

Concept Note

Gender Equality in the World of Work: Professional Upgrading on International and National Legal Frameworks for Courts in East Africa and the Caribbean

Introduction

The Bureau for Gender Equality proposes to undertake professional upgrading for judges on combating gender-based discrimination in the workplace in the Caribbean and East Africa. The initiative is based upon the explicit demands of ILO constituents as reflected in Country Programme Outcomes (CPOs). Two workshops focusing on the application of ILO Conventions as they pertain to combating gender-based discrimination in the workplace are proposed: one in Port of Spain for judges and registrars from Barbados, Belize, Guyana, Jamaica, St. Lucia, and Trinidad and Tobago; and one in Dar es Salaam for judges and registrars from Kenya, Rwanda, Uganda and the United Republic of Tanzania.

The application of international labour standards remains an ongoing challenge (to greater and lesser degrees) in all ILO Member States. Where professional upgrading on labour standards does take place, it rarely deals with gender equality as a stand-alone issue. Furthermore, where specific courses on gender equality do exist they often target only the specialised human rights bodies, such as Equality Commissions or Human Rights Commissions, and do not give sufficient attention to world of work issues. This proposal will try to fill these gaps by upgrading the knowledge and skills on gender issues of judges presiding over courts and tribunals with a specific mandate on employment issues.

The program will build upon previous initiatives, and in particular the success of a professional upgrading for judges in Southern Africa in October 2012 (See Mission Report attached as Annex). It will also build upon work undertaken within the two sub-regions themselves. In the Caribbean trade unionists have been trained on the application of labour standards as pertaining to gender equality. Meanwhile in 2008 East African labour court judges underwent professional upgrading on how international labour standards can be used to combat discrimination against persons with disabilities and people living with HIV and AIDS.

The overall aim is to enable the participant judges and registrars to:

- Better appreciate the ILO's standard setting function and supervisory machinery and its potential for enforcing national laws on gender equality
- Handle gender-related concepts and principles as they relate to their professional roles
- Avail themselves of updated knowledge in relation to gender-related ILO Conventions and Recommendations
- Apply their knowledge and skills in using international labour law to resolve disputes related to gender equality in their jurisdictions

Strategic Fit

ILO Conventions

While virtually all ILO Conventions touch on issues of gender equality to some degree, two of the ILO's 'fundamental' conventions are of particular relevance: the Equal Remuneration Convention, 1951 (No. 100); and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Both have been ratified by all ten target countries. Other instruments of particular relevance are the Workers with Family Responsibilities Convention, 1981 (No. 156), and the Maternity Protection Convention, 2000 (No. 183). These four are commonly referred to as the ILO gender equality Conventions. Among the target countries, only Belize has ratified Conventions 156 and 183. However the issues of maternity protection and work-family balance are of relevance to evolving jurisprudence on gender equality in the workplace. Recommendation No. 200 concerning HIV and AIDS and the world of work, adopted by the ILC in 2010 has a strong gender component and given the female face of the pandemic, forms part of the treaty framework that underpins this proposal.

ILC Resolution on Gender Equality at the Heart of Decent Work

The ILO mandate on gender equality is guided by the International Labour Conference Resolution concerning Gender Equality at the Heart of Decent Work (ILC Resolution), adopted in June 2009. The ILC Resolution instructs the ILO "...to support the strengthening of labour inspection systems and courts so that they are able to monitor more effectively the application of key equality Conventions and issues of sex discrimination at work"¹; and calls on governments to enforce "non-discrimination legislation and gender-sensitive labour law...through well resourced labour inspectorates and courts that do not discriminate on the basis of sex..."²

¹ Resolution concerning Gender Equality at the Heart of Decent Work para. 52(e)

² Ibid., para. 39.

ILO Programme and Budget 2012-2013

The Program and Budget 2012-2013 (P&B) makes it clear that: “The ratification of Conventions Nos. 100 and 111 will continue to be a priority and, where ratification has occurred, follow-up to the comments of the supervisory bodies will be supported. The practical effectiveness of ratification will be enhanced by increasing the capacity of judges...to ensure the application of equality of opportunity and treatment.”³ Furthermore, one of the indicators for the achievement of Outcome 17 of the P&B is that “A capacity-building plan for relevant officials on the enforcement and/or promotion of non-discrimination laws and policies is implemented.”⁴

Decent Work Outcomes

The promotion of rights at work is one of the four pillars of the Decent Work Agenda. Moreover, a solid national legal framework to combat gender-based discrimination is the foundation stone of all efforts to promote gender equality in the workplace, as it is from such law that all anti-discrimination programmes and strategies are derived. All ten countries have Country Program Outcomes under the P&B that explicitly commit them to the improved implementation of ILO standards. These are:

- Strengthened capacity of member States to ratify and apply international labour standards and to fulfil their reporting obligations (Barbados 826, Belize 828, Guyana 826, Jamaica 826, Rwanda 826, Trinidad and Tobago 826, Uganda 826)
- Strengthened capacity of member States to ratify and apply international labour standards, including gender equality principles, to fulfil their reporting obligations (Kenya 828 and UR Tanzania 828)

United Nations

The Sixty-sixth session of the United Nations General Assembly (2011-2012) called upon the UN system to “systematically address, as appropriate, aspects of the rule of law in relevant activities, including the participation of women in rule of law-related activities.”⁵ Meanwhile the UN system-wide Network on Women and Gender Equality’s Task Force on Women’s Access to Justice highlighted “the poor state of the rule of

³ ILO Program and Budget for the Biennium 2012-2013, para. 282.

⁴ Ibid., indicator 17.1(d).

⁵ ‘The rule of law at the national and international levels’ Resolution adopted by the General Assembly (66/102)

law as regards gender equality globally and the need to enhance co-ordination between UN agencies working to strengthen the rule of law and women's access to justice".⁶ In response the Task Force committed to "training courses for the judiciary, including both male and female members of the legal profession."⁷

Implementation

The professional upgrading will be open to the President of the Labour Court (or the court with jurisdiction over employment issues), two active judges (ideally one woman and one man), and to the court registrars. Two separate workshops will take place, and each will be five days in duration (See tentative workshop programme attached as Annex). Invitations will be issued to the following institutions, which (Rwanda exempted) have a common historical legal tradition, based on British common law:

Port of Spain Workshop:

- The High Court of Barbados
- The High Court of Belize
- The High Court of Guyana
- The Jamaican Industrial Disputes Tribunal
- The High Court of St. Lucia
- The Industrial Court of Trinidad and Tobago

Dar es Salaam Workshop:

- The Industrial Court of Kenya
- The High Court of Rwanda
- The Labour Division of the High Court of the United Republic of Tanzania
- The Industrial Court of Uganda

In each case the workshop facilitators will be Ms Jane Hodges, Director of ILO's Bureau for Gender Equality, and English-speaking judge from a Anglophone jurisdiction, and two ILO officials working on Standards issues. The materials successfully piloted at the Southern African workshop will be adapted, and where new materials need to be

⁶ Inter-Agency Network on Women and Gender Equality: 1st Report of the Task Force on Women's Access to Justice, para. 1., 11th Inter-Agency Session (New York, Feb.2012)

⁷ Ibid. para. 6(d).

developed, this will be done by the relevant facilitator.

Following the two workshops it is proposed that a high-level symposium be held at ITC-ILO Turin for the Presidents of all 15 Courts that have undertaken the Professional Upgrading through 2012 and 2013, i.e. the Presidents of the above-listed institutions, along with the Presidents of the courts who attended the ITC-ILO workshop in 2012, namely: Botswana's Industrial Court, the Malawi Industrial Relations Court, Nigeria's National Industrial Court, South Africa's Labour Court and Labour Appeal Court, and Zambia's Industrial Relations Court.