



South African Human Rights Commission

Parliamentary Equality Review Process

"The Equality Courts' impact on persons with disability and women - The experiences of the South African Human Rights Commission"

Presentation to Justice and Constitutional Development Portfolio Committee, NA; Joint Monitoring Committee on Children, Youth and People with Disability, Joint Monitoring Committee on Improvement of Quality of Life and Status of Women and Gender.

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1. Introduction

The South African Human Rights Commission (the Commission) welcomes the parliamentary initiative to conduct a review process of our equality legislation. On 13 June 2003, Equality Courts were designated in terms of the Equality Act (Promotion of Equality and Prevention of Unfair Discrimination Act 4/2000, "the Act"). Thus, some three years has passed since members of our communities have had the remedies contained in the Act available to them to use should they be subject to unfair discrimination, hate speech or harassment. It is therefore an appropriate time to review what has been happening in these courts, identify the challenges and weaknesses and seek solutions. Equality Courts are an important component in ensuring that our constitutional values of equality and dignity are achieved. They assist in the eradication of unfair discrimination and the building of a national culture of tolerance and respect for diversity.

It is noted that this review process seeks to understand the impact of Equality Courts in the lives particularly of women and persons with disabilities. The Commission on Gender Equality is granted the mandate in terms of the constitution to address gender issues and is empowered in terms of the Act to take gender matters to the Equality Court. This may account for why the Commission has little experience in this area. The Commissions' experience of the Act is predominantly in the area of racial discrimination. The Commission has also had experience of the Act in the area of discrimination against persons with

physical disabilities. This presentation will seek to highlight the intersection of the Commissions' experiences of the Equality Courts and persons with physical disabilities.

In preparing for this presentation an internal questionnaire was compiled and distributed to all legal sections and relevant departments and units within the Commission. Much of the information contained herein draws on the responses that were received to the questionnaire.

2. The Mandate of the Commission

The South African Human Rights Commission was established in terms of Chapter 9 of the Constitution of the Republic of South Africa Act, 1996 (Act 108/1996) to strengthen constitutional democracy in South Africa. In terms of Section 184 of the Constitution, the SAHRC has the following specific functions:

- a) To promote respect for human rights and a culture of human rights;
- b) To promote the protection, development and attainment of human rights; and
- c) To monitor and assess the observance of human rights in South Africa.

In the performance of its functions the SAHRC is primarily guided by the Bill of Rights, as contained in the Constitution, existing rights as developed through our common law and other statutes and international human rights instruments.

Objectives of the Commission

In seeking to carry out its mandate the Commission pursues the following primary objectives:

- To promote human rights and contribute to developing a sustainable culture of human rights through education and training, community outreach and public awareness campaigns;
- To monitor human rights by providing comprehensive research and documentation mechanisms designed to advance and assess human rights, especially social and economic rights;
- To protect human rights by investigating individual and systemic complaints of human rights violations and provide appropriate redress;
- To entrench the Commission as the major resource and primary focal point for human rights promotion, protection and monitoring in the country;
- To be accessible and work in a collaborative manner with organs of State, Civil Society and other Chapter 9 organizations;
- To advance the public and parliamentary accountability of the Commission's work and maximize the utilization of public resources through sound strategic management and efficient financial and administrative systems and procedures; and
- To publicize and convey the role and work of the Commission to the general public via an integrated internal and external communications

strategy.

Service Delivery Environment¹

The service delivery environment within which the Commission operates straddles all spheres of political, social, cultural and economic life in South Africa. It is this service delivery environment that also impacts on the experience of violence by those who are vulnerable. The environment is complex and characterized by the following challenges:

- Poverty, unemployment and the degradation of human dignity
- Unequal treatment on the basis of various discriminatory grounds
- Inadequate delivery of social services including education, housing, social Security, water, etc.
- The undermining of a human rights culture through crime and violence.
- Violence against women and children
- The impact of the HIV/ AIDS pandemic on life in South Africa

3. Locating equality and disability work in the Commission

The Commission is made up of commissioners and a secretariat. The disability work of the Commission is mainstreamed through all of its various components rather than being located within one department, unit, or provincial office.

In line with a decision taken at the Commissions' Strategic Planning session in February 2006 a new position of Disability Coordinator has been created within the office of the CEO. This position will seek to integrate more effectively and create synergies between the different centers of work in the Commission on disability issues.

3.1. Commissioners

Commissioners who are appointed by the State President are responsible for providing policy and guidance to the Commission. Commissioners are responsible for raising the profile of the Commission, overseeing public hearings, strategic interventions in human rights, attending to media engagements, representing the Commission and human rights policy development. The Commission currently has five full time commissioners (one who is on long leave for a year) and one part time commissioner. It should be noted that during the Commissions' first term from 1997 - 2002, commissioner Jerry Nkeli, who had been nominated by DPSA, was dedicated to focusing on disability issues. With his departure, commissioner Charlotte Mc Clain took on the additional portfolio of

¹ Extract from Strategic plan 2006/7

responsibilities on the Commission with regards to the achievement of equality in the country.

The Equality Unit is responsible for:

- Preparing the statutorily required Annual report on Equality to parliament. (Section 28(2) of PEPUDA)
- Visiting and monitoring Equality Courts throughout the country (an example of a report from this activity is attached)
- Conducting various training workshops on equality matters
- Compiling legal opinions on matters
- Conducting research and presenting this at public forums
- Producing internal monthly newsletter on equality matters

The Equality Unit has conducted its own research recently on logistical issues around Equality Courts (e.g. where courts are established; whether training has been provided; and the number of cases received, withdrawn, finalized and referred). This research is attached herewith as Annexure "a". The Unit has also compiled recently "*A Guide on how to use the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000 (PEPUDA)*". This is attached as Annexure B herewith.

3.7. Provincial Offices

The provincial offices of the Commission are structured in order that education, training and awareness programmes can be carried out in the provinces. Also, each office houses a legal component that handles complaints.

The provincial offices are situated in eight of our nine provinces, namely:

- Eastern Cape
- Free State
- Gauteng (covers North West)
- Kwa Zulu Natal
- Limpopo
- Mpumalanga
- Northern Cape
- Western Cape

4. Equality Court Work

4.1. Establishment of provincial offices and law clinic status

Equality court work is conducted through the Legal Services Department, which is based at the Head Office and the legal sections within each of the provincial offices. The majority of the offices have law clinic status. As can be seen in the tables below some of the provincial offices have been in existence for a longer period of time than others.

Province	Established	Law Clinic Status
Eastern Cape	2001	No
Free State	2001	No (working arrangement to refer cases to Law Clinic at UOFS) Has an advocate.
Gauteng / North West	1996	Yes since 2002
Kwa Zulu Natal	1999	Yes since 2005
Limpopo	1999	Yes, since 2006
Mpumalanga	2005	No – in the process of applying for law clinic status
Northern Cape	2004	Yes, since 2005
Western Cape	1996	Yes, since 2003

Is law clinic status necessary for the SAHRC to assist persons with Equality Court matters?

This question was mooted within the Commission. After careful consideration of the Act it was agreed that law clinic status is not necessary in order that our legal staff can assist members of the public in bringing matters in the Equality Court. The basis for this is found in section 20 of the Equality Act which states:

Institution of proceedings in terms of or under Act

20. (1) Proceedings under this Act may be instituted by –

- a) any persons acting in their own interest;
- b) any person acting on behalf of another person who cannot act in their own name;
- c) any person acting as a member of or in the interest of, a group or class of persons;
- d) any person acting in the public interest;
- e) any association acting in the interests of its members;
- f) the South African Human Rights Commission, or the Commission for Gender Equality.

The Act was created to be an accessible mechanism through which people whose rights to equality have been violated can receive redress. The Guiding principles of the Act refer to "...the expeditious and informal processing of cases which facilitate participation by the parties to the proceedings"³.

Thus, both the Guiding Principles and the provisions of PEPUDA that provide standing to parties to initiate proceedings provide a basis for the Commission to assist members of the public to bring matters in the Equality Court. Despite this, an internal questionnaire within the Commission indicates a view that there is a need for professional attorneys and advocates to assist members of the public. This is premised on attorneys and advocates being familiar with court

³ Section 4(1) Promotion of Equality and Prevention of Unfair Discrimination Act 4/2000.

procedures and how things operate. Based on this, there was a strong feeling that Law Clinic status is preferable in order for the Commission to effectively and professionally assist members of the public.

It was also cited that there is a perception amongst the public that when approaching a court it is necessary to have the assistance of an attorney or advocate. It was also stated that there is a lack of awareness that a lawyer is not needed in Equality Court proceedings. In addition it is felt that insufficient and inadequate training has been given to court officials to assist members of the public who are unrepresented.

Finally, many of the respondents in the equality matters have had legal representation. This places the respondent in a position of power and it thus becomes necessary to level the playing field by ensuring that the complainant has legal representation. It should be made known to magistrates that they can call upon the Commission for assistance where legal representation is needed in a Equality Court matter. Also, there should be an arrangement with the Legal Aid Board whereby legal aid attorneys can be made available where it is in the interest of justice that a complainant be provided with legal assistance.

4.2. Number of cases concluded in Equality Courts

To date, the Commission has fifteen (15) cases that have been taken to the Equality Court and concluded. In some provinces, there are no cases that have been taken to the Equality Court. This does not mean that there have not been cases that have been considered for possible taking to the Equality Court or cases that for a variety of reasons do not get to the Equality Court (this will be discussed further).

It is interesting for example, that the KZN office interprets the legislation strictly and racial incidences that occur at the work place are not referred to the Equality Court whereas the Northern Cape office has taken such matters successfully to the Equality Court.

Most provincial offices have a few cases that are currently pending in the Equality Courts. Each office has a number of cases that have been referred to the court and are yet to be finalized. However, there is no marked increase from the current numbers (e.g. Mpumalanga 5; Head Office 12; Kwa Zulu Natal 1, Free State 3)

Provincial Offices and number of finalized Equality Court matters as of October 2006

Province	Number
Eastern Cape	1
Free State	0

Gauteng / North West	6
Kwa Zulu Natal	0
Limpopo	1
Mpumalanga	3
Northern Cape	2
Western Cape	2
TOTAL	15

Summary of cases

1. *Willie Bosch vs Minister of Safety and Security & Minister of Public Works, 2006, Port Elizabeth Equality Court, Eastern Cape*

The complainant was successful in alleging that the Kebega Police Station was not accessible as it had no assistive devices. He was therefore denied access to the building when he went there to pay his firearm license renewal fee. The matter was heard and the court made an order that: offices that assist the elderly and the disabled should be moved to the ground floor; within two financial years a lift should be installed in the building; and, that the department issue an unconditional apology to the complainant and disabled persons generally.

2. *Viera Case, Johannesburg Magistrates Court, Gauteng*

The complainant's son is studying at a tertiary institution where there are no ramps for wheelchairs and his son is a quadriplegic. The matter was lodged in the Equality Court. There was a directions hearing and a postponement for a joinder application. During this period, the respondent went ahead and built the necessary ramps. The matter was eventually dismissed as the ramp was built.

3. *Sekati Case, Gauteng*

The complainant was wheelchair bound and alleged that the block of flats where she resides does not have facilities for wheelchairs. The matter was heard and the court ordered that this was discrimination on the grounds of disability. The respondent was ordered to complete the necessary renovations in order to ensure that there is a ramp. The implementation of the order has been monitored by the Commission.

4. *Esthe Muller Case vs Department of Justice & Department of Public Works, Germiston Equality Court, Gauteng.*

The SAHRC assisted this complainant in bringing her matter before the Equality Court. She is a quadriplegic lawyer who was being denied access to courtrooms due to the inaccessibility of government buildings. She was thus unable to practice her profession in certain instances. Ms Muller was successful in her matter and this has led to various undertaking by Public Works and the Justice Department to ensure that court buildings are accessible to everyone.

5. *Nkwatshu Case, Gauteng*

A black complainant approached a local day care centre and inquired if there was space available for his young child. He was informed that there was no space at the crèche. When a white Afrikaans speaking person telephoned the crèche she was informed that there were six places available. The matter was settled out of court. The Respondent gave an unconditional apology and also placed an advertisement in the newspaper apologizing for their racially discriminatory conduct.

6. *Kaunda Case, Johannesburg Equality Court, Gauteng*

The complainant alleged that he was not permitted to sit on specific benches as they were demarcated for whites only. The matter was taken to the Equality Court. However, the case was dismissed due to insufficient evidence.

7. *'The Barbershop case', Jody Kollapen vs Du Preez, Pretoria Equality Court, Gauteng*

The chairperson of the Commission lodged a complaint in the Equality Court after he was denied a haircut on the basis that he was not white. The shop assistants stated that they did not cut Indian hair. Expert evidence demonstrated that there was no difference in cutting Indian and white hair. The shop was ordered to: issue an unconditional public apology; pay a fine of R10 000 to a charity of the Chair's choice; and, the hair salon would obtain the services of a hairdressing instructor who will train staff to cut all types of hair, especially hair types classified as ethnic or African. The SAHRC would prepare a report for the court after liaising with the bargaining council for the hairdressing industry and service providers to ensure that all courses include a component training hair stylists to cut the hair of all people in South Africa. Du Preez invited the Chair for a haircut at any one of his salons.

8. *Abogya Jonathan Manful Case, Lebogakgomo Equality Court, Limpopo*

In this case, the respondent was challenging the definition of a 'historically disadvantaged individual' (HDI) as contained in the regulations to the Procurement Policy Framework Act. The presiding officer held that the matter must be heard in the High Court as he did not have the jurisdiction to pronounce on the correctness or otherwise of Regulations to an Act.

9. *Ayesha Rajah v Merry Pebbles, Sabie Equality Court, Mpumalanga*

The complainant, a lady of Indian descent, was denied accommodation at Merry Pebbles Resort. She was told that the place was fully booked. However, when her white companion with whom she was traveling made the same request, accommodation was made available for her. It was quite clear that the denial for accommodation was based on racial discrimination.

10. *Fishman v Barkhuizen, White River Equality Court, Mpumalanga*

The complainant, a Jew, woke up to find his neighbour, Mr. Barkhuizen (the

respondent) had painted the wall of his own house(the respondent's wall) which is facing the complainant's shop with a swastika and words "hubrizo mamzer". The words mean Jewish bastard. The respondent admitted to painting the wall as part of an artistic mural and that he was exercising his right to freedom of expression. This conduct was found to be hate speech by the Equality Court.

11. *Ranto v Van Rooyen, Nelspruit Equality Court, Mpumalanga*

The respondent Mr. Van Rooyen requested the complainant's ID book. He thereafter proceeded to make a copy of the complainant's ID photo. However, he placed a picture of a baboon over her ID photo. He then gave the ID book and the copy of the "baboon ID" (sic) back to the complainant. The complainant was distressed by the respondent's conduct. The court found that these actions amounted to racial harassment.

12. *Cacadu vs Paul van Zyl, Beaufort West Equality Court, Northern Cape*

The complainant had a dispute with his employer and was insulted. He was told to "loop jou kaffir" (sic). The court found in favor of the complainant.

13. *Johannes Tities vs Gustav Ekkerd, Upington Equality Court, Northern Cape*

The complainant alleges that he was called a 'skelm hotnot'. The matter is currently awaiting decision of the presiding officer on whether the matter will be heard in the Equality Court or referred to another forum.

14. *Pillay / De Vos Case vs Sliver Club, Cape Town Equality Court, Western Cape*

The Sliver Club, a gay club, denied access to De Vos' partner, Pillay on the basis of racial discrimination. The matter was settled out of court and the settlement agreement was made an order of court.

15. *Mkhize vs Edgemoor High School, Blue Downs Equality Court, Western Cape*

There was a physical fight between the black complainant and another white learner. It was alleged that the incident occurred due to racial discrimination. The matter was settled out of court and the settlement agreement was made an order of court.

4.3. Length of time the case took and outcome

Depending on the court involved it appears to take varying amounts of time for matters to be finalized. There have also been a couple of incidences where matters have taken longer due to joinder applications of other parties after the commencement of proceedings.

There was a general sense that in some instances the clerks of the court and presiding officers are hesitant to act, as they are unfamiliar with the Act and the proceedings. The Head Office stated there was general non-compliance with

time lines that are set out in the Act.

Length of time and outcome of case

Case	Length of time	Outcome
1. <i>Willie Bosch</i>	1 year	Order that the building be made accessible.
2. <i>Muller</i>	Approx 6 months	Order that all court buildings to be made accessible
3. <i>Sekati</i>	Approx 6 months	Order that the landlord must install a wheelchair ramp
4. <i>Viera</i>	Approx 6 months	Order that Public school to be made accessible to learners with disabilities
5. <i>Nkwatshu</i>	Approx 6 months	Order that complainants child be admitted to predominantly Afrikaans school Unconditional apology
6. <i>Kaunda</i>	Approx 6 months	Dismissed for insufficient proof of racial discrimination
7. <i>Kollapen</i>	Approx 6 months	Unconditional public apology Fine of R10 000 to charity of complainants' choice Report to court on ensuring that all hair stylists are trained to cut everyone's hair.
8. <i>Manful</i>	10 months	Referred to another forum
9. <i>Ayesha Rajah</i>	9 months	R7 500 award for discrimination on the basis of race
10. <i>Fishman</i>	1 year	R2 000 award for hate speech (appeal in progress ⁴)

⁴ The Commission is taking the amount of the award on appeal as it is of the view that it is too low

11. Rantho	1 year	R5 000 award for hate speech and discrimination on the grounds of race
12. Cacadu	During 2004 /5 there was no presiding officer designated in Upington this led to delays	R2 000 Compensation awarded and an unconditional apology.
13. Tities	As above	Matter resolved out of court, apology given
14. Pillay / De Vos	3 months	Settlement agreement was made an order of court. R10 000 paid to complainants organization of choice and an unconditional apology
15. Mkhize (Edgemead case)	2 ½ years	Settlement agreement was made an order of court. R10 000 paid to organization of choice, unconditional apology and a racism audit to be conducted at the school

4.4. How matters are referred to the Equality Court

In most offices and particularly the more rural provinces such as Mpumalanga, Northern Cape and Free State, the office assists the complainants throughout the process of referring a matter to the Equality Court. Mpumalanga and Northern Cape are relatively new offices and therefore have lighter caseloads than other provinces. However, it is interesting that their approach appears to ensure that matters are successfully taken through the Equality Court process. The Head Office also assists complainants in accessing the court and providing them with all necessary assistance.

In some offices (e.g. Western Cape), should the complainants wish to proceed with a matter in the Equality Court then they are sent on their own to the Equality Court. In some cases they may be assisted to complete the forms. However, the province has recently become aware that not all Equality Courts as easily accessible as was thought and that complainant's may need assistance.

General concerns were expressed that should an illiterate member of our community go to Equality Court on her or his own that she or he would find it difficult to access the court. Very often the security staff at the entrance to the court are not aware of the Equality Court.

Accessibility of Equality Courts

Province	Accessible ⁵	Clearly and visibly marked	Illiterate complainants
Eastern Cape	No	No	No
Free State	Yes	No	Unlikely
Gauteng / North West	Mostly	Sometimes	Maybe ⁶
Kwa Zulu Natal	Uncertain ⁷	Not always	Not always
Limpopo	Yes	No	No
Mpumalanga	Yes	No	No
Northern Cape			
Western Cape	Not always ⁸	Not all ⁹	No

4.5. Preparedness of Equality Court staff and magistrates

It is trite that the Equality Act and the procedures are new to the courts staff and magistrates. Training however has been provided to many of the staff. However, there is a lack of usage of the courts and thus there is little opportunity for many of the staff to put their knowledge acquired during training to use. In some courts the clerk of the court did not know what was expected of her/ him¹⁰. This lack of knowledge can lead to delays in the matter.

It was felt that there is an ongoing need for training of staff. Some staff have been trained some time ago and have not had an opportunity to use the knowledge they received and may therefore have forgotten a lot that was taught. Also, some of the staff that were initially trained may have left the Department.

The Head Office has found that there has been a lack of compliance by the clerk of the court and the magistrate with the time frames that are stipulated in the Act. Also, some presiding officers appeared unfamiliar with the Regulations.

⁵ It is unclear whether those who filled in the questionnaire realized that this question refers to accessibility in terms of being wheelchair accessible.

⁶ This would depend on the Equality Clerk and whether she / he has received sufficient training and understands her / his duties

⁷ KZN offices states that they are yet to visit all the Equality Courts in the province

⁸ Hermanus Court is not accessible

⁹ Cape Town Equality Court was difficult to locate in the building. "On one occasion the Legal Officer visited the Cape Town Equality Court and found it after searching for half an hour. At the court entrance the Security Guards had no idea where the Equality Court was. They sent her over to the Regional Court across the Road. At the regional Court she was referred to about four different people and she had to wait in a queue for assistance. Only after making a telephonic enquiry was she advised it is over at the Magistrate Court and which room number. A similar process occurred at the George Equality Court. Only after speaking to the 3rd person was she able to meet with the Clerk of the Equality Court. At both Courts there was no signage."

¹⁰ E.g. White River Equality Court, Mpumalanga

In Limpopo it was felt that neither the magistrate nor the clerk of the court were familiar with the Equality Court procedures. They did not appear to know what was expected of them¹¹.

In KZN there was a hesitancy by the magistrate to want to engage with the matter because he was unfamiliar with the Act and the process¹².

The Free State office has recently referred a matter to the Equality Court and is finding staff very helpful. Both the clerk of the court and the magistrate appears familiar with what is expected of them.

4.6. The experience of discrimination in provinces

Racial discrimination appears to be the most predominant form of discrimination that is still experienced in South Africa. The disability sector has also been making use of the Equality Courts in order to ensure that the built environment is made more accessible for them.

Most cases appear to be direct discrimination cases. We are yet to see cases of indirect discrimination being brought in the Equality Court. The racial discrimination cases also appear to be direct and blatant discrimination cases. This may account for why these cases tend to settle out of court.

The Northern Cape tends to have a number of verbal racial discrimination and hate speech cases. In a typical matter which is currently ongoing, a coloured farm worker was told to "roep daai kaffir" (sic); "Los daai kaffir uit en doen jou werk. Kyk jy is a kaffir, 'n kaffir bly jy 'n kaffir tot jy dood gaan" (sic) and "Se daai kaffir moet nie hier kom rond ry nie" (sic). This demonstrates the overt and blatant forms of direct discrimination that still exist in this province. The matter is being defended.

Whilst matters have been brought in the area of disability, all of these cases pertain to persons who are wheelchair bound. There have not been cases brought by persons with other types of disability such as blind persons, deaf persons or person with intellectual, cognitive or psychiatric disabilities.

The Commission has no experiences of unfair discrimination cases on the grounds of gender, sex, pregnancy or marital status. There have also not been cases of discrimination on the grounds of ethnic or social origin despite it being known that there are incidences of xenophobia and discrimination against non-nationals.

The Commission has a couple of age discrimination cases that it is currently busy with.

¹¹ Lebowakgomo Equality Court, Limpopo

¹² Umsinga Equality Court, KZN

The Commission has not had any cases of discrimination on the grounds of religion, conscience, belief, culture, language or birth.

Types of discrimination complaints received versus predominant forms of discrimination in a province

Province	Complainants referred to court / Received at SAHRC	Discrimination in province
Eastern Cape	Racial discrimination	Racial Discrimination
Free State	Racial discrimination against children	Racial discrimination
Gauteng / North West	Racial discrimination, gender discrimination, disability, hate speech	Discrimination on the grounds of race, gender, disability & sexual orientation
Kwa Zulu Natal	Racial discrimination	Racial discrimination, particularly within the workplace; verbal discrimination against people with HIV/AIDS
Limpopo	Racial discrimination	Racial discrimination
Mpumalanga	Hate speech, racial discrimination	Discrimination on the basis of racism between landowners/farmers and farm dwellers/workers.
Northern Cape	Racial discrimination	A lot of verbal racial discrimination and hate speech
Western Cape	Racism, Sexism, Disability	Discrimination on the basis of racism and sexism, discrimination against non-nationals, discrimination on the basis of socio-economic status

4.7. Some cases are never concluded for a variety of reasons

It was pointed out that a number of matters are referred to the Equality Court and are not finalized. Some of the reasons for this include:

- Complainant disappears and is uncontactable
- Complainant decides not to continue with the case because it is taking too long

- Matters are referred by the Equality Court to the CCMA
- Parties resolve the matter themselves and the matter is withdrawn
- Complainant does not arrive for trial

In the Northern Cape recently on the day of trial the witness arrived drunk. Therefore the matter had to be postponed. The respondent requested wasted costs for the day. The magistrate stated that these are social cases that do not need an attorney and therefore the court refused to award wasted costs.

4.8. Customer satisfaction

There was a diversity of opinion as to whether the complainants in the matters were satisfied with the outcome of the case. In some matters, the complainant got what they asked for and were satisfied. In others, a mere apology was sufficient to satisfy the complainant. It was also stated that the process itself was a learning experience for those accused of racism and that they acknowledged that their behavior and words were no longer acceptable within our constitutional democracy.

In Mpumalanga, the *Fishman* case is being taken on appeal, as the complainant deemed the award of R2 000 as being too low. In addition, the respondent has not demonstrated a willingness to apologize. It is felt by the complainant that the compensation awarded is a mere 'slap on the wrist'.

In the *Rancho* case in Mpumalanga the respondent was dismissed due to his conduct. The complainant was satisfied that this was sufficient punishment for what had occurred.

It is interesting to note that the vast majority of cases are found in favor of the complainant. Out of 15 cases, 13 were found in favor of the complainant, one was referred to another forum and one case was not found for the applicant.

It should be noted that many who have used the court are persons who they themselves are relatively empowered. The Act does not appear to be used as much by the poor and the marginalized in society. Thus those who are already in relatively privileged positions in society are using the Act to assert their rights when they are unfairly discriminated against.

There has been a strong focus on monetary relief to the individual who has experienced the unfair discrimination. Amounts of between R2 - R10 000 have been awarded against respondents. This has been coupled with unconditional apologies. The Act sets out a variety of innovative forms of relief that a court can grant that would address unfair discrimination on a broader level¹³. These

¹³ Powers and functions of equality court

21(2) After holding an inquiry, the court may make an appropriate order in the circumstances, including-

a) an interim order;

creative forms of relief do not appear to be utilized (e.g. the use of audits have been limited). Presiding officers should be encouraged to make use of all the different forms of relief that the Act provides for.

The awarding of individual damages does not assist in creating a healthy jurisprudence in unfair discrimination matters that can influence policies within broader society. Individual awards of damages are confined to the parties and no one outside of the case can extract the value of the award to the parties.

To date that have been no studies or follow ups conducted with complainants to assess in a more empirical manner their satisfaction with the court proceedings and the outcome of their cases.

4.9. Equality matters lodged with the Commission

The Commission has many equality matters that are not placed before the Equality Court. Instead these matters are dealt with through the Commission's complaints procedure. The Western Cape office for example reports that it deals with a number of racism complaints and that these are not sent to the Equality Court. In fact 165 out of a total of 839 cases in the office currently are equality cases i.e. 20% of total caseload. The Head Office estimates that approximately 60 equality matters are received each year.

During the 2005/6 year the Commission received 428 equality cases out of a

- b) a declaratory order;
- c) an order making a settlement between the parties to the proceedings an order of court;
- d) an order for the payment of any damages in respect of any proven financial loss, including future loss, or in respect of impairment of dignity, pain and suffering, emotional and psychological suffering, as a result of the unfair discrimination, hate speech or harassment in question;
- e) after hearing the views of the parties or, in the absence of the respondent, the views of the complainant in the matter, an order for the payment of damages in the form of an award to an appropriate body or organization;
- f) an order restraining unfair discriminatory practices or directing that specific steps be taken to stop the unfair discrimination, hate speech or harassment;
- g) an order to make specific opportunities and privileges unfairly denied in the circumstances, available to the complainant in question;
- h) an order for the implementation of special measures to address the unfair discrimination, hate speech or harassment in question;
- i) an order directing the reasonable accommodation of a group or class of persons by the respondent;
- j) an order that an unconditional apology be made;
- k) an order requiring the respondent to undergo an audit of specific policies or practices by the court;
- l) an appropriate order of a deterrent nature, including the recommendation to the appropriate authority, to suspend or revoke the license of a person;
- m) a directive requiring the respondent to make regular progress reports to the court or to the relevant constitutional institution regarding the implementation of the court's order;
- n) an order directing the clerk of the equality court to submit the matter to the Director of Public Prosecutions having jurisdiction for the possible institution of criminal proceedings in terms of common law or relevant legislation;
- o) An appropriate order of costs against any party to the proceedings;
- p) An order to comply with any provision of the Act.