



The current position of affirmative action



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Report compiled by Solidarity Research Institute
Researchers: Paul Joubert and Francois Caldo
Edited by Dr Dirk Hermann
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1. Introduction

Mr Jimmy Manyi, the Employment Equity Commission chairman, has recently released the latest Employment Equity Report. The commission will again find that affirmative action is progressing too slowly. In other words, affirmative action is failing. The debate in South Africa should move from whether affirmative action is fair to why it has failed so that it could be phased out in its current form and redesigned to ensure a better life for all.

In this report we concentrate on why affirmative action is failing and discuss two points. The first core argument is that affirmative action is failing because it is based on emotional output (racial numbers) and not on inputs (training and development). Training and development will lead to growth, which is the best method of correction. Because of the insufficient focus on training and development South Africa is experiencing a huge skills problem and this leads to poor growth and service delivery. The skills shortage also means that affirmative action has in practice come to a standstill. The report secondly also argues that affirmative action in South Africa cannot escape the failure of affirmative action in the rest of the world.

One of the stated aims of affirmative action in South Africa is to eradicate economic disparity among people. This is an admirable goal, as South Africa is one of the countries with the most unequal distribution of wealth in the world. During the last decade or so, this inequality has only worsened. The gap between the rich and the poor is steadily widening. It is therefore imperative that poverty must be alleviated.

The way in which affirmative action has been defined in South Africa does not help to achieve this objective. Since its inception, it has defined the group that must be helped by affirmative action not as the poor, but along racial lines and according to the principle of representation. The result is that correction is only made on job levels where whites have been overrepresented. As argued later there are such a small number of whites in the workplace that, relative to the larger designated group in South Africa, it would make little difference to simply correct the overrepresentation of whites. Whites are only overrepresented on the upper job levels, which means that correction can only be made on the upper job levels.

The current way of empowering people through affirmative action does not actually empower. It is merely the powerful governmental actor using its power to place disempowered people in jobs. If people are educated and trained in scarce skills (input-based affirmative action), they themselves become empowered and do not have to rely on any outside interference by the government.

Affirmative action is based on designating certain people as groups that must get preference in certain areas, while designating others as groups that must not get preference. Affirmative action can only exist in such a scenario. If the “other” category falls away, affirmative action has no effect, as everyone is then included in the “preferred” group. Defining whites as the “other” group is problematic, because this group is so small. White males are only 2 196 300 of a total population of 48 687 000 people, or 4.5%. All whites as a percentage of the total population make up only 9.2%. At the moment, the ratio of white males to the rest of the population is 1:21.

In practice this means that only 4,5% of the positions South African labour market will be available for people of the designated group in South Africa, if all whites are removed from the labour market. Only a very small percentage of the designated group can benefit from this. Affirmative action is an effective instrument to help a minority, but an extremely inefficient instrument to help the majority. If 4,5% of the population has to correct the other 95,5% it simply leads to a feeling of alienation among the minority and a feeling of unfulfilled expectations among the majority. This is a powder-barrel about to explode. It is therefore simple: affirmative action in its current form fails because there are too little whites to discriminate against.

The key to any successful country in the modern world is knowledge. Those without knowledge and skills are left behind. In South Africa, partly because of injudicious transformation, the battle against poverty and unemployment is being undermined because of skills bottlenecks which are not unblocked. If the government is genuinely committed to halving poverty and unemployment by 2014 it will find it has no choice but to make use of all the skills it can possibly find.

The skills shortage is a crippling constraint on economic growth. We can't afford to pick and choose among job applicants on racial grounds at a time when South Africa needs every person who can contribute.

The biggest problem regarding the skills crisis lies in the South African education system. Currently, matric results are a big disappointment. In 2007 only 4.50% students (overall) passed mathematics on HG, and 4.98% passed Science on HG. This little pool of students is too small for South Africa's need. When one takes into account that only about 300 black matric students pass mathematics HG with a C-symbol or higher, it is clear that affirmative action cannot progress in certain job categories. In fact, even if all white skills are used it will still not be enough. Thousands of black skills should be pipelines, not only for the purposes of affirmative action, but also for economic growth.

South Africa desperately needs skilled workers; therefore affirmative action is already being disregarded by private companies.

Affirmative action and the skills problems are discussed in more detail later.

In the early days of affirmative action Malaysia was held up as the model of affirmative action by South Africa. Tokyo Sexwale, former premier of Gauteng, said that Malaysia's policy of affirmative action and empowerment of its indigenous people can serve as an example to others.

However, in March this year the affirmative action dream in Malaysia was rocked to its core with the country's national election. The ruling party had its weakest performance since independence in 1957. Five constituent governments were taken over by the opposition. For the first time since 1969 the ruling coalition lost its two-thirds majority.

Affirmative action was one of the most important focal points used by the opposition to mobilise votes. Interestingly it not only mobilised the minority groups that have been directly affected by affirmative action, but also a large number of ordinary Malaysians.

In the rest of the world the pendulum is also moving against affirmative action. In the USA writers and activists are opposing affirmative action, black Americans such as Thomas Sowell, Walter Williams and Ward Connerley. Last year in the American middle-

term election Connerley managed to force a referendum on affirmative action in the liberal state of Michigan. Against all expectations he won the referendum and affirmative action was banned in Michigan.

The International Labour Organisation (ILO) tried to tackle the affirmative action dilemma by developing a definition of affirmative action. This definition is also commonly used by the United Nations. In terms of the definition affirmative action should be temporary and remedial. Affirmative action and the international world will be discussed later.

The core arguments of the report will be discussed next.

2. Affirmative action and the international world

In the early days of affirmative action Malaysia was held up as the model of affirmative action by South Africa. Tokyo Sexwale, former premier of Gauteng, said that Malaysia's policy of affirmative action and empowerment of its indigenous people can serve as an example to others.

Various similarities between the Malaysian and South African situation, in respect of affirmative action, can be identified. Malaysia has a heterogeneous population with racial divisions. The target group for favouritism, like in South Africa, is the majority. Affirmative action was also incorporated in the constitution of independence. The government is therefore correct, there are several similarities between the two countries which could make Malaysia a good case study for South Africa.

However, in March this year the affirmative action dream in Malaysia was rocked to its core with the country's national election. The ruling party had its weakest performance since independence in 1957. Five constituent governments were taken over by the opposition. For the first time since 1969 the ruling coalition lost its two-thirds majority.

Advance warning of the "perfect storm" that hit the ruling party has been present for a long time. The party had too much power and ethnic polarisation, corruption, racial dominance and religious intolerance made the Chinese and Indians feel like second-class citizens.

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Ordinary people revolted against the 37-year old policy of affirmative action. An Indian worker on a plantation said the following about affirmative action: "Just like the axe marks on the trees, the Malaysian government inflicted countless wounds on the Indian minority by denying them jobs, restrain them from education, removing freedom of religious expression and most importantly by stripping them of their dignity."

The former president of Malaysia and architect of affirmative action, Dr. Mahatir bin Mohamed, read the affirmative action signs after his retirement when he said that an elite group was favoured at the expense of poor Malaysians. He was of the opinion that the poor Malaysians did not gain anything. However, his statements could not prevent the resistance against affirmative action. The designers of the policy could not also be the rehabilitators.

The general feeling was that affirmative action is no longer necessary, because of the accelerated growth of the Malaysian middle class. There also was a feeling that affirmative action only benefited a small group of elite, with close ties to the government. The programme did not assist the ordinary Malaysian, especially those in the low income category who should have benefited.

The newly elected opposition leaders already said that they are to slaughter the holy affirmative action cow. They are planning a government administration without affirmative action that promotes nepotism, corruption and inefficiency.

The opposition wishes to follow an economic agenda that will still help the poor Malaysians, but through competition and a merit system. Although the opposition does not have the majority in parliament, he can already scrap affirmative action in the five constituent states, including the most industrialised state, Selangor, and start on implementing the new Malaysians Economic Agenda.

In the rest of the world the pendulum is also moving against affirmative action. In the USA writers and activists are opposing affirmative action, black Americans such as Thomas Sowell, Walter Williams and Ward Connerley. Last year in the American middle-term election Connerley managed to force a referendum on affirmative action in the liberal state of Michigan. Against all expectations he won the referendum and affirmative action was banned in Michigan. In South Africa the first black provincial leader of the Democratic Alliance in Gauteng, Johan Moodey, came out against affirmative action. Western-Cape ANC minister Marius Fransman put the affirmative action cat among the pigeons with his proposal of a moratorium on affirmative action and IFP leader Mangosuthu Buthelezi says affirmative action is the cause of the brain drain in South

Africa. Moodey, Fransman and Buthelezi understand the new world pendulum of affirmative action.

The United Nation's Human Development Report recommended that affirmative action in the USA should move from race to the socio-economic position of the disadvantaged. In India the affirmative action programme was adjusted to take the socio-economic position of workers into account. Everywhere affirmative action is moving away from the permanent favouring of a small group of elite.

The International Labour Organisation (ILO) tried to tackle the affirmative action dilemma by developing a definition of affirmative action. This definition is also commonly used by the United Nations. In terms of the definition affirmative action should be temporary and remedial. If affirmative action is permanent or pursuing racial numbers it cannot be regarded as affirmative action – it would be a transgression of Resolution 111 of the ILO, which prohibits discrimination, but does make provision for affirmative action within a strict definition of what it entails.

The corrective definition of the ILO is logical. The purpose of the temporality is to prevent permanent disruption of the society and to limit the permanent prejudicing of a group. The remedial nature of affirmative action should see to it that the process keeps to its purpose (correction) and does not simply become an instrument to benefit the group. Remedying also prevent people from being “corrected” repeatedly and is a counterbalance against elitist enrichment. With these two conditions affirmative action can lead to equality. Equality in terms of the international definition therefore offers built-in protection for the disadvantaged mass who need correction and for the group disadvantaged in the process.

This brings us back to Tokyo Sexwale and the government's view that Malaysia can serve as an example for South Africa. If the government would like to be consistent with its Malaysian example, he would have to learn the following lessons:

- The international opinion is turning against affirmative action. The trend in Malaysia is exactly the same as in the USA, where affirmative action was banned in the liberal state Michigan in a referendum.

- The incorrect application of affirmative action could have destructive results for a ruling party.
- Affirmative action that only benefits the elite leads to revolt by the masses.
- Continuous discrimination against members of the minority group leaves them feeling like second-class citizens.
- The minority that are prejudiced and the majority that are not benefited could jointly revolt against the elite.
- A government who applied an incorrect policy for too long, cannot rehabilitate it themselves.
- In the long term people revolt against a policy that results in inefficiency and improper favouritism.
- A popular policy that fails becomes a popular mobilisation instrument of the opposition.

The government should take a leaf from the Malaysian affirmative action book and the rest of the world and redesign affirmative action before affirmative action redesigns the government.

3. Affirmative action – the skills crisis and education

As the source of the failure of affirmative action is a shortage of skills, the largest part of this report will focus on this.

“Affirmative action is already dead due to the skills crisis.”

A number of analysts, with the notable exception of the Chairman of the Employment Equity Commission, Mr. Jimmy Manyi (who claims that South Africa’s skills shortage is an urban legend), have identified skills shortages as a constraint on economic growth. **To deny that South Africa faces a critical skills deficit is to deny the past, ignore the present, and jeopardise the future of our beautiful country.**

One must remember that the keys to any successful country in the modern world are access to information and access to skills. Those without skills are left behind. The core objectives of this government are to halve poverty and unemployment by 2014. However, to reach these objectives, the government needs high levels of economic growth. Without the necessary skills, this can’t be obtained. This means that South Africa is currently in a Catch 22 situation: What weighs the most? Transformation at all cost, or alleviation of poverty and unemployment through economic growth? What is required now is a fundamental shift in thinking. Currently the battle against poverty and unemployment is being undermined because of skills bottlenecks which are not unblocked. **If the government is genuinely committed to halving poverty and unemployment by 2014 it will find it has no choice but to make use of all the skills it can possibly find.**

In short, we all know currently that the skills shortage is indeed a fatal constraint to economic growth. We can’t afford to pick and choose among job applicants on racial grounds at a time when South Africa needs every person who can contribute. Yes, transformation must take place to rectify the injustices of the past, but clearly the government is willing to sacrifice economic growth on the altar of racial preferencing at all cost.

At the current moment South Africa needs all its skills; otherwise it will be affecting the state's performance as well as the economy's ability to compete on the world stage. According to Clem Sunter, The International Institute for Management Development's *World Competitiveness Yearbook for 2007* highlights South Africa's 12-place fall from grace. It has descended from 38th to 50th position in a ranking of 55 countries. The latest data of 2008 shows it has descended further to 53rd place. However, as the saying goes, the honeymoon is now over. Staying in the 'Premier League' is proving increasingly challenging for South Africa. Losing further ground in the competitiveness stakes will see South Africa further knocked out of the 'Premier League' into the 2nd division. The latter is occupied by countries that are euphemistically described as 'poor but peaceful'. It applies to the bulk of the developing world. If we are knocked into the so-called 2nd division, there is no chance of South Africa living up to the ANC's dictum of a 'better life for all'. The money simply isn't there. Furthermore, it's very difficult to get back into the 'Premier League' after one's position has been filled by another country which will jealously guard its new status.¹

For more clarity on this issue, let's have a closer look at the skills crisis in South Africa. These are some of the reasons why affirmative action is already dead:

Facts & figures:

A number of studies/surveys have confirmed that the skills shortage is a real problem in South Africa, and a constraint to economic growth:

Situation in 2007:

(a) Accounting firm Deloitte released a report in June 2007, indicating that 81% of companies struggle to find appropriate staff, with 76% saying that finding employment equity candidates was a particular problem. The survey noted that there was a particular shortage of:

- ❖ Chartered accountants;
- ❖ IT specialists;
- ❖ Sales and marketing personnel;
- ❖ Scientists.

¹ The world and South Africa in the 2010's – Clem Sunter & Chantell Illbury

- (b) Another study done by the Bureau for Economic Research (BER) at the University of Stellenbosch found that 47% of SA manufacturers said that the skills shortage was their most serious difficulty.
- (c) A further study done by the Centre for Development and Enterprise (CDE), specifically mentioned the skills shortage as a specific challenge to do business, and half of the firms had to source skills from abroad. **The CDE says that government should ease upon its push for employment equity as it is preventing business from using highly skilled and experienced people and is aggravating SA's skills shortage.** The CDE also said that the skills shortage is worsening because of emigration and the ageing of skilled and experienced staff, their movement into more senior positions and the growing emphasis on employment equity.

Situation in 2008:

Economists confirm that the skills shortage is biggest constraint to economic growth:²

- a) In May 2008 the Institute of Race Relations (SAIRR) had a panel discussion with five independent economists. The panel comprised of Chris Hart, Azar Jammine, Ulrich Joubert, Elna Moolman and Dawie Roodt. They also broadly concurred that the most important barrier to economic growth is the current skills shortage, although other barriers such as inadequate infrastructure, inefficiencies in governance, inflation, trade deficits, etc. were also identified.
 - (i) **Ulrich Joubert** said that the skills shortage is the most serious problem. He is also worried about the ability of the education system to provide the skills we need. Power stations are being built and should be ready by 2014, but where will we find the people to run them? We should be preparing them now through our education system, but instead we are losing skilled people to emigration and HIV/Aids.
 - (ii) **Azar Jammine** said that the skills challenge in South Africa is the biggest constraint of all to economic growth. Those without skills are left behind. He also confirmed that there is a huge drop-out rate from our schools. Of the

² SAIRR – Fast Facts Number 6 Of 2008 – Why not 8%

total that began school in Grade 1 in 1995, only 31% sat matric exams at the end of 2007, of which only 3% obtained a university exemption. To improve the output of the schooling system, we need many more teachers. Yet, according to Jamine, 25 000 teachers leave the profession every year on average, while only 7000 enter it. Some 50% of secondary schools do not even offer HG mathematics.

(iii) **Dawie Roodt** said that South Africa can't retain our own skills; neither can we attract replacement skills (A recent study by *The Economist* shows South Africa at the bottom of a list of 30 countries in this regard). He further also stated that we can't even produce skills, for South Africa came dead last in a recent assessment of the reading literacy of Grade 4 children in various countries.

(iv) **Elna Moolman** stated that growth has historically been driven in most societies by increasing skills, education, research and development. Yet, according to her, South Africa lags on education and skills. There has also been deterioration in South Africa's skills, partly because of the brain drain, but also because of HIV/Aids.

❖ In the panel concurred that for South Africa to be competitive on the global market, we must be more productive, but we can't do that unless we have the skilled people available.

Business is worried about skills in SA:

a) Nearly half of private businesses say a lack of skills is the biggest constraint to growth in South Africa, according to a survey released on 12 March 2008 by Grant Thornton annual International Business Report (IBR). The survey shows that of the 48% businesses said they faced a skills crunch, 72% of them were in the construction sector.³ The view in this sector comes at a critical time as the country builds up for the Fifa 2010 World Cup, Eskom's massive new power

³ Survey finds skills the main growth barrier (The Times, 13 March, 2008)

stations package and Transnet's budgets to expand railways lines, ports and fuel pipelines.

- b) Apart from the construction sector, more than half of businesses in the services sector (52%) cited lack of skills as the major constraint to growth.
- c) Lee-Anne Bac, a director at Grant Thornton Strategic Solutions, said that **although the skills shortage was a global concern, South African businesses were the hardest hit.** "The fact that South Africa is 10 percentage points higher than the global average does indicate that the **skills crisis is more acute here.** A lack of skills development, emigration and crime are just some of the factors that contribute to this problem," she added.

What is keeping SA executives awake at night?

- a) Worrying about staff and finding the right people to fill jobs is what keeps South African executives awake at night, according to joint research conducted by business and technology think-tank FutureWorld and the Strategy & Innovation business unit of Deloitte.⁴
- b) The global economic slowdown was rated the most pressing issue by 44% of international executives, while 45% of South African executives said shortage of skills kept them awake," said FutureWorld SA CEO Neil Jacobsohn.

Exxaro adds its voice to the skills crisis debate in South Africa:^{5 6 7}

- a) Earlier in this year Exxaro, also held a conference on the Skills crisis in South Africa with various key role players attending it. The outcome was very clear: South Africa has a skills crisis, and it is affecting businesses negatively. Exxaro CEO Siphon Nkosi, who is also president of the chamber of Mines of South Africa, even went a step further and said that South Africa's skills issue was a "national crisis". **He said that people are emigrating and we need to create the right climate for people to want to work in South Africa.**

⁴ Skills worry SA bosses most (Jul 3 2008 , Fin24, http://www.fin24.com/articles/default/display_article.aspx?ArticleId=1518-1786_2350830) & FutureWorld Flash Survey 2008 – What's keeping executives awake at night?

⁵ Skills deficit- National crisis (Mining weekly, April 11-17 2008)

⁶ Stop skills haemorrhage, Chamber of Mines president Nkosi urges South Africa (Mining weekly ,9 Apr 08, - http://www.miningweekly.co.za/article.php?a_id=130931)

⁷ South Africa's skills issue a 'national crisis', says Exxaro CEO Nkosi (21st February 2008, Mining weekly, http://www.miningweekly.com/article.php?a_id=127568)

- b) Exxaro executive GM Retha Piater said that recruiters locally, nationally and globally are “fishing for skills from the same small pond”. Their biggest challenge is to retain the skills that they have developed.
- c) Former Exxaro CEO and chamber of Mines president Con Fauconnier says that as far as he can recall, Exxaro has been training a quarter of the mining industry’s technical skills and between 12% and 14% of South Africa’s technical skills. He further stated that this is only one company doing this. He pointed out five years ago that all the artisans South Africa needed could be trained within a 100-km radius of Midrand, in facilities only partly used or standing vacant. Five years later the people are still talking about it, while the average age of an artisan in South Africa is now 50-55. In the seventies, South Africa was training 30 000 apprentices a year, compared with 3 500 learnerships last year and the year before. This is not enough for South Africa.

Expansions & economic growth hampered by shortage of skill:

- ❖ Due to a lack of skills, it is quite ironic that South Africa did not benefit from the recent “mining boom”, which is already having a negative impact on economy, and companies that want to embark on multibillion-rand expansions, can’t, because they are struggling to find skills like artisans and engineers. **Sasol has done internal studies on more than 180 current Sasol projects with a monetary value of R62 billion. They concluded that the shortage of skills will result in these projects taking 11% longer to complete than they normally would have.** This outlook is mirrored in the opinion of Ian Morrison of Anglo American’s technical division, who believes that Eskom’s new Medupi and Project Bravo generators will only be operational in 2014 and not in 2012 as planned. The electricity-distribution networks will also suffer as a result of people with limited skills replacing the ageing workforce. This will prolong the period of economic suffering caused by electricity shortages – directly as a result of skills shortages.

The problem regarding artisans:

- a) There is a huge shortage of artisans in South Africa.
- (i) Solidarity itself reported that South Africa only had 10% of the artisans that it had 20 years ago, and estimated that the country has a 40% shortage of artisans. **Solidarity even started its own training college to train artisans as part of the solution, to South Africa's current skills crisis.**
 - (ii) Illustrative of the decline in skills is the fact that when Brian Angus took up his post as executive director of the Steel and Engineering Industries Federation of SA (Seifsa) in 1987, there were about 15 000 apprenticeships at steel, metal and engineering companies. Over two decades he witnessed this figure plummeting to 3 000, and more recently, with the advent of initiatives to deal with the skills crisis, slowly ticking up again to about 3 500. "The industry is suffering, especially due to a shortage of artisan skills," he says. "It is probably our biggest constraint to growth. There can't be any company of any significant size that's not strongly felt the impact of the lack of skills." Angus blames the move away from apprenticeships to learnerships as the primary cause of the deterioration in the skills base of the metal and engineering industry.⁸
 - (iii) Engineering firm Grinaker-LTA has had to import welders from Malaysia, Ireland and India, while it was reported in June 2006 that Sasol would be importing 1 300 Thai artisans and welders to perform maintenance work on the company's Secunda synthetic fuel plant.
- b) At the SAAE International workshop which was held at University of Pretoria in March 2008, it was mentioned that South Africa had to produce 50 000 artisans by 2010, while we aren't even producing a fraction of the numbers per year to meet the target by 2010. Currently it is just China and India which is producing enough artisans to meet in their own demand.

Speaking at the release of the 2008 Landelahni Mining Survey⁹, Sandra Burmeister, Chief Executive of recruitment group Landelahni, said that according to the Joint Initiative for Priority Skills Acquisition (JIPSA), at least

⁸ Steel industry boss tells a tale of disappearing skills (Business Report, - June 3, 2008)

⁹ Artisan training is short of R9nn – Business Report, 23 July 2008 & Landelahni , Media Release: Mining industry responds to skills development challenge. – 22 July 2008

12 500 artisans should be produced each year over the next four years to meet demand. According to her South Africa continues to suffer a severe shortage of well-qualified, competent and experienced artisans. Here are some fast facts:

- ❖ The number of artisans tested across all trades increased from 15 000 in 1970 to 26 500 in 1986, while those who passed trade tests increased from 6 000 to 13 500. From 1986, however, the numbers tested dropped to 9 041, and those who passed dropped to a low 3 222, or 42%.
- ❖ The Mining Qualifications Authority (MQA) target registration for artisans in 2008 is 1 766, against 1 034 actual registrations. Assuming an average pass rate of 42%, some 434 artisans are trained each year under MQA auspices with specific qualifications in mining.
- ❖ “Artisan training requires a significantly increased investment by both government and private sector,” says Burmeister. “The current artisan population is aging, with an average age of 50-55 years. So we should not merely be training for current needs, but also to replace the aging workforce.”

The problem regarding engineers:

A closer look at Eskom:

- (a) Where is Eskom going to get all the skilled workers it needs? For instance, Eskom needs engineers, but does South Africa have enough engineers? ¹⁰
 - (i) Up to 300 qualified engineers leave South Africa every year, and according to Johan Pienaar of the Engineering Council of SA (Ecsa) the number could even be higher. He said the 300 estimate is based on the engineers who cancel their registration with Ecsa before they emigrate. Pienaar said that in November 2005, about 14 900 engineers were registered with Ecsa. In November last year, the number stood at 14 811 (However, the latest figures

¹⁰ Hundreds of engineers quit SA- 24 January 2008 - http://www.fin24.com/articles/default/display_article.aspx?ArticleId=1518-786_2257734

show that on 31 January the figure was 14 351)¹¹ – this despite 1 290 engineers qualifying every year at South African universities.

(ii) Dawid Botha, the executive director of the SA Institute of Civil Engineers (Saice), said the shortage of engineers and technicians is a national problem heading for disaster. Allyson Lawless, a former president of Saice, said there are currently less than three civil engineers for every 100 000 people in South Africa.

- ❖ A survey done by Lawless shows that 79 of the country's 231 local municipalities do not have civil engineers, technologists or technicians. Botha confirmed this and said there are more than 1 000 vacancies for these skills at municipalities countrywide.
- ❖ South Africa has only one engineer for every 3 200 people, compared to one engineer for every 130 people in China, one engineer for between 250 and 300 people in Europe, and one engineer for 450 people in Australia, according to the South African Institution of Civil Engineering (SAICE). Brazil, which is a country with very similar characteristics to SA, has one engineer for every 227 people.

(iii) Even the SA Institute of Electrical Engineers said in Johannesburg on Tuesday, 26 August 2008 the electricity industry has been hit by a chronic shortage of engineers.¹²

(iv) According to an article in the Business Report (Artisan training is short of R9bn) it is mentioned that Eskom is expanding its training college in Midrand to boost the output of artisans to support its expansion programme. The electricity supplier has 5 368 engineers and artisans in training according to the article.¹³

- ❖ In short, Eskom is now reaping what it sowed during the nineties. Eskom is one of the companies in the country driving affirmative action the

¹¹ Challenges of the engineering skills shortage: A perspective on the professional scene – SAAE International workshop – University of Pretoria – March 2008

¹² Electricity Industry hit by lack of skills – Sapa, 26 August 2008

¹³ Artisan training is short 9bn. Business Report.

hardest. You can drive the issue if you can get the people with the right skills and the right knowledge to do the work, but Eskom is not doing that.

- ❖ Skilled people with years of experience are leaving Eskom, due to the fact that there is no future for them at Eskom. In 2006 a study done by Solidarity showed that 75% of Eskom's white workers were considering leaving the company. Recently, a manager at one of Eskom's departments requested skilled personnel from Solidarity's database – he explicitly indicated that their race would not be a factor in their selection. **When a company desperately needs skilled workers, affirmative action is disregarded.**
- ❖ Even MP Manie van Dyk called for Eskom to review its employment policies. "The shortage of skills, particularly technical skills, is largely attributed to the aggressive implementation of affirmative action, resulting in high levels of de-motivation and a mass exodus of highly-skilled staff."¹⁴

True empowerment and transformation is through education & training:

- (a) The biggest problem¹⁵ regarding the skills crisis lies in the South African education system. Currently, matric results are a big disappointment. South Africa spends an enormous amount of money on education (Expenditure on education as a percentage of GDP in 2006 was 5,4%, while the average expenditure for 190 other countries was 4,7%)¹⁶, but still is not providing the right quality of students. South Africa just does not produce enough students with mathematics & science on HG to study further in critical scarce occupations like engineering, etc. In 2006 only 4,77% students (overall) passed mathematics on HG, and 5,63% Science on HG.¹⁷ In 2007 these figures declined further to 4,50% for students who passed mathematics on HG and 4,98% for Science on HG.

If one only looks at the students who passed mathematics and science on HG out of the total number of students who had mathematics & science on HG, it is as

¹⁴ Business.iafrica.com (28 January 2008) - <http://business.iafrica.com/news/835284.htm>

¹⁵ The crisis in the education system was mentioned at the Exxaro skills crisis seminar that was held in March/April earlier this year and also at the International workshop regarding the challenges of the engineering shortage which was presented by the South African Academy of Civil Engineers in March 2008.

¹⁶ Source: Efficient Group (Sub-source: World Development Indicator Database, Human Development Report, 2006)

¹⁷ Source: Department of education, Education Statistics in SA at a glance, SC Examination Results, 2007

follows: Students who passed mathematics on HG declined from 7,2% in 2006 to 6,9% in 2007, while the students who passed science on HG declined from 15% in 2006 to 13% in 2007.

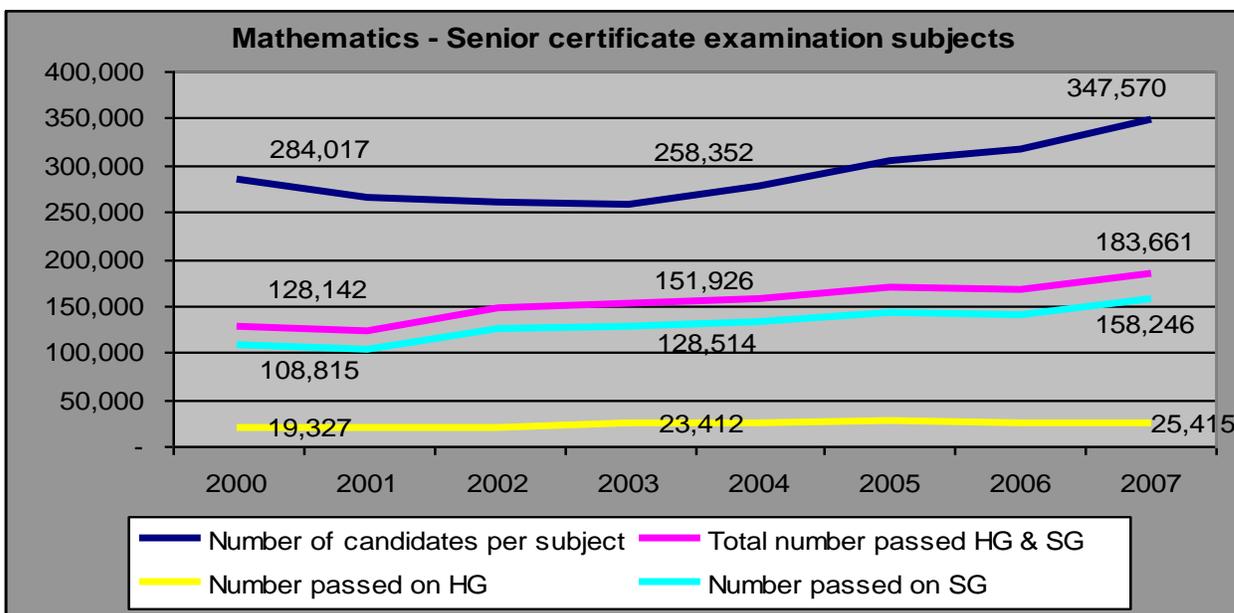
A closer look at education performance:

(b) Matric results:

(i) Grade 12 pupils who took mathematics (Higher Grade and Standard Grade) in the last few years performed as follows:

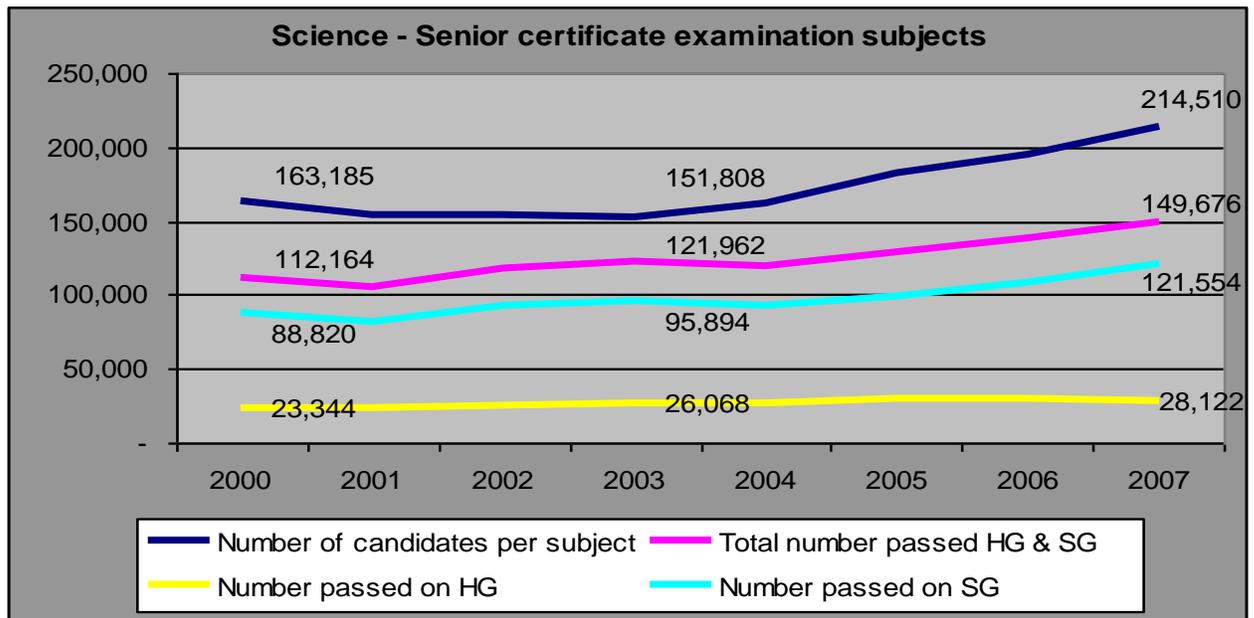
The pass rate for the number of higher grade mathematics students in 2007 was 7% (i.e. only 25 415 students passed higher grade mathematics in 2007) and for standard grade mathematic students 46% (i.e. only 158 246 students passed standard grade mathematics in 2007) of the total number of students who had mathematics as a subject.

Graph 1:



(ii) Matric pupils who took the subject science (Higher Grade and Standard Grade) in the past few years, performed as follows:

Graph 2:



The pass rate for the number of higher grade science students in 2007 was 13% (i.e. only 28 122 students passed higher grade science in 2007) and for standard grade science students 57% (i.e. only 121 554 students passed standard grade science in 2007) of the total number of students who had science as a subject.

If one looks at the above results it is clear that the education system must be improved to ensure true empowerment for all. By focusing just on the output of racial representativity while neglecting the input of decent education, affirmative action is failing to solve the real problem of disadvantage.¹⁸ Our public education system is actually reproducing disadvantage. Solving this crisis will require that the education department delivers a quality school leaver to the labour market and the tertiary education sector that a growing industrialized economy demands.

- ❖ Even Science and Technology Minister, Mosibudi Mangena, says that schools and universities are failing to provide the training that would allow SA to start filling the estimated 30 000 hi-tech positions that are vacant. "We are not doing well at all at school or university level," the minister said on 8 September 2008 at a technology conference staged by Telkom. The minister further stated that schools were not producing enough students with the right knowledge to study subjects such as mathematics, physics and chemistry at university level. "They

¹⁸ Danger that South Africa will cut of its nose to spite its face - SAIRR

don't have the skills to enter those arenas. We need to get the schools right first.”

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However, to enable schools to deliver a quality school leaver to South Africa one needs teachers with the right skills to teach the pupils. Recently, there were calls for faster transformation in the Western Cape's Education Department.²⁰ Do we really want to jeopardise the future of our children and that of the country for employment equity at all cost? The National Department of Education's own annual report stated that it has a shortage of skilled personnel.²¹ It would be unwise to drive employment equity further at all cost when one can see there is a huge skills crisis and it is affecting the education system negatively. Rather use those teachers with degrees and years of experience in schools where there are shortages and make them help turn the education for our children around.

The further pursuit of racial demographics in the education system can also have the same devastating effects as currently seen at other public service departments such as local municipalities. Skilled people who happened to be white have had their services dispensed with, all in the name of transformation, leaving the public sector with a greater shortage of skills than might have been the case. The public service has been criticized for using the Employment Equity Act to push experienced and skilled white employees out to the private sector, and which is affecting service delivery in all spheres of the government. At the end of the day one can't afford to lose more experienced workers and replace them with inexperienced personnel as there would be no one left to train the new recruits. Even Jimmy Manyi has said: "Some of the service delivery crisis is caused purely by incompetent people – some of whom are black and some are white. They must all be dealt with."²²

The country has cut off its nose to spite its face. A wiser government would have done everything possible to retain scarce skills despite their whiteness. The public sector would be working more efficiently today if it had happened, to benefit of the whole of the

¹⁹ Thousands of hi-tech jobs are vacant – Business Day, 9 September 2008

²⁰ Equity “still a problem for Cape schools” -

http://www.iol.co.za/general/avant_newsview.php?click_id=13&art_id=vn20080605115818316C174455&set_id=1

²¹ Onderwys - Beeld, 9 September 2008 & Onderwys erg onder-bekwaam, Beeld, 8 September 2008

²² Time for BEE to grow up and act its age. Business Times. 14 June 2008

country and particularly of those heavily dependent on public institutions like hospitals and social services.

At least ANC Secretary Gwede Mantashe has looked beyond race and made the comment that efforts to beef up the public service, including by bringing back skilled Afrikaners, will pay off in time.²³ ANC treasurer-general Matthews Phosa recently also said: "We owe it to the next generation to resolve these issues. They don't carry the baggage we do. **Race should thus no longer be the decisive factor when applying for a job**; it should rather be which person has the right skills."²⁴

In conclusion one can say: Of course, we have to correct the imbalances of the past, but that has to be done through responsible, sensible affirmative action, good education and proper training – never at the expense of efficiency and service delivery. When, a country desperately needs skilled workers, affirmative action is disregarded.

²³ Business Day – 9 September 2008, page 12

²⁴ BEE a failure. 18 September 2008.

http://www.fin24.com/articles/default/display_article.aspx?Nav=ns&ArticleID=1518-1786_2395322

4. Jimmy Manyi is not objective about affirmative action:

Jimmy Manyi is the chairman of the Employment Equity Commission (EEC). He is tasked by the Minister of Labour with making sure that the government's policies that are aimed at achieving employment equity reach their mark. He must act impartially when performing any function of the EEC. He may not participate in forming or communicating any advice on any matter in respect of which he has a direct financial interest *or any other conflict of interest*.²⁵

Jimmy Manyi is the president of the Black Management Forum (BMF). He is tasked with the development and empowerment of managerial leadership primarily amongst black people.²⁶ He is also the group executive at Tiger Brands Corporate Affairs.

These two paragraphs both describe Jimmy Manyi. On the one hand he must be an impartial and fair adjudicator of employment equity and affirmative action. On the other hand he is in a position where he represents the interests of the black managerial group, which includes himself. The policies which he advises on in his position as chairman of the Employment Equity Commission directly affect him in his job at Tiger Brands, as well as the people he represents as president of the BMF. This is clearly a conflict of interest as specified in Chapter IV, section 29, sub-section 4 (d) of the Employment Equity Act. It is like making the cat guard the cream.

Further evidence that Manyi is not an impartial chairman of the EEC, can be found in some of the many improper public statements that he has made as president of the BMF:

- (a) "White people believe that their genes are better and have the feeling that black people are inherently incompetent and mediocre."²⁷
- (b) "Racism in the workplace hinges on the notion that black people are considered inherently inferior, mediocre and incompetent, regardless of their outstanding achievements and track records."²⁸

²⁵ Information directly sourced from the Employment Equity Act, No. 55 of 1998 (own italics)

²⁶ Information directly sourced from the BMF's website.

²⁷ <http://www.busrep.co.za/index.php?fSectionId=7fArticleId=3844831> 23 May 2007

²⁸ <http://www.busrep.co.za/index.php?fArticleId=3985325> 16 August 2007

- (c) “Black economic empowerment partners are “house niggers” who defend the malpractices of their (white) partners.”²⁹
- (d) “The BMF has a problem with black people who forget that they are black. Some people call them coconuts.”³⁰
- (e) “White directors are ‘ambassadors of unfair discrimination’.”³¹
- (f) “Black people are only appointed in areas of containment.”³²
- (g) “If whites thought Zimbabweans were militant, wait until they witness the militancy of South African workers,” Manyi warned. “If the workplace did not become more equitable and the black majority continued to be marginalized, ‘Zimbabwe could look like a Sunday picnic’ in comparison.”³³
- (h) “We looted. It was so nice to loot, we would stop a truck carrying milk and say: “If we loot this truck who loses? You or the white man?” We enjoyed the spree until the hippos came.”³⁴
- (i) “White women should not benefit from affirmative action and should not continue to be in the definition of the previously disadvantaged.”³⁵
- (j) “A striking feature of [the latest] report is the continued trend of over-representation of White females by an average of about three times their Economically Active Population.”³⁶
- (k) “The idea of an unrepresentative section of the population to roll out a process cushioned in the legislative language is fraudulent and totally misleading and should be punishable in terms of the law.”³⁷
- (l) “The skills shortage is an urban legend. There is no skills shortage, just an under-utilization of skilled people, who are out there but ignored because of racism.”³⁸

²⁹ http://www.iol.co.za/index.php?click_id=13&set_id=1&art_id=vn20070906113049401C288520
6 September 2007

³⁰ Said during a radio-interview on Kaya 2 September 2008

³¹ http://www.iol.co.za/index.php?click_id=13&set_id=1&art_id=vn20070906113049401C288520
³² http://www.mg.co.za/articlepage.aspx?articleid=318611&area=/insight/insight_national/ 10
September 2007

³³ <http://www.busrep.co.za/index.php?fSectionId=561&fArticleId=3988673> 19 August 2007

³⁴ Sunday World – 12 August 2008 (Referring to his role in the Soweto-protests.)

³⁵ <http://www.busrep.co.za/index.php?fSectionId=561&fArticleId=3938897> 18 July 2008

³⁶ Foreword of the 2007/08 CEE report. **This is a blatant lie. White women’s EAP is 5.4% and they are represented at a level of 8%, according to Manyi’s own report.**

³⁷ <http://business.iafrica.com/news/623543.htm> 21 September 2006 - Manyi was referring to Solidarity’s idea of creating a code of good practice for employers from current affirmative action legislation.

³⁸ <http://www.busrep.co.za/index.php?fSectionId=7fArticleId=3844831> 23 May 2007

These are just some of Manyi's remarks that clearly indicate a remarkable degree of intolerance towards others. This position was reinforced by the BMF's indignant objection to the inclusion of about 20 000 people of Chinese descent in the definition of "Coloured" which meant that they could also be advanced through affirmative action.³⁹ He repeated these sentiments in the foreword of the latest Employment Equity Report. If Manyi does not even want such a small amount of people to also share in their new-found wealth, how can it be expected of Manyi as chairman of the EEC to advise impartially? Even if Manyi was the very epitome of tolerance towards other groups, his denial of the skills shortage would still make him unqualified for his position as chairman of the EEC. Someone who does not grasp the most important issue in the South African labour market can surely not be expected to advise the Minister of Labour!

Last year, Manyi argued (using flawed statistics as his point of departure) that white women should be excluded from being beneficiaries of affirmative action, because "white women had benefited enough" from affirmative action.

In the 2008 Women in Corporate Leadership Census, the Businesswomen's Association of South Africa (BWASA) said the following: "...we remain adamant that a split along racial lines, as advocated last year by the Employment Equity Commission, will not help our cause at all because women of all races and colours continue to be discriminated against and overlooked in corporate South Africa. Our figures bear testimony to this."

Manyi based his opinion on his belief that white women held a disproportionate amount of senior managerial positions. Because of this, he wanted to exclude all white women from affirmative action in 2007 and he continues to vilify them even today. Women managers are a minority (about 25%⁴⁰) within a minority (managers) of the South African labour force. To base a decision that would affect all white women on such a small amount of people is absurd. Manyi himself holds a senior managerial position. Removing white women from those positions would, whether he intends it to or not, open up more opportunities for himself, as well as for the people he represents through the BMF.

³⁹ Black business condemns Chinese ruling
<http://www.itweb.co.za/sections/business/2008/0807031040.asp?S=Black%20Empowerment&A=BLE&O=google> 3 July 2008

⁴⁰ BWASA. 2008. Women in corporate leadership census 2008.

Jimmy Manyi has said at least one thing that does make perfect sense: “The universal hallmark of true leadership is humility. We need to have humility to admit when we have faltered, and not defend the indefensible and pretend we are infallible.”⁴¹

It is incontrovertible that Manyi is not a fair and impartial chairman of the Employment Equity Commission. He does not listen to his own advice to admit that he has faltered and continues to defend the indefensible. He recently said: “For us in the BMF we think that the discussion about the sunset clause never made sense then, doesn’t make sense now, will never make sense ever!”⁴² This is in direct opposition to his other stated position on infallibility and also indicates his lack of impartiality as chairman of the EEC. Manyi should be removed from this position and replaced by an impartial person whose own interest can not conflict with that of the EEC. A person who has left the open labour market would be ideal. Someone who understands the hardships faced by any previously- or currently-disadvantaged South African. A black woman who is independent of any corporate interests could possibly be the best choice to make sure that everyone is fairly treated by South Africa’s employment equity policies. This would be an important step to promote gender equality and transformation.

⁴¹ Time for BEE to grow up and act its age. *Business Times* (14 June 2008)

⁴² Radio-interview on Kaya, 2 September 2008

5. Some problems with this year's report by the Employment Equity

Commission:

This year's report is compiled out of 1493 reports received from employers who have more than 150 employees. 1365 reports were excluded. The reason that is given for the exclusion is that these reports were from smaller businesses who reported for the first time. The 2003 report is compiled out of 3252 reports from large employers, with 1645 reports excluded. The 2005 report is compiled out of 2085 reports from large employers, with 677 received reports excluded. Reasons given for the exclusion in 2005 include data in vital tables not tallying, missing pages and inaccurate completion of reports. It is very strange that because of these kinds of mistakes, there were 677 unusable reports two years ago, but this year the Commission apparently did not receive a single report with errors from a large employer. It is therefore reasonable to assume that of the 1493 reports received from large employers this year, some would have been riddled with errors as well.

This year's report is based on the least number of employers since 2001. It represents only about 2 million of South Africa's 17 million-strong EAP. The 2003 report represented 3.3 million, and the 2005 report represented 2.4 million. The employers who report to the Commission also differ every year. Because of this, a scientific comparison between the different reports is virtually impossible. Many of the employers who do not submit any reports are governmental departments who, on average, meet or exceed the racial demographic targets of affirmative action policies. If such employers do not deem it necessary to submit reports, the statistics will always remain skewed towards an under-representation of black people. This matter is discussed further in section 5.2.

Because of the unlikelihood of there being no errors in the reports submitted by large employers this year, the decline in employers and employees represented by the report and the basic mathematical errors (certain columns' totals are simply incorrect), the 2007 Employment Equity Report is the most unreliable one released by the EEC as of yet. It is even worse than the 2006 report which was exposed as being deeply statistically flawed by Solidarity.⁴³ Policy decisions that use only the 2007 EEC report as

⁴³ See Solidarity's comprehensive "*The Truth about Employment Equity in South Africa*" report that was released in September 2007.

a source of information will be deeply flawed and unrealistic. Any policy decisions have to be based on scientifically- and statistically-correct data, which the Employment Equity Reports unfortunately do not provide at the moment.

For the moment, we will ignore the bias and flaws of the Employment Equity Reports, and consider their figures as correct. It will be shown that **even when using these flawed figures**, the conclusions reached by Jimmy Manyi are false.

In the foreword to the latest Employment Equity Report, Jimmy Manyi states that white women continue to be over-represented by an average of about three times their share of the Economically Active Population (EAP). According to his own document, white women are 5.4% of the EAP. They hold only slightly more than 8% of total jobs. His statement that they are three-times over-represented, is a blatant lie. If it was true, white women would have to hold 16.2% of all jobs.

In 2001, white women held 12.4% of all jobs, in 2003, 9.5%, in 2005, 9.1%, and now they hold 8%. There is a clear decreasing trend, and never has Manyi's statement of white women holding three times more jobs than they "should", been correct.

Manyi also notes in the foreword that: "White males also continue to be dominantly over-represented." While on the face of it, this statement is not false, it is still misleading as a result of omitted truths, to wit: The representation of white males in total jobs has declined steadily from 14% in 2001 to 12.6% in 2003 to 11.2% in 2005 and 10.1% in 2007. Even when one only looks at the top management level, like Manyi obsessively does, white males have also constantly declined, from 78% in 2001 to 58.4% in 2007. Top management accounts for only 0.046% of South Africa's total EAP.

It is interesting to note that during his speech at the press launch of this year's report, Manyi throughout compared 2003's report to 2007 – omitting 2005. He pointed out that white women's share of top management increased from 8.8% in 2003 to 9.8% in 2007. However, when one compares 2005 with 2007, white women's share of top management jobs actually declined. The same is true of white women and even *white men* in all the other job categories. Both show a decline in all categories (except for an increase of 0.1% for white women in non-permanent jobs) from 2005 to 2007. Manyi conveniently skipped that part.

The one percentage point increase in white women's share of top management jobs from 2003 to 2007 that Manyi mentions, represents a mere 155 white women. Based on this tiny number of people, he creates the impression that all white women are "unfairly benefiting" from affirmative action. Once again, this is simply a falsehood.

Another thing that Manyi finds "troubling" is the decline from 2003 to 2007 in black representation at the professionally qualified and mid-management level. This is merely a result of an anomalous spike in the figures in the 2003 report, for which the EEC gives no explanation. Once again, when one compares 2005's report to 2007's figures, it shows increased representation of blacks at this level and a decline for whites. The same goes for a comparison between 2001 and 2007. Total black male representation increased from 16.8% to 26.4%, black female from 8.1% to 14.9%, while white males declined from 52.8% to 38.7% and white females from 22.3% to 18.5%. It is only Manyi's selective comparison of 2003 and 2007 that makes the picture look dark for blacks and rosy for whites.

5.2 Non-submission of reports by transformed employers create a skewed picture:

It is sometimes assumed that only companies that want to circumvent the Employment Equity Act fail to submit reports, but the 2005 list of non-submitting employers shows that they are the transformed institutions. Such a trend will distort and underestimate black representation in the workplace.

A list of non-submitting entities in 2005, provided by the Labour Department only after a specific parliamentary request by one of the opposition parties, is given below. The equivalent list for the 2007 report was requested from the department by Solidarity, but it has so far not been made available. It would most probably show a worsening trend, as the number of non-submitting entities has fallen very sharply in the 2007 report.

Municipalities

1. Abaqulus Municipality
2. Amatole District Municipality
3. Ba-Phalaborwa Municipality
4. Butterworth Municipality

5. City of Johannesburg Municipality
6. City of Tshwane Metropolitan Council
7. Emfuleni Local Municipality
8. Emnambithi/Ladysmith Municipality
9. Govan Mbeki Municipality
10. Highland Municipality
11. Local Municipality of Lekwa
12. Makana Municipality
13. Maluti Phofung Municipality
14. Mamusa Local Municipality
15. Mbombela Local Municipality
16. Messina Municipality
17. Mnquma Local Municipality
18. Modimole Municipality
19. Municipality of Piketberg
20. Naledi Municipality
21. Nama Khoi Municipality
22. Nkomazi Municipality
23. Romothishere Moiloa Local Municipality
24. Sakhisizwe Municipality
25. Setsoto Municipality

State Departments (Provincial)

1. Department of Agriculture: Western Cape
2. Department of Education and Training: Western Cape Area
3. Department of Health: KwaZulu-Natal
4. Department of Social Development: Eastern Cape
5. Department of Transport: Eastern Cape
6. Department of Transport: Polokwane
7. Department of Agriculture: Western Cape
8. Free State Department of Health
9. Free State Provincial Treasury
10. KZN Treasury
11. KZN Department of Labour

12. Mpumalanga Department of Housing & Land Administration
13. North West Provincial Government: Department of Transport

State Departments (National)

1. Department of Agriculture
2. Department of Agriculture: Conservation and Environment
3. Department of Finance & Economic Affairs
4. Department of Health
5. Department of Housing
6. Department of Justice Head Office
7. Department of Sport, Arts and Culture
8. Department of Health and Welfare
9. Department of Public Works, Roads and Transport

Other

1. Director of Public Prosecutions
2. Eastern Cape Development Corporation
3. Eastern Cape Tourism Board
4. Gauteng Office of the Premier
5. Klerksdorp City Council
6. KwaZulu-Natal Provincial Administration
7. KZN Office of the Premier
8. National Research Foundation
9. Parliament of the RSA
10. SABS
11. SABC Strategic Human Resources
12. The Parliamentary Service
13. Transnet
14. Transnet Pension Fund

From the 2008 State of the Public Service Report by the Public Service Commission, the following race-representativity levels in national- and provincial government can be seen.

Year	National (%)				Provincial (%)			
	African	Asian	Coloured	White	African	Asian	Coloured	White
2004	74	4	9	14	64	5	9	22
2005	75	3	10	12	67	3	11	19
2006	79	3	9	9	69	3	11	17
2007	80	3	9	9	71	3	11	16

It is clear that government has, in almost all cases, reached levels that can be considered “transformed”. Most of the entities who did not submit reports for 2005, are part of the figures in the table above.

In the following table, the figures are disaggregated by each province. It is unclear why the figure for whites at national level is at 15% in the table below, while it is at 9% in the table above. The PSC report gives no explanation.

National/ Provincial	RACE	2004 (%)	2005(%)	2006(%)	2007 (%)
NATIONAL	Blacks	78	81	83	85
	Whites	22	19	17	15
Eastern Cape	Blacks	95	95	95	95
	Whites	5	5	5	5
Free State	Blacks	82	82	82	83
	Whites	18	18	18	17
Gauteng	Blacks	79	79	80	82
	Whites	21	21	20	18
KwaZulu- Natal	Blacks	94	94	95	96
	Whites	6	6	5	4
Limpopo	Blacks	97	97	97	97
	Whites	3	3	3	3
Mpumalanga	Blacks	90	90	92	92
	Whites	10	10	8	8
Northern Cape	Blacks	82	82	92	90
	Whites	18	18	8	10
North West	Blacks	54	91	83	86
	Whites	46	9	17	14
Western Cape	Blacks	80	80	79	81
	Whites	20	20	21	19

This table gives further evidence of how transformed the public sector is. If these departments and municipalities do not submit reports to the Commission for Employment Equity, the Commission's reports can not show the complete truth.

Even at the senior management services level, black people dominate in the public sector. The table below gives the percentages per province only of the so-called "African" group and does not even include Coloured or Indian people.

National/ Provincial	Total African	%	Total SMS Members
NATIONAL	2 838	73	3 902
Eastern Cape	402	81	498
Free State	237	64	369
Gauteng	565	70	805
KwaZulu- Natal	522	79	657
Limpopo	415	92	450
Mpumalanga	220	87	253
North-West	250	85	293
Northern Cape	145	86	169
Western Cape	200	53	374
TOTAL	5 794	73	7 770

The same report indicates that there are large numbers of funded vacancies in all public departments. According to the PERSAL system, this number is 330 987, while the departments themselves indicate only 88 323, out of a total number of 1 433 401 (as per PERSAL). This number of vacant posts, clearly indicates a terrible synthesis between the skills shortage and the blind commitment to transformation. Posts are left vacant and service delivery suffers, rather than appointing skilled white applicants into these vacant positions.

6. Notable court cases involving affirmative action:

There has been a number of court cases that have challenged the assumptions and accepted wisdom regarding affirmative action. While the skills shortage and the fact that there are simply too few whites to discriminate against are eroding affirmative action on a de facto basis, these court cases are changing the judicial framework and weakening affirmative action's unfair discrimination as well.

Information about the following cases was provided by the Institute for Constitutional and Labour Law Studies. The main points about each case is highlighted below.

- **Reynhardt v University of South Africa (2008)**

In this case, an inexperienced coloured person was given a job instead of a very experienced white male. At this time, the employer had already met its transformation targets and was will excluding the more-experienced white male using affirmative action.

The court found that in a case like this, where affirmative action targets had already been reached, an employer could no longer exclude a member of the non-designated group (whites) and use affirmative action as justification.

The employer was ordered to pay the white person 12 months' compensation, as well as R661 000 in damages.

- **Sibiya v Aivia.Kom (Pty) Ltd (unreported)**

A person of the designated group claimed that she had been unfairly discriminated against when she did not receive the promotion that she applied for.

The court ruled that persons from the designated group could not claim unfair discrimination if they had not been considered for appointment or promotion after an objectively fair selection procedure, even if the job had gone to a person from the non-designated group.

- **SA Engineering Council & another v City of Tshwane Metropolitan Municipality and another (2008)**

Mr Weyers, a registered professional engineer employed by the municipality as manager of part of the municipal power control system, was responsible for the

continious operation of the power system. His job also included recruiting and appointing competent operators who were able to do the inherently dangerous jobs of working with the high voltage installations. A number of vacant posts occurred in his department. He had a test for applicants' competency devised, which was approved by his superiors. The only candidates who passed the test were all white. Weyers's seniors told him to remove them from the shortlist and to replace them with names of black applicants who did not pass the test. Mr Weyers wrote a letter to the Labour Department and to the SA Engineering Council in which he told of how the municipality appointed inexperienced people into jobs that were dangerous for themselves and which could create a danger for the public. In the letters, he pointed out that while affirmative action was necessary, the inexperienced black applicants should first have been appointed as trainees. As a result of these letters, Mr Weyers was fired from his job at the municipality. He went to the High Court for assistance.

The court found that Mr Weyers acted correctly in terms of all the applicable laws and that he had in fact been required by law to take steps to ensure safe operation of the power system. He had given more than enough justification for deviating from affirmative action in this case. The municipality was interdicted from imposing any sanction on Weyers for writing his letters.

- **Martin Gordon v Department of Health: Kwazulu Natal (2008)**

Mr Gordon was found to be the most suitable candidate for a certain job by a selection panel. Despite this, a black applicant was given the job. Mr Gordon approached the Labour Court claiming that this constituted unfair discrimination based solely on his race and colour. The Labour Court ruled that this was not the case. Mr Gordon then appealed to the Labour Appeal Court, who rejected the appeal.

The Supreme Court of Appeal found that the appointment of the black candidate in the absence of a plan of programme was ad hoc and arbitrary. It concluded that the appointment of the black candidate discriminated unfairly against Mr Gordon.

The following are pending cases in which Solidarity acting on behalf of the applicants.

- **Solidarity obo JPF van Zyl v Govan Mbeki Municipality**

Mr van Zyl (who is a member of the non-designated group) held a job as a plumber at the municipality. Two other people of the designated group worked under him on a lower job level – they are not qualified as plumbers. The municipality later incorporated two other municipalities, after which the two men who had worked under Mr van Zyl were appointed in a higher job level than him, while he remained on his previous level. He now did all the plumbing work for the entire incorporated region, while the other two, who were now earning more than him, still mainly only built new sewers. Mr van Zyl has to assist the other two in their administrative and plumbing duties as well, as they are not qualified to do this themselves.

Mr van Zyl can not be expected to receive less money and be on a lower level than people he has to assist because of their lack of qualifications and experience, merely because he is white.

- **Solidarity obo JJ Lubcker v Emahlaheni Local Municipality**

Mr Lubcker is employed as Acting Senior Licence Officer by the municipality and commenced his employment in 1999. A more advanced position was advertised by the municipality, clearly indicating the requirements for the position. Eight people, including Mr Lubcker, applied for the post. Mr Lubcker was the only applicant who adhered to the requirements as advertised. After being interviewed, he was later told that his application was unsuccessful. A black person who did not adhere to the requirements, was appointed instead. The matter was referred to the CCMA, who referred it to the Labour Court. The municipality does not have an affirmative action policy. The municipality acted in a differentiating manner in this case, and this amounts to unfair discrimination because the municipality does not have an affirmative action plan.

- **Solidarity obo RM Barnard v SAPS**

Barnard is a white female who currently holds the rank of captain in the SAPS. A new post of Superintendent was created by the SAPS in order to improve service delivery by the SAPS to the public. Barnard, along with six other applicants, two white and four black, applied for this post. Barnard received the highest score by a duly appointed interview panel. The black person who received a score of

12.5% lower than Barnard was deemed by the panel to be unsuitable for the position. Furthermore, the panel recommended that the appointment of Barnard would not aggravate the representivity of the unit as a whole, as she was already part of it. The panel also agreed that the appointment of Barnard would definitely enhance service delivery. In spite of this, the Divisional Commissioner recommended that the post not be filled, citing the reasons (in contradiction to the selection panel) that Barnard's appointment would decrease representivity and would not enhance service delivery.

Later, another post was advertised and again Barnard received the highest score, and the panel again stated that service delivery would be improved if she was appointed and that representivity levels would not suffer. Once again, she was not appointed and the position was withdrawn.

- **Solidarity obo H Ueckermann, LL de Jager, C van Ham & JJ Geustyn v SAPS**

The applicants are all white majors in the SAPS. Each of them hold degrees in forensic investigation and have many years experience. Each one of these applicants applied for various promotion posts within the SAPS forensic services. They were unsuccessful in their applications, with the stated reason being that no white persons would be considered for the promotions. The posts were left vacant. The applicants were not appointed in the promotion posts, but are still required to perform some of the tasks associated with these posts. They were the only persons qualified to fill these posts, but were not appointed as a result of unfair discrimination based on differentiation on grounds of race and colour. The forensic science unit's performance suffered as a result of the posts being left vacant, as the applicants' workloads have increased in their current positions. Critical service delivery regarding public safety and security is being neglected as a result of blind adherence to transformation policies. It is established in law that in such a case, service delivery must trump transformation.

7. Conclusion

Good education and proper training are measures that bring about real empowerment, because, according to Francis Bacon, knowledge is power. According to Aristotle, knowledge is also virtue. Therefore, the *right* thing to do is to give our people power through knowledge. The wrong thing to do is to focus just on the output of racial representativity while neglecting the input of decent education. Current affirmative action fails to solve the real problems of disempowered people.

These realities are apparently not seen as very serious or pressing by the Employment Equity Commission. This would hopefully change if the independence and impartiality of the commission could be assured.

The battle against poverty and unemployment under all of South Africa's people is being lost because of chronic skills shortages – people are just not trained for the type of jobs the South African economy can provide. If the government is genuinely committed to halving poverty and unemployment by 2014 it will find it has no choice but to make use of all the skilled workers, regardless of the colour of their skin.

Because of the skills shortage, affirmative action is already ineffective. As the white share of SA's total population gradually declines, the effectiveness of affirmative action that discriminates on basis of race will continue to decline. As long as the "other" group is defined as Thabo Mbeki's mythical "rich and white nation" vs. the "black and poor" nation instead of just the "rich" and the "poor", affirmative action can not benefit those who are actually disadvantaged.

In summary it can be said that affirmative action has failed because:

- A skills shortage currently exists and in numerous career categories affirmative action has become irrelevant. In practice, in various job situations, there already is a moratorium on affirmative action.
- The pipeline of black skills from the school system is too restrictive. This is largely because of the numerous dysfunctional schools.

- Affirmative action is based on racial output and there are too few whites to make a difference for the designated group.
- The international climate on affirmative action has changed radically.

A successful affirmative action programme will:

- Focus on broadening the pipeline of skills. The emphasis will move to training and development so that a broader basis could benefit by affirmative training.
- Remove blockings in the skills pipeline to accelerate growth and service delivery. Growth and service delivery is the best affirmative action processes.
- Be brought in line with the latest international trends.