



**COSATU**

A Trade Union  
Perspective on the  
Code of Good  
Practice and its  
compliance with  
ILO C190

FEDERATIONS GENDER NATIONAL  
DIALOGUE

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# OUTLINE OF PRESENTATION



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This presentation and perspectives are based on work conducted by COSATU with FEDUSA and NACTU, and with support from Solidarity Center and Women Legal Centre

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Background: Innovations of C190

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Government and Trade Union Responses: Gaps

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Comparative Examples

# INNOVATIONS OF ILO C190



- ❖ Recognising the Right of **Everyone** to a World of Work free from Violence and Harassment
- ❖ “**Violence and Harassment**” part of a continuum (Art 1)
- ❖ **Psycho-social, digital (cyberbullying), domestic violence,**
  - ❖ **Expanded understanding of workers (Art 2)**
- ❖ **Expanded workplace:** formal & informal & including that linked to /arising out of work (Art 3) and from third parties violence (Art 4)
- ❖ Prevention (Art 7): **role of public authorities in case of informal workers;** identify in consultation sectors/occupations work arrangements where workers are more exposed to violence and take measures to effectively protect (Art 8)
- ❖ Art 9: **Workplace policy and psychosocial risks in OHS;** and identify risks and take measures to prevent and control
- ❖ Enforcement (Labour Inspectors) & Remedies: Employer, union, and state obligations

# 1. DEFINITIONS of Violence and Harassment at Work (Art 1 and 7)



- **Govt Response:**

- Employment Equity Act prohibits all forms of harassment as a form of unfair discrimination based on prohibited grounds of race, gender, sex etc.
- Definition found in Code of Good Practice, amended in March 2022: Harassment includes violence, physical abuse, psychological abuse, emotional abuse, sexual abuse, gender-based abuse and racial abuse and includes the physical use of force or power, whether threatened or actual. Harassment related to one of prohibited grounds prohibited.
- Other Relevant Acts: LRA, OHS, PEPUDA, PROTECTION FROM HARASSMENT ACT, DVA

- **Labour Response:**

- LRA and Employment Equity limited to discriminatory harassment on prohibited grounds
- Does not address physical, psychological or economic harm
- While COGP tries to expand the content of EEA, problem is that the Code is a “guide”, which is limited by the terms of the Act
- OHSA - addresses health and safety, but this doesn't explicitly address violence and harassment
- PEPUDA - also based on prohibited grounds and requires repeated conduct
- Protection from Harassment Act : requires “ought to know causes harm”, “reasonable belief”, “repeatedly”, and remedy is an interdict (private remedy)

# 2. SCOPE:

## Who is protected and Where are they protected?



- **Govt:**

- "No persons are excluded from protection against harassment and violence"; "there are no exclusions"
- In the workplace: LRA, OHS Act and EEA apply; Code of Good Practice covers all economic sectors, public/private/formal/informal
- Protected in places of work, where paid/rest/meal/sanitary/changing facilities/ work related trips & accommodation/ work technology/employer provided accommodation and when commuting to work
- In fact, the COGP applies to domestic workers, health workers and those working virtually

- **Labour Response:**

- EEA applies to "employees" not everyone and not employers;
- Excludes contractors workers in informal economy and platform work
- COGP limits employer obligations to commutes to/from work where transport is provided by the employer
- COGP attempt to extend this (S2.2): "perpetrators and victims may be wider, including managers, supervisors, job seekers, applicants, persons in training, volunteers, clients, contractors" but remedy through PEPUDA
- PEPUDA doesn't comply with C190 (also discriminatory harassment and repeated); also absolves employer of obligations to take reasonable steps to prevent GBV/H employer-provided

(3) Art 4(2): Approach to prevention that is consultative; is  
(a) gender responsive and  
(b) takes into account V & H by 3rd parties



- **Govt Response:**

- SA regards all forms of harassment as forms of unfair discrimination: EEA & COGP (NEDLAC Social partners participated and part of policy development)

- **Labour Response:**

- In Social Dialogue, leading up to COGP, organised labour did not think amended COGP sufficient to comply because:

- Almost complete absence of provisions on violence
- Limited provisions on non-discriminatory harassment
- Absence of provisions to mitigate domestic violence
- Inadequate provisions on economic violence, third party violence and transport
- Absence of provisions on enforcement
- Limited relevance if COGP to atypical employees and no relevance to non-employees
- Require multidisciplinary process

# 4. Fundamental Principles and Rights at Work including FOAA, Elimination of Discrimination in Labour and Employment, to eliminate V & H



- **Govt:**

- EEA prohibits unfair discrimination including violence and harassment; including in Ch III, identifying and eliminating employment barriers; harassment is a form of discrimination
- COGP defines harassment, “...unwanted conduct, which impairs dignity and creates a hostile and intimidating environment for one or more employees....on prohibited grounds” and women workers as well as vulnerable groups
  - Includes domestic workers and home health care workers

- **Labour Response:**

- EEA and COGP only apply to employees; leaves non-employees and workers in informal economy outside of workplace remedy
- Further by providing that remedies for V &H for non-employees through PEPUDA and Protection from Harassment Act, taking these issues outside of Collective Bargaining, and not extending this to informal economy

# PREVENTION & RESPONSIBILITIES OF EMPLOYERS



- **GOVT:**

- EEA, COGP, LRA, PEPUDA, Protection from Harassment Act
- S 60 A of EEA requires employers to take proactive and remedial steps to prevent harassment in the workplace; S8 of COGP, requires employers to develop **harassment policies**
- Both EEA and COGP apply to all employees and employers in all economic sectors, including **public authorities** (ito S60)
- **COGP** requires employers under **OHSA** to jointly identify hazards and risks of violence and harassment and take steps to eliminate; including third party harassment
- COGP recognises harassment particularly affects employees in **vulnerable employment**, who while covered by Labour Law in theory, are not in practice

- **Labour Response**

- EEA applies only to harassment on prohibited grounds; doesn't set out sector specific responses; no GBVH risk assessments; no victim-centric remedies

# Enforcement and Remedies



- **Government:**

- LRA & EEA - CCMA
- OHSA - Labour Inspectors
- PEPUDA - Equality Court
- Protection from Harassment Act (courts)

- **Labour Response**

- Labour inspectors do not have an explicit mandate to address all forms of V & H at work;
- No provisions allowing worker to refuse dangerous work where violence or harassment is likely to occur due to acts/ omissions of employer
- OHSA - natural entry point; also provisions in BCEA and EEA

# Impact of Domestic Violence in World of Work



- **Government Response:**
  - COGP complies
- **Labour Response:**
  - No provisions in labour law or COGP allowing victims of domestic violence paid leave or other accommodations

# Guidance Training and Awareness



- No training received on revised COGP and implications
- Cosatu - workshops to raise awareness of ILO C190 and empower union negotiators and labour inspectors

# Comparative International Experience

(Solidarity Center Research)

## OHS Approach - Canada



- ❖ Bill C-65 (42 -1); in force Jan 2021 (amends Labor Code)
- ❖ Part II: Workplace Harassment and Violence Prevention Regulations (federal):
  - ❖ Joint Assessment (with partner) of Risk factors and Prevention;
  - ❖ 3 year Review
  - ❖ Section 8 Identification of Risk Factors include internal and external risk factors including culture of workplace, family violence, data on harassment and violence at work, physical design of the workplace, measures in place to protect psychological health and safety at work.
  - ❖ Mitigate risk and develop implementation plan, including emergency
- ❖ Employer obligations to former employees, if brought to employers attention within 3 months of termination
- ❖ Workplace Harassment and Violence Prevention Fund: funding sector specific tools

# Comparative Law



- ❖ **Australia** - 10 paid domestic violence leave days (2022)
- ❖ **Japan:** Anti-Power Harassment Law in effect for large corporations (2020) and April 2022 (for small or medium):
- ❖ **Examples** of power harassment:
  - ❖ physical abuse
  - ❖ mental or emotional abuse
  - ❖ deliberate isolation of employees in the workforce
  - ❖ overwork of employee
  - ❖ providing work well below skill level
  - ❖ infringement of privacy of employees by asking questions irrelevant to business purposes.

# ILO C190 and Collective Bargaining



- ❖ **COLLECTIVE BARGAINING**
- ❖ **Lesotho:** binding agreement with a Code of Practice on GBV/H independent complaint procedure with suppliers in the garment sector (2019)
- ❖ **Denmark:** tripartite agreement on sexual harassment (4 March 2022); anticipated new Bill to prevent sexual harassment which anticipates higher claims for compensation from companies that don't comply.
- ❖ **Argentina** CBAs on domestic violence in pharmaceuticals, tourism and education; in **Brazil** in banking and postal sector.
- ❖ **Columbia:** CBA between Municipality and Asotintos on informal work (wine vendors) in Colombia, including municipal guarantee of prevention and eradication of gbv by buyers & passer-by of the Zone; complaint lines.
- ❖ **Georgia:** downloadable mobile app to enable call for help including in travel to and from work

**WORKERS OF THE  
WORLD UNITE  
YOU HAVE NOTHING  
TO LOSE BUT  
YOUR CHAINS**