DAY ONE 26TH AUGUST 1992 Dear Delegate,

Welcome to International Executive Communications' conference on "Affirmative Action".

Before we begin I would like to draw your attention to a few practical details:

#### CONFERENCE NOTES

The notes presented in this volume are those made available to International Executive Communications by courtesy of the speakers. Should you wish additional information, or in the case of missing notes, please approach the speakers directly after his or her presentation. Alternatively, please make a note on your evaluation form for my attention, and I will forward your request to the speaker.

#### PROGRAMME CHANGES

Dawn Mokhobo, of Eskom, will not be able to present her paper at 11:15 today, however we are delighted that Danie Joubert, Human Resources Staffing Manager of Eskom, as chairman is willing and very able to address this module being both familiar with the human resources function and the role of Affirmative Action programmes within Eskom.

The hostesses at the registration desk are there to help you with any queries regarding the conference. Please do not hesitate to ask them or myself for help.

Telephones are available for your use in the foyer outside the conference room.

We will not interrupt the conference for telephone messages. All messages will be at the registration desk and your name will be posted on the board outside the conference room as soon as we receive a message for you. Please keep an eye on the board!

#### EVALUATION FORMS

We would like to know your opinions on the conference. Please fill in the evaluation form provided in this folder, and hand it to one of the organisers. All answers and comments are highly appreciated and will be of great help to us in continuously improving the quality of our service.

I hope that you find both days rewarding.

KIM TAYLOR

CONFERENCE PRODUCER

Em Taylor.

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#### AFFIRMATIVE ACTION

#### INDABA CONFERENCE CENTRE, FOURWAYS

DAY ONE: 26th August 1992

08:00 Refreshments

08:30 Chairman's Opening Remarks
Danie Joubert
Human Resources Staffing Manager
ESKOM

Hun its for all Same. Hold back. OHL Tickets HSRC

08:45 AFFIRMATIVE ACTION IN SOUTH AFRICA: WHAT ARE THE KEY ISSUES?

Gideon Malherbe
Manager: Management Development Affirmative Action
Consultant
CTU, ANGLO AMERICAN CORPORATION OF SOUTH AFRICA

09:30 A PRACTICAL APPROACH TO THE MANAGEMENT OF AFFIRMATIVE ACTION

Fiona Green
Manpower Development Manager
SALES HOUSE, EDGARS GROUP

- 10:15 Morning Tea
- 10:30 A NACTU OPINION ON AFFIRMATIVE ACTION
  Mahlomola Skhosana
  Deputy General Secretary
  NATIONAL COUNCIL OF TRADE UNIONS
- 11:15 AFFIRMATIVE ACTION IS THE SOLUTION TO SOUTH AFRICA'S SKILLS CRISIS

Danie Joubert Human Resources Staffing Manager ESKOM

- 12:00 Lunch
- 13:15 DEMOGRAPHICS AND AFFIRMATIVE ACTION
  Dr Chimere-Dan
  Population and Research Programme
  Department of sociology
  UNIVERSITY OF THE WITWATERSRAND

| 14:00 | THE LINE MANAGE<br>Michael Watkins | RS ROLE | IN   | ENSURING  | SUCCESS |
|-------|------------------------------------|---------|------|-----------|---------|
|       | Senior Manager<br>FIRST NATIONAL   |         | atio | n Develor | pment   |

- 14:45 Afternoon Tea
- 15:00 WHAT IS THE PROFITABILITY THREAT: ARE WE FACING THE FACTS
  OR OUR FEARS?
  Paul Alexander
  Human Resources Consultant
  OLD MUTUAL
- 15:45 A KENYAN CASE STUDY: FOCUSING ON A COUNTRY WHERE AFFIRMATIVE ACTION HAS BEEN INTRODUCED
  Margaret Njuguna
  Training and Personnel Manager
  LONRHO EAST AFRICA
- 16:30 Chairman's Closing Remarks
- 16:45 Close Of Day One

DAY TWO: 27th August 1992

- 08:00 Refreshments
- 08:30 Chairman's Opening Remarks
- 08:45 A SYSTEMS APPROACH TO CAREER MANAGEMENT AND AFFIRMATIVE ACTION

  Dawid Swart
  General Manager Personnel and Industrial Relations
  TOYOTA SA MARKETING
- 09:30 THE IMPORTANCE OF COMPANY INVOLVEMENT IN DEVELOPMENT AND TRAINING

  Don Wiggill

  Training Manager

  CTU, ANGLO AMERICAN CORPORATION
- 10:15 Morning Refreshments

#### 10:45 AFFIRMATIVE ACTION AND THE IMPLICATION ON ASSESSMENT METHODS

Alwyn Moerdyk Manager Psychological Services Central Services Organisation TRANSNET

#### 11:30 AN OPTION TO AFFIRMATIVE ACTION

Andrew Olivier
Managing Director
THIRD FOUNDATION SYSTEMS

12:15 Lunch

#### 13:15 PANEL DISCUSSION: CAN SOUTH AFRICA AFFORD AFFIRMATIVE ACTION?

Margaret Njuguna LONRHO EAST AFRICA

Gideon Malherbe ANGLO AMERICAN CORPORATION

Alwyn Moerdyk TRANSNET

Albire

14:15 Afternoon Refreshments

#### 14:30 ASSESSMENTS FOR INCENTIVE PROGRAMMES

Natalie Witthuhn Managing Director ORIGO TRAINING

#### 15:15 AN ANC OUTLOOK ON THE ECONOMIC FUTURE WITH AFFIRMATIVE ACTION

Albie Sachs
Member Of The Constitutional Committee
ANC

16:00 Chairman's Closing Remarks

16:15 CLOSE OF CONFERENCE

#### DAY ONE

GIDEON MALHERBE: AFFIRMATIVE ACTION IN SOUTH AFRICA: WHAT ARE THE KEY ISSUES?

ALL SLIDES INCLUDED IN DOCUMENTATION

FIONA GREEN: A PRACTICAL APPROACH TO THE MANAGEMENT OF AFFIRMATIVE ACTION

KEY POINTS OF PRESENTATION INCLUDED IN DOCUMENTATION

MAHLOMOLA SKHOSANA: A NACTU OPINION ON AFFIRMATIVE ACTION A COPY OF PAPER TO BE HANDED OUT AT THE END OF DAY ONE

DANIE JOUBERT: AFFIRMATIVE ACTION IS THE SOLUTION TO SOUTH AFRICA'S SKILLS CRISIS

A COPY OF PAPER TO BE HANDED OUT AT THE END OF DAY ONE ALL SLIDES ARE INCLUDED IN DOCUMENTATION

DR CHIMERE-DAN: **DEMOGRAPHICS AND AFFIRMATIVE ACTION**A COPY OF PAPER TO BE HANDED OUT AT THE END OF DAY ONE
ALL SLIDES ARE INCLUDED IN DOCUMENTATION

MICHAEL WATKINS: THE LINE MANAGERS ROLE IN ENSURING SUCCESS ALL SLIDES ARE INCLUDED IN DOCUMENTATION

PAUL ALEXANDER: WHAT IS THE PROFITABILITY THREAT ARE WE FACING THE FACTS OR OUR FEARS?

KEY POINTS OF PRESENTATION ARE INCLUDED IN DOCUMENTATION

MARGARET NJUGUNA: A KENYAN CASE STUDY: FOCUSING ON A COMPANY WHERE AFFIRMATIVE ACTION HAS BEEN INTRODUCED
A COPY OF PAPER TO BE HANDED OUT AT THE END OF DAY ONE

#### DAY TWO

DAWID SWART: A SYSTEMS APPROACH TO CAREER MANAGEMENT AND AFFIRMATIVE ACTION

KEY POINTS OF PRESENTATION ARE INCLUDED IN DOCUMENTATION

DON WIGGILL: THE IMPORTANCE OF COMPANY INVOLVEMENT IN DEVELOPMENT AND TRAINING

KEY POINTS AND SLIDES ARE INCLUDED IN DOCUMENTATION

ALWYN MOERDYK: AFFIRMATIVE ACTION AND THE IMPLICATIONS ON ASSESSMENT METHODS

A COPY OF PAPER TO BE HANDED OUT AT THE END OF DAY TWO

ANDREW OLIVIER: AN OPTION TO AFFIRMATIVE ACTION
A SYNOPSIS OF PRESENTATION INCLUDED IN DOCUMENTATION

NATALIE WITTHUHN: ASSESSMENTS FOR INCENTIVE PROGRAMMES
KEY POINTS OF PRESENTATION ARE INCLUDED IN DOCUMENTATION

ALBIE SACHS: AN ANC OUTLOOK ON THE ECONOMIC FUTURE WITH AFFIRMATIVE ACTION

TWO BOOKLETS ON AFFIRMATIVE ACTION INCLUDED IN DOCUMENTATION:

AFFIRMATIVE ACTION AND BLACK ADVANCEMENT IN BUSINESS

AFFIRMATIVE ACTION AND GOOD GOVERNMENT

DANIE JOUBERT

HUMAN RESOURCES STAFFING MANAGER

ESKOM

#### CURRICULUM VITAE

DANIEL ANDRIES JOUBERT



Danie Joubert is the Human Resources Staffing Manager of Eskom responsible for organisation and skills planning, student development, professional mentorship, education investment, skills assessment, recruitment, skills market development and the Eskom Technology Leadership Programme. He also coordinates Eskom's Human Resources Strategic Plan.

He was previously the Engineering Manpower Manager of Eskom's Engineering Group which has responsibility for all Eskom's major capital projects and power station engineering services.

Before that he held positions as head of manpower planning for Eskom and Iscor.

He is a qualified work study practitioner and holds a B Admin from the University of Pretoria. He has also completed Unisa's School from Business Leadership Advanced Executive Programme. He is registered as a General Personnel Practitioner with the South African Board for Personnel Practice.

He is presently the chairman of the Education and Training Committee of the South African Chamber of Business a member of the Private Sector Education Council (PRISEC) and is serving on the Education & Training Committee of the South African Engineering Association and the adjudication panel for the 1992 Technology Top 100 Contest.

#### GIDEON MALHERBE

MANAGER: MANAGEMENT DEVELOPMENT AFFIRMATIVE ACTION CONSULTANT

CENTRAL TRAINING UNIT ANGLO AMERICAN CORPORATION

#### CV - GIDEON MALHERBE

Mr Gideon Malherbe is from CTU at Maccauvlei, where he is responsible for all management development as well as being a consultant for organisations on strategic positioning and Affirmative Action.

Gideon gained his BA from the University of Cape Town and recently completed his MBA from WITS. Apart from being a keen golfer his main field of interest lies in the positioning of organisations in the new South Africa.

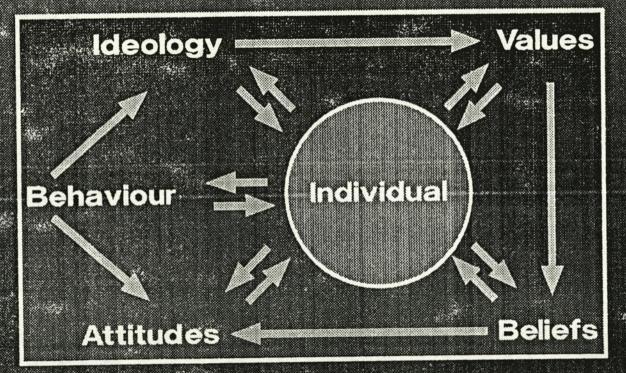
He is currently Consulting to a wide group of organisations both inside and outside the Anglo American fold.

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# AFFIRMATIVE ACTION IN THE NEW SOUTH AFRICA

## IDEOLOGY CHAIN



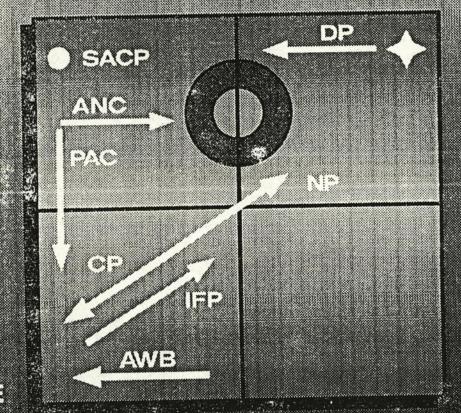
If the goal of an ideology is in conflict with the process, the process will invariably become the ideology

## INDIVIDUAL IN SOCIETY **POLITICAL** Vote **Power** SOCIAL ECONOMIC Human Land **Values Rights Ownership** Infra-Production structure Gideon Malherbe - C.T.U.

#### THE POLITICAL CHESSBOARD LIBERAL Democrat Labour DP UK USA ANC NP IFP СP **Tories** AWB Republic PAC CONSERVATIVE INDIVIDUAL **GROUP** Gideon Malherbe - C.T.U.

## SOUTH AFRICA - CHESSBOARD

LISIERAL



CONSERVATIVE

GROUP

INDIVIDUAL

# ECONOMIC DEMOGRAPHICS APARTHEID IDEOLOGY NON-DOMINANT GROUP DOMINANT GROUP Gideon Malherbe - C.T.U.

## ECONOMIC DEMOGRAPHICS CHANGE IDEOLOGY

NON-DOMINANT GROUP

DOMINANT GROUP

#### ECONOMIC DEMOGRAPHICS ACTUAL SITUATION

NON-DOMINANT GROUP

Ist World

3rd World

## ECONOMIC DYNAMICS

Corporate Sector Small Business Sector

Informal Sector Helpless Sector

Education Levels/Needs

50% Blacks illiterate 500 000 Skilled jobs empty by 2000

## THE EDUCATION ENTERPRISE

PHILOSOPHY

Non-racialism VS multi-racialism

**ORGANISATION** 

Co-option vs elected representation

CONTROL

Centralised vs community

CURRICULA

Unilateral vs multi-lateral

TRAINING

For past or future

Gideon Malherbe – C TU

## EDUCATION

- Promotion depends on ability at school
- Teach virtues of democracy
- Teach to respect justice, fair play and dignity

- V.S. Slabbert, 1989

# EFFECTS OF DISCRIMINATION ON INDIVIDUAL

Knowledge

Intellectual

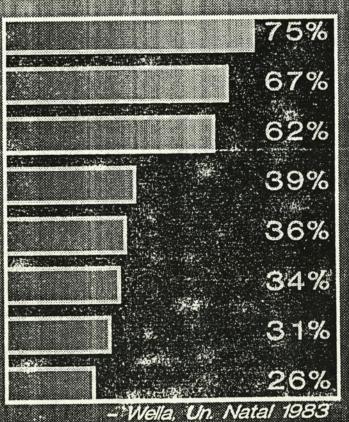
Social Skills

Cultural

Psychological

**Physiological** 

#### OBSTACLES TO BLACK ADVANCEMENT As Seen by Black Managers



75% Black educational system

67% Whites have no confidence in blacks

62% Irrelevant training and orientation

39% Statutory obstacles

36% Hollow job

34% Black's non-assertiveness

31% Cultural conflict

26% Poor selection

#### 4 STACES OF BLACK CRADUATE EMPLOYEE

| STAGE 1  | REALITY SHOCK | Occupational see-saw                      |
|----------|---------------|---|
| STAGE 2. | HOSTILITY     | Low acceptance;<br>criticise organisation |
| STAGE 3  | CONFLICT      | Us-them;<br>resignations                  |
|          | ACCEPTANCE    | Personal acceptance;<br>doing more        |

## AFFIRMATIVE ACTION PLAYERS

Government

Freedom Fighters

Judiciary

Power Groups

Industry

Management

Labour

### POSITIONING OF AFFIRMATIVE ACTION

- Born free and equal in dignity and rights"
- Equality vs Freedom
- Equality and Law
  - Equality before the law
  - Equal protection of the law
  - Equality by way of the law

## EQUALISATION

ECONOMIC

General Welfare

SOCIAL

Discrimination

POLITICAL | Reparations

# AFFIRMATIVE ACTION VIEWPOINTS

Non-discrimination

General Welfare

Reparations

## AFFIRMATIVE ACTION CONCEPTUAL FRAMEWORK

Constitutional

Legislation

Controlling mechanisms

Implementation

Public sector

Private sector

Property

Success criteria

# AFFIRMATIVE ACTION LIABILITIES

- Colour becomes a passport
- Encourages dependency on entitlements
- Nurtures a victim focused identity
- Rewards the underdog rather than the achiever
- Advancement by colour not competence

# APPIRMATIVE ACTION ASSETS

- Enforce equal opportunity
- Instil values that make for self-reliance
- Teach skills
- Attack poverty not colour

# AFFIRMATIVE ACTION WHO BENEFITS?

- DISADVANTAGED
  - Females
  - Racial Groups
  - Cast Groups
  - Disabled
- ELECT FEW?
- MIDDLE CLASS?
- **\*UNDER-PRIVILEGED MASSES?**

## SHIFTS IN ORGANISATIONS

- A Strategic Implementation
- A Culture and Values

- A Participative Management
- ∆ Conflict Management

#### MANAGE HUMAN RESOURCES

- Focus on future
- Include all in development need assessment
- Must build interracial tolerance
- Managed conflict becomes creative
- Can't ignore environment
- There is only one future
- No outsiders will share in our future

- Tony Frost - Lonhro 1991

## INDUSTRY WIDE EFFORT

- Resource Utilisation
- 2 Recognised Programme
- Research
- 4 Negotiations & Lobbying
- 5 Scope of Work

FIONA GREEN

MANPOWER DEVELOPMENT MANAGER

SALES HOUSE EDGARS GROUP Curriculum Vitae

Ethne Fiona Green

#### PERSONAL DETAILS

SURNAME : Green

FIRST NAMES : Ethne Fiona

DATE OF BIRTH : 15 October 1949

MARITAL STATUS : Married (second marriage)

CHILDREN : Andrew: 18 years: UCT student

Robert: 16 years: Scholar

ADDRESS : 13 Juniper Street

Randpark Ridge Ext 41

Randburg 2194

HOME TEL NO : 792 4375

WORK TEL NO : 495 6215

NATIONALITY : South African

#### EDUCATION:

- . Matric Greenside High School Johannesburg: Head Prefect 1966
- Transvaal Teacher's Diploma: JCE 1967-1969. House Committee member and Drum Majorette leader

#### WORK HISTORY:

. Jan 1970 - Dec 1973

Std 5 mathematics & physical education teacher. Responsible for consumable stock and TED circulars. (The latter being almost a full-time job!) Soccer and netball coach.

Jan 1974 - Dec 1979

Full time mother

Jan 1980 - Dec 1980

Head of mathematics department and Std 4 & 5 maths teacher. Resigned as no permanent post was available and felt younger son required more of my time.

Jan 1981 - Dec 1982

Joined World Books as a representative in order to earn products for own children. Rose to Area Manager. Resigned as I did not perceive this as a full time career.

Jan 1983 - August 1986

Joined Interman (Pty) Ltd, a language and communication training company, who specialise particularly in Black Development. Originally trained as an English Language Trainer using the Direct Method. Moved into selling and training part-time. Rose to Sales Manager. Resigned as I had left my husband, required the security of a large company and had reached a ceiling at Interman.

Sep 1986 - Oct 1987

Joined Sales House (part of the Edgars Group) as a Business Analyst: Merchandise Division.

Nov 1987 - May 1989

Offered Group Compensation Manager position involving job evaluation & compensation management for the whole Edgars Group. Accepted this position as it was high profile and afforded the opportunity to learn the group structure and operation. It was seen as a short-term objective for further promotion.

June 1989 - Current

Returned to Sales House as Manpower Development Manager responsible for:

- training & development
- manpower & succession planning
- career discussion & pathing
- Black Employee Development
- "Ombudsman" serving on Edgars Black Management Forum

This position also entails standing in for the Human Resources Director in his absence. Held the position of Personnel Manager: Merchandise Division for 6 months, as well as the above responsibilities, to enable a new Head Office Personnel Manager to "grow" into her job.

#### SPECIAL ACHIEVEMENTS

- Operation Edgrade: Commenced a Saturday school for Edgars employees' children in Jan 1987. This school now has a part-time co-ordinator, 40 voluntary teachers and 120 pupils ranging from Std 2 to Std 10. Subjects focused on are maths and english but enhancement programmes, such as PC skills, basic business concepts are included. 98% of the pupils are Blacks.
- Retail Development Programme: Selected in August 1988 to attend this 2 week residential "elite" Edgars programme.
- Learnt to speak Zulu (although not fluent) this opened doors that cannot be described.

#### COMMITTEES SERVED

- JCE House Committee: 1969
- Executive Nursery School Committee: 1980/81
- Management Committee: Cliffview Primary School 1983
- Tennis Club Committee: 1982/83
- Black Employee Development Task Force Chairperson: 1990

#### PROFESSIONAL MEMBERSHIPS

Individual member of National Black Management Forum

#### HOBBIES/INTERESTS

#### Sport: Active:

- Tennis
- Squash
- Hockey
- Canoeing
- Swimming
   (Although have not participated recently)

#### Spectator & keen interest:

- Soccer
- Rugby
- Motor racing
- Athletics
- Cricket
- Gymnastics

#### People Development:

Particularly Black children but also act as unofficial "mentor" to Black adults.

#### Gardening:

Started a garden from scratch in 1989 and am interested generally in this field.

#### Bird watching:

A new hobby.

#### Politics:

Follow politics closely and assist during elections.

#### A PRACTICAL APPROACH TO THE MANAGEMENT OF AFFIRMATIVE ACTION (SYNOPSIS)

#### FIONA GREEN: MANPOWER DEVELOPMENT MANAGER: SALES HOUSE

#### INTRODUCTION

I will present to you today issues that Sales House has addressed. Some, in fact most, aspects have been implemented and others are in the pipeline. Certain things I will discuss are my own personal view and not necessarily those of the Sales House Chain or the Edgars Group.

#### WHY HAS AFFIRMATIVE ACTION FAILED

\* Chaired a task force in July '90 which comprised line management and personnel to define 'the mess' i.e. Analyze our past and current approach. Essential to have black representation on such a forum.

\* Selection : Criteria too rigid. These were largely

education, experience, age as well as a battery of psychometric tests. Exact fits with the

criteria were the employees who failed.

\* Education : The huge gap in the level of education was

ignored. A black matriculant is really at +

the end of std. 7.

\* Fixed Period : The programme was 2 years with no consideration

for fast trackers or slow learners.

\* Theoretical : Exercises and tests were based on self-study

but once expected to be put into practice there

was very limited success.

\* High Profile : Creation of an 'elite' caused resentment from

experienced long-serving employees. Expectations were raised of definite management appointment after the completion of the

programme.

\* Manpower and Succession Plan -

No Link : It is essential that positions are available once "qualification" has occurred. This can

only happen if recruitment and development is

linked to a plan.

\* Monitoring

This was allegedly done by divisional staff with no central anchor person. Extremely complex in a multi-branch organisation with 40 plus trainees scattered country-wide.

#### DEVELOPING AN INTEGRATED APPROACH

\* Champion : There must be an individual driving the programme or process who lives, eats, breathes

black advancement. This is not necessarily the personnel manager. It could be anyone as long

as the belief and the commitment is there.

\* Mentors : It was decided to have 4 training stores in

each of the 3 regions. Store managers with a proven track record of employee development and, specifically, black employees, were selected as mentors. Their role is one of

overseeing and liaison. Training was provided.

\* Sponsors : Staff in the 12 training stores were selected

by the mentors to be the 'hands-on' sponsors of those highlighted for development. Training

was also provided.

\* Selection : All fixed criteria was shelved. Matric was

only preferable. A man-spec was drawn up and internal candidates considered first. For example a 31 year old with 12 years experience and a Std. 8 has been highly successfully

developed to store manager level.

\* Learner Paced : The programme has no fixed time period with no

guarantees of appointment to store management. A general assistant to supervisor is seen as progress. Everyone is on the same programme.

\* On-the-job : Some theoretical input but largely practical

on-the-job exercises guided by the sponsors. Most trainees are in jobs already and some are unaware they have been highlighted for

development - thus very low profile.

Normal Performance Appraisal Route :

Progress, advancement and/or appointment is through the normal appraisal route with careful monitoring. (To be discussed later in the talk).

#### **ENCOURAGING AN ATTITUDE CHANGE**

Black Management

Forum

Join the National BMF and encourage their involvement in the business. Encourage an internal BMF to challenge the company as well as to act as a sounding board.

Accountability

Add to job descriptions and goal sheets so that accountability for progress is measurable. Weight this heavily in the appraisal process second to the major functional goal.

Recognition

Introduce incentives such as Mentor/Sponsor of the month/year awards. Extra days leave, weekend away for two, movie tickets, once-off bonuses etc. Sponsor badges are under consideration.

Planning Boards :

Set up a forum comprising the champion, his boss and relevant staff, including a shop steward, to discuss progress and future strategy. This creates ownership and the understanding of different values.

Networking

Encourage observers in meetings, even at board level. Develop social interaction e.g. darts evening, pub lunches, soccer teams.

Training

Seek programmes that encourage cross-cultural integration e.g. Interlead's Team Build 2000, Language courses, Bridging programmes.

#### LOGISTICAL CONSIDERATIONS

:

Regions

If multi-branched, define regions for practical

monitoring as well as cultural mix.

\* Visits : As there now only 12 stores, visits regularly

are possible by the champion and divisional staff. Discuss training with all members of

staff.

\* Training : Smaller numbers therefore feasible to

centralise formal training at head office when necessary e.g. I.R., Performance Appraisals

etc.

\* Relocation : The biggest logistical problem. A Venda cannot

fit into George. The regions cater for relocation culturally. Assistance with finding housing and schooling should be present - divisional staff to be trained in counselling and have information on housing and schooling

in their areas.

#### MANPOWER AND SUCCESSION PLANNING VERSUS QUOTAS

#### Quotas

\* Lack of commitment: A manager will never be committed to accurate

appointment and development if forced. He will

be happy to earn his 'brownie points'.

\* Tokenism : Quotas encourage tokenism and the wrong man for

the job syndrome.

\* Failure : This tokenism sets up the appointee to fail.

\* Re-inforce

Negative Attitudes: The manager becomes negative to appoint blacks

as he now believes that failure is inevitable the "you see, they can't do the job" belief is

re-inforced.

#### Planning

- \* Establish and publish a 3 year Manpower Plan linked to the Business Plan. Development is now paced with this and two things happen:
  - \* Correct placement.
  - \* A position is available when the candidate is ready.

\* Projections

Project figures, by level, at least bi-annually and measure actual appointments against these targets.

#### THE IMPORTANCE OF MONITORING AND FOLLOW-UP

\* Champion : If this person has been carefully selected

monitoring and follow-up follows naturally and

enthusiastically. .

\* Monthly

Progress Reports: These are to be submitted by a set date to the

champion and are to be kept as simple as

possible.

\* Quarterly Figures: The champion compiles quarterly figures by

level which reflect increases and decreases on the last quarter, with explanation and/or justification. These should be tabled at board

meetings and wherever possible even higher up.

\* Phone Calls : With the focus on a smaller area and number,

regular phone checks become feasible.

\* Visits : As mentioned earlier, at least a visit per

quarter is essential. These should have a structured approach with a check-list and a

follow-up action plan.

\* Annual Reports : A comprehensive annual report is drawn up with

actuals vs targets, successes and reasons, failures and reasons and recommendations for future strategy. This should be tabled at board level too, as well as at the Planning

Board mentioned earlier.

#### CONCLUSION

A positive, practical approach is required with all negative elements, be they human or otherwise, eradicated. Money must be spent and a pro-active stance to balancing black management numbers to the environment has to be taken. Get prepared now - it  $\underline{is}$  going to be enforced - see it as a challenge and be ready.

# MAHLOMOLA SKHOSANA

DEPUTY GENERAL SECRETARY

NATIONAL COUNCIL OF TRADE UNIONS

#### CURRICULUM VITAE

NAME : MAHLOMOLA SKHOSANA

DATE OF BIRTH : 22 MARCH 1952

PLACE : BENONE SOUTH AFRICA

EDUCATION : LOWER PRIMARY EDUCATION 1959 - 1962

HIGHER PRIMARY EDUCATION 1963 - 1966

SECONDARY & HIGH SCHOOL 1967 - 1972

WORK HISTORY : SOUTH AFRICAN INSTITUTE OF RACE RELATIONS AS A

RESEACHER TO COMPILE THE INSTITUTES ANNUAL SURVEY

WHICH IS DISTRIBUTED WORLD WIDE AND USED BY

STUDENTS, ACADEMICS AND POLITICIANS AS REFERENCE,

FROM 1979 - 1982.

MY NAME APPEARS IN THE LIST OF COMPILERS OF THE 1979

- 1981 ANNUAL SURVEYS.

## COUNCIL OF UNIONS OF SOUTH AFRICA (CUSA)

1982 MARCH 20 JOINT CUSA WORKED AS AN ORGANISER AND WRITTING ARTICLES IN THE FEDERATIONS NEWSLETTER. ORGANISED WORKERS IN THE FOLLOWING SECTORS:

PRIVATE SECURITY INDUSTRY

PUBLIC SECTOR

SERVICE

MINING : IT WAS THE TIME WHEN THE NATIONAL UNION OF MINEWORKER WAS

BEING FORMED. (NUM)

IN 1985 I STUDIED WITH THE UNIVERSITY OF THE WITWATERSRAND.

SCHOOL OF BUSINESS ADMINISTRATION A SPECIAL CAUSE IN INDUSTRIAL RELATIONS

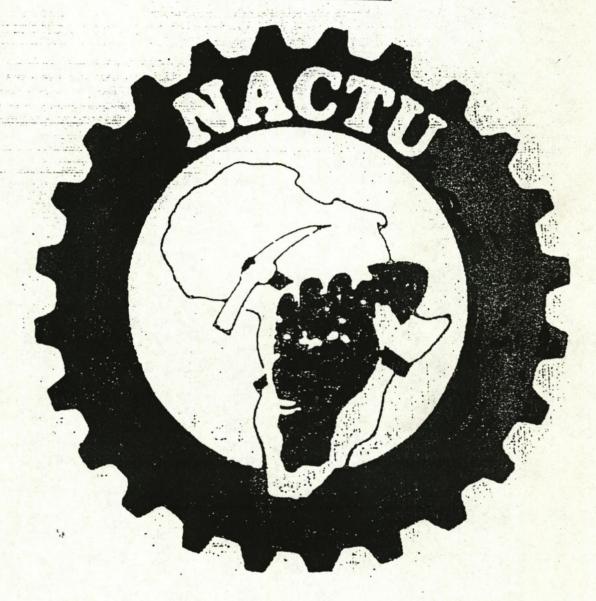
CALLED: CERTIFICATE PROGRAMME IN INDUSTRIAL RELATIONS (CPIR) WITH SUCCESS.

#### NATIONAL COUNCIL OF TRADE UNIONS (NACTU)

IN OCTOBER 1986 CUSA MERGED WITH AZACTU AND THE NATIONAL COUNCIL OF TRADE UNIONS WAS FROMED. I WAS ELECTED THE ASSISTANT GENERAL SECRETARY SINCE THEN I WAS HOLD THAT POSITION. MY RESPONSIBILITIES ARE AS FOLLOWS:

- (i) RESEACH & PUBLICATIONS OF THE FEDERATION
- (ii) ADMINISTRATION
- (iii) WE HAVE 21 REGIONAL OFFICES IN CHARGE OF THOSE
- (iv) TO REPRESENT THE FEDERATION NATIONALLY AND INTERNATIONALLY

# AFFIRMATIVE ACTION CONFERENCE NACTU'S VIEW



PRESENTED BY

MAHLOMOLA SKHOSANA

1ST ASS. GENERAL SECRETARY

#### MAHLOMOLA SKHOSANA

NATIONAL COUNCIL OF TRADE UNIONS

A NACTU OPINION ON AFFIRMATIVE ACTION

#### AFFIRMATIVE ACTION CONFERENCE NACTU'S VIEW

Thank you Mr. Chairperson Distinguished guests Ladies and Gentlemen

I bring you greetings from the National Council of Trade Unions. Mr. Chairperson allow me to join those who have spoken before me in thanking you for inviting us to address this important conference.

#### INTRODUCTION:

A brief look at the historical development of the South African political economy in addressing the problem of poor whites particular the Afrikanners in the twenties will help us to understand that affirmative action is not a new concept in South Africa it has always been there backed by legislation for white people.

Responding positively to the demands of the white workers strike of 1992, the PACT GOVERNMENT embarked on a process of social engineering which was accompanied by vicious legislation to economically empower white workers at the expense of black workers. The Industrial Conciliation Act of 1924 was passed which by its own definition excluded black workers. This was immediately followed by the 1925 WAGE ACT which raised wages for white workers thereby improving their standard of living.

#### STATE RELIEF:

The programme of state relief via Public Works such as construction of roads, dams and railway lines was not only meant to provide employment but also to provide an opportunity to acquire skills as most Afrikanners were uneducated and unskilled. The railways alone by 1935 were having 100 000 white workers in their employment. The Private sector was also subsidised to offer employment and pay accepted wages to whites this was called civilised labour policy, which by 1933 had seen 13 000 black workers retrenched. Domestic industrialisation was also given much attention e.g the establishment of IDC ISCOR and direct funding of agriculture paying for irregation schemes.

#### SOCIAL WAGE:

Social Wage came in a form of subsidies for white education as well as introduction of industrial schools. Feeding schemes for undernourished children at schools was embarked upon. Bread was also subsidised, low cost housing was provided.

#### FAIRNESS OF THE PROGRAMMES

The successful implementation of the programmes will also depend on the fairness of those who are in charge of the programmes. The following issues are always a bone of contention:

- (i) Blacks are always expected to make some adjustments whilst whites are not expected to do the same.
- (ii) Setting up of high standards to keep other people out.
- (iii) Unions are always told that it is managements prerogative to hire best qualified persons for posts outside the bargaining unit.
- (iv) The programme also depends whether the employer wants to make it to succeed or not. Law enforcement alone will not make it work.
- (v) The programmes success also depends on the state of the economy. During recession companies will cut back on training.

#### ROLE OF THE STATE:

The socio-economic imbalances that exist in our society requires state intervention in various ways which will enable disadvantaged communities of all races to improve their lot, through the following:

- Legislation which will set up various state angencies as well as statuary bodies under the Department of Manpower and other state departments.
- (ii) Some of the agencies should have powers to investigate complaints about discrimination at the workplace or at the employment level, these might be about race, gender or religion etc.

#### SOCIAL WAGE:

(i) The state should provide subsidies to employers who are willing to implement programmes which can be varified in their plants or at company level.

- (ii) The state should set up training programmes for those people without skills and unemployed.
- (iii) Education and training should be subsidised to enable more people to acquire skills
- (iv) The state must provide efficient public transport through subsidies.
- (v) Public health institutions must be subsidised.

#### POLITICISING THE PROGRAMME:

Given the polarised nature of our society and the tendency of playing one group against the other or even to openly curryfavour with one group at the expense of others will render such programmes a source of political contention. This kind of behaviour is prevelent in the trade union movement as well as in our politics. Management is advised to walk the narrow straight path when dealing with different unions, on these programmes.

#### CONCLUSION

It is our view that affirmative action is a policy governments and private sector apply to identify people with the potential or qualified individuals for jobs that have been previously denied them because of race or gender If the programmes are properly applied they can achieve the following:

- (i) Open doors of learning to everybody.
- (ii) It is necessary and does improve the quality of life of those who have acquired skills through the programmes.
- (iii) Unlike in the past it should not be done for a certain race group only.
- (iv) It helps to remove barriers which block people from acquiring skills and jobs.
- (v) It will immediately benefit those individuals who have qualifications and skills.
- (vi) To a certain extend is can help to alleviate unemployment, since modern investment is more capital intensive than labour intensive.

The media can also contribute positively by publishing achievements of both individuals as well as groups to urge them forward. Creativity and assertiveness should be recognised and rewarded. However it must be borne in mind that the South African situation is characterised by division at all levels. Division at social, economic and political levels bringing into being the existance of political, social and economic separation based on colour and origin, this has resulted in devepolment of different norms and values including perceptions about the present and the future of our country. Experience has taught us that the real struggle begins after the settlement of the political dust.

Meeting economic and social improvement expectation of our people remains a challenge not only for a democratic government but also the private sector. Affirmative actions programmes can assist people overcoming the legacy of apartheid which will be with us for a long time to come.

I THANK YOU.

#### DANIE JOUBERT

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AFFIRMATIVE ACTION IS THE SOLUTION TO SOUTH AFRICA'S SKILLS CRISIS

# AFFIRMATIVE ACTION IS THE SOLUTION TO SOUTH AFRICA'S SKILLS CRISIS

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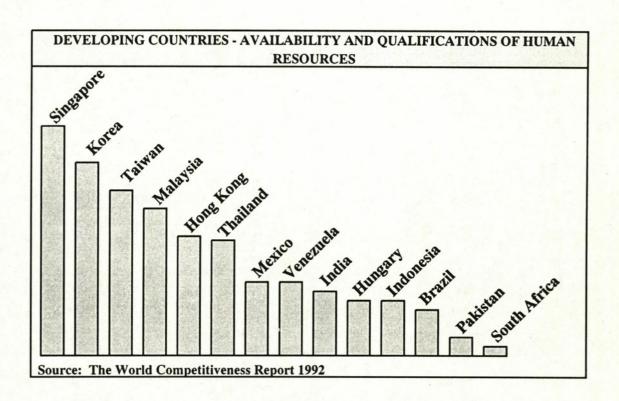
Eskom

#### INTRODUCTION

South Africa has been ranked eighth amongst fourteen leading developing countries of the world by the international business school IMD based in Switzerland in their 1992 World Competitiveness Report. In respect of one of the eight factors, which are applied to assess a country's competitiveness and to determine the final ranking, namely PEOPLE, South Africa has the dismal position of fourteenth or stone last. The reason for South Africa's poor position is found in indicators such as population growth related to economic growth, effectiveness of education, enrollment in higher education, pupil - teacher ratio, pupil intake, level of literacy, computer literacy, economic literacy, size of the workforce, unemployment, growth in employment, number of engineers, brain drain and many other key elements which work together as the people component of competitiveness.

I think we all realise that the ranking is a fair reflection of South Africa's competitiveness in view of the economic and social conditions that are now prevailing in South Africa. The issue and the challenge is to determine what South Africa must and can do to improve its' international competitiveness and thereby improving the quality of life of its inhabitants.

If we see affirmative action merely as the replacement of white labour with black labour to redress inequality and injustices we have no chance of improving South Africa's competitiveness. If however, we assess South Africa's skills profile in the context of leading developing and even developed countries of the world and determine what must be done at an international, national, company and individual level to improve our skills base, we will be on the road to improvement and success. We must at the outset destroy the paradigm that affirmative action is needed to redress the social injustices of the past as it merely generates fear and a win-lose conflict. One can not move forward by looking back-any golfer can tell you that. We have to internalise the win-win paradigm that South Africa needs a quantum leap in the supply of technological, entrepreneurial, managerial and leadership skills to be competitive, irrespective of race and gender and that demographics dictate that we focus on the production of black skilled and professional workers for the future.



#### 2. THE SUPPLY OF BLACK SKILLED PEOPLE

The supply of black graduates and diplomats from universities and technikons in the crucial engineering, technology and accounting fields has been mediocre. This is resulting in a very weak supply of black engineers and accountants as well as managers in these fields. It is also currently giving rise to remuneration packages which are in stark contrast with packages available to white equivalents.

The following table reflects the poor supply of black graduates and diplomats in the engineering and accounting fields.

| SUPPLY OF NEW BLACK GRADUATES AND DIPLOMATS |                             |                             |
|---|-----------------------------|-----------------------------|
| Qualification and Discipline                | % of all qualifiers<br>1986 | % of all qualifiers<br>1990 |
| Engineering Graduates                       | 1,8%                        | 2,0%                        |
| Engineering Diplomats                       | 9,1%                        | 8,1%                        |
| Accounting Graduates                        | 4,3%                        | 4,5%                        |
| Accounting Diplomats                        | 0,9%                        | 5,4%                        |

The poor supply of black graduates and diplomats led to the poor supply of black engineers and chartered accountants in the skills market. It is also significant that there has not been any major shift in the supply of these skills.

The root cause of the problem of the poor supply of black skilled people lies in the supply of secondary school pupils with subjects and marks that prevent access to institutions of higher learning. This situation is brought about poor facilities, poor teaching, poor career guidance and poor attendance at schools as a result of political interference.

If one for example compares the annual supply of ±1500 engineers from universities in South Africa with leading developing countries such as South Korea and Taiwan, where respectively 23 000 and 7 000 engineers are produced, it is a cold fact that more people should go into engineering. There simply is not enough white talented people available.

The question that has to be answered is how do we in South Africa draw more black people into professions such as engineering and accounting and how do we succeed in delivering these skilled people to the world of work.

The answer probably lies in a strategy that addresses the problem of poor delivery in an international, national, company and individual context.

# 3. IMPROVING THE DELIVERY OF BLACK SKILLED AND PROFESSIONAL STAFF

As said before the problem must be addressed in various environments. Focussing only on what a particular company can do to improve the supply of black skilled people will not solve the problem. Companies have very little impact individually, but can become a force when there is collective national effort and when the external environment is conducive and supportive.

#### 3.1 ACTION AT INTERNATIONAL LEVEL

Development aid from agencies such as United Nations and World Bank has been instrumental in the improvement of education and training of people in many developing countries. A country such as Italy is currently contributing about 0,4% of its GDP or about 4 600 billion lire to development aid to third world countries, eastern Europe and the Mediterranean basin. The aid is predominantly focussed on education and training.

There is also currently a proposal on the table that the EEC increase its development aid to reach 1% of overall GDP and allocate this in equal portions to the third world countries, to Eastern Europe and the USSR and to the Mediterranean basin.

The action that is needed is that South Africa must tap into this potential source of aid to improve the local delivery system in its full context.

A second initiative at international level is to enter into cooperation and exchange agreements with the many potential sponsors that are now entering South Africa for business purposes. There are many opportunities for sending South Africans to other countries for training with the aid of sponsorships.

#### 3.2 ACTION AT A NATIONAL LEVEL

At a national level there is a lot that is done and can be done to improve the quality and quantity of skills delivery. The following are mere examples:

- the value of vocational education and training is being promoted;
- there are many bodies such as NGO's and large trusts entering the education and training field;
- universities and technikons are introducing bridging programmes for students from disadvantaged communities;
- professional bodies are assessing the delivery system;
- employer bodies are developing proposals and strategies to improve skills supply through education and training;
- trade unions are studying benchmark education and training systems in other parts of the world in order to participate in the local debate;
- statutory bodies are involved in formulating education renewal strategies and new curricula, and
- political parties and their agencies are actively involved in developing restructuring strategies.

The problem with all these initiatives is that they are not aligned in terms of philosophy or intent, nor are they coordinated with the result that resources and energy are not optimised and that overheads limit the impact at the coal face.

Some form of mission, prioritising and alignment is needed in the current transition phase and a national education forum can effect this.

#### 3.3 ACTION AT A COMPANY LEVEL

Many of the large corporations in South Africa have been involved in social responsibility programmes for many years and the supply of black professional workers currently available in the labour market, can largely be attributed to them and their efforts.

There is now a greater awareness amongst Corporate South Africa of the poor production of black skilled workers in South Africa than ever before, primarily as a result of factors such as political power shifts, mass action, unemployment and economic decline.

Companies are doing the following things to improve the delivery of skills from black communities to the work place:

- setting targets for the education and training of black skilled people;
- creating a climate conducive to the employment and training of black workers;
- articulating policies on equal opportunity employment and training practices;
- investing in infrastructure such as schools, colleges, books, equipment and electrification of facilities;
- awarding bursaries and scholarships;
- getting involved in teacher upgrading programmes;
- getting involved in career counselling and marketing at schools;
- producing video programmes to educate and promote interest in education;
- getting involved in youth education and development programmes;
- organising employees to address the education needs of the communities;
- starting equal opportunity programmes with black champions, and
- exchanging information about policies, successes and failures in the acceleration of skills development.

Although much is being done by some companies there are still thousands of companies in South Africa that are not involved. The reasons for non-involvement are numerous and diverse yet can be reduced to one primary cause, namely that South African business has a paradigm of *short-term-profit-above-all* with a poor awareness of the need for business involvement in the delivery of skilled workers to the community. If this paradigm is not shifted, international competitiveness will continue to be a dream. Investment in people learning and development is more important that investment in buildings, plant, equipment and technology. Only through people can capital investment come alive.

# 3.4 ACTION AT THE INDIVIDUAL LEVEL

The ultimate accountability for being competitive and successful in the world of work rests with the individual. Influence, support and opportunity are some of the reinforcing forces that drive individual education and training. The will to succeed and the ability to work hard and make decisions about opportunities rest with the individual.

The individual level is probably the one which gets the least attention in current programmes, yet it is a critical factor for success in skills delivery. Much can be done to improve individual accountability.

#### 4. CONCLUSION

The delivery of well educated and skilled black workers to the world of work is a complex process. Only through a holistic approach which contains strategies and objectives for handling issues and opportunities at various levels of society can we succeed in producing more skilled black workers.

The imperative for success rests in a new paradigm about learning and the value of investment in education and training. A new constructive paradigm can not be developed if inequalities and disparities brought about by injustices of the past dominate our thinking, emotions and behaviour.

Assessing the competitiveness of South Africa and realising what influence a poor skills supply is having on our competitiveness is an essential kick-start for a new paradigm.

DA Joubert 20 August 1992 DR CHIMERE-DAN

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DEMOGRAPHICS AND AFFIRMATIVE ACTION

### DEMOGRAPHICS AND AFFIRMATIVE ACTION

A synopsis

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#### Introduction

The special form of management information with which organizations are able to take advantage of population dynamics for strategic decision making has come to be known as demographics. In this address, I will show that demographic imperatives make affirmative action a wise route to future competitiveness of organizations in South Africa. Secondly, I will suggest how demographics can inform the process of introducing affirmation action in different organizational settings.

# Demographics as a tool for policy and management

Demographic characteristics are powerful determinants of needs, attitudes and behaviour in many spheres of life. In both public and private sectors, policies and activities directed to effect changes in needs, attitudes and behaviour are enhanced by an understanding of demographic structures and processes. However the nature of the demographic information required for policy making vary according to type and size of an organization and according to expected results.

As a guide to public policy, demographics is highly relevant to contemporary South Africa because the rapidly expanding national population is already making increasing demands for public services. Maximum and equitable responses to these demands will need a knowledge of different characteristics of the national and local-level population groups.

In the private sector, demographics is used in two ways. The first is in the design, implementation and evaluation of organizational strategy. A common area of application of demographics is in the monitoring of the characteristics, attitudes and responses of clients or consumers of products, goods and services. A challenge for business in South Africa today is to develop short-term and long-term strategy to meet the demands by the rapidly growing national population for goods and services. To meet these demands, business will have to apply

demographic information and methods in order to ascertain the exact nature of existing and potential markets.

The second application which is of great interest to big organizations is in the area of human resources planning, development and monitoring. The use of demographics in this area depends on specific targets and general culture of an organization. This is the aspect which is more directly linked to the subject of this conference and I will emphasize it accordingly.

# Affirmative action and demography in South Africa

A wide definition of affirmative action is given in the ANC Policy Guideline For A Democratic South Africa (1992, p.11) as, "special measures to enable persons discriminated against on grounds of colour, gender and disability to break into fields from which they have been excluded by past discrimination". In South Africa the racial dimension dominates discussions of affirmative action, expectedly so due to long history of racial conflicts.

Common worries about affirmative action which are summarized in the 1991 Annual Report of the National Manpower Commission (1992, p. 4) include the dangers of creating a cycle of dependency and erosion of progress already achieved by individuals, a possibility that a wrong sub-group of the population could be targeted, and the danger that affirmative action could lead to racial conflict.

However it is defined, the very problems which give rise to the concept of affirmative action have important demographic roots in addition to obvious political causes. If affirmative action is seen as steps taken to encourage the participation of target group of people at all levels of public and private sector, major demographic questions need to be answered for effective policy implementation. Specific demographic questions which should concern organizations in South Africa today include:

(i) How many people do we need to maximize productivity now

and at other specific periods in the future?

(ii) What should be the <u>demographic profile</u> of our work force with reference to the following: age, sex, marital status, occupation, ethnicity, race, education, language, household size and structure and geographical residence?

# Affirmative action as organizational strategy

Major fears entertained by organizations about affirmative action stem mainly from a narrow or limited interpretation of the concept. If introduction of affirmative action is seen as a process of creating mechanisms to ensure equal opportunity based on existing or potential capabilities of the previously disadvantaged population groups, this process ought to be a positive corporate strategy.

To attract and maintain personnel of a high quality, an organization will have to develop and successfully project an acceptable corporate culture which is compatible with the prevailing mood in the new South Africa. An avenue for achieving this would be for an organization to develop through affirmative action, an image which satisfies the demographically diverse population of South Africa.

Thus, affirmative action can be viewed as an organizational strategy which if imaginatively introduced would lead to the achievement of the objectives of an organization. Obviously, the strategy or model for affirmative action in each organization will depend on what these objectives are.

Two of the major demographic questions for an organization which sees affirmative action as an organizational strategy are;

(a) What are the demographic consequences of a particular model of affirmative action?

(b) Would the likely demographic scenario resulting from affirmative action enhance or impede the goals of our organization?

There are no general or routine answers to these questions. Each organization has to obtain fresh demographics to address specific policy or management problems of that particular organization as the need arises.

# Practical demographics for affirmative action

In this section, I wish to suggest practical steps for applying demographics in the introduction of affirmative action within an organization.

# Step 1: Understanding demographic patterns

Firstly, a good understanding of demographic patterns and processes in South Africa is a basic step to introducing affirmative action in an organization. Let me illustrate this with seven general examples.

- a. There are distinct racial patterns of demographic trends and these have implications first for the nature, size and racial composition of organizations in the public and private sectors, and the nature, size and racial composition of markets for specific goods and services.
- b. Urbanization. The high rate of urbanization calls for a sensitive balance of interest between the urban and non-urban areas. Neglect of the rural market is at best, a short-sighted business strategy. Expansion of the economy and a rise in earning power is likely to create bigger markets in the country-side which can only be captured first by organizations with prior preparations for this process. Preparation in this respect would go beyond mere readiness to expand operations in the country-side. An ideally prepared organization should have been developing geodemographic systems, i.e., working on small-area demographic projections and examinations of different scenarios with respect to both market and staff requirements for operations in each target

geographical/population unit.

- c. Household dynamics. A careful analysis of household dynamics in South Africa would cast doubt on some popular thinking. For instance, it is generally believed that the white market in South Africa is saturated. A closer look at white household structure and dynamics opens up fresh possibilities. Progressive nucleation of the family among whites, declining age at leaving home and a rising rate of divorce are processes whose net result is the multiplication of white household with consequent expansion in the demand of household goods and services. Similar processes, though slower, are observed among other non-white population groups, especially in the urban areas.
- d. Total fertility rate The extremely low level of fertility among whites has long-term implications for the cost and composition of manpower.
- e. Migration pattern of skilled manpower has both immediate and long-term implications for personnel development strategy in organizations. Between 1979 and 1989, immigration accounted for 17.6% increase in high and middle level manpower. Organizations whose operations require expert skill intensive personnel should set up demographics systems for monitoring this process.
- f. Problems in the labour force (i) Analysis of the potential pool of labour indicates that the type of skills likely to be needed most are not the type which are produced most by the educational system, especially at the tertiary educational level. (ii) A declining absorptive capacity of the economy results in an increasing rate of unemployment. In the formal sector, the absorptive capacity was below 10% in the 1985-1990 compared with an absorptive capacity of over 80% in the early 1960s.
- g. Changing status of women As more women take formal employment, this would have implications for policies on employment and working conditions.

# Step 2: Investing in demographics

From the examples given, it is obvious that the nature of data and the level of expertise required for effective application of demographics may not be within easy reach of most organizations. In most instances demographic data from widely known sources such as censuses, vital registration systems and cross-sectional surveys may not be used to answer the type of questions posed by organizations. At best, these types of sources can provide baseline data for the estimation of national, regional, and sometimes, district-level totals. In particular, most censuses are usually one to two years out of date at the time of publication. If there are any recent demographic or market waves, use of such data for corporate strategy entails high risks.

As a result of these shortcomings in publicly available data, organizations which appreciate the perennial need for demographic data and applications usually employ qualified demographers. These specialist establish systems of demographics in-house. This option has four main advantages. Firstly, the system of demographics so established is organization-specific and therefore are tailored to the needs of an organization. Secondly data and results remain confidential property of the organization and are more effective instruments of competition. Thirdly, once a system is in place, monitoring and updating of demographic data ensure better accuracy and application of information. Fourthly, routinization shortens the time lag between collating, interpretation and application of results.

Establishing a system of organization-specific demographics can be a tedious and time-consuming and expensive exercise. For this reason, other organizations which cannot afford to keep a specialist full-time make constant use of demographic consultants.

# Step 3: Targeting occupational levels

The choice of occupational levels to be targeted depends on the nature and goals of organizations. An area of most critical need and where affirmative action will be most visible is the high level manpower. The most recent available figures show that at this level there were just 14% of non-whites and 19% of women (excluding nurses and teachers in both cases).

# Step 4: Choosing models of affirmative action

The third step is for an organization to decide in principle whether it would opt for a functional or structural affirmative action. This decision will be heavily influenced by the occupational level targeted for affirmative action.

From the point of view of demographics, affirmative action can be <u>functional</u> or <u>structural</u>. Functional affirmative action is a construct of expediency. It is usually a response to external political or other forms of pressures and involves little consideration of long-term demographic and related long-term consequences for corporate culture and productivity. On the other hand affirmative action is structural when it is construed with in-built demographic perpetuation as part of over-all short-term and long-term strategy to strengthen the competitiveness of an organization. I have already suggested that in the end, a good model of affirmative action at the organizational level would turn out to be a strategy for the enhancement of organizational goals. Structural affirmative action is more likely to fulfil this role.

# Step 5: Instituting programmes of human resources development

Demographic trends indicate that a shrinking pool of skilled labour force is most likely. An imaginative approach to this problem would involve long-term programmes of human resources development which will offer a more racially and gender balanced pool of skill manpower in the short-term and long-term.

Skills which are more experience based and require long on-the-job training could be targeted and developed at the secondary school level. Those that require long formal education can be targeted and developed at the tertiary level of education.

#### Conclusion

I have suggested that the demographic composition and trends in South Africa make affirmative action a necessity for organizations. Viewed from the point of view of organizational efficiency, affirmative action is a good test of the adaptive capacity of organizations in contemporary South Africa. In the context of ongoing socio-economic and political changes, organizations which are likely to compete successfully against their rivals are those which respond practically, sensitively and timely to the changing composition and trends in the population constituting their markets or clients. Data needs and methodological details for the demographics of affirmative action should largely be specific to organizations and have to be handled by professionals either in-house or obtained from external sources under special arrangements.

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### LONRHO EAST AFRICA

A KENYAN CASE STUDY: FOCUSING ON A COMPANY WHERE AFFIRMATIVE ACTION HAS BEEN INTRODUCED

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#### LONRHO EAST AFRICA

AFFIRMATIVE ACTION: A KENYAN CASE STUDY FOCUSING ON A COMPANY WHERE AFFIRMATIVE ACTION HAS BEEN INTRODUCED

#### INTRODUCTION

My definition of affirmative action in the workplace is adopting management styles conducive to racial integration, and developing attitudes that enhance racial coexistence, racial tolerance and racial acceptance.

It is to be borne in mind that tolerance and acceptance have to be mutual. It is not just the white people accepting the other races. These races also need to tolerate and accept the whites. We all have our fears and insecurity!

Introducing affirmative action pre-supposes that there is a group or groups of people in the organisation who are marginalised. It is a process which also presumes that the organisation is defective in its hiring polices and procedures, assignment of jobs, promotion criteria and awarding of benefits.

Affirmative action should therefore be seen as a fully integrated concept within the organisation culture, the human resources management approach and the individual management and leadership styles of the main players. Successful affirmative action must therefore involve not only the policy makers, but also the managers and supervisors. It must epitomise the values of the entire organisation, which values must be agreed and communicated to all levels of staff; and, more importantly, to be lived by every member of the organisation particularly the key role models.

It is vitally important that everyone in the organisation is involved, as involvement leads to commitment. Exclusion of any major player leads to frustration and estrangement. Affirmative action can only materialise in an organisation climate and culture where there is mutual trust and mutual respect.

The affirmative action concept should ideally start in the mind and heart of the Chief Executive. He is the central figure in culture management, shaping the value system which cascades down to his management team and to all the other levels.

There is little point in having grandiose written statements about the process of affirmative action. These have to be translated into a real way of life in the workplace. There has to be a genuine, practical and conscious process of acceptance; and this calls for a rare degree of moral courage on the part of the policy makers and opinion leaders in the organisation.

We need to accept that successful introduction of affirmative action must address the "people issues", and, in this regard it is vitally important to restore and enhance the concept of human resource ownerships. These human resource functions include:

### organisation development:

team building, sharing of values and culture;

#### 2 remuneration structures:

job grading and compensation based purely on the job performed;

### 3 training:

identifying training needs and training investment costing;

### 4 promotion and succession planning:

career pathing and total people development; and

#### 5 labour relations:

interface with workers and the union on shop-floor related matters.

Those managers who are able to harness and enhance the energies and capabilities of their people will not only empower themselves, but their staff and the organisation as a whole and become effective business actors.

The process of affirmative action involves three major players - the government, the employers, and the employee organisations. Without adequate support from each other, the process can be thrown into reverse, standstill or total disintegration. In order for the process to succeed, these players need to interact in a business environment. The business environment has society factors, government and legal factors, economic factors, technical factors, competition, customers/buyers/sellers and the union. All these factors have to be addressed.

The government as we all know is the major player in a changing environment. Labour laws need to be revised to usher in an accommodative atmosphere. But whereas the government may address issues such as fair labour practices and equal employment opportunities by enacting the appropriate legislations, the people who will bring about real change are the business community. It is the business community that will make or break the process of affirmative action!

Let us look at this. An employer who puts a sign in his window, "No black hired" is discriminating. So is an employer who segregates his black employees into special all-black departments, limiting the better jobs in his establishment to whites. The distinguishing mark of discrimination here is the employer's use of an obvious racial

hiring standard. It may well be that the employer is motivated by ill-will or racial hostility; but, this is not necessary. The employer's motives for segregation and exclusion can be otherwise: desire not to upset traditional ways of doing things, desire to avoid upsetting the whites, or even desire to avoid costs of changing. This is where moral courage comes in.

An employer may be more subtle. He may adopt seemingly neutral procedures or standards which nevertheless serve his intention to exclude or limit the number of blacks working for him. For example, an employer adopts a policy that requires every applicant to provide recommendations from three past employers. This policy, though cast in terms that are racially neutral, will effectively assure the employer that there will be few blacks who get hired into his organisation. Where is the commitment? It is no wonder that there were, and still are, numerous legal suits in America on the implementation of affirmative action despite government legislation.

Affirmative action programmes in America and in independent African countries started with the political settlement which then required employers to adopt certain procedures to assimilate the blacks into the mainstream of economic affairs and decision making. But it needed the employers to manage the reconciliation process which ushered in a new era of acceptance, respect, trust and team spirit in the workplace.

The Kenyan experience bears testimony to this.

### THE KENYAN EXPERIENCE

At independence, in 1963, Kenya had 3 categories of peoples:

- 1 the indigenous Kenyans;
- 2 the Indians; and
- 3 the whites.

The second category comprised the Indians who had been brought to Kenya by the British government as manual workers to build the Kenya/Uganda railway. They remained in Kenya mainly in own businesses as traders. A small number were in the public service as clerks and accountants. Some of the Indians took up Kenya citizenships while a sizeable number chose to remain British citizens.

The whites comprised government employees in the administration and public service, private sector employees and private businessmen; and, a large population of settlers. This latter group were the white pioneer community who had settled in Kenya and owned large tracts of land or were in private businesses.

At independence, the Indians and the whites were given a choice as to whether or not to become Kenya citizens. Many of them chose not to, and they left the country for a variety of reasons which included:

o fear of losing jobs;

- o fear of retribution;
- o they could not contenance living in a country run by blacks;
- o fear that the systems and services would cramble and that the country would revert to the dark ages, etc.

This meant that the pool of qualified people was significantly reduced at a time when many of the better educated Kenyans lived outside the country.

The whites who remained in Kenya were not necessarily any better educated than the Africans; yet in instances where an African with the same level of education as a white vied for the same job, the white was more likely to be hired than the black. Whites were perceived to be more civilized, more knowledgeable, more trustworthy, and generally more acceptable!

Immediately after independence, the new Kenya Government devoted itself to what we termed as nation-building. The basic objective of nation building was to develop Kenya into a politically just, economically progressive and socially democratic country. In order to translate these principles into reality, the government enacted a number of legislations to place the administration and economic control of the country into the hands of the indigenous people. One of these legislations was the Trade Licensing Act which restricted trading in specified items and areas in Kenya to Kenyan citizens, and introduced a relaxation of lending policies by the commercial banks and government financial agencies in order to encourage more Kenyans to enter this sector of the economy.

### THE KENYANISATION OF PERSONNEL

Additionally the Kenyanisation of Personnel in both the public private sectors was adopted as government policy under the Immigration Act of 1967. Under the new policy the government embarked on vigorous training schemes to train indigenous people capable of entering the job market especially in senior positions. The exercise proved quite successful in the public service due mainly to government enforcement; but, for a number of years it continued to meet with determined resistance in the private sector. In order to redress this situation the government established the Kenyanisation Bureau whose task was to deal with jobs which non-Kenyans then occupied to evaluate whether or not such jobs could be done by Kenyans. The Bureau was also charged with the responsibility of maintaining a manpower register of qualified Kenyans so that when jobs arose, the Bureau would check whether or not a Kenyan was available to take it before considering an application for any work permit from non-citizens. Employers were accordingly required to make returns giving a breakdown statement of the company's establishment describing jobs being done by non-Kenyans, the qualifications required for such jobs and the company's training arrangements. This information would enable the Eureau to advise the Immigration Department on the issue or the cancellation of work permits to non-Kenyans.

Employers were, and still are, required to prove that they cannot fill vacant positions with Kenyans before work permits were issued. If expatriates were recruited, then this was done on condition that the employer provided the name of the Kenyan who would understudy him and the training programme to be followed.

The Bureau would guard against any tricks or delaying tactics by employers who wanted to employ expatriates for longer periods. And indeed, employers were apprehensive about giving jobs to Kenyans! They felt that Kenyans were not adequately qualified, that efficiency would suffer, and that there would be a lowering of standards. But the government was going to spare no expense to bring qualified Kenyans into the mainstream of the job market and of the economic life of the country.

When preparing this paper, I interviewed a past Director of the Bureau, Mr. Albert Ekirapa (currently the Chairman of the Nation Group of companies, one of the biggest commercial enterprises in the Aga Khan Network in Kenya). Mr. Fkirapa tells me that his brief as Director of the Kenyanisation Bureau included travelling to all parts of the world especially to America and UK where many Kenyans had gone before independence to study. They had settled there as they knew that there were no opporturities commensurate with their newly acquired qualifications as the jobs they now aspired to were held by expatriates. They of course did not know that the situation had changed. Mr. Ekirapa would identify these Kenyans and those studying in Universities, interview them for specific jobs, issue them with letters of appointment, and even with air tickets to travel home to take up the jobs. He tells me that it was a very expensive undertaking, but also a highly successful one, as this crop of Kenyans was out to prove that a black person can do it. That alone was a big motivation factor and it made the transition surprisingly smooth. The systems were efficient and they worked! And if a fair level of complacency and a slackening of standards and efficiency has crept in in the subsequent years, especially in public services and parastatal organisations, this is a result of other factors rather than a lack of qualified people.

I also interviewed one of this first crop of Kenyan senior executives, Mr. Joe Wanjui who is currently the Chairman of East African Industries, a Unilever consumer products company in Kenya. Mr. Wanjui was in America baving graduated in Physics and Mathematics from Ohio Wesleyan University and completed his post-graduate studies in Engineering at Columbia University in New York, but had opted to stay and work for the Esso Corporation in New York. He came back under the Kenyanisation programme to become Executive Director of the Industrial and Commercial Developing Corporation. ICDC had been established as the government's investment arm in the commercial enterprises which had hitherto been fully foreign owned. As Executive Director of ICDC, Mr Wanjui helped to promote and organise the financing of numerous industrial and commercial ventures in Kenya, including the Kenya National Trading Corporation, Kenya Industrial Estates, and the ICDC Investment Co. Ltd. He also helped to launch many individual entrepreneur projects, and was intrumental in attracting a number of multi-national manufacturers to Kenya. East Africa Industries which Mr. Wanjui heads today is held out as a fine example of a well managed company under a Kenyan African Chief Executive.

Analysing the Kenyanisation programme the London Daily Telegraph said in May, 1969, and I quote

"Kenya's chances to consolidate its independence are good despite its stepped up Kenyanisation programme. Will disaster follow the programme as some expatriates feel? Almost certainly not. There will probably te a further slow decline for some time in efficiency. . . . But in time there should be enough Africans to reverse the trend. The most serious effect of Kenyanisation could be on foreign investment which is vitally necessary to fuel an expanding economy and to bridge a visible balance of payments gap . . . ."
end of quote.

The Kenya government knew that the results of a successful training programme would take sometime to materialise, but then it will continue to produce berefits for years to come. The government therefore made provision for renewal of work permits of non-Kenyans despite alct of pressure from trade unions, church organisations and other pressure groups.

Another past Director of the Kenyanisation Bureau is quoted as having warned Kenyans against being in too much of a hurry to take over jobs from expatriates as this would happen as soon as there were adequately qualified persons to do so. The government was acutely aware of the dangers of "tokenism" and "window-dressing" which would not have had any long-term benefit to the country. To ward off an "Uncle Tom" culture the government insisted on training programmes specifically targeted at the attainment of skills required for specific jobs. The government set the example by establishing the Kenya Institute of Administration, the Kenya Secretarial College and other training institutions; and by sending Kenyans to crash programmes in public administration schools and on attachment programmes mainly in the U.K. Private employers followed suit.

Expensive? Of course the programmes were expensive and they made horrendous demands on the scarce human resources the employers had at their disposal then; but they ensured that employers had within their establishment a core of very well qualified and motivated staff who were not only able to take over but who would provide the required continuity.

It may perhaps not be possible to draw a parallel between the Kenyan experience and the situation in South Africa where the whites are here to stay unlike in Kenya where the expatriates come and go at the expiry of their work permits. This is where my assertion earlier on that it is the business community that will bring about real change holds true. The business community in this country will have to come up with a formula that will not only harness the energies of the black people constructively, but which will also bring about racial integration and cooperation in the work-place.

Indeed, it is the business community in Kenya that facilitated the process of bringing Kenyans into the job market and the economy. Private employers adopted and have continued to take a reasonably responsible attitude as a result of which it has not been necessary for the government to lay down a specific policy or guidelines on affirmative action such as hiring quota systems prescribed in America under the Civil Rights Act. Instead employers were asked to identify the jobs they could Kenyanise and to draw their own programmes and timetables to achieve the Kenyan participation levels so identified. The numbers and timescales had of course to be agreed with the Kenyanisation Bureau. And because of, rather than inspite of this pragmatic approach on the part of the government, companies have progressively taken on more and more Kenyans and developed them to take on senior management positions. Many public and private companies in Kenya are headed by Kenyan African Managing Directors, Executive Directors and General Managers; and, training remains a central function in their management. The one area that employers in Kenya have to practice some sort of affirmative action is in balancing the tribes content in their establishments.

#### LONRHO EAST AFRICA

One cannot talk about the business community or opinion leadership in Kenya without talking about Lonrho East Africa. Ionrho is one of the bigger private employers in Kenya with a total workforce of 6500 employees in diverse businesses.

When private employers were required to implement the Kenyanisation Programme, Lonrho Fast Africa group companies had the same fears and apprehensions as all the other employers in the country.

And like all the other employers, Lonrho embarked on internal re-organisation programmes which addressed the "peoples issues", and which have brought about a culture of mutual acceptance, mutual respect and a real team spirit among the people of the different races, colours, religious and tribes that work for the group.

We addressed the "people issues" viz

#### 1 Organisation Development -

(team spirit, sharing of values and culture)

We began by defining our mission statement. This has been revised many times over the years, but one fundamental provision has remained: the importance of developing the human resource. Our current mission statement which was re-worded recently through a series of seminars attended by all senior managers in the group reads as follows:

"We are committed to remain the quality market leaders in Agriculture, Leisure, Transportation and Motor industries in East Africa through a structured programme of expansion, diversification, self-sufficiency, human resources development, marketing and technological research while maximising shareholders' return on investment and contributing to national development".

#### 2 Remuneration Structures -

(job grading and compensation based purely on the job performed)

We have one job grading and remuneration system for all jobs throughout the group, and grade definitions which dictate any salary reviews and promotions for white, black, Asian, man or woman.

### 3 Training -

(identifying training needs and training investment costing)

Fach Lonrho group company has a training function which organises work-related training for all grades of staff especially in technical and supervisory skills. Each company is required to make provision in its budget for assisting staff with the cost of further education. The companies are also required to organise flex hours and day-release for staff attending polytechnics and technical schools.

### 4 Promotion and Succession Planning -

(career pathing and total people development)

Our training programmes are based on vigorous performance appraisal systems which determine staff development plans for individuals, departmental succession plans, and performance targets for each individual member of staff. The centralised longho East Africa Training Programme organises management training for the senior managers of the group to provide them with all-round management skills and to prepare them for more opportunities for internal promotion. We have a senior management population of 120. Alot of these managers have worked for Longho for over 20 years starting in junior supervisory positions. And I doubt that many of them would even start thinking of working for another employer!

Our employee retention rate is to a large extent attributable to our commitment to staff training and development. We believe that education moulds and equips a person; that as Addison stated: "What sculpture is to a block of marble, education is to the human soul"

#### 5 Labour Relations -

(interface with workers and the union on shop-floor related matters)

We are very fortunate in Kenya that our trade union movement does involve itself in politics, and that there is a tripartite arrangement between the Ministry of Labour, the Central Organisation of Trade Unions, and the Federation of Kenya Employers which ensures that labour disputes are usually resolved early and rarely reach the industrial court.

It would be unrealistic to pretend that these systems run like clockwork. Of course they do not; partly due to varying degrees of commitment of different managers, and also because managers are constantly under pressure to produce profits, and therefore some of them view the "peoples issues" as secondary.

However, we have a Managing Director who believes that success in managing our businesses depends on the quality of trained people we are able to deploy in an atmosphere of mutual respect and mutual acceptance. The "peoples issues" approach to Lonrho East Africa's human resources management is his brain-child. He has spared no effort to sell it to his management team; and this is the major reason that our internal Kenyanisation programme has been successful.

MN/1992

DANIE JOUBERT

HUMAN RESOURCES STAFFING MANAGER

ESKOM .

### CURRICULUM VITAE

DANIEL ANDRIES JOUBERT



Danie Joubert is the Human Resources Staffing Manager of Eskom responsible for organisation and skills planning, student development, professional mentorship, education investment, skills assessment, recruitment, skills market development and the Eskom Technology Leadership Programme. He also coordinates Eskom's Human Resources Strategic Plan.

He was previously the Engineering Manpower Manager of Eskom's Engineering Group which has responsibility for all Eskom's major capital projects and power station engineering services.

Before that he held positions as head of manpower planning for Eskom and Iscor.

He is a qualified work study practitioner and holds a B Admin from the University of Pretoria. He has also completed Unisa's School from Business Leadership Advanced Executive Programme. He is registered as a General Personnel Practitioner with the South African Board for Personnel Practice.

He is presently the chairman of the Education and Training Committee of the South African Chamber of Business a member of the Private Sector Education Council (PRISEC) and is serving on the Education & Training Committee of the South African Engineering Association and the adjudication panel for the 1992 Technology Top 100 Contest.

# AFFIRMATIVE ACTION CONFERENCE

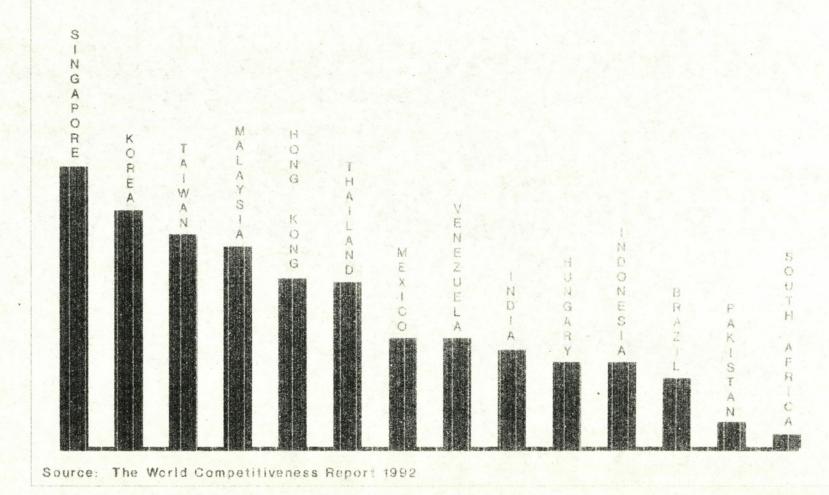
### PURPOSE

- To share and debate mindsets about and research into A.A.
- To build a national paradigm (vision) for a win-win outcome
- To identify leverage points for a national strategy leading to a win-win outcome

### AFFIRMATIVE ACTION

- Holistic win-win strategy to bring about a quantum leap in the supply of technological, entrepreneurial, managerial and leadership skills to kick-start South Africa's international competitiveness
- Not a political or social purge
- Demographics dictate focus

### DEVELOPING COUNTRIES - AVAILABILITY AND QUALIFICATIONS OF HUMAN RESOURCES



# SUPPLY OF NEW BLACK GRADUATES AND DIPLOMATS

| Qualification and Discipline | % of all qualifiers<br>1986 | % of all qualifiers<br>1990 |  |
|------------------------------|-----------------------------|-----------------------------|--|
| Engineering Graduates        | 1.8%                        | 2,0%                        |  |
| Engineering Diplomats        | 9,1%                        | 8,1%                        |  |
| Accounting Graduates         | 4,3%                        | 4,5%                        |  |
| Accounting Diplomats         | 0,9%                        | 5,4%                        |  |

### AFFIRMATIVE ACTION STRATEGY

- International level
- National level
- Company level
- Individual level

### ACTION AT INTERNATIONAL LEVEL

- Development aid
- Cooperation and exchange agreements
- Training with the aid of sponsorships

### ACTION AT NATIONAL LEVEL

- Vocational education and training
- NGO's and large trusts
- Bridging programmes
- Professional bodies
- Employer bodies
- Trade unions
- Statutory bodies
- Political parties

# ACTION AT A COMPANY LEVEL

- Targets for education and training
- Climate
- Policies on equal opportunity
- Investing in infrastructure
- Bursaries and scholarships
- Teacher upgrading programmes
- Career counselling and marketing at schools
- Video programmes
- Youth education and development programmes
- Organising employees
- Equal opportunity programmes with black champions
- Exchanging information

# ACTION AT THE INDIVIDUAL LEVEL

- Accountability for being competitive and successful in the world of work rests with the individual
- Influence
- Support
- Opportunity
- The will to succeed
- Ability to work hard
- Make decisions about opportunities

### DR CHIMERE-DAN

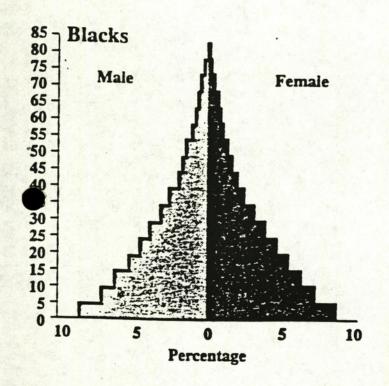
POPULATION AND RESEARCH PROGRAMME DEPARTMENT OF SOCIOLOGY

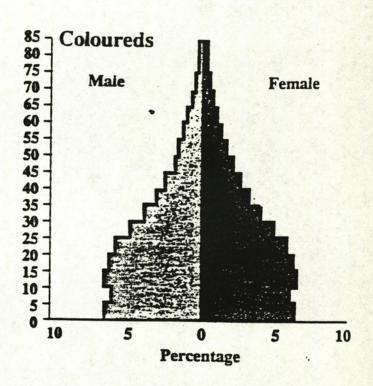
UNIVERSITY OF THE WITWATERSRAND

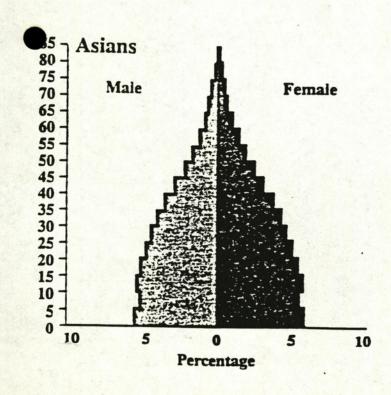
### Dr. Orieji Chimere-Dan

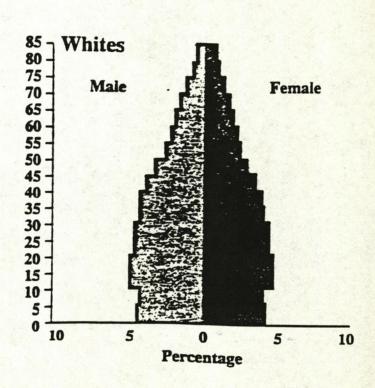
Dr. Orieji Chimere-Dan holds M.Sc. and Ph.D degrees in demography from London University. He is responsible for population research and training at the Department of Sociology, University of the Witwatersrand, Johannesburg. He has published in professional journals and consults for local and international organizations on population and development in Southern Africa. He belongs to professional associations such as the International Union for the Scientific Study of Population, the Population Association of America, British Society for Population Studies and the Union for African Population Studies. Dr. Chimere-Dan is current national convenor of demography for Association of Sociology in South Africa.

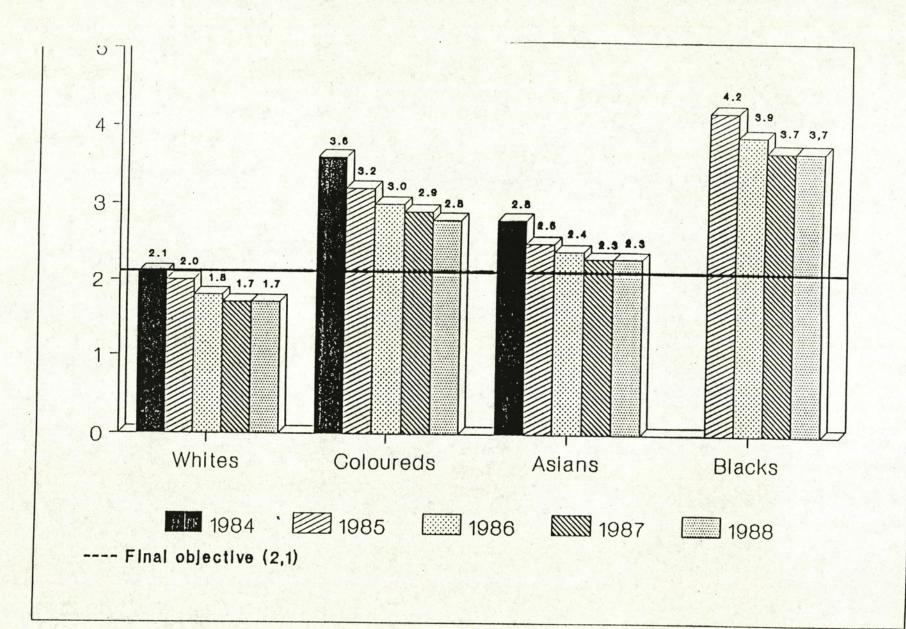
Fig. 1: Age Pyramids, 1985

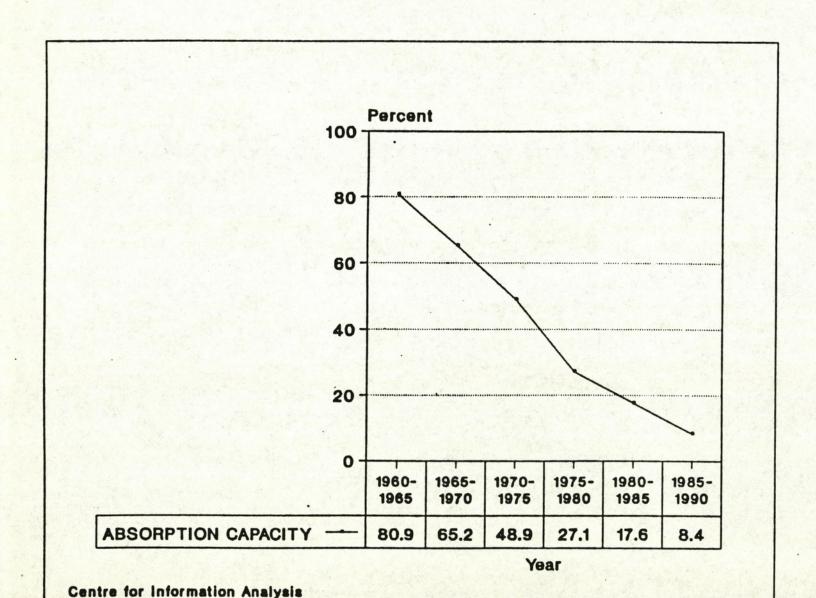


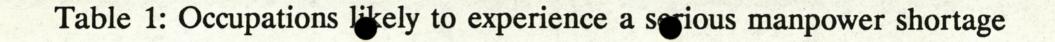












A: All categories of engineers

B: Technicians/Technologists

C: Computer science occupations (except operators)

D: Artisans - millwrigt, electrician, diesel mechanic, lithographer

E: General - metallurgist, chemist, mathematical related, veterinary, town and regional planner, registered accountant

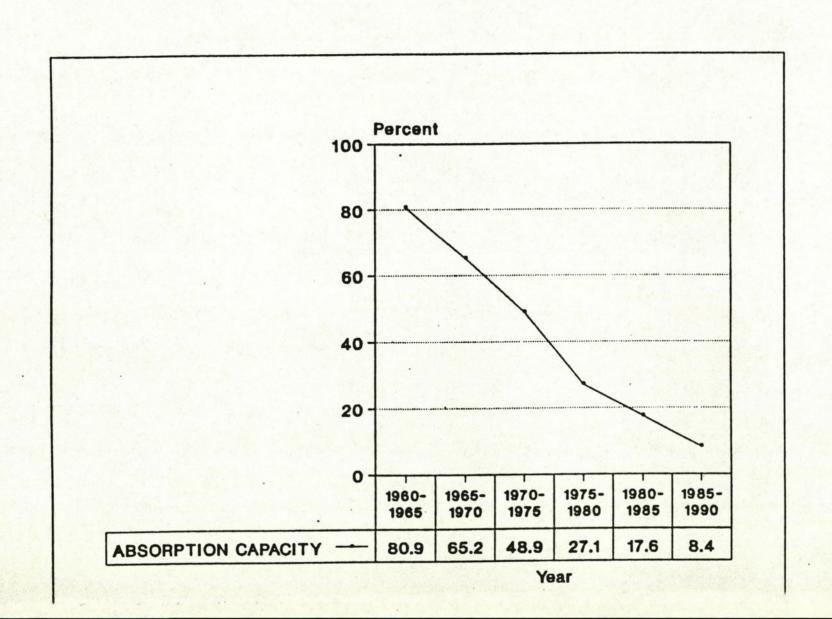
Source: NMC Annual Report 1991.

### UALIFICATIONS ACCORDING TO FIELD OF SPECIALISATION, 1985 AND 1990

|  | 1985                    |                           | 1990                    |                                     |
|--|-------------------------|---------------------------|-------------------------|-------------------------------------|
|  | DEGREES AND<br>DIPLOMAS | DIPLOMAS AND CERTIFICATES | DEGREES AND<br>DIPLOMAS | DIPLOMAS<br>CERTIFICAT<br>TECHNIKON |
|  | UNIVERSITIES            | TECHNIKONS                | UNIVERSITIES            |                                     |
| Susiness, commercial and managerial sciences social sciences, education lealth care and health sciences ingineering and mathematical | 13,5%<br>31,1%<br>9,7%  | 18,6%<br>1,4%<br>9,6%     | 14,7%<br>33,9%<br>9,3%  | 22,8%<br>3,9%<br>10,3%              |
| sciences, computer<br>science<br>Il others   | 7.8%<br>37.9%           | 44,9%<br>25,5%            | 7.2%<br>34.9%           | 29.9%<br>33,1%                      |
| OTAL   | 100,0%                  | 100,0%                    | 100,0%                  | 100,0%                              |

surce: Department of National Education

South Africa: Incremental changes in the absorption capacity of the formal sector (1960–1990)



### MICHAEL WATKINS

SENIOR MANAGER ORGANISATIONAL DEVELOPMENT

FIRST NATIONAL BANK

### MICHAEL JAMES WATKINS

Michael Watkins was appointed Senior Manager - Organisation Development at First National Bank at the beginning of 1992. Although he has his roots in branch banking, he has specialised in the field of Human Resource Development. Prior to taking up his present position, he held management positions at the Bank's Centre for Management Studies in Sandown [1987 to 1991].

He holds the degrees B Com [General] and B Com [Hons] [Business Economics] from the University of the Witwatersrand and is currently studying towards an MBA.

He is a registered Personnel Practitioner with the SABPP, a full member of the IPM and is also an examiner for one of South Africa's major professional institutions in the field of Human Resource Management.

He is married with three children.





# Affirmative Action

The line managers role in ensuring success

Michael Watkins Senior Manager -

> Organisation Development

First National Bank

The purpose of Affirmative Action is to advance equality in the enjoyment of human rights within societies where there has been in the past systematic discrimination, whether social or political.

Asbjorn Eide Director, Norwegian Institute of Human Rights

# 

Diversity - a reality of life

Ownership

• Commitment - top to bottom

Barriers

Training and Development

Responsibility and Accountability

# DIVINSIAN and like a reality of like

### Traditional:

- Culture, race, political, language, etc.

### The 1990's

- Conflict in every sense
- Varying educational standards
- Diverse economic systems approaches
  - Different visions of the future
  - Morale and motivation
  - Employment/unemployment
  - Inadequate communication
  - Wealth deterioration

# The MM Society



High expectations



Emphasis on rights



Questioning society



Individuality



Bottom-up participation



Conservation of physical resources



Technology revolution



Less predictability (human environment)

# The Management

- Strong future orientation
- Optimal use of human resources
- Appropriate use of technology
  - Pre occupation with external environment
- Concern for organisational purpose
  - A focus on values
  - Challenging old assumptions and practices
  - Entrepreneurship

# OWNERSHIP

A planned process, not an event

Cascading involvement Management
Workers

Line communication and structuring the work environment

Line workshopping / networking

Rewarding achievement / penalising non - achievement

# COMMITMENT - top to bottom

Executive management as role models

## Conditioning the environment

- communication network
- bridging processes
- involvement at all levels
- real issues
- willingness to experiment and take risks
- applauding positive results visibly

Failure cannot be contemplated

# STRATEGIC STEPS FOR EFFECTIVE AFFIRMATIVE ACTION

- Establish company policy and commitment
- Link corporate business objectives and mission
  - Audit workforce
- Analyse workforce
  - Set specific, measurable goals
  - Communicate objectives

# STRATEGIC STEPS FOR EFFECTIVE AFFIRMATIVE ACTION

(continued)

- Responsibility and accountability
- Recruitment and promotion
- Appraisal and development
- Review and revise employment procedures
  - Monitoring and measurement systems

# SUCCESSFUL AFFIRMATIVE ACTION

- Blacks in senior line positions
- Blacks managing Whites
- Blacks successfully doing former White jobs
- Lower turnover/higher retention rates for Blacks
- Positive, visible, active support and commitment given to strategy by top management, especially the C.E.O.
- Total commitment by line management
- Workplace and social acceptance of all by all

PAUL ALEXANDER

HUMAN RESOURCES CONSULTANT

OLD MUTUAL

#### BIOGRAPHY FOR AFFIRMATIVE ACTION CONFERENCE

NAME: PAUL ALEXANDER

TITLE: HUMAN RESOURCES CONSULTANT

COMPANY: OLD MUTUAL

DUTIES: - Human Resource Consultant to Old Mutual's Branch Structure.

- Involved in:

\* Organisational Development

\* Manpower planning\* Succession planning

\* Human resource management systems

\* Trainee management schemes

\* Change management\* Affirmative action

- Manage a team of Human Resource Advisers.

BACKGROUND: Generalist Human Resources and has been with

Old Mutual for 7 years both in Durban at Old

Mutual Head Office in Cape Town.

QUALIFICATIONS: - BA (Hons) degree from Wits University.

- Registered Personnel Practitioner with the South African Board for Personnel Practice.

# KEY POINTS FROM A SPEECH TO BE DELIVERED BY MR PAUL ALEXANDER, OLD MUTUAL,

## AT THE INTERNATIONAL EXECUTIVE COMMUNICATION CONFERENCE

#### ON AFFIRMATIVE ACTION

#### 26 - 27 AUGUST 1992

WHAT IS THE PROFITABILITY THREAT - ARE WE FACING THE FACTS, OR OUR FEARS?

#### THE PROBLEM OF PERCEPTIONS -

- DIFFERENT IS SEEN AS DIFFICULT.
- ALL THE USUAL FEARS ASSOCIATED WITH THE MANAGEMENT OF CHANGE PROCESS, ARE PERTINENT AND TOPICAL WHEN ONE LOOKS AT FEARS UNDERLYING AFFIRMATIVE ACTION.
- FEARS GENERALLY COME THROUGH IN ESPOUSED REASONS FOR OPPOSING AFFIRMATIVE ACTION.
- WE COUCH OUR FEARS IN SAFE ACCEPTABLE CATEGORIES SUCH AS ECONOMIC ONES.
- WHITES FEAR LOSING THEIR RIGHTS.
- WHAT WE ARE TALKING ABOUT IS NOT LOSS OF RIGHTS BUT LOSS OF PRIVILEGES.

#### CATEGORIES OF ECONOMIC ARGUMENTS AGAINST AFFIRMATIVE ACTION

- 1. THAT PROFITABILITY WILL DECLINE
- 2. THAT PRODUCTIVITY WILL BE LOWERED
- 3. STANDARDS WILL BE LOWERED
- 4. EXPENSES WILL INCREASE
- 5. CUSTOMER SERVICE AND THEREBY MARKET SHARE WILL DECREASE AND
- 6. RESOURCES WILL BE WASTED.

BEHIND QUESTIONS ABOUT PRODUCTIVITY, PROFITABILITY, STANDARDS,
AND EXPENSES COME VERY BASIC QUESTIONS

- "WILL I LOSE MY JOB?"
- "ONCE AFFIRMATIVE ACTION STARTS, BANG GOES MY CHANCE OF PROMOTION"
- "HOW WILL I COMMUNICATE AND DEAL WITH BLACK MANAGERS AND STAFF"
- THE BASIC FEAR OF CHANGE.
- THE FEAR OF THE UNKNOWN.

SOMETIMES VERY BASIC RACIST ASSUMPTIONS UNDERLIE MANY OF THE "ACCEPTABLE ARGUMENTS" PUT FORWARD CONCERNING PRODUCTIVITY AND PROFITABILITY.

THAT IS NOT TO SAY THAT EVERY PERSON WHO OPPOSES AFFIRMATIVE ACTION FROM ANY ECONOMIC POINT OF VIEW IS A RACIST.

- THE MARGINALITY OF MANY BLACK PEOPLE WITH HIGH POTENTIAL IS
  LESS A FUNCTION OF INDIVIDUAL ABILITY THAN OF SOCIAL
  CLOSURE.
- A LINK BETWEEN WHAT ARE OFTEN OUR OWN RACIST ASSUMPTIONS AND
  THE RESULTS WE GET IN TERMS OF PRODUCTIVITY.

MANAGEMENT HAS AN IMPORTANT ROLE IN CHALLENGING THESE FEARS.

AFFIRMATIVE ACTION IS ABOUT REMOVING WHITE PRIVILEGE AND NOT REMOVING THE RIGHTS OF WHITES.

#### ECONOMIC OBSTACLES TO AFFIRMATIVE ACTION

- 1. CURRENT STATE OF OUR ECONOMY.
- 2. HOW DO YOU CHANGE THE RACIAL MIX IN YOUR ORGANISATION WHEN YOU ARE IN FACT SHRINKING AND NOT GROWING?

- 3. FINANCIAL RESOURCES ARE SCARCE.
- 4. THE IMPLICATION OF TAKING ANY LARGE GROUP INTO AN ORGANISATION WHO HAVE HAD IN THE PAST INFERIOR "BANTU" EDUCATION AND PERHAPS LITTLE BUSINESS EXPOSURE.
- 5. A TRAINING AND DEVELOPMENT COST
- 6. AN EFFECTIVE AFFIRMATIVE ACTION PROGRAM IS COSTLY.
- 7. THE RESULTS ARE INTANGIBLE AND LONG TERM

THESE VERY REAL ECONOMIC FACTORS YOU NEED TO BALANCE WITH THE COST OF NOT HAVING AN AFFIRMATIVE ACTION PROGRAMME

- 1. THE COST OF NOT HAVING ONE FAR OUTWEIGHS THE COST OF HAVING ONE.
- MARKETING REASONS.
- 3. BLACK SPENDING POWER IS PROJECTED TO INCREASE AT A DRAMATICAL RATE.
- 4. WE NEED TO REFLECT THE COMPOSITION OF THE MARKET THAT WE SERVE.

IF ONE WANTS TO MAINTAIN ONES POSITION AS A SERIOUS PLAYER IN THE BLACK MARKET, IT IS CLEAR THAT AFFIRMATIVE ACTION IS AN ABSOLUTE ECONOMIC NECESSITY.

- EXPERIENCE OF AMERICAN CORPORATIONS

#### DIVERSITY ADDS VALUE

- PHILOSOPHY OF <u>UBUNTU</u>.
- VALUING AND MANAGING DIVERSITY INVOLVES FOCUSING TOO ON PRODUCTIVITY.
- UNLEASHING CONSIDERABLE POTENTIAL WITHIN OUR ORGANISATIONS.
- AN OPPORTUNITY TO CORNER PART OF AN INCREASINGLY DWINDLING MARKET.
- THERE IS STRATEGIC VALUE TO MOVE NOW.
- IF NOT, IT MAY BE FORCED.
- TARGETS FOR NATIONALISATION.

# A WAY TO GUARANTEE THAT THE PROFITABILITY THREAT BECOMES A REALITY

- TOKENISM AND SHADOW CANDIDATES.
- COUNTER-PART SYSTEM.
- JOB FRAGMENTATION.
- CREATION OF EXTRA POSITIONS, "BLACKS ONLY" TRAINEE SCHEMES.
- FOCUS ON NUMBERS WITHOUT SUPPORTIVE STRUCTURES.

POSITIONING OF THE AFFIRMATIVE ACTION PROGRAM IN AN ORGANISATION.

- A CLEAR CORPORATE OBJECTIVE AND PART OF THE BUSINESS STRATEGY OF THE ORGANISATION.
- ONE NEEDS TO COMMUNICATE THIS.
- VERY CLEAR RESULTS ORIENTATION.
- PROGRESS A KEY RESULT AREA FOR EVERY MANAGER.
- MEASURED AT PERFORMANCE APPRAISAL TIME.

- REWARD SUCCESSES AND RECOGNISE BEACONS.
- LINK AFFIRMATIVE ACTION TO MAIN STREAM STRATEGIES OF THE ORGANISATION.

AFFIRMATIVE ACTION IS CRITICAL FOR THE SURVIVAL OF ORGANISATIONS AND THEREBY THEIR PROFITABILITY.

PRODUCTIVITY DEPENDS LARGELY ON MANAGEMENT, QUALITY OF TRAINING AND DEVELOPMENT, HOW THINGS ARE COMMUNICATED.

- TO WHAT EXTENT IDENTIFICATION AND SENSE OF BELONGING IN THE ORGANISATION IS BUILT AMONG ALL EMPLOYEES.
- STANDARDS NEED TO BE REVIEWED.
- STANDARDS ARE REVIEWED FOR THEIR CULTURE FAIRNESS.
- IT COSTS A LOT TO RUN AN AFFIRMATIVE ACTION PROGRAMME, BUT ONE MUST COST THAT AGAINST THE PRICE OF NOT HAVING ONE.
- ONE IS OFTEN BETTER EQUIPPED TO SERVICE ONE'S MARKET AND INCREASE MARKET SHARE IF ONE MORE ADEQUATELY REFLECTS THAT MARKET.

IF YOU DON'T HAVE AN AFFIRMATIVE ACTION PROGRAM THEN RESOURCES WILL BE WASTED.

MEASURE RESULTS AND NOT ACTIVITY, TO DEVELOP MEANINGFUL INDICES.

ECONOMIC OBSTACLES TO AFFIRMATIVE ACTION CAN AND WILL BE OVERCOME.

cm/p4/pa-31

MARGARET NJUGUNA

TRAINING AND PERSONNEL MANAGER

LONRHO EAST AFRICA

#### CURRICULUM VITAE

Name : Margaret Njuguna

Nationality : Kenyan

Education/: Bachelor of Arts (Econ)
Qualifications: University of Nairobi, Kenya

: Master of Science (Organisation Management)

University of Manchester, U.K.

Post-graduate certificate in Organisation Management - University of Hamburg, Germany

Professional: Member, British Institute of Management

: Member, Kenya Institute of Management

#### KEY WORK EXPERIENCE

1 January 1991 to date

Training and Personnel Manager, Lonrho East Africa incharge of all management training and coordination of staff management policies and systems of Lonrho East Africa which includes Lonrho group companies in Kenya, Uganda and Tanzania.

2 1989 - 1990

Manager, Human Resources Development Group, Deloitte Haskins & Sells Management Consultants Ltd.

3 1985 - 1988

Senior Consultant, Coopers & Lybrand Associates. Incharge of the Human Resources Division.

4 1983 - 1984

Personnel and Administration Manager, Minet ICDC Limited.

5 1980 - 1983

Senior Administrative Assistant and lecturer in the Extra-Mural Department of the University of Nairobi.

#### Hobbies:

o Golf - 15 handicap

- in 1988 was Kenya lady Golfer of the Year in the Bronze Division

o Gardening

#### DAWID SWART

GENERAL MANAGER PERSONNEL AND INDUSTRIAL RELATIONS

TOYOTA SA MARKETING

#### CURRICULUM VITAE

#### D H SWART

Dawid Swart was educated at the University of the Orange Free State where he obtained his Bachelor of Social Science degree majoring in Psychology, sociology and nursing in 1974. He furthered his studies and obtained an Honours degree in Industrial Sociology. He is currently working on his masters degree and the topic of his thesis is "The problematic nature of prejudice under Black employees in the work environment."

Specialist courses undertaken include Presentation of Louis Allan Management and various other trainer courses including training in behaviour modelling, thinking skills and Industrial Relations. Dawid is presently a member of the IPM Human Resources Services Committee and a trustee of the Vaal Triangle Career College.

Dawid's working career began in 1971 when as a full time student he also worked as a psychiatric nurse. After obtaining his Bachelor degree he joined Vierfontein Colliery in a Personnel capacity before moving on to Stilfontein Goldmine and then Sasol One - each time gaining more generalised personnel experience.

In 1981 he joined Anglo Alpha Ltd as a Personnel Manager and remained there until mid 1988, when he left to join Fedmech as their General Manager: Manpower. Fedmech was part of the Federale Volksbeleggins Group of Companies which was a diversified industrial holding Company with interests in enterprises directed at growth sectors, mainly in consumer markets.

In 1990 he was promoted to the Head Office of Federale Volksbeleggings as General Manager: Manpower and Group Communication.

Dawid left Federale in November 1991 and he presently is the General Manager: Personnel and Industrial Relations for Toyota SA Marketing. He joined Toyota in December 1991 to assist in the development and implementation of the Companies vision, mission, values and strategic priorities. The function includes the managing of the Human Resource department which involves managing job outputs of specialists in Human Resource management, Training and development, Social Responsibility, Loss Control and Services. A further function includes co-ordinating and consulting on Toyota's Human Resources Strategy.

Dawid's present special areas of interest are systems thinking, strategic planning and cognitive development.

#### A SYSTEMS APPROACH

TO

## CAREER MANAGEMENT AND AFFIRMATIVE ACTION

Presented by:

Mr Dawid Swart General Manager, Personnel & IR : Toyota SA Marketing

Presented on Thursday, 27 August 1992 at the International Executive Communications Conference on Affirmative Action

### A SYSTEMS APPROACH TO CAREER MANAGEMENT AND AFFIRMATIVE ACTION

#### 1. INTRODUCTION

Thank you for the invitation. The number of delegates present is an indication of the importance of the subject. What I am sharing with you is my own experience and my personal recommendations.

#### 1.1 FRAMEWORK

Affirmative action and career management will be discussed as one topic although our usual scientific way of handling social systems would be to break it up and study it as two separate disciplines. We differentiate between career management and affirmative action only on the basis that affirmative action is in fact career management in an abnormal environment. My recommendation will be that we treat both problems as one and as part of a bigger whole.

#### 1.2 TOPICS COVERED

- \* Techniques used to implement affirmative action programmes Past
- \* Structures working against the process Reality
- \* A participative approach Systems thinking
- \* Scorekeeping and scoreholders It determines the game

#### 2. TECHNIQUES USED TO IMPLEMENT AFFIRMATIVE ACTION PROGRAMMES

#### 2.1 WHAT DOES AFFIRMATIVE ACTION MEAN

Affirmative action refers to a situation where an organization uses its resources and expertise to deliberately make a concerted effort to train and develop blacks with talent and potential for promotion.

#### 2.2 IS AFFIRMATIVE ACTION STILL NECESSARY

The various stakeholders are still entrapped in their traditional way of thinking. They think about the organisation as a rigidly managed command - control system with as pyramid structure. When asked about affirmative action, their perspectives are a product of the way they think about the organization and include all the problems created by such a system.

#### 2.3 EMPLOYEES PERSPECTIVE ON AFFIRMATIVE ACTION

To address the disadvantages caused by:

- Poor education
- Job reservation
- Segregation
- Western business culture
- Prejudice
- Racism
- Lack of political rights
- Unequal distrubution of wealth

## 2.4 MANAGEMENT'S PERSPECTIVE ON AFFIRMATIVE ACTION

#### To deal with:

- Moral issues
- Employee expectations
- Market pressure
- Trade Union pressure
- Political pressure
- Management/worker ratios
- Under-utilised manpower
- Employee motivation
- Employee loyalty

### 2.5 COMMUNITY PERSPECTIVE ON AFFIRMATIVE ACTION

#### The community expects:

- Management mix to reflect racial mix
- Non discriminatory practices
- Rectification of past wrongs
- Affirmative action legislation
- Redistribution of wealth
- Equal opportunities

#### 2.6 COMMON ELEMENTS IN AFFIRMATIVE ACTION PROGRAMMES

The material and programmes available on affirmative action contain more or less the same elements, the only difference being that of the departure point, and in detail:

#### \* Survey perceptions and fears

Level of resistance
Pockets of resistance
Extent and nature of resistance

#### \* Policy statement

Reason for the programme
What the programme entails
Who will be assisted by the programme
Strategies to address problem areas

#### \* Ensure management commitment

. Road show
Action plans

#### \* Communication to Employees

Expose in handbooks Cover during induction Regular briefs

#### \* Set Organisational objectives

Managers to agree on targets Budget

\* Identify advancement opportunities

Positions Skills index

\* Complete job specifications

Organization structure
Outputs
Measurement criteria

\* Complete Man specifications

Skills
Experience
Qualifications
Personality traits

\* Compare candidates to job and man specification

Interview
Test

 Determine the gap between specification and candidate

Individual training programme Measure results

#### \* Establish an effective mentor programme

Train mentors
Assign trainees to mentors

#### \* Monthly/quarterly and annual reports

Progress against targets

#### 3. STRUCTURES WORKING AGAINST THE PROCESS

Affirmative action programmes are either not working, or progress is too slow. The stakeholders usually blame one another for the lack of movement. Looking at affirmative action with a systems perspective, the hidden structures working against it becomes clearer:

#### 3.1 THE COST OF DEVELOPMENT

Bridging the education gap
Training and Development Programmes
Outputs

#### 3.2 ONE SOLUTION PER PROBLEM

- Job reservation Quotas
- Poor education Educate
- Discrimination Reverse discrimination
- Segregation Integration
- Poverty Distribution of wealth

#### 3.3 PATERNALISM

- Management will do it for you
- Reach down and lift them up
- The company must develop me

#### 3.4 RESISTANCE TO CHANGE

Social systems are structured in such a way that it promotes balance. Any forced changes are forced back just as hard by the system. Most change programmes hit a glass ceiling.

#### 3.5 COMPETITION

- Positions
- Time
- Money
- Effort

#### 3.6 BOTTOM LINE FOCUS

- You get what you measure
- Bonus schemes based on profit
- Development not easily measured

#### 3.7 MULTI-FUNCTIONALITY OF JOBS

- Explicit functions : Job contract
- Implicit functions : Power and prestige

#### 3.8 COMMAND CONTROL ORGANISATIONAL STRUCTURES

- Top man in control
- Ask next level
- Pleasing the boss
- Political games

#### 4. A PARTICIPATIVE APPROACH TOWARDS AFFIRMATIVE ACTION

Realise that what we are aiming to do can be compared to asking Elana Meyer to change from the 10 000 metre event in which she excelled, to the 100 metre.

Her whole training programme will have to be adapted to enable her to change her system from the ability of keeping a constant pace for an extended period to that of an explosion of power over a short distance.

If we think of the organization as a system, then we must realize that we expect too much of the organization if we ask it to perform differently from the way it was designed, without re-designing it.

The answer to our problem therefore lies in redesigning the system to produce the required outputs.

#### 5. INTRODUCING CHANGE

#### 5.1 PARTICIPATIVE APPROACH

- Holistic
- Impact on total organization

#### 5.2 MANAGING THE CHANGE PROCESS

## 5.2.1 Obtain commitment from top and middle management by:

- Establishing the need for affirmative action
- Clarifying perceptions about affirmative action
  - \* Negative perceptions
  - \* Positive perceptions
- Establishing how affirmative action can benefit all stakeholders
- Obtain understanding of the changing role of management from controlling to that of balancing the needs of the four primary stakeholders
  - \* Shareholders profit and growth
  - \* Customers quality, value for money & good service

- \* Employees Personal growth,
  empowerment and
  reward for effort
- \* Community Socio-economic development and safe clean environment to live in.
- How to turn affirmative action into a competitive advantage

#### 5.2.2 Develop the programme

In one sentence, define the objective to be achieved within 10 years:

## Example

"To develop a successful organization with a management mix reflecting the same mix as that of the economically active population."

#### 5.2.3 Idealized design

- New South Africa
- All employees disappeared
- Re-man from scratch
- Must meet the objective
- Technologically feasible
- Operationally viable
- Ignore implementation problems

### 5.2.4 System specification to reach your objective

- Outputs : Goods and services

- Inputs : Resources needed; manpower, material, machines

- Process : How decisions are made

- Performance criteria : Measuring success

- Management Style : To meet needs of stakeholders

#### 5.2.5 Define reality

- Outputs
- Inputs
- Process
- Performance criteria
- Management Style

#### 5.2.6 Determine the gap

### 5.2.7 Critical activities needed to close the gap

- Performance measurement
- Reward for performance
- Pitfalls and corrective action
- Conduct a values exercise
- Recruitment strategy

## 5.2.8 Organizational structure to enhance affirmative action

- Structured around business processes
- Modular teams as building blocks
- Reduce work classification to enhance flexibility
- Self managed teams
- Flat organization

#### 5.2.9 Biggest constraint

- Knowledge gap
- Context-free transfer of knowledge
- Common language
- Methodology
- Define problems and generate solutions
- Reward for teaching others your discipline

#### 6. SCORE HOLDERS

- External pressure legislation
- Self managed
- Vision driven

#### 6.1 SCORE KEEPING

- Turning negatives into positives
- Competitive advantage
- Constraints are the rules of the game
  - \* Break rules
  - \* Eye on referee
  - \* Be creative within the constraints
- International competition

#### 7. CONCLUSION

- Nothing in life is simple, we are dealing with complexity beyond the grasp of any individual
- Stop thinking that you must have the answer to all problems
- Ask others what they see together you can form a better picture of the complex whole.

DON WIGGILL

TRAINING MANAGER

CENTRAL TRAINING UNIT ANGLO AMERICAN CORPORATION

#### CURRICULUM VITAE

Don B. Wiggill was born in the Orange Free State and went on to survive both this and an education entrusted to ferociously autocratic German nuns and unrelentingly maverick Irish brothers. After matriculating in 1978 with distinctions in English, Afrikaans and History Don embarked on a two-year government sponsored vacation in the Cape Province courtesy of the S.A.D.F. This National 'Service' saw him playing tuba and sousaphone in the W.P. Command Band. Between 1981 and 1984 Don worked as a Banqueting Waiter at the Carlton Hotel, a Money Packer at Bez Valley Fidelity Guards, a CNA till assistant, a barman at the Chamber of Mines Sports Club and even as a clown in the travelling Paddington Bear Show! As a 'sideline' he attended lectures at Wits and in 1984 he graduated cum laude with a B.A. Ed degree. Between 1985 and 1987 Don taught senior English and History at Hyde Park High School; obtained a B. Ed Honours degree cum laude (again from Wits) and by mid-1987 realised that teachers are underpaid, underdeveloped and underworked. Having made this discovery Don left to join Anglo American Training Centre at Maccauvlei. Now in his fifth year of service Don has extensively in their Management Training Organisational Development Units and currently is Training Manager in charge of Public Programmes in their Centre for Individual Skills Development. Don has pioneered lifeskills and organisational readiness training within CTU in association with DeBeers and Amcoal who have jointly put some 230 trainees, undergraduates, graduates and technikon students through his Business Preparedness Programme. Don is currently involved in launching two new programmes Junior Lifeskills Study School (J.L.S.) and New Era Manager (N.E.M.) both of which see further applications of Lifeskill training. J.L.S. has been run twice and organisations such as Schweppes, Deved and Johnsons Wax have been instrumental in sponsoring the J.L.S. ventures which have seen some 80 young South African pupils coming together to explore their diverse value systems. Don is CTU's certified Reddin MES facilitator and has facilitated these Senior Management programmes in both South Africa and Zimbabwe. He is married to Paula and they have one son Dylan.

# THE IMPORTANCE OF COMPANY INVOLVEMENT IN DEVELOPMENT AND TRAINING

- Don B. Wiggill
TRAINING MANAGER - LIFESKILLS
C.T.U.

IN THE END, AS ANY SUCCESSFUL
TEACHER WILL TELL YOU, YOU
CAN ONLY TEACH THE THINGS
THAT YOU ARE. IF WE PRACTICE
RACISM THEN IT IS RACISM THAT
WE TEACH

- Max Lerner, 1949

# **OVERVIEW**

- \* "THE ANIMALS" Digo, Tanzania
  Bridging vs Organisational Readiness Programmes
- \* "THE PERSISTENT DOG" Bura, Central Africa Programme Development:
  - An Holistic Model of Lifeskills
  - Core Values
- \* "WHO IS THE BEST?" East Africa Maximising Learning Opportunities
  - Participant Diversity
  - Management/Union Input
- \* "THE NIGHTINGALE AND THE ASS" North and East Africa

An Evolving Methodology

- Learner Independence
- Encouraging Self-Accountability
- \* "HEARING AND SEEING" Douala, Cameroon Making Line Managers Responsible
  - Demythologising Mentorship
  - Every Manager a Mentor
- \* "HOW THE TORTOISE OUTWITTED HIS FATHER-IN-LAW" - Bulu, Cameroon A Final word

#### THE PERSISTENT DOG

BURA, CENTRAL AFRICA

A dog was trying to crack a thigh-bone between his teeth. "Why all that trouble for a hard old bone?" asked his master. The dog answered, "I hope to find some soft marrow inside."

#### THE ANIMALS

DIGO, TANZANIA

Many years ago all the animals were domestic - they lived with Man in his garden. But, of course, they could not stay for ever because while some animals love to be free, others are angry and violent by nature, and some are very proud while others are delicate and sensitive. So they quarrelled with Man until at last he said, "I can't stand you any longer - go away and live in the wilderness! You may not live with me if you refuse to obey me."

So most of the animals left: the angry lion, the rapacious leopard, the dirty hyena, the proud giraffe, the delicate gazelle, the ill-tempered rhinoceros and the indomitable elephant. Some stayed: the hungry goat, the meek sheep, the placid cow and the obedient dog. They all agreed to live with Man and do what he wanted.

# THE NIGHTINGALE AND THE ASS

NORTH AND EAST AFRICA

One day the nightingale sang beautifully. The ass was listening, and when the nightingale stopped for breath, the ass observed, "Very nice, my feathered friend, but at home we have a cock who sings every morning, much louder than you. You can't beat that!"

Do not waste your talents on someone who lacks the taste to appreciate them.

#### WHO IS THE BEST?

EAST AFRICA

One day the animals were quarrelling about who was the best animal.

"I am," roared the lion, "for I am the most feared."
"No, I am," trumpeted the elephant, "because I am the biggest."
"No, I am," hissed the viper, "for I am the deadliest."
"Am I not the highest flier?" cried the eagle.
So they went on for a long time.
The cheetah claimed precedence for being the fastest animal, the giraffe for being the tallest, the python for being the longest, and the sheep for being the most patient. Finally they agreed to call Man and let him be the judge. Man came and said, "The best of all the animals is the cow because she is the most useful to me."
Each of us thinks first of his own interest.

#### HEARING AND SEEING

DOUALA, CAMEROON

The spider made friends with the millipede. One day while they were sitting together the millipede said, "My dear, did you know that human beings are deaf? When I stamp my thousand feet they can't hear even one of them."

The spider answered, "Really! And did I ever tell you that they are blind as well? When I've spun myself a new house, a human being will walk straight through it!"

"Yes," said the millipede, "and what is more, humans do not love their bodies - they cover them up so that no one can see the beautiful things which God gave them!"

"True," added the spider, "and they don't like other things which God gives us either. Like the sunshine and rain, which they protect themselves against with silly hats and umbrellas!" They both agreed that people must be very stupid indeed for not loving what God has given them.

# HOW THE TORTOISE OUTWITTED HIS FATHER-IN-LAW

BULU, CAMEROON

The tortoise was on the look-out for a suitable wife. Soon he found a nice girl who was willing to marry him. There only remained her father's consent and the agreement of a 'bride-price'. However, the girl's father did not particularly fancy Mr Tortoise as his son-in-law, so he said, "All I want for my daughter are three bundles of water neatly tied up with string." The tortoise retorted, "All right, I will do that as soon as you have made the string for me for the smoke of your tobacco pipe."

# **BRIDGING VS ORGANISATIONAL READINESS**

#### \* THE BRIDGE - AND YOUR ORGANISATION

- Culture and its Function/Dynamics e.g. Inclusion/Exclusion? Reward/Punishment? The Invisible Prejudice?
- Change Readiness Levels e.g. Growth or Maintenance Cycle?
- Challenge e.g. Best Sameness or Most Diversity?

## \* THE BRIDGE - AND THE ENTRANT

- Disadvantaged or Differently Enabled?
- Difficult to Accommodate or Hard to Accept?
- A Danger to the Status Quo or An Endangered Species in the Status Quo?

# \* ORGANISATIONAL READINESS - THE EVOLUTION OF A NEW BUSINESS CULTURE

- The Entrants Organisational Readiness
- The Organisation's Readiness for New Entrants
- The deBeer's Experience

# PROGRAMME DEVELOPMENT 1

#### \* An Holistic Model of Lifeskills

## **GROWTH**

- Holistic Life Mapping
- Managing Self Concept
- Problem Solving & Thinking
- Learning through Experience
- Study Skills
- Literacy
- Numeracy

# SOCIAL

- Managing Relationships
- Interpersonal Communication
- Self-Assertion
- Teamness
- Conflict Management
- Emotional Literacy
- Counselling, Coaching & Facilitating

# WE NEED THE SKILLS OF ...

# **SURVIVAL**

- Career Management
- Time Management
- Money Management
- Entrepreneurship
- Business Communication
- Job Seeking
- Hunting the Wooly Mentor

# **COPING**

- Managing Leisure
- Effective Parenting
- Home Management
- Stress Management
- Managing Retirement
- Community Involvement
- Street Law & Consumerism

"WE CANNOT AFFORD TO TOOL YOUTH FOR SURVIVAL IN A CIVILISATION THAT WILL BE DEAD BEFORE THEY WILL."

- Nancy Wilson and Joseph Rotter

# PROGRAMME DEVELOPMENT 2

# \* CORE VALUES AND BELIEFS

- Each person is unique, valuable and worthy of respect.
- People are primarily responsible for what happens to them.
- Failures are potential learning experiences.
- Self-Awareness, Acceptance and Accountability are preconditions for respecting, valuing and loving others.
- Individuality is best expressed against the backdrop of a Group.
- We have a choice.
- Discomfort precedes Change and Change precedes Growth.
- Racism is most often rooted in ignorance.
- Strengths and Weaknesses have common Roots.
- The meaning resides in the learner and is dictated by what she is ready to learn.

# **MAXIMISING LEARNING OPPORTUNITIES**

# PARTICIPANT DIVERSITY

- WHO NEEDS LIFESKILLS?
  - \* Mentor and Protege
  - \* Trainee and Veteran
  - \* Mix Discipline, Gender and Race
- AVOIDING PATERNALISM
- THE MEDIUM IS THE MESSAGE
- EDUCATING THE ORGANISATION
- BONDING

"A SEGREGATED SCHOOL SYSTEM PRODUCES CHILDREN WHO, WHEN THEY GRADUATE, GRADUATE WITH CRIPPLED MINDS."
- MALCOLM X, 1965

# MANAGEMENT AND UNION INPUT

- \* Lifeskills and External Recruitment
  - INDUCTION/ORIENTATION/ORGANISATIONAL READINESS PROGRAMME
- \* Lifeskills and Internal Development
  - ENRICHING TECHNICAL TRAINING/MAXIMIS-ING GROWTH
- \* ORGANISATIONAL READINESS TRAINING FOR MANAGEMENT AND UNION PARTICIPANTS

# AN EVOLVING METHODOLOGY

# **KEY ISSUES**

- Learner Independence
- Encouraging Self-Accountability

# THE PROCESS

- \* Fable and Metaphor.
- \* Learning Diary.
- \* Lifeskill Component.
  - Valid and Reliable Instrument
  - Content/Theory
  - Group Application
- \* Recreational Mathematics.
- \* Team Consensus Activity.

# THE PURPOSE

- \* Increase awareness of self and others.
- \* Clarify own and others current values.
- \* Expand knowledge base of the organisation; the community; the world.
- \* Evolve an holistic life map.
- \* Lifeskills acquisition.
- \* Develop Problem Solving Repetoire.

# THE METHOD BEHIND THE MADNESS

- \* NON-INTRUSIVE TEACHING
- \* TEAMNESS
- \* SIMULATION OF WORKLIFE
- \* GAMES DRIVEN
- \* REFLECTIVE LEARNING
- \* HAND, HEART AND HEAD SKILLS
- \* MINIMAL FACILITATOR INVOLVEMENT
  - COMPETITION AND GROUP IDENTITY DRIVEN

# MAKING LINE MANAGERS RESPONSIBLE 1

# "A YOUNG BRANCH TAKES ON ALL THE BENDS THAT ONE GIVES IT."

- Chinese Proverb

# **DEMYTHOLOGISING MENTORSHIP**

- ORIGINS Babysitter to Craft Master
- A HELPING RELATIONSHIP
- COMPLEMENTARY ROLES

\* Coach - Player

\* Guru - Disciple

\* Guide - Tourist

\* Doctor - Patient

\* Master - Servant

\* Role Model - Copier

\* Manager - Subordinate

\* Choir Master - Choir Member

\* Leader - Follower

\* Sanctioner - Risk Taker

### **KEY ISSUES:**

- Role Model Appropriacy?
- Commitment to Process?
- Do Arranged Marriages Work?
- Is the Mentor committed to Change?

#### MAKING LINE MANAGERS RESPONSIBLE 2

# **EVERY MANAGER A MENTOR**

- \* Mentoring Literate Managers
- \* Build Required outputs into the Manager's E.A.'s; K.P.A.'s; J.D.'s or J.E.D.'s
- \* Key Skills Areas:
  - Coaching
  - Counselling
  - Facilitating
  - Teaching

# **KEY ISSUES**

- \* Suitability as **CHANGE AGENT** 
  - Catalyst
  - Process Helper
  - Solutions Giver
  - Resource Linker
  - Stabilizer
- \* Sabotage Potential

A TRADITION WITHOUT INTELLIGENCE IS NOT WORTH HAVING
T.S. Eliot

# SOME PRACTICAL CONSIDERATIONS

# SOURCE: "BLACK ADVANCEMENT IN ZIMBABWE - SOME CONSIDERATIONS FOR AFFIRMATIVE ACTION IN DE BEERS." - April 1992

- John Gatherer and Johnathan Erickson
- \* AFFIRMATIVE ACTION A MAJOR H.R. ISSUE 1990's
- \* A.A. IN SOUTH AFRICA WILL BE CHARACTERISED BY POLITICS - LEGISLATIVE SUPPORT LIKELY
- \* DERACIALISATION NECESSARY
- \* A.A. A PART OF BROADER EMPLOYEE DEVELOPMENT STRATEGIES
- \* GOAL-DIRECTED A.A. PLANS NECESSARY BUT SHOULD FOCUS ON QUALITY
- \* ACKNOWLEDGE POLITICAL AND UNION CHALLENGES WHILE EVOLVING STRATEGIES TO ADDRESS COMPANY NEEDS
- \* BOOST INTAKES TO CATER FOR LOSSES
- \* INTENSIFY SUPPLEMENTARY TRAINING IN AREAS OF SUPERVISORY, MANAGEMENT AND LIFE SKILLS
- \* PURSUE EDUCATION INITIATIVES
- \* RETAIN TRAINEES

THE FUTURE HAS WAITED LONG ENOUGH; IF WE DO NOT GRASP IT, OTHER HANDS, GRASPING HARD AND BLOODY, WILL Adlai Stevenson, 1963

#### ALWYN MOERDYK

MANAGER PSYCHOLOGICAL SERVICES CENTRAL SERVICES ORGANISATION

TRANSNET

#### C.V. A.P. Moerdyk

Holds a Masters degree in Psychology from University of Natal and is a registered Industrial Psychologist.

Has worked for the NIPR and the Chamber of Mines Research Organization.

Has written widely in the Black Advancement /Equal Opportunity/ Affirmative Action field.

He served for a while on Protec (Johannesburg) committee and the IPM's Equal Opportunity committee.

Currently employed by Transnet to develop culture-fair techniques for identifying potential and selecting people in the organization.

ANDREW OLIVIER

MANAGING DIRECTOR

THIRD FOUNDATION SYSTEMS

# ANDREW OLIVIER Managing Director THIRD FOUNDATION SYSTEMS

Andrew Olivier has been involved in the field of organisational restructuring and Human Resources Planning for the past eight years.

He is presently a partner and consultant with Third Foundation Systems, operating in the United Kingdom and South Africa.

His area of specialisation is Human Resources Planning and Development within organisations undergoing change.

Andrew has won numerous national awards for productivity improvements and internal communication strategies. He is currently writing a novel about change.

A copy of this presentation is not available but should one be required please contact Andrew Olivier (021) 788 8088.

# APRACTICAL OPTION FOR AFFIRMATIVE ACTION PROGRAMMES

Affirmative action programmes in south africa have come under increasing criticism for being racist, elitist and for having few results. At the same time, they are viewed as necessary in some form or another by most parties.

This article will examine an option for advancement of lowerlevel, underutilised employees which can be for an affirmative action quota system or alternatively, as an equal opportunity enforcer that will maintain standards, stressing merit and the best person for the job.

The first requirement is that there is commitment to achieving previously determined HR visions and issues such as the following, which impact on affirmative action matters:

 The eventual objective is a 30% increase in nondominant groups in supervisory and management positions within the next 10 years.

- Employees' potential assessed in order to plan their development in accordance with the actual and forecasted needs of the organisation.
- A holistic manpower planning and development approach in place, operational and linked to strategic forecasted complements.

In order to move away from value-loaded labels, stress should rather be placed on the opportunity that the concept of career ladders and paths offers all in the organisation. The formulation of this information is a second guideline. Career ladders and career paths are based on the premise that each post in the organisation should have its own post profile. Once compiled, these should form a flowing network of post specifications, each building one upon the other like blocks of a tower. This we call a career ladder. Each discipline should have a career ladder, interacting with other disciplines. This interaction, both vertically and horizontally, will determine an individual's career path.

A third guideline is a far more open communications climate. Published post specifications and career ladders allow individuals access to information for self-career planning. Booklets or a 'prospectus' can outline career ladders and paths in different disciplines, plus relevant HRD policies and procedures. Post profiles in their blandest form represent equal opportunity for all and may test statements such as equal opportunity and promotion from within.

Succession planning at lower levels of the organisation is a new concept and broad-based succession planning was designed, in part, to cater for this need. The process, if followed to its logical conclusion with limited but directed company intervention, can offer an alternative to the value-loaded labels of affirmative action or equal opportunities that does not make the parties equal. It is a powerful motivator.

Broad-based succession planning provides for a participative forum for discussion of holistic work issues. Through the interactive session of employee/mentor/manager, underutilised employees can be guided, developed and monitored in a fashion that does not involve preferential policies or treatment.

Each employee in the advancement programme will have customised development plans for their present and future possible posts in the career ladder. These will have been democratically agreed upon and have been worked into the forecasted strengths, wherever possible.

Mechanisms need to exist for monitoring performance. In many organisations there are no formal performance management systems at the lower levels. Post profiling provides a means of performance management through the structured use of key performance areas.

A fifth requirement is that such an advancement programme must have a number of entry points.

One entry point may be those employees who

meet certain requirements. This may be that they already hold a matric, are not older than 25 or have proven themselves as performers over a period of time. The matric or Std 9 certificate has proved to be a good entry point for further selection. Once the employees have successfully entered the programme they become part of broad-based succession planning, which attempts to move the 'talent' pipeline through the organisation in response to planned and *ad hoc* needs.

Another entry point may be company-assisted education assistance programmes. Employees at the lower levels who are studying in areas that the company may be able to use should be invited to apply for entry into the programme. A lot of companies spend a great deal of money in this upliftment programme, but ignore the results – with the possible exclusion of the MBA highflyer.

The following pitfalls have been identified in many employee educational assistance programmes:

- Employees not treated or viewed as an organisational resource in terms of future trainable or deployable manpower (potential supply).
- Failure to link lower-level employees with proven ability or potential to development plans for future posts on the understanding: (i) that they obtain their qualifications, and (ii) exceed expectations in the KPAs of their current posts.
- Insufficient career guidance or counselling on the type of skills/careers the organisation requires and supporting those who undertake studies in those directions.
- Poor coordination between those who handle and monitor the financial side in many instances and those who may approve the course of study.
- Failing to assess those already studying usable courses at lower levels of the organisation, where age, years of underutilisation and language barriers are not yet impediments to progression.

The career ladder for these employees should be no different from the existing ladders for all other employees. The career paths should start at the semiskilled level and end in executive management. There may be a number of career paths into technical and middle-managerial levels. If any special components are included in the post profile, these should be reflected in the entry level.

Another requirement should be a balanced assessment of potential from more than one source. This may be a further entry step and involves some type of psychometric testing to ascertain grasp of reality, competency in language, aptitude and numerical ability testing. If potential assessment is used, for example, then CPA results of a high mode 2 might be entry requirements for the supervisory path and for management, mode 3's and above should be identified.

A direct link should be established to long-term, forecasted HR requirements. If a need exists in the

technical field, employees should be counselled and steered towards study in that area. Specific career paths should follow a laid-down ladder to meet projected shortfalls: the need to progress beyond arbitrary target-setting of so many pink, blue or green employees in positions x, y and z by the year 1998. Stress should be placed on the manpower areas that are in short supply or which are predicted to be in short supply in the future. A policy of promotion from within should be encouraged and employees given the opportunity to participate from the lowest levels in the organisation. Competent, well trained employees should be available to meet the needs of the organisation within the framework of an agreed-upon plan. There is no 'quick fix' and a long-term evolutionary view must be taken. Progress should be monitored as part of an executive annual HR review that examines progress in light of the visions and issues agreed upon.

A last requirement is monitored progress through the career ladder, dependent on performance, both academically and practically. Time limits for completing the development plans and meeting performance expectations must be set. The career paths should link, wherever possible, into other existing company educational or skilling options, such as bridging company, tertiary educational bursaries and other programmes.

# AN EXAMPLE OF BROAD-BASED PLANNING IN OPERATION...

During early 1990 the first attempt was made at empowering/developing employees in the unskilled and semiskilled levels who had managed, despite severe disadvantages, to obtain a matric school certificate. A matric or Standard 9 certificate was taken as entry point to the programme. The company had very little information on its lower-level employees' educational qualifications. NUM were requested to assist in drawing up a verified list of all its members holding a Std 10 or Std 9 certificate. This was done and those employees were sent personal letters inviting them for a preliminary interview. During preliminary interviews with these employees their aspirations, background and work history were explored. At a subsequent meeting potential assessments and personality profiles were conducted, as well as vocational interviews.

Out of 42 identified, 20 joined the programme. Due to delays, the programme began almost a year after the initial identification was made. Twelve of those employees had left the organisation. Almost all were hazardously underutilised, according to the career path appreciation.

The HR department had completed post profiles and the associated career ladders for three major departments, two of them technical with skilled manpower needs.

A psychologist from the HSRC then conducted a

battery of psychometric tests on the group to confirm matches of ability to aspirations, so as to focus more clearly on appropriate career paths. The concept of selfhelp was articulated from the beginning.

During the time these assessments were undertaken, a strike was in progress. Stayaway was total and doubt was expressed if anyone would turn up for the assessments. These fears proved groundless, as permission was given by the NUM to those employees concerned to continue with the process. Out of the 20 employees, 19 showed up at the training centre. The absent employee later phoned to apologise and wished to continue being part of the programme. Next door, arbitration was underway and outside union members sang songs and danced.

After joint discussions with employees, it was decided that those who were studying in certain directions would be placed in departments that allowed them to utilise their newly acquired skills once the studies were completed. Their personal data was captured on the manpower planning package computer system and development plans created for the appropriate career ladder, together with performance criteria and time periods.

This programme has worked well to date and more than half of those on the programme have advanced or changed career through their own merit and abilities. Five of the employees are now part of regular succession planning, having moved through the supportive first-level post in the career ladder.

#### CONCLUSION

Post profiling is an unbiased subsystem that can be meshed with other

subsystems for producing equal and fair ground rules, whilst ensuring no loss of standards.

Broad-based succession planning offers an alternative approach to opening up opportunity for underutilised employees with potential at all levels of the organisation and streaming them up different career paths. in line with forecasted requirements for the future. It is an option that could function in tandem with a quota system or, preferably, as a system on its own, integrated into the culture and manpower planning and development strategy of the company.

NATALIE WITTHUHN

MANAGING DIRECTOR

ORIGO TRAINING

#### **BIOGRAPHY**

Natalie Witthuhn has had extensive experience in the design and implementation of climate surveys, communication audits and needs analyses Natalie's true strength lies in assessing needs of different companies and designing interventions that are directly linked to the companies needs. She has designed many organisational development interventions, training programmes and evaluation incentive programmes for a variety of companies. She runs her own consultancy company, Origo Consultants.

Natalie has a B.A (S. W) Hons from the University of the Witwatersrand.

# ASSESSMENTS FOR INCENTIVE PROGRAMME.

Incentive programmes are controversial; debatable and not perceived as an integral part of affirmative action.

I am going to share an example of a incentive programme and I leave you to debate the role/place it has in affirmative action.

#### PILOT PROGRAMME IN A RETAIL CHAIN

#### Step 1. Needs Analysis

Aims and objectives of analysis were:-

- 1. To evaluate the most effective manner of reinforcing an existing service care programme implemented by another training company.
- 2. To evaluate the nature of the reward or recognition that would motivate different level of staff.
- 3. To assess the nature of the criteria and to determine exact set of criteria.
- 4. To evaluate the feasibility of a team scheme as part of the incentive programme.
- 5. To determine the evaluators and the practical process that would be needed for the programme to be successfully implemented.
- 6. To ascertain union commitment and support of a future programme.
- 7. To evaluate previous incentive programmes and the reasons for their success or failure.

## PROCESS INVOLVED IN NEEDS ANALYSIS

Designed questionnaire

Interviewed 12% of staff at 13 stores.

Random selection - representative of total store.

1/2 Hour one on one interviews.

# CONCLUSION

76% in favour of reward/recognition programmes

24% opposed to reward/recognition programmes - reasons:-

Favouritism, bias, unfair standards.

#### REWARD

Education 50%

Certificates 45%

Vouchers 41%

Prizes 33%

#### TEAM CONCEPT

63% were in favour of teams as opposed to individuals getting rewards.

#### **UNION SUPPORT**

70% felt unions would support incentive programmes.

## LANGUAGE OF PROGRAMME

76% felt programme should be launched in English Interviewers aware of literacy problem.

#### **CRITERIA**

65% felt Customer Care should be criteria.

# **EVALUATION**

98% felt it should be team evaluation

87% felt a mystery customer would control bias.

# EXISTING CUSTOMER CARE PROGRAMME

98% were in favour of programme.

# RECOMMENDATIONS

Based on the analysis of the information it was recommended that an incentive programme be implemented. The following needed to be considered in the final design of the programme.

Senior and store management commitment to the programme must be present.

Administration needed to be conducted by a professional team.

Criteria to be people/customer skills

Criteria to be known by all staff.

Feedback to be regular and on time.

Evaluation to be done by team.

Recognition element (certificate, trophy, prize giving) to be equally weighted with reward element.

Incentive programme to be run on a "all have the potential to win" basis as opposed to a competitive "one winner" basis.

Reward element to combine travel, fun, recognition and education.

Team concept should be used as peer pressure is powerful motivational tool.

Programme should run monthly for a period not exceeding nine months.

Mystery customer to be used to evaluate teams.

Launch to be powerful and to combine training element. Suggested use of people's theatre to present concepts, criteria and training.

People's theatre to be used on monthly basis to reinforce training and to reintroduce new criteria, if necessary.

Three people to evaluate each person.

Teams to be compared with one another. Extra recognition for best team performance.

A manager to evaluate an individual.

Incentive Programme should be seen as a key part of ongoing training process.

# **BENEFITS**

Motivated staff.

Make people work together - kept teams together.

Showed that company was caring.

Attracted customers.

Created enthusiasm.

Changed attitudes.

Helps with promotion, job enrichment, career development.

Was part of a total process in developing Supermarket chain.

Facilitated and aided training process.

Instilled pride and loyalty in company.

The Needs Analysis had demonstrated that there was a definite need for reward and the incentive programme should be linked to existing service skills programme, however the focus should not only be Customer Care but rather "People Care" eg, showing empathy should be showing empathy to customer as well as staff showing empathy to each other. This approach is more broad based but will facilitate change in the culture and value base of retail store, which will assist in winning customers.

A perceived weakness by staff was that Management lacked follow through and commitment to programmes. For an incentive programme to succeed, it must have the commitment of senior and store management and it must be perceived as long term process, not a quick fix solution.

# Step 2 - Implementation of Incentive Scheme

## **KEY FACTORS - SUMMARY POINTS**

#### **CRITERIA**

- 5 Service factors defined into quantifiable behaviour measurements.
- Forms tested prior to implementation
   language
   photographs

# **MEASUREMENTS**

- Natural teams
- 3 People evaluate (2 peers, 1 manager)
- Monthly Rotation
- Mystery Customer measures team
- Union Support

#### LAUNCH

- Literacy problem / Scepticism
- Black actors
- Music / Song
- Prestige / Fun
- Training

## REWARD / RECOGNITION

- Reward team (movie tickets)
- Combination of prizes recognition and education
- Recognition (monthly education shows)
- Prizes (lucky dip)
- Education (top three people)

#### **EDUCATION**

- 3 Day programme
- Drakensberg / Magaliesberg
- Fun
- Team Development Corporate Identity / Vision
- Skills Development
- Head office support
- 4 Stores x 3 people = 12 people per month
- 9 Months programme = 27 people per store  $\pm \frac{1}{3}$

# PROGRAMME EVALUATION

Successful - Motivational

Training element

Loyalty increased

3 stores improved

skills developed

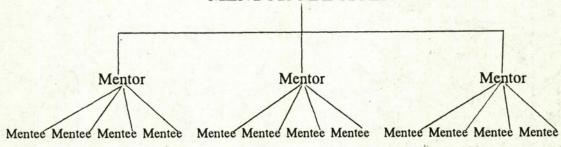
Problems - Need good management support

Not reinforced at regional / Head office level

#### Step 3 - 2nd Phase Mentorship

- 27 achievers per store mentors selected
- Mentorship scheme
- True participative learning

#### MENTOR MANAGER



FILE: INCSPECH

#### ALBIE SACHS

MEMBER OF THE CONSTITUTIONAL COMMITEE

AFRICAN NATIONAL CONGRESS

#### ALBIE SACHS - C.V.

Born in Johannesburg.

Educated in Cape Town. - B.A.LLB at University of Cape Town

Advocate of the Supreme Court (Cape) - 1957-1966

Was in exile 1966-1990

Received a PhD at the University of Sussex

Law Lecturer and Professor at Universities of Southampton, Eduardo Mondlane and Columbia.

Author of many books and articles.

Director of the South Africa Constitution Studies Centre, Institute of Commonwealth Studies, University of London - 1989 to date

Honorary Professor at the University of the Western Cape and University of Cape Town.

Member of the Constitutional Committee of the ANC and advisor in Working Group 2 (Constitutional Principles) at CODESA.

# AFFIRMATIVE ACTION AND BLACK ADVANCEMENT IN BUSINESS

Albie Sachs June 1992

SA CONSTITUTION STUDY CENTRE



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#### AFFIRMATIVE ACTION AND BLACK ADVANCEMENT IN BUSINESS

One person's dream of advancement is another person's nightmare. What follows is an attempt to de-fantasise discussion, and to scrutinise the issue of affirmative action in business in the harsh/soft light of constitutional principle.

### I. INTRODUCTION: DISPOSSESSION AS NINE POINTS OF THE LAW

The most striking thing about the legacy of apartheid is its tangibility. Just as no aspect of daily life was too grand or too petty to escape the system's active attention, so today its heritage pervades every aspect of daily existence, and does so in a most concrete way.

Dispossession, in our country, is nine points of the law.

South Africa should, but does not, belong to all who live in it. Because of apartheid, South Africa is today both territorially and legally owned by the whites. The problem is to establish a congruence rather than a divergence between ownership and equity. Put very simply, as a result of the injustices of apartheid, the whites own almost everything and the blacks possess virtually nothing.

It is painful and paradoxical for us to be speaking in categories of race. Our whole objective has been to look at human beings as human beings, and not as members of this group or that. Yet if we are to face up honestly and realistically to the problems of the country, whether in the economic or any other sphere, we cannot ignore the extent to

which the racial factor opens the door for some and closes it for others.

It is frequently said that the playing field for business activity is not level. The truth is far worse: we are not even on the same playing field.

This position of exclusion of blacks from ownership or active participation in the economic arena did not just come to pass. It was the result of a deliberate policy of successive governments, backed up by law and the police force. The objective, as proudly stated at the time by any number of Parliamentarians and recorded in the reports of countless Government Commissions, was to destroy all forms of African independence and to ensure that the vocation of blacks was not to be citizens or producers but to reproduce themselves as natives available for the employ of whites.

One of my earliest cases as a young advocate was defending a client on the charge that, "being a native, he did trade in a native location without permission." The accused - I think it was Chris Hani's father - had been trying to sell soap and candles and cigarettes and boot polish from a barrow. As a native, according to the law, he could not trade at all in a white area, that is, in most of South Africa. Even in what was called a native location he could not trade unless he had special permission, which he had to apply for annually.

The Native Land Act, the Native Urban Areas Act, the Native Labour Regulation Act and the various statutes obliging Africans to carry passes and to get permission to do just about anything, were used systematically and relentlessly to deprive Africans of any settled economic rights anywhere in the country.

The Group Areas Act was designed precisely to violate rights which people had acquired - against all the odds - through the market. Every transaction relating to land could only be registered if the deed stated that the parties belonged to the

appropriate race group. In the case of the Central Business Districts, this meant those officially classified as whites.

There was money to be made out of the Group Areas Act - by white developers, attorneys, architects and officials.

The result is that today the Central Business Districts of all cities and dorpies are owned by whites. This came about not just because whites had more money than blacks, or were better entrepreneurs, or because they were more willing to save, or to take risks, or to work hard, but because they were white. Blacks were simply excluded by law. They could neither own land nor put up buildings nor use land as security. Professionals were not even permitted as of right to rent premises in what were called white areas.

I remember how after I had argued my first appeal in the Appellate Division in Bloemfontein how excitement turned to dismay: my attorney told me of another young advocate who had just handled his first appeal - during the morning break he had not been offered the customary cup of tea in the court, and at lunch-time he had had to sit in his car and eat sandwiches and drink coffee from a thermos flask. This same advocate some years later had had to use my chambers in Cape Town clandestinely so that his breach of the Group Areas Act would not come to light. Intellectually boulevards ahead of those he had had to appear before in court, only now is he on the Bench - Ishmail Mohamed.

Historians have documented how every attempt by Africans to compete in the economic sphere was beaten back by the state at the invocation of white entrepreneurs. When, after the opening up of the diamond fields in the second half of the last century, African farmers were outproducing whites for the new market, special laws were introduced into the Cape Parliament to destroy the prosperity of the African farmers.

At the time of Union in 1910, Africans were seeking by means of purchase to re-acquire the land from which they had been dispossessed by conquest. The Native Land Act was introduced to prevent this process from continuing, one of the arguments used in its justification being that African competition was unfair since Africans were communalistic and clubbed together to raise funds while whites were individualistic and had to bid on their own.

When Senator de Klerk introduced the Job Reservation Act into Parliament four decades later, his objective was to keep blacks out of competing with whites for skilled and semiskilled jobs [and even some unskilled ones].

The Bantu Education Act was, in the words of Dr. Verwoerd, designed to prevent blacks from seeking to graze in the green pastures reserved for whites.

The figures today tell the story of past discrimination and present inequality.

Less than 3% of managers or executives in South Africa are black.

Less than 2% of all direct shares in companies listed on the JSE belong to black business. [This proportion is said to be increasing by half a per cent each year, which means that in just under a century, black business will finally account for half the shares].

Estimates of black shareholding in non-listed companies are of the order of 2%.

Black sole owners are said to account for approximately 15% of small formal businesses.

Lumping together all informal sector enterprises, it is estimated that Africans control about 40% of the total in number and about 30% of their capital and turnover.

Add all these figures together and we find that effective African participation in the business sphere is barely 10% of the total, even though Africans constitute about 73% of the population.

Thus what we are inheriting is not just inequality, but a system of structured inequality, and one brought about by deliberate state policy.

Removing the barriers created to equal participation in the economy cannot therefore be seen simply as an individual responsibility for socially conscious have's, or as a personal commitment by economically ambitious have-not's. It is a national task requiring active steps by all of us, and direct engagement between all the have's and all the have-not's in our country.

The answer will not, we feel, be found in re-directing the old racist laws against the old oppressors. We assume that as a matter of firm and unshakeable principle, the new constitution will prevent policies of dividing the people on the grounds of race and of reserving privilege for some and humiliation for others; that it will forbid uprooting people from their homes and businesses, as happened in the past; that it will outlaw apartheid, whether in old forms or new, and whether aimed at a majority or a minority or individuals.

How, then, can we resolve the conundrum: how can we create a non-racial society, which requires us to be completely

colour-blind, and at the same time overcome the effects of past discrimination, which compels us to stare the realities of continuing racial privilege in the face?

#### II AFRICANISATION

It is not so much that we wish to Africanise the South African economy, as that we seek to South Africanise it. By South Africanising South Africa we mean acknowledging its full dimensions as a country and actively recognising the value and worth of all its people. To achieve this, we have, all of us, to break through the laws, habits and assumptions that restrict participation in the country's public, economic and cultural life. The full and varied richness of all South Africans has to be able to express itself.

To the extent that the African people have been the main victims of exclusion in the past, so they will be the main beneficiaries of inclusion in the future. Yet the objective will not be to replace one form of race rule or hegemony with another. Rather, it will be to get rid of the system of race domination altogether.

This is why in political terms we say that power should pass from a racial minority to the people as a whole. Economically speaking we insist that all should be entitled to share in the country's wealth. We must put an end to the cycles of domination and subordination, of pride for one and humiliation for the other. We must become, all, South Africans.

This means far, far, more than simply declaring that the New South Africa is at hand or has arrived. Pleased though we might be that hated apartheid laws have been scrapped, the self-perpetuating structures of inequality still exist. Nor are mere intonements about the virtues of the market and free enterprise enough. The reality is that neither the job market nor the capital market in South Africa are free, and that the reward for enterprise and risk depends more on skin colour and connections than it does on effort or ingenuity.

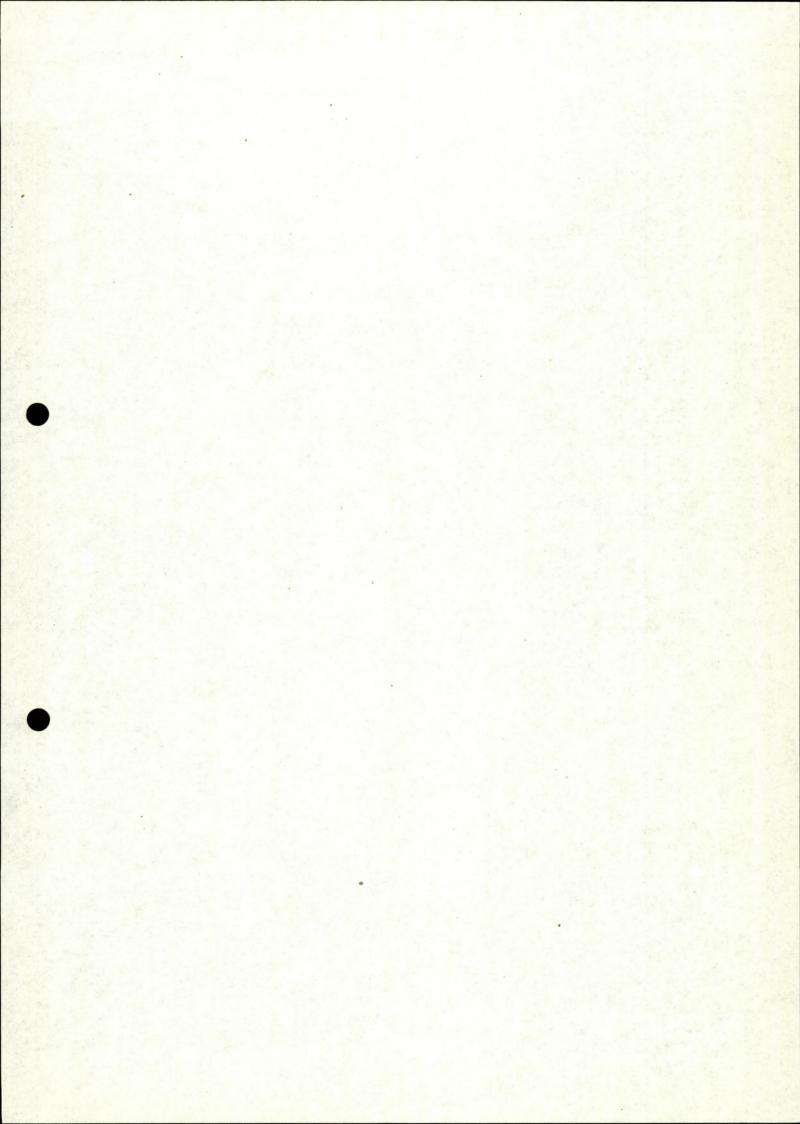
If we wish truly to South Africanise the South African economy, then, we must dismantle all the barriers and

impediments - whether legal, financial, psychological or cultural - which keep the majority out of full and free participation in the country's economic life.

The African cultural dimension, whether expressed in terms of language, dress, humour, style or attitudes, will come through naturally and strongly when people of African origin take their rightful place at all levels of economic life. What has been called the Anglo-Saxon behavioral style will continue for those who feel comfortable with it - the directors of Anglo-American will not have to do the toyi-toyi to get to their office - but it will not be the only one, nor will it continue to be the prescribed form. Thus the African personality will express itself as part of the South African personality, neither claiming hegemony nor accepting inferiority, just demanding its rightful position as a major ingredient of the whole.

South Africanising South Africa is perhaps the greatest of all tasks facing our generation. We have to South Africanise our sports teams, our cultural life, our Parliamentary system and our economic activity.

It is the consciously guided process of enabling all that was suppressed and marginalised in the past to come out into the open. It means giving our society a new texture and personality without suppressing or marginalising those who tried unilaterally to control it in the past. It means the working out in practice of the principle that South Africa belongs to all who live in it.



#### III. NATIONALISATION

The term nationalisation, often preceded by the adjective wholesale, has come to have immense symbolical and emotive significance in South Africa. Just as the cultural boycott for years blocked serious debate about culture, so has taking positions against or for nationalisation obscured the asking of serious questions about the future of economic life in this country.

The word is put on to the agenda more by those who are against it [whether wholesale or retail], than by persons who feel it might have some positive role to play, particularly in ensuring the eradication of poverty and inequality.

The opponents of nationalisation would in fact strengthen their case if they made it clear that they were against any form of restriction on competition, from wheresoever it came.

Central planning is central planning, commandism is commandism, whether done by a few bureaucrats in a government department or a handful of executives in the boardroom of a giant, pyramidly-structured finance house.

Enterprise can be as un-free if strangled by a system of tightly interlocked pyramid ownership or by a price-fixing cartel as it could be if throttled by the state: to adapt a phrase by Samora Machel, some people do not mind being devoured by a capitalist lion as long as they are not eaten by a state tiger.

The figure of nearly eighty per cent of shares quoted on the Johannesburg Stock Exchange belonging to five major conglomerates is well-known, and has given rise to the jibe that if any real privatisation is needed in South Africa then it should be in relation to these economic mammoths.

Unfortunately, the voices that are most insistent on the need for diffusion of power in the political field, and that argue most persuasively for political pluralism and for diverse points of political competition, are the quietist in relation to devolution and dispersion of power in economic life. We hear a lot about power-sharing in the political domain; it would not come amiss to hear a few words about power-sharing in the economic sphere.

When the ANC Constitutional Guidelines were drafted in 1987 the words relating to economic life were chosen with considerable care. The text referred to the responsibilities of the state in a mixed economy, without making any reference to nationalisation. Our view, implicit in the drafting, was that the issue of nationalisation versus privatisation was not a constitutional one, and that in any event it was being used to create a false debate with high emotional overtones and low practical significance.

In our view, concentration on the wrong issue would have taken attention away from the two really great economic questions: how could our economic resources best be used to deal with the massive problems of poverty and inequality created by apartheid? and, how could black people be able to participate on a basis of full equality in economic life? These were questions of direct constitutional significance, of basic human rights. The nationalisation/privatisation debate could continue, but as a political not a constitutional one.

What is worrying several years later is not that these questions still remain unanswered, but that so little attention to finding a solution to them is being given, particularly by those who have more economic expertise than we do. We are suddenly informed that South Africa is after all a poor country, that even the rich are really poor. We are told that without economic growth there can be no redistribution of wealth, even though as the late Simon Brand pointed out on several occasions, simply by recirculating the resources already available to the state there could be extensive and meaningful redistribution.

It is worth mentioning that all of us had had direct experience of living in African and other countries that had tried various forms of centralised state economic planning. Our decision not to lock the future of our country into any ideological format, whether of the kind that committed the state to total commandist responsibility or of the sort that prescribed complete free-market irresponsibility, was not based on adherence to or repudiation of any doctrine, however credited or discredited it might have been. Nor was it a consequence of the collapse of Eastern Europe, which had not as yet taken place.

Rather, we made our assessment of what we felt the basic legal-economic framework for a new South Africa should be, in the light of our own assessment of the successes and failures of economic development in the post-colonial countries we had lived in.

Speaking for myself, after having lived for 11 years in Mozambique, I was of the view that governments should do the things that it they are good at, and that, conversely, the private sector should do what it performed well. At the same time, each should refrain from trying to exercise hegemony over areas where it did not function well.

#### **DE-SATANISING THE STATE**

Governments are not good at making or selling shoes or refrigerators, nor, it would seem, at growing or selling mealies. Yet by and large, they are much better than the private sector in seeing to it that basic services and utilities are provided to the whole population. In most parts of the world, if the government does not look to the furnishing of education, health services, water, electricity and rubbish collection, no-one else does, and the great majority of the population are simply left without.

There just is not a great market in teaching the masses arithmetic or healing the poor or providing storm-water drains or electric lights in the slums.

Similarly, in most parts of the world, the creation of an infrastructure of communications and transport, including the building of roads, railway lines, ports and telecommunications facilities, is seen primarily as a governmental responsibility.

In the past all these governmental activities have been directed in South Africa towards satisfying the interests of the voters, that is, of the white section of the population, and even then disproportionately in favour of those with the most influence with the ruling party. We need now urgently to ensure that everyone is covered on an equal footing by government. This means giving immediate attention to building up all the basic infrastructures of decent living in the areas where the majority live.

It requires prioritising the construction of roads and the furnishing of electricity, water, rubbish collection, postal services and telephones in the townships and in the so-called homelands and Bantustans.

This in turn means that the communities themselves must be involved directly in the decisions and their implementation. An important role awaits the black business community, acting in concert with the civics and other community organisations, in seeing to it that the services and facilities are what the people want, where they want and at a price they can afford.

We will not get very far if we rely on simplistic notions either that the state should do everything or that it should do nothing. The state should be neither glorified nor denigrated. It has a role to play, a role that might expand or contract over time. Silly anti-statism which regards the state as the new Satan is as unhelpful as blind belief in the state as the universal solver of problems.

The state creates conditions within which economic activity takes place. To see the state and the market as mutually

exclusive is to belie history. As Lord McGregor used to point out when he lectured at the University of London, it was the state that created conditions for the first developed capitalist market to come into being, namely, that of the United Kingdom

The Poor Laws drove people off the land and created a labour market, he pointed out. Laws relating to limited liability and establishing a supervised Stock Exchange, brought the capital market market into being, he continued, while the setting up of the Department of Trade and Industries provided a framework of common rules governing the operation of companies in the market.

Since that time, the state has taken on further functions. It promotes investments and exports, controls the quality of products, protects trade marks and patents, regulates the supply of money, raises and lowers basic interest rates, raises and spends vast sums of money on everything from bombs, which the free marketeers seem to love, to social welfare, which they appear to hate.

In many countries with thriving economies, the state liaises with employers and unions to establish a social contract governing the principles whereby national wage levels are to be fixed. Most developed societies provide machinery for collective bargaining and for the settling of disputes between capital and labour.

In all its activities, the state is a symbol, a doer, an employer, a contractor and an enforcer of the law.

The state as symbol: The state and the public administration are a mirror in which the people see themselves reflected. If their image is absent, they feel that something is missing. If the government is all-white, or all-male, or all Afrikaansspeaking, this might seem quite natural, even providential, to white, male Afrikaans-speakers, but will appear grotesque to all those who are excluded.

The great task facing us now is to have a government that represents and reflects all the people of our land in all their variety. We need a system of selection and a style of working which will lead everyone to say: I might not like what the so-and-so's are doing right now, but this is our government, our police force, our army and our civil service. Similarly, we want the people to feel that this is our transport service, our airline, our telephone system, our electricity supplier, our post office, and our public broadcast network.

The opening up of the para-statals at all levels thus becomes a socio-cultural-economic necessity. It is not required in order to provide jobs for pals nor should it be offered as a compensation for the exclusion of blacks from skilled jobs and managerial posts in the private sector.

The question of the best forms of management of para-statals so as to ensure their efficient functioning is quite a different one. Whether the emphasis is primarily on value for money or mainly on providing a good service to those who need it the most, opening up and diversification is imperative for three reasons:

in order to ensure that the public see themselves reflected and have confidence in the bodies that serve them,

to see to it that the diverse needs, languages and priorities of the public are attended to by those most in touch with their sentiments and expectations;

and to enable the talents, energies and life experiences of all to enrich the functioning of the bodies.

This is not to argue for fixed quotas based on race, language, sex, ethnic origin, region and so on, but to see the opening up and balancing out of the public service and of para-statals as an act not only of justice to those who have been excluded but as a matter of common sense and good government.

One of the most irritating phenomena of contemporary times is to find that as soon as the question of opening up any of the exclusive institutions dominated by apartheid and patriarchy is mentioned, the question of lowering of standards is immediately raised. Somehow, blacks and women are automatically associated with incompetence and stupidity and seen to be natural threats to standards. Yet how many of us do not know of wise, hard-working, competent and adaptable people employed their whole lives in jobs well below their capacities simply because they were black or female?

How many persons have been passed over, or not even considered, for promotion, for the same reason? The hidden networks that operate the more powerfully because they are unconscious, the glass ceilings that function the more effectively because they are transparent, trap people in preordained categories almost as rigidly as apartheid did, with the added disadvantage that they are regarded as natural and necessary whereas apartheid was condemned as artificial and unjust.

The state as doer: for better or for worse, states are the greatest builders of our era and also the biggest destroyers. The role of the state in providing basic services and amenities for the population has already been dealt with. The function of the state as jailer, executioner, spy and killer is also part of the equation, and one that above all has to be submitted to constitutional control.

At the same time, the state has special responsibilities in relation to guaranteeing basic freedoms and liberties. Unlike private commercial bodies that tend towards as much secrecy and autocracy as possible, the state that respects constitutionalism sets up agencies to control itself. An open society is far more likely than a closed one to provide for the delicate human interactions which will be needed to secure advancement for all on a broad front.

We are going to need far more openness and accountability both in the public and the private sectors.

The state as employer: in all the advanced industrialised nations, there is no question as to who is the biggest employer - the state. Even Ronald Reagan and Margaret Thatcher were on the state payroll. The state employs civil servants, teachers, nurses and police. Para-statals that might be private in form but are really state-directed, employ pilots, engineers, telephonists and construction workers.

At present there are no blacks in any top positions at all in the South African state or para-statal apparatus, and they constitute less than 2% of upper middle to senior civil servants. Clearly there will have to be rapid advancement so as to create more balanced structures in middle and senior positions.

The state as contractor: the state is not only the biggest employer, it is the biggest contractor. The less the state does itself in the economic field, the more it secures by contract from the private sector.

Far from increased government involvement in providing such things as education, health and other services to the general population being detrimental to the private sector, it would stimulate the economy and open up vast new areas of entrepreneurial activity. The state would then be expected to move away from present patterns of almost total reliance on white business to supply the necessary goods and services, and pursue a policy of diversification of procurements.

The state as enforcer of the law: it is not the function of the constitution to prescribe economic policy. The ebb and flow of thinking on economic questions should be allowed to take its course, uninhibited by constitutional constraints. To command that there be a completely free market [wholesale free-marketisation] is in its own way as anti-libertarian as to prohibit a free market. The open society does not close off

avenues of choice, but, rather, guarantees the greatest number of options. One of the most important freedoms of all, and one particularly precious and needed in South Africa, is the freedom to say I was wrong.

Freedom of speech and assembly, coupled with political pluralism and regular elections, are vital to ensure that the avenues of choice are never blocked off irreversibly one way or the other. Successive governments in France nationalise and privatise in turn. Their right to do so is not considered a constitutional matter, though the question of compensation may well be.

#### LEARNING TO BE BUSINESS-LIKE WITH BUSINESS

If many of us have to learn to de-demonise the state, others have to find a way to live with business. Just as we need a state that attends in an effective, caring and accountable way to the issues that fall within its mandate, so will we require a vigorous, efficient and creative private sector to do the things that fall primarily within its sphere.

The choice in our world is not between omnipotence and impotence. We may avoid the evil of an omnipotent world of business dominating an impotent state, without having its opposite, namely, an all-pervasive state crowding out the private sector.

Business people like to be able to plan. They wish to know the rules within which they must operate. They want to be free to take decisions as their commercial judgement directs them. They cannot function well if their plans are constantly subject to reversal by a variety of state boards and officials. They are a part of civil society and entitled to a certain measure of autonomy.

If the government wishes to see them devoting more of their energies towards providing goods and services for the havenot's, the best way to do so is not by appeals for social responsibility nor by commanding certain types of performance. Rather, it must create a secure and predictable legal framework within which business can operate, guarantee workers' rights, and follow policies that make it economically worthwhile to concentrate on attending to the basic needs of the general population.

There is no point in trying to force capitalists to feel guilty about making profits. Better to enable them to get a good return for doing good work. If, unfortunately, there is good money to be made out of manufacturing guns and bombs for the state, there should, happily, be a good income to be earned from building classrooms and clinics.

At the same time, business has to respect the basic rights of employees, consumers and members of the general public. Just as there are unfair trading practices and unfair labour practices, so are there hiring, training and promotion practices that are unfair because they violate basic constitutional rights. The almost automatic exclusion of blacks and of women from middle and senior positions in business is one of them.

The law does not intrude unnecessarily either in the home or in the office or on the factory floor. At the same time, human rights do not stop at the front door, nor at the entry to an office building, nor at the factory gate.

The basic principles of advancement, affirmative action, equal opportunity - whatever name is given to them - are the same for all, businesses. They do not give commercial advantages to some enterprises as against others. A case can be made out for possibly exempting small enterprises, but otherwise, whatever their status in other parts of the world might be, they would appear to be essential in all spheres of business life in South Africa.

Conclusion: The real question is not whether there will be nationalisation or privatisation, but what contribution the state

should make, in the context of a mixed economy with a vigorous private sector, towards securing black advancement.

It is quite clear that there are great possibilities of the state setting an example to the private sector both as employer and contractor. It can significantly open up opportunities for those previously denied.

The issue remains whether the state should also act as legislator for the private sector. Should the state require as a matter of law that there be black advancement in the private sector, and if so, should this be accomplished through prescribed quotas?

#### IV 3, 4, 5, 6 .... THE QUESTION OF QUOTAS

The 3-4-5-6 programme has the advantages of clarity and simplicity. It is compact and it both exposes the present discriminatory system and suggests a formula for measuring progress in overcoming it.

NAFCOC, the African business organisation, invented the formula. They proposed that a new democratic government adopt legislation requiring the progressive opening up of economic opportunities for blacks according to set quotas. They refer to Malaysian experience as a precedent, and set out a system of minimum targets which would have to be reached by the year 2000. Their proposal was that all companies listed on the JSE should be required by that year to meet the following targets:

- \* black representation in the boardrooms not less than 30%;
- \* black participation in equity not less than 40%;
- \* external purchases from black suppliers not less than 50%;
- \* black involvement in management, not less than 60%.

As one supporter of the proposal said, business people deal in figures, and if you do not put a number to a proposal, no-one in the business world takes it seriously.

As a means of focussing attention on the question of the exclusion of black people from the medium and higher reaches of business, the programme has already been eminently successful. It encourages those who faintheartedly accept inferior positions to be bolder in their outlook. It shakes the complacency of those who somnambulistically imagine that the present set-up must be the best one because it placed such excellent persons as themselves in charge.

At the same time, as its authors readily concede, the concept is far from unproblematic.

Economists will be asking their own questions. What follows is an attempt to apply a constitutional perspective to the problem. The views expressed are exploratory and mine alone.

#### RACISM BECOMES COLOUR-BLIND

Suddenly the biggest racists became the most ardent non-racists; overnight the most chauvinist of men become the greatest non-sexists. With hardly a pause or a stumble, people who have been discriminating all their lives discover the virtues of non-discrimination and merit at last becomes meritorious.

Apartheid has gone, they declare, and now there is nothing to stop anyone from achieving their just due on the basis of merit alone. To give special preferences to blacks or women now would, they assert, be as bad as denying them opportunities was in the past.

We cannot in response pretend that the problem is an easy one. We who have spent all our lives fighting against racism and at least part of them struggling against sexism, do not come easily to accept that race and gender are factors that can legitimately be taken into account in relation to advancement in the workplace or business sphere.

We are uncomfortable in the world of quotas, remembering how they were used in a humiliating way in the past to limit rather than open up access to universities and other bodies.

In the light of our experience, we are against group rights, whether in the realm of politics or of business. We detest the stereotyping and assumptions that go with them. We take alarm at the very idea that anyone should benefit from or be

disadvantaged by the mere fact of being black or white, male or female.

At the same time, we are confronted with the reality that non-racism is suddenly being used to protect racial exclusion, just as the non-sexist principle is advanced to maintain male domination. If we are to be realistic, the greatest merit is still [in order] to have a white skin, to possess a male sexual organ, to speak English or to speak Afrikaans. Only after that do real qualifications enter the picture.

Decades, even centuries, of overt discrimination, have left us in a most paradoxical situation. While formal discrimination is being phased out, practical discrimination remains largely intact. The consequent anomaly is that the instrument being advanced to maintain the practice of inequality is the very principle of equality itself. Put another way, the concept of equal rights is becoming the main barrier to the actual enjoyment of equal rights. Whereas before inequality was justified on the grounds of the need to discriminate, now it is legitimised on the basis of the necessity not to discriminate.

We are told that if positions are not being opened up in significant number to blacks or women, it is because there are simply not enough qualified blacks of both genders or women of any race to take their places on the boards or on the bench [whether the workbench or the judicial bench]. It is claimed that `we' [the selectors] apply the merit principle only, without reference to race or gender.

Clearly the merit principle cannot be disregarded. We certainly cannot be opposed as a matter of principle to the concept of qualifications or of standards. We want the equal rights idea to triumph in South Africa. We want good quality performance. As true non-racists and non-sexists, we have no doubt that black persons of both genders and women of all races are capable of holding their own with anyone, that talents and capacities are to be found with equal dispersion amongst all groups and in both sexes.

Yet in practice we know that there is massive under utilisation of the skills and energies of blacks and of women. It is evident, too, that conscious and unconscious discrimination continues to play a big role, both in the public and the private sectors.

To get a position, blacks and women simply have to try harder, be better, be more highly qualified. Factors of supposed convenience or inconvenience still play a part: will white employees accept a black boss or supervisor, will men agree to having a woman in authority over them, unless, that is, the black person is manifestly brilliant and the female undeniably excellent?

The black must be more than equal to the model [not the reality] of the perfect white, but please, not a jumped-up imitation white. The woman must more than hold her own with her idealised male counterpart, but may we be preserved from someone who has lost her femininity, that is, her capacity to be pleasing and attractive to men. Sadly, what are self-evident daily experiences for those who are kept out, are simply not seen by those who control the points of entry or advance. Anyone who complains of feeling excluded is said to have a chip on his or her shoulder.

Once a black person or a woman is appointed, there is extra pressure to perform impeccably. Any lapse is immediately attributed not to any personal incapacity, but to black-ness or female-ness.

Then there is the question of the way that standards are defined and interpreted. Being a 'good chap' is still a major qualification for being taken on. All things being more or less equal, the good chap, the known quantity, the person least likely to cause waves, will get the position. This is not only unfair to persons who are not socialised into being good chaps, and whose children are never going to have the possibility. It restricts the range of inputs and the variety of

life experiences that could enrich the texture of the organisation.

The model life situation that is taken into account as being normal and to which the applicant must conform is that of the successful standard white South African male. The language skills that count are English [or Afrikaans] - you may speak five languages, but if they do not include English and Afrikaans, you are not bilingual.

Liability for taking time off for maternity or for attending funerals or taking part in family indabas, is a definite minus. The psychological aplomb and sense of fitness that goes with being interviewed by your own kind, speaking your own language, responding to your own codes of communication in a style that is your own, and sharing the same allusions and points of reference, is a firm plus.

Interviewers and examiners are often quite unaware of the extent to which the very objectivity in which they believe biases them in favour of good white chaps. Conversely, they ignore the value of diversity and of the creative tension that variety can produce.

To sum up: The most difficult problem has been to reconcile the pri the principle of non-racism, which seeks whe avoid any reference to race, with the principle of repairing the damage done by past racism, which requires paying attention to actual and continuing patterns of racial disadvantage.

Many attempts have been made to achieve this. The situation is intrinsically difficult and contradictory. Better to acknowledge the problems than to attempt a formulation that is either so bland as to say nothing useful, or so weighted to one side of the problem as to avoid the real difficulties.

It would be absurd if non-racialism became the main instrument for protecting racial advantage; it would be equally incongruous if taking account of the realities of racism meant ignoring completely the goal of achieving a race-free society.

What we need to do is to develop a principle which contains the possibilities of simultaneously outlawing racial or gender discrimination and looking concretely at the real disadvantages suffered by some persons compared to others because of race or gender.

The principle which has the greatest potential for achieving this is that of equal protection,

#### **EQUAL PROTECTION**

The first clause of any Bill of Rights in South Africa must be one guaranteeing the fundamental equality of all without reference to race, colour, creed, gender, ethnic origin, language or birth. So much is contained in these simple words. So many people have been driven off their land, so many cast into prison, so many forced to take up arms, to endure torture and banishment and exile, that they could be realised.

They are profound words, the moral and political foundation of the South Africa we wish to live in. We know what we must avoid, the "never again" aspect of the Bill of Rights. Never again shall we dispossess people from their land, homes and businesses because of race, never again, no matter who they are. Never again shall we have laws reserving jobs exclusively for members of one race, however great the need to deal with the imbalances we are inheriting.

Never again must we have divided and corrupt Tricameral own affairs institutions. Never again must our people be kraaled off from the mainstream into poor and overcrowded Bantustans; and, as a matter of principle, never again should new forms of Group Areas be used to harass and segregate the former oppressors.

We are all South Africans, with equal entitlements and equal responsibilities as citizens of this land. No one has fought harder than the most oppressed section of the community, namely, the African people, for the achievement of this fundamental principle for equal rights and it was they more than anyone else who struggled against the division of our country into one group called settlers and another referred to as natives.

Whatever form advancement or affirmative action takes, even if it involves preferences which take race into account as a means of overcoming past discrimination, it cannot include total exclusion of anyone because of race. Never again should anyone be barred simply because of race from owning property or setting up a business or occupying any post.

Any statutes of the kind that were used in the past to oppress the African people would be unconstitutional. Even if their motive was to redress past wrongs, the method they employed would violate the principle of equal protection. As was said before, the cycle of domination and counter-domination must be broken if ever we are to have a real country called South Africa.

Yet equal protection should not be seen purely as a defensive principle to be raised against procedural inequality. Equal protection in the full sense of the term means looking at the reality of people's lives and ensuring that everyone is accorded the basic elements of equal dignity.

The law and the constitution cannot require that we all be equally happy or even be equally rich. Different philosophies exist as how best to become healthy, wealthy and wise. The function of the constitution is restricted to seeing to it as far

as possible that we all have an equal chance to become these things.

Properly understood, equal protection signifies that every South African is as far as possible given an equal chance to get ahead in life. In South African conditions this means five things, each of which should be attended to with its own mechanisms and in its own way.

The first takes race into account only in a negative sense, that is, to outlaw race discrimination. The next three are completely free of any reference to race; only the fourth one requires that race be explicitly taken into account in an affirmative way.

The principal argument that follows is that the fifth aspect should be seen as supplementary to and not substitutive of the first four, that is, that affirmative action will function in a just and effective way if it is seen as an extension rather than a contradiction of the principle of equal protection.

#### REMEDIES AGAINST DISCRIMINATION

The first aspect of equal protection that has relevance to the advancement of blacks in business is that it provides for the creation of remedies against racial discrimination.

A rather old-fashioned view of human rights and constitutionalism would have it that the constitution can only deal with the relationship between individuals and the state. Supporters of this view argue that discrimination by the state against an individual will be unlawful, but not discrimination by individual against individual. Thus freedom of contract would permit an employer to discriminate against a job applicant or to keep certain senior posts for members of one group only, without the state being able to interfere. At most, they say, the state can use its regulatory or policing power to bring such a firm into line, that is, it can refuse it a licence, or deny it tax benefits or state aid, or exclude it from

receiving state contracts. Yet it would not have the power to provide a direct remedy against the discriminatory act itself.

Such an approach flies in the face of practice in many countries where in the past two decades and in response to obligations undertaken in terms of international conventions, states have adopted legislation to combat discrimination in the private as well as the public spheres.

We in South Africa will have to establish agencies such as have functioned with a fair degree of success in other countries to investigate patterns of discrimination in relation to such matters as education, jobs, access to accommodation and entry into privately owned facilities serving the public, like restaurants, hotels and cinemas. The agencies would also have to provide means for receiving and responding to individual complaints, so that they can try to resolve the dispute by conciliation but invoke the law if necessary to get a just result.

It is usually recognised that small businesses employing only a few persons would be exempt from investigation. Yet medium-sized and large firms would no longer be able to discriminate as many of them overtly do today. This would mean that blacks could not be excluded from consideration for jobs or for advancement within firms or from receiving credit or from tendering for contracts simply because they are black. Nor could transparent devices be used which do not openly refer to race but which have the inevitable effect of excluding blacks, such as that applicants must live in a particular suburb.

Because of the all-pervasive character of racism in our society and its deep penetration into the business world, the functioning of a Human Rights Commission, or whatever the agency might be called, would be of major significance in opening up opportunities for black persons. The most important employment agency in South Africa, namely the Broederbond, would be directly affected. This body is itself overtly/covertly both racist and sexist in its membership, and some say it might have some problems in the new South Africa if it could not see its way to opening up and transforming itself from being the AB into becoming the NRABSbond [the Non-Racial Afrikaner Broeder- and Susterbond].

In any event, even granting that the AB still has a role to play in bringing a rather recalcitrant section of the community into a new and democratic dispensation, it could no longer continue to influence the allocation of senior positions in the way it has been doing; it could not even carry on distributing posts by arranging a form of power-sharing with a secret African society.

The Human Rights Commission would essentially deal with overt racist practices and behaviour, where the intention to discriminate could be proved or else be presumed from the circumstances. Great attention will have to be given to establishing sensitive and participatory procedures, involving where appropriate unions [white as well as black], employers bodies, the Registrar of Companies, various licensing bodies, as well as skilled and independent investigators working with the courts or the tribunals that are given jurisdiction.

It would not, however, be capable by itself of helping black people achieve the qualifications, skills, credit-ratings or other attributes essential for really advancing in the business world. It is in this respect that the other aspects of equal protection are important.

#### **EQUAL SPENDING**

The second aspect of equal protection has significant implications of a generally redistribution character for South Africa. It is that all spending by the public sector, whether at

national, regional or local level, should be done on an equal basis.

At the moment we know through so-called own affairs budgeting how unequal the protection is: white children are either five times as stupid as black ones or else five times more privileged, since they receive five times as much per head from the state coffers on their education. White sickness is either four times as bad as black sickness, or else whites are four times as privileged as blacks, since they receive four times as much from the health budget.

Equal protection would mean narrowing and eliminating the gap. We will no longer have black and white pupils, just pupils, nor will we have black and white patients, just patients.

Equal spending will have a major impact on the building up of infra-structures and amenities in what are today called black areas. Not only would the health, education and living conditions of black people improve in general. There should be a considerable opening up of craft and entrepreneurial opportunities for blacks in relation to the necessary undertakings.

#### REGIONAL EQUALISATION

In the third place, the principle of equal protection requires that a person's opportunities should not be unduly influenced by which part of the country he or she is born in. The huge discrepancies between the rich and poor regions of the country and the wealthy and poverty-stricken parts of every town and village, will have to be attended to as a matter of constitutional duty. The mechanism here is to equalise spending, with a special view to building up equal infrastructures.

The principle of regional equalisation is known to many constitutions. It is an aspect of the principle of equal

protection, a means of ensuring that no-one is disadvantaged simply because of being born or growing up in any particular region.

It is particularly relevant to the areas presently referred to as homelands or independent states. At the moment they are reliant on subsidies from Pretoria that have been dispensed in a way that has maximised corruption and dependency and minimised true development. In future, as parts of new non-racial and non-ethnic regions, these areas will be able to press for the right to development. For once the fact that they are overcrowded will count in their favour. Their people will have the vote and accordingly be able to exert considerable influence.

The building up of basic infrastructures in these very poor areas will also require extensive involvement of the private sector, in relation to which black business people should find themselves well-placed because of their familiarity with the zones concerned.

#### AM EXPANDING FLOOR OF MINIMUM RIGHTS

Fourthly, equal protection requires the furnishing of at least the basic minima of a decent and dignified life for all on an equal basis. Society is under a duty to see to it that all its members enjoy at least the foundations of a dignified existence. This requires attention being paid as a matter of constitutional duty to ensuring basic nutrition, health services, education, shelter [including electricity and water] and welfare. Appropriate means must also be found to giving substance to the right to work.

Different mechanisms have been proposed for achieving this aspect of equal protection. The ANC's draft Bill of Rights provides for a Social Rights Commission to monitor Clauses referring to an expanding floor of basic social, health, educational and welfare rights. The rate of expansion will be conditional on availability of resources.

#### EQUAL OPPORTUNITIES AND AFFIRMATIVE ACTION

The fifth and final aspect of equal protection (viewed in its full aspect as the foundation of equal dignity), relates to creating opportunities to overcome the barriers erected by past discrimination. The terms equal opportunities and affirmative action are sometimes used interchangeably, sometimes in an opposite sense. In general, equal opportunities tends to be the softer and more diplomatic version, affirmative action the more resolute one. They both involve special action to overcome the automatic replication from generation to generation of patterns of factual discrimination. Equal opportunities tends to put the emphasis on procedures, affirmative action on goals or outcomes.

The essence of the matter is not to separate the fifth aspect of equal protection, namely affirmative action, from the first four. The question in South Africa is not whether or not we will have affirmative action - the alternatives of inaction or arbitrary action are too unhappy to merit attention - but how we can ensure that affirmative action derives from, is integrated within and truly serves the principle of equal protection.

The following seven criteria are offered as a means of achieving the desired connection. The objective is to arrive at principles and procedures that will work, that seem to be eminently fair, that will promote real equality and that will reduce the oppressive sense of living in a society which is divided and unequal.

### SEVEN CRITERIA TO GOVERN THE APPLICATION OF AFFIRMATIVE ACTION

Responsibility.

Equitability.

Proportionality.

Inclusiveness.

Security.

Accountability.

Flexibility.

These six -ities and one -ness seem at first glance to be the kind of things that both white and black business people could live with. However much the business world might like to see the word profitability added to the list, they would presumably accept that there is no constitution in the world that can guarantee its existence.

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What precisely do these seven principles signify in relation to black advancement in business? More specifically, how would they relate to the programme of 3, 4, 5, 6?

#### RESPONSIBILITY

Given the way that the state in the past acted openly and through the statute book to discriminate against certain groups, it should not be necessary to prove responsibility to remove discrimination on a case by case and sector by sector basis.

What would be important would be to show the need for special intervention over and above the general extension of the principles of equal protection as set out above.

Thus the state would be expected to act with all deliberate speed to get its own house in order. The ordinary processes of recruitment, training and promotion will clearly be inadequate to rectify the towering imbalances in the state's own structures.

While non-racial elections will automatically de-racialise incumbency of elected offices, such as the President and members of the Cabinet, they will not directly affect the civil service, army and police force. Nor will they be sufficient to open up the middle and senior management levels of the parastatals.

Another area where the state would have clear responsibility to act would be in relation to land. While ordinary market mechanisms will undoubtedly have a role to play, they might in certain instances even intensify land hunger, as white investors sought to buy land in what have until now been called black areas. Responsibility to restore land to victims of recent forced removals is obvious, as is the necessity to find land on which people can live with at least a minimum of security and dignity.

Yet the problem goes further. If nothing is done to ensure a law-governed and progressive opening up of access to land on the part of those historically dispossessed, claims to land will be settled in a bloody and anarchic way outside of the law.

The setting up of a Land Claims Tribunal is a necessity. The Tribunal must be vested with clearly defined powers to recognise and reconcile in as equitable way as possible the claims of the dispossessed and the interests of present title-holders. Just compensation will have to be determined. The state cannot shirk its responsibility to supervise the process, create the necessary mechanisms, attend to the financial

implications and ensure that proper legal principles are followed.

No-one doubts the responsibility of the state to act in a decisive way so as to accelerate education and training for those disadvantaged by past discrimination. This implies creating special courses or targeting certain persons for existing courses. If the concept of equal opportunities has any meaning at all, at the very least it requires equal access to the acquisition of skills.

It is clear that in a post-apartheid South Africa, the main sphere for affirmative action will be in relation to repairing the damage done directly by apartheid yet the question arises as to whether there are other areas where it will be regarded as appropriate to single out groups for preferential treatment in order to make up for past exclusion.

The issue of gay and lesbian rights does not crop up in this connection - those rights should be covered by the general principles of equal protection mentioned above. Yet two groups would seem to have a strong claim for being beneficiaries of affirmative action programmes.

The first is women. Experience has shown that the question of rights for women never just solves itself. Nor is there ever a good time to pursue the issue. The question of basic rights is always inconvenient, uncomfortable for some, urgent for others.

In South Africa's case there is a strong overlay of black oppression and women's oppression, so that any attempt to level the playing fields, or grant equal opportunity, or do whatever it may be called, would inevitably require not special but special, special treatment to overcome the obstacles in the way of black women.

Yet the issue is a wider one. Affirmative action must be seen as part and parcel of a generalised programme of securing

respect for the human rights of all South Africans. If, as we increasingly say, South Africa is to be a non-racial, non-sexist society, it is not for nothing that we link anti-racism and anti-sexism. If the object of the exercise is to acknowledge the worth and liberate the capacities of all South Africans, then there can be no doubt that affirmative action must be used to back up the just claims of all women, both black and white, just as it must help realise the entitlements of all blacks, both men and women.

In other countries, anti-discrimination laws, have tended to give equal treatment to the issues of race and of gender oppression. In some cases, separate bodies have been set up to deal with the two; in other countries there is a single authority with blanket jurisdiction to cover both. It might be that in South Africa we will launch a generalised human rights agency to advance and defend human rights in all areas, but arrange for it to have separate specialised bodies to overcome race and sex discrimination, respectively.

Racial oppression and gender oppression have much in common in that they both block the development of the victim groups; both tend to justify themselves with similar arguments; and both end up blaming the victims for their plight. At the same time, their nature and roots are quite different, and the victim in one sphere can be the oppressor in the other.

The other group with a strong claim to affirmative action are the disabled. Society tends to see the problem as a welfare rather than a human rights one. Taking all forms of disability and infirmity, including those associated with advanced age, into account, it has been estimated that there are no less than nine million disabled persons in South Africa. Whatever the number, the basic claims of the disabled, as are being increasingly recognised on an international level, are for their right to participate in general life like everybody else and to be able to work like all others.

This requires that special action be taken to enable disabled people to have access to public transport, to be able to enter and circulate freely in buildings and to use their brains and energy to do useful and properly remunerated work. Legislation in many countries requires that transport and building licences will not be granted unless the interests of disabled people are properly taken into account. Frequently there is a further requirement that employers, particularly large ones, ensure that a certain quota of jobs is made available to disabled people.

Just as it is essential that women have the decisive voice in determining what sort of agencies and principles should be used so as to secure their rights, so is it fundamental that bodies like Disabled People of South Africa play a central role in working out affirmative action programmes for the disabled.

#### **EQUITABILITY**

It is not possible to promote equitable objectives with inequitable procedures.

The notion of equity is central to the whole enterprise of affirmative action. The basic idea is not that of a re-division of spoils that go with office. Nor is it a paternalistic handout made to appease consciences on the one side and to buy peace on the other. It is a project based on a sense of elementary justice that seeks to deal with and overcome inequities in an equitable manner.

This means that both the foundation of the programmes and the way they are handled must be equitable. Whereas the notion of strict rights always involves total triumph for one claim int and total defeat for another [you either have a right or you do not - you cannot have half a right], the concept of equity requires a balancing out of claims.

In the case of affirmative action it means that the interests of present incumbents or titleholders must also be taken into account, as well as of other persons from the privileged group who wish to get employment, advance up the ladder, farm or build a house. These interests must then be balanced against those of the groups that have been prejudiced by past and continuing discrimination.

To take a concrete case: in relation to restructuring the civil service so as to make it less unbalanced, it would be inequitable to adopt procedures which would have the effect of keeping out persons who satisfy at least the minimum requirements for the job, or which prevented special modes of training so as to enlarge the pool of candidates. At the same time, it would be inequitable to ignore the employment and pension rights of the existing incumbents.

Any affirmative action programme in relation to the civil service would accordingly have to be global in character. Basing itself on the principle of overcoming inherited injustice, it would have to operate in a just way. This would mean that in pursuing its clear objectives it would have to give a fair hearing to all concerned, give due weight to the interests of all, and opt for the solution that is least onerous to those affected. There would also have to be appropriate systems of review and supervision.

#### **INCLUSIVENESS**

Bit by bit, we build up a culture of South Africanising our processes and our solutions. The basis for doing this is to acknowledge a common claim to basic rights and aspirations and get into the habit of working together in the search for the most acceptable way of moving forward.

Affirmative action programmes should never be worked out unilaterally and then imposed, whether from above or from below, on recalcitrant employers, business people or landowners. Nor should they be worked out in government

departments and then announced to the proposed beneficiaries.

We have never in South Africa got used to taking joint, all-inclusive responsibility for designing and implementing projects. We still rely heavily on experts, secrecy and public relations promotion to get projects through. The more distant they can be kept from the people most directly involved, the better - in this way, so it is felt, unwanted emotions and unreasonable demands can be kept out of the picture.

The truth is that once the real problems are openly acknowledged, and all those likely to be affected brought into the process in a meaningful way, a solution that will be effective and lasting is far more likely to be found.

To return to the issue of opening up the civil service, it would be essential to involve all the unions and staff associations, however racist or else progressive they might have been, in the process. Government leaders, the companies concerned with pension funds, and representatives of all groups which deal with the civil service, whether they be private firms or community organisations, should also be involved in an appropriate way.

Provided that the basic objectives are not compromised, the more on-the-spot input there is, the better. It is not only that the solutions worked out are likely to be more efficacious, but that the people most directly affected are more likely to accept the compromises involved since they would have been party to them and at least have had their chance to make their position known.

#### **SECURITY**

Affirmative action is a serious business and must be treated seriously. The criteria for applying it must be established in

advance and be clearly spelt out so that all concerned know what the issues are and realise where they stand.

There must be a secure framework of principles and procedures governing its processes.

Put in other words, affirmative action must not be an excuse for dishing out rewards to friends, acolytes, neighbours, family members, helpful secretaries, old schoolmates, political associates, speakers of the same language, lovers, or even comrades who shared jail or exile and now have no property or pension to fall back on [they should have proper pension rights]. Nor should it serve as a pretext for victimisation, revenge or the discharge of racial animosity. Nor, on the other hand, should it be a cover for arbitrarily promoting friends of the boss, faithful retainers from sweetheart unions, long-time informers and spies, so-called loyal staff.

The rule of law must apply, not the subjective, corrupt, nepotistic or capricious whims of individuals. At the same time, affirmative action must be effective. Society must throw its weight behind affirmative action programmes. The law must back them up, supervise them, and see that they work.

#### **ACCOUNTABILITY**

We have to move away from the notion that all is fair in love, war and business, and the concomitant presumption that secrecy and deceit are business virtues. Genuine trade secrets can be protected without hanging on to information which will be required from all companies on an equal basis.

Openness and the free flow of relevant information is key ingredient of the principle of accountability. Without hard and reliable facts and figures, the participants involved in the process of elaborating the programme cannot function properly. Similarly, without solid information freely supplied, those entrusted with monitoring progress cannot do their job properly.

The private sector knuckled under with barely a whimper to apartheid regulation and the racialisation of everything. It should not be too difficult for it to learn to live with a genuine opening up of business at all levels, that is, with what will amount to anti-apartheid de-regulation, or the deracialisation of everything.

Accountability involves not only openness but financial control, Parliamentary control and judicial review.

The question of affordability will clearly have to be reckoned with in every case. The government could double or triple the size of the civil service so as to create new posts for black persons and for women without disturbing the positions of white men. This would not be an acceptable solution. The cost to the country would be too high.

Similarly, private companies will have to take account of the costs involved in working out affirmative action programmes. They ought not to be able to avoid taking affirmative action simply because it involves expense. A certain degree of expense is inevitable, but if it is part of an across the board programme applied to the company's competitors, it should not put the firm at a disadvantage. The medium and long-term advantages of diversifying the workforce and management should then be positive for each company and for the economy in general.

The cost factor cannot in itself be used to block affirmative action altogether, but it is an important element that will have to be taken into account in relation to the phasing and extent of concrete programmes.

Parliamentary control implies that the persons responsible for initiating and monitoring affirmative action programmes will not function as autonomous individuals responsible only to their bureaucratic or political superiors, but will also have to

answer for their conduct and decisions to the elected representatives of the people.

This could be an important check against the pursuing of policies in conflict with principles agreed upon when affirmative action legislation was being adopted. It could also help to discourage abuse and corruption by officials.

Finally, there will have to be accountability to the courts. In the USA the courts have played an important role not simply in testing the constitutionality of affirmative action programmes, but in themselves designing such programmes and monitoring their implementation. In such cases, they appoint commissioners to help them with fact-gathering, receive information from all sides, and make a binding determination. Thus the courts have been directly involved in ordering everything from bussing to housing programmes to hiring and promotion schemes in large businesses.

It might be that South African courts will feel more comfortable with leaving affirmative action determinations to other bodies, and with confining their role to that of ensuring that the proper constitutional and legislative principles and procedures have been followed.

#### **PROPORTIONALITY**

The ends are laid down in the Bill of Rights and in legislation: are the means used proportionate to the objectives?

It seems that in most countries with constitutional courts the main issue with which the judges of these courts are confronted is that of proportionality. Cases of clear violation of, or manifest compliance with the constitution do not reach the courts. Those that do are usually concerned with reconciling or harmonising two or more competing principles.

Proportionality is a controlling mechanism based on reason and good sense which has the objective of relating means and ends.

The concept of proportionality is relied upon in many other parts of the law. It regulates the degree of force which may legitimately be used to repel an attack. One cannot used a gun to ward off a threatened slap on the wrist. Where there is joint negligence, damages are apportioned in accordance with the degree of negligence.

The reasonable man or woman, the mythical creature against whose judgement and actions the courts are always measuring behaviour, invariably has a good sense of proportion. The limits of the duty of care or the principles for assessing damages in negligence actions take into account the floodgates argument, that is, the need to balance the right to full indemnification in relation to wrongfully caused injury, against the ruinous cost to insurers of unlimited claims.

It should not be beyond the capacity of Parliament to draft legislation setting out the procedures for and criteria governing the elaboration and implementation of affirmative action programmes. Nor should it be beyond the wit of our judges to develop a sensible, just and efficacious interpretative jurisprudence based on the core principle of proportionality.

In the case of affirmative action there is an inherent tension between the principle of colour-blindness and the principle of being sensitive to the way colour impinges negatively and unjustly on people's lives. Completely to ignore either element would be to act in a disproportionate way.

Thus an affirmative action programme that totally disbarred whites or men from certain positions, would be disproportionately tilted towards the principle of resolute steps to correct imbalances. One which on the other hand ensured training or hiring policies that gave a positive

weighting to blacks or women [or, possibly, to poor people or people from rural backgrounds] as part of the general profile of candidates, without excluding whites or males [or rich people or those from the cities], would meet the requirement of proportionality.

There is also the question of balancing the public interest in deracialising and diversifying business against the good functioning and internal culture of any particular enterprise.

Any attempt, for example, simply to bulldozer through a programme of instant deracialising of underground jobs in the mines might be regarded as unconstitutional because of disproportionality in relation to process and timing. Conversely, a refusal to move towards the progressive opening up of well-paid underground jobs on the grounds that white miners would object and so disrupt production to the detriment of all, would equally fail the test of proportionality. The public interest and the rights of black miners could never be completely excluded, but neither would the need to phase in changes in a way that would cause the least disruption.

Disproportionality could relate to expense - it would be disproportional to saddle the firm or the taxpayer with manifestly ruinous expense, and equally it would be disproportionate to say that a programme could only be viable if it involved no cost at all.

It could refer to timing. A recent visit to a firm that prides itself on delivering packages anywhere in the world in record time showed that all the clerks at the main office were white. This clearly must have reflected hiring policy since the number of qualified and overqualified black persons capable of doing the work must have been enormous.

To give that firm until the end of the month to correct the imbalance would mean weighting the balance too much in favour of the public interest. To give them ten years would be disproportionate the other way. Acting with the direct

involvement of all those most directly and intimately concerned, the body making the determination [assuming it was not voluntary] would find out the normal hiring frequency. It should then provide that the firm advertise widely, and finally ensure that out of the pool of qualified applicants, say, at least two out of three new recruits in the next two year period should be black.

It could refer to means or criteria. It would be disproportionate to have criteria for appointment or advancement that were so restrictive as to exclude qualified persons. On the other hand, it would be equally disproportionate to have criteria that were so lax as totally to dilute the element of qualification.

#### **FLEXIBILITY**

Inflexibility of purpose is the foundation of flexibility of means. There can be no flexibility in relation to the objective of overcoming the effects of past discrimination. Apartheid is irremediably bad and offensive. There must be no wavering in relation to getting rid of its effects.

Once the firmness of the goal is accepted, it is possible to be extremely flexible in relation how to achieve it. Conversely, it is when there is doubt about the honesty of seeking the goal that people fight over every detail of the programme. The objective of flexibility must be to secure affirmative action, not to undermine it.

Flexibility, then, relates to the means, not the ends. If the bodies or persons concerned voluntarily introduce programmes that seriously and substantially bring about the required changes, if they follow appropriate procedures and involve all interested parties in the process of decision-making, then there is no need for external intervention in any form.

The principle of flexibility, then, encourages the voluntary principle, without foregoing the right of the law to intervene when there is no progress at all or the rate of advance is manifestly inadequate.

The principle also acknowledges the importance of process and timing, that is, of phasing advance, as well as of giving the parties affected considerable latitude in regard to the precise methods to be used: what matters is that the problem be tackled with resolution and that certain goals or targets be reached.

It is not affirmative action but history which has created the issues. Everyone knows what the basic problems are. Persons who have been unjustly and often cruelly excluded from access to opportunities are now claiming their rights. Others who are in privileged positions are anxious that in losing their monopoly they will lose everything.

Responsibility, equitability, security, inclusiveness, accountability, proportionality and flexibility. These are the seven sisters of affirmative action to deal with these dilemmas. Other writers could add a few more principles, or collapse several of this list into one.

The fact is that however it is structured, affirmative action could well be a law-governed and principled process that contrary to many expectations brought South Africans closer together.

When people are themselves involved in a process of change, they lose much of their anxiety. The end result might not be exactly what any of the parties wanted, but would be accepted on the basis that there really was no other way.

The mutual relief at jointly working out solutions that function in practice and that avoid unending strife and tension, could well encourage the beginnings of a new

consciousness that could be as rewarding as the results of affirmative action itself.

#### V CONCLUSION

If the above tests of constitutionality became the law, would 3, 4, 5, 6 pass?

There could be no question that the goal of opening up business at all levels would be constitutional. Legislation designed to ensure that this goal was reached and establishing criteria and procedures along the lines mentioned above would also be valid. Quotas would not be unconstitutional per se even if they gave express preference to blacks or to women or to disabled persons. The question would be, is 3, 4, 5, 6 based on

responsibility?..... Clearly, in the light of the way blacks were dispossessed by the state in the past, the state has a duty to repair the damage done. It is not just a matter of morality, but of survival. If the law is not there to attend to the problems in an appropriate manner, the nation will tear itself apart. The duty to act and to do so resolutely cannot be doubted.

equitability? ......To the extent that the proposal flows from one part of the business equation only it cannot be said to have emanated from an equitable procedure. In that sense, it would be inappropriate for a democratic government to pass legislation enforcing the programme simply because it sympathised with its original proponents. Equity would require that all interested parties be heard.

inclusiveness?.....The same factors would apply.

security?.....The importance of this element is that 3, 4, 5, 6 would have to be incorporated into legislation. This would mean Parliamentary debate about all its aspects and discussion about the detailed mechanisms to be established to ensure achievement of the goals.

accountability?.....If the programme were adopted, there would have to be specific mechanisms built in to take account of the costs involved, to ensure openness of information and proceedings, to guarantee Parliamentary supervision and to indicate precisely how review by the courts would operate. It would not be a programme simply left to state officials to implement on their own according to their personal judgements and predelictions.

proportionality?.....This is of course the key element. The procedural elements of equity and inclusiveness could be attended to. White business people and unions could be involved in the process, and the Johannesburg Stock Exchange and the Registrar of Companies brought in. Many questions would have to be asked, first by Parliament, then by the courts.

Would the package have to stand or fall as a whole? Could parts be constitutional and others not? Thus the government could more readily impose quotas on itself than on private firms. 3, 4, 5, 5 could accordingly more easily pass the test for advancement in the public sector, for which it was not specifically intended, than in the private sector, in respect of which it was initially proposed.

The issue of proportionality cannot be resolved without much more information. The problem is not to declare targets but to ensure that they are reasonable and reachable.

flexibility?..........If the basic scheme were held not to be disproportionate, there would be no inherent difficulty in building in the necessary degree of flexibility in ensuring compliance. Firms could be given considerable leeway in relation to how to find suitable candidates for the board and for general management, how to ensure shareholding by blacks and how to distribute procurement contracts.

The crucial element, then, would be that of proportionality. Are the means proportional to the end? Are there other and

better ways of achieving the same objective, with less cost both economically and socially? Are the figures adjustable? Can parts of the programme be severed from the rest without destroying the whole concept?

It was not NAFCOC'S intention to anticipate future constitutional determinations, but merely to put the question of black advancement firmly on the agenda. To the extent that they have helped in a simple and effective way to concentrate attention on a neglected subject, they deserve to be congratulated.

It might well be that application of the first four elements of the principle of equal protection would lessen the need for resort to affirmative action and quotas. New strategies could be advanced that were more securely and more broadly based.

The general opening up of education for blacks, the broadening out of access to learning and culture, the new patterns of directing state resources towards satisfying the needs of all, could result in the development of a strong and self-reliant black business infrastructure. At the same time, black economic power could be mobilised through workers, residents and consumer organisations. Black trade unionists and black savers could become shareholders with direct representation on the board.

Black business people could then advance on all fronts, as independents, through franchises and through joint ventures. With their community contacts, language skills and capacity to relate directly to the new business opportunities that a democratic government would develop, they would be in a stronger position to advance in the formal sector of business on their own terms.

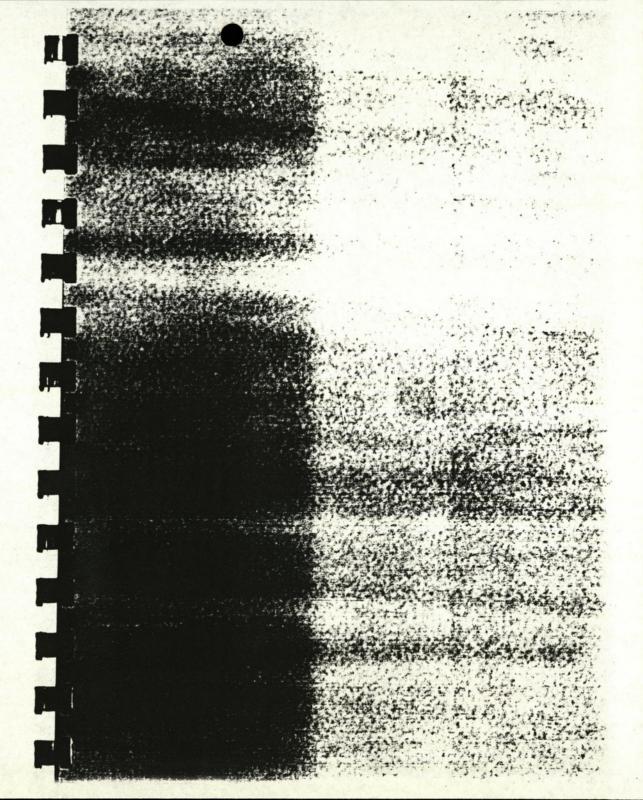
The small business and the informal sectors should also expand without this being projected as an alternative to advancing in big business.

The future of black business people, then, would seem to lie in their maintaining close links with the community rather than in distancing themselves from it.

Relationships with the unions could become quite complicated, because there is no guarantee that black employers are any less antagonistic to organised labour than are white ones. Yet the more far-sighted black business people will see that the unions are important links with the community, that they control considerable funds and that they will be a major protagonist in influencing the country's economic policy, and especially spending in the socioeconomic sphere.

Black business people will also be able to accompany and assist what should be a growing class of black farmers producing for the market. The same would apply to the civics, who would have considerable influence on the way schools and clinics and telephones and water pipes and electric lights were installed in the townships.

The prospect would be of the black entrepreneurial class contributing not only to their own advancement but to the advancement of all black people, and of doing so in a way that was consistent with the principles of constitutionalism and encouraged the evolution of a united South African nation in which, proud of different cultures, we all at last became South Africans.



ERROLATIVE ACTIONS EROOD GOVERNMENT

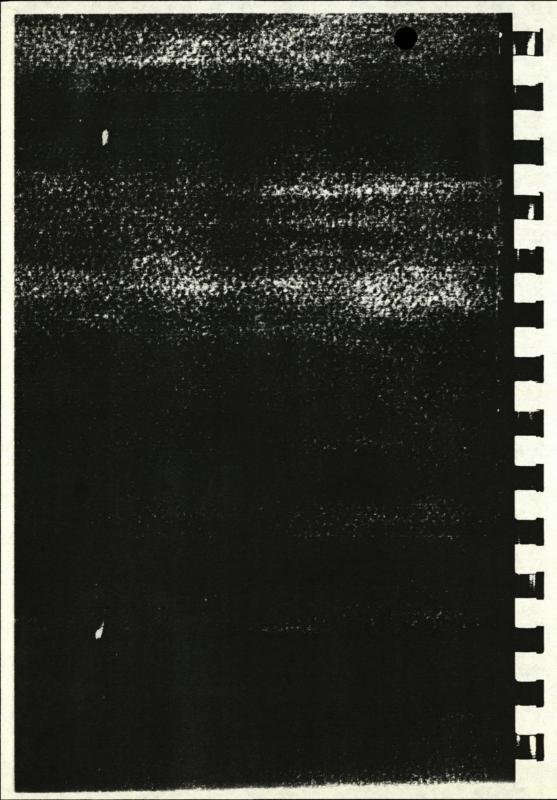
THE LOOK AT COMPETITUTION OF ANISMS FOR RE-DISTRIBUTION IN SOUTH AFRICA

Albie Sachs

Cape Town - Cambridge :

November 1991

thir Berkeley Memorial Lecture



## AFFIRMATIVE ACTION AND GOOD GOVERNMENT

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### AFFIRMATIVE ACTION AND GOOD GOVERNMENT

## A FRESH LOOK AT CONSTITUTIONAL MECHANISMS FOR RE-DISTRIBUTION IN SOUTH AFRICA

#### PART ONE - THE SETTING

Fly over any city, drive through any suburb, travel past the farms of South Africa, and immediately you see who owns what, who lives how, whose streets are lit at night and whose are dark. Go to any school or hospital or playground, and, with marginal differences, the story is the same.

Our children and our grandchildren are born into a world where their life chances are grossly unequal. However skilled or hardworking or upright they might be, their destinies are determined not primarily by any virtue or merit they might have, but by the accident of how their parents were classified by the apartheid state.

Colour rather than need or ability is still the greatest factor in deciding who will wear shoes or who will go barefoot, who will get water by switching on a tap and who has to walk miles each day to fetch it, who will matriculate and who will be unable to write his or her name, who will die of measles or malnutrition and who will go on to sail round the world.

Now that the battle for equal voting rights is slowly and relentlessly being won, we have to embark on the even more arduous task of guaranteeing equal access to the resources of the country.

Affirmative action is in the air. We put it there, and it is our duty to explore its implications, give it a thoroughly South African meaning, ensure that it responds to the claims of all our people and not just of a small new elite, and finally see to it that it achieves such success that it extinguishes itself.

In a distressingly ironic way, there is nothing new about affirmative action in our country. We have had it for decades, even for centuries, with this special difference, that it operated not in favour of the disadvantaged but for the benefit of those already ahead. By law and by practice, quite independently of individual merit or entitlement, the section of the population classified as white were given immense and at times total advantage in relation to their fellow South Africans.

Thus, the whole of apartheid law amounted to no less than a systematised and unjust form of affirmative action in favour of the whites, who were granted preferential access to land, to employment, to credit, to participation in cultural or sporting life, indeed, to every amenity and facility that society had to offer.

After their election victory in 1948, the Nationalists practised linguistic affirmative action within racist affirmative action, embarking on a conscious and declared policy of promoting Afrikaners in general and their supporters in particular in every area of South African life. Their claims that whatever the law might have said, Afrikaners were subject to various forms of exclusion and disadvantage, undoubtedly had merit, but not nearly as much as those of black South Africans today.

The Nationalists now acknowledge that their policies have failed, but they continue largely to uphold their basic principle of governmental spending: to those that have, it shall be given four or five times over.

The special favouring of the privileged minority continues to this day. While aspects of formal race segregation have been abolished, the system of 'own affairs' enables us to see clearly what is hidden in other countries, namely the iniquitous statistics of continuing advantage and disadvantage.

Thus, each white child still gets five times as much spent on his or her education as a black child. White patients continue to have four times as much spent on their health, while white farmers get vast benefits in the form of soft credits and price subsidies that are not available to black farmers. Even old aged pensions are heavily weighted in favour of whites.

It grieves one to be referring to blacks and whites, to be using the language of race. We long for the day when colour is completely irrelevant in our society, when we are all just human beings, South Africans, with a common love for this country, and possessing an equal chance of enjoying its riches, the moment when skin colour is not even noticed, let alone referred to. To achieve that, is, and must always be, our goal. Indeed, it has to be the primary aim of affirmative action.

Yet the truth is that the injustices and inequalities produced by past race discrimination do not go away simply because the laws which enforced the discrimination are repealed. To ignore the realities of racial inequalities would be an example not of being colour-blind, but of being totally blind.

Whether in the public or the private sector, the situation is the same. Look at who sit on the boards, who direct the departments, who control the supply of money or paper or cement, who sit behind the desks and who carry the messages.

To deepen the injustice, these inequalities replicate themselves from generation to generation. Illiteracy, ill-health and poverty get handed down as a bitter bequest from parents who would love to do well by their children, but who lack the where-with-all. On the other hand, wealth, skills and confidence get locked into the communities and families that have always enjoyed them.

Inequality continues as before, only now it is regarded as natural, or, worse still, as the fault of the disadvantaged.

What a painful paradox it would be if, after decades of struggle and sacrifice, we succeeded in doing what apartheid could never do, namely, in legitimising inequality.

#### FEARS ABOUT AFFIRMATIVE ACTION

The best way of dealing with fears is to confront them, not to evade them. The problem in our country is that everything is divided, even our fears. This faces us with the difficulty of finding uniform principles to deal with divided fears.

Since the means of public expression are largely in white hands, we have no difficulty in discovering what white fears are. Time and time again we are warned against policies which will result in unqualified people blinded by ideology or spurred on by personal greed being placed in positions of economic command. The resulting combination of ideological misguidedness and personal ineptitude, we are told, will rapidly lead to total economic and social collapse, African style.

Blacks, on the other hand, are said not to have fears but to have expectations, usually, we are informed, of an unrealistic kind. The central problem is then projected as being how to balance white fears against black expectations.

The reality is that South African expectations are far more universal than South African fears. Virtually all South Africans expect that government will be fair and honest, that they will be able to get on with their lives in a dignified way

and live in prosperity and peace. No-one wants a breakdown of public institutions or a collapse of the economy.

#### Blacks fear that

whites will destroy everything rather than live in equality;

alternatively, there will be formal voting equality, but white domination will continue unabated in the social and economic spheres;

alternatively, affirmative action will enable a small section of the black middle class to advance into white society, while the great majority of the people are left to carry on living in segregated squalor and misery; what we will have is not nonracial democracy, but non-racial authoritarianism. Combined with heartless free market principles, this will result in continued oppression of the majority, colonial style.

What we need, says Govan Mbeki, is not affirmative action but social change.

It is in this situation of mutually re-inforcing fears that constitutionalism can make a major contribution. Constitutionalism seeks out rather than runs away from incompatibilities. Its function is precisely to grasp paradox, acknowledge contradiction. Far from homogenising society and proclaiming a universality of opinion, it pre-supposes diverse and conflicting interests and posits universally accepted means of dealing with them. Good faith, past record, body alchemy between leaders and even, some would say, a favourable conjunction of the planets, might have their role to play, but none of them can act as substitutes for clearly expressed constitutional provisions.

Constitutionalism thus acknowledges the universality of South African expectorations and the separate and contradictory nature of South African fears. It then seeks to

find broadly acceptable principles to deal with the tensions between the expectations and the fears.

Constitutions have to speak loudest precisely where the potential for clash of arms is greatest. We may predict that long after agreement has been reached on the three 's's - sovereignty, suffrage and the state - there will still be emotional debate about the three 'p's - property, pensions and posts.

What we need to do at this stage is not to attempt to solve all these problems at once, but to create a constitutional mode in terms of which they can be faced up to and handled in the future.

Already we find two different approaches being adopted. The one is problem-evasive, the other problem-confronting.

The problem- evasive strategy is to strive for secret accommodation between elites to produce as plausible and vague a formula as possible. This is then sold to followers with minimum precision and maximum publicity.

It bases itself on the assumption that the public is stupid, greedy and not very interested in politics. It replaces the good principle of pragmatism with the negative one, so evident in South Africa today, of ad hoc-ism. It confuses the vigorous scepticism about people and about power that must infuse any constitution, with a debilitating cynicism about constitutionalism itself. The constitution becomes a device for buying time rather than the basis of a compact designed to endure.

The danger of making constitutional arrangements through deals is that they can be unmade through deals. The more solemn, open, popularly-based, widely-agreed to, and fully-debated the terms of the constitution, the more profound and public the process of any alteration will have to be.

This approach pre-supposes that people on all sides are capable of great wisdom and common sense if they are directly involved in discussions about their future, receive the information necessary for intelligent decisions, trust the procedures being adopted and genuinely feel that their opinions will make a difference.

#### PART TWO - THE BACKGROUND

THE WORD 'BUT'

Bertrand Russell, the critical English philosopher who, amongst many things in an extraordinary life of 94 years employed Ronnie Kasrils\*, once said that the most important word in the English language was 'but'.

Five years ago, when the newly-formed Constitutional Committee of the ANC was debating the question of whether to support a Bill of Rights for South Africa, the answer we gave was an emphatic 'yes', followed by an equally resonant 'but....'

<sup>\*</sup>Well-known member of the ANC who recently emerged from the underground

We had no doubt that the Freedom Charter supported the idea of a constitution that gave firm and clear guarantees that all South Africans would in future be able to enjoy fundamental human rights and freedoms. The NEC had come out explicitly in favour of a multi-party democracy and of a justiciable Bill of Rights, that is, of an entrenched set of principles and norms that could be invoked by recourse to the courts if necessary.

Our fear was that a Bill of Rights would be projected in such a way as to highlight one aspect of the Freedom Charter while extinguishing another. We were concerned that after generations of struggle we would finally succeed in entering the political kingdom, but that all else would be denied unto us.

In other words, we would win freedom without bread, when what we wanted was freedom with bread; worse still, the freedom would be defined in terms which precluded us from getting bread. Our biggest victory would be our greatest defeat; the very constitution that signalled equality would prevent us from achieving equality, and, worse still, we would have signed away our rights ourselves. Life would be as unjust in conditions of freedom as it was under apartheid.

This is where the word 'but' came in. It was the fundamental qualification that a strong and meaningful Bill of Rights be associated with an equally firm constitutional requirement for steps to be taken to eradicate the inequalities created by apartheid. Without that, the quest for human dignity in our country had little meaning.

Perhaps in an earlier phase of our lives we would have hesitated to support a Bill of Rights at all. We might sweepingly have condemned the idea as bourgeois, thereby inflicting a triple injury on ourselves, first, by depriving ourselves of a major instrument of liberation, second, by handing the notion over to the bourgeoisie as their private property, and, third, by letting them have it in violation of their own market principles free, gratis and for nothing.

In any event, the Constitutional Committee threw its weight enthusiastically behind the idea of a Bill of Rights [well before the debacle of Eastern Europe], indicating that affirmative action should be integral to the process of extending human rights to all South Africans.

Persons who received the ANC Constitutional Guidelines some years ago will recall that the document included clauses calling for programmes of affirmative action to overcome the massive inequalities produced by apartheid. Particular mention was also made of the need to redress the disabilities imposed on women, by means of affirmative action.

We gave no definition of affirmative action. Indeed, we are unaware to this day of the term ever having been defined in legislation or international covenants. Modern conventions, however, frequently have articles which make it plain that any special treatment to favour language, cultural, religious and educational rights of formerly oppressed groups, and any moves to overcome the disadvantages imposed by past gender and race discrimination, shall not be regarded as violating human rights principles.

The phrase affirmative action came from the United States, where it had had a turbulent history. In using it, we studied American experience but gave it our own South African significance, importing neither the specific forms it took in that country nor the controversies it evoked there.

We regarded it as an advantage that the term had an open rather than a closed meaning. It has been said that the key words of any constitutional document are creatively ambiguous. A fundamental concept is established on the basis of its manifest appropriateness and necessity, and texture and refinement are then added as a result of subsequent experience.

We needed, and still need, the substantive rightness of a broad constitutional principle that requires that active steps be taken to secure equal chances in life for all. We also wanted and continue to want a sense of procedural security. Thus we need clearly defined pointers both as to what the principle embraces and as to how it is to be applied.

The actual working out we will have to leave to future practice.

#### STRATEGIC CONSIDERATIONS

The emphasis we gave to affirmative action was based on a number of strategic constitutional considerations.

In the first place, we did not know how change was going to come about, whether through insurrection or negotiations or a combination of both. Accordingly, we wanted a concept that would require and accommodate change in all possible situations, but not be dependent on any particular mode of transformation [the one option we did not contemplate was defeat].

Secondly, after consultation with the NEC, we put forward the notion of a mixed economy as a constitutional concept. This pre-supposed an important role both for the state and the private sectors in the economy. Affirmative action is a strategy that is peculiarly well-suited to facilitate redistribution in a mixed economy; it is ideologically open and pre-supposes active steps being taken to redress imbalances in both the public and the private spheres.

Thirdly, considerable experience, both of a positive and a negative nature, had been gained in the United States of affirmative action in practice. Difficult conceptual and practical issues had been confronted, and a number of techniques and strategies developed capable of fitting comfortably within a Bill of Rights framework. We could

benefit as much from knowing about the errors and setbacks as we could from having information about the successes.

Many of the questions remain complicated, particularly that of the relationship between non-racialism [non-sexism], equal protection, and quotas. Possibly our experience in South Africa will feed back to our brothers and sisters in the USA. In addition to being able to apply hindsight to their struggles, we can look forward to certain advantages:

we can count on majority support, we can anticipate clear constitutional authorisation for affirmative action and we can rely on a deep-rooted and continuing tradition of non-racism to give it an across-the-board character.

Without doubt, we must avoid becoming too closely embroiled in American controversies, especially since they have, like many American institutions, taken on a colouring not unrelated to the election campaigns in which they featured. What is clear is that without a clear constitutional commitment to affirmative action, our courts will flounder, the judges will divide and the causes both of equality and tranquility will suffer.

Finally, and most important of all from a technical point of view, the concept of affirmative action established a firm and seamless connection between the clauses of the Freedom Charter dealing with fundamental freedoms and those referring to social rights. On the one hand, it guaranteed that being free and having the vote would better enable people to work for social advancement, on the other it ensured that the achievement of social rights would come about under the rule of law according to just principles and fair procedures.

It forbids the constitution, under the guise of a false libertarianism, from becoming an instrument of human abandonment, heartlessness and neglect; it prevents good constitutional concepts like equal rights and freedom of association from being turned on their heads so as to promote

the privatisation of misery and what may be called the inevitabilising or fatalising of inequality.

At the same time, affirmative action excludes another and opposite kind of libertarian lawlessness, namely, constitutionalised banditry in the form of arbitrary confiscation, self-help and warlordism.

It thus becomes the even-handed alternative both to congealing present inequalities and to establishing 'redistribution' through nepotism, corruption, protection and jobs for pals.

Affirmative action should thus be seen neither as the fairy godmother of the East nor as the wicked witch of the West but as the midwife of equity here in our own land.

#### PART THREE - THE PRINCIPLES

Affirmative action in the South African context has extremely broad connotations, touching, as apartheid did and still does, on every area of life. It goes to the heart of the human rights idea in our country. It is the foundation of a sense of shared citizenship and common allegiance to South Africa.

It expresses a commitment to the taking of firm, orderly and principled steps to overcome the enormous divisions in lifechances created by apartheid.

It is the great de-stabiliser of the abnormal society created by apartheid, and the profound re-stabiliser of the new country we want to build.

In its widest sense, affirmative action covers all purposive activity designed to eliminate the effects of apartheid and to create a society where everyone has the same chance to get on in life. In terms of the ANC draft Bill of Rights, all anti-

discrimination measures, as well as all anti-poverty ones, may be regarded as constituting a form of affirmative action.

The draft Bill contemplates a wide range of principles and strategies to overcome the inequalities created by apartheid.

The first is the concept of equal rights or anti-discrimination, supported in institutional terms by a Human Rights Commission and the courts.

The second is the idea of regional equalisation, that is, of ensuring a flow of revenue for infra-structural development which will progressively overcome the inequalities between poor and rich regions. This is achieved by constitutional regulation of fiscal arrangements between the regions and the centre.

The third is the principle of an expanding floor of minimum social, educational and welfare rights, backed up by a Social Rights Commission and the courts.

Finally, special techniques or modalities of affirmative action, involving a wide variety of agencies, may be used to deal in an urgent and accelerated way with special blockages or impediments to the achievement of equal opportunity for all.

This last is the area of affirmative action in the narrow sense. There is a close connection between affirmative action in the broad sense and affirmative action in the narrow sense, but it would be a mistake to confuse the two. In particular, it would be an error to attempt to load affirmative action in the narrow sense with the whole burden of transformation in the country. Quotas and timetables work well if they are appropriately tailored to meet certain situations, but they can never be a substitute for good government and progressive social programmes.

Affirmative action, then, should be seen as the olive, not the drink. The drink has to be good government based on

accountability, equal rights and commitment to the advancement of all.

### **EQUAL PROTECTION**

The words are so simple that we are inclined to view them as poetical or preambular rather than as the foundation of enforceable constitutional rights.

- 1. All South Africans are born free and equal in dignity and rights.
- 2. No individual or group shall receive privileges or be subjected to discrimination, domination or abuse on the grounds of race, colour, language, gender, creed, political or other opinion, birth or other status.
- 3. All men and women shall have equal protection under the law.

This is the fundamental anti-apartheid notion, the foundation of the new constitution. In terms of all the basic entitlements of citizenship, we are all the same, entitled to be treated in identical fashion, irrespective of race, colour, creed, gender etc. - it is for these principles that countless South Africans gave their lives.

In another kind of society where basic equality of rights exist, such a clause might be more preambular than prescriptive. In a country like ours, where every aspect of life has for decades, even centuries, been determined in a grossly unequal way, equal protection has immense potential for transformation.

The first consequence of applying equal protection will be to end the completely indefensible affirmative action currently being taken in favour of the white minority. In some countries it is difficult to prove race discrimination by the State. This is not the case in South Africa, where, as has been pointed out, separate and unequal spending is explicitly guaranteed by the system of 'own affairs' in Government.

There is no area too poignant to escape this inequality: white schoolchildren in the countryside glide in government-subsidised buses past black pupils trudging miles to and from farm-schools each day.

The inequality of state, regional and local authority disbursements is to be found in every sphere, from health, to education, to street lighting, to the provision of parks and pools, not to speak of the furnishing of swimming lessons. How many white patients in a hospital have to share beds or sleep on the floor? While white hospitals, schools and living areas are underutilised by any standards, black areas and facilities are grossly overcrowded. Yet instead of public revenue being used to diminish these inequalities, it is employed to sustain them.

Article 14 of the ANC's first draft of a Bill of Rights declares that in its activities and functioning, the state shall observe the principles of non-racism and non-sexism, and encourage the same in all public and private bodies. It goes on to affirm that all benefits conferred and entitlements granted by the state shall be distributed on a non-racist and non-sexist basis.

We have barely begun to appreciate the practical implications of applying the principles for which we have been fighting all our lives. Equal protection is a solid and unassailable concept. It guarantees an end to discrimination against blacks, while at the same time it protects whites against retaliatory domination or abuse. As new, non-racial authorities are elected to office at the various levels of government, we can expect them for the first time in our country's history to function according to the principle of equal protection.

Furthermore, in dealing with the private sector and with n.g.o.'s, the state will insist that the latter apply equal protection principles; there will no longer be building of schools for whites and schools for blacks, with different spending criteria, but only the construction of schools for children. Similarly, contractors that exclude blacks and women as a matter of principle or by way of established practice cannot expect work from a government committed to upholding the constitutional principle of equal protection.

Equal protection does not involve confiscation or dispossession or an attack on the living standards of anyone, but it does mean that all future spending is done on an equal basis.

Nor does equal protection require the raising of extra revenue. What it does insist on is that all moneys in the state coffers be expended on citizens equally as citizens, and not on them differentially as blacks and whites. This is not a question of new spending, but of re-directed spending - so much for the often-repeated question: but where will the money come from?

### THE HUMAN RIGHTS COMMISSION

Someone applies for a job and is refused. He or she thinks it was because of race or gender. To whom can the person go for relief?

Someone is refused admission to a hotel, excluded from a sports club, prevented from buying a house, blocked in his or her career? What remedy is there if it was because of discrimination?

In Mozambique almost whatever your symptoms, the doctors diagnosed malaria, and they usually were right. Similarly, almost any setback or impediment in South Africa will be attributed to racism, and usually it will be right. Racism is so

rampant in our society that unless we have manifestly active and fair means of dealing with it, people will begin to take the law into their own hands.

We need criteria as to where to draw the line: people can marry whom they like and be as bigoted as they wish in relation to whom they invite home to dinner. If they let out rooms in their house to lodgers, can they discriminate? We have to find the line between respecting the right to privacy on the one hand, and the right to accommodation and personal dignity on the other.

It is urgent that we in South Africa begin to think about and plan for a Human Rights Commission.

Civil Rights and Equal Opportunities legislation in Britain and the USA give considerable attention to the setting up of semiautonomous government agencies to investigate and deal with such cases.

Clearly we are going to need similar bodies in South Africa. The courts will always be there to defend the constitutional rights of everybody, including the right to equal treatment. Yet court proceedings tend to be long drawn out, expensive and conflictual.

Thus regionally based bodies can be set up with the task of receiving and investigating complaints of race or gender discrimination. Normally, they would attempt to solve the dispute by conciliation. If this failed, and there appeared to be a clear case of discrimination, they could refer the matter to a Tribunal that specialised in hearing such matters.

The function of the courts in the UK is limited essentially to ensuring that correct procedures have been followed and that the law has been correctly applied; in the United States, the Courts tend to take a more direct and active role, with the power to award damages for what is referred to as violation of a person's civil rights.

We have had apartheid legislation for very long, now we will have to have anti-apartheid law to rectify the damage. The difference is that they will do so not by curbing freedom, rights and dignity, but by promoting them.

It is not that we believe that laws solve all the problems of bad behaviour, but we do regard them as important. They set standards for what is publicly regarded as right and wrong, they make it easier for the less racist persons in letting bureaus and employment agencies and so on to stand up to their more bigoted colleagues, they tell the victim of discrimination that he or she is not helpless, and they provide for dignified and fair proceedings to deal with complaints and achieve appropriate solutions.

In short, the choice is not limited to either self-help or helplessness. Fair means are provided to achieve fair results. The elements of mediation and speedy and inexpensive resolution are given special emphasis. The culture of rights is strengthened, as law, culture and behaviour interact.

The same principles apply to gender discrimination, which is even more deeply rooted and ancient. Equal protection requires effective means for ensuring that women are freed from all the burdens and disabilities imposed upon them by law and by patriarchal practice.

The question then arises as to whether there should be a single agency dealing with all types of discrimination, or different bodies for race and gender. Should protection be separate but equal?

The Human Rights Commission will have a huge task. It will have to be present in every area, capable of responding to every type of complaint.

Equally if not more important, a Human Rights Commission could investigate patterns of discrimination and make recommendations or orders for their elimination. One expects that the government will take steps to put its own house in order, but what about access to housing, schools, hospitals, swimming pools and to employment in the private sector?

It is in this respect, especially where there are manifest imbalances but no proof of express current intent to discriminate, that the principles of affirmative action in the narrow sense, including quotas, would come into play.

We can say, then, that the equal rights clauses in the constitution will only have meaning if they can be put into effect. Good government and anti-discrimination laws provide the foundation for achieving equality, but they need to be supplemented by public agencies staffed by resolute yet sensitive persons with clearly defined mandates.

Yet neither the laws nor the institutions will be enough. What will be central to the viability and effectiveness of the new anti-apartheid legal arrangement will be the existence of strong social organisations, or, as they are sometimes referred to, organs of civil society.

### THE ROLE OF SOCIAL ORGANISATIONS

Modern constitutions must to see to it that government tries to do neither too much nor too little. People need space to get on with their lives. They are entitled to privacy, choice and personal self-determination.

The apartheid state intruded on every aspect of the lives of the majority. The concept of personal freedom thus has special significance for those who have been stopped in the streets, raided in their homes, and told where they can live and with whom. There are many things that are simply not the business

of the state, and it is the duty of the constitution to point out what they are.

At the same time, there are other issues that are very much the concern of the state, and it is the function of the constitution to make clear what they are as well. In virtually all countries the state has primary responsibility for ensuring that basic educational and health services are available to the general public. In most countries, para-statal organisations provide water and electricity, as well as other services such as posts and telecommunications.

The statement that the individual is free to seek education or health services or clean water or electricity wherever he or she wishes only has meaning if schools and hospitals and electricity and water supplies exist. Because of apartheid, facilities that whites take for granted simply are not there for blacks. The new state will have to shoulder the same responsibilities towards the total electorate which the old one accepted in relation to the white electorate. Equal protection means equal entitlement.

The idea of entitlement is central to the human rights notion. It represents the difference between the top-down paternalistic concept of upliftment and the bottom-up idea of advancement. Yet entitlement alone is not enough. Indeed, it can become dis-empowering if it signifies a relationship based on an active state and a passive citizen.

If good, non-racial, non-sexist, democratic and open government is the main guarantee that the effects of apartheid will be overcome, then the organs of civil society are the principal guarantors that good government will exist. Over and above any mechanisms and procedures which might be established to enable people to secure their constitutional rights, there will have to be vigorous social institutions, such as trade unions, religious organisations, civics, the women's movement, student bodies, cultural circles and professional

and business associations, to see to it that government tries neither to overstep nor to understep the mark.

Freedom of association and constitutionally guaranteed space for social organisations, enables people to get on with their own lives in the way they think best [Article 5 of the draft Bill of Rights]. This space is particularly important for the most exploited and oppressed in our society, who as individuals have little chance of getting maximum benefit from the new constitutional order, but who in combination will better be able to secure their rights.

It is worth repeating that all constitutions are based on mistrust, not only of our opponents but of ourselves. Governments, however honourable, are always cognisant of what they call constraints, which, when boiled down, usually means of being constantly aware of the need to accommodate to power. Robust and self-confident community organisations ensure that the people are never converted into a mystical abstraction that only comes to life once in five years when hand-outs are offered before elections.

Community bodies are particularly important in relation to affirmative action. It could well be that in South Africa, as in the United States, the main beneficiaries of affirmative action in the narrow sense will be the black middle class, and, possibly, professional women of all races. These are important sections of society and have every reason to expect the constitution to support their just claims. Yet there are millions more who are also entitled to advancement and whose claims will be ignored or met in large measure according to the degree to which they are able to present coherent and impactful claims.

In other words, as far as the great majority of the people are concerned, the guarantee of affirmative action, that is of manifest reduction of inequality and improvement in their lives, will come from a combination of good government and

strong community and other organisations, rather than simply from quotas, timetables and hiring procedures.

The organisations will see to it that no-one is too isolated or too poor or too unlettered or too fearful to lose out on their constitutional entitlements. Living according to the rule of law depends as much on the activities of non-lawyers as of lawyers.

There will also be a great need for specialised and autonomous non-governmental organisations [n.g.o.'s] to ensure that social programmes are sensitive, fine-tuned and participatory in character. Not only will bodies as diverse as the National Medical and Dental Association and Operation Hunger have a larger function than ever to play in helping new health and nutrition policies to evolve, there will be a great need for organisations independent of the state to help people secure their rights as against the state.

#### THE OMBUD

The attractiveness to many South Africans of the Ombud is that it is totally unfamiliar. This gives us the chance to make the Ombud the person who deals with all the problems of abuse and maladministration that we cannot handle elsewhere in the Constitution.

The Ombudsman was an office first created in Norway and Sweden to receive complaints from the public in relation to the functioning of the state administration. In recent years many women have held the position, so now the gender-free term Ombud is used there instead.

The idea has been taken over in many countries, where it is seen as a useful means of giving the ordinary citizen redress against officials who are rude, devious, incompetent, tardy or capricious, or who in any other way abuse their office without necessarily violating the law. The Ombud investigates

the complaint and can recommend action if necessary against the offending official. It is then up to the superiors of the official to decide what to do.

The office is an interesting example of yet another constitutional paradox: the state appoints an official paid out state funds to control the actions of the state.

Generally, the Ombud's decisions become recommendations only, and from the point of view of 19th Century concepts of legal rights, they have no significance whatsoever since they cannot be enforced in a court of law. The fact is that there is far greater compliance with these recommendations than with many court orders [for example, maintenance payments]. New kinds of remedies give rise to new kinds of rights.

The ANC draft Bill of Rights gives an important place to the Ombud, without regarding him or her as the only agency outside of the courts for dealing with violations of human rights. On the contrary, the function of the Ombud is better fulfilled if its scope is clear and precise: to deal with the officious official. In the South African context, we could extend the role to investigating cases of the three ugly brothers, prejudice, favouritism and corruption.

The office is far too weak, however, to handle the whole question of dealing with racist structures and patterns of behaviour. It should not be put forward as an ineffectual alternative to a Human Rights Commission or to properly monitored affirmative action programmes.

# REGIONAL EQUALISATION

If it is not as dramatic as the principle of equal rights or as controversial as the concept of an expanding floor of social rights, that is because the notion of regional equalisation is only now being put on the agenda. Yet just as in West Germany where it played a major role in eliminating pockets

of poverty and overcoming uneven economic and social development, so in South Africa it has great potential for reducing poverty and inequality.

Article 10 of the ANC draft Bill of Rights declares that in order to achieve a common floor of rights for the whole country, resources may be diverted from richer to poorer areas, and timetables may be established for the phased extension of legislation and minimum standards from area to area.

This idea needs to be built upon in relation to the general question of funding for regional development. The gross underdevelopment of the rural zones referred to as the homelands, is an affront to all of us. The areas that have prospered on the basis of exploiting migrant labour now have to acknowledge their responsibility for ensuring the even development of the whole country. Cultural distinctness can be retained without perversely and offensively regarding isolation, poverty, lack of clothing and hunger as a cultural right.

The concept of regional equalisation will be most strongly expressed in the section of the Constitution dealing with the regions and their relations with the central government. What is clear is that priority will have to be given to building up social and economic infrastructures in areas presently under the Venda, Transkei and KwaZulu and other administrations if poverty and inequality are ever to be eliminated in our country.

### AN EXPANDING FLOOR OF SOCIAL RIGHTS

Water comes to us from the skies. It is not a dividend of risk capital. The dams that hold it are the product of the work and taxes of us all, as are the pipes along which it runs. Yet when this necessity of life flows into the homes of whites as a matter of course and rarely into those of blacks, who can deny that human rights are being violated? Are whites

thirstier and dirtier than blacks? It is not just a question of money. The poor are willing to pay. The water is just not there for them.

In a society like ours, however, it is the very vastness of the injustice that is used as an argument against subjecting it to constitutional remedy. Persons whose biggest worries about water are what kind of filter to use in their swimming pools or whether to buy bottles of Schoonspruit or Perrier, simply cannot see that access to clean water should be classified as a fundamental human right. To them it is not a question of rights but of money. Give everyone a chance to make money, and the rights take care of themselves; the only right that really matters is the right to spend your money as you please.

To those for whom getting water is a daily chore and often an agony, on the other hand, there is simply no choice - the reservoirs, the pipes and the taps are simply not there, even when they have the money. When they buy water in drums they in reality pay far more than they would do if they received it through pipes.

In the absence of common life experiences it is often difficult to find common standards. Yet if we search deeply enough, we do find that in the end our primary needs and our dependence on our environment are the same. Many modern libertarians speak strongly about the natural right of access to supermarkets, but remain silent about the natural right of access to nature. Air, fire, soil and water - nature has been appropriated by apartheid, and it is the task of the new South Africa to de-racialise access to these fundamental elements of life.

Without this, Africa will come back, but with a dry and empty bowl.

The themes of race, poverty and dignity are so intertwined in our country that unless there is a programme of active intervention to promote the enjoyment of the minimum

decencies of life on an across-the-board basis, the concept of equal protection takes on a mocking quality.

It is for this reason that the draft Bill of Rights, in keeping with virtually all modern constitutions, gives great emphasis to the securing of social, educational and welfare rights. Where it differs from most other constitutions [but not from various international conventions] is that it attempts to go beyond simply setting out these rights as something to be aimed for, and seeks to establish criteria and mechanisms for making them enforceable. Put another way, the draft Bill of Rights tries to lay a constitutional foundation for the achievement of positive or enforceable rights in the social sphere.

The basic idea is to impose a duty on Parliament to adopt legislation which, taking account of the resources of the country, grants progressively increasing rights to every citizen. It focuses on certain core or fundamental areas of human existence, establishing the notion of an expanding list of entitlements to nutrition, health, education, shelter, employment and welfare.

In a sense, this is a pro-active extension of the principle of equal protection. It re-inforces the notion of equal opportunity by demanding at least equal starting-off points for everyone.

This approach is not uncontroversial. An important debate exists as to whether it is appropriate to put the concept of an expanding floor of minimum rights in a constitution at all. Many argue that social rights belong in the political rather than the constitutional domain. They contend that it does a disservice to the timeless and clearly understood principles of human freedom to submerge them in transient, poorly comprehended social rights; worse still, they say, the pursuit of collective social rights opens the way for undermining basic individual rights.

The paradox is that the more extensive the provision of social rights in any country, the easier it is to have them constitutionally recognised. The idea that everyone is entitled to certain levels of health care, to so many years of education, to electricity and clean water, has in such a country the self-evident quality that marks it down for constitutional acknowledgement.

Insensitivity on the issue of social rights is sometimes compounded by trivialisation. One frequently hears people arguing that it is a lovely but totally irresponsible idea to promise everyone a home when the economy simply does not allow for homes for all.

The minimum floor of rights approach in fact does not offer everyone a home, desirable though this would be. It merely promises to reduce homelessness, and guarantees certain specific housing rights, sometimes of a purely defensive character, such as the right not to have your home destroyed if alternative accommodation is not available. At the same time, it promotes the idea of progressive materialisation of the right to enjoy electricity, access to clean water, and to benefit from waste disposal, even in the most humble of homesteads.

The rights to food, clothing, shelter and education are rights in themselves, not to be weighed in a competitive scale against the rights to freedom.

Equally, freedom is a value in itself, not something to be balanced against bread.

What is required, then, is a firm constitutional commitment towards the preservation of fundamental freedoms quite independently of whether social rights are being realised.

The Bill of Rights must be formatted in such a way that both sets of fundamental rights are protected, each in an appropriate manner. There will always be overlap. The

presentation and interpretation should be such that wherever possible, the different sets of rights re-inforce each other.

Where necessary, however, depending on the circumstances, one cluster of rights must give way to another. Thus, torture can never be constitutionally justified, even in times of famine to find out where food is being hoarded. By the same token, property rights can never be invoked to justify destruction of food in order to keep prices high.

There is another important reason for favouring a constitutional commitment to improving the life of those forced to live in poverty and deprivation. If people are satisfied that there are institutions which guarantee that their basic rights are being attended to on a generalised basis, they are less likely to see each application for a job or a home or a place in a school or hospital as part of a general race war. Affirmative action in the sense of race and gender-aware programmes is thus freed of the burden of having to carry on its own shoulders all movement towards a more just society, and enabled better to fulfill its true function, namely, to provide in a well-tailored way for accelerated advance in certain crucial areas.

In any event, whether the floor of rights idea is in the constitution or not, it should be high on the agenda of any new government. We will have to have an Education Act, a Housing Act, a Health Act, as well as legislation to help overcome hunger, unemployment and the other ills of our divided country. These statutes will create positive rights enforceable in the courts.

They will be non-racial in character, referring to pupils, patients, residents and workseekers, not to blacks and whites. Yet by focussing on the rights of those whose circumstances are the hardest, they will ensure that in practice the main beneficiaries will be those who suffered the greatest deprivations in the past, that is, blacks, and especially black women. The emphasis will, however, be on need, not on

race; the white family that recently moved in with black squatters could benefit as much as their black neighbours.

#### AFFORDABILITY AND ENFORCEABILITY

If politics is the art of the possible, and science the art of the soluble; if culture is the art of the performable, then law is the art of the enforceable, and politics, science, culture and law are all the art of the affordable.

One of the main criticisms of the concept of constitutionalising social rights is that they are not worth the expensive parchment they are written on, for the simple reason that they can be neither enforced nor afforded.

This observation has to be taken seriously. To fill the Bill of Rights with empty or even false promises would be to do it a major disservice. The real answer has to be to find and develop appropriate remedies.

We are somewhere in between where the UK was with the Liberal Government in 1910 and the Labour Government of 1946, roughly where the Nordic countries were with the creation of welfare states in the 1930's, and where the USA was during the time of the New Deal in the same decade. More interestingly, we are a little behind where South Africa itself was when Jan Hofmeyer was Deputy Prime Minister in the 1940's.

The Gluckman Report on the Future of Health Services was widely commended and in fact was acted upon, not here in South Africa, unfortunately, but in the UK, where some of its recommendations were incorporated into the British National Health Service. School feeding schemes, embryo legal aid services, and unemployment insurance schemes were all developed at that time and then all later discarded by the Nationalist Party government.

We have to resume the interrupted work, and those who recognise the need for something to be done but are worried about the enforceability aspect should help in the search for appropriate concepts rather than retreat into recalcitrant philosophical positions. There has been great and welcome creativity in relation to enforceability of environmental rights. Let us hope for equal initiative in respect of social rights. The quality of human rights endeavour should not be strained - we should all work for blue, red and green rights, that is, for first, second and third generation rights. We may each concentrate on those of greatest concern to us without denying the importance or validity of the others.

Court actions are not the only mechanisms to be found in modern societies for enforcing rights. Thus, the second generation right of access to clean water is daily enforced in South Africa - for the minority, at least - by means of statutes governing water supplies. These laws create a system of responsibilities involving inspectorates, reporting and penalties for endangering health. It is not necessary to sue anyone to get potable water out of your tap.

What is required in relation to social, educational and welfare rights is a concept of enforceability that takes into account both the question of affordability and the issue of appropriate forms of enforcement.

Affordability has to be built into the characterisation of social rights just as reasonableness enters into the definition of negligence, or proportionality into the concept of self-defence. It involves a relationship between the duty to spend on the one hand and the obligation to pay on the other. Some entitlements will be free, usually those related to health and education. Others have to be paid for, normally those classified as utilities, such as water, electricity, housing and transport. Some are based on general tax revenue, some on payment, some on contributions.

The constitution establishes the general framework, insisting on certain principles, such as progressive extension of access to the means for enjoying basic social rights, consultation, open decision-making with free circulation of relevant information, supervision, accountability and affordability. Legislation then creates the specific rights and duties within the constitutionally laid-down format.

The details of the legislation will depend on the political process and the mandates given to each government. The implementation will be done by the executive according to the general principles of good government, democratic accountability and judicial review.

The courts will not be called upon to take decisions on where schools or hospitals or reservoirs should be built. Their role will be to ensure that constitutional principles are being applied when such activities are undertaken.

Contrary to what some commentators have said, the concept of an expanding floor of minimum rights does not give the state greater powers. On the contrary, it gives the state greater responsibilities, and the citizens greater powers against the state. One of the functions of the courts will be to ensure that in fulfilling its responsibilities, the state acts in a constitutional rather than an arbitrary or highhanded manner.

The ANC draft Bill of Rights proposals would in fact have the effect of considerably strengthening the scope of judicial review, not by turning the judges into pseudo-engineers or teachers or doctors or accountants, but by calling upon them to be real judges in relation to classical legal issues such as fairness of procedure and faithfulness to the constitution and the law.

In addition, clauses dealing with social rights in the Bill of Rights could have implications for judicial decision-making that went beyond judicial review as such. In other words, for those who equate enforceability with judicial rulings, the

adoption of social rights clauses would have considerable impact on the nature of court orders.

Thus, they could in some cases directly establish strong rights, such as that not to be evicted from shelter or have one's home destroyed if an alternative home is not available. In general, they could give rise to defensive or negative rights, that is, they could render unlawful actions which are designed to or have the effect of diminishing the exercise of the specified rights. They would also have a major impact on the interpretation of statutes and on enquiries into the validity of administrative acts or of by-laws.

Yet if the social rights clauses are to give rise to positive rights enforceable in the courts, something more direct is needed, and that comes from legislation. Broad constitutional programmes get converted into specific structures of rights through legislation. In this way, the right, say, to free and compulsory primary education, as is found in many constitutions, is realised through an Education Act.

It is now widely accepted in South Africa that the Bill of Rights should affirm a universal right at least to primary education. Once that principle is adopted, there is no intrinsic reason why it should not be extended to rights to primary health care, primary nutrition provision and primary access to utilities. The same modalities of progressive creation of facilities will have to apply in each case. None is intrinsically more or less enforceable than any other.

#### A SOCIAL RIGHTS COMMISSION

An idea gaining increasing support is that a Social Rights Commission be established in order to monitor, report on, do research on, receive complaints on and generally supervise the implementation of social rights programmes.

Such a body would assist the courts in making determinations where social rights questions were in issue, but their function

would be much wider. They would liaise with all legislative authorities, that is, at local, regional and national levels, and inform them and the public as to progress made and failures recorded in the implementation of social rights. If minimum standards are required by law, they could report on defaulters.

An adverse report by the Social Rights Commission might not be as powerful in a technical legal sense as an adverse judgment by a court of law, but it could have great significance with public opinion, and end up being enforced in practice through consequent legislative or executive action.

#### PART FOUR - AN EXAMPLE

POWER TO THE PEOPLE - AN ELECTRIC LIGHT IN EVERY HOME

There is no reason why there should not be a light in every home in South Africa. Whites take electricity for granted.

Yet two thirds of South Africans collect firewood, burn paraffin, use coal or candles or car batteries. Their houses fill with fumes, frequently catch fire. Darkness comes early. There is no refrigeration, no hot water, no fans.

Energy comes from the earth and sun. We all have a right to fire, to enable us to cook, to ward off danger, to keep ourselves warm, to illuminate the darkness. The right to energy in a country like South Africa means a right to electricity, not just a right to collect firewood or dung or to carry paraffin.

The right to electricity is both a right in itself and also the foundation of the exercise of other rights. When we boil water, we affirm the right to health. When we read at night, we exercise the right to education. When we save food in a fridge, we strengthen the right to nutrition.

The problem is not one of enforceability, nor even of affordability. It is one of humanity. It is as it has always been, a question of who matters, of who counts. The resources are there, the cost can be recovered and means can be found for making the rights enforceable.

In the Jordan 94 per cent of homes have electricity. The figure in Chile is the same [and we are informed by the Minister of Energy there that they are very worried by it]. In Thailand virtually every urban dwelling and more than 70 per cent of rural homes have electricity.

In South Africa, which has the world's fifteenth largest power generation capability, the figure is about 32 per cent. We do not know the precise percentage because until now no government or other body has bothered to find out. What has mattered was that every white home has had lights.

The question of who has or does not have electricity has nothing to do with location. White farmers in the most remote areas can look forward to a cool beer in summer and a hot cup of coffee in winter, while blacks living in the cities, even right next to a power station, even workers in the electricity supply industry, have to do without.

Nor is affordability a major factor. Blacks pay one and a half times as much as do whites for each unit of energy they consume; they also suffer much more discomfort, not to speak of the hours they have to spend on acquiring and storing fuel.

Nor is it a matter of supply. The electricity is there. ESKOM is said to be the fifth largest generating authority in the western world. It has vast reserves which it cannot dispose of. It has enough spare capacity to supply every unelectrified house in the country. Links with hydro-electric schemes in Mozambique and Zaire promise South Africa future supplies that will be cheap and produce little damage to the environment.

The key determinant of who has and who does not have lights is accordingly not some rationally justifiable factor such as distance from a power station, capacity of the consumer to pay, or an absolute shortage of electricity. It is race. While white homes have electricity as a matter of course, only about 20 per cent of black homes have it.

The fact is that until now, the majority of South Africans were just not contemplated by the authorities that controlled the distribution of electricity. They did not have the vote, nor the right to own homes where they pleased, nor the right to study and engage in economic activity on equal terms. Lack of power in the home was a direct consequence of lack of power in the organs of government.

The apartheid state excluded them, at best ignored them. It was not a question of excessive state intervention but of excessive state neglect. The answer is not to continue with this neglect, but to ensure that the state shoulders the same responsibility towards blacks that it has always done in relation to whites. We need to bring light to all, not to privatise darkness.

This is where a new constitution and a Bill of Rights will have immediate relevance. Democratic, non-racial government at all levels will ensure that local authorities for the first time are answerable to all the people in their area, and not just to a racial minority.

Equal protection means that all future spending, whether at national, regional or local level, has to be done on an equal basis. Street lighting has to be made equally available throughout a metropolitan area. If a white farmer has a power line running to his or her homestead, black farmworkers on the same land should have equal access to the current [subject, of course, to payment for use on the same basis].

Regional equalisation will mean that the regions which currently suffer from gross under-provision of electricity, such as Northern Transvaal or Ciskei-Transkei-Border should receive special infra-structural support. The electricity grid would have to be spread so as progressively to achieve regional equality.

Affirmative action in the narrow sense would signify that special programmes might be developed to help black consumers of electricity. An example might be special tariffs to discount costs for the poorest of the urban dwellers or to reduce connection and installation fees for those in the more remote rural areas. Basically, however, the idea would be to extend electricity to all on an equal basis as citizens and not as blacks.

This is where the expanding floor of minimum rights comes in. It is a mechanism designed to establish an enforceable programme for the progressive extension of electricity to every home in the country. It is not something separate from equal protection, regional equalisation and affirmative action, but rather, a comprehensive and coherent means of achieving all these together. It is the non-racial constitutional framework for achieving the right to light.

The minimum standards idea would involve three parameters: defining target sections of the population with the most urgent entitlement [for example, health-education- or business-related]; specifying geographical areas most amenable to rapid and inexpensive electrification; and, finally, determining the levels and quality of supply and installation.

The first task would be to establish a nation-wide Electrification Commission with responsibility for surveying the present situation and creating a map showing the number and location of homes with electricity and those without. Acting in collaboration with government structures at national, regional and local levels, together with ESKOM and with civic and business organisations, the Commission would

work out a programme setting out the steps that would have to be taken to extend electricity to every home.

The targeted populations would steadily increase in number, the territorial units would progressively be enlarged and the quality of electricity supply units would over time increase on a step by step basis. Eventually all homes in the country would have the same basic supply of electricity.

Appropriate legislation would have to be adopted to govern the implementation of this programme. It would establish the bodies responsible for determining and implementing the scheme, lay down the criteria they were to use, and prescribe in broad terms the way tariffs would be worked out. The legislation would have built into it a mechanism for determining what funding would be available and how any fluctuations would affect the rate of advance.

Finally, it would lay down a system of empowerment\ accountability\ enforcement. Thus, the Electrification Commission would be subject to at least four kinds of accountability:

to Parliament and elected regional and local authorities;

to civic and community organisations, who would have rights at least to information and consultation;

to the courts, who would apply the principles of judicial review in the light of the nature and objectives of the legislation; and

to the Social Rights Commission, which would receive complaints and suggestions from the public, undertake investigations and research, assist the courts when necessary, and report to Parliament and local legislatures on progress made and on blockages and possible solutions.

Critics will say that access by all to electricity might well be a worthy goal but that it can hardly be considered a right, and even less so a fundamental human right. In particular, they

claim, the right to light should not be called a right at all, since it cannot be enforced. Thus, somebody who wishes to have domestic electricity cannot go to court to get an order that he or she must be furnished with electricity.

Enforceability will come from the format; the nature of the remedies will emanate from the character of the rights. There is nothing strange about this.

The right to vote is said to be a fundamental first generation right. Yet it is not a defensive right to be upheld by the courts against the state. Its exercise depends on state action. Thus, the right to vote can only be realised when there is an election. No-one can go to court and demand that the state provide him or her immediately with the right to vote. The Electoral Law lays down the periodicity of elections, how voters' rolls are to be established, where voting is to take place and what procedures must be followed when votes are cast.

Similarly, injured workers do not have to go to court to get compensation. They follow special procedures before specially appointed bodies.

Similarly, the right to primary education does not give every Tom, Dick and Harriet the right to go to court and demand an immediate place for his or her child at any particular school, and certainly not that a school be built in a particular area to suit their particular needs or convenience.

What it does require is that each and every government elected to office, independently of its specific political philosophy:

work on a programme progressively to extend educational facilities through training teachers and putting up school buildings until there is a school place for every child up to a certain standard; and

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adopt an Education Act governing the way people apply for entry to schools and stating how that application should be considered; and establish a system of accountability and control in relation to the process.

Citizens then enforce their children's' educational rights through the political process and elections, by means of complaints and publicity, through invoking the support of public agencies, n.g.o's, the Ombud, and the Social Rights Commission, and, if necessary, by appeal to the courts.

Rights in relation to planning and development are exercised in terms of complex legislation involving a multiplicity of bodies, some purely political, some technical, some administrative, and some judicial.

One has to repeat: if the law were as inventive in relation to securing the rights of the poor as it is in respect of the rights of the rich, there would be no difficulty in finding appropriate ways and means to enforce basic social rights.

To the extent that the law is concerned primarily with priorities and procedures, it should be relatively simple to construct legislation that created a system of enforceable rights to electricity for all.

To begin with, the Constitution lays down a general scheme for ensuring that resources are devoted in a systematic and law-governed way to the progressive extension of basic social rights to all. It also sees to it that appropriate bodies are made responsible and accountable for the process.

Within an overall energy policy, an Electrification Act thereafter specifies the ways and means whereby electricity is steadily extended to all homes in the country. It is through the provisions of this Act that individual citizens progressively enter the category of those who can demand the furnishing of electricity to their homes as of right, going to court if necessary.

At the same time, mechanisms will exist to ensure that all citizens can insist that the question of extending electricity supplies receives constant attention. These mechanisms could consist of Parliamentary, regional and local government committees to which the public has access, as well as the Social Rights Commission referred to above.

Finally, the courts will be in the background to ensure that proper procedures are followed and correct criteria adopted when decisions are made about where and when to extend the supply of electricity.

As with environmental law, new forms of enforceability involving new agencies and new forms of pressure will emerge.

What matters is that everyone will feel that they are within the regard of the constitution and the law. People's power will mean a constitution plus electrification.

# PART FIVE- THE THEORY

# NON-RACIALISM AND GOOD GOVERNMENT

Equal protection, an expanding floor of rights, and regional equalisation are all profound means of attacking the problem of inequality. Overwhelmingly, it will be blacks who will benefit from these programmes, because it is blacks who are the poorest and the most disadvantaged. Yet they will be benefiting in the ordinary way as citizens and not as blacks. The non-racial principle remains intact, indeed, it is reinforced.

We cannot emphasise too strongly that the main means of achieving affirmative action in the wide sense in South Africa

is simply through applying the principles of good government.

Accordingly, before we fully explore the question of targets and timetables, and affirmative action in the narrow sense, we must install good government. This, more than any special programmes, is the guarantee that people will at last get their rights. The question of quotas will be dealt with later - but however they are considered, they should never become a substitute for good government. At most they should be a means of supplementing it in key areas where special measures of an intensive and accelerated kind are required.

#### THE THEORISATION OF AFFIRMATIVE ACTION

We want non-racism and non-sexism, yet we argue that there are circumstances where it is necessary to take account of race and gender. Various terms are used to cover the situation, depending in large measure on how sympathetic or otherwise the user is to the idea. Thus some speak of active programmes of equal opportunity, others of benign discrimination, others of positive discrimination, and yet others of reverse discrimination.

No theoretical problems arise when affirmative action is seen merely as being good government which for the first time regards blacks as full citizens entitled to equal rights and which develops programmes of social advancement which have the effect of benefiting more blacks than whites.

The problem comes when we acknowledge preferences based on race or gender in favour of those previously disadvantaged on grounds of race or gender. How, it is asked, can one and the same constitution reconcile the principle of equal rights and non-discrimination with that of affirmative action and racial or gender preferences?

The answers given in other countries tend to be based on two theories. The first may be called the level playing field

theory. The emphasis here is on the creation of conditions of equal opportunity so that in future all persons may compete on a basis of equality. The second is the theory of compensatory justice, namely that affirmative action is not only permissible but obligatory to compensate victims of past discrimination for the injuries done to them.

We in South Africa read the debates on these questions in other countries with deep interest. Yet we need to develop our own conceptualisation based on our own experience and the meaning that affirmative action has for our society.

A number of features appear to be relevant.

In the first place, it is unnecessary in our country to require specific or case by case proof of past exclusion. The evidence is in the statutes, and the ferocity with which they were applied. Apartheid law plus separate institutions of government plus unequal budgets established discrimination as a declared principle of public life. Whole communities were affected. The results are there for the world to see.

Secondly, the exclusion of the majority is not only unjust, it threatens the stability and progress of the nation. The imbalances that helped to stabilise colonialism, segregation and apartheid, become intolerable and destabilising in conditions of democracy and equal rights.

Thirdly, we are not adapting a constitution, we are creating one. Like all good constitutions, its function will be to deal with the great problems of equity and iniquity in our world. As such, it must confront and respond to the injustices which have torn our country apart and which have led to the demand for a new constitution. Some new constitutions are the products of convenience, ours will be the outcome of struggle.

Just as the American Constitution was a post-revolutionary one, the West German [now, German] constitution a post-war

and post-Hitler one, and the Indian constitution a post-independence one, so ours must be a post-apartheid constitution.

Post-apartheid means more than just chronologically after apartheid. It signifies taking into account everything that apartheid produced. By tackling the legacy of apartheid, we are doing far more than giving equal opportunities to individuals who have been discriminated against in the past. We are also accomplishing something much more profound than giving compensation for past wrongs.

We are de-colonising and de-racialising our society; we are South Africanising our country, giving it a new personality; we are re-creating our state on new foundations. We are also dealing with the fears of all and with the feelings of injustice of many. We are seeking to draw on the skills, life experience and wisdom of the whole people so as to improve government and strengthen the economy.

The question is not whether there will be a restructuring of society but how the inevitable restructuring will come about. Affirmative action in our conditions becomes a crucial mechanism for ensuring

that change is meaningful,

that it benefits most those who need it most,

that it proceeds in an orderly way by means of the rule of law and not according to the whims of well-placed, corrupt or power-hungry officials,

that it revolves around principles and values agreed upon by as many sectors of the community as possible as being the best ones to help the country move forward,

that it encourages tranquility and promotes growth.

To sum up: principled application of affirmative action according to law is a major guarantee that majority rule operates in a fair manner for the benefit of the whole of society.

#### ADDRESSING WHITE FEARS

It might well be that whites who were the main beneficiaries of racism in the past will be the principal ones to benefit from non-racialism in the future; the broadness of a principle may be measured by the amount of irony it contains.

What this means is that whites will be protected by the constitution, as will everyone else, from the kinds of dispossession on grounds of race to which they subjected blacks in the past.

Acknowledging their right to protection from abuse or domination is not a negotiating concession or a compromise by the anti-apartheid forces. It is a principle. It is in the Freedom Charter. That is the kind of society we want to live in. That is what we struggled for, an end to the world of domination and subordination. Certain issues must be put beyond the scope of vote-catching mobilisation.

Now that we have moved out of the era of the swart gevaar [black danger], the yellow peril and the red threat, we do not want to move into the age of the white menace. The constitution, the whole philosophy of the ANC and the need of the country to avoid civil war and to draw on the skills of everyone, all point in the same direction, non-racialism.

Thanks to the principles of the Freedom Charter which they did so much to resist, whites will be secure in their homes without a Group Areas Act to threaten them, be able to study without fear of a new Extension of Universities Act to exclude them, and be free to advance their careers without a new Job Reservation law to keep them out.

The main beneficiaries of affirmative action, on the other hand, will undoubtedly be those who suffered most under apartheid. Yet this does not mean that affirmative action, whether in the broad or the narrow sense, should be seen as a punitive or retributive measure against those who benefited from apartheid. Put more simply, it would be wrong to conceive of affirmative action as being by nature an anti-white phenomenon.

At the same time, the whites can not use the principle of non-racism to enable them to hold on forever to the 87% of the land which they obtained by racist methods. Nor are they entitled to monopolise for all time the commanding heights of business, and not only the commanding heights, the foothills as well.

The whites by and large have the education, health care, housing and employment that they wish. They give up none of these, and if they are poor, they benefit from programmes designed to help the disadvantaged, whoever they may be.

What the whites have to forego is their privileged status both as the beneficiaries of government policies and as the sole determiners of such policies. The many things they have been getting from the government, they will continue to receive, but on the same basis as everyone else. If they want extra, they will have to pay for it.

Affirmative action in this sense takes away their privileges but not their possessions. It gives them in return something they have never had, a secure position in the country, living as equals and on a dignified basis as full human beings with their fellow South Africans.

# ADDRESSING BLACK FEARS

Affirmative action is a process not a result, but it is a fair process designed to achieve a just result. If it is anchored in good, non-racial, non-sexist government, and if it is

envigorated by active community and social organisations, it should respond to the wishes of those who have been marginalised or excluded by past oppression. We may tell Govai. Mbeki that affirmative action is change in the conditions of our time.

Getting our national institutions in place on a non-racial and democratic basis will be relatively easy. The real battle against apartheid will be at the level of local government and affirmative action.

Properly applied, affirmative action responds to the two great anxieties that blacks have expressed, namely, that getting political rights will do nothing to ease the disastrous social situation in which they are forced to live, and, secondly, that at most it will enable a tiny black elite to share in the spoils of exploitation with the whites, leaving the majority as destitute as before.

Affirmative action establishes the goal of equal life chances for all. It puts the achievement of equal rights firmly on the agenda, and forces the whole of society to face up to the consequences of accumulated discrimination. It establishes criteria and mechanisms for monitoring progress. It opens the way for institutions of government that are representative so that for the first time the population at large can feel this is our police force, our army, our civil service, these are our courts.

It gives people the skills and in-service experience to enable them to overcome the doubts and insecurities instilled by generations of imposed subordination.

On the other hand, it avoids the disruptions and civil conflict that forced takeover and brusque, unilaterally-imposed advancement would bring. In circumstances where the majority at last have political rights, it is the intransigent minority of white supremacists who will seek physical confrontation and public disorder. Peaceful transition favours

the masses. We want steady, well-worked out programmes of advance that bring in everybody, not impetuous and uncoordinated assaults that at best benefit a few. Tranquility is our friend.

The strategy of principled affirmative action also helps to avoid the danger of a new bureaucratic elite emerging which, under the cloak of nationalism, regionalism or tribalism, uses its position to enrich itself and its close associates. We do not want to Bantustanise South Africa, but rather to South Africanise the Bantustans, and, indeed, to South Africanise all of South Africa.

Affirmative action is still an open concept. It depends very much on ourselves how it functions and who it favours. Yet it contains the full possibility of establishing relatively painless lines of advance for the benefit of all. It facilitates the creation of orderly and just access to the new possibilities being won by struggle.

Affirmative action rejects both the Big Bang theory of change and the Total Silence one. It looks at the skills which the whites have as a source of enrichment for the whole country. The know-how, technology, experience and international contacts belong not only to the whites but to the whole South African nation. Conditions must be created to enable these skills to be placed at the service of all, whether in farming or policing or healing or building.

We wanted to make racist South Africa ungovernable and apartheid unworkable. Now our goal is to enable non-racial, non-sexist South Africa to govern itself and to make democracy work.

# **PART SIX - THE PROGRAMMES**

# SOME REFLECTIONS ON QUOTA IN OTHER COUNTRIES

The USA, India and Malaysia are the three countries with the greatest experience of affirmative action.

The Indian Constitution requires that special measures on a quota basis be taken to ensure representation of low caste persons and members of what are called scheduled tribes, in government and educational institutions. The indications are that these provisions have helped to break down ancient forms of exclusion and permitted members of the affected groups to lead dignified lives in general society. At the same time, they have done little to undermine communal-type thinking, which continues as before.

It appears that affirmative action procedures in Malaysia have been fairly successful in opening up both the civil service and commerce to persons from the Malay community who had previously been grossly under-represented in both areas.

The price, however, has been to reinforce a spirit of communal rather than national identity. Some commentators feel that advancement could have been achieved by other means.

In the USA, affirmative action emerged after the ghetto uprisings of the 1960's when it was felt that without special intervention, black Americans would never be able to enjoy the rights said in the Constitution to be available for all. The same interventionist principles were extended to all minorities and to women.

It is widely accepted that the main beneficiaries of affirmative action programmes in that country have been black professional men and women, and white professional women.

but that the great majority of blacks and of women have not seen their status improve.

The constitutional position of affirmative action in the USA remains unclear. Some judges have insisted that a colour-blind constitution does not permit any preferential treatment on the grounds of colour. Others have argued that to achieve equal protection it is necessary to take account of the reality of racist practices that disadvantage certain groups and advantage others.

A perusal of the case law suggests that the following principles have been developed by the courts:

Where there is proof of deliberate exclusion on the grounds of race, then race can be used as a factor in remedying the resultant disproportions. Thus if blacks constitute 20 per cent of a pool available and qualified for employment, it can be ordered that new hiring take place on the basis of one black-one white until the 20 per cent quota is reached.

If there is no proof of intentional exclusion, however, but the employer, union or public agency wishes to bring about cultural or racial diversity in the workforce, it may use race as a plus to be taken into account, provided that it is not an exclusive or controlling factor but rather part of a flexible evaluation system looking at the total picture. Thus if there are a number of suitable candidates, each with plusses and minuses, all must be considered, but there would be nothing constitutionally wrong in giving special weight to race or sex as an inclusionary factor.

One lesson we can learn is that a clear constitutional foundation for affirmative action must be found. Part of the problem in the USA was that there was a strong constitutional foundation for anti-discrimination laws in general, but not for affirmative action as such, particularly if they were colour-sensitive rather than colour-blind.

# GOALS, TIMETABLES AND MONITORING IN SOUTH AFRICA

Racial quotas are so ugly that they can only be justified on the grounds that the alternative of permitting continuing racial disadvantage is even more distasteful.

We have to confront the issue directly. As judge Harry Blackmun of the US Supreme Court said, in order to deal with racism, we have to take account of the realities of race. He then went on to declare that it would be ironical indeed if racial inequality were maintained by the Equal Protection clause.

At the very least, the new South African Constitution must, as in Namibia, authorise incoming governments to take affirmative action to overcome the inequities of the past. In other words, the equal rights clause in the constitution should not be used as a means of preventing blacks from enjoying equal rights.

The same principles should apply to overcoming the exclusion of women from decision-making positions and interesting careers. The longer an injustice has been committed, and the more widespread its impact, the more natural it is made to appear.

For these and other reasons, we feel that the Bill of Rights should go further than merely authorise the taking of affirmative action by future governments.

It should expressly require that such governments affirmatively restructure themselves so that their composition conforms with the principles of the new Constitution. They should also function according to the non-racial and non-sexist norms and principles set out in the Constitution, and spend their revenue in the same way. Finally, as a major contractor, they should insist on dealing only with firms that follow these principles; we hear so much about maintaining

standards when they are equated with keeping present practices intact, but almost nothing about keeping up standards based on non-racism and non-sexism.

The Constitution should accordingly impose an active constitutional duty on all incoming governments to take action to correct the injustices of the past. For this reason, the ANC draft Bill of Rights devotes two full Articles to the subject.

#### Article 13 reads:

- 1. Nothing in the Constitution shall prevent the enactment of legislation, or the adoption by any public or private body of special measures of a positive kind designed to procure the advancement and the opening up of opportunities, including access to education, skills, employment and land, and the general advancement in social, economic and cultural spheres, of men and women who in the past have been disadvantaged by discrimination.
- 2. No provision of the Bill of Rights shall be construed as derogating from or limiting in any way the general provisions of this Article.

It has been pointed out that the second clause is capable of being read in such a way as to permit affirmative action to override any and all of the fundamental freedoms set out in the Bill of Rights. In other words, it could be used to justify ignoring the prohibitions on torture, forced labour or capital punishment.

This was clearly never the intention of the Constitutional Committee, and it would seem that a tighter formulation will be required so as to remove any possible doubt. The crucial thing is to ensure that the courts do not in future strike down affirmative action programmes simply on the grounds that they are designed to procure the advancement of and open up opportunities for those previously victimised by

discrimination. In particular, the Equal Rights clause should not be used to block the achievement of equal rights.

Article 14 is entitled Positive Action. It goes further than Article 13 in that it not only permits but actually requires positive action by the state to pursue "policies and programmes aimed at redressing the consequences of past discriminatory laws and practices, and at the creation of a genuine non-racial democracy in South Africa"[para 5].

The next paragraph goes on to say that such policies "shall include the implementation of programmes aimed at achieving speedily the balanced structuring in non-racial form of the public service, defence and police forces and the prison service."

Special attention also has to be paid to rectifying the inequalities to which women have been subjected, and to ensuring their full, equal, effective and dignified participation in the political, social, economic and cultural life of the nation [para 8].

Finally, legislation may be enacted requiring nongovernmental organisations and private bodies to conduct themselves in accordance with the above principles.

Provisions such as these would do away with many of the problems which American judges had when dealing with affirmative action programmes. Whether or not quotas are desirable, they would not automatically be unconstitutional.

Given the history of apartheid laws and practices, it would be unnecessary to prove in each case that there had been deliberate exclusion of blacks. The danger would be that employers, universities and others would actually use past apartheid laws as an excuse for opposing affirmative action now, arguing that their hands had been tied, therefore they too were victims.

# SOME TENTATIVE REFLECTIONS ON QUOTAS

As long as the question of sovereignty and political rights remains unresolved, it is difficult to deal with any other issue on its merits, whether it be cultural, ethnic, economic or related to life style. Every battle over every job and over every university position becomes a battle over South Africa. Only a genuine political settlement will open the way to honest assessment of the many problems facing our country, not the least that of overcoming the imbalances and distortions in every area of South African life.

All that is good from the past could be retained without fear that this would perpetuate the whole system of apartheid. At the same time, everything that needs correction can be tackled without anxiety that the whole society will collapse or that sections of the community will open themselves to abuse.

Principles can be agreed to and institutions put in place that are not seen simply as means for advancing the political demands of one group or the other.

Above all, an open, frank and serious national debate can be started on the question of how best to open up what had formerly been closed, and of how to do so in a manner that will most benefit those who most deserve it. Attention will have to be paid as well to minimising disruption to the economy and as well as to promoting the evolution of a true sense of national unity.

In the light of the above, and bearing in mind the general principle that good, open, accountable, government operating according to non-racial and non-sexist principles is always the foundation of achieving equality, we may tentatively suggest the following principles for the application of quotas, monitoring and timetables in South Africa:

- 1. Quotas should never be the main means of redressing the injustices and inequalities created by apartheid. What we need is good, democratic government answering to the needs of the people as a whole, and not just to a minority. We want a country of people, not of quotas.
- 2. One of the principal tasks of government will be to open up opportunities for all, giving special attention to the needs of those who have been most excluded or injured by past discrimination.
- 3. While the general principles of equitable adjustment must be the same in all spheres and based upon common constitutional principles, the precise methods to be used in each specific area should be adapted to its concrete reality, its traditions of organisation and its in-service or in-house culture, inasmuch as they are not racist or sexist.
- 4. Thus a Civil Service Commission, working with government and the trade unions, should initiate and supervise steps to open up the civil service, the Army, the police and other agencies of government. The talents and life experiences of all South Africans must be used and seen to be used. At the same time, levels of competence must be maintained and improved upon, and a sense of serving the whole of society developed.
- 5. While we insist on all sections of the population being fairly and appropriately represented in the public sector, we do not favour a system based solely on quotas, particularly if it means that persons in the public service are seen as representing and serving only the group to which they belong; the incumbents are there to represent and serve the whole South African nation, not just the group from which they come.
- 6. Special attention will have to be paid to correcting injustices relating to the ownership and use of land. A Land Claims Tribunal should be created to see to it that victims of

forced removals have their land rights restored, or else be appropriately compensated; that farmworkers who have been for generations on land receive protected rights, and that persons historically denied access to land now have access made available to them. Where existing titles are interfered with, compensation shall be ordered, taking into account an equitable balance between the public interest and the interest of the persons affected. Extension programmes, training and credit facilities must be made available to the new land owners and users.

- 7. The principal task in the sphere of education will be that of integrating the disparate school systems, applying equal spending and creating the foundations of good quality education for all. This will have immediate implications for buildings, training, the provision of textbooks and pupil-teacher ratios. At the same time, there will have to be accelerated training for black and female cadres to staff the developing educational institutions and overcome the present imbalances in government, the economy and the professions.
- 8. In the case of health, the same process of integration and equal spending must take place, coupled with a special emphasis on primary health care and the role of teaching hospitals. The medical profession should also see to it that the impediments to black advance are removed, and take special steps to do justice to those who have been kept back in the past.
- 9. The government, the unions and the private sector must make special provision for overcoming the effects on employment of Bantu Education and job reservation, concentrating on programmes of accelerated vocational and professional training, both in-service and outside. Present arbitrary systems of hiring, promoting and firing must give way to new ones based on equal opportunity principles, in terms of which special encouragement is given to persons from disadvantaged groups.

- 10. Business organisations, government and the unions must get together to work out ways and means of ensuring that access to managerial positions, to capital and to credit is opened up, so that when we speak of a mixed economy we mean a mixed economy, not a white one.
- 11. Opening up the civil service, education, health and jobs should not mean appointing unqualified persons simply on the basis of colour or gender. The essence of affirmative action programmes is to give special support to enable people who have been kept out of qualifications in the past, to acquire them now. Blackness should never become a property right in itself as whiteness became, nor should whiteness continue to have the superior status it presently enjoys. Yet balance, representativity, cultural diversity and the need to draw on the widest range of skills and life experience of all are factors that could and should be taken into account.
- 12. Race and gender can thus be relevant elements amongst others in deciding on appointments, but only if the candidates satisfy at least basic requirements for the position. The merit principle is not abolished but applied in a more sensitive way. Special efforts should be made to search for the widest range of candidates and to give training to those who have been disadvantaged. All things being roughly equal, race and gender preferences should be permitted, even required, to tip the balance and thereby help to overcome the effects of past discrimination. Any such preference should apply for a determinate period only, as a specific means of overcoming the structured and self-perpetuating inequalities produced by past discrimination. No-one should be excluded from consideration on grounds of race or gender, nor should quotas ever be used to establish ceilings or to bring about the exclusion of any group.
- 13. Encouragement should be given to voluntary schemes, and the principle of active involvement of all interested parties should be maintained at all times.

- 14. Mere appeals to social responsibility, however, are not enough. Legislation should be adopted defining the circumstances when quotas, timetables and monitoring should be used. They should establish the procedures to be followed, the agencies with responsibility for investigation and supervision, and the role of the courts.
- 15. The legislation should avoid attempts to use bureaucratic measures and arbitrary figures to enforce top-down changes. Not only are these precariously at the mercy of future statistical opportunism, they invite resistance on the part of those having to give way, and can create discomfort for those who benefit.
- 16. The real medium and long-term answer is to build up a system of general education and personal mobility, and to encourage strong organisations of civil society to see to it that their members enjoy their constitutional rights in every way. In the short term, however, quotas and timetables could have an important role to play, if they are well-targeted, neatly tailored, participatory, limited in duration, and do not unduly or gratuitously trample on the rights of others. It is important that they be used skillfully, resolutely and with as much sensitivity as possible.

# **AFTERWORD**

There are many more themes to be developed than those touched upon here. In particular, the whole question of how to deal with gender oppression and discrimination needs far fuller treatment than it has received. If any readers feel that basically this paper has been written about racial inequality, and that references to gender have been tacked on, they will be right. Certain broad principles of affirmative action will have to apply equally to the effects of both racial and gender

discrimination. Yet the history and nature of race oppression and gender oppression are so different that each should not be seen as the twin of the other.

Human rights are indivisible and universal, but they are all human rights for specific persons. This is the first post-writing observation I wish to make, namely, the whole question of affirmative action to deal with the effects of gender oppression needs to be dealt with separately and equally, and only then can points of overlap can be determined.

The second point is that the proposals in these pages represent a minimum set of principles for a divided country attempting to emerge from a long history of racism. Organisations that regard themselves as progressive should take steps in advance of the rest of society. In particular, any organisation committed to equality and advancement of the rights of the oppressed, should take active measures to rectify the underrepresentation of women in positions of responsibility. Declarations of intent are not enough.

What I would suggest would be the setting of precise goals or targets based on percentages, coupled with a requirement that bona fide action be taken to achieve them; further, that explanations be given for any failure to meet these goals and that monitoring agencies be set up to supervise and report on the whole process. If this all fails, quotas will have to be considered.

I would welcome comments on any of the ideas presented here. Please write to:

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