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Celebrating Africa Day



The Orange Farm Human Rights Advice Centre with Itsoseng Women's Project hosted Africa Day on 25 May 2023 in Orange Farm and partnered with ProBono.Org to make the celebration a success.

The purpose of celebrating Africa Day was to bring people together including parents and children to raise awareness of the challenges that are taking place in their communities with regard to discrimination, xenophobia, hate speech and racism.

There was a truck playing African music and children proudly raising flags from the different African countries who walked around the community in the morning.

ProBono.Org, Lawyers for Human Rights and the Department of Justice were invited to give presentations on these topics.



Swazi Malinga
 1982 – 2023
RIP

Musina Refugee Project:

Community outreach, consultations and engagements

By Masontaga Malatja, Johannesburg Intern

Two visits to Musina were undertaken in the past two months. The first visit was from 24-26 April 2023. Zama Mbatha, the project's paralegal, was accompanied by Zwivhuya Ramashia and Lerato Sefume who are responsible for the education programmes at Constitution Hill which focus on educating learners and community members on democracy, human rights and constitutionalism. They also offer outreach programmes on the Bill of Rights and national symbols.

During the visit we engaged with three high schools in the area to invite the grade 8 to 11 learners to participate in the community outreach programme, where we also ran a Bill of Rights workshop with them. We also spent time inspecting venues and consulting in preparation for the follow-up visit in May.

The second visit took place over a period of five days, from 8 to 12 May.

We visited the Messina Legal Advice Office (MLAO) to consult with our existing clients on their cases. Mpho Mogodi, the Project Manager and Staff Attorney joined the consultations online to provide legal advice to our clients. The most common matters we came across during the consultations were those relating to birth registration and child documentation, access to education due to lack of proper documentation and asylum application appeals.

On the second day of consultations, the MLAO had over 50 asylum seekers coming in to seek



assistance with completing their appeal forms after their asylum-seeker applications were rejected by the Refugee Status Determination Officer (RSDO). These forms are being submitted to the Refugee Appeal Authority of South Africa (RAASA).

On 11 May 2023, we held a debating workshop for the schools that would be participating in a debating competition at the Skoomplaas Stadium the following day. The workshop was facilitated by debating coaches from the Pan African Schools Debating Championship. The Constitution Hill representatives also gave a presentation on South African Symbols.

Over 100 learners and community members attended the next day's debate, which consisted of junior

and senior debates centred around Citizenship, Permanent Residence and Refugee rights. This was followed by a football tournament between the Musina High and Renaissance High soccer teams. ProBono.Org presented trophies and medals to the learners who participated in the debating teams and the football teams.

Many community members expressed appreciation for our work in Musina and were excited about the various events as Musina is a small town and events such as these are rare. We were joined at the event by Legal Aid-SA, The Department of Social Development (DSD) and The International Organisation for Migration (IOM).

Australian Volunteers

Reflection on the “local volunteer” pilot programme

The Australian Volunteer International (AVI) Programme was not able to send volunteers out of Australia during COVID-19 restrictions, as has been their practice for many years. In 2022 they agreed to pilot a “local volunteer” programme whereby they would fund local people to work in partner organisations as part of their Innovation Hub. They funded Kgomotso Leshabane and Ayanda Zulu to work at ProBono.Org for a year as part of our internship programme. AVI also provided a

peer support programme for the volunteers.

On 21 April AVI held a reflection workshop with partners, the volunteers and peers to share the experiences of the “volunteering your way into the work market” project and map their year’s journey. Suggestions for improvements in any further extension of the programme were also shared. We are very appreciative of the opportunity to participate in this pilot programme and the experience gained by Kgomotso and Ayanda.



Changing Faces in the Workplace:

Pitfalls and Possibilities of the Employment Equity Amendment Act

By Masi Ncube, Staff Attorney, Cape Town

The Employment Equity Amendment Act 4 of 2022 (“the Amendment Act”) was assented to by President Cyril Ramaphosa on 6 April 2023. The Amendment Act, which amends the Employment Equity Act 55 of 1998 (“the Act”) has re-introduced divided opinions about transformation in the workplace into the public discourse. This begs the question – What are the significant amendments and what views are held about the amendments?

Section 9(3) of the Constitution of the Republic of South Africa, 1996 prohibits unfair discrimination on the basis of race, gender, disability and other characteristics. However, section 9(2) of the Constitution states that to promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken. The Act and the Amendment Act are therefore empowered by section 9(2) of the Constitution.

The abovementioned legislation recognises that the results of apartheid include current-day disparities in employment, occupation and income within the labour market which need to



be redressed beyond repealing apartheid laws. Thus, the Act aims to advance suitably qualified people from designated groups (defined in the Act as Black people, women and people with disabilities) in the workplace by implementing targets. The Act includes Black African, Coloured and Indian people in its definition of Black people.

Notably, the Amendment Act allows the Minister of Employment and Labour to identify and set sectoral-, regional-and occupation-specific targets in an effort to achieve transformation. The Minister is required to consult relevant stakeholders such as employers, trade unions and the Employment Equity Commission prior to setting the targets. Once the targets are

set, section 53 of the Act requires the Minister to issue Compliance Certificates to compliant employers.

... the Act aims to advance suitably qualified people from designated groups (defined in the Act as Black people, women and people with disabilities) in the workplace by implementing targets.

It is noteworthy that the failure of designated employers to reach the targets without a reasonable ground for non-compliance may lead to their inability to contract with the

State and they may face substantial fines.

Criticism

The Amendment Act has been met with mixed reactions. For instance, the definition of “designated employer” (i.e. an employer who should comply with the Act) now excludes employers with fewer than 50 employees, irrespective of their annual turnover. This

amendment has been praised as the regulatory limitation provides relief to small businesses who may not be able to afford to reach the targets. However, the unintended consequence could be that designated employers seeking to resist transformation may intentionally set up subsidiaries with fewer than 50 employees. Alternatively, recalcitrant designated employers may consider outsourcing or automising their goods and/or services.

It should be highlighted that public debate over-emphasises the Amendment Act's effects on the racial makeup of the workforce. There is not enough discussion about the broadening of the definition of "disabilities". The amended definition of disabilities should be applauded as it now includes people who have a long-term or recurring physical, mental, intellectual or sensory impairment. This definition mirrors that of the United Nations Convention on the Rights of Persons with Disabilities, 2007.

Many designated employers lament the Amendment Act's inability to recognise that due to South Africa's education challenges, there is a

small pool of suitably qualified candidates from designated groups to recruit from for certain sectors and therefore it will prove difficult to fulfill the targets.

However, this can be seen as a reasonable ground for non-compliance. Moreover, to address this challenge multi-pronged coordination is required amongst various governmental departments to make quality education and skills

development accessible for people from designated groups.

A common criticism of the Amendment Act

is that it may hinder economic growth and discourage investors in a time where South Africa's economy is in dire straits.

It should be considered that transformation is not the antithesis to economic growth. Innovative measures should be implemented for economic growth that consists of an inclusive labour workforce

Amongst the myriad arguments for and against the Amendment Act, the most discussed (and perhaps the most complex) argument is the assertion that the targets amount to quotas.

Targets or Quotas?

In *South African Police Service v Solidarity obo Barnard* 2014 (6) SA 123 (CC), the court observed that "the primary distinction between numerical targets and quotas lies in the flexibility of the standard.

Quotas amount to job reservation and are properly prohibited by section 15(3) of the Act. The same section endorses numerical goals in pursuit of workplace representivity and equity. They serve as a flexible employment guideline to a designated employer."

In *Minister of Justice and Constitutional Development v South African Restructuring and Insolvency Practitioners Association* 2017 (3) SA 95 (SCA), the court

...transformation requires a sustained team effort as well as a workplace culture shift from employers, employees, trade unions and government.

found that quotas violate the rights to equality and dignity and are thus impermissible under section 9(2) of the Act. Curiously enough,

the Act fails to define "quotas" and the courts have not provided much clarity in this regard either. It then becomes difficult for designated

employers to avoid quotas in circumstances where its parameters are not clearly defined. However, it can be deduced that a quota is rigid, i.e. a fixed number or percentage to be met despite ever-changing circumstances and context.

It is yet to be determined by the courts whether the targets in the Amendment Act can be interpreted to be quotas. It should be noted that on 12 May 2023, the Minister published the draft targets contemplated by section 15A of the Amendment Act for public comment.

One can argue that transformation should not be treated as a compliance burden or a box-ticking exercise by designated employers. Instead, transformation requires a sustained team effort as well as a workplace culture shift from employers, employees, trade unions and government. An actionable commitment to substantive, transformative employment equity therefore can foster South Africa's values of reconciliation, diversity and unity.

A visit from Canada

Canadian students Will Stevens and Tiana Gleason from the University of Western Ontario, who are in South Africa at the invitation of the S A Society for Labour Law (SASLAW) between May and July 2022, visited ProBono.Org on 11 May accompanied by a representative of Fasken, their hosts in Johannesburg. After an introduction at our office, we took our visitors to meet with Martha Chauke, the paralegal at the Dobsonville Community Advice Office who we have been working with for a number of years. Martha talked about the work of the advice office, which serves a wide area providing the community with legal assistance.

We wish Will and Tiana well for their visits to Durban and Cape Town, where they will be hosted by Norton Rose Fulbright and Webber Wentzel. We also hope they have been inspired to include pro bono work in their legal careers once they graduate.



Staff news



Congratulations to our Johannesburg intern Masontaga Malatja, who received her LLB degree at a graduation ceremony at Wits University on 18 April 2023.

Write for us



We would like to invite legal practitioners to contribute to our bi-monthly newsletters by writing an article of up to 400 words (one page) on a topical issue of law. Please indicate your interest to the editor at margaret@probono.org.za

The deadline for articles for the next issue will be: **1 August 2023**



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