

**Responses to Guiding Questions 7 to 9 based on the
Plan of Action of Bridgetown, Article 7 (f)
to be presented at the
Meeting of the Working Groups 1 and 2 of the XX Inter-American Conference of Ministers
of Labour (IACML)
Quito, Ecuador – December 3rd to 5th, 2019**

Question 7

What strategies or initiatives is your institution developing regarding labor inclusion and non-discrimination of groups that face greater challenges in the world of work, such as persons with disabilities, afro-descendants, and indigenous populations, among others? We thank you for highlighting actions to strengthen inclusive enterprises, awareness-raising strategies, and improved access to training systems, as well as actions related to labor inspection and monitoring to safeguard the rights of these groups in the workplace.

The Constitution of Barbados, at Section 23 states:

“...(a) no law shall make any provision that is discriminatory either
of itself or in its effect; and

(b) no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority.

(2) ...the expression "discriminatory" means affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour or creed, 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 which are not afforded to persons of another such description”

The provisions of the Constitution have the effect of influencing the legal and regulatory frameworks and custom and practice, in relation to labour inclusion and non-discrimination. Further demonstration of the intent to apply these principles is underscored by the ratification in 1974, by Barbados, of two key ILO Conventions, namely:

- Convention No. 100 (1951) on Equal Remuneration; and
- Convention No. 111 (1958) on Discrimination (Employment and Occupation).

In the context of Barbados, the ongoing review and adjustment of the legal framework underpins actions to safeguard and improve the level of labour inclusion and non-discrimination in the world of work. It must also be highlighted that, the tripartite approach is applied in the development of legal and regulatory instruments, including Codes of Practice, to attain such inclusion and non-discrimination. The ideals of Sustainable Development Goal 8, which addresses the promotion of sustained, inclusive and sustainable economic growth, full and productive

employment and decent work for all, are reflected in the legal instruments, policies and programmes that Barbados continues to undertake, in relation to equality and non-discrimination in the labour market.

The Plan of Action of Bridgetown highlights that the following categories of persons are typically among those listed as being among the more vulnerable groups or persons who “... face the greatest challenges in the world of work:

- people with disabilities,
- the youth, women, migrants,
- Afro-descendants;
- and indigenous peoples.

The latter two categories are not normally considered to be areas of focus for Barbados where the majority of the population is of Afro-descent coupled with the fact that there is no indigenous population as exist elsewhere in the region.

With regard to the legal and regulatory framework, the following pieces of labour legislation, which mirror the associated ILO Conventions, are relevant:

- Employment Rights Act- 2012
- Employment Sexual Harassment (Prevention) Act – 2017.

The Employment Rights Act is under continuous review, to ensure that the provisions are well suited to environment. It is anticipated that more strides will be made when the present Employment (Prevention of Discrimination) Bill is enacted. Further strengthening of the efforts to foster inclusion and non-discrimination are seen in the development of the Protocol to Address Migrant Labour Conditions – 2017.

Protocol to Address Migrant Labour – 2017

The Protocol to Address Migrant Labour while specific to conditions in Barbados, is set in the context where regionally, there is the freedom of movement of skilled and unskilled labour within CARICOM. Additionally, situations arise where people outside the CARICOM grouping seek opportunities for employment in Barbados. The Protocol, which incorporates the concept of decent work, is freely available to the public in print and electronic formats and is hosted on the web sites of the Ministry of Labour and Social Partnership Relations and the Ministry of Foreign Affairs and Foreign Trade. The Protocol seeks to make all stakeholders aware of what is required when employing migrant workers and establishes the minimum conditions that should be adhered to. The Protocol therefore serves as a guide for employers and employees with a view to creating enabling and productive work environments.

The four fold-purpose of the Protocol is to:

- outline the conditions which should be adhered to by employers who will be utilising migrant labour;
- set out the rights and responsibilities of the employers and employees;
- ensure that migrant workers are treated with equity, and respect and to ensure that their human rights are not infringed upon; and

- ensure that employers, employees and counterpart agencies, are equally aware of the conditions that must be in place in order to comply with existing legislation and any international conventions that Barbados is signatory to.

In order to raise awareness of the Protocol amongst the social partners and within the community of migrant workers, summaries of specific sections of the document were produced, to highlight aspects such as - access to health care, the work permit process, provisions for social security, and key factors in the conditions of employment under the law.

Employment Rights Act- 2012

Employment (Prevention of Discrimination) Bill

The thrust to promote equal access to rights in the world of work is evidenced by the Employment Rights Act – 2012. This thrust will be further strengthened on the enactment of the Employment (Prevention) of Discrimination Bill.

The Employment Rights Act (ERA) applies to all workers in the private sector and statutory corporations. It is to be noted that employment related matters in the Public Sector are governed by a separate piece of legislation – the Public Service Act, 2007.

Under the ERA, every worker, regardless of his / her vulnerability, has access to certain minimum rights in employment, including the right not to be unfairly dismissed, however this does not negate the right of an employer to dismiss for a fair reason. Where a worker is dismissed solely for a reason, which may connote some element of discrimination under the ERA, then, that dismissal may be determined to be unfair. Included in the named reasons that may lead to a finding of discrimination on dismissal are:

- the belief or the fact that a worker has or had HIV/AIDS or any other life threatening illness;
- the worker is or was disabled
- matters that relate to the race, colour, gender, age, marital status, religion, political opinion or affiliation, national extraction, social origin or indigenous origin;
- matters that relate to the responsibility of an employee for the care and welfare of a child or a disabled family member under the immediate control of the employee, where the responsibility is associated with an emergency affecting the child or disabled family member.

The Employment (Prevention) of Discrimination Bill, seeks to protect workers from discrimination on grounds that mirror those contained in the ERA. The Bill makes provision for the prevention of discrimination in the course of employment and during the processes of job creation and recruitment. Examples of the grounds on which a claim of discrimination arise include: race, origin, sex, social status, pregnancy, maternity and family responsibility.

Employment Sexual Harassment (Prevention) Act

Earlier this year, 2019, the International Labour Conference adopted Convention 190 on violence and Harassment. This followed the assertion by the ILO that "... the pervasiveness and the cost of sexual harassment, a manifestation of sex-based discrimination, has become a growing concern at the national and international level." It is opined that to a considerable extent, young workers, women and the disabled are likely to be victims of workplace sexual harassment.

Barbados in 2017, introduced the Employment Sexual Harassment (Prevention) Act. The introduction of the Act signalled the start of a new chapter in the practice and administration of employment relations in Barbados. The Act makes provision for the protection of workers in both the public and private sectors from workplace sexual harassment. Additionally, the Act provides a framework for the reporting of claims by employees, outlines a fair procedure for the hearing and determination of claims and compels each employer to establish a clear written policy statement against sexual harassment in the workplace. Employees have the responsibility to adhere to the policy. By design, the act is gender-neutral and non-discriminatory.

Since its enactment through to the present, officers have been called on discuss to provisions of the instrument in a wide cross-section of workplaces, on behalf of the representative organisations of employers and employees and in civil society organisations. In an effort to assure easy implementation in workplaces, the Labour Department, in collaboration with IMPACT Justice – a civil society project being executed at the University of the West Indies, Cave Hill Campus, prepared two documents for distribution to the public:

- a *Model Workplace Policy Statement Against Sexual Harassment*; and
- the companion booklet entitled *Sexual Harassment in the Workplace – What You need to Know* – to provide employers and employees with basic information on the operation of the Act.

Strategies

A combination of strategies is utilised to disseminate information to the social partners and the general public. The Ministry of Labour and Social Partnership Relations hosts a web site where pertinent information is uploaded for the benefit of all parties. Efforts are underway to revamp the website so as to improve effectiveness and in particular there is the intention to ensure that the content of the website caters to the needs of all sectors amongst the social partners, with particular emphasis on the interests of the youth. Traditional methods such as the hosting of workshops and the delivery of seminars, continue to attract interest. On an annual basis, the Industrial Relations Section and the Occupational Safety and Health Section of the Labour Department, in addition to the Anti-Discrimination Unit of the Ministry of Labour and Social Partnership Relations, host seminars, where a cross-section of employers and employees are apprised of their legal obligations and responsibilities with regard to labour legislation, including matters concerning equality and the prevention of discrimination.

In an effort to vary the traditional approach to awareness building and also reach more members of the workforce, mobile tours are undertaken, where in the course of a day, multiple

workplaces are visited by officers. On those occasions, information, usually in a paper-based format is shared along with exchanges on any related concerns on the part of employers or employees. Routine workplace inspections conducted by Labour Officers and Safety and Health Officers, coupled with the day-to-day response to enquiries, also serve to be an effective tool for assessing and addressing any concerns.

Collaboration with the social partners to share information with their various memberships, is ongoing. To this end, representative organisations of employers and employees often call on the expertise of officers to deliver presentations during their respective in-house training programmes.

The Government Information Service continues to be a primary resource to facilitate the transmission of information via the print and electronic media. Through this channel, for example, a series of short televised and radio programmes were aired on the Employment Sexual Harassment (Prevention) Act, the Employment Rights Act and the Protocol to Address Migrant Labour.

Question 8

How do your labor regulations protect and support those who provide care (care-givers) to people in vulnerable situations? Please provide examples.

Generally, the rights and privileges afforded to employees under the Employment Rights Act and those to be afforded on enactment of the Employment (Prevention of Discrimination) Bill, apply to persons who are employed as care-givers. The Employment Rights Act – 2012 (ERA) and the Employment (Prevention of Discrimination) Bill are the two pieces of legislation that make specific mention of the persons who may be categorised as care-givers. The ERA (section 30), for example, specifically provides that it is unfair to dismiss an employee for a reason that relates to the responsibility of that employee to care for a child or a dependent family member with a disability, where that responsibility is associated with an emergency that affects the child or dependent family member.

The Employment (Prevention of Discrimination) Bill, at Section 7, stipulates that an employer shall, in response to a request from an employee on the grounds of family responsibility, make any adjustment for the employee as may be suited to the circumstances. The adjustments may include:

- altering the work hours of the employee;
- allocating some of the employee's duties to another person;
- and
- assigning the employee to different place of work.

A care-giver who has the status of employee has the right to a fair process for the hearing of complaints that are brought under those two pieces of legislation. In either case, the employer

is legally obligated to address any claim brought by an employee and alternatively, where the matter is not settled at the workplace, it may be referred for conciliation by the Chief Labour Officer. In the event that there is no resolution at the level of the workplace nor the Chief Labour Officer, the care worker has recourse to the Employment Rights Tribunal.

Question 9

Is your institution developing or planning to develop any action aimed especially at persons deprived of liberty? We thank you for indicating current or potential actions, as well as sharing any information you consider relevant to address this particular group.

The Barbados Employment and Career Counselling Service (BECCS), is that agency of the Ministry of Labour and Social Partnership Relations which serves as the national employment service. The agency has the mandate to "...find decent employment for all Barbadians through the provision of job placement services for both local and overseas employment." The functions of BECCS include assisting persons to be employable by offering free career guidance and counselling services. These services are offered equally all persons including those who may have been deprived of liberty and are to be reintegrated into the world of work.

BECCS represents the Ministry of Labour and Social Partnership Relations on the Prison After-Care Committee. The functions of the Committee, established under Rule 29 of the Prison rules 1974 (Cap. 168) include:

- the review of cases prisoners from time to time during their sentence for the purpose of assisting with their rehabilitation;
- consideration of the recommendations of the Superintendent of the Prison and the Chief Probation Officer regarding grants and other assistance to be made to prisoners on discharge;
- and to assist wherever possible with job placements.

A former inmate who is seeking the services of BECCS for employment in the local labour market is not required to disclose his / her former status to that agency.

Note: Engagement of the Third Sector It is acknowledged that in many instances persons who are vulnerable often rely on the services offered by NGOs and other civil society organisations. Currently, The Government, through the Ministry of Labour and Social Partnership Relations is currently preparing a regulatory framework to further develop the operations of Civil Society organizations. The Caribbean Policy Development Centre (CPDC) has developed a White Paper entitled "A Call for NGO Legislation in Barbados" and the Government is committed to ensuring that this is accomplished (brought to reality). A Social Justice Committee, chaired by the Minister of Labour and Social Partnership Relations, has been established under the umbrella of the Social Partnership. The Committee is representative of a number of civil society organisations such as those that represent the interests of women, men and the youth and organisations representing people living with disabilities. The mandate of the Social Justice Committee is to consider matters

that relate to social justice in the areas of poverty alleviation, the role of the family, discrimination, access to education, the integration of people living with disabilities, access to employment, safety and security and the environment.

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