General, are there rules against age discrimination which have constitutional status? What do these rules say precisely, and how do they work at lower levels of law making?

Section 9(3) of our constitution states that the state may not discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age disability, religion, conscience, belief, culture, language and birth. The Employment Equity Act 55 of 1998 prohibits unfair discrimination. It states that no person may unfairly discriminate, directly or indirectly against an employee in any employment policy or practice on one or more grounds, including...age. It further states that it is not unfair discrimination to distinguish, exclude or prefer any person on the basis of an inherent requirement of the job.

1(b) Which international agreements and conventions dealing with age discrimination has your country ratified?

The ILO convention No111 dealing with employment and occupational discrimination

1(c) What are the main sources of Law against age discrimination?

Our constitution, the basic conditions of Employment Act 75 of 1997. The Employment Equity Act and the ILO convention.
1(d) Are collective agreements bound by the provisions?
Yes.

1(e) Which groups are protected by these provisions, young employees, older employees or is it just forbidden to consider age as a decisive factor for working conditions?

It is forbidden to consider age as a decisive factor for working conditions.

2. Please specify, what are the criteria according to which it is determined that it is an unlawful age discrimination (i.e. relevancy of the age to the nature of the job)?

The age must be an inherent requirement of the job. If the age is not an inherent requirement for the job then it would be unlawful to discriminate against a person based on his/her age.

3. Do you have provisions stating minimum or maximum age for hiring employees?

The Basic Conditions of Employment Act stipulate that it is an offence to hire a child under the age of 15. A child between 15 and 18 may be hired only if the work is appropriate for a child and the employment will not place the child’s wellbeing, education, physical or mental health or spiritual, moral or social development at risk.

4. Do you have provisions stating minimum or maximum age for entering pension funds systems?

No any employee that is legally employed may enter into a pension fund system.

5. Have you got collective regulations or statutory provisions, which give certain protections or certain allowance only if the employee has achieved a certain age? Describe them.
Yes, in terms of our pension laws an employee may only receive certain pension benefits at the age of 55. The retirement age is 60 years at which age the employee becomes entitled to full pension. During retrenchment the employee and the employer may agree that the employer goes on company initiated early retirement which is normally between age 50 and 55. If the retirement age is 60 and the company and employee agree that the employee should retire at 55 the company will pay in the 5 year difference.

6. Does the computation of wages depend on the age of the employee? Describe this.

No.

7. Does the duration of holiday or the pay during sickness depend on the age of the employee or on seniority or both?

No.

8. Are there any provisions for elder employees, which entitle them to a reduction of working hours? Describe them.

No.

9.a Is it allowed to terminate an employment relationship (dismiss), due to the employees age? If yes-which age?

No.

b Is it allowed to terminate an employment relationship (dismiss), because the employee is entitled to get an old-age pension? If yes-which – at which age

Yes. Depending on the collective agreements and statutes. The retirement age is normally 60 and the employer may force the employee to go on retirement. If he refuses the employment relationship can be terminated but the employee will get his full benefits.

10. Have you got provisions in your labour law system, which have the purpose to promote the vocational integration of
employed older employees or young employees and in order to do so weaken their statutory protection? For instance are there provisions which authorises the conclusion of fixed-term contracts of employment once the worker has reached a certain age? Does such provision exist for certain groups of employees?

No, but collective agreements to that effect may be entered into by workers and employers.

11. Have you got provision which give special statutory protection in order to prevent the termination of employment contracts of older or young employees?

Yes, the Employment Equity Act.

12. What are the rules governing the burden of proof?

The employee only has to proof that he/she was dismissed. The burden to proof that the dismissal was fair is on the employer.

13. Are there any administrative or criminal penalties? Please give details.

It is a criminal offence to hire a child under the age of 15.

14. What are the most common cases at court regarding age discrimination?

When companies refuse to hire people above the age of 50. It is mostly indirect discrimination cases. Employers will as a rule never tell an employee that he/she is not hired because of his age.