

A young man with albinism, smiling with his eyes closed, is the central focus. He is positioned in front of a classical building with large columns and ornate carvings. The image is overlaid with a semi-transparent orange circle.

TOOLKIT ON THE USE OF EQUALITY COURTS TO COMBAT RACE AND COLOUR-BASED DISCRIMINATION AGAINST PERSONS WITH ALBINISM IN SOUTH AFRICA

MARCH 2025



Co-funded by
the European Union



**Centre for
Human Rights**
UNIVERSITY OF PRETORIA



About the Centre for Human Rights

The Centre for Human Rights, Faculty of Law, University of Pretoria, is an internationally recognised university-based institution combining academic excellence and effective activism to advance human rights, particularly in Africa. It aims to contribute to advancing human rights, through education, research and advocacy.

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Acknowledgements

The Centre for Human Rights is grateful to the European Union Delegation in South Africa whose generous support made the compilation of this toolkit possible. The Centre also thanks Ms Chuma Bubu-Mdlulwa who drafted this toolkit.

Abbreviations and acronyms

EEA Employment Equity Act 55 of 1998

GG Government Gazette

HIV Human Immunodeficiency Virus

PEPUDA Promotion of Equality and Prevention of Unfair
Discrimination Act 4 of 2000

SAHRC South African Human Rights Commission

Glossary of Terms

- **‘Claim’** means a statement (sometimes called a pleading) showing that the complainant was discriminated against in violation of PEPUDA along with the sought-after remedy, typically a demand for money, property or enforcement of a right provided by law.
- **‘Clerk’** means the court administrator who makes sure that the process works smoothly. The clerk is directly responsible to the Court and interacts with the Presiding Officers.
- **‘Complainant’** means the person alleging damages or wrongdoing in terms of PEPUDA (ie, the person bringing the claim).
- **‘Form 2’** is the legal document that is used by the Equality Court to allow the complainant to set out the allegations of discrimination, the information related to other parties, including anyone that will represent the complainant in the Equality Court, and a list of remedies the complainant may seek. This form substitutes what is otherwise called a ‘complaint’ in courts of law. The clerk will assist the complainant in completing this form.
- **‘Form 3’** is the notice the clerk will send to the respondent advising the respondent of the claims against him/her and advising him/her of the opportunity to respond to the claims.
- **‘Harassment’** means unwanted conduct that is persistent or serious and demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and is related to a person’s membership or presumed membership of a group identified by one or more of the

prohibited grounds or a characteristic associated with such a group.

- **‘Hate speech’** is the publishing, propagating or communication of words based on one or more of the prohibited grounds. These words must be reasonably construed to demonstrate a clear intention to be hurtful, harmful or incite harm and to promote or propagate hatred, eg, calling people derogatory (insulting or offensive) names or words.
- **‘Presiding Officer’** means the hearing officer in the Equality Court System, who is a specially trained Magistrate.
- **‘Prohibited grounds’** are race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, disability, religion, conscience, belief, culture, language, birth and HIV status.
- **‘Prima facie case’** is a case with enough evidence to proceed to a hearing.
- **‘Respondent’** means the person or persons against whom the complainant is bringing the claim of damages or wrongdoing. This person responds to the claim brought against him/her.
- **‘Unfair discrimination’** occurs when people are treated differently compared to other categories of people, and such treatment impairs their dignity. Discrimination is considered unfair when it imposes burdens or withholds benefits or opportunities from any person on one of the prohibited grounds listed in PEPUDA.

Executive Summary

In 1996, the South African Constitution was adopted, which, amongst other things, guarantees racial equality under the law.¹ To promote the Constitution's promise of the end of discrimination and enforce equal treatment under the law, the government enacted the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA).² This anti-discrimination law prohibits unfair discrimination by both the government of South Africa and by private persons or organisations.³ Under PEPUDA, the Equality Courts were created to hear most cases about unfair discrimination, hate speech and harassment.⁴ Any person or association acting on its own behalf or on behalf of others can bring a case covered by PEPUDA to the Equality Courts if they or someone else has received mistreatment due to discrimination on a number of grounds, including, but not limited to, race and colour.⁵ In spite of this enabling legal framework (as will be explored in more detail below), persons with albinism in South Africa continue to face discrimination based on race and colour across various aspects of their lives. Concern has been expressed both by the former United Nations Independent Expert on the Enjoyment of Human Rights by Persons with Albinism, Ms Ikponwosa Ero, as well as the Committee on the Elimination of Racial Discrimination about the prevalence of race and colour-based discrimination against persons with albinism in South Africa.⁶ In 2023, the Centre for Human Rights conducted research on the experiences of persons with

1 The Constitution of the Republic of South Africa, 1996, sec 9.

2 Act 4 of 2000 (PEPUDA).

3 PEPUDA, sec 6.

4 PEPUDA, sec 16.

5 PEPUDA, sec 7.

6 Committee on the Elimination of Racial Discrimination, Concluding Observations on the Combined Fourth to Eighth Periodic Reports of South Africa, 5 October 2016, UN Doc CERD/C/ZAF/CO/4-8 (2016).

albinism with respect to the extent and impact of colourism and racism, and that can be found in the report titled: ‘The impact of race and colour on the enjoyment of human rights and fundamental freedoms by persons with albinism in South Africa’.⁷ This toolkit aims to build on that research report by providing more background and information on the use of Equality Courts as an avenue that can be used by persons with albinism in South Africa to combat race and colour-based discrimination.

7 See Centre for Human Rights ‘Impact of race and colour on the enjoyment of human rights and fundamental freedoms by persons with albinism in South Africa’ (2023).



1



Introduction

Persons with albinism have a pigmentation deficiency which causes them to have a lighter skin colour than other members of their racial groups. For black persons with albinism particularly, their lighter skin colour sets them apart from other black South Africans, often resulting in stigmatisation and discrimination based on colour.⁸ Research states that the discrimination that persons with albinism in South Africa face is common and has a negative impact on their enjoyment of human rights and fundamental freedoms as guaranteed by the Constitution, including the right to employment, education, political and public participation, health, access to justice and freedom from exploitation, violence, and abuse.⁹ Discrimination based on race and colour is prohibited in various international human rights laws at the global and regional levels, as well as in South African law.¹⁰ One avenue that persons with albinism can use to assert their rights is the Equality Courts, which the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA) establishes. These courts adjudicate cases involving unfair discrimination, harassment and hate speech. This toolkit aims to provide practical steps on how persons with albinism, who may not be familiar with the Equality Courts and may lack legal representation, can use these courts to combat race and colour-based discrimination.¹¹

8 Centre for Human Rights 'Impact of race and colour on the enjoyment of human rights and fundamental freedoms by persons with albinism in South Africa' (2023) 10.

9 Centre for Human Rights (n 1).

10 See the Constitution of the Republic of South Africa, 1996; Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA); and the Employment Equality Act 55 of 1998, which all contain provisions prohibiting discrimination on numerous grounds, including race and colour.

11 PEPUDA, secs 4(1)(a)-(b). Also see *Maharaj v Gold Circle* (2018) 1 All SA 760 (KZP).

This toolkit has six sections. The first section is this introduction. The second section provides an overview of race and colour-based discrimination experienced by persons with albinism in South Africa. The third section addresses the national laws applicable to discrimination against persons with albinism. The fourth section provides an overview of the Equality Court system and a step-by-step guide on navigating Equality Courts from filing the complaint to preparing for the hearing. The fifth section explores the critiques and limitations of Equality Courts in achieving the goals set from their inception. Finally, section six provides a conclusion for the toolkit.



2.

**Race and colour-
based discrimination
against persons with
albinism in South
Africa: An overview**

Skin colour has historically been used as a way of recognising the racial group a person belongs to.¹² However, for persons with albinism, the lack of pigmentation does not qualify them as white. Persons with albinism generally identify themselves with the black communities in which they were born despite their skin colour.¹³ Nevertheless, some members of the black community reject them despite their lineage.¹⁴ As a result, there is a worrying occurrence of race and colour-based discrimination against persons with albinism, including hate speech, provocation of violence and violence. Often, the discrimination manifests in a complex manner. On one hand, because of their skin tone, black persons with albinism are associated with whiteness, and it is sometimes assumed that they benefit from the privileges of being 'white'.¹⁵ This perception can attract vengeance from other members of the black community. On the other hand, persons with albinism are seen as sub-human, as evidenced by the name-calling and myths and misconceptions about them.¹⁶

Naturally, race and colour-based discrimination has affected persons with albinism negatively. The 2023 study found that it impacts them in two dimensions: the social dimension and the human rights dimension.¹⁷ Socially, the rejection that persons with albinism face leads to a fragmented sense of

12 M Mswela & M Nöthling-Slabbert 'Colour discrimination against persons with albinism in South Africa' (2013) 6 South African Journal of Bioethics and Law 25 n 7.

13 R Phatoli, N Bila & E Ross 'Being black in white skin: Beliefs and stereotypes around albinism at a South African University' (2015) 4 African Journal of Disability 106.

14 Prof Rhodes 'How would albino Black-Africans be treated in apartheid-era South Africa?' https://www.reddit.com/r/AskHistorians/comments/32wsje/how_would_albino_blackafricans_be_treated_in/ (accessed 27 November 2024).

15 T Corinne 'Albinism in Africa: Examining identity formulation' Honours Thesis, University of Chattanooga, 2021.

16 As above.

17 Centre for Human Rights (n 1) 23.

identity due to the inability to fully identify with any racial group. It also inflicts psychological scars – studies conducted in South Africa show that children and adults with albinism have a lower self-image and a higher level of anxiety than their peers.¹⁸ Lastly, the consequences of the rejection can be fatal, where the colour of persons with albinism is linked with harmful myths and superstitions.¹⁹ All of these contribute to persons with albinism feeling alienated, excluded and rejected from their own communities.²⁰

The impact of race colour-based discrimination goes further than the social dimension. It adversely impacts the enjoyment of human rights and fundamental freedoms by persons with albinism in South Africa; specifically, their rights to education, employment, freedom from abuse and violence, health and access to justice.²¹ In the Centre's 2023 study, many of the participants said that they did not report incidents of discrimination that they had experienced. One of the reasons cited for not reporting was uncertainty about whether their experience amounted to discrimination or not as well as worry of being perceived as overly sensitive.²² Another reason for the failure to report is a lack of awareness or knowledge about where to report such discriminatory incidents.²³

18 AC Rielly 'Mental health of children with albinism: Associated risk and resilience factors' Master of Education dissertation, University of Johannesburg, 2020 <https://ujcontent.uj.ac.za/esploro/outputs/graduate/Mental-health-of-children-with-albinism/9913602407691> (accessed 27 November 2024).

19 Centre for Human Rights (n 1) 29.

20 As above.

21 Centre for Human Rights (n 1) 30.

22 Centre for Human Rights (n 1) 39.

23 As above.

Race and colour-based discrimination against persons with albinism, therefore, manifests in a complex manner both socially and from a human rights perspective, making it necessary to explore the ways in which the law can address such discrimination and raise awareness about the procedure to lodge complaints of discrimination.



3.

**The Constitutional
right to equality
and national
laws prohibiting
discrimination**

Having highlighted the negative impact of discrimination based on race and colour above, it is important to note that South African law prohibits this discrimination in the Constitution and in various legislation. These laws are considered below.

3.1 The Constitution

The right to equality is guaranteed in section 9 of the Constitution. Section 9(1) guarantees every person the right to be ‘equal before the law’ and to ‘equal protection and benefit of the law’. Equality includes the full and equal enjoyment of all rights and freedoms. Section 9(3) prohibits unfair discrimination on several grounds, including race and colour. The state may not discriminate directly or indirectly against anyone on one or more prohibited grounds, and no person may unfairly discriminate directly or indirectly against anyone on one or more prohibited grounds.

3.2 Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA)

As section 9(4) of the Constitution requires, national legislation has been enacted to prevent or prohibit unfair discrimination.²⁴ The national legislation referred to in this section is PEPUDA. One of PEPUDA’s guiding principles is to provide access to justice for all persons in relevant judicial and other dispute resolution forums.²⁵ In the application of the Act, the existence of inequalities such as race and disability in all spheres of life as a result of past and present unfair discrimination should be recognised and taken into account;²⁶ as well as the need to take measures at all levels to eliminate such discrimination and inequalities.²⁷

24 Constitution, sec 9(4).

25 PEPUDA, sec 4(1)(b).

26 PEPUDA, sec 4(2)(a).

27 PEPUDA, sec 4(2)(b).

Section 7 of PEPUDA provides that:

No person may unfairly discriminate against any person on the ground of race, including –

- (a) the dissemination of any propaganda or idea, which propounds the racial superiority or inferiority of any person, including incitement to, or participation in, any form of racial violence;
- (b) the engagement in any activity which is intended to promote, or has the effect of promoting, exclusivity, based on race;
- (c) the exclusion of persons of a particular race group under any rule or practice that appears to be legitimate, but which is actually aimed at maintaining exclusive control by a particular race group;
- (d) the provision or continued provision of inferior services to any racial group, compared to those of another racial group;
- (e) the denial of access to opportunities, including access to services or contractual opportunities for rendering services for consideration, or failing to take steps to reasonably accommodate the needs of such persons.

PEPUDA, therefore, prohibits unfair discrimination based on race, and persons with albinism can rely on it to obtain redress for discrimination based on colour.²⁸

3.3 Employment Equity Act

Another piece of national legislation that prohibits discrimination is the Employment Equity Act (EEA) which prohibits discrimination in the employment space, including discrimination based on race and colour.²⁹ Section 6(1) of the EEA states that:

28 PEPUDA, sec 7(2)(a)-(b).

29 Employment Equity Act, sec 6(1).

No person may unfairly discriminate, directly or indirectly, against an employee. in any employment policy or practice. on one or more grounds. Including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture. language and birth.

Therefore, persons with albinism who have experienced discrimination in the employment sector based on their colour, can also rely on the EEA to seek redress.

Together, the Constitution, PEPUDA and the EEA provide an enabling legislative framework for combatting colour-based discrimination against persons with albinism. Despite the equal importance of all these laws, the rest of this toolkit will focus solely on PEPUDA because it establishes the Equality Courts in South Africa.



4

● **Guide to using
Equality Courts**

Alongside prohibiting unfair discrimination (on the grounds of race, gender and disability), hate speech and harassment,³⁰ PEPUDA also provides for the establishment of Equality Courts to ensure the implementation of the provisions of the Act.³¹ The following section is a guide to using the Equality Courts in South Africa.

4.1 What are Equality Courts?

Equality Courts are specialised courts that were created in terms of PEPUDA. They were created to provide accessible and efficient access to justice for those seeking redress for unfair discrimination, harassment and hate speech.³² For the purpose of PEPUDA, every High Court is an Equality Court for the area of its jurisdiction. In other words, the High Court in Johannesburg also acts as an Equality Court for Johannesburg. On 19 September 2019, the Minister of Justice and Constitutional Development extended Equality Courts to Magistrates' Courts in order to bring access to justice to the marginalised and vulnerable citizens to assert their rights.³³ Therefore, Magistrates' Courts across the country now also serve as Equality Courts. Equality Courts eliminate barriers to judicial access by making it easier for complainants to navigate the courts without legal representation, with equality clerks appointed to assist the public when lodging complaints. A clerk of an Equality Court guides complainants through the procedure of filing a complaint and offers any advice that is needed by complainants.³⁴

30 PEPUDA, secs 3-5 and 16.

31 PEPUDA, sec 16(1)(a).

32 M Hunter-Parsonage & C Albertyn 'Emerging from the shadows? The Equality Courts in South Africa' Report of the NRF SARChI Chair in Equality Law and Social Justice (2021) 4 and 7.

33 Government Notice 1218, GG, 19 September 2019, 42717 (Designation of Courts).

34 PEPUDA, sec 20(1)-(3). Government Notice 764, GG, 13 June 2003, 25065 (Regulations relating to the Promotion of Equality and Prevention of Unfair Discrimination), reg 6(1).

Equality Courts were established to address reported cases of alleged unfair discrimination and ensure meaningful access to justice for all:

It is abundantly clear that the Equality Court was established in order to provide easy access to justice and to enable even the most disadvantaged individuals or communities to walk off the street, as it were, into the portals of the Equality Court to seek speedy redress against unfair discrimination, through less formal procedures.³⁵

4.2 Who can institute proceedings in the Equality Courts?

Proceedings in the Equality Courts may be instituted by:

- Any person acting in his/her own interests, even if they are not directly involved in what happened. This means a complaint to the Court can be made against someone or an organisation that one believes to have failed to respect the rights of another person.
- Any person acting on behalf of another person who cannot act in his/her own name.
- Any person acting as a member of or in the interests of a group or class of persons.
- Any person acting in the interest of the public.
- Any association, organisation, or body acting in the interests of its members.
- The South African Human Rights Commission or the Commission on Gender.³⁶

PEPUDA also places specific duties on the South African Human Rights Commission (SAHRC), the Commission on Gender Equality and other bodies established by the Constitution. These bodies are required to assist complainants in bringing

³⁵ *Manong & Associates (Pty) Ltd v Eastern Cape Department of Roads and Transport* (369/08) [2009] ZASCA 50 (25 May 2009) para 53.

³⁶ PEPUDA, sec 20(1).

complaints to the Equality Courts, conduct investigations into cases, and advise complainants.³⁷ The SAHRC has recently reiterated its commitment to register complaints by persons with albinism for investigation in order to provide the necessary redress.³⁸

4.3 What types of cases are heard in the Equality Courts?

The Equality Courts handle cases regarding complaints of unfair discrimination, hate speech or harassment. If you believe you or someone was treated badly because of hatred or bias based on race, colour of your/their skin, disability (and other grounds), you can report your case at the Equality Courts.

The Equality Court clerk and the presiding officer provide guidance on how to advance the case and the kind of evidence to present; they question witnesses themselves and have the authority to call witnesses. Equality Courts hear cases in an ‘expeditious and informal manner’, which enables and encourages participation by the parties in their cases.³⁹ Therefore, persons with albinism seeking redress and remedy for unfair discrimination, harassment and hate speech based on colour may approach the Equality Court closest to them.

4.4 Step-by-step guide on how to institute proceedings in Equality Courts

Below are the steps one needs to take to present a claim in the Equality Courts. This should assist in understanding the timing and flow of these simple procedures. The forms can be found in the annexures at the end of this document.

37 PEPUDA, sec 25(2).

38 SAHRC ‘Struggles of people living with albinism to be highlighted on Human Rights Day’ (17 March 2022) <https://sahrc.org.za/index.php/sahrc-media/news/item/3050-struggles-of-people-living-with-albinism-to-be-highlighted-on-human-rights-day> (accessed 27 November 2024).

39 PEPUDA, sec 4(1)(a)-(b). Also see, *Maharaj* (n 4).

Step 1

A person, an association or a commission wishing to bring a case before a court of law using PEPUDA must approach their nearest Magistrates' Court, ask for the Equality Court and notify the clerk of their intention to start proceedings by filling out Form 2.⁴⁰ Form 2 is the form to use when commencing proceedings at the Equality Court. The clerk should assist in completing the form; alternatively, it is possible to approach the offices of the SAHRC or the Commission for Gender Equality nearby for assistance.

Step 2

Once Form 2 is filed, the clerk of the Equality Court must then notify the respondent(s) about the claim within seven days by completing Form 3.

Step 3

The respondent(s) has ten days within which to reply. Should the respondent wish to state their side of the case they will be given a copy of Form 4 which they must complete and return to the clerk within ten days. The clerk then has seven days from receipt of the response to notify the complainant of the respondent's response.

Step 4

Within three days of the expiry of the period within which the respondent(s) is meant to reply, the clerk must refer the matter to the Presiding Officer (the Magistrate or Judge who will hear the matter). The Presiding Officer has seven days to decide whether the matter should be heard at the Equality Court or referred to an alternative forum, such as the SAHRC.⁴¹

40 PEPUDA, sec 20(2).

41 PEPUDA, sec 20(3)(a).

Step 5

If the Presiding Officer decides to hear the matter, the clerk must assign a date for the directions hearing within three days. At the directions hearing, the Presiding Officer will decide on issues such as when parties can come to trial, whether anyone needs an interpreter, whether assessors should be used, etc.⁴²

Step 6

The hearing on the merits of the claim is next, which involves the Presiding Officer listening to all the evidence and arguments from both sides of a case and making a decision based on the core facts and legal issues involved, essentially deciding who is right or wrong based on the substance of the dispute. This is the main part of a trial where the real arguments are presented and evaluated.

Once Form 2 is filed with the clerk, a decision should take about 90 days. If the claim is referred to an alternative forum and resolved by that forum, it will proceed according to that forum's process. If either party objects to the decision of the Presiding Officer, the matter can be appealed to the High Court within 14 days of the decision.

4.5 Preparing the claim and Form 2

It is also important to understand the process of filing a claim in the Equality Courts since the reality is that very few Magistrates' Courts, including the Equality Courts, are set up with properly trained clerks to help a complainant fill out Form 2 and initiate the claim process. Since the claim must fall within the narrow parameters of PEPUDA, the information presented to the clerk should initially focus only on issues covered by PEPUDA and should not be mixed with issues that PEPUDA does not address,

⁴² PEPUDA, sec 20(4).

such as criminal or labour issues. By focusing only on relevant issues, the clerk will be better able to determine if the claim is properly placed in the Equality Court.

Step 1 *Make a prima facie case*

To make the *prima facie* case, you, as the complainant, must establish the following three elements. First, the complainant must identify themselves and allege that he/she is a person protected by PEPUDA. In order to be protected by PEPUDA, he/she must be a person who was discriminated against in South Africa. Second, the complainant must allege that the respondent is subject to PEPUDA and the jurisdiction of the Equality Court in question, in other words, either lives within the area where the Court has jurisdiction or did something prohibited by PEPUDA within that area. Third, the complainant must state what that person or entity allegedly did. The *prima facie* case does not require the complainant to present evidence – it only requires him/her to plead that the discriminatory conduct prohibited by PEPUDA occurred.

Step 2 *Pick the right evidence to make a prima facie case*

After making the *prima facie* case, as discussed in Step 1, you, as the complainant, must provide evidence to support the facts you asserted. Although ‘proof’ is not required in pleading a *prima facie* claim, if the respondent does answer with proof, the complainant must also respond with proof. For this reason, it is important to ensure proper evidence to support the claim, even though the initial requirement is only to state a *prima facie* case. Evidence is ‘material that a party (the complainant or respondent) wants the court to consider as proof of the claim or defence offered’. It can take many forms but is not limited to statements of witnesses, documents, films and photos, tape recordings, business records, objects, etc.

Step 3 The respondent's response

Once the *prima facie* case has been alleged, the respondent answers the charges and can submit proof that: (i) either the discrimination did not take place as alleged; (ii) the conduct was not based on a prohibited ground; or (iii) that the conduct, although discriminatory, was fair in this case. The respondent's burden is to 'prove, on the facts before the court, that the discrimination did not take place as alleged'. To do that the respondent will have to present evidence that is admissible in court. If the respondent puts admissible evidence into the record to rebut the complainant's allegations, the responsibility will shift to the complainant to present hard evidence to support their allegations.⁴³

To ensure that the evidence presented is credible and admissible, a complainant or legal representative assisting a complainant should try to develop an understanding of the basic rules of evidence when preparing a case. This is true because, as has been the case thus far in the Equality Courts, respondents, once accused, are likely to hire a lawyer to defend them. When that happens, the most effective weapon a complainant (or their legal representative) can have is a good understanding of the most basic rules of evidence.

43 PEPUDA, sec 13.



5.

Critiques and limitations of Equality Courts

After a hopeful beginning, based on the belief that the transformative aspirations of the Equality Courts would be achieved for members of the public who brought their claims to these Courts, the reality has been a slow development of the Equality Courts, their usage and the principles of law that come out of these Courts.⁴⁴ Although there have been some strides in litigating before the Equality Courts for the rights of persons who have experienced unfair discrimination, hate speech and harassment, the Equality Courts are still faced with some challenges that may delay access to justice.⁴⁵

One challenge is the accessibility of the Equality Courts. The SAHRC has reported that security guards at some Equality Courts are not always aware of the existence of the Equality Court within the Magistrates' or High Court buildings that they are guarding.⁴⁶ A security guard is often the first person a potential complainant encounters at court and, most likely, will be asked to provide directions. It is therefore important that the awareness of the Equality Court sitting in each division must be extended to staff providing security services and that Equality Courts are properly sign-posted with information pamphlets or kiosks being provided at the entrance to the building for the litigants.⁴⁷

Another challenge is the shortage of properly trained clerks to help a complainant to fill out Form 2. Some Magistrates' Courts, including the Equality Courts, may not have properly-trained clerks to help the complainant start the claim process. Because of this, it can be difficult for clerks to analyse a complainant's accusation and determine whether it is a proper claim to bring before the Equality Court. Complainants are unlikely to

44 Hunter-Parsonage & Albertyn (n 25) 40.

45 W Holness & S Rule 'Barriers to advocacy and litigation in the equality courts for persons with disabilities' (2014) 17 *Potchefstroom Electronic Law Journal (PELJ)*1907 1927.

46 As above.

47 As above.

understand the nuances of PEPUDA. The role of the clerk is crucial and therefore unless the clerks have the necessary training and are made sensitive to the different access needs of persons, the Equality Courts will remain inaccessible to ordinary South Africans.⁴⁸

Awareness of the critiques and limitations of Equality Courts may be helpful to persons with albinism as they navigate the court system. Nevertheless, the Equality Courts remain a useful avenue for seeking redress against race and colour-based discrimination. Once these challenges are addressed, the potential of the Equality Courts to combat colour-based discrimination against persons with albinism can be strengthened.

48 Holness & Rule (n 38) 1928.



6. Conclusion

This toolkit outlined the race and colour-based discrimination experienced by persons with albinism in South Africa and the unfortunate impact that it has on the enjoyment of the human rights and fundamental freedoms guaranteed by the Constitution, as well as the enjoyment of life in the social sphere. In spite of the South African laws that prohibit unfair discrimination based on race and colour, the discrimination faced by persons with albinism persists. In light of this the toolkit sought to provide persons with albinism with an avenue to access recourse in the face of a violation of their rights through the Equality Courts which are established by PEPUA. The toolkit provided background information on the Equality Courts, who can bring cases before the courts, and outlined a practical step-by-step process from bringing the claim to the hearing for using the Equality Courts in instances of unfair discrimination, harassment and hate speech that persons with albinism may face. The toolkit also outlined some critiques and limitations of the Equality Courts and recommended that: (i) the security staff in the Equality Courts are informed of the presence of the Courts and that proper signage is available in order to enable easy access for complainants; and (ii) that clerks receive proper training in order to be in the position to help ordinary citizens without access to lawyers to file a complaint. Nevertheless, the Equality Courts remain a useful avenue for seeking redress against race and colour-based discrimination for persons with albinism and we are hopeful that once these issues are addressed, the potential of the Courts will be strengthened.

Annexure 1



J693

Form 2⁴⁹

REPUBLIC OF SOUTH AFRICA

FORM 2

INSTITUTION OF PROCEEDINGS IN TERMS OF SECTION 20 OF THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION ACT (ACT NO. 4 OF 2000) [Regulation 6 (1)]

- Note: 1. Affidavits of other persons or other documentary evidence in support of the matter must be attached.*
- 2. Your attention is drawn to the fact that the equality court may refer the matter to an alternative forum. If the matter is referred back to the equality court the clerk will inform you accordingly.*

[If the space provided is inadequate, submit information as an Annexure to this form and sign each page.]

PART A: PARTICULARS OF COMPLAINANT (to be completed if lodging complaint on own behalf)					
Surname:					
Full names:					
ID. No./Date of birth:					
Residential address:					
		Code ()			
Residential telephone number:					
Cellular telephone number:					
Work address:					
		Code ()			
Work telephone number:					
Fax number:					
Physical address (where documents can be served):					
		Code ()			
Preferred method in which the form is to be served:	Registered post <input type="checkbox"/>	E-mail <input type="checkbox"/>	Fax <input type="checkbox"/>	Sheriff <input type="checkbox"/>	Clerk <input type="checkbox"/>
Correspondence contact details (In terms of above):					
E-mail address:					
Other relevant information (such as financial position, availability of transport, socio-economic status, if an interpreter will be needed and if special requirements are needed e.g. wheelchair access) which may assist the presiding officer to make a decision regarding the forum which must deal with the complaint in terms of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000):					

49 https://www.justice.gov.za/EQCact/forms/eqc_form2_J693.pdf

PART B: PARTICULARS OF PERSON ACTING IN TERMS OF SECTION 20(1)(b) - (f) ON BEHALF OF ANOTHER PERSON/ASSOCIATION/BODY (Proof of capacity of person acting in terms of section 20(1)(b) - (f) to be attached)

Surname:					
Full names:					
ID. No./Date of birth:					
Capacity of person acting in terms of section 20 (1) (b) - (f):					
Registration number of corporate body:					
Residential address:					
	Code ()				
Residential telephone number:					
Cellular telephone number:					
Work address:					
	Code ()				
Work telephone number:					
Fax number:					
Physical address (where documents can be served):					
	Code ()				
Preferred method in which the form is to be served:	Registered post <input type="checkbox"/>	E-mail <input type="checkbox"/>	Fax <input type="checkbox"/>	Sheriff <input type="checkbox"/>	Clerk <input type="checkbox"/>
Correspondence contact details (In terms of above):					
E-mail address:					
Name(s) and address(es) of person(s) on whose behalf you are acting.					
	Code ()				

PART C: PARTICULARS OF RESPONDENT(S) (The under mentioned particulars should be furnished in respect of each respondent.

Name of person(s)/organization(s) against whom/which proceedings are instituted:

ID. No./Date of birth/
Registration No.:

Residential address (if applicable):

Code ()

Residential telephone number:

Cellular telephone number:

Work/Business address:

Code ()

Work telephone number:

Fax number:

Preferred method in which the
form is to be served:

Registered post

☐

E-mail

☐

Fax

☐

Sheriff

☐

Clerk

☐Correspondence contact details
(In terms of above):

Physical address (where documents can be served):

Code ()

E-mail address:

PART D: PARTICULARS OF PERSON APPEARING ON BEHALF OF COMPLAINANT

Full names and surname of person appearing on your behalf: (representative)

ID. No./Date of birth:

Postal address of representative:

Code ()

Residential telephone number:

Cellular telephone number:

Fax number:

E-mail address:

PART E: PARTICULARS OF COMPLAINT AND RELIEF SOUGHT

Nature of complaint: (Please give full details of the complaint, the date of the incident(s) and the particulars of possible witnesses. Also indicate which right has been violated and the reasons why you think such right was violated.)	
How has it affected you?	
Documents: Are there any documents to substantiate your complaint (e.g. pay slips, references, records of conversations) to substantiate your claim? (If so please attach.):	
Relief sought: (Please indicate what assistance you require. The court may make an interim order, declaratory order, an order for the payment of damages, an order that an unconditional apology be made etc.)	

PART F: PARTICULARS OF INSTITUTIONS/BODIES APPROACHED

Particulars of institutions/bodies previously approached in respect of the complaint:	
The response of the institutions/bodies mentioned above:	

Signed atthis.....day of..... year

.....
Signature of Complainant/Representative of class of persons/institution/organisation

PART G: AFFIDAVIT

I certify that before administering the oath/affirmation, I asked the deponent the following questions and wrote down his/her answers in his/her presence:

(1) Do you know and understand the contents of the declaration?

Answer:.....

(2) Do you have any objection to taking the prescribed oath?

Answer:.....

(3) Do you consider the prescribed oath to be binding on your conscience?

Answer:.....

I certify that the deponent has acknowledged that he/she knows and understands the contents of this declaration. The deponent uttered the following words: "I swear that the contents of this declaration are true, so help me God."/" I truly affirm that the contents of the declaration are true." The signature/mark of the deponent was affixed to the declaration in my presence.

.....
Commissioner of Oaths

Full first names and surname

.....
.....
.....

(Block letters)

Designation (rank).....Ex Officio Republic of South Africa

Business address.....

.....Code.....

(Street address must be stated)

Date:.....

Place.....

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Co-funded by
the European Union



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