

United Nations General Assembly Open-Ended Working Group for the purpose of strengthening the protection of the human rights of older persons Eleventh working session – New York, 6-9 April 2020

Introduction

Mauritius, as a welfare state, provides social protection and social security services to vulnerable people, including the elderly and the disabled persons policies. Seniors enjoy free medical services, free transport facilities, non-contributory old age pension, residential care homes and there exists several legislations that cater for their protection and safeguard their rights.

The Equal Opportunities Act and the Workers' Rights Act make provision for the access to justice and right to work and access to the labour market for the elderly.

(i) Access to Justice: Replies to Questions 1 to 8 are as follows:

Section (28), (32) and (33) of the Equal Opportunities Act caters for aspects regarding access to justice by the Elderly. Extract of the Act is Annexed. Avenues of redress under the Equal Opportunities Act are catered under section (28), (32) and (33) of the Act:

Where a person is of the view that he has been discriminated against on the ground of age in contravention of provisions of the Equal Opportunities Act, that person can seize the Equal Opportunities Commission, which has relevant powers of investigation and can require any employer to, amongst others, disclose information regarding any equal opportunity policy it has adopted in its place of work. The Commission also empowered to record statements under warning from any person, for the purposes of conducting an investigation. In addition to having powers of investigation, the Commission is also empowered to attempt to resolve

the matters by conciliation. In the event the Commission is of the opinion that the complaint cannot be resolved by conciliation, or it has attempted to resolve the matter but has not been successful in that attempt, it has to, after conducting and completing its investigation-

- (a) prepare a report relating to the complaint, with its recommendations;
- (b) send a copy of the report to the parties to whom the complaint relates;
- and
- (c) make a report available for inspection in such manner as it thinks fit.

Where the complaint remains unresolved, the Commission has to refer the complaint to the Equal Opportunities Tribunal forthwith with the consent of the complainant.

As regards the powers of the Equal Opportunities Tribunal, it can issue an interim order as a matter of urgency for the purpose of preventing serious and irreparable damage to a person or category of persons, or protecting the public interest, or preventing a person from taking any step that would hinder or impede a hearing before the Tribunal. It is also empowered to make orders declaring the rights of the complainant and the respondent in relation to the act to which the complainant relates, requiring the respondent to pay to the complainant, within such time as it may determine, compensation in an amount not exceeding 500,000 rupees, amongst others.

An appeal from any decision of the Tribunal lies to the Supreme Court of Mauritius, which is empowered to affirm, quash or alter any order made by the Tribunal.

Avenues of redress to breaches of provisions Workers' Rights Act 2019

A person wishing to vindicate a right not to be discriminated against on the ground of "age" pursuant to the provisions of the Workers' Rights Act 2019 can institute proceedings before the Industrial Court. Those proceedings are

conducted in the same manner as proceedings in a civil or criminal matter, as the case may be, before a District Magistrate.

Appeals from the Industrial Court are normally heard by the Supreme Court of Mauritius.

(ii) Right to Work and Access to labour market: Replies to 1 to 9 are as follows:

The labour legislations in Mauritius neither forbids the right to work of older persons nor their access to the labour market. The Workers' Rights Act 2019 (WRA) and the Equal Opportunities Act make provision for same.

In fact **section 10** of the Workers' Rights Act 2019 (WRA) stipulates that "a person aged 16 years and above shall be competent to enter into an agreement".

An extract of the abovementioned section is reproduced hereunder:-

"A person who is of the age of 16 or more shall be competent to enter into an agreement and shall, in relation to the agreement and to its enforcement, be deemed to be full of age and capacity."

Furthermore, the Employment Service of the Ministry also caters for the registration of older persons who are looking and are available for jobs. Some service delivery such as counseling and placement activities are also provided to them.

Major challenges, among others, faced by older persons are that whenever they lose their jobs -

- they have difficulties to be redeployed or find alternative jobs; and
- some of them do not have the experience or skills that match labour market requirements or are else are not adapted to the labour market needs.

Any person, irrespective of his age and where ever employed is covered by the labour legislation.

The number of older persons (aged 60 years and over) engaged in informal work as at 2018, is around 11,000, of whom around 2,000 are women.

With the coming into operation of the National Employment Department –

- the infrastructure of the different Employment Information Centres is being upgraded for ease of accessibility, and
- provision is being made concerning the delivery of new service such as one-to-one counseling, job prospects and workshops to all jobseekers, including older persons.

The Employment Service collects information on jobs and disseminate them through the website: <https://mauritiusjobs.govmu.org>, the media (TV and Radio programmes) and to youth centres, Social Security offices, Citizens Advice Bureaux and NGOs.

The Labour Division of the Ministry of Labour, Human Resource Development and Training operates 17 regional labour offices which are scattered around the island. The Officers posted therein ensure enforcement and compliance of the labour legislation through regular workplace inspections.

In addition, these labour offices have a well-established complaint handling mechanism whereby any worker, including older persons, can report their grievances/ complaints to the officers concerned. In case of breaches of provision of the labour laws and failure to take remedial actions, criminal prosecution or civil proceedings may be initiated against the defaulting employer.

Moreover, the Information, Communication and Education Section of the Ministry is responsible for sensitising and educating the labour force and the public at large through the dissemination of information on labour laws, either at workplaces or through the media (T.V. and radio).

In addition, as mentioned earlier, counseling and workshops conducted by the Employment Service are good practices that make the older people become employable and facilitate their access to the Labour Market.

- The workshops comprises, among others, the following themes;
 - (a) How to write a CV
 - (b) How to write a motivation letter
 - (c) How to search and apply for jobs
 - (d) How to prepare for an interview

All economic sectors of activity in Mauritius are covered by the labour legislation. There are 32 Remuneration Regulations which prescribe wages in respective economic sectors of activity whilst general terms and conditions of work are covered under the Workers' Rights Act (WRA) which apply indiscriminately to all workers, including older persons.

Sections 5 and 26 of the WRA on "*discrimination in employment and occupation*" and "*Equal remuneration for work of equal value*". These provisions prohibit workplace discrimination whether by an employer towards any worker, irrespective of age who is in his employment or a prospective employer towards a job applicant as well as on the issue of discriminatory payment of wage based particularly on age of workers.

Section 114(2) of the Act further provides a strong disincentive to discourage unwelcome conduct at the workplace. Any person found guilty would on conviction be liable to **a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 5 years** in contrast to the fine of Rs 75,000 and a term of imprisonment not exceeding 2 years under the repealed Employment Rights Act. In addition, Section 61(2) of the WRA specifies that a worker may claim that his/her contract of employment has been unjustifiable terminated where he/she is ill-treated by his/her employer. In that case, the worker may claim severance allowance as stipulated by the WRA for unjustified dismissal.

It is also to be noted that Sections (2), (5) and (6) of the Equal Opportunities Act with respect to rights to work of the elderly, to the extent that the Equal Opportunities Act prohibits direct and indirect discrimination on the basis of "age", the right of work of older persons is protected in Mauritius (see: sections 2, 5 and 6 of the Equal Opportunities Act as Annexed) . The Act binds the State.

In addition, section 10 of the Equal Opportunities Act prohibits discrimination on the basis of “age” by an “employer” or a “prospective employer” in the advertisement of a job, in the arrangements he makes for the purpose of determining who should be offered employment, in determining who should be offered employment and in the terms or conditions on which employment is offered, by refusing or deliberately omitting to offer employment to that person, amongst others. Thus, to the extent that Section 10 of the Equal Opportunities Act prohibits on the basis of “age” discrimination in the determination on who has to be offered a job, the right to work of older persons is protected. A copy of section 10 of the Equal Opportunities Act is attached.

Section 11 of the Equal Opportunities Act takes the protection further by extending the proscription against discrimination on the basis of “age” to persons already in employment. Accordingly, an employee is forbidden to discriminate against an employee (i) in the terms or conditions of employment that the employer affords that employee, (ii) in the conditions of work or occupations safety and health measures, (iii) in the provision of facilities related to or connected with employment, (iv) 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, (iv) by terminating the employment of the employee, amongst others. A copy of section 11 of the Equal Opportunities Act is also attached.