

**DEVELOPING A MODEL FOR SUCCESSFUL  
IMPLEMENTATION OF AFFIRMATIVE ACTION  
IN THE SOUTH AFRICAN PUBLIC SERVICE**

**BY**

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## PREFACE

The imbalances that prevail in South Africa today are a result of decades of accumulated legacy of the past government. It stands to reason that the democratic government cannot redress these imbalances overnight. Tact and careful planning are required to ensure that the changes that are effected will be sustainable with less problems. It is for this reason that the pros and cons of affirmative action have been highlighted in this study, so that the strategies formulated and implemented should aim at overcoming the problems and achieving the required diverse workforce.

The commitment of the government to promote equality of all citizens has been displayed in the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996) and other legislative interventions. However, legislation should be complimented with the commitment and responsibility of all citizens to promote the affirmative action process. Those who have born the brunt of discrimination in employment should not be complacent. They should play an active role in acquiring career skills that will increase their opportunities for upward occupational advancement. The advantaged groups have to change their attitude and accept that change has to take place. They must cooperate in promoting diversity in employment.

The need for affirmative action may be evident but the problem is how to implement it. While this study has attempted to create a model for successful implementation of affirmative action in the South African public service, it is acknowledged that no strategy can be effective in all organisations. It is thus necessary to keep on exchanging ideas and learning from mistakes as the process of change unfolds.

## CHAPTER 1

# INTRODUCTION AND THE PROBLEM OF INTEREST TO THE INVESTIGATOR

### 1.1 INTRODUCTION

During the apartheid era, the South African society was divided on racial lines into blacks, coloureds, Indians and whites. This was made official with the promulgation of the now repealed *Population Registration Act*, 1950 (Act 30 of 1950). Lever (1978:8) presents the South African society as one which was hierarchically structured, with whites forming the apex of the hierarchy, enjoying all the privileges like, amongst others, being members of the cabinet and parliament, occupying higher positions in the civil service, better housing, education, health services and business opportunities. Below whites were coloureds and Indians who had less privileges than whites. Blacks occupied the bottom and formed the bulk of the hierarchy as "the drawers of water and hewers of wood." Blacks, coloureds and Indians were generally referred to as non-whites.

This discrimination has been an on-going process from 1948 to 1993, during which period the South African government enacted and enforced apartheid laws. Since the take-over of the African National Congress (ANC) - led government, South Africa has been undergoing transformation and change that affect both the public sector and private enterprise, and that present some challenges to all employers and employees. One of these challenges is to achieve representativeness in the workplace.

Representativeness in the workplace has aroused much concern and interest among employers and employees as it involves "affirmative action" which is often viewed negatively by those who entertain fears of losing their positions. On the other hand, those who are likely to benefit from the affirming process are eagerly looking forward to the improvements that will occur in the quality of their lives as a result of the

change, even to the extent of confusing affirmative action with retribution. Reference to affirmative action as positive discrimination or reverse discrimination is fashionable.

## **1.2 STATEMENT OF THE PROBLEM**

In South Africa, the deep, historical and systematic roots of inequality have presented some problems in the workplace, like uneven and gender employment patterns. Affirmative action, as one of the transformation processes to redress the imbalances, is also not without problems. Some of these problems will be analysed in the following discussion.

### **1.2.1 Racial Discrimination in the Workplace**

As part of discrimination, blacks (including coloureds and Indians) were denied opportunities in a number of ways. In employment, they were under-represented in managerial positions, while they swelled the ranks of least paid, menial labourers. This pattern obtains in the public service as well as in the private enterprise.

The demise of the authoritarian apartheid regime has meant the beginning of the transformation process to a democratic, non-racial and non-sexist society, where human rights are provided for in the constitution. The new democratic government has inherited some discriminatory practices from the previous government, among them, employment discrimination. There are calls from various quarters for the government to make a conscious effort to ensure that affirmative action is implemented and will not remain just a buzzword. The injustices of the past must be addressed. Government ministers too have "... highlighted the urgent need to speed up affirmative action so as to completely transform the "too pale and too male" character of the public service" (Daily Dispatch, 20 December 1994:17). President Mandela has stated as ANC position, that all who are marginalised by apartheid and denied the opportunity to develop their full potential have a right to affirmative



action. In the main, these are blacks, coloureds, Indians and women generally (Daily Dispatch, 30 November 1994:12).

### **1.2.2 Employment Discrimination on the Basis of Sex**

According to Green (Sunday Tribute Magazine, 20 November 1994:3) women have been discriminated against from the beginning of civilisation. They have always been regarded as the weaker sex, inferior to men physically, mentally and emotionally. This trend has persisted to modern times. Women have been placed in low paid jobs as secretaries, clerks, typists, tea-makers and cleaners. There is under-representation of women in managerial positions. In some jobs, women have been paid lower salaries compared to men with the same status, and promotion of women to higher positions has been slow.

The pattern is gradually changing but there is a need to hasten the process. Women internationally are very vocal about sex discrimination and the Beijing Conference in September 1995, on gender issues, underlines the point.

Rosener (1990:119-125) states that women are better managers than men. They are more capable of promoting participative management, thus encouraging cooperation and enthusiasm on the part of subordinates as well as a feeling of being part of the organisation.

### **1.2.3 The Application of Affirmative Action**

Affirmative action is a good approach to correct the injustices caused by apartheid, but it has been reduced and mistaken in its application. There has been more focus on race and gender, and other factors of relevance in view of affirmative action have been ignored. Some of these will be highlighted in the following discussion.

**a) Beneficiaries of Affirmative Action**

Blacks, who do not have even basic qualifications required for positions, do not benefit from affirmative action. This means that those who were more affected by discrimination are the ones that suffer more. Blackstone (1977:67) states that some black people are highly advantaged with well educated, affluent parents. Although such people have suffered from discrimination, by comparison, they have suffered less than those children who were born of poor parents, and who may not have the qualifications required for employment.

**b) Representativity in a Wider Sense than Consideration of Race and Sex**

Local circumstances which are important in improving the quality of life of disadvantaged groups, thereby promoting their opportunities of occupational advancement, are not considered when affirmative action is applied. For example, it may be necessary to consider the employment of a renowned expert even if he does not belong to the disadvantaged communities where conditions warrant it, in order to uplift their standard of living. This is in line with President Mandela's plea to white people not to leave the country, as their skills are required to empower blacks who were denied opportunities to acquire such skills.

**1.3 OBJECTIVES OF THE STUDY**

The objective of this study is to create an affirmative action model that may be more effective in ensuring that the entire workforce in public organisations reflects the diversity of the community it serves and in improving the quality of public service delivery.

**1.4 REASONS FOR UNDERTAKING THE STUDY**

The researcher was prompted to research this subject, because of the topicality and importance of affirmative action during this transformation period in South Africa.

Although affirmative action is being applied in some institutions, there are areas of vital importance in promoting upward occupational mobility of disadvantaged groups that have been ignored.

It is generally believed that affirmative action is necessary, but the problem is how to implement it successfully. Weiner (1993:2) concurs that "... the debate is not whether one should have some programme to redress ethnic inequalities but what kind of programme should be adopted to address the issues."

The study is likely to identify obstacles to the implementation of affirmative action and will suggest ways of overcoming them so as to improve the representation, thus enhancing representativity of disadvantaged groups in the entire workforce and improving the quality of public service delivery.

## **1.5 DELIMITATION OF THE STUDY**

Various factors serve to restrict the focus of this study. It is essential that a closer look is taken at these factors.

### **1.5.1 Variables**

Although there are other forms of employment discrimination, such as discrimination based on physical and mental disability, age, religion and national origin, this study has been limited to race and gender discrimination. This is by no means an attempt to underplay the former, but because these do not fall within the ambit of apartheid discriminatory policies. Instead they would be exacerbated by race and gender. For example, if one is discriminated against in employment on the basis of physical and mental disability, age, religion or national origin, there would be an added disadvantage if the individual were female and not white.

## 1.6 METHODS OF COLLECTING DATA

Social scientists collect data in various way. Fox (1969:57) identifies three of these namely, observation in which the researcher gathers data while watching the respondents function in a given area, measurement, in which some device is applied to the respondents, and questioning in which the respondent answers questions posed to him/her.

### 1.6.1 The Question Method

According to Ary (1979:173), the question method falls into two categories, the interview or oral questions and the questionnaire or written questions. These two forms can be used to obtain information concerning beliefs, facts, feelings and intentions. Wiersma (1986:79) states that the interview is an oral exchange of opinions between an interviewer and an individual or individuals, and is conducted in person. Responses may be limited to a single word responses like yes or no, or they may be lengthy statements. The questionnaire consists of questions or statements to which the respondent is asked to respond in writing. The response may be in the form of a checkmark or written statements. A questionnaire may be referred to as a written self-administered interview, just as an interview may be regarded as an oral questionnaire. In this study, interviews have been preferred.

### 1.6.2 Literature Study

An attempt has been made to utilise past studies as a foundation on which to build the investigation. Literature consulted consisted of books, periodicals and other publications which provided valuable information on the subject. As affirmative action is generally a topical subject in the new democratic South Africa, useful information has been obtained from the newsmedia. A theoretical study has been preferred to an empirical one because of the general nature of the topic.

## 1.7 DEFINITION OF TERMS

As this study concerns some terms which could have different interpretations, it is important that they are defined according to the context in which they should be understood through the course of this dissertation.

### 1.7.1 Racism

According to the Longman Dictionary of Contemporary English (1989:854), racism is the dislike or unfair treatment of people, influenced by the belief that one's own race is best and that the other race is inferior. In South Africa, this negative attitude of white people towards blacks was perpetuated by discriminatory apartheid laws created by the white Nationalist government. Ezorsky (1992:9-10) differentiates between overt and institutional racism. Overt racism occurs when harm is done or benefit withheld, because of racial bias against the victim, or because the perpetrator is trying to conform to the racial prejudice displayed by others. An example is that of an employer who will not employ blacks, because this would be unacceptable to the employer's white clients or employees. Institutional racism, on the other hand, is when the employer uses race-neutral practices which impact negatively on black people. For example, specific skills and work experience may be required for a job. Black people who may lack the necessary qualifications are thus excluded from employment.

While these criteria are free of bias, they may impact negatively on black people, who may thus be affected by policy of "last hired, first fired" which will favour white people as blacks have not been able to acquire the needed skills. Such neutral practices perpetuate racist beliefs and attitudes. In institutional racism, the person involved in the administration of racist policies and practices may not necessarily, as an individual, have racist attitudes and prejudices.

### 1.7.2 Affirmative Action and Equal Employment Opportunity

Charlton and van Niekerk (1994:xviii) state that the term "affirmative" refers to giving preference in order to correct past wrongs. For the purposes of this dissertation, it means to remove barriers which deny blacks and females access opportunities to managerial positions. Affirmative action hence requires that employers identify areas where there is under-representation of members of disadvantaged groups and to implement remedial strategies.

Equal employment opportunity means that individuals are afforded equal opportunity to compete in the labour market. They are treated equally with regard to hiring, promotion, discharge and fringe benefits. This requires that there should be equality of learning opportunities so as to prepare individuals for employment as well as non-discriminatory employment policies and practices. DuBrin and Ireland (1993:238) refer to equal employment opportunity as "... a legal requirement that provides protection against all forms of discrimination."

Sonn (1993:30) asserts that equal employment opportunity can be achieved when diversity and multiculturalism are promoted in the workplace. This implies that similarities and differences should be understood and appreciated. Affirmative action is, therefore, a process or plan of action that aims to ensure that people are afforded equal employment opportunities. Ezorsky (1992:31) maintains that affirmative action involves proactive strategies to increase the recruitment and development of disadvantaged groups. It entails much more than merely reactive non-discriminatory measures.

According to the *White Paper on Public Service Transformation* (1995:10.1), "... affirmative action can be defined as laws, programmes and activities designed to redress past imbalances and to ameliorate the conditions of individuals and groups who have been disadvantaged on the grounds of race, colour, gender or disability."

### 1.7.3 Retribution

Some members of the disadvantaged groups tend to confuse affirmative action with retribution. The two terms are not synonymous. According to the Longman Dictionary of Contemporary English (1989:893), retribution refers to punishment that is severe and deserved. This would mean that white employees who had preferential advantages as a result of apartheid, with some jobs reserved for them, would be removed from their positions and be replaced by blacks in the name of affirmative action. This would not be affirmative action but, instead, punishment meted out to whites for the favourable opportunities they had.

Such a simplistic exercise is a good recipe for racial tension and bitterness among the affected individuals with all kinds of likely adverse effects. Sachs (1992:212) maintains that affirmative action should not be seen as being "anti-white." Hlongwane, African Chamber of Commerce President (Daily Dispatch, 01 July 1996:8) makes a point that if whites are removed from positions which are then filled with blacks, that would "... be creating a new kind of job reservation and trying to punish wrong with wrong." This would be discrimination in reserve.

### 1.7.4 Empowerment and Development

Some people tend to use these two concepts interchangeably. Related though they are, the concepts differ. To empower means to give power to somebody to do something that he/she had no authority to do before. Stoner and Freeman (1992:358) maintain that empowerment is the granting of power by a manager to subordinates to act, in order to achieve set goals. Although the responsibility lies with the subordinates who have the delegated power, the manager retains final responsibility.

According to DuBrin and Ireland (1993:253), "... development refers to increasing the capabilities of employees in order to improve their future performance." It is important that employees be developed in their jobs i.e. their skills improved, so that they can perform better in future and enhance their occupational advancement.

Empowerment requires that subordinates be developed to acquire the necessary skills that will enable them to exercise the authority and responsibility delegated to them by their managers.

#### 1.7.5 Black Advancement

Black advancement refers to the vertical upward mobility of black employees to supervisory and managerial positions thus promoting their participation in top management, something which was previously the preserve of the white sector of the South African society. To be successful, black advancement requires training and development of blacks to enable them to acquire skills and knowledge that will bring them to acceptable levels of competence.

Schlemmer and Antwerpern (1992:87) maintain that black advancement has "... tended to be portrayed by the labour movement in particular as belated elitist strategies to insulate the privileges of the (white) bourgeoisie and to divide the unity of interests among the voteless."

#### 1.7.6 Diversity Management

Van der Walddt and du Toit (1998:261) define diversity as those qualities that make an individual different from another or unique. The individual's potential can be improved by promoting the strengths and eliminating the weaknesses. Londen and Rosener (1991:18-20) identify two dimensions of diversity, namely, primary diversity with differences which cannot be changed like age, ethnicity, gender, race, sexual orientation and physical characteristics, and secondary diversity with aspects that can change, like work experience, income, educational background, marital status religion and geographical situation.

Qunta (1995:41-42) believes that diversity management is the process whereby an organisation that has a diverse workforce devises some strategies to ensure that all members of the organisation perform their functions to the best of their ability. This



does not mean that the dominant group should impose its values and beliefs over others. Instead, each group should appreciate each other's differences and these should be harmonised so that all members strive to achieve the goals of the organisation. Managers should use styles of management that will promote the success of diversity management programmes. Human (1993:71-73) makes a telling point by stating that diversity management "... does not involve pretending that all cultures are equal, it is about addressing negative expectations and negative perceptions of black culture and black people without reinforcing their cultural differences." Diversity management is very important in South Africa which has a rainbow nation, with differences in race, gender, age, physical and mental abilities that should be accommodated in organisations.

#### **1.7.7 Representative Bureaucracy**

According to Schuman (1976:56), bureaucracy refers to organisations that are governed by rules and regulations, where jobs are classified according to skills, responsibility and authority and where activities carried out are recorded. A representative bureaucracy is characterised by a diverse work force that reflects the demographics of the area it serves. This is what affirmative action seeks to achieve.

Keller (1991:89-90) contends that a diverse work force is important for decision making and implementation of policy. It promotes an input from a variety of viewpoints and experiences of the different members of an organisation. A diverse staff will be representative of members of the community. It will have empathy and will strive to deliver services efficiently and effectively.

#### **1.7.8 Quotas**

The Longman Dictionary of Contemporary English (1989:853) defines a quota as a fixed number of people representative of a definite grouping officially allowed in a place. Van der Walddt and du Toit (1998:241) refer to quotas as "... rigid numerical requirements, based on legislation or other forms of formal compulsion, aimed at

removing disparity and disproportional representation in the workplace." Some organisations have fixed quotas for disadvantaged groups in order to ensure their representativeness thus, in our case, quota would serve to correct the racial and gender imbalances that resulted from apartheid.

## 1.8 THE OUTLINE OF THE STUDY

The ensuing chapters are arranged as follows:

Chapter two examines affirmative action in selected countries. The United States of America (USA) is one of the countries selected, because it was the first country to introduce affirmative action. The historical background of affirmative action in USA is described, as well as the positive and negative views on affirmative action. Some studies carried out on affirmative action in USA and the guidelines for affirmative action plans are also presented. Some lessons on affirmative action have also been drawn from Malaysia which, like South Africa, has the majority of the population being beneficiaries of affirmative action. The historical background of Malaysia ethnicity and politics, and affirmative action in Malaysia are also discussed.

Chapter three deals with merits and demerits of affirmative action. Differing views are presented, some in support of and others criticising affirmative action.

In Chapter four, the South African legal framework on affirmative action and employment equity is discussed. This includes legislation and policy documents relating to affirmative action.

The penultimate chapter, chapter five, describes the affirmative action model. The requirements for successful implementation of an affirmative action programme are first discussed and then the different phases of an affirmative action programme are explained.

Chapter six concludes the discussion and recommendations are forwarded.

## **CHAPTER 2**

### **A STUDY OF AFFIRMATIVE ACTION IN SELECTED COUNTRIES**

#### **2.1 INTRODUCTION**

It has been deemed important to make a study of affirmative action in selected countries on which to build this study. As other countries have experienced similar problems to those currently faced by South Africa, it would be advantageous to get an idea of how they handled the situation. There might be lessons to be learnt from their successes and failures.

In this study, the United States of America (USA) has been selected as a comparative model, because of the American history of discrimination against African-Americans, and also because attempts have been made to redress those inequalities. Malaysia also presents an interesting case for South Africa because, the target group in Malaysia, like South Africa, is the majority group.

This chapter will therefore, focus on how affirmative action came into being in the United States of America (USA) as well as on points for and against affirmative action. Some studies carried out in that country and guidelines on affirmative action will be discussed. After this has been done, the historical background of Malaysian ethnicity and politics will be discussed. An overview of affirmative action in Malaysia, highlighting the strategies used to implement affirmative action policies will follow.

#### **2.2 THE USA EXPERIENCE OF AFFIRMATIVE ACTION**

The USA and South Africa share a common history as far as discrimination is concerned. One point of difference is that in the USA, blacks who have been discriminated against by whites are in the minority, while the opposite obtains in

South Africa. It is, therefore, important to find out how discrimination started in the USA and what measures were taken to overcome it. Days III (1994:58) asserts that what one learns from US history will greatly influence one's views on affirmative action. The following discussion will explore the historical perspective of affirmative action in the USA.

### 2.2.1 Historical Background of Affirmative Action in the USA

According to Charlton and van Niekerk (1994:37), "... affirmative action was initially introduced in the United States in order to deal with racial discrimination and equality." Slaves were the main objects of discrimination. The history of affirmative action and equal employment opportunity in the USA dates back many years ago from the time of slavery, when whites maintained power and dominated over slaves. Morris (1993:24-39) states that black slaves were exploited with maximum physical and mental domination. They organised themselves into a protest movement, through which slavery was eventually overthrown. The movement had white men and women in its membership. When slavery was overthrown, whites still wanted to maintain their domination over blacks, forming white supremacist groups like Ku Klux Klan, and Knights of the White Camelia, which used different tactics like force, intimidation, arson, murder and any form of violence to achieve their objectives. Laws like those preventing marriages between races and those requiring segregated schools, theatres, hotels, restaurants, trains and barbershops, were passed to ensure racial segregation. As Morris (1993:41-42) puts it, "... black people were also segregated in the labour market because they were confined to low-paying jobs, thus creating a cheap labour pool which could be exploited by former slave masters."

According to Collier-Thomas (1984:35-53), the Jim Crow system of domination, as this new system of racial domination came to be called, was protested against by the civil rights movement, and black women played a major role in fighting for women's rights and also to overcome the system. They organised local and national clubs through which they fought.

Affirmative action has been subject to legal provisions in USA and many Presidents have made important contributions towards increasing employment opportunities of those groups that were formerly denied such opportunities. Berkley (1978:109 and 140) remarks that until about 1883, positions in government employment were given to political party supporters and there was no consideration of merit or equal rights in government service. This resulted in the assassination of President James Garfield in 1881 by a frustrated job seeker who could not secure a position in the public service. The *Civil Service Act* of 1883 (sometimes called the *Pendleton Act*) brought about changes in this employment practice, with qualification on merit being used as one of the criteria. This Act prohibited punishment or threat with punishment to any public servant who refused to make a political contribution.

Berkley (1978:121-122 and 143) contends that women were discriminated against in the federal government. In 1884, Congress passed a law giving the maximum salary of women employed in government service at six hundred dollars a year, while men performing the same job could earn to the tune of eighteen hundred dollars. The position of black people was even worse. They were subject to discriminatory practices in hiring, promotion and discharge. President Truman, in 1947, played his part in eliminating employment discrimination by creating a Fair Employment Board within the civil service to study the operations in government departments and suggest ways of improving them.

This work was continued by President Eisenhower's Committee on Government Employment Policy in 1955. Significant strides were taken in 1961 during the time of office of President John F Kennedy, who set up a President's Committee on Equal Employment Opportunity.

According to Dye (1995:57-58), the *Civil Rights Act* of 1964 was one of the major sources for affirmative action and equal opportunity. According to Title VII of this Act, it would be illegal to discriminate on the basis of colour, race, sex, religion or national origin in all employment practices like hiring, firing, promotion privileges and other conditions of employment. Stimpson (1992:48) maintains that affirmative

action as a concept, is a creation of President Lyndon Johnson's administration in 1965 as part of the *Executive Order 11246* which states that the United States policy should redress past injustices, and ensure that individuals are afforded equal opportunity in employment. Days III (1993:62) states that during the late 1960s, government contractors were required by the federal government to set timetables and goals for employing African-Americans before they (contractors) would be awarded contracts. Employers had to employ one black person for each white person employed, until the entire workforce reflected black representation that was proportional to blacks in the labour pool. This measure was criticised as benefiting blacks who had not shown to have been victims of discrimination (non-victims), and adversely affected white candidates who were not responsible for discrimination against blacks (innocent third party). Those who criticised these affirmative action measures maintained that merit would be ignored and unqualified blacks would be hired instead of qualified whites.

According to Bradley, Investment Manager of the Equal Employment Opportunity Commission, Mississippi Office in Jackson, in 1972, the *Equal Employment Opportunity Act* was passed and required state and local government to enforce affirmative action policies and plans. The Equal Employment Opportunity Commission (EEOC) a federal agency, was established in terms of this Act to eliminate discrimination in employment. The EEOC was given powers to investigate any form of discrimination and if it was satisfied that the complaint was valid, it would persuade the opposing parties to come to an agreement that would eliminate all discrimination. If a settlement could not be reached, it could sue or allow the parties involved to go to court. The Commission first had to prove that discrimination in employment had indeed taken place. If, on investigation, the Commission found that there was no proof of discrimination, the charging party would be informed likewise. Local governments had submit yearly reports to the EEOC, regarding the progress they had made, to ensure that the entire workforce was representative of minority groups and women. This also implied that local governments had to give special attention to their hiring targets. Other government

departments and private organisations had to do likewise. The EEOC still retains and continues to exercise the powers conferred on it since its inception.

Weiner (1993:9-10) contends that in the early 1970s the EEOC set quotas and goals for employing disadvantaged groups. He further states that during this period, the meaning of the term "affirmative action" was double-pronged. On the one hand, it related to a proactive effort to recruit and promote minority groups to higher positions in employment, thus putting an end to employment discrimination, while on the other hand, it meant results that were compelled by the set quotas. This resulted in individuals and organisations challenging affirmative action measures in court. As Days III (1993:64) puts it, "... if the 1960s was the decade of experimentation and innovation with respect to affirmative action, the 1970s ushered in a period of legal challenges to various forms of affirmative action that continues unabated ..."

Barker (Sunday Times, 10 November 1996:12) reports that in California, about 54 percent of the voters adopted the "California Civil Rights Initiative or Proposition 209." This initiative puts an end to job and contract reservation for disadvantaged groups, as well as the selection of students for admission to public institutions on the basis of race and gender. Supporters of this initiative, some of whom were black, maintain that black children did not put much effort to their work in public schools, because they knew that they would be admitted to colleges at lower grades than whites. They took the matter to court to compel state officials to comply with "Proposition 209". Opponents of this move strongly support the 1964 Civil Rights Act, accusing the opposing group of sympathising with the Ku Klux Klan.

Affirmative action in the USA continues to be a subject of debate and much controversy. Some of the arguments will be presented in the following discussions.

### **2.2.2 Affirmative Action Backlash**

There is an ongoing debate on affirmative action which threatens to divide the USA society over the question of whether or not women and minorities still require

preferential treatment. This tends to elicit brisk effervescence, with the black community strongly believing that this will perpetuate white domination over minorities in the USA. On the other hand, the idea is likely to receive favourable support from the white community which asserts that counter discrimination is no cure for discrimination (Newsweek, 13 February 1995:36).

Sowell (The Clarion-Ledger, 15 March 1995:7A) writes, "... with affirmative action suddenly coming under attack from many directions, and even liberals backing away from it, we need to question not only its underlying assumptions but also what some of the alternatives are." President Clinton appeared to play safe on the issue of affirmative action and called upon democrats to make sure that affirmative action did not result in reverse discrimination and abuse. In an address to Californian democrats in Sacramento, on 8 April 1995, he urged them to take a closer look at affirmative action programmes, so that those that are good may be retained (The Final Call, 26 April 1995:2). In the ensuing discussion, opposing views and affirmative action will be highlighted.

#### **a) Arguments in Favour of Affirmative Action**

Civil rights groups and supporters of affirmative action argue that women and minorities still need preferential treatment, because they still have limited access to top positions. There is a strong belief that doing away with affirmative action means turning the clock backwards. Ezorsky (1991:73-74) is of the opinion that blacks have a right to require compensation for past injustices. Furthermore, racist practices which characterised the slave period still persist, with blacks being over-represented in jobs which would be specifically for slaves.

According to Rowan (7 March 1995:7A), the chances of the USA being colour-blind are slim. The affirmative action backlash is caused by white males who intimidate those who are prepared to ensure that blacks of good quality are put in positions of authority. Rowan further states that affirmative action is simple to understand even by racists who are either openly racists or practise subtle racism. He contends that



affirmative action means that Americans accept past injustices of denying education and opportunities to many USA citizens, and are prepared to take active steps to redress the imbalances, so that all members of society are guaranteed to happier life thereafter. Cochran *et al.* (1993:7) states that other people in the USA maintain that affirmative action places members of the target groups in prominent positions and presents them as role models to younger members of the groups who aspire to be in such positions. They also believe that whites were responsible for exploiting minorities and should bear the consequences of being deprived of the resources they previously enjoyed.

Some proponents of affirmative action believe that black people should not benefit from affirmative action just to make up the number of black faces in an organisation but for the skills they offer as individuals and the diversity they bring as black persons. There is a general feeling that some African-Americans who reject affirmative action are those who have been fortunate to belong to the middle class and do not care about the suffering which their fellow black people have been subjected to as a result of discrimination. Unqualified members of disadvantaged groups are hired or promoted at the expense of suitably qualified competent white males, thus encouraging "reverse discrimination." This should not be the case. What is important is that underprivileged and under-represented groups should get the necessary training and be in sufficient numbers in the labour pool. Blacks with minimum qualifications required for the job should be hired because they have the basic skills which can be improved through training, guidance, support and monitoring.

Raspberry (The Clarion-Ledger, 26 May 1995:11A) maintains that all American citizens have benefited from racial justice and not just the black people. He contends that all efforts to promote racial justice put President Clinton in the White House. The *Voting Rights Bill* which allowed blacks to vote, put white politicians in positions through democratic votes from blacks. Raspberry (The Clarion-Ledger, 26 May 1995:11A) acknowledges the fact that racism still persists in USA, in spite of all the marked progress made to eliminate it. The following studies conducted on

affirmative action serve to endorse the fact that discrimination in the workplace remains a problem.

#### **b) Negative Views on Affirmative Action**

Cochran et al. (1993:359-361) believes that affirmative action policies are being criticised even by people who supported legal equality as pursued by the civil rights movement. Some of the criticisms levelled against these policies arise out of self interest, while others seem logical. One such criticism is that members of the disadvantaged groups get compensated at the expense of those groups that are not targeted by affirmative action. It is argued that some blacks who are favoured by affirmative action may come from highly advantaged backgrounds, as sons and daughters of affluent professionals. Such individuals may receive preferential treatment over sons and daughters of poor white parents, because affirmative action policies merely target members of specific groups without taking into consideration their background.

Some critics like Sowell (The Clarion-Ledger, 15 March 1995:7A) contend that affirmative action has promoted lower standards for blacks who are made to believe that they are progressing, but when they have to compete in the real world, they soon realise that they cannot cope. They maintain that affirmative action encourages nepotism. This is likely to cause a split even among members of the same political parties, like the Democratic Party. Sowell (The Clarion-Ledger, 15 March 1995:7A) argues that affirmative action is disastrous to self development. He further states that, if minorities could be determined to improve themselves, they could derive much benefit from the whole exercise, instead of self-pity and resentment. Friedeman (The Clarion-Ledger, 12 April 1995;11A) quotes Sowell who states that affirmative action policies have not been successful in other countries. He believes that the attack on affirmative action and the failure of US laws are an indication that the USA is heading for a social disaster.

Negative comments also come from some conservative women's leaders and black economists, who assert that affirmative action has destroyed their communities and has contributed to poor race relations in the workplace, as African-Americans are viewed with suspicion by their co-workers. Furthermore, affirmative action has brought forth a colour-conscious rather than a colour-blind society. It is on record that 51% of whites believe that equal rights have been pushed to the other extreme (US News, 13 February 1995:33-38). In spite of such opposition to affirmative action, it is being viewed in a favourable light by some authorities.

### 2.2.3 Some Studies Carried Out on Affirmative Action

According to the Final Call (26 April 1997:7), a "USA TODAY" poll has revealed that 72% of blacks support affirmative action while 38% of whites are not in favour of affirmative action. A study released in March 1995 on affirmative action shows that in the USA, minorities and women who achieve high ranks get less pay than white males. Black males with professional degrees get 79% of the salary received by white males doing the same jobs. Dr Hare of the San Francisco Black Think Thank, a group that supports affirmative action, stated that not much has been benefited by blacks from affirmative action. When a white female occupied a position, the black male was pushed out, so white females benefited more. To some extent middle class blacks did benefit as well.

According to the Clarion-Ledger (5 May 1995:3E), a social studies teacher in the USA, who asked his classes about their feelings regarding special preferences for disadvantaged groups in jobs and educational opportunities, got responses that indicate strong feelings about affirmative action policies. Most of them are against racial/gender preferences, while only a few support special preferences for minorities and women. According to a Wall Street Journal/NBC News survey (The Final Call, 26 April 1995:7), 2 out of 3 Americans, including those whose votes put President Clinton in power, are against affirmative action. It is interesting to note that some of those who oppose affirmative action have been beneficiaries of affirmative action.

For example Justice Clarence Thomas, the only black member of the US Supreme Court is opposed to affirmative action (Daily Dispatch, 26 August 1991:11).

In some cases it has been found that some employment procedures which are supposed to be race neutral have a racist impact. For example, Feagin and Feagin (1978:47) state that many studies show that the most widely used recruitment method is that of workers communicating vacancies to friends, relatives, neighbours and acquaintances. According to Ezorsky (1995:15), having a friend in a department is very important for job seekers. Because people who will get to know about these vacancies are whites who will start telling their friends, neighbours and relatives about the positions to be filled, blacks will obviously be in a disadvantaged position, as they are not in the same circles as whites. Ezorsky (1995:15) further states that studies carried out by Parker of the National Centre for Career Strategies in 1990, reflect that about 80% of top officials get their jobs through communicating job information, and about 86% of jobs are never advertised. Sullivan (1989:226) carried out a study in 1989 on three neighbourhood groups of young men and also came to the conclusion that personal contacts play an important role in securing a job, as against education.

Another area of interest is that of promotion, layoffs and discharge which are determined by seniority. In all these instances, Ezorsky (1991:24-25) maintains that blacks, even those who got their positions because of affirmative action programmes, are likely to suffer because, in most cases, whites have a higher status than blacks. Whites will be in line for promotion while the principle of last hired, first fired will invariably affect blacks. All this results in over-representation of blacks in low paying and undesirable jobs, while the opposite holds for higher positions.

Other studies reveal that in 1990, the Federal Civil Service reflected the nation's population with women making up 43% of the total federal civil service. 16% of positions in the civil service had been found to be occupied by African-Americans, and 5.4% by Hispanics (U.S Office of Personnel Management 1990a). Women and minorities remain in bigger numbers at the lower end of the occupational ladder.

The number of black employees per se may be misleading because it is not indicative of representativeness of blacks in managerial positions. According to US Today (24 March 1995:3a), a survey shows that Americans are torn along racial lines on the issue of affirmative action. Half of blacks say they have been subjected to employment discrimination, while a third of whites report to have encountered reverse discrimination.

Another area of concern is reduction in the workforce. According to Washington Post (9 March 1982:7a), it has been found that reduction of the number of government employees has a negative impact on groups that have been traditionally under-represented in government employment, especially in higher positions. Barnes, who was chairman of the Federal Government Task Force, reported at the December 1980 US Congress, that by October 1981, there was a likelihood of 3.2 times of administrators who were laid off to be members of disadvantaged communities, and that women administrators were 1.6 times likely to be affected by layoffs than men. This pattern was reflected at state and local governments levels.

These studies reveal that, although affirmative action has been in operation for many years in USA, representativeness in employment remains a problem. Legislation on affirmative action has, to some extent, provided a recourse for the disadvantaged groups. Statistics show that there are many cases of alleged employment discrimination. In 1990, a total of 62 100 charges were filed with the EEOC. The number increased to 91 200 in 1994 (U.S. News, 23 February 1995). Generally, the Supreme Court has supported preferential treatment based on gender and race, in order to redress the injustices resulting from discrimination. However, there seems to be a move towards the opposite direction, where, in many cases, decisions were taken in favour of whites. This is an indication of the weakening of support for affirmative action and has resulted from a ruling given against the Fire-fighters Local Union which was contesting layoffs by Stotts et al. According to Ezorskry (1991:49-50), Judge Sarokin in 1984 (Firefighters Local Union No. 1874 v Stotts et al. (1984)) stated that cities and states which applied discriminatory practices could do so to ensure reduction in the workforce in layoffs that were based on seniority. This meant

that disadvantaged groups would be the first affected. The current affirmative action backlash might be a setback to any progress that had been made. The ensuing discussion will pay attention to some guidelines for affirmative action plans in the USA which may be incorporated in the South African situation.

#### 2.2.4 Guidelines for Affirmative Action Plans

Scott and Little (1991:178) present some guidelines on affirmative action plans. They maintain that the plan should redress past and present injustices but in the process, it should not displace current incumbents, thus tampering with interests of those who are not members of disadvantaged groups. They also believe that no positions should be set aside for particular groups to the exclusion of others. The plan should be flexible so that, if members of the disadvantaged groups with suitable qualifications are not available, qualified individuals irrespective of group should be considered for the position. The plan should be temporary and should be there to ameliorate the current deficiency. It should be abandoned as soon as the required diversity has been attained.

The Bureau of National Affairs (1982) in the USA lists the following strategies used by state agencies to counteract the negative impact of layoffs on disadvantaged groups:

- \* The Committee dealing with layoffs should first determine how the layoff which is conducted on the normal basis of seniority will affect the composition of the workforce in each class of employees. The Committee can issue specific directives to ensure that the composition of employees is about the same before and after the layoff.
- \* The state gives an allowance of up to 5% above and below the stipulated number in the composition of the workforce.
- \* According to the affirmative action policy, during layoffs, agencies should monitor any adverse racial or sexual impact based on seniority. When hirings

are being made, under-utilization as a result of layoffs should also be considered. Wooldridge (1995:8) asserts that in collective bargaining agreements of some local governments in USA, affirmative action considerations during layoffs are contained. Many redundancies will result from privatization of services that were previously rendered by the government. To reduce the adverse impact such redundancies might have on disadvantaged groups, Ford (1988:6) has the following suggestions:

- \* The government should consider setting up those employees who are likely to be affected by layoffs as small business people and then enter into contracts with them. They will be in a position to locate the job sites better than people from outside.
- \* There should be negotiations between the government and contractors so that the latter can employ some of the laid off employees.
- \* The government should consider reserving some contracts for members of the disadvantaged groups, so that they also benefit from government goods and services. These measures could be very useful in reducing the high rate of unemployment and also eliminating the negative view some people have on privatization and affirmative action.

The discussion of affirmative action in America provides a lesson for South Africa from which to formulate its own plans and programmes. A brief outlook of affirmative action in Malaysia will be discussed in the paragraphs to follow. Malaysia was a poor country composed of different ethnic groups of varying economic status with an economically backward majority. It was through mutual co-operation of the groups that affirmative action policies and programmes were put in place and these successfully transformed the economy of the country and improved the quality of life of its poor citizens.

## 2.3 LESSONS FROM MALAYSIA

Unlike the USA, Malaysia and South Africa share a common factor of the majority of the population being beneficiaries of affirmative action. There are different religious groups in Malaysia just as there are ethnic groups in South Africa (Slabbert, 1993: Televised debate). To understand the Malaysian experience of affirmative action which may present a good lesson for South Africa, it will be necessary to take a look at the historical perspective of Malaysian politics and ethnicity.

### 2.3.1 Historical Background of Malaysia Ethnicity and Politics

An account of Malaysia history as given by Emsley (1996:15) reveals that in the nineteenth century, Malaysia was a British colony. Before that, trading relations existed between the British and the inhabitants of Malaysia, known as the sultanates, who were always fighting each other. As a result of this warring, the British responded to a civil war in Perak, in 1874, and came to the assistance of the sultans, offering them security in return for the control of commerce. British officers were placed in each Malay state and had to advise the sultans on matters pertaining to Malay custom and religion. The British were engaged in the mining industry and this required land, transportation and a reliable workforce.

The Malay people were basically rural with close ties to their land and could not be used for labour in a modern setting. They were regarded as passive with no work ethic. According to Emsley (1996:16-19), Chinese and Indian labourers were imported and worked in mines and plantations respectively. By the 1930s the influx of foreigners resulted in the reduction of the Malaysian population. When the British were overthrown by the Japanese in 1942, the Chinese were given harsh treatment as the enemy, like forced labour, expropriation and execution. The Chinese formed the majority of the Malayan Peoples Anti-Japanese Army which was dominated by communists. To counteract Communism, the British proposed a constitution for a Malaysian Union which provided for the formation of a democratic state where a centralised government would have all the powers taken from the Sultans. As a



counteract measure, the Malay population formed the United Malays National Organisation (UMNO). This initiative was a success and the Malays were able to exercise influence over the constitution. The UMNO, the Malaysian Indian Congress (MIC) and the Malaysian-Chinese Association (MCA) formed an alliance and won the elections in 1951, 1955 and 1959. This was a government of National Unity which ruled the country from 1970 to 1990.

As Puthucheary (1993:26) points out, the economy of the country quickly grew in the 1960s. The Chinese contributed to and benefited more from this economic growth. However, this did not reduce unemployment, especially among the Malays and other indigenous people collectively known as Bumiputra. Economic growth was mainly observed in urban areas and less so in rural areas where Malays were employed. Charlton and van Niekerk (1996:29) maintain that, "...prior to and during transition, the Chinese government and the Malays got together and set themselves twenty to twenty-five years to work out an improvement in the country's quality of life." This was the beginning of a long road to success in implementing affirmative action programmes in a country so divided ethnically, socially and economically.

### 2.3.2 Affirmative Action in Malaysia

According to Laxton (1993:29), when Malaysia attained its independence in 1967, its population consisted of three different groups, namely the Malays, constituting 50% of the population, Chinese and Indians (also called the Ceylonese) forming 39% and 10% respectively. The Chinese, who were relatively rich, were mainly found in urban areas. The Malays, on the other hand, were engaged in subsistence agriculture and cultivation of rubber in small holdings. Puthucheary (1993:24) concurs that the Malays formed the "largest single community" of the Malaysian population. They were more economically disadvantaged than the Chinese. They had received preferential treatment in the form of government quotas to improve their economic status during the colonial era, and some of these policies on affirmative action were included in the Constitution. In 1948, the Malays strongly opposed the removal of preferential policies and, as a result, the continuation of those policies was

guaranteed. However, there was provision in the Constitution that safeguarded the "legitimate interests" of the other groups, whereby all Malay citizens irrespective of race, culture or creed could enjoy certain fundamental rights like equality before the law.

Emsley (1996:19) maintains that affirmative action policies were given wide coverage in the media. Land reservation for Malays also applied in urban areas. Quotas were introduced in public employment. Weiner (1993:7) concurs that in the civil service, appointments were such that four Malays would be employed for every non-Malay. Laxton (1993:29) also states that the promotion of Malays to higher positions was accelerated to ensure that they occupied "highest policy-making positions." The non-Malays were not happy with such preferential treatment but the Chinese who were in the government alliance were not unduly perturbed. Many non-Malays who were government supporters deferred to opposition parties.

Puthuchearry (1993:27-28) contends that preferential policies that favour specific groups tend to promote ethnic identity by the target group as well as non-beneficiaries of those policies. The term "Malaysian Malaysia" was often used to demand "equal treatment for all citizens" as against special rights for Bumiputras. The ethnic hostility was at its height during the elections in 1969. The "riots and emergency" which was introduced, entrenched the provision of the Constitution giving Malays more power. The New Economic Policy (NEP) was introduced, effective from 1970 to 1990, with the aim of reducing and eventually ending poverty and restructuring Malaysian society in order to correct the economic imbalance (Mid-Term review, 1973). Emsley (1996:26-43) states that in 1973, about 55 percent of the Bumiputra population was said to be exploiting the poorly educated Malay people. The government was bent on increasing productivity in rural areas. This was done through education and training to ensure equality of opportunity and to promote social mobility. Remote areas were provided with more and better qualified teachers to ensure quality education. This was important because Malays had received less and inferior education compared to Chinese and Indians. Technical colleges, institutions and more universities were established to educate and train Malays. Quotas in

favour of Malays were introduced to university admissions to increase Malay representation. A proportion of scholarships and licences for business were reserved for Malays. To some extent, this had a negative effect in that more Chinese sent their children to overseas institutions, and this was a considerable financial loss for the country in foreign exchange. There was over-representation of Chinese and Indians in the 1970s at the University of Malaya, but when the NEP was introduced, this pattern quickly changed to the extent that by the end of 1970s, Malays were excessively over-represented. During the 1980s, racial quotas imposed on tertiary institutions were relaxed. Students were encouraged to study technological and vocational subjects. This benefited the Malays who, because of poor schooling, could not be recruited to science subjects at tertiary level. By early 1990s the balance had been restored, with an education system that matches an internationally accepted manufacturing economy.

According to the World Bank (8667 -MA:1991), in 1988, more funds (about 1,17% of the GDP) were invested in public health care, with more emphasis on primary and preventive health in rural areas, thereby reducing the infant mortality rate from 45 per thousand in 1970 to 14,2 in 1988, and increasing the life expectancy of the rural population. Agriculture was also restructured. Thick forests owned by the state were cleared, model villages were built with all the infrastructure, and many Bumiputra families were settled there. Rural Malay labourers were recruited and offered plots to lease or own. They were granted loans at affordable rates. Roads, schools and clinics were built and development programmes increased production, employment and income of peasant farmers. The government subsidized capital works like irrigation, as well as fertiliser, pesticides and credit through the Malaysian Agricultural bank. Rapid growth and development also took place around areas in industrial and manufacturing enterprises. The available urban work force could not handle the excess employment growth rate. Bumiputra who were poor peasants and rural labourers flocked to urban areas for employment. This rapid increase in the size of modern, urban institutions helped to increase the earning capacities of Bumiputra incumbents. Weiner (1993:7) states that "... a handful of Malays became rich as a result of providing policy of equity to Malays; generally Malays did better

in finding employment in the public than in the private sector. There were gains among the rural poor as a result of the land development schemes, the growth of public education, and, most importantly, in the expansion of opportunities for employment."

All these factors helped to reduce and eventually eliminate poverty and to increase employment and economic growth. Charlton and van Niekerk (1994:42) assert that the Chinese government and the Malaysian majority exploited the high rate of economic growth of the country which promoted the distribution of resources and all this contributed to the success of affirmative action. Puthucheary (1993:29-30) identifies some of the strengths and weaknesses of affirmative action in Malaysia as follows:

- \* Poverty was remarkably reduced. This was, to some extent, due to the fact that affirmative action programmes were implemented within an economic development framework. This was made possible because of political stability that prevailed in the country, as well as the incentives provided, in order to attract foreign investment, thereby promoting economic development.
- \* There was general improvement in the income levels of all ethnic groups. Although some individuals who were adversely affected by affirmative action continued to complain, the non-Malays as a group were not adversely affected.
- \* The New Economic Policy (NEP) provided for the establishment of a joint venture involving companies and the government. The companies welcomed this arrangement because they would be protected by the state.
- \* The gradual introduction of affirmative action programmes resulted in their general acceptance by the no-target groups. This, together with the cooperation received from the latter, played a major role in the success of affirmative action.

However, Puthuchearry (1993:31-32) warns that in Malaysia, there was a feeling of insecurity among non-Malays, because the government used its parliamentary control to ensure that affirmative action programmes were implemented. This encouraged the non-beneficiaries to form groups to protect their interests and thus promoted ethnic divisions. There was also competition and conflict between the target and non-target groups. Even among the Malays, those who benefited were at the upper end of the social stratum, while the poorer members of the community still suffered. The former would thus defend the preferential policies that favoured Malays in the name of protecting the interests of the community. All this is an indication that affirmative action can have its successes, but failures should also be expected and possibly prevented.

## 2.4 CONCLUSION

From the above discussion it can be concluded that various countries have adopted different strategies to implement affirmative action programmes. The USA has legislation which is being enforced but the present mood is an indication that not all USA citizens accept it. It will be of interest to learn what the outcome of the affirmative action backlash will be.

The successful implementation of affirmative action programmes in Malaysia was not attained overnight. It took many years to distribute economic resources to the benefit of disadvantaged groups, without adversely affecting employment opportunities of the previously advantaged communities. It is, therefore, important for South Africa to realise that affirmative action requires careful planning and implementation and this is a process and not an event, that will not be achieved within a short time. Of equal importance is the fact that the rainbow nation that makes up the South African population should have an input on the strategies that have to be adopted, to ensure commitment and cooperation of all relevant stakeholders, otherwise resentment may be created in those who are adversely affected, and they may sabotage the whole

exercise. To be successful, South Africa should learn from mistakes made by other countries. It will be ideal to adopt whatever strategies that could be useful and to adapt them to suit local conditions. The next chapter deals with the strengths and weaknesses of affirmative action.

## CHAPTER 3

### MERITS AND DEMERITS OF AFFIRMATIVE ACTION

#### 3.1 INTRODUCTION

Any government that comes into power will effect some changes which may be perceived as being good by some people, especially those who will benefit from such changes. However, those who believe that they will be adversely affected may hold an opposite view preferring to retain the status quo and even contest the changes. What is happening in South Africa today is testimony to this. The government has embarked on the transformation of the public service in order to, amongst other things, end the indefensible affirmative action that has been taken for many years in favour of the white minority. Measures are being taken to achieve representativity and employment equity. But during parliamentary debates, no discussion in support of affirmative action passed unchallenged.

This chapter will be devoted to the pros and cons of affirmative action and the following issues will be highlighted:

The positive aspects of affirmative action outlining the following:

- Equal employment opportunities
- Transforming society
- Empowering the disadvantaged groups
- Enhancing change
- Promotion of human resource potential and other miscellaneous benefits.

The demerits of affirmative action which include:

- Expectations of the disadvantaged groups
- Impediments to black occupational advancement
- Attitudes of the advantaged groups
- Problems associated with recruitment and selection
- Under-utilisation of black skills and potential
- Tokenism
- Health related problems
- Failure to tap potential and talent of blacks within the organisation
- Problems associated with staff development
- Representative bureaucracy vis-a-vis merit
- Affirmative action, a costly exercise.

### 3.2 POSITIVE ASPECTS OF AFFIRMATIVE ACTION

According to Berkley (1984:126), many public managers have had headaches and some employees have had heartaches as a result of affirmative action, but the benefits that accrue from it both to employers and employees should not be underestimated. The following are some of the benefits:

#### 3.2.1 Equal Employment Opportunities

Affirmative action ensures that all citizens are afforded equal employment opportunity in the public sector. Employers are compelled to hire more than the usual proportion of members of the disadvantaged groups in order to redress past discrimination (Gitelson *et al.* 1991:106). Public organisations become more representative with a diverse workforce and thus give individual employees the opportunity to feel that they are of service to fellow citizens. Such employees will have empathy and will be more responsive to the needs of the communities they serve. They will endeavour to perform their duties to the best of their ability. This will promote efficiency and effectiveness of service delivery. Moreover, a more representative organisation will



enjoy legitimacy and will be more acceptable to members of the public who will try to support it whenever possible. According to Schwella *et al.* (1996:90), "... if the composition of the public institutions personnel reflects that of the population, it is assumed that officials will be more responsive to people's wishes." Besides providing equal opportunities, affirmative action helps to transform society as the following discussion indicates.

### 3.2.2 Transforming Society

Klug (1993:25) states that affirmative action helps to transform society from being discriminatory to a society that is non-discriminatory and that promotes equality of opportunity in employment. Schwella (1991:9-10) concurs that affirmative action provides restitution for injustices of the past, helps to combat racism and ensures that job opportunities are distributed equally in the public service. Nel (1995:207) adds that affirmative action improves the quality of life of the disadvantaged sections of society and enables them to compete on an equal footing. It promotes equality, human dignity and freedom which are enshrined in the Bill of Rights in the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996), and thus ensures that true democracy prevails.

Affirmative action helps to empower those who come from disadvantaged backgrounds. This will be discussed in the following paragraphs.

### 3.2.3 Empowering the Disadvantaged Groups

Affirmative action helps members of the disadvantaged groups to break through the barriers of oppression and move up the occupational ladder. They will thus gain experience and become involved in making decisions on matters affecting their own communities. They will also have access to education and educational institutions, especially the best ones from which black students were previously barred. Moreover, affirmative action does not only benefit the target groups, but also the nation as a whole.

Kennedy (1993:70) believes that it helps to dispel the negative perceptions that whites have about the ability of black people to hold responsible positions and to impart knowledge and use the important skills they have acquired. It has also helped to reduce the number of situations where the disadvantaged groups experience racial isolation, like being excluded from positions in the workplace. It thus improves labour relations and reduces conflict in the workplace. Representativeness indicates that society that was once dominated by the advantaged groups has rejected the elements of the past and is committed to creating a new social order.

#### 3.2.4 Enhancing Change

Schwella et al. (1996:90) maintain that representative public structures present opportunities for change in the social and economic structures. If specific groups are given preferential treatment, prejudices may be lessened and this may bring about change needed by authorities to improve the social and economic status of the disadvantaged groups. According to Nel (1995:186), affirmative action provides opportunities that allow people of all race groups and sexes to contribute to the needs of the country through their skills in areas of management, leadership, entrepreneurship and technology.

Burton (1988) contends that affirmative action promotes efficiency and productivity by making the best use of available talent. It ensures that only relevant criteria are used for appointments and promotions and that all qualified applicants are given proper consideration. The existing standards, policies, procedures and criteria for selection have to be reviewed to avoid exclusion of qualified people from being considered for positions and employment benefits. This entails the removal of barriers to employment opportunities and it ensures that a realistic interpretation of what merit involves for particular jobs is applied. Albertyn and White (1994:59-60) maintain that affirmative action promotes efficiency and productivity by ensuring that talent and capacity in black people and women which are at present being ignored by employers, because of prejudice against members from disadvantaged backgrounds can now be accessed. Furthermore, women could be a good investment for their

employers in that the turnover rate of women employees is lower than that of men, with lower absenteeism.

With the introduction of affirmative action, human resource potential is promoted. This will be explored in the following discussion

### **2.3.5 Promotion of Human Resource Potential and Other Miscellaneous Benefits**

Human (1993:35) believes that affirmative action is a mechanism whereby competent individuals may be recruited and developed. It is a method of identifying and promoting the human resource potential and managing diversity effectively in South Africa. Cheminais *et al.* (1998:255) agree with Human and state that if properly implemented, an affirmative action programme can lead to improved human resource management. It can promote the role of mentorship and good leadership skills of supervisors. Managers and supervisors are forced to be sensitive to and involved in the development of human resources. Training and development is according to the needs of individuals and not according to the needs of groups. Moreover, an affirmative action programme that is properly managed can raise the standard of performance in the workplace. It can help to evaluate the competence of the current workforce and also to determine if criteria and requirements for job entry are relevant to job content.

Stahl (1976:187-188) presents the following arguments in favour of affirmative action:

- The target groups have a sense of security in their jobs. They feel that what they are doing is wanted and they are allowed to use their creativity and fully utilise their minds and skills.
- There is a feeling of emotional security. Employees feel that their work is accepted and that they are making progress in achieving their set objectives of being able to use their skills and abilities. Social acceptance by colleagues provides a favourable climate for such emotional satisfaction.

- The feeling of being wanted and being part of the group of employees in the organisation fosters a sense of belonging and is a motivating factor for good performance.

Levy (1995:78) is of the opinion that "... affirmative action frequently benefits the elite of the target group - it allows those in the best positions to take advantage of opportunities opened up through affirmative action, i.e. those in the middle to top positions." According to Human (1992:11), affirmative action helps organisations to comply with legal requirements and thus stay clear of costly challenges in court. It also enlarges the pool of candidates from which recruitment and selection will take place. Human resource management becomes more professional with improved loyalty and commitment of disadvantaged groups. Adonisi *et al.* (1995:165) assert that from the moral point of view, affirmative action ensures that those who were denied opportunities during the apartheid era gain access to such opportunities. This promotes reconciliation and reconstruction in the country as a whole.

The culture and mindset of the organisation plays an important role in providing a climate that is conducive to a feeling of security, belonging and contentment of the entire workforce. According to Schwella *et al.* (1996:91), different countries have varying compelling factors for implementing affirmative action. Developing countries, where discriminatory laws and policies have prevented occupational advancement of disadvantaged groups, need measures to redress past imbalances more than countries with less restrictive practices. Although affirmative action has its positive aspects, the following discussion will show that it is fraught with problems.

### 3.3 DEMERITS OF AFFIRMATIVE ACTION

Affirmative action is desirable in view of the advantages attributed to it. However, as affirmative action has been legally practised for decades in favour of the advantaged groups, it is natural that they prefer to maintain the status quo and reject anything that threatens to deprive them of the privileges they have enjoyed for so long. The USA experience shows that although affirmative action was introduced

many years ago, it is still plagued by problems. In South Africa, criticisms levelled against affirmative action should be expected. Some are valid, while others arise from self-interest, fear and poor management of affirmative action programmes. Well developed affirmative action policies and programmes may be formulated but some weaknesses may surface during their implementation. The following discussion will explore some of the weaknesses.

### 3.3.1 Expectations by the Disadvantaged Groups

It is common knowledge that during the apartheid era, there was under-representation of black people and women in managerial positions. This was part of discrimination against the underprivileged groups which found its way into the statute books. Charlton and van Niekerk (1994:22) illustrate this point eloquently when they state that the black majority was denied basic rights by the minority of white people in all spheres of life, with black people judged by the colour of their skin and not by their knowledge and skills. It is generally believed that the majority of black people voted for the ANC in order to have a government that would address some of the inequalities that resulted from apartheid. That is one of the reasons that there is such a hue and cry for affirmative action. The new government, amongst other things, is expected to structure the civil service to ensure affirmative action and equal employment opportunity thus promoting equality among all citizens. According to Nel (1995:188), the "... promotion of equality means that all people must be regarded as equal as far as citizenship, social and moral conviction, job opportunities, promotion and the law are concerned."

In general, black people expect immediate and radical changes in the structure of the public service, with more blacks occupying top positions. To illustrate this point, Madi (1993:58) quotes a white manager who asserts that "... blacks believe that, because they hold a degree, or even a string of degrees, they deserve being on the board of directors." This could mistakenly imply removing a white qualified employee and replacing him/her unconditionally with a poorly qualified, inexperienced black person. This will inevitably result in inefficient and ineffective

service delivery. Even if a black manager who replaces a white one has the required qualifications, such a person may lack the necessary experience. Levy (1995:71) warns against "... the bi-polarism that on the one hand stresses affirmative action's ability to reduce the legacy of historical disadvantage and, on the other, insists on its potential to exacerbate racial differences and displace a competent, qualified (meaning predominantly white) contingent of decision makers with an inefficient and "unqualified" black one."

### 3.3.2 Impediments to Black Advancement

Upward mobility of blacks in the public service does not seem to have made much progress. Charlton and van Niekerk (1994:48) state that Blade Nzimande, formerly from the University of Natal, attributes this to the resistance from white middle managers who were promoted too fast to their level of incompetence. They thus view black advancement as a threat to their positions. On the other hand, Mitchell and Arnott (1992:13-14) quote Eugene Nyati, an economist who stresses the incompetence of some black managers who rose too fast in the occupational ladder to fulfil the required black advancement. He makes an added point that the incompetent black managers only strengthen the negative attitudes of whites towards the incompetence of blacks.

There are often heated debates from the opposing camps with blacks maintaining that there should be more blacks in managerial positions, while there is resistance from whites who feel insecure, and label the demand for black occupational advancement as reverse discrimination. Charlton and van Niekerk (1994:48) maintain that "... to the average white South African the issue is tinged with varying degrees of guilt and fear, depending on age and economic position (and emigration possibilities)."

The attitude of senior management may be misleading and this may pose some problems to black occupational advancement. Some of these will be examined in the following discussion.

a) **Attitudes and Lack of Commitment of the Formerly Advantaged Groups**

Giliomee (1979:224) contends that as the National party had been in power since 1948, a strong relationship had developed between the party and the state. The neutrality of public service disappeared. This was reflected in the fact that Afrikaners constituted 80% of the white public service. Hugo and Stark (1992:52-60) believe that the decline of apartheid since February 1990, has evoked fears of majority rule amongst most South Africans who had racial socialisation. Such fears were reinforced by right-wing political elements, issuing warnings regarding discrimination against white people which was already taking place in Namibia. All this resulted in insecurity, fear and distrust among white public servants and have been aggravated by the ANC's policy of non-racialism and affirmative action. Whites may thus display a negative attitude towards women and black occupational advancement. Charlton and van Niekerk (1994:84) summarise studies conducted of black people and women as follows:

- "In broad terms, the higher the education and income, the more positive attitudes will be.
- English-speaking people were found to be more tolerant than Afrikaners and men more tolerant than women.
- Although white male business people generally felt positive about the principles of equal opportunity and fairness, many expressed belief that blacks are inherently inferior to whites (in terms of objectivity, self-confidence, ability to contribute to the goals of the organisation).
- White male MBA students (upwardly mobile managers) hold discriminatory attitudes similar to those of their more aged counterparts.

- White civil servants have slightly more negative attitudes than their private sector counterparts, although they were significantly more tolerant of "coloured" than African advancement.
- White English-speaking male managers also doubt the current (but not inherent) capabilities of white women."

Qunta (1995:69) identifies two aspects of insincere attitudes on the part of white managers towards black occupational advancement. On one aspect, senior management may purport to accept affirmative action and to be prepared to break away from past discriminatory practices. Policies may be formulated and left to be implemented by line managers. Generally, the language used by top management is quite impressive and leads one to believe that the organisation is genuinely committed to the transformation process. However, the black processional in the employ of such an organisation may be cynical about the whole exercise.

Qunta (1995:69-70) argues that top management may be sincere in its commitment to transform the organisation and may also realise that, if affirmative action programmes are not implemented, political pressure from government will force it. On the other hand, top management may delegate the implementation of affirmative action programmes to middle management. The latter may find it difficult to accept change in the political environment and may not be as motivated as the former to bring about change in the organisation. Middle management may thus fail to carry out the instructions of top management.

Besides the lack of motivation, employees at middle management level may feel threatened in their positions as they may realise that they have to compete with blacks who are better qualified than themselves. Top management may not be affected by the competition because they constitute only the apex of the organisational triangle. Furthermore, many blacks are usually employed and trained at junior levels. This ensures the necessary delay which protects top management from competition (Qunta



1995:70). Even if senior management is sincerely committed to affirmative action, it cannot be absolved from blame for the failure of its implementation.

According to Qunta (1995:70-71), in some cases, top management may pretend to support affirmative action, to the extent of having a policy but will not take any measures to see to its implementation by middle management. The latter may fail to implement the policy which top management set without readiness to sanction the officials involved who have been in the employ of an organisation for many years. If black employees leave an organisation because of unacceptable working conditions, it reflects badly on the organisation concerned. That is particularly so at this time when the political climate requires organisations to be committed to redressing the imbalances caused by apartheid.

Affirmative action may reinforce white prejudice. According to some affirmative action plans, disadvantaged groups with minimal qualification may be hired or promoted deliberately over better qualified whites. This is to allow the former to recover from the effects of historical injustices. Jencks (1983:14) believes that "such preference reinforces white prejudice about black incompetence." Ezorsky (1992:61) contends that the white perception of black incompetence may be biased. In some cases, where blacks have the same qualifications or are slightly better qualified than their white counterparts, prejudiced whites will perceive such blacks as being less qualified. They will regard the employment of blacks as racial preference to inferior candidates. However, Ezorsky (1992:61-62) further argues that affirmative action programmes do not require employers to hire blacks who are unqualified but rather those who have minimal qualifications required for the job.

Madi (1993:52-57) asserts that many whites perceive blacks as being incapable of managing any modern institution responsibly, an idea used to deny blacks promotion to positions of authority. Human (1991:224) concurs with Madi and states that research suggests that white South Africans display a negative disposition towards black advancement and perceive black people as being naturally less capable than their white counterparts. Such prejudice and negative expectations have a negative

effect on performance. They prescribe who will be blamed by the manager for poor performance and who will be assigned challenging tasks. According to Will (1983:39), those who feel that affirmative action is a threat to their opportunities for employment and upward mobility do not believe that it is an attempt to enhance social justice and political stability, but rather regard it as reverse discrimination.

### 3.3.3 Problems with Recruitment and Selection

Recruitment and selection are some of the problem areas in the implementation of affirmative action that need attention. According to Adonisi *et al.* (1995:54), some organisations are aware of the importance of internal development to prepare employees for promotion opportunities, but they often fail to do so. In the absence of employees within the organisation who have been groomed for job opportunities, when vacancies occur, external appointments are resorted to as quick-fix solutions. When external appointments are made to fill positions, networking becomes the most used method of recruitment. Ezorsky (1992:15) illustrates this point by stating that blacks and whites are basically in separate circles of friends, relatives and neighbours. Blacks thus tend to suffer because they do not have such employment connections where employees are predominantly white. As a result, under-represented communities are not reached when networking is used as a recruitment. The negative effect of isolation of blacks from white society is further compounded when employers hire applicants from white neighbourhoods who simply "walk-in" to enquire about job openings. Blacks who reside in townships are denied such opportunities. Adonisi *et al.* (1995:154) concur that "... often appointments are filled by word of month, that is through networks rather than making use of public media. It is also common for organisations to advertise only in newspapers that are read by a small portion of the population or to place advertisements only in a single language, in most cases English."

According to the Industrial Council's Guidelines for the implementation of affirmative action (Circular 02/1995:13.2), recruitment should be such that it attracts suitably qualified candidates from under represented communities. Furthermore, recruitment

should take place internally and outside talent may be necessary when a suitable candidate cannot be found within the organisation. Levy (1995:87) is of the opinion that personnel already in leadership positions should be trained and adequately utilised when openings in managerial positions occur within an organisation. Black graduates from universities and technikons who are either employed in positions for which they are over qualified or are unemployed altogether, should be considered as target groups for recruitment. This should not be difficult given the prevailing high unemployment rate in South Africa. Adonisi *et al.* (1995:159) argue that, "... internal promotions are used to reward people for performance and give them opportunities for further development. As many organisations realise the need to change their race and gender profile they are tempted to appoint external black people and women immediately into management positions, rather than identify and develop internal potential."

Pieterse, Affirmative Action Specialist of the City of Cape Town states that the Cape Town City Council ensures equality of opportunity by forbidding any enquiries about job openings. Anybody who solicits the support of any person in authority in the local authority for employment is disqualified. Only recruitment agencies which support the principles of agreement on affirmative action which have been approved by the Affirmative Action Committee are utilised by the Council for recruitment. Internal recruitment involves placing all advertisements in places which management and unions within each branch have agreed upon, including notice boards in all departments, sections and depots. No job should be advertised with specifications tailored to suit a particular candidate. All advertisements published should be placed in newspapers or publications which target groups are likely to read. The advert should clearly state the City Council promotes the principles of affirmative action. Details regarding language as well as factors relating to social and cultural environment where applicable do not necessarily exclude applicants who may fill such positions with the necessary training and adjustment.

Adonisi *et al.* (1995:155-156) contend that members of an interviewing panel in some organisations are basically white and have been selected because of their competence in the job rather than their skills in interviewing. The natural tendency for them is

to select candidates of their own kind, an activity which is described as "homo-social reproduction." Other candidates may feel intimidated by such a racial and gender composition of the interviewing panel. Furthermore, selection is often based on the current skills of the candidate and not future potential, whereas an individual with potential can be trained to develop skills on the job.

Psychometric tests which have been used in South Africa test intellectual abilities which are related to one's education and background. Blacks, who have been subjected to poor education and difficult backgrounds, might not have fared well in such tests. This might not have been a good reflection of their future potential, and therefore, such tests could have been regarded as irrelevant and unfair. It is important to use recruitment and selection techniques that will not give unfair disadvantage to under-privileged communities, as this will only retard their upward occupational mobility. Authors like Qunta (1995:68) have criticised these psychometric tests, stating that they could be viewed as indirect discrimination, and could be taken up in the Industrial Court as unfair labour practice.

According to Sunday Times (1998:5), the Human Sciences Research Council which standardises IQ tests used at school, clinics, hospitals and industries throughout South Africa, held a meeting of top psychologists in Johannesburg, where a move was made to scrap some intelligence tests in the workplace which favour whites, and to adopt international tests which could be adapted to suit local conditions. This resonates with the *Employment Equity Bill*, 1997 which requires employers to validate their psychological tests and to see to it that testing is not biased against designated groups. The Society for Industrial Psychology hailed the clause as a step in the right direction, as it promotes sound psychological practice, increasing the correct use of testing, and putting South Africa in line with legislation used around the world. If used correctly, psychometrics can provide an objective and fair assessment method in an organisation. It can also play an important role in the affirmative action process. Wessels (1992, 27(1):57) adds that the United Kingdom provides race-related training which involves skills for personnel and management on interviewing,

selection and performance appraisal, including matters relating to equal employment opportunity and racial discrimination.

Some members of disadvantaged groups who have been hired to managerial positions may be under-utilised. This may have a negative impact on such incumbents who may feel disillusioned and resentful. Further discussion on this problem will follow.

#### 3.3.4 Under-utilisation of Skills and Potential of Blacks

As far as under-utilisation of blacks is concerned, Qunta (1995:58-59) makes a telling point. The competent professional who has been appointed in an organisation is given a good salary with the accompanying fringe benefits, but the work he/she is expected to do is not challenging. Challenging tasks are passed over to white employees. The employment of such an individual is window dressing, which could be regarded as one of the strategies for sabotaging the process of affirmative action. Such a situation may be humiliating and frustrating, as the incumbent may be regarded as being incapable of performing the work, or as not being intelligent enough. Charlton and van Niekerk (1995:81) refer to this as "... a "white male elite" racist corporate culture that sets up subtle barriers to opportunity through an attitude founded on the premise of incompetence." This will destroy self confidence and retard development and experience for the individual concerned. As a result of this, in his/her frustration, a black professional may look for better challenging jobs elsewhere. If the same thing happens there, job hopping may eventually be the result.

Bowmaker-Falconer (1995:55-56) echoes this sentiment by supplying responses obtained when managers and trainees were interviewed at Unilever on reasons for blacks leaving the organisation. Blacks maintain that, in general, many people perceive that blacks are incompetent, because of their disadvantaged background, to the extent that, when information is required, they are bypassed and more "reliable sources" are consulted. Those who have moved to higher positions are frustrated, because they are not given anything to do and kill time reading newspapers, which is what they are paid for.

Although blacks receive good training, they are not afforded the opportunity to apply the knowledge and skills they have acquired. As a result, they quit the job. Madi (1993:68) concurs that some white managers promote the failure of their subordinates by being too kind to them and not allowing them to grow and stand on their feet. This will retard black occupational advancement. Public organisations have to guard against malpractices of this nature, because they cannot afford to lose scarce, skilled and competent human resources. An equally bad practice is that of token appointments. This practice will be elaborated on in the following discussion.

### 3.3.5 Tokenism

Tokenism is another form of window-dressing. Because of political desiderata, an organisation may decide to employ some black persons at junior and middle management levels, in order to appear to be changing, although it is not really interested in making changes. Charlton and van Niekerk (1994:66) state that some organisations provide positions that are merely cosmetic change, giving the incumbent a posh office and an impressive title, without the responsibility and accountability that goes with it. The appointment is based on skin colour and not merit. A good salary is offered but the appointee has no power or autonomy. Innes (1993:18-19), in support of Charlton and van Niekerk, describes tokenism as a situation where decision making powers are removed from relatively high ranking positions in an organisation so that a new appointee may not be in a position to bring about changes which top management may not be enthusiastic about. Qunta (1995:54) concurs that "... tokenism can be regarded as an attempt to subvert the process of African economic improvement. It is meant to silence, with a facade, calls for a meaningful black presence in employment. In most cases there is nothing actually wrong with the appointee but rather with the motives behind his or her appointment." Madi (1993:13-14) refers to this as the peacock approach, where the organisation is merely concerned with displaying beautiful colours of its employees like a peacock. The token appointees are not expected to make any contribution. They are for decorative purposes only.

Token appointments may take the form of appointing an individual to a position for which the appointee lacks the necessary qualifications or experience. Such a person is bound to fail to deliver the goods as expected from the position. The incumbent will be quite uncomfortable about the motive behind the appointment and also about the fact that he/she is regarded as a token employee. Qunta (1995:54) states that during the authoritarian regime in South Africa, employees who received such favouritism were regarded as working with and being used by senior management to oppress subordinates. Black token employees would not question senior management for malpractices within the organisation, because they were nursing their positions and the remuneration they received which they might not have deserved. With regard to token employees, Madi (1993:13) makes a telling point when he asserts that "... hollow jobs are then created for them in some far little corner of the company. They are encouraged to remain quiet and are displayed only for public relations purposes. Of course, all this information is kept away from the recruit, who is allowed to build castles in the air and is rewarded for keeping those castles in the air."

Memela (as quoted by Mohlamme 1991:13-15) one of the victims of tokenism who, in frustration left the job, gives some of the experiences of tokenism as follows:

- "The work was unable to give free reign to my talents and abilities.
- The talented unsuccessful black professionals who invade the corporate world at the end of the university career are destined to wither and dry up under scorching heat frustrations.
- Black professionals who know if white skills withdraw there is no chance that black professionals can replace them, simply because black brains vegetate in posh offices.
- I have watched black professionals neatly put away in the dark corners, eliciting catastrophic reactions from white management who tell them to wait as their pitiful case is being discussed.

- Black professionals are kept at the periphery of involvement and their mental energy is canalised into activities that provide white superiors with what they don't know about blacks."

Public institutions should avoid token appointments. Black appointees should have the minimal qualifications required for the positions and be developed so that they may move up the occupational ladder and be able to perform their functions efficiently and effectively. Those who are not in favour of affirmative action, are quick to regard appointments of disadvantaged groups as tokens, in an attempt to block their advancement. According to the Industrial Council Guidelines for the practical implementation of affirmative action (Circular 02/1995:Para. 13.4.1), "... the appointment of "token persons" into senior positions will cause resentment and simultaneously set the individual up to fail. It is vital that the degree/level of responsibility previously borne by incumbents in these positions should not be reduced and that new personnel receive the necessary training to reinforce such standards." Affirmative action employees may have health-related problems. These will be dealt with in the discussion that follows.

### 3.3.6 Health-related Problems

According to the Daily Dispatch (27 May 1997:7), stress may affect some affirmative action appointees as a result of being promoted rapidly. According to a brain researcher, Dr Gillman, the executive director of the South African Brain Research Institute, people, especially those with a rural background typical of a Third World environment, have not been emotionally prepared to cope with stress and pressures that obtain in a "First World Workplace." If they are promoted to positions of authority without some years of emotional preparation for such jobs, they may suffer from medical conditions like diabetes, ulcers and hypertension. This may happen irrespective of the person's intellectual capability to cope with the new position.



### 3.3.7 Failure to Tap Potential and Talent of Blacks within the Organisation

Adonisi *et al.* 1995:27) state that a survey conducted by Caroline White on affirmative action at the South African Breweries Beer Division in 1993, indicated that the company tends to look outside the organisation for senior appointments, instead of promoting employees from within. Some of the graduates affected by this failure to tap talent and potential within the organisation had been frustrated by this practice and had left.

Failure to recognise and acknowledge the potential and talent of employees within a public organisation can cause considerable discontent among them, as it hampers their advancement. Local authorities are required by the Industrial Council Guidelines on Affirmative Action (Circular 02/1995: Para 14.4.7), to ensure that most of their human resources consist of promotions from within and also appointments made on merit. Staff development should be encouraged and performance appraisals done, in order to improve their promotion opportunities. Some problems have also been encountered in staff development as indicated in the following paragraph.

### 3.3.8 Problems associated with Staff Development

Qunta (1995:71) contends that some organisations subject blacks who may be overqualified for positions, to training that is unnecessary or to permanent training. This arises from the general perception that black education is inferior to that of whites, and also from the negative perception of the intelligence of blacks. Madi (1993:38) supports this and states that "... white education has been a paragon of pedagogical perfection, while black education has been an idiots paradise."

According to Qunta (1995:71-74), black graduates object to training that is reserved for blacks and also oppose the invitation of a white expert to train blacks on black culture. Qunta suggests that the manager and the candidate should have a discussion to identify the strengths and weaknesses of the candidate, and then determine his/her training needs as they relate to the priorities of the organisation. Unnecessary and

prolonged training retards the occupational advancement of blacks. A black trainee who has had to undergo such training will always be behind his/her white colleague who was not required to undergo such training. Adonisi *et al.* (1995:128) agree with Qunta when they state that "... implementing affirmative action is hindered by the unwillingness of some managers to groom trainees because they see them as threats to their own jobs. Trainees who were interviewed felt that the goal posts were being shifted and that they were being kept at trainee status for longer than necessary. They believed that opportunities were quickly identified for white trainees than for blacks."

The need for specialised training and capacity building for blacks and women cannot be denied. Training should aim at developing skills and knowledge, especially of target groups. This will ensure that black people and women will be available for internal recruitment and promotion. This helps to inculcate loyalty and commitment in employees. Funds should be provided for in the budget for employees to improve their knowledge through formal education at universities, technikons and other relevant institutions in addition to on-the-job training. Van Vuuren (Charlton and Van Niekerk 1994:163) contends that at Transnet, training and development of supervisors and managers are taken as a priority. They look for untapped potential of blacks within the institution and the identified blacks are sent on training courses. At Transnet, they prefer to develop their own employees to employing people they do not know from outside the institution.

In order to develop, people require motivation and commitment to develop. Disadvantaged communities lack confidence, self-esteem and initiative and have inferiority complex. This is a psychological effect of discrimination and racism which, if not attended to, will be a barrier to upward mobility of black people and women. Sonn (1993:31) refers to this as "internalised oppression", whereby people who are targets of oppression, consciously or unconsciously internalise that they are inferior. It impacts negatively on any attempts to implement affirmative action. Such inferiority complex may manifest itself in being passive, behaving like a clown and being aggressive, to justify such untoward behaviour. Internalised oppression is not

easy to handle. Training and education of all employees about the adverse effects of this behaviour on competitiveness and productivity is important. Pieterse, Affirmative Action Specialist of the City of Cape Town states that, to address this problem, the Cape Town City Council has employed multicultural facilitators who are designated with the task of re-orientating the disadvantaged groups, so that they understand their disadvantage and become motivated to develop. These facilitators organise workshops and have discussions with individuals or groups.

### 3.3.9 Representative Bureaucracy vis-à-vis Merit

A representative bureaucracy is one that ensures that disadvantaged groups are represented at all levels of an organisation according to the demographics of the area. Uveges (1979:346) maintains that a representative bureaucracy is desirable in a public institution, because it helps to increase employment and income, and also to improve living standards and self-esteem of disadvantaged groups. Moreover, the consumers of public services could benefit because their "representatives" understand their needs and wishes better and will endeavour to cater for them. Schuman and Olufs (1993:256) state that the concept of representative bureaucracy originated in patronage where positions were awarded according to one's political activity. The line of demarcation between politics and public service has been removed and bureaucracy has largely been politicised.

Efficient and effective service delivery requires that people be employed on merit, as evidenced by formal qualifications, skills and knowledge essential to the job. Other factors like the candidate's potential, motivation and ability to respond to training and development programmes are also important. Because of historical discrimination, many black people have been denied the opportunity to acquire formal qualifications and this has kept them out of the mainstream of organisations. Qunta (1995:23-24) argues that the concept of merit is mainly subjective and has been used as one of the strategies for excluding people from positions they would have occupied, if objective criteria were used in the selection process.

As Levy (1995:86) points out, "... merit is a crucial issue in affirmative action, since it affords many the opportunity to claim that affirmative action is simply patronage or tokenism and promotes people under-qualified for the job." Albertyn and White (1994:59) contend that in some cases, other considerations which have nothing to do with the ability to perform are given more importance than the merit principle. Some employers try to meet the expectations of consumers when it comes to employees who have contact with the public like receptionists and airline cabin staff. Such positions are, in some cases, filled by attractive white young women. In some positions of authority where customers refuse to deal with women, white men are appointed.

The question of numbers and/or merit raises some arguments. Klingner and Nalbandian (1985:75-77) contend that affirmative action has a profound effect on human resource managers who view it as being burdensome. It interferes with the desired criteria for recruitment, hiring and promotion. The merit principle requires that the best qualified candidate be hired and promoted. However, if affirmative action is applied, the consideration of target groups is of utmost importance, to the extent that the person hired and promoted may not be the best qualified for the job. Human resource managers thus find themselves in a difficult position because they have to provide high quality employees, while on the other hand they are under political pressure to utilise underprivileged groups who may not be of the best quality. Graham (1990:179) supports Klingner and Nalbandian by stating that some people < believe that affirmative action tends to reduce the standard of choices of personnel for hiring and promotion as well as the calibre of the workforce.

According to Charlton and van Niekerk (1994:53), in countries where practices relating to employment are controlled by legislation, employers are required to meet quotas. This means that the staff complement should reflect the composition of those in the labour market on the basis of gender and race. Certain percentages of positions should be set aside for disadvantaged groups and recruitment patterns should reflect these ratios. A system of goals may also be used. Andrews (1992:39) concurs that "... the quota system implies that a specific number of percentage of the members of a protected group must be appointed or promoted regardless of the

number of qualified candidates available for the jobs in question. Under a system of goals people are hired according to their qualifications and other requirements necessary to perform a job successfully." Adonisi *et al* (1995:165-166) maintain that goals should be specific to each organisation and should take into consideration any likely future restructuring that could be necessary as a result of changes in the size of the organisation, staff turn over, retirements and retrenchments. When setting goals, skills available in the labour market as well as targets and timetables according to race, gender and skills in the organisation should be considered. The time when the policy ends and the gradual steps to be taken to reach the point of termination should also be taken into account.

The quota system should not be applied merely to meet the numerical requirements. The calibre of the employees should be considered, in order to avoid tokenism and lowering standards which will adversely affect the organisation. While the number of blacks and females in an organisation is an important yardstick for measuring progress made in redressing the injustices resulting from past and present employment discrimination, numbers *per se* are unacceptable. They should go hand in glove with merit which goes with competence. The presence of blacks and females in an organisation should be meaningful. Madi (1993:77) prefers "... an organisation that has only two, but two highly professional and highly effective black executives as against an organisation that has fifty black clowns paraded as managers." Bayat and Wissink (1994:283) assert that while merit is desirable because it ensures competence, it is also undesirable from a political point of view, because it does not remedy the effects of the injustices that the disadvantaged people were subjected to. Wills (1983:36) makes an additional point when he states that disadvantaged groups should be allowed to recover from the effects of past injustices by being given extra training or being hired over better qualified white candidates and then given special assistance. Cheminais *et al.* (1998:57) assert that the transformation of the public service in the South African situation requires that the process of selection should be taken beyond the traditional approach of the best qualified candidate for the job towards the best suitable candidate for the job with regard to representativity and sensitivity to the needs of the public to be served. Where the disadvantaged background has deprived

some people with potential, of certain qualifications and experience, the employees who have been selected would be trained and developed, so that they attain their full potential. In support of a balance between numerical considerations and merit, Charlton and van Niekerk (1994:57) refer to Ncube, Group Industrial Consultant of Anglo-American, who believes that South Africa has to maintain the quality of its employees to be able to compete locally and internationally. Ncube further stresses the importance of removing barriers to opportunities, as well as the transformation of the culture and mindset of the organisation so that affirmative action can be implemented as the organisational strategy.

Sachs (1992:220-221) maintains that race and gender preference for positions should only be considered where candidates have minimum qualifications for such positions and should apply for a specified period. The main objective should be the achievement of non-racism and non-sexism. Legislation should clearly state the circumstances when such quotas should be used. Nel (1995:207) warns against compulsory quotas which may hamper the provision and utilisation of competent human resources, thus negatively impacting on the success of the organisation in achieving its objectives.

Innes (1992:15) contends that the disadvantaged groups are treated like an endangered species. As a result, they do not feel that they face the challenge of working hard to acquire the required skills that will enable them to move up the occupational ladder. They believe that being a member of the disadvantaged group assures them of career advancement.

The quality of human resources should not be compromised by numerical considerations. Representativity may also involve targets and time-frames. These imply that an organisation has a set time by which its workforce should reflect a specified number of underprivileged groups. This may be an effective strategy for implementing affirmative action, provided it is carefully applied and monitored.

Quantity and quality can coexist without dropping standards. Charlton and van Niekerk (1994:55) illustrate this by referring to Transnet, where affirmative action programmes have been effectively implemented for quite some time. The institution insists on representativeness and contends that most jobs require the right person and not the best. However, the need for the best qualified person who has gone through stringent tests to be competent to perform specialist functions is also acknowledged. Black people are targeted for employment in managerial positions. If there is no suitable black candidate, a white person will only be considered after representation has been made at board level and it must be stressed that a suitable black candidate could not be found for the job.

### 3.3.10 Affirmative Action a Costly Exercise

Affirmative action may be quite costly to organisations, especially where incompetence prevails as a result of aiming at quantity without quality. Some affirmative action employees may be unproductive and it may be necessary to engage the services of consultants who charge exorbitant prices. Any organisation that embarks on affirmative action should take into account the costs involved, and should make provision in its budget. An important component of successful affirmative action and equal employment opportunity programmes is training and capacity building for disadvantaged groups, to improve their career-oriented skills and knowledge. This involves money, but such costs are necessary and may be regarded as an investment in employees. An exercise of this nature will bring long-term benefits to any organisation. Chaney (1993:8) states that there should be a specific budget establishment for the implementation of affirmative action. Mayisela (1996) alludes to this when he states that the implementation of affirmative action in institutions should be taken as part of the overall change that is taking place in South Africa and is being promoted by a political climate that has been radically transformed. When change takes place, expenditure is inevitable.

### 3.4 CONCLUSION

In conclusion, it may be stated that many obstacles stand in the way of the successful implementation of affirmative action, and these should be identified and eliminated. Such problems may arise from white professionals who may be resistant to change, or who may lack management skills in general, or from under-represented groups who may be impatient and making impossible demands. The latter could also be adversely affected by discrimination and may lack initiative, confidence and self-esteem. However, there are positive aspects that cannot be ignored. Kennedy (1993:71) argues that "... opponents of affirmative action have both exaggerated problems that accompany race conscious programmes and minimised problems with the policies they embrace."

Any change that affects human lives may elicit different kinds of responses from beneficiaries and non-beneficiaries, depending on the positive or negative impact, real or perceived, the change may bring about. The following chapter will explore the legislative framework of affirmative action.



## CHAPTER 4

### LEGISLATIVE FRAMEWORK OF AFFIRMATIVE ACTION

#### 4.1 INTRODUCTION

For generations, the majority of South Africans were discriminated against because of the colour of their skin, and this was legalized by the apartheid government. Since the democratic government took over in 1994, it has sought ways and means of redressing the imbalances caused by the discriminatory laws. In the sphere of employment, affirmative action policies and programmes have to be devised. These will have to be implemented in organisations and the organisations themselves will determine the way in which the policies and programmes will be applied. Furthermore, the process of the development and implementation of the policies and programmes will be governed by the legislative frameworks in which the country operates. This chapter seeks to address the following:

- *The Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996)
- *The Labour Relations Act*, 1995 (Act 66 of 1995)
- *The Employment Equity Bill*, Government Notice 1840 of 1997
- *The White Paper on the Transformation of the Public Service*, Government Notice 1227 of 1995
- *The Skills Development Bill*, Government Notice 1296 of 1997
- *The White Paper on Affirmative Action in the Public Service*, Government Notice 564 of 1998.

#### 4.2 LEGISLATIVE FRAMEWORK

Different countries have adopted different kinds of legislation on affirmative action and equal employment opportunities. Albertyn and White (1994:60) have identified three categories of legislation that are used internationally as follows:

- minimal legislation where affirmative action is, to a large extent, voluntary and depends on courts to define the limits of affirmative action;
- legislation which is detailed and which expressly states the nature and scope of affirmative action required; and
- legislation which provides for collective bargaining to determine the limits and nature of affirmative action.

#### 4.2.1 Minimal Legislation on Affirmative Action

Voluntary affirmative action legislation, which relies on courts to define the limits of its application, means that different Supreme Court Judges could have different interpretations of the policy. This may have an adverse impact on affirmative action. The challenge against Justice Minister Dullar Omar's action is a case in point. In 1996, Justice Minister Omar did not consider white males for promotion to 30 senior public service positions. Omar and the Public Service Minister, Zola Skweyiya were taken to court by a group of white male state attorneys who claimed they were victims of discrimination. The court ruled in favour of the latter (Business Day, 1997:6).

In South Africa, since the take over of the democratic government, affirmative action has been voluntary. Some organisations have embarked on affirmative action because, according to Charlton and van Niekerk (1994:13), they "... feel they had better get their act together now or incur the wrath of a new government and have little time to comply with what is seen ostensibly to be an enforced quota system." Other countries have adopted detailed legislation, which will be addressed in the following discussion.

#### 4.2.2 Detailed Legislation on Affirmative Action

Detailed affirmative action legislation is found in countries like Australia and Canada. In these countries, the law makes it imperative that inequality in employment be addressed and also outlines procedures and strategies of how to go about it. Albertyn and White (1994:60-62) state that, according to this legislation, employers have to:

- make a firm commitment to employment equity or programmes for equal opportunity;
- carry out studies that will reflect the numbers and distribution of the disadvantaged groups in the organisation and also detect barriers and discriminatory practices that hinder occupational advancement of the disadvantaged groups;
- prepare plans and programmes and set goals and timetables to achieve these; and
- report annually on the progress made and problems encountered.

The Australian legislation on affirmative action, the *Equal Employment Opportunities for Women Act*, 1996, lays down an eight-point plan for affirmative action on the basis of gender for all employers in the private sector with more than 100 employees as follows:

- there should be an affirmative action policy statement which all employees should be informed about;
- the organisation should secure the services of a senior manager who should see to the development, implementation and coordination of the affirmative action programme;

- consultations with trade unions and all other employees especially women about the programmes;
- preparation of the staff profile and statistical analysis; and
- an analysis and review of current human resource policies and practices. These include the provision that the employers should:
  - \* develop a system of internal promotions to reward people for performance and also afford them opportunities for further development;
  - \* identify suitable candidates for promotion within the job classifications which have predominantly female employees.;
  - \* establish management programmes for career counselling and succession;
  - \* provide training or get the assistance of external training programmes;
  - \* establish rules and procedures for advertisement, recruitment, selection and appointments which are not based on sex;
  - \* devise and enforce a policy on sexual harassment; and
  - \* monitor and evaluate programmes;

Two reports should be prepared namely:

- \* a public report which should reflect the staff profile and an outline of the programme; and

- \* a confidential report with details of the programme.

It has been established by the Affirmative Action Agency in its evaluation that all employers comply with only part of the legal requirements and evade some provisions. The sanction for non-compliance has been found to be insufficient (Albertyn and White 1994:61-62).

South Africa also has legislation on affirmative action and employment equity. In the following discussion, the South African legislated intervention will be explored.

#### 4.2.3 Legislative Framework on Affirmative Action in South Africa

Having learnt from experiences of other countries, South Africa has devised legislative intervention in order to promote employment equity. Some of this has been in the form of the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996) which will be discussed hereunder.

##### A) The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)

The Preamble to the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996) states that the people of South Africa adopt the Constitution to:

- "heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights;
- lay foundations for a democratic and open society in which government is based on the will of the people and every citizen is equally protected by law."

Rautenbach and Malherbe (1996:283) state that until the introduction of the Interim Constitution, 1996, South Africa did not have any provision in the constitution for the protection of human rights. Since the commencement of the Interim Constitution, 1996, a Bill of Rights formed part of the Constitution. According to the *Constitution*

of the Republic of South Africa, 1996 (Act 108 of 1996), South Africa is a democratic, non-racial and non-sexist state. Chapter 2 of the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996), specifically deals with the Bill of Rights, which is the cornerstone of democracy. It affirms the rights of all people who should be accorded equality, freedom and human dignity.

Section 9 of the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996) recognises the equality of all persons before the law and the right to equal protection before the law. Smit and Naude (1997:48) take this to mean that when it comes to the relationship between individuals and government and the application of the law, no person is better or worse than another person. All people should be treated equally. Equality also refers to full and equal enjoyment of all rights and freedoms. To ensure that people are treated equally, there should be legislative measures to protect those who have been discriminated against. Unfair discrimination by the state or any person against any individual on the basis of race, sex, gender, pregnancy, marital status, ethnicity or social origin, colour, age, sexual orientation, religion, culture, belief, disability, birth, language and conscience, is forbidden. The relevance of this provision applies to selection, promotion, transfer and dismissal of employees. Discrimination in the workplace, which has been practised during the apartheid era, has to be eradicated in order to achieve a public service that is representative of South African society.

According to section 12, every person has a right to freedom and security. No person should be treated in a cruel or degrading way. The unfair and degrading treatment that has been meted out to the disadvantaged members of society, denying them opportunities of upward mobility, is unconstitutional.

Section 16 deals with freedom of expression. This includes the right to receive and to give information or ideas. Communication in the workplace is important, as it keeps employees knowledgeable about all that is taking place regarding their employment. Their participation in decisions helps to create a climate of trust and a feeling of belonging. Intergroup and inter-organisational communication help to

keep all employees happy and motivated. This is one of the ingredients of a successful affirmative action programme. All employees have a right to acquire knowledge through training and development to increase their opportunities of being promoted up the career ladder. This will increase representativeness of the disadvantaged groups.

Section 23 relates to labour relations. It is the right of every person to be accorded fair labour practices. Each employee has a right to form and join a trade union, to take part in activities and programmes of the union and to strike.

Matters pertaining to labour relations will be taken up in the *Labour Relations Act, 1995* (Act 66 of 1995), an important legislation which regulates employment. It is the right of all persons to use the language and take part in cultural activities of their own choice (Section 30). Communication with employees, written or oral, should be in the language that they understand. In implementing affirmative action, managers should accept and manage a diverse workforce and promote multiculturalism. This means that there should be recognition, appreciation and acceptance of similarities and differences in the workforce.

Section 32 refers to access to information. It is the right of all employees to have free access to information held by the state for any other person and which they might use to protect their rights. Employees should know legislative measures and remedies available to protect their rights where such rights have been violated.

According to Section 33, every citizen has a right to lawful, reasonable and procedurally fair administrative action. It is the right of every person to demand written reasons where administrative action has adversely impacted on the rights of the individual. Cheminai *et al.* (1998:101) assert that "... implicitly included here are the rules of natural justice which allow a respondent the opportunity to state his or her case, to be represented by legal counsel if preferred, and to appeal in judgements where the employment status, conditions of service, or career prospects of the employee may be detrimentally affected."

The values and principles of public administration and other provisions of the constitution for promoting affirmative action and employment equity will be explored in the discussion that follows.

**i) Principles and Values Pertaining to Public Administration**

Chapter 10 of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996), deals with public administration and highlights the democratic values and principles that govern public officials in the provision of services and in managing human resources. These values and principles apply to all spheres of government, organs of the state and public enterprises. They include:

- the promotion and maintenance of a high standard of professional ethics;
- the promotion of economic, efficient and effective use of resources;
- impartial, equitable and fair provision of services, free of bias;
- promotion of development;
- being responsive to public needs and encouraging public participation in policy-making;
- encouraging accountability and transparency and providing the public timeously with information which is accessible and accurate;
- good management of human resources and practices and career development in order to enhance human potential; and
- ensuring representativeness of South African people with practices on human resources management and employment based on fairness, objectivity ability



and the need to redress the imbalances of the past, to achieve broad representativity.

Van der Walt and du Toit (1998:110) list the democratic values that should guide the behaviour of public officials as follows:

- "The actions of public managers must be of such a nature that the objectives of the people's representatives are effectively pursued and the rights and freedom of the public are not infringed.
- Political officials accept responsibility for the actions of public managers - public managers in turn must accept responsibility for the actions of their subordinates.
- The action of public managers should be fair and reasonable.
- No public funds may be wasted as a result of inefficient work."

To promote the values and principles of public administration throughout the public service, section 196 of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996), provides for the creation of the Public Service Commission, which will be described in the following discussion.

## **(ii) The Public Service Commission and Public Service**

The Public Service Commission is a single, independent, statutory agency consisting of 14 members appointed by the President, in terms of section 196 of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996). The Commission must be impartial in the exercise of its powers, and perform its functions without fear, prejudice or favour in order to maintain a high standard of professional ethics in the public service, and to promote efficient and effective public administration. Other

state organs are required to protect and assist the Commission to ensure that it functions independently, impartially, effectively and with dignity.

Section 196 (4) of the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996), confers upon the Commission the following powers and functions:

- to promote the values and principles of public administration throughout the public service;
- to monitor, evaluate and investigate the organisation, administration and human resource practices of the public service;
- to issue directives to ensure that personnel procedures regarding recruitment, selection, promotion, transfers and dismissals are in accordance with values and principles of public administration;
- to suggest measures that will promote efficient and effective performance within the public service; and
- to submit annual reports to the National Assembly regarding:
  - \* the Commission's activities and performance of its functions, including findings made, directives issued and advice given;
  - \* an evaluation of the extent to which the values and principles of public administration in the public service are complied with; and
  - \* issue a report to the legislature of the particular province regarding its activities.

Section 197 of the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996) provides for a public service in the Republic, which must be structured

according to national legislation. The employees must execute the policies of the government of the day with loyalty. There must be no nepotism or prejudice against political affiliation in the public service.

Provincial governments are required to recruit select, promote, transfer and dismiss members of the public service in their administrations, according to uniform norms and standards applicable to the public service. The public service is regulated by the *Public Service Act, 1994* (Act 103 of 1994).

According to Chapter 9 of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996), some state institutions were created to strengthen constitutional democracy in South Africa as the following discussion will prove.

### iii) State Institutions Supporting Constitutional Democracy

Some of the institutions which strengthen institutional democracy may have a bearing on the public service and the promotion of employment equity and affirmative action. Section 181(1) of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) lists them as:

- the Public Protector;
- the Human Rights Commission;
- the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;
- the Commission for Gender Equality; and
- The Auditor-General.

According to section 181, these institutions are subject to the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) only, otherwise they are independent. They must act impartially, exercise their powers and discharge their tasks without fear, favour or prejudice. They must be assisted and protected by other organs of the state, using legislative and other measures to ensure that these

institutions are independent, impartial, effective and have dignity. They are accountable to the National Assembly to which they must submit a report at least once a year, regarding their activities and the performance of their functions.

**a) Public Protector**

Craythorne (1997:199) states that the office of the Public Protector has replaced the office of Ombudsman. The office of Ombudsman was first created in Scandinavia, and spread from Denmark, Sweden and Norway to other countries. As early as 1809, Sweden had an Ombudsman to receive and investigate complaints from members of the public in relation to the functioning of the state administration. Sachs (1992:214) states that in recent years, the position has been held by women, and a gender-free term of ombud has thus been found suitable. Many countries have taken up the idea of the ombud as a means of granting the ordinary citizen redress against officials who abuse their office.

The ombud will investigate the allegation and make recommendations to the superiors of the official, who will then decide what the next line of action will be. (Craythorne (1997:200) makes an added point when he states that society and public affairs are becoming more complex. The laws tend to be broad expressions of policy, which require detail to be filled in by subordinate legislation. This gives administrative powers to officials, who also act under delegated powers given to them. Some officials may act unjustly or improperly in the execution of their duties. Craythorne (1997:200) further states that recourse available to the complainant consists of:

- appeal to administrative bodies. Because of the workload from other work that has to be done, the complaint may not be thoroughly investigated; and
- courts. This form of remedy may not be used by many people because of the high litigation costs, and also because many people are not aware of the availability of this remedy.

In South Africa, the majority of the people is either illiterate or has poor education. People do not know that they have to claim their rights. The disadvantaged members of society need remedies to address their grievances, so that these do not build up. Although the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996) provides for the right of citizens to lawful, reasonable and procedurally fair administrative action, it is important that there should be some mechanisms to deal with acts which may perpetuate injustices that may be detrimental to society. The Public Protector comes in handy in this regard (Craythorne 1997:200). The services of the members of the office of the Public Protector are free. This is of great help to the disadvantaged groups who might not afford the high litigation costs. The Public Protector initiates its own investigations where there are serious allegations of improper conduct.

Section 182 of the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996) describes the functions of the Public Protector as follows:

The Public Protector has power which is regulated by National Assembly:

- to investigate any alleged or suspected improper conduct or conduct which might bring about improper acts or unfair influence in state affairs or in public administration at all spheres of government;
- to make a report on the alleged or suspected misconduct and to take corrective action;
- the investigation of court decisions does not fall under the jurisdiction of the Public Protector;
- the accessibility of the Public Protector to the public must be ensured;

- the report issued by the Public Protector must be open for public scrutiny unless, in exceptional cases determined by national legislation, such a report has to be kept confidential; and
- national legislation prescribes additional powers to be exercised and functions to be performed by the Public Protector;

**b) Human rights Commission**

As Sachs (1992:215) puts it, South Africa had apartheid laws and needed to have anti-apartheid laws, not because of a belief that laws would solve all problems. Laws set standards regarding what is right or wrong and provide for fair proceedings in dealing with complaints. They also give the victims of discrimination a reassurance that they can get help. Sachs further states that, although good government provides a foundation for attaining equality, it needed to be supplemented by public agencies manned by persons with well-defined duties. The Human Rights Commission as one of those agencies would have to investigate complaints of discrimination and make recommendations to eliminate it.

According to Section 194 of the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996):

The Human Rights Commission must:

- promote respect for human rights and a culture of human rights;
- promote the protection, development and attainment of human rights; and
- monitor and assess the observance of human rights in the Republic.

The Human Rights Commission has powers, as regulated by national legislation, necessary to perform its functions, including the power:

- to investigate and to report on the observance of human rights;
- to take steps to secure appropriate redress where human rights have been violated;
- to carry out research; and
- to educate.

The Human Rights Commission helps to ensure that the transformation process is informed by human rights issues. The Commission for Gender Equality is also concerned with human rights especially those pertaining to women.

#### c) **Commission for Gender Equality**

According to Sachs (1992:215) gender discrimination has been practised in most countries of the world from the ancient times. There is a need for mechanisms to ensure that women are relieved from burdens and disabilities imposed upon them. The Commission for Gender Equality helps to eliminate employment discrimination against women and promotes their representativity. The Commission also protects women from sexual harassment. Section 187 of the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996) outlines the functions of the Commission for Gender Equality as follows:

- "The Commission for Gender Equality must promote respect for gender equality and the protection, development and attainment of gender equality;
- The Commission for Gender Equality has the power, as regulated by national legislation, necessary to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality."

**d) Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.**

Section 195 of the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996) lists the functions of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities as follows:

"The primary objects of the Commission for the Promotion and Protection of Rights of Cultural, Religious and Linguistic Communities are:

- to promote respect for the rights of cultural, religious and linguistic communities;
- to promote and develop peace, friendship, humanity, tolerance and national unity among cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; and
- to recommend the establishment or recognition, in accordance with national legislation, of a cultural or other council or councils for a community or communities in South Africa.

The Commission has the power, as regulated by national legislation, necessary to achieve its objects, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning the rights of cultural, religious and linguistic communities.

The commission may report any matter, which falls within its powers and functions to the Human Rights Commission for investigation.

The Commission has the additional powers and functions prescribed by national legislation."



The Commission is important in South Africa where each organisation has a diverse workforce, with employees from different cultural backgrounds and with different religious beliefs and languages. The institution promotes respect and acceptance of each other's culture, religion and language as a right of each individual. An employee has a right to be addressed in a language he/she understands. For example, an interview conducted in a language that the candidate does not understand puts the candidate at a disadvantage, and is discriminatory, unless the job requires that particular language. Those who, because of their religion, revere certain days, should be allowed to make arrangements for leave in order to pursue their religious beliefs. This Commission thus promotes human rights, especially those relating to religion, culture and language and this is consistent with the Bill of Rights.

**e) Auditor-General**

The Office of the Auditor-General plays an important role in monitoring the public service and ensuring accountability. The office carries out annual audits of all national departments and provinces. The transformation of the public service is a costly exercise and it is important that control measures be exercised to ensure the ethical use of funds.

According to Section 188 of the *Constitution of the Republic of South Africa, 1996* (Act 108 of 1996) the Auditor-General must audit and report on the accounts and financial statements and financial management of national and provincial state departments, as well as municipal institutions or any other institution that receives money for public purposes.

The Auditor-General must submit audit reports to any legislature that has an interest in the audit, and any other authority prescribed by national legislation.

All reports must be made public, in keeping with principles of transparency and accountability.

Various specific legislative measures have been introduced to regulate the employment of public servants. Most of them have provision for affirmative action and employment equity. The *Labour Relations Act*, 1995 (Act 66 of 1995), as one of such measures, will be examined in the following discussion.

## **B) The Labour Relations Act, 1995 (Act 66 of 1995)**

The *Labour Relations Act*, 1995 (Act 66 of 1995) promotes democracy in the workplace, by ensuring that the rights of employees are promoted and protected. It supports the Bill of Rights contained in Chapter 2 of the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996), which is the cornerstone of democracy in South Africa. In dealing with the rights of individuals, Section 185 of Act 66 of 1995 refers to the right of a person or persons not to be dismissed unfairly. According to Section 187 (1) of the Act, an automatically unfair dismissal occurs when an employer dismissed an employee because the latter took action, or made an indication of an intention to take action against the former for:

"The employee's pregnancy, intended pregnancy, or any reason related to her pregnancy; that the employer unfairly discriminated against an employee, directly or indirectly, on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility."

Craythorne (1997:264) contends that although the Act provides for the unfair discrimination under Section 187 (1)(f), if a person was dismissed, because such a person had reached a retiring age which is normal or agreed upon for persons in a particular employment, that would not be regarded as being an unfair dismissal.

Section 191 of the Act deals with disputes regarding unfair dismissals. If there is no agreement about the fairness of the dismissal, the aggrieved party (employee) may, in writing, and within 30 days of the date of the dismissal, present the case to:

- a) "A Council, if the parties to the dispute fall within the registered scope of that council; or
- b) The Commission if no Council has jurisdiction.

If the council or Commission is of the opinion that the aggrieved party has a good reason, the dispute may be accepted even after the 30 day limit has expired."

According to Sections 191 and 192, the council or Commission must be satisfied that the employer has been sent a copy of the referral by the employee. The council or Commission must try to settle the dispute by conciliation. In the event of the council or Commission certifying that the dispute is still not resolved, or the dispute remains unresolved after 30 days have elapsed since the case was reported to the council or Commission, the employee may refer the dispute to the Labour Court for adjudication, as this dismissal would constitute an automatically unfair dismissal. It is important that the employee proves that there is a dismissal and the employer should prove that the dismissal is indeed fair.

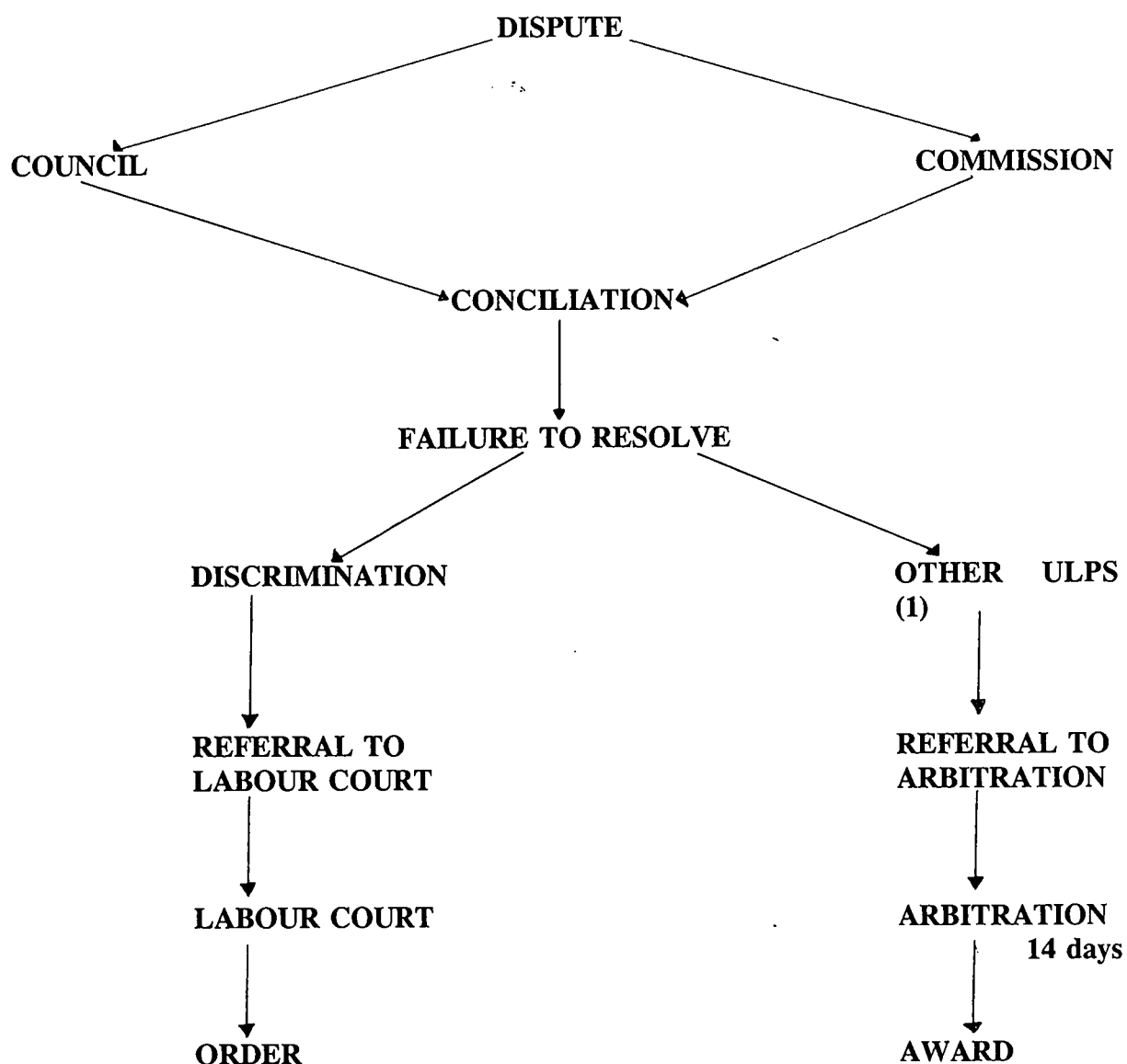
Section 193 of the Act provides for remedies for unfair dismissal. If the dismissal is found to be unfair by the Labour Court or an arbitrator who has been appointed, the latter may order that the employer reinstates the dismissed employee dating back from the date of the dismissal. The employer will have to re-employ the employee in the work initially performed before dismissal, or in any other suitable employment, on terms and not earlier than the day of dismissal, or the employer may be required to pay compensation. The provision for reinstating or re-employing the dismissed employee does not apply if the employee is against such re-employment or reinstatement, or if the employment relationship is not likely to be normal, because of the dismissal, or if reinstating or reemploying the dismissed employee is impracticable. In addition to these remedies, the Labour Court may make any additional order it deems appropriate, if a dismissal is automatically unfair. For example, if the dismissal has been found to be an act of discrimination, the Labour Court may also interdict the employer from the discriminatory practice.

Section 194 (3) imposes limits on compensation. "The compensation awarded to an employee whose dismissal is automatically unfair must be just and equitable in all the circumstances, but not more than the equivalent of 24 months's remuneration calculated at the employee's rate of remuneration on the date of dismissal" (See flow diagram 1 on page 79).

Schedule 7 of the *Labour Relations Act*, 1995 (Act 66 of 1995) refers to transitional arrangements. Part B deals with unfair labour practices which make provision for residual unfair labour practices.

Section 1 and 2 of Schedule 7 of the *Labour Relations Act*, 1995 (Act 66 of 1995) state that an unfair labour practice arises when there is an unfair act as a result of an act or omission relating to an employer and employee regarding discrimination which may be direct or indirect "against an employee on any arbitrary ground, including, but not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language, marital status or family responsibility." It may also relate to the unfair conduct of an employer with regard to the promotion, demotion or training of an employee or employment benefits provided to an employee. When an employee has been suspended, or when disciplinary action which is short of dismissal has been taken against the employee, or when the employer has failed or refused to reinstate or re-employ a former employee according to agreed upon terms, all these are regarded as unfair labour practices (See flow diagram 1 on page 79).

**FLOW DIAGRAM 1**  
**UNFAIR LABOUR PRACTICE**  
**SCHEDULE 7 (Item 2)**



According to this Act, an employee also refers to a person who applies for employment. An employer can adopt or implement policies and practices that will protect and promote upward mobility of individuals or groups who have been subjected to unfair discrimination, so that they can fully and equally enjoy all rights and freedoms. When discrimination is based on the requirements of a particular job, that does not constitute unfair discrimination (Schedule 7, Item 1(b), (c) and (d) and Item 2(a), (b) and (c) of Schedule 7 of the *Labour Relations Act*, 1995 (Act 66 of 1995).

The *Employment Equity Bill*, 1997 enacted in 1998, is an attempt by government to achieve equity in employment by eliminating discrimination. The following discussion will be devoted to the examination of the Bill.

### **C) The Employment Equity Bill, 1997, Government Notice 1840 of 1997**

The *Employment Equity Bill*, 1997 enacted in 1998 plays a supportive role to the *Labour Relations Act*, 1995 (Act 66 of 1995). It aims at eliminating unfair discrimination in the workplace which results from using discriminatory policies and practices. The Bill encourages employers to promote equal opportunities in employment. The following discussion will focus on the elimination of unfair discrimination.

#### **i) Elimination of Unfair Discrimination**

Like the *Labour Relations Act*, 1995 (Act 66 of 1995), an employee, according to Section 5 of the *Employment Equity Bill*, 1997 also refers to a person who has applied for employment.

Discrimination against an employee directly or indirectly "... in any employment policy or practice, on one or more grounds, including race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, political opinion, culture, language and

birth" is forbidden. Harassment of an employee and testing of an employee for any medical condition are regarded as unfair discrimination, except where the testing is permitted by legislation, or is justified by the conditions of employment, medical history, part of the requirements for the job and social policy."

The *Employment Equity Bill*, 1997, deals with disputes as follows:

- Any dispute regarding the afore-mentioned may be referred, in writing, to the Council for Conciliation Mediation and Arbitration (CCMA) within 30 days after the date of dismissal, or 12 months after the act or omission that is said to constitute unfair dismissal respectively. If the time limit has elapsed and the charging party has a valid reason for failing to meet the deadline, the CCMA may accept the referral.
- The CCMA must be satisfied that the charging party has sent copies of the case to all other parties involved in the dispute, and that reasonable steps have been taken to settle the dispute.
- The CCMA must attempt to settle the dispute through conciliation. If this fails, any of the parties involved may refer the dispute to the Labour Court for adjudication or all the parties involved may agree that the CCMA arbitrates the dispute (See Flow Diagrams 2 and 3 on page 82 and 83 respectively).

**FLOW DIAGRAM 2**  
**UNFAIR DISCRIMINATION**  
**CHAPTER II (Section 5)**

1 Year

**ACTION OR OMISSION  
ALLEGED TO  
CONSTITUTE UNFAIR  
DISCRIMINATION**

**DISPUTE**

**CCMA**

**CONCILIATION**

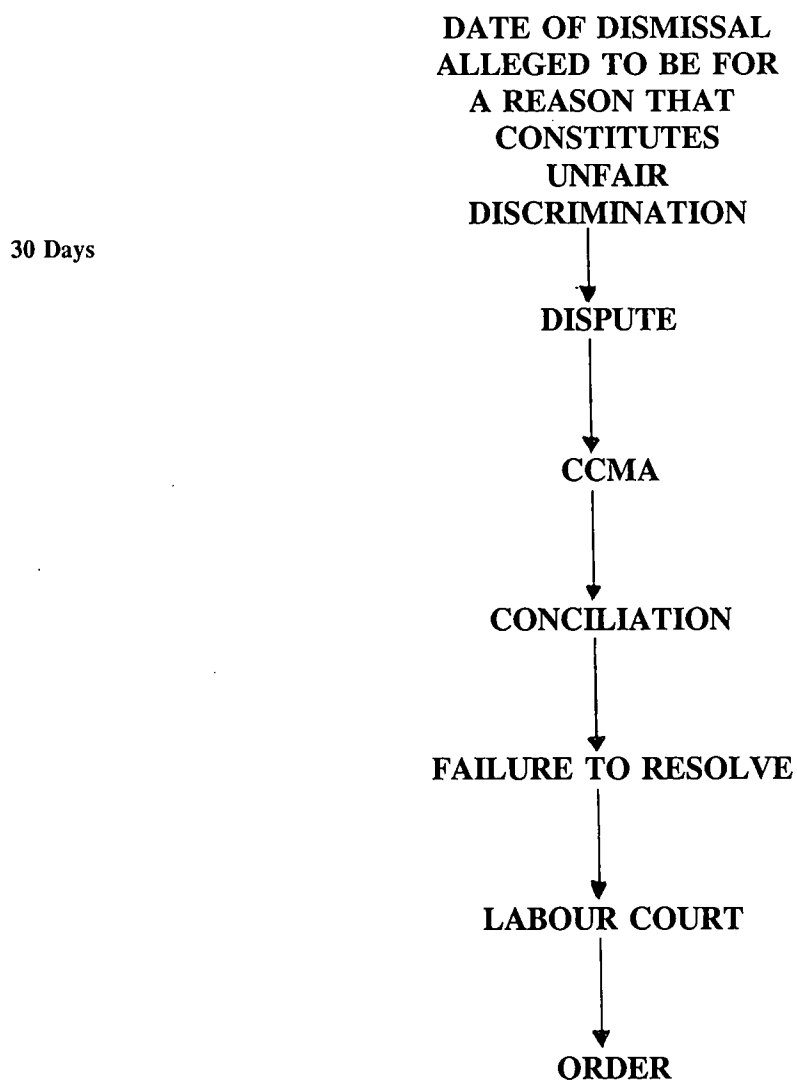
**FAILURE TO RESOLVE**

**LABOUR COURT**

**ORDER**



**FLOW DIAGRAM 3**  
**UNFAIR DISCRIMINATION DISMISSAL**  
**CHAPTER II (Section 5)**



The duties and responsibilities of the employer will be highlighted in the discussion that follows.

## ii) Duties and Responsibilities of the Employer

Sections 8 and 9 refer to black people, women and people with disabilities as designated groups and their employers as designated employers. The employer of such groups is required to take positive steps to identify and do away with all discriminatory practices in employment that adversely affect the designated groups and to promote diversity in the workplace.

Section 12 of the *Employment Equity Bill*, 1997, states that measures to implement affirmative action including preferential treatment in the appointment and promotion of suitably qualified candidates from designated groups as well as training, retraining and development of such groups, are all regarded as positive measures. These measures will help to promote equality of opportunities of the designated group in employment and also ensure their representativity in the entire workforce. However, the *Employment Equity Bill*, 1997, does not provide for the appointment, training and promotion of a specific number of people from the designated groups or the appointment of people from such groups who are not suitably qualified or the creation of new positions in the workforce. There is also no provision in the *Employment Equity Bill*, 1997, for any decision taken by the designated employer regarding employment policies and practices that could cause a complete barrier to prospects of employment of people who are not part of the designated groups.

According to Section 16, designated employers are required to collect data and review current policies, practices and procedures in order to detect any factors in the employment and workplace which can impact negatively on designated groups in the entire workforce.

The employer should prepare an employment equity plan and implement it in order to make progress towards employment equity in the workforce. In terms of Section 17, the plan should:

- clearly indicate the desired objectives to be attained every year;
- indicate the barriers that have been identified and measures taken to remove those barriers;
- set numerical goals to be achieved in order to ensure representativity of the designated groups in the entire workforce within each level and category of the occupation, as well as timetables and strategies to achieve the desired goals. All this is done where the analysis of the staff profile has shown under-representation;
- reflect the timetable for achieving the goals and objectives besides the numerical goals for every year of the plan;
- state the duration of the plan, which should be between one year and five years;
- reflect the procedures in place for monitoring and evaluation of and any progress towards the implementation of the plan;
- state internal mechanisms for the resolution of disputes regarding the implementation of the plan; and
- identify senior managers and other persons in the workforce who should monitor and implement the plan.

Section 21 stipulates that the senior manager(s) responsible for the monitoring and implementation of the employment equity plan should be given authority and means

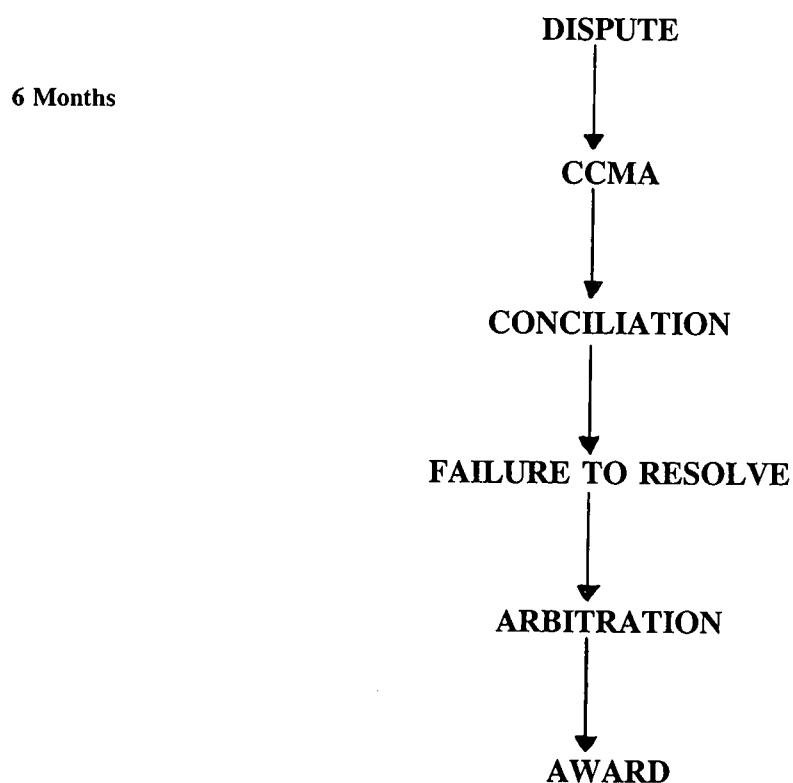
to perform the required functions by the designated employer, although that does not exempt the latter from holding the end responsibility as required by the *Employment Equity Bill*, 1997.

All this is done to ensure that all employees are well informed about what they are expected to do, what their rights are and also remedies available when such rights have been violated. Section 23 states that an employer should establish and maintain records regarding its workforce, employment equity plan and all other records relating to the employer's compliance with the *Employment Equity Bill*, 1997.

Section 24 of the *Employment Equity Bill*, 1997, provides that:

- any dispute regarding the interpretation or application of the *Employment Equity Bill*, 1997, may be referred in writing to the Council for Conciliation Mediation and Arbitration (CCMA) by the disgruntled party. This must be done within six months after the alleged dispute has taken place;
- where the dispute has been referred to the CCMA on any date after the prescribed period has elapsed, the CCMA may accept the referral if charging party forwards valid reasons for such a delay;
- the CCMA should be satisfied that the aggrieved party has supplied the other party with the copy of the referral and that the aggrieved party has taken all reasonable measures to resolve the conflict;
- the CCMA should try to resolved the conflict through conciliation; and
- if conciliation fails to settle the dispute, any of the parties in dispute may request the CCMA to arbitrate between them.

(See diagram 4 on page 87).

**FLOW DIAGRAM 4****AFFIRMATIVE ACTION****CHAPTER III**

In terms of Sections 18, 19, 20 and 37 of the *Employment Equity Bill*, 1997, the designated employer is required to submit reports to the Director-General. The first report must be submitted within 18 months after the commencement of the Act, and should relate to the initial preparation of and consultation regarding the employment equity plan. The annual reports that follow on or before 1 October, should deal in detail with the progress made in implementing the employment equity plan. A register of all employers who have submitted the reports must be kept by the Minister. A public company that is a designated employer must publish a summary of the report in its own financial report, while a State designated employer must table the information in the report in Parliament. The designated employer should prepare another employment equity plan before the end of the term of the existing employment equity plan.

Section 22 deals with a standard notice, which is a summary of the *Employment Equity Bill*, 1997 contained in the regulations issued by the Minister, and which should be displayed in the prescribed form at the workplace so that all employees can read it. An employer is also required to provide in prominent places, which can be readily accessed by all employees:

- the latest report that the employer has submitted to the Director-General; and
- any arbitration award of order of the Labour Court or compliance order regarding the provisions of the Act in relation to that employer, as well any relevant document prescribed by the Act (Chapter 111, Section 22, (1) and (2)).

Section 22 of the *Employment Equity Bill*, 1997, further states that a copy of the employment equity plan, which the employer has, should be made available to all employees, so that the latter can copy and consult it when necessary. It could be a good practice to supply each employee with a copy of the plan, and routinely ensure that every new appointment gets a copy.

To promote equity in employment, a commission should be established and this will be examined in the ensuing discussion.

### **iii) Commission for Employment Equity**

Chapter IV of the *Employment Equity Bill*, 1997, deals with the Commission for Employment Equity. In terms of Section 27, the Commission may give awards of achievement to employers in recognition of their efforts in promoting employment equity. The Commission may also undertake research and report to the Minister on any matter relating to the application of the *Employment Equity Bill*, 1997.

Section 29 and 30 of the *Employment Equity Bill*, 1997, require the Minister to provide the Commission with staff necessary for the performance of the Commission's functions, which include calling upon members of the public to submit written representations and also oral representations at public hearings. The Commission is required to submit a written report annually to the Minister.

Any plan that is being implemented has to be monitored to determine if the implementation is going according to plan. It should be enforced and legal proceedings instituted where there is failure to comply with the requirements. The employment equity plan is no exception. The following discussion will be devoted to monitoring, enforcement and legal proceedings.

### **iv) Monitoring, Enforcement and Legal Proceedings**

In terms of Section 31, employees and trade union representatives have to monitor the implementation of the *Employment Equity Bill*, 1997, and bring any contravention to the attention of:

- "another employee;
- an employer;
- a trade union;

- a workplace forum;
- a labour inspector;
- the Director-General; or
- the Commission"

Section 32 grants a labour inspector the authority to enter an organisation, question and conduct an inspection according to Sections 64 and 65 of the *Basic Conditions of Employment Bill*, 1997. In terms of Section 33 of *Employment Equity Bill*, 1997, a labour inspector is required to obtain a written undertaking from the designated employer to comply with the provisions of the *Employment Equity Bill*, 1997, within a specified period, if the labour inspector has valid reasons to believe that the employer has not complied with the provisions of the *Employment Equity Bill* 1997, by:

- not consulting with employees in order to reach an agreement regarding the analysis of current policies, practices and procedures;
- failing to conduct an analysis as required;
- not preparing and not implementing an employment equity plan to promote employment equity;
- failing to submit the first report within 18 months of the implementation of the equity plan and then yearly reports;
- not publishing its report in the employer's yearly financial report;
- failing to prepare a subsequent equity plan;
- not assigning a manager the responsibility of monitoring and implementing an employment equity plan;



- failure to display a notice, as well as the latest report submitted to the Director-General, at the workplace for all employees to read; and
- not keeping records regarding employment equity.

In terms of Section 34, if the designated employer has failed to give or to comply with the written undertaking, a compliance order may be issued to and served on the designated employer by the labour inspector. Information contained in the compliance order includes:

- all that the employer should do and the period within which all that should be done; and
- the maximum fines that the employer is liable to for failing to act in accordance with the compliance order.

Section 34 further states that on receipt of the compliance order, the employer should have a copy of the order displayed at all prominent places in the workplace. The employer may decide to comply with the order within the stipulated period or to object to the order. If the employer fails to comply with the order within the stipulated period or object as required, the Director-General may apply to the Labour Court so that the order may be a Labour Court order.

In terms of Section 35, the employer may raise an objection to the order with the Director-General in writing, within 21 days of its receipt. If there is a good reason for failure to register an objection within the stipulated time, the Director-General may accept the objection. After the latter has considered representatives of the employer, the whole order or part of it may be confirmed or changed or cancelled, and the time within which any part of the order which has been confirmed or changed has to be complied with as stated. Within 60 days after receiving the representatives of the employer and making a decision, the Director-General must send a copy of the decision to the employer concerned. The employer must then comply with the order

within the specified time, or decide to appeal against the order to the Labour Court. If the employer neither complies with the order nor appeals against the order with the Labour Court, the Director-General may apply to the Labour Court to have that order made a Labour Court order.

According to Section 36, when the employer has received a copy of the decision from the Director-General regarding the objection to the compliance order, the employer must appeal against the order to the Labour Court within 21 days. If the Labour Court is satisfied that there is a valid reason for the failure of the employer to meet the deadline of 21 days, the Labour Court may accept the appeal.

In terms of Section 39, a review may be conducted by the Director-General, to determine whether or not an employer is acting according to the provisions of the Act. The view may be requesting:

- an employer to submit a copy of the current analysis or employment equity plan to the Director-General;
- an employer to submit any book, document, record, correspondence or any other information which the Director-General deems relevant to the review;
- a meeting with the employer to discuss the employment equity plan, its implementation or any matter pertaining to the provisions of the Bill; and
- a meeting with all the stakeholders, employees, workplace forum, trade unions or any other individual who may provide information which is relevant to the review.

Sections 41 and 42 state that as a result of the review, the Director-General may approve of the employment equity plan of the employer, or make a written recommendation to the employer indicating steps to be taken by the employer regarding provisions of the Bill, the period within which such steps should be taken

and any other applicable information. If the employer fails to abide by the recommendation of the Director-General, the latter may refer the failure to comply to the Labour Court.

Section 40 requires the Director-General to determine whether or not an employer is implementing the employment equity plan according the provision of the *Employment Equity Bill*, 1997, and should consider representativity of designated groups at all levels and category of the occupation in the entire workforce regarding:

- national and regional demographics;
- the pool of suitably qualified members from designated groups from which the employer could employ or promote employees;
- the current and envisaged financial status of the employer;
- progress made by other designated employers who are subjected to similar circumstances in implementing the employment equity plan;
- any efforts that the designated employer has made towards implementing its employment equity plan; and
- the progress made in eliminating barriers in employment which impact adversely on members from designated groups.

To compel employers to develop and implement measures to promote representativity of disadvantaged groups, the Act provides for maximum fines for those employers that perpetuate discrimination in employment. The maximum fines are reflected in the following tabulation.

v) **Maximum Fines Imposed for Failure to Comply with the Act**

According to Schedule 1, there is a maximum fine faced by employers who contravene some provisions of the Act (See the following tabulation taken from page 44 of the Government Gazette No 390 (No 18481).

**TABLE 1 - MAXIMUM PERMISSIBLE FINES THAT MAY BE IMPOSED FOR CONTRAVENING THIS ACT**

This Schedule sets out the maximum fine that may be imposed in terms of this Act for the contravention of certain provisions of this Act.

PREVIOUS CONTRAVENTION	CONTRAVENTION OF ANY PROVISION OF SECTIONS 13, 14, 16, 17, 18, 19, 20, 21, 22, 23 AND 39 (2)
No previous contravention	R500 000-00
A previous contravention in respect of the same provisions	R600 000-00
A previous contravention within the previous 12 months or two previous contravention in respect of the same provision within three years	R700 000-00
Three previous contraventions in respect of the same provision within three years	R800 000-00
Four previous contraventions in respect of the same provision within three years	R900 000-00

Source: Government Gazette, 1 December 1997 (No. 18481).

vi) **Analysis of the Proposed Act**

In the wake of the *Employment Equity Bill*, 1997, enacted in 1998, comments have been coming forth in support and critical of the Bill.

President Mandela, in his Opening of Parliament speech, described the *Employment Equity Bill*, 1997, as "another nail in the coffin of apartheid," stating that those who criticize it are motivated by self-interest. Hattingh (Daily Dispatch, 19 February 1998:20) states that Innes, a labour consultant and editor, contends that the government could not allow white people to exercise monopoly control over the economy of the country, otherwise it would not win the next election. Hattingh further refers to Gamsu, a human resource consultant who believes that the Bill, if properly implemented, will develop a better quality workforce. It will require employers to review their employment practices, which are based on stereotypes, prejudice and personal practices and force them to examine their workforce. This could unearth employees with potential, what Gamsu refers to as "diamonds in the rough."

Hattingh (Daily Dispatch, 19 February 1998:20) further states that Collings, a Financial Mail assistant editor, maintains that, although the Bill is meant to ensure that the composition of the workforces of organisations reflects the racial composition of the country, this may be difficult for some organisations to achieve. Collings further asserts that the Bill acknowledges the possible lack of suitably qualified blacks, and that some organisations can ill-afford training and development programmes. However, the Bill takes into consideration the natural inclination of some organisations to pay lip service to training and development of blacks, and thus forces organizations to make plans and set numerical goals and timetables.

Jeffery (Daily Dispatch, 12 March 1998:12) maintains that the argument by Collins that the ANC needs the Bill to get votes in order to win the next election does not hold water. Seeking re-election should not determine an important economic and labour market policy. Furthermore, the Bill is not likely to achieve a better life for all as promised in the last election. It creates a demand for skilled black people, and this demand would be better met through more investment and faster economic growth. However, Hattingh (Daily Dispatch, 19 February 1998:12) quotes Sono, the President of the South African Institute of Race Relations, who believes that the Bill will act as a disincentive to employment growth and business expansion. Jeffery

alludes to this and states that the Bill will not benefit the poor because they will not be suitable for higher positions, and their chances of getting employment in lower positions are slim, because the provisions of the Bill discourage the creation of jobs.

The memorandum, which accompanies the Bill, envisages a demographic representation of 76 percent for Africans, 52 percent for women and 5 percent for the disabled to be achieved within 5 years. In practice, Jeffery (Daily Dispatch, 12 March 1998:12) argues, some organisations may find it difficult to make reasonable progress to meet the requirement. Organisations may find it difficult to dismiss white employees unfairly in order to make room for new employees, especially if there are very few retirements or resignations or deaths. The organisations may not be in a position to create new jobs in order to take on Africans, women and the disabled. Moreover, the penalty for non-compliance which ranges from R500 000-00 to R900 000-00 is quite severe, and is more suitable for criminal offenses. The Bill will also encourage unsuccessful employees to bring discrimination suits against employers who will have to prove their innocence, failing which they might be subject to penalties and compensatory damages. Added to this are the legal costs. The whole exercise might prove to be very costly and crippling to some organisations, especially the smaller ones.

Although the Bill may have some weaknesses, one can tell a mile away that if properly implemented, it can eliminate employment discrimination. It forces those employers who still want to uphold the privileges of the advantaged groups to break with the past and accept change, so that all employees are accorded equal employment opportunities. The legislation is a response to the call by the Minister for the Public Service and Administration (White Paper, 1995:10.8) for legislation which would be dovetailed with the *Labour Relations Act*, 1995, in order to strengthen affirmative action programmes.

The Ministry for the Public Service and Administration issued the *White Paper on the Transformation of the Public Service*, 1995, which also promotes representativeness

and affirmative action. The following discussion will focus on the relevant chapters of the White Paper.

**D) White Paper on the Transformation of the Public Service, 1995**

The transformation of the public service is an important process that will ensure that the new public service is representative of the South African society. This is in line with the mission and vision of the democratic government, which will be discussed in the following paragraph.

**i) The Mission and Vision for a Transformed Public Service**

According to Chapter 2 of the *White Paper on the Transformation of the Public Service*, 1995, the democratic government of South Africa is bent on bringing about change in the lives of the majority of people in South Africa who were disadvantaged by apartheid. To this end, the government has adopted a vision of being "committed to continually improving the lives of the people of South Africa by a transformed public service which is representative, coherent, transparent, efficient, effective, accountable and responsive to the needs of all." Chapter 2 further states the government thus undertakes to create a public service that is people-driven and people-centred and that promotes equity and equality. To achieve this, it has to transform the state from being dictatorial and discriminatory, to a state that serves and empowers all the people of South Africa.

While the vision of transforming the public service has to be fulfilled, there are many obstacles which have to be addressed and overcome. These, according to Chapter 3 of the *White Paper on the Transformation of the Public Service*, 1995 include:

- lack of representativeness in the public service in terms of race, gender and disability;

- resistance to and fear of change, especially by those who have been advantaged by the past policies. Some of the public servants that are highly skilled may, out of fear of what change might bring about or resistance to change, leave the public service. Some may emigrate to other countries, taking away skills acquired at high costs of the country;
- lack of skills and capacity as a result of the discriminatory effects of the apartheid system of education. Added to this is the lack of in-service training and education opportunities for the disadvantaged groups within the public service resulting in lack of capacity; and
- financial problems emanating from the fact that the new government inherited a situation where the bulk of the national consumption budget was taken up by salaries, wages and benefits of public servants. This causes a problem because the financial resources available for the transformation of the public service are meagre, given the fact that the government is also under pressure to increase the salaries of employees especially the workers who receive very low wages.

The government has identified certain areas, which are of priority for the process of transformation. Some of these include:

- promotion of representativeness of the public service and affirmative action;
- development of human resources; and
- improvement of conditions of employment and labour relations.

To address these priority areas, policies and strategies have to be developed and implemented. There are various structures and agencies involved in the transformation process. The Office of the Minister for the Public Service and



Administration plays an important role in facilitating the transformation of the public service and has, among others, the following responsibilities:

- to ensure that the transformation process is coordinated at national and provincial levels of government;
- establishing research structures and strategies to support the transformation process; and
- concentrating on public service policy and reform and labour relations policy.

Chapter 10 of the *White Paper on the Transformation of the Public Service*, 1995, deals with representativeness and affirmative action. The need for representativeness is identified as one of the main foundations of a non-sexist, non-racist and democratic society, and is one of the key principles of the new government. Black people, women and disabled people are excluded from all positions of influence, with the majority of positions in government still held by whites. All this results in wastage of human potential.

To achieve representativeness, affirmative action programmes have to be implemented. Chapter 10 of the *White Paper on the Transformation of the Public Service*, 1995, identifies the following problems likely to be encountered during the introduction of affirmative action:

- the danger of compromising other transformation goals like efficiency and effectiveness in the process of taking affirmative action as a priority;
- tokenism and criticism that affirmative action is merely concerned with numbers in ensuring representativeness; and

- possible conflict between affirmative action and other employment conditions and rights which are guaranteed in the constitution like equity and non-discrimination.

Detailed guidelines for departmental affirmative action programmes are outlined in Chapter 10 of the *White Paper on the Transformation of the Public Service*, 1995. All departments are required to prepare plans for internal monitoring and evaluation of their affirmative action programmes. Annual progress reports should be submitted by departments to the Cabinet and Parliament for scrutiny.

Chapter 13 of the *White Paper on the Transformation of the Public Service*, 1995, focuses on human resource development and training as an important factor in:

- enabling public servants to take advantage of the opportunities for participative management and decision-making;
- forming an integral part in promoting representativeness in the public service;
- enabling public servants to acquire knowledge and skills useful for implementing RDP; and
- facilitating the introduction of institutional changes in the public service.

The government emphasises the role of historically disadvantaged tertiary institutions in their contribution towards the institutional, social and cultural transformation of the public sector.

Some of the provisions of the *White Paper on the Transformation of the Public Service*, 1995 resonate with the principles and values of public administration, as laid down in Section 195 of the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996). The *Skills Development Bill*, 1997, promotes human resource development and training and will be examined in the following discussion.

### E) Skills Development Bill, 1997

The Department of Labour has issued the *Skills Development Bill*, 1997, in order to promote and facilitate training and development of human resources in the public sector and private enterprise. This will also help to promote representativeness and employment equity, as the skills of the disadvantaged groups will be improved, thereby increasing their potential and competitiveness. All this would promote efficient and effective service delivery. The main aim of the *Skills Development Bill*, 1997 is:

"To provide for a skills development strategy which is flexible, accessible, decentralized, demand-led and based on a partnership between the public and private sectors, and for that purpose:

- to provide for the establishment of a Research and Strategic Planning Unit to collect and disseminate information on labour market skills trends;
- to provide for the establishment of Employment Services to enable persons to be active participants in the labour market;
- to provide for leadership and other training programmes that lead to registered qualifications;
- to promote high quality and training by a system that is cost-effective, accountable and meets training needs;
- to provide the financing of skills development by means of a levy-grand scheme;
- to provide the coordination of the strategy by Sector Education and Training Boards, the National Skills Authority and the Minister of Labour; and

- to provide for incidental matters."

Section 1 of the *Skills Development Bill*, 1997, identifies the objects of the Bill as follows:

- "a) to provide a skills development strategy which is flexible, accessible, demanded, and based on partnerships between the public and private sector;
- b) to improve the competency levels of the workforce in order to promote the level of responsibility of employees, and to enable employers to improve rising levels of productivity and competitiveness;
- c) to enable persons of working age who are outside of work to obtain nationally recognized qualifications indicating work readiness;
- d) to enable persons to enter and remain in employment or become self-employed and enjoying a rising standard of living; and
- e) to provide for special assistance to target groups to enter and remain in the employment or become self-employed."

The *White Paper on Affirmative Action in the Public Service*, 1998, as one the Legislative interventions on affirmative action in South Africa will be dealt with in the following discussion.

#### **F) White Paper on Affirmative Action in the Public Service, 1998**

The *White Paper on Affirmative Action in the Public Service*, 1998, is another important legislative measure that should be effective in promoting affirmative action and employment equity.

In terms of Chapter 1, the purpose of the *White Paper on Affirmative Action in the Public Service*, 1998, is to ensure that departments at National and Provincial levels of government know what they are required to do in developing and implementing affirmative action programmes, and that role players also know what their responsibilities are in terms of accountability, monitoring and coordination.

Paragraph 1.7 states that while the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996) requires the Public Service to reflect the demographics of the South African Society, the *White Paper on the Transformation of the Public Service*, 1995, actually gives a number of specific targets to achieve broad representativity of the South African Society in the Public Service.

According to paragraph 1.17, affirmative action should redress the imbalances that resulted from discriminatory practices, so that black people which include Africans, Indian and coloured people, as well as women and people with disabilities, can benefit from the opportunities that obtain in an equitable Public Service. Furthermore, affirmative action can be applied in distorted ways which could result in one group being boosted at the expense of others. For example, white women could be recruited under the guise of affirming women, at the expense of black, coloured and Indian women. Similarly, there is a tendency to hire black people and women while neglecting people with disadvantages. Such practices should be monitored and eradicated.

Chapter 2, paragraph 2.2 of the *White Paper on Affirmative Action in the Public Service*, 1998, gives the objectives of the Public Service Affirmative Action as follows:

- "... to enhance the capacities of the historically disadvantaged through the development and introduction of practical measures that support their advancement within the Public Service.

- To inculcate in the Public Service a culture which values diversity and supports the affirmation of those who have historically been unfairly disadvantaged.
- To speed up the achievement and progressive improvement of the numeric targets set out in the White Paper on Transformation of the Public Service."

Paragraph 2.4 stresses the need for good management of human resources for the successful implementation of affirmative action programmes, as well as the importance of integrating human resource management and development with affirmative action, which means that each manager will play a leading role in affirmative action programmes.

In terms of paragraphs 2.6 - 2.8, a diverse workforce that is representative of the population of the country should be achieved within the available means. Affirmative action should not undermine efficiency and cost-effectiveness in the Public Service. The importance of budgeting and careful use of funds is thus very important, as large sums of money will be required to cover the costs of affirmative action activities. Communication, consultation and transparency within the organisation is very vital, so that all employees understand the affirmative action policies. The employees will thus accept and support these policies better.

Chapter 3 of the *White Paper on Affirmative Action in the Public Service*, 1998, deals with the development and management of an affirmative action programme. The affirmative action programmes for the Public Service, according to paragraph 3.4 to 3.14, should state the minimum requirement of:

- numerical targets;
- staff profile;

- a detailed survey which is repeated annually to determine the needs and perceptions of all employees, irrespective of whether they belong to the three target groups or not;
- a review of current practices to identify those that may prevent the recruitment, retention and upward mobility of members of the three target groups in employment and to apply appropriate remedies where necessary;
- demonstration of employee's support for the affirmative action policies of the organisation;
- an affirmative action plan which should include the objectives of affirmative action, targets, available financial and other resources for achieving the stated objectives, monitoring reporting and assessment, conflict resolution and consultation;
- identification of the responsibilities of the role players for the implementation of the affirmative action programme of the department including those of the Director-General or Departmental Head, Line Managers, Head of Human Resources, Head of Human Resources Development, senior managers and the affirmative action programme manager; and
- a policy statement which clearly states the commitment of the department to affirmative action.

The White Paper also gives guidance on how an affirmative action programme is developed.

In Chapter 4, the various steps which should be followed by departments implementing an affirmative action plan are set out. In terms of paragraphs 4.9 - 4.11, organisations have to submit reports to the Public Service Commission, Department of Labour and the Parliamentary Portfolios Committee on the Public

Service and Administration. Both the Department of Labour and the Parliamentary Portfolio Committee on the Public Service and Administration can take action against departments and administrations that are failing to carry out their duties and functions regarding affirmative action as required. Annual reports tabled before the various legislatures will reflect progress made in implementing affirmative action. To monitor and evaluate the process of affirmative action, the Department of Public Service and Administration will periodically ask for information on affirmative action and then report to Parliament regarding the effectiveness of the policy. At the end of the year 2000 a report will be submitted and then every three years, suggesting improvement in the national minimum targets for representativeness of the three target groups and also changes in policy found necessary through experience.

#### 4.2. CONCLUSION

From the discussion, it can be deduced that the Government, through the *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996) and other legislative measures, is committed to protecting, respecting and promoting the rights, dignity, freedom and equality of every person in South Africa. The *Constitution of the Republic of South Africa*, 1996 (Act 108 of 1996) does provide for representativity of the South African people in public administration and the need to redress past imbalances. There is also provision for good human resources and career development practices to enhance human potential. These are essential for ensuring that the disadvantaged groups acquire the necessary skills for occupational advancement.

Specific legislative provisions that promote employment equity like the *Labour Relations Act*, 1995 (Act 66 of 1995) and the *Employment Equity Bill*, 1997, are likely to abolish discrimination in the workforce and to promote representativity of the disadvantaged groups. Even those employees who have been paying lip service



to the transformation process will be forced to comply with the legislation, to avoid high penalty for non-compliance.

The following chapter will be devoted to the affirmative action model.

## **CHAPTER FIVE**

### **DEVELOPING AN AFFIRMATIVE ACTION MODEL**

#### **5.1 INTRODUCTION**

Affirmative action is an emotive issue in contemporary South Africa. It requires careful and systematic planning and development of processes and methods that will suit local conditions. It should be seen as part of the ongoing transformation process, to address and redress the injustices that disadvantaged groups have been subjected to. In countries like the USA, where affirmative action was first introduced, the concept is still not a success story. However, the positive aspects of affirmative action indicate that it is worth the effort. Attempts should be made to reduce or possibly eliminate problems that may be encountered during its implementation.

This chapter will address:

- \* The objectives of an affirmative action programme.
- \* The guiding principles that should be considered for developing successful affirmative action programmes.
- \* The various steps involved in the affirmative action process which include the preparation and the implementation of the programme.

#### **5.2 THE PURPOSE OF AN AFFIRMATIVE ACTION PROGRAMME**

Before any discussion on affirmative action programmes is made, it will be necessary to discuss the objectives of such programmes which are laid down in the Guide for the Practical Implementation of the Agreement on Affirmative Action and Equal Employment Opportunity in Local Government (1995:para. 2.1) as follows:

- to correct the imbalances in the composition of the present and future workforce with regard to race and gender by means of an affirmative action programme for a limited period, until the entire workforce in an organisation is representative of the labour market;
- to level the playing fields in order to enable members of disadvantaged groups to compete on equal footing for jobs with other candidates;
- to remove all forms of employment discrimination;
- to identify and eliminate any barrier or practice that may impede the hiring of employees and their occupational advancement, especially those who have been historically disadvantaged by prejudices that favour some groups and disadvantage others;
- to encourage transparency and to ensure that all groups are included in the decision-making process relating to affirmative action. This promotes an interdependent relationship and trust amongst management, employees and trade unions;
- to create organisational structures, practices and culture that are non-discriminatory and that encourage employees to accept and respect diversity; and
- to foster team spirit that will promote the achievement of the goals of the organisation.

Having decided on the purpose of the affirmative action programme, it is important to explore some of the factors that may promote or hinder the successful implementation of an affirmative action programme.

### **5.3 PREREQUISITES FOR SUCCESSFUL AFFIRMATIVE ACTION PROGRAMMES**

The way in which affirmative action programmes are implemented will, to a great extent, determine their success or failure. The following are some of the requirements for successful affirmative action:

#### **5.3.1 Avoidance of Making Changes too Rapidly**

It is worth noting that affirmative action is a process that cannot be implemented overnight. Alfred (1991:11) warns against making changes too rapidly and cautions organisations not to allow themselves to be pressurised into promoting members of the disadvantaged groups to higher positions too rapidly. During implementation the programmes should be monitored and evaluated and specific needs of each organisation identified. These will be highlighted in the following discussion.

#### **5.3.2 Monitoring Evaluation of the Programme and Identification of Specific Needs of Each Organisation**

Although planned beforehand, affirmative action programmes need monitoring and evaluation throughout their implementation, so that the necessary changes can be effected. Weiner (1993:86) puts it eloquently when he states that "... monitoring, appraisal and reassessment must be essential elements in a policy. If a programme does not work, have the humility-and the political courage- to drop it." Nel (1995:205) is of the opinion that no affirmative action programme applies to all countries and all organisations alike. Each programme should be based on the specific needs of each country and each organisation. Commitment of all stakeholders is important as the following discussion will highlight.

### 5.3.3 Commitment of All Stakeholders to Affirmative Action and the Importance of Communication

- All stakeholders (employers, employees, and unions) should be involved in and committed to the affirmative action process, so that they develop that feeling of ownership. They will put their weight behind it to ensure that it succeeds. As Griffiths (1993:15) puts it, "... another vital factor in the affirmative action battle plan is that of commitment. Unless significant stakeholders are committed to the policy, it will founder in promises and vague diversionary tactics."
- A high degree of commitment of top management to the process is essential. Human (1993:34-35) asserts that this commitment should not be confined to mere talking about affirmative action at social functions and in annual reports. It entails practical involvement of top and senior line managers in the implementation of programmes. They have to be trained so that they acquire skills in people management. There should be active monitoring and a system of reward for sections that have made progress in managing diversity effectively.

Affirmative action should not be seen as an inconvenience to the organisation, but rather as a necessary mechanism for exploiting the potential of human resources of South Africans and for addressing and redressing the disadvantages of the past.

- Communication plays a vital role in fostering commitment of and cooperation among all stakeholders. Managers should devise ways and means of ensuring effective communication between groups and among different departments and sections of a public organisation. This will enhance motivation and job satisfaction of all employees. Weiner (1993:85) concurs that if there is commitment to the programme, an open discussion should be encouraged. Weiner further states that, "... simply writing a law or announcing a

programme without widespread support is a sure recipe for disaster. Without broad commitment, programmes will be contentious and improperly implemented."

Members of the disadvantaged groups should realise that they must actively take part in an affirmative action process and should not expect to be placed in positions that they do not deserve, merely because they happen to be target groups. Moreover, cultural diversity should be accepted and exploited to strengthen an organisation. Some of these concerns will be addressed in the ensuing discussion.

#### **5.3.4 Eradication of the Culture of Entitlement of Disadvantaged Groups and Acceptance of Cultural Diversity**

The culture of entitlement that plagues the minds of many historically disadvantaged groups should be eradicated. They should pull themselves up by their own bootstraps and should be empowered such that they refrain from relying on handouts from the state or society. Schwella *et al.* (1996:93) maintain that "... the process of development must be fostered among all employees. They must be encouraged to take an active part in their own development." Development should also involve the whole organisation with all the stakeholders. It should not be confined to training programmes for diversity management for whites. The culture and mindset of the workplace should change. Everybody should be encouraged to break with the past and accept that change has to take place. According to Sonn (1993:30-31), there should be a change of perceptions and attitudes. It is necessary to depart from the racist belief that anything that is African is inferior. What is needed is appreciation and acceptance of the cultural differences among employees which can contribute towards the effectiveness and productivity of the organisation.

Affirmative action programmes are not likely to succeed if there is poor economic growth in a country. This will be discussed in the following paragraph.

### 5.3.5 Promotion of Economic Growth in the Country

Puthucheary (1993:37) believes that a high level of economic growth in a country contributes to successful affirmative action programmes. Conversely, poor economic growth results in a high level of unemployment and this impacts negatively on affirmative action programmes. Advantaged groups may be more adversely affected and may be resentful and disillusioned. According to Weiner (1995:13), "... affirmative action programmes falter when economic growth is low and a fixed or even dwindling pie is then divided among contending communities." Maphai (1993:9) contends that government should step in with policies that will promote economic growth and redistribution.

### 5.3.6 Addressing Past and Present Imbalances

According to Picard (1994:268), opportunities for education and training in general should be created, in order to enlarge the pool from which employees will be recruited without being criticised of practising reverse discrimination. Moerdyk (1992:1) concurs that affirmative action should not only be confined to addressing past and present imbalances by providing opportunities for training and development of disadvantaged groups in the working environment, but should extend to the wider community.

Human (1991:254) contends that affirmative action should be considered during recruitment and selection and thereafter all employees should have the opportunity to develop their potential, so that they can move up the occupational ladder based on merit. During selection and assessment of potential candidates, the traditional approach of formal education and experience should rather be replaced by an approach that addresses the actual requirements for the job more adequately.

Nel (1995:206) maintains that the operation of affirmative action programmes should not be left entirely to the state but various organisations, tertiary institutions and non governmental organisations should be involved.

Pieterse (Affirmative Action Specialist of the Cape Town City Council) highlights the following measures in addressing past and present imbalances:

- there should be personnel and career plans so that all employees know what the position is, regarding occupational advancement and development; and
- the organisation should engage the services of an affirmative action officer, but the daily implementation of affirmative action should be the responsibility of the line managers and not the human resource department.

Besides the prerequisites for successful implementation of affirmative action, there are strategies which can be effective in transforming the public service to a non-racial and non-sexist one. Some of these are identified in the following paragraphs.

#### **5.4 STRATEGIES FOR IMPLEMENTING AFFIRMATIVE ACTION**

These strategies can be divided into short and long term actions. The following paragraphs will be devoted to short term strategies.

##### **5.4.1 Short Term Actions**

Short term actions should be undertaken in order to bring about the required transformation of the public service. Leonard (1991) contends that the skills of the current public service at all levels should be determined and public servants retrained. The individual incumbent administrators will thus not feel threatened in their positions. Thomas (1992:192) believes in the strategy of rationalisation of public service at all levels of government. According to this strategy, public servants would be assessed and, on this basis, either retained or released. Those who are retained would have to accept the possibility of being transferred to any part of the country, and also a possibility of being downgraded or even upgraded within the public service.



Picard (1994:263) believes in the orientation of the current public servants on the strengths and weaknesses of a non-racial public service. Sensitivity workshops, short-term training and small group discussions will help to eliminate problems that may exist between the administrator and the new recruits from the disadvantaged backgrounds, to ensure that the behaviour of public servants within organisations promotes a transition towards non-racialism. Oberholster (1993:26) stresses the importance of adopting a strategy that will bring about change in values, norms and attitudes and to use such attributes to promote the overall effectiveness of the organisation.

The importance of long term strategies should not be underestimated and these will be addressed in the following discussion.

#### **5.4.2 Long Term Strategies**

Staff development and training carried out by public institutions is important in implementing affirmative action. However, Picard (1994:226) argues that besides public institutions, staff development and training should be provided by tertiary institutions, in order to develop a non-racial and non-sexist public service. These institutions should be sensitive to the needs of government and should adjust their curricula to address these needs.

Education can also help to eliminate the inability to realise the limits of knowledge and skills an individual has, what Picard and Garrity (1992) refer to as bounded knowledge. A student who recognises such limitations, will be modest enough, as a manager, to get assistance or expert knowledge where need arises, to the benefit of the organisation.

The following discussion will examine the various steps involved in the affirmative action model.

## 5.5 STEPS INVOLVED IN AN AFFIRMATIVE ACTION MODEL

Affirmative action programmes cannot be managed in an unplanned, disorderly manner. Various logical steps should be followed, monitored and evaluated. These may be grouped under phases of preparation and implementation. Nel (1995:199) regards 18 months as the optimal period for the implementation of an affirmative action programme, including the preparation phase. However, Nel acknowledges the fact that management styles in various organisations differ and these would influence implementation and as such, there should be no hard and fast rule regarding the sequence of steps, period and phases of implementation.

### 5.5.1 Preparatory Phase

This phase entails planning to avoid employing ad hoc measures which may lead to failure of the whole process. Hofmeyr and Whata (1991:20-21) contend that an affirmative action strategy should be devised and followed, in order to avoid being pressurised by the government and members of the public to implement measures which do not work.

#### a) Awareness of the Need for Affirmative Action

It is important that top management understands why affirmative action is indeed necessary. The awareness of this need may result from tensions within, individual proposals or criticism from outside the organisation. Adonisi *et al.* (1995:133-134) identify the following factors as being instrumental in bringing the attention of management to the need for affirmative action:

#### **Internal Factors**

These originate within a public institution and include the following:

- trade unions and employee organisations of disadvantaged groups demanding training and development for their members to increase their opportunities for occupational advancement;
- formal and informal groups of employees demanding an end to discrimination against blacks and women; and
- human resource departments advocating improved practices in the department of human resources including affirmative action.

### **Internal Factors**

These factors arise outside a public institution and make the management aware of the need to embark on affirmative action.

- A change from a dictatorial to a more democratic government. In South Africa for example, all discriminatory laws were repealed and the present government has had to put in place some measures to correct the effects of discrimination in employment that resulted from apartheid policies.
- People of South Africa in general may step up their demand for equality. In contemporary South Africa, members from disadvantaged backgrounds may be demanding equal treatment with their counterparts from advantaged groups. This may be from political parties or interest groups.
- There may be a need for organisations to have a complement of employees that reflects the demographics of the area with regard to race, gender and language.
- Political change in the country with prospects of economic growth and foreign investment. Some overseas companies may not be keen to invest in a country

where discrimination is rife. This may exert pressure on the latter to introduce affirmative action in order to promote foreign investment.

- Anticipated legislation on affirmative action which may require organisations to follow certain criteria, and which may also introduce penalties for those that do not comply with the legislation. Before the enactment of the *Employment Equity Act*, 1998, some organisations embarked on affirmative action so that, by the time legislation was passed, they would not be under pressure to implement affirmative action. They would thus be spared the penalties for non-compliance.

When the need for affirmative action has been addressed, moral support should be provided by an organisation.

#### **b) Provision of Moral Support**

Klingner (1980:366) states that human resource handbooks should contain a statement that affirms the organisation's support for and commitment to equal employment opportunity and affirmative action.

A public institution should also provide for an affirmative action officer and a steering committee which will be explored in the following paragraphs.

#### **c) Affirmative Action Officer**

Where possible, public institutions in South Africa should secure the services of an affirmative action officer or specialist employed in a full time capacity or on contract for a specified period, who should preferably be a member of disadvantaged groups. The reason for this is that it will promote the visibility of an affirmative action programme. If a public institution cannot afford to employ an affirmative action officer, a senior manager should be assigned the duties of an affirmative action

officer. According to Pieterse, Affirmative Action Specialist, of the City of Cape Town, the affirmative action officer would meet the following criteria:

- knowledge of laws and regulations relating to affirmative action;
- command respect and credibility within the organisation and be able to influence supervisors;
- be able to gain the confidence and cooperation of line managers so that they work together in handling problems that may arise; and
- the ability to detect human resource practices that may promote or retard progress in affirmative action.

According to Klingner (1980:368), the functions of the affirmative action specialist include the following:

- to market the organisation's commitment to affirmative action;
- to assist line managers when conducting a utilisation survey, identifying areas where under-utilisation of disadvantaged groups exists, setting objectives and time tables in order to determine progress in the implementation of affirmative action, and also estimating resources needed for the whole process;
- to draw up a system of collecting data from the various units of the organisation and to determine if the system is being adhered to;
- to report periodically on the problems and progress on affirmative action to top management;
- to liaise between an organisation, employee organisations and trade unions; and

- as Latsy, Affirmative Action Officer of the City of Jackson in Mississippi puts it, to receive and investigate complaints from any person regarding the implementation of affirmative action and make recommendations to top management.

The affirmative action specialist should work with what could be called an affirmative action steering committee. The following discussion will deal with the affirmative action steering committee.

#### d) The Affirmative Action Steering Committee

An Affirmative Action Steering Committee should be established to facilitate the affirmative action process, starting from formulation, through implementation, monitoring and evaluation including any negotiations that may be involved. This committee should basically ratify the affirmative action plan drawn up by the affirmative action officer in consultation with other sectors. Such a committee should consist of a cross-section of staff with equal representation from all stakeholders. Charlton and Niekerk (1994:155) suggest that the committee could consist of:

- the chief executive officer (as convenor);
- senior line managers;
- union representatives;
- representatives of middle management, junior management, supervisory management, administrative staff and non-unionised employees; and
- human resource representatives, and affirmative action support person.

Human (1993:46) is of the opinion that the committee which should endeavour to include representatives from various departments, should not be too big, twelve being regarded as a reasonable number. Committee members should preferably be chosen by colleagues on the basis of their interest in affirmative action or skills in this field. The National Labour Relations Forum Agreement on Affirmative action and *Equal Employment Opportunity* (1994: Paragraph 7.1.5 and 7.1.6) states that besides the

committee, it may be necessary to appoint subcommittees including technical experts to carry out specific tasks. The subcommittees could monitor and evaluate specific programmes and make the necessary recommendations.

#### e) **Commitment to Affirmative action and Consultation**

The commitment of the organisation to affirmative action should be marketed internally and externally using memoranda, training programmes and meetings for supervisors and managers. Policy statements should be placed on bulletin boards and personnel handbooks and informal meetings should be held with employees. The need for consultation with all stakeholders is of vital importance, in order to secure their commitment to affirmative action. There should be open and frank discussions as well as workshops, so that all concerned should be afforded opportunities to express their fears, anxiety and expectations (Klingner 1980:368). According to Nel (1995:201), the following can be confirmed by discussions of this nature:

- why it is necessary for change to take place;
- for economic growth of the country more skilled employees are required;
- there is a big demand for managers and the existing management pool cannot meet such a demand;
- affirmative action is a proactive stance of correcting the imbalances caused by past failures and will be abandoned as soon as the imbalances have been redressed; and
- it may be necessary to promote white middle managers to make room for black managers who have to be promoted.

Pieterse, Affirmative Action Specialist of the City of Cape Town, believes that those who are used to the privileges of apartheid are likely to feel threatened by affirmative action, and in their resentment, they may sabotage it. Such fears and doubts about affirmative action may be allayed by engaging facilitators. Unions have a great

influence in recruitment and other employee activities, so their cooperation in implementing affirmative action is essential.

A utilisation survey should be conducted and this will be examined in the discussion that follows.

**f) Conducting a Utilisation Survey and Determining Attitudes and Perceptions**

It is impossible to formulate and implement any strategy on affirmative action in an organisation without first determining what the current situation is in terms of the workforce. According to the Guide for Practical Implementation of the National Labour Relations Forum for Local Government Agreement and Equal Employment Opportunity (1994:para.7.3), this task should be assigned to heads of departments, the human resource department and the affirmative action officer. The utilisation survey will indicate the composition of the workforce in the organisation like, race and gender, as well as the salaries and job titles. All this will help to establish over-representation or under-representation at various levels which will require affirmative action to be given priority. Information regarding educational qualifications will be necessary to determine training needs of individual employees and also to identify those employees for accelerated advancement.

Schwella *et al.* (1996:93-94) state that investigations into the job group profiles will group the workforce according to job classification like management levels and departmental groupings. The position of groups can then be determined and any problems identified. The skills and experience available within the organisation should be compared with those outside the organisation. This will assist in recruitment and development of strategies. The job transaction profile should also be established as it will show progress of disadvantaged groups within the organisation and reveal areas that need to be improved.



Charlton and van Niekerk (1994:152) contend that the attitudes and perceptions that prevail in an organisation should also be monitored, in order to identify factors that may hamper the implementation of affirmative action like negative attitudes, stereotypes and lack of commitment so that means may be devised to remove such obstacles.

According to Adonisi *et al.* (1995:151-153), the method used to collect information will be determined by the committees or subcommittees assigned the task according to the structure, size and culture of the organisation. Interviews, questionnaires or group discussion may be preferred. The task groups should consist of people from diverse backgrounds and should be representative of the workforce in terms of race, gender, level and interest group. They should be thoroughly briefed beforehand and it should be impressed upon them that they should have open and frank discussions which should be directed to issues and not people. Confidentiality and impartiality should be observed. Furthermore, internal or external facilitators or a combination of these could be used. External facilitators have an advantage of being perceived as being impartial, but could lack insight into the intricacies that obtain within the public institution. On the other hand, internal facilitators could help in building commitment and a sense of ownership of the process. For this reason, Adonisi *et al.* (1995:153) suggest that external facilitators should be engaged when facilitation skills are not available within the public institution.

The current policies and procedures need to be assessed, so that recommendations concerning these may be made. The following discussion will elaborate on the review of the policies and procedures.

#### **g)      Assessment of the Existing Policies and Practices**

Affirmative action has an impact on human resources policies and practices. Therefore, human resource functions like recruitment, selection, induction, training and development, promotion as well as conflict resolution need to be reviewed, to identify areas in the existing policies and practices that need to be changed or

modified, in order to eliminate any form of discrimination. Human (1993:23) maintains that the following aspects of policy should be considered:

- if the policy addresses the actual requirements for the job;
- whether the qualifications required relate to performance on the job or whether other factors and experiences could be valid if accepted;
- if the policy is currently in line with legislation on employment standards and human rights and if the same could obtain in future;
- consistent and fair or arbitrary use of policy. Any allowance for exceptions and circumstances thereof; and
- if policy impacts negatively on disadvantaged groups and how.

The process of recruitment used in an organisation should be described, to determine whether the process promotes representativity of the workforce in the organisation or not. The following, according to Adonisi *et al.* (1995:155), should be examined:

- the media used for recruitment to determine if the newspapers used have the majority of the target groups in their readership;
- whether or not the disadvantaged groups are reached in the process of recruitment;
- review of the patterns of recruitment over the past few years in terms of gender, race and level of skills; and
- persons responsible for recruitment to determine if they have the necessary skills and knowledge to attract the target groups.

The selection and placement policies and practices need to be analysed to determine whether they support affirmative action or not. Adonisi et al. (1995:156-157) suggest the following:

- the selection patterns of the organisation over the past few years with regard to race, gender and level of skills need to be assessed;
- the composition of the selection panel in the organisation in terms of race, gender and level of skills should be determined;
- determine whether or not the selectors understand the cultural context and have experience with target groups;
- the current selection methods of the organisation should be described e.g. interviews or tests;
- determine if the selection instruments are fair, objective, culture-free and not biased against disadvantaged groups,
- find out whether or not the tests used have been evaluated against the long-term performance in the organisation; and
- any alternative methods of selection that can be used in the organisation should be described.

Orientation of new recruits should be reviewed to identify shortcomings in the orientation process of the organisation which may impact adversely on affirmative action. Pieterse, Affirmative Action Specialist of the City of Cape Town, states that the following need to be examined:

- the availability of an orientation programme for new employees in the organisation;

- how soon after placement of new recruits orientation starts;
- person(s) responsible for orientation;
- if the orientation programme is ever evaluated; and
- any suggestions made to improve the programme.

Training should provide employees the opportunity to develop skills that will enable the employees to meet the challenges on the job and also promote opportunities for occupational advancement. According to Pieterse, Affirmative Action Specialist of the City of Cape Town, the following should be analysed to determine any barriers to affirmative action:

- the annual budget for training available;
- who are selected for training in terms of race and gender and the type of training offered;
- people responsible for selection of trainees, the skills they possess, as well as the criteria used for selection;
- the skills possessed by trainers in training a diverse workforce; and
- whether or not the training is linked to advancement in the job.

Promotion of employees in an organisation is one of the mechanisms of human resource development and job enrichment. At the same time, if employees are not developed, they may be denied opportunities for occupational advancement. It is important, therefore, to examine the current promotion practices in an organisation to identify those that do not support affirmative action, which, according to Latsy, Affirmative Action Officer of the city of Jackson in Mississippi, are:

- the promotion patterns of the organisations for the past few years with regard to race, gender and job level;

- the criteria for promotion used and if these are accepted as being fair throughout the organisation;
- the link between the results of performance evaluation and promotion;
- persons responsible for making decisions on promotion; and
- factors that impede promotion in the organisation in relation to gender, race and level of skills.

In any organisation, where a group of people has come together to achieve a common objective, conflicts are inevitable. In South Africa where policies have enforced statutory and formal discrimination, conflicts are likely to occur between those who have been favoured by the policies and those who have been adversely affected. Mechanisms to deal with those conflicts should be examined. Latsy further suggests the following analysis:

- determine what procedures are used in the organisation to deal with conflict and if they cater for discrimination on the basis of race and gender;
- the types of complaints received and who have used the procedures to resolve conflict on the basis of race gender and level in the job;
- the forms of discrimination that prevail in the organisation;
- if those who are involved in conflict resolution do have conflict handling skills.

All the findings should be compiled into a report that will be used in the formulation of an affirmative action strategy.

## **h) Reporting on the Findings of the Audit**

Schwella et al. (1996:94) maintain that a report on the results of the audit should be released and made available at the human resource department. It will help to identify problem areas in the management, operations departments, human resource department and employees. It will also provide indicators for factors that promote or impede affirmative action and the guidelines for strategy formulation. Strategy formulation will now be examined.

## **i) Formulation of an Affirmative Action Strategy**

Once all the above-mentioned steps have been taken, it would be essential to formulate a strategy for the implementation of the process, which, according to Human (1993:43), covers the formulation of objectives to address the problems that have been identified during the audit and to achieve a more representative workforce. Therefore, the organisation needs an affirmative action policy.

### **1) An Affirmative Action Policy**

An affirmative action policy should be formulated. All stakeholders in the organisation should be involved in the formulation of policy. Bendix (1996:594-595) states that all stakeholders should agree on the following:

- the meaning of affirmative action;
- what is meant by the term representative;
- the objectives of affirmative action set by an organisation and how these would be met;

- time frames in terms of months and years for achieving the set objectives, bearing in mind that one of the objectives is to ensure that affirmative action is, at a certain stage, replaced by an equal employment opportunity policy;
- identification of target groups and methods of recruitment and selection of candidates.
- education and training in order to develop employees within an organisation. This includes long term investment by developing employees at lower levels of the organisation;
- ensuring that new recruits are integrated into the organisation;
- systems of monitoring and evaluation of performance that apply to all employees;
- support systems for employees whose job performance is not up to standard;
- training and development initiatives outside the organisation to be given support;
- the possibility that some employees may have to be relieved of their duties, and procedures to be followed when this has to take place;
- making all employees aware of affirmative action initiatives and programmes to bring about change in attitudes, and also addressing those who sabotage the process; and
- marketing affirmative action to clients, in order to gain their support for affirmative action.

The policy should define the goals and timetables. According to Levy (1995;81) quotas are fixed targets and are not the best way of implementing affirmative action, especially when it comes to human resource development. Quotas are set without consideration of the future staffing opportunities of the organisation, and may lead to upward mobility without training, or to token appointments. Goals are fixed targets for the composition of the workforce on the basis of race and gender to be achieved in a specific time frame. Adonisi *et al.* (1995:165-166) agree with Levy and maintain that:

- goals should be organisation specific and when they are formulated, a realistic view of future staffing opportunities should be taken into account. Future staff capacity should consider organisational growth or decline, retrenchments, retirements, staff turnover, current skill base in the organisation and any restructuring initiatives envisaged;
- an assessment of skills available in the external labour market should be considered when goals are formulated;
- goals should include targets and timetables differentiated by race, gender and skill level in the organisation; and
- goals should be such that there is a distinction between long term or the termination point of policy and incremental steps required to get there.

According to the Guide for Practical Implementation of the National Labour Relations Forum for Local Government Agreement on Affirmative Action and Equal Employment Opportunity (1995:para. 9), target dates should be set, in order to monitor progress made as far as representativeness and tasks relating to affirmative action are concerned. Targets dates should be set for the composition of staff and for the completion of tasks with regard to affirmative action and equal employment opportunities. Line managers should set targets, as representativeness may result in the target being exceeded in some areas, while the opposite obtains in others. Line



managers, who are in the first place responsible for representativeness in the organisation, should set objectives, consult and negotiate with the affirmative action officer and the steering committee, and get the approval of the Chief Executive Officer. These objectives will then be linked to target dates and be incorporated in the strategic management plan.

According to the Guide for the Practical Implementation of the National Labour Relations Forum for Local Government Agreement on Affirmative Action and Equal Employment Opportunity (1995:para. 9) when objectives are set, the following aspects should be taken into account:

- the staff turnover in the various job categories;
- the staff within the organisation who can be employed in senior positions through accelerated advancement, thus laying emphasis on staff development instead of external recruitment;
- the staff composition in relation to the relevant labour market in terms of race and gender;
- the supply of the desired occupational skills in the relevant labour market;
- the availability of human resources and budget provision to support measures on affirmative action; and
- special measures to appoint members of the disadvantaged group.

## **2) Allocation of Responsibilities**

According to Charlton and van Niekerk (1994:154-155), the responsibility for the implementation of affirmative action varies according to the position held in the job. Line managers are assigned the task of and are accountable for implementing

affirmative action. The human resource department has a supporting role. It should keep human resource records regarding recruitment, selection, promotion, staff profile and training. The Chief Executive Officer is responsible for formulating, communicating and implementing an affirmative action strategy. He is supported by the affirmative action officer or support person who handles matters relating to affirmative action on a day-to-day basis. The affirmative action officer is also a link between the Affirmative Action Steering Committee and the Chief Executive Officer.

The affirmative action officer and the human resource officials should help departmental heads to determine the workforce of their departments, affirmative action targets and training objectives. This interdependent relationship can help to allay fear and promote trust. In the process, new or redundant positions, skills available and training required for such positions can be identified. From all this, specific plans can be developed for the progress of disadvantaged groups. Charlton and van Niekerk (1994:156) state that the following questions should be asked and answers to the questions should be communicated throughout the department:

- whether or not there are members of disadvantaged groups in the department;
- whether or not their ability and motivation are not under-played;
- whether or not there are any attempts to train and develop these employees to enhance their chances of upward mobility; and
- the number of vacant posts that can be filled by members of disadvantaged groups after development.

The answers to such questions can result in the development of specific programmes to be implemented. The following will focus on these programmes.

### 5.5.2 Development and Implementation of Programmes

It will be necessary to make all employees aware of what is to take place, and of the benefits of venturing into such a programme. Creation of awareness will be a point of focus in the following discussions.

#### a) Sensitising Workshops and Communication

Employees should know what affirmative action is all about, and how it would benefit individuals, the organisation and the society in general. They should be informed about what to expect and what their role will be to make the programme a success. Sensitising workshops should be arranged, in order to explain and clarify the content of the affirmative action strategy to the employees, identifying their roles and responsibilities. The following information should, according to Charlton and van Niekerk (1995:158-159), be communicated to employees:

- "... the affirmative action policy statement, its strategies and its rationale;
- policies, procedures, roles and responsibilities (departmental and individual), and evaluation and reward criteria;
- what training will take place;
- when affirmative action objectives will be expected to be achieved and when evaluation will take place;
- educating people concerning the why, what and how of affirmative action; and
- what annual benefits exist for the individual and the organisation."

Pieterse (Affirmative Action Specialist, City of Cape Town) states that multicultural facilitators should be engaged in workshops to help the advantaged members to overcome their fears and anxiety. At the same time, facilitators could help the disadvantaged groups to gain confidence, self-esteem and initiative and to overcome inferiority complexes which are a psychological effect of discrimination and racism. The facilitators should re-orientate the disadvantaged groups so that they understand their disadvantages and become motivated to break with the past and to develop. This will increase their opportunities for advancement. Workshops should be opened by senior managers to show their commitment and support. Besides workshops, there should also be discussions with individuals and groups. Each employee should receive a policy document regarding affirmative action, and each senior manager should be responsible for introducing the policy to all staff members. Formal lines of communication should be established so that staff members know who to communicate their problems and questions to for clarification.

An affirmative action officer, or any official assigned the tasks of an affirmative action officer, with the assistance of line managers, should develop specific programmes to eliminate discrimination in all human resource activities. The following constitute some of the human resource functions that need to be adjusted.

#### **b) Recruitment**

Schwella et al. (1996:39) describe recruitment as consisting of actions that are taken to attract as many suitably qualified candidates as possible to apply for job openings. This is what Siegel and Myrtle (1985:170) refer to as positive recruitment, which "tries to build relationships that might result in the channelling of future candidates without direct effort. From these applicants, the best suitable candidate will be selected and appointed to the vacant post." Beach (1985:137) contends that recruitment aims at creating a pool of people who would like to be employed in the organisation. According to Stahl (1983:95,) prospective recruits for the public service are all those who have the required qualifications for a specific job. A policy decision of the organisation may require external recruitment which is usually used

for entry-level personnel appointed from outside the organisation. On the other hand, appointments to higher positions may be made by promoting personnel already in the employ of the organisation.

To promote affirmative action, the recruitment techniques for each job type should be reviewed to ensure that the information on the job opening reaches members of disadvantaged communities. Such recruitment should make use of schools, community organisations and the media accessible to groups that are under-represented in the workforce. It is important that advertisements for job openings specifically state that applications from under-represented groups are most welcome. Adonisi *et al.* (1995:172) state that some times it may be necessary to use recruitment techniques that may reflect cultural bias, like fluency in a certain language or access to or familiarity with disadvantaged communities which the organisation serves. Recruitment by word of mouth or networking and also using only one recruitment agency should be avoided as these limit the scope and the scale of new recruits.

Records should be developed to provide updated information on a continuous basis regarding the number of applicants from the disadvantaged groups for a position, whether or not they were selected (Klingner 1980:369). In some cases, to achieve increased representativity of members of disadvantaged groups in an organisation, it may be necessary to recruit and select such members who may lack formal qualifications and other skills like experience, over candidates from advantaged groups. This means that in an attempt to achieve representativity, merit may be compromised. Increased representativity in employment is a constitutional requirement and lends legitimacy to the public sector. However, merit cannot be ignored as it is important for efficient service delivery. Some strategies have to be devised to balance representativity and the need for merit. One such strategy, according to Schwella *et al.* (1996:39), would be a recruitment policy that provides for recruitment and selection of candidates from disadvantaged backgrounds who have the necessary potential. They would then go through processes of training and development, in order to release the potential and to build in the necessary merit that would enable the new recruits to function more efficiently, effectively and with

confidence. It should be born in mind that people have different attitudes about public employment as will be explained in the following few lines.

### **Attitudes About Public Employment**

Siegel and Myrtle (1985:168-169) maintain that some factors like race, gender, socio-economic level and political allegiance may affect the attitudes people have about public employment. Some groups may have a positive attitude towards employment in the public sector, and may view it as an avenue of occupational advancement. However, there are negative stereotypes which believe that public employment is plagued with discriminatory practices, corruption, nepotism, tokenism and many other ills. These accusations may be real or perceived. The attitudes may be changed depending on socio-economic, political and personal conditions. It is important that a good image of public institutions be displayed, in order to create a positive attitude in prospective recruits especially from disadvantaged groups.

When recruitment has successfully developed a large pool of eligibles, the next step will be to select the most qualifying candidate for the job. The following discussion will focus on the selection of employees.

#### **c) Selection**

Selection aims at identifying the most suitable candidate for a position in an organisation. Beach (1985:137) asserts that the objective of the selection process is to eliminate those who do not possess the skills and other requirements of an organisation. All discriminatory questions should be excluded from application forms. There are various techniques used in the selection process and, according to Cloete (1985:118), they should satisfy the following requirements:

## - **Objectivity**

This requires that the results of such a test be observable and can be reported and recorded in a definite way. There should be no personal bias. The results of an objective test should not be influenced by external factors like race, political party, gender, place of residence or age. However, in implementing affirmative action, some of the external factors like race, gender and place of residence might be considered in order to enhance occupational advancement of people from disadvantaged backgrounds.

## - **Validity**

Validity refers to the degree to which a test measures what it is intended to measure. A valid test should predict the future performance of the employee in the job or suitability for the job. This is important as the best suitable candidates for the job from disadvantaged groups may be selected if they have the minimum requirements for the job over their highly qualified counterparts from advantaged groups.

## - **Reliability**

A reliable test is one that has consistent results. Tests are regarded as being reliable when they yield the same results after retesting, or when tests are being conducted for the same person at a different place and or at a different time. The results of a reliable test are determined by statistical analysis. Wright (1974:143) adds the utility value of a test, arguing that tangible benefits should accrue to the organisation from the test, especially in terms of costs. A test which is very costly to administer does not satisfy the utility requirement. Schwella *et al.* (1996:45) identify some factors which should be considered with regard to the use of selection techniques:

- a) Violation of human rights of the candidates should be avoided at all costs. Their rights with regards to privacy and confidentiality should be respected.

- b) Selection techniques should test skills, knowledge and other requirements that are relevant to the job. Questions which are discriminatory with regard to race, gender, age and health are illegal. Adonisi *et al.* (1995:172) concur that selectors should determine the potential the candidate has to respond to accelerated training and should not stick to formal education and experience qualifications for a position, since candidates from disadvantaged backgrounds who are potentially competent, might be excluded in the process.
  
- c) Selectors who use certain selection techniques should be qualified or registered professionals. The law prescribes the required qualifications which should be adhered to. Some of the tests used during the selection process are outlined by Beach (1995:157-163) as follows:
  - i) aptitude tests which measure the potential an individual has to perform certain functions provided prior training has been received. Such tests include intelligence tests;
  
  - ii) special aptitude tests which measure specific capacities like mechanical, sales or clerical capacities;
  
  - iii) personality tests which assess the attitudes, values and personal make-up of the candidates. Questionnaires are used and responses of the candidates are interpreted by trained analysts; and
  
  - iv) achievement tests which may be administered orally or in writing are used to assess the knowledge of a particular job.

Pieterse, Affirmative Action Specialist, City of Cape Town, stresses that psychometric tests, if used, should be culturally neutral and used for the purpose for which they were designed. The selectors who use them should be sensitive to the cultural background of the candidate. This is important because psychometric tests measure the intellectual abilities which are influenced by educational opportunities,



exposure and experience. For members of the disadvantaged groups whose education has been regarded as inferior, because of the past policies of the country, such tests may not be the best way of predicting future performance.

Levy (1995:87-88) concurs that tests used in the selection process should examine a wide range of factors. They should give an indication of where the new recruit might be placed in an organisation at a particular stage of its development. If an organisation is committed to affirmative action, coaching and access to past tests and simulation test exercises could be helpful in overcoming some of the cultural and educational inequalities. The interview method is one of the selection techniques which requires closer analysis.

Hays and Reeves (1984:199-200) state that an interview is an interaction on a face to face basis of two or more candidates, in order to exchange information that can be used to arrive at a decision. Interviews are classified by Beach (1985:167-168) into four main types as follows:

- the planned interview involves an outline of all relevant topics like previous work experience, qualifications and home life. The candidate will talk freely about these and the interviewer will be able to extract information that will point towards probable success or failure in the work situation. This will also assist the applicant to decide whether or not to accept the position. A friendly environment should be created in order to attract candidates especially from disadvantaged groups;
- the patterned interview consists of a questionnaire which has a standard format for all interviews. This type of interview tends to reduce honesty and openness;
- stress interviews are meant to deliberately create a stressful situation for the candidate, with the interviewer being very hostile, assertive and even aggressive, in order to assess the reaction of the interviewee. This type of

interview requires well trained and skilled interviewers and needs extreme care; and

- panel interviews consist of an interviewing panel which is made up of three or more interviewers who complement each other to ensure that all areas of the requirements for the job are covered. They can confer and discuss to ensure objectivity without bias.

According to Latsy, Affirmative Action Officer of the City of Jackson in Mississippi, the racial and gender composition of the interviewing panel should be representative of the disadvantaged group so that candidates from disadvantaged backgrounds may not feel threatened or inhibited by an interviewing panel that is less representative of their own kind, as this may adversely affect the candidates' performance in the interview. Moreover, Adonisi *et al.* (1995:155) assert that selectors tend to see the best potential in people of their own kind, something they refer to as homo-social reproduction.

Interviews should be conducted in an orderly manner to yield useful results. The interviewer should first determine what is to be achieved through this type of selection technique. It should be conducted in a neat and suitable place where interruptions are not likely to occur. The value of results obtained from interviews will largely depend on the skills of the interviewers. It is thus important to select and train interviewers who have appropriate qualifications and personality traits (Cloete, 1985:119-121). Interviews should not be treated like interrogations which make the interviewee feel harassed. Members from disadvantaged backgrounds could be more affected, because of the cultural backgrounds and educational inequalities. Perhaps an exception could be made in the case of stress interviews which are meant to assess the reaction of the candidate to stressful situations.

#### d) Occupational Advancement, Training and Development

These should be adjusted in order to cater for the under-represented groups. Promotion is a method of filling vacant positions to reward employees for their good performance and to provide opportunities for development. According to Klingner (1980:192), the objectives for promotion are similar to those for selection. Managers prefer promotion criteria, methods and procedures that result in the placement of

qualified employees, and the promotion of the most highly qualified candidates to be left to the discretion of managers. Employees would like promotion to be made solely within the organisation. If they are eligible for promotion themselves, they would prefer to be considered automatically when a vacancy occurs. Groups from outside the organisation hold different views about promotions. Job seekers would like organisations to consider external appointments for promotional positions on the basis of expertise, representativeness or political standing.

As is the case with recruitment and selection, merit is one of the important considerations in occupational advancement. One of the determinants of merit is seniority. Seniority is important for promotion, because it reflects the fairness of the promotion system of the organisation. However, if an organisation has just embarked on affirmative action, members of the disadvantaged groups may lack the required seniority and may thus not be eligible for promotion. This may adversely affect social representativeness. Moreover, Klingner (1980:194-195) argues, conflict may arise between seniority and representativeness when there is reduction in the workforce of the organisation. Members of the disadvantaged groups who may lack seniority, may be the first ones in line for retrenchment. To counteract this, each organisation should devise its own strategies such as identifying some members of the disadvantaged groups for accelerated development.

Junior or entry level positions should be given to members of the disadvantaged groups who do not qualify for top level positions. If a member of the disadvantaged groups with skills required for the position is not available, it is advisable that a member with potential be identified for training and development, in order to increase promotion opportunities and to foster representativeness. External appointments of

members of the disadvantaged groups should be avoided unless it is absolutely necessary, because they may sometimes be regarded as window-dressing or token appointments. Moreover, external appointments which may be regarded as quick fix solutions may affect loyalty and commitment of the employees within the organisation who may feel deprived of opportunities to develop. Promotion criteria should be related to the job. Levy (1995:87) argues that "... employment policies that have as their principle the regular internal recruitment and development of personnel most effectively enhance affirmative action strategies as these stress in-house training and development as well as the deployment of appropriate existing personnel in the structures of the organisation that were hitherto not characterised by open access." One way of handling the question of development in a more rational manner is the development of careers, especially for the disadvantaged groups, to the extent that higher specific posts are reserved for officials who have completed specific periods of service in specified lower grade positions. According to Robbins (1982:66), a career is "... a sequence of positions occupied by a person during the course of a lifetime." Career development is described by Beach (1985:234-235) as consisting of career planning which involves planning one's work life at personal level, and career management which is concerned with plans and activities of the organisation with regard to career development. For effective career development in an organisation, Robbins (1982:259-264) suggests the following actions which could be effective in the development of disadvantaged groups:

- assigning challenging jobs to employees initially. If employees are assigned challenging tasks, it will tend to stimulate improved performance in later life. It is important to place employees in positions that are within their capabilities;
- information with regard to career options should be readily available to avoid the spread of incorrect information about career development in the organisation. Talented and ambitious employees will thus be in a position to avoid activities that will not be helpful to them in advancing their careers;

- assessment of employees in assessment centres where members of the organisation observe work related behaviour of employees helps the assessors to develop an awareness of the development process, thus promoting their own career development;
- all employees should be given information on present vacancies as well as criteria for promotion. This information should be on bulletin boards or other publications of the organisation. The language used should be well understood by members of the disadvantaged groups;
- career counselling helps in career development. Regular sessions are held to discuss career opportunities and actions that can be taken for self-development. These discussions help both employees and employers to understand what realistic goals are;
- workshops on career development may be used to identify and clarify issues and misconceptions;
- training and education at regular intervals to keep employees up-to-date with current practices and skills. Opportunities should be provided by the organisation for internal and external education and training programmes;
- periodic changes of jobs to create opportunities for development by exposing the incumbent to a wide range of opportunities provided by new tasks; and
- by allowing senior staff to go on sabbaticals in order to enhance their career development and by attending relevant conferences.

Management development also forms part of career development. Management development is very important and is defined by Beach (1985:62) as:

- a systematic process of training and growth, whereby the incumbent gains and applies knowledge, skills and attitudes that enable the individual to manage assigned tasks efficiently and effectively;
- coaching or mentoring where managers actively develop a new manager, giving guidance, advice, constructive criticism and suggestions. Charlton and van Niekerk (1995:201) define coaching as "... using day-to-day experiences to maximise learning on the job: diagnosing present maturity levels; identifying and removing obstacles to growth; and systematically facilitating more competent behaviour that enables a degree of responsibility, autonomy, and interdependence." Nel (1995:510) maintains that for this method of management development to succeed, there should be mutual trust between the superior and subordinates;
- understudy assignments which allow an assistant to do the managers' job for a short time when the manager is on leave, thereby gaining experience in all areas of the job. Stahl (1976:174) refers to this as trial on the job which is an ideal technique for judging the promotability of employees for higher responsibility;
- job rotation where managers are given opportunities to do other jobs and thus get the exposure to and knowledge of a wide variety of activities. According to Skinner and Invancevich (1992:383), job rotation means that managers are transferred from job to job on a systematic basis. Job assignments can last from two weeks to 6 months; and
- committee assignments which enable developing managers to take part in decision-making and to learn from others how they investigate issues, arrive at decisions and make recommendations.

According to Schwella (1996:70), all these techniques should take place in conjunction with individual needs, according to the level of proficiency of the

developing manager. Management development is very important when affirmative action programmes are implemented, in order to increase representativity of the disadvantaged groups in the public sector. It enhances their opportunities of upward mobility. Career development forms an integral part of training and development as the next section will argue.

Training and development are important aspects of affirmative action policy. Wooldridge (1992) and McLennan (1992) identify the following reasons for training and development as part of an affirmative action programme:

- they ensure that beneficiaries of affirmative action are qualified and thus eliminate the possibility of patronage;
- they help to build internal capacity and to develop skills, thus providing access and opportunity for occupational advancement; and
- training on the environment helps to address cultures within the organisation by introducing democratic work procedures and training programmes which address cultural and gender stereotypes, affirmative action and equal employment opportunity.

According to Human (1991:324) the following factors should be considered for the successful development of employees:

- line managers are the main role players in the development of employees;
- promotion and development from within the organisation are important for the development and motivation of people;
- commitment of top management to the development of people and evaluation of managers with regard to the development of people should be emphasized;

- both the manager and subordinate are jointly responsible for development and both need assessment in this respect;
- the development of the disadvantaged groups should be taken as part of the general development of employees and each individual should be managed and developed according to individual needs;
- managers should be made aware of the importance of the development of people as personal development and all employees should be made aware of the processes involved in personal development; and
- managers should examine their own stereotypes and prejudices and should devise strategies to address these.

Training should be linked to job performance and should prepare the individual for increased responsibility or future prospects of employment. Employees should be consulted about their training needs to enhance their motivation and commitment to training. Organisations should realise the importance of training and should set aside sufficient funds for training implementation. Adonisi *et al.* (1995:158) maintain that recruits from members of the disadvantaged groups are often denied sufficient responsibility but are, instead, subjected to endless training cycles, unlike their counterparts from the advantaged groups. This tends to stigmatise training and reinforces the negative perceptions about the ability of the disadvantaged groups. While conceding that there is a need for specialised training for members of the disadvantaged groups in certain cases, that cannot be accepted as generally applicable to all members of the disadvantaged groups. By the same token, it cannot be taken as given that the need for specialised training never applies to the advantaged groups. What is important is training that is based on the needs of the individual which relate to the priorities of the organisation. Charlton and van Niekerk (1995:168) concur that employees with a high aptitude should not undergo the same training and development as those with a lower aptitude. Development should be designed to suit the specific needs of the individual.



Employees themselves, especially disadvantaged groups, should take the initiative to improve their skills by using facilities for training and development within and outside the organisation. The principle of life-long learning is very important in South Africa. Van Dyk *et al.* (1992:66-67) state that "... life-long learning is interpreted as the development of a management inclination to strive for the self-improvement of their own and other subordinates' technical knowledge and managerial and leadership abilities through self-study, as well as the voluntary attendance (or by personal request) of development programmes which are available through their working careers, to enable them to keep abreast of the latest developments regarding their vocations and careers."

Each organisation should have a training policy on affirmative action which aims at providing advice, opportunities, facilities and financial support so that employees from disadvantaged backgrounds may, according to van Dyk *et al.* (1992:70):

- acquire skills, knowledge and qualifications necessary to enable employees to perform their tasks and duties efficiently and effectively;
- develop their potential to meet the future manpower needs of the organisation; and
- develop as individuals beyond the present and future needs of the organisation in some cases. Such a policy would address the conflict that may exist between increased representativity and merit as a result of the employment of members of the disadvantaged groups who may have the potential to develop but who may not as yet have the skills of the advantaged groups.

People, especially line managers, who are going to play a leading role in an affirmative action programme should be identified and trained in order to get maximum benefit. It is important to create a friendly environment in order to encourage newly recruited managers from disadvantaged backgrounds to hold down

their jobs. Charlton and van Niekerk (1995:161) suggest the following criteria to be used for selection of such line managers who should be trained trainers:

- total commitment to the process and to maintaining the highest standards of implementation;
- warm personality and empathy with good interpersonal skills;
- have sufficient authority and command respect from other members of the organisation;
- understand and have experience in individual and organisational change and training;
- restricting the number of trainee facilitators to between twelve and sixteen in each group to ensure maximum participation; and
- to allocate six days per month for training at two courses each day to avoid fatigue and to make allowance for the trainees to attend to other organisational matters in general, and also specifically pertaining to promoting affirmative action like developing and updating courses, administration, additional training and continual training.

There should be continuous consultation between the human resource manager, trainer, senior management and affirmative action officer. Monitoring and evaluation should take place on a continuous basis and will be examined in the following discussion.

### e) **Monitoring and Evaluation**

It is essential that monitoring and evaluation be carried out continuously during the implementation of affirmative action. Human (1993:69) states that the processes of monitoring and evaluation will help to:

- ensure that the organisation remains committed to affirmative action;
- determine the roles and responsibilities of all employees in affirmative action;
- determine the progress made by the organisation in affirmative action; and
- identify areas that require change or more attention in the strategy.

Latsy, Affirmative Action Officer of the City of Jackson in Mississippi maintains that the processes of monitoring and evaluation are a shared responsibility of the CEO or a person nominated by him/her, the affirmative action officer with the affirmative action steering/coordinating committee and the human resource department in their respective areas of activity. Forms should be designed and made available to each department, which in turn will be responsible for reporting at quarterly intervals. Besides this, the affirmative action officer should make spot checks and also receive and investigate complaints from the various departments and sections.

According to Adonisi et al. (1995:168) the progress report should include:

- progress made with regard to specific objects;
- changes in the staff profile against the set targets;
- information regarding recruitment, promotion with regard to race, gender and level of skills;

- opportunities created through education and training with regard to race, gender and level of skills; and
- perceptions held by different groups and individuals on the progress made in implementing affirmative action. Such perceptions could be elicited through interviews with representatives of senior management, unions, new recruits from target groups, line managers and managers from members of the disadvantaged groups. The interviews should lay emphasis on:
  - target group commitment;
  - how the disadvantaged groups perform;
  - any hindrance to implementation of affirmative action;
  - successes achieved;
  - support from management; and
  - suggestion to bring about improvements.

Human (1991:225) maintains that managers should be evaluated on the extent to which they develop their subordinates. They should realise the effect of their own values, attitudes and expectations on the development of their subordinates. The progress reports will provide a feedback to the affirmative action task group which will identify problems and institute the necessary changes. Beitel (1993:86) points out that programmes that have been developed to correct the imbalances that exist in society should be regarded as experimental. Some may work, while others may not. It is thus important to devise mechanisms for monitoring, reviewing periodically and correcting the programmes.

There should be a system of reward on the basis of performance. This serves as an incentive and a monitor to the recipient. Charlton and van Niekerk (1995:157-158) contend that managers should be rewarded for progress. They could be promoted, praised, given opportunities to further their studies, allowed more time with family, afforded challenging career experiences and even more money. In the public sector, the monetary reward could take the form of putting the manager on a special salary

notch, and certificates could be awarded to deserving managers. The structure for rewards should be flexible to provide for excellent, average and below average performers. The criteria for measurement of performance should be quantitative as well as being qualitative. Rewards should be regarded by recipients as being according to performance and there should be transparency about the allocation of rewards. Any inconsistencies may result in disgruntled and demotivated recipients.

#### **f) Grievances and Disputes**

During the implementation of affirmative action programmes, an employee may have a grievance of alleged discrimination. This should be expected as affirmative action has aroused much controversy with members of disadvantaged groups supporting the process of affirmative action, while those who are likely to be adversely affected may be profusely opposed to affirmative action. The latter may resist the implementation of affirmative action, and they may thus perpetuate discriminatory practices or may claim to be discriminated against. Pieterse, Affirmative Action Specialist, City of Cape Town states that the aggrieved employee may complain of discrimination with regard to:

- selection;
- promotion;
- career development;
- training; or
- sexual harassment.

Pieterse further states that the grievance regarding the alleged discrimination may be taken to the affirmative action officer by the aggrieved party's union, or by the management responsible at each level of the grievance procedure on receipt of the grievance. The affirmative action officer, in consultation with the affirmative action steering committee will investigate the case and try to resolve it amicably. If the matter remains unresolved through the grievance procedure, the aggrieved party or

union may further process the matter through the negotiating and grievance procedures. The parties may agree that any matter which is alleged by either party to constitute unfair discrimination, may be dealt with as if it were unfair labour practice in terms of the *Labour Relations Act*, 1995.

**g) Preparation and Release of the Annual Programme Audit**

According to Die Suid Afrikaan (1993:40) the monitoring committee should prepare the first major audit. This is based on the continuous monitoring and the evaluation of reports which are submitted quarterly. This involves internal discussion by the committee itself and recommendations thereof. The report is submitted to top management for response and confirmation of commitment. The report will then be submitted to the Department of Labour as required by the *Employment Equity Bill*, 1997. The report will constitute a feedback which will highlight the strengths of the programme which need to be supported and weaknesses which necessitate a review of the identified areas in the programme.

**5.6 CONCLUSION**

The democratic government of today has brought about changes to redress the inequalities that have affected the lives of many people in South Africa. One of these changes is in the workplace with the introduction of affirmative action. Any change is bound to elicit resistance and has to be introduced carefully. It is on the strength of this that the factors which may impede the implementation of affirmative action should be identified and avoided. Of equal importance is planning and formulation of strategies before the implementation stage. It is also important to monitor and evaluate the process in order to effect the necessary changes or improvements. No affirmative action programme will fit all organisations. Each organisation should devise its own plans and strategies to suit its own needs.

## CHAPTER 6

### CONCLUSION AND RECOMMENDATIONS

#### 6.1 CONCLUSION

South Africa is going through a process of transformation, which is by no means an easy one. One major area of transformation is in the public sector, to promote representativeness of the disadvantaged groups. This is bound to elicit resistance from the advantaged groups, who have enjoyed the benefits of affirmative action for many years. However, there are lessons to be learnt from other countries, which have experienced similar problems.

The USA is still experiencing discrimination based on race and sex. Although affirmative action as a concept originated in USA many years ago, representativeness in the workforce remains a problem. Legislation on affirmative action was passed and quotas and goals were set to promote representativeness in employment. The EEOC, a federal agency, was established to enforce affirmative action policies and plans. However, racist practices which characterised the slave period still exist, with blacks being over-represented in jobs which would be specifically for slaves. Some studies carried out on affirmative action reveal that more blacks and a smaller percentage of whites support affirmative action. Institutional racism is also marked, especially when it comes to the reduction in the workforce. The principle of last hired, first fired is likely to adversely affect blacks, thus contributing to their over-representativeness in low paying and undesirable jobs.

What can be learnt from USA is that:

- an affirmative action plan should be flexible, so that if members of the disadvantaged groups with suitable qualifications are not available, qualified individuals irrespective of group should be considered for the position;

- the plan should be there to ameliorate the current deficiency and should be abandoned as soon as the required diverse workforce has been attained. The objective of an affirmative action plan should be to achieve a non-racial and non-sexist public service;
- to counteract the negative impact of layoffs on the disadvantaged groups, it is necessary to determine how the layoff conducted on the normal basis of seniority will affect the composition of the workforce of each class of employees;
- specific directives can be issued to ensure that the composition of employees is about the same before and after the layoff;
- the employees who are likely to be affected by layoffs should be set up as small business people and be awarded government contracts. They will be in a position to locate the job sites better than people from outside; and
- there should be negotiations between the organisation and the contractors, so that the latter can employ some of the laid off employees. These measures could help to reduce the high rate of unemployment and eliminate the negative perception people have on privatisation and affirmative action.

Malaysia, like South Africa, has the majority of the population being beneficiaries of affirmative action and could provide useful lessons for South Africa, as the following discussion will highlight.

- The Chinese government and the Malays got together and set themselves twenty to twenty-five years to work out strategies to improve the quality of life in the country. This underlines the importance of gradual implementation of affirmative action programmes, as well as the involvement of all stakeholders in order to secure their acceptance and cooperation.



- Quotas and use of Parliamentary control are necessary to ensure that affirmative action programmes are implemented.
- Affirmative action should be implemented within an economic development framework. This is enhanced by political stability and incentives, which help to attract foreign investment. The resources can thus be distributed among citizens, reducing unemployment and poverty.
- The government and the private sector should establish a joint venture to promote economic development.

It is clear that affirmative action is likely to meet resistance from non-target groups and, unless there is two-way communication between top management and all employees, the process will not succeed.

The strengths and weaknesses of affirmative action should be identified, in order to promote and strengthen the positive aspects and to eliminate obstacles which may stand in the way of successful implementation of affirmative action. Commitment of all stakeholders to redressing the imbalances of the past, and not merely submission to political pressure from government to transform is very important. The culture of entitlement that plagues the minds of some members of the disadvantaged groups should be eliminated. Internalised oppression, a psychological effect of racism and discrimination which affects the disadvantaged groups and manifests itself as inferiority complex, lack of initiative, confidence and self-esteem, should be eradicated, as it may adversely affect their occupational advancement.

Tokenism is one of the problems that can cause resentment on the part of the advantaged groups, and may result in inefficient and ineffective service delivery. Training and development play a major role in the successful implementation of affirmative action, in order to develop the skills and knowledge of target groups to ensure that such groups are available for recruitment and promotion.

All this requires the cooperation and commitment of white managers to groom trainees and not to see them as threats to their jobs. The advantaged groups should be encouraged to have a positive attitude towards affirmative action. Persuasion rather than confrontation should be the main focus of attention. Race-related training should also be provided and should involve skills for human resource management on interviewing, selection and performance appraisal, including matters relating to equal employment opportunity and racial discrimination. The importance of diversity management cannot be overemphasized.

Merit is important to ensure efficient and effective service delivery. To promote representativeness without compromising merit, other factors should be considered when selecting candidates for employment, like the candidate's potential, motivation and ability to respond to training and development programmes. Most jobs require the right person for the job and not the best qualified. In the transformation of the public service in South Africa, the traditional approach of selecting the best qualified candidate should be replaced by hiring the best suitable candidate for the job, with regard to representativity and sensitivity to the needs of the public to be served. Quantity and quality can coexist without dropping standards. Members of the disadvantaged groups who have the knowledge and skills required for the jobs, should be fully utilised and given challenging jobs so that their high level of motivation can be maintained, and help to propel them to the top of their occupational ladder. Such incumbents could be good role models to their juniors who will aspire to be in such positions.

The culture and mindset of public organisations should change and be conducive to the transformation process. A hostile environment should be changed as it will constitute a "push factor" that will encourage newly appointed managers from under-represented groups to leave the service. Rather, a more friendly environment should be created, in order to give such managers opportunities to hold down their jobs and to encourage them to develop.

Organisations should be prepared to incur costs in implementing affirmative action. Costs are necessary for training and capacity building for disadvantaged groups to improve their career-oriented skills and knowledge. This is good investment in employees and will bring long-term benefits. However care should be taken not to incur unnecessary costs by aiming at quantity without quality. In the final analysis, the quality of service delivery is required.

Legislation on affirmative action is perceived by some people as being necessary, while others are against it. While voluntarism is the ideal, it may not work in most cases, especially in South Africa where legislation was passed to affirm the majority of the population. The advantaged groups may feel that their careers are threatened, and may lack the necessary commitment to implement affirmative action strategies. It is thus necessary to allow some period of grace to give public organisations time to make visible change. When they are resistant to change and display a negative attitude, compulsion in the form of legislation is the necessary option.

## 6.2 RECOMMENDATIONS

On the basis of this study, the following recommendations are forwarded:

- \* Before embarking on affirmative action, there should be clearly defined objectives so that whatever is being done, should be aimed at achieving the stated objectives. Some of these should be to remove all forms of employment discrimination, and to identify and eliminate any obstacles that may impede the hiring and occupational advancement of the disadvantaged groups.
- \* The organisational structures, culture and practices should promote team spirit among all employees, unions and management with mutual respect as well as acknowledgement and acceptance of cultural diversity. It is important to realise that there are short and long-term strategies that should be considered,

in order to ensure a successful implementation of affirmative action programmes. Short-term strategies include:

- determination of skills of current public servants and retraining them;
  - rationalisation of the public service at all levels of government. Public servants may thus be released or retained with a possibility of being transferred to any part of the country, downgraded or upgraded in the public service as the case may be; and
  - sensitivity workshops, short-term training and small group discussions to eliminate problems that may exist between the manager and new recruits from a disadvantaged background.
- \* Long term strategies involve staff development and training at tertiary institutions, which should adjust their curricula to address the needs of the public service.
- \* The affirmative action programme should be planned beforehand, monitored and evaluated throughout the period of implementation, so that changes may be effected when necessary. No affirmative action programme will fit all organisations. Each organisation should devise its own plans and strategies to suit its own needs.
- \* A high degree of commitment of top management to the affirmative action process is essential. Top management will thus instil a sense of commitment into line managers and all subordinates. There should be effective communication between groups and among different departments and sections of the organisation. Transparency should be promoted so that all employees develop mutual trust and a sense of ownership of the programme, and work towards its successful implementation.

- \* An affirmative action programme should be managed in phases as follows:

The preparatory phase which should consist of:

- awareness of the need for affirmative action, during which top management realise that affirmative action is necessary;
- provision of moral support. Human resource handbooks should contain a statement affirming the organisation's support for and commitment to affirmative action;
- where possible it is necessary to appoint an affirmative action officer who should preferably be from a disadvantaged background, and thus understands the problems he has to tackle. The affirmative action officer should work with the Chief Executive Officer and an affirmative action steering committee which should be representative of all stakeholders. Where an affirmative action officer cannot be employed the duties of such an officer should be assigned to a senior manager;
- the commitment of the organisation to affirmative action should be marketed internally and externally using memoranda, training programmes and meetings for supervisors and managers;
- the Heads of departments, the human resource department and the affirmative action officer should conduct a utilisation survey, to determine the composition of the workforce in the organisation in terms of race, gender, as well as salaries and job titles, and also the attitude and perceptions that prevail in the organisation; and
- the existing policies and practices should be assessed, in order to eliminate any form of discrimination. These include recruitment, selection, placement, orientation, training and development and utilisation. The report of the results of the audit should be released and made available at the human resource department.

On the basis of the report of the results of the audit, an affirmative action strategy should be formulated. The following should be considered:

- an affirmative action policy should be formulated and all stakeholders should be involved;
- goals and timetables should be set; and
- various officials and departments should be assigned the responsibility of implementing affirmative action namely, Chief Executive Officer, an affirmative action officer, an affirmative action steering committee, line managers and the human resource department.

The phase of implementation of affirmative action programmes should preferably consist of:

- sensitising workshops and communication to explain and clarify the content of the affirmative action strategy to employees, identifying their roles and responsibilities;
- recruitment techniques should ensure that the information on job openings reaches members of the disadvantaged groups and is in a language that they understand;
- the selection process should eliminate those who do not possess the skills and other requirements of the organisation. All discriminatory questions and tests should be excluded;
- if members of the disadvantaged groups with skills required for promotion are not available, it is advisable that members of these groups with potential should be identified for accelerated development. External appointment should be made if there is no suitable candidate within the public institution;

- a friendly atmosphere should be created in order to encourage newly recruited managers from disadvantaged backgrounds to hold down their jobs;
- training and development form an important aspect of an affirmative action programme. Training should be linked to job performance, and should prepare the individual from under-represented groups for increased responsibility or future prospects of employment. Each organisation should have a training policy which provides advice, opportunities, facilities and financial support for employees;
- Line managers should be trained trainers with warm personalities, empathy and good interpersonal skills;
- monitoring and evaluation should be carried out continuously during the implementation of affirmative action to determine progress made. There should be a system of reward for those managers that have made progress in implementing affirmative action;
- grievances and disputes over alleged discrimination and racism in the workplace should be dealt with; and
- continuous monitoring and evaluation reports submitted quarterly should form the basis of the first major annual report. It will highlight the strengths of the programme which need to be supported and weaknesses which necessitate a review of the identified areas in the programme.

This study has focused on affirmative action with regard to race and sex. Other aspects of discrimination like sexual harassment, disability and sexual orientation could provide useful studies.

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## SUMMARY

During the apartheid era, the South African government introduced and enforced discriminatory policies giving unfair advantage to white people who enjoyed all the privileges. The 1994 national elections meant the demise of an authoritarian government and heralded a transformation process to a democratic, non-racial and non-sexist society where human rights are provided for in the constitution. The new government has introduced affirmative action in order to eliminate employment discrimination and to promote occupational advancement of disadvantaged groups, thus increasing their representativeness in managerial positions.

Affirmative action is a topical subject in contemporary South Africa with some groups, especially those who are likely to benefit from the affirming process supporting it, while those who are likely to part with the privileges that they have enjoyed for decades, strenuously rejecting it. However, it has to be borne in mind that affirmative action is a process and not an event. In countries like the United States of America (USA) where affirmative action was first introduced many years ago, it is still not a success story. It needs careful planning and monitoring throughout its implementation in order to identify areas in the process that need to be adjusted or amended.

Affirmative action should not be confused with retribution where white people are being punished for the privileges they enjoyed. It does not mean that white employees should be removed from their positions and be replaced by blacks as this may precipitate racial tension and bitterness. Affirmative action requires training and development of members from disadvantaged backgrounds, so that they are ready to move up the occupational ladder. They should take an active part in their own development. The culture of entitlement which plagues the minds of historically disadvantaged groups should be eradicated. They should

not think that being beneficiaries of affirmative action entitles them to managerial positions without the necessary qualifications and skills. Each public organisation should provide opportunities for training and development of disadvantaged groups, like study leave, financial assistance and on-the-job training. Academic institutions should adjust their curricula to suit the needs of public organisations.

Commitment of top management, employees and unions is one of the important ingredients of affirmative action so that all stakeholders may cooperate in devising strategies for successful implementation of affirmative action programmes. The culture and mindset of the workplace should change. There should be a change of perceptions and attitudes. It is necessary to depart from the racist belief that anything that is African is inferior. What is needed is appreciation and acceptance of the cultural differences among employees which can contribute towards the effectiveness and productivity of a public organisation. The calibre of employees should be considered in order to avoid tokenism and lowering standards. Where the disadvantaged background has deprived some people with potential of certain qualifications and experience, employees who have been selected would be trained in order to unlock their potential.

A public organisation should, where possible, employ the services of an affirmative action officer or a senior manager who should be assigned the duties of an affirmative action officer. Such an officer should preferably be a member of disadvantaged groups who would command respect and credibility within an organisation and be responsible for the day-to-day issues concerning affirmative action. He / she should work with an affirmative action steering committee which should consist of a cross-section of staff with equal representation from all stakeholders.

Specific programmes should be developed to eliminate discrimination in all human resource activities like recruitment, selection, promotion, training and development and evaluation. There should be mechanisms to deal with grievances and disputes regarding alleged discrimination.



## OPSOMMING

Tydens die apartheid era is 'n diskriminerende beleid deur die Suid-Afrikaanse regering bekendgestel en bekragtig. Daardeur is 'n onregverdigde voordeel aan blankes gegee en 'n verskeidenheid van voorregte is geniet. Die nasionale verkiesing in 1994 het die einde van 'n outoritêre regering betekë. Gevolglik die begin van 'n transformasieproses tot 'n demokratiese, nie-rassige en nie-seksistiese samelewing. In die nuwe grondwet word voorsiening gemaak vir die beginsel van menseregte. Die nuwe regering het regstellende aksie ingestel sodat diskriminasie by indiensneming tot 'n minimum beperk word. Dit het gelei tot die bevoordeling van benadeelde groepe in die werkplek. Bestuursposisies het daarom meer verteenwoordigend van die groepe geword.

Regstellende aksie is 'n aktuele onderwerp onder sekere groepe in die huidige Suid-Afrika. Die groepe wat waarskynlik sal voordeel trek, is ondersteunend ander groepe wat sekere voorregte wat al dekades lank geniet is, moet prysgee, verwerp die proses. Dit moet egter in gedagte gehou word dat regstellende aksie 'n proses is en nie 'n gebeurtenis nie. In lande soos die Verenigde State van Amerika (VSA), waar regstellende aksie jare terug bekendgestel is, het dit nog nie veel sukses behaal nie.

Dit vereis deeglike beplanning en die proses moet deurgaans gemonitor word tydens die implementasie daarvan. So word areas wat gewysig of verander moet word, geïdentifiseer.

Regstellende aksie moet nie verwar word met vergelding, waar blankes gestraf word vir die voorregte wat hul geniet het nie. Dit beteken nie dat blanke werknemers van hul posisies verwyder word en deur swartmense vervang moet word nie. Dit kan lei tot rassekonflik en verbittering aanmoedig. Regstellende aksie vereis opleiding en die ontwikkeling van lede van voorheen benadeelde

groepe, sodat hulle voorberei word om die beroepsleer te bestyg.

Hulle moet 'n aktiewe rol in hul eie ontwikkeling speel. Die "kultuur van geregtigheid" wat die gedagtes van die histories benadeelde groepe oorheers, moet uitgeroei word. Daar moet nie dangeeneem word dat die wat voordeel trek uit die regstellende proses geregtig is tot bestuursposisies, sonder die nodige kwalifikasies of vaardighede nie. Elke organisasie moet geleenthede voorsien vir die opleiding en ontwikkeling van benadeelde groepe, soos byvoorbeeld studieverlof, finansiële bystand en indiensopleiding. Akademiese instellings moet hul leerplanne aanpas om te voorsien in die behoeftes van die organisies.

Toewyding deur topbestuur, werknemers en vakbonde is een van die belangrikste bestanddele waaruit regstellende aksie bestaan. Alle belangegroepe sal dan kan saamwerk in die ontwikkeling van strategieë vir die suksesvolle implementasie van regstellende aksie programme.

Die kultuur en denkwys in die wekplek moet verander. Daar moet 'n verandering in persepsies en houdings intree. Dit is noodsaaklik om at te sien van die rassistiese denkwys dat enige iets van Afrika nie goed genoeg is nie. Die waardering en aanvaarding van kulturele verskille onder werknemers is noodsaaklik. Daardeur word bygedra tot die produktiwiteit en effektiwiteit van 'n organisasie.

Die vaardighede van werknemers moet in ag geneem word om 'n verlaging van standarde te voorkom. Waar die vorige bedeling werknemers met die nodige potensiaal van sekere kwalifikasies en nodige ondervinding ontnem het, word hulle nou opgelei om hul volle potensiaal te bereik.

'n Organisasie moet, waar moontlik, die dienste van 'n regstellende aksie toesighouer of senior bestuurder, wat tot die pligte van 'n regstellende aksie toesighouer aangestel is, gebruik maak. Die toesighouer moet verkieslik 'n lid

van die benadeelde gemeenskap wees. Die persoon moet respekafdwing en as kredietwaardig binne die organisasie gesien word. Die toesighouer is verantwoordelik vir die hantering van vraagpunte wat rondom regstellende aksie mag ontstaan. Hy / sy moet in samewerking met 'n besturende regstellende aksie komitee optree. Die komitere moet uit 'n deursnee van personeel bestaan met gelyke verteenwoordiging van alle belangegroepe.

Spesifieke programme moet ontwerp word om diskriminasie tydens menslike hulpbronaktiwiteite, soos werwing, keuring, bevordering, opleiding en ontwikkeling, asook evaluasie, teen te werk. Daar moet meganismes ingestel word om klagtes en verskille aangaande beweerde diskriminasie te hanteer.