

# A socio-legal analysis of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000

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## Summary

In the thesis I consider the potential effectiveness of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (hereafter “the Act”) in reaching its stated goal of achieving societal transformation in South Africa.

I consider and analyse those socio-legal theories that have a bearing on the relationship between “law” and “society”, and the extent to which state law may be used in a “top-down” or instrumental fashion to steer society in a desired direction. I identify several characteristics of effective laws and compare these to the Act. As the Act is the South African version of what may be termed “anti-discrimination legislation”, I determine the usual shortcomings of this legislation in foreign jurisdictions, and identify the steps the South African legislature has taken to obviate these shortcomings.

This thesis analyses four requirements of effective laws in more detail: (i) that the enforcement mechanisms should consist of specialised bodies staffed by well-trained personnel; (ii) that the source of the new law must be authoritative and prestigious; (iii) that the purpose behind the legislation must at least to a degree be compatible with existing values; and (iv) that the required change must be communicated to the large majority of the population.

In order to assess the degree of expertise of equality court personnel, the first requirement above, I discuss and analyse the implementation of training programmes for court personnel tasked to preside in courts applying the Act. I illustrate that the current pool of equality court personnel was probably inadequately trained, *inter alia* because the individuals tasked to manage the training of equality court personnel did not follow good management practice.

As to the second and third requirements of effective legislation referred to above, I report on an empirical study relating to unfair discrimination undertaken in 2001 in “white Pretoria”, Mamelodi and Atteridgeville. The results of this study suggest that the majority of South Africans do not experience explicit discrimination and where they do, they generally do not approach courts to

have their grievances aired. In turn, this finding suggests that the Act will be underutilised and will not play the role envisaged for it by Parliament in combating discrimination.

As to the last requirement highlighted above, I illustrate that the public awareness campaign relating to the Act was inadequate in its impact.

In conclusion, the study identifies a number of weaknesses in the Act and proposes a range of amendments that would facilitate the use of these courts by complainants. I also identify further avenues of socio-legal research that could be undertaken relating to the Act, specifically how the Act may be utilised to combat poverty in South Africa.



## Opsomming

In die proefskrif ondersoek ek die potensiële doeltreffendheid van die *Promotion of Equality and Prevention of Unfair Discrimination Act 4* van 2000 (hierna “die Wet”). Ek ondersoek spesifiek die vraag of die Wet sy gestelde doelwit - die bereiking van sosiale transformasie in Suid-Afrika - sou kon bereik.

Ek oorweeg en ontleed daardie sosio-juridiese teorieë wat die verhouding bespreek tussen “reg” en “gemeenskap”, en tot watter mate “owerheidsreg” gebruik kan word, in ‘n instrumentele manier, om ‘n gemeenskap in die verlangde rigting te stuur. Ek identifiseer verskeie eienskappe van doeltreffende wetgewing en vergelyk hierdie eienskappe met die Wet. Omdat die Wet die Suid-Afrikaanse weergawe is van wat gewoonlik as “anti-diskriminasie wetgewing” beskryf word, ondersoek ek ook die tradisionele tekortkominge van hierdie soort wetgewing in buitelandse jurisdiksies en identifiseer ek die stappe wat die Suid-Afrikaanse wetgewer geneem het om hierdie tekortkominge aan te spreek.

Die proefskrif bespreek vier eienskappe van doeltreffende wetgewing in meer besonderhede, naamlik (i) dat die afdwingingsmeganisme moet bestaan uit gespesialiseerde liggame en beman moet word deur goed opgeleide personeel; (ii) dat die bestaansbron van nuwe wetgewing gesag moet dra; (iii) dat die doel wat nuwe wetgewing onderlê minstens tot ‘n mate versoenbaar moet wees met bestaande gemeenskapswaardes; en (iv) dat enige nuwe wetgewing behoorlik gepopulariseer moet word.

Ten einde die graad van deskundigheid van gelykheidshofpersoneel vas te stel, die eerste vereiste hierbo, bespreek en ontleed ek die implementering van opleidingsprogramme vir die hofpersoneel wat getaak is om hierdie Wet af te dwing. Ek dui aan dat hierdie opleidingsprogram grootliks nie in sy doel geslaag het nie, onder andere omdat die personeel wat getaak is om die opleidingsprojek uit te voer, nie behoorlike bestuurspraktyk toegepas het nie.

Wat die tweede en derde vereistes van doeltreffende wetgewing betref waarna ek hierbo verwys, doen ek verslag oor ‘n empiriese ondersoek wat ek in 2001 onderneem het in wat genoem kan

word “wit Pretoria”, Mamelodi en Atteridgeville betreffende onbillike diskriminasie. Die resultate van hierdie studie toon aan dat die meerderheid Suid-Afrikaners nie eksplisiete diskriminasie ervaar nie, en waar hulle dit wel ervaar, nie van howe gebruik maak om die dispuut op te los nie. Hierdie afleiding impliseer weer dat die Wet onderbenut gaan word en nie die rol wat die Suid-Afrikaanse parlement voorsien het, gaan speel in die aanspreek van diskriminasie nie.

Wat die vierde vereiste hierbo na verwys betref, dui ek aan dat die populariseringsprojek veel te wense oorgelaat het.

Ter gevolgtrekking identifiseer ek ‘n aantal leemtes in die Wet en stel ek ‘n aantal wysigings voor wat klaers beter in staat sal stel om van howe gebruik te maak in die toepassing van die Wet. Ek identifiseer ook ‘n aantal moontlikhede vir verdere sosio-juridiese navorsing met betrekking tot die Wet, veral dan hoe hierdie Wet gebruik sou kon word om armoede in Suid-Afrika aan te spreek.

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## Abbreviations and acronyms

ABA J	The American Bar Association Journal
AHRLJ	African Human Rights Law Journal
AJ	Acta Juridica
Am Soc R	American Sociological Review
Austr LJ	The Australian Law Journal
BCHRT	British Columbia Human Rights Tribunal
BCLR	Butterworths Constitutional Law Reports
Br J Law & Soc	British Journal of Law and Society
BYU L Rev	Brigham Young University Law Review
Cam LJ	Cambridge Law Journal
Can BR	The Canadian Bar Review
Can J ALP	Canadian Journal of Administrative Law and Practice
CJWL	Canadian Journal of Women and the Law
Comp Lab L & Pol'y J	Comparative Labour Law and Policy Journal
Conn L Rev	Connecticut Law Review
Cornell L Rev	Cornell Law Review
DJ	De Jure
DR	De Rebus
DSA	Development Southern Africa
ELDU	Equality Legislation Drafting Unit
ELETU	Equality Legislation Education and Training Unit
Geo LJ	Georgetown Law Journal
Harv CRCL LR	Harvard Civil Rights-Civil Liberties Law Review
Harv J on Legisl	Harvard Journal on Legislation
Harv L Rev	Harvard Law Review
Henn L	The Hennepin Lawyer
HRQ	Human Rights Quarterly
HSRC	Human Sciences Research Council
IB	Interights Bulletin





Int & Comp LQ	International and Comparative Law Quarterly
ILJ	Industrial Law Journal (South Africa)
ISLR	Irish Student Law Review
Int J Ethics	International Journal of Ethics
Int J Manp	International Journal of Manpower (sic)
Int J Soc & Soc P	International Journal of Sociology and Social Policy
Int J Soc Law	International Journal of the Sociology of Law
JAL	Journal of African Law
JISEC	Judicial Information Service for Equality Courts
J Law & Soc	Journal of Law and Society
Law & Soc Inq	Law and Social Inquiry
Law & Soc Rev	Law and Society Review
LDD	Law, Democracy & Development
LS	Legal Studies
Man LJ	Manitoba Law Journal
Melb U L Rev	Melbourne University Law Review
Mich L Rev	Michigan Law Review
Minn L Rev	Minnesota Law Review
Mod L Rev	The Modern Law Review
NJCL	National Journal of Constitutional Law
Osgoode Hall LJ	Osgoode Hall Law Journal
Oxford J LS	Oxford Journal of Legal Studies
PL	Public Law
S Afr J Sociol	South African Journal of Sociology
SAHRY	South African Human Rights Yearbook
SAIRR	The South African Institute of Race Relations
SAJHR	South African Journal on Human Rights
SALJ	South African Law Journal
SAPL	SA Public Law
Stan L Rev	Stanford Law Review
Stat L Rev	Statute Law Review



Stell LR	Stellenbosch Law Review
Tex L Rev	Texas Law Review
THRHR	Journal of Contemporary Roman-Dutch Law ( <i>Tydskrif vir Hedendaagse Romeins-Hollandse Reg</i> )
TMB	(Equality Legislation) Training Management Board
TMT	(Equality Legislation) Training Management Team
TRW	Journal for Juridical Science ( <i>Tydskrif vir die Regswetenskap</i> )
TSAR	Journal of South African Law ( <i>Tydskrif vir Suid-Afrikaanse Reg</i> )
Tul L Rev	Tulane Law Review
Univ Chicago L Rev	The University of Chicago Law Review
UNB LJ	University of New Brunswick Law Journal
Univ Miami L Rev	University of Miami Law Review
U Pa L Rev	University of Pennsylvania Law Review
Yale LJ	The Yale Law Journal
W&M L Rev	William and Mary Law Review
W&A	Word and Action
Wis L Rev	Wisconsin Law Review