that lays out how governments, employers and trade unions can address and, most critically, prevent violence and harassment in the world of work, including in particular GBVH. The ILO is a tripartite organisation, which means that representatives of trade unions and employers have a direct seat at the negotiating table, along with government representatives.⁹ Trade unionists at the ILO, led overwhelmingly by women and supported by allied feminist leaders and human rights defenders, fought to ensure that C190 reflected the lived experience of marginalized workers, and that its protections addressed the root causes of violence and harassment at work, including discrimination, power relationships and precarious work.¹⁰

Implementing the comprehensive protections outlined in C190 is an enormous opportunity to address structural discrimination against marginalized workers in Nigeria, in particular women workers. C190 has an accompanying document, Recommendation 206 (R206),¹¹ which was negotiated simultaneously and offers additional guidance on how states should implement the obligations contained in C190. Together, C190 and R206 provide a roadmap for how to design policies to ensure safe, respectful workplaces for everyone.

This report outlines the Nigerian legal framework, the role of international human rights law in domestic adjudication, and current Nigerian law addressing GBVH and other forms of violence and harassment. It then outlines key provisions of C190 and how these protections are currently reflected in Nigerian law. The report identifies opportunities to incorporate more specific protections into Nigerian law, as well as opportunities for legal practitioners to seek justice under existing law, to ensure that all workers enjoy the fundamental right to be free from GBVH, and other forms of violence and harassment, in the world of work.

EXECUTIVE SUMMARY

C190 and R206 protect the fundamental right of all workers to be free from violence and harassment in the world of work, including particularly gender-based violence and harassment (GBVH). Part 1 of this report analyses how this right is currently defined and protected in Nigerian law. The right to be free from workplace violence and harassment is reflected in the Nigerian Constitution, which protects the rights to dignity, non-discrimination, and freedom from degrading treatment; as well as the rights to just and humane working conditions and health, safety and welfare in employment. Under § 254-C of the Third Alteration Act of 2010, the National Industrial Court of Nigeria (NICN) has exclusive jurisdiction over workplace discrimination and sexual harassment, and may directly apply ratified conventions relating to labour, employment and workplace relations. This provision allows the NICN to directly apply C190, which means that courts and policymakers should interpret current laws to incorporate its provisions. However, clarifications to laws and policies would further

⁷ TUC, *Solidarity Centre Strategise to Ensure ILO C190 Implementation*, NIGERIAN TRIBUNE (October 6, 2022) <https://tribuneonline.ng/tuc-solidarity-centre-strategise-to-ensure-ilo-C-190-implementation/>

⁸ Ratifications of C190 - Violence and Harassment Convention No. 190, ILO Normlex, https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0:NO:11300:P11300_INSTRUMENT_ID:3999810 (last visited Feb. 23, 2023).

⁹ About the ILO, INTERNATIONAL LABOUR ORGANIZATION, <https://www.ilo.org/global/about-the-ilo/lang--en/index.htm> (last visited Feb. 27, 2023).

¹⁰ See, e.g. Jane Pillinger, Robin Runge, and Chidi King, *Stopping Gender-Based Violence and Harassment at Work: The Campaign for an ILO Convention* Columbia University Press (2022) <http://cup.columbia.edu/book/stopping-gender-based-violence-and-harassment-at-work/9781788213684>

¹¹ Recommendation (No. 206) Concerning the Elimination of Violence and Harassment in the World of Work, (June 21, 2019) https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0:NO::P12100_ILO_CODE:R206 [hereinafter R206].

the holistic implementation of C190 and allow for the full expression of its protections. Current labour and employment laws contain some aspects of the rights and protections outlined in C190 and R206, but not in the comprehensive manner outlined in C190.

Part 2 examines how the critical protections contained in C190 and R206 are reflected under current law and identifies priority areas of legal reform to bring Nigerian law into full compliance. Part 2 also offers guidance to legal practitioners in the pursuit of justice for workers experiencing GBVH and other forms of violence and harassment in the world of work. Implementing C190 and R206 must involve consultation and collaboration with workers and unions to ensure that effective and inclusive mechanisms are adopted.

Labour laws should fully reflect an expansive right to be free from all forms of violence and harassment, including specifically GBVH and other forms of identity-based oppression at work. Workers with disabilities should have a clearly articulated right to a work environment that is open, inclusive and accessible, including reasonable accommodations. All workers must be protected, including workers in the informal economy and in non-standard forms of employment, who often fall outside the current scope of labour law. There is a critical need to adopt an expansive understanding of employment relationships under national law that reflects the modern realities of work. Working in consultation with unions and informal worker organisations, the Nigerian government should identify special mechanisms to protect the rights of workers in the informal economy, in particular self-employed workers. Policies should reach the entire world of work, including addressing violence and harassment in public spaces and transport. Workplace-based protections must include measures to address the impact of domestic violence on the world of work.

C190 and R206 reflect the reality that the workers most impacted by GBVH and other forms of violence and harassment are in the best place to identify violations and design effective mechanisms to ensure safety, while employers are often in the best place to implement such changes. Thus, Nigerian law should reflect a clear, explicit duty for all employers to prevent violence and harassment



linked with, connected to or arising out of an employer's business, including as part of a broader obligation to ensure the safety and health of all workers. Employers should do this in consultation with workers and unions. The employer's duties in this context should include obligations to identify and prevent violence and harassment committed by third parties. There should be clear accountability and liability for employers to ensure they effectively identify and mitigate risks and address harm arising from or linked with their business.

There is a need to adopt comprehensive health and safety laws and policies that apply to all workplaces and include violence and harassment as an occupational hazard. Workers should have the right to refuse work in the case of imminent harm from violence and harassment without penalty. Labour inspectors must have a clear mandate to investigate and address violence and harassment and be trained in how to identify structural elements that enable it, including discrimination and precarious working conditions.

The government should work with trade unions, women's right organisations and other human rights organisations to create safe, gender-responsive, effective complaints procedures, including measures to address barriers to reporting. There is a critical need for strong mechanisms to protect workers who report violence and harassment from retaliation. Public officials, including labour inspectors, court officials, police and other public officers should be trained in how to handle cases of workplace violence and harassment in a trauma-informed and victim-centric manner. Victims of GBVH and other forms of violence and harassment must have access to a full range of remedies that holistically address the harm and prevent recurrence, including adequate compensation, access to medical and mental health support, and changes to employer policies and practices that will address the structural factors that so often enable GBVH and other forms of violence and harassment.

Laws must also protect and strengthen the rights to freedom of association and collective bargaining. Enabling worker organising to demand safe working conditions is a central requirement to ending violence and harassment. Trade unions, governments and employers should jointly engage in public education and awareness-raising to ensure everyone understands their rights and obligations under law.

Part 3 offers recommendations for key reform priorities. Reforms could be implemented in a number of ways, including incorporating measures in the proposed Labour Standards Bill, adopting comprehensive regulations regarding occupational safety and health, and implementing measures through the ECOWAS harmonisation process. Regardless of where reforms are housed, workers and unions must be at the centre of decision-making to ensure the safety, health, dignity, and equality of rights of all workers in all workspaces.

PART 1:

Current Legal Framework Regarding GBVH in the World of Work

Nigeria is a constitutional democracy and has ratified core international human rights and ILO Conventions. The Nigerian Constitution protects rights to non-discrimination, to dignity and freedom from degrading treatment, just and humane working conditions and safety and health. The Third Alteration Act of 2010 grants the National Industrial Court exclusive jurisdiction over workplace discrimination and sexual harassment, empowers the NICN to apply ratified international conventions, treaties and protocols related to labour and employment.¹² This paves the way for a direct application of the provisions of C190 by the National Industrial Court of Nigeria. Current labour and employment laws contain some aspects of the rights and protections outlined in C190 and R206, and the expansive rights in the Constitution, but not in the comprehensive manner outlined in C190. Further, criminal laws also outlaw some forms of violence and harassment at work, but lack the comprehensive workplace remedies and preventative measures contained in C190.

1. CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA 1999 CAP C.23 LAWS OF THE FEDERATION (LFN), 2004

The Constitution of the Federal Republic of Nigeria is the supreme law of the land; all other laws derive their authority from it. Section 1(1) declares its provisions binding on all authorities and persons.¹³ Section 1(3) provides that any law that is inconsistent with the Constitution shall be declared null and void, to the extent of the inconsistency.¹⁴

Chapter II outlines the Fundamental Objectives and Directive Principles of State Policy. Under section 13, all government actors must conform to, observe and apply the provisions of chapter II.¹⁵ Section 6(6)(c) removes justiciability of issues or questions relating to the Fundamental Objectives and Directive Principles of State Policy set out in the chapter from the powers vested in the Judiciary. However, there are exceptional circumstances where courts have considered this issue.¹⁶ Section 14(1) states that the Federal Republic of Nigeria is a State based on the principles of democracy and social justice. Section 14(2)(b) stipulates that the security and welfare of the people is the primary purpose of the government. Section 16 provides that the State shall control the national economy to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity. It is also the responsibility of the State to direct its policy towards ensuring suitable and adequate shelter; suitable and adequate food, reasonable national minimum living wage; old age care, and pensions, and unemployment; and sick benefits and the welfare of the disabled are provided for all citizens.

¹² The phrase “Notwithstanding anything to the contrary in this Constitution” overrides section 12 of the Constitution which provides that “[n]o Treaty between the Federation and any other country shall have the force of law except to the extent to which such treaty has been enacted into law by the National Assembly.”

¹³ CONSTITUTION OF NIGERIA (1999).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Olafisoye v. F.R.N* [2004] 4 NWLR 580, 659 (Nigeria).

Chapter II, section 17 affirms that the State social order is founded on freedom, equality and justice ideals.¹⁷ In furtherance of this order,

- (a) every citizen shall have equality of rights, obligations and opportunities before the law;
- (b) the sanctity of the human person shall be recognised and human dignity shall be maintained and enhanced;
- (c) exploitation of human ... resources in any form whatsoever for reasons, other than the good of the community, shall be prevented.¹⁸

Section 17(3) articulates the state's obligation to direct its policy towards

ensuring that (a) all citizens, without discrimination against any group whatsoever, have the opportunity for securing adequate means of livelihood as well as adequate opportunity for securing suitable employment; (b) conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life; (c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused; (d) there are adequate medical and health facilities for all persons; (e) there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever; (f) children, young persons and the aged are protected against any exploitation whatsoever, and against moral and material neglect; (g) provision is made for public assistance in deserving cases or other conditions of need, and (h) the evolution and promotion of family life is encouraged.¹⁹

Chapter II, section 21(a) states that “the State shall protect, preserve and promote the Nigerian cultures which enhance human dignity and are consistent with the fundamental objectives as provided in this Chapter II.”²⁰ Section 23 states that the national ethics shall be discipline, integrity, dignity of labour, and social justice, among others. This statement of ethics implies an acknowledgement of the concept of decent work, and commitment to safe workplaces devoid of violence and harassment.

Chapter IV of the Constitution protects fundamental rights.²¹ Section 34 protects the right to dignity of the person, including freedom from inhuman or degrading treatment, as well as freedom from torture, slavery, servitude, forced or compulsory labour. Section 42 prohibits discrimination against citizens of “a particular community, ethnic group, place of origin, sex, religion or political opinion.”²²

While chapter IV guarantees various fundamental rights, section 45(1) provides that the rights in sections 37 through 41 do not “invalidate any law that is reasonably justifiable in a democratic society - (a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom of other persons.”²³ As is discussed further in [Part 2.9](#) of this report on trade union rights, the Supreme Court has interpreted the ability to derogate broadly with respect to collective bargaining, and this potentially presents a barrier to justice.

¹⁷ CONSTITUTION OF NIGERIA (1999).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

2. CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA (THIRD ALTERATION) ACT NO.3 OF 2010

The Constitution of the Federal Republic of Nigeria (Third Alteration) Act No. 3 of 2010²⁴ confers on the National Industrial Court of Nigeria (NICN) exclusive jurisdiction over workplace discrimination, sexual harassment, and international conventions related to labour rights.

Section 254C(l) strips high courts of their previous inherent right to hear causes and matters relating to labour and employment and makes the NICN the only court with competent jurisdiction to hear such matters. It provides “the National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters relating to or connected with any labour, employment, trade unions, industrial relations and matters arising from workplace, the conditions of service, including health, safety, welfare of labour, employee, worker and matters that are incidental or connected to any of these matters.”²⁵ Section 254C(l)(g) specifically confers exclusive jurisdiction “relating to or connected with any dispute arising from discrimination or sexual harassment at workplace;” while subsections 254C(l)(h) and (f) do the same with matters “relating to, connected with or pertaining to the application or interpretation of international labour standards;” and those “relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters.”²⁶

The NICN also has exclusive jurisdiction over all laws related to labour, employment, industrial relations or the workplace;²⁷ issues relating to strikes, lock-outs and industrial actions; disputes over the interpretation and application of chapter IV of the Nigerian Constitution as it relates to “employment, labour, industrial relations, trade unionism, employer’s association or any other matter which the Court has jurisdiction to hear and determine”; child labour, child abuse and human trafficking; the national or regional minimum wage; and payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement.



Section 254C(2) further states unequivocally that “[n]otwithstanding anything to the contrary in this Constitution, the NICN shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.”²⁸ This provision is critically important and paves the way for a direct application of the provisions of C190 by the National Industrial Court, even in absence of legislation being passed to

²⁴ Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 [hereinafter TAA], <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/87610/99964/F2002516110/NGA87610.pdf>.

²⁵ “Notwithstanding the provisions of section 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by any act of the National Assembly.” *Id.* at 254C(l).

²⁶ TAA, *supra* note 24, § 254C(l), (h) and (f).

²⁷ Including the Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, and the Employees’ Compensation Act. *Id.* at 254C (l)(b)

²⁸ The phrase “Notwithstanding anything to the contrary in this Constitution” overrides section 12 of the Constitution which provides that “[n]o Treaty between the Federation and any other country shall have the force of law except to the extent to which such treaty has been enacted into law by the National Assembly.” *Id.* at 254C(2).

give full effect to C190.

3. NICN JURISPRUDENCE

The interpretation of existing laws by the NICN is an important source of law regarding GBVH in the world of work in Nigeria. The landmark case of *Ejjeke Maduka v. Microsoft Nig. Ltd.*²⁹ provides a particularly critical point of reference regarding GBVH and other forms of violence and harassment at work. When the case was decided, no definition of sexual harassment existed. In the intervening years definitions have been adopted in the Rules of Civil Procedure and the VAPP Act, both discussed below.

Maduka v. Microsoft illustrates how a bold application of international conventions, treaties and protocols can be used to enforce worker rights. The judicial creativity and commitment to justice reflected in this case cannot be over-emphasised. Microsoft involved sexual harassment, including unwanted physical contact, of women staff at Microsoft Nigeria. The main complainant had repeatedly been subjected to unwanted physical contact and comments by a supervisor and had reported the misconduct to their immediate supervisor. No action was taken, and the complainant was eventually fired.

At the time, no Nigerian law defined or specifically prohibited sexual harassment. However, the learned judge concluded that sexual harassment contravenes article 34(1)(a) of the Constitution, which protects the right to dignity, including the right to be free from degrading treatment, and article 42, which protects the right to be free from discrimination based on sex and other identities. The NICN also looked to articles 2 and 5 of the African Charter,³⁰ which protect the right to be free from discrimination and from degrading treatment, respectively; as well as the UN Convention on the Elimination of Discrimination Against Women (CEDAW),³¹ General Recommendation 19 from the UN Committee tasked with interpreting CEDAW,³² and article 1(a) of ILO Convention 111 on Discrimination in Employment and Occupation.³³ The NICN also considered Microsoft's own anti-harassment and anti-discrimination policy. The ruling held that "sexual harassment is a form of discrimination based on gender. It has the effect of cancelling equality of opportunity and treatment at the workplace."³⁴

This decision is a landmark decision not just in relation to gender-based harassment, but also to the direct application of international and regional labour and human rights treaties. It is therefore a decision that should be studied closely as an advocacy tool, as well as a precedent.

In *Oluremi Toyin Ajayi v. Helmut Rumm and 2 Ors*,³⁵ the NICN again affirmed that section 34(1)

²⁹ *Maduka v. Microsoft* [2014] 41 NLLR (Part 125) 67 (Nigeria), <https://compendium.itcilo.org/en/compendium-decisions/national-industrial-court-of-nigeria-ejjeke-maduka-v-microsoft-19-december-2013-case-no-nicn-la-492-2012>.

³⁰ African Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 1520 U.N.T.S. 217 <https://www.achpr.org/legalinstruments/detail?id=49> [hereinafter ACHPR].

³¹ Convention on Elimination of all Forms of Discrimination against Women, adopted Dec. 18, 1979, 1249 U.N.T.S. 1 <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women> [hereinafter CEDAW].

³² Comm. on the Elimination of all Forms of Discrimination against Women, all Forms of Discrimination against Women, U.N. Doc. A/47/38 (SUPP) at 3 (1992) <http://undocs.org/A/47/38> [hereinafter Gen. Rec. No. 19].

³³ Convention (No. 111) Concerning Discrimination in Respect of Employment and Occupation, June 25, 1958, 362 U.N.T.S. 31, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_Ilo_Code:C111 [hereinafter C111].

³⁴ *Maduka*, [2014] 41 NLLR (Part 125) 67 (Nigeria).

³⁵ *Ajayi v. Rumm*, Unreported Suit No. NICN/LA/338/2015 decided April 13, 2018 (Nigeria)

(a) of the Constitution, which guards the right to personal dignity including the right to be free of degrading treatment, applies to discriminatory conduct against women at work. The NICN also referred to articles 2 and 5 of the African Charter on Human and Peoples Rights.³⁶ In this case, an employer initiated a panel of enquiry to investigate whether a worker was pregnant. The learned judge held that the employer's actions were humiliating and degrading treatment, finding that discrimination based on pregnancy "strikes at the very core of a woman's dignity and sense of self-worth." This case further reaffirms that discriminatory conduct can constitute a violation of the right to dignity.

4. NATIONAL INDUSTRIAL COURT OF NIGERIA CIVIL PROCEDURE RULES OF 2017

The National Industrial Court Civil Procedure Rules define sexual harassment, and how to plead a case before the NICN. This can be said to be a direct result of *Ejeke Maduka v. Microsoft*. Order 14 on Sexual Harassment and Discrimination at the Workplace³⁷ provides much needed guidelines on how complainants can plead a case of sexual harassment and other forms of discrimination before the NICN. Now, with the ratification of C190, advocates can also refer directly to that legal instrument to understand the parameters of these Rules. These standards are discussed in detail below in [Part 2.1](#) of this report.

5. LABOUR ACT OF 1974

The Labour Act of 1974³⁸ does not directly address violence and harassment in the world of work. It was originally promulgated as a Decree by the Federal Military Government, which means that it did not go through the normal legislative process. It has remained more or less the same since 1974 when it was promulgated. There have been ongoing discussions regarding a proposed Labour Standards Bill, which would reform the current system regarding worker rights and labour legislation. This process should include reforms to bring the law into complete conformity with ILO Convention 190.

The Labour Act covers individual employment relations, including prohibiting discrimination based on pregnancy for women workers who have worked for the same employer continuously for six months. The Act defines "woman" as any member of the female sex whatever her age or status.³⁹ Section 54(c) gives such workers the right not to be terminated while on maternity leave.⁴⁰ The Public Service and the organised private sector go beyond the floor provided in section 54. In the unorganised or informal sector, pregnant women workers who request for maternity leave may have their employment terminated contrary to the provisions of section 54.

6. EMPLOYEE'S COMPENSATION ACT OF 2010

The Employee's Compensation Act (ECA) provides compensation for death, injury, or disability

³⁶ ACHPR, *supra* note 30.

³⁷ National Industrial Court of Nigeria (Civil Procedure) Rules No. (1) (2017) 104:1 OG, B3 [hereinafter NICN Civil Procedure Rules], <https://nicn.gov.ng/publication/National%20Industrial%20Court%20of%20Nigeria%20Civil%20Procedure%20Rules%202017.pdf>.

³⁸ Labour Act, Cap .L1 LFN, 2004 (Nigeria), <https://www.placng.org/lawsofnigeria/laws/L1.pdf>.

³⁹ *Id.* at § 91.

⁴⁰ *Id.* at § 54.

arising out of or in the course of work.⁴¹ The ECA is intended to “provide for an open and fair system of guaranteed and adequate compensation for all employees or their dependants for any death, injury, disease or disability arising out of or in the course of employment” and to “provide rehabilitation to employees with work-related disabilities as provided in this Act.”⁴² As discussed in more detail below in [Part 2.6](#) on remedies, the ECA recognizes both physical and psychological harms. In replacing the “Workmen” Compensation Act of 2004, it also represents a positive step forward in terms of gender-neutral legislation.

7. FACTORIES ACT OF 1987

The Factories Act⁴³ contains basic provisions on safety, health and welfare, but only in workspaces designated as “factories,” and so is not applicable to all the places that now fall within the modern world of work. However, it is one of the major pieces of legislation that have been enacted to provide for the safety and health of the workforce, in line with section 17(3) of the 1999 Constitution.

8. NATIONAL POLICY ON OCCUPATIONAL SAFETY AND HEALTH

The National Policy on Occupational Safety and Health was adopted in 2006 to “facilitate the improvement of occupational safety and health performance in all sectors of the economy and ensure harmonisation of workers’ rights protection with regional and international standards.”⁴⁴ Nigeria ratified ILO Convention 155 on Occupational Safety and Health (C155)⁴⁵ in 1994,⁴⁶ and ratified ILO Convention 187 on the Promotional Framework for Occupational Safety and Health Convention (C187)⁴⁷ on November 8, 2022, along with C190.⁴⁸ Further, the ILO declared in 2022 both C187 and C155 as fundamental conventions,⁴⁹ which are binding on all member states of the ILO regardless of their individual ratification.⁵⁰ Thus, the NICN has direct authorization to consider the two conventions when assessing worker rights to occupational safety and health.

⁴¹ Employee’s Compensation Act, 2010 (Nigeria) [hereinafter ECA] https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&psn=87608&p_classification=15.03.

⁴² *Id.* at § 1(a-b).

⁴³ Factories Act Cap. F1 LFN 2004 (Nigeria) <https://www.ilo.org/dyn/natlex/docs/WEBTEXT/47979/65089/E87NGA01.htm>.

⁴⁴ NIGERIA COUNTRY PROFILE ON OCCUPATIONAL SAFETY AND HEALTH 22 (2016), https://www.ilo.org/wcmsp5/groups/public/---africa/---ro-abi-djan/---ilo-abuja/documents/publication/wcms_552748.pdf.

⁴⁵ Convention (No. 155) Concerning Occupational Safety and Health, June 21, 1981, 1331 U.N.T.S. 279 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C155 [hereinafter C155].

⁴⁶ Ratifications of C155 - Occupational Safety and Health Convention, 1981 (No. 155), ILO NORMLEX https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312300 (last visited Feb. 25, 2023).

⁴⁷ Convention (No. 187) Concerning the Promotional Framework for Occupational Safety and Health, June 15, 2006, 2564 U.N.T.S. 291 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C187 [hereinafter C187].

⁴⁸ Nigeria Ratifies ILO Conventions on Occupational Safety and Health and on Violence and Harassment in the World of Work, ILO NEWS (Nov. 8, 2022), https://www.ilo.org/global/standards/WCMS_860705/lang--en/index.htm#:~:text=International%20labour%20standards-.Nigeria%20ratifies%20ILO%20conventions%20on%20occupational%20safety%20and%20health%20and,ratify%20the%20ILO%20Convention%20No.

⁴⁹ ILO, Resolution on the Inclusion of a Safe and Healthy Working Environment in the ILO’s Framework of Fundamental Principles and Rights at Work, at ¶ 3, ILC.110/Resolution I, (June 10, 2022), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_848632.pdf.

⁵⁰ ILO: Major Breakthrough on Occupational Health and Safety, INTERNATIONAL TRADE UNION CONFEDERATION NEWS (Oct. 6, 2022), <https://www.ituc-csi.org/ILO-occupational-health-and-safety>.

9. VIOLENCE AGAINST PERSONS (PROHIBITION) ACT OF 2015

The Violence Against Persons Prohibition (VAPP) Act of 2015 prohibits violence in private and public life and provides remedies for victims and punishment for offenders.⁵¹ Part I prohibits a range of offences, including rape, inflicting physical injury, emotional, verbal and psychological abuse, stalking, deprivation of liberty, attack with harmful substance, and administering of substance with the intention of empowering the victim's will, so as to engage in sexual activity with that person. There are provisions regarding attempts to commit the offences, or incitement or aiding and abetting of another person to commit any of the offences. While the VAPP Act constitutes important progress on addressing violence and harassment in society, as discussed in more detail in the [Part 2.1](#) and [Part 2.6](#) below, criminal measures alone are insufficient to address the specific dynamics of the workplace.

All the offences under the VAPP Act carry various criminal penalties, including terms of imprisonment and fines. The penalty for the offence of rape is life imprisonment, except where the offender is under 14 years of age, in which case, the penalty on conviction is a term of imprisonment for 14 years. In all other cases, the minimum term is 12 years without an option of a fine. Group rape carries a minimum of 20 years imprisonment without the option of fine. The penalty for the offence of inflicting physical injury to any person is five years imprisonment, or a fine of N100,000.00 or both. Surprisingly, the punishment for an attempt to commit the offence is a term of imprisonment not exceeding three years, or a fine not exceeding N200,000.00 or both. It is not clear why the attempt should carry a heavier fine than the actual offence. The same observation can be made for other prescriptions. There is no consistency and, arguably, no correlation between the jail terms and the fines. They appear to be arbitrary.

The VAPP Act provides for appropriate compensation to be awarded to the victim as may be deemed fit in the circumstance. The language is permissive, meaning that compensation is at the court's discretion. However, the central focus is on the criminalisation of the prohibited conduct and punishment as prescribed.

Provisions of the VAPP Act supersede any other provision on similar offences in the Criminal Code, the Penal Code, and the Criminal Procedure Code.⁵² Jurisdiction to hear cases is vested in the High Court of the Federal Capital (FCT) Abuja, while the National Agency for the Prohibition of Trafficking in Persons and other related Matters (NAPTIP) has the mandate to administer the provisions of the Act in collaboration with relevant stakeholders. The VAPP Act makes allowance for the registration of service providers with state governments. These are voluntary organisations, registered under the Companies and Allied Matters Act⁵³ or any other law. The services they provide include legal aid, medical, financial, or other assistance. These measures provide services that are particularly essential and are considered more in [Part 2.6](#) on remedies below.

10. TRAFFICKING IN PERSONS (PROHIBITION) ENFORCEMENT AND ADMINISTRATION ACT, 2015

Human trafficking often involves violence and harassment of vulnerable workers. Trafficking of

⁵¹ Violence Against Persons (Prohibition) Act of 2015 (Nigeria), [https://www.ilo.org/dyn/natlex/docs/ELECTRON-IC/104156/126946/F-1224509384/NGA104156.pdf%20\(VAPP%20law](https://www.ilo.org/dyn/natlex/docs/ELECTRON-IC/104156/126946/F-1224509384/NGA104156.pdf%20(VAPP%20law) [hereinafter VAPP Act].

⁵² By virtue of section 45, any offence committed or proceeding instituted before the commencement of the VAPP Act, under the Criminal Code, or the Penal Code, or the Criminal Procedure Code, or any other law or regulation relating to any act or violence defined by the VAPP Act, shall as the case may require, be enforced or continue to be enforced by the provisions of the Act.

⁵³ Companies and Allied Matters Act No. (3) (2004) CAP (C20) 107:124 OG, A93 (Nigeria), <https://archive.gazettes.africa/archive/ng/2020/ng-government-gazette-dated-2020-08-10-no-124.pdf>.

children for child labour is a significant feature of human trafficking. The Trafficking in Persons (Prohibition) Enforcement and Administration Act⁵⁴ creates the offence of employment of a child as domestic worker and inflicting grievous harm. Section 22(1)(b) of the Act makes it an offence for anybody to employ a child to work in any capacity except as provided in the Act. The provisions are identical to those found in the Labour Act, except that section 22(1)(d) also includes the employment of a child as a domestic labour outside his own home or family environment. The Act does not seem to have defined the word ‘child.’ However, trafficking of persons for the purpose of prostitution sets eighteen years as the age below which such trafficking is an offence. As discussed above, under the Constitution, the NICN has exclusive jurisdiction in civil causes and matters connected with or related to child labour, child abuse, human trafficking or any related matter. The Act also creates the National Agency for the Prohibition of Trafficking in Persons (NAPTIP), a special purpose vehicle.⁵⁵ Its functions include the coordination and enforcement of all other laws on trafficking in persons and related offences; investigation of all cases of trafficking in persons, including forced labour, child labour, forced prostitution, exploitative labour and other forms of exploitation. NAPTIP’s legal department prosecutes suspected traffickers.

11. INTERNATIONAL LAWS AND STANDARDS

The NICN is empowered under Section 254C of the Constitution to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.⁵⁶ Further, under Section 7(6) of the National Industrial Court Act, the NICN shall “have due regard to good or international best practice.”⁵⁷ What amounts to good or international best practice is a question of fact.⁵⁸

In *Aero Contractors Co. of Nigeria Limited v. National Association of Aircraft Pilots and Engineers (NAAPE) & Ors*,⁵⁹ the NICN affirmed that section 254C allows the Court to directly apply any international convention ratified by Nigeria. Furthermore, the NICN looked to decisions of the ILO Committee of Experts and the Committee on Freedom of Association, bodies within the ILO tasked with interpreting the provisions of international labour standards, in this case to understand the scope of the right to strike and to protect the rights of striking workers. The application of international best practices is an evolving area, but the NICN has consistently referred to ILO standards and interpretations from relevant treaty bodies to understand the scope of rights under existing law.

⁵⁴ Trafficking in Persons (Prohibition) Enforcement and Administration Act No. (4) (2015) 102:32 OG, A93 (Nigeria), <https://archive.gazettes.africa/archive/ng/2015/ng-government-gazette-dated-2015-03-30-no-32.pdf>.

⁵⁵ *Id.* at § 2.

⁵⁶ CONSTITUTION OF NIGERIA (1999).

⁵⁷ National Industrial Court of Nigeria Act No. (1) (2006) 93:38 O.G., A1, <https://nicn.gov.ng/officialGazette/act.pdf>.

⁵⁸ *Id.* at § 6.

⁵⁹ *Aero Contractors Co. of Nigeria v. Nat’l Ass’n of Aircraft Pilots & Engineers* [2014] 42 NLLR (Part 133) 664, <https://compendium.itcilo.org/en/compendium-decisions/industrial-court-of-nigeria-aero-contractors-co-of-nigeria-limited-v-the-national-association-of-aircrafts-pilots-and-engineers-the-air-transport-senior-staff-association-of-nigeria-and-the-national-union-of-air-transport-employees-4-february-2014-case-no>.

Nigeria has ratified the following ILO Conventions that have a direct relevance to GBVH and other forms of violence and harassment in the world of work⁶⁰:

C190 Violence and Harassment Convention ⁶¹	C155 Occupational Safety and Health Convention ⁶²	C187 Promotional Framework for Occupational Safety and Health Convention ⁶³	C111 Discrimination in Employment and Occupation Convention ⁶⁴	C87 Freedom of Association and Protection of the Right to Organise Convention ⁶⁵
C98 Right to Organise and Collective Bargaining Convention ⁶⁶	C29 Forced Labour Convention ⁶⁷	C105 Abolition of Forced Labour Convention ⁶⁸	C138 Minimum Age Convention ⁶⁹	C182 Worst Forms of Child Labor Convention ⁷⁰

Other relevant international standards Nigeria has ratified⁷¹ include the International Covenant on Economic, Social and Cultural Rights,⁷² the Convention on the Elimination of All Forms of Discrimination against Women,⁷³ the International Convention on the Elimination of All Forms of Racial Discrimination,⁷⁴ the Convention against Torture and Other Cruel, Inhuman or Degrading

⁶⁰ For a full list of ILO Conventions ratified by Nigeria see *Ratifications for Nigeria*, ILO NORMLEX https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11200:0::NO::P11200_COUNTRY_ID:103259 (last visited Feb. 25, 2023).

⁶¹ C190, *supra* note 6.

⁶² C155, *supra* note 45.

⁶³ C187, *supra* note 47.

⁶⁴ C111, *supra* note 33.

⁶⁵ Convention (No. 87) Concerning Freedom of Association and Protection of the Right to Organize, July 9, 1948, 68 U.N.T.S. 17 [hereinafter C87].

⁶⁶ Convention (No. 98) Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, adopted July 1, 1949, 96 U.N.T.S. 257 [hereinafter C98].

⁶⁷ Convention (No. 29) Concerning Forced or Compulsory Labour, adopted June 28, 1930, 39 U.N.T.S. 55. [hereinafter C29].

⁶⁸ Convention (No. 105) Concerning the Abolition of Forced Labour, adopted Jun. 25, 1957, 320 U.N.T.S. 291 [hereinafter C105].

⁶⁹ Convention (No. 138) Concerning Minimum Age for Admission to Employment, adopted June 26, 1973, 1015 U.N.T.S. 297 [hereinafter C138].

⁷⁰ Convention (No. 182) concerning the prohibition and immediate action for the elimination of the worst forms of child labour, June 17, 1999, 2133 U.N.T.S. 161 [hereinafter C182].

⁷¹ For a full list of all ratified UN treaties, see *Ratification of 18 International Human Rights Treaties*, UN OFFICE OF THE HIGH COMM'R FOR HUM. RTS., <https://indicators.ohchr.org/> (last visited Feb. 25, 2023).

⁷² International Covenant on Economic, Social and Cultural Rights, adopted Dec. 16, 1966, 993 U.N.T.S. 3. <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> [hereinafter ICESCR].

⁷³ CEDAW, *supra* note 31.

⁷⁴ International Convention on the Elimination of All Forms of Racial Discrimination, adopted Mar. 7, 1966, 660 U.N.T.S. 195.

Treatment or Punishment,⁷⁵ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families,⁷⁶ and the Convention on the Rights of Persons with Disabilities.⁷⁷ Nigeria has also ratified the African Charter on People and Human Rights⁷⁸ and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (The Maputo Protocol).⁷⁹

12. REGIONAL HARMONISATION

The Economic Community of West African States (ECOWAS) Directive on Harmonisation of Labour Laws establishes a set of minimum standards which ECOWAS members can build on to achieve consistency and cohesion in labour law provisions, for the promotion and protection of workers' interests and welfare within the region.

The harmonisation document covers freedom of movement and freedom to work within the region. ILO Convention 29 on Forced Labour is the benchmark to prohibit forced labour.⁸⁰ The provisions on employment protection cover vulnerable persons. ILO Convention 111 on Discrimination in Employment and Occupation was used as benchmark for the provisions in the harmonisation document on equal treatment of men and women workers;⁸¹ while Convention 182 on Worst Forms of Child Labour, 1999,⁸² and Convention 138 on the Minimum Age provided the floor for provisions on employment of children and young persons.⁸³

Occupational health and safety, respect for the dignity of men and women workers, freedom of association and collective bargaining, and social protection, among others, are specifically provided for in the Harmonisation document. ILO Conventions Nos. 87 and 98 on Freedom of Association,⁸⁴ and Right to Free Collective Bargaining, respectively,⁸⁵ were the reference standards for the ECOWAS provisions. The Federal Ministry of Labour and Employment (FMLE) is the supervising ministry. It works in collaboration with the Nigeria Labour Congress (NLC), Trade Union Congress (TUC), and the Nigeria Employers Consultative Association (NECA). The Permanent Secretary of FMLE emphasised the need for collective bargaining and dialogue among the stakeholders, which calls for direct and indirect engagement on an ongoing basis regarding harmonization of protections against violence and harassment at work.

⁷⁵ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, December 10, 1984, 1465 U.N.T.S. 85.

⁷⁶ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Dec. 18, 1990, 30 I.L.M. 1517 (entered into force July 1, 2003).

⁷⁷ Convention on the Rights of Persons with Disabilities, Jan. 24, 2007, 2515 U.N.T.S. 3 [hereinafter CRPD].

⁷⁸ ACHPR, *supra* note 30.

⁷⁹ Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa, adopted July 11, 2003 (entered into force Nov. 25, 2005) [hereinafter the Maputo Protocol].

⁸⁰ C29, *supra* note 67.

⁸¹ C111, *supra* note 33.

⁸² C182, *supra* note 70.

⁸³ C138, *supra* note 69.

⁸⁴ C87, *supra* note 65.

⁸⁵ C98, *supra* note 66.

PART 2:

Key Provisions of C190

1. DEFINITION OF GBVH IN THE WORLD OF WORK

C190 deliberately adopts comprehensive and broad definitions of violence and harassment in the world of work, including GBVH, to ensure the full spectrum of abusive conduct at work is recognized and addressed. Article 1(a) defines violence and harassment as “a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender-based violence and harassment.”⁸⁶ Article 1(b) defines GBVH 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.”⁸⁷

The definition of GBVH includes rape, sexual assault, demands for sex and other forms of sexual harassment. It also intentionally encompasses abuse that is rooted in gender discrimination that is not sexual, such as bullying, mobbing and offensive or degrading comments based on a person’s actual or perceived gender identity. These forms of abuse are extremely common, and it is important to address both sexual and nonsexual GBVH under law.

Article 6 of C190 provides that each member shall adopt laws, regulations, and policies ensuring the right to equality and non-discrimination in employment and occupation, including for women workers, as well as “for workers and other persons belonging to one or more vulnerable groups or groups in situations of vulnerability that are disproportionately affected by violence and harassment in the world of work.”⁸⁸ The language in this article is a deliberate recognition of intersectional discrimination and the need to create protections for marginalized workers experiencing multiple forms of discrimination.

Finally, C190 also prohibits work-related abuse that is not specifically rooted in identity-based discrimination. Such conduct, which is often prohibited in national legal systems under provisions dealing with workplace bullying, is a threat to the right to a world of work free from violence and harassment. Further, such broader protections are critical to establishing safe, respectful workplaces for workers subject to GBVH, since discriminatory conduct is often extremely difficult to prove.

Gender-based Violence and Harassment

The NICN Civil Procedure Rules (“the Rules”), establish elements for how to plead sexual harassment and discrimination based on gender and other prohibited categories before the NICN.⁸⁹ With the ratification of C190, the broad definition contained in article 1(b) should also inform these

⁸⁶ C190, *supra* note 6.

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ NICN Civil Procedure Rules, *supra* note 37.

definitions.⁹⁰

The Rules define “sexual harassment” to mean “unwanted, unpleasant, offensive or threatening conduct of a sexual nature distinguished from sexual attention that is welcome and mutual.”⁹¹ Sexual attention becomes sexual harassment if

- a. the behaviour is persistent, although a single incident or instance can constitute sexual harassment; and/or
- b. the recipient has made it clear that the behaviour is considered offensive; and/or
- c. the perpetrator should have known that the behaviour is regarded as unacceptable.⁹²

When alleging sexual harassment, under Order 14(1)(1) of the Rules the claimant must indicate whether the sexual harassment is:

- a. Physical conduct of a sexual nature : such as unwanted physical contact, ranging from touching to sexual assault and rape, strip search by or in the presence of the opposite sex, gesture that constitutes the alleged sexual harassment ; and/or
- b. A verbal form of sexual harassment: such as unwelcome innuendoes, suggestions and hints, sexual advances, comments with sexual overtones, sex related jokes or insults, or unwelcome graphic comments about a person’s body, unwelcome and inappropriate enquiries about a person’s sex life and unwelcome whistling at a person or group of persons, any document, material or exhibit in further support of the claim; and/or
- c. A non-verbal form of sexual harassment which includes unwelcome gestures, indecent exposures, and unwelcome display of sexually explicit pictures and objects ; and/or
- d. Quid pro quo harassment where an owner, employer, supervisor, member of management or co-employee undertakes or attempts to influence or influences the process of employment, promotion, training, discipline, dismissal, salary increments or other benefits of an employee or job applicant in exchange for sexual favours.

Order 14(1)(3) requires a claimant alleging workplace discrimination based on gender to “indicate the activity, (including the mode, manner, correspondence and communication) that constitutes the alleged workplace discrimination” and to state that the discrimination is based on gender.

In *Ejike Maduka v. Microsoft Nig. Ltd.*,⁹³ the NICN further outlined the contours of sexual harassment. The NICN stressed that

[s]exual harassment may be subtle and may even involve what would otherwise constitute normal sexual or social activity. Conduct constituting sexual harassment encompasses both the physical and the psychological. Milder forms of sexual harassment include verbal innuendos and affectionate gestures that are inappropriate in the circumstance, repeated social invitations for dinner or drinks, or unwelcome flirting where the implicit message is that sexual favours are anticipated or expected. Normal sexual or social activity may become sexual harassment where a power differential exists between the parties ... [sexual

⁹⁰ C190, *supra* note 6.

⁹¹ NICN Civil Procedure Rules, *supra* note 37, at §10(2).

⁹² *Id.*

⁹³ *Maduka*, [2014] 41 NLLR (Part 125) 67.

harassment] may be constituted by many or a single act and broadly speaking, the intention of the harasser is not relevant.⁹⁴

Importantly, the NICN also recognized the role that gendered power hierarchies play in sexual harassment, finding

it is important to bear in mind that the perpetrator of sexual harassing behaviour may not be motivated only by sexual desire or lust. The perpetrator may simply be demonstrating his or her power to the victim. In many cases, such behaviour may be a by-product of the prevailing stereotypes in the system. Thus, male perpetrators may indulge in sexually-harassing behaviour to simply show the female victim ‘her place’ or to convey to her that she is good only for gratifying their sexual desires.⁹⁵

This critical insight into the underlying dynamics of GBVH reflects C190’s recognition that government measures must address root causes, including unequal power relationships.⁹⁶

In *Microsoft*, the NICN critically also emphasized the need for the law to address non-sexual forms of GBVH. The learned court opined that

[a]ny definition of sexual harassment should be broad enough to encompass both sexual conduct or behaviour as well as sex-based behaviour. “Disparaging comments on the role of women, their place in the labour market, or their skills and capabilities,” inaccurate criticisms of job performance, obstruction, etc., could all constitute sex-based harassment.⁹⁷

The case emphasizes that non-sexual, gendered harassment and violence are also covered within the scope of Nigerian law.

The VAPP Act also defines and prohibits sexual violence, including rape and assault, and defines sexual harassment broadly to encompass both sexualized misconduct and gendered abuse.⁹⁸ The VAPP Act also prohibits “sexual intimidation,” meaning “an actual demand” or “any action or circumstances which amounts to demand for sexual intercourse with either a male or female under any guise, as a condition for passing examination, securing employment, business patronage, obtaining any favour in any form, as defined in this Act or any other enactment,”⁹⁹ as well as “acts of deprivation, withholding, replacing or short-changing of entitlements, privileges, rights, benefits, examination or test, marks or scores, and any other person of disposition capable of coercing any person to submit to sexual intercourse for the purpose receiving reprieve thereto; or [a]ny other action or inaction construed as sexual intimidation or harassment under any other enactment in force in Nigeria.”¹⁰⁰

“Sexual harassment” is defined as unwanted conduct of a sexual nature or other conduct based on sex or gender which is persistent or serious and demeans, humiliates or creates a hostile or

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ The ILO through C190 recognizes an “inclusive, integrated and gender-responsive approach, which tackles underlying causes and risk factors, including gender stereotypes, multiple and intersecting forms of discrimination, and unequal gender-based power relations, is essential to ending violence and harassment in the world of work.” *Supra* note 6, at preamble.

⁹⁷ *Maduka*, [2014] 41 NLLR (Part 125) 67 (internal quotations omitted).

⁹⁸ VAPP Act, *supra* note 51, at §§ 1, 46.

⁹⁹ *Id.* at § 46.

¹⁰⁰ *Id.*

intimidating environment including physical, verbal or non-verbal conduct.¹⁰¹ Thus, the need to recognize the full spectrum of GBVH is well-established in Nigerian law.

Other Forms of Discriminatory Harassment

Under Order 14(1)(2), a claimant alleging workplace discrimination must “indicate the activity, (including the mode, manner, correspondence and communication) that constitutes the alleged workplace discrimination”; and state whether the alleged workplace discrimination is on any of the following grounds: “(a) ancestry, (b) religion, (c) gender, (d) marital status, (e) family situation, (f) genetic heritage, (g) ethnic origin, (h) political or ideological convictions, (i) union affiliation, (j) tribe, (k) handicap or disability, (l) health, (m) pregnancy, and (n) any other ground.”¹⁰² This is a non-exhaustive list and should extend to other forms of identity-based discrimination present in Nigerian society. It should be read in conjunction with C190 and R206, which protects against vulnerable groups or groups in situations of vulnerability recognized in international labour standards and human rights instruments.¹⁰³

In *Microsoft*, the NICN explicitly recognized that claims for discriminatory treatment at work can involve hostile environment claims, and that such claims could also apply to other forms of discriminatory violence and harassment.¹⁰⁴ The NICN reflected that hostile environments can reflect “more subtle and insidious” forms of discrimination against workers, for reasons such as an “individual’s race, colour, Religion, sex, or national origin.”¹⁰⁵ The NICN further stressed that sexual harassment claims did not have to demonstrate the denial of concrete employment rewards, but instead only that “unwelcome sexual conduct has invaded the workplace,” which the Court considered a breach of the rights to dignity and non-discrimination.¹⁰⁶ This reasoning should extend to other cases involving discriminatory violence and harassment.

The NICN has repeatedly recognized that discriminatory harassment can be considered degrading treatment in violation of article 34(1)(a) of the Constitution. In *Oluremi*,¹⁰⁷ discussed above in Part 1.3 on NICN jurisprudence, investigating a job applicant’s pregnancy status was deemed humiliating and degrading treatment. This sets a precedent for other discrimination cases that violate the right to human dignity.

With respect to workers with disabilities, Nigeria has ratified the United Nations Convention on the Rights of Persons with Disabilities,¹⁰⁸ and therefore the rights and protections enshrined in that treaty, including article 27 on work and employment and article 16 on freedom from exploitation, violence and abuse, should be read into current Nigerian law. Article 27 enshrines the right to “a work environment that is open, inclusive and accessible to persons with disabilities,” and recognizes a duty to “[e]nsure that reasonable accommodation is provided to persons with disabilities in the workplace.”¹⁰⁹ This should be read into current Nigerian law, but could also be clearly articulated in laws and policies, including the link between preventing harassment and an open, inclusive and accessible workplace.

¹⁰¹ *Id.*

¹⁰² NICN Civil Procedure Rules, *supra* note 37.

¹⁰³ R206, *supra* note 9, at ¶ 13.

¹⁰⁴ Maduka, [2014] 41 NLLR (Part 125) 67.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ Unreported Suit No. NICN/LA/338/2015 (April 13, 2018).

¹⁰⁸ CRPD, *supra* note 77.

¹⁰⁹ *Id.* at art. 27.

The VAPP Act prohibits many forms of violence and harassment that occur in the world of work, including rape, physical injury, emotional, verbal, and psychological abuse, wilfully causing fear of physical injury, coercion, offensive conduct, stalking, and intimidation.¹¹⁰ The VAPP Act recognizes “[v]ulnerable groups,” defined as “women, children, persons living under extreme poverty, persons with disability, the sick and the elderly, ethnic and religious ethnic minority groups, refugees, internally displaced persons, migrants and person in detention.”¹¹¹ This list of various vectors of social identity-based vulnerability could be used to build out cases of discrimination related to work.

Non-discriminatory Workplace Violence and Harassment

The NICN Civil Procedure Rules do not contain any explicit prohibition of abusive conduct in the workplace that is not linked to discrimination. However, the expansive jurisdiction of the Court under the Third Alteration Act empowers it to look to the provisions of C190 to make such a finding. Moreover, past precedent has linked the right to be treated with dignity at work to protections of the right to dignity under the Constitution, which applies broadly to all individuals. The NICN in *Microsoft* and *Oluremi* emphasised the “right to dignity” protected in the Nigerian Constitution, which would enshrine the right to a world of work free from violence and harassment.¹¹² The language, reasoning and deductions from that case clearly imply that actions impacting the dignity of workers, including degrading treatment, are a matter of constitutional rights. Moreover, matters relating to employee’s safety, health, and welfare have also assumed wider and broader prominence, beyond the limited provisions of the Factories Act or any other legislation of its era, with Nigeria’s recent ratification of ILO Convention 187,¹¹³ which calls for governments to “promote and advance, at all relevant levels, the right of workers to a safe and healthy working environment.”¹¹⁴ C190 explicitly calls for violence and harassment to be recognized as a threat to occupational safety and health.¹¹⁵

Section 46 of the VAPP Act prohibits several acts that are not based on discriminatory intent, including emotional, verbal and psychological abuse; harassment; and intimidation.¹¹⁶ Emotional, verbal and psychological abuse is defined as a “pattern of degrading, or humiliating conduct towards any person, including: repeated insults, ridicule or name calling; repeated threats to cause emotional pains; and repeated exhibition of obsessive possessiveness.”¹¹⁷ Section 46 defines harassment as “engaging in a pattern of conduct that induces fear of harm or impairs the dignity of a person including stalking; repeated making telephone calls or inducing another to make telephone calls to a person, whether or not conversation ensues; and repeatedly sending, delivering, or causing delivery of information such as letters, telegrams, packages, facsimiles, or electronic mail, text messages or other objects to any person.”¹¹⁸

Finally, “intimidation” means the uttering or conveying of a threat or causing any person to receive a threat, which induces fear, anxiety or discomfort.¹¹⁹

It is helpful that there are broader forms of violence and harassment, as well as many serious forms

¹¹⁰ VAPP Act, *supra* note 51, §§ 1, 2, 4, 14

¹¹¹ *Id.* at § 46.

¹¹² *Maduka*, [2014] 41 NLLR (Part 125) 67; *Ajayi*, Unreported Suit No. NICN/LA/338/2015.

¹¹³ C187, *supra* note 47.

¹¹⁴ *Id.* at art. 3(2).

¹¹⁵ C190, *supra* note 6, at art. 9.

¹¹⁶ VAPP Act, *supra* note 51.

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

of GBVH, contemplated specifically in the VAPP Act. However, as discussed more below in Part 2.6 on remedies, remedies under criminal law are not adequate to address the specific dynamics of violence and harassment in the world of work, particularly with respect to employer accountability. Ensuring individual perpetrators face justice is important, but to end the systematic nature of GBVH and other abuses in the world of work, employers must be held accountable for creating safe, respectful workplaces, and individual victims must have the harm done to them recognized and remedied—measures not always contemplated in criminal laws but possible to be more fully realised under the broad jurisdiction of the NICN and through the reform of labour laws.

2. PROTECTION OF ALL WORKERS AND PERSONS IN THE WORLD OF WORK

Convention 190 protects “workers or other persons in the world of work, including employees as defined by national law and practice, as well as persons working irrespective of their contractual status, persons in training, including interns and apprentices, workers, whose employment has been terminated, volunteers, job seekers and job applicants.”¹²⁰ It explicitly applies “to all sectors, whether private or public, both in the formal and informal economy.”¹²¹

In many jurisdictions, the most vulnerable workers are excluded from labour laws, including anti-discrimination laws. The definition of “worker” in C190 is broad because the Convention deliberately sought to address the changing nature of employment, including the growth of the informal economy and the increasing use of non-standard forms of employment to escape obligations to workers. Non-standard forms of employment can include the use of independent contractors, subcontractors, zero hours contracts, “gig” work and other forms.¹²² In Nigeria, more than 80% of the population works in the informal economy.¹²³



While the Nigerian Constitution broadly protects the rights of everyone to just working conditions, freedom from discrimination, and safety and health at work, Nigerian labour law applies only to “employees.”

To bring a claim before the NICN, a person must meet the definition of “employee” under the National Industrial Court Act. Section 54 of the Act defines “employee” to mean a person employed by another under oral or written contract of employment whether on a continuous, part-time, temporary or casual basis and includes a domestic servant who is not a member of the family of the employer.”¹²⁴ This is a broad definition that allows for many workers to seek justice before the court. The phrase “contract of employment” is the same as a contract of service, which is distinguished

¹²⁰ C190, *supra* note 6, at art. 2(1).

¹²¹ *Id.* at art. 2(2).

¹²² ILO, *Non-Standard Employment Around the World: Understanding Challenges, Shaping Prospects* (2016) https://www.ilo.org/global/publications/books/WCMS_534326/lang--en/index.htm.

¹²³ Nigerian Informal Workers Demand Decent Work, Solidarity Center Podcast (October 6, 2011), <https://www.solidaritycenter.org/podcast-nigerian-informal-workers-demand-decent-work/>.

¹²⁴ NICN Act, *supra* note 55.

under Nigerian law from a contract for services. However, the reality is that the line between the two is becoming increasingly blurred as many employers seek to utilise a contract for services to disguise an employment relationship.

Other definitions of worker in Nigerian labour law include:

- Under section 91 of the Labour Act, “worker” means any person who has entered into or works under a contract with an employer, whether the contract is for manual labour or clerical or is expressed or implied or oral or written, and whether it is a contract of service or a contract personally to execute any work or labour.¹²⁵ It does not include persons exercising administrative, executive, technical or professional functions as public officers, or otherwise.
- Section 54 Trade Unions Act defines a “worker” as any employee who has entered into or works under a contract with an employer, whether the contract is for manual labour, clerical work or otherwise, expressed or implied, oral or in writing, and whether it is a contract personally to execute any work or labour or a contract of apprenticeship¹²⁶
- Section 48 Trade Disputes Act states that “worker” means any employee who has entered into or works under a contract with an employer, whether implied, or oral or in writing, and whether it is a contract of service or apprenticeship.¹²⁷
- Under the National Minimum Wage Act, 2019, a “worker” is defined as any person who has entered into or works under a contract with an employer whether the contract is for manual labour or clerical work or is expressed or implied or oral or written and whether it is a contract personally to execute any work or labour. However, it excludes part time workers, commission or piece rate workers, workers in establishments employing less than 25 persons, workers in seasonal employment such as agriculture, and workers employed in a vessel or aircraft to which the laws regulating merchant shipping or civil aviation apply.¹²⁸

In *Shena Security Ltd v. Afropak*,¹²⁹ the Supreme Court provided a list of indicators for determining the distinction between contract of service and contract for services. These indices are:

- If payments are made by way of “wages” or “salaries”, this is indicative that the contract is one of service. If it is for service, the independent contractor gets his payment by way of “fees”. In a like manner, where payment is by way of commission only or on the completion of the job, that indicates that the contract is for service.
- Where the employer supplies the tools and other capital equipment, there is a strong likelihood that the contract is that of employment or of service. But where the person engaged has to invest and provide capital for the work to progress, that indicates that it is a contract for service.
- In a contract of service/employment, it is inconsistent for an employer to delegate his duties under the contract. Thus, where the contract allows a person to delegate his duties thereunder, it becomes a contract for service.

¹²⁵ Labour Act, *supra* note 38.

¹²⁶ Trade Unions Act (2004) Cap. (T14) (Nigeria), <https://www.placng.org/lawsofnigeria/laws/TRADE%20UNIONS%20ACT.pdf>.

¹²⁷ Trade Disputes Act No. (7) (1976) (as amended) (Nigeria), <https://www.placng.org/lawsofnigeria/laws/T8.pdf>.

¹²⁸ National Minimum Wage Act No. (6) (1981), §9 (Nigeria), <https://www.placng.org/lawsofnigeria/view2.php?sn=323>.

¹²⁹ *Shena Security Co. v. Afropak* [2008] 6 CLRN 1 (Nigeria), <https://lawcarenigeria.com/shena-security-co-ltd-vs-afropak-nig-ltd-ors/>.

- Where the hours of work are not fixed it is not a contract of employment/of service.
- It is not fatal to the existence of a contract of employment/of service that the work is not carried out on the employer's premises. However, a contract which allows the work to be carried outside the employer's premises is more likely to be a contract for service.
- Where an office accommodation and a secretary are provided by the employer, it is a contract of service/of employment.¹³⁰

Workers seeking compensation for injuries on the job must meet the definition of "employee" under section 73 of the Employee's Compensation Act. There, "employee" is defined as "a person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis and includes a domestic servant who is not a member of the employer including any person employed in the federal, state and local government and any of the government agencies and in the formal and informal sectors of the economy"¹³¹ An independent contractor is not an employee, unless the court finds otherwise based on the peculiar facts of the case.

In some cases, the NICN has applied the definition of employee broadly to cover those under non-standard agreements to work for another. For example, in *Thomas Boadi v. Christopher Geighengan* the NICN held that a driver who was hired under an oral agreement and only worked on ad hoc basis over a period of five years was an employee within the meaning of that term in section 54 of the National Industrial Court Act.¹³² The case highlights a fundamental change made by the NICN Act of 2006, which broadened the types of relationships that can come within the umbrella of employer/employee.¹³³ The fluid and intermittent nature of the relationship in *Boadi's* case makes it unlikely that the outcome would have been the same if it had been under the more restrictive and traditional definition of employee.

In *PENGASSAN v. Mobil Nig. Unltd.*,¹³⁴ the NICN specifically referred to international standards and the need to look beyond the form of the contract to the underlying reality of the employment relationship. The NICN referred to an ILO report on the scope of the employment relationship,¹³⁵ which states that

the determination of the existence of an employment relationship should be guided by the facts of what was actually agreed and performed by the parties, and not by the name they have given the contract. That is why the existence of an employment relationship depends on certain objective conditions being met (the form in which the worker and the employer have established their respective positions, rights and obligations, and the actual services to be provided), and not how either or both of the parties describe the relationship. This is known in law as the principle of the *primacy of facts*, which is explicitly enshrined in some national systems. This principle might also be applied by judges in the absence of an express rule.¹³⁶

¹³⁰ *Id.* at ¶ 11.

¹³¹ ECA, *supra* note 41.

¹³² *Boadi v. Geighengan*, [2014] 47 NLLR (Part 153) 372 (Nigeria).

¹³³ NICN Act, *supra* note 55.

¹³⁴ *PENGASSAN v. Mobil Nig. Unltd.*, [2013] 32 NLLR (Pt 92) 243 (NLC) (Nigeria).

¹³⁵ See Pengassan citing ILO, THE SCOPE OF THE EMPLOYMENT RELATIONSHIP 23 (2003) <https://www.ilo.org/public/english/standards/relm/ilc/ilc91/pdf/rep-v.pdf>. This report was used to inform discussions of Recommendation 198, discussed later in this section.

¹³⁶ *Id.*

However, in the PENGASSAN case, the NICN still embraced a narrow understanding of employment relationships. The Court rejected a claim based on a “triangular” employment relationship,¹³⁷ where workers are formally employed by one enterprise (often referred to as a the “labour intermediary,” “agency” or “provider”) to perform work for another company. That company benefits from the workers labour without the responsibilities inherent in a recognized employment relationship. Triangular relationships can allow employers to escape obligations to workers, including obligations to protect against violence and harassment, by creating uncertainty and barriers to accountability.¹³⁸ Troublingly, a recent decision from the Court of Appeals adopted a similarly narrow understanding.¹³⁹ In *Felix Adariku & 5 Ors v. Luck Guard Limited*, the Court of Appeals rejected a claim involving a triangular employment relationship, relying on a formalistic reading of the contract, rather than examining which employer actually benefited from the worker’s labour, and had the ability to control their working conditions.

Other NICN cases have reflected more formalistic understandings of the distinction between a contract of service and a contract for services. In *Olatunji & anor v. Uber Technologies System Nig. Ltd. & 2ors*¹⁴⁰ the NICN concluded that Uber drivers are independent contractors rather than employees. The Court based its judgement on the express terms of the service agreement between the parties. The learned Court subjected them to the various indices enumerated in the *Shena* case and concluded that the terms of the agreement pointed to independent contractors rather than employees. This holding is in contrast to holdings across many other legal systems that have determined gig drivers to be employees, since the gig companies have the ability to control virtually all significant aspects of drivers’ work.¹⁴¹ There is a need for those called upon to draft or to review such agreements to look out for what one can only describe as “banana peels.”

ILO Recommendation 198 (R198),¹⁴² adopted in 2006, enshrines the principle of examining the underlying reality of a relationship rather than the form of the contract, a principle which has been adopted in many national jurisdictions by statute or jurisprudence.¹⁴³ R198 calls for member states to adopt a legal presumption that an employment relationship exists where one or more relevant indicators are present.¹⁴⁴ This presumption is not currently applied consistently in practice in Nigeria, particularly where outsourcing of labour through private employment agencies is involved.

Further, R198 lists indicators to define an employment relationship that examines the issue of dependency. This is particularly critical in the context of discrimination and abusive conduct,

¹³⁷ *Id.*

¹³⁸ *Disguised Employment / Dependent Self-Employment*, ILO, https://www.ilo.org/global/topics/non-standard-employment/WCMS_534833/lang--en/index.htm (last visited Feb. 6, 2023).

¹³⁹ See, e.g. Bridget Edokwe, *The Concept of Triangular Employment Suffers a Blow- A critique of the recent decisions of the Court of Appeal in Appeal No: CA/A/1061/2020: Luck Guard Limited v. Felix Adariku & 5 Ors & Appeal No: CA/A/1061/2020 Total E& P Nigeria Limited v Felix Adariku & 5 Ors.*, BARRISTERNG.COM (Feb. 4, 2023), <https://barristerng.com/the-concept-of-triangular-employment-suffers-a-blow-a-critique-of-the-recent-decisions-of-the-court-of-appeal-in-appeal-no-ca-a-1061-2020-luck-guard-limited-v-felix-adariku-5-ors-appeal-no-ca/>.

¹⁴⁰ *Olatunji v. Uber Technologies System Nig. Ltd.*, NICN/LA/546/2017 (Dec. 4, 2018) (Nigeria), <https://judgement.nicnadr.gov.ng/details.php?id=3075>.

¹⁴¹ See, e.g., International Lawyers Assisting Workers (ILAW) Network, *TAKEN FOR A RIDE 2: ACCELERATING TOWARDS JUSTICE* (2022), <https://www.ilawnetwork.com/wp-content/uploads/2022/12/ISSUE-BRIEF-Taken-for-a-Ride-2.pdf>.

¹⁴² ILO, *Employment Relationship Recommendation*, 2006 (No. 198) (June 15, 2006) [hereinafter R198], https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312535.

¹⁴³ For example, ¶ 9 states policies and laws to determine the existence of an employment relationship “should be guided primarily by the facts relating to the performance of work and the remuneration of the worker, notwithstanding how the relationship is characterised in any contrary arrangement, contractual or otherwise, that may have been agreed between the parties.” *Id.*

¹⁴⁴ *Id.* at ¶ 11.

because a precarious employment relationship not subject to legal protections makes it harder for workers to achieve justice. This is often particularly prevalent in low-wage industries, where workers cannot survive even a short stint of unemployment. Analysing the dependence of workers has led courts in other jurisdictions to deem workers in non-standard forms of work, such as gig workers, to be employees rather than in a contract for services.

R198 SUGGESTS THAT MEMBERS ADOPT INDICATORS OF AN EMPLOYMENT RELATIONSHIP THAT SHOULD INCLUDE EXAMINING:

“(a) the fact that the work: is carried out according to the instructions and under the control of another party; involves the integration of the worker in the organization of the enterprise; is performed solely or mainly for the benefit of another person; must be carried out personally by the worker; is carried out within specific working hours or at a workplace specified or agreed by the party requesting the work; is of a particular duration and has a certain continuity; requires the worker’s availability; or involves the provision of tools, materials and machinery by the party requesting the work;

(b) periodic payment of remuneration to the worker; the fact that such remuneration constitutes the worker’s sole or principal source of income; provision of payment in kind, such as food, lodging or transport; recognition of entitlements such as weekly rest and annual holidays; payment by the party requesting the work for travel undertaken by the worker in order to carry out the work; or absence of financial risk for the worker.”¹⁴⁵

It is critical that protections against violence and harassment extend to all workers. This requires ensuring that workers in non-standard or disguised employment relationships have the true nature of the relationship recognized and that employers are held accountable for their duties to workers. It also requires the government to adopt special measures for workers who are genuinely self-employed, in particular workers in the informal economy. Legislation could clarify the scope of protections, and courts should read the expansive understanding of C190, as well as international best practices that call for examining dependency and power relationships between parties, into existing tests that require an examination of the underlying reality of the relationship, as well as employer duties with respect to workers and others impacted by their business.

3. PROTECTING THE “WORLD OF WORK”

C190 article 3 “applies to violence and harassment in the world of work occurring in the course of, linked with or arising out of work (a) in the workplace, including public and private spaces where they are a place of work; (b) in places where the worker is paid, takes a rest break or a meal, or uses sanitary, washing and changing facilities; (c) during work-related trips, travel, training, events or social activities; (d) through work-related communications, including those enabled by information and communication technologies; (e) in employer-provided accommodation; and (f) when commuting to and from work.” C190 sought to address the changing nature of work and ensure that workers are protected beyond just the physical worksite.

Coverage of the commute and public spaces is particularly important for broader economic equality, as a lack of safety in public spaces and on the commute can affect the types of jobs and work hours women and other marginalised workers seek out. The employer’s duty to provide a safe and

¹⁴⁵ *Id.* at ¶ 13.

healthy workplace should be understood to extend throughout the world of work, including on the commute.

The analysis of employer liability under current Nigerian labour law, as articulated in the *Microsoft* case, would examine whether a breach of a fundamental right “is related or connected to an employment matter,”¹⁴⁶ which when read in conjunction with C190 should be understood to cover the entire world of work.

Under the Employee’s Compensation Act “[a]ny employee, whether or not in a workplace, who suffers any disabling injury arising out of or in the course of employment shall be entitled to payment of compensation.”¹⁴⁷ This includes entitlement to compensation for accidents “sustained while on the way between the place of work and (a) the employee’s principal or secondary residence; (b) the place where the employee usually takes meals; or (c) the place where he usually receives remuneration, provided that the employer has prior notification of such place.”¹⁴⁸ However, litigants would have to assess whether a claim under the Employee’s Compensation Act or a negligence claim under tort law had a better chance of succeeding and resulting in adequate compensation.¹⁴⁹

The government’s obligation to ensure safety on the commute and in public spaces should be covered by constitutional provisions guaranteeing equality, along with provisions of the VAPP Act, but it may be difficult to achieve effective, timely justice under these provisions alone. It is particularly critical for the government to recognize its obligation to protect workers in the informal economy and develop specific mechanisms for prevention and remedy where there is no employment relationship.

While the protections of C190 should be read into existing protections under law, further clarifications to law and policy to clearly articulate the obligations of both employers and the government to fully and effectively guard against violence and harassment across the entire world of work are necessary to give full effect to Nigeria’s treaty obligations.



¹⁴⁶ Maduka, [2014] 41 NLLR (Part 125) 67.

¹⁴⁷ ECA, *supra* note 41, § 7(1)(a).

¹⁴⁸ *Id.* at § 7(1)(b)

¹⁴⁹ See, e.g., Femi Aborisade, *Employee’s Compensation Act: Progress or Retrogression?*, Centre for Labour Studies & Department of Business Administration and Management Studies, Paper delivered at the 15th Annual Kolagbodi Memorial Lecture at 19-20 (2011), https://www.academia.edu/1374309/Employee_Compensation_Act_Progress_or_Retrogression.

4. EMPLOYER DUTY TO PREVENT AND ADDRESS GBVH

Under C190 article 9 governments must “adopt laws and regulations requiring employers to take appropriate steps commensurate with their degree of control to prevent violence and harassment in the world of work, including [GBVH].”¹⁵⁰ Employers are generally in the best position to take necessary measures to create safe, respectful working environments tailored to the specifics of the workplace and industry. Ensuring that employers have an explicit duty of care for the safety and dignity of their workers and are held accountable to taking concrete steps to identify and prevent violence and harassment, is a critical aspect of C190’s framework.

C190 requires that the full spectrum of violence and harassment has to be addressed - a specific recognition that actions that are deemed more “minor” forms of GBVH, such as inappropriate comments, are interconnected to “major” violations, such as physical assault. Abusive behaviour left unchecked often escalates, and the employer must be obligated to take steps to respond promptly and appropriately to harassment that does not rise to a criminal offence.

Currently, employer liability in Nigeria for discrimination and harassment is both direct and vicarious. The employer owes a duty of care to employees, including a duty to exercise reasonable care for the employee’s physical and psychological well-being,¹⁵¹ and also a duty of care to anybody who is lawfully within the premises of the employer who is harassed by an employee. The fact that the employee was acting beyond the call of duty is immaterial. The legal concept of occupier’s liability makes the safety and welfare of anybody within the premises the responsibility of the employer.

In *Microsoft*, the NICN found that both the direct supervisor and the employer had a duty “to provide a safe and secure work environment” that was violated by exposing a worker to “undignified and discriminatory treatment.”¹⁵² The special position of the claimant as a diversity champion for women employees within the Microsoft organisation in West, East and Central Africa is a pointer to the wider implication and application of the case. Further, in an earlier ruling in the *Microsoft* proceedings, the NICN upheld liability for both a subsidiary and a parent company. Both Microsoft Nigeria and its parent company Microsoft Corporation were deemed to be co-employers and held liable for harassment. The NICN concluded that both employers, through “inaction and silence... tolerated and ratified” the supervisor’s harassing conduct, and this was deemed to be a breach in their duty of care.¹⁵³

Under article 9 of C190, governments should adopt regulations that require employers to take specific preventative measures including “(a) adopt and implement, in consultation with workers and their representatives, a workplace policy on violence and harassment; (b) take into account violence and harassment and associated psychosocial risks in the management of occupational safety and health; (c) identify hazards and assess the risks of violence and harassment, with the participation of workers and their representatives, and take measures to prevent and control them; and (d) provide to workers and other persons concerned information and training, in accessible formats as appropriate, on the identified hazards and risks of violence and harassment and the

¹⁵⁰ C190, *supra* note 6.

¹⁵¹ Femi Aborisade, *Employee’s Compensation Act: Progress or Retrogression?*, Centre for Labour Studies & Department of Business Administration and Management Studies, Paper delivered at the 15th Annual Kolagbodi Memorial Lecture, at 2 (2011) https://www.academia.edu/1374309/Employeees_Compensation_Act_Progress_or_Retrogression

¹⁵² *Maduka*, 41 NLLR (Part 125) 67.

¹⁵³ *Maduka v. Microsoft*, NICN/LA/492/2012 (Dec. 19, 2013), <https://compendium.ilo.org/en/compendium-decisions/national-industrial-court-of-nigeria-ejeke-maduka-v-microsoft-19-december-2013-case-no-nicn-la-492-2012>.

associated prevention and protection measures.”¹⁵⁴

Currently, there are no provisions in Nigerian statutes that specifically require employers to adopt policies, engage in risk assessments, or provide training to workers on violence and harassment. However, there are awareness and sensitisation programmes, aimed at revising workplace policies and regulations to enshrine principles of diversity, equity and inclusion, with gender issues as the central focus. Now that Nigeria has ratified both Convention 190 and Convention 187¹⁵⁵ on a promotional framework for occupational health and safety, both require governments to create more specific obligations on employers. Moreover, the obligation to adopt appropriate preventative measures should also be read into the understanding of the underlying common law duty of care that employers owe their workers and those impacted by their business.

C190 article 8 specifically requires that governments “take appropriate measures to prevent violence and harassment in the world of work” by “recognizing the important role of public authorities in the case of informal economy workers,” and working in consultation with trade unions and informal worker associations, identify measures to protect workers.¹⁵⁶ Even if misclassification is broadly addressed, workers that are truly self-employed may not have recourse to the same preventative measures and mechanisms, and in those cases the government of Nigeria has a role to play in ensuring the preventative policies and redress mechanisms are identified and adopted.

5. VIOLENCE AND HARASSMENT COMMITTED BY THIRD PARTIES

C190 requires that violence and harassment committed by third parties be addressed in national laws and employer policies.¹⁵⁷ In many professions, such as hospitality, healthcare, and retail, workers are often subjected to abusive conduct by third parties, such as clients, customers and members of the public. This is a predictable, structural feature of these roles, and employers must be required to take proactive measures to address and prevent violence and harassment from third parties.

In *Microsoft*, the NICN recognized sexual harassment can involve third parties including co-employees and “outsiders” such as customers, and noted that such harassment can constitute a violation of “the right to safeguard one’s dignity.” Government measures aimed at promoting safety in the entire world of work, including the commute and public spaces, will also play an important role in ensuring the full range of protections envisioned in C190 are completed.

6. ACCESS TO VICTIM-CENTRIC REMEDIES

C190 article 10 requires governments to ensure “easy access to appropriate and effective remedies.”¹⁵⁸ Per R206 these remedies should include the right to resign with compensation; reinstatement; appropriate compensation for damages; “orders requiring measures with immediate executory force to be taken to ensure that certain conduct is stopped or that policies or practices are changed;” and the awarding of legal fees and costs. Remedies for victims of GBVH must be “gender-responsive” and should include “(a) support to help victims re-enter the labour market; (b)

¹⁵⁴ *Supra* note 6.

¹⁵⁵ C187, *supra* note 47.

¹⁵⁶ C190, *supra* note 6.

¹⁵⁷ *Id.* at art. 4(2).

¹⁵⁸ *Id.* at art. 10.

counselling and information services, in an accessible manner as appropriate; (c) 24-hour hotlines; (d) emergency services; (e) medical care and treatment and psychological support; (f) crisis centres, including shelters; and (g) specialized police units or specially trained officers to support victims.”¹⁵⁹

Much of current law regarding violence and harassment, in Nigeria and around the world, is focused on punishing individual perpetrators. Individual accountability is necessary but by no means sufficient to address GBVH and other forms of violence and harassment that are rooted in structural inequalities. C190 deliberately widened its frame to incorporate remedies that focus on addressing the harm to victims and requiring measures that will prevent recurrence. This includes ensuring access to medical and mental health services to address the physical and psychological impacts of GBVH, and measures that require employers to make changes to policies and practices that will address the structural factors that so often enable GBVH.

Currently, the NICN is empowered to issue compensation and other appropriate remedies, with discretion to determine what those are. This wide latitude empowers the court to issue orders that include damages and orders to employers to make changes to their policies and practices. This is still a developing area. The victim-centric remedy is part of a restorative justice approach which seeks to shift focus away from the traditional crime and punishment approach. However this is an area that requires intentional advocacy to ensure that interests of victims of violence and harassment are recognised and compensated.

Microsoft is reflective of such an approach, and advocates now have the opportunity to build on that precedent. *Folarin Oreka Maiya v. The Incorporated Trustees of Clinton Health Access Initiative*¹⁶⁰ also reflects the need to ensure adequate compensation. In that case, termination of employment on account of pregnancy was found unlawful and a violation of the guaranteed fundamental rights of the affected employee under the 1999 Constitution, the African Charter on Human and People’s Rights, and ILO Convention 111. The Court specifically held that termination should attract an award of heavy damages. This provides a basis for arguing that GBVH cases should be treated similarly

In *Andrew Monye v. Ecobank Nigeria Plc*,¹⁶¹ the NICN recognised that termination without notice constitutes an unfair labour practice. At the time this case was decided, the concept of an unfair labour practice was not yet enshrined in Nigerian law (it would be introduced in the Third Alteration Act, discussed above in [Part 1.2](#)), but it was recognized and developed by the NICN in this case based on international best practices, and international labour standards. It is a tool that should prove very useful in establishing breaches of rights and responsibilities of the parties in an employment relationship.

The Employee’s Compensation Act would allow workers who qualify as employees under the Act to claim compensation for injuries sustained during the course of employment. This should, particularly when read in conjunction with C190, apply to physical and psychological harm arising from GBVH and other forms of violence and harassment in the world of work. Under article 8, workers deemed employees can claim “compensation for mental stress not resulting from an injury” if the mental stress is

- a. an acute reaction to a sudden and unexpected traumatic event arising out of or in the course of the employee’s employment; or

¹⁵⁹ *Supra* note 9.

¹⁶⁰ *Maiya v. Trustees of Clinton Health Access Initiative* [2012] 27 NLLR (Part 76) 110 (Nigeria).

¹⁶¹ *Monye v. Ecobank Nigeria, NIC/ LA/06/2010* (October 8, 2011)(Nigeria).

- b. diagnosed by an accredited medical practitioner as a mental or physical condition amounting to mental stress arising out of the nature of work or the occurrence of any event in the course of the employee's employment, or
- c. caused by the decision of the employer to change the work or the working conditions of work organization in such a way as to unfairly exceed the work ability and capacity of the employee.¹⁶²

However, there are several critical shortcomings of the Employee's Compensation Act. Compensation is often extremely low, even in cases of severe harm. It is necessary to ensure high penalties on employers to act both as a deterrent against abusive behaviour and to ensure effective protective measures are adopted at the workplace level. This defect is compounded by the lack of mechanisms to support workers who seek to bring claims, such as access to free or reduced cost legal representation or provisions to shift the costs of a successful litigation onto the employer. Currently, as legal scholar Femi Aborisade has argued, "the cost of legal action to seek redress discourages victims from initiating actions. Even where compensation is paid or action is successfully instituted, the entitlement tends to be too meagre as not to justify the time and resources invested in the process."¹⁶³ Further, under section 4 workers must report an incident within two weeks to the employer, and must bring claims within one year of the injury. These requirements may particularly impact claims of sexual assault and other discriminatory violence, as victims may require time to process traumatic events, fear retaliation or stigma from coming forward, or face other barriers to reporting.

Remedies under VAPP Act include punishment for individual perpetrators and measures aimed at compensation and recognition of harm. According to section 38, victims of violence are to "receive the necessary materials, comprehensive medical, psychological, social and legal assistance through governmental agencies and/or non-governmental agencies providing such assistance," to be informed of and given access to legal, health and social services and to rehabilitation and reintegration programmes.¹⁶⁴ Many states in Nigeria have yet to domesticate the legislation.

THE VAPP ACT ALONE IS NOT SUFFICIENT TO PREVENT VIOLENCE AND HARASSMENT IN THE WORLD OF WORK.

Criminal legislation is focused on individual perpetrators rather than institutional actors and the specific dynamics of work. C190 focuses on ensuring measures to promote employer accountability for creating safe, respectful working environments, including proactive obligations to address behaviour that does not rise to the level of a criminal offence. This gets at the structural factors that enable violence and harassment at work. The VAPP Act lacks provisions requiring job-related remedies such as reinstatement, and it does not create clear obligations on employers to change policies and practices to prevent recurrence. Further, criminal cases have a higher burden of proof than civil cases, making it more difficult to achieve justice. Engaging the mechanisms created in the VAPP Act alongside labour remedies would more holistically address GBVH and other forms of violence and harassment at work, particularly since the VAPP Act includes some measures to support survivors currently absent in labour law.

There is a critical need to develop holistic support for victims so that they can pursue claims and achieve justice, including ensuring access to legal services and fee shifting. Reforming labour

¹⁶² ECA, *supra* note 41.

¹⁶³ Aborisade, *Employee's Compensation Act*, *supra* note 151, at 1.

¹⁶⁴ VAPP Act, *supra* note 51.

and other laws to ensure access to comprehensive, victim-centric remedies include measures that recognize the harm caused, and address the underlying factors causing the violence and harassment in the world of work. This means ensuring adequate compensation both to recognize harm and disincentivize behaviour; job-related remedies including reinstatement; access to ongoing psychosocial support including mental health counselling and support to find alternative employment where appropriate; and accountability for both individual actors and institutional actors, including measures that require changes to practices and policies in individual employers and across industries.

7. PROTECTION FROM RETALIATION

C190 article 10 requires governments to ensure “protection against victimization of or retaliation against complainants, victims, witnesses and whistle-blowers.”¹⁶⁵ It is incredibly common for victims to face retaliation, and legislation should protect the right to report without being fired or otherwise penalised for speaking out explicitly. Fear of retaliation is a major factor as to why cases of GBVH are so grossly under reported. The NICN *Microsoft* case centred around a retaliatory firing, and the NICN has recognized the concept of unfair labour practices, which should extend to retaliation for seeking justice for workplace GBVH and other forms of violence and harassment. Retaliation should be understood as an affront to the rights to non-discrimination and the right to personal dignity protected in the Constitution and international and regional treaties ratified by Nigeria, as it allows harm to the person to go unremedied. ILO Convention 155 also protects workers from retaliation where they complain in good faith about what they consider to be “a breach of statutory requirements or a serious inadequacy in the measures taken by the employer in respect of occupational safety and health and the working environment.”¹⁶⁶ Specific measures, including large fines and other penalties sufficient to be dissuasive, should be built into law.

8. OCCUPATIONAL SAFETY AND HEALTH (OSH)

Article 12 of C190 calls on governments to apply the Convention “by extending or adapting existing occupational safety and health measures to cover violence and harassment and developing specific measures where necessary.”¹⁶⁷ This is a critical site to realise the employer obligations under article 9, including the obligation to undertake risk assessments related to GBVH and other forms of violence and harassment in the world of work, identify potential hazards and take steps to address them. Article 9 specifically calls for measures that require employers to “take into account violence and harassment and associated psychosocial risks in the management of occupational safety and health.”¹⁶⁸ Legislation could fully enshrine this right in detail. Ensuring protection under current law calls for a creative use of the various provisions under the Constitution,¹⁶⁹ the Occupational Safety and Health Policy,¹⁷⁰ ILO Conventions 155¹⁷¹ and 187,¹⁷² The African Charter on Human and Peoples

¹⁶⁵ C190, *supra* note 6.

¹⁶⁶ C155, *supra* note 45, art. 17.

¹⁶⁷ See also C190, *supra* note 6, at art. 11.

¹⁶⁸ C190, *supra* note 6, at art. 9(b).

¹⁶⁹ Constitution of Nigeria (1999).

¹⁷⁰ NIGERIA COUNTRY PROFILE ON OCCUPATIONAL SAFETY AND HEALTH, *supra* note 44.

¹⁷¹ C155, *supra* note 45.

¹⁷² C187, *supra* note 47.

Right,¹⁷³ including the Protocol on Women,¹⁷⁴ and CEDAW,¹⁷⁵ among others.

Even though the current OSH laws mostly only apply to factory settings, with a narrow definition of what constitutes a factory, the right to safe, healthy workplaces should be read to extend to all workers and all workplaces. The Factories Act did not envisage the current scenario, where the demarcation between workspace, the home, and other spaces have become blurred. A progressive interpretation would reflect treaty obligations and international best practices.

The Employee's Compensation Act applies more broadly in terms of occupational injuries, but the Act does not specifically address the full range of obligations that are usually imposed on employers under occupational safety and health frameworks, particularly regarding the obligation to take proactive steps to identify, prevent, and mitigate OSH risks and hazards. The fact that Nigeria has ratified C187 means that the government must adopt a national policy in consultation with unions that promotes and advances “the right of workers to a safe and healthy working environment.”¹⁷⁶ and a programme to eliminate or minimise “work-related hazards and risks.”¹⁷⁷ C155 further calls for a policy that aims to “prevent accidents and injury to health arising out of, linked with or occurring in the course of work, by minimising, so far as is reasonably practicable, the causes of hazards inherent in the working environment.”¹⁷⁸ C190 article 10(h) specifically requires that the government “ensure that labour inspectorates and other relevant authorities” can issue orders for employers to change policies and practices, including orders to stop work in cases of an imminent danger to life, health or safety.¹⁷⁹



One critical OSH protection is the right of workers to remove themselves from unsafe situations without retaliation. C190 protects that right in article 10(g).¹⁸⁰ ILO Convention 155 on Occupational Safety and Health also protects the right of workers to remove themselves from situations that present an imminent and serious danger to life or health without retaliation.¹⁸¹ This right could be adopted as part of efforts to bring laws into compliance with both C190 and C155 and should be read into the general rights to be free from degrading and discriminatory treatment at work.

The employer duty to take measures to identify and prevent OSH risks and hazards should be read into common law duties, including the duties of care owed by employers to workers and

¹⁷³ ACHPR, *supra* note 30.

¹⁷⁴ Maputo Protocol, *supra* note 77.

¹⁷⁵ CEDAW, *supra* note 31.

¹⁷⁶ C187, *supra* note 47, at art. 3(2)

¹⁷⁷ *Id.* at art. 5(2)(b).

¹⁷⁸ C155 has been declared a “fundamental” convention of the ILO, and is binding on all ILO members, regardless of individual ratification. See ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (2022), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/normativeinstrument/wcms_716594.pdf.

¹⁷⁹ C190, *supra* note 6

¹⁸⁰ *Id.*

¹⁸¹ C155, *supra* note 45, at art. 13.

others impacted by their business. Employer obligations to prevent and address OSH hazards and risks can also be handled through collective bargaining for revised workplace policies, which can use international labour standards as guidelines. Government support to negotiations in the informal economy, and at the sectoral level, can buttress efforts by unions to bargain for better OSH standards and protections.

9. FREEDOM OF ASSOCIATION AND COLLECTIVE BARGAINING

C190 and R206 consistently affirm the critical need to ensure that workers can effectively exercise their rights to freedom of association and collective bargaining.¹⁸² Nigeria has also ratified ILO Conventions 87 and 98,¹⁸³ which protect the rights to freedom of association and collective bargaining; as well as the United Nations' International Covenant on Economic, Social and Cultural Rights¹⁸⁴ and the African Charter on Human and Peoples' Rights.¹⁸⁵ In any given workplace or industry, workers themselves are in the best position to identify how violence and harassment impacts their working life and craft solutions. Organising to demand workplace safety and bargaining for effective policies and protections is critical to ending GBVH and other workplace abuses.

Currently, the right to freedom of association and collective bargaining is protected under the Nigerian Constitution, but not fully realised in current labour laws. Section 40 of the Constitution protects the right of every person to freedom of association. However, under Section 45(1) the government can make laws that restrain or derogate from the enjoyment of fundamental rights, so long as the law is “(a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom of other persons.”¹⁸⁶ Unfortunately, this clause has sometimes been given a broad reading by courts with respect to trade union rights, in a manner that is not always consistent with the treaty obligations of Nigeria or international law.

In a 1985 case, *Osawe v. Registrar of Trade Unions*,¹⁸⁷ the Supreme Court upheld a provision of the Trade Unions Act that gives the Registrar of Trade Unions the power to refuse to register a trade union where there is already an existing registered union that covers the same interests. This restriction on trade union plurality was deemed by the Supreme Court to be aimed at restoring order to trade unionism in Nigeria, and therefore not unconstitutional.

The ILO Committee of Experts on Application of Conventions and Recommendations regularly

¹⁸² See, e.g., C190, *supra* note 6, at arts. 5, 12.

¹⁸³ Ratifications of C087 – Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ILO Normlex, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312232:NO (last visited Feb. 27 2023); Ratifications of C098 – Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ILO Normlex, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312243:NO (last visited Feb. 27, 2023).

¹⁸⁴ Article 8 protects the right to form and join unions, to form confederations, to operate unions in full freedom and the right to strike. ICESCR, *supra* note 72.

¹⁸⁵ The ACHPR was domesticated through the People's Rights (Ratification and Enforcement) Act CAP A9 of 2004. The African Commission developed Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights “to assist State Parties to comply with their obligations under the African Charter.” Article 59 of the Principles and Guidelines explains that States should “[e]nsure the right to freedom of association, including the rights to collective bargaining, to strike and other related organisational and trade union rights” in order to guarantee the right to work. See Afr. Comm. on Hum. and Peoples' Rts., Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (Oct. 24, 2011), https://www.achpr.org/public/Document/file/English/achpr_instr_guide_draft_esc_rights_eng.pdf.

¹⁸⁶ Constitution of Nigeria (1999).

¹⁸⁷ *Osawe v. Registrar of Trade Unions*, [1985] 1 NWLR (Pt. 4) 755 (Nigeria).

calls attention to this restriction as a violation of article 2 of ILO Convention No. 87 on Freedom of Association.¹⁸⁸ Nigeria's response since 2005 has been that this was cured in the Trade Unions (Amendment) Act of 2005. However, while the Act bestows discretionary powers on the Minister to register federations of trade unions "if it is in the public interest" to so do, restrictions on registering a trade union where another exists under section 3(2) of the Trade Unions Act remain unchanged.¹⁸⁹ The Act itself was viewed by many as strategically aimed at weakening the power of the Nigeria Labour Congress (NLC), while leaving much of the problematic infrastructure bestowing discretion on government officials to restrict trade unions and limit plurality in place.

Further, current labour law does not fully recognize and protect the right to strike, and mechanisms to protect workers who organize into unions from retaliatory firings are not effective.¹⁹⁰ Restrictions in the Trade Unions Act, the Trade Disputes Act and the Public Order Act curtail the right to strike such that it is difficult for many workers to exercise in practice.¹⁹¹

To fully realize the protections of C190, workers must be able to exercise their rights to organize and demand fair, safe working conditions free from violence and harassment.

10. IMPACT OF DOMESTIC VIOLENCE ON THE WORLD OF WORK

C190 article 10 (f) states that governments must "recognize the effects of domestic violence and, so far as is reasonably practicable, mitigate its impact in the world of work."¹⁹² R206 lays out "appropriate measures" to address the impact, which include: (a) leave for victims of domestic violence; (b) flexible work arrangements and protection for victims of domestic violence; (c) temporary protection against dismissal for victims of domestic violence, as appropriate, except on grounds unrelated to domestic violence and its consequences; (d) the inclusion of domestic violence in workplace risk assessments; (e) a referral system to public mitigation measures for domestic violence, where they exist; and (f) awareness-raising about the effects of domestic violence."¹⁹³

These measures are critical to ensure that workers who experience domestic violence, mostly women, can remain employed while seeking safety. Domestic violence presents dangers at the workplace to victims and co-workers, and it is unfortunately extremely common for abusers to interfere with their victim's job performance, placing victims at risk of being fired.¹⁹⁴ Unfortunately, there are no provisions under Nigerian law currently that specifically prevent discrimination against victims of domestic violence on the part of employers, nor any provisions that guarantee workplace accommodations or leave to address the impact of domestic violence. Reading C190 into domestic law would, however, mean including such protections under existing systems. For example, dismissals that are connected to domestic violence should be understood as a discriminatory unfair

¹⁸⁸ Committee of Experts on the Application of Conventions and Recommendations, ILO LABOUR STANDARDS, <https://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang--en/index.htm> (last visited Feb. 23, 2023).

¹⁸⁹ See Comm. of Experts on the Application of Conventions and Recommendations, Observation: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) – Nigeria (2022), https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0:0::NO:13100:P13100_COMMENT_ID,P13100_COUNTRY_ID:4116449,103259.

¹⁹⁰ *Id.*

¹⁹¹ Femi Aborisade, LEGAL FRAMEWORK ON THE RIGHT TO FREEDOM OF ASSOCIATION IN NIGERIA (2022), <https://www.ilawnetwork.com/resource/legal-framework-on-right-to-freedom-of-association-in-nigeria/>.

¹⁹² C190, *supra* note 6.

¹⁹³ R206, *supra* note 9, at ¶ 18.

¹⁹⁴ See, e.g., Solidarity Center, FACTSHEET: DOMESTIC VIOLENCE IS A WORKER RIGHTS ISSUE (2022) https://www.solidaritycenter.org/wp-content/uploads/2022/02/DV-is-a-Worker-Rights-Issue-Fact-Sheet_2-2022.pdf.

labour practice.

11. TRAINING, AWARENESS-RAISING AND SENSITIZATION

C190 emphasises the need for the government to engage with social partners—trade unions and employers—to engage in awareness-raising and sensitization to ensure all actors in the world of work understand and address the root causes of GBVH and other forms of violence and harassment in the world of work.¹⁹⁵ In particular, R206 calls on governments to provide gender-responsive training to labour inspectors and other relevant authorities “with a view to identifying and addressing violence and harassment in the world of work, including psychosocial hazards and risks, gender-based violence and harassment, and discrimination against particular groups of workers.”¹⁹⁶ C190 also calls for “gender-responsive, safe and effective complaint and dispute resolution mechanisms,”¹⁹⁷ with R206 specifically highlighting the need for court officials to have expertise in handling cases in a victim-centric manner.¹⁹⁸ This training should be carried out in consultation with trade unions.



There is also a critical need for sensitisation and awareness programmes among workers so that they are aware of their rights under law and the processes and procedures to pursue justice. This need is captured in this ILO statement: “there is a gap between rights set out in national and international standards and their implementation in real situations. Even the best legal provisions cannot be of much use if they are not known and not put into practice. People need knowledge about legal rights and the machinery to enforce them if they are to combat discrimination and fight for fair balance of opportunity, treatment, pay and representation between men and women in all areas of paid and unpaid employment and in work-related decision making.”¹⁹⁹ Further, employers must be trained on their duties under law, and made aware of best practices to prevent and address GBVH and other forms of harassment.

Even the best legal standards, whether national or international, are not of much use, if those for whom they are made, are ignorant of them. Certainly, they remain paper tigers if the government officials implementing protections do not fully understand them. This underscores the need to mount a robust campaign to keep C190 on the front burner at all times through advocacy, seminars and other means of engagement for effective communication.

¹⁹⁵ C190, *supra* note 6, at art. 11(b-c); R206, *supra* note 9, at ¶ 20.

¹⁹⁶ R206, *supra* note 9, at ¶ 20.

¹⁹⁷ C190, *supra* note 6, at art. 10(e).

¹⁹⁸ R206, *supra* note 9, at ¶ 16.

¹⁹⁹ ILO, ABC OF WOMEN WORKERS’ RIGHTS AND GENDER EQUALITY (2d ed. 2007), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---gender/documents/publication/wcms_087314.pdf.

PART 3:

Recommendations

ILO Convention 190 presents a roadmap for how to develop laws and policies to prevent violence and harassment, in particular GBVH, in the world of work. The government of Nigeria should work in consultation with trade unions, informal worker associations and civil society organisations to fully implement the requirements of C190. The protections in C190 can also be read into the architecture of existing legal protections.

a. Ensure that all forms of violence and harassment are recognized and prohibited under national law

- Adopt a broad health and safety regulation that covers all workplaces and all workers that clearly includes the right to be free from all forms of violence and harassment in the world of work
- Articulate a clear right to dignity in the workplace that applies to all workers under the Labour Standards Bill, the Rules of NICN or other relevant legal instruments
- Ensure that the legal definition of discriminatory violence and harassment at work includes a recognition of all relevant social identities and recognizes the full spectrum of misconduct, including the creation of a hostile work environment
- Ensure that workers with disabilities have a clearly articulated right to a work environment that is open, inclusive and accessible, including reasonable accommodations

b. Protections against GBVH and other forms of violence and harassment in the world of work must apply to all workers, across the board, including those in a contract for service and self-employed workers

- This should include efforts to create an expansive definition of “worker” under the Labour Standards Bill and other legislation on worker rights that includes workers in the informal economy and in non-standard forms of employment in its protections
- There should be a presumption of an employment relationship adopted into Nigerian law, along with a requirement to assess issues of employer control and worker dependence, in line with ILO Recommendation 198.
- Working in consultation with unions and informal worker organisations, the Nigerian government should identify special mechanisms to protect and ensure the rights of workers in the informal economy, in particular self-employed workers.

c. Protections must cover the entire world of work, including public spaces and the commute. This is particularly important because there is now a thin line between public space and workplace strictly so called.

- The right to compensation under the Employee Compensation Act should clearly include compensation for both physical and psychological harm caused by violence and harassment, including violence and harassment experienced on the commute and in other places connected to work such as conferences, trainings and social events
- The Nigerian government must adopt policies aimed at creating safety in public spaces and on public and private transport. The drafting process of these policies should include engagement with trade unions and civil society to ensure equitable access to public spaces and mobility
- Employers should have a duty of care to workers to ensure their safety during the commute, particularly when employers know or should have known that a commute is particularly dangerous. This could be adopted within the Labour Standards Bill and/or as a part of broader regulations on worker rights

d. Employers must have an explicit duty to prevent violence and harassment in the world of work. Awareness of this must be created and must start from the top leadership.

- This duty could be enshrined in both the Labour Standards Bill and/or regulations to ensure the right to health and safety
- Regulations should include a clear obligation to take steps to identify and prevent all forms of violence and harassment linked with, connected to or arising out of an employer's business, as part of a broader obligation to ensure the safety and health of all workers
 - » These regulations should specifically include the obligation to identify and prevent violence and harassment committed by third parties
- There should be a specific obligation for employers to work in consultation with workers and unions to identify and mitigate risks of violence and harassment within the specific business or sector
- Employers should be obligated to adopt policies and procedures to prevent violence and harassment, and be obligated to train all workers and managers on these policies and how to access complaints mechanisms and legal procedures
- With respect to the informal economy, the Nigerian government must work in consultation with trade unions and informal worker organisations, to identify and adopt mechanisms tailored to different types of informal work, to ensure protections for self-employed workers and others without a traditional employment relationship

e. Create a comprehensive health and safety program aimed at violence and harassment, as part of a broader policy to ensure the right to health and safety in the workplace

- Employers must have a clear obligation under health and safety regulations to take proactive steps to identify health and safety risks and hazards related to GBVH and other forms of violence and harassment and eliminate or mitigate all risks and hazards
- Workers must have the right to refuse work in the case of imminent harm caused by violence and harassment without penalty

- Labour inspectors must have a clear mandate to address violence and harassment as a health and safety issue, including training on the structural elements that enable violence and harassment, including discrimination and precarious working conditions

f. Victims of GBVH and other forms of violence and harassment must have access to a full range of remedies, including adequate compensation, access to medical and mental health support, and changes to employer policies and practices

- This could be enacted through clarification of existing mechanisms and harmonization across labour, civil and criminal processes to ensure access to reinstatement, access to medical and mental health services, and measures that require employers to make changes to policies and practices that will address the structural factors that so often enable GBVH and other forms of violence and harassment
- As the actor with the most ability to change structural factors, employers should face dissuasive penalties for failing to prevent violence and harassment to incentivize compliance. The Employee's Compensation Act could be reformed to ensure both adequate compensation and punitive measures can exist simultaneously
- Workers should have support to bring claims, including support to obtain legal advice and representation, as well as measures that allow for shifting costs in successful cases to employers

g. Create strong, clear mechanisms to prevent retaliation against workers who experience, report or witness violence and harassment

- This could be enshrined in the Labour Standards Bill or otherwise brought into national regulation
- The government should work with trade unions, women's rights organisations and other human rights organisations to address retaliation and other barriers to reporting
- Trade unions can support their members by facilitating safe spaces for women and other marginalised workers to discuss their experiences and identify mechanisms to prevent retaliation, as well as address the shame and stigma that too often accompanies GBVH and other forms of harassment and violence at work

h. Workers must have workplace-based protections to address the impact of domestic violence on the world of work

- The Labour Standards Bill or other regulations could include the right to paid leave and workplace accommodations to address the impact of domestic violence, as well as protection against adverse actions by employers
- Regulations of occupational safety and health should recognize the risk domestic violence presents to workers and require that employers include it in risk analysis and mitigation
- The Nigerian government should adequately resource support mechanisms, including crisis centres, that enable victims to escape domestic abuse
- Trade unions can develop relationships with crisis centres and organisations that support victims of domestic violence to ensure workers have access to appropriate resources

i. The government must create safe, gender-responsive, effective complaints processes

- The Nigerian government should work with trade unions and civil society to provide effective, gender-responsive support to access the legal system, including access to psycho-social support in navigating the legal system and effective legal representation. It should also involve long-term counselling and support for re-entering the labour market
- The Nigerian government should work with trade unions and civil society to train labour inspectors, court officials, police and other public officers in how to handle cases of workplace violence and harassment, including GBVH and other discriminatory violence and harassment in a trauma-informed and victim-centric manner
- Trade unions can engage their own shop stewards, leaders and workers to ensure they disseminate information on how to support workers in accessing legal processes and obtaining psycho-social support

j. Protect the right to freedom of association and collective bargaining

- Efforts to reform the Labour Standards Bill or other mechanisms must fully protect the rights of all workers to form and join trade unions free from intimidation and retaliation, to engage in strikes and industrial actions and to bargain collectively

k. Utilise the ECOWAS harmonisation process to ensure that C190 is fully implemented in law and policy**l. Create public awareness of violence and harassment in the world of work and C190, as a potent instrument to protect the safety, health, dignity, and equality of the rights of all workers in all workspaces.**

- Trade unions, governments and employers all have a role to play in disseminating C190 and ensuring that workers, government officials and employers all understand their rights and obligations under law to effectively end GBVH and other forms of violence and harassment at work



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