



Republic of Mauritius



Report

January 2022 - December 2023



Towards a
**Discrimination-Free
and Inclusive Nation**



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**Discrimination-Free and
Inclusive Nation**



Published by the Equal Opportunities Commission, 1st Floor, Belmont House, 10 Intendance Street, Port Louis.

About this Report

This report provides an overview of the role of the Equal Opportunities Commission and its activities for the period January 2022 to December 2023.

Feedback

As the Commission is constantly striving to improve its services, any comment, observation or query relating to the content of this report will be appreciated.

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This report can also be downloaded from the Commission's website on eoc.govmu.org.

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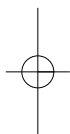
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Highlights



Staff dedicated at work



396 complaints investigated



Conciliation successful in 58 cases



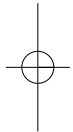
Sensitisation campaigns carried out, including the delivery of onsite talks



Sensitisation/awareness campaigns with students



Staff attending training sessions



1.0 Message of Chairperson

“Live and let live”

G. De Malynes



As the Chairperson of the Equal Opportunities Commission, it is with great pleasure that I address you in this report.

Ever since the Equal Opportunities Commission has been set up, it has been at the forefront of the battle against discrimination and striving relentlessly to work towards a discrimination-free and inclusive nation, embodying the very essence of our mission and vision.

Our motto: “TOWARDS A DISCRIMINATION-FREE AND INCLUSIVE NATION” encapsulates our commitment to fostering a society where equal opportunity is promoted and where every individual, irrespective of his background, is fairly and equitably treated. Mauritius being a mosaic of cultures, traditions and identities, it is through embracing this rich tapestry that we can promote peace, social justice and harmony.

The journey to combat discrimination is arduous but the Equal Opportunities Commission remains steadfast in its determination to overcome challenges and obstacles that hinder the path to equality. Our fight against discrimination knows no boundaries.

Let me reaffirm that we stand as a beacon of hope for those who have been unfairly treated. Our doors are open and we are ready to listen, support and advocate for those in need. We firmly believe that, together, we can build a society where fairness and respect prevail. We urge everyone to join hands and work collectively to promote a culture of empathy, understanding and inclusiveness.

The journey ahead will require the dedication and collaboration of every citizen. With your unflinching support and belief in the principles of equality, I am confident that we shall be able to build a nation which is discrimination-free and inclusive.

The Equal Opportunities Commission is firmly committed to fight discrimination and uphold the principles of equality of opportunity in the Republic of Mauritius.

Ahmad Sulliman Jeewah

Chairperson

Equal Opportunities Commission

“Where there is a will, there is a way”

George Herbert

mem sans pou tou

సమాన అవకాశాలు
samāna avakāśālu

平等机会
ping deng ji hui

சம வாய்ப்புக்கள்
sama vaayppukkal

یکساں مواقع
yaksan mawaqé

समान अवसर
samaana avsar

समान संधी
samāna sandhī

égalité des chances

समान अवसर
samāna avsar

equal opportunities



equal opportunities

समान अवसर
samāna avsar

égalité des chances

समान संधी
samāna sandhī

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mem sans pou tou

About the EOC



2.0 About the Equal Opportunities Commission (EOC)

The Equal Opportunities Commission is an independent statutory body set up under the Equal Opportunities Act 2008 (EOA), to administer that Act. The Commission's role is to promote anti-discrimination and equal opportunity principles and policies throughout Mauritius.

2.1 Functions of the Commission

The Equal Opportunities Commission currently performs three main roles:

1. Investigation of discrimination complaints, hearing the parties and attempting to conciliate them, when appropriate;
2. Working to prevent discrimination from occurring by informing people about their rights and responsibilities under the EOA through sensitisation campaigns as well as through preparation of appropriate codes and guidelines; and
3. Keeping under review the working of the EOA and any relevant law and submit to the Attorney-General proposals for amending them, if required.

2.2 Composition of the Commission

The Commission consists of a Chairperson and three other members appointed by the President of the Republic, acting on the advice of the Prime Minister after consultation with the Leader of the Opposition.

2.3 Staff Profile

As at 31 December 2023, the Commission's staff comprised 19 persons amongst whom are the Secretary to the Commission, 3 Investigators, 1 Office Management Executive, 2 Confidential Secretaries, 2 Court Transcribers, 2 Management Support Officers, 1 Word Processing Operator, 1 Procurement and Supply Officer/Senior Procurement and Supply Officer, 1 Consultant/Service Provider, 2 Interns under the Service to Mauritius Programme (STM), 2 Office Auxiliaries and a Driver. The Secretary to the Commission is a Deputy Permanent Secretary and exercises powers and administrative functions as the Commission delegates to her. The remaining members of the staff, other than the Investigators, the STM Interns and the Consultant/Service Provider, are on secondment from the Public Service.

2.4 Chairperson and Members of the Commission



Mr. Ahmad Sulliman Jeewah
Chairperson

Mr. Ahmad Sulliman Jeewah, former District Magistrate and Senior Crown Counsel, served as Municipal Councillor and Lord Mayor of the City of Port Louis and also as Member of the National Assembly and Minister of Civil Service Affairs and Administrative Reforms.



Mr. Gunneswar Shibchurn
Member

Mr. Gunneswar Shibchurn is holder of a BA (Hons) degree in Economics with Management from the Napier University, Edinburgh, UK. He also possesses a PGCE in Business Studies from the MIE. He has a long career as Educator and is also a member of several socio-cultural and religious organisations.



Mr. Louis Richard Toulouse
Member

Attorney-at-Law and former Clerk of the Rodrigues Regional Assembly. Since the year 2015, Mr. Toulouse is lecturing “drafting of pleadings and legal documents” in relation to the Law Practitioners Vocational Course. He is the author of a book entitled “Draftings made simple”.

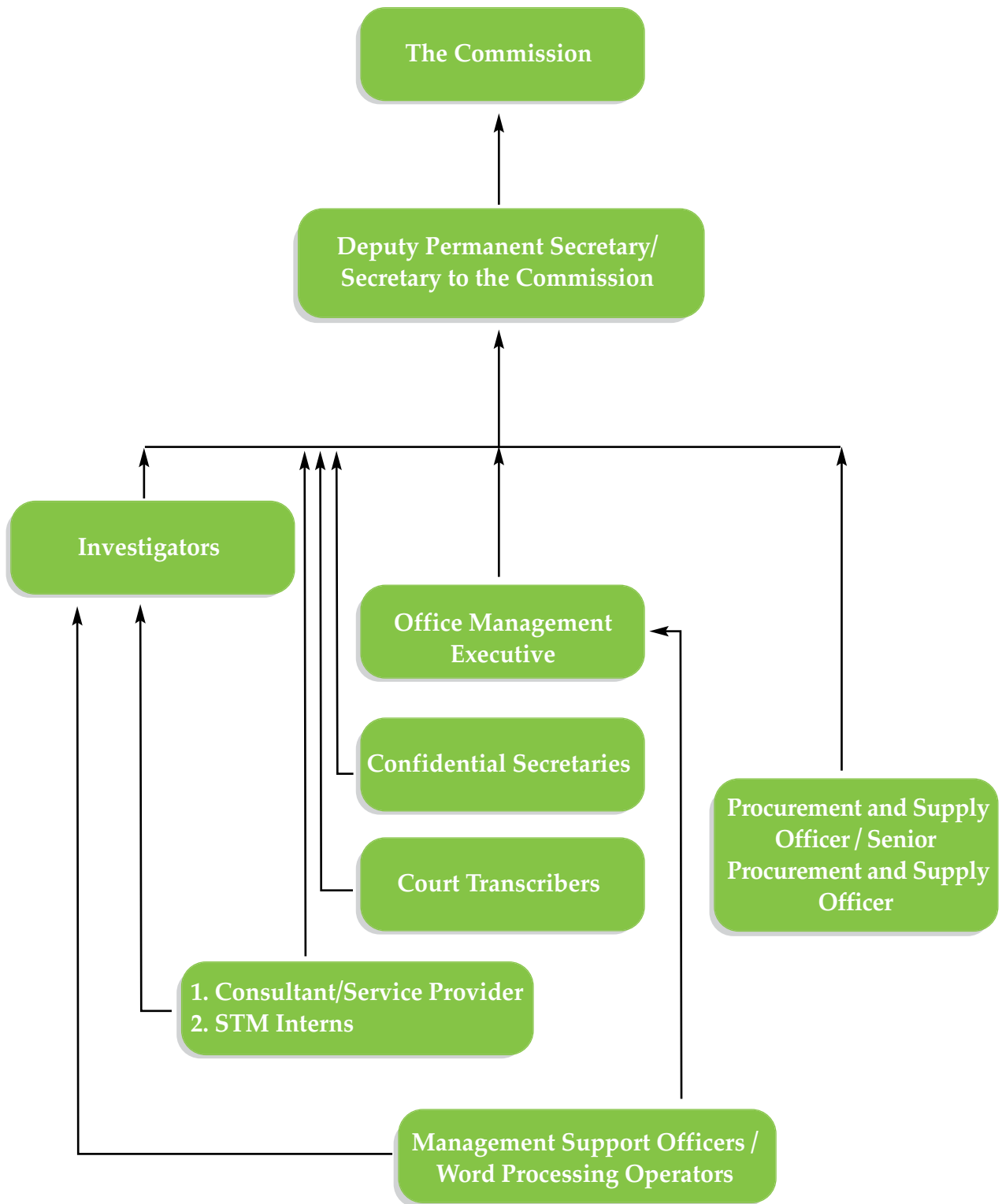


Mr. Gheanduth Seechurn, OSK
Member

Former Director of the National Co-operative College. Mr G. Seechurn is the holder of an MBA, BSc in Business Studies and a Diploma in Public Administration and Management.



2.5 The Equal Opportunities Commission Organisational Structure



2.6 The Equal Opportunities Commission Team



1st Row – From left to right

Ms. S. Buldawoo, Mr. G. Shibchurn, Mr. A.S. Jeewah, Mr. L. R. Toulouse, Mr. G. Seechurn

2nd Row – From left to right

Mr. J. Mungalia, Mr. E. Quirin, Mrs. N.C. Nuckchady, Mrs. M. Narroo-Dajee, Mrs. R. Boodia, Mr. R. Aristide, Mr. M. Ramkalawon

3rd Row – From left to right

Mr. G.K. Bhoyroo, Ms. P. Jooseery, Mrs. A. Sooben, Mrs. K. Ramrucha, Mr. K. Deepchand, Mr. J. Seegolam, Mr. C. S. Rupear

Mr. Ahmad Sulliman JEEWAH	Chairperson
Mr. Gunneswar SHIBCHURN	Member
Mr. Louis Richard TOULOUSE	Member
Mr. Gheenduth SEECHURN, OSK	Member
Ms. Shalini BULDAWOO	DPS/ Secretary to the Commission
Mr. Jagdish SEEGOLAM	Investigator
Mrs. Mirabye NARROO-DAJEE	Investigator
Mrs. Rajshree BOODIA	Confidential Secretary
Mrs. Amlavally D. S. SOOBEN	Confidential Secretary
Mr. Girish Kumar BHOYROO	Procurement & Supply Officer (PSO)/Senior PSO
Mr. Jeetesh MUNGALIA	Management Support Officer
Ms. Priyanka JOOSEERY	Management Support Officer
Mr. Louis Rodney ARISTIDE	Word Processing Operator
Mrs. Neha Chowbay NUCKCHADY	Consultant/Service Provider
Mr. Meetrinand RAMKALAWON	Service to Mauritius Intern
Mr. Chetan Sharma RUPEAR	Service to Mauritius Intern
Mr. Kailash DEEPCHAND	Office Auxiliary
Mrs. Kalianee RAMRUCHA	Temporary Office Auxiliary
Mr. Jean Eddy QUIRIN	Driver

2.7 The Investigation Cadre at the Equal Opportunities Commission

Section 30 of the Equal Opportunities Act vests the Equal Opportunities Commission (the Commission) with an investigative mandate -

“30. Investigation

(1) Subject to section 32, the Commission may, where a complaint appears to it to be well-founded, conduct an investigation into the complaint.”

The Investigators, under the administrative authority of the Secretary, *inter-alia*, assist the Commission throughout the whole complaint handling process.

Investigators:



Mr. Jagdish Seegolam was appointed Investigator at the Equal Opportunities Commission with effect from 15 January 2018. He has over two decades of experience at the Probation and Aftercare Service. He has also worked at the ICAC and the Australian High Commission. He holds an LLB (Hons), an LLM and a Postgraduate Certificate in Human Rights, in addition to other qualifications in Commerce and Social Work.



Mrs. Mirabye Narroo-Dajee holds an LLB (Hons) and a Masters in Business Administration. She has worked in the private sector for a few years before joining the Civil Service. As from 2015, she worked as Analyst in the “Legislation and other Legal Issues” Unit of the Ministry of Finance and Economic Development and thereafter joined the Equal Opportunities Commission as Investigator in 2018.



Mr. Nivish Varma Chummun joined the Equal Opportunities Commission as Investigator in 2023. Previously, he worked as Senior Investigator at the National Human Rights Commission. He holds an LLB and an LLM, in addition to other qualifications in Arbitration, Intellectual Property, Hospitality Management and Human Rights.

The prohibition of discrimination on the ground of 'marital status' from a pedagogical perspective.

"If you don't have a lens that's been trained to look at how various forms of discrimination come together, you're unlikely to develop a set of policies that will be as inclusive as they need to be".

Kimberlé Williams Crenshaw

3.0 The Prohibition of discrimination on the ground of 'Marital status' from a pedagogical perspective

INTRODUCTION:

Discrimination is a universal plague. It affects all the continents, from Asia to Africa, from Europe to America. Mauritius is not an exception. Research has shown that this phenomenon tends to be exacerbated in time of socio-economic upheavals.

The anti-discriminatory laws

This article highlights the essential issues which all alleged victims of discrimination must raise and prove when lodging a complaint with the Equal Opportunities Commission. It also addresses the issue of the burden of proof and focuses on the protected status- 'marital status'.

Our anti-discriminatory laws are inspired by the Universal Declaration of Human Rights of 1948.

(i) Article 1 of the Universal Declaration of Human Rights provides as follows:

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

(ii) On the 12th March 1968, Mauritius became independent and adopted its Constitution. Our Constitution provides for anti-discriminatory provisions.

Section 3 of our Constitution provides, *"It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms –*

- (a) the right of the individual to life, liberty, security of the person and the protection of the law;*
- (b) freedom of conscience, of expression, of assembly and association and freedom to establish schools; and*
- (c) the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation,..."*

Similarly, Section 16 (1) of our Constitution provides, *"Subject to subsections (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect".*

Section 16 (2) provides the following, *"Subject to subsections (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public authority".*

(iii) The Equal Opportunities Act 2008

Before the enactment of the Equal Opportunities Act 2008, herein after referred to as the "Act", victims of alleged discrimination had only one recourse, viz, lodging a plaint with summons before the Supreme Court for redress.

The case of **Jaulim v/s DPP (1976) MR 96** is a vivid example. The issue in this case concerns the exclusion of women from the service of jury in assize cases. It concerns the issue of sex discrimination.

It is to the public knowledge that lodging a plaint with summons with the Supreme Court is costly inasmuch as the plaintiff has to retain services of an Attorney-at-Law and a Barrister, whereas filing a complaint with the Equal Opportunities Commission is free.

Secondly, it is also to the public knowledge that the Supreme Court is overburdened with cases. It takes a long period to thrash out a discrimination case by the Supreme Court whereas the Equal Opportunities Act 2008 as amended provides for a quick mechanism to thrash out discrimination complaints.

A cursory perusal of the Hansard when the Equal Opportunities Bill was debated (debate No 36 of 02 December 2008), reveals that the philosophy of the Equal Opportunities Act is to:

“afford better protection against discrimination to all citizens and most particularly the minorities and to offer them opportunities which may never have come their way in the absence of such a legislation”.

The notion of discrimination

It is good to note that many complainants allege in their complaint forms that they have been subjected to injustice, nepotism, prejudices, inequalities, there was no meritocracy, unfairness and so on. However, for the Equal Opportunities Commission to entertain a complaint, the complainant must first prove that he or she has been subjected to discriminatory practices based on one of the thirteen protected grounds as provided by the Equal Opportunities Act 2008 as amended.

Therefore, it is important to understand the precise meaning of the technical term “discrimination” but not the ordinary dictionary meaning.

The Equal Opportunities Act 2008 as amended does not give the technical definition of the word discrimination.

The precise legal definition can be gathered from Section 16(3) of our Constitution which provides as follows: -

“In this section, ‘discriminatory’ means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, caste, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages that are not accorded to persons of another such description”.

In a nutshell, ‘discrimination’ means the complainant has been meted out with a less favourable treatment as compared to another person in the same or similar situation as him/her based on the seven grounds as enumerated above.

It is good to note that the Equal Opportunities Act 2008 as amended provides for three types of discrimination; Section 5 provides for direct discrimination, Section 6 provides for indirect discrimination and Section 7 provides for discrimination by victimisation. It is also good to mention that the Equal Opportunities Act 2008 as amended has extended the protected grounds by adding six new statuses, namely: age, ethnic origin, impairment, marital status, sexual orientation and in 2017, the Act was amended to include criminal record.

The notion of marital status

The second element to be considered by a complainant who lodges a complaint with the Equal Opportunities Commission is that the less favourable treatment is attributable to his/her status, viz, “marital status” which is defined as follows:

“the condition of being single, civilly or religiously married, married but living separately from one’s spouse, divorced, widowed or a single parent”.

It is good to note that experience has shown to us that some prospective employers have out of compassion given more favourable treatment with respect to “a single parent”, especially single mother, divorced, widowed but less favourable treatment to civilly or religiously married persons.

The condition *sine qua non* for the Equal Opportunities Commission to entertain a complaint

Section 28 (1) of the Equal Opportunities Act provides as follows: “*subject to section 29, any person who alleges that any of his rights under this Act has been infringed may lodge a written complaint with the Commission, setting out the details of the alleged act of discrimination*”.

A complainant who alleges that he/she has been less favourably treated based on his/her marital status must set out in details, viz, he/she must particularise the less favourable treatment which he/she has been subjected to and the more favourable treatment of another person based on their status.

The notion of the burden of proof

The burden of proof in a discriminatory complaint before the Commission can be explained as follows: the complainant is alleging that the Respondent has acted discriminatorily against him. The complainant shoulders the burden to convince the Commission that he has been subjected to a less favourable treatment as compared to another person based on his status as is provided for by the Equal Opportunities Act 2008, as amended.

The issue in relation to the discrimination complaint is whether the burden of proof shifts on the “alleged discriminator” as it is the law in England on the premise that discrimination claims are difficult to prove. Experience has taught us that discriminatory practices are subtle, invisible, most often than not the evidence is being brushed under the carpets and in most cases, the evidence is in the possession of the “alleged discriminator”.

In the United Kingdom, following a European Council Directive which recognises that discrimination claims are difficult to prove, once the complainant has established a prima facie case of discrimination, the onus shifts to the Respondent to show that the behaviour was not on discriminatory grounds. Section 136 (2) of the British Equality Act 2010 is clear on the issue of the burden of proof in discrimination complaints.

However, the situation under Mauritian law is different. The Equal Opportunities Act does not contain any such provision as Section 136(2) of the British Equality Act. Therefore, in the Mauritian context, the burden of proof rests on the complainant to adduce sufficient evidence to prove that he or she has been less favourably treated based on the ground of “marital status” as compared to another person who has been more favourably treated on the same ground.

Instances where the burden of proof shifts on the Respondent

The Equal Opportunities Act 2008 as amended provides for three instances where the burden of proof shifts on the Respondent:

- (i) Section 6(2) which refers to indirect discrimination in general provides that “*the burden of proving that a condition, requirement or practice is justifiable in the circumstances lies on the discriminator*”;
- (ii) Section 10(2) which refers to employment of person in general provides that “*...the burden of establishing the relevance of the criminal record to the nature of the employment shall rest with the employer or prospective employer*”; and
- (iii) Section 11(2) which refers to persons in employment in general provides that “*the burden of establishing the relevance of the criminal record to the promotional post shall rest with the employer*”.

It is also good to note that Section 5(3) creates a presumption of discrimination on the ground of “sex” on the discriminator “*where he acts because of the pregnancy, family responsibility or potential pregnancy of the aggrieved person as he does.....*”.

The Standard of proof

Section 28 (1) of the Equal Opportunities Act provides *inter alia*, that the complaint must set out the details of the alleged act of discrimination.

The issue is how much *evidence* must the complainant adduce for the Equal Opportunities Commission to entertain the complaint. In other words, how much particulars must be provided by the complainant for the complaint to be considered as “*appears to be well-founded*” as is provided for by Section 30 of the Equal Opportunities Act.

Normally, each complaint will be assessed on its own merits. However, as in all civil cases, the standard of proof in discrimination cases is on a balance of probabilities.

The time bar issue

Section 28(2)(a) of the Equal Opportunities Act provides that, “...a complaint under subsection (1) shall be lodged within 12 months of the date of the alleged act of discrimination”.

The complainant must lodge his/her complaint within a period of 12 months of the date of the alleged act of discrimination.

Section 28(2)(b) of the Equal Opportunities Act provides that the Equal Opportunities Commission has a discretionary power to extend the delay of 12 months for the lodging of a complaint should the complainant show “good cause” for the non-observance of the statutory delay.

Conclusion

William Bill Gates, the founder of Microsoft stated, “discrimination has a lot of layers that make it tough for minorities to get a leg up”.

Indeed, experience has taught us that all over the world, it is the minority groups who suffer most from discriminatory practices.

The philosophy of the Equal Opportunities Act is to:

“afford better protection against discrimination to all citizens and most particularly the minorities and to offer them opportunities which may never have come their way in the absence of such a legislation”.

In a recent report entitled « Blanchard-Tirole », Professor Jean Tirole who is the Honorary Chairman of the Toulouse School of Economics, stated that « *la lutte contre des inégalités est un levier d’ascenseur social et de croissance économique pour la République* ».

Since 1968, Mauritius has ratified many anti-discriminatory International Treaties, *inter-alia*, International Convention on the Elimination of all Forms of Racial Discrimination and Convention on the Elimination of All Forms of Discrimination against Women, Domestic Workers Convention and Convention on the Rights of Persons with Disabilities. It is true that since the independence of Mauritius, many anti-discriminatory legislations have been enacted by Parliament to combat discrimination in Mauritius.

However, it is a fact that discriminatory practices are still prevailing in our society. Indeed, it is in the interest of the population at large that we make a concerted effort to move towards an inclusive and discrimination-free society.

Louis Richard TOULOUSE

Member

Equal Opportunities Commission

Discrimination at the workplace

*“Hard work beats talent WHEN talent doesn’t
work hard”*

Tim Notke



4.0 Discrimination at the workplace

The Equal Opportunities Act 2008 is a law that protects a person or a particular group of people from discrimination or unfair treatment.

Employees are judged more often on their personal attributes rather than on merits. Employers commit negative employment actions based on specific characteristics or statuses which do much harm to the victims. Such actions are unlawful and yet they happen every day without one realising it or not. They cause stress and anxiety and lower the morale. They affect personal life, health and the quality of life. Both employers and employees tend to lose as there is a fall in efficiency and productivity.

It is illegal to discriminate at any point in the employment process from hiring to firing employees and in between.

Workplace discrimination can be categorized as follows:

- a. Racial discrimination;
- b. Sex and Sexual Orientation discrimination;
- c. Age discrimination; and
- d. Impairment discrimination amongst others.

a. Racial Discrimination

Racial discrimination is based on race, colour, ethnicity or place of origin. It occurs when qualified candidates are not hired or are given a less desirable job as per their qualifications. There is little scope of promotion for these differently treated workers who may even be demoted. They suffer from all forms of prejudices to the extent that the workplace becomes a hostile environment.

b. Sex and Sexual Orientation Discrimination

This form of discrimination is based on the employee's gender, sexual orientation and identifying gender. It also includes pregnancy and parenthood. Employees are very often humiliated, offended or degraded as they are treated in a sexual way.

c. Age Discrimination

Very often workers are treated less favourably because of their age. They are considered to be less able and productive which cannot be objectively justified. Some workers beyond a certain age are forced to premature retirement.

d. Impairment Discrimination

Employees with impairments like mobility, hearing, visual, psychological amongst others must not be put at a disadvantage and made to suffer from derogatory remarks. Still while not making the working environment threatening, employers must see that workers with disabilities benefit from equal employment opportunities and equal pay.

Examples of discrimination at the workplace

- Applicants not getting hired based on personal characteristics.

- Exhibiting favouritism during promotion or on restructuration of organization.
- Demoted or getting fired because of a particular status.
- Enduring derogatory or offensive comments.
- Not deriving certain benefits such as maternity, paternity, parenthood or disability leaves.
- Voluntary shift substitutions or swaps.
- Doing tasks unrelated to the position.

Build up case with evidence

Proving workplace discrimination is a real challenge though not impossible. In the first instance, victims of discrimination must file a complaint at the Equal Opportunities Commission. The length of service does not matter to lodge a case against unlawful discrimination.

Documentation of: -

- Conversations;
- emails;
- text messages; and
- Statistics are important. Any relevant evidence related to the incident will build your case and help you to fight for fairness, justice and equal rights.

Employers must be proactive and prevent discrimination and be familiar with the Equal Opportunities Act 2008.

“If opportunity doesn’t knock, build a door.”

Milton Berle

Gunneswar Shibchurn

Member

Equal Opportunities Commission

A Holistic-Cum-Proactive Human Resource (HR) Approach To Address Workplace Discrimination

"All of us do not have equal talent but all of us should have an equal opportunity to develop our talent."

John Fitzgerald Kennedy

5.0 A Holistic-Cum-Proactive Human Resource (HR) Approach To Address Workplace Discrimination

Treating employees in the workplace with respect, dignity and fairness, regardless of their protected grounds of discrimination such as age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex or sexual orientation and criminal record as prescribed under the Equal Opportunities Act 2008 (EOA) is central to effective and proactive people management. In effect, equal opportunity and non-discrimination are critical pillars for building an inclusive workplace and eventually, a better and harmonious society. Needless to say, they also constitute basic labour rights and are, indeed, fundamental to the achievement of social justice and human dignity. As a matter of fact, all persons including employees should enjoy the right to equal opportunity but most importantly, all employers have the legal obligation to ensure that their organisations are compliant with all the requisite regulatory frameworks, more so, with the EOA which governs equal opportunity and discrimination in our country.

This law makes acts of discrimination based on the defined protected grounds, unlawful. In today's diverse and dynamic workplace environment, the issue of workplace discrimination remains a significant concern. To combat this scourge effectively, HR professionals should consider adopting a Holistic-cum-Proactive approach which, in all evidence, goes beyond mere compliance with anti-discrimination laws. So this article aims at exploring the importance of a Holistic-cum-Proactive HR approach to workplace discrimination and focuses on prevention, education, and fostering an inclusive workplace culture.

EQUALITY – A LEGAL RIGHT

Evidently, the EOA does not define the term 'Equal Opportunities' or 'Equality' as such, however the concept of equal opportunity is enshrined in our Constitution and other pieces of legislation. In principle, the concept of equal opportunities or equality of opportunity promotes the idea that people must be treated fairly and entitled to same opportunities regardless of their protected grounds of discrimination as prescribed under the law. At work level, equal opportunities connote the idea that employees should be treated with respect and dignity. They must have access to opportunities such as promotion and training, amongst others, alike other employees and should be able to compete on a 'level playing field' for positions without distinction of any of the protected grounds.

Equal opportunity in the workplace is a fundamental right at work and key part of protecting human rights. Obviously, it primarily entails the responsibility and commitment of the employer to a very large extent. In fact, the employer has the legal and moral obligations to put into place the requisite policies and procedures so that the principle of equal opportunity and non-discrimination prevails at the workplace.

The employer's commitment to active promotion of this critical principle is undeniably fundamental to the achievement of social justice and substantive equality for employees. Clearly, employees are considered as assets to organisations and through the application of this vital principle, employers are able to attract and retain the best talents, support greater innovation and set up a congenial and productive working environment.

To enforce equal opportunities in the workplace and prevent unfair treatment of employees, Government has adopted in 2008 the EOA. This Act is, indeed, a specialised piece of legislation specifically designed to combat discrimination on the basis of 13 specific grounds and promote equality of opportunity equitably in organisations. As per this Act, therefore, equality is, unarguably, conceived as a legal right against discrimination and a major aspect of meritocracy. Hand in hand, it guarantees fair treatment and respect for workers, and equal access to whatever opportunities that arise in the organisation to deserving employees. It also serves as an effective shield against undignified and unfair treatment of employees, thereby contributing towards the creation of an inclusive and supportive work environment. Undoubtedly, such a congenial environment is a great stepping-stone to boosting the level of loyalty and commitment of employees to their employers.

The EOA has also established the Equal Opportunities Commission, a specialised and anti-discrimination institution, which is geared towards promoting an inclusive society by capitalising on the richness of our diversity and also acting as a watch-dog to protect workers' rights to non-discrimination. As a matter of fact, employers should not lose sight of the fact that equal opportunity is, first and foremost, a requirement of justice but at the same time a driver of social harmony within workplace. Evidently, any violation of this acquired right may definitely result into consequential legal implications whose repercussions on the organisation could be very serious and damaging.

Equal opportunity in the workplace is a very sensitive issue which deserves serious consideration. It is a fundamental human right of universal validity and accordingly regulatory compliance on the part of employers is sine-qua-non for the progress of their business.

DISCRIMINATION – A SERIOUS HUMAN RIGHTS VIOLATION

The Universal Declaration of Human Rights, a historic and milestone agreement, adopted by not less than 193 member States in 1948, proclaims that all human beings are born free and equal in dignity and rights. Evidently, this implies that every person must be treated without any discrimination regardless of their protected grounds under the law. Articles 1 and 2 of this Declaration are very explicit in this respect as they establish the basic concepts of dignity, equality and freedom from discrimination. Despite this expression of fundamental values has been shared by the majority of countries across the globe, the fact remains that discrimination is, astonishingly, an everyday reality. It is so widespread and rampant that it is even said that 'discrimination is as common as clouds in the sky.'

In Mauritius, in spite of remarkable progress made in reinforcing the legal protection of citizens against discrimination, it goes without saying that discriminatory acts and practices are still prevalent in different spheres of society, more so, in employment. Discrimination occurs when a person is treated less favourably than another person in a similar situation and this treatment cannot be objectively and reasonably justified. It is typically considered something antithetical to norms of fair and equal treatment in a democratic society. Put simply, discrimination means denial of equal opportunity or absence of equality. It is utterly harmful in the sense that it perpetuates inequality and

as such it runs against the fundamental values and ethics of a modern society. At the heart of all forms of discrimination is the prejudice based on the concept of identity and this is ultimately driving social exclusion thus causing an ever-widening rift in society.

Needless to say that with time and development of the country, Government deemed it essential to further protect people against discrimination, most importantly workers who are the ones more liable to fall easy prey to this scourge. Therefore, Government enacted further laws and one amongst others is the EOA whose primary objective is to combat and eliminate discrimination, sexual harassment and victimisation. It is essentially an anti-discrimination law and legally speaking, this Act makes it illegal to discriminate against people, in particular, workers because of the 'protected characteristics' they have.

Discrimination is indeed a major challenge affecting workplace, and remains a fundamental problem across the globe to-day. Research on the consequences of discrimination has shown that it is one of the major causes leading to demotivation and constant decrease in involvement of workers. It also causes employees to feel undervalued as their work and contributions are purposely not recognised and appreciated. Moreover, persistent exposure to discrimination may lead workers to internalise the prejudice, manifesting in low esteem and other psychological problems.

On the other hand, the reputation of the organisation also suffers when cases of discrimination are publicly known. Discrimination cases, if proved to be well-founded, may lead the organisation to serious legal troubles including costly lawsuits and damages. To avoid such adverse consequences, HR professionals should imperatively adopt a pro-active strategy and initiate preventive measures as well as protective actions to shield both the employees and the organisation from discrimination. The following steps could serve as a panacea for the organisation –

- Implementing a strict policy that makes employment discrimination of any type unacceptable. In this concern, it is fitting to underline that as per section 9 (1) of EOA, an Equal Opportunity Policy is mandatory in every work organisation having more than 10 employees;
- Placing equality first can guide towards making the right decisions;
- Creating a culture of fairness and inclusion;
- Encouraging best practices and fair behaviour in the workplace - for instance, transparency about what is happening in the organisation is essential to build trust and good rapport with employees;
- Adhering to legal standards and procedures in all respects and levels;
- Equal access to opportunities and benefits.

It is a moral as well as a legal obligation for HR professionals to address discrimination with a full-fledged programme and policies. Not implementing the set of measures can be considered as moral shortcomings or mere lip-service to the non-discrimination principle.



Anyway, one thing that is certain and definite is that we cannot make the world a better place to live in if we turn our back on discrimination. Above all, if we desire a society without discrimination, then we must not discriminate against anyone on the basis of any of the protected grounds.

HOLISTIC AND PRO-ACTIVE HR APPROACH

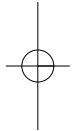
It is an undeniable and explicit fact that a satisfied staff is the very foundation of a thriving organisation. Discrimination is, obviously, unlikely to generate this feeling of satisfaction among employees who form part of the prime contributors to the success of an organisation. Clearly, they are irreplaceable, and by and large, the very survival of an organisation depends on them.

Workplace discrimination is indeed such a sensitive and serious issue that it necessitates a pragmatic, holistic and pro-active approach. Basically, people management is very complex and employee discrimination is comparatively much more complex and burdensome, this is why HR professionals are called upon to tackle the people-related concerns with great tact and consideration. In fact, the HR department in an organisation occupies such a critical position that it is viewed as the heart of the organisation and the HR professionals as the 'cement' that holds the organisation together. Besides acting as the link between management and employees, legal and regulatory compliance is yet another core responsibility of HR practitioners. Thus, they have the legal responsibility to take care of all compliance issues in order to keep their organisations out of trouble and compliant with all Government laws. Keeping in view the serious challenges that normally crop up chiefly in the constantly evolving and changing business landscape, HR should imperatively consider adopting innovative and creative strategies to manage employee-centric issues, essentially workplace discrimination.

Discrimination is, so to say, a double-bladed weapon that spares neither the employees nor the organisation. Therefore, in a bid to prevent adverse consequences, it would be judicious and apt for HR professionals to think of HR more strategically through a Holistic-cum-Proactive approach. In effect, this approach studies the business and its goals in an endeavour to identify potential problems and create practices and procedures to prevent and address them before they occur. Most importantly, this approach entails building trust and loyalty together with promoting employees' safety and well-being. It is more employee-centric in the sense that it puts into place a 'people-first' culture in an inclusive work environment.

Moreover, this approach involves the strategic development of plans for training and capacity-building of all employees, recruitment and selection, management and motivation of staff. The fact that this approach is employee-centric, it makes employees feel they are valued and appreciated for their precious contributions to the progress of their work organisations. Additionally, it puts people over profit by fostering their development and investing in them through offering upskilling and reskilling opportunities.

However, this approach could be consolidated by integrating the principle of equal opportunities as a key value in the organisation's core management policies and by considering non-discrimination as a guiding principle in their business practices.



In doing so, HR would be able to foster a workplace culture free from discrimination, sexual harassment and victimisation. For this to happen, two essential preconditions are required, namely: -

- (1) A better understanding of the EOA 2008 which is a sine-qua-non for HR professionals for the application of the principle of equal opportunities and non-discrimination in all HR decisions and procedures;
- (2) Instituting an Equal Opportunity Policy which is a clearly-written protocol stating the organisation's commitment to equality of opportunity and treatment in all human resource practices. However, it is important to ensure that employees are aware of this policy and its procedures and know how to lodge complaints of discrimination. Instead of reacting to incidents of discrimination, this HR approach focuses on prevention, education and the fostering of an inclusive work culture.

PREVENTION

A Holistic-cum-Proactive HR approach to workplace discrimination begins with prevention.

This involves creating policies and procedures geared towards prohibiting discriminatory behaviour, as well as providing appropriate mechanisms for reporting cases of discrimination without fear of retaliation. The prevention measures include the following:

(a) Clear Anti-Discrimination Policies.

They outline what constitutes discrimination at workplace and include information on reporting procedures.

(b) Training and Education.

Regular training sessions can be instrumental in preventing discrimination as they help to recognise and address discriminatory behaviour.

(c) Equal Opportunity Initiatives

HR should implement equal opportunity initiatives to ensure a more inclusive workforce from the outset. By fostering diversity in the organisation, the likelihood of discrimination can be reduced.

EDUCATION

Education is a key component of a Holistic-cum-Proactive HR approach to workplace discrimination. By providing employees with the knowledge and tools to recognise and combat discrimination, HR can empower individuals to take an active role in creating an inclusive workplace. It comprises the following measures: -

(a) Diversity and Inclusion Training

This training can help employees understand the value of diversity, recognise their own biases and learn how to interact respectfully with colleagues of different background.

(b) Leadership Training

This training emphasises the importance of creating an inclusive work environment and handling complaints appropriately.

(c) Open Dialogue

HR can facilitate discussions, workshops and other forums where employees can share their experiences and perspectives. Such interactive sessions foster a culture of empathy and understanding.

FOSTERING AN INCLUSIVE WORKPLACE CULTURE

A proactive HR approach to workplace discrimination goes beyond policies and training. It aims to promote inclusive workplace culture where diversity is promoted and discrimination is not tolerated.

This strategy entails

(a) Inclusive Leadership

HR should ensure that the leadership team is committed to diversity and inclusion. Leaders should give examples by modelling inclusive behaviours and holding themselves accountable for creating an environment free from discrimination.

(b) Reporting Mechanisms

HR must maintain effective and confidential reporting mechanisms for discrimination complaints. It is essential that employees feel safe and supported when reporting incidents, and HR should take immediate action to address any concerns.

END POINT

Unarguably, it is a curious paradox that despite almost all the countries around the world have endorsed the Universal Declaration of Human Rights and hence made a pledge of support to conform to all the human rights and freedoms defined therein, we live in a world which is continually affected by deep inequalities and prejudicial treatment. Clearly, discrimination remains a fundamental problem in the workplace globally and obviously one of the most serious challenges affecting workers' opportunities, their well-being and their sense of belonging to their work organisations.

Admittedly, discrimination constitutes a blatant violation of workers' rights and, indeed, runs against the fundamental values of a modern society. And yet various legal instruments and laws are in place to combat discrimination and protect people against it.

In the local context, the EOA 2008, a specifically designed anti-discrimination law, has the mandate to combat and eliminate discrimination based on certain specific protected grounds as well as to promote equal opportunities. It presupposes that everybody has the right to be treated fairly and equally. In other words, this implies that laws, policies and procedures should in no way be discriminatory. In sum, under this Act, it is illegal to discriminate on anything related to employment; nevertheless, discrimination is an everyday reality.



It is high time that supreme importance be given to the principle of equality and non-discrimination in workplaces. Furthermore, it is vital that a zero-discrimination tolerance policy be implemented to protect workers and motivate them to be committed to their work organisations. Hand in hand, a Holistic-cum-Proactive HR approach to workplace discrimination is essential for creating a harmonious and productive environment. By emphasizing prevention, education, and the fostering of an inclusive workplace culture, HR cannot only mitigate the negative impact of discrimination but also help organisations thrive in an increasingly diverse world. Honestly speaking, discrimination has no place in the modern workplace and HR must lead the way in ensuring that all employees are treated with dignity, respect and fairness.

Equality and non-discrimination are in effect, critical organisational building blocks to create an enabling and inclusive work environment. It helps drive efficiency in the work organisations as opposed to discrimination which generates frustration and social exclusion in the society. In this perspective HR professionals should imperatively play a more dynamic and innovative role by adopting a Holistic-cum-Proactive HR approach. This strategy puts people first and recognises the contributions of the employees. Equal treatment and empowerment of employees are at the core of this approach.

Gheenduth Seechurn OSK
Member
Equal Opportunities Commission



Sex Discrimination under the Equal Opportunities Act 2008

“Look at the sky and count the stars, look down and realize we are all from the same universe and stop discrimination.”

Bangambiki Habyarimana

6.0 Sex Discrimination under the Equal Opportunities Act 2008

Sex discrimination is a serious issue that can have far-reaching effects on individuals and society as a whole. Despite significant progress in the past decades, sex discrimination remains a major problem in many areas of life, including the workplace, education, and access to services. It is, therefore, important for everyone, including the employer, to be aware of their rights and responsibilities and to work towards creating a society where everyone is treated with respect and equality.

The Equal Opportunities Act 2008 (EOA) is a law in Mauritius that aims at promoting equality and preventing discrimination on various grounds, including sex. Under the EOA, sex discrimination is defined as treating someone unfairly or less favourably because of their sex, including discrimination based on pregnancy, family responsibility and potential pregnancy.

Sex discrimination can take many forms and can occur in various settings, including employment, education, accommodation, access to premises and clubs, sports, and the provision of goods, services or facilities. It can be direct or indirect. Direct discrimination occurs when someone is treated less favourably because of their sex. For example, if an employer refuses to hire a woman because she is pregnant or a nightclub offers free entry to women but charges men to get in. These would be considered direct discrimination.

Indirect discrimination occurs when a seemingly neutral practice has a disproportionate impact on one sex. For example, if an employer decides to change shift patterns for staff so that they finish at 17.00hrs instead of 16.00hrs. Female employees with caring responsibilities could be at a disadvantage if the new shift pattern means they cannot collect their children from school.

It is important to note that sex discrimination is not always intentional and can be caused by a policy that is not meant to discriminate. However, even unintentional discrimination is unlawful and can have serious consequences for those affected.

As per Section 5(3) of the EOA, a discriminator is deemed to discriminate on the ground of sex where he acts as he does because of:

- (i) *pregnancy of the aggrieved person;*
- (ii) *family responsibility of the aggrieved person (this means the responsibility of a person to care for or support a dependent child or any other immediate family member who is in need of care or support);*
- (iii) *potential pregnancy of the aggrieved person (meaning the fact that a woman is or may be capable of bearing a child; has expressed a desire to become pregnant or is likely or is perceived as being likely to become pregnant); or*
- (iv) *a characteristic of the aggrieved person that generally appertains, or is imputed, to a person who is pregnant, has family responsibility or is potentially pregnant.*

A complaint was brought to the Equal Opportunities Commission (the Commission) by a School Head Master. She alleged being discriminated on the basis of her sex and claimed that an Educator insulted her in the presence of a Deputy Head Master by stating that she was not fulfilling her responsibilities as Head Master properly. As per Complainant, the Educator also told her 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.

In a case based on sex discrimination, it was alleged by the complainant that she had been treated less favourably regarding her application for vacation leave. Complainant averred that she applied for 8 days' vacation leave to look after her husband who had undergone an urgent surgery and which was refused by her employer. She stated that the latter instead asked for her transfer to another Ministry. Following a meeting which the Commission had with the complainant, the latter decided to withdraw her complaint. No further action was, therefore, undertaken in the matter by the Commission.

In another case the complainant, having 13 years of service, was dissatisfied with the decision of her employer not to appoint her to the newly created post of Assistant Occupational Safety and Health Officer (internal advertisement). She applied to the Commission for a redress on the alleged ground of less favourable treatment based on sex discrimination and pregnancy at the material time. Both the complainant and the successful candidate held the required qualifications (Diploma in Occupational Health and Safety) as well as a degree in the relevant field. The Commission highlighted that apart from her qualifications, the complainant also had, according to her undisputed evidence, replaced and discharged the duties of the Health and Safety Officer on an average of one and a half year at the request of her employer. The Commission also noted that the complainant performed the duties of Health and Safety Officer to the entire satisfaction of her employer.

The Commission also pointed out that the interview mark sheet was fraught with inherent bias and concluded that the appointment made by the respondent on the ground that the selected candidate was "the best candidate", was void ab initio and could not stand. The Commission was also of the view that there was substance in the discrimination complaint on the ground of sex in the light of the elaborate evidence of the complainant which evidence had stood unrebutted by the respondent employer.

Another complainant alleged being discriminated on the basis of his sex, averring that his wife had filed a divorce case and kept him aloof of his daughter's progress and academic performance at school. His daughter was a Grade 2 student. His wife also prevented him from having any contact with his daughter. As per the complainant, the management of the school had repeatedly failed to respond to his request to be issued with a copy of his daughter's results. As such he could not follow his daughter's progress at school. He considered such treatment from the respondent to be unfair as his wife was getting his daughter's result while he was not. The Commission successfully attempted to resolve the matter through conciliation. The respondent took the undertaking to henceforth submit to the complainant a copy of his daughter's result.

However, it is important to highlight that the EOA has also made provision for some exceptions that allow employers or organisations to discriminate on the basis of one's



sex. In other words, there are circumstances when being treated differently due to sex is considered to be lawful. As per section 13 of the EOA:

“(1) Notwithstanding sections 10 to 12 of the EOA, which relates to employment of persons, persons in employment and persons undergoing training, an employer or prospective employer may discriminate on the ground of sex where being of a particular sex is a genuine occupational qualification for employment, promotion, transfer or training.

(2) For the purposes of subsection (1), being of a particular sex is a genuine occupational qualification where –

- (a) the duties relating to the employment or training can only be performed by a person having particular physical characteristics, other than strength or stamina, that are possessed only by persons of that sex;*
- (b) the duties relating to the employment or training need 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;*
- (c) the duties relating to the employment or training include the conduct of searches of the clothing or bodies of persons of a particular sex;*
- (d) the nature of the establishment where the work is carried out requires a position to be held by a person of a particular sex because –*
 - (i) it is a hospital, prison or other establishment for persons requiring special care, supervision or attention;*
 - (ii) the other persons are all of the same sex, except where the presence of a person of the opposite sex is exceptionally required; and*
 - (iii) it is reasonable, having regard to the essential character of the establishment, that the position should not be held by a person of the opposite sex; or*
- (e) the holder of the position provides persons with personal services for promoting their health, welfare or education, and those services can most effectively be provided by a person of a particular sex. ”*

In conclusion, the EOA provides important protections against sex discrimination in Mauritius. It is, therefore, imperative for everyone to be aware of their rights under the law and to take action if they believe they have been discriminated against. The Equal Opportunities Commission is responsible for enforcing the EOA and investigating complaints of discrimination. If you believe you have been discriminated against on the ground of sex, you are most welcomed to file a complaint with the aforesaid Commission.

Jagdish Seegolam
Investigator
Equal Opportunities Commission

Coming to where the shoe pinches: the non-apparent biases in the recruitment process

“If you hire only those people you understand, the company will never get people better than you are. Always remember that you often find outstanding people among those you don’t particularly like.”

Soichiro Honda

7.0 Coming to where the shoe pinches: the non-apparent biases in the recruitment process

Since the coming into operation of the Equal Opportunities Act (the Act) in 2012, discrimination against job applicants on the basis of any of their protected characteristics (status) - age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex, sexual orientation and criminal record is proscribed.

Section 10(1) of the Act stipulates, inter alia, the following –

“No employer or prospective employer shall discriminate against another person –

- (a) in the advertisement of a job;*
- (b) in the arrangements he makes for the purpose of determining who should be offered employment;*
- (c) in determining who should be offered employment;*
- (d) in the terms or conditions on which employment is offered;*
- (e) by refusing or deliberately omitting to offer employment to that person.”*

The Guidelines for Employers (Guidelines) issued by the Equal Opportunities Commission (EOC) in 2013 expounds the above by highlighting that, *“it is the duty of each employer to make sure that... every prospective employee is given **a fair go at each and every stage of the employment process** (job advertisement, selection/interview stage, appraisals, promotion... etc.).”*

However, despite the existence of the abovementioned provisions, the nature of complaints received at the EOC and the investigation thereof have time and again shed light on the several courses of action adopted by prospective employers, deliberate or undeliberate for that matter, which on their own or together with other circumstances, have lent colour to allegations that the prospective employer has favoured a particular job applicant or disadvantaged another on the basis of one or more of his/her protected characteristic/s.

- **The job advertisement**

In an endeavour to provide guidance to employers on how to prevent discrimination, achieve equality of opportunities in the field of employment and hence mitigate the risk of legal liability, the Guidelines recommend employers to ensure that all opportunities for employment are advertised **widely, fairly and openly**. Advertisement of vacancies is undeniably the stepping stone to giving all interested persons the equal and fair chance to compete for a position as it parallelly also allows the employer to tap into the skills, experience and expertise of the candidate best suited for the job. However, based on the complaints received at the EOC, the non-advertisement of vacancies as well as the handpicking of persons by employers to fill particular positions, continue to remain living realities. Flouting the principle of fair advertising, an employer was indeed reported to have placed the advertisement for an internal vacancy not on the notice board, but at a height of 10 feet, above a door, to the disadvantage of an elderly serving employee with 40 years' experience, who was eligible to compete for the post but did not apply for same, having remained completely unaware of the advertisement. The undue haste of

the employer to act, by setting the deadline to apply for the post 7 days only after the date the vacancy had been advertised, further buttressed the complainant's allegation that the way for a specific person to apply for the job and be eventually appointed, had been craftily paved, step by step, by the employer.

- **The job description and requirements**

The Guidelines place on every employer/prospective employer the responsibility to ensure that the job advertisement accurately reflects the requirements for the job in terms of qualifications, experience, skills, knowledge and abilities as well as the job description (duties and tasks). Employers should be able to justify each duty/task and any requirement, without overstating them. A requirement that a candidate should demonstrate "**proficient communication skills**" for appointment as Pipe Cleaner or that a Butcher, whose main task would be to slaughter animals, should possess "**sound interpersonal skills**" would certainly make one tick. Such overstated criteria might disarmingly pave the way for an interview panel, should it be so minded, to favour candidate X for instance, by subjectively rating him "proficient" as compared to candidate Y who would, as subjectively, be rated "good".

Yet another recommendation of the Guidelines is that all the criteria listed in the advertisement should, as far as possible, be capable of being tested **objectively**. An advertisement requiring the candidate to "*possess enthusiasm for outdoor work*" for instance would raise serious concern as to the standard/s by which that "*enthusiasm*" would be assessed and most importantly as to the identity of those who would be apt, in the real sense of the word, to carry out such an assessment.

Coming to the question of qualifications, the appropriateness of a requirement for a specific academic qualification "*or an equivalent qualification acceptable to the Board*" in order to qualify for a post, has been up for debate before the EOC several times. A complainant had lodged a complaint, stating that he had been discriminated on the basis of his political opinion as he had not been selected for a particular post despite satisfying all the requirements. In the course of investigation, it came to light that the first requirement for the post was "*a degree in Information and Communication Technology or a related field from a recognised institution or an equivalent qualification acceptable to the Board*" and that the successful candidate in fact did not possess any degree but was instead holder of a Post Graduate Diploma which was deemed to be an "equivalent qualification" by the Board. This raised fundamental questions as to the regularity of the selection process, from a 'fairness' perspective-given the existence of institutions like the Higher Education Commission and the Mauritius Qualifications Authority, was the Board the competent authority to decide about the equivalence of qualifications? Going one step further, by investing itself with the authority to decide about the equivalence of qualifications, could the Board have introduced an element of potential bias in the whole selection exercise?

On a related note, a provision of the Act, often overlooked by employers is Section 16 which entitles a person who has not been offered employment and who has reason to believe that he has been the subject of discrimination, to obtain in writing from the employer, information on the experience or qualifications of the successful candidate, as

is available to the employer. The employer should not however, by law, communicate any information which identifies or purports to identify the successful candidate.

- **The screening process**

Employers are responsible for ensuring that their selection procedures are fair and that every selection decision, from shortlisting to appointment, is consistent and based on objective evidence of the candidates' suitability for the post.

"I wish to express concern for not being convened for interview for the post of.... It is quite clear that the most probable reason that I have not been called for interview is to eliminate the chance of my securing this job, in favour of an another candidate" - those were the terms in which a complainant had addressed her complaint to the EOC. She had further alleged that she had been discriminated against because of her "political opinion" as the successful candidate allegedly *"belongs to a family that has strong political support"*. The complainant held a BSc. (Hons) Agricultural Biotechnology. The post applied for required candidates to possess a BSc Biotechnology and/or Molecular Genetics or any related field. During investigation, the institution explained that a screening panel had been set up, comprising of two Board members and two independent persons who decided in their best judgment to shortlist candidates in the light of a footnote appearing on the advertisement to the effect that the institution in question *"reserves the right to call only the best qualified candidates for interview"*. Out of the 51 applicants, 5 were called for interview, all of them possessing an MSc and or a PhD 'in the required field'. The institution argued that the complainant had not been called for an interview as she possessed only a BSc.

The circumstances giving rise to this particular complaint begged the following questions-

- assuming that an MSc or PhD was required to carry out the duties attached to the post in question, why was same not clearly spelt out as a qualification requirement in the advertisement?
- could "best qualified candidates" as appearing in the footnote have conveyed to applicants "candidates who best satisfy the requirements at the level of BSc" and not "candidates with higher qualifications than those mentioned in the advertisement"?
- did the footnote give the institution the blanket authority to disqualify all BSc holders from competing for the post right from the starting line, by not convening them for an interview when in fact they met the qualification requirement as mentioned in the advertisement?
- was the screening panel fair in unilaterally deciding to change the rules of the game, in the course of the match by imposing a higher requirement (MSc/ PhD) than that which was initially spelt out, in order to convene for interview?

The same complainant later applied for another post, the requirement of which was a BSc Molecular Genetics and/or Biotechnology or any relevant field and this time, it was argued by the institution in question that, "two experts having scientific background"

were called upon to carry out the screening exercise and that they had diligently checked every BSc transcript for modules earned in both of these fields. For candidates who did not cover such modules at undergraduate level, but who held higher degrees such as MSc/MPhil/PhD, the panel checked whether these included both Molecular Genetics and Biotechnology. The screening panel this time took a more restrictive, modular approach to again disqualify the complainant for an interview.

- **Interviews**

It is recommended by the Guidelines that employers take steps to ensure that all job interviews are conducted strictly on the basis of the application form, the job description, the person specification, the agreed weight given to each criterion and the results of any selection tests, so that all applicants are assessed objectively, and solely on their ability to do the job satisfactorily. The Guidelines gingerly highlight that, *“For many employers, the interview is the decisive stage of the selection process. It is also the stage when it is easiest to make judgements about a candidate based on instant, subjective and, sometimes wholly irrelevant impressions. If assumptions about the capabilities or characteristics of people of a certain status contribute to an unfavourable impression, this could lead to an unlawful, discriminatory selection decision”*.

- **The interview panel**

According to the Guidelines, persons involved in interview panels should benefit from training in interview techniques with a view to helping them assess the candidates, objectively, based on the profile required as per the criteria laid down in the job advertisement, on their merit and not on stereotyped assumptions. Employers should not be basing themselves on the status of the job applicant but should rather be exclusively merit oriented in their approach when it comes to selecting a candidate. Merit, according to the Guidelines, is made up of the following 3 inextricably linked elements (i) the talent (ii) the competence and (iii) the willingness and desire to work.

In order not to negatively impact the fairness of the exercise, it is crucial that the interview panel members be selected based on -

- i. their knowledge and experience relevant to the criteria being assessed; and
- ii. the specific contribution they can make to the interview process.

Serious questions as to the regularity of the interview exercise have been raised during investigations at the EOC where a panel comprising of only members of the finance cadre for instance, was made to assess candidates for the post of Assistant Surveillance & Security Manager, the duties of which mainly involved ensuring the adequate coverage of CCTV system on certain premises or where a panel comprising of two members, one being a Business Development Manager and another one a finance cadre, was made to assess the candidates' knowledge of vehicle maintenance and road safety laws for the post of Driver.

- **Interview questions**

The interview panel is encouraged to prepare questions that will help them assess the candidates' suitability for the job based on the requirements for same. Questions

pertaining to the personal characteristics of the candidate - age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex, sexual orientation and criminal record - that would convey to the job applicant that because of that particular personal characteristic, he would be favoured or disadvantaged in the selection exercise should be avoided unless such a consideration is demonstrably relevant to the job. Questions such as “Do you not think that you are too old/too young to shoulder the responsibilities for this job? Being a woman with a young child, will you be capable of devoting yourself to your work? Do you know X? (X being an influential person capable of positively or negatively influencing the exercise)” carry an undertone of bias as targeted by the EOA and would certainly lend colour to allegations of discrimination.

- **Relevance and weightage of each criterion**

Good practice would require that the weight and marks carried by each criterion assessed, from the screening and so until the interview stage, be commensurate with the importance that every specific criterion holds, regarding the job in question. Furthermore, it is only unfair towards job applicants to mark them, in their backs, on criteria not specified in the job advert and/or not relevant to the job. Such a practice indeed, has the effect of carrying to success candidates who would otherwise not be selected. The investigation of a complaint as such, revealed that during an interview exercise, candidates were marked on an added criterion - ‘sickness’, when the job advert absolutely referred to no such requirement. The investigation of yet another complaint showed that “personality” was inserted as a criterion for the assessment of candidates, at interview stage, and carried 25 marks over 100 when the advertisement clearly made no reference to such a requirement for the post of Driver –

“4. Driver

QUALIFICATIONS

By selection from among employees who reckon

- (i) the Certificate of Primary Education;*
- (ii) a valid driving licence (manual gear) to drive cars or vans or at least 15-seater minibuses or lorries up to five tons;*
- (iii) a basic knowledge of mechanics and simple vehicle maintenance; and*
- (iv) a good eyesight.”*

Very often employers choose to go by a two-tier system for selection, consisting of written examinations followed by an interview. Written examinations (assuming that all the questions set are properly framed, are relevant to the job requirements and are marked by a competent panel), would certainly have the merit of resulting into an objective assessment of the candidates. However, it has often been noted that the subsequent interviews of the successful candidates at the examinations totally upset their initial ranking thereby putting into perspective the important question of the weightage - examination v/s interview. An applicant for the post of Administrative Officer who had topped the written examinations was eventually reported by the employer to have been among the lowest scorers at the interview- ranked 8th and was hence not selected for the post.

- **Other elements**

Apart from whatever has been discussed in the previous paragraphs, based on the complaints lodged with the EOC, there are other occurrences, few of which are reproduced below, which have had the effect of breathing in an element of bias in the recruitment exercise:

- *“My interview was scheduled at 11.00 hrs but I was interviewed at 15.45 hrs for approximately 5-7 minutes. I believe that the whole process was used to victimise me as per section 7 of the Equal Opportunity Act since the Respondent was fully aware that I had made a complaint which was still ongoing at the level of the EOC.”*
- *“I have been made aware that in the first week of March..... the ...staffs were mobilised for a special visit of the laboratories by X (successful candidate eventually). The necessary evidence for such visit can be retrieved from visitor’s registration book of.... I strongly believe it is unethical to provide any kind of special treatment to one particular candidate before interview and this demonstrates the bad faith of respondent”.*
- *A witness deponed at the EOC to the effect that one of the members of the interview panel hurriedly left the interview room to follow the “successful candidate” outside to inform him, after his interview, that he had obtained the post whilst there were still candidates waiting to be interviewed.*
- *“The ex-Officer in Charge was a member of the interview panel. He had also prepared the examination questions. He marked papers together with other staff all of whom know the handwritings of some candidates...I firmly believe that he left no stone unturned to frame me and discriminate me as I am currently an active Executive Member of the...Union. He is very much aware of same. In fact, during the interview he questioned me about my integrity on confidential matters to the Union.”*

In the face of the intangible and more often than not, irreversible societal impact of discrimination in the field of recruitment and employment, the legislature has, in its wisdom, by virtue of section 9 of the EOA, imposed an obligation on employers **to draw up and apply** an Equal Opportunity Policy at their workplace to inter alia minimise discrimination and promote recruitment on the basis of merit. However, and alarmingly so, adoption of an Equal Opportunity Policy by many employers has, so far, only been a matter of “compliance with the Act” whilst the provisions thereof continue to remain dead letters.

Mirabye Narroo-Dajee
Investigator
Equal Opportunities Commission

Age discrimination or Ageism at Work: Insights

*“Equal rights, fair play, justice, are all like the air;
we all have it or none of us has it.”*

Maya Angelou



8.0 Age discrimination or Ageism at Work: Insights

According to the World Health Organization (2021), ageism is a form of discrimination or prejudice based on an individual's age and can affect anyone due to their perceived age, whether they are young or old. It can manifest in various aspects of life, including employment, healthcare and social interactions where it often results in unjust or unfair treatment of individuals solely based on their age. Moreover, ageism amplifies and intersects with other forms of disadvantages, such as those tied to gender, impairment or race. Age discrimination at the workplace is a pervasive issue that affects individuals worldwide.

In Mauritius, this issue is no exception. Despite laws and regulations in place to protect workers from such kind of discrimination, age related bias remains a concern in many organisations. Legal safeguards addressing age discrimination can be identified within the Equal Opportunities Act of (EOA) 2008 and The Workers' Rights Act 2019, respectively.

Section 11 (d) of the EOA stipulates that no employer shall engage in discrimination against an employee *“by denying the employee access, or limiting access, to opportunities for advancement, promotion, transfer or training, or to any other benefit, facility or service associated with employment.”*

Nonetheless, Section 13 (5) (a) of the EOA provides that in exceptional and necessary instances where age restrictions or prerequisites are essential, an employer may, under certain circumstances *“discriminate on the ground of age, where the offer of employment is limited to persons of a particular age.”* However, this remains contingent upon the unique circumstances of each case, and employers must not exploit this provision to engage in age-based discrimination among their employees.

Section 5 (a) of the Workers' Rights Act 2019 outlines regulations regarding discrimination in the context of employment and professional pursuits. It defines discrimination as:

“affording different treatment to different workers attributable, wholly or mainly, to their respective description by age,...”

Age discrimination is not only adverse to persons involved but also to the organisations themselves, as it can lead to loss of talent, skills and experience. There are various spheres where this kind of discrimination can be observed. Firstly, hiring practices within organisations can constitute of ageism when recruiters tend to select older candidates with higher years of professional experience as opposed to younger recent graduates who may be equally or more dynamic and susceptible to rapid adaptability. Such practices can render the recruitment of young individuals with less or no experience challenging, whereby they often work in a different sector or offered job positions that do not align with their qualifications. Employers may rationalise offering young employees lower salaries, even when their qualifications warrant higher compensation. This is a complex issue that affects employees at various stages of their careers, especially young workers.

On the other hand, ageism can limit older job seekers' access to employment opportunities, as employers may show preference for younger candidates based on stereotypes related to age and perceive them as being more agile in mastering and utilising advanced technology. There is an inclination that age discrimination may often become apparent in the context of promotion within the workplace. Younger employees may be perceived as having greater potential for growth and development while older workers may find themselves consistently overlooked for advancement opportunities, even when they possess the requisite skills, knowledge and experience to excel in higher roles. This systemic bias not only obstructs the career progression of older professionals but also deprives organisations of the wealth of expertise and leadership acumen these employees bring to the forefront. However, this can be viewed from the other way as well. Young individuals may encounter age discrimination when vying for promotions in the workplace. Employers may undervalue the competencies and accomplishments of younger employees. In certain instances, the innovative contributions and fresh perspective offered by young professionals are often overlooked in favour of more conventional measures of experience.

Some individuals may experience both age and gender discrimination simultaneously. Age discrimination can amplify gender discrimination by reinforcing stereotypes, limiting career opportunities, perpetuating pay disparities and many more. For instance, older women may face a dual bias – ageism due to their seniority and gender discrimination because of traditional stereotypes related to women's capabilities. On the other hand, discrimination can hinder career advancement for young women. They may encounter difficulties in gaining access to leadership roles or opportunities for growth because of preconceived notions about their readiness for higher responsibilities.

Consequently, to address the main issue of age discrimination or ageism, it is imperative that organisations conduct a thorough review of all human resource policies and procedures to proactively identify and eliminate any instances of age discrimination. It is also required to ensure that hiring promotion and other prime policies are not only equitable but also free from any practices that may disadvantage employees based on their age. Organisations and individuals must work together to challenge stereotypes, promote diversity and create inclusive work environments that value the contributions of workers of all ages. By addressing age discrimination, Mauritius can harness the full potential of its workforce and build more equitable workplaces for the future.

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BSc (Hons) International Business Management
Equal Opportunities Commission

Subtle forms of discrimination: A Vicious Circle

*“ Our lives begin to end the day we become silent
about things that matter.”*

Martin Luther King Jr.

9.0 Subtle forms of discrimination: A Vicious Circle

The Universal Declaration of Human Rights of December 1948 which defines the fundamental rights and freedoms that every individual inherently deserves, without distinction of any kind, also made an obligation for Member States to undertake to achieve, in collaboration with the United Nations, the promotion of universal respect for and compliance with those rights and freedoms. To accentuate this obligation, Zero Discrimination Day, established by the United Nations in 2013, is commemorated on 01 March annually to foster equality, peace, inclusion and diversity with a view to put an end to all forms of discrimination based on race, colour, gender, disability, amongst others. Be that as it may, can we objectively say that all human beings, in today's era, are treated equally, with respect and fairness?

For sure, fresh graduates and school dropouts at some point in time must have encountered the same dilemma while embarking on their careers: *'no experience - no job, no job - no experience'*. Assuming we are successful in finding employment, does our ability to retain that position depend more on our own commitment to it than it does on whether or not our employer is satisfied with our performance? Does the colour of our skin, our physical appearance, our gender, our age have a role to play in how our employer evaluates us or will his decision be based purely on factors related to our performance in order to assess us? Compared to an average employee, an ideal employee carrying out his/her duties with due professionalism will be considered for promotion by an employer. Nonetheless, in some cases, regardless of how much effort a person is putting into doing his best at work, the latter is often overlooked for promotion or might even be dismissed from his job because of prejudices which are more subtly expressed than overtly.

Both underweight and overweight individuals experience negative bias in different settings including the workplace. Weight stigma is common in an environment where more importance is given to physical appearance. In many countries, discriminating on race, gender, religion, sex, colour, impairment is prohibited by law but weight bias happens mostly behind closed doors based on people's conscious and unconscious biases. There is no proof to support the idea that overweight people are lazy, less conscientious, less disciplined or that underweight people are "ill" or "unhealthy" but in reality, they might be left with hardly any chance of securing a job in contrast to their 'normal weight' counterparts. Once hired, these workers are often prone to derogatory remarks, feelings of embarrassment, worrying unnecessarily about what colleagues might be thinking of them. No matter how much a health problem can be controlled or not, stigmatizing people because of their weight might have far reaching consequences.

Likewise, mature employees can be associated with having obsolete skills, being sluggish to get accustomed to new things or be perceived as performing inadequately. Based on this perception, the management of a company may appoint a junior staff to take over the responsibility of a supervisory position to the detriment of the senior most employees who was supposed to be nominated for that post. The noteworthy discrepancy in the prevalence of different forms of age discrimination is where the person is told point-blank that he is not being given the same treatment as others because of



his age or when he is convinced that he is being discriminated against on the basis of his age. Surprisingly, some workers are comfortable with the status quo, they believe that age discrimination is not serious enough, thus, preferring to leave things as they are. Some workers have the willingness to fight but they have no evidence of the prejudice being caused to them whilst for some, pondering about the complaint process itself is nerve-wrecking making it easier for them to keep quiet. If we look at the other side of the coin, Section 13 (5)(a) of the Equal Opportunities Act 2008 provides for an instance where the employer/prospective employer may discriminate against a person on the ground of age, namely where the job offer is limited to persons of a particular age. Ultimately, it is a pre-requisite to identify types of behaviours that may be construed as age discrimination to yield game changing results.

Consciously or intuitively, even though we know it might be specious, we assume that attractiveness and competence are interrelated. Studies have revealed that those with facial acne for instance are susceptible to discrimination on the job market. One particular survey showed that only 22% of respondents were willing to hire people with acne scars, being well aware that those with blemishes on the face can be both well-groomed and highly qualified. Managers emphasise on the candidate's appearance especially if the job involves direct contact with customers. But it could well be a fallacious belief that poor hygiene is the cause of acneic skin. Worrying about others' judgement on visible skin condition can deeply affect one's self-confidence. For the betterment of an organization, it is therefore vital that subconscious bias be identified, recognized and avoided.

Here is a famous quote by Johnny Depp: *"My body is my journal and my tattoos are my story"*. People ink their bodies to show a picture of their struggle or they might also use it as a means of expression. There is a false assumption that people who are fond of hard music or those tattooing themselves are rebellious. People with tattoos or piercings are not legally protected, hence, the possibility of an employer refusing to employ a job applicant on the basis of his/her body art or piercing does exist. Every organization has a dress code policy at the office so that workers are well aware as to how they should present themselves at work. Some employers allow tattoos at the workplace, for example, Virgin Atlantic has become the first UK Airline to permit cabin crew to display tattoos, however, some employers do not appreciate body art, which they do not want to reflect in their way of doing business. In this case, the employee should be given the opportunity to explain the reason behind him/her having a tattoo in order to have concrete evidence before reaching a reasonable conclusion. Indeed, there should be a limitation on the types of tattoos that can be made visible to ensure that others do not derive negative connotations from them. As a result, employers must exercise caution when enforcing prohibitions or stringent guidelines for tattoos that cannot be made visible so that the message of diversity and inclusion that any firm conveys to its employees is not put at stake.

Another subconscious bias that garnered wide media coverage recently is that of hairstyle. A Lecturer was reported to have been reprimanded by a University for having made persistent negative remarks about a student's hairstyle in front of the whole class. Not admitting a student to a school because of the stigma associated with dreadlocks

is yet another example of hairstyle bias. We all live in a world where each one of us is unique. How we look at each other might contribute significantly to changing the present circumstances without compromising the future of any youngster of our country.

As the saying goes: *“The First Impression is the Last Impression”*. Whenever a job seeker is convened for an interview, the least that the prospective employer can expect from him/her is to have a proper dressing sense in order to have an idea as to whether the prospective employee will adhere to the company’s established dressing code or not. Likewise, policies such as ‘No smoking’ or ‘No alcoholic drinks’ are implemented in all workplaces which is quite common in practice. For years, all sorts of questions have been raised on women’s clothing, make up, education and now men also are judged on their appearance. According to recent news, the introduction of a new clean-shaven policy was planned for front line officers by Police Scotland with a view to allow staff to wear protective FFP3 masks during their exposure to fires, road accidents, chemical incidents and this requires staff to shave twice a day for these masks to be effective. Initially, it may seem to be a trivial issue to abide with this regulation until it leads to physical discomfort. Shaving daily is excruciating with severe razor bumps causing long-term damage to the skin. It was reported that four male officers initiated legal proceedings to express their disapproval with this directive. The decision was eventually delayed after having sought further health and safety advice. In general, employers have the right to put in place grooming standards and acceptable attires to be worn by employees, nevertheless, prior to enforcing such standards, they should bear in mind workers with medical conditions who may not come into terms with that decision.

If one’s intellectual capacity is analysed by simply gauging at one’s outward appearance, then including qualifications as one of the criteria before appointing anybody seems futile. While it is unethical for an employer to judge an employee solely on his or her personal characteristics, it is even worse when the employee knowingly or unknowingly allows himself/herself to be subjected to such a treatment. If individuals are constantly subconsciously judged for their outer appearance and if that judgement becomes socially acceptable, then fighting discrimination will be the same as questioning what has always been considered a normal practice.

At start, these types of prejudicial behaviour towards a category of individuals may be taken for granted until they begin to have long lasting impacts such as diminished self-esteem, negative impact on career, social life and most importantly, earning potential which should definitely be a cause for concern. The enactment of laws, in such cases, would be at least assuring that it’s illegal to be constantly criticized for one’s personal attributes. Although legislation is not the only solution, it does make a difference just like it did in putting up safeguards against discrimination on gender, colour, race and impairment.

Priyanka Jooseery
Management Support Officer
Equal Opportunities Commission

Criminal Record and its impact on finding employment

“It is not possible to be in favor of justice for some people and not be in favor of justice for all people.”

Martin Luther King Jr.

10.0 Criminal Record and its impact on finding employment

The Youth Employment UK, an independent, non-profit social organisation founded to tackle youth unemployment in the United Kingdom, reported in February 2023 that there were over 11 million people (about 16% of the UK population) who had at least one criminal record. Having a criminal history can create doubts in the mind of an individual about whether it will be possible for him/her to move on in life despite having a previous conviction, by getting a fulfilling job for a good future. In addition, the Alliance for Safety and Justice (ASJ), a nationwide organisation known to bring together various crime survivors to promote policies that aid communities most victimized by crime and violence in the United States of America, carried out a study of the experiences of Americans touched by crime and incarceration. It reported in June 2020 that approximately 78 million people in the United States have a criminal record which represents one in three adults at the national level, and as many as one in two in some states.

Economist *Amanda Agan*, and Professor-in-Law *Sonja Starr* in an article entitled: 'The effect of Criminal Records on Access to Employment' which featured in the *American Economic Review of 2017*, highlighted that criminal record related questions on job applications keep many applicants with a criminal past from having a chance to impress employers with their qualifications.

In Mauritius, individuals with a criminal record face difficulty while seeking a job or when their employment are terminated because of their criminal history. Requesting a potential or current employee to produce a Certificate of Character is the requirement made by various employers in order to determine whether the said employees have a criminal past.

The aim of the amendment brought to the Equal Opportunities Act 2008 (EOA) was to find a solution to the advantage of people with a criminal record, seeking employment. Intensive research, discussions, and modifications were made to the Australian model to adapt to the local context.

In 2017, the Bill to amend the EOA was introduced with the aim of promoting anti-discrimination when hiring individuals. Another objective was to prohibit discriminating behaviour at the promotion stage where a person's criminal history was unrelated to the nature of his work.

The Equal Opportunities (Amendment) Bill introduced "criminal record" which was added to the existing 12 statuses under Section 2 of the EOA and under which an individual can be a victim of discrimination. Sections 10 and 11 were also amended in this regard. An extract from the Equal Opportunities (Amendment) Act 2017 is reproduced below:

THE EQUAL OPPORTUNITIES (AMENDMENT) ACT 2017

Act No. 15 of 2017

Government Gazette of Mauritius No. 110 of 23 November 2017

I assent

BIBI AMEENAH FIRDAUS GURIB-FAKIM

23 November 2017

President of the Republic

ARRANGEMENT OF SECTIONS

Section

1. Short title
 2. Interpretation
 - 2A. Section 2 of principal Act amended
 3. Section 10 of principal Act amended
 4. Section 11 of principal Act amended
-

An Act

To amend the Equal Opportunities Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the **Equal Opportunities (Amendment) Act 2017**.

2. Interpretation

In this Act –

“principal Act” means the Equal Opportunities Act.

2A. Section 2 of principal Act amended

Section 2 of the principal Act is amended by deleting the definition of “status” and replacing it by the following definition –

“status” –

- (a) means age, caste, colour, creed, ethnic origin, impairment, marital status, place of origin, political opinion, race, sex or sexual orientation; and
- (b) in relation to sections 10 and 11, includes criminal record;



3. Section 10 of principal Act amended

Section 10 of the principal Act is amended –

- (a) by renumbering the existing provision as subsection (1);
- (b) in the newly numbered subsection (1), by adding the following new paragraph, the word “or” at the end of paragraph (d) being deleted and the full stop at the end of paragraph (e) being deleted and replaced by the words “; or” –

(f) where, subject to subsection (2), that person has a criminal record which is irrelevant to the nature of the employment for which that person is being considered.

- (c) by adding the following new subsection –

(2) The burden of establishing the relevance of the criminal record to the nature of employment shall rest with the employer or prospective employer.

4. Section 11 of principal Act amended

Section 11 of the principal Act is amended –

- (a) by renumbering the existing provision as subsection (1);
- (b) in the newly numbered subsection (1), by inserting,

after paragraph (e), the following new paragraph, the word “or” at the end of paragraph (e) being deleted –

(ea) where, subject to subsection (2), the employee has a criminal record which is irrelevant to the nature of the promotional post for which the employee is being considered; or

(c) by adding the following new subsection –

(2) The burden of establishing the relevance of the criminal record to the promotional post shall rest with the employer.

Passed by the National Assembly on the twenty first day of November two thousand and seventeen.

Bibi Safeena Lotun (Mrs)

Clerk of the National

Assembly



The EOA has been amended and Section 10 states amongst others, in relation to the employment of persons, that no employer or potential employer shall discriminate against another individual in the situation where ‘that person has a criminal record which is irrelevant to the nature of the employment for which that person is being considered.’ It also stipulates that ‘the burden of establishing the relevance of the criminal record to the nature of employment shall rest with the employer or prospective employer.’

Section 11 of the EOA states inter alia, with respect to individuals already in employment, that no employer shall discriminate against ‘an employee who has a criminal record which is irrelevant to the nature of the promotional post for which that employee is being considered; or by placing the employee at a disadvantage in any other manner and that the burden of establishing the relevance of the criminal record to the promotional post shall rest with the employer.’

Case Studies

- **Mauritius**

A complaint based on the ground of criminal record, was lodged at the EOC on 19 October 2022 where according to Mr. X, his employment was terminated due to his previous convictions, two convictions for larceny and one conviction for drug dealing. The Commission held a meeting with the HR Manager of the said company for further clarifications. During the said meeting, the HR Manager inter alia stated that she was not aware of the amendment to the EOA and that she will discuss the matter at the level of management. The Commission explained to the HR Manager that the law has been breached as the nature of the work of Mr. X at the company was unrelated to his previous convictions. Consequently, Mr. X informed the Commission that he was reinstated at the company and withdrew his complaint.

- **International**

Firstly, in the case of *Mr. CG v NSW (RailCorp NSW)*, on 12 March 2012, in Australia, the Court found that RailCorp NSW, Mr. CG's potential employer, had discriminated against him by declining to appoint him because of his criminal history. Mr. CG had previously applied for the post of Market Analyst in June 2009. He was the preferred candidate and was chosen for the job. However, he was informed that his prior driving offences in 2001 and 2008 were the reason behind which he was eventually not offered the employment. It should be noted that Mr. CG had previously worked for RailCorp in another capacity. The offences from 2001 and 2008 were not related to his employment nor did they take place while he was on duty. It also appeared that those offences did not have an effect on nor presented a risk to his employment during his previous time of working at the company.

Secondly, a decision taken in *Khorsand v Toronto Police Services Board* on 27 February 2023, in Ontario, demonstrated the substantial influence that a person's police record may have on an individual's life. In this case, Mr. Khorsand applied for the post of Special Constable. He had failed his background check and the Toronto Police Service

(TPS) refused to provide him with a justification. Records kept by the TPS showed instances where Mr. Khorsand called the police to report a crime or was a witness to one. Police officers identified him as "Brown" in those records. Mr. Khorsand had no prior conviction and had never been put on trial for a crime. The Court ruled that a police department can be forced to give explanations as to why a person fails a background check prior to employment and give them the opportunity to contest those explanations. The Court emphasised that the use of the term "Brown" to identify Mr. Khorsand (with reference to the colour of his skin) was a serious threat to public interest as it was leading to additional discrimination.

As demonstrated above, these job seeking challenges may increase existing socioeconomic and racial disparities because the poor and minorities have a disproportionate number of criminal records. The job's relevance to the applicant's criminal history, subsequent employment experience, and character references should all be given special consideration. The applicant should have a chance to address the record.

The mandate of the Commission is first and foremost to conciliate and work towards the elimination of discrimination. It is known that providing people having criminal record with access to employment may lower their risk of recidivism, thereby enhancing public safety. The Commission is actively working to safeguard persons in employment/employment of persons against discrimination by continuously carrying out sensitisation campaigns in different job sectors and by addressing the issues regarding same through meetings held at the Commission.

Neha Chowbay Nuckchady
Consultant - (LLM/LLB/MICA)

Chetan Sharma Rupear
STM Intern - (LLM/LPVC/LLB)

Meetranand Ramkalawon
STM Intern - (LLB)
Staff of the Equal Opportunities Commission

Anti-discrimination laws in Mauritius

“There is nothing ‘honourable’ or ‘reasonable’ in giving a pass to those who want to discriminate.”

DaShanne Stokes

11.0 Anti-discrimination laws in Mauritius

11.1 The Constitution

On the 12th March 1968, Mauritius became independent and inherited its Constitution.

Section 3 of our Constitution provides that *“It is hereby recognised and declared that in Mauritius there has existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms –*

- (a) the right of the individual to life, liberty, security of the person and the protection of the law;*
- (b) freedom of conscience, of expression, of assembly and association and freedom to establish schools; and*
- (c) the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation, ...”.*

Similarly, Section 16 (1) of our Constitution provides that *“Subject to Subsections (4), (5) and (7), no law shall make any provision that is discriminatory either of itself or in its effect”.*

Section 16(2) provides the following *“Subject to Subsections (6), (7) and (8), no person shall be treated in a discriminatory manner by any person acting in the performance of any public function conferred by any law or otherwise in the performance of the functions of any public office or any public authority”.*

11.2 The Equal Opportunities Act

In 2008, the Equal Opportunities Act (EOA) was adopted by the National Assembly with a view to promote equal opportunity between persons, prohibiting discrimination on the ground of status and by victimisation as well as establishing an Equal Opportunities Commission and Equal Opportunities Tribunal. The EOA, therefore, makes it unlawful to discriminate on specific grounds in certain circumstances.

11.2.1 What is discrimination?

11.2.1 (a) Direct discrimination

As per the EOA, direct discrimination occurs where in the same circumstances, the discriminator treats or proposes to treat a person with a particular characteristic (status) less favourably than he treats or would treat another person with a different characteristic. The discriminator is thus deemed to discriminate when he does so because of the particular characteristic (status) of that other person. The characteristic (status) of that other person need not be the only dominant reason for discrimination. That it is a substantial reason would be enough for the offence to be constituted under the EOA.

11.2.1 (b) Indirect discrimination

A person discriminates indirectly against another person where he imposes or proposes to impose a condition, requirement or practice which is not justifiable in the circumstances, on another person and which has the effect of disadvantaging that other person when compared to other persons of the same status.

11.2.1 (c) Discrimination by victimisation

A person discriminates by victimisation against another person where he subjects or threatens to subject that other person to any detriment on the ground that the aggrieved person has made or proposes to make, a complaint against the discriminator or any other person under the EOA.

11.2.2 Grounds of discrimination

Discrimination based on the following statuses is prohibited under the EOA -

- Age
- Caste
- Colour
- Creed
- Ethnic origin
- Impairment
- Marital Status
- Place of origin
- Political opinion
- Race
- Sex
- Sexual orientation
- Criminal record in relation to employment of persons and persons in employment

11.2.3 Areas of discrimination

As per the EOA, the aforementioned types of discrimination are unlawful in the following areas-

- Employment activities
- Traineeship
- Professions, trades or occupations
- Education
- Provision of goods, services or facilities
- Accommodation
- Disposal of immovable property
- Companies, partnerships, sociétés or registered associations
- Clubs
- Access to premises
- Sports

11.2.4 Sexual Harassment

Apart from discrimination, sexual harassment is also prohibited under the EOA. According to section 25 of the Act, a person sexually harasses another person where, he makes an unwelcome sexual advance, or an unwelcome request for a sexual favour to another person or he engages in any other unwelcome conduct of a sexual nature towards another person.

Sexual harassment is constituted where that unwanted behaviour of a sexual nature is made in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the other person would feel humiliated, intimidated or offended.

Acts of sexual harassment may include:

- unwanted requests for sexual favours
- offensive comments of a sexual nature
- sexual, vulgar, dirty, indecent, obscene jokes
- comments, questioning or teasing about a person's alleged sexual activities or private life
- persistent unwelcome invitations, telephone calls or emails with sexual undertones.

Acts of sexual harassment are prohibited under the EOA in the following areas:

- Employment activities
- Education
- Provision of goods, services or facilities
- Provision of accommodation
- Disposal and acquisition of immovable property
- Companies, partnerships, sociétés or registered associations and clubs.

In circumstances where following an investigation, it is revealed that the offence of sexual harassment has been committed, the Commission may decide to refer the matter to the Director of Public Prosecutions.

11.2.5 Application of the Equal Opportunities Act (EOA)

The EOA binds the State of Mauritius and has effect notwithstanding any other enactment relating to employment, education, qualifications for a profession, trade or occupation, the provision of goods, services, facilities or accommodation, the disposal of property, companies, partnerships, sociétés, registered associations, sports, clubs and access to premises which the public may enter or use.

11.2.6 Non-Application of and exceptions to the Equal Opportunities Act (EOA)

Section 4 of the EOA sets out a number of instances where provision of different treatments to persons is not prohibited. Examples of such instances include life insurances policies, accident insurance policies and similar matters involving the assessment of risk, making the membership of a club available to persons of one sex only and the ordination of a priest, minister of religion or a member of a religious order, to name a few.

Section 13 of the EOA provides for exceptions to the prohibition to discriminate. As such, an employer or prospective employer may discriminate on the ground of sex where being of a particular sex is necessary to qualify for a particular employment, promotion, transfer or training. The said section also stipulates the conditions under which an employer or prospective employer may discriminate against a person who has an impairment.

11.3 The Children's Act 2020

Section 11(1) provides:-

- (1) No person shall discriminate against a child on the ground of the child's, or the child's parent's, race, caste, place of origin, political opinion, colour, creed, sex, language, religion, property or disability.
- (2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

Complaints Procedure under the Equal Opportunities Act 2008



12.0 Complaints Procedure under the Equal Opportunities Act 2008

By virtue of section 27 (3) (c) of the EOA, the Equal Opportunities Commission is empowered to carry out an investigation of its own motion or following a complaint. The Commission has a well-established complaints procedure for receiving, recording and effectively responding to complaints made by persons who alleges an act of discrimination.

Provision of information to persons alleging that they have been discriminated against

Very often, aggrieved persons seek information from the Commission before lodging their complaints. The staff of the Commission, therefore, does its level best to help them by answering their queries.

12.1 Lodging a complaint

Any person who feels that any of his rights under the Equal Opportunities Act has been infringed, may lodge a written complaint with the Commission. In order to assist the aggrieved person, a Complaint Form requiring the complainant to specify the grounds on which he felt discriminated against and to explain the circumstances that led to same has been designed by the Commission. Complaints can be lodged in hard copy, by email and via the Commission's website.

A complaint should, by law, be lodged within 12 months of the date of the alleged act of discrimination. However, on good cause shown by the complainant, the Commission may consider complaints lodged outside the 12 months' statutory delay.

12.2 Complaint Handling

Once a complaint is lodged, preliminary meetings are carried out with both parties with a view to gather more information so as to determine whether the complaint appears to be well-founded. If, following the preliminary meetings, the Commission is of the view that the matter does not fall within the jurisdiction of the Act, the complaint is set aside.

On the other hand, if after the preliminary meetings with both parties, the Commission is of the view that the complaint appears to be well-founded, the Commission shall open an investigation.

12.3 Investigation

During the process of conciliation, the Commission shall attempt to conciliate the parties.

12.4 Conciliation successful

Conciliation can only occur if both parties agree on a settlement. The Commission is impartial and does not have the power to impose a settlement if the parties do not agree. Settlements reached by the parties include:

- an apology
- monetary compensation
- a satisfactory explanation on behalf of the respondent
- policy change within the organisation

- opportunity to be considered for a promotion or training
- access to a particular service

Where a complaint has been settled by conciliation, the settlement is embodied in a written agreement and registered with the Equal Opportunities Tribunal. Upon registration, the agreement is deemed to be an order of the said Tribunal and becomes binding to both parties.

12.5 No conciliation

Where the Commission has been unsuccessful in attempting to resolve the matter by conciliation, a full-fledged investigation is carried out –

- Following its investigation, the Commission finds that there is no evidence of discrimination. The Commission shall issue a finding pursuant to Section 31 of the Act.
- Following its investigation, the Commission finds that the Complainant has adduced sufficient evidence on a balance of probabilities that he/she has been discriminated against on his/her status, the Commission shall issue a report pursuant to Section 33 of the Act.

12.6 45 days cooling-off period

After the Commission has issued the report, the parties still have 45 days cooling-off period.

During this period, a settlement between the parties is still possible.

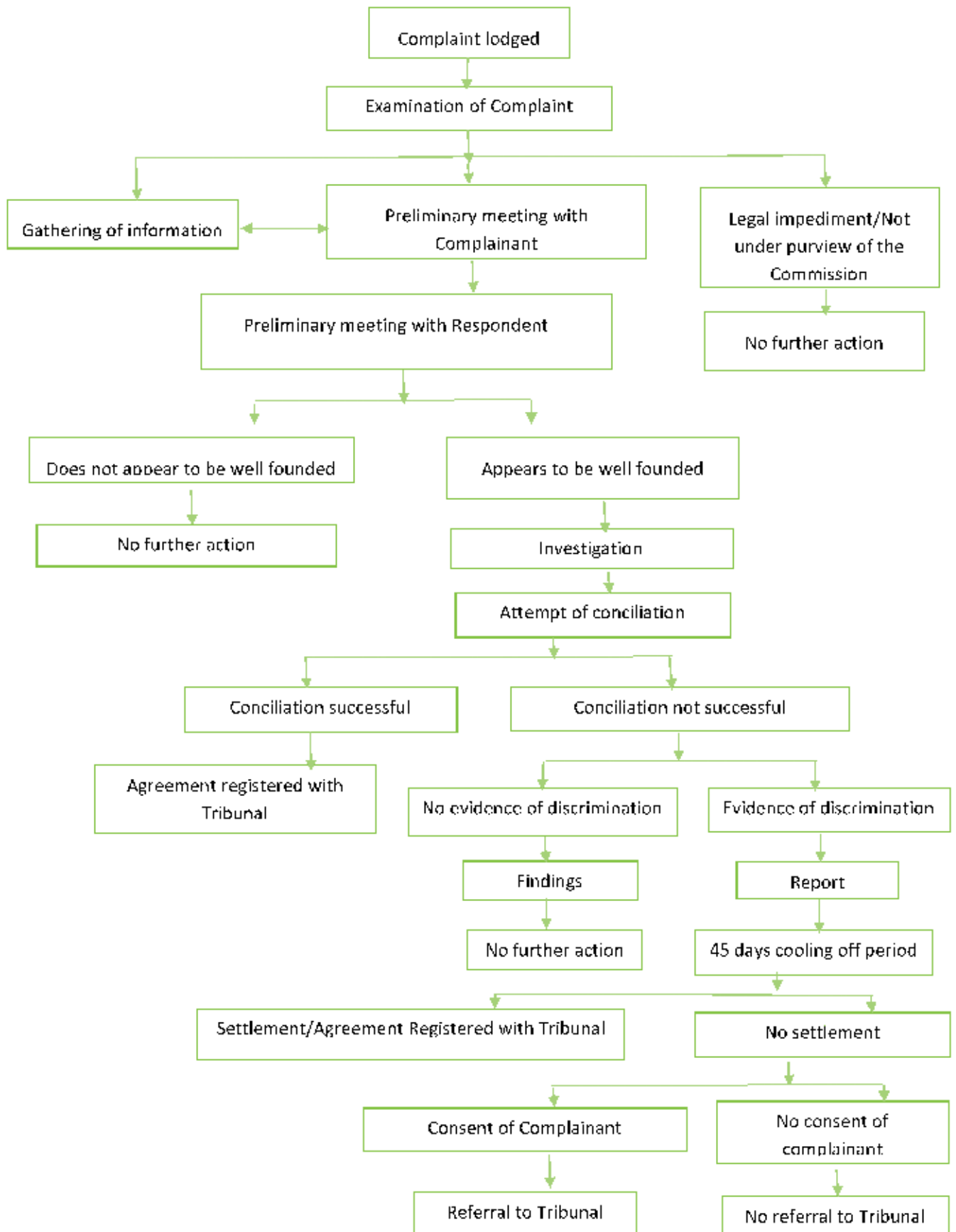
- If there is a settlement within the 45 days cooling-off period, same is embodied into an agreement which is registered with the Equal Opportunities Tribunal.
- If there is no settlement during these 45 days cooling-off period, the Commission shall, with the consent of the Complainant refer the complaint to the Tribunal forthwith.
- On the other hand, if the consent of the Complainant is not obtained, then there is no further action by the Commission regarding the complaint.

12.7 Withdrawal of complaint

In some cases, the complainant abandons his/her complaint during the complaint handling process itself or decides to withdraw it, mostly if the matter has been settled prior to it being heard by the Commission.



12.8 Complaint Handling Process



Rodrigues



13.0 Mission to Rodrigues:

Since its inception, the Equal Opportunities Commission has regularly carried out missions to Rodrigues. The Commission was in Rodrigues from 13 to 17 March 2023.



Chairperson and Members of the Commission

Objectives of the mission

The objectives of the mission were, *inter-alia*;

- (i) working towards the elimination of discrimination and the promotion of equality of opportunity and good relations between persons of different status in Rodrigues;
- (ii) conducting preliminary meetings and investigation in relation to the complaints which had been lodged;
- (iii) attempting to reconcile parties; and
- (iv) conducting sensitisation sessions with stakeholders of the educational sector and Heads of Department and Human Resource Personnel of the Rodrigues Regional Assembly.

The Venue

All the hearings with respect to the complaints lodged at the Commission were held at Les Cocotiers Hotel, Anse aux Anglais.

Courtesy Visit

The delegation paid a courtesy visit to the Island Chief Executive to discuss some issues.



Preliminary Meetings/Investigations

The Commission conducted several preliminary meetings and investigations.



Investigation session in progress

Sensitisation Sessions

Upon its arrival in Rodrigues on the 13 March 2023, the Commission participated in a programme on the local radio, “Radio Rodrigues” pertaining to the role of the Commission and the purpose of its mission. During the programme, the general public was invited to meet staff of the Commission for any assistance/information which they may require when lodging a complaint with the Commission.

Sensitisation session with Heads of Department and Human Resources Personnel of the Rodrigues Regional Assembly



A sensitisation session with Rectors, Deputy Rectors, Managers and Heads of Department of the colleges in Rodrigues was held at Antoinette Prudence Lecture Theatre at Malabar.

A sensitisation session with stakeholders of the educational sector



Following the first radio programme, many members of the public came to meet Members of the Commission to seek information.

Meeting with a member of the public





Media Coverage



Conclusion

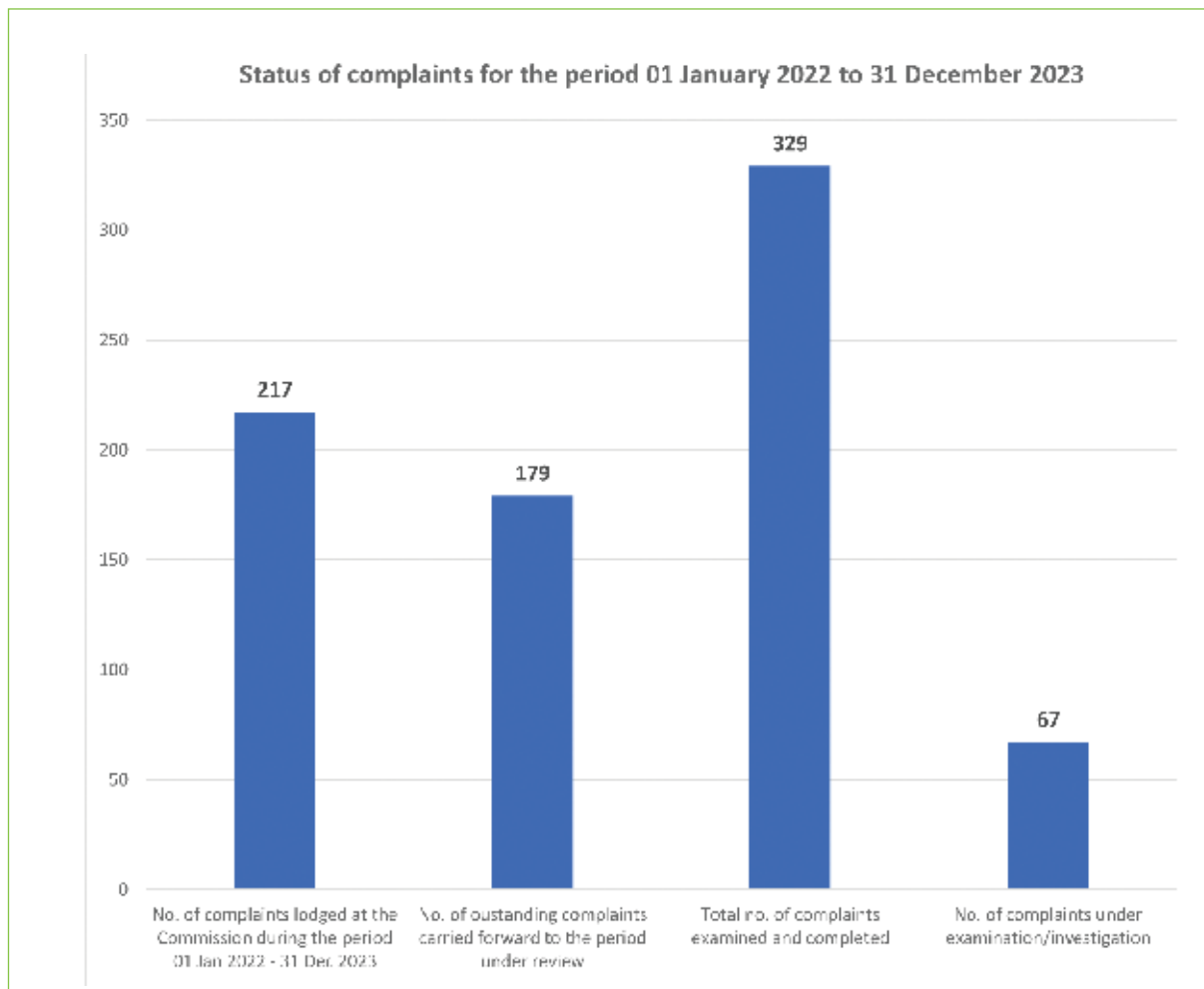
The Commission completed its mission both as regards to the complaints lodged and the various sensitisation programmes carried out.

Statistics

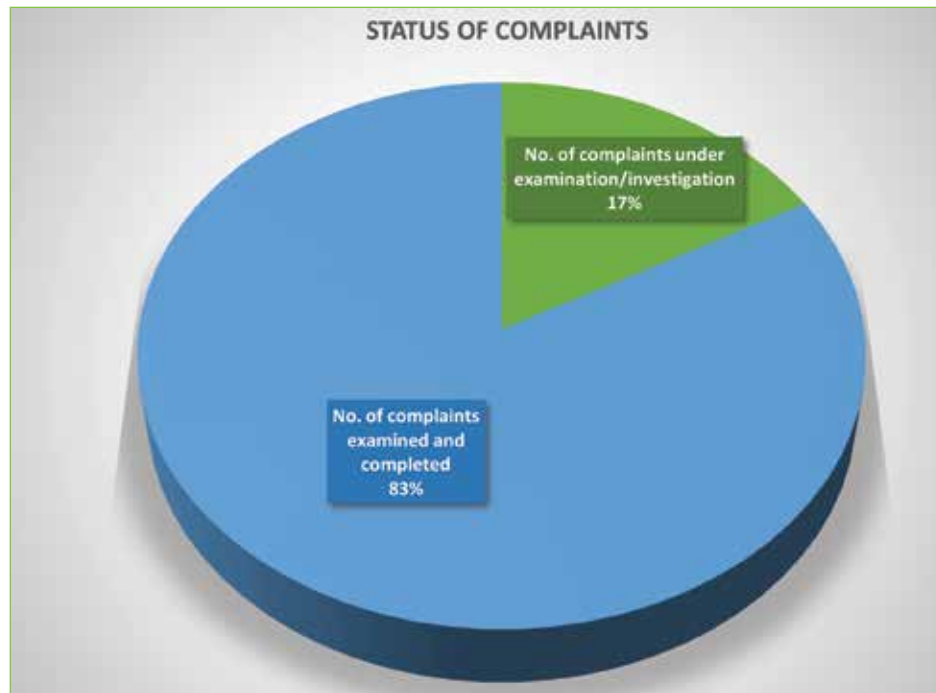


14.0 Statistics regarding complaints

No. of complaints lodged at the Commission during the period 01 January 2022 to 31 December 2023	217
No. of outstanding complaints carried forward to the period under review	179
Total number of complaints examined and completed	329
No. of complaints under examination/investigation	67
Miscellaneous/Anonymous grievances	416



Percentage regarding complaints investigated during the period 01 January 2022 to 31 December 2023



During the aforementioned period, 396 complaints of alleged discrimination were examined at the Commission, out of which 329 complaints were completed and 67 complaints are still being examined.

No. of complaints lodged at the Commission per month during the period 01 January 2022 – 31 December 2023



Year	Month	Number of Complaints Received
2022	January	6
	February	6
	March	14
	April	19
	May	4
	June	9
	July	12
	August	12
	September	9
	October	9
	November	4
	December	10
2023	January	5
	February	10
	March	29
	April	13
	May	4
	June	7
	July	3
	August	7
	September	10
	October	8
	November	2
	December	5

Summary of complaints examined

SN	Details	No. of cases
1	Number of complaints examined	396
2	Conciliation Successful	58
3	Not under purview	142
4	Complaints in progress	67
5	Examined and set aside	48
6	Complaints withdrawn	41
7	Findings/Reports Issued	40
8	Complaints referred to Equal Opportunities Tribunal	5

Number of complaints examined

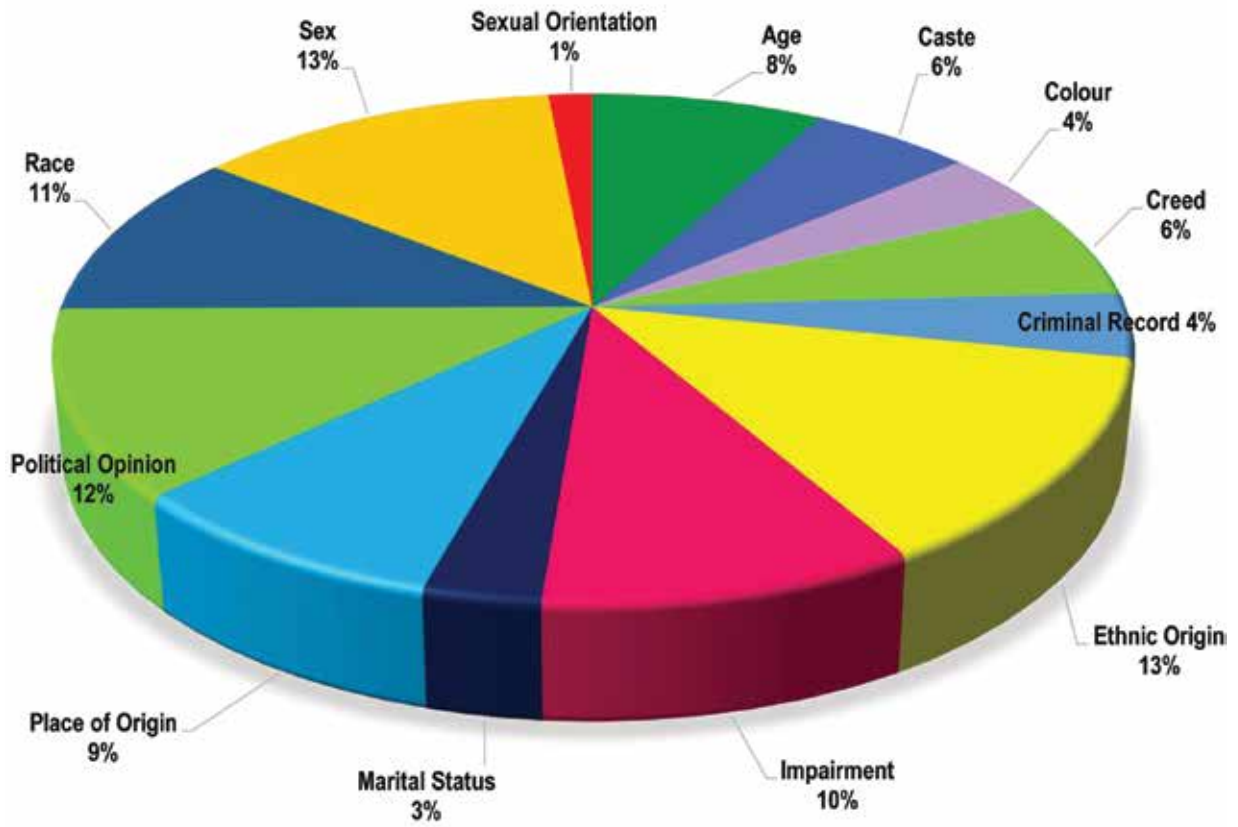


Complaints based on grounds of discrimination

Grounds of Discrimination	Number of complaints
Age	16
Caste	11
Colour	8
Creed	12
Criminal Record	8
Ethnic Origin	26
Impairment	19
Marital Status	6
Place of Origin	17
Political Opinion	23
Race	21
Sex	25
Sexual Orientation	3

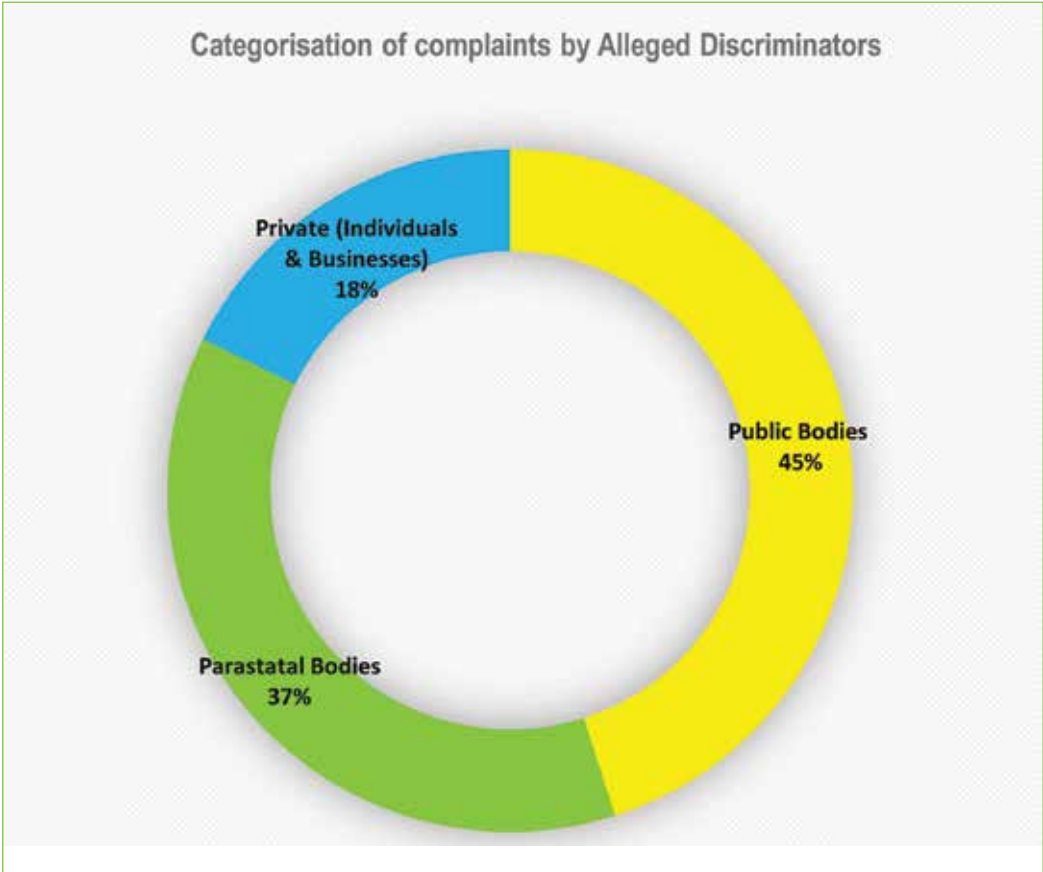
It is to be noted that there are complaints lodged on multiple grounds.

Complaints based on grounds of discrimination



Alleged discriminators	No. of complaints lodged
Public Bodies	186
Parastatal Bodies	154
Private (Individuals & Businesses)	73

Categorisation of complaints by alleged discriminators



It is to be noted that there may be more than one alleged perpetrator/discriminator for a complaint lodged at the Commission.

Sensitisation / Awareness Programmes



15.0 Sensitisation/Awareness Programmes

As part of its mandate, the Equal Opportunities Commission is required to carry out sensitisation/awareness campaigns with a view to eliminate discrimination and promote equality of opportunity and good relations between persons of different status. Sensitisation/awareness campaigns have been held throughout both years 2022 and 2023, both in Mauritius and Rodrigues.

List of sensitisation programmes undertaken by the Equal Opportunities Commission (EOC) from January 2022 to December 2023

A. 'Ensam avec CSU Programmes'

S/N	Date (Saturdays 2022/2023)	Venue
1	29 January 2022	Kendra Shopping Mall
2	05 February 2022	Phoenix Mall
3	12 February 2022	Plaisance Shopping Village
4	26 March 2022	Municipality of Quatre Bornes
5	16 April 2022	Petit Raffray Village Hall
6	30 April 2022	Super U Flacq
7	14 May 2022	Goodlands Farmers Service Centre
8	21 May 2022	Medine Camp de Masque Recreational Centre
9	22 July 2023	Palma, Quatre Bornes (Corner Machine Lane and Avenue Koosseal)
10	12 August 2023	Ajoodhea Hall, Long Mountain
11	19 August 2023	Petite Riviere Social Welfare Centre
12	02 September 2023	Bel Air Social Welfare Centre
13	23 September 2023	Goodlands Farmers Centre
14	28 October 2023	Riviere du Rempart Youth Centre
15	18 November 2023	Baie du Cap Village Hall

Gallery

Kendra Shopping Mall, St Pierre



Phoenix Mall



Plaisance Shopping Village



Municipality of Quatre Bornes



Goodlands Farmers Service Centre



Medine Camp de Masque Recreational Centre



B. Sensitisation Campaigns

(i) Official Mission of EOC to Rodrigues from 13 to 17 March 2023

S/N	Date	Venue
1	Wednesday 15 March 2023	Conference Room, Rodrigues Regional Assembly
2	Friday 17 March 2023	Lecture Theatre, Antoinette Prudence at Malabar

(ii) Mauritius

S/N	Date	Venue
1	Friday 26 May 2023	Mauritius Institute of Education
2	Friday 02 June 2023	Université des Mascareignes
3	Thursday 15 June 2023	Civil Service College
4	Friday 11 August 2023	Open University of Mauritius
5	Friday 08 December 2023	Open University of Mauritius

Courtesy visit with the Director of the MIE after a sensitisation session carried out on Friday 26 May 2023



Talk at the University of Mascareignes



Training by Members of the Commission with the HR Cadre held on Thursday 15 June 2023 at the Civil Service College, Atom House, Port Louis





Case Studies



16.0 Case Studies

Case 1

In 2020, fourteen Primary Sector Educators (Arabic) lodged complaints with the Commission based on the fact that during the past twenty-five years, there had been no increase in the number of Deputy Head Teachers-Arabic as compared to other Asian languages. Following an exchange of correspondence and meetings held with representatives of the Ministry of Education, Tertiary Education, Science and Technology, it came to the knowledge of the Commission that the Ministry had been carrying out an exercise to resolve the said anomalous situation and that in the same vein, a proposal had been made in 2021 by the said Ministry to the Ministry of Finance and Economic Development for the creation of four additional posts of Deputy Head Teacher- Arabic. With a view to ensuring a close follow-up of the matter, meetings were then held by the Commission with a representative of the Ministry of Finance and Economic Development and on 29 March 2023, following the obtention of all necessary clearances, six additional posts of Deputy Head Teacher (Oriental Languages)-Arabic were filled by the Ministry of Education, Tertiary Education, Science and Technology, to the satisfaction of the complainants.

Case 2

Mr. X, father of a Grade 2 student, addressed his grievance to the Commission stating that he had been discriminated on the ground of 'sex' as the school attended by his daughter had repeatedly failed to issue him with a copy of her results in the given circumstance that his wife had filed for divorce. Upon the Commission's intervention, Mr. X succeeded in obtaining a copy of his daughter's results. Mr. X heartily thanked the Commission for its assistance in finding a solution to his grievance.

Case 3

In 2022, Mrs. X lodged a complaint with the Commission alleging that her son who was at that time enrolled in the pre-primary section of a particular primary school, had been refused admission in Grade 1 of the same school. Mrs. X further contended that children coming from other further regions were granted admission, to the prejudice of her son and that same was tantamount to a discrimination on the ground of 'place of origin'. A first meeting was scheduled by the Commission with Mrs. X, a representative of the primary school as well as a representative of the Ministry of Education, Tertiary Education, Science and Technology. Mrs. X eventually apprised the Commission that her son's name had been included in the list of students to be admitted in Grade 1 of the school and that she hence no more wished to proceed with her complaint.

Case 4

On 11 October 2021, the complainant lodged a complaint on behalf of his minor step-daughter at the Commission against the Ministry of Education, Tertiary Education, Science and Technology and the Mauritius Examinations Syndicate alleging that his step-daughter has been discriminated against on the basis of sex. The complainant stated that the latter sat for her National Certificate of Education (NCE) exams 2020/21

after which she was granted admission to a state college. The said state college figured fourth on her list of preferred academies despite that she obtained 17 as grade aggregate whereas students obtaining a higher-grade aggregate were admitted to the first 3 colleges on her list.

During meetings held at the seat of the Commission, the respondents explained that in line with the Nine Year Continuous Basic Education reforms, 12 academies were set up as from June 2021, mixed schools with gender parity, 50% of the seats reserved for boys and 50% of the seats reserved for girls. The respondents also provided the Commission with particulars setting out the admission exercise in relation to the Complainant's stepdaughter.

The Commission issued its Findings under Section 31 of the Equal Opportunities Act 2008 and concluded that there is no evidence establishing that the respondents discriminated against the complainant's stepdaughter as the allocation of seats for boys and girls are carried out on separate lists and that the principle of gender parity is observed in the academies which are co-educational institutions and all this in accordance with the official policy in relation to education reforms.

Case 5

The complainant lodged a complaint with the Commission on 08 December 2022. The complainant alleged that her employment as Attendant (Hospital Services) (on shift) had been terminated on the ground of her impairment as she had been a victim of direct discrimination. She also stated that she was convened before a Medical Board on three occasions.

Several meetings were held by the Commission which investigated whether a proper medical assessment of the complainant had been carried out. During the Commission's investigation, the respondent produced enough evidence to support that the complainant was 'medically unfit' to work as per the Scheme of Service of an Attendant (Hospital Services) (on shift) and the termination of her employment was not due to her impairment.

The Commission also noted that the complainant had obtained another job which best suited her. In the light of which, the Complainant withdrew her complaint and thanked the Commission for its intervention.

Case 6

Mr. X and Mr. Y, inhabitants of Rodrigues, respectively lodged complaints with the Commission alleging that they had been less favourably treated on the basis of their political opinion inasmuch as they could not benefit from the Meat Subsidy Scheme set up by the Rodrigues Regional Assembly, having been informed by an Agricultural Officer of the Commission for Agriculture that their names had been removed from the relevant list on the basis of an anonymous letter received by the Departmental Head of the above named Commission, following which, the Executive Council had ordered an enquiry. After having ascertained the well-foundedness of the complaints, the Commission made

laborious attempts to conciliate the parties but same remained unfruitful, through no fault of the complainants. Upon completion of its investigation, the Commission in its Report under Section 33(1)(a) of the Equal Opportunities Act, concluded that the complainants had successfully discharged the burden of proof, on a balance of probabilities, that they had been less favourably treated on the basis of their status, that is “political opinion”, as compared to two other beneficiaries of the said Scheme, who were more favourably treated based on their status and very strongly recommended that the Rodrigues Regional Assembly uses *“the mandatory 45 days ‘cooling off’ period to find a practical working solution for the Complainant.”* After the said 45 days, the Commission having been informed by the parties that the complaints had remained unresolved still, same were referred to the Equal Opportunities Tribunal with the complainants’ consent.

Case 7

Mr. X, Indian Speciality Chef Tournant, lodged a complaint with the Commission alleging that his rights as the Indian Chef had been infringed as the opportunity to work as the main Indian Chef had been given to a Junior Sous-Chef. Mr. X further stated that the said Junior Sous-Chef had been favoured by the Executive Chef as both of them were non-residents of Mauritius as compared to him (complainant) who possessed the Mauritian citizenship. During meetings held with the parties concerned, the Commission was reassured that neither the complainant had been demoted nor was it being envisaged to terminate his employment. The complainant therefore withdrew his complaint.

Case 8

Mr. X lodged a complaint with the Commission averring that he felt aggrieved by the fact that an officer junior to him had been selected by the Management of the institution which employed him, to be assigned the responsibility of Responsible Officer. Mr. X further stated that he had been discriminated against on the basis of his age and place of origin. Upon an investigation of the complaint, it came to the knowledge of the Commission that Mr. X had not been selected for the assignment of higher duties as he did not hold the required qualifications at that time. A conciliation was nevertheless reached between the parties as the institution undertook to consider Mr. X for the next assignment of duties as Responsible Officer, as he now held the required qualifications.

Case 9

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

In the present case, Mr. X, an ex-Business Development Officer (BDO), lodged a complaint in 2018 at the Commission against the Ministry of Business, Enterprise and Cooperatives (Business and Enterprise Division). He claimed that he was recruited as BDO with an ex-parastatal body which falls under the aegis of the respondent. He worked for that organisation in the same capacity till April 2018. The aforesaid organisation ceased its operation in 2018. Sect 16 of the Act which governed that institution provided for the redeployment of its employees.

Mr X was redeployed in the post of Research and Development Officer to another parastatal body, a post which has nothing in common with the work he was doing as a Business Development Officer at the ex-parastatal body. He averred that following the redeployment exercise, he was treated less favourably on the ground of his 'age' as compared to his 4 colleagues who were also Business Development Officers and who were more favourably treated. He further claimed that although he is equally and/or more qualified and experienced than his 4 colleagues, yet he was not redeployed into a Ministry. Of note Complainant was 39 years old at the material time, viz, less than 40 years old whereas his colleagues were older than him.

The Commission examined the complaint, which appeared to be well founded, and subsequently started its investigation in same. After having sought explanations from the parties and other stakeholders, the Commission spared no effort to conciliate the parties but has not been successful through no fault on the complainant's part. It concluded that Mr. X has successfully discharged the burden of proof, on a balance of probabilities, that he has been subjected to discriminatory treatment, viz, he was less favourably treated on the basis of his status, that is "age" as compared to some of his Business Development Officer colleagues who were more favourably treated in relation to their redeployment in a Ministry where the scope for promotion, job security and job satisfaction are more advantageous as compared to Mr. X's redeployment to a parastatal body where he is most unhappy and feels out of place, considering his professional unblemished career.

In this context, the Commission issued a Report on 02 May 2022 pursuant to Section 33(1) of the Equal Opportunities Act (EOA) 2008 and the matter was referred to the Equal Opportunities Tribunal with the consent of the Complainant.

Case 10

A complaint was lodged by Mr. X, a Branch Manager in August 2020 against a renowned financial institution (his employer) claiming that he was treated less favourably based on the grounds of his age and ethnic origin.

Mr. X claimed that he was working in a branch of the financial institution where he had the responsibility of managing a team of 4 employees. In due course, the number of employees posted at the aforesaid branch was reduced from 4 to 2. Mr. X urged his employer to restore the number of employees under his responsibility to 4. However, the said request was not accepted. After a few months Mr. X was transferred to the head office of the financial institution. He was replaced at the branch office by a colleague, who was much younger than him, and the former was given two additional staff to support him in his work at the branch office. Mr. X felt that he had been discriminated against on grounds of his age and ethnic origin.

The Commission examined the complaint, which appeared to be well founded, and subsequently started its investigation in same. Following several hearings and after having sought explanations from both parties, the Commission spared no effort to conciliate them but in vain. It concluded that Mr. X has successfully discharged the

burden of proof, on a balance of probabilities, that he has been subjected to less favourable treatment on the basis of his status, that is “age” and “ethnic origin” as compared to his colleague who was more favourably treated when the latter was appointed as Branch Manager at the branch office under question.

The Commission issued a Report on 31 May 2022 pursuant to Section 33(1) of the Equal Opportunities Act (EOA) 2008 and the matter was referred to the Equal Opportunities Tribunal with the consent of the Complainant.

Case 11

In January 2022, a complaint was brought to the Commission by Mr. X against a widely known private club located in the centre of Mauritius. Mr. X alleged that he and his wife had been racially discriminated by the respondent because they were non-white, hindus and non-members of the respondent.

Mr. X alleged that he registered his minor daughter with an academy, which offers lessons for learning the game of tennis. The aforesaid service provider has several venues for such tennis classes in Mauritius including that of the respondent. Since 2020, Mr. X had been bringing his daughter to her weekly tennis classes being held in the compound of the respondent.

As per Mr. X in January 2022, he, his wife and his 3-year old son accompanied his daughter for her scheduled tennis class. While his daughter was attending her tennis classes, Mr. X claimed that he took his son to the small kid’s playground which is opposite the tennis court and where other kids, accompanied by their parents were playing. As soon as Mr. X and his son entered the playground, respondent’s security guard came to him in an aggressive manner and asked him to leave the premises on the ground that he is not a member of the Club. He also claimed that the security guard informed him that, as a non-member of the Club, he may only bring his daughter for training to the tennis classes and cannot have access to other areas of the Club’s premises. Mr. X claimed that no one told him before of any such rules.

The respondent, which is a private club reserved to its members and their guests, has numerous sport facilities including tennis courts. In view to promote sports in Mauritius, the club gives access to some of its facilities to independent service providers including the one with whom Mr. X’s daughter was enrolled, which offer lessons and/or classes to members as well as non-members of the club. In that regard, the service provider in question and their clients have access to only certain areas forming part of the Club’s property. The other premises and/or parts of the club are reserved to members and their guests.

The Commission, which initially found the complaint well-founded, proceeded with an investigation in the matter. However, after having heard all the parties, sought explanations from witnesses and other stakeholders and analysed all the evidence adduced before it, the Commission concluded that Mr. X has not been able to establish that he has been discriminated against by the respondent on the basis of his colour,



religion or indeed any other protected ground as set forth in the EOA and consequently issued its Findings on 19 June 2023 pursuant to Section 31 of the EOA.

Case 12

The EOA 2008 has been amended in 2017 to prohibit discrimination in employment on the ground of a person's criminal record, both at recruitment and promotion level, where a person's criminal record is not relevant to the nature of his or her employment.

In this case, Mr. X, an unskilled employee, lodged a complaint with this Commission in October 2022 against a well-known construction company in Mauritius. He claimed that his employer has terminated his contract of employment on the ground that he does not have a clean Certificate of Character.

The Commission held two meetings with the employer of Mr. X. As the latter could not establish the relevance of the criminal record to the nature of the employment of Mr. X, it decided to take him back in employment.

Mr. X thanked the Commission for its assistance in the matter.



Other Events

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17.0 Other Events

- **Clavis International Primary School**

On 19 September 2022, two groups of Clavis International Primary School students in their final year accompanied by their respective teachers and parents visited the Commission in connection with an Exhibition as part of the requirements for their final graduation on the themes “Stereotypes and Equal Opportunities in Mauritius” and “Discrimination”.

“Dear Board members and staff of EOC,

On behalf of the Clavis’ students, Dr. Vera Ramtohul and Mrs. Chundunsing, who you very warmly welcomed today, I would like to thank you whole-heartedly. They got lots of information about equal opportunities and discrimination that will help them for their IB Primary Years Programme exhibition to be presented later this month. We would also like to encourage you in pursuing the great job you are doing in the field of equal opportunities in Mauritius. Highly appreciated.”

A staff of the Commission giving explanations on discrimination and equality of opportunities to the students



Members and a staff of Commission together with a staff and students of the Clavis International Primary School



- **Brahma Kumaris**

Mr G. Shibchurn, Member of the Commission attended a public conference on 08 May 2023 at the Caudan Arts Centre organised by the Brahma Kumaris, Global Peace House and Inner Space Meditation Centre (Port Louis) on the theme “Embracing the Unknown”.

The Public conference was held by Mr Charles Hogg, National Coordinator (Chief Executive) of the Brahma Kumaris, Australia and Chairman of its Board of Directors.



Compliments to the Equal Opportunities Commission



18.0 Compliments

- “We are very happy. We would like to thank the Ministry of Education and this Commission for this. We are very grateful.”
- “Chairperson Sir, thank you very much...Thank you from the bottom of my heart.”
- “Thank you very much. Thank you for your time and energy that you have put to help me.”
- “I wish to thank you for your concern and help to solve my problem.”
- “I am very grateful to you and your team for having taken up my case against the Finance Department...I thank you again for having done needful and wish you and your team the very best in their endeavours.”
- “I confirm that conciliation has been successful with the help of Equal Opportunities Commission.”



Press Cuttings



Actualité

ENSEIGNEMENT PRIVÉ
L'UPSEE tire à boulets rouges sur le directeur de la PSEA

LES membres de l'Union of Private Secondary Education Employees (UPSEE) étaient face à la presse, hier, à l'hôtel St-Georges à Port-Louis. Plusieurs sujets ont été abordés, dont la reprise de l'éducation, les cours en ligne ou encore les nombreux problèmes des éducateurs face à la Private Secondary Education Authority (PSEA). Pour l'UPSEE, près de deux ans après l'émergence du Covid, le système éducatif est toujours en rodage et peine à faire ses preuves avec les nombreuses circulaires contradictoires. Une véritable cacophonie. Le syndicat explique que pour les premier et second trimestres, les élèves et enseignants n'ont eu au maximum que 50 jours de contact et peinent à terminer le programme en ce troisième trimestre.

Pour Munsoo Kurimbaccus, vice-président de l'UPSEE, il y a un dys-

fonctionnement à la PSEA en ce moment, qui pénalise les éducateurs du privé. Par exemple, les Section Leaders et autres Heads of Department, n'ont pas encore reçu leur allocation pour l'année 2020-21. «Raison évoquée : le manque de typists, selon le directeur de la PSEA. C'est un monument d'incompétence...» De plus, une quarantaine d'enseignants n'ont pas reçu leur boni de fin d'année ; si certains ont pu l'obtenir à la fin de décembre, d'autres attendent toujours. Il y a aussi la «travelling allowance» qui a été revue par le PSEA alors que tel n'est pas le cas pour ceux des collèges d'État. «Il y a même des cas où, sur la fiche de paye de certains éducateurs, ils n'ont pas payé l'allocation de décembre et ont même déduit le montant de leur paie. Nou finn met enn case pou sa.»

Il y a aussi les diplômes de quelques éducateurs qui ne sont plus reconnus par la PSEA, alors qu'ils

exercent déjà. «L'affaire a été référée à l'Equal Opportunities Commission (EOC) et nous félicitons le président de l'EOC d'avoir fait comprendre au directeur de la PSEA que ses explications étaient caduques et qu'il n'a pas l'autorité pour décider si ces diplômes sont reconnus.» Il devra venir de l'avant le 14 février pour dire qu'il a pu résoudre le problème ou pas. «Mo espere PSEA donn enn bon nouvel pou St-Valentin...»

Le président de l'UPSEE, Bhojepsard Jugdamby, n'a pas été tendre envers le directeur de la PSEA lui non plus. «PSEA scorpion dan pa pey travayyer, pa donn teaching licence...» Il a rappelé que le combat de l'UPSEE, d'ailleurs, dans le cas du Mauritius College peine à aboutir à cause de l'axe malsain entre le collège et l'organisme. Pour lui, la PSEA est un «éléphant blanc».

Shelly CARPAYEN



Pour les membres de l'UPSEE, la PSEA est un «éléphant blanc».

Actualité

LICENCE D'ENSEIGNEMENT

La position de la PSEA attendue aujourd'hui

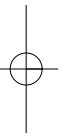
LE litige entre des enseignants et la *Private Secondary Education Authority* (PSEA) prendra-t-il fin aujourd'hui ? Rien n'est joué, évoquent les syndicalistes de l'éducation. Car c'est ce lundi 14 février que la direction de la PSEA doit se prononcer par rapport à sa précédente mesure entourant la validité et acceptation des licences d'enseignement devant l'*Equal Opportunities Commission* (EOC) à Port-Louis.

Une plainte avait été logée par un éducateur en 2021. «*Ce dernier possédait une licence en informatique de la British Computer Society du Royaume-Uni. Il s'agit d'une institution reconnue mondialement dans ce domaine et qui contribue au cursus des Grades 11 et 13. L'enseignant travaillait depuis un an dans un collège et voulait intégrer un autre département. C'est alors qu'on lui a annoncé que son certificat n'était plus valable, n'étant plus accepté*

par la PSEA», déclare Bhoseparsing Jhugdamby, président de l'*Union of Private Secondary Education Employees* (UPSEE).

Selon lui, plusieurs enseignants sont touchés par ce problème, comme ils détiennent des qualifications semblables. D'ailleurs, bon nombre d'entre eux ont perdu leur emploi. Le cas a ainsi été logé devant l'EOC car cela «*crée une disparité*». Selon lui, pour enseigner l'informatique, il faut posséder une licence en «*computer science*». Tout tient à l'appellation. Ces règlements de la PSEA s'appliquent à d'autres matières comme la physique, les «*food studies*», entre autres. «*Si cette situation persiste, personne ne voudra exercer dans le secteur éducatif*», poursuit-il. Les parties concernées, soit l'éducateur, ses représentants syndicaux et la PSEA, entre autres, se présenteront au siège de l'EOC dans la matinée. Affaire à suivre.

Melhia BISSIÈRE



| Ki News |

Kelvina Venden handicapée et limogée par la santé saisit l'EOC et la CCM

Kelvina Venden, limogée par le ministère de la Santé en novembre dernier, n'a pas chômé cette semaine. L'habitante de Centre-de-Flacq a saisi la Commission de Conciliation de Médiation (CCM) et l'Equal Opportunities Commission (EOC) pour contester son renvoi. La semaine dernière, le Défi Plus barrait sa Une avec les tribulations de cette femme de 28 ans, atteinte d'un handicap depuis

sa naissance. Recrutée au poste d'Attendant à l'hôpital Bruno Cheong, à Flacq, en janvier dernier, elle a, 10 mois plus tard, été déclarée « permanently unfit » par un Board médical. Ce, alors que dans un document officiel de l'établissement de santé, le travail de la jeune femme est qualifié de « very satisfactory ». La version du ministère de la Santé sur ce cas est toujours attendue.



Appendix





An institution set up under the Equal Opportunities Act 2008

COMPLAINT FORM

PARTICULARS OF COMPLAINANT

(To be filled in by the complainant or the person assisting him/her)

- 1. Title(Mr/Mrs/Miss):
2. Surname:.....
3. First Name:.....
4. National Identity Card Number:.....
5. Address:.....
6. Occupation:.....
7. Telephone (Home):..... (Work):.....
8. Mobile:..... Fax:.....
9. Email:.....

PARTICULARS OF RESPONDENT(S)

Alleged Discriminator(s)

- 1. Name(s) of person(s)/organisation(s) complained against:
2. Address:.....
3. Telephone:..... Fax:.....
4. Email:.....
5. Relationship to complainant (aggrieved person):.....

Equal Opportunities Commission
1st Floor, Belmont House, Intendance Street, Port-Louis, Mauritius
Tel: 201-1074; Fax: 201-3408; Email: eoc@govmu.org

2. Why according to you did the respondent(s) act in such a way?

.....
.....
.....
.....

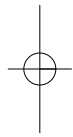
3. How has this problem affected you? What prejudice have you experienced and what would you like us to do following this complaint?

.....
.....
.....
.....

4. Do you have any witness(es)? Yes No

If Yes, please specify their names and respective contact address:

.....
.....
.....



5. Other Institutions

Have you submitted a complaint against the same person/organization in relation to the same facts to another institution/court?

Yes No

If **Yes**, please specify the name(s) of the institution(s) and the date(s) of the complaint.
(Please annex photocopies of same)

.....
.....
.....

6. Any other relevant information you would like to provide?

.....
.....
.....
.....

6. Documents

Please attach copies of all relevant documents. If you cannot provide same, kindly inform us where they may be obtained from.

.....
.....
.....
.....

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

.....

Signature

.....

Date

**Send this complaint form to:
The Secretary,
Equal Opportunities Commission,
1st Floor, Belmont House,
Intendance Street, Port Louis.**



For further information, please contact the Equal Opportunities Commission on 201-1074/201-3502. You are advised to access our website eoc.govmu.org wherein reference is made to the Equal Opportunities Act 2008 before filling this complaint form. You can also fax your complaint form on 201-3408 or email it on eoc@govmu.org.



1st Floor, Belmont House,
10 Intendance Street,
Port Louis
Mauritius

Tel: 201 3502 / 201 1074

Fax: 201 3408

Email: eoc@govmu.org

Website: eoc.govmu.org



One people One nation



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