

**AFFIRMATIVE ACTION POLICY AND PRACTICE IN THE  
DEPARTMENT OF JUSTICE AND CONSTITUTIONAL  
DEVELOPMENT WITH PARTICULAR RESPECT TO  
GENDER**

By

**Name:** Nana Charlotte Kunene

  
**Student Number**

A research report submitted to the School of Government,  
University of the Western Cape, in partial fulfillment of the  
requirements for the degree of Master of Public Administration

**Supervisor:** Professor John Bardill

**Date:** May 2005

# TABLE OF CONTENTS

<b>TABLE OF CONTENTS</b>	ii
<b>DECLARATION</b>	v
<b>ACKNOWLEDGEMENTS</b>	vi
<b>DEFINITION OF CONCEPTS AND ABBREVIATIONS</b>	vii
<b>ABSTRACT</b>	viii

## **CHAPTER ONE: BACKGROUND TO THE STUDY**

1.1 Introduction and Research Problem	1
1.2 Purpose and Objectives of the Study	3
1.3 Significance of the Study	5
1.4 Research Methodology	6
1.5 Literature Review	8
1.6 Organization of the Study	9



## **CHAPTER TWO: LITERATURE REVIEW**

2.1 Introduction	10
2.2 The Theoretical Perspective on Affirmative Action	12
2.3 The Duties and Responsibilities of the Human Resource Department in administering transformation in the workplace	20
2.4 Affirmative Action in the United States of America.	22
2.5 Lessons that South Africa could learn from the USA	24
2.6 Historical Background on Affirmative Action in South Africa	26
2.7 Developments in South Africa since 1994	29
2.8 Summary	34

### **CHAPTER THREE: RESEARCH METHODOLOGY**

3.1 Introduction	36
3.2 Outline of the Department	36
3.3 Research Methodology	37
3.4 Research Procedures	39
3.5 Problems Encountered in Data Collection	41

### **CHAPTER FOUR: RESEARCH FINDINGS**

4.1 Introduction	43
4.2 Progress Towards Affirmative Action and Employment Equity	43
4.3 Research Findings: Perceptions on Affirmative Action and Employment Equity	48
4.3.1 Personnel, Selection and Promotions Directorate	49
4.3.2 Employment Equity and Transformation Directorate	55
4.3.3 Labour Relations Directorate	61
4.3.4 Gender Unit Directorate	69
4.3.5 Planning Directorate	75
4.3.6 Interviews	79
4.4 Summary	82

### **CHAPTER FIVE, FINDINGS, CONCLUSION AND RECOMMENDATIONS:**

5.1 Summary and Conclusion	83
5.2 Results	88

<b>REFERENCES</b>	92
<b>APPENDIX A: CONSENT LETTER</b>	97
<b>APPENDIX B: QUESTIONNAIRE</b>	99
<b>APPENDIX C: RESPONDENTS' CURRENT PORTFOLIOS</b>	103



## DECLARATION

I declare that *Affirmative Action Policy and Practice in the Department of Justice and Constitutional Development* is my own work, and that all sources I have consulted and quoted have been acknowledged as complete references. I further declare that this research report has not been submitted, in part or in its entirety, to any University, College or institution of higher education, for any degree, certificate or any other qualification.

Full name: Nana Charlotte Kunene Date:.....

Signed: .....



## ACKNOWLEDGEMENTS

I would like to thank God for being there for me and his love. I would like to thank my supervisor, Professor John Bardill, for all his support, for availing himself whenever I needed corrections and for the guidance that he offered. I would also like to thank Dr Kealeboga Maphunye for his comments on earlier drafts of this research report.

I would like to express my gratitude to my family, especially my mother for always being supportive of my academic career, for being understanding and believing in me. Also to my partner, Malala Ndlazi, for assisting me with the editing of the manuscript and for offering me his undying love and support.



I would like to thank the National Department of Justice and Constitutional Development in Pretoria and the different Directors in the Human Resource Department for allowing me to collect data and to use their precious time.

## ABBREVIATIONS

AA	Affirmative Action
ANC	African National Congress
Black People	A generic concept meaning Africans, Coloured and Indian
CCMA	Commission for Conciliation Mediation and Arbitration
COSATU	Congress of South African Trade Unions
Department	Refers to the Department of Justice and Constitutional Development
Designated Group	Refers to black people, women and people with disabilities
DPSA	Department of Public Service and Administration
EAP	Employment Assistance Programme
EE	Employment Equity
EEA	Employment Equity Act of 1996
EEOC	Equal Employment Opportunity Commission
HRD	Human Resource Department
KWV	Kooperatiwe Wynboere Vereeniging
LRA	Labour Relations Act of 1995
NDJCD	National Department of Justice and Constitutional Development
PPMS	Policy Performance Management Systems
RDP	Reconstruction and Development Programme
SA	South Africa
USA	United States of America

## ABSTRACT

During the apartheid era black people were systematically excluded from all positions of influence in the state and civil society. Although a small elite benefited from the Bantustan dispensation, the majority of senior posts in government were held by whites and, in particular, white males. Women and people with disabilities were similarly disadvantaged and marginalised, particularly those from black communities. With the new dispensation in South Africa, the Government was clear that this situation would not be allowed to continue. In its 1995 White Paper on the Transformation of the Public Service, it was stressed that:



“To meet the new and challenging tasks with which it is faced, and in particular to improve the quality and equity of service delivery, it is absolutely imperative that the public service draws upon the skills and talents of all South Africans, and derives the benefits of the broader perspectives that a more representative service will bring” (WPTPS, 1995:41).

The White Paper also emphasised that all ministries and departments would be required to introduce affirmative action strategies, define their affirmative action targets and present annual progress reports that will be subject to parliamentary scrutiny. In doing so, these ministries and departments should ensure, amongst other things:

“That they are not just seen as a hiring policy or numbers game but as an holistic approach that empowers people hitherto marginalised and enables them to succeed; and also that they are based not only on the eradication of racism, sexism and other forms of discrimination, but also on the development of a uniquely South African corporate culture, therefore entrenching a culture of inclusivity” (WPTPS, 1995:43).

The need for a representative public service was subsequently stressed in the 1996 Constitution, the 1998 White Paper on Affirmative Action in the Public Service, and the 1998 Employment Equity Act, amongst others.

This research report sets out to provide an evaluation of the progress made by the Department of Justice and Constitutional Development (NDJCD) with respect to affirmative action and employment equity, and particularly with respect to the promotion of greater gender equity in employment, especially at the management levels. After contextualising the study within broader theoretical and practical approaches towards affirmative action, the research report will outline and assess the progress made by the Department towards achieving a more representative workforce, especially at the management levels. In particular, it will assess the progress made towards the Department’s target of 30% women managers by the year 2005. This assessment will take the form of an analysis of data and statistics provided by the Department in its annual reports and other documents.

Employing more black people and women at the managerial levels is only one part of the story, however. It is also important to assess to what extent the Department has transformed in ways which enable such people to succeed and feel empowered in their posts. These and other related issues are pursued in the most detailed and substantive part of the report (in Chapter 4) which presents the findings of the questionnaires distributed to members of the different directorates of the National Human Resources Department of the NDJCD. Although most of the 27 respondents surveyed through this questionnaire feel that definite progress has been made with respect to affirmative action and gender equity, they also stress that there are a number of important challenges and constraints that will need to be overcome if the Department's employment equity objectives are to be achieved successfully. A number of recommendations for addressing these challenges and constraints are provided in the concluding chapter of this research report.



The research report is organized as follows:

- Chapter One introduces the study and provides details on the research problem, objectives and research methodology.
- Chapter Two provides a detailed literature review on the meaning and practice of AA and gender equity, with examples drawn from the USA and South Africa.
- Chapter Three explains the methodology of the study, and outlines the procedures through which the questionnaires and interviews were conducted.

- Chapter Four provides an assessment of progress with respect to AA and gender equity in the NDJCD, based on a study of official reports and more especially on the perceptions of NDJCD staff questioned and interviewed as part of the research.
- Chapter Five provides conclusions and recommendations.



# CHAPTER ONE

## INTRODUCTION AND BACKGROUND TO THE STUDY

### 1.1 INTRODUCTION AND RESEARCH PROBLEM

Women in South Africa, and especially black<sup>1</sup> women, have historically been subordinated, marginalised and disadvantaged through a triple form of oppression, based on race, class and gender. Since 1994 there has been an increasing commitment to redressing this situation both by government and civil society organizations. This growing commitment to women's empowerment and gender equality has been demonstrated in a variety of ways, including the equality clause in the 1996 Constitution which specifically protects women's rights; the national government's adoption in 1995 of the *Beijing Platform of Action*, its ratification in January 1996 of the international *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), and its signing in September 1997 of the SADC declaration committing the governments and countries of Southern Africa to promote women's empowerment and gender equality; the establishment of the Commission for Gender Equality (CGE), and the Office on the Status of Women (OSW) in the Office of the Presidency; the introduction of measures and targets to increase the representivity of women in the public service, especially at senior management levels;<sup>2</sup> and the promulgation of

---

<sup>1</sup> In line with the definition in the Employment Equity Act, 'black' will be used in this research report to refer to people of African, Coloured and Indian descent.

<sup>2</sup> The White Paper on the Transformation of the Public Service (November 1995), for example, specified that by the end of the 1990s all departmental establishments must be at least 50 percent Black at the management level, and that at least 30 per cent of new recruits to the middle and senior management echelons should be women.

legislation which promotes the rights of women and prohibits unfair discrimination (such as the 1998 Employment Equity Act).

Despite these encouraging developments, progress has in many respects been disappointingly slow in translating these policy commitments into effective targets, plans and programmes for implementation, both in terms of increasing the representation of women at the management levels in the public service, and empowering them and enabling them to succeed in their jobs once appointed. The disappointing rate of progress with respect to gender equity in a number of national government departments was highlighted in the Presidential Review Commission Report on the Reform and Transformation of the Public Service which pointed out that “although the situation has improved since 1994, the current level of representivity still leaves much to be desired” (PRC, 1998:124). According to the  PRC report, progress with respect to gender representivity had been particularly slow in national departments such as Housing, Home Affairs, Safety and Security, and Justice.

The disappointing rate of progress with respect to gender equity in the Department of Justice and in the Judiciary was acknowledged in the Department’s own Annual Report for 1998/99. When women did succeed in rising to senior positions either in the Department or within the Judiciary, they also frequently found it difficult to carry out their work effectively, in many cases because of the unsupportive attitude from male colleagues. This was indicated in an article in the Sunday Times of 28 January 2001 (Rickard, 2001:10) on Judge Jeanette Traverso who was the first woman to be elected as

a Deputy Judge President of the Western Cape High Court. Judge Traverso was once told by a senior male colleague that she did not have any future field of law, and felt that she had been undermined, not only by the system, but also by many of her male colleagues. Women in the legal field are expected to work twice as much as men in order to prove that they can perform just as well as or better than their male counterparts. This fits in with Dye's argument (2002:257) that large numbers of women are entering the South African legal profession but few have made it to senior partner in the nation's largest and most prestigious law firms. It seems that women are still seen as not being competent enough to fill senior positions.

The research problem that this research attempts to address is the gap between policy intentions with respect to women's empowerment and gender equality on the one hand, and the actual implementation of such intentions on the other hand. The research will focus on the Department of Justice (now the Department of Justice and Constitutional Development). Although the main emphasis will be placed on gender representivity, especially at senior management levels, this will be contextualised within the broader area of affirmative action and employment equity.

## **1.2 PURPOSE AND OBJECTIVES OF THE STUDY**

The main purpose of this research report is to assess the progress made by the National Department of Justice and Constitutional Development (NDJCD) towards the implementation of effective policies and plans with regard to affirmative action and

employment equity in general, and women's empowerment and gender equity in particular.

More specifically, the objectives of the research report are:

- To contextualise the assessment of the NDJCD's policies and practices with regard to affirmative action and gender equity within broader theoretical perspectives on affirmative action and employment equity, as well as within the national framework for affirmative action, employment equity and gender equality that has been put in place in South Africa in the period since 1994.
- To outline the policies and plans introduced by the NDJCD to promote affirmative action and employment equity.
- To assess, through a review of official departmental reports as well as questionnaires circulated to selected staff, the effectiveness of these policies and plans in achieving the principles laid down in the Constitution and the Employment Equity Act, as well as the objectives and targets laid down in the White Paper on the Transformation of the Public Service.
- To identify challenges and constraints that have hindered the achievement of the NDJCD's objectives and plans with respect to affirmative action and gender equity.



- To make recommendations for overcoming such challenges and constraints.

### **1.3 SIGNIFICANCE OF THE STUDY**

The importance of this study is that it assesses whether the Department of Justice and Constitutional Development has implemented AA and gender equity as part of its transformation process, and as a way of redressing the inequalities and imbalances of the past. It is hoped that the study will help the Department to move forward with its policies on AA and employment equity. In particular, it is hoped that it will assist the Department in developing an understanding of employee perceptions regarding the success of AA in general, and ensuring adequate female representation in senior management positions in particular.



Mr Pieter Bruwer, the Department's Chief Director of the Selection, Personnel and Promotion Directorate, which is part of the Human Resource Department (HRD.), has requested a copy of the study, in the hope that it may assist in the on-going process of transformation.

This study is also significant because it could benefit researchers and students who are interested in carrying out research on affirmative action and employment equity in the public sector. The study could also provide a useful point of reference for other public service departments, trade unions and other related organisations.

## **1.4 RESEARCH METHODOLOGY**

The research was conducted primarily with employees of the Human Resources Department (HRD) within the National Department of Justice and Constitutional Development. Respondents were randomly chosen according to their gender and race. The HRD is divided into five directorates, namely: 1. Employment Equity and Transformation; 2. Labour Relations; 3. Training; 4. Gender; and 5. Selection, Personnel and Promotions. In addition to the questionnaires, the author was also able to interview the Public Relations Officer from the Communication Department in the NDJCD, as well as the Chief Director of the Selection, Personnel and Promotion Directorate. I was also allowed to view a Departmental video recording on transformation which contained presentations by the Director General and the Managing Director of Human Resource Department.



The HRD Department comprises four hundred employees nationally, with over a hundred employees in the Pretoria head Office. My sample comprised thirty-two respondents, including both males and females and spanning the grades from lower to higher paid positions.

Data was gathered by using questionnaires and taking notes. The interviewer asked for consent from the Managing Director of the HRD. and then made an appointment with the Chief Directors of the different directorates in order to conduct the questionnaires with their employees. Questionnaires were filled in by the respondents, while the researcher took notes and assisted the respondents during some of the sessions (for details of the

questionnaire, see Appendix B). Information that was gathered was treated with confidentiality.

The two research methods that were used for gathering data were the Qualitative and the Quantitative methods. Qualitative research is often the most adequate method of investigation, involving sophisticated techniques (Baker 1999, 254). The researcher chose this method because she thought that it would enable her to identify the non-verbal language of the respondents as they responded to the questions asked. The other reason is that the method could help to clarify other questions that the respondents might have had difficulties in understanding. Baker (1999:254) adds to the above statement by saying the verbal behaviour can be observed in two ways by listening to the content of the conversation and by recording it in terms of the types of language presentations, questions, answers, statements, affirmation and praise.

Quantitative methods were used when dealing with statistics, for example, when looking at the ratio of women recruited and promoted to high positions through AA policies and practices. Such data is obviously important in evaluating the success of the National Department of Justice and Constitutional Development (NDJCD) in implementing its AA and employment equity policies. Additional details about the research methodology will be discussed in Chapter Three.

## **1.5 LITERATURE REVIEW**

A wide range of sources were consulted in the course of this study. These are covered thematically in Chapter 2.



## 1.6 ORGANIZATION OF THE STUDY

The study is divided into five chapters, as follows:

- **Chapter One:** Introduces the study and provides details on the research problem, objectives and research methodology
- **Chapter Two:** Provides a detailed literature review on the meaning and practice of AA and gender equity, with examples drawn from the USA and South Africa.
- **Chapter Three:** Explains the methodology of the study, and outlines the procedures through which the questionnaires and interviews were conducted.
- **Chapter Four:** Provides an assessment of progress with respect to AA and gender equity in the NDJCD, based on a study of official reports and more especially on the perceptions of NDJCD staff questioned and interviewed as part of the research.
- **Chapter Five:** Provides conclusions and recommendations.



## CHAPTER TWO LITERATURE REVIEW

### 2.1 INTRODUCTION

During the apartheid era people were discriminated according to their race, sex and cultural background. The group that benefited most from the apartheid government was that of the white males. White males held most of the high positions in all organizations. Women were not given a chance to lead organizations as they were erroneously assumed to be incompetent. After a democratic government was elected into power in 1994, all the discriminatory laws that epitomized apartheid were repealed. Black people and women were for the first time afforded their human rights and an opportunity to participate in all spheres of society. However, for this to happen, it was recognised that policies of Affirmative Action (AA) and Employment Equity (E.E) would need to be introduced to ensure that the “playing fields” were levelled. This was acknowledged by former President Mandela when he stressed that:

“We have to pay attention to the question of affirmative action to enable women to take their rightful place in every area of public and private life not least within the ANC itself. Apartheid and patriarchy have combined in unholy matrimony and begotten an intolerable degree of inhibition on the creation of capacities of the majority of South African women. We need urgently to find a practical way out.” (Cited in Centre for Development Studies, 1992:2).

The practical way out from the discrimination was the implementation of AA, in particular through the introduction of the Employment Equity Act of 1998, as well as specific policies of affirmative action for the public service (such as the 1998 White Paper on Affirmative Action in the Public Service).

During the implementation of such AA programmes, many white South African males thought that AA was a policy of reverse discrimination, whereas this was not the case. Rather, they were intended to eradicate the discrimination that was going on in the past, and to enable all citizens to have the opportunity to share the privileges that white males used to enjoy. Hugo and Stack (cited in Hugo, 1992:51) point out that the goal of AA is to achieve equal chances for all and will not amount either to a vengeful turning of the tables of oppression, or the creaming off of the riches of the country by a small new class of exploiters.



This chapter examines a number of theoretical perspectives on AA, as well as the implications of AA for human resources practitioners. It then provides a brief survey of AA policies in the United States and the lessons for South Africa. The chapter concludes by providing a background to the introduction of AA and employment equity policies and programmes in South Africa.

## 2.2 THEORETICAL PERSPECTIVE ON AFFIRMATIVE ACTION

Peron (1992:1) defines AA as a programme of preferential policies based on membership of a specific group, usually a racial group. In the South African context the targeted groups for Affirmative Action have nothing to do with discriminating against those who were previously privileged nor is it opting to avenge against certain groups. Its main aim is to offer opportunities to previously disadvantaged people on the basis of merit.

The ANC and its allies proposed that this new system of preferential policies primarily based on race and secondarily on gender should be implemented in South Africa. The ANC further made it clear that it would address the under-representation of black people in senior managerial positions by promoting black owned businesses and encouraging policies of AA. In particular an ANC government would promote strategies favouring black people and women in the public and private sector, and would give top priority to applying AA principles to black women by means of legislation to secure black women's rights (Innes cited in Innes, Kentridge and Perold, 1993:6-7). This statement was made prior to 1994, before the ANC came to power. Innes (ibid) further argued that as soon as the ANC came into power, policies that protected women's rights would be implemented and be included in the development programmes of the country. Women should be allowed to take a lead wherever possible and that they should be supported when they were playing such a role.

Innes (ibid:8)) defines AA as a policy that is simply meant to eliminate obstacles for blacks and women. It simply clears away the racial and gender obstacles in the path so that women may use their own skills and initiatives to advance. Black people and women were not granted a chance in the previous dispensation to contribute to the development of the country, a situation that would need to change dramatically.

Thomas (1996:6) adds that AA has been seen as a means of correcting historical injustices and creating a level playing field where everyone could compete based upon equal access to education, training, and other opportunities formerly restricted to the white minority population. It is assumed that everyone would have the opportunity to contribute to the development of the country. Thus, all people would be able to share the skills and knowledge they have, thereby contributing to their own development and that of the country as a whole.

Nkuhlu, cited in Adams (1993:16) stresses that AA is about human dignity and development. It is about removing obstacles that inhibit the realization of human potential and the provision of a support system to ensure that development actually takes place. The discriminated group has been humiliated for such a long time that they have lost their sense of belonging. This had to be brought back to the people through AA programmes.

Charlton and van Niekerk (1994:xxvii) state that people work harder and smarter if they are trained effectively and treated with dignity. Whenever people are treated with respect they will truly give it back in abundance. By showing respect to a person it means you trust that the person will manage to do the required job successfully. Qunta (1995:22) argues that apartheid destroyed people's self esteem and hindered their self-realization. AA policies must be introduced to counteract this.

Human, cited in Adams (1993:79) points out that her research over the previous 6 years shows that many white male managers in South Africa believe that blacks and white women are less capable than white men. This has been a justification for not hiring women or blacks because they supposedly did not have the ability to perform well at the workplace. Qunta (1995:27) points out that black professionals who fail or make mistakes are judged more harshly than their white counterparts. Somehow making error is permitted from them much less than it is for their white colleagues. What is more disturbing is that their individual mistakes become an indictment of black people as a whole, while when a white professional fails or makes mistakes, they are judged and dealt with on an individual basis.

Human (in Adams 1993:85) further points out that whenever a woman fails to do her job she often becomes a laughing stock. Men forget that the pressure they put on women renders them vulnerable to negative evaluation. These stereotypes continue despite the

fact that many women have pursued highly successful careers and managed to combine this with their household and caring responsibilities.

All in all most women survived the pressure that was put on them, as they managed to make things for themselves. Many women have headed households and maintained successful careers. You find many examples of individuals from a single parent families (especially female headed) are successful.

Hersch, cited in Innes et al (1993:181) argues that AA affirms the value and importance of women's contribution to the world of work. AA means not forcing women into the mould of the opposite sex in order for them to be treated as equals. It means allowing women to be equal on their own terms.

AA policy does not imply that whites are inferior or incapable of certain tasks. It does not discriminate against them because they are European in origin and have a different culture from Africans. What it does say to them is "you can no longer be the only ones to have access to all the best jobs, facilities, and so on. We will temporarily give preference to qualified black persons, to correct past imbalances, until a normal situation has been established" (Qunta 1995:22). From the perspective of the previously and presently

disadvantaged, this is seen as fair play, although this is often not easily understood by outsiders.

Mokgoro, cited in Nzimande and Sikhosana (1996:255) also argues that AA is not a mere replacement of white male Afrikaners with blacks and women, but should be seen as a vehicle that leads to socio-economic transformation and alters the balance of power within the public bureaucracy and in society as a whole. It is a way of involving every person in the development of the country, by making people work together as one. Each and every contribution that will be made will not only benefit that person concerned but also the country as a whole.



Nkuhlu, cited in Adams (1993:12) argues that AA would be futile if the only aim was to compensate for the wrongs of the past. The past is gone and it cannot be retrieved. It is the present and the future that we can change. Therefore AA must be aimed at making the future better not only for this generation, but for the future generations as well. This sounds convincing because people cannot keep on dwelling on the wrongs of the past, especially when making the wrongs of the past an excuse for development.

Reskin and Padavic (1994:71) argue that many employers have discovered that an AA plan is good business. It is not only a defense against discrimination suits, it also helps

employers to recruit talented employees. Most employers who have incorporated AA into their personnel practices see no reason to return to the old system. Such employers are looking forward to capture people with talent that they could not recruit during the apartheid era. They could see AA really putting them into an advanced situation, because the company will ultimately develop for the better.

Jauch (1998:59) argues that AA should enable all people to participate in wealth creation in their own way, according to their skills, aspirations and experience. Whites should try and share the skills that they have acquired with the unskilled people. In that way they will be sharing and distributing the skills and wealth that they have acquired.



Charlton and Van Niekerk (1994:xx) stress that the “new South Africa” is meaningless unless it is accompanied by a fundamental change in the way we view people. In this respect AA is ongoing as it involves a change of heart in those people who are creating opportunities and in the people who will be given the opportunities. The end result of the process is affirming for all concerned: people are treated with dignity and respect and are trained in critical success competencies. They develop the self confidence to effect permanent changes.

However, people need to be prepared for changes that might be taking place. They should not be pushed too hard because they might resist the relevant changes. They need to be given enough time to ease the tension that they might be having. Transformation is a worrying thing for people to undergo, as it takes them away from their comfort zones. They therefore constantly need assurance that transformation will ultimately be beneficial for themselves as well as for the previously dispossessed.

Schreiner, cited in Nzimande and Sikhosana (1996:81) argues that in South Africa AA has to be part of the transformation away from apartheid and exploitation towards a non racial, non sexist and democratic society in which the socio-economic conditions of the majority (that is black working class women and men) are substantially transformed in a manner which is empowering. AA should be used as a tool to transform the situation of the country, by being given the necessary skills, so that people could be able to contribute to the development of the country.

Nkuhlu, cited in Adams (1993:17) states that it must always be borne in mind that the majority of the disadvantaged people are poor and unemployed. AA must include these people as well. They must be empowered through the creation of structures that enable them to be involved in decisions affecting their lives and through increased access to economic resources and income generating activities.

Days cited in Charlton and Van Niekerk (1994:89) notes, however, that such people (the poor and unemployed) often find it difficult to benefit from AA programmes precisely because they do not have the minimum qualifications and experience to take advantage of the opportunities that present themselves. What poor people need is a type of broad social welfare economic programme that will move them slowly but collectively upward. People without the necessary qualifications should not be left behind.

Human (1993:15) argues that all employees should be helped to understand the process of development and their responsibility for developing themselves. She also states that all employees should be helped to understand the process of development and their responsibility for developing themselves.



## **2.3 DUTIES AND RESPONSIBILITIES OF HUMAN RESOURCE DEPARTMENTS IN ADMINISTERING AA IN THE WORKPLACE**

Human (1993:29) points out that AA requires more than just training and development of black people and women. It also requires a major restructuring of the way in which an organization's human resources are recruited, promoted and developed, as well as the way in which human resources departments are structured and managed. AA should not be the responsibility of a small section within the HR department. It should be mainstreamed into the work of the whole department and the organization as a whole. The status of HR departments needs to be raised and, at the same time, it needs to be recognized that HR and AA should be the responsibility of all managers and not just those in the HR department. As the vast majority of managers (in both the public and private sectors) in the pre-1994 period were white males, this in turn will involve the training and assessment of managers in HR and AA functions. One of the main reasons why AA programmes fail is because top management is not fully committed to them. It might be that the management feels that it does not need to be told or advised because it knows what is suitable for the work place. The responsibility for development does not lie with the HRD alone. It lies with each and every line manager who should be trained to manage a diverse workforce (Human 1993:12).

Innes (Innes et al, 1993:46) states that AA will require the re-education of management, since management's past and present racist and sexist attitudes and behavior are perceived by many to be an obstacle to the advancement of blacks and women. Innes

(ibid:53) goes on to argue that the trade unions should play an important role in planning, implementing and monitoring training with respect to AA policies on recruitment and selection. For instance, whenever there is an interview that is taking place in an organization, the respective trade union in that organization should participate in the whole procedure of recruitment. The trade union representative will monitor the whole process to ensure that it is in line with employment equity law and policy.

Human (1993:13) argues that AA should take place primarily at the recruitment and selection stage. Thereafter, all employees should be developed and promoted according to the workforce succession and career plans. However, a check should be kept on the numbers of blacks and women who are provided with promotion opportunities, to ensure that AA succeeds.



Sachs, cited in Adams (1993:119) argues that as apartheid has now gone, there is nothing to stop anyone from achieving their objectives on the basis of merit alone. Sachs argues that to give special preference to blacks or women would now be as bad as denying them opportunities in the past. People should work together in order for the AA programmes to achieve their objectives. People have to take more personal responsibility and outgrow the tendency of always blaming the apartheid government for their failures.

## **2.4 AFFIRMATIVE ACTION IN THE UNITED STATES OF AMERICA**

The concept of AA originated in the USA in the 1960s, though the struggle to end racial discrimination dates back even further. In 1941 the then President Franklin Roosevelt issued an executive order prohibiting racial discrimination by employers in all industries involved in defense production. In 1945 legislation was passed in some states including New York to prohibit racial discrimination in employment (Clark cited in the Center for Development Studies, 1992:111). However, it took twenty more years of civil rights activities before anti-discrimination legislation was extended to all states, in particular those in the south. This took the form of Title VII of the 1964 Federal Civil Rights Act. This Act, which was strongly contested in Congress and in the country, outlawed discrimination on the basis of race, colour, religion or national origin. It was only after Congressman Howard Smith of Virginia  sponsored an amendment, that discrimination on the grounds of sex was added to this list. It was in this legislation and subsequent amendments and executive orders that the term affirmative action was used for the first time.

In the years following 1964, further legislation, executive orders and regulations were issued to concretize the general principles laid down in the Civil Rights Act of 1964. These included regulations on AA in employment from the Federal Department of Labour, in which the Federal Office of Contract Compliance is housed. They also included the Equal Employment Opportunity Act of 1972. The provisions of the 1964 Civil Rights Act and subsequent legislation, executive orders and regulations are monitored by the Equal Employment Opportunity Commission (EEOC). The EEOC's

role is to investigate individual complaints of discrimination filed under the Title VII of the 1964 Act. The EEOC also has the right to sue any employer for discrimination, should the company not follow a fair employment policy with regard to employing racial or ethnic minorities (Qunta, 1995:30). Employers can defend themselves, however, by proving that, despite their best efforts and for reasons beyond their own control, there were not enough qualified black applicants for their businesses (Clark cited in Centre for Development Studies, 1992:113).

According to section 703 (a) Title VII of the Civil Rights Act of 1969, it is unlawful for an employer to fail or refuse to hire or to discharge any individual based on race, colour, religion, sex or national origin. This could easily be interpreted as prohibiting preferential hiring which involves the selection of employees precisely on the basis of race and sex (Moens, 1985:17-18). Section 703 (j) of Title VII states that “nothing contained in this Title shall be interpreted to require any employer to grant preferential treatment to any individual, or to any group on account of an imbalance which may exist with respect to the total number of persons of any race, employed by any employer in comparison with the total or percentage of persons of such race in any community”. A combined reading of section 703 (a) and (j) categorically prohibits preferential hiring on the basis of race or sex and a company that uses an explicit ratio in selecting employees is engaged in unlawful discrimination (Moens 1985:17-18).

Despite this, many employers in the USA have attempted to implement AA policies through the establishment of targets and quotas for people from previously disadvantaged

groups. However, faced with increasing legal challenges during the past decade, the use of such quotas is now declining in most areas.

## **2.5 LESSONS THAT SOUTH AFRICA COULD LEARN FROM THE USA**

It took the USA many years to come up with legislation and policy to challenge the discrimination that minority groups experienced. We cannot compare ourselves with America because it is now in its fourth decade since AA was implemented. In contrast, we are currently on our tenth year of democracy. The main lesson that we can learn from the Americans is to avoid some of the problems and mistakes they made when implementing AA. One such lesson concerns the danger of “tokenism” and stigmatizing legitimate achievements by beneficiaries of affirmative action. In the USA, people who were appointed to senior positions were not sure whether they were appointed on merit or purely as part of AA targets and quotas.  This sometimes resulted in appointees becoming de-motivated and unproductive (Herholt and Marx, 1999:29).

Herholdt and Marx (1999:29) also point out that the critics of AA in the USA have argued that companies are sometimes forced to hire women and members of minority groups who are less qualified and that this has an adverse effect on job performance and productivity. However, Herholdt and Marx (ibid) state that it was found that after gaining work experience, female and minority workers performed as well as their white male counterparts.

Another lesson that can be learned concerns the problem of reverse discrimination, especially in situations where quotas for AA appointees are prescribed by organizations. A number of successful legal challenges have been made in American courts to AA quotas on the basis that these have led in turn to discrimination against well qualified members of the majority white population.

Human (1993:78) points out that the lesson for South African organizations, and those of other countries, is the need for professional and fair HRD systems which emphasize the need to address employee and managerial expectations, lay down clear responsibilities in relation to development, and inculcate a respect for the creation of cultural synergy.

Qunta (1995:35) states that in South Africa, Africans have as an advantage both their population numbers and a predominantly African government. They also have vocal organization such as watchdogs. It is these organizations and the personal resources of individual Africans that will eventually lead to changes in the current corporate climate. At a psychological level, numbers are important for Africans. Whilst they are presently a minority in business, as is the case with African Americans, they know that this is only temporary. Nevertheless, they do experience the same sense of alienation and frustration as their counterparts in the U.S.

## 2.6 THE HISTORICAL BACKGROUND OF AA IN SOUTH AFRICA

For 46 years (1948-1994) South Africa was under the apartheid regime, based on racial divisions and segregation. This division was based on skin colour, race, culture and gender. Races other than whites were marginalized with respect to employment opportunities and other aspects of their lives. Jobs available to the marginalized groups were low status occupations such as domestic work or secretarial positions. In contrast, whites had access to high status careers such as lawyer, accountants and pilot. Qunta (1995:19) points out that compared to black men and women, white women have had unhindered access to the best educational institutions in this country. They had the exposure to opportunities that economic prosperity, and being part of a privileged minority offered them. They were not hampered in their careers by the burden of raising a family because unlike their counterparts in the western world, most had at their disposal very cheap domestic labour.



In contrast, the disadvantaged groups were not allowed to work or buy themselves houses wherever they wanted to. The Apartheid Government favoured white people over other races by providing them with higher salaries, better education and safer and more secure environments.

According to Sonn (cited in Adams, 1993:6), there has been a long history of affirmative action in South Africa, although until 1994 this was in favour of the white Afrikaner minority. Afrikaner corporations such as KWV, Sanlam and Santam were supported by the apartheid state. In addition, after 1948, the Nationalist Party Government moved to

ensure that Afrikaners, and in particular Afrikaner males, dominated senior positions within the public service.

Peron (1992:25) points out that apartheid in South Africa has its origins in attempts to resolve the “poor white” problem in South Africa. The Carnegie Poverty reports in the late 1920s and early 1930s revealed the growing problem of poverty amongst sections of the white and particularly Afrikaner population (Louw and Foster cited in Foster and Potgieter, 1991:64). This growing underclass of poor whites, threatened as they perceived themselves to be by cheaper black labour, was to form the backbone of Nationalist Party support in the period after 1948. Their loyalty at the polls was subsequently rewarded by the Nationalist Party through policies which clearly favoured the employment of Afrikaners. By 1952 about 80% of the workers employed in the South African Railway and Harbours were Afrikaners; while 68% of Post Office workers at this time were also Afrikaners. In 1968 there were twice as many Afrikaners in the Public Sector as there were in 1948. In 1978, 90% of the approximately 150 key positions in the public sector were held by Afrikaners and in 1979, 35% of economically active Afrikaners were employed in the Public Sector (Van Der Horst cited in Adams, 1993:6-7).

Qunta (1995:28) argues that those of us who work in white companies know that some of our white colleagues do not have the academic qualifications prescribed for the positions they presently occupy. Often they have worked their way up in the hierarchy of the company, having had the support that is so crucial for the advancement. During the

apartheid era, whites and especially Afrikaners were often promoted to positions for which they were not really qualified.

Lipton (cited in Peron, 1992:10) indicates that apartheid was imposed, because without it blacks would have out-performed white workers. If whites were more economically efficient, then apartheid would have been unnecessary and would not have been implemented. blacks were not given any choices, they had to live and accept whatever the previous government was prepared to offer them. Peron (1992:3) argues that this is what the poor Afrikaners accomplished through apartheid as they used the power of government to keep blacks out of competition to secure jobs and higher wages for themselves. Wage discrimination was anchored by the laws such as the Wage Act 44 of 1937 (subsequently 45 of 1957), which permitted differentiation between categories of employees on the grounds of sex and race (Adams 1993:22). O` Meara (1975) has calculated that the index of real whites salaries rose by more than 10% in the first year of National Party rule. During the same period the income of blacks decreased by 5%, with black women the worst off.

## **2.7 DEVELOPMENTS IN SOUTH AFRICA SINCE 1994**

After the 1994 first democratic election, the democratic government was faced with the challenge to amend the discriminatory legislation. Because of apartheid, the democratic government had to develop policies and legislation that would eradicate racial, gender and other forms of discrimination. Some of the main policies and legislation are summarized below.

### **2.7.1 Constitution Act number 108 of 1996:**

The Constitution (Act number 108 of 1996) in many ways sets out the main framework for a non-racist and non-sexist society in South Africa, by declaring in its Bill of Rights that all people regardless of race, gender, religion and culture are equal before the law and have the right to equal protection and benefit of the law. Every policy and legislative measure must correlate and comply with what the Constitution stipulates. Those that do not can be challenged in the Constitutional Court. . Section 195 [1] of the Constitution stipulates 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."

### **2.7.2 White Paper on the Transformation of the Public Service**

The White Paper on the Transformation of the Public Service (WPTPS) was published in November 1995. The WPTPS provides a convincing rationale for AA strategies, based on the need to reverse the systematic exclusion of Black people and women from positions of influence within the public service that had characterised the apartheid system; as well as the systematic exclusion of people with disabilities from positions at all levels within the service.

"With the new dispensation in South Africa, this situation cannot be allowed to continue. To meet the new and challenging tasks with which it is faced, and in particular to improve the quality and equity of service delivery, it is absolutely imperative that the public service draws upon the skills and talents of all South Africans, and derives the benefits of the broader perspectives that a more representative service will bring." (WPTPS para. 10.1)

The WPTPS recognised that in South Africa, as in many other countries, the introduction of AA programmes will undoubtedly be confronted by a number of potential problems and dangers. These include the dangers of "tokenism," reverse discrimination, and the possible alienation of non-target groups within the public service, as well as the danger of prioritising affirmative action at the expense of other transformation goals, especially efficiency and effectiveness. For this reason the White Paper stressed that AA policies and programmes should:

- be devised and planned in a feasible, sensitive yet unapologetic way, as part of a broader approach to human resources development and capacity building;

- address the specific and different needs of Black people, women and people with disabilities;
- be seen not just as a hiring policy or numbers game but as an holistic approach that empowers people hitherto marginalised and enables them to succeed;
- be devised and introduced in ways which complement rather than conflict with other transformation goals and programmes;
- be explained and communicated effectively at all levels.

Although the WPTPS steered clear of fixed quotas for departments and provinces, it did lay down a number of broad targets with respect to increasing representivity. These were:

- That within four years all departmental establishments must be at least 50 percent Black at the management level;
- That within four years at least 30 per cent of new recruits to the middle and senior management echelons should be women.
- That within ten years, people with disabilities should comprise 2 per cent of public service personnel.

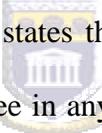


The framework laid down in the WPTPS was subsequently given more substance and momentum through the 1998 *White Paper on Affirmative Action in the Public Service* (WPAAPS), as well as by the Employment Equity Act of 1998 which was piloted through Parliament by the Minister of Labour. The WPAAPS provides detailed and concrete guidelines for departments, as well as a number of mandatory requirements. Directors-General (DGs), for example, must appoint a programme manager for AA, but there is no stipulation as to the rank of such a person. It also provides for the inclusion of

targets in relation to affirmative action and representivity in the proposed performance-related contracts for DGs and Heads of Department.

### **2.7.3 Employment Equity Act (EEA.) number 55 of 1998:**

The Employment Equity Act (EEA), which came into force on 14 May 1999, outlaws unfair discrimination in the workplace and requires employers (private and public) to prepare and implement employment equity plans, and to report regularly to the Government on progress in relation to such plans. The priority groups identified for affirmative action by the WPTPS, WPAAPS and the Employment Equity Act are black people (defined as Africans, Coloureds and Indians), women and people with disabilities.

Section (6) subsection (1) of the EEA.  states that no person may unfairly discriminate directly or indirectly, against an employee in any employment policy or practices on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, HIV status, conscience, belief, political opinion, culture, language and birth (EEA.1998: 14).

### **2.7.4 Specific Policies and Initiatives on Gender**

As noted in the introduction to Chapter 1, the growing commitment since 1994 to gender equity and women's empowerment has been demonstrated in a variety of ways. These include the equality clause in the 1996 Constitution which specifically protects women's rights; the National Government's adoption in 1995 of the *Beijing Platform of Action*, and

its ratification in January 1996 of the international *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW); the establishment of the Commission for Gender Equality (CGE), and the Office on the Status of Women (OSW) in the Office of the Deputy President (now the Presidency) to promote and safeguard the rights of all women; the establishment of provincial OSWs, as well as Gender Desks (or Gender Focal Points) in national and provincial line departments; the introduction of measures and targets to increase the representivity of women in the public service, especially at senior management levels; and the promulgation of legislation which promotes the rights of women and prohibits unfair discrimination (including the 1998 Employment Equity Act and the 1997 Termination of Pregnancy Act which has transformed women's reproductive rights to chose termination over pregnancy).



## 2.8 SUMMARY

During the apartheid years, the discriminated races did not have any rights to voice their grievances. They are now having rights, thanks to the democratic government that came to power after the 1994 elections. Women are no longer left behind, because they have opportunities to fill high posts and even to choose careers that were previously occupied almost exclusively by men.

This research paper takes is based on the view that AA was not implemented in South Africa as a way to avenge the inequalities of the past, but to distribute equally the resources that were previously accessible by the white minority. The AA policy and subsequent legislation passed by the Government were introduced with the aim of protecting the dignity of every person who is a citizen of South Africa, especially the previously disadvantaged. This was a way of eradicating the imbalances of the past.

The next chapter (chapter 3) provides details on the National Department of Justice and Constitutional Development (NDJCD) and provides more detail on the research methodology used in the study.



## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

#### **3.1 INTRODUCTION**

This chapter provides a synopsis of the research methodology that was employed in this study. The data was collected from the National Department of Justice and Constitutional Development (NDJCD) in Pretoria. The National Department controls all regional Departments of Justice in South Africa. The first part of this chapter outlines the structure of the NDJCD, and provides a detailed outline of the Human Resource Department. The second part provides an outline of the research methodologies utilized, the sample used for this study and how the data gathered was analysed.



#### **3.2 OUTLINE OF THE DEPARTMENT**

The NDJCD is divided into eight different departments, currently known as the business units. These are: 1. Human Resources (HR.); 2 Court Services; 3. Public Education and Communication; 4. Finance Management; 5. Information Management Systems; 6. Master of the High Court; 7. Legal Advisory Services; and 8. Legislative and Constitutional Development.

The concept of business unit is used for managing the Department by utilising business principles as in the private sector. For the purpose of this study, the HR Department was chosen as the primary research focus, because the researcher thought it would give a fair reflection of the NDJCD as a whole. Moreover, the HR Department is primarily

responsible for the recruitment process thus making it a vital unit in the transformation and AA processes.

The HR Department is divided into six directorates; namely: 1. Employment Equity and Transformation; 2. Gender; 3. Training; 4. Labour Relations; 5. Development Planning; and 6. Selections, Personnel and Promotions. Each directorate has its own Director, and the six Directors each report to the Managing Director of the Department. The H.R Department has over four hundred employees nationally, while the Pretoria office has over one hundred employees. Due to time and resource constraints, the participants in the study were recruited from the Pretoria office of the HR Department.

### **3.3 RESEARCH METHODOLOGY**



With regards to the research method used, both qualitative and quantitative methods were utilized. Strauss (1990:17) defines qualitative research as research that produces findings not arrived at by means of statistical procedures or other means of quantification. This may refer to research that focuses on peoples lives, stories, and behaviour; it may also include organizational functioning, social movements or interactional relationships.

The research was conducted primarily through the use of questionnaires, rather than face-to-face interviews. Most of the staff surveyed were very busy and it would have been extremely difficult to arrange interviews with all of them. The use of the questionnaire as the main research instrument allowed the researcher to sample the perceptions of a much larger number of staff than would have been the case had individual interviews been chosen as the principal research tool. Once the questionnaire was compiled, copies were

handed to the directors of the six directorates who ensured that they were distributed to the appropriate staff members. These were chosen by random sample (see later under the section on Procedures below). Although no interviews were conducted, the researcher was available, when required, to assist staff in the completion of the questionnaires.

Barker and Blankenship (cited in Loubser, 1996: 215) argue that the type of questionnaires designed determines the type of information the research will generate. For example, for this study, the researcher compiled a questionnaire that was composed of twelve questions, two of which were structured and the remainder unstructured and open ended. Loubser (cited in Martins et al., 1996:229) notes that unstructured questions or open-ended responses allow the respondent to give his/her own answer without imposing limitations.



In addition to the questionnaires provided to the participants, the researcher scrutinized documents and other material that were made available by the Department. These included Departmental Annual Reports, as well as a video of the transformation process in the Department. Interviews were also held with the Public Relations Officer from the Communication Department in the NDJCD, as well as the Chief Director of the Selection, Personnel and Promotion Directorate.

### 3.4 RESEARCH PROCEDURES

The researcher initially established contact with the Department of Justice and was informed that written consent had to be obtained from the Director General. The Director General approved the study and referred the researcher to a contact person in the Department for the purpose of future correspondence and liaison (See Appendix A for the consent letter).

The second phase involved establishing contact with the Assistant Director of the Employment Equity and Transformation directorate, who informed the researcher about the structure of the Department and arranged a meeting with the Managing Director of the HR Department.



This section of the study presents a breakdown of the staff complement in each of the directorates in the HR Department. It also provides details on the sampling methods used. Stroker (1989:102 &113) argues that it is essential that the sample should in all respects be a true image or reflection of the population. For the purpose of this study a sample of 33 members were selected from the 100 plus staff members of HR Department in Pretoria. This represented close to one-third of the total staff complement. The sample included representatives from all grades and was balanced in terms of race and gender.

The Employment, Equity and Transformation Directorate has five employees, including the Director. Four employees were chosen consisting of three black males and one

Indian female. The National Director of the Personnel, Promotion and Selection Directorate has about seventy-five employees in his section and a sample of ten was selected, consisting of six white females, one black female, two white males and one black male. The Director of the Development and Planning Directorate has seven employees in his directorate and a sample of four was selected, consisting of one black female, one coloured female, one white female and one Indian male. The Labour Relations Directorate has thirteen employees and a sample of five employees was selected, consisting of four black males and one coloured female. The Director of the Training directorate has nineteen employees in his office and a sample of five employees was selected, consisting of one Indian male, one white male, two white females and a black female. The Director of the Gender Directorate has six employees in her section, two of whom are consultants. A sample of four respondents was selected, consisting of two white females and two black males.



Appointments were made with the Director of each directorate and during the meetings they were given a brief and concise explanation of the nature and purpose of the study. Due to the nature of their work and time constraints, it was mutually agreed that questionnaires be given to the Directors who in turn would hand them out to their subordinates in line with the researcher's specific requests. The participants were given a period of two weeks to complete the questionnaires. This was subsequently extended by a further three weeks.

The response rate for completed questionnaires was a highly encouraging 100% for five of the six directorates. Unfortunately, however, none of the six questionnaires handed out to the Training Directorate were completed and returned. Overall, however, this still meant that 27 out of the 33 questionnaires were completed and returned.

### **3.5 PROBLEMS ENCOUNTERED IN DATA COLLECTION**

One of the respondents in the Employment and Equity Transformation directorate wanted to intervene in the conduct of my study. On the day of our appointment, after he had read through my introductory letter, he informed me that he would be glad if I did not specify that I was concentrating on the Department of Justice but only on a “Department”. He said that he was afraid that my study, once completed, might “end up in the wrong hands”, and that this might reflect on the department negatively. His main justification for holding this view was that the Department was still in the process of transformation and facing difficulties, especially at the middle management levels.

The researcher also encountered problems with the contact person in the Department who was not always co-operative. For instance, she used delay tactics on several occasions when I came to collect the completed questionnaires from the respondents. As a result of these delays, I was forced to extend the time for the completion of the questionnaires from two weeks to five weeks. This delayed the data analysis and report writing stages.



## **CHAPTER FOUR**

### **RESEARCH FINDINGS**

#### **4.1 INTRODUCTION**

This chapter first provides an overview of the progress that has been made by the Department of Justice and Constitutional Development towards a more representative workforce. It then provides a detailed synthesis of the responses obtained from the respondents to the questionnaires. The findings in the second and more substantive part of this chapter will be reported according to the sequence of the questionnaires. Moreover, the responses have been divided according to the five directorates in the Human Resources Department.



For the sake of ensuring confidentiality, no names are mentioned in this research report. A list of the respondents' current portfolios is provided in Appendix C.

#### **4.2 PROGRESS TOWARDS AFFIRMATIVE ACTION AND EMPLOYMENT EQUITY**

“The Justice Department, led by the Minister of Justice, hereby acknowledges the existing inequalities, imbalances, prejudice and injustice of the past in the Department. Whereas there is a need to create a new dispensation in which all South African citizens will enjoy and exercise their fundamental rights and freedoms, the Justice Department through this policy document supports the core ideal of Affirmative Action and fundamental equal opportunity for all South African citizens.” (National Department of Justice, Comprehensive Policy Document on Representivity and Employment Equity, 1996).

According to the Department of Justice's 1996 Policy Document on Representivity and Employment Equity, the Department's vision is to transform the administration of justice to create a system which is cheaper, simple, more effective, efficient and generally fair. The end result will be a system which is representative of and responsive to the needs of the entire South African community. To realise its vision, the Department will, amongst other processes, use affirmative action as a strategy to achieve effectiveness and efficiency as well as achieving its constitutional obligation to ensure that the personnel reflects the demography of the entire South African society. The Department's approach is flexible and it is not the Department's intention to fill all posts with black persons and or women candidates at all cost but generally to reflect the demographics of the South African Community in all of its occupational classes and at all levels.



More specifically, the Department's objectives with regard to AA and Employment Equity were:

- To give priority to the recruitment of candidates from disadvantage groups for appointment and promotion to enable the Department to reach the targets and time frames set out in the White Paper on Transformation of the Public Service document" - namely, by the end of this century (1999) 50% of management should be black and 30% should be women.<sup>3</sup>
- To remove all forms of discriminatory practices based on race, gender, disability,

---

<sup>3</sup> This target represents a misunderstanding of the actual targets laid down in the White Paper on the Transformation of the Public Service and the White Paper on Affirmative Action in the Public Service. In these documents the target was that within five years 30% of new recruits to the management echelon should be women.

age, language; and to establish equity in the Department.

- To identify and rectify the effects of previous discriminatory practices and modify principles of employment so as to accommodate the disadvantage groups and promote/create representivity.
- To promote transparency in the implementation of decisions related to the promotion of representivity, and in so doing foster trust and cooperation amongst management, officers and employees.
- To improve intercultural communication at all levels by creating a favourable climate which is sensitive to the diversity within the workplace.
- To design human resource development programmes (training and capacity building) that will empower all levels of staff, in particular the previously disadvantaged groups.
- To ensure top management support and commitment to the processes of affirmative action and employment equity.
- To accelerate the intake and empowerment of disadvantaged groups at all levels, *inter alia*, through developing training and supportive strategies for new and existing staff.
- To give particular attention to gender representivity especially in middle and top management echelons.
- To make provision for the speedy resolution of grievances and disputes related to the implementation of this agreement in terms of the applicable labour laws.
- To create a friendly and accessible work environment for people with disabilities.
- To reassure those who feel threatened by the transformation process.

Table 1 provides details on progress that has been made by the Department towards greater representivity, in particular at the management levels. The table shows that black managers (male and female) constituted 30% of the management echelon of the Department in 1996. White males constituted 66% and white females a further 4%. By 2003, the situation had changed quite significantly. Black people now constituted 56%, of whom black males constituted 41% and black females 15%. The proportion of white males had declined from 66% to 36%, though white males still constituted the largest single category. The Department has therefore achieved the 50% target for black managers set out in the White Paper on the Transformation of the Public Service.

With respect to gender, the transformation  has also been significant, though the Department still falls short of the target of 30% set in the Department's policy documents. The percentage of female managers within the management echelon has increased from 6% in 1996 to 23% in 2003, of whom black female managers constitute 15% and white female managers 8%. Because of the slower progress with respect to gender, the Department has moved the target date for a 30% representation of women from 1999/2000 to 2005.

**Table 1: Department of Justice and Constitutional Development - Employment Equity Trends in the Departmental Management Echelon 1996-2003**

YEAR		MALE					FEMALE					TOTAL
		AM	CM	IM	WM	Total	AF	CF	IF	WF	Total	
1996	No.	34	0	1	81	116	1	0	1	5	7	123
	%	27	0	1	66	94	1	0	1	4	6	100
2003	No.	43	6	10	52	111	16	2	5	1	35	146
	%	29	5	7	36	77	11	1	3	8	23	100

AM = African Male    CM = Coloured Male    IM = Indian Male    WM = White Male

AF = African Female CF = Coloured Female IF = Indian Female WF = White Female  
**Source:** Department of Justice, Comprehensive Policy Document on Representivity and Employment Equity, 1996; Department of Justice and Constitutional Development, 2003/04 Annual Report.

With respect to the Department as a whole, the 2003/04 Annual Report shows that Black people constitute 71%, of whom black males constitute 35% and black females 36%. Males constitute 46% of the whole Department and females 54%. Admittedly a large proportion of black employees, and black women in particular, are concentrated in the lower ranks of the Department.

Table 2 provides details on the Department’s targets and actual performance with respect to the Judiciary and the Magistracy. The table indicates that, whilst the targets for Magistrates have nearly been achieved (the Departmental Reports do not provide the exact figures), the Judiciary still has some way to go, especially with respect to the targets set for female judges.

**Table 2: Department of Justice - Employment Equity Targets for the Judiciary and Magistracy**

RACE & GENDER	JUDICIARY		MAGISTRACY	
	2005 Target	2004 Actual	2005 Target	2004 Actual
% Black	40%	34%	50%	Nearly 50%
% Women	20%	12%	30%	Nearly 30%

Black = Africans, Coloureds and Indians

**Source:** Department of Justice and Constitutional Development, 2003/04 Annual Report.

The increasing numbers of black and female employees in the Department is only one part of the story, however. It is also important to assess to what extent the Department has transformed in ways which enable such people to succeed and feel empowered in their posts. These and other related issues will be pursued in the next section of the

research report which presents the detailed findings of the questionnaires submitted to members of the different directorates of the National Human Resources Department.

#### **4.3 RESEARCH FINDINGS: PERCEPTIONS ON AFFIRMATIVE ACTION AND EMPLOYMENT EQUITY**

The following sections of the research report provide a description and analysis of the responses to the questionnaires circulated to staff of the human resources directorates.



#### **4.3.1 Personnel Selection and Promotion Directorate:**

*Responses to Question 1: What Portfolio do you hold in the Department of Justice? For how long have you been in this position?*

Four of the participants (001,004,006 and 009) indicated that they were in junior managerial positions (Assistant Directors), and had been in these positions for an average of three and a half years. Three other respondents (003,008 and 0010) indicated that they held senior non-managerial positions, that is, those of Senior Personnel Practitioner, for an average period of two years. The final three respondents (002,005 and 007) indicated they held middle management positions, that is Deputy Directorship, having occupied these for an average of three years.

*Responses to Question 2: How long have you been working for the Department of Justice?*



The service duration of the participants in the department ranged from two years and two months to 31 years. Respondent 002, the Deputy Director for Staff Provisioning and Utilisation, had served the shortest period (2 years and two months) Respondent 007, who is also a Deputy Director, had served the longest period (31 years) in the department.

*Responses to Question 3: Please give a brief description of your Current Portfolio in the Department of Justice?*

Respondent 001 indicated that his portfolio involved planning for the HR department. Respondent 002 indicated her role involved the management and provision of human resources and their adequate utilization in the department. The third (003) respondent

indicated that he was involved in researching, developing and maintaining appointments and related policy issues in the department. Moreover, his tasks included offering advice and guidance regarding appointment policies, practices, applications and preparing written reports or memoranda for senior management. Respondent 004 described his duties as being inclusive of conducting research with regard to appointments and staff mobility, compiling policies related to appointments and providing advice on policies and employees in the department. The fifth (005) respondent reported that she was responsible for effecting ranks, promotions, advertising and the filling of posts. The sixth respondent described himself as an H.R. Branch Accountant. According to respondent 007, his portfolio involved establishing planning for human resource needs, while the eighth respondent noted that she was involved in the determination of personnel needs. This involved the creation and abolishment of posts using the prescribed norms and scientific methods. Respondent 009 assisted the Deputy Director as a head of the sub directorate and concentrated on amendments of prescribed policies and the drafting of new policies in terms of the objectives of the department. Respondent 0010 was an establishment planner.

*Responses to Question 4: According to your own understanding, what does Affirmative Action stand for?*

In the responses, the dominant theme was that AA was based on appointing suitably qualified persons from previously disadvantaged or discriminated groups to positions that they were barred from occupying in the past. The other dominant theme that the participants referred to was about right sizing the disparities in the work force and thus offering a work force that is representative of the population.

*Responses to Question 5: Do you believe in Affirmative Action and Gender Equity? Give reasons.*

The dominant theme was that they believed in affirmative Action and Gender Equity on condition that they were correctly administered, managed fairly and closely monitored to ensure that every person receives equal opportunities.

*Responses to Question 6: Do you think Affirmative Action should be implemented in the Department of Justice? Give reasons.*

Participants stated that Affirmative Action was implemented in the department. From their responses, however, the participants were not certain about the exact period when the policy was implemented. From the responses, it seems that a substantial number of the AA positions that needed to be filled was met. A dominant response from the respondents was that the aim of Affirmative Action was to ensure that the management of the public service was representative of the country's population.

*Responses to Question 7: Has Affirmative Action been implemented in the Department of Justice? Give reasons.*

Respondent 009 was not certain whether AA was implemented in the department. The nine respondents agreed that AA had already been implemented in the department. The reason given was that more than 50% of the employees in the Department were from previously disadvantaged groups (including women).

*Responses to Question 8: If yes, has Affirmative Action been successfully implemented?*

Respondent 001 said he did not know whether AA was successfully implemented. Respondents 009 did not write anything, while respondents 002, 003 and 004 said that more than 50% of the employees had been affirmed. The other three respondents (005, 006 and 007) agreed that AA had been successfully implemented but they did not state reasons for the responses they gave. Respondent 008 said that AA was a process and that there were some positive developments. Respondent 010 said he does not have an idea.

*Responses to Question 9: Are there any Problems encountered in implementing Transformation? Give reasons.*

Respondents 001, 006, 007 and 0010 said they did not know about any such problems because this was not part of their job descriptions. Respondent 005 said there were no problems encountered in implementing transformation. Respondent 002 stated that the reasons would differ from area to area but strong cultural roots mainly hampered transformation. Respondent 003 agreed with the question but did not give reasons. Respondent 004 said that people felt negative towards any change that was effected in an organization; even if it was not communicated properly, a process such as AA transformation was required by legislation and had to be complied with irrespective of employees' resistance to the process. Respondent 008 said he thought that it could be a problem because a number of AA appointees lacked skills and knowledge in some fields. Respondent 009 said that if the supervisory levels were still occupied by people of only one race who were promoting and upholding their cultural values and norms, it would be

difficult for transformation to be speeded up. The respondent also felt that there was a significant amount of tokenism and window dressing in the Department.

*Responses to Question 10: How were those Problems, dealt with?*

Sixty percent of the respondents said they were not aware how the problems were resolved and that they were not directly involved in making managerial decisions. Respondent 002 said the issue was dealt with through workshops, change management and strategic workshops. Respondent 003 pointed out that advertised posts were compiled to reach previously disadvantaged groups, and that statistics were collected and monitored by the EE division. Respondent 004 said that a gender transformation unit had been established in the department, while respondent 008 said employees were trained and developed by attending courses and workshops.



*Responses to Question 11: Do you think by the year 2005 the Department will have reached its required target of 30% for women in senior management positions? Give reasons.*

Respondent 001 said that, taking all relevant facts into consideration, there was a reasonable chance that the 2005 deadline would be reached, based on the availability of posts. Respondent 002 said the department would not reach its 2005 target because there were some real differences between male and female roles in the society. Respondent 003 agreed that the 2005 deadline would be reached because the Employment Equity Act required that certain percentages of women be employed in managerial positions. Respondent 004 said that, if the target was a requirement set by legislation, the Department would be obliged to adhere to it. Respondent 005 agreed that the target

would be reached because, in the filling of all posts that become vacant, this would be taken into account. Respondent 006 said he had not yet seen the EE plan. Respondent 007 said he did not know and that this was not part of his function, while respondent 008 said there were already quite a number of women in senior positions. Respondent 009 said that women were being increasingly hired in senior positions but that they were doing almost nothing. This reflected tokenism within the Department. Respondent 0010 said he did not know.

*Responses to Question 12: What criteria are used in promoting employees?*

Fifty percent of the respondents said they were aware that the previous promotions policy was abolished in July 2001. Staff interested in upward progression now have to compete, internally and/or externally, for vacant posts at a higher level. The remaining 50% of respondents thought that the previous promotions policy was still in place.

In conclusion it seems that quite a number of employees in this directorate were not familiar with policies and laws such as the Employment Equity Act and the LRA. As 60% of the respondents are in management positions, this is somewhat surprising and disturbing.

### 4.3.2 The Employment Equity and Transformation Directorate

*Responses to Question 1: What Portfolio do you hold in the Department of Justice? For how long have you been in this position?*

Respondent 0011 stated that his portfolio had been that of Senior Personnel Practitioner since 1999. Respondent 0012 had been a Director since 1999, 0013 had been an Assistant Director for three years and respondent 0014 an Assistant Director since 2000.

*Responses to Question 2: How long have you been working for the Department of Justice?*

Respondent 0011 had been with the department for many years. Respondent 0012 had been with the department for three years, 0013 for five years while respondent 0014 for four years.



*Responses to Question 3: Please give a brief description of your Current Portfolio in the Department of Justice?*

Respondent 0011's duties were to deal with the special programmes in the Department such as Batho Pele projects, smoking policy and transformation issues. Respondent 0012 was responsible for implementing projects such as the Employment Equity (EE), Batho Pele, disability, HIV/AIDS and the Employment Assistant Programme (EAP). Respondent 0013 left the space blank. Respondent 0014 was in charge of policy formulation and awareness raising on EE issues.

*Responses to Question 4: According to your own understanding, what does Affirmative Action stand for?*

Respondent 0011 defined AA as an action favouring those who had suffered from discrimination. Respondent 0012 said AA was meant to correct past imbalances brought about by apartheid. Respondent 0013 pointed out that AA affirmed and gave people from the designated groups opportunities to work and compete equally with other groups, and respondent 0014 said AA was a means of achieving representivity as the people from the disadvantaged group were offered higher positions.

*Responses to Question 5: Do you believe in Affirmative Action and Gender Equity? Give reasons.*

All the respondents said that they believed in both AA and gender equity. Respondent 0011 pointed out that AA affirms people who were previously disadvantaged in the work environment by offering them higher positions which were previously occupied by white males. Respondent 0012 said that gender equity was an attempt to balance both sexes in the workplace and community, and that it was the only way transformation could be brought about in the organization. Respondent 0013 stated that AA supported gender equality in the workplace to redress gender imbalances of the past and to eradicate gender biases. Respondent 0014 said if AA were implemented correctly it would work and bring about a healthy environment of people with a diverse background since each would have learned or developed skills in a different way. They would be able to make a diverse yet valuable contribution at the workplace.

*Responses to Question 6: Do you think Affirmative Action should be implemented in the Department of Justice? Give reasons.*

Respondent 0011 said that the previously disadvantaged people should be given opportunities in the department to prove their worth. Respondent 0012 pointed out that it was necessary for business to have equity and diversity, AA was a government policy that should be implemented. Respondent 0013 said AA ensures E.E, promotes equality in the workplace and equal employment opportunities. Respondent 0014 said that AA was necessary in order to redress the inequalities of the past.

*Responses to Question 7: Has Affirmative Action been implemented in the Department of Justice? Give reasons.*

All the respondents gave a 'yes' answer. Respondent 0011 said that in the past top management positions in the department were occupied almost exclusively by white males. Women from different races and black males were now represented in the department at the management level. Respondent 0012 said that the department had policies and various sections had EE plans wherein there were AA targets. Respondent 0013 said the department adheres to AA by eradicating all forms of discrimination with respect to the designated groups. Respondent 0014 said that if one looked at the department's statistics, one would note that women were becoming more represented in managerial positions.

*Responses to Question 8: If yes, has Affirmative Action been successfully implemented?*

Respondent 0011 said that AA was successfully implemented but did not explain further. Respondent 0012 said implementation was a process, adding that in certain sections of the department employees from the disadvantaged groups were represented. AA had been

achieved in some departments, whilst in others the process was still going on. Respondent 0014 stated that EE awareness programmes were held nationally and are at present still being rolled out. Diversity awareness was offered by the department.

*Responses to Question 9: Are there any Problems encountered in implementing Transformation? Give reasons.*

All respondents agreed that there had been problems. Respondent 0011 stated that some staff did not want to see the department transforming. Some of these had resigned and others had been transferred to other departments. Respondent 0012 said firstly that there was a lack of sufficient executive management support in driving the transformation process, and secondly that a lot of managers had found loopholes in the AA and EE policies which enabled them to drag their feet when it came to implementation. Respondent 0013 pointed out that employees were resisting change and had fears of the unknown. Respondent 0014 said that some people in the department were fearful of change and that this was one of the barriers the department encountered.

*Responses to Question 10: How were those Problems, dealt with?*

Respondent 0011 did not write anything, but respondent 0012 said that they had sessions with managers to try and deal with the problems through discussions. Respondent 0013 said that workshop had been held to re-assure employees that their jobs would not be threatened by AA. Respondent 0014 said the department offered programmes such as EE awareness that were held nationally.

*Responses to Question 11: Do you think by the year 2005 the Department will have reached its required target of 30% for women in senior management positions? Give reasons.*

Respondent 0011 agreed by saying that the directorate of transformation and corporate strategy in the department was making sure that women were represented in senior positions. The department had an EE plan to achieve its objectives. Respondent 0012 said that hopefully this would be the case but that there were various things that might affect the process. However, the department remained committed to its target. Respondent 0013 was uncertain, due to the current state of restructuring. Respondent 0014 said most definitely that the target would be reached. Women currently constituted 53% of the total staff complement of the Department.



*Responses to Question 12: What criteria are used in promoting employees?*

Respondent 0011 said that the department had an EE plan and a career path mechanism in promoting and developing employees. Respondent 0012 said that all employees would need to apply for advertised jobs adverts in order to be promoted. Respondent 0013 said the performance management system was used to assess their performance. Despite these differing views, it seems clear that in order for employees to be promoted they will need to apply, along with other candidates, for advertised posts.



### 4.3.3 The Labour Relations Directorate

*Responses to Question 1: What Portfolio do you hold in the Department of Justice? For how long have you been in this position?*

Respondent 0015 stated that he had been a Deputy Director since 1999. Respondent 0016 said he had been a Senior Personnel Officer for the past five years, and respondent 0017 said that he had been a Senior Personnel Officer since 1<sup>st</sup> March 2000. Respondent 0018 said he had been a Principal Personnel Officer since 1999 and respondent 0019 said he was a Principal Personnel Officer.



*Responses to Question 2: How long have you been working for the Department of Justice?*

Respondent 0015 stated that he had been with the department for more than twenty-one years. Respondent 0016 said that he had been with the department for five years, and respondent 0017 said that he had been with the department for two years and six months. Respondent 0018 said that he had been with the department for three years and respondent 0019 stated for five years.

*Responses to Question 3: Please give a brief description of your Current Portfolio in the Department of Justice?*

Respondent 0015's duty was to handle employee relations and head the sub directorate by dealing with disciplinary matters. Respondent 0016 stated that his duties were to give

administrative support to the line managers, and to provide advice to the department on possible steps to be taken in initiative discipline. Respondent 0017's duties are to perform administrative work by advising employees on possible steps to be taken in disciplinary proceedings.. Respondent 0018 assists in keeping and evaluating statistics with regard to grievances and misconduct matters. This was done by ensuring that the statistics were completed and updated on a monthly basis. Respondent 0019 worked with the sub directorate dealing with workers' daily complaints.

*Responses to Question 4: According to your own understanding, what does Affirmative Action stand for?*

Respondent 0015 understood AA to be a means to solve past imbalances in employment in terms of race and gender. These people were currently given first preference by norms of AA in terms of appointments and promotions so as to level the playing field. Respondent 0016 saw AA as levelling the playing fields in terms of employment opportunities. Respondent 0017 said that AA was designed to address the imbalances of the past by appointing previously disadvantaged people. Respondent 0018 said AA meant equal opportunities for everyone. Respondent 0019 stated that AA corrected racial imbalances in the work place because of the past racist government policies and laws. Now the pattern had been changed by appointing people of other races and gender in order to balance the ratio.

*Responses to Question 5: Do you believe in Affirmative Action and Gender Equity? Give reasons.*

All the respondents said that they believed in AA and gender equity. Respondent 0015 said that both AA and gender equity were related to employment equity because they are about fairness. There was a need to address past inequality based on gender, in line with the Constitution and other relevant legislation such as the Employment Equity Act. Respondent 0016 stated that AA offered the previously disadvantaged people the opportunity to participate fully in the work environment. Respondent 0017 said AA and gender equity had taken away the inferiority complex that female employees had, because in the old dispensation they were belittled. Respondent 0018 said that AA and gender equity was important in building the country and a united society. Gender Equity should be implemented through AA policies. Respondent 0019 stated that he supported AA and gender equity, but felt that women (black and white) must be given preference.



*Responses to Question 6: Do you think Affirmative Action should be implemented in the Department of Justice? Give reasons.*

All the respondents gave a yes answer. Respondent 0015 said that Africans were a majority in the population and were subjected to all forms of discrimination in the past. Therefore there was no way that the department could ignore AA as it has to be implemented to correct past imbalances. Respondent 0016 said that, prior to the democratic dispensation, the Department was comprised almost exclusively of white males at senior management levels and in the judiciary. This situation had to be changed. Respondent 0017 added that AA should be implemented in the department in order to promote a healthy and harmonious work environment. The implementation of this process would also enable the department to recruit suitable personnel from all sections of the South African population. Respondent 0018 said that AA had been implemented

and it is an ongoing process. Respondent 0019 said that, whilst the Department was predominantly white in the past, currently more than 50% of staff were black (African, Coloured or Asian). This respondent further added that the process should continue and that AA should be implemented further until 80% of staff were black.

*Responses to Question 7: Has Affirmative Action been implemented in the Department of Justice? Give reasons.*

Respondent 0015 agreed that AA had been implemented, as part of the process of rationalization that had been underway since 1997. Through this process, many employees from previously disadvantaged groups had been promoted to higher levels. Respondent 0017 also replied in the affirmative. However, he felt that more training and workshops were needed regarding AA to achieve greater awareness. Respondent 0018 agreed and said it was evident that AA had been implemented, if one looked at the number of employees in the department. He believed it was an ongoing process. Respondent 0019 agreed saying they had more black managers in top positions and these managers were now in the driving seat of the AA process in the Department. For example, there is an African Director-General, and of the eight Deputy Directors General six are black.

*Responses to Question 8: If yes, has Affirmative Action been successfully implemented?*

Respondent 0015 said he believed that AA had been successfully implemented in the department. However, they still needed to see more people with disabilities and the necessary facilities in the department. Nonetheless, some progress had also been made in

this regard. Respondent 0016 and 0017 disagreed on any success of AA being implemented and did not give any reason. Respondent 0018 agreed that AA has been successfully implemented but did not give reasons for this. Respondent 0019 agreed and said he was proud to say that he was himself a product of AA implementation. He said that more than ever black people and women were taking leading management positions in the Department.

*Responses to Question 9: Are there any Problems encountered in implementing Transformation? Give reasons.*

Respondents 0015, 0016, 0017 and 0018 agreed that there had been problems. Respondent 0015 stated that there were problems encountered and that the reason was that AA was not an event but a process. Therefore, it would be unrealistic to think or expect that in this process there would not be resistance, especially from those who saw transformation as a process that removed them from their status or comfort zones. For example, there was currently a process underway of separating the powers of the judicial and administrative heads of magistrate's offices. Formerly most of the office heads were magistrates. In many cases the magistrates have been reluctant to share their expertise with the newly appointed office heads. Respondent 0016 added that there had been little consultation or transparency in the whole transformation exercise. Respondent 0017 said that, during the process of transformation, some people resisted change. This was because they were scared of being victimized. Respondent 0018 said that, as with all new policies, there were bound to be some problems. The key question was how one goes about dealing with them. Respondent 0019 said he had not seen many problems,

although he was aware that some colleagues had opted to resign because they felt increasingly insecure.

*Responses to Question 10: How were those Problems, dealt with?*

Respondent 0015 said the department was currently undergoing restructuring. In this process, new units called business units had been established, each headed by a managing director. The rationale behind this was to manage the Department by using business principles as in the private sector. One hopes that this would address most transformation issues. Respondent 0016 said that management and the unions had declared a number of disputes around the issues of AA, but an agreement had been reached in the central bargaining chamber on procedural guidelines for AA. Respondent 0017 stated that both the employer and employees sat together when making decisions. The transformation process was communicated simply and clearly so that employees were able to understand it. Employees were given opportunities to air their frustrations, grievances and fear through the collective bargaining system. Respondent 0018 said that, as an ongoing process of implementing AA, minor problems were bound to occur. Respondent 0019 did not answer the question.

*Responses to Question 11: Do you think by the year 2005 the Department will have reached its required target of 30% for women in senior management positions? Give reasons.*

Respondent 0015 said that this would depend on consistency, especially with regard to how newly created posts in the various business unit would be handled. One hoped each business unit would not create its own principles and procedures that would defeat the

overall objectives of the department. Respondent 0016 said the Department would not reach the targeted number of women in the department, because 95% of the senior management positions had already been filled, only a small percentage by women. Respondent 0017 said the target would be reached by the year 2005, because the Department was enthusiastic about promoting workforce diversity. Women were proving their capabilities and they believed in themselves. Respondent 0018 agreed with the question and did not give reasons. Respondent 0019 also agreed with the question and said the target would be reached before the year 2005. The department was fully behind the empowerment of women in the work place.

*Responses to Question 12: What criteria are used in promoting employees?*



Respondent 0015 said promotion was mainly through the advertisement of posts, which allowed various applicants to compete. Normally, the advertisement would contain the following statement: “The department of Justice is an equal opportunity employer. In the filling of vacant posts the objectives of section 195 (1) (i) of the Constitution of SA. 1996 Act 128 of 1996 and the staffing policy of the department will be taken into consideration”. Respondent 0016 said that employees were promoted only when a vacancy exists and they should apply for the advertised post and compete with other candidates. Respondent 0017 added by saying posts were advertised and employees competed for those posts. Respondent 0018 did not write anything, and respondent 0019 said fair criteria were applied in the promotion of employees.



#### **4.3.4 The Gender Unit Directorate**

*Responses to Question 1: What Portfolio do you hold in the Department of Justice? For how long have you been in this position?*

Respondent 0020 said his portfolio was a grade one Senior Administrative Clerk. Respondent 0021 said he was an Assistant Administration Officer. Respondent 0022 stated that he was a Researcher, and Respondent 0023 was a Consultant Maintenance Project Leader.

*Responses to Question 2: How long have you been working for the Department of Justice?*

The duration ranged between 5 years and 5 months. Respondent 0020 stated that he had been in the department since May 2002. Respondent 0021 had been in the Department since October 1998, and Respondent 0022 since March 2002.

*Responses to Question 3: Please give a brief description of your Current Portfolio in the Department of Justice?*

Respondent 0020 said his duties were to organize workshops, arrange meetings, check the Director's diary, and organize filing systems and stationery. Respondent 0021 deals with the victim empowerment programme, and also assists in monitoring and implementing policies. He is also responsible for certain gender projects, as well as providing advice to the Ministry and assisting in speech writing. Respondent 0022 did not write what his portfolio entails. Respondent 0023's duty was to co-ordinate all the maintenance of the Employment Justice Programme, by streamlining and automating the maintenance administrative process.

*Responses to Question 4: According to your own understanding, what does Affirmative Action stand for?*

Respondent 0020 defined AA as a necessary form of transformation. Respondent 0021 said that AA increases the number of black people in employment, and ensures that the organization's employment equity targets are achieved. Respondent 0022 defined AA as a positive action to balance the previously injustices committed to the majority of the people. Respondent 0023 said that AA ensures that the previously disadvantage groups are able to take their rightful place in the workplace at a faster place than would otherwise be the case.

*Responses to Question 5: Do you believe in Affirmative Action and Gender Equity? Give reasons.*



All the respondents said that they believed in AA and gender equity. Respondent 0020 said that he believed that people who were previously disadvantaged must get first preference. Respondent 0021 said that many qualified people from different races and gender had not previously had the experience to excel. However, although he believed in genuine forms of AA and gender equity, he nevertheless felt that senior management were sometimes only interested in meeting their EE targets, without necessarily taking qualifications or abilities into account. Respondent 0022 said that it was a right thing to do. Respondent 0023 believed in both AA and gender equity although it should not be applied to the detriment of other objectives of the Department. If not applied with caution and sensitivity, AA could lead to decreased productivity and service delivery, as well as negative attitudes in the work place.

*Responses to Question 6: Do you think Affirmative Action should be implemented in the Department of Justice? Give reasons.*

Respondent 0020 said that there were still some inequalities in the Department that need to be addressed. Respondent 0021 said that AA was necessary because the Department was an AA employer. Within the judiciary, in particular, there was a great need for AA. Respondents 0022 and 0023 felt that AA had already been implemented in the Department. Respondent 0023 said that this had helped to create a representative work force, capable of relating to all the different groups of people in need of its services.

*Responses to Question 7: Has Affirmative Action been implemented in the Department of Justice? Give reasons.*

Respondent 0020 agreed and said that AA was working in the gender directorate and he was happy with his job. Respondent 0021 agreed and added that representivity within the judicial system had improved dramatically, although there were still too few female judges and managers. Respondent 0022 left the space blank. Respondent 0023 agreed with the question. As a woman, she felt that she had been empowered by the Department, being employed in a much more senior position than would have been the case ten years ago. In her directorate, most of the race, gender and social groups were represented and worked well together as a team.

*Responses to Question 8: If yes, has Affirmative Action been successfully implemented?*

Respondent 0020 said he did not know. The other respondents agreed that AA had been implemented successfully or reasonably successfully, though more in the case of black

people than women. According to Respondent 0023, AA and gender equity had been implemented without a major loss of knowledge and skills. There was a very positive attitude between all the different groups and an enhanced understanding of different cultures.

*Responses to Question 9: Are there any Problems encountered in implementing Transformation? Give reasons.*

Respondent 0020 agreed that there had been some problems, largely because some people do not appreciate change. He did not know what their problem were but hoped that their children would show them the way. Respondent 0021 agreed and said some people were resistant. Respondent 0022 did not write anything. Respondent 0023 agreed and said personally that she had encountered resistance from some of her colleagues, as well as from some of the courts she had visited. People resisted change largely because they were worried about losing their jobs or their status. Officials sometimes resisted transferring their skills to their colleagues, thinking that they might replace them.

*Responses to Question 10: How were those Problems, dealt with?*

Respondent 0020 said that improved communication between management and staff was needed to ease anxieties about AA. Respondent 0021 said that AA should be incorporated into all policies and procedures, leaving employers no choice other than to accept it. Respondent 0022 left the space blank. Respondent 0023 said that problems were dealt with in a sensitive way, reassuring officials that transformation was eventually good for both the workplace and the community. Every small positive gesture was a

building block towards healing and understanding. Employees should be reassured about their own personal job security.

*Responses to Question 11: Do you think by the year 2005 the Department will have reached its required target of 30% for women in senior management positions? Give reasons.*

Respondent 0020 stated optimistically that the department would definitely reach the targeted number. He definitely felt that women should be given a chances to show their skills and competency. Respondent 0021 said that she hopes the target for women will be reached by the year 2005, as currently there was a problem with the availability of qualified women for senior positions in government. Respondent 0022 did not write anything. Respondent 0023 felt that the Department would need a lot of encouragement if it was to reach the target.



*Responses to Question 12: What criteria are used in promoting employees?*

Respondent 0020 mentioned the qualities that an employee should possess to be promoted. These included hard work, discipline, preparation, respect, punctuality, communication, behaviour and appearance. Respondent 0021 said that the criteria were skills, the ability to perform and do well in your work, and commitment to your work. Respondent 0022 left the space blank. Respondent 0023 said that he had observed that the criterion was purely about getting the best person for the job.



### 4.3.5 The Planning Directorate

*Responses to Question 1: What Portfolio do you hold in the Department of Justice? For how long have you been in this position?*

Respondent 0024 said his portfolio was that of Senior Personnel Officer. Respondent 0025 works as a Senior Personnel Officer. Respondent 0026 has been a Secretary since 1999, and Respondent 0027 is a Principal Personnel Officer.

*Responses to Question 2: How long have you been working for the Department of Justice?*

Respondent 0024 has been with the Department since 1995, Respondent 0025 since 1999, and Respondent 0026 since 1997. Respondent 0027 has been with the Department for fifteen years.



*Responses to Question 3: Please give a brief description of your Current Portfolio in the Department of Justice?*

Respondent 0024 described his portfolio as evaluating notches and merit, and carrying out secretariat tasks for the Principal Personnel Officer. Respondent 0025 is involved in evaluating merits, awards, promotions and notches. Respondent 0026 is involved in general administration work. Respondent 0027 deals with merit awards and notches for officers at the national office.

*Responses to Question 4: According to your own understanding, what does Affirmative Action stand for?*

Respondent 0024 defined AA as giving every person a permanent job regardless of race, colour and gender. Respondent 0025 said that AA was based on everybody getting equal opportunities. Respondent 0026 did not write anything. Respondent 0027 said that men and women should be treated equally by the Department.

*Responses to Question 5: Do you believe in Affirmative Action and Gender Equity? Give reasons.*

Respondent 0024 agreed and believed in AA and gender equity, in particular because it empowers women and enables them to move into more senior positions. However, he added that AA policies were sometimes implemented unfairly by appointing people who did not have the necessary qualifications and experience for the job. Respondent 0025 agreed, and added that all employees should be given a chance to prove themselves. Respondent 0026 but did not give any reasons. Respondent 0027 agreed but felt that women were not being sufficiently empowered to enter into senior positions within the Department.



*Responses to Question 6: Do you think Affirmative Action should be implemented in the Department of Justice? Give reasons.*

Respondent 0024 agreed that AA should be implemented in the department and added that AA policies had been in place since in 1997, enabling a lot of people from designated groups to obtain jobs within the Department. Respondent 0025 agreed because AA was part of transformation in the department and everyone should be given opportunities to prove themselves. Respondent 0026 agreed but did not give reasons. Respondent 0027 agreed because it would contribute towards the smooth running of the Department.

*Responses to Question 7: Has Affirmative Action been implemented in the Department of Justice? Give reasons.*

Respondent 0024 said that AA had been implemented in the Department because there were now far more employees from other races (Africans, Coloured and Asians) than was the case previously. Respondent 0025 was not sure whether AA had been implemented because staff at his level were not informed whether AA has been implemented or not. Respondent 0026 did not write anything, while Respondent 0027 said she was not sure.

*Responses to Question 8: If yes, has Affirmative Action been successfully implemented?*

Respondent 0024 said he was not certain as to whether AA had been successfully implemented or not. Respondent 0025 said he was not sure about the success of AA in the department because transformation was still taking place. Respondent 0026 did not write anything, and respondent 0027 said she did not have any idea.

*Responses to Question 9: Are there any Problems encountered in implementing Transformation? Give reasons.*

Respondent 0026 left the space blank. All of the other respondents stated that they were not aware of any problems in implementing transformation in the Department.

*Responses to Question 10: How were those Problems, dealt with?*

Again Respondent 0026 did not write anything. Because the other respondents were unaware of implementation problems, they naturally could not comment on how such problems were addressed.

*Responses to Question 11: Do you think by the year 2005 the Department will have reached its required target of 30% for women in senior management positions? Give reasons.*

Respondent 0024 said the Department was working quite hard at this and would most probably achieve the target. Respondent 0025 was optimistic that the target would be met. Respondent 0026 thought that the target would be reached but did not give any reasons. Respondent 0027 also thought the target would be reached but only if appointments were carried out in a fair way.

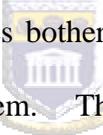


*Responses to Question 12: What criteria are used in promoting employees?*

Respondent 0024 said that in the past an employee was expected to have worked for a period of three consecutive years before qualifying for promotion. The previous promotions policy has now been abolished and management is currently seeking to replace it with a new policy. Respondent 0025 said promotion no longer exists as the previous policy was abolished in 2001. Staff now have to compete for vacant posts at a higher level with other internal and/or external candidates. Respondent 0026 felt that employees could still get promotion by attending training courses. Respondent 0027 stated that staff seeking to advance their careers would need to apply for vacant posts at a higher level.

#### **4.3.6 Interviews**

In addition to the questionnaires, the author was also able to interview the Public Relations Officer from the Communication Department in the NDJCD, as well as the Chief Director of the Selection, Personnel and Promotion Directorate. I was also allowed to view a Departmental video recording on transformation which contained presentations by the Director General and the Managing Director of Human Resource Department.

In the interview with the Public Relations Officer the author asked why some employees did not seem to have an insight about developments happening in their departments. He replied that, in his experience, many employees tend to ignore such developments unless their own interests are materially affected. He said that his own department frequently sends out notices to employees requesting them to collect the internal newsletter. Typically, however, very few employees bother to collect them. The Public Relations Officer also mentioned another problem.  This was that, in his experience, many managers would pay lip service to the need for transformation and employment equity at management meetings. However, when it came to implementing appropriate strategies and plans in their own directorates, they were often far less committed.

The Chief Director of the Selection, Personnel and Promotion Directorate said that the Justice and Constitutional Development Department only started to take affirmative action and employment equity seriously after they were challenged in the High Court. Since then, however, he had noticed a much greater level of commitment to AA and employment equity amongst most managers, and there was an eagerness to transform the

Department to be a better workplace for all employees (black and white, men and women), to work and succeed.

On the departmental video-recording, the Director-General (DG) pointed out that transformation in the department would be in a form of staff knowing what would be there for them in terms of change and how they would benefit from it. He added that change should be managed properly. He further stated that change was part of transforming the Department for the better and yet employees tended to be threatened by change especially when little or no explanation was given for the reasons behind it. He argued that the fears of the employees would be eased through more effective forms of communication in future. However, he also mentioned that the limits placed by the Government on staff increases in the Department in the period since 1998 had placed an obvious constraint on affirmative action and employment equity through the recruitment and selection processes.

Also on the video-recording, the Managing Director of Human Resource Department stressed that, in pushing forward with affirmative action and employment equity, the Department would design and implement a change management process that would:

- Deal with the employees' fears;
- Include a skills audit involving all staff, to help identify the gap between the skills that are available and the skills that will be needed in the future;
- Include a strategy to assist staff in acquiring the necessary skills.
- Manage change effectively by involving all employees.



#### **4.4 SUMMARY**

As this chapter is in many ways the most substantive one in the research report, a summary and conclusion of the main findings will form an important part of the next and concluding chapter (chapter 5). It would have been unnecessarily repetitive to have repeated the same points here.



## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATIONS**

#### **5.1 SUMMARY AND CONCLUSION**

As this research report has shown, the Department of Justice and Constitutional Development's vision is to transform the administration of justice to create a system which is cheaper, simple, more effective, efficient and generally fair. The end result will be a system which is representative of and responsive to the needs of the entire South African community. To realise its vision, the Department has introduced strategies for affirmative action, employment equity and gender equity to achieve greater effectiveness and efficiency as well as to meet its constitutional obligation to ensure that its personnel reflects the demography of the entire South African society. The Department's approach has been a flexible one, designed not to fill all posts with black persons and or women candidates at all cost but generally to reflect the demographics of the South African Community in all of its occupational classes and at all levels.

With regard to representivity within the Department, this report has demonstrated that the Department has realized the target for a black management of at least 50% that was set out in the Government White Paper on the Transformation of the Public Service and the White Paper on Affirmative Action in the Public Service. Gender representivity at the management levels has proved more difficult to realize, however. Although the percentage of female managers has increased from 6% in 1996 to 23% in 2003/04, there is still some way to go if the Department is to meet its target of 30% by 2005. Nevertheless, as the Department's Annual Report for 2003/04 shows, the rate of female

promotions into management positions is certainly improving. During 2003/04, seven African women were promoted to senior management positions, and 101 black women (77 African, 11 Coloured and 13 Indian) were promoted to middle management positions.

With respect to the Department as a whole, the 2003/04 Annual Report shows that Black people constitute 71%, of whom black males constitute 35% and black females 36%. Males constitute 46% of the whole Department and females 54%. Admittedly a large proportion of black employees, and black women in particular, are concentrated in the lower ranks of the Department. With respect to the magistracy and the judiciary, this research report has shown that, whilst the Department's targets for magistrates are more or less on track, the judiciary still has some way to go, especially with respect to the targets set for female judges.



The increasing numbers of black and female employees in the Department is only one part of the story. The researcher felt that it was important to assess the extent to which the Department has transformed in ways which enable such people to succeed and feel comfortable and empowered in their posts. It was also important to investigate the general levels of awareness within the Department about affirmative action and gender equity, as well as challenges and constraints that have affected the attempts to achieve a more representative, diversified and empowered workforce.

It is these kinds of issues that the researcher looked at through the questionnaires and interviews. The main conclusions that emerge are as follows. In the first place, most of

the respondents who took part in the questionnaire process had quite a clear understanding of the nature of affirmative action and employment and gender equity, as well as the purpose of AA and employment equity strategies in terms of redressing past imbalances and enabling the Department to draw upon the diverse skills and talents of all South Africans rather than a minority as in the past.

In the second place, most of the respondents declared themselves to be in favour of AA and gender equity strategies, providing they were implemented fairly and consistently and not in tokenistic way. Most of them stressed that AA beneficiaries should have the necessary skills, experience and/or potential to carry out their tasks effectively. If this was not the case, AA strategies would not gain the support of staff and would most probably fail.



In the third place, there was less agreement amongst the respondents when it came to the question of the extent to which AA and gender equity strategies had been effectively implemented in the Department. Some felt that the AA process was already complete, whereas others felt that there was still some way to go. Some pointed out that AA and gender equity had been implemented more effectively in some departments but not in others. Quite a number of respondents were unsure, which was quite a striking observation considering that most of the respondents were in supervisory or middle management positions.

In the fourth place, although a number of respondents claimed that they were unaware of challenges and problems facing the implementation of the Department's AA, employment equity and gender strategies, others listed quite a number of challenges and constraints. So too did some of the people interviewed. Their perceptions of the challenges and constraints included:

- The lack of interest and awareness about AA and employment equity by many employees. They only became interested when their own positions and interests were threatened.
- Resistance to change by some employees and managers, especially white employees and managers. This often made it difficult for black and female managers to carry out their work effectively.
- The lack of executive management support for AA and employment equity in some directorates. Many managers only paid lip-service to the need for a more representative service.
- The lack of an effective communications strategy for informing employees about the need for AA and employment equity.
- The lack of involvement by employees in the formulation of such strategies.

- The fact that some AA appointments of black people and women have been tokenistic, and not based on the possession of appropriate skills, experience and /or potential.
- The capping of the personnel establishment in the Department which has limited the capacity to promote AA through the creation of new posts (this point was stressed by the DG on the Departmental video-recording).



## 5.2 RECOMMENDATIONS

To assist in the Department of Justice and Constitutional Development in addressing some of the above challenges and constraints, in particular in ways which promote the empowerment and overall development of women in the Department, the following are recommended:

1. Recognising the fact that women are still disadvantaged as compared to men in many sections of the Department of Justice and Constitutional Development, it is recommended that the Department should provide more funding for women for training, capacity building and, in particular, tertiary studies. This will help in developing a pool of skilled female personnel from which the Department could select those with leadership potential for fast-tracking to senior positions.
2. Given the fact that there are numerous problems faced by employees in terms of career development in the department, it is recommended that each employee's career path should be charted with them and their progress monitored regularly. The responsibility for this should rest with the career management section of the Department, with the assistance of the training and development division.
3. Training of the employees should be aligned with their needs and abilities, as well as with the needs of the Department. This should be preceded by a skills audit.

4. Promotion to senior position should be biased towards those who have been through the Department's training programmes and have shown progress. In addition, those who have been identified for promotion could be placed on a mentoring programme. Special attention in this regard should be directed to black and female employees.
5. The Department's training and development division, together with the recruitment and selection division, should map out a clear strategy for fast tracking candidates from designated groups with the necessary potential for middle and senior management roles. A clear plan for equipping them with the necessary skills and support will also need to be developed.



6. The Department should introduce a more effective communication and information strategy to ensure that all employees are informed and made aware of the need for transformation, affirmative action and employment equity, as well as the plans and changes that are being put in place. Newsletters should be made available to all employees and they should be encouraged to read them. Copies of the Department's Annual Reports should also be made available.
7. The performance-related contracts for Heads of Departments should include specific AA targets (particularly in relation to gender), thus giving HODs the necessary incentive to take a more proactive approach to affirmative action and representivity.

8. Awareness training for senior managers should be introduced to enable them to plan and implement more effective strategies for affirmative action and gender equity. This should be part of a broader awareness campaign throughout the Department. As part of this broader awareness raising process, dedicated, skilled and committed members of non-designated groups should be given reassurance with regard to their job status.
  
9. Special programmes, such as valuing and managing diversity, should form part of public service affirmative action strategies to prevent the "old" bureaucratic ethos perpetuating itself as new candidates are recruited to the service. A change in ethos is critical to changing the  public service into an effective, efficient and representative arm of government.
  
10. Monitoring and evaluation of the affirmative action and employment equity processes should take place on a regular basis to enable the Department to assess the extent to which change is taking place. This should go beyond the monitoring of figures relating to representivity by examining qualitative changes in the environment, practices and processes of the Department.



## REFERENCES

- Adams, C. (1993). *Affirmative Action in a Democratic South Africa*. Kenwyn: Juta.
- Agocs, C. and Burr, C. (1996). Employment Equity, Affirmative Action and Managing Diversity: Assessing the differences. In *Workforce Diversity and Competitive Strategies: Human Resource Policies and Practices in the 1990`s*, 17(4 -5).
- Baker, T. L. (1999). *Doing Social Research*. Singapore: MCGraw Hill.
- Bless, C. and Higson-Smith, C. (1995). *Social Research Methods: An African Perspective*  
Kenwyn: Juta.
- Centre for Development Studies (May 1992). *Affirmative Action in a New South Africa: The Apartheid Legacy and Comparative International Experiences and Mechanisms of Enforcement*. Cape Town: University of the Western Cape.
- Charlton, G. D. and Van Niekerk, N. (1994). *Affirmative Action Beyond 1994: Laying the Foundation for Comprehensive and Effective Affirmative Action, Into the 21 century*.  
Kenwyn: Juta.
- Clayton, S. D and Crosby, F. J. (1992). *Justice, Gender and Affirmative Action*.  
Michigan, USA: University of Michigan Press.
- Dye, T. R. (2002). *Understanding Public Policy*. Upper Saddle River: Prentice Hall.
- Foster, D. and Louw-Potgieter, J. (1991). *Social Psychology in South Africa*. Isando:  
Lexicon Publishers.
- Glazer, N. (1975). *Affirmative Discrimination: Ethnic Inequality and Public Policy*. New  
York: Basic Books.

Herholdt, W. and Marx, M. (1999). Employment Equity in South Africa: A Guide to Affirmative Action Success. Johannesburg: Prentice Hall South Africa.

Hugo, P. (1992). Redistribution and Affirmative Action: Working on the South African Political Economy. Halfway House: Southern Book Publishers.

Human, L. (1993). A Practical Guide Affirmative Action and the Development of People. Kenwyn: Juta.

Innes, D.; Kentridge, M. and Perold, H. (1993). Reversing Discrimination: Affirmative Action in the workplace. The Innes Labour Brief. Cape Town: Oxford University Press.

Jauch, H.M. (1998). Affirmative Action in Namibia: Redressing the Imbalances of the Past Windhoek: New Namibia Books.

Lewis, D.H.; Ngoasheng; M.M.; Baskin, J.M.; Buhlungu, S.M.; Bird, A.P.; Cheadle, H.M.; Kaplan, D.E.; Lamprecht, A.I.; Liebbrandt, D.M.V.; Ma.tashe, G.S.; Mhone, G.C.Z.; Natrass, N.J.; Ramano, M., Santho, S. and Segal, N.S. (1996). Restructuring the South African Labour Market: Report of the Presidential Commission to investigate Labour Market Policy. Parow. CTP Book Printers.

Loubser, M. (1996). Questionnaire Design. In Martins, H., J. Loubser, M., and De J van Wyk, H. (eds.). Marketing Research: South African Approach. Pretoria: Unisa Press.

Martins, H.J., Loubser, M. and De J van Wyk, H. (1996). Marketing Research: South African Approach. Pretoria: Unisa Press.

Moens, G. (1985). Affirmative Action: The New Discrimination. Center for Independent Studies.

Nzimande, B. and Sikhosana, M. (1996). *Affirmative Action and Transformation*. Durban: Indicator Press.

Peron, J. (1992). *Affirmative Action Apartheid and Capitalism*. Saxonwold: Free Market Foundation.

Qunta, C. (1995). *Who's Afraid of Affirmative Action: A Survival Guide for Black Professionals*. Cape Town: Kwela Books.

Reskin, B. and Padavic, I. (1994). *Women and Men at work*. California: Pine Forge Press.

Sanders, W.B. and Pinhey, T.K. (1983). *The Conduct of Social Research*. New York: CBS College Publishing.

Sapsford, D. and Tzannatos, Z. (1993). *The Economics of the Labour Market*. London: The Macmillan Press.



Strauss, A.L (1990). *Basics of qualitative research: grounded theory, procedures and Techniques*. Newbury Park: Sage.

Stroker, D.J. (1989). Basic Sampling Methods. In Schnetler, J. (ed). *Survey Methods and Practice*. Pretoria: Human Science Research Council.

Thomas, A. (1996). *Beyond Affirmative Action: Managing Diversity for Competitive Advantage in South Africa*. Randburg: Knowledge Resources.

## **POLICY DOCUMENTS**

Constitution of the Republic of South Africa: Act 108 of 1996.

Department of Justice and Constitutional Development (2004). *Annual Report 2003/2004*.

Department of Justice and Constitutional Development (2002). *Employment Equity Policy: Final Draft*. Directorate: Transformation and Corporate Strategy.

Department of Justice. (1999). *Gender Policy Statement: Balancing the scale of Justice through Gender Equality*. Pretoria. Directorate: Publications for the Chief Directorate: Transformation and Equity.

Ministry of the Public Service and Administration (November 1995). *White Paper on the Transformation of the Public Service*, Pretoria: Government Gazette No. 16838.

Department of Public Service and Administration. (December 1997). *White Paper on Human Resource Management in the Public Service*. Pretoria: Government Gazette No. 18594.



Department of Public Service and Administration. (April 1998). *White Paper on Affirmative Action in the Public Service*. Pretoria: Government Gazette number 18800.

Office of the President. (December 1995). *Labour Relations Act*. Cape Town: Government Gazette Number 16861.

Presidential Review Commission. 1998. *Developing a Culture of Good Governance: Report of the Presidential Review Commission on the Reform and Transformation of the Public Service in South Africa*. Cape Town: Government Printer.

Department of Labour (October 1998). *Employment Equity Act*. Cape Town: Government Gazette Number 19370.

## NEWSPAPER ARTICLES

Misbach, W. (2002). Race and Sex Equity is on Track. *Sowetan*, 24 May: 04.

Mokoena, M. (2000). White Amnesty, Affirmative Action and Economic Growth. *City Press*, 12 November: 2.

Rickard, C. (2001). Bringing a Woman`s Touch to the Bench, New Deputy Judge President Takes Sensitivity Heart. *Sunday Times*, 28 January: 10.



## **APPENDIX A - CONSENT LETTER**

**UNIVERSITY OF THE WESTERN CAPE**

### **School of Government**

---

University of the Western Cape, Private Bag X 17, Bellville 7  
Tel: +27 (021) 959 3803  
Fax: +27 (021) 959 3849

15 August 2002

Dear Madame/Sir

#### **RE: Granting Access to Collect Data**

I hereby would like to apply to be granted access to collect data from the Department of Justice.



I am a Masters student from the University of the Western Cape. My research topic is based on the Affirmative Action in the Department of Justice. The information that I am looking for is for my mini-thesis. Data will be collected regarding the following areas:

- Transformation in the Department.
- Statistics on Gender Equity.
- Employment Equity Act.
- Affirmative Action.
- Strategies used in forwarding Transformation.
- Problems encountered in forwarding Transformation.
- Any successes and failures.
- Future plans on things (Transformation) that need to be done.

I can be contacted at this Address: 1010 Extension One; Kwa –Thema; Springs; 1575.

My telephone is 082 6906433.

Thanking you in anticipation.

Yours faithfully.

.....

Charlotte Kunene (Miss)



## APPENDIX B - QUESTIONNAIRE

1. What **Portfolio** do you hold in the Department of Justice? For how long have you been in this position?

.....  
.....

2. For how **Long** have you been working for the Department of Justice?

.....

3. please give a brief description of your **Current Portfolio** in the Department of Justice?

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

4. In your own understanding what does **Affirmative Action** stand for?



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

5. Do you believe in **Affirmative Action and Gender Equity**? Give reasons.

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

6. Do you think Affirmative Action should be **implemented** in the Department of Justice? Give reasons.

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

7.Has **Affirmative Action** been implemented in the Department of Justice? Give reasons.

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

8.If yes, has it been **Successfully implemented?**

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

9. Are there any **Problems encountered** in implementing Transformation? Give reasons.

.....

.....

.....

.....

.....

.....

.....

10. How were those **Problems dealt** with?

.....

.....

.....

.....

.....

.....

.....



11. Do you think by the year **2005** the Department would have reached its required **target of hiring women** in senior positions? Give reasons.

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

12. What criteria are used in **Promoting employees?**

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

**THANK YOU FOR YOUR CO-OPERATION AND FOR SPENDING YOUR  
TIME FILLING IN THIS QUESTIONNAIRE!!!**



**APPENDIX C:**  
**LIST OF RESPONDENTS' CURRENT PORTFOLIOS**

**Respondents from the Personnel Selection and Promotion Directorate**

- Respondent 001 : Assistant Director Human Resource and Establishment Planning  
Respondent 002 : Deputy Director in Staff Provisioning and Utilization  
Respondent 003 : Senior Personnel Practitioner  
Respondent 004 : Assistant Director in Human Resource  
Respondent 005 : Deputy Director in Promotion and Recruitment  
Respondent 006 : Assistant Director in Branch Accountant and Human Resources  
Respondent 007 : Deputy Director in Human Resources and Establishment Planning  
Respondent 008 : Senior Personnel Practitioner  
Respondent 009 : Assistant Director in Research, Drafting Policies  
Respondent 0010 : Senior Personnel Practitioner



**Respondents from the Employment Equity and Transformation Directorate:**

- Respondent 0011 : Senior Personnel Practitioner  
Respondent 0012 : Director of Employment Equity and Transformation.  
Respondent 0013 : Assistant Manage in Employment Equity and Transformation.  
Respondent 0014 : Assistant Director in Employment Equity and Transformation

**Respondent from the Labour Relations Directorate:**

- Respondent 0015 : Deputy Director in Labour Relations  
Respondent 0016 : Senior Personnel Officer  
Respondent 0017 : Senior Personnel Officer  
Respondent 0018 : Principal Personnel Officer  
Respondent 0019 : Principal Personnel Officer

**Respondent from the Gender Unit Directorate:**

- Respondent 0020 : Grade one Senior Administration Clerk

Respondent 0021 : Assistant Administration Officer  
Respondent 0022 : Researcher  
Respondent 0023 : Consultant Maintenance Project Leader

**Respondents from the Planning Directorate:**

Respondent 0024 : Senior Personnel Officer  
Respondent 0025 : Senior Personnel Officer  
Respondent 0026 : Secretary  
Respondent 0027 : Principal Personnel Officer

