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OECD Guidelines for
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SPECIFIC INSTANCE:

**GENDER-BASED VIOLENCE AND HARASSMENT IN GLOBAL OPERATIONS OF
MCDONALD'S CORP. AND RELATED DUE DILIGENCE BY INVESTORS APG
ASSET MANAGEMENT AND NORGES BANK**

To the National Contact Point:

The above-named organizations seek the assistance of the Netherlands NCP in a Specific Instance under the OECD Guidelines for Multinational Enterprises involving gender-based violence and harassment (GBVH) by McDonald's, a multinational enterprise with extensive and substantial presence in the Netherlands directing overall European operations. Petitioners also include in this Specific Instance two major institutional investors in McDonald's, APG Asset Management and Norges Bank.

Petitioners seek assistance from the Netherlands NCP in offering a mediation process that will engage responsible McDonald's officials and concerned institutional investors in Europe. The goal is to jointly create a plan and program to address GBVH in McDonald's stores – a European plan and program that McDonald's headquarters can adopt and extend to the company's worldwide operations. To Petitioners' knowledge, this is the first-ever Specific Instance taking aim at systematic sexual harassment at a multinational enterprise. The Netherlands NCP has an opportunity here to break new ground in the responsible business conduct landscape.

We recognize that the Implementation Procedures of the OECD Guidelines say (at paragraph 23), "*Generally, issues will be dealt with by the NCP of the country in which*

the issues have arisen.” However, the issues raised in this Specific Instance involve conduct at McDonald’s operations in many OECD member states and key partner states including, but not limited to:

Australia
Brazil
Chile
Colombia
France
United Kingdom
United States

Moreover, the institutional investors cited in this Specific Instance are based in the Netherlands and in Norway. The broad dispersal of countries in which GBVH occurs in McDonald’s stores, and the location of the two major investors, make it necessary for one NCP to take a lead role in this Specific Instance, working in conjunction with NCPs in other countries where GBVH issues have arisen and, with respect to Norges Bank, with the Norwegian NCP. For reasons set out in Section III below, Petitioners turn to the Netherlands NCP as the best forum for considering this case.

I. Petitioners, the Enterprise, and the Investors

The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF) is a global union federation composed of 423 affiliated unions representing more than 10 million workers in 127 countries in multiple food-related sectors, including fast-food restaurants.

The European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT-IUF) is the European regional organization of the IUF that brings together 120 national trade unions in those sectors throughout Europe, including the fast-food industry.

The Service Employees International Union (SEIU) is a U.S. and Canadian trade union organizing and representing workers in multiple service sectors of the economy.

The União Geral dos Trabalhadores (UGT) is a Brazilian trade union center with affiliated unions representing thousands of workers in the fast-food sector, including McDonald’s workers.

McDonald’s is a global fast-food company with nearly 40,000 stores in 120 countries employing nearly 2 million workers, with annual revenues surpassing \$20 billion.

APG Asset Management is the Netherlands’ largest pension capital investor and one of the largest pension fiduciary asset managers worldwide. APG has more than \$400 million invested in McDonald’s.

Norges Bank is Norway’s central bank and the single largest owner in the world’s stock markets through its Government Pension Fund Global. Norges Bank has \$1.3 billion invested in McDonald’s.

II. OECD Guidelines and Due Diligence Guidance provisions cited in this Specific Instance

The OECD Guidelines incorporate major international human rights instruments including the UN covenants on civil and political rights and on economic, social and

cultural rights, which contain guarantees of non-discrimination and health and safety in employment. Sexual harassment is a widespread and severe violation of these protections.

This Specific Instance addresses violations of the following provisions of the OECD Guidelines and of the OECD Due Diligence Guidance for Responsible Business Conduct:

A. Guidelines Chapter IV on Human Rights:

2. *Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.*
4. a. *Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country*
3. *Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.*
6. *Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.*

As noted in the Guidelines' Commentary on Human Rights, they also incorporate major international human rights instruments: the International Bill of Human Rights, consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These contain guarantees of non-discrimination and health and safety in employment. Sexual harassment is a widespread and severe violation of these protections.

B. Guidelines Chapter V on Employment and Industrial Relations:

1. *e) Non-discrimination.*
3. *Consultation and cooperation between employers and workers.*
4. *c) Adequate steps to ensure occupational health and safety.*
8. *Consultation between workers' representatives and management on labor-management relations and matters of mutual concern.*

C. Due Diligence Guidance for Responsible Business Conduct:

Sections 1.1-1.3: Embed responsible business conduct into policies and management systems in the enterprise's own operations, its supply chain and other business relationships.

Sections 2.1-2.4: Identify and assess actual and potential adverse impacts associated with the enterprise's operations, products or services.

Sections 3.1-3.2: Cease, prevent and mitigate adverse impacts.

D. ILO Conventions 111 and 190

The OECD Guidelines and Guidance also incorporate ILO Convention No. 111 on discrimination in employment. As the official commentary on the employment and industrial relations chapter says:

Paragraph 1 of this chapter is designed to echo the ILO's 1998 Declaration, namely non-discrimination in employment and occupation in the form of specific rights and obligations in ILO Conventions recognized as fundamental. Convention 111 on discrimination, including sex-based discrimination.¹

In June 2019 the ILO adopted a landmark new convention on gender-based violence and harassment, Convention No. 190.² Convention 190 should be read in conjunction with the core Convention No. 111, as the ILO Recommendation accompanying the new convention says: "Members should ensure that provisions on violence and harassment in national laws, regulations and policies take into account the equality and non-discrimination instruments of the International Labour Organization, including the Discrimination (Employment and Occupation) Convention (No. 111)."³

ILO Convention 190 calls on governments to require employers to:

- (a) adopt and implement, in consultation with workers and their representatives, a workplace policy on violence and harassment;
- (c) identify hazards and assess the risks of violence and harassment, with the participation of workers and their representatives, and take measures to prevent and control them.⁴

ILO Conventions 111 and 190 together are integral to the OECD Guidelines and Due Diligence Guidance. The Netherlands NCP can set an important example and inspiration for all other NCPs by applying them in this Specific Instance. In particular, the reference to "consultation with workers and their representatives" and "the participation of workers and their representatives" are especially relevant, since such consultation and participation are exactly what is needed in a mediation process overseen by the Netherlands NCP.

III. Why the Netherlands NCP should take the lead in this Specific Instance

This Specific Instance calls for treatment by the Netherlands NCP because of McDonald's deep corporate presence and extensive connection to the Netherlands. The Netherlands is the center of McDonald's European operations, and is the home of one of the two institutional investors joined to this Specific Instance.

Although McDonald's is headquartered in the United States, the U.S. NCP is not in a position to adequately handle this case, for reasons set forth below. The Netherlands NCP is best positioned to assist Petitioners and the company, together with major institutional investors, in a mediation process to address the GBVH crisis in McDonald's in Europe and worldwide.

A. McDonald's in the Netherlands and in Europe

¹ See OECD, "Commentary on Employment and Industrial Relations," *OECD Guidelines for Multinational Enterprises* (2011).

² See ILO, Violence and Harassment Convention, 2019 (No. 190), at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C190.

³ ILO Violence and Harassment Recommendation, 2019 (No. 206), at https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R206.

⁴ ILO Convention 190, Article 9 (emphasis added).

McDonald's has an enormous presence in Europe, and the nerve center of the company's business, both in Europe and for key worldwide operations, is the Netherlands. Netherlands-based entities control financing, franchisee relations, real estate, commercial services, logistics and other functions integral to McDonald's operations on the continent.

McDonald's is the biggest fast-food chain in Europe, with more than 8,500 stores employing nearly half-a-million workers in 39 European countries.⁵ European operations produce more of McDonald's annual \$20 billion revenue than its U.S. operations.⁶ McDonald's has significant corporate roots in the Netherlands, where key directors also have responsibility for European operations:

McDonald's European Finance Company BV

Parent: MCD Europe Limited. (100% shareholder)

Year of Incorporation: 1990

Directors: Manuel Steijaert, Malcolm Hicks

Authorized representative: Marc Anthony de Kemp

McDonald's European Finance Company BV is the direct parent entity of McDonald's Nederland BV, the local franchise issuer for the Netherlands. But reflecting its reach beyond the Netherlands, McDonald's European Finance Company BV provides financial services to McDonald's subsidiaries across the European Union. Director Manuel Steijaert is based in the Netherlands, where he is Vice President, International Operated Markets at McDonald's and oversees McDonald's operations in Russia, Italy, Spain, Poland, Netherlands, Austria, Switzerland, Portugal, the Czech Republic, Ukraine, Belgium and Slovakia. He has his offices in Amsterdam.⁷

Malcolm Hicks is based in London and has been Vice President at McDonald's Corporation headquarters in the United States since 2013, and Senior Director-European Legal at McDonald's Europe since 2004.⁸ In addition to his role in McDonald's European Finance Company BV, Hicks is a director of McDonald's International Property Company, Ltd., McDonald's Global Markets LLC, McDonald's Global Restaurant Services, Inc., McD Global Franchising. Ltd., McD Europe Franchising LLC, and MCD Europe Limited and other McDonald's entities with European and global magnitude. Hicks is also a director of McDonald's separately-chartered holding companies in Austria, Belgium, Bulgaria, Czech Republic, France, Germany, Italy, Ireland, Russia, and the UK.

Amsterdam-based Marc Anthony de Kemp is an authorized representative for McDonald's European Finance Company BV, and is thus linked to all the company's European operations. He is also authorized representative for McDonald's Nederland BV, and a director of Eastern Europe McD Holding BV.

McDonald's Nederland BV

Parent: McDonald's Nederland BV (100% shareholder)

⁵ See McDonald's, "Around the Globe," at <https://corporate.mcdonalds.com/corpmcd/about-us/around-the-world.html>.

⁶ See "Revenue of McDonald's Corporation worldwide in 2019, by region," *Statista Business Data*, at <https://www.statista.com/statistics/219453/revenue-of-the-mcdonalds-corporation-by-geographic-region/>.

⁷ See Manuel Steijaert LinkedIn profile at See <https://www.linkedin.com/in/manu-steijaert-7643406/?originalSubdomain=nl>.

⁸ See Malcolm Hicks LinkedIn profile at <https://www.linkedin.com/in/malcolm-hicks-2303695/>.

Year of Incorporation: 1971

Director: Erwin Rick Dito

Authorized representative: Marc Anthony de Kemp

McDonald's Netherland BV is the franchisor of McDonald's restaurants in the Netherlands. The company's sole director is Netherlands-based Erwin Dito, who is publically listed as 'Managing Director' of McDonald's in the Netherlands.⁹ Mr. Dito replaced Manuel Steijaert as head of McDonald's Nederland BV in 2019.¹⁰ But as shown below, Mr. Dito also has responsibilities for McDonald's business in Eastern Europe.

Marc Anthony de Kemp is registered as authorized representative of McDonald's Nederland BV and of McDonald's European Finance Company BV. He has worked as Manager Franchise & Legal at McDonald's Nederland B.V. since 2014.¹¹

Eastern Europe McD Holdings BV

Parent: MCD Europe Limited (100% shareholder)

Year of Incorporation: 2015

Directors: Erwin Rick Dito; Karen Ann Matusinec; Marc Anthony de Kemp

Eastern Europe McD Holding BV is a holding company for entities that are providing commercial and/or financial services to franchisees in Eastern Europe, including Russia. Netherlands-based Erwin Dito and Marc Anthony de Kemp are directors, along with Karen Matusinec, who is Senior Vice President and Treasurer of McDonald's at corporate headquarters in the United States. She is responsible for global business services and global financial matters.¹²

In sum, Wayne Hicks, Erwin Dito, Karen Matusinec and Marc de Kemp all have extensive ties both to Netherlands-based McDonald's entities and to corporate headquarters and global operations. Two of them are based in the Netherlands. They all would be key interlocutors in a mediation process sponsored by the Netherlands NCP under the OECD Guidelines pursuant to this Specific Instance.

B. McDonald's in the United States

Petitioners recognize that McDonald's is a U.S. multinational corporation with headquarters in Chicago, Illinois, USA, and that normally the United States NCP would receive the Specific Instance. However, there are paramount reasons why the U.S. NCP is not in a position to receive this Specific Instance, and the Netherlands NCP should take the lead in the matter.

McDonald's top management in the United States has been contaminated by sexual harassment abuses in their own ranks. They would come to a U.S. NCP-sponsored mediation with unclean hands, making it impossible to achieve a result that addresses

⁹ See McDonald's Netherlands website at <https://www.mcdonalds.com/nl/nl-nl/over-ons/management.html>; see also Jasper Mulder, "McDonald's Nederland benoemt marketing- en communicatiebaas Erwin Dito tot nieuwe topman," *Adformatie*, September 24, 2018, <https://www.adformatie.nl/carriere/erwin-dito-wordt-nieuwe-topman-mcdonalds-nl>.

¹⁰ See Joost van Velzen, interview with Erwin Dito, "De Macs zitten vol, maar directeur Erwin Dito wil meer: 'Het is niet langer een guilty pleasure'," *Trouw*, March 2, 2019, at <https://www.trouw.nl/nieuws/de-macs-zitten-vol-maar-directeur-erwin-dito-wil-meer-het-is-niet-langer-een-guilty-pleasure~bc4627ca/?referer=https%3A%2F%2Fwww.google.com%2F>

¹¹ See Marc Anthony de Kemp LinkedIn profile at <https://www.linkedin.com/in/marc-de-kemp-0313592/>.

¹² See Karen Matusinac LinkedIn profile at <https://www.linkedin.com/in/karen-matusinec-b6449798/>.

and remedies the problem and prevents GBVH abuses in the future. In contrast, McDonald's Netherlands and European management, already engaged in various forms of social dialogue with workers and trade unions and untainted by the kind of scandals that emerged in the United States, would bring constructive approaches and ideas to a mediation process.

McDonald's U.S. management for decades has been open about the company's hostility to trade unions. In the 1970s John Cooke, the company's then-head of U.S. labor relations, declared: "Unions are inimical to what we stand for and how we operate."¹³ Michael Quinlan, who was McDonald's CEO for ten years in the 1980s and 90s, said, "McDonald's is basically a non-union company and intends to stay that way."¹⁴

McDonald's view on unions contravenes the long-standing position of the OECD reflected in the Committee on Investments that "the thrust of the Guidelines in this area is towards management adopting a positive approach towards the activities of trade unions and an open attitude towards organisational activities of workers in the framework of national rules and practices."¹⁵ It runs counter to requirements under the Guidelines, the Guidance, and relevant ILO conventions for consultation with and participation of worker representatives in crafting policies and practices to halt GBVH abuses.

Turning to the U.S. NCP and hoping that McDonald's U.S. management would be open to an offer of mediation would be an exercise in futility. McDonald's headquarters in the United States insists that it has no responsibility for employment conditions, employment relations, or workplace abuses in franchisee-operated stores. More than 90 percent of McDonald's stores are operated by franchisees.¹⁶ In contrast, while the company applies its franchise system in Europe as well, McDonald's in the Netherlands and in Europe recognize and negotiate with trade unions, both for corporate-owned stores and on behalf of franchisee-owned stores.

1. McDonald's unclean hands on GBVH issues

GBVH corruption starts at the pinnacle of McDonald's corporate structure. In 2019 the CEO was removed because of a sexual relationship with a subordinate employee.¹⁷ Reflecting the lack of seriousness with which McDonald's board of directors and officers treat sexual harassment, they decided that the CEO violated company policy, but his

¹³ See Konrad Yakabuski, "Arch Enemy," Report on Business magazine, *Toronto Globe & Mail*, , August 31, 2001, at <https://www.theglobeandmail.com/report-on-business/rob-magazine/arch-enemy/article18417788/>.

¹⁴ See Tony Royle, Brian Towers, eds., *Labour Relations in the Global Fast-Food Industry* (Routledge Press 2002), p. 60; see also Tony Royle "'Low-road Americanization' and the global 'McJob': a longitudinal analysis of work, pay and unionization in the international fast-food industry," *Labor History*, Vol. 51, Issue 2 (2010), at <https://www.tandfonline.com/doi/abs/10.1080/00236561003729693>.

¹⁵ See Directorate for Financial, Fiscal and Enterprise Affairs, Committee on International Investment and Multinational Enterprise, *The OECD declaration and decisions on international investment and multinational enterprises: 1991 review*, at <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAFFE/IME/RD%2822000%293&docLanguage=En>.

¹⁶ See McDonald's, "Franchising Overview," at <https://corporate.mcdonalds.com/corpmcd/franchising/overview.html>.

¹⁷ See David Yaffe-Bellany, "McDonald's Fires CEO After Relationship With Employee," *The New York Times*, November 3, 2019, at <https://www.nytimes.com/2019/11/03/business/mcdonalds-ceo-fired-steve-easterbrook.html>.

dismissal was not “for cause.” The CEO walked away from McDonald’s with a severance package of \$42 million.¹⁸ His dismissal led to investigative reporting that found a culture of drinking, partying, and sexual dalliance between top executive and subordinates in which women employees in subordinate positions were expected to play along.¹⁹

Gender-based violence and harassment is part of McDonald’s culture. And “violence” is the correct word: groping, touching, forced kissing and other forms of unwanted bodily contact are a form of sexual assault violating the physical integrity of the victim. As one McDonald’s worker put it:

*The company has refused to listen to us. With the firing of Steve Easterbrook, we now know why. It’s clear McDonald’s culture is rotten from top to bottom. McDonald’s needs to sit down with worker-survivors and put them at the center of any solution.*²⁰

The 2019 sexual harassment episode involving McDonald’s CEO was simply the highest-profile in a longstanding pattern of behavior deeply-rooted in the company’s culture. Employees have been lodging GBVH complaints against McDonald’s managers for decades. But cases accelerated in recent years as the company failed to implement policies preventing such abuse.

In 2008, McDonald’s management in Colorado and New Mexico paid \$505,000 in damages to a group of young women workers, most aged 15-17, who complained of management biting their breasts, grabbing their buttocks, making numerous sexual comments, and making offers of favors in exchange for sex. Management settled the case without admitting any wrongdoing.²¹

In 2011, McDonald’s management in Wisconsin paid a \$1 million settlement to workers (again, many ages 15-17) who complained of failure to halt incidents of sexual comments about their bodies, propositions to engage in sex, unwanted kissing, and groping their private areas of the body without consent. Instead of halting these abuses, management fired some of the young women who complained of such treatment. Again, the settlement contained no acknowledgment of corporate misconduct.²²

Since 2016, workers have filed dozens of complaints against McDonald’s in state and federal courts and administrative agencies. In May 2019, 25 women in 20 cities filed sexual harassment complaints against McDonald’s Equal Employment Opportunity Commission, the U.S. federal agency that investigates workplace discrimination claims. They include cases in which workers as young as 16 accused supervisors of serious

¹⁸ See Alina Selyuch, “McDonald’s Fired CEO Is Getting Millions, Putting Spotlight On Pay Gap,” National Public Radio, November 5, 2019, at <https://www.npr.org/2019/11/05/776305627/mcdonalds-fired-ceo-is-getting-millions-putting-spotlight-on-pay-gap>.

¹⁹ See Heather Haddon and Suzanne Vranica, “McDonald’s Looks Beyond Party Culture,” *The Wall Street Journal*, January 5, 2020, at <https://www.wsj.com/articles/mcdonalds-looks-beyond-party-culture-11578243600>.

²⁰ See Alexia Fernández Campbell, “The firing of McDonald’s CEO won’t solve the chain’s sexual harassment problem: It’s an empty gesture,” *Vox*, November 4, 2019, at <https://www.vox.com/identities/2019/11/4/20947689/mcdonalds-ceo-steve-easterbrook-fired>.

²¹ See EEOC, “McDonald’s Franchise to Pay \$505,000 for Sexual Harassment of Young Women, Including Teens,” Press Release, April 7, 2008, at <https://www1.eeoc.gov/eeoc/newsroom/release/4-7-08.cfm?renderforprint=1>.

²² See EEOC, “Owner of 25 McDonald’s Restaurants to Pay \$1 Million in EEOC Sexual Harassment Suit,” Press Release, July 18, 2012, at <https://www.eeoc.gov/eeoc/newsroom/release/7-18-12a.cfm>.

misconduct, including attempted rape, indecent exposure, groping, and sexual offers. The women said they were ignored, mocked, or punished when they reported it. Some had their hours cut back and others were fired.²³

In one case in early 2019, a 16-year old harassed by her manager complained using the company's internal procedures. Both she and her mother, who also worked at McDonald's, suffered demotions and loss of pay and eventual job loss.²⁴ Recent complaints filed in November 2019 include accounts of McDonald's store managers in Michigan subjecting workers to groping and physical assaults, sexually charged verbal taunts, insults and derisive comments, with no action taken by McDonald's upper management.²⁵

In the latest complaint against McDonald's in April 2020, workers said they face "a systemic sexual harassment problem" in Florida stores. The two named plaintiffs filed their action as a class-action lawsuit seeking \$500 million in damages in federal court in Illinois, the state where McDonald's is headquartered. They said they were repeatedly subjected to sexual harassment and physical assaults at a company-owned McDonald's in Sanford, Florida, and that McDonald's is not training store managers or adequately punishing serial harassers.²⁶

Sexual harassment at McDonald's is part of an overall crisis in the fast-food industry generally. According to a national survey in the United States by a respected polling group, forty percent of women in the fast-food industry report facing sexual harassment on the job – a rate substantially higher than in workplaces overall.

The survey found that 42 percent of women in fast-food who experience sexual harassment feel forced to accept it because they can't afford to lose their job. More than one in five (21 percent) women who face sexual harassment report that, after raising the issue, their employer took some negative action, including by cutting their hours, changing them to a less desirable schedule, giving them additional duties and being denied a raise.

The survey further described the effects of sexual harassment on women working in the industry. Forty-five percent of women in fast-food cite health problems resulting from harassment faced on the job, including stress, anxiety, depression, changes in sleep patterns and changes in appetite.²⁷

2. McDonald's hands washed – of any responsibility for GBVH abuses

²³ See Time's Up Legal Defense Fund, "New Sexual Harassment Charges Against McDonald's By Workers Across the Country," May 21, 2019, at <https://nwlc.org/press-releases/times-up-legal-defense-fund-housed-and-administered-by-the-national-womens-law-center-fund-supports-new-sexual-harassment-charges-against-mcdonald/>.

²⁴ See Melena Ryzik, "In a Test of Their Power, #MeToo's Legal Forces Take On McDonald's: In newly filed complaints, McDonald's employees described repeated sexual harassment and then punishment for speaking out," *The New York Times*, May 21, 2019, at <https://www.nytimes.com/2019/05/21/business/mcdonalds-female-employees-sexual-harassment.html?searchResultPosition=4>.

²⁵ See David Yaffe-Bellany, "McDonald's Lawsuit Targets 'Pervasive' Culture of Sexual Harassment: A former employee in Michigan sued just a week after the chain's C.E.O. was fired for a relationship with a subordinate," *The New York Times*, November 12, 2019, at <https://www.nytimes.com/2019/11/12/business/mcdonalds-harassment-lawsuit.html>.

²⁶ See Associated Press, "Workers Sue McDonald's Over Harassment at Florida Stores," *The New York Times*, April 13, 2020, at <https://www.nytimes.com/aponline/2020/04/13/business/ap-us-mcdonalds-harassment-suit.html>.

²⁷ See Hart Research Associates, "Two in Five Women in Fast Food Industry Face Sexual Harassment on the Job," October 15, 2016, at <https://hartresearch.com/fast-food-worker-harassment-survey-findings/>.

While they have unclean hands with respect to GBVH issues, McDonald's headquarters management washes its hands of any obligations to ensure compliance with labor and employment laws, including laws against sex discrimination, in its franchisee-operated stores.

Most McDonald's employees believe they are working for McDonald's, an iconic global brand company that will have adequate resources and programs to prevent and remedy instance of sexual harassment. They wear McDonald's uniforms, serve McDonald's products, and follow McDonald's policies. McDonald's supplies the IT software to franchisees for scheduling and payroll systems, and trains franchisee managers on employment relations practices. Nonetheless, McDonald's insists that it has no responsibility for franchisees' labor practices or liability for labor law violations.

McDonald's issues company-wide policies on sexual harassment that look good on paper, but takes no effective action to implement them in practice. When abuses occur and complaints are filed, McDonald's lets its franchise operators take the blame. McDonald's says it has no responsibility or liability for the harm caused by sexual harassment of McDonald's employees working in franchisee operations.

The OECD Due Diligence Guidance makes clear that business relationships covered by due diligence include "All types of business relationships of the enterprise – suppliers, franchisees, licensees, joint ventures, investors, clients, contractors, customers, consultants, financial, legal and other advisers, and any other non-State or State entities linked to its business operations, products or services."²⁸

The Guidance adds:

Due diligence can be adapted to deal with the limitations of working with business relationships. Enterprises may face practical and legal limitations to how they can influence or affect business relationships to cease, prevent or mitigate adverse impacts on RBC issues or remedy them. . . . Enterprises can seek to overcome these challenges to influence business relationships through franchise agreements. In cases where impacts are directly linked to an enterprise's operations, products or services, the enterprise should seek, to the extent possible, to use its leverage to effect change, individually or in collaboration with others.²⁹

After the wave of GBVH complaints in 2019, McDonald's announced that it would conduct sexual harassment training for managers and staff in all its stores. But fundamental problems pervade such training. First, it does not mandate training for the more than 90 percent of McDonald's operated by franchisees, because McDonald's does not want to concede that it has any role in halting GBVH abuses in franchise-run stores. Second, it is a top-down program that does not seek employees' involvement or input and rejects any role for employee representatives.³⁰

²⁸ See OECD, "Characteristics of Due Diligence – the Essentials," Due Diligence Guidance for Responsible Business Conduct" (2018), at <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf> (emphasis added).

²⁹ *Id.* (emphasis added).

³⁰ See Dee-Ann Durbin, "McDonald's offering harassment training to all US workers," *Associated Press*, August 28, 2019, at <https://apnews.com/f66f03cf38094e67a501ad4f8ca80919> (noting "McDonald's isn't requiring franchisees — who are independent owners — to provide the training").

McDonald's reaction to the wave of GBVH episodes in stores around the United States and its refusal to engage employees and their representatives on GBVH contradicts the OECD Guidance affirmation that:

Due diligence is informed by engagement with stakeholders:

Stakeholders are persons or groups who have interests that could be affected by an enterprise's activities. Examples of stakeholders include workers, workers' representatives, trade unions (including Global Unions), community members, civil society organisations, investors and professional industry and trade associations.

Stakeholder engagement is characterised by two-way communication. It involves the timely sharing of the relevant information needed for stakeholders to make informed decisions in a format that they can understand and access. To be meaningful, engagement involves the good faith of all parties. Meaningful engagement with relevant stakeholders is important throughout the due diligence process. In particular, when the enterprise may cause or contribute to, or has caused or contributed to an adverse impact, engagement with impacted or potentially impacted stakeholders and rightsholders will be important.

For example, depending on the nature of the adverse impact being addressed, this could include participating in and sharing results of on-site assessments, developing risk mitigation measures, ongoing monitoring and designing of grievance mechanisms.

Contrary to these obligations, McDonald's corporate management in the United States refuse to give employees or their representatives any meaningful engagement or any role in developing risk mitigation measures, and ongoing monitoring and designing of grievance mechanisms to address GBVH issues.

McDonald's has always paid lip service to the need to prevent sexual harassment, making anti-GBVH policy pronouncements, setting up "hot lines" for employees to telephone complaints, and hiring consulting groups to provide training for managers. But all the company's moves in the United States have a fundamental flaw: they have no role for workers themselves to help shape anti-GBVH programs, to bring their own experience and ideas to the table, or to choose representatives who can give voice to their concerns in dialogue with McDonald's management. This is in stark contrast to McDonald's labor relations practices in the Netherlands and in Europe, where the company recognizes and deals with trade unions in its normal course of business, both on its own behalf and on behalf of its franchisees. This kind of dialogue is the process the submitting labor organizations hope to achieve through a mediation with the help of the Netherlands NCP.

The existence of collective bargaining agreements in the Netherlands and elsewhere in Europe, at least at the national/sectoral level, to which the company adheres, means that company officials responsible for Netherlands and European operations are open to dialogue with union representatives and would in principle be open to engagement in a mediation sponsored by the Netherlands NCP. Such a process can lead to an agreement and a template for McDonald's operations around the world, which would be a signal achievement of the Netherlands NCP, helping to advance the application of the Guidelines and the goal of responsible business conduct.

3. Evading responsibility, with help from Trump

The difficulty in turning to the U.S. NCP in this matter is also magnified by developments giving virtual immunity to McDonald's headquarters management for violations of labor and employment law in McDonald's franchisee-managed stores in the United States. Before Donald Trump took office in January 2017, U.S. labor and employment law enforcement agencies were beginning to hold McDonald's accountable for compliance in the 90 percent of McDonald's operations that are managed by franchisees.³¹ But Trump-appointed majorities at these agencies reversed these moves and exempted McDonald's from any responsibility or liability for such violations under lobbying pressure from McDonald's and other franchisors.³²

a. National Labor Relations Board

The NLRB oversees union organizing and collective bargaining in the United States under the National Labor Relations Act. The NLRA protects "concerted activity" by workers in defense of their working conditions, and makes unlawful any retaliation for such action.

Several workers who participated in lawful protests in 2014 as part of the "Fight for \$15" movement were fired by McDonald's franchise operators, and filed complaints over their treatment. Based on evidence at trial, an NLRB judge found in July 2018 "copious evidence" that the McDonald's response to the protest was "formulated and implemented from its corporate headquarters."³³

In December 2019, a majority of the NLRB appointed by President Donald Trump overturned the judge's decision and relieved McDonald's of any liability in the case. The Trump majority ruled that McDonald's was not a joint employer sharing responsibility with franchisees for unfair labor practices under the NLRA.³⁴ It was a blatantly political decision based on pro-employer, anti-union, anti-worker bias in Trump administration policy.³⁵ In fact, the ruling has been challenged by worker advocates because the

³¹ See Noam Scheiber, "As His Term Wanes, Obama Champions Workers' Rights," *The New York Times*, August 31, 2015, at <https://www.nytimes.com/2015/09/01/business/economy/as-his-term-wanes-obama-restores-workers-rights.html>.

³² See Ed Teixeira, "How President Trump Gives The Franchise Industry Needed Relief," *Forbes Magazine*, September 17, 2018, at <https://www.forbes.com/sites/edteixeira/2018/09/17/how-president-trump-gives-the-franchise-industry-needed-relief/#2dac8b3c4a87>; Michael Hiltzik, "Trump's Labor Regulators Hand McDonald's a Big Win Over Its Workers," *Los Angeles Times*, December 18, 2019, at <https://www.latimes.com/business/story/2019-12-18/trump-mcdonalds-big-win>.

³³ See Noam Scheiber, "Judge Rejects Settlement Over McDonald's Labor Practices," *The New York Times*, July 17, 2018, at <https://www.nytimes.com/2018/07/17/business/economy/mcdonalds-franchise-nlr.html>.

³⁴ See NLRB, *McDonald's USA and Fast Food Workers Committee*, Cases 02-CA-093893 et al., 368 NLRB No. (December 12, 2019), at [apps.nlr.gov > link > document.aspx](https://apps.nlr.gov/link/document.aspx)

³⁵ See Lauren Etter, Josh Eidelson, Hassan Kanu, and Michael Smith, "McDonald's Has White House Allies in High-Stakes Labor Showdown," *Bloomberg News*, December 12, 2019, at <https://news.bloomberglaw.com/daily-labor-report/mcdonalds-has-white-house-allies-in-high-stakes-labor-showdown>; Emily Bazelon, "Why Are Workers Struggling? Because Labor Law Is Broken: There's little pressure for corporations to accede to labor's demands when Trump has hamstrung enforcement," *The New York Times Magazine*, February 19, 2020, at <https://www.nytimes.com/interactive/2020/02/19/magazine/labor-law-unions.html>.

Trump-appointed chair of the NLRB was for years a top partner in a law firm that represented McDonald's in labor-related cases.³⁶

b. Department of Labor Wage and Hour Division and EEOC

In 2015, the Obama administration's Department of Labor proposed a rule that would make franchisors like McDonald's a joint employer with franchisees for adherence to federal minimum wage and overtime pay laws.³⁷ When the Trump administration took power, it moved quickly to stop implementation of the proposed rule.³⁸ In January 2020, Trumps' labor department put the final nail in the coffin of joint employer responsibility by issuing a rule that granted McDonald's almost-complete impunity for wage and hour violations in franchisee-operated stores.³⁹

The administration is taking the same approach with the Equal Employment Opportunity Commission, the federal agency charged with enforcing anti-discrimination laws and regulations including sexual harassment. Since 2016, workers filed more than 60 complaints with EEOC offices around the United States. But the Trump-appointed 3-2 Republican majority now controlling the EEOC has failed to take action on the complaints, instead giving workers what is called a "right-to-sue" letter saying in effect, "go hire yourself a lawyer and go to court – we are not going to help you."⁴⁰

The Trump administration's refusal to hold McDonald's accountable for its conduct on freedom of association, wage and hour, and anti-discrimination standards brings into play the admonition in Paragraph 38 of the Guidelines commentary on the human rights chapter:

A State's failure either to enforce relevant domestic laws, or to implement international human rights obligations or the fact that it may act contrary to such laws or international obligations does not diminish the expectation that enterprises respect human rights. In countries where domestic laws and regulations conflict with internationally recognised human rights, enterprises should seek ways to honour them to the fullest extent which does not place them in violation of domestic law, consistent with paragraph 2 of the Chapter on Concepts and Principles.

³⁶ See Hassan Kanu, "McDonald's Labor Board Ruling Attacked on Ethics Grounds," Bloomberg News, January 7, 2020, at <https://news.bloomberglaw.com/daily-labor-report/mcdonalds-case-should-be-reopened-on-ethics-grounds-lawyers>.

³⁷ See Noam Scheiber, "As His Term Wanes, Obama Champions Workers' Rights," *The New York Times*, August 31, 2015, at <https://www.nytimes.com/2015/09/01/business/economy/as-his-term-wanes-obama-restores-workers-rights.html>.

³⁸ See Noam Scheiber, "U.S. Moves to Limit Wage Claims Against Chains Like McDonald's," *The New York Times*, April 1, 2019, at <https://www.nytimes.com/2019/04/01/business/economy/labor-department-joint-employer.html>.

³⁹ See Daniel Wiessner, "U.S. makes it harder to sue corporations over franchise wage law violations," *Reuters Business News*, January 13, 2020, at <https://www.reuters.com/article/us-usa-labor/u-s-makes-it-harder-to-sue-corporations-over-franchise-wage-law-violations-idUSKBN1ZC1LU>.

⁴⁰ See Josh, Eidelson, "U.S. Discrimination Watchdog Is Headed for Pro-Business Makeover," *Bloomberg News*, October 10, 2017, at <https://www.bloomberg.com/news/articles/2017-10-10/u-s-discrimination-watchdog-is-headed-for-pro-business-makeover>.

IV. Sexual Harassment Around the World

Gender-based violence and harassment plague McDonald's workers around the world, making it all the more important for the Netherlands NCP to take control of this Specific Instance. Under the auspices of the NCP, a mediation process involving McDonald's Netherlands and European management and workers' representatives can lead to a solution on the same global scale.

Here are examples from countries in different regions, in addition to the United States, that show the global reach of GBVH issues in McDonald's:

Australia

GBVH abuses are widespread in the Australian retail sector. A survey of workers represented by the Shop, Distributive and Allied Employees' Association (SDA) conducted by the Australian Human Rights Commission found multiple forms of sexual harassment:

- Suggestive comments or jokes that made people feel offended
- Intrusive questions
- Leering
- Unwelcome touching
- Inappropriate contact
- Being followed
- Repeated invitations for dates⁴¹

The purpose of the 2019 Member Survey was to investigate the prevalence, nature and reporting of sexual harassment of SDA members in their workplaces and in the community more broadly.

Brazil

In December 2019 Brazil's public prosecutor found "serious indications of practice of moral harassment, sexual harassment and discrimination" in 23 complaints by McDonald's workers around the country. (*fortes indícios da prática de assédio moral, assédio sexual e discriminação em diversas unidades*).

The prosecutor also noted "the lack of knowledge of workers of any program instituted by the Company for receiving complaints of abuse, moral harassment, sexual harassment and discrimination" (*Destaca-se, igualmente, o desconhecimento dos trabalhadores do programa instituído pela empresa para o recebimento de denúncias de abuso, assédio moral, assédio sexual e discriminação*). The prosecutor

⁴¹ See Australian Human Rights Commission, "Everyone's Business: Sexual harassment of SDA members (2019)," at <https://www.humanrights.gov.au/everyones-business-sexual-harassment-sda-members>; see also Alison Branley, "Nearly half of young retail workers report being sexually harassed, on average, seven times a year," *Australian Broadcasting Corp*, October 29, 2019, at <https://www.abc.net.au/news/2019-10-29/sda-survey-finds-workers-being-sexually-harassed-by-customers/11645556>.

recommended that the complaints proceed to the National Coordination Group on Equality, Discrimination and Harassment (COORIGAUDDADE).⁴²

The complaints included the following episodes of gender-based violence and harassment:⁴³

1. "Complainant was harassed by her supervisor and duty manager. Supervisor embraced the complainant, caressed her and 'stroked' her private parts. Duty manager followed the complainant to the bathroom, intimidating her with malicious invitations."
2. "Complainant was sexually harassed on several occasions by her supervisor, who would follow her around the store and often try to have some kind of physical contact with her, would refer to the complainant in a lascivious way, call her 'very beautiful,' saying she had a lovely body; that he liked young women; that he badly wanted to kiss her mouth; that the complainant was driving him crazy, among other things, thus creating extremely embarrassing and humiliating situations for the complainant, who, it is worth recalling, was a minor at the time."
3. "Complainant underwent sexual harassment as her manager would enter the changing room when the Complainant was getting changed, often catching her not wearing a shirt, only her brassiere, and would stay there, going as far as to state that the Complainant's breasts were 'perky.' Further, her supervisor, as well as entering the changing room when the Complainant was getting changed, seeing her with no top (wearing only her brassiere), on another occasion, caressed the Complainant's body, including her groin and thighs, and said that 'if she wanted a promotion she would have to give something in return,' thus making clear allusion to sexual favors."
4. "This was the worst of the embarrassments, by a manager, who harassed her on a daily basis; every time he walked by her he would try to undo her bra strap, and on some occasions even embraced the complainant, thus creating a hostile, humiliating and intimidating situation in the workplace."
5. "By means of an electronic photomontage, using the Complainant's face, the employee's image was associated with embarrassing and unreal situations of a sexual nature. The said photomontage began to circulate in electronic social media including among the Complainant's co-workers, thus making her the object of mockery and humiliation, leading to depression and extreme shame. It is urgent to stress that the circulation of this photomontage included a social medium in which the Complainant's *immediate superior, took part. He not only failed to forbid the practice, but reveled in it, equally directing his nefarious sarcasm against the employee.*

⁴² See Ministério Público de Trabalho, *Arcos Dourados Comércio De Alimentos Ltda.*, Pa-Promo nº 001039.2019.09.000/3, December 27, 2019. A copy of the prosecutor's ruling is appended to this Specific Instance, with an unofficial translation into English).

⁴³ See União Geral dos Trabalhadores – UGT (Brazilian trade union), Complaint to Ministério Público do Trabalho, May 2019.

Among many other participants that started making fun of the Complainant, there figured another manager, who, equally, did not forbid and also made humorous remarks about the situation in which the image of the employee's face was placed. And even having shown the photomontage to the general manager of the restaurant where she worked, the Complainant was not able to end the illicit practice of associating the image of her face with embarrassing situations before co-workers on social media.

The direct participation of the Complainant's hierarchical superior in the illicit practice of subsuming the image of the Complainant's face in embarrassing situations of a sexual connotation, going on to adopt jokes about and ridiculing of the employee, denotes the responsibility of the Defendant (McDonald's) itself in the practice of the illicit act, which caused her very severe moral harm.

France

Rue Réamur McDonald's

A McDonald's manager at the company's rue Réamur store in the deuxième arrondissement of Paris installed a cellphone camera in the women's changing room, and secretly filmed young women changing their clothes. In October 2019, a newly-hired young woman discovered the camera and reported the abuse to the police.⁴⁴

The store manager who perpetrated the abuse was detained by police and terminated from his position with the store. But what happened next was troubling. The victimized worker explained, "They proposed a financial settlement if would voluntarily leave the job, but I refused that, too. I wasn't going to quit my job when it was me who was offended." Then McDonald's terminated the young woman's employment, citing the fact that she was still in her probation period and could be terminated without cause.

The employee filed a new legal complaint that she was dismissed in retaliation for bringing the abuse to management's attention and exposing the transgression. "It's a hard lesson," she said. "They do anything with the money they have, with the lawyers they have, but it doesn't frighten me. I'll go to the authorities to challenge my dismissal." She was hoping that a resolution of her complaint would allow her to return to work.⁴⁵

In 2017, a French tribunal found a McDonald's manager liable for "sexual and moral harassment" against five women workers at the company's store in Mont-de-Marsan, west of Toulouse. The court found that the manager pinched the workers' buttocks and made "humiliating or degrading remarks, often with sexual connotation."⁴⁶

McDonald's defended the manager by arguing that only five out of forty workers complained, and that he was "just joking" and wanted to "relax the atmosphere." As for

⁴⁴ See Céline Carez, « Paris : le manager voyeur de McDonald's filmait les femmes dans les vestiaires, » *Le Parisien*, October 30, 2019, at

⁴⁵ See Sarah Ugolini, « La salariée dénonce son manager qui la filmait à son insu, McDonald's s'en sépare, » *Capital*, November 26, 2019, at <https://www.capital.fr/entreprises-marches/la-salariee-denonce-son-manager-qui-la-filmait-a-son-insu-mcdonalds-sen-separe-1356172>.

⁴⁶ See Yoan Boffo, « Mont-de-Marsan : le directeur d'un McDonald's condamné pour harcèlement, » *Sud Ouest*, May 17, 2017, at <https://www.sudouest.fr/2017/05/17/mont-de-marsan-le-directeur-d-un-mcdonald-s-condamne-pour-harcelement-3453959-3452.php>.

pinching buttocks, the defense was that they worked in close proximity: “when you work back-to-back, there can be some involuntary touching.” His lawyer blamed the complaint on an “organized gang” of workers “with personal ties of friendship.” The court fined the McDonald’s manager 1000 euros.⁴⁷

Paris region McDonald’s

In April 2020, workers at a McDonald’s in the Paris region told an interviewer from Paris-based *ReAct* (*Réseau pour l’Action Collective Transnationale* – Transnational Collective Action Network) of severe incidents of sexual harassment by a co-worker (referred to here as “Mr. X”) and of McDonald’s failure to take preventive and remedial action despite being made aware of the problems. These workers’ statements dramatically demonstrate the need for an agreement that can be achieved pursuant to this Specific Instance so that they and McDonald’s workers worldwide will not have to endure what these workers faced.

The interviewer carefully wrote an account of the workers’ testimonies, including direct quotes from their statements.⁴⁸ The workers wish to remain anonymous to protect themselves against possible reprisals by McDonald’s management, and are identified here as employees A, B, C, and D. Their statements contain coarse, vulgar, gross and graphic language stemming from the statements and actions of the harasser. Petitioners are removing such language from the text of this Specific Instance.

Statement of employee A on events that occurred in late 2019:

The bully’s behavior included psychological and sexual harassment, homophobic remarks, threats, as well as verbal and physical violence. “My aim is to make the girls at McDonald’s cry,” he declared on several occasions.

One victim confided in the (female) manager, talking of her unease and the inappropriate behavior of her co-worker. The manager was indifferent. She took the incidents lightly, as though made in jest. She protected everyone belonging to her clique, minimized the facts and concealed the information from headquarters to prevent the harasser from getting fired.

The bully, unpunished for his behavior, feeling untouchable as there had been no reaction either from his bosses or management, was able to take advantage of the trivialization of his acts to continue his attacks. His behavior became increasingly regular and violent.

With the next two victims he would say things with sexual overtones and his attitude was quite tactile (gross remarks omitted). Despite all these cases and reports to management, no action was taken against him. He was “untouchable” and simply enjoyed a privileged position due to the manager’s leniency. Marginalized, the victims received no support from their bosses.

The solitude and isolation they were faced with left them with feelings of anxiety and pain. These victims had to seek medical and psychiatric help and, hoping for help, spoke of their distress to the occupational health physician and to the work inspection services, which intervened to put an end to this traumatic work place situation.

⁴⁷ *Id.*

⁴⁸ Translation into English by professional translator in Paris.

My aim, through this testimony, is to denounce the excessive favoritism shown at my work place, the lack of consideration for the health and security of its employees, and to raise awareness amongst people, whether they be victims or not, as such cases are very widespread and it could happen to anyone.

The reason an investigation is being carried out is because of my heavy insistence to management, which saw me cry on several occasions. Management stated that I had spoken out too late. However, there were other victims before me who expressed their distress. So management had several opportunities and ample time to intervene. This whole story took place over a year and a half. Given their “intervention,” which changed nothing in the harasser’s behavior and only took place when I finally exploded, I have my doubts about what kind of “intervention” they would have taken if I had spoken out earlier.

Statement of employee B on events between August 2018 and December 2019:

I am employed at a restaurant in the Ile de France (Paris region). I have a permanent half-time contract. I’ve worked there for ten years. I have been subjected to psychological and sexual harassment.

Mr. X has been one of the employees at the restaurant for four years. At first I got along rather well with him because we both played the same sport. After a while, between August 2018 and December 2018, we even began teasing each other, nicely at first, but X seems not to know how to stop when he should and he began being a bit too physical with me: he would pinch me in the waist, put his hand on my shoulder or hold my wrist when he wanted to ask me something related to work.

It kept building up. . . And despite the fact that I would ask him to stop because he was suffocating me, that I had had enough of him and that he was not letting me concentrate on my work, he would continue to stick to me. . . He would stalk me, be on the lookout for me. And if I made the mistake of answering him he would double down. He continued harassing me: “B, shall we eat together?” “B, you’re not feeling well, do you want a hug?”

In February 2019 I found out that X had been suspended at the beginning of the year because he tried to hit Ms. N. He was suspended for only three days because the manager minimized what happened and said that she did not wish to contact headquarters for a lay-off. In fact, X had told Ms. N. (gross remark omitted) and Ms. N. had replied (gross remark omitted). The manager simply drafted a report concerning verbal abuse quoting precisely only Ms. N but not Mr. X.

He started laying into me again, verbally, around April 2019, bad-mouthing me once again. During this whole period I tried to ignore him but I began feeling nervous. . . I felt bad mentally. I couldn’t understand why I was crying. I was exhausted. I felt like my head was going to explode. My doctor had given me several sick leave permits saying that that boy was “a danger for me.” As a matter of fact, Mr. X is proud to say that he makes all the girls at McDonald’s cry. Actually he does not behave this way with all the girls, but he is pretty much protected by the manager.

Seeing that nothing was happening, that there was no change and no support from my bosses, I filled out a first report on 9 November 2019 and a second one on 15 December 2019. I lodged a complaint on 3 January 2020 against Mr. X. An internal

inquiry is currently taking place at McDonald's. . .

Mr. X has the support of several employees, and even of some influential people at the restaurant. That's why I already know that some people will try to discredit my action.

Statement of employee C on events that took place between July 2018 and January 2019:

I worked at the McDonald's (in the Paris region) between July 2018 and January 2019. I had a problem with Mr. X who began poking fun at me because I'm short - I measure 1 meter 50. He would make fun of me regarding my sexuality because I like girls.

It was real psychological harassment. I cried and suffered for several months. I would pretend that I did not hear his remarks and that I couldn't care less but deep down it hurt me.

He had a small gang that included other co-workers. They would say untrue things about me, like for example that I would look at this girl in the restaurant and in the locker room.

X would team up with me at work and treated me like a dog and always wanted me to do his work. . . One day, it was too just much and I couldn't take it anymore. I cried while on duty and the days afterwards. X would say to his group of friends "Boohoo, guess who I'm imitating." Because of this, I asked my manager to take me off evening work. And I asked if I could work separate from where X was working.

He often made homophobic remarks, saying that (gross homophobic remark omitted) or calling me "the dwarf." As soon as I would speak to a girl or would get along well with her he would tell her that I was going to pounce on her. I told the manager but she protects him and will never do anything against him. When I told her all of this she replied that it was "squabbling " and that it was just in fun.

Statement of employee D on events that occurred in 2019:

I am a witness to demeaning, aggressive and threatening remarks made by Mr. X to several of his co-workers such as Ms. C. These took place on several occasions and during different periods.

Around April 2019, X made disparaging remarks concerning Ms. C's work, such as "other than doing inventory she is useless." His remarks became increasingly nasty and personal around September. I quote: "the other crazy one," "she's useless," and "if I want to I can make her cry."

Such remarks were already spoken by X regarding other colleagues such as Y., G. and also to me: "Whatever girl at McDonald's I want to make cry, I will make them cry," or "all those I wanted to make cry, I've made them cry," these remarks were made many times.

And regarding Ms. C., remarks criticizing and mocking her physical appearance (because she is short) and her sexual orientation were made several times. . . Although this was reported to management, nothing was done. Ms G. also asked to have her hours changed in order to come across X and others as little as possible, but no sanctions were taken and her request was refused.

I too received physical and verbal threats from X. He was given a "reprimand" internally

within the restaurant but this did nothing to change his behavior. . .

A lot of his behavior was seen by or reported to the bosses in place at the time of these incidents and afterwards, but everything was always taken as if it were all in jest or taken lightly. No one wanted to take action, and even when discussing things on several occasions with the managers, their response was either that they agreed on the fact that it was not right but that they could not do anything, or else that it was nothing more than minor squabbles between colleagues. In all cases management did nothing despite the fact that there were several cases.

X's behavior is becoming increasingly violent and commonplace. Yet there is no reaction from our bosses. The people who have to endure his harassment have also to endure the trivialization of his actions, whether it be by the bosses or by co-workers (some out of fear of being subjected to the same thing, fear of reprisals or disfavor) even when it's done in plain view of everyone. And no objective report has been done for the time being.

X's actions have under no circumstances been recounted in any detailed report and the victims, who had insisted on the matter, were asked to write up a report after the fact. The only report made by a manager was done at my express request.

Not only was the situation regarding any of the people concerned by X's abuses not taken seriously, but the trivialization of his acts allowed him to continue with impunity and even a certain amount of indulgence on the part of the bosses, leading him to believe that he could easily take advantage of the situation and get away with continuing to act this way. I am taking the liberty of quoting him "in any case the manager won't do anything. I don't risk a thing."

United Kingdom

In the UK, as in the United States, McDonald's refuses to recognize or otherwise deal with the principal union that represents workers in the fast-food sector, the Bakers, Food and Allied Workers Union (BFAWU). In 2019, the union released results of a comprehensive survey of McDonald's employees who told of managers making repeated sexual comments, brushing up against staff and discussing sexual desires, abusing their access to workers' contact details in order to send texts and explicit photos, and offering better hours and promotion in return for sex.⁴⁹

A McDonald's worker in London said:

I got approached by a manager to me who would make sly comments like asking if I was up for any fun while his wife was going to be away. He would say that in the workplace. He eventually got hold of my phone number from the system or from another employee. He text me to say he was at home alone with just the kids. I just blocked his number. That resulted in him pulling his pants down in the stockroom where there were no cameras. He held his penis and said, 'Is this worth waiting for?' After I complained, a manager said I better have proof of what I'm saying he did because if I was saying this about her, she would use her life savings on

⁴⁹ See Maya Oppenheim, "More than 1,000 reports of sexual abuse and harassment at UK McDonald's, campaigners say," *The Independent*, July 20, 2019, at <https://www.independent.co.uk/news/uk/home-news/mcdonalds-sexual-harassment-protests-abuse-workers-a8937186.html>.

*getting me done for slander.*⁵⁰

The employee complained to McDonald's human resources office, but said months passed before a cursory investigation took place. She finally left McDonald's, concluding:

*What I hope happens is McDonald's and my managers listen. We need a zero sexual harassment policy. McDonald's care if you give out one too many sauces or one too many napkins in the drive-through but they need to address harassment. There are a lot more women suffering sexual harassment than any of us can imagine.*⁵¹

Chile

Petitioners have engaged researchers in Chile who received several anecdotal accounts of sexual harassment in McDonald's. On March 3, 2020, the research group requested information from labor ministry and judicial databases. On March 26, 2020, those authorities refused to provide the information, citing privacy rules.⁵²

Researchers are continuing efforts to obtain such information either through official channels or from statements by workers. Interviews with workers have been prevented by difficulties due to the Coronavirus pandemic. Petitioners will supplement this Specific Instance with additional information as it is received.

Colombia

Researchers investigating sexual harassment in Colombia have identified at least fifteen cases of sexual harassment claims against McDonald's there. Judicial authorities have promised to send relevant information regarding these cases, but office closings because of the Coronavirus pandemic have delayed reception. As with information from Chile, Petitioners will supplement this Specific Instance with additional information on Colombia as it is received.

Petitioners are making efforts to get more information on sexual harassment at McDonald's in more countries, but it should not delay consideration of this Specific Instance. Such evidence would be mainly cumulative, not novel. And we ask the NCP to keep in mind the difficulty of obtaining such information from workers, who are often reluctant to discuss their experiences and to reveal intimate details of harassment, and also concerned about possible reprisals for speaking out.

V. Institutional Investors in McDonald's: APG Asset Management and Norges Bank

A. OECD guidance on institutional investors

The 2017 OECD guidance paper on responsibilities of institutional investors sets forth due diligence expectations for institutional investors in companies that might carry risks in the social responsibility arena:

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² See letter from Paula Luz Ortega Solis, Chile Dirección del Trabajo, to trade union attorney Wendoling Silva Reyes, March 26, 2020 (attached with this Specific Instance).

Business relationship responsibilities in the context of institutional investors

[A] relationship between an investor and investee company including a minority shareholding can be considered a "business relationship" under the OECD Guidelines.

Hence investors, even those with minority shareholdings, may be directly linked to adverse impacts caused or contributed to by investee companies as a result of their ownership in, or management of, shares in the company causing or contributing to certain social or environmental impacts.

[I] investors are expected to consider RBC risks throughout their investment process and to use their so-called "leverage" with companies they invest in to influence those investee companies to prevent or mitigate adverse impacts.⁵³

B. APG Asset Management and Norges Bank

Netherlands-based APG Asset Management and Norway-based Norges Bank are giant investment funds with portfolios reflecting billions of dollars of investments in thousands of companies. APG Asset Management N.V. holds a more-than \$400 million investment in McDonald's.⁵⁴ With a \$1.3 billion stake in the company, Norges Bank is the 8th-largest single investor in McDonald's, behind institutional investors that include Vanguard, Black Rock and Fidelity investments.⁵⁵

Although they are minority shareholders, APG and Norges Bank are significant institutional investors with \$1.7 billion invested in McDonald's. The Netherlands NCP has already decided that minority shareholders have a responsibility to exercise due diligence under the OECD Guidelines in the well-known POSCO case:

The NCP concludes that investors have a responsibility under the OECD Guidelines even when they are only minority shareholders in a company. This means that investors and other financial institutions have a responsibility to exert influence where possible on companies they invest in to help prevent or mitigate possible adverse impacts of these companies' operations.⁵⁶

The Norway NCP took the same approach to Norwegian institutional investors in POSCO:

NBIM has submitted that the OECD Guidelines do not apply to minority shareholding nor in this Specific Instance. The NCP does not share this view. The OECD Guidelines apply to the financial sector, as they do to all

⁵³ See OECD, "Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises" (2017), at <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf>.

⁵⁴ See Fintel, "McDonald's Corp. Institutional Ownership and Shareholders" (2020), at <https://fintel.io/so/us/mcd>

⁵⁵ See CNN Business, "McDonald's Corp. Shareholders" (2020), at <https://money.cnn.com/quote/shareholders/shareholders.html?symb=MCD&subView=institutional>

⁵⁶ See the full Final Statement at <https://www.oecdguidelines.nl/latest/news/2013/9/18/publication-final-statement-posco-a.o.---lok-shakti-abhiyan-a.o.>

sectors. They do not make any exception for sub-groups of investors, nor do they exempt minority shareholders.⁵⁷

C. APG and Norges Bank's commitment to socially responsible investment

Reflecting their commitment to socially responsible investment, APG and Norges Bank both have highly-developed RBC programs and policies. Both are widely known as pioneers and leaders in the socially responsible investment field. The petitioners in this Specific Instance recognize these funds' progressive role in the responsible investment field and have enormous respect for their accomplishments. However, these investment funds' programs and policies should address the global problem of gender-based violence and harassment at McDonald's under both the Guidelines and the investors' own social responsibility commitments.

Before turning to their inaction on McDonald's, here is a summary of the funds' social responsibility commitments:

1. APG Asset Management

APG Asset Management is the Netherlands' largest pension capital investor and one of the largest pension fiduciary asset managers worldwide. With investments in thousands of companies around the world, APG manages more than € 533 billion in pension funds for thousands of public and private sector employers in the Netherlands, providing the pension for over 4.7 million participants.⁵⁸

APG has a deeply-rooted commitment to social responsibility in managing its investments, citing in particular the OECD Guidelines as a foundation of its approach and incorporating ILO core labor standards and conventions:

The way APG manages its clients' pension assets is about more than realizing financial gains. On behalf of our clients we implement the Responsible Investment Policy. APG's responsible investment approach is based on the OECD Guidelines for Multinational Enterprises . . . We employ a variety of means to assess whether companies operate in line with these principles. Labour standards are a subset of human rights. The majority of the core labour standards are based on human rights provisions that are listed in the international human rights treaties. The International Labour Organization (ILO) has defined core principles as covered in the ILO's Declaration on Fundamental Principles and Rights at Work (1998) and laid down in eight core conventions.⁵⁹

APG sets out stringent due diligence expectations for companies in which it invests. The due diligence requirements are generic, not company-specific, but they are especially relevant to McDonald's and its franchise system, and to McDonald's failure to engage and consult with workers affected by GBVH violations in stores around the world:

Effective due diligence identifies risks posed by suppliers, business partners and clients at an early stage. Hence risks can be mitigated and

⁵⁷ See the full Final Statement at https://www.responsiblebusiness.no/files/2015/11/nbim_final-1.pdf

⁵⁸ See APG, "Who is APG" (2020), at <https://www.apg.nl/en/who-is-apg>.

⁵⁹ See APG Asset Management, "Responsible Investing: Investing with an eye for environment, society and good governance" (2018), at <https://www.apg.nl/en/asset-management/responsible-investing>.

risk exposure reduced. Consultation with potentially affected parties enables the company to establish its social license to operate and address concerns at an early stage.

Effective due diligence to identify risks posed by suppliers and business partners at an early stage is important in order to reduce the potential exposure to labour rights related controversies. Establishing a procedure where employees can express concerns provides an important early warning system. Employee engagement is important to achieve operational traction...⁶⁰

APG puts special emphasis on engaging with its investee companies on responsible business conduct:

APG recognizes that the responsible use of investor rights and our role as stewards of capital involves the monitoring of and engagement with the companies in our portfolio. Engaging with our portfolio companies is a central element of APG's and its clients' responsible investment approach. Engagement is the process of entering into a dialogue with companies and managers of assets or funds in order to better understand our investments, ascertain their ESG risk profile, and to influence their performance and practices where appropriate.

APG expects its investments to demonstrate responsible business practices and to respond in a timely and appropriate manner when a particular behaviour falls short of those standards.⁶¹

2. Norges Bank

Norges Bank is Norway's central bank whose mission is to promote economic stability and manage substantial assets on behalf of the Norwegian people. The bank notes that it is "the single largest owner in the world's stock markets" through its Government Pension Fund Global.⁶²

Norges Bank grounds its social responsibility commitments in internationally-recognized principles on human rights and labor rights, with particular reference to the OECD Guidelines. The bank also points to the UN Global Compact and the UN Guiding Principles on Business and Human Rights as foundations of its social responsibility policies, and through all these instruments the ILO's core conventions. Here are key passages from the bank's statement of "expectations of companies" in which it invests:

Our expectation documents set out how we expect companies to manage various environmental and social matters. Our expectations are based on internationally recognised principles such as the UN Global Compact, the UN Guiding Principles on Business and Human Rights, the G20/OECD Principles of Corporate Governance, the OECD Guidelines for Multinational Enterprises and other topic-specific standards.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² See Norges Bank, "Responsible investment: Government Pension Fund Global" (2019), at <https://www.nbim.no/en/the-fund/responsible-investment/>.

Under international law, the legal obligation to protect human rights rests with governments. Although international human rights treaties do not impose direct legal obligations on business enterprises, they nevertheless constitute important standards for companies. The UN Guiding Principles on Business and Human Rights refer to the responsibility of companies to respect the human rights expressed in the International Bill of Human Rights and the core ILO conventions as a minimum.⁶³

Norges Bank's expectations of responsible business conduct by investee companies reaches those companies' "supply chains and other business relationships," which includes the relationship between McDonald's and its franchisees. The bank expects investee companies to engage employees in identifying risks of negative impacts and to "consult and engage with their workers and their representatives" on human rights issues:

[W]e encourage companies to identify their salient human rights issues, i.e. the human rights that may be at risk of the most severe negative impact through a company's business operations, including its supply chains and other business relationships, as well as through the use of its products and services.

Companies should regularly consider whether their organisational structure, incentive systems, training programmes and wider company culture integrate sustainable business practices appropriately. Employees and contractors should be engaged in these efforts and made aware of company policies and practices.

Companies should, as appropriate to their size and the nature and context of their operations, consult and engage with their workers and their representatives, health and safety representatives, potentially affected groups and other relevant stakeholders on human rights issues.⁶⁴

D. The investment funds' need to exercise their own due diligence and to hold McDonald's to their due diligence requirements

The OECD guidance paper for institutional investors puts special emphasis on the need for investors to engage not only with their investee companies, but also with stakeholders "impacted by the behaviour of investee companies:"

Engagement with stakeholders by investors

Direct stakeholders of institutional investors will include their beneficiaries. These entities should be involved to the extent possible in shaping due diligence approaches and RBC policy. Additionally, stakeholders may include those most impacted by the behaviour of investee companies.

Investors may not be able to identify and be aware of all RBC risks present in their portfolio at all times, however, they can use existing

⁶³ See Norges Bank Investment Management, "Human rights – Expectations of companies" (2020), at <https://www.nbim.no/contentassets/0ff34e35ba1a44c3b6c2039466ccbec7/human-rights-expectations-document2.pdf>.

⁶⁴ *Id.*

information and a combination of approaches to identify real and potential impacts in the face of information deficits. They should also be continuously updating information on RBC issues as these issues are not static.

Petitioners in the Specific Instance recognize that APG and Norges Bank invest in thousands of companies and cannot be expected to have intimate, up-to-date knowledge of every company's conduct. Nonetheless, they fell short in regard to GBVH abuses in McDonald's. GBVH problems at McDonald's should have come to the investors' attention through their normal due diligence operations.

APG says:

APG has a dedicated team of stewardship and responsible investment professionals, the Global Responsible Investment and Governance (GRIG) team. Our investment teams carry out stewardship responsibilities with regard to their portfolios together with the GRIG team to ensure sustainable returns and create, protect and enhance the economic value of our clients' assets. At APG, we have developed our own methodology and also use various external sources and systems to help us prioritize and select focus areas for our stewardship activities and monitor progress and outcomes. . . We have developed an in-house centralised knowledge management system (KMS) in which we track our engagement with companies as well as other relevant research, financial and ESG information.⁶⁵

Norges Bank says "We constantly monitor environmental, social and governance risks in the countries, industries and companies in which the fund is invested. . . We constantly monitor the companies in our portfolio in order to pick up incidents that might indicate failures in the management of environmental, social and governance risks."⁶⁶

As noted, APG and Norges Bank directly employ many researchers and analysts charged with reviewing responsible business conduct in investee companies. They also obtain information from external consulting groups that monitor companies' RBC performance, and contract with academic experts for more research on RBC issues.⁶⁷ These in-house staff, outside consultants, or academic experts should have raised alarms about GBVH abuses in McDonald's.

The signals were everywhere, beginning with the context of the "Me Too" movement generally throughout the world and, in the labor rights field in particular, the ILO's adoption of Convention No. 190 on gender-based violence and harassment. APG and Norge Banks' ESG researchers, analysts and consultants should have also acted on widespread media attention in 2018-19 to worker protests and class-action sexual harassment lawsuits against McDonald's, and widespread media attention to the

⁶⁵ See APG, "Responsible investment & Stewardship policy" (December 2018), at https://www.apg.nl/pdfs/APG%20Responsible%20Investment%20-%20Stewardship%20Policy%20FINAL_ENG.pdf.

⁶⁶ See Norges Bank, "Responsible investment: Government Pension Fund Global" (2019), at <https://www.nbim.no/en/the-fund/responsible-investment/>.

⁶⁷ *Id.* In 2018, Norges Bank engaged researchers at universities including Oxford, Columbia, Dartmouth, Chicago, Boston College, and London Business School.

dismissal of McDonald's CEO in 2019 for a sexual relationship with a subordinate (and despite this, the Board of Directors awarding the CEO a \$42 million severance package).⁶⁸

APG and Norges Bank's internal and external monitoring systems should have alerted them to the growing problem of sexual harassment in an iconic company in which these two institutional investors had a \$1.7 billion stake. Norges Bank engaged with 1,826 companies in 2018 on responsible business issues, but it makes no mention of gender-based violence and harassment as a subject matter for such engagement.⁶⁹ Only one mention of either investor acting on sexual harassment issues is found in APG's Responsible Investment Report, where APG notes that among the 366 companies with which it engaged in 2018, one was the U.S. mass media company Twenty-First Century Fox on a problem of sexual harassment.⁷⁰

E. Bringing investors to the mediation table

As noted earlier, the petitioners in this Specific Instance do not inculcate APG and Norges Bank for their failure to act on sexual harassment at McDonald's. They should have known of these problems, but apparently they did not, even with their array of RBC researchers, analysts and monitors. Petitioners want to be forward-looking and are not asking APG and Norges Bank to explain or excuse the breakdown of their due diligence process with regard to sexual harassment at McDonald's.

Instead, Petitioners ask the Netherlands NCP to bring these investors into a mediation with McDonald's under the NCP's auspices in line with their commitment to engagement between with workers and workers' representatives and advocates on RBC matters. APG and Norges Bank together can provide important insights and a powerful voice to help guide McDonald's and the petitioning groups to a mediated agreement in this Specific Instance.

VI. Conclusion: A Request for NCP Good Offices

As discussed in the foregoing sections of this Specific Instance, McDonald's conduct on GBVH issues is inconsistent with the recommendations contained in the OECD Guidelines, the Due Diligence Guidance, and international labor and human rights norms that are incorporated in these OECD instruments. Two major institutional investors have not sufficiently exercised due diligence to prevent these violations. The issues raised here are bona fide and merit further consideration by the Netherlands NCP.

Petitioners now seek the good offices of the Netherlands NCP to bring together the worker representatives, McDonald's Netherlands and European management, and APG

⁶⁸ A Google search for [McDonald's "sexual harassment"] yields more than 3½ million results. See various citations elsewhere in this Specific Instance filing.

⁶⁹ See Norges Bank, "Responsible investment: Government Pension Fund Global" (2019), at <https://www.nbim.no/en/the-fund/responsible-investment/>.

⁷⁰ APG said its objective in this engagement was to achieve "Effective measures against sexual harassment and discrimination – Provide evidence of an effective, anonymous complaints procedure that provides explicit guarantees that the employee who lodges a complaint will not be penalized. Improve the company culture, also through training and by providing information on the policy against discrimination and sexual harassment. See APG, "Responsible Investment Report 2018" (July 2019), at <https://www.apg.nl/en/publication/Verslag%20Verantwoord%20Beleggen%202018/1102>.

and Norges Bank RBC officers in a mediation process in Europe that can develop agreed practices to address gender-based violence and sexual harassment in conformity with the OECD Guidelines, and which could serve as a global model of practices and procedures that McDonald's headquarters management could adopt and extend to the company's worldwide operations.

In furtherance of a productive mediation process, Petitioners also point to Paragraph 4. a. of Chapter V of the Guidelines on employment and industrial relations. This clause calls upon multinational enterprises to "Observe standards of employment and industrial relations not less favourable than those observed by comparable employers in the host country."

IUF has negotiated strong protections on gender-based violence and harassment in agreements with several multinational companies that operate in the United States, Brazil, France, Britain and other countries named in this Specific Instance. They include companies in food services and hospitality sectors with franchise systems, both in their U.S. holdings and worldwide.

These companies are relevant comparators with McDonald's under Paragraph 4. a. cited above. Petitioners invite the NCP, McDonald's, and APG and Norges Bank to review the GBVH provisions of these agreements. They are a practical indication that such agreements can be reached and implemented, including with companies making use of franchising. They have been publicly welcomed by the signatory companies. They can serve to inspire discussion of an agreement that addresses sexual harassment in McDonald's.

AccorInvest (Luxembourg)

(<http://www.iufdocuments.org/ifa/en/AccorInvest/2019%20AccorInvest-IUF%20Agreement%20on%20Fighting%20Against%20Sexual%20Harassment.pdf>)

Arla Foods (Denmark)

(<http://www.iufdocuments.org/ifa/en/Arla/2019%20Arla-IUF%20agreement%20to%20fight%20sexual%20harassment.pdf>)

Chiquita Brands International Sàrl (Switzerland)

(<http://www.iufdocuments.org/ifa/en/Chiquita/2013%20Appendix%20on%20Sexual%20Harassment.pdf>)

Meliá Hotels International (Spain)

(<http://www.iufdocuments.org/ifa/en/Melia/2019%20Melia-IUF%20Joint%20Commitment%20on%20preventing%20sexual%20harassment.pdf>)

Sodexo Group (France)

(<http://www.iufdocuments.org/ifa/en/Sodexo/2017%20Sodexo-IUF%20Joint%20Commitment%20on%20preventing%20sexual%20harassment.pdf>)

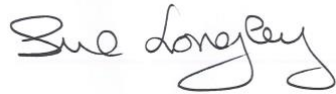
Unilever (Netherlands-UK):

(<http://www.iufdocuments.org/ifa/en/Unilever/1%202016%20IUF-IndustriAll-Unilever%20Joint%20Commitment%20on%20preventing%20sexual%20harassment.pdf>)

Petitioners understand that you will convey this Specific Instance to McDonald's, to APG, and to Norges Bank. See below for the names and contact information of the officials who Petitioners believe should receive a copy.

Thank you for your consideration in this matter.

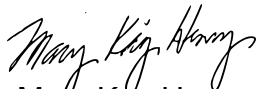
Yours truly,



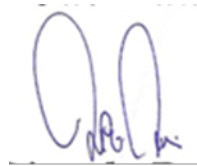
Sue Longley
IUF General Secretary



Kristjan Bragason
IUF-EFFAT Regional Secretary



Mary Key Henry
SEIU President



Ricardo Patah
UGT President

Please note: the central points of contact for further communication with Petitioners are:

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Please send all communications to Ms. Longley and Ms. Carlson.

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