

Committee on the Application of Standards

Date: 16 May 2022

Governments appearing on the preliminary list of individual cases have the opportunity, if they so wish, to supply on a purely voluntary basis, written information before 16 May 2022.

► Information on the application of ratified Conventions supplied by governments on the preliminary list of individual cases

Malawi

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (ratification: 1965)

The Government has provided the following written information.

- (i) *undertake, in cooperation with the organizations of workers and employers, an evaluation of the existing legal framework on sexual harassment and, in particular, to amend the definition of sexual harassment in section 6(1) of the Gender Equality Act of 2013 to explicitly include hostile work environment harassment;*

The Government of Malawi notes the recommendation to amend section 6(1) of the Gender Equality Act (Cap 25:06) to explicitly include hostile work environment harassment. The Government will consult the relevant stakeholders to consider the recommendation.

- (ii) *identify the initiatives taken to date to prevent and address sexual harassment in the public and private sectors, and the procedures and remedies available to victims, with a view to identifying existing gaps and risk factors and designing effective interventions to strengthen the protection of women workers against sexual harassment;*

The Malawi Human Rights Commission (MHRC) is the public institution charged with the implementation of the Gender Equality Act. To this end, MHRC has been undertaking a number of activities as part of the implementation of the Act. The work undertaken so far include:

- (a) Development of a model sexual harassment policy and its popularization to promote widespread adoption or adaption as the case may be, both by public and private establishments.
- (b) Conducted a situation analysis on sexual harassment in the formal and informal sectors.
- (c) Development of Sexual Harassment Guidelines for use as establishments work on the development of their policies which take longer to finalise, especially in the public sector.

- (d) Supported twenty-one (21) institutions of higher learning to develop sexual harassment guidelines between 2021 and 2022.
- (e) Conducted capacity building trainings for both public and private sector establishments on prevention and tackling sexual violence and harassment. Over twenty (20) institutions benefited from such trainings between May and November, 2021.
- (f) Undertook monitoring of compliance with the Gender Equality Act, in particular sections 6 and 7 by conducting an audit of sexual harassment policies in sixty (60) institutions between November 2021 and April 2022. Advice was provided to institutions that did not have a policy in place.
- (g) Is investigating twenty-three (23) cases of sexual violence and harassment recorded between January 2021 and April 2022. Twelve (12) of these have since been concluded.

The Department of Human Resource Management and Development (DHRMD) for its part is responsible for the implementation of the Gender Equality Act within the Public Service. The Department has a dedicated Gender Unit that conducts sensitization on an ongoing basis as part of its normal programmes.

Regarding the Court cases in England concerning Malawi's tea sector, Government has not been able to get sufficient facts to assist in addressing the alleged violation in the reported claims. Efforts to identify the victims to help with information that could assist in devising well-informed interventions by Government have so far been unsuccessful. The claims against Eastern Produce Malawi Limited and its parent company based in the United Kingdom, Camellia were settled in an out of court settlement without admission of liability on their part. Being a confidential settlement which was not disclosed to Government, Government has requested the British High Commission in Malawi and Eastern Produce Malawi Limited to assist in gathering information regarding the claims. The claim against PGI the parent company of Lujeri Tea Estates Limited is continuing only against the parent company. Hopefully, this case will provide more information during the full trial. The foregoing notwithstanding, Government will continue to enforce the Gender Equality Act, including in the tea sector which happens to be one of the leading sectors in tackling gender based violence and sexual harassment. Tea was the first sector in Malawi to adopt a sector-wide sexual harassment policy entitled "Tea Association of Malawi Gender Equality, Harassment and Discrimination Policy." The sector wide policy was adopted in 2017 and all tea companies in Malawi are implementing the policy. All managers of the tea companies and the leadership of the Plantation and Agricultural Workers Union (PAWU) as well as the rank and file members of PAWU have been trained on gender based violence and sexual harassment.

Some major developments and activities that have been undertaken since the adoption of the tea sectoral policy which was launched during the International Women's Day commemoration held at Thyolo Sports Club in March 2017 include the following:

- (i) Establishment of the office of a Gender Equality Coordinator at TAML Secretariat. The Coordinator provides technical leadership and support to TAML and its members regarding the implementation of the TAML Gender Policy and gender mainstreaming in the tea industry
- (ii) Translation of the Policy and its Guidelines into the local Language in 2019 and printing and distribution of copies to all tea estates for greater access y by the majority of estates' employees who have low levels of education

- (iii) Establishment of a Women's Welfare Committees (WWCs) in all estates which act as safe spaces where women discuss issues affecting them. Issues requiring management intervention are subsequently escalated to management of respective estates for action.
- (iv) Establishment of Gender, Harassment and Discrimination Committees (GHDCs) in all the tea estates. The GHDCs are mandated to receive, deliberate and recommend disciplinary actions to be undertaken on harassment and discrimination complaints to estates' disciplinary committees.
- (v) Formulation of sectoral Gender Equality, Harassment and Discrimination Guidelines which elaborate the complaint handling procedure. In addition, the guidelines stipulate what estates ought to do to effectively promoted gender equality and equity and address harassment and discrimination in their workplaces.
- (vi) Conducting of awareness-raising campaigns focusing specifically on sexual harassment in employment and occupation on an ongoing basis in line with the sector's Policy.
- (vii) Training on Gender Equality and Sexual Harassment for all employees in the tea industry, supported by different partners including IDH-The Sustainable Trade Initiative, World University Service of Canada (WUSC) and ILO.
- (viii) Women Leadership trainings: The aim is to equip women with leadership skills as well as mentorship skills so that they can mentor fellow aspiring women leaders and help their employers identify women eligible for promotion to leadership roles in their respective workplaces.
- (ix) Gender Learning and Sustainability symposium which has become an annual event since 2019. The aim of the activity is to foster dialogue amongst TAML, its partners and government in order to assess progress made and reassert priorities for institutionalization of gender equality across the tea industry.
- (x) Annual sector level commemoration of International Women's Day as part of raising awareness on gender equality and sexual harassment. The commemoration brings together all players in the tea sector and government to TAML's industry – wide GHD Policy provides minimum standards for the sector and individual estates are always urged to do better.

As a result, at individual estate level, the following measures are in place:

- (a) Availability of a variety of grievance reporting modes which include use of anonymous complaint boxes, hotline (in the case of Eastern Produce), email addresses, Women Safeguarding Supervisors, Workers' Rights Advisor, Women's Welfare Committee, Gender, Harassment and Discrimination Committee, Line Managers, any member of the Human Resources department and General Managers. Each estate has an elaborate grievance handling mechanism that ensures confidentiality (Lujeri has engaged an external international consulting Firm to support them with the grievance handling process). Eastern Produce (EPM) has created a Gender & Welfare office. In this regard, a gender expert was recruited in 2021 to promote employee welfare and gender equality in all EPM operations.
- (b) Inclusion of a briefing on the Policy as part of the induction programme for all newly recruited employees.

- (c) Regular participation of estate management and employees in gender equality events such as 16 days of Gender Activism Tea is actually one of Malawi's leading sectors in addressing workplace violence and sexual harassment.

IUF's report purporting widespread gender based violence and sexual harassment in the tea sector has, therefore, come as a big surprise, especially to the tea sector itself. Government categorically disputes IUF's inference that "..... the fact that the workers' complaint was made public and dealt with through a law firm based in the United Kingdom indicates that the established procedures in Malawi at the local and national levels are inadequate for victims of gender-based violence in the workplace who are seeking to achieve justice and to ensure an end to sexual harassment on tea estates". This is totally untrue and unfounded. In the first place, the complainants never made any attempt to report their complaint locally. Furthermore, the complaint was never made public, at least in Malawi.

For your information, Chair, Malawi has one of the most robust, open and independent justice systems. Malawi's constitutional court judges have won the 2020 Chatham House Prize in recognition of their 'courage and independence in the defence of democracy'. Countless cases of gender based violence and harassment are reported to authorities, notably Malawi Human Rights Commission, Ministry of Gender, Ministry of Labour, Malawi Police Service as well as to non-governmental human rights organizations, among others. Some have ended up in our courts. One recent high profile case that was successfully prosecuted involved Mota Engil, an international construction company.

Chair, I believe everyone, including the IUF knows why the tea sector cases in Malawi are being heard in a Court in the United Kingdom (UK). The answer is simple: Leigh Day, which is prosecuting the case is a UK based Law Firm and our case is not the first for Leigh Day to prosecute outside the jurisdiction from which it arose. That is the character of Leigh Day Law Firm. The details of the victims, compensation paid to them is never disclosed making it extremely difficult for governments to follow up. Regarding IUF's report on the dismissal of 11 managers and supervisors for sexual harassment related misconduct, Government carried out an independent investigation and found a gross distortion of facts.

Chair, I would like to put the record straight. To begin with, no joint investigation of cases of sexual harassment was ever undertaken by TAML and PAWU during the stated time or indeed at any time. No specific estate has been mentioned in the report but our investigation suspect it could be Lujeri Tea Estate where cases of disciplinary hearing took place in April 2021 following findings of a routine investigation undertaken by the Company itself using an independent international firm Ethical Trade Consultancy. Only two cases of sexual harassment were identified and properly dealt with within the complaint and disciplinary frameworks of Lujeri and the laws of Malawi. Surprisingly, even the Plantation and Agricultural Workers Union (PAWU) has disowned the IUF report. Government welcomes another delegation from IUF to double-check their facts. We also welcome any credible and well-meaning organization, including the ILO, to come and independently verify the facts as reported by IUF.

(iii) *provide information on the results of the evaluation and the actions envisaged as a follow-up;*

Government acknowledges that there is room for improvement in a number of areas. The Gender Equality Act and other gender related national frameworks that predate the Violence and Harassment Convention 190 need to be reviewed to bring them in line with the Convention. I am pleased to report that with financial support from the ILO, a local consultant is already on the ground to assess gaps in the legal framework as part of broader measures for tackling workplace gender based violence and harassment more effectively. Government is also desirous of ratifying Convention 190 and looks forward to ILO technical support, with

the organization's wealth of expertise and experience in this area. More information will be provided once the consultant has completed her work. Government would like to assure the Committee that we will work closely with the social partners and other relevant bodies in dealing with this matter. We have in fact already started the collaboration as this report is the product of tripartite-plus consultations that took place on 11 May, 2022.

- (iv) *increase the capacity of the competent authorities, including labour inspectors, to prevent, identify and address cases of sexual harassment in employment and occupation, including on tea plantations;***

Malawi Human Rights Commission is strengthening its inspectorate unit through trainings. Training for labour inspectors in the Ministry is ongoing and the next one is scheduled to be conducted in June 2022, with technical support from the ILO. One of the items on the training programme is on detecting and addressing cases of sexual violence and harassment. The tea sector has been purposely targeted.

- (v) *continue undertaking awareness-raising campaigns in collaboration with the social partners;***

As explained above, Malawi Human Rights Commission, Department of Human Resource Management and Development and Tea Association of Malawi as well as individual tea companies have been conducting awareness campaigns. The Ministry will be joining together with the partners.

- (vi) *provide information on the adoption of the Sexual Harassment Workplace Policy pursuant to section 7 of the Gender Equality Act and its implementation;***

The Malawi Human Rights Commission as per its mandate, reviewed draft policies of institutions submitted to the Commission for the purpose of checking consistency with the Gender Equality Act as a quality assurance measure. Ten (10) draft policies were reviewed between November 2021 to April 2022. The institutions concerned include: Ministry of Forestry and Natural Resources, Malawi Police Service, National Youth Council, Electricity Supply Corporation of Malawi Limited, Sunbird Tourism PLC, Old Mutual Limited (Malawi) and Department of Human Resource Management and Development (DHRMD). The Policy for DHRMD covers the entire Civil Service and was validated on 18th May, 2022 after which it is going to be submitted within the next to Government (the Office of the President and Cabinet) for consideration and 2022. The draft Policy has accompanying Guidelines to facilitate implementation of the Policy.

- (vii) *consider amending section 6(1) of the Gender Equality Act to ensure that the term "reasonable person" in the definition of sexual harassment no longer refers to the harasser, but to an outside person.***

The Government of Malawi notes the recommendation to amend the definition of sexual harassment under section 6(1) of the Gender Equality Act (Cap 25:06). However, we would like to draw the Committee's attention to the principle of reasonable person in Malawian law. "reasonable person" is a common law standard used as an objective test used by courts in Malawi both in civil and criminal law. "reasonable person" is appropriate for the reason that offers an objective test that goes beyond the harasser. We look forward to further engagement with the Committee to elaborate on how the concept of "reasonable person" is interpreted under Malawian

In conclusion, Government wishes register its disappointment with the whole approach of IUF on this matter for the deliberate distortion of facts to paint a grim picture of the situation in our tea sector when that is not the case. We are further disappointed that IUF never bothered to share with the Malawi Government its report. It had to take the ILO to share its copy of the report on 11 May 2021, a day after the stakeholders' consultation meeting. We

suggest that in future, ILO should be strict to ensure that such reports are furnished in good time to all the parties concerned.