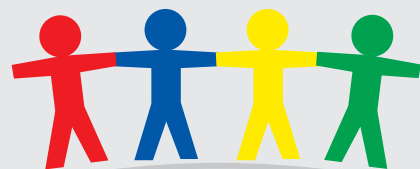




Report
2014



Report 2014



One people One nation

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About this Report

This report provides an overview of the Equal Opportunities Commission's activities during the first two years since its establishment.

Feedback

The Commission is geared towards constantly improving its services. Any comments, observations or queries relating to the contents of this Report will be appreciated.

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This report is intended as information and guide only. It is not a substitute for legal advice.

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Foreword

Two years down the road. And still a long way to go. Many happy endings in individual cases. But the uphill battle for triggering a change of mindset is yet a daunting task.

Mauritius expects. And rightly so.

Restoring dignity and raising self esteem is a personal imperative. And a national necessity for a new social order.

Equality and social integration are more than ever urgencies before the younger generations lose faith. The drift towards pessimism lurks.

Revisiting the social set-up should not be weighed down.

Setting up the equal opportunities legal framework was a laudable initiative. Yet just preliminaries.

The concept of equal opportunities will only be credible where it subsumes the way of dealing with inequality at birth.

In order to reach this goal, some countries have chosen to adopt a course which relies on a system of redistribution so as to try to ensure that the several social groups are treated equally. That system of redistribution is known as “positive discrimination”.

The concept provides a built-in answer to the problem but it cannot be said to promote social justice since it does not have due regard for the merit of each individual.

Because it rests on a quota system, it is bound to favour some as opposed to others. The idea originates from the American courses of action known as “affirmative action”. Nevertheless it does not promote either the progress of society or individual satisfaction.

A notion which involves preferential treatment in any society and belittles some individuals cannot be acceptable to everyone. Not only does it weaken individual merit; it could even be felt by those who are favoured by it that they are being preferred because the system only looks at quantity but not at quality. Self esteem would be the loser in such a system.

Although positive discrimination does its best to meet the situation head on, it cannot be acclaimed as a fully satisfactory solution.

What then could be a system which would eventually diminish inequalities at birth and ensure that society would be imbued with a sense of equality?

Hopefully the thought-provoking opinion analysis which follows may be the spark lightening up a deep and sound debate nationwide.

Thinking out of the box is not only a right. It is our duty.

Brian N J GLOVER

Chairperson



Opinion

Repenser L'équité

Le concept de l'égalité des chances repose essentiellement sur le respect du mérite.

L'idéal de l'égalité des chances dans une société c'est de permettre à chacun d'entre nous d'accéder à une position dans la société qui corresponde à son effort et à son talent.

L'égalité des chances est donc une nécessité tant individuelle que collective.

D'une part, l'estime de soi est en jeu. Une conception individualisée de l'égalité des chances engendre une approche concurrentielle pouvant à terme optimiser les compétences à condition, bien évidemment, que l'individu ressente qu'il obtient une position sociale qui est à la hauteur de ses qualités et de son effort.

D'autre part, la société a grandement besoin que les plus compétents, les plus talentueux et les plus durs travailleurs soient ceux qui bénéficient des recrutements et des promotions proportionnels à leurs qualités intrinsèques, leur éducation et leur expertise. Il en va de la productivité nationale et de l'optimisation des ressources humaines.

L'égalité des chances est sans nul doute une vision absolument nécessaire dans une société moderne. A court, à moyen et à long terme. Mais bien que cette notion égalitaire soit une nécessité individuelle, collective et sociale, la question que tout citoyen est en droit de se poser est la suivante : cet horizon nécessaire est-il atteignable?

Il existe, dans notre société ainsi que dans celles de pays mondialement reconnus comme plus développés que le nôtre, des obstacles contraignants pour l'intégration et l'application de la notion d'égalité de chances entre individus.

Primo, tous les individus ne peuvent avoir les mêmes chances au départ. Affranchissons nos esprits d'un réflexe que nous imposent souvent nos yeux par trop embués de complaisance ou parfois même de complexes : nous ne naissons pas tous égaux et tout le monde ne jouit pas dans son enfance des mêmes avantages économiques, sociaux, structurels et parfois affectifs.

Secundo, il existe dans toutes les sociétés, mais sans doute est-elle plus exacerbée chez nous, une tendance à la discrimination inconsciente. Bien qu'il puisse exister des exceptions qui confirment la règle, il n'en demeure pas moins vrai que même des personnes convaincues d'être justes peuvent parfois obéir instinctivement et inconsciemment à des schémas de pensée discriminatoire. L'être humain a trop tendance à choisir l'autre par rapport à sa propre image. Cette abomination est le reflet d'une psychologie sociale où la méconnaissance d'autrui et la méfiance de l'inconnu exercent pernicieusement un impact traitre sur le décisionnel.

Tertio, l'évolution de la pensée humaine n'ayant pas subi un profond renouvellement, la discrimination délibérée se révèle trop souvent, ici et ailleurs, dans les exercices de recrutement, de sélection et de promotion. Cette pensée discriminatoire peut être non seulement basée sur des préjugés vieux comme la lune mais peut tout aussi bien être fomentée par des calculs d'intérêts particuliers et étrangers au principe du mérite individuel.

Notre pays peut se targuer aujourd'hui d'une valeur sociale ajoutée qu'apporte le cadre juridique mis en place à travers la *Equal Opportunities Act* avec l'avènement de la *Equal Opportunities Commission* et du *Equal*

Opportunities Tribunal. Cette initiative est salubre à bien des égards. Il était impératif de commencer quelque part avec quelque chose. Des progrès sont déjà ressentis dans le combat contre la discrimination qu'elle soit délibérée ou inconsciente. De plus, la conscientisation collective s'étant cristallisée à travers la volonté institutionnelle dans sa mission pédagogique, il nous est permis d'espérer que nous sommes sur les bons rails. Cependant, cette évolution ne saurait s'arrêter en si bon chemin. Si le changement des mentalités est un long processus, il ne nous est cependant pas permis de sempiternellement donner le temps au temps. Cette posture contrasterait amèrement avec l'impatience légitime de la nouvelle génération. Nous avons donc non seulement le droit de repenser l'égalité des chances. Nous en avons le devoir.

Une propension à la réflexion n'est certes pas une négation de la structure juridique d'aujourd'hui. Car la construction d'un meilleur demain se doit d'être une préoccupation citoyenne. L'avancement de la cité n'est pas une considération creuse. Malgré certaines dérives pessimistes, l'on doit continuer à penser que le patriotisme n'est point une ringardise. Et comprendre que l'apologie de la pensée conformiste ne relève point de la prudence mais de l'irresponsabilité.

Des trois obstacles à l'intégration pérenne de la molécule égalitaire dans l'équation sociale tels qu'énoncés plus haut, le plus difficile à passer, avec les structures juridiques existantes, demeure la première : les inégalités de naissance. Alors que les nantis de ce monde jouissent d'un départ dans les conditions optimales, les tristes réalités économiques, sociales, structurelles et parfois affectives des moins chanceux plombent les ailes. L'effort est dans ce cas d'une insuffisance déprimante. Et le talent ne rapporte rien s'il ne peut être valorisé par la société.

Les situations inégales ne peuvent être traitées de manière égale. C'est là toute la pertinence du principe de l'équité.

Pour être crédible, l'égalité des chances nécessite un système qui corrige les inégalités de naissance. Pour atteindre cet objectif, certains pays ont choisi d'adopter un système de redistribution visant à promouvoir entre différents groupes sociaux une plus grande égalité de fait. Cette redistribution structurelle est connue comme la "discrimination positive". Elle s'inscrit dans une logique de comblement d'un écart. Cette notion est certes une réponse structurelle mais elle n'est point une solution sociale juste car elle ne repose pas sur le mérite individuel. Dans sa logique de quota, cette formule suppose un traitement préférentiel. Trouvant son origine dans les programmes américains d'*affirmative action*, elle demeure néanmoins néfaste au progrès collectif et à l'épanouissement individuel. Une théorie basée sur un traitement préférentiel au milieu du collectif et reposant sur une stigmatisation individuelle ne saurait faire l'unanimité. Non seulement elle émasculera le mérite mais elle pourrait aussi être mal vécue par ses bénéficiaires qui percevront un traitement de faveur faisant fi des compétences car exclusivement basé sur le quantitatif et non le qualitatif. L'estime de soi en prendrait un sérieux coup.

Malgré sa dynamique volontaire et frontale, la discrimination positive ne saurait s'imposer comme une solution pleinement satisfaisante.

Qui plus est, l'on est pourvu de suffisamment d'honnêteté intellectuelle et de réalisme pour se rendre à l'évidence que l'on ne pourra jamais supprimer totalement les préjugés et obtenir une équité sans faille. Quelle serait alors la formule qui pourrait à terme minimiser les inégalités de naissance pour une meilleure intégration sociale dans le respect de l'équité ?

L'inspiration pourrait se trouver dans le model britannique.

Une politique de *Positive Action* et non de *Positive Discrimination* pourrait être envisagée.

La *Positive Action*, contrairement à la *Positive Discrimination*, ne sacrifie pas l'intégration sociale sur l'autel du mérite individuel. Le talent et l'effort demeurent les fondements de la méritocratie. Cependant, la *Positive*

Action permet une plus grande marge de manœuvre aux pourvoyeurs d'emplois dans le domaine de la formation professionnelle. Cela non seulement ouvre la voie à une plus grande intégration sociale mais offre aussi à l'employeur l'attrait d'une masse salariale plus diversifiée ne répondant plus à des stéréotypes. Par exemple, si un employeur est d'avis qu'un groupe social est sous représenté au sein de son entreprise, la *Positive Action* lui donne la faculté d'offrir plus d'opportunités de formation professionnelle en vue d'une plus grande sécurité d'emploi à des candidats de ce groupe social en particulier. Les caractéristiques de ce groupe social pourraient être basées tant sur leurs genres que sur leurs origines ethniques.

Une telle approche, tout en créant plus d'occasions (*opportunities*) ne garantit cependant pas des résultats (*outcomes*) aux bénéficiaires de cette formation, le recrutement et la promotion se faisant toujours sur la base du mérite, du talent, des compétences et des efforts individuels.

La *Equality Act* du Royaume Uni donne aussi une flexibilité accrue dans le monde de l'emploi au chapitre des mesures d'encouragement qui pourraient être appliquées dans le but d'attirer une plus grande demande d'emploi au sein d'un groupe social en particulier. Un employeur, jugeant, par exemple, la gente féminine ou un groupe ethnique sous représenté au sein de son établissement, est en droit d'encourager des candidatures du groupe en question. Cette mesure incitative ne saurait cependant avoir pour but d'écarter des candidatures de personnes hors de ce groupe sous représenté.

Outre une meilleure intégration sociale, la *Positive Action* à la sauce anglaise est d'un atout non-négligeable aux yeux d'employeurs désireux de se prévaloir du *diversity dividend* que lui apporte une telle politique. Car des ressources humaines d'horizons divers et variés confèreraient la possibilité d'une clientèle plus large touchant tous les groupes sociaux, une plus grande richesse d'innovations à travers un brassage d'idées différentes et un *reputational benefit* que seul l'argent ne peut payer.

Se limitant uniquement à la formation (*training*) et à l'encouragement, la *Positive Action* transcende le mythe fallacieux selon lequel elle favoriserait le recrutement de groupes sociaux répondant à des caractéristiques spécifiques.

Par ailleurs, le caractère facultatif des dispositions de l'*Equality Act* n'impose aucune obligation aux employeurs frileux qui craignent l'instauration de complications administratives dans leurs gérances. La *Positive Action* dépend de la volonté des uns et des autres. Mais elle ouvre à grands battants une porte qui semble encore qu'entrouverte chez nous.

Les principes de la *Positive Action* sont sans doute déjà ancrés dans les mœurs de quelques employeurs de bonne volonté à Maurice. Mais cette notion n'est pas codifiée. Qu'elle doit l'être est un débat souhaitable.

L'on nous bassine souvent les oreilles ici et là de l'incessant refrain que notre pays est différent. Certes. Et c'est tant mieux. Mais cette rengaine ne devrait en aucun cas nous empêcher de penser différemment.

Ces quelques lignes ont pour but de susciter une réflexion profonde et collective dans la transparence la plus totale.

Après tout c'est ça la démocratie.

Brian N J GLOVER

Président

Commission pour l'Égalité des Chances



About the EOC

About the EOC

Our Vision

Our vision is to create a fairer Mauritius, with no barriers to equal opportunities and to foster an unprejudiced and inclusive society free from discrimination.

Our Mission

Our mission is to:

1. Prohibit discrimination on the ground of status and by victimization;
2. Promote good relations between persons of different status;
3. Reach out to people at different levels through our sensitization campaigns with a view to fostering equal opportunities values;
4. Enable the emergence of a society where there is no fear of discrimination and where the equal opportunities culture is well-ingrained in each citizen's life;
5. Provide victims of discrimination with an effective remedy; and
6. Assist and encourage persons who are discriminated against and those who discriminate to resolve their dispute by conciliation.

Our Motto

The Commission is geared towards promoting an inclusive society by bringing forward the richness of our diversity, which makes us so unique as a nation.

In line with our vision and our mission, our motto is: "One People, One Nation"

Who we are?

The Equal Opportunities Commission (in the report referred to as "the Commission") is an independent statutory body set up under the Equal Opportunities Act 2008 (in the report referred to as "the Act"). The Commission comprises a Chairperson and three other members, nominated by the President of the Republic. The Commission also has a Secretary who is responsible for the administration of the Commission.

The Commission operates with a very small, but dedicated staff. Leading by example, the Commission has made it a point not to recruit necessarily from the public sector. Recruitments are on-going to fill vacant positions.



Our Team at the EOC



- | | |
|--------------------------------------|--|
| 1. Mr. Brian N.J Glover | Chairperson |
| 2. Mr. Shameer Mohuddy | Member |
| 3. Dr. Rajayswur Bhowon | Member |
| 4. Mrs. Danisha Sornum | Member |
| 5. Mr. S. Youdhisteer Munbodh | Secretary (Deputy Permanent Secretary) |
| 6. Mr. Naseer Toorabally | Procurement and Supply Officer |
| 7. Mr. Kamlesh C. Suneechur | Ag Office Management Assistant |
| 8. Mrs. Maneka Ramphul | Management Support Officer |
| 9. Mrs. Linda Vadiavaloo | Confidential Secretary |
| 10. Mrs. Radha Jagoo | Confidential Secretary |
| 11. Mrs. Rajshree Boodia | Confidential Secretary |
| 12. Miss Devadee Runghien | Intern - Investigation & Administration |
| 13. Miss Ashvina Bikoo | Intern - Investigation & Administration |
| 14. Miss Aasrah V. Hurbungs | Trainee - Complaints Handling & Administration |
| 15. Miss Tevishna Sunassee | Trainee - Complaints Handling & Administration |
| 16. Mr. Tekanand Purroye | Office Care Attendant/Driver |
| 17. Mr. Leckrajsing Ujoodha | Policeman |

What we do?

1. Our mandate

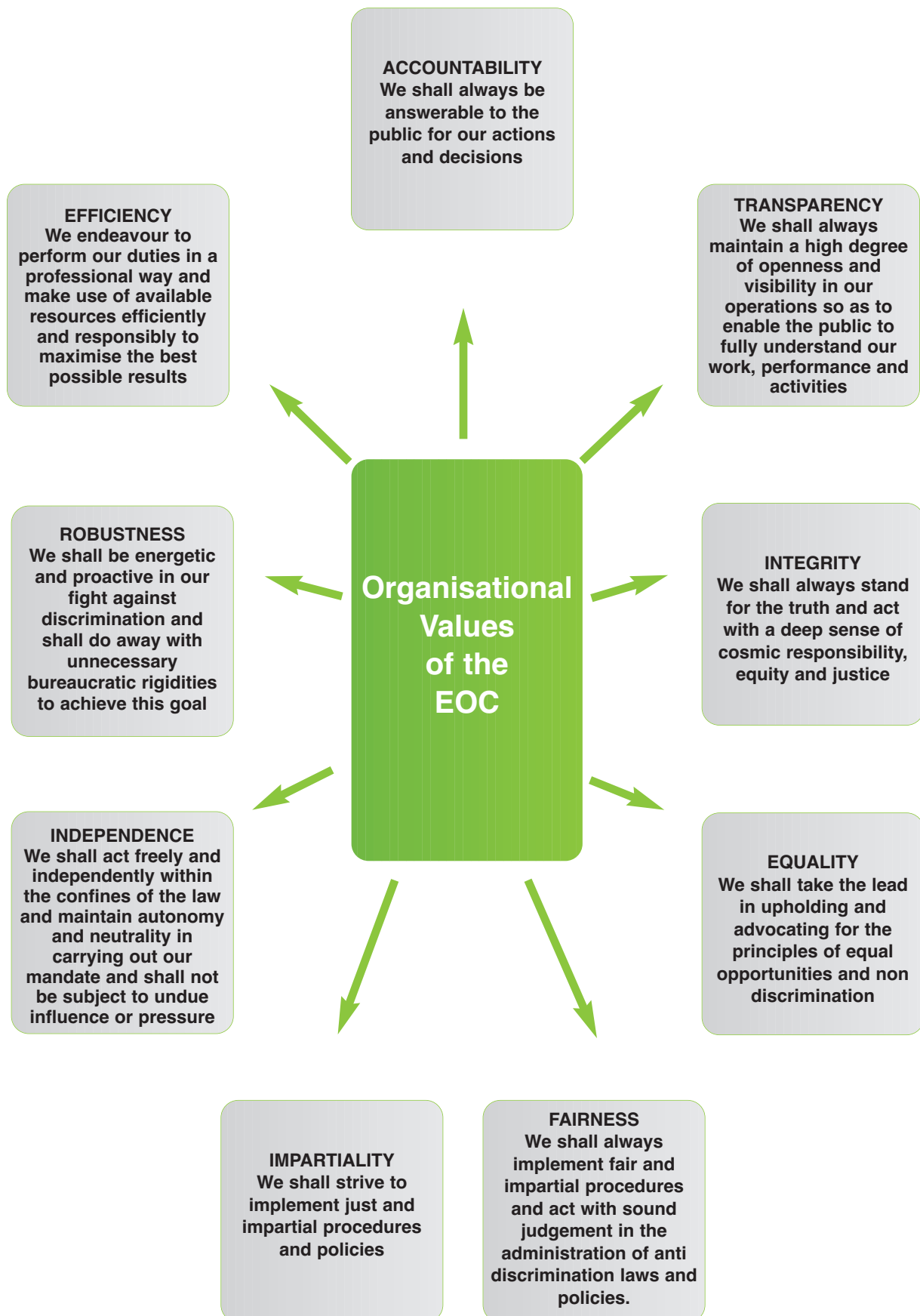
The Commission is mandated under the Act to:

- i. work towards the elimination of discrimination, and the promotion of equality of opportunity and good relations between persons of different status;
- ii. keep under review the working of the Act and any relevant law and submit to the Attorney-General proposals for amending them, if required;
- iii. of its own motion or following a complaint, carry out an investigation;
- iv. attempt to reconcile the parties by whom and against whom a complaint is made;
- v. conduct and foster research and education and other programmes for the purpose of eliminating discrimination and promoting equality of opportunity and good relations between persons of different status;
- vi. prepare appropriate guidelines and codes for the avoidance of discrimination and take all necessary measures to ensure that the guidelines and codes are brought to the attention of employers and the public at large;
- vii. refer the matter to the Director of Public Prosecutions if on completion of an investigation, it is revealed that an offence has been committed;
- viii. refer any matter to the Equal Opportunities Tribunal (in the report referred to as the “Tribunal”) for non-compliance with the Act; and
- ix. apply for interim orders to the Tribunal as a matter of urgency.

2. The 12 protected grounds under the law

The Commission’s mandate is a very specific one. Cases of discrimination fall within the purview of the Commission only if the less favourable treatment is based on the ‘status’ of the person. ‘Status’ refers to the 12 protected grounds of discrimination under the law, namely, age, caste, creed, colour, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex and sexual orientation.

Our organisational values



Our transparency and impartiality statement

The Commission is committed to discharge its statutory duties in an impartial, fair, just, transparent and objective manner.

Conciliation between the parties is facilitated through the balancing of power disparity, exploring practical solutions with the parties and assisting the parties to make informed decisions.

With a view to being transparent at all stages, from investigation to conciliation, the Commission always informs the parties about the reasons behind any recommendation. Also, valuing transparency as a key characteristic of good corporate governance, the EOC privileges communication to the public and provides timely information through its website as well as through regular radio interventions and press briefings.

With the aim of fulfilling its mandate in the most efficient manner, the Commission always endeavours to:

1. provide a friendly and accessible enquiry service;
2. handle complaints with utmost confidentiality and diligence;
3. conduct investigations in a fair and timely manner; and
4. educate employers, employees and the public in general about this new law through its mass sensitization campaigns across the country.



Understanding the Psychology of Prejudice

"I have cherished the ideal of a democratic and free society in which all persons will live together in harmony and with equal opportunities. It is an ideal which I hope to live for. But, my Lord, if needs be, it is an ideal for which I am prepared to die for"- Nelson Mandela

Discrimination, multi-faceted as it is, demands an equally multi-dimensional approach. This complex social dynamics with which the Commission deals, entails the identification, isolation and understanding of behavior patterns, which though varying across our society, underpinned by a unique diversity, have common denominators.

People may discriminate knowingly and in all conscience; but in most instances, people discriminate unknowingly; the prejudice often exists at a subconscious level. Employers, for instance, may tend to choose people in their own image or people having the same ethnic background as themselves or of the same sex. It is not necessarily an ill will, but more of a human tendency to associate with the known rather than the unknown. This is not a behavior restricted only to the Mauritian society but is more of a global syndrome.

Albeit, no matter what form the discrimination may take, the impact is the same- psychological distress for the person victim of discrimination, which invariably results in decreased productivity. It may be noticed that at times the victim of discrimination may be so used to his circumstances that he may not react to the unfair treatment meted out to him, or he may not react out of fear of being further marginalized. This goes to show that the promotion of equal opportunities is not a mere concept, but a professional skill that demands to be inculcated in employers and employees alike and be implemented so as to allow for the emergence of a more conducive work environment. In short, it is a societal joint account.

The quest for fairness being instinctive in us humans, it is all too natural for each citizen to aspire for an equal opportunity to explore his or her potential and live a fulfilled life. This culture of equality is not an inborn attitude. It is more of a skill that needs to be awakened, developed and exercised as an art of mastering our actions.

More often than not, it is observed that the first reactions of alleged discriminators in most cases is to get on the defensive and deny the allegation of discrimination or to blame the complainant for invoking discrimination, particularly if based on race or sex or political opinion. It's not a mere denial or a mere blame-game; it's the reflection of the fear of being tagged racist or sexist or simply as discriminator; it's the reflection of discrimination as it is in our society- a taboo.

The effort of the Commission lies beyond merely solving cases. It is foremost essential for each individual to understand that there is no shame in acknowledging discrimination and that the way forward lies indeed in the acknowledgement and not in the denial. Discrimination for sure is an offence under the law, but one that is better dealt with through mutual understanding rather than punishment. That's why the Commission always encourages parties to look beyond settling individual cases and use the conciliation experience as solid

ground for relooking positively into behavior patterns and skills that can enlarge the space for the promotion of equality of opportunity. In the same spirit, when devising our strategic plan for the next two years, much emphasis has been laid on the building of a cohesive network with all stakeholders of our society to bring real, adaptive and systemic changes.

It is also observed that when people are faced with allegations of discrimination, it is often argued that it is probably more of a perception of discrimination. True as this may be in some cases, it is also a fact that perception of discrimination is as harmful and destructive as discrimination itself. There is a very fine line to be drawn between discrimination and a perceived discrimination. If there is a lack of transparency in decision-making, a perception of discrimination easily sets in, especially in such a multi-ethnic and highly politicized society as ours. So, discrimination cannot be tackled in a segregated manner. It entails the rethinking of policies to render the general functioning of institutions and companies more transparent. It means questioning what probably has always been considered as normal practice, for instance, not having mark sheets during interviews, or asking questions pertaining to the personal life of a person that may make the latter believe that he or she has been treated unfairly.

Our stark reality today is that discrimination manifests itself in its various forms at all levels of the society. Beside racial discrimination, another most prevalent form of discrimination is that based on sex. As per recent figures of the Statistics Bureau of Mauritius, on the average in all sectors, the woman's salary is 26 percent less for the same job done as a man. Cases lodged at the Commission tend to show that the woman is more vulnerable to discrimination. Pregnancy, maternity leave, marital status and family responsibilities are all often wrongly used as excuses to weaken the professional role of the woman. It needs not be. Enabling a complementary evolution for both man and woman, be it, individually, professionally or politically is what will give a new dynamism to the socio-economic system. Decommissioning centuries-old institutions that have marginalized the woman as well as persons of a different sexual orientation would perhaps enable us to better counter the causes of prejudice.

A collective effort is needed to pull down the barriers that prevent us from evolving towards a fairer society. Discrimination is the kind of societal weed that needs constant uprooting. It means that we need to explore new dimensions to evolve the mindset and inculcate the skills that will enable society at large to embrace the philosophy of equality of opportunity.

Fighting discrimination rests upon the willingness to challenge normality. It's all a matter of breaking out of the abnormal zone of normality in which it is so easy to find comfort. There are still all the walls for us to bring down, which may practically sound impossible in the short run. Nothing prevents us, though, from drilling holes, cutting doors and windows through the walls as a starting point.

Danisha Sornum

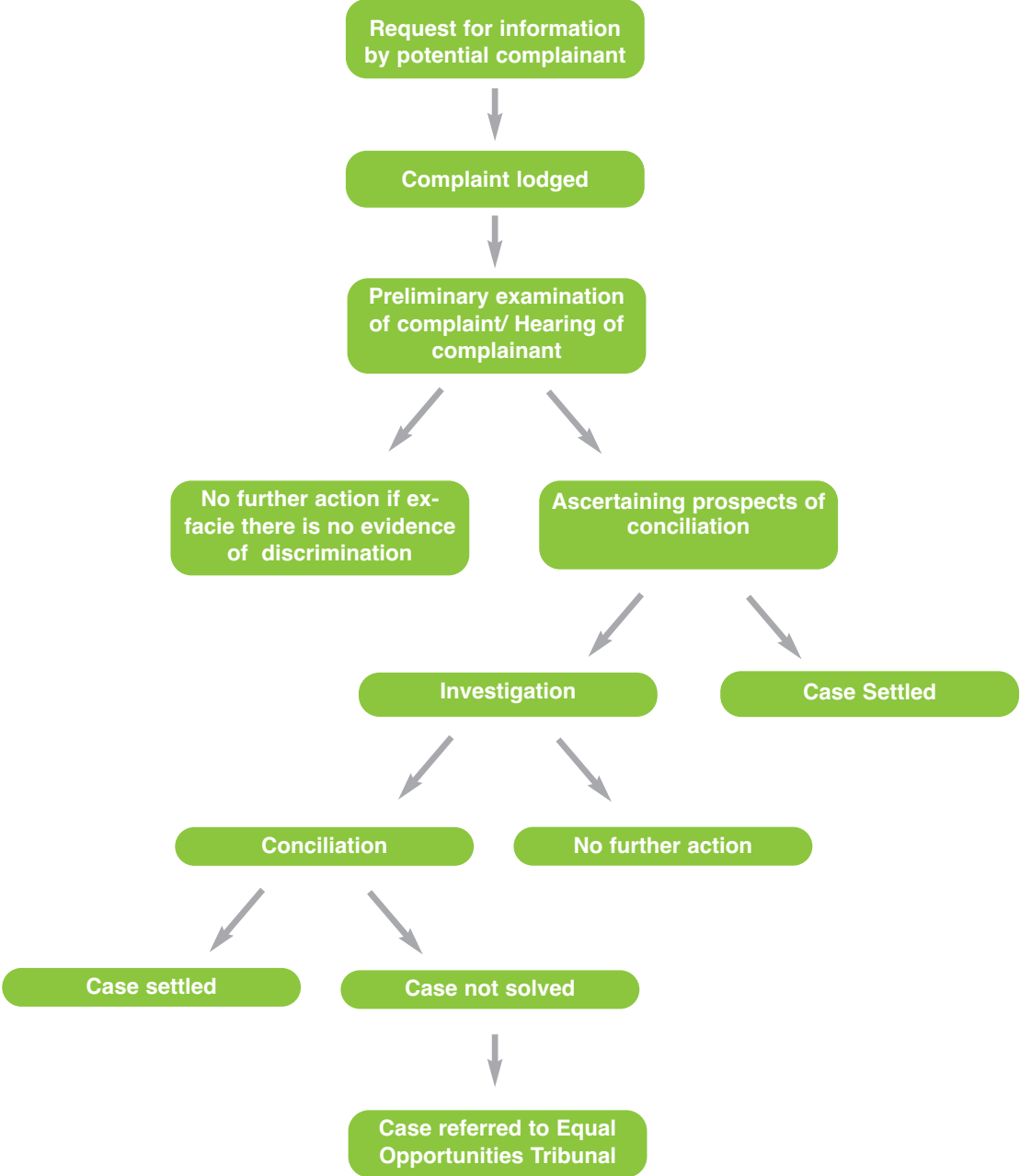
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Complaint ● Handling Process

The Commission is mandated to address complaints alleging discrimination on the basis of one or more of the 12 protected grounds under the law. Such complaints may emanate from individuals, a group of persons, corporate bodies or they may even be anonymous.

1.1 Investigation and Conciliation

Below is a structural outline of the process of complaint handling:



The Commission has established a simple yet very powerful means of addressing the cases via a very user friendly “Complaint Form”. A copy of the said Complaint Form is set out in Appendix I.

As may be gauged from the above diagram, very often, complainants seek information from the Commission before lodging the complaint. The staff of the Commission helps the public in understanding the principles of the Act and its procedural aspects.

When the complaint is lodged, there is a preliminary examination of the said complaint by the Members of the Commission. At this stage, the complainant is very often called at the seat of the Commission for a preliminary hearing so as to enable the Commission to gather more information as to the allegations made.

It is apposite to note that even if *ex facie* a complaint, it would appear that there is no sufficient evidence to find that a complaint is well-founded, the Commission does not reject the complaint outright. The complainant is given the opportunity to provide the Commission with further evidence or is requested to particularise the status upon which he/she feels discriminated. The same procedure is adopted when *ex facie* a complaint, the latter appears to be time barred. The Commission invites the complainant to show good cause for the time-line to be extended. Albeit increasing the workload and being heavily time consuming, such a process is systematically adopted as it is believed that the Commission has a social mission to achieve.

Therefore, following a preliminary examination of the complaint, if the Commission finds that there is no sufficient evidence of discrimination even after gathering more information from the complainant, no further action is taken on the complaint. If the Commission is of the view that there is sufficient evidence to proceed, the alleged discriminator is called in with a view to ascertaining prospects of conciliation in the first instance, without delving into the merits of the case. This very often enables an early settlement in the case, thereby avoiding a lengthy, time-consuming and costly process. It has been observed that ascertaining prospects of conciliation before even starting an investigation helps to avoid breeding bad blood between the parties, and becomes instead a step towards promoting good relations.

Should the alleged discriminator be unwilling to reconcile, but the complaint appears to be well-founded, the Commission carries out a full-fledged investigation. Following the investigation, it may still be found that there is no evidence of discrimination, in which case, the complaint is set aside.

For instance, the Commission received a complaint whereby it was alleged by the complainant that he was given a less favourable treatment by an institution that refused to give him a permit to sell alcohol in his shop. He alleged that the less favourable treatment was based on his ethnic origin as those of other ethnic backgrounds in his village had been given their permits. The Commission opened an investigation, during the course of which site visits were also conducted. Following the investigation, it was found that the complainant could not be given his permit because his shop, where he proposed to sell alcohol drinks, was located near two places of worship, which is not allowed under the applicable law. There was therefore no evidence of discrimination on the basis of ethnic origin.

The Commission also investigated an anonymous complaint whereby it was alleged that children of a particular ethnic background in a school were being given a less favourable treatment by the teacher. However, following a thorough investigation, it was found that the allegations were not well-founded and were made in bad faith.

If on the completion of the investigation, the Commission finds on a balance of probabilities that there is discrimination on the basis of one of the protected grounds under the law, a final attempt at conciliation is made. A report containing the recommendations of the Commission is sent to the parties whilst at the same time inviting them to attempt conciliation. If no settlement is reached within 45 days, the Commission may then, with the consent of the complainant, refer the matter to the Tribunal. An example of such a report is set out in Appendix II.

Be that as it may, the Commission strives to fulfill its conciliatory mandate at all times during the whole complaint handling process. The promotion of good relations between persons of different status being of paramount importance in a diverse society as ours, the Commission at all stages encourages parties down the path of conciliation.

1.2 Types of outcomes sought

When the parties agree to settle the matter, either the said settlement is embodied in a written agreement (Appendix III) or the matter is simply settled between the parties without the need for any written agreement.

The settlement reached between the parties may take various forms. Below are some of the outcomes sought:

(i) Apology

A complaint was lodged at the Commission whereby the complainant alleged that he had been discriminated upon the basis of his colour and ethnic origin. The complainant, working as Chef in a Hotel, averred that the Nursing Officer at the hotel ill-treated him and did not give him immediate care when he fell ill at his place of work. In a “healing of hearts” spirit, the Nursing Officer apologised to the complainant, and the latter accepted his apologies before the Commission.

(ii) Monetary compensation

It was alleged by a complainant that she was dismissed from her job because she was pregnant. A monetary compensation was offered to the complainant, which she accepted.

(iii) A satisfactory explanation on behalf of the respondent;

In some cases, the complainants do not look for specific outcome to the case; they simply wish to have clarifications, for instance, as to why they have not been promoted. In such cases, the Commission proceeds to request for information pertaining to same. This may imply requesting for selection criteria, mark sheets amongst others.

(iv) Equal Opportunity Training Programme;

A Mauritian living abroad was refused access to a hotel and he alleged discrimination based on the colour of his skin and his place of origin. He believed that he was not allowed access to the bar of the hotel because he is a Mauritian and a “Black”. He averred that there were mostly tourists

and “Whites” in the hotel. The hotel denied the allegation and explained that they could not allow the complainant in on the day he came because due to unexpected weather conditions, the bar was full. However, in a spirit of promoting good relations, the hotel proposed to settle the matter by offering a free stay to the complainant. The latter refused the offer and made a counter offer instead, requesting the hotel to organize a sensitization campaign on the promotion of equal opportunities and the elimination of discrimination, to be carried out by the Commission, which proposal was agreed by both parties.

(v) Policy change within the organization;

A group of complainants lodged a complaint against a parastatal body alleging that several recruitments had been carried out without following the proper procedures, therefore bypassing the principle of equal opportunities and breeding a perception of racial discrimination. The complainants simply wished for a policy change within the organization. It was agreed by the alleged discriminator that there should be more transparency in its selection and promotion exercises. The institution therefore immediately adopted an Equal Opportunity Policy, with an undertaking to have marksheets and observe other good governance principles in future recruitment and promotion exercises.

(vi) Opportunity to be considered for a promotion, or training.

It was alleged by a complainant that she was being assigned higher duties outside her scheme of service without reasonable explanation and that as compared to her other colleagues, she was never promoted. She alleged sex discrimination. The matter was taken up by the Commission, following which the complainant was promoted.

(vii) Access to a particular service

An inhabitant of Rodrigues lodged a complaint against the Commission of Public Infrastructure and Others. The complainant averred that he was refused access to water facilities because of his political opinion. The Commission conducted an investigation to that effect and the case was settled. He was eventually granted the said water facilities.



The Equal Opportunities Act: a truly revolutionary piece of legislation

1. Access to information regarding qualifications and experience (section 16 of the Act)

Under section 16 of the Act, it is now possible for a person who has not been offered employment or an existing employee who has been transferred or not been promoted and who has reason(s) to believe that he/she may have been subject of discrimination, to have access to information pertaining to the qualifications and experience of the successful candidate.

If such a request is made, then the employer is legally obliged to disclose the requested information. However, what cannot be disclosed is any information identifying the successful candidate since this information is protected under the cover of confidentiality.

This section 16 is revolutionary in the true sense of the word since it goes a long way in providing the necessary circumstantial evidence and information required for establishing discrimination. Many a times, complainants find it quite arduous to establish discrimination in the absence of any direct evidence or any evidence at all. This is a real stumbling block in the process of establishing discrimination and as such the Commission faces a real challenge in pursuing the matter or in conducting its investigations, and some complaints ineluctably end up being set aside. Many a times, one of the FAQs I get especially from young people during sensitization campaigns and workshops which I conduct is the following: *“Sir, I went for an interview and in the interview room, there was only the HR Manager and I. My interview went on very well but I eventually did not get the job. I believe that I may have been discriminated against since I have reasons to believe that the person who got the job has lesser qualifications and experience than I”*. Now, with section 16 of the Act, this unsuccessful candidate can write to the company/institution and ask for the qualifications and experience of the person selected and the company/institution has a legal obligation to provide such information to this candidate. With such information in hand and with a simple comparison exercise, it becomes easy for this candidate to establish a less favourable treatment (if any) in his/her case and thus this information can be used as circumstantial evidence or at least as a *“début de preuve”* of discrimination. This information has a real probative value.

And what makes this section of the Act even more interesting and unique is that it applies not only in respect of the recruitment and employment process but also in respect of promotion and transfer exercises. An employee who fails to secure a promotion whilst his/her colleagues do get same may now very well exercise this right, obtain the necessary information from his/her employer and eventually make his/her case to the Commission.

2. Indirect discrimination (section 6 of the Act)

The Act has created a new form of discrimination: indirect discrimination. This comes in as a second form of discrimination besides direct discrimination in the Act.

Whilst it is common knowledge that many a times, discrimination may not necessarily be direct, for instance an employer not giving a job to a candidate or not giving a promotion to an employee on the ground of the latter's status, but that it may also take a more subtle and surreptitious form. Hence, this same employer can very well circumvent the system by imposing certain conditions or requirements in the advert thereby making it tailor made for the candidate he/she wants to favour. In the absence of indirect discrimination provisions, he/she could very well get away with crime given that this tailor making process would not be captured by direct discrimination. That is the main reason why the legislator in its wisdom has specifically provided for indirect discrimination as another form of discrimination under the Act.

This is unique since the only form of discrimination which is there in the other relevant legislation, for instance in section 16 (Protection from discrimination) of the Constitution of Mauritius is direct discrimination. Moreover, whilst the Employment Rights Act 2008 does refer to unreasonable conditions, requirements or practice being imposed when talking about discrimination in employment, it does not however go to the extent of specifically tagging this as indirect discrimination and hence making it an offence under the said legislation. This can only be found in the Equal Opportunities Act. In fact, quite a few complaints have been lodged at the Commission against employers or prospective employers on the ground that the latter may have imposed conditions or requirements in the advert or scheme of work which are not reasonable in the circumstances or not consonant with the nature of the work. In such cases, the conditions imposed related mostly to age limit criteria or requirement for a certain number of years of experience at senior management level.

Now, what is even more unique and interesting in the Equal Opportunities Act is that contrary to direct discrimination where the burden of proof lies on the complainant, in the case of indirect discrimination, this burden of proof shifts from the complainant onto the alleged discriminator. It is up to the latter to prove that the condition or requirement imposed is justifiable in the circumstances. This renders the task of the complainant less arduous and challenging inasmuch as he/she only has to establish that a condition or requirement has been imposed for instance in an advert or a scheme of service and that such condition or requirement puts him/her at a disadvantage when compared to other persons. It will be up to the alleged discriminator to prove his/her case.

3. Inclusion of impairment as a protected ground (section 2 of the Act: definition of 'status')

Impairment has been included as a protected ground under the definition of status in the Act. Again this is unique and very much particular to the Act given that other relevant legislation makes no mention whatsoever of this particular ground. Hence, neither section 16 of the Mauritian Constitution nor section 4(5)(a) of the Employment Rights Act 2008 makes of impairment a ground for discrimination.

Under the Act, impairment not only captures physical and mental handicaps and disorders but also extends to infections such as HIV Aids or Malaria etc.

Hence, people who suffer from handicaps and who have reason(s) to believe that they may have been discriminated against on that basis whether at the workplace or in respect of access to public places or educational institutions, for instance, may validly challenge the alledged discriminator under the Act on the ground of impairment.

Quite a few cases lodged at the Commission are pitched on impairment and in most of these cases, successful conciliation has been reached. In fact, the very first case which was referred by the Commission to the Equal Opportunities Tribunal pursuant to section 33(5) of the Act is one based on impairment (a lady on a wheelchair being denied access to a nightclub). The Tribunal has recently issued a ruling in favour of this lady and ordered the alledged discriminator to pay compensation to the latter for prejudice suffered.

Shameer Mohuddy

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Statistics and case studies

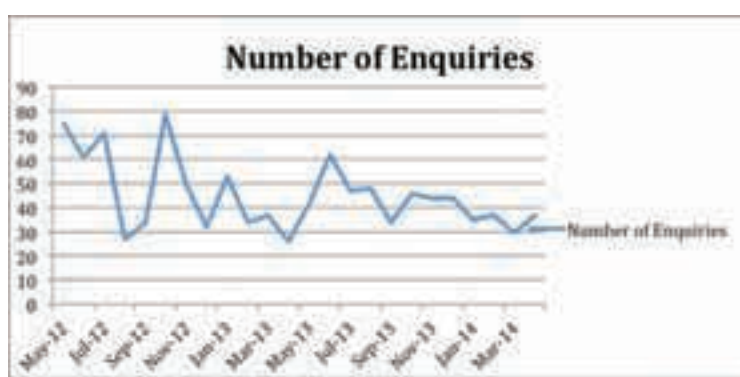
Statistics and case studies

2.1 Statistics

2.1.1 Request for Information

As mentioned earlier in this report, very often members of the public seek information before they lodge a complaint. The Commission provides a very user-friendly and accessible enquiry service. Beside our website that provides relevant information and updates, the staff of the Commission also attends to queries that members of the public may have on the phone, via email, or face-to-face. Below is a graph showing the trend in the number of people who call in at the Commission to seek information prior to lodging a complaint.

Trend in the number of people who called at the seat of the Commission for queries



It may be observed that at the outset, when the Commission had just been set up, there were relatively more queries to be attended to. The decrease in the number of queries tends to suggest that the sensitization campaigns being carried out by the Commission across the country over the last two years have enabled the citizens to better understand the mandate of the Commission.

2.1.2 General view of complaints

Over the last two years since its establishment, the Commission has received more than 1000 complaints, out of which 50 have been lodged by Rodrigues.

Below are the figures on the complaints dealt with by the Commission for the period April 2012- April 2014.

| | |
|---|------|
| Number of complaints lodged as at end of April 2014 | 1058 |
| Number of hearings in Rodrigues | 50 |
| Number of hearings held | 303 |
| Number of complaints examined by the Commission | 969 |
| Number of complaints not under purview of the Act | 230 |
| Number of complaints time barred | 65 |
| Number of complaints withdrawn | 37 |
| Number of complaints under Investigation | 245 |
| Number of complaints in which there was no evidence of discrimination | 89 |
| Number of complaints set aside (No Feedback from Complainant) | 87 |
| Number of complaints where additional information is being sought | 175 |
| Number of complaints referred to Equal Opportunities Tribunal | 3 |
| Number of complaints referred to other Instances | 10 |
| Number of complaints conciliated/settled | 28 |



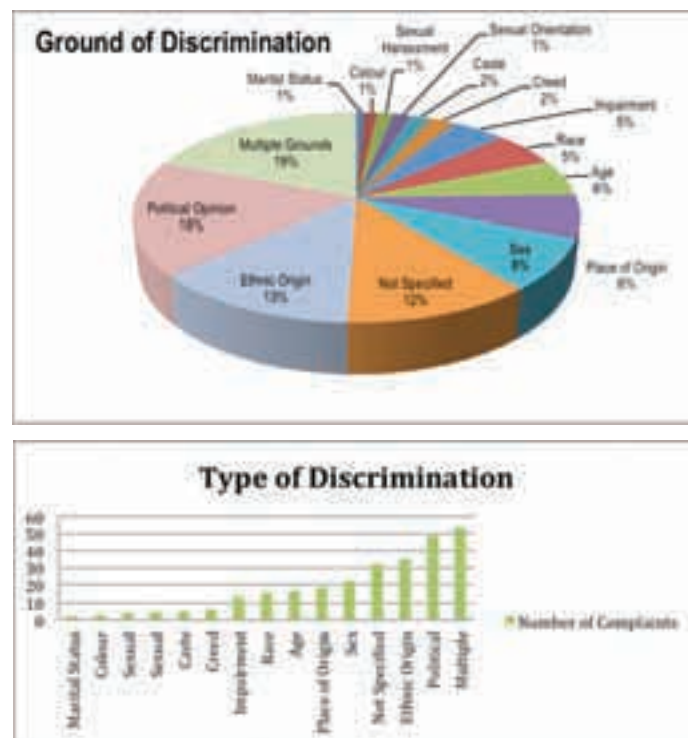
2.1.3 The 12 Protected Grounds of Discrimination

As mentioned earlier in this report, there are 12 protected grounds under the Act, namely, age, caste, creed, colour, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex, and sexual orientation. In addition, the Act also proscribes sexual harassment.

The graph below shows a breakdown of the complaints as per the grounds that were evoked by complainants when lodging their complaints.

Grounds of Discrimination – Both Mauritius and Rodrigues

(Based on complaints conciliated, settled, referred to Tribunal/DPP and currently under investigation)



As may be seen from the above graph and chart, ethnic origin and political opinion are two of the grounds of discrimination that are most often relied upon by complainants. This trend may be explained by the multi-ethnicity and diversity that underlie our societal fabric.

2.2 Case Studies

2.2.1 AGE

Age discrimination arises when the age of a person is considered to be the cause of less favourable treatment.

An example of direct discrimination on the basis of age would be a person who, despite possessing the qualifications and skills required, is not selected for a job because the employer believes that the person is too young for the job and will not be an authoritative figure for that position.

An example of indirect discrimination would be a job advertisement where a requirement of 10 years' experience is set, whereas from a reasonable person's point of view, 3 or 4 years' experience would be adequate for the job.

A case being investigated into by the Commission concerns an allegation of indirect discrimination on the basis of age. Here, an age criterion of 40 years has been set out in the advertisement and it is alleged by the complainant that the said criterion is not justifiable in the circumstances, especially in view of other criteria in the advertisement such as the need for a doctoral qualification and years of experience required. At present, the Commission is in the process of gathering more information to ascertain whether the age criterion is justifiable or not in the circumstances.

2.2.2 IMPAIRMENT

Impairment under our law encompasses a physical impairment, a mental impairment and even the presence in the body of organisms that may cause disease, for example, HIV/AIDS.

A physical impairment can be a total or partial loss of a part of the body, a malfunction of a part of the body, or a disfigurement of a part of the body. The following is an example of how the Commission dealt with a case of less favourable treatment on the basis of physical impairment.

The complainant's daughter was born with a physical impairment as a result of which she had difficulties to pursue her primary education as other normal students of her age. Despite having passed her CPE Exams, she was refused admission in various schools due to her handicap and also because she had already reached the age of 15, whereas the age limit to join a secondary school is 13 years. The Commission took up the matter with the Ministry of Education. The Minister, in the spirit of eradicating such discrimination and promoting Inclusive Education, exercised his discretionary powers to enable the child to attend secondary school despite her age. Necessary arrangements were also made for the child to be admitted in a secondary school equipped to accommodate physically handicapped students who use wheelchairs.

In another instance, a complaint was lodged against the Ministry of Health, Speech Therapy Unit, whereby the complainant alleged discrimination on the basis of his place of origin and impairment. The complainant averred that his son was not allowed to attend the speech therapy sessions at the hospital though his son had a hearing disability and attended the school of deaf. The complainant also alleged that no transport arrangement was made for his impaired child to travel from his place of residence to another region for therapy. The matter was settled by calling upon a representative of the Hospital to liaise amicably with the complainant. The representative of the Hospital diligently accepted to take on board the complainant's son for speech therapy during school vacations.

As mentioned above, impairment also includes a mental or psychological disorder or disease.

For example, in a case handled by the Commission, the complainant, employee of a company, suffered post traumatic stress, after she was trapped in a fire that broke out on the premises of the said company. Due to her state of post traumatic stress, the performance of the complainant slowed down and she had to absent herself from work quite often. The complainant was of the view that her employer was treating her less favourably because of this psychological disorder and that she was being sidelined, especially in terms of scope for promotion and training. She also believed that she was not being provided with adequate support from the management to cope with the psychological disorder she was suffering from as a result of the accident at her place of work. The Commission examined the complaint and found it well-founded. The complainant informed the Commission that she wished to resign and that a monetary compensation be paid to her, proposal which was agreed to by the respondent.

2.2.3 CASTE

From the complaints lodged at the Commission, it would appear that the caste system is still rooted in the Mauritian society.

For instance, the Commission is at present dealing with a case where the complainant alleges that she has to face the casteist remarks of her superior on a daily basis, which hampers a conducive work environment.

There have been various complaints, especially in the public sector, whereby employees feel they are not given promotion because of their caste. In most of the cases, it was however concluded that there was no sufficient evidence of discrimination on the ground of caste.

The Commission opened an investigation upon receiving an anonymous complaint against a non-profit making school. It was alleged that a particular caste of an ethnic group was being favoured and that a person belonging to the said caste, who was at that point in time performing as deputy rector under actingship had already been promised to be confirmed in that post, thereby filling the vacancy without giving the others interested in the post the opportunity to apply. The management of the school denied that fact but nonetheless agreed to settle the matter by advertising internally for the post, thus, allowing for the consideration of third parties' expressions of interests.

2.2.4 CREED

Creed, in other words, a religious belief or a confession of faith, is also a protected ground under the Act. An instance of discrimination on the basis of creed would be if an employee is not allowed to wear a jewellery or any other visible sign associated with his or her creed, without any reasonable justification.

The Commission is at present dealing with a complaint where the person alleges that he has been discriminated upon on the basis of his creed since he was convened for exams on a Saturday with respect to a post for which he had applied. He alleges that as per his faith he can neither work nor take any exams on Saturdays, which is considered to be a sabbatical day. The outcome sought is that the institution setting the exams considers another day apart from Saturday for the said exams. The Commission is still investigating the matter.

Another case based on creed which the Commission is investigating pertains to the policy of a company that prevents employees who are front-liners from wearing visible signs associated with their creed or religion. In such cases, it is up to the alleged discriminator to prove the reasonableness of having such a policy. The outcome of the case would also depend on whether the policy is adopted across board for people of different creed or to only one group of people.

2.2.5 COLOUR

Colour of skin is often invoked as ground of discrimination along with race in most of the cases.

In May 2012, a complaint was brought to the Commission against a hotel. The complainant alleged discrimination on the ground of colour and race. The complainant alleged that the post for which he considered himself to be duly qualified was contracted out to less qualified persons and he believed the less favourable treatment was based on his race and the colour of his skin. The complainant alleged that White people were systematically favoured and that as a 'Ti-Creole', he was not even afforded the opportunity to apply for the said post. The Commission found the complaint well-founded and proceeded with an investigation. In

accordance with section 30(1) of the Act, the Commission facilitated the settlement of the matter through conciliation. After much deliberation, the hotel agreed to make a public tender for the contested post. Instead of automatically renewing the contract of the person providing the service at the time, the hotel agreed to make allowance for equal opportunity by giving consideration to the expression of interest on the part of third parties. This was embodied in an agreement. It is apposite to note that following the advertisement, a selection exercise was carried out and the complainant was offered employment in one of the hotels of the group.

2.2.6 RACE

Race is often invoked as ground of discrimination together with ethnic origin.

In a complaint lodged against a Ministry, it was alleged by the complainant that she was transferred from one department to another without any justifiable reason and she feared a new transfer. She believed the less favourable treatment was because of her race and ethnic origin and she averred that she was the only one who was arbitrarily transferred as opposed to her other colleagues who were of the same racial background as the officer-in-charge. Following an investigation by the Commission, the matter was settled at the level of the Ministry. It was agreed between the parties that there would be no arbitrary transfers and that the complainant would be treated at par with her colleagues.

2.2.7 ETHNIC ORIGIN

As stated earlier, ethnic origin is one of the grounds of discrimination that is most frequently invoked by complainants. In many of the complaints, denial of equal opportunities for promotion at the place of work is the central issue. Complaints of this nature are received both from the public and the private sectors.

The Commission is at present investigating various complaints lodged against different para-statal bodies, where there are allegations of discrimination on the ground of ethnic origin, relating to recruitment and promotion exercises. It has been observed in many instances that the lack of transparent selection criteria and the absence of mark sheets, amidst others, are elements that permeate the perception and fear of discrimination on the basis of ethnic origin. In a case where the Commission has concluded that there was no discrimination on the ground of ethnic origin, it was nevertheless highlighted that there were various shortcomings in the way the selection was carried out (Appendix IV)

The Commission investigated a complaint where the complainant was a supervisor in a hotel. He was accused of theft, following which he lost his job. He believed he had been treated unfavourably because of his ethnic origin and his place of origin. He alleged that during his employment at the hotel he never received any promotion though he had made several applications for different posts of a higher level. The Commission made an attempt at conciliation and a settlement was reached between the parties whereby the complainant received full compensation for his number of years of service at the hotel.

2.2.8 PLACE OF ORIGIN

Place of origin is not defined under the law. The Commission has received complaints where place of origin is invoked as ground of discrimination in different circumstances.

In June 2012, a Mauritian living abroad lodged a complaint alleging that he had been refused access to a hotel. He averred having been discriminated on, *inter alia*, his place of origin, that is, because he is a Mauritian and also because of his colour of skin. He believed that had he been a foreigner or had he been a White, he would have been allowed in the hotel. The hotel denied the allegations, but in all good faith nonetheless offered to settle the matter through conciliation with a view to promoting good relations. The hotel offered a free stay to the complainant, which the latter refused. The complainant made a counter offer, requesting the hotel to organize a sensitization campaign on the promotion of the elimination of equal opportunities and non-discrimination, to be carried out by the Commission, which proposal was agreed by both parties.

In another case, it was alleged by the complainant that the tax levied on immovable property in urban areas amounts to discrimination in so far as no such tax is levied on immovable property in rural areas. In this case, the Commission has concluded that one's place of origin is not one's place of residence, as a result of which no further action could be taken.

During the course of sensitization campaigns carried out by the Commission, particularly in Rodrigues, concerns have been expressed as to discrimination on the basis of place of origin. It is reported that sometimes Rodriguans feel discriminated upon because they come from Rodrigues.

2.2.9 SEX

There is discrimination on the ground of sex if a less favourable treatment is afforded to a woman as compared to a man or vice versa, because of their sex. For example, it would amount to discrimination on the ground of sex if a company employs only people of one sex, without any reasonable justification, or where sex is not a genuine occupational qualification for employment. An example of a genuine occupational qualification would be where the duties have to be performed by a person of a particular sex to preserve decency or privacy because they involve the fitting of clothing for persons of that sex.

It would also amount to sex discrimination if the said discrimination is based on pregnancy, potential pregnancy or family responsibility of a person. For instance, there would potentially be a case for sex discrimination if an employer removes the management responsibilities from an employee after resumption of work following maternity leave.

The first case conciliated at the Commission was pitched on sex. The complainant alleged that she had been discriminated upon on the basis of sex as she was demoted to a position with a lower salary (a difference of almost Rs 6,500) because she was pregnant. The company claimed that it demoted her as the job she was performing was demanding, hectic and

required long hours of standing, all of which are detrimental to pregnant women. However, evidence laid down before the Commission suggested that the employer was reluctant to have a pregnant woman as the ‘vitrine’ of its enterprise. Instead, the employer wanted her to perform duties “hors de la vue” of the clients. The Commission found the complaint well-founded, conducted hearings and the parties agreed to settle the matter by way of compensation to the complainant.

In another case based on sex discrimination, it was alleged by the complainant that she was treated less favourably as compared to the other colleagues in her team, all of whom were males. She further alleged that she was forced to resign under pressure. The Commission successfully attempted to resolve the matter through conciliation, and the complainant received an ex-gratia payment from her ex-employer.

A complaint was also brought to this Commission from a School Head Master who alleged being discriminated on the basis of her sex. The complainant claimed that an Educator insulted her in the presence of a Deputy Head Master by stating that she is not fulfilling her responsibilities as Head Master properly, that he would not take directives from a woman and would have her transferred. As conciliation, the complainant accepted the apologies of the Alleged Discriminator and both agreed before the Commission to start afresh on a good footing.

2.2.10 MARITAL STATUS

Marital status refers to the condition of being single, civilly or religiously married, married but living separately from one’s spouse, divorced, widowed or a single parent. Though not many complaints have been received based on marital status, concerns about discriminatory practices are often raised during the sensitization campaigns carried out by the Commission. It would appear that questions pertaining to marital status are often asked by employers or prospective employers during interviews. There is a general feeling that employers, especially in specific sectors such as the tourism industry, give preference to those who are single as opposed to those who may be married and who have to shoulder family responsibilities. The same feeling is prevalent in the public sector, particularly with respect to overseas training opportunities.

A complaint was lodged at the Commission whereby it was alleged by the complainant, a single mother, that she was being treated less favourably and she believed the less favourable treatment was based on her marital status. She alleged that both her colleague and herself had sought a transfer from Rodrigues to Mauritius. However, whilst her colleague, a married woman, was granted the transfer, her request was denied. The matter was settled and she was granted her transfer.

2.2.11 SEXUAL ORIENTATION

Sexual orientation means a person’s sexual orientation towards:

- Persons of the same sex (gay or lesbian)
- Persons of the opposite sex (heterosexual)
- Persons of either sex (bisexual)

For example, it would be a breach of the Act if a customer is refused access to a shop because he

is a gay or she is a lesbian. Another instance of discrimination would be if at a job interview, an applicant says that he/she has a same sex partner and he/she is not offered the job despite being the most competent.

The Commission received a complaint based on sexual orientation against the Blood Donors Association and the Ministry of Health and Quality of Life. As part of the blood screening process, those who wish to donate blood are required to fill in a questionnaire. One part of the questionnaire puts the question as to whether the person is engaged in homosexual activity. If a person answers in the affirmative, the latter is permanently disqualified from donating blood, that is, there is a total ban on homosexuals giving blood. It is alleged by the complainant that this amounts to discrimination on the basis of sexual orientation.

An extensive research was carried out by the Commission in this case following which it was concluded that the question as couched on the questionnaire amounts to discrimination on the ground of sexual orientation as it targets a particular group of people, that is, the homosexuals, as opposed to a certain act, that is, a sexual activity that be classified as risky.

It was noted that many countries where there was previously a total ban are now adopting a more progressive attitude, at the instance of the UK. The question that is asked pertains to the sexual activity and the ban is locked in a timeline, for instance, it is asked whether the person has been engaged in anal or oral sex twelve months prior to the date of donating blood.

The alleged discriminator has by way of conciliation agreed to reform its policy and reframe the question on the questionnaire. This has now been done and the question now targets the sexual activity considered as risky and not a particular group of persons.

It is also to be noted that the alleged discriminator has undertaken to adopt the Commission's recommendation to the effect that since homosexuality remains a criminal offence under our laws, the questionnaire will explicitly give the homosexual donor an explicit assurance that any information furnished therein shall be confidential and shall not be used in any court proceedings.

2.2.12 POLITICAL OPINION

Political opinion is the most frequent ground of discrimination. However, very often, the complainants fail to prove their case on a balance of probabilities. It has been observed that in many cases, it is more a matter of a mere perception of discrimination. However, some well-founded cases have also been dealt with and settlements found, both in Rodrigues and the island of Mauritius.

The Commission opened an investigation of its own motion into statements allegedly made by the Minister of Tourism, Mr Michael Sik

Yuen during the local government elections campaign of December 2012. The allegation as obtained from a journalist was that the Minister threatened the electors in a particular constituency that if they vote for the opposition in the elections, there would be a less favourable treatment on the part of the Ministry of Local Government as far as the financing of projects in that constituency is concerned, hence a threat of discrimination on the basis of political opinion. The evidence however proved to be too vague to stand the test of proof. At some stage during its investigation, the Commission came across a voice recording but the author of the same showed reluctance in testifying. In the mean time the Minister of Tourism, Mr. Michael Sik Yuen had invoked his constitutional right to silence. In view of the statement, the Commission invited the Minister of Tourism, Mr. Michael Sik Yuen to make a public statement expressing his regrets in so far as the interpretation of his statements made during the local government elections campaign is concerned.

Various complaints have also been made against a para-statal body that is mandated to issue licences to taxi drivers. The Commission conducted investigation into the said cases that were mostly pitched on political opinion. It was found that a standard formula is used when licences are not granted- the unsuccessful applicants are simply informed that they were not among 'the most suitable candidates'. However, the para-statal body was unable to explain how the determination as to 'the most suitable candidates' is made. Nor was there a clear set of criteria or mark sheets to assess the candidates. In light of the opacity that underlies the process of grant of licences, on a balance of probabilities the Commission came to the conclusion that the complaints were well-founded. In one case, it was even found that licences were wrongly granted, and following investigation carried out by the Commission, it was conceded by the para-statal body that the said licences had to be revoked. However, though at first the para-statal body agreed for conciliation by amending its policies to allow for a more transparent process, it later deviated from this stand. After several unsuccessful attempts at conciliation, the Commission is considering referring the cases to the Tribunal.

2.2.13 SEXUAL HARASSMENT

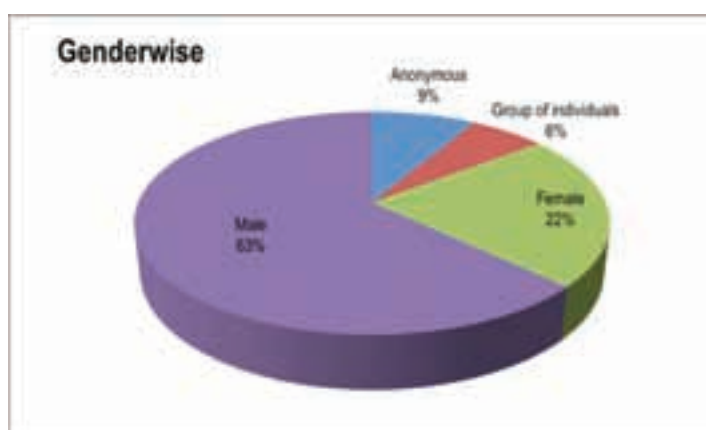
Apart from discrimination on the basis of the 12 protected grounds, sexual harassment is also proscribed under the Act. There is sexual harassment when a person, in circumstances in which a reasonable person would have foreseen that the other person would be humiliated, offended or intimidated, either (i) makes an unwelcome sexual advance, or an unwelcome request for a sexual favour, to another person, or (ii) engages in any other unwelcome conduct of a sexual nature towards another person.

It is difficult to have conciliation in cases of sexual harassment. At times victims of sexual harassment at the place of work may only wish for a transfer from one department to another, a solution that may be reached through conciliation. In other situations, the complainants may wish for sanctions to be taken against the alleged discriminators. In such circumstances, the Commission, following an investigation that reveals that the offence of sexual harassment has been committed, may refer the matter to the Director of Public Prosecutions. One such case has already been referred to the DPP.

2.3 Categorisation of Complaints

2.3.1 Categorisation of complaint Genderwise (Based on 1032 complaints received)

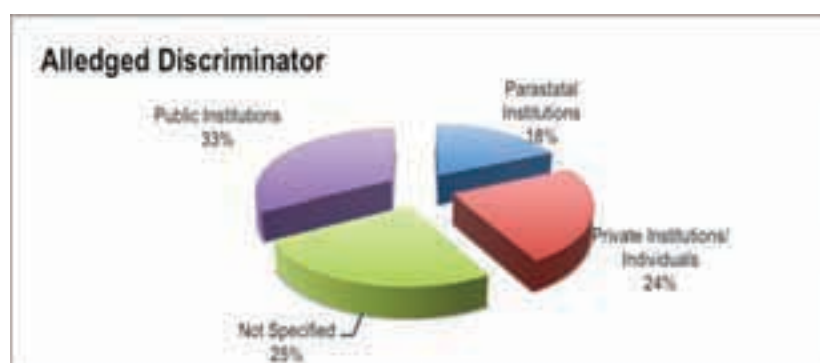
| Category | Number of complaint |
|----------------------|---------------------|
| Anonymous | 90 |
| Group of individuals | 64 |
| Female | 238 |
| Male | 666 |



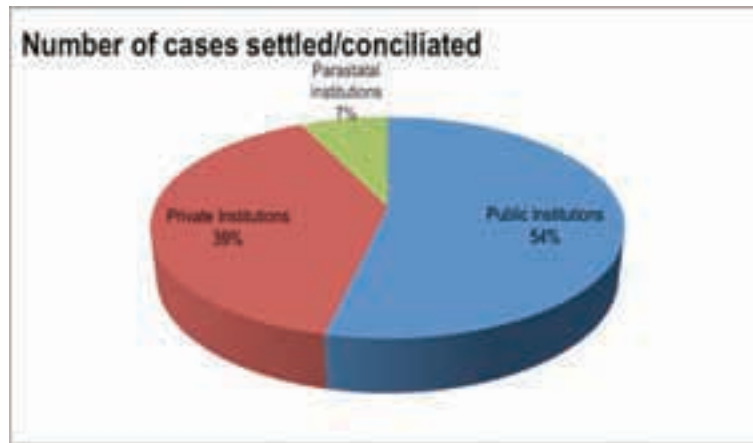
2.3.2 Public/Private Sector categorization

Categorisation of complaints by Alleged Discriminators (Based on 1058 complaints received)

| Respondent | Number of Complaints |
|----------------------------------|----------------------|
| Parastatal Institutions | 194 |
| Private Institutions/Individuals | 250 |
| Not Specified | 268 |
| Public Institutions | 346 |



| Respondent | Number of cases settled/conciliated |
|-------------------------|-------------------------------------|
| Public Institutions | 15 |
| Private Institutions | 11 |
| Parastatal institutions | 2 |



2.4 The Equal Opportunities Tribunal

2.4.1 The Equal Opportunities Tribunal

The Act provides not only for the Equal Opportunities Commission, but also for the Equal Opportunities Tribunal. The Tribunal functions independently of the Commission, with one President and two assessors.

2.4.2 Referral of cases to the Tribunal

The mandate of the Commission is to attempt conciliation between the parties. However, if following an investigation no conciliation is reached and the Commission determines on a balance of probabilities that there is discrimination, the matter may then be referred to the Tribunal, with the consent of the complainant. The Commission has referred the following cases to the Tribunal in accordance with section 33(1) of the Act:

2.4.3 Nelson v Paradox Night Club

The case concerns a complaint lodged at the Commission on 6 February 2012 against a night club, alleging discrimination on the ground of impairment, as the complainant was denied access to the night club because she was in a wheel chair. The Commission held several hearings, conducted an investigation and thereafter initiated a conciliation process. The alleged discriminator claimed that the complainant was denied access because, in accordance with section 23(2) of the Act, the night club is not designed in a way to render it accessible to persons in a wheelchair. Consequently, the alleged discriminator refused to settle the matter by way of compensation. On the other hand, the complainant believed that the question of accessibility is not a valid point in as much as she had managed to reach the door step of the night club with the help of her family and she was denied access inside the night club. It was further argued by the complainant that she had on previous occasions enjoyed the use of the premises and so had other persons with other disabilities, as confirmed by the alleged discriminator. No settlement could be reached between the parties and after several unsuccessful attempts at conciliation, the matter was referred to the Tribunal. It was concluded by the Tribunal that there has been discrimination on the ground of impairment and the complainant has obtained a compensation. (Appendix V)

2.4.4 The CEB case

Here, it was averred by the complainant, an Engineer, acting as Senior Engineer that he has been discriminated since he joined the CEB in 1992. It was alleged that on several occasions when advertisements were made for the post of Senior Engineer, he applied for such vacancies and although he made it to the interviews, he was never selected despite his seniority, qualifications and experience. He also claimed that his juniors, whom he had himself trained, had been promoted to his detriment. Basing himself on comparables, the complainant believed that the less favourable treatment was on the basis of his ethnic origin.

The Commission conducted an investigation and after hearing both parties, attempted to resolve the matter by conciliation, which was not successful. Hence, the matter was referred to the Tribunal by virtue of section 33 of the Act. The CEB applied for a Judicial Review of the Commission's decision to refer the matter to the Tribunal in the Supreme Court. Leave for Judicial Review was refused. (Appendix VI)

It is to be noted that the complainant has withdrawn his case from the Tribunal as the parties have agreed to settle the matter.

2.4.5 Jurisdiction of the Tribunal to issue interim orders

The Tribunal not only has the jurisdiction to hear and determine complaints referred to it by the Commission, but also to issue interim orders as a matter of urgency for the purpose of:


- (i) preventing serious and irreparable damage to a person or category of persons;
- (ii) protecting the public interest; and
- (iii) preventing a person from taking any step that would hinder or impede a hearing before the Tribunal.

The Commission successfully sought an injunction from the Tribunal in the case of *Adjodah v La Plantation Resort*. A complaint was lodged on 24 October 2012 against the hotel. The complainant alleged discrimination based on his political opinion. The complainant had two contracts with the hotel, one for a boat house and the other for a diving centre. His contract for the boat house was terminated by the hotel and he believed he was being treated less favourably because of his political opinion.

The Commission opened an investigation and the evidence obtained tended to suggest that the allegation was well-founded. However, shortly after having been on notice of the complaint lodged by the complainant with the Commission in respect of the termination of the contract relating to the boat house, the complainant received from the hotel a notice of termination of the other contract relating to the diving centre.

In the circumstances, the Commission had reasons to believe that the decision of the hotel to terminate the contract for the diving centre in the aftermath of the complaint was tantamount to discrimination by victimization under Section 7 of the Act.

The Commission made representations before the Tribunal to issue an interim order ordering the alleged discriminator to refrain from executing or otherwise giving effect to its decision to terminate the contract for the diving centre until further notice. The interim order was granted.

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EOC Branch in Rodrigues

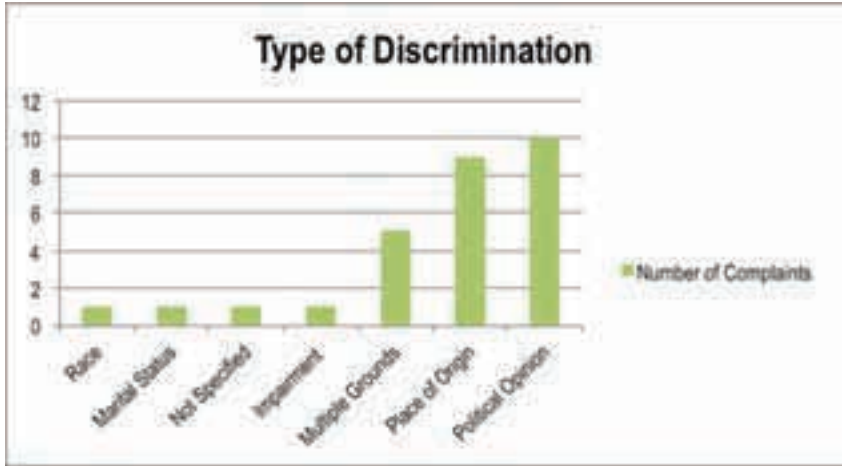
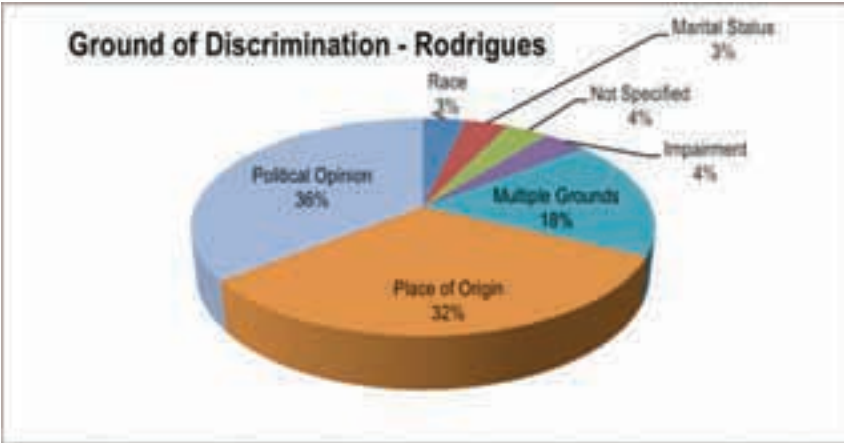
EOC Branch in Rodrigues

A branch of the Commission was set up in Rodrigues on 08 August 2012. The Rodrigues branch enables persons residing in Rodrigues to lodge their complaints on site. Since the establishment of the Rodrigues branch, the Commission has conducted some 30 hearings in Rodrigues.

As may be seen from the chart and the graph below, most complaints are based on political opinion.

Grounds of Discrimination – Rodrigues only

(Based on complaints conciliated, settled, referred to Tribunal and currently under investigation)



With a view to sensitizing the Rodriguans about the law and the mandate of the Commission, many sensitization campaigns have been carried out over the last two years, in schools, with NGOs, and members of the public in general. A Sports Day was also organized for handicapped people in November 2013.

Rodrigues

Target Audience – Civil Servants, Teaching Staff

| Date | Name of Institution | Number of audience targeted (Approx.) |
|--------------|---|---------------------------------------|
| 02.Jul.12 | Session with Employees of the Public Sector | 60 |
| 03.Jul.12 | Session with the Private Sector, including Trade Unions | 30 |
| 03.Jul.12 | Session with School teachers and Managers of Colleges | 20 |
| 04.Jul.12 | Session with MITD students | 55 |
| 09.Dec.13 | Malabar Human Resource Centre | 60 |
| TOTAL | | 225 |

The Commission encourages participants to contribute actively to the discussion by raising their concerns and making proposals. Some of the main concerns raised relate to:

- discrimination between Mauritian and Rodriguans (Place of Origin); and
- political interference in the decision-making process in public institutions in Rodrigues (EOC in Rodrigues)



Sports day for the Disabled held at the Grand Montagne Sports Complex on 10 December 2013



Sensitisation at Malabar complex with school teachers



Sensitisation with the students of Rodrigues College

Policy, Research and Recommendations

Policy, Research and Recommendations

4.1 Guidelines for Employers

In April 2013, the Commission issued the Guidelines for Employers under section 27(3)(f) of the Act. The Guidelines came into effect as from 15 April 2013.

As per section 9 of the Act, every employer employing more than 10 employees on a full-time basis is required to draw up and apply an equal opportunity policy in line with the guidelines and codes issued by the Commission. The Guidelines aim at helping employers to:

- (i) Understand and comply with their obligations under the Act, particularly on how to prevent discrimination at work and promote equality of opportunities in the field of employment;
- (ii) Draft and adopt an Equal Opportunity Policy at their place of work;
- (iii) Be merit-oriented in their approach, and adopt good employment practice, especially with respect to training, selection, promotion and recruitment;
- (iv) Reduce the risks of legal liability, costly and time-consuming grievances and damage to productivity, staff morale and the organisation's reputation;
- (v) Foster good relations in the workplace; and
- (vi) Create a working environment where people feel they are respected and valued.

The Guidelines do not impose any legal obligation, nor are they an authoritative source of the law. However, they may be used in evidence in legal proceedings brought under the Act. These Guidelines, when followed by employers, enable them to better defend themselves in cases where they are the alleged discriminators.

During the past year, the Commission has ensured that the Guidelines are brought to the attention of all employers, be it the private or the public sector, and the public at large, through the numerous sensitization campaigns carried out at the place of work, through workshops specifically designed for human resource cadres and also through the media.

4.2 Recommendations

The Commission is mandated under the law to review the working of the Act and any other relevant law and submit to the Attorney-General proposals for amending them. Based on the cases treated by the Commission as well as the response received during the sensitization campaigns carried out across the island during the past two years, the Commission has already submitted recommendations to the Attorney-General pursuant to the provisions of section 27(3)(b) of the Act. The recommendations are as follows:

- (i) Inclusion of the good faith principle in the Act;
- (ii) Amendments to the Constitution to enable the Tribunal to deal with referral of cases involving the Public Service Commission; and
- (iii) Inclusion of language as the thirteenth ground of discrimination under the Act.

(i) Inclusion of the good faith principle in the Act

It has been proposed by the Commission to amend section 28 of the Act by adding a new subsection 3 to read as follows:

"Any person lodging a complaint pursuant to subsection 1 above shall act in good faith".

The above proposal has been made in light of the many unfounded, frivolous and vexatious complaints lodged at the Commission. This not only causes undue and unnecessary prejudice to alleged discriminators but ineluctably leads to waste of time and resources of the Commission. Very often, the Commission embarks on time consuming and tedious investigations only to find out at the end that the complaint was unfounded, frivolous and vexatious. In the process and as part of the investigation, we often call in the alleged discriminators and also generally request for information and documents from them. Besides reputational issues caused to the alleged discriminators, they also end up wasting time and resources. In order to deter such complaints, it is therefore essential that persons lodging a complaint at the Commission do so in good faith and that this good faith principle be enshrined in the Act. This will not only act as a significant safeguard for the protection of innocent parties against unfounded, frivolous and vexatious complaints but will also avoid waste of time and resources, especially when such resources are limited, for the Commission and for the alleged discriminators as well.

(ii) Amendments to the Constitution to enable the Tribunal to deal with referral of cases involving the Public Service Commission

The Commission has recommended to the Attorney-General to consider making the necessary amendments to the Constitution to enable the Tribunal to entertain referrals of cases involving the Public Service Commission especially in light of the prohibitive provisions of section 118(4) of the Constitution.

There are 3 service commissions that are set up under the Constitution in respect of the public service: (i) the Judicial and Legal Service Commission (JLSC); (ii) the Public Service Commission (PSC); and (iii) the Disciplined Forces Service Commission (DFSC). Save for the Public Bodies Appeal Tribunal and the Supreme Court, in the exercise of their functions under the Constitution, none of the above-mentioned commissions can be subject to the direction or control of any person or authority (vide section 118(4) of the Constitution). It follows therefore that the constitutional issue that the Commission has with the PSC also applies for the JLSC and the DFSC. This in effect means that save for issues regarding training, the Commission cannot entertain cases when it comes to the PSC, the JLSC and the DFSC. This completely undermines the Commission's authority and power to investigate cases of discrimination in the public service, the judicial and legal service and within the police force, the fire service and the prison service.

When the then Attorney General, Mr. Rama Valayden, presented the Equal Opportunities Bill to the Parliament, he said that this law "will also protect the public officers". Hence, it follows that the intention of the legislator was clear from the very outset: this law should also extend to the public service. Further, this Parliamentary intent is also reflected in the definition of "employer" in the Act. The term "employer" includes the State. This can only come to buttress the point that public service and more particularly the above mentioned 3 institutions: the PSC, the JLSC and the DFSC, were meant *ab initio* to fall within the remit and jurisdiction of the Act.

(iii) Inclusion of language as the thirteenth ground of discrimination under the Act

There are twelve protected grounds of discrimination under the Act. It has been recommended by the Commission to include 'language' in the definition of 'status' so that it becomes the thirteenth protected ground.

This recommendation follows the various complaints that were lodged at the Commission by the Government Urdu Teachers Union as well as other Oriental Language Teachers against the Ministry of Education. It was averred by the complainants that Oriental Language Teachers are treated less favourably than General Purpose Teachers since they are not given the same opportunity to be promoted to the post of Headmasters despite being more senior. In the absence of 'language' in the definition of 'status', the case was pitched on ethnic origin.

The cases were examined by the Commission. However, it was concluded that there was no evidence of discrimination on the basis of ethnic origin as General Purpose Teachers and Oriental Language Teachers may be of the same ethnic origin. The unfair differential treatment stems from the teaching of languages as compared to the teaching of General subjects.

Moreover, the issue of language is very often taken up during the sensitization campaigns conducted by the Commission. There is a general apprehension amongst many people, especially youngsters, pertaining to the language used to conduct interviews. It is reported that although the official language in Mauritius is English, many employers of the private sector test and assess candidates on their ability and fluency in French whilst it is not always a reasonably justifiable criterion. This often causes prejudice to such candidates in that their chances of being selected for employment are seriously hampered.

It is apposite to note that the recommendation to include language in the definition of 'status' has been endorsed by the Committee on the Elimination of Racial Discrimination in Paragraph 10 of Part C of the 2013 CERD Advance Unedited Report, with a view to enabling the State to buttress its safeguards against discrimination.

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Highlights of the first two years of the Commission

Highlights of the first two years of the Commission

1. Launching of website (now available in creole) in May 2012



2. Equal Opportunities Day and launching of Creole version of Equal Opportunities Act 2008 in 2013



3. EOC in Agalega in 2013



| Date | Name of Institution | Number of audience targeted (Approx.) |
|------------|---------------------|---------------------------------------|
| 25.Nov.13 | MEDCO | 20 |
| 26. Nov.13 | South Agalega | 30 |
| 27. Nov.13 | North Agalega | 25 |
| | TOTAL | 75 |

International Missions

UN CERD Review

In February 2013, the Commission as represented by its Chairman Mr Brian N.J. Glover, attended the UN CERD (United Nation’s Committee on the Elimination of Racial Discrimination) Periodical Review held in Geneva. Although participating in an observer’s capacity, the Chairman of the Commission exceptionally took the floor following requests from some members of the UN CERD. Mr Brian N.J. Glover made a presentation about the work of the Commission in Mauritius and explained the working of the Equal Opportunities Act.

The International Human Rights Council

The Equal Opportunities Commission as represented by its Chairperson attended the Second Cycle Universal Periodic Review of Mauritius by the International Human Rights Council at Le Palais des Nations, Geneva on 23 October 2013. Being an independent and autonomous statutory body, the Equal Opportunities Commission participated at the said session with an Observer Status. Numerous delegates of various countries intervened during the said session and the following facts about the Equal Opportunities Commission are noteworthy.

The following countries commended Mauritius for the enactment of the Equal Opportunities Act and the setting up of the Equal Opportunities Commission:

- | | |
|------------|--------------------|
| 1. Lesotho | 9. Armenia |
| 2. France | 10. Bénin |
| 3. Rwanda | 11. Botswana |
| 4. Egypt | 12. Tchad |
| 5. Uganda | 13. Congo |
| 6. Uruguay | 14. Ivory Coast |
| 7. Vietnam | 15. Djibouti |
| 8. Zambia | 16. United Kingdom |

It is apposite to note that whilst welcoming the enactment of the Equal Opportunities Act and the setting up of the Equal Opportunities Commission, the following countries recommended that, given that there can be no discrimination based on sexual orientation since the coming into force of the Equal Opportunities Act, Mauritius should consider amending section 250 of the Penal Code which creates the offence of sodomy:

1. Australia
2. Ireland
3. Canada


India, whose representative attended the Equal Opportunities Commission’s presentation at the Side Event of 22 October 2013 warmly welcomed the setting up of the Commission but more particularly acknowledged the promising work done so far by the Commission and commended the Commission for the independence and impartiality it has shown in its work so far.

Delegates and representatives of some 50 different countries also attended the Side Event organized by Mauritius at Le Palais des Nations at the seat of the United Nations on 22 October 2013.

The Chairperson of the Equal Opportunities Commission made a thorough presentation at the said event and also engaged in an intensive interaction dialogue with the delegates present. A detailed presentation of the Equal Opportunities Act and on the work of the Equal Opportunities Commission was given. All delegates were also provided with a compilation of all relevant information about the Equal Opportunities Act both in hardware and software presentation packs.



Special session hosted by the EOC (Mauritius) at the UN in October 2013



Sensitisation and Awareness Campaigns

Sensitisation and Awareness Campaigns

Over the last two years the Commission has embarked on a major awareness campaign programme across the island with a view to sensitizing the public about the law on equal opportunities and the work of the Commission. As shown in the table below, nearly 10 000 people have already been targeted through these awareness campaigns.

| ITEM | Sensitisation Programme | Number of Persons Targeted Year 2012 | Number of Persons Targeted Year 2013 | Number of Persons Targeted As at April 2014 | TOTAL |
|------|------------------------------|--------------------------------------|--------------------------------------|---|-------------|
| 1 | Women's Centre | 70 | 470 | - | 540 |
| 2 | Community Centre | 120 | 130 | - | 250 |
| 3 | Employer Programme (Public) | 240 | 615 | 180 | 1035 |
| 4 | Employer Programme (Private) | 205 | 545 | 50 | 800 |
| 5 | Youth Centre | 320 | 530 | - | 850 |
| 6 | School Programme | 915 | 1920 | 360 | 3195 |
| 7 | Citizens Advice Bureau | - | 1247 | 520 | 1767 |
| 8 | NGOs | 265 | 285 | 100 | 650 |
| 9 | Community Outreach (others) | - | - | 165 | 165 |
| 10 | EOC Workshops | - | 100 | - | 100 |
| 11 | Agalega | - | 75 | - | 75 |
| 12 | Rodrigues | 165 | 60 | - | 225 |
| | Total | 2300 | 5977 | 1375 | 9652 |

6.1 Equal Opportunities Day

The Commission celebrated its first Equal Opportunities Day on the 27th September 2013.

This date has been chosen by the Commission after a thorough research into the history of Mauritius. It is deemed appropriate since it coincides with the 1943 events whereby four labourers died on the Belle Vue Harel Sugar Estate in the quest for better wages, which reflects the very basis of a society grounded on meritocracy. Meritocracy being at the very core of the concept of equal opportunities, it is considered by the Commission that there can be no better day to create awareness in an on-going effort for a better society.

Amongst the people who lost their lives in the labour strikes was a lady called Anjalay Coopen, who was pregnant at the time. The Commission considers that she stands as a symbol through which the Commission can transmit the essence of the Act to the public.

A series of activities were organised to mark the Equal Opportunities Day, *inter alia*:

1. Elocution contest for university students;
2. Essay writing competition for secondary level students;
3. Drawing competition for primary school pupils;
4. Sports activities for physically impaired persons; and
5. A workshop with our stakeholders.



Sports Day for the disabled organised in September 2013 at Sir Gaëtan Duval Stadium.



Winners of Drawing Competition 2013



Final of Elocution Contest held at the Municipal Council of Port Louis in August 2013

6.2 EOC Workshop

The EOC organized a workshop on the 17th October 2013 at Domaine Les Pailles. The aim of the workshop was to discuss about the incorporation of equal opportunities and elimination of discrimination within the Human Resource framework. Human Resource cadres from both the public and the private sector were called to participate in the discussion, which proved to be very fruitful. It was observed by the Commission that the Act and the Commission being relatively new, many aspects of the law and the mandate of the Commission remained unknown or confusing even for Human Resource cadres.

The workshop started with a presentation on the Act by the members of the Commission. Following the presentation, there were open discussions on the salient issues pertaining to the elimination of discrimination and the promotion of equal opportunities at the workplace. The Human Resource cadres were also requested to put forward their observations as to the specific problems they encounter with respect to the implementation of the law in their respective fields.

Some of the main observations made by Human Resource cadres operating in the public sector are as follows:

- The fact that PSC, LGSC and DFSC are not answerable to the Commission and the Tribunal may hamper the implementation of the Act in the public sector;
- The need for amendments to the law with respect to the above;
- The need for more transparency in the recruitment and promotion process in the public sector and in para statal bodies;
- On-going training to be provided regarding the Act; and
- Equal Opportunities Policy to be enforced.

As regards the private sector, various points were highlighted, amongst others that there is a high risk of victimisation in the private sector, which may explain the fact that less complaints emanate therefrom. Therefore, it was proposed that the Commission should target the top management of companies so as to create more awareness about the aim of the law and the Commission.

Since the establishment of the Commission, sensitization campaigns have also been conducted targeting a wide range of audience (NGO's, Federations and Unions, Youngsters, Students, Women, Employers, Employee and the public in general).

6.3 NGOs, Federations and Unions

| Date | Name of Institution | Number of audience targeted (Approx.) |
|------------|---|---------------------------------------|
| May.12 | MACOSS | 50 |
| 22.Jun.12 | Government Services Employees Association | 60 |
| 05.Sept.12 | Rotary Club of Port-Louis | 50 |
| 11.Oct.12 | Women in Networking | 75 |
| 18.Oct.12 | Gender Links | 30 |
| 02.Oct.13 | Workshop – Blood Donors Questionnaire | 150 |
| 09.Mar.13 | Nursing Association | 40 |
| 09.Oct.13 | National AIDS Secretariat (Men having sex with Men) | 15 |
| 31.Oct.13 | FCSOU | 50 |
| 14.Nov.13 | FCSOU (Coromandel) | 30 |
| 10.Apr.14 | Union (Rose Hill) | 100 |
| | TOTAL | 650 |

The sessions conducted enable the Commission to get first hand information about the various issues that are of major concern and are also an opportunity to receive suggestions from stakeholders. For example, it was proposed during one of the sessions with NGOs that spent conviction should be included in the definition of 'status'. This proposal has been considered by the Commission.

6.4 Youth Centre Programmes

With the collaboration of the Prime Minister's Office, the Commission also embarked on a human rights programme targeting youngsters between 16 and 25. In this respect, the Commission carried out working sessions with groups of youngsters in various youth centres around the island during week-ends.

Youth Centre

Target Audience – Youngsters

| Date | Name of Institution | Number of audience targeted (Approx.) |
|------------|---|---------------------------------------|
| Jul.12 | Pamplemousses | 30 |
| Jul.12 | Helvetia | 50 |
| Jul.12 | Port Louis (seat of Ministry of Youth & S) | 30 |
| 07.Jul.12 | Bambous | 30 |
| 07.Jul.12 | Chemin Grenier | 30 |
| 15.Jul.12 | Rose Belle | 30 |
| 11.Aug.12 | Riviere du Rempart | 30 |
| 11.Aug.12 | Flacq | 30 |
| 12.Aug.12 | Rose Hill | 30 |
| 01.Sept.12 | Floreal | 30 |
| 16.Mar.13 | Plaine Verte | 30 |
| 30. Ma.13 | Helvetia | 30 |
| 06.Apr.13 | Riviere du Rempart | 30 |
| 27.Apr.13 | Bambous | 25 |
| 04.May.13 | Montagne Blanche | 20 |
| 10.May.13 | Goodlands | 30 |
| 10.May.13 | Flacq | 30 |
| 18.May.13 | Souillac | 30 |
| 22.Jun.13 | Rose Belle | 35 |
| 06.Jul.13 | Docker's Village and Pamplemousses Youth Centre | 40 |
| 20.Jul.13 | Tranquebar | 30 |
| 28.Sep.13 | Floreal | 30 |
| 05.Oct.13 | Trefles and Barkly | 60 |
| 19.Oct.13 | Roche Bois | 60 |
| 26.Oct.13 | Kennedy | 30 |
| 09.Nov.13 | Mont Roche | 20 |
| | TOTAL | 850 |



During these working sessions relating to the Human Rights Programme, the youngsters are called upon to participate actively in the discussions. The response has been very positive and various proposals have been made, *inter alia*,

- It is important to focus on awareness campaigns so as to bring about a shift in the mindset of our citizens;
- It has often been pointed out that for better efficiency, more powers should be conferred on the Commission, especially as far as investigation procedures are concerned;
- Proposal for the Commission and the Tribunal to set out regulations in order to deter parties from using delaying tactics.

6.5 School Programmes

The Commission has conducted awareness campaigns in various secondary schools and universities across the island, targeting both the teaching and non-teaching staff as well as students.

School & University Programme

Target Audience – Students, Teaching & Non Teaching Staff

| Date | Name of Institution | Number of audience targeted (Approx.) |
|------------|---------------------------------------|---------------------------------------|
| 13.Jun.12 | BPS (Form V) | 70 |
| 26.Jun.12 | S. Ramudhin Govt School | 90 |
| 16.Jul.12 | BPS College (Form IV & V) | 80 |
| 26.Sept.12 | Sir Bartholomew's College, Port Louis | 80 |
| 27.Sept.12 | Royal College, Curepipe | 100 |
| 28.Sept.12 | MGSS, Moka | 50 |
| 02.Oct.12 | Hindu Girls, Curepipe | 85 |
| 03.Oct.12 | Aleemiah College, Phoenix | 80 |
| 04.Oct.12 | R. Tagore Institute, Ilot | 45 |
| 05.Jul.12 | University of Technology | 50 |
| 17.Oct.12 | University of Mauritius | 125 |
| 26.Oct.12 | Open University | 15 |
| 30.Oct.12 | University of Mascareignes | 15 |
| 31.Oct.12 | Fashion & Design Institute | 30 |
| 21.May.13 | St Esprit College | 100 |
| 26.Sep.13 | Clavis International School | 100 |
| 14.Oct.13 | H Ramnarain GS, Terre Rouge | 250 |
| 15.Oct.13 | Nicolay GS, Roche Bois | 300 |
| 16.Oct.13 | E. Anquetil GS, Roche Bois | 290 |
| 17.Oct.13 | Marcel Cabon GS, Cité la Cure | 240 |
| 21.Oct.13 | L. Serge Coutet GS, Baie du Tombeau | 340 |
| Year 2013 | Notre Dame College | 250 |
| Year 2013 | Loretto College Quatre Bornes | 150 |

| | | |
|-----------|-------------------|-------------|
| 17.Feb.14 | Universal College | 125 |
| 04.Mar.14 | HSC Laureates | 35 |
| 21.Mar.14 | Loretto College | 100 |
| | TOTAL | 3195 |



Meeting with students from Clavis School in 2013



Sensitisation program held at Loreto Convent of Quatre Bornes and Notre Dame College



Sensitisation program with laureates 2013 held on 21 March 2014

It may be noted that students contribute positively to the discussions. Questions relating to the following were frequently raised:

- Discrimination against students who are married or pregnant; and
- Equal access to education to the handicapped.

6.6 Community Outreach

Sensitization campaigns were carried out at the level of Citizens Advice Bureau, Community Centres, Social Welfare Centres, Women Centres, and others.

6.6.1 CAB (Citizens Advice Bureau)

Target Audience – Varied

| Date | Name of Institution | Number of audience targeted (Approx.) |
|------------|-----------------------|---------------------------------------|
| 05.Feb.13 | Bambous | 40 |
| 12. Feb.13 | Mahebourg | 50 |
| 19. Feb.13 | Riv du Rempart | 40 |
| 26. Feb.13 | Ste Croix | 30 |
| 05.Mar.13 | Bel Air | 40 |
| 19. Mar.13 | Petite Riviere | 40 |
| 26. Mar.13 | Triolet | 40 |
| 02.Apr.13 | Quartier Militaire | 40 |
| 09. Apr.13 | Curepipe | 35 |
| 16. Apr.13 | Pte aux Sables | 40 |
| 23. Apr.13 | Pamplemousses | 35 |
| 30. Apr.13 | Vacoas | 35 |
| 07.May.13 | Goodlands | 40 |
| 14. May.13 | Beau Bassin | 40 |
| 21. May.13 | Route Nicolay | 35 |
| 28. May.13 | Flacq | 35 |
| 04.Jun.13 | St Pierre | 35 |
| 11. Jun.13 | Riviere Noire | 45 |
| 18. Jun.13 | Grand Bois | 42 |
| 25. Jun.13 | Mt. Blanche | 45 |
| 02.Jul.13 | Quatre Bornes | 45 |
| 09. Jul.13 | Piton | 40 |
| 23. Jul.13 | Cite Vallijee | 30 |
| 06.Aug.13 | Riv Des Anguilles | 30 |
| 20. Aug.13 | Grand Baie | 50 |
| 27. Aug.13 | Midlands | 30 |
| 03.Sep.13 | Bois des Amourettes | 40 |
| 17. Sep.13 | Rose Hill | 50 |
| 24. Sep.13 | Plaine Magnien | 45 |
| 01.Oct.13 | Lallmatie | 30 |
| 08.Oct.13 | Chemin Grenier | 30 |
| 15.Oct.13 | Montagne Longue | 45 |
| 04.Feb.14 | Beau Bassin | 60 |
| 11. Feb.14 | Riviere du Rempart | 50 |
| 18.Feb.14 | Mahebourg | 50 |
| 25.Feb.14 | Colline Monneron | 35 |
| 04.Mar.14 | Floreal | 50 |
| 18. Mar.14 | Bel Air Riviere Seche | 40 |
| 26. Mar.14 | Black River | 50 |
| 01.Apr.14 | Flacq | 50 |
| 08. Apr.14 | Curepipe | 40 |
| 15. Apr.14 | Pointe aux Sables | 40 |
| 22. Apr.14 | Bois des Amourettes | 25 |
| 29. Apr.14 | Goodlands | 30 |
| | TOTAL | 1767 |



Sensitisation campaign at CAB

6.6.2 Women Centre

Target Audience – Women

| Date | Name of Institution | Number of audience targeted (Approx.) |
|-----------|---|---------------------------------------|
| 29.Aug.12 | Flacq Women's Centre | 70 |
| 26.Feb.13 | Abercrombie Women Centre | 50 |
| 27.Feb.13 | Notre Dame Women Centre | 50 |
| March.13 | Goodlands Women Centre | 40 |
| 30.Mar.13 | BAT (National Women's Council) | 100 |
| 20.Nov.13 | Riviere du Rempart (Legal Literacy Campaign) | 200 |
| 13.Dec.13 | Flacq Women's Centre (organized by Flacq Lion's Club) | 30 |
| | TOTAL | 540 |



Legal Literacy campaign at Rivière du Rempart in 2013

6.6.3 Community, Social Welfare & other Centres

Target Audience – Women & Staff

| Date | Name of Institution | Number of audience targeted (Approx.) |
|-----------|--|---------------------------------------|
| 30.Jul.12 | National Women Council - Bramsthan Social Welfare Centre | 40 |
| 22.Dec.12 | Belle Mare Recreational Centre | 80 |
| 28.02.13 | Idrice Goomany Community Centre | 75 |
| 01.03.13 | Vallée des Pretres Community Centre | 25 |
| 25.11.13 | Montagne Blanche Social Welfare Centre | 30 |
| | TOTAL | 250 |

6.6.4 Community Outreach (Others)

Target Audience - General

| Date | Name of Institution | Number of audience targeted (Approx.) |
|-----------|------------------------------|---------------------------------------|
| 07.Mar.14 | Islamic Cultural Centre | 15 |
| 08.Mar.14 | Tamil Leagues Women's League | 150 |
| | TOTAL | 165 |



Sensitisation campaign at Islamic Cultural Centre and Tamil League respectively

During the community outreach programmes, a wide range of issues are discussed, amongst others,

- discrimination against women in sports (in terms of sponsorship and other facilities);
- the prevalence of the caste system, in particular, in villages;
- sexual harassment;
- rights of elderly people;
- rights of women;
- quota for women in politics;
- rights of handicapped people.

6.7 Employer Programmes

As mentioned earlier in this report, the Commission has issued guidelines aimed at being a guiding tool for employers to draft their own Equal Opportunities Policies. With a view to ensuring that these Guidelines are brought to the attention of employers, the Commission has conducted working sessions with employers, both in the public and private sectors.

6.7.1 Employer Programme (Public Sector)

Target Audience –HR cadres and other employees

| Date | Name of Institution | Number of audience targeted (Approx.) |
|-----------|--|---------------------------------------|
| 01.Jun.12 | National Women Council | 50 |
| 01.Aug.12 | Central Electricity Board | 60 |
| 26.Oct.12 | Ministry of Labour | 40 |
| 30.Oct.12 | Mauritius Employees Federation | 30 |
| 05.Nov.12 | Tertiary Education Commission | 10 |
| 07.Nov.12 | Mauritius Research Council | 15 |
| 09.Nov.12 | National Children’s Council | 25 |
| 09.Nov.12 | Rajiv Gandhi Science Centre | 10 |
| 17.May.13 | MITD (Piton) | 40 |
| 01.Jul.13 | HRDC Workshop | 50 |
| 29.Aug.13 | AREU | 100 |
| 29.Aug.13 | AREU | 100 |
| 30.Aug.13 | Ministry of Gender | 25 |
| 19.Aug.13 | Ministry of Gender (Discussion on the National Policy Framework) | 200 |
| 10.Oct.13 | Ministry of Gender Equality, CD & FW | 100 |
| 20.Jan.14 | Ministry of Civil Service | 60 |
| 22.Jan.14 | HRDC (Ebene) | 60 |
| 29.Jan.14 | Ministry of Civil Service | 60 |
| | TOTAL | 1035 |



Sensitisation campaign at AREU and Ministry of Civil Service respectively

Some of the points highlighted during the course of these sessions are summed up below:

- The harmonization of different policies relating to discrimination;
- The possibility of having a standard interview feedback sheet in line with Equal Opportunities policies;
- Suggestion to have a watch mechanism to ensure compliance with the Equal Opportunities Act

6.7.2 Employer Programme (Private Sector)

Target Audience – HR cadres and other employees

| Date | Name of Institution | Number of audience targeted (Approx.) |
|-----------|---|---------------------------------------|
| 31.May.12 | Association Mauricienne Femmes Chefs d'Enterprise | 50 |
| 20.Jun.12 | Soft Skills Consultant | 25 |
| 21.Jun.12 | Soft Skills Consultant | 20 |
| 13.Jul.12 | AHRP's Annual Seminar 2012- Le Meridien Hotel | 50 |
| 26.Jul.12 | Mauritius Bankers Association Ltd | 60 |
| 06.Mar.13 | INNODIS | 50 |
| 20.Mar.13 | Ceridian Ltd | 35 |
| 07.Aug.13 | Forges Tardieu | 25 |
| 19.Aug.13 | Aquarelle | 15 |
| 22.Aug.13 | CIM Group | 70 |
| 29.Aug.13 | Terra | 50 |
| 04.Sep.13 | MCB | 90 |
| 24.Sep.13 | Transparency Mauritius | 15 |
| 08.Nov.13 | AILES | 50 |
| 20.Nov.13 | Air Mauritius Ltd | 80 |
| 04.Dec.13 | GML | 50 |
| 27.Dec.13 | Air Mauritius Ltd (Plaisance) | 15 |
| 16.Jan.14 | Air Mauritius (Ebene) | 50 |
| | TOTAL | 800 |



Sensitisation program held at the Mauritius Commercial Bank Ltd. on 04 September 2013

Some of the issues that were taken up during these sessions are as follows:

- Concerns expressed with regard to the place of women in the law practice and in business.
- Ways and means to prevent workplace sexual harassment
- Concerns about impact of the Act on the performance appraisal system at work.
- Overall wish to work with the Commission for the implementation of equal opportunity policies and;
- Gender equality in investigative journalism

6.8 EOC - Gender Links Collaboration

The EOC has collaborated with Gender Links (GL), a Southern African NGO, on various projects. GL is committed to a Southern Africa in which women and men are able to participate equally in all aspects of public and private life.



In October 18th October 2012 the Chair of the Equal Opportunities launched the Mauritius Barometer. The



Barometer is a one stop shop giving details giving empirical data and citizens perception on the 28 articles of the SADC Protocol as well as the position of Mauritius with baseline and targets on the SADC Protocol on Gender and Development. It is also a tool for NGOs, Ministries, the media and all stakeholders to get information on the different issues of Mauritius be it economy, education, climate change, governance or HIV and AIDS at the click of a mouse.

In the same year the Chair of the Equal Opportunities Commission launched War @ Home – Gender Based Violence Indicators Research of Gender Links. In his speech, Brian Glover, told about the alarming results with one woman on four having known violence in Mauritius.



In April 2013, the Chairperson acted as main Judge for the National Summit on SADC Protocol @ Work where localities, media enterprises and NGOs share their best practices. Mr. Glover then accompanied the winners as well as Minister of Local Government to the Regional Summit in Johannesburg where he acted as a judge and chaired several panels.

As part their prizes, winners in the Local Government and the media categories got a study visit in Mauritius in September 2013. The Equal Opportunities Commission had a working session with them. The presentation was an eye opener for the delegates from Madagascar, Democratic Republic of Congo, Zimbabwe, South Africa and Lesotho. The aim of the study tour was to foster networks and relationships with various Mauritian institutions.

In December 2013, The Chairperson of the EOC launched the 2013 Mauritius Barometer.

6.9 Media Programmes

As part of its activities aimed at promoting equal opportunities, the Commission has already participated in various radio and television programmes, whereby not only information was disseminated to the public, but questions and observations were also invited from the public. These programmes also involved the participation of other social workers and professionals, who contributed towards constructive debates.

The Commission intends to do publicity programmes in the form of television advertisements and shows, print media articles, placing posters in public places, exhibitions, press briefings and interviews as well as regularly updating the Commission's website.

2014-2016

● **Strategic Plan**

2014-2016 Strategic Plan

The Equal Opportunities Commission has elaborated a two-year strategic plan for the period May 2014-2016. This strategic plan aims at summarizing our priorities and at emphasizing on how we intend to focus our resources so as to meet our challenges in the best way possible. It sets out a list of programmes and projects that the Commission intends to implement in the years ahead with a view to help building a fairer Mauritius.

Below is the 2014-2016 Strategic Plan. Our major priorities for the two years ahead will be to:

- promote awareness about the Act and access to the Commission;
- build and strengthen the Commission.

This two-year strategic plan sets out the objectives targeted by the Commission for the period 2014-2016. Resources will be allocated accordingly.

2014-2015 Strategic Plan

| WORK AREAS | PROJECTS | OBJECTIVES |
|---------------------------------------|---|--|
| 1. Building and strengthening the EOC | Update and refine the Commission’s operating model. | <p>Ensure that the Commission’s operating model, including ways of working, processes and systems enable it to meet its challenges in the most efficient manner.</p> <p>Build the capacities of the institution to act as a modern regulator, with enhanced monitoring, compliance and enforcement functions.</p> |
| | <p>Establish Rules of Procedure in the following areas:</p> <ul style="list-style-type: none"> • Independence and impartiality of the Commission • Complaint handling procedure (e.g. set up time limitations between hearings) | <p>Strengthen management capability</p> <p>Ensure that the Commission meets its objectives as a regulatory body.</p> <p>Ensure that the Commission is proportionate, accountable and transparent in its work.</p> <p>Render the complaint handling procedure more efficient, for example, by deterring delaying tactics by parties.</p> <p>Ensure that the decision-making process is transparent.</p> |

| | | |
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| <p>2. Ensuring compliance with the Equal Opportunity Policy at work</p> | <p>Devise a methodology for follow-up on the Equal Opportunity Policy that each employer has the responsibility to draft and put into practice under the Act.</p> | <p>Ensure that best practices are adopted by employers across the public and the private sector and that employers understand their statutory responsibilities.</p> <p>Ensure that every organization, public and private, understands what is required of it under the law, and abides by the law.</p> |
| | <p>Establish a listing system to monitor compliance with the Equal Opportunity Policy, by classifying companies and other bodies in different lists according to their rate of compliance with the Equal Opportunities Policy.</p> | <p>Help build the image of Mauritius as the land of equal opportunities, both at national and international level; and boost public confidence in institutions, both public and private.</p> |
| | <p>Have regular work sessions with employers and employees alike to ensure that the law is understood and applied.</p> | <p>Work towards the elimination of discrimination, the promotion of equality of opportunity and good relations between persons of different status.</p> |
| <p>3. Keep under review the working of the Act and any relevant law and make proposals, if any, to the Attorney General</p> | <p>Have regular work sessions with our various stakeholders with a view to getting their feedback on the implementation of the Act.</p> | <p>Ensure that the principle of equal opportunity to one and all, and non-discrimination are deeply ingrained in the Mauritian society; and laws are amended as and when needed so as to create a fairer Mauritius.</p> |
| <p>4. Dissemination of information through the Commission's website</p> | <p>Improve the guidance provided through our website, <i>inter alia</i>, by giving updates on cases that are conciliated/settled, whilst maintaining the confidentiality of parties concerned; by providing updates on legislative developments and other aspects of the work being carried out at the Commission.</p> | <p>Make the Commission more accessible to the public through its website.</p> <p>Become more visible through digital networking such as facebook and twitter.</p> <p>Encourage open debates through an engaging website.</p> |

| | | |
|---|---|---|
| | | <p>Provide timely and accessible guidance on the law, and answer frequently asked questions so as to dispel doubts about the law and the functioning of the Commission.</p> <p>Use the website as a platform to provide regular and accessible updates on the legislation, case law and enforcement of the law.</p> <p>Use social networking to raise the Commission's profile.</p> |
| <p>5. Raising public awareness</p> | <p>Continue with sensitization campaigns among various stakeholders, <i>inter alia</i>, NGOs, women in women centres across the island, groups of people in various regions through the Citizens Advice Bureau.</p> | <p>Foster positive attitudes to difference and diversity within local communities.</p> <p>Promote shared and cross-community understanding; promote tolerance.</p> |
| | <p>Participate in radio and television programmes.</p> | <p>Break prevailing taboos, especially by opening discussions on previously little-discussed topics, e.g. on sexual orientation and racial discrimination.</p> <p>Have open interactions with the participants.</p> <p>Disseminate information in various languages, e.g. English, French, Creole, Bhojpuri.</p> <p>Encourage shared dialogues and constructive debates.</p> |
| <p>6. Provide training to stakeholders</p> | <p>Provide training to the advice sector, e.g., CAB employees</p> | <p>Enable CAB employees to provide timely and accessible advice and guidance to individuals.</p> <p>Empower NGOs, the voluntary and community sector as well as all our stakeholders to be active participants</p> |

| | | |
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| | | in fulfilling the mission of the Commission. |
| 7. Develop youth equality leaders | Youth programmes to be continued, and training as well to be provided to youngsters. | Deal with intolerance and prejudice as from a young age. Improve young people's access to knowledge and understanding of equality of opportunities and non-discrimination. Create platforms for greater inter-community contact. |
| | Work with young people at school | Develop new partnerships between schools and the EOC. Raise awareness among teachers and children so that they relate to best practices, citizenship, equality and human rights in their daily lives, as from a tender age. |
| 8. Foster research | Carry out surveys and studies on the various aspects of discrimination across the Mauritian society; carry out comparative international human rights research. | Become a centre of excellence in research. Have a strong and reliable database. Carry out thematic reviews and enquiries. Work on equality statistics. Focus on disaggregation of data. |
| | Create a Research Database | Promote partnerships with people and organisations interested in undertaking research on discrimination in the Mauritian context. Facilitate research collaboration. |

| | | |
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| | | Provide a platform for debate and discussion through the organization of research-focused meetings. |
| 9. Building Networks (national and international) | Work closely with other stakeholders so as to have an integrated approach towards the elimination of discrimination and the promotion of equal opportunities (for example, The Prime Minister's Office, The Attorney General's Office, The National Human Rights Commission, The Ombudsman, The Data Protection Office, The Ombudsperson for Children). | Make the EOC more visible, both nationally and internationally and work within a framework of close collaboration with other institutions in Mauritius and around the world. |
| | Build up our network with NGOs. | Promote shared dialogue. |
| | Provide possibility of internship at the Commission, be it from Mauritians or foreigners, by partnering with Mauritian as well as foreign educational institutions. | Allow for the emergence of a cohesive framework for the promotion of equal opportunities in all walks of life across Mauritius. |
| | Seek accreditation of the Commission with the United Nations Human Rights Council. | Work in close partnership with all our national and international stakeholders with a view to achieving better outcomes. |
| | Participate in international conferences | Make the EOC more visible. |

A vertical green line on the left side of the page, ending in a solid green circle, and a solid green vertical bar on the right side of the page.

Compliments to the EOC

HANDICAP MOTEUR | Après trois ans d'attente

Brandy Perrine pourra aller au collège

■ Brian Glover (EOC) : « Nous pourrions à terme, avec la bien pensante humaine, corriger les inégalités »

Suite à l'article du Mouvrien et après l'intervention de l'Equal Opportunities Commission (EOC) et de la Global Rainbow Foundation, Brandy Perrine qui s'était vu refuser l'accès au collège pourra enfin entamer son cycle secondaire. Cette adolescente souffrant d'un handicap moteur avait, une première fois, appris que les classes de Form I étaient à l'étage et une deuxième fois, quelle avait dépassé l'âge requis. Avec l'accord de Monseigneur Ian Ernest, elle sera admise au St Andrews College bientôt.

Nous parlons dans notre édition du 28 décembre 2013 du cas de Brandy Perrine, l'adolescente avec un handicap moteur qui, malgré ses 20 unités au CPE, ne pouvait aller au collège. Une solution a été trouvée hier, après l'intervention de l'Equal Opportunities Commission auprès du ministère de l'Éducation qui a accepté d'assouplir les règlements dans ce cas précis. Sans imprévu, Brandy Perrine sera admise au collège St Andrews bientôt. C'est ce qu'a confirmé le ministère de l'EOC hier après-midi.

Âgée de 15 ans, la jeune fille a eu toutes les peines du monde à se faire accepter dans un collège après avoir réalisé une bonne performance au CPE l'année dernière. Selon les règlements, elle avait en effet dépassé l'âge pour être admise en Form I.

Une situation qui a révolté ses parents car Brandy avait

déjà réussi le CPE une première fois il y a trois ans et les collèges approchés pour son admission avaient laissé comprendre que toutes les classes de Form I étaient à l'étage.

Pour des raisons de santé, la jeune fille a dû mettre ses projets d'études en veilleuse. Après une intervention chirurgicale en Inde qui lui permet désormais de se déplacer avec des prothèses, elle a repris ses études et décroché 20 unités au CPE 2013.

C'est le professeur Armoogum Parsuramen, de la Global Rainbow Foundation qui est le premier à s'occuper du cas de Brandy. Malgré ses maintes sollicitations auprès du ministère de l'Éducation, les choses n'avancèrent pas. On proposa d'abord à la jeune fille d'intégrer une école spécialisée.

Dû à la décision de se tourner vers l'EOC, la maman de Brandy a déposé une



Brandy Perrine attendait ce jour avec impatience

plainte formelle, estimant qu'il y avait une discrimination à son égard. L'EOC a invité le ministère de l'Éducation à reconsidérer son cas. D'autant que lors de la cérémonie de fermeture du camp Jaipur Foot, Mgr Ian Ernest, mis au courant de la situation de Brandy par Armoogum Parsuramen, avait pris l'engagement d'accueillir la jeune fille au St Andrews.

Ce n'est qu'hier que l'EOC a été informée par le ministère que Brandy Perrine pourra, effectivement, être admise dans ce collège malgré son âge. C'est ce que nous a confirmé également le service de communication du ministère.

Chez la famille Perrine à Rose-Hill, c'est un ouf de soulagement. « Nous attendons ce jour avec impatience, Brandy veut aller au collège; elle aime apprendre », dit sa mère. On attend encore la lettre officielle d'admission. Mais selon le ministère, celle-ci sera expédiée aujourd'hui.

Brian Glover, président de l'EOC, est lui aussi heureux de ce dénouement. Il affirme que la commission a agi aussitôt la plainte enregistrée. « Je salue l'intervention rapide et efficace du ministre Danuwara. Je tiens aussi à remercier Mgr Ernest. Des gestes positifs permettent de



Elle a décroché 20 unités au CPE

« penser que nous pourrions à terme, avec la bien pensante humaine, corriger les inégalités de naissance dans notre pays. »

Géraldine LEGRAND

Armoogum Parsuramen (président de la GRF) :

« Je suis confiant que Brandy va réussir »

Pour le président de la Global Rainbow Foundation (GRF), ce développement est une petite victoire puisque c'est après de nombreuses sollicitations que Brandy pourra enfin aller au collège. « Je me réjouis de ce développement. Tout le monde attendait quelque chose de positif pour Brandy. Je suis confiant qu'elle va réussir, puisqu'elle a déjà fait preuve d'un courage exemplaire en reprenant ses études et en passant de 6 à 20 unités. »

Armoogum Parsuramen annonce également que la GRF offrira une bourse pendant cinq ans à la jeune fille afin qu'elle puisse poursuivre ses études dans les meilleures conditions. « Je remercie Mgr Ernest pour son intervention et je félicite le collège St Andrews pour sa politique d'intégration des personnes avec handicap. Brandy a également obtenu une chaise motorisée d'Onnicare Foundation. Elle pourra être indépendante et se déplacer facilement. »

Le président de la GRF affirme également qu'il accompagnera Brandy pendant tout son parcours scolaire. « C'est une fille formidable qui m'inspire. Elle réalise déjà de bonnes performances en handisport et je suis sûr qu'elle continuera à en faire de même pour ses études. »

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 ALNO AT **Xpanda**
 022 5098 000

24 | FOOTBALL]
 ANDY SOPHIE SIGNE
 À SAINT-BENOÎT

Un premier cas devant l'Equal Opportunities Tribunal ?

Elle a tenté une dernière médiation, mais en cas d'échec, elle devrait référer le cas à l'Equal Opportunities Tribunal. Hier, l'Equal Opportunities Commission a invité une chaîne de magasins, mise en cause dans la plainte d'une femme enceinte, à déposer un nouveau



à lire



François Eynaud :
 « On ne peut continuer à construire des hôtels »

Page 7

Weekly Sale by levy
 The pound of flesh
 Page 38 - 39

Succès pour la journée handisport de l'EOC



Une compétition où aucun effort ne fut épargné

La semaine de l'égalité des chances a culminé samedi avec une journée sportive dédiée aux personnes handicapées. Le stade sir Gaetan Deryal qui accueillait l'événement était très animé pour l'occasion. Des athlètes de différents groupes d'âge et avec différents handicaps ont donné une démonstration de leurs talents, en présence du ministre de la Jeunesse et des Sports Devarand Ritoo et du président de l'Equal Opportunities Commission (EOC) Brian Glover.

Valoriser le talent, la compétence et le désir d'acquiescer des concitoyens un droit de leurs handicaps : tel était l'objectif de cette journée sportive organisée par l'EOC. Pour le président de la commission, Brian Glover, c'est le principe même de l'égalité des chances qui était au centre de cette journée sportive. Ce dernier se félicite que le sport permet aux handicapés de développer un potentiel individuel et collectif, constituant ainsi un vecteur non-négligeable qui catalysera un regard décomplexé par rapport à la différence et l'autre. L'EOC Organisation d'une telle activité.



Les athlètes ont pris au sérieux leurs épreuves



L'esprit d'équipe leur a permis de remporter la victoire

Les épreuves ont été catégorisées selon l'âge et les limites de chaque participant. On peut ainsi citer les courses pour les physically, visually, hearing et intellectually impaired, respectivement. On a même eu droit à trois petits matches de foot d'une durée de trente minutes, pour les trois dernières catégories.

À la fin, même s'il y a eu des médailles, ce n'est pas les performances qui ont compté le plus, mais la possibilité des participants à dépasser leur potentiel, tout en faisant un regard décomplexé à leur égard.

La journée, qui avait débuté vers 11 h, s'est terminée vers 16 h 30 avec des athlètes arborant fièrement leurs médailles et le sourire aux lèvres.



Les membres du personnel ont apporté leur contribution à cet événement sportif

Brian Glover :
« L'égalité des chances requiert un changement de mentalité »
 RadioPlus
 87.5 FM 92.8 FM 96.9 FM

Elle a tenté une dernière médiation, mais en cas d'échec, elle devrait référer le cas à l'Equal Opportunities Tribunal. Hier, l'Equal Opportunities Commission a invité une chaîne de magasins, mise en cause dans la plainte d'une femme enceinte, à déposer un nouveau...



croissance des arrivées touristiques prévue, le président de l'AHIRM dit halte aux nouveaux projets hôteliers.

Compliments to the EOC

“I wish to thank the Commission for finding a solution to my case. I encourage other people, especially women, to come forward with their grievances and not to tolerate discrimination”- complainant

“Please allow me to thank the Commission for receiving me at the Commission despite the fact that my complaint may not be well-founded. Being listened to is already very much heart healing”- complainant

“My thanks to the Commission for responding very quickly to my complaint”- complainant

The Executive Committee of the Agricultural Research and Extension Unit Staff Union (ASU) and its members expressed their deepest gratitude for the two highly informative and interactive sessions held at the Farmer Training School of AREU at Wooton on 28th August and 5th September 2013. They also extended their gratitude to the two resource persons from the Commission for having captivated their attention throughout the sessions and enlightened them with relevant information.

“We would like to convey our heartfelt thanks to the Commission for servicing the module ‘Equal Opportunities and Gender Issues’ during the Training Programme on Legal Issues for officers of the HR Cadre....” - S.C.E, Ministry of Civil Service and Administrative Reforms.

“I wish to express to you my heartfelt thanks and deepest gratitude for having kindly extended to us an able resource person, who has been able, within the very short lapse of time, to deliver an exposé on the essence of Equal Opportunities....”
– PS, Ministry of Arts and Culture.

The President and members of SSR Disability Services Centre thanked the Commission for the support and collaboration during the workshop held at Belle Mare Recreational Centre, aimed at sensitizing women on the essentials of the Equal Opportunities Act and the mandate of the Commission.

“My sincere thanks to your Commission for having responded positively to our request and delegated a member of the Commission to present an expose on the different pertaining issues associated to the mandate of the EOC”- HRDC

Appendices

- I Complaint Form**
- II Report**
- III Agreement**
- IV Findings - Professor Ameenah Gurib-Fakim Case**
- V Determination - Mrs. Hewlett Nelson Case**
- VI Judgment - Mr. Naden Poolecootee Case**

EQUAL OPPORTUNITIES COMMISSION
1st Floor, Belmont House, Intendance Street, Port Louis, Mauritius

COMPLAINT FORM

About You

Name (Surname first): (Mr/Mrs/Miss).....

Your Address:

.....

Telephone (Home): (Work):

Mobile:E-mail:

Fax:NIC:

Name of person/s/organisation complained against:

.....

Its/their address:

.....

Telephone:

What is their relationship to you?

What type of discrimination do you think you have experienced? Please tick the box that applies

| | | |
|--|--|---|
| <input type="checkbox"/> Age | <input type="checkbox"/> Impairment | <input type="checkbox"/> Sex |
| <input type="checkbox"/> Caste | <input type="checkbox"/> Marital status | <input type="checkbox"/> Sexual orientation |
| <input type="checkbox"/> Colour | <input type="checkbox"/> Place of Origin | |
| <input type="checkbox"/> Creed | <input type="checkbox"/> Political opinion | |
| <input type="checkbox"/> Ethnic origin | <input type="checkbox"/> Race | |

What happened to you?

We need to know:

- What happened?
- Where it happened?
- Who did it and who was involved?

Please give us all the dates and other details you can remember. If you need more space to write your complaint please attach your own extra pages after duly signing at the bottom of each page.

What would you like to happen as a result of lodging this complaint?

Further information

Were there any witnesses?

Other institutions. Have you submitted a complaint against the same person/organisation in connection with the same facts? If Yes, please specify the name of the institution and the date of the complaint.

Is there anyone who is helping you with this complaint who you would like us to talk to?
(for example, a community worker, trade union, a lawyer or a friend)

What is their name: _____

What is their role/job? _____

Their address: _____

Telephone: _____

Documents: Please attach copies of any document that may help us with our investigation, such as doctor's certificates, records of conversations, letters or advertisements. If you cannot provide relevant documents please tell us where they are kept and who can get them.

I hereby declare that I am making this complaint in good faith and that the facts contained therein are true and correct.

Signed

Date

Send this complaint form to:

**The Equal Opportunities Commission
1st Floor, Belmont House
Port Louis**

For further information please contact the Equal Opportunities Commission on 201 3502 or on the following e-mail address: eoc@mail.gov.mu

EQUAL OPPORTUNITIES COMMISSION
REPORT
(Pursuant to Section 33(1)(a) of the Equal Opportunities Act)

Re: Complaint of [Name of Complainant] against the [Name of Respondent]

1. On [xxxx], [Name of Complainant] (hereinafter referred to as “the Complainant”) lodged a complaint in writing (hereinafter referred to as “the Complaint”) with the Equal Opportunities Commission (hereinafter referred to as “EOC”) pursuant to the provisions of subsection 1 of Section 28 of the Equal Opportunities Act (hereinafter referred to as “the Act”).
2. The Complaint was directed against the [Name of Respondent] (hereinafter referred to as “the Alleged Discriminator”).
3. The gist of the Complainant’s case against the Alleged Discriminator was that on [xxxx], the Alleged Discriminator refused to the Complainant access to the Alleged Discriminator’s [xxxx] situated at [xxxx] (hereinafter referred to as “the Premises”) on the ground of the Complainant’s [xxxx]. The Complainant is [xxxx] and is in a [xxxx].
4. The EOC examined the Complaint and decided to ask further information from the Complainant.
5. On [xxxx], the EOC held a preliminary hearing of the Complainant in order to seek further information in respect of the Complaint.
6. After an examination of the Complaint and after the preliminary hearing referred to at paragraph 5 above, the EOC decided to conduct an investigation into the Complaint pursuant to the provisions of Section 30 of the Act.
7. By letter dated [xxxx], the EOC informed the Alleged Discriminator about the Complaint and requested the Alleged Discriminator to attend a meeting to be held on

[Date and Time. at the seat of the EOC situated at 1st Floor, Belmont House, Intendance Street, Port Louis.

8. On [xxxx], the Alledged Discriminator attended the aforesaid meeting. After putting the Alledged Discriminator on notice of the Complaint and the details pertaining thereto, the EOC proceeded to hear the Alledged Discriminator.

9. The Complainant alledged that she had suffered moral damage and prejudice following the Alledged Discriminator's [act of discrimination] and informed the EOC that some monetary compensation would settle the matter in lite

10. In line with the provisions of sub-section 1 of Section 32 of the Act, the EOC attempted, in the first place, to resolve the matter in lite by conciliation.

11. In the course of the conciliation proceedings, the EOC held several meetings to wit:
 - 11.1 on [Date] the EOC met with [Name of Complainant/Respondent];
 - 11.2 on [Date] the EOC met with [Name of Complainant/Respondent];
 - 11.3 on [Date] the EOC met with [Name of Complainant/Respondent];
 - 11.4 on [Date] the EOC met with [Name of Complainant/Respondent]; and
 - 11.5 on [Date] the EOC met with [Name of Complainant/Respondent].

12. At the last meeting referred to at paragraph 11.5 above, the Alledged Discriminator unequivocally informed the EOC that he was not prepared to pay any sum of money to the Complainant. The stand of the Alledged Discriminator was based on the following grounds:
 - 12.1 he had not discriminated against the Complainant on [ground of discrimination]; and

- 12.2 [xxxx] thereby explicitly calling in aid the provision of paragraph [xxxx] of Section [xxxx] of the Act.
13. In the light of the contents of paragraph 12 above, the EOC, after completion of its investigation, has come to the unfortunate conclusion that the matter in lite may not be resolved by conciliation.
14. Consequently, pursuant to the provisions of paragraph (a) of subsection 1 of Section 33 of the Act, the EOC is duty bound to prepare and issue the present report.
15. After carefully considering all the evidence before it and after having applied the same to the relevant provisions of the Act, the EOC finds that the grounds invoked by the Alleged Discriminator as particularised at paragraphs 12.1 and 12.2 above may not hold good water in as much as:
- 15.1 it is clear from the evidence on record that the Alleged Discriminator has in truth and in fact [ground of discrimination] on the basis of her [type of discrimination]; and
- 15.2 the provisions of paragraph (a) of subsection 2 of Section 23 of the Act may not be successfully called in aid by the Alleged Discriminator in as much as [ground of discrimination] was never an issue because:
- (a) [xxxx];
- (b) [xxxx];
- (c) [xxxx]; and
- (d) [xxxx].
- (e) [Emphasis added]
16. The Alleged Discriminator has failed to demonstrate that any [xxxx] as required by the provisions of section [xxxx] of the Act.
17. True it is that the Alleged Discriminator has averred that he [act of discrimination]. It is however, apposite to note that Section [xxxx] of the Act deals essentially with the question of [xxxx].
[Emphasis added]
18. For the reasons enunciated above, it is highly recommended that the Complainant and the Alleged Discriminator (hereinafter referred to as “the Parties”) do try a last attempt at resolving this matter by way of conciliation.

19. As provided for in subsection 2 of Section 33 of the Act, any of the Parties to the present matter may, within a period of 45 days of the date of the receipt of the present report, inform the EOC whether the matter may be resolved through a settlement.

20. Last but not least, the EOC wishes to draw the attention of the Parties to the inescapable and mandatory nature of the provisions of subsection 3 of Section 33 of the Act which reads as follows:

“Where the Commission has been informed under subsection (2) that the complaint remains unresolved, it shall, with the consent of the complainant, refer the complaint to the Tribunal forthwith”

21. The present report is issued only as at the date hereof and the EOC assumes no obligation to update or supplement this report to reflect any facts or circumstances which are not comprised within the evidence laid down before the EOC as at the date thereof.

22. This report including the recommendations contained therein is solely addressed to the Parties, and as such may not be relied upon by any other person way unless the EOC decides otherwise.

Made and issued in three (3) originals on this [date] at Belmont House, Intendance Street, Port-Louis, Mauritius.

.....
Mr Brian N.J. GLOVER
Chairperson

.....
Dr Rajayswur BHOWON
Member

.....
Mr Shameer MOHUDDY
Member

.....
Mrs Danisha SORNUM
Member

AGREEMENT**Before the Equal Opportunities Commission**
(Section 32 Equal Opportunities Act)

Between : **[Name of Complainant]**
A citizen of Mauritius holder of NIC NO. [xxxx]

and residing at [Address]

And : **[Name of Respondent]**
A public/private company duly registered and validly
existing under the laws of Mauritius, having its registered
office at [Address] represented by [xxxx]

WHEREAS

- A. **[Name of Complainant]** (hereinafter referred to as “the Complainant”) has on [xxxx] lodged a complaint (hereinafter referred to as “the Complaint) with the Equal Opportunities Commission (hereinafter referred to as “the Commission”) pursuant to the provisions of subsection 1 of section 28 of the Equal Opportunities Act (hereinafter referred to as “the Act”) alleging that he may have been discriminated upon by **[Name of Respondent]** (hereinafter referred to as “[xxxx]”) under the relevant provisions of the Act.
- B. Following an examination of the Complaint and after hearing the Complainant, the Commission decided to conduct an investigation into the Complaint.
- C. The Commission duly notified [Name of Respondent] about the facts set out at paragraph B above and called upon [Name of Respondent] to be and appear before it to, *inter alia*, give evidence in connection with the Complaint.
- D. [Name of Respondent] has denied having committed any breach of the Act, but has nevertheless, in a spirit of good faith and cooperation, agreed to the Commission carrying out a conciliation.
- E. Pursuant to the provisions of subsection 1 of section 30 of the Act, the Commission attempted to resolve the subject matter of the investigation by conciliation.
- F. During the several hearings of the representatives of [Name of Respondent] the

Commission duly informed the aforesaid representatives about the facts set out at paragraph D above. [Name of Respondent] has in the course of the said hearings denied having committed any breach of the Act.

G. The conciliation proceedings continued before the Commission following which [Name of Respondent] made an offer, in view of settling the subject matter of the investigation by conciliation in line with the spirit of the Act and more specifically to show its willingness in being instrumental to the promotion of good relations and making allowance for the principles of equal opportunities.

H. The offer of [Name of Respondent] reads as follows:-

[xxxx].

(hereinafter referred to as “the Offer”).

I. At a meeting held before the Commission on [date], the Complainant accepted the Offer.

J. Pursuant to the provisions of subsection 4 of section 32 of the Act, the parties namely the Complainant, on the one hand, and [Name of Respondent] on the other hand, having settled the matter by conciliation, expressed the wish that the settlement be embodied in a written agreement.

THESE FACTS STATED, IT IS HEREBY AGREED AS FOLLOWS

1. The parties, having settled the Complaint by conciliation, hereby most formally and unequivocally agree to have the Complaint settled as per the terms and conditions set out at paragraph H above subject to the provisions set out below at paragraphs 2, 3 and 4.

(hereinafter referred to as “the Settlement”)

2. The parties further vow and declare that the Settlement is in full and final satisfaction of the Complaint and furthermore that each party does not have any past, present or future claim whatsoever against each other.

3. The parties further declare that the present agreement shall be registered with the Equal Opportunities Tribunal and that upon registration, this agreement shall be deemed to be an order of the Equal Opportunities Tribunal and binding on the parties.

4. Last but not least, the parties agree and undertake that no appeal shall lie against

the Settlement and/or any matter being the subject of this agreement and that non-compliance with the terms and conditions of this agreement shall be construed as being a breach of an order of the Equal Opportunities Tribunal after the registration of the said agreement.

Made in three originals, one for each party and one for the Commission, and in good faith on **[date]** before the Equal Opportunities Commission at its seat situated at 1st Floor, Belmont House, Intendance Street, Port-Louis, Mauritius.

.....
The Complainant

.....
[Name of Respondent]

Witnessed by the Secretary of Equal Opportunities Commission

.....
[xxxx]
Secretary

EQUAL OPPORTUNITIES COMMISSION**FINDINGS****(Pursuant to Section 31 of the Equal Opportunities Act)****Re: Complaint of Professor Ameenah GURIB-FAKIM against the University of Mauritius**

1. On 19 December 2013, Professor Ameenah GURIB-FAKIM (hereinafter referred to as “the Complainant”) lodged a complaint (hereinafter referred to as “the Complaint”) at the Equal Opportunities Commission (hereinafter referred to as “the Commission”) against the University of Mauritius (hereinafter referred to as “the Alleged Discriminator”) alleging that she had been less favourably treated by the Alleged Discriminator on the ground of her ethnic origin when the Alleged Discriminator decided not to appoint the Complainant as Vice Chancellor of the Alleged Discriminator.
2. After a careful examination of the Complaint, on 30 January 2014, the Commission held a hearing at its seat during which the Complainant was given full opportunity to be heard in order to further buttress her case as particularized in the Complaint. In the course of the said hearing, the Commission sought and obtained from the Complainant all necessary clarifications and such additional evidence as it deemed fit and relevant.
3. After the examination of the Complaint and after having heard the Complainant, the Commission found the Complaint well-founded and consequently, acting pursuant to the provisions of section 30(1) of the Equal Opportunities Act (hereinafter referred to as “the Act”), the Commission opened an investigation. The Complainant was informed accordingly.
4. On 24 February 2014, the Commission proceeded to hear the representatives of the Alleged Discriminator namely, Professor S. Jugessur and Mrs Ramano. The Commission duly put the Alleged Discriminator on notice of the fact that the Commission had opened an investigation pursuant to section 30(1) of the Act as the Commission had found the Complaint well-founded. At the said hearing the Alleged Discriminator was given full opportunity to be heard. Furthermore, the Commission sought and obtained some material evidence from the Alleged Discriminator in the course of its investigation.
5. In the light of the preliminary explanations afforded by the Alleged Discriminator at the hearing held on 24 February 2014 and in view of the difficulties met by the Complainant in her attempt at linking the alleged less favourable treatment to her

status, i.e her ethnic origin, the Commission decided to record individual and separate statements from each and every member of the panel who interviewed, *inter-alia*, the Complainant.

6. It is apposite at this stage to highlight that a discrimination under the terms of the Act is a “less favourable treatment” invariably based on the “status” of the aggrieved party. And status is defined as “age; caste; colour; creed; ethnic origin; impairment; marital status; place of origin; political opinion; race; sex; and sexual orientation”.

[Emphasis added]

7. The panel in lite consisted of six(6) members namely:
 - 7.1 Mrs S R Issur-Goorah, Registrar at the University of Mauritius;
 - 7.2 Associate Professor S K Ramchurn, Dean, Faculty of Science at University of Mauritius;
 - 7.3 Mrs S Naiken, Council Member at University of Mauritius;
 - 7.4 Mrs U N Demkah-Bagha, Chairperson Staff Committee at University of Mauritius;
 - 7.5 Dr F. Khodaboccus, Director Quality Assurance at University of Mauritius; and
 - 7.6 Mrs N. Nababsing, Permanent Secretary, Ministry of Tertiary Education.
8. The persons referred to at paragraph 7 were all heard on 12 May 2014 and their statements were recorded separately in order to avoid any possible concoction of evidence.
9. The investigation exercise referred to at paragraph 8 above revealed some highly informative facts but also some rather intriguing aspects pertaining to the manner in which the marking procedure was carried out during the interview of the candidates, including but not limited to the Complainant.
10. The first fact worth mentioning is that the six (6) members of the interviewing panel carried out their exercise in presence of Professor S. Jugessur who, according to the rules of the Alleged Discriminator, would have had no right to vote until and unless there would have been a tie-break between the six (6) members of the panel as to the choice of the successful candidate. It is interesting to note that Professor S. Jugessur has had to exercise his casting vote in the case in lite.
11. It is at this stage of paramount importance to place on record that the tie-break situation referred to at paragraph 10 above had no bearing on the fate of the Complainant as it concerned two other candidates.
12. However, this Commission views the following with some concern:
 - 12.1 there were no precise and accurate pre-established criteria on which the members of the panel had to judge the candidates;

- 12.2 consequently there were no standard form mark sheets provided to the members of the panel;
- 12.3 each member of the panel therefore proceeded with their own markings as they deemed fit;
- 12.4 there is contradictory evidence as to whether the so-called “mark sheets” or any other paper used for jotting down notes have been kept in the custody of the Alleged Discriminator or remained with the members of the panel; and
- 12.5 there would have been no tie-break situation had a member of the panel not “decided” to review his/her choice after “discussion”.
13. Notwithstanding the above, this Commission has found no evidence, even on a balance of probabilities, that the Complainant has been less favourably treated by the Alleged Discriminator by reason of her ethnic origin or by reason of any of the other definitions of “status” under the Act. One has to rely on facts and not on mere hunches.
14. Be that as it may, we feel duty bound to place on record that our investigation has nonetheless clearly revealed that more consideration was given by the members of the panel to the Complainant’s demeanor and apparent traits of character during her interview rather than laying emphasis on her undisputed qualifications and experience.
15. The present case was unfortunately one that could not be resolved by conciliation.
16. In the light of paragraph 13, this Commission is unable to take any further action in this matter under provisions of the Act save and except that this Commission will be issuing recommendations to the Alleged Discriminator so that the latter ensures that in the future its selection exercises are carried out so as not to leave any room for query.
17. Perceptions of discrimination may be as fatal as discrimination itself in our quest at changing mindsets for the building of a nation of equal opportunities.
18. The present document is being issued pursuant to the provisions of section 31 of the Act.
19. The present report is issued only as the date hereof and the Commission assumes no obligation to update or supplement this report to reflect any facts or circumstances which are not comprised within the evidence laid down before the Commission as at the date thereof.

Made and issued in two (2) originals on this 23rd day of May 2014 at Belmont House,
Intendance Street, Port Louis, Mauritius.

.....
Brian N J GLOVER
Chairperson

.....
Dr Rajayswur BHOWON
Member

.....
Danisha SORNUM (Mrs)
Member

.....
Mohammad Shameer
MOHUDDY
Member

EQUAL OPPORTUNITIES TRIBUNAL

In the matter of:

Mrs Hewlett Nelson

(Complainant)

v/s

The Director of The Paradox Night Club

(Respondent)

(Cause No. 01/EOT/13)

Determination

By virtue of section 33(3) of the Equal Opportunities Act, the Equal Opportunities Commission has referred the complaint of Mrs Hewlett Nelson to this Tribunal.

Particulars of claim of complainant

In her particulars of claim dated 27 January 2014, the complainant has averred as follows:

- 1. On Friday 6 January 2012 at around 23.00 hours, in company of her family, she went to the 'Paradox' nightclub at Rose Hill to spend some good time. To her utter surprise, she was flatly refused access to the nightclub by the security guard at the entrance because she was in a wheelchair.*
- 2. She was shocked and felt terribly humiliated. Her husband asked to see the director who arrogantly confirmed that persons on wheelchairs are not allowed in the nightclub and added that they could go and see the police if they wanted instead of answering to their question.*
- 3. Afterwards, she went to the police station of Rose-Hill and gave a statement that same night at around 23:45 hours.*

4. *She has been unduly discriminated by the management of that nightclub, which by refusing her access to the nightclub, flouted the national legislations and international obligations of the country to respect the rights of persons with disabilities.*
5. *By the acts and doings of the management of the nightclub, she felt humiliated, embarrassed and reduced in her dignity and that same have caused her considerable damage and prejudice which she would estimate at Rs 500,000.*

Statement of Defence of Respondent

In his statement of defence, the respondent has averred that he was entitled to refuse access to the complainant under section 23(2) of the Equal Opportunities Act as the premises were not accessible to wheelchair users. He refused access for security reasons which he made very clear to the complainant.

a. Access to the club by stairs

The respondent contends that he falls under the exception provided by S 23(2). The premises were not constructed in such a way as to render them accessible to persons on wheelchair. The premises in which the Respondent operates the club is found at the 1st storey of a building which was constructed in the 1970s. The ground floor accommodates shops. Access to the club from the ground floor is via a staircase of 18 stairs composed of 2 landings. The width of the staircase is 1m45 and it leads to the sole entrance to the club. The presence of the stairs makes the club inaccessible to wheelchairs users. In fact the complainant admitted that it was difficult for her to have access to the club because of the stairs and she had to be helped to climb the stairs.

The issue of unjustifiable hardship under S 23(2)(b) does not arise: the club rents the premises and pursuant to its contract of tenancy it does not have the right to make any alteration to the staircase. Moreover, under the Building (Accessibility to and facilities for disabled persons) Regulations 2005 (GN No. 118 of 2005), the onus to alter a building in order to make it accessible to disabled persons is put on the owner of the building and not the tenant. Regulation 4 provides:

4. *The owner of every building referred to in regulation 3 shall ensure that –*
 - (a) *The Building meets the requirements specified in the Second Schedule;*

- (b) *The International Symbol of Access for Disabled Persons set out in the Third Schedule is permanently and conspicuously displayed in the manner and at the places specified in that Schedule, in order to indicate that the facilities and structures specified in the Second Schedule are provided for in the building.*

b. Absence of facilities to accommodate persons on wheelchairs inside the club

It is also the Respondent's contention that the premises were not designed in such a way as to render them accessible to persons on wheelchairs. Inside the club, there are no facilities to accommodate wheelchair users. There is no access ramp to the bar. Even if a temporary access ramp could be added, it would still be infeasible to accommodate wheelchair users as there are no appropriate sanitary conveniences. The club has 3 urinals and 1 toilet for men and 2 toilets for ladies. They are all on the first floor.

Again the issue of unjustifiable hardship under S 23(2)(b) does not arise as the Respondent does not have the right pursuant to his contract of tenancy to make alterations to the premises by adding an accessible sanitary convenience. Again the Building (Accessibility to and facilities for disabled persons) Regulations 2005 (GN No. 118 of 2005) puts the onus of altering premises so as to provide accessible sanitary conveniences on the owner of the building.

Therefore the Respondent was entitled in law to refuse access to the complainant as the premises were not constructed and are not designed so as to provide access and to accommodate persons on wheelchairs and he cannot make any alterations to the premises. The Respondent is unaware that the complainant had been in the nightclub some fifteen years ago and states that prior to the incident with the complainant, the Respondent had never had any customer on wheelchair. It is noteworthy that the Respondent has the required licence from the Tourism Authority to run the nightclub.

a. Inappropriate fire escape

The Respondent's major concern is the emergency evacuation in case of fire or any other hazard. The club has already been experienced 2 fires incident in the past. The emergency exit is not accessible for wheelchair users for 2 reasons: firstly it is a moveable structure which has 15 steps. As the access to the club was difficult for the complainant due to the stairs, so would be the fire escape. Secondly it is too narrow to accommodate wheelchair users as it is 60 cm wide. The club has recourse to a moveable fire escape because the building does not have one.

Also, in case of an emergency evacuation, it would be difficult for persons on wheelchairs to move around and help themselves. Even if the complainant's relatives undertook to help her in case of any emergency, the club could not have taken such risk. The absence of an appropriate fire escape goes to show once again that the premises were not designed to accommodate persons on wheelchairs.

Evidence

Mrs Hewlett Nelson deponed to say that on the night of 06 January 2012, she proceeded to Paradox nightclub in company of her husband and some friends. Reaching the entrance of the nightclub, which is found on the first floor, the security guard told her husband that she would not get access into the nightclub because she was in a wheelchair. Whilst being in the presence of some twenty people, she heard the security guard denying her access inside the nightclub and felt humiliated as never before. On the same night, afterwards she reported the matter to the police and one month later she lodged a complaint at the Equal Opportunities Commission. She estimates having suffered damage and prejudice worth Rs 500,000 because she was denied access to the nightclub.

Under cross examination, she maintained that when the security guard stated that the wheelchair would not get access, he meant the wheelchair and herself. She admitted that the club was located on the first floor of an old building. She agreed that there were no existing facilities for people with impairment like her. According to the complainant, the amount of Rs 500,000 as indemnity is not exaggerated, but she could not say how she reached that figure.

Mr Herve Runga, spouse of the complainant, stated on 06 January 2012, in company of the complainant and some friends, he proceeded to Paradox nightclub in Rose Hill. *"It was the second time that they went there but the first time that the complainant was refused access.* Reaching the entrance, the security guard pointing towards his wife uttered *"ça pas pou rentrer, ça"*. Afterwards, the director of the club, came near the entrance and decreed in an assertive tone *"Li pas pou rentrer, alle guette garde"*. He felt humiliated and went to report the matter to the police. He recalled that when they went to the nightclub on the first occasion, they were allowed access and could chat and take a drink.

Under cross examination, he explained that there were some 30 persons outside the nightclub and they were waiting in "row" their turn to get access to the nightclub. With the help of two persons, he carried the complainant upstairs.

Mr Toolsy Boyjoo, director of Paradox nightclub, stated that on that very night, he was called upon by the security guard to resolve a problem of access to the nightclub. He

explained to a group of persons who accompanied a woman in a wheelchair, that the club does not possess the adequate structures and facilities to accommodate handicapped persons. The building was erected in 1970 and the first floor was occupied by the nightclub since 1974. At that time, the buildings were not provided with access facilities for persons moving in wheelchairs.

He stressed on the fact, that he does not have the right, as tenant, to bring any alteration to the building. He made some alterations for instance caused an “accordeon” door to be fixed, but was sued by the owner for doing so. The case is still pending before court.

In the nightclub, there are no existing facilities for the movement of wheelchairs. In case the nightclub is full, wheelchair cannot move inside. Furthermore, there is no ramp to allow movement of wheelchair from the ground floor to the first floor. In order to provide access facilities to wheelchairs in the club, a significant alteration is required but there is no sufficient space to materialise same. All these modifications cannot be envisaged without the owner’s consent. According to the contract of tenancy, the tenant is not authorised to undertake any structural change.

He explained that the nightclub has a moveable emergency fire exit which is only 60 cms wide. It is very difficult to assist a person in wheelchair getting out in case of fire. It is impossible for a handicapped person in a wheelchair to use the moveable metal staircase in case of emergency.

According to him, he did not see the complainant at the entrance. Someone asked him to allow access to a disabled person who was in a wheelchair. He replied that the nightclub did not possess appropriate structures to allow access to people in wheelchair. He added that he was himself involved in social activities namely in the group “lizié dans la main” which aims at assisting disabled persons and would never discriminate on ground of impairment.

Under cross examination, he explained that it is the policy of the nightclub not to allow access to handicapped persons. At no time he would have allowed access to the nightclub irrespective of the fact that the club is full or not.

He stated that there is a fire exit in the nightclub. In the past, on two occasions fire broke out in the nightclub, requiring appropriate repairs, which were effected without the need to have the consent of the owner of the building. In 1974, there was no metallic emergency staircase, it was fixed up in order to comply with the requirements of the fire services. He had been sued by the owner for having fixed an “accordeon” door and a moveable metallic staircase for the fire exit.

Under re-examination, he explained that the metallic staircase was provided at the request of the fire services in compliance with the regulations requesting a fire exit.

Despite the objection of the owner to proceed with the installation of the fire exit, he was advised to abide by the requirements of the fire services, by providing the fire exit, otherwise, he could not operate the nightclub. Subsequently, officers of the fire services issued a fire clearance after being satisfied of the availability of a moveable fire exit.

Submissions of Counsel

Mr E. Mooneapillay of Counsel for the complainant submitted that Mr T. Boyjoo, by refusing a disabled person access to the nightclub, has been guilty of discrimination. The respondent has brought modifications to the building on two occasions. He referred to the evidence of Mr Hervé Runga, who stated that the complainant and himself had in the past been allowed access to the nightclub.

In his reply, Mr I. Collendavelloo SC, for the respondent referred to section 23(1) of the Equal Opportunities Act which reads as follows:

Subsection (1) - shall not apply to the access to or use or enjoyment of any premises by a person with an impairment where

- (a) The premises are not designed or constructed in such a way to render them accessible to a person with the impairment.

According to him, these premises are unsuitable for access to users of wheelchair. It would be a dramatic situation in case of fire, if they are inside. He referred to regulation 3 of 2005 made under the Building Act which applies to a new building or to existing building which is object of extensive repairs, reconstructions, alterations or additions. He submitted that the Authority may direct the owner of a building to alter his building, but not the occupier and the tenant, so that the building meets the requirements specified in the second schedule. Moreover, the order of the fire services for an emergency exit was not meant to cater for handicapped persons.

He submitted that the respondent cannot make any alteration to the building and is being sued by the landlord for having fixed up an “accordeon” door and provided an emergency fire exit. For him the particulars of defence, namely the impossibility of making things accessible, provides a complete defence to the respondent.

Findings

The Tribunal has heard the submissions of both counsel.

It is not disputed that the complainant was denied access because of her impairment. In our view this complaint falls within the purview of section 23 of the Equal Opportunities Act which reads as follows:

- (1) *Subject to subsection (2), no person shall discriminate against another person –*
 - (a) *by refusing to allow him access to, or the use or enjoyment of any premises, which the public or a section of the public may enter or use, whether on payment or not ...*

- (2) *Subsection (1) **shall not apply** to the access to or use or enjoyment of any premises by a person with an impairment where –*
 - (a) *the premises are **not designed or constructed** in such a way as to render them **accessible** to a person with the impairment; **and***
 - (b) ***any alteration to the premises would impose unjustifiable hardship** on the person required to provide access.*

- (3) *For the purposes of subsection (2), in determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case shall be taken into account including –*
 - (a) *the nature of the benefit, facility or service or detriment likely to accrue or be suffered by any person concerned and*
 - (b) *the financial circumstances of, and the estimated amount of expenditure required to be made by, the person required to provide access.*

As highlighted above the law provides that in case of refusal based on ground of impairment, a two fold statutory defence is available for the person refusing to allow access namely

- (1) the premises were not designed or constructed in such a way as to render them accessible

- (2) in case of alteration, the imposition of unjustifiable hardship on the provider of access.

There is no dispute in respect of the first limb. It is admitted by both parties that the premises are not designed or constructed in such a way as to render them accessible to a person with impairment. But this is not enough. Section 23 2(b) provides also for the respondent to prove that any alteration would impose unjustifiable hardship on the person required to provide access.

The main issue which remains to be determined, is whether the respondent has adduced evidence on both limbs of section 23(2) in order to justify his refusal of access to the complainant.

The respondent deponed in a straight forward and convincing manner to demonstrate that his refusal was based on security reasons and that the premises could not provide access facilities to persons in wheelchair. As a tenant, he could not bring alterations to

the premises, except with the consent of the owner. But the latter would not authorise any alterations and is presently suing him for having fixed an “accordeon” door and an emergency fire exit. His counsel submitted that it was impossible for the respondent as tenant, to make alterations to the building to make things accessible.

In his statement of Defence, respondent repeatedly and forcefully contended that the issue of unjustifiable hardship under sec 23 (2)(b) does not arise, because the respondent as tenant has no right to make any alteration to the premises. The onus to alter a building in order to make it accessible to disabled persons is put on the owner and not on the tenant of the building.

In our view, for the respondent to succeed he should have adduced evidence as specified in section 23 (2)(b) of Equal Opportunities Act to demonstrate that alteration would impose unjustifiable hardship on the person required to provide access. It might be that the provider of access is the owner, but the respondent, even as a tenant, is bound to show that the alteration would impose unjustifiable hardship on the person required to provide access. The fact that he has been sued by the owner for affecting alterations, in compliance with law does not excuse him from the statutory, requirement laid down in section 23 2(b), in relation to the imposition of unjustifiable hardship. Furthermore section 23(3) provides that in determining what constituted unjustifiable hardship, relevant circumstances which should be taken into consideration including the financial circumstances of, and the estimated amount of expenditure required to be made by, the person required to provide access. On that score too, the respondent has failed to adduce evidence.

In the present matter, to justify his refusal the respondent has put forward valid reasons, namely (a) safety and security (b) absence of facilities to accommodate persons in wheelchairs inside the club (c) inappropriate fire escape. But on the other hand, he has discarded completely the issue of unjustifiable hardship on the ground that this issue does not arise being given that he is a tenant. In our view, this stand is wrong and misconceived in law, because the proof that any alteration to the premises would impose unjustifiable hardship on the person required to provide access. is a mandatory statutory requirement to justify refusal of access to person with an impairment.

For these reasons, the Tribunal finds that the complainant has established that the respondent has acted discriminately by refusing to allow her access on the ground of her physical impairment. On the other hand, the respondent has ignored completely the requirement laid down in section 23 (2)(b) of the Equal Opportunities Act in order to justify his refusal.

In respect of compensation, the Tribunal takes into account the reasons, given by the respondent to refuse access. But also the circumstances surrounding the refusal which was made at the doorsteps of the nightclub in front of several persons to a user of wheelchair who has the legitimate expectation (having been allowed access in the past) to get inside the nightclub. In these circumstances the Tribunal orders the respondent to pay to the complainant Rs 50,000 as compensation, which it considers to be a fair and reasonable figure.

The said amount to be paid within one month as from the date of this determination.

(H. D. Vellien)
President

(K. Lotun)
Member

[M. Bali (Mrs)]
Member

Dated this 23 May 2014

CENTRAL ELECTRICITY BOARD v THE EQUAL OPPORTUNITIES COMMISSION

2014 SCJ 137

Record No. 109026**IN THE SUPREME COURT OF MAURITIUS**

In the matter of:

The Central Electricity Board**Applicant**

v.

The Equal Opportunities Commission**Respondent**

In the presence of:-

Naden Pooleecootee**Co-Respondent****JUDGMENT**

This is an application for leave to apply for a judicial review of the decision of the respondent (“the Commission”) to refer a complaint of the co-respondent to the Equal Opportunities Tribunal (“the Tribunal”) on the grounds that the decision is unreasonable, in breach of natural justice, illegal, *ultra vires* and unfair.

The Commission is objecting to leave being granted on the ground that the application does not disclose an arguable case.

Ex facie the applicant’s affidavit and its annexes, the co-respondent, who is an employee of the applicant, made a complaint to the Commission alleging that he might

have been discriminated against on the ground of his ethnic origin as on several occasions he was not promoted to the post of Senior Engineer by the applicant although he was senior to the successful candidates. After an exchange of correspondence and some meetings between the applicant and the Commission, the matter was not resolved by conciliation and the Commission referred the complaint to the Tribunal.

Learned Counsel for the applicant has submitted that the Commission should have found no merit in the complaint of the co-respondent as the person selected for the post of Senior Engineer is of the same ethnic origin as the co-respondent. Learned Counsel has further submitted that the Commission should not therefore have referred the complaint to the Tribunal pursuant to section 31 of the Equal Opportunities Act (“the Act”) which provides that the Commission shall take no further action on a complaint where it finds no evidence of discrimination.

It is to be noted that there is not one post but “*various positions of Senior Engineer at the CEB* (the applicant) *with distinct duties and responsibilities*” as borne out by a letter from the applicant itself (Annex I) and that the co-respondent had applied for the post of Senior Engineer on several occasions.

Be that as it may, the short answer to the above submissions is that it is not the role of this Court to assess the merits of the decision of the Commission and to substitute its own judgment for that of the Commission. It is well settled that the purpose of a judicial review is to look at the legality of a decision and at the decision making process and not to act as a court of appeal (vide **Luchmun v The Mauritius Sugar Terminal Corporation** and **Naidoo v The Public Service Commission**). In the present case, the applicant is clearly asking this Court to sit on appeal on the merits of the decision of the Commission to refer the complaint of the co-respondent to the Tribunal.

As regards the decision making process adopted by the Commission and the legality of its decision, we agree with learned Counsel for the Commission that it has all along acted in accordance with the law. On receipt of the complaint from the co-respondent against the applicant, the Commission conducted an investigation and tried to resolve the matter by conciliation, as provided for under sections 30 and 32 of the Act. The attempt at conciliation having been unsuccessful, the Commission sent a report to both parties concerned, i.e. the applicant and the co-respondent pursuant to section 33(1). In that report (Annex K), the Commission highly recommended that the parties try a last attempt at resolving the matter by conciliation and drew attention to the

“inescapable and mandatory nature” of section 33(3) which provides that where a complaint remains unresolved, the Commission must, with the consent of the complainant, refer the complaint to the Tribunal forthwith. As there was no response from the applicant, the Commission referred the complaint of the co-respondent to the Tribunal.

From the above, it is evident that the Commission has acted strictly within the parameters of the law and as required by law. In any case, the Commission has not taken any final and conclusive decision with regard to the complaint of the co-respondent. It will be up to the Tribunal, which has already been seized, to do so.

In this context, the applicant has not exhausted alternative remedies before coming to this Court. In **Guddoye v National Transport Authority**, leave to apply for a judicial review was refused as the applicant had not exhausted all other available remedies before going to the Supreme Court.

The Tribunal is statutorily empowered and enjoined under the Act to hear and determine a complaint referred to it by the Commission. In the present case, the Tribunal will be considering the complaint of the co-respondent afresh and the applicant will have full opportunity to present its case. The merits of the complaint of the co-respondent will, therefore, be a matter eminently fit for the Tribunal to consider and determine.

In these circumstances, it is obvious that the complaint of the co-respondent should first be dealt with and determined by the Tribunal, a course of action which is statutorily provided for. And if the applicant is not satisfied with the decision of the Tribunal, it will be open to it to appeal to the Supreme Court under section 41 of the Act. The applicant has, therefore, clearly not exhausted other available remedies.

Furthermore, the applicant has alleged that the Commission was biased and unfair in the course of the conciliation proceedings. We are, however, of the opinion that this is a non-issue. As already stated above, the Tribunal will be considering the complaint of the co-respondent afresh and the applicant will have full opportunity to present its case. Moreover, whatever evidence was given in the course of conciliation proceedings before the Commission will not be admissible before the Tribunal by virtue of section 38(5) of the Act.

Another issue raised by the applicant is that the initial complaint of the co-respondent was based on the ground of “ethnic origin” but was thereafter changed to

that of “status” for unknown reasons. We merely wish to point out that “status” is defined under section 2 of the Act as meaning, *inter alia*, “ethnic origin”.

For the above reasons, we find that the present application does not disclose any arguable case. Leave is, accordingly, refused and the application is set aside with costs.

**N. Matadeen
Judge**

**D. Chan Kan Cheong
Judge**

6 May 2014

Judgment delivered by Hon. D. Chan Kan Cheong, Judge

**For Applicant : Mr. D. Ramdhur, Attorney-at-Law
Mr. J. Peeroo, of Counsel**

**For Respondent : Mr. J. Gujadhur, Attorney-at-Law
Mr. M. Sauzier, SC**

**For Co-Respondent : Mr. J. C. Ohsan Bellepeau, Attorney-at-Law
Mr. G. Bhanji-Soni and Ms B. Bhagwan,
both of Counsel**