

Committee on the Application of Standards

CAN/PV.1

Commission de l'application des normes

31.05.22

Comisión de Aplicación de Normas

110th Session, Geneva, 2022

110^e session, Genève, 2022110.^a reunión, Ginebra, 2022

Warning: this document is a draft and may contain omissions or errors. It is made available solely for the purpose of verification and correction. Persons referred to in this document are not to be regarded as bound by statements attributed to them. The ILO declines all responsibility for any errors or omissions which this document may contain, or for any use which may be made of it by third parties.

Avertissement: ce document est un projet, qui peut comporter des omissions ou des erreurs et n'est rendu public qu'à des fins de vérification et de rectification. Les mentions contenues dans ce document provisoire n'engagent pas les personnes dont les propos sont rapportés. La responsabilité du BIT ne saurait être engagée à raison des éventuelles erreurs et omissions entachant ce document, ou de l'utilisation qui pourrait en être faite par des tiers.

Advertencia: el presente documento es un proyecto y puede contener omisiones o errores. Solo se publica a efectos de comprobación y rectificación. Las declaraciones que se atribuyen en el presente documento provisional a las personas citadas en él no comprometen su responsabilidad. La OIT queda exenta de toda responsabilidad respecto de cualquier error u omisión que pudiera figurar en el presente documento o que pudiera derivarse del uso del documento por terceros.

Seventh sitting, 31 May 2022, 4.02 p.m.

Septième séance, 31 mai 2022, 16 h 02

Septima sesión, 31 de mayo de 2022, 16.02 horas

Chairperson: Mr Topet

Président: M. Topet

Presidente: Sr. Topet

Discussion of individual cases

Discussion des cas individuels

Discusión de los casos individuales

Malawi (ratification: 1965)

Convention (n° 111) concernant la discrimination (emploi et profession), 1958

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

Convenio sobre la discriminación (empleo y ocupación), 1958 (núm. 111)

El Presidente - Hemos terminado la primera parte de nuestras discusiones de esta tarde y antes de empezar el examen del primer caso relativo a la aplicación del Convenio núm. 111 por Malawi quiero formular algunas indicaciones.

Durante las intervenciones las pantallas indicarán el tiempo restante para los oradores y les ruego que se esfuercen por respetar los límites de tiempo establecidos. Si fuese necesario, una vez alcanzado el tiempo máximo me veré obligado a interrumpir al orador. En caso de ser necesario, y en consulta con los demás miembros de la Mesa de la Comisión, también recurriré a la posibilidad de reducir los límites de tiempo, por ejemplo, en los casos en que existe una larga lista de oradores. Cuando tal decisión lo justifique anunciaré los tiempos máximos de intervención al inicio de cada sesión, que deberán ser estrictamente respetados.

A este respecto, para permitir que la mesa tome una decisión en tiempo oportuno, se invita a los delegados acreditados en la reunión de la Conferencia inscritos en la Comisión que deseen hacer uso de la palabra que se inscriban en la lista de oradores 24 horas antes del examen del caso, enviando el formulario disponible en la página web de la Comisión por correo electrónico a can2022@ilo.org. Es muy importante que los delegados indiquen claramente en dicho formulario si el discurso será pronunciado en forma presencial o por Zoom. Además, y de conformidad con la práctica de la Comisión, los observadores solo podrán ser inscritos en la lista de oradores después de que la Mesa de la Comisión lo haya aprobado. También se solicita a los delegados que envíen copia electrónica de sus declaraciones a la dirección standartinterpret@ilo.org de ser posible por lo menos 24 horas antes de su intervención. Los intérpretes están aquí para facilitar la comunicación multilingüe. Para facilitar su labor agradeceremos que pronuncien sus intervenciones a una velocidad razonable.

Para esta discusión sobre Malawi (Convenio núm. 111) contamos con 17 oradores que harán uso de la palabra. Sobre esta base la Mesa decidió no reducir los tiempos máximos de intervención, a saber: 15 minutos para el Gobierno de Malawi; 10 minutos para los portavoces del Grupo de los Empleadores y el Grupo de los Trabajadores; 6 minutos para los miembros empleador y trabajador del país concernido, respectivamente, que se distribuirán entre los diferentes oradores de cada grupo; 4 minutos para los grupos gubernamentales; 3 minutos

para los otros miembros; 10 minutos para las observaciones finales del Gobierno de Malawi, y 6 minutos para las observaciones finales de los portavoces del Grupo de los Empleadores y del Grupo de los Trabajadores.

Invito ahora a la representante gubernamental de Malawi, Sra. Kamtukule, a que tome la palabra.

Government representative (Ms KAMTUKULE, Minister of Labour) – The Government of Malawi notes the observations of the Commission on the Application of Standards (CAS) and wishes to respond as follows. On the recommendation to amend the definition of sexual harassment, under section 6, subsection 1 of the Gender Equality Act, we find use of the term “reasonable person” in the definition appropriate for the reason that it offers an objective test that goes beyond the harasser; that is to say, looking at the circumstantial evidence surrounding the harasser’s conduct. However, we welcome further engagement with the Committee to elaborate on how “reasonable person” is interpreted under Malawian law in order to reach a common understanding.

We do not rule out an amendment to this section to clarify the law so as not to leave anyone behind, or not to leave any doubt.

The Government of Malawi also notes the recommendation to amend the same section, to explicitly include “hostile work environment harassment”. The Government will consult relevant stakeholders to consider that recommendation.

The Government of Malawi takes gender-based violence and harassment in the workplace very seriously, that is why section 7 of the Gender Equality Act requires employers to come up with workplace policies for the elimination of sexual harassment in their workplaces. There is also a dedicated public institution, which is called the Malawi Human Rights Commission, that is charged with the overall responsibility of implementing the Act. Among other functions, the

Commission promotes, protects and enforces the Gender Equality Act in Malawi. It also educates the masses, including workers and employers, on gender-based violence and harassment. The Commission has also developed a model sexual harassment workplace policy and workplace sexual harassment guidelines, which it is popularizing for widespread adoption by enterprises.

There are also a number of civil society organizations working in the area of gender rights. These are organized under the umbrella body called “the NGO Gender Coordination Network” and are very active in championing gender rights. They work very closely with relevant government institutions including the Ministry of Gender, the Ministry of Labour, the Malawi Human Rights Commission itself, the Malawi Congress of Trade Unions and its affiliates and the Malawi Police Service.

Regarding the report of the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Associations (IUF) on cases of gender-based violence and harassment in the tea sector in Malawi, it should be noted that the tea sector under the Tea Association of Malawi has a sexual harassment and sexual policy in place which was adopted in 2017. Since then, a lot of sensitization across all levels of employees, ranging from top management down to estate labourers at the lowest level have been and continue to be sensitized. Individual tea estates have their own workplace programmes. Some estates have even engaged gender specialists to support their enterprise-based gender programmes.

In short, addressing sexual harassment in the tea sector has been institutionalized. You may wish to know that from time to time, the Ministry of Labour conducts inspections to these estates and I have personally been on several of them and one of the things that I have noted, was the fact that even community members were aware of the systems and structures that

have been put in place by these tea companies to address gender-based violence and harassment issues.

An independent investigation was conducted by the Ministry of Labour, of which I am the Minister responsible, to verify the IUF report. To our disappointment, the IUF report has been found to be a gross exaggeration and distortion of the situation on the ground. This case was escalated without any discussion whatsoever at national level and neither were the tripartite players engaged.

In the first place, the Plantation and Agriculture Workers Union (PAWU), which is reported to have conducted joint investigations with the Tea Association of Malawi that purportedly led to the dismissal of 11 managers and supervisors on sexual harassment-related misconduct, denied ever having ever participated in such an exercise. PAWU also denied knowledge of the purported dismissals. The Ministry's investigations only established two cases of sexual harassment in one tea estate. These two cases came to light following investigations by an independent international firm, known as Ethical Trade Consultancy, that the tea estate has hired to assist in investigating cases of misconduct by estate managers and workers.

Despite several requests, the Malawi Government has not been furnished with any details of the report or the reported sexual harassment court cases in the United Kingdom. As such, therefore, we are unable to comment much on the same or use information therefrom to address the problem. We understand that there was a confidential out-of-court settlement to the tune of £3 million, but, as Government, we are not aware of how much of the settlement money went to the purported victims.

We are also keen to find out who the victims are, because in Malawi, once the court orders unanimity, every party to the proceeding would be bound by that order. In that regard,

therefore, not even the media can risk contempt of court charges. However, information is needed to assist in addressing any gaps, whether in the law or procedures, that may exist.

The inference by the IUF that the established procedures in Malawi at the local and national levels are inadequate for victims of gender-based violence in the workplace is expressly wrong and quite unfortunate. The fact of that matter is that the United Kingdom-based law firm in case prefers prosecuting cases in the United Kingdom for its own convenience. In the case of Malawi tea sector, the court cases are proceeding only against UK-based parent companies of the two Malawi tea companies, which successfully challenged to be excluded on the basis that Malawi has competent courts and a world-renowned judicial system with massive abilities to successfully try these cases locally. The claimants' allegations that there is a real risk of lack of justice in Malawi throughout courts are therefore both incorrect and unfounded.

There are numerous cases on sexual harassment being handled by our courts at the moment and some that were concluded, which may attest to this point. One recent famous case involved an international company, whose judgment can be accessed online and another one involving the State against the Inspector-General of Police and others. In both cases, judgment was delivered in favour of the women. It is therefore on this basis that the Malawi Government predicts that the court in England, will dismiss the claim on the basis that England is not the proper forum for bringing sexual harassment claims that allegedly happened in Malawi. We therefore strongly believe that there is no risk of injustice if the cases were to be heard in Malawi.

Individual tea estates have a number of reporting channels for sexual harassment cases, including committees specifically established for this purpose, with the sensitization that has been going on since 2017 when the tea sector adopted a sector-wide sexual harassment policy.

Sexual harassment cases are being reported to the estate authorities and dealt with through internal procedures of the estate and, where appropriate, escalated to the courts. The cases remain few though and are not at the scale portrayed by the IUF in its report. Had it not been for the exaggeration and distortion, it is my considered opinion that Malawi did not at all deserve to be double footnoted.

The forgoing notwithstanding, the Government of Malawi welcomes an ILO mission and any credible institution to come and conduct independent investigations to establish the true extent of gender-based violence and sexual harassment in Malawi's tea sector. We promise to cooperate fully with anyone. IUF is also welcome to make another visit for the purpose of double-checking facts on the ground.

In conclusion, the Government of Malawi will continue to enforce the Gender Equality Act. The Government also acknowledges that there is room to improve measures for preventing gender-based violence and harassment in the workplaces, protecting the victims and addressing a whole range of issues on violence and harassment in the workplaces. To this end, the Government of Malawi undertakes to continue working very closely with the social partners. The Government recognizes the Gender Equality Act may require reviewing in light of the Violence and Harassment Convention, 2019 (No. 190) which the Act predates. The Government is further seriously considering initiating the process of ratifying Convention No. 190 to enhance measures for preventing and addressing violence and harassment in the workplaces. In this regard, therefore, the Government would appreciate ILO's technical support.

Worker members – Chairperson, this is the first time our Committee is discussing the application of Convention No. 111 with respect to Malawi. Malawi ratified Convention No. 111 in 1965. The gaps in the existing legislation, the systematic and serious violation in practice

and the harmful impact on victims, including the irreparable damage caused by sexual violence and discrimination, justifies that this case is discussed as a double footnoted case. In addition, the institutional weaknesses identified in the report clearly demonstrate the failure of the Government of Malawi to comply with the Convention. Malawi's Constitution prohibits discrimination against women on the basis of gender. In 2013, the Gender Equality Act was enacted to prohibit and provide redress for sex discrimination, harmful practices and sexual harassment. However, as the report shows, women workers in Malawi are exposed at work to rape, sexual assault, sexual harassment, coercion and discrimination by male workers. We deplore the systematic sexual violence and harassment in Malawi, including the rape, assault and discrimination suffered by women workers on tea and macadamia nut plantations. In 2019, a case was filed in the London court on behalf of 36 Malawian women who suffered gender-based violence and harassment, including rape and sexual harassment while working on tea estates in the Mulanje and Thyolo districts in Malawi. In 2021, a similar case was filed also in London on behalf of 31 Malawian women who had been subjected to sexual harassment, sexual assault, coerced sexual relations and rape spanning a period between 2014 and 2019 while working on tea plantations and macadamia nut orchards in southern Malawi. The continued and systematic nature of these violations reveal deep institutional weaknesses in holding perpetrators to account, including by prosecutors, courts, labour inspectors, employers in the private and public sectors and victim protection authorities. According to reports, the companies claim that they have adopted sexual harassment policies that were accessible to all employees, and frequently reviewed. If any such policies exist in practice, the hostile and intimidating workplace environment prevented the majority of the victims from reporting the abuse for fear of losing their jobs or retaliation from their abuser.

A similar challenge appeared to exist with the judiciary. In one case in 2021, the Malawi courts ruled in favour of an employee who had been sexually harassed. However, this is few

and far between. It is clear that women in general face challenges and obstacles accessing the courts in Malawi. For example, according to the statistics cited by a judge of the high court of Malawi, only 6.4 per cent – 358 out of 5,553 cases filed to the industrial relations court between 2012 and 2015 were filed by women applicants.

According to Article 8 of the Universal Declaration of Human Rights referred to in the preamble of Convention No. 111, everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him or her by the constitution or by law. We see an urgent need to review the extent to which women access the courts in Malawi in sexual harassment cases in particular.

Let me now cover anti-sexual harassment laws, and specifically the definition of sexual harassment contained in section 6(1) of the Gender Equality Act of 2013. This definition says that sexual harassment is an unwanted conduct of a sexual nature in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated. Already, in 2019, the Committee of Experts requested the Government to amend this definition to ensure that the term “reasonable person” in the definition of sexual harassment no longer refers to their harasser but to an outside person. Further, the Committee of Experts recommended to explicitly include in the definition of “sexual harassment” hostile work environment harassment. The Government must implement the Committee of Expert’s observations without further delay. The incomplete definition in the Gender Equality Act is a major setback in fighting gender-based violence and limits women’s access to justice in cases of sexual harassment. Further, we know that section 7 of the Gender Equality Act obliges the Government to ensure that employers have developed and are implementing appropriate policies and procedures aimed at eliminating sexual harassment in the workplace, which shall entitle all persons who have been subjected to sexual harassment at work to raise a grievance about its occurrence and be

guaranteed that appropriate disciplinary action shall be taken against perpetrators. This section also calls for a designated person, outside of line management, who could be approached by a person who has been subjected to sexual harassment for confidential advice and counselling. As the current court case litigated in the United Kingdom demonstrate, immediate action is needed to ensure that employers comply with the requirements enshrined in section 7 of the Gender Equality Act. At the same time, the Government should immediately increase the capacity of labour inspectors to prevent, identify and address cases of sexual harassment in employment and occupation. In doing so, the Government should ensure that labour inspectors are gender responsive, recognizing that women are disproportionately exposed to discrimination and violence at work. This can be achieved through the recruitment of more women labour inspectors and by introducing gender equality indicators for inspection. Businesses must themselves take up their obligations to respect labour and human rights at the workplace seriously.

Sexual harassment is a violation of the fundamental human right to non-discrimination. The Government of Malawi has failed to comply with the prohibition of discrimination in employment and occupation, including sexual harassment, contained in Convention No. 111. The Committee of Experts has concrete and practical requests for the Government of Malawi. The Government must take immediate and practical measures in line with these comments to ensure and implement a zero-tolerance policy towards gender-based violence, including sexual harassment. We welcome the intentions announced by the Government in the additionally provided information – that the Gender Equality Act and other gender-related national frameworks that pre-date Convention No. 190 need to be reviewed to bring them into line with this Convention, including the desire of ratifying Convention No. 190.

Employer members – This case involves the examination of the application in law and practice by Malawi of Convention No. 111. This is a fundamental Convention which Malawi

ratified in 1965. The case is double-footnoted. It is being examined by this Committee for the first time, although the Committee of Experts has previously made two observations, in 2019 and 2020.

The basis for the latest observation and the case coming before this Committee is mainly the allegations by the IUF that there is widespread sexual violence in the tea industry in Malawi and that the local legal framework is inadequate to address it and provide protection to female workers, as court action was initiated in the United Kingdom against Malawi companies and their associated companies in the United Kingdom.

The Committee of Experts noted these allegations from the union with serious concern and called on the Government to, among other things, conduct a gap analysis of the legal framework, identify initiatives taken to eliminate sexual harassment, provide information on the results of the evaluation, improve the capacity of competent authorities to address sexual harassment, continue with awareness-raising campaigns, provide information on the adoption of the sexual harassment and workplace policy in line with section 7 of the Gender Equality Act, consider amendments to section 6(1) of the Gender Equality Act to ensure that the definition of “reasonable person” goes beyond the harasser as well as broaden the definition of “sexual harassment” to explicitly include hostile work environment.

We thank the Government for the comprehensive information provided on 16 May 2022, which was also elaborated on by the representative of the Government of Malawi here today. This information helps this Committee in consideration of the case with relevant and up-to-date information.

We note that the Government disputes the allegations made by the IUF and that the Government has made efforts to establish the details of these allegations. We wonder, however, whether the Government has engaged or not the most representative employers’

organization in the country, the Employers' Consultative Association of Malawi (ECAM), in this regard.

The Government has highlighted a number of initiatives that are being undertaken by the Malawi Human Rights Commission, the Department of Human Resource Management and Development and employers in the tea plantations. These include, among others, assistance to public and private entities with their workplace harassment policies, awareness campaigns, targeted training for management and general staff in the tea plantations and inclusion of sexual harassment policies as part of induction programmes for new staff, as well as consultation with social partners to consider amendments to the Gender Equality Act, especially section 6.

We also note that the ILO is already providing financial and technical assistance to Malawi, which has enabled work to be undertaken to analyze any gaps in the national legal framework with a view to possibly ratifying Convention No. 190. We further note that the Government has also requested ILO technical assistance in respect of the Committee of Experts' recommendation to amend the definition of "reasonable person" to extend it beyond the harasser. We trust this assistance and engagement at the national level will lead to the harmonization of Malawi's legislation with international standards.

Employer members accordingly encourage the Government to continue addressing the legal issues with technical assistance from the ILO as far as necessary and to consult with its social partners. The Government is also encouraged to keep the Office informed of progress in this regard.

Worker member, Malawi (Mr NJOLOMOLE) – The Malawi Congress of Trade Unions (MCTU) which is the most representative organization of workers in Malawi, has noted the basis of the case relating to findings of the IUF report on issues of sexual harassment prevalent in

the tea sector and possibly in other sectors in Malawi. We have also taken note of the attempt by the Committee of Experts to raise issues as regards legislative gaps in our laws to address challenges of sexual harassment in the tea sector and possibly other sectors too.

MCTU could have appreciated if this case was also discussed at a national level before it was escalated to this level. However, we acknowledge the position taken by the Malawi Government in response to the issues raised in the findings of the IUF report and the identified legislative gaps. Our prayer in this regard, is for the Government of Malawi should endeavour to mobilize the tripartite partners, including our employer counterparts, to find common ground and take bold decisions to find lasting solutions to these emerging issues. True, this is in conflict with Convention No. 111 and the Safety and Health in Agriculture Convention, 2001 (No. 184).

We draw our strength from the guidelines provided through Convention No. 190 which would guide in crafting favourable legislation to tackle the challenge of violence and sexual harassment in the workplace. Therefore, we cannot bury our heads to reality and raise procedural and technical issues instead of taking bold steps towards ratification and domestication of Convention No. 190. We are confident that the ratification and domestication of Convention No. 190 will comprehensively address the identified technical misunderstandings in our legislations and align our legislations to international standards.

In this light, we use this opportunity as a workers' organization to request for support from ILO towards the ratification and domestication process of Convention No. 190 as a starting point and perhaps undertake more research and scaling up awareness measures in this regard.

Employer member, Malawi (Mr KHAKI) – ECAM, as the national employers' representative body, is involved through its affiliate, the Tea Association of Malawi, in

implementing initiatives in the tea industry to promote a decent and safe work environment for all workers, including women. ECAM has noted the report of IUF about cases of gender-based violence and harassment in the tea sector in Malawi and wishes to respond as follows:

At the international level, Malawi is a state party to several international human rights instruments, including those that are under the auspices of the ILO which deal with workers' rights. To this end, the Malawi Government ratified Convention No. 111 which it takes seriously. At the national level Malawi, among others, has enforced the following laws: The Republic Constitution, the Gender Equality Act of 2013, the Employment Act and the Revaluations Act which, among others, prohibit and criminalize discrimination and sexual harassment in the workplace and also provide statutory aggravated grievance-handling mechanisms. At the tea sector, the tea industry has over 60,000 employees at the peak period comprised both of permanent and seasonal employees, with 30 per cent of them being women. The industry is the second biggest former employer to the Malawi Government.

The tea association of Malawi's is an affiliate of ECAM and it is the representative body for all employers and producers in the tea industry in Malawi.

The tea industry has a gender equality, harassment and discrimination policy in place which came into force in 2017 and all members have adopted this. The policy and guidelines comply with the requirements of the Gender Equality Act and provide, educate and effective grievance-handling mechanisms. All 50,000 employees in this sector have been since trained and oriented on the policy, including its grievance-handling mechanisms. The industry has established at a state level various working committees which includes women's welfare committees and gender harassment and discrimination committees, which receive, deliberate and recommend redress. The tea industry has continuing sensitization programmes for all employees at all the levels.

ECAM and the tea association of Malawi continue to work with different partners, including the ILO, on the sustainable trade initiative to promote workers' rights including in relation to violence and harassment.

It has already been pointed out that the tea industry is inspected by the Government of Malawi through the Minister of Labour. The latest inspection was done under the leadership of the Honourable Minister of Labour. For an industry with over 60,000 workers, if such cases exist, they remain few and not on a scale that has been portrayed by IUF in its report. These are identified and sanctioned by laws.

In conclusion, ECAM denies the allegations of rampant sexual harassment in the tea industry. ECAM remains committed to improve measures for preventing gender-based violence and harassment, including adequate protection of victims. ECAM is also working with the investment climate reform facility to carry out a gap analysis that will provide evidence-based responses to challenges that exist at this point, and would appreciate ILO technical support.

Lastly, ECAM recognizes the right of IUF to report the matter through the ILO. It seriously notes with concern that it was not concerted nor informed of the issues as a social partner at the national level prior to the report that was submitted to the ILO. Good faith entails that social partners should be concerted at a national level.

Membre gouvernementale, France (M^{me} SALOMON-VALLENS) – J'ai l'honneur de m'exprimer au nom de l'Union européenne (UE) et de ses États membres. La République de Macédoine du Nord et l'Albanie, pays candidats, et l'Islande et la Norvège, pays de l'Association européenne de libre-échange (AELE), membres de l'Espace économique européen, s'alignent sur la présente déclaration.

L'UE et ses États membres s'engagent à promouvoir, protéger, respecter et réaliser les droits de l'homme, y compris les droits au travail.

Nous encourageons activement la ratification et la mise en œuvre universelles des normes internationales fondamentales du travail. Nous soutenons l'OIT dans son rôle indispensable d'élaboration, de promotion et de contrôle de l'application des normes internationales du travail ratifiées et des conventions fondamentales en particulier.

Le principe d'égalité et de non-discrimination est un élément fondamental du droit international des droits de l'homme. Dans les traités fondateurs de l'UE et les Constitutions des membres de l'UE, l'interdiction de la discrimination est un principe central. La convention n° 111 est la traduction de ce droit humain fondamental dans le monde du travail, de l'emploi et de la profession.

L'UE et ses États membres sont des partenaires de longue date du Malawi. Ce partenariat est encore renforcé dans le cadre de notre coopération avec l'Union africaine (UA) et la Communauté de développement de l'Afrique australe (SADC), ainsi que par l'inclusion du Malawi parmi les bénéficiaires du programme «Tout sauf les armes» (TSA) de l'UE pour les pays les moins développés.

Nous sommes gravement préoccupés par les observations de l'Union internationale des travailleurs de l'alimentation, de l'agriculture, de l'hôtellerie-restauration, du tabac et des branches connexes (UITA) qui décrit le problème systémique de la violence et du harcèlement fondés sur le sexe, y compris le viol et le harcèlement sexuel, dans les plantations de thé, auquel sont confrontées les femmes employées principalement dans le cadre de contrats saisonniers et donc précaires. Nous sommes également alarmés par les rapports faisant état de femmes victimes de harcèlement sexuel dans l'agriculture et d'autres secteurs.

Nous prenons note des efforts déployés pour enquêter sur les cas de harcèlement sexuel dans les plantations de thé, mais nous partageons pleinement les préoccupations de l'UITA quant au fait que le cadre juridique existant ainsi que les initiatives actuelles ne sont pas suffisants pour éradiquer la violence sexiste et le harcèlement sexuel dans les plantations de thé.

Nous exhortons le gouvernement, conformément au rapport de la commission d'experts, à entreprendre, en coopération avec les partenaires sociaux, une évaluation du cadre juridique existant sur le harcèlement sexuel et, en particulier, à modifier la définition du harcèlement sexuel dans la section 6(1) de la loi sur l'égalité des sexes de 2013 pour inclure explicitement le harcèlement dans un environnement de travail hostile, ainsi qu'à accroître la capacité des autorités compétentes, y compris les inspecteurs du travail, à prévenir, identifier et traiter les cas de harcèlement sexuel dans l'emploi et la profession, y compris dans les plantations de thé. En outre, les procédures et les recours dont disposent les victimes devraient être considérablement améliorés afin que justice soit rendue. Les mesures de prévention et les campagnes de sensibilisation au harcèlement sexuel dans l'emploi et la profession, menées en collaboration avec les partenaires sociaux, devraient également être renforcées. Compte tenu de la gravité de la question, nous encourageons également le gouvernement du Malawi à se prévaloir de la coopération technique du BIT.

L'UE et ses États membres se tiennent prêts, à la demande du gouvernement malawite, à fournir une assistance technique pour traiter les questions soulevées par l'UITA. Le Malawi reste l'un des pays prioritaires couverts par l'initiative Spotlight de l'UE et de l'ONU, un partenariat pluriannuel visant à éliminer toutes les formes de violence à l'égard des femmes et des filles lancé en septembre 2017. Dans le cadre de cette initiative, le Malawi a déjà bénéficié d'un financement de plus de 28 millions de dollars axé sur une stratégie de

prévention globale qui aborde les problèmes structurels de la violence basée sur le genre et les liens avec la santé et les droits sexuels et reproductifs.

L'UE et ses États membres restent attachés à leur coopération et leur partenariat étroits avec le Malawi et se réjouissent de poursuivre les efforts conjoints avec le gouvernement et l'OIT.

Government member, Mozambique (Mr MAVILA) –The Government of Mozambique would like to thank the representative of the Government of Malawi for the clarification provided regarding the issues raised by the Committee of Experts on the implementation of Convention No. 111.

The information delivered in this session demonstrates the respect that the Government of Malawi has for this Committee and its commitment to fully answer the questions raised. The Government of Mozambique congratulates the Government of Malawi for showing openness to clarify the scope of the concepts contained in the Malawian Gender Equality Act and for actions it has been taking to address sexual harassment in the workplace in general and in the agricultural sector and the tea industry in particular. The Malawian Government is committed to working with its social partners to promote the protection of workers and recognize that there is still room to improve its interventions in the prevention of violence and harassment in the workplace.

As a demonstration of this commitment, the Government of Malawi informed us that the ratification process of Convention No. 190 is under way. In this context, the Government of Mozambique encourages ILO technical assistance in creating conditions for the effective implementation of this Convention after its ratification.

Employer member, Botswana (Mr TSIMANYANA) – First of all, we must acknowledge the seriousness and importance of the women, both at society level and especially in the

workplace. Sexual harassment, indeed, does not have a place anywhere in our society. Every nation must strive for the protection of women and promotion of equality, equal opportunity and pay at work, and their safety, most importantly.

However, we have three observations on this case that we want to put across. First of all, the issue of dialogue, the need for technical assistance to establish, strengthen and promote the national structures, especially dialogue, to ensure that the tripartite structures are not a zero sum, must be emphasized here. Indeed, in the words of our Director-General who just left the Office, this is quite necessary.

The case in point demonstrates that there has not been any form of engagement or dialogue between the parties – which indeed cuts across our very fabric of our existence as the ILO.

Serious violations of the nature alleged by the workers' association between Government and employers alike must unite to establish the veracity of such allegations and ensure that they are dealt with correctly and decisively.

We observe that there has been an enactment of the Gender Equality Act in Malawi, which is in itself a huge milestone in achieving the very equality we want to promote if there is to be any inadequacies that are to be found. The tripartite parties must be the first to collectively engage to make sure that improvements are realized in the national structures of Malawi.

Substantive issues – it appears from the brief we have received that substantive issues have not been satisfactorily substantiated in this matter. These substantive issues, if put forward openly, should form the basis for improvement on procedures, policies, laws to prevent future recurrences. Most importantly, it appears from the brief, that the Government has done a lot in awareness campaigns, investigations, and other interventions and this, in itself, is commendable and must be applauded. We must be seen both in actions and

perception to be respectful of the sovereignty of the local, independent dispute resolution mechanisms. In this case, it shows that internally we have not exhausted all measures to get to the bottom of these issues.

Social dialogue must be encouraged for both parties to engage meaningfully on the matter and in this case, it would appear that there has not been any meaningful engagement at sectoral and national levels. We must only escalate issues to an international stage when these local remedies are either non-existent, ineffective or wilfully ignored and in this case, I see little effort from the parties to follow the said national guidelines and structures. It is not convincing here that the local remedies have not been thoroughly put to the test, thoroughly exhausted and have dismally failed.

Lastly, we note and observe that this matter has been double footnoted by the Committee of Experts in the classification status. Rightly so because of the serious nature of the violations of women's rights which we appreciate. But on the basis of what has been submitted so far on the floor in different fora, the classification has been a bit overboard. In this case, we firmly believe that this can be resolved at a national level and not at the stage where we are now.

Government member, Zimbabwe (Mr NGORIMA) – The Government of Zimbabwe appreciates the interventions made by other delegates especially the Workers' and Employers' groups. It also appreciates the information submitted by the Government of Malawi on the measures taken to address sexual harassment in general as requested by the Committee of Experts. Furthermore, it appreciates the measures that Malawi has been implementing to address sexual harassment against women in the tea industry with particular reference to policy guidelines and the establishment of committees mandated to deal with such issues among other initiatives.

We note that tripartite constituents within the subregion had the opportunity to discuss the issues which form the subject of the discussion of today during the Southern African Development Community (SADC) Employment and Labour Sector meeting held in March 2022.

In the deliberations during the said SADC meeting, the ILO Decent Work team in Pretoria offered to provide technical assistance through the engagement of social partners in Malawi with a view to finding a solution to the issues in question at national level.

Accordingly, we submit that the social dialogue framework in Malawi assisted by the ILO Pretoria Decent Work Team should be given the opportunity to engage and establish an agreed framework in dealing with the issues under discussion.

Government member, United Kingdom (Ms MATTANA-QUINN) – I am speaking on behalf of the United Kingdom and Canada.

The United Kingdom and Canada strongly support the imperative to end sexual harassment and violence in all its forms in the workplace. We firmly stand for individual freedom, humanity and dignity, including the rights of women and girls. The United Kingdom and Canada welcome efforts in Malawi to fight sexual harassment and promote gender equality.

Effective safeguarding in both the public and private sectors are prerequisites for service delivery and economic development. We encourage all stakeholders in Malawi to intensify these efforts and encourage Malawi to request technical assistance from the ILO to further address these issues.

The United Kingdom and Canada are supportive of the existing work of the Human Rights Commission of Malawi in this area and will look forward to engaging with the Government of Malawi, its institutions, social partners and the private sector through ILO mechanisms to address these concerns.

Government member, Zambia (Mr MUNTENGWA) – I am taking the floor on behalf of the Government of Zambia in its national capacity.

The Government of Zambia notes the information supplied by the Government of Malawi relating to the various observations of the Committee of Experts as contained in Report III(A).

Zambia takes special notice of Malawi's legal system and understands that it is a common law jurisdiction and that the term reasonable person is an unequivocal and well understood principle to infer the requirement for the application of an objective assessment or standard when used.

Zambia takes note of Malawi's commitment towards upholding tripartism to enhance protection of workers while acknowledging that there is scope to progressively and completely eradicate violence and harassment at workplaces.

Zambia especially notes, with admiration, information that the Government of Malawi has initiated the process of ratifying Convention No. 190 and implores the ILO to avail Malawi the support it craves for in this regard.

Government member, Eswatini (Mr SHABANGU) – My delegation would like to recall that Member States who ratify this Convention undertake to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminate any discrimination in respect thereof.

We would also like to draw the attention of the Committee to the provisions of Article 3 of the Convention which provides that the promotion of acceptance and observance of the national policy eliminating any discrimination shall be pursued, by methods appropriate to national conditions and practice, with the cooperation of employers' and workers' organizations and other appropriate bodies.

What we wish to underscore here is that this is a shared responsibility which requires that there should be a discussion with the social partners.

We have had occasion to consider the information that has been provided by the Government of Malawi both before the resumption of this Committee's sitting as posted on the Committee's webpage and the new information that has been presented by the Honourable Minister today. From the information supplied, we have taken note that, both through legislative and national policy instruments, Malawi has endeavoured to implement Convention No. 111 both in law and practice.

We also get the sense that there are serious intentions by the Government which are dedicated towards the full implementation of the Committee's comments. The Government expresses being amenable to initiating the requisite consultative engagements with regards to those recommendations requiring legislative reforms and is availing itself of the ILO's technical assistance in this respect and other areas of concern.

With the level of flexibility that has been demonstrated by the Government of Malawi, this delegation is of the considered view that technical assistance and support must be availed to the Government in order to address the areas of concern at a national level.

Worker member, Zimbabwe (Ms TURUVINGA) – I would want to highlight that this case was double footnoted hence its automatic selection for discussion by this Committee.

The double footnote alone speaks volume to the fact that the Government of Malawi has not been sincere for years in taking measures to address issues of discrimination in employment and occupation and, in particular, matters to do with sexual harassment and gender-based violence against women.

Allow me to highlight some of the social, human and economic impacts of sexual harassment. When someone is sexually harassed, it leaves them feeling so much threatened,

humiliated and patronized. This also creates a threatening and intimidating work environment that makes the harassed person scared to even go back to work. The social and human costs of sexual harassment can be very high and, in the worst cases women have committed suicide. Some families have divorced creating problems for children. In all cases, it makes victims' lives difficult, worse off if the matters have received publicity.

The society we live in tends to frown upon victims and at times victims are blamed or accused of having started it. Women who are harassed are always made to feel at fault, and if they complain they may be dismissed or lose even promotion prospects at the workplace or even forced to resign.

Sexual harassment also has a detrimental effect on the workplace itself. As it affects workers' morale, it makes them less efficient. Harassed people also suffer from mental stress and in countries like Malawi where there is limited support or where there are weak systems, or none at all, it is quite critical that the issue be looked at holistically.

If we are talking about decent work, then we must not allow acts of sexual violence in our society, as these deprive people of their dignity. Sexual violence in all forms of gender-based violence are a threat to equality, a threat to equal opportunities and a threat to safe, healthy, and productive working environments. We need to protect the dignity of our workers and stop creating threatening, hostile, insulting, humiliating or offensive situations in the workplaces.

Sexual harassment constitutes a violation of human rights and I call upon the Government of Malawi to go further than what they have done; to implement the recommendations of the Committee of Experts and create an enabling environment for its workers and the people of Malawi and it is quite critical that they also set an example for the SADC region itself.

Although this discussion is centred only on Malawi, I would also want to buttress the importance of this discussion to be mentioned in the African region where these problems of

gender-based violence and non-compliance with the Conventions are, and I hope the recommendations of this case will guide the entire SADC region and others at large.

Lastly, I call for the ratification of Convention No. 190 and its full implementation in the SADC region.

Miembro trabajadora, Brasil (Sra. Juneia Martins Batista) - El acoso y la violencia sexual contra las mujeres es una lacra que devasta la vida personal y profesional de millones de trabajadores en todo el mundo. Es incompresible y reprochable que el Gobierno de Malawi no se tome en serio sus obligaciones a este respecto y las recomendaciones de la Comisión en este sentido.

Por ejemplo, en una observación anterior, la Comisión solicitó al Gobierno que, entre otras cosas, adopte las medidas necesarias para implementar la estrategia sobre igualdad y diversidad en una política de gestión de los servicios públicos y, en particular, que adopte las medidas legislativas, ejecutivas y administrativas con este fin.

A este efecto, el informe de la Comisión de este año refiere que el Gobierno había informado, entre otras cosas, que la Ley de Servicios Públicos estaba siendo revisada a la luz de la Ley de Igualdad de Género, en colaboración con la Comisión Nacional de Derechos Humanos. Al respecto, la Comisión pidió al Gobierno que comunique información sobre el resultado de la revisión de la legislación en el sector público y las medidas adoptadas a este respecto. En su informe escrito el 16 de mayo de 2022, el Gobierno informa que la Comisión de Derechos Humanos de Malawi revisó proyectos de políticas de diversas instituciones con el fin de comprobar la coherencia con la Ley de Igualdad de Género. Entre los mismos, se revisó la política del Departamento de Gestión y Desarrollo de Recursos Humanos que cubre todo el servicio civil, que fue validada el 18 de mayo de 2022. Sin embargo, el Gobierno no aclara ni informa sobre la revisión de la Ley de Servicio Públicos a la que se refirió con anterioridad. El

Gobierno debe aclarar este punto y si no lo ha hecho, debe ajustar la Ley de Servicios Públicos a los estándares establecidos por la Ley de Igualdad de Género. Así también, en su informe escrito del 16 de mayo del 2022, el Gobierno expresa, con referencia a la recomendación de la Comisión de Expertos, que modificará la definición del acoso en la sección I de la Ley de Igualdad de Género de 2013 y consultará a las partes interesadas relevantes para considerar la recomendación. Sin embargo, recordamos que esta recomendación fue ya hecha por la Comisión en 2014, que de ello han pasado más de siete años sin que el Gobierno tomará medida alguna. Esto parece evidenciar que el Gobierno no se toma en serio ni sus compromisos internacionales, ni las recomendaciones de la Comisión. En estas circunstancias, ¿cómo podemos tomarnos en serio las actuales promesas del Gobierno de Malawi?

Por otra parte, es positivo que el Gobierno también desee ratificar el Convenio núm. 190 y que espera el apoyo técnico de la OIT. Esperamos que este apoyo se concrete; que, en consulta con los actores sociales, se ratifique este Convenio, y que se lo implemente en la práctica. Para ello también se necesita el compromiso firme y genuino de que el Gobierno va a asignar los recursos económicos suficientes para llevar a cabo la aplicación efectiva del Convenio núm.190 en la práctica.

Observer, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) (Mr BUKETOV) – In August 2021, the IUF, together with five national unions of Malawi which are affiliated to us – these are the unions which represent workers in hotel, food, catering, tobacco, sugar, commercial, industrial and plantations – jointly submitted an observation to the Committee of Experts bringing its attention to the fact that gender-based violence and harassment was endemic in tea plantations in Malawi. Women workers are the most affected and they are then unable to exercise their rights under Convention No. 111.

This observation was grounded on the information from the union members, ILO reports and research papers and the material, made public by the local and international media proving that sexual harassment is widespread in the tea sector of the country. There is massive evidence to the problem. I will quote just one more recent of them.

On 27 May 2022, four days ago, in an interview with Malawi News Agency, the Head of Coordination and Capacity Building of the National AIDS Commission said that in tea estates issues of sexual abuse are high. "Reports indicate that trading sex for favours is one of the factors contributing to high transmission of HIV and AIDS in different workplaces." Following this statement the Industrial Relations Secretary for the Tea Association of Malawi said "it is unfortunate to note that sex for work is still rampant in the estates".

These are the voices from Malawi.

The described situation concerns not only tea workers, but workers in agriculture and in other sectors are also subject to gender-based discrimination, violence and harassment. But I have to make a clarification. We never produced a report. We have never produced a public report and it is wrong to consider so our internal submission, basically the right which workers decided to exercise in this case to bring the issue internally into the ILO system for discussion. But it was not an attempt to publicly accuse the Government of anything. It was an offer to start a dialogue.

We welcome the response of the Government, which in detail explains the efforts undertaken in the country in dealing with the issues of discrimination. We appreciate the expressed commitment of the Government to continue working in this direction. We believe that this is the right attitude for the country whose economy is heavily dependent on the tropical commodities supply for the international market.

Nevertheless, we remain convinced that these initiatives of the Government and the existing legal framework are not sufficient to eradicate the systemic problem of gender-based violence and sexual harassment on tea plantations.

We regret to note that the provided response of the Government contains a misunderstanding of the intentions of the unions and does not cover the critical areas where immediate actions need to be taken with a view to eliminating discrimination.

The women victims deserve justice and security. The Government has an obligation to provide security for the victims and their families; but in this case, the Government failed even to establish the names of victims.

Sexual harassment is a challenge for the tea sector and, in this context, we would like to repeat our request for independent research to better understand the causes of gender-based violence on tea plantations, including work arrangements and non-standard forms of work which make women vulnerable.

Finally, we believe a tripartite meeting is needed with assistance from the ILO to engage all parties, including companies and unions, in the development of sectoral policies for the elimination of gender-based violence and discrimination.

Government representative, Malawi (Ms KAMTUKULE, Minister of Labour) – We maintain our position that the phrase “reasonable person” refers to an objective bystander and not the harasser, as intimated in the report and I want to explain a little bit regarding our position.

The considered view of the Government of Malawi is that contrary to the Committee’s observation, the term “reasonable person” is appropriate for the reason that it introduces an objective test in reference to an outsider, not the harasser. The term “reasonable person” is used by the courts in Malawi, in both criminal and civil cases. Reference to the harasser as

proposed by the Committee would introduce a subjective test approach to proving the offence under section 6, subsection 1 of the Gender Equality Act. The subjective test standard would require that the prosecution should prove the harassers real state of mind at the time of the commission of the offence, while the objective test would look at the circumstantial evidence surrounding the harassers conduct. Using the subjective test, a defendant can escape liability by simply showing that they did not intend to commit the offence. The objective test looks at the risk that the defendant took in pursuing their chosen step. It is thus easier to prosecute an accused person using the objective test than using the subjective test which the Committee prefers. Accordingly, sexual harassment can be decisively dealt with using the reasonable person test currently employed by section 6, subsection 1 of the Gender Equality Act, as opposed to the harasser's standpoint as suggested by the Committee. We, however, welcome any engagement so that we come to a common understanding of the interpretation, that may include adding clarity to this section.

The two cases commenced in a foreign jurisdiction cannot be used as evidence of concluding that there is rampant and widespread sexual harassment in the tea industry. The claim remains as an allegation, because as at this time, these have not been proven, nor has a judgment been issued by the court in the United Kingdom. Hence, at present, the case remains an unproven allegation which cannot reasonably form the basis of concluding that, therefore, there is widespread sexual harassment in the industry.

Secondly, apart from the reference to the case, no evidence or information on research or studies has been presented to the Government of Malawi, or its social partners, to substantiate the assertions being made by IUF. We therefore maintain that the assertions by IUF are a gross exaggeration, unfounded, incorrect, untrue and void of the reality on the ground.

Regarding the judicial system, the courts in Malawi are internationally renowned and in 2020, 25 of our Constitutional Judges were awarded the Chatham House Award. Such an international recognition would not have been awarded if our judicial system was inadequate as alleged. Additionally, the conclusions of our judicial system's inadequacy, which was manifestly bypassed in this case, should have been reached after efforts made to get justice from the same on the issue at hand had failed. Secondly, the low numbers of women litigants are not surprising considering that in percentage terms, woman employers are lower than men. However, this itself does not prove that the judicial system in Malawi is inadequate.

Regarding the exhaustion of national dialogue platforms, we join the MCTU and ECAM in that such allegations should have been discussed at national level with all the social partners, because, as a Government, we believe in social dialogue. Only if we had an impasse or a stand-off, only then should the matters have been escalated to this Committee. The case is continuing, and the courts have not made yet a ruling.

The tea industry has over 60,000 employees. It is the second largest employer in Malawi. I cannot begin to explain the impact of the industry on our economy and my submission to your Committee this evening is that the Government of Malawi will do everything it can to ensure that the rights of all workers, especially women, are safeguarded.

Regarding the information of the victims, like I said in my submission, the Government of Malawi does not have any information regarding the victims, but we only heard that about £3 million, if it is not dollars, was awarded to the victims, but we do not know how much of that money was allocated to the purported victims, and in that case, we cannot make any comment regarding that.

Employer members –The Employer members welcome the views shared by the delegates on this case. We note with concern however, that the allegations which form the basis for

today's discussion, were never brought to the attention of the social partners, especially ECAM. We believe this Committee should emphasize the importance of affording national structure and processes the opportunity to consider and remedy any allegations of breach of employees' rights.

From the information submitted by the Government and ECAM, the judicial system in Malawi is clearly capacitated to address any issues of alleged workplace harassment and violence.

Accordingly, we invite the Government to continue addressing the compliance issues in close consultation with the most representative employers' and workers' organizations and, where necessary, with technical assistance from the ILO and to keep the Office informed of progress achieved.

We also encourage the Government to continue all other efforts in Malawi to ensure the protection of men and women against sexual harassment and hostile work environments.

Worker members – We note the comments of the Government of Malawi. Applauding cannot silence the Committee of Experts' observation and its qualification of this case as a double footnoted one. The Government of Malawi has an obligation to respect international labour standards, including the prohibition of discrimination in employment and occupation and sexual harassment contained in Convention No. 111. The Worker members very concerned that women workers in Malawi are not protected from rape, sexual assault, sexual harassment, coercion and discrimination in the workplace and that they do not enjoy effective access to remedy in Malawi. These horrific cases and their persistence indicate that the established procedures in Malawi at the local and national levels are inadequate for victims of gender-based violence in the workplace while seeking to achieve justice and to ensure an end to sexual harassment on tea estates. The situation calls for immediate action, and instead of

being defensive, the Government of Malawi should cooperate. We call on the Government to undertake in cooperation with the organizations of workers and employers an evaluation of the existing legal framework on sexual harassment, and of the procedures and remedies available to victims, including a review of the extent to which women access the courts in Malawi. Such a review should aim at identifying existing gaps and risk factors and should result in designing effective intervention to strengthening the protection of women workers against sexual harassment. Such an assessment should then contribute towards reforming the judiciary if needed, and increase access to the courts by women to assert their rights, and their access to remedies, including compensation. We call on the Government to seek ILO assistance to increase the capacity of the competent authorities, including the labour inspectorate, and to prevent, identify and address cases of sexual harassment in employment and occupation in line with the Convention. We urge the Government to adopt a gender-responsive approach to labour inspection. We also call on the Government to take immediate and active measures in accordance with section 7 of the Gender Equality Act to ensure that employers have developed and are implementing appropriate policies and procedures aimed at eliminating sexual harassment in the workplace, which shall entitle all persons who have been subjected to sexual harassment in the workplace to raise a grievance about its occurrence and be guaranteed appropriate disciplinary action shall be taken against perpetrators. The Government should also provide information on the adoption of the sexual harassment workplace policy pursuant to section 7 of the Gender Equality Act and its implementation.

Lastly, the Government should continue undertaking awareness-raising campaigns in collaboration with the social partners and it should provide information on the results of the evaluation and the action envisaged as a follow-up. The Government of Malawi must implement in law and practice the concrete and practical comments of the Committee of Experts contained in the report.

El Presidente – Damos, entonces, por concluida la discusión de este caso. Las conclusiones de este caso serán adoptadas por la Comisión en la tarde del jueves 9 o en la mañana del viernes 10 de junio.

Discúlpenme, repito las conclusiones serán adoptadas en la tarde del jueves 9 o en la mañana del viernes 10 de junio.

Quiero informar a la Comisión que el documento D.0 (Rev. 2), con un cambio en el orden del examen de los casos individuales que fue aceptado por la Mesa, se ha publicado en la página web de la Comisión, les invito a consultar dicho documento.

La Comisión reanudará sus sesiones a las 11 de la mañana y examinará durante el día los siguientes casos individuales:

- Myanmar: Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87);
- Azerbaiyán: Convenio sobre la abolición del trabajo forzoso, 1957 (núm. 105), y
- República Centroafricana: Convenio sobre las peores formas de trabajo infantil, 1999 (núm. 182).

La séance est levée à 17 h 25.

Se levantó la sesión a las 17.25 horas.

The sitting closed at 5.25 p.m.