

## Committee on the Application of Standards

Date: 16 June 2022

Governments appearing on the list of individual cases have the opportunity, if they so wish, to supply written information to the Committee.

### ▶ Information on the application of ratified Conventions supplied by governments on the list of individual cases

#### Malawi (ratification: 1965)

#### Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

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, the MHRC has been undertaking a number of activities as part of the implementation of the Act. The work undertaken so far includes:

- (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) Implementation of 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 finalize, especially in the public sector.

- (d) Support for 21 institutions of higher learning to develop sexual harassment guidelines between 2021 and 2022.
- (e) Capacity-building training courses for both public and private sector establishments on prevention and tackling sexual violence and harassment. Over 20 institutions benefited from such training courses between May and November 2021.
- (f) Monitoring of compliance with the Gender Equality Act, in particular sections 6 and 7, by conducting an audit of sexual harassment policies in 60 institutions between November 2021 and April 2022. Advice was provided to institutions that did not have a policy in place.
- (g) Investigation of 23 cases of sexual violence and harassment recorded between January 2021 and April 2022. Of these, 12 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, the 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 the 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 the Government, the 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, the 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 the Tea Association of Malawi Limited (TAML) Secretariat. The Coordinator provides technical leadership and support to the 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 by the majority of estate employees, who have low levels of education.
- (iii) Establishment of a Women's Welfare Committee (WWC) in every estate, which acts as a safe space where women discuss issues affecting them. Issues requiring management

intervention are subsequently referred to the management of the respective estates for action.

- (iv) Establishment of a Gender, Harassment and Discrimination Committee (GHDC) in every tea estate. The GHDCs are mandated to receive harassment and discrimination complaints, deliberate on them and recommend to estates' disciplinary committees the disciplinary actions to be undertaken.
- (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 promote gender equality and equity and address harassment and discrimination in their workplaces.
- (vi) Implementation 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 the ILO.
- (viii) Women leadership training: 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 the TAML, its partners and the 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 the Government. The 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 the 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 adviser, 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.

The report of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) 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. The Government categorically disputes the 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 the authorities, notably the Malawi Human Rights Commission, Ministry of Gender, Ministry of Labour and 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. 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 the Leigh Day law firm. The details of the victims and the compensation paid to them are never disclosed, making it extremely difficult for governments to follow up. Regarding the IUF's report on the dismissal of 11 managers and supervisors for sexual harassment-related misconduct, the 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 the TAML and PAWU during the stated time or indeed at any time. No specific estate has been mentioned in the report but our investigation suspects it could be the Lujeri Tea Estate, where disciplinary hearings took place in April 2021 following the 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 the disciplinary frameworks of Lujeri and the laws of Malawi. Surprisingly, even PAWU has disowned the IUF report. The Government welcomes another delegation from the 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 the IUF.

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

The Government acknowledges that there is room for improvement in a number of areas. The Gender Equality Act and other gender-related national legal frameworks that predate the Violence and Harassment Convention, 2019 (No. 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. The Government is also desirous of ratifying Convention No. 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. The 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;***

The Malawi Human Rights Commission (MHRC) is strengthening its inspectorate unit through training. Training for labour inspectors in the Ministry is ongoing and the next training programme is scheduled to be conducted in June 2022, with technical support from the ILO. One of the items on the training programme is concerned with 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, the MHRC, the Department of Human Resource Management and Development (DHRMD) and the Tea Association of Malawi Limited (TAML), 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 MHRC, 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 draft policies were reviewed between November 2021 and April 2022. The institutions concerned include: the 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 the DHRMD. The policy for DHRMD covers the entire civil service and was validated on 18 May 2022, after which it is due to be submitted to the Government (the Office of the President and Cabinet) for consideration by the end of 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 by courts in Malawi in both civil and criminal law. "Reasonable person" is appropriate for the reason that it 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 law.

In conclusion, the Government wishes to register its disappointment with the whole approach of the 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

the IUF never bothered to share its report with the Malawian Government. It was left to 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 the ILO should be strict in ensuring that such reports are furnished in good time to all the parties concerned.