

Gender Equality in the World of Work:

Professional Upgrading on Gender Equality at Work for EAC Labour Courts

Welcome Remarks by Ms Jane Hodges,
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Honourable Justices, Court members and staff,
Esteemed ILO Director for the East African Subregion, and colleagues:

As Director of ILO's Gender, Equality & Diversity Branch, which is part of the new HQ Department called WORKQUALITY, allow me to warmly welcome you to this important workshop. It is one of a series that the ILO was instructed to organise by our constituents following the 2009 International Labour Conference general discussion on gender equality and decent work.

At the outset, allow me to thank our gracious host country, for their commitment to this activity. Allow me also to recognize the amazing organisational and substantive work carried the ILO team based in the Dar es Salaam Office, for their hard work to ensure that we have an environment for optimal learning experiences.

The ILO engages in a number of regular activities with courts, not just labour courts but also appeal levels and Supreme Courts. In fact, this very week ITC-Turin is running its well known "ILS for judges and labour practitioners" workshop which some of you may already have attended. And ILO acts as the secretariat for the European Labour Court Judges grouping, which meet every year to upgrade their knowledge on latest labour issues. But this workshop is different: it is one of a series that represent a direct follow up to the *2009 ILC Conclusions on Gender Equality*, which are the blueprint for all of the ILO's work on promoting gender equality. The Members explicitly instructed the ILO (para. 52(e)):

"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".

The Conclusions also (in para. 39) called 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...".

So, is this the only reason we are here?

The answer to this question is anchored in the core mandate of the International Labour Organization, set out in the 1919 Constitution. The promotion of gender equality and the fight against discrimination is a central aspect of the Decent Work Agenda. It is vitally important that labour law, and how the courts apply and interpret labour law, are attentive to the promotion of gender equality. It is the cornerstone upon which all of the ILO's work to promote

equality between women and men is built, as it is from such law that all programmes, policies, strategies are derived. As you are all no doubt aware, the ILO promotes its agenda of decent work for women and men primarily through its international labour standards. How these Conventions and Recommendations are aligned and implemented in national law is the bedrock of efforts to promote full and productive employment with rights **at** work, social protection and the promotion of social dialogue.

What then is gender equality? And how does it relate to the world of work? Simply put: promoting gender equality is about ensuring that women and men have equal rights and responsibilities, have equal opportunities for advancement, and are given equal respect in their work. That does not mean “sameness”! And let me stress at the outset that gender equality is not a “women’s issue”; it concerns men as well. While progress is being made in rebutting this misconception, there is still a long way to go in convincing men, and indeed some women, that men have a role to play in promoting gender equality, and that gender equality is beneficial for women and men workers alike.

ILO support to labour inspection systems is well known, especially in some regions of the world. Labour Courts are one of the key institutions in ensuring that men and women enjoy equal rights in the workplace, because they give enforceability to the larger legal framework. They do this primarily through court rulings that punish discriminatory behaviour and give redress to victims, and in so doing set precedent that – hopefully – sends strong public policy messages to the legislature as well. Moreover, as Labour Court Judges you are often called upon to give opinions on laws as they are being drafted. In addition, as esteemed members of the Judiciary, you represent important role models in your communities. So it is of vital importance that, as judges, you continue to upgrade your knowledge in this area so as to make judgements, hand down decisions and give expert advice and submissions in accordance with the principles of gender equality that are universally accepted and part of the international framework.

In summary: without good, gender-sensitive laws, and good, gender-sensitive interpretation of those laws by courts, there can be no real progress in equality between women and men. I cannot overstate the importance of this workshop, and the fact that ILO Members called for this ongoing support to courts in their *2009 Conclusions on Gender Equality*.

The Relevant ILO Instruments and the programme content

As all ILO Conventions relate to social justice, virtually all are pertinent to issues of gender equality to some degree. However, two of the ILO’s ‘fundamental’ Conventions are of particular relevance to our work here this week and they have been ratified by all represented in this room: the Equal Remuneration Convention, 1951 (No 100); and the Discrimination (Employment and Occupation) Convention, 1958 (No 111). Both Conventions have in fact been ratified by the vast majority of ILO Member States (171 and 172 respectively as at 2013). We will be looking at and discussing both Conventions in detail, and how they are reflected and interpreted in national laws this afternoon and tomorrow morning, and indeed indirectly throughout the week.

Other instruments of particular relevance to the promotion of gender equality in the workplace that will be canvassed here are the Workers with Family Responsibilities Convention, 1981 (No 156), and the Maternity Protection Convention, 2000 (No 183). Heavily ratified in some parts of the world, like Latin America, neither have been ratified by any of the countries represented here (& very few African States in general). Yet the issues of maternity protection and work/family balance are still of relevance to our work as there is an emerging jurisprudence in respect of both issues, and sessions will be devoted to this.

Complaints about sex discrimination in the form of termination of employment, with reference to ILO's Convention No 158 of 1982, will be examined in a dedicated session as well. Article 5 of that text makes it clear that the following grounds, among others, shall not constitute valid reasons for termination: sex, marital status, family responsibilities, pregnancy, nor absence from work during maternity leave (which foreshadowed the full ban on such discrimination written into Convention 183 on maternity protection).

We will also be devoting a session to the recent ILO Convention on Decent Work for Domestic Workers, 2011 (No 189), now ratified by 8 countries (2 number from Africa). And we are told that many more States have plans well advanced for ratification in the near future. This Convention is of particular relevance to gender equality. Firstly, it is estimated that 90% of domestic workers are women. However, perhaps more pointedly from a gender perspective is the nature of the work the Convention addresses. Domestic workers undertake work traditionally undertaken by women in their own homes, e.g. caring for children, cleaning, cooking etc., and in many countries, both legally and culturally, it was and is not seen as 'work' in the traditional sense. However anyone who has spent time caring for children, cooking and cleaning knows only too well: it is hard work! Rewarding yes, but hard work nonetheless, and it is high time it were recognised as such.

Another highly relevant standard is Recommendation No 200 concerning HIV and AIDS and the world of work, adopted by the ILC in 2010. It has a strong gender component, and there is also an emerging jurisprudence in respect of it. To quote Paragraph 3(a) of the Recommendation: *"the response to HIV and AIDS should be recognized as contributing to the realization of human rights and fundamental freedoms and gender equality for all, including workers, their families and their dependants."* Our discussions will focus on how, as jurists, we can give effect to this commitment.

The legislative framework for ending gender-based violence and sexual harassment in the workplace will be covered during this workshop. While there is not (as yet) any dedicated ILO instrument on these issues, there are a number of provisions in standards that address sex-based violence, e.g. Article 10 (3) of the Indigenous and Tribal Peoples Convention, 1989 (No 169) explicitly protects against sexual harassment; Article 5 of the Domestic Workers Convention states: "Each Member shall take measures to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence"; and Paragraph 14(c) of the HIV Recommendation reads: "Measures should be taken in or through the workplace to reduce the transmission of HIV and alleviate its impact by: ... ensuring actions to

prevent and prohibit violence and harassment in the workplace". And international treaties of broader scope, such as Recommendations 12 and 19 of CEDAW, address gender-based violence and sexual harassment as intolerable forms of persecution in the human rights context. This was the subject of the UN Commission on the Status of Women in NY last march, and the Human Rights Council meeting in Geneva has been receiving excellent, detailed reports from the special procedures mandates, such as the Special Rapporteur on Violence Against Women. These UN documents and studies –often based on country visits– report that sexual harassment strikes at the heart of women's economic self-sufficiency, disrupting women's earnings capacity by forcing them out of the workplace. Thus there is a clear world of work angle: we shall be sharing with you some shocking data, as well as recent court decisions.

Finally, the workshop devotes some time to checking procedural issues that are crucial to a justice system that, on the one hand, wishes to avoid sexist practices and, on the other hand, wants to publicly demonstrate that labour justice is available and applied to both women and men on an equal footing, as is stated in so many national Constitutions. Issues can be discussed concerning burden of proof in discrimination cases, confidentiality of evidence including non-disclosure of names, courtroom hearing practices, expert evidence especially in wages cases and relevant rules/bench advice on cross examination, to name but a few.

In closing, Your Honours, may I stress that you all have important and honourable roles to play! If you doubt the effect that your decisions might have in the long run, allow me to conclude my remarks by referring to a well-known sex discrimination case of the Indian Supreme Court: *Vishaka & Others v. State of Rajasthan & Ots.*, 13 August 1997, Case No.43.

Since domestic law did not address the issue of sexual harassment and did not formulate effective measures to prevent sexual harassment at the workplace, the Supreme Court decided to formulate general principles in order to define the concept of sexual harassment and to provide legal recourse for victims. The Supreme Court referred to CEDAW, as well as Australian judicial decisions on the subject. A detailed analysis of the implementation of the Supreme Court's 'Vishaka Guidelines' was then carried out by the Government to determine how in practice they could be implemented. This resulted in Labour Commissioners being given more clarity on their mandate to receive and act on sexual harassment complaints, as well as the empowering of Workplace Complaints Committees to address sexual harassment grievances. Some fifteen years later, the Indian Parliament adopted the Protection of Women Against Sexual Harassment at Workplace Bill, which is rooted in the Supreme Court's bold work.

This example brings me back to my first point, namely that good law, and good interpretation of the law is the basis from which all programmes, policies, strategies to promote equality between working women and men are derived. I have no doubt that you all have equally interesting examples from your countries which you will share as the week progresses.

I wish you a fruitful and engaging workshop.