

FMCOVER STORY

AFFIRMATIVE ACTION

A long way to

Affirmative action has always been a political hot potato. The policy was designed to redress injustices and inequalities, but it has instead become a battleground for a divisive ideological war. Is it necessary or should it be canned?

It has been 10 years since the legislation for affirmative action was promulgated, but it remains controversial for both government and its detractors. There is still no national consensus on whether it should be scrapped, subject to a sunset clause, or stay in its contentious form. It seems to be on shaky ground at a time of severe skills shortages.

There is no quick-fix answer, but commentators on both sides acknowledge that the results so far have been disappointing. And, for the first time, backers of affirmative action are uniting in a call for a review of the entire policy.

Statistics from the most recent Commission for Employment Equity paint a bleak picture, revealing that the participation of black people in mainstream economic activity, and mainly within private corporations, is still marginal (see accompanying table).

Representation of black people (Africans, coloureds and Indians) at top management level appears to have stagnated at around 23,2% (see page 34). Black females make up 6,6% of top management, while white women account for 14,79%.

At senior management level, 26,9% are black people, 8% of whom are black

women. Of all employees at the professionally qualified and middle management level, black people make up 36,5%, of whom 13,8% are black women.

The results of a survey by executive search firm Landelahn make for equally sombre reading. Just 18% of directorships of the Top 100 companies on the JSE are occupied by black men (while black women occupy 7%, and white women 4%).

What should be done next with affirmative action? "Get rid of it and strengthen the education system," says businessman and commentator Moeletsi Mbeki. "We need training to redress the

past, not affirmative action. If we are not producing science and maths students, employment equity quotas aren't going to help us."

He believes trade unions and other workplace structures should

deal with issues of discrimination in the workplace. "The mentality of black economic empowerment is one of saying black people are helpless and inferior."

But Jimmy Manyi, chairman of the

SA WORKFORCE

Profile of the economically active population by race and gender

Population group	Economically active (LFS, September 2007)		
	Male	Female	Total
African			
number	7 072 000	5 842 000	12 919 000
percentage	41,2%	34,0%	75,2%
Coloured			
number	917 000	823 000	1 740 000
percentage	5,3%	4,8%	10,1%
Indian			
number	306 000	159 000	466 000
percentage	1,8%	0,9%	2,7%
White			
number	1 115 000	892 000	2 017 000
percentage	6,5%	5,2%	11,7%
Total			
number	9 437 000	7 727 000	17 178 000
percentage	55,0%	45,0%	100%

SOURCE: COMMISSION OF EMPLOYMENT EQUITY

WHAT IT MEANS

► In its current form, the policy is failing
► A review is needed to build skills at schools

equity data should be treated with circumspection. It says that since larger employers submit annual reports and smaller employers submit reports every two years, this makes comparison difficult.

The trade union says the data is also flawed because so many employers do not submit reports.

For example, in 2005, 25 municipalities (including large metropolitan councils like Tshwane and Johannesburg), 13 provincial government departments and nine national government departments failed to submit reports. That year, parliament and the director of public prosecutions also failed to submit reports.

Case study 1

Implementing the Employment Equity Act is fraught with legal complications. According to *Juta's Annual Labour Law Update* an employment equity plan is an essential but not compulsory element to meet employment equity targets. A disconcerting feature of the legal application of affirmative action is that once targets are met for a particular level, merit becomes the only consideration when an appointment is made.

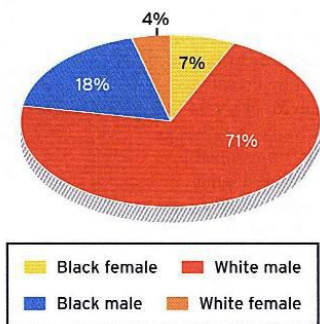
Perhaps, most tellingly, the *Update* notes that "there is no right to affirmative action in our law". This was established in a 2004 case brought by Lillian Dudley against the City of Cape Town Metropolitan Council. Dudley challenged the appointment of Ivan Toms as head of the city's health department. The labour court found against Dudley, arguing that the Employment Equity Act merely served as a guideline.

The case was heard at the constitutional court in 2004 and referred to the labour appeals court, where it is awaiting judgment. Dudley is now CEO of Health Systems Trust. Toms died of meningitis two weeks ago, still serving in the contested position.

Thebe Mabanga

TOP GUNS

Top 100 board representation by race and gender (%)



SOURCE: LANDELAHNI

"If employers whose transformation is far advanced do not deem it necessary to submit reports, the employment equity reports will be skewed, and black representation will be underestimated," says the union in its own study, *The Truth about Employment Equity in SA*.

Most crucially, Solidarity contends that the commission's report cannot be representative of the entire labour force since it covers just 1,6m workers or 9,82% out of the 16,7m labour force. Added to the debate is the question of whether white women should still be beneficiaries of affirmative action.

But with little to show after more than a decade in place, Ndletyana wants to see some sort of review: "There is a recognition that things have gone wrong and there is now a need to modify the policy in a way that it still affirms black people without appearing hostile to whites."

Unlike Mbeki, he does not want the policy scrapped, just modified.

But businessman Reuel Khoza is firmly in Manyi's corner: "What is there to review? Anyone who is asking for that is blind or does not live in SA to see how the executive teams and the boards are still dominated by white people.

"Black people are not uneducated or stupid. They just need to be given an opportunity to prove themselves. If any review is done I would say it is time to accentuate it."

Affirmative action can come with its own stigma. Landelahni CE Sandra Burmeister says an increasing number of

black candidates who are supposed to be beneficiaries of affirmative action are dissociating themselves from it, largely because of the perception that the appointments are not based on merit.

"Our own business, a black-owned search firm, is a product of affirmative action," she says. "We were given a chance to prove ourselves on the market. We grabbed the opportunity and delivered. Had we not delivered, we would not have been offered further growth opportunities."

Burmeister suggests that the phrase "affirmative action" might be outdated.

"It seems to have developed negative connotations. Perhaps it is time to do away with the term, but ensure that we still maintain the original concept or reasoning behind it."

Case study 2

In 2006, Leon Christiaans, an employee of Eskom, applied for a position but was overlooked in favour of an African candidate. The matter was taken to private arbitration, with Christiaans, who had 18 years' experience compared with the incumbent's two, arguing that as a coloured person he qualified as an employment equity candidate. The arbitrator found in favour of Eskom, which argued that demographics justified the appointment because, even among black candidates, a further consideration of African candidates had to be made.

Mike Goussard, an organiser at the trade union, Solidarity, and Christiaans's representative at the time, told the *FM*: "People must be judged on merit and looked at for the value they can add to the business, in this case 18 years." The case is frequently cited to illustrate that the Employment Equity Act applies degrees of disadvantage. Christiaans is still employed by Eskom in a different, senior managerial position.

Thebe Mabanga

Bill Lacey of the SA Chamber of Commerce & Industry supports the principle of affirmative action, but argues for a "sunset clause" which could kick in after a generation.

"There have to be some compensatory measures to redress the past, but then implementation has caused a lot of problems," says Lacey. "We must focus on the education system to ensure that it is good enough to provide the required skills."

This notion is echoed by both Mbeki and Ndletyana, who believe that by turning the focus to schools and training colleges, there is more likely to be a steady stream of skilled and qualified black people entering the workforce, which in turn will ensure that the quotas and targets are met with the best-qualified candidates.

There is a quiet optimism that there will be a more profound debate on one of

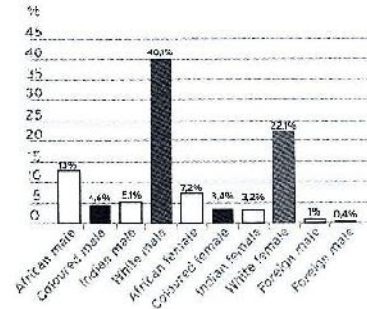
the most sensitive issues of post-apartheid SA. Many agree that much of government's position on affirmative action and empowerment has been driven by President Thabo Mbeki, who Ndletyana describes as being "imprisoned by ideological dogma".

In his successor as ANC president, Jacob Zuma, commentators see a more "common sense" approach, which signals a level of openness to explore issues even if he doesn't agree with them.

Judging the success of affirmative action policies may in the end depend on where you stand. Many people have been

IN THE MIDDLE

Percentage distribution of professionals and middle management employees by race and gender



SOURCE: COMMISSION OF EMPLOYMENT EQUITY

empowered; many more have not. Society is not where it was, but it has a long way to go.

Prakash Naideo & Sibonelo Radebe

