



**REF: CL/GEN.165/SC/mh**

**2016-07-18**

To:

**ALL EXECUTIVE COUNCIL MEMBERS AND  
TRADE UNION REPRESENTATIVES (TUR's)**

### **COURT RULING ON THE IMPLEMENTATION OF EMPLOYMENT EQUITY.**

Employers are compelled to take regional racial demographics into account when applying employment equity plans.

This comes after the Constitutional Court found on Friday that the Department of Correctional Services (DCS) had acted in breach of its obligations under section 42 of the Employment Equity Act in not taking into account the demographic profile of the regional and national economically active population but simply using the demographic profile of the national population in assessing the level of representation of the various groups and in setting the numerical targets for its 2010 Employment Plan.

According to section 42(i) of the Employment Equity Act the employer must ensure that suitably qualified people from and amongst the different designated groups are equally represented within each occupational level in relationship to the demographic profile of the national and regional economic active population.

Judge Raymond Zondo handed down a majority judgement where he held that the DCS used a wrong benchmark – one that was not authorised by the Employment Equity Act. DCS only used the national demographic profile when the Department refused to appoint seven Coloured men in the Western Cape.

According to Zondo the Department had no justification for using race and gender to refuse to appoint the individual applicants. He made a ruling that the decisions not to appoint most of the individual applicants constituted acts of unfair discrimination.

Zondo also upheld and confirmed the Labour Court and Labour Appeal Court's ruling according to which the region's racial demographics must also be taken into account when drafting and applying employment equity plans.

Non-profit Organisation – Ref: Number 036 913

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Solidarity, who brought the application on behalf of DCS members, said the ruling has permanently changed the implementation of affirmative action in respect of minorities in South Africa. "The verdict does not only mean a landslide victory for the particular applicants, but for every member of a minority group in South Africa. The verdict is moreover a reaffirmation that affirmative action plans have to comply with constitutional principles and that such plans must be subject to a nuanced approach."

UNTU Greetings.

A handwritten signature in black ink, appearing to read 'S Carstens', written in a cursive style.

S CARSTENS  
Obo SA Harris  
GENERAL SECRETARY