

BACKGROUND

The Republic of South Africa

The Republic of South Africa is the 2nd largest country in Africa and a leading economic power. It has a population of 44 million; about 80% are Black African, 10% White, 9% "Coloured"; that is, of mixed race, and .5% Indian. For some purposes, these three "nonwhite" groups are referred to generally as "Blacks" and this will be the case in these case studies (with Black Africans referred to as Africans). It has a national government, and nine provincial governments, which, for all significant matters, are subordinate to the national government.

Until the 1990s the country operated under a policy of Apartheid, a strict form of racial segregation. Early in the 20th Century, there was considerable ambiguity as to which racial classification people belonged, with some holding different classifications depending on the law being enforced. The Population Registration Act, passed in 1950, attempted to settle the ambiguity, and sharply defined racial definitions with resolute barriers among them in order to ensure "racial purity." Placement into a category was based on appearance and lifestyle rather than lineage. The Apartheid government did not stop at ensuring everyone was properly racially defined. They also sought to enforce cleavages among racial groups. The Group Areas Act (Act 41 of 1950) gave officials the authority to evict Indians and Coloureds from their residences and relocate them to their own "group" areas (Goodman 1999). The 1959 Promotion of Bantu Self-Government Act established eight Bantustans (also called homelands). Each was to be populated by a different Black "tribe" and was to become self-governing and eventually independent (Goodman 1999). This program was never fully carried out as no bantustan ever became homogenous despite forced movement on a considerable scale (Guelke 1992). Once a homeland was granted independence, Africans associated with that homeland, lost their South African citizenship.

In the 1970s and 1980s, in response to increasing organized internal opposition as well as financial sanctions imposed by the international community, greater reforms began to occur. Many of the apartheid government's severest laws were rescinded. Although political turmoil continued into the 1990s, an Interim Constitution was produced in 1993 that provided an institutional framework for a transition from Apartheid a democratic state. The self-governing homelands and independent states were re-incorporated into a new Republic of South Africa, with a national government and 9 provincial legislative authorities and administrations. (These provincial governments, for all important matters, are subordinate to the national government). The Public Service Act of 1994 (No. 103 of 1993) combined what had been 15 civil services into a single, unified one, comprised of 32 departments, offices and services at the national level and the establishment of 9

At the time of the first democratic election in 1994, 94% of the management echelon of the public service was White and 97% was male (DPSA 1996:24). For many reasons it was vital that the civil service be transformed so that all racial groups as well as women and people with disabilities could be found holding positions at all levels in government

and in all occupational groups. Section The final Constitution (no. 108 of 1996) included this statement:

Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation.

The Act further promised “a transformed public service which is representative, coherent, transparent, efficient, effective, accountable and responsive to the needs of all” (PSA 1994: §11.2. (b)).

Redressing the imbalances of the past to achieve a representative public service was no small task. The legacy of inadequate education failed to prepare women and Blacks for these jobs. The previous system of higher education was fragmented and not well-planned. In 1993, nearly 70 percent of white adults aged 20-24 were enrolled in higher education, compared to only about 12 per cent of Africans in this age group. These disparities were decreasing, but by 1997 still remained substantial. (“White paper on a Programme” 1997.) Many Africans who now are able to enroll in the universities are cognitively unprepared for the course of study (Mphela 2006). While Africans could be found at all levels of the civil service in the African self-governing territories that existed under Apartheid, those Africans that were in the public service of the former RSA were doing low level work. Similarly, women in the public service were predominantly found in low paid work in the fields of education and health. People with disabilities were perhaps the worst off as a result of severe educational disadvantages, past discriminatory labor legislation and other physical and social barriers (White Paper on Affirmative Action 1998).

From time to time the President’s Cabinet has set specific targets for transformation. Currently, these are that 50% of posts at the senior management level must be occupied by women, and 75% by Blacks (currently 29% are held by women and 71% by Blacks). Two percent of positions are to be held by people with disabilities, where only .2% are now.

It was clear that affirmative action would be needed in order to ensure that women, Blacks and people with disabilities would have a chance to compete for higher level jobs if the Constitutional goal of a representative public service and these ambitious targets were to be achieved. The Employment Equity Act (no. 55 of 1998) included extensive provisions for this, including goals and timetables applicable to both private and public sector employers. The goals are incremental targets toward achieving the Cabinet’s directive and take into account factors such as

- the degree of underrepresentation of employees from designated groups
- present and planned for vacancies
- economic and financial circumstances of the employer
- labor turnover trends

The Employment Equity Commission in the Department of Labour was given responsibility to monitor employers' progress in meeting targets and the ability to impose sanctions where it was determined efforts are not being made in good faith. See Appendix 1 for relevant provisions of the Act.

The Western Cape

The Western Cape province is on the southwest tip of the country with a population of 4.2 million. The majority speak Afrikaans, while the two other official languages are English and isiXhosa. It is one of the wealthiest provinces with one of the lowest unemployment rates for the country. This accounts at least in part for the annual migration of about 46,000 people into the Western Cape from other provinces each year, which puts a burden on its health care system and other social services.

In national elections and in most provinces, since the first democratic election in 1994, the African National Congress (ANC) has consistently won. There has been an exception to that, however, and that has been in the Western Cape, where, until recently, the Afrikaaner-dominated National Party won the majority of the vote. As a result, the Western Cape has its own constitution. The ways in which the Western Cape differs from the rest of the nation is important for understanding the dynamics of the means by which representivity is attained in its provincial departments.

In most provinces, Africans represent the majority of provincial employees, ranging from 73% in Gauteng to 97% in Limpopo. In most provinces, Africans hold the majority of senior management positions. However in the Western Cape, Coloureds hold the highest proportion of provincial government positions (62%) while Africans only hold 17% of positions. Whites, who only hold 20% of provincial positions in the Western Cape, hold 53% of top level jobs, with Coloureds holding the next highest proportion (Public Service Commission 2006:32).

There are historical reasons for the disproportionately high number of Coloureds and low number of Africans in the Western Cape. Under Apartheid, there existed a preference policy where Coloureds were encouraged to move into the province to perform service work while Africans were sent to other provinces to work in the gold mines. This, combined with the special political status that was given to Coloureds under Apartheid has led to tension between the two groups in the province. The preference for Coloured policy was abolished in 1986 and since that time Africans have flocked to the Western Cape. However, that has contributed to the unemployment rate of 26% and backlog of housing of nearly 400,000 units (Hendricks 2005). The demographics are changing. While under Apartheid, Africans represented only 10% of the population of the Western Cape, they are expected to comprise a majority of the electorate by 2012 (Seekings 2006).

Another manifestation of this tension is that in the first democratic election in 1994, the ANC won only 1/3 of the vote in the Western Cape. The National Party, the party in power under Apartheid, won 53%, drawing considerable support from the Coloureds, although by no means were the Coloureds unanimous in their vote. Subsequently the

ANC's share of the vote has grown and it now holds power in the Western Cape largely because of the influx of Africans into the province.

The Western Cape provincial government has developed a theme called "iKapa elihlumayo", the Xhosa name for a "Growing Cape" that is designed to guide it until the year 2014. Some of the objectives of the strategy are:

- Human resource development with an emphasis on youth, including creating 10,000 new learnerships.¹
- Economic growth, including attracting \$R5 billion in new investment into priority economic sectors by 2006
- Job creation and social capital regeneration including creating at least 120,000 net new jobs by 2008
- Infrastructure investment, including increasing investment in infrastructure from 1.1% of GDP to 2.5% of GDP by 2008.

It is worth noting that the population of the Western Cape is young; according to the 2001 Census 47% of inhabitants are under 25.

The Western Cape, like all provinces and the national government, is committed to a process called transformation in order to achieve the representative government called for in the Constitution. As noted, the process for doing so is outlined in the Employment Equity Act. That Act requires public and private employers to set numerical targets based on achieving a workforce where racial groups, men and women and disabled people are represented in the department in the same proportion as they are represented in the "Economically Active" Labour Force in the province, as reported by the latest Census. Table 1 shows that demographic profile for 2001, according to Statistics South Africa

Table 1. Demographic Profile of the Western Cape (Economically Active Labour Force)

Race	Male	Female	Total
African	15.8	13.9	29.7
Coloured	27.4	23.8	51.2
Indian	0.6	0.3	0.9
White	10.1	8.1	18.2
Total	53.9	46.1	100

Persons with disabilities: 2.44%

¹ According to the Skills Development Act of 1998 a learnership is where a learner enters into an agreement with an employer to obtain specified practical work experience while also attending education and training.

Western Cape departments are required to report annually to the Department of Labour on their progress toward attaining these targets. They are also required to develop five year Employment Equity plans. In developing these plans, employers are required to empanel a consultative forum that is representative of the workforce (see Appendix 1). These plans project numerical targets but they also include the “affirmative action measures” that the employer will take. Examples of such measures could be:

- Diversify advertisements of vacant positions to reach a broader cross-section of the population
- Develop retention strategy to retain greater numbers of Blacks and women
- Modify work environment to achieve reasonable accommodation.
- Develop diversity sensitivity training program.

APPENDIX 1

EMPLOYMENT EQUITY ACT: RELEVANT PROVISIONS

6. (1) No person may unfairly discriminate, directly or indirectly, against an employee, 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, HIV status, conscience, belief, political opinion, culture, language and birth.

(2) It is not unfair discrimination to—

- (a) take affirmative action measures consistent with the purpose of this Act; or
- (b) distinguish, exclude or prefer any person on the basis of an inherent requirement of a job.

(3) Harassment of an employee is a form of unfair discrimination and is prohibited on any one, or a combination of grounds of unfair discrimination listed in subsection (1).

Affirmative action measures

15. (1) Affirmative action measures are measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer. 20

(2) Affirmative action measures implemented by a designated employer must include— 25

- (a) measures to identify and eliminate employment barriers, including unfair discrimination, which adversely affect people from designated groups;
- (b) measures designed to further diversity in the workplace based on equal dignity and respect of all people;
- (c) making reasonable accommodation for people from designated groups in order to ensure that they enjoy equal opportunities and are equitably represented in the workforce of a designated employer; 30
- (d) subject to subsection (3), measures to—
 - (i) ensure the equitable representation of suitably qualified people from designated groups in all occupational categories and levels in the workforce; and 35
 - (ii) retain and develop people from designated groups and to implement appropriate training measures, including measures in terms of an Act of Parliament providing for skills development.

(3) The measures referred to in subsection (2)(d) include preferential treatment and numerical goals, but exclude quotas.

(4) Subject to section 42, nothing in this section requires a designated employer to take any decision concerning an employment policy or practice that would establish an absolute barrier to the prospective or continued employment or advancement of people who are not from designated groups. 5

Consultation with employees

16. (1) A designated employer must take reasonable steps to consult and attempt to reach agreement on the matters referred to in section 17—

- (a) with a representative trade union representing members at the workplace and its employees or representatives nominated by them; or 10
- (b) if no representative trade union represents members at the workplace, with its employees or representatives nominated by them.

(2) The employees or their nominated representatives with whom an employer consults in terms of subsection (1)(a) and (b), taken as a whole, must reflect the interests of— 15

- (a) employees from across all occupational categories and levels of the employer's workforce;
- (b) employees from designated groups; and
- (c) employees who are not from designated groups. 20

(3) This section does not affect the obligation of any designated employer in terms of section 86 of the Labour Relations Act to consult and reach consensus with a workplace forum on any of the matters referred to in section 17 of this Act.

Analysis

19. (1) A designated employer must collect information and conduct an analysis, as prescribed, of its employment policies, practices, procedures and the working

environment, in order to identify employment barriers which adversely affect people from designated groups.

Employment equity plan

20. (1) A designated employer must prepare and implement an employment equity plan which will achieve reasonable progress towards employment equity in that employer's workforce. 10

(2) An employment equity plan prepared in terms of subsection (1) must state—

- (a) the objectives to be achieved for each year of the plan;
- (b) the affirmative action measures to be implemented as required by section 15(2); 15
- (c) where underrepresentation of people from designated groups has been identified by the analysis, the numerical goals⁴ to achieve the equitable representation of suitably qualified people from designated groups within each occupational category and level in the workforce, the timetable within which this is to be achieved, and the strategies intended to achieve those goals; 20
- (d) the timetable for each year of the plan for the achievement of goals and objectives other than numerical goals;
- (e) the duration of the plan, which may not be shorter than one year or longer than five years;
- (f) the procedures that will be used to monitor and evaluate the implementation of the plan and whether reasonable progress is being made towards implementing employment equity; 25
- (g) the internal procedures to resolve any dispute about the interpretation or implementation of the plan;
- (h) the persons in the workforce, including senior managers, responsible for monitoring and implementing the plan; and 30
- (i) any other prescribed matter.

(3) For purposes of this Act, a person may be suitably qualified for a job as a result of any one of, or any combination of that person's— 35

- (a) formal qualifications;
- (b) prior learning;
- (c) relevant experience; or
- (d) capacity to acquire, within a reasonable time, the ability to do the job.

(4) When determining whether a person is suitably qualified for a job, an employer must—

(a) review all the factors listed in subsection (3); and

(b) determine whether that person has the ability to do the job in terms of any one of, or any combination of those factors. 5

(5) In making a determination under subsection (4), an employer may not unfairly discriminate against a person solely on the grounds of that person's lack of relevant experience.

(6) An employment equity plan may contain any other measures that are consistent with the purposes of this Act. 10

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