

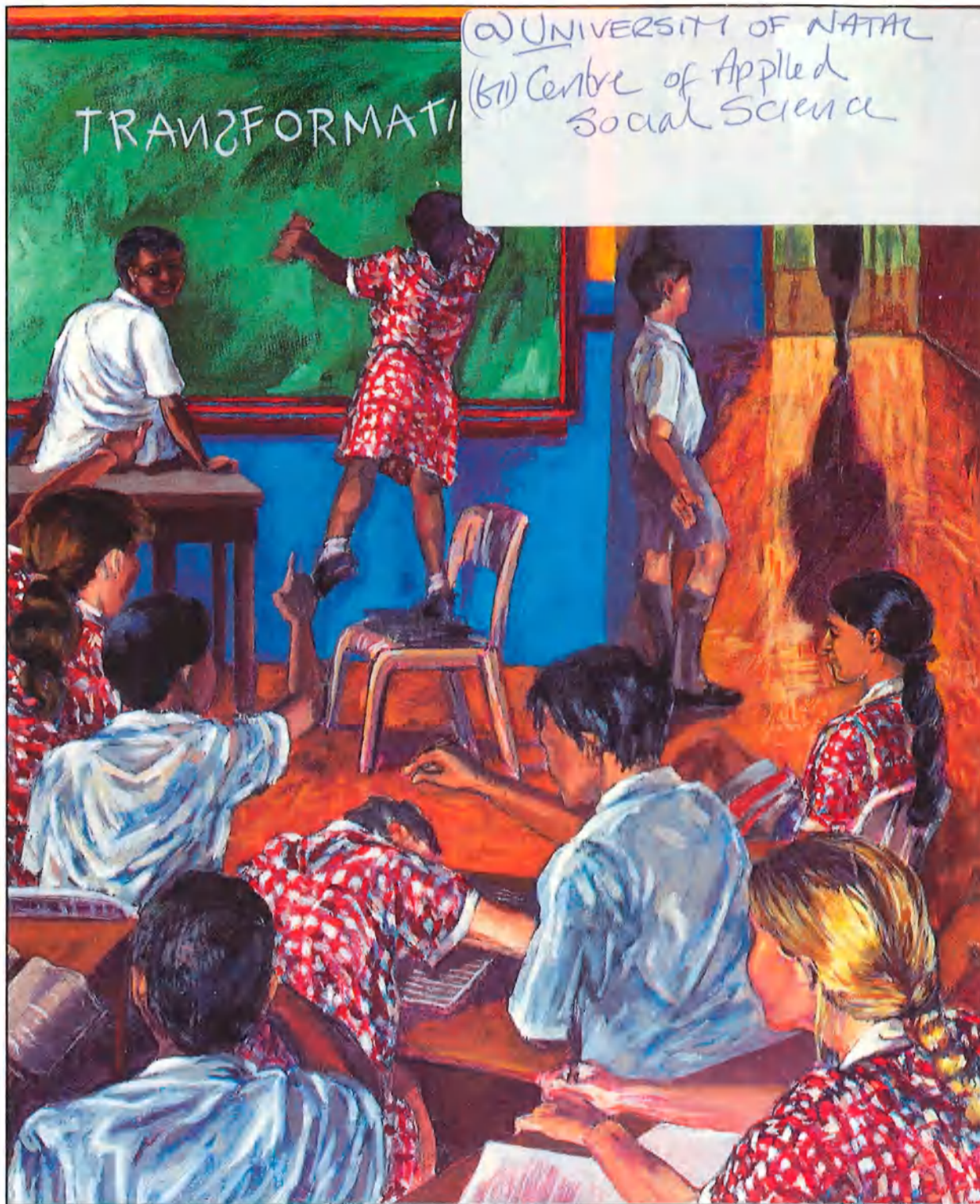
VOLUME FIFTEEN NUMBER ONE

AUTUMN 1998

# INDICATOR

## SOUTH AFRICA

(86)



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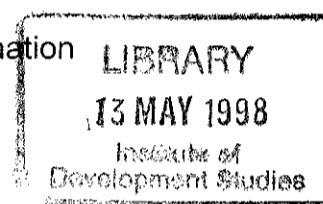
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# SOUTH AFRICA Quarterly Report

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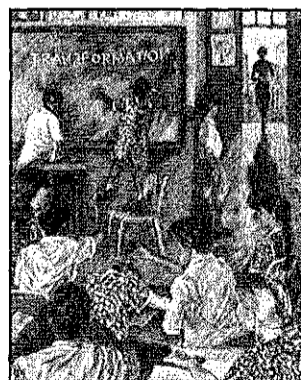
Much of what we thought we knew about population movement may be in error. Levels of rural movement may be well above previous estimates

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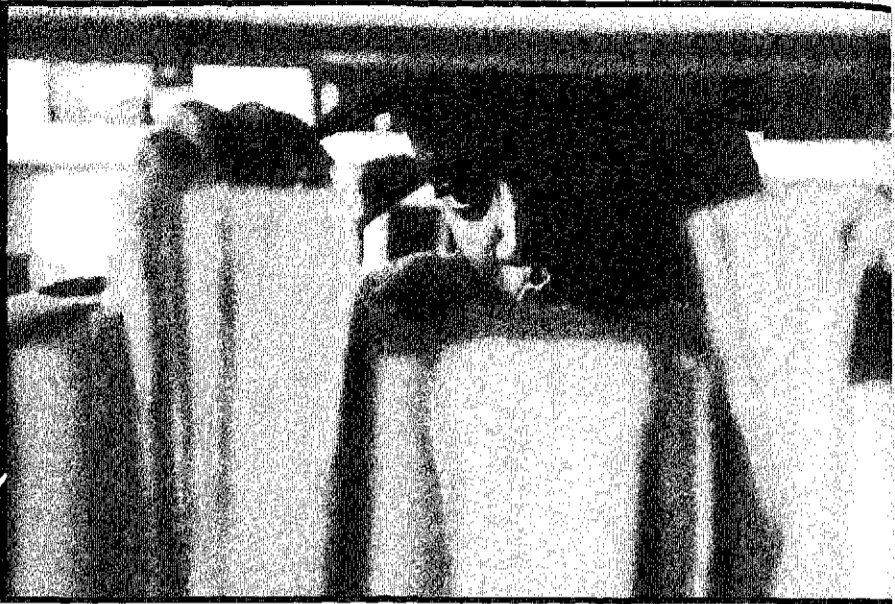
How does affirmative action fit into the right to equality guaranteed in the Constitution? Is it fair that one previously disadvantaged group be given preference over another?



Cover painting by Louisa Wassenaar

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# A place for dialogue



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# INDICATOR

## EDITORIAL

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**N**elson Mandela deserves to be taken seriously. His ongoing rebukes of the media should not, therefore, be swept aside as the paranoid ramblings of an ageing president. Mandela, the great non-racialist and reconciler, has repeatedly accused the "white-dominated media" of "undermining the revolution." We should accept this criticism with humility.

The media help generate public opinion, which translates very efficiently into market reality. Investors, both internal and foreign, are hesitant to part with their money in a country where the media prophesies doom from every editorial.

But journalists only feel free to be so critical because they have confidence in the ability of the government to withstand the onslaught - even tabloid paparazzi know better than to shout fire in a crowded theatre. By his rebuke, Mandela has implicitly acknowledged that he himself is not so confident. And, frankly, he is in a better position to know.

Yoweri Museveni, the only man on the continent who can rival Thabo Mbeki for the right to lead the African Renaissance, has rejected multi-party democracy as inappropriate for his country at this time. Party politics are divisive, he says, and developing nations need a sense of national unity. So long as the Ugandan economy continues to grow, the West seems willing to tolerate his departure from orthodoxy (President Clinton's gentle chiding aside).

Perhaps out of a similar sense of transitional instability, the ANC appears to be determined, on the one hand, to co-opt its black opposition and, on the other, to discredit its minority opponents. Unfortunately, the proposed ANC/IFP merger would simply serve to polarise party politics in South Africa along race lines, achieving the opposite of the intended effect. And, while race-baiting may serve to unify black voters, nothing is more likely to send the whites packing.

Analysts have also expressed their alarm over recent legislation that gives wide discretionary powers to national ministers. Those who feel threatened by this authoritarian drift should ask themselves what

it is that they are truly afraid of. Democracy, after all, is essentially a tool to ensure that government promotes the interests of the majority while protecting the rights of minorities. If anything, the ANC has been guilty of neglecting the former responsibility. It may now be the case that South Africa's need for rapid delivery is greater than an ideological argument against concentration of power.

Since the ANC has no serious rivals to its majority control of the government, these moves to silence opposition and increase the authority of party members must be motivated by a fear that any internal friction is a luxury that the nation cannot presently afford. They represent a tacit admission that western democracy is not working well on the continent, even here on the southern tip.

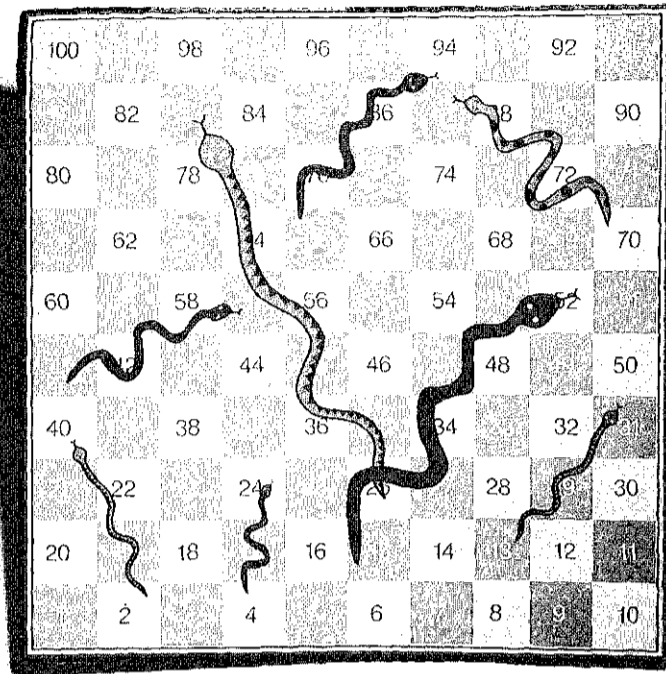
In the same vein, it might also be argued that South Africa is not ready for a fully critical press. There is a fine line between proudly declaring that the emperor has no clothes and wilfully inciting capital flight. Journalists emulating the press in better established states may be making the common error of mistaking South Africa for a first world country.

That having been said, this issue of Indicator contains plenty that is critical of the government. Since the topic of focus is education, it is difficult not to be pessimistic. But as always, a balance of views is sought, with writers from academia, non-governmental organisations and the government itself represented.

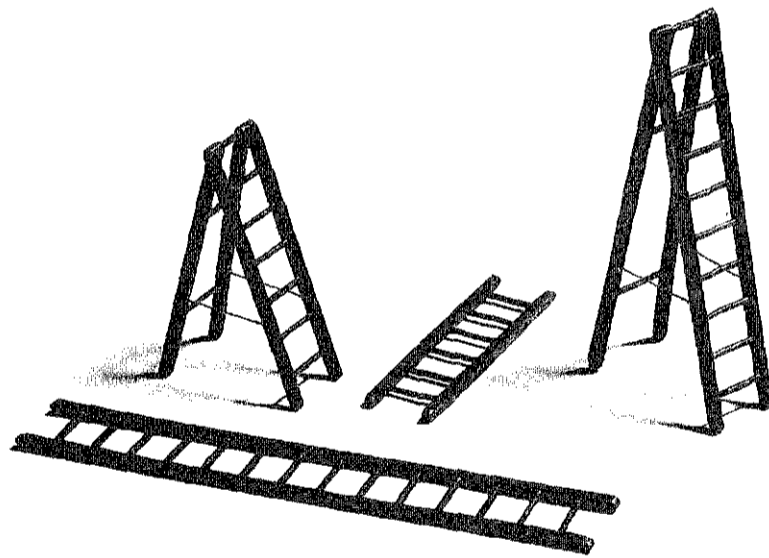
Three articles review the content and effects of the TRC, as this bold experiment in political group therapy sees its last days. Tom Lodge looks at the popular perception that the ANC-led government is corrupt, and finds the evidence rather lacking. The provincial spending mess is examined from the inside and from without, and Karthy Govender takes a legal stab at the way the formerly disadvantaged are hierarchised.

On the whole, opinions diverse as the nation itself. And isn't that what democracy is all about?

**Ted Leggett - Editor**

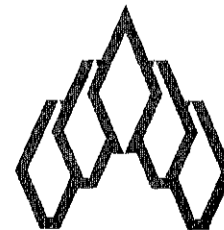


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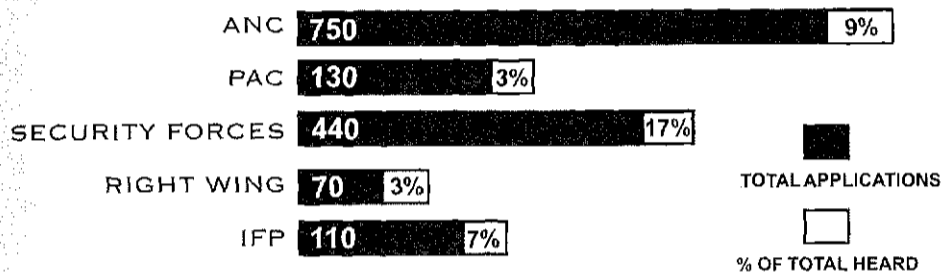
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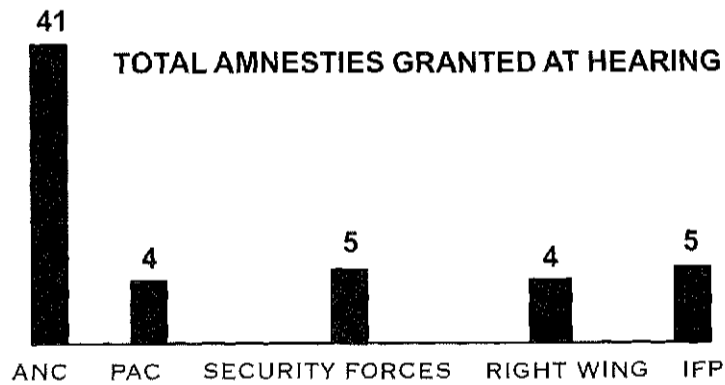
# POLITICAL MONITOR

## TRC AMNESTY APPLICATIONS BY PARTY

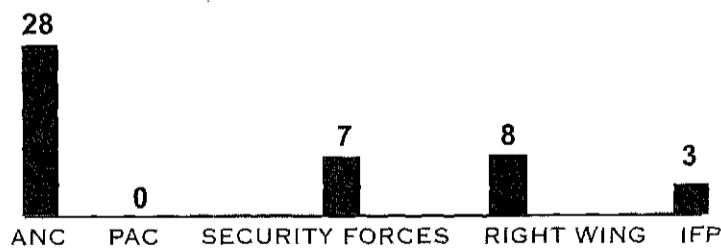
### TOTAL NUMBER OF HEARABLE APPLICATIONS TO DATE



### TOTAL AMNESTIES GRANTED AT HEARING



### TOTAL AMNESTIES REFUSED AT HEARING



THIS DOES NOT INCLUDE 77 CASES OF AMNESTY GRANTED IN CHAMBERS.  
 THIS DOES NOT INCLUDE 3500 ADMINISTRATIVE REFUSALS.  
 SOURCE: TRC AMNESTY COMMITTEE

# A STATE OF DENIAL: WHITE SOUTH AFRICANS' ATTITUDES TO THE TRUTH AND RECONCILIATION COMMISSION

BY GUNNAR THEISSEN  
TRANSITIONAL JUSTICE PROJECT  
UNIVERSITY OF THE WESTERN CAPE

BRANDON HAMBER  
TRANSITION AND RECONCILIATION UNIT  
CENTRE FOR THE STUDY OF VIOLENCE AND RECONCILIATION

The assumption of responsibility by all parties involved is essential to the reconciliation process. A survey conducted by the Centre for the Study of Violence and Reconciliation suggests that the majority of white South Africans are unconvinced that they played a role in apartheid abuses. And over 40% of those surveyed think apartheid was a good idea, badly executed.

In the interests of reconciling South Africa with its troubled past, the Truth and Reconciliation Commission (TRC) has called on the entire country to remember, acknowledge and admit their role in past crimes. Specifically, it has focussed on white South Africans, the security forces, the armed wings of the liberation movements, the past government, and specific sectors (e.g. the medical profession, the business sector) all of whom have been called upon to carefully scrutinise their complicity in the apartheid system.

This has proved to be a difficult task, however, perhaps because most people would like to forget their role in a system that has been internationally condemned as a crime against humanity. In light of this, the Centre for the Study of Violence and Reconciliation (CSVr) set out to investigate the extent to which white South Africans have embraced the TRC process and acknowledged their role in the apartheid system.

In May 1996, shortly after the first public hearings of the TRC, the CSVr conducted a random nation-wide telephone survey of 124 white South Africans (Theissen, 1997). The CSVr wanted to gather information on how white South Africans feel about the TRC, and also to assess their views on the social

and political changes that had taken place since April 1994.

## SUPPORT FOR APARTHEID

In order to answer these questions, it is important to first determine the extent to which white South Africans supported the apartheid government. Evidence for this support is unequivocal.

Election results indicate that white South Africans increasingly supported the former government and its apartheid policies from 1948 onwards. In 1977, one year after the Soweto uprising, support for the NP regime was at its peak - 67% of all white votes went to the NP that year.

White opposition to the apartheid system was confined to a small minority. During the years of the state of emergency, parties with a moderate position, such as the Progressive Federal Party (later the Democratic Party), only accounted for a maximum of 20% of white votes (Van Rooyen, 1994).

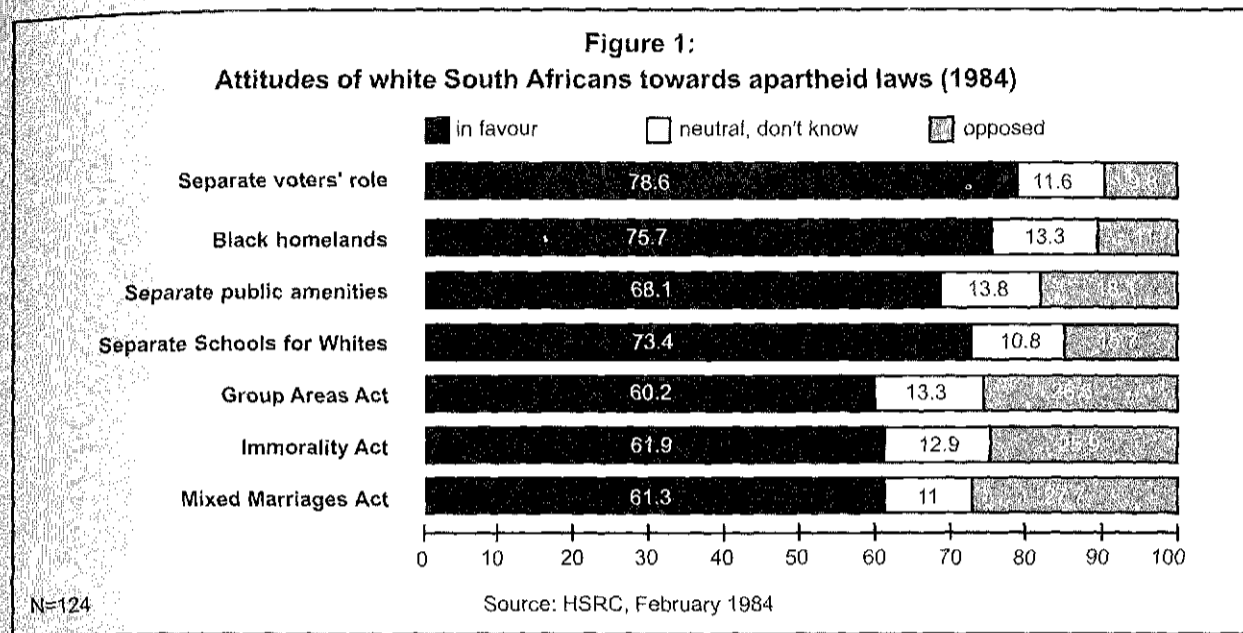
In addition, during the 1980s white South Africans were repeatedly asked how they felt about the apartheid legislation. A survey conducted by the Human Science Research Council (HSRC) in February 1984 revealed that the vast majority of white South Afri-

cans were in favour of the exclusion of black South Africans from the political system, white schools, residential areas and public amenities (Fig. 1 below). Even the more obvious forms of racist legislation, such as the 'Immorality Act' and the 'Mixed Marriages Act', were supported by 60% of the white population in 1985 (Rhodie, De Kock & Cooper, 1985).

cans did not only turn a blind eye to the ongoing human rights violations, but many supported the way the security forces dealt with black opposition.

### THE NEW SYSTEM

Since 1990, change has been rapid in South



White South Africans also generally supported government and security force actions. In November 1977, for example, after nearly all black consciousness organisations and the Christian Institute of Rev. Beyers Naudé had been banned, 68% of all white South Africans approved of the government's actions. In 1984, 90% of white South Africans felt that the government's combating of 'terrorism' was good or very good (Rhodie et al, 1985).

Four years later, 85% supported "stronger action against the ANC and its fellow travellers to prevent or to reduce terror attacks," (Hofmeyr, 1990). During the 1980s, the South African Institute for International Affairs (1982-1990) repeatedly evaluated whether white South Africans thought that the government should militarily attack ANC 'terrorist' or 'guerrilla' bases in its neighbouring countries. Generally, the vast majority approved of the policy of cross-border raids.

Furthermore, in May 1989, shortly before the collapse of apartheid, 57% of white South Africans were still in favour of "detention without trial for suspected violators of security laws" (Hofmeyr, 1990). This came at a time when reports about severe ill-treatment and torture in detention were fairly widespread.

Thus, it can be concluded that white South Afri-

ca. It is not clear, however, how whites feel about the so-called 'new South Africa', particularly given the overwhelming support of the past regime by white South Africans.

The CSVSR survey found that although most respondents accepted some of the outer manifestations of the new South African patriotism (e.g. the new flag), a large number of white South Africans were not content with the new political system (58.8%).

Although the CSVSR survey found that very few whites would like to reinstall apartheid (or at least would not openly admit to it), some 44% claimed that the former political system was not unjust. The same percentage believed that apartheid was a good idea but was badly carried out, and every third respondent held the view that apartheid has done more good than harm to South Africa (33%).

This indicates that, aside from some limited attitudinal change, there are still many white South Africans who remain uncritical of the apartheid past and do not see the system as inherently problematic.

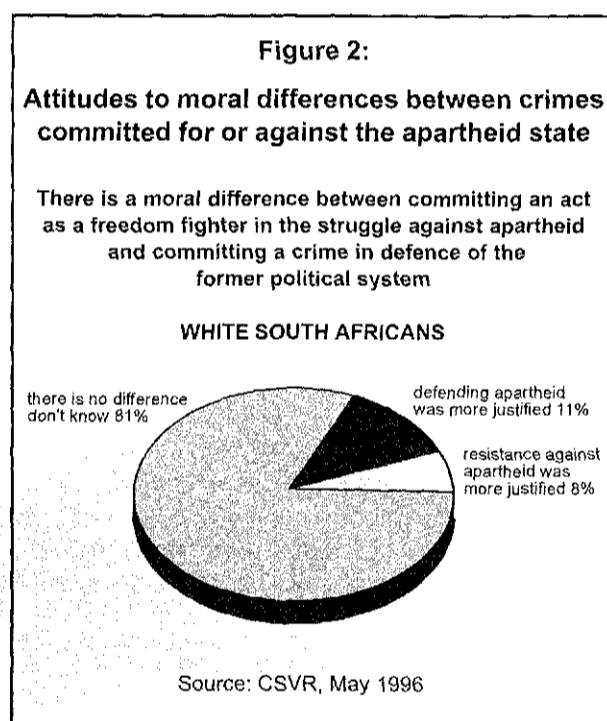
### BLAME FOR THE PAST

Only 14 percent of white South Africans surveyed by the CSVSR felt that those people who supported

the NP in the past were, at least to some degree, responsible for the repression of black communities. Instead, they saw only those directly involved to be blameworthy.

Responsibility for the atrocities of the past was mainly placed at the doorsteps of anti-apartheid activists and 'troublemakers' in black communities (57%). To a lesser degree the security forces (46%) and the former NP government were also seen as responsible (46%). Eighty one percent of respondents claimed that there is no moral difference between an act committed in defence of the apartheid system and an act committed as part of the liberation struggle (Fig.2 below).

Clearly, therefore, the white South African respondents did not see their personal support for the NP government and its actions as integrally linked to the violations that occurred in the past.



### SUPPORT FOR THE TRC

Although several surveys (IDASA 1994; HSRC 1995) conducted prior to the hearings have indicated widespread support for a Truth Commission among black South Africans, most white South Africans seem to have had an ambivalent or negative perception of the TRC.

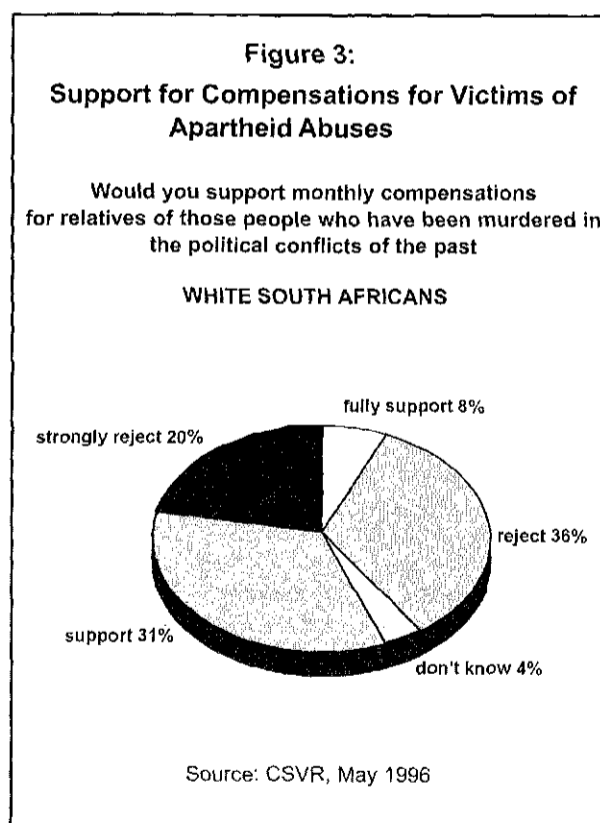
A significant number of the white South Africans surveyed (46%) believed that "the TRC was an ANC-inspired witch-hunt to discredit its enemies," although the same percentage disagreed and 8% had no opinion.

In May 1996, only 36% of the 128 surveyed said that most of the allegations made by victims to the TRC were true, 41% of the respondents believed that the incidents victims spoke of were being exaggerated. Perhaps predictably, mistrust and rejection of the TRC was found to be more common among older white South Africans. The only group surveyed to show overwhelming support for the TRC was that under 30 years of age.

### SUPPORT FOR COMPENSATION

In terms of paying compensation to the victims and relatives of gross human rights violations, an HSRC survey conducted before the TRC began showed that 60% of white South Africans felt that victims of apartheid should not be compensated for the ills they suffered in the past (HSRC, 1995). The CSV survey conducted in the early months of the TRC showed that 56% of the respondents felt the same.

In addition, two out of three respondents felt that it was better to forget about the past than to prosecute people who had committed crimes against anti-apartheid activists. Most white South Africans in this group were not inclined to redress the socio-economic injustices of the past. Only a few respondents supported measures like affirmative action (25%) and the return of some farmland to the black majority (13%).



According to the CSVr survey, more than two out of three white South Africans still believe that "there are times when detention of political prisoners may be necessary to maintain social order." Every second respondent said that police should be allowed to use their guns more frequently and 80% supported the death penalty.

Seemingly, human rights violations may still be tolerated by many South Africans as long as the violations can be justified.

### GLORIFICATION OF THE PAST

The CSVr survey indicates that there is a strong relationship between racism, the denial of past injustices and the glorification of the apartheid past. Respondents who scored high on the racism scale included in the survey, tended to be dissatisfied with the new democratic order. They also denied past injustice and romanticised the apartheid past.

While support for openly racist statements was low in the survey, implicit racial prejudices were voiced repeatedly. For example, "it is certainly best for all concerned that interracial marriages should not take place" and "it is crucial for the stable development of the country that whites retain economic control", received 57 and 54% approval respectively.

It was also fairly common for white respondents to complain that black South Africans were deliberately using the apartheid past to discriminate against whites. More balanced language broadcasting, affirmative action and land restitution were often referred to by respondents as "apartheid in reverse".

### GERMANY AFTER WW II

Interestingly, the results of the survey do not differ considerably from the political culture of West-Germany during the first decades after the end of the Nazi regime. During that time many Germans still believed that Germany had not been responsible for the outbreak of World War II (54% in 1951) and that National Socialism was a good idea that was badly carried out (57% in 1948).

Furthermore, Hitler was still seen as one of Germany's greatest statesmen in 1955 (48%). In an attitude similar to that of white respondents towards compensation for victims of apartheid in South Africa, 66% of the German public opposed reparation for Jewish holocaust survivors in 1952 (Bergmann & Erb, 1991).

Perhaps like the German public after World War II, the CSVr survey indicates that many white South Africans remain unconvinced about the unjust nature of the past system and certainly do not see them-

selves as highly complicit. Apartheid is generally viewed as a system which was not inherently bad but was carried out in such a way that 'mistakes' occurred.

Most white South Africans, according to the CSVr survey, are more likely to blame anti-apartheid activists, or perhaps the security forces, for the atrocities that occurred, than to acknowledge their own role in maintaining the system that allowed these violations to occur.

On the other hand, the results of the CSVr survey, as with survey research done in Germany, confirmed that the younger generation (those under 30 years of age) differed remarkably from the older generation in their perceptions about the past and their attitudes to the future.

Younger white South Africans were generally more satisfied with the new South Africa, had a higher human rights awareness and were more committed to undoing past injustices. There is hope that the white community may become more democratic and unprejudiced as those who were not directly involved in the conflict mature.

### HAS THE TRC HELPED?

The CSVr survey was a small exploratory study, carried out at the beginning of the TRC process. Perhaps over the past 18 months, the TRC has assisted in convincing more white South Africans that apartheid was fundamentally unjust and that its victims have a right to some form of reparation.

Clearly, there has been some white interest in the TRC, despite their relative absence at most hearings. The "TRC Special Report" TV programme has had up to 1.2 million viewers a week. Although it is more popular among black South Africans, a sizeable number of its viewers are white, and the programme often captures a greater audience than the English news at 8 p.m.

The CSVr survey found that 23% of the white South Africans claimed that they had heard about the atrocities committed by the apartheid regime for the first time through the TRC, while 55% said that they knew about the atrocities but were unaware of their severity, and 22% said they had been more or less fully aware.

While those claiming complete ignorance may simply be in denial, the high percentage of those saying that they were unaware of the extent of the atrocities suggests that the TRC may have opened up a number of eyes to the full evil of the apartheid system.

Nonetheless, the question that remains unanswered is whether the exposure created by the TRC has had a positive attitudinal impact on white South Africans. Despite white interest in the TRC, the CSVN survey suggests that assumption of responsibility is not forthcoming.

One of the most disturbing findings of the survey was that general human rights awareness remains low, despite the TRC. This is not a finding confined to white South Africans - it has also been shown that democratic values in black communities are not as strong as they should be in a consolidated democracy (Gouws, 1993).

Even if the TRC convinced the white population that political human rights violations are morally unacceptable in the months since the CSVN survey was conducted, it is questionable whether the TRC has helped convince the nation that all human rights violations are wrong.

Therefore, the real challenge facing the TRC is for it to make recommendations that help ensure that ongoing abuses (for example, the torture of criminals or violations committed by the police in pursuit of criminals) are not accepted by the general public. In so doing, the recommendations will need to address the human rights culture of white and black South Africans in a concerted way. However, much still needs to be done by white South Africans themselves.

As long as many white South Africans still glorify the apartheid past, reject responsibility and the need for compensation, and claim that "too much is done

for blacks at the expense of white people nowadays" (a statement that received 54 % support) the road to reconciliation will remain a difficult one. ■

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# HEALING THE HEALERS? THE TRC'S HEARINGS ON THE HEALTH SECTOR

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The health sectoral hearings were not what many participants anticipated. Those who expected to name the professionals guilty of misconduct were disappointed. Were the hearings about telling the truth and promoting reconciliation, or about restoring the lost honour of the medical profession?

In the comparative history of Truth Commissions - a notable case of an international learning experience - sectoral hearings are a South African innovation. While the victims' hearings have followed the model of Chile and other Truth Commissions, and the quasi-judicial procedures of the amnesty process are a version (or inversion) of political trials, it would be more difficult to find precedents for these sectoral hearings.

They are not primarily focused on particular individuals, whether perpetrators or victims, but are more contextual in orientation, though also concerned with a specific institutional or professional sector of society. As such, they probably represent an attempt by the TRC to address one of its basic and enduring challenges: how to balance the concern with individual cases of political atrocities and gross violations of human rights with the structural features of apartheid as a system of oppression.

In his opening words, Archbishop Tutu succinctly outlined the TRC's main objective for the Health Sector Hearings:

*"We intend to be looking at the role of the health sector in perpetrating, colluding with or resisting human rights abuses during the period under review".*

Dr. Wendy Orr, for her part, indicated an even more ambitious objective for these hearings:

*"We need to break the culture of silence, the taboos which have surrounded the medical profession, the mystique of the medical profession, the fact that people don't speak out, the fact that doctors are viewed as a closed club who often stand up for each*

*other rather than for their patients. That's really what these two days are about".*

It must be said that very little of this happened in the course of these hearings; apart from a few passing remarks on the tendency of the medical profession to close its ranks, with little regard for the rights of patients in general, or detainees in particular, there was no sustained attempt to examine the institutional culture or social context of the health sector in a self-critical spirit.

## MOMENTS OF TRUTH

The concern with the disclosure of truth thus remained firmly focussed on the issue of accountability for professional abuses and misconduct. This was reinforced by the bitter memories of the Biko case, and especially of the wholesale failure of the professional and statutory bodies when faced with their moment of truth.

As was pointed out by Prof. Frances Ames at these hearings, Biko was not the first but the 46th political prisoner to die in detention; nor was he by any means the last to do so. Yet thoughts of the Biko case were never long absent from the proceedings and recurred time and again in the course of the different presentations. Judging by these discussions, one might almost think that the history of professional 'ethics' and human rights violations begins (and sometimes seems also to end) with the Biko case.

No doubt there are some obvious reasons for the special significance of the Biko case in this context. The death of a political leader of Biko's stature repre-

sented not just one more victim of political violence and torture. For the medical profession, the publicity around the profoundly dubious roles of district surgeons in the events leading to Biko's death, and the repeated failures by the major professional bodies to act against the individuals concerned, became an enduring public scandal.

In the words of Dr. Barker, the indefensible finding of the Medical Council had been a refusal of the truth. It, "seemed to simply ignore the evidence given at the inquest". Quite literally this had faced the Medical Association of South Africa (MASA),

*"With its moment of truth. It had the opportunity to rise to the occasion and to meet the challenge to demonstrate its commitment to truth, to equity, to justice and the centuries old tradition of professional honour. It ... failed to respond to the challenge and thereby betrayed the values for which it supposedly stood."*

**T**elling the truth, by naming the names of the perpetrators at these hearings proved to be unexpectedly problematic.

What 'the Biko saga' came to represent to health professionals, both at the time and in retrospect, was not so much a question of violation of human rights, of amnesty or justice, or even of the need for reconciliation. Instead we typically find a different moral vocabulary invoked whenever the Biko case is mentioned, that of (professional) honour and shame. On this view, the Health Hearings represented an opportunity for MASA and the medical profession to rehabilitate their public standing.

For others, it was precisely the problem that the professional and statutory organisations, in particular the Medical Council and MASA, had abdicated their responsibilities and failed the profession by refusing to hold individuals responsible for human rights abuses. Surely the TRC and the Health Sector Hearings provided the opportunity where such professional accountability could be ensured by disclosing the truth, and at long last naming the names of those involved in professional abuses of human rights.

This certainly was the expectation of NGOs like the Health and Human Rights Project (HHRP), who prepared a submission drawing attention "to more than a hundred cases of detainees ill-treated by doctors, nurses, psychologists while detained under security legislation." One of the HHRP's key aims, explained Dr. Leslie London, "is to facilitate the process of documenting past involvement of health professionals and their organisations in human rights abuses so as to prevent recurrence in the future"

His colleague, Nomfundo Walaza, spelled this out in greater detail, "Former detainees had told us numerous stories about inadequacies of the custodian care system; doctors failing to take adequate medical histories; district surgeons refusing to listen to their complaints; medics pronouncing them fit for torture and further interrogation; physicians handing medical files to the security police; nurses deliberately withholding treatment or shackling detainees to their beds; psychologists violating the confidentiality of their patients for security reasons; doctors neglecting to keep proper clinical records and failing to follow up a prescribed course of treatment. ... In fact there are probably as many complaints about health care in detention as there were detainees in South Africa. Each one has a story to tell, and their voices have been conspicuously absent from the TRC hearings."

Some of the case studies for these Health Hearings had evidently been prepared with the specific objective of enabling the victims and/or witnesses of such past abuses to "tell their own stories", including the particulars of those professionals who had perpetrated human rights abuses in the past. In this way, by naming the names of the perpetrators, a measure of professional accountability, if not justice, might at long last be ensured.

#### NAMING NAMES

However, telling the truth by naming the names of the perpetrators at these hearings proved to be unexpectedly problematic, even for the TRC. Quite early in its activities the Commission had come up against the objections and obstructions devised by the legal representatives of alleged perpetrators who might be implicated by being named in its hearings.

Following a decision handed down by the Appellate Division in 1996, the TRC was forced to comply with a cumbersome procedure of advance notification, giving adequate opportunity to those who could be 'named' to prepare their responses. The consequences of this requirement for public disclosure of the truth could be observed at the Health Hearings.

Even before Dr. Klatzow, in one of the first of such case studies, could take the witness stand, there was an intervention by the legal representative of Gen. Lothar Neethling, who had been notified that he might be implicated during the evidence of Dr. Klatzow. The intervention proved entirely effective.

Dr. Klatzow made it clear that "after much consideration I have decided to mention the broad topics and to avoid the mention of names", and went on instead to use non-specific references to "a head of the Forensic Science Laboratory" or "that odious in-



dividual". To insiders there could be little real doubt as to just who he had in mind, but the public naming of names, so crucial to truth-telling, had been avoided. The same constraints applied to the other case studies.

On behalf of the TRC Dr. Wendy Orr offered some explanation, "Perhaps if I could just comment on the issue of naming names, because I would hate the audience to think the TRC is entering into the culture and collusion of silence. A number of doctors were named in submissions that were sent to us but unfortunately a number of them had very common names so we had great difficulty locating those doctors and sending them their section 30 notices as required by the Appellate Division decision. However, we now have sent all those notices out but the doctors have to be given adequate time to respond."

It must be said that this is not entirely convincing. No doubt the legal constraints and practical difficulties are real, and one need not blame the TRC itself for the obstacles put in its way by opposing lawyers, but precisely for these reasons, it had become problematic whether the narrative "truths" disclosed by enabling people to tell their own stories are suitable in a context where ensuring accountability for human rights abuses requires the naming of names.

### THE ASHTON CASE

Some of the pitfalls of persisting with this strategy were vividly demonstrated during the Hearings in the case study designed to illustrate the complicity of health professionals in systemic abuses.

In telling his story of harassment by the security forces in the small Boland town of Ashton in 1987 Mr. Jacob Nel offered dramatic evidence of the active involvement of a local doctor in a midnight security raid on his home:

"The police had balaclavas over their heads ... One doctor came in with them. A doctor from Ashton. ... He came in police uniform as well with a balaclava over his head as well. ... The balaclava slipped off his face and I saw his face. I know him since 1980." Even more dramatically he then continued to claim that the doctor concerned was actually present at the hearings: "He is present now that I am talking to you. He is right here . ... I haven't seen him since 1987/88, but I've seen him here today and I still recognise him."

Significantly, though, this dramatic claim with its serious implications was not pursued in any follow-up questions. What, then, are we supposed to make of this disclosure? It is, of course, possible that Mr. Nel's claims were literally true, and they may subsequently have been taken up and verified by the TRC's Investigative Unit.

But in the context of the Hearings they were left dangling, and this must raise unsettling questions as to the standing of the claims involved in this story. The narrative details - the balaclava slipping during the night raid to reveal a familiar face the alleged perpetrator recognised years later, and in our very midst - have definite dramatic force, but their 'truth' may be of a different order.

Similar dramatic allegations of witnesses recognising erstwhile perpetrators present at TRC proceedings (among the police on guard, within the audience) have been made at a number of other hearings as well and, irrespective of the literal truth in each case, they clearly represent a narrative archetype of some significance.

But in a context where the professional accountability of particular individuals is at stake the actual and credible naming of names must be decisive. In

the absence of that, it is not clear what the point of the relevant case studies presented at the Hearings is actually supposed to be.

### AMBIVALENCE

Underlying these particular difficulties may be more general and unresolved ambivalences informing the quest for professional accountability for past human rights abuses, and not only on the part of the TRC itself. Thus Dr. Leslie London of the Health and Human Rights Project forcefully expressed his alarm at the obstacles which had been placed in the way of naming individual perpetrators, something which the HHRP had specifically set out to achieve: "We as the Project, want to register our concern for this whole process which has led to a situation where [in] many of the cases that we have brought to the attention of the Truth Commission we cannot actually name the particular health professionals involved. We are not going to name those health professionals, but we feel it is really a travesty of the process of truth to arrive at a situation where we cannot speak openly."

However, Dr London himself then went on to suggest that the basic problem of professional accountability is not so much that of individual culpability, but rather the more general issue of collective responsibility and institutional culture: "We must reject the bad apple notion of complicity. It is insufficient and indeed misleading to argue that it was only a few deviant professionals who led the whole profession into disrepute, and rather than identifying a convenient

The police had balaclavas over their heads ... One doctor came in with them... I've seen him here today and I still recognise him."

*number of scapegoats we need to look at the profession as a whole and understand what made the profession so inherently amenable to cooption by an ideology that denied human rights. It's particularly in the area of the lack of professional accountability that this emerges."*

In a similar vein, though with reference to the aim of reconciliation rather than that of accountability, Dr. Klatzow also justified his reluctant decision not to mention the names of actual perpetrators in his testimony: *"As the purpose of this Commission and this hearing is above all reconciliation I cannot see any good that will come out of the names being mentioned. They will, in any event, give rise to a welter of accusations, denials and counter-accusations [which] would, in my view, obscure the true point of my submission."*

**T**he basic problem was how the honour of the profession could be restored in the eyes of professionals as well as the general public.

In the end it is perhaps the legacy of the 'Biko saga' which may be most to blame. It is understandable that some may have expected the TRC to achieve, at long last, what the Medical Council and

MASA had so signally failed to do a decade earlier, i.e. to enforce professional accountability on individuals guilty of human rights violations. But this was a mistaken expectation.

It remains the responsibility of these professional bodies, and not of the TRC, to initiate the investigations and procedures that might ensure that professional accountability in individual cases of human rights abuses is exacted. The TRC, after all, does not set out to prosecute the perpetrators of human rights violations, but dispenses amnesty conditional on full disclosure.

It was an interesting anomaly of these Health Hearings that whenever the prospect of amnesty for professional misconduct was raised, this was only to dismiss it out of hand. From the perspective of concern with professional accountability, one may thus have expected the representatives of the professional bodies, above all the Medical Council and MASA, to be closely interrogated at the Hearings on how this would be achieved, especially in view of their past records and the general lack of an investigative approach to cases of professional misconduct.

Similarly, it could have been suggested to the HHRP that their submission documenting professional misconduct of doctors belongs with the Medi-

cal Council rather than the TRC if professional accountability is the objective. Neither of these happened in the course of the Hearings.

## RECONCILIATION

In the health context, 'reconciliation' tends to be understood in terms of the individual and collective traumas suffered in the past and the enduring need for counselling, healing and appropriate support structures. To what extent, and in what sense, though, do the healers themselves require healing? The ways in which the notion of reconciliation was applied to the health sector in these Hearings proved to be both revealing and in some ways highly problematic.

In the circumstances, and given the historical context of a medical profession still in the shadows of the Biko case, there was a real question as to what MASA, as well as many other professionals, actually understood by the 'reconciliation' it sought. What the Biko case meant is that the honour of the medical profession had been impugned. Accordingly, the basic problem was how the honour of the profession could be restored in the eyes of professionals as well as the general public. Wittingly or unwittingly, this cast the Health Hearings in a particular historical role.

The general objective of truth and reconciliation as applied to the health sector was perhaps best expressed by Dr. Leslie London, *"It is very difficult to see how any trust, within the health sector and also between the health professionals and the broader community, can be achieved until the truth is disclosed. We believe that only by fully acknowledging and understanding what took place in the professions under apartheid is it possible to achieve reconciliation in the health sector. ... Real truth and reconciliation can only come from below, from within our institutions and should be seen as part of a larger project to rehabilitate the health sector and build a culture of human rights within it"*

On this view a specific and coherent role for the TRC process in the health sector emerged in which the Health Hearings would provide an interactive forum as well as a stimulus for an ongoing process to be continued in different local and institutional settings.

Various other participants stressed that without this intervention of the TRC the necessary processes of self-examination and local reconciliation would not get off the ground. As long as the notions of truth and reconciliation were used in these rather vague and generalised ways, all participants at the Hearings could agree. When pressed, though, and in more specified contexts, it soon transpired that these no-

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Thus, Dr. Barker, on behalf of the MASA, passionately committed his organisation to the TRC process. *"I plead with you and with the nation, that this submission be accepted with respect for the truth which it embodies. It is vital for the Association, at this point in its development, its renewal and its transformation, to achieve reconciliation, and this can only happen if there has been full disclosure and full acknowledgement of all the wrongs of the past."*

As evidence of MASA's good faith in this regard, he referred to the unconditional apology for the past wrongs of the Association that had been made in June 1995, as a step along the road of reconciliation in which wholehearted participation in the current TRC process would be another step.

However, others did not simply accept the MASA commitment at face value, and its public apology proved controversial. Dr. Barker himself had to admit as much, *"We stand by every word that was spoken in that apology. However, there are those who understood this apology to be an attempt on the part of the Association to achieve what they termed blanket amnesty and to sweep everything else from our past under the carpet. This was far from the intention of that apology."*

The fact of the matter, of course, is that the MASA participation in the Hearings, as much as its earlier public apology, came burdened with the legacy of its failings as a professional body during the critical time of the Biko saga. Moreover, it was not entirely clear to what extent MASA had actually changed its ways or whether it was still effectively the same organisation now merely seeking public rehabilitation.

## HEROES

These sensitivities came to a head around one of the key themes running through the Health Hearings, that of celebrating those exceptional medical professionals who had spoken out about torture and other human rights abuses or who had resisted the imperatives of apartheid medicine.

This was part of the basic conception of the Health Hearings, as Archbishop Tutu indicated in his opening words, i.e. to, *"face the past honestly, acknowledging responsibility for the frequent failure of the health sector to uphold human rights, celebrating those who did fight for their patient's rights and facing the future ... with firm recommendations on how to ensure non-repetition of past atrocities."*

Some of the 'case studies' were specifically designed with this in mind, e.g. the testimony of Profes-

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During the Health Hearings themselves there were no explicit objections to this implicit agenda, if that it was. In more indirect ways though, some comments and interventions attempted to correct the balance. Thus at different points participants also found occasion to pay specific tributes to the role of black doctors and professionals in the struggle against apartheid.

Notably this included Commissioners Mkhize and Ramashale. Commenting on the presentation by Dr. Bletcher, Ms Mkhize said that *"You have ... fairly described to us the experiences of concerned doctors or committed doctors who were coming from outside to the townships. But there were also, I suppose, other health workers who were working and living in the townships"*, and went on to mention some, like Dr. Asvat, by name.

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Notably this included Commissioners Mkhize and Ramashala. Commenting on the presentation by Dr. Bletcher, Ms Mkhize said that *"You have ... fairly described to us the experiences of concerned doctors or committed doctors who were coming from outside to the townships. But there were also, I suppose, other health workers who were working and living in the townships"*, and went on to mention some, like Dr. Asvat, by name.

This theme was taken up by Dr. Ramashala, speaking from the chair in introducing the opening session on the second day of the Hearings: *"I thought I would set the tone, so to speak, by remembering those doctors who couldn't walk away from it"*

She elaborated on the implications of this intriguing characterisation as follows: *"My tribute to black doctors is not to take away or demean what was contributed by doctors in the broader South African community, but it is a special tribute because they couldn't walk away from it. You see, they were part of the morass, part of the pain, part of the struggle and overriding all of that was the question of caring even under very difficult circumstances..."*

From a standard (and liberal) moral perspective this may appear a somewhat paradoxical tribute, and the distinction may appear to cut the other way. Surely, there can be no moral credit for involuntarily finding oneself part of a problem, while those who consciously chose to involve themselves in caring for others despite considerable personal risks to themselves may therefore deserve special accolades? In general that may well be true, but in this case Dr. Ramashala was really calling attention to the specific ways in which the medical profession had been racialised in the context of apartheid.

In the final analysis this was the real problem and

the source of the need for 'reconciliation' in the health sector. Somehow the way in which the heroic exceptions to apartheid medicine were being celebrated in these Hearings was not especially calculated to address the problem of reconciliation between the alienated racial sections of the health professions.

In conclusion, the Health Hearings thus gave some evidence of contrasting attempts to pursue the process of truth and reconciliation in more concrete ways. More generally, though, the prospects for reconciliation in, and transformation of, the medical profession at large remain problematic.

The best summary, perhaps, is that provided by Prof Simpson: *"There has been far too little genuine debate about the nature of social healing and what surely promotes it. Truth is one essential component of the needed social antiseptic which could cleanse the social fabric of the systematised habit of disregard for human rights, but it needs to be examined truth, it needs to be considered, thought about, debated and digested and metabolised by individuals and by society."* ■

# THE STATE SECURITY COUNCIL, THE COURTS, AND THE TRC

BY LOUISE STACK  
CENTRE FOR POLICY STUDIES

Murder and torture were just as illegal under apartheid as they are today. The TRC has amply demonstrated that both were commonplace, calling into question the vigilance of those whose role it was to uphold the law. Is it reasonable to believe the former government was truly unaware?

If the most verig of the former National Party politicians are to be believed, then the widespread practices of torturing political prisoners and murdering NP government opponents were all the result of a terrible misunderstanding by the security forces of government policy. But could it rather be that the mighty edifice of the state security system was deliberately built, as analyst Stephen Laufer puts it, "on the principle of plausible deniability"? Will we ever know? Should we ever know?

Some, including former Minister of Defence, Magnus Malan, argue that revealing everything that happened in the past would undermine trust in the state and cause the country indeterminable harm. Since it was precisely too much trust in the state that created the space for apartheid atrocities in the first place, this argument is more than a little shaky.

## THE STATE SECURITY COUNCIL

Pik Botha, Roelf Meyer, Leon Wessels and Adriaan Vlok, all former members of the State Security Council (SSC) testified before the Truth Commission in October last year during special hearings on the role of the Council during the former regime. The State Security Council was a powerful cabinet committee established by PW Botha to advise the cabinet on security matters. As such, it was at the head of the elaborate National Security Management System.

Its 23 permanent members included the State President as chairman, the Minister of Defence, Ministers and Directors-General of Law and Order, Foreign Affairs, Finance, Constitutional Development and Justice, the Chief of the SADF, Chiefs of the army,

navy, airforce and medical services, the Director of the National Intelligence Service and the Chief of Military Intelligence, the Commissioner of Police, the Chief of the Security Police, the Director of Security Legislation and the Director-General of the Office of the State President. The SSC met every fortnight on the day before cabinet meetings.

If any organ of state knew about and condoned the illegal methods used by the security forces, it was surely the SSC. But, if the SSC was the black box of the NP government's security policy, the tape appears to be blank.

## THE TESTIMONY

Despite Wessels' very evident rankling at the failure of former SSC members, once responsible for coordinating state security activities, to coordinate their own appearance before the hearing, the testimonies of the four men were remarkably similar. None offered any substantial details on the inner workings of the SSC during NP rule and all were agreed that there had never been any political instruction to the security forces to carry out any illegal action.

All were also agreed that NP politicians were to blame for security force brutalities only in their errors of omission. All offered apologies for their silent acquiescence and inertia in the face of rumours and suspicions of secret and illegal security force actions.

Botha did make an aside comment that any such instruction would not, in any case, have been minuted, giving the impression that the practice of not minuting was common in the SSC. Unfortunately, he did not elaborate and nor was he questioned on the point.

Perhaps the commissioners were overwhelmed by his public acknowledgement that the NP's policy had had no moral foundation. Archbishop Desmond Tutu, visibly stunned, responded by saying that "no one of your political stature from your community has, up until now, said that the NP was morally corrupt. It takes a person's breath away". This is what Tutu had been waiting to hear.

But answers to the questions of who knew about and authorised the actions of the security forces and where responsibility for these actions lay, remains elusive. Botha, Meyer and Wessels all acknowledged that they had harboured 'suspicions' that members of the police were involved in irregular activities.

Only Vlok denied that he had ever suspected that policemen were killing opponents of the state. He admitted that he had been 'worried' about accusations of torture in the courts and had always then 'requested a report', but "there was no one who reported to me that we tortured so and so and he gave us this information". Thus, he was sorry it all happened, but he never knew about it or approved it.

Wessels took a different tack. While Botha claimed that no one in the previous government could say that there had not been 'suspicions' of irregular police activity on their side, Wessels went much further in saying that no one could claim not to have 'known' that the police were torturing detainees given the allegations made in the courts, in the press and in parliament.

"It all happened right under our noses. That is why I don't believe I can stand up and say I did not know". In many respects, he said, he had not wanted to know. The NP had not had an inquiring mind about these matters "since the days of the Biko tragedy right up until the days of the hostel atrocities".

### CONSPIRACY OF IGNORANCE

One major question here is what is required to assume 'knowledge' on the part of a government about what happens in its prisons? Prisoners are by definition sealed off from the rest of society. There is no possibility of 'eye witness' accounts of torture from outside the ambit of the police and prison establishment. Since the judiciary has to base its findings on evidence rather than suspicion, from where is this 'evidence' supposed to come?

High Court Judge President Friedman, in a personal submission to the TRC, pointed out that there was little that judicial officers could do when pre-

sented, as they often were, with false evidence by security policemen and district surgeons. In any event, judicial officers tend to find the evidence of officers of the law more credible than that of those on the wrong side of the law. Another major question is what constitutes a government 'instruction' to torture or kill? The politicians deny knowledge of any such instructions emanating from the SSC or cabinet. Yet it happened pervasively. So how could this be?

The line of the politicians is that NP policy was misinterpreted by security officers. The militant language used by politicians when they talked about 'eliminating', 'removing permanently from society,' 'neutralising', 'wiping out', 'getting rid of the enemy' was mistakenly interpreted by the security forces to mean 'kill'. They never meant any such thing.

The argument is not really tenable. If someone like Vlok was genuinely 'worried' about accusations of irregularities among the officers under his command, how likely is it that he would have continued, thoughtlessly, to use words like 'eliminate the enemy' to motivate them? Are we to believe that although the politicians had their suspicions and concerns about the behaviour of the security forces, they not only failed to make an effort to ensure that they discovered the truth, but they continued to congratulate and inflame the zeal of the security forces?

Police General Griebenaauw has admitted to giving his tacit approval for the torture of detainees and for not taking disciplinary steps against the policemen involved. According to Griebenaauw, the successes of police officers could be directly attributed to the 'unconventional methods' used. The officers involved believed that their actions were condoned by their commanding officers and by the government.

He pointed out that "the ongoing pressure by government, the evident condonation of atrocities and even acknowledgement for services rendered against terrorism led to the men in the 'machine room' believing they did not need direct orders to do these irregular deeds." Training of ANC guerrillas to resist normal interrogation methods, together with the race against time to locate arms caches and MK cadres, led the former head of the security police's terrorist tracking unit in the Western Cape, William Liebenberg, to gradually allow the use of unconventional interrogation methods.

### A DIVIDED GOVERNMENT?

If it is true that there were neither deliberate instructions by politicians to the security forces to use

**W**essels said no one could claim not to have 'known' that the police were torturing detainees "



irregular methods, as claimed in all four statements, nor any 'knowledge' among the politicians of the use of such methods, as claimed in three of the statements, then it follows, as commissioners pointed out, that since such methods were systematically and universally applied, two parallel governments must have been operating under separate sets of guidelines - the cabinet on the one hand and the security services on the other.

The cabinet could not have been in control. But this was vehemently denied by Botha: "the cabinet was running the country. There can be no doubt about that". Apparently Botha saw no contradiction between making that claim on the one hand, and yet claiming on the other, that the SADF often carried out operations outside SA's borders without his knowledge, like the Seychelles coup, the continued support for Renamo after the Nkomati Accord and the air strikes on Gaborone, Harare and Lusaka that sabotaged the 1985 EPG negotiations initiative. Was he then, as Minister of Foreign Affairs, really in control of the foreign policy of the country?

Wessels attributed the appearance of a dual government to the failure of the NP government to exercise proper control over its security forces. He put the responsibility for their actions squarely, rather than by default as Vlok had done, in the hands of the NP government.

The NP-created framework within which the police had acted was that the highest law of the land is the security of the land. "In those circumstances, no one can say they did not know. It was foreseen that under those circumstances people would be detained, people would be tortured." The politicians had failed the security forces because they had not offered a viable constitutional vision to end the conflict and nor had they exercised proper control over them. The relationship between politicians and security forces had not been open or transparent and this is what led to the relationship not being managed properly.

Why was this relationship between the politicians and security forces closed and opaque? Where did the tacit authorisation for the irregular activities of security forces come from? Botha claimed that real power had rested in the hands of the former presidents PW Botha and FW de Klerk.

If real power rested with the president rather than the cabinet, does that mean that the president, entirely on his own, managed the relationship with the

security forces? That hardly seems likely. It sounds more like passing the buck. In any event the relationship between the politicians and security forces had become diseased years before PW Botha took over the reins of the state.

Meyer, who was in charge of the National Security Management System, whose task it was to coordinate the government's counter-revolutionary strategy, put the "dirty war" in which no holds were barred and no questions asked" down to "things developing

over a period of time so that in the end we were all part of a frame of mind that believed there was an enemy that had to be wiped out. Maybe in the end it was fear that dictated everything. In that context it is probably not possible to put blame at a specific place. It was all over."

Maybe in the end it was fear that dictated everything. In that context it is probably not possible to put blame at a specific place. It was all over.

#### THE COMPLICITY OF THE COURTS

Certainly the complicity in concealing the dark side of the face of NP rule was long-lived and extensive. Torture in South African prisons and murders of political opponents did not begin in the 1980s. These were not sudden aberrations in the desperate dying stages of NP rule. Through all those years the security forces enjoyed the active support of the judiciary, the media, district surgeons and the white electorate who stubbornly refused to listen to the signals coming out of the country's prisons.

Why was it that the 'independent' judiciary, theoretically the bulwark of justice, failed to protect citizens against the abuse of power by the state? From the end of the 1950s up until the early to mid-1980s, the record of the judiciary is lamentable. During the period of NP rule, the courts repeatedly ruled in favour of racial discrimination under the Separate Amenities and Group Areas Acts and in favour of the erosion of internationally recognised rights and conditions pertaining to detainees under the Terrorism Act.

In its submission to the TRC on the role of the judiciary, National Association of Democratic Lawyers asserts that the judiciary actively participated in creating the framework within which the excesses of apartheid occurred. They reject the view that judges were powerless in the face of the doctrine of parliamentary sovereignty. Citing Judge Didcott's 1982 judgement in which he referred to 'just legislation', they point to the "powerful effect of a judge's condemnation of unjust laws and the role he was forced to play in implementing them."

In his testimony at the TRC special hearings on the legal system, former Western Cape Attorney-General DJ Rossouw said that as a product of the environment in which the apartheid system operated, "... on occasion, I may have believed accusers too readily or may have been insensitive to hearing or investigating claims of injustice." But, he said, it was parliament and not the law that had failed the victims of apartheid.

In its testimony, the General Council of the Bar of SA acknowledged that it had deliberately adopted the approach of only concerning itself with issues relating to the administration of justice and not with political issues or policy matters. But it placed primary responsibility for the repressive laws of apartheid on the NP government and members of the white electorate who had repeatedly voted it into office.

#### UNDERSTANDING APARTHEID

In both the hearings on the SSC and the judiciary, the focus of attention has been on establishing the site of responsibility for the atrocities committed in the name of apartheid. Perhaps blame is less the point than developing an understanding of how and why the political system degenerated into the widespread acquiescence to brutality that it did.

If the horrors of Hitler's Germany were not sufficient to prevent the horrors of apartheid, then simply knowing all the horrors of apartheid is not likely to be enough to prevent the same thing happening again, here or anywhere else. Firoz Cachalia, Leader of the House in the Gauteng Legislature, argues that the

truth commission hearings should be structured to determine the systemic characteristics of the old order which encouraged the abuse of human rights, rather than as a quasi-judicial proceeding aimed at establishing individual or collective guilt.

Some lessons we have learned and some preventative measures are thankfully now in place. We now have a Constitution that serves as the supreme law to which parliament itself is subservient and over which the judiciary has final say. Judges are now appointed in a process that is open to public scrutiny.

But are we really out of the woods? Is the ANC, or any other future strong majority party for that matter, beyond the temptations of the abuse of power to achieve some goal that it deeply believes in?

As ex-prisoner and writer/artist Breyten Breytenbach puts it, explaining how the Buddha helped him to understand Marx: "the goal can never sanctify the means; the means - this is exactly the Middle Way - constitute, every moment of the day, comprehensively the aim itself." Have we really learned this?

We would do well to remember that, as HG Wells pointed out, the ugliest, most retrogressive and finally fatal idea of modern imperialism was the idea of a tacit conspiracy between the law and illegal violence. "By such treasons against their subjects, empires destroy themselves. The true strength of rulers and empires lies not in armies and navies, but in the belief of men that they are inflexibly open and truthful and legal. As soon as a government departs from that standard, it ceases to be anything more than 'the gang in possession' and its days are numbered." ■

# POLITICAL CORRUPTION IN THE NEW SOUTH AFRICA?

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Forty-six percent of South Africans believe the government to be substantially corrupt. But to what extent is this perception justified?

**D**efinitions of political corruption can be very broad, embracing all kinds of mis-behaviour in different state domains. Here, our concern is with corruption which affects politics in the narrow sense, involving parliamentarians and other elected representatives, cabinet ministers and other members of government, and political parties.

Even in this restricted sense, at least one public opinion survey has suggested that a large minority of South Africans, 46%, perceive government to be substantially corrupt (IDASA, 1996). Subsequent surveys conducted by Transparency International suggest an increasing conviction, amongst businessmen at least, that South Africa is affected by corrupt government.

This is a bit surprising. Though there has been a mounting incidence of reports of corruption in the press since the 1994 election, most of these have referred to various forms of venality in the civil service and parastatal organisations. Only a very small number of instances of corrupt behaviour have been attributed to politicians.

## NATIONAL EXECUTIVE

There have been very few allegations of corruption directed against national cabinet members or their deputies. Of these, the most significant involved the National Party's Abe Williams, the former Minister of Welfare. He resigned in February 1996 from the Government of National Unity after a raid on his house by the Office for Serious Economic Offences. They had been informed that, as welfare minister in the House of Representatives, he had accepted a huge bribe from a company tendering to dispense pensions.

Winnie Madikizela Mandela, Deputy Minister of Arts and Culture until her dismissal in 1995, had a

comparably wayward reputation at the time of her appointment. During her tenure as the ANC's head of welfare, an internal ANC investigation had found that she and her associates had wasted a total of R400 000 on foreign journeys and similar extravagances. During her term in government, her alleged improprieties included her acceptance of R75 000 for helping to influence the award of low cost housing contracts, and, possibly more serious, entertaining in her office a visiting American impresario who was about to enter a business arrangement with Madikizela Mandela's daughter's public relations company.

Sankie Mthembu-Mahanyele, the Minister of Housing, is believed by some of her opponents to have allowed the improper award by the Mpumalanga government of another housing contract to a company, Motheo Construction, owned by a close friend of hers, Thandi Ndhlovu. But though she did overrule the advice of her Director General, William Cobbett, who told her the project should be investigated by the Auditor-General, there is no evidence to suggest that she knew the contract was flawed. She and Cobbett had a history of disagreements and animosity and she may have disregarded his advice for this reason.

Steve Tshwete, Minister of Sport, accepted while in office, free hotel accommodation from Sol Kerzner - though there is no evidence that this affected his political conduct in any way - and he has been criticised by sports journalists for employing a 'home boy' network in his department.

National Enterprises Minister Mrs Stella Sigcau's reputation has suffered from the revival of the charges that she accepted a R50 000 share of a bribe paid by Sol Kerzner ten years ago to the Transkeien president, in whose government she held a post. She was

cleared by a Commission of Inquiry appointed by General Holomisa and no fresh evidence was revealed by Holomisa when he chose to renew his attack on Sigcau in 1996.

Even if all these allegations are taken at face value, this does not suggest an executive riddled with corruption.

### PROVINCIAL EXECUTIVE

Provincial executive councils have been more susceptible to such accusations. Until his resignation in 1997, Mpumalanga's MEC for Safety and Security, Steve Mabona, authorised the irregular issue of driving licences - notably

**N**one of these instances suggests corruption on a grand scale. Much of it may be attributable to inexperience

to the deputy speaker of the House of Assembly, but apparently on many other occasions as well. He was also accused by the provincial traffic director, Henry Bra-

zier, of appropriating R110 000 of the department's budget to settle personal hotel and travel bills and for chartering an aircraft for private use.

In the same province, various un-named MEC's were discovered in 1995 to have used R1.3 million from a low cost housing budget to renovate their state homes. The renovations included a swimming pool. The same investigation suggested that the allocation of state-owned houses was characterised by nepotism, favouritism and political privilege.

In the Free State, two former MEC's have lost their posts as a consequence of corrupt practices. Ace Magashule, MEC for Economics and Tourism, was dismissed after a departmental inquiry confirmed that he had authorised irregular loans from the Free State Development Corporation. Vax Mayekiso was removed from the Executive Council after complaints that he had used his position as MEC for Housing to influence the outcome of a dispute between a petrol station and a taxi company with which his wife had connections.

Two Northern Province MEC's, CE Mushwana and Dikeledi Magadzi, lost their portfolios, Finance and Public Works, respectively, after the Semenye Commission reported their failure to adhere to proper tendering and procurement procedures. In neither case, though, were the MEC's accused of personally benefitting from the transactions they had authorised.

Three North-West MEC's, Rockey Malebane-Metsing (Agriculture), Mamoekoene Gaoretelelwe (Education), and Riaan de Wet (Tourism) have been

replaced as a consequence of respectively, implication in an improper loan, nepotism, and using a government plane for a personal journey.

### PARLIAMENT

Only a few parliamentarians and provincial legislators have received any public attention as a consequence of corruption accusations. As noted above, House of Assembly Deputy Speaker Baleka Mbete-Kgositsile obtained a driving licence through special favours from the Mpumalanga traffic department. There is no reason to disbelieve her claim that she was caught up "in a web of impropriety of which I was - at the time - unaware".

Only two other members of the National Assembly have been implicated in corruption reports: Simon Ripinga, currently under investigation by the Heath Commission for cheap land purchases from the KaNgwane Government, and Moses Mayekiso, for using a SANCO account to settle his wife's hotel bill.

Two Mpumalanga MPL's, the Speaker and Deputy Speaker, Elias Ginindza and Cynthia Maropeng, have run foul of parliamentary inquiries, Ginindza for making a R208 000 overpayment from public funds for the construction of a guard-house at his home, and Maropeng for taking R75 000 worth of personal advances and claiming private expenses, including for staying at Cape Town's Mount Nelson hotel with her child and nanny.

In 1995, Gauteng MPL Oupa Monareng was convicted after attempting to bribe a policeman to avoid arrest on a charge of possessing a stolen car; he lost his appeal against a suspended sentence on May 1997, but that did not prevent his appointment by the legislature the following month to a new committee to monitor police conduct.

### THE GRAVY TRAIN

With the exception of the Abe Williams case, none of these instances suggests corruption on a grand scale. Much of it may be attributable to inexperience and ignorance of conflict of interest principles rather than a consequence of avarice. So what has stimulated the perceptions that politicians are generally corrupt?

Those recorded in the IDASA survey conducted in 1995 may have been boosted by the 'gravy train' outcry. This followed the House of Assembly's acceptance of the recommendations of the Melamet Commission, which had been appointed before the 1994 elections to report on the remuneration of politicians.

The proposals set out new scales which raised the annual pay package of MP's from R184 000 to R193 200, while reducing their number of free flights and removing constituency allowances. Subsequent pay awards have increased MP's salaries by a further 15 per cent.

In themselves, these increases represent no more than the rate of inflation. But such rationalisations take as their premise the assumption that MP's should earn salaries twenty times the normal industrial wage, and equivalent to the very senior levels of earning in the civil service.

Whatever the merits may be for such rates, the timing and the reporting of the Melamet recommendations, as well as the justificatory arguments used by several ANC MP's to defend their ready acceptance of them, certainly strengthened popular perceptions that parliamentarians and ministers were behaving greedily or ostentatiously.

The R30 million which the Northern Provincial government was willing to spend on its MPL's thirty official residences and the publicly purchased BMW limousines which Mpumalanga authorities felt compelled to maintain for their MEC's also help to sustain popular prejudices about 'fat cat' politicians. These are surely less defensible items of expenditure than the Melamet pay scales, yet they have attracted no specific censure from national politicians.

Apparent tolerance of, or even tacit support for, corrupt practices and individuals by senior politicians may have also helped to fuel public scepticism about the integrity of elected officials. Dullah Omar's decision to organise a welcome home reception for Allen Boesak on his arrival at Cape Town airport to face criminal charges arising from his administration of a charity was probably particularly damaging in this respect, given Omar's status as Minister of Justice. His willingness, previously, to morally exonerate Boesak from the charges with his reference to 'struggle book-keeping' was similarly ill-judged.

Boesak's earlier appointment as an ambassador was just one of a series of public appointments sanctioned by President Mandela which ignored well publicised corruption allegations. Winnie Madikizela Mandela elevation to her deputy ministership was another rather conspicuous example of this tendency.

Political pressures may have explained, though not justified, these two decisions, but no such rationale can be used to interpret the recent recruitment to Jay Naidoo's office of two members of the disgraced council of the Independent Broadcasting Authority. Unreported outside the Eastern Cape but equally alarming was the halting in 1995 of an investigation

by the provincial legislature into a Transkeian parastatal corporation, the Magwa Tea Corporation, on the orders of the Deputy President's Office.

A better known example of the national government appearing to protect those guilty of corrupt practices was when the ANC's national leadership forced Patrick Lekota to reappoint Ace Magashule to his executive at the beginning of 1996. Subsequently, the ANC 'redeployed' Lekota to the National Council of Provinces after he refused to publicly refrain from criticising Magashule's behaviour. In each of these episodes, the senior politicians concerned ignored the maxim that public perceptions of corruption, however unfounded, can do as much damage to a government as its actual incidence, and leadership should do everything it its power to discourage both.

It is a form of political corruption, if policies have as their major motivation the rewarding of electoral support from specific groups or regions.

## ELECTION FINANCING

Much of what is popularly taken to be corrupt behaviour is not illegal. Parliamentarians who vote themselves new privileges are not breaking any law. If a political party in power benefits through its policies, a specific constituency, or even a more narrowly defined interest, as a reward for electoral support or campaign donations, it too may not be violating the law. Because such behaviour may not bring personal gain to any individual, politicians themselves often do not perceive such behaviour to be improper.

It is often a form of political corruption, though, if policies have as their major motivation the rewarding of electoral support of any kind from specific groups or regions. Election financing is likely to become an increasingly contentious issue in South African politics, with even small parties attempting to raise huge sums for their campaigns.

The ANC, which in 1994 expended around R160 million on electioneering, is increasingly compelled to expand its domestic financial base. There need not be anything untoward in this if political parties are required to disclose the sources of their finances, but this is not expected from them at present.

According to the ANC's former treasurer-general, Makhenkosi Stofile, it has now become quite customary for his organisation to approach black businessmen for R2 million donations, in return for which they could expect the ANC to play "the role of facilitators for black business in this country".

As a policy, the latter is perfectly defensible, so long as particular contracts to particular companies are not influenced by such considerations. The need to ensure this campaign funding is disclosed, however, is essential. The revelation that illegal casino operators made donations to the Inkatha Freedom party during the passage in 1997 of the KwaZulu-Natal provincial gambling legislation helps to underline the point.

The ANC's willingness to accept fees in return for cabinet ministers making appearances as after dinner speakers at corporate banquets, as well as the President's predisposition to solicit party donations when visiting certain foreign countries, suggests two other habits which may help to promote what is sometimes termed 'transactive corruption' (Adonis, 1997).

More harmful, perhaps, may be efforts by party or politically connected business ventures to bid for government contracts:

- an ANC Youth League sponsored undertaking was among several concerns hoping to win a contract to build and manage a juvenile detention centre;
- several leading ANC Women's League Politicians sit on the board of a company which runs a holding centre for illegal aliens on behalf of the Department of Home Affairs;
- a company owned by the Free State legislature's chair of the committee on housing, dismissed former MEC, Vax Mayekiso, continues to win municipal contracts for subsidised housing.

To be fair, even in this morally ambiguous area politicians in the present administration are probably much less likely to act in favour of special or sectional interests and in so doing violate general public interest than their predecessors (even if one accepts the narrow racial definition of public interest which operated during apartheid-era politics).

In 1995, the Nel Commission of Inquiry into a fraudulent investment company, Masterbond, discovered that former cabinet minister Tertius Delpport had approached several companies while holding office to suggest they hire MP's as 'consultants'. The episode and Delpport's justifications for his activities suggest a political environment in the late 1980s in which such undertakings were unexceptional.

The recently instituted register of parliamentarians' incomes and assets supplies a partial safeguard against such efforts to influence legislators (IDASA, 1997). A confidential section of the register has ensured that only about one third of MPs' interests have been listed publicly and any failure to disclose assets

cannot be investigated unless the Register receives a compliant from the public. Business directorships remain concentrated among National Party and Democratic MPs, as does property ownership. What will be revealing is when up-dated versions of the register demonstrate any shifts across party lines of such concentrations of interests.

## NEW PLAYERS

ANC parliamentarians are in most cases new to public office and many come from idealistic 'struggle' backgrounds. It is reasonable to assume that it will take some time for a really intimate relationship to develop between the new political class and businessmen, though this process may be accelerated by the movement of prominent politicians such as Cyril Ramaphosa and Tokyo Sexwale into black business 'empowerment' firms.

However, though the new political class may be comparatively clean compared to its venal forerunners when it comes to corruption, it is being judged according to harsher and more demanding criteria. More information is available for public scrutiny and this open style of government reinforces public perceptions that politicians are corrupt.

Unfairly, the ending of white supremacy has aroused racially and culturally prejudiced expectations that modern South African politics will be affected by those sociological predispositions favouring public corruption elsewhere in Africa. If these beliefs are allowed to spread unchecked, they could inflict much damage. Once citizens generally believe that a political system has been profoundly corrupted, they will behave in a fashion which will ensure that it will become so. ■

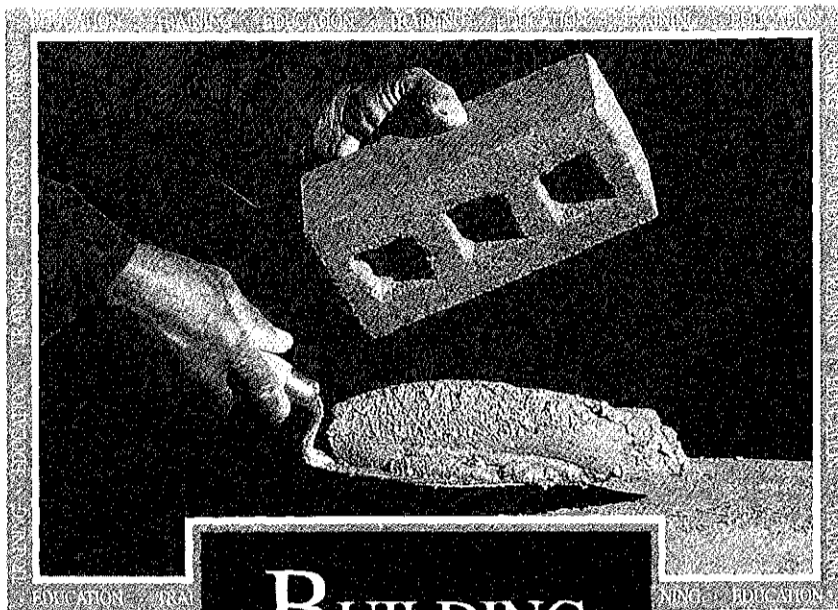
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The ending of white supremacy has aroused prejudiced expectations that modern South African politics will be affected by those predispositions favouring public corruption elsewhere in Africa.



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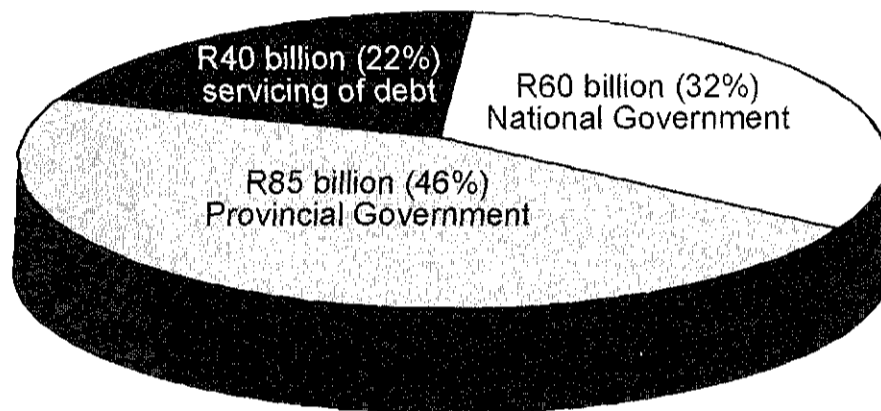
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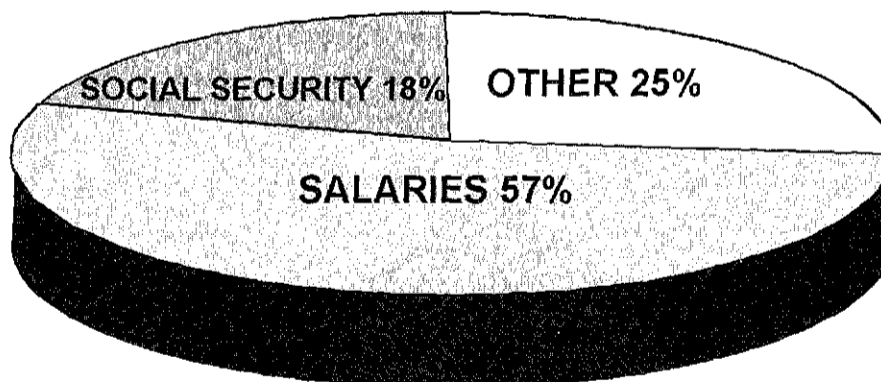


# ECONOMIC MONITOR

BUDGETARY ALLOCATION OF NATIONAL REVENUES 1997/8



AVERAGE PROVINCIAL SPENDING BREAKDOWN 1997/8



SOURCE: IDASA Budget Information Service

# FINANCING THE PROVINCES IN SOUTH AFRICA

BY ALBERT VAN ZYL  
BUDGET INFORMATION SERVICE  
IDASA

The distribution of centrally-collected revenues to the provinces has proven quite a contentious issue for fiscal decision makers. All of the provinces must now cope with the rigours of servicing growing needs with limited national resources, but there are some steps the provinces can take to enhance their autonomy.

Intergovernmental fiscal relations in South Africa owe their complexity to the lack of correspondence between fiscal responsibility and resources. One dimension of this disjuncture is a vertical fiscal disequilibrium - a gap between the fiscal revenue and the expenses of the different levels of government. The provinces are responsible for the majority of services provided by government, but 95% of their revenue comes from central government.

It is, however, not simply a case of the provinces spending more than they collect in revenue. We see, for example, that the Western Cape and Gauteng contribute more in terms of tax to the central government (16,7% and 49,3%) than is accorded to them by central government transfers (10,3% and 12,28%) (SAIRR, 1997:709). This disequilibrium is as much a result of the fiscal system as it is of the expenditure of, and actual revenue generated by, the provinces.

The second dimension of the distance between the location of resources and the location of needs is a horizontal fiscal disequilibrium - the important differences that exist between the levels of per capita government spending in each of the provinces.

## ADDRESSING THE IMBALANCES

One can address these disequilibria by the 'nationalisation' of revenue, as happens in Italy and the Netherlands, and risk transforming redistribution into a free for all. Or one can proceed by adjustments or 'bricolages' as in France or the United States. Another approach is to rationalise and make the system more equitable, as in Germany, where the system is based on the sharing of revenue between the different spheres of government on the basis of a revisable formula (Mény 1991:451).

The South African system is derived from the German one and is thus based on a common revenue pool to which each sphere of government has the right to an 'equitable share.' This 'equitable share' must be large enough to permit each sphere to fulfil the functions constitutionally accorded to it.

In the 1997/8 budget, of a revenue pool of R185 billion, R85 billion (46%) went to the provinces, R60 billion (32%) to national government departments and R40 billion (22%) to the servicing of debt. The provinces shared this R85 billion according to a formula of the Financial and Fiscal Commission.

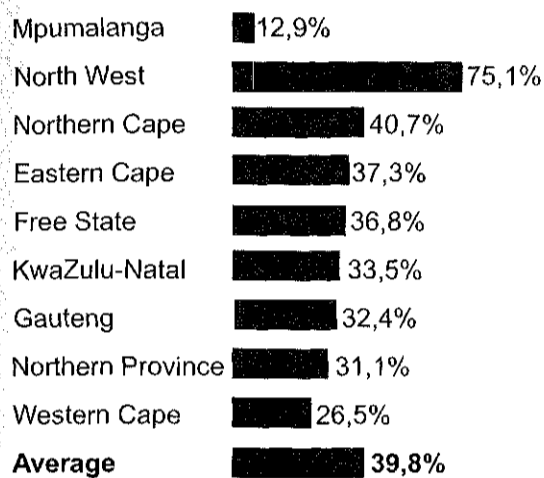
Actual per capita provincial allocations in the 1997/8 budget in rand

Western Cape	2393	KwaZulu-Natal	1747
Mpumalanga	1594	Gauteng	1830
Northern Cape	2559	Northern Prov.	1971
Eastern Cape	1979	North West	1929
Free State	1936	<b>Average</b>	<b>1925</b>

Source: 1997/98 Budget Review

This split between the provinces is decided upon by the Budget Council, which includes national and provincial Finance Ministers and MECs. For 1997/98, the budget council based the split on population figures, but weighting rural population by 25%. Between 1994/5 and 1997/8, the transfers to the provinces increased by 39,8% (nominally, the inflation rate not being taken into account).

**Increase in provincial allocations from 1994/5 to 1997/8**



Source: National Estimate of Expenditure, Various Years

As we have already noted, 95% of provincial revenue comes from central government. The remaining 5% is made up of revenue gathered by the provinces themselves (predominantly from vehicle licences, a tax on horse races and payments for services at provincial hospitals). This 5% will soon rise by approximately 1% from provincial taxes on gambling.

## DECENTRALISING REFORMS

The constitutional principle that frames provincial revenue is the following: "Each level of government shall have a constitutional right to an equitable share of revenue collected nationally so as to ensure that provinces and local governments are able to provide basic services and execute the functions allocated to them" (CP XXVI).

Principle 27 foresees the establishment of a new body. It states that the: "Financial and Fiscal Commission [FFC], in which each province shall be represented, shall recommend equitable fiscal and financial allocations to the provincial and local governments from revenue collected nationally (CPXXVII)."

It is well known that the FFC recommendations for the provinces targeted the horizontal fiscal disequilibrium. It is less well known that they also targeted the vertical fiscal disequilibrium.

The chairperson of the FFC, Murphy Morobe, has thus declared that a decentralised system of provincial finance could improve the allocation of resources to the provinces, provided that the provinces are accountable to their electorates. He even stated that it would be difficult to continue justifying the existence of provincial governments if the transfer of sizeable grants to the provinces from central government continued (Mail & Guardian 15/11/96).

The first stage of decentralising reform accorded provinces the power (within certain limits) to determine their own budgetary priorities. Previously, the allocations from central government to the provinces were made per government department, and the provinces could thus not transfer funds between provincial government departments according to their needs.

Now this division is decentralised to the provinces. An important implication of this change is that the national departments can no longer transfer funds between provinces according to their needs. Consequently, the policy of 'no bail outs' (provinces who overspend on their budgets will not be supported by central government) has emerged. The enhanced budg-

**"Own" income of provinces in 1997/8 as a percentage of their total revenue**

Mpumalanga	4%	KwaZulu-Natal	4,7%
North West	4,5%	Gauteng	6%
Northern Cape	3,5%	Northern Province	4,6%
Eastern Cape	2,2%	Western Cape	5,4%
Free State	7,8%	<b>Average</b>	<b>4,74%</b>

Source: Budget Review 1997/98 Dept. of Finance

etary autonomy of the provinces also enhances their responsibilities.

In the last fiscal year (1997/98), the provinces were responsible for 57% of government expenditure, of which primary and secondary education, health, and welfare were the most important areas of spending. About half of provincial expenses consist of the salaries paid to public service employees. By sector, education is the most expensive, on average between 35% and 40% of the total budget.

However, as Chetty (1997:5) has noted; "In a situation where salaries are nationally negotiated, provinces will be left little scope for reprioritisation." In education, for example, teachers' salaries make up 85% of education spending. These salaries are the product of national agreements of the education labour relations council that also set the teacher-pupil ratios target at 1-35 for secondary schools and at 1-40 for primary schools.

The provinces thus have little control over the salaries of teachers or the number of teachers in their employ. From what we have seen in this sector alone, over 30% (85% of the 40% share that education has of provincial budgets) of their expenses are thus outside of provincial control.

Similarly, in the welfare sector, 88% of provincial expenses are constituted by social security payments. The amounts and the recipients of these payments are determined by the central government. One could repeat the same exercise in the health sector. The conclusion remains the same; provinces have little control over their expenses.

The proclaimed decentralisation of provincial finances has not resulted in provinces having greater control of their expenses. This disempowerment follows logically from the programme of the central government to reconstruct the country. It wants to ensure that the provinces provide a common minimum of services, and therefore forces them to take on certain expenses.

## DEBT AND TAXES

The second pillar of decentralising reform envisages a progressive reduction of the central government's share of personal income tax of up to 7% (in 2002/3) in order to permit the provinces to impose a surcharge of up to 12% on this tax, and thus to increase their global revenue. These proposals were retained in the new Constitution on condition that they are provided for by legislation, which has not yet been passed.

The macro-economic strategy of central government, (GEAR), Growth Employment and Redistribution has

as two of its central aims to reduce the national budget deficit to 3% (by the year 2000/1) and to reduce the total tax imposed by all levels of government to 25% of the GDP. For the 1997/8 budget, the deficit is planned for 4% and the total tax imposed is set at 26%.

In a situation where the central government is already reducing its revenue, it is difficult to see how it would be ready (before the 2000/2001 budget) to reduce its revenue even more to accommodate the provinces. This proposal of the FFC will, at least for the moment, not significantly affect the revenue of provinces. This second pillar therefore is not likely to increase the financial autonomy of the provinces either.

### Total revenue of provinces as foreseen by the FFC (R million)

Year	Allocation	Allocation with tax imposed
1996/7	75,299	78,678
1997/8	76,216	81,768
1998/9	77,120	85,010
1999/00	78,010	88,353
2000/01	78,883	91,821
2001/02	78,563	95,418
2002/03	78,153	99,147

Source: Financial and Fiscal Commission (1996)

The provinces have also been accorded the right to borrow, in terms of the "Borrowing Powers of Provincial Governments Act" (No. 48 of 1996). However, they can only borrow for capital expenditures, which make up a relatively small part of their budgets. Loans for current account expenditures "may be raised only when necessary for bridging purposes during a fiscal year and must be repaid within twelve months (Constitution, 230.1)."

However that may be, the provinces have decided, with the national Minister of Finance, to place a moratorium on provincial borrowing in order to manage the total debt of the country in the framework of GEAR. In the short term, the right to borrow will thus, once again, not increase the financial autonomy of the provinces.

Provinces have, during the current fiscal year, attempted to bypass this moratorium by making extensive use of bank overdraft facilities. The high interest

rates (19,25%) on such borrowing, and indications by the Minister of Finance that overdraft facilities would be monitored and limited in the future, makes this strategy less than sustainable. Provinces have also "used the central government as a bank" by holding back income tax paid by public servants.

The provinces have also been accorded, from the 1997/98 budget onwards, the right to 'roll over' unspent funds between financial years. The provinces can thus retain funds that they are not able to spend in a given year. This regulation could significantly enhance the autonomy of at least the poorer provinces, who do not spend all the funding available to them from lack of

in the 1997/98 budget. The goals of this formula are, on the one hand, to achieve equity in the provision of provincial services, especially in education and health. As such it targets the horizontal fiscal disequilibrium.

On the other hand, the formula approach tries to insulate the process of redistribution from political manipulation and thus addresses the vertical disequilibrium. In the 1997/8 fiscal year the 'formula' simply took provincial population figures and weighted rural population (a proxy for poverty) by 25%.

The formula only pertains to non-earmarked funds with which the provinces can, in principle, do whatever they wish. There are also earmarked transfers to the provinces that are reserved for particular purposes. These

**The components of the formula proposed for 1998/99 are the following:**

- an education share, based on the average of the size of the school-age population and number of learners actually enrolled (39,0%);
- a health share, based on the proportion of the population without private health insurance and weighted in favour of women, children, and the elderly (18,0%);
- a social security component, based on the estimated numbers of people entitled to social security grants (16,0%);
- a basic share, based on total population, with an additional 50 per cent weight in favour of rural communities (15,0%);
- an economic output share, based on the estimated distribution of gross geographic product (GDP) (8,0%); and
- an institutional component, equally divided among the provinces (4,0%).

Source: MTEF, Department of Finance, 1997

institutional capacity. They can now accumulate these funds to improve their institutional capacities.

**THE DISTRIBUTION FORMULA**

The third pillar of the decentralising reforms is manifested in the formula for the distribution of funds between the provinces, which was used for the first time

transfers normally have bearing on functions that provinces fulfil for the central government on an agency basis. This formula replaces a 'system' described by Simkins (1997:1) as "ramshackle and particularist, in that it had different arrangements for provinces, self-governing territories and TBVC. All these arrangements were subject to arbitrary political intervention."

The formula is supposed to be more 'objective' and

Sources: 1997/98 Budget and MTEF document, Department of Finance,									
<b>The influence of the formula on the equitable shares</b>									
	1996/97 Equitable shares	1997/98 Equitable shares	2002/03 Target shares	Percent change 1996/97 -2002/03		1996/97 Equitable shares	1997/98 Equitable shares	2002/03 Target shares	Percent change 1996/97 -2002/03
Western Cape	11,13%	10,0%	9,6%	-13,75%	North West	8,57%	8,9%	8,2%	-4,31%
Eastern Cape	18,46%	17,9%	16,9%	-8,45%	Gauteng	4,75%	14,6%	16,2%	9,8%
Northern Cape	2,35%	2,6%	2,3%	-2,12%	Mpumalanga	6,12%	6,3%	7,6%	24,2%
KwaZulu-Nata	19,34%	19,2%	20,3%	4,96%	Northern Province	12,38%	13,7%	12,5%	1%
Free State	6,90%	6,9%	6,6%	-4,35%	<b>Total</b>	<b>100%</b>	<b>100,0%</b>	<b>100,0%</b>	

Formula to be phased-in over five years. The "equitable shares" exclude other unconditional and conditional grants to the provinces from the national share.

less open to political manipulation. The fact that the provincial allocations will be determined by an instrument more difficult to manipulate, should afford some protection to the provinces. Before this formula was put in place, the allocations of the provinces were virtually solely determined by the national Minister of Finance.

### PROBLEMS WITH THE FORMULA

Three criticisms have been levelled at this formula. Firstly the 'poor' provinces wouldn't have the capacity to spend their allocations as efficiently as the 'rich' provinces. The latter would not be able to pursue their projects because of cuts in their budgets, while the 'poor' provinces will have the funds without the necessary capacity. All this would amount to stunting the national development by the inefficient utilisation of limited resources.

Secondly the population figures used in the formula would not be accurate. No reliable population figures were available for the 1997/8 budget. The figures used originate from the 'October Household Survey 1995,' undertaken by the Central Statistical Service (CSS) according to which the Western Cape, for example, would have 9% of the total population.

The preliminary results of the 1996 census (also done by the CSS), show, however, that the Western Cape, for example, has 10,9% of the national population. We do not yet know how much of this 1,9% refers to rural population, which could influence the transfer of this province even further.

Even if reliable figures were available, they would measure the provincial populations at a given moment, and as such would be too rigid to take significant interprovincial population migration into account. This weakness of the formula approach puts the Western Cape and Gauteng, as the two main destinations of these migratory movements, at a distinct disadvantage.

The fact that the formula takes the size of the rural population as an indicator of deprivation magnifies this disadvantage, because the migrants would be counted as urbanites when they arrive in these two areas, but they would be counted as rural in their province of origin (Meiring interview). In their province of origin they count for 25% more than they do in their province of destination, while their level of deprivation does not necessarily change (the formula proposed for 1998/99 goes even further by weighting 50%).

In spite of these problems, it is difficult to criticise

the larger aims of the formula, which is intended to equalise allocations and to redistribute revenue less arbitrarily. The problem of using the rural population as an indicator of deprivation is linked to the absence of better indicators. The 1996 census could remedy this situation.

### THE 'RICH' PROVINCES

A more disturbing problem is that the reductions implied by this formula are interpreted politically. The NP has, for example, often declared that the ANC would be trying to 'suffocate' the Western Cape by limiting and reducing the finance, personnel and resources at its disposal (Die Burger 28/09/96).

Even the provincial leader of the DP has recently explained that the budget of the province is reduced without any input from the provincial side. The province is, nevertheless, perceived as responsible for the decline in services that follows the reduction of its allocation.

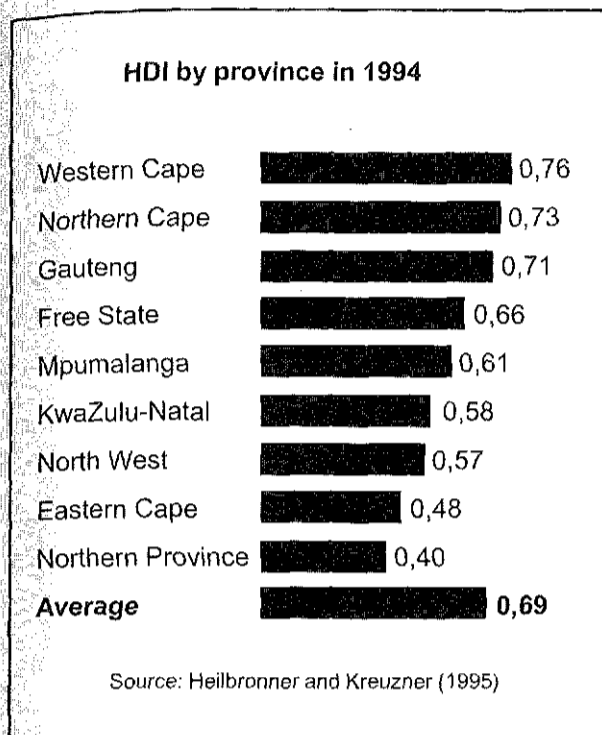
This would be "a very effective strategy" by the ANC to control the Western Cape, being a province that escapes from its direct political control (Bester interview). The NP considers this not only as a strategy aimed at the provincial government, but also as aimed directly at the NP (Meiring interview). An overall decrease in the quality of life in the Western Cape would be more harmful to the NP than to the ANC since the quality of life of their supporters is generally higher (Meiring interview).

The reduction of the Western Cape's allocation is, however, not unique: "... all provinces are under some pressure because transfers from central government rose by only 7% in nominal terms (well below the rate of inflation plus the rate of population growth) from 1996/7 to 1997/8" (Simkins 1997:8).

Regardless of this, it is true that the Western Cape will suffer the harshest reductions of all the provinces. The per capita allocation of the Western Cape, however, remains substantially higher than that of other provinces, even after the first reduction of its allocation in the 1997/98 budget. Also, its Human Development Index (HDI) was 0,76 in 1994, while the national average was only 0,69 (Heilbronner and Kreuzner, 1995).

Even though the other provinces are more in need of development than the Western Cape, its allocation remains higher than theirs. It could appear that the Western Cape is disadvantaged by the central government in the allocation of funds, but this reduction is

**M**igrants would be counted as urbanites when they arrive in the city, but they would be counted as rural in their province of origin. Their level of de-privation does not necessarily change.



the result of the relative need of the other provinces rather than a 'systematic strategy' against the Western Cape.

While the result of these reductions could be harmful to this province, the goal is the reparation of the horizontal fiscal disequilibrium and finally the development of the whole country.

The reason why the reduction of provincial allocations is perceived as a strategy against certain provinces is that the whole system of intergovernmental fiscal transfer rests on a zero-sum. Any increase in the transfer of one province translates into a decrease in the allocation of another, since all allocations come from the same limited source.

This situation is, finally, the result of the implementation of a policy of equalisation, without an accompanying policy of decentralisation as recommended by the FFC. Any increase in the allocation to the poor provinces ultimately translates into a relative reduction in the allocations to the richer provinces, because the latter do not have the ability to enhance their revenue independently.

### WAYS OF COPING

In the rest of this article, we will discuss five strategies open to the 'rich' provinces in response to the reduction of their allocations. The barriers which hinder the first three (reducing costs, borrowing, and taxing) have already been discussed.

First of all, the provinces cannot easily increase the

cost effectiveness of their administrations since they do not control the most important cost drivers in their budgets, namely salaries. Secondly and thirdly, the ability of provinces to borrow money and to impose a surcharge on personal income tax are provided for in the new Constitution, but this has not yet been translated into practice because of the macro-economic imperatives as articulated in GEAR.

Another two strategies are available to provinces. They are referred to by Wallich (1994:6) as "extra budgetary revenue sources".

We have already indicated that the imperative of international competitiveness constrains the central government in the management of intergovernmental fiscal relations. The pressures exercised by international market forces also echo at the provincial level. The Western Cape and Gauteng have already embarked on programmes to attract foreign investment.

Of course the sphere of 'Foreign Affairs' is constitutionally a central government function and no initiative from the provinces could contradict the framework established by the central government. However that may be, Gauteng, for one, has already established twinning agreements and economic partnerships, with the tacit consent of central government.

These accords vary from programmes of financial and technical assistance to programmes of cultural exchange, and involve Malaysia, a province of South Korea, two provinces of Germany and one of Cuba.

### BUSINESS AND POLITICS

The last strategy is embodied in the corporatist practices that have often been analysed at central government levels, but are also beginning to evolve at the provincial level. As is the case with central government, sub-national governments are also open to the influence of civil society: "every level of government as an organisation is in close contact with its socio-cultural, economic and political relevant environment (Parri, 1990:214)".

Given the relative youth of the provinces in their present incarnation, these relations are in their first stages of development and exist only very informally. The distinction between 'governance' and 'government' is often used in this regard to explain that decisions are made by networks of non-governmental and governmental actors. 'Governance' is no longer the preserve of 'government'

As Simkins (1997:8) has indicated, "As provincial governments have little to contribute in the way of funding, it is small wonder that private-public partnerships are so much discussed in provincial development strat-

egies". Even though the provincial governments do not yet profit directly from the taxes paid by businesses in their territories, they glean benefit from their presence in the province. The most obvious benefit is job-creation.

One example of cooperation between local business and provincial government is the campaign to keep the national parliament in Cape Town, waged against Gauteng's drive to have it transferred to Pretoria. This effort by Gauteng was denounced by the chairperson of the Civic Alliance for Parliament (CAP), Gerald Morkel (who is also the Western Cape's minister of Community Security), as being a strategy of the Pretoria property-lobby.

In the Western Cape, where property prices have increased by 13% over the last year, this sector is of growing importance (Cape Town Business Report 18/07/97). It is also estimated that the removal of parliament from Cape Town could cost the province 10 000 jobs. A campaign for the retention of parliament would thus be in the interests of government and civil society alike.

In the CAP's list of patrons we see clearly that these actors see the issue in the same way. Amongst its patrons are the provincial premier; the Ministers of Finance, Economic Affairs, Police; all the mayors of the metropolitan substructures; all the major political parties active in the province; the Cape Chamber of Commerce; the Kaapse Saekamer; COSATU; the Black Management Forum, etc.

Of course, the interests of civil society are not uniquely 'provincial' interests. The picture is a lot more complicated than that. Nevertheless it does happen, as we have shown, that the provincial government, business and other actors in civil society share a common interest in protecting the Western Cape as a province.

This tendency, towards an integration of civil society and the 'provincial state' could provide a measure of financial autonomy to the provinces. This can be

done by the private-public partnerships that flow from a definition of common interests.

The development of these phenomena (provincial corporatism and provincial international relations) could become a source of further tension between the provinces and the central government. The degree of autonomy that the central government will permit the 'strong' provinces, such as Gauteng and the Western Cape, is one of the central issues in the development of the system of intergovernmental relations in South Africa. ■

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# ARE THE PROVINCES OVERSPENDING? BUDGETING IN THE NEW INTERGOVERNMENTAL FISCAL SYSTEM

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The recent termination of employment of almost 30 000 temporary teachers and the Eastern Cape pension shortfall have brought the question of provincial spending to the fore. Writing in their private capacities, two FFC researchers explain that the provinces and the national government have two very different perspectives on the issue, and suggest some possible solutions.

**A**lmost all of the nine provinces are projected to overspend on their 1997/98 budget allocations. Most provinces have attempted to curb their expenditure by introducing cost control measures and improved financial management. Notwithstanding some success in this area, it is still estimated that the provinces will overspend by an estimated R6 billion in total. The highest projected deficits are in the Eastern Cape, Kwazulu-Natal and the Northern Province.

This article will attempt to assess the scale of the overexpenditure, determine where it is occurring, and discuss its possible causes. The very different perspectives of the provincial and national governments on this issue will be reviewed. Finally, suggestions will be made of the measures required to avoid a repeat of this situation during the next budgetary year.

## INCIDENCE OF OVER EXPENDITURE

Although the bulk of government overexpenditure is at the provincial level, it is not just the provincial governments that are experiencing difficulties. A number of national departments are also projected to overspend, most notably the departments of Corrections, Justice, and the South African Police Service. Although it is difficult to project the level of overexpenditure in these departments, cost-control measures have been put in place.

Of the R6 billion that the provinces are estimated to overspend, most will be in the areas of education, health and welfare. These three functions make up about 72% of total provincial expenditure. Most provinces have been forced to make savings in other ar-

reas in order to reduce the aggregate level of overexpenditure in these core social service departments.

The main cost driver in education and health is personnel, with huge deficits being forecast in this area. Most provinces have been forced to cut non-personnel costs in education and health dramatically. Both recurrent non-personnel items, such as textbooks and medicines, and capital expenditure, such as the building of classrooms and clinics, have been cut. Provincial welfare departments have been forced to cut spending on priority items other than social security grants, including a broad range of social services.

There have been a number of provinces, or departments within provinces, that have been able to reduce costs to limit overspending. The education departments in Gauteng, the North West and the Free State have put in place management controls that have reduced their projected overexpenditure. Most provinces have reduced the payment of pensions to 'ghost' pensioners, saving millions of rands.

## THE NATIONAL VIEW

From the perspective of national government, the overspending in the provinces is an unacceptable situation, arising out of the inability of the provinces to manage cash flows. Provincial allocations increased from 1994/95 to 1997/98 by an average of 39.8%, which reflects a real increase over the period of 11%.

This represents a significant shift in expenditure towards provincial spending in general and, in particular, towards functions such as education, health and welfare. Despite a tight fiscal policy, the provinces have

received budgets which have grown more than the public sector in general.

The inability to manage a budget is demonstrative of three major problems in provincial government:

- poor budgeting and budget processes;
- poor financial management; and
- the lack of political will to implement cost-control measures.

Provinces receive an 'indicative allocation' approximately six months before the budget is announced in March. This allocation is a result of an administrative and political process involving the provinces and the national government. Once the provinces are made

**S**ome provinces have deliberately underbudgeted in the belief that the national government would be forced to bail them out.

aware of this indicative allocation, they then begin the budgeting process.

This budget is the product of internal negotiation and reflects both the obligations

that all provinces face as well as the regional priorities. Provincial legislatures adopt these budgets soon after the national budget is adopted, thus making them law.

Some provinces have deliberately underbudgeted certain politically sensitive functions such as welfare, education and health, in the belief that the national government would be forced to bail them out. And indeed, in previous years, some provinces were given additional allocations to cover shortfalls. This provided an incentive to overspend since there was an expectation that they would be rescued once again. Consequently, there was no incentive to make tough political choices and implement cost-saving measures.

Some provinces have poor financial management systems and resources have been abused. This lack of adequate financial management meant that senior managers did not have the tools to monitor expenditure, improve efficiency, or implement measures to control costs.

In provinces which have incorporated homeland governments, there are also inefficiencies. These provinces have failed to act appropriately to cut wastage and are attempting to reduce backlogs in education, health and welfare, without making the requisite savings from efficiency improvements.

The national government is also of the view that the provinces have employed large numbers of new staff with the knowledge that they do not have the resources to pay them. For example, there are 40 000 more teachers employed by provinces than there were

two years ago. They have been employed with little regard for budget constraints and these employments are out of line with the macroeconomic programme.

In summary, from the perspective of national government, the current financial crisis is a result of the inability of provincial governments to manage their cash flow and to prepare realistic budgets. In response, the Department of Finance intends to ensure that the provinces are made more accountable for their expenditure responsibilities and to ensure managerial and administrative improvements. The Department seeks the political backing to put managerial and financial systems in place to get a better handle on provincial government expenditure.

## THE PROVINCIAL VIEW

The provinces either argue that they do not receive sufficient resources to meet their constitutional responsibilities, or that they do not have the tools to be able to manage their budgets and make the required adjustments to their expenditure.

Salaries and social security grants comprise about 90% of the provincial budget. However, labour agreements, conditions of employment and salaries are all negotiated in national bargaining chambers. The level of social security payments to individuals, as well as the criteria by which individuals qualify for these grants, is also determined by national government. Provinces have no discretion over either of these two major cost drivers, which means that they are unable to adjust their budgets or significantly reduce costs.

Determining the level of funding that goes to the provinces is a complex task of matching revenues with expenditure responsibilities. One of the arguments made in support of the view that the provinces are underfunded is the issue of what constitutes 'the base'. The base is a set of budgets used as the point of departure when phasing in a formula approach to funding.

The base used to draw up the 1997/98 budget is problematic for two reasons. Firstly, prior to the creation of the provinces in 1994, the entire budget went through one process managed by the national government but with separate budgets for the TBVC states. The 1995/96 budget year was the first year where nine provinces were budgeted for as separate entities. From 1993/94 to 1995/96, provincial functions received allocations ranging from R 57 billion in 1993/94 to R 66 billion in 1995/96 (Budget Review, 1994-6). This indicates that when the provinces were created, provincial functions received allocations that were much lower, in real terms, than before the provinces were created.

Provinces with better managerial capacity, such as Gauteng and the Western Cape, overspent on their budgets due to the inability to manage within the new allocations. Provinces with weaker managerial capacity were not able to spend all their allocations and capital allocations were rolled over. In aggregate terms, there was very little overexpenditure in 1995/96, due to a lack of capacity and the slow pace of implementing new government programmes. By 1997, the implementation of new programmes had begun and provinces had acquired the capacity to spend their allocations. As a result, all nine provinces found the level of funding lower than required.

Provinces that have incorporated former homelands and self-governing territories (SGTs) are experiencing particularly serious financial difficulties. Most of the expenditure in the former homelands and SGTs went through the Department of Foreign Affairs budget or the Department of Regional and Land Affairs budget. It is not possible to determine exactly how much of this money was spent in each of these entities. For this reason, the 1995/96 budget drawn up using the so-called 'budgeting from zero' exercise, may have underestimated the amount of money being spent in these areas.

Another problem with the base is that many provinces overspent in the past and when the 1997/98 allocations were made, these levels of spending were not taken into account. Provinces were not able to manage the real budget cuts from this higher level of actual expenditure.

Some provinces have backlogs that were inherited from the previous government. These backlogs can occur in the form of too few schools, clinics, roads and houses or in the form of people who qualify for social security grants but who did not claim them in the past. Some capital backlogs can be managed by phasing in expenditure over a number of years, but backlogs in social security payments are more difficult to manage.

The provinces are responsible for implementing many new policies of the new government. The drive to provide free health care to children and pregnant women, the 'back to school' campaign, and the clinic development programme have all had a huge impact on the lives of South Africans. These programmes have also had an impact on expenditure in the provinces. The cost implications of many of these policies were never quantified, nor were additional funds made available for their implementation.

Provinces are being asked to live within a tight budgetary constraint, implement new and costly policies, reduce personnel expenditure, and improve managerial capacity to ensure efficiency and cost effective-

ness in the long term. This would be difficult at the best of times. During the transition, without established management systems and in an ever-changing policy environment, these challenges are simply unrealistic.

## POSSIBLE SOLUTIONS

There are a set of practical steps that can be taken to reduce, if not eliminate, persistent overexpenditure in the provinces. The first of these steps would require a one-off adjustment to the base of the entire budget. This would affect both the total amount going to all the provinces and the amount going to each individual province.

This new base could then be used as the starting point to phase provinces towards their "equitable share of resources," as determined by a formula produced by the Financial and Fiscal Commission (FFC). This adjustment of the base must be done carefully to avoid funding the wrong behaviour, or creating inappropriate incentives. The budget system must enhance accountability at all levels of government.

If provinces are asked to budget for and manage personnel expenditures, then they must be given the tools to manage within a budget. This set of tools would include the right to determine salaries, increases, organisational structures and retrenchments. In order to meaningfully manage personnel, clear policy priorities and human resources management systems have to be put into place. This would require a decentralised personnel system that would then be consistent with the decentralised financial arrangements set out in the Constitution.

If government is to meet its deficit targets and achieve its delivery objectives, it has to reduce the level of tax payers' money going directly to salaries. This can be achieved through a balance between retrenchment and wage restraint in certain sectors. Retrenchment without adequate management capacity will not yield improvements in efficiency. Retrenchments and wage restraint must be part of a process of improving management systems in the civil service.

Some provinces inherited huge numbers of employees from former homeland governments or self-governing territories. The provinces simply do not have the management tools to retrain and redeploy these excess personnel, and do not have the money

Provinces are being asked to live within a tight budgetary constraint, implement new and costly policies. This would be difficult at the best of times.

to retrench them. A one-off retrenchment fund, established by national government, would allow provinces to shed these excess personnel without overspending on their budgets.

Government needs good managers, particularly financial managers. Skills such as understanding a budget and preparing accounting statements are lacking in government. Accounting procedures, budget systems and financial management systems will all be costly in the short term, but will provide government with the ability to deliver better services at a lower cost in the long term.

National government has insisted that all provinces use the FMS system to manage their finances. The PERSAL system, which manages personnel salaries payments, has been upgraded to include all the provinces. While noting the limitations of these systems, the government recognises that they are required to overcome the information asymmetry between national and provincial governments, which currently leads to budget games. These tools must be used to rein in financial mismanagement and to improve efficiency of spending.

Lastly, a set of incentives which encourage provinces and departments to keep within their budgets must be developed as a matter of urgency. Govern-

ments, departments and individuals must be rewarded for reducing corruption or reducing costs. Multi-year budgeting provides the opportunity to reward provinces that can improve efficiency and reduce costs. With the savings, they will then have the ability to introduce new programmes to improve the level of service delivery.

The current crisis in provincial finances must be seen as a problem symptomatic of a system in transition that is not being managed effectively. South Africa is attempting to devolve both political and financial authority to lower tiers of government, while at the same time attempting to implement an entirely new set of national priorities within the context of a tight fiscal policy. Solutions to the current crisis must be seen as part of developing an effective system of intergovernmental relations that is consistent with our new democratic order and sensitive to the interests of the country as a whole.

Matching revenues with responsibilities must be the goal of the intergovernmental allocations. This intergovernmental system must be designed to encourage efficiency and effectiveness, deal with the historic effects of apartheid, and provide citizens with good services. These tasks can only be achieved by closer cooperation between and among the different tiers of government. ■

# THE MEDIUM TERM EXPENDITURE FRAMEWORK: AN EFFECTIVE TOOL FOR GOVERNMENT?

BY CLIVE PINTUSEWITZ  
FINANCIAL AND FISCAL COMMISSION

The transition to a new system of budgeting and managing public finance brings risk, uncertainty and confusion. Clive Pintusewitz, writing in his private capacity, argues that any temporary difficulties will be worthwhile if the MTEF is strengthened and the institutions of government restructured to ensure its effectiveness.

**T**he introduction of the Medium Term Expenditure Framework (MTEF) is a welcome shift by the Ministry of Finance towards a multi-year budget. It represents a significant departure from the annual, incremental and ad hoc budgeting of the past. A detailed account of the MTEF is contained in The Medium Term Budget Policy Statement (Department of Finance, 1997a).

The MTEF is intended to establish transparent rolling budgets and support effective planning to meet the policy priorities of national and sub-national governments. These priorities must be pursued within the country's financial resources, of course.

Surprisingly little analysis of the MTEF has taken place. The media and other commentators have concentrated almost exclusively on the government's macroeconomic policy - GEAR (Department of Finance, 1996). This is an unfortunate oversight, since the MTEF requires a fundamental overhaul of the operation of government and reflects government priorities. It also offers a preview of the intentions of the Department of Finance (DoF) prior to the publication of the Budget Policy White Paper.

## WHAT IS THE MTEF?

The MTEF should be understood as a tool for facilitating presentation of the spending priorities and plans of government over a number of years, and for matching these plans with the fiscal resources available.

The MTEF is described as part of a wider overhaul of the budgetary process, intended to provide the "bridge between the technical preparation of the bud-

gets and the need to reflect political priorities in expenditure plans." Further steps to be announced in 1998 include "a framework of improved incentives and greater accountability, accompanied by reforms of financial management."

The features of the MTEF are summarised by the DoF (Department of Finance, 1997) as follows:

- three-year budgets will be created, a task which will include a detailed analysis of projections, the establishment of sectoral task teams, and the quantification of policy options;
- rolling budgets will allow for the implementation of policy priorities and the introduction of resource-based planning, which in turn will initiate a process of programme reprioritisation;
- public debate of plans will become an integral part of the process.

The essence of the MTEF is to facilitate a dialogue, which must result in matching expenditure responsibilities (and priorities) with revenue. Since this is a dynamic process, it also involves the need to support a public sector budgeting and management system with the correct incentives for efficient, effective and equitable public finance.

This results in a competitive budget process, whereby departments compete for resources. Projects and programmes are prioritised according to the benefits expected from the expenditure, national political interests and local concerns (regional, provincial and local). This involves both a 'top-down' and a 'bottom-up' process and includes expenditure and revenue components.

The aim of the dialogue is to create consensus over revenue and expenditure priorities within an effective framework. National, provincial and local governments and departments determine their 'needs' (in theory this can be achieved through a zero-based budget), or budgets can be determined to meet certain objectives as outlined by policy goals. Since resources are scarce, not all these goals can be met immediately and simultaneously; trade-offs and prioritising are required.

The MTEF will be consistent with a decentralised system of government. Formula funding for sub-national governments will be utilised (FFC, 1996). National priorities will be reflected through the development of norms and standards and supported through a number of intergovernmental institutions. Governments (including provinces and municipalities) will be held accountable for any spending in excess of budgets.

The policy framework for the MTEF aims to establish areas of priority spending. In effect, this policy framework is a summary of each departments policies, with an additional emphasis on social services and strengthening the ability of the economy to grow.

The MTEF plans must accommodate both the reallocation of resources between programmes and reprioritisation within the programmes themselves. The output of the MTEF therefore shows spending by sphere of government and by function. This is depicted in Tables 1 and 2.

**Table 1:**  
**Expenditure growth - national and provincial government**

R billion	1997/98	2000/01	Average nominal growth
<b>National government</b>			
Debt service	39.9	48.8	6.9%
National functions	60.8	76.8	8.1%
Conditional grants to provinces	4.5	5.2	5.4%
Policy reserve	2.1	10.0	
<b>Provincial government</b>			
Provincial functions	81.8	100.5	7.1%
<b>Total</b>	<b>189.2</b>	<b>241.3</b>	<b>8.5%</b>
<b>Total (non-interest)</b>	<b>149.2</b>	<b>192.5</b>	<b>8.9%</b>

**Table 2:**  
**Spending by type of service**

	R billion 2000/01	% non interest expenditure	Average nominal growth 1997/8-2000/01
Education	49.5	27.1%	8.7%
Health	24.9	13.6%	7.4%
Welfare	20.7	11.4%	9.0%
Other Provincial	25.8	14.1%	5.3%
Defence	12.4	6.8%	4.6%
Justice, police and prisons	24.1	13.2%	9.5%
Economic services	17.1	9.4%	5.7%
General administration	8.0	4.4%	6.2%
<b>Total</b>	<b>182.5</b>	<b>100.0%</b>	<b>7.5%</b>
Reserve	10.0		
<b>Total (non-interest)</b>	<b>92.5</b>		<b>8.9%</b>

## INSTITUTIONAL CHANGE

Multi-year budgeting is new and very different from the manner in which South Africa has budgeted in the past. Departments and sub-national governments are now expected to make efficiency gains and support restructuring over multiple years.

Putting the system in place will require substantial institutional change. For example, no incidence or utilisation data is currently collected in the budgeting process. There are not a sufficient number of experienced financial managers with an ability to do sound financial planning at all government levels at present.

A good balance has to be found between building an 'ideal' system and supporting the transformation of the present system. The first MTEF effort has clarified some of the deficiencies of the present system.

## CONSTRAINTS

There are a number of critical constraints which have to be addressed to ensure that the MTEF can be operationalised.

There is a need to improve the accounting system and data exchange in government. The Ministry of Fi-

nance is aware of the need for a new accounting system to support the shift to objective oriented budgeting and to allow for an accrual system. In the short term, standardising programmes and votes, linking the staff and accounting systems, and improving the quality of data are crucial.

More support is required for sub-national governments, especially those that inherited the large Self-Governing Territories (SGTs) and homelands. Data requirements for the MTEF must anticipate these limitations and ensure improvements.

There is much 'noise' in the present system. Due to the interplay of many changing circumstances, the outcomes of which are difficult to quantify in their individual capacities, the ability to relate cause and effect has broken down. This noise has to be removed from the budget system if incentives and accountability are to be established and 'budget gaming' is to be reduced.

This would involve reviewing the 'base' of the provinces' budgets and national mandates, while resolving the problems confronting personnel planning. Thus, if revenues are decreased, the expenditure and service responsibilities also have to be decreased - if not, a mismatch will occur. The need to create stability needs to be weighed against the need for priorities to change.

Changing the incentives and the rules for policy development must be done with urgency. At present, policies of most departments are being drastically revised. This is appropriate given the past policy framework. The cost implications of policies and their administrative requirements have not, however, been adequately assessed.

Thus, priorities are difficult to establish in a budget and implementation is impossible to secure with certainty. This means that real shifts in priorities are extremely limited in a tight fiscal environment.

A framework needs to be established which allows policies to be costed. New policies must be piloted to ensure that administrative and managerial requirements can be met. Policies which are not backed by proper planning of this nature should not be passed by the legislatures or Parliament.

Management skills in budgeting must be enhanced, especially in provinces which inherited the homelands and SGTs. Without sufficient personnel and systems in place to monitor spending, ensure restructuring and improve efficiency, there is little chance of meeting government objectives.

Clarity over distributive goals is essential in order to resolve the political uncertainty of government programmes. In the absence of such an approach, there is bound to be continued conflict over spending decisions which impact on specific groups.

There is a need to strengthen communication between the budgeting (finance) and planning (departments), and among all three spheres of government.

The bottom line is that the MTEF must be evaluated by finance and other key stakeholders, and should evolve in conjunction with institutional reality.

## ACCOUNTABILITY

In order for budgeting and planning to occur effectively in a democracy, clarity is required concerning accountability. A number of countries have recently shifted towards the New Zealand model of budgeting - this approach includes the use of performance contracts and clarity over responsibilities for individuals and agencies.

In the absence of a broader development plan, the MTEF is largely a monologue.

In this regard, South Africa has a Constitution that creates a comprehensive system of checks and balances. This is crucial in a system with a number of spheres of government. In the absence of clear accountability, it is impossible to ensure that governments' priorities can be established and consensus over revenue and spending programmes achieved.

## FISCAL AND ECONOMIC PLANNING

The MTEF is being planned and implemented in the virtual absence of any development planning. This raises questions about South Africa's capacity to attain the expected development goals (employment creation, eradication of poverty, narrowing of income inequalities), since present economic policy is limited largely to fiscal planning. There is a need for a clearer definition of society's broader goals.

In the absence of a broader development plan, the MTEF is largely a monologue. The fiscal plan provides for top-down input, derived from the macroeconomic framework. This is a bid to define the 'fiscal envelope' for national revenues to be spent by the national provincial and local governments. The section of the MTEF document on priorities is very generalised and reflects a lack of clarity over the resources required and the priorities of spending.

If the MTEF is going to be a tool for bringing the macroeconomic programme and the government's spending plans together, then the dialogue (concerning policy, funding and planning) and process of planning and prioritising spending has to be enhanced.

In addition, if national wage agreements and the size of social grants are determined nationally, these need to be properly reflected in the MTEF so that de-

cisions can be made concerning the level of service delivery for government. At present, the macro economic framework creates spending constraints, while wage negotiations and increased social security grants

**W**hat is required is that a mechanism be established to translate national priorities into implementable provincial programmes.

create conflicting funding responsibilities.

If government is to reconcile these divergent policies, either more revenue must be made available or spend-

ing and service delivery must be reduced. Without consensus over spending, clear accountability, and the tools needed for managing spending, the MTEF will be inherently limited for meeting planning goals.

### FORMULA FUNDING

In most countries that undertake some form of fiscal and development planning, the process is usually 'bottom-up', with sub-national governments drawing up their plans and submitting these to the national government. After evaluation of the submitted plans, the national government then decides what resources will be made available to each lower level government, sometimes in consultation with sub-national governments.

In the South African situation, the resources for each province for a three to five-year period will be pre-determined by a formula. Clarity needs to be obtained about the role of the MTEF (and the formula), and how to ensure that priorities are funded. This requires resolution of an appropriate balance between national priorities and provincial autonomy.

An example of the lack of clarity between the formula and the MTEF is the relationship between the expenditure priorities and the vertical division. "The division of funds between the spheres of government must reflect the nation's priorities. If the share of expenditure going to social services is increased, this will take effect through the equitable share of provinces, or additional grants to provinces from the national share..." (Department of Finance 1997, p.40).

The MTEF also proposes that education, health and welfare be increased at a pace faster than the budget in general (ibid. Table 6.2, p. 60). Yet the vertical division which allocates revenue to the three spheres of government is held stable, even though most of the social spending occurs at the provincial level. It is unrealistic for this additional expenditure to only be met from savings in other provincial functions - a mechanism to ensure a shift to the provincial level is required.

In essence, the vertical division does not take into account the policies outlined in either the MTEF or GEAR. The MTEF document acknowledges that more resources are required in the short term in order to reduce infrastructural backlogs in social services. If this is to be achieved through the reserves, then the transmission mechanism through which the reserves relate to the formula must be established in the MTEF and built into the formula.

If the national government wishes to take a more direct role in developmental planning, a planning infrastructure must be developed at the national level and a capital fund should be used to guide development spending.

### DECENTRALISED IMPLEMENTATION

Fiscal planning of the type characterised in the MTEF has worked well in unitary states where little power is vested in the lower levels of government (e.g. Indonesia) and in centralised federations (e.g. Malaysia). The South African Constitution, however, confers a considerable degree of spending power on the provincial governments, particularly with respect to important functions such as education and health.

A prerequisite for the success of the MTEF would appear to be the attainment of consensus in institutions such as the Budget Council and the Inter-Governmental Forum, rather than through legislated co-ordination. Whether this could be anything more than a short-term solution remains to be seen. A decentralised system does not preclude medium term planning, nor does medium term planning preclude a decentralised system.

What is required is that a mechanism be established to translate national priorities into implementable provincial programmes, without precluding the ability of provinces to determine their own priorities. The MTEF argues for the use of outcome measures, norms, and standards. This will require time and improved information, but can be addressed incrementally if the institutional constraints are taken into account.

If the provinces are appropriately funded for their service requirements, the management issues for the provinces include the need to ensure that the correct priorities are being met (e.g. sufficient funding for preventative health care and less for inefficient bureaucrats), that spending is efficient, and that outcomes are met as defined in national policies or frameworks.

### SECTORAL PLANNING

National departments may wish to develop norms and standards for particular programmes with a view



to promoting equity and development nationally. The establishment of the MTEF and the transfer of block grants to the provinces raises specific questions relating to sectoral planning. It is not clear now how sectoral planning will occur, if at all.

Although the MTEF should be the mechanism by which the financial consequences of such norms and standards are assessed, the extent to which the elements of sectoral planning could be accommodated in the MTEF is not clear. The sectoral priorities as seen in Table 2 are generalised and not linked to clear plans or outcomes.

The MTEF notes the need for the provinces to have greater control over personnel, and their spending in general. The favoured mechanisms to achieve this are a retrenchment tool and the extension of bargaining to incorporate the provinces. Caution should be taken against using a single tool to solve a number of problems. While there are undoubtedly surplus personnel, additional thought should be given to the potential impact of retrenchment on service delivery.

Experience has already shown that retrenchments are not a panacea, especially in the absence of management. Additional tools and a plan to fund retrenchments should be developed. Since many of the supernumerary staff are inherited from the past, it may be sensible for national government to fund the retrenchments as a one-off exercise, in a manner similar to the way the debt has been handled.

#### A TOOL FOR CHANGE

The MTEF is a useful framework which is limited by the system in which it operates. It is therefore diffi-

cult to picture the operation of the MTEF as it may be intended.

The MTEF has the potential to be a vehicle for transforming the functioning of government, in particular to bring budgeting and planning together in a generalised manner. The MTEF is going to have to shift from being a monologue expressing the fiscal constraint, to a dialogue which incorporates bottom-up plans and sectoral policies.

This requires some changes to the institutions of government to ensure that the right incentives become entrenched as good governance in South Africa. For this to occur, an immediate priority is to stabilise the present system and focus on the achievement of outcomes. ■

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# BOOK REVIEW:

## COMRADES IN BUSINESS:

### POST-LIBERATION POLITICS IN SOUTH AFRICA

BY SIMON BEKKER  
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A review of the book by Adam Heribert, Frederik Van Zyl Slabbert and Kogila Moodley (Cape Town: Tafelberg, 1997, 239pp.)

A fundamental predicament facing democratic government is how to strike a workable balance between efficiency and equity - in economic terms, between wealth creation and the reduction of inequality and poverty. It is this question, according to the authors of *Comrades in Business*, that emerges both as the primary challenge facing post-apartheid South Africa and as the best context within which to understand its politics. As the authors put it:

"The central thread in our analyses revolves around the dilemma [of] how to manage the inevitable political pain of necessary economic reform .... by a political system that promotes equality and egalitarian rights" (189,190).

This conclusion is reached by interrogation - nine 'important questions' commonly asked by influential South African observers are posed and then discussed one by one in separate chapters. Common wisdom assumptions about these questions are revealed and tested against experience and evidence drawn from numerous sources. Comparisons between South Africa and countries in North America, Western and Eastern Europe, and Latin America are systematically introduced.

Conclusions are drawn with prudence - 'on the one hand,' evidence suggests this view; 'on the other hand,' that view - prudence, accordingly, almost to a fault. The chapters succeed, nonetheless, in guiding the reader through these 'important questions' to the predicament that the authors claim underpins South African politics today. Readers interested in one or more of these questions will find the relevant chapters both informative and imaginative.

The 'important questions' revolve around two common views of South Africa. The first is of a society

deeply divided along lines of race and ethnicity. This model implies that these lines of division predict which primary identities South Africans experience, how they vote, and how they mobilise when the need arises. The second view is that of a society governed by the will of the people in which the state acts by popular majority mandate and thereby intervenes to achieve the welfarist ends identified by these majorities.

If we look carefully at how post-apartheid South Africa was established, argue the authors, and how politics are currently being conducted, we are able to show that both these views of South Africa are wrong. Rather, we need to reveal the critical institutions that fashion politics. Once this has been done, it will be clear, in their words, that:

"The state is neither an agent of capital nor labour but attempts to reconcile their conflicting interests... This...makes South Africa a pragmatically united rather than a deeply divided society. The projection of deep ethno-racial divisions overrates appearance at the expense of underlying forces" (158).

And, they add, the underlying forces are trapped in the iron grid of the liberal global market economy.

Accordingly, in an historical chapter asking whether apartheid can fruitfully be compared to Nazism, race relations in South Africa are found to be much less fraught with tension and conflict than has generally been assumed. This is an important reason why apartheid was able to liberalise itself - which was not the case with Nazism.

In the same vein, the authors argue that voters taking part in the national and provincial elections of 1994 and the local government elections of 1995/6 did not vote with their ethno-racial hats on. Other interests predominated, the outcomes notwithstanding. Accordingly,

the only miracle that may be attributed to these elections is that they were able to be planned and executed under the turbulent circumstances prevailing at the time.

Underlying these arguments is the question about how, against all odds, the reasonably peaceful political transition itself was possible. In a chapter on how South Africa "talked itself through a revolution," the success of the negotiation process is explained not only in terms of well-known preconditions but also as the result of a set of unique characteristics: the personalities of the political leaders, the varying skills of the negotiators, and the singularly undemocratic nature of parts of this process of democratisation.

What of politics as they are currently being conducted in the country? Though formally a liberal and non-racial democracy and formally a nation-state, the society has only begun its journey down this road.

Transition weakens rather than strengthens the state at the beginning of this journey. Institution-building and delivery are therefore critical. They ought to precede nation-building in a culturally diverse society, since it is extremely difficult to design constitutional provisions which will balance the building of a nation against allowing linguistic, educational, religious and ethnic diversity to flourish.

It is a blessing that the doctrine of nonracialism is held in such high esteem by the ANC/SACP alliance. This party, in fact, is supported by a majoritarian voting bloc determined through ethno-racial 'demography' and this too is a "blessing in disguise as long as it allows the strongest ethno-national group to extol nonracialism."

The authors readily acknowledge the many pitfalls along this road, the ANC's inability to treat the IFP as an opposition party, in particular. They admit that both state and political institutions are weak when measured against the standards of a modern liberal democracy.

They then turn to the economic institutions of South Africa, a country they typify "as a complex industrialised society." Their arguments are succinct - successful transition in South Africa was "greatly facilitated by the vast resources at the disposal of the state and the private sector-led economy" (184), to the point that one can speak of a "purchased revolution". Without these institutions and their productive capacity, the fledgling liberal democracy and nation-state would not even have been on the road.

Secondly, the authors address corporatism -

"business-union-state relations" - which, they argue, "guarantees...in the decisive economic realm...the consensual type of democracy that simple majoritarianism lacks in the political sphere" (158). In short, it is the economic institutions that will support and guide South African society on its journey.

Here too, revealing prudence, they admit to constraints and pitfalls as the global market economy requires domestic policies that promote growth and fiscal conservatism, thereby revealing socialist democracy to be a wish rather than a reality. The ANC contains centrifugal interest groups and will probably fragment after the 1999 national elections. Most importantly, many of the new black elite - comrades in business - have been visibly seduced by capitalist greed and are, accordingly, losing the moral highground of struggle politics.

This last point leads them to predict that the ANC "has sown the seeds of its own disintegration" since populist, socialist and traditionalist interest

groups within the organisation will increasingly not be able to stomach the "filthy rich" lifestyle of many of their erstwhile leaders.

These weaknesses notwithstanding, the primary argument of the book remains. The political and state institutions, supported by robust corporatist institutions of the economy (which bind black and white together) face a dual task - to reform the economy so as to create wealth by locating it within global market requirements, while appeasing the expectations of the black underclass.

This reveals the fundamental predicament of the ANC: how to reform without losing the support of this underclass to another political party which would embark on socialist and/or populist and/or Africanist programmes to the long-term detriment of all. The struggle has changed and this underclass stands in potential party-political opposition to the "liberation aristocracy."

In short, the authors argue, it is the democratic rules of the party-political game and the economic rules of the international market economy that will dictate South Africa's future. These are the institutions that really count, not the ethno-racial cleavages of a deeply divided society nor the struggle ideology of people's democracy.

There are, of course, defects in the evidence provided in support of these arguments. The main one relates to the economy. The political pursuit of equity is deeply influenced, if not largely controlled, by the economic pursuit of wealth. Even though a rising tide

The struggle has changed and this underclass stands in potential party-political opposition to the 'liberation aristocracy'.

may not lift all boats, it certainly comes to the aid of a government in pursuit of the reduction of inequality and the alleviation of poverty.

Conversely, the longer the stretch of beach, the fewer fish there are to net and to distribute, and the greater the likelihood of government being forced onto undemocratic paths. Analysis of the recent performance of the South African economy - its growth, the 'jobless' nature of that growth, capital outflows and inflows, its image in the global economy, and its macro-economic policy environment - would reveal evidence critical to any assessment of the country's present and future politics, particularly when these are expressed within the model the authors use.

In particular, the South African space economy, located as it is around three pivotal metropolitan areas, raises important political questions. Does this space economy promote the devolution of powers to provinces (or cities)? Does it do so on a uniform basis to all provinces or on a differential basis to provinces which are better-off and worse-off? What are the possible consequences of this have provincial party formations? In short, it is not only economists but also political scientists that ignore the space economy at their peril.

In conclusion, the primary weakness of the work as a whole is theoretical. The book is not really a book at all but rather a collection of essays integrated together after the fact. Except for the first chapter on ethno-nationalism in a global context, which is weak, each 'important question' is skilfully analysed as a subject on its own. The integration takes place by viewing South Africa as facing the same institutional predicament as the new industrial liberal democracies in the Americas and on the Mediterranean rim.

This comparative approach is deeply flawed. South Africa is on the African continent. It is not a complex industrialised country, it is semi-industrial-

ised. It is not pragmatically united through corporatism binding the state, labour and capital together "to diffuse and suspend class warfare", at best, this pragmatic union binds one half of its inhabitants into this alliance. The other half - the "underclass", as the authors put it - find themselves outside the institutional framework the authors posit as their primary theoretical context.

Recent work on South Africa has argued that half of its population (those who speak little or no English, who hold to animist or African separatist Christian beliefs, who conform to customary law, and who hold down no fixed employment in the formal economy) reveal more parochial identities and act within more particularistic institutions than those needed for a liberal-democratic political culture. This grouping may even be located beyond civil society, if this is taken in a strict sense.

Both Jean-François Bayart and Robert Kaplan have analysed such communities in Africa and Asia. The implication is that members of this grouping are creating for themselves a new way of life, new social capital, that is neither integrated into, nor pragmatically united to, the emerging industrial liberal democracy. Being beyond civil society, they are opting - in terms of democratic politics - for exit, rather than legitimacy or voice.

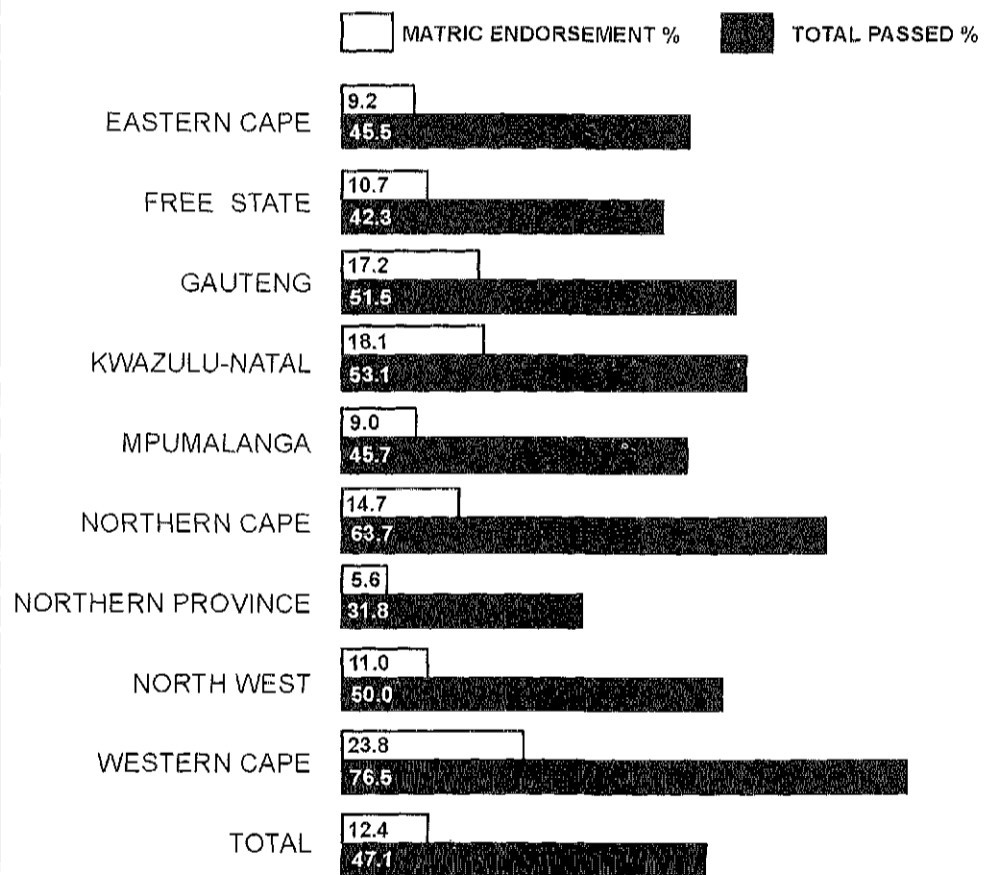
This model suggests that the political challenge lies in the incorporation of this grouping into civil society itself rather than into one or other existing or future political party, and that the primary divide in South African society is neither racial nor class-based but cultural.

Unless the educational sector and the economy are able to include members of this grouping into the citizenry and the formal economy, half the society will continue to journey down a separate extra-democratic road on which political parties do not tread and where voting does not matter. ■

South Africa is not pragmatically united through corporatism.

# DEVELOPMENT MONITOR

SENIOR CERTIFICATE EXAMINATION RESULTS BY PROVINCE FOR FULL-TIME CANDIDATES WITH SIX OR MORE SUBJECTS FOR 1997



SOURCE: DEPARTMENT OF EDUCATION

# SCHOOLS IN BLACK AND WHITE

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Are educational standards dropping? In white middle-class schools, they are probably not. Standards in poor black schools are already so low that it is difficult to imagine them declining further. Policies to improve black education are sound, but so poorly implemented that they are likely to take decades to take effect.

**T**he future of state schools is a hot topic for middle-class South African parents. The consensus, among whites and Indians at least, seems to be that a rapid decline in standards is inevitable. There is a veritable litany of woes: growing class sizes, the exodus of top teachers, poor matric results, lack of discipline, educational decay, and lack of funding and resources.

Government policies are interpreted as lowering standards at state schools. The fear is that the redistribution of resources will cause centres of 'excellence' (formerly white and Indian schools) to be neglected, while failing to improve impoverished African schools.

Is this really the case? While there is room for concern over the future of 'middle-class' state schools, there is little evidence that educational standards are seriously threatened. Unfortunately, African schools remain poor, chaotic, and sub-standard, with government efforts to improve them hamstrung and likely to take decades rather than years.

For the purposes of this article, it will be assumed that standards are acceptable in schools which operate efficiently, have the necessary resources, well-qualified teachers, parents who are supportive, and pupils who learn in ways that improve their knowledge, skills, and ability to think. All these things continue to happen in wealthy state schools.

African schools are mostly in a mess, but unfortunately, they have been for decades. Standards are generally so low it is difficult to imagine how they could decline further.

## TWO TYPES OF SCHOOLS

Four years into democracy and an African National Congress-led government, meaningful comparisons between African and formerly white, Indian or coloured schools are still not possible. Resources have been

directed from the latter towards the former, but this has only occurred recently, has been hamstrung by budgetary constraints, and has not yet made a discernible difference.

In any case, the resources available to be redistributed are minimal after teacher salaries, which gobbled up around 90% of the R40 billion 1997-98 budget, have been paid. With formerly privileged schools largely making up subsidy losses by charging fees, the gap between the formerly privileged and disadvantaged sectors remains huge and is likely to remain so for the foreseeable future.

In the Sunday Tribune (1997), Jonathan Jansen noted growing disparities between privileged and poor schools. He believes the ability to draw on expertise and assistance is what is widening the gap. Privileged schools have been able to employ teachers, draw on educated parents to help access private resources, and find ways to do better with fewer resources. Meanwhile in poor schools pupil numbers are increasing at the same time as the system is losing teachers.

## DISADVANTAGED SCHOOLS

South Africa had 12 053 266 pupils in 1996, according to the government's School Register of Needs Survey (1997). The highest enrolments were in KwaZulu-Natal (2 690 950), the Eastern Cape (2 231 865) and the Northern Province (1 934 101). There were 27 864 schools, 69,9% of them primary, 19,6% secondary, 9,4% combined, and 1% special schools.

By far the largest number of pupils are in African schools, so for the vast majority of South African children, the school experience remains one of crowded classrooms, lack of books and basic facilities, ill-qualified teachers, missed lessons and rote learning. Quality varies greatly between schools but is generally very low, with achievement depending largely

on the abilities and commitment of a few senior teachers and the school principal. The preconditions for quality education simply do not exist in many African schools.

The Needs survey revealed that one in four of the country's schools have no water, only 43% have power and one in three have flush toilets. There is a shortage of 57 499 classrooms, more than a million children need a desk and chair and 17 000 telephones are needed nationally. Many school buildings are in a weak or very weak condition. While 62% of schools have adequate stationary, only 49% have adequate textbooks, 73% have no learning equipment and 69% have no materials.

### TEACHERS AND STUDENTS

More depressing are the prospects for many African schools achieving two other preconditions for quality - good teaching and learning. The quality of many of South Africa's 350 000 or so teachers is a major problem for disadvantaged schools.

The previous government made little attempt to encourage good teaching in black schools. Many teachers - themselves the products of poor schooling - are under-qualified, and the qualifications they do have are questionable. The government commissioned national teacher education audit was highly critical of most teacher colleges.

Teachers are attempting to improve their qualifications. A survey by the South African Institute for Distance Education in 1995 revealed that one in three teachers - 130 000 - were upgrading their qualifications on distance education courses. African teachers comprised 86% of these students. The survey found, however, that most courses were outdated and of 'exceptionally poor' quality - generally so bad that teachers emerged no better than they were before. In addition, the report predicts that the rapid expansion of distance courses would incur enormous costs to the government, which subsidises public courses and has to pay graduating teachers higher salaries.

Poorly qualified teachers impact on the educational experience of pupils. But that's not where the story ends. While many teachers are dedicated, many others are not: studies have found alarmingly high levels of absenteeism and lack of commitment among teachers, due to factors such as low morale, poor training and moonlighting to supplement salaries.

Lack of discipline among pupils in many African

schools is also chronic and reflects a wider societal breakdown. In its report in 1997, the Gender Equity Task Team in the national Department of Education described gender inequity and violence as rife at all levels of the education system, reflecting the endemic violence in the broader society.

The influence of the outside environment impacts on pupils in other ways too. For example, domestic problems in poor families, difficult living conditions, the obligation of pupils to do domestic duties, and the often total absence of a culture of learning: all contribute to the challenges pupils face.

None of these conditions are new to disadvantaged schools, their pupils and their teachers. The task of a democratic government is to tackle such problems coherently over time. New school policies attempt this difficult task, and have been widely accepted as sound. More serious is the inability of most provinces to implement policies and deliver improvements to schools.

### NEW POLICIES

The main post-apartheid education policy is the South African Schools Act, which came into effect in January 1997. In it, the government tries to improve education quality and ensure constitutional rights through two major thrusts. The first is devolving educational powers from the state and schools to parents, via governing bodies. The second is enabling schools (and parents) to exercise greater discipline over teachers and pupils.

These aims are described in terms of *partnerships between the state, schools, parents, teachers and pupils*, who are expected to work together in governing bodies to ensure the smooth and disciplined running of schools. A teachers' code of conduct was drawn up by the South African Council of Educators, and is enforced in the Act.

New governing bodies have a wide large range of responsibilities. Among them are running school finances, recommending appointments, deciding on admissions, language, and religious policies, and controlling the school's property and grounds. Governing bodies are also eligible for additional powers - including paying for services, buying textbooks, material and equipment, and deciding the extra-mural curriculum and choice of subjects - if they can show they have the necessary capacity.

Both thrusts were aimed primarily at African schools, where parental influence was marginal and poor management and lack of discipline are severe. However, governing bodies were only elected last year

In 1995, one in three teachers were on distance education courses. However, most courses were of 'exceptionally poor' quality.

and begin operating fully this year. They have also impacted minimally on 'middle class' schools, where governing bodies already enjoyed substantial powers and discipline is not generally a problem.

Two other major policies are worth mentioning. The 'Culture of Learning and Teaching Campaign' (Cult) is targeted mostly at poor schools. The campaign aims to instil key educational values - discipline, application, determination to succeed, mutual support and community ownership - into 'popular consciousness' in an effort to improve education.

More directly, Cult is trying to involve the private sector, unions, civil society, parents, teachers and learners in projects funded jointly with public and private money that, for example, build classrooms, refurbish schools, conduct capacity building, get teachers back into classrooms, combat crime or raise school funds. So far Cult has had minimal impact.

'Curriculum 2005', launched with Grade One pupils this year, is aimed at improving education quality in all schools. This policy subsumes traditional subjects into eight broad learning categories, and introduces new 'outcomes based' ways of learning, stressing the ability to think and work in groups over content and rote learning.

While there is wide agreement on the principles behind Curriculum 2005, there are grave doubts about whether teachers at poor schools will be able to deliver a totally new way of teaching. Of all the new policies except funding, however, Curriculum 2005 should have the most impact on formerly white, Indian and coloured schools where, over time, it is likely to revolutionise the curriculum.

### FORMERLY PRIVILEGED SCHOOLS

There has been a noticeable - and predictable - demographic shift in formerly privileged schools. Upward social aspirations have translated into educational musical chairs. Since the early 1990s, when state schools began admitting children of all races, formerly white, Indian and coloured state schools have turned into solidly middle-class institutions catering for anybody who can afford them.

Nobody wants to talk about it, but education observers have noticed an accompanying trend: many formerly coloured schools are filling up with African pupils, Indian schools with coloured pupils, and white schools with Indian pupils. White children especially, but not exclusively, are trekking into a burgeoning number of private schools.

The explanation is likely to be found in apartheid policies, which separated races geographically as well as generating huge income disparities - whites the richest followed by Indians, coloureds and Africans. African families were banished to outer city areas, while Indian and coloured families were parked in 'buffer' suburbs between townships and wealthy white suburbs. Presumably, such racial dynamics will decline as South Africa's rapidly transforming socio-economic profile stabilises, and residential areas begin to reflect income as opposed to race.

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The demographic shift in formerly privileged schools has enormous social, economic, and educational implications. Among other things, it is encouraging racial integration. Less public money and more children in middle class schools are placing pressure on resources, leading to fee hikes and a greater flow of private money into state schools. New policies and cultural integration are changing the nature of education. Tiny private schools are springing up everywhere.

### WHITHER THE GOOD SCHOOLS?

It could be argued that the state should try to protect middle-class schools in South Africa. It is, in fact, trying, though politically rather than financially, one hastens to add. Since poor schools, damaged by decades of deprivation and apartheid policies, are generally not producing well-qualified school leavers, and since the private sector is still tiny (although growing), it will be the established good schools of the state sector that will continue to provide the crucial skills South Africa needs.

Pragmatism persuaded the post-apartheid government to let schools charge fees, thereby allowing a flow of private money into education. And it was pragmatism, as much as constitutional obligations or the threat of court challenges, that persuaded the government to continue allowing state schools to employ additional teachers with private money obtained through fees.

This decision - vital to schools wanting to keep class sizes down and offer a range of subjects - was taken last year against strong opposition from within the government, as well as from teacher unions concerned about continuing education inequities and lack of union guarantees for privately employed teachers.

There are many arguments against class-based education systems, but they are a reality worldwide.



Parents send their children to the best schools they can afford. The desire for a good education, leading to greater economic opportunity, appears to be the main reason why black parents with enough money are taking their kids out of township schools and sending them - often long distances - to schools in formerly white, Indian and coloured suburbs.

The flight of many white and Indian kids to independent schools is more sinister, based at least partly on racism, perceptions of declining standards and fear of change. However, for most children independent education is still not an option. Parents are hard pressed to raise the money - fees at established schools range from R6 500 to R18 000 a year - and there are, in any case, not enough schools.

Mark Henning, national director of the Independent Schools Councils, points out that while the number of private schools has doubled to more than 1 000 in two years, most of the new schools are tiny. He estimates the number of places in the private sector to have risen by only around 10 000 - to 240 000 in all - and he doesn't think the sector will grow to beyond 3% of all schools. Thus, most middle class children, and virtually all poor children, will remain in state schools.

It is too early to judge the overall impact of political and demographic changes on educational quality in middle class state schools. However, education experts believe it varies between institutions and areas: some formerly Model C, Indian and coloured schools are thriving, others are not. Henning believes perceptions of declining standards in formerly privileged schools are largely unfounded, and that parents will "rally around, pay fees and work actively to make sure schools work".

### THE MATRIC DISASTER

Matric results are one measure of standards. Last year's 7,6% decline in the pass rate - from 54,7% in 1996 to 47,1% in 1997 - exacerbated fears that standards are dropping, including those in middle class schools. The proportion of pupils achieving university exemption was 12,4%, down from 15,6% in 1996.

But there were also more 'As' achieved than ever before, mostly from suburban schools, which implies that their standards are rising. It is more likely that the poor marks are a result of changes and improvements to the matric examinations process itself, that more 'As' reflect longstanding qualitative differences between poor and privileged schools, and that the matric results tell us little about what is going on in wealthy sub-

urban classrooms.

Glen Fisher, education and training director for the National Business Initiative, believes the 1997 results do not reflect a drop in standards but at last reflect real performance: the way the exams operated previously masked problems.

Henning notes that the suburban state schools coping the best are those in more affluent areas, which have been able to raise fees, retain good teachers, keep parents involved and employ staff with private funds to maintain class sizes and subject range. Such schools are confident that they can maintain standards.

### MORE STUDENTS, LESS TEACHERS

Schools are no longer drawing only from local communities. The concept of the neighbourhood school has broken down.

Some schools have been overwhelmed by increasing class sizes and difficulties collecting money. The greatest problems are being faced by schools where there are dwindling numbers of children from reasonably well-off homes, making it difficult to raise fees and rally parental support. Some schools, Fisher says, are also battling to cope with the pace of change in terms of student populations and staff turnover. Where change has been very rapid, schools have struggled to maintain stability and standards.

Changing student population has another implication, Fisher says. Since many black children in suburban schools are still travelling from townships, schools are no longer drawing only from local communities. The concept of the neighbourhood school has broken down. Schools are no longer servicing an identifiable population of parents who share the same values, which may cause problems as yet unknown.

The main pressures on formerly privileged schools in the past five or six years have been growing pupil numbers and, at a time of declining state funding, the related need for more resources.

Schools previously funded for classroom ratios of 25 or 30 pupils per teacher have had their teacher quotas cut back, in line with the state's intention to aim for ratios closer to 35 to one in secondary and 40 to one in primary schools. This aim was abandoned by the national Department of Education in December 1997, when provinces were given the responsibility for deciding classroom ratios.

Class sizes have been growing fairly rapidly in privileged state schools in the past decade. While there is little evidence to suggest that bigger classes lead inevitably to declining standards, large classes do place

teachers under considerable pressure. The choice has been either to employ teachers using private funds, or to cope with larger classes. The Schools Act urges schools to raise funds to improve educational quality by, among other things, employing additional teachers; indeed, says the education department, it is the duty of school governing bodies to do so.

The Department also points out that the classroom ratios are guidelines for teacher numbers at schools. Not all classes have to have the same number of learners: some subjects require small classes, while in others classes can appropriately be larger. The Department is encouraging neighbouring schools to combine classes in subjects taken by small numbers of pupils.

Formerly white, Indian and coloured schools lost a lot of good teachers in the Department's disastrous voluntary severance and redeployment scheme, which aimed, but failed, to achieve a balance of teacher numbers between privileged and poor schools.

However, there are many good teachers left in privileged schools, Henning argues, and with some flexibility in the teachers they can employ and the salaries they can pay, it remains possible for schools to keep or attract good teachers.

### NEW INTEGRATION

Resource requirements have been increased, in senior schools especially, by the need to support English second-language pupils coming from disadvantaged schools. This pressure is easing as more black children enter privileged schools at an earlier age. Some wealthy state schools have argued that, rather than standards dropping to accommodate disadvantaged students, the opposite has happened: teachers have had to become better.

After a rapid enrolment of black students in formerly white schools in the early 1990s, the proportion of African children seems now to be growing much more slowly and can be estimated at around 20 to 30%. Now at capacity and still drawing from local households, the government appears to accept that many middle-class schools appear to be covertly pursuing (illegal) admission policies that favour black kids whose parents can afford fees and share similar values.

This presents a huge dilemma for a government. On the one hand it is determined to pursue equity in education, on the other it is reluctant to interfere di-

rectly in schools, place further pressure on good state schools, or encourage a middle-class flight to the private sector.

Henning, too, discourages a large scale drift to private schools. He harbours grave doubts about the economic viability of many new independent schools which face huge expenses, and some of which may eventually have to close down. He also argues that wealthy state schools inherited assets worth millions of rands, sound infrastructures and strong governing bodies. By contrast, many small new private schools have just been built, lack basic resources such as libraries, and achieve uncertain standards.

It would appear, then, that despite the decline in funding, the major difficulties experienced by middle-class schools in the new South Africa have been transitional, and are easing. The government could clearly not continue funding policies radically skewed in favour of white pupils. While the drop in state funding is being softened

by rising school fees, it is likely to remain the single greatest threat to standards in suburban schools in the future.

### FUNDING

Lack of money is the major problem for all schools and all provinces. In the middle of last year Minister of Finance Trevor Manuel predicted an education over-spend of R2,2 billion in the 1997-98 financial year, fuelled primarily by teacher salaries. Duncan Hindle, a chief director of human resources in the national Department of Education, described over-spending on personnel in education as a major crisis for the government.

Important among the reasons for the crisis is an agreement made in the Education Labour Relations Council, which gave schools the right to employ teachers in line with pupil-ratio guidelines. This meant, firstly, that well staffed schools which lost teachers under the voluntary severance programme were able to employ new teachers up to their number entitlement - undermining possible savings from the 15 000 teachers shed in the programme.

This problem was exacerbated by the Supreme Court's Grove Primary School decision, which entitled schools to employ teachers of their choice and not accept teachers suggested for redeployment. Secondly, it enabled schools with high pupil to teacher ratios - African schools - to employ new teachers. This

shot up education spending, especially in provinces with large numbers of rural schools.

Hindle also describes the widespread "double parking" of teachers - where two teachers are employed in one post - caused by the use of substitute teachers, the large scale employment of teachers, and problems with redeploying excess teachers.

The provinces have been tied into the Council agreement, but do not receive sufficient funds to execute it. At the end of 1997, the provinces tried to stem spiralling staff costs by not renewing the contracts of tens of thousands of temporary teachers. However, they largely backed down in the face of union outrage and concern that many schools would open in January with too few teachers.

#### **A QUESTION OF EQUITY**

Salary problems are also perpetuating equity problems. Not only do privileged schools still have the best and most teachers per pupil, but those provinces favoured by the former government remain much better funded. Dr Mike Jarvis, director-general of education for KwaZulu-Natal, points out that the Western Cape receives twice as much money per pupil than KwaZulu-Natal. If the two provinces were funded in the same way, KwaZulu-Natal's education budget would grow by nearly R6 billion.

With 90% of education budgets being spent on teacher salaries (internationally the proportion is 80%), it has been impossible to begin adequately resourcing poor schools. To try to achieve greater equity, the department of education drafted 'national norms and standards' policies that, among many other things, encourage provincial departments to target schools in the poorest 40% of their populations for redress. It is likely that this policy, as with most others, will take a very long time to implement.

Policies aimed at improving education in poor schools (while not undermining wealthy state schools), lack of resources, and implementation problems have combined to ensure that South African state schooling has not changed much in the four years since the end of apartheid. African schools remain poor, chaotic and sub-standard, with government efforts to improve them hamstrung and likely to take decades rather than years.

Meanwhile, formerly white, Indian and coloured schools - despite racial changes and resources pressures - have mostly remained havens of reasonable education for the middle classes. There is little evidence to suggest that their standards are declining, though the potential for decline exists. It will be up to the state, teachers, parents and pupils to work together to ensure that the schools producing the bulk of South Africa's skills remain able to do so in the future. ■

# WHY EDUCATION POLICIES FAIL

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The recent matric failures are a direct result of bad policy. This article reviews, in general terms, the reasons underlying the failure of education policy since 1994.

In any respectable democracy, the failure of 294 254 matriculants (52,9% of the total of 556 246 candidates) would immediately lead to political costs for the government in power. In some states, the political head might resign in anticipation of being fired; in others, immediate cabinet reshuffles might result; and in many, urgent commissions of inquiry might be launched. Yet in South Africa, the results of the 1997 matriculants seemed only to reinforce the state of government.

A senior advisor to the Minister of Education cynically stated that he expected the decline to continue in subsequent years, until the first graduates of Curriculum 2005 emerge. The MEC for Education in Gauteng insisted that 'systemic changes' were necessary before we could expect changes in the matriculation results.

While political appointees can be expected to defend their jobs (rather than face unemployment in the real world), the 1997 matriculation results merely mirror the unmitigated failure of education policies since 1994; a failure that cannot simply be dismissed on the basis of history, apartheid, resources or by that most opportunistic of arguments, 'change cannot happen overnight'.

## POLICY BY DECLARATION

The failure of education policy is a direct result of the over-investment of the state in the political symbolism of policy rather than its practical implementation. Social policy carries a broader symbolic significance than its simple technocratic ends; indeed, all states use policy for purposes of legitimation. However, since 1994 it has been clear that the declaration of education policy was almost always driven by political imperatives to the exclusion of practical considerations. Two examples from curriculum policy are illustrative.

Firstly, consider the cleansing of apartheid syllabuses

shortly after Minister Bengu's appointment in late 1994: within three months, a swift review of more than 100 apartheid syllabuses was completed. The end result? While cosmetic changes were made to some syllabuses, most remained unchanged, and not a single intervention was made to support or enable these minor changes to be realised in the classroom (Jansen, 1998a).

The political imperative to change one of the foundations of racist, colonial ideology - the apartheid curriculum - was understandable. This task gained short-term political recognition for a Ministry broadly chastised in the aftermath of the elections for non-delivery. But all this passed without any consequences for the quality of teaching and learning in schools.

Secondly, consider the contentious introduction of Curriculum 2005 in Grade 1 classrooms in 1998. This highly sophisticated curriculum, based on first-world assumptions about well-resourced classrooms and highly qualified teachers, is being introduced without the training and resources needed to enable such a curriculum to be implemented in classrooms (Jansen, 1998b).

The belated recognition by the national Department of Education that far more time and resources were needed to give this curriculum a chance led to a scaling down of implementation. Originally, both Grades 1 and 7 were targeted for 1998 implementation. But at the same time, officials could not politically afford to appear to be backing-down on this policy in the face of widespread criticism, and so Outcomes Based Education (OBE) for Grade 1 learners remains mandated.

Again, understandable political considerations enforce an unworkable policy, even though the implementation of Curriculum 2005 is likely to deepen inequalities between white, privileged schools and black, under-resourced schools (Greenstein, 1997).

The problem of over-investment in the politics of

policy is exacerbated by the fact that senior education bureaucrats and ministerial advisers have little experience of what happens inside classrooms and how schools can work to negate policy intentions. Indeed, several of these key personnel have their primary experience in the civil service, pre-school education, trade unionism, non-governmental organisations, and as academics in universities . . . but not as teachers in real schools.

Understandably, many of the more senior personnel in the first-wave of civil service employment after apartheid are largely (though not exclusively) political appointees, not education experts. The collective mindset of these inexperienced personnel has resulted in what I like to call policy by declaration; that is, a naive belief that the mere promulgation of policy (in the form of discussion documents, Green Papers, White Papers etc.) constitutes change. There is little understanding of "the routes by which [policy] influence is exerted or the kinds and degrees of influence that bear on classroom practice" (Knapp, 1997).

#### PERSONNEL PROBLEMS

This general lack of attention to policy implementation strategies was compounded by poorly managed policy decisions, which created significant turbulence in the education system during 1997. In fact, part of the explanation for the disastrous matriculation results was the turbulence which the state created in schools last year.

Whether it was the cleaners' strike in KwaZulu-Natal or the teacher redeployment crisis in Mpumalanga, the legal crisis on teacher employment in the Western Cape or the temporary teachers' crisis throughout the country, it was clear that personnel policy decisions were consistently undermined by inadequate political management. Policy, rather than crafting consensus or yielding more effective educational outputs, continues to undermine the learning environment in many schools, including those well beyond the ambit of the typical black, disadvantaged school.

As this article is being written, many KwaZulu-Natal schools are closed on account of an angry reaction by parents and their associations to the latest "staffing guidelines for mainstream schools," which dramatically reduces the number of teachers allowed in public institutions (Department of Education, 1998). The declaration of a cold statistic on how many teachers to employ given a certain 'learner range' (enrolment num-

bers) demonstrates that officials understand neither how learners move within education institutions nor that such ratios cannot be predetermined by classroom or subject, given racialised residential patterns.

In short, white schools insisting on enrolling students from the adjacent residential areas, not only keep their schools mainly white, but also use the additional revenue from hiked-up school fees and other parental contributions to increase the gap between privileged and disadvantaged schools. Yet the policy insists that the net effect of this 'redeployment' is to benefit marginalised schools. The credulity factor in policy is staggering.

It is common knowledge that in many, if not most, black high schools, there will be little formal teaching in the first term, no teaching in the final term and sporadic teaching episodes in between.

#### THE MAGISTER CHAOS

A further exacerbating factor is the nature of the policy environment within which education officials work. It does not take more than one hour's visit to Magister Building in Schoeman Street, Pretoria (the seat of education policy formulation) to realise that the bureaucrats in that building function under enormous political and

logistical pressures, with ostensible health consequences for many of the persons involved.

Crisis management pervades these offices: a senior official, in the middle of working on curriculum policy, is instructed to rush to Port Elizabeth or Durban as last-minute substitute for the Minister of Education. Another senior official frantically calls together a group of outsiders in late November 1997 for one week of separation from work and loved ones to prepare education materials for the new Curriculum 2005, weeks away from implementation in January 1998. Needless to say, the quality of these materials is highly questionable. And another official works through the night for months on end to meet a parliamentary deadline for one of the numerous White Papers to emerge from Magister.

Ordinary bureaucrats face constant pressure from political heads to respond to the multiple crises pervading the education system, without the long-term policy deliberation essential for deeper transformation in the nation's schools. Time is managed poorly and politically.

#### A LACK OF INTERVENTION

While it is true that many problems in education can be explained by the over-investment in the political processes underpinning policy, it is the lack of politi-

cal intervention in the current chaos in schools which deepens this crisis.

It is common knowledge that in many, if not most, black high schools, there will be little formal teaching in the first term, no teaching in the final term and sporadic teaching episodes in between. The first term is typically absorbed in deciding on staffing complements, finalising timetables, organising sporting events, waiting for essential resources (like textbooks and stationery), dealing with admissions crises (too many students show up for too few places) and the like. The final term is devoted to examinations and the preceding weeks serve as unofficial time-off for students.

Yet there are few, if any, political leaders who are likely to insist on full-time attendance (let alone teaching and learning) by teachers and learners for every day of the school year. To be sure, the odd political speech or sporadic 'back-to-school' pronouncement might occur, but there are no political mechanisms enforced to ensure that teachers, as state employees, meet their instructional obligations.

It could, of course, be speculated as to why such intervention is not forthcoming - such as the role of powerful teacher unions which have not put their collective weight behind this issue, or the inability of the state to access many black urban and rural schools which have developed an almost impenetrable culture of resistance to inspectorial or supervisory action since the student uprisings of the 1970s.

The point is that unless there is sustained, high-level political authority which insists that state employees teach or face specified consequences and that learners remain in school or face some punitive

action (such as a fine to parents whose children drift through city centres in mid-morning on a regular school day), then we cannot expect the quality of black education to improve in the next century.

It should be clear that it is both impossible and undesirable to have policy which is devoid of politics. Political commitment is an inescapable component of policy formulation and implementation. States everywhere invest political values and choices through policy.

However, when the short-term political gains from elaborate policy declaration override concerns about making such policies work for those most marginalised in the education system, then the policy needs to be queried. In this context, the argument that only money is required to resolve our educational problems is a dangerous miscalculation of the nature of education crisis, and bedevils possible resolutions. ■

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# THE TINKLE OF TERTIARY TILLS: PRIVATE UNIVERSITIES FOR SOUTH AFRICA?

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The present system of public tertiary education is under assault by private sector rivals, who have far more market savvy. De-racialised and propelled on a wave of indirect subsidisation, are private universities finally emerging in South Africa?

A private tertiary sector has emerged steadily in the last few years, as universities and technikons no longer have the monopoly on delivering tuition for tertiary degrees and diplomas. This process has taken place in the midst of a difficult seven-year period of legislative and policy lacunae in the run-up to the new Higher Education Act of 1997.

The Act now finally grants a substantial and regulated place to private initiatives. For example, they are collectively represented on the Council for Higher Education and will be allowed to register formally with the Education Department.

At this stage, private initiatives have yet to develop into a fully-fledged private university system with highly credible research and tuition facilities such as that of the USA. Instead, the private sector, very astutely in this incipient phase, has attached itself to the beleaguered and heavily state-subsidised distance education provider, Unisa, and offers full-time and part-time tuition for its degrees.

Unisa finds itself in this situation because of its historically uneven quality and low student success rate, which have been heavily critiqued by independent reviewers. This new association allows the private sector to benefit from state-subsidised education, which absorbs the bulk of the real costs of research, course development, examination and teaching materials.

Initially, these attachments were informal, but with the publishing of the Higher Education Bill, the private sector and Unisa have now entered into formal agreements. These were trumpeted by large advertisements in the media as being in line with the intentions of the new Higher Education Act.

All the present private groups under the umbrella of Educor (Midrand Campus and Damelin) and Advantech (Varsity College) offer tuition only - as a result they take little responsibility for the content and hence costs of the degree processes. Some observers argue that this comfortable symbiosis is tantamount to state-subsidised privatisation, with existing tertiary distance education providing a framework for private sector initiative.

Support for these initiatives from government can be seen in many ways, from the place given to private education in the Act to the symbolic attendance of the Minister of Education, Sibusiso Bengu, at Midrand Campus's degree awarding ceremony in 1996.

Some advocates of private education, such as the chairperson of the National Commission for Higher Education, Prof. Jairam Reddy, have gone as far as to advocate the possibility of student subsidy being given directly to students, so that their choices are not confined to the state sector alone. This would amount to a situation similar to that in the United States, where disadvantaged students can obtain federal funding while attending private institutions.

To add to their credibility, some of the private sector institutions offer international qualifications from institutions in the United Kingdom, USA and Australia. In the area of technical and commercial diplomas normally offered by technikons, the private initiatives have tied themselves to a host of certificate providers, both local and international, offering everything from Institute of Bankers exams to cutting-edge qualifications in Information Technology.

Recent offerings include credible diplomas in

journalism, previously the preserve of technikons. Even the state sector is now mimicking private sector initiatives: the offer of an MBA from the University of Wales by a group of technikons is indication of the extent to which the desire for credibility and international standing has gone.

Educor, the largest private grouping, boasts a student population of 330 000 in its various educational endeavours. Recent reports suggest that figures for matric correspondence courses at Damelin (the longest established and most significant of the Educor subsidiary companies) are up; they are thought to be growing in the face of the poor 1997 results.

Educational failure in the state system is clearly a fertile breeding ground for private sector initiative. Some private initiatives go so far as to boast of "living on state failure."

Few educational service sectors have seen such rapid growth in the last two years. The new private tertiary initiatives have moved from the periphery of tertiary education into the mainstream in a very short time. Educor is listed on the JSE and its shares have produced good returns. There is clearly a great deal of money to be made.

The state-subsidised universities adopted a rhetoric of privatisation nearly a decade ago, driven by the transformation of tertiary education on a world-wide scale, as well as the specific demands of South Africa's transformation. What they called for was the promotion of 'income-generating' activities at universities, in the form of contract consultancy activities, outside research funding and working relationships with commerce, industry and government.

The first of these - contract consultancy - is an anarchic and minimally regulated activity in which academics are involved by dint of expertise, and bring unpredictable advantages and revenue sources to the universities per se. The others are more clearly regulated by the universities and can prove to be earners for research purposes, but seldom provide substantial cross-subsidy to central teaching activity.

Pressure has been put on areas of the university no longer attracting subsidy-earning and fee-paying students: some sections and departments face closure or drastic downsizing. Simultaneously, fees have become increasingly important as government subsidy diminishes. Some solutions have been sought by the 'outsourcing' of administrative services, where the privatisation of services has been accomplished either by being put out to tender or left to ad hoc purchasing decisions on an 'as needed' basis.

Some services have attempted to become income-generating activities in themselves, e.g. print units. In some institutions, the property of the university has been handed over to private management groups who manage and maintain the physical infrastructure and allocation of space for a fee.

The object is to establish an economic use (ie. rent) for property, facilities and space at market-related value for educational and research endeavour - in other words, to bring the 'discipline of the market' to the educational process.

Previously, property costs were decided by administrative fiat and subsidy formula. All of these measures have been directed towards downsizing and cost-cutting, which will allow for the survival of the institutions in the face of decreasing state financial commitment. In effect, the ground is being prepared for privatisation.

The trend for universities to increase their potential to earn income through fees rather than subsidy, is given impetus by the new Higher Education Act. There is, however, no provision for the full privatisation of existing state-subsidised universities. The state could, in fact, treat some of the universities and technikons as it has many other autonomous parastatals and sell them off as assets.

The arrangements which Unisa is currently making with the private sector would certainly accord with such a possibility. Many such partnerships already cut across state services, from welfare and health to defence.

While research is the prized activity of all universities, the basic activity of both universities and technikons is, and will remain, teaching. In this central activity the private sector looks set to present a serious challenge to them. This will affect their ability to earn fees from tuition, as the pool of fee-paying students is mopped up by the private sector. The market for degrees and certificates is being effectively deregulated.

Although private sector efforts may seem limited at this time, the example of Midrand Campus, which has taken just six years to match the student numbers of long-established institutions such as Rhodes University and the University of Natal (Pietermaritzburg), both in existence for most of this century, gives one a sense of the growing potential.

In the initial period of their development, private institutions capitalised on the 'white flight' factor, as the difficulties of transition manifested themselves in the form of riots related to a faltering interim financial aid scheme for students who needed support.

**T**he market for degrees and certificates is being effectively deregulated.



They are now able to draw on a non-racial aspirant market that seeks these new institutions for a variety of reasons, from the offer of free gym club membership, to payment by instalments (which few of the state funded universities have been able to implement), to the small staff-student ratios which permit quality tuition.

No private sector initiatives can survive in a market that is defined as anything other than non-racial and make reasonable profits. This was discovered by South Africa's private schools 17 years ago when many of them desperately opened their doors as student numbers declined.

A highly refined sense of the emerging market underpinned the capital outlays and the risk factors involved in the establishment of this private sector. Traditional university management tends to portray this competition as preying on social fears. This is a misconception. In fact, the social profile of those availing themselves of the private tertiary sector does not reflect this.

In addition, the marketing strategies of the new competition - for example, a discounting of tuition fees for academic success and 75% discounts to students in leadership positions at schools - simply outshine anything which the older institutions can or will offer. Simple, practical measures in the market place have been the basis of their success. The difficulties being faced by the traditional universities have provided a perfect context.

In addition to attaching itself to Unisa, the private sector has strategically employed consultants and academics from the state-subsidised institutions to teach and develop their courses. They have provided lucrative avenues for post-graduates to tutor, which far outstrip the available offers by the traditional universities.

In certain courses, tuition is dominated by full-time academics from the traditional universities trying to find ways of supplementing their inadequate incomes. This has sometimes created situations of embarrassingly strong competition. Recently, the management of one university discovered that a competing private Information Technology degree with better offerings was staffed substantially by the university's own academics.

There are changes in the nature of the employment market which do not allow universities to sustain a monopoly on supplying it. This is particularly true of Information Technology, where the ability to retool is critical and rapid changes may produce degree structures that overnight look redundant. Declining state subsidy and the necessary capital outlays are not going to provide a match to private sector initiative.

This is happening on a world-wide scale; many universities in the USA, for example, have been forced to contract out the teaching of certain technology courses to private initiatives which run degree courses by distance education. Universities simply offer their names to the degree - thus becoming reduced to the sale of status certificates.

Interestingly, Educor has also moved into the field of personnel placement. I would suggest that an involvement in tertiary educational activities and human resource initiatives by the private sector could see it providing for a market which is steadily growing more suspicious of the state-subsidised university.

The demands on the education budget in South Africa are likely to be tremendous in the future. Universities, which depend heavily on state subsidy and underfunded students, are going to find it increasingly difficult to capture the market of fee-paying students which the Higher Education Act directs them to pursue. These students are likely, increasingly, to vote with their feet in the direction of better (private) educational services and environments.

This reality is already starkly evident in some universities, but it is a challenge which the historically 'privileged' and 'expensive' institutions are now going to face along with the rest. They are in competition with what amounts to state-subsidised privatisation. They will need state support to survive the changing market or face the future as academic ghettos.

There is, in fact, very little tertiary activity not subsidised by the state. The nature of subsidy is simply less direct in the case of the emerging private sector.

Strategies to redefine the funding basis of universities and technikons, "proving that they are worth funding" (in the words of Trevor Coombes, Deputy Director General of Education), are going to be a constant preoccupation of their administrations for many years to come. We await the development of fully privatised universities in South Africa.

The announcement in January by Educor that it is exploring the possibility of a fully established and registered private university confirms this. Adding this to the not unrealistic boast from the Educor management, that the established Universities were very keen to establish relationships, reveals another facet to the university dilemma.

What Educor has understood and developed is a newly emerging market. What the established universities are faced with is that they are neither private nor public and do not know which way they can go. ■

The marketing strategies of the new competition simply outshine anything the older institutions can offer.

# COMPETING INTERESTS OR MISUNDERSTOOD REALITIES? AFFIRMATION ACTION AND THE UNIVERSITY OF DURBAN-WESTVILLE

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Many of the staff of the University of Durban-Westville were prominent in the struggle against apartheid. There is now pressure on the staff, comprised mainly of Indians, to make way for the advancement of African people. How is this delicate issue to be resolved?

**T**he debate about affirmative action and related issues has intensified since 1995, with the government providing the legislative framework for these deliberations. Proposed and enacted legislation, including the Employment Equity Bill (which is currently before Parliament), the Transformation of Higher Education Act of 1997, the Basic Conditions of Employment Act of 1997, and the draft white paper on Affirmative Action in the Public Service, has been hotly debated.

While the pre-1995 debate on affirmative action tended to be overly sophisticated, the legislative framework has ensured that such issues are now debated on the ground. Affirmative action is essentially about creating access and equity for groups in society whose entry and upward mobility has been hampered by either prescription or omission.

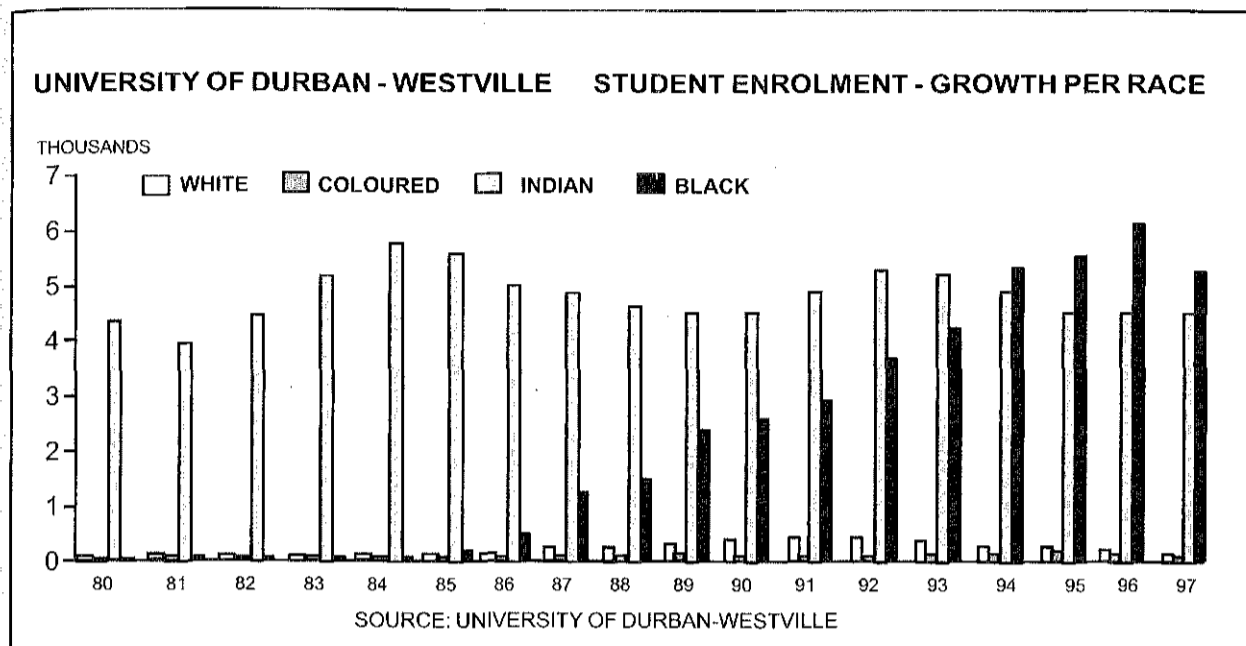
The South African predicament of legislated racial discrimination, and the tunnel-vision mentality that it bred on the part of both oppressor and oppressed, throws up some interesting contradictions. The focus of this paper is the predicament of the University of Durban-Westville (UDW) where there is the perception that Indians and Africans, as hitherto oppressed black groups, have competing interests for affirmation at the University. These interests manifest themselves at two levels, which are the composition of the student body and the racial diversity of the University's staff.

## A 'STRUGGLE' UNIVERSITY

The dilemma facing the University may be better understood through reference to its earlier history and the conditions which gave rise to the tensions now apparent. The University had its origins in apartheid's grand ideology of separate development. People of Indian origin were classified an 'Asiatic' race and were compelled to accept the social placement that went with such identification. The enrolment of UDW was restricted to students of Indian origin. The idea was to create an educated elite who would cater for the needs of 'their' people.

Progressive forces within the Indian community urged a boycott of the institution, but gradually came to accept that it could be used as a terrain of struggle against the apartheid state. The University has, for the greater part of its existence, been a hotbed of radical activism, accommodating political strains as diverse as the Black Consciousness and the Congress Movements.

Admission of students from other race groups, which occurred in the rarest of instances, was by special permission of the Minister of Home Affairs. Up until the mid-1980s, the student body remained almost entirely Indian, with no African students and only a handful of those classified white or coloured. The table reflects the growth per race group of first-entry students between 1980 and 1996, showing the rapid rise in the enrolment of African students after 1985.



This table suggests that, while the University was able to meet its access objectives for students for the most part, its diversity profile in terms of staffing lagged behind. This inability to either attract, accommodate, or retain suitable African staff has been the cause of some underlying tensions which are not readily acknowledged by the University community.

When it comes to staff, the academic sector has been historically dominated by whites and a growing number of Indians who were able to acquire higher degrees. At the administrative and service level, Indians enjoyed preferential access to employment, but were denied access to positions at the managerial or supervisory level.

Given this background, a significant number of Indians employed by the University are of the belief that national liberation means that they, whose upward mobility has been hampered by restrictive legislation and racist policy in the past, now need to be affirmed. On the other hand, a critical eye is being cast on the University's inability to engage sufficiently in corrective measures to redress the racial inequities created by the previous order. In other words, the historic 'Indian privilege' of employment at UDW must give way to a staff make-up which is sensitive to the demographic profile of the region and the nation.

While the University has made significant strides in altering its 'Indian' culture (the protection of which was the singular mission of the University council in earlier times), it still has a long way to go. In the academic sector, it has managed to attract a fair number of African scholars to its staff, including both returning exiles and those from other parts of the continent. Relying on the open market to determine who

is suitable for employment appears to have met the twin objectives of redress and academic excellence.

### TENSIONS IN HIRING

Suspensions do abound that, despite the University's commitment to affirmative action, African candidates do not necessarily have an edge, particularly those competing for junior appointments. This is generally attributed to the composition of selection committees, which are usually overwhelmingly Indian. While prejudice is not necessarily suggested, it is widely believed that a greater empathy for African candidates would be forthcoming if there were a larger number of African interviewers on the selection panel.

The selection committees are usually composed of representatives of each of the University constituencies, the dean of the relevant faculty, members of the department in which the vacancy exists, and a non-voting member of the Human Resources Department. In the event of a more senior appointment, an external expert from the field and senior management may be represented.

In the administrative sector, where the attainment of a stronger diversity profile has been much slower, a measure of resentment may be discerned among a significant proportion of the University's Indian staff. It is believed that affirmative action is intended to allow Africans to enter employment higher up the ladder, thus denying those Indians who have been in the system the opportunity to progress.

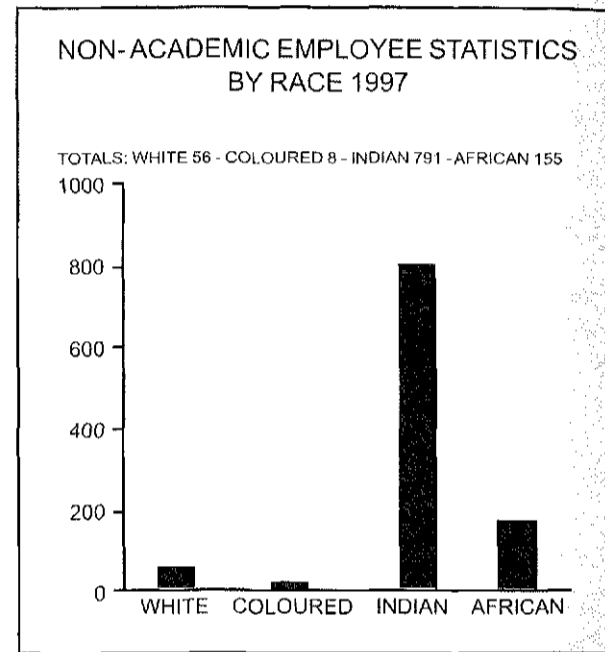
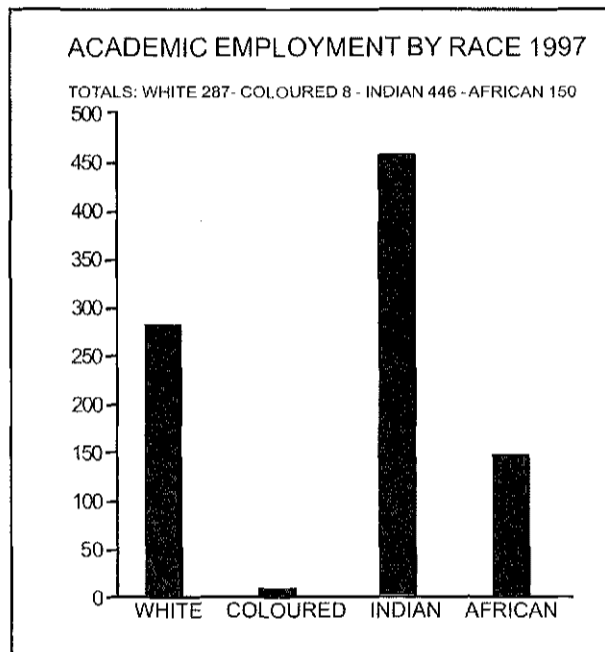
This perception has not been subjected to any critical scrutiny, and therefore creates fertile ground for negative attitudes towards corrective action to develop. Promotion based purely on seniority is a form of en-

titlement that cannot be acceptable at the University, or in any other environment. Competition for upward mobility has been misunderstood as a discriminatory practice.

In any event, the entry of Africans into the administrative sector generally has been so minuscule that it is statistically insignificant. Where vacancies have arisen in senior positions in the administrative sector over the past five years, they have either been filled by

optimally utilised to create spaces for affirmative action. In the end, around 70 further persons were taken onto the University payroll. The greater part of this number were junior Indian administrative staff, who were deemed 'ad-hoc' appointees, contracted for periods of several years.

It emerged that the University was in breach of the provisions of the Labour Relations Act of 1995, due to the practice of continually renewing the contracts of



internal candidates or non-African appointees from outside.

The University cannot be accused of bad faith in this regard as, in every instance, the accepted process of advertising vacancies in widely available media was adhered to. Suitable African candidates were not available to fill these positions for a variety of reasons, ranging from a restricted pool of candidates to university scales not being able to compete with the appeal of the private sector, where such individuals are in high demand. The table below reflects University employment by race and gender in all categories.

### RETRENCHMENTS

In 1997, the University embarked on a process of awarding voluntary severance packages (VSP) to staff in the administrative sector. A total of 245 persons availed themselves of this opportunity. The bulk of recipients were Indians with a small number of whites and Africans. The Africans were largely from the Campus Protections Services.

The VSP system, although made available at tremendous financial cost to the University, was not

temporary workers. The University was therefore forced to employ the workers who fell into this category. As a result, it appears that human resource development policy at the University has been wanting. Indeed, this is the one area in which the University must develop greater foresight if its affirmative action priorities are to be achieved.

There are a number of challenges facing the Human Resources Department ranging from its structure and composition, to its vision for training and development. One of the most startling shortcomings in this regard is the lack of an affirmative action officer to drive the social redress policy.

### BROAD TRANSFORMATION FORUM

The University management has hitherto not grappled with the issue of affirmative action in any tangible way, despite the commitment in its employment code to give preference to persons who have not had previous access to university employment. This is despite a plethora of documentation, fora and debate spanning more than a decade, in which a number of University constituencies have had intensive input.

Among these is the Broad Transformation Forum,

which was spearheaded by the staff of the Combined Staff Association (COMSA) early in the decade. Fora of this type have floundered, given the variety of difficulties that have plagued the institution in recent years.

The recent appointment of a vice chancellor for a five-year term has allowed for a fair measure of stability to return to the University, and there is now a firm commitment to meet the transformatory objectives identified earlier this decade. Vital leadership on transformation is now likely, given the Vice-Chancellor's articulation of an 18 month timetable for meeting far-reaching transformation objectives.

It is expected that a Transformation Forum, which is identified as an important vehicle to implement the provisions of the Higher Education Act of 1997, will tackle a range of issues that impinge on transformation. This Forum will, however, not be in a position to address all of the University's concerns around affirmative action and it is vital that other formations emerge with the specific agenda of transforming the University's diversity profile.

If the University does not move fast enough to address affirmative action issues, it will be caught off guard by the provisions of the Employment Equity Bill, which is expected to be piloted through the legislature this year.

Given the slow pace of transformation at the University, it is apparent that the affirmative action dimension of UDW's transformation may well be a more traumatic process than many imagine. It will be difficult to balance the fears and concerns of existing, particularly Indian, staff, with the tremendous pressures on the University to meet the challenges of access and equity.

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# SOLIDARITY AND SURVIVAL: MIGRANT COMMUNITIES IN SOUTH AFRICA

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Are migrants forming communities of their own in South Africa? Recent studies paint a picture of foreign young men banding together against a hostile environment, but eager to return home at the earliest opportunity.

**W**hile increased immigration has attracted much academic and public attention in recent years, little research has been directed at understanding the dynamics of community establishment and identity formation within new migrant populations. Given that South Africa is newly aware of the relevance of group identity to social harmony, this represents a significant oversight.

This short paper seeks to develop our understanding of how foreign communities develop, function and refer to themselves, drawing on results of a recent survey undertaken by the Centre for Southern African Studies (CSAS). This involved interviews with thirty-nine migrants in the Gauteng region over a period of four months, from May-August 1996.

Studies by other researchers in South Africa were also utilised, including research conducted by Maxine Reitzes (Centre for Policy Studies); Alan Morris (University of the Witwatersrand), the Cape Town Refugee Forum, Sechaba Consultants and Fion de Vletter and Associates (the latter two being conducted in conjunction with the IDASA Southern African Migration Project). The experience of migrants as individuals and as community members forms the backbone of the paper.

The relevance of community membership to social identity has been debated at length in identity theory. Many theorists view engagement and investment in communities as a central factor in identity formation (Gold, 1992; Nielson, 1985; Nagel, 1986). While the systems of internalisation and identification with a larger group are obviously significant, the processes whereby they are achieved are unclear.

For discussion purposes, the establishment of communities and the subsequent emergence of commu-

nity identities are understood here in terms of a number of broad processes: the formation of communities through networking, the sharing of common ground or the intentional creation of community space, and community consolidation.

## NETWORKING

Networking, defined here as influence and encouragement between home and satellite communities, is central to the success of community formation and community consolidation endeavours in an adopted country.

For years international and local researchers have been occupied with the notion of international networking as a precondition for migration, and in the Southern African region there appears to be some evidence of a link between networking and (particularly) illegal migration.

While this research is as yet inconclusive, the interviews conducted by the CSAS appear to corroborate the notion that networking facilitates, even increases, migration. Of the sample surveyed in this study, 62% of respondents had prior contacts in South Africa and had been informed about the easiest ways to enter the country and to find employment.

Many had maintained their interactions with their earlier contacts and clear patterns of symbiotic relationships were evident in the interviews. For some, the contacts who had arrived before them had come to assume figures of authority, and gave some structure to an otherwise ambiguous community formation.

As one person said: "He [his contact] is now my father and I am his son. We have become a family". Prior network relationships frequently remain impor-

tant, and may evolve into close inter-personal dependencies.

Given that the sample represented a mix of asylum seekers and economic migrants, however, not all the respondents saw prior connection to have been critical to their migration. As one respondent noted:

*"I knew some people who came here a long time ago, but not that they could help me. With or without knowing them I would have come here anyway because I was running away from war".*

### COMMUNITY BUILDING

Community formation is a process in which a number of parameters are unclear. The construction of collective identities has, for example, been closely bound to territoriality. What does this mean for the emergence of new identities in migrant communities? How important is proximity for identity formation? How significant are elements of family, religion, traditional leadership and networking? What impact does xenophobia and ethnic-targeting have on migrants, and on their long-term aspirations as individuals and communities?

One fact that emerges repeatedly in surveys of migrant communities is the development of ethnic enclaves; Mozambicans in Alexandra, Nigerians and Congolese in Johannesburg's inner-city areas etc.

In Cape Town groupings of 'foreigners' are increasingly evident in informal settlements such as Imizamoyethu and Marconi Beam (currently the research focus of an IDASA study).

In the CSAS survey, seventy-two percent of respondents confirmed that they had maintained a high level of contact with their fellow nationals. Of these, almost two-thirds shared accommodation with migrants from their home countries. Although the CSAS sample is relatively small, it is interesting to note that the nationalities that appeared most cohesive were those from Mozambique and Zimbabwe, i.e. historically established groups.

It appears, further, that the least cohesive communities seem to be those from further afield; Cameroon, Sierra Leone and Senegal in particular. One respondent noted, in response to a question about the amount of interaction he maintained with fellow nationals: *"Not very much, as there is not yet much associations as we don't know each other well yet".*

A respondent from Sierra Leone commented: *"I think there are others from my country in my area but I have so far seen few of them because I am always busy... and they are involved with their business".*

As the first comment suggests, community cohesiveness is something that develops over time. What is also possible is that the reason for migration is a factor, hitherto unexplored, in the degree of cohesiveness that does develop. Gold (1992) and others have suggested that refugee communities are among the closest-knit, because the survival of the individual depends to a large extent on the community.

Where migration is more of an individual choice, as it appears to be currently in South Africa in migrants originating from north and west Africa, the need for community solidarity may be somewhat reduced. On the other hand, xenophobic reactions by South Africans reluctant to witness the assimilation of foreigners into South African society arguably provides an inducement for these individuals to form supporting networks.

International theories relating to community building within ethnic enclaves frequently emphasize the roles of traditional systems - the family and religion, for example - in community establishment and the emergence of ethnic identities.

Seventy-two percent of respondents confirmed that they had maintained a high level of contact with their fellow nationals. Of these, almost two thirds shared accommodation with migrants from their home countries.

### A YOUNG MAN'S GAME

These features are problematic in the South African context because, as gender profiles have revealed, populations of both economic migrants and asylum seekers in this country are consistently dominated by males.

Statistics indicate a predominance of young males between the ages of 18 and 30. The male to female ratio is grossly disproportionate, with females constituting less than one percent of the total refugee population in Cape Town, and estimated at less than five percent of all migrants who have arrived since 1990.

Very little family migration or family reunification is evident, both in anecdotal experience and in official figures. The logistical difficulties associated with acquiring accurate numbers and ratios mean that the extent of the male dominance is difficult to determine accurately, but it is believed to be considerable.

This means that the traditional routes of community establishment for foreign groups, through inter-family relations and kinship structures, are largely inappropriate in the South African context, raising serious questions about the long-term viability and legitimacy of emerging community structures.

## MUTUAL DEPENDENCIES

For the purposes of short-term survival, the relationships that do appear to be forming within foreign ethnic groups are, however, believed to be compelling enough to be considered viable communities. They are characterized by patterns of patronage and symbiotic relations that are not unlike the dependencies created in traditional family structures, and the level of mutual enterprise and support between members appears to be significant.

Some comments from the CSAS interviews substantiate this:

*"We are interacting in many ways".*

*"My fellow country-men do help each other financially if one has no money for rent that month".*

*"We have got networks to protect each other".*

*"If you go to a foreign country you can easily find someone who's from your country. There is a lot of solidarity. When you find one Zairian he likes to present you to others".*

Yet practical problems stand in the way of community development. Of these the problem of time is paramount:

**Q:** Do you have a lot to do with your countrymen?

**A:** *"Yes, but to a very lesser extent because we all have very little time to relax or take a leisure walk or some kind of gatherings we would normally do in Mozambique...".*

*"One does not have a resting day, even on week ends you must be working".*

*"We have no time to meet, and enjoy ourselves like we would do in Mozambique".*

Another is the physical threat derived, ironically, from physical proximity:

*"We cannot stay together all the time because the police and the South African robbers know where we are and then there is trouble".*

## LONE WOLVES

Not all migrants interviewed saw themselves as part of a community of fellow-countrymen. Many were disinclined to join collectivities, others found the constraints of time and distance to be insurmountable

Some, comparing the communities they had left behind with the potential replacements here saw these as laughable. For example:

*"In this society you have no brother's keeper. Nigerians move in flock [sic]. They move together. They try to come close. They try to have family meetings, house meetings, so you can't stay alone. It is such a*

*setup that there are family influences. You can hardly do anything alone".*

For others, the ascriptive ties available in South Africa appear to be more cosmetic than meaningful. At the end of the day, for many, it was a challenge of every person for themselves:

*"In South Africa life is difficult if you are a foreigner because every day you must see to it that you do something that can at least bring some money into your pockets, otherwise you will suffer because no one will feed you or pay the rent for you.... You do not use days like weekends and holidays for leisure and relaxation".*

A second migrant concurred:

*"Life here is difficult because in order to live one has to always have enough money to buy food and other basic needs. Even if you are sick you can still live in Malawi but in South Africa if you are sick it means you do not eat because there is no one to work for you or give you food without you doing any job for him".*

## RECEPTION BY SOUTH AFRICANS

In almost all survey work undertaken into migrant experiences in South Africa, a common theme is the negative response that immigrants have experienced from South Africans. This is received with understandable anger, given that the anti-apartheid struggle was supported by many of these people in the past.

*"During the apartheid system in South Africa each and every Sunday we used to receive a lot of South Africans running away from their bad government. We have never treated them like they do to us".*

The emergence of xenophobia in this country has been fueled by media reports, and particularly by the persistent linking of migrants with crime, though this is largely unsubstantiated. Stereotypes of national vices: drug running on the part of Nigerians and money laundering by Zambians etc. are common vehicles for fueling xenophobic tendencies.

One Nigerian academic commented:

*"When I go to a supermarket my fellow blacks immediately start watching me. I cannot understand that. The impression is that all the foreigners are criminals. Maybe they get this impression from television. But it's very wrong. And that's what they're doing, generalising to all Nigerians that they're crooks whether you're a lecturer or whatever".*

Xenophobia is also driven by the fear that foreigners will disadvantage South Africans financially and socially. As one respondent commented:



*"Both at home and at work relations are bad. At home sometimes people are coming to provoke us, calling us 'makwerekwerwe' demanding us to give them money because we are taking their jobs. They also say that we are taking their wives".*

Another common complaint was the experience, shared by many, of working for South African employers, and then being refused pay or threatened with deportation:

*"... some of the people in South Africa do not pay you after you have done their work, and that is making our life difficult".*

It is not just the public that appear to be responsible for the hostility. Police corruption and brutality is a further theme that emerges repeatedly in the interviews:

*"At work the police are harassing us and if you do not want to be arrested and returned home you must give them money". And another: "The police sometimes arrest us for no reason and demand bribery for our release".*

### **LIFE IN A HOSTILE CLIMATE**

Though it is premature to assess the impacts of hostility on migrant communities there are at least two possible responses. The first might be the eventual capitulation of migrants in the face of hostility, forcing them to make the difficult decision to return to their home countries or to move on to somewhere more accommodating.

For those that will remain, experiences of foreign ethnic communities in countries such as the United States, where hostility and discrimination have been equally prevalent, suggest that the survival strategy of such groups is constructed on the refusal of the community to internalise the abuse, so ensuring that their sense of identity as individuals and as a community is left untainted.

Community potentially operates as a medium through which individuals are able to externalise the hostility facing them and to reassert their own identities within the security of the familiar.

Immigrant collectivism offers a basis for interest group formation, but ultimately the small, local forms which are evident in South African cities are unlikely to wield much external influence. In short, such collectivities serve almost exclusively as support bases for fellow nationals, and have little power beyond this.

### **MIGRANT ASPIRATIONS**

The amnesty offered to illegal migrants in 1996

attracted far fewer applicants than expected. Research subsequently commissioned by IDASA from Lesotho and Mozambique produced the unexpected result that amnesty, and the permanent resident status in South Africa which it conferred, were not considered priorities by the majority of migrant workers from those countries.

Many of the respondents in the CSAS and Wits studies confirmed the fact that permanent residence is not considered particularly attractive to migrants. A number suggested that permanence has become untenable, given the realities of the harsh life here in South Africa. A common theme emerging from interviews study is the desire of migrants to return to their own homes in the future.

As one person commented:

*"I'll go back. After a while you keep on thinking that home is home. The situation we are living in (in the Democratic Republic of Congo) is very unstable. We don't know if there is going to be a war tomorrow or anything. So we are just waiting for the situation to cool down." (Morris)*

Another, again one of the respondents in the Wits research project said:

*"No, here is no good for me to breed my family. If you ask me it's because I know a place that is softer than this place. ... This place is not the dream I had. I cannot bring my family here." (Morris)*

An asylum seeker in Cape Town noted :

*"No, we are here only because it is dangerous in our home country. When the government there has gone then we will go home tomorrow".*

and a miner from Lesotho noted:

*"Social life here is corrupt, and things we most value as Basotho do not mean anything here. ... In terms of peace, Lesotho is the best place to stay in." (South African Migration Project.)*

### **QUIET CONSOLIDATION**

It has been less than a decade since many of the foreign migrant communities now present in South African cities first emerged, and these communities are clearly still in the early stages of community formation.

Although very little research has been undertaken with the specific intent of interrogating the dynamics of the processes involved in the establishment of these communities within South African society, it is possible to begin to discern some common patterns between them.

Given the significant level of public and official hostility directed towards them, these new ethnic

communities have been particularly valuable to many migrants, yet constraints of time and the ongoing victimisation of both individuals and groups have largely prevented the development of extended forms of political or social mobilisation.

What seems to be happening, therefore, is a quiet consolidation of resources as a form of passive rebellion against prevailing hostilities.

Lack of strong family structures in most of the groups has meant that communities tend to be organised not around traditional social structures, such

**W**hile ethnic groups recognise that all 'foreigners' are essentially in the same boat, little evidence of mutual solidarity emerges.

as family, religion and extended social networks, but around the need for protection and the sharing of resources and contacts.

An interesting fact is the almost total lack of collaboration and support between ethnic communities. While ethnic groups recognise that all 'foreigners' are essentially in the same boat as far as hostility is concerned, little evidence of mutual solidarity emerges from any of these research projects.

The collectivities that are developing are created with the dominant aim of social insurance, rather than necessarily with the intention of easing the assimilation process. Indeed it is largely ambiguous as to

whether migrants are desirous of assimilating into the greater South African society at all. The apparent transience of the majority of these migrants is striking.

While new migrant communities are effective as a support base for ethnic groups at the local level, and while they undoubtedly contribute to international networking by disseminating information to prospective migrants in the home countries, they appear largely powerless to deal with the structural conditions which generate many of the real problems that migrants encounter in this country. ■

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# ON THE MOVE: POVERTY AND THE IMPACT OF MIGRATION IN KWAZULU-NATAL

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Much of what we thought we knew about population movement may be in error. An extensive study on migration, from which this article is drawn, was conducted by the Rural Urban Studies Unit, in collaboration with the Department of Sociology at Stellenbosch University. Levels of rural movement in KwaZulu-Natal appear to be well above previous estimates.

**M**ost of the rural population in KwaZulu-Natal seems to be on the move, and the impact of their migration will shake the way we see poverty and development. The force of migration is probably the most neglected dynamic in South Africa's social policy. Few factors have done more to change the context of opportunity for the poor, yet little is known about how people move from place to place.

Within the Eastern Seaboard, the province of KwaZulu-Natal is the centre of most of the economic activity, most of the violence, and much of the poverty. Its current population has been estimated at more than seven and a half million (CSS, 1997).

The most recent census estimates available for the former KwaZulu homeland (DBSA, 1991) put the population at roughly five million. About another million black people live outside former KwaZulu. Results from the present study suggest that something in the order of four million disadvantaged people have migrated away from their home communities during their lifetimes, going to live in new places in search of a better life.

Perhaps three million have migrated in the last 15 years, and, at present, about the same number seem to be unsure whether they have stopped moving or not. As many as half a million fall into the group thinking of making a move in the near future.

Implications for the economy and society of the province, and from there to the rest of the country, are

profound. Our sample survey indicates two thirds of the province's total African population is no longer living in their community of origin. Only in the remote interior districts of the former KwaZulu did more than half the recorded population report themselves as local-born.

It looks as if the solid, cohesive rural communities of folklore and tourist literature may be a thing of the past. In their place is a huge, restless surge of human movement, which overwhelms institutions and sinks efforts at development.

## CYCLES OF MIGRATION?

Rural to urban migration is usually assumed to be the main migration flow, and most of that has been thought to be circulatory - from rural to urban and back again, according to the rhythm of labour migration. These patterns do not seem to hold true any longer.

Instead, the rural space economy is bending into a new shape as urban unemployment continues to rise. Population movement no longer seems to follow the routes pioneered by urban labour migration. For the rural poor, most population flow today is rural to rural, as the urban sector separates and breaks away into a demographic sector on its own.

This surge responds to economic realities. For individuals and families facing high unemployment in a changing space economy, migration from one place

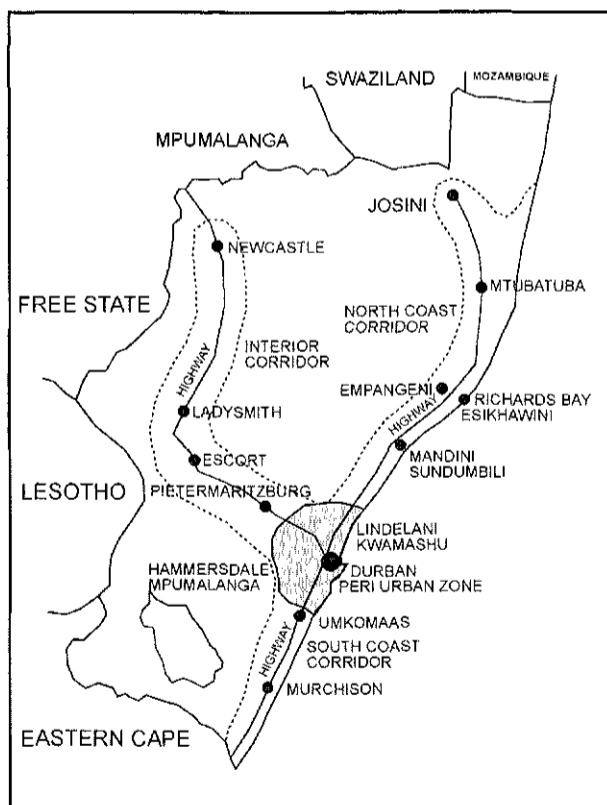
to another is probably the most important economic option. By leaving a disadvantaged community of origin and moving to a better location, rural households can succeed in shifting all their constraints at once.

However, under current conditions of heavy crowding in rural source communities, moving from one area to another usually means trying to improve access to wage income at the cost of losing access to land, to the production economy, and to natural resources. Migration is not an easy choice to make, and many fail.

### THE RESEARCH

Migration is usually thought to be driven by the search for work, infrastructure and services. To explore the influence of migration on population and land needs, the Development Bank of Southern Africa (DBSA) established a multi-year programme in four phases, anchored at Stellenbosch University's Department of Sociology and the University of Natal's Centre for Social & Development Studies. This study was mandated to look at the Eastern Seaboard provinces from the Mozambique border to the Western Cape coast.

Over a 1000 qualitative interviews and over 50 local participatory workshops were completed, before the project surveys began in the KwaZulu-Natal region. The data here comes from the KwaZulu-Natal survey of 487 rural and 100 urban cases, together with the information gathering workshops and interviews.



### THE FINDINGS

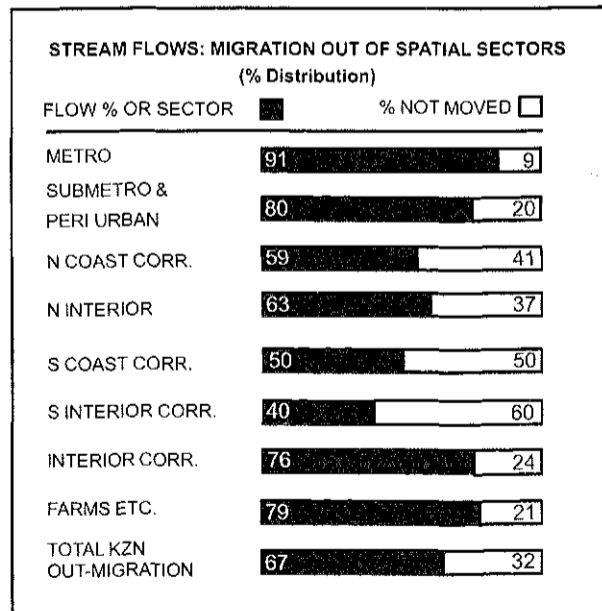
Based on the study sample, most of the disadvantaged population in KwaZulu-Natal has moved away from their home communities. About 30% said they moved primarily to find work, another 30% because of difficult conditions at home, and 15% because of conflict and violence. Over half say they have moved at least once under crisis conditions - they were forced to move in the face of emergencies that prevented planning, which often meant that the first situation they could find was a bad situation.

What was unexpected was that the great majority of moves away from home - over 75% - were rural to rural. Movement from rural communities into the urban sector meant, in practice, movement into the urban shack communities, the only urban settlements that take in outsiders. This accounted for less than a quarter of the total recorded household movement in KwaZulu-Natal.

### CITY FLOWS FALL

The reasons for this are clear. Labour migration no longer dominates the rural economy for the poor. Unable to compete effectively for work at a distance, rural families face a choice. They can either stay home and rely on limited, low-paid local work opportunities, in addition to home agriculture and informal earnings, or move closer to urban centres to try to find better paid work on a commuting basis.

And choices have changed. Unemployment in the metro shack areas has risen to record rates, forcing a fundamental change. For the first time in history, it looks as if people can now do better in smaller rural centres than in the city. Results suggest that income levels available around the outlying cities and small towns



may be rising beyond what people can get in the metropolitan shack settlements, in a thin and competitive job market, swamped with aspiring rural work-seekers.

Average monthly income per person in urban shacks was R257, compared to R175 in the rural Tribal Authority areas. But the better-off rural peri-urban areas recorded per person incomes well over R300 per month, and metro peri-urban areas were nearly as high.

Rural peri-urban incomes in smaller centres like Empangeni, Nongoma, Groutville or Mtwalume come from combining nearby work with some kind of land option and informal small business. Though some rural centres appear overwhelmed with in-migrating families desperate for work, indications at this stage are that others may be developing the kind of economy that can sustain fairly strong in-migration. Rural peri-urbanisation looks like the future trend.

### INSTABILITY

Population instability is also rising. This quantum jump in rural mobility appears to have resulted in a permanent paradigm shift in the way people look at settlement and residence. Once people have left home, they can never regain the standing and security they could claim in their communities of origin, and can never claim as much land in other locations as they could where they were born. The mobile population is then forced to take up migration as a substitute strategy for getting resources they need.

In the urban shack areas, movement is constant: over 90% of the sample population said they had moved at least once. However, islands of greater stability may be developing in the oldest shack areas, foreshadowing a stable urban population yet to come. At Inanda, more than 25% of the sample said they were born in the area and had never moved. But for newer areas, the proportion of locally born people who had never moved tended to run below 1%.

In the rural districts, levels of movement varied widely by area. But for all the rural areas together, more than half the families reporting said they had moved away from their original home area. Many more had moved locally, within their home community. Movement was much faster in localities in touch with the developed community.

Moving back home remains the final fallback option for people who face a crisis or find they can't make a living in their new localities. Results suggest, however, that the families who move away are less likely now than they once were to return home. Only 9% of the families which had moved were rural-born people

who had returned after living in the city. Those who leave the metro area now often settle in nearby peri-urban communities instead of returning to rural points of origin.

### SEPARATION STAGE

While this process of spatial separation looks less advanced in the Cape and Eastern Cape, in KwaZulu-Natal the regional disadvantaged population appears to be breaking up into three broad categories:

- a permanent urban-born population located in the townships and older informal settlements, which has large economic advantages and now dominates the urban job market;
- a conservative rural population in Tribal Authority and mission areas, which has never moved, is strongly attached to home links, and has its advantages in land access and security networks;
- a very large mobile population, originally linked to labour migrancy, forced removals, and refugee processes, which follows the strategy of trying to change constraints and find advantage by moving from place to place. This last grouping is, in many ways, the most dynamic and forward-looking in terms of development and poverty reduction. It is self-selected, and on average is younger, better educated and more ambitious than the people who choose security and social connections over risk and economic ambition. On the other hand, the mobile constituency is also the grouping that is having the most difficulty in accessing resources.

These migration trends are changing the balance of human resources at the provincial level, and there are important implications for spatial development policy. We still need to go further in exploring the relative capacity of migrating families - their endowments in terms of human capital, in education, skills, and earning power - and in comparing those who are moving to the city to those now targeting the outlying centres.

### STORM CELLS

Instead of a dominant rural to urban flow of people, local cells of movement seem to be building up within the province. These demographic pressure cells resemble weather cells, with demographic activity instead of storm activity. Such cells can be identified in the combined metro/peri-urban region, in the northern interior, and to a lesser extent in the south interior and south coast.

The demographic map of KwaZulu-Natal can be split analytically into the core metro city and its surrounding dense peri-urban region as against the more

Only 9% of the families were rural-born people who had returned after living in the city.

rural hinterland, and split again into the coastal strip and the interior. The former KwaZulu homeland then separates demographically and economically from the formerly white rural districts.

This demographic map gets its structure from the transport arteries making up the three existing development corridors: the northern and southern coastal corridors, and the interior corridor linking the port of Durban to Gauteng. Population flows scale very sharply in relation to these corridors, but do not always move as might be anticipated.

### THE CITY AND THE NORTH

More population instability is recorded north of the inland corridor than in the south, and most population flow comes from the Tribal Authority areas and the large-scale commercial farms. The south coast and south interior have a more viable agricultural economy and have suffered less from removals and large-scale displacements of population.

For the northern former KwaZulu districts, the percentage who had never moved was the highest found - 70%. In the north, with its more marginal agriculture, the massive, 30-year-long removals and evictions in the Weenen-Estcourt land reform pilot area are thought to have affected as many as 300 000 people. These displacements, and the resulting overcrowding and land loss in the areas receiving the dispossessed, have acted as a demographic engine for the north interior.

These apartheid displacement processes have been reinforced by the numerous "black spot" removals in the northern Natal farming districts, which have further squeezed and distorted the disadvantaged population in these areas.

Results are easy to see: a demographic pressure cell has built up where the removals peaked. The highest levels of movement the sample recorded were in the farm-origin population, mainly drawn from the northern districts. Nearly 80% of all the farm-origin people had moved at least once, and three quarters had made crisis moves, with many evictions.

Most of these displaced people moved on to other farms, went into tenancy areas in the surviving "black spot" communities on private African-owned land, or found precarious accommodation in the former KwaZulu districts. The knock-on effects in the crowded and turbulent destination areas of the north have been wide-ranging and serious. Few families in these areas still retain agricultural land, as fields have been converted to accommodate the dispossessed on a massive scale.

In the interior transport corridor, which runs through the economically depressed Estcourt sub-region, over two thirds of the households reporting said they had migrated at least once, moving inward toward what economic opportunity the area still holds. In the northern coastal corridor, rates of movement were nearly as high - 63%.

Only in the isolated interior of northern KwaZulu was the migration rate below half, at 43%. However, these areas serve as the main source area for migrant families entering the corridors, and have undergone heavy out-migration not reflected in the replies of people still living there.

What is important is that this kind of migration is mainly local. That is, people seem to be moving crosswise, from the adjacent areas into the corridors themselves, more than along the corridors into their central terminus in the Durban metropole.

Only about 4% of the people in the metro shack samples came from the interior corridor, and 2% from the north interior of former KwaZulu. Roughly the same percentages seem to travel to the other end of the corridor and reach Gauteng.

From the sending side, about 5% of the total migration flow out of the interior corridor, and about 10% of the total migration from the north interior of KwaZulu, went into the metro area. Most of the movement in the very active northern cell takes place within the cell itself, within and between the interior corridor and northern former KwaZulu.

There is some exchange with the coast, but much less than expected with the metro region. Instead, the Greater Durban area draws most of its in-migrating families from its own peri-urban zone (nearly a third), from the south coast (18%), and, perhaps increasingly, from the metro shack settlements themselves (9%). And people are now beginning to flow outward from the city population into the more advantaged rural and peri-urban areas.

### HOW MOVING AFFECTS POVERTY

Median monthly incomes per person were significantly higher in the metro peri-urban zone (R315), than in the urban shacks (R257). As far as poverty is concerned, migration appears to be a strategy that works. Per capita income was higher by 25% for the sample households that had moved than for those that didn't. Migrating families earned R260 per family member, as opposed to R208 for the families that had not moved.

However, the respondents who had moved were not so sure themselves of the results. More than twice as many families said they were better off as a result of having moved, but most cited intangible factors like better leadership and less violence. With regard to the economic situation, their response was mostly negative. High expectations may be affecting their perceptions.

Although employment for family heads in migrating families was higher than that for heads that had stayed put, overall employment rates were slightly higher for those who had remained in their community of origin. Wages, however, were significantly higher for the population that had moved. Apparently, people who migrate do not necessarily find more jobs, but they find better jobs.

Migrants to urban areas were better off than some of those in outlying areas, but not as well off as those who have positioned themselves in the rural sector with access to the city. About 32% of urban shack families reported incomes of over R2000 per month, but for metro peri-urban areas this rises to 44%, and, for some peri-urban dense rural settlements, as high as 50%.

Surprisingly, the very highest incomes in the sample were land-related and not urban-related. For some in established commercial small farming areas, the percentage of households taking in over R2000 per month was as high as 84%, with an average household income of R4330. While these households were also significantly larger (with an average of 8.8 residents compared to the 5.0-5.7 found elsewhere), per capita income still came to over R500 per month.

It appears that, in relative terms, urban incomes have dropped in the last five years. It also seems that attaining simultaneous access to both land and the city is a better strategy than urban migration right now, and that rural land based strategies can also work very well. On the whole, the rural areas are still poorer than urban ones, but probably less so than is generally thought.

### INSTITUTIONAL CHANGES

A number of other changes in the ordering of rural society are linked to the quantum jump in rural mobility. Destination areas are tightly packed, tense and turbulent. The availability of infrastructure in most of these areas is pulling in migrants rapidly. These areas are often under committee systems, usually ANC-aligned, which often have popular support but tend to be institutionally weak.

Land is frequently sold off quickly to arriving outsiders, and land rights for weaker holders are often insecure. The more urban these areas are, the more new families need street-smarts and a secure income to hold their place.

In the former homelands and in many tenancy areas, the inflow of high numbers of strangers is tearing up the social relations between chiefs, landlords and other land administrators and their constituencies. Local level administrative institutions seem to be undergoing fundamental change, as more and more land allocation involves outsiders and is routed through administrators rather than through transactions between community members.

The result has been the de-personalisation of traditional relations of respect between people in authority, always seen as the oldest children of the soil, and their constituencies of ordinary residents.

Where administrators and constituents have no shared social links, power can easily become impersonal and power relations coercive, and motivated by profit. As respect for chiefs and administrators wavers, their own interests can come to concentrate increasingly on staying in power and claiming a return on public assets, instead of representing their followers and ensuring general benefits for the community.

At the same time, administrators encourage population instability by selling land on a preferential basis to outsiders, who can be expected to pay much more than born community members for whom a local landholding is an entitlement right.

The communities that result are mainly made up of outsiders. Administrators obtain greater power over land dealings, but lose legitimacy and are alienated from their constituents as they come to be seen as taking corrupt profits from allocating land to outside interests.

### IMPLICATIONS: SMALL FARMING

Small farming and home agriculture are probably the main fallback option for impoverished households in a time of extraordinary unemployment. What are the implications of extraordinary migration levels for this kind of support?

Mobile people have a strong interest in acquiring land to subsidise earnings from wages and small business. But the migration process systematically disadvantages mobile households in terms of access to land.

Right now, it seems as if male-headed households,

suffering from long-term structural unemployment, are the group most attracted to land offers. But they are short of effective market outlets, and, if they have moved, are often short of land to grow enough food to sell. Households run by men report that they need at least two hectares of land with a water supply, plus support services.

The alternate constituency for small farming is women. Traditionally said to be Africa's farmers, women seek land to feed their families. Women in the sample farmed effectively with much less land and fewer resources than men, and women were more willing to intensify production on small areas. But there were relatively few women entrepreneurial farmers.

For women as producers, institutional pressures to avoid entrepreneurial use of land are serious, and increase when land resources are under pressure. Women-headed households are perhaps the single most impoverished grouping in rural communities, and the most in need of support options. Provision of secure production land in small plots to women could have a very significant payoff in poverty reduction.

If the mobile constituency can be helped to get land, the poverty effects will be considerable. Very high average incomes were recorded for families that had succeeded in entering small farming. And once set up, their willingness to move on was the lowest recorded. Small farming shows up as a very effective strategy both for population stabilisation and for poverty reduction.

#### IMPLICATIONS: LAND REFORM

Currently, the land reform programme is generating some very useful mechanisms for delivering land to those who need it. However, these initiatives need to take account of the migration stream.

Initiatives to make commonages around rural small towns available on a lease basis to informal settlers are showing very successful results. These projects are much faster and more easily accessible than land delivery to communities in outlying areas.

These commonage initiatives are ideally suited to mobile families, but the land available is currently limited, and not all towns that attract settlement have commonage land as well. There is a need to expand this programme, supplying additional land where necessary.

Land redistribution on a community basis in outer rural areas can potentially address the land need for rural families that migrate within local cells. However, these initiatives were originally set up to cater for removed communities as groups, and did not encourage access by families in the migration stream. Efforts to adapt planning to cater for individual households need to be accelerated. Tenure reform also needs to give secure, universal rights to trade land

within the community, so that those who need it know they can buy or lease it locally.

Land in these areas, as well as on commonage, also needs to be made available to women heads of household on a secure basis, to combat their institutional disadvantage as farmers. Here, community gardens can serve as one possible model.

At the root of the migration problem lies the shortage of land in Tribal Authority areas, which have, since colonial times, accommodated families removed from white-owned farms. The desperate overcrowding and lack of income in these areas is driving migration on a national basis.

State land on the borders of former homeland communities urgently needs to be made available to individual families on a basis that includes small production holdings of one or two hectares. Giving such land in much bigger blocks to elite 'small' farmers has little effect on poverty and encourages migration. The way this land is dealt with needs to be reassessed.

#### THE OUTLOOK FOR MIGRATION

Migration in KwaZulu Natal has reached epidemic proportions over the last ten to fifteen years. Most of it represents a search for income, as unemployment forces families to choose between the land economy and wage work. However, it is also clear that these are not the only factors determining when and where people move.

Other critical factors are the demand for infrastructure, peace, and a stable community that can support inter-family ties. For the unemployed, those facing emergencies, and households in the second part of their earning career, land itself is also a vitally important resource.

If unemployment remains high, the rural population will continue to vote with its feet, and a major redistribution of the national population is on the cards. It is still unclear what is happening in provinces with less violence and less metropolitan labour absorption capacity.

Results for the DBSA study will soon be coming on line for the Eastern Cape and Cape Province, but more needs to be known nationally about what the levels of rural migration are, where it is going, and what happens to the migration stream when urban jobs dry up.

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*“Electrical energy is the common factor that binds us in our quest for a better quality of life for all our peoples. By concentrating on the positives, on common development factors, we are building bridges for tomorrow. I believe that electricity could be a catalyst not only for illustrating the interdependence of all Southern African states, but also for stimulating a new development in our subcontinent.”*

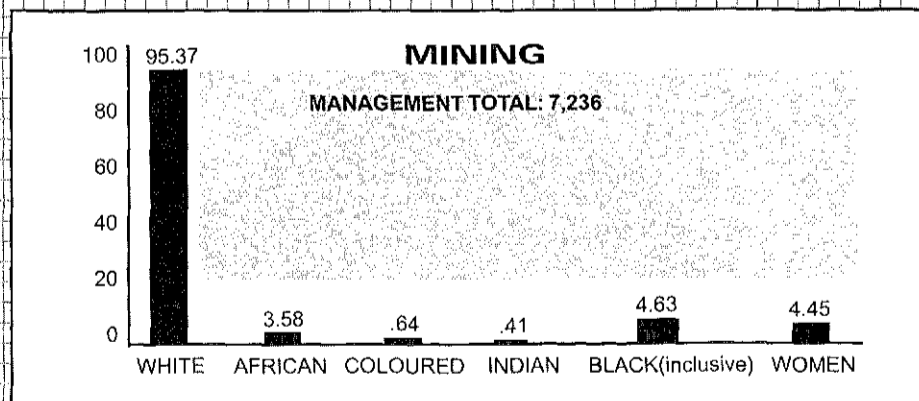
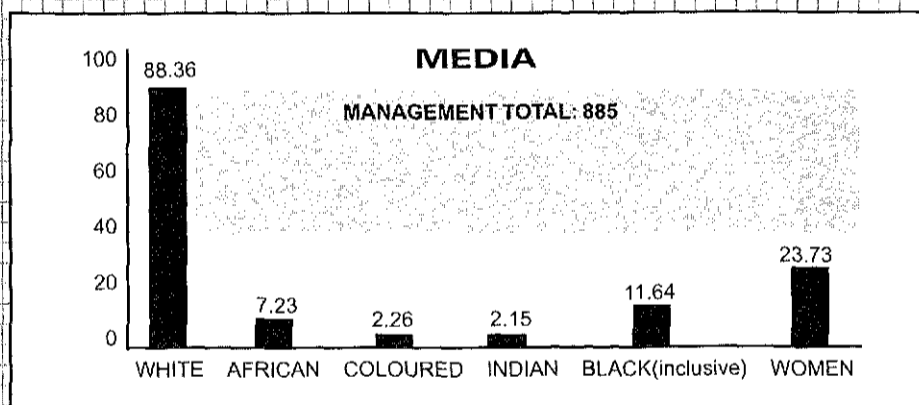
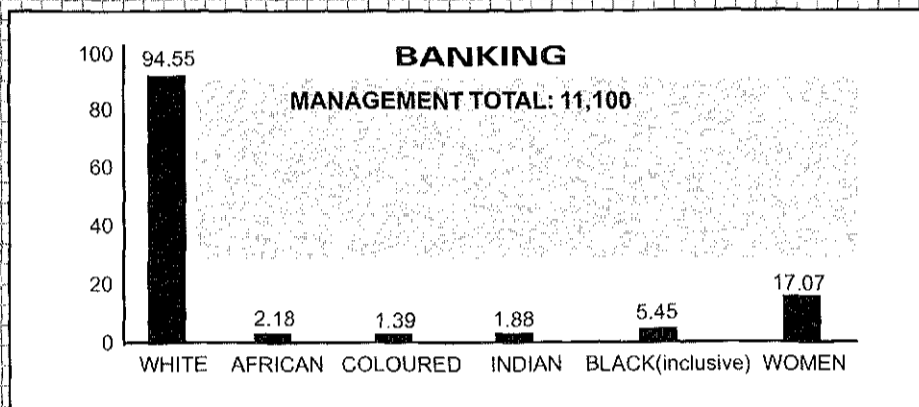
Dr. John Maree, Chairman,  
Eskom Electricity Council.



**ESKOM**

# LEGAL MONITOR

## RACE DISTRIBUTION OF MANAGERS BY INDUSTRY



SOURCE: THE BREAKWATER MONITOR, UCT

# THE EQUALITY PROVISION, UNFAIR DISCRIMINATION, AND AFFIRMATIVE ACTION

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How does affirmative action fit into the right to equality guaranteed in the Constitution? Is it fair that one previously disadvantaged group be given preference over another? In this excerpt from an address to the International Law Society delivered at the University of Michigan, Karthy Govender grapples with these questions.

The Constitution of South Africa lays out the rights of equality all citizens enjoy. Section 9(1) states, "Everyone is equal before the law and has the right to equal protection and benefit of the law." Further, section 9(3) declares:

*"The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth."*

An understanding of the relationship between the right to **equality before the law** and the right against **unfair discrimination** is central to any appreciation of the right to equality. These are two distinct facets of the law of equality.

## THE EQUALITY PROVISION

The equality provision does not prevent a government from making classifications. People are classified and treated differently for a variety of legitimate reasons. Thus, while the government may legitimately make classifications, it may only do so if the criteria upon which the classifications are based are permissible.

After some ambivalence the court, in a trilogy of cases (*President of the Republic of South Africa v Hugo* 1997 (6) BCLR 708 (CC), *Prinsloo v Van der Linde and Another* 1997 (6) BCLR 759 (CC) and *Harksen v Lane NO and Others* 1997 (11) BCLR 1489 (CC)), laid down guidelines as to how the corresponding rights in the Interim Constitution are to be inter-

preted. An applicant who is relying on a violation of the right to equality must demonstrate:

- that the provision under attack differentiates between people, or categories of people, and that this differentiation is **not rationally connected** to a legitimate governmental objective (this is a section 9(1) inquiry), or;
- that he or she has been unfairly discriminated against. If the differentiation is on one of the **grounds specified** in section 9(3), then discrimination is deemed to be established. If the differentiation is not on one of the specified grounds, then discrimination is only deemed to have taken place if, objectively, the ground is based on attributes or characteristics which have the **potential to impair fundamental dignity**. If the discrimination is not on one of the specified grounds then the applicant will have to demonstrate unfairness by showing, inter alia, that the impact of the discrimination on him or her is unfair.
- Even if the discrimination is found to be unfair, the measure may still be saved if it is a law of general application and **reasonable and justifiable** in terms of the limitation clause (*Harksen v Lane*).

Whether a classification is permissible, would then depend on the **purpose** of the classification and whether there is a **sufficient link** between the criteria used to effect the classifications and the governmental objectives. This approach was affirmed by the Constitutional Court in *Prinsloo v Van Der Linde and Another*:

*In regard to mere differentiation, the constitutional state is expected to act in a rational manner. It should not regulate in an arbitrary manner or manifest 'naked preferences' that serve no le-*

governmental purpose, for that would be inconsistent with the rule of law and the fundamental premises of a constitutional state.

The purpose of this aspect of equality is, therefore, to ensure that the state is bound to function in a rational manner. Accordingly, before it can be said that mere differentiation infringes [the Constitution] it must be established that there is no rational relationship between the differentiation in question and the governmental purpose which is proffered to validate it. In the absence of such rational relationship the differentiation would infringe [the Constitution].

Thus, the developing jurisprudence on equality draws a distinction between cases of differentiation based on grounds that affect a person's dignity and worth as a human being and those based on grounds which do not have this effect. Where the differentiation does not impact on dignity, then the applicant is restricted to arguing that there is a violation of section 9(1).

#### A VALID DISTINCTION

The distinction drawn in section 84 of the Forest Act of 1984, which was considered by the Constitutional Court in *Prinsloo v Van Der Linde*, was between people

**A** law may have an unfair discriminatory impact, even if it is neutral on its face.

occupying land in fire-control areas and those occupying land outside

such areas. Under the law in question, if a fire occurred on land outside a fire control area, negligence would be presumed until the contrary was proven. However, this presumption would not apply to people living within fire-control areas.

The distinction drawn, in this case, did not affect the dignity of people. In such instances much greater latitude would be afforded to government by the court, which adopted a very non-exacting measure of scrutiny. The court simply required the state to act in a rational manner and was thus prohibited from making arbitrary differentiations which served no legitimate governmental purpose. Mere differentiation would violate section 9(1) if it were established that no rational relationship existed between the differentiation in question and the governmental purpose which was advanced to validate it.

Applying these principles to the facts of the case, the court held that there was a rational basis for the differentiation. In fire-control areas, regulations prescribed duties and obliged people to participate in

schemes to prevent fires from spreading. These regulations did not apply outside the fire-control areas.

There was thus a necessity to ensure that people occupying land outside the fire-control areas were especially vigilant. The section sought to achieve this. Further the differentiation drawn in section 84 was not of the kind that impaired the dignity of the occupiers of land outside the fire-control areas. Thus, there was no unfair discrimination.

A much more robust approach is adopted when the grounds of differentiation impact on human dignity. The court, by compartmentalising the equality right in this fashion, has clearly signalled that the primary thrust of the equality right is to carefully scrutinize differentiations that impact upon dignity.

#### UNFAIR DISCRIMINATION

The mechanisms by which this aspect of the right are enforced and the manner in which it has been interpreted indicates that this is the core provision of the right to equality. Its ambit and scope are wide and much assistance is afforded to individuals claiming a violation of this right.

The prohibition against both direct and indirect discrimination is intended to cover all forms of discrimination on the listed or analogous grounds. Thus any law which has an **unfair discriminatory impact** may amount to prohibited discrimination even if the law is neutral on its face. Thus the applicant does not have to overcome the often insurmountable burden of proving that the law was enacted with the intent of unfairly discriminating on one of the listed or analogous grounds.

In *Beukes v Krugersdorp Transitional Local Council and Another* (1996 (3) SA 467 at 480) the council levied a flat rate of charges for services in townships such as Kagiso and Munsieville, while the residents of Krugersdorp paid a higher, user-based levy for their services. The Krugersdorp residents argued that they were being discriminated against on the basis of race. The Transitional Local Council (TLC) argued that the distinctions were not based on colour but on practical considerations.

The court held that while the TLC did not expressly levy higher charges on whites it did so indirectly. Because of our history of racially exclusive areas, township residents were almost all black, while Krugersdorp residents were almost all white. The difference in charges, therefore, had an indirect racial impact.

However, the court held that the discrimination was not unfair as it was an interim measure that had to be implemented for practical reasons, such as inad-

equate metering facilities and the long-standing fees boycott by residents of townships.

## WHAT IS DISCRIMINATION?

In both *Prinsloo v Van der Linde and Harksen v Lane*, the Constitutional Court held that the provision in the Interim Constitution (section 8(2)) envisaged two categories of differentiation. The first is differentiation on one of the specified grounds and the second is differentiation on grounds that are analogous to the specified grounds.

The court has held that discrimination in South Africa means "treating people differently in a way which impairs their fundamental dignity as human beings". All that the applicant is required to do in order to prove discrimination is to establish, objectively, that the differentiation is either on the specified grounds or on analogous grounds. An analogous ground has been defined as one which is "based on attributes or characteristics which have the potential to impair the fundamental dignity of persons as human beings, or to affect them seriously in a comparably serious manner".

However, the prohibition is against unfair discrimination. Section 9(5) provides that once discrimination on one of the specified grounds is established then it is deemed to be unfair. However, if the allegation is that the discrimination is on an unspecified ground, but one that impacts adversely on dignity, then the applicant has the burden of proving the discrimination is unfair.

The court has provided some guidelines on what constitutes unfair discrimination in *Harksen*. The **impact on the complainant** is the determining factor regarding unfairness. The court held that the following factors must be taken into account in making this determination:

- The position of the complainant in the society and whether the complainant was a victim of past patterns of discrimination;
- the nature of the provision or power and the purpose sought to be achieved by it. An important consideration would be whether the primary purpose was to achieve a worthy and important societal goal and an attendant consequence of that was an infringement of the applicant's rights; and
- the extent to which the rights of the complainant had been impaired and whether there had been an impairment of his or her fundamental dignity.

This requirement was considered by the Constitutional Court in *President of the Republic of South Africa and Another v Hugo*. The Presidential Act 17

of 1994 granted a remission of sentence to all mothers in prison on 11 May 1994 with minor children under the age of 12 years. The respondent prisoner, a father with a minor child of 12, argued that the act discriminated unfairly against him on the basis of gender.

The law clearly discriminated against the respondent. The issue was whether the discrimination was unfair. The majority of the court held that in the South African society, the mother is primarily responsible for nurturing and rearing children. This imposes a tremendous burden upon women and is one of the root causes of women's inequality in this society. On the basis of this generalisation, the President afforded an opportunity to mothers which he denied to fathers. The court had regard to the following factors;

**T**he impact on the complainant is the determining factor in establishing unfairness.

(1) The fact that the individuals discriminated against do not belong to a class which had historically been disadvantaged does not necessarily make the discrimination fair;

(2) At the heart of the prohibition against unfair discrimination lies the imperative to establish a society in which all human beings will be accorded equal dignity and respect regardless of their membership of particular groups. This goal cannot be achieved by insisting upon identical treatment in all circumstances. The question is whether the overall impact of the measure furthers the constitutional goal of equality; and

(3) In order to determine whether the impact is unfair it is necessary to have regard to:

- the group who has been disadvantaged;
- the nature of the power in terms of which the discrimination is affected; and
- the nature of the interests which have been affected by the discrimination.

The majority of the court held that the discrimination was not unfair. The decision of the President benefitted children and gave female prisoners with minor children an advantage. This advantage was denied to fathers of minor children.

The effect of the act was to do no more than deprive them of an early release to which they had no legal entitlement. A decision to release all male prisoners with minor children would have been met with a public outcry. Thus it could not be argued that the decision not to afford male prisoners the same opportunity impaired their sense of dignity or sense of equal worth.

## PROBLEMS WITH HUGO

One of the concerns with this decision is that the inquiry, conducted in order to determine whether the discrimination is unfair, involves weighing and balancing different rights and interests. The consequence is that some of the issues that are meant to be dealt with within the limitation clause are transferred, in terms of this analysis, to determining whether unfair discrimination has occurred.

Justice Mokgoro held that denying fathers their release from prison on the basis of a stereotype about their aptitude in child rearing is an infringement of their equality and dignity. The learned justice appeared unpersuaded by arguments that mothers of young children are more disadvantaged than others

**G**roups disadvantaged by past discrimination should not disproportionately bare the burden of the past.

in the penal system and held that there was no correlation between the nature of

the disadvantage and the measures taken to alleviate that disadvantage.

Accordingly, Mokgoro J concluded that the measure amounted to unfair discrimination. However Mokgoro J considered that the infringement was justifiable under the limitation clause, largely for the reasons given by Goldstone J.

A problem that would have confronted the majority, had they adopted the route taken by Mokgoro J, was that the right was not being limited as little as reasonably possible. If the purpose was to free the caregivers of minor children, then why did the President not set up an administrative inquiry to determine this issue irrespective of the sex of the prisoner.

Thus each prisoner, irrespective of race, would have been required to prove that he or she was the primary caregiver in order to qualify for this dispensation. The object could have been attained without discriminating on the basis of gender.

The dissent of Kriegler J was premised on a principled objection. He accepted that the release of the mothers was praiseworthy and likely to benefit some children. The essence of the equality clause was to end deeply entrenched patterns of inequality in our society. The stereotype that women are responsible for the nurturing and the upbringing of children was primarily responsible for inhibiting the progress of women in society.

Because of this perception, the President, by re-

leasing mothers of minor children, was perpetuating a stereotype which was the main cause of the inequality of women in our society. Thus, the benefits to a few were outweighed by the serious disadvantage to society as a whole. The discrimination, he concluded, was thus unfair.

## AFFIRMATIVE ACTION

It is imperative that any assessment of affirmative action programmes be placed in the South African context. Attempts to emulate the reasoning of foreign courts must be approached with a heightened measure of circumspection. A useful starting point is the constitutional principles. The Constitutional Court identified the following as one of the basic structures and premises of the new constitutional text contemplated by the constitutional principles:

*... a legal system which ensures equality of all persons before the law, which includes laws, programmes or activities that have as their objective the amelioration of the conditions of the disadvantaged, including those disadvantaged on the grounds of race, colour or creed.*

*In re: Certification of the Constitution of the Republic of South Africa, 1996 1996 (10) BCLR 1253 (CC) at paragraph 44.*

Because of the commitment to substantive or real equality, the draftspersons clearly intended the affirmative action programmes to be seen as essential and integral to attaining equality, and not to be viewed as a limitation or exception to the right to equality.

As affirmative action is seen as part of the right to equality, it would appear that those challenging such programmes bear the onus of proving their illegality (Sheppard, 1993). Affirmative action legislation is expressly sanctioned by the Constitution, thus forestalling any argument as to whether preferential treatment for disadvantaged persons is permitted or not (Smith, 1995). Affirmative action programs must:

- promote the achievement of substantive equality; and
- be designed to protect and advance people disadvantaged by unfair discrimination.

Interpreting materially similar provisions in the Interim Constitution, Prof Mureinik suggested that the words 'designed to' could mean 'intended to' or 'constructed so as to achieve' (Mureinik, 1994). He concludes that the affirmative action programmes must be intended to achieve the aims and must, in fact, be capable of achieving the aim.

The beneficiaries of the programme must be persons or categories of persons who have been disadvantaged by unfair discrimination in the past. It appears that the constitutional draftspersons, both in the solemn pact (the constitutional principles) and in the final constitution, endorsed remedial programmes aimed at achieving substantive equality.

Given the above, it is submitted that the most appropriate standard, in general, is whether there is a rational link between the programme and the attainment of the objective of advancing persons disadvantaged by past discrimination. Whether there are other ways of achieving this objective should not form part of the inquiry.

This inquiry, then, should mirror the analysis that the Court has adopted in dealing with assertions that section 9(1) of the Constitution has been infringed. The affirmative action provisions in the Constitution are couched in race-neutral terms. The width of the provision is designed to protect programmes that benefitted all communities that were disadvantaged as a result of past discrimination.

If an affirmative action measure has the effect of penalising a community that had previously suffered from discrimination, then the courts should adopt a slightly higher degree of scrutiny than was described above. This is because it is unfair for a person who has been treated unequally in the past to continue to be treated unequally without the government providing a reasonable explanation.

Groups disadvantaged by past discrimination should not, in the absence of clear justification, disproportionately bare the burden of the past. Further, many of these groups are minority communities and cannot look to the political process for relief.

Hurt J in *Motala and Another v University of Natal* (1995(3) BCLR 374 (D)) adopted a highly deferential standard in reviewing the admission policies of the University of Natal Medical School. A 'gifted' Indian student, who had obtained five distinctions and a 'B' symbol in matric, was refused admission into the medical school. The medical school decided to limit the number of Indian students admitted to its programme to 40.

The poor standards of education available to African students under the control of the Department of Education and Training meant that a merit-based entrance programme would result in few African students being accepted. It was argued that as the Indian community had also been disadvantaged by apartheid, discrimination between African and Indian students amounted to unfair discrimination.

The court held that the admission policy adopted

by the medical school was designed to achieve the adequate protection and advancement of a group disadvantaged by unfair discrimination:

*While there is no doubt whatsoever that the Indian group was decidedly disadvantaged by the apartheid system, the evidence before me establishes clearly that the degree of disadvantage to which the African pupils were subjected under the 'four tier' system of education was significantly greater than that suffered by their Indian counterparts. I do not consider that a selection system which compensates for this discrepancy runs counter to the [Constitution].*

The apartheid society had a distinct hierarchy of races. Whites were at the top and Africans firmly rooted at the bottom.

The coloured and Indian communities were situated in

It is perfectly legitimate to apply affirmative action in proportion to the measure of disadvantage suffered under apartheid.

between. It is perfectly legitimate, therefore, if we are seeking to achieve genuine equality, to apply the affirmative action programme in proportion to the measure of disadvantage suffered under apartheid.

However, when the effect of the programme is to further disadvantage people who had also been disadvantaged in the past, the court must be satisfied that the programme is reasonable.

Reasonableness on the facts of *Motala* would require that at least some explanation be provided as to: how the number of 40 was arrived at; the extent to which this operated as a guideline or as a rigid figure; the extent to which the socio-economic backgrounds of students were taken into account; the demographics of the area in which the medical school was located; and the extent to which society as a whole benefitted from such a decision.

Hurt J's acceptance of the programme simply on the basis that Africans were more disadvantaged than Indians is, it is submitted, incorrect.

When interpreting the Constitution it is imperative, as Froneman J put it in *Qozoleni v Minister of Law and Order* (1994(1) BCLR 75(E)), to understand the mischief that the new constitutional order was meant to remedy and to extract the constitutional principles or values against which laws can be measured. The Constitutional Court in *S v Zuma* (1995(4) BCLR 401 (CC) at 412) accepted this approach, with the qualification that the language of the text must not be ignored. However, to interpret the Constitution as if it were the Income Tax Act and thus frustrate the principles enshrined, would be wrong.

## THE ERROR OF STRICT-SCRUTINY

An example of the 'strict-scrutiny' approach is found in the decision of Swart J in *Public Servants' Association of South Africa v Minister of Justice and Others* (1997 (5) BCLR 577 (T)). This case involved the South African Department of Justice, which was, at the time, virtually the exclusive domain of white males. In order to address the situation, the Department of Justice appeared to adopt the position that no white males would be considered for certain posts.

In setting aside this scheme, the judge regarded affirmative action programmes, in terms of the Interim Constitution, as an exception to the right to be treated equally, and he subjected the words in the Constitution allowing the programme to exacting scrutiny. The court held:

- The affirmative action measure must be designed to achieve the adequate advancement of previously disadvantaged persons. This required a causal connection between the designed measures and the objectives;
- The affirmative action measure cannot go beyond what is adequate in order to attain the objective of advancement and cannot be haphazard and random. In other words the means used must be equal in magnitude or extent to the objective;
- Both the ends envisaged and the means used are reviewable;
- In deciding on the appropriateness of the measure, cognisance must be taken of the interests of the target group, the rights of others and the interests of the community. Regard must also be given to possible disadvantages that the target group and other groups may suffer; and
- The word 'promote' suggests an incremental and not an immediate attainment of the objective.

The judge's misunderstanding of the constitutional imperatives and the necessity for urgent affirmative action programmes is revealed in the following dicta:

*At the same time, I think that in promoting a broadly representative public administration, efficiency need not be sacrificed. If, for instance, in the case of preferring blacks to whites where all have broadly the same qualifications and merits, on a properly controlled and rational basis, representivity will be promoted, but not at the cost of efficiency.*

Given the deliberate skewed allocation of resources along racist lines during the last three hundred years, it is highly unlikely that this approach will result in any real change in the near future. It fails to remedy the mischief that the Constitution identified for urgent reparation.

On the facts, the court held that the affirmative action policy of only appointing women and people of colour to certain posts was haphazard, random and over-hasty. As there was no carefully considered policy, it was not designed to achieve the objective and the policy was deemed unconstitutional.

It is unlikely that many affirmative action programmes will survive scrutiny if the approach of Swart J is emulated. It would be convenient but wholly unfair and prejudicial if the abdicationist approach of Hurt J in *Motala* were to be followed in similar facts.

## SUBSTANTIVE EQUALITY

In addition to these restraints on the state, the Constitution in Section 9(4) makes the prohibition against unfair discrimination horizontally applicable. Thus, every individual has a right not to be unfairly discriminated against by any other individual or juristic person. More details about the right and the sanction for violating the right will be contained in an act of parliament which the National Parliament is obliged to enact.

It is unlikely that affirmative action could be implemented under a 'strict scrutiny' analysis.

The right to equality proposes a vision, that if correctly implemented, can bridge the enormous chasm that divides this society. If this divide is not bridged, people will demand and seek another order capable of achieving this. The consequence would be that this constitutional democracy would implode.

The attainment of a more egalitarian society must, however, be achieved in the structured manner laid down by the Constitution. The directive that courts, tribunals and forums must promote values that underlie an open and democratic society based on human dignity, equality, and freedom, re-enforces the view that some countervailing concerns, such as individual freedoms, must be considered and weighed alongside the need to attain the societal goal of equality. The attainment of substantive equality in a balanced fashion is the challenge which faces South Africa. ■

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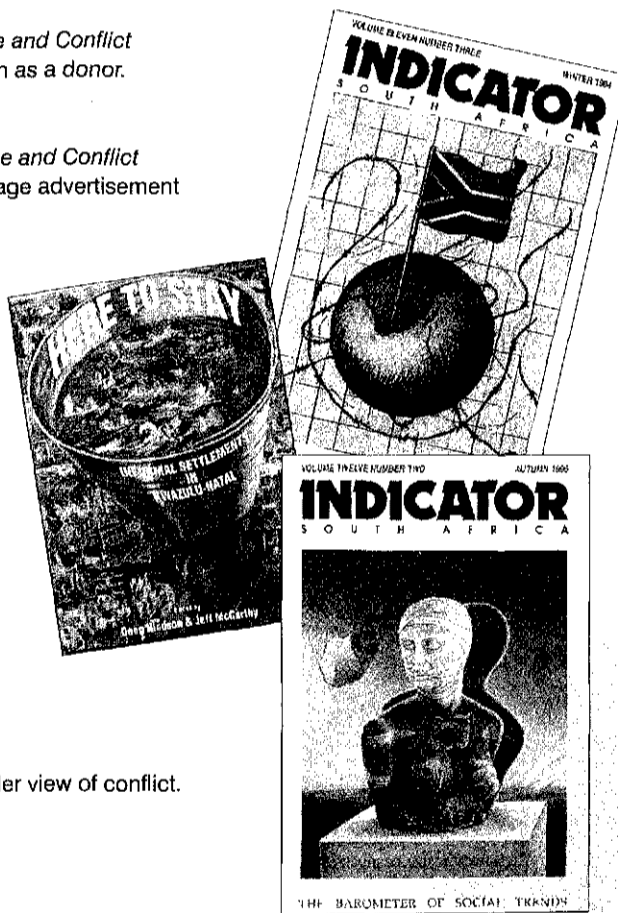
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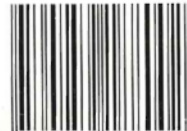


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