

EMPLOYMENT POLICIES AND PRACTICE IN THE
PUBLIC SERVICE: THE CASE FOR AFFIRMATIVE ACTION

BY

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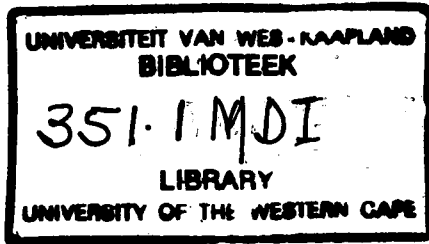


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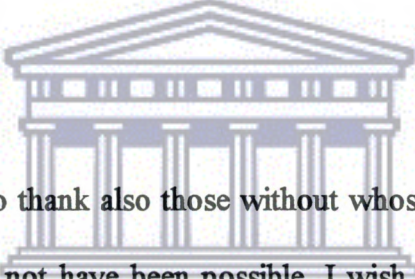
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ABSTRACT

South Africa's apartheid legacy of racial and class inequalities demands drastic and purposeful intervention. This is necessary because, blacks and women have, for decades, been discriminated against on the basis of race, gender and disability. Despite the advent of a democratic government, a large proportion of senior management positions in the public service of South Africa are still occupied by white, male Afrikaners who, in 1996 constituted 63 per cent of the management echelon. There is a need, therefore, to introduce a nation-wide, and systematic strategy in the public service to "normalise" this situation through programmes of affirmative action.

The objective of such programmes is to redress inequalities that still exist between different racial groups in this country. However, what this investigation will attempt to show is that affirmative action means different things to different people and its implementation is complicated by this fact. It also aims, among other things, to enrich the debate surrounding the implementation of affirmative action and the conceptualisation of this policy within the context of South Africa. In doing so, this study will look at the lessons of experiences in the implementation of affirmative action programmes internationally, namely in the U.S.A, Malaysia and Namibia.

In giving shape to the argument, the study will compare the racial and gender composition of the management echelons of the national government at the advent of democratic rule in April 1994 and two years later in January 1996. Finally, this investigation will suggest the way forward, highlighting the mechanisms and strategies that are necessary for the successful implementation of affirmative action in the public sector.

DECLARATION

I declare that this mini-dissertation is my own, unaided work. It is being submitted for the Degree of Master of Administration at the University of the Western Cape. I further testify that it has not been submitted for any other degree or Institution of Higher Learning.

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1998



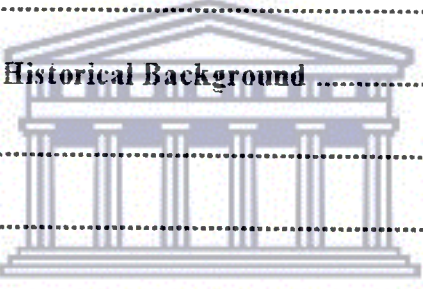
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CHAPTER 1

INTRODUCTION

Despite the formal abandonment of apartheid policy, South Africa remains a highly unequal society. One of the critical questions that still faces the new democratic government is how to address the many inequalities that characterised the South African way of life under apartheid. These included, among other things, the deliberate creation of exclusionary devices to restrict the access of blacks to higher civil service positions in predominantly white, male civil service structures. Black access to top management positions, furthermore, had been limited by the grossly inferior system of Bantu Education.



Although some changes have taken place since April 1994, the public sector is still largely unrepresentative of the South African population, and therefore is seen as illegitimate by many. For these reasons, it is imperative that programmes of administrative restructuring are embarked upon with the aim of correcting distortions brought about by apartheid. Hence the call for the implementation of Affirmative Action to "normalise" the public sector and make it more representative of the South African population as a whole.

Whilst there is broad agreement on the need for affirmative action in South Africa, the concept remains ill-defined and there is no clear understanding of how and at what pace it should be implemented. Further research on this topic is clearly indicated, and particularly research that examines, and draws lessons from, the experiences of countries elsewhere in the world.

Lessons from History

In South Africa, a shift in political power in 1948 led to major state intervention in industrial relations, employment, education and urban development policy, all of which served to enable the white population to occupy the commanding heights of the economy and society (Human, 1985:12). For example, from this period onwards, at local, provincial and central levels, most middle and senior level civil servants were recruited from white Afrikaans - speaking universities (World Bank, 1992:14). From this period onwards, furthermore, racist laws and practices had a profound impact in shaping the character and behaviour of the South Africa public service. Thus, in the intervening four decades, before the advent of the government of national unity (GNU) in 1994, the public service was dominated by white, male Afrikaners who constituted 94% of the top management posts in the public sector (School of Government, 1996:25). This was despite the fact that white people in South Africa constitute only 13 per cent of the total population.

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Members of the Afrikaner community had, in fact, first entered the public service in substantial numbers at the lower grade levels in the 1920s under the so-called 'civilised' labour policies, which attempted to alleviate the plight of poor whites. These programmes continued with the National Party victory in 1948 when the state sector further expanded and employed more white people. The successes of these policies are further attested to by available statistics. For example, in 1921 there were 4 805 unskilled white employees in the state railway system, by 1928 the number had expanded to 15 878 (De Kiewiet, 1957:234).

However, it is during the period after 1948 that job preferences were mainly accorded to the dominant Afrikaner segment of white society. This programme of recruitment was accelerated especially when there were recurrent staff shortages in the public service in the 1950s. According to Hugo, during this period nearly 15% of the total 106 956 public service posts were vacant and the situation continued to deteriorate (Hugo 1990:110). In spite of this critical state of affairs, the government's response to the staff shortages had been premised on the politically motivated assumption that the problem was one of the white public service whose requirements were to be met by whites. It should be recalled, following the dictates of Apartheid policy introduced in the 1950s, that public sector employment policy in this country had been based on the ideological reasoning that the political destiny of blacks lay in their "own areas" that is, in the designated ethnic homelands (Hugo, 1990:110).

Any departure from this principle, particularly in regard to African participation in the organs of state, would be tantamount to creating unacceptable black expectations of a political future alongside white South Africans. To this end, a host of racially exclusive stopgap, and ultimately ineffectual, remedial strategies were attempted for the white public service. These included, inter alia:

- more vigorous recruitment and widespread advertising;
- short intensive training courses;
- relaxing entry grades and promotion requirements;
- employment of pensioners;
- enhanced salary and fringe benefit incentives;
- the introduction and extension of study bursaries;

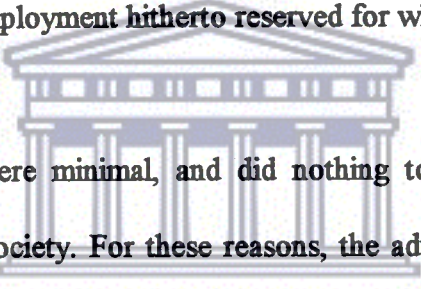
- intensified overseas personnel recruitment ; and "as a final surrender to the dictates of racial policy", the curtailment of the functions of the public service "to accord with the dwindling pool of available white manpower" (Hugo, 1990:111).

It is precisely for the above reasons Parkin argues, that the history of white advancement in South Africa illustrates the theory of social closure which postulates that there is a mechanism by which groups seek "to maximise rewards by restricting access to resources and opportunities to a limited circle of eligibles" (Parkin, 1979:11). They justify this exclusion on the basis of certain social or physical attributes. Hence, race, gender, educational qualifications and political clout were used by the past government as exclusionary devices to the disadvantage of the black majority. To most whites, particularly Afrikaners, this policy became key to economic, social and political privileges and empowerment.

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In the field of industrial employment, a succession of laws such as the Wage Act of 1925, the industrial Conciliation Act of 1974 and Mines and Works Act of 1986 explicitly disadvantaged Africans to protect white interests. Yet, ironically, neither the Public Services and Pensions Acts of 1923 or of 1957 incorporated any formal racial disbarment. In fact, Section 11 (3) of the latter Act stipulated a number of attributes based on qualifications, merit and efficiency which should be abolished in making appointments and promotions (De Kiewiet, 1957:234). However, mechanisms in favour of whites were combined with efforts which were devoted to educating and training them to participate in a society which was undergoing rapid transformation away from a rural-based economy (Hugo, 1990:112).

This training was not extended to blacks since local government and other public bodies were encouraged to employ more whites rather than attempt to recruit members of other racial groups (De Kiewiet, 1957:236). In this vein, the white minority government was, for decades, intent on safeguarding its moral and political ideals of racial supremacy. Nothing significant was done to alleviate the plight of black people, and in particular Africans, economically in the workplace. It was not until the late 1970s that some minor changes began to take place in the private sector as highlighted below (Tsukudu, 1991:28). The reforms that followed the uprisings of the mid - 1970s, allowed some relaxation of labour laws and allowed blacks, and Africans in particular, into areas of employment hitherto reserved for whites.



The changes, however were minimal, and did nothing to challenge the balance of power in South African society. For these reasons, the advancement of blacks in the post - apartheid era through affirmative action programmes becomes not only permissible, but also obligatory if historical imbalances are to be redressed effectively. However, the argument against the advancement of blacks has continued in different forms both in the public and private sectors. One example is the one against the promotion and upliftment of blacks as a group. The argument is that affirmative action as a mechanism for achieving this goal, is treated as a means which is justified by the end. Worse still, it is maintained, individual rights, such as a white person's right to work, are sacrificed for a dubious social good.

Group upliftment here is viewed as a utilitarian objective, which is generally opposed by those who, like Raphael, are firmly committed to the inviolability of individual rights:

“ I am not at all sure that the utilitarian goal of maximising the general interest can have the moral weight required to overrule an individual's right not to be discriminated against by a public body.... If reverse discrimination is to be justified, the case must be made in terms of what the policy will do, and what the community owes to the disadvantaged groups....The case cannot be made in terms of what the policy will do for society as a whole” (Raphael,1980:16).

But Jauch argues that the above is a typical, individualistic statement from a libertarian point of view, based on the formal 'equality of opportunity' perspective that is usually characteristic of all those who reject affirmative action on a group basis as an unjustified intervention (Jauch, 1995:34). According to him the demand for affirmative action as a means to redress the imbalances of the past is justified on the basis of the egalitarian principles of social justice.

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Above all, if the implementation of affirmative action is to be successful and effective, people will need to change their attitudes and adapt to new ideas. As noted below, there are limited options available to eliminate attitudinal resistance to change. However, one proposed solution to this problem is that the composition of the bureaucracy should be broadened, especially in respect to its middle echelons. Shrire argues that black input at all levels would, if nothing else, improve the communication between the bureaucrat and the client (Schrire, 1990:88). Generally, the promotion of blacks to senior managerial positions is seen by most whites as a threat to their present privileged positions, thus strengthening their resolve to resist any attempts to bring about change (Maphai, 1989:17).

Black advancement, Nzimande (1986) adds " is viewed as a threat to the extended production of the white middle class in South Africa, largely due to the limited vacancies that exist at management level " (Nzimande as cited in Maphai, 1989:20).

Even within the private sector, companies may publicly stress the need for black managers while a real commitment to manager advancement is often absent. Taken as a whole, however, shifts have and are taking place in the occupational structures as greater numbers of black people move upwards, but such shifts are not so striking if one considers the relative number of people from each racial group participating in the labour force. Blacks remain under represented in professional and managerial positions in the private sector and the rate of their participation in these areas has been slow to increase (Xhobasa, 1996:58).

In most cases, the recruitment into these organisations seems not to be intended to empower black people and to give them access to economic resources, but appears to reflect corporate conscience and concern for black upliftment (Tsukudu, 1991:29).

Gavin Relly, a prominent figure in the South African business sector, confirmed this lack of progress in black advancement when he said that:

"We all thought that it would be much easier to develop managerial and directorial skills among African, Coloured and Asian people than has, in fact, been the case. Not in any way because of incompetence but more because of our environment in- house and socially has been hostile. Much of this can be traced to apartheid but a good deal to our shortcomings " (Relly as cited by Welsh, 1988:168).

In spite of these shortcomings the role of the private sector in promoting black advancement can not be ignored. It is believed that the public sector can learn a lot from this experience.

In fact, the debate on the role of affirmative action programmes has already been underway in the South African private sector for some years (Hugo, 1990:116). For example, comparable experience with the United States shows, among other things, that there must be a clear unambiguous commitment, in the form of a statement of policy, to affirmative action by the chief executive officer and senior staff, and frequent reaffirmation of that commitment (Hugo, 1990:117)

This commitment, furthermore, must be communicated to all staff members. Orientation and training programmes similar to those found in the private sector should be used in preparing the incumbents of new posts in South Africa to assume positions of responsibility in the new government. Indeed, as Tapscott puts it, "the private and the public sector must share the burden of past and the responsibilities of the future" (Tapscott, 1996:34). While the goal of a representative and inclusive public sector should be pursued with vigour, there is a concern, Sachs argues, that "blackness should not be a property right in itself as whiteness became... (H)owever", he maintains, "all things being roughly equal, race and gender preferences should be permitted, even required, to top the balance and thereby help overcome the effects of past discrimination" (Sachs, 1991: 58).

Hugo also agrees with this view when he says that "blackness in and of itself" should not guarantee any emphatic treatment. But given an environment in which appropriate training and bureaucratic norms of efficiency, accountability and anti-corruption are enforced, the inherent advantages of being black assume a more persuasive relevance (Hugo, 1989:4).

Any such preferences should apply for a determinate period only, as a specific means of overcoming the structured and self-perpetuating inequalities produced by past discrimination. In the public sector, public officials are in daily contact with the public and influence public perceptions of policy in important ways (Boaden, 1982:11). The legitimacy of public policy will also be influenced by the manner in which it is implemented by public officials. In that respect, the white experience in South Africa differed from the black experience. Blacks experienced the bureaucracy mostly in its role as the implementer of the policies of the apartheid government. As such, blacks had to suffer the corruption, inefficiency and racial arrogance of officials in their day-to-day enforcement of apartheid legislation such as that pertaining to housing and the implementation of education policies.

While some white South Africans have accepted the need for change, it is likely that black advancement in the traditional white preserve of the public service employment will continue to be resisted although now in more subtle and indirect forms. For a range of economic and political reasons, however, there can be no substitute for black advancement in the public sector. What reform elites have to do in this context is to balance the political demands for reform with the equally important need to ensure that the bureaucracy remains efficient and effective (Shrire, 1990 : 89). The main problem is, however, that this country has little time at its disposal. This is because part of this process will require an accelerated recruitment of blacks to senior posts in the public service in the short - term. This, in turn, has raised fears that the appointment of blacks in great numbers may, to an extent, affect effectiveness and efficiency.

This is the same concern that is expressed by Maphai (1991) when he warns that a massive and indiscriminate recruitment of blacks into the "grave train from which whites have just disembarked" may simply perpetuate a system that does not bring about any effective measure of development (Maphai, 1991:36).

Notwithstanding this, "as long as the trains still run," Shire argues to the contrary, "perhaps it is better for them (reform elites) to have less efficient, multiracial operating teams than more efficient, traditional white operators" (Shire, 1990: 90). Indeed, "it is preposterous", Mandela argues further, "to suggest that the departure of some of these employees necessarily means that standards will drop; least of all that the employment of blacks and women automatically means lack of qualification and therefore a harbinger for disaster" (Mandela, 1997). Hugo (1990) also agrees with the view that the acceleration of black employment may well be accompanied by a strain on standards of efficient service - delivery to the public, at least in the short - term.

"This will be the case partly due to inadequate administrative skills and experience, and partly from the simple fact of opening up a white and largely Afrikaans bureaucracy to reflect a more inclusive representation" (Hugo, 1990: 125). Put in other words, while the recruitment of blacks may adversely affect "narrowly defined efficiency" there is no viable substitute for promoting representativeness in the public service in this country. Thus, the argument for black recruitment is also a challenge to the often - raised merit - cum - standards debate where, in most cases, the concern for the maintenance of "maximum standards of efficiency" appears to be a convenient excuse for preserving the status quo (FEMUTU, 1994).

In other words, what this position holds is that the appointment of black people will inevitably lead to a decline in standards. The invalid conclusion reached, however, is that the appointment of blacks through affirmative action programmes will not be based on merit, i.e. black people will be appointed simply because they are black. This argument also assumes that in the past "all white, male Afrikaners appointments into the public service were based on standards" (Jauch, 1995:108).

If the recruitment into the public service of blacks in big numbers is to succeed, there is a need for the political will to push ahead the programme. Unfortunately, progress in this direction has been slow. When the ANC led government took over power in 1994, the status quo was expected to change. However, it is disturbing to learn that more has not been done by the GNU to reverse the status quo. For example, existing legislation and public regulations are still stumbling blocks to effective implementation of affirmative action, and to the redress of imbalances created by racial discrimination in this country (School of Government, 1996:26).

The Public Service Act of 1994, for example, still contains discriminatory personnel procedures and practices for recruitment and promotion. Under this system, the new recruits into the system, especially low skilled blacks, will continue being disempowered. This is primarily due to a lack of effective training programmes to develop the much needed skills for an efficient and delivery orientated public service. This is a criticism raised by some black labour organisations (trade unions) who are of the opinion that the present government has been very slow or rather too "timid" in implementing affirmative action in the public sector (School of Government, 1996:33).

Their argument is that if the previous government could use affirmative action successfully to empower Afrikaners in the 1940s and 1950s, there is no good reason why the new government does not "act with the same political will" to empower black people (School of Government, 1996:33). There is a need, therefore, for the GNU to act swiftly and introduce, through legislation, an affirmative action - based human resource development strategy to normalise public sector employment.

Part of this broad development programme must include training and education that will serve as important mechanisms to assist the government in developing the professional capacities of public servants and in promoting institutional change. For example, re-training and re-orientation will enable public officials from the previous government to change values and practices which they acquired from the apartheid structures. Logically, one would expect that such programmes would target the white officials in these structures.

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A recent investigation shows that, there is generally a lack of commitment to the transformation process, and in particular in implementing affirmative action, by many heads of departments who are mainly white males. It is even more disturbing, to learn that even some blacks in decision making positions seem to have adopted " the core values, systems and policies of the "old" public service (School of Government, 1996:26). For these reasons, re-orientation and re-training programmes should be aimed not only at inculcating a new civil consciousness in the civil servants of the past order, but they must also target new recruits.

The aim is to develop new knowledge and skills, which are receptive to the new social and political order. It is believed that programmes of affirmative action will need to be strengthened by enabling legislation, to ensure that they are correctly implemented. In this sense, affirmative action programmes will be intended for all those who have in the past been systematically oppressed, denied equal access to resources and skills, and more often, branded as racially or socially inferior in the past. Thus, the beneficiaries of the programme will be blacks, women and disabled people.

In 1996 an estimated 63% of senior positions in the public service were still occupied by whites and it is likely that a significant segment of these are ideologically antipathetic to political change (School of Government, 1996:23). In this context, there is no guarantee that public service officials from the former regime will not continue to wield undue influence over government and that the prescriptions for affirmative action provided by the Constitution and the White Paper on the transformation of the civil service will not be frustrated. Hence the call to also address attitudinal resistance to change.

Objectives of the Study

1. To examine the need for affirmative Action in the public service of South Africa;
2. To look at the state of public sector employment in this country;
3. To review current policies and practices ;
4. To draw lessons from other countries namely U.S.A, Malaysia and Namibia;
and
5. To suggest proposals for change.

Motivation for the Study

Drawing from international experiences, namely affirmative action policies in the United States of America, Malaysia and Namibia, it is believed that an investigation of this nature will help those involved in the promotion of employment equity in the work place in particular, and in the transformation of the public service in general. It is also hoped that it will assist reformers in interpreting the challenges that confront them in the pursuit of affirmative actions policies - the differing perspectives, the contradictions, and, above all, the implementation thereof. In that respect, it is also believed that this study will be of assistance to both reform agencies and policy-makers alike. In particular, it may help them in reaching consensus in defining key terms and concepts that are crucial in establishing a common vocabulary for understanding the meaning of affirmative action itself.

Data Collection

The information presented in this investigation was largely derived from secondary sources. In that respect, special attention was paid to the Reconstruction and Development Programme (ANC, 1994) and the White Paper on Transformation of the Public Service, (Republic of South Africa, 1995). The investigation also draws on recent official statistics on representativeness in the public service by population group and gender. Much of the information was drawn from papers submitted and discussions held in workshops, seminars and conferences on affirmative action organised around the country between 1993 and 1994, many of which this writer attended. Chapter 4 elaborates further on these discussions.

Hypothesis

The principal hypothesis of this study is that the successful implementation of Affirmative Action policies in the public sector will depend on legislative action to compel organisations to adopt new employment policies and practices but that legislation alone is not enough. This assertion is made on the grounds that there is a need to establish mechanisms and strategies that will be aimed at reducing attitudinal resistance to change in the public service. These include, *inter alia*, re - training, re - orientation and re - education of personnel from both the previous government as well as recruits into the public service.

Thus, this study addresses the following further questions:

1. How can affirmative action policies be implemented to redress past injustices in the public sector and make it more representative of the South African population as a whole?
2. What can be done to accelerate and promote the upward mobility of blacks who have previously been excluded from the public service?
3. How should attitudinal resistance to change be dealt with ?
4. What lessons can be learnt from the experiences of the U.S.A, Malaysia and Namibia ?

Structure of the Thesis

This thesis is divided into 6 chapters which are structured as follows:

Chapter 1 : Introduction

This is a brief background on the history of discriminatory and racist employment policies and practices under Apartheid in South Africa.

Chapter 2

This chapter addresses a number of conceptual issues surrounding affirmative action with the aim of contextualising it within the broader processes of transformation in South Africa. What emerged from a review of the literature on affirmative action and the proceedings of conferences which the writer attended, is that the concept means different things to different people.

Chapter 3

This draws on issues specifically relating to race, gender and racial composition in the departments of the public service at national level.

Chapter 4

The aim of this chapter is to highlight the perspectives of key stakeholders on affirmative action including government, employer and employee organisations, and civil society. It also identifies some of the most important areas of intervention that will be necessary for the success of this programme in the public sector, including appropriate legislation, targets and quotas, recruitment and selection procedures etc.

Chapter 5

In this chapter the focus is on lessons learnt from international experience. That is, how affirmative action programmes were implemented in other countries namely, the United States of America, Malaysia and Namibia.

Chapter 6

The purpose of this chapter is to address the complex range of issues and strategies that are necessary for the successful implementation of affirmative action programmes. These include, among other things, monitoring and evaluation, training and development, the communication of policy to all stakeholders, and, above all, political support for the programmes.

Chapter 7: Conclusion

The concluding chapter attempts to summarise key points raised in the preceding chapters and assesses the findings of the investigation in terms of the hypothesis posed



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CHAPTER 2

The Need for Affirmative Action

The discussions in the introductory chapter indicated that a programme of administrative restructuring will need to be embarked upon as soon as possible if the public sector is to become more representative of the South African population as a whole. In this chapter, it is suggested that affirmative action is the most appropriate strategy to redress this situation.

Firstly, it has become obvious that educational upliftment will be indispensable in the advancement of blacks in the public service or any other sphere, and, secondly, that a broadened recruitment of black people, backed by political leadership is necessary if this situation is to change. Thirdly, that the black advancement programme "must have 'teeth' preferably legislative, if it is to be effective" (Hugo, 1990:112). However, an affirmative action policy is not likely to be without problems. One is that of conceptualisation and interpretation. These issues have serious implications in determining how affirmative action programmes are implemented.

For example, one sentiment is that any reasonable person, any South African whose moral judgement is presumed to be serving him or her well, should understand why black expectations seem so inflated and why they will always see their former oppressors in terms of colour. This is also for the very same reason why some members of civil society such as labour organisations and other stakeholders in the transformation process seem impatient, demanding swift action to ensure that legislation is enacted and that policies of affirmative action are implemented as a matter

of urgency (School of Government, 1996:33). It is also precisely why appeals now for 'non-racism' by the National Party and its supporters are held as suspect by many black South Africans. Such appeals, are similar to those made by Maree when he argued, reacting to the ANC policy on affirmative action that:

“You cannot strive for a non-racial state and then base state policy on a concept where race classification is the criteria. It will sustain the very concept on which apartheid failed, namely, treating different races differently. Put simply, one cannot fight racism with racism” (Maree, 1994).

The reality is that no amount of 'evidence' be it statistical or otherwise, from the supporters of the previous government will convince disadvantaged black South Africans that, they as the direct victims of apartheid, should not be given preferential treatment in the work place. Understandably, thus, the broader interpretation of the "equal opportunity" principle is a contested one. But it is better to agree that these are difficult policy issues than to misinterpret and distort the realities of the country.

There was glaring evidence in apartheid statutes that blacks were discriminated on the basis of race (Sachs, 1991:14). White fears on these issues, however, are also as understandable. Hugo concurs with this view when he says that “the notion of any form of preferential or compensatory treatment for blacks is designer - made to raise adrenaline levels among many, if not most whites” (Hugo, 1990:110). On the other hand, given the history of black oppression and all its attendant economic, social and political ramifications, in South Africa, black expectations can not be said to be unreasonable and therefore unacceptable.

The solution is to strike a balance between black aspirations and white fears if the process of transformation and reconciliation is to work. This stated, the priorities of national transformation should not be compromised by those of reconciliation, as has been the case in Namibia, and as will be discussed below.

Conceptualisation of Affirmative Action

Up to this day, there is still no general theory of affirmative action (Maphai,1996:11). However, there is a need to pose the question: "what does the concept of Affirmative Action mean for South Africans ? " White fears about the implementation of this strategy as a government policy, as indicated, have been wide spread. This is perhaps not surprising in that a similar strategy was used in the past to uplift whites economically, socially and politically at the expense of black people.

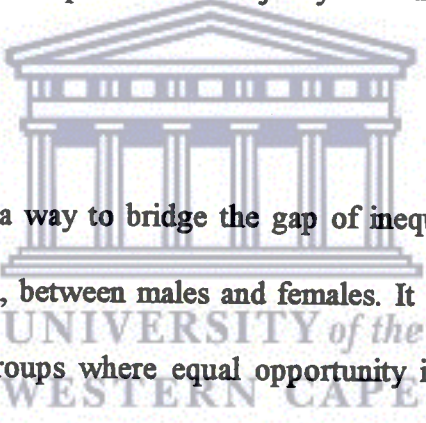
It also has been stated that black expectations may sometimes appear unreasonable although, however, not unjustified. This is because, as Hugo affirms, "only the die-hard proponents of the Verwoerdian vision of the homeland policy would dispute the inequality of black exclusion in the public service" (Hugo, 1990:115). Not only have black people been denied equal employment opportunities, but they have also been cut off from privileges in the economic, social and political spheres. Affirmative action programmes seek to redress this, and it is not surprising, therefore, that not infrequently this concept is deliberately misinterpreted by some stakeholders in the change management process in order to preserve the status quo.

This attitude once again depicts the extent of division and inequality in this country. It is also in the context of these different interpretations that President Nelson Mandela had this to say of the concept : " to millions, affirmative action is a beacon of positive expectation. To others, it is an alarming spectre which is viewed as a threat to their personal security and a menace to the integrity of public life" (Mandela, 1991:1).

Generally, affirmative action is defined as a strategy and measure to redress the imbalances of the past. But in relation to the public service, its programmes will be aimed at opening employment opportunities for disadvantaged groups to promote representativeness at all levels of the government (Sachs,1991:28). This definition is in line with the "basic values and principles" that govern public administration and as enshrined in Paragraph 195 (1) (i) of the new Constitution of the Republic of South Africa. Chapter 10 of the Constitution states that: "public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation" (Republic of South Africa Constitution, 1996:107).

As stated above, the fears of white people are as understandable as black expectations. But what the reformers are saying under this new political dispensation is that whites have only to forego their privileged status both as beneficiaries of apartheid government policies and as the sole determiners of such policy. That is the minimum that is required of them.

The many things they have been getting from the new government, they will continue to receive, but on the same basis as all other citizens. Affirmative action in this sense takes away white privileges but not their possessions (Human, 1991:16). In that regard, South Africans have yet to engage in a serious dialogue about the past, the Truth and Reconciliation Commission notwithstanding. However, facing up to inequalities created by apartheid is essential if the concept of national reconciliation is to be fully understood and is to become acceptable to most blacks. This entails inter alia, an end to the privileges, which the white minority enjoyed for decades. According to Jauch (1995) it means : “educating whites that what they have belongs to all and that they should learn to give up and share it justly with the rest of the population” (Jauch, 1995:26).



Thus, affirmative action is a way to bridge the gap of inequality between blacks and whites, and, as will be seen, between males and females. It is compensatory action in favour of disadvantaged groups where equal opportunity implies the absence of all discrimination. Thus, some commentators believe that affirmative action presupposes or follows equal opportunity. "Affirmative action" according to Sachs, "is not unfair discrimination against the advantaged group nor is it 'apartheid-in-reverse'" (Sachs, 1991:28). This is because affirmative action is intended to overcome the effects of past and present discriminatory practices, policies or other obstacles to equal employment opportunities.

Affirmative action is a remedial concept that requires a re-orientation in employment practices. Accordingly, “government agencies (are) obliged to give preferential hiring and promotion to certain groups” in order to ensure that they are represented at all levels of government in acceptable proportions (Novit, 1979 : 22).

Affirmative Action and Equal Opportunity

The equal opportunity approach (which is formal and exclusive) assumes that if the disadvantaged or designated groups are given access to education and employment on the bases of equal skills and qualifications, there is no reason why they can not compete as equal partners with other population groups namely, whites (Johannesburg City Council,1994). In contrast, the affirmative action approach (fair and inclusive) says that the disadvantaged have, for decades, been denied the opportunity to compete with their white counterparts because of racial and socio-economic discrimination under apartheid. For these reasons, therefore, the former can not be expected to compete as equal partners with the same people who have benefited from the spoils of discriminatory policies. Equal opportunity should therefore be seen as a supplement to affirmative action rather than equivalent to it. In other words, a balance should be struck between formalism and fairness.

Equality of opportunity is the ideal towards which South African society should work. Equity and inclusion, moreover, do not imply a lowering of standards. Public sector reformers need also to ask themselves whether, on the bases of the above problem statement, they should not consider giving preferential treatment to the victims of past discrimination in order to redress these historical imbalances.

Nagel describes four stages of development for affirmative action. The first stage is desegregation, which is the abolition of all statutory and discriminatory legislation, leading to formal equality; the second stage is concerned with various strategies designed to combat residual, indirect and unconscious discrimination through education and attitudinal changes in private and social relations. The second stage forms part of the theory of compensatory justice; namely that affirmative action is not only permissible but that it is also obligatory to compensate victims of past discrimination for the injuries done to them.

The third stage is equality of opportunity, which is the adoption of remedial measures so that equality of opportunity is not merely a formality. This entails the provision of educational and other resources to establish a base for fair competition and participation with the advantaged groups; this stage is referred to as fair rather than formal. Affirmative action is the fourth and final stage and is the last resort. If the remedial measures from stages one to three have failed and there is still discrimination, then preferential treatment must be given to the disadvantaged groups (Nagel, 1989:55).

Towards an Inclusive Public Sector

The introduction of affirmative action in the public sector will have obvious consequences, not only for those people directly concerned with recruiting blacks at the lower levels, “but also with those white civil servants who may object to working with them” (Hugo, 1989:32). This calls for a change in attitudes.

Changing attitudes and consequent patterns of behaviour will be difficult, and this remains a major challenge, which the reform elite has yet to overcome. Affirmative action policies will also be difficult to monitor (Shrire, 1990:85). The pursuit of affirmative action policies in this country, as in other countries such the USA, Malaysia and Namibia, has not been without problems. For example, there seems to be a contradiction between the idea of "equality for all" and the redress of past injustices. How, it is asked, can one and the same constitution reconcile the principle of equal rights and non-discrimination with that of affirmative action, racial imbalance and gender preference? The answer given in other countries tends to be based on two perspectives. The first may be called 'the level playing field theory'. The emphasis here is on the creation of conditions of equal opportunity so that in future all persons may compete on a basis of equality (Sachs, 1991:12).

The other perspective is that affirmative action is that not worth its political costs. That is, that the affirmative action programmes have mainly benefited people of colour in the middle classes and in the upper tiers of the working class and have not and cannot affect the miserable condition of the people trapped in the so-called underclass - those who have been so deprived that they lack the skills even to take advantage of the sort of opportunities offered by affirmative action programmes (Kennedy, 1993:69).

The complaint is that affirmative action programmes all too often help most those people of colour least in need of assistance and least injured by racial discrimination. In the chapter which follows discussion will focus on the experiences of other countries, which have attempted to implement affirmative action programmes.

CHAPTER 3

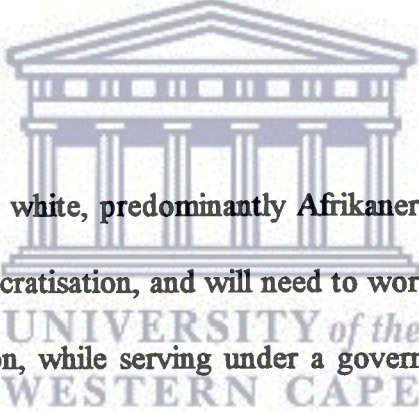
State of the Public Sector : The challenges

South Africa has a large public sector. It consists of the public service, the police and defence forces, the intelligence service, provincial departments, parastatals, public corporations and advisory bodies as well as local government bodies. Because of the extent of the civil service, this study will only focus on national departments and will cover issues relating to race, gender equity and disability.

The rationalisation and restructuring of the public service, as indicated, will require a complete overhaul of existing structures. Effective change management is required for all of this. As stated in the introduction to this thesis, on their own, legislative constitutional interventions are not sufficient. This is because "the link between structures, effective governance, and a change in ethos, is crucial to the successful implementation of affirmative action in the public sector" (Levy,1996).

As Levy affirms, "open and enabling structures, combined with education, training and people - centred public servants is what is empowering and conducive to the management of democratic change" (Levy; 1996). However, as with all the other structures inherited from the previous government, the old departments and personnel are still going to stay with us for sometime. Section 236 (2) in Schedule 6 of the new Constitution specifically guarantees these arrangements by asserting that all civil servants in office at the time that the Constitution became law will be guaranteed their jobs (Republic of South Africa,1996:163).

Because of this, neither a change of administrative structure nor a significant change of personnel is likely to take place quickly. This was one of the inevitable consequences of a negotiated political settlement, which the ANC, as the dominant partner in the Government of National Unity (GNU) had to agree to, mainly to accommodate the National Party. A recent article by Munslow and Fitzgerald notes this well when they argue that “the political compromises involved in the protracted negotiated transfer of power do not permit a sweeping away of all structures if such option could ever be possible” (Munslow and Fitzgerald, 1994:14). According to Levy, in spite of these limitations, it is believed that “an enabling constitution, justiciable Bill of Rights and the establishment of democratic structures offer the greatest scope for affirmative action” (Levy, 1994).



Levy argues further that “the white, predominantly Afrikaner, civil servants will have to face the challenge of democratisation, and will need to work alongside black people as equals in the administration, while serving under a government which has a black majority representation”. Again, this formed part of a negotiated compromise, which involved assurances that, once the government of national unity was in place, “white” jobs would be secured. These transitional arrangements continue to function as outlined in the new Constitution.

This provision in the Constitution, however, appears to impede efforts to promote affirmative action. This is because extensive black recruitment, especially into the decision - making ranks, will be necessary to address gross historical discrimination and to make the public service broadly representative of all segments of South African society. In the face of this political dilemma, reform elites have to balance the political demands for reform with the equally important need to ensure that the bureaucracy remains efficient and effective (Shrire, 1990:86). Therefore, an important perspective in approaching affirmative action is to assess "the impact that the existing structure has on implementing change" (Levy, 1994).

The Status of Public Sector Employment

According to the 1995 White Paper on Transformation of the Public service, the government envisages that "by the year 2000 the personal composition of the public sector, including parastatals, must have changes that will reflect the national distribution of race and gender" (Republic of South Africa, 1995: 9). Whilst some progress has been made in the appointments made at most at the most senior levels of government, middle and lower management echelons in the administrative hierarchy remain predominantly male and white.

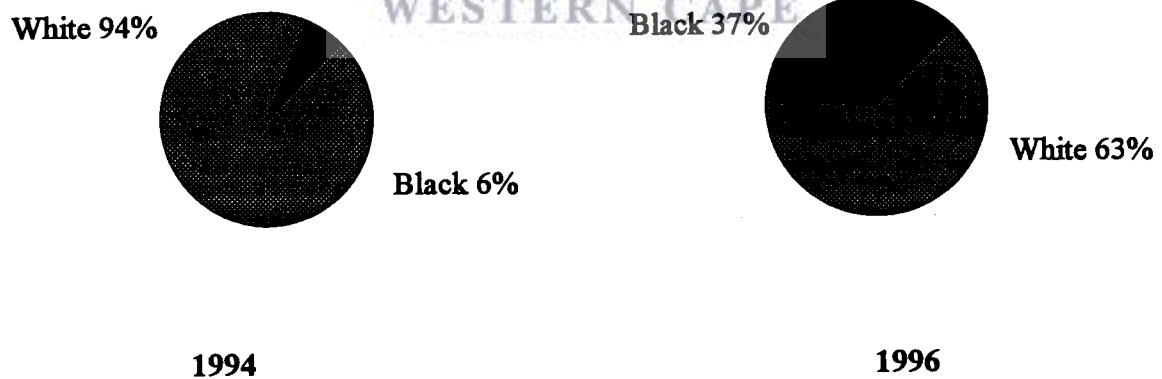
The lowest echelons of the public service are predominantly black. Existing statistics readily reflect this state of affairs. Africans constitute 76 % of "the lower and largely poorly paid" ranks of the public service. Coloureds make up 10 per cent while 1 per cent are Asian (School of Government, 1996:26). Although the racial composition within the integrated public service has changed, whites still constitute 63% of the top

management echelons, while blacks occupy only 37% of senior positions (School of Government, 1996:25). At the level of director - general 20 out of 38 post are held by blacks (Public Service Commission, 1996:4). Despite some progress, thus, the majority of senior management positions in the public service, and especially in the middle management category, are still occupied by whites. The present state of public sector employment as a consequence, is aptly described by Ncholo (1996) as follows:

" The affirmative action policy in the public service resembles an Irish Coffee - the top is white, and there is a sprinkling of chocolate on the surface; the bottom is black" (Ncholo, 1996:27).

The extent of change in the racial composition of senior management in the public sector is illustrated in Figure 1 below. This represents the position before the advent of the Government of National Unity and some eighteen months later in January 1996.

Figure 1 : Profile of Senior Public Posts by Race



Source: School of Government, 1996:26-27.

From the figure, it is evident that although progress has been made in the appointment of senior managers, more still needs to be done to establish a public service which is truly representative of South African society as whole.

Posts in Departments of the Public Service at National Level

The current government policy on restructuring all departments in the public service, also proposes that by the year 2000, at least 50% of senior posts in the public sector must be occupied by blacks . Within the same period, it envisaged that 30% of posts should be occupied by women, while disabled people will comprise 2% of public service personnel (School of Government, 1996: 44).

Table 1 below shows the number of posts filled at present in the management echelons of departments at national level. This table indicates that whites fill 64 per cent of the posts. Here, 46% of the directors - general are black compared with 53% in the public service as a whole (Public Service Commission, 1996: 4). The departments at national level have appointed women to 17 % of the posts in the management echelon compared with 10 % for the management echelon as a whole.

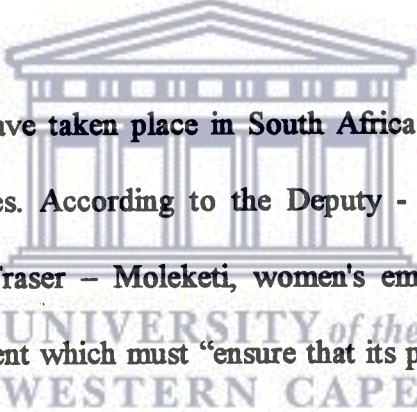
Table 1 : Posts filled in the Departments of the Public Service at National Level**31 December 1995.**

	Africans	Asian/ Indian	Coloured	White	Total	Male	Female
Director- General	6	3	2	13	24	22	2
Percentage	25	13	8	54	100	92	8
Deputy Director- General	10	3	5	19	37	31	2
Percentage	27	8	14	51	100	84	16
Chief Director	28	7	2	45	82	70	12
Percentage	34	9	2	55	100	85	15
Director	57	12	9	179	257	210	47
Percentage	22	5	4	70	100	82	18
TOTAL	101	5	18	256	400	333	67
Percentage	25	25	5	64	100	83	17

Source : Public Service Commission, 1996.

Women in the Public Service

Amongst most political parties in South Africa, it is a conviction that the enhancement of the status of women should go with the granting of political power to blacks. It is for these reasons that "special attention has to be paid to rectifying the inequalities to which women have been subjected, to ensure their full, equal, effective and dignified participation in the political, social and cultural life of the nation" (Sachs, 1991:9). According to the 1997 Employment Equity Bill, women are especially absent from economic decision - making and especially in areas relating to financial, monetary, commercial and tax policies. Gender segregated employment is thus still the main pattern in the economy (Republic of South Africa 1997:13).



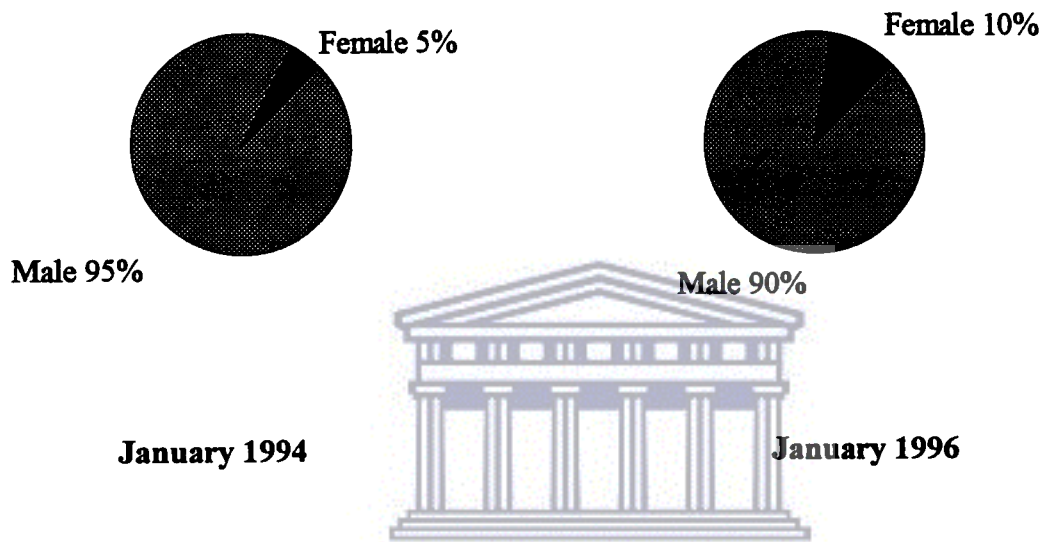
The political changes that have taken place in South Africa thus could have major implications for women's lives. According to the Deputy - Minister of Population Development and Welfare, Fraser – Moleketi, women's empowerment is now the responsibility of the government which must "ensure that its policies and programmes address all discrimination of the past". According to the Deputy - Minister, women make up the largest proportion of the work force at the level of highly skilled workers, within which category the majority of teachers and nursing personnel falls (Fraser-Moleketi, 1996). However, although there are many women employed in the public service, "very few of these women are in the upper, decision-making and powerful echelons of bureaucracy" (Fraser-Moleketi, 1996).

Historically, this situation arose because of gender discrimination in access to education and training, in hiring, pay and promotion practices, in inflexible working conditions, and in the lack of child-care services all of which served to restrict women in their economic mobility and advancement . On the issue of gender equity, however, the Public Service Commission (PSC), notes that: "it is difficult to draw comparisons with the past because of the absence of a unified database for the eleven different public services which have now been combined" (Public Service Commission, 1996:6).

However, the profile of the management echelons of the former Republic of South Africa provides enough information to contextualise the changes, which have taken place. The dominance of males in the public service after and before the GNU is evident from the figure below. Before the advent of a democratic government in South Africa, women constituted only 5 % of the management echelon (School of Government, 1996 : 28 - 29). After the advent of the GNU in January 1996, women filled 10% of the posts at higher and middle management echelons. At present, however, there are only three women directors - generals.

Figure 2 below shows the position of women in the management echelons of the public service prior to 1994 and after the advent of the GNU in January 1996.

Figure 2: Profile of Senior Public Posts by Gender



Source: School of Government, 1996:28-29.

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Generally, on the evidence of the figure above, one is inclined to conclude that while some progress has been made in appointing women to management positions, the government will still need to take special measures to ensure women's access to, and full participation in, administrative power structures.

The Status of Women in Sweden

The quest for a deeper and broader approach to gender equity in other countries may help us understand the urgency for promoting the representativeness of women in the public service of South Africa. In Sweden, for instance, there are ongoing efforts to ensure that greater numbers of women take part in political decision-making.

These efforts include encouraging more representation of women in the higher levels of the civil service (Martensshon, 1996: 35). For example, 80% of staff in the care and education sector are women, but very few of them are chiefs or managers. The situation is different in politics, however, and the national cabinet consists of 11 female and 11 male ministers. So far local government is the only the sphere of government where gender equality has been developed significantly. Some of the changes which have increased participation by women include the taking over of child-care and the care of the elderly from the central administration (Martenssohn,1996:36). As a consequence, almost half of the female labour force have found jobs in the public sector - thus generating an independent income, and improving their standing and influence in society.

Disability and Equity

According to the 1996 Green Paper on Employment Equity, only one in five disabled people is economically active, and only one in a hundred severely disabled people has a job on the open labour market. This picture suggests that people with disability are seriously under represented in the public service (Republic of South Africa,1996:5).

For this reason, there is a need to establish measures to promote the representativeness of the disabled in the public service. For example, the current Public Service Act (1994), which proscribes against the permanent employment of disabled persons, should be removed in order to promote representation in the public service, particularly at decision - making levels. (Chalken et al, 1996 : 29). In order to achieve this objective, it is important to ensure, among other things, that the public service:

- offers an environment that is free of barriers to maximize access;
- eliminates prejudice and stereotypes in its practice and policies; and
- provides development opportunities and appropriate resources for training, which should include a review and a refocus of all training and development programmes to access their sensitivity to the needs of people with disabilities and the capacity of trainers to meet these needs (Republic of South Africa, 1998: 25).



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CHAPTER 4

Current Policies and Practices

The debate in South Africa at present is not about whether affirmative programmes should be implemented or not. The question now is how best and how soon it must be done. In chapter 1 above, we have attempted to show what the concept of affirmative action means, and in the process have suggested that the concept means different things to different people. In this chapter, the discussion will focus on some of the current policy issues that have dominated the debate surrounding the implementation of affirmative action in the public sector. These debates have taken place in the labour unions, in government and amongst the public.

Perspectives on Affirmative Action : Labour and Local Authorities

It was stated in the introduction that part of this investigation would include an examination of the perspectives of various stakeholders in the transformation process. These stakeholders include employer and employee organisations throughout the country. In particular, the issue of the implementation of affirmative action has dominated the debate on transformation of local governments.

The current position is that senior officials in the existing local government structures, trade unions and academic institutions are acknowledging openly the need for affirmative action and the subject has become a regular feature at conferences. In order to give a background to this debate, it is necessary to make a brief review of some of the affirmative action proposals and guidelines presented by both employer and employee organisations at local government level in the conferences on affirmative

action that have taken place in South Africa since 1994. Although these discussions took place at local level, and hence fall outside the scope of this thesis, they are felt to be of relevance to the broader debate on affirmative action. At the inception of the new government, there was no common understanding at local level of what affirmative action was or what this policy was supposed to achieve. That stated, it is significant that a limited consensus did emerge out of these conferences, workshops and seminars, on affirmative action based human resource development. There was a general agreement that there was a need to change white local government structures, in particular, and employment policies and practices in the public service in general. However, this process has not been without difficulties, and especially those of interpretation.

Problems of Interpretation

A key problem is that some of the proposals and guidelines for the implementation of an affirmative action policy, submitted by both employee and employer organisations, did not go far enough in recommending fundamental changes in the public sector. For example, it was expected of them to move beyond 'formalism' (equal opportunity) to policies of fairness as one of the basic affirmative action criteria for appointment (Inlogov,1994). Most of the proposals on recruitment procedure were very superficial, coming up with strategies that were piece-meal, and that seemed only to tinker with the status quo without recommending any major reforms that might challenge entrenched and privileged positions.

What follows below is a brief review of some the proposals and guidelines that were submitted and discussed by different stakeholders such as the Federation of Employer Organisations (FEO) and the Federation of Municipal Trade Unions (FEMUTU). The purpose of these conferences, workshops and seminars many of which the writer attended, was to discuss employment policies and practices at local government level. Not all of the organisations discussed below, however, necessarily attended these meetings but they nevertheless, were part of the ongoing debate on transformation of the public sector. A perusal of some of the documents from those workshops, conferences and seminars, reveals some of the difficulties experienced in developing a broad consensus on the issue of affirmative action.


Improper Definition of Terms

A general problem related to the fact that there was a lack of clarity in defining certain key terms and this constrained efforts to establish common ground with respect to terminology and vocabulary. There was also considerable difficulty in reaching agreement between various stakeholders in the transformation process as to how to establish effective guiding principles and strategies for the implementation of affirmative action programmes. This lack of agreement could not be attributed to a lack of knowledge of the need for affirmative action, but more often, it was a deliberate distortion of terms, and ultimately, of facts. For example, the narrow definition of the merit system by the FEO tended to promote a management approach that was characterised by an over-emphasis on "skills and qualifications" as criteria of recruitment (FEO, 1994).

Again, the equal opportunity principle was extremely broadly defined by this organisation in order to ensure that it would accommodate even those who benefited from apartheid discrimination, especially whites. In addition, the proposed preference given to certain racial groups in order to redress the imbalances of the past has been interpreted as racist and or "reverse discrimination". Alternatively, some interest groups argued that the implementation of affirmative action programmes should be voluntary, with little or no interference from outside. It was not surprising therefore, that these proposals did not make any provisions for sanctions, let alone legislation to ensure enforcement of affirmative action (FEMUTU,1994).

As Levy has correctly observed , more often than not, it is people who are against the very concept of affirmative action who " distort the argument surrounding legislation even before its shaping and design" (Levy,1996: 4). The problem is that many in the senior management in the public service still uphold and adhere to old service rules and regulations that may adversely influence the implementation of affirmative action .This leaves their commitment to equality highly questionable, hence the call in many quarters, for legislative action. Almost all of the documents reviewed in this study failed to mention, even in passing, that some groups were more adversely affected by past discrimination than others, that is, that there are various degrees of disadvantage. This poses the question: who are the so-called "designated, disadvantaged or identifiable groups" ? Does this refer to African, Asian or Coloured people or the rich or poor of the South African population ?

For instance, it is of historical record that the Coloured people in the Western Cape, were given preference over Africans under the preferential labour policy in the Western Cape (Levy,1992). Today, however, the mere mention of preferential treatment to specific racial groups, namely Africans, has become highly controversial. The point being here is that it is unnecessary to state who were the most direct victims of apartheid. Although it can be fully acknowledged and accepted that the definition of "blacks" includes African, Asian and the so-called Coloured people and that this definition accords with the principles of equality, non - discrimination, non - racialism, and above all, with the spirit of national reconciliation, the fact that the African people were especially discriminated against should not be lost sight of if the transformation process is not to be distorted.



Those in favour of preferential treatment to certain racial groups are often accused of uttering "irresponsible statements", of being "radical" or of raising "sensitive issues". It has, in essence, "become an extremely emotive issue, raising unrealistic hopes on the one hand ,and provoking irrational fears on the other" (Jauch,1995:31). The question to be asked is how this should be applied in a way that allays the fears of whites, and at the same time, meets the expectations of disadvantaged groups without being vague or ambiguous about it. Sachs (1991) puts it more succinctly when he says:

"the implementation of the affirmative action programme is intrinsically difficult and contradictory. But it is better to acknowledge the problems than attempt a formulation that is either so blind as to say nothing useful, or so weighted to one order of the problem as to avoid any real difficulty " (Sachs,1991:7).

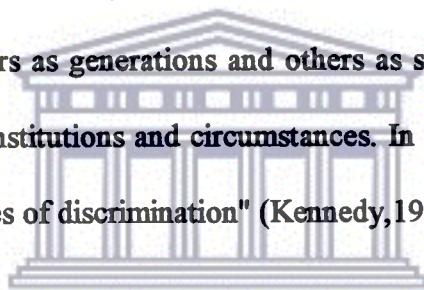
This problem has been further compounded by the fact that some of the arguments advanced in the affirmative action debate were written by whites, with middle-class and professional backgrounds, who appeared to be apologists for the status quo and who were anxious to safeguard their own privileges and positions. As Mazwai affirms: "one still finds some white South Africans who in the past were prepared to lay down their lives for Verwoerd and his policies" leading discussion groups in conferences that have been taking place in the broader transformation process (Mazwai, 1993:47). A seeming paradox, however, is that those who were perhaps least disadvantaged will also be those who benefit most from affirmative action policies, as Sachs maintains:

"The main beneficiaries of affirmative action on the other hand, will undoubtedly be those who benefited most [my emphasis] under apartheid. Yet this does not mean that affirmative action, whether in the broad or narrow sense, should be seen as a punitive or retributive measure against those who benefited from apartheid. Put more simply, it would be wrong to conceive of affirmative action as being by nature an anti-white phenomenon. At the same time, whites cannot use the principle of non-racialism to enable them to hold on forever to the 87% of the land which they obtained by racist methods" (Sachs 1991:6).

Such interpretations have led to the distortion of the meaning of affirmative action and have led to calls for the redefinition of the concept itself. This has been the case, because, more often than not, the emphasis has been on the maintenance of standards. Whilst it is certain that standards should be maintained at all costs, this should not inhibit the advancement of affirmative action. Most of the papers presented in conferences and workshops prior to April 1994 also emphasised the importance of equal protection.

This view should be treated with scepticism since it was generally advanced by

individuals who had benefited from the discriminatory policies of the apartheid. In essence, it implied that "disadvantaged, designated or identifiable groups" should forget the past and compete with whites as equals. Others, such as the Federation of Employer Organisations (FEO) believed the employment playing field would be "levelled" through the introduction of affirmative action programmes but these would be "phased out after an agreed time frame" (FEO,1994). However, the authors of these papers do not say what will happen if imbalances in employment relations still persist in different parts of the country. The term "temporary" is abstract and therefore relative in this instance. According to Kennedy it depends on what one means by temporary (Kennedy,1993:74). The problem is, he maintains, that "some people think of temporary as two years, others as generations and others as several generations. One has to look at the particular institutions and circumstances. In some cases, it will take longer to eradicate the vestiges of discrimination" (Kennedy,1993:74).



Given that black people in South Africa were subjected to centuries of discriminatory laws and practices, it might be expected that affirmative active policies are going to stay with us for some time. However, the implementation of the programme should take into account the demographic realities and the racial composition in each geographic area. For example, in the Western Cape the ' Coloured' people outnumber African people in terms of population density. Therefore, naturally, one would expect that the occupational structures in public sector employment will reflect more Coloureds than Africans, whereas in the Eastern Cape region the opposite would hold true. In spite of these shortcomings, significant developments did take place in the development of a common understanding of affirmative action policies.

These included the signing of an agreement by different stakeholders in the transformation process in a Conference that took place in Cape Town on the 15 August 1994. The following are some of the signatories to this historical agreement developed by the National Labour Relations Forum, namely;

- Municipal employees organisation;
- Cape Provincial Local Authorities Employers organisation;
- Major cities employers organisation;
- South African Workers Union;
- Institute of Trust Clerks;
- South African Workers Union;
- Johannesburg Municipal Employees Association;
- Durban Municipal Employees Society;
- National Union of Employees of Local Authorities;
- Personnel Association of the Local Government; Affairs Council;
- Amalgamated Municipal Employees Association; and
- Western Province local Authority Workers Association (National Labour Relations Forum, 1994).

This conference included trade unions, representatives from existing government structures, NGOs and other community - based organisations. It is felt important to mention, nevertheless, that the majority of the delegates representing the various employer and employee organisations were whites while only a few blacks attended. Since then this position has changed. Labour organisations now make their position very clear, albeit in a different note as illustrated by Wocke (NEDLAC, FEDSAL), a

participant to the 1996 International Conference on Affirmative Action who stated that the government was moving very slowly in implementing affirmative action programmes and there was more talk with less action (Wocke, 1996: 33). In that respect, it was argued that it was time for the political leadership to accelerate the pace of transformation so as "to ensure that legislation is enacted and policies implemented".

Put simply, the message was : grandiose plans and strategies without practical implementation are not sufficient. The government needs to move faster. During this Conference, the need was also expressed to critically examine the policies relating to right-sizing, voluntary retrenchment and down- sizing. For example, the former once implemented, the unions submitted, will not only affect the middle and senior echelons of the public service, but also the lower positions that are occupied mainly by blacks. Furthermore, training should be made available for those who will have to be redeployed as a result of down- sizing (School of Government, 1996: 33).

Beneficiaries and the Disadvantaged

Whereas the main target group for affirmative action programmes will be black people (generally defined), women and people with disabilities, it is believed that the race and class of these groups also needs to be considered in order to help us determine precisely who should benefit from the policies of affirmative action. In other words this discussion is aimed, among other things, at reiterating that affirmative action programmes must also take into account considerations of inequalities based on race and social classes (School of Government, 1996:38).

The Class - Specific Approach

According to Levy, the problem is that, in the past, affirmative action policies had a tendency to benefit the better off members of disadvantaged groups (Levy,1996). In the USA, as indicated, affirmative action programmes benefited middle class Black people as a class while marginalising the underclass. According to Kennedy "about one-third of this class lived in poverty" (Kennedy,1993: 64). Therefore the identification of beneficiaries on the basis of economic standards is crucial .It would ensure that the most disadvantaged sections of society are reached. However, this approach will not be without obstacles. One is that " class - based affirmative action programmes will be difficult to implement as they have to bring about fundamental changes in the distribution of wealth and income" (Jauch,1995:26). Notwithstanding this, policies of affirmative action should always be aimed not only at addressing employment opportunity issues, but also socio-economic ones.

In view of what has been discussed above, one asks whether affiliation to a particular group should not be considered when determining those eligible for benefits? Given, for example, that African people and African women especially were the most adversely affected by the previous government's discriminatory racial laws and policies, the question may be posed as to whether it would not be just and politically correct that, as a group, they are given preferences over the other "disadvantaged, designated or identifiable" groups who suffered to a lesser extent from the policies of the past , namely the 'Coloured' and Indian people ?

Some Reflections on Quotas and Targets

As pointed out above, the debate now is no longer whether affirmative action should be applied or not but how soon and how best to do it. Currently, the debate is about whether quotas or targets are desirable options in order to promote employment equity in the public sector. However, this debate has not been without its own controversies. One of the most heated controversies in this debate concerns the extent to which affirmative action can be expressed in numerical terms [i.e in quotas] (Loxton,1994: 30).

Fitzgerald , for example, is of the view that targets, rather than quotas, are preferable in that they allow for affirmative action to more easily become a vital strategic thread within more holistic transformation strategies aimed at changing organisation and culture and improving performance on a variety of important indicators (Fitzgerald,1996). " Employment quotas", he adds, "may be considered in the case of disabled people". However, as Sachs maintains, " quotas should never be the main means of redressing injustices and inequalities created by apartheid" (Sachs,1991:13).

To him, what is needed is good, democratic government sensitive to the needs of the people as a whole, and not just a minority. Some writers, however, would argue that the racial inequalities in South Africa are so deeply rooted that the case for numerical quotas is compelling (Loxton,1994:30). It is against this background that Faundez says that there is no good reason why quotas can not be interpreted "as flexible targets which have to be realistically based on circumstances of each employer as the setting numerical quotas is an indispensable feature of any affirmative action

programme " (Faundez, 1994 : 47). This argument should not, however, be seen as favouring a system based on quotas, particularly if it means persons in the public service are seen as representing and serving the group which they belong. Instead, one of the principal tasks of the government will be to open up opportunities for all, giving special attention to the needs of those who have been most excluded or injured by past discrimination. Quotas should only apply as a last resort to promote representativeness, cultural diversity and the need to draw on the widest range of skills and experience available. The following strategies are suggested for the support of quotas :

- the government, unions and private sector must make special provision for overcoming the effects on employment of Bantu Education and job reservation;
- the government must concentrate on programmes of accelerated vocational and professional training, both in - service and outside; and
- in education , there will be a need to integrate the disparate school system, applying and creating the foundation for equality and education for all (Zimmerman, 1996 unpublished).

Policy Principles and Guidelines for Implementation

Any legislation on affirmative action will need to be backed up with guidelines people can follow. Detailed and uniform strategies are also needed on the development and implementation of affirmative action programmes (Duba, 1989). In order to achieve these objectives Hugo suggests, the following as guidelines for the public sector :

- there must be a clear and unambiguous commitment to affirmative action policy and frequent reaffirmation of that policy by senior staff ;

- the commitment must be communicated down the hierarchy ;
- firm action must be taken against employees who create obstacles to the programme ; and
- staff in supervisory positions must be made accountable for the performance of the programme (Hugo,1990 :115).

Furthermore, an open, frank and serious debate must be started on the question of how best to open up what had been formerly closed, and how to do so in a manner that will benefit those who most deserve its assistance (Sachs ,1991:11). In doing so, Zimmerman maintains, the following factors have to be taken into account:

political factors - the strength of the vision of transformation, redress, and reconciliation and the appropriateness of the policy frame work;

economic factors - this includes the processes of reconstruction development and rationalisation, and as well as the linkage between public and private sector ;

social factors - the promotion of employment equity, empowerment and capacity - building;

work environment - the strength of teamwork, public participation, training and continuous learning are critical in this respect (Zimmerman,1996 : unpublished).

Review of Employment Policies and Practices

In pursuit of the policy of affirmative action, there is also a need to review employment policies and practices including terms and conditions of employment. The aim is to eliminate any systemic discrimination which might exist. A review of human resource policies or practices would need to include:

recruitment procedures - to ensure that the methods used for recruiting employees do not favour any particular group;

selection criteria - to ensure that the criteria used for selection are objective and are related to the intrinsic requirements of the job;

promotions - to ensure that criteria for promotion do not adversely affect members of the disadvantaged groups;

conditions of service - to ensure that terms, conditions and benefits of service are fair and equal and are consistent with the principles of equal conditions for equal work;

training and development - to ensure that training and development programmes are offered to all employees irrespective of their level of education and other considerations that may adversely affect the career development of members of any particular group; and

compensation and benefits - to ensure that policies and practices governing pay and benefits systems do not adversely affect members of disadvantaged groups (Levy, 1996: unpublished).

Retrenchment and Retirement

The achievement of affirmative active goals through "exit policies" is difficult. This is because of the moral dilemma facing the government as to what to do with existing public servants (Mokgoro, 1992). Some writers have suggested retrenching or retiring redundant civil servants since their sympathies lie with an outdated order and their positions can be filled by black civil servants. For constitutional reasons, this is not feasible. However, early retirement and voluntary retrenchment packages are still

options that exist. The problem first is that once these policies are implemented it results in antagonism and resentment towards black and female advancement on the part of existing civil servants who feel that their jobs are at stake. Secondly, the expertise of experienced senior civil servants is highly necessary. Therefore, extensive retrenching or retiring experienced civil servants would result in a vacuum of experience. In wrestling with these issues then, it is of value to consider approaches adopted in other countries.

In Holland, for example, a system is used whereby those with the longest service are the first to be asked to take early retirement or retrenchment packages, while in the United States of America they are using a military system based on the "up or out" principle. What this means is that those who have not been selected for promotion must exit the service after a fixed period in a grade (School of Government, 1996 : 23). Again, affirmative action programmes should be seen within the broader context of a national human resource development strategy. As such, the process of intervention through recruitment, selection and promotion should be restructured. These policies should be based more on competency and redefinition of the merit system than qualifications, experience or seniority (School of Government, 1996:38).

Redefining the Merit System

It is also suggested that the present arbitrary systems of hiring and promotion must give way to new ones based on equal opportunity principles in terms of which special encouragement will be given to peoples from disadvantaged groups. This includes removal of the Personnel Administrative System (PAS) and the discriminatory health

regulations of the Public Service Act of 1994. In particular, there is a need for redefinition of the merit system. For example, there should be a shift from a mechanical definition of experience and the measure of an individual according to the PAS system, to an assessment of an individual's contribution to the organisational performance of the public service.

There is an assumption that since the merit principle is not of primary consideration in selecting candidates, the best applicant will lose the job and thus there will be a lowering of standards (Duba, 1992). However, studies by Leonard in the United States of America have shown that there is no significant evidence to prove a decrease in productivity when affirmative action is implemented (Leonard, 1985: 25).

In practice, the hiring process can be simply be understood as employing the person most likely to succeed in a particular job and in the particular organisation without compromising standards (Fitzgerald, 1996: unpublished). Part of the "merit" assessment process should include attributes not traditionally considered in the South African public service, including : - leadership and vision, multi - cultural ability, understanding of current policy, knowledge of communities, citizens and clients, language and communication ability, commitment to reconstruction and development, ethical calibre, ability to work within a team, and finally, breadth and diversity of experience before joining the public service (Fitzgerald, 1996: 24).

Having stated all this, if the implementation of the above policies is to succeed, the new government will need to establish a framework that can serve as a guide in developing an overall regulatory affirmative action compliance strategy (Sachs,1991:8). As Sachs maintains, "this is essential to co-ordinate and rationalise human resource development training policies" (Sachs,1991:9). For example, while the public service must be based on merit, career suitability, skills, competence and qualifications, these standards should not be interpreted to further minority interests.

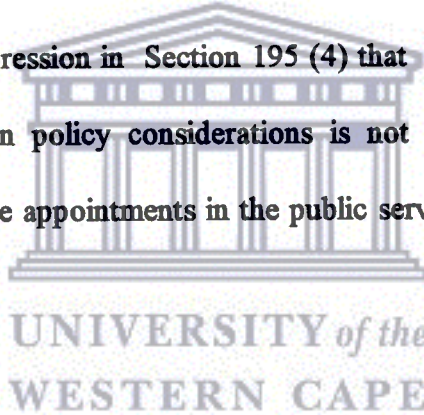
Policy Debates in the Government

There has been considerable discussion in the government about the implementation of affirmative action programmes but until recently no coherent policy had emerged. After months of debate both at local and national level, the new government has unequivocally committed itself to accelerate the process of increasing the representiveness in the public service through, what the Deputy - President of South Africa has called, "well - constructed policies and programmes " to reverse the status quo (Mbeki,1996: 4).

And ,more recently, the parliamentary Portfolio Committee on the Public Service has been working on a policy framework to address the question of representiveness and affirmative action in the public service (Mlambo - Ngcuka ,1996: 9). These recent developments includes an International Conference on Affirmative Action in the Public Service hosted jointly by the School of Government (UWC) and the Parliamentary Portfolio Committee on Public Service in Cape Town in early 1996 (School of Government,1996: 2).

One of the stated objectives of the government during this Conference was to eradicate all forms of discrimination in the labour market. The government's recognition of the urgency for affirmative action through legislation was underpinned by the Deputy President Thabo Mbeki, when he said that one of the measures to ensure that affirmative action policy is implemented is that Director-Generals "could be required to sign performance contracts specifying affirmative action targets" (Daily Dispatch, 1/4/1996:2).

In addition to this, Chapter 10 of the new Constitution has an enabling proviso allowing employers and the state to discriminate on behalf of the historically disadvantaged. This finds expression in Section 195 (4) that reads: "The appointment of a number of persons on policy considerations is not precluded, but national legislation must regulate these appointments in the public service" (Republic of South Africa, 1996:108).

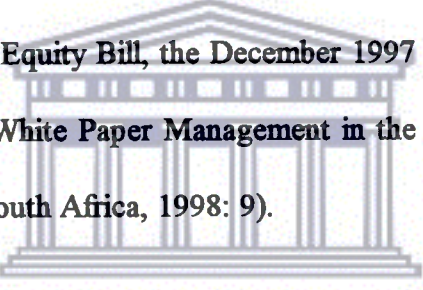


The launch of the 1998 White Paper on Affirmative Action on the 28 of April by the Department of Public Service and Administration in Pretoria has herald a new chapter in the redress of the disadvantaged status of black people, women and people with disabilities who have suffered most from past discrimination. It is a comprehensive policy framework that is indicative of the government's commitment to transform this country into a non-racist, non-sexist and democratic society.

The aim of the White Paper, among other things - which will serve as a national policy framework - is to set guidelines "within which national departments and provincial administration will develop their own affirmative action programmes, structures,

mechanisms and guidance" (Republic of South Africa, 1998: 5).

Most importantly, the White Paper will also be "aimed at closing gaps and removing ambiguities in policies which were created by the previous measures of 1995". This statement is of particular interest. This is so in that the 'closing of gaps and the removal of ambiguities' in previous policies may help eliminate any use of terminologies, conceptions and interpretations that have, in the past, afforded some of those reluctant or opposed to implementing affirmative action in the public sector the opportunity to distort its meaning, especially in the context of South Africa. It is also encouraging to learn this framework embodies the basic principles and guidelines as enunciated in the December 1997 Employment Equity Bill, the December 1997 White Paper on Human Resource and the July 1997 White Paper Management in the Public Service Training and Education. (Republic of South Africa, 1998: 9).



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In respect of the former, the White Paper develops further the vision of affirmative action by building on the requirements of the Employment Equity Bill which defines affirmative action "as part Government's broader employment equity strategy". As indicated in chapter 6, part of this employment equity strategy will be to set minimum mandatory requirements in order to ensure that all public sector employers, in consultation with employees and other stakeholders, implement affirmative action by recruiting, promoting and training employees from disadvantaged groups. It is envisaged, on the other hand, that the latter will also provide the new framework "to ensure an equitable, representative and well - skilled Public Service, in the medium to long term" (Republic of South Africa, 1998:9).

Policies on Gender and Equity

What the government wants to achieve is greater numbers of women taking part in political decision-making and also more women in higher levels of the civil service (Fraser- Moleketi, 1996). Presently the Commission for Gender Equity is establishing itself as an independent structure outside government. It is envisaged that this structure " will act as a vehicle for mainstreaming gender considerations in all publicly funded policies and programmes" (Fraser-Moleketi,1996). Since June 1996, relevant structures have been established at both the national and provincial governments levels to promote gender equity. Earlier this year, the government ratified the UN Convention for the elimination of all Discrimination Against Women. Other initiatives since 1994 include the establishment of a government Office for the Status of Women and the creation of gender desks in most national departments.

Policies on Disabled Persons

The government has taken a number of steps to ensure that discrimination against disabled persons is eliminated. These measures include:

- establishing a Disability Office in the executive ? President Office; and
- the publication of a White Paper on an Integrated National Disability Strategy (NDS) [February,1997].

The NDS integration plans will be in line with the UN's Programmes of Action for the Disabled and the Disability Rights Charter for South Africa (1992).The overall objectives of this strategy is to help with the integration of the disabled into government programmes and to fund and monitor these strategies (Chalken, et al

,1996:31).

Legislation for Affirmative Action

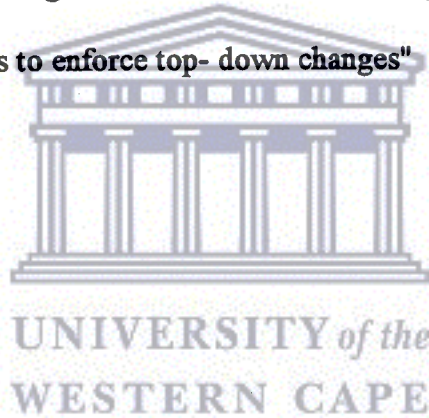
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As noted above, Section 195 (4) of the Constitution provides that: "the appointment of a number of persons on policy considerations is not precluded but national legislation must regulate these appointments" (Republic of South Africa,1996:108). The problem with this statement is that it is so general as to border on the vague and ambiguous. For example, what is exactly meant by appointing "a number of persons", on "policy considerations," that are "not precluded" ? Again, how is it proposed that 'national legislation' will 'regulate' these 'appointments' ? That is, what mechanisms are there in place to ensure that this national objective is achieved ?

While the former (i.e "a number of persons") can be interpreted as referring to the advancement of persons who have been unfairly discriminated in past , that is, the so-called "disadvantaged, designated or identifiable" groups, it is still not clear what is meant by "on policy considerations". In short, the problem with this Section of the Constitution is that its language is not prescriptive in that organisations "are allowed, rather than required" to introduce affirmative action programmes (Levy,1996). In essence, this vagueness means that persons who are expected to benefit from these affirmative action programmes are left to the mercy and good will of employers in senior management in the public sector. It is in this context that Mpahlele had to say that : "to leave employers to their own moral and human judgement in this regard is to leave the matter of the fate of the lambs stupidly in the care of the fox" (Mpahlele as cited by Xhobasa, 1996:58).

It is for the same reasons that it is strongly argued that enabling legislation should be adopted as a matter of urgency, defining the circumstances when targets, quotas, timetables and monitoring should be used. "They should establish the procedures to be followed, the agencies with responsibility for investigation and supervision, and the role of the courts" (Sachs, 1991:3). And, such legislation "will have to be carefully dovetailed with the Labour Relations Act" (School of Government, 1996: 46).

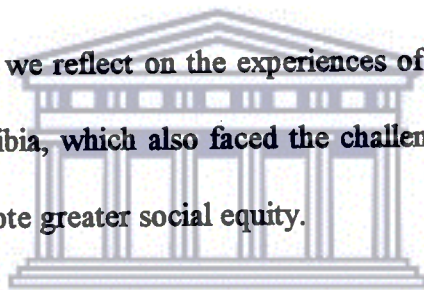
This includes discussion of proposed legislative change with a number of employee organisations who are now part of the Central Chamber of the Bargaining Council. "However", Sachs cautions, "legislation should avoid attempts to use bureaucratic measures and arbitrary figures to enforce top-down changes" (Sachs, 1991,3).



CHAPTER 5

An Overview of Experiences in other Countries

In the preceding chapter, it was stated that it is only through the implementation of policies of affirmative action that the inequalities caused by apartheid laws and policies can they be effectively addressed. However, it has also become evident that the various interpretations of the affirmative action programme clearly indicate that there is still no common understanding of this policy. In South Africa this situation has led to confusion surrounding the debate on the policy as will be shown in chapter 4 below. In trying to grapple with what so far has been called "affirmative action", it is felt important that in this chapter we reflect on the experiences of other countries, namely the USA, Malaysia and Namibia, which also faced the challenges of racial imbalance and have attempted to promote greater social equity.



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Affirmative Action in the United States of America

Affirmative action policies in the US emerged after the ghetto uprisings of the 1960s when it was felt that without intervention, black Americans would never be able to enjoy the rights proclaimed by the Constitution to be available to all (Sachs, 1980:12). In fact, the period between 1960 and 1970 can be regarded as a decade when the US was experimenting and innovating with affirmative action policies. The 1970s, moreover, ushered in a period of legal challenges to various forms of affirmative action that continue unabated to this day (Days, 1996:64).

Implementation of Affirmative Action in the U.S.A

In 1965, President Lyndon Johnson's Executive Order No.112 46 prescribed affirmative action for all Federal contractors (Jauch, 1995:2). The Federal government required that these contractors “set timetables for hiring African - American workers” (Days, 1996:63). By the early 1970s, quotas were established for certain minority groups under the Equal Opportunity Employment Commission. Among other things, employers had to ensure that the composition of the workforce reflected the population at large (Jauch, 1995:3). For example, if 10 percent of the population was black, then at least 10 per cent of the work force had to be black.

The 1970s were also the period when voluntary affirmative action programmes were being established in the private sector to increase employment opportunities for African - Americans, other groups and women (Days, 1996:65). These efforts for black advancement were particularly evident in colleges and other institutions of higher learning across the country. Days further argues that there were many reasons why the private sector had to comply with the provisions of the Executive Order No.112 46. One was the fear of law suits against them by the government - hence the 'race' to promote representativeness in the occupational structures of the private sector. However, others did it out of moral obligation to undo the inequalities caused by years of systemic racial discrimination. The Constitutional position of affirmative action in the USA, however, remains unclear.

Some judges have insisted that a colour-blind constitution does not permit any preferential treatment on the ground of colour. Others have argued that to achieve equal protection it is necessary to take account of the reality of the racist practices that disadvantage certain groups and advantage others (Sachs, 1991 : 25). Case law suggests that the following principles have been developed by the courts:

" Where there is a proof of deliberate exclusion on the grounds of race, then race can be taken as a factor in remedying the resultant disproportions. Thus if blacks constitute 20 per cent of a pool available and qualified for employment, it can be ordered that new hiring takes place on the basis of one black one white until the 20 per cent quota is reached. If there is no proof of intentional exclusion, however, but the employer, union or public agency wishes to bring about cultural or racial diversity in the workforce, it may use race as a plus to be taken into account, provided that it is not an exclusive factor or a controlling factor but rather part of a flexible evaluation system looking at the total picture " (Sachs, 1991:26).

Thus, "if there is a number of suitable candidates, each with pluses and minuses, all must be considered". But, Sachs further argues that "there would be nothing wrong in making preference on the bases of race and sex as an inclusionary factor" (Sachs, 1991:26). The Fourteenth Amendment to the US Constitution guarantees equal protection under the law, but it affords relief against legislative and executive acts only, not discriminatory conduct by private parties. To remedy the situation, Congress passed the Civil Rights Act of 1964. Title VII of that legislation prohibits employers, unions and employment agencies from making employment decisions on the basis of race, sex, religion, colour and national origin (Thompson, 1993:37).

Results of Affirmative Action in the U.S.A

The American experience on affirmative action was instrumental as far as it was able to show the importance of setting specific goals and timetable for departments:

- making specific rules for specific positions;
- being able to delineate target groups; and
- highlighting the importance of specific grievance procedures (Stafford, 1996:17).

Further, the experience of affirmative action in the United States has shown that “it is only when programmes are accompanied by rewards and sanctions that meaningful progress will be made” (Hugo, 1990:118). Other than what is mentioned above, these programmes in the US failed to address wider issues of poverty (Weiner, 1993:22). Jauch (1995) also concurs with this contention when he says that in the US, there was no simultaneous attack on the socio - economic system (Jauch, 1995:1). Consequently, to a considerable extent, affirmative action policies benefited middle class blacks. “This” according to Days, “should not be surprising, because this is what the programmes were set to achieve” (Days,1993: 61). That is, programmes were meant to help minority groups who met 'minimal job qualifications' (Days,1993:61). As such, affirmative action policies in the US have been instrumental in " narrowing the gap between groups, but also contributed to an increasing gap within groups” (Jauch, 1995:4).

Lessons for South Africa

In a country where white values, rights and systems are still in place despite the change in government, and are still incorrectly accepted as the only norms, an uncritical application of the United States model of affirmative action in South Africa wrongly suggests that the latter has already reached a stage of desegregation, non-racism, non-sexism and non-discrimination. There is a need therefore, to critically examine the concepts of affirmative action and the policies of inclusion and their applicability to South Africa. According to Fitzgerald (1996) the US literature and conception sees affirmative action primarily as "bringing minority individuals into mainstream institutions" (FitzGerald, 1996). In South Africa, on the contrary, the fundamental strategic problem is bringing institutions into the (African - majority) mainstream of the society; in this specific context, Africanizing the public service. The emphasis in the case of the USA therefore, was that of supporting talented but (disadvantaged) individuals in a hostile environment, whereas in South Africa the emphasis should be on opening up organisations to the real environment in which they must operate and succeed. One other lesson to be drawn from this experience is that a clear constitutional foundation must be established in South Africa.

Part of the problem in the USA was that there was a strong constitutional foundation for anti-discrimination laws in general, but not for affirmative action as such, particularly if they were colour- sensitive rather than colour-blind (Sachs, 1991:22). In other words, "the notion of affirmative action was obviously not contemplated at the time of the enhancement of the Constitution"(Friedman, 1986: 65).

Furthermore, the US legislative formulas serve both to accentuate the race factor and to allow “undeserving” individuals to benefit under affirmative action programmes. For example, it is widely accepted that the main beneficiaries of affirmative action programmes in the US have been black professional men and women, and white professional women, but that the great majority of blacks and women have not seen their status improve (Maphai, 1989:17). While the expansive interpretations by the US courts are seen as positive, the zigzag course of American case law can not set precedents for the South African situation for the above reasons.

Affirmative Action in Malaysia:

Historical Background

The affirmative action policies in Malaysia were based on a political pact between the Chinese and the Malay political elites. These two groups represented the largest ethnic communities in the country, (the other ethnic groups consisted of Indians and Ceylonese (Weiner, 1993:22)), and their two major political parties formed the Alliance Party and agreed in 1971 to a New Economic Policy (NEP) under which Malays were given preferences in the administrative services, in education, in land policies and in obtaining a share of equity in the corporate sector. The Malays, being the major political force in the Alliance Party government, agreed that in return, they would pursue pro-growth economic policies that would enable the Chinese to prosper in trade and in business. Affirmative action policies in Malaysia are not a new phenomenon. Long before independence in 1957, these policies were in place (Puthuchery, 1996 : 5). Such programmes helped in improving the socio-economic position of the Malay communities.

Thus, the affirmative action programmes introduced after independence were a continuation and intensification of colonial policies that had specifically targeted Malays. The Malays constituted close to 50 per cent of the population and were mainly engaged in subsistence agriculture and small - holder rubber plantations (Jauch, 1995: 10). The Chinese, who constituted approximately 40 percent of the total population, were mainly traders and business people.

Implementation

In Malaysia, affirmative action is defined specifically in ethnic terms. That is, the targeted group to be assisted by affirmative action programmes belongs to a particular ethnic group; ranked social systems are assumed in which ethnic and class boundaries coincide (Puthuchery, 1991:6). The affirmative action policy as indicated, is in favour of employing Malays in the public sector. Article 153 of the Constitution specifically provides for this special right. It should, however, be noted that this clause contradicts the proclamations in the Constitution relating to the protection of individual rights. For example, it contradicts Article 8, which provides that all persons are equal before the law and are entitled to its equal protection. The official interpretation of the special rights clause in the 1970 White Paper on Transformation of the Public Service was stated as follows:

“The purpose of this Article is to provide leverage to the Malays to advance and progress more rapidly since it is generally recognised that the Malay and the non- Malay have not advanced at the same rate of progress” (Republic of Malaysia, 1970).

However, the Constitution did also provide for certain guarantees protecting what it called the 'legitimate interests' of other communities. This meant that, in implementing affirmative action, the government had to take into account the rights of the Malays such as rights to keep their property and the rights of those in public employment to keep their jobs. That is, although there was a quota restricting the employment of non-Malays in certain sections of the civil service, non - Malays were not to be denied access to other sections where there was no quota. Puthuchearry (1991) argues that perhaps in doing this, the Alliance government in which the Malays were in the majority, as trying their utmost to reconcile the contradictions in the Constitution (Puthuchearry, 1991:5).

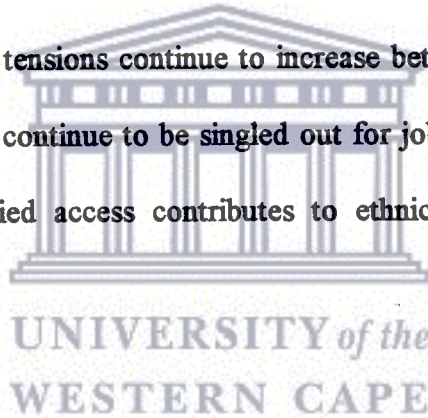
In principle, there was nothing wrong in implementing these measures. This is simply because when the decision was taken and provision was made for this Special Rights clause, all the major parties were represented in the Alliance party government (Jauch, 1995:11). They had all accepted that these measures were necessary for the interim. In pursuance of this policy, the Alliance government imposed quotas in many public service departments in this order: 4 Malays to 1 non-Malay in the Malaysian Home and Foreign Service (previously called the Malaysian Civil Service), 3 to 1 in the Police Force. The quota in the armed forces extended to the rank and file (Puthuchearry, 1991:10). Furthermore, quotas were introduced by the Alliance government to improve the quality of life in the rural areas. The Malays benefited from these programmes as most of the residences in these areas belonged to them (Jauch, 1995:12). More Malays were employed in the expanding public service.

However, due to a lack of skills, they continued to work in the administrative and sub-professional jobs, while the non - Malays dominated the professional and technical services. This increased tensions between these two ethnic groups due to the unequal occupational structures. In 1969, these tensions erupted into open violence. The Malays took advantage of this opportunity to entrench once more the special provisions in their favour, thus making them a permanent feature of the Malaysian society. Thenceforth, there was strict adherence to the rule of the law. These special provisions became part of NEP policy, which aimed to achieve an ethnic balance between all sectors of the economy (Jauch, 1995:13).

Results

It appears that affirmative action procedures in Malaysia have been fairly successful in opening up both the civil service and commerce to persons from the Malay community who had previously been grossly under represented in both areas. The price, however, has been to enforce communal rather than national identity. Affirmative action policies under the auspices of the NEP did, however, contribute to the establishment of a Malay business community (Puthuchear, 1991:7). Various strategies were embarked upon including the setting up of public enterprises to employ and train Malays, and the use of administrative regulations to encourage Malay employment in private sector companies (Jauch, 1995 :13).

The period between 1970 and 1990 has been successful in promoting growth with equity. As a result, until recent reversals, Malaysia stood out as one of the fastest growing economies in the Asian Pacific area under the leadership of the Johor State Economic Development Corporation [JSEDC] (Mansor, 1996:15). For example, JSEDC, which manages government projects, has been successful in promoting affirmative action programmes through the development of indigenous management-entrepreneurs in Malaysia (Mansor, 1996:16). Today, most Malays occupy positions that were formerly the preserve of the non-Malays. These developments also affected the number of Malays enrolling in institutions of higher learning. By 1980 75 per cent of students in local institutions were Malay (Jauch, 1995:12). However, despite this favourable economic growth, tensions continue to increase between Malays and non-Malays. The fact that Malays continue to be singled out for jobs while the rest of the other ethnic groups are denied access contributes to ethnic tension and sporadic conflict.



Lessons for South Africa

The Malaysian case has illustrated that fast tract promotion procedures are very effective in achieving representativeness in the public service as a whole. It also shows that targets and quotas can be effective in redressing racial imbalances (School of Government, 1996 :39). However, the Malaysian experience also serves as a lesson to reformers about the problems that are associated with "reverse discrimination" especially when it is based on quotas. The danger is that when certain groups are singled out for special preferential treatment, this may elicit resistance from those groups who do not benefit from such programmes.

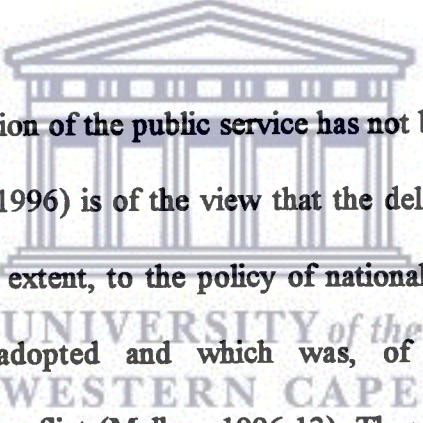
The interests of the non-target group should always be taken into account when framing affirmative action policies. It would be advisable, therefore that affirmative action programmes in South Africa be based on targets rather ethnic quotas. Sachs (1991) agrees with this argument when he says the policies of the new government must be aimed at building a nation based on equality and not on quotas (Sachs, 1991:9). ‘Less distasteful would be to permit, when necessary, race and gender preferences as relevant elements in deciding on appointments, but only if candidates satisfy basic requirements for the position’. The problem, according to him, comes when one acknowledges preferences based on race and gender (Sachs, 1991: 10).

The Namibian Experience:

Historical Background

At the time of independence in 1990, the Namibian government had about 50 000 civil servants in its employ. This number was divided into the central civil service structure and the ethnic second-tier authorities (Jauch, 1995:184). Virtually all top and middle management posts were occupied by white, male Afrikaners. Only one woman was in the position of a director in the Department of National Education. Most black Namibian people were employed below the management level. The first challenge facing the new government led by the South West African Peoples Organisation (SWAPO) was to remove social, economic and political inequalities caused by more than a century of racial discriminatory laws and practices (Melber, 1996:12).

The immediate obstacle and priority in the transformation process was to restructure a colonial civil service that had for years, operated as a closed system governed by the Public Service Act of 1980. One of the provisions of this Act was that promotion posts should be filled internally and that any advertisement should only be placed if no suitable persons within the administration could be found. As a result of these stringent requirements set by the Act, the advancement of black Namibians in senior public service positions was restricted (Jauch, 1995:184). In essence, the positions of existing white civil servants became secured. "Openings for blacks were very few until the actual size of the civil service was increased to deal with the new demands facing the state" (Loxton, 1993: 29).



Changes in the racial composition of the public service has not been extensive as might have been expected. Melber (1996) is of the view that the delay in black recruitment could be attributed to a great extent, to the policy of national reconciliation that the SWAPO government had adopted and which was, of course, necessary at independence to avoid racial conflict (Melber, 1996:13). Thus, in Namibia, the whole process of transformation revolved around the policy of national reconciliation where the political leadership tended to emphasise the need for peace without making any significant inroads in redressing socio-economic inequalities of the past.

Implementation

In order to redress the inequalities caused by apartheid laws and practices, the SWAPO government had to move swiftly and implement new strategies with the aim of transforming the status quo. In this the new government was aided by the Namibian

Constitution that empowered the parliament to enact legislation to change this situation. In terms of Article 10 of the Constitution: "all persons are equal before the law and no person may be discriminated against on the grounds of sex, race, colour, ethnic origin, religion, creed or socio-economic status" (Republic of Namibia, 1989).

Notwithstanding these fundamental human rights, Article 23 introduces certain qualifications:

"Nothing contained in Article 10 thereof shall prevent Parliament from enacting legislation providing directly for the advancement of persons within Namibia who have socially, economically or educationally been disadvantaged by past discriminatory laws and practices, or for the implementation of policies and programmes aimed at redressing social, economic and educational imbalances of past discriminatory laws or practices or for achieving a balanced restructuring of the public service, the police the defence and the prison services.

In the enactment of legislation and the application of any policies and practices contemplated by sub- Article (2) hereof, shall be permissible to have regard to the fact that women in Namibia have traditionally suffered special discrimination and they need to be encouraged and enabled to play a full equal, and effective role in social, economic and cultural life of the nation" (Republic of Namibia, 1989).

As can be seen from above, these provisions created an extensive legal space for a legislative programme incorporating affirmative action for both blacks and women. Furthermore, the National Public Service Commission Act of 1992 established an independent Public Service Commission (PSC) which was charged with overseeing the process consisting of a chairperson and between three and six other people nominated by the president and appointed by the National Assembly (Jauch, 1995: 186). After the establishment of these structures the Namibian government pledged to increase the employment of black people and women in the public sector. Gawanas, a member of the PSC, explained this policy as follows: the government as an employer, faced with two equally qualified applicants, one black person or female, one white or male, might

choose the black person or woman if they are under- represented in that particular job. Where a less well-qualified person is chosen in preference to a well-qualified person it should be sanctioned by very circumscribed circumstances (Gawanas,1991:32).

Gawanas argues that this latter course is necessary in view of the various problems which present themselves. Namely, the question of the balance between the demands of equity and those of efficiency. According to her “equity demands restitution and meeting the expectations of the disadvantaged. Efficiency demands appointing people on the basis of merit so as not to result in economic inefficiency” (Gawanas, 1991:33). However, the Namibian government has expanded rather than cut the civil service since independence and the employment of black people has not been accompanied by a reduction in the number of whites.

Results

It can be said that when compared with the previous public service changes have taken place in the ethnic composition of staff in Namibia since independence. However,while the top echelon is largely composed of blacks, whites (male) still dominate middle management positions. Thus, they still occupy 52 percent of the higher - ranking posts although they constitute only 5 per cent of the total population. It is also disappointing to learn that despite the constitutional commitments cited above, there have not been major changes to the status quo, which existed before the SWAPO government took over in 1990 (Melber, 1996:14).

For example, the racial and gender composition of the public service still reflects the old public service structures. Females are still outnumbered by males by a ratio of 4 to 1. From the above data, it is evident that a lot still needs to be done by the Namibian government to promote the representativeness of women in the public sector.

Lessons for South Africa

The study of the successes and failures of affirmative action policies in Namibia is of significance because of its special relationship with this country. In terms of immediate history and geographic location, Namibia is our closest counterpart and its treatment of equality and affirmative action policies may well be reproduced here. The Namibian experience can serve as a lesson on how to deal with a public service that is increasingly becoming bigger than the government can afford to maintain financially. The lesson is that the promotion of a representative service should not lead to the development of a bloated public service structure. The new government in South Africa should also learn from the folly of prioritising national reconciliation at the expense of promoting a rigorous implementation of affirmative action programmes. As Du Pisani points out, in Namibia, the politics of national reconciliation failed to address the main issues related to affirmative action such as minimum wages and redistribution (Du Pisani, 1993:29).

Against the background of what has been discussed above, it is believed that affirmative action programmes are not only meant to restructure employment opportunities per se, but also to redress socio - economic imbalances caused by apartheid policies. Therefore, there is a need to balance national reconciliation with the

speedy implementation of affirmative action programmes (School of Government, 1996:39). The Namibian case also illustrates that affirmative action strategies should focus at all levels of the public service (School of Government,1996:39). Today, a lot still remains to be done in Namibia in addressing historical inequalities brought about by apartheid. It is in this context that Melber warns South Africans against a process that is likely to be reproduced here when he says:

“ In Namibia it appears as if national reconciliation and affirmative action run the danger of ending up as two contradictory initiatives within a policy framework aimed at the co-optation and integration of the disadvantaged into existing structures of class and property under the newly restructured formal relations of political power. Every effort should be made to prevent the same tendencies emerging in the South African context” (Melber, 1996:14).



CHAPTER 6

Proposals for Change

This chapter focuses on mechanisms and strategies that must be put in place to ensure the effective and successful implementation of affirmative action programmes in the public sector. These include, among other things, the communication of policy to all stakeholders, the introduction of legislation and its enforcement, and the monitoring and evaluation of progress. The backing of the political leadership, it must also be stated, will be crucial in pushing ahead the implementation of such programmes through enabling legislation.

Consultation with all Stakeholders

If the implementation of affirmative action programmes is to succeed, it is important that all employees be made aware of the policies that will directly affect them. According to Levy, it is essential that "policy and content be communicated to both internal and external stakeholders and the members of civil society" (Levy, 1996:5). The problem is that a superficially communicated affirmative action programme can cause tensions and anxieties that may lead to resistance to change. To avoid this kind of situation, it has been suggested that "public servants, irrespective of rank must be involved and consulted on implementation of the programme" (School of Government, 1996: 40). Thus, it is envisaged that the objectives for establishing an effective communication strategy should include, among other things:

- demonstrating the support of management for the programme ;
- informing all employees of the programme so that they can understand and support it ;

- ensuring that the expectations from personnel concerning development and advancement are realistic;

Internally, the policy and programme can be communicated by:

- distributing circulars and memoranda outlining the policy statement and detailing the implementation of the programme;
- distributing articles dealing with the policy in internal news letters;
- discussing the policy thoroughly in employee meetings;
- creating forums to answer employee questions and concerns

(Levy,1996:unpublished).

Enforcement

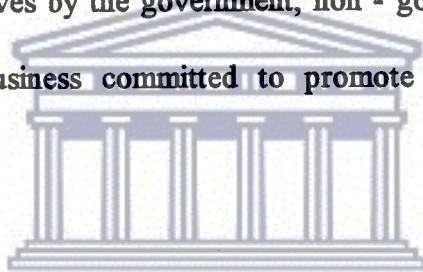
It has been argued at length in the preceding chapters, that in order to succeed, the implementation of affirmative action programmes in the work place must be accompanied by enabling legislation that includes: monitoring and evaluation programmes; the participation of the Public Service Commission and other monitoring structures, contract compliance, the setting of goals and timetables and staff auditing.

Monitoring and Evaluation

It is suggested that legislation should establish a combined mechanism for proactive monitoring and enforcement (Levy, 1996). It is in this context that the School of Government argues that all departments "... be required, rather than permitted ... to present, on an annual basis, a progress report for scrutiny by Parliament and the Cabinet" (School of Government, 1996:46).

In realisation of this objective, most recently, the HRC has adopted affirmative action policy which will allow it to intervene and mediate in labour disputes. According to Mojelo, a spokesperson for the organisation, the HCR, among other things, will :

- encourage the development of appropriate guidelines to assist in the implementation of affirmative action;
- advocate for the adoption of effective affirmative action measures by the government ;
- monitor the development and implementation of national legislation on affirmative action; and
- assist and support initiatives by the government, non - governmental organisations (NGOs), labour, and business committed to promote affirmative action etc. (Mojelo,1998 : 7).



Further structures that will monitor the implementation of the affirmative action programme will include:

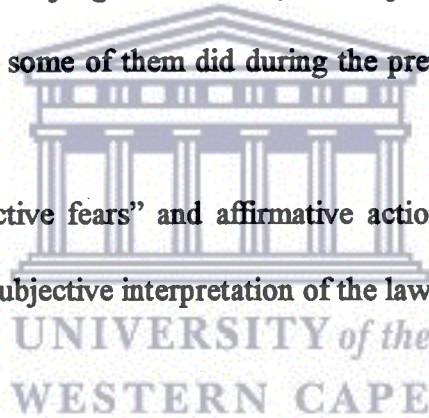
- ✓ the Presidential Review Commission - to review and conduct workforce surveys in all government departments;
- ✓ the Department for Public Service and Administration - to push ahead the process throughout the public service;
- ✓ the Department of Labour - to implement and monitor employment equity legislation;
- ✓ the Parliamentary Portfolio Committee on the Public Service and Administration - to oversee the implementation of affirmative action programmes;
- ✓ Departmental Transformation Units - to monitor and evaluate the implementation

process within individual departments;

- ✓ the Commission on Gender Equality and the Office of the Status of Women - to act as "watch- dogs" in promoting the representation of women in the public service (School of Government, 1996: 40).
- ✓ the National Co-ordinating Committee on Disability - to monitor the advancement of the disabled (School of Government, 1996:46).

The positive attitude of the members of the judicial bench is also important during the implementation of affirmative action programmes. In other words, there is need for a change of attitude on the part of judges. This is so, in that judges can be manipulated to serve sectarian interests as some of them did during the previous government. This is because

“ they have their own subjective fears” and affirmative action cases brought before them could be influenced by subjective interpretation of the law (Duba, 1991:35).



Contract Compliance

It has been proposed that the government should establish, by law or on a voluntary basis, a contract of compliance to ensure implementation of affirmative action programmes. For example, such an approach could be introduced as "a phasing-in process to a legislative programme and could be subsequently embodied in the affirmative action legislation" (Levy, 1996:8). It has been suggested that directors – general should be appointed on performance related contracts, and the meeting of affirmative action targets should form part of their assessment criteria (School of Government, 1996:40).

Goal and Timetable Setting

It is necessary that goals and timetables be established for the development and implementation of affirmative action programmes. However, as Levy maintains " the setting of goals or objectives whether numerical or otherwise should be realistic and based on achieving representative employment profiles with regard to population group and gender and the available capacity to achieve such goals" (Levy, 1996:10). Such provisions are in line with the 1994 RDP White Paper. In essence, what this implies is that any affirmative action goals and time frames should be fixed within the general time frames set originally by the RDP.

Audit of Current Staff Complement

A workforce survey is essential in order to establish an overview of the nature of problems to be addressed and to determine the extent to which blacks, women and disabled persons are represented in each job category and at each salary level (Levy, 1996). This process should cover all administrations, departments and statutory bodies at national and provincial levels (School of Government, 1996:39).

Obligations

It has been suggested that all public sector employers should be obliged to implement affirmative action programmes by recruiting, promoting, and training employees from disadvantaged groups. Among other things, such employers should be expected to conduct a workforce analysis to determine the extent of under representation of disadvantaged groups. This would need to be based on "internal data on occupational levels, qualifications, years of service, salaries, age, race, gender and disabilities"

(Levy, 1996:13). In addition to this, the 1997 Employment Equity Bill provides that employers, should be required to develop an employment equity plan that:

- lays out major conditions to reduce barriers to historically disadvantaged groups;
- accelerates training and promotion for people from the historically disadvantaged communities; and
- provides key indicators of success in ensuring equity (Republic of South Africa, 1997:10).

Enhancement of the Status of Women

Comprehensive strategies need to be established to ensure the representation and empowerment of women within the public service. These would include inter alia:

- the introduction of targets and quotas, the aim of which would be to enforce employers to promote gender equity;
- the review of human resource policies regarding the recruitment, training and promotion of women in the workplace;
- the enacting of laws against sexual harassment and ensuring that they are implemented.
- establishment of an Ombudsperson "with teeth", as is the case in Sweden, to oversee the process of eliminating discrimination against women; and
- the introduction of educational and training programmes to combat illiteracy among women (School of Government, 1996:28).

Redress of Discrimination Against the Disabled

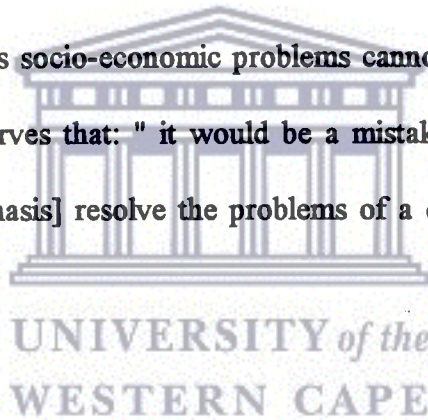
This includes the review of all legislation that discriminates against people with disabilities. For example, the health requirements of the 1994 Public Service Act and the Staff Code can, and have, been used to restrict the access of disabled person to employment opportunities in the public service (School of Government, 1996:29). These Acts need to be repealed to facilitate greater representation of disabled persons.

Furthermore, the restructuring of all policies governing employment of disabled persons must also include introduction of an affirmative action- based human resource strategy that is specific to the needs of this target group (Chalken et al, 1996:29). For example, special training programmes such as in – service training and skills development programmes should be embarked upon as part of this process.

The Public Service and Civil Society

One important feature in the drafting the 1995 White Paper on Transformation of the Public Service is that it is guided by the principles and objectives set out in the Reconstruction and Development Programme (RDP White Paper, 1994:126). It provides, among other things, that members of civil society should be involved both in policy formulation and in implementation of affirmative action programmes. It is against this background that Mahlawe-Luzipho (1992) argues that the delivery or enforcement mechanisms “must include agencies which have the involvement of members and organisations of civil society as a means of enforcing social justice”(Mahlawe -Luzipho, 1992:26).

It is believed that members and organisations of civil society will play an important role both in promoting economic growth and in the successful implementation of affirmative action programmes. The reasons being that, while in the short to medium-term, government policy on affirmative action may well be aimed at promoting employment equity in the workplace, ultimately, the new government and broader society as a whole will need to play a role in solving the question of redistribution of wealth and income and other socio-economic problems in this country. As stated above, the achievement of economic growth will, undoubtedly, be a difficult but not insurmountable task. The argument here being not to suggest that affirmative action programmes can be a “substitute for social policy” (Faundez, 1994 : 60). It is fully understood that the country’s socio-economic problems cannot be solved over-night. Indeed, as Loxton well observes that: “ it would be a mistake to expect affirmative action to *instantly* [my emphasis] resolve the problems of a deeply unequal society” (Loxton, 1994:29).



Therefore, affirmative action programmes should be seen as but one part of a broader socio -economic strategy in transforming South African society. This stated, however, it is submitted that, affirmative action programmes can be useful and effective if combined “with coherent policies in key social sectors “(Loxton, 1994:29). In this specific context, this requires, among other things, that the implementation of programmes be decentralised so that they can be tailored “to meet specific needs of different target groups, provinces, and departments” (School of Government, 1996:35).

The Swedish case, cited above illustrates the fact that the devolution of power to the lower levels of government provides a solid base for societal cohesion. For example, according to Marttenssonhn, the right of local government in Sweden to levy its own taxes "resulted in the improvement on adequate housing, education, health, child care facilities and the care of the elderly" (Marttenssonhn, 1996:35). There is, moreover, a need to also address the question of the rural and unskilled masses who have been marginalised for a long time. This is a section of our society, who, by force of circumstances, remained uneducated and largely illiterate.

It is therefore suggested that this needy group should be given appropriate training in life and literacy skills in order "to enable them to upgrade their lives in general and to enable them to strive towards self-improvement" (Kumpungu,1996: 2). In building linkages with civil society, it is also suggested that the partnership between the public and the private sector should be strengthened considerably. For example, the United States government has invested in the private sector by allowing the latter to train its employees. So far, this strategy has proven very successful, and valuable lessons could be learnt from this policy in South Africa (Tapscott, 1996:34).

It has been further suggested these affirmative action programmes should, as a matter of urgency, target other key public sector institutions such as the parastatals, public corporations and or advisory boards. These public sector bodies, according to the 1994 RDP White Paper, can play a significant role in promoting economic empowerment for the disadvantaged "because of their strategic , economical and social importance" (Republic of South Africa, 1994:127).

For example, these bodies can be restructured and run in a manner that reinforces and supports the RDP. This national objective, however, can only be realised once civil society is adequately represented on the boards of these bodies (Republic of South Africa: 1994:128). The strategic placement of high-ranking black executive directors, such as Mr Saki Macozoma, Andile Ngcaba and Zukile Nomvete, among others in the management echelons of parastatals such as Transnet, Telkom and South Africa Airways respectively, is directly in line with this policy. It is the most aggressive action yet taken by the government in promoting economic empowerment of black people.

Promotion of Labour Relations

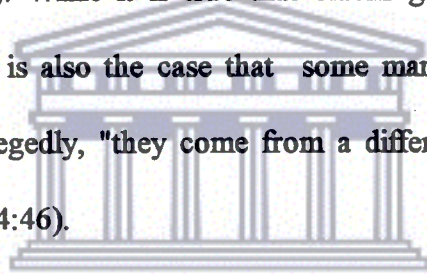
It is important that organised labour and other public bodies be involved in the design of affirmative action programmes. According to Boaden, one of the reasons for providing people with the opportunity to participate is that those whose lives are affected by the proposed public policies will have the opportunity to express their views and to influence policy-makers as to the necessity or desirability of the suggested policies (Boaden et al, 1982:7).

It is for the very same reasons that employee organisations should be encouraged to take part in policy formulation and implementation relating to changes in labour relations. The involvement of unions in the implementation of affirmative action programmes will determine, *inter alia*, the pace and direction these policies take.

to problems that face South Africa;

- inculcating specific knowledge and understanding; and
- transferring technical skills (World Bank, 1992:16).

Although the above proposals are seen as viable options in promoting the educational upliftment of blacks, one has to examine and question the quality and content of many of the crash training programmes which have been introduced. In that respect, it is important to avoid the so-called "training syndrome", in which some black people become "perpetual trainees" in organisations without getting line function responsibility (Stern,1994:46). While it is true that blacks generally are in need of training more than whites, it is also the case that some managers "are insistent on training blacks", because, allegedly, "they come from a different mindset that needs 'special training' " (Stern, 1994:46).



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Most of the new appointees to top management posts in the parastals and other public corporations in the public sector have been victims of this attitude. The question now being asked is whether the government has not gone "too far, too fast" in its drive to make these companies affirmative action role models? The criticism against this move is that all these executives are inexperienced, and as such, they need to undergo special training. In response to these allegations, Mr Saki Macozoma, argues that while as a Deputy he may lack experience in business grounding, it does not mean he is unequal to the job (Mail and Guardian, July 19-25,1996:14). According to him, this was not crucial in that what he is mainly charged with at Transnet, is to transform the organisation from long years of "Broerdebond" culture.

The Deputy Managing Director (now the Managing Director) is also mindful of the general lack of skills among blacks and the compromises that have to be made. To him, one of these compromises may include appointing people to high posts and then having to send them on management training courses.

Acknowledging these shortcomings, he said: " I can live with these compromises. We need programmes, which give people skills in the shortest possible time; we need to give them responsibilities equal to or even greater than their skills. There is a delicate balance between making them tokens and overwhelming them with responsibilities" (Mail and Guardian, July 19-25,1996: 14). According to Stern, the paternalistic attitude adopted by white managers is not only counter-productive but also "injurious when applied to blacks who have already acquired professional training and experience" (Stern,1994:47). It is against this background that it is suggested that a more representative public service can only be promoted through:

- promoting a uniform education for all;
- institutional capacity - building;
- relevant education and training programmes;
- mentorship and apprenticeship programmes; and
- creating an enabling environment.

Promoting Uniform Education for All

As stated above, affirmative action presupposes the existence of a skilled labour pool (Duba, 1989). The components of this pool have to be trained in the technikons and the universities and other post secondary institutions. Again, as has been well noted above, it is public opinion that the South African labour pool is composed of primarily "unskilled blacks and more skilled whites" (Duba, 1989).

There is, thus, an urgent need for education and training programmes to ensure that the future incumbents of a variety of posts in the public service are efficient and effective in their roles. Relevant training programmes tailored to meet their needs must be developed. In a paper delivered on affirmative action in the public service, Zimmerman (1996) argues that in South Africa, "there is a major problem in the scarcity of blacks with reasonable levels of training and professional experience". This submission is supported by data from the HSRC, the Ministry of Education and the South African Institute of Race Relations. According to an investigation carried out by Zimmerman in 1994, there were only about 75 000 blacks with university degrees in South Africa. Of this number, about 40 000 were in general arts or education. "This leaves some 35 000 black to compete with ten times that number of whites for the top professional, technical, and managerial jobs" (Zimmerman, 1996).

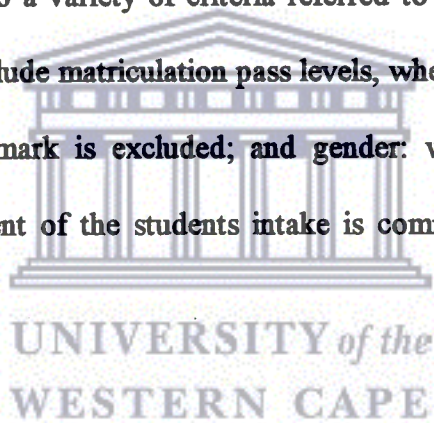
The other problem is that not all degrees held by blacks are of equal standing while others are not relevant for the market. There appears to be a mismatch between subjects studied by many black graduates and the needs of the public and private sector. All the above problems are the intentional consequences of "Bantu Education".

For affirmative action to succeed not only the vestiges of “Bantu Education” must be abolished, but also there should be a uniform system of education for all South Africans (Duba, 1991:31). Therefore, the new government must make extra efforts to promote blacks to the same educational levels as whites; and that policy must be initiated with immediate effect.

To this end, a number of South African universities have established schools of public administration: among others, the University of the Western Cape's School of Government, the Fort Hare Institute of Governance and the University of Stellenbosch's School of Public Management, with the specific goal of empowering blacks and women for management positions in the public service. One way of doing this is to relax the entrance requirements to tertiary institutions, since these were mechanisms that were used in the past to block the access of black people to universities and technikons. What has been encouraging in this regard, is the realisation by many prominent academics that matric symbols, and especially matriculation exemption, is a poor predictor of the potential of a disadvantaged student at university. For example, Professor Gerwel the former Rector of the University of the Western Cape (UWC) noted in 1991 that this institution was originally intended by apartheid authorities to cater exclusively for Coloured students (Gerwel, 1991:21).

In the early 1980s the University adopted a policy of broadening access to all applicants who satisfied the minimum academic requirements. In essence, this meant that any applicants who passed matric were eligible to study at UWC irrespective of their matric symbols race.

Accordingly, UWC devised a two levelled strategy in pursuance of its policy. This entailed an on going process of expanding university facilities which allowed for an increase in the number of students and a change in admission policy. The selection process for admission at UWC takes place in two stages. Firstly, the data in application forms is fed into the computer, which then randomly selects names of all students entitled to enrol at the University. Selection is based solely on matriculation results. If the results meet the statutory minimum requirement of the university, the individual applicant is admitted. These are the first names selected and they make up 80% of the available places. Secondly, the remaining 20% of places available are then selected according to a variety of criteria referred to as "corrective factors" (Gerwel, 1991:23). These include matriculation pass levels, where it is ensured that no applicant with a high pass mark is excluded; and gender: where it is ascertained whether the female component of the students intake is commensurate with the set target.



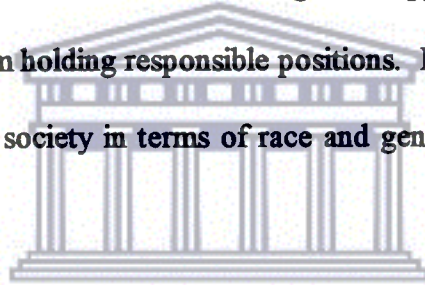
Institutional Capacity - Building

Academic support and staff development should be introduced in each and every university in South Africa and these programmes should be staffed by suitably qualified full-time academics. Affirmative action inherently means not only the uptake of black students in all the so-called historically white university but also the training of the white academics in these universities on how to teach disadvantaged students (Duba, 1991:32). This, in turn, would assure employers of a labour pool of adequately skilled potential employees of all races.

It is to be hoped that the implementation of the employment equity policies outlined in the 1997 White Paper on Education and Training in the public service will enhance efforts to bring about change in educational institutions and the public service as a whole (Republic of South Africa, 1997:11).

Relevant Education and Training Programmes

Employment equity can not succeed without a relevant national education and training system that supports the development of every individual in society. The RDP policy position on these issues is very clear. According to the 1994 RDP White Paper, affirmative action programme must include "training and support to those who have previously been excluded from holding responsible positions. Recruitment and training should reflect South Africa's society in terms of race and gender" (Republic of South Africa, 1994:60).



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To carry out these objectives, the RDP proposes the establishment of a Civil Service Institute in South Africa. Hence the establishment of the South African Management and Development Institute (SAMDI) is directly in line with the achievement of these goals (Republic of South Africa 1995:23). This Institute, it is envisaged, will be responsible among other things, for the development of public service employees through in-service training. One of the priorities of the Institute will be to ensure that a cadre of public servants is developed to lead and transform the public service.

Provide Mentorship and Apprenticeship Programmes

In addition to training, Hugo also suggests apprenticeship and mentorship programmes: "Mentors provide coaching, friendship, sponsorship and role modelling relationships to younger, less experienced protégés" (Hugo, 1990:112). Thus, instead of retiring more experienced civil servants, he further suggests, "their expertise can be utilised to train individuals from disadvantaged communities" (Hugo, 1990:112).

However, although an innovative notion, in the South African context this might prove to be a problem if experienced senior civil servants have antagonistic attitudes towards the advancement of black and female civil servants. Therefore, to encourage the successful implementation of such programmes and the general acceptance of black and female advancement through development programmes, incentives and rewards may have to be introduced.



Address Attitudinal Resistance to Change

South Africa is faced with a problem where "racial intolerance and social integration can not be solved without addressing attitudinal resistance to change" (Human, 1991:7). The truth is that the injustices and inequalities produced by past race discrimination will not go away simply because the laws which enforced discrimination are repealed or because a new Constitution has been adopted.

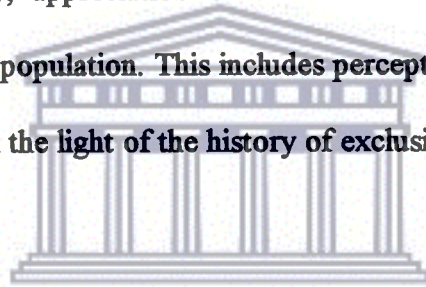
What is needed is the creation of an enabling environment to facilitate transformation. As mentioned in Chapter 1 above, the development of an appropriate ethos for the Public Service will be of paramount importance to the new dispensation. This can not be over-emphasised.

If affirmative action programmes are to succeed in transforming the public sector, "it is necessary that an enabling environment which is sensitive to the diversity of cultures is created" (Ncholo, 1996). A new democratic state will require a public service which "is steeped in ethical sensitivity and is accountable and responsive to the aspirations of the majority of South Africans" (Mokgoro, 1992).

As Hofmeyr correctly noted in his study of the South African public service almost ten years ago, that there was a need (as there still is) for "attitude change programmes to unfreeze the beliefs and perceptions of employees and sensitise them to the need for change" (Hofmeyr, 1987: 22). This means, in practice, removing the spirit of intolerance, the lack of acceptance and mistrust together and entails changing attitudes. The lack of understanding of the importance of behavioural changes has been a primary cause of the failure of major reforms at the implementation stage in most developing countries (Khan, 1980:2). It is regrettable, however, that more often than not, this important area in the reform effort is ignored by most reform agents. It is either dealt with superficially or not at all.

It is true, nevertheless, that attitudinal changes are difficult to bring about and will take a long time to address effectively. The Department of the Public Service and Administration also expressed the same view in the 1995 White Paper on Transformation of the Public Service, when it conceded that attitudinal changes are notoriously difficult to implement and frequently take years to achieve (Department of Public Service and Administration, 1995: 12).

Attitudinal and behavioural resistance, however, were historically employed to retard the rate of black advancement within the public sector, thus preserving the socially based structure of public institutions (Maphai,1989:15). The subtle dimensions of racism and sexism, in particular, are hard to control and eliminate and will need to be addressed over a period of time. For these reasons, it can be presumed that even the proposed legislation that will be introduced by this Ministry will only be aimed at enforcing compliance with policies of affirmative action rather than eliminating adverse behavioural patterns (Maphai,1989:15). Thus, the affirmative action policies should be also be aimed at promoting multi - culturism, which implies the recognition, understanding and, hopefully, appreciation of similarities and differences between sections of the South African population. This includes perceptions and attitudes about self and others, particularly in the light of the history of exclusion and discrimination in this country (Sonn,1993:3).



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In order to reduce attitudinal resistance to change, there should be a shift from an ethnocentric, mono - cultural society to a more inclusive and democratic society. Therefore, in order to develop a professional work ethic and commitment amongst civil servants it will be necessary not only to re - train and re - orientate existing public servants, but also to re-socialise them.

Re- training, Re - orientating and Re - socialising

Although considerable financial costs will be involved, re - training of incumbent civil servants is essential. This is necessary if the entire work environment is to change. Thus, Human argues "white management needs to be assessed, re-educated and

trained in management skills" (Human,1991:9). Re - education is also a necessity if the civil servants of the former homelands are to be fully incorporated into the "new South Africa" as many of these civil servants are discredited and lack the necessary educational qualifications (World Bank, 1992: 25).

Re - education and re - training also might not prove to be that costly since appropriate structures already exist, such as in-service training and in-house training. Among other things, "every employer shall be required to file with the PSC a plan detailing an approach to a structured and comprehensive training programme which must be designed to meet the existing and prospective need of disadvantaged groups. Every training programme must be relevant, effective and accessible" (Levy,1996: unpublished). The programmes should include, amongst others, courses on career counselling, mentoring, adult basic education and any other course aimed at improving the skills and abilities of those being trained. To facilitate access, all training course entrance requirements will need to be reviewed to prevent them from acting as barriers to the development of members of the disadvantaged groups.

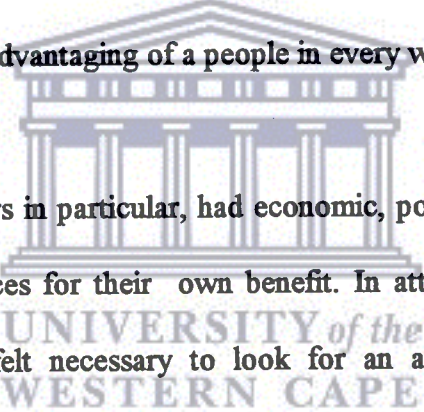
Support of Political Leadership

Finally, if the implementation of all these programmes is to succeed, and indeed, be effective, the support of the political leadership is crucial. According to Khan, the support of the political leadership is not only desirable but also a must if any major reforms are to succeed (Khan, 1980:4). Thus, politicians must exercise the political will that is needed to push ahead the implementation of affirmative action through the legislation that has been enacted (School of Government, 1996:40).

CHAPTER 7

Summary and Conclusion

The most critical question that has been raised in this investigation is how to transform employment relationships that have, for many decades, been structured along racial and genders lines in the South African public service. Black access to senior management positions as indicated, had been restricted by statutory and other formal barriers to entry and advancement within, what were, predominantly white and male civil service structures. It is evident from discussions in earlier chapters that black people, who constitute 87% of the South African population and women, are still under represented in the occupational structures of the government. As indicated, this situation is the direct result of systematic disadvantaging of a people in every way that mattered.



The white minority, Afrikaners in particular, had economic, political and social power to access and control resources for their own benefit. In attempting to address the legacy of the past, it was felt necessary to look for an appropriate strategy for intervention in order to reverse the status quo and make the public sector more representative of the South African population as whole. As suggested in chapter 1, this strategy will take the form of affirmative action programme supported by enabling legislation. As indicated, the transformation of the South African civil service into a broadly representative, democratic and non-racial civil service institution will need a complete overhaul of existing structures.

Affirmative Action as Strategy

It has become apparent in earlier discussions that the new government will have difficulties in implementing its affirmative action. However, as stated, a complete overhaul of discriminatory policies and practices is not an insurmountable task. Therefore, in its efforts to combat an unrepresentative public service and an undemocratic repressive ethos, the government will have to continue the debate until it comes up with a set of principles that will form the basis of an acceptable affirmative action policy in South Africa. As shown, affirmative action should be understood as part of a human resource strategy which attempts to redress the disempowering consequences of Apartheid.

As has been suggested, affirmative action as a human resource strategy must include, among other things, an evaluation of existing employment decisions to identify those which tend to discriminate or exclude persons from disadvantaged groups, namely African, Coloured and Indians. Such employment decisions include:

- recruitment procedures;
- selection procedures for appointment or hiring employees;
- selection for training;
- the promotion , demotion or transfer of employees;
- conditions of service;
- action to terminate employment decisions that unjustifiably discriminate or exclude persons in disadvantaged groups;
- action to make reasonable accommodation of the physical and mental limitations of handicapped persons;

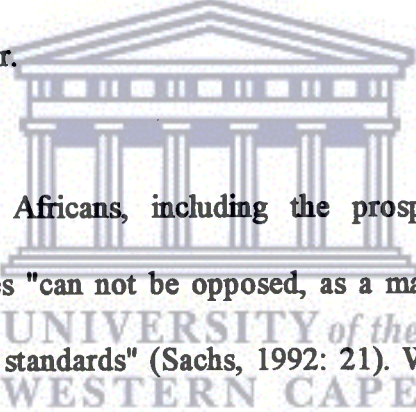
- the setting of numerical goals and general objectives that the employer intends to achieve;
- the provision of special training programmes or schemes to ensure that persons from disadvantaged communities acquire the necessary skills and qualifications;
- the establishment of a timetable for attainment of those goals (Kumpungu, 1992: 22).

The Debate Surrounding Implementation of Affirmative Action

Since 1991, the discussions around the possible introduction of affirmative action programmes to transform the South African public service has not been without problems. As indicated in chapter 1 and subsequent chapters, some of these problems were and still are related to the conceptualisation and interpretation of affirmative action, and especially, in respect to the implementation thereof. In particular, what emerged from the discussions in chapter 1 and chapter 4 is that this concept means different to different people. For example, those opposed to affirmative action have viewed this policy as "reverse discrimination" - hence strengthening the resolve to resist any major changes that may threaten their present privileged status.

It is not surprising therefore, that some organisations, mainly those which were part of the old apartheid structures, such as the Federation of Employer Organisations (FEO), have strongly argued for a voluntary affirmative action policy that will be "phased out after an agreed period of time" (FEO, 1994).

Moreover, there has been a general perception that the promotion of blacks in large numbers will lead to a drop in the standards of 'efficiency and effectiveness' in the public sector. The implication being here is that black people will be recruited indiscriminately in large numbers without taking into consideration the merit principle. In this sense, affirmative action has been condemned as window - dressing and, as such, it is bad for business (Duba, 1992:3). Put in other words, what the critics of this policy mean is that : once affirmative action programmes are implemented, they will replace a competent, qualified contingent of decision - makers (meaning white) with an inefficient and unqualified one. As submitted in chapter 4, no one has argued against the use of merit as criterion for recruitment and selection of "affirmative action candidates" in the public sector.



This is because, all South Africans, including the prospective beneficiaries of affirmative action programmes "can not be opposed, as a matter of principle, to the concept of qualifications and standards" (Sachs, 1992: 21). What should be borne in mind is that the restructuring of the public sector does not merely mean replacing white faces with black faces. Although the civil service should be made representative of the majority of the population in South Africa, there should also be a concerted effort to replace an ideology of inequality with ideals of administrative equity, efficiency and effectiveness in the delivery of society as a whole. The merit principle is therefore crucial in affirmative action. Its absence will afford many as noted above, the opportunity to claim that affirmative action is simply patronage or tokenism and promotes people under - qualified for the jobs (Ngema, 1992).

Affirmative action does not make sense unless the people employed have the necessary knowledge and ability to perform. The argument that has been advanced in chapter 4, and this *must* be emphasized, is that although the selection of candidates on merit is "fundamental to ensure that the Public Service recruits and promotes people of the highest potential", the current criteria for determining suitability for the job must be evaluated and a new system applied (Republic of South Africa, 1998: 35). The reasons being that the previous government used the 'merit' system as an exclusionary device to discriminate against "both external candidates and certain groups of internal candidates".

In most cases, as indicated in the introduction to this thesis, blacks, and in particular, African men and women were the most affected by these policies. What has been suggested therefore is that, in the practice of equal employment opportunity, there must be a shift from a mechanical definition or narrow perception of merit in favour of "abroad perspective encompassing ability and potential for the job" (Levy, 1994: 72). Put simply : the minimum qualifications need to be revised. In practice, this means that the pass / fail 'meet the criteria or not' school - room approach to testing becomes inappropriate, especially where the public service is committed to affirmative action.

Training and Development

Training which is linked to the merit principle, will be probably one of the most important components in the attainment of an equal opportunity society. As suggested in chapter 6, the new government will have to introduce intensive training programmes for disadvantaged groups. Essentially, affirmative action must be aimed at educating

and training people to bring them onto an equal footing with the previously advantaged sector of the population. It is believed that training, just like the merit system, will to some extent, eliminate any claims of patronage, favouritism and nepotism. It is in this context that it is argued that affirmative action should not be seen as a short - term strategy to push incompetent people into jobs and consequently to wreck the economy of the country, but should be a long - term programme which is subjected to constant evaluation (Kumpungu, 1992). This stated, however, Sterns warns that trainers should be wary of reducing the targeted groups into so-called "perpetual trainees" as has so often been the case (Stern, 1993: 46).

International Perspectives

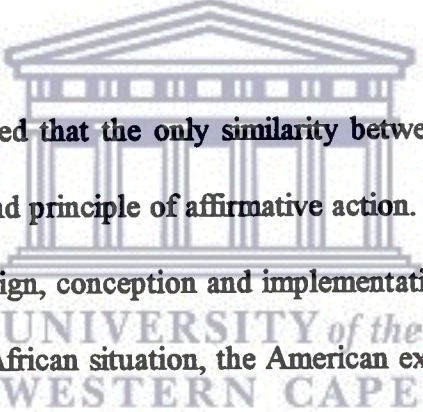
In the search for the most acceptable way forward and an affirmative action policy that will be suitable for the South African situation, it was necessary to study international perspectives of the concept. For the purpose of this investigation, the United States of America, Malaysia and Namibia were chosen as case studies. The aim of implementing affirmative action in these countries was to address inequalities of gender, race, ethnicity, etc. (Luhabe, 1993: 25).

Essentially, the process in each of the case studies was motivated by changes in power structures. As pointed out in Chapter 5, these decisions were politically motivated and efforts were made on behalf of the disadvantaged. The study of the implementation of affirmative action in these countries further illustrated that, while the policy is not a perfect one in addressing historical imbalances, experiences elsewhere are a valuable source of information and should act as an inspiration to South Africa and should be of

assistance in the choice and design of affirmative action.

Affirmative Action in the United States of America

The findings of this study showed that there is a concern amongst policy makers that, if affirmative action is applied based on the American model, the historically excluded majority in South Africa will not benefit from policies, procedures and programmes associated with it. This is because, essentially, affirmative action programmes in the U.S were designed to bring a minority blacks into mainstream private and public service structures that were predominantly white. By contrast, the aim of the South African government is to empower a black majority and bring it into structures presently dominated by a white minority.



However, it can also be argued that the only similarity between the U.S. and South Africa is in the ultimate aim and principle of affirmative action. This is because, despite the fact that the American design, conception and implementation of affirmative action is not suitable for the South African situation, the American experience has shown the importance of formulating a legislative framework for the implementation of affirmative action and for monitoring, evaluating and enforcing compliance with the requirements set by this policy.

Affirmative Action in Malaysia

The Malay dominated government in Malaysia succeeded in introducing fast -track training programmes which accelerated empowerment of the disadvantaged Malay community. These programmes included the use of job quotas to improve the economic status of Malays both in the corporate and public sectors.

As indicated, however, the inclusion and the subsequent entrenchment of 'special rights' clauses in the Malaysian Constitution, favouring specifically the Malays to the disadvantage of a Chinese minority, led to tensions between these two racial groups. In 1969, these tensions led to serious riots and sporadic ethnic conflict.

Affirmative Action in Namibia

According to Melber, one of the main factors that impeded progress in Namibia is the fact that “there have been very few, even less systematic, efforts to come up with an appropriately defined conceptualisation of affirmative action to suit the Namibian context” (Melber, 1996:14). As a consequence, the Namibian government did not have a clear, balanced policy framework. Politicians tended to emphasise the need for national reconciliation at the expense of addressing socio-economic issues. That is, there was no comprehensive policy in place capable of balancing national reconciliation and practical measures to redress inherent socio - economic imbalances.

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On the strength of the above observations, it would seem that in the South African case there is a compelling need to create an enabling legislative framework if the implementation of affirmative action is to succeed. As illustrated above, the decision to implement affirmative action in the United States of America, Malaysia and Namibia was motivated by a change in power structures. As a result of this change in power relations, efforts were made, among other things, to promote employment equity in the work place.

However, it became obvious that without creating an enabling legislative framework to back up this transformation process their efforts at changing the status quo were doomed to failure . Indeed, as Duba aptly observed : " the implementation of affirmative action programmes will only succeed if the government of a country has created a positive infrastructure for its own existence" (Duba, 1992: 4).

This infrastructure may be in the form of legislations to push ahead the implementation of such programmes. In the United States of America, for example, an Act was passed (Title VII of the Civil Rights Act of 1964) prohibiting discrimination on the basis of race, colour, religion, sex and national origin (Duba, 1992 : 4). To backup this process, an executive order (Executive Order 11246) was issued which applied Title VII prohibitions and requirements for affirmative action to companies with federal contracts (Clark, 1991: 111). All these legal provisions should confirm, irrespective of whether the intended objectives were achieved or not in the countries studied, that people can not be persuaded by education or encouragement alone to implement affirmative action policies.

While in principle, there is nothing wrong in encouraging voluntary efforts aimed at implementing affirmative action, the South African government has yet to set up definitive legislation to create a solid base for implementation. However, as illustrated in earlier chapters, analysis of the South African civil service has highlighted the fact that there is a deep seated culture of conservatism and racism.

There is a need, therefore, to formulate a clear policy framework and legal parameters within which affirmative action can take place in order to eliminate and avoid any ambiguities, and hopefully, erratic interpretations of the policy as was the case in Namibia. As has been pointed out in Chapter 4, for example, the view is that, as it stands, Section 195 (4) in Chapter 10 of the Constitution of South Africa has thus far only posed the possibility of affirmative action in the public sector.

As shown, this Section does not specify as to *how*, *when* and *what* mechanisms will be put in place in order to achieve these objectives. It is important to note that the Constitution does not say that the government is be obliged to enact such programmes. According to Kumpungu, there is a big difference between the two and affirmative action as it stands in the Constitution means very little until these laws "are firmly in place to define affirmative action" (Kumpungu, 1992). It is therefore essential that the new government in South Africa government creates a legislative framework backed up by regulations, setting, among other things, guidelines with detailed uniform strategies for the development of an affirmative action plan and timetable. The recently published White Paper on Affirmative Action is an important step in this direction .

An Enabling Environment

Furthermore, the creation of an enabling environment will be crucial for ensuring that affirmative action is implemented in South Africa. This may entail such agencies as the Public Service Commission to monitor and evaluate the implementation of this policy.

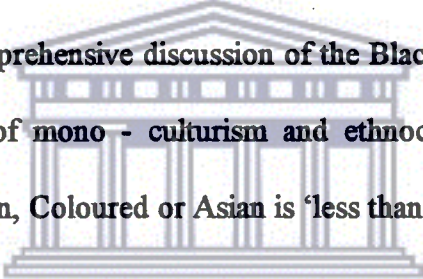
“However”, Levy cautions: “none of these mechanisms will be wholly effective unless senior management takes on a major responsibility for the transformation process, especially in the elimination of those ‘systematic’ barriers to democratic practices...” (Levy, 1992) There is also need therefore, to uproot a deeply entrenched racist and repressive ethos that has been characteristic of the white male dominated civil service. For example, race and gender stereotypes have become so deeply rooted in the South African psyche that it will take generations to change them (Loxton, 1993: 17).

In this context, it is believed that training, as a tool for capacity - building in the human resource management and development context, can also lead to a more democratically accountable work environment. This implies a need to change the social environment. The re - training, re - orientation, and re - education of existing personnel from the "old" order as well as a training of new recruits into the system, will also be necessary for promoting and attaining this objective. Of necessity, thus, the needs, aspirations and world - views of the diverse work force must be counted for and not denied.

The 1997 White Paper on Public Service Training and Education and the 1997 White Paper: Human Resource Management in the Public Service cited in chapter 4, are specifically crafted to provide guidelines for the achievement of this important national objective (Republic of South Africa, 1998: 5) . According to the Department of Public Service and Administration, the aim is " to speed up the processes of achieving broad representation and equity by providing practical ways of redressing the disadvantaged status of those groups who have suffered from past discrimination" (Republic of South Africa, 1998: 9) .

Having said all this, however, what is important is whether the current public service will be able to make the necessary ethical and cultural shifts on its own. It should be made very clear that cultural change can and will not be forced upon public servants. This is because, attitude change is a long process. Perhaps, as Mokgoro has suggested, an answer to the question as to whether a public servant is willing to change “will depend on an individual's value system” (Mokgoro, 1992).

However, social culture within departments and public sector organisations must be addressed. That is, assumptions about norms, values, styles and other aspects must be re-evaluated. Therefore, an important aspect of understanding cultural differences (in this country) “involves a comprehensive discussion of the Black centred world - view and ethos. In part, because of mono - culturism and ethnocentrism and the racist assumption that what is African, Coloured or Asian is ‘less than’ (Sonn, 1993: 5).



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This stated, however, it is must also be submitted that if the current state of public sector employment remains unchanged in spite of the implementation of strategies as set out in the 1997 White Paper on Human Resources Management in the Public Service and the 1998 White Paper on Affirmative Action in the Public Service, and in particular, with whites showing little or no commitment or willingness to change their attitudes, the setting of numerical quotas will become imperative.

The Deputy - President, Thabo Mbeki seemed to share the same sentiment when he stated that : " it is probably better for people opposed to affirmative action to leave the country as they always threatened to do" (Mbeki,1998:13). Nevertheless, Ncholo argues that "applying the policy would not lead to huge retrenchments as staff would be re-trained instead of recruited outside" (Ncholo,1998: 4). At the same time, according to Skweyiya, the Minister of Public Service and Administration, the White Paper on Affirmative Action should be a relief to some white public servants.

"Now that a policy is in place", he affirms, "white people can be assured that they will not be thrown out simply because they are white. White people in the public service are just as South African as any of the other" (Skweyiya, 1998: 4). All these statements should be welcomed, with the hope that they will allay the fears of white civil servants who have generally viewed affirmative action as 'reverse discrimination' and thus, a threat to their positions.



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Conclusion:

Against the background of what has been discussed above, it has become apparent that the implementation of affirmative action in the public service of South Africa will have to be supported by a legislative action if it is to succeed, and indeed, be effective. The aim being, specifically, to compel public sector organisations to comply with the goals and objectives as set out by this policy. As noted, most of the white male dominated civil service structures in this country are deep-rooted in a culture of conservatism and racism.

Because of this, the new government will have to also address the question of attitudinal resistance to change. This stated, however, it will be a serious mistake to view affirmative action, especially under the current state of the South African economy as an agent of social engineering. Although this policy has generally been regarded in earlier discussions as a tool for promoting a broadly representative public service, it cannot address all issues of poverty and social welfare in this country. The restructuring of employment policies and practice and broader transformation of the South African society are “mutual but not identical” issues. According to Maphai, “one is temporal, at least in theory, while the other is a permanent feature” that requires state intervention (Maphai, 1993: 8).

It is precisely in this context that it is submitted that any recommendations discussed here are not necessarily going to make the implementation of affirmative action programmes any less difficult. To some extent, they may help sharpen commitment to a concept whose fulfilment demands sustained and flexible application.

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