

---

**REPORT ON THE SECOND**  
*Employment and  
Labour Relations*  
**ANNUAL SYMPOSIUM  
AND EXHIBITION (ELRASE II)**

---

**DATE:**

15th-17th September, 2024

**VENUE:**

THE UNIVERSITY OF NAIROBI CHANDARIA AUDITORIUM

**THEME:**

THE ROLE OF THE EMPLOYMENT AND LABOUR RELATIONS  
COURT IN FOSTERING THE RIGHT TO A WORLD OF WORK  
FREE FROM VIOLENCE AND HARASSMENT INCLUDING  
GENDER BASED VIOLENCE AND HARRASSMENT

**SUB-THEME:**

MAINSTREAMING ILO CONVENTION 190 (C190) AND  
RECOMMENDATION 206 (R 206)



Social Transformation  
through Access to Justice





## FOREWORD BY THE **CHIEF JUSTICE**

Following the promulgation of the Constitution of Kenya 2010, the Judiciary embarked on a transformative journey to ensure justice is not only accessible but also people-centred. The Constitution heralded a new era for the Judiciary by elevating the Employment and Labour Relations Court to the status of a superior court, with a specialised mandate to adjudicate disputes related to employment and labour relations.

The Employment and Labour Relations Annual Symposium and Exhibition (ELRASE) provides a critical platform for the Court to engage in meaningful discourse on emerging issues within the employment and labour relations sector. It serves as a forum for addressing the most pressing challenges affecting workers and employers alike.

Through initiatives such as ELRASE II, stakeholders and organisations have been able to address issues like workplace violence and harassment, with the overarching goal of ensuring that workers' rights and freedoms are fully protected.

We also look forward to Kenya's ratification of ILO Convention No. 190, which will provide valuable insights to help harmonise and strengthen labour sector policies, ensuring a more inclusive and equitable work environment for all.

**Hon. Justice Martha K. Koome, EGH**  
**Chief Justice and President of the Supreme Court**  
**of Kenya**



## MESSAGE FROM THE **PRINCIPAL JUDGE**

The second Employment and Labour Relations Court Annual Symposium and Exhibition (ELRASE II) focused on the role of the Employment and Labour Relations Court (ELRC) in fostering the right to a world of work free from violence and harassment, including gender-based violence and harassment. The Symposium aimed to encourage the ratification and mainstreaming of the ILO Convention 190 (C190) and Recommendation 206 (R206).

Gender-based violence encompasses a wide range of behaviours that inflict or are likely to inflict physical, sexual, psychological, or economic harm or suffering on a person. It includes threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life. Within the world of work, gender-based violence further includes violence or harassment in the confines of the workplace, during working hours, while commuting to and from work, and in social activities.

The ELRC recognises these diverse manifestations of gender-based violence and harassment and their profound impact in the world of work. Subsequently, the Court is committed to encouraging stakeholders and the government to work towards fostering a workplace free from such abuses. The Court looks forward to the ratification of these groundbreaking international labour standards, whose impact is far-reaching even without ratification.

Moving forward, we hope that the relevant stakeholders will keep their word to collectively dedicate their efforts towards ratifying and mainstreaming ILO C190 and R206.

**Hon. Mr. Justice Byram Ongaya**  
**Principal Judge, Employment and Labour Relations Court**



## ACKNOWLEDGMENTS BY THE CHIEF REGISTRAR OF THE JUDICIARY

I take this opportunity to celebrate with the Employment and Labour Relations Court as it commemorates 12 years since its establishment in 2012. The milestones achieved by the Court in transforming the employment and labour relations sector have underscored the importance of addressing violence and harassment in the world of work and have greatly provided a critical foundation aimed at ensuring that all workers enjoy their rights without fear of harassment or violence. This has undoubtedly been a result of the highly consultative and collaborative process culminating in the Employment and Labour Relations Annual Symposium and Exhibition II (ELRASE II).

I wish to acknowledge the Hon. Chief Justice Martha K. Koome, and the Hon. Deputy Chief Justice Philomena Mbete Mwilu for their steadfast and supportive leadership that provided the framework for the administration of justice, which in turn was a driving force for the realization of ELRASE II.

I thank the Hon. Principal Judge Byram Ongaya for his effective stewardship of the team that was involved in the preparation for the ELRASE II. The symposium presented a valuable platform for legal professionals, scholars and stakeholders to engage in meaningful dialogue on Convention 190, particularly our pursuit as a country to a world of work free from harassment and violence.

I am grateful to the panellists and the discussants for their insightful contributions, which will undoubtedly influence Kenya's ratification of Convention 190. I am thankful to the Registrar of the Employment and Labour Relations Court (ELRC), Hon. Kennedy Kandet and the Judiciary staff, for their hard work and dedication in making this symposium possible. I also wish to acknowledge the stakeholders, notably, the Law Society of Kenya (LSK), Ministry of Labour and Social Protection, Central Organization of Trade Unions (COTU - K), the Federation of Kenya Employers (FKE), the Constitutional Commissions and Independent Offices, the International Labour Organization - ILO and Nairobi University for dedicating their time in the planning and organization of the symposium and exhibition.

**Hon. Winfridah Bonayi Mokaya,  
Chief Registrar of the Judiciary**



## EXECUTIVE SUMMARY

With a limited legal framework addressing violence and harassment in the workplace, it was deemed necessary to examine the role of the Employment and Labour Relations Court in fostering a world of work free from violence and harassment. This highlighted the urgent need to fast-track the domestication and implementation of the International Labour Organisation's Convention 190 (C190) and Recommendation 206 (R206). This report captures the deliberations from the second Employment and Labour Relations Annual Symposium and Exhibition (ELRASE II) that brought together stakeholders.

The symposium aimed to explore the interpretation, implementation, and practical impact of C190 and R206 within the Kenyan context. It also sought to examine the legislative and policy gaps that may hinder full domestication, promote integration of the principles of C190 and R206 into workplace culture, and raise awareness of global best practices through comparative analysis. In addition, the event provided a platform for stakeholder feedback and showcased innovations, productivity and service delivery initiatives.

The symposium comprised four roundtable discussions, each focused on critical aspects of ILO C190 and R206, with emphasis on their relevance and implementation within the Kenyan context.

**Round Table 1** centred on understanding the scope of Convention 190 and Recommendation 206, and the extent to which these instruments are reflected in the Kenyan Constitution, statutes, and policies. The discussions addressed the scope and provisions of C190 and R206, the constitutional framework for incorporating international law, and statutory provisions that implement these standards. Particular attention was given to the role of the National Gender Equality Commission (NGEC) in promoting and advocating for the ratification of C190 and R206. Panellists explored the statistical prevalence of workplace harassment and the diverse sectors affected, highlighting existing legal gaps in the definitions, scope, and enforcement mechanisms. Key issues raised included the need to ensure individual, not just institutional, accountability and to broaden protections across all forms of employment. Recommendations called for the labour sector to develop customised measures for vulnerable groups, such

as domestic workers, migrant workers, night workers, and gig economy workers, and to adopt gender-responsive education. The need to broaden the definition of harassment to match the comprehensive standard in C190, extend coverage from "employees" to "workers" as per Article 41 of the Convention, revise the 20-employee threshold for implementing sexual harassment policies, and recognise emerging risks such as digital privacy violations was also emphasised. Finally, participants underscored the urgency of ratifying C190 before the 2026 deadline and called for institutionalised monitoring mechanisms through regular audits and assessments.

**Round Table 2** focused on the manifestation, lived experiences, and mainstreaming of C190 and R206. Deliberations highlighted the various forms and prevalence of violence and harassment in the workplace, sector-specific challenges, and gaps in current policy and legislative frameworks. Institutional efforts to address harassment were acknowledged, but it was noted that cultural and societal barriers, particularly patriarchal norms and resistance to change, continued to undermine progress toward a harassment-free world of work. The panellists stressed the importance of aligning the ratification and domestication of C190 and R206 with local systems, realities, and experiences. Recommendations included strengthening legal and policy frameworks, undertaking institutional reforms, and building capacity through training. The creation of safe, inclusive, and responsive workplaces through trusted and confidential reporting mechanisms, investment in both qualitative and quantitative data collection, and adequate resource allocation for effective policy implementation were also prioritised.

**Round Table 3** examined Kenyan and comparative jurisprudence related to C190 and R206, highlighting the emerging legal principles supporting the right to a world of work free from violence and harassment, including gender-based violence. Despite Kenya not having ratified C190, it was noted that courts had proactively interpreted and applied its principles in several decisions. Commendably, it was noted that some rulings had even adopted broader definitions of harassment to include bullying, verbal abuse, intimidation, retaliation, and exclusion. Comparatively, South African jurisprudence was noted for incorporating vicarious liability where employers fail to address workplace harassment.

Discussions also acknowledged the complex issue of third-party liability—for instance, harassment perpetrated by clients, students, or others not formally employed by the organization. Recommendations from this roundtable included the adoption of gender-responsive and human rights-based approaches to handling harassment claims, development of clear guidelines on employer accountability, capacity building for judicial and institutional actors, clarification of third-party liability, and the codification of vicarious liability to ensure institutional responsibility for employee misconduct.

**Round Table 4** concentrated on best practices for fostering a world of work free from harassment and violence. It was noted that many countries were still in the process of developing effective frameworks around best practices. That notwithstanding, several country-specific initiatives were highlighted, such as Canada's workplace behaviour change programs supported by its Harassment and Violence

Prevention Fund; Zimbabwe and Lesotho's integration of GBV measures into occupational safety and migration policies; and Australia's imposition of positive obligations under its Sex Discrimination Act. Panellists also examined workplace factors that exacerbate harassment, such as denial of opportunities, stereotyping, cultural attitudes, and abuse of authority. Emphasis was placed on the need for continuous review of harassment policies to reflect evolving societal dynamics, and on simplifying communication, including the use of vernacular languages, to enhance understanding and accessibility. The discussions further advocated for sociocultural transformation beginning at the family level and the adoption of holistic, multidisciplinary approaches to building and sustaining respectful and dignified work environments.

At the end of the symposium, the Joint Court Users Committee of the Employment and Labour Relations Court endorsed an official communiqué detailing the resolutions and recommendations for future action.



## LIST OF CASES

*P O v Board of Trustees, A F & 2 others [2014] eKLR*

*N M L v Peter Petrausch [2015] eKLR*

*S R M v G S S (K) Limited & another [2017] eKLR*

*CNR v FITM & another (Respondent) (Cause E204 of 2021) [2022] KEELRC 82 (KLR) (26 April 2022)*

*Winnie Treezer Ochieng v Label Craft (K) Ltd [2021] eKLR*

*Lydiah Mongina Mokaya v St. Leonard Maternity & Nursing Limited [2019] eKLR*

*Mwangi vs Director of Public Prosecutions & another; JNM (Interested Party) (Petition E118 of 2023) [2024] KEHC [7282] (KLR) (14 June 2024)*

*Purity Karimi & another v Republic [2020] eKLR KEHC 3969 (KLR) (Criminal Appeal 48 of 2019)*

*Ondieki v Maeda (Petition E153 of 2022) [2023] KEHC 18290 (KLR) (Constitutional and Human Rights) (31 May 2023)*

*Kirui v Ekaterina Tea Kenya PLC (Employment and Labour Relations Cause E013 of 2023) (2024) KEELRC 1747(KLR) (9<sup>th</sup> July 2024)*

*JWN v Securex Agencies(K) Limited [2018] eKLR*

*Dominic Ooko & Another v SRM & 2 Others (2022) KECA 44 (KLR)*

*Muikamba v Radio Africa Group Limited [2023] KEELRC 1251 (KLR)*

*Sankale v Masai Mara University; Transparency International Kenya & 2 others (Interested Parties) (Employment and Labour Relations Petition E097 of 2021) [2024] KEELRC 1741 (KLR) (5 July 2024)*

*CMK v Chandarana Supermarket Limited (Cause 13 of 2018) [2024] KEELRC 388 (KLR) (26 February 2024) (Judgment)*

*Githura v Safaricom Limited [2023] KEELRC 2684 (KLR)*

*Munyandu vs. Padayachi (2016) 4 All ER SA 110*

*Moos vs. Makgoba (2022) JOL 54225*

*Roy v. Correct Care Solutions LLC (2019)*

*Foy v Department of Justice and Constitutional Development and others [2023] eKLR*

*Munyandu vs. Padayachi (2016) 4 All ER SA 110 and Moos vs. Makgoba (2022) JOL 54225*

*Andrese & 182 others v Meta Platform, Inc & 3 others; Kenya Human Rights Commission & 8 others (Interested Parties) (Constitutional Petition E052 of 2023) (2023) KEELRC 3381(KLR) (7<sup>th</sup> December 2023)*

*Amathole District Municipality v Commission for Conciliation, Mediation and Arbitration and Others (PA9/2018) [2022] ZALAC 119; (2023) 44 ILJ 109 (LAC); [2023] 2 BLLR 103 (LAC) (10 November 2022)*



## ACRONYMS

**CBA** - Collective Bargaining Agreement

**CLEAR** - The Committee of Experts on the Application of Conventions and Recommendations

**STAJ** - Social Transformation through Access to Justice

**ILO** - International Labour Organisation

**ILC** - International Labour Conference

**ELRC** - Employment and Labour Relations Court

**ELRASE** - Employment and Labour Relations Annual Symposium and Exhibition

**GBV** - Gender Based Violence

**GBVH** - Gender Based Violence and Harassment

**EEOC** - Equal Employment Opportunity Commission

**KNBS** - Kenya National Bureau of Statistics

**CEDAW** - Convention on the Elimination of All Forms of Discrimination against Women

**WIBA** - Work Injury Benefits Act

**LRA** - Labour Relations Act

**IAWJ-K** - International Association of Women Judges Kenya Chapter

**OSHA** - Occupational Safety and Health Act

**TSC** - Teachers Service Commission

**FKE** - Federation of Kenya Employers

**DOSH** - Directorate of Occupational Safety and Health Services

**C190** - Violence and Harassment Convention

**R206** - Violence and Harassment Recommendation, 2019

**UON** - University of Nairobi

**LSK** - Law Society of Kenya

**EYA** - Employer of the Year Award

**TVET** - Technical and Vocational Education and Training

**EU** - European Union

**ORS** - Office Romance Syndrome

**COVID 19** - Corona Virus Disease

**KIPPRA** - Kenya Institute for Public Policy Research and Analysis

**NGEC** - National Gender & Equality Commission

**TABLE OF CONTENTS**

**FOREWORD**..... III

**MESSAGE FROM THE PRINCIPAL JUDGE** ..... IV

**ACKNOWLEDGMENTS**..... V

**EXECUTIVE SUMMARY**..... VI

**LIST OF CASES** ..... VIII

**ACRONYMS**..... IX

**TABLE OF CONTENTS**..... X

**CHAPTER ONE** ..... 1

**1 INTRODUCTION**..... 2

    1.1 Development of the Concept Paper ..... 2

    1.2 Rationale and Objectives of the Symposium ..... 2

    1.3 Structure and approach to deliberations at the Symposium ..... 2

        1.3.1 Thematic Areas ..... 2

    1.4 Establishment of Committees ..... 2

    1.5 Identification of venue for the event ..... 3

    1.6 Participants ..... 3

    1.7 Pre-ELRASE II Activities ..... 3

    1.8 Resource Mobilization and Funding..... 3

    1.9 Publicity and Coverage of the event..... 5

    1.10 Curtain Raiser Webinar ..... 5

    1.11 Corporate Social Responsibility (CSR)..... 5

    1.12 Launch of ELRC Policy Documents..... 5

    1.13 Exhibition and Assessment of exhibition Stands..... 5

    1.14 Protocol and Security ..... 5

    1.15 Gifting of branded items and issuance of policy documents ..... 5

**CHAPTER TWO** ..... 6

**2. OPENING CEREMONY**..... 7

**2.1 Welcoming Remarks** ..... 7

    2.1.1 Prof. Winifred W. Kamau; Dean, School of Law, UoN ..... 7

    2.1.2 Mr. Mwaura Kabata, Vice President, LSK ..... 7

    2.1.3 Mr. Dickens Mitawia Ouma, Ag. Head of Industrial Relations, Legal & Membership Services, FKE ..... 8

    2.1.4 Brother Benson Okumu Okwaro, MBS, Deputy Secretary General, COTU (K) ..... 10

    2.1.5 Ms. Amanda Mejía Cañadas, International Labour Standards & Labour Law Specialist..... 10

    2.1.6 Mr. Thomas Okoth Koyier, EBS, Ag. Chairperson, National Gender & Equality Commission (NGEC)..... 11

    2.1.7 Hon. Mr. Justice Byram Ongaya, EBS, Principal Judge, ELRC ..... 12

    2.1.8 Hon. Dr. Alfred Mutua, EGH, Cabinet Secretary, Ministry of Labour & Social Protection ..... 12

    2.1.9 The Keynote Address by Hon. Justice Martha K. Koome, EGH, Chief Justice & President  
         of The Supreme Court of Kenya ..... 13

**CHAPTER THREE**..... 16

<b>3 SESSION 1.....</b>	<b>17</b>
<b>3.1 TOPIC 1: RECAP OF EMPLOYMENT AND LABOUR RELATIONS ANNUAL SYMPOSIUM AND EXHIBITION, 2023.....</b>	<b>17</b>
<b>3.2 TOPIC 2: HISTORICAL GENDER AND SOCIO-ECONOMIC PERSPECTIVES ON VIOLENCE AND HARASSMENT AT WORK, INCLUDING GENDER-BASED VIOLENCE AND HARASSMENT. ...</b>	<b>17</b>
<b>CHAPTER FOUR.....</b>	<b>21</b>
<b>4. ROUND TABLE 1.....</b>	<b>22</b>
<b>THEMATIC AREA:UNDERSTANDING THE SCOPE OF CONVENTION 190, RECOMMENDATION NUMBER 206 AND THE EXTENT THEY ARE PROVIDED FOR IN THE KENYA CONSTITUTION, STATUTES AND POLICIES .....</b>	<b>22</b>
<b>4.1 TOPIC 1: SCOPE AND PROVISIONS OF C190 AND R.206 .....</b>	<b>22</b>
4.1.1 Panelist: Ms. Irene Kashindi, Member of ILO’s Committee of Experts on the Application of Conventions and Recommendations .....	22
<b>4.2 TOPIC 2: CONSTITUTIONAL PROVISIONS INCORPORATING C190 &amp; R.206 .....</b>	<b>24</b>
4.2.1 Presenter: Hon. Lady Justice Hellen Wasilwa, Judge of The Employment and Labour Relations Court .	24
4.2.2 TOPIC 3: STATUTORY PROVISIONS IMPLEMENTING C190 AND R206 UNDER THE KENYAN LAW.....	25
4.2.3 Presenter: Dr Melissa Muindi, Academic Director at Strathmore University.....	25
<b>4.3 TOPIC 4: THE ROLE OF THE NATIONAL GENDER EQUALITY COMMISSION IN CONVENTION NO.190 RECOMMENDATION NO. 206 .....</b>	<b>27</b>
4.3.1 Presentation by Ms. Tabitha Nyambura, Head of Gender and Women Division, The National Gender and Equality Commission (NGEC) .....	27
4.3.2 Presentation by Ms. Winfred Wambua on The Role of National Gender and Equality Commission (NGEC).....	27
4.3.3 Discussant: Ms Amanda Mejia Cañadas, International Labour Standards and Labour Law Specialist ..	29
<b>CHAPTER FIVE.....</b>	<b>30</b>
<b>5 ROUND TABLE 2 .....</b>	<b>31</b>
<b>5.1 THEMATIC AREA: MANIFESTION, EXPERIENCES AND MAINSTREAMING OF CONVENTION 190(C190) AND RECOMMENDATION 206 (R.206).....</b>	<b>31</b>
5.1.1 Presenter: Ms Florah Munyasa, Assistant Director, Legal Labour and Industrial Relations, Teachers Service Commission.....	31
5.1.2 Presenter: Brother Benson Okwaro, Deputy Secretary General COTU(K).....	31
5.1.3 Presenter: Mr. Dickens Ouma, Federation of Kenya Employers.....	31
5.1.4 Presenter: Mr. Kephias Odhiambo, Deputy Chief Industrial Relations Officer, Ministry of Labour and Social Protection .....	31
5.1.5 Presenter: Ms. Linda Oluoch, Chief Executive, Kenya Tea Growers Association.....	31
5.1.6 Presenter: Ms. Diana Maina on behalf of Ms. Jennifer Wachira, Legal Manager Kenya Agricultural Employers Association (AEA). .....	32
5.1.7 Presenter: Ms. Ann Ireri, Executive Director, Federation of Women Lawyers.....	32
5.1.8 Presentation: Dr. Annette Mbogo, Executive Director, Kituo Cha Sheria.....	32
5.1.9 Presenter: Ms. Winfred Wambua Gender and Inclusion Expert, National Gender and Equality Commission.....	33

5.1.10 Discussant: Ms. Valentina Beghini, Legal Specialist- Violence Harassment, and Non-Discrimination ILO Geneva.....	33
5.1.11 Discussant: Dr. Elizabeth Muli, Senior Lecturer and Chairperson Department of Commercial Law, University of Nairobi.....	33
<b>5.2 SESSION 2:.....</b>	<b>34</b>
<b>TOPIC: COMPARATIVE INTERNATIONAL STATUS REPORT ON IMPLEMENTATION OF C190 AND R206 .....</b>	<b>34</b>
5.2.1 Presenter: Ms. Amanda Mejia Canadas, International Labour Standards and Labour Law Specialist .....	34
5.2.2 Plenary Session.....	36
<b>CHAPTER 6 .....</b>	<b>37</b>
<b>6 ROUND TABLE 3 .....</b>	<b>38</b>
<b>6.1 THEMATIC AREA: KENYAN AND COMPARATIVE JURISPRUDENCE AROUND CONVENTION 190 AND RECOMMENDATION 206 .....</b>	<b>38</b>
<b>TOPIC: EMERGING JURISPRUDENCE ON THE RIGHT OF EVERY PERSON TO A WORLD OF WORK FREE FROM VIOLENCE AND HARASSMENT INCLUDING GENDER-BASED VIOLENCE AND HARASSMENT UNDER ILO CONVENTION 190.....</b>	<b>38</b>
6.1.1 Presentation by Honourable (Dr.) Justice Jacob Gakeri.....	38
6.1.2 Presentation by Ms. Judith Guserwa, Advocate.....	39
6.1.3 Presentation by Dr. Naomi Nyawira Njuguna .....	39
6.1.4 Discussant 1 - Ms. Amanda Mejia Canadas .....	40
6.1.5 Discussant 2 - Ms. Lucy Kambuni.....	40
<b>CHAPTER 7.....</b>	<b>42</b>
<b>7 ROUND TABLE 4 .....</b>	<b>43</b>
<b>7.1 THEMATIC AREA: BEST PRACTICES TOWARDS A WORLD OF WORK FREE FROM HARRASSMENT AND VIOLENCE INCLUDING GENDER BASED VIOLENCE .....</b>	<b>43</b>
7.1.1 Presentation by Ms. Ida Chimedza.....	43
7.1.2 Presentation by Honourable Lady Justice Hellen Omondi, Judge of Appeal, President International Association of Women Judges Kenya Chapter (IAWJ-K). .....	45
7.1.3 Presentation by Mr. Wesley Kipngetch, Deputy Director of Ethics and Governance -Public Service Commission.....	46
7.1.4 Discussant: Honourable Prof. Margaret Kobia, PHD, EGH, Chancellor, St Paul's University .....	47
<b>CHAPTER 8 .....</b>	<b>49</b>
<b>8 CLOSING CEREMONY .....</b>	<b>49</b>
<b>8.1 Remarks by Hon. Kennedy Kandet, Registrar, ELRC .....</b>	<b>50</b>
<b>8.2 Remarks by Hon. Justice Byram Ongaya, Principal Judge, ELRC.....</b>	<b>51</b>
<b>8.3 Hon. Justice George Vincent Odunga, Judge, Court of Appeal.....</b>	<b>51</b>
<b>8.4 Remaks by Mr. Shadrack Mwangolo Mwadime, CBS, Principal Secretary Labour and Skills Development, Ministry of Labour and Social Protection.....</b>	<b>51</b>
<b>8.5 Signing of the Communique .....</b>	<b>53</b>
<b>9 ANNEXES .....</b>	<b>54</b>
<b>9.1 ANNEX 1.....</b>	<b>55</b>
<b>REPORT ON THE NAIROBI EMPLOYMENT AND LABOUR RELATIONS COURT OPEN DAY HELD ON 22ND JULY, 2024 AT MILIMANI LAW COURTS PARKING. ....</b>	<b>55</b>

<b>9.2 ANNEX 2.....</b>	<b>60</b>
<b>REPORT ON THE NAIROBI EMPLOYMENT AND LABOUR RELATIONS COURT; INNS OF COURT, 2024 HELD AT MILIMANI LAW COURTS CEREMONIAL HALL ON 22/07/2024 AT 2.00PM. ....</b>	<b>60</b>
<b>9.3 ANNEX 3 .....</b>	<b>74</b>
<b>REPORT ON ELRASE 2 CURTAIN RAISER WEBINAR HELD VIRTUALLY ON 13TH SEPTEMBER, 2024 FROM 2:30 PM.....</b>	<b>74</b>
<b>9.4 ANNEX 4 .....</b>	<b>84</b>
<b>SOME OF THE ACTUAL SPEECHES AT ELRASE PRECONFERENCE ACTIVITIES.....</b>	<b>84</b>
9.4.1 Keynote Address by Hon. Lady Justice Martha Koome, EGH, Chief Justice and President of the Supreme Court of Kenya.....	84
9.4.2 Open Day Speech by Hon. Justice Byram Ongaya, Principal Judge ELRC.....	87
9.4.3 Remarks by Hon. Shadrack Mwadime, EBS, Principal Secretary, State Department for Labour and Skills Development, Ministry of Labour and Social Protection.....	98
<b>9.5 ANNEX 5.....</b>	<b>100</b>
<b>PROGRAMME .....</b>	<b>100</b>
<b>9.6 ANNEX 5.....</b>	<b>107</b>
<b>PARTICIPANTS .....</b>	<b>107</b>
<b>9.7 ANNEX 6 .....</b>	<b>121</b>
<b>PROFILES OF RESOURCE PERSONS.....</b>	<b>121</b>
<b>9.8 ANNEX 7.....</b>	<b>163</b>
<b>MEMORANDA FROM CONSTITUTIONAL COMMISSIONS AND INDEPENDENT OFFICES.....</b>	<b>163</b>
9.8.1 Ministry of Labour and Social Protection.....	163
9.8.2 State Department for Gender and Affirmative Action.....	174
9.8.3 Federation of Kenya Employers.....	176
9.8.4 Independent Electoral and Boundaries Commission (IEBC).....	181
9.8.5 National Police Service Commission .....	186
9.8.6 Kenya Prisons Service .....	195
9.8.7 Independent Policing Oversight Authority .....	197
9.8.8 Commission on Administrative Justice.....	212
9.8.9 Kenya Private Sector Alliance.....	216
9.8.10 Safaricom PLC .....	219
<b>9.9 ANNEX 8.....</b>	<b>222</b>
<b>SOME OF THE ACTUAL SPEECHES AT THE ELRASE OPENING CEREMONY .....</b>	<b>222</b>
9.9.1 Keynote Address by Hon. Lady Justice Martha Koome, EGH, Chief Justice and President of the Supreme Court of Kenya.....	222
9.9.2 Remarks by Hon. Dr. Alfred Mutua, Cabinet Secretary, Ministry of Labour and Social Protection .....	234
9.9.3 Remarks by Hon. Justice Byram Ongaya, Principal Judge, ELRC.....	234
9.9.4 Welcome Remarks by Prof. Margaret Jesang Hutchinson, Vice Chancellor of the University of Nairobi .....	237
9.9.5 Speech by Mr. Mwaura Kabata, Vice President of the Law Society of Kenya.....	240
9.9.6 Remarks by Ms. Jacqueline Mugo, EBS, CEO Federation of Kenya Employers .....	247
9.9.7 Remarks by Ms. Caroline Khamati Mugalla, ILO Director, Country Office, Dar es Salaam .....	249

9.9.8 Remarks by Mr. Thomas Koyier, EBS, Ag. Chairperson, National Gender and Equality Commission .....	257
<b>9.9 ANNEX 9</b> .....	<b>260</b>
<b>SOME OF THE ACTUAL PRESENTATIONS BY PANELISTS AND DISCUSSANTS DURING THE</b>	
<b>ROUND TABLE SESSIONS</b> .....	<b>260</b>
9.10.1 Roundtable 1 Presentations.....	260
9.10.2 Roundtable 2 Presentations .....	272
9.10.3 Roundtable 3 Presentations .....	282
9.10.4 Roundtable 4 Presentations .....	288
<b>9.11 ANNEX 10</b> .....	<b>294</b>
<b>SOME OF THE ACTUAL SPEECHES AT THE CLOSING CEREMONY</b> .....	<b>294</b>
9.11.1 Closing Remarks by Hon. Shadrack Mwadime, EBS, Principal Secretary, State Department for Labour and Skills Development, Ministry of Labour and Social Protection.....	294
9.11.2 Closing Remarks by Bro. Ben Okwaro, Deputy Secretary General, COTU .....	300
<b>9.12 ANNEX 11</b> .....	<b>307</b>
<b>EXHIBITION REPORT</b> .....	<b>307</b>
<b>9.13 ANNEX 3</b> .....	<b>310</b>
<b>ELRASE II COMMUNIQUE</b> .....	<b>310</b>
9.13.1 Joint Communique for the Second Employment and Labour Relations Annual Symposium and Exhibition (ELRASE II).....	310
<b>9.14 ANNEX 3</b> .....	<b>318</b>
<b>ELRASE II PICTORIALS</b> .....	<b>318</b>
<b>ELRASE II PROCEEDINGS LINKS</b> .....	<b>334</b>
<b>ELRC POLICY DOCUMENTS LAUNCHED DURING ELRASE II</b> .....	<b>334</b>



# C hapter 1



## 1 INTRODUCTION

### 1.1 Development of the Concept Paper

The college of the Employment and Labour Relations Court (ELRC) Judges approved the preparation of the Concept Paper on ELRASE II. The Concept Paper was subsequently shared with and approved by the Hon. Chief Justice. A road map was drawn outlining the intended activities, deliverables and timelines to guide in the preparation of the symposium.

### 1.2 Rationale and Objectives of the Symposium

The rationale of the symposium was on mainstreaming ILO Convention No. 190 and Recommendation No. 206 with the following objectives:

- i. Promote awareness on the scope, content, and application of ILO Convention No. 190 on the right of every person to a world of work free from violence and harassment, including gender-based violence and harassment.
- ii. Share manifestations of violence and harassment in the world of work.
- iii. Share emerging jurisprudence on the right of every person to a world of work free from violence and harassment, including gender-based violence and harassment.
- iv. Provide a forum for workers and entrepreneurs to give feedback on initiatives taken against violence and harassment at work.
- v. To exhibit on manifestations and prevention of violence and harassment at work.

### 1.3 Structure and approach to deliberations at the Symposium

The sessions of the symposium included a mix of keynote addresses and moderated panel discussions on thematic areas by experts from the International Labour Organization and practitioners from academia, the Law Society of Kenya, Judges, social partners, development partners, independent commissions and offices, county government departments, civil society organizations, among others. The conversations were intended to share experiences on gender-based violence in various workplaces.

### 1.3.1 Thematic Areas

The thematic areas included:

- i. Understanding the scope of Convention No. 190, Recommendation No. 206 and the extent they are provided for in the Kenyan Constitution, Statutes and policies;
- ii. Manifestation, experiences and mainstreaming of Convention No. 190 by sector;
- iii. Kenyan and comparative jurisprudence around Convention No. 190; and,
- iv. Best practices towards a world of work free from harassment and violence, including gender-based violence and harassment.

### 1.4 Establishment of Committees

During the inaugural Employment and Labour Relations Annual Symposium (ELRASE), the Principal Judge of the court established various committees to spearhead the preparation of the Symposium. The Committees included; Planning Committee, Technical Rapporteur and Reporting Committee, Resource Mobilization Committee, Procurement Committee, Pre-Conference Activities Committee and Protocol and Security Committee.

In line with the Resolutions of the Planning Committee, the Registrar Employment and Labour Relations Court established a Technical Committee to spearhead and plan for the ELRASE II. Further, the Technical Committee was required to implement various resolutions and recommendations emanating from the Planning Committee.

### 1.5 Identification of venue for the event

Through involvement of the court's stakeholders, the University of Nairobi was identified as the venue for the holding of ELRASE II. This was informed by the need to partner with the academia recognizing the important role played in development of the Kenyan Jurisprudence.

### 1.6 Participants

428 delegates attended ELRASE II from various parts of the country and different sectors. The participants comprised of various stakeholders drawn from organizations and institutions, including: the Employment and Labour Relations Court, the Judiciary, Ministry of Labour and Social Protection, Central Organization of Trade Unions (COTU)(K), Federation

of Kenya Employers (FKE), Law Society of Kenya, Kenya Law Reports, Institute of Human Resource Management, Ethics and Anti-Corruption Commission, Media Council of Kenya, Public Service Commission, Teachers Service Commission, National Police Service Commission, Kenya National Human Rights and Equality Commission, Office of the Director of Public Prosecution, National Land Commission, Commission on Revenue Allocation, Kenya Tea Growers Association, Kenya Agricultural Employers' Association, The International Commission of Jurists, Kituo Cha Sheria, Federation of Women Lawyers (FIDA), University of Nairobi, Moi University, Mount Kenya University, Kenyatta University, Strathmore University, Riara University, Jomo Kenyatta University of Science and Technology, Kenya Bankers Association, Ministry of Public Service and Human Capital Development, Kenya Civil Aviation Authority, Salaries and Remuneration Commission, IDLO, KEPISA, KAM, Attorney General, International Labour Organisation (ILO), Commission on Administrative Justice, National Gender Commission, Inter Religious Council of Kenya, Law Reform Commission, County Governments, National Council for People with Disabilities, Equality Now, Judiciary Leadership Advisory Committee, State Corporations Advisory Committee, Court Users Committee, Bar Bench Committee, and the International Association of Women Judges-Kenya Chapter.

The participants were categorised as delegates, panellists, session chairs, discussants, security & protocol, rapporteurs, and exhibitors. Since the event was live-streamed, the participants not physically present followed the sessions virtually on the Judiciary YouTube and Facebook pages.

### **1.7 Pre-ELRASE II Activities**

The Planning Committee developed and approved the budgetary requirements for the symposium. Due to budgetary constraints on funds by the Government of Kenya through the Judiciary Authority to Incur Expenditure (AIE), the Committee resolved to reach out to the various stakeholders for donations to fund the deficit. The funding included IDLO printing 200 copies of the Conciliation Training of Trainers (TOT) Manual, and the ILO providing technical assistance through availing ILO experts for the symposium sessions, and developing the ELRASE II Programme.

Through the involvement of the Court's stakeholders, the University of Nairobi was identified as the venue for the holding of ELRASE II. This was informed by the need to partner with academia, recognising the important role played in the development of the Kenyan Jurisprudence.

In the build-up to ELRASE II, the ELRC also undertook various activities and initiatives, including Open Days, Inns of Court, TV and Radio show appearances, Newspapers infomercials, a Curtain Raiser Webinar, and an outreach at the ACK St. Nicholas Children's Home.

### **1.8 Resource Mobilization and Funding**

The Planning Committee developed and approved the budgetary requirements for the Symposium. Due to budgetary constraints on funds by the Government of Kenya through the Judiciary Authority to Incur Expenditure (AIE), the Committee resolved to reach out to the various stakeholders for donations to fund the deficit.

Below is a table of the pledges and donations received and the status of honoring the pledges;

S/N	FORM OF PLEDGE	LIST OF DONORS								
		ILO	FIDA	COTU	KUIDHEIHA	K.T.G	FKE	KITUO CHA SHERIA	TSC	STAKEHOLDER DEPOSIT FROM ELRASE I
1.	Publicity/ Merchandise	2,689,013	-	-	-	-	-	-	-	-
2.	Cash Donations	650,000	171,500	500,000	100,000	50,000	250,000	260,000	400,000	1,400,000
	<b>Total</b>	<b>3, 339,013</b>	<b>171,500</b>	<b>500,000</b>	<b>100,000</b>	<b>50,000</b>	<b>250,000</b>	<b>260,000</b>	<b>400,000</b>	<b>1,400,000</b>
	<b>Honored Pledges</b>	<b>2,689,013</b>	<b>-</b>	<b>500,000</b>	<b>100,000</b>	<b>50,000</b>	<b>-</b>	<b>-</b>	<b>400,000</b>	<b>1,400,000</b>
	<b>Outstanding Amount</b>	<b>650,000</b>	<b>171,500</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>250,000</b>	<b>260,000</b>	<b>-</b>	<b>-</b>

The planning committee developed an itemized budget of Kshs. 8, 774,023 that was to be funded as per the table below;

FY 2024/25 ITEMIZED ELRASE BUDGET													
EMPLOYMENT AND LABOUR RELATIONS COURT													
Code	Code Particular	Kshs	GOK	ILO	KITUO CHA SHERIA	COTU	FKE	KUDHEIHA	FIDA	K.T.G	TSC	STAKEHOLDER DEPOSITS	TOTAL
2210301	Travel Costs (airlines, bus, railway, mileage allowances, etc.)- Domestic	80,000.00	80,000.00										
2210302	<del>Accommodation</del> Domestic	1,370,000.00	1,370,000.00										
2210303	Daily Subsistence Allowance - Domestic	360,000.00	360,000.00										
2210502	Publishing and Printing Services	300,000.00	300,000.00										
2210504	Advertising, Awareness and Publicity Campaigns	2,989,013.00	300,000.00	2,689,013									
2210802	Boards, Committees, Conferences and Seminars	3,169,960.00	788,460.00	650,000	260,000	500,000	250,000	100,000	171,500	50,000	400,000		
2211201	Stakeholder Deposits	305,050.00										305,050.00	
	Refined fuels lubricants for transport	200,000.00	200,000.00										
	<b>TOTAL</b>	<b>8,774,023</b>	<b>3,398,460</b>	<b>3,339,013</b>	<b>260,000</b>	<b>500,000</b>	<b>250,000</b>	<b>100,000</b>	<b>171,500</b>	<b>50,000</b>	<b>400,000</b>	<b>305,050.00</b>	<b>8,774,023.00</b>

The procurement of goods and services for ELRASE II was partially conducted by the Employment and Labour Relations Court, the International Labour Organization (ILO) and the International Development Law Organization (IDLO) as follows;

S/NO.	ORGANIZATION/INSTITUTION	ITEM (S) PROCURED
1.	Government of Kenya through the Judiciary	<ul style="list-style-type: none"> <li>» Conference Facilities</li> <li>» Live Streaming &amp; Public Address Services</li> <li>» Publicity services-Informercials on KTN Television and Newspaper strips on Nation and Standard Newspaper.</li> <li>» Dummy books and rotating tables for the launch of policy documents</li> <li>» Printing of ELRASE II Programme</li> <li>» Judiciary branded flags</li> <li>» Award certificates for the exhibition</li> <li>» Entertainment (Kayamba Africa and Prison Band)</li> </ul>
2.	International Labour Organization (ILO)	<ul style="list-style-type: none"> <li>» Branded T-shirts</li> <li>» Printing of the ELRC (Procedure) Rules</li> <li>» Branded Caps</li> <li>» Branded Gift Bags</li> <li>» Branded Banners</li> <li>» Lanyards and cards</li> </ul>
3.	International Development Law Organization (IDLO)	<ul style="list-style-type: none"> <li>» Printing 200 copies of the ELRC Conciliation Manual</li> </ul>

Further, the International Labour Organization (ILO) supported the symposium by providing technical assistance through availing ILO experts who facilitated the sessions as discussants and panellists. In addition, the Organization played a key role in development of the ELRASE II Programme.

### 1.9 Publicity and Coverage of the event

In publicizing the Symposium, the following activities were undertaken;

S/NO	DESCRIPTION	DATES UNDERTAKEN
1.	Talk show for ELRASE II at Spice FM	12 <sup>th</sup> September, 2024
2.	Curtain Raiser Webinar on Convention 190	13 <sup>th</sup> September, 2024
3.	Standard and Nation Newspaper Strips	16 <sup>th</sup> September, 2024
4.	KTN TV informercials	15 <sup>th</sup> & 16 <sup>th</sup> September, 2024
5.	Judiciary Social Media Platforms I.e. X, Facebook, Instagram	During the event on 16 <sup>th</sup> and 17 <sup>th</sup> September 2024
6.	Judiciary Website, YouTube and SMS	During the event on 16 <sup>th</sup> and 17 <sup>th</sup> September 2024
7.	Marching Procession with Police Band	16 <sup>th</sup> September, 2024

### 1.10 Curtain Raiser Webinar

This was held on 13<sup>th</sup> September 2024 on the topic 'Conceptualizing and Contextualizing Harassment and Gender based Violence in the workplace in Kenya: Current Issues and Stakeholder Perspectives'.

The webinar was hosted by Hon. Justice Mathews N. Nduma, moderated by Dr. Stephen Aming'a from Jkuat School of Law while Dr. Naomi Njuguna from UON Faculty of Law played the role of a discussant.

Eleven (11) Panelists were drawn from various stakeholders of the court to wit; Federation of Kenya Employers, Central Organization of Trade Unions (COTU), Ministry of Labour and Social Protection among others.

### 1.11 Corporate Social Responsibility (CSR)

On Sunday, 15<sup>th</sup> September, 2024, the Employment and Labour Relations Court team lead by the Honourable Principal Judge held a community outreach at the ACK St. Nicholas Children's Home where they interacted and gifted the children.

### 1.12 Launch of ELRC Policy Documents

On the first day of the symposium, the Hon. Chief Justice launched three policy documents: The Employment and Labour Relations Court (Procedure) Rules, 2024, Conciliation Training of Trainers (TOT) Manual, and the ELRC Registry Operations Manual.

The new Court Rules, gazetted vide *Kenya Gazette Notice No. 133 of 16<sup>th</sup> August, 2024*, were necessitated by the need to incorporate emerging issues such as virtual court sessions, e-service, divisions of the Court, among others.

The TOT Manual was developed with support from the IDLO to enhance the use of conciliation in the labour relations sector.

The ELRC Registry Operations Manual, developed to standardize the Court's activities across its registries, had been reviewed to incorporate emerging issues such as e-filing.

### 1.13 Exhibition and Assessment of exhibition Stands

Fifteen organizations were invited to exhibit, however, only eight exhibited. The exhibition booths were provided by the University of Nairobi at a cost of Kshs.15,000 per booth. Dr. Arthur Gitonga, a Judge from the Agricultural Society of Kenya led in assessment of the exhibition stands.

The three best performing stands were recognized and awarded with certificates.

They were;

1. Federation of Kenya Employers
2. Employment Labour and Relations Court
3. National Council for Law Reporting

### 1.14 Protocol and Security

Twenty Police Officers from the Judiciary Police Unit provided security before and during ELRASE II. Protocol services were offered by the Judiciary protocol staff.

### 1.15 Gifting of branded items and issuance of policy documents

The procured items which included branded t-shirts, branded caps, branded bags and the launched policy documents were gifted to various participants who attended the symposium.



# C hapter **2**

## 2 OPENING CEREMONY

### 2.1 Welcoming Remarks

The Symposium commenced with an official opening session graced by the Honourable Chief Justice Martha K. Koome who gave the keynote address. The Cabinet Secretary, Ministry of Labour and Social Protection, Hon. Dr. Alfred Mutua, EGH, also made his remarks.

Opening remarks were also made by the Dean School of Law, University of Nairobi (UoN), Prof. Winifred W. Kamau, on behalf of Prof. Margaret Jesang Hutchinson, Vice Chancellor of the University of Nairobi; Mr. Mwaura Kabata, Vice President of the Law Society of Kenya; Mr. Dickens Ouma on behalf of Ms. Jacqueline Mugo, EBS, CEO Federation of Kenya Employers (FKE); Bro. Benson Okwaro, MBS on behalf of Dr. Francis Atwoli, NOM (DZA), EBS, MBS Secretary General of the Central Organization of Trade Unions (COTU); Ms. Amanda Mejia Canadas on behalf of Ms. Caroline Khamati Mugalla-ILO Director, Country Office, Dar es Salaam; Mr. Thomas Koyier, EBS, Ag. Chairperson, National Gender and Equality Commission (NGEC) and the Employment and Labour Relations Court (ELRC) Principal Judge Hon. Justice Byram Ongaya.

The session was moderated by Mr. Duncan Okello, Commissioner, Kenya Law Reform Commission.

#### 2.1.1 Prof. Winifred W. Kamau; Dean, School of Law, UoN

Prof. Winifred Kamau welcomed the participants to UoN and the 2<sup>nd</sup> Employment and Labour Relations Annual Symposium and Exhibitions (ELRASE II). She noted that as an esteemed institution of higher learning in Kenya's public sector, the University is honoured to serve as a key stakeholder and partner of the Judiciary, especially the ELRC.

She stated that the academic discourse on pertinent issues faced by the ELRC especially concerning workplace harassment and violence will contribute significantly to this endeavour.

She noted that work is not merely a means of earning a living; it is a fundamental prerequisite to economic stability and survival, not only for individuals but also for their families and communities. Anything that threatens access to work hinders socioeconomic progression and individuals' well-

being. Therefore, it is important to note that the creation of a work environment free of harassment and violence cannot be overstated, as these issues directly threaten the dignity and economic advancement of workers.

She added that the right to a workplace free from violence and harassment is enshrined in the Kenyan Constitution, various international instruments, and domestic laws. In line with the commitment to combat violence and harassment in the workplace, the University has implemented a comprehensive Harassment Prevention and Procedure Policy, which provides an anonymous reporting system and enshrines procedures for fair hearings and remedial actions against perpetrators.

Further, UoN engages in regular sensitization campaigns to raise awareness among stakeholders on the importance of a safe workplace and has established a Gender Based Violence Recovery and Resource Centre at its health services.

Additionally, its various faculties, particularly the Faculty of Law, play a proactive role in public sensitization, including initiatives like legal aid days. The university also collaborates with staff unions to ensure complaints of violence and harassment are addressed promptly and effectively in line with its workplace policies.

She stated that the University stands in solidarity with its partners and stakeholders advocating for Kenya's ratification of ILO Convention 190 accompanied by Recommendation 206, the first international treaty addressing the elimination of workplace violence and harassment.

She noted that it is essential that we leverage on this symposium to reinforce our collective resolve to make ideals a tangible reality. Through collaboration and commitment to policy change, we can foster an environment that honours the rights of every worker and beyond.

#### 2.1.2 Mr. Mwaura Kabata, Vice President, LSK

Mr. Mwaura Kabata represented the Law Society of Kenya President, Ms. Faith Odhiambo. He began by commending ELRC for organizing the symposium under the theme "The Role of the Employment and Labour Relations Court in Fostering the Right to a World of Work Free from Violence and Harassment, Including Gender-Based Violence and Harassment." The theme reflects not only the progressive nature of our courts but also

the continued commitment of all stakeholders to protect human dignity, advance labor rights, and foster a safer work environment for every Kenyan.

He congratulated ELRC for organizing this symposium, which is significant as it builds on the incredible foundation laid during the inaugural symposium held last year, which marked 11 years since ELRC was established under the Constitution of Kenya. He noted that over the years, this Court has established itself as a pillar of justice in labor relations, developing jurisprudence that has shaped and safeguarded the labor rights of countless Kenyans.

He continued stating that LSK appreciates the centrality of this year's theme, which highlights the urgent need to mainstream ILO Convention 190 and Recommendation 206 into Kenya's domestic legal framework, as violence and harassment, particularly gender-based violence and harassment, remain grave challenges in the world of work. This symposium, therefore, provides an invaluable platform to examine the local and comparative jurisprudence on this matter, as well as explore sector-based experiences on how to better implement these international standards.

He commended the Judiciary's efforts to highlight these issues, which reflect its leadership in advancing human rights in the workplace. He expressed confidence that this symposium will not only contribute to a stronger legal framework but will also spur the adoption of best practices in tackling violence and harassment in every industry and sector in Kenya.

Mr. Kabata stated that these discussions come at a crucial time when stakeholders across various sectors must engage in collective action to eliminate workplace violence and harassment. He noted that the insights and deliberations shared here will be critical in strengthening our national commitment to protecting workers, promoting gender equality, and ensuring a safe work environment for all.

He noted that the launching of key policy documents during this symposium—the Employment and Labour Relations Court (Procedure) Rules, 2024, the Conciliation Manual for the Employment and Labour Relations Court, and the Registry Operations Manual—marks another important step in advancing the rule of law and enhancing efficiency within

the Court. The documents represent significant strides in ensuring that justice is delivered efficiently and effectively, and LSK looks forward to seeing how they will positively impact the administration of labor justice in Kenya.

He further stated that the Court has played a critical role in shaping labour jurisprudence in Kenya with respect to protecting the rights of vulnerable workers and fostering industrial harmony.

He concluded by thanking the Court for its tireless efforts in promoting justice, fairness, and dignity in the workplace and on behalf of LSK and the legal fraternity, pledged their continued support and collaboration to further these goals.

### **2.1.3 Mr. Dickens Mitawia Ouma, Ag. Head of Industrial Relations, Legal & Membership Services, FKE**

Mr. Dickens Ouma conveyed the congratulatory messages from the family of employers through FKE, as well as its secretariat, to ELRC for ELRASE II. He noted that ELRC has made tremendous steps in the last 13 years through a robust engagement in emerging issues that affect the world of work. These issues include harassment and violence including gender-based violence at the workplace, which is one of the major challenges at the workplace globally.

He stated that harassment and violence are multi-faceted as it is perpetrated in the course of, linked with, or arising out of work. It is also wide enough to be seen in the context of mostly between employees themselves, either as between a senior employee in a management position and against employees in lower positions, or between employees in the same rank. It can similarly be discerned and usually manifests itself at the point of recruitment, promotions, or generally career growth, or in day-to-day operations, particularly where it is connected to favours, enhanced remuneration, or generally benefits to be awarded to victims.

He continued to state that the FKE, being a major player in the IOE, chaired a session in the run-up to the adoption of C190 on 21<sup>st</sup> June, 2019, in Geneva. At the time, some of the key issues that were highlighted and which ultimately formed the pillars of the declaration of a workplace free from harassment and violence included;

- 1) Establishment of the right of everyone to a world of work free from violence and harassment, including gender-based violence and harassment;
- 2) A comprehensive definition which covers a wide range of unacceptable behaviours and practices that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm;
- 3) The scope of the application – in terms of covering public and private, and to all workers irrespective of their contractual status. This includes workers in both formal and informal sectors, trainees, interns, volunteers, job seekers, and employees exercising managerial responsibilities;
- 4) Preventive Measures: Members are required to adopt laws and regulations to prevent violence and harassment in the workplace;
- 5) Provision of support, services and remedies for victims of violence and harassment, including complaint mechanisms, dispute resolution, and access to justice;
- 6) Training and Awareness: It emphasizes the importance of training and awareness-raising activities to prevent violence and harassment in the workplace; and
- 7) Monitoring and Enforcement: Members are required to ensure effective monitoring and enforcement of national laws and regulations related to violence and harassment in the workplace.

He noted that Convention 190 is a landmark treaty aimed at creating safer and more respectful workplaces globally which was adopted 5 years ago, however, it has not been ratified nor domesticated in Kenya.

Mr. Dickens Ouma pointed that the scope of section 6 of the Employment Act dealing with Sexual Harassment is not wide enough to cover the various manifestations that harassment and violence including gender-based violence entail as it deals with just one form of harassment.

He observed that ELRASE II would for the first time initiate structural conversations involving major stakeholders giving different perspectives on the issue of harassment and violence including gender-based violence at the workplace. Some of its members who have first-hand experience with

harassment and violence at the workplace and given an opportunity they will share their experiences and measures they are putting in place to counter such challenges.

He noted that workplace harassment and violence, including gender-based violence, is a complex silent problem as it goes to the root of the social dynamics of employer – employee relationship. These issues carry cultural inhibitions to be freely talked about as they are perceived as taboo subjects, including gender-based violence. Therefore, this calls for creation of awareness on what constitutes harassment and violence at the workplace and the extent of its manifestation. Statutory and constitutional places an obligation on the shoulders of employers, including but not limited to;

- Creating a safe work environment free from hazards including harassment and violence
- Putting in place anti-harassment and anti-violence policies that cover the substantive antecedents taking the form of confidentiality, protection and sanctions against perpetrators.
- Training and education geared to recognizing, preventing and addressing harassment and violence including sanctions to perpetrators.
- Reporting mechanisms which are accessible, confidential and involve multiple channels.
- Prompt, thorough and impartial investigations.
- Proper documentation of complaints, investigations and training sessions.

He noted that based on the above, ratification is one thing, but domesticating and implementing C190 is a different thing altogether, as there is need for an overall change in the country's mind set, and relooking our value systems as a prerequisite.

He encouraged participants to focus on collaboration and partnership instead of blame game when dealing with incidences of harassment and violence, including gender-based violence. It is only then that we shall cultivate strong values, including mutual self-respect, not only at the workplace, but also outside the workplace. It must be manifest in the way we conduct public service, our businesses and the way we shape future employees to grow the economy of our country.

Mr. Ouma noted that the Court plays a crucial role in fostering a work environment free from violence and harassment by ensuring that national laws and regulations as well as other instruments of engagement like HR Policy Manuals and CBAs are enforced, and that workers' rights are protected. The role of the Court includes and is not limited to: adjudication of cases, enforcement of laws, setting precedents, promoting awareness and providing awareness. By fulfilling these roles, ELRC will play a big role in creating a safer, more respectful, and equitable work environment for all employees.

Mr. Ouma stated that FKE undertakes training on international labour standards, which tends to deter them from entertaining such vices. It also assists its members in reviewing its policies and instruments of engagement, and is in the process of ensuring that best practices, international labour standards, and acceptable conditions of work are incorporated in such documents. This forms one of the foremost measures they have put in place to mainstream a workplace free from violence and harassment. Further, they tailor some of its membership events to incorporate thematic areas that deal with best practices, such as the Employer of the Year Awards (EYA), where international labour standards and acceptable conditions of work form the core areas of assessment.

#### **2.1.4 Brother Benson Okumu Okwaro, MBS, Deputy Secretary General, COTU (K)**

Bro. Okwaro gave remarks on behalf of Dr. Francis Atwoli, NOM (DZA), EBS, MBS, Secretary General of the Central Organization of Trade Unions (COTU (K)). He stated that the organization has been a leading champion of the importance of ratification of ILO Convention 190, which calls for the elimination of violence and harassment in all aspects of work.

He thanked the International Labour Organization for remaining true to its mandate on the promotion of social justice in the world of work. He noted that since 1919, the ILO has provided the best platform for workers globally to canvas their issues in a manner that allows both the employer and government to share equally their perspectives and opinions on the same. Specifically, the International Labour Conference (ILC) has remained a leading forum for ensuring that the normative standards for the world of work are standardized and improved even as the world of work is changing. He requested the Chief Justice to give the Judges of the ELRC

maximum support in taking part in the ILC in Geneva every year.

He pointed out that COTU (K) has held conversations with the government, including the President, on the ratification of ILO C190, a matter that the President has publicly acknowledged and consequently provided direction. However, it is unfortunate, especially on the part of the Ministry of Labour and Social Protection that Kenya is yet to ratify C190 even after His Excellency President declared his willingness and support of his government towards ratification. He called upon the Ministry of Labour to expedite the process, which will mark the beginning of yet another exhausting journey that only this Court will make easier.

He noted that upon ratification, the ELRC has to give life to the operationalization of C190 by making major determinations on a number of cases brought before them on the same. The jurisprudence by the Judiciary of Kenya, starting from this Court, following the ratification of ILO C190, ought to be centred on the mission of eliminating harassment and gender-based violence at work places.

In conclusion, he thanked ELRC for bring stakeholders under such a forum to discuss pertinent issues in the world of work and committed to always be counted on for any discussion aimed at promoting justice in the world of work.

#### **2.1.5 Ms. Amanda Mejía Cañadas, International Labour Standards & Labour Law Specialist**

Ms. Amanda Mejía Cañadas spoke on behalf of Ms. Caroline Khamati Mugalla, ILO Director: Country Office, Dar es Salaam. She began by acknowledging the strong partnership between the ILO and the ELRC, which has been instrumental in advancing the promotion and application of International Labour Standards and realizing decent work in the Republic of Kenya.

She noted that the symposium's theme resonates deeply with the ILO's mission, namely promoting social justice and internationally recognized human and labour rights. She stated that the success of the symposium rests on solid partnerships and looked forward to continuing ILO's collaborative efforts to advance its normative mandate and empower the Judiciary.

She stated that since its creation in 1919, the ILO has relied

on its standard-setting function as an instrument to promote social justice and universal peace. Among its unique defining organizational features is its tripartite structure, which brings together representatives of Governments, Employers, and Workers of its now 187 Member States to set International Labour Standards, develop policies, and devise programs promoting decent work for all women and men.

Ms. Cañadas noted that Kenya has been an active ILO Member State for 50 years since 1964 and continues to play a critical role in the activities of the Organization. It has ratified 52 Conventions, of which 39 are in force, including seven fundamental conventions, three governance conventions, and 27 technical conventions, which testifies to its commitment to promoting decent work and social justice and, more specifically, to be bound by the provisions of several treaties under international law and subject to regular international control of the application of the provisions of ratified instruments in both law and practice international.

She pointed that the efforts today are not isolated; rather, ILO has been at the forefront of advancing International Labour Standards globally, and this collaboration is a testament to our shared commitment to promoting justice, fairness, and upholding the rights of workers.

She appreciated the constant support and patronage from the Ministry of Labour and Social Protection, the Federation of Kenya Employers (FKE) and Central Organization of Trade Unions Kenya (COTU-K). She further expressed gratitude to Hon. Lady Justice Martha Koome, Chief Justice and President of the Supreme Court of Kenya, and the Judiciary for their ongoing engagement. She noted that the judiciary plays a pivotal role in upholding justice, and ILO looks forward to continuing our collaborative efforts to advance labour standards and empower our judiciary.

She emphasized that ILO remains committed to supporting promotional efforts towards the ratification of other pertinent International Labour Standards complementing the Violence and Harassment Convention, 2019 (No. 190).

She appreciated the ongoing work through the Ministry of Labour towards the ratification of three fundamental instruments, namely the Freedom of Association and Protection of the

Right to Organise Convention, 1948 (No. 87), the Occupational Safety and Health Convention, 1981 (No. 155), the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), as well as five technical conventions, the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Labour Administration Convention, 1978 (No. 150), the Domestic Workers Convention, 2011 (No. 189), and the Private Employment Agencies Convention, 1997 (No. 181).

She concluded by recognizing that by mainstreaming Convention No. 190 and its accompanying Recommendation No. 206, we are taking a decisive step towards realizing the right to a world of work free from violence and harassment within and beyond Kenyan borders. She thanked ELRC for organizing this symposium.

### **2.1.6 Mr. Thomas Okoth Koyier, EBS, Ag. Chairperson, National Gender & Equality Commission (NGEC)**

Mr. Koyier began by congratulating the Judiciary for organizing the event, which comes at a pivotal time in the country's journey towards dignity and equality in the workplace. He stated that NGEC is proud to be associated with the Judiciary, particularly in recognition of its outstanding efforts in gender mainstreaming within the judicial system. He commended the Kenya Women Judges Association for their lead in advocating for greater gender equality and inclusion in the Judiciary.

In respect to the symposium, he noted that ILO Convention No. 190 and Recommendation 206 provides an international framework to address issues by promoting culture of zero tolerance towards violence and harassment in the world of work. He noted with pride that NGEC has keenly followed Kenyans need to ratify C.190 as follows:

- 1) Its engagement in the Gender Equality Forum held in Paris in the year 2021 when Kenya made 12 commitment; commitment 3 being that it would ratify C190 by 2026;
- 2) Gave an advisory to the Ministry of Labour in 2022 following the legal scan that showed no conflict of C190 with the Kenyan domestic laws and constitution;
- 3) NGEC was also engaged in the joint effort led by the President's Advisor on Women's Rights, Ms. Harriette Chiggai in 2023;
- 4) NGEC was part of the joint effort through the Office of

the Deputy President in May 2025; and

- 5) Lastly, through this symposium which NGECC commits it will support the ratification and implementation of C190.

Mr. Koyier encouraged the Ministry of Labour with the support of all other stakeholders to fast track the ratification process. On its part, NGECC committed to continue advocating for the development of workplace gender mainstreaming, GBV policies, providing advisories, conducting gender-based analysis and audits and strengthening capacity of institutions to handle cases related to violence and harassment at work.

He concluded by congratulating the Judiciary for the development of the Employment and Labour Relations Procedure Rules, 2024, the Conciliation Manual and the ELRC Registry Operations Manual. He noted that these documents marked a major stride in strengthening institutional capacity and promoting fair access to justice.

He thanked the Hon. Chief Justice for her tireless missions of institutionalizing alternative dispute resolution mechanisms and installation of SGBV courts in the country as it will benefit the vulnerable population through access to justice.

### **2.1.7 Hon. Mr. Justice Byram Ongaya, EBS, Principal Judge, ELRC**

The Honourable Justice Ongaya began by thanking all participants for accepting the Court's invitation and finding time to attend the symposium. He also thanked the Hon. Chief Justice for proving the value of the Annual Employment and Labour Relations Symposium & Exhibition. He reiterated that the Court is proud of the commitment to social dialogue and the court's partners, the workers, the employers and the government.

He noted that C190 recognizes the rights of everyone to work free from violence and harassment and covers both paid and unpaid workers in all environments; all persons; the suppliers; the clients; the hospitals; and the patients, it covers everyone in a work environment. Therefore, the law and policies must provide gender-based violence and harassment.

He stated that after Covid-19, virtual work and working from home has become a new normal; harassment and violence, especially sexual harassment has permeated the new work

environment extending to work from home. The law and policy should prohibit all forms of gender-based violence across all forms of digital communication and media including virtual world support.

The Hon. Justice Ongaya noted that victims need remedies and perpetrators need to be rehabilitated. Awareness is therefore paramount to deal with social-cultural attitudes that undermines these goals. There is need for a multidisciplinary and multi-sectoral approach to inform the gaps in practices, policies and laws.

He reassured the participants that ELRC is dedicated to one's excellence in judicial service delivery through justice and thanked our stakeholders and the International Labour Organization for supporting the Court.

He concluded by recognizing the pillars of the Court being the judges, the Registrar, deputy registrars and our staff.

### **2.1.8 Hon. Dr. Alfred Mutua, EGH, Cabinet Secretary, Ministry of Labour & Social Protection**

The Honourable Dr. Mutua began by commending the Judiciary for ELRASE II and acknowledging the International Labour Organisation as its good partners. He noted that the tripartite members FKE and COTU are in a good place to move the country's labour relations to a better place.

He further noted that there is need for a system whereby everyone feels being in a fair environment, including in the Judiciary. He expressed that litigants need to feel they received a fair judgment and if they lose, that they lost fair and did not have a strong case. Since a fair system is important to grow and develop the economy, therefore, judgments from the ELRC have a big effect in attracting or scaring away investors. He stated that the Judiciary has been doing a good job so far.

He pointed out that when it comes to social employment, fair systems need to be in a way that if one works in a company, they feel valued. He noted that he, for instance, wants to initiate a programme whereby interns hired by the Judiciary, the government and companies, are given first priority when these institutions are hiring permanent staff. They are not set aside and their time wasted.

He stated that to foster fair working conditions, one has to

provide an environment for productivity where people work well. Employees and workers are not slaves and need to be treated fairly and properly. On the other hand, employers are not missionaries to just give out money; as an employee you are there to work and produce for employers to get money to pay you. There is need for a culture of good work ethic.

He continued to state that in respect to the occupational health standards, he will be pushing some new recommendations and regulations to ensure the country protect the work environment.

The Hon. Dr. Mutua pointed that there is need to respect each other in the workplace especially respect for women. Further, there is need for inclusivity and gender parity.

He stated that there is need for the country to get into the conversation on how to deal with sexual harassment. He is of the view that employees are not supposed to date each other especially in hierarchy so as to draw a clear line; this needs to be enhanced everywhere.

He called upon all organizations to implement what is discussed at the symposium and have a way of addressing and getting victims to report issues of sexual harassment. On his end, he will be setting up a unit in the Ministry of Labour and Social Protection whereby people can escalate such issues and receive proper protection.

Hon. Dr. Mutua noted the need for alternative dispute resolution mechanisms to declog the Court system and let them handle tough issues. He requested for a forum with the judges to discuss this further and foster collaboration between the Ministry and the ELRC.

He further stated that since he assumed office, he found many pending bills and about 10 Conventions that need to be ratified. He committed to accelerate the bills to parliament and sort the ratification of the conventions including Convention 190.

He congratulated the University of Nairobi for hosting the symposium and commended the ELRC for the good work it is doing.

## **2.1.9 The Keynote Address by Hon. Justice Martha K. Koome, EGH, Chief Justice & President of The Supreme Court of Kenya**

The Honourable Chief Justice began by commending the ELRC for convening the symposium, as it reflects an initiative of engaging stakeholders in continuous dialogue in line with the principle of ‘cooperative dialogue’ that we champion in the Judiciary’s ‘Social Transformation through Access to Justice’ (STAJ) blueprint. The judiciary’s commitment in maintaining stakeholder and Court users’ conversations provides vital feedback on our work and helps identify areas of improvement.

She noted that the benefits of the engagement are already evident as ELRC has achieved notable progress in recent years particularly in Court performance. She highlighted the Court’s impressive case clearance rate of 190% in the last financial year, having resolved 8,014 cases against 4,210 new filings. By the end of 2024, ELRC had reduced its backlog by 30%, lowering pending cases to 6,966 from 9,896 at the start of the financial year. Moreover, only 240 cases remain in the system for more than 3 years bringing the Court closer to the STAJ benchmark of ensuring no case remains before a trial court for more than 3 years, she urged the Court to prioritize these cases and aim to resolve them by the end of December.

The Hon. Chief Justice noted that the symposium’s theme addresses critical and urgent issue being violence and harassment in the workplace including gender-based violence which are not just occupational challenges but are human rights violations. Both the Constitution and international conventions mandate us to take bold steps to eliminate these injustices in the workplaces.

She noted that ILO Convention No. 190 affirms that violence and harassment in the workplace violates human rights, threaten equal opportunities and are incompatible with decent work. The Violence and Harassment Convention, 2019 (No.190) along with its accompanying Recommendation (No. 206) provides a comprehensive framework for a workplace free from violence and harassment. These instruments articulate a clear, inclusive and gender-responsive approach to prevention and redress. Given that this is the first international instrument explicitly providing for the right to a world of work free from violence and harassment, it is fitting that this symposium has

brought together diverse stakeholders to deliberate on how best to respect, protect and promote this right.

She expressed that as a guardian of justice, the Judiciary bears the responsibility of ensuring that the ELRC upholds these values while shaping a workplace culture grounded in dignity, respect and mutual regard. This symposium therefore provides a valuable opportunity for reflection whether our domestic laws align with global standards and whether jurisprudence developed by the Court meets the high standards sets by comparative jurisdictions. We must also assess whether we are doing enough to protect employees from violence and harassment and fostering workplaces where everyone can thrive free from intimidations, abuse or discrimination.

The Hon. Chief Justice noted that the Constitution particularly Article 19(2), emphasizes the purposes of recognizing and protecting human rights is to preserve the dignity of individuals and communities while promoting social justice. This vision is reflected in Articles 27 and 28 which underscores the principles of equality, non-discrimination and human dignity. These provisions make clear that every employee has the right to a workplace that respects their fundamental rights. Further, Article 41 guarantees employees' right to fair labour practices including reasonable working conditions. Therefore, a workplace free from harassment is central to ensuring employees are not only protected but also empowered.

She noted that violence and harassment in the workplace have far reaching consequences affecting not only the victims psychological and physical health but also their dignity, family life and social well-being. These violations also have broader societal impacts, diminishing the quality of public and private services, reducing productivity and tarnishing the enterprise's reputation. Moreover, gender-based violence and harassment disproportionately affects women and addressing this inequality requires an inclusive, integrated and gender responsive approach.

She pointed that violence and harassment is not an isolated phenomenon but are rooted in harmful social attitudes including gender stereotypes and unequal power dynamics. Thus, Courts efforts must extend beyond legal remedies

to address the root causes through education, awareness and prevention. Therefore, as we seek solutions, we must acknowledge the intersectionality of violence in the workplace. For instance, domestic violence spills over to the work environment impacting productivity, health and safety. Employers, workers organizations and labour market institutions all play a critical role in recognizing, responding to and addressing the impact of domestic violence.

The Hon. Chief Justice reiterated that to achieve a world of work free from violence and harassment requires collective action; employers, trade unions, policymakers and civil society must work together to forge partnerships build stronger institutions and create safe and respectful workplaces for all.

She pointed that violence and harassment in the world of work affects our workplaces irrespective of professions and takes many forms including verbal abuse, physical assault, psychological trauma, sexual harassment and even rape. These actions constitute serious violations of the dignity of victims and are inconsistent with fair labour practices and social justice as enshrined in the Constitution and international legal frameworks. Therefore, we must join hands in the fight to make our workplace safe for all of us.

She highlighted the judiciary's effort to combat violence and harassment within its own ranks as earlier this year, the Judicial Service Commission approved the Judiciary's Gender Mainstreaming, Diversity and Sexual Harassment Policies; which aim to create a harassment free environment within the Judiciary. Additionally, the Judiciary has established an Employee Protection Unit within the Office of the Chief Justice to investigate complaints of violence and harassment and promote appropriate standards of conduct across its workplaces.

The Hon. Chief Justice commended ELRC for developing 3 key policy documents which we are launching today: The Employment and Labour Relations Court (Procedure) Rules, 2024; the Conciliation Manual for the Employment and Labour Relations Court; and The Registry Operations Manual for the Employment and Labour Relations Court. These documents represent a significant step towards strengthening the efficiency, accessibility and effectiveness of the Court.



She noted that the Employment and Labour Relations Court (Procedure) Rules, 2024 provides clear and structured guidelines to streamline court processes, enhance access to justice and reduce delays. The Conciliation Manual aligns perfectly with STAJ's emphasis on multi-door approach to dispute, offering a less adversarial, cost-effective and faster alternative to litigations. The Registry Operations Manual will standardize and improve service delivery in court registries, ensuring they are both efficient and user centered. These documents reflect ELRCs ongoing commitment to improvement and innovation, she is confident that their adoption will enhance the Court's capacity to foster harmonious industrial relations and protect labour rights.

She concluded by urging the judges, trade union representatives, employer associations and other stakeholders to use this symposium as a springboard for action. Through collaboration, we can build a future where every workplace is a place of safety, respect and opportunity.

The Hon. Chief Justice officially declared ELRASE II open and declared the 3 policy documents: The Employment and Labour Relations Court (Procedure) Rules, 2024; the Conciliation Manual for the Employment and Labour Relations Court; and The Registry Operations Manual for the Employment and Labour Relations Court officially launched.



# C hapter 3

### 3 SESSION 1

#### 3.1 TOPIC 1: RECAP OF EMPLOYMENT AND LABOUR RELATIONS ANNUAL SYMPOSIUM AND EXHIBITION, 2023

**Presenter: Hon. Justice Kebira Ocharo, Judge of the Employment and Labour Relations Court**

The Honourable Justice Kebira Ocharo took the participants through a recap of the inaugural Employment and Labour Relations Annual Symposium and Exhibition I that was held from 17<sup>th</sup> to 19<sup>th</sup> July 2023, at the Kenyatta International Convention Centre. He remarked that the occasion marked a significant milestone: a decade of the Employment and Labor Relations Court, themed “The Place of the Employment and Labour Relations Court in Promoting Social Justice and Economic Prosperity.”

The Judge remarked that the symposium served as a vital forum for key stakeholders to engage in meaningful discussions on issues facing the Court. He noted that insights gleaned from those deliberations did not only influence the current operations but also continue to shape the future trajectory of the Court, ensuring it remains responsive to the dynamic landscape of employment and labour relations.

He stated that the Court engaged a spectrum of stakeholders, enriching its understanding of the employment and labour relations policy and justice continuum. It was an opportunity to reflect on the historic achievements and milestones in alignment with the constitutional goals that guide the Court’s work. Aligned with the judiciary’s blueprint for Social Transformation through Access to Justice (STAJ), the symposium underscored a people-centered approach to justice that places the needs of Kenyans at the forefront of its judicial mandate.

The Judge remarked that throughout the sessions, invaluable jurisprudence and diverse experiences were shared as the Symposium explored best practices in a collaborative spirit. The stakeholders collectively reaffirmed the significance of fostering harmonious industrial relations and creating an enabling work environment; crucial elements for both individual well-being and national development.

Justice Ocharo highlighted commendable initiatives from ELRASE I, such as the visit to the Children’s Cancer Ward at the Kenyatta National Hospital. The visit allowed the Court to connect with young patients and their families, offering not only material support but also a profound reminder of the Court’s social responsibility.

The Judge encouraged the participants of ELRASE II to maintain the momentum from the inaugural symposium and continue the pursuit of excellence in promoting social justice and enhancing economic prosperity through judicial endeavours.

#### 3.2 TOPIC 2: HISTORICAL GENDER AND SOCIO-ECONOMIC PERSPECTIVES ON VIOLENCE AND HARASSMENT AT WORK, INCLUDING GENDER-BASED VIOLENCE AND HARASSMENT.

**Presenter: Dr. Nancy Baraza, on behalf of Prof. Kameri Mbote**

In introducing the topic of discussion, the Speaker appreciated the relevance of addressing Gender-Based Violence (GBV) and harassment in the workplace in protecting human rights, promoting gender equality, and fostering safe work environments.

She defined workplace harassment as unwelcome conduct that demeans, humiliates, or threatens an employee, whether verbal, physical, or psychological. She further defined Gender-Based Violence and Harassment (GBVH) as any act or threat of violence based on gender that results in harm or suffering in the workplace. She stated that workplace violence and harassment include a broad range of behaviours from verbal abuse to physical violence, with GBV targeting individuals based on their gender which disproportionately affects women globally and in Kenya. She remarked that harassment in the workplace negatively impacts the victims, organizational productivity and employee morale.

Dr. Baraza highlighted that prior to the United States Equal Employment Opportunity Commission (EEOC) guidelines issued in 1980, sexual harassment had not been clearly defined as an unlawful behaviour in the workplace. The definition resulted in over 100 countries, including Kenya, enacting laws to address workplace sexual harassment.

On statistics, Dr. Baraza stated that more than one in five people (almost 23%) in employment have experienced violence and harassment at work, whether physical, psychological or sexual.

On the historical perspectives, she began with Colonial and Post-Colonial Kenya and stated that women's work, particularly domestic labour, was not considered an economic activity, hence the systemic marginalization and lack of protection of women. Culturally ingrained patriarchal systems placed women in unpaid care-giving roles while men dominated formal waged labour. The Speaker intimated that before the Second World War, women in Kenya primarily worked in agriculture and even after independence, they continued to face lower wages than men, highlighting systemic gender inequalities.

On economic structure, Dr. Baraza noted that women are predominantly employed in informal sectors, with minimal legal protection, making them vulnerable to harassment. In the current modern context, over 60% of the world's informal workforce comprises women, often in precarious and unsafe conditions. She also stated that women often take lower-paying jobs, giving employers and supervisors unchecked power increasing their susceptibility to harassment. She asserted that over 90% of new jobs created in Kenya are in the informal sector, according to the Kenya National Bureau of Statistics (KNBS), 2020 and that women are more likely to be employed informally, where legal protections are weaker. She highlighted that these gender power imbalances and economic dependence contribute to harassment, while legal protections are mostly focused on formal sectors.

The Speaker explained that despite existing international instruments protecting women, including ILO Convention 190 on Violence and Harassment, ILO Convention 111 on Discrimination in Employment and Occupation, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), enforcement and awareness remained limited, especially in the informal sector. She stated that General Recommendation No. 35 on GBV against women, updating General Recommendation No. 19, not only characterized GBV as an equality issue but also as a human rights issue. It specifically states that women's right to a

life free from GBV is indivisible from and interdependent with human rights. Accordingly, subjecting women to sexual harassment, which is a form of GBV, is tantamount to violating the human rights of such victims. She expounded that General Recommendation No. 19 on Gender-Based Violence at General Comment 18 defines sexual harassment to include 'unwelcome sexually determined behaviour such as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand whether by word or action.' This comment notes that in addition to the adverse effects of sexual harassment on the victim, sexual harassment also amounts to discrimination where the victim reasonably believes that rejecting the inappropriate sexual conduct will adversely affect her employment as manifested through unfair denial of employment-related benefits or an uncomfortable working environment.

With regard to the national legal framework, Dr. Baraza noted that Article 27 of the Constitution of Kenya ensures equal protection and non-discrimination based on gender, sex, pregnancy, and marital status while Article 41 guarantees fair labour practices, including fair remuneration and safe working conditions for workers. On statute law, she opined that the Employment Act at section 5(3)(a) prohibits direct and indirect discrimination based on sex, pregnancy, marital status, and other factors. Section 6 of the Act prohibits sexual harassment, which is defined as direct or indirect requests for sexual intercourse that have an implied or expressed promise of preferential treatment/ threat of detrimental treatment or threat about the current or future employment status of the employee. She added that other forms of sexual harassment proscribed by the Act include the use of language of a sexual nature or visual material or physical behaviour that is unwelcome or offensive and has a detrimental effect on the employee. Further, that the Act requires employers with more than 20 employees to have a sexual harassment policy. Section 29 of the Act protects women's right to maternity leave but does not sufficiently address workplace accommodations for pregnant and nursing women, especially in informal work settings.

The Speaker highlighted that the Sexual Offences Act, 2006 criminalizes sexual harassment at Section 23 and imposes a penalty of imprisonment of 3 years or a fine of not less than

Kshs. 100,000 or both where one is found guilty.

She discussed the Work Injury Benefits Act (WIBA), 2007 and stated that the Act provides compensation for workplace injuries but largely excludes psychosocial harms like sexual harassment.

She touched on the Labour Relations Act, 2007 and asserted that Section 4 of the Act guarantees workers' rights to form or join trade unions and engage in collective bargaining, but women in the informal sector rarely benefit from these protections.

Dr. Baraza mentioned that the Occupational Safety and Health Act (OSHA), 2007, at Section 6, requires employers to provide a safe working environment, but it is gender-neutral, failing to address gender-related risks such as sexual harassment.

She also spoke on Sessional Paper No.3 of 2021 National Action Plan on Business and Human Rights, in which the Government has among other things undertaken to introduce a requirement for the conduct of human rights due diligence, including impacts on gender, before the approval of licenses/permits for businesses. The Government has also undertaken to strengthen the labour inspectorate department to carry out its mandate effectively, and sensitize the public, especially women and other marginalized groups, on several issues, including labour laws.

With regard to case law, Dr, Baraza discussed the case of **P O v Board of Trustees, A F & 2 others [2014] eKLR**, a landmark case, where the ELRC found that the claimant had been sexually harassed and ruled that sexual harassment is a form of discrimination. The court determined that the sexual violence suffered by the claimant, followed by the wrongful termination of her employment, amounted to inhuman and degrading treatment. The court awarded the claimant KES 3,000,000 in general damages for sexual harassment, unfair termination, and other financial compensation for wrongful dismissal without notice. The court also emphasized that sexual harassment in the workplace constitutes a breach of occupational health and safety, as outlined in Section 8 of the OSHA.

She discussed the case of **N M L v Peter Petrusch [2015] eKLR**, where the ELRC held that the respondent had violated

several of the claimant's constitutionally guaranteed rights due to sexual harassment. These rights included the right to dignity and protection, freedom from violence (whether from public or private sources), and freedom from inhuman, degrading, or cruel treatment. The Court further found that the claimant's right to fair labour practices, which encompasses the right to reasonable working conditions, had been breached due to the sexual harassment she endured.

Dr. Baraza also cited the case of **S R M v G S S (K) Limited & another [2017] eKLR**, which highlighted the institutional failures in addressing sexual harassment. The court found the organization culpable of failing to implement proper mechanisms to prevent sexual harassment and held them accountable under the Employment Act. This case also demonstrated the challenges victims face, such as under reporting or dismissal of complaints by male-dominated institutions.

From the case law, Dr. Baraza gave key observations and noted the following issues: -

- **Power Relations-** she stated that the above cases underscore the role of power dynamics in workplace sexual harassment. Harassers, often in positions of authority, exploit hierarchical differences to seek sexual favours from their victims. Either promises of rewards for compliance or threats of punishment for refusal or reporting accompany the harassment. These cases show a pattern of *quid pro quo* harassment and how it contributes to a hostile work environment.
- **Institutional Challenges-** she asserted that these cases, particularly the **P O v Board of Trustees (Supra)** highlight victims' institutional obstacles when seeking redress. These include the absence of robust sexual harassment policies and dismissive attitudes toward complaints, often exacerbated by patriarchal structures within organisations. Victims frequently report to male-dominated authorities who may be dismissive or complicit.
- **Legal Accountability-** she stated that despite these challenges, the courts have shown willingness to



hold organisations accountable for failing to address sexual harassment. For example, in **S R M v G S S (Supra)**, the court emphasized that organisations must implement proper policies as required by the Employment Act. However, due to under reporting, many organisations that fail to comply with the law may escape sanctions.

- **Court Discretion and Remedies-** she stated that courts exercise considerable discretion in awarding damages for sexual harassment under Section 6 of the Employment Act. Unlike other labour violations with fixed remedies, sexual harassment penalties are left to the court's judgment. For instance, in **N M L v Peter Petrausch (Supra)**, the court awarded substantial damages to a domestic helper, emphasizing the severity of the harassment.
- **Economic Power Disparities and Harassment-** she stated that economic disparities in workplaces often perpetuate GBVH, as women in low-paying or insecure jobs are more vulnerable to abuse. Additionally, women in Kenya earn less than men, making them economically dependent and less likely to report workplace violence.
- **Informal Sector Vulnerabilities-** she stated that the informal sector, which employs more than 60% of women in Kenya, lacks basic workplace protections. Also, that the Employment Act does not extend to informal workers, leaving women without recourse to legal protection from GBVH.
- **Intersectionality-** she stated that GBV at work intersects with other vulnerabilities, such as race, ethnicity, and economic status. In addition, that women from marginalized communities face compounded risks of violence and harassment, often with no support systems in place.

In conclusion, Dr. Baraza noted that the historical and socio-economic marginalization of women in the labour force, coupled with power imbalances in the workplace, significantly increases their vulnerability to GBVH. In this regard, she gave an example of the cases of **P O v Board of Trustees** and **N**

**M L v Peter Petrausch (Supra)** that illustrate how workplace sexual harassment is deeply intertwined with systemic discrimination and power dynamics.

In her recommendations, the Speaker underscored the need to strengthen legal enforcement - employers and institutions should implement and enforce comprehensive anti-harassment policies as mandated by the Employment Act and other legal frameworks. Courts must continue to impose substantial penalties on organizations that fail to address workplace harassment. There is need to raise awareness through training and awareness campaigns to inform employees of their rights and the mechanisms available to report harassment. There is also need to address power imbalances within workplaces by promoting gender parity, especially in leadership roles, and by fostering a culture where reporting harassment is safe and encouraged. In doing this, institutions must establish transparent reporting mechanisms and ensure victims are supported through access to justice. Additionally, there is a need for legislative reforms to ensure that workplace protections extend to informal labour sectors, where women are often most vulnerable to harassment. Lastly, there is need for continued advocacy and legal reform, paired with cultural shifts in workplace dynamics, which are essential to making significant strides toward eradicating workplace violence and harassment against women.



# C hapter 4



## 4 ROUND TABLE 1

### THEMATIC AREA: UNDERSTANDING THE SCOPE OF CONVENTION 190, RECOMMENDATION NUMBER 206 AND THE EXTENT THEY ARE PROVIDED FOR IN THE KENYA CONSTITUTION, STATUTES AND POLICIES

**Moderator:** Honourable Lady Justice Linnet Ndolo

**Panelists:** Ms. Irene Kashindi  
Hon. Lady Justice Hellen Wasilwa  
Dr. Melissa Muindi  
Ms. Tabitha Nyambura

**Discussant:** Ms. Amanda Mejia Canadas

#### 4.1 TOPIC 1: SCOPE AND PROVISIONS OF C190 AND R.206

##### 4.1.1 Panelist: Ms. Irene Kashindi, Member of ILO's Committee of Experts on the Application of Conventions and Recommendations

The Presenter began by quoting some statistics. She stated that at least 5 employees in any workforce will experience harassment in their careers. Globally, one in every three females experience harassment in their career. In Kenya, at least 46% of women and 21% of men have been harassed in the workplace.

She defined a Convention as a binding legal instrument to parties who ratify it as opposed to a non-binding recommendation. The subject of the symposium, ILO Convention 190, was adopted by the International Labour Conference on 21<sup>st</sup> June 2019 and entered into force in June 2021. So far, she asserted, 45-member states have ratified it with 8 being from Africa. However, Kenya is yet to ratify it.

The Speaker pointed out that the ILO Convention recognizes the right of everyone to a world of work free from violence and harassment. It imposes obligations on member states to respect, promote, and realize this right. Its key objectives are to prevent, remedy, and eliminate violence and harassment in the world of work. The foregoing is achieved through three key pillars - inclusive, integrated and gender-responsive.

Ms. Kashindi analysed the substance of the Convention by explaining that it defines violence and harassment as a range of unacceptable behaviour, practices, or threats thereof

whether single or repeated that aim at, result, or are likely to result in physical, psychological, sexual, or economic harm and includes GBVH. GBVH is defined as violence and harassment directed at persons because of their sex or gender or affecting persons of a particular sex or gender disproportionately and includes sexual harassment.

She further explained that the ILO Convention applies to all sectors, whether private or public, both in the formal and informal economy, and whether in urban or rural areas. It applies to workers and other persons in the world of work, including:

- a) Employees as defined by national law and practice;
- b) All persons working irrespective of their contractual status;
- c) Persons in training, including interns and apprentices;
- d) Workers whose employment has been terminated;
- e) Volunteers;
- f) Jobseekers and job applicants; and
- g) Individuals exercising the authority, duties, or responsibilities of an employer.

The Convention seeks to protect against violence occurring in the course of, linked with, or arising out of work in:

- a) The workplace;
- b) Public and private spaces, where they are a place of work;
- c) Places where a worker is paid, takes a rest break or a meal;
- d) Sanitary, washing and changing facilities;
- e) Work-related trips, travel, training, events or social activities;
- f) Through work-related communications;
- g) Employer-provided accommodation; and
- h) Commuting to and from work.

The Presenter discussed the following salient provisions of C190:

- (a) Inclusive, integrated, and gender-responsive approaches - Article 4(1) states that member states are obligated to respect, promote, and realize the right of everyone to a world of work free from violence and harassment. Article 4(2) states that in doing so, member states should adopt (in accordance

with national laws/circumstances and subject to tripartite consultation) an inclusive, integrated and gender-responsive approach to the prevention and elimination of violence and harassment in the world of work. Member states should consider the involvement of third parties (both as victims or perpetrators) in preventing and addressing violence and harassment. Additionally, it recognizes that GBVH disproportionately affects women and girls and recognizes that an inclusive, integrated, and gender-responsive approach is essential to ending violence and harassment in the world of work.

- (b) Interlinkages with fundamental principles and rights at work - Article 5 states that preventing and eliminating violence and harassment requires member states to promote and respect fundamental principles and rights at work, namely: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and, the elimination of discrimination.
- (c) Prevention and protection - members are obligated to define and prohibit violence and harassment in the world of work in laws and regulations and to adopt appropriate prevention measures (Articles 4, 7 and 8). Members should adopt laws and regulations requiring employers to take appropriate steps commensurate with their degree of control to prevent violence and harassment in the world of work. It provides for the identification of hazards, assessment of risks of violence, and adoption of measures for controlling and preventing such risks (Article 9).
- (d) Enforcement and remedies - C190 emphasizes the need for access to appropriate and effective remedies and safe, fair, and effective reporting and dispute resolution mechanisms. Member states should monitor and enforce relevant laws, ensuring access to safe, fair, and efficient reporting systems and dispute resolution processes (workplace, external, courts, tribunals) (Articles 10 (a) & (b)). Protection measures should be implemented for complainants, victims, witnesses,

and whistle-blowers to prevent retaliation.

Ms. Kashindi discussed the provisions of Recommendation 206, which include:

- a) Risk Assessments - these expound on risk areas and recommend paying attention to the involvement of third parties such as clients, customers, service providers, users, patients, and members of the public; and the impact of discrimination, abuse of power relations, and gender, cultural and social norms that support violence and harassment.
- b) Customized approaches - recommends tailored approaches for different sectors and vulnerable groups, for instance, night work, work in isolation, health, hospitality, social services, emergency services, domestic work, transport, education or entertainment; and for different workers, for instance, migrant women workers.
- c) Protection for informal and domestic workers - recommends specific measures to protect informal economy workers, such as domestic workers and gig workers, through the provision of leave, flexible hours.
- d) Dispute resolution - encourages mediation, conciliation, and arbitration for handling complaints. For court processes, it recommends speed, expertise in GBV, legal aid, and shifting of the burden of proof where appropriate, save in criminal cases.
- e) Gender-specific measures - it focuses on GBV and intersectionality with other aspects, for instance, race and migrant status.
- f) Training & Awareness campaigns - it calls for public awareness campaigns and training on violence prevention for judges, labour inspectors, police officers, workers, employers. It also recommends a gender-responsive educational curricula.
- g) Social dialogue & collective bargaining - recommends the involvement of trade unions, employers, and workers in policy-making.
- h) Data collection & monitoring - it recommends data collection, research, and policy harmonization across sectors.

In conclusion, the Presenter remarked that violence and harassment are global problems. She stated that all the participants have a role to play and remarked that ELRASE II was a great opportunity for sensitization on Convention 190 and Recommendation 206.

## 4.2 TOPIC 2: CONSTITUTIONAL PROVISIONS INCORPORATING C190 & R.206

### 4.2.1 Presenter: Hon. Lady Justice Hellen Wasilwa, Judge of The Employment and Labour Relations Court

Justice Wasilwa noted that Convention 190 and its subsequent Recommendation 206 have not been ratified by Kenya. However, its ratification and subsequent implementation enjoy the backing of the Constitution through Article 2(5) of the same that provides that general rules of international law shall form part of the laws of Kenya and Article 2(6) which provides that any treaty or convention ratified by Kenya shall form part of the laws of Kenya.

The Presenter then discussed the relevant Articles of the Constitution as follows:

- a. Article 10(2) of the Constitution provides that the national values and principles of governance shall include human dignity, human rights, equity, social justice, non-discrimination and protection of the marginalized.
- b. Article 22(1) provides that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. The provisions of the Convention shall thus be subject, if need arises in the aforementioned circumstances, to litigation before competent courts of law in Kenya.
- c. Article 25 provides *inter alia* for the rights and fundamental freedoms that shall not be limited. They include: freedom from torture and cruel, inhuman or degrading treatment or punishment; and freedom from slavery or servitude.
- d. Article 26 provides for the right to life.
- e. Article 27 provides for the right to equality and freedom from discrimination.
- f. Article 29 provides for the right to freedom and

security of the person from, among others, being subjected to any form of violence by public or private sources, subjected to torture in any manner, whether physical or psychological, subjected to corporal punishment or treated or punished in a cruel, inhuman or degrading treatment.

- g. Article 30 provides for freedom from slavery, servitude and forced labour.
- h. Article 32 provides for freedom of conscience, religion, belief and opinion.
- i. Article 41 provides for the right to fair labour practices, such as, fair remuneration, reasonable working conditions, to form, join and participate in trade union activities, and to go on a strike.
- j. Article 43 provides for economic and social rights such as the highest attainable health, adequate housing, adequate food, social security, education, and clean safe water.
- k. Article 47 provides for the right to fair administrative action that is expeditious, efficient, lawful, reasonable, and procedurally fair.
- l. Article 48 provides for the right to access to justice.

In discussing how the relevant provisions of the Constitution should be interpreted, the Speaker quoted the Honourable Chief Justice (Emeritus) Dr. Willy Mutunga in his treatise, *“The 2010 Constitution of Kenya and its interpretation; Reflections from the Supreme Court’s Decisions (vol 1, 2015) SPEJU 16”* as follows:

*“Our constitution cannot be interpreted as a legal-centric letter and text. It is a document whose text and spirit has various elements built within its content as amplified by the Supreme Court Act that is not solely reflective of legal phenomena. The content reflects the historical, economic, social, cultural and political setting of the country and also its traditions. Reference to Black’s Law Dictionary will not therefore always be enough and references to foreign cases will also have to take into account these peculiar Kenyan needs and contexts”.*

Justice Wasilwa also drew from Article 259 on interpretation which states that:

- (1) This Constitution shall be interpreted in a manner that—

- (a) promotes its purposes, values and principles;
- (b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
- (c) permits the development of the law; and
- (d) contributes to good governance.

(2) If there is a conflict between different language versions of this Constitution, the English language version prevails.

(3) Every provision of this Constitution shall be construed according to the doctrine of interpretation that the law is always speaking and, therefore, among other things-

- (a) a function or power conferred by this Constitution on an office may be performed or exercised as occasion requires, by the person holding the office;
- (b) any reference in this Constitution to a State or other public office or officer, or a person holding such an office, includes a reference to the person acting in or otherwise performing the functions of the office at any particular time;
- (c) a reference in this Constitution to an office, State organ or locality named in this Constitution shall be read with any formal alteration necessary to make it applicable in the circumstances; and
- (d) a reference in this Constitution to an office, body or organization is, if the office, body or organization has ceased to exist, a reference to its successor or to the equivalent office, body or organization.

In conclusion, the Speaker stated that despite non-ratification of Convention 190, Kenyan law provides adequate safeguards, which can be relied upon to ensure a workspace devoid of violence and harassment.

#### 4.2.2 TOPIC 3: STATUTORY PROVISIONS IMPLEMENTING C190 AND R206 UNDER THE KENYAN LAW.

##### 4.2.3 Presenter: Dr Melissa Muindi, Academic Director at Strathmore University

Dr. Melissa commenced by explaining that Convention 190 is the first international treaty that explicitly addresses violence and harassment at the workplace, and recommendation 206 builds upon it. She reported that Kenya has laws that safeguard against violence and harassment at the workplace that mirror the Convention. However, she stated that there is room for improvement as highlighted in her presentation.

#### Employment Act, Cap 226 of the Laws of Kenya

The Speaker noted that the Employment Act is the primary statute that regulates employment relations in Kenya. More specifically, Section 6 of the Employment Act prohibits sexual harassment in the workplace and requires employers who have more than 20 employees to have a policy on sexual harassment. She was concerned about the provision catering for 20 employees, yet it only needed two people for sexual harassment to occur. Be that as it may, she reckoned that having a policy provides clarity on how to deal with sexual harassment at the workplace.

She noted that Section 5 of the Act protects employees from discrimination and underscores several grounds of discrimination some of which are gender, race and religion. She observed that case law demonstrates Sections 6 and 5 intertwine or overlap, in that, issues of discrimination also tie in with issues of harassment and vice versa. She gave an example of the case of **CNR v FITM & another (Respondent) (Cause E204 of 2021) [2022] KEELRC 82 (KLR) (26 April 2022)** where the Claimant who was a former customer service manager alleged that between December 2020 and January 2021, she had experienced harassment at the workplace. In particular, the Claimant alleged that her manager sent her offensive text messages with sexual connotations. She then raised a complaint to the employer but felt that no action was taken. The Claimant felt that the workplace was hostile which ultimately forced her to resign. She claimed constructive dismissal. The issues that the Court had to determine in this case were whether the actions of the employer constituted sexual harassment and whether the employer had failed in his duty to prevent such harassment from happening at the workplace. Ultimately in this case, it was found that indeed there was a breach of Section 6 of the Act on sexual harassment, and in addition, there was a violation of Article 41 of the Constitution. Dr. Melissa highlighted that there are many other cases addressing the same issues, including **Winnie Treezer Ochieng v Label Craft (K) Ltd [2021] eKLR** and of **Lydia Mokaya v St. Leonard Maternity & Nursing Limited [2019] eKLR**.

The Presenter observed that Article 5 of the Convention brought forced and child labour victims under the Convention's

protection. Likewise, the Employment Act offers protection against forced labour and child labour under Sections 4 and 53 respectively. She recognized that the Employment Act was a good starting point as it laid the foundation for the issues of harassment and violence. However, she suggested that the said Act should be enhanced by broadly defining the term harassment to mirror the definition provided under Convention 190.

### **Sexual Offences Act, No. 3 of 2006**

Dr. Melissa pointed out that the Sexual Offences Act provides a legal framework that already aligns with Convention 190, as it criminalizes violence and harassment including violence and harassment in the workplace. She zoomed in on Section 23 that addresses sexual harassment and makes it an offence for any person in a position of authority or holding a fiduciary duty to subject another person to unwanted sexual advances. She noted, Sections 24 and 25 also contained relevant provisions on the same.

The Presenter gave a practical example of how the above sections applied by highlighting the case of **Mwangi vs Director of Public Prosecutions & Another; JNM (Interested Party) (Petition E118 of 2023) [2024] KEHC [7282] (KLR) (14 June 2024)**. In this case, JNM, who was working together with the Petitioner, filed a complaint with the police alleging that the Petitioner committed the offences of sexual harassment and commission of an indecent act with an adult contrary to Sections of 23(1) and 11(1) of the Sexual Offences Act. This complaint resulted in the Petitioner being arrested. Flowing from the cited case, the Presenter emphasized that sexual harassment at the workplace can also warrant criminal prosecution.

### **The Penal Code, Cap 63 of the Laws of Kenya**

Dr. Melissa noted that the Penal Code criminalizes acts of physical violence, including assault and threats that may arise even in the world of employment. She observed that Section 250 for instance, contains provisions on assault which can be invoked even when dealing with instances of violence at the workplace as was in the case of **Purity Karimi & another v Republic [2020] eKLR - Criminal Appeal 48 of 2019**. In this case, Doris an Advocate and the complainant, while at

Tigania Law Courts performing her duties, was mocked and called derogatory names by the two accused persons, Purity and Judy. They uttered that she was a *“stupid Kamba and she would not survive in Tigania”* and even referred to her as uncircumcised. Consequently, the complainant reported the incident to the police which led to the arrest of the Appellants. In this case, the Court held that the courts where the Complainant was taunted could be interpreted as her place of work and this would include the hotel visited by her and her client. The Appellant’s actions were intended to provoke a violent reaction and to cause a breach of peace and because of that, they were found to constitute a criminal offence. The Speaker mentioned that in that case, the court also emphasized that such incidences are prevalent, therefore, deterrent measures may be necessary. She emphasized the importance of the case in its broad interpretation of the place of work, which the Speaker lauded as progressive.

### **The Protection Against Domestic Violence Act, 2015**

The Presenter stated that the scope of Convention 190 includes issues of domestic violence. She noted that there were instances where there was an overlap between personal domestic relations and the world of work. Therefore, in such instances, she stated, the Protection Against Domestic Violence Act would be important to bear in mind, for example, in relation to family businesses. She referred to Section 3 of the Act which defines domestic violence broadly to cover emotional, verbal, psychological and sexual abuse. She highlighted that what is key when reading this Act is that the people are in a domestic relationship, not necessarily the place where the violence happens. She informed the audience that when thinking about domestic abuse, it did not necessarily mean abuse happening behind closed doors, or in the bedroom or in someone’s house. The focus is mainly on the people who are in a domestic relationship.

### **Occupational Safety and Health Act (OSHA) 2007**

The Presenter educated the participants on the OSHA to the extent that it does not only focus on chemicals, gloves and/or issues to do with protective gear as perceived, but also provides for violence and harassment. She observed that Article 9 of Convention 190 offers protection from violence and harassment, which also includes aspects of psycho-

social risks. This can be married to Section 6 of the OSHA that imposes a duty on employers to ensure the safety, health and welfare of all employees including by preventing violence and harassment of a psycho-social nature. Dr. Melissa, however, pointed out that the interpretation of section 6 of the OSHA can be a challenge as psycho-social risks are not explicitly mentioned under the Act.

### **The Labour Relations Act, 2007**

Dr. Melissa remarked that trade unions have a role in preventing violence and sexual harassment at the workplace especially through collective bargaining.

### **The National Gender and Equality Commission (NGEC) Act of 2011.**

The Speaker stated that this Act is important because it established the NGEC, which promotes gender, equality and freedom from discrimination and this also includes; protection from violence and harassment in the workplace focusing especially on vulnerable groups like women and persons with disabilities.

### **Data Protection Act, 2019**

Dr. Melissa stated that Convention 190 provides for protection against harassment in work-related communications including those enabled by ICT. She observed that the Data Protection Act does not explicitly mention violence and harassment at the workplace, however, viewed in the context of Convention 190, it contains provisions that would protect employees from misuse of their personal information which could be termed as harassment. She opined that violence and harassment do not necessarily mean physical abuse but could even mean harassment through texts messages.

The Presenter identified the case of **Ondieki v Maeda (Petition E153 of 2022) [2023] KEHC 18290 (KLR) (Constitutional and Human Rights) (31 May 2023)** which did not necessarily talk about violence and harassment *per se* at the workplace but discussed how the installation of CCTV cameras affects the right to privacy. She stated that in light of this case, the practice of having CCTV cameras and other ways of monitoring employees' performance, especially in a formal setup, could be potentially deemed as harassment. She further noted that

data privacy could be an emerging issue in harassment at the workplace.

In conclusion, Dr. Melissa recognized that Kenyan laws already address violence and harassment at the workplace in alignment with C190 and R206. Dr. Melissa recommended that in order to enhance protection against violence and harassment, there is need to adopt a much broader definition of the term 'violence and harassment' in line with C190. Further, she recommended for expansion of the scope of protection to focus on workers as set out in Article 41 of the Constitution, rather than the general term, employees, as defined in the Employment Act. Additionally, Dr. Melissa suggested that trade unions incorporate violence and harassment provisions when engaging in Collective Bargaining Agreements and Recognition Agreements.

The presenter underscored the role of civil society organizations in promoting a safe work environment by offering support services to victims of workplace harassment such as legal aid, counselling services, and shelters as appreciated by C190.

## **4.3 TOPIC 4: THE ROLE OF THE NATIONAL GENDER EQUALITY COMMISSION IN CONVENTION NO.190 RECOMMENDATION NO. 206**

### **4.3.1 Presentation by Ms. Tabitha Nyambura, Head of Gender and Women Division, The National Gender and Equality Commission (NGEC)**

Ms Tabitha commenced by giving a hypothesis that everyone has experienced violence or sexual harassment at some point either at the workplace or in other fora and emphasized on the need to self-retrospect on whether one is a perpetrator, victim or survivor of violence and sexual harassment. She pointed out the need to identify the role played by an individual in addressing violence and harassment at the workplace instead of focusing on the role played by institutions such as the NGEC.

### **4.3.2 Presentation by Ms. Winfred Wambua on The Role of National Gender and Equality Commission (NGEC)**

Ms. Wambua's presentation focused on the role of the NGEC in realizing Convention 190 and Recommendation 206. She pointed out that NGEC as a Constitutional Commission

established by the National Gender and Equality Commission Act pursuant to Article 59 (4) and also (5) of the Constitution of Kenya is mandated to promote and ensure gender equality, upholding principles of equality and non-discrimination for all persons. She noted that although the Commission serves all Kenyans and all persons, the Act mandates it to focus more on vulnerable or special interest groups which include women, persons with disabilities, children, youth, older members of the society, minority and marginalized groups. For this reason, she stated that the NGEC is keen on looking at how the needs, concerns and interests of the special interest groups are catered for in the Convention, and how access to justice within the work environment has been secured for the citizenry.

She highlighted the Commission's vision, which encompasses a society free from gender inequality and all forms of discrimination especially for the special interest groups.

Ms. Wambua identified the achievements of NGEC such as its participation in the ratification process of the Convention through making 12 commitments in June 2021 at the Gender Equality Forum, chief among them being Commitment No. 3, which required states to ratify Convention 190 by 2026.

She stated that the NGEC has been active in the Multi-Sectoral Central Committee hosted by the Ministry of Labour, whose mandate is towards the ratification of C190 and R206. In this context, she highlighted that NGEC had made contributions by providing advisory support to the Ministry of Labour in 2022 which advisory followed a legal review indicating that there are no conflicts between C190 and R206, and domestic laws.

The Presenter noted that NGEC has participated in the joint effort led by the President's advisor on women rights Ms. Harriet Chiggai in 2023 and also, in the efforts by the office of the Deputy President in March 2024 to expedite the process of ratification before May 2024.

She underscored NGEC's participation in the symposium as an indicator of its role in the contributions to the conversation of prevention of violence and harassment at the workplace.

Ms. Wambua highlighted the functions of NGEC as provided for in the Act and

reiterated the Commission's commitment in supporting the ratification and the implementation of C190 and R206. In this regard, she stated that the Commission is keen on:-

- Advocating for the development and implementation of policies and laws that align with the principles of C190 and R206.
- Promoting awareness on gender equality and related issues by ensuring that the scope, which is both public and private, is all-inclusive. It is the Commission's responsibility to ensure that everybody understands their rights and their responsibilities and can be able to implement them.
- Issuing advisories geared towards ratification and making contributions regarding formulation of national policies and legislation that address workplace violence and harassment in line with C190 and R206.
- Advocating for the development of workplace GBV policies. In public institutions, the Commission has facilitated the development of institutional GBV policies and gender mainstreaming policies. At the national level, the Commission has developed frameworks and guidelines that have supported County Governments formulate GBV policies and legislation. For instance, in 2016, the Commission developed a model for GBV for County Governments and launched a gender mainstreaming policy on matters of sexual and GBV for the TVET sector in 2023.
- Providing oversight in monitoring the implementation of the gender equality policies and practices including those related to workplace violence and harassment.
- Encouraging a gender-based analysis class in order to appreciate the inter-sectionality of violence and sexual harassment.
- Carrying out audits to enable the Commission measure how Kenya is performing as a country when it comes to prevention and response to matters of violence and sexual harassment. This is done to appraise and evaluate the effectiveness of the existing measures and policies of different institutions in addressing workplace violence and harassment.

The Speaker noted that NGEC functions involve collaboration with regulatory bodies and other enforcement agencies to ensure adherence to regulations and standards, and compliance with international instruments that promote matters of gender equality and non-discrimination. In fulfilling this function, NGEC collaborates and co-ordinates with other government and non-governmental organizations to ensure a unified approach in addressing workplace violence and harassment.

**4.3.3 Discussant: Ms Amanda Mejia Cañadas,  
 International Labour Standards and Labour Law  
 Specialist**

The Discussant summarized the presentations by the panellists and noted that C190 and R206 is an aspirational and transformational instrument. She highlighted the key characteristic of the instrument is the scope of its application with emphasis on the shared responsibility as duty bearers and right holders. She referenced the discussion of Ms Kashindi on global and national statistics relating to women susceptible to sexual harassment in the workplace and other ILO Conventions such as Convention 111.

She noted that C190 and R 206 define harassment, but not sexual harassment. Ms. Amanda noted that the panellists in their presentations appreciated CEDAW as one of the complimentary treaties and adequately illustrated how the three pillars are complimentary as they touch on criminal law, cyber security law among others. In addition, she mentioned that the Convention provides for a broader scope of application which is not provided for in the domestic laws as it not only seeks to protect employees but also other persons who are not necessarily employees.

The discussant noted that Lady Justice Wasilwa in her presentation cited the different constitutional provisions relevant to application of the C190 and R 206. In this regard, she added that the Constitution provides adequate safeguards that can be relied upon to protect workers against harassment in the world of work.

With regard to the presentation by Dr Melissa, Ms Amanda noted that the panellist mentioned a number of statutory provisions and case law from employment and criminal law and particularly section 6 of the OSHA, which places a duty on

the employer on issues of harassment in alignment with C190 and R206.

Ms. Amanda emphasized the need for member states to have statistics with regard to violence and harassment in the work place to enable identification of areas of vulnerability. In addition, she recommended for member states to adopt a broader definition of harassment as provided by C190 in their domestic laws, expand the scope of protection and encompass the term workers as opposed to employees.

In relation to the discussion by Ms. Tabitha, Ms. Amanda appreciated NGEC's commitment in promoting awareness by engaging the three key players - the government, the employers and the workers.



# C hapter **5**

## 5 ROUND TABLE 2

### 5.1 THEMATIC AREA: MANIFESTION, EXPERIENCES AND MAINSTREAMING OF CONVENTION 190(C190) AND RECOMMENDATION 206(R.206)

**Moderator:** Honourable Justice Jorum Nelson Abuodha

**Panellists:** Mrs Florah Munyasa

Brother Benson Okwaro

Mr. Dickens Ouma

Mr. Kephias Odhiambo

Ms Linda Oluoch

Ms Jenifer Wachira

Ms Ann Ireri

Dr. Annette Mbogo

Ms Winfred Wambua

**Discussants:** Ms. Valentina Beghini

Dr. Elizabeth Muli

#### 5.1.1 **Presenter: Ms Florah Munyasa, Assistant Director, Legal Labour and Industrial Relations, Teachers Service Commission**

Ms. Munyasa presented on violence and harassment from the perspective of the TSC. She highlighted that the Commission has put in place frameworks such as a sexual harassment policy and a code of conduct prioritizing the interests of learners. She noted that the Commission had come up with policies to deal with unique scenarios such as teachers being harassed by students. She however remarked that scenarios such as extension of domestic violence to the work place had not been catered for.

#### 5.1.2 **Presenter: Brother Benson Okwaro, Deputy Secretary General COTU(K)**

Brother Okwaro acknowledged that sexual harassment is a major point of concern at COTU. He mentioned that COTU has always encouraged their members to incorporate sexual harassment clauses in Collective Bargaining Agreements.

#### 5.1.3 **Presenter: Mr. Dickens Ouma, Federation of Kenya Employers**

Mr Ouma highlighted that the federation is reviewing best practices and encouraging employers to include harassment policies in their Human Resource Manuals. He further noted

that the federation pushes for the policies to be negotiated in CBAs before registration. Additionally, he encouraged employers to carry out regular trainings on harassment and create multiple avenues for reporting harassment.

#### 5.1.4 **Presenter: Mr. Kephias Odhiambo, Deputy Chief Industrial Relations Officer, Ministry of Labour and Social Protection**

Mr. Odhiambo spoke on the steps taken by the Ministry towards the ratification of C190 and R206. He observed that amongst the countries that have so far ratified C190 are Somalia, Uganda and Rwanda. He indicated that the Ministry has collected views from the public and carried out a gap analysis in June 2024. The Convention is awaiting a cost analysis, and the Government is committed to ratifying the Convention by the end of the year. The Presenter reiterated the Ministry's commitment to alleviating harassment by carrying out regular work place inspections. He noted the lack of a legal framework for workplaces of less than 20 employees, and the absence of a penal clause in Section 6 of the Employment Act. Mr Odhiambo urged trade unions to include clauses that address violence and harassment in their CBAs.

#### 5.1.5 **Presenter: Ms. Linda Oluoch, Chief Executive, Kenya Tea Growers Association.**

Ms. Oluoch began by referencing the BBC exposé on sexual harassment in the tea sector. She noted that despite existing policies and procedures addressing gender issues in the tea estates including sexual harassment, the vice is still rampant with the perpetrators being those holding senior positions as was noted from the exposé. The Speaker acknowledged that governance systems were not trusted post the BBC Expose hence the need for sensitization of employees on individual accountability. Despite the employers' best efforts to curb the menace, victims and survivors of sexual harassment at the workplace rarely report the incidents. The Speaker highlighted that after the exposé, the victims who came forward were given psychosocial support and disciplinary measures were taken against the perpetrators mentioned. As a result of the expose, whistleblowing and reporting mechanisms were enhanced; the positions of team leaders in field operations were phased out; and women empowerment policies were put in place.

**5.1.6 Presenter: Ms. Diana Maina on behalf of Ms. Jennifer Wachira, Legal Manager Kenya Agricultural Employers Association (AEA).**

The Speaker highlighted some of the manifestations of violence in the agricultural sector to include ethnic bias, gender bias, abuse of power, sexual coercion in the recruitment process, physical and verbal violence, and false sexual harassment allegations based on personal dislike. She observed that there are many unreported sexual harassment cases in the sector, and identified the factors influencing under-reporting as: the culture of victim shaming especially in matters relating to sexual harassment, and stigma around reporting.

Ms. Maina identified that the duty of the Association in mainstreaming C190 and R206 includes: training on leadership qualities and supervisory skills; policy development for the companies without anti-harassment policies and review of existing policies; grievance handling at farm level; handling of domestic conflicts by gender committees before forwarding the same to management; and policy enforcement.

**5.1.7 Presenter: Ms. Ann Ireri, Executive Director, Federation of Women Lawyers.**

Ms. Ireri, while giving the context of C190 and R206, explained that the Convention addresses work related violence and harassment. It was adopted in 2019. It defines key terms, delimits its scope, lays out its core principles, addresses issues related to protection and prevention, enforcement and remedies, guidance, training and awareness -raising, methods of application and concludes with final provisions.

She informed the attendees that FIDA Kenya, alongside other institutions, have urged the Government of Kenya to ratify Convention 190 because it gives a comprehensive definition of what constitutes violence and harassment in the world of work. Further, the Convention contains a robust definition of "workplace", pushes for an inclusive, integrated, gender-responsive approach, outlines possible methods of enforcement and proposes remedies, and states the means of application of the Convention to national law by way of regulations, including CBAs or measures.

The presenter highlighted some progressive provisions of C190 and R206. The international labour standards build on

existing human and women rights treaties, including CEDAW and Convention 189 that calls for decent work for domestic workers. Through them, there is recognized the right of all to be free from violence and harassment for the first time in international law. The standards also contain progressive provisions that define work broadly, such as, freedom from violence, fear and coercion in all areas related to work, including in seeking employment, during work hours as well as breaks. C190 and R206 are the first international labour standards to provide a framework for preventing, addressing and elimination of violence and harassment in the world of work.

The Presenter indicated that FIDA has worked with the Judiciary and lawyers in a collective effort towards protecting workers from violence and harassment. She offered pragmatic recommendations from her perspective. FIDA Kenya's recommendation on ratification and domestication of C190 should be considered, the country must not tire to invest in qualitative and quantitative data, in that, there must be research, the country must be able to identify gaps and see where there is need for compliance, lack of jurisdiction by our courts should be addressed, and there is need to enforce policies and practices.

Ms. Ireri also stated that there is need to be deliberate in empowering labour movements, particularly people with disability. She suggested the need for resource allocation, as laws are only good as far as they are implemented. She called for popularization to raise awareness on C190 and R206, and inculcating a culture of zero tolerance for violence and harassment through shifting and transforming socio-cultural and gender norms. Finally, she recommended that the Convention ought to be made accessible to persons with disabilities and women in particular through access to information, trainings, tools and redress mechanisms. The country must pay attention to particular places of work namely, industrial parks, factories, ports, and the domestic sphere, as they have the highest levels of harassment.

**5.1.8 Presentation: Dr. Annette Mbogo, Executive Director, Kituo Cha Sheria**

The speaker stated that there is need to create a safe working environment that prioritizes quick responses to harassment.

She explained that harassment takes many forms, being men-men, men-women, supervisor-supervisee, and between colleagues. She emphasized the importance of violence management in order to identify and respond to conflicts. The Speaker classified harassment as sexual, personal, verbal, psychological, cyber bullying and physical. She noted the importance of policy formulation in law and in organizations such as anti-harassment policy and grievant redress mechanisms. Among the recommendations she made are: the need to define violence to avoid dependence on an individual perspective; the need for harmonized decisions by the court and an evidentiary requirement that is not too rigorous.

Dr. Mbogo highlighted the action points taken by Kituo Cha Sheria as: providing legal aid to victims; having whistleblowing policies; rehabilitation of perpetrators with their consent; monitoring compliance with non-harassment policies; imposing sanctions; creating awareness; and sensitization.

**5.1.9 Presenter: Ms. Winfred Wambua Gender and Inclusion Expert, National Gender and Equality Commission.**

Ms. Wambua presented on GBV in Kenya. She noted that women bear the brunt of sexual and gender-based violence with the statistics being at 41%. She took special note of the tea, informal, media and the domestic industries as the sectors with the highest prevalence of sexual harassment. She also noted that the patriarchal nature of society has been a major hindrance to the eradication of sexual and gender-based violence, and decried inadequate reporting avenues and lack of strong reporting mechanisms.

The Speaker gave a comparative study of the South Korean experiences of gender equality. While contrasting South Korea with Kenya, she noted that the former has very progressive policies on gender equality, including: strong enforcement and compliance policies; self-regulation by institutions; strong preventive mechanisms in the form of comprehensive training with prescribed content; and publishing of an annual compliance list of shame which affects the reputations of organizations.

Ms. Wambua recommended that Kenya adopt sensitization and formation of committees to monitor and ensure compliance. She called for ratification of C190 and noted its significance

towards eradication of GBV alignment with international standards.

**5.1.10 Discussant: Ms. Valentina Beghini, Legal Specialist- Violence Harassment, and Non-Discrimination ILO Geneva**

Ms. Beghini noted the great strides already taken towards a world of work free from harassment and GBV. She acknowledged the common thread by all speakers which was ratification of C190 recognizing its importance. She noted that GBV is a silent epidemic and it is not enough to merely have policies, but mechanisms must be put in place to encourage people to speak out.

She took special note of Ms. Munyasia's presentation on TSC, which helped in unpacking the challenges appurtenant to eradication of sexual harassment. This unpacking informs education and awareness sessions and enables identification of perpetrators and victims. She recognized the manifestation of the power dynamics in instances where the learner is the perpetrator.

The Discussant appreciated the trade unions' efforts of mainstreaming GBV-related provisions in CBAs.

Ms. Beghini challenged organizations to invest resources like money, time and energy through outreach to help in eradication of GBV. She appreciated the Ministry of Labour for its deliberate efforts towards ratification of C190; and noted the vital nature of the inspections carried out by the Ministry. Finally, she urged law reforms to strengthen weak clauses.

**5.1.11 Discussant: Dr. Elizabeth Muli, Senior Lecturer and Chairperson Department of Commercial Law, University of Nairobi.**

Dr. Muli called for an expanded definition of GBV, considering cultural structures. Further, she noted that the law is not a panacea, and there was need to collect data to inform potential changes given the differing experiences depending on the organizations involved. She highlighted the importance of interventions such as training and awareness-raising through engagement of all stakeholders. She advocated for mainstreaming through the training of all levels of personnel. The Speaker concluded by stating that once C190 is ratified, there should be an effort to infuse it with local systems and experiences.

## 5.2 SESSION 2:

### TOPIC: COMPARATIVE INTERNATIONAL STATUS REPORT ON IMPLEMENTATION OF C190 AND R206

**Moderator: Honourable Justice David Nderitu, Judge of The Employment and Labour Relations Court**

#### 5.2.1 Presenter: Ms. Amanda Mejia Canadas, International Labour Standards and Labour Law Specialist

Ms. Canadas presentation focused on the following:

- i. How member states have implemented C190 and R206 into national legislation;
- ii. The statistics of the ratification, entry into force and reporting with a case study of 1 country from Africa, namely Namibia, and 2 from Latin America, namely Ecuador and Uruguay;
- iii. Key features of the instruments; and
- iv. Lessons learnt regarding the articles the ILO supervisory body has highlighted.

Ms. Canadas explained that ILO international standards are the result of a global tripartite agreement, which involves government; employers; and workers. These standards are the minimum worldwide. She described ILO instruments as taking three main forms – Conventions, Recommendations and Protocols. In relation to the instruments ratified by Kenya in recent years, she highlighted the instruments concerning fishers and sea farers, working time, remuneration, freedom of association, collective bargaining, labour, occupational health and safety, and child labour protection. The Speaker stated that a member state's ratification of an instrument is a formal commitment to be bound by it according to international standards. There is global consensus that the ideas in C190 and R206 should be consolidated and adopted.

The Presenter explained that numerous binding ILO instruments address equality of opportunity and treatment, including: the Equal Remuneration Convention, 1951 No. 100; the Discrimination (Employment and Occupation) Convention, 158 No. 111; the Workers with Family Responsibilities Convention, 1981 No. 156; and the Violence and Harassment Convention, 2019 No. 190. Kenya has ratified the first three conventions. While ratification is not mandatory, it is an essential step for

member states.

In relation to C190 and R206, the Presenter stated that the two instruments recognise the right of everyone to a world of work free from violence and harassment. On statistics, the Presenter indicated that of the 9 African states that have ratified Convention 190, 7 are from Eastern and Southern Africa: 4 from SADC and 3 from EAC. Globally, there have been 45 ratifications, with the latest occurring in September, 2024. She stated that in 2021 entry into force was done by 3 member states which were Uruguay, Fiji and Namibia. For entry into force and reporting timeframe, the member states are required to report within a year which is an obligation. She stated that the obligation to supply the first report was generated in 2022 but Uruguay and Namibia only supplied their reports in 2023. The committee of experts commented on the adoption in the same year and published it in 2023. She stated that there were additional comments from Namibia and Ecuador at the beginning of 2024.

In relation to the scope of application Ms. Canadas explained that the Convention applies to workers in all sectors, whether private or public, in formal or informal economies, and in urban or rural areas. The Convention protects workers and other persons in the world of work (Article 2(1)) including:

- i. Employees as defined by national law and practice;
- ii. Persons working irrespective of their contractual status;
- iii. Persons in training, including interns and apprentices;
- iv. Workers whose employment has been terminated;
- v. Volunteers;
- vi. Jobseekers and job applicants; and
- vii. Individuals exercising the authority, duties or responsibilities of an employer.

It covers violence and harassment occurring in the course of, linked with or arising out of work in accordance with Article 3, which includes in:

- i. The workplace;
- ii. Public and private spaces, where they are a place of work;
- iii. Places where worker is paid, takes a rest break or a meal;

- iv. Sanitary, washing and changing facilities;
- v. Work-related trips, travel, training, events or social activities;
- vi. Through work-related communications;
- vii. In employer-provided accommodation; and
- viii. While commuting to and from work.

The Presenter stated that the recognition of the right of everyone to a world of work free from violence and harassment is indicated in the preamble of C190 to include GBVH. The measures to operationalize it in the human rights conceptualization should include:

- a) Respect, where the duty bearers must refrain from violating or curtailing the enjoyment of the right;
- b) Promote, which is the duty bearers actively working towards transforming the current state of affairs and taking preventive measurement; and
- c) Realize, which entails the obligation to define and prohibit as well as sanctions.

She noted that the rights-based framework is found in the third part of the Convention. She stated that under Article 4(2) and (3) of Convention 190 the approach includes:

- i. Inclusivity talks about sectors, people and types of tools
- ii. Integrated talks about separate branches of the law
- iii. Gender-responsiveness

Ms. Canadas stated that the legal framework regulating violence and harassment at work contemplates occupational safety and health, anti-discrimination and equality law, workers' compensation law, private law which is the law of obligation, and criminal law. She stated that one of the provisions is that member states need to define whether they are going to adopt single or separate concepts.

With regard to the forms of sexual harassment, which is prohibited, the Speaker highlighted "quid pro quo" and "hostile work environment". She stated that "quid pro quo" sexual harassment mostly concerns behaviour directed to a particular person and captures a reciprocal but coercive

exchange following the pattern "this for that" (a person's rejection of, or submission to, sexual harassment is used in exchange for a decision affecting their employment); sexual harassment causing a "hostile working environment" may encompass situations that are not directed at a particular individual, that do not show this kind of reciprocal exchange, or that are more subtle (not linked to a decision affecting the victim's work). She stated that it was important to distinguish the two types of sexual harassment.

In discussing the application of C190 in countries that have ratified it, the Speaker cited Ecuador where she highlighted the case of the dismissed public servants. She noted that in some jurisdictions, the private sector is at the forefront in implementing the Convention while the public sector remains behind. She stated that in some countries, such as Uruguay, protection is only afforded where an employment relationship exists. Namibia is changing its labour laws to include bullying hence implementing the Convention in its national legislation. In relation to labour inspections, in Namibia, labour inspection forms/checklists exclude sexual harassment. In contrast, Uruguayan inspectors are empowered to eliminate danger at work, inclusive of sexual harassment. In terms of sanctions, Namibia has proposed an amendment to empower an arbitrator dealing with cases of violence and harassment at work to issue an award including damages. For Uruguay, there are disciplinary sanctions under labour law and criminal sanctions.

The Speaker remarked that enforcement through protection of victims is one of the key provisions of C190. Recognizing the effects of domestic violence, some of the measures taken by the countries that have ratified the Convention include ensuring that the women are retained at work. In Uruguay, full payment of salaries is provided for during victim's absence from work, while for instance attending hearings. Flexible working hours also provided for, for an initial period of 6 months. They also grant victims the necessary time to follow the judicial administrative measures established by the competent authority. In Namibia, a protection order can include a "no-contact" provision forbidding the respondent to be at or near the workplace.

The Presenter recognized that some of the issues dealt with

by C190 may go beyond the immediate competence of the ministry responsible for labour. Hence, preparation of a full report on the application of the Convention may necessitate consultation with other competent ministries or government agencies. To illustrate the foregoing, Ms. Canadas noted that Kenya has ratified the Maritime Labour Convention whose scope of application goes beyond the maritime and employment authorities since it provides for violence among other things.

## 5.2.2 Plenary Session

During the plenary session, the following were noted:

- The scope of C190 goes beyond the employer-employee relationship, and encompasses workers generally.
- There should be a national discussion about who has jurisdiction to adjudicate matters from C190 once Kenya ratifies it, considering the different jurisdictions of the courts of equal status such as the High Court and the Employment and Labour Relations Court. It was observed that in some member states, in the absence of an employment relationship a matter goes to the High Court or the Penal Court. Others will deal with it in the context of labour law, equality, and criminal law. There are some special courts in some jurisdictions which deal specifically with GBV.
- Verification by ILO of romanticized non-factual annual reports submitted by member states who have ratified C190 in compliance with the monitoring system. It was observed that employers' organisations have the right and most importantly the legitimacy to observe whether the annual report accurately reflects the manner in which the government gives effect to C190. The observation is not limited to organizations within the country. For instance, if Uganda has an issue with Kenya's policy on migrant workers, Uganda might provide observation in Kenya. Further, there are special procedures for reporting which keep member states honest.



# C hapter 6

## 6 ROUND TABLE 3

### 6.1 THEMATIC AREA: KENYAN AND COMPARATIVE JURISPRUDENCE AROUND CONVENTION 190 AND RECOMMENDATION 206

**TOPIC: EMERGING JURISPRUDENCE ON THE RIGHT OF EVERY PERSON TO A WORLD OF WORK FREE FROM VIOLENCE AND HARASSMENT INCLUDING GENDER-BASED VIOLENCE AND HARASSMENT UNDER ILO CONVENTION 190**

**Session Chair:** Honourable Justice George V. Odunga, Judge of the Court of Appeal

**Panelists:** Honourable (Dr.) Justice Jacob Gakeri  
Ms. Judith Guserwa  
Dr. Naomi Nyawira Njuguna

**Discussants:** Ms. Amanda Mejia Canadas  
Ms. Lucy Kambuni

#### 6.1.1 Presentation by Honourable (Dr.) Justice Jacob Gakeri

The Honourable Judge explained that violence and harassment is mostly pegged on power dynamics. He highlighted some cases in Kenya in which matters of harassment including sexual harassment have been brought to Court as follows:

1. **Geoffrey Kirui v Ekaterra Tea Kenya PLC [2024] KEELRC 1747 (KLR)** – an employee of the defendant company was sexually harassing multiple women. When the evidence was brought before Justice Wasilwa, she was satisfied that he had sexually harassed women and there was therefore a valid and fair reason to dismiss the employee. However, the court determined that fair procedure was not followed and found the termination to have been unfair, and awarded compensation.
2. **N M L v Peter Petrausch [2015] eKLR** – the case involved a lady hired as a domestic servant. The Court held that there was sexual harassment and awarded Kshs. 1.2 million in damages.
3. **P O v Board of Trustees, A F & 2 others [2014] eKLR** – the manager of a company asked a lady employee to attend a conference with him in Swaziland and

during the trip, sexual harassment was said to have taken place during a stopover in Cape Town after the manager booked the same room for both of them. The lady was later dismissed from employment for refusing to sleep with him. The Court awarded Kshs. 3 million as compensation for sexual harassment and unfair termination of employment.

4. **JWN v Securex Agencies (K) Limited [2018] eKLR** – the claimant’s supervisor made an announcement at a parade attended by 39 guards that the claimant was the culprit in a sexual escapade. The Court held that this amounted to sexual harassment. The respondent had failed to develop a policy statement on sexual harassment pursuant to section 6(2) of the Act, which provides the definition of sexual harassment; employee entitlement to employment free from sexual harassment; steps taken to prevent sexual harassment; how to report to the employer complaints of sexual harassment; and non-disclosure of the complainant except for purposes of disciplinary process or investigating complaints. The Court also found the failure to deal with allegations of a sexual nature in a confidential and private manner to be unlawful.

The Judge explained that although Kenya has not ratified C190, it is evident from the cases identified above that Kenya has domesticated a number of its provisions. He noted that courts have been up to task in finding sexual harassment where it has been proved on a balance of probabilities. For instance, in the Court of Appeal case of **Dominic Ooko v SRM & G4S Security Services (K) Ltd [2022] KECA 44 (KLR)**, an IT Manager was being harassed by the Manager. The appellate court upheld the finding of the ELRC (Justice Abuodha) but reduced the compensation awarded to Kshs. 2.9 million. It held that the burden of proof had been met and all the elements of sexual harassment established. The test to be applied is that of the victim, that is, did they find the conduct of the perpetrator unacceptable? But the test of the reasonable man may also be applied. The Court of Appeal further held that it is important to document by, for example, writing an email to the perpetrator and human resource.

### 6.1.2 Presentation by Ms. Judith Guserwa, Advocate

Ms. Guserwa stated that the issue of violence and harassment is alive in workplaces, churches, homes and other areas, and is an emotive and sensitive issue that starts with how children are raised by their parents. She noted that violence and harassment is experienced in universities when lecturers solicit for sexual favours from students, which later extends to the workplace. She explained that children should be taught to grow through systems and cultures, and universities must be told to instill values in children. Students can also be perpetrators when they sexually harass their teachers. In her experience, people are profiled when they report sexual harassment cases, thus their request not to be named.

She asserted that at the workplace, it is important to document communication that amounts to sexual harassment. She gave instances when sexual harassment could occur such as in relation to promotions and teachers attending home events for their students for example parents' birthdays. She noted that she handled such a case on behalf of her client in which when the matter was reported to the TSC, the teacher was interdicted. She acknowledged that despite Kenya having the best laws, there is a duty to enforce those laws.

The Panelist noted that although Section 6 of the Employment Act sets the threshold for developing sexual harassment policies at 20, there is need to protect even the one (1) employee that has been harassed. In that regard, she thanked the ELRC for treating each case on its own merits. The Panelist opined that the public should be trained on their rights and that men should especially be sensitized and encouraged to speak out to enable enforcement of laws that protect men.

### 6.1.3 Presentation by Dr. Naomi Nyawira Njuguna

Dr. Naomi stated that in accordance with C190, emerging jurisprudence should take into account the forms of harassment including bullying, physical assault, sexual harassment, abusive language and verbal insults, retaliation and intimidation, isolation/exclusion, and sexual orientation. Some of the cases that have involved the aforesaid matters include the **Brown's Cheese case** that involved period shaming; **Muikamba v Radio Africa Group Ltd - Cause No. E245 of 2021**; **Sankale v Masai Mara University**; **Transparency**

**International Kenya & 2 others (Interested Parties) - ELRC Petition No. E097 of 2021**; **Osok v PSC & another**; **CMK v Chandarana Supermarket Limited - Cause No. 13 of 2018**; and **Gathura v Safaricom Ltd - Cause No. 2122 of 2017**.

Dr. Naomi noted that discussions around the issue of sexual harassment are very victim centred but there are two sides to every story. For instance, the definition in Section 6 of the Employment Act, and C190 are victim centred. Her opinion was that there may be need to strike a balance. She pointed out that South Africa has ratified C190 and may offer guidance to Kenya.

She highlighted the case of **Foy v Department of Justice and Constitutional Development and others [2023] eKLR** in which the Court stated that normal managerial functions do not constitute harassment and that the court should balance whether the facts indicate harassment or a person who is overly sensitive and has idiosyncrasies. In **Maphanga v Department of Justice and Constitutional Development**, the Court held that the definition of harassment excludes instructions by a superior.

The Panelist indicated that the Court should also consider whether the test for harassment is subjective or objective. She highlighted the South African cases of **Munyandu vs. Padayachi (2016) 4 All ER SA 110** and **Moos vs. Makgoba (2022) JOL 54225**. She stated that there is need to distinguish someone who is unhappy with controversy in the workplace and couches the issue as harassment, with a person who has actually experienced harassment. She called upon the FKE, in advising their members, to urge the employer to consider how they deal with the issue of harassment.

Dr. Naomi stated that C190 expands the jurisdiction of the ELRC especially in relation to the informal sector. She questioned whether, for example, the Court can issue orders for County authorities to offer security to women in a county marketplace at night. She urged participants to consider the issue in light of the Supreme Court decision in the **NSSF case**, in which the Court stated that the ELRC has jurisdiction over labour relations issues, which may extend beyond the employment relationship. Further on the issue of jurisdiction, she highlighted the **Arendse & 182 others v Meta Platforms case**.

The Panelist contextualized the provisions of C190 in relation to employer liability for violence and harassment by third parties. She questioned, for instance, the extent to which an employer can be held liable where the chair of examinations in a university receives death threats from a student they do not lecture, or the Magistrate shot in the course of their duties by a third party. She noted that the issue has been considered in the USA, in the case of **Roy vs Correct Care Solutions**, in which the court held that if the employer knew or in the exercise of reasonable care should have known that there was harassment, and failed to offer protection, they will be held liable. The employer can provide facilities that minimize harassment such as implementing open plan offices and separating male and female staff.

Dr. Naomi suggested that the Director of Occupational Safety and Health be left with administrative matters, while legal issues be dealt with by the Ministry of Labour. She explained that the Court can take the following approaches to interpretation:

1. A human rights-based approach, but consider whether the cultural reality/ cultural relativism will water down the human rights-based approach. Cultural values may act as a deterrent to reporting harassment and violence.
2. Gender responsive approaches: there cannot be a gender-neutral approach, but rather a gender-responsive approach.
3. Capabilities approach: translating the entitlements of law to actual practical remedies including the structural interdict, compensation for injuries from bullying, and ensuring that internal reporting mechanisms are fair.

#### 6.1.4 Discussant 1 - Ms. Amanda Mejia Canadas

Ms. Canadas summarized that the four cases evoked by Justice Gakeri relating to violence and harassment mostly concerned complainants that were women, against men. The cases demonstrated the unfair power balance. She highlighted the importance of learning how to terminate employees (on the part of the employer) so that perpetrators are not allowed to benefit from their wrongdoing, by being awarded compensation for unfair termination. She also underscored the importance

of having a gender lens throughout life and at the workplace, in bringing up children and for career development. She noted that C190 covers failure to respect privacy and protection of certain victims. The Discussant pointed out that sometimes sexual harassment has nothing to do with discrimination, and questioned how the Court deals with the issue. Further, that the impact of violence and harassment may need to be considered in relation to performance.

She noted that Ms. Guserwa addressed the occurrence of harassment between teachers and learners, which also evokes the issue of women hitting men in retaliation of the domestic violence they have suffered. She asked participants to reflect on cases where the gender tables are turned, in that the reaction tends to be different. Since the duty to enforce is imposed on the Judiciary, there is need to empower the younger staff in the Judiciary and to sensitize/train the public. She acknowledged that sex, gender and age play a huge role in matters of harassment and violence and that ethnicity also has an effect in certain localities or countries.

#### 6.1.5 Discussant 2 - Ms. Lucy Kambuni

While summarizing Dr. Naomi's presentation, Ms. Kambuni was shocked by the statistics that one in three women will experience sexual violence and harassment. She noted that she believes people are how they act and not what they say. She was disheartened to learn that sexual violence and harassment also occurs in the context of Advocates; with both male and female senior counsel abusing their junior staff by, for example, asking candidates for internship to catwalk for them; or refusing to pay the victims when other staff are being paid and asking to meet them at other locations.

The Discussant lauded the courts for interpreting the provisions comprised in C190 even though the law is yet to be ratified. In this regard, she highlighted the Court of Appeal case of **TSC vs WG and 5 others** in which the Court considered whether the TSC can be held vicariously liable for the acts of a teacher for the sexual harassment of 12 and 13 year-old students. TSC argued that they had taken all actions of issuing policies and could not have done anything more. The State also argued that it could not be held liable for the lapses. The Court found that the teacher was a known child predator and was transferred as a deputy principal to another school where he

committed the acts within and outside the school. The teacher had been acquitted in the Magistrate's Court. The Judge found that no disciplinary action had been taken against the teacher and held that the minors were vulnerable victims and that the TSC is responsible for providing a safe learning environment. Preparing the policy was not enough, there should have been a reporting mechanism. In this case, the Court of Appeal came up with the concept of negligent retention affirming that TSC should have put in place procedures and processes to enable the victims to report. The Attorney General could also not avoid being held liable. The Court cited the African Charter on Rights of the Child. Ms. Kambuni concluded that despite non-ratification of C190, its provisions were clearly being enforced.

The Discussant informed the participants that South Africa has codified the vicarious liability of employers for their employees' actions in their law; Section 60 of the South African Employment Equity Act provides that an employer may be held vicariously liable for an employee's acts of discrimination including sexual and racial harassment. She recommended that Kenya should consider including such a provision in its laws.

The Discussant highlighted the murder of the medical intern in West Bengal, India. The intern had worked for 36 hours straight, and the hospital where she worked did not have dedicated facilities for rest. The intern was attacked at night by a man with a history of womanizing and domestic violence. Ms. Kambuni questioned whether victim compensation should be available for the intern's family and who between the hospital and the state should be held liable, as per C190. She also discussed the **Mike Epreys case** (Abercombie & Fitch), in which the offender abused over 100 young models looking to get into the sector, would feed them with drugs and promised to progress their career. She also questioned whether the employer should be held liable in such a case.

She also noted that some South African cases define unwanted attention. For example, in the **Amathole District Municipality case** that was decided post ratification of C190, the Labour Appeal Court applied the objective test and held that the claimant had not proven that the overtures were unwanted and unwelcome as she had not reported the case, and had exchanged messages with the manager calling him

sweet names.

While concluding the session, the Chair, Justice Odunga, opined that where a case is brought alleging violation of constitutional rights relating to violence and harassment, the Court has the power to fashion appropriate reliefs no matter which laws provide for them.

## Plenary Session

During the plenary session, the following were noted:

- The Presenters at the Symposium to document their presentations and submit them to the Registrar for dissemination to the participants, to facilitate further learning.
- Traditional values governing our society need to be re-instilled. The Court should partner with other stakeholders who champion these values, to sensitize the public on them and to address extremism, fundamentalism and radicalization.
- The extent of the employer's duty under C190 to ensure that victims and witnesses report harassment despite cultural factors exhibited in jurisprudence; while maintaining the victims' right to privacy. It was observed that disciplinary hearings in the context of sexual harassment are not ordinary and the rights of the complainants and accused have to be balanced. The accused's right to documentation is balanced with the complainant's right to confidentiality. Nonetheless, since Kenyan law makes provision for substantive and procedural fairness in the disciplinary process, the accused is entitled to information in order to defend themselves.
- In instances of mental health issues of the perpetrator, the Court is guided by the evidence of his or her mental health status, while balancing the rights of the parties.
- In instances of harassment in schools, it is important for parents to raise children responsibly so that they can avoid being victims, and or perpetrators in future workplaces.



# C hapter 7

## 7 ROUND TABLE 4

### 7.1 THEMATIC AREA: BEST PRACTICES TOWARDS A WORLD OF WORK FREE FROM HARRASSMENT AND VIOLENCE INCLUDING GENDER BASED VIOLENCE

**Session Chair:** Honourable Lady Justice Christine Baari

**Panelists:** Ms. Ida Chimedza  
 Honourable Lady Justice Hellen Omondi  
 Mr. Wesley Kipngetich

**Discussant:** Honourable Professor Margaret Kobia

#### 7.1.1 Presentation by Ms. Ida Chimedza

The Panelist pointed out her hesitance to use the term “best practices” because C190 is a new instrument, and noted that even in countries that have ratified it, the practices are yet to be tested before the ILO supervisory bodies.

She noted that integration, inclusivity, and gender responsiveness are the key guiding principles contained within C190 and R206, and which principles are critical as operationalization of the instrument precedes its ratification. She explained that integration focuses on key areas such as occupational safety, health, and inspection. In contrast, inclusivity emphasizes the importance of ensuring that no one is left behind. This involves recognizing the intersectionality of various challenges and addressing the barriers faced by individuals based on factors like geographic location or ethnic background. By doing so, an environment where everyone has equal access to opportunities and resources can be created. As regards gender responsiveness, the Panelist stated that it entails recognizing that women are disproportionately affected by issues of violence and harassment, particularly GBV.

Ms. Chimedza made reference to the practice in Lesotho, which developed a National Occupational Safety and Health Policy that explicitly specifies violence and harassment as a key issue that every organisation or individual involved is required to pay attention to. She made further reference to her home country of Zimbabwe, which in 2020, came up with a national labour migration policy in alignment with the guideline on inclusivity, by taking into account violence and

harassment. Appreciating that migrant workers fall in the category of vulnerable workers or most at-risk workers, she highlighted that the said policy aims to ensure that labour, the rights of migrant workers during both inward and outward migration, and especially the rights of women labour migrants who are more vulnerable to GBV, sexual abuse and human trafficking are upheld in line with ILO’s policy on decent work. She also referred to Jordan, where a new Labour Law was enacted in June 2023 defining and prohibiting sexual harassment at work. She noted that Jordan also introduced measures to support, among others, lactating and pregnant workers.

In considering other best practices, the Panelist referred to the European Union which came up with a political agreement that combats violence against women domestic violence. The agreement criminalizes physical, psychological, economic, and sexual violence against women across the EU membership. She highlighted the importance of evidence in combating harassment and violence, stressing the need to base responses to such vices in an informed context. Kenya should, at the national, sectoral and enterprise levels, call for investigations to understand the manifestation, prevalence and root causes of GBV. Within the context of the enterprise, the Panelist stressed the need for understanding the manifestation of GBV within the different work streams and units.

Ms. Chimedza stated that the key lesson and response to C190 is that it is everybody’s business in that the society should come together and address it. She faulted the value system in reference to what people are doing within their homes and what they are educating their children. She stated that people are creating a culture that normalizes violations in day-to-day interactions.

She noted that risk assessments and Monitoring and Evaluation (M&E) are vital while taking an intersectionality approach, after which the findings should be communicated for people to know the prevalence, to prompt behaviour change and personal accountability. For instance, in the case of HIV response, the society was always inundated with statistics and people knew each country’s prevalence and incidence rate, which subsequently contributed to reduction in HIV statistics.

She underscored the importance of communicating and then putting in place M&E systems to get results and using public media to communicate as a strategy to bring change.

The Panelist cited the Australian Sex Discrimination Act of 1984 that was amended in 2022 to include a positive obligation to eliminate sexual harassment. Under the new provision, an employer or person conducting a business or undertaking, must take reasonable and proportionate measures to eliminate sexual harassment, sex-based harassment and conduct that subjects a person to a hostile work environment and victimization, as far as possible. She explained that the meaning of reasonable and proportionate measures includes implementing policies and procedures and collecting and monitoring data.

Ms. Chimedza stressed the key role played by the Judiciary in the journey towards elimination of violence and harassment through the passing of judgments consumed by the public, and which communicate whether the country has a zero tolerance to issues of GBV.

She pointed out the South African Code of Good Practice on the Prevention and Elimination of harassment in the workplace, which came into effect on 18 March 2022. It defines harassment as unwanted conduct that impairs dignity, creates a hostile or intimidating work environment or has the effect of inducing submission through actual or threatened adverse consequences, which includes psychological, emotional, sexual, gender based and racial abuse. She highlighted the importance of considering context when enacting laws. For instance, in South Africa race is a topical issue given the history of apartheid.

The Panelist further considered South America where Chile, in August 2024, enacted the so-called Karen Law in honour of Karen Sorenso, a worker who tragically took her own life after falling victim to workplace harassment. She noted that the Karen case, which involved an unfortunate suicide, illustrated that such emotive issues may trigger law reforms and actions.

Ms. Chimedza emphasized the importance of having a collective approach to the issues of harassment and violence at the workplace - at the sector, enterprise and organizational levels - by ensuring that policies are comprehensive, inclusive

and promote a transformative change approach and there is mainstreaming within CBAs. While noting the tea industry's BBC exposé, she asserted that having a policy in place is not enough, as harassment is very much a behavioural aspect. If elimination is to be achieved, there is need to focus on changing behaviours and recognizing human complexities.

The Panelist stated that there is need for regular education, awareness training, identifying of gender champions at all levels - at executive, shop floor and farms - so that correct information is shared and there is constant awareness, reminders through messaging, drama groups and posters, to ensure that this issue remains at the forefront for all.

On the issue of reporting, she stated that multiple channels and timely responses in terms of investigations are vital. While appreciating that there are instances of false reporting, she highlighted the need for a thorough and good investigation mechanisms to avoid false accusations. She pointed out that encouraging people to report is not enough, but victim and survivors should also be provided with support. She opined that a comprehensive referral pathway is a component of best practice at the enterprise level or sectoral level.

Ms. Chimedza referenced Ireland where trade unions negotiated for workplace policies to support survivors of domestic violence, leading to the adoption of progressive workplace policies in the specific sectors.

Further, she referred to Canada where the Minister of Employment and Social Development established the Workplace Harassment and Violence Prevention Fund to support behaviour change in the workplace, including the development of tools, resources and training materials. In essence, tool development is also particularly important for employer organisations and trade unions, so that the response is standardized.

As relates to practice in Japan, the Speaker stated that a campaign against unreasonable complaints was launched by the Japanese Federation of Textile, Chemical, Commerce, Food and General Services Workers Union in 2017 which secures better protection for the workers within this sector. In conclusion She pointed out that no country has a holistic best practice as relates harassment as things are still evolving and taking shape.

### 7.1.2 Presentation by Honourable Lady Justice Hellen Omondi, Judge of Appeal, President International Association of Women Judges Kenya Chapter (IAWJ-K).

The Honourable Judge praised the Judiciary for establishing gender harassment and mainstreaming policies, initiated under retired Chief Justices Willie Mutunga and David Maraga, and now under implementation by Chief Justice Martha Koome.

The Judge noted that IAWJ-K as an association has been at the forefront in the formulation of a harassment policy. She noted that IAWJ-K's objectives are advancing human rights, elimination of gender bias and promoting access to justice for women and children through gender parity, development of jurisprudence, awareness creation, empowerment and mentorship. She centred her discussion on why best practices, general best practices, and the Judiciary.

The Speaker stated that best practices are majorly about preserving the dignity of an individual, safety and respect in the world of work. She pointed out that the first step is assessing the levels of knowledge and awareness; the second step is identifying and analyzing the trends within a workplace; the third step is identifying the barriers leading to non-exposure of acts of sexual harassment; and the last step is developing a culture of gender inclusivity.

She discussed "office romance syndrome" (ORS), noting the Chief Justice's observation about the challenges in addressing this issue. Many relationships that develop in the workplace can be positive, and it is important not to let ORS be used as a justification for harassment or abuse. To prevent this, she emphasized the need for empowerment and a consistent flow of information. This could be achieved through various channels - documents in the workplace, social media, public forums, TV shows, newspapers, and video clips - to raise awareness about ORS and its implications.

Justice Omondi highlighted the importance of considering compliance mechanisms, emphasizing a key question: Do personnel trust the system? She discussed various reporting methods, including anonymous reporting, whistle-blower protections, and what she referred to as the "busy bee" approach.

The "busy bee" method involves individuals observing interactions among colleagues - not necessarily because they are witnessing harassment, but to stay informed about workplace dynamics. The approach aims at ensuring transparency and understanding of what is happening within the organization.

She stressed the need to have a fair disciplinary process, which must not only include psychosocial support for the victim, but also for the perpetrator, since although it is a lot about respect, dignity and harmony in the workplace, it is also about culture, social conduct and the biological set up.

The Judge highlighted that in putting in place a sexual harassment policy in the workplace, the persons therein need to know why the same is being set up, for them to understand why a conduct which would otherwise be upheld in their social circles or in their cultural circles, becomes reprehensible at their workplace. She stated it is critical to simplify communication, whether in the policy or in the disciplinary process, to ensure it is understood by all. She encouraged need for the policy to be in both Kiswahili and English. She acknowledged that having listened to the presenters from the agriculture and tea zones, perhaps it would be advisable to communicate in vernacular, whether through translation of the policy document into vernacular, or holding talk shows in vernacular radio and TV stations to enhance awareness.

The Judge encouraged adopting a multifaceted approach involving other stakeholders. She emphasized the need for a collective effort to ensure wholesome awareness. The judge stressed the need to collect data and gendered evidence to inform policy.

She asserted that law and society are constantly evolving, highlighting the need to adapt to these changes. She pointed out that it is surprising to think that sending someone a message on WhatsApp could be considered sexual harassment. Traditionally, many believed that if an interaction was not physical, it did not happen. She highlighted that it would be important to constantly review policies on harassment to keep up with the changing times.

The Speaker highlighted IAWJ-K's strategic plan, being the strengthening of the quality of jurisprudence among judicial

officers. She pointed out the need for training to facilitate interpretation and implementation of law in a manner that is free from gender bias and that conforms to international and regional treaties and conventions. She emphasized the importance of improving judicial officers' understanding of the different categories of sexual harassment. Since individuals come from diverse backgrounds and experiences related to these categories, judicial officers may not fully grasp their implications. There is need to engage with academia, stakeholders and peer reviewers on gender jurisprudence in relation to the world of work. She pointed out that IAWJ-K's is big on mentorship to leverage on knowledge and experience of its networks.

She recognized the need for collection of evidence and documentation, noting the need for a judiciary compendium from decisions by the courts, so that there is a documented reference point. She recognized the need to involve all spheres such as religious groups, cultural units, and social influences.

Justice Omondi remarked that gender harassment affects everyone. It concerns children, who will eventually enter the workforce, and impacts spouses, who may face media scrutiny if implicated in sexual harassment. Homes serve as the best schools for children. For instance, when a child observes how a parent interacts with a domestic helper, it sends a powerful message about respect and behaviour. Even if attempts to teach different values in school are made, much of a child's perspective is shaped by their upbringing at home. Therefore, she argued that the foundation of best practices begins within the family environment.

### 7.1.3 Presentation by Mr. Wesley Kipnetich, Deputy Director of Ethics and Governance -Public Service Commission

Mr. Wesley addressed best practices in public sector workplaces regarding gender harassment, gender violence, and general harassment. He highlighted the existence of a robust legislative and policy framework aimed at addressing harassment issues in public service organizations. This includes numerous national policies and revised management procedures that target harassment effectively.

On the institutional framework, the Speaker explained that the public service has a long tradition of managing workplace

conduct through various institutional frameworks, key of which include:

- **Human Resource Committees:** These consist of performance committees, disciplinary committees, and complaint reporting systems.
- **Regulatory Bodies:** These organizations regulate professional conduct in public service and handle harassment complaints.

When these frameworks are ineffective or lose public confidence, employees should report issues to appropriate authorities, such as service commissions, which oversee disciplinary actions, and boards responsible for state corporations and universities. Constitutional commissions, like the Ethics and Anti-Corruption Commission and the Commission for Administrative Justice, also play a role in addressing technical complaints. He acknowledged that while these institutions exist, they may not comprehensively address all harassment issues, particularly subtle forms like sexual harassment.

Regarding subtle forms of harassment, Mr. Wesley pointed out that workplace predators might manipulate victims by denying them opportunities, such as promotions, training, or travel, which makes them more susceptible to manipulation. He described how certain officers might isolate individuals from assignments, further exacerbating the issue. He provided a case study where an officer approached him to discuss challenges with their immediate supervisor, highlighting how lack of communication can contribute to a toxic work environment. He noted instances where supervisors impose unrealistic timelines on employees, disregarding their personal lives, which can constitute harassment.

Additionally, he identified other forms of harassment, such as sending employees on personal errands, which may be viewed as coercive due to fear of repercussions on promotions and entitlements.

The Presenter referenced the Leadership and Integrity Act of 2012, which prohibits bullying at the workplace. He also discussed issues related to discrimination and stereotyping, such as making jokes about different tribes or mimicking individuals with disabilities.

To combat these issues, Mr. Wesley advocated for employee training to increase awareness of harassment in the workplace. He emphasized the importance of implementing reporting mechanisms and establishing a counselling department to support employees who have experienced harassment. He encouraged employers to create systems that resolve ethical dilemmas and foster awareness. In his view, empowering employees and allowing anonymous reporting of sensitive complaints are critical steps in addressing workplace harassment effectively.

#### **7.1.4 Discussant: Honourable Prof. Margaret Kobia, PHD, EGH, Chancellor, St Paul's University**

Prof. Kobia noted that Kenya has yet to ratify C190, but commended the ELRC for its efforts to address workplace violence and harassment through recent court decisions. She raised critical questions about the nature of harassment: Who is likely to be harassed? Who are the violators? Who is most vulnerable? She pointed out that while Kenya has numerous policies aimed at preventing workplace violence and harassment, most of these remain unimplemented. She emphasized the urgent need for a comprehensive strategy and action plan involving all stakeholders including government, employers, workers, and civil society to effectively combat violence and harassment. Prof. Kobia argued that without a clear action plan, the ratification of C190 would not yield meaningful results.

Highlighting the importance of capacity building, she called for ongoing training for employers, employees, and unions on emerging issues related to violence and harassment at work. Citing global statistics, she noted that 80% of people have experienced some form of violence or harassment in their workplace or home. Furthermore, a study by KIPRA revealed that during COVID-19, 92% of individuals faced GBV at work.

The Discussant stressed the need to understand the perpetrators of violence and harassment in order to develop effective responses. She argued that such behaviors must be addressed through appropriate reinforcement or punishment, as outlined in workplace policies. Identifying individuals responsible for misconduct is crucial in creating effective organizational policies against violence and harassment. The structure of organizations also plays a significant role in these

issues. A lack of clarity regarding reporting procedures can foster an environment conducive to misconduct. For instance, in various industries, there are instances where supervisors abuse their authority over subordinates, highlighting the need for clear reporting structures and accountability.

Prof. Kobia identified the absence of sociocultural knowledge and the assignment of duties based on gender as primary contributors to violence and harassment. She pointed out that tasks assigned without considering gender dynamics can make individuals more susceptible to harassment. Additionally, she discussed how cultural socialization can lead to environments where employees are not taught to respect one another, inadvertently promoting harassment.

Discussing the impact of violence and harassment on performance and productivity, she stated that such issues create systematic barriers to equality in the workplace. Employees who experience violence or harassment often face emotional distress, resulting in decreased performance and high turnover rates, which can lead to increased healthcare costs and loss of talent in public service.

To address these challenges, Prof. Kobia advocated for collaborative, multidisciplinary approaches to develop sound policies that effectively curb sexual harassment. She underscored the necessity of building strong institutions capable of delivering on their mandates to create a workplace free from violence and harassment. She made the following recommendations that would help achieve the best practices at the workplace:

- Designing an action plan to implement relevant policies, rules, regulations, and procedures on violence and harassment;
- Designing and implementing a comprehensive and coherent policy which are not in conflict with the existing policies;
- Providing mandatory training for all staff on violence and harassment at the workplace;
- Ensuring a participatory and all-inclusive approach with the key stakeholders;
- Creating clear reporting mechanisms; and
- Developing performance management system.



In summary, Prof. Kobia called for a holistic approach for all stakeholders to ensure that there are structures in place that provide a supportive work environment free from harassment and violence. She also mentioned that there is need to have effective governance in terms of transparency, accountability, competence and equity in order to eliminate all forms of harassment and violence in the world of work. The Professor urged organizations to invest in non-harassment and violence policies, laws, regulations, and procedures that prevent harassment and protect staff by putting in place mechanisms for monitoring, evaluation, validating, and reporting which would help in tracking progress towards a world of work free from harassment for a better, inclusive future.



# C hapter 8



## 8 CLOSING CEREMONY

### 8.1 Remarks by Hon. Kennedy Kandet, Registrar, ELRC

Hon. Kennedy Kandet began by thanking God for keeping participants safe during the symposium. He thanked the Hon. Chief Justice and the Judiciary leadership for the approval to hold the annual symposium every year and for gracing the symposium. He thanked the Principal Judge of the ELRC for his guidance and leadership while planning for the symposium. He thanked Hon. Justice Ocharo Kebira, the Chairperson of the Planning Committee and all the members of the Court Users Committee for walking with the Court through the journey. He applauded all the Judges of the ELRC for actively participating in the symposium by giving guidance in the pre-meetings and acting as panellists, chairs of sessions and moderators in the event.

Hon. Kandet expressed gratitude to the Court's partners specifically, the International Labour Organisation (ILO) for giving financial and technical support. He recognised the presence of Miss Amanda and Ms. Ida who flew from South Africa to attend the symposium as representatives of the ILO. He identified other partners who extended resources to hold the symposium, that is, Central Organizations for Trade Unions (COTU) (K); Federation of Kenya Employers (FKE); Kituo cha Sheria, Federation of Women Lawyers in Kenya (FIDA Kenya); the Teachers Service Commission (TSC); Kenya Union of Domestic, Hotels, Educational Institutions, Hospitals and Allied Workers (KUDHEIHA) and the Kenya Tea Growers Association (KTGA); it is through their support the Court was able to secure the venue and provide refreshments had throughout the event.

He applauded the panellists for demonstrating in-depth knowledge of the subject and for breaking it down for the participants, making it easier for the discussants to unpack the discussions. He specifically expressed gratitude to Dr. Naomi Njuguna for walking with ELRC, including moderating the Curtain Raiser Webinar, and all who contributed and facilitated during the said webinar.

He highlighted that during the opening ceremony, ELRC launched three key court documents that is the Employment and Labour Relations Procedure Rules, 2024, the Conciliation

Manual and the ELRC Registry Operations Manual. The Hon. Registrar thanked members of the Rules Committee chaired by the Hon. Presiding Judge for engaging stakeholders for almost over one year, to come up with the new Employment and Labour Relations (Procedure) Rules, 2024, as gazetted by the Honourable Chief Justice.

The Hon. Registrar acknowledged and thanked the members of the committee that developed the Registry Operations Manual and noted that the Manual has shown some improvement and inclusion of new developments in the Judiciary, including on the digital strategy.

He stated that the Court developed the Conciliation Manual, which is the training of trainers' manual, under the support of IDLO, with the lead consultant being Dr. Joy Mbabu. He believes that the Manual is going to create a knowledgeable force in terms of the skills the trainers will have to aid in ADR.

He thanked the protocol team for ushering the participants in during the symposium and attending to guests while noting there were no complaints received. He thanked the Head of the Judiciary Police Unit for deploying officers who secured the safety of all participants, and the members of the secretariat who spent many hours planning the event and manning the registration desk.

He also acknowledged the ICT team that ensured the event streamed live and put in place facilities to ensure the process was captured. He acknowledged the Director of Public Affairs and Communication who stood with the Court from the planning stages and ensured that the event was shared with the public almost at real time through the Judiciary's social media accounts.

He thanked the participants, delegates, service providers, and the ELRC Deputy Registrars and Magistrates, who deal with employment and labour relations matters and were present to learn. He noted and thanked that the Court's legal researchers, who were tasked to be rapporteurs for purposes of the event and were the team behind the Communique. He thanked the staff of the Judiciary and finally, the exhibitors for meeting the parameters set by the awarding judge, Dr. Kitonga, whom he thanked for applying his professional knowledge in judging the exhibitors.

The Hon. Kandet concluded by inviting the Hon. Principal Judge, ELRC to make his closing remarks.

## **8.2 Remarks by Hon. Justice Byram Ongaya, Principal Judge, ELRC**

The Hon. Judge Ongaya began by thanking all the participants while noting that Convention 190 and Recommendation 206 is about integration, inclusivity and gender responsiveness. He stated that the Court is implementing social transformation through access to justice and there cannot be lasting peace, prosperity and justice without social justice based on social dialogue.

He thanked all the stakeholders led by the Ministry of Labour and Social Protection, the Central Organisation of Trade Unions, the Federation of Kenya Employers, and all who make claims to work and work places and spaces through those three tripartite partners. He committed that the Court is keen to bring the Constitution to the people. He noted that Article 10 of the Constitution of Kenya talks about the national values and principles of governance and these principles apply to individuals, families and communities. The principles of national governance shall be applied by state organs, state officers and by every person hence the Constitution has been given to the people and that is why in the judicial revision of social transformation through access to justice, the Court takes the Constitution to the public.

He thanked the Hon. Chief Justice for giving approval for the annual holding of ELRASE and encouraged the stakeholders to participate. He highlighted Professor Kobia's earlier remarks that the Court cannot do it without resources and the clear roadmap of about eight steps she taught to be able to achieve it.

He noted that the Judiciary would want to make and do justice, and reduce and eliminate the backlog. To be qualitative means that while we have our domestic and local positions based on our social cultural dynamics, there are those that are not consistent with what the world has settled, yet the Court wants to be consistent with human dignity. The Judiciary cannot therefore make decisions that are inconsistent with settled world principles. He thanked ILO for walking with the Judiciary and reassured that the Judiciary wants to do justice that is world class in quantity and quality.

He encouraged the upholding of human dignity and noted that human rights are based on the inherency of human dignity, and human dignity is not an aspiration but inherent in the humanity. He called for working together to make justice the true shield and defender of humanity, and the Kenyan people.

The Hon. Justice Byram concluded by inviting the Hon. Justice Odunga to address the participants on behalf of the President of the Court of Appeal, Hon. Justice Daniel Musinga.

## **8.3 Hon. Justice George Vincent Odunga, Judge, Court of Appeal**

The Hon. Judge Odunga began by expressing gratitude to the Employment and Labour Relations Court for organizing for this particular symposium and noted that it had been very informative. He noted that such as occasion should not be taken for granted as we sit together as different stakeholders in the judicial system, exchange ideas, and talk to one another, considering the current virtual world to come by. It is something to be appreciated.

## **8.4 Remaks by Mr. Shadrack Mwangolo Mwadime, CBS, Principal Secretary Labour and Skills Development, Ministry of Labour and Social Protection**

He began by acknowledging the presentations made by the panellists and the very rich and deep and insightful discussions.

He suggested and requested that the symposium be devolved to the grass-root level, at the county level, as the people at that level would benefit greatly, and is the group of people that are ignorant concerning their rights. For instance, if we had the symposium somewhere out there in the counties, possibly Kericho, because the participant referred to the BBC Exposé on the tea plantations, it would appraise people concerning their rights. He noted the presence of FKE and COTU and encouraged the Court to go to the grassroots level and share this information.

He noted that resource base in the continent is extremely high and if we can encourage our people to have confidence in themselves, they would be able to exploit these resources for our own good, and our standard of living would improve.

He looked forward to receiving the report and take note of what had been discussed during the symposium because the onus

of implementing these policies is with the Executive. He noted that as pointed out by Professor Kobia, there have been good policies over the years, but many a times they are kept i the shelves to collect dust; which is the reason why other African countries, sometimes pick our policies, and are very good at implementing them. Therefore, we have a responsibility of not only coming up with excellent policies that will be beneficial to our people, but also implementing them.

He appreciated the Judiciary, particularly the Honourable Chief Justice and the President of the Supreme Court of Kenya, the Hon. Justice Martha Koome, for organizing the just concluded symposium and exhibition, and all delegates, panellists, and discussants for active participation and engagement in the three-day event.

He noted that the theme of the event being the role of the employment and labour relations court in fostering the right to a world of work free from violence and harassment, including gender-based violence and harassment, is quite appealing, relevant, and resonates well with the aspiration of the government of Kenya, particularly on the journey towards ratification of Convention No. 190 and its accompanying Recommendation No. 206, which started in June 2024. The Ministry of Labour and Social Protection, through our consultative engagement with stakeholders, developed an ambitious time-bound action plan to guide on the ratification process. In June 2024, the Ministry of Labour and Social Protection convened a historical meeting, bringing together all relevant government departments, civil society, social partners, and development partners who successfully developed a gap and cost-benefit analysis.

He expressed that he is aware that during the symposium, several critical issues concerning labour rights, safety and health of workers, gender-based violence, and the well-being of workers in Kenya emerged. The key issues include labour law reforms to incorporate the contents of Convention No. 190 in readiness for ratification and to strengthen the responsibilities of parties in Section 6 of the Employment Act 2007. He noted that distinguished discussants and participants had identified milestones and challenges and underscored urgent need for comprehensive measures to address the challenges effectively.

The Ministry of Labour and Social Protection, as in the recent past, focused on addressing the vulnerability of all workers, including migrant workers, particularly women, who are prone to exploitation, abuse, and discrimination, both domestically and internationally. Ratification of ILO Convention No. 190 and accompanying Recommendation No. 206 is indeed timely and of which will guarantee the rights and protections of workers comprehensively and combat gender-based violence in the workplaces.

During the webinar, which was the curtain raiser for this auspicious event, it came out clearly that there is still prevalence of violence and harassment in workplaces across the country, particularly gender-based violence. This then presents an urgent need to enhance: advocacy, awareness, and sensitization for ratification of ILO Convention No. 190 and Recommendation No. 206; implementation of GBV-related policies in the workplaces; offer support for women's economic empowerment and corporate social responsibility; and capacity building of labour inspectorate, i.e., the Occupational Safety and Health Authority d. and our labour inspectors under the labour Commission, but also trade unions and all law enforcement officers in this space.

As a way of creating of awareness and sensitization of the public on Convention No. 190, he stated that the Ministry had kick-started public participation in the eight mapped regions of Coast, Nairobi, Rift Valley, Nyanza, Western, North-Eastern, Eastern, and Central.

He noted that ratifications come with a reporting obligation as provided for in the ILO Constitution, therefore, all stakeholders with a responsibility in the workplaces must play their roles diligently by eradicating all forms of violence and harassment in their spaces. The outcome and recommendations of the just-ended symposium will assist the Ministry and even Kenya at large in making significant steps towards creating a more equitable, inclusive, and prosperous society for all its citizens. These recommendations will assist businesses and policymakers to contribute in creating safer and more inclusive workplaces.

He concluded by thanking all the universities that participated in the symposium, led by the University of Nairobi, for their support through knowledge sharing and provision of the venue;

the Honourable speakers of both the Senate and National Assembly for their participation; our social partners and the International Labour Organization for their contribution in this event and continued support in the labour sector as we uphold the fundamental principles and rights at work.

He once again thanked the Honourable Chief Justice and the President of the Supreme Court, the Principal Judge, and all Honourable Judges for always acknowledging the role of the Ministry of Labour in participating in employment and labour relations court activities.

He tasked all stakeholders to join hands and support one another in this noble cause of ensuring that our country is free from violence and harassment, including gender-based violence, by putting in place the requisite legal framework and systems. He promised to work very closely with the court, trade unions, and all the stakeholders.

### **8.5 Signing of the Communiqué**

The Hon. Registrar invited Hon. Lady Justice Maureen Onyango to read the Communiqué to the participants. Thereafter, he then called upon Hon. Justice Byram Ongaya, EBS, Principal Judge, Mr. Mwaura Kabata, Vice President, Law Society of Kenya, Bro. Ben Okwaro, MBS, Deputy Secretary General, Central Organization of Trade Unions, Mr. Dickens Ouma, Federation of Kenya Employers and Hon. Shadrack Mwadime, Principal Secretary, Ministry of Labour and Social Protection to execute the communiqué.



# C hapter 9

## 9 ANNEX

### 9.1 ANNEX 1

#### REPORT ON THE NAIROBI EMPLOYMENT AND LABOUR RELATIONS COURT OPEN DAY HELD ON 22ND JULY, 2024 AT MILIMANI LAW COURTS PARKING.

- The Open Day was held at the Milimani Law Courts parking area.
- The procession was started by the members marching from the Milimani Commercial Court grounds guided by the prison band to the venue of the event where it was proceeded with the Kenya national anthem and the East African anthem.
- This was followed by opening prayers by Hon. Lady Justice Linnet Ndolo and Honourable Sukyan Hassan.
- It was attended by the Honourable Chief Justice, Lady Justice Martha K. Koome judges of the Labour and Employment Court, the Deputy Registrars, Magistrates and staff, ELRC Nairobi Staff and stakeholdres. They were;
  1. **Hon. Justice Ongaya Byram – The Presiding Judge, Nairobi.**
  2. **Hon. Lady Justice Monica Mbaru – Mombasa.**
  3. **Hon. Lady Justice Maureen Onyango – Eldoret.**
  4. **Hon. Justice Mathews Nderi Nduma – Nairobi.**
  5. **Hon. Justice Abuodha J. Nelson – Nairobi.**
  6. **Hon. Lady Justice Hellen Wasilwa – Nakuru.**
  7. **Hon. Justice Stephen Radido – Kisumu.**
  8. **Hon. Justice James Rika – Nairobi.**
  9. **Hon. Lady Justice Linnet Ndolo – Nairobi.**
  10. **Hon. Justice Onesmus Makau – Nyeri.**
  11. **Hon. Justice Nzioki Wa Makau – Nairobi.**
  12. **Hon. Justice Dr. Jacob Gakeri – Nairobi.**
  13. **Hon. Lady Justice Jemimah W. Keli – Kakamega.**
  14. **Hon. Lady Justice Anna N. Mwaure – Nairobi.**
  15. **Hon. Justice Bernard Manani – Nairobi.**
  16. **Hon. Lady Justice Stella Rutto – Nairobi.**
  17. **Hon. Justice Ocharo Kebira – Nairobi.**

## 18. Hon. Lady Justice Agnes Mueni-Nzei Kitiku – Mombasa.

## 19. Hon. Justice David Nderitu – Nakuru.

### SESSION ONE;

- The session chair was the Chief of staff of the Judiciary Ms. Rose Gichuka who observed and set out the protocol of members in attendance. She invited the registrar of the ELRC, Hon. Kennedy Kandet who gave his opening remarks as follows;
- To begin the session was Jackline Mugo on behalf of the Federation of Kenyan Employers who gave the following speech;
- The next speaker was the LSK Nairobi Branch chair, Mr. Erick Kivuva who gave the following speech;
- He commended the ELRC for reducing case backlog and appreciated the role the open day plays to different stakeholders.
- The president of the national LSK Ms. Faith Odhiambo followed and gave her speech as follows;
- She pointed out that Judiciary should be a voice to all and congratulated the ELRC for 200% case clearance.
- Madam Eunice Gichangi gave her speech next on behalf of Mr. Jeremiah M. Nyegenye, CBS representing the senate.
- She commented that the work of this court was crucial in fostering devolution and digitization of court processes has made it easier.
- Mr. Amos N. Gathecha, the Principal Secretary, Ministry of Public Service, Performance and Delivery Management gave his speech as follows;
- He commented the ELRC for the open day in actualizing the theme of the people centred justice.
- Mr. Shadrack Mwangolo Mwadime the Principal Secretary, Ministry of Labour and Social Protection also gave his speech which was as follows;
- He noted that the court is keen on ensuring the theme

herein was actualized. He commended the court for the open day and noted that cases were filed in the right courts.

- The prison band thereafter had a performance then the procession moved into the second session of the day.

## **SESSION TWO:**

### **REMARKS BY THE JUDGES**

- Hon. Justice Oscar Angote started the session. He observed the protocol laid out and gave his speech emphasizing on the importance of open days and its significance to the relevant stakeholders and members of the public.
- He also highly commended the theme of this year's open day and how it impacts the society and all parties involved with matters around the ELRC.
- Hon. Justice Stephen Riech made a speech on behalf of Hon. Justice Eric Ogolla and thanked members in attendance and particularly the presiding judge of the ELRC.
- The Judge noted that litigants were still filing cases in the wrong forums and emphasized on more sensitization. He commended the court for the open day noting it was very crucial.
- He read the following speech on behalf of the Principal Judge of the High Court as follows;
- The principle Judge of the ELRC, Hon. Justice Byram Ongaya gave his speech which was as follows;
- The Judge pointed out that the case clearance rate at the ELRC was at 200% and the time cases were taking to be resolved in Nairobi was one and half years in Nairobi and one year in other stations like Kisumu.
- The Judge appreciated the Judges, Deputy Registrars, Magistrates handling employment matters and the staff for commitment to work in order to realise the good results.

- The Judge noted that the cases are now divided in to Claims, Judicial Review and Appeals division. That once filed a case is allocated a judge to handle immediately.
- The judge noted that there were trainings on harassment and violence at work place among other trainings.
- The Judge noted that the court was also incorporating the ILO fundamental, freedoms, principles and rights in its practice.
- The Judge emphasized on a judiciary which reflects on what matters to the people. That there was need for labour market which gives employees decent jobs.
- The Judge also pointed the issue of job gap and working poor employees who needed better working jobs.
- Justice Byram Ongaya, the Principal Judge of the ELRC gave the following speech:

*"I thank each of you for accepting our invitation and for your presence today. I thank the Honourable Chief Justice for presiding at today's ELRC open day. The open day is part of the continuing Judiciary focus towards the full realization of the vision of Social Transformation through Access to Justice. It demonstrates our judiciary's commitment for a citizen focused judicial service delivery.*

*The year under review ending on 30<sup>th</sup> June, 2024 has seen strides in our judicial service delivery. As at 30<sup>th</sup> June 2024, the statistics were as follows at the Nairobi ELRC station: Resolved cases 4,765; filed cases 3,380; pending cases 5,219. Case clearance rate is 200%. Average time to resolve a case was 544 days of 1½ years. Our priority is to hear and determine the pending older cases towards clearing the case backlogs. Our priority is to become a champion in judiciary service delivery with all cases being heard and determined within a year.*

*The court at Nairobi has fully implemented the three divisions of Appeals, Claims and Labour Relations, and, the Judicial Review and Labour Rights. I thank the Honourable*

Judges for embracing and implementing the divisions together with Judicial Docket Management System. Our case and Judgment Management system has thereby greatly improved. The implementation of the judiciary digital strategy has positively impacted upon the efficiency and effectiveness of our case management systems.

The Honourable Judges have also implemented the Court's committees for enhanced justice and stakeholder engagement. The Judge's ADR committee held the mediation summit in conjunction with the KJA, CAM taskforce and secretariat. During the summit, stakeholders shared useful knowledge, experiences and practices about court-annexed mediation, ADR and AJS.

The Judges' Jurisprudence and Publications Committee has embarked on development of the Employment and Labour Relations handbook. The handbook is expected to guide the Court and the Court's stakeholders on the relevant procedural, substantive and case law, towards more expeditious and informed delivery of justice. The Legislative Reforms Committee is embarking to participate in the process of the review and improvement of the labour and employment statutes as initiated and undertaken by the Ministry of Labour and Social Protection.

The Rules Committee has concluded the review of the ELRC (Procedure) Rules 2016 and we look forward to the Honourable Chief Justice's approval and promulgation of the new rules, 2024. The Rules Committee has also engaged the Registrar of Trade Unions towards initiating rules that will streamline the court's hearing and determination of trade union election disputes. The committee has also liaised with the Secretary, Occupational Safety and Health towards codification and publishing of coherent guidelines and procedures for processing claims and assessment for work related injuries, accidents, diseases and deaths. The procedures will go a long way towards streamlining likely objections and appeals arising from such claims and assessments. Later in the year, the Court plans to hold the ELRASE 2 focusing on ILO C190, 2019 on a World of Work free from Violence and Harassment including Gender Based Violence and Harassment. We look forward to our Court Users and stakeholders having conversations

and exhibition about manifestations of harassment and violence at work; actions taken towards freedom from harassment and violence at work; relevant local and comparative jurisprudence; and the next steps, in that regard.

The Court has also benefited from the training of our Judges by the ITC-ILO and ILO on International Labour Standards (ILS). The training which took place earlier in the year through the KJA is expected to contribute to our jurisprudence and enhanced justice in the many disputes that come before the court. I also thank the Honourable Chief Justice for the support and approval of our four Judges and the Registrar who attended the 112<sup>th</sup> ILO 2024 ILC. We look forward to more of our Judges and Judicial Officers attending the important ILO annual conference. We thank the ILO for the continued support. It should be that delivery of Justice by the court should meet world class standards.

In that regard, the Honourable Judges have embraced the International Labour Standards (ILS). The ILO declarations on fundamental principles and rights at work adopted in 1998 and amended in 2022 constitute an expression of commitment by governments, employers and workers organization to uphold basic human values vital to our social and economic well-being. The five ILO fundamental principles and rights include:

*Freedom of association and the effective recognition of the right to collective bargaining.*

*The elimination of all forms of forced or compulsory Labour.*

*The effective abolition of child labour.*

*The elimination of discrimination in respect of employment and occupation.*

*A safe and healthy working environment.*

The ILO fundamental principles and rights at work have been incorporated in the Constitution of Kenya 2010 as well as the various labour and employment statutes. Through the decisions of the court, there is a deliberate movement towards the full realization of the principles and rights in the world of work. The litigants being aware of

*the principles and rights, they are increasingly embracing a constitutional approach going beyond the contract of employment as shown in the diversity of the disputes that are brought before the Court.*

*The Court is alert to the global call for a New Social Contract for tackling the inequality pandemic. The global common agenda is about a New Social Contract based on rebuilding trust in institutions, inclusion, protection and participation, and, rethinking the measurement of gross domestic product (GDP) to reflect what matters to the people and the planet. We need policies and decisions that are consistent with the call by the civil society, religious leaders, the workers and employers for economic reforms that help create a just and sustainable future. If we maintain business as usual with a model of corporate greed entrenching inequality, exclusion and despair, then we will welcome perpetual instability of communities with tragic loss of jobs and many people struggling in the informal sector.*

*The International Trade Union Confederation (ITUC) Congress in November 2022 adopted six building blocks for the New Social Contract namely:*

*Investment in decent climate-friendly jobs with just transitions.*

*Respect for labour rights and implementation of a labour protection floor.*

*Minimum living wages and equal pay policies.*

*Universal access to social protection through a global social protection fund.*

*Promotion of greater levels of equality and an end to discrimination.*

*An inclusive development model and inclusive multilateralism based on social dialogue.*

*As a Court, we are aware that universal and lasting peace can only be based on social justice. We must sustain gains made and address new challenges based on human, environmental, economic and societal values – essentially a New Social Contract. We need an equal, safe and secure society where, everybody everywhere, is not left behind.*

*We know technological changes are rapidly changing work and work relationships. However, the relevant regulatory frameworks are lagging behind. We know increased aging population needs robust support systems. We know massive increase in young population calls for solutions for an oversupply of labour. We know climate change requires us to work even harder to make the world environmentally sustainable. We also know that the labour market is the cornerstone that shapes and conditions social outcomes. We know when the labour market fails to assure decent jobs the result is persistent discontent and dissatisfaction.*

*We need a labour market that assures decent jobs towards reducing inequalities. We need to enable workers and their families to satisfy their basic needs. Decent jobs are at the core of accessing public services of health, education and social protection floors. Decent jobs enable persons to increase their ability to better care, feed, and educate themselves. Decent jobs enable individuals to better integrate in society.*

*To address peace, stability, growing discontent and dissatisfaction, we must diminish persistent and rampant joblessness and insecurity. Job gap is the emergent measure of unmet need for employment. We need to reduce the job gap in our labour market. How many workers have a need for employment but are outside the labour force because they do not satisfy the criteria to be considered unemployed? What can be done to reduce job gap? Then, there is the problem of working poverty characterized with workers living in extreme poverty, earning less than USD 1.90 per day per person. What can be done to reduce the numbers of the working poor? The working poor scenario is due to many salaried employees being excluded from the scope of wage laws and policies. Such includes disguised employment arrangements like in outsourcing and platform workers. Many of such workers are in informal employment especially in agricultural sector and domestic workers – the paid and unpaid caregivers. In some instances, the laws and policies are inadequate as it happens for gang and piece rate workers. The consequence is that the working poor are thereby denied sufficient decent income and social protection. The priority action is to move more*

persons from the informal to formal employment. I trust that through social dialogue of our well-established social partners, we can together work towards offering good or at least decent standards of living with adequate job protection.

We as well need to examine our labour productivity. We need to initiate enterprises with rich job structures or high productivity activities. We must also check the rising cost of living and avoid policies and decisions that lead to high consumer price inflation characterized with acute cost-of-living crisis. We need also to examine labour income share and institute measures for increasing the share. As a priority, we need to address the trend of declining labour income share.

I have pointed out these things to assure that the Honourable Judges are cognizant of the prevailing world of work concerns and are committed to doing justice in the disputes that are brought to the Court. Through the various engagements such as this open day, Court Users Committees, Bar-Bench Committees, Inns of courts like the one due later in the afternoon, and, the Employment and Labour Relations Annual Symposium and Exhibition (ELRASE), I trust that together we will make justice the true shield and defender of our people. I thank the Honourable Chief Justice for approving, championing, and supporting the implementation of the citizen-oriented initiatives for justice delivery. The ELRC reaffirms its commitment to the full realization of the vision of Social Transformation Thorough Access to Justice.

Once again, I thank you for the presence, patience and listening."

- The next speaker was the Chief Registrar of the Judiciary, Hon. Winfridah Mokaya who also gave her speech as follows;
- The Registrar noted that all stakeholders play a critical role in realizing the theme. That 1<sup>st</sup> July, 2024 the Judiciary started implementing STAJ blue prints hence this was the best time for the open day by ELRC.
- The Registrar commented the court for having a good

case clearance record noting it may go real time.

- The Registrar pointed that they were seeking views on how to strengthen case management and noted that the court did not entertain corruption.
- The Registrar noted on the need to train judges and judicial staff even though the resources are limited.
- Her speech was as follows:

"I would like to join the Presiding Judge in extending a warm welcome to everyone who has joined us today.

Secondly, I wish to appreciate the Nairobi Employment and Labour Relations Court, led by the Presiding Judge, for organizing this Open Day.

The importance of engaging as stakeholders of the Employment and Labour Relations Court (ELRC) cannot be overstated. All stakeholders represented here today play a critical role in the delivery of justice.

At this juncture, allow me to draw your attention to the theme of the day: "Social Transformation through Access to Justice: Stakeholder Involvement in Case Management for Effective Service Delivery." This Open Day could not have been scheduled at a better time. On 1<sup>st</sup> July 2024, the Judiciary began implementing our STAJ blueprint, which is people-centered. The STAJ blueprint envisages public engagement in all phases of justice delivery, as well as promoting a relationship of accountability within the Judiciary and between the Judiciary and other stakeholders.

This Open Day is therefore dedicated to all stakeholders to have an opportunity to reflect on the achievements and milestones of the ELRC, identify the challenges facing the Court, and find common solutions towards improving case management, with the aim of enhancing effective service delivery.

Our Constitution guarantees the public's right to scrutinize and comprehend the workings of the law. This transparency is essential for fostering trust and confidence in our judicial system.

As Justice Louis Brandeis once said, "Sunlight is said to be

*the best of disinfectants; electric light the most efficient policeman.” Transparency through public participation is therefore key to a just and accountable judiciary.*

*To enrich our conversation today, let me share a few statistics on the ELRC caseload in the FY 2023-2024:*

*A total of 4,210 cases were filed, and 8,014 cases were resolved in the ELRC Stations.*

*The Court achieved a Case Clearance Rate of 190%, with most ELRC stations exceeding 100%.*

*At the end of June 2024, the ELRC stations had a total of 6,966 cases pending resolution.*

*The ELRC station reduced the backlog by 11.7% from 7,837 to 4,179 cases.*

*It is also remarkable that the ELRC has embraced technology. Court proceedings have shifted from the traditional style of open physical court to a hybrid system, which includes virtual courts. Digitization of the justice system presents great opportunities as well as risks that must be evaluated, and strategies on mitigation employed.*

*Therefore, I invite all stakeholders present to use this opportunity to broaden our engagement to ensure that we gather as much information as possible and share many perspectives to improve our case management.*

*In addition, the Judiciary seeks views on where we can direct both existing and future policy and how to harness modern technology with the view of enhancing and strengthening case management.*

*Before I take my seat, let me take this opportunity to state that the Judiciary does not tolerate corruption: Our courts are zero corruption zones! And they should remain so.*

*As the Chief Registrar, I am cognizant of the urgent needs of the Court, which include the need to enhance the capacity of Judges, Judicial Officers, and Staff through training, addressing the shortage of staff, and meeting infrastructural needs among others.*

*Though we are facing a challenging fiscal environment, as the Judiciary Management we are keen on targeting our limited resources on priorities that go towards delivering*

*timely justice.*

*And as I conclude, let me reiterate the commitment of my Office in supporting and facilitating the Employment and Labour Relations Court.”*

- The Chief Registrar then ushered in the Chief Justice, Hon. Lady Justice Martha K. Koome, EGH, who gave her keynote address as follows;
- The CJ pointed that the open day gets better each year which needs to address the needs of all Kenyans as people centred justice.
- The CJ noted that the open days are pivotal in actualizing today's theme and commended this court for bringing stakeholders together.
- The CJ emphasized on understanding case management and understanding the real issues for example the Gen Z issues where they have pointed out corruption. She emphasized that bribery was unacceptable in the Judiciary.
- The CJ also pointed out that they were seeking views on how to improve complaints management system.
- On the 200% case clearance rate the CJ commended the court and also on the 7.5% case adjournment rate noting at her time as a practitioner it was at 90%. That they were looking for 0% case adjournment.
- The CJ emphasized on Alternative Justice systems that is ADR, AJS and such which eases burden in the courts and parties resolve disputes amicably towards Restoration of social Harmony.
- The session was the photo session the Hon. CJ with all the Speakers, All judges, the Registrars and Deputy registrars, the staff and finally the CUC.

## 9.2 ANNEX 2

**REPORT ON THE NAIROBI EMPLOYMENT AND LABOUR RELATIONS COURT; INNS OF COURT, 2024 HELD AT MILIMANI LAW COURTS CEREMONIAL HALL ON 22/07/2024 AT 2.00PM.**

**THEME: BEST PRACTICES IN CASE MANAGEMENT: THE BAR AND THE BENCH PERSPECTIVES**

The event was opened by a word of prayer by Hon. Electer Riany.

Hon. Fredrick Nyamora then welcomed all Hon. Judges, magistrates, advocates and other participants present for the ELRC Inns of Court, 2024 and welcomed the Hon. Presiding Judge to give the opening remarks.

The ELRC Presiding Judge, Hon. Justice Byram Ongaya welcomed the Hon. Judges and scholars present and invited collegial interactions of the court users particularly the bar and the bench. He further expressed that he looks forward to the event fostering collegial interaction and enable the discovery of justice.

### SESSION ONE: ELRC INNS OF COURT PANEL DISCUSSION

**Moderator:** Hon. Lady Justice Stella Rutto

**Panelists:** Hon. Dr. Justice Jacob Kariuki Gakeri -  
Judge of the ELRC

Hon. Mr. Justice Ocharo Kebira - Judge of  
the ELRC

Mr. Wycklife Oyoo - LSK Nairobi Branch  
Council Member and Convener, Legal Aid &  
PIL Committee

Mr. Jefferson Museve - Advocate

- **The moderator introduced the event's theme and posed the first question to all the panelists; what will a true effective case management involve?**

Hon. Justice Dr. Gakeri stated that an effective case management system involves clear timelines of what activities ought to be undertaken; understood by all participants and which they must abide by and there ought to be consequences for non-observance.

Hon. Justice Ocharo was of the view that an effective case management involves a corroborative and proactive approach where the court and stakeholders are involved to ensure effective, fair and timely resolution of controversy. This include setting straight timelines for filing of documents and for taking procedural steps.

Mr. Museve viewed it in terms of setting down

matter for hearing which heavily depends on case management i.e. trial preparation and the trial itself. It also involves the stakeholders' input and strict timelines for effective case management.

Mr. Oyoo firstly conveyed the apologies of the ELRC Bar Bench convener, Ms Watende who was held up with another matter. He proceeded to explain that an effective case management should be geared to arriving at the ultimate goal of the trial which is to do dispense justice efficiently, timeously and the best available away. Therefore, it has tie with what we seek to achieve as justice sector users. He further stated that it is about the completeness and readiness of the case for trial which means case management must be given the weight it deserves to ensure there is no turning

- **The Moderator posed the second question to Hon. Justice Ocharo; whether the ELRC Procedure Rules has provided anchorage for case management.**

Hon. Justice Ocharo stated that there is a current philosophical principle that the court should at the earliest stage possible develop responsibility in the manner the case gets to court until the case is determined.

He continued to state that there is anchorage of this philosophical principle in the rules. The rules have given the court supervisory and controlled powers in the process of the cases from the day of filing to judgment which wasn't embraced before.

He started by looking at Rule 5 of the ELRC Procedure Rules which guides what pleadings or a statement of claim for labour matters should contain and documents must accompany the statement of claim. He averred that this provision used effectively by the court gives the court powers to redirect a matter brought before the court in contravention to section 65 of the Labour Relations Act; this is one of the mechanisms that grants the court control.

He also looked at Rule 8 which provides a memorandum of appeal should be confined contemporaneously

with the proceedings. This procedure not available in the Civil Procedure Rules and is another mechanism that can be employed by the court to enable the movement and faster determination of appeals.

He also identified that another rule that speaks on case management is Rule 10(3) which gives the court powers to *suo moto* to direct the filing of electronic evidence. This is not left to the parties but the court may state the circumstance of the matter and for efficient disposal of the matter it needs the electronic evidence.

He further noted that the court has embraced Rule 11 on service where the court must serve documents in a matter as opposed to the parties. This comes to play when a litigant sleep on a matter and the court is keen on achieving numbers and promote constitutional directive of expeditious disposal of matters; then the court can direct that the documents should be served by the court.

Lastly, he highlighted Rule 14(7) which allows the court on its own motion as a way of case management to direct a party to file clarification on matters on its pleadings which are not clear.

- **The moderator directed this question to Mr Oyoo; there has been many developments from the season of Covid, ELRC has improved its rules and systems, in your view is adoption of service by electronic means efficient in case management and to what modes are available electronically.**

Mr. Oyoo opined that electronic service is inescapable and we cannot wish it away especially as since the Judiciary is moving completely to e-filing. Therefore, it will not ogre well for parties to file pleadings electronically and not be allowed to serve electronically. Comparative court have amended their rules to incorporate service by email as a common method of service and from the bar, counsels include their email address liner that one is being served under the rules and that the mode of service is deemed as effective service.

He stated that email properly features as a mode of service but other modes of electronic service such as WhatsApp service presents serious challenges on the issue of service and advocates have litigated on what is the conclusive evidence of WhatsApp service; who effects service? must it be a licenced process server? How is this going to sit with issues such as data protection where the recipient asks who he got his/her phone number if you are not the claimant and are instructed to service.

He therefore noted that the rules have conceptualised other modes of service except for email, the court will have to include these other modes of electronic service and the point of convergence becomes the affidavit of service explaining how service was done and how the recipient received it.

He further stated that service should not be treated as a mere procedural step as there have been serious litigation on service of summons particularly on foreign corporations; he highlighted that the Meta case where the issue of service was the first point passed before the court takes jurisdiction. Therefore, service goes to the root of efficient court processes and case management because issue of service should not a back and forth matter.

Lastly, he stated that there needs to be clarity as the rules provides for electronic service but does not explicitly list all the modes available hence becomes and issue of practice and the development of the law and the digital era.

- **The moderator then posed a question to Mr Museve that states; how best can the court manage filing of interlocutory applications and management of hearing and determination of the same in a way that does not impede access to justice.**

Mr Museve highlighted that interlocutory applications occur in between the trial before judgment is delivered, however, from the side of the bar, it is usually frustrating as certain steps taken by litigants as it may work for certain client or be used as a tool

to delay the trial.

He further stated the key challenges on interlocutory application is that some are usually frivolous and wastes the court's time. Some clients want to delay the matter and keep filing application after application and this requires the bench to step in and put its foot down. The bench can be firmer and dismiss these applications with costs especially to parties that bring frivolous applications.

In respect to insufficient case management, Mr Museve observed that there is a scenario where a statement claim is filed contemporaneously with an application seeking interim orders or a respondent in his response files a preliminary objection within the pleadings and not file a formal application. These are the issues that bring key challenges in handling interlocutory application. He proceeded to state several case examples that handled such matters such as Kenya Union of Commercial and Food Allied Workers v Mobile Pay Ltd; George Maina Kamau v Attorney General & 2 Others; Law Society of Kenya v Attorney General and 2 Others.

He highlighted that from these case laws the court should set strict timelines and strict adherence to the same, pre-trial conference, discouragement of frivolous case, embracing alternative dispute resolution mechanism in the first instance through pre-trial conference.

- **The moderator directed the next question to Hon. Justice Dr Gakeri; in your view and from your experience, have preliminary objection (PO) been properly utilised and what the court can in the scheme of case management to stop the misuse of the court's time through filing of POs which ideally does not dispose of the matter.**

Hon. Justice Dr Gakeri stated that a PO can be used to facilitate expeditious settlement the matter or delay the process and they are a bit common. In the recent past he has come across many POs on matters filed by trade unions where the opposing counsel objects

that the union lacks locus standi as the grievants are not its members and have never been members. In such case there is no PO, however, the court has to give the parties time to file submissions; he therefore requests parties to file submission within 2 days and if they fail to do so he proceeds to write a ruling as is.

It's the Honourable judge's opinion that POs are misused, however, he tries to engage parties in AJS which sometime work and sometimes does not work. The court can direct counsels to the PO and give them time to compromise on it or file submissions. The effect of this is to delay the case which works in favour of the party that files an unmerited PO, however, if it is merited it is fit for purposes of administration of justice.

Hon Justice Gakeri also pointed for effective case management, it is essential for the judge to be vigilant at the pretrial stage. The purpose of the pretrial conference is to ensure that all preliminaries are disposed off and what is remaining is the hearing of the matter.

He further noted if there effective and efficient case management there ought to be no application after the pretrial conference but this calls for vigilance by the counsels on record.

To get a wholesome perspective on the issue Mr Oyoo was requested to give his opinion on the matter from the side of the bar. He started by stating that POs and interlocutory applications are sometimes necessary to meet the ends of justice as if the orders sought are not given will render the whole matter nugatory.

He observed that we must not wish away interlocutory applications as unnecessary distractors to achieving justice.

He further noted the court plays a vital role in dealing with dealing with POs and interlocutory applications. He urged the courts to implement strategies such as oral arguments in the applications so that urgent issued to be canvassed by the parties can be done within 5 minutes and a decision is given in a week.

He stated that if interlocutory applications are well managed they could further the ends of justice.

He also suggested that discourage filing of many applications, the court can direct that no other application can be filed without the leave of the court.

- **The moderator shifted the panelists to the issue of ADR and posed the question of Hon. Justice Ocharo, in your view, the current mechanisms of ADR contemplated under the ELRC rules effective to ensure expeditious disposal of cases and generally case management.**

The court and its stakeholders should understand that the constitution requires us to use ADR mechanisms for expeditious disposal of matters.

The court can do better in embracing ADR by having a robust policy which can be handled by the ADR Committee thinking of rules to be put in place to ensure there is an uptake of matters referred to mediation and concluded through mediation; secondly, stakeholders change the mindset and embrace other mechanisms to get justice, this can be done by educating ourselves as the court, the litigants and their counsels on the same.

He also suggested the court has serious mechanisms to identify matters that can easily be determined by way of alternative dispute mechanism e.g. computation of terminal dues which can be easily solved through negotiations.

He further noted the need for the court to continuously have evaluation the success and failures of ADR and what are the best way forward.

- **The moderator posed a question to Mr. Museve on whether the jurisdiction of ELRC has been settled.**

Mr Museve stated that the jurisdiction of ELRC has also been an issue he has struggled in his practice. He highlighted that under expanded jurisdiction, there is Joseph **Njoroge Kamau vs NEMA** where the proponents of the case were of the view of expanded jurisdiction, were if there is an issue of an employer

-employee relationship touching on the matter

He also brought the issue of limited jurisdiction handled in *NLC V Trust Land* express where it suggested the issue of limitation and held that ELRC lacked jurisdiction over disputes concerning compulsory acquisition of land.

He also noted another area of concern is public interest; Section 12 of ELRC Act on jurisdiction of the court. He observed issue on public interest litigation may arise where MCAs file a case against SRC raising pertinent issues on the relationships captured under Section 12. However, he noted that where the issues on the matter touches on the general welfare of the employees, the court can hear and determine the matter.

- **The moderator then posed a question to Hon. Justice Dr. Gakeri to discuss the place of ELRC in public interest litigation**

Hon. Justice Dr. Gakeri explained that as long as the issue litigated is at the core of employment issues and the petitioner is within the limitation of public interest litigation and the confines of the law, once this is demonstrated the court can proceed to hear and determine the matter.

He further looked at the latest Supreme Court decision on jurisdiction where the court overruled a Court Appeal decision, judges appear to be suggesting that as long as the matter involves employer employee relationship, then the court has jurisdiction. However, as to who ought to bring the case in court was not clearly stated, however, the Supreme court relied on section 12(3) of the Act and felt the same is exhaustive on who can institute a case in the court.

Mr. Oyoo also chimed in and stated that jurisdiction should be applied at the different types for example territorial and temporal jurisdiction and even the kind of orders given for example sec 59 of the Employment Act on the remedies available as read together with the rules, is there a remedy for the employer as opposed to the employee.

Further, jurisdiction come down to the philosophy of the court, should the court take up matters that touch on grey areas such as the NSSF case which was settled by the Supreme Court that ELRC had jurisdiction.

- **The moderator the involved the panellists on the issue of WIBA and the court’s jurisdiction especially on the adoption of the Director Of Occupational Safety And Health Services awards (DOSH). Is it court’s jurisdiction administrative or judicial?**

Mr. Oyoo opined that the court enjoys supervisory jurisdiction over WIBA matters. The WIBA regime lacks clarity of how the court should deal with such matters when it comes to adoption. The court cannot open up the Director’s decision when it comes to court and start receiving evidence and hearing parties on a decision already determined, meaning it will be acting as an appellate body whereas the court does not hold appellate jurisdiction on WIBA matters.

Hon. Justice Ocharo gave the court’s view on this by firstly noting that as a court, they are divided but majority agree that WIBA does not provide for mechanism of enforcement of DOSH, therefore what happens to employees successful in getting DOSH awards. It was his view that the court has the authority in such situations to be effective so that litigants do not suffer unjustly because there is a lacuna and the court steps in and comes up with judgment laws.

The judge agreed with the school of thought that the court came up with a facilitative mechanism that has nothing to do with the merits or demerits of the Director or get into the evidence produced before it. Therefore, the court has administrative or facilitative jurisdiction.

- **In conclusion, the moderator asked the panellist to expound on role of the stakeholders in case management and how they can assist in court to achieve its principal objective under the Act.**

Hon. Justice Dr Gakeri states that all stakeholders are

principal to ensuring the matter goes full throttle to conclusion and the court, lawyers, litigants must play their part. The process is collaborative. There ought to be congeniality to foster consensus between the court and the lawyers and for ease of administration of justice and expeditious disposal of matters.

Hon Justice Ocharo approached by observing that all stakeholders each have a responsibility in case management. For the court, it should identify issues for determination; set strict timelines to the parties; and facilitating and referring matters to ADR. In respect to stakeholders, there is need for cooperation from their end; secondly, preparation, parties must be willing to participate in pretrial conferences and before getting to the hearing stage; and lastly, they need to be ready and willing to embrace ADR as a way of expeditious disposal of matters.

On Mr. Museve’s end, he brought up the suggestion that the court could introduces of pre-trial questionnaire on ADR, for example conciliation which is essential in matters involving trade unions and this can be flagged off at this stage.

He further noted that role of stakeholders is quadripartite approach that involves the judiciary, legal practitioners to ensure strict adherence to times and the parties involved who must cooperate with the court and most importantly the court’s staff who are heavily involved in inputting the court activities in the CTS platform and the last and fifth partner is AI which may end being a party in case management and a stakeholder in the near future.

Mr. Oyoo stated the role of stakeholders begins from identifying who they are and it must be aware that court decisions not only affect the parties in that case, especially when declaratory orders are made.

The understanding of the court process is the first point that makes court users help in case management. This is facilitated by a working CUCs and Bar benches and training by the judiciary and advocates. Also, the bar encourages open days and

service weeks and such initiative to help in case management.

The court of the biggest player in effective case management, therefore, how the court administration works informs how slow or fast the case will move. He proceeded to state that the distillation of the issues for trial is important; when an advocate knows what issues the court focusing on, he/she will not spend a lot of time in cross examination of things that may not inform the decision of the Court. He further suggested that if possible, the Court should invite parties to make oral submissions if necessary, so that when the decision comes, I am not surprised when they go to render itself on an issue that no one submitted on or went on.

Secondly, he highlighted that the e-filing portal does not allow fixing of dates in the portal and counsels have to move the court for a date. He gave an example that the court sends an email informing advocates the matter has been taken out and assigns another hearing date which may not be convenient to counsel which can be negated to deciding his diary. He suggested moving forward, the court can give a mention date in the shortest time possible to confirm with counsel their diaries to avoid adjournment of hearing.

He went on to expound on the counsel's role that the filing of cases and how timeously it is done is important. Mr. Oyoo also noted in filing employment claims the claimant has at least or at most three years to bring this case to court, whereas, rule 5 gives the Respondent only 21 days to file everything pertaining to the case. Therefore, there is an inequality of arms.

He finalised by discussing the public's role, where he noted there is need for continuous education to enable parties understand what rights they have, what role they play and the allowance granted in the rules for example the rule that Claimants acting in person may not have to comply with certain pretrial procedures and the judge can give directions of the hearing without burdening them with the procedural

rules.

He concluded by stating it is essential every party locates their place in case management process correctly and ensuring the collaborative effort.

The moderator concluded the session and thanked all the panellists for the robust discussions and handed the event back to the MC.

## **SESSION TWO: COLLATIONS OF THE PANELIST'S DISCUSSION**

**Discussant: Dr. Naomi Njuguna, Lecturer Faculty of Law, University of Nairobi.**

Hon. Justice Nduma Nderi welcomed the discussant to take over the second session, she espoused that the session is meant to collate the panel's discussions bring it out clearly and tease out some of the controversial issues that were still not clear.

The discussion, being tackled on that day was one of best practices of case management under the theme of dispensation and access to Justice. Dr. Naomi wanted to look particularly at expeditious handling of cases in a cost effective and transparent manner. She stated that the speakers, both from the bench and from the bar, had really done justice to the theme. She was of the opinion of; at the end of the day, what they were saying is that when all had been said and done and they look at how Justice is being dispensed at the employment and Labor Relations Court, justice needs not only to be done, but also to be seen, and felt to be done since this is in the way the perception of Justice is being handled. From the way the case starts to the way the case ends, she believed the impact of delays at this court can be particularly unjust to litigants, especially an employee perhaps who was to wait for a case to be handled in order for them to receive the benefits of their employment since they don't receive any pay until the case is handled, so the effect of the delay, if we are talking about social transformation through access to Justice, we can definitely see the social economic effects of delays from this particular court.

The first thing she got as the panelist were talking was first, whether case management work and she thinks from that perspective of the Academy, what can be done is to have

an evaluative study, the data is needed. Dr. Naomi believes there is need to actually go to the ground and ask the court users, the stakeholders and everybody who is involved in the process to tell us whether case management as it has been envisaged in the law, actually works. Case backlogs have decreased and we ought to look at it from both sides, from the bench and from the bar. Hon. Justice Ocharo took us through the provisions of the rules that provide the philosophical basis for case management within the rules and the law. She also suggested to us that case management is not just about rules and procedures, she believes it has other factors that influence the efficiency of case management that go beyond the rules that are in the books.

Dr. Naomi felt we also needed to think about the staffing and look at the infrastructure that is available for the court users to actually do effective case management. She stated we also want to look at technological resources and whether there is an organizational culture to data management, performance management and effective case management. What she heard from the floor is that there are certain principles of effective case management that must be adhered to. She felt that we must have cooperation relationships between various actors and we must have judicial leadership in this process ensuring that the parties are well prepared for the case and that the case can go on without a hitch until the end.

She also heard that we must monitor, there must be clear timelines and vigilance. She believes the word that she heard was vigilance until the end. in terms of automation and digitization. Dr. Naomi felt that COVID taught us resilience and we need to adapt as we are seeing the benefits of technology. She stated that there are also challenges, as we had heard from Mr. Oyoo and from the rest of the panelists, especially with regard to the process of service.

Dr. Naomi wondered whether there is a rule when teaching the interpretation of legal provisions. She cited the mischief rule and the golden rule. But one question that was paused was that how do we interpret the term electronic service? When the thing that is being used now is just email, can we not use *ejus dem generis*? To see whether we can also incorporate mobile phone service. She was not sure whether mobile phone is in the same category and class as email communication

in terms of like electronic communication. She believes that there are questions around whether even if it is not stated in the law and all that is required is electronic or rather email, perhaps we could use *ejus dem generis* is to expand the modes of electronic service as we try to address the challenges of digitization.

Dr. Naomi stated that she has an 89-year-old father who is highly litigious but he does not know how to use this technology. She empathized with the many court users apart from age are also having challenges accessing the court because of automation and digitization because of lack of proper computers poor Internet connectivity and so on. She believes that as we think about digitization atomization, we need to also think about ways in which we can make the process easier since technology is here to stay. We must embrace it, but we must make it easy for ourselves.

On Interlocutory applications and Preliminary Objections (POs), Dr. Naomi heard words like frustration, frivolous, vexatious and so on. She believes what really came out, especially in terms of the POs, is how do we balance the opportunity, the right to the opportunity to be heard, because as Mr. Oyoo had said these applications sometimes are necessary in the interests of justice. She was not sure we balance that with preventing the delay of cases. What she had as the solution to this was, we need to engage or the court needs to engage with the advocates to decide on the validity of the PO. Sometimes it will really need that engagement with their okay. Personally, as they appear before the court, strict timelines and vigilance on the part of the judge and the advocates, especially at the pre-trials stage.

Other strategies she heard was making oral arguments in other jurisdictions. She thinks it is Australia and some states in the US that came up with issues like concise statements, they are not using the normal pleading process in the notice of motion and so on and so forth, but they are coming up with just an informal way of bringing up an issue and then the judge will decide on the appropriate way to handle the matter. It is kind of informal and it kind of expedites the matter are very quickly. She was of the opinion that we should adopt that strategy.

On jurisdiction Dr. Naomi felt that before we go to arbitration

jurisdiction, we need to consider these things called hybrid matters where the court is faced with a situation where there are two sets of issues. Maybe one commercial and one that is an employment labour relations issue. The predominant purpose test should be established to see whether the court has jurisdiction over that matter. The substantial issue at hand is how to handle such a case when it comes to the court and how counsel frame their pleadings when they are faced with such dilemmas. She said that one of the things she would have wanted to hear from the floor is the question of the exhaustion principle and whether the courts, has jurisdiction when there is an alternative form of dispute resolution that has not yet been exhausted. She gave an example of section 77 of the County Governments Act which says that if somebody has an issue with the County Public Service Board they should take it to the Public Service Commission and section 87 of the Public Service Commission Act has the jurisdiction of courts when it comes to dealing with these disputes if it is a work-related issue, but does the court have any jurisdiction there?

Dr. Naomi felt that as we talk about expanded jurisdiction, as we talk about limited jurisdiction, we also need to talk about the principle of exhaustion and whether the court can handle a matter is the court a bastion of justice? Does it have residual jurisdiction in such matters? Does the court have jurisdiction over foreign contracts? She heard the META case being mentioned and stated we need to know that the panelists can expound to us whether the court has jurisdiction over foreign contracts, where there is a violation of the fundamental freedoms relating to labor issues. Another issue for jurisdiction would be if an arbitration clause has been put in the employment contract, are the parties bound? Is the court bound by that arbitration clause or can the court actually look beyond the arbitration clause to achieve justice, especially for the employee who may have lower bargaining power? Most of employment contracts are unilateral, meaning that they are drafted by the employer and handed to the employee to sign it. If the employee has not had an opportunity to bargain for the terms in that particular contract, can that arbitration clause still binds the parties and housed the jurisdiction of the court?

In terms of arbitration Dr. Naomi stated there is need to have a very good conversation in terms of case management. What she heard without repeating what the panelists said and asked

herself from those submissions is which method therefore of alternative dispute resolution is the most appropriate for labor disputes. Out of negotiation, conciliation, mediation, arbitration and so on, which is the most appropriate? She believes at the moment mediation has been embraced very strongly. She stated from the statistics from 2022/23 the settlement rates using mediation was 51.2% it went slightly up this year 2023/24 to 54.9% She was honored to be at the second mediation summit that was held at Strathmore University where again the statistics were very impressive.

Dr. Naomi stated that the practicality on the ground for some users is that some of the mediators are not well versed in handling some of these issues because they have no clue since they are not specialized mediators, so they can handle anything that comes your way using the principles of mediation. It is fine, but in labour disputes is there need to have specialized mediators in the area of Labor law in order to increase the rate of settlement in this area?

In terms of the public interest litigation, Dr. Naomi thinks this is something that we need to embrace. The point that came through very strongly is that as long as the matter relates to employment and Labor Relations, then it does not matter whether that person is an employee or not, or an employer or not that matter will be handled by the court. She stated stakeholders such as herself in the Academy, stakeholders such as the media, how is the media reflecting reporting on the cases that come from this court, the LSK employer associations what's the relationship? She asked. She wanted to know how we sensitize Members on these trade unions, community players and chiefs.

Dr. Naomi concluded by saying when we talk about Alternative Justice System (AJS), as Hon. Judge Dr Gakeri, who talked about AJS, has a large pool from the community that some disputes need to be handled from that level. So, what we need them to do, and what she heard coming through is that we need to do a stakeholder analysis. We need to do our stakeholder mapping and we need to do a stakeholder engagement that enhances or that enables us to understand the roles of various

stakeholders in case management effectiveness.

She concluded by thanking all the participants.

### **SESSION THREE: PLENARY**

#### **Moderator: Justice Nduma Nderi**

The plenary session began at exactly 4.10 pm.

The Moderator invited the audience to actively participate in the session by posing questions to the Panelists in relation to what has been discussed by the panelists or the conduct of the Employment and Labour Relations Court generally.

Justice Nduma Nderi started off by stating that the traditional definition of case management is the expedient and just determination of cases from filing to Judgment, he asked who were the stakeholders after Judgment?

Ms. Jacqueline Manani, Director Legal Services Public Service Commission, asked two questions namely: The first question was in relation to the jurisdiction on enforcement of decisions of Tribunals and Appeals by the Court, She highlighted that Section 87 of PSC Act provides for enforcement of decisions of PSC by Court in that, a Party who has a PSC judgment in their favour can go to the court for enforcement. She wanted to find out what was the role of the court? Whether the Court at that point exercised appellate jurisdiction? For context, she gave a scenario that when the Court goes into the decision of the Commission to decides if this decision is wrong and decides not to enforce it, whether the Court at that instance would be getting into an appellate jurisdiction role? Her concern was that the moment the Court decides that PSC had no jurisdiction to adjudicate the instant matter for one reason or the other, then it would be entirely leaving the parties without a remedy.

She stated that her 2<sup>nd</sup> question was a comment. She observed that apart from just case management it is important for Court to help the parties manage disputes especially when a matter first goes to Court at the *exparte* stage (where a party files a Petition together with an application). She reckoned that she knew the Courts were busy however, requested that when the Courts are faced with an application for interim orders (*exparte*), they ought to first scrutinize the documents filed before the hearing of the application. She explained that the

reason for this is there were instances where some parties particularly Respondents with a bias towards Government entities, upon obtaining interim orders, sleep on the orders and continue to frustrate the matter indefinitely. She also gave an example of a time when a blanket order was issued by the Court and the matter went on and on for two years to the point where, the parties were frustrated.

Mr. Allan Sitima an Advocate in the public service specifically the Teachers Service Commission noted that the noble ideals of robust case management could not be understated. He further noted that one of the issue that has been canvassed and interrogated is on procedural justice vis avis substantive justice. He explained that the whole idea and philosophy of case management is to have clear enforceable timelines that are understood, can be enforced and have legal sanctions. In the circumstances, he wanted to know whether there was a linkage between the procedural steps which is a concern of case management, and substantive justice; whether there was a balance between the two?

On the issue of Preliminary Objections, Mr. Sitima stated that there is a school of thought that provides that Preliminary Objections are a complete waste of time and can be determined wholesomely. Further, flowing from Justice Gakeri suggestion that P.O's should be handled at the pre- trial stage, he sought a further clarification on that issue since from his practice he was aware that Preliminary objections especially those grounded on the law can be raised it at any time in the course of the proceedings. That being the case, the Court cannot therefore say that a litigant never brought it up at the pre-trial stage and consequently lock you out.

In addition, Mr. Sitima agreed with Mr. Museve on the issue of ADR and in particular on Court Annexed Mediation where he suggested that it was about time that we had a questionnaire to flag matters for mediation. He stated that in his practice, he had handled cases not amenable for mediation at all. Consequently, he was of the view that it is about time we also set the bare minimums on what cases can or cannot be referred for Mediation for interests of time.

Mr. Sitima also commented on the issue of public interest litigation which he concurred should be expanded. He acknowledged the late Justice Majanja as the first judge to

expand this and who reasoned that even issues involving constitutional matters and petitions can be the concern of the ELRC Court. Further, he was curious on Dr. Naomi's personal thoughts and insights particularly on the way forward to the issue of the exhaustion principle which she had left hanging.

Ms. Beatrice Mathenge from the Ministry of Labour, the Office of the Registrar of Trade Unions had three questions and comments namely: The first question was on the issue of Appeals from the decision of the Registrar of Trade Unions referred to the ELRC Court. She gave a scenario emanating from Rule 8 of the ELRC Rules that provided for filing of the Memorandum of Appeal. She stated that there was a lacuna in the law as Parties sometimes filed documents or introduced new documents at the Appellate stage, which were non-existent at the trial stage especially in cases where a Memorandum of Appeal was served without the Record of Appeal. She suggested that the particular Rule ought to be amended to indicate that the Memorandum of Appeal to be filed together with the Record of Appeal from the outset so that the parties can verify what documents have been filed and can raise an objection (if need be).

Her second comment was on service of pleadings on interested Parties. She reported that often times when she represented an Interested Party, they were not served with the Pleadings at the trial stage and only served at the Court of Appeal stage vide the directions of COA. She indicated that whereas she did not know the reason for the lapse, she urged that the Court to ensure that the Interested parties are served with the pleadings at all stages of the trial for them to respond.

The third comment was on the issue of the territorial jurisdiction of the ELRC specifically in relation to matters involving the Trade unions. She stated that in many cases, you would find that the Trade Union has filed matters all over the country eg in Mombasa even in instances where the matter has arisen in Nairobi. She indicated that it was really an expensive venture for the parties involved and also for the representatives.

Sandra Kavagi, Advocate, Oraro & Company Advocates commented on mediation and ADR mechanisms arising from Dr. Naomi's discussion. She recalled that she had previously raised the issue in a different forum and division. She

pointed out that it would be important that the mediator appointed to get training on handling employment and related issues especially for matters referred to mediation at the instance of the parties or Court which will total to successful outcomes. On the same breath, Ms. Kavagi suggested that the Magistrates handling employment disputes should also undertake continuous training on the subject to aid in the efficient disposal of employment matters.

Okemwa Jason, Advocate commented on how to use Preliminary Objections effectively as an authoritative tool for case disposal. He suggested that we can effectively use preliminary objections using cases like service groups where is an assumption that the facts brought are correct and if that PO is successful, it will extinguish the case. He suggested that the Judiciary ought to make a rule that once you bring an objection, there is an express admission that you will get a summary judgment as is widely used in the United States of America. He stated that when you bring a preliminary objection, then if successful, you should get a Summary Judgement.

Ms. Brenda Kongaya, Advocate, requested the Hon. Deputy Registrars to shed light on something she had recently encountered in Court in relation to a Ruling relating to party-party bill of costs. She explained that the court in this specific case, ruled that the applicable remuneration order is schedule 7 and not schedule 6 as she knew especially on appeal matters emanating from the subordinate court. The Court went ahead to state that guided by paragraph 58 of the advocate's remuneration order providing that, "in matters or courses which having regards to the amount recovered or paid in settlement of the bill awarded, would have been brought in a Resident Magistrate or other subordinate court cause of scale application to subordinate court only shall be allowed unless the judge otherwise orders." She went ahead to state that consequently, she was left with a lot of confusion, not knowing which schedule should apply, whether schedule 6 or 7, especially on taxing party-party costs on appeal from the subordinate Court. She further sought clarification as to whether paragraph 58 of the remuneration order, was applicable in such instances as she believed that the proper appellate Court is the ELRC and not the subordinate Court.

Hon. Lady Justice Stella Rutto opened the response session where she requested the Panellists to answer the questions posed by the participants.

Justice Ocharo responded to the first question raised by Ms. Manani. He stated that he was aware several Acts would refer enforcement of those decisions of PSC to Court generally. He cited the reason as the lack of an enforcement mechanism by those entities. From his view, where the subject matter is the execution of those decisions, the Court going beyond that would be assuming an appellate jurisdiction over those matters. He further stated that there are mechanisms in the various statutes that created those tribunals for appeal for example an appeal to such and such a court or judicial review applications. For purposes of enforcement, he opined that it refers to the exclusion of those decisions.

On the comment regarding *ex parte* orders, he voiced that if the affected party felt somebody was enjoying an injunction indefinitely, then the law allows you to move the court to discharge such orders. He declared that injunctive orders are supposed to last a maximum of one year and applications must be dealt with within a year at most. He further stated that at the expiration of it, any party is at liberty to move the Court to discharge the said orders especially if the party was indolent.

Mr. Museve was asked to respond to Justice Nduma's question on who were the stakeholders after Judgement. Thanking the bench for the question he stated that the post-judgement level appears under case scheduling which normally covers both the pre and post-trial stages. He stated that the stakeholders are most likely the litigants involved in the matter, where you find that there is the requirement especially when an appeal is filed, to have certified copies of proceedings and the decision of the court, ie the Judgement itself or Ruling, Order, and the Decree. He noted however, there has been challenges at times in acquiring these documents from Court.

He noted that the other parties involved included the Judge. However, there was a concern as to whether the court is at the time, *functus officio* depending on what the parties wanted to move the Court on.

It was highlighted that in addition, the litigants themselves

comprised the post-judgment stakeholders. He reckoned that there was an issue in the execution of the Judgement itself citing a case of *Lucy Wanjiru vs Tuskys Supermarket (unreported)* where the Honourable Court ordered for reinstatement and compensation. The issue that arose therein was obtaining the decree and the Court's decision so as to ensure that both the transition are in terms of reinstatement.

Dr. Gakeri was requested to clarify on the issue relating to Preliminary Objections as raised by Mr. Sitima. He noted that he did not suggest that everything can be resolved at the pre-trial stage, but rather, a lot of groundwork can be done by applicants at the pre-trial stage so that if a PO or any application was to be made thereafter in the course of the hearing, then it must be an issue that could be arising by virtue of the hearing, not something that was discovered early. He further stated that POs, by their very nature, ought to be dealt with as early as possible, because effective POs have a huge impact on the suit itself. Therefore, he noted the earlier the POs are raised, the better so as to avoid wastage of precious judicial time and litigant's time.

The moderator requested Justice Ocharo to respond to the issues raised by Advocates Sitima and Museve on alternative dispute resolution mechanisms. Firstly, whether there should be a bare minimum set for matters either referred for mediation or conciliation prior to admission in Court? Secondly, whether there are cases that cannot outrightly go for ADR as the court must resolve them? And thirdly, whether then there is still need to have a pre-trial questionnaire to flag matters suitable for ADR?

To answer the questions on the use of ADR, Justice Ocharo noted in summary, that all cases are solvable by way of ADR therefore, there should be no exclusion policy on what cases to take or not to take for ADR. He further suggested that it will be important to subject all matters to ADR to find out whether they will be solved.

On the issue of procedural and substantive justice posed by Mr. Sitima, Justice Ocharo opined that in the dispensation of justice, both of them are of equal level, none should appear to be inferior to the other. He explained that was why the wording under Article 159 of the Constitution, was deliberately chosen ie "without undue reliance to procedural law" to mean

that there is an appreciation that procedure is a key sub-component of dispensation of justice from his view. He further stated that however, if the procedural default does not go to the core of the matter, then it should not take precedence over substantive justice.

Honourable PJ Justice Byram Ong'aya responded to the issue raised on the management of Appeals from the decisions of the Registrar of Tribunals. He reported that the Rules Committee had improved the regime on managing appeals, by requesting the decision-maker to provide certified records. He assured the audience that moving forward, the decision-makers will provide certified records, therefore, the highlighted problem cease to exist.

Justice Nduma added that there was a rule which says, instead of waiting for the record of appeal, in appropriate matters, the Court shall call for the original record and that the Judges may then make a very summary decision about the appeal without waiting the long process of typing proceedings, particularly for the magistracy, like in the interlocutory appeals. He gave an example, of where the magistrate declines leave to amend, the file could be brought over, the Judge looks at it, makes a decision on the appeal, and send it back to avoid delays associated with typing proceedings.

Mr Oyoo responded to the issue of training of mediators specifically those handling employment disputes and whether there was need for mediators and Magistrates to be specifically trained on employment disputes. Mr Oyoo replied that it was inescapable to avoid continuous training of mediators.

He recalled that the mediation registry was set up sometime in 2016 as a pilot stage so as to make it viable for monitoring mediation matters with an aim of future and progressive improvement. He was delighted to report that there has been considerable improvement and success in court annexed mediation.

He further noted that mediators are currently certified through the 40 hours mediation training timeline which amounts to a week-long training and wondered whether that was sufficient time to have someone qualify as a mediator. His greater concern was on eligibility of mediators as to him it seemed like anyone could really undertake the mediation course even

those not trained in law but were from another profession.

He further acknowledged efforts by the mediation registry to assign mediators to areas they are best suited for. He averred that currently, there was a requirement of one to list their areas of specialization or areas of interest highlighting some of the new developments which shall continue to be witnessed as it is not all about training of mediators.

He reported that in the recent past, mediations have only been conducted by lawyers and nothing considerable has been so far achieved. He was of the view that the Judiciary ought not be so unfair to other professionals so as to appear to suggest that for instance if you do not specialize in employment law, then you cannot effectively mediate an employment matter, as that would be a wrong assumption.

He noted that the whole philosophy behind court annexed mediation was that a blind person ideally should come in to help the parties resolve their disputes. In the application of the philosophy, a mediator in essence should not have the court file with them but mere case summaries. He further reiterated the need for continuous training of mediators as the one off-40 hours mediation training was inadequate.

Mr. Oyoo begged to differ with Justice Ocharo's view that all matters were mediatable. On the contrary, he stated that screening matters for mediation before trial was important and inescapable as it would lead to high successful mediation outcomes. He illustrated an example of a time a matter was taken for mediation yet counsel had raised a PO on jurisdiction on the ground that the matter was time barred and was of the opinion that the matter was unmediatable. Despite this, the counsel was forced to go through the long mediation process only for it to collapse and then sent back to court to argue his PO.

He further noted that there are matters that would appear complex on the outside, but in the inside, with proper screening, could be resolved through mediation. He remarked that the outright answer is not to say "let lawyers do mediation or let employment experts do mediation" but rather, have strong ethical standards for mediators. He highlighted his point by giving an example of a time when a mediator went to his offices to look for the advocate in conduct who had

appeared virtually and had been very rude to him. Therefore, the mediator had gone to see who that advocate was, in person.

He concluded by reiterating that the ethical standards that govern mediators are quite relevant and more critically there is need to look at how mediators are disciplined. He noted that whereas we know how Judges and Advocates are disciplined, there is still no threshold of how mediators are disciplined as to date, we do not have control over them.

Hon. Mbenja was asked to respond to the question on what schedules the tax masters apply to appeals from the magistracy as raised by Ms. Brenda. He acknowledged that it is a common question that they face on a daily basis for instance where an advocate draws a party-party bill of costs in a matter where the award was for instance Kshs. 200,000 and then the party prepares a bill of costs for Kshs. 2 Million shillings. He stated that sometimes it becomes necessary to use Court's discretion and apply Rule 58 of the Advocates Act Practice Rules which comes into play, in this instance, to settle the case. He stated that the said matter had been seriously litigated before, and was certain the principal judge has made quite a number of decisions starting on this matter, which guide the tax masters on taxation issues. He encouraged Ms. Brenda not be confused anymore as all she needed to know was to look at what rule says, and look at what has been presented before Court as cases, Advocates get a lot of drafts from their students. Therefore, he urged Advocates to ascertain the documents filed and should go through them to check whether they are commensurate with the Act and the Rules before they are presented in Court.

Mr. Ouma was given an opportunity by the moderator to ask one last question before closing the session. Mr. Ouma started off by stating that he is a member of the Mediation and Accreditation Committee which has an ethics and standards sub-committee. He reported that the problem they were currently facing is that nobody wants to report any mediator involved in misconduct. He therefore urged individuals to report the mediators involved in any alleged misconduct, so that the Mediation and Accreditation Committee can take action against them.

In addition, Mr. Ouma asked what point is the Court *functus*

*officio*? He stated that the question culminated from a problem him together with some legal practitioners had encountered particularly when making applications for a stay-pending appeal. He wanted to know what were the parameters?

Justice Ocharo in response, observed that the Court became *functus officio* when the law did not provide you with any restriction to entertain the matter after the decision is made. He gave an example of where the law did not give you powers for review, and where it did not give you powers to extend time for an action to be taken against the order, e.t.c. He, however acknowledged that the issue was indeed controversial.

### **Closing Remarks**

#### **Conducted by the Presiding Judge Hon. Justice Byram Ong'aya**

Justice Byram Ong'aya began by thanking everyone for attending the event. He particularly appreciated the panelists and the discussants. He acknowledged that he had learnt a lot from sitting and listening and thanked the panelists profusely.

He stated that the conversations will continue and the Registrar will put up a Facebook page for the conversations to go on so that when we attend the next Inns of Court, they will have resolved a lot of issues which had not been discussed at this forum. While looking forward to the next Inns of Court, he profusely thanked everyone, and welcomed the Registrar Hon Kennedy Kandet to give his vote of thanks.

### **Vote of Thanks**

#### **By Hon. Kennedy Kandet, Registrar, ELRC**

The Hon. Registrar started off by reporting that the ELRC Rules of Procedure are currently with the Attorney General. He stated that he has been informed that they are to be signed and then forwarded to the Hon. Chief Justice after which, they will be published.

Before giving his vote of thanks, he responded to the query on the issue of electronic service (through SMS and WhatsApp platforms). He informed the audience that the said Rules incorporated the issues of electronic mail service when the rules will be effected, summons may be sent by mobile enabled messaging application through a well-known and operational telephone number.

He further invited questions and comments from the virtual audience. While noting there was none, he proceeded to give his vote of thanks.

He first thanked the panelists, Hon Justice Dr. Jacob Gakeri, Honourable Justice Ocharo Kebira, and the two advocates, Mr Museve and Mr Wycliffe Oyoo for the job well done and asked the audience to appreciate them. Secondly, he thanked the moderator, Lady Justice Stella Rutto appreciating her for the good job and likened her to the moderators in TV shows.

He specifically thanked Dr Naomi Njuguna, Lecturer, University of Nairobi, Faculty of Law for her attendance and mentioned that she had journeyed with the ELRC for a long time since the ELRC Annual Symposium held in 2023. He honoured her for her involvement and commitment in Naivasha when they were unpacking the report and promised to continue engaging her on these issues.

He then thanked other ELRC judges present starting with Honourable Justice Nduma Nderi, the first Principal Judge and now the presiding judge of the Judicial Review and Human Rights Division, Lady Justice Linnet Ndolo, the Presiding Judge of the Claims and Labour Relations Division and the presence of Lady Justice Anna Mwaure.

Further he appreciated the Deputy Registrars who included Hon. Nyamora, Hon. Aziza, Hon. Mbenja and Hon. Riany who had worked closely with the bar convener to ensure that the event is a success. He further acknowledged the Assistant Deputy Registrars namely Ms. Rebecca, Ms. Lynnette and Mr. Kiverenge for a well-organized event. While appreciating them for their efforts, he took the opportunity to introduce the Assistant Deputy Registrars as the new cadre of judicial officers working alongside the Deputy Registrars and whose mandate is to ensure efficiency in managing court operations.

The Rapporteur/ ELRC Legal Researchers who were taking minutes of the proceedings and preparing the Report for the sessions, also received their share of appreciation from the Registrar. He also remembered to thank the virtual/online attendees.

In concluding the session, the Registrar promised that the Registry has taken keen notice of all the discussions and deliberations in the session and will continue to support the

court in case management of Employment and Labor Relations matters. The panelists were well applauded by the audience as they left the floor to resume their seats.

The Session was concluded by a word of prayer from Lady Justice Ndolo.

### 9.3 ANNEX 3

#### REPORT ON ELRASE 2 CURTAIN RAISER WEBINAR HELD VIRTUALLY ON 13<sup>TH</sup> SEPTEMBER, 2024 FROM 2:30 PM

**THEME: CONCEPTUALISING AND CONTEXTUALISING HARASSMENT AND GENDER BASED VIOLENCE IN THE WORKPLACE IN KENYA: CURRENT ISSUES AND STAKEHOLDER PERSPECTIVES**

#### Present

Hon. Justice Nderi Nduma – Judge, ELRC (*Host*)

Hon. Justice Byram Ongaya – Principal Judge, ELRC

Hon. Justice Hellen Wasilwa – Judge, ELRC

Hon. Fredrick Momanyi Nyamora – Deputy Registrar, ELRC

Dr. Stephen Aming'a – JKUAT (*Moderator*)

Dr. Naomi Njuguna – UON (*Discussant*)

#### Panelists

Mr. Dickens Mitawia Ouma – FKE

Dr. Isabella Kiplagat – KIPPRA

Mr. Justus Nyakego Bosire – DOSH & Ministry of Labour

Mr. Kephias Odhiambo – Chief Industrial Relations Officer, Ministry of Labour

Ms. Joan Machayo – PSC

Mr. Justus Bosire Nyakego – Deputy Director, DOSH

Ms. Rose Omamo – COTU

Ms. Jane Munoru – Institute of Human Resource Management

Ms. Eunice M'mbone – National Police Service

Mr. Lumumba Fleming Omondi – Kenyatta National Hospital

Dr. Margaret Muthoni Kariuki – UON

Ms. Elizabeth Onyango – LSK

Hon. Nyamora welcomed all the attendees to the Webinar and explained that the Webinar was a curtain raiser for ELRASE 2 whose theme is ILO Convention 190 and Recommendation 206. He welcomed the Registrar, Hon. Kandet to make his remarks.

Hon. Kennedy Kandet introduced the panelists and discussant and welcomed all the attendees to the Webinar. He informed all the attendees that ELRASE 2 will be held on 16<sup>th</sup> and 17<sup>th</sup>

September 2024, and encouraged attendees to continue registering for the same. Finally, he introduced the host, Hon. Justice Matthew Nduma Nderi.

The Host, Hon. Justice Nderi Nduma, welcomed the attendees to the Webinar and defined Convention 190 as protecting workers from physical, mental and economic harm. He introduced the Moderator, Dr. Stephen Ating'a and read his brief biography to the attendees. He also introduced the Discussant, Dr. Naomi Njuguna.

The Moderator, Dr. Stephen Ating'a, thanked the Honourable Registrar, the Court and the attendees for attending. He indicated that the Webinar would enlighten attendees on Labour laws specifically Convention 190 and its Recommendation 206. He stated that he expected attendees to later share experiences and ideas on how to deal with work related and workplace violence and harassment. He pointed out that the Convention was adopted on 21/6/2019 by the International Labour Organization and accompanied by Recommendation 206, which is important as it elaborates on the Convention and states how it should be implemented. The idea of coming up with the Convention was developed in 2015, and come 2019 the Convention was adopted. The Convention took more than 10 years to come forth following agitation by women and their associations. The need was appreciated despite other Conventions (37) dealing with similar issues, because of these reasons:

1. Insufficient data on extent of violence and

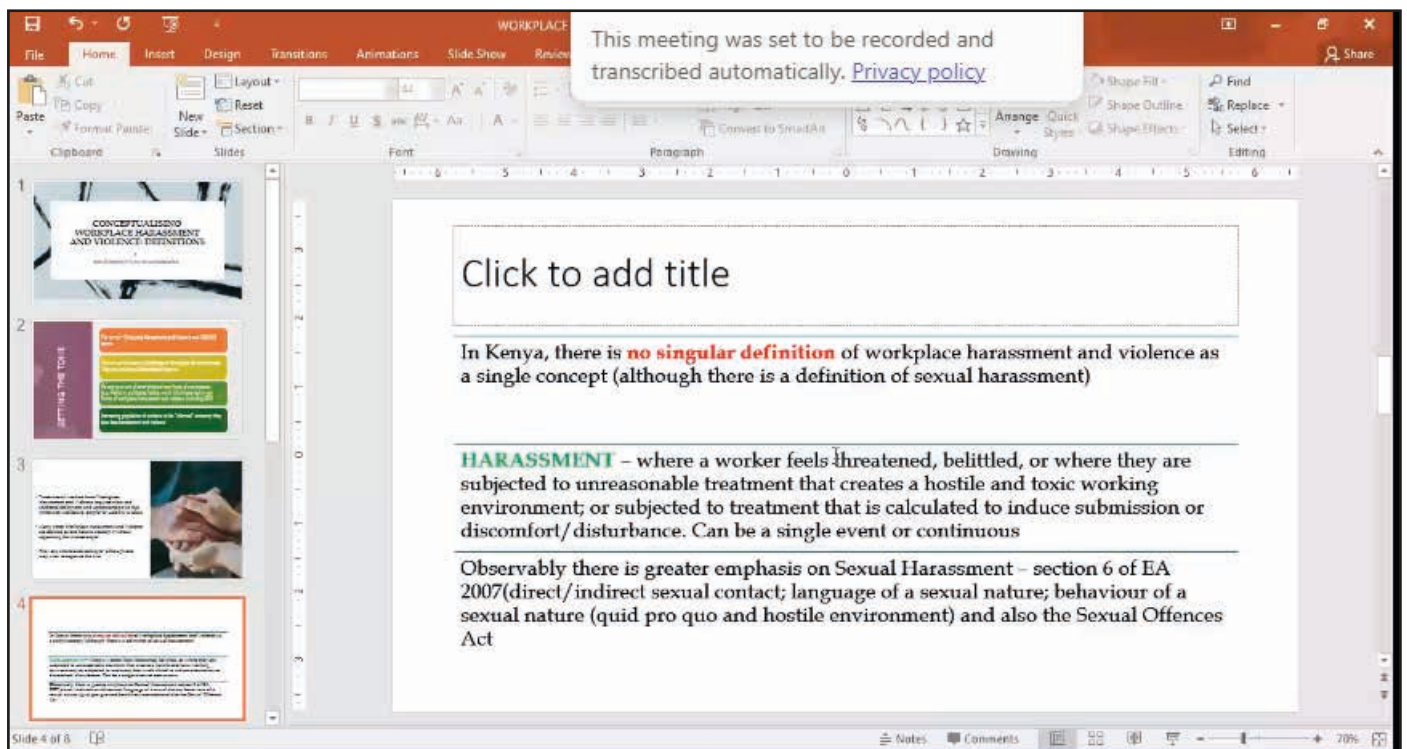
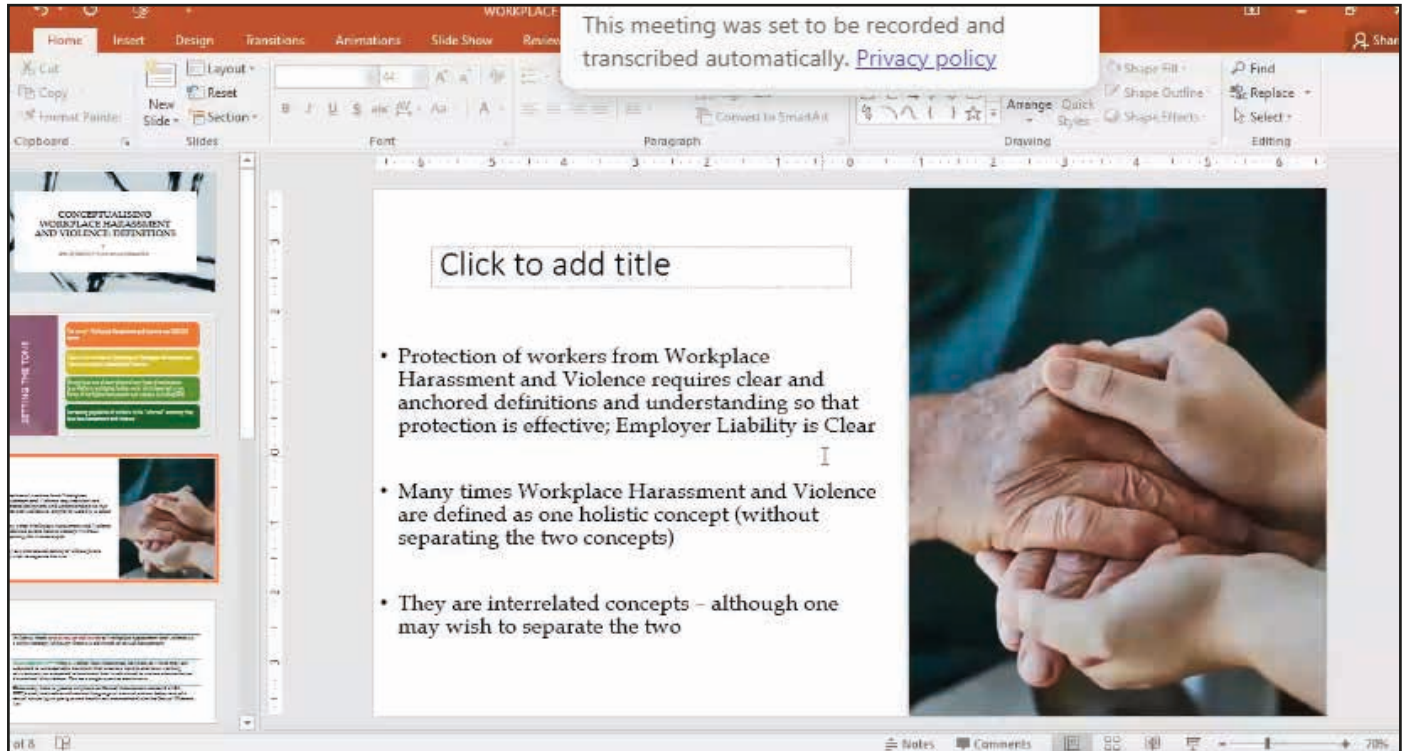
harassment at work;

2. Insufficient definition of harassment and violence at work;
3. No integrated and coordinated approach to violence and harassment at work.

Dr. Stephen Ating'a further noted that Convention 190 was developed to fill the gap. He emphasised that C190 covers relationships of workers and other persons with third parties, between employers and employees, between former employer and employees, in the informal and formal sectors, in virtual workspaces and channels used, with suppliers, and relates to injuries or threat of injuries even outside their workstations because of decisions and interests made at the workplace. Unfortunately, Kenya has not adopted the C190 yet it is the

only convention that covers violence and harassment beyond the recognised definitions, but quite a number of countries have. Convention 190 is the first Convention that gives a composite definition of harassment and violence outside sexual harassment.

The Discussant, Dr. Naomi Njuguna, presented on the definition of harassment, including gender-based violence and harassment. (See attached presentation)



This meeting was set to be recorded and transcribed automatically. [Privacy policy](#)

Click to add title

Sexual harassment – a form of sex discrimination and gender based violence

Other examples of workplace harassment include bullying, mobbing, insulting, isolation, sarcastic remarks, humiliation, abuse of positions of power, inappropriate jokes -

**VIOLENCE** – acts or threats of physical, psychological, emotional, social harassment, intimidation or other threatening or disruptive behaviour.

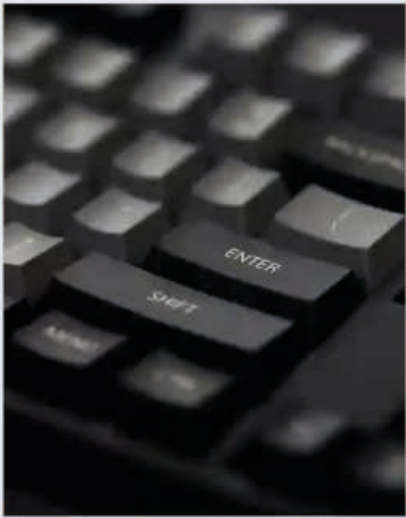
Gender based violence – violence that is directed against any person based on gender norms and unequal power relationship

Slide 5 of 8

RESIDEN

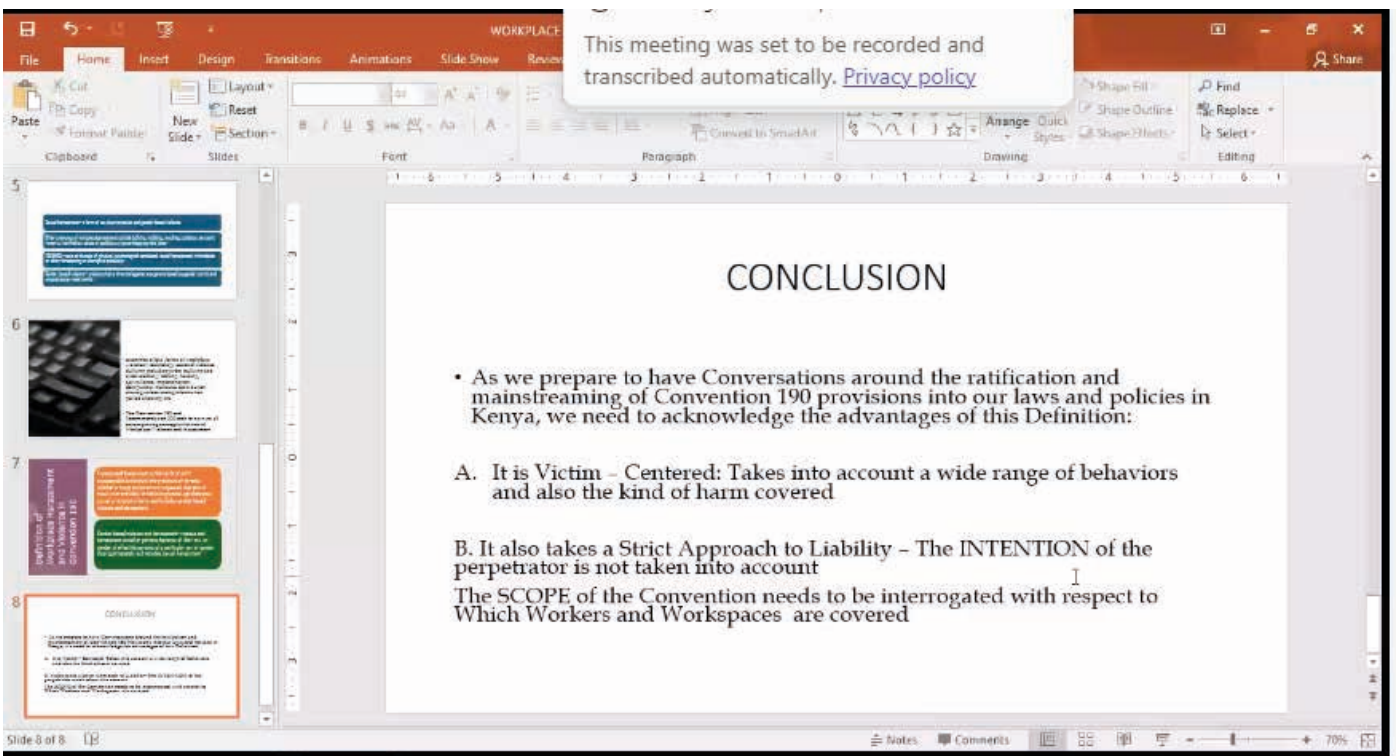
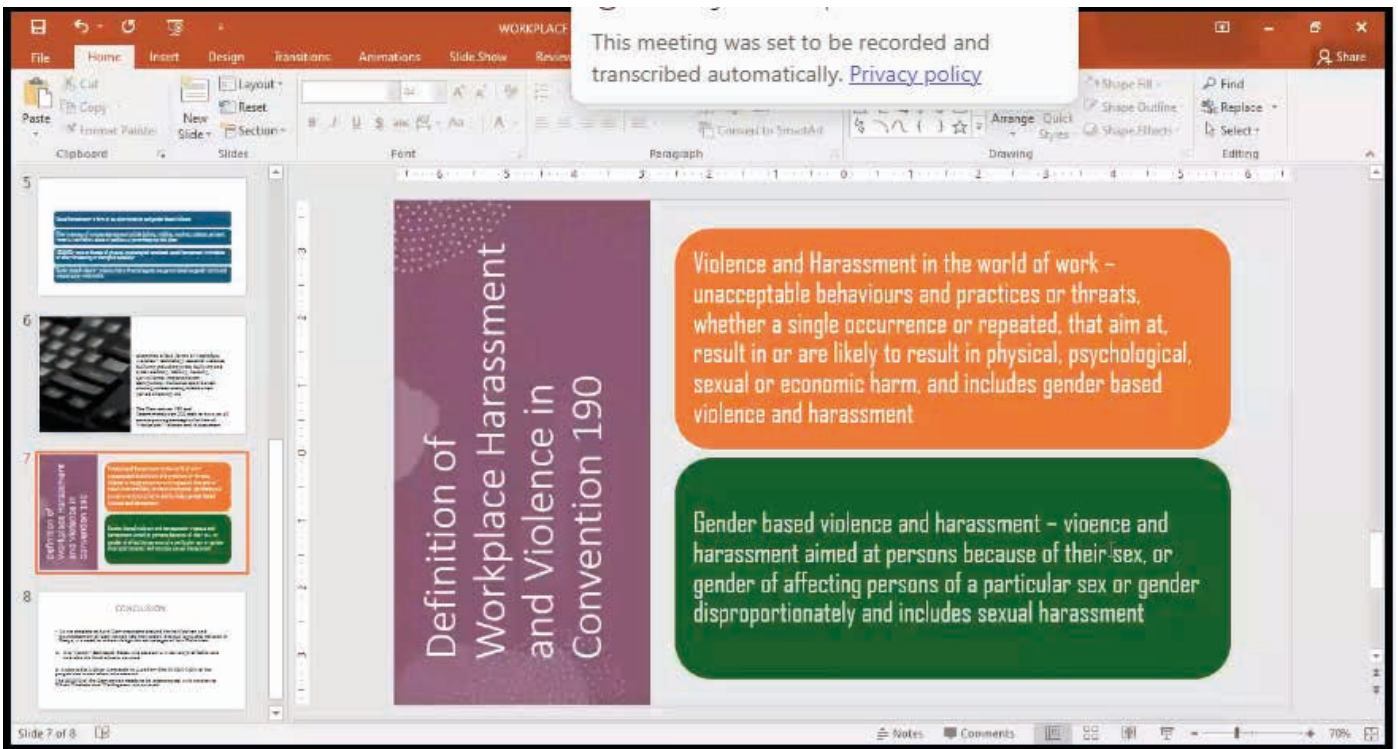
This meeting was set to be recorded and transcribed automatically. [Privacy policy](#)

Click to add title



- Examples of less forms of workplace violence – technology assisted violence, bullying including cyber bullying and cyber stalking, trolling, hacking, surveillance, impersonation, denigration, malicious distribution, sharing embarrassing information, period shaming, etc
- The Convention 190 and Recommendation 206 seek to have an all encompassing conceptualisation of Workplace Violence and Harassment

Slide 6 of 8



The Discussant clarified that emerging workspaces have led to emerging forms of workplace harassment and violence, such as the fact that more and more workers are in the informal workspace. Harassment and violence require clear definitions so that employer liability is clear. Violence and Harassment are terms that are used interchangeably and taken as one holistic concept. Harassment is where a worker feels threatened or belittled. Harassment may involve treatment calculated to induce submission. In Kenya, greater emphasis is placed on sexual harassment. Sexual harassment is defined in Section 6 of the Employment Act and in the Sexual Offences Act. It is a form of Gender Based Violence and sex discrimination. Other forms of harassment include bullying, mobbing, isolation, humiliation, abuse of power. Our socio-cultural norms may cause victims to keep quiet/ fail to report the cases. Lesser-known forms are cyber assisted harassment including sharing embarrassing info, period shaming, cyber bullying etc.

Further, Dr. Naomi lauded Convention 190 for giving an all-encompassing definition of harassment and violence, namely, any unacceptable practices and threats. She felt that the definition of gender-based violence may cover transgender people, which is a very controversial discussion, and noted that the definition takes a strict liability test. This means that the intention of the perpetrator is not material; even if they mean well, their actions will be considered as harassment. These issues will be discussed in more detail in ELRASE 2.

The Moderator, Dr. Aminga added that the Convention has two unique aspects: inclusivity that is it covers both formal and informal sectors, people who are seeking employment (despite no privity of contract), people who have left employment, interns, trainees, suppliers etc as either people being protected or being covered as perpetrators; and covers mobile work spaces and other spaces which are not within the place of work for example motor vehicles. He cautions that despite what is in Section 6 and 12 of the Employment Act, a lot of matters covered by the Convention have not been explored in our local laws. He informed the participants that in 2021, a Global Risk Survey by ILO found that the highest cases of harassment and violence which are work related were viewed in Denmark and New Zealand. Kenya is at 22%. As expected, men are less than women when it comes to exposure to workplace harassment and violence.

The Moderator welcomed the panelists who made their presentations as hereinunder.

**Panelist 1**, Dr. Isabella Kiplagat from KIPPRA educated the participants about the various forms of harassment, and stated that statistics indicate that workplace harassment is common in our workplaces in Kenya. Although there are no national statistics because of several issues including under-reporting, there are reports by various organizations. The available reports highlighted physical violence (especially in the healthcare, security and transportation sectors); verbal abuse, for example shouting and use of insulting language; and sexual harassment especially in the agricultural sector and domestic workers. In terms of prevalence, the health sector is leading (National Union of Nurses Report: 60% of nurses experience it); followed by the Agricultural sector (75% of women in flower farms) and then the Matatu sector

(2018 Matatu Welfare Association Report: over 40% of workers experience).

**Panelist 2**, Mr. Lumumba Fleming Omondi affirmed that various forms of Gender Based Violence are experienced in the Kenyatta National Hospital, since it has employees, who deal with patients and service providers. Physical violence is experienced, with patients and families of patients getting into physical altercations with health service providers causing bodily injury and pain. No study/research has ever been conducted to establish the frequency, but the incidences are experienced. Psychological violence, verbal abuse and sexual harassment are also experienced. The Panelist ended on a positive note by stating that steps have been taken to mitigate this issue, such as providing support services to the victims, namely, clinical and psychosocial support. The Institution has also embraced approaches covering men and people of different sexual orientations, rather than just women.

**Panelist 3**, Ms. Jane Munoru from the Institute of Human Resource Management explained that her experience has been that at her workplace at the Institute they have experienced no cases of harassment and/or violence at the workplace. But from their members, they have received some cases, and are trying to deal with them in accordance with the law, although the law is not very well developed by the Courts. She felt that clients refusing to pay human resource professionals is a form of harassment. She affirmed that the Institute is trying to sensitize their members on how to do proper reporting in order to build a case.

**Panelist 4**, Dr. Margaret Muthoni from the University of Nairobi discussed the causes of workplace harassment and GBV including social, organizational, political, economic, and cultural factors, and gender norms. In relation to economic factors, she expounded that employees who depend on income from their employers cannot challenge their employers. This makes it harder to resist and report harassment especially among interns, informal workers and low wage employees. Pay gaps and wage disparities aggravate the issue. She felt that among the factors causing violence and harassment at the workplace, economic and social factors, and gender norms and stereotypes, are leading. There are cases of seniors taking advantage of juniors; subordinates harassing seniors.

In terms of impact, these forms of violence and harassment affect individuals psychologically, for instance, they go into depression and develop mental health issues. There is also an impact in terms of medical costs. For organizations, the impacts include an affected reputation, decreased morale and legal implications. Society is also affected. The Panelist was of the view that long working hours and workers being forced to work odd hours may be a form of workplace harassment if the employee is not compensated.

**Panelist 5**, Mr. Mr. Justus Nyakego Bosire (DOSH & Ministry of Labour) discussed whether violence and harassment is an Occupational Safety and Health issue. He felt that per the definition under the Convention, it affects the safety and health of workers and so will fall within the ambit of Occupational Safety and Health. On how the national policy on Occupational Safety and Health deals with the issue of harassment and violence at work, the Panelist highlighted Section 9 of the Occupational Safety and Health Act which prohibits discrimination; Section 14 which prohibits discrimination in an environment with hazards; and Section 17 which provides for preservation of mental health. He affirmed that violence and harassment are occupational hazards. On the issue of vulnerable workers, the Panelist stated that the Occupational Safety and Health policy does not explicitly provide for vulnerable workers, but caters for persons under the age of 18 who are undergoing training or indentured workers. They are supposed to be given light work and should not be exposed to hazardous spaces at work. On enforcement, the Directorate of Occupational and Safety enforces the provisions of the Act. Any breach of safety and health at the workplace is criminal. The Directorate has a record of cases involving attacks which have arisen at workplaces. It investigates these cases and comes up with a report then the Work Injury Benefits Act takes over for purposes of pursuing compensation for the person injured. On whether there are administrative powers that can be invoked such as inquiries into violence and harassment, the Panelist highlighted Section 32 of the Occupational Safety and Health Act which obligates an officer when carrying out an inspection to gather information on harassment. There is also the carrying out of risk assessments at the workplace, which should bring out the risk of violence and harassment. Since

there are limited numbers of officers at the Directorate, there are people who are engaged to carry out audits and report to the Directorate. When queried about virtual workspaces, the Panelist answered that virtual workspaces are fairly new, and these spaces are not contemplated in our laws, but the Directorate expects reviews to the law. But where there are injuries of mental health, the Directorate would welcome psychiatric reports and would be able to assist those workers. He confirmed that the Ministry carries out investigations into attacks which culminate in injury to workers for instance the Magistrate who died and policemen injuring themselves and others, and offers compensation.

**Panelist 6**, Mr. Kephas Odhiambo explained that as a Ministry, to address issues of violence and harassment in the workplace, and to keep pace with the changing world of work, they apply national policy including the labour laws, Penal code, and Sexual offences Act. The Ministry advises employers to have rules touching on these subjects, and to allow employees to participate in trade union activities in order to benefit from CBAs which may have provisions on sexual harassment. On how far we are on ratification of the Convention, he indicated that on 22<sup>nd</sup> January 2024 the Ministry requested Memoranda on the Convention, and received an overwhelming response. They have held meetings to discuss the ratification including with COTU, FKE and the Kenya Union of Domestic Workers, and with other stakeholders, intended at carrying out a gap analysis in relation to local labour laws. He confirmed that they are now in the process of carrying out a cost benefit analysis together with a technical officer from the Ministry of Treasury, and are in the process of carrying out stakeholder engagement and public participation.

**Panelist 7**, Ms. Diana Kiarie from Delmonte, discussed whether the company has a violence and harassment policy from a private sector perspective. She illuminated that the Company has handled only one case of workplace related violence, which was a sexual harassment case. She confirmed that she has, however, also seen cases of workers experiencing Gender Based Violence at home. She confirmed that they have global policies at the workplace which are drawn from local laws including the Constitution and labour laws. They have an Anti-

Harassment Policy, one against Sexual Harassment, and one Anti Bullying policy. On whether there is a connection between workplace violence and violence at home, she reiterated that incidences of workplace violence are few because of the systems in place within the Organization which culminates in robust disciplinary measures. So, she did not believe that there was a co-relation between the two since Gender Based Violence at home is caused by socio-economic and cultural factors.

**Panelist 8**, Ms. Machayo (PSC), discussed interventions and the existing policies and laws on violence and harassment at the workplace. She reminded participants that Public Service workplaces include schools, hospitals, and communities for county commissioners. Managing data from these places becomes very difficult. Usually, the PSC will come across issues of violence and harassment when handling disciplinary issues. The PSC is currently reviewing the mother document, ie the HR Policy and Procedures to cater for training required, reporting mechanisms, and the power balance issues. With regard to the elements of an ideal/appropriate policy, the Panelist felt that it should have objectives, definitions, preventive measures for instance training and awareness, responses and support, and investigations and follow up including evidence which can be taken to the police.

**Panelist 9**, Ms. Eunice Nyonga from the National Police Service explained the role of the National Police Service in combating incidences of violence and harassment in the world of work. She began by stating that they have policies against violence and harassment in the workplace, including against Gender Based Violence. The laws and policies are regularly reviewed to cater to the changing environment. The police are often called upon to mediate and deal with issues of violence and do their best to reconcile the parties, monitor and evaluate and strengthen the existing structures. She indicated that the National Police Service offers psychosocial support to officers who are exposed to trauma and PTSD through their robust counselling department. They also have internal mechanisms to handle complaints against officers through their Internal Affairs Unit, toll free lines, debriefing rooms for psychological debriefing, and gender desks in police stations where both internal and external cases can be reported. She informed the participants that recently, representatives from

the National Police Service were in Parliament supporting an amendment of the NPS Act to include mental health functions. She clarified that the psychosocial support unit is open to officers and their families as well as civilian members of the police force.

**Panelist 10**, Ms. Elizabeth Onyango from the Law Society of Kenya discussed the Law Society's experience in terms of work place violence. She stated that there has been a study on sexual harassment in the legal sector with 65% of Advocates reporting that they had been victims of harassment by employers, clients and judicial officers. A policy was developed by the LSK in 2019 relying on Article 41, Art 28 and others in the Constitution. She regretted that our laws are not specific to the workplace, however. She was emphatic that Convention 190 should be ratified to deal with harassment specifically in the workplace, as this would bring a more focused approach. On whether lawyers have been harassed or subjected to violence as a result of their work, she answered yes. About 15% have been harassed by clients. On the relationship between the LSK and the police, she stated that the two bodies work together to deal with such cases.

**Panelist 11**, Mr. Dickens Ouma (FKE) discussed whether there have been reports of workplace harassment and violence in his Institution, and whether there have been policies put in place by employers to curb these instances. He stated that he is aware of the issue of violence and harassment in the world of work with certain enterprises having in place policies that prevent intimate relationships among employees since there is usually a thin line between sexual harassment and a relationship disagreement. He pointed out that liability in sexual harassment cases does not only attach to the perpetrator but also to the employer per Section 6 of the Employment Act. He stated that Article 41 (1) of the Constitution is wide enough to include all forms of violence and harassment especially read together with Article 2(5) on international instruments forming part of Kenyan law. The Employment and Labour Relations Court has punished harassment in workplaces under the principle that they constitute unfair labour practices. On whether there are particular interventions by FKE, they state that they encourage their members to create a safe work environment, by implementing HR Manuals and CBAs. On whether there is a Code of Conduct for members, the Panelist

conceded there isn't, but confirmed that the Federation carries out trainings among members and encourages them to in turn train their employees, create confidential reporting mechanisms, and carry out thorough investigations.

**Panelist 12**, Ms. Rose Omamo (COTU) explained the role of trade unions in combating violence and harassment in the workplace. She stated that they have the role of negotiating CBAs for the informal sector, are involved in reform, make sure that impart skills on their members on how to bargain, and ensure that the members consider gender equality in bargaining. She confirmed that they have experienced many cases where trade union officials are harassed and victimized by employers for participating in trade union activities, assisting other employees, and giving reports on safety hazards. On the specific measures put in place by COTU, she stated that they have trained staff on violence and harassment matters, and have established measures at the workplace under CBA clauses on zero tolerance to harassment and violence at the workplace. They have also held rallies and campaigns to urge the government to ratify Convention 190, and carried out data collection.

**Panelist 13**, Ms. Christina Arum from the KNHRC, discussed what her organization does to eliminate violence and harassment at the workplace. She informed the participants that they have done advisories to the government urging them to ratify Convention 190, have reporting obligations to various treaties and instruments relating to harassment and violence, give businesses recommendations, and do sensitizations and trainings. She stated that they have received cases of domestic workers as well as regular employees being subjected to violence, have carried out investigations and support the victims of such violence. The Panelist confirmed that they have embraced ADR.

Dr. Naomi gave a vote of thanks and clarified that the Webinar was intended to get stakeholder perspectives on violence and harassment in the workplace. She encouraged the following thinking points:

1. How research on emerging workplace issues can be funded in order to influence to our laws and policies.
2. How we can build capacity and increase personnel who can handle the reports which are made by victims.

3. How we can enhance access to justice by creating independent reporting mechanisms, introducing compensation for emotional, psychosocial and reputational injuries into the Work Injury Benefits Act, and maximizing Alternative Justice Systems for victim and perpetrator.
4. How we can focus on safety and welfare issues relating to harassment and violence.
5. How we can have inter-disciplinary conversations on socio-cultural issues which can exacerbate violence and harassment in the workplace.
6. How do we mainstream Convention 190 into our laws and policies to create a blueprint that employers can use to eliminate violence and harassment.
7. We should collect data on violence and harassment since data is currently scant because of fear, which will be made possible by empowering people to report cases of violence and harassment.

Hon. Justice Nduma thanked the discussants and moderator and guided the attendees through a Q&A session as hereunder.

#### Q&A Session

1. Elizabeth Onyango: where a perpetrator is accused falsely, how should this be dealt with in the context of the Convention and the Sexual Offences Act?
  2. Wangari Munyara: we have been struggling with the definition of workplace harassment or bullying and how to deal with it, since this has not been defined or addressed in our laws. Toxic workplaces breed workplace harassment which may include verbal abuse, employee well-being and mental health issues. Dr. Naomi agreed that there should be work place audits which consider the Occupational Safety and Health issues raised by workplace violence and harassment.
  3. Anthony Maina: what is the manner in which one may calculate compensation from sexual harassment in the workplace? What is the right forum to deal with such an issue, labour case or civil court?
- Dr. Aminga: Violence can be criminal and can be raised in the ELRC as a human rights issue.

4. Prisca Otambo: how do we deal with people not reporting sexual harassment in the workplace in the context of the burden of proof being on the victim and especially where perpetrators leave no proof?

Dr. Naomi agreed that the burden of proof being on the victim is problematic, especially since in discrimination, the burden of proof is on the employer to prove that the employee has not been discriminated against.

5. Sam from Mombasa: what can be done to protect/empower employees so that they may have the confidence to report?

Dr. Aminga: we can create targeted response and multiple reporting channels. Employers can be obliged, as a matter of law, to document cases and report to the Ministry. Trade Unions are key in empowering members.

6. Dr. Ferdinand: research gaps have been identified in that we are lacking data, is there a way to establish a multi sectoral team to collect and analyze data with a view to building capacity?

Dr. Aminga: there is data, it is just scanty. Kenyatta University carried out a study, Global Survey on Risk also has data, but a multi-agency approach would be helpful as these issues affect many of us.

The Panelists were invited to make closing remarks on the way forward;

- Mr. Dickens Ouma from FKE felt that it is critical for the conversation to go on so that ratification happens and in order to build jurisprudence around violence and harassment.
- Ms. Rose Omamo from COTU felt that the government should be lobbied to ratify Convention 190 and to ensure that it is domesticated and implemented and that we align our laws with the definition.
- Mr. Justus Bosire from DOSH and the Ministry of Labour thanked the Judiciary for organizing these events even as the Ministry moves towards ratification. He assured the attendees that have noted the issues being brought out. He also confirmed that the Ministry has inspectors collecting data at the County level and will share the data very soon.

- Ms. Elizabeth Onyango from the Law Society of Kenya felt that the Convention should be ratified and implemented, and the public should be sensitized to learn what is harassment, the obligation of the employers to prevent it, and the remedies for victims.

The Judiciary through Hon. Justice Nduma thanked the participants and indicated that the Court organized the event in line with its mandate of administering justice to the people of Kenya.

The Principal Judge, Hon. Justice Byram Ongaya, thanked the participants for attending the Webinar, and informed members of ELRASE 2 (2024) to be held at the Chandaria Towers of the Nairobi University. He welcomed all the attendees to the symposium. He stated that the symposium is intended to enhance and implement the Judiciary's vision on social justice and that the Employment and Labour Relations Court is a broad-based platform for Kenyans to access justice. He noted that training, coaching and exploration is therefore important for conducive workplaces. Through this Webinar, attendees learned that the law has gaps; that we have socio-cultural attitudes which make it difficult to eliminate harassment and violence in the world of work; that there is a data shortage which can be remedied by an obligation on employers to report these cases; and that the Convention goes beyond the normal employer-employee relationship. The Honourable Principal Judge emphasized the employers' obligation to create raw data.

The Webinar was concluded with a word of prayer by Flora Manyasa.

## 9.4 ANNEX 4

### SOME OF THE ACTUAL SPEECHES AT ELRASE PRECONFERENCE ACTIVITIES

#### 9.4.1 Keynote Address by Hon. Lady Justice Martha Koome, EGH, Chief Justice and President of the Supreme Court of Kenya



#### KEYNOTE ADDRESS BY THE HONOURABLE CHIEF JUSTICE AT THE 2024 EMPLOYMENT AND LABOUR RELATIONS COURT (ELRC) OPEN DAY – 22<sup>ND</sup> JULY 2024 THEME: ‘STAKEHOLDER INVOLVEMENT IN CASE MANAGEMENT FOR EFFECTIVE SERVICE DELIVERY’

Mr. Shadrack Mwadime, Principal Secretary, Ministry of Labour and Social Protection

Mr. Amos Gathecha, Principal Secretary, Ministry of Public Service, Performance and Delivery Management

Hon. Winfridah Mokaya, Chief Registrar of the Judiciary,  
Hon. Justice Byram Ongaya, Principal Judge, Employment and Labour Relations Court

Honorable Judges and Judicial officers,

Distinguished Guests,

Esteemed Stakeholders,

Ladies and Gentlemen,

Good morning,

1. I am delighted to join you today for the 2024 Employment and Labour Relations Court (ELRC) Open Day. This gathering is not merely a routine event; it is a cornerstone of our judiciary’s strategic blueprint—‘Social Transformation through Access to Justice’ (STAJ). The STAJ blueprint aims to ensure that we have a people-centered justice system that is accessible, efficient, and responsive to the justice needs of all Kenyans.
2. Open Days such as this are pivotal in actualizing one of STAJ’s strategic outcomes, which is: ‘**Deepened partnerships that enhance coordination in the administration of justice.**’ They provide a platform for all participants within the justice ecosystem—including court users, judges, and judicial officers—to align their efforts and collaborate effectively. By coming together,

we can address systemic challenges that hinder the realization of accessible, efficient, expeditious, and cost-effective justice delivery.

3. The ELRC’s commitment to engaging stakeholders is commendable. By bringing together all relevant parties, we create a collaborative environment where insights and feedback can be exchanged between the court and stakeholders. This dialogue is essential for positioning the court as a “court of excellence.” Stakeholders’ perspectives guide us in emphasizing areas that require further attention and improvement.
4. The theme of this year’s Open Day, ‘*Stakeholder Involvement in Case Management for Effective Service Delivery*,’ highlights the essential role of stakeholders in our judicial processes. It underscores the importance of every voice in the justice ecosystem and the collective effort required to ensure that we are all reading from the same script. This gathering offers an invaluable opportunity to learn about the work being done by the ELRC, share insights, and provide feedback, fostering a deeper understanding and stronger partnerships.
5. The Employment and Labour Relations Court has made commendable strides in recent years. I am pleased to highlight the **impressive case clearance rate of 190%** recorded in the last financial year. The Court resolved **8,014 cases** as compared to **4,210 cases** that were filed in the course of the last financial year. As at the end of June 2024, the ELRC had **6,966 pending cases, a reduction of 30% from 9,896 cases** that were within the system at the start of the financial year. In addition, at the end of June, there were **only 240 pending cases** that had been in the system for over three (3) years, thus the court is at the threshold of attaining our STAJ benchmark that no cases should be before a trial court for more than 3 years.
6. This achievement means the court is not only keeping up with new filings but also effectively addressing the backlog of cases. Such efficiency is a testament to the court’s dedication and the effectiveness of its case management strategies. I therefore congratulate and commend the Judges and staff of the ELRC for this good work.

7. Furthermore, the ELRC recorded **an adjournment rate of 7.5% incidents of scheduled court events** in the last financial year. I urge the court to continue enforcing the “no adjournment” policy in line with the court’s commitment to minimizing delays and ensuring that justice is not only done but done expeditiously. Reduction in incidents of adjournments requires robust and proactive approach to case management, and this requires stakeholders to work with the court and support the court’s focus on delivering timely justice.
  8. Another area where the ELRC has excelled is in the development of **social justice jurisprudence**. The groundbreaking decisions rendered by this court have provided valuable legal insights and guidance, not just within our borders but also internationally. These decisions reflect a rich collection of legal thought and highlight the ELRC’s role as a beacon of justice and national development.
  9. The court has tackled various critical issues, including workers’ rights, fair labour practices, and equality within the employment context. By addressing these issues with thoughtful and progressive judgments, the ELRC has set a high standard for labour relations and contributed significantly to the body of law in this field. This emerging social justice jurisprudence is a testament to the court’s dedication to upholding the principles of fairness, equality, and justice for workers and employers.
- Ladies and Gentlemen,**
10. Let me also take this opportunity to reiterate the message that I have championed in the past that while litigation remains a primary avenue for resolving disputes, it is **imperative that we promote and integrate Alternative Dispute Resolution (ADR) mechanisms more robustly**. Conciliation, mediation, and traditional justice systems offer effective and flexible alternatives to conventional litigation. ADR not only alleviates the burden on our courts but also provides parties with more amicable, timely, and cost-effective solutions.
  11. Conciliation and mediation stand out as key components of ADR within the employment context. These processes foster a spirit of cooperation and mutual understanding between disputing parties. By engaging in dialogue and negotiation, parties can reach consensual and sustainable agreements that preserve relationships and promote a harmonious work environment. I urge all stakeholders to actively participate in and advocate for these methods as primary options for dispute resolution.
  12. In addition to modern ADR methods, we must also recognize and incorporate alternative (traditional) justice systems (AJS) that have long been part of our cultural heritage. These systems, rooted in community practices and values, offer restorative justice approaches that emphasize reconciliation and the restoration of social harmony. By integrating these traditional methods into our formal dispute resolution framework, we can enhance the inclusivity and accessibility of justice.
  13. I must also **commend the stakeholders who have supported the ELRC over the years**. Trade unions, the employers’ federation, the government through the Ministry of Labour and Social Protection, and other partners have worked closely with the court, enabling it to become a cornerstone of our justice system. Your unwavering support and collaboration are vital in our quest to position the ELRC as a court of excellence.
  14. The involvement of stakeholders is not just beneficial; it is essential. Your insights, feedback, and support help the court to identify areas for improvement and to develop innovative solutions to the challenges we face. By working together, we can ensure that the ELRC continues to deliver high-quality, effective, and efficient justice.
  15. As we look to the future, it is clear that stakeholder engagement will continue to be a key driver of our success. The feedback and insights we receive from you are invaluable in helping us understand where to focus our efforts to ensure continuous improvement. By working together, we can overcome the challenges

that lie ahead and achieve our shared goal of accessible, efficient, and expeditious justice for all.

16. I encourage all of you to actively participate in the Open Day's discussions, share your experiences, and provide feedback. Your input is crucial in helping us to refine our processes, improve our services, and ensure that we are meeting the needs of all court users. Together, we can build a justice system that truly serves the people and stands as a model of excellence.

### **Conclusion**

17. In conclusion, today's Open Day is not just an event; it is a reaffirmation of our commitment to justice through collaboration. It is an opportunity to celebrate our achievements, reflect on our challenges, and chart a path forward together. I am confident that through our collective efforts, we can continue to enhance the quality of justice delivered by the ELRC and ensure that it remains a pillar of our justice system.
18. Thank you, and I look forward to the fruitful discussions and insights that will emerge from this engagement.

God bless you all.

**Hon. Justice Martha K. Koome, EGH**  
**Chief Justice and President of the Supreme Court of Kenya**

9.4.2 Open Day Speech by Hon. Justice Byram Ongaya, Principal Judge ELRC



THE JUDICIARY  
OFFICE OF THE PRINCIPAL JUDGE OF EMPLOYMENT  
AND LABOUR RELATIONS COURT OF KENYA

**OPENING REMARKS BY THE PRINCIPAL JUDGE, HON.  
JUSTICE BYRAM ONGAYA AT THE OPEN DAY ON 22<sup>ND</sup> JULY  
2024 AT MILIMANI LAW COURTS GROUNDS, NAIROBI**

**Theme: Social Transformation Through Access to Justice: Stakeholder  
Involvement in Effective Case Management**

Your Ladyship, Chief Justice and President of the Supreme Court,  
Hon. Shadrack Mwangolo Mwadime, Principal Secretary, Ministry of  
Labour and Social Protection,

Hon. Amos Njoroge Gathecha, EBS, Principal Secretary, State  
Department of Public Service, Ministry of Public Service, Performance  
and Delivery Management.

Honourable Principal Judge of the High Court,

Honourable Presiding Judge of the Environment and Land Court,

Honourable Judges of the ELRC and all Judges Present,

The President of the LSK, Chair Person of LSK, Nairobi Branch and  
Members of the Bar,

Our Stakeholders,

Honourable Registrars and Deputy Registrars,



**Honourable Judicial Officers Present,**

**Our Judiciary Staff,**

**Ladies and Gentlemen,**

I thank each of you for accepting our invitation and for your presence today.

I thank the Honourable Chief Justice for presiding at today's ELRC open day. The open day is part of the continuing Judiciary focus towards the full realization of the vision of Social Transformation through Access to Justice. It demonstrates our judiciary's commitment for a citizen focused judicial service delivery.

The year under review ending on 30<sup>th</sup> June, 2024 has seen strides in our judicial service delivery. As at 30<sup>th</sup> June 2024, the statistics were as follows at the Nairobi ELRC station: Resolved cases 4,765; filed cases 3,380; pending cases 5,219. Case clearance rate is 200%. Average time to resolve a case was 544 days of 1½ years. Our priority is to hear and determine the pending older cases towards clearing the case backlogs. Our priority is to become a champion in judiciary service delivery with all cases being heard and determined within a year.

The court at Nairobi has fully implemented the three divisions of Appeals, Claims and Labour Relations, and, the Judicial Review and Labour Rights. I thank the Honourable Judges for embracing and implementing the divisions together with Judicial Docket Management System. Our case and Judgment Management system has thereby greatly improved. The implementation of the judiciary digital strategy has positively impacted upon the efficiency and effectiveness of our case management systems.

The Honourable Judges have also implemented the Court's committees for enhanced justice and stakeholder engagement. The Judge's ADR committee held the mediation summit in conjunction with the KJA, CAM taskforce and secretariat. During the summit, stakeholders shared useful knowledge, experiences and practices about court-annexed mediation, ADR and AJS.

The Judges' Jurisprudence and Publications Committee has embarked on development of the Employment and Labour Relations handbook. The handbook is expected to guide the Court and the Court's stakeholders on the relevant procedural, substantive and case law, towards more expeditious and informed delivery of justice. The Legislative Reforms Committee is



embarking to participate in the process of the review and improvement of the labour and employment statutes as initiated and undertaken by the Ministry of Labour and Social Protection.

The Rules Committee has concluded the review of the ELRC (Procedure) Rules 2016 and we look forward to the Honourable Chief Justice's approval and promulgation of the new rules, 2024. The Rules Committee has also engaged the Registrar of Trade Unions towards initiating rules that will streamline the court's hearing and determination of trade union election disputes. The committee has also liaised with the Secretary, Occupational Safety and Health towards codification and publishing of coherent guidelines and procedures for processing claims and assessment for work related injuries, accidents, diseases and deaths. The procedures will go a long way towards streamlining likely objections and appeals arising from such claims and assessments. Later in the year, the Court plans to hold the ELRASE 2 focusing on ILO C190, 2019 on a World of Work free from Violence and Harassment including Gender Based Violence and Harassment. We look forward to our Court Users and stakeholders having conversations and exhibition about manifestations of harassment and

violence at work; actions taken towards freedom from harassment and violence at work; relevant local and comparative jurisprudence; and the next steps, in that regard.

The Court has also benefited from the training of our Judges by the ITC-ILO and ILO on International Labour Standards (ILS). The training which took place earlier in the year through the KJA is expected to contribute to our jurisprudence and enhanced justice in the many disputes that come before the court. I also thank the Honourable Chief Justice for the support and approval of our four Judges and the Registrar who attended the 112<sup>th</sup> ILO 2024 ILC. We look forward to more of our Judges and Judicial Officers attending the important ILO annual conference. We thank the ILO for the continued support. It should be that delivery of Justice by the court should meet world class standards.

In that regard, the Honourable Judges have embraced the International Labour Standards (ILS). The ILO declarations on fundamental principles and rights at work adopted in 1998 and amended in 2022 constitute an expression of commitment by governments, employers and workers

organization to uphold basic human values vital to our social and economic well-being. The five ILO fundamental principles and rights include:

- a) Freedom of association and the effective recognition of the right to collective bargaining.
- b) The elimination of all forms of forced or compulsory Labour.
- c) The effective abolition of child labour.
- d) The elimination of discrimination in respect of employment and occupation.
- e) A safe and healthy working environment.

The ILO fundamental principles and rights at work have been incorporated in the Constitution of Kenya 2010 as well as the various labour and employment statutes. Through the decisions of the court, there is a deliberate movement towards the full realization of the principles and rights in the world of work. The litigants being aware of the principles and rights, they are increasingly embracing a constitutional approach going beyond the contract of employment as shown in the diversity of the disputes that are brought before the Court.

The Court is alert to the global call for a New Social Contract for tackling the inequality pandemic. The global common agenda is about a New Social Contract based on rebuilding trust in institutions, inclusion, protection and participation, and, rethinking the measurement of gross domestic product (GDP) to reflect what matters to the people and the planet. We need policies and decisions that are consistent with the call by the civil society, religious leaders, the workers and employers for economic reforms that help create a just and sustainable future. If we maintain business as usual with a model of corporate greed entrenching inequality, exclusion and despair, then we will welcome perpetual instability of communities with tragic loss of jobs and many people struggling in the informal sector.

The International Trade Union Confederation (ITUC) Congress in November 2022 adopted six building blocks for the New Social Contract namely:

- a) Investment in decent climate-friendly jobs with just transitions.
- b) Respect for labour rights and implementation of a labour protection floor.
- c) Minimum living wages and equal pay policies.



- d) Universal access to social protection through a global social protection fund.
- e) Promotion of greater levels of equality and an end to discrimination.
- f) An inclusive development model and inclusive multilateralism based on social dialogue.

As a Court, we are aware that universal and lasting peace can only be based on social justice. We must sustain gains made and address new challenges based on human, environmental, economic and societal values – essentially a New Social Contract. We need an equal, safe and secure society where, everybody everywhere, is not left behind.

We know technological changes are rapidly changing work and work relationships. However, the relevant regulatory frameworks are lagging behind. We know increased aging population needs robust support systems. We know massive increase in young population calls for solutions for an oversupply of labour. We know climate change requires us to work even harder to make the world environmentally sustainable. We also know that the labour market is the cornerstone that shapes and conditions social

outcomes. We know when the labour market fails to assure decent jobs the result is persistent discontent and dissatisfaction.-

We need a labour market that assures decent jobs towards reducing inequalities. We need to enable workers and their families to satisfy their basic needs. Decent jobs are at the core of accessing public services of health, education and social protection floors. Decent jobs enable persons to increase their ability to better care, feed, and educate themselves. Decent jobs enable individuals to better integrate in society.

To address peace, stability, growing discontent and dissatisfaction, we must diminish persistent and rampant joblessness and insecurity. Job gap is the emergent measure of unmet need for employment. We need to reduce the job gap in our labour market. How many workers have a need for employment but are outside the labour force because they do not satisfy the criteria to be considered unemployed? What can be done to reduce job gap? Then, there is the problem of working poverty characterized with workers living in extreme poverty, earning less than USD 1.90 per day per person. What can be done to reduce the numbers of the working poor? The working poor scenario is due to many salaried employees being excluded from the



scope of wage laws and policies. Such includes disguised employment arrangements like in outsourcing and platform workers. Many of such workers are in informal employment especially in agricultural sector and domestic workers – the paid and unpaid caregivers. In some instances, the laws and policies are inadequate as it happens for gang and piece rate workers. The consequence is that the working poor are thereby denied sufficient decent income and social protection. The priority action is to move more persons from the informal to formal employment. I trust that through social dialogue of our well-established social partners, we can together work towards offering good or at least decent standards of living with adequate job protection.

We as well need to examine our labour productivity. We need to initiate enterprises with rich job structures or high productivity activities. We must also check the rising cost of living and avoid policies and decisions that lead to high consumer price inflation characterized with acute cost-of-living crisis. We need also to examine labour income share and institute measures for increasing the share. As a priority, we need to address the trend of declining labour income share.

I have pointed out these things to assure that the Honourable Judges are cognizant of the prevailing world of work concerns and are committed to doing justice in the disputes that are brought to the Court. Through the various engagements such as this open day, Court Users Committees, Bar-Bench Committees, Inns of courts like the one due later in the afternoon, and, the Employment and Labour Relations Annual Symposium and Exhibition (ELRASE), I trust that together we will make justice the true shield and defender of our people. I thank the Honourable Chief Justice for approving, championing, and supporting the implementation of the citizen-oriented initiatives for justice delivery. The ELRC reaffirms its commitment to the full realization of the vision of Social Transformation Through Access to Justice.

Once again, I thank you for the presence, patience and listening.

**BYRAM ONGAYA**

**PRINCIPAL JUDGE**

**EMPLOYMENT AND LABOUR RELATIONS COURT OF KENYA**

**22<sup>ND</sup> JULY 2024**



9.4.3 Remarks by Hon. Shadrack Mwadime, EBS, Principal Secretary, State Department for Labour and Skills Development, Ministry of Labour and Social Protection



**REPUBLIC OF KENYA**  
**MINISTRY OF LABOUR AND SOCIAL PROTECTION**  
**OFFICE OF THE PRINCIPAL SECRETARY**  
**PRESENTED BY**  
**SHADRACK M. MWADIME, EBS**  
**THE PRINCIPAL SECRETARY**  
**STATE DEPARTMENT FOR LABOUR AND SKILLS DEVELOPMENT**  
**DURING OPEN DAY FOR THE EMPLOYMENT AND LABOUR RELATIONS COURT, NAIROBI.**

**22<sup>ND</sup> JULY, 2024**

- **Hon. Lady Justice Martha Koome EGH, Chief Justice, and President of the Supreme Court of Kenya,**
- **Hon. Justice Smokin Wanjala, CBS, Supreme Court Judge and Director Kenya Judiciary Academy**
- **Hon. Mr. Justice Daniel K. Musinga, CBS, FCI Arb President Court of Appeal**
- **Hon. Justice Byram Ongaya, Principal Judge of the Employment and Labour Relations Court**
- **Dr. Francis Atwoli, NOM (DZA) EBS, MBS, Secretary General COTU (K)**
- **Ms. Jaqueline Mugo, EBS Chief Executive Officer, Federation of Kenya Employers**
- **Hon. Kennedy Kandet, Registrar of the Employment and Labour Relations Court,**
- **All Judges, Magistrates and Registrars present,**
- **Court Users Committees present,**
- **All distinguished Guests,**

**Ladies and Gentlemen,**  
**Good morning**

It gives me great pleasure to join you today during this open day for the Employment and Labour Relations Court, 2024.

This activity demonstrates the open-door policy of the Government which allows the citizens of this great Nation to experience Court process, and Courts support services. It also avails the opportunity to interact with the Honorable Judges and Court officers.

This annual event of the ELRC has always been an opportunity of the Court to engage directly with the clientele and therefore aids in confidence building. As the Ministry of Labour and social Protection, we are happy to be Part of this initiative.

**Ladies and Gentlemen,**

The role of Employment and Labour Relations Court is very significant to the Ministry of Labour and social protection because it promotes industrial harmony, and regulate the relations between employers and their employees; between the trade unions and employer organizations; and adjudicate on disputes arising from these relations.

The ELRC is indeed a key player in dispute resolution cycle in this Country and the Ministry has benefited a great deal through Court precedence set by the Honorable judges which have shaped the paradigm of Labour relations.

**Ladies and Gentlemen,**

Our society is changing drastically through social transformation occasioned by myriads of factors such as technological change, economic change, political change, and social movements which shape the way we live, work, and interact with one another. These changes are driven by a multitude of factors, such as globalization, technological advancements, demographic shifts, and evolving cultural norms.

The world being a global village has led to the exchange of ideas, goods, and services across borders. This has blurred traditional boundaries, creating new opportunities and challenges for individuals and societies.

**Ladies and Gentlemen,**

The theme of this open day which is **“Social transformation through access to justice: stakeholder involvement in effective case management”** resonates well with the current dimensions of life. The theme recognizes that when there is

justice to citizens and institutions are fair and accessible, societies become more stable and cohesive contributing to social transformation.

I am pleased that the ELRC is keen in promoting accessibility, efficiency, transparency, accountability, inclusivity, shared leadership, cooperative dialogue and social justice. This is articulated through this forum where services are being taken closer to the people.

**Ladies and Gentlemen,**

I am glad that the Judiciary is keeping up with rapid technological advancements to promote accessibility through various innovative underpinnings through the Blueprint for Social Transformation through Access to Justice (2023-2033).

As the Chief Justice aptly put it, ***“Judiciary occupies a special place; not only the anchor of justice but also the compass guiding our Nation towards anchoring the ideals enshrined in the Constitution of Kenya 2010”***

**Ladies and gentlemen,**

The State Department of Labour and Skills Development appreciate the transformation of the Employment and Labour Relations Court from the days when it was a Tribunal domiciled in the Ministry of Labour and only admitting matters filed by Trade Unions (1964-2011). The Court has transformed pursuant to the provisions of the Constitution of Kenya 2010, to a superior court with expanded mandate and jurisdiction.

We have seen over time the Court develop a very rich jurisprudence in matters Labour Relations which speak to Social Justice ensuring social transformation and equity.

State Department for Labour & Skills Development is a critical stakeholder in Employment and Labour Relations Court as most of the matters that end up in Court first pass through our offices spread over the 47 counties as provided for in our statutes.

Indeed, the ELRC appreciates our efforts to the extent that it continues to refer several matters to our offices for conciliation which helps to decongest our courts and also help build labour relations as well as reduce cost of accessing justice.

**Ladies and Gentlemen,**

I am aware, like any other system, the Justice system in this country faces a myriad of threats including inadequate budget provisions, perception of corruption, and lately, threats to the persons of our judicial officers. Threats to the Judiciary are threats to all of consumers of the justice in this country and therefore it behoves all us to rise up and defend our institutions, more so, our Judiciary with its entire staff.

Judiciary is the hallmark of social justice. If we are to achieve social justice then the system must be accessible, responsive, efficient, and effective and inclusive, especially for the vulnerable. This will depend on quality of case management system right from when the case is filed through registration, filings, court orders and judgments and case tracking.

Indeed, in this time and age litigants must not be looking for their advocates, or coming to courts to know the status of their files. Rather it should be easy to track the case on one’s mobile phones. To this end we must enhance the use of technology through electronic case management. And as we do this, we must continue to engage all the stakeholders through such forums.

As you walk through your journey of the ten (10) year Social Transformation of the judiciary, we, as a key stakeholder in the whole

matrix undertake to walk with you for the sake of social justice for our people.



**Ladies and gentlemen,**

I call upon the ELRC to simplify even further the Court process to give litigants more access to justice. I further call upon the Court to find a lasting solution to the backlog of unresolved disputes in the Ministry of Labour which was occasioned by revocation of prosecutorial powers of the Labour officers in 2019.

**Thank you and God Bless you, God bless Kenya.**

## 9.5 ANNEX 5


### PROGRAMME



REPUBLIC OF KENYA

JUDICIARY  
REPUBLIC OF KENYA

THE JUDICIARY  
EMPLOYMENT AND LABOUR RELATIONS COURT

 *Second*  
**ELRASE**  
EMPLOYMENT AND LABOUR RELATIONS  
ANNUAL SYMPOSIUM AND EXHIBITION




DATE:  
15<sup>TH</sup> - 17<sup>TH</sup> SEPTEMBER, 2024

VENUE:  
THE UNIVERSITY OF NAIROBI CHANDARIA AUDITORIUM

*Programme*

**THEME:**  
**THE ROLE OF THE EMPLOYMENT AND LABOUR RELATIONS COURT IN FOSTERING THE  
RIGHT TO A WORLD OF WORK FREE FROM VIOLENCE AND HARASSMENT INCLUDING  
GENDER BASED VIOLENCE AND HARRASSEMENT**

**SUB THEME:**  
**MAINSTREAMING ILO CONVENTION 190 (C190) AND ECOMMENDATION 206 (R 206)**



Social Transformation  
through Access to Justice

DAY ONE: SUNDAY 15 <sup>TH</sup> SEPTEMBER, 2024			
9.30 AM-12.00PM	ELRC OUTREACH PROGRAM, ACK ALL SAINTS CATHEDRAL		
3.00 PM-4.00PM	PREPARATION AND SETTING UP OF EXHIBITION BOOTHS		
DAY TWO: MONDAY 16 <sup>TH</sup> SEPTEMBER, 2024			
TIME	SESSION	FACILITATOR	SESSION MODERATOR
8:00 AM - 8:30 AM	Registration	Secretariat	ORELRC
8.30 AM-8.45AM	Opening Prayer	Hon. Lady Justice Anna Mwaure Hon. Sukyan Hassan	
SESSION CHAIR: HON LADY JUSTICE LINNET NDOLO, JUDGE OF THE EMPLOYMENT AND LABOUR RELATIONS COURT			
8.45AM -9.00AM	Recap of ELRASE I		Hon. Justice Kebira Ocharo, Judge of the Employment and Labour Relations Court
9.00AM -9.20AM	Historical, gender and social-economic perspectives on violence and harassment at work including Gender Based Violence and Harassment		Prof. Patricia Kameri-Mbote-Senior Counsel and Director Law Division, United Nations Environment programme
9.20 AM-10:35 AM	<p>ROUND TABLE I</p> <p>Understanding the scope of convention 190, Recommendation number 206 and the extent they are provided for in the Kenya Constitution, Statutes and Policies</p>		
	Topics for discussion	Panelists:	Discussant
	<p>a) Scope and Provisions of C190 and R.206</p> <p>b) Constitution provisions incorporating C190 &amp; R.206</p> <p>c) Statutory provision implementing C190 &amp; R.206</p> <p>d) Role of the National Gender Equality Commission in C190 and R.206</p>	<p>Ms. Irene Kashindi, Member of ILO's Committee of Experts on the Application of Conventions and Recommendations</p> <p>Hon. Lady Justice Hellen Wasilwa, Judge of the Employment and Labour Relations Court</p> <p>Dr. Melisa Muindi, Academic Director Strathmore University</p> <p>Ms Tabitha Nyambura, Head of Gender and Women Division, National Gender and Equality Commission</p>	Ms. Amanda Mejia Cañadas, International Labour Standards and Labour Law Specialist
10.35AM-10.55 AM	Plenary		
10.55 AM-11.15AM	HEALTH BREAK		



Social Transformation  
through Access to Justice





**SESSION CHAIR; HON JUSTICE JORUM ABUODHA, JUDGE OF THE EMPLOYMENT AND LABOUR RELATIONS COURT**

<b>11.15 AM- 12.45 PM</b>	<b>Manifestation, experiences and mainstreaming of convention 190 (C190) and Recommendation 206 (R.206)</b>		
	<b>Perspectives by</b>	<b>Discussants</b>	
	<ul style="list-style-type: none"> <li>a) <i>Mrs. Florah Munyasa, Assistant Director, Legal Labour and Industrial Relations, Teachers Service Commission</i></li> <li>b) <i>Tripartite</i> <ul style="list-style-type: none"> <li>i) <i>Bro. Benson Okwara, MBS Deputy Secretary General COTU-K</i></li> <li>ii) <i>Mr. Dicken Ouma Federation of Kenya Employers</i></li> <li>iii) <i>Mr Kephias Odhiamba, Deputy Chief Industrial Relations Officer, Ministry of Labour and Social Protection</i></li> </ul> </li> <li>c) <i>Agricultural Association</i> <ul style="list-style-type: none"> <li>i) <i>Ms Linda Oluoch, Chief Executive Kenya Tea Growers Association</i></li> <li>ii) <i>Ms Jennifer Wachira Legal Manager, Kenya Agricultural Employers Association</i></li> </ul> </li> <li>d) <i>Civil society</i> <ul style="list-style-type: none"> <li>i) <i>Ms Ann Ileri, Executive Director, Federation of Women Lawyers</i></li> <li>ii) <i>Dr. Annette Mbogo, Executive Director, Kituo Cha Sheria</i></li> </ul> </li> <li>e) <i>Ms. Winfred Wambua, Gender and Inclusion Expert, National Gender and Equality Commission</i></li> </ul>	<p><i>Ms. Valentina Beghini, Legal Specialist –Violence, Harassment, and Non-Discrimination. ILO Geneva</i></p> <p><i>Dr. Elizabeth Muli, Senior Lecturer and Chairperson, Department of Commercial Law, University of Nairobi</i></p>	
<b>12.45 PM- 1.00 PM</b>	Plenary		
<b>1.00PM -2.00PM</b>	HEALTH BREAK		



Social Transformation  
 through Access to Justice



SESSION MODERATOR: COMMISSIONER DUNCAN OKELLO		
2.00 PM - 3:30 PM	<p><b>National Anthem</b></p> <p><b>East African Anthem</b></p> <p><b>Opening and Welcome Remarks</b></p>	<p>Kenya Prison Band</p> <p>a) Prof Margaret Jesang Hutchinson, Vice Chancellor of the University of Nairobi</p> <p>b) Mr. Mwaure Kabata, Vice President of the Law Society of Kenya</p> <p>c) Ms Jacqueline Mugo, EBS, CEO Federation of Kenya Employers</p> <p>d) Dr. Francis Atwoli, NOM (DZA), EBS, MBS Secretary General of the Central Organization of Trade Unions</p> <p>e) Ms. Caroline Khamati Mugalla – ILO Director: Country Office, Dar es Salaam</p> <p>f) Mr Thomas Koyier, EBS. Ag. Chairperson, National Gender and Equality Commission</p> <p>g) Hon Winfridah Boyani Mokaya, Chief Registrar of the Judiciary</p> <p>h) CPA Charity Kisotu, Vice Chairperson, Public Service Commission</p> <p>i) Hon Justice Byram Ongaya, Principal Judge Employment and Labour Relations Court, Kenya</p> <p>j) Hon. Justice George.V Odunga, Judge, Court of Appeal</p> <p>k) Hon (Dr) Justice Smokin Wanjala, CBS, Supreme Court Judge and Director, Kenya Judiciary Academy (KJA)</p> <p>l) Hon. Dr. Alfred Mutua, EGH Cabinet Secretary of the Ministry of Labour and Social Protection</p>
3.30PM-4.00PM	Key note address by Hon. Justice Martha K. Koome, EGH, Chief Justice & President of the Supreme Court of Kenya	
4.00PM -4.30PM	Launch of the Conciliation Training of Trainers Manual, Registry Operations Manual and the Employment and Labour Relations Court (Procedure) Rules, 2024	
4:30PM-5:00 PM	<b>Group Photograph, DPAC</b>	
	Closing prayer, Hon Justice Onesmus Makau	
	<b>Chief Guest visit to exhibition booths</b>	
	<b>HEALTH BREAK AND END OF DAY 2</b>	



Social Transformation  
through Access to Justice



DAY 3- TUESDAY 17<sup>TH</sup> SEPTEMBER, 2024

TIME	SESSION	FACILITATOR	SESSION MODERATOR
8:30 AM – 09:00 AM	Registration	Secretariat	DRELRC
9.00AM	Opening prayer	Hon.Lady Justice Agnes Kitiku Nzel	
<b>SESSION CHAIR: HON JUSTICE DAVID NDERITU</b>			
9.00AM – 10.15 AM	Comparative international status report on implementation of C190 and R206	Ms. Amanda Mejia Cañadas, International Labour Standards and Labour Law Specialist	
10.15AM -10.30AM	HEALTH BREAK		
<b>SESSION CHAIR: HON JUSTICE GEORGE V. ODUNGA JUDGE OF THE COURT OF APPEAL</b>			
10.30AM- 12.30PM	<b>ROUND TABLE 3</b> <b>Kenyan and Comparative jurisprudence around Convention 190 and Recommendation 206</b>		
	<b>Topics for discussion</b>	<b>Panelists</b>	<b>Discussant</b>
	-Emerging jurisprudence on the right of every person to a world of work free from violence and harassment including gender-based violence and harassment under ILO Convention 190:	Dr. Naomi Nyawira Njuguna, Lecturer at the University of Nairobi  Hon.(DR) Justice, Jacob Gakeri, Judge of the Employment and Labour Relations Court  Mrs Judith Guserwa Advocate  Dr. Gibson Kamau Kuria, Senior Counsel	Ms. Amanda Mejia Cañadas, International Labour Standards and Labour Law Specialist       Mrs Lucy Kambuni, Senior Counsel
12.30 PM -1.00PM	PLENARY		
1.00PM-2.00PM	LUNCH BREAK		
<b>SESSION CHAIR: HON LADY JUSTICE CHRISTINE BAARI</b>			
2.00PM -3.15PM	<b>ROUND TABLE 4</b> Best practices towards a world of work free from harassment and violence including gender-based violence and harassment		
	<b>Panelists</b>	<b>Discussant</b>	
	a) Ms. Ida Chimedza, ILO Technical Specialist on Gender, Equality, Non-discrimination, and Inclusion b) Hon. Lady Justice Hellen Omondi, Judge of Appeal, President International Association of Women Judges Kenya Chapter (IAWJ-K) c) Mr Wesley Kipngetch, Deputy Director Ethics and Governance Public Service Commission	<b>Hon. Prof. Margaret Kobla, PhD, EGH, Chancellor, St Paul's University</b>	



Social Transformation  
through Access to Justice





<b>3.15PM -3.30PM</b>	Plenary	
<b>3.30PM-4.00PM</b>	Report of the exhibition and award to best exhibitors	Exhibition Judge
<b>4.00PM- 4.30 PM</b>	Presentation and signing of the official Communique	<ul style="list-style-type: none"> <li>a) Mr. Mwaura Kabata, Vice President of the Law Society of Kenya</li> <li>b) Ms Jacqueline Mugo, EBS, CEO Federation of Kenya Employers</li> <li>c) Dr. Francis Atwoli, NOM (DZA), EBS, MBS Secretary General of the Central Organization of Trade Unions</li> <li>d) Hon. Shadrack Mwangolo Mwadime, EBS Principal Secretary Labour and Skills Development Ministry of Labour and Social Protection</li> <li>e) Hon. Justice Byram Ongaya, Principal Judge, ELRC</li> </ul>
<b>4.30 PM- 5.30 PM</b>	<b>Official Closing Ceremony</b> <b>Remarks by:-</b> <ul style="list-style-type: none"> <li>a) Hon. Justice Byram Ongaya, Principal Judge ELRC</li> <li>b) Hon. (Dr) Justice Smokin Wanjala, CBS, Supreme Court Judge and Director Kenya Judiciary Academy</li> <li>c) Hon. Shadrack Mwangolo Mwadime, EBS Principal Secretary Labour and Skills Development Ministry of Labour and Social Protection</li> </ul>	<b>Session Moderator</b>  Hon. Kennedy Kandet
<b>5.30PM- 6:00 PM</b>	<b>Key note address by Hon. Shadrack Mwangolo Mwadime, EBS Principal Secretary Labour and Skills Development Ministry of Labour and Social Protection</b>	
<b>6.00PM</b>	Closing prayer	Hon Lady Justice Linnet Ndolo
	National Anthem	
	<b>END OF DAY 3 AND ELRASE 2</b>	



Social Transformation  
through Access to Justice





THE JUDICIARY

EMPLOYMENT AND LABOUR RELATIONS COURT



Second  
**ELRASE**  
EMPLOYMENT AND LABOUR RELATIONS  
ANNUAL SYMPOSIUM AND EXHIBITION

DATE:  
**15<sup>TH</sup> - 17<sup>TH</sup> SEPTEMBER, 2024**

VENUE:  
THE UNIVERSITY OF NAIROBI CHANDARIA AUDITORIUM

**TO REGISTER AND ATTEND VIRTUALLY ON TEAMS, SCAN THE LINK**



Social Transformation  
through Access to Justice



## 9.6 ANNEX 5

### PARTICIPANTS

S/N	NAME	INSTITUTION	CATEGORY
01	Lady Justice Philomena Mbeti Mwilu	JUDICIARY	JUDGE
02	Justice Byram Ongaya	JUDICIARY	JUDGE
03	Justice Maureen Onyango	JUDICIARY	JUDGE
04	Lady Justice Stella Rutto	JUDICIARY	JUDGE
05	Justice Onesmus Makau	JUDICIARY	JUDGE
06	Justice Stephen Radido	JUDICIARY	JUDGE
07	Lady Justice Monica Mbaru	JUDICIARY	JUDGE
08	Justice Mathews Nduma	JUDICIARY	JUDGE
09	Justice James Rika	JUDICIARY	JUDGE
10	Justice Nzioki Wa Makau	JUDICIARY	JUDGE
11	Justice D.k. Njagi Marete	JUDICIARY	JUDGE
12	Lady Justice Jemimah Keli	JUDICIARY	JUDGE
13	Lady Justice Anna Mwaure	JUDICIARY	JUDGE
14	Justice Bernard Manani	JUDICIARY	JUDGE
15	Justice Kebira Ocharo	JUDICIARY	JUDGE
16	Lady Justice Agnes Nzei Kitiku	JUDICIARY	JUDGE
19	Lady Justice Hellen Wasilwa	JUDICIARY	PANELIST
20	Justice Jacob Gakeri	JUDICIARY	PANELIST
21	Lady Justice Hellen Omondi	JUDICIARY	PANELIST
22	Hon. Winfridah B. Mokaya	JUDICIARY	CHIEF REGISTRAR
23	Hon. Caroline Kabucho	JUDICIARY	DELEGATE
24	Hon. Susan Ndegwa	JUDICIARY	DELEGATE
25	Mr. Joseph Keverenge	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
26	Hon. Harriet Getenga	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
27	Hon. Lucy Sindani	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
28	Hon. Tobias Omono	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
29	Hon. Angeline Odawo	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
30	Hon. Electer Riany	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
31	Hon. Sharon Mwayuli	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR

S/N	NAME	INSTITUTION	CATEGORY
32	Hon. Rebecca Thyaka	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
33	Hon. Martin Jagongo	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
34	Hon. Irene Thamara	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
35	Hon. Fredrick Nyamora	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
36	Hon. David Mbeja	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
37	Hon. Victoria Ochanda	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
38	Hon. Kipkurui Kibellion	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
39	Hon. Fatuma Rashid	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
40	Hon. Nancy Barasa	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
41	Hon. Carolyne Rono	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
42	Hon. Linet Mwangangi	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
43	Hon. Agneta Ogonda	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
44	Hon. Lucy Ambasi	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
45	Hon. Anne Nyoike	JUDICIARY	MAGISTRATE/DEPUTY REGISTRAR
46	Ms. Jane Sikulu	JUDICIARY	PROTOCOL
47	Ms. Eddel Barasa	JUDICIARY	PROTOCOL
48	Mr. Moses Nzomo	JUDICIARY	PROTOCOL
49	Ms. Sharon Laibuch	JUDICIARY	PROTOCOL
50	Ms. Margaret Mwaniki	JUDICIARY	PROTOCOL
51	Mr. James Munga	JUDICIARY	PROTOCOL
52	Ms. Maryline Jepkorir	JUDICIARY	PROTOCOL
53	Mr. Moses Orina	JUDICIARY	PROTOCOL
54	Ms. Millicent Kibet	JUDICIARY	PROTOCOL
55	Mr. Steve Karuri	JUDICIARY	PROTOCOL
56	Ms. Noel Alubbe	JUDICIARY	PROTOCOL
57	Mr. Jacktone Mwendwa	JUDICIARY	PROTOCOL
58	Mr. Mohamed Ali	JUDICIARY	PROTOCOL

S/N	NAME	INSTITUTION	CATEGORY
59	Mr. David Chibole	JUDICIARY	PROTOCOL
60	Ms. Lorraine Owele	JUDICIARY	PROTOCOL
61	Mr. Jimale Bashir Quta	JUDICIARY	PROTOCOL
62	Mr. Benjamin Mwawuda	JUDICIARY	PROTOCOL
63	Ms. Charity Karimi	JUDICIARY	PROTOCOL
64	Mr. Khayumbi Antony	JUDICIARY	PROTOCOL
65	Mr. Mohamed Salat Sheikh	JUDICIARY	PROTOCOL
66	Mr. Richard Otene	JUDICIARY	PROTOCOL
67	Ms. Hilda Mwenda	JUDICIARY	PROTOCOL
68	Mr. Benjamin Gathungu	JUDICIARY	PROTOCOL
69	Ms. Catherine Makau	JUDICIARY	PROTOCOL
70	Mr. Calleb Otieno	JUDICIARY	PROTOCOL
71	Mr. Patrick Malembwa	JUDICIARY	PROTOCOL
72	Ms. Diana Munyingi	JUDICIARY	PROTOCOL
73	Ms. Eunice Agunda	JUDICIARY	PROTOCOL
74	Ms. Sharon Sareto	JUDICIARY	RAPPORTEUR
75	Mrs. Eunice Musembi	JUDICIARY	RAPPORTEUR
76	Mrs. Brenda Chepkonga	JUDICIARY	RAPPORTEUR
77	Mr. Andrew Amadi	JUDICIARY	RAPPORTEUR
78	Ms. Venice Kore	JUDICIARY	RAPPORTEUR
79	Hon. Peris Muyaa	JUDICIARY	RAPPORTEUR
80	Ms. Diana Waititu	JUDICIARY	RAPPORTEUR
81	Ms. Caroline Guy	JUDICIARY	RAPPORTEUR
82	Ms. Gloria Nyanaro	JUDICIARY	RAPPORTEUR
83	Ms. Phyllis Mueke	JUDICIARY	RAPPORTEUR
84	Ms. Edna Angote	JUDICIARY	RAPPORTEUR
85	Mr. Andrew Okango	JUDICIARY	RAPPORTEUR
86	Ms. Winnie Kamau	JUDICIARY	RAPPORTEUR
87	Ms. Bernadette Muthoni	JUDICIARY	RAPPORTEUR
88	Hon. Kennedy Kandet	JUDICIARY	REGISTRAR
89	Hon. Esther Nyaiyaki	JUDICIARY	REGISTRAR
90	Hon. Ann Asugaha	JUDICIARY	REGISTRAR
91	Hon. Aziza Ajwang	JUDICIARY	SECRETARIAT
92	Mr. Amos Kimani	JUDICIARY	SECRETARIAT
93	Ms. Valentine Lumadi	JUDICIARY	SECRETARIAT
94	Ms. Edna Aturi	JUDICIARY	SECRETARIAT
95	Mr. Nelson Kemboi	JUDICIARY	SECRETARIAT

S/N	NAME	INSTITUTION	CATEGORY
96	Mr. Benard Kipng'eno	JUDICIARY	SECRETARIAT
97	Ms. Chebet Dorine	JUDICIARY	SECRETARIAT
98	Ms. Mary Wanyugi	JUDICIARY	SECRETARIAT
99	Ms. Juliet Larabi	JUDICIARY	SECRETARIAT
100	Ms. Anntonine Odhiambo	JUDICIARY	SECRETARIAT
101	Ms. Wangu Mugo	JUDICIARY	SECRETARIAT
102	Ms. Cicily Marui	JUDICIARY	SECRETARIAT
103	Mr. Caleb Thagichu Njoroge	JUDICIARY	SECRETARIAT
104	Mr. Martin Rotich	JUDICIARY	SECRETARIAT
105	Mr. Maurice Odinga	JUDICIARY	SECRETARIAT
106	Mr. Arnold Kimanzi	JUDICIARY	SECRETARIAT
107	Ms. Janeth Toleigh	JUDICIARY	SECRETARIAT
108	Mr. Frank Martha	JUDICIARY	SECRETARIAT
109	Mr. Moses Kingi	JUDICIARY	SECRETARIAT
110	Mr. Martin Ngari	JUDICIARY	SECRETARIAT
111	Ms. Maureen Okaka	JUDICIARY	SECRETARIAT
112	Mrs. Caroline Waituika	JUDICIARY	SECRETARIAT
113	Mr. Kevin Kawai	JUDICIARY	SECRETARIAT
114	Mr. Ryan Maina	JUDICIARY	SECRETARIAT
115	Ms. Emily Masawa	JUDICIARY	SECRETARIAT
116	Ms. Connie Baraza	JUDICIARY	SECRETARIAT
117	Ms. Eunice Kinyua	JUDICIARY	SECRETARIAT
118	Mr. Shikhutuli Namusyule	JUDICIARY	SECRETARIAT
119	Ms. Catherine Wambui	JUDICIARY	SECRETARIAT
120	Mr. Abdow Haret Dpac	JUDICIARY	SECRETARIAT
121	Mr. Bernard Ogolla	JUDICIARY	SECRETARIAT
122	Ms. Judy Maina	JUDICIARY	SECRETARIAT
123	Mr. Simon Kalekye	JUDICIARY	SECURITY
124	Mr. Babu Almasi	JUDICIARY	SECURITY
125	Mr. Zakaria Nyaga	JUDICIARY	SECURITY
126	Mrs. Cyprine Rhobi	JUDICIARY	SECURITY
127	Mr. Paul Ekai	JUDICIARY	SECURITY
128	Mr. Ibrahim Omar	JUDICIARY	SECURITY
129	Ms. Agnes Norman	JUDICIARY	SECURITY
130	Mr. Moses Koikai	JUDICIARY	SECURITY
131	Ms. Rahma Ibrahim	JUDICIARY	SECURITY
132	Mr. George Mutungu	JUDICIARY	SECURITY

S/N	NAME	INSTITUTION	CATEGORY
133	Mr. Nura Babu	JUDICIARY	SECURITY
134	Mr. Julius Kosgei	JUDICIARY	SECURITY
135	Mr. Ochieng Obunga	JUDICIARY	SECURITY
136	Mr. Justine Otundo	JUDICIARY	SECURITY
137	Mr. Hezekiah Oporu	JUDICIARY	SECURITY
138	Mr. Joseph Mrombo	JUDICIARY	SECURITY
139	Mr. Antony Warui	JUDICIARY	SECURITY
140	Mr. Jones Lenaisiaku	JUDICIARY	SECURITY
141	Mr. David Munyoki	JUDICIARY	SECURITY
142	Mr. John Olenja	JUDICIARY	SECURITY
143	Mr. Kenneth Thuo	JUDICIARY	SECURITY
144	Mrs. Faith Makau	JUDICIARY	SECURITY
145	Mr. Gilbert Kwemoi	JUDICIARY	SECURITY
146	Ms. Mary Waithaka	JUDICIARY	SECURITY
147	Ms. Eunice Murei	JUDICIARY	SECURITY
148	Ms. Halima Hussein	JUDICIARY	SECURITY
149	Mr. Gilbert Kwemoi	JUDICIARY	SECURITY
150	Mr. Leonard Kamunya	JUDICIARY	SECURITY
151	Mr. Sheth Ogada	JUDICIARY	SECURITY
152	Mr. Haron Kebira	JUDICIARY	SECURITY
153	Mrs. Gitonga Regina	JUDICIARY	SECURITY
154	Mr. Hezron Kaburu	JUDICIARY	SECURITY
155	Mr. Nicodemus Mutinda	JUDICIARY	SECURITY
156	Mr. Peter Mwangi	JUDICIARY	SECURITY
157	Mrs. Beatrice Chesang	JUDICIARY	SECURITY
158	Mrs. Bibiann Nthusi	JUDICIARY	SECURITY
159	Mr. Samson Kipkemboi	JUDICIARY	SECURITY
160	Mr. Rashid Mwarama	JUDICIARY	SECURITY
161	Mr. Joseph Mutua	JUDICIARY	SECURITY
162	Ms. Mercyline Hiram	JUDICIARY	SECURITY
163	Mr. Alex Andenga	JUDICIARY	SECURITY
164	Justice Joram Abuodha	JUDICIARY	SESSION CHAIR
165	Lady Justice Linnet Ndolo	JUDICIARY	SESSION CHAIR
166	Lady Justice Christine Baari	JUDICIARY	SESSION CHAIR
167	Justice David Nderitu	JUDICIARY	SESSION CHAIR
168	Justice George Odunga	JUDICIARY	SESSION CHAIR
169	Ms. Talaso Tuye	JUDICIARY	STAFF

S/N	NAME	INSTITUTION	CATEGORY
170	Mr. Peter J. Keya	JUDICIARY	STAFF
171	Mrs. Rosebell Githaiga	JUDICIARY	STAFF
172	Ms. Anne Muriigi	JUDICIARY	STAFF
173	Mr. Fredrick Ngondo	JUDICIARY	STAFF
174	Ms. Deborah Munyange	JUDICIARY	STAFF
175	Mr. Peter Kiruka	JUDICIARY	STAFF
176	Mrs. Catherine Barasa	JUDICIARY	STAFF
177	Ms. Leah Ndirangu	JUDICIARY	STAFF
178	Ms. Mercy Njue	JUDICIARY	STAFF
179	Ms. Christine Njoroge	JUDICIARY	STAFF
180	Mr. Douglas Okodoi	JUDICIARY	STAFF
181	Mrs. Rosalia Masime	JUDICIARY	STAFF
182	Ms. Naomi Muthoni	JUDICIARY	STAFF
183	Mrs. Mary Ogude	JUDICIARY	STAFF
184	Ms. Stella Cheptumo	JUDICIARY	STAFF
185	Mrs. Caroline Wali	JUDICIARY	STAFF
186	Ms. Amukhoywa Sialimba	JUDICIARY	STAFF
187	Ms. Agnella Murunga	JUDICIARY	STAFF
188	Mr. Patrick Kemboi	JUDICIARY	STAFF
189	Ms. Beatrice Odiko	JUDICIARY	STAFF
190	Mr. Abdulmajid Ahmed Hassan	JUDICIARY	STAFF
191	Ms. Eli Joy Ngatha	JUDICIARY	STAFF
192	Mr. Samuel Anyoka	JUDICIARY	STAFF
193	Mr. George Mbugua	JUDICIARY	STAFF
194	Mr. Eric Ojwang	JUDICIARY	STAFF
195	Mr. Vincent Kipkoech	JUDICIARY	STAFF
196	Mr. Stephen Odindo	JUDICIARY	STAFF
197	Mr. Benjamin Otieno	JUDICIARY	STAFF
198	Mr. Brian Changamu	JUDICIARY	STAFF
199	Ms. Sophie Nyai	JUDICIARY	STAFF
200	Mrs. Beatrice Mutuku	JUDICIARY	STAFF
201	Ms. Martha Kennedy	JUDICIARY	STAFF
202	Mrs. Caroline Oduol	JUDICIARY	STAFF
203	Mrs. Rose Ngayira	JUDICIARY	STAFF
204	Mr. George Obai	JUDICIARY	STAFF
205	Ms. Doreen Ndemo	JUDICIARY	STAFF
206	Mr. Daniel Ngumbi	JUDICIARY	EXHIBITOR

S/N	NAME	INSTITUTION	CATEGORY
207	Ms. Miriam Nderitu	JUDICIARY	EXHIBITOR
208	Ms. Esther Sakwanda	JUDICIARY	EXHIBITOR
209	Ms. Christine Oyugi	ATTORNEY GENERAL	DELEGATE
210	Mr. Oscar Onyango	BAR-BENCH	DELEGATE
211	Mr. Amos Mpusia	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
212	Mr. Mbugua Nicholas Ndungu	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
213	Ms. Beatrice Wanjiku	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	GUEST
214	Ms. Liza Emily	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
215	Mr. Endro Aiko	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
216	Mr. Kamuye Justin	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
217	Ms. Philis Mwendwa	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
218	Mr. Bush Onkoba	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
219	Mrs. Teresia Njeri	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
220	Mr. Daniel Katei	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
221	Mr. John Machio	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
222	Mr. Julius Maina	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
223	Mr. Albert Njeru	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
224	Hon. Roba Duba	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
225	Mrs. Jescah Nandwa	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
226	Ms. Evan Magiri	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
227	Mr. Benson Okwaro	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	PANELIST
228	Ms. Mary Achieng	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
229	Ms. Dorothy Okiya	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE

S/N	NAME	INSTITUTION	CATEGORY
230	Ms. Cesna Ayieko	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
231	Ms. Agnes Mukami	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
232	Mr. Nashon Marua	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	EXHIBITOR
233	Ms. Ann Kivinda	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
234	Mr. Juston Kimutai	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
235	Ms. Zebeidan Hussein	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
236	Mr. Issac Okello	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
237	Ms. Joyce Kemunto	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
238	Ms. Agnes Ndunge	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
239	Ms. Hellen Chelule	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
240	Ms. Susan Nambute	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
241	Mr. Peter Owiti	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	GUEST
242	Mr. Joseph Tipape	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
243	Mr. George Gibore	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
244	Mr. Austin Otieno	CENTRAL ORGANIZATION OF TRADE UNIONS (COTU)	DELEGATE
245	Ms. Elizabeth Musembi	COMMISSION ON ADMINISTRATIVE JUSTICE	DELEGATE
246	Ms. Kinyua Isolina	COMMISSION ON ADMINISTRATIVE JUSTICE	GUEST
247	Ms. Sharon Naserian	CONCILIATION MANUAL MEMBERS	DELEGATE
248	Ms. Jacqueline Osoro	COUNTY GOVERNMENTS	DELEGATE
249	Ms. Jerono Katwa	COUNTY GOVERNMENTS	DELEGATE
250	Mr. Jeizan Faruk	COUNTY GOVERNMENTS	DELEGATE
251	Ms. Khadija Yusuf	COUNTY GOVERNMENTS	DELEGATE
252	Mrs. Nisha Singh	COUNTY GOVERNMENTS	RAPPORTEUR
253	Mr. Baiyenia Moses	COUNTY GOVERNMENTS	DELEGATE

S/N	NAME	INSTITUTION	CATEGORY
254	Mr. Fredrick Karani	COURT USERS COMMITTEE	DELEGATE
255	Ms. Judith Guserwa	COURT USERS COMMITTEE	DELEGATE
256	Mr. Peterson Wachira	COURT USERS COMMITTEE	DELEGATE
257	Mrs. Alice Moraa	COURT USERS COMMITTEE	DELEGATE
258	Mr. Frida Mbugua	COURT USERS COMMITTEE	DELEGATE
259	Mr. Harry Odondi	DELMONTE KENYA LTD	DELEGATE
260	Mr. Gedion Kimutai	DELMONTE KENYA LTD	DELEGATE
261	Mrs. Diana Kiarie	DELMONTE KENYA LTD	DELEGATE
262	Mr. Derrick Alali	DOTADZ EVENTS	STAFF
263	Ms. Grace Maina	DOTADZ EVENTS	STAFF
264	Ms. Irene Mwangi	DOTADZ EVENTS	STAFF
265	Mr. Paul Kamau	DOTADZ EVENTS	STAFF
266	Mr. Dickson Ndung'u	DOTADZ EVENTS	STAFF
267	Mr. Brian Musiega	DOTADZ EVENTS	STAFF
268	Mr. Eddie Kamau	DOTADZ EVENTS	STAFF
269	Mr. Maxwell Ochieng	DOTADZ EVENTS	STAFF
270	Mr. Austine Oguyoh	DOTADZ EVENTS	STAFF
271	Mr. Fredrick Otieno	DOTADZ EVENTS	STAFF
272	Mr. John Nyamai	DOTADZ EVENTS	STAFF
273	Mr. Georgiadis Musonye	DOTADZ EVENTS	STAFF
274	Mr. Patrick Muiruri	DOTADZ EVENTS	STAFF
275	Mr. Philip Mutuku	DOTADZ EVENTS	STAFF
276	Mr. James Njuguna	DOTADZ EVENTS	STAFF
277	Ms. Brenda Omwaka	ELRC RULES COMMITTEE	DELEGATE
278	Mrs. Olga Ochola	ETHICS AND ANTI CORRUPTION COMMISSION	DELEGATE
279	Mrs. Neema K Mkorori	ETHICS AND ANTI CORRUPTION COMMISSION	DELEGATE
280	Mr. Samuel Mungai	FEDERATION OF KENYA EMPLOYERS	EXHIBITOR
281	Ms. Hellen Wanjiku	FEDERATION OF KENYA EMPLOYERS	EXHIBITOR
282	Mr. Geoffrey Maumo	FEDERATION OF KENYA EMPLOYERS	DELEGATE
283	Mrs. Beryl Hendricah	FEDERATION OF KENYA EMPLOYERS	EXHIBITOR
284	Ms. Sheila Obiayo	FEDERATION OF KENYA EMPLOYERS	DELEGATE
285	Mr. Jude Okeche	FEDERATION OF KENYA EMPLOYERS	DELEGATE
286	Ms. Racheal Karugu	FEDERATION OF KENYA EMPLOYERS	DELEGATE
287	Ms. Salome Kibuna	FEDERATION OF KENYA EMPLOYERS	DELEGATE
288	Mr. Richard Meli	FEDERATION OF KENYA EMPLOYERS	STAFF
289	Mr. Dickens Ouma	FEDERATION OF KENYA EMPLOYERS	PANELIST

S/N	NAME	INSTITUTION	CATEGORY
290	Ms. Judy Kudwoli	FEDERATION OF KENYA EMPLOYERS	EXHIBITOR
291	Ms. Ann Ireri	FEDERATION OF WOMEN LAWYERS (FIDA)	PANELIST
292	Ms. Virginia Kibunja	FEDERATION OF WOMEN LAWYERS (FIDA)	DELEGATE
293	Ms. Winfred Mueni	FEDERATION OF WOMEN LAWYERS (FIDA)	DELEGATE
294	Ms. Quresha Abdullahi	INSTITUTE OF HUMAN RESOURCE MANAGEMENT	DELEGATE
295	Ms. Jane Munoru	INSTITUTE OF HUMAN RESOURCE MANAGEMENT	DELEGATE
296	Ms. Lilly Ann Wachira	INSTITUTE OF HUMAN RESOURCE MANAGEMENT	DELEGATE
297	Ms. Wangari Kibanya	INSTITUTE OF HUMAN RESOURCE MANAGEMENT	DELEGATE
298	Ms. Jean Kagonia	INSTITUTE OF HUMAN RESOURCE MANAGEMENT	DELEGATE
299	Mr. Joseph Kavoo	INSTITUTE OF HUMAN RESOURCE MANAGEMENT	GUEST
300	Ms. Lorraine Ochiel	INTERNATIONAL DEVELOPMENT LAW ORGANIZATION	DELEGATE
301	Mr. Jim Mwanda	INTERNATIONAL DEVELOPMENT LAW ORGANIZATION	DELEGATE
302	Ms. Amanda Mejia	INTERNATIONAL LABOUR ORGANIZATION	DISCUSSANT
303	Ms. Valentina Beghini	INTERNATIONAL LABOUR ORGANIZATION	DISCUSSANT
304	Ms. Ida Chimedza	INTERNATIONAL LABOUR ORGANIZATION	PANELIST
305	Mr. Fredrick Otina	INTERNATIONAL LABOUR ORGANIZATION	DELEGATE
306	Mr. James Nyabola	INTERRELIGIOUS COUNCIL OF KENYA	DELEGATE
307	Ms. Sophie Wachera Kinyanjui	Keenya Airports Authority	DELEGATE
308	Ms. Vanessa Omore	Keenya Airports Authority	DELEGATE
309	Ms. Annie Kegode	Keenya Airports Authority	DELEGATE
310	Ms. Diana Maina	KENYA AGRICULTURAL EMPLOYERS ASSOCIATION	PANELIST
311	Ms. Jennifer Wachira	KENYA AGRICULTURAL EMPLOYERS ASSOCIATION	PANELIST
312	Ms. Ruth Lemlem	KENYA ASSOCIATION OF MANUFACTURERS	DELEGATE

S/N	NAME	INSTITUTION	CATEGORY
313	Mr. Malcolm Mwangi	KENYA ASSOCIATION OF MANUFACTURERS	DELEGATE
314	Mr. Stephen Rangar	KENYA CIVIL AVIATION AUTHORITY	DELEGATE
315	Mr. Duncan Okello	KENYA LAW REFORM COMMISSION	DISCUSSANT
316	Prof. Jack Mwimali	KENYA LAW REPORTS	DELEGATE
317	Ms. Janet Munywoki	KENYA LAW REPORTS	DELEGATE
318	Ms. Flora Weru	KENYA LAW REPORTS	EXHIBITOR
319	Ms. Emily Nakhungu	KENYA LAW REPORTS	EXHIBITOR
320	Ms. Peninnah Mello	KENYA PRIVATE SECTOR ALLIANCE	DELEGATE
321	Ms. Linda Oluoch	KENYA TEA GROWERS ASSOCIATION	PANELIST
322	Mr. Carry Nyaranga	KENYA TEA GROWERS ASSOCIATION	DELEGATE
323	Prof. Waceke Wanjohi	KENYATTA UNIVERSITY	DELEGATE
324	Mrs. Joy Otube	KITUO CHA SHERIA	EXHIBITOR
325	Dr. Annette Mbogoh	KITUO CHA SHERIA	PANELIST
326	Ms. Glory Kairi	KITUO CHA SHERIA	EXHIBITOR
327	Ms. Esther Obande	KITUO CHA SHERIA	EXHIBITOR
328	Mr. Jimmy Sayi	KITUO CHA SHERIA	EXHIBITOR
329	Mr. Mathews Onyango	KITUO CHA SHERIA	EXHIBITOR
330	Ms. Winnie Songok	LAW SOCIETY OF KENYA	DELEGATE
331	Mr. Githara Chuchu	LAW SOCIETY OF KENYA	DELEGATE
332	Mrs. Irene Kashindi, Fciarb	LAW SOCIETY OF KENYA	PANELIST
333	Ms. Naomi Kihugu	LAW SOCIETY OF KENYA	GUEST
334	Mr. Eugene Owiti	LAW SOCIETY OF KENYA	DELEGATE
335	Ms. Naomi Njeri Kariuki Kariuki	LAW SOCIETY OF KENYA	GUEST
336	Mr. Griffin Odhiambo	LAW SOCIETY OF KENYA	DELEGATE
337	Ms. Esther Sayo	LAW SOCIETY OF KENYA	DELEGATE
338	Mr. Felix Etyang	LAW SOCIETY OF KENYA	DELEGATE
339	Ms. Lilian Mbuchi	LAW SOCIETY OF KENYA	DELEGATE
340	Mr. Enock Chisengo	LAW SOCIETY OF KENYA	DELEGATE
341	Mr. Philip Odete	LAW SOCIETY OF KENYA	DELEGATE
342	Ms. Milka Maina	LAW SOCIETY OF KENYA	DELEGATE
343	Mrs. Carren Sadia	LAW SOCIETY OF KENYA	DELEGATE
344	Mr. Brance Odhiambo	LAW SOCIETY OF KENYA	DELEGATE
345	Mr. Obunde Henry	LAW SOCIETY OF KENYA	DELEGATE
346	Ms. Elizabeth Kerubo Omao	LAW SOCIETY OF KENYA	DELEGATE
347	Ms. Stacey Achieng'	LAW SOCIETY OF KENYA	GUEST
348	Mrs. Jully Kamollo	LAW SOCIETY OF KENYA	DELEGATE

S/N	NAME	INSTITUTION	CATEGORY
349	Mrs. Lucy Kambuni	LAW SOCIETY OF KENYA	DISCUSSANT
350	Dr. Gibson Kamau Kuria	LAW SOCIETY OF KENYA	PANELIST
351	Ms. Yvonne Gathoni	LAW SOCIETY OF KENYA	DELEGATE
352	Ms. Jackline Akinyi	LAW SOCIETY OF KENYA	DELEGATE
353	Mr. Edwin Opiyo	LAW SOCIETY OF KENYA	DELEGATE
354	Ms. Joy Gitau	LAW SOCIETY OF KENYA	DELEGATE
355	Mrs. Maureen Mwenesa	LAW SOCIETY OF KENYA	DELEGATE
356	Ms. Caroline Kamau	MADISON GROUP LTD	DELEGATE
357	Mr. Hillary Korir	MEDIA COUNCIL OF KENYA	DELEGATE
358	Mr. Josphat Kibaara	MEDIA COUNCIL OF KENYA	DELEGATE
359	Dr. Nahashon Moitaleel	MINISTRY OF LABOUR AND SOCIAL PROTECTION	DELEGATE
360	Mr. Danchael Mwangure Chamangi	MINISTRY OF LABOUR AND SOCIAL PROTECTION	DELEGATE
361	Mr. Hudson Njihia	MINISTRY OF LABOUR AND SOCIAL PROTECTION	DELEGATE
362	Mr. Richard Litaba	MINISTRY OF LABOUR AND SOCIAL PROTECTION	DELEGATE
363	Mr. Kephias Odhiambo	MINISTRY OF LABOUR AND SOCIAL PROTECTION	PANELIST
364	Mr. Willy Kimani	MINISTRY OF LABOUR AND SOCIAL PROTECTION	DELEGATE
365	Mr. Francis Lenarum	MINISTRY OF LABOUR AND SOCIAL PROTECTION	DELEGATE
366	Mr. John K. Narangwi	MINISTRY OF LABOUR AND SOCIAL PROTECTION	DELEGATE
367	Mr. Nevian Karan	MINISTRY OF LABOUR AND SOCIAL PROTECTION	DELEGATE
368	Ms. Winfrey Odera	MINISTRY OF LABOUR AND SOCIAL PROTECTION	DELEGATE
369	Mr. Edward Chemei	MINISTRY OF LABOUR AND SOCIAL PROTECTION	DELEGATE
370	Ms. Doreen Njue	MINISTRY OF LABOUR AND SOCIAL PROTECTION	DELEGATE
371	Ms. Hellen Opiyo	MINISTRY OF LABOUR AND SOCIAL PROTECTION	GUEST
372	Mr. Francis Mitiambo	MINISTRY OF LABOUR AND SOCIAL PROTECTION	DELEGATE
373	Ms. Ann Kanake	MINISTRY OF LABOUR AND SOCIAL PROTECTION	DELEGATE
374	Dr. Peter Kirira	MOUNT KENYA UNIVERSITY	DELEGATE

S/N	NAME	INSTITUTION	CATEGORY
375	Mr. Kevin Kinyoro	MOUNT KENYA UNIVERSITY	DELEGATE
376	Mrs. Hannah Dorcas	MOUNT KENYA UNIVERSITY	DELEGATE
377	Ms. Anne Rasowo	NATIONAL GENDER AND EQUALITY COMMISSION	DELEGATE
378	Ms. Winfred Wambua	NATIONAL GENDER AND EQUALITY COMMISSION	PANELIST
379	Ms. Tabitha Nyambura	NATIONAL GENDER AND EQUALITY COMMISSION	PANELIST
380	Mr. Collins Mutuma	NATIONAL GENDER AND EQUALITY COMMISSION	SECRETARIAT
381	Ms. Rosaline Ndwiga	NATIONAL GENDER AND EQUALITY COMMISSION	DELEGATE
382	Ms. Eunice Nyong'a	NATIONAL POLICE SERVICE COMMISSION	DELEGATE
383	Mr. James Musee	NATIONAL POLICE SERVICE COMMISSION	DELEGATE
384	Ms. Mediatrice Rapando	OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION	DELEGATE
385	Mrs. Jacqueline Manani	PUBLIC SERVICE COMMISSION	DELEGATE
386	Mr. Wesley Kipngetich	PUBLIC SERVICE COMMISSION	PANELIST
387	Ms. Gichangi Wangeci	PUBLIC SERVICE COMMISSION	DELEGATE
388	Mr. Maurice Ogosso	PUBLIC SERVICE COMMISSION	DELEGATE
389	Mr. Wangari Kulanya	PUBLIC SERVICE COMMISSION	DELEGATE
390	Ms. Ashley Nasimiyu	RIARA UNIVERSITY	DELEGATE
391	Mrs. Wangui Muchiri H.s.c	SALARIES AND REMUNERATION COMMISSION	DELEGATE
392	Mr. Murakaru Wahome	SALARIES AND REMUNERATION COMMISSION	DELEGATE
393	Mr. James Sitienei	SALARIES AND REMUNERATION COMMISSION	DELEGATE
394	Prof. Margaret Kobia	St. PAUL'S UNIVERSITY	DISCUSSANT
395	Dr. Melissa Muindi	STRATHMORE UNIVERSITY	PANELIST
396	Ms. Emily Uchi	STRATHMORE UNIVERSITY	DELEGATE
397	Mr. Germain Kiruthu	STRATHMORE UNIVERSITY	GUEST
398	Mr. Davies Mosingi	STRATHMORE UNIVERSITY	DELEGATE
399	Mr. Isaac Odhiambo	TEACHERS SERVICE COMMISSION	DELEGATE
400	Ms. Flora Manyasa	TEACHERS SERVICE COMMISSION	PANELIST
401	Mr. Akal Odero Tom	TEACHERS SERVICE COMMISSION	DELEGATE
402	Ms. Pauline Kamau	TEACHERS SERVICE COMMISSION	EXHIBITOR
403	Mr. Anthony Njagi	TEACHERS SERVICE COMMISSION	EXHIBITOR

S/N	NAME	INSTITUTION	CATEGORY
404	Mr. Daniel Kiumi	TEACHERS SERVICE COMMISSION	DELEGATE
405	Mrs. Hellen Chirure	TEACHERS SERVICE COMMISSION	DELEGATE
406	Ms. Allan Sitima	TEACHERS SERVICE COMMISSION	DELEGATE
407	Mr. Cavin Anyuor	TEACHERS SERVICE COMMISSION	DELEGATE
408	Prof. Patricia Kameri Mbote	UNEP	PRESENTER
409	Mr. Samson Simiyu	UNIVERSITY OF NAIROBI	DELEGATE
410	Dr. Elizabeth Muli	UNIVERSITY OF NAIROBI	DISCUSSANT
411	Dr. Naomi Nyawira	UNIVERSITY OF NAIROBI	PANELIST
412	Mr. Valentine Ataka	UNIVERSITY OF NAIROBI	DELEGATE
413	Mrs. Judy Nguru	UNIVERSITY OF NAIROBI	DELEGATE
414	Mrs. Judy Nguru	UNIVERSITY OF NAIROBI	DELEGATE



**Hon. Justice Martha K. Koome, EGH,  
 Chief Justice & President of the Supreme Court of Kenya**

Chief Justice Martha K. Koome, EGH, assumed office on 21st May 2021 as the 15th Chief Justice of the Republic of Kenya and 3rd President of the Supreme Court of Kenya. She is the first woman to hold the office of Chief Justice since the Kenyan Judiciary was established more than a century ago.

Prior to her appointment, the Chief Justice served as a senior Judge of Appeal. During her tenure as an Appellate Judge, she oversaw the Criminal Division. She also chaired the Committee which developed the Court of Appeal Practice Directions in Civil and Criminal Appeals introducing novel case management strategies that have championed excellence at the Court. She also chaired the Committee that developed the Court of Appeal Registry Manual that standardized registry operations enhancing customer experience and streamlining records management at the Court.

During her term at the Court of Appeal, she was elected President of the Kenya Magistrates and Judges Association (KMJA) in 2019 and served as an official of East Africa Magistrates and Judges Association (EAMJA).

Chief Justice Koome joined the Judiciary in 2003 as a High Court Judge where she served until 2011. In that period, she was engaged in leadership and administrative roles within the High Court as the Resident Judge of the High Court in Nakuru and Kitale as well as the Head of the Land and Environment Division of the High Court at Nairobi, as it was then referred.

Upon her admission to the roll of advocates in 1987, the Chief Justice served as a legal practitioner for fifteen years curving out a niche in conveyancing, commercial law, civil litigation, criminal litigation, and family law.

She has also been actively engaged in multiple community service projects and promoted children and family matters through volunteer and pro bono services. Chief Justice Koome's milestones include being a Council Member of the Law of Society of Kenya between 1994 and 1996. She was involved in the formation of the East African Law Society in 1995 and served as the inaugural Treasurer. While at the East African Law Society, Justice Koome participated in negotiations towards the enactment of the East African Community Treaty and institutions of the Community, including, the East African Court of Justice.

In 1997 she was elected Chairperson of the Federation of Women Lawyers Kenya Chapter (FIDA Kenya) and served in that position for two consecutive terms. In 2005 she was appointed member of the African Union Committee on the Rights and Welfare of the Child. In the same year she led the Kenyan delegation to Beijing during the major review of the Beijing Platform for Action.

Chief Justice Koome is celebrated as a revolutionary jurist who participated in the law review process which gave rise to the Constitution of Kenya, 2010. In 2020, the United Nations recognised Justice Koome as an eminent Human and Children's rights defender following years of dedicated work in pursuit of the rights of women and children. Notably, she chaired the National Council on the Administration of Justice (NCAJ) Committee that reviewed the Children's Act and established Court User Committees focused on child justice. In appreciation of her decades' long pioneering work on advocacy and advancement of the rights of children and the marginalised, Justice Koome was voted runner-up for the United Nations Person of The Year (2020).

Chief Justice Koome holds a Bachelor of Laws (LLB) degree from the University of Nairobi, a Post-graduate Diploma in Law from the Kenya School of Law and a Master of Laws (LLM) from the University of London.



**Dr. Alfred. N. Mutua,EGH**  
**Cabinet Secretary, Ministry of Labour and Social Protection**

Dr. Alfred Mutua previously served as the Cabinet Secretary for Foreign & Diaspora Affairs of the Republic of Kenya. He had also served as the First Governor of Machakos County for two terms, from 2013 to 2017 and from 2018 to 2022.

Dr. Mutua had previously served the country as the Official Government Spokesman between 2002 and 2012.

Dr Mutua, who has a Doctorate in Communication and Media has been a journalist, author, businessman, lecturer, civil servant and a politician.



**Hon. Justice (Dr.) Smokin Wanjala, CBS**  
**Judge of the Supreme Court of Kenya**

Hon. Justice Wanjala is a Judge of the Supreme Court of Kenya having been appointed in 2011. Between 2011 and 2016, he was a member of the Judicial Service Commission (representing the Supreme Court) and Chairman of the Commission's Human Resources and Administration Committee. The Hon. Judge is the Judiciary Representative to the Council of Legal Education (CLE) having been appointed as such in 2020. He is the current Director, Kenya Judiciary Academy (KJA). Justice Wanjala has also served as a member of other critical Committees of the Judiciary, including but not limited to, the Judiciary Standing Committee on Elections (JCE) and the Judiciary Committee on Performance Management and Measurement Understanding (PMMU).

Hon. Justice Wanjala is a holder of a Bachelor of Laws (LL.B Hons.) from the University of Nairobi, a Diploma in Law from the Kenya School of Law, a Master of Laws (LL.M) from Columbia University, New York, and a Doctorate in Law (PhD) from the University of Ghent, Belgium.

Before his appointment to the Supreme Court of Kenya, Justice Wanjala served as a Law Lecturer and later, Senior Lecturer at the University of Nairobi for nineteen (19) years (1986-2004). While still lecturing at the University of Nairobi, he served as the Joint Secretary to the Commission on Illegally and Irregularly Acquired Public Land (the Ndung'u Commission) in 2003. He is credited with having overseen the compilation and writing of what has become popularly known as the Ndung'u Report. Justice Wanjala was the first Chairman of the Public Complaints Committee on the Environment (PCC) which is one of the Compliance Committees of the National Environment and Management Authority-NEMA (2002-2004).

He was appointed Assistant Director of the Kenya Anti-Corruption Commission (KACC) in October 2004, where he served in that capacity until 2009.

He has many publications to his credit including books and articles in the fields of Law, Human Rights and Governance. He has published locally and internationally. Apart from his accomplishments in academia as a Law Teacher and Author, Justice Wanjala has participated in major research projects leading to the compilation and production of Seminal Reports.

Justice Wanjala is one of the four founder members of the Centre for Law and Research International (CLARION) where they pioneered Civic Education in the Country. He is a member of the International Commission of Jurists, ICJ-Kenya Chapter and the Kenya National Academy of Sciences. He has recently delivered lectures at the International Anti-Corruption Academy (IACA) during the Institution's Summer Lecture Series. He is a member of the Advisory Board of Columbia Global Centres - Nairobi, Kenya; which is one of the nine World-Wide Regional hubs established by Columbia University to enhance research and collaboration for the benefit of humanity.

In 2008, Justice Wanjala became a subject of Biographical Record in Marquis "Who is Who" in the World, 25th Edition. Inclusion in this Biography is limited to individuals who have contributed significantly to the betterment of society.

In 2012, Justice Wanjala received the Presidential Award of the Chief of the Order of the Burning Spear (CBS) [First Class], the 4th Highest Civilian Award in Kenya, in recognition of his distinguished service rendered to the Nation.



**Hon. Lady Justice Hellen Omondi**  
**Judge, Court of Appeal and President International Association**  
**of Women Judges Kenya Chapter (IAWJ-K)**

Justice Hellen Omondi Amollo Owino holds Masters Degree in Women's Laws from the University of Zimbabwe, Bachelors of Laws Degree from the University of Nairobi and a Diploma in Law from the Kenya School of Law.

She studied at the University of Minnesota in 1999 for her a certificate in Graduate Study and Professional Development.

She was admitted to Roll of Advocates in 1985. Her experience as a magistrate spans 22 years.

Justice Omondi joined the judicial service as a District Magistrate II (Prof.) in 1985 rising to become a Chief Magistrate in 2003, a position she held until 2007 when she was recruited judge of the High Court of Kenya.

Lady Justice Hellen Omondi is the President of the International Association of Women Judges - Kenya Chapter.

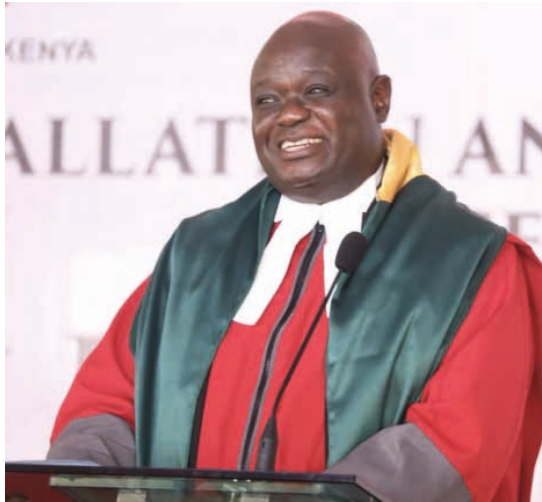


**Hon. Mr. Justice George Vincent Odunga  
Judge, Court of Appeal**

Hon. Justice George Vincent Odunga was appointed Judge of the Court of Appeal in 2022. He holds a Bachelors of Laws Degree from the University of Nairobi. He studied for his Diploma in Law at the Kenya School of Law in 1994.

Before joining judicial service, Judge Odunga practiced as an Advocate at Rajn K. Somaiya between 1995 and 2001 before moving on to join Behan and Okero Advocates as partner, serving from 2002 to 2011, when he was appointed judge of the High Court. He has training in Enhancing Maritime Law Jurisprudence in Kenya.

Hon. Justice Odunga was admitted to the Roll of Advocates in 1995. He served for 16 years as a legal practitioner.



**Hon. Mr. Justice Byram Ongaya,  
Principal Judge, ELRC**

Hon. Justice Byram Ongaya is the Employment and Labour Relations Court Principal (ELRC) Judge having been elected in 2022. He was appointed Judge of the ELRC in 2012. Justice Ongaya has served in Nakuru, Nyeri, Nairobi and Mombasa.

He practiced law from 1998 to 2004, focusing on Constitutional and Administrative Law, Judicial Review, Civil Litigation and, Public Policy and Legislative Drafting. In 2004, he was appointed to found and head the Legal Services Department at the Public Service Commission of Kenya (PSC).

In 2010, Justice Ongaya was appointed and seconded to serve as the Director of Legal Services at the Interim Independent Boundaries Review Commission (IIBRC). He has authored and has been involved in drafting many legal instruments including policy documents and advisory legal opinions.

He holds a Master of Laws degree (LLM) – Governance and Democracy, from the University of Nairobi, 2008. He attained a Bachelor of Laws (LLB) from the University of Nairobi (1998). He was admitted to the Roll of Advocates in 2000.

He is a registered Certified Public Secretary of Kenya – CPS(K), and a life member of the Institute of Certified Public Secretaries of Kenya (ICPSK). He served as a member of the Editorial Committee of the Institute’s Journal, “The Management”.



**Hon. Lady Justice Hellen Wasilwa**  
**Judge of the ELRC**

Lady Justice Hellen Wasilwa was appointed Judge of the ELRC in July 2012. She has served in Kisumu, Nairobi and Nakuru.

Judge Wasilwa has more than 30 years of experience in administering justice in Kenya. She joined the Judiciary in 1990 as a magistrate and rose through the ranks to her current position. Prior to her appointment as a judge, she served as the first Registrar of the then defunct Industrial Court of Kenya.

She has also been a trainer and a lecturer at the Kenya School of Law, JTI, Advocates CLE and Mount Kenya University. The Judge has served as a member of the ELRC Rules Committee (2013 to 2018) and Vice Chair of the Judiciary Human Resource Policies and Procedures Manual Taskforce (2018 to 2021).

She is currently the Vice President of the Kenya Women Judges Association and the immediate former President of the Kenya Judges Welfare Association.

She was awarded the Head of State Commendation (HSC) in 2008, for her distinguished service as a civil servant. She won the Child Jurist of the year Award- Chambers of Justice for her outstanding contribution in the protection of children as magistrate (2002). She also won the Inaugural lawyer of the Year Award - The Cradle, the Child Foundation (2002).

She holds a Master of Laws (LLM) - Environmental and Natural Resource Law, 2009, Bachelor of Laws (LLB), 1988 from the University of Nairobi and Post Graduate Diploma from the Kenya School of Law.

She has trained in International Labour Standards from the ILO Training school in Turin Italy and Advanced leadership from the Kenya School of Government. She was admitted to the Bar in 1989.



**Hon. Dr. Justice Gakeri Jacob Kariuki**  
**Judge of the ELRC**

Hon. Dr. Justice Jacob Gakeri was appointed Judge of the Employment and Labour Relations Court in 2021. Prior to the appointment, Gakeri was serving as Secretary/CEO to the Council of Legal Education since 2018.

Previously, Dr. Justice Gakeri lectured at the Kenya School of Professional Studies (1993- 1996), at Strathmore University from (1996-2008), and at the University of Nairobi (1996-2011). In 2015, he moved to the Council of Legal Education working as Director, Quality Assurance until 2016 and as Director of Examinations and Ag. Secretary/CEO (2016 -2018).

Hon. Dr. Justice Gakeri is a holder of a Doctorate of Philosophy degree in Juridical Science from Indiana University (2011) and two Masters of Laws degrees from the University of Houston (2009) and University of Nairobi (1993).

He attained his Bachelor of Laws degree from University of Nairobi (1988). He obtained his Diploma in Law from the Kenya School of Law (KSL) in 1989 and he admitted to the Roll of Advocates the same year.



**Hon. Mr. Justice Kebira Ocharo**  
**Judge of the ELRC**

Justice Kebira Ocharo was appointed Judge of the Employment and Labour Relations Court in 2021. Prior to his appointment, Ocharo was Managing Partner at Ocharo Kebira & Company Advocates since 1997.

Previously, he served as a Legal Assistant/ Pupil at Omagwa Angima & Company Advocates between 1993 and 1996, and as an Associate Advocate at Omagwa Angima & Company

Advocates from 1996 to 1997. Justice Ocharo holds Masters of Science degree in Human Resource Management from Masinde Muliro University (2016), Bachelor of Laws from the University of Nairobi (1994) and Diploma in Law from Kenya School of Law (1995). He was admitted to the Roll of Advocates in 1996.



**CPA Charity S. Kisotu, CBS**  
**Vice Chairperson, Public Service Commission**

Ms. Charity Seleina Kisotu was appointed Vice Chairperson of the Public Service Commission on 10th January 2019. She is the chairperson of the Finance, Planning, ICT and General Purpose Committee of the Commission.

Prior to her appointment, she was a member of the Board of the Central Bank of Kenya since 2016. She also served at various times as Chairperson of the Insurance Tribunal; Chairperson of the National Social Security Fund Board of Trustees; Chairperson of Kenya Wines Agencies Limited (KWAL); member of Nairobi City County Public Service Board and Chief Accountant at the National Water Corporation.

As Chairperson of KWAL, she successfully presided over the privatization of the organization which was a special assignment given to her board by the appointing authority. Ms. Kisotu holds a Master of Business Administration (MBA) degree from Moi University. She is a Certified Public Accountant of Kenya (CPAK) and a Certified Secretary (CS). She further served as member of the Council of Elders and Honorary Secretary, Nairobi Baptist Church



**Hon. Winfridah Boyani Mokaya**  
**Chief Registrar of the Judiciary**

Hon. Winfridah Boyani Mokaya is the Chief Registrar of the Judiciary sworn to office in March 2024. Prior to her appointment as the CRJ, she served as the Registrar of the Judicial Service Commission, a position she assumed in 2012.

Hon. Mokaya, an Advocate of the High Court of Kenya, joined the Judiciary 1997 rising from District Magistrate II to Senior Principal Magistrate.

She holds a Bachelor of Laws degree from the University of Nairobi and a Post Graduate Diploma in Law from the Kenya School of Law. She is also a Certified Public Secretary and is currently pursuing a Master of Laws degree.

She is a member of the Kenya Magistrates and Judges Association (KMJA), Kenya Women Judges Association (KWJA), East African Magistrates and Judges Association (EAMJA) and the Institute of Certified Public Secretaries (ICPSK).



**Mr. Shadrack Mwangolo Mwadime, EBS**  
**Principal Secretary Labour and Skills Development, Ministry of Labour and Social Protection**

Mr. Mwadime is a career civil servant who has risen through ranks and has a wealth of experience and over thirty years offering leadership, policy direction and coordination of government development projects in various counties across the nation.

He has excellent resource planning skills as demonstrated by successful completion of various government projects in the work-stations assigned. He has the ability to foster peace initiatives by application of appropriate intelligence gathering mechanisms and adopting multi-tiered negotiation approaches. He was a member of the Task Force on Provincial Administration Policy that stipulates Code of Conduct and reviewed to improve the Terms and Conditions of service for Public Administrators. In addition, he successfully established the Administration Department at the Deputy President's Office after the Promulgation the 2010 Constitution and was conferred with the Honour Elder of the Burning Spear (EBS) in 2014 in recognition of his exemplary work and dedication to service.

Currently, he is a PhD Student in Strategic Management at Moi University. He holds a Masters' Degree in Business Administration from Moi University, a Master of Science in Leadership and Governance from Jomo Kenyatta University of Agriculture and Technology and a Bachelor of Arts (Economics and \ political Science) from University Nairobi, Nairobi Kenya. He is a member of the African Association for Public Administration and Management (AAPAM), a professional body for Administrators.



**Dr. Francis Atwoli, CBS, EBS, MBS**  
**Secretary General, Central Organization of Trade Unions (COTU)**

Dr. Francis Atwoli is currently serving as the Secretary General of the Central Organization of Trade Unions (COTU). He has served in the capacity since he was first elected in 2001.

He has served in several organizations including as the President of the Pan African Labour Movement, and a member of Training Centre of the International Labour Organization in Italy.

Dr. Atwoli was awarded an honorary doctorate of Humane Letters (Labour Relations) from Masinde Muliro University of Science and Technology. He is also a recipient of both Chief of the Burning Spear (CBS), Elder of the Burning Spear (EBS) and the Moran of the Burning Spear (MBS) awards in recognition of his role in championing social Justice.



**Mrs. Jacqueline Mugo, EBS, MBS, OGW**  
**Executive Director and CEO, Federation of Kenya Employers.**

Mrs. Jacqueline Mugo is the Executive Director and CEO of the Federation of Kenya Employers.

She is an advocate of the High Court of Kenya with over 30 years' experience in Labour Relations, Leadership, Advocacy and Human Resources, among others.

Mrs. Mugo is also the Secretary-General of Business Africa Employers Confederation, a Titular Boardmember of International Labour Organization (ILO), the Vice President for Africa of the International Organization of Employers (IOE), member of the ACP- EU Committee on Trade and also serves on various national boards.

She plays a critical role in shaping employment, labour and Social Policy at national and international level to enhance Social Justice and the decent work agenda.



**Prof. Margaret Jesang' Hutchinson**  
**Ag. Vice Chancellor, UoN**

Prof. Margaret Jesang' Hutchinson is the Acting Vice Chancellor of the University of Nairobi. She is first ever female to hold the position of a Vice Chancellor since its inception in 1970. Prof. Hutchinson, who assumed office in Acting Capacity on Monday, August 5, 2024 is also the Substantive Deputy Vice Chancellor (Research, Innovation and Enterprise) and Immediate Acting Deputy Vice Chancellor (Finance, Planning and Development) at the University of Nairobi.

Prof Hutchinson holds a PhD from the University of Guelph, Canada, and MSc and BSc from the University of Nairobi. She has over 43 years of experience in Agricultural research, extension, Innovation and Technology transfer and strategic administration. At the university, she has held several administrative positions, supporting management to deliver the university's mandate. She is widely published, a mentor and a role model for students and researchers across Africa.

Prof Hutchinson consults with many organizations in matters Agriculture, Food and Nutrition Security, Gender Mainstreaming in Agriculture, Leadership, governance and Transformation nationally and internationally.

She is a member of several professional bodies such as the International Society of Horticultural Science, African Crop Science Society, Horticultural Association of Kenya, Kenya Professional Association of Women in Agriculture and Environment, the Agricultural Society of Kenya and Institute of Directors.



**Hon. Prof. Margaret Kobia, PhD, EGH,  
Chancellor, St Paul's University**

Hon. Prof. Margaret Kobia previously served as the Cabinet Minister in the Ministry of Public Service, Youth, Gender, Social Protection and Special Programs, 2018 - 2022. Prior to joining the Cabinet, she was the Chairperson, Public Service Commission 2013 - 2018 and the founding Director General of the Kenya School of Government 2005 - 2012. She was also Senior Lecturer of Management, entrepreneurship and Research Methods at Strathmore University 2003- 2005.

Hon. Prof. Margaret Kobia is a seasoned administrator with a wealth of experience in public administration and gender issues and currently serves as the Chancellor, St. Paul's University

She was awarded the Order of Grand Warrior (OGW) and First Class Order of Chief of Burning Spear (CBS) by the President of the Republic of Kenya in 2007 and 2009, respectively. In 2016, she received the highest Head of State Honours of Moran of Golden Heart (MGH) for her strong excellent leadership in public service.

Prof. Kobia is a Full Professor of Management and Entrepreneurship and holds a PhD Degree in Human Resource Education of the University of Illinois, M.Ed. of Kenyatta University and B.Ed. of the University of Nairobi.



**Mr. Thomas Okoth Koyier, EBS**  
**Ag. Chairperson, National Gender and Equality Commission (NGEC)**

Mr. Thomas Koyier, EBS is the Ag. Chairperson, a Commissioner and Convener for Legal, Complaints, investigations and redress in the commission. He has been a champion in advocating for a society free from gender inequality, inclusivity and ensuring that there is no violation in the fundamental rights of all people. He has a background and experience in gender equality, Leadership and organizational management, Business Ethics, strategic management and entrepreneurship. Comm. Koyier was appointed as a commissioner by H.E Uhuru Kenyatta in December 2021.

Prior to joining NGEC, Comm. Koyier, EBS was appointed in 2019 by President Uhuru Kenyatta to serve as a member of the Insurance Appeals Tribunal up to 2021. He was appointed by President in 2022 as a Chairperson of the Selection Panel for the appointment of one Chairperson and one member with the Teachers Service Commission and was later reappointed as a Chairperson for the Selection Panel of three members of Teachers Service Commission as Commissioners.

In 2023, Commissioner Koyier, EBS was appointed by H.E President William Ruto as a member of the Selection panel for Power of mercy for the appointment of members of the Power of Mercy. He was a Lecturer in the School of Business and Economics at Daystar University and a member of University Committee for Curriculum Development and Review, member of University Human Resource Committee and member of University Ethics Review Board.

He has been a Consultant with National Environmental Trust Fund (NETFUND) Partnership, member of internal consultant that developed Strategic Plan for Daystar University (2011-2016). He has also been actively involved in community development for over 20 years. He serves as a Board of Director of Biblia Sacco.

Mr. Koyier was awarded the Elder of the Order of the Burning spear (EBS) by H.E Uhuru Kenyatta.



**Ms. Caroline Khamati Mugalla**  
**ILO Director: Country Office, Dar es Salaam**

Ms. Caroline Khamati Mugalla is a dynamic and accomplished leader with over 18 years of experience in labor relations, trade union management, and advocacy across East Africa. She currently serves as the Director of the ILO Country Office for the United Republic of Tanzania, Burundi, Kenya, Rwanda, and Uganda. She is adept at steering complex projects, engaging high-level stakeholders, and implementing impactful programs.

Ms. Mugalla's career is marked by a pioneering role as the first female Executive Director of the East Africa Trade Union Confederation (EATUC), where she successfully managed a membership base of over 3.5 million and drove strategic initiatives across five East African countries.

Her expertise spans a wide range of areas, including program design and management, stakeholder engagement, and resource mobilization. I am skilled in crafting and executing strategies that align with organizational goals and regional needs.

Ms. Mugalla has a strong academic background with a Master's in Business Administration (MBA) with a focus on Human Resources Management from Kenya Methodist University, complemented by specialized diplomas in international trade, labor markets, gender mainstreaming, and social protection from the International Labour Organisation, Turin, Italy.



**Mr. Mwaura Kabata**  
**Vice President, Law Society of Kenya**

Mwaura Kabata is an Advocate of the High Court of Kenya. Currently a partner at Alakonya & Associates advocates LLP as well as the Vice President of the Law Society of Kenya. A public interest litigation counsel with wide experience in Constitutional Law and many aspects of Constitutionalism with a key focus on the Rule of Law, Good Governance and Public Administration.



**Hon. Kennedy Kandet**  
**Registrar, Employment and Labour Relations Court.**

Registrar, Employment and Labour Relations Court. Hon. Kennedy Kandet Republic of Kenya Hon. Kennedy Kandet, joined the judiciary as a District Magistrate 11 in 2003 and rose through the ranks to become the first Registrar of the Employment and Labour Relations Court, to be recruited by the JSC. He was one of the pioneer Assistant Registrars in charge of the Magistrate's Court. He holds a Master of Laws Degree (LLM), in the thematic area of Law Governance and Democracy, Bachelor of Law (LL.B) and a post graduate Diploma in Law. Kandet has received professional training in Strategic Leadership Development Programme, from KSG, Judicial Administration at the Royal Institute of Public Administration, London, Contemporary Public Administration Management at Galilee International Management Institute, Israel, Court Management and Administration, University of Cape Town South Africa and completed the Executive Leadership Development, Governance & Ethics of the Judiciary Course with the Centre for Management Excellence UK in London. He has attended conferences including on the Role of African judiciaries in promoting gender justice (Accra -Ghana), International Labour Conference, Geneva and trained on Alternative Dispute Resolution Mechanisms (Arusha-Tanzania) Kandet serves as a member of the Judiciary's Human Resource Management Committee, the Administration of Justice and Performance Management Committee and the Building Infrastructure and Development Committee.

He is the Secretary of the Employment and Labour Relations Rules Committee and a Member of the National Labour Board. Previously he served as the Executive Secretary of the Auctioneers Licensing Board. He spearheaded the holding of the inaugural Employment and Labour Relations Annual Symposium and Exhibition, the training of Judges on International Labour Standards, the development of the Employment and Labour Relations Court (Procedure) Rules, the Service Delivery Charter and the Registry Operations Manual. He has implemented Judiciary programmes under JTF, SJT and STAJ Blueprints.



**Irene Kashindi, FCIrb Advocate, High Court**

Irene is an Advocate of the High Court of Kenya with close to 15 years of experience. She has an LL.B and LL.M from the University of Nairobi. She is a partner in Munyao, Muthama and Kashindi Advocates. She was previously a partner in Hamilton Harrison and Mathews.

Irene is an expert in Employment and Labour Relations. She is also adept in Alternative Dispute Resolution and she is a Fellow of the Chartered Institute of Arbitrators. Her other areas of practice include insolvency, tax and public procurement. She is a Board member of the Public Procurement and Administrative Review Board (PPARB) and Chair of its HR/Training Committee.

She is a co-author together with George Kashindi, of the Kashindis' Employment Case Digest (August 2020).

She is the LSK representative in the Employment and Labour Relations Court Rules Committee.

Irene has several Awards and Honours, among them: top-ranked in Band 1 by the prestigious legal director Chambers and Partners since 2017 in the employment category, "Recommended Lawyer" in employment by Legal 500 from 2018 to date 2023, winner of the Client Choice Awards (litigation) in Kenya (2018), and the Lawyer of the Year (2nd Runner's up) Award by LSK Nairobi Branch in 2020.

She has been a resource person and has appeared as a speaker and trainer at Law Society of Kenya CPDs programmes, Judiciary Academy, client training programmes among other seminars and conferences.



**Dr. Melissa Muindi**  
**Academic Director Strathmore University**

Dr. Melissa Muindi, an early career researcher and academician, is an Advocate of the High Court of Kenya and a Certified Professional Mediator. Currently serving as Academic Director at Strathmore University, Dr. Muindi is involved in shaping the legal minds of the future. Her role as a Lecturer at the same institution involves teaching courses such as Labour Law and Alternative Dispute Resolution, where she showcases her dedication to both legal education and research. Dr. Muindi's teaching experience also includes positions at Kenyatta University and Riara Law School, where she taught various courses, including Labour Law, Law of Torts, and Legal Systems and Methods.

Her academic journey is marked by intellectual prowess and dedication. Dr. Muindi obtained her Bachelor of Laws (LL.B. Honours) in 2010, setting the stage for a brilliant career in academia. Subsequently, she earned a Master of Laws (LL.M.) in 2014 and culminated her academic achievements with a Doctor of Philosophy in Law (PhD) in 2023. Her doctoral thesis, titled "An Analysis of the Legal Regulation of the Outsourcing Triangular Employment Relationship in Kenya," exemplifies her commitment to exploring complex legal issues affecting the labour market.

As an early career researcher, Dr. Muindi has contributed significantly to legal literature. Notable publications include articles in journals such as the Journal of Conflict Management and Sustainable Development, International Journal of Law and Policy, and the Kenya Law Journal. Her research delves into critical issues, such as mediation in outsourcing relationships and the implications of international labour standards in Kenya.

Dr. Muindi's influence extends to international conferences and webinars, where she has presented thought-provoking insights. Her presentations on emerging jurisprudence in labour law practice, and the role of mediation in addressing challenges faced by outsourced workers reflect her commitment to advancing legal discourse on a global scale.

Dr. Muindi's impact extends beyond the classroom. She is also a mentor to several students. At the 2023 Strathmore University Staff Recognition Ceremony, she received an award for her commendable mentorship initiatives. Dr. Muindi exemplifies a commitment to professional growth and collaboration.

In conclusion, Dr. Melissa Muindi is a luminary in the legal and academic realms, embodying excellence, dedication, and a passion for advancing the field of law.



**Ms. Tabitha Nyambura Wairima**

**Head of Gender and Women Division; The National Gender and Equality Commission (NGEC)**

Ms. Tabitha Nyambura Wairima is a dedicated and accomplished Gender Equality, Diversity, and Inclusion Expert with a wealth of practical experience spanning 19 years. Her expertise lies in promoting gender equality and empowering marginalized groups through various initiatives and strategies. She is currently heading the Gender and Women Division at the National Gender and Equality Commission.

She holds a Master's Degree in Gender and Development from the University of Nairobi.



**Dr. Elizabeth Muli**

**Senior Lecturer & Chairperson, Department of Commercial Law, University of Nairobi**

Elizabeth Muli is a highly experienced Academic, Mediator and Advocate of the High Court of Kenya with 28 years of good standing. Currently a Senior Lecturer at the University of Nairobi School of Law, she specializes in labour law and constitutional law, guiding both research and teaching in these fields. Before entering academia, Elizabeth served as a State Counsel in the Treaties & Agreements Department at the State Law Office.

Elizabeth's distinguished career includes key leadership roles such as Vice-Chair of the Commission for the Implementation of the Constitution, membership on the Council for Legal Education, and the Commission for University Education. She has also contributed to numerous national committees and task forces.

A Fulbright Fellow, Elizabeth holds a Doctor of the Science of Law (JSD) and Master of the Science of Law (MSL) from Stanford Law School, an LLM from the University of Bristol, UK, and an LLB from the University of Nairobi. Her research interests span labour law, constitutional law, and alternative dispute resolution. She is currently engaged in a research project focused on the domestication of international labour standards through judicial interpretation in Kenyan courts, further advancing the conversation on the integration of global standards into the national legal framework.



**Ms. Flora Manyasa**

**Assistant Director, Legal, Labour and Industrial Relations; Teachers Service Commission**

Ms. Flora is an experienced legal and policy professional with over 15 years of dedicated service in diverse legal and advisory roles. She is currently serving as an Assistant Director in Legal, Labour, and Industrial Relations at the Teachers Service Commission in Kenya. Her role involves ensuring compliance with legal standards and providing strategic advice on labour and industrial relations matters.

Previously, she held the position of Legal and Policy Advisor at the State Department of Gender, where she was instrumental in policy formulation, legal research, and project management; her work was pivotal in shaping gender-related policies and advancing human rights initiatives.

She began her career as a Law Clerk at the Supreme Court of Kenya, where she specialized in research and analysis on complex legal issues presented before the Court. She also has significant experience as a State Counsel at the Office of the Attorney General

She holds a Master's degree in Human Rights from the University of the Free State and a Bachelor's degree in Law from Mangalore University.



**Mr. Benson Okumu Okwaro, MBS**  
**Deputy Secretary General of the Central Organization of Trade Unions (COTU) and the General Secretary of the Communication Workers Union**

Benson Okumu Okwaro, MBS, is the Deputy Secretary General of the Central Organization of Trade Unions (COTU) and the General Secretary of the Communication Workers Union. He brings a wealth of experience and expertise in labor relations and advocacy, playing a critical role in shaping labor policies and advancing workers' rights.

In his current capacity, Mr. Okwaro is actively involved in representing COTU (K) in various committees and initiatives, including his role at the Employment and Labour Relations Court. His dedication to improving labor conditions and promoting a fair and safe working environment underscores his commitment to enhancing Kenya's employment landscape.

international labour standards through judicial interpretation in Kenyan courts, further advancing the conversation on the integration of global standards into the national legal framework.



**Mr. Dickens Mitawia Ouma**  
**Ag. Head of Industrial Relations, Legal & Membership Services;**  
**The Federation of Kenya Employers (FKE)**

Mr. Dickens Ouma is an advocate of the High Court of Kenya with over 23 years in active legal practice, 10 years of which have been specialized in labour law practice and Industrial Relations consultancy.

Mr. Ouma is holder of B.Com and LLB degrees and post-graduate Diploma from the Kenya School of Law. He is a Comm. for Oaths and Notary Public as well as a Certified Professional Mediator. He is a member of the LSK, EALS and Commonwealth Lawyers Association.

Currently serving as the acting Head of Industrial Relations, Legal and Membership Services with the Federation of Kenya Employers and concurrently serves as a member of Court Users Committee of the ELRC, member of Rules

Committee – ELRC and a member of Mediation Accreditation Committee – in the Court annexed Mediation programme under the Judicial Transformation Agenda. He is a member of the Hospitality Wage Council as well as a member of the Tripartite Advisory Committee of ILO's All Hands in Kenya, advancing Labour Standards through Cooperative Actions Project.

Mr. Ouma is a holder of Certificate in Effective Labour Regulation for Development –(International Training Center for ILO – Turin, Italy); Certificate in Negotiations and Mediation Skills, DECP and Certificate in Social Dialogue and Consensus Building for Industrial Harmony and Economic Growth, ARLAC Training Center, Harare –Zimbabwe. He also doubles up as a certified NITA trainer as well as consultant on Industrial Relations, Labour Laws and International Labour Standards thereby being involved in promotion of labour and social policy.



**Mr. Kephas Odhiambo**  
**Deputy Chief Industrial Relations Officer, Ministry of Labour and Social Protection**

Mr. Kephas has provided over 24 years of dedicated service as a Labour Officer with the Ministry of Labour in Kenya and has vast expertise in managing and resolving complex labour issues. His career has been marked by a diverse array of roles, including conciliator of trade disputes, workplace inspector, child labour expert, and court prosecutor. He excels in creating and reviewing employment contracts, fostering positive trade union relations, and ensuring workplace safety and compliance.

Mr. Odhiambo's academic background includes a Bachelor's degree in Human Resource Management from Busoga University, where he specialized in strategic management, dispute resolution, and employment laws. Additionally, he holds an International HR Diploma from Cambridge College International in Britain.

He is also a certified ILO-S.I.Y.B trainer, well-versed in entrepreneurship training and development, enabling him to support and guide emerging business leaders. His expertise extends to managing strikes and lockouts, improving employment conditions, and upholding fair labour practices.



**Ms. Lindah Adhiambo Oluoch**  
**Chief Executive Officer, Kenya Tea Growers Association (KTGA)**

Ms. Oluoch is an Advocate of the High Court of Kenya who holds a Bachelor of Laws (LL.B) from the University of Nairobi and a Postgraduate Diploma in Law from the Kenya School of Law. She is currently expanding my expertise through the International Trade certification at the ITC Chartered Institute of Export & International Trade, focusing on intra-Africa trade and value-chain advancement.

Currently, she is serving as the Chief Executive Officer of the Kenya Tea Growers Association (KTGA) in Kericho, Kenya; and is responsible for steering the strategic direction of the Association, which is pivotal in promoting sustainable practices and advancing labor compliance within the tea industry. Her role involves enhancing community impact through educational, health, and social welfare initiatives, as well as advocating for safe work environments and gender equity within the tea value chain.

Prior to her current role, she held the position of Legal & Advocacy Manager at KTGA, where she was instrumental in developing advocacy strategies and influencing regulatory interventions to support industry sustainability and labor practices. My tenure included addressing critical issues affecting tea production and ensuring effective representation of industry interests.

She has actively contributed to industry discussions and knowledge sharing through conference presentations on regulatory issues and market levies affecting the agricultural sector. She is committed to advancing legal and regulatory frameworks, coupled with my strategic vision, positions me as a leader in promoting sustainable and equitable practices in the industry.



**Ms. Jennifer Wachira**

**Legal and Industrial Relations Services Manager, Agricultural Employer's Association**

Ms. Wachira has over 12 years of legal practice in various areas of law, including employment, constitutional, international, conveyancing, and arbitration. She is passionate about advancing the rule of law and promoting alternative dispute resolution mechanisms in Kenya and beyond.

She is a member of the Chartered Institute of Arbitrators, a registered trainer with the National Industrial Training Authority and a registered Data Controller.

She has successfully handled complex and high-profile cases involving labour disputes, human rights violations, land transactions, and contractual agreements. She has also been involved in conducting legal audits and compliance reviews for various organizations and institutions.

She represents Kenya as a member of the Employment Law Committee of the East Africa Law Society which enables her to gain insight in the Employment Law sphere within East and Central Africa.

Ms. Wachira is currently pursuing her Masters in Employment and Industrial Relations which is offered by the International Training Centre of the International Labour Organisation in conjunction with the University of Turin, Italy.



**Ms. Anne W. Ileri**  
**Executive Director, Federation of Women Lawyers (FIDA)**

Anne W. Ileri is currently the Executive Director at the Federation of Women Lawyers- Kenya (FIDA-Kenya) and the Chairperson of the Elections Observation Group (ELOG) Steering Committee. Anne was recently appointed to the Presidential Taskforce on National Police Service and Kenya Prisons Service Reforms.

Anne W. Ileri earned her Bachelor of Laws (LL. B Hons) degree from Moi University and has a post-graduate diploma in Legal studies from the Kenya School of law. She also earned a post-graduate diploma in

human rights and gender equality from Uppsala University in Sweden. In addition, she holds a Master's degree in Public Policy and Management from Strathmore Business School and is a Ph.D. candidate with the University of Pretoria, Faculty of Law.

Anne W. Ileri has more than sixteen years of post-admission experience. She has specialized in public interest litigation and the legal protection of human rights.

Regionally, Anne W. Ileri has consulted with the African Union and the Kofi Annan International Peacekeeping Training Centre, Ghana on International Humanitarian Law.

Internationally, Anne has worked at the INTERIGHTS, London on strategic litigation around women's rights in Africa. She is also a recipient of the United States International Visitor Program on Women and Leadership. Anne was named the Top 40 under 40 woman in 2019 by the Business Daily and was the Kenyan representative to the inaugural RAISA Global Women Leaders Program, 2021 hosted by the Kingdom of Spain.



**Dr. Annette Mbogoh**  
**Executive Director, Kituo cha Sheria- Legal Advice Centre**

Dr. Annette Mbogoh is an advocate of the High Court of Kenya with fourteen (14) years standing. She undertook her Bachelor of Laws (LL.B.) degree at the University of Nairobi and Postgraduate Diploma in Law at the Kenya School of Law in Nairobi. She later pursued a Masters in Women’s Law (MWL) and Doctor of Philosophy in Law (DPhilLaw) from the Southern and Eastern Africa Regional Centre for Women’s Law in the University of Zimbabwe. She has conducted empirical research work on trafficking and sex tourism involving the youth in the Coast county of Mombasa, gender and public participation of women in land governance and transitional justice processes, disability rights and human rights in general.

Dr. Mbogoh has 15 years’ experience working in civil society and academia mainly focusing on social justice and legal empowerment. She has worked in the Christian Legal Education, Aid and Research (CLEAR-Kenya), The CRADLE-The Children Foundation and Kituo cha Sheria-Legal Advice Centre. She is the Executive Director of Kituo cha Sheria-Legal Advice Centre. Some of her recent publications include: A Mbogoh & R Mwatela “Public Health or Security Issue: An Analysis of Kenya’s Response to the COVID-19 Pandemic” in Vol 17 (3) European Studies Journal (2020) 165-188, MK Chan & A Mbogoh (2016) Strengthening women’s voices in the context of agricultural investments: Lessons from Kenya London/ Nakuru, IIED/KLA, Mbogoh A (2021) “Pouring new wine in old wineskins: State Capture, Contestations and Conflicting Understanding of Paralegalism in Kenya with the advent of the Legal Aid Act 2016” in Egerton Law Journal Vol. 1 pp.164-182, Mbogoh A (2021) “A Critical Analysis of the Intersections of Women’s Multiple Identities and Its Impact on Representation in Local Peace Processes in Kenya: A Case Study of Mombasa and Kilifi Counties” in East Africa Law Journal Special Issue (forthcoming) and Mbogoh A (2022) “My Marriage, My Choice: An Analysis of Kenya’s Plural Marriage Law” (forthcoming Book chapter).



**Ms. Anne W. Ileri**  
**Executive Director, Federation of Women Lawyers (FIDA)**

Anne W. Ileri is currently the Executive Director at the Federation of Women Lawyers- Kenya (FIDA-Kenya) and the Chairperson of the Elections Observation Group (ELOG) Steering Committee. Anne was recently appointed to the Presidential Taskforce on National Police Service and Kenya Prisons Service Reforms.

Anne W. Ileri earned her Bachelor of Laws (LL. B Hons) degree from Moi University and has a post-graduate diploma in Legal studies from the Kenya School of law. She also earned a post-graduate diploma in

human rights and gender equality from Uppsala University in Sweden. In addition, she holds a Master's degree in Public Policy and Management from Strathmore Business School and is a Ph.D. candidate with the University of Pretoria, Faculty of Law.

Anne W. Ileri has more than sixteen years of post-admission experience. She has specialized in public interest litigation and the legal protection of human rights.

Regionally, Anne W. Ileri has consulted with the African Union and the Kofi Annan International Peacekeeping Training Centre, Ghana on International Humanitarian Law.

Internationally, Anne has worked at the INTERIGHTS, London on strategic litigation around women's rights in Africa. She is also a recipient of the United States International Visitor Program on Women and Leadership. Anne was named the Top 40 under 40 woman in 2019 by the Business Daily and was the Kenyan representative to the inaugural RAISA Global Women Leaders Program, 2021 hosted by the Kingdom of Spain.



**Dr. Naomi Nyawira Njuguna**  
**Senior Lecturer faculty of Law at the University of Nairobi**

Dr. Naomi is the former Head of Department of Private Law at Catholic University of Eastern Africa, Nairobi. Currently, she is a lecturer at the University of Nairobi.

Naomi is a leading law scholar in commercial law. She served as a resident tutor during her graduate studies at University of Manchester. She has also been a Businesses law lecturer at Kenya School of Professional Studies. She currently lectures commercial law and supervises advanced legal research at Catholic University of Eastern Africa. Her areas of specialization and research interests include International Commercial and Corporate Law and International Economic Law with a bias for how law and legal reforms influence economic development in the developing countries.



**Ms. Judith Abrahams Guserwa**  
**Advocate, High Court**

Ms. Judith Guserwa is a distinguished advocate and is an accomplished legal practitioner with a wealth experience and expertise in various areas of law. Her journey of law began with a Bachelor of Laws degree (LLB) from the university of Nairobi and was admitted as an Advocate of the High Court of Kenya in 1984 after completing her post graduate diploma in the practice of law at the Kenya school of law.

To further her legal knowledge MS Guserwa pursued post graduate studies obtaining a masters in law (LLM) with a specialization in Public Finance from the university of Nairobi and also earned a second master's in Business Administration (Executive MBA) from Moi University.

Ms. Guserwa has established herself as a private legal practitioner, founding and leading her own firm M/S J.A Guserwa & Company Advocates with her expertise in litigation in various areas including employment and labour disputes, supply chain management, commercial and civil law, procurement, criminal law, conveyancing just to mention a few.



**Dr. Gibson Kamau Kuria**  
**Advocate, High Court of Kenya**

Dr. Gibson Kamau Kuria is an esteemed Advocate of the High Court of Kenya possessing over four decades of invaluable experience in the legal profession. With unwavering commitment to justice and impressive track record. He has made significant contributions to constitutionalism, human rights and legal education.

In 1975, Dr. Kamau initiated his legal activism passionately advocating for constitutionalism,

rule of law, human rights, legal education, family law and succession. Throughout his career he has published numerous articles which writings have helped shape the discourse on crucial legal matters and have furthered the understanding and promotion of fundamental rights and justice.

Dr. Kamau's legal career encompasses a diverse range of roles and accomplishments. From 1971-1978 he served as a legal scholar and lecturer at the University of Nairobi. As a litigator he has effectively represented clients in civil, commercial, property, contract, restitution, constitutional and human rights matters.

Dr. Kamau has a vast knowledge and exceptional contributions to the legal field which have earned him several prestigious awards and accolades. In 1990 he was honoured with the Rule of Law Award by the American Bar Association for his outstanding work in promoting human rights in Kenya. The same year he received the Human Rights Watch's Award as human rights monitor. In May 1991 he was awarded the Doctorate of Laws by Lewis Clark Law School, Oregon, USA.

Dr. Kamau's leadership qualities have been instrumental in shaping the legal institutions and fostering positive change. He has served as a Secretary General East Africa law society 1995, vice chairman of the Law Society of Kenya from 1997-1998 and later served as the chairman of the Law Society of Kenya from 1999 - 2001.

Dr. Kamau Actively participated in the Kenyans efforts to review and reform the constitution leading to the realization of the transformative 2010 constitution.

Dr. Kamau is Currently involved in practice principally of Civil Law in the areas of Constitutional Law, Company Law, Property Law, Labour Law, Family Law, Succession and Law of Torts.



**Mrs Lucy Kambuni, Senior Counsel (SC), EBS**

Mrs Lucy Kambuni is a legal practitioner with over Thirty- Nine (39) years in corporate, commercial, Constitutional and Elections law. She holds a master's in public international law from the University of Nairobi.

Mrs. Kambuni is currently a member of the Advisory Committee on Nominations of Judges of the International Criminal Court (ICC) and the Equity General Insurance Company Board. She is the former Vice Chair of the Law Society of Kenya and Founder Member of the East Africa Law Society

She has served as lecturer at the Kenya School of Law and the Kenyatta University School of Law; and severally served as member of tribunals investigating the Conduct of Judges and was member of the Employment and Labour Relations Rules Committee

Mrs. Lucy Kambuni served on Boards in the Public Sector: Commission for University Education, Council of Legal Education, the NGO Council, Tourism Trust Fund and Masinde Muliro University of Science and Technology; and Boards in the Private Sector such as the Kenya Private Sector Alliance, Zamara Fanaka Retirement Fund and Mater Hospital

She was Lead Assisting Counsel to the Commission of Inquiry into the Petition to Suspend the Makueni County Government and Commission Investigating the Crash of Helicopter 5Y-CDT in the Kibiku Forest, Ngong on 10th June 2012.

She has served as member of Government task forces: Task Force on Devolved Government, Working Committee to Advise the Government on the Case Before the International Criminal Court involving Kenya Citizens and Task Force on the Development of Policy and Framework for Legal Education and Training in Kenya Served as Commissioner, Independent Review Commission (IREC) (Kriegler Commission) that investigated the General Elections held in Kenya on 27 December 2007, pursuant to the settlement brokered by the Kofi Annan led Panel of Eminent African Personalities.



**Wesley Kipngetich**  
**Director: Values and Ethics, Public Service Commission.**



**Amanda Mejía-Cañadas is a Honduran national who has been working in the fields of International Human Rights Law and International Labour Law for the past 20 years, most of which from the International Labour Organization (ILO) headquarters and, more recently at the ILO Decent Work Technical Support Team for Central Africa, in Yaoundé, Cameroon, and at the ILO DWT for Eastern and Southern Africa, in Pretoria, South Africa.**

Her primary duties include the technical accompaniment of Eastern and Southern African Governments, including via regional integration communities, in the timely fulfilment of their constitutional obligations relating to international labour standards (ILS); support in the appropriate follow-up to comments adopted by the ILO supervisory bodies, in the drafting of national legislation to ensure its conformity and effective implementation, in accordance with ILS and comparative labour law, as well as to the Central African tripartite constituents in the framework of the follow-up to the recommendations of the Tripartite Working Group (TWG) of the Standards Review Mechanism (STM).

She previously worked for eight years in the International Labour Standards Department (NORMES) at the ILO Headquarters in Switzerland on applying and promoting instruments relating to employment, tripartite consultations, freedom of association and collective bargaining, indigenous and tribal peoples, domestic workers and seafarers.

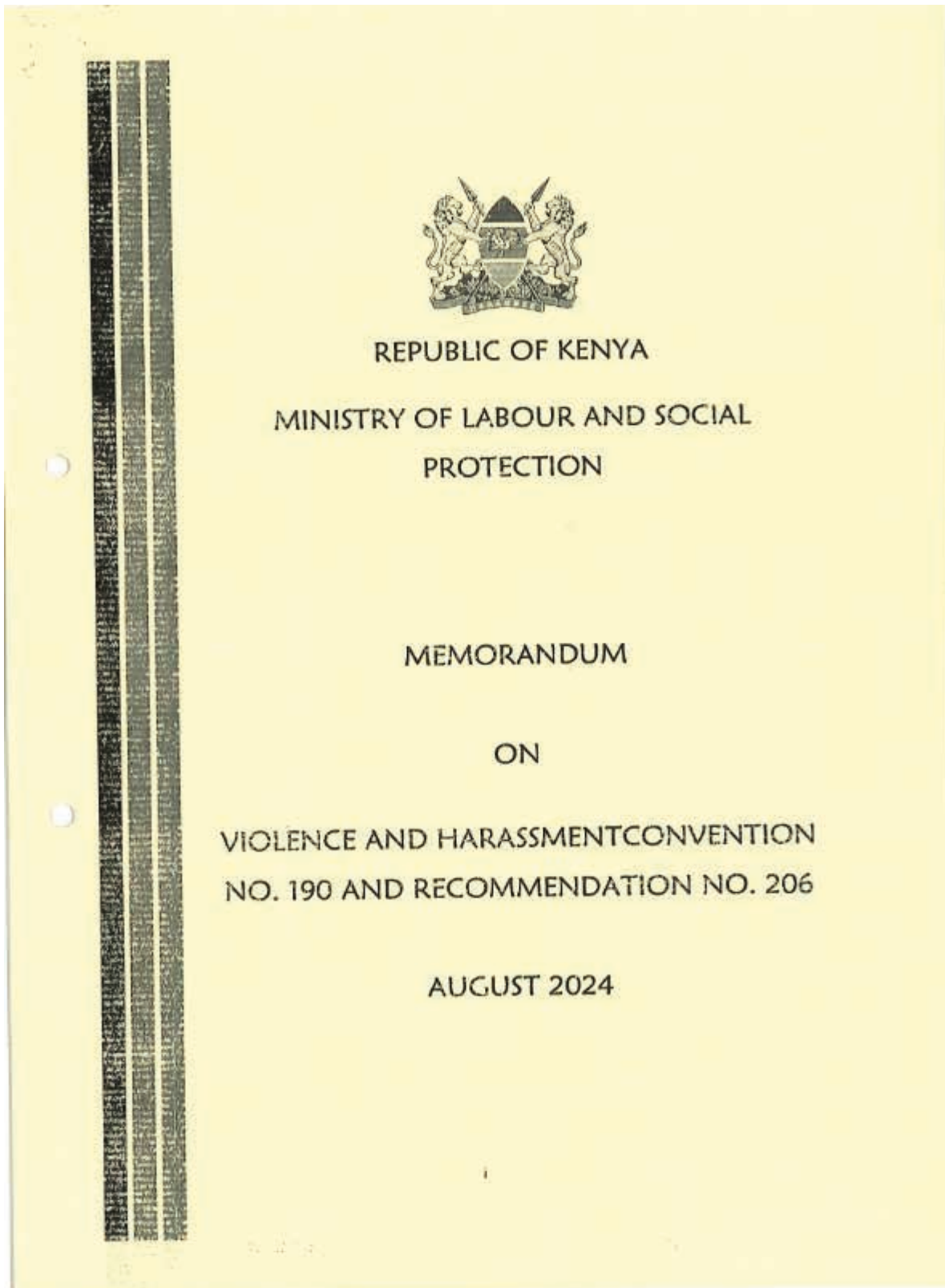
Before joining the ILO, she worked at the Honduran Council of Private Enterprise (COHEP), the Honduran Institute for Children and the Family (IHNFA), and the National Human Rights Commission (CONADEH) of Honduras. She also lectured in human rights law, at the undergraduate and postgraduate levels, in the law faculties of the Central American Technological University (UNITEC) and the National Autonomous University of Honduras (UNAH), respectively.

She holds a Bachelor of Laws with French Law from the London School of Economics and Political Science (United Kingdom), a Master of Law in International Human Rights Law from the University of Essex (UK), and a Master's degree in International Law, Foreign Trade and International Relations from the Higher Institute of Law and Economics (Spain). Moreover, she also holds a Diploma in Legal Studies from the Robert Schuman University, Strasbourg III. (France).

9.8 ANNEX 7

MEMORANDA FROM CONSTITUTIONAL COMMISSIONS AND INDEPENDENT OFFICES

9.8.1 Ministry of Labour and Social Protection





## 1.0 OBJECTIVES OF THE MEMORANDUM

The objectives of this Memorandum are to:

- i. Highlight of five (5) cases experienced by the Ministry in respect to Violence and Harassment at the Workplace including Gender Based Violence and Harassment at Work.
- ii. Highlight how the Ministry handled the above cases related to violence and Harassment at work
- iii. Highlight measures that the Ministry has put in place to mainstream a workplace free from violence and harassment including Gender based violence.

## 2.0 BACKGROUND

The Kenyan Constitution guarantees the right to dignity and freedom from discrimination, providing additional protection against sexual harassment in both public and private spheres.

The Kenya constitution is regarded globally as one of the most progressive documents. One of the reasons for this praise is to provision on the bill of rights. In as far as discrimination, harassment and retaliation, the constitution provides on various article on protection against these vices.

Under article 41, it provides that every person has the right to fair labour practices. It further states that every worker has the right;<sup>24</sup>

- a) to fair remuneration;
- b) to reasonable working conditions;
- c) to form, join or participate in the activities and programmes of a trade union; and
- d) to go on strike

Article 27 of the Constitution of Kenya prohibits any person and state from discriminating directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.

Article 28 of the Constitution of Kenya on the other hand provides that every person has inherent dignity and the right to have that dignity respected and protected. All these provisions are grounds enough to demand that workplace managers protect employees from any form of discrimination, humiliation and retaliation.

The Employment Act, 2007 lays down the minimum conditions of employment. It regulates the relationship between employer and employee. It defines the benefits, duties and obligations of the employer and the employee, including: service contract, prohibition of forced labour, discrimination in the workplace, sexual harassment, payment of wages, vacation, dismissal and living conditions. It further provides that Employers should develop comprehensive policies prohibiting sexual harassment and ensure they are communicated to all employees.

Further, the Employment Act, 2007 requires employers with 20 or more employees to have a policy on sexual harassment (Art 6, sub-article 2). Article 12 of the same Act further stipulates that an employer with 50 or more employees should have a grievance handling procedure.

### **3.0 RECENT CASES ON VIOLENCE AND HARASSMENT INCLUDING GENDER BASED VIOLENCE**

#### **3.1 Browns Food Limited Company incidence of forcing Female Employees to strip naked.**

The incident happened on 4th July, 2023 in the Morning hours. The occurrence happened after some of the head of department decided to make decision of stripping of female employees on production side simply because of improper disposal of used sanitary towel.

#### **3.2 Sexual harassment of female workers in the various tea estates in Kericho County.**

On 20th February 2023, the BBC-Africa published an article on its website entitled "True Cost of Our Tea: Sexual Abuse on Kenyan Tea Farms Revealed" this article was widely circulated in the mainstream and social media.

The media report stated that sexual exploitation has been uncovered on tea farms that supply some of the UK's most popular tea brands including PG Tips, Lipton and Sainsbury's Red label. It was reported that more than 70 women in Kenyan tea farms owned for years by two British companies; Unilever and James Finlays & Co had been sexually abused by their supervisors.

In the video reporting, there appeared some management officials of the tea Companies soliciting for sex for work from female employees. Some of these events were recorded under cover in hotel rooms. The undercover victim in the video, identified as Katy, stated that she had been offered a job on condition that she gives in to sexual advances in order to secure the job and also to be transferred to light duties at the Company tea nursery.

Overall, Kenya operates a rigid wage and remuneration system where changes in wages and remuneration are not linked to productivity. The weak

link between pay and productivity reduces responsiveness of wages and remuneration to business cycles particularly during prolonged economic downturns such as those experienced during the COVID-19 pandemic. Rigid wage and remuneration systems also undermine national competitiveness and creation of productive and sustainable employment opportunities.

### 3.3 Ministry Interventions on the Cases

The Ministry in responding to this public report, initiated investigations through the Office of the Labour Commissioner and the County Labour Offices of both Kericho and Bomet in whose jurisdiction the Tea estates are situated.

The county Labour Officers were informed by the management of Ekaterra Tea (formerly Unilever) that Samuel Yebel and Jeremiah Koskei were supervisor and Division Manager respectively.

James Finlays (K) Ltd Management stated that Mr. John Chebochok is a former Manager with the Company who had retired and had been on boarded as a Contractor of Labour (Outsourcing) through a Company known as Solis.

At Ekaterra Tea, investigation revealed that Mr. Daniel Ruto to whom these complaints were reported to by aggrieved employees failed to escalate the complaint to the company Management and instead reported to the BBC undercover investigator. The failure to escalate the complaint is a dereliction of duties.

In the course of investigations, the Ministry learnt that the office of the Director of Public Prosecutions had directed the Directorate of Criminal Investigations to conduct investigation on the allegations. The Companies have also filed complaints with the police to conduct their own investigations.

### 3.3.1 Ministry's Investigation and Intervention at Brown's Food Company Ltd.

The Ministry conducted an investigation into the inappropriate actions taken by some department heads at Brown's Food Company Ltd, where female employees were subjected to degrading treatment during a meeting held on the 4th of July, 2023. This investigation revealed that employees were singled out, and some were stripped to check for menstrual periods after allegations were made regarding improper disposal of sanitary products.

The Ministry found that the Quality Assurance Manager, along with the Human Resource Manager and the Personal Assistant to the Director, were responsible for this misconduct. The company admitted that this incident occurred but distanced itself, claiming that the actions were individual decisions made by those department heads, not a directive from senior management. The Ministry confirmed that those involved in the mistreatment had been arrested, with two employees already taken to court as investigations continue.

The management has since suspended the individuals involved, hired external professionals to conduct an independent investigation, and provided counseling to the affected employees.

Key findings include communication gaps between employees and management and a lack of proper hierarchical consultation before decisions were made. To prevent future occurrences, the Ministry recommended forming a workers' committee, establishing departmental representatives, and creating an inclusive disciplinary committee to resolve disputes.

### Measures the Ministry is employing to address Workplace Violence and Harassment including Gender-Based Violence and Harassment

The Government through the Ministry of Labour and Social Protection has put in place a number of measures to protect rights for all workers, including female workers at the tea estates and Brown's Food Company employees.

The measures include:

1. Promoting implementation of the requirements of section 6 of the Employment Act, 2007 that requires an employer who employs 20 or more employees to have a sexual harassment policy and to bring it to the attention of all workers.
2. Following labour inspections carried out at the two firms by the officers from the Ministry pursuant to the provisions of section 35 of the Labour Institutions Act. In the last labour inspection conducted in July and May of the year 2021 at Ekaterra and Finlays respectively, there was no sexual harassment case found to have occurred or reported at the time.
3. There exists a Labour Complaints resolution procedure to assist in resolving all types of labour disputes at the workplace, including sexual harassment.
4. Recognition Agreement (RA) and Collective Bargaining Agreements (CBA) signed between the two firms and the Kenya Plantation Workers Union (KPAWU) also provides for measures to protect workers from harassment at the workplace.
5. Employment Act 2007, has been amended to explicitly address workplace harassment and violence, providing legal recourse for victims and imposing obligations on employers to create safe working environments.

6. The Ministry has set up formal channels for reporting workplace violence and harassment, ensuring that employees can file complaints confidentially. This includes support hotlines, grievance desks in labour offices, and digital platforms to report misconduct.
7. The Ministry conducts regular workplace inspections to ensure compliance with labour laws concerning workplace violence and harassment. Companies found non-compliant with gender-based violence prevention measures face penalties.
8. The Ministry works closely with law enforcement agencies and the judiciary to ensure that cases of workplace violence, especially gender-based violence, are properly investigated, prosecuted, and adjudicated. This includes fast-tracking cases involving gender-based violence and ensuring that victims receive justice.

### 3.0 RATIFICATION OF VIOLENCE AND HARASSMENT CONVENTION NO. 190

The Constitution of Kenya, 2010 advocates for Decent Work, promotions of fundamental rights at work, adequate income from work representation and social security. The Ministry of Labour and Social Protection seeks to continuously improve its existing policy, legal and institutional frameworks, besides aligning to the International labour standards and emerging issues.

During the 58th International Labour Day held on 1st May 2023 His Excellency the President of the Republic of Kenya, Dr. William Samoei Ruto directed the Ministry of Labour and Social Protection to commence the process of ratifying the above Conventions.

The National Labour Board in its first meeting held in August 2023 in Mombasa received request to approve ratification of various ILO Conventions including Convention No. 189 and 190. The Board resolved

that there is need to do a wider stakeholder engagement and public participation on these Conventions.

Further the Ministry has received several petitions from workers, employers and civil society organizations dwelling on the same area of interest. However, there is need for increased constituents, public and wider stakeholder awareness around these two ILO conventions.

In a National Stakeholders Workshop held in Matuu, Machakos County, an ambitious roadmap was developed (as below). The process is now at Public Participation stage

**TIME BOUND ACTION PLAN TOWARDS RETIFICATION OF THE ILO VIOLENCE AND HARASSMENT CONVENTION NO. 190 AND DOMESTIC WORKERS CONVENTION NO.189**

Rank	ACTION AGREED	BY WHEN/TIMELINE	RESPONSIBILITY BY WHO	PARTNERS
1	Public participation meetings in eight (8) regions:  Coast; Nairobi; Rift Valley; Nyanza; Western; North Eastern; Eastern and; Central	31st May 2024	ML&SP - Commissioner for Labour	ILO; CREAW; FKE; COTU-K; KUDHEIHA; Freedom Fund; Council of Governors; NLB; Ministry of Interior; NCPWD; and CSOs
2	Compiling field comments and gap analysis.	30th June 2024	ML&SP - Commissioner for Labour	ILO; MFA; NGEC; FKE; COTU-K; NLB; OP-WRA; State department for Gender & Affirmative Action.
3	Development of Country Position Paper;	31st July 2024	ML&SP - Commissioner for Labour	ILO; CREAW; FKE; COTU-K; KUDHEIHA; NGEC; Freedom Fund; County Government; NLB, MFA; The National Treasury; OAG, THE CoG, NLB, OP-WRA, State department for Gender
4	Development of cabinet memorandum	30th August 2024	ML&SP - Commissioner for Labour	AG, CS Treasury, CS Labour, Foreign Affairs

5	Development of Parliamentary memorandum	30th September 2024	State Department for Foreign Affairs	State Department for Foreign Affairs
6	Preparation /Signing of instruments of ratification,	30th October 2024	State Department for Foreign Affairs	State Department for Foreign Affairs
7	Depository		State Department for Foreign Affairs	State Department for Foreign Affairs

**GOVERNMENT FURTHER MEASURES TO ADDRESS VIOLENCE AND HARASSMENT IN THE WORKPLACE**

The Ministry has deployed 162 Labour Inspectorate Staff to our 50 Labour Offices across the Country who among other duties conduct Labour Inspections in the workplaces to ensure compliance to the Minimum Labour Standards as per the Labour Laws.

For FY 2023/24 14,007 Labour Inspection were conducted across the Country and violence and Harassment at workplace was one of the parameters investigated through a prescribed form known as LD.101 form. Kenya has ratified Labour Inspection Convention No. 81 and Labour (Agriculture) Inspection No. 129 which strengthened our legal frameworks on Labour Inspections.

Through the Labour Inspectorate Staff, the Ministry has been in way front to capacity build Social Partners on sound labour relations and in process sensitize on violence and harassment and Gender Based Violence and encouraging the employers to put in place policies to guide on sexual harassment with clear procedures and train workers on their rights to a workplace free from any kind of harassment.

**CONCLUSION**

To be able to address Violence and Harassment, including Gender Based Violence, there is need to strengthen the national policy frameworks as well

as ratifying the International Labour Standards such as the Violence and Harassment Convention No. 190 and its Recommendation No. 206.

Efforts is also required in capacity building of employers and workers as well as the Labour Inspectorate Staff. Further, of importance is putting in place mechanisms to prevent violence and harassment at workplace and develop clear grievance handling procedure to assist those affected by the vice.

Sensitization and advocacy on violence and harassment are crucial for fostering an informed, supportive, and proactive environment. They help ensure that violence and harassment are actively prevented and effectively addressed, contributing to a safer and more equitable workplace.

Partnership and collaboration with other Institutions like the Employment and Labour Relations Court, other MDAs, the Employers' Organization, Workers Organization, the Kenya National Human Rights Commission, Kenya the Civil Society will play a key role in policy formulation as a key effort in addressing Violence and Harassment including Gender Based Violence.

## 9.8.2 State Department for Gender and Affirmative Action

### **MEMORANDUM FOR THE SECOND EMPLOYMENT AND LABOUR RELATIONS COURT ANNUAL SYMPOSIUM AND EXHIBITION (ELRASE 2) AT UNIVERSITY OF NAIROBI FROM 16<sup>TH</sup> TO 17<sup>TH</sup> SEPTEMBER, 2024.**

- a) While protecting the privacy of the individuals involved or affected highlight at most 5 cases your organization has experienced relating to violence and harassment including Gender Based Violence and Harassment at work;**

During the 2023/2024 Financial Year, the State Department recorded one (1) reported case of Gender Based Violence and Harassment at work. The case involved sexual harassment. The case involved a male colleague X making unwelcome gestures, innuendos and jokes to a female colleague Y during official working hours.

- b) With respect to the above-mentioned cases state how you managed the situation;**

The State Department has an established Gender Mainstreaming Committee (GMC) which has the responsibility of handling all matters related to Gender Based Violence and Harassment at work. The functions of the committee include:

- i. Development of an institutional complaint handling and reporting mechanism;
- ii. Establishment of communication and referral mechanisms on GBV response, interventions within the State Department;
- iii. Development of programmes for support (psychosocial, education) of vulnerable groups and individuals;
- iv. Collect, collate and analyze GBV related data through annual surveys; and
- v. Track and report periodically on the gender indicators as per the performance contract.

With regard to the reported case, the incident was recorded in the Complaint register as a requirement, formal investigation was conducted and a report prepared. From the report, the two officers were referred for Counselling and Guidance.

- c) What measures has your institution put in place to mainstream workplace free from harassment and violence including Gender based violence;**

- Developed a work place Policy on gender Mainstreaming and Sexual Harassment;
- Constituted a Gender Mainstreaming Committee whose membership is drawn from the various directorates in the State Department and meets on quarterly basis to deliberate on matters GBV;

- A budget line is devoted to the Committee for its operations;
- The Committee has an elaborate reporting mechanism through which cases are handled. Among the reporting mechanisms are suggestion boxes, complaints register, and compliance audits.
- Issued a circular to the service on mainstreaming GBV activities in all training programmes organized by Ministries/State Departments;
- The State Department has customized code of conduct and ensures that each employee signs a form on entry into the Service to acknowledge adherence to the Code;
- Incorporated the code of conduct in the Human Resource Policies and Procedures Manual for the Public Service and ensures effective implementation;
- In addition, the Public Service has other management committees such as Human Resource Advisory Committees (HRAC) for supporting a workplace free from harassment and violence;
- The State Department has established a Guidance and Counseling Directorate to provide psychosocial support in cases of GBV and sexual harassment. In addition, the Ministry has strengthened capacity of Ministries/Departments to report and handle cases of violence and harassment through training of Mental Health Champions.
- The State Department has developed and implemented a Dignity at Work Policy to ensure that all employees are accorded a dignified and respectful work environment free from any form violence and harassment;
- The State Department ensures implementation of the Grievance Handling Mechanism Policy by the Public Service Commission which provides the employees with the confidence of reporting grievances.

**d) Any other issue you may wish to state about workplace harassment and violence including Gender based violence and harassment**

- Non-disclosure due to fear of stigmatization;
- victims wanting to protect the aggressor, fear of the unknown and victimization;
- Inadequate information by members of staff on issues relating to violence and harassment in the workplace;
- Failure to fully investigate reported cases leading to decisions that are not fully informed by facts on the ground;
- Funding to committees is not consistent and adequate;
- There is no framework to document reported cases; and
- There is inadequate jurisprudence to inform proceedings of reported cases.

### 9.8.3 Federation of Kenya Employers

PLR 2718 BOPJ



**FROM: THE FEDERATION OF KENYA EMPLOYERS (FKE)**

**A PRESENTATION FOR THE 2<sup>ND</sup> ELRC ANNUAL SYMPOSIUM AND EXHIBITION (ELRASE) ON MAINSTREAMING ILO C190.**

The Federation of Kenya Employers (FKE) is the premier and most representative employers' body in Kenya. The Federation's members employ 67% of formal private sector wage employees in Kenya. The role of the Federation is to build the capacity of employers and to influence the business environment through advocacy, effective representation, social dialogue, and provision of value-add services. In addition to representing employers at local level, the Federation also represents members at regional and international level including at East Africa Employers Organization, Confederation of IGAD Employers (CIE), BUSINESSAfrica-Employers Confederation, the International Organization of Employers (IOE), and the International Labour Organization (ILO), and other global forums.

#### **Principles that guide FKE policy positions**

In taking a policy position, FKE is guided by the need to ensure a balanced and sustainable policy environment that promotes:

- Kenya's socio-economic development
- Accelerated job creation
- Enterprise development
- Fair Labour practices
- Resilient and competitive businesses
- Harmonious industrial relations
- Social Justice
- International labour standards and acceptable conditions of work
- Feasibility and affordability of the costs associated with implementation of the policy.

#### **2. FKE Position on the role of ELRC in fostering the right to a world of work free from violence and harassment (C190)**

ILO Convention No. 190 (C 190) is an important instrument aimed at eliminating violence and harassment at the workplace. In a world of work that has become increasingly competitive and volatile, cases of violence and harassment at the workplace have become common. The rights

Page 1 of 6

**Headquarters:**  
Wajiki House, Arguinge Kofia Road,  
P.O. Box 40311-00100 Nairobi, Kenya  
Tel: 020-2721923/43/49/52, Cell: +254 709 607101/102  
Hotline: +254 795 207051 Email: fkehq@fke-kenya.org

**Coast Branch Office:**  
First Floor, Rail House,  
P.O. Box 54115-80100 Mombasa.  
Tel: 041-2311112, 010627300  
Email: fkecsa@fke-kenya.org

**Western Kenya Branch Office:**  
Second Floor, Reinsurance Plaza,  
P.O. Box 1443-40100 Kisumu,  
Tel: 057-2226620/209233347, 0709827301  
Email: fkekw@fke-kenya.org

**Rift Valley Branch Office:**  
Gido Plaza  
P.O. Box 3218-20100 Nakuru,  
Tel: 0708827311 / 312  
Email: fkevin@fke-kenya.org

[www.fke-kenya.org](http://www.fke-kenya.org)

of workers and highlights of behavioural challenges at the workplace made the adoption of C190 necessary.

The characteristics of C 190 include;

1. Comprehensive Coverage:

C190 covers all workers, regardless of their contractual status, including employees, job seekers, trainees, interns, and volunteers. It applies to both the public and private sectors, as well as the formal and informal economies.

2. Broad Definition of Violence and Harassment:

The convention defines violence and harassment broadly to include physical, psychological, sexual, and economic harm. This encompasses a wide range of behaviours, from verbal abuse to physical assault.

3. Inclusive Scope: It addresses violence and harassment that occur in various work-related contexts, such as the workplace, during commutes, in employer-provided accommodations, and through work-related communications.

4. Gender-Based Violence: C 190 specifically recognizes the disproportionate impact of violence and harassment on women and includes provisions to address gender-based violence and harassment.

5. Preventive Measures: The convention mandates that member states adopt laws and policies to prevent violence and harassment, including risk assessments, training, and awareness-raising campaigns.

6. Support and Remedies: It requires the establishment of mechanisms for reporting and resolving incidents of violence and harassment, as well as providing support and remedies for victims.

7. Third-Party Involvement: The convention acknowledges that violence and harassment can involve third parties, such as clients, customers, or service providers; and includes provisions to address these situations.

8. Promotion of a Culture of Respect: C 190 emphasizes the importance of fostering a work culture based on mutual respect and dignity, which is essential for preventing violence and harassment.

By incorporating these parameters, C190 aimed to create a safer, more respectful, and inclusive world of work for everyone and where employees feel protected and are able to exploit their full potential and enhance their skills.

### **Constitutional and Statutory Underpinnings**

C 190 came into force on the 25<sup>th</sup> June, 2021 when it was adopted by the International Labor Organization member countries.

It similarly should be noted at the outset that C 190 has not been ratified by Kenya.

It is however noted that Article 11 of C 190 gives a window of opportunity and makes it possible to entrench the provisions of the Convention in the national laws, Regulations as well as Collective Bargaining Agreements.

Article 2(5) of the Constitution of Kenya, 2010 makes provision on the supremacy of the Constitution and incorporating general rules of International laws.

Article 41 of the Constitution of Kenya 2010 makes provision for fair labour practices. The wording of the Article makes it wide enough to construe the constitutional provision to include protection against violence and harassment at the workplace, as the same constitute an unfair labour practice. Similarly, Article 29 of the Constitution of Kenya 2010 makes provision to right to freedom and security, including right not to be subjected to any form of violence from either public or private sources. Reference to public and private sources may very well be extended, without the risk of overreach to include workplaces.

Article 53(1)(d) makes provision for protection of children from all forms of violence or exploitative labour.

In Kenya therefore, it can safely be said that there are fairly enough constitutional provisions to give effect to C 190, notwithstanding that the substantive Convention has not been ratified within the jurisdiction.

On statutory provisions, it is to be noted that the principal law governing the world of work in Kenya being the Employment Act, 2007 does not stipulate in specific terms the protection of workers against violence and harassment at the workplace.

The closest the Employment Act comes to making such stipulations is to be found at section 6(2) of the Employment Act, 2007 with respect to protection against sexual harassment. It makes it mandatory that every employer having more than 20 or more employees "shall after consulting with the employees or their representatives" issue a policy statement on sexual harassment.

Sexual harassment is just one of the many permutations of violence and harassment at the workplace and therefore the provisions of section 6 of the Act must be seen in its narrow construction and does not encompass the entire features of violence and harassment at the workplace in its many manifestations.

We can nevertheless safely say that ELRC has enough instruments coupled with deliberate leverage with international laws to give effect to the substance of protection of workers against violence and harassment of the workplace.

#### **The Role of the ELRC in Enforcing C190.**

The Court plays a crucial role in fostering a work environment free from violence and harassment by ensuring that national laws and regulations as well as other instruments of engagement like HR Policy Manuals and CBAs are enforced and that workers' rights are protected. The role of the Court includes and is not limited to:

##### **1. Adjudication of Cases:**

The Court hears and resolves disputes related to workplace violence and harassment. This includes cases where employees allege that their rights to a safe and respectful work environment have been violated.

Such allegations must be proven on a balance of probability, while encouraging employers to put in place such safeguards to curb such violations. This is important because it cannot be a policy of an enterprise to perpetuate such vices. They manifest themselves in the human resource management at the workplace.

2. **Enforcement of Laws:**

The court ensures that employers comply with national and international laws as well as other documents of engagement which aim to eliminate violence and harassment at the workplace.

3. **Setting Precedents:**

Through its rulings and judgment and without jurisdictional overreach, the Court may be called upon to set legal precedents that guide future cases and influence workplace policies. These precedents help establish clear standards for acceptable behavior and the consequences of violations.

4. **Promoting Awareness:**

By addressing cases of violence and harassment through a forum such as ELRASE, Open Days and Court Users Committee, the Court raises awareness about these issues and the importance of maintaining a safe work environment. This can lead to broader cultural changes within enterprises.

5. **Providing Remedies:**

The Court may in deserving cases order remedies for victims, such as compensation, reinstatement, or other corrective actions. This not only helps the victims but also serves as a deterrent to potential violators.

6. **Collaboration with Other Bodies:**

The Court must deliberately work in conjunction with other regulatory bodies, such as DOSH, NLB, NEA and others to ensure a comprehensive approach to preventing and addressing workplace violence and harassment.

By fulfilling these roles, the ELRC will have played a big role in creating a safer, more respectful, and equitable work environment for all employees.

ILO Recommendation No. 206 (R206) complements ILO Convention No. 190 (C 190) by providing guidance on how to implement the principles of the convention. Some of its features include:

1. **Integrated Approach:**

R206 emphasizes an inclusive, integrated, and gender-responsive approach to addressing violence and harassment in the workplace. This involves incorporating measures into labour and employment laws, occupational safety and health regulations, equality and non-discrimination laws.

2. **Freedom of Association and Collective Bargaining:**

It highlights the importance of ensuring that all workers and employers enjoy freedom of association and the effective recognition of the right to collective bargaining.

3. **Preventive Measures:**

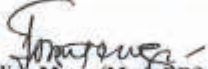


The Federation also assist its members in review of its policies and instruments of engagement and in the process ensure that best practices and international labour standards and acceptable conditions of work are incorporated in such documents. This forms one of the foremost measures we have put in place to mainstream a workplace free from violence and harassment.

Some of our membership events are tailored to incorporate thematic areas that deal with best practices. Employer of the Year Awards (EYA) is such event where such international labour standards and acceptable conditions of work form the core areas of assessment.

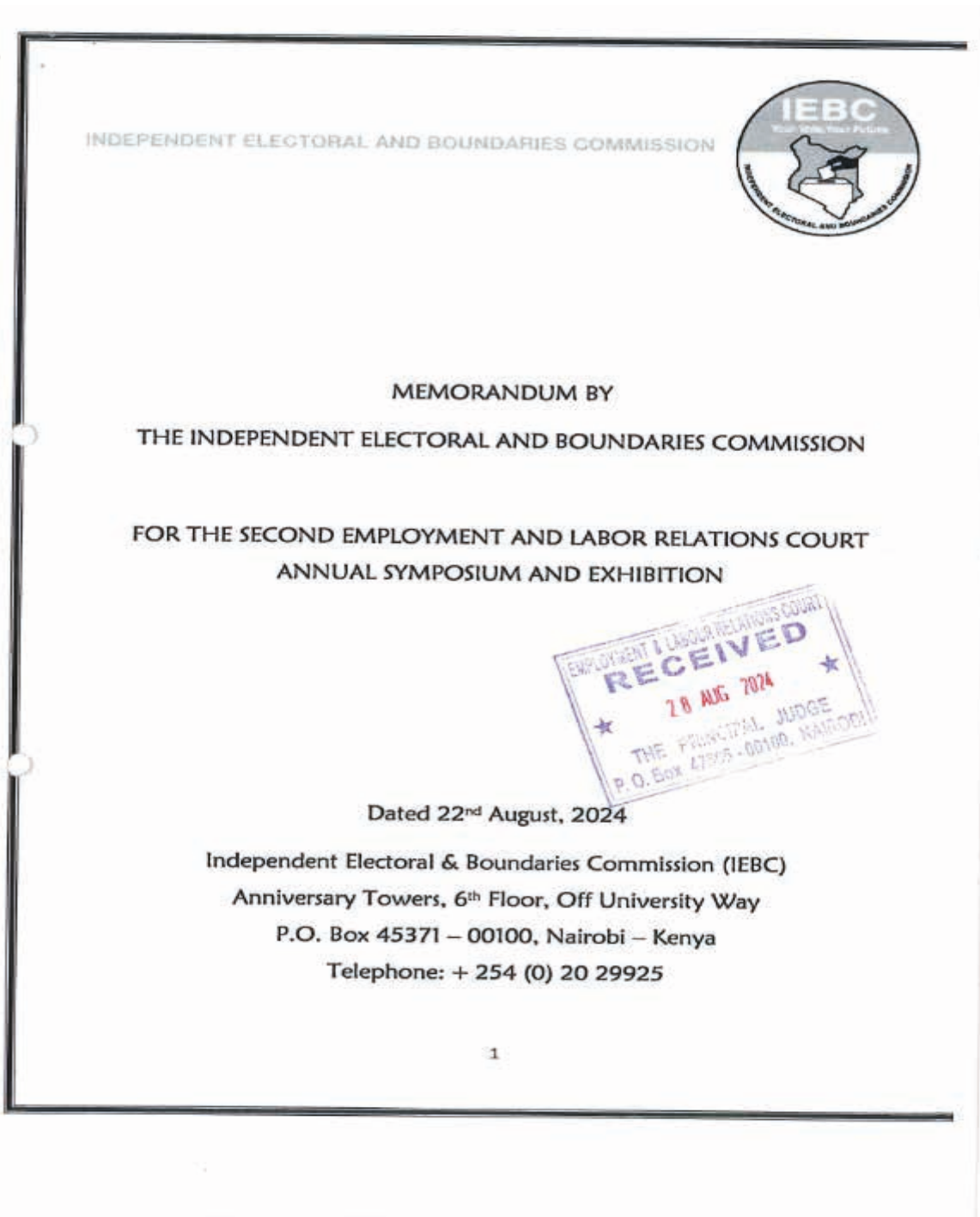
The Federation is a believer in social justice and is ready to be an active participant in this conversation to make our workplaces free from any form of violence and harassment.

Signed for and on behalf of the  
**FEDERATION OF KENYA EMPLOYERS**

  
Jacqueline Mugo (Mrs), EBS, MBS, OGW  
**EXECUTIVE DIRECTOR & CEO**

21/08/2024

9.8.4 Independent Electoral and Boundaries Commission (IEBC)



**A. Background**

1. The Independent Electoral and Boundaries Commission hereinafter referred to as "the Commission" is a Constitutional Commission established under Article 88 of the Constitution of Kenya.
2. Its mandate is to conduct or supervise referenda and elections to any elective body or office established by the Constitution or as prescribed by an Act of Parliament.
3. The constitutional mandate of the Commission is further operationalized by the Independent Electoral and Boundaries Commission Act, 2011, the Elections Act, 2011 and other subsidiary rules and regulations.
4. The core values of the Commission are adherence to the Rule of Law, **Inclusivity, Integrity, Accountability, Teamwork** and Innovativeness.
5. Sections 11 and 12 of Independent Electoral and Boundaries Commission (CAP 7C) bestows upon the Commission the power to create Directorates, field offices, Units, Divisions or Committees and to appoint thereto such employees as it may determine. In this regard, the Commission has nine directorates.
6. **Measures to Mainstream a Workplace Free from Harassment and Violence in compliance with ILO Convention 190**
6. As a leading institution in Kenya's democratic process, the Commission recognizes the significance of ensuring that its workplace remains free from any form of violence or harassment, including gender-based violence.
7. The Commission has in place robust policies and legal framework that governs matters relating to the protection of its employees. These include:
  - i. **Human Resource and Administration Policies and Procedures Manual**
8. The Human Resource Manual has several provisions that require every employee of the Commission to adhere to. The provisions provide guidance in the workplace and create an environment conducive to all staff. These includes:

**a. Professionalism and integrity**

All employees are required to carry out their duties in a manner that treats the public and fellow employees with courtesy and respect.

**b. Rule of law**

All employees are required to abide by the Constitution, other laws of the country and the Commission's code of conduct which includes respecting other employees' rights and fundamental freedoms.

**c. Discrimination**

Pursuant to Article 27 of the Constitution, the Commission does not condone any form of discrimination on grounds of race, sex, pregnancy, marital status, health status, ethnic or social origin, color, age, disability, religion, conscience, belief, culture, dress, language or birth.

Where there is any form of discrimination, employees are encouraged to report the matter as soon as it occurs for investigation and appropriate action to be taken. All reported cases are treated with utmost confidence.

**d. Sexual harassment**

An employee shall not sexually harass a fellow employee or member of the public.

**e. Counselling services**

Recognizing the importance of support for our employees and remedies for victims of violence or harassment, the Commission provides guidance and counselling services to address the psychological needs of employees.

**f. Disciplinary control**

The Commission has disciplinary control mechanisms to ensure that discipline cases are dealt with reasonably, efficiently, effectively, expeditiously, lawfully and in a procedurally fair manner.

- ii. **The Code of Conduct for Members and Employees of the Commission**
9. The Fourth Schedule of CAP 7C carries a Code of Conduct which prescribes the conduct for Members and employees of the Commission for the purpose of ensuring collegiality, integrity and professionalism.
10. Specifically, the Code explicitly prohibits an employee from sexually harassing a member of the public or a colleague.
11. The Commission is dedicated to maintaining a safe and respectful working environment for all its employees.
12. There is established a **Zero Tolerance Policy** that clearly defines and strictly prohibits all forms of harassment and violence, including gender-based violence. This policy is accompanied by strong enforcement mechanisms that ensure violations are dealt with promptly and effectively.
13. Additionally, the Commission has put in place a **Whistleblower Protection Framework** that encourages employees to report incidents without fear of retaliation, thereby fostering a culture of openness and accountability.
14. To further strengthen our preventive efforts, the Commission conducts **Mandatory Training Programs** for all employees, focusing on workplace conduct and the importance of a harassment-free environment.
15. These training sessions are complemented by ongoing **Awareness Campaigns** that emphasize employees' rights and responsibilities, ensuring that everyone is well-informed about acceptable behavior and the consequences of violations.
16. To ensure the effectiveness of our policies, we conduct **Regular Audits** to monitor compliance and identify areas for improvement, while our **Grievance Committees** are always ready to address any issues that may arise, providing a fair and transparent process for resolving complaints.

17. While no cases have been reported, the Commission remains vigilant and committed to continuous improvement. We are constantly reviewing our policies and practices to ensure they align with best practices and the evolving needs of our workforce.

C. Cases of Violence and Harassment (Including Gender-Based Violence)

18. Upon reviewing our records, we can confirm that no cases of violence or harassment, including gender-based violence, have been reported within the Commission during the period under consideration.

19. This is a testament to the proactive and progressive measures and policies we have implemented to prevent such incidents and foster a positive work environment.

E. Conclusion

20. The Commission is proud of the measures we have put in place to create a safe and respectful work environment. We are committed to upholding the principles of ILO Convention 190 and Recommendation 206 and will continue to work towards a workplace free from violence and harassment.

21. The Commission eagerly anticipates participating in the upcoming symposium and contributing meaningfully to the discussions on fostering safer workplaces.

  
Marjan Hussein Marjan, MBS  
Commission Secretary/CEO

address: Anniversary Towers, 6th Floor, off University Way, P.O Box 45371-00100 Nairobi, Kenya  
phone: +254 (0) 2769000, fax: +254 (0) 20 2219185, email: info@iebc.or.ke, website: www.iebc.or.ke

## 9.8.5 National Police Service Commission



National Police Service Commission



### NATIONAL POLICE SERVICE COMMISSION MEMORANDUM ON CONVENTION 190 AND RECOMMENDATION 206

(Memorandum submitted by the Chief Executive Officer, National Police Service Commission)

#### 1. Objective of Memorandum

The objective of this memorandum is to highlight cases experienced by the National Police Service Commission in relation to violence and harassment including gender-based violence and harassment at work. The memorandum outlines ways in which respective cases have been managed and measures put in place to mainstream a work place free of harassment and violence notably gender-based violence.

#### 2. Background of the Subject Matter

The International Labour Organization Violence and Harassment Convention, 2019 (No. 190) and the Violence and Harassment Recommendation, 2019 (No. 206) were the first international labour standards to provide a common framework for prevention, remedying and elimination of violence and harassment at work particularly gender-based violence. The Convention recognizes the right of everyone to a world of work free from violence and harassment, and sets out obligations for states and actors

to respect, promote and ensure realization of this right as envisaged in Article 4 of the Convention.

The Convention does not define what constitutes violence or harassment however, violence and harassment have been identified as a “range” of unacceptable behavior. It is on this premise that countries and organizations prevent and protect against a range of unacceptable behavior and practices at the work place. The convention applies across sectors private and public. Member states and their respective organizations are expected to put in place measures to prevent and address violence and harassment that occurs, is linked with and arises from or in the course of work.

The Convention and recommendations therein, require states and respective organizations to respect, promote and ensure realization of the fundamental principles and rights at work and promote decent work environments. States and organizations are to adopt laws, regulations and policies that ensure the right to equality and non-discrimination for women workers, persons belonging to one or more vulnerable group and those in situations of vulnerability that are disproportionately affected by violence and harassment are protected. The laws, regulations and policies must require employers to take appropriate steps commensurate with their degree of control to prevent harassment at work and in particular ensure;

- a. A workplace policy, adopted and implemented in consultation with workers and their representatives.
- b. Occupational safety and health management systems that take into account violence and harassment and associated psychosocial risks.

- c. Identification of hazards and assessment of risks of violence and harassment, with the participation of workers and their representatives, and adoption of measures to prevent and control such hazards and risks.
- d. Information and training, including on hazards and risks, associated prevention and protection measures, and the rights and responsibilities of workers and other persons concerned.

Member states have additional obligation under the convention to define and prohibit violence and harassment in the work place in their laws and regulations and adopt appropriate measures to prevent it. Cognizant that violence and harassment do not occur uniformly across the world of work, prevention measures must include the identification of the sectors, occupations and work arrangements in which workers and other persons concerned are more exposed to violence and harassment and the protection of those persons. Identification of the sectors, occupation and work arrangements is to be done in consultation with the employees' and workers' organizations concerned and through other means.

#### **International Labour Organization Recommendations**

The Convention and the recommendations provide remedies for work place violence and harassment which include the right to resign with compensation, reinstatement, appropriate compensation for damages, orders requiring measures with immediate executory force, and legal fees and costs. The Convention specifies that victims of gender-based violence and harassment must be provided with access to gender-responsive, safe and effective complaints and dispute resolution mechanisms and support services. The mechanisms should include courts with specific expertise, timely

and efficient processing, legal advice and assistance, accessible guides and the shifting of the burden of proof. Support, services and remedies should include support to help victims re-enter the labour market, counselling and information services, 24-hour hotlines, emergency services, medical care and treatment, crisis centres including shelters, specialized police units or specially trained officers.

### 3. Cases Relating to Gender Based Violence and Harassment at Work

The Commission employs approximately 103,000 officers who work in stressful environments characterized with danger, ambiguity in work encounters and exposure to deaths. The unique nature of the operational environment results to mental stress that presents violence in and outside the work place. Available data on reported cases of gender-based violence and harassment were committed by officers outside the work place. The cases however necessitated internal disciplinary action as a preventive and control measure against gender violence and harassment.

In exercise of its disciplinary mandate the Commission concluded a total of 1356 discipline cases between 2019 and 2024 among which 9 were sexual offences committed outside the work place. The 9 cases were tried in courts across the country with verdicts resulting to dismissal of responsible officers from service as shown in the table below:

S/No	Nature of Offence	Action taken
1.	<b>Defilement.</b> A male officer charged before Senior Principal Magistrates Court at Siyau for defilement contrary to section 8 (1) of the Sexual Offences Act No. 3 of 2006	Dismissal



2.	<b>Rape and Abuse of Position of Authority.</b> A male officer charged and convicted for rape contrary to section 3(1) (a) and (c) as read with section 3(3) of the Sexual Offences Act No. 3 of 2006 and abuse of position of authority contrary to section 24 (2) (b) of the Sexual offences Act No. 3 of 2006	Dismissal
3.	<b>Defilement.</b> A male officer charged and convicted for rape before the Principal Magistrates Court in Mimbweni contrary to section 8(1) as read with section 8(3) of the Sexual Offences Act No. 3 of 2016	Dismissal
4.	<b>Defilement, Committing an Incecent act with a child and Abuse of Position of Authority.</b> A male officer was charged with the three offences contrary to respective provisions of the Sexual Offences Act No. 3 of 2016. The officer was acquitted under section 202 of the Criminal Procedure Code	Removal
5.	<b>Defilement.</b> A male officer charged with defilement contrary to section 8(3) of the Sexual Offences Act No. 3 of 2006.	Dismissal

#### **4. How the Commission has Managed Gender Based Violence and Harassment at Work**

The Commission has formulated a Gender Mainstreaming Policy whose focus is prevention of sexual and gender-based violence at the National Police Service Commission and the National Police Service respectively. The Policy which is at the draft stage seeks to improve productivity through enhancing a gender friendly work environment. Adoption and implementation of the policy will ensure elimination of violence and harassment in the service while facilitating gender mainstreaming.

The Commission enacted disciplinary regulations in 2018. The regulations provide procedures on disciplinary matters in the National Police Service and action against officers who commit criminal offences. Noteworthy is that 9 cases of conviction arising from criminal offences ranging from defilement, rape and abuse of position of authority were committed by officers outside the work place and resulted to dismissal of the officers from service.

In implementing gender responsive work place safety and security measures, the Commission has instituted empowerment programs for all staff and officers in the service. The Commission promotes and encourages participation in gender related initiatives and campaigns challenging sexual and gender-based violence including 16 Days of Activism.

#### **5. Measures the Commission has Put in Place to Mainstream a Workplace Free from Harassment and Violence including Gender-Based Violence**

In addressing gender concerns at the work place, the National Police Service Commission has formulated a Gender Mainstreaming Policy for uniformed and civilian

members of the service. The policy seeks to ensure that the Commission and National Police Service in partnership with other stakeholders promote equality among men, women, vulnerable and marginalized groups at the work place. The policy is a demonstration of the Commission's commitment to scale up a harmonized gender response at the National Police Service and the National Police Service Commission respectively.

The Commission recognizes that work place productivity is dependent upon gender mainstreaming and inclusivity. Adoption and implementation of the draft Policy will therefore facilitate gender mainstreaming in the National Police Service and National Police Service Commission. Key among challenges the policy will address is management of human capital, governance, budget allocation and organizational culture that facilitates equality for men, women, vulnerable and marginalized groups in the service.

As an equal opportunity employer, the Commission progressively seeks to eliminate gender disparities at the National Police Service and the National Police Service Commission through bridging the current and future gender imbalances in its staffing. The current staff establishment at the National Police Service Commission comprises 239 staff out of whom 39% are men, 61% women and 2.1% PWDs. According to the 2021 Kenya Economic Survey (Kenya National Bureau of Statistics) the Commission serves a clientele of 100,481 police officers, 86% of who are men and 14% women.

A survey conducted at the National Police Service in 2020 enumerated the number of female and male officers in the service between 2016 to 2020. The survey revealed that the number of women in law enforcement is significantly lower than their male

counterparts, ranging between 14.4 % and 13.8%. Additional statistics revealed that over 800 police officers in Kenya suffer from various forms of disabilities. The draft Gender Mainstreaming Policy establishes mechanisms to eliminate gender disparities in access to employment, recruitment and selection, retention, performance management, promotion, training, career progression, placement and budget allocation.

The Commission established a Gender Mainstreaming Committee and a gender office that acts as a liaison between the management and the Committee. This is in addition to continuous capacity building and awareness creation amongst officers in the service. The Commission also partners and collaborates with Government Ministries, Agencies, State Departments, NGOs, CBOs and private sector players in advancing gender mainstreaming.

The Commission encourages a gender sensitive culture in the organization aimed at eradicating all forms of gender oppression, discrimination and marginalization while encouraging progressive gender responsive social relations.

#### **6. Any other issue the Commission Wishes to state about Workplace, Harassment and Violence including Gender-Based Violence and Harassment**

The gender concept has become fluid with some individuals identifying as neither male nor female. In 2019, a Bill was introduced in parliament to make provision for registration of intersex persons. The aim of the Bill was to ensure that registration of persons reflects unique gender identity. According to the 2019 Kenya Population and Housing Census, the approximate number of intersex persons in Kenya stood at 1,524 with the highest in Nairobi at 245. Publication of this data is likely to give rise to the number of intersex persons who openly identify themselves. This presents a unique



challenge to employers on how to address gender-based violence and harassment against this unique group of individuals.

The National Police Service Commission is never the less committed to eliminate discrimination and violence against all genders through extensive education in order to ensure the wellbeing of all officers in the service. Discrimination based on gender status and identity shall not be tolerated in the service.

This Memorandum is presented by: -

**Peter K. Leley**

**CS/ Chief Executive Secretary  
NATIONAL POLICE SERVICE COMMISSION:**

## 9.8.6 Kenya Prisons Service

### **MEMORANDUM FOR THE SECOND EMPLOYMENT AND LABOUR RELATIONS COURT ANNUAL SYMPOSIUM AND EXHIBITION (ELRASE 2)**

#### **Background**

The Kenya Prisons Service (KPS) is a department within the Ministry of Interior and National Administration. It is established and governed by the Constitution, Prisons Act (Cap 90), Borstal Institutions Act (Cap 92) and Persons Deprived of Liberty Act 2014 Laws of Kenya among other laws. It has a total of 31, 017 prison officers out of which, 23, 719 are male and 7, 298 are female deployed across the country.

#### **a) Reported cases relating to violence and harassment at Kenya Prisons Service.**

##### Case Scenarios

- i. There have been cases on domestic violence which were forwarded from various penal institutions within the country.
- ii. One Institution received a case in which the wife reported the husband who was not providing food for her and their two children and only bought food for himself.
- iii. There was a report on an instance of Verbal Violence (use of abusive language) between officers in an institution.
- iv. There was one ( 1 ) reported case on Physical violence between some officers.

#### **b) How the case scenarios were managed;**

- i. The various Regional Commanders, Gender and Social Welfare Officer had deliberations with the concerned parties. Some agreed to Mediation while others opted for Separation.
- ii. The stations Officer In charge involved Social Welfare Officer who is also a counsellor and after intervention they decided to be transferred to institutions near their rural area to seek parental guidance.
- iii. The Officer in charge was requested to mediate. Disciplinary action was taken towards the accused and the victims were taken through counselling session.
- iv. The concerned officers were taken through counselling by the wellness committee.

#### **c) Measures taken to address Gender-Based Violence and Harassment at the workplace.**

1. In a bid to foster reforms (including gender based reforms) within the service, Kenya Prisons Service has established a Directorate on Reforms.
2. KPS further promotes gender balance within the service through equal appointment of Head of Departments and Head of Prisons in the various institutions. The management is heading towards a 50/50 gender balance to curb male domination in leadership positions within the service.
3. The Service has trained about 60 officers on matters gender who are deployed to the various gender desks within the prisons.

4. Through the support of United Nations Office of Drugs and Crime (UNODC), Kenya Prisons Service is developing a Gender Policy and the data collection exercise has been slated for the month of September, 2024.
5. The Service has developed a draft Code of Conduct on Sexual Harassment, Exploitation and Abuse whose aim is to prevent sexual harassment, exploitation and abuse. The same is subject to public participation of all Prison Officers.
6. The Service is developing a Sexual and Gender Based Violence Policy.
7. Promotion of Gender Equality and Non-discrimination in recruitment, employment, deployment, promotion and remuneration prison officers.
8. The Service has Appointed Gender and Disability Mainstreaming Committee in all institutions.

**d) Challenges**

1. Lack of capacity to provide co-ordinated activities within the institutions.
2. Lack of resources to finance Gender and SGBV initiatives.
3. Minimal/delayed implementation of gender mainstreaming initiatives and recommendations.
4. Lack of quality data on violence and harassment claims and initiatives.
5. Fear of victimization.

**e) Recommendations**

1. Conduct of sensitization and awareness across all prison stations.
2. There is need for capacity building for staff across all ranks.
3. Establishment of streamlined complaints/redress mechanisms.
4. Leadership commitment- leaders should lead by example by demonstrating unwavering commitment and modelling the desired behaviours.
5. Develop referral systems.
6. Enhance collaborations with state and non-state actors involved in gender issues.
7. Establishment of lactating rooms/ areas in female institutions.
8. Develop Guidelines for pre-natal and post-natal work deployment for the female staff.

9.8.7 Independent Policing Oversight Authority



## **1. Introduction**

### **1.1 Prelude**

This section presents the score on the level of implementation in mentioned thematic areas<sup>1</sup>. It provides an overview on areas implemented and those yet to be implemented. The findings also present the implementation scores of specific recommendations under each thematic area.

Further, this summary presents a more detailed perspective of prevalence, reporting and handling Sexual and Gender Based Violence(SGBV) cases at Police Station Level as documented from an assessment conducted alongside the tracking of recommendations exercise in 110 police facilities across 22 counties. Analysis of SGBV incident reports made to IPOA in 2023 also informs the findings.

### **1.2 Summary of Findings on Implementation of Station-Level Recommendations**

The overall implementation score of IPOA recommendation to NPS was 53%. Thematic area on Detainees Welfare had the highest implementation score of 82% indicating that the IPOA recommendations related to the welfare of detainees had been significantly taken up by NPS.

Thematic area on disability friendliness had the lowest implementation scores of 26%. The biggest gap lies in the absence of braille, ramp and sign language interpreters which was an impediment to disability friendliness in police stations. Children matters had an implementation score of 31% where 79% of the sampled police stations lacked child protection units, 74% lacked trained staff on children matters and 59% had no juvenile cells for both boys and girls.

---

<sup>1</sup> Safety and security of police premises, children perspectives, gender perspectives, office space and utilities, disability friendliness, housing, detainee welfare, psychosocial support, community policing, AIE utilization, staff capacity, trainings and promotions, police uniforms, records and registers and tools and equipment.

In summary, while there is notable progress in areas such as detainees' welfare and staff capacity, critical areas like disability friendliness, children's perspective, and registers and records require a more comprehensive and effective approach to fully implement IPOA recommendations. The summary of findings is as illustrated below;

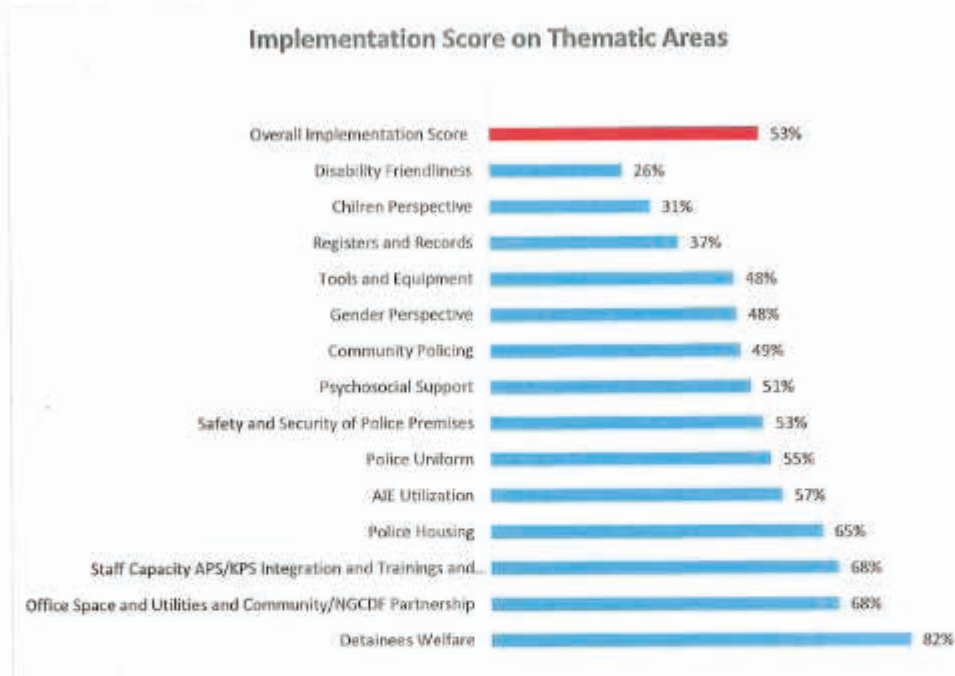


Figure 1: Summary of the Level of Implementation Score in Various Thematic Areas

## 2. Sexual and Gender Based Violence Thematic Area

### 2.1 Introduction

The Independent Policing Oversight Authority (IPOA) plays a crucial role in ensuring the National Police Service (NPS) handles Sexual and Gender-Based Violence (SGBV) with utmost sensitivity. These cases are identified for their potential to cause trauma and

stigma to the victims, therefore, demanding a delicate and sensitive approach from law enforcers.

Recommendations made by IPOA focus on creating a gender-responsive environment within the NPS. These include measures like training officers on gender issues, establishing dedicated gender office/desks with daily staffing, and providing separate detention facilities for men and women. Additionally, IPOA recommends lactation rooms, essential hygiene products, and private interrogation spaces for complainants. Further, the Authority recommends and advocate for pre-trial considerations including reasonable bail terms for pregnant and lactating women. However, this report reveals a concerning reality. Findings from IPOA assessment of the level of implementation of recommendations made to the NPS indicate below average score of 48%. This report explores prevalence, receipt, processing and handling of SGBV complaints by NPS.

## **2.2 Prevalence of Incidents of SGBV Reported to IPOA**

In 2023, IPOA received 33 SGBV related complaints. Thirteen (13) of these were defilement complaints, 10 were rape allegations and 4 on sexual assault as illustrated in the Figure 2 below. All these complaints are under active investigation by the Authority. It is through handling of the complaints that the Authority makes recommendations to the ODPP and others to the National Police Service to ensure that SGBV matters are handled professionally and effectively in Kenya.

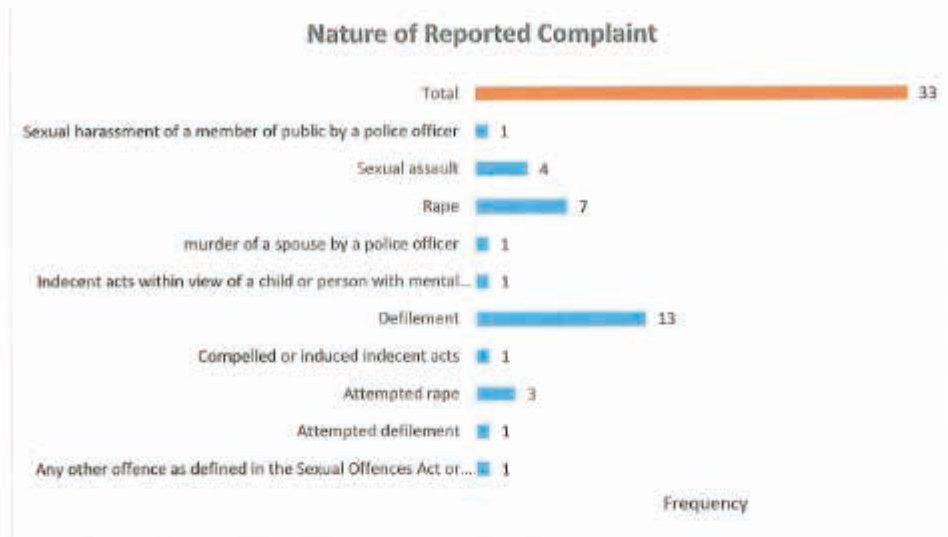


Figure 2: Nature of SGBV Complaints Received by IPOA in 2023

### 2.3 Source of SGBV Cases Reported to IPOA by County

Reported cases of SGBV were from 23 counties as shown in figure 3 below. Nakuru recorded 5 cases, Nairobi 3 cases, Busia, Kajiado, Kitui and Mombasa recorded 2 cases each while the other 17 counties recorded a case each. This is an indication that SGBV is a common problem across the regions in the country emphasizing the need for proper equipping and training of the NPS to deal with cases of SGBV.



Figure 3: Counties where SGBV Complaints Received by IPOA in 2023 Occurred

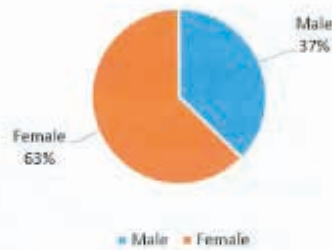
#### 2.4 Prevalence, Reporting and Processing of SGBV Cases at the Police Facilities

This section presents the findings from the assessment of prevalence, reporting and processing of SGBV cases at the Police Facilities.

##### 2.4.1 Victims of SGBV by Gender

The findings of the study showed that 63% of the SGBV complaints reported to Police Stations affected women with 37% being male victims. It's against this backdrop, that the Authority continues to make recommendations to put in place measures to prevent SGBV cases and professional handling of cases that may occur.

**Prevalence of SGBV by Gender**

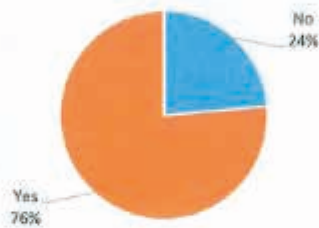


*Figure 4: Victims of SGBV by Gender*

**2.4.2 Reporting of SGBV in Police Stations**

During the tracking exercise, 76% of the stations reported to have received SGBV complaints. This is an indication of high prevalence of the SGBV complaints affirming the need for NPS to implement strategies to enhance handling of these complaints. The findings indicated that police stations lacked necessary facilities to effectively handle SGBV related complaints. For instance, 40% of police stations did not have a gender office/desk and those that had, 33% had no officers assigned to man them daily. There was an improvement in capacity building of officers where 68% of the stations had police officers trained on gender issues.

**Stations with Reported Cases of SGBV**



*Figure 5: Stations with Reported Cases of SGBV*

- (c) **Use of ADR at the Community Level:** Alternative dispute resolutions methods such as mediation and compensation were practiced by the communities. For instance, 'Maslaha' in North Eastern region and 'Kipgaa' in North Rift region. Communities in North Eastern region did not report matters related to SGBV to the Police as required. They embraced elders led mediation that ended up with some form of compensation to the victims. The reports that were made to the Police were those whose mediation had not yielded the desired results by the victims' family. This posed a great challenge to the Police because such cases were reported late and the purpose of their reporting was not prosecution but to compel the perpetrator to reach certain demands by the victims' family.
- (d) **Uncooperative/Hostile Witnesses:** Police Officers noted that processing of most SGBV cases could not progress beyond the station level since witnesses were not cooperative or turned hostile in the process of investigations. This affected the processing of the cases since it was difficult to prosecute such matters where no witness is available.
- (e) **Language Barriers:** This mainly affected parts of Kenya where most locals speak native languages and most of the police officers deployed to such regions do not speak or understand the local language. This limits reporting and handling of SGBV cases at Police Stations.
- (f) **Lack of female officers in some stations:** There is a dire lack of female officers in some parts of the Country especially Turkana, West Pokot, Marsabit, Mandera, Wajir and Garissa. Lack of Female officers in these regions is a main hindrance towards implementing recommendations on gender matters including prevention of SGBV.
- (g) **Lack Awareness/Insufficient Information:** Most Communities in the country are still subject to their traditions as compared to the Law. The crimes on SGBV are treated the same with other offences such as assault and theft. They are mediated and the

focus is usually not the victim but family satisfaction. The community level of awareness about the laws on SGBV and the required procedures of securing evidence and reporting of those cases is low.

#### 4. Recommended Strategies in Curbing SGBV

Some of the strategies recommended to enhance the effectiveness of NPS handling of SGBV complaints include;

- a) **Community Policing:** Community policing holds significant potential to improve the National Police Service's (NPS) effectiveness in handling and processing SGBV complaints. This is through; information sharing, victim support, facilitating awareness campaigns and other community based programs.
- b) **Psychosocial Support in the Service:** Police Stations to have access to counsellors who can easily be reached when need be to provide counselling services to victims. POLICARE was progressive idea towards achieving this but its implementation is yet to be achieved.
- c) **Children Protection Units and Safe Houses:** There is need for the State to invest in construction of child protection units and safe houses across all police stations in Kenya. At least every Sub-County should have a functional and well-resourced Child protection Unit/safe house. This will help the Service to protect and fulfill children rights and play a part in actualizing the children Act on areas dealing with children in conflict with the law and those in need of care and protection.
- d) **Training of Police Officers on Gender Issues:** The National Police Service should invest heavily on training police officers assigned gender matters at the Station level. This will go along ensuring professional delivery of gender based services to members of public.
- e) **Awareness Creation on Handling and Reporting SGBV Incidents:** Most members of public lack information on matters to do with handling and reporting of SGBV incidents. There is need for a spirited campaign to sensitize the communities on steps to take immediately after SGBV offences occur. This will

make it easy for communities to report and for the police to effectively handle the matters.

- f) Recruitment and deployment of Adequate Female officers:** The Service should put an intentional plan to raise the number of female officers in the Service. Female officers should be deployed in all police stations in the republic because incidents affecting women occur in the entire republic and not just in cities where the few available female officers are majorly deployed. More female Officers in the Service will be the main big step towards implementation of gender related recommendations.
- g) Punitive Actions against Guilty Offenders:** The judiciary should recommend punitive sentences in line with various laws for offenders found guilty of SGBV offences. This will act as a deterrent mechanism for potential offenders in the society.



**MEMORANDUM BY THE INDEPENDENT POLICING OVERSIGHT AUTHORITY (IPOA) FOR THE EMPLOYMENT AND LABOUR RELATIONS COURT ANNUAL SYMPOSIUM AND EXHIBITION.**

**A CASE OF IPOA ENSURING A CONDUCTIVE WORKING ENVIRONMENT FOR POLICE OFFICERS**

**A. MANDATE OF THE INDEPENDENT POLICING OVERSIGHT AUTHORITY**

1. The Independent Policing Oversight Authority (IPOA) is a State Agency established by Section 3 of the Independent Policing Oversight Authority Act, Chapter 86 of the Laws of Kenya, with the primary objective of providing civilian oversight over the work of the Police.
2. The establishment of IPOA is grounded on Article 239(5) of the Constitution of Kenya which provides for civilian oversight of all security institutions in the country including the National Police Service.
3. Section 5 of the Act outlines the mandate/objectives of IPOA as: -
  - a) hold the Police accountable to the public in the performance of their functions;
  - b) give effect to the provision of Article 244 of the Constitution that the Police shall strive for professionalism and discipline and shall promote and practice transparency and accountability; and
  - c) ensure independent oversight of the handling of complaints by the Service.

**B. ROLE OF THE INDEPENDENT POLICING OVERSIGHT AUTHORITY IN ENSURING THE NATIONAL POLICE SERVICE IS FREE FROM VIOLENCE AND HARASSMENT INCLUDING GENDER BASED VIOLENCE**

1. Pursuant to Section 6 (b) of the IPOA Act, the Authority receives and investigates complaints from members of the National Police Service. The common complaints that IPOA receives from Police Officers include:-
  - a) Unfair and un-procedural transfers. Transfers within the Police Service are part and parcel of service delivery as an Officer can be called upon to serve in any part of the Country. However, the challenge arises when transfers are used to frustrate an Officer from pursuing personal development such as further education or are used to 'punish' Officers who refuse to engage in unethical practices.

- b) The Officers are transferred and required to report to a new station without the requisite facilitation.
  - c) Unfair dismissal from Police Service without due process and procedures being followed.
  - d) Sexual harassment by Seniors. This Complaint is majorly from female officers. A study conducted by the Authority this year showed that physical acts were the most common at 81.2%, followed by derogative comments (76.2%), and negative comments (44.1%).<sup>1</sup>
  - e) Demand for bribes from Seniors for promotion.
2. To ensure that Police Officers can file complaints without fear, Section 24 (11) and (12) of the IPOA Act provides;
- 11) "No member of the Police shall be subjected to disciplinary hearings or other disadvantage based solely on the fact that such member has lodged a complaint with or given evidence or information to the Authority.*
- 12) Any person who subjects a Police officer to a disciplinary hearing or other disadvantage based solely on the fact that he has lodged a complaint with or given evidence before or information to the Authority, commits an offence."*
3. Upon conclusion of the investigations, the Authority is mandated;<sup>2</sup> :-
- a) where the inquiry, in the Authority's opinion, discloses a criminal act by a member of the Service, recommend the prosecution of that member to the Director of Public Prosecutions;

<sup>1</sup> Tracking of implementation of station level recommendations, 2024: A summary of findings and a perspective on prevalence, reporting and processing of sexual and gender-based violence (SGBV) incidents in police facilities

<sup>2</sup> Section 29 of the Independent Policing Oversight Act

- b) where the inquiry, in the Authority's opinion, discloses negligence in the performance of duty by a member of the Service, recommend disciplinary action be taken against such member;
  - c) recommend that the complainant take any other course of action suitable in the circumstances;
  - d) take any other steps it may deem fit.
4. IPOA is also empowered by Section 6 (k) to make recommendations to the National Police Service.

### **C. CHALLENGES THAT IPOA FACES IN INVESTIGATING CASES OF VIOLENCE AND HARRASEMENT WITHIN THE NATIONAL POLICE SERVICE**

1. Under reporting of cases of violence and harassment by Police Officers. This is mostly because of fear reprisals from the alleged perpetrator and fear of stigmatization of the victim by other Officers. The aforementioned study by IPOA found only about 6% of the cases of sexual harassment within the National Police Service are actually reported. Out of 110 police stations visited, 6 stations had reported cases of SGBV involving policers officers. However, it was noted that actual occurrence of SGBV incidents among officers could be higher but most of them could not report due to stigma associated with such matters while others were afraid of getting victimized in case they reported. The National Taskforce on Improvement of the Terms and Conditions of Service and other Reforms for Members of the National Police Service, Kenya Prisons Service and National Youth Service, also found cases of SGBV within the NPS were under reported despite female police officers decrying rampant instances of sexual harassment and gender-based violence.
2. There are no clear mechanisms of handling cases of gender-based violence and sexual harassment within the Policy Documents of the National Police Service;

3. Lack of awareness amongst Officers of the protections provided under the IPOA Act if they were to file a complaint against another Officer.
4. Lack of implementation of the Transfer Policy and Career Progression Guidelines.
5. Limited access to psychological support for victims of violence and harassment.

**D. RECOMMENDATIONS**

1. Continued sensitization on IPOA's role in investigating complaints by Police Officers against other Officers.
2. Adoption and implementation of recommendations by IPOA on improving the welfare and working conditions of Police Officers.
3. Implementation of the Transfer Policy and Career Guidelines by the National Police Service.
4. Development of a Sexual Harassment Policy by the National Police Service to ensure the protection of victims of violence and sexual harassment within the Service.

Yours

**ELEMA HALAKE, SS**  
**DIRECTOR/ CHIEF EXECUTIVE OFFICER**

9.8.8 Commission on Administrative Justice



THE  
COMMISSION ON ADMINISTRATIVE JUSTICE  
"Office of the Ombudsman"

file  
2718 B/PJ

Our Ref: CAJ/ADM/9 Vol IV  
Your Ref: ELRC/PJ/150/ELRASE 2/2024

21<sup>st</sup> August 2024

**Hon. Justice Kennedy Kandet**  
Principle Judge  
Employment and Labour Relations Court of Kenya  
P O Box 47606-00100  
**NAIROBI**



Dear Sir,

**RE: CALL FOR MEMORANDUM FOR THE SECOND EMPLOYMENT AND LABOUR RELATIONS COURT ANNUAL SYMPOSIUM AND EXHIBITION (ELRASE 2)**

Receive warm compliments from the Commission on Administrative Justice (Office of Ombudsman).

Reference is made to the above subject matter where you invited the Commission to submit a memorandum with respect to Convention 190 and Recommendation 206.

The purpose of this letter therefore, is to submit the memorandum and detailed below;

**Introduction**

In accordance with the International Labour Organization's Convention No. 190 (Violence and Harassment Convention, 2019) and Recommendation No. 206 (Violence and Harassment Recommendation, 2019), this memorandum outlines the Commission on Administrative Justice's (CAJ) policies and practices addressing gender-based violence and harassment. Whereas the Commission does not have specific cases relating to violence and harassment, there is in

place policies including the HR Policy and Procedure Manual that specifically deals with gender-based violence and harassment. The Commission is also in its final stages of developing the Sexual Harassment Policy.

### **Sexual Harassment**

#### **Reference: Convention 190, Article 4; Recommendation 206, Paragraph 7**

Convention 190, Article 4, and Recommendation 206, Paragraph 7, explicitly recognizes the right of everyone to work in an environment free from violence and harassment, including gender-based violence and harassment. The Commission adheres to these provisions by categorically prohibiting sexual

harassment within the workplace in its HR Policy and Procedure Manual. The Commission relies on the Sexual Offences Act, 2006, HR Policy and Procedure Manual to handle such cases, ensuring compliance with both national and international legal standards.

### **Bullying**

#### **Reference: Convention 190, Article 1(b); Recommendation 206, Paragraph 8**

Convention 190, Article 1(b), and Recommendation 206, Paragraph 8, defines "violence and harassment" to include bullying, which encompasses repeated, malicious behavior intended to undermine a person. The Commission's policy on bullying as provided in the HR Policy and Procedure Manual is aligned with these provisions, ensuring that such behavior is not tolerated and that victims have access to appropriate support and redress mechanisms.

### **Complaint and Grievance Handling**

#### **Reference: Convention 190, Article 10; Recommendation 206, Paragraph 14**

Convention 190, Article 10, mandates that appropriate and effective remedies should be available to victims of violence and harassment, including internal



complaint procedures. Similarly, Recommendation 206, Paragraph 14, emphasizes the need for accessible and safe complaint mechanisms.

In line with these provisions, the Commission has established comprehensive internal complaint and grievance handling procedures within its HR Policy and Procedure Manual, Complaints Handling Manual, The Investigations Manual and the Alternative Dispute Resolution Manual aimed at:

1. **Providing Mechanisms for Addressing Complaints**
2. **Creating a Conducive Work Environment**
3. **Enhancing Employee Relations by promoting harmonious relations between the employees and the employer through prompt and fair grievance handling.**

These procedures are in compliance with the Constitution of Kenya (2010), the Employment Act, 2007, and other relevant labor laws.

#### **Workplace Safety and Health**

##### **Reference: Convention 190, Article 9; Recommendation 206, Paragraph 13**

Convention 190, Article 9, requires that Member States ensure that workplace policies address occupational safety and health concerns related to violence and harassment. Recommendation 206, Paragraph 13, further elaborates on the need to establish mechanisms to prevent and protect workers from these risks.

The Commission, in compliance with these provisions, has established an Occupational Health and Safety (OHS) Committee in line with **The Occupational Safety and Health Act No. 15 of 2007** to oversee workplace safety. This committee is responsible for conducting safety inspections, investigating accidents, and ensuring that appropriate protective measures are in place to safeguard employees' health and well-being.

### **Employee Wellness**

#### **Reference: Recommendation 206, Paragraphs 18 and 19**

Recommendation 206, Paragraphs 18 and 19, emphasize the importance of workplace wellness programs that address psychosocial risks and support employee well-being. The Commission has implemented various wellness initiatives, including counseling services, HIV/AIDS support, and substance abuse interventions, to enhance employee productivity and morale. The Commission also organizes mental wellness and Counseling camps for its employees.

### **Conclusion**

The Commission remains committed to creating a work environment free from violence, harassment, and discrimination. To that end, the Commission looks forward to continued collaboration with the Judiciary and other stakeholders in promoting safe, healthy, and equitable workplaces for all the employees.

We thank you for your continued support and assure you of our highest regards.

Yours sincerely,



**MERCY K. WAMBUA, OGW**  
**COMMISSION SECRETARY/CEO**

## 9.8.9 Kenya Private Sector Alliance



August 29, 2024

Byram Ongaya,  
Principal Judge,  
Office of the Employment and Labour Relations  
Court of Kenya,  
P.O. Box 30430 - 00100,  
Nairobi.



Dear Judge Ongaya

**REF: MEMOORUNDUM WITH RESPECT TO CONVENTION 190 AND RECOMMENDATION 206 - SECOND EMPLOYMENT AND LABOUR RELATIONS COURT ANNUAL SYMPOSIUM AND EXHIBITION (ELRASE 2)**

Receive warm greetings from Kenya Private Sector Alliance (KEPSA).

In line with the International Labour Organization's (ILO) Convention 190 and Recommendation 206, KEPSA is resolutely committed to fostering a safe, respectful, and inclusive workplace environment, free from all forms of harassment and violence, including gender-based violence. This memorandum provides an overview of our policies, procedures, and proactive measures aimed at preventing and addressing such issues.

### 1. Case Experience

As of the date of this memorandum, KEPSA has not experienced any documented cases of workplace harassment, violence, or gender-based violence. While no specific incidents have been reported, we recognize the importance of being vigilant and proactive to prevent any potential issues.

### 2. Management Strategies

In the absence of specific incidents, we have adopted a comprehensive approach to prevent harassment and violence:

- **Preventive Measures:**

We have regular training and awareness programs designed to educate employees on recognizing, preventing, and addressing harassment and violence. These programs are mandatory for all staff and are updated to incorporate the latest best practices and legal requirements.

7<sup>th</sup> Floor, South Tower, Two Rivers, Limuru Road | P. O. Box 3556 - 00100, Nairobi, Kenya  
☎ +254 720 340949 / 735 999979 ✉ info@kepsa.or.ke 🌐 www.kepsa.or.ke

- **Proactive Monitoring:**

KEPSA engages in ongoing monitoring and evaluation of workplace culture through employee surveys, feedback mechanisms, and regular audits. This proactive approach helps us identify and address potential concerns before they escalate.

- **Confidential Reporting Mechanisms:**

We have established multiple confidential reporting channels, including anonymous reporting systems and direct contact points within the HR department. These mechanisms and our open-door policy, ensure that employees can report concerns without fear of retaliation or breach of privacy.

### 3. Measures to Maintain a Harassment-Free Workplace

To ensure that our workplace is free from harassment and violence, including gender-based violence, KEPSA has implemented several key measures:

- **Comprehensive Anti-Harassment Policy:**

Our organization has developed and enforced a detailed anti-harassment policy that encompasses all forms of harassment and violence, including gender-based violence. This policy includes clear procedures for reporting, investigating, and addressing complaints, ensuring a structured and fair process.

- **Training and Education:**

We hold trainings on workplace harassment and violence, addressing gender-based violence.

- **Support Systems:**

We provide access to a range of support services, including counselling, legal advice, and employee assistance programs. These resources are available to any employee who may need them, ensuring they have the necessary support to address and resolve issues.

- **Awareness Campaigns:**

We run continuous awareness campaigns to promote a culture of respect and prevent harassment. These include workshops, seminars, informational materials, and ongoing communication efforts designed to reinforce our commitment to a safe work environment.

- **Policy Review and Improvement:**

Our policies and procedures are subject to regular review and improvement. We assess their effectiveness through feedback, incident reports, and compliance with ILO standards to ensure they remain relevant and effective.

7<sup>th</sup> Floor, South Tower, Two Rivers, Limuru Road | P. O. Box 3556 - 00100, Nairobi, Kenya  
 ☎ +254 720 340949 / 735 999979 ✉ info@kepsa.or.ke 🌐 www.kepsa.or.ke

#### 4. Additional Observations

- **Commitment to Continuous Improvement:**

We understand that maintaining a harassment-free workplace is an ongoing commitment. We are dedicated to continually refining our policies, training programs, and support systems based on employee feedback, new developments, and evolving best practices.

- **Collaboration and External Guidance:**

We actively seek collaboration with external experts, consultants, and organizations to stay informed about the latest developments in workplace safety and harassment prevention. This collaboration helps us enhance our practices and align with international standards.

We are currently partnering with International Finance Corporation (IFC) to sensitize organizations on matters Equity, diversity and Gender Equality that encompasses Gender Based Violence in workplaces and how to alleviate this.

- **Cultural and Behavioural Changes:**

KEPSA is focused on fostering a positive organizational culture where respect, dignity, and safety are prioritized. We are committed to promoting behavioural changes that support a respectful and inclusive work environment for all employees

Our organization is fully committed to upholding the principles outlined in ILO Convention 190 and Recommendation 206. While we have not encountered specific cases of harassment or violence, we continue to proactively implement and refine measures to ensure a safe, respectful, and inclusive workplace. We remain open to further dialogue and collaboration to enhance our practices and contribute to broader efforts in this regard.

We have always valued the collaboration between KEPSA and the Judiciary of Kenya and look forward to more collaboration in future.

Yours Sincerely,



Carole Kariuki, EBS, MBS, HSC

**Chief Executive Officer**



10<sup>th</sup> September 2024

The Judiciary  
 Office of the Principal Judge of Employment and Labor Relations Court of Kenya  
 3<sup>rd</sup> Floor, Room 301  
 Millimani Commercial Court Building  
**Nairobi**



Attn: Hon. Byran Ongaya

Dear Judge, Byran Ongaya,

**RE: MEMORANDUM FOR THE SECOND EMPLOYMENT AND LABOUR RELATIONS COURT ANNUAL SYMPOSIUM AND EXHIBITION**

Reference is made to the above and to your letter dated 5<sup>th</sup> August 2024 which we received on 12<sup>th</sup> August 2024.

As per your request, we have gathered the information on cases of violence and harassment at our organization and the actions that were taken to prevent such incidents from recurring. Please note the below;

**1. Sexual Harassment Claims**

We have had two major sexual harassment incidents in the recent past. The first incident was reported during the covid period where a colleague invited another over to his home to isolate together. In the second, a perpetrator shared explicit images of themselves and attempted to undress in front of a colleague. Both these incidents led to internal investigations by the relevant teams. The gathering of evidence was done including witness interviews. The offenders were taken through disciplinary process and sanctioned in accordance with company policies and procedures.

One of the perpetrators sued Safaricom for wrongful dismissal and was successful because during the disciplinary process, Safaricom did not explicitly name the victim to protect her identity. The court found that it was important for the perpetrator to know which individual was being referred to during the disciplinary hearing.

Safaricom also provided counselling for the victims in both these incidents.

**2. Domestic Violence Spillover:**

C2 - Safaricom Inte.

We had a specific incident of an employee who was unable to attend work due to domestic violence and reached out to the company security agents for assistance. The employee was taken to a safe place and security deployed for the employee as they resolved the issue. The staff member was also provided with counselling to manage distress.

In such cases, the Safaricom security team plays an important role in providing security to staff and where needed, escalating the matter to the legal authorities,

### **3. Bullying and Psychological Harassment:**

We had an unfortunate incident where a group of employees engaged in bullying behavior towards a colleague, leading to a toxic work environment. The targeted employee experienced anxiety and depression, ultimately resulting in absenteeism and decreased productivity.

Safaricom also focuses on culture change initiatives which are aimed at fostering a respectful workplace culture, including team-building activities and ongoing training.

It is vital to note that in each of the above cases, the company has taken proactive measures to create a safe and respectful workplace, including implementing clear policies, providing training, and ensuring that there are effective reporting mechanisms in place. The measures put in place to mainstream a workplace free from harassment and violence including Gender based violence include:

#### **A. Clear policies**

Safaricom has developed anti-bullying and harassment, gender-based violence policies that define harassment and violence, including examples, and outlined unacceptable behaviors. These policies are easily accessible to all employees and regular trainings on the policies done.

#### **B. Zero Tolerance Statement**

The company has clearly communicated zero-tolerance for harassment and violence, emphasizing that such behaviors will not be tolerated and will result in disciplinary action. This has been done through direct engagements and internal communications.

#### **C. Training and Awareness**

Safaricom provides regular training for all employees, including management, on recognizing, preventing, and responding to harassment and violence. The trainings cover topical subjects such as bystander intervention, diversity, equity, and inclusion, harassment, and violence, such as bullying, sexual harassment, and domestic violence awareness. This is done by virtual and physical trainings.

#### **D. Reporting Mechanisms**

C2 - Safaricom Inte

**Confidential Reporting Channels:** Safaricom has established multiple confidential reporting options (i.e., hotlines, designated employees, and anonymous reporting) for employees to report incidents without fear of retaliation.

**E. Implement Support Systems**

Safaricom provides access to Employee Assistance Programs (EAPs) that offer counseling and support services for employees dealing with harassment, violence, or related issues. Services are included in the medical cover and toll-free hotline for counseling services.

**F. Safe and Inclusive Culture**

Safaricom encourages an environment of respect and inclusion through team-building activities, diversity training, and initiatives that celebrate differences are promoted in the company. Safaricom also fosters an environment where employees feel comfortable discussing concerns and providing feedback about workplace culture and policies.

**G. Conduct Regular Assessments**

Regular surveys to assess employee perceptions of safety, harassment, and violence in the workplace are conducted. The results are used to identify areas for improvement.

**H. Ensure Accountability**

The consequences for violating harassment and violence policies are clearly outlined ensuring that disciplinary actions are consistently applied.

**I. Crisis Management Plans**

The company has established and communicated clear procedures for responding to incidents of violence, including evacuation plans, communication protocols, and coordination with law enforcement if necessary. A direct line to report incidents and a warden system for reporting crisis.

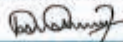
**J. Regular Policy Review and Updates**

The company regularly reviews and updates policies and training programs to reflect changes in laws, best practices, and employee feedback.

We hope that the above information will assist you as you prepare for the symposium. Please feel free to reach out to us in case of any other information or assistance that you may require.

Yours sincerely,

**FOR: SAFARICOM PLC**



Wangechi Gichuki (Sep 11, 2024 11:07 GMT+3)

**Wangechi Gichuki**

Safaricom PLC

P.O. Box 66827-00800

Nairobi, Kenya

+254 722 003 272

[safaricom.co.ke](http://safaricom.co.ke)

C2 - Safaricom Inte



## 9.9 ANNEX 8

### SOME OF THE ACTUAL SPEECHES AT THE ELRASE OPENING CEREMONY

#### 9.9.1 Keynote Address by Hon. Lady Justice Martha Koome, EGH, Chief Justice and President of the Supreme Court of Kenya



#### THE JUDICIARY

OFFICE OF THE CHIEF JUSTICE AND PRESIDENT  
OF THE SUPREME COURT OF KENYA

---

### **HONOURABLE CHIEF JUSTICE'S KEYNOTE ADDRESS AT THE OPENING OF THE SECOND EMPLOYMENT AND LABOUR RELATIONS COURT ANNUAL SYMPOSIUM AND EXHIBITION (ELRASE II) – 16TH SEPTEMBER 2024**

**THEME: 'THE ROLE OF THE EMPLOYMENT AND  
LABOUR RELATIONS COURT IN FOSTERING THE**

1

---

***RIGHT TO A WORLD OF WORK FREE FROM  
VIOLENCE AND HARASSMENT; INCLUDING  
GENDER-BASED VIOLENCE AND HARASSMENT'***

---

1.I am delighted to be with you today for the opening of the Second Annual Employment and Labour Relations Court Symposium and Exhibition (ELRASE II). Let me begin by

2

---

commending the Employment and Labour Relations Court (ELRC) for convening this important event.

2. This symposium and exhibition reflect a commendable initiative of engaging stakeholders in continuous dialogue, in line with the principle of **'cooperative dialogue'** that we champion in the Judiciary's **'Social Transformation through Access to Justice'**

3

(STAJ) blueprint. Our commitment to maintaining ongoing conversations with stakeholders and court users provides vital feedback on our work and helps identify areas for improvement. I commend the Principal Judge, Judges, Registrar, and the entire staff of the ELRC for fostering this spirit of engagement through annual events like this, enabling

4

---

meaningful engagement with stakeholders and court users alike.

3. The benefits of such engagement are already evident. The ELRC has achieved notable progress in recent years, particularly in improving court performance. I am pleased to highlight the Court's impressive case clearance rate of **190%** in the last financial year, having

5

resolved **8,014** cases against 4,210 new filings. By the end of June 2024, the ELRC had reduced its backlog by **30%**, lowering pending cases to 6,966 from 9,896 at the start of the financial year. Moreover, **only 240 cases** remain in the system for more than three years, bringing the Court closer to the STAJ benchmark of ensuring that no case remains before a trial court for more than three years. I urge the

6

Court to prioritize these 240 cases and aim to resolve them by the end of December.

**Ladies and Gentlemen,**

4. Turning to the theme of this year's symposium, *'The Role of the Employment and Labour Relations Court in Fostering the Right to a World*

7

*of Work Free from Violence and Harassment, Including Gender-Based Violence and Harassment,*' it addresses a critical and urgent issue. Violence and harassment in the workplace, including gender-based violence, are not just occupational challenges; they are human rights violations. Both our Constitution and international conventions mandate us to

8

---

take bold steps to eliminate these injustices in the workplace.

5. At the heart of this commitment is the recognition that every individual has the right to work in an environment free from violence and harassment. This principle is articulated in ILO Convention No. 190, which affirms that

9

---

violence and harassment in the workplace violate human rights, threaten equal opportunities, and are incompatible with decent work. The Violence and Harassment Convention, 2019 (No. 190), along with its accompanying Recommendation (No. 206), provides a comprehensive framework for a workplace free from violence and harassment. These instruments articulate a clear, inclusive,

10

and gender-responsive approach to prevention and redress.

6. Given that this is the first international instrument explicitly providing for the right to a world of work free from violence and harassment, including gender-based violence, it is fitting that this symposium has brought

11

together diverse stakeholders to deliberate on how best to respect, protect, and promote this right.

7. As guardians of justice, we bear the responsibility of ensuring that the Employment and Labour Relations Court upholds these values while shaping a workplace culture

12

grounded in dignity, respect, and mutual regard. Violence and harassment—whether physical, psychological, or gender-based—stand in direct contradiction to these principles.

8. This symposium therefore provides a valuable opportunity for reflection. We must assess

13

whether our domestic laws align with global standards and whether the jurisprudence developed by the Employment and Labour Relations Court meets the high standards set by comparative jurisdictions. We must also ask ourselves whether we are doing enough to protect employees from violence and harassment? Are we fostering workplaces

14

---

where everyone can thrive free from intimidation, abuse, or discrimination?

9. Kenya's Constitution, particularly Article 19(2), emphasizes that the purpose of recognizing and protecting human rights is to preserve the dignity of individuals and communities while promoting social justice. This vision is reflected

15

---

in Articles 27 and 28, which underscore the principles of equality, non-discrimination, and human dignity. These provisions make clear that every employee, regardless of their background or gender, has the right to a workplace that respects their fundamental rights.

16

10. Furthermore, Article 41 of the Constitution guarantees the right to fair labour practices, which includes the right to reasonable working conditions. A workplace free from violence and harassment is central to this guarantee, ensuring that employees are not only protected but also empowered.

17

---

11. Violence and harassment in the workplace have far-reaching consequences, affecting not only the victims' psychological and physical health but also their dignity, family life, and social well-being. These violations also have broader societal impacts, diminishing the quality of public and private services, reducing productivity, and tarnishing the reputation of enterprises. Moreover, gender-based violence

18

and harassment disproportionately affect women, and addressing this inequality requires an inclusive, integrated, and gender-responsive approach.

12. We must recognize that violence and harassment are not isolated phenomena; they are rooted in harmful social attitudes, including

19

gender stereotypes and unequal power dynamics. Thus, our efforts must extend beyond legal remedies to address the root causes through education, awareness, and prevention.

13. As we seek solutions, we must also acknowledge the intersectionality of violence in

20

the workplace. Domestic violence, for instance, often spills over into the work environment, impacting productivity, health, and safety. Employers, workers' organizations, and labour market institutions all play a critical role in recognizing, responding to, and addressing the impact of domestic violence.

21

14. Achieving a world of work free from violence and harassment requires collective action. This responsibility is not the Court's alone. Employers, trade unions, policymakers, and civil society must work together to forge partnerships, build stronger institutions, and create safe and respectful workplaces for all.

22

**Ladies and Gentlemen,**

15. We all agree that the right to work is central to an individual's dignity and well-being. Violence and harassment in the workplace undermine these vital aspects of human dignity and welfare.

23

16. The pervasive challenge of violence and harassment in the world of work affects our workplaces irrespective of professions and takes many forms, including verbal abuse, physical assaults, psychological trauma, sexual harassment, and even rape. These actions constitute serious violations of the dignity of victims and are inconsistent with fair labour practices and social justice, as enshrined in

24

both our Constitution and international legal frameworks. We must therefore all join hands in the fight to make our work places safe for all of us.

17. It would be remiss of me to fail to highlight the Judiciary's efforts to combat violence and harassment within its own ranks. Earlier this

25

year, the Judicial Service Commission approved the Judiciary's Gender Mainstreaming, Diversity, and Sexual Harassment Policies. These policies aim to create a harassment-free environment within the Judiciary. Additionally, we have established an Employee Protection Unit within the Office of the Chief Justice to investigate complaints of violence and harassment and promote appropriate

26

standards of conduct across Judiciary workplaces.

**Ladies and Gentlemen,**

18. I would also like to commend the Employment and Labour Relations Court for developing three key policy documents, which we are launching today: ***The Employment and***

27

***Labour Relations Court (Procedure) Rules, 2024; The Conciliation Manual for the Employment and Labour Relations Court; and The Registry Operations Manual for the Employment and Labour Relations Court.***

19. Each of these initiatives represents a significant step toward strengthening the

28

efficiency, accessibility, and effectiveness of the Court. The Employment and Labour Relations Court (Procedure) Rules, 2024, provide clear and structured guidelines to streamline court processes, enhance access to justice, and reduce delays.

29

---

20. The Conciliation Manual aligns perfectly with our STAJ blueprint's emphasis on a multi-door approach to dispute resolution. It underscores conciliation as a key pathway for resolving labour disputes, offering a less adversarial, cost-effective, and faster alternative to litigation.

30

21. The Registry Operations Manual will standardize and improve service delivery in court registries, ensuring they are both efficient and user-centered.

22. These documents reflect the Employment and Labour Relations Court's ongoing commitment to improvement and innovation. I

31

am confident that their adoption will enhance the Court's capacity to foster harmonious industrial relations and protect labour rights.

### **Conclusion**

23. In closing, I urge all of you—Judges, trade union representatives, employer associations, and other stakeholders—to use this symposium as a springboard for action. Together, we can

32

build a future where every workplace is a place of safety, respect, and opportunity.

24. It is now my honour to officially declare ELRASE II open and to declare the three policy documents: The Employment and Labour Relations Court (Procedure) Rules, 2024; The Conciliation Manual for the Employment and

33

Labour Relations Court; and The Registry Operations Manual for the Employment and Labour Relations Court, officially launched.

Thank you, and I wish you all fruitful deliberations during the symposium and exhibition.

**Hon. Justice Martha K. Koome, EGH**

34

**Chief Justice and President of the Supreme Court of Kenya**

9.9.2 Remarks by Hon. Dr. Alfred Mutua, Cabinet Secretary, Ministry of Labour and Social Protection



9.9.3

REPUBLIC OF KENYA

MINISTRY OF LABOUR AND SOCIAL PROTECTION

REMARKS BY

HON. DR. ALFRED MUTUA

CABINET SECRETARY FOR LABOUR AND SKILLS DEVELOPMENT

DURING

SECOND EMPLOYMENT AND LABOUR RELATIONS ANNUAL SYMPOSIUM AND EXHIBITION (ELRASE 2)

ON

15<sup>TH</sup> SEPTEMBER 2024

AT

THE UNIVERSITY OF NAIROBI CHANDARIA AUDITORIUM  
NAIROBI, KENYA.

- Rt. Hon (Dr) Moses Masika Wetang'ula, EGH, MP, Speaker of the National Assembly
- Hon. Lady Justice Philomena Mbete Mwilu, MGH, Deputy Chief Justice and Vice President, Supreme Court of Kenya
- Hon (Dr) Justice Smokin Wanjala, CBS, Supreme Court Judge and Director, Kenya Judiciary Academy (KJA)
- Hon. Justice G.V Odunga, Judge, Court of Appeal
- Hon Justice Byram Ongaya, Principal Judge Employment and Labour Relations Court, Kenya
- Hon Winfridah Boyani Mokaya, Chief Registrar of the Judiciary
- Amb. Antony M. Muchiri, Chairperson, Public Service Commission
- H.E Anne Waiguru, EGH Chairperson Council of Governors

- Mr Thomas Koyier, EBS. Ag. Chairperson, National Gender and Equality Commission
  - Ms. Caroline Khamati Mugalla - ILO Director: Country Office, Dar es Salaam
  - Dr. Francis Atwoli, NOM (DZA) , EBS, MBS Secretary General of the Central Organization of Trade Unions
  - Ms Jacqueline Mugo, EBS, CEO Federation of Kenya Employers
  - Mr. Mwaura Kabata, Vice President of the Law Society of Kenya
  - Hon. Kennedy Kandet, Registrar of the Employment and Labour Relations Court,
  - All Judges, Magistrates and Registrars present,
  - Court Users Committees present,
  - All distinguished Guests,
  - Ladies and Gentlemen,
- Ladies and Gentlemen,

I am honoured and privilege to be here with you today during this auspicious event, The Second Employment and Labour Relations Symposium and Exhibition (ELRASE 2) whose theme is: *"The Role of the Employment and Labour Relations Court in Fostering the Right to a World of Work free from Violence and Harassment"*. First, let me take this opportunity to thank the Hon. Chief Justice for inviting my Ministry to this occasion owing the good relations we have with the Employment and Labour Relations Court in the course of our mandates towards achieving social justice in the labour sector.

**Our Chief Guest,**

This Years' theme resonates with our day to day efforts towards achieving decent work for all through promotion of harmonious Industrial relations in the Country. Violence and Harassment in the World of Work has been rampant in the near past as employers abuse workers in various forms leading to demotivation which then results to low productivity and affecting our economy negatively. The ILO Convention No. 190 on Violence and Harassment adopted in 2019 provides the first international definition

of violence and harassment in the world of work, including gender-based violence and harassment. Together with **Recommendation No. 206**, Convention No. 190 recognizes the right of everyone to a world of work free from violence and harassment and provides a common framework for action. Violence and harassment at work takes a range of forms and leads to physical, psychological, sexual and economic harm. Since the adoption of the Convention, the COVID-19 pandemic has further highlighted the issue, with many forms of work-related violence and harassment being reported across countries since the outbreak began, particularly against women and vulnerable groups.

**Ladies and Gentlemen,**

As you may be aware that the global community has made it clear that violence and harassment in the world of work will not be tolerated anymore. Consequently, on June 21, 2019, the ILO's International Labour Conference adopted the Centenary Declaration on the Future of Work, expressing a clear commitment to a world of work free from violence and harassment. On the same day, the Centenary Conference brought this commitment to life with the adoption of the Violence and Harassment Convention (No. 190) and Recommendation (No. 206).

Convention (No. 190) and Recommendation (No. 206) aims at: -

- Establishing or strengthening reporting and dispute resolution mechanisms;
- Ensuring access to remedies and support for victims, including against retaliation;
- Ensuring workers' right to remove themselves in case of imminent and serious danger to life, health and safety;
- Empowering labour inspectors and other authorities.

**Our Chief Guest**

Following the Presidential Directive to ratify Convention No. 190 and Convention No. 189 in May 2023, My Ministry in collaboration with various stakeholders held several Consultative meetings, developed a Technical Working Group and came up with a Road Map to spearhead the process of ratification. Currently the process in public participation and development of the

cost benefit analysis led by the State Department for Planning at the National Treasury. The Directorate for Treaty making has been the guide in the process. The Ministry is looking forward to ratify this Convention by the end of this year.

**Ladies and Gentlemen,**

The Ministry of Labour and Social Protection has 50 offices across the Country and labour Inspectorate staff deployed to man them. The Labour Officers are responsible in Inspection of Workplaces to ensure compliance to the Minimum terms and conditions of employment. In their duty, the Labour Inspectorate also investigate on issues of violence and Harassment at workplace including Gender Based Violence. For instance, the Ministry conducted over 14,000 Labour Inspection in the FY 2023/24 covering wide range of areas including discrimination, sexual harassment in the workplace.

**Ladies and Gentlemen,**

It is good to note that currently, the Court is established in seven stations, namely; Nairobi, Mombasa, Kisumu, Nakuru, Kericho, Nyeri and Eldoret. In addition, there are eight (8) sub-registries located in Malindi, Machakos, Bungoma, Garissa, Meru, Kisii, Voi and Kitale. We acknowledge this positive stride of the Court to bring services down to the people. It is also positive to mention that the Court currently has embraced technology and this enabled many litigants who may not be able to reach the Court physically to attend the hearings via Zoom or Webex.

**Ladies and Gentlemen,**

As a Ministry, we appreciate the transformation the Employment and Labour Relations Court has undergone and appreciate the strides made towards achieving social justice in Kenya. However, we need more collaborations between the judges and the Labour Inspectorates who are conciliating the labour disputes, which eventually will be arbitrated by the Court in cases of disagreements. A one -Country -Team Approach Principle, where agencies speak to one another and effectively deliver services to the people. In this context then as a Ministry we propose a capacity building programs to be initiated among the staff of the Court and the Labour Inspectorate staff from the Ministry.

**Ladies and Gentlemen,**

As I conclude, let me say that however the achievements made in ensuring justice is served to the labour disputes litigants, there has been a setback in the last few years when the Labour Inspectorate Staff were de-gazetted from prosecuting labour disputes. Currently the individual complaints reported to various County Labour Offices are stuck and not going to the Court as the ODPP also are not fully convert on how to prosecute the civil cases.

This then will call us to consider re-visiting the gazette Notice No. 1216 dated 16<sup>th</sup> December, 2019, through which the Office of the Director of Public Prosecutions (ODPP) took the role of prosecuting Labour Disputes.

**Ladies and Gentlemen,**

Once again, I applaud the Court for organizing this event that had offers us with an opportunity to bring in perspectives on Violence and Harassment including the Gender Based Violence and Sexual Harassment. The Forum will reflect on the efforts directed towards this course and

**Thank you and God Bless the Labour Fraternity**

9.9.4 Remarks by Hon. Justice Byram Ongaya, Principal Judge, ELRC



THE JUDICIARY



OFFICE OF THE PRINCIPAL JUDGE,  
EMPLOYMENT AND LABOUR RELATIONS COURT

REPUBLIC OF KENYA

THE EMPLOYMENT AND LABOUR RELATIONS COURT OF

KENYA

OPENING REMARKS BY THE PRINCIPAL JUDGE, HON.  
JUSTICE BYRAM ONGAYA AT THE OPENING CEREMONY  
OF THE 2<sup>ND</sup> EMPLOYMENT AND LABOUR RELATIONS  
ANNUAL SYMPOSIUM AND EXHIBITION HELD ON 16<sup>TH</sup> AND  
17<sup>TH</sup> SEPTEMBER 2024 AT THE UNIVERSITY OF NAIROBI  
THEME: The role of the ELRC in fostering a world of work free  
from violence and harassment including gender based violence

Your Ladyship, Chief Justice and President of the Supreme Court,  
Our Stakeholders, Social Partners

Ladies and Gentlemen,

I thank each of you for accepting our invitation and for your presence today. From the outset, I thank the Honourable Chief Justice for presiding at today's ELRASE 2, 2024. We at judiciary are implementing social transformation through access to justice. ELRASE 2 is part of the

multi-door approach of accessing justice. We cannot have lasting peace, justice, and prosperity without social justice based on social dialogue. I thank our social partners and stakeholders for submitting to social dialogue.

C190 recognizes the right of everyone to work free from violence and harassment. C190 covers both paid and unpaid work, formal and informal sectors, and all workers in all environments.

The Government is required to adopt legislation and policies that ensure the right to equality and non-discrimination at work, employment and occupation. The law and policy must provide for gender based violence and harassment.

After COVID 19 the new normal includes virtual work and working from home. Harassment and violence especially sexual harassment has permeated the new work environment. There is an outbreak of sexual harassment extending to working from home. The law and policy should prohibit all forms of gender-based violence across all forms of digital communication and media including as relates to virtual world of work.

Victims need remedies. Perpetrators need rehabilitation. Labour inspection and administration should gather data to inform policy and



law reform. Awareness is paramount to deal with socio-cultural attitudes that undermine the goals. We need a multi-disciplinary and multi-sectoral approach to inform filling of gaps in practices, policies and laws.

Today I reassure that the ELRC is dedicated towards excellence in judicial service delivery and doing justice. I again thank our stakeholders and the International Labour Organization for supporting the Court. I trust together we will assure justice as the true shield and defender of our people.

Thank you.

Byram Ongaya

Principal Judge, Employment and Labour Relations Court

16.09.2024



**UNIVERSITY OF NAIROBI**

**WELCOME REMARKS BY THE VICE CHANCELLOR  
PROF. MARGARET JESANG HUTCHINSON, ON  
MONDAY, SEPTEMBER 16, 2024 AT 2.30 P.M. AT THE  
UNIVERSITY OF NAIROBI, CHANDARIA AUDITORIUM**

---

\* *Hon. Chief Justice, Lady Justice Marjatta Koome, Chief Justice & President of the Supreme Court of Kenya*

**Hon. (Dr.) Moses Masika Watengula, Speaker of the  
National Assembly**

**Hon. Dr. Alfred Mutua, Cabinet Secretary, Ministry of  
Labour and Social Protection,**

**Hon. Lady Justice Philomena Mwilu, Deputy Chief  
Justice and Vice President of the Supreme court of  
Kenya,**

**Hon. Dr. Justice Smokin Wanjala, Supreme Court  
Judge and, Director, Kenya Judiciary Academy,**

**Hon. Anne Waiguru, Governor Kirinyaga County,**

*CIA Chanty VC PSC*  
*Principal*  
**Honorable Justice Daniel Byram Ongaya, Judge of**

*Judges etc - Other present*  
**the Employment and Labour Relations Court,**  
**Ambassador Caroline Khamati Mugulla, ILO Director,**  
**Country Office, Dar es Salaam**

*Hon. Justice Maurice Onyango, Judge ELRC*  
**Hon. Dr. Justice, Jacob Gakeri, Judge Employment**  
**and Labour Relations Court,**

*Justice Maurice Onyango Hon. Justice Ndumu Ndumu*  
*Hon. Hella Nwachuku (Ndumu Ndumu)*  
**Hon. Winfrida Boyani Mokaya, Chief Registrar of High**  
**Court, Judiciary**

**Senator, (Rtd) Justice Steward Madzayo,**

**Dr. Francis Atwoli, COTU, Secretary General**

*Thomas Koiger - VC  
NGEC*

*✓ Benson Okwara - DSG COTU*  
*Dickson Ouma - FKE Reg.*  
**Amb. Anthony Muchōiri, Chairperson, Public Service**  
**Commission,**

*\* Senior Counsel, Gibson Kamau, Kuria,*

**Ms. Faith Odhiambo, President of the Law Society of**  
**Kenya,** *- Mwaura Kabata, VP, LSK*

**Mrs. Jacqueline Mugo, CEO, Federation of Kenya**  
**Employers** *Benson Okwara,*

*Dr.* **Joyce Mutinda, Chairperson, National Gender**  
**Commission,**

*\* Advocate, Judy Thongori,*

Staff + students, UoN

**Distinguished ladies and gentlemen,**

Good afternoon!

**It is my distinct pleasure to welcome you all to the University of Nairobi, and significantly to the 2nd Employment and Labour Relations Annual Symposium and Exhibition, known as ELRASE – 2.**

**We are gathered here today in this hallowed Chandaria Auditorium, on this 16th day of September in the year 2024, to explore a theme that is both critical and timely: *The Role of the Employment and Labour Relations Court in Fostering the Right to A World of Work Free from Violence and Harassment.***

**In alignment with this, our sub-theme focuses mainstreaming ILO Convention 190 on Eliminating Violence and Harassment in the World of Work.**

**As an esteemed institution of higher learning in Kenya's public sector, the University of Nairobi is honored to serve as a key stakeholder and partner with the judiciary, especially the Employment and Labour Relations Court.**

**Together, we embark on a journey towards realizing the agenda of social transformation through enhanced access to justice. It is our firm belief that fostering meaningful academic discourse on**

**pertinent issues faced by the Court, especially concerning workplace harassment and violence, will contribute significantly to this endeavor.**

**We all understand that work is not merely a means of earning a living; it is a fundamental prerequisite for economic stability and survival, not only for individuals but also for their families and communities. Anything that threatens or disrupts access to work consequently hinders the socio-economic progression and well-being of individuals.**

**The importance of creating a work environment free from harassment and violence cannot be overstated,**

**as these issues directly threaten the dignity and economic advancement of workers.**

**The right to a workplace free from violence and harassment is enshrined in our constitution and various international instruments and domestic laws, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, ILO Standards and Conventions concerning fundamental rights at work, the African Charter on Human and Peoples' Rights, the Maputo Protocol, the Employment Act, and the Sexual Offences Act, among others.**

**In line with our commitment to combat violence and harassment in the workplace, the University of Nairobi has implemented a comprehensive Harassment Prevention and Procedure Policy. This policy provides for an anonymous reporting system and enshrines procedures for fair hearings and remedial actions against perpetrators.**

**Furthermore, we engage in regular sensitization campaigns to raise awareness among all stakeholders about the importance of a safe workplace. We are the only learning institution in Kenya that has established a Gender Based Violence**

Page | 10

**(GBV) Recovery and Resource center at our University Health services.**

**Our security personnel undergo training to effectively respond to incidents of workplace violence and harassment.**

**Additionally, our various faculties, particularly the Faculty of Law, play a proactive role in public sensitization, including initiatives like Legal Aid Days where we provide pro bono legal assistance. We collaborate closely with staff unions to ensure that any complaints regarding violence and harassment**

are addressed promptly and effectively in line with our progressive workplace policies.

As we convene here today, the University of Nairobi stands in solidarity with our partners and stakeholders, advocating for Kenya's ratification of ILO Convention No. 190—the first-ever international treaty specifically addressing the elimination of violence and harassment in the workplace, accompanied by Recommendation No. 206. The effective implementation and mainstreaming of the provisions of this Convention within our institution are vital steps towards ensuring a workplace

Page | 12

environment where dignity and the right to work free of harassment and violence are upheld.

Let us leverage this Symposium to reinforce our collective resolve to make these ideals a tangible reality. Together, through collaboration, sharing of ideas, and commitment to policy change, we can foster an environment that honors the rights of every worker in our communities and beyond.

Thank you for your presence here today, and for your dedication to this crucial cause. Let us work together towards a brighter and more equitable future in the world of work.



**Once Again, Welcome to ELRASE – 2.**

**Thank you.**

**PROF. M. JESANG HUTCHINSON**

**VICE-CHANCELLOR (AG.)**

**& PROFESSOR OF HORTICULTURE**

9.9.6 Speech by Mr. Mwaura Kabata, Vice President of the Law Society of Kenya



**SPEECH FOR MR. MWAURA KABATA, VICE PRESIDENT OF THE LAW SOCIETY OF KENYA AT THE EMPLOYMENT AND LABOUR RELATIONS ANNUAL SYMPOSIUM AND EXHIBITION (ELRASE II)**

*Honorable Chief Justice, distinguished judges, esteemed members of the Employment and Labour Relations Court, representatives of the International Labour Organization (ILO), government officials, legal professionals, esteemed colleagues, distinguished guests, ladies, and gentlemen,*

**Good Afternoon.**

It is both an honor and a privilege to stand before you today at the *Employment and Labour Relations Annual Symposium and Exhibition (ELRASE II)*, as a representative of the Law Society of Kenya (LSK) and on behalf of our President, Ms. Faith Odhiambo, who unfortunately could not join us due to an important international engagement for the Society. She sends her heartfelt regards and wishes this event tremendous success.

I would like to begin by commending the Employment and Labour Relations Court for organizing this symposium under the theme *“The Role of the Employment and Labour Relations Court in Fostering the Right to a World of Work Free from Violence and Harassment, Including Gender-Based Violence and Harassment.”* The theme reflects not only the progressive nature of our courts but also the continued commitment of all stakeholders to protect human dignity, advance labor rights, and foster a safer work environment for every Kenyan.

This event is particularly significant as it builds on the incredible foundation laid during the inaugural symposium held last year, which marked 11 years since the Employment and Labour Relations Court was

1

established under the Constitution of Kenya, 2010. I would like to extend our heartfelt congratulations to the Court on this milestone. Over the years, this Court has established itself as a pillar of justice in labor relations, developing jurisprudence that has shaped and safeguarded the labor rights of countless Kenyans.

As the Law Society of Kenya, we deeply appreciate the centrality of this year’s theme, which highlights the urgent need to mainstream *ILO Convention 190 (C190)* and *Recommendation 206 (R206)* into Kenya’s domestic legal framework. Violence and harassment, particularly gender-based violence and harassment, remain grave challenges in the world of work. This symposium provides an invaluable platform to examine the local and comparative jurisprudence on this matter, as well as explore sector-based experiences on how to better implement these international standards.

The judiciary’s efforts to highlight these issues, particularly through the Employment and Labour Relations Court, are a commendable reflection of its leadership in advancing human rights in the workplace. I am confident that the outcomes of this symposium will not only contribute to a stronger legal framework but will also spur the adoption of best practices in tackling violence and harassment in every industry and sector in Kenya.

Beyond the legal issues at hand, today and tomorrow’s discussions come at a crucial time when stakeholders across various sectors must engage in collective action to eliminate workplace violence and harassment. We must ensure that the legal protections for workers are not only in place but also enforced with diligence and sensitivity. The insights and deliberations shared here will be critical in strengthening our national commitment to protecting workers, promoting gender equality, and ensuring a safe work environment for all.

The launching of key policy documents during this symposium—the *Employment and Labour Relations Court (Procedure) Rules, 2024*, the *Conciliation Manual for the Employment and Labour Relations Court*, and the *Registry Operations Manual*—marks another important step in advancing the rule of law and

2

enhancing efficiency within the Court. These documents represent significant strides in ensuring that justice is delivered efficiently and effectively, and I look forward to seeing how they will positively impact the administration of labor justice in Kenya.

I also want to express my anticipation for the rich contributions that the participants of this symposium will bring forward. The breadth of expertise and experience in this room is vast, and I am confident that the discussions will yield valuable recommendations that can inform policies and practices for many years to come.

As we engage in these discussions, let us also reflect on the tremendous progress the Employment and Labour Relations Court has made in the last 11 years. From protecting the rights of vulnerable workers to fostering industrial harmony, the Court has played a critical role in shaping labor jurisprudence in Kenya. On behalf of the Law Society of Kenya, I wish to thank the Court for its tireless efforts in promoting justice, fairness, and dignity in the workplace. We, as the legal fraternity, pledge our continued support and collaboration to further these goals.

In conclusion, I look forward to the invaluable insights and deliberations that will emerge from this symposium. I trust that they will inspire action and lead to meaningful progress toward creating a world of work that is free from violence, harassment, and inequality. Let us remain steadfast in our resolve to protect the most vulnerable and to ensure that every worker in Kenya enjoys their fundamental rights to safety, dignity, and respect.

Once again, congratulations to the Employment and Labour Relations Court for 11 years of stellar service, and to all participants, I wish you fruitful discussions and a successful symposium.

**THANK YOU.**

## 9.9.7 Remarks by Ms. Jacqueline Mugo, EBS, CEO Federation of Kenya Employers

### TALKING POINTS DURING THE OPENING CEREMONY OF ELRASE II – 16<sup>TH</sup> SEPTEMBER, 2024.

"FKE as a stakeholder and player in the engagement and development of steps towards giving effect to the letter and spirit of C190 with respect to a workplace free from harassment and violence including gender based violence and in line with international labour standards and acceptable conditions of work".

#### Salutations and Protocols

- The Hon. CJ & President of the SCORK
- The Hon. Dep. CJ & President of the SCORK
- The Hon. President of the COA
- The Hon. Presiding & Principal Judges of the various Divisions of the HC
- The Hon. Judges of ELRC
- The Hon. Social Partners and other Stakeholders in the I.R field
- Distinguished Guests

#### CONGRATULATORY MESSAGE

- ❖ The family of employers through their premiere organisation the FKE and well as the secretariat congratulates the ELRC for the occasion of the second edition of the Employment and Labour Relations Annual Symposium and Exhibition, 2024.
- ❖ The ELRC grew from its infancy having been birthed by Article 162(2) of the COK, 2010 and has made tremendous steps in the last 13 years through a robust engagement in emerging issues that affect the world of work.
- ❖ One such issue is harassment and violence including gender-based violence at the workplace, which is one of the major challenges at the workplace globally. It is multi-faceted as it is perpetrated in the course of, linked with or arising out of work.
- ❖ This is wide enough to be seen in the context of mostly between employees themselves – either as between a senior employee in management position as against employees in lower positions or between employees in the same rank. It can similarly be discerned and usually manifest itself at the point of recruitment, promotions or generally career growth or in day-to-day operations particularly where it is connected to favours, enhanced remuneration or generally benefits to be awarded to victims.
- ❖ The IOE fully supported Convention 190. The Federation of Kenya Employers, being a major player in the IOE actually chaired a session in the run up to the adoption C190 on the 21<sup>st</sup> June, 2019 in Geneva.
- ❖ At the time, some of the key issues that were highlighted and which ultimately formed the pillars of the declaration of workplace free from harassment and violence included;

1. Establishment of the right of everyone to a world of work free from violence and harassment, including gender-based violence and harassment.
2. A comprehensive definition which covers a wide range of unacceptable behaviours and practices that aim at, result in or likely to result in physical, psychological, sexual or economic harm.
3. The scope of the application – in terms of covering public and private, and to all workers irrespective of their contractual status. This include workers in both formal and informal sectors, trainees, interns, volunteers, job seekers and employees exercising managerial responsibilities.
4. Preventive Measures: Members are required to adopt laws and regulations to prevent violence and harassment in the workplace.
5. **Provision of support, services and remedies** for victims of violence and harassment including complaint mechanisms, dispute resolution and access to justice.
6. Training and Awareness: It emphasizes the importance of training and awareness-raising activities to prevent violence and harassment in the workplace<sup>2</sup>.
7. Monitoring and Enforcement: Members are required to ensure effective monitoring and enforcement of national laws and regulations related to violence and harassment in the workplace<sup>2</sup>.

Convention 190 is a landmark treaty aimed at creating safer and more respectful workplaces globally.

- ❖ Though adopted 5 years ago, C190 has not been ratified nor domesticated in Kenya. The scope of section 6 of the Employment Act, 2007 dealing with Sexual Harassment is not wide enough to cover the various manifestations that harassment and violence including gender-based violence entail. In fact, section 6 of the Employment Act, 2007 deals with just one form of harassment.
- ❖ Through ELRASE II, I wish to observe that this is the first time a structural conversation has been initiated where major stakeholders are giving different perspectives on the issue of harassment and violence including gender based violence at the workplace. Some of our members who have had first-hand experience with harassment and violence at the workplace are here and I hope they will be given an opportunity to tell us what they have experienced and what measures they are putting in place to counter such challenges.

- ❖ Workplace harassment and violence including gender-based violence is a complex silent problem. It is complex because it goes to the root of the social dynamics of employer – employee relationship.
  - The twin social construction of employment
  - The cultural inhibitions of freely talking about what are perceived as taboo subjects, including gender-based violence.  
...and therefore,
- ❖ This calls for creation of awareness on what constitutes harassment and violence at the workplace and the extent of its manifestation.
  
- ❖ Compliance with statutory and constitutional provisions is an important obligation placed on the shoulders of employers, including but not limited to ;
  - a) Creating a safe work environment free from hazards including harassment and violence
  - b) Putting in place anti-harassment and anti-violence policies that cover the substantive antecedents taking the form of confidentiality, protection and sanctions against perpetrators.
  - c) Training and education geared to recognizing, preventing and addressing harassment and violence including sanctions to perpetrators.
  - d) Reporting mechanisms which are accessible, confidential and involve multiple channels.
  - e) Prompt, thorough and impartial investigations.
  - f) Proper documentation of complaints, investigations and training sessions.
  
- ❖ There is need to prepare ourselves as a country. Ratification is one thing, but domesticating and implementing C 190 is a different thing altogether. There is need for an overall change in the country's mindset. A need to have a relook at our value systems is a prerequisite. The social permutations at the family level, at the community level and at the national stage will afford us a dispassionate and objective platform to have a conversation on the letter and spirit of C190.
  
- ❖ In the course of these conversations, we must focus on collaboration and partnership instead of blame game when dealing with incidences of harassment and violence including gender-based violence.
  
- ❖ It is only then that we shall cultivate strong values including mutual self-respect not only at the workplace but even outside the workplace. Indeed one cannot inculcate morality at the workplace if the national psyche is devoid of the same. It must be manifest in the way we conduct public service, our businesses and the way we shape future employees to grow the economy of our country.

## The Role of the ELRC in Enforcing C190.

- ❖ The Court plays a crucial role in fostering a work environment free from violence and harassment by ensuring that national laws and regulations as well as other instruments of engagement like HR Policy Manuals and CBAs are enforced and that workers' rights are protected. The role of the Court includes and is not limited to:
  - ❖ **Adjudication of Cases:**

The Court hears and resolves disputes related to workplace violence and harassment. This includes cases where employees allege that their rights to a safe and respectful work environment have been violated. Such allegations must be proven on a balance of probability, while encouraging employers to put in place safeguards to curb such violations. This is important because it cannot be a policy of an enterprise to perpetuate such vices. They manifest themselves in the human resource management at the workplace.
  - ❖ **Enforcement of Laws:**

The court ensures that employers comply with national and international laws as well as other documents of engagement which aim to eliminate violence and harassment at the workplace.
  - ❖ **Setting Precedents:**

Through its rulings and judgment and without the risk of jurisdictional overreach, the Court may be called upon to set legal precedents that guide future cases and influence workplace policies. These precedents help establish clear standards for acceptable behaviour and the consequences of violations.
  - ❖ **Promoting Awareness:**

By addressing cases of violence and harassment through a forum such as ELRASE, Open Days and Court Users Committee, the Court raises awareness about these issues and the importance of maintaining a safe work environment. This can lead to broader cultural changes within enterprises.
  - ❖ **Providing Remedies:**

The Court may in deserving cases order remedies for victims, such as compensation, reinstatement, or other corrective actions. This not only helps the victims but also serves as a deterrent to potential violators.

By fulfilling these roles, the ELRC will have played a big role in creating a safer, more respectful, and equitable work environment for all employees.

The Federation in its Organizational Development services to its members undertake trainings on international labour standards that tends to deter them from entertaining such vices.

The Federation also assist its members in review of its policies and instruments of engagement and in the process ensure that best practices and international labour standards and acceptable conditions of work are incorporated in such documents.

This forms one of the foremost measures we have put in place to mainstream a workplace free from violence and harassment.

Some of our membership events are tailored to incorporate thematic areas that deal with best practices. Employer of the Year Awards (EYA) is such event where such international labour standards and acceptable conditions of work form the core areas of assessment.

The Federation is a believer in social justice and is ready to be an active participant in this conversation to make our workplaces free from any form of violence and harassment.

#### EPILOGUE

- ❖ Balancing the rights of employers and employees require an environment where all parties who approach the Court must respect the authority of our Courts and be assured of a fair hearing. But at the same time, as employers, we look forward to engaging in this conversation from the context of a moral obligation as a country. Only then can we have a workplace devoid of harassment and violence including gender-based violence.
- ❖ This is the surest way we can attract investors and create a prosperous economy and a sector that upholds decent work agenda.

Thank you!!

**Jacqueline Mugo**  
**EXECUTIVE DIRECTOR/CEO**

9.9.8 Remarks by Ms. Caroline Khamati Mugalla, ILO Director, Country Office, Dar es Salaam



Opening Remarks by:

Ms. Caroline Khamati Mugalla – ILO Director: Country Office, Dar Es Salaam

September 16, 2024

<b>Event:</b>	The Second Employment and Labour Relations Annual Symposium and Exhibition (ELRASE 2) at the University of Nairobi
<b>Protocol:</b> <i>As appropriate</i>	<ul style="list-style-type: none"> <li>▪ Honourable Justice Martha K. Koome, EGH, Chief Justice and President of the Supreme Court of Kenya</li> <li>▪ Right Honourable (Dr) Moses Masika Wetang'ula, EGH, MP, Speaker of the National Assembly</li> <li>▪ Honourable Dr Alfred Mutua, EGH, Cabinet Secretary, Ministry of Labour and Social Protection (MOLSP)</li> <li>▪ Her Excellency Anne Waiguru, EGH, Chairperson, Council of Governors</li> <li>▪ Ms. Jacqueline Mugo, EBS, CEO Federation of Kenya Employers (FKE)</li> <li>▪ Doctor Francis Atwoli, NOM (DZA), EBS, MBS, Secretary General of the Central Organization of Trade Unions (COTU)</li> <li>▪ Honourable (Dr) Justice Smokin Wanjala, CBS, Supreme Court Judge and Director, Kenya Judiciary Academy (KJA)</li> <li>▪ Honourable Justice G.V. Odunga, Judge, Court of Appeal</li> <li>▪ Honourable Justice Byram Ongaya, Principal Judge, Employment and Labour Relations Court, Kenya</li> <li>▪ The Vice Chancellor of the University of Nairobi</li> <li>▪ Ambassador Antony M. Muchiri, Chairperson, Public Service Commission</li> <li>▪ Honourable Winfridah Boyani Mokaya, Chief Registrar of the Judiciary</li> <li>▪ Mr. Thomas Koyier, EBS, Ag. Chairperson, National Gender and Equality Commission</li> <li>▪ Mr. Mwaura Kabata, Vice President of the Law Society of Kenya</li> <li>▪ Honourable Judges and Officers of the Court</li> <li>▪ Distinguished Ladies and Gentlemen</li> </ul>

► Acknowledge with appreciation

- It is an honour to stand before you today at this significant gathering, the 2nd Employment and Labour Relations Annual Symposium and Exhibition (ELRASE), on behalf of Ms Caroline Khamati Mugalla, director of the International Labour Organization (ILO) Country Office for the United Republic of Tanzania, Burundi, Kenya, Rwanda and Uganda.
- I would like to take this opportunity to acknowledge the strong partnership between the ILO and the Employment and Labour Relations Court (ELRC), which has been instrumental in advancing the promotion and application of International Labour Standards and realizing decent work in the Republic of Kenya.



- Today, we gather to debate an issue that is both pressing and universal: the effective realisation of the right to a world of work free from violence and harassment, including gender-based violence.
- This year's symposium theme resonates deeply with ILO's mission, namely promoting social justice and internationally recognized human and labour rights.
- I, therefore, extend a warm welcome to each one of you. The successes of initiatives such as this rest on solid partnerships, and we look forward to continuing our collaborative efforts to advance our normative mandate and empower our judiciary.
- Since its creation in 1919, the ILO has relied on its standard-setting function as an instrument to promote social justice and universal peace. The Organization, established by the Treaty of Versailles in 1919, is the first specialized agency of the United Nations system. Among its unique defining organizational features is its tripartite structure, which brings together representatives of Governments, Employers, and Workers of its now 187 Member States to set International Labour Standards, develop policies, and devise programs promoting decent work for all women and men.
- The Republic of Kenya has been an active ILO Member State for 50 years since 1964 and continues to play a critical role in the activities of the Organization. It has ratified 52 Conventions, of which 39 are in force, including seven fundamental conventions, three governance conventions, and 27 technical conventions, which testifies to its commitment to promoting decent work and social justice and, more specifically, to be bound by the provisions of several treaties under international law and subject to regular international control of the application of the provisions of ratified instruments in both law and practice
- Our efforts today are not isolated; rather, they reflect the Organization's broader work. The ILO has been at the forefront of advancing International Labour Standards globally, and this collaboration is a testament to our shared commitment to promoting justice, fairness, and upholding the rights of workers.
- It is, therefore, significant to see in our midst the tripartite representation of the organizations' national constituents and key partners in Kenya, and I take this opportunity to appreciate the constant support and patronage from the Ministry of Labour and Social Protection, the Federation of Kenya Employers (FKE) and Central Organization of Trade Unions Kenya (COTU-K).



- We express our gratitude to Honourable Martha Koome, Chief Justice and President of the Supreme Court of Kenya, and the Judiciary for their ongoing engagement. The Judiciary plays a pivotal role in upholding justice, and we look forward to continuing our collaborative efforts to advance labour standards and empower our judiciary.

► **As I conclude,**

- The ILO remains committed to supporting promotional efforts towards the ratification of other pertinent International Labour Standards complementing the Violence and Harassment Convention, 2019 (No. 190). I therefore note and appreciate the ongoing work through the Ministry of Labour towards the ratification of three fundamental instruments, namely the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Occupational Safety and Health Convention, 1981 (No. 155), the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), as well as five technical conventions, the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Labour Administration Convention, 1978 (No. 150), the Domestic Workers Convention, 2011 (No. 189), and the Private Employment Agencies Convention, 1997 (No. 181).
- As we move forward with the symposium's discussions, let us remain steadfast in our commitment to eliminating violence and harassment in the world of work. By mainstreaming Convention No. 190 and its accompanying Recommendation No. 206, we are taking a decisive step towards realizing the right to a world of work free from violence and harassment within and beyond Kenyan borders.
- I sincerely thank the Employment and Labour Relations Court for organizing this event, and I look forward to the fruitful deliberations ahead.



**REFERENCE NOTES FOR THE AG. CHAIRPERSON, NATIONAL GENDER AND EQUALITY COMMISSION, COMMISSIONER THOMAS KOYIER, EBS DURING THE EMPLOYMENT AND LABOUR RELATIONS ANNUAL SYMPOSIUM AND EXHIBITION (ELRASE II)**

Dates: 16th – 17th September 2024 VENUE: University of Nairobi, Chandaria Auditorium

1. Hon. Justice Martha K. Koome, EGH, Chief Justice and President of the Supreme Court of Kenya;
2. Rt. Hon. (Dr.) Moses Masika Wetang'ula, EGH, MP, Speaker of the National Assembly;
3. Hon. Dr. Alfred Mutua, EGH, Cabinet Secretary of the Ministry of Labour and Social Protection;
4. H.E Anne Mumbi Waiguru, EGH, OGW., Chairperson Council of Governors;
5. Hon. Lady Justice Philomena Mbete Mwilu, MGH, Deputy Chief Justice and Vice President, Supreme Court of Kenya;
6. Hon. Justice (Dr.) Smokin Wanjala, CBS, SCJ, Supreme Court Judge and Director, Kenya Judiciary Academy (KJA);
7. Hon Justice Daniel Musinga, CBS, FCI Arb., President Court of Appeal;
8. Hon. Mr. Justice Byram Ongaya, Principal Judge Employment and Labour Relations Court, Kenya;
9. Amb. Anthony M. Muchiri, Chairperson, Public Service Commission;
10. Prof. Dr. Margaret Hutchinson, PhD. Vice Chancellor, University of Nairobi;
11. Dr. Francis Atwoli, NOM (DZA), EBS, MBS, Secretary General of Central Organizations of Trade Unions (COTU);
12. Hon. Winfridah Boyani Mokaya, Chief Registrar of the Judiciary;
13. Ms. Jacqueline Mugo, EBS, CEO, Federation of Kenya Employers,
14. Faith Odhiambo, President, Law Society of Kenya;
15. Honorable Judges and Magistrates, lecturers and University Professors
16. Honorable Participants with specific reference to our students
17. Distinguished guests, Ladies and Gentlemen

**Good afternoon!**

It gives me great honor to address you today at the *Employment and Labour Relations Annual Symposium and Exhibition (ELRASE II)*. At the onset, allow me to congratulate the Judiciary for organizing this event, which comes at a pivotal

time in our national journey toward dignity and equality in the world of work. Thank you for inviting the National Gender and Equality Commission.

As a Commission, we are proud to be associated with the Judiciary, particularly in recognition of your outstanding efforts in gender mainstreaming within the judicial system. I would like to specifically commend the Kenya Women's Judges Association for their lead role in advocating for greater gender equality and inclusion in the judiciary. Also the Chief Justice for the remarkable achievements in promoting women in judicial systems at 50: 50 Mark. Your collective efforts have positioned the Judiciary as a trailblazer in fostering a more equitable and inclusive environment across all aspects of the judicial system. I speak with authority on this commendation because NGECE has audited Judiciary and walked with them a journey of implementation of our findings.

### **Distinguished Guests, Ladies and Gentlemen**

The theme of this symposium, *"The Role of the Employment and Labour Relations Court in Fostering the Right to Work Free from Violence and Harassment: including Gender-Based Violence and Harassment,"* speaks to the most pressing issues in today's labor environment. The sub-theme focusing on the *mainstreaming of ILO Convention 190 (C190) and Recommendation 206 (R.206)* reminds us of the shared responsibility we bear in ensuring safe, inclusive, and dignified workplaces, free from violence and harassment.

### **Distinguished Guests, Ladies and Gentlemen**

This convention, alongside Recommendation 206, provides an international framework to address these issues by promoting a culture of zero tolerance toward violence and harassment in the world of work.

I note with pride that this is the fifth time that NGECE is keenly discussing Kenya's need to ratify the C190.

- a) The first time was June, 2021 in Paris when Kenya made 12 commitments under Generation Equality Forum (GEF). Commitment number 3 was ratify C190 by 2026 and so far we have reviews on our performance in GEF.
- b) Second time NGECE gave an advisory to Ministry of Labour in 2022 following a legal scan that showed no conflict of this convention with our domestic laws/constitution

- c) Third time as a joint effort led by President's Advisor on Women's Rights, Hon. Harriette Chiggai (2023)
- d) Fourth time was joint effort led by the Office of the Deputy President in March 2024 to expedite the process of ratification before May 1, 2024
- e) And now, 2024 by the Employment and Labour Relations Court-the conference.

The National Gender and Equality Commission (NGEC) fully supports the ratification and implementation of C190. We encourage the Ministry of Labour with the support of all other stakeholders to fast-track the ratification process. On our part as NGEC, we commit to continue advocating for the development of workplace gender mainstreaming and GBV policies, providing advisories, conducting gender based analysis plus (GBA+), conduct gender audits and strengthening the capacity of institutions to handle cases related to violence and harassment at work.

### **Distinguished Guests, Ladies and Gentlemen**

#### **As I conclude,**

I congratulate the Judiciary for development of the *Employment and Labour Relations (Procedure) Rules, 2024*; the *Conciliation Manual for the Employment and Labour Relations Court*; and the *Registry Operation Manual for the Employment and Labour Relations Court*. These documents mark a major stride in strengthening institutional capacity and promoting fair access to justice. Further I thank you CJ for your tireless mission of institutionalizing Alternative Dispute Resolution Mechanisms, and Installation of SGBV courts in our County. Our vulnerable populations shall benefit from improved access to justice.

Thank you.

God bless you  
God Bless Kenya

**Commissioner Thomas Koyier, EBS**

## 9.10 ANNEX 9

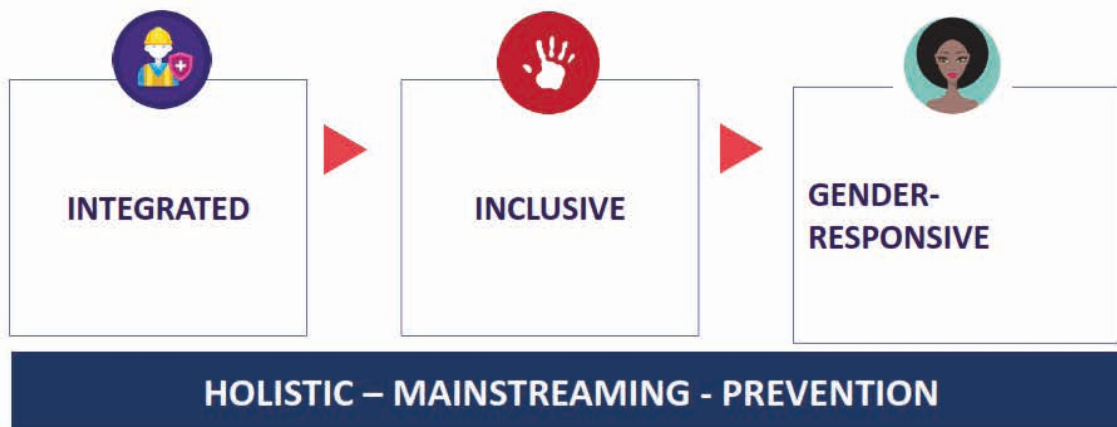
### SOME OF THE ACTUAL PRESENTATIONS BY PANELISTS AND DISCUSSANTS DURING THE ROUND TABLE SESSIONS

#### 9.10.1 Roundtable 1 Presentations

##### 9.10.1.1 Presentation by Ms. Ida Chimedza, Gender Specialist, ILO



### GUIDING PRINCIPLES



## COUNTRY EXAMPLES

**Lesotho:** The 2020 National Occupational Safety and Health Policy explicitly specifies “violence and harassment” as one OSH issue that every organization or individual involved with distribution and transport shall be required to pay attention and monitor (Lesotho 2020) (*Integration with OSH*)

**Zimbabwe:** The 2020 National Labour Migration Policy takes into account violence and harassment, and in particular gender-based violence and harassment. The National Policy particularly aims to ensure that labour migrants’ rights during both inward and outward migration – and especially the rights of women labour migrants, who are more vulnerable to gender-based violence, sexual abuse and human trafficking – are upheld in line with the ILO Decent Work. (*Inclusive – marginalised group*)

**EU:** Political agreement also reached on the Directive on combating violence against women and domestic violence in February 2024, which criminalises physical violence, as well as psychological, economic and sexual violence against women across the EU, both offline and online (*gender-responsive*)

International Labour Organization (ILO) | C190



## EVIDENCE GENERATION

### Understanding the Context

- Country / Sector / Enterprise or organisation or Department
- Research, Surveys, Studies – with gender disaggregated data

### Drivers –

- poverty, power dynamics, discriminatory social norms eg toxic masculinities, religious practices, gender inequality
- Sector specific – seasonal workers, precarious contracts etc

### Risk assessments – for different work streams, contracts

### Inter-sectionality of vulnerabilities

- Persons with disabilities, women, young workers,

### Impact

- Business case eg Reactive vs Preventive very costly eg Tea case with BBC
- Monitoring and Evaluation
- Impact at individual and organisational levels

International Labour Organization (ILO) | C190



## COUNTRY EXAMPLE

**Australia:** Effective 12 December 2022, the Sex Discrimination Act 1984 was amended to include a positive obligation to eliminate sexual harassment. Under the new provisions, an employer or person conducting a business or undertaking (duty holder) must take "reasonable and proportionate measures" to eliminate sexual harassment, sex-based harassment, conduct that subjects a person to a hostile work environment and victimization as far as possible. The meaning of 'reasonable and proportionate measures' includes implementing policies and procedures, *collecting and monitoring data*, providing appropriate support to workers and employees, and delivering training and education on a regular basis.

International Labour Organization (ILO) | C190



## LEGAL and POLICY FRAMEWORKS

- At national level - Coordination
- Clear and standardised definitions and alignment with C190
- Alignment of laws and policies – including with constitution –
- Expedition of GBVH cases – upholding confidentiality
- Tripartite+ stakeholder engagements
- National Workplace Policies and Strategies and Standardised Tools
- Roles and Responsibilities of Stakeholders defined
- Partnerships, including Public-Private Partnerships
- Sanctions – Deterrent

International Labour Organization (ILO) | C190



## COUNTRY EXAMPLES

**Jordan:** A new labour law in June 2023 defining and prohibiting sexual harassment at work was adopted, and the country introduced measures to support, among others, lactating and pregnant workers.

**South Africa:** The Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace came into effect on 18 March 2022. Harassment is defined as unwanted conduct which impairs dignity, creates a hostile or intimidating work environment, or has the effect of inducing submission through actual or threatened adverse consequences, which includes psychological, emotional, sexual, gender-based and racial abuse.

**Chile:** In August 2024, the so-called Karin Law (in honour of Karin Bolaños, a worker who tragically took her own life after falling victim to workplace harassment) against workplace harassment was enacted.

International Labour Organization (ILO) | C190



## RESPONSE at SECTOR and ENTERPRISE LEVELS

- **Systemic**
  - Policies that are comprehensive, inclusive, and promote transformative change
  - Mainstreamed in Collective Bargaining Arrangements
  - Address risks from infrastructure, work arrangements – remote, lighting,
- **Behavioural**
  - Regular education and awareness trainings; Gender Champions; Personal accountability; dressing; interrogate harmful social norms
- **Reporting, Investigation, Resolution Mechanisms**
  - Accessible reporting channels eg multiple, hot-lines;
  - Timely, Unbiased, Confidential, Transparent, Investigation and resolution processes
- **Referral Pathways**
  - Internal and External through partnerships
  - Comprehensive – health, psycho-social, safety, legal
- **Enforcement**
  - Hold perpetrators accountable and ensure consistent enforcement of consequences

International Labour Organization (ILO) | C190



## COUNTRY EXAMPLES

**Ireland:** Trade unions negotiated for workplace policies to support survivors of domestic violence, leading to the adoption of progressive workplace policies in the financial services, communications and postal sectors

**Canada:** Ministry of Employment and Social Development Canada established the Workplace Harassment and Violence Prevention Fund to support behavioural changes in the workplace, including the development of tools, resources, and training materials for various workplaces across different sectors in 2022 . These projects help workplaces comply with the Workplace Harassment and Violence Prevention Regulations and legislation, in force since January 2021, to protect employees from harassment and violence in federally regulated workplaces.

**Japan:** Campaign Against Unreasonable Complaints launched by the Japanese Federation of Textile, Chemical, Commerce, Food and General Services Workers' Unions (UA Zensen) from 2017 secures better protection for commerce workers in Japan.

International Labour Organization (ILO) | C190



## THANK YOU

**International Labour Organization**

(<https://www.ilo.org/global/lang--en/index.htm>)

## Understanding the scope of Convention 190, Recommendation 206 and the extend they are provided for in the Constitution of Kenya

A PAPER PRESENTED BY HON LADY JUSTICE HELLEN WASILWA DURING THE  
ELRASE 2 ON THE 16<sup>TH</sup> SEPTEMBER 2024 AT THE UON TAIFA HALL

### Ratification and constitutional backing

2

- ▶ Convention 190 and its subsequent recommendation 206 have not been ratified by Kenya. However, its ratification and subsequent implementation enjoy backing of the constitution through Article 2(5) of the Constitution of Kenya that provides that general rules of international law shall form part of the law of Kenya and Article 2(6) provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya.

16/09/2024

### Constitutional provisions outlawing harassment and violence at work

3

- **Article 10(2)** of the Constitution provides that the national values and principles of governance shall include human dignity, human rights, equity, social justice, non-discrimination and protection of the marginalized.
- **Article 22(1)** provides that every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened. The provisions of the Conventions shall thus be subject, if need arises in the aforementioned circumstances, to litigation before competent courts of law in Kenya.

16/09/2024

4

contd

- **Article 25** provides inter alia for the rights and fundamental freedoms that shall not be limited, they include: Freedom from torture and cruel, inhuman or degrading treatment or punishment; and Freedom from slavery or servitude.
- **Article 26** on the right to life.
- **Article 27** on the right to equality and freedom from discrimination.
- **Article 28** on the right to human dignity.

16/09/2024

5

contd

- **Article 29** on the right to freedom and security of the person from among other being subjected to any form of violence from public or private sources, subjected to torture in any manner, whether physical or psychological; subjected to corporal punishment or treated or punished in a cruel, inhuman or degrading treatment.
- **Article 30** on freedom from slavery, servitude and forced labour.
- **Article 32** on freedom of conscience, religion, belief and opinion.

16/09/2024

6

contd

- **Article 41** on the right to fair labour practices such as fair remuneration, reasonable working conditions, to form, join and participate in trade union activities and to go on a strike.
- **Article 43**, that provides for the Economic and social rights such as highest attainable Health, adequate housing, adequate food, social security, education and clean safe water.

16/09/2024

7

- **Article 47** on the right to fair administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.
- **Article 48** on right to Access to justice.
- ▶

16/09/2024

## Interpretation of the constitutional provisions

8

- ▶ Hon CJ (emeritus) Hon Dr Willy Mutunga in his treatise..." The 2010 constitution of Kenya and its interpretation; Reflections from the Supreme Courts decisions(vol 1, 2015) SPEJU 16" stated as follows:-
- ▶ *"Our constitution cannot be interpreted as a legal-centric letter and text. It is a document whose text and spirit has various elements built within its content as amplified by the Supreme Court Act that is not solely reflective of legal phenomena. The content reflects historical, economic, social, cultural and political setting of the country and also its traditions. Reference to Blacks Law Dictionary will not therefore always be enough and references to foreign cases will also have to take into account these peculiar Kenyan needs and contexts"*

16/09/2024

## Art 259 of the Constitution

9

- ▶ "This Constitution shall be interpreted in a manner that--
- ▶ (a) promotes its purposes, values and principles;
- ▶ (b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
- ▶ (c) permits the development of the law; and
- ▶ (d) contributes to good governance.
- ▶ (2) If there is a conflict between different language versions of this Constitution, the English language version prevails."

16/09/2024

10

## Art 259 contd

- ▶ 3, Every provision of this Constitution shall be construed according to the doctrine of interpretation that the law is always speaking and, therefore, among other things--
- ▶ (a) a function or power conferred by this Constitution on an office may be performed or exercised as occasion requires, by the person holding the office;
- ▶ (b) any reference in this Constitution to a State or other public office or officer, or a person holding such an office, includes a reference to the person acting in or otherwise performing the functions of the office at any particular time;
- ▶ (c) a reference in this Constitution to an office, State organ or locality named in this Constitution shall be read with any formal alteration necessary to make it applicable in the circumstances; and
- ▶ (d) a reference in this Constitution to an office, body or organisation is, if the office, body or organisation has ceased to exist, a reference to its successor or to the equivalent office, body or organisation

16/09/2024

11

## conclusion

- ▶ In spite of non ratification which is the way to go, the law provides adequate safe guards which can be relied upon to ensure a work space devoid of violence and harassment.

16/09/2024

9.10.1.3 Presentation by Sr. Melissa Muindi, Lecturer & Academic Director, Strathmore Law School



## *Statutory provisions implementing C190 and R260*

By **Dr. Melissa Muindi**,  
Lecturer & Academic Director,  
Strathmore Law School

### *Employment Act, 2007*

- **Section 6:** Prohibits sexual harassment in the workplace. It requires employers with more than 20 employees to adopt measures to prevent sexual harassment, including a policy against sexual harassment and mechanisms for filing complaints.
- **Section 5:** Protects employees from discrimination on the basis of gender, race, religion, and other factors.

e.g. *CNR v FITM & another* (Respondent) (Cause E204 of 2021) [2022] KEELRC 82 (KLR) (26 April 2022)

## *Sexual Offences Act, 2006*

---

- **Section 23:** Addresses sexual harassment, making it an offence for any person in a position of authority or holding a fiduciary duty to subject another person to unwanted sexual advances.
- Other relevant provisions include **Section 24 and 25**
- E.g. *Mwangi v Director of Public Prosecutions & another; JNM (Interested Party)* (Petition E118 of 2023) [2024] KEHC 7282 (KLR) (14 June 2024) (Judgment)



## *Penal Code (Cap. 63)*

---

- **Part XXIV** provides for the different forms of assault. These can be invoked in the context of physical violence in the workplace.
- E.g. *Purity Karimi & another v Republic* [2020] eKLR

## *The Protection Against Domestic Violence Act, 2015*

---



- **Section 3:** Defines domestic violence broadly, including emotional, verbal, psychological, and sexual abuse.
- What is key is that the people are in a domestic relationship, not the place where the violence manifests.

## *The Occupational Safety and Health Act (OSHA), 2007*

---

- **Section 6:** Places a duty on employers to ensure the safety, health, and welfare of all employees.
- Article 9 of C190: protection against violence and harassment and **associated psychosocial risks** in the management of occupational safety and health



## *The National Gender and Equality Commission Act, 2011*

---



**NGEC**  
National Gender and  
Equality Commission

- This Act establishes the National Gender and Equality Commission, which promotes gender equality and freedom from discrimination, including protection from violence and harassment in the workplace, especially for vulnerable groups like women and persons with disabilities.

## *The Data Protection Act, 2019*

---

- Though primarily focused on personal data protection, the Act contains provisions that could protect employees from misuse of their personal information, which can sometimes contribute to harassment.
- E.g. *Ondieki v Maeda* (Petition E153 of 2022) [2023] KEHC 18290 (KLR) (Constitutional and Human Rights) (31 May 2023) (Judgment)



# Thank you

Any question? 

---

*Contact me through  
mmuindi@strathmore.edu*

## 9.10.2 Roundtable 2 Presentations

### 9.10.2.1 Presentation by Mr. Dickens Ouma, Head of Industrial Relations, Legal & Membership Services

#### MANIFESTATION, EXPERIENCES & MAINSTREAMING OF C.190 AND REC. 206 – ELRASE II – 16<sup>TH</sup> SEPTEMBER, 2024.

##### FKE's PERSPECTIVE

- C 190 came into force in June, 2019 when it was adopted by the International Labor Organization member countries.
- It similarly should be noted at the outset that C 190 has **not been ratified** by Kenya. It is however noted that Article 11 of C 190 gives a window of opportunity and makes it possible to entrench the provisions of the Convention in the national laws, Regulations as well as Collective Bargaining Agreements.
- The Federation of Kenya Employers through its Organizational Development services which seeks to build internal capacities of its members through highlighting on the international labour standards, encourage its membership to embrace best practices in the workplace including putting in place policies that protect employees.
- The Federation similarly when called upon to assist members in reviewing their documents of engagement including HR Policy Manuals, Code of Conduct and even contracts, encourage members to include not only welfare clauses, but such clauses that protect workers, including harassment and violence.
- Whilst there are members in the discussion that will deal with actual situations on the ground, FKE seeks to focus on gender-responsive interventions by employers. These take the form of;
  - a) The employers should **develop and implement clear policies** that explicitly prohibit harassment, violence including gender-based violence. There should be training and/or awareness creation at the time of on-boarding and regular sensitisation. The reporting mechanism must entail accessibility, confidentiality and must be multiple in nature.
  - b) **Cultural change** through inculcation of respect and equality through workshops, seminars and employee engagement. The employees should be equipped with knowledge to identify instances of harassment and violence and intervene when they witness what constitute harassment and violence.
  - c) Employers must put in place structures that ensures **prompt, thorough and impartial investigations**. Disciplinary action against perpetrators including dismissal must be assured as well as support for victims including counselling, legal assistance and time off if needed.
  - d) A **safe and inclusive workplace** that entail physical safety of workplace in terms of light, security, emergency response is encouraged.

In instances of sexual harassment, the reporting structures are usually hampered by cultural considerations that come with being singled out as a victim. The **social stigma** is an impediment which some employers are determined to overcome through empowerment, particularly of the women workers as well as through civic education.



Still some employers identify instances where harassment and violence are rife and take measures to find alternative ways of dealing with it. One area where harassment is likely to be committed is at the recruitment stage and career progress.

**Dickens M. Ouma**

Head of I.R, Legal & Membership Services  
FEDERATION OF KENYA EMPLOYERS

---

2 | Page

9.10.2.2 Presentation by Ms. Anne Ireri, Executive Director, FIDA Kenya



# ELRASE CONFERENCE 2024

Anne W. Ileri  
Executive Director

Visit Our Website  
[www.fida-kenya.org](http://www.fida-kenya.org)



**FIDA - KENYA**  
FEDERATION OF WOMEN LAWYERS IN KENYA



## Manifestations, experiences and mainstreaming of Convention 190 (C190) and Recommendation 206 (R206)

### Context of C190 and R208- manifestation

**FIDA - KENYA**  
FEDERATION OF WOMEN LAWYERS IN KENYA



- Landmark convention and accompanying recommendation that addresses work related violence and harassment adopted in June 2019.
- The convention defines key terms, identifies the scope, lays out its core principles, addresses issues related to protection and prevention, enforcement and remedies, guidance, training and awareness –raising, methods of application and concludes with final provisions.
- Proposals emerging from the convention are further elaborated in Recommendation 206 , providing a pathway to the realization of the convention's progressive provisions.
- FIDA –Kenya alongside other institutions have called on the Government of Kenya to ratify Convention 190 on violence and harassment for the following reasons:
  - Comprehensive definition of what constitutes violence and harassment in the world of work
  - Robust definition of what is meant when reference to the workplace is made
  - Pushes for an inclusive, integrated, gender-responsive approach.
  - Outlines possible ways to enforce ILO 190 and proposes remedies
  - States the means of application of the ILO 190- national law, regulations including collective bargaining agreements or measures

## Progressive provisions of the Convention 190 (C190) and Recommendation 206 (R206)

- Builds on arrange of existing human and women rights treaties including CEDAW as well as Convention 189 that calls for decent work for domestic workers.
- C190 and R206 for the first time in international law recognize the right of all to be free from violence and harassment
- Contain progressive provisions that define work broadly,, freedom from violence, fear and coercion in all areas of related to work include in seeking employment, during work hours as well as breaks.
- They are the first international labour standards to provide a framework for preventing, addressing and elimination violence and harassment in the world of work.

## Experiences of Convention 190 and Recommendation 206

### **Case study of implementation – NAMIBIA/First country to ratify the convention**

- Approach was systematic and inclusive
- There was political will to implement the convention
- The constitution of a working group and a roadmap was prepared
- Research with the assistance of ILO
- Assessment on the extent to the national laws and practice were in compliance with the convention and recommendations
- Mobilized support for ratification through a high-level briefing on the Convention
- Compliance, formalities of ratification and explanatory memoranda
- Public awareness raising
- Ambitious implementation plans through short, medium and long-term strategies
- Training and capacity building

## Mainstreaming recommendations for Kenya for C190 and R206

1. Urgently ratify, domesticate and implement C190 nd R206
2. Make greater investment in quality disaggregated data that reflect the intersectionality of women especially
3. Identify gaps within the existing judicial systems, laws, policies, measures and practices and reform them to be in compliance
4. Establish and strengthen safeguarding policies and practices as well as enforcement and monitoring systems
5. Meaningfully engage and collaborate with disability and WROs and labour unions and movements
6. Mobilize maximum available resources and allocate resources required for implementation through progressive taxation, gender –responsive budgeting and curbing illicit financial flows
7. Carry out popularization to raise awareness on C190 and R206
8. Inculcate a culture if zero tolerance for violence and harassment through shifting and transforming socio-cultural and gender norms
9. Ensure accessibility for PWDs and women in particular including access to information, trainings, tools and redress mechanisms
10. Pay particular attention to places of work such as industrial parks, factories and ports as well as the domestic sphere that are especially prone to abuse and have disproportionately high levels of violence end harassment



9.10.2.3 Presentation by Ms. Linda Oluoch, Chief Executive Officer, Kenya Tea Growers Association



## OUTLINE

1. KTGA Overview
2. Tea Producers and Enterprises Context
3. The Expose`
4. Key Findings & Lessons Learned Root causes of salient/ potential /actual human rights risks /challenges and
5. Solutions and Recommendations.
6. Way forward – Modeling progress: Beyond human rights compliance



Presentation Template

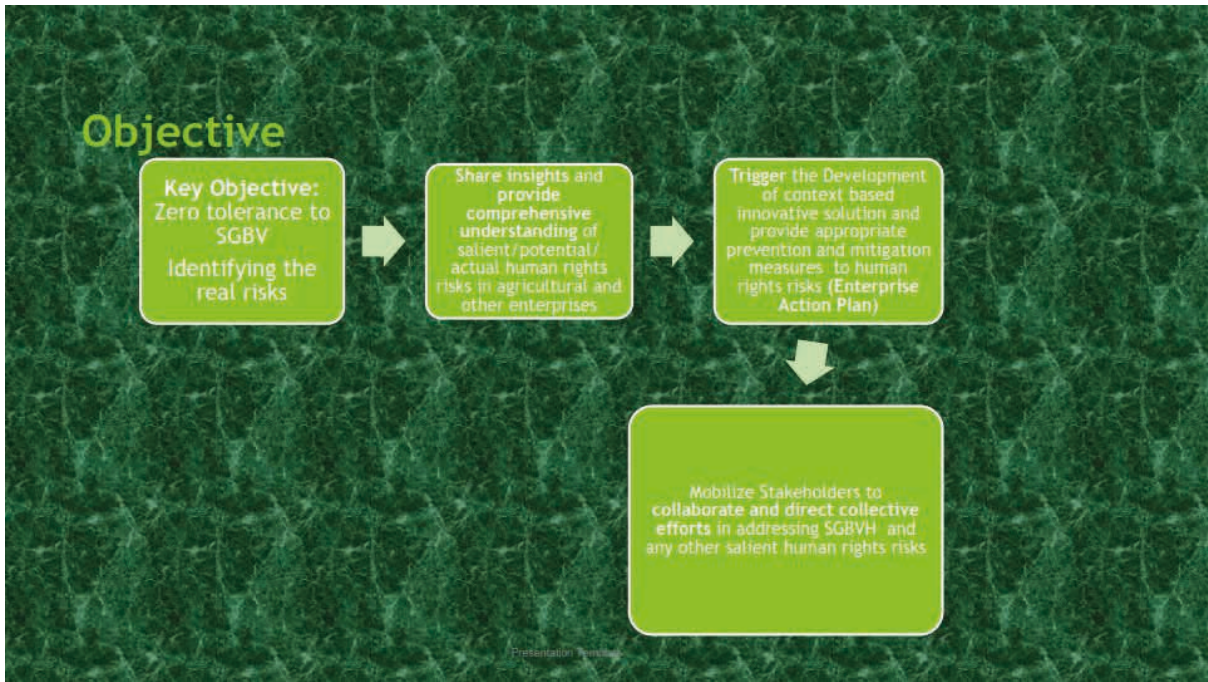
## KTGA OVERVIEW

- Both public and private tea companies- in five Counties: Kericho, Bomet, Nyamira, Nandi, Kiambu (Kisii, Vihiga, Murang'a)
- Advocate for a supportive environment for large-scale tea producers; supporting small-holder out-grower farmers: modelling best practice in sustainable agriculture & Kenya tea production
- Advocate for business and industry sustainability; and ensure decent work and good labour practices

### IMPACT

- **40%** of tea production nationally
- Livelihoods and economic sustainability for over **60,000** out-growers
- Over **35,000** persons: formally waged employees, skilled and unskilled; unionisable and management
- Community initiatives in **education, health, water, environmental stewardship; sustainable land use and innovation** in agricultural production

Presentation Template



## Driving forces for Human Rights and Environmental Due Diligence

- ▶ UN Guiding Principles on Business and Human rights
- Government and Companies as **duty bearers** have a duty to
  - Government to **Protect**
  - Business to **respect** Human rights
  - Business to **remedy** where infringement to human rights occurs
  - The employees and all other relevant third parties are the **rightsholders**

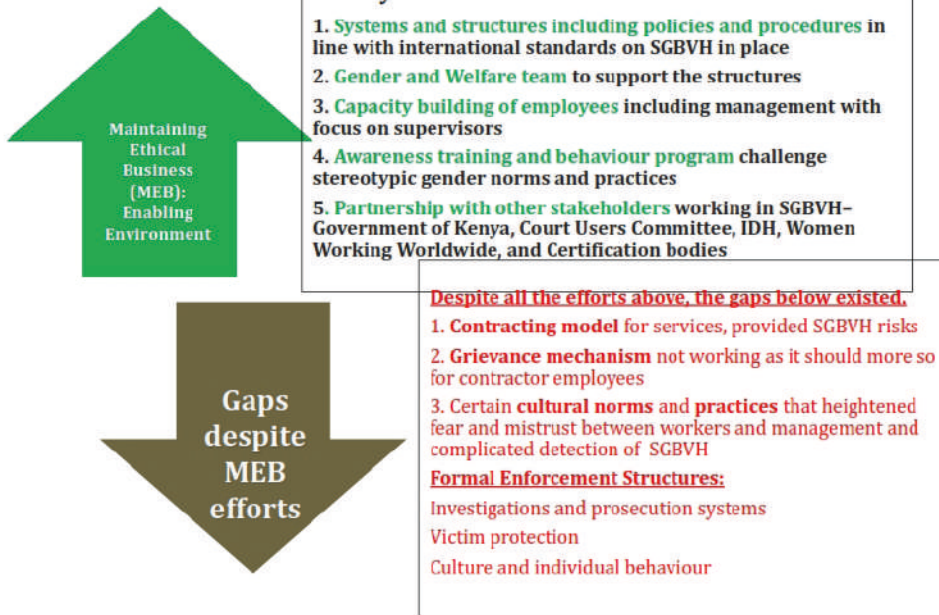


## LEGAL & STANDARDS FRAMEWORK

1. EMPLOYMENT ACT : Sexual Harrassment Policy, Grievance Systems and Processes; Committees
  2. OSHA- OSH Committees
  3. National Action Plan on Business & Human Rights
  4. UN Guiding Principles on Business and Human rights
- ▶ Global Agricultural Best Practices
  - ▶ International Sustainability Frameworks and Standards and Reporting:
    - ▶ **Assess and Address Committees**

Presentation Template

Our Context -Prior to BBC Documentary



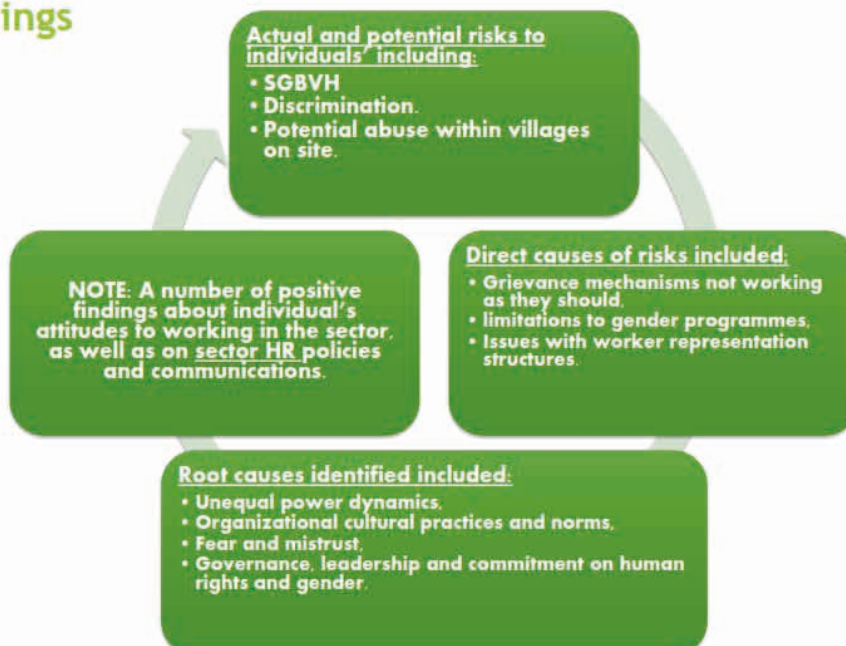
7

AND THEN....

- ▶ Employee Engagement
- ▶ Safeguarding Livelihoods and Psychosocial support
- ▶ Response to alleged perpetrators: Disciplinary & Terminations
  
- ▶ Enhancement of Welfare & Whistle-blowing
- ▶ Contracting model reviewed
- ▶ Independent Investigation
  
- ▶ Remediation Action Plan
- ▶ Protect, Respect, Remedy

Presentation Template

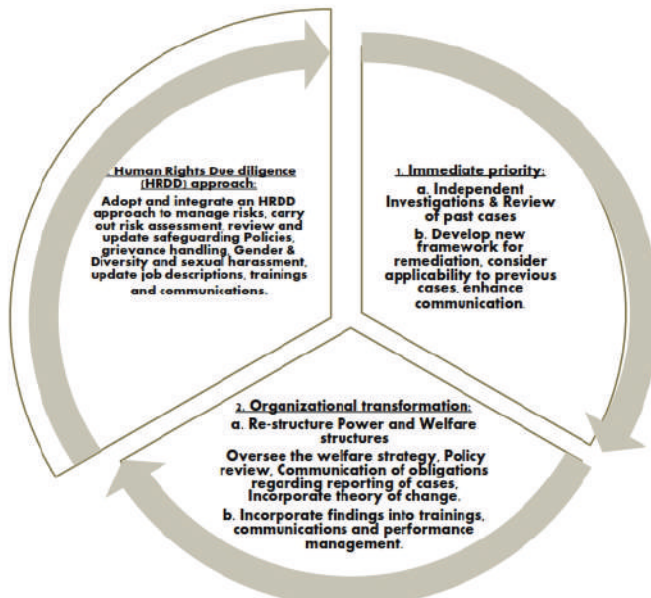
Key Findings



# NOW WHAT?

Presentation Template

## Action Plan: Protect, Respect, & Remedy (Summary)



## PROGRESS OVER COMPLIANCE

- ✓ Embedding Human Rights Due Diligence (HRDD) systems-based approach to preventing, mitigating and addressing human rights risks and impacts, incorporating continuous improvements in Kenya business operations
- ✓ **Training & Awareness creation:** in-house, cross-stakeholder
- ✓ Whistle blowing line
- ✓ **Administrative Restructuring:** welfare department; gender officers and KPIs
- ✓ **Recruitment and selection practices reviewed:** Ballotina in recruitment
- ✓ **No team supervisors:** fewer layers of leadership
- ✓ **KPIs on Human Rights** for senior managers developed and adopted
- ✓ **Messages on zero tolerance** approach to retaliation included relevant communications and forums to workers **on regular basis.**
- ✓ **Regular professional development** and clinical supervision and counselling provided to all members of the **Welfare Team**
- ✓ **M&E - External audit** and measurement of processes, awareness and outcomes
- ✓ **Stakeholder engagements** - Engagement with industry players, customers done government and union officials done.



# QUESTIONS & DISCUSSION

Presentation Template

## MULTISTAKEHOLDER APPROACH



Thank you



*Lindah Oluoch*

*[oluochlindah@ktga.or.ke](mailto:oluochlindah@ktga.or.ke)*



Presentation Template



### 9.10.3 Roundtable 3 Presentations

#### 9.10.3.1 Presentation by Dr. Naomi Njuguna, Senior Lecturer, Faculty of Law University of Nairobi



**EMERGING JURISPRUDENCE ON  
THE RIGHT OF EVERY PERSON TO  
A WORLD FREE FROM VIOLENCE  
AND HARASSMENT : AN  
ACADEMIC PERSPECTIVE**

By

**Dr. Naomi Njuguna**  
Senior Lecturer, Faculty of Law  
University of Nairobi

## SETTING THE TONE FOR EMERGING JURISPRUDENCE BASED ON C.190

- Since Kenya has not ratified Convention 190, there is no specific jurisprudence on this Convention
- BUT this is not to say that there is no jurisprudence that touches on Workplace harassment and violence
- Notably many of the cases where workers (mainly employees) have raised issues of harassment or violence or discrimination, have been in unfair or unlawful dismissal cases. The main focus therefore of the case is the unlawfulness or otherwise of the dismissal of the employee, and not the issues of harassment raised.

### WHAT THE COURT NEEDS TO TAKE INTO ACCOUNT:

**A. The EXPANDED definition of Harassment and Violence that is contained in the Convention - "a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm, and includes gender – based violence and harassment"**

Emerging jurisprudence therefore needs to take into account the emergent unacceptable behaviours and practices that cause HARM (physical, psychological, sexual or economic harm)

### EXAMPLES OF UNACCEPTABLE PRACTICES (COMMON AND EMERGENT/EVOLVING FORMS):

---

Physical Assault; Workplace Bullying

---

Sexual harassment – quid pro quo and hostile working environment; other forms of gender based harassment (e.g. period shaming – e.g. the incident at Brown’s Cheese

---

Abusive language, verbal insults – *Mwikamba v Radio Africa Group Ltd (Cause E245 of 2021) (2023) KEELRC 1251 (30th May 2023)*

---

Retaliation/Retaliatory actions/intimidation – *Ole Sankale v Masai Mara University; TI & 2 Others (Interested Parties) (ELRC Petition E097 of 2021) (2024) KEELRC 1741 (5th July 2024)*

---

Also *Osok v Parliamentary Service Commission & Ano (Petition E056 of 2021) (2024) KEELRC 582 (15th March 2024)*

- Isolation/exclusion – *CMK v Chandarana Supermarket Ltd (2024) KEELRC 388* – exclusion and isolation as a result of making a complaint against sexual harassment. Her complaint was not kept confidential by the HR
- Sexual orientation – *Gathura v Safaricom Ltd (Cause 2122 of 2017) (2023) KEELR 2684 (27th October 2023)*
- Threats
- Abuse of power
- Technology assisted violence and harassment (cyberbullying, cyberstalking)

### Victim – Centred Approach v Employer – Centred Approach (A Balance is needed)

NOTE: Some interesting jurisprudence from South Africa – Normal managerial functions and duties by employers DO NOT amount to harassment: *Foy v Department of Justice and Constitutional Development and others (2023) ZALCJHB 1 (8th September 2023)* - in this case, the Court (at para 25) also noted that a Court must be alive to the idiosyncrasies and over sensitivities of different employees

The Court stated:

*"Given the grammatical meaning of the word harassment, it is relatively easy for an employee to deliberately avoid the useful and necessary distinction between the exercise of managerial powers and harassment. For example, a lethargic employee may consider certain work instructions to amount to harassment."*

- See also: *Maphanga v Department of Justice and Constitutional Development (2023) ZALCJHB 69* where the Court stated:

*"In law harassment refers to a person acting in a manner that causes the complainant to fear harm. Harm refers to any mental, psychological, physical or economic harm. It cannot be said that if a superior issues a work instruction, such superior is acting in such a manner that will cause the junior to fear harm."*

Another Question/Issue Raised: Is the test of harassment Subjective or Objective? Is harassment to be viewed from the victims point of view or from a reasonable person's point of view?

See: *Mnyandu v Padayachi (2016) 4 All ER SA 110 (Case before the Convention 190)*: the CA held that harassment must be repetitive, oppressive or overwhelmingly oppressive if it is a single act and must be unreasonable in nature.

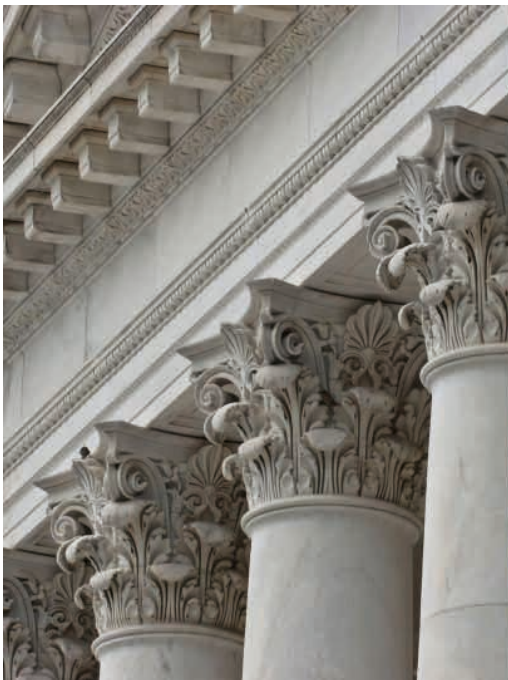
Supported after the coming into force of Convention 190 – *Moos v Makgoba (2022) JOL 54225* – Harm requires a more objective analysis as opposed to the subjective nature of hurt. Being offended, saddened or unhappy does not automatically mean harassment is taking place

## **B. The Scope of WHO is protected from Workplace Violence and Harassment**

The Convention widens the scope to (different)workers, rather than only employees – Raises the question of the JURISDICTION of the ELRC

The informal sector/economy - higher prevalence of harassment and violence – the Current legislation is skewed towards formal employer and employee relations.

QUESTION: Can the ELRC for example, issue orders for a County to put in place measures to ensure the security of women at a county market place (e.g. in the night hours)?



The Supreme Court in the NSSF case – seemed to emphasise that the jurisdiction of the ELRC is not just on employment matters but also on all labour relations (which is a wider type of jurisdiction)

See also *Arendse & 182 others v Meta Platforms, Inc & 3 others; Kenya Human Rights Commission & 8 others (Interested Parties) (Constitutional Petition E052 of 2023) (2023) KEELRC 921 (20th April 2023)* - content creators who faced redundancy; privity of contract not necessary to establish violations of human rights by a person in control and authority over another; Jurisdiction over VIRTUAL work spaces

Room for Strategic Litigation on this

### C. Employer Liability for Violence and Harassment from third parties

**QUESTION:** How far can an Employer be held liable for acts of harassment and violence by third parties (e.g. clients, members of the public, etc) - in certain sectors, the risks of third party violence and harassment are higher e.g. health services, education services, journalism/media sector, etc

American Jurisprudence: *Roy v Correct Care Solutions, LLC, 914 F. 3d 52 (1st Circuit, 2019)* - employer liable if employee is able to show that the employer knew, or in the **exercise of reasonable care** should have known that the harassment occurred and failed to take appropriate remedial action.

### E. Workplace Violence and Harassment as an Occupational Safety and Health Issue

Workplace injuries as a result of Harassment and Violence – Domain of DOSH? Current statistics on reported cases of workplace harassment – very low (around 1% of cases reported)

**Access to Justice** – Is the Court better placed than DOSH to handle harassment and violence as a workplace safety and health issue? Can there be dual responsibility – one administrative (e.g. enforcement of workplace audits by DOSH and the other judicial – enforcement of rights)?

# Approaches to Interpretation

- **Human Rights Based Approach** – the use of human rights principles and norms to interpret the law.

**QUESTION:** Can this be watered down by cultural relativism? Are there some socio - cultural/religious norms and practices that are deemed culturally acceptable and not seen as harassment? E.g. ways of greeting, separation of men and women in the workspace due to religious or cultural norms, forms of dressing, etc

- **Gender - Responsive Approach** – taking into account gender differences and needs; men and women may face particular challenges that are attributable to their gender differences.
- **Capabilities Approach** - Translating Constitutional and Human Rights entitlements to actual enforceable rights - ensuring that the remedies are effective (e.g. compensation for the violation but also for the injuries sustained - psychological injuries and physical) and that internal reporting mechanisms e.g. use of policies against Sexual Harassment, are fair and will not unfairly prejudice the complainant

**THE END**

*Thank you for your Attention!*

9.10.4 Roundtable 4 Presentations

9.10.4.1 Presentation by Hon. Prof. Margaret Kobia, PhD, EGH, Chancellor, St. Paul's University

# ELRASE ANNUAL SYMPOSIUM 17-SEPT-2024

Best Practices Towards a World Free from  
Violence and Harassment Including GBV  
(C190)

Hon. Prof. Margaret Kobia, PhD, EGH

## Questions to Ponder and Complexity of V&H views

1. What is violence and harassment at workplace and why does it **matter**?
2. Who is likely to be violated and harassed, Who is the violator?, Who is included and excluded and why? Where is the **evidence and data**?
3. What are the **theoretical perspectives** around violence and harassment at the workplace?
4. How would **best practices** for world free from violence and harassment look like and whose best practices?

## Definition

1. There are several definitions that may be summed up as **unacceptable behaviors** and practices or threats that result in **offending and humiliating** another person physically, psychologically, economically, sexual harm including GBV, 2019 (C190).
2. **GBV** is the violence and harassment directed at persons because of their sex/gender 2019, (C190).
3. Recommendation No 206 of 2019, member states to promotes prevention and protection of VH at the workplace.

## Some Tools for Prevention V&H

1. **Constitution 2010 and all Employment and Labor Relations Acts** provides for a **policy** in place for work place to deal with violence and harassment grievances handling.
2. **Public officers Ethics Act** provision against sexual harassment of member of staff or public person.
3. **Data protection Act 2019**, (Lawfulness, fairness and transparency).
4. **UN Resolution 1325** on women, peace and security (peace building, protection of human rights violations and access to justice).
5. **UN Convention 1993** on elimination of all forms of discrimination against women (which extends to violence against women).

## Some Tools for Prevention V&H (Cont.)

1. Need to develop and adopt a **comprehensive strategy** and **National Action Plan** in consultations with all stakeholders (government, employers and workers unions) to implement and combat violence and harassment.
2. Need for continuous capacity building and learning for staff, employers and unions to understand **VH emerging issues** and the future of the world of work.

## Status of Violence & Harassment

In the world of work, **V&H remains prevalent globally with 80%** of the workers having been subjected to at least one kind of violence and harassment (Melek, 2021).

Gender Based Violence (**GBV**) **92% remains** rampant, tolerated and normalized with 90% victims being female and 10% being male (KIPPRA 2022).

Three **theoretical perspectives** that explain Violence and Harassment at the workplace include:

1. psychological model (individual traits and behavior)
2. organizational model (context, structure, & environment) and
3. social cultural model (social roles, socialization and culture)

Sectors most affected are *Health, Agriculture, Education and Manufacturing*.

## Impact of V&H on Performance and Productivity

1. Creates systemic **barriers to equality** in employment.
2. Affects persons capability in **performance and productivity**.
3. May lead to high **turn over**, **increased health cost**.
4. Promotes **organizational culture** of unhappy staff/low morale, and feeling of powerless to change the situation.

## How Would Best Practices Free from V&H at the Workplace Look Like

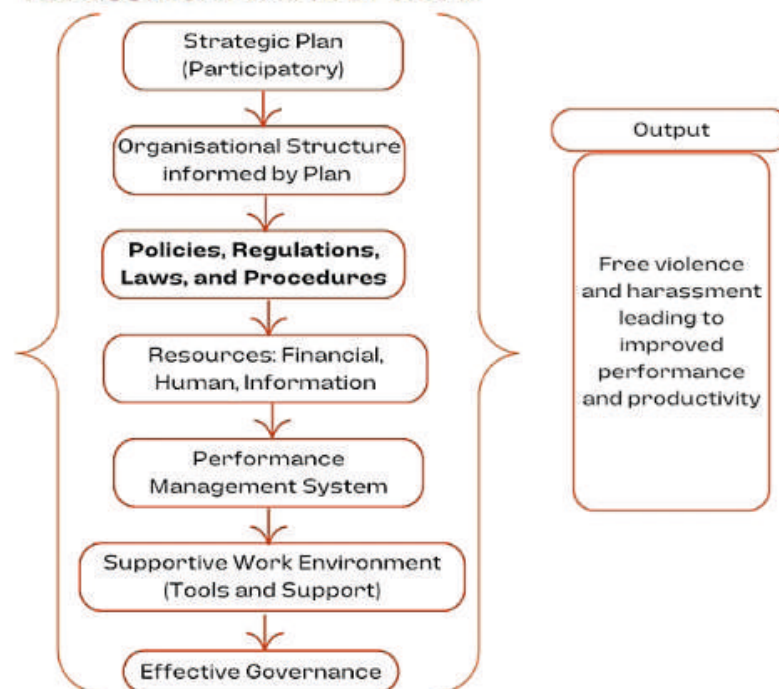
1. Due to **rapidly changing work** environment, best practice is a **journey** and not a destination.
2. Best practices require a **collaborative efforts** with **multiagency** and **multidisciplinary** approach to sound policy making to avoid silo mindset (SDG 16 peace, justice and strong institutions and 17on partnership).
3. Building **strong institutions** that deliver on their mandate holds the promise for a work place free from violence and harassment at the work place.

# How to Achieve Best Practices and Prevent Workplace V&H

1. Design **action plan** for implementation of relevant policies, laws, regulations and procedures.
2. Design and implement a comprehensive **coherence policy**.
3. Conduct **work place assessment** to identify VH risks.
4. Provide **mandatory training** for all staff on VH.

Ensure **participatory inclusive approach** with key stakeholders, alignment with constitution and laws, and all underpinned in strong a institution.

Conceptual Framework for a free violence and harassment world of work



# Conclusion

---

- 1. There is a correlation between violence and harassment and the status of mental health at the workplace. (WHO, 2021).**
  - 2. Despite the high level of VH noticed at the workplace 80%, Lack of knowledge of employees on how to identify, report, deal with VH at the workplace remains a barrier.**
  - 3. Organizations to invest in VH policies, laws, regulations and procedures that prevent and protect staff. Employers view promoting VH at the workplace more of cost than an investment (e.g. installing CCTV).**
  - 4. Monitoring, evaluation, validating and reporting on C190 and Rec 206 and other relevant tools would help in tracking progress towards a free VH world of work for a better inclusive future for all.**
-

## 9.11 ANNEX 10

### SOME OF THE ACTUAL SPEECHES AT THE CLOSING CEREMONY

- 9.11.1 Closing Remarks by Hon. Shadrack Mwadime, EBS, Principal Secretary, State Department for Labour and Skills Development, Ministry of Labour and Social Protection

9.2 Speech by Principal Secretary,  
State Department for Labour and Skills  
Development



**REPUBLIC OF KENYA**  
**MINISTRY OF LABOUR AND SOCIAL PROTECTION**

**CLOSING REMARKS**

**BY**

**SHADRACK M. MWADIME, EBS**  
**PRINCIPAL SECRETARY**  
**STATE DEPARTMENT FOR LABOUR AND SKILLS DEVELOPMENT**

**DURING**

**THE SECOND EMPLOYMENT AND LABOUR RELATIONS ANNUAL  
SYMPOSIUM AND EXHIBITION (ELRASE 2)**

**1**

**ON**

**TUESDAY, 17<sup>TH</sup> SEPTEMBER, 2024**

**AT**

**THE UNIVERSITY OF NAIROBI CHANDARIA AUDITORIUM  
NAIROBI, KENYA**

- Hon. Lady Justice Philomena Mbete Mwilu, MGH, Deputy Chief Justice and Vice President, Supreme Court of Kenya.
- Rt. Hon. Amason Jeffah Kingi, EGH, Speaker of the Senate
- Hon. (Dr) Justice Smokin Wanjala, CBS, Supreme Court Judge and Director Kenya Judiciary Academy

**2**

- **Hon Justice Byram Ongaya, Principal Judge ELRC**
- **Hon. Kennedy Kandet, Registrar of the Employment and Labour Relations Court,**
- **All Judges, Magistrates and Registrars present,**
- **Court Users Committees present,**
- **All distinguished Guests,**
- **Ladies and Gentlemen,**

### **Good afternoon!**

First and foremost, let me take this early opportunity to appreciate the Judiciary particularly the Hon. Chief Justice and the President of the Supreme Court of Kenya **Hon. Justice Martha K. Koome, EGH** for organizing the just concluded Symposium and exhibition.

3

I also wish to thank all delegates, panellists and discussants for their active participation and engagement in the three-day event ending today. This event has brought us all under one roof as actors in labour sectors to discuss the pertinent issues affecting workplaces in our nation, that is Violence and Harassment including Gender Based Violence.

The theme of the event being **"The Role of the Employment and Labour Relations Court in Fostering the Right to a World of Work free from Violence and Harassment including Gender Based Violence and Harassment"** is quite appealing, relevant and resonate well with the aspiration of the Government of Kenya particularly on the journey towards ratification of ILO Convention No.190 on Violence and

4

Harassment and its accompanying recommendation No, 206 which started in June, 2024. The Ministry of Labour and Social protection through a consultative engagement with stakeholders developed an ambitious time bound action plan to guide on this Ratification process.

In June 2024, the Ministry of Labour and Social protection convened a historical meeting bringing together all relevant Government Departments, Civil society, social partners and development partners who successfully developed a gap and cost benefit analysis.

**Ladies and Gentlemen,**

I am aware that during the symposium, several critical issues concerning labour rights, Safety and Health of workers, gender-based

5

violence (GBV), and the well-being of workers in Kenya emerged. The key of these issues includes labour laws reforms to incorporate the contents of Convention No. 190 in readiness for ratification, strengthen the responsibilities of parties in Section 6 of Employment Act 2007.

Distinguished discussants and participants have identified milestones and challenges and also underscored urgent need for comprehensive measures to address these challenges effectively. The Ministry of Labour and Social Protection has in the recent past focused on addressing the vulnerability of ALL workers including migrant workers, particularly women, who are prone to exploitation, abuse, and discrimination, both domestically and internationally.

6

Ratification of the **ILO Conventions 190** and accompanying **recommendation No. 206** is indeed timely and of which will guarantee the rights and protections of workers comprehensively and combat Gender based violence in the workplaces.

**Ladies and Gentlemen,**

During the webinar which was curtain raiser for this auspicious event and during the last three days, it has come out clearly that there is still prevalence of violence and harassment in workplaces across the Country, particularly gender-based violence. This then present us with an urgent need to enhance:

a) Advocacy, awareness and sensitization for ratification of ILO Convention C190 and recommendation 206

7

b) implementation of GBV-related policies in the work places.

c) Offer support for women's economic empowerment, and corporate social responsibility.

d) Capacity building of labour inspectorate (OSHA and Labour), trade unions and all Law enforcement officers in this space.

As one way of creation of awareness and sensitization of the public on Convention No. 190, the Ministry has kickstarted public participation in the eight (8) mapped regions: -Coast, Nairobi, Rift Valley, Nyanza, Western, North Eastern, Eastern and Central.

8

### **Ladies and gentlemen**

As you may be aware, ratifications come with a reporting obligation as provided for in the ILO Constitution. All Stakeholders' with the responsibility in the workplace must therefore play their roles diligently by eradicating all forms of violence and harassment in their spaces.

### **Ladies and gentlemen**

The outcome and recommendations of the just ended symposium will assist my Ministry and even Kenya at large in making significant steps towards creating a more equitable, inclusive, and prosperous society for all its citizens. These recommendations will assist businesses and policy makers to contribute to creating safer and more inclusive workplaces:

9

- a) fostering sustainable economic development.
- b) prioritizing labour rights, gender equality, and workplace safety in Kenya.
- c) Enhancing collaborating with stakeholders,
- d) implementing robust policies, and conducting thorough analyses,

### **Ladies and gentlemen**

In conclusion, I wish to thank all the Universities who participated in this symposium led by the University of Nairobi for their support through knowledge sharing and provision of the venue, I also wish to thank the Honourable Speakers of both Senate and National Assembly for their personal presence and participation.

10

Allow me also to thank our social partners and the International Labour Organization for their contribution in this event and continued support in labour sector as we uphold the Fundamental Principles and Rights at Work.

Finally, in a special way, let me once again thank the Honourable Chief Justice, and the President of the Supreme Court, the Principal Judge and all Honourable Judges for always acknowledging the role of the Ministry of Labour in participation in Employment and Labour Relations Court activities.

11

Let us ALL join hands and support one another in this noble course of ensuring that our Country is free from Violence and Harassment including Gender Based Violence through putting in place the requisite legal framework and systems.

Thank you all.

12

## 9.11.2 Closing Remarks by Bro. Ben Okwaro, Deputy Secretary General, COTU

### **CLOSING REMARKS BY BRO. BEN OKWARO DURING CLOSING CEREMONY OF THE EMPLOYMENT AND LABOUR RELATION ANNUAL SYMPOSIUM AND EXHIBITION**

- Hon. Lady Justice Martha Koome, EGH, Chief Justice and President of the Supreme Court
- Right Hon. Dr. Moses Wetangula, EGH, Speaker of the National Assembly
- Hon. Dr. Alfred Mutua, EGH, Cabinet Secretary, Ministry of Labour and Social Protection
- Lady Justice Philomena Mwilu, MGH, Deputy Chief Justice and Vice President of the Supreme Court
- Hon. Justice Dr. Smokin Wanjala, CBS, Supreme Court Judge and Director, Kenya Judiciary Academy
- Hon. Winfridah Mokaya, Chief Registrar, Judiciary
- Hon. Justice Byram Ongaya, Principal Judge, Employment and Labour Relations Court
- Hon. Kennedy Kandet, Registrar, Employment and Labour Relations Court
- Sis. Caroline Mugalla, ILO Regional Director, Country Office Dar-Es-Salaam

- Sis. Jacqueline Mugo, EBS, Executive Director, Federation of Kenya Employers
- Brothers and Sisters,

Foremost, allow me with humility to convey to you all solidarity greetings from the Central Organization of Trade Unions in Kenya, COTU (K), under the leadership of our Secretary General, my Brother Dr. Francis Atwoli.

It was the wish of the Secretary General to once again join you today for this second Annual Employment and Labour Relations Court Symposium but due to another urgent and pressing matter he has had to send me here, as his Deputy, to represent him in his capacity and make this address on his behalf.

Allow me to thank the leadership of the Judiciary, under the leadership of the Chief Justice of the Supreme Court Hon. Lady Justice Martha Koome, for not only empowering the specialized court as established by our constitution but also giving them the maximum support to innovate and grow in relation with the members of the public that they serve.

As COTU (K), we believe that this symposium plays a major role in contributing to the ongoing debate on enhancing

workers' rights and welfare not only in the country but globally.

It is a fact that the jurisprudence from this court has been, in some instances, a matter of discussion both locally and internationally at higher labour institutions like the International Labour Organization.

Just recently, I was going through a decision made by the Supreme Court on the importance of meaningful social dialogue at places of work so as to ensure decisions are not made to the detriment of employees, and I couldn't help but think about the key role played by this court in ushering in such monumental court rulings.

Brothers and Sisters, as workers, this court remains our refuge considering we remain the weakest and most vulnerable among the tripartite partners and we shall continue to beseech this court to continue dispensing justice and thus promoting social justice at places of work.

This second symposium and exhibition is close to our hearts considering the theme, **“The role of the Employment and Labour Relations Court in fostering the right to a world of work free from violence and harassment; including Gender-Based Violence and Harassment.”**

It is on record that COTU (K) has been a leading champion of the importance of ratification of ILO Convention 190 which calls for the elimination of violence and harassment in all aspects of work.

At this point, allow me to thank the International Labour Organization for remaining true to their mandate on the promotion of social justice in the world of work.

Since 1919, the ILO has provided the best platform for workers globally to canvas their issues and do it in a manner that allows both the employer and government to equally share their perspectives and opinions on the same.

Specifically, the International Labour Conference (ILC) has remained a leading forum for ensuring that the normative standards for the world of work are standardized and improved even as the world of work is changing.

This is why I want to kindly request the Chief Justice to always give the judges of this court Maximum support in taking part in the ILC in Geneva every year.

Brothers and Sisters, today, more than ever before, we need the voice of this court, and the judiciary at large, in the concerted efforts to eliminate gender based violence and harassment at work places.

As COTU (K) we have held conversations with the government, including the President, on the ratification of ILO C190 a matter that the President has publicly acknowledged and consequently provided direction.

It's rather unfortunate, especially on the part of the Ministry of Labour and Social Protection, that we are yet to ratify this very convention even after His Excellency President declared his willingness and support of his government towards ratification.

We now call upon the Ministry of Labour to expedite the process which will mark the beginning of yet another exhausting journey that will only be made easier by this court.

The Employment and Labour Relations Court will yet again have to give life to the operationalization of this Convention by making major determinations on a number of cases that will be brought before them on the same.

If this court truly cares about working women, especially, I know that a brighter day for the working women and, by extension, men is on the horizon because they will, when it matters the most, come to their defense.



The jurisprudence by the Judiciary of Kenya, starting from this court, following the ratification of ILO C190, must be centered around the mission of eliminating harassment and gender based violence at work places.

As COTU (K) we will always count on the Judiciary of Kenya, and especially this court, as a leading champion for social justice in the world of work.

Once again, I thank you for bringing all of us together under such a forum to discuss pertinent issues in the world of work and we commit ourselves to always be counted on for any discussion that is aimed at promoting justice in the world of work.

As I conclude, let me call upon all of us to join hands and work together to ensure that all work places are safe for all and that justice reigns in the courts wherever one is afflicted.

I thank you.

## 9.12 ANNEX 11

### EXHIBITION REPORT

The Employment and Labour Relations Court (ELRC) participated in an exhibition organized as part of the ELRASE II celebrations. It was noted that on the first day, approximately nine (9) exhibitors had confirmed participation.

The ELRC displayed its mandate and operations to the public. The Court is established pursuant to Article 162(2) of the Constitution of Kenya and operationalized under the Employment and Labour Relations Court Act, No. 20 of 2011. The Court currently operates in seven primary stations—Nairobi, Mombasa, Kisumu, Nakuru, Kericho, Nyeri, and Eldoret, with eight (8) sub-registries located in Malindi, Machakos, Bungoma, Garissa, Meru, Kisii, Voi, and Kitale.

Members of the public who visited the ELRC booth were informed of the procedure of filing claims, beginning from registration, service of documents, pre-trial processes, hearing, and judgment, followed by taxation before the Deputy Registrar and ultimately execution. The public was also enlightened on the categories of cases admissible before the Court, including claims, petitions, collective bargaining agreement (CBA) disputes, judicial reviews, and appeals from subordinate courts. It was observed that an average of ninety (90) people visited the booth over the last two days of the exhibition, with a generally positive reception.

Other institutions and their exhibition highlights were as follows:

#### 1. Teachers Service Commission (TSC):

The Commission, established pursuant to the Teachers Service Commission Act, Cap. 212 of the Laws of Kenya (now repealed and replaced by the current legislation), and elevated to a constitutional commission by Article 237 of the Constitution of Kenya 2010, informed visitors about its statutory and constitutional mandate of teacher management. This includes registration, recruitment, deployment, promotion, remuneration, and discipline of teachers in public schools and institutions. The Commission also highlighted its expanded

role in teacher policy formulation and in promoting the professional development of educators in Kenya. Visitors were taken through the process of registration and the disciplinary mechanisms available for redress within the teaching service.

#### 2. Kenya Union of Domestic, Hotels, Educational Institutions and Hospital Workers (KUDHEIHA):

KUDHEIHA is registered under the Labour Relations Act. It informed attendees of its long-standing advocacy since 1942 on behalf of vulnerable workers employed in domestic work, hospitality, educational, and medical institutions. Its representatives detailed the benefits of union membership, notably the legal representation offered to members in instances of dismissal or unfair labour practices. Attendees were educated on how the union engages in collective bargaining, promotes occupational safety and health, and seeks enforcement of minimum labour standards under applicable labour laws and international labour conventions to which Kenya is a party.

#### 3. Kituo Cha Sheria – Legal Advice Centre:

Established in 1973 and registered as a Public Benefit Organization (PBO) under the Non-Governmental Organizations Coordination Act, Kituo Cha Sheria reported on its mission to ensure access to justice for poor and marginalized communities. The institution highlighted its flagship programmes, which include public interest litigation, legal aid services, community legal empowerment, and refugee rights advocacy. Of particular interest was its engagement in labour and housing rights, and the representation of asylum seekers and stateless persons before national and international tribunals. The organization's role in advancing socio-economic rights and influencing legal and policy reform was emphasized to visitors.

#### 4. Federation of Kenya Employers (FKE):

The Federation, incorporated in 1959 as the premier employers' organization, elaborated on its tripartite role in representing employers in industrial relations, labour law reform, and policy advocacy. FKE representatives highlighted their role in guiding employers on compliance with labour

and employment laws, and promoting dispute resolution mechanisms that reduce industrial unrest. The “FKE Girls and Tech” programme was showcased as part of its corporate social responsibility aimed at closing the gender gap in STEM fields. The Federation further explained how it supports employers through capacity-building workshops, legal audits, and human resource advisory services.

#### **5. Central Organisation of Trade Unions Kenya (COTU-Kenya):**

Established in 1965 and registered under the Labour Relations Act, COTU-K was reported to have provided information on its mandate as the umbrella body for trade unions in Kenya. With forty-seven (47) affiliate unions and over four million members, the organization described its engagement in national labour policy, tripartite negotiations, and its historic role in championing worker rights in Kenya. Attendees were educated on grievance handling procedures, the role of COTU in collective bargaining frameworks, and its working relationship with the Employment and Labour Relations Court in matters of conciliation and dispute resolution. The mentorship programme at Tom Mboya Labour College in Kisumu was also highlighted as a vital centre for labour education and leadership development.

#### **6. Kenya Law Reports (KLR):**

As the official publisher of judicial opinions under the National Council for Law Reporting Act, the Kenya Law team informed the public on how their work promotes access to justice by publishing decisions of the superior courts, statutes, and legal commentary. Visitors were particularly interested in understanding how to access judgments online and in hardcopy formats, with KLR officers clarifying the process of citation and legal referencing for use in pleadings and court proceedings. Awareness was also created on recent digitization efforts to enhance public legal education and transparency in the judiciary.

#### **7. Law Society of Kenya (LSK):**

Established under the Law Society of Kenya Act, the LSK informed participants of its statutory and constitutional role

in advancing the rule of law and administration of justice in Kenya. It was reported that the Society promotes ethical practice among its members, conducts continuous legal education (CLE) for advocates, and provides legal aid to indigent persons. The public was sensitized on how to lodge complaints against advocates and the mechanisms in place to address professional misconduct through the Advocates Complaints Commission and the Disciplinary Tribunal.

#### **8. Madison Insurance:**

Representatives of Madison Insurance reported that the company, licensed under the Insurance Act, operates across life and general insurance sectors, offering tailored products to both individual and corporate clients. The institution underscored its adherence to good corporate governance practices, innovative financial solutions, and customer-centric services. Their participation in the exhibition was anchored on the company’s broader goal of supporting social protection frameworks by providing risk cover for medical, life, and pension-related contingencies.

#### **Awards and Recognition of Best Exhibitors**

During the awarding ceremony, Honourable Ndemo invited Honourable Kennedy Kandet, Registrar of the Employment Court, to introduce the judging panel. Dr. Gitonga from the Agricultural Society of Kenya, also a lecturer at the University of Nairobi, was introduced as the chief judge, having assessed the booths alongside two other independent judges. The judging criteria included:

- i. Booth appearance (20 marks);
- ii. Reception and knowledge of booth personnel (20 marks);
- iii. Display, décor, and information delivery (25 marks);
- iv. Relevance to the exhibition theme—particularly, the exhibitor’s understanding and articulation of the theme in relation to employment, labour relations, and social development.

Dr. Gitonga reportedly noted that while booth standards were generally uniform, only two exhibitors demonstrated an in-depth understanding of the theme. He proceeded to announce the three best-performing exhibitors as follows:

- i. Federation of Kenya Employers (FKE) – Recognised for exemplary booth decoration and articulate presentation of the theme. Awarded by Honourable Justice Byram Ongaya.
- ii. Employment and Labour Relations Court – Commended for comprehensive thematic knowledge. Awarded by Honourable Justice Nderi Nduma.
- iii. Teachers Service Commission – Noted for outstanding decoration and thematic alignment. Awarded by Honourable Justice Byram Ongaya.

Honourable Ndumo concluded by appreciating all exhibitors, including those not awarded, for their efforts in showcasing their respective mandates and contributing meaningfully to the exhibition.



## 9.13 ANNEX 3

### ELRASE II COMMUNIQUE

#### 9.13.1 Joint Communique for the Second Employment and Labour Relations Annual Symposium and Exhibition (ELRASE II)



THE REPUBLIC OF KENYA  
THE EMPLOYMENT AND LABOUR RELATIONS COURT USERS'  
COMMITTEE

JOINT COMMUNIQUÉ FOR THE SECOND EMPLOYMENT AND LABOUR  
RELATIONS  
ANNUAL SYMPOSIUM AND EXHIBITION (ELRASE II)

HELD ON 16<sup>TH</sup> AND 17<sup>TH</sup> SEPTEMBER, 2024  
AT  
THE UNIVERSITY OF NAIROBI, CHANDARIA AUDITORIUM

---

We, the Joint Court Users Committee of the Employment and Labour Relations Court of Kenya, attending the 2<sup>nd</sup> Employment and Labour Relations Annual Symposium and Exhibition (ELRASE 2) themed *"The role of the Employment and Labour Relations Court in fostering the right to a world of work free from violence and harassment including gender-based violence and harassment,"* with the sub-theme of *"Mainstreaming ILO Convention 190 (C190) and Recommendation 206 (R 206)."* at the University of Nairobi, Chandaria Auditorium;

**RECOGNISING** the role of the Employment and Labour Relations Court and its stakeholders in fostering a world of work free from violence and harassment including gender-based violence and harassment;

**AFFIRMING** our commitment towards ratification of the ILO Convention No. 190 - Violence and Harassment Convention, 2019 and its Recommendation No.206;

**ACKNOWLEDGING** that the government through the Ministry of Labour and Social Protection has committed to engage the public through public participation in respect to Convention 190 and Recommendation 206;

**RECOGNISING** the commitment made by the Government of Kenya at the International Labour Conference in 2023(ILC 121) to develop adequate labour protection;

**RECOGNISING** the commitment made by the Cabinet Secretary, Ministry of Labour and Social Protection to accelerate ratification of Convention 190 and Recommendation 206 by the end of 2024;

**ENCOURAGING** employers and / organizations to promote appropriate standards of conduct across work places, by establishing investigative mechanisms for reported cases of violence and harassment;

**ENCOURAGING** employers to establish appropriate policies aimed to create a harassment free environment for instance the gender mainstreaming, diversity and sexual harassment policies.

**NOTING** the provision of Article 2 (5) of the Constitution and recognizing that C190 provides an inclusive, integrated and gender-responsive approach towards promotion and realization of a world of work free from violence and harassment:-

1. The Second annual Symposium was attended by the Hon. Chief Justice and President of the Supreme Court; Cabinet Secretary, Ministry of Labour and Social Protection; Principal Secretary, Ministry of Labour and Social Protection; Dean of School of Law, University of Nairobi; the Deputy Secretary General of the Central Organisation of Trade Unions; Head of Industrial Relations, Legal and Membership Services of the Federation of Kenya Employers; Vice President of the Law Society of Kenya; Judges of the Court of Appeal, Judges of the Employment and Labour Relations Court; the Chief Registrar of the Judiciary; the Registrar of the Employment and Labour Relations Court; Deputy Registrars; Independent Constitutional Commissions, Civil Society Organisations; judicial staff and representatives of the Court Users in their diversities across the Republic.
2. The rationale of the Symposium was focused on mainstreaming ILO Convention No. 190 and Recommendation No. 206 with the following objectives: -
  - (i) *Promote awareness on scope, content, and application of ILO Convention No. 190 on the right of every person to a world of work free from violence and harassment including gender-based violence and harassment.*
  - (ii) *Share manifestations of violence and harassment in a world of work.*
  - (iii) *Share emerging jurisprudence on the right of every person to a world of work free from violence and harassment including gender-based violence and harassment.*
  - (iv) *Provide a forum for workers and entrepreneurs to give feedback on initiatives taken against violence and harassment at work.*
  - (v) *To exhibit on manifestations and prevention of violence and harassment at work.*
3. The deliberations centered around three (3) thematic areas as follows:-
  - (i) *Understanding the scope of Convention No. 190, Recommendation No. 206 and the extent they are provided for in the Kenyan Constitution, statutes and policies;*

- (ii) *Manifestation, experiences and mainstreaming of Convention No. 190 by sector;*
- (iii) *Kenyan and comparative jurisprudence around Convention No. 190;*

4. **DRAWING** from the deliberations under the above thematic areas:-

- a. On **Understanding the scope of Convention No. 190, Recommendation No. 206 and the extent it is provided for in the Kenyan Constitution, statutes and policies**, the Kenyan government to ensure that anti-harassment policies are implemented and enforced in all workplaces, including the informal sector.
- b. Organizations should prioritize training and awareness campaigns to inform employees of their rights, reporting mechanisms and to tackle structural power inequalities.
- c. Workplaces should promote gender parity, create a safe environment for reporting all forms of harassment, and promote continued advocacy and legal reforms, paired with cultural shifts in workplace dynamics which are essential to making significant strides towards eradicating workplace violence and harassment.
- d. The Ministry of Labour and Social Protection to intensify labour administration and inspection to inform decision-making and to ensure non-discrimination and equality in the world of work.
- e. The Ministry of Labour and Social Protection to coordinate other relevant agencies towards a multi-disciplinary and multi-sectoral survey and research to fill gaps in practices, policies, and law.
- f. The stakeholders to initiate and undertake awareness of Convention No.190 and Recommendation No.206 to diminish social cultural activities and practices that may undermine the process of ratification of Convention 190.

- g. Under the theme, **Manifestation, experiences and mainstreaming of Convention No.190 and Recommendation No. 206** , the Attorney General in consultation with relevant stakeholders to initiate law reforms to broaden the definition of harassment and violence to include other forms of work place harassment such as physical assault, workplace bullying, isolation, exclusivity and harassment on the basis of sexual orientation.
- h. The stakeholders to take deliberate steps towards ensuring a work place free from harassment and gender-based violence through having reporting and investigative mechanisms to ensure fair and procedural disciplinary processes in the event of harassment at the work place.
- i. The Ministry of Labour and Social Protection to initiate the process of amendment of Section 6(2) of the Employment Act, 2007 to require the creation sexual harassment policy for a workforce of less than 20. Additionally, there is need for inclusion of a penalty clause to Section 6 of the Employment Act against employers who fail to comply.
- j. Parties to a Collective Bargaining Agreement (CBAs) to consider inclusion of clauses on harassment and violence including gender-based violence.
- k. There is need for regular training of employees and employers on harassment policies in both the formal and informal sectors.
- l. The Ministry of Labour to conduct research and data collection geared towards elimination of work place harassment and violence including Gender -based Violence and the necessity to build capacity among the institutions and its personnel to handle reports on harassment and violence.

- m. Under **Comparative jurisprudence around Convention 190 and Recommendation 206**, Ministry of Labour should collaborate with other agencies dealing with migration, criminal law, the Inspectorate of Occupational Safety and Health, to implement the provisions of Convention 190 and Recommendation 206 which go beyond employment and labour issues.
- n. The Ministry of Labour and Social Protection expressed its commitment to initiate the process of review of the Labour Laws to explicitly define harassment and violence including gender-based violence.
- o. The Ministry of Labour and Social Protection expressed its commitment to undertake the exercise of capacity building in the Inspectorate of Occupational Safety and Health to ensure compliance and enhance their capacity to identify investigate and address incidences of harassment and violence promoting a culture of zero tolerance.
- p. The Ministry of Labour and Social Protection expressed its commitment to coordinating the ratification of the ILO Convention 190 and Recommendation No. 206 demonstrating their commitment to upholding International Labour Standards for work place safety and equality.
- q. The Attorney General, the Kenya Law Reform Commission and any other relevant bodies to initiate legislative reforms to make provisions for victims of violence and harassment in the world of work including GBV that would comprise compensating them, and justify their absence from work. For instance, there could be provision for flexible working hours and permitted time off.
- r. The relevant bodies to initiate law reforms in the Kenyan law to include vicarious liability of employers for the acts of their employees in relation to violence and harassment including gender-based harassment and violence.

- s. The Attorney General and all relevant bodies to initiate law reform to incorporate the definitions of violence and harassment from Convention 190 into our national laws.
  - t. The Employment and Labour Relations Court, Ministry of Labour and other stakeholders to sensitize the general public on their rights with regard to violence and harassment in the world of work including gender-based violence.
  - u. The society to endeavor to instill values in young children and adults to ensure that they respect and protect human dignity in order to secure a future that is free from violence and harassment, including gender-based violence.
  - v. Under **Best practices towards a world of work free from harassment and violence including gender-based violence and harassment** stakeholders to adopt best practices that preserve the dignity of an individual.
  - w. Employers to ensure that there is timely response after investigations and offer support to victims and survivors of violence.
5. **DEEPLY AWARE** of the steps taken towards promotion and realization of a world of work free from violence and harassment, and taking cognizance of the gaps in the regulation of harassment and gender violence, it is proposed that there is a need for an inclusive and gender-responsive approach to prevent and eliminate harassment and violence. On this basis, stakeholders agreed on the need to ratify Convention No. 190.
6. **BUILDING** on the robust efforts made by the Government and Stakeholders to enhance a world of work free from harassment and violence, there is a need for the creation of awareness through public Participation on the provisions of Convention No. 190 geared towards its ratification.

7. **WE CONVEY** our sincere gratitude to the Judiciary, under the leadership of the Chief Justice and President of the Supreme Court for approval of the holding of the Second Employment and Labour Relations Annual Symposium and Exhibition, the Judges, Registrar, Deputy Registrars and staff of the Employment and Labour Relations Court for hosting and organizing the 2<sup>nd</sup> Annual Symposium and Exhibition, the presence and support of all the stakeholders of the Court.

**Dated at NAIROBI this 17<sup>th</sup> Day of September, 2024**

**SIGNED BY:**



---

**HON. JUSTICE BYRAM ONGAYA**  
**PRINCIPAL JUDGE EMPLOYMENT AND LABOUR RELATIONS**  
**COURT**



---

**MWAURA KABATA**  
**VICE PRESIDENT LAW SOCIETY OF KENYA**



---

**BRO. BENSON OKWARO, MBS**  
**DEPUTY SECRETARY GENERAL, SECRETARY GENERAL COTU (K)**



---

**MR. DICKENS OUMA**  
**FEDERATION OF KENYAN EMPLOYERS**



---

**HONOURABLE SHADRACK MWADIME**  
**PRINCIPAL SECRETARY, MINISTRY OF LABOUR AND SOCIAL**  
**PROTECTION**

## 9.14 ANNEX 3

### ELRASE II PICTORIALS









# ELRASE

## EMPLOYMENT AND LABOUR RELATIONS

### ANNUAL SYMPOSIUM & EXHIBITION



HON. JUSTICE KEBIRA OCHARO  
JUDGE, EMPLOYMENT & LABOUR RELATIONS COURT

THURSDAY 12<sup>TH</sup> SEPTEMBER | 8AM

FOSTERING A WORLD OF WORK FREE FROM VIOLENCE  
& HARASSMENT INCLUDING SGBV



LIVESTREAM: [www.spicefm.co.ke](http://www.spicefm.co.ke) YouTube SpiceFM f LIVE Spice FM Ke

NAIROBI 94.4 · NAKURU 96.0 · NYERI 90.9 · KISUMU 102.5 · MALINDI 97.7 · MOMBASA 87.9 · ELDORET 96.7



Save  
THE  
Date

## SECOND EMPLOYMENT AND LABOUR RELATIONS ANNUAL SYMPOSIUM & EXHIBITION

(ELRASE 2)



DATE: September 16 - 17, 2024



VENUE: THE UNIVERSITY OF NAIROBI CHANDARIA AUDITORIUM

**THEME:** The Role of the Employment and Labour Relations Court in Fostering  
the right to a world of work free from Violence and Harassment including  
Gender Based Violence .



Social Transformation  
through Access to Justice



# SUNDAY

## *Service Invitation*

Join us for a Sunday  
Service and a CSR  
Activity

### Venue:

- All Saints Cathedral Church
- Thomas Barnardo Children's Home



15<sup>th</sup> | SEPTEMBER | 2024



Social Transformation  
through Access to Justice

# DAILY NATION

**Questions** Kenya Kwanza government pushed tenders without conducting public participation

## Secret deals rock Ruto's regime

**Opaque** Controversial big-money deals brokered behind a cloud of secrecy by President William Ruto's administration, including Indian conglomerate Adani Group's bid to take over the Jomo Kenyatta International Airport, have sparked protests and spawned court cases, with potential dire ramifications for Kenyan taxpayers **Pages 4&5**

**Where's the DP? Gachagua skips President's church function in Nyeri**



**P.6** President William Ruto (right) during Sunday service at Nganganthi Primary School grounds in Nyeri County yesterday where the African Independent Pentecostal Church of Africa launched its central-western archdiocese. A seat reserved for Deputy President Rigathi Gachagua remained empty as Mr Gachagua did not show up for the event that was held in his backyard. **JOSEPH KANYI**

**PROPERTY**

**Developers' billions frozen in apartments zoning row**

Court battles between developers and residents have become increasingly common as conflicting decisions on whether to allow construction at various sites throws the real estate industry into confusions / **P7**



**EPL**  
**'Gift of the Gab': Gabriel's bullet header earns Arsenal derby win**

A Gabriel Magalhaes' second-half header earned Arsenal a crucial 1-1 win at Tottenham Hotspur in a feisty north London derby yesterday to keep pace with early Premier League leaders Manchester City / **P31**

**DEVOLUTION**

**MPs in new plan to unlock Sh60 billion for counties**

MPs have initiated a process to unlock Sh60 billion that the national government owes counties but cannot be released since the Division of Revenue Bill, 2024 has not been passed / **P14**

## Why universities and schools are in turmoil

Universities Academic Staff Union secretary-general Constantine Wasonga during a press briefing in Nairobi last month. **WILFRED NYANGARESI / NATION**



**L**earning in public universities is set to be disrupted this week when lecturers begin a strike over a pay dispute, adding to the chaos in the education sector already rocked by grievances from learners and their instructors. Two unions have instructed their 30,000 members in public universities and constituent colleges to boycott duty from Wednesday over implementation of a salary raise stipulated in a collective bargaining agreement (CBA) that is due to lapse next year. **SEE PAGE 2**

**30,000**

Members of two unions representing workers in public universities



**ELRASE**  
EMPLOYMENT AND LABOUR RELATIONS  
Annual Symposium and Exhibition

**Thematic Focus**

- Historical, gender and social-economic perspectives on violence and harassment at work including Gender Based Violence and Harassment
- Understanding the scope of convention 190, Recommendation number 206 and the extent they are provided for in the Kenya Constitution, Statutes and Policies.
- Manifestation, experiences and mainstreaming of convention 190 (C190) and Recommendation 206 (R.206)
- Kenyan and Comparative jurisprudence around Convention 190 and Recommendation 206.
- Emerging jurisprudence on the right of every person to a world of work free from violence and harassment including gender-based violence and harassment under ILO Convention 190.
- Best practices towards a world of work free from harassment and violence including gender-based violence and harassment.

# Chinese language unlocks opportunities

► It has become an asset, in sectors like construction, engineering, tourism, and education.

► Currently, there are about 400 Chinese-owned companies in the country.

JACINTA MUTURA, NAIROBI

**T**he demand for Chinese language is steadily growing in Kenya, offering a wide range of professional opportunities.

With the increasing presence of Chinese companies and investments in the country, knowledge in the Chinese language has become an asset, particularly in sectors like construction, engineering, tourism, and education.

Noah Njoroge, the founder of Geek Interpretation and Translation, and the Kenyan Chinese Speakers Association, explains the evolving landscape. "Chinese has a very big space in Kenya, and it's going to keep on growing. I really encourage people to take it up because there are multiple sources of income directly related to Chinese. It could be in interpreting, training interpreters, or even in the arts," Njoroge said.

Njoroge's career in training, translation and interpretation has spanned over a decade. He now leads an association of over 765 Chinese speakers in Kenya, which provides mentorship, professional support, and opportunities for personal development to its members.

For a big part of his career, Njoroge also did court translations where a Chinese person or company is accused, or a Chinese person is accusing someone and there's a language challenge. Building his history as a court interpreter in Kenya also earned him an opportunity to work at the African Court on Human and People's Rights in Arusha.

For a session in Nairobi, a translator is paid about Sh2000 and if they travel out of Nairobi, one can make between Sh5,000 and Sh7000 per appearance.

Kenyan workers as translators in Chinese companies earn between \$100 (Sh12,900) and \$150 (Sh19,300) per day for short-term projects and those working on long-term projects take home between Sh100,000-Sh150,000 per month.

Currently, there are about 400 Chinese-owned companies in Kenya.

Mastery of the language has gone beyond translation and now encompasses the transfer of technical knowledge. According to Njoroge, engineers and technicians who speak Mandarin Chinese are often called upon to facilitate understanding during the installation of Chinese machinery and equipment.

They also translate manuals to ensure that Kenyan workers understand how to operate and maintain new technologies brought in by Chinese firms.

Chinese language proficiency is proving valuable in various sectors.

The tourism sector is emerging as a major market for Mandarin speakers. Njoroge highlighted how Chinese tourists have specific interests, such as birdwatching or visiting historical sites, and local tour guides who speak Mandarin are in high demand. "With more Chinese tourists coming into the country, there is a growing need for Chinese-speaking tour guides, drivers, and hospitality workers. We could see up to a million Chinese coming in Kenya annually," he said.

The other big space will be in creative industry. "Content creators can talk about the beautiful sceneries we have in Kenya. You can go to the coast but do a tour that is aimed at attracting Chinese people to the coast," said Njoroge.

His sentiments were echoed by Nicole Shitolwa, a Mandarin Chinese teacher at Crawford International



A tutor helping his students. More students are taking up Chinese language. Under the Competence Based Curriculum (CBC) centre, the Chinese language is now one of the foreign languages taught in schools. [Courtesy: JICA/China.org.cn]



*With the modernisation and industrialisation and the world moving to the East, more people are taking up the active course in the language.*

Faith Nyambaki, Curriculum Development Officer- Mandarin Chinese at KICD.

School, who observed a growing interest in the language among students.

"We are seeing more students, who, especially want to do technical courses or things that have to do with information technology. You find that children are very interested in those things," said Shitolwa.

She added, "China is the best in terms of Artificial Intelligence. You'll find that children who are interested in coding, gaming, want to do their education in the East."

The tutor notes with the rise of technology, most things and careers will be technology-based.

The rising number also lead to

more students getting scholarships to go to China, especially sponsored by the Chinese embassy in Kenya.

As China strengthens its presence in Africa, Kenyan educational institutions are incorporating Mandarin into their curriculums. Schools and universities are increasingly hiring Mandarin teachers to equip students with this skill.

Currently, there are four Confucius Institutes at the University of Nairobi, Kenyatta Universities, Moi and Egerton Universities offering Chinese language and culture.

In addition, several Confucius classrooms have also opened in secondary schools in Kenya. Under the Competence Based Curriculum (CBC) center, the Chinese language is now one of the foreign languages taught in schools.

Kenya Institute of Curriculum Development (KICD) Chief Executive Officer Professor Charles Ong'ondo says Mandarin Chinese was introduced to Kenyan schools to fill the gap in the demand of people conversant with foreign languages.

These include Mandarin Chinese, Arabic, French, and German in the country. Chinese Mandarin was introduced in the CBC in 2017 with experts' recommendations that foreign languages should be introduced from an earlier age. The language is currently offered as a learning area from Grade Four to Grade Nine as co-curricular activities. Foreign languages are also taught in Senior schools.

"The world has become a global village and there is a lot of movement or mobility of foreigners coming to Kenya, sometimes even to have companies and establish work, potential establishments," noted Ong'ondo.

"With the modernisation and industrialisation and the world moving to the East, more people are taking up the active course in the language," said Faith Nyambaki, Curriculum Development Officer- Mandarin Chinese at KICD.

**ELRASE**  
EMPLOYMENT AND LABOUR RELATIONS  
Annual Symposium & Exhibition

ELRASE 2  
Theme:  
The Role of the Court in Fostering the right to a world of work free from violence and harassment including Gender Based Violence.

DATE: September 16 - 17, 2024

VENUE: THE UNIVERSITY OF NAIROBI CHANGARIA AUDITORIUM

**Thematic Focus**

- Historical, gender and social-economic perspectives on violence and harassment at work including Gender Based Violence and Harassment.
- Understanding the scope of convention 190, Recommendation number 206 and the extent they are provided for in the Kenya Constitution, Statutes and Policies.
- Manifestation, experiences and mainstreaming of convention 190 (C190) and Recommendation 206 (R.206)
- Kenyan and Comparative jurisprudence around Convention 190 and Recommendation 206.
- Emerging jurisprudence on the right of every person to a world of work free from violence and harassment including gender-based violence and harassment under ILO Convention 190.
- Best practices towards a world of work free from harassment and violence including gender-based violence and harassment.

International Labour Organization

FEDERATION OF KENYA EMPLOYERS  
The Voice of Employers

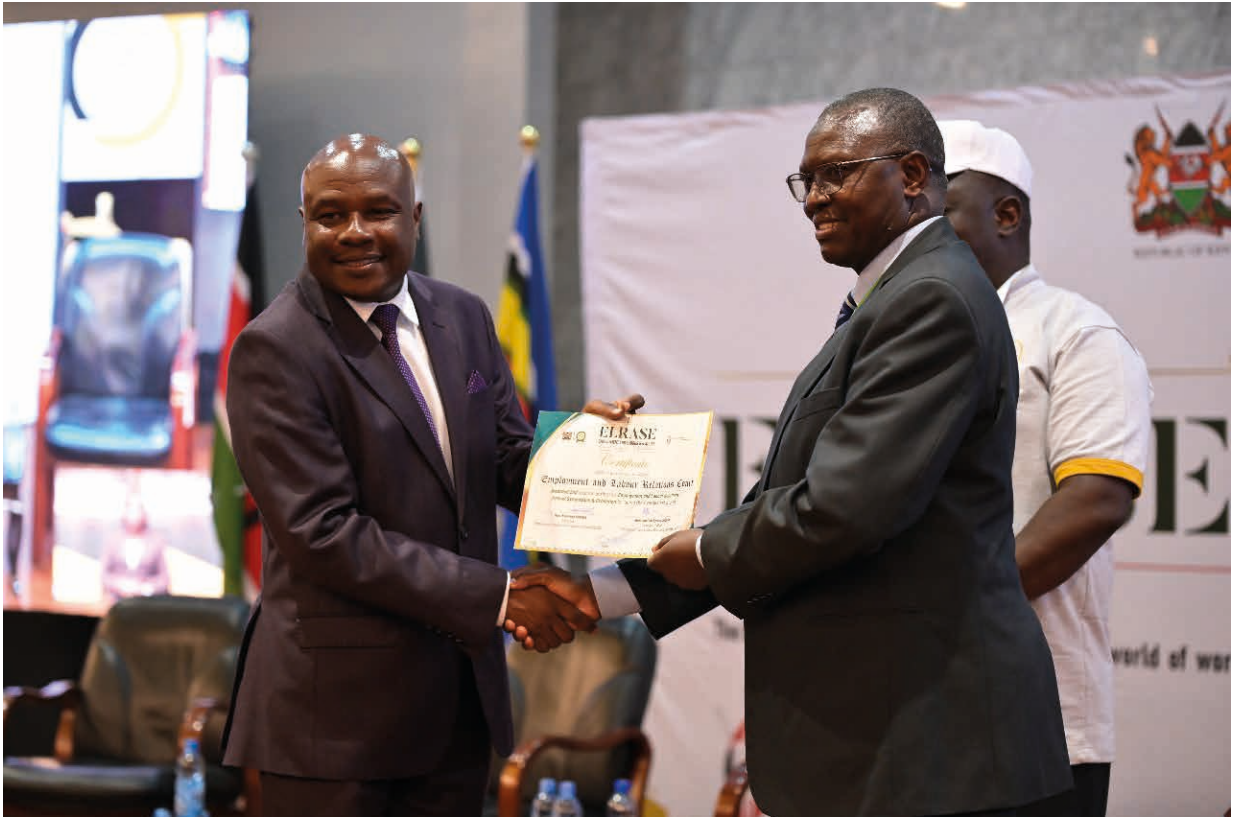
KITUO CHA SHERIA  
LEGAL ADVICE CENTRE  
we care for justice

KTGA  
KENYA TRADE GUILD ASSOCIATION

















## ELRASE II PROCEEDINGS LINKS

[https://www.facebook.com/100064229423213/  
videos/1231516761499347](https://www.facebook.com/100064229423213/videos/1231516761499347)

<https://www.youtube.com/watch?v=sBTj7kxWH5c>

<https://www.youtube.com/watch?v=zo55bM1Lxk4>

## ELRC POLICY DOCUMENTS LAUNCHED DURING ELRASE II

1. The Employment and Labour Relations Court  
(Procedure) Rules 2024  
[https://new.kenyalaw.org/akn/ke/act/ln/2024/133/  
eng@2024-08-23](https://new.kenyalaw.org/akn/ke/act/ln/2024/133/eng@2024-08-23)
2. Conciliation Training of Trainers (TOT) Manual  
<https://tinyurl.com/4u73h2v4>
3. ELRC Registry Operations Manual  
[https://drive.google.com/file/d/1VwVZG0s0WdmepbU  
fwyvT040aLebgjPte/view?usp=drive\\_link](https://drive.google.com/file/d/1VwVZG0s0WdmepbUfwyvT040aLebgjPte/view?usp=drive_link)



[www.judiciary.go.ke](http://www.judiciary.go.ke)

