

KENOTE ADDRESS BY H.E MATHIAS CHIKAWA, MINISTER FOR
CONSTITUTIONAL AND LEGAL AFFAIRS AT THE OPENING OF SUB-
REGIONAL GENDER TRAINING FOR LABOUR AND INDUSTRIAL
COURT JUSTICE AND REGISTRAR IN EAST AFRICA 7TH-11
OCTOBER 2013, ARUSHA

Mr. Alexio Musindo, Director ILO Country Office for
Tanzania, Kenya, Rwanda and Uganda

Honourable Judges,

Honourable Registrars

Distinguished Guests,

Ladies and Gentlemen

I feel greatly honored to have been invited to
present a keynote address to this Sub-Regional Gender
Training Workshop for Labour and Industrial Court
Justices and Registrars in East Africa here in Arusha.

At the outset allow me to take this opportunity to
thank Mr. Alexio Musindo, ILO Country Office Director

and the ILO for the invitation you extended to me to officiate this training workshop. I was moved to accept the invitation on a bona fide bias fact that, the proposed training involves Labour and Industrial Court Justices and Registrars who play a key role in justice delivery in our countries.

On behalf of the people and the Government of the United Republic of Tanzania, I wish to welcome all participants here in Arusha and Tanzania in general. We feel particularly honoured that you have chosen to have this training here in Arusha. It is my sincere hope that you will find time in your busy schedule to sample the delights abundant in this city. I assure you that you will not regret the experience.

On behalf of the Government, I also wish to commend the decision taken by ILO to organise this kind of workshop for Labour and Industrial Court Justices and Registrars in East Africa. We take your presence in the Country seriously as we recognise the value that this

training will have on the delivery of Justice in our respective countries.

Distinguished Participants,

I will not do justice if I do not acknowledge on behalf of my Government the work of ILO in the world and specifically in our countries. Since its establishment the ILO has played a pivotal role in ensuring that clear labour standards are established and implemented by the member states. The variety of standards established by ILO through conventions and recommendations is an indication of the amount of work that ILO has been doing in the labour sector.

It is extremely encouraging to see ILO values widely appreciated by African countries as key to their development process. It is a fact that many countries have ratified ILO fundamental Conventions as a sign and conviction reflecting a strong commitment to fundamental principles and rights at work. By ratifying the Conventions, member States commit themselves to put

those provisions into effect, both in law and in practice.

This pivotal role has enabled our countries to benefit from the technical expertise from ILO. Such that they have positively influenced the improvement of our legal and institutional framework on labour matters. It is fair however to admit that there is still much to be achieved.

I am aware that not all East African Countries have achieved this. We are all working towards ensuring that, our laws and practices are aligned to the widely accepted ILO standards and that we have institutional frameworks suitable to achieve this. As we commit to achieve this, I wish to assure ILO of our countries continued cooperation with it towards achieving better and favorable labour conditions in our Region.

Distinguished Participants,

To judges and Registrars, the concept of gender needs to be understood clearly as a cross-cutting

socio-cultural variable. It is an overarching variable in the sense that gender can also be applied to all other cross-cutting variables such as race, class, age, ethnic group, etc. We also have to realize that there is a dual rationale for promoting gender equality. Firstly, that equality between women and men - equal rights, opportunities and responsibilities - is a matter of human rights and social justice. And secondly, that greater equality between women and men is also a precondition for (and effective indicator of) sustainable people-centered development. The perceptions, interests, needs and priorities of both women and men must be taken into consideration not only as a matter of social justice but because they are necessary to enrich development processes.

Your presence alone is a demonstration of your selfless commitment, not only to your various mandates, but also to see a brighter future in the region. You could have ignored the invitation to attend this

training simply because of your disbeliefs on what concepts of gender and gender equality entails.

Distinguished Participants,

This is a unique training because of what is said to be happening in court rooms daily. Just as what is happening in our societies, the perception that Judges have on gender issues has not been good. In many countries of the world, East African Countries inclusive, Judges have been blamed for not being gender sensitive when they have cases that involve gender issues. From Criminal cases to Civil cases, their attitude towards gender equality has raised many questions whether gender forms part of their priorities. This attitude reflects the gender gap that exists in Court rooms which negatively affects the decisions handled by judges.

We are Aware that, Judges and Registrars are part of the society in which they live, reflecting many of its cultural values and moral norms but also many of

its prejudices. But Expectations are high, that when faced with cases involving gender equality, discrimination, gender based violence, Judges will depart from the existing cultural values and moral norms and ensure that justice is done.

Distinguished Participants,

Allow me to say this, ensuring gender equality in the world of work is key to my Ministry not because it is a basic human right, but it is indeed a fundamental value and an issue of social justice. The achievement of gender equality in work places requires a context in which men and women work together on equal basis. Unfortunately the workplace has been identified as a major site of inequality between women and men, and therefore a critical area in which to we need intensify our efforts to promote gender equality.

You are all witnesses on how alarming gender related issues at the work place are. Despite the efforts that have been made to eliminate the various

forms of discrimination against women in the workplace, the position of women in the labour market is still perceived as being disadvantageous. In fact, the range of inequalities between men and women in paid employment is still, surprisingly, a large one.

In all countries Gender discrimination in the labour market can be found because, one constant characteristic in labour force profiles is sex. And while multiple and overlapping areas of discrimination such as sex and race; sex and disability; sex and age must be eliminated, some of the greatest efforts must be made in overcoming sexism in employment and in the workplace.

There is differential treatment of Men and women at the work place, in issues of equal pay for men and women when they perform the same job, in recruitment and promotion men are preferred over women, gender related issues such as pregnancy are not accommodated by employers, stereotype behaviors at the work place

such as a stereotypical assessment that women belong in the home while men work and provide support affects women and often lead to sex discrimination in the workplace.

Distinguished Participants,

It is important for lawyers - Judges and Registrars in East Africa Courts to understand the pertinent gender equality issues in the world of work so that they may play their role effectively in promoting equality and ending discrimination. Lawyers - judges and Registrars must know that women experience systemic barriers in almost every aspect of work - this ranges from whether they have paid work at all, the type of work they obtain or are excluded from; the availability of supports such as childcare; benefits and conditions of work; their access to higher-paying "male" occupations; the insecurity of their jobs or enterprises; the absence of equitable pension entitlements - or indeed of any entitlements; and the

lack of time, resources or information necessary to enforce their rights. An analysis of the differences between women and men in responsibilities assigned, activities undertaken, access to and control over resources, as well as in decision-making, will provide the basis for appropriate decisions that you should take when inequalities are identified.

Women are especially vulnerable owing to their high numbers in unpaid, low-paid, frequently interrupted, or informal economy work. Direct and indirect discrimination, stereotyping, inadequate access to and control over productive resources, informal and atypical forms of employment, lack of voice and participation in decision-making are just a few of the challenges facing women in the labor market. Discrimination is more acute in the case of women with multiple disadvantaged factors such as disability and/or HIV/AIDS status.

Distinguished Participants,

Ministries and stakeholders responsible for labour and employments are troubled to see these inequalities at the work place continue each day in our countries. I have seen the commitment of stakeholders in the labour and employment sector working day and night to eliminate them. In Tanzania, the Ministry of Labour and Employment, The Judiciary and the Commission for Mediation and Arbitration among others work day and night to ensure these inequalities are eliminated. However, to me their elimination will not happen if the victims do not get justice when they seek it. I am mindful that having a legal framework in place to prohibit the same is a crucial step towards elimination. But I am also cognizant of the need to have knowledgeable Judges and Registrars who will deal with gender related cases at the work place efficiently and effectively. Judges who appreciate issues of gender and gender equality, judges who are updated on gender related Conventions, whether under the ILO or UN,

Judges whose decisions will be influenced by not only applying domestic law but also persuaded by internationally recognized standards. With these class of judges, victims of gender discrimination at the work place will be assured of effective justice.

Distinguished Participants,

I know this training is focussed at sensitizing all relevant Labour and Industrial justices and Registrars on gender issues. For this, ILO is taking a lead in facilitating judges and Registrars from these East African Countries to bridge the gender knowledge gap that exists in our judicial systems. This training will inter alia enable the participants to better appreciate ILO standard setting function and supervisory machinery. We expect after this training justices and registrars present here will have potential of enforcing national laws on gender equality, handle gender related concepts and apply ILO standards efficiently.

Distinguished Participants,

International labor standards are primarily tools for Governments which are seeking to draft and implement labor law and social policy, in consultation with employers and workers' organizations, to acceptable international norms. They prescribe, inter alia, minimum working conditions and the principle of non-discrimination in its many aspects, and are usually designed for all workers irrespective of their sex, ethnicity, physical ability, or other attributes.

A review of the labor standards will reveal that they address gender equality in different ways. Some are gender-explicit, referring specifically to gender equality or non-discrimination, women, or men, e.g. the Conventions on Equal Remuneration between women and men 1951 (No. 100), Maternity Protection, 2000 (No. 183), Termination of Employment, 1982 (No. 158), and Employment Policy, 1964 (No. 122). Others are gender-sensitive standards whose provisions by their nature

take into account women's and men's needs but do not mention men and women explicitly, e.g. the Conventions on Workers with Family Responsibilities, 1981 (No. 156), Elimination of the Worst forms of Child Labor, 1999 (No. 182), Part-time Workers, 1994 (No. 175) and Home Workers, 1996 (No. 177), and a range of standards dealing with working conditions such as safety, security and transport. The fundamental Convention No. 111 spans these two groups, since it addresses discrimination and therefore gender equality but is not exclusively about gender-based discrimination.

Distinguished participants,

In Addition to the Conventions cited above, the protection and promotion of equality between women and men are recognized as fundamental concepts in other major international human rights instruments, including the Universal Declaration of Human Rights (1948); the International Covenant on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights

(ICESCR) (1966); the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) (1979) and its Optional Protocol of 1999; the Convention on the Rights of the Child (1989); the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (1990); the UN Declaration on the Elimination of Violence against Women (1993); the Beijing Declaration and Platform for Action (1995) and its follow-up; the Millennium Development Goals; and, the UN Convention on the Rights of Persons with Disabilities, adopted by the Plenary of the General Assembly on 13 December 2006.

Such provisions are also binding on States which have not ratified specific ILO instruments but have ratified these more general international standards. Many of the treaty bodies established to monitor compliance with the UN instruments have in their regular reporting paid special attention to gender issues, and indeed have mainstreamed gender equality in their questions to States Parties.

Distinguished participants,

Allow me to refresh your memories on the normative frameworks guiding our work to ensure equality in the world of work. As you may be aware, International Instruments including Conventions are international treaties open to ratification by member states at the United Nations.

By ratifying it means that a country undertakes to apply the provisions of the ratified Convention in law and practice and submit to regular international supervision on the extent of application. In the case of ILO Conventions, ratifying countries must provide regular reports to the ILO on the measures taken to implement the Convention, and must accept the ILO's supervision of compliance.

In fact, millions of workers benefit from national laws that are influenced by ILO Conventions even when the country has not yet ratified them. Recommendations set non-binding guidelines to orient national policy

and practice which may be used as a source of inspiration or interpretation. They may supplement the provisions contained in a parallel Convention on the same issue. Countries which have ratified a Convention must implement it. They should repeal any statutory provisions and modify any administrative instructions or procedures that are inconsistent with the Convention.

In light of this framework, gender mainstreaming in the application of international labor standards is important because it helps to ensure that women and men have equal access to benefits derived from those standards. International labor standards are one of the ILO primary means of action to improve the working and living conditions of women and men, and promote equality in the workplace for all workers. All ILO standards, with some exceptions, in particular those addressing issues relating to maternity and women's reproductive role, apply equally to men and women.

However, there continues to be a gap between the rights set out in national and international standards and the real situation of workers. These rights must be made effective in practice. It goes without saying that women workers' rights constitute an integral part of the values, principles and objectives that are at the core of the ILO's mandate to promote social justice and decent work fairly paid, productive work, carried out in conditions of freedom, equity, security and dignity.

Distinguished participants,

Many countries including Tanzania have adopted specific legislation prohibiting discrimination and promoting equality in employment, (Section 7 of the Employment and Labour Relations Act, 2004) and many national constitutions including URT Constitution (which is now in the process of review) under Article 13 (4) and (5) contain Articles specifying such equality.

The Government on our part has established several Institutions such as the Ministry of Labour and Employment, The Judiciary - Labour Division, the Commission for Mediation and Arbitration, Occupational Safety and Healthy Authority among others to set standards, monitor implementation and adjudicate on labour matters. The Government has a duty to prevent discrimination and promote equality. But the law is not consistently applied and inequality persists. You have a role in ensuring enforcement through legal, administrative and where possible promotional measures to fill the continuing gaps between the law and its application, through your institutions.

Distinguished participants,

Once international law is transformed into national law or is given effect through collective bargaining, the respective national provision is usually referred to. In general, over the past decade, labor court judges, lawyers and others involved in litigation

procedures have become more aware of the implications of sex discrimination. Some labor law key cases have demonstrated the importance of judicial advancement of workplace equality. There is, however, criticism and also some evidence that legal systems dominated by men who do not understand the equality issue may constitute an obstacle to the enforcement process.

Distinguished participants,

I would like to emphasise that enforcing equality legislation and repealing discriminatory laws, while clearly important, are not sufficient to eliminate gender inequality at the work place because it often results from deeply entrenched societal and cultural attitudes and beliefs. Enforcement of the laws in practice needs improvement through change of attitudes and perceptions of those applying the law.

As Judges and Registrars, you need to appreciate that there are changes in the roles of women and men, their relations with each other, and the nature of the

households, markets and societies in which they live. Gender equality cannot be achieved if biases remain embedded in economic and social institutions and in development processes.

Distinguished participants,

Eliminating gender discrimination is not only a matter of fundamental human rights, but is also smart economics. Promoting gender equality should go beyond governments and public services, as it is also in the interest of businesses in the private sector as well. Diversity benefits economic performance since businesses can tap into the creativity, innovation and skills of both men and women.

While legal instruments for promoting gender equality and protecting women workers rights are steadily expanding in numbers and being improved at both national and international levels, there is still a gap between the rights set out in national and

international standards and their implementation in real situations.

Provisions cannot be of much use if they are not known and not put into practice. People need knowledge about legal rights and the machinery to enforce them if they are to combat discrimination and fight for a fair balance of opportunity, treatment, pay and representation between men and women in all areas of paid and unpaid employment and in work-related decision-making. However, workers and employers alike are only hazily aware or even un-aware of their rights and obligations, and this is perhaps the greatest obstacle to their exercising those rights and fulfilling the obligations.

Dissemination of information about these rights is, therefore, a vital instrument for improving gender equality. I urge the organizers of this workshop to organize similar sessions involving workers and employers to continue discussing and raising awareness

not only of the rights but also on the importance of mainstreaming gender in work places.

Distinguished participants,

Experience shows that where legislation is clear on its gender implications and is well implemented, gender equality has a better chance of being achieved. I am confident that at the end of the workshop you will come up with a clear way forward on how you will put into use the knowledge that you will gain to see to it that women and men enjoy equal right in the world of work free from discrimination.

Distinguished Participants,

Let me once again thank the ILO for their invitation and assure my Government's support and cooperation in their work in the Country. I wish participants and facilitators of this workshop a fruitful workshop that will bring change in their work.

With these few remarks, I now declare this Sub-Regional Gender Training workshop for Labour and Industrial Court Justice and Registrars in East Africa officially opened.

I thank you for your kind attention.