

GENERAL NOTICE

NOTICE 804 OF 1996

DEPARTMENT OF LABOUR

MINISTRY OF LABOUR

EMPLOYMENT AND OCCUPATIONAL EQUITY: POLICY PROPOSALS

PLEASE NOTE!

FOOTNOTES APPEAR AT END OF DOCUMENT

1. The Minister of Labour requested the Department of Labour: Directorate Equal Opportunities to draft a Green Paper identifying policy proposals for inclusion in a new Employment and Occupational Equity Statute.
2. These proposals are hereby published by the Minister of Labour in the Schedule hereto for general information, public comment and discussion at the National Economic, Development and Labour Council.
3. (a) All interested parties are invited to submit written comments on the draft policy proposals.
(b) Such comments should be addressed to the Director-General: Labour, Private Bag X117, Pretoria, 0001, for attention Mr J. T. Crouse at Fax number (012) 320-0799.
(c) Comments should reach the office of the Director-General by not later than 31 August 1996.
(d) The name, telephone number or fax number and address of a person who may be contacted in regard to the comments should also be stated clearly.
4. The comments will be considered by the Department of Labour and will also be submitted to the National Economic, Development and Labour Council for consideration.
5. An Employment and Occupational Equity Bill will then be drafted and placed before the aforementioned Council for deliberation.

SCHEDULE

GREEN PAPER: POLICY PROPOSALS FOR A NEW EMPLOYMENT AND OCCUPATIONAL EQUITY STATUTE

FOREWORD

The Department of Labour is publishing a Green Paper entitled "Employment and Occupational Equity".

Eradicating all forms of discrimination in the labour market is one of the fundamental objectives of the Government. This is demanded by the constitution and is an integral part of processes that would help achieve social justice in South Africa.

The Department of Labour has been working on this issue for about a year now. The policy formulation process has now reached a point where an Employment Equity Bill could be drafted and submitted for consideration by

Cabinet.

The proposed Employment Equity Bill will become part of the laws initiated by Government to eradicate discrimination. In itself the Bill will be the first intervention to do away with all forms of discrimination in occupation and employment. Since there is no previous statute of this nature and complexity, that the Department of Labour has drawn up or administered before, it was vital that we consult extensively as well as solicit expertise from persons outside the Department.

The Green Paper makes proposals of key policy considerations that have to go into the Employment Equity Bill. These proposals are made in the context of South Africa's social and economic development. The provisions of the ILO Convention 111 that could be integrated into policy formulation processes in order to ensure that South Africa meets her obligations in this branch of International Labour Standards, have also been considered in drafting this Green Paper.

The Department, having taken these matters into consideration, now publishes this Green Paper to allow members of the public to participate further in this debate. The comments received from the public will be analysed and then taken into account in the next stage of this process, namely, preparing a draft Bill. The Green Paper has already been tabled before Cabinet. It shall also be the subject of negotiations by the members of NEDLAC and will be scrutinised by other government agencies.

The proposals have been presented in a manner that we hope is easy to read. We take this opportunity to express our hope that the public will take advantage of participating in this important aspect of labour policy.

T T Mboweni (MP)
Minister of Labour

GREEN PAPER

EMPLOYMENT

AND

OCCUPATIONAL

EQUITY

DEPARTMENT OF LABOUR

(DIRECTORATE: EQUAL OPPORTUNITIES)

JULY 1, 1996

Glossary of Abbreviations

AAPDF	Affirmative Action Policy Development Forum
CCMA	Commission for Conciliation, Mediation and Arbitration
CSS	Central Statistical Services
EEAC	Employment Equity Advisory Council
HRD	Human Resource Development

LIFO	Last In, First Out
LRA	Labour Relations Act No 66 of 1995
NEDLAC	National Economic Development and Labour Council
SAQA	South African Qualifications Authority

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SUMMARY

1. What is employment equity?
 - 1.1 This Green Paper outlines proposals on employment equity as the basis for further discussion and refinement. These proposals aim to help redress disadvantages emanating from past racial policies and, as far as possible, to ensure the accommodation of differences between people in the workplace.
 - 1.2 The work of the Comprehensive Labour Market Commission shall also inform the final proposals that will form part of the Bill. The terms of reference of the Commission include proposals for "mechanisms aimed at redressing discrimination in the labour market."
 - 1.3 The need for policies on employment equity arises, in the first place, from recognition of continuing inequalities associated with past discrimination, associated primarily with race and gender.
 - 1.4 Given these inequalities, measures to achieve employment equity necessarily reflect an analysis of the nature and extent of discrimination in the workplace, and its relationship to past discrimination outside the labour market.
 - 1.5 Employment equity centres on:

1.5.1 eradication of unfair discrimination of any kind in hiring, promotion, training, pay, benefits and retrenchment, in line with Constitutional requirements. The government will give individuals easier access to remedies.

1.5.2 measures to encourage employers to undertake organisational transformation to remove unjustified barriers to employment for all South Africans, and to accelerate training and promotion for individuals from historically disadvantaged groups.

1.6 Employment equity does not provide a panacea for all the evils of past discriminatory policies. To succeed, it could form part of a broad complex of measures that enhance overall social and economic equality in ways that support productivity, democracy and diversity.

2. Employment equity in the context to fine qualities in income and status

2.1 Policies aimed at promoting employment equity gain their urgency from the deep inequalities that rend our society. Income distribution in South Africa is among the most unequal in the world.

2.1.1 An unusually small share of the national income goes to the majority of the population. Black people are clustered at the bottom while most whites appear at higher income levels.

2.1.2 The inequalities associated with race and gender, and some social and economic implications are examined through several illustrations in tables and statistics.

2.1.3 The data indicate deep-seated inequalities in income and occupational status that line up with race and gender. These inequalities have imposed heavy burdens on society, the economy, and individuals.

2.2 Measures for employment equity will contribute to alleviating inequalities only as part of a broader strategy of reconstruction and development.

2.3 Inequalities in race and gender do not arise solely or even primarily from discrimination in employment. The overall distribution of income is highly unequal.

2.4 For this reason, the measures discussed here aim to encourage equity in the workplace in ways that help improve the overall distribution of income while fostering a more productive economy.

3. Employment equity in the context of factors leading to inequalities in employment

3.1 Measures to ensure that employment equity forms part of an overall strategy to overcome disadvantage are also explored. The proposals put forward examine factors that contribute to discrimination and disadvantage in employment and how the situation could be rectified.

3.2 The approach taken, combines anti-discrimination measures to protect individuals with measures to encourage institutional and cultural change by employing organisations.

3.3 Given this deeper transformation, accelerated training and promotion for individuals from historically disadvantaged groups can achieve success.

3.4 In short, policies aimed at fostering equity in employment could form part of a much broader effort to reduce inequalities while fostering greater productivity and economic growth. In that context, employment equity will centre on:

3.4.1 procedures to eliminate lingering discrimination in decision-making about employees' careers, pay and benefits,

3.4.2 restructuring of work organisation to promote diversity,

3.4.3 reducing the barriers to historically disadvantaged groups,

3.4.4 the transformation of workplace culture and procedures, through measures, in order to accelerate the training and promotion of people from historically disadvantaged groups.

4. Measures for effecting employment equity

4.1 Some of the proposals made on the scope and application of the measures are as follows;

4.1.1 prohibition of harassment on the job;

4.1.2 procedures for decision-making about employees;

4.1.3 ways to reorganise work and training to reduce barriers to entry and, in that context

4.1.4 to accelerate the hiring, training and promotion of people from historically disadvantaged groups,

4.1.5 A final section discusses employers' and employees' responsibilities in drawing up, monitoring and reporting on employment equity plans.

4.2 The extent of obligations on employing organisations will depend primarily on their size and current practices, of which details shall be spelt out by the policy guidelines emanating from the Department of Labour.

4.3 All employers will provide some key data on employment on a regular basis.

4.4 All employers will have to undertake procedures to prevent discriminatory decision-making about employees, ensure equal pay and benefits for equal work, and ban discriminatory harassment.

4.5 Larger employers will have to submit employment equity plans for approval by the Minister of Labour. Smaller employers may have to submit plans, if requested by employees or other stakeholders, or to gain certification to gain government subsidies or tendering rights.

4.6 Employers with plans should have a legal obligation to carry them out, and to report on their implementation.

4.7 Larger employers will have to establish appropriate systems for internal appeals and grievances against discriminatory behaviour or harassment,

4.8 Employers will have to consult on employment equity measures, including the audit and plan, with employees and possibly other important stakeholders.

5. Institutional framework and enforcement mechanisms

- 5.1 The institutions charged with supporting efforts by employing organisations, monitoring progress, and resolving disputes are explored. Sanctions and incentives available for enforcement are then reviewed.
- 5.2 Employment equity measures will try to strike a positive balance between strict administrative processes and a concerted effort by the Department of Labour to build positive relations among the affected parties.
- 5.3 The government should;
 - 5.3.1 create an enabling environment to protect individuals from discrimination;
 - 5.3.2 provide advice and support to employers in transforming the work organisation and culture to promote equity;
 - 5.3.3 monitor progress in improving equity in employment overall;
 - 5.3.4 foster the resolution of disputes about institutional transformation; and
 - 5.3.5 enforce planning requirements where desirable.
- 5.4 In the absence of established standards and programmes, the Department shall adopt an incremental approach in implementing the statute. The relevant enforcement mechanisms and institutional remedies will have to evolve over time towards established benchmarks for good practice and performance.

Chapter 1

INTRODUCTION

1.1 What is employment equity?

- 1.1.1 This Green Paper outlines proposals on employment equity as the basis for further discussion and refinement. Our proposals aim to help redress disadvantages emanating from past racial policies and, as far as possible, to ensure the accommodation of differences between people in the workplace.
- 1.1.2 We must change the structures and procedures that reproduce and reinforce old prejudices, and bring into being a new culture of diversity at work. The creation of this new culture will have to be a conscious process that pulls in all economic sectors and stakeholders.
- 1.1.3 The government is committed to positive measures to overcome the legacy of discrimination and disadvantage inherited from the previous order of state and society. Under the apartheid system, a series of laws built discrimination into the political and social order of the day, entrenching them in all spheres of life, including the workplace.
- 1.1.4 The repeal of these discriminatory laws will not, by itself, end the disadvantages which they generated. Social and economic forces have taken their place in perpetuating that order. In these

circumstances, government must embark on programmes to foster equality, which include measures for employment equity.

1.1.5 Employment equity centres on:

1.1.5.1 A ban on unfair discrimination of any kind in hiring, promotion, training, pay, benefits and retrenchment, in line with Constitutional requirements. The government will give individuals easier access to remedies.

1.1.5.2 Measures to encourage employers to undertake organisational transformation to remove unjustified barriers to employment for all South Africans, and to accelerate training and promotion for individuals from historically disadvantaged groups.

1.1.6 To achieve these ends,

1.1.6.1 Employers must set up non-discriminatory procedures for hiring, promotion, remuneration, selection for training and retrenchment, primarily by communicating possibilities more evenly and by establishing clear, justified criteria for the relevant decisions;

1.1.6.2 In consultation with employees and other stakeholders, employers should develop an Employment Equity Plan that;

- a) lays out measures to reduce barriers to historically disadvantaged groups;
- b) accelerates training and promotion for people from historically disadvantaged communities; and
- c) provides key indicators of success in ensuring equity.

1.1.6.3 All employers will report on employment and training in terms of race and gender, so that society can monitor the success of these policies in transforming employment.

1.1.7 The proposals for employment equity centre

1.1.7.1 on anti-discrimination measures, which will apply without exception, and

1.1.7.2 on the development of plans by the organisations affected. The planning process lets employers, in consultation with major stakeholders, address their particular constraints.

1.1.8 Government will develop programmes to support and monitor progress, and will intervene to protect individuals from discrimination in the workplace. It will build on the provisions of the 1995 Labour Relations Act as well as new policy initiatives aimed at expanding human resource development.

1.1.9 Employment equity does not provide a panacea for all the evils of past discriminatory policies. To succeed, it must form part of a broad complex of measures that enhance overall social and economic equality in ways that support productivity, democracy and diversity.

These measures include the new framework for training, improvements in education, a dramatic upgrading of infrastructure in historically disadvantaged communities, reconstruction of the economy to support

expanded employment and self-employment, and enhanced multilingualism.

1.2 The policy formulation process

- 1.2.1 The Green Paper has been prepared by the Directorate: Equal Opportunities within the Department of Labour. It was drafted by a team of experts on the basis of extensive consultation with stakeholders.
- 1.2.2 On March 3, 1995, the Minister of Labour established the Affirmative Action Policy Development Forum (AAPDF) as a non-statutory advisory forum. The AAPDF brought together organised business, organised labour, women, youth, representatives of disabled people, government officials and researchers to debate key aspects of employment equity in an informal environment. It concluded its work on February 22, 1996, after establishing the drafting team to prepare this document.
- 1.2.3 The work of the Comprehensive Labour Market Commission will also inform our proposals. The terms of reference of the Commission include the development of proposals for "mechanisms aimed at redressing discrimination in the labour market."
- 1.2.4 Following discussion of this Green Paper with stakeholders both outside and inside the government, the Department of Labour will provide more definitive proposals through a White Paper on Employment Equity.

1.3 Areas of focus

- 1.3.1 Policies on employment equity start from the recognition of inequalities arising out of past discrimination, mostly on the basis of race and gender. Chapter Two briefly reviews disparities in income and occupational status, drawing primarily on the CSS October Household Survey for 1994.
- 1.3.2 Given these inequalities, measures to achieve employment equity necessarily reflect an analysis of the nature and extent of discrimination in the workplace, and its relationship to disadvantages outside the labour market. Chapter Three locates labour-market discrimination in the context of broader inequalities, and analyses where discrimination occurs in labour-market processes. On this basis, it describes the major thrusts of our proposals.
- 1.3.3 Chapter Four outlines the requirements an employment equity policy places on employers and employees.
- 1.3.4 Chapter Five reviews the institutional framework required to enforce, monitor and evaluate outcomes of employment equity policies. It stresses the role of the Commission for Conciliation, Mediation and Arbitration (CCMA) in avoiding unnecessarily antagonistic solutions, and the importance of supporting change through a variety of sanctions and incentives. It also proposes an Employment Equity Advisory Council to advise the Minister on improvements in relevant policies.

Chapter 2

EMPLOYMENT EQUITY IN

CONTEXT (1): INEQUALITIES IN

INCOME AND STATUS

2.1 Introduction

2.1.1 Policies aimed at employment equity gain their urgency from the deep inequalities that rend our society. Income distribution in South Africa ranks among the most unequal in the world. An unusually small share of the national income goes to the majority of the population.

In that context, Black' people, and especially Black women, are clustered at the bottom, while most Whites appear at higher income levels.

2.1.2 This chapter discusses the inequalities associated with race and gender, and some social and economic implications. Chapter Three then explores the place of employment equity in a larger strategy to address them.

2.2 Inequalities in income and status related to race and gender

2.2.1 In South Africa, differences in income and status in the economy go hand in hand with race and gender. Generally, the data show that substantial inequalities still exist between Blacks and Whites and men and women, even when they have similar occupational status and education.

2.2.2 The figures underscore the need to define inequalities, not in terms of race or gender, but in terms of how race and gender work together. Effective policies cannot simply apply sweeping measures to all Black people or all women. Rather, we must first define the nature of inequalities faced by different groups, and the extent to which these inequalities arise within the labour market. Only then can successful measures on employment equity emerge.

2.2.3 The Appendix to this chapter provides data from the 1994 October Household Survey on incomes and occupational status by race and gender. The discussion here only identifies the key trends that emerge from these tables.

2.2.4 Table 1 (page 17) outlines differences in access to employment by race and gender. It underlines the fact that Black people, and especially Black women, are much worse off than Whites. Close to half of Black women were unemployed, compared to a quarter of Black men - and under 5 per cent of Whites.' African women alone make up one in five employees, but one in two unemployed people. In contrast, White men make up one in seven employees, but less than one in a hundred of the unemployed.

2.2.5 Table 2 (page 18) indicates incomes for employed and self-employed people by race and gender. Almost one in three African employees earned less than R500 a month, compared to less than one in twenty Whites. A third of Black people earned under R500 a month, compared to under 5 per cent of Whites. Disparities emerged even within occupational categories. Thus, in top management, only half of Black people earned more than R2000 a month, compared to three quarters of Whites. Among unskilled workers, about 2 per cent of Black people earned over R2000 a month, compared to over half of White men and a quarter of White women.

2.2.6 Differences in income proved even more extreme for self-employed

people. Over a third of African women were self employed, and two thirds earned under R500 a month. In contrast, a fifth of White men were self employed, and 3 their incomes averaged over R15000 a month.

2.2.7 Table 3 (page 20) indicates the extent to which race and gender define occupation and status. A White man was 5000 times as likely to be in top management as an African woman. Generally, Whites were heavily over-represented in the professions and management, and virtually none were elementary workers. White women dominated in secretarial work. Black women were most heavily over-represented among self-employed elementary workers and the unemployed. Black men were over-represented only among shop floor workers.

2.3 Disability and inequality

The data do not permit a comparable analysis of the relationship between disability, income and status. Estimates suggest that 5 per cent to 12 per cent of the population are moderately to severely disabled.

Only one in five disabled people is economically active, and only one in a hundred severely disabled people has a job on the open labour market. The vast majority of the disabled must depend on social pensions and family support, rather than earned income.

2.4 The impact of inequality

2.4.1 Massive inequalities in income and status affect social cohesion, undermine efficiency and economic growth, and have a devastating impact on families and individuals. This section briefly explores some of the implications.

2.4.2 Clearly, South Africa cannot sustain inequalities related to race and gender at the level it currently suffers. They contribute to high levels of social unrest and crime, which undermine growth and development.

2.4.3 Extreme inequalities also affect the economy directly. They are associated with inefficiencies in the labour market and consequently throughout the economy. In addition, they have prevented the growth of the middle class, which has stunted domestic demand and human resource development.

2.4.4 Apartheid policies led to allocative and technical inefficiency. They marginalised large sections of the labour force, preventing them from engaging in directly productive and sustainable economic activities either as employees or as self-employed individuals. This is a plain waste of resources.

2.4.5 Apartheid policies also artificially reduced the cost of the labour of the majority, and increased the cost of employing a favoured minority. As a result, employers faced higher costs for skilled and supervisory workers, while they had little incentive to improve the productivity of unskilled labour. Since employers could not easily substitute for high-cost, often poor quality protected labour, they endured substantial inefficiency at the microeconomic level.

2.4.6 Consistent inequalities in incomes by race and gender were associated with an unusually skew distribution of income, as the table below illustrates. As a result, poverty and inequality in South Africa prove worse than in most Third World countries at a similar level of productivity.

2.4.7 The middle 60 per cent of South Africans received substantially less than the norm for Third World countries, and far less than in the newly industrialising economies. This compression of the middle class limits the potential for balanced economic growth and social development.

Income shares in South Africa compared to selected newly industrialising countries

	Share of income going to:				
	poorest 20%	second 20%	third 20%	fourth 20%	richest 20%
South Africa	3%	6%	10%	18%	63%
South Korea	7	12	16	22	42
Thailand	6	9	14	22	50
Singapore	5	10	15	22	49
Malaysia	5	8	13	20	53
Indonesia	9	12	16	21	42

Source: World Bank, World Development Report 1995

2.4.8 In short, the apartheid legacy distorts resource allocation in the labour market, the way in which capital and labour are combined, the relative costs of inputs, the structure of production and consumption and the levels of savings and investment in the economy. The costs to society and to individuals remain uncountable.

2.5 The implications for employment equity

2.5.1 The data indicate that deep-seated inequalities in income and occupational status line up with race and gender. These inequalities have imposed heavy burdens on society, the economy, and individuals.

2.5.2 Measures for employment equity will contribute to alleviating inequalities only as part of a broader strategy of reconstruction and development. For one thing, inequalities in race and gender do not arise solely or even primarily because of discrimination in employment. For another, the overall distribution of income is highly unequal. For this reason, the measures discussed here aim to encourage equity in the workplace in ways that help improve the overall distribution of income while fostering a more productive economy.

2.5.3 Chapter three locates employment equity in the overall development strategy. It then discusses how the proposals here address factors that contribute to discrimination and disadvantage in employment.

APPENDIX TO CHAPTER 2:

INEQUALITIES IN INCOME AND STATUS, BY RACE AND GENDER

TABLE 1.

ACCESS TO EMPLOYMENT BY RACE AND GENDER, 1994

status in labour force	black women	black men	of which: included in black		
			asian women	asian men	coloured women
not economically active	52%	34%	2%	1%	5%
unemployed	53%	43%	1%	1%	4%
total employees	24%	52%	1%	3%	5%
employers or workers on own account	55%	21%	0%	2%	4%

(Table 1. Continued)

status in labour force	of which: included in black			white women	white men	total
	coloured men	african women	african men			
not economically active	3%	45%	30%	9%	5%	100%
unemployed	4%	48%	39%	2%	1%	100%
total employees	8%	18%	41%	10%	14%	100%
employers or workers on own account	2%	50%	17%	6%	18%	100%

Source: Calculated from, CSS, October Household Survey 1994

TABLE 2.

INCOMES BY RACE AND GENDER FOR SELECTED OCCUPATIONS, 1994

status in labour force	black women	black men	of which: included in black		
			asian women	asian men	coloured women
% of employment of group	70%	93%	93%	87%	87%
total employees					
R0-R499	26%	27%	7%	3%	20%
R500-R999	27%	25%	24%	14%	28%
R1000-R1999	35%	33%	49%	40%	41%
over R2000	12%	14%	21%	29%	11%
% of employment of group	1%	2%	2%	4%	1%
top management					
R0-R499	9%	6%	0%	1%	0%
R500-R999	8%	11%	11%	5%	5%
R1000-R1999	36%	32%	66%	31%	32%
over R2000	47%	51%	23%	64%	63%

professionals	% of employment of group	7%	7%	4%	4%	3%
	R0-R499	2%	3%	5%	2%	4%
	R500-R999	9%	6%	7%	6%	11%
	R1000-R1999	47%	30%	34%	16%	38%
	over R2000	42%	61%	55%	74%	47%
clerks	% of employment of group	11%	7%	33%	14%	19%
	R0-R499	8%	4%	4%	2%	4%
	R500-R999	27%	19%	23%	17%	24%
	R1000-R1999	52%	54%	55%	45%	58%
	over R2000	13%	23%	18%	36%	14%
artisans and related occupations	% of employment of group	3%	13%	6%	13%	4%
	R0-R499	27%	12%	9%	1%	10%
	R500-R999	34%	32%	26%	2%	36%
	R1000-R1999	34%	42%	55%	18%	50%
	over R2000	6%	15%	10%	80%	4%
operators and assemblers	% of employment of group	6%	19%	17%	15%	12%
	R0-R499	15%	16%	8%	5%	6%
	R500-R999	32%	26%	24%	18%	34%
	R1000-R1999	48%	45%	58%	62%	59%
	over R2000	5%	12%	9%	15%	2%
elementary workers	% of employment of group	22%	32%	3%	4%	24%
	R0-R499	55%	55%	12%	12%	49%
	R500-R999	31%	26%	36%	38%	29%
	R1000-R1999	13%	17%	47%	40%	21%
	over R2000	1%	2%	4%	10%	1%
employers and workers on own account	% of employment of group	30%	7%	7%	13%	13%
	R0-R499	69%	25%	24%	3%	75%
	R500-R999	20%	15%	12%	5%	16%
	R1000-R1999	7%	23%	22%	16%	7%
	over R2000	4%	37%	43%	76%	3%
top management	% of employment of group	2%	2%	2%	6%	0%
	R0-R499	24%	11%	9%	0%	18%
	R500-R999	16%	6%	0%	2%	6%
	R1000-R1999	21%	20%	5%	5%	51%
	over R2000	39%	63%	86%	93%	24%
	% of employment of group	26%	2%	3%	2%	12%

elementary workers	R0-R499	74%	21%	49%	13%	78%
	R500-R999	20%	18%	19%	9%	16%
	R1000-R1999	5%	25%	28%	38%	5%
	over R2000	1%	11%	5%	40%	1%

(Table 2, continued)

status in labour force		of which: included in black			white women	white men
		coloured men	african women	african men		
total employees	% of employment of group	95%	65%	93%	90%	80%
	R0-R499	19%	30%	30%	4%	2%
	R500-R999	24%	27%	26%	2%	7%
	R1000-R1999	37%	32%	32%	38%	2%
	over R2000	15%	12%	12%	43%	47%
top management	% of employment of group	2%	0%	1%	4%	11%
	R0-R499	7%	17%	7%	0%	1%
	R500-R999	5%	9%	15%	9%	1%
	R1000-R1999	47%	30%	27%	23%	11%
	over R2000	41%	43%	50%	67%	89%
professionals	% of employment of group	3%	7%	4%	11%	8%
	R0-R499	1%	2%	3%	1%	1%
	R500-R999	6%	9%	5%	6%	4%
	R1000-R1999	29%	49%	32%	26%	13%
	over R2000	63%	41%	59%	67%	82%
clerks	% of employment of group	8%	8%	6%	44%	9%
	R0-R499	2%	11%	5%	3%	2%
	R500-R999	18%	29%	20%	18%	10%
	R1000-R1999	55%	49%	55%	45%	33%
	over R2000	25%	12%	21%	34%	56%
artisans and related occupations over	% of employment of group	20%	3%	12%	1%	21%
	R0-R499	6%	33%	15%	13%	2%
	R500-R999	25%	34%	35%	15%	8%
	R1000-R1999	46%	27%	39%	16%	28%
	over R2000	23%	6%	11%	56%	63%
operators and assemblers	% of employment of group	14%	4%	20%	1%	6%
	R0-R499	9%	23%	18%	8%	3%
	R500-R999	27%	33%	27%	33%	9%
	R1000-R1999	53%	39%	43%	41%	36%
	over R2000	11%	5%	12%	17%	52%

elementary workers	% of employment of group	31%	22%	34%	1%	2%
	R0-R499	42%	57%	57%	5%	14%
	R500-R999	30%	31%	25%	16%	19%
	R1000-R1999	26%	11%	16%	23%	41%
	over R2000	2%	1%	2%	56%	27%
employers and workers on own account	% of employment of group	5%	35%	7%	10%	20%
	R0-R499	12%	69%	29%	17%	6%
	R500-R999	15%	21%	16%	15%	4%
	R1000-R1999	26%	6%	24%	16%	9%
	over R2000	47%	4%	31%	51%	82%
top management	% of employment of group	1%	2%	2%	2%	6%
	R0-R499	3%	25%	14%	9%	3%
	R500-R999	3%	18%	7%	5%	1%
	R1000-R1999	16%	20%	23%	9%	5%
	over R2000	78%	37%	56%	77%	91%
elementary workers	% of employment of group	1%	30%	2%	0%	0%
	R0-R499	32%	74%	20%	0%	6%
	R500-R999	28%	20%	17%	59%	0%
	R1000-R1999	20%	5%	24%	0%	16%
	over R2000	20%	1%	7%	41%	78%

Source: Calculated from, CSS, October Household Survey 1994. a.
Employment in occupation as a % of employment plus self-employment of group *
under 0,5 %

TABLE 3.

INDEX OF REPRESENTIVITY IN SELECTED OCCUPATIONS BY RACE AND GENDER,
ROUNDED TO NEAREST 5 POINTS, 1994

Note: 100 = proportional to participation in labour force; over 100 means
relative over representation, under 100 means relative under representation
of which: included wider black population:

status in labour force	black women	black men	of which: included in black		
			asian women	asian men	coloured women
total employees	65	115	124	152	110
top management	14	53	67	213	31
professionals	90	60	135	91	72
technicians and associated professionals	83	59	144	151	95

clerks	72	59	312	171	167
service/retail workers	90	101	161	182	154
artisans and related	26	131	69	188	41
operators/assemblers	41	168	159	185	113
elementary workers	79	152	15	27	118
employers and workers on own account	160	44	47	116	88
top management - own account	44	91	84	314	11
elementary workers - own account	241	19	34	33	154

(Table 3, continued)

status in labour force	of which: included in black			white women	white men
	coloured men	african women	african men		
total employees	140	57	109	145	137
top management	78	9	41	206	548
professionals	53	91	59	262	203
technicians and asso- ciated professionals	62	79	54	270	224
clerks	79	50	50	501	105
service/retail workers	85	78	99	129	114
artisans and related	242	23	111	16	289
operators/ assemblers	150	31	169	10	75
elementary workers	177	75	155	5	10
employers and workers on own account	35	160	44	86	179
top management - own account	63	48	85	116	331
elementary workers - own account	4	261	19	1	7

Source: Calculated from, CSS, October Household Survey 1994. The index consists of the group's percentage share in each Occupation divided by the group's percentage share in the economically active population. These figures understate the poor representation of African women in higher-level positions, since African women were most Underrepresented in the economically active population.

* under 2,5

Chapter 3
EMPLOYMENT EQUITY
IN CONTEXT 2
FACTORS LEADING TO
INEQUALITY IN EMPLOYMENT

3.1 Introduction

3.1.1 In discussing the obstacles to employment equity, we distinguish between factors that arise inside and outside the labour market.

3.1.1.1 Non-labour-market factors contributing to inequality include disparities in education, housing and household infrastructure, responsibility for housework and childcare, and how close living areas are to work.

3.1.1.2 Labour-market factors include discrimination in hiring, training, promotion and retrenchment, and unnecessary hindrances perpetuated by the way in which work and training are organised.

3.1.2 This chapter first reviews the major factors leading to inequality, and outlines government policies that address these issues. It then considers where discrimination can creep into the workplace, and reviews options for addressing the problem.

3.1.3 The analysis here indicates that measures to foster employment equity must address both discrimination in decision-making about persons' careers and remuneration, and the organisation of work and training.

In such a context, policies to accelerate training and promotion to accelerate the attainment of representivity seem more likely to succeed.

3.2 Inequality inside and outside the labour market

3.2.1 Diagram 1 (page 13) illustrates the position of the labour market in reinforcing inequality. Historically, discrimination occurred within the labour market itself. In addition, a panoply of laws, regulations and policies ensured the disadvantage of the majority of South Africans.

3.2.2 Outside the labour market, critical factors reinforcing inequality include the history of unequal education and training, disparities in the ownership of assets, the unequal division of household labour, especially in communities with poor infrastructure, and regional backlogs. Our strategy to secure social and economic equality must therefore reach far beyond employment equity.

Diagram 1. Discrimination within and outside the labour market

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- 3.2.3 The years of separate and unequal education mean that most Africans bring relatively weak formal qualifications to the labour market. On average, according to the October Household Survey for 1994, Africans had half the years of education of Whites, with slightly lower figures for African women. The average White person had completed secondary school; the average African had five years of education.
- 3.2.4 The education gap narrows substantially for younger cohorts of the population. Thus, for Africans aged 25 to 29, only a tenth had under five years of education, compared to half of those aged 60 to 64.
- Still, with equalisation in spending per pupil expected to arrive only well after the turn of the century, a considerable racial gap in education will persist for the foreseeable future.
- 3.2.5 While more Africans have acquired some secondary education, the pool of highly qualified people remains disproportionately White. According to the 1994 October Household Survey, in the population as a whole White men made up over 30 per cent of all people with post-high school qualifications, and White women comprise almost 25 per cent. Men and women Africans together made up only 40 per cent.
- 3.2.6 A peculiarly South Africa problem emerges from the history of separate school systems. Employers cannot easily assess the value of education in the historically Black system, which combined rigorous selection methods with obsolete and under-resourced teaching conditions. The lack of reliable information on different school systems forms a market failure.
- 3.2.7 Separate school systems also fostered the use of different languages according to ethnic group. In lower-level jobs, by insisting on European-based languages, employers may effectively exclude Africans.
- 3.2.8 The highly unequal distribution of assets contributes to differences in incomes along race and gender lines. Apartheid prevented Africans from owning land. It limited the access of Black people, and especially Black women, to loans, markets and infrastructure, making capital accumulation difficult.
- 3.2.9 Unfortunately, no definitive evidence exists on the ownership of assets by race, gender or class. Estimates suggest that Whites own over nine tenths of all assets in South Africa. Moreover, according to the October Household Survey, interest payments formed the largest non-wage share of income for Whites; for Africans, the largest source of non-wage income was old-age pensions.
- 3.2.10 The figures on income from self employment (see Table 2 in the Appendix to Chapter Two) underline the consequences of unequal access to assets. Both African women and White men are disproportionately self-employed. But for African women, self-employment forms a poorly paid survival strategy. In contrast, self-employed White men are mostly managers and professionals, able to use their assets and formal qualifications to generate high incomes.
- 3.2.11 Women typically face the burden of unpaid household labour in addition to income-generating work. A rigid organisation of work may prevent them from performing well, since they must take time off for

child care and other family responsibilities. For many women, household responsibilities leave no time for paid employment at all.

In most countries, remedying gender imbalances has meant restructuring work organisation to give greater flexibility in balancing paid work against caring responsibilities.

3.2.12 In historically African areas, very poor levels of household infrastructure multiply the time needed for household chores. In 1994, only 8 per cent of Africans had running water at home. Half of African families had to fetch water from over 200 metres away, and half cooked on wood or paraffin. Still, even if they have paid employment, most African women cannot afford paid domestic help,

3.2.13 Finally, spatial differences coincide with racial and gender disparities.

3.2.13.1 Apartheid pushed millions of Africans, and especially African women, into areas with little investment or infrastructure. Today, provinces that include the former homelands - especially the Eastern Cape and Northern Province - are by far the poorest. The provincial income per capita in these provinces lies at about a tenth that of Gauteng and the Western Cape. Their populations are under 5 per cent White and over 55 per cent women. In contrast, over a quarter of the population of Gauteng and the Western Cape is White, and the gender distribution is slightly skewed toward men.

3.2.13.2 Even in the former "White" territories, laws kept most Black communities on the fringes of the urban areas, As a result, they remain distant from many work opportunities, which imposes high costs for transport in terms of both money and time. For women in particular, commuting both adds to the burdens of household and family responsibilities, and may cause danger if they must travel in the dark.

3.2.14 In short, many conditions outside the labour market contribute to inequalities along race and gender lines. These factors interact with labour-market discrimination in a variety of ways. Disadvantage in the labour market makes it harder for workers and their families to overcome other disadvantages shaped by apartheid, such as poor schools and distance from work. And labour-market disadvantages often arise because employers do not make allowance for the circumstances of the majority of the population.

3.2.15 The breadth of factors that contribute to inequality underlines the need for measures that go beyond the labour market. To have a significant impact on inequalities, employment equity measures will be coordinated with

3.2.15.1 strategies to transform education and training;

3.2.15.2 restructure the economy to improve productivity and employment creation; and

3.2.15.3 greatly improve basic household infrastructure in historically disadvantaged communities.

3.3 Inequalities in the labour market

- 3.3.1 While conditions outside the labour market remain highly unequal, we in income and status related to race and gender emerge even when people have the same jobs, occupations or education. Training remains particularly skewed, further perpetuating inequalities both inside and outside of employment.
- 3.3.2 Private surveys estimate that Whites earn between 5 and 10 per cent more than Africans in virtually identical jobs. Moreover, lingering discrimination in the selection of people for training and in promotions means that White men generally enjoy a far more rapid rise than other people.
- 3.3.3 The impact of discrimination also emerges from disparities in earnings by race and gender, even in groups with the same qualifications and occupations. As the table below shows, Black people, and especially Black women, earn considerably less than Whites with the same formal education.
- 3.3.4 Similarly, African men and women have only marginal differences in total educational achievement. But African women face higher unemployment rates and lower incomes than African men. Education and income by race and gender, 1994 (mean earnings as a percentage of those of average African man at the same educational level)

education level	Mean earnings in group as percentage of those of African men:							
	African women	African men	White women	White men	Coloured women	Coloured men	Asian women	Asian men
none	82%	100%	n.a.	n.a.	83%	97%	n.a.	n.a.
Sub A - Std. 2	74	100	n.a.	n.a.	88	102	162%	n.a.
Std. 3 - Std. 5	72	100	n.a.	n.a.	93	112	141	149%
Std. 6 - Std. 9	73	100	133%	200%	91	118	115	131
Std. 10	81	100	177	122	87	107	86	122
Post Matric	85	100	117	203	91	106	101	130

n.a. = not applicable (sample in group was too small)

Source: Budlender, "A Profile of South African Women," in, Women's Budget Initiative, (1996), p. 11 (calculated from October Household Survey 1994 data)

- 3.3.5 Finally, Table 2 in the Appendix to Chapter Two (page 13) indicates large differences in earnings by race and gender within occupational classes.
- 3.3.6 While general education remains largely outside the labour market, on-the-job training forms an integral part of it. The available evidence suggests that White men continue to enjoy privileged access to formal training programmes, with Black women virtually excluded. Private surveys suggest that in 1994, some two thirds of all apprentices were White. A particular difficulty emerges for Africans who, because they have been excluded from formal training courses,

lack paper qualifications for skills acquired informally.

3.4 What is discrimination in the labour market?

- 3.4.1 Economists define labour market discrimination as arising when employers make decisions about employees for reasons that are not related to genuine work requirements. Discrimination appears most obviously when an employer focuses on irrelevant personal characteristics instead of work performance or merit. Thus, in many organisations, women or Black people must still work unusually well to gain a promotion.
- 3.4.2 The Constitution spells out a range of criteria that employers may not generally use in making employment decisions - sex, race, religion, and so on. The only exceptions occur when an employer is explicitly aiming to overcome disadvantage arising out of past discrimination.
- 3.4.3 Discrimination emerges both in decision-making on career events for individuals, and in the organisation of work and training. Diagram 2 (below) illustrates how discrimination can arise in the labour market, and indicates some policy responses. The remainder of this chapter explores these issues in more depth.

Diagram 2. Sources of discrimination in the labour market, and some general remedies

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3.5 Discrimination and decisions about employees

- 3.5.1 Discrimination in employment becomes possible when employers make decisions about employees' careers. Key points for decisions about employees, either as individuals or in groups, are hiring; setting pay and benefits; promotion; grading; selection for training; and retrenchment.
- 3.5.2 Measures to prevent discrimination generally use fairly standard techniques to make decision-making more open and accountable. Typically, anti-discrimination policies require that employers:
 - 3.5.2.1 ensure that all potential candidates, and especially those from disadvantaged groups, know about opportunities as they arise, generally by advertising appropriately;
 - 3.5.2.2 define and communicate clear, non-discriminatory criteria for their decisions, for instance, about promotions or appointments;
 - 3.5.2.3 provide equal pay and benefits for equal work;
 - 3.5.2.4 give reasons for their decisions in these areas in terms of the stated criteria; and
 - 3.5.2.5 establish routes of appeal to management or to representative committees.
- 3.5.3 These procedures let employers select the best people for the job,

whether or not they come from historically disadvantaged groups. In the U.S., affirmative action requires that, where candidates have virtually identical capabilities, employers favour people from disadvantaged groups.

- 3.5.4 Anti-discrimination measures typically permit only very limited exceptions - usually, as in the Constitution, to overcome past disadvantage.
- 3.5.5 This broad scope has various reasons. Employers enjoy substantial flexibility because of the recognition that unavoidable requirements for the job may shut out people from historically disadvantaged groups. Furthermore, assessing compliance is fairly easy. Finally, the costs imposed on employers are offset by social benefits and long-run efficiency gains, as employment increasingly reflects performance.
- 3.5.6 Assessing procedures to end discrimination may run into problems defining adequate advertising and appropriate criteria.
- 3.5.7 It is not easy to decide whether an employer has advertised opportunities sufficiently broadly. For an internal promotion opportunity, is it adequate to put a notice on a bulletin board in the staff common room? In the public service, is advertisement of senior managerial positions in the national English press sufficient? Must family-owned businesses advertise before they hire family members?
- 3.5.8 More fundamentally, whether consciously or not, employers may rely on criteria that do not reflect genuine needs for the job. Such criteria may not explicitly mention race, gender, or other personal characteristics. But they may nonetheless impose an extra burden upon members of a particular group.
- 3.5.9 For instance, demanding that people be fluent in English and Afrikaans excludes many Africans from employment, promotion or training. Often, however, the work itself does not require fluency in both languages. Indeed, performance might be improved by acquaintance with other languages altogether. Similarly, requiring that candidates for physical labour be tall or heavy effectively excludes most women, without giving them a chance to demonstrate their abilities.
- 3.5.10 A particular concern in South Africa has been the history of duplicate grades for White and Black workers. As a result, workers get different pay and benefits for almost identical work. In these cases, the historically White grades generally call for formal qualifications, such as matric, that most Africans could not get. Often, however, the actual work does not need such high levels of general education.
- 3.5.11 Anti-discrimination laws typically insist that employers demonstrate that the criteria used in key decisions reflect genuine job requirements.
- 3.5.12 Anti-discrimination measures make decisions on employees' careers more open and accountable, in order to rule out criteria that do not relate to the requirements of the job. Complying with these requirements typically involves little cost compared to the long run social and economic benefits.

3.6 Discrimination, diversity and the organisation of work and training

- 3.6.1 The organisation of work and training may also effectively discriminate. Necessarily, these systems reflect assumptions about employees, ranging from their skills, to where they live, to their household responsibilities. Those assumptions may bar people viewed as "different" - even when, as in South Africa, that applies to the majority of the population. 3.6.2 In many cases, the organisation of work and training does not define career paths for workers outside of management. As a result, they can never find advancement. In South Africa, where most lower-level workers are Black and women, this structure then reproduces inequalities in status associated with race and gender.
- 3.6.3 A few examples indicate how work organisation may effectively maintain discrimination on the basis of race and gender.
- 3.6.3.1 Employers often insist that work start before schools open and end long after schools close. Since in most families women still have responsibility for child care, this practice may shut them out from employment opportunities. Similarly, when employers set up workshops on weekends, they effectively exclude many women with caring responsibilities from important meetings.
- 3.6.3.2 Where employees live in townships far from work, rigid shifts may synchronise poorly with the available transport. As a result, they may face unnecessarily long commutes and the hazards of travelling in the dark.
- 3.6.3.3 Some employers do not provide toilet facilities for women or disabled people at work.
- 3.6.3.4 On the mines, lower-level, historically African jobs were designed to minimise training needs and decision-making. For instance, workers at the stope face did not maintain their own machines, which among other ills led to frequent production pauses. Decision-making and skills were concentrated in supervisory positions, with formal qualifications that most Africans could not achieve.
- 3.6.3.5 These supervisory positions remained virtually all White, and enjoyed an array of benefits on and off the job. A less hierarchical structure would bring greater decision-making and skilling within the reach of more workers, and gradually lead to a more even spread of power, pay and benefits.
- 3.6.3.6 A similar rigidity holds sway in the public service, Job descriptions for lower level workers, such as gardeners or cleaners, routinely say they have neither skills nor supervisory responsibilities. Not surprisingly, these jobs hold out little hope of promotion or training.
- 3.6.4 The organisation of training may also keep out people from historically disadvantaged groups. Again, some examples illustrate.
- 3.6.4.1 Most apprenticeships require matric, so that they exclude the vast majority of Black workers.
- 3.6.4.2 Training often takes place at night or on weekends and provides neither child care nor secure transport, making

participation by women more difficult.

3.6.4.3 In the public service, training schemes are aimed at creating a bigger pool of university graduates. Researchers have encountered cleaners taking courses at night for matric working virtually in isolation, with neither leave time nor funding from the public service.

3.6.5 Promoting diversity at work brings many benefits, including greater flexibility, access to a broader pool of skills, and reduced hierarchy, which should ultimately boost productivity. But it also imposes costs.

3.6.5.1 It may require changes to physical facilities, for instance to provide ramps for wheelchairs or day-care centres.

3.6.5.2 Even where obvious material costs do not arise, institutional and cultural transformation affects attitudes and habits, which both employees and management may find difficult.

3.6.6 For these reasons, broad consultation seems critical to workplace restructuring. Employment equity measures generally propose a planning process, with clear guidelines for outputs and consultation.

This process aims to empower both employees and employers to work together to change their environment to accommodate diversity.

3.7 Options for achieving employment equity

3.7.1 This analysis of discrimination in the labour market points to three strategic options for employment equity. Society could:

3.7.1.1 leave employment equity to voluntary action and market forces;

3.7.1.2 focus on transforming decision-making around employees' careers, with or without affirmative action; or

3.7.1.3 reform decision-making as part of a broader reorganisation of work and training that reduces barriers to employment for the majority of South Africans. In that context, employment equity policies ask for accelerated hiring, training and promotion for people from historically disadvantaged groups.

3.7.2 Neither social science theories nor practical experience suggest that the deepseated inequalities left by apartheid will disappear in the foreseeable future without some government assistance. In particular, the unaided action of market forces seems unlikely to achieve that end. Naturally, the proposals here will ensure support for employers who seek employment equity, minimising bureaucratic burdens and maximising advice and information flows.

3.7.3 The second approach concentrating on decision-making around career events - forms part of any employment equity programme. This approach comes close to the affirmative action policies pursued in the United States, Malaysia and other countries.

3.7.4 In the absence of institutional and cultural reform, however, anti-discrimination measures alone do little to empower the majority. Indeed, they may lead only to tokenism. Employers then place individuals from historically disadvantaged groups in positions that

have no real influence or prospects of advancement. Moreover, the environment may prove so full of hindrances, or even hostility, that individuals cannot perform well.

3.7.5 An exclusive focus on reforming decision-making makes individuals the principle source of change in the workplace. Employers and fellow workers become, not part of the process, but rather the objects of legal challenges. The government cannot easily intervene in these situations, and may fall back on time-consuming and expensive court cases. Then, even if individuals win, they often find they cannot function in their new positions.

3.7.6 For these reasons, the proposals here focus on a combination of measures to end discrimination and encourage the reorganisation of work and training.

3.8 Core proposals for employment equity

3.8.1 Analysis of labour-market discrimination leads to the central themes of our employment equity strategy. It points to:

3.8.1.1 anti-discrimination measures to protect individuals combined with measures to encourage institutional and cultural change by employing organisations;

3.8.1.2 accelerated training and promotion for individuals from historically disadvantaged groups in this context;

3.8.1.3 as far as possible, mediation and arbitration to resolve disputes, with strong legal protection against discrimination and harassment.

3.8.2 These proposals aim at transformation of the workplace. They establish a continuous process of human resource development with an ethos of equity for all. Ultimately, employment equity will form an integral part of the strategy and culture of every employing organisation, and of the country as a whole. It becomes a leading goal in practices around human resource development.

3.8.3 These measures can play a critical role in reducing social conflict and enhancing democracy while overcoming the skills bottleneck in the economy. Changes in decision-making procedures, in the organisation of work and in workplace culture help these programmes succeed in achieving representativity without sacrificing productivity or limiting individuals' achievements.

3.8.4 This policy undoubtedly places great challenges before government, employers and employees. They include:

3.8.4.1 Institutional and cultural change imposes costs in both time and money. Appropriate timetables must let employers manage these costs without indefinitely delaying equity. The policy will take into account the resource constraints of smaller employers.

3.8.4.2 In some workplaces, consultation will run into an insider/outsider dilemma. In many cases - notably in the public service - the majority of employees come from historically privileged groups. If employment equity plans are subject to employee veto, they may never materialise. In these cases, the government must provide strong

representation for the "outsiders," the historically disadvantaged majority.

- 3.8.4.3 The government does not have the resources to monitor compliance in every workplace. As far as possible, strategies for enforcement must therefore bring in other stakeholders, such as unions, management teams and responsible officers, and workplace forums.
- 3.8.4.4 Initially, the government will focus its attention on large or strategically placed employers, who could act as role models and whose actions affect more people. It will deal with complaints in ways that prevent discrimination without causing unnecessary conflict in the workplace.
- 3.8.4.5 Finally, employment equity policies cannot succeed in a vacuum. Other strategies must address those roots of inequality that lie outside the labour market.

3.9 Employment equity, education and training

- 3.9.1 Employment equity cannot succeed without a national education and training system that supports the development of every individual in society. The implementation of the National Qualifications Framework is a crucial step to overcoming the barriers to employment. It will give all individuals, for the first time, a chance at lifelong learning, while getting employers much greater information on the skills of their employees.
- 3.9.2 The Department of Labour is working with the social partners on a new HRD strategy which will ultimately transform the training system. This strategy means that, increasingly, training will:
 - 3.9.2.1 link into internal career paths that promote progression and productivity;
 - 3.9.2.2 bear credit in terms of the National Qualifications Framework, in order to facilitate further learning over time as well as flexibility;
 - 3.9.2.3 enhance employment security;
 - 3.9.2.4 involve adult basic education and
 - 3.9.2.5 build on prior learning, whether acquired formally or informally.
- 3.9.3 The HRD strategy provides a critical framework for accelerating hiring, training and promotion for historically disadvantaged groups. It will enhance the capacity of designated groups to participate in designing and monitoring training programmes linked to employment equity plans. Generally, government funding of training will promote representivity, especially in decision-making occupations.

3.10 A multifaceted strategy for equity

- 3.10.1 Policies to foster equity in employment must form part of a much broader effort to reduce inequalities while supporting productivity and economic growth. In addition to HRD, strategies that foster equality outside the labour market while contributing to growth and development include:

- 3.10.1.1 the expansion of household infrastructure and housing in historically Black communities;
 - 3.10.1.2 improved social services for the majority of the population;
 - 3.10.1.3 measures to foster more equal distribution of assets, including support for small and medium enterprises and land reform, as well as a stronger competition policy.
- 3.10.2 As part of this wider strategy, employment equity will centre on:
- 3.10.2.1 Procedures to eliminate discrimination in decision-making about employees' careers, pay and benefits.
 - 3.10.2.2 The restructuring of work organisation to accommodate diversity and reduce the barriers to historically disadvantaged groups.
 - 3.10.2.3 In the context of the transformation of workplace culture and procedures, measures to accelerate the training and promotion of people from historically disadvantaged groups.

Chapter 4

PROPOSED MEASURES

FOR EMPLOYMENT EQUITY

4.1 Introduction

This chapter discusses the components of an employment equity policy in greater detail. It first reviews the scope and application of the measures, and the form of regulation involved. It then outlines proposals for ending harassment on the job; procedures for decision-making about employees; and ways to reorganise work and training to reduce barriers to entry and accelerate the achievement of representivity. Finally, it explores employers' and employees' responsibilities in drawing up, monitoring and reporting on employment equity plans. Box 3 (on page 39) sums up the responsibilities of employing organisations.

4.2 Scope and application

- 4.2.1 The proposals here apply to all employing organisations, employees and applicants for employment. The proposed legislation will accommodate various categories of employers.
- 4.2.2 The anti-discrimination proposals reach all groups protected by the Constitution. Generally, they bar the inclusion of criteria not related to job requirements in decisions about employees' careers.
- 4.2.3 Measures to accelerate hiring, promotion and training will be directed at three disadvantaged groups: Black people, women and persons with disabilities. The process of consultation on this Green Paper will define;
 - 4.2.3.1 how much to differentiate within these groups in order to meet specific needs, and
 - 4.2.3.2 how to ensure accelerated measures for designated groups without re-installing an oppressive classification system.

4.3 Forms of regulation

- 4.3.1 Only the most important provisions of the employment equity proposals will be included in the Bill. Most of the detail discussed here will be provided by the Department of Labour through codes of good practice. Some of these codes will be made into subsidiary legislation. This approach ensures flexibility, making possible a continuous improvement in employment equity policies.
- 4.3.2 The Bill will spell out the need for changes in decision-making to end discrimination, prevent harassment and give the Department of Labour the power to require companies to develop an employment equity plan. Codes of good practice will spell out ways to implement these requirements, for instance defining adequate advertising or unacceptable criteria for hiring or promotion.
- 4.3.3 Overtime, a jurisprudence on employment equity will also evolve, giving further guidance to employing organisations.

4.4 Prohibition of harassment on the job

- 4.4.1 Harassment involves unwanted or unsolicited attention based on someone's personal characteristics, in terms of the Constitutional protections against discrimination. Hate speech and sexual harassment are particular forms of harassment.
- 4.4.2 No employer may subject applicants or employees to harassment in the workplace, or permit other employees to engage in harassing behaviour.
- 4.4.3 Employers should review grievance procedures to ensure that they deal with complaints of harassment sensitively and effectively. If necessary, employees will be able to obtain protection from the government, as discussed in Chapter Five.

4.5 Decision-making about career events

- 4.5.1 Employers will be prohibited from using recruitment and selection methods and criteria that discriminate unfairly. Critical areas for transformation include advertising opportunities, the development of criteria, and decision-making on candidates. The organisational audit, discussed in Section 4.6 below, should provide a basis for assessing and reforming procedures as needed.
- 4.5.2 Advertising. Fulfilling anti-discrimination requirements involves a systematic transformation of advertising procedures. Critical steps include:
 - 4.5.2.1 The development of advertising mechanisms that reach all realistic candidates for new opportunities, including people from historically disadvantaged groups.
 - 4.5.2.2 Ending processes that neglect historically disadvantaged groups, such as advertising through newspapers or institutions with limited audiences.
 - 4.5.2.3 Avoiding word-of-mouth recruitment, which favours members of historically privileged groups, unless it serves to widen the pool of applicants. No one would oppose informal head-hunting for qualified applicants from historically disadvantaged groups, but it should not replace advertising

to as wide a group as possible.

- 4.5.3 Definition of criteria. Modifying selection criteria involves a two-stage process: redefining criteria to avoid higher hurdles than the current organisation of work and training legitimately requires; and ultimately transforming work and training to reduce barriers to employment even further.
- 4.5.3.1 Employers should immediately review their criteria for hiring, training, transfers, retrenchments and promotion, to ensure that they do not discriminate. Acceptable criteria aim solely to select people who can do the job under normal conditions.
 - 4.5.3.2 As far as possible, employers should define criteria in terms of skills rather than formal educational requirements, in order to avoid building on past disadvantage. This approach is particularly important in choosing people for training. Co-operation with the South African Qualifications Authority (SAQA), when it is implemented, will prove particularly helpful.
 - 4.5.3.3 For similar reasons, employers should recognise the value of experiences in different types of organisations and situations.
 - 4.5.3.4 Where a company has historically employed few people from disadvantaged groups, seniority within the company may be a discriminatory criterion.
 - 4.5.3.5 Employers should avoid psychometric tests unless they can demonstrate that they respect diversity.
 - 4.5.3.6 Criteria should not discriminate against degrees from historically Black institutions unless employers have evidence that the graduates of the course in question do not measure up. The SAQA will assist in this connection.
 - 4.5.3.7 Language policies can unnecessarily limit access by historically disadvantaged groups. Here, close co-operation with employees to find new linguistic practices on the job is important.
 - 4.5.3.8 Grading systems may separate groups doing virtually identical work on the basis of race and/or gender, leading to unequal pay and benefits for equal work. In these cases, redefining grades is necessary.
 - 4.5.3.9 Many employers give housing allowances and other benefits only to unmarried people and married men. Where employers want to avoid duplicating benefits for married couples, they can let the couple decide who will take the benefit.
 - 4.5.3.10 Standard Last-In, First-Out (LIFO) practices may perpetuate past disadvantage, when Black people and/or women legally or effectively had unequal access to employment. But employees need some certainty and protection to ensure lay offs do not cause unnecessary hardship. If reappraisal of LIFO principles is desirable, new procedures must give employees sufficient security.

4.5.3.11 Employers should review grounds for dismissal to ensure that they do not discriminate. This area of employment currently falls under the LRA.

4.5.4 Decision-making procedures. Above all, employers will have to give reasons for their decisions about employees in terms of explicit, fair criteria. Employers should avoid letting other factors creep in. For instance, it might discriminate against historically disadvantaged groups to be swayed by whether all applicant played rugby for the province.

4.5.4.1 Where possible, representative bodies could assist in important decisions. For instance, employers might establish selection bodies that include representatives of historically disadvantaged groups, if necessary invited from outside the organisation.

4.5.5 Internal appeals procedures. Appeals or grievance procedures within the employing organisation provide a flexible and efficient way to deal with complaints. They permit organisations to heal their own wounds and learn from experience. Internal appeals will work, however, only if they have legitimacy with all stakeholders.

4.6 The organisational audit

4.6.1 An organisational audit (see Box I below) gives employers, employees and other stakeholders a chance to get the information they need to decide on realistic and efficient steps to change. It identifies existing shortcomings and barriers to change.

4.6.2 As far as possible, the audit should be conducted in co-operation with relevant employee representatives. Except for aspects that demonstrably relate to competitive requirements, the audit will become a public document, available on demand by employees.

4.6.3 The Department of Labour will provide guidelines and formats for the organisational audit. All employers will report on a few key aspects of the audit on a regular basis. Their inputs will feed into statistics for monitoring representivity and employment equity by sector and region.

Box 1. Ideally, the organisational audit will give information on:

- * Employment, pay and benefits in major categories by race, gender and disability
- * Programmes and policies on human resource development, including levels of expenditure, certification, and the race, gender and disability status of trainees
- * Organisation of work in terms of the skills and responsibilities required by different positions, and hours worked
- * Transport, housing and caring arrangements and preferences of employees, by race and gender, including options for hours worked
- * Languages used and language competence
- * Physical facilities for disabled people and women Procedures for hiring, training, promotion, retrenchment and transfers Grievance and internal appeals procedures.

4.7 Planning for change

4.7.1 Employing organisations should develop plans to minimise barriers to people from historically disadvantaged groups and accelerate their hiring, training and promotion. These plans will propose measures to enhance employment equity while managing unavoidable costs. (See Box 2 on page 37)

4.7.2 The process starts with the organisational audit. On that basis, the plan can identify ways to eliminate obvious barriers to historically disadvantaged groups. Ultimately, it should lead to a thorough review of work organisation, grading systems and training.

Generally, it should help employers develop greater flexibility in recognising and using skills, improve career pathing and enhance access to training.

4.7.3 The development and implementation of employment equity plans must go hand in hand with broader efforts to create an affirming environment. Fair and open labour relations and respect for human rights and diversity form a critical foundation for employment equity. Employers and employees should participate in training on conflict management, cultural and gender diversity and institutional change.

Box 2. Employment equity plans include:

1. A profile of employees by race, gender and disability, identifying problem areas.
2. Measures to;
 - a) restructure procedures for hiring, training, promotion, retrenchment and transfers to prevent discrimination
 - b) identify and minimise aspects of work and training that hinder people from historically disadvantaged groups
 - c) accelerate recruitment, training and promotion in order to achieve more equitable representation of designated groups
 - d) develop an organisational culture that welcomes diversity
3. Goals and timetables for implementation
4. Details on the role of representatives of employees or, where relevant, other stakeholders in the formulation of the plans.

4.7.4 Some measures seem likely to form a part of most employment equity plans. They include:

4.7.4.1 plans for building physical infrastructure to accommodate women and disabled people;

4.7.4.2 investigation of more flexible hours, work-related day-care and assistance with transport or housing, if they would help level the playing ground for applicants or employees from historically disadvantaged groups;

- 4.7.4.3 explicit support for cultural diversity in the workplace, expressed for instance through clothing, languages and food;
 - 4.7.4.4 as far as possible, lower formal qualifications for jobs and training;
 - 4.7.4.5 a review of grading structures to level unnecessary hierarchies and give all employees a realistic career path, supported by training;
 - 4.7.4.6 improved grievance procedures to minimise the possibility of discriminatory harassment.
- 4.7.5 The Department of Labour will support the planning process as far as possible. It will develop guidelines and timetables to support planning in all employing organisations.
- 4.7.6 Only organisations that belong in primary categories, as regulated by Cabinet, will have to submit an employment equity plan for approval by the Minister of Labour. Other employers may have to provide plans for inspection by the Minister if representatives of employees or other important stakeholders formally request it.
- 4.7.7 Consultation on this Green Paper should help define these primary categories, for instance in terms of size, strategic importance for HRD or perhaps a record of consistent discriminatory practice.
- 4.7.8 The Department of Labour will develop guidelines that minimise official discretion in assessing the acceptability of plans.
- 4.8 Employers and employees in employment equity
- 4.8.1 The success of employment equity measures depends on the development of internal structures to carry out the institutional audit, develop an employment equity plan and oversee its implementation.
 - 4.8.2 As far as possible, these structures will involve consultation with stakeholders. Employment equity will work only if it occurs in an atmosphere where all employees, from management to the shop floor, can freely inform and debate specific measures. Obviously, larger companies can establish more elaborate systems for this purpose.
 - 4.8.3 Larger organisations, at least, should have an official responsible for the activities related to employment equity. In addition, a body that can represent all employees must participate in the auditing and planning processes, and help establish internal appeals and grievance procedures. Where workplace forums exist, they will take on this role. In either case, where an employee body will be unrepresentative of society as a whole, employers might consult other stakeholders.
 - 4.8.4 Where an employer can demonstrate that they have established an appropriate internal appeals and grievance procedure, they may obtain some relief from penalties for discriminatory behaviour by subordinates.
 - 4.8.5 Where employers and employees cannot agree on a plan, or where the Minister of Labour rejects their proposals, the dispute will go through the channels discussed in Chapter Five.
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Box 3. Responsibilities of Employing Organisations

- * Employers will consult on employment equity measures, including the audit and plan, with employees and possibly other important stakeholders.
- * All employing organisations will provide some key data on employment on a regular basis, as defined by the Department of Labour.
- * All employing organisations will undertake procedures to end discriminatory decision-making about employees, and ensure equal pay and benefits for equal work.
- * All employing organisations will review grievance systems to ensure their effectiveness in handling discriminatory behaviour or harassment.
- * Employers in some categories will have to submit employment equity plans for approval by the Minister of Labour. Other employers may have to submit plans, if requested by employees or other stakeholders, or in order to get subsidies or tendering rights, as discussed in Chapter Five. Once approved, employers will have a legal obligation to carry the plans out, and report on their implementation.
- * Large and strategically placed or persistently unrepresentative employers will be asked to implement employment equity processes more rigorously, and report on them in greater detail.

Note: Chapter Five discusses the incentives for the fulfillment of these responsibilities.

Chapter 5

THE INSTITUTIONAL FRAMEWORK

5.1 Introduction

5.1.1 Employment equity measures will strike a balance between strict administrative processes and a concerted effort to build positive relations among the affected parties.

5.1.2 The government must

5.1.2.1 protect individuals from discrimination;

5.1.2.2 provide advice and support to employing organisations to transform work and training toward equity and representivity;

5.1.2.3 monitor progress in implementing employment equity;

5.1.2.4 foster the resolution of disputes; and

5.1.2.5 enforce planning requirements when they apply.

5.1.3 This chapter looks, first, at the institutions charged with supporting employing organisations, monitoring progress, and resolving disputes. It then reviews incentives for compliance.

5.2 The Department of Labour

The Department of Labour is responsible for achieving compliance with the proposed legislation and codes of good practice. The components within the Department that will administer the legislation are the Directorate for Equal Opportunities and the Labour Inspectorate.

5.3 The Directorate for Equal Opportunities

5.3.1 The Directorate will guide the process of policy formulation and implementation. It will institute processes to end discriminatory practice, as far as possible by building more positive relationships among all the stakeholders. It will monitor whether institutions have submitted plans, where relevant, and assist in developing acceptable versions.

5.3.2 Its tasks will include:

5.3.2.1 Developing codes of good practice to support implementation of employment equity measures. It will establish regulations that define when a company must submit an employment equity plan, and how it will assess those plans.

5.3.2.2 Setting up a system of consultation with stakeholders or their organisations with a view to nurturing social partnership.

5.3.2.3 Examining the practices or policies of employers, as needed, to assess whether they are perpetuating discrimination and disadvantage.

5.3.2.4 Establishing performance indicators and timetables to assess-

a. the inclusion of members of the disadvantaged groups in positions not previously open to them,

b. equal pay and benefits for equal work,

c. the transformation of work and training,

d. creation of a work environment and culture that is open to persons of diverse backgrounds and attitudes.

5.3.2.5 Establishing machinery for the collection and collation of data from the relevant employers, and ensuring its translation into statistics.

5.4 The Labour Inspectorate

The Labour Inspectorate will undertake monitoring and enforcement activities that do not require highly specialised knowledge or discretion. In the course of general inspections, it will ensure that employers make the required returns of data and, where appropriate, plans. It might also ensure that employers have complied with appropriate procedures around hiring, training, promotion and transfers.

5.5 Bargaining Councils

5.5.1 The LRA provides for bargaining councils, which are industry-wide collective-bargaining forums. Their functions presently include promoting and establishing training and education schemes, and could extend to other measures to promote employment equity.

5.5.2 Bargaining Councils will submit regular reports to the Minister of Labour in order to establish sectoral patterns and norms. This practice will encourage stakeholders in the workplace to negotiate key indicators of success in employment equity.

5.6 The Commission for Conciliation, Mediation and Arbitration(CCMA)

5.6.1 It is envisaged that the CCMA will play a central part in both the anti-discrimination and employment equity aspects of the Bill. The CCMA's primary functions are to resolve disputes through conciliation, mediation and arbitration, and to assist in the establishment of workplace forums.

5.6.2 All employment-equity disputes that cannot be resolved in the workplace, for instance through internal appeals mechanisms or workplace forums, will be referred to the CCMA. A party could approach the Labour Court only if dissatisfied with the outcome.

5.7 The Labour Court and the Labour Appeal Court

5.7.1 The LRA establishes the Labour Court and the Labour Appeal Court as courts of law and equity. They provide specialist tribunals for labour law and related matters. The Labour Court is a superior court with the same status and powers as those conferred on a Provincial Division of the Supreme Court, with appeals to the Labour Appeals Court.

5.7.2 The powers of the Labour Court to order costs against a party to a dispute will be extended to disputes on employment equity.

5.7.3 The Labour Appeal Court will be the court of final instance, except on matters that raise constitutional issues. These may be referred to the Constitutional Court.

5.7.4 Over time, the decisions of the Labour Court and the Labour Appeal Court will provide a jurisprudence on discrimination law. Together with codes of good practice from the Department of Labour, it will provide a guide to employers and employees.

5.8 Standing and the burden of proof

5.8.1 The law will permit class action suits by representatives of stakeholders. A union or other group would have standing to argue that an employer is discriminating, and not only the individuals directly affected.

5.8.2 Experience abroad suggests the critical importance of reversing the onus of proof in enforcing employment equity. Essentially, this would mean that once an allegation of discrimination has been registered, an employer would have to prove that they had pursued non-discriminatory procedures and, where required, fulfilled employment-equity planning requirements. For instance, they would have to show that a candidate was not qualified under the criteria for the job.

5.9 The Employment Equity Advisory Council (EEAC)

5.9.1 Employment equity legislation will establish the EEAC as an advisory council for the Minister of Labour, who will appoint an independent chair. The law will ensure adequate representation of stakeholders in the council.

5.9.2 The EEAC will give expert advice on policy and monitor progress in attaining employment equity and representivity.

5.9.3 The Department of Labour will table codes of good practice for consultation in the council before presenting them to Parliament.

5.10 Monitoring mechanisms

5.10.1 Sound policies require on-going monitoring and evaluation, in order to ensure appropriate adjustments to specific measures and incentives.

5.10.2 Mechanisms to monitor the progress of employment equity legislation include:

5.10.2.1 The aggregation of data from employers and other sources into published statistics on key indicators of employment equity.

5.10.2.2 Reports by bargaining councils, as discussed above.

5.10.2.3 Co-operation with non-government bodies which are already involved in monitoring employment equity, possibly through agency or contractual relationships.

5.11 Incentives and sanctions

5.11.1 As far as possible, government action will favour employers who promote employment equity. Potential measures include making a good record on employment equity a consideration in;

5.11.1.1 granting tenders for government and parastatals contracts, and

5.11.1.2 providing direct or indirect subsidies, such as training grants from the Department of Labour or investment incentives from the Department of Trade and Industry.

5.11.2 As discussed above, disputes about employment equity would go first to the CCMA and then to the Labour Court. If the relevant body decides that an employing organisation has violated employment equity requirements, they would undertake corrective action. For instance, they might require the employer to promote an employee who was denied promotion on discriminatory grounds.

5.11.3 The Department of Labour will explore administrative and legal sanctions for non-compliance, including the imposition of fines. It will develop substantially stricter penalties for cases where a pattern of non-compliance can be discerned, for instance on the basis of repeated cases of proven discrimination or continued failure to develop acceptable employment equity plans when required.

Annexure: Acknowledgements

The proposals contained in this Green Paper result from deliberations with key stakeholders who participated in the AAPDF. Participants include:

* Business South Africa

* Black Management Forum

- * COSATU
- * Centre For Applied Legal Studies - Gender Research Unit
- * Centre For Policy Studies
- * Career Guidance Services Unit
- * Centre For Human Rights - University of Pretoria
- * National Women's Coalition
- * National Youth Development Forum
- * Office of the Public Service Commission
- * RDP Office: Disability Empowerment Desk
- * LHR Disability Rights desk

In 1996, representation in the forum expanded through consultation with:

- * NACTU
- * FEDSAL
- * The Department of Public Service and Administration

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(Footnotes)

- 1 The term "Black" here refers to Africans, Asians and Coloureds. See page 26.
- 2 Since many Black women did not count as economically active at all because they had given upon finding a job, these unemployment figures, are more likely understated than those for other groups.
- 3 Debbie Budlender, "Profile of South African Women," in, Women's Budget Initiative (1996), p. 4
- 4 From a technical standpoint, the argument in economics that free competition will eliminate discrimination assumes a fairly perfect market. In South Africa, high levels of concentration and common employment practices across all major employers in many sectors negate competitive pressure to further the careers of the most productive employees. In that context, poor labour-market signals emerge in large part because White employers cannot adequately assess Black credentials, experience or recommendations; given the predominance of Whites among management, this shortcoming will not rapidly disappear.