

# Combating all injustices

TNA P.19 10/05/2016

Discrimination is not only often racist in nature; equality in education and other rights are also denied to many



## Analysis

BOKANKATLA MALATJI

PRIOR to 1994 South African society was built on an institutionalised system of segregation that was racially oppressive and discriminatory. However, discrimination did not only take the form of racism but also manifested through discrimination on the basis of gender and disability, among others.

The legacy of the apartheid era still persists today in South Africa for many who were denied equal opportunities to employment on the above-mentioned grounds.

As a result of this legacy, the dawn of the democratic era fostered a new environment that recognised the fundamental importance of equality, and it was identified as one of the founding principles of the Constitution of the Republic of South Africa.

The Bill of Rights, as expressed in Chapter 2 of the Constitution, guarantees all persons the right to equality in Section 9, as well as the right not to be discriminated against.

Twenty years since the adoption of the Constitution, South Africa has continued to reinforce the legal framework around the right to equality by domesticating international legal instruments such as the Convention for the Rights of People with Disabilities; the International Convention on the Elimination of all forms of Racial Discrimination and the Convention on the Elimination of Discrimination against Women, among others.

However, the legislative framework is premised on the substantive conception of equality and therefore acknowledges that special measures may need to be taken to advance categories of persons disadvantaged by unfair discrimination in the past.

The Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 is but one piece of legislation developed in this respect. Despite the laws and policies in place, widespread discrimination persist, including in the workplace. Labour-related complaints have continuously formed part of the "top five" human rights complaints received by the South African Human Rights Commission over the last few years, along with complaints relating to equality.

Between 2014 and 2015 the number of labour-related complaints constituted 9% of all complaints received by the commission. Additionally, equality-related complaints remain the highest category of complaints received by the commission, and trends indicate that equality complaints have increased on an annual basis. A total of 59% of all equality-related complaints relate to race, while 13% related to disability. This is reflective of the prevalence of a wider problem of discrimination in South Africa.

Unfair discrimination in the workplace takes on different forms, including individual and institutional. While the former refers to



**APARTHEID LEGACY.** The Human Rights Commission has reported that while policies aiding the disabled in the workplace are often in place, actual implementation is often lacking. PICTURE: GETTY IMAGES

individual perceptions and conduct, the latter refers to institutional policies or practices which unfairly and disproportionately restrict access to goods, services or opportunities for particular groups of people.

People with disabilities are often the victims of unfair discrimination when attempting to access employment, and the human rights commission's 2012 Equality Report highlighted a number of factors influencing the prevalence of discrimination against persons with disabilities, including a gap between policy conception and implementation, persistent stigmatising social attitudes, the intention of and the reliance on disability grants, resource constraints as well as the impact of apartheid spatial legacy on the equitable accessibility and opportunities for disabled persons.

Other challenges experienced in the work place include a lack of reasonable accommodation of working environments, barriers to accessing quality education, structural challenges, a lack of access to information and limitations related to legal capacity. Furthermore, women continue to experience severely limited employment prospects, resulting in the continuation or intensification of gender inequality in the workplace.

As part of the broader equality agenda, the commission launched a toolkit for the private sector on promoting the right to work of persons with disabilities in 2015, which aims to promote awareness and assist employers in the private sector to advance the right to employment for persons with disabilities. The toolkit highlighted the fact that per-

sons with disabilities face multiple barriers which hinder their ability to obtain employment and enjoy full and effective participation in the labour market on an equal basis to others.

The toolkit illustrates the fact that disability is often equated with an inability to work, and the result is that as many as eight in 10 persons with a disability are unemployed. The toolkit further found that a correlation between the degree of impairment and employment exists, with more severe forms of impairments associated with higher unemployment, while further correlations between gender, race, income and geographic disparities were also highlighted.

The main aim of the national hearing on unfair discrimination in the work place (held this week on Monday) was therefore to create greater awareness and understanding of discrimination in the workplace and assist in addressing systemic forms of discrimination and social stigmas with a view of promoting and enhancing the achievement of equality and equitable employment opportunities for all persons.

For example, where people with disability are concerned, it presents an opportunity to further understand challenges and opportunities surrounding issues such as recruitment, retention, upskilling, gender equality and the provision of reasonable accommodation, among others.

We succeeded in examining not only the extent to which discrimination persists in the workplace but will also examine the prevalence of deeper forms of institutionalised

## KEY POINTS

- Prior to 1994 South African society was built on an institutionalised system of segregation which was racially oppressive and discriminatory
- However, discrimination did not only take the form of racism but also manifested through discrimination on the basis of gender and disability, among others. The legacy of the apartheid era still persists today in South Africa for many who were denied equal opportunities to employment on the above-mentioned grounds
- Despite the laws and policies in place, widespread instances of discrimination persist in South African society, including in the work place
- Labour-related complaints have continuously formed part of the "top five" human rights complaints received by the South African Human Rights Commission over the last few years, along with complaints relating to equality

discrimination, while identifying existing barriers to equality, and propose a set of practical recommendations to promote the achievement of equality and equitable opportunity for vulnerable groups in South Africa.

It is imperative that the recommendations from this hearing are implemented by all stakeholders and the commission is committed to ensuring they are.

Malatji is the commissioner at the SA Human Rights Commission responsible for the rights of older persons and people living with disabilities