

REPORT ON THE IMPLEMENTATION OF THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT 2000

**SOUTH AFRICA CAPACITY BUILDING PROGRAM
(SACBP) – Phase III**

**ASSISTANCE TO DEPARTMENT OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT –
SCOPING EXERCISE/ NEEDS ANALYSIS**

**21 NOVEMBER – 9 DECEMBER
2000**

1. Goals

The broad goal of the activity was to help the Department of Justice and Constitutional Development in South Africa to better understand global equality and discrimination issues, to enable it to assist the relevant role players in implementing the new *Promotion of Equality and Prevention of Unfair Discrimination Act (No.4 of 2000)* (“the Equality Act”). In particular, the aim was to commence development of a draft training curriculum and benchbooks for the Equality Court to enable implementation of the Act.

2. Introduction

The program was intended to provide technical assistance from myself as a Justice of a Supreme Court and Associate Professor Philip Tahmindjis, a senior academic from Australia, both of whom have experience and expertise in the human rights and discrimination area, to relevant South African personnel so that the latter could gain some insight into how other countries have dealt with discrimination and equality matters. The principal focus of the program was the *Promotion of Equality and Prevention of Unfair Discrimination Act 2000* and its implementation. This involved consideration of, and discussions about, international and domestic discrimination and equality issues; drafting educational material; supplying examples of implementation and promotion from Australia and elsewhere; advising on Regulations under the Act; and advising on education for the judiciary and other relevant personnel.

We arrived in South Africa on 21 November 2000 and remained until 9 December 2000. Most of the time was spent in Pretoria, but visits were also made to Johannesburg, Bloemfontein, Cape Town and Durban, to the organisations and people mentioned below. We produced a draft educational curriculum, draft benchbook, recommendations, verbal advice to various stakeholders and also arranged for materials to be sent to several of the stakeholders from Australia.

3. Background

The South African Department of Justice and Constitutional Development sought our assistance in the broad field of equality and human rights, particularly with respect to the implementation of the *Promotion of Equality and Prevention of Unfair Discrimination Act 2000* which is due to come into force in March 2001. The enforcement of the Act will be through Equality Courts. Relevant judicial and other personnel need to be educated in the content of, and procedures under, this Act. It was felt that advice from experienced people from Australia, which has had this type of legislation since 1975, could assist in devising the best way to implement and promote the Act. The Supreme Court of Queensland and the Queensland University of Technology generously provided the services of Justice Atkinson and Associate Professor Tahmindjis to undertake this significant international aid activity under the auspices of AusAID.

4. Outcomes

The outcomes achieved by the activity were:

- Writing a draft curriculum for education of judicial and court officers who will administer and enforce the Act.
- Creating a draft benchbook.
- Making observations and recommendations with respect to judicial education.
- Making recommendations with respect to the way forward.
- Indicating relevant resources and materials, in Australia and elsewhere, that might assist South Africa in the implementation process.
- Arranging for relevant materials to be sent to South African NGO's to assist them in their work on judicial education and also informing the wider South African community about the Act.

5. Outputs

Discussions were held with the following persons and organisations, on the dates indicated, and with respect to the outcomes as indicated:

- Meeting with some members of the Training Team to discuss overall outcomes for the program (Pretoria, November 21). This meeting established especially the need to draft a curriculum for the education of personnel and a benchbook.
- Meeting with the Commission on Gender Equality (Johannesburg, November 21). This meeting discussed the programs already undertaken by the Commission and how it might participate with respect to the Equality Act, its referral and mediation facilities and educational programs.
- Meeting with Supreme Court of Appeal judges (particularly Zulman and Farlam JJ) (Bloemfontein, November 22). This meeting discussed the particular educational requirements of all levels of the judiciary and approaches to judicial education in the South African context. We were briefed on a case to be heard and heard it argued to understand the procedure in the Supreme Court of Appeal.
- Meeting with Chief Magistrate Raulinga and the magistrates of the Bloemfontein Magistrates Court (Bloemfontein, November 22). This meeting addressed the particular needs of magistrates under the Equality Act. We visited a court to see how the cases are conducted and the procedures used in the Magistrates Courts in South Africa.
- Meeting with Malherbe CJ, High Court. This meeting discussed the view of the judiciary in the higher courts on the Equality Act.
- Meeting with members of the judiciary and of the faculty at the Law School, University of the Orange Free State (Bloemfontein, November 22). This meeting discussed academic concerns with equality legislation and the links with the judiciary in Bloemfontein.

- Meeting with the faculty at the Law School, Vista University (Bloemfontein, November 22). This meeting discussed the issue of equality legislation in the specific context of universities catering for predominantly black students. The possibility of obtaining law books for the Law Library from international NGO's was also discussed.
- Meeting with the staff at the Centre for Applied Legal Studies, University of Witwatersrand (Johannesburg, November 23). This meeting discussed the issues relating to education of personnel under the Act, in particular the production of educational materials and benchbooks.
- Meeting with members of the staff of the Community Law Centre and the Faculty of Law, University of the Western Cape (Cape Town, November 24). This meeting discussed approaches to judicial education in equality and programs already undertaken.
- Meeting with Saras Jagwanth, Race, Law and Gender Institute, Faculty of Law, University of Cape Town (Cape Town, November 24). This meeting discussed judicial education in equality, especially social context training, and the development of equality jurisprudence in South Africa.
- Participation in Workshop on the Regulations for the Equality Act (Pretoria, November 27). This was a day-long discussion on the detail of the draft Regulations of the Act.
- Meeting with staff of the Human Rights Centre, Faculty of Law, University of Pretoria (Pretoria, November 28). This meeting discussed judicial education in equality issues.
- Meeting with staff at the National Institute of Public Interest Law and Research (NIPILAR) (Pretoria, November 28). This meeting discussed, in particular, access to justice issues and the role of NGO's in advising people of their rights under the Equality Act. The use of paralegals as advocates in Equality Courts was also discussed. Use of community educational materials from the Human Rights and Equal Opportunity Commission in Australia was discussed. The sending of training and educational materials from the Queensland Anti-Discrimination Commission to the Human Rights Commission was also arranged.
- Meeting with Marthinus Langenhoven, Regional Head, Department of Justice, KwaZulu Natal Province (Durban, November 29). This meeting discussed in particular the regional implementation issues of the Equality Act, including translation problems. The issue of judicial independence was also discussed.
- Meeting with Mr Laui, Acting Chief Magistrate (Durban, November 29). This meeting discussed implementation issues and the magistracy, and their particular educational needs in the light of status and workload.
- Meeting with Mr Scott, Acting Director, Centre for Socio-Legal Studies, Natal University (Durban, November 29). This meeting discussed community education with respect to equality legislation.
- Meeting with Professor McQuoid-Mason of the University of Natal. This meeting discussed judicial education and resources available at the University.
- Meeting with staff of the Justice College (Pretoria, November 30). This meeting discussed existing training programs for magistrates and other court personnel, educational needs for equality legislation and social context training.
- Meeting with Mr Andre Keet, Human Rights Commission (Johannesburg, December 1). This meeting discussed the work the Commission and NGO's could do with respect to community education and awareness of equality legislation.

The sending of training and educational materials from the Queensland Anti-Discrimination Commission to the Human Rights Commission was also arranged.

- Meeting with staff from Justice College (Pretoria, December 6). Further meeting to discuss in more detail aspects of educational programs in equality.
- Meeting with members of the Training Team (Pretoria, December 7). Meeting to discuss draft curriculum for equality education.
- Presentation of our report and papers on Legal Equality by Associate Professor Tahmindjis and “Equality Legislation and Judicial Education: The Challenges” by Justice Atkinson at a function hosted by Mr Justice Ngoepe, Judge President of the Transvaal.

All of the above directly fed into the production of the draft curriculum and benchbook and formed the basis of further recommendations made. We were also able to provide further advice on operational and educational matters to the people and organisations visited, including establishing some South African-Australian links between government agencies and universities.

6. The Rationale for Judicial Education

In 1997, the late Chief Justice Mahomed of the Supreme Court of Appeal welcomed Judges to the first orientation course for Judges held in South Africa. He acknowledged the suspicion with which such a course might be greeted. There is no doubt that many Judges and legal practitioners have felt affronted by the suggestion that Judges need or want further education. These criticisms range from the reasonable suggestion that Judges are intelligent, experienced and highly trained professionals who don’t need further training to suggestions that it is a sinister plot by the Executive to “re-educate” judges. And yet, in most of the oldest democracies with well established and entrenched division between the three branches of government and a strong tradition of judicial independence, the need for judicial education has come to be accepted and implemented for many years.

Continuing judicial education was first introduced in the United States in 1963 with the encouragement of Chief Justice Warren Burger and the establishment of a National Judicial College. Over the next three decades this was followed in jurisdictions such as Canada, Great Britain, Australia and New Zealand, all of which, like South Africa, appoint Judges usually with both considerable experience and intelligence.

The rationale for judicial education is two-fold. Firstly, in a rapidly changing legal and social environment, the judiciary needs continuing education to maintain the standards of excellence to which it has always aspired. Secondly, continuing judicial education provides a visible means of accountability which even the judiciary cannot avoid in modern times.

The international trend towards greater judicial education has increased and expanded. Judicial education in Australia has been conducted through individual courts, through conferences of Judges, through the Australian Institute of Judicial Administration and through the Judicial Conference of Australia. On 3 November 2000, the Federal Attorney General announced that a working group would explore the establishment of an Australian Judicial College and that it would meet for the first

time on that day. Members of the working committee include judges from Federal and State Supreme Courts and officers from the Commonwealth of New South Wales, Victorian and Western Australian governments. The joint chairs are Chief Justice John Doyle of the Supreme Court of South Australia and Mr Robert Cornall who is the Secretary of the Commonwealth Attorney General's Department. The working group will report to the standing committee of the Attorney General.

What is the rationale for judicial education? Chief Justice Mahomed in his address, gave four reasons for judicial education which conform with the generally accepted international paradigm:

1. the intensity of qualitative and quantitative changes in the content of laws and in the complexity of litigation which has been generated by unprecedented technological development and industrial innovation;
2. the potential areas of jurisdiction of Judges have continued to expand exponentially with the growth of a constitutional culture which makes it very often necessary for the judiciary to make value judgments in assessing the constitutionality of parliamentary statutes and the legality of executive and administrative action following upon this;
3. proper judicial insights in many areas involve training sensitive to the perspectives and the complaints of special groups unfairly marginalised in the past, such as women, blacks, homosexuals, illiterate and disabled persons, all disadvantaged by assumptions which might need review and discussion;
4. accountability of the judiciary makes it a necessary initiative for judges to adopt. As the Chief Justice said:¹

“There has been a potentially massive expansion in the powers of the judiciary which now includes the jurisdiction to strike down laws made by a democratically elected Parliament. This is of course crucial for constitutional democracy, but will undoubtedly stimulate public demand to understand the process of judicial adjudication, the values and beliefs which inform it, and the competence of the men and women who hold judicial office. Particularly in areas where the conclusion of the court is not based on some very complex technical rule but on some kind of basic values, in respect of which the lay person has a different view, he or she will want to understand the approach of the court and the justification for its conclusions. If he or she does not, the decisions of the courts will not enjoy legitimacy in his or her mind. If that legitimacy is assailed, the independence of the judiciary which we must jealously protect, will itself become threatened. Judicial education in collegial discussion is therefore necessary to maximise our efficiency and competence, to effectively nurture our legitimacy, and ultimately to protect our independence.”

¹ ibid at 109

There are a number of imperatives in judicial education and one that is generally agreed is that the process must be Judge-driven and Judge-controlled. That does not mean that all other organs of government and other persons are excluded. Indeed the initiative for the development of the judicial college in Australia involves close co-operation between the executive and the judiciary in the planning and, of course, the legislature who will fund it. However the Judges must be closely involved in and have control over the development of programs and implementation of them. The independence of the judiciary requires no less.

There is also a responsibility on the executive to enhance opportunities for Judges to acquire training and sensitivity towards groups which are fairly marginalised or otherwise disadvantaged by previously unarticulated assumptions.²

The National Association of States' Judicial Educators in the United States of America has properly outlined the objectives of judicial education as being:³

“To assist Judges to acquire the knowledge, skill and attitudes required to perform their judicial responsibilities fairly, correctly and efficiently; to promote Judges' adherence to the highest standards of personal and official conduct; to preserve the integrity and impartiality of the judicial system through elimination of bias and prejudice, and the appearance of bias and prejudice; to promote effective court practice and procedures; to improve the administration of justice; to enhance public confidence in the judicial system.”

Justice Nicholson of the Supreme Court of Western Australia has recognised the integral relationship between judicial education in furthering both judicial independence and accountability. In his article “Judicial Independence and Accountability: Can they Co-Exist?” in the *Australian Law Journal* in 1993, his Honour said:⁴

“Judicial education is now an accepted part of judicial life in many countries. It is an enhancement of the mental qualities necessary to the preservation of judicial independence. Judicial independence requires that the judicial branch is accountable for its competency and the proposition is now accepted beyond the debate.”

The implementation of the equality legislation in South Africa gives the judiciary a welcome opportunity to seize the initiative in the area of collegial judicial education to ensure that it controls that education and at the same time to reassure the population that their constitutional rights to equality are protected and able to be effectively vindicated in both the higher and lower courts.

² Mahomed “The independence of the Judiciary” (1998) 115 South African Law Journal 658 at 661

³ Principals and Standards of Continuing Judicial Education, The National Association of State Judicial Educators, 1991, 1NASJE, Commentary on Preamble, 6.

⁴ Nicholson RD “Judicial Independence and Accountability: Can they Co-Exist?” (1993) 67 *Australian Law Journal* 404-426 at 425

7. Suggested draft curriculum

We provided the following draft curriculum to be considered by the implementation team in South Africa.

Rationale

The Constitution of the Republic of South Africa in section 9 provides for the development and enactment of legislation that will address equality. In response to this constitutional mandate the **Promotion of Equality and Prevention of Unfair Discrimination Act (No. 4 of 2000)** was enacted. As well as making unfair discrimination unlawful, the Act aims to introduce a proactive approach to equality. It is therefore of the utmost importance for the community and for the legal system of South Africa that those responsible for the administration and implementation of this Act are knowledgeable of, and comfortable with, this legislation, the principles on which it is based, and the empathetic approaches it requires.

Objectives

1. To enable participants to gain a knowledge of the rules, principles and procedures of the *Promotion of Equality and Prevention of Unfair Discrimination Act* (“the Act”);
2. To enable participants to develop the intellectual and personal skills to perform competently in the new juridical and social environment of South Africa as represented in the Act;
3. To enable participants to competently locate and use international and domestic materials relevant to the Act;
4. To enable participants to critically reflect on their own experiences and appreciate the diverse perspectives of issues relevant to the Act.

Teaching and Learning Methodologies

The methodology should recognise that the judiciary is a sophisticated cohort of highly educated and legally experienced judicial officers who are interested in the effective implementation and adjudication of cases under the Act. Equally, the methodology should recognise that part of the cohort will involve clerks of the court who will be interested in the more practical aspects of the legislation. There will need to be separate curricula for the various participants in the educational programs.

Assessment

It is important that the programs are assessed so that different pedagogical strategies can be identified if there are weaknesses or gaps in the program.

Modules

A: Social Context

This could be undertaken by using, or adapting, existing programs run by such institutions as the Justice College, Pretoria; the Centre for Applied Studies, University of Witwatersrand; the Community Law Centre, University of the Western Cape; the Race, Gender and Law Institute, University of Cape Town; School of Law, University of Natal; Human Rights Centre, University of Pretoria. Overseas institutions which also run this type of program include the National Judicial College, University of Nevada, USA.

Topics to be covered could include:

- The nature and causes of bias and stereotyping
- Types of bias (gender, race, culture, disability etc)
- Bias in decision-making
- Bias and judicial ethics
- Systemic discrimination
- History of discrimination
- Internalised or sub-conscious bias
- Understanding particularly vulnerable groups

The method of covering these topics could include:

- Problem solving
- Examination of the participants' own perspectives and values
- Role reversal eg gender reversal
- Examination of myths and stereotypes
- Simulations
- Practical exercises for the adjudication of cases and the use of the Regulations.

It is suggested that it be essential for this module to be completed before participants attempt the modules in Part B, or at least do Parts A and B concurrently. For magistrates, completion of social context training offered by the University of Cape Town and Justice College should be a prerequisite.

B: Content of the Act

1. The Preamble to, and Objects of, the Act: The Notion of Equality

Substantive Equality rather than Formal Equality
Equality of Outcomes

* International Approaches to Equality

South West Africa Case (Second Phase) (1966) ICJ Rep,
judgment of Tanaka J at pp.305-6

International Covenant on Civil and Political Rights, Arts. 2-5

Convention on the Elimination of All Forms of Racial Discrimination, Arts. 1-4

Convention on the Elimination of All Forms of Discrimination Against Women Arts. 1-5

African Charter of Human and Peoples Rights

International Covenant on Economic, Social and Cultural Rights

* Domestic Approaches to Equality

The Historical Background in South Africa

Constitution of the Republic of South Africa, s.9

South African cases

Harksen v Lane (1997) 11 BCLR 1489 (CC)

City Council of Pretoria v Walker (1998) 3 BCLR 257

* Comparisons with other Jurisdictions

Australia

Canada

Britain

* Chapter 5 of the Act

Sections 24-29

* Critique of equality

For example: R. Graycar & J. Morgan: *The Hidden Gender of Law*, pp.44-50; D. Kairys: *The Politics of Law*, pp.96-116; R. Sadurski, "Equality before the Law: A Conceptual Analysis" (1986) 60 *ALJ* 131; R. Delgado, "Storytelling for Oppositionists and Others: A Plea for Narrative" (1989) 87 *Michigan L.R.* 2411. Specifically with respect to discrimination laws and equality, see A. Parashar, "The Anti-Discrimination Laws and the Illusory Promise of Sex Equality" (1994) 13 *University of Tasmania L.R.* 83; M. Thornton: *The Liberal Promise*, Introduction & Chapter 1.

2. The Interpretation of the Act and its Guiding Principles

* Sections 3, 4

* *Constitution of the Republic of South Africa*, Chapter 2

* Statutory interpretation: strict interpretation vs purposive interpretation (eg, Gaudron J in *Waters v Public Transport Corporation* (1991) EOC 92-390: High Court of Australia).

The use of inference in interpretation and application.

- * Systemic problems
 - Examples from the South African experience
- * Identifying indirect discrimination
 - Term or condition
 - Disproportionate ability to comply
 - Reasonableness

3. Unfair Discrimination: Meaning, Aspects and Application

- * Act ss.1, 6-9, 14, 29, Schedule
- * “Unfair” discrimination
 - Comparisons with reverse discrimination and affirmative action
- * Direct and Indirect Discrimination
- * Specific terms: “human dignity”; “legitimate purpose”; “reasonable accommodation”.
- * “Race”
- * “Gender”
- * “Disability”
 - An Australian example: *Cocks v State of Queensland* (1994) EOC 92-612
- * Other grounds enumerated in the Constitution eg pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, religion, conscience, belief, culture, language, birth
- * Further grounds: eg social and economic discrimination, HIV status

South African Equality Cases:

Constitutional Court

Brink v Kitshoff 1996 (4) SA 197 (CC) (1996 (6) BCLR 752)

Fraser v Children’s Court Pretoria North 1997 (2) SA 261 (1997 (2) BCLR 153)

Prinsloo v Van der Linde 1997 (3) SA 1012 (CC) (1997 (6) BCLR 759)

President of the RSA v Hugo 1997 (4) SA 1 (CC) (1997 (6) BCLR 708)

Harksen v Lane 1998 (1) SA 300 (CC) (1997 (11) BCLR 1489)

Larbi-Odam v MEC for Education 1998 (1) SA 745 (CC) (1997 (12) BCLR 1655)

East Zulu Motors v Empangini Transitional Local Council 1998 (1) BCLR 1 (CC)

City Council of Pretoria v Walker 1998 (3) BCLR 257 (CC)

National Coalition of Gay and Lesbian Equality v Minister of Justice 1998 (1) SA 6 (CC) (1998 (12) BCLR 1517)

National Coalition of Gay and Lesbian Equality v Minister of Home Affairs 2000 (1) BCLR 39 (CC)

Hoffmann v South African Airways 2000

4. Hate Speech

* Act ss.10, 15

* Comparison with defamation

5. Dissemination and publication of discriminatory information

* Act s.12

* Factors:

“Disseminate”, “publish”, “display”

“Reasonably construed/understood to demonstrate a clear intention”

“bona fide engagement in artistic activity ...”

6. Harassment

* Act ss.1(xiii), 11, 15

* Not only sexual harassment

* Factors:

“Unwanted”

“Persistent”, “Serious”

“Demean”, “Humiliate”, “Create a hostile or intimidating environment”

“Calculated to induce submission”

* Type of detriment

7. Employment Equity Act 1998

* When does the Employment Equity Act apply and when does that the Equality Act apply (eg independent contractors, the Army)

8. Practice and Procedure

- * Burden of proof
Section 13
- * Equality Courts
Sections 16, 21, 22
- * Clerks of Equality Courts
Section 17
- * Institution of Proceedings/Which Court/Representation
Section 20
- * Regulations
Regulations
Sections 18, 19, 22
- * Use of assessors
Section 22
- * Orders and compensatory damages
Section 21
Measure of damages, innovative orders
- * Appeals and reviews
Section 23

9. Judicial Method

- * Identifying subtle discrimination
- * The use of inference
- * Handling controversial cases

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8. Recommendations/Suggestions made

1. The inclusion of a **rationale and objectives** is always important when designing a curriculum, in order to make explicit the aims of the education and to indicate what the participants should be able to achieve as a result of it. This is especially so when the education involves an element of transformational/attitudinal issues, where there may be some resistance to or doubt about its efficacy, and where these issues connect directly with the application of the Act.
2. The structure of, and planning for, the education could be undertaken using the considerable existing expertise already available in universities and NGOs in South Africa. Examples of institutions which have a demonstrated ability to participate are: Justice College (Pretoria); Centre for Applied Legal Studies (University of Witwatersrand); Community Law Centre (University of the Western Cape); Law, Race and Gender Centre (University of Cape Town); Human Rights Centre (University of Pretoria), School of Law (University of Natal); Commission on Gender Equality and the Human Rights Commission. It is suggested that these would be preferable to the use of government departments and would allow for regionalisation of the program. It is also suggested that the judiciary should be actively engaged in all stages of the development and implementation of the education. This is important both practically and in the light of the doctrine of the separation of powers, especially in the light of the recent decision of the Constitutional Court in the *Heath S.I.U. Case*.
3. Education of the judiciary has special characteristics because of the nature of the judicial role, doctrinal constraints with respect to judicial independence and the specific needs of judges and magistrates. As the higher court justices form a professional elite, judicial education should extend beyond the conventional domain of technical competence. Thus, education should embody the importance of peer leadership, a focus on developing skills (knowing “how” rather than just knowing “what”) and the facilitation of individualised learning. In this way, judicial education may assume its full potential as an agent of leadership in promoting human rights.
4. Separate curricula should be developed: one designed for judges, one for magistrates, and one for clerks of the court.
5. Examples, scenarios, case studies, etc, should be included in all modules. These should be specific to South African issues.
6. It is essential that the draft curriculum be developed by the academies using South African expertise and experience.

9. The Way Forward

Our brief was to consider a draft bench book and draft curriculum with regard to the *Promotion of Equality and Prevention of Unfair Discrimination Act 2000* (the “Equality Act”). This was done. We also provided a collection of papers on judicial education and the rationale for it.

We also made recommendations on how to move the process forward. In our view, it is imperative that the role of the Executive, through the Department of Justice, be facilitative rather than directive. This can be achieved by the Management Committee for the Implementation of the Equality Legislation chaired by Thuli Madonsela from the Department of Justice and made up of nominees of the Judicial Services Commission (Judge Farlam and Judge Zulman), nominees of the Magistrates Commission (Ms Valerie Gqiba, Mr Joe Raulinga and Ms Cecile van Riet (Justice College)), and representatives of NGOs and the Universities (Andre Keet from the Human Rights Commission, Saras Jagwanth, Senior Lecturer in Law from the University of Cape Town, Joyce Seroke from the Commission on Gender Equality and Professor Shadrack Gutto from the Centre for Applied Legal Studies, School of Law, University of Witwatersrand). It is in our view essential that in this model of implementation that a judge should co-chair the Committee in order to preserve judicial independence.

There are a number of University Law Schools and NGOs associated with Universities who have the confidence of the judiciary. An appropriate way to progress the matter would be for the Management Committee in conjunction with the Justice College and the Judicial Services Commission and the Magistrates Commission to arrange a colloquium of judges and academics from such institutions around the country to meet and discuss the content and format of seminars to introduce the members of the judiciary to the Equality Act and to finalise the content of the curriculum. The model we have recommended for the next phase attempts to make best use of existing resources for effective judicial education.

With regard to the three different groups, we recommended that the next phase be:

- the **clerks of the court** and the registrars should have training conducted by the Justice College in connection with the training already planned for them in relation to the implementation of the *Promotion of Administrative Justice Act 2000* and the *Promotion of Access to Information Act 2000*;
- the Justice College be asked to provide judicial education for the **magistrates** on the Equality Act, building on the social context training which they have already undertaken;
- Universities and NGOs in each province should be asked to arrange separate seminars for interested **judges** in their respective provinces to introduce them to the Equality Act and to discuss freely and openly in private the concepts and content of the Act and the problems and challenges that might arise in the adjudication of cases under the Act. A national conference should also be organised which includes international speakers so that the South African

judiciary can contribute to jurisprudential learning in this important area of human rights law which transcends national boundaries.

We also recommended that the Department of Justice ensure that there is adequate funding for these phases of the implementation of the Act to be achieved.