

# VIOLENCE AND HARASSMENT IN THE CARE ECONOMY

*A global research agenda*

ESRC/GCRF STRATEGIC NETWORK ON LEGAL REGULATION OF UNACCEPTABLE FORMS OF WORK



## Unacceptable work: global dialogue / local innovation

The **UN International Labour Organization (ILO)** has called for workers around the world to be protected from **unacceptable forms of work (UFW)**: jobs that “deny fundamental principles and rights at work, put at risk the lives, health, freedom, human dignity and security of workers or keep households in conditions of extreme poverty”<sup>1</sup> This ILO policy agenda responds to the growth in insecure and low paid labour across the global work force. Sustaining productive and protected working lives is among the most pressing challenges of the early twenty-first century. The urgency of this objective was recently confirmed by the inclusion of the Decent Work objective among the **UN Sustainable Development Goals (SDG8)**.<sup>2</sup>



The Strategic Network identifies and responds to Global Regulatory Challenges: the most urgent and complex issues that face lower-income countries in upgrading or eliminating UFW.



Effective labour regulation is crucial to securing decent work. Yet the regulatory strategies that can eliminate unacceptable work – most urgently in lower-income countries - have yet to be identified.<sup>3</sup> **The ESRC/GCRF Strategic Network on Legal Regulation of Unacceptable Forms of Work** responds to this urgent need by supporting a dialogue on UFW regulation.

The Network has brought together a **team of researchers and policy-makers from a range of disciplines and from the global North and South**. Network Teams are focused on identifying and responding to Global Regulatory Challenges: the most urgent and complex issues that face lower-income countries in upgrading or eliminating UFW. A set of Challenges have been identified and **Research Agendas** developed to investigate each Challenge through cross-regional comparisons of countries of different income levels.

## The global regulatory challenge: regulating violence and harassment in the care economy

For unacceptable forms of work to be eliminated, men and women must be free from the **threat, fear or infliction of mental and physical harm**. Violence that takes place in the context of work and is **based on gender** – is known as **gender-based violence, or GBV**. It is a critical human rights violation that reflects and reinforces **inequalities between women and men**.

Understandings of GBV rightly highlight the problem of **violence by men against women**. Yet the term is increasingly used to embrace all forms of violence that are related to **gendered social expectations, social positions based on gender, or non-conformity with a socially accepted gender role**<sup>4</sup>.

In the context of work, **perpetrators** are typically clients/customers, employers, co-workers and strangers. **Victims** are typically either clients/customers or workers. Many **higher-risk occupations** are female-dominated: e.g. social care, healthcare and teaching. Additionally, workers are at particular risk of gender-based violence when they are also **migrants, working within the informal economy, domestic workers or dependent family workers**.

One of its most concerning settings for GBV is **care work that is carried out in the private home**. In **advanced industrialised countries**, GBV in the care economy is often associated with casualised employment in homecare<sup>5</sup>. The context is a rapidly growing demand for **care of an aging population** and **marketisation of state-funded care provision**. In **lower-income countries**, domestic work is often a highly significant employer, especially of women, and subject to very high levels of **informality**<sup>6</sup>.

1. ILO Towards the ILO centenary: realities, renewal and tripartite commitment (2013); <http://www.ilo.org/global/topics/dw4sd/theme-by-policy-outcomes/>.
2. <http://www.un.org/sustainabledevelopment/sustainable-development-goals/>
3. See further Judy Fudge and Deirdre McCann Unacceptable forms of work: a global and comparative study (ILO 2015); Deirdre McCann and Judy Fudge 'Unacceptable forms of work: a multidimensional model' (2017) 156(2) *International Labour Review* 147-184.
4. Council of Europe Gender matters - Manual on gender-based violence affecting young people (2007).
5. Sara Charlesworth 'Decent working conditions for care workers? the intersections of employment regulation, the funding market and gender norms' (2012) 25(1) *Australian Journal of Labour Law* 108; Lydia JB Hayes Stories of care: a labour of law, gender and class at work (2017).
6. ILO Domestic workers across the world: global and regional statistics and the extent of legal protection (2013).

## The need for legal frameworks

States have obligations in international law to ensure that **laws protect workers from gendered oppression and violence**. International standards include the ILO Domestic Workers Convention, 2011 (No. 189), and the ILO is currently debating international standards on ***Violence against Women and Men in the World of Work***.<sup>7</sup>

In most countries, however, there is a lack of **effective regulatory frameworks**, and inadequate attention to **compliance and enforcement**. Where formal labour standards and enforcement exist, further, there is strong evidence of de facto **gender-bias or gender-normativity** in regulatory frameworks.

The ineffective regulation of violence and harassment in the care economy is therefore a **Global Regulatory Challenge** that undermines the goal of equality between women and men.

## Preventing violence and harassment in care work: a research agenda

During 2017, the Strategic Network on Legal Regulation of Unacceptable Forms of Work was funded by the UK Economic and Social Research Council through the Global Challenges Research Fund to design **Research Agendas** on combating unacceptable work. The purpose of the Research Agendas is to identify the **most effective research strategies** that can (1) illuminate the Global Regulatory Challenges and (2) identify the most effective legal and policy responses.

This **Research Agenda on Violence and Harassment in the Care Economy** proposes a strategy for legal reform that can ensure decent working conditions and care standards.

7. ILO Ending violence and harassment in the world of work (2018).

### The Strategic Network Team

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## The Strategic Network Team

The Research Agenda has been designed by a **Strategic Network Team** that includes researchers and policy actors from across the world.

To ensure the **interdisciplinary** mix of skills needed to address the complexity of UFW, the researchers were drawn from different academic disciplines.

Local **policy actors** were a core part of the Team, providing advice and guidance on how to achieve innovative regulatory interventions that can offer lessons to the global debates.

## RESEARCH OBJECTIVES

The overarching objective of this research agenda is to achieve **progressive change** in the regulation of the care economy that will ensure **better care and decent working conditions**.

Key questions include:

- How does the regulation of employment treat **workplaces that are also private homes**?
- How do employment laws continue to privilege notions of a **standard (and masculinised) employment relationship** to the detriment of care workers and care recipients?
- Can a focus on GBV promote a **broader understanding of the potential of regulatory tools** (including occupational health and safety measures, workplace equality laws, and the regulation of care quality)?
- To what extent can policies on **casualisation, low pay and insecurity at work** eliminate the threat or fear of GBV?

The aim should be to build **collaborative capacity** between academics, NGOs, representatives of homecare workers and recipients, and policy-makers/legislators. The outcome of this collaboration would be to identify and promote **innovative regulation and monitoring strategies** that can effectively ameliorate UFW.

## METHODOLOGY

To achieve these objectives, the research methodology must involve a **socio-legal analysis of regulatory frameworks**. The analysis would encompass the legal entitlements of care workers, as well as problems of non-enforcement and ‘gaps’ in provisions that disadvantage homecare workers and contribute to UFW by facilitating casualisation and GBV. The **normative effect of legislation and questions of gender equality** must also be included in the analysis.

A particular focus is how **labour standards complaints** may be legally understood as **equality complaints**, how **employment rights issues** can be addressed through **occupational health & safety laws**, and whether initiatives to combat violence and harassment can be integrated into **formalisation policies**.

Collaborative action among researchers, stakeholders and policy makers should identify **innovative regulatory strategies**. The objective is to support the **trailing and evaluation** of practical strategic interventions.

## An illustration: Australia, UK, Argentina, Mexico

**Comparative research** on the operation of regulatory frameworks is crucial to combat UFW and to derive global lessons from innovations at the country level. For this reason, the Strategic Network has concluded that future research should involve **comparisons** of countries at a range of income levels and in different regions.

A comparison on ***Violence and Harassment in the Care Economy*** concluded that future research should focus on (1) **care work in advanced industrialised economies**, in which legal

interventions on GBV are more developed and (2) domestic work in the global South.

As an illustration, a comparison of home care regulation in the **UK and Australia**, would capture **similar challenges**. Both countries have responded to the growth in the elderly population by developing **economic markets in long term care**. In consequence, **GBV in care-settings** has emerged as a significant cause of concern. **Complimentary initiatives** are also being developed. In **Australia**, for example, the Victorian government has de-

veloped a *Gender Equality Strategy* that has a focus on workplace violence and the Australian government is developing a national aged care workforce strategy<sup>8</sup>. In the **UK**, the Welsh government has consulted on proposals to support working practices and care quality and recently passed the Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015.

In the global South, legal reforms in recent decades in **Latin America** have responded to aspects of the poor quality of domestic work. GBV has been frequently neglected. Yet countries in the region are increasingly ratifying the Domestic Workers Convention, 2011 (No. 189), which requires a regulatory response to GBV.

The experience of **Argentina** and **Mexico**, offers a useful comparison. Argentina was the first ILO member State to ratify Convention No. 189 (March 2014). An extensive labour law for domestic workers was adopted in 2013 (Law No. 26844) and a National Commission of Private Home Employment was established in 2015. In **Mexico**, the regulatory framework on domestic work is less developed, although the National Union of Domestic Workers (SINACTTRAHO) was established in 2016. The objective of this comparison would be to **derive lessons** from the Latin American experience that would enrich the debates global debates. A particular focus would be **strategies to reduce informality**, including through the involvement of unions and domestic workers' representative bodies.

Illustration: Australia, UK, Argentina, Mexico



8. Commonwealth of Australia The future of the Australian aged care workforce (2017).