

Act No. 52, 2002 PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION AMENDMENT ACT, 2002

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 30 December 2002.)

ACT

To amend the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, so as to further provide for the training and designation of presiding officers of equality courts for purposes of the Act; to provide for the designation of magistrates' courts as equality courts; to further regulate the training of the clerks of equality courts; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Substitution of section 16 of Act 4 of 2000

1. The following section is hereby substituted for section 16 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (hereinafter referred to as the principal Act): 5

“Equality courts and presiding officers

16. (1) For the purposes of this Act, but subject to section 31—

- (a) every High Court is an equality court for the area of its jurisdiction;
- (b) any judge may, subject to subsection (2), be designated in writing by the Judge President as a presiding officer of the equality court of the area in respect of which he or she is a judge; 10
- (c) the Minister must, after consultation with the head of an administrative region defined in section 1 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), by notice in the *Gazette*— 15
 - (i) designate one or more magistrate's courts as equality courts for the administrative region concerned;
 - (ii) define the area of jurisdiction of each equality court, which may consist of any number of districts, sub-districts or other areas of jurisdiction created in terms of section 2 of the Magistrates' Courts Act, 1944; 20

INCWAJANA EJWAYELEKILE ECHACHISAYO:

- [] Amagama abhalwe ngokugqamile ezibayeni asho okushiye kulomthetho okhona.
- _____ Amagama adwetshelwe ngomugqa oqatha asho okufakiwe kumthetho okhona.

(English text signed by the President.)
(Assented to 30 December 2002.)

UMTHETHO

Wokuchibiyela uMthetho wokuQhubekisa ukuLingana nokuVimbela uBandlululo olungaLungile, 2000, ukuze kuqhutshelwe phambili ukuhlinzekela ukuqeqeshwa kanye nokukhonjwa kweziphathimandla zokwengamela ezinkantolo zokulingana kuye ngezinhloso zaloMthetho; ukuhlinzekela ukukhonjwa kwezinkantolo zezimantshi njengezinkantolo zokulingana; ukuqhubela phambili ukulingisa ngomthetho ukuqeqeshwa komabhalane bezinkantolo zokulingana; kanye nokuhlinzekela izindaba eziqondene nazo.

MAKUMISWE yiPhalamente yeRipabliki yaseNingizimu Afrika, njengokulandelayo:—

Ukungeniswa kokunye endaweni yesigaba 16 soMthetho 4 ka 2000

1. Isigaba esilandelayo ngalokhu singeniswa endaweni yesigaba 16 soMthetho wokuQhubekisa ukuLingana nokuVimbela uBandlululo olungaLungile, 2000 (emuva kwalokhu obizwa ngokuthi uMthetho oyinhloko): 5

“Izinkantolo zokulingana neziphathimandla zokwengamela

16. (1) Kuye ngezinhloso zaloMthetho kodwa ngaphansi kwelungelo lesigaba 31—

- (a) yonke iNkantolo ePhakeme iyinkantolo yokulingana yaleso siqinti sesikhundla samandla ayo omthetho; 10
- (b) noma iliphi ijaji, kuye ngelungelo lesigatshana (2), lingakhonjwa ngokubhaliwe nguMongameli Jaji njengesiphathimandla sokongamela enkantolo yokulingana yesiqinti lapho liyijaji khona; 15
- (c) uNgqongqoshe, emva kokubonisana nophethe kwezokuphathwa kwesifunda ochazwe kusigaba 1 soMthetho weZinkantolo zeZimantshi, 1944 (uMthetho No. 32 ka 1944), ngenothisi kuGazethi— 15
- (i) makakhombe eyodwa noma ezingaphezulu izinkantolo zezimantshi njengezinkantolo zokulingana zesifunda sokuphatha esiqondene; 20
- (ii) makanqume isiqinti sesikhundla samandla omthetho senkantolo yokulingana engabunjwa yinoma elingakanani inani lezigodi, izigojana noma ezinye iziqinti zesikhundla samandla omthetho njengokuyala kwesigaba 2 soMthetho weZinkantolo zeZimantshi, 1944; 25

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- (iii) increase or reduce the area of jurisdiction of each equality court;
- (iv) appoint one or more places within the area of jurisdiction of each equality court for the holding of equality court sittings;
- (v) withdraw or vary any notice under this paragraph; and
- (d) the head of an administrative region contemplated in paragraph (c) must, subject to subsection (2), designate in writing any magistrate or additional magistrate as a presiding officer of the equality court. 5
- (2) Only a judge, magistrate or additional magistrate who has completed a training course as a presiding officer of an equality court—
 - (a) before the date of commencement of section 31; or 10
 - (b) as contemplated in section 31(4),
 and whose name has been included on the list contemplated in subsection 4(a), may be designated as such in terms of subsection (1).
 - (3) The Judges President and the heads of administrative regions must—
 - (a) take all reasonable steps within available resources to designate at least one presiding officer for each equality court within his or her area of jurisdiction; and 15
 - (b) without delay, inform the Director-General of the Department of any judge, magistrate or additional magistrate who has completed a training course as contemplated in section 31(4) and (5) or who has 20
 - (4) The Director-General of the Department must compile and keep a list of every judge, magistrate and additional magistrate who has—
 - (a) completed a training course as contemplated in section 31(4) and (5); 25
 - or
 - (b) been designated as a presiding officer of an equality court in terms of subsection (1).
 - (5) A presiding officer must perform the functions and duties and exercise the powers assigned to or conferred on him or her under this Act or any other law.”. 30

Amendment of section 17 of Act 4 of 2000

- 2. Section 17 of the principal Act is hereby amended by the—
 - (a) substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs, respectively:
 - “(a) Subject to subsection (2) and the laws governing the public 35
 - service, the Director-General of the Department may, for every equality court, appoint or designate one or more officers in the Department, or may appoint one or more persons in the prescribed manner and on the prescribed conditions, as clerks of the equality court, who must generally assist the court to which they are attached in performing its functions and 40
 - who must perform the functions as may be prescribed.
 - (b) If a clerk of an equality court is for any reason unable to act as such or if no clerk has been appointed or designated for any equality court under paragraph (a), the presiding officer concerned may, despite subsection (2), designate any competent officer in the Department to act 45
 - as clerk for as long as the said clerk is unable to act or until a clerk is appointed or designated under paragraph (a), as the case may be.”; and
 - (b) addition of the following subsections:
 - “(2) Only an officer or person contemplated in subsection (1)(a) 50
 - who has completed a training course as clerk of an equality court—

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- (iii) makandise noma anciphise isiqinti sesikhundla samandla senkantolo yokulingana ngayinye;
- (iv) makaqoke eyodwa noma ezingaphezulu izindawo ngaphakathi kwesiqinti samandla omthetho senkantolo yokulingana ngayinye zokuhlalela amacala; 5
- (v) makahoxise noma aguqule noma isiphi isaziso ngaphansi kwalendima; futhi
- (d) ophethe kwezokuphathwa kwesifunda ocatshangwe kwindima (c), kuye ngelungelo lesigatshana (2), makakhombe ngokubhaliwe noma iyiphi imantshi noma imantshi yokwengeza njengesiphathimandla sokwengamela inkantolo yokulingana. 10
- (2) Ijaji kuphela, imantshi noma imantshi yokwengeza esiphothule uhlelo lokuqeqeshwa njengesiphathimandla sokwengamela enkantolo yokulingana—
- (a) ngaphambi komhla wokuqalisa kwesigaba 31; noma 15
- (b) njengoba kucatshangwe kwisigaba 31(4), nogama lakhe limbandakanywe kuhide olucatshangwe kwisigatshana (4)(a), angakhonjwa kanjalo njengokuyala kwesigatshana (1).
- (3) OMongameli baMajaji kanye nabaphethe kwezokuphathwa zesifunda— 20
- (a) mabathathe zonke izinyathelo ezifanele ngaphakathi kwezinsizo ezitholakalayo zokukhomba okungenani isiphathimandla esisodwa sokwengamela senkantolo yokulingana ngayinye ngaphakathi kwesiqinti sesikhundla samandla ayo omthetho; kanye
- (b) ngaphandle kokulibala, mabatshele umQondisi-Jikelele woMnyango ngejaji, imantshi noma imantshi yokwengeza esiphothule uhlelo lokuqeqeshwa njengoba lucatshangwe kusigaba 31(4) no (5) noma esikhonjiwe njengokuyala kwesigatshana (1). 25
- (4) UmQondisi-Jikelele woMnyango makahlanganisele futhi agcine uhlelo lwejaji lonke, lwemantshi kanye nolwemantshi yokwengeza— 30
- (a) esiphothule uhlelo lokuqeqeshwa njengoba lucatshangwe kusigaba 31(4) no (5); noma
- (b) esikhonjiwe njengesiphathimandla sokwengamela enkantolo yokulingana njengokuyala kwesigatshana (1).
- (5) Isiphathimandla sokwengamela masenze imisebenzi futhi sisebenzise amandla esabelwe wona noma esinikwe wona ngaphansi kwaloMthetho noma imuphi omunye umthetho.”. 35

Isichibiyelo sesigaba 17 soMthetho 4 ka 2000

2. Isigaba 17 soMthetho oyinhloko ngalokhu siyachitshiyelwa—

- (a) ngokungenisa ezindimeni (a) no (b) zesigatshana (1) izindima ezilandelayo ngokulandelana: 40
 - “(a) Kuye ngelungelo lesigatshana (2) kanye nemithetho ephethe inkonzo yomphakathi, umQondisi-Jikelele woMnyango angaqokela noma akhombele yonke inkantolo yokulingana esisodwa noma ezingaphezulu iziphathimandla zoMnyango, noma angabeka oyedwa noma abangaphezulu abantu ngendlela enqunyiwe nangemibandela enqunyiwe njengomabhalane benkantolo yokulingana, abafanele ukusiza ngokujwayelekile inkantolo abakuyo ekwenzeni imisebenzi yayo futhi okufane benze imisebenzi njengoba kunganqunywa. 45
 - (b) Uma umabhalane wenkantolo yokulingana noma ngasiphi isizathu engakwazi ukwenza kanjalo noma uma kungekho mabhalane oseqokiwe noma osekhonjelwe noma iyiphi inkantolo yokulingana ngaphansi kwendima (a), isiphathimandla sokwengamela esiqondene, phezu kwesigatshana (2), singakhomba noma isiphi isiphathimandla esifanele soMnyango esingabamba njengomabhalane nxa umabhalane oshiwo engakwazi ukusebenza noma kuze kube umabhalane usebekiwe noma usekhonjiwe ngaphansi kwendima (a), kuye, ngesimo.”; futhi 50
- (b) nokufakwa kwezisigatshana ezilandelayo: 55
 - “(2) Isiphathimandla kuphela noma umuntu ocatshangwe kusigatshana (1)(a) osephothule uhlelo lokuqeqeshwa njengomabhalane wenkantolo yokulingana— 60

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- (a) before the date of commencement of section 31; or
- (b) as contemplated in section 31(6), and whose name has been included on the list contemplated in subsection (3), may be appointed or designated as such under subsection (1)(a).
- (3) The Director-General of the Department must compile and keep a list of every officer or person who has—
 - (a) completed a training course as contemplated in section 31(6); or
 - (b) been designated or appointed as a clerk of an equality court in terms of subsection (1)(a)."

Amendment of section 31 of Act 4 of 2000 10

3. The following section is hereby substituted for section 31 of the principal Act:

“Implementation of Act

- 31.** (1) Despite section 16(1) no proceedings may be instituted in any court unless a presiding officer and one or more clerks are available.
- (2) For purposes of giving full effect to this Act and making the Act as accessible as possible—
- (a) and in giving effect to subsection (1), judges, magistrates or additional magistrates, as the case may be, and clerks referred to in subsection (1) may be—
 - (i) designated as presiding officers; and
 - (ii) appointed or designated as clerks, respectively, for one or more equality courts;
 - (b) the Minister must make the Act available in all official languages in the prescribed manner within a period of two years after the commencement of this Act.
- (3) The Director-General of the Department must take all reasonable steps within the available resources of the Department to ensure that a clerk is available for each court in the Republic.
- (4) The Chief Justice must, in consultation with the Judicial Service Commission and the Magistrates Commission, develop the content of training courses with a view to building a dedicated and experienced pool of trained and specialised presiding officers, for purposes of presiding in court proceedings as contemplated in this Act, by providing—
- (a) social context training for presiding officers; and
 - (b) uniform norms, standards and procedures to be observed by presiding officers in the performance of their functions and duties and in the exercise of their powers.
- (5) The Chief Justice must, in consultation with the Judicial Service Commission, the Magistrates Commission and the Minister, implement the training courses contemplated in subsection (4).
- (6) The Director-General of the Department must develop and implement a training course for clerks of equality courts with the view to building a dedicated and experienced pool of trained and specialised clerks, for purposes of performing their functions and duties as contemplated in this Act, by providing—
- (a) social context training for clerks; and
 - (b) uniform norms, standards and procedures to be observed by clerks in the performance of their functions and duties.
- (7) The Minister must table a report in Parliament, as prescribed, relating to the content and implementation of the training courses referred to in subsections (4) and (5)."

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- (a) ngaphambi komhla wokuqalisa kwesigaba 31; noma
 (b) njengoba kucatshangwe kusigaba 31(6),
 nogama lakhe liqukwe kuhide olucatshangwe kusigatshana (3),
 angaqokwa noma akhonjwe kanjalo ngaphansi kwesigatshana (1)(a). 5
 (3) UmQondisi-Jikelele woMnyango makahlanganisele futhi agcine
 uhide lwesiphathimandla lonke noma lomuntu—
 (a) osephothule uhlelo lokuqeqesha njenjoba lucatshangwe kusigaba
 31(6); noma
 (b) osekhojiwe noma oseqokiwe njengomabhalane wenkantolo
yokulingana njengokuyala kwesigatshana (1)(a). 10

Isichibiyelo sesigaba 31 soMthetho 4 ka 2000

3. Isigaba esilandelayo ngalokhu singeniswa endaweni yesigaba 31 soMthetho oyinhloko:

“Ukugcwalisa uMthetho

- 31.** (1) Phezu kwesigaba 16(1) akukho cala elingamangalwa kunoma 15
 iyiphi inkantolo ngaphandle kokuba isiphathimandla esongamele kanye
 noyedwa noma abangaphezulu omabhalane betholakala.
 (2) Ngenhloso yokunika ukugcinwa okugcwele kuloMthetho nokwenza
 uMthetho ufunyaniseke njengoba kungenzeka—
 (a) nokugcinwa kwesigatshana (1), amajaji, izimantshi, noma izimantshi 20
 zokwengeza kuye ngesimo kanye nomabhalane okubhekiswe kubo
 kusigatshana (1)—
 (i) bangakhonjwa njengeziphathimandla zokwengamela; futhi
 (ii) bangaqokwa noma bakhonjwe njengomabhalane,
 ngokulandelana, beyodwa noma ezingaphezulu izinkantolo 25
 zokulingana;
 (b) uNgqongqoshe makenze loMthetho utholakale ngazo zonke izilimi
 ezisemthethweni ngendlela enqunyiwe naphakathi kweminyaka
 emibili ngemuva kokuqala kwaloMthetho.
 (3) UMqondisi-Jikelele woMnyango makathathe zonke izinyathelo 30
 ngaphakathi kwezinsizo ezitholakalayo zoMnyango alungiselele ukuthi
 umabhalane uyatholakala wenkantolo ngayinye eRiphabliki.
 (4) IJaji eyoNgamele, ibonisana neKhomishani yeNkonzo yaMajaji
 kanye neKhomishani yeZimantshi mayithuthukise okuqokethwe yizinhlelo 35
 zokuqeqesha ngenhloso yokubumba imbiza yeziphathimandla
 zokwengamela eziqeqeshiwe nezinolwazi oluthile oluqokiwe ezininikele
 nezinokwazi, ngenhloso yokongamela amacala enkantolo njengoko
 kucatshangwe kuloMthetho, ngokuhlinzeka—
 (a) uqeqesho lwesimo kwezokuhlalisana lweziphathimandla 40
 zokwengamela; futhi
 (b) izinkambiso mkhuba-munye, izindinganiso nezindlela-nqubo
 zokugcinwa yiziphathimandla zokwengamela ekwenzeni imisebenzi
 nezibopho kanye nasekusebenziseni amandla abo.
 (5) IJaji eyoNgamele ibonisana neKhomishani yeNkonzo yaMajaji,
 iKhomishani yeZimantshi kanye noNgqongqoshe, mayigcwalise izinhlelo 45
 zokuqeqesha ezicatshangwe kusigatshana (4).
 (6) UMqondisi-Jikelele woMnyango makathuthukise futhi enze
 njengokunqunyiwe uhlelo lokuqeqesha lomabhalane bezinkantolo
 zokulingana ngenhloso yokubumba imbiza yomabhalane abaqeqeshiwe
 abanolwazi oluthile oluqokiwe abazinikele nabanokwazi, ngenhloso 50
 yokwenza imisebenzi nezibopho njengoko kucatshangwe kuloMthetho,
 ngokuhlinzeka—
 (a) uqeqesho lwesimo kwezokuhlalisana lomabhalane; futhi
 (b) izinkambiso mkhuba-munye, izindinganiso nezindlela-nqubo
 zokugcinwa ngomabhalane ekwenzeni imisebenzi yabo nezibopho. 55
 (7) UNgqongqoshe makethule umbiko ezithebeni zePalamente,
 njengoko kunqunyiwe, eziphathelene nokuqokethwe kanye
 nokugcwaliswa kwezinhlelo zokuqeqesha okubhekiswe kuzo
kwizigatshana (4) no (5).”

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Short title

4. This Act is called the Promotion of Equality and Prevention of Unfair Discrimination Amendment Act, 2002.

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Isihloko esifingqiwe

4. LoMthetho ubizwa ngokuthi uMthetho wokuChibiyela ukuQhubekisa ukuLingana nokuVimbela uBandlululo olungaLungile, 2002.