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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)

Written information provided by the Government

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.

Discussion by the Committee

Government representative (Minister of Labour) – The Government of Malawi notes the observations of the Committee of Experts and wishes to respond as follows. On the recommendation to amend the definition of sexual harassment, under section 6(1) of the Gender Equality Act (GEA), we find the 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 GEA requires employers to come up with workplace policies for the elimination of sexual harassment in their workplaces. There is also a dedicated public institution, the Malawi Human Rights Commission (MHRC), that is charged with the overall responsibility of implementing the Act. Among other functions, the MHRC promotes, protects and enforces the GEA 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 an umbrella body, 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 MHRC itself, the Malawi Congress of Trade Unions (MCTU) 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 Limited (TAML), has a sexual harassment policy in place which was adopted in 2017. Since then, a lot of awareness-raising across all levels of employees, ranging from top management down to estate labourers at the lowest level, has been conducted and is continuing. 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, for 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 TAML that purportedly led to the dismissal of 11 managers and supervisors on sexual harassment-related misconduct, denied ever having 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, Ethical Trade Consultancy, that the tea estate 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 (UK). 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 the 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 anonymity, 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 that may exist, whether in the law or in procedures.

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 blatantly wrong and quite unfortunate. The fact of the matter is that the UK-based law firm in the case prefers prosecuting cases in the UK for its own convenience. In the case of the Malawi tea sector, the court cases are proceeding only against UK-based parent companies of the two Malawi tea companies, which successfully submitted a challenge 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 through the courts are therefore both incorrect and unfounded.

There are numerous cases of 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 the UK will dismiss the claim on the basis that the UK 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 awareness-raising 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 foregoing 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. The 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 (GEA). 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 workplace. To this end, the Government of Malawi undertakes to continue working very closely with the social partners. The Government recognizes that the GEA 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 in order to enhance measures for preventing and addressing violence and harassment in the workplace. In this regard, therefore, the Government would appreciate the ILO's technical support.

Worker members – This is the first time that our Committee is discussing the application of Convention No. 111 with respect to Malawi. Malawi ratified the Convention 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 the fact that this case is being 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 (GEA) 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 a London court on behalf of 36 Malawian women who had 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 from 2014 to 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 suffering retaliation from their abusers.

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 of cases (358 out of 5,553) filed in 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 the Convention, 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 GEA of 2013. This definition says that sexual harassment is 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 the harasser but to an outside person. Further, the Committee of Experts recommended that the definition of “sexual harassment” should explicitly include hostile work environment harassment. The Government must implement the Committee of Expert’s observations without further delay. The incomplete definition in the GEA is a major setback in fighting gender-based violence and limits women’s access to justice in cases of sexual harassment. Furthermore, we know that section 7 of the GEA 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 demonstrates, immediate action is needed to ensure that employers comply with the requirements enshrined in section 7 of the GEA. 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 GEA and other gender-related national legal frameworks that predate Convention No. 190 need to be reviewed to bring them into line with this Convention, including the desire to ratify 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 (UK) against Malawian companies and their associated companies in the UK.

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 (GEA), consider amendments to section 6(1) of the GEA 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 harassment.

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 relevant and up-to-date information helps the Committee in consideration of the case.

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 (MHRC), the Department of Human Resource Management and Development (DHRMD), 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 GEA, 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 analyse 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.

The 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 – 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 gaps in our laws in order to address challenges of sexual harassment in the tea sector and possibly other sectors too.

The MCTU could have appreciated it if this case had also been discussed at a national level before it was escalated to this level. However, we acknowledge the position taken by the Malawian 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 that 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. It is true that this situation 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 by 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 legislation and align our legislation to international standards.

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

Employer member, Malawi – The Employers' Consultative Association of Malawi (ECAM), as the national employers' representative body, is involved through its affiliate, the Tea Association of Malawi Limited (TAML), in implementing initiatives in the tea industry to promote a decent and safe work environment for all workers, including women. ECAM has noted the IUF report 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 Government of Malawi ratified Convention No. 111, which it takes seriously. At the national level, Malawi, among others, has enacted the following laws: the Constitution of the Republic, the Gender Equality Act (GEA) of 2013, the Employment Act and the Labour Relations Act, which, among others, prohibit and criminalize discrimination and sexual harassment in the workplace and also provide statutory aggravated grievance-handling mechanisms. In the tea sector, the tea industry has over 60,000 employees at the peak period, comprising both permanent and seasonal employees, 30 per cent of whom are women. The industry is the second biggest formal employer after the Government.

The TAML 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 GEA and provide efficient and effective grievance-handling mechanisms. All 60,000 employees in this sector have since been trained and oriented on the policy, including its grievance-handling mechanisms. The industry has established at estate level various working committees which includes women's welfare committees and gender harassment and discrimination committees, which receive

complaints, deliberate on them and recommend redress. The tea industry has continuing awareness-raising programmes for all employees at all levels.

ECAM and the TAML continue to work with different partners, including the ILO and IDH-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 Ministry 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 the 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 the IUF to report the matter through the ILO. It seriously notes with concern that it was not consulted or 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 consulted at a national level.

Membre gouvernementale, France – J'ai l'honneur de m'exprimer au nom de l'**Union européenne (UE) et de ses États membres**. La **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 – 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 the Convention. The information delivered in this session demonstrates the respect that the Government of Malawi has for this Committee and its commitment to fully answering the questions raised. The Government of Mozambique congratulates the Government of Malawi for showing openness with regard to clarifying the scope of the concepts contained in the Malawian Gender Equality Act (GEA) 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 recognizes 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 indicated that the ratification process for Convention No. 190 is under way. In this context, the Government of Mozambique recommends ILO technical assistance in creating the conditions for the effective implementation of this Convention after its ratification.

Employer member, Botswana – First of all, we must acknowledge the seriousness and importance of 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 is just ending his term of 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 the very fabric of our existence as the ILO.

Regarding the serious violations of the nature alleged by the workers' association, the 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 the enactment of the Gender Equality Act (GEA) in Malawi, which is in itself a huge milestone towards achieving the very equality we want to promote if there is to be any inadequacies that are to be found. The tripartite actors 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 approached in this matter. These substantive issues, if put forward openly, should form the basis for improvement on procedures, policies and laws to prevent future recurrences. Most importantly, it appears from the brief, that the Government has done a lot in terms of awareness campaigns, investigations and other interventions; 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 the parties concerned 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 forums, the classification has been a bit excessive. 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 – 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 – 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 Malawi Human Rights Commission (MHRC) 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 – The Government of Zambia notes the information supplied by the Government of Malawi relating to the various observations of the Committee of Experts. 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 in the workplace. Zambia especially notes the information, with admiration, that the Government of Malawi has initiated the process of ratifying Convention No. 190 and implores the ILO to provide Malawi with the support it desires in this regard.

Government member, Eswatini – My delegation would like to recall that Member States which 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 eliminating 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 promotion of the acceptance and observance of the national policy for eliminating 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 underline here is that this is a shared responsibility which requires discussion with the social partners.

We have had occasion to consider the information that has been provided by the Government of Malawi before the resumption of the sitting of this Committee as posted on its 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 the Convention in both law and practice.

We also get the sense that the Government has serious intentions directed towards the full implementation of the Committee's comments. The Government indicates being amenable to initiating the requisite consultative engagements with regard 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 provided to the Government in order to address the areas of concern at a national level.

Worker member, Zimbabwe – 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 volumes regarding 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 extremely 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, and it is even worse 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 promotion prospects at the workplace or even be 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 or non-existent systems, it is quite crucial 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 and 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 crucial that they also set an example for the Southern African Development Community (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 throughout the African region, where these problems of gender-based violence and non-compliance with the Conventions exist, and I hope the recommendations of this case will guide the entire SADC region and others beyond it.

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

Worker member, Brazil – Sexual harassment and violence against women is a devastating blow to the personal and professional lives of millions of workers all over the world. It is unfathomable and reprehensible that the Government of Malawi is not taking seriously its obligations in that regard or the recommendations of the Committee on the matter.

For example, in a previous observation, the Committee asked the Government, among other things, to take the necessary steps to implement the strategy on equality and diversity in the public service management policy, and particularly to adopt legislative, executive and administrative measures to that end.

To that end, the Committee's report this year notes that the Government has stated, among other things, that the Public Service Act is being reviewed in light of the Gender Equality Act (GEA), in collaboration with the Malawi Human Rights Commission (MHRC). In that regard, the Committee asked the Government to provide information on the outcome of the review of the relevant legislation on the public sector and the actions taken in this respect. In its written information of 16 May 2022, the Government reports that the MHRC has reviewed the draft policies of various institutions to check consistency with the GEA. One of policies reviewed was that of the Department of Human Resource Management and Development (DHRMD), which covers the entire public service, which was validated on 18 May 2022. However, the Government does not explain or provide information about the review of the aforementioned Public Service Act. The Government must explain this point and, if it has not already done so, it must amend the Public Service Act to conform with the standards established by the GEA. In addition, in its written information of 16 May 2022, the Government, referring to the recommendation from the Committee of Experts, states that it will amend the definition of harassment in section 6(1) of the 2013 GEA and consult with the relevant stakeholders to consider the recommendation. However, we recall that the Committee made this recommendation back in 2014, so more than seven years have passed since then without the Government taking any steps at all. This appears to demonstrate that the Government is not taking either its international obligations or the recommendations of the Committee seriously. In these circumstances, how can we be expected to take the Government of Malawi's latest promises seriously?

On the other hand, it is a positive sign that the Government also wishes to ratify the Violence and Harassment Convention, 2011 (No. 190), and is looking forward to ILO technical support. We hope that this support will materialize and that, in consultation with the social

partners, this Convention is ratified and implemented in practice. This too requires a firm and genuine commitment from the Government to allocate sufficient financial resources to ensure the effective implementation of Convention No. 190 in practice.

Observer, International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) – In August 2021, the IUF, together with five national unions of Malawi which are affiliated to us – representing workers in the hotel, food, catering, tobacco, sugar, commercial, industrial and plantation sectors – 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 the Convention .

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

On 27 May 2022, in an interview with the 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," he added. Following this statement, a representative of the Tea Association of Malawi Limited (TAML) said, "It is unfortunate to note that sex for work is still rampant in the estates".

These are the voices from Malawi.

The situation described concerns not only tea workers; workers in agriculture and 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 our internal submission in this way; basically, workers decided to exercise the right 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 explains in detail the efforts undertaken in the country to deal with the issues of discrimination. We appreciate the stated 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 supply of tropical commodities 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 response provided by the Government contains a misunderstanding of the intentions of the unions and does not cover the critical areas where immediate action needs to be taken with a view to eliminating discrimination.

The women victims deserve justice and security. A person aggrieved because of sexual harassment need not exhaust internal procedures before civil proceedings can be instituted. 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 (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(1) of the Gender Equality Act (GEA). The subjective test standard would require that the prosecution should prove the harasser’s 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 harasser’s 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(1) of the GEA, 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 to conclude that there is rampant and widespread sexual harassment in the tea industry. The claims remain as an allegation because, at the present time, these have not been proven, nor has a judgment been issued by the court in the United Kingdom. Hence, at present, the allegations in the cases remain unproven, and this cannot reasonably form the basis for concluding that consequently there is widespread sexual harassment in the industry.

Secondly, apart from the reference to the cases, 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 the IUF. We therefore maintain that the assertions by the IUF are a gross exaggeration, unfounded, incorrect, untrue and devoid of reality on the ground.

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

Regarding the exhaustion of national dialogue platforms, we join the Malawi Congress of Trade Unions (MCTU) and the Employers’ Consultative Association of Malawi (ECAM) in

asserting that such allegations should have been discussed at national level with all the social partners because, as the 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 in question 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 today is that the Government of Malawi will do everything it can to ensure that the rights of all workers, especially women, are safeguarded.

Regarding information on the victims, the Government of Malawi does not have any information regarding the victims, but we only heard that about 3 million pounds (GBP), if it is not dollars (USD), was awarded to the victims, but we do not know how much of that money was allocated to the purported victims, and so we cannot make any comment in that regard.

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 the Employers' Consultative Association of Malawi (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 clearly has the capacity 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. Applause cannot silence the Committee of Experts' observation and its classification of this case as a double-footnoted one. The Government of Malawi has an obligation to respect international labour standards, including with regard to the prohibition of discrimination in employment and occupation and sexual harassment, as contained in the Convention. The Worker members are 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 remedies in Malawi. These horrific cases and their persistence indicate that the established procedures in Malawi at the local and national levels, while seeking to achieve justice and to ensure an end to sexual harassment on tea estates, are inadequate for victims of gender-based violence in the workplace. 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 have access to the courts in Malawi. Such a review should aim at identifying existing gaps and risk factors and should result in designing effective intervention to strengthen 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 for women, so that they can assert their rights, and also 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 (GEA) 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 have the guarantee that appropriate disciplinary action will 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 GEA 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.

Conclusions of the Committee

The Committee took note of the written and oral information provided by the Government representative and the discussion that followed.

The Committee noted with deep concern the trade unions' allegations of systematic sexual violence and harassment of women, including the rape, assault and discrimination suffered by women workers on tea and macadamia nut plantations.

Taking into account the discussion, the Committee urges the Government to take all necessary measures, in consultation with the social partners, to:

- **ensure existing legislation on sexual harassment is in line with the Convention;**
- **organize dedicated tripartite discussions on the issue of sexual harassment and violence in the workplace with a view to taking further practical and concrete measures to ensure the effective protection of workers in this regard in law and in practice;**
- **ensure effective access to and the effective functioning of national judicial and non-judicial mechanisms that consider allegations of breach of workers' rights on grounds of discrimination, including sexual harassment and violence, and provide adequate legal remedies to victims;**
- **continue supporting existing initiatives undertaken by the Malawi Human Rights Commission and the Department of Human Resources Management and Development, including awareness-raising campaigns and the dissemination of the Sexual Harassment Workplace Policy and related guidelines to ensure that employers develop and implement effective workplace harassment policies.**

The Committee urges the Government to continue to avail itself of ILO technical assistance to ensure full compliance with the Convention.

The Committee requests the Government to submit a report to the Committee of Experts by 1 September 2022 with information on the application of the Convention in law and practice, in consultation with the social partners.

Government representative – The Government of Malawi notes the observations of the Committee. As a woman and the Minister responsible for labour in the Government of Malawi, I can commit here before the entire Committee that we shall endeavour to promote and protect the rights of all workers, including women workers from violence and harassment. We reiterate our position as submitted in our oral and written submissions. We will continue to work with our social partners to implement the recommendations made by the Committee. We also welcome the technical support from the ILO and the donor community.

The Government of Malawi will submit its report within the stated timelines.