

8. EQUALITY REVIEW COMMITTEE

The Equality Review Committee (hereinafter referred to as ("the Committee"/ or alternatively "the ERC") was established in terms of Section 32 of the Promotion of Equality and Prevention of Unfair Discrimination, 2000 (Act No. 4 of 2000) as Amended by Acts No. 52 of 2002 and Act No. 55 of 2003, (hereinafter referred to as "the Act") The committee was established in September 2000 and Gazetted as per *Government Gazette* No. 6875 dated 1 September 2000 Vol. 423 No. 21517.

The Seven (7) members of the Equality Review Committee who were appointed in terms of Section 32 of the Act are:

- ❖ Mr. J Kollapen: Chairperson of the South African Human Rights Commission, appointed in terms of Section 32 (b) of the Act. Since the Australian Model was followed, the Chairperson of the Human Rights Commission has been appointed the Chair of the Equality Review Committee.
- ❖ Ms T M Masipa (Senior Judicial Officer) appointed in terms of Section 32 (a) of the Act.
- ❖ Ms Joyce Piliso-Seroke, Chairperson of the Commission on Gender Equality, appointed in terms of Section 32 (c) of the Act.
- ❖ Mr. Vincent Saldanha ; Representative of the Civil Society, from the Legal Resources Centre, appointed in terms of Section 32 (d).
- ❖ Prof. Shadrack Gutto: expert in the field of human rights, appointed in terms of Section 32 (e) of the Act.

- ❖ MS Ntombazana Botha, member of the National Assembly, appointed in terms of Section 32 (f) of the Act.
- ❖ Mr. P D N Maloyi, member of the National Council of Provinces, appointed in terms of Section 32 (g) of the Act.

Mr. P D N Maloyi, member of the National Council of Provinces, appointed in terms of Section 32 (g) of the Act. Mr. Maloyi has since left the NCOP for the National Assembly. (This therefore means that he loses his position in the Committee since he was elected to represent the NCOP. The letter from the Minister to the Chairperson of the NCOP is on its way). The Minister is requesting the Chairperson to nominate Mr Maloyi's successor as member of the ERC.

The terms of the ERC members has since expired. The Minister has already started with the process of re-appointing them as contemplated under section 33 (5) of the Act. The members appointed in terms of section 32 (b) and (c) are *ex officio* members.

8.1 The ERC Reports

The Committee has so far compiled the following reports:

- **Report on section 34 grounds.**
 - Section 34 of the Act provides that the Committee must investigate and make recommendations to the Minister on the inclusion of Nationality, HIV/AIDS, Socio-economic status and Family Responsibility and status into the definition of "prohibited grounds". The Committee held a Workshop wherein various stakeholders deliberated on the issue.

Subsequent to this Workshop, the Committee compiled a report, with its recommendation.

- **Report on the Criminalization of acts of unfair discrimination.**
 - There were some concerns raised by most stakeholders that the acts of unfair discrimination should be criminalized. As a result, the Committee spearheaded the process of investigating the criminalization. A research was done and the committee made its recommendations.
- **Report on the representation by the Insurance Industry (represented by the Life Offices Association (LOA)).**
 - The Life Offices' Association, representing the insurance industry, made representation with the aim of proposing amendments to some provisions of the Act. They proposed the amendment of sections 13 & 14 of the Equality Act. Numerous meetings took place between the ERC and the LOA. Subsequent to these meetings, the ERC compiled a report and made its recommendation to the Minister regarding the proposals.
- **The ERC Report on the Monitoring of the implementation of the Act as well as the operation of the designated equality courts.**

The Committee reports on a variety of issues. Among these are the following:

- The designation of equality courts;
- The training of equality court personnel;
- Raising awareness;
- Designation of presiding officers and clerks;
- Minimum resources in the courts, etc;

- Department's compliance with the provisions of the Equality Act.

These are still Draft Reports. The draft reports have since been circulated among all ERC members for their inputs. Once they all agree on these reports, a final draft will be prepared for the Chairperson's signature and subsequent submission to the Minister.

8.2 The ERC Secretariat

The members of the ERC are not appointed on a full time basis. They occupy offices in other government departments and organizations. Therefore, the day to day running of the activities of the Committee is carried out by the Secretariat, situated in the office of the Director-General of Justice. The Staff of the Secretariat, among other things, prepare and compile Draft Reports on behalf of the Committee. These Draft Reports are then forwarded to all the members for scrutiny and inputs. Once they agree with the said drafts, the Chairperson of the Committee signs them and forwarded them to the Office of the Minister.

The Secretariat is currently composed of the following people:

1. Adv. Rob Skosana (Head of the Secretariat)
2. Mr. Samuel Rasiuba (Legal Administrative Officer)
3. Ms Thabang Snowy Dibilwana (Administrative Clerk)

It has since been suggested that the Secretariat should be headed by a Director, as it is the case in most Secretariats in various government department and institutions. It is also recommended other two (2) positions of Legal Administrative Officers be created.

The Secretariat currently falls under the Chief Directorate: Policy Research, Co-ordination and Monitoring in the Office of the Director-General. The Secretariat

initially fell under the branch Court services but was subsequently transferred to the Office of the Director-General with effect from 01 December 2005.

9. LEGISLATION AND REGULATIONS (Position regarding the commencement of the provisions of the promotion of equality and the prevention of unfair discrimination act, 2000, relating to promotion of equality)

10.1 The Promotion of Equality and the Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000) (the Act), with the exception of sections 24 to 28 and 29(2), is in operation. The sections which have not yet been put into operation, relate to the promotion of equality.

10.2 The putting into operation of the outstanding sections is dependant on the promulgation of regulations to facilitate the implementation of such sections. (For example: Section 25(3)(c) refers to reports by the Director-General of Justice and Constitutional Development relating to cases in the equality courts which are to be prescribed by regulations; section 25(4)(b) which refers to equality plans, the format of which is to be prescribed by regulations; section 25(5)(a) also refers to the equality plans to be submitted to the South African Human Rights Commission to be dealt with in the manner which is to be prescribed by regulations; section 27(2) relates to private persons and the Minister may make regulations relating to their obligations in respect of the promotion of equality (which may include a code of practice); and section 31 which deals with the making available of the Act in all official languages in the prescribed manner.)

10.3 An incremental approach was adopted in respect of the putting into operation of the Act. After the commencement of the sections of the Act relating to the prevention of unfair discrimination (that is the sections relating to the establishment and functioning of the equality courts) in June 2003, the

submitted to the Minister for her approval. The Minister requested the Policy Unit of the Department to furnish her with advice. Round table discussions and various meetings followed and different issues were raised.

- 10.5 The issues raised were complex, some of which relate to policy matters and others to legal questions. The policy matters relate, for example, to the reporting and enforcement agencies (some of which are mentioned in the Act itself and some of which are to be prescribed), to the question of whether practice, and if so, what the contents should be and the position of the
- 10.6 At a further meeting the Minister expressed some views on the approach to be followed and requested that a briefing be given to her on the content of the draft regulations. Since then, two different versions of the draft regulations have been developed in an attempt to capture the Minister's views. A meeting with the Policy Unit has been scheduled for 6 October

2006 to discuss the latest version of the draft regulations and the way forward.

10.7 It needs to be mentioned that once the draft regulations have been approved by the Minister, the Minister of Finance must also be consulted as is required by the Act and the regulations are also to be submitted to Parliament in terms of the Act.

10.8 The briefing of the Minister will be arranged on an urgent basis.

11 BENEFITS TO WOMEN, CHILDREN AND PERSONS WITH DISABILITY

Whether there has been any benefit that is gained by women, children and persons with disability from Equality Court is difficult to say with certainty for now, as tools to monitor this are not fully in place, for example reliable statistics. At this stage it is difficult to analyse the statistics at hand. As an example it is not clear whether complaints lodged which are identifies as harassment relate to sexual harassment or other forms of harassment.

12 CONCLUSION

The Directorate is engaged in other activities that compliment the work of the Equality court project such as involvement with advising on the UN International Convention on the Protection of the Rights and Dignity of Persons with Disability.

The ultimate goal of the Directorate is the optimal functioning of the Equality Courts in a manner that will result in attainment of substantive equality for all, and also having a monitoring and evaluating tool that will enable us to determine whether the legislation is in fact assisting the intended beneficiaries.