

Press Release



**South African
Institute of
Race Relations**

South Africa's Leading Research and Policy Organisation

For immediate release

8 March 2011

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Meaningless assurances

In an attempt at damage control, President Jacob Zuma has sought to assure coloured people in the Western Cape and Indians in KwaZulu-Natal that the Employment Equity Amendment Bill (the bill) does not mean what it says, states the South African Institute of Race Relations.

The bill removes a provision in the Employment Equity Act of 1998 (the EE Act) requiring designated employers to align their workforces with the 'demographic profile of the *national and regional* economically active population'.

Under the bill, the words '*national and regional*' are removed. The amended provision thus requires alignment with 'the demographic profile of the economically active population'.

Under ordinary principles of statutory interpretation, all national legislation applies to the nation as a whole — and regional demographic profiles thus cannot be used unless this is expressly authorised (as it is at present).

"Mr Zuma says the removal of the word '*national*' shows that no real change is intended, but this is unconvincing. Once the words '*and regional*' are taken out, leaving the word '*national*' in the clause is tautologous, for the demographic profile then in issue is clearly the national one in any event," says the Institute's in-house legal expert and Head of Special Research, Dr Anthea Jeffery.

The president adds that the amendment is intended to give employers the flexibility to use either national '*or*' regional demographics, as the current reference to national '*and*' regional demographics has caused confusion.

If this is true, however, all that the Department of Labour needed to do was to change the word '*and*' to '*or*'.

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Adds Jeffery: “The Government’s claim that the bill brings about no change in the law is disingenuous. It is also foolish to accept its ‘assurance’ that this is so, as the Congress of South African Trade Unions (Cosatu) has done, for the courts cannot take such statements into account in interpreting the wording of a statute.

“South Africa also has plenty of experience of how little such assurances mean, for the country has only to think back to the promises made by the National Party government that laws allowing detention without trial would not lead to torture, to take but one example.

“Mr Zuma’s statement that the Government would ‘not enact or implement any legislation in conflict with the Constitution or the non-racial ethos and foundation of South Africa’ is welcome — but it is also hardly convincing.

“The EE Act itself, with its emphasis on racial classification, racial targets, and racial preferences, contradicts the Constitution’s commitment to non-racialism.

“The country and all its people would be far better served by effective measures to stimulate growth, vastly increase skills, and liberate the labour market from stifling, coercive, and racially discriminatory regulation.”

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