

CHAPTER 5

A HISTORICO-COMPARATIVE STUDY OF AFFIRMATIVE ACTION AND EMPLOYMENT EQUITY IN SOUTH AFRICA

5.1 INTRODUCTION

A historico-comparative study of Affirmative Action and Employment Equity in South Africa is important for a number of reasons. Firstly, it draws attention to the history of the country highlighting the fact that the present-day South Africa is deeply rooted in historical **“myths and misrepresentations, divisions and conflict”** (Hartshorne, 1992: 20-21). Secondly, an historical perspective will offer explanations and provide background information against which perceptions and attitudes of the different racial groups towards Affirmative Action and Employment Equity in the country emerged. This would contribute to a deeper understanding and appreciation of them. Thirdly, and more specifically, it will contribute to a better understanding of the need for and relevance of Affirmative Action and Employment Equity particularly in Higher Education in the country. Fourthly, it would serve as a catalyst for the introduction and type of Affirmative Action and Employment Equity policies that will contribute towards successful transformation of Higher Education in South Africa. Fifthly, it will highlight the unique challenges and/or constraints faced by Higher Education institutions in South Africa in their attempts to implement Affirmative Action/Employment Equity programmes.

5.2 APARTHEID HIGHER EDUCATION LEGACY

Prior to the historically significant free election of 27th April 1994 which ushered in democratic South Africa, the educational system upheld the ideology of apartheid. The characteristics and intended objective of this system are aptly crystallized by the following statement made in the House of Assembly in 1945 :

“We should not give the natives [Blacks] an academic education, as some people are prone to do. If we do this we shall be later burdened with a number of academically trained Europeans and non-Europeans, and who is going to do the manual labour in the country? ... I am in thorough agreement with the view that we should so conduct our schools that the native who attends those schools will know that to a great extent he must be the labourer in the country.”

(Kumbula, 1993 : 14)

Education was, therefore, the institutional mechanism of oppression driven and secured by apartheid regime to suppress the Black majority educationally, economically, politically and socially. Student enrollment statistics, Higher Education staff composition as well as the allocation of resources over the years reveal that this mechanism, through its carefully planned penetration into the respective cultures, enabled the apartheid authorities to establish a society based on segregation and discrimination. The 1905 School Board's Act set the mechanism in motion when it provided state schools for White pupils only (Kumbula, 1993 : 14-18). **“This gave Whites the head start that characterize their present social, economic, political and educational position to this day”** (Lindsay, 1997 : 523). It was only in 1976, following the Soweto riots, did school attendance become compulsory for African (Black) children. Once set in motion, the apartheid mechanism of oppression was maintained. African educational institutions were e.g., allocated the least resources, insofar as staffing, level of training, textbooks, equipment, etc., were concerned.

A brief history of Higher Education in South Africa (universities and technikons) is necessary at this point to provide a historical appreciation of the categories of types and sub-types of such institutions. It will also provide an understanding of some of the socio-historical forces which shaped this clustering of institutions into their respective types and sub-types. Such knowledge will invariably provide a useful background

against which staffing trends, Equity efforts, as well as challenges and constraints, unique to the respective institutions, can be interpreted.

Prior to 1916, the University of the Cape of Good Hope (UCGH), which was established according to the British model in 1873, was the only university in South Africa. At the time it served as the examining and degree-granting institution for all the university colleges in the country. The university colleges that it serviced in the Cape were the South African College, Victoria College of Stellenbosch and Rhodes University College. In Natal there was Howard College, while in Bloemfontein and Pretoria there was Grey College and the Transvaal University College, respectively. These university colleges were for White students only and staffed exclusively by Whites. The UCGH remained the only South African full university until the end of World War I and English was the only language of UCGH examinations (Cooper and Subotsky, 2001 : 5-6). It was subsequently replaced in name and functions by the University of South Africa (UNISA).

With the introduction of the University Act of 1916, the University of Cape Town (UCT), the University of Stellenbosch and UNISA were initially recognized and granted full university status. This was followed, in 1922, by the establishment of the University of The Witwatersrand (WITS) and in 1930 by the University of Pretoria (UP). Subsequent to World War II other university colleges received full university status. They were : University of Natal in 1949, the University of Orange Free State in 1950 and Potchefstroom University in 1951. This was followed by the dual medium University of Port Elizabeth (UPE) in the Eastern Cape in 1964 and Rand Afrikaans University (RAU) in Johannesburg in 1966. Thus, the new South Africa has inherited a legacy of 10 Historically White Universities (HWUs) and a Distance Education University (DEU) called UNISA.

The scenario in Higher Education institutions, therefore, hardly differed from that of primary and secondary education. It is clear from the aforementioned that segregation within the South African Higher education system preceded the Nationalist Party

coming into power in 1948. Apartheid ideology provided the framework for structuring of the Higher Education system from 1948 onwards when formal apartheid policy was introduced by the Nationalist Government. With the introduction of the Bantu Education Act of 1953, all education in South Africa was officially divided along racial/ethnic lines to enforce the dominance of White rule by excluding Blacks from quality academic education and training in technology.

The Nationalist government, with the introduction of the Extension of University Act of 1959, officially stamped its ideology of racial segregation on the South African Higher education system that became the organizing principle in apartheid South Africa. Prior to the passing of the Act a few Black, Coloured and Indian students were studying at the English-speaking universities of Cape Town, Natal, Rhodes and Witwatersrand. As a result of the Act students of colour were **“relegated to specially established tribal colleges”** which later became full universities (Johnson, 1998 : 141).

The development of these tribal colleges for different Black ethnic groups was initiated in 1959/60. These colleges were located in different rural areas and were frequently referred to as ‘bush’ colleges. This commenced with the University College of Fort Hare which, according to Johnson (1998 : 145), provided an education far superior to that in subsequent tribal colleges. The establishment of the University College of Fort Hare in 1959, originally called the S A Native College when it was established in 1915, signalled the beginning of segregated Higher Education in South Africa.

As part of the apartheid regime’s separatist ideology and to foster the strategy of divide and rule, students of colour from the different race groups were forced to attend these separate tribal universities and technikons. For example, Indians were forced to attend University of Durban-Westville (UDW), Coloureds, University of Western Cape (UWC) and Zulus, University of Zululand (UNIZUL) and so on. Hence, under apartheid rule, each institution targeted and enrolled students and staff from specific racially/ethnically defined groups. In this regard the Act of 1959, according to Johnson (1998 : 141), was **“a calamitous step”** for Higher Education in the country. In order

to develop bases for its apartheid ideology, the Nationalist government, established the University of Port Elizabeth (UPE) in 1964 and Rand Afrikaans University (RAU) in 1966 to counter the influence of the so called English liberal universities. These Historically White Afrikaans-Medium Universities (HWAUs) were the cultural possession of the Nationalist Party - Dutch Reformed Church - Broederbond nexus, which stressed Christian National Education that sharply opposed the culture of the English-speaking liberal universities. These universities were established as a counter to Rhodes in the Eastern Cape and Witwatersrand in Johannesburg. The ruling party successfully obtained the loyal support of the Afrikaanse Studentebond to accept the dictates and values espoused by their Nationalist Party (NP) elders. Nzimande (1988: 4) underscores this contention by stating that the main function of the Historically Afrikaans-Medium institutions was the “... **training of loyal servants of apartheid**” which was indeed the case as many of the ministers in parliament during the apartheid regime were from these institutions.

Technikons, on the other hand, are uniquely South African institutions of Higher Education that have evolved within the country over the years. They also operated strictly under the framework of the apartheid ideology. During the apartheid era these institutions periodically underwent some sort of transformation. Transformation is, therefore, not new to them. Technikons were initially established as vocational centres which provided for the need for more technically- orientated people in the country. With the development of mines and railways during the latter part of the eighteenth century the need for technical education increased. By the early 1900s numerous training centres developed and by 1910 a reasonable framework of technical education had been established (Reynolds, 2001 : 142). With the change in character and the increased variety of courses offered, these centres of vocational training soon became known as technical colleges.

With the introduction of the Advanced Technical Education Act of 1967, the technical colleges of Cape, Natal, Pretoria and Witwatersrand were changed to colleges for advanced technical education (CATEs). Two additional colleges were established in

1967, one at Vanderbijl Park and the other in Bloemfontein. By the end of 1969, there was a total of six CATEs. All these institutions were by law exclusively White staffed and for White students only.

Another Act which led to further evolution of the CATEs was the Technical Education Amendment Act of 1979. Although the name Colleges for Advanced Technical Education (CATE) described the functions of these institutions, it soon became clear that, for various reasons, this designation was not widely appealing to the general public. The 1979 Act gave CATEs a new designation which was uniquely South African. They were now referred to as technikons. This term was derived from the word 'techne' meaning ingenuity, dexterity or skill which was combined with the suffix 'kon' to create a noun (Committee of Technikon Principals, n.d. : 3).

Added to the list of the abovementioned exclusively White technikons was Technikon South Africa (TSA), which was established in 1980 as a distance education technikon. Hence, by the 1980s, there were seven Historically White Technikons (HWTs). They were : Technikon Natal, Cape Technikon, Pretoria Technikon (PT), WITS Technikon, Vaal Triangle Technikon, Bloemfontein Technikon and TSA. Arising out of the 1979 Act, for the first time they were viewed as Higher Education institutions. Their task was to provide vocational education in order to supply the labour market with personnel with technological and other job specific skills as well as practical knowledge related to specific jobs.

In order to promote the ideology of apartheid, other technikons were established by the state to provide technical education for Africans, Indians and Coloureds exclusively. The respective Black groups were legally prohibited from studying at each other's or White technikons. The oldest technikon serving a historically disadvantaged population was M L Sultan Technikon in Durban, established in 1946. It was established exclusively for the Indian group. Peninsula Technikon (Pentech) which started as Cape Technical College in the 1920s was declared exclusively for the Coloured group in 1979 (Cooper and Subotsky, 2001: 10).

The five Historically African Technikons were established as part of the apartheid scheme of self-governing Bantu Homelands from the late 1970s onwards. This coincided with the Higher Education institutional expansion in apartheid-designated African rural areas. Mangosutho Technikon (MT), which started in 1970 along the fringe zone of Durban, became a technikon in 1979 followed by Technikon Northern Transvaal in 1980, north of Pretoria, which was renamed Technikon Northern Gauteng (TNG) in the new South Africa. Setlogelo, which started as a college in 1976 just inside the Bophuthatswana border, became North West Technikon in 1987. Transkei Technikon, which started in Butterworth in 1987 became Eastern Cape Technikon (ECT) in 1991, and Ciskei Technikon (renamed Border Technikon (BT)) was established in Bisho in 1988.

By the early 1990s the HBTs reached a total of seven. Together with the 21 universities this brings the total of Higher Education institutions to date in South Africa to 36 **“... more than in any other country with a population of under 50 million people”** (Cooper and Subotsky, 2001 : 7). This unnecessary duplication of institutions was established to entrench the ideology of apartheid.

As was the case with the universities, the imprint of apartheid strongly influenced the organization, staffing, resources, funding and access to the technikons. In fact, Cooper and Subotsky (2001 : 226) appropriately state that at Historically Disadvantaged Technikons (HDTs) **“... the double imprint of apartheid is evident : both in the racially stratified labour market according to personnel categories and in the racially determined historical institutional types”**. In this regard they cite the following discrepancies between HATs and HDTs :

- ❑ The percentage of Africans in the professional category at HATs was extremely low (7%), while in the HDTs they comprised 20%.
- ❑ White professional staff at HATs comprised a massive 80%. In addition, they comprised a considerable 40% at HDTs.

- ❑ Employment Equity as related to academic and Executive/Administrative/Management staff appears to be slower than that of universities.

The most significant change in the history of technikon education took place in 1993. The Technikon Act No. 125 enabled technikons to offer degree studies. The Certification Council for Technikon Education (SERTEC) was established to ensure that all technikons adhered to university-comparable standards of teaching and examination. The Technikon Education Amendment Act of 1993 allowed SERTEC to accredit instructional courses presented by technikons. Technikons were allowed to offer bachelor's degree in technology (B Tech), the master's degree in technology (M Tech) and doctoral degrees in technology (D Tech). While the majority of HWTs currently conduct courses leading to degrees at all three levels, a number of the HDTs have not been able to do so. There is the perception that this was due to the lack of adequately qualified staff and facilities in HDTs arising from the inequalities of the past

Given the ideological distinction of apartheid policy between general affairs and own affairs, universities, technikons and teacher training institutions were racially segregated and placed under the control of each of the respective fourteen different Departments of Education, (NCHE, Final Report : www.hsrc.ac.za/nche/final/transform/3.html). These divisions resulted in gross fragmentation of the Higher Education system. Consequently, the effectiveness and efficiency of the system suffered badly through a lack of co-ordination, common goals and systematic planning.

The authoritarian nature of the Nationalist government and the ever-escalating conflict around apartheid, polarized the relationship between some Higher Education institutions and the government resulting in a sharp state - civil society dichotomy. In the government's attempt to deal with this situation they adopted a governance model for HDIs that led to more state control. Control by legislation was supported by the central government's administrative and executive powers with which they controlled

the composition of management, administrative and academic structures, access, student affairs, funding as well as the appointment in some cases, of all senior members of staff. In contrast, there was strong institutional autonomy for HWIs which led to a remarkable degree of self-regulation among them in the 1980s.

Many of the 17 Historically Disadvantaged Institutions (HDIs) remained fully segregated until the 1980s. The University of South Africa (UNISA) was the only university that offered distance education for students of all racial/ethnic groups. So unequal was the distribution that in 1978 university enrollment comprised 121 869 Whites, 25 150 Africans, 10 661 Coloured and 10 117 Indians (Lindsay, 1997 : 524). By 1985 the African enrollment at institutions of Higher Education increased to a mere 39 700, while that of Whites increased to 141 000 which was inverse to the country's population distribution of 77% Blacks and 11% Whites respectively (Behr, 1988 : 198). Sonn (1993(b) : Conference, Pretoria) underscores this fact by pointing out that the apartheid system was responsible for more than 27 million scientifically illiterate Blacks, Coloureds and Indians.

The area of teacher training for Africans was one of the areas strategically intended for and used to secure apartheid's grip on education. In 1953 the Bantu Education Act was passed by the Minister of Native Affairs, Dr H F Verwoerd, the architect of apartheid. He enunciated the apartheid strategy by categorically stating :

“When I have control of Native education I will reform it so that natives will be taught from childhood to realise that equality with Europeans, is not for them ... People who believe in equality are not desirable teachers for natives.”

(Kumbula, 1993 : 15)

White officials expected that the high numbers of African teacher trainees would ensure an adequately colonized teacher population. In this way they secured the control

necessary to maintain White supremacy.

Arising from the aforementioned, four categories of Higher Education institutions emerged in South Africa. They were the Historically White English-Medium liberal Universities (HWEUs) and technikons. These institutions apparently enjoyed a liberal culture but their liberalness had its limitations. Although they appeared to resist racial segregation, their history, before the onset of formal apartheid, reveals a fair amount of hypocrisy over hidden racial quotas and a less than total commitment to the liberal principles they preached. Badat *et al.* (1994: 12) corroborate this viewpoint, stating that the English-Medium institutions, whilst giving the impression that they were not aligned to the ideology of the Afrikaner government, functioned well within the divided social order. Nzimande (1988 : 5) in a terse but telling manner, claims that all they did was merely assimilate Blacks into the White culture of their institutions. Formal and informal segregation still, however, prevailed in their social and academic practices (Murray, 1990 : 649-76).

The second category, the Historically White Afrikaans-Medium Universities (HWAUs), on the other hand, were the protégés of the National Party-Dutch Reformed Church-Broederbond nexus. They reflected the anti-colonial racist thrust of the Afrikaans culture and were viewed as “**conservative crucibles of Afrikaner nationalism**” (Booyesen, 1989 : Conference at WITS). However, among the Afrikaans-language universities, the University of Stellenbosch was viewed as the most progressive and *verligte* (enlightened), while the Universities of Pretoria and Potchefstroom were viewed as *verkramp* (most conservative).

The third category were the so called tribal colleges. These are presently classified as either Historically Disadvantaged Universities (HDUs), Historically Black Universities (HBUs) or Historically Black Institutions (HBIs). When they were established by the apartheid regime, these universities were vilified by the ANC and Pan African Congress (PAC) as illegitimate, ethnically defined and third-rate institutions. These institutions were originally controlled by the Broederbond and Bantu Homeland Administrations and

were severely repressed by the apartheid regime. What was significantly glaring was that they were severely disadvantaged by the lower levels of funding by the apartheid government compared with HAIs. The allocation of resources mirrored the racial hierarchy of opportunities entrenched in other sectors of South African society. A case in point was, in the 1992-3 financial allocation, UCT, a Historically White University, received 71% of its total budget from the government, while the neighbouring University of Western Cape, a Historically Black University, received only 46% of its total budget from the government. This disparate allocation occurred even though UWC had an enrolment of 14 398 compared to UCT's 13 000 students (Mabokela and King, 2001 : xvi).

In addition to obvious disparities in funding, the HBUs were plagued by poor infrastructure and physical facilities compared to HWIs. The majority of these institutions (with the exception of UDW and UWC) were established in isolated parts of the country. These areas lacked adequate schooling, medical services, transport and accommodation for both students and staff. This restricted their active participation in the core of South African academic life. Such circumstances continued to plague these institutions, making it difficult to compete with the HWIs.

Further, the inability of HBIs to procure alternative funding made it difficult for them to compete effectively for highly qualified faculty. Consequently, the credentials of faculty members of South Africa's Historically White and Historically Black Universities differed greatly.

The fourth category was Distance Education Universities (DEUs) of which UNISA was and still is the largest such university in the country. Its success led to the establishment of the Vista University with campuses around the country to cater for urban Blacks. Vista students are almost entirely Black and UNISA is now predominantly so. UNISA, however, belonged to the world of Afrikaans universities which preached the apartheid ideology. Its headquarters was in Pretoria and it had a largely Afrikaans White faculty and administration. Up until 1968 all non-White

universities were under the tight control of UNISA regarding syllabi and examinations. This was a further effort by the apartheid regime to control and manipulate the Black mind. The syllabi offered for Blacks was **“the single most important and devastating instrument for producing third class intellectuals and the control of the Black mind”** (Nzimande, 1988 : 5). It is, therefore, understandable why the pool of highly rated Black academics is small today.

Restrictions were also placed upon Black institutions of Higher Education with regard to the subjects they were allowed to offer. This is a further factor that had a bearing on the pool of Black academics especially in the sciences and other scarce subjects. These institutions were also restricted in terms of the levels and fields of study they offered. Initially, all studies were restricted only to undergraduate degrees and diplomas and the fields of study were predominantly in the liberal arts, humanities, education and law. The sciences and other technical subjects were taught mainly by the Historically White Institutions (HWIs). Wherever the sciences were taught in HDIs they were almost exclusively teacher training orientated and hence, to a large extent, not geared towards future research.

Most students and staff at HDIs were, therefore, trained to be cogs in the wheel of the apartheid machinery. South Africa’s Historically Black Institutions for Higher Education were, therefore, established to fulfil three primary goals (Mabokela, 2002 : 206) :

- ❑ to legitimize and cement the ideology of separate racial and ethnic groups as promoted by the ruling National Party;
- ❑ to provide personnel who could administer and support structures in the self-governing homelands; and,
- ❑ to maintain and reproduce the subordinate social, educational and economic positions of Blacks.

It is thus apparent from the above that although Blacks were offered greater opportunity to study under the Extension of Universities Act of 1959 they had no alternative but to

study subjects which contributed to the prevailing social order. Gerwel (1992 : 132) reinforces this notion by arguing that “**apartheid had as its deliberate objective, the systematic underdevelopment of intellectual skills and human potential**” of Blacks. Hence, the reason for Blacks being presently disadvantaged with low academic qualifications.

The apartheid regime was highly successful in developing a university system that was divided by race both between and within each institution. Staffing of academics was clearly divided among the institutions of Higher Education according to race up to 1993. This was described by Peacock (1993 : 4) as “**vertical racial separation**”. Within the university itself there was “**horizontal racial separation**” with Whites dominating senior positions in the majority of Higher Education institutions (Peacock, 1993 : 4). Badat *et al.* (1994 : 32) maintain that this domination of Whites in senior positions “**ensured essential continuity in the academic character of these institutions**”. Higher Education institutions conformed in varying degrees with the policy of racially separated institutions by not recruiting both staff and students outside their designated race classification. Also academic staff of colour, by a process of “**rational self exclusion**”, rarely applied to HWUs for jobs as they felt they would automatically not be selected because of their race (Peacock, 1993 : 5).

It took approximately 30 years for the system, inaugurated by the 1959 Act, to begin to collapse (Johnson, 1998 :141). This was in part the outcome of student protests on university campuses and other institutions of education across South Africa. It soon led to a change in Higher Education legislation. This commenced when non-White groups were allowed to attend any HDI of their choice. Although this was gradual it was a move towards integration by the HWUs.

This move was facilitated by the University Amendment Act (the Quota Act) of 1983 which lifted some of the formal barriers prohibiting Blacks from attending HWIs and allowing people from other racial groups to study at the so called Coloured or Indian institutions. They were, however, only allowed to study outside their tribal institutions

provided that the course of study was not offered at their institutions. Further, the numbers admitted to such institutions was subject to a strict quota system.

Whilst this increased the avenues of study for Blacks the overall number of Blacks studying at Higher Education institutions was still significantly lower than that of Whites. Also, by way of the quota system, the number of people of colour in HWIs was kept to a controlled minimum so as not to disturb the established and intended population structure of such institutions governed by the apartheid ideology. Manie (1988 : 11) points out that such measures were attempts, amongst others, to **“reform apartheid, not dismantle it”**.

5.3 THE ACADEMIC RESPONSE TO AFFIRMATIVE ACTION

We need to consider at this juncture the South African Higher Education Academic response to Affirmative Action and Employment Equity efforts during the late 1980s and early 1990s. This was the period just before the first free democratic election in 1994.

In South Africa, as mentioned earlier, there was a paucity of research on the academic response to Affirmative Action or into discrimination at South African universities (Peacock, 1993 : 7). Even after the birth of the new democratic South Africa and the establishment of the new constitution, there is still a lack of such research. It is, therefore, one of the aims of this study to unearth such information with a view to establishing the *status quo* regarding Affirmative Action and Employment Equity.

During the last two decades, as was the case in the USA in earlier years, faculty and staff positions were often filled by professional acquaintances of the Dean or Heads of Departments. Advertisements for people of colour in national newspapers were rare and, that too, only when no known candidate was available. Whatever mentoring was offered was particularly for White males. Seldom were women or members of the previously disadvantaged groups given the encouragement and job opportunities available to their White male colleagues. Since few senior faculty were women or

members of the disadvantaged group many promising females and members of the disadvantaged groups lacked role models and the encouragement to continue their studies. A cycle was perpetuated which ensured that the best jobs went to the protégés of departmental staff who were usually White males, thereby continuing the traditional old boy network. In this regard, a South African Black woman academic, with a PhD degree made the following observation :

“I’ve seen White males promoted to full professor without so much as a Doctorate, and with no publications. Promotions seem automatic for [White] men ... the road is much steeper for women ...”

(Peacock, 1993 : 55)

This apparently relaxed academic milieu, sheltered by the apartheid ideology, was shaken by the revelations of a study conducted by the Union of Democratic University Staff Associations (UDUSA) headed by Peacock in 1993 entitled ‘South African Universities, Race and Gender Factors in Employment Patterns’. This was one of the pioneering studies in this area and contained substantial data documenting, *inter alia*, discrimination in institutions of Higher Education. It was also a coincidence that it was completed on the eve of the first democratic elections in the country, following upon which major changes in Higher Education and in the entire fabric of the South African society were envisaged. In view of this it would be interesting to note the responses of academics after the onset of the new democracy, moreso, because during this period Affirmative Action legislation and the Equity Bill were under consideration.

This research revealed that only a small percentage of the 21 universities in South Africa stated that they were Affirmative Action employers. What, however, was of concern was the lack of research into discrimination at South African universities and the lack of any type of institutional strategy that in any way addressed race and gender issues (Peacock, 1993 : 7). Although it was a legal requirement that universities provide statistical data on racial classification of their workforce at the time,

administrators did not appear to have made significant use of this data to develop internal strategies to minimize the effects of apartheid. In fact, the majority of the universities found great difficulty in identifying and accepting the fact that there was discrimination at their institutions and that it could possibly have had an effect on the present staffing. It is perhaps, out of guilt, that they wished to sweep the matter under the carpet and to act as if discrimination never existed.

This is surprising in view of the fact that the strength of the belief of the apartheid regime in the separate development of universities within South Africa was categorically expressed by the following paragraph from the Universities Amendment Bill of 1966:

“No student, member of staff, association of students or staff, research worker, or person of any university shall on the ground that he advocates, promotes, or maintains any form of racial separation be prejudiced or subjected to any form of discrimination.”

(Peacock, 1993 : 11)

This Bill also gave the Minister powers to withhold all or part of the government grant to universities who failed to ensure that racists were not criticized. This had been a constant feature of their approach. For example, in 1987 F W de Klerk, then Minister of Education, threatened to withhold subsidies if the university did not **“police opposition to the regime”** (Peacock, 1993 :11). This was a threat that his father, who was also a Minister of Education, used freely in the 1960s. Badat *et al.* (1994 : 30) extend this perception by adding that staff could be dismissed on any one of 17 counts including criticism of the department of education or the policy of separate development.

Further, it is also important to note that there has never been, since the introduction of apartheid, any legislation to restrict the autonomy of universities in appointing staff irrespective of race or gender. Legally and in theory the individual university senate of

Historically White Universities (HWUs) had total autonomy to recruit whoever they wished, yet, with a few notable exceptions, **“the academic staff as well as the governing structures of the majority of the universities at that time, were almost exclusively composed of White men”** (Sarakinsky, 1993 : 5).

An example of the power that the apartheid regime wielded over universities was the case at UCT in 1968 : The university attempted to appoint a person of colour to the position of senior lecturer in the Department of Social Anthropology; this attempt was regarded by the state as **“tantamount to the flouting of the accepted traditional outlook of South Africa”** (Peacock, 1993 : 13). It was made patently clear by the apartheid regime that they would not hesitate to take steps as they deemed fit to reject it if the appointment was ratified. The appointment was subsequently rescinded.

It is evident from the above that the apartheid regime did not hesitate to impose its power on institutions of Higher Education. The institutions either accepted or acquiesced to the **“accepted traditional outlook”** (Peacock, 1993 : 13). Some of the institutions appeared to have conformed more readily than others. It is, therefore, not surprising that several university administrators pretended that discrimination did not exist at their institutions. This is probably due to an escapist and/or biased perception by individual universities. This perception is corroborated by the findings of a study conducted in 1986 on community perceptions of the University of The Witwatersrand (WITS). It was found, among other things, that contrary to its own perception of itself as liberal and non-discriminatory, WITS was widely regarded by Blacks as being, *inter alia*, racist, elitist and exclusive in its employment, student enrollment and teaching practices (Perception of WITS (POW) : 1986 :2). It appears, therefore, that discrimination was perpetuated under the guise of liberal rhetoric that was characteristic of many English-speaking universities in the country.

By 1993 only two universities, UCT and WITS, had formal positive action staffing programmes which took into account race and gender. At UCT this was described as Affirmative selection. However, both universities made it absolutely clear that they

opposed Affirmative Action at selection. In fact, Peacock (1993 : 65) makes the declaration that the vast majority of senior administrators was opposed to any form of Affirmative Action in staffing. White universities preferred non-discriminatory legislation rather than equal opportunity or Affirmative Action legislation. In this regard Ezorsky (1991 : 42) proposes that such **“absence of discriminatory intent does not redeem employment procedures ... that operate as built-in headwinds for the previously disadvantaged”**. The view held by some senior members of management was that Affirmative Action was equivalent to the practice of direct discrimination, as was the case under the apartheid regime.

Those universities apparently supporting Affirmative Action were unable to clearly articulate how the principle of Affirmative Action was implemented. Thus, it is understandable why academics, like Sarakinsky (1993 : 5), sagaciously remarks that :

“... if our universities are serious about Affirmative Action and becoming equal opportunity or non-discriminatory employers they must confront the problem honestly. Adopting glib resolutions and merely proclaiming their intentions is not good enough as it often leads to the perpetuation of discrimination under the guise of liberal rhetoric.”

Peacock's (1993 : 65) discussion with members of the academic staff revealed that its implementation would not be without the possibility of conflict. He quoted as an example the appointment of a Black academic with significantly lower qualifications and experience over a White academic. This ultimately led to opposition from sections of the White staff.

Peacock (1993 : 65), drawing on his study, maintains that recruitment procedures followed by those universities in South Africa who claimed to support Affirmative Action then were:

- ❑ Selection was made from within a designated identified group on merit, provided the minimum necessary criteria, usually technical, were met. Selection would normally not be undertaken if there were no candidates from the designated group that met the minimum criteria.
- ❑ No initial exclusion of individuals who fell outside the designated racial or gender group was undertaken. If candidates from the designated group did not meet the minimum requirements then selection took place, on merit, outside of the initial designated group.

Peacock (1993 : 65) also found that there were no formal Affirmative Action/Employment Equity recruitment policies available in writing. This reinforces Sarakinsky's (1993 : 5) earlier view of **“adopting glib resolutions and merely proclaiming intentions”**. The truth of the matter is that the integrity of South African academics of the old regime was seriously damaged because they perceived Affirmative Action as an attempt to correct past discriminatory acts.

Many local academics generally associated Affirmative Action with the quota system and were engaged in the simplistic belief, that despite the shortage of Black candidates with the necessary training and experience, the quota of Black staff still had to be met. Blacks were, therefore, simply appointed in order to keep the statistician happy (Sarakinsky, 1993 : 7).

Peacock (1993 : 4-5) found that many administrators did not use race and gender statistics adequately to develop internal strategies that would minimize the effects of apartheid. According to his findings, one Vice-Chancellor actually argued that there was no need for race and gender statistics as **“apartheid was now behind us”** (Peacock, 1993 : 5).

Fortunately, this view, he found, was not shared by the majority of the committee of Vice-Chancellors. He also found, in his study, that there was a lack of recognition of the

impact of apartheid on Higher Education institutions, especially among senior members, many of whom were representatives of the old apartheid regime.

It is common knowledge that significant changes in gender and racial profile of institutions depend to a large extent on deliberate reviewing and modifying of existing internal recruitment criteria. His findings revealed this to be in limited practice. In fact, he found that universities **“were less than prepared for the challenges that [were to] face them”** (Peacock, 1993 : 6).

Another contentious area of concern that emerged from this study was that, where an institution, when asked, stated that it does not discriminate it was assumed to be true. However, he asserts that this did not necessarily mean it was true in that the race and gender statistics, especially at HWUs, showed otherwise. Given the political climate during the threshold period, before the first free general elections in 1994, it would have been almost suicidal for well-known senior members of Higher Education institutions to state openly that there was discrimination against people of colour and women. What concerned Peacock (1993 : 7) deeply was the lack of research into discrimination at South African institutions of Higher Education, lack of policies and a lack of any type of institutional strategy that addressed race and gender issues. This makes the need for the present study even more relevant.

With regard to women and Affirmative Action, the overwhelming majority of universities in 1993 did not recognize that there was a severe underutilization of women staff members (Peacock, 1993 : 38). Hence, it is not surprising that South African universities are described as **“not being havens of non-sexism or a leading light in the promotion of women to senior positions”** (Bethlehem, 1993 : 214). All the universities declared that the possibility of any gender bias that might inhibit entry or progress of women within the male dominated institutions, was remote. The observations and experiences of women reveal otherwise.

The conditions for Black women in South Africa were further exacerbated by the fact that



they were not only treated as unequal to men but, also, in terms of the race classification devised by the apartheid regime, Black women academics were treated unequally to White women as well. Dowling (1992 : 78) is of the opinion that the injustices levelled against Black women were of greater magnitude than that inflicted on others in South Africa. Not only were they excluded from participating in the organization and functioning of their families and society, but they also experienced far greater oppression as a result of apartheid. A further disadvantage in the past was that, traditionally, Black females were often deprived of schooling while their male siblings attended school (Mjoli, 1990 : 19-20). She concludes that the debt owed to Black South African women is considerably more than that to White women or men. Hence, it is clear that the cycles of discrimination that Black women encountered in South Africa differs from that of White women.

Although the senior management of all universities visited by Peacock (1993 : 38) showed their willingness to discuss gender issues, the majority of them were unable to provide even the most basic statistical data related to gender and staffing. This lack of institutional research into the gender question raised severe doubts as to whether this matter was treated seriously or given any attention at all. The findings of the study did, however, reveal vast differences in the positions held by males and females. The Gender Equity Task Team (Wolpe *et al.*, 1997 : 195) found that :

“... educational administration in South Africa has traditionally been and remains male dominated.... Because of the conditions created by apartheid, this has often been racially skewed, with White males in the most senior decision-making positions.”

The reasons for the differences in positions held by women at South African universities in comparison with their male colleagues are difficult to identify. However, a starting point could be that they were late entrants into academia, with significant numbers of entry being only in the 1960s (Bethlehem, 1993 : 214). Also, women were historically discriminated against by apartheid regulations that prohibited or limited full-time

employment of married women. In some universities this practice continued until the mid-1980s. Bethlehem (1993 : 215) believed that there were other processes or factors at work which served to block women's progress, particularly at the higher levels. Up until about 1993 women were not only underrepresented in faculties in terms of their total number but they were also underrepresented in senior academic positions and within the senior decision-making structures.

Many of the Deans and other administrators interviewed at the universities were of the opinion that women were not disadvantaged anymore and that it was only a matter of time before they are on par with men. By implication this means that there is no need for Affirmative Action or any other programme to ensure the advancement of women. Gender equality in academia was, therefore, seen as a process that will occur in time on its own accord. At many universities gender consciousness was not regarded as part of the Affirmative Action programme. It appears as if the logic of Affirmative Action in terms of race was not followed through in terms of gender.

The implication of the above is that gender was neither seen as political nor a serious problem that needed to be addressed. It was also perceived as not being a part of the university transformation programme. Unlike racial inequality, gender inequality was not seen as a product of historical disadvantage. Ramphela (1994 : 13) endorses this criticism by stating that :

“... there is much less consensus about whether the education and advancement of women had been systematically hindered.”

A probable reason for this, according to her, is that discrimination based on sex has been less overt. It has tended to take place through informal means and in less public ways. Bethlehem (1993 : 213-227), through a series of interviews with academics and administrators from conservative, liberal and radical ends of the spectrum at three universities, found that there was consensus among them that it was unnecessary or undesirable to attempt Affirmative Action or any systematic programme for the

advancement of women in academia. She also claims that **“university administrations have hidden for too long behind the fine-sounding mission statements asserting non-discriminatory practices - they must now be challenged to live up to these pledges”** (Bethlehem, 1993 : 227).

Overt discrimination against women was also present in the form of differing conditions of service for married men and women. For example, at many universities women were denied a housing subsidy and had unequal access to the pension fund. Given such discrimination, *inter alia*, one can argue that universities in South Africa failed to treat women as a valued human resource in whom the university had an investment.

Proponents of Affirmative Action agree that one cannot change the past, but one can learn from the mistakes of the past. They maintain that there would have been no need for Affirmative Action, with its associated special programmes, had there been no race or gender prejudice during the apartheid regime. They claim that if children of colour had been given an equal opportunity to receive quality education in the early years, the number of graduates from disadvantaged race groups would have been relatively high, enabling more to qualify for jobs in Higher Education institutions. Supporters also assert that while present-day institutions appear to profess good intentions regarding non-discriminatory hiring practices, they have, however, been quite slow in translating good-faith intentions into action.

It can be seen from the opposing viewpoints concerning Affirmative Action in Higher Education that the academic community then was deeply split over the issue and could not even agree on the meaning, purpose and legitimacy of Affirmative Action. Unless consensus in Higher Education is reached, Affirmative Action will continue to divide the academic community for years to come. In view of this, it would be interesting to establish via this study whether the aforementioned conditions and views of academics have transformed through time or do they still prevail.

5.4 STATE INITIATIVES TO ENSURE TRANSFORMATION OF HIGHER EDUCATION

The NP government's apartheid policies influenced every aspect of South Africa's educational endeavours. As such, the challenge to bring equitable educational and employment opportunities to every citizen involves a multiplicity of tasks. Most notable has been the struggle to desegregate schools and to transform the Higher Education system from a system plagued with racial and gender disparities to one that will uphold the ideals of non-sexism and non-racism. In acknowledgment of the massive deficiencies in the system of Higher Education, inherited from the apartheid era, the state undertook several initiatives that are discussed below. The impetus to do so rested on the prevailing notion that Higher Education is a tool for redistributing wealth and other resources in a way that does not reflect or perpetuate prior policies of racial, gender or geographical inequities.

5.4.1 The Constitution of The Republic of South Africa

After the elections in 1994 the new government undertook several initiatives in order to support and ensure democratic participation of all the people in South Africa. The first and foremost of these was the South African Constitution itself that explicitly makes provision for Affirmative Action programmes as a means of redressing the injustices of the past (RSA, 1996 : 7). In this regard the Constitutional Court identified the following as one of the basic structures and premises of the new constitutional text :

“... 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.”

(Govender, 1998 : 82)

Govender (1998 : 82), a South African Professor of Law, argues that because of the commitment to substantive or real equality, the draftpersons of the South African constitution 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. Sheppard (1993 : 19-20) corroborates this view by arguing that if Affirmative Action is seen as part of the right to equality, it would appear that those challenging such programmes bear the onus upon themselves in proving its illegality. Smith (1995 : 86) alludes to the arguments presented by Govender and Sheppard by stating that, since Affirmative Action is expressly sanctioned by the Constitution, it forestalls any argument as to whether preferential treatment for disadvantaged persons is permitted or not. In the light of the aforementioned Govender (1998 : 82) claims that Affirmative Action programmes must :

- **“promote the achievement of substantive equality; and,**
- **be designed to protect and advance people disadvantaged by unfair discrimination.”**

Since a large number of citizens participated in the process of approving the final draft documents of the Constitution, it represents one of the most intensive collaboration between the South African Government and its people to date. Consequently, the constitution provides for legislative action to safeguard and/or ameliorate those previously disadvantaged by discrimination. Also it categorically declared that the state will not condone or perpetuate discrimination of any kind based on race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth.

The Bill of Rights further protects the individual from the injustices of the past and, more particularly, it stipulates the right to academic freedom in institutions of Higher Education. With regard to education in general the Bill of Rights states

that :

“Everyone has the right to a basic education, including adult basic education and to further education, which the state must take reasonable measures to make progressively available to and accessible.”

(Report of the Constitutional Assembly (RCA), 1996 : 12)

In the same report the government gives the assurance that, in order to guarantee access to, and the right to education for all, it will take into account **“equality, practicability and the need to redress the results of past racially discriminatory law and practice”** (RCA, 1996 : 12). Hence, the introduction of, *inter alia*, the White Paper on Affirmative Action and the Employment Equity Act No. 55 of 1998.

5.4.2 The Reconstruction and Development Programme (RDP)

Many of the policies developed after the 1994 elections to protect citizens' fundamental rights to education which are now being implemented operated at various levels of efficiency. Among these was the Reconstruction and Development Plan (RDP), one of the initial plans designed to address and expedite implementation of civil rights policy as outlined in the new constitution. As detailed in the White Paper on Reconstruction and Development (ANC, 1994) the RDP proposes policy for change in critical areas of development including human resources, education, redress and Equity. It proposes, *inter alia*, the concept of lifelong learning and the restructuring and integrating of training and education from pre-school to Higher Education.

5.4.3 The Green Paper on Higher Education

Consequent to the RDP a National Commission on Higher Education (NCHE) was established in 1995 on the recommendation of President Nelson Mandela. The Commission was tasked to analyse the situation in Higher Education in South Africa. This major effort culminated in the Green Paper on Higher Education Transformation in 1996 (NCHE, 1996 (b)). The Green paper signalled the policy intentions of the Department of Education with regard to the reconstruction and development of Higher Education in South Africa. This paper indicated that while the Higher Education system has considerable capacity and internationally acknowledged areas of excellence it is also fundamentally flawed by inequities, imbalances and distortions emanating from its apartheid history and present structure. The recommendation of NCHE was that the system of Higher Education be reshaped to **“serve a new social order, to meet pressing national needs, and to respond to a context of new realities and opportunities”** (NCHE, 1996(a) : 26).

5.4.4 The Education White Paper (EWP) 3 of 1997

In June 1997 the third policy document, Education White Paper 3, A Programme for Higher Education Transformation, was submitted to the cabinet. The White Paper 3 states that the successful transformation and expansion of the South African system of Higher Education depends on policy which has redress as the overarching guiding principle. Further, it identifies two elements critical to effective redress programmes :

- a level of access which ensures that no qualified person will be denied participation in the Higher Education system; and,
- a level of institutional support which ensures that past inequities and disproportionalities are recognized and properly addressed.

With special regard to Employment Equity the White Paper 3 on the Transformation of Higher Education identifies the following as being, *inter alia*, the deficiencies which characterize the present system of Higher Education :

- **“There is an inequitable distribution of access and opportunity for students and staff along lines of race, gender, class and geography. There are ... indefensible balances in the ratios of Black and female staff compared to Whites and males”**

(Department of Education (DOE), 1997(a) : section 1.4)

- **“... the composition of staff in Higher Education fails to reflect demographic realities. Black people and women are severely underrepresented, especially in senior academic and management positions.”**

(DOE, 1997(a) : section 2.94)

The NCHE, Final Report (www.hsrc.ac.za/nche/final/transform/3.html) notes that the Higher Education sector in South Africa, apart from being predominantly White, is highly stratified in terms of race and gender which substantiates the above claims of the EWP3. The trend that was noted in the study is that the greater the prestige, status and influence particular positions held, the greater the extent they were dominated by Whites and men. Positions, which, on the other hand, had a lower status and prestige and which wielded little influence tended to be filled mainly by Blacks and women. The Report also revealed that the majority of the Whites were employed as academic staff or in senior administrative positions. These disparities in the overall employment structure of universities and technikons increased with rank. In 1990, for example, 92% of the executive/administrative management positions at universities were held by Whites.

An analysis of the latest available data for 1999 provided by Subotsky (2001 : 23-35), confirms that the Higher Education workforce still **“fails to reflect demographic realities”** (DOE , 1997(a) : section 2.94); it is still highly stratified by race and gender. Overall he found that the approximate proportion of staff in the university system categorized by race was Africans (40%), Coloured (7%), Indians (3%) and Whites (50%). Greater disparities emerged when he disaggregated Higher Education labour according to the various professional and non-professional categories. In the professional category he found Africans to contribute 19% as compared to 77% Whites.

While such imbalances persist he noted some recent increases in the proportion of African academic staff, predominantly within HDUs. In such institutions Africans comprised 64%. In other HDUs, such as UDW and UWC, the proportion of White academic staff dropped from 50% to about 33⅓% while the proportion of African staff increased from 1% to 10% during the period 1988 to 1998 (CHET, 1999 : 3).

Whilst this was the case, imbalances still prevailed when compared to HAUs where Whites dominated the academic staff. At HWAUs they comprised 96% and at HWEUs they comprised 87% with some individual institutions reaching 99%. The position was very similar at technikons. By 1999 Africans formed the majority of academic staff at HDTs (52%). In general, they remained highly underrepresented at most HATs.

Subotsky (2001 : 36) also found that a similar pattern prevailed in the executive/management category, where increases in the proportion of Africans occurred at African HDUs. The HAUs were still predominantly White. A downward trend was, however, evident in the number of White executive/management staff at HATs.

Regarding gender equity, overall, there has been a consistent growth in the

proportion of women academics across all institutional types (from 28 percent in 1988 to 30 percent in 1992 and to 35 percent in 1997 and 1998). However, across the entire university system, women academics are still strongly underrepresented in senior ranks and somewhat overrepresented in the lecturer and junior lecturer categories. Overall, in 1996, 66⅔ percent of all women academics were in the lecturer category and 30 percent in the senior lecturer category. By contrast, male academics were spread fairly evenly across the professor/senior lecturer/lecturer categories with approximately a third in each. In 1998, women comprised 38 percent of the academic staff at technikons. They were also underrepresented in the senior ranks there, although to a lesser degree than in the universities (CHET, 1999 : 3). Mabokela (2002 : 186) noted that, among the higher academic ranks at some HWUs, women comprised 3% of professors and about 8% of associate professors while their male counterparts held 97% and 92% of the positions respectively.

“Gender inequities are pervasive in allocation of key administrative positions and permanent research and teaching positions” in South Africa (Mabokela : 2002 : 95). Mabokela and King (2001 : 4), in another study, also found that, over a thirteen year period (1983-1995), the proportion of women in senior administrative positions at one prestigious university in South Africa increased only by about 0,75%. In another institution, which started off with one woman administrator in 1983 (1,72%), compared to 57 male colleagues, the ratio of females to males changed, after thirteen years, to 5 : 92. This, they claim, is clearly reflective of the trends prevalent at South African universities in general.

It is clearly apparent from the above statistics that over the decade 1988-1998 historically non-African technikons, like the historically non-African universities, changed very little and did not reflect the demographic realities of South Africa. In the Kwa Zulu-Natal region, in particular, on which the study focuses, Butler-Adams (2001 : 31) claims that race and gender discrepancies amongst Higher Education staff are still marked with gender discrepancies which are even more

intense when tabulated across race and rank. In a very recent publication by CHET, Subotsky (2001; 37), discussing the statistical profile of staff Equity in South African institutions of Higher Education, appropriately sums up the present position by stating that :

“The outline of recent changes in the profile of higher education staff over the past few years shows that, ... very little impact is evident. ... This suggests that the various structural, institutional and practice-embedded impediments to employment equity are creating conditions highly resistant to change.”

Apart from bringing about transformation in Higher Education there are two broad reasons why the staff position of Blacks and women are of great concern to Higher Education institutions. The first reason is a moral one, following from the demands of Equity. The second reason is of a strategic nature. In a world where talent is spread evenly among people, no organization or system can thrive when it relies only on a small segment of its potential skills.

In an attempt to facilitate Employment Equity and to encourage and support diversity The White Paper 3 called for three year rolling plans to be submitted by institutions of Higher Education to the Department of Education. These documents were expected to incorporate human resource development plans including Equity goals with special reference to the following :

“... staff recruitment and promotion policies and practices; staff development ...; remuneration and conditions of service ...; reward systems ...; and, the transformation of institutional cultures to support diversity.”

(Department of Education (DOE), 1997(a) : Section 2.96)

Further, in the Education White Paper 3, (DOE, 1997(a) : section 2.95) the state recognizes that:

“The barriers to access are complex and that the building of human resource capacity poses the dual challenges of equity and development. The problem is broader than the redress of the apartheid legacy.”

In view of this, intensive efforts are required by institutions of Higher Education to develop or, rather, create an enabling environment which will serve to overcome the constraints to Employment Equity. Affirmative Action strategies could play a major role in this regard.

Affirming the significance of a productive institutional culture to the achievement of Equity, the Education White Paper 3 also recommends that institutions of Higher Education develop strategies to achieve this. It commends an institutional culture where there is gender Equity by categorically stating that :

“... institutions have a responsibility for creating an equitable and supportive climate for women, students and staff ... [which, *inter alia*, should] include women’s representation in senior academic and administrative positions and institutional, governance structures, ...”

(DOE, 1997(a) : section 3.43)

Higher Education institutions, especially in South Africa, given the unfortunate past under the apartheid regime, face more difficulties than other employers do in attempting to achieve Employment Equity. The CHET Report (1999: 7) recognizes the fact that Higher Education institutions in South Africa are worse off for the following reasons :

- At many Higher Education institutions, more especially among the Historically Advantaged Institutions, underrepresentation of people, from the designated group especially with regard to academic and senior-executive-managerial staff is low. Hence, in implementing Employment Equity policies they will be required to start from a low base level and that would indeed exacerbate the challenge.
- Formal qualifications, which have become idolatory in the context of Higher Education in South Africa, constitute a rigid requirement for appointment and promotion of academic staff. This makes the access by the previously disadvantaged to Higher Education institutions difficult, given the deprived nature of education they received in the past.
- The weak managerial skills of Heads of academic departments who constitute a critical level in the management hierarchy.
- The relative autonomy enjoyed by faculties within Higher Education institutions leads them to operate as a 'world unto themselves'.
- The perpetuity of the traditional personnel-administration approach as opposed to more proactive Human Resources Management style presents a further challenge. In this regard Cloete *et al.* (2000 : 10) claim that at many institutions the role of the institutional managers is limited to day-to-day administrative operation rather than providing strategic leadership to that organization.

Other reasons include :

- The enormous burden on already severely loaded institutional management. The following exemplifies this : In addition to the Higher Education Act (HEA) of 1997, Higher Education institutions are required

to grapple with a series of new laws and policy developments such as, *inter alia*, The Basic Conditions of Employment Act (1997), the Labour Relations Act (1995), the Skills Development Act (1998), the requirements of the Size and Shape Report (CHE, 2000) and the requirements of the South African Qualifications Authority (SAQA). Amidst this multitude of policy and legislative initiatives, **“severely burdened and in many cases financially stripped institutions, who are often going through an identity and/or leadership crisis or face potential closure must find time and resources to work on the issue of employment equity”** (Potts, 2000: 52-53). It is obvious, therefore, that implementation of the requirements of the Employment Equity Act (EEA) places an enormous burden on Higher Education.

- The universities' racial bias and their individual legacies also serve as a constraint. The creation of institutions of Higher Education for separate races by the previous apartheid regime has resulted in most institutions still having a predominance of one racial group in their staff complement. This skews the current situation at the respective institutions and provides a further challenge.
- The isolated location of most HDIs in the rural areas contributes to the difficulty of attracting top academics. This also isolates Black academics and students from urban sites of learning (Potts, 2000 : 58).
- There is the pervasive notion that academic standards and credentials of the academic staff (faculty) at HBIs are not comparable to those of HWIs. The perceived underqualification of academic staff at HBIs, coupled with the persistent perception of these institutions as third rate institutions, present challenges, as these institutions struggle to create a new identity and rid themselves of their historical marginal position created by the apartheid regime. Such an image also influences the degree to which the

HBIs can compete with HWIs for staff and students.

- Standards in South African institutions of Higher Education are “**deeply imbued with British values**” and do not take into account the majority culture. Therefore, these standards have little relevance for South Africa (Mabokela, 2002 : 191).

5.4.5 The Higher Education Act No. 101 of 1997 (HEA)

In 1997, the new government, led by the ANC, passed its own Higher Education Act which together with the Education White Paper 3 of 1997, formed the basis for addressing Employment Equity in Higher Education. The preamble to the Higher Education Act of 1997 states categorically, *inter alia*, that the Act should contribute towards redressing the discrimination of the past and ensuring representivity and equal access to education. It also expresses the desire to “**pursue excellence, promote the full realisation of the potential of every student and employee, tolerance of ideas and appreciation of diversity**” (Department of Education (DOE), 1997(b) : Preamble). One of the key requirements of the Act, in order to achieve the above, was that every public Higher Education institution establish an institutional forum. The purpose of this institutional forum is to advise the council of the particular institution on, *inter alia*:

- “**race and gender equity policies**”;
- “**the selection of candidates for senior management positions**”;
- “**codes of conduct, mediation and dispute resolution procedures**”;
- “**the fostering of an institutional culture which promotes tolerance and respect for fundamental human rights and creates an appropriate environment for teaching, research and learning.**”

(Department of Education (DOE), 1997(b) : section 31(1)(a))

The Act not only provides for central control by the Minister of Education but also gives him/her the powers to change any institution or merge one with the other or to close down an institution. Institutions are also advised that they should operate on a model of co-operative governance, including notably a transformation forum, in which students, staff and members of the community should be represented.

One of the objectives of the Higher Education Act is to ensure that transformation of the nation's universities and technikons takes place. In his address at the University of Natal, President Mbeki emphasised the importance of this stating that the university has a major role to play since it is regarded as **“a microcosm of the wider society”** (Johnson, 1998 : 155).

Another objective is to integrate the extremely disparate Higher Education institutions into more or less the same end-state. To facilitate this, as a starting point, funding discrepancy between HDUs and HAUs have been rationalized by reducing state funding for all universities and technikons.

5.4.6 The Employment Equity Act (EEA) No. 55 of 1998 [Department of Labour (DOL), 1998]

The main aim of Higher Education legislation promulgated, through the introduction of the aforementioned White Paper 3 of 1997 entitled 'A Programme for Transformation of Higher Education' and the Higher Education Act No. 101 of 1997, was to bring about the transformation of Higher Education in South Africa. As discussed earlier, in order to achieve this, it sought to provide a basis against which Higher Education transformation could be monitored, assessed and expedited. Such a legislative framework as a whole may, therefore, be described as a broad statement of intent which was not as effective as envisaged. This, to a large extent, was due to its inadequacy in providing specific guidelines as to how such transformation should be initiated, driven and

managed.

This legislative framework did not contribute appreciably to effect transformation in Higher Education which is evidenced by the outcomes discussed earlier on. The ineffectiveness can be described from an Employment Equity perspective, as having contributed only a limited change in staff Equity in institutions of Higher Education, more especially at the HAIs. These outcomes, among others, reveal that expecting change or transformation to be realized through mere goodwill or good-faith attempts on their own were inadequate. This, in addition to other considerations, made the introduction of the Employment Equity Act No. 55 of 1998 and its application to Higher Education imperative.

The Employment Equity Act No. 55 of 1998 was introduced as one piece of legislation amongst several that together formed the government's transformation programme. This part of the Act was intended to disseminate and put into practice Chapter III, which deals with Affirmative Action. The Employment Equity Act (EEA) falls in line with the South African Constitutional commitment to equality as applied to the domain of employment (discussed in Chapter 2). Also, it fulfills South Africa's obligation to article 5 of Convention III, i.e., the Convention concerning Discrimination in respect of Employment and Occupation (discussed in Chapter 2). With regard to the practice and procedures associated with it the Act draws on the international experience discussed in Chapter 4, particularly from Canada, Australia and the USA.

According to Kabake and Molteno (2001 : 4) the purpose of the EEA is to achieve Equity in the workplace by :

“a) promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and



b) implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups (specifically black people, women and people with disabilities) in order to ensure their equitable representation in all occupational categories and levels in the work force.”

The EEA is also based on the principle that the removal of discrimination alone is not adequate on its own to ensure progress of those who were unfairly discriminated against in the past. It advocates that additional special measures must also be considered.

The EEA disallows, by law, any unfair discrimination against employees and employers. Kabake and Molteno (2001 : 4) draw attention to the following, which they claim are explicitly excluded from the definition of unfair discrimination and which is a strong case for Affirmative Action in the country:

“(a) the taking of affirmative action measures consistent with the purpose of the Act, namely for the achievement of equity in the workplace and

(b) distinguishing, excluding or preferring any person on the basis of an inherent requirement of a job (thus providing for selection on the grounds of merit).”

Further, harassment of whatever nature and medical testing (e.g., HIV, psychological testing) are also regarded as a form of unfair discrimination. Medical testing is prohibited unless it is required by law or the need for it can be justified.

5.4.6.1 The Legal Obligation Regarding Affirmative Action

That part of the EEA which deals with Affirmative Action is applicable only to designated employers, who are defined as those who employ 50 or more employees or have in access of a specified turnover(as reflected in Schedule 4 of the Act) (DOL, 1998 : Section 1). Specific duties for all designated employers are stipulated by the Act.

5.4.6.1.1 Duties of a Designated Employer

A designated employer must implement Affirmative Action measures for designated groups (Black people, women and the disabled) to achieve Employment Equity (DOL, 1998 : Section 19). In order to implement Affirmative Action measures successfully, a designated employer must:

- consult with employees;
- conduct an analysis;
- prepare an employment equity plan; and,
- report to the Director-General on progress made in the implementation of the plan.

5.4.6.1.2 Affirmative Action Measures

Affirmative Action measures are defined as :

“... measures intended to ensure that suitably qualified employees from designated groups have equal employment opportunity and are equitably represented in all occupational categories and levels of the workforce.”

[DOL, 1998 : Section 15(2)]

Such measures according to the EEA (DOL, 1998 : Section 20), must

include :

- identification and elimination of barriers which have an adverse impact on designated groups;
- measures to promote diversity;
- making reasonable accommodation for people from designated groups;
- provision for retention, development and training of designated groups (including skills development); and,
- preferential treatment and numerical goals to ensure equitable representation but excluding quotas.

In implementing the aforementioned measures, designated employers are cautioned : They are not required to take any decision regarding an Employment Equity policy or practice that would establish an absolute barrier to prospective or continued employment or advancement of people **not** from designated groups (DOL, 1998 : Section 21).

5.4.6.1.3 Consultation

A designated employer must take reasonable steps to consult with representatives of employees representing the diverse interests of the workforce. He/she is obliged to do this when conducting an analysis, preparing and implementing a plan and reporting to the Director-General (DOL, 1998 : Section 26).

5.4.6.1.4 Analysis

A designated employer must conduct an analysis of employment policies, practices, procedures and working environment so as to identify employment barriers that adversely affect members of designated groups. The analysis must also include the development of a workforce profile to determine to what extent designated groups are underrepresented in the

workplace (DOL, 1998 : Section 22).

5.4.6.1.5 The Employment Equity Plan

A designated employer must prepare and implement a plan to achieve Employment Equity. This must :

- have objectives to be achieved for each year of the plan;
- include Affirmative Action measures;
- have numerical goals for achieving equitable representation;
- have a timetable for each year of the plan for achievement of goals and objectives other than numerical goals;
- have internal monitoring and evaluation procedures, including internal dispute resolution mechanisms; and,
- identify persons, including senior managers, to monitor and implement the plan.

(DOL, 1998 : Section 24)

5.4.6.1.6 Reports

The designated employer must submit regular reports to the Director-General of Labour on its analysis, plan and progress towards implementation of Employment Equity. Employers that employ fewer than 150 employees, must report every two years. Employers that employ more than 150 employees must report every year.

5.5 CONCLUSION

In this chapter, the apartheid Higher Education legacy, the position regarding Affirmative Action and Employment Equity at institutions of Higher Education of the past and finally state initiatives to rectify the above scenario in the name of Higher Education transformation, are discussed. This discussion is summarized in the mind map

(Figure7).

Given the institutionalised nature of discrimination in South Africa, voluntary haphazard or perceived efforts to include the previously excluded are insufficient. What is needed is a firm commitment to transformation by institutional administrations. They need to construct entities comprising multiple constituencies to devise, implement and monitor transformation; develop incentives and sanction structures to encourage participation in transformation activities and provide frequent opportunities during which all stakeholders can engage in open conversation regarding the pace, process and progress of change. Anything less will decrease the likelihood that equity of opportunity will ever become accomplished.

The next chapter deals with the empirical investigation related to Affirmative Action and Employment Equity. It will include an analysis of the response to the questionnaires and personal interviews by academics employed at Higher Education Institutions in KwaZulu-Natal. This will be followed by a discussion of the findings and recommendation emanating from such findings.

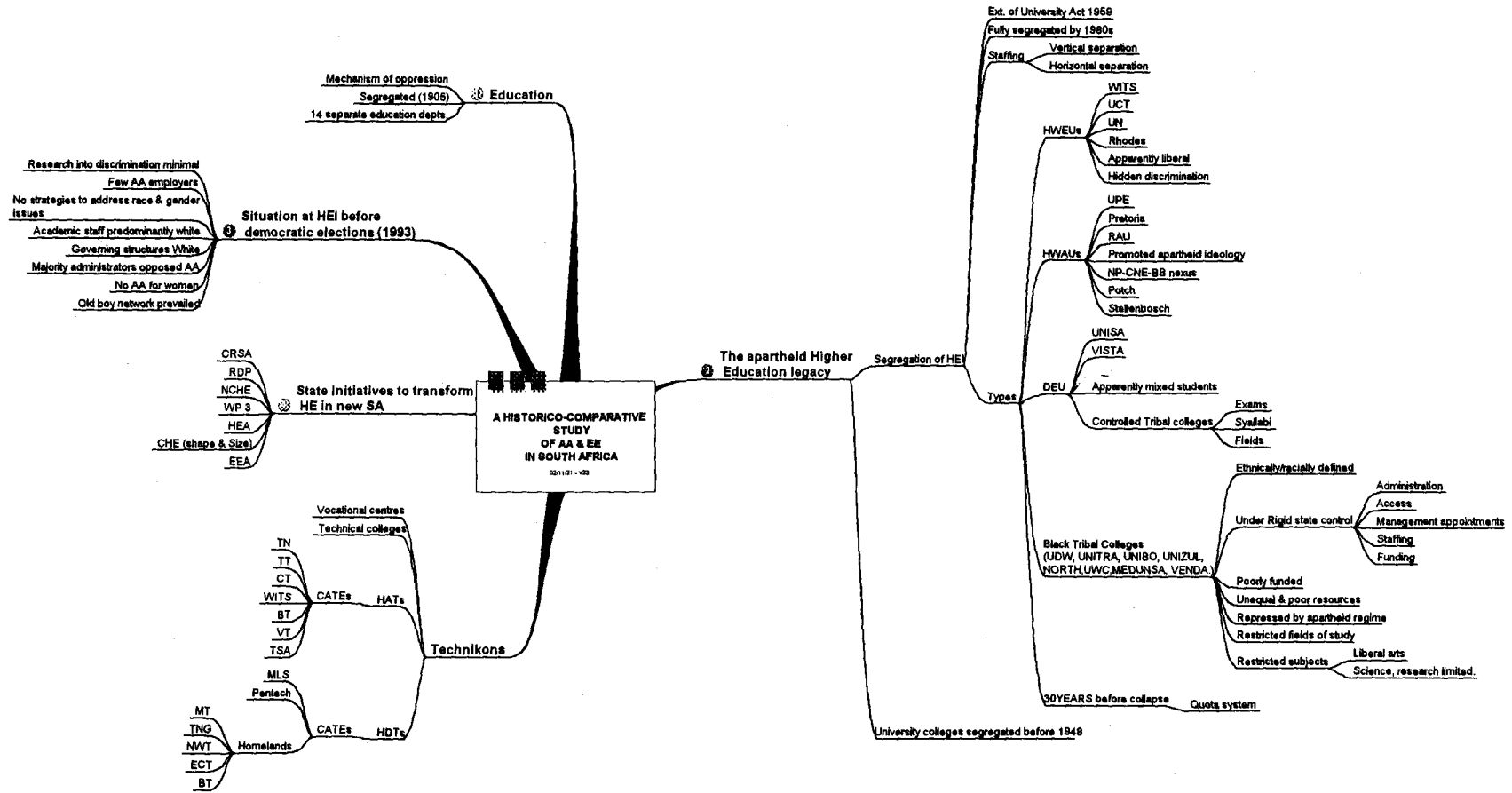


FIGURE 7 : SUMMARY OF THE APARTHEID HIGHER EDUCATION LEGACY IN SOUTH AFRICA