

## Equal employment opportunities: A conceptual puzzle

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### Abstract

Various concepts are used in official and academic discourses on affirmative action in general and the transformation of the South African public service in particular. If what is meant by the different words is not clear, people will not be able to understand each other clearly and assess the progress being made with the various interventions. The purpose of this article, therefore, is to produce a conceptual framework that will untangle the major transformation-related concepts in the public service. It is shown in this article that equality and fundamental equal employment opportunities seem to be the end of all the transformation-related interventions. Four criteria, prerequisites or standards (i.e., equity, justice, merit and representativeness) have been identified to assess all human resource-related interventions. Affirmative action has been shown to be a means to achieve equality and equal employment in the public service. Affirmative action seems to aim, legally, at the enhancement of the 'designated groups.' Although the designated groups are defined as *blacks*, *women* and *disabled*, it is argued that not all members of the three designated groups will be people who are historically disadvantaged persons. The article comes to the conclusion that it may be possible to have true equality and fundamental equal employment opportunities based on equity, justice and merit, without having a staff component representing hundred per cent of the country's population composition. At the same time, it may be possible to have representativeness, without having an equitable, just and merit-based staff component and without real equality.

### I. Introduction

Ten years since the historic democratic elections in 1994, the South African society has been assessed from various perspectives to determine the successes or

failures of the first decade of the democratic dispensation. It is therefore appropriate to evaluate the progress that government has made in the implementation of its numerous policies published in various white papers. One such policy document, the *White Paper on the Transformation of the Public Service* (Republic of South Africa 1995), set targets and timeframes for making the public service more representative. This specific paper uses concepts such as 'representative', 'affirmative action' and 'targets'. The Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), which was enacted a year later, uses different concepts in this regard, namely 'equal', 'equality', 'employment equity', 'historically disadvantaged', 'designated group' and 'unfair discrimination'. My thesis for this article is that there is confusion in the application of related concepts such as 'equality', 'employment equity', 'equal employment opportunity', 'affirmative action' and representativeness in the public service because these words are sometimes used as if they were synonyms. On other occasions a particular word appears to be used as if it had different meanings (concepts). This article uses Pauw's (1999, 11) definition of a concept, namely 'a concept has one meaning that can be expressed by different words'. The purpose of this article, therefore, is not to assess the progress that has been made with the transformation of the South African public service, but to produce a conceptual framework that will untangle the major transformation-related concepts in the public service.

## 2. The relationship between the concepts 'equal employment opportunity', 'equity' and 'affirmative action'

Although the *White Paper on the Transformation of the Public Service* (Republic of South Africa 1995) was published before the Constitution of the Republic of South Africa (Republic of South Africa 1996), the Constitution set the tone for the importance of the concept 'equality' in the discourse on employment in the public service by stating that everyone 'is equal before the law and has the right to equal protection and benefit of the law' (subsec. 9[1]) and that equality 'includes the full and equal enjoyment of all rights and freedoms' (subsec. 9[2]). This tone is echoed in the *White Paper on Human Resource Management in the Public Service* (Republic of South Africa 1997a) which derives 'equity' as a value from the Constitution. In the *Green Paper on a Conceptual Framework for Affirmative Action and the Management of Diversity in the Public Service* (Republic of South Africa 1997b) affirmative action is seen, in the context of equality and equity, as a 'means to enable the disadvantaged to compete competitively with the advantaged of society'. What follows are observations and an evaluation of the various shades of meaning of these concepts in more detail.

## 2.1 Equality and *equal employment opportunity*

The fact that the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) gives specific attention to the concept *equality* (Republic of South Africa 1996, sec. 9) is an indication of the foundational importance of this concept. The *Green Paper on a Conceptual Framework for Affirmative Action and the Management of Diversity in the Public Service* (Republic of South Africa 1997b) proceeds to unpack the possible meanings of the concept *equality*, referring to related concepts such as impartiality, equitability, equity, fairness and justice, which will be discussed next. Whereas subsection 9(1) of the Constitution (Republic of South Africa 1996) refers to the relative position of an individual before the law, the Green Paper applies this principle of equality to employment opportunities available for individuals. It attaches two characteristics to the concept ‘equal opportunities’, namely that of (1) a ‘*principle* [emphasis added] enshrined within the ideal of a representative public service to ensure equality in employment for the equal enjoyment of rights, opportunities, benefits and access in the workplace’ and (2) a ‘*tool* [emphasis added] to eradicate discrimination and unfairness in the workplace in pursuit of a representative public service’ (Republic of South Africa 1997b ch 3). Conceptually, this formulation is not easy to read, let alone understand. As concepts are there to be understood, the challenge is to unpack the true meaning of this formulation.

How does this Green Paper understand the concept *equal opportunities*? The first characteristic of this concept seems to be that of a principle. According to the *Concise Oxford dictionary* (1975, 970), a *principle* is a ‘fundamental truth as basis of reasoning’. It may also be regarded as a *premise*, namely ‘a previous statement from which another is inferred’ (*Concise Oxford dictionary* 1975, 961). Section 5 of the Employment Equity Act, 1998 (Act 55 of 1998) (Republic of South Africa 1998b) serves as an adequate statement for this purpose: ‘Every employer must take steps to promote equal opportunity in the workplace by eliminating unfair discrimination in any employment policy or practice.’

According to the formulation in Chapter 3 of the Green Paper, the above premise serves as a point of inference for an argument or statement regarding the ‘ideal of a representative public service’ (Republic of South Africa 1997b, ch. 3). How can one formulate such a statement? The best example is perhaps the first part of subsection 195(1)(i) of the Constitution, which states, ‘Public administration must be broadly representative of the South African people.’ This is not where the initial formulation of the Green Paper ends. It is clear that representativeness is not an aim in itself, but is supposed to serve as a means to another aim, namely ‘to ensure equality in employment for the equal enjoyment of rights, opportunities, benefits and access in the workplace’ (Republic of South Africa 1997b, ch. 3). Equality in the workplace in other words, equal employment opportunity is shown to be a means of achieving

‘full and equal enjoyment of all rights and freedoms’ as stated in section 9(2) of the Constitution (Republic of South Africa 1996). Table 1 lists a chain of statements following from the first characteristic of the concept ‘equal opportunities’.

**Table 1:** Chain of statements

No.	Statement	A tool for pursuit statement no.	A principle for statement no.
1	Elimination of unfair discrimination in any employment policy or practice.	2	
2	Promotion of <i>equal employment opportunity</i> in the workplace.	3	1
3	Contribution to a public administration which is broadly representative of the South African people.	4	2
4	Ensuring equality in employment.	5	3
5	Ensuring the equal enjoyment of rights, opportunities, benefits and access in the workplace.	6	4
6	Ensuring full and equal enjoyment of all rights and freedoms for everyone.		5

The ultimate meaning of the concept *equal opportunities* as a principle seems to be ‘the full and equal enjoyment of all rights and freedoms for everyone in the country’ (Republic of South Africa 1996, sec. 9); in other words, equality. The concept *equal opportunities* also has the characteristic of a tool ‘to eradicate discrimination and unfairness in the workplace in pursuit of a representative public service’ (Republic of South Africa 1997b chap. 3). The *Concise Oxford dictionary* (1975, 1366) defines a *tool* as a ‘mechanical implement’ or ‘thing used in an occupation or pursuit’. It seems that a tool can be a ‘mechanical implement’ in pursuit of a principle. Is it possible for a concept like ‘equal opportunities’ to simultaneously be a principle and a tool? From Table 1, it seems to be possible. The promotion of equal employment opportunities in the workplace (statement 2 in Table 1) simultaneously serves as a principle for the elimination of unfair discrimination in employment policy or practice (statement 1 in Table 1) and as a tool contributing to a public administration that is broadly representative of the South African people.

The core principle seems to be equality (statement 6 in Table 1). The *Green Paper on a Conceptual Framework for Affirmative Action and the Management of Diversity in the Public Service* (Republic of South Africa 1997b, ch. 1) makes a distinction between two categories of equality, namely formal and substantive equality. Accordingly, formal equality ‘implies the removal of laws that result in discrimination and segregation’, where substantive equality ‘necessitates the acknowledgement and eradication of the actual social and economic conditions that generate inequality’ (Republic of South Africa 1997b, ch. 1). Formal equality assumes that all persons are equal bearers of rights and responsibilities, without being concerned with institutionalised, structural differences in equality (Van Reenen 1997, 153). It tends to reinforce and entrench rather than eliminate inequalities by ignoring actual social and economic disparities between individuals and groups in society (Van Reenen 1997, 153). However, Henrard (2003, electronic collection) argues that substantive equality, allowing and requiring remedial measures geared to redressing both individual and group disadvantages, lies at the heart of the Constitution. Substantive equality tends to use the same line of reasoning applied by Plato and Aristotle in their view of proportional equality, which requires that each will receive the same consideration in the distribution decision, although numerical amounts distributed differ (Klug 1991, 324).

From the above it seems clear that the principle of equality and equal employment opportunities do not have a neutral meaning and application within the South African context.

## 2.2 Equity, justice and merit

A second group of concepts, used in the official documents on public service transformation and related issues, includes *equity*, *justice* and *merit*. The *White Paper on Human Resource Management in the Public Service* (Republic of South Africa 1997a, ch. 2, par. 2.3) derives *equity* as a value from the Constitution and defines it as follows: ‘Where there has been unfairness, corrective measures must be implemented so as to ensure that human resource practices are free from discrimination, invisible barriers and unjustness which will impede equal employment opportunities.’

The above explanation of the concept *equity* indicates that this concept refers to ‘corrective measures’ as a tool for enhancing equal employment opportunities. Being this tool, it seems as if the concept ‘equity’ has relatively the same meaning and function as statement 1 in Table 1, referring to the elimination of unfair discrimination in any employment policy or practice. This observation is confirmed by Chapter 1 of the *Green Paper* (Republic of South Africa 1997b), which explains *employment equity programmes* as ones that ‘include strategies to expose and redress the historic and systematic inequalities and injustices of groups and individuals, disadvantaged on the grounds of race, gender and disability’. The *White Paper on Human Resource Management in the Public Service* of 1997 describes

*employment equity* as something to be achieved (Republic of South Africa 1997a, ch. 5, par 5.1.1). The Green Paper seems to apply both meanings of this concept as Chapter 3 refers to employment equity as something to be achieved through affirmative action programmes (Republic of South Africa 1997b).

A careful reading of the above texts shows that employment equity may have two distinct characteristics, namely that of (1) interventions (programmes and strategies) and (2) a state of being (to achieve employment equity). In a sense, it serves more or less the same purpose as *tool* and *principle* in the discussion of *equality* in the previous section. The literature on affirmative action and employment equity also seems divided on the meaning of the concept. For example, Mello (2000, 33–34) regards *employment equity* as an intervention aiming ‘at the prevention of discrimination in the workplace’. Brand and Scholtz (2001, 119); Veldtman (2001, abstract), and Kruger and Moiler (2000, online), however, view *equity* as ‘a state of being’ to be achieved by affirmative action and other policy interventions.

Bearing in mind the statements on the meanings of the concept *equality* in Table 1, it seems that there may be a close connection between ‘equity’ and ‘substantive equality’. If substantive equality means the promotion of *equal employment opportunity* in the workplace by means of the acknowledgement and eradication of the actual social and economic conditions that generate inequality (Republic of South Africa 1997b, ch. 1) and if *equity* means ‘corrective measures . . . to ensure that human resource practices are free from discrimination’ (Republic of South Africa 1997a, ch. 2, 2.3), the two concepts have the same meaning. That is why I believe that equity is not supposed to imply an intervention, such as in the case of equality. Equity is supposed to be a principle or a ‘state of being’ serving as criterion for the assessment of the various interventions in the public service. In other words, in order to achieve employment equity, it will be necessary to impose measures (legislative, policy and procedural interventions) promoting substantive equality in the public service. These measures will have to be fair and equitable.

A concept closely related to equity is *justice*. The Green Paper (Republic of South Africa 1997b, ch. 1) describes *affirmative action’s pursuit of equality* as ‘a tool of social justice in civil society and the workplace’, bridging the gap between ‘the injustices of the past and a democratic future’. This document regards *justice* as a concept invoked by the broad term *equality*. At the same time, policy interventions, such as affirmative action, are seen as tools bridging the gap between the *injustices* of the past and a democratic future (Republic of South Africa 1997b, ch. 1; Adam 2000, 54–55; Kruger and Moiler 2000, online).

More than 30 years since the first publication of his standard work, *A theory of justice*, Rawls’s (1971) ideas on justice and social justice are still relevant. Rawls (1971, 5) regards justice as ‘constituting the fundamental character of a well-ordered human association’. He (1971, 9) maintains further that social justice provides ‘a standard whereby the distributive aspects of the basic structure of society are to be assessed’. It seems to me that ‘justice’ may be regarded first as a ‘state of being’ or

standard, similar to equity, which serves as criterion for the assessment of the interventions by government or employers with regard to the employment of individuals in the public sector.

The third concept in this section is *merit*. *Merit* refers to ‘the principle of recruiting, selecting, promoting and dismissing employees on the basis of their performance, expertise and technical qualifications’ (Fox and Meyer 1995, 81). This concept is still regarded as an essential value in the public service of the United Kingdom, for instance (Chapman 2000, 108; Painter 2000, 166; Shergold 1996, 1), although the so-called deinstitutionalisation of public institutions has been shown to lead to greater patronage and more tampering with appointment and promotion of staff (Peters 2000, 132).

Bearing in mind that merit is commonly regarded as an essential value of public administration, it is significant that the *White Paper on Human Resource Management in the Public Service* (Republic of South Africa 1997a, executive summary par. 17) states that it ‘must be defined within the context of employment equity’. In other words, merit must be subordinate to equity. This statement is perhaps a practical response to Corby’s (2000, 35) observation that ‘equal opportunities is undermined by a key ethical value in public service: selection and promotion on merit’. Like equity and justice, merit seems to be a standard to be used in the measurement or assessment of various policy and procedural interventions. However, merit is shown to be subordinate to equity and probably also to justice.

How does merit relate to policies of equal opportunity? Kruger and Moiler (2000, online) hold that the obstacles hindering black progress, such as inadequate training and experience, as well as discrimination in the workplace, ‘should first be eliminated before merit can become the only criterion for appointment and promotion’. In other words, equity and justice must first be restored before merit can be used to offer equal opportunities to all possible candidates for positions in the public service. One of the means of restoring equity and justice seems to be affirmative action.

### 2.3 *Affirmative action and a public service representative*

The third category of concepts includes *affirmative action* and a *representative public service*. A literature review on the concept *affirmative action* reveals that nearly all the definitions of or discussions about the concept boil down to its characteristics, ends and means. Table 2 contains an outline of the literature review. The literature review characterises affirmative action by its temporariness, purposefulness, correctiveness, non-discrimination, a perception that it is a violation of the constitutional right to equality and equal liberty, and another that it is a constitutional obligation that must be fulfilled by government (*Notice reaffirming affirmative action goals in light of Adarand decision*, quoted by Cao 2003, electronic collection; Mabokela 2000, 108–109; Kruger and Moiler 2000, online; Hodges-Aeberhard 1999, electronic collection; Stacey 2003, 146; Sing

1999, 19). A review of the relevant official documents reveals that the South African Government attaches the following characteristics affirmative action:

- ‘a strategy for the achievement of employment equity through redressing imbalances’ (Republic of South Africa 1997b, ch. 3)
- ‘a means to enable the disadvantaged to compete competitively with the advantaged of society’ (Republic of South Africa 1997b, ch. 1).

**Table 2:** Affirmative action: characteristics, ends and means

Characteristics	Ends	Means
<ul style="list-style-type: none"> <li>● a tool (<i>Notice reaffirming affirmative action goals in-Light of Adarand decision</i>, quoted by Cao 2003, electronic collection)</li> <li>● a corrective tool (Mabokela 2000, 1089)</li> <li>● an effort (Mabokela 2000, 108–109);</li> <li>● a purposeful effort (Kruger and Moiler 2000, online)</li> <li>● supposed to be temporary in nature (Kruger and Moiler 2000, online; Hodges-Aeberhard 1999, electronic collection)</li> <li>● an extension of the notion of equality of opportunity and non-discrimination (Hodges-Aeberhard 1999, electronic collection)</li> <li>● a violation of the Constitutional right to equality and equal liberty (Stacey 2003, 146)</li> <li>● constitutional obligation that must be fulfilled by government (Sing 1999, 19)</li> <li>● a form of state-sponsored social mobility (Adam 2000, 52).</li> </ul>	<ul style="list-style-type: none"> <li>● breaking down barriers to equal employment opportunity for women and minorities (<i>Notice reaffirming affirmative action goals in light of Adarand decision</i> quoted by Cao 2003, electronic collection)</li> <li>● to end the oppression of minorities (Boston and Mair-Reichert 2003, electronic collection)</li> <li>● redressing of workforce’s racial imbalance (Wagner 1989, electronic collection)</li> <li>● to rectify the existing imbalances (Mello 2000, 32)</li> <li>● to abolish inequalities (Kruger and Moiler 2000, online)</li> <li>● to redress inequities (Mabokela 2000, 108–109)</li> <li>● to address discriminatory practices of the pass (Mabokela 2000, 108–109);</li> <li>● to address the effects of current discrimination (Mabokela 2000, 108–109);</li> <li>● to promote diversity (Mabokela 2000, 109; Boston and Mair-Reichert 2003, electronic collection)</li> </ul>	<ul style="list-style-type: none"> <li>● a means to an end (Kruger and Moiler 2000, Online)</li> <li>● an intervention more than the mere provision of equal and merit-based opportunities (Kruger and Moiler 2000, Online)</li> <li>● a compensatory programme (Mabokela 2000, 108–109)</li> <li>● Laws, programmes or activities (Mello 2000, 32)</li> <li>● universalist criteria (Kruger and Moiler 2000, online)</li> <li>● recruit, employ, and advance qualified members of historically disadvantaged groups (Williams and Norris 1990, 5)</li> <li>● preferential treatment of certain individuals or groups (Kruger and Moiler 2000, Online);</li> <li>● organisational audit (Mello 2000, 32)</li> <li>● monitoring of policies (Mello 2000, 32).</li> </ul>



**Table 2** (continued)

Characteristics	Ends	Means
	<ul style="list-style-type: none"> <li>● levelling the playing field (Kruger and Moiler 2000)</li> <li>● aimed at effecting equal (occupational) opportunities (Kruger and Moiler 2000)</li> <li>● replacing white incumbents with members of the African community (Mbele 1996, abstract).</li> </ul>	

The purposes or ends of affirmative action seem to be: breaking down barriers to equal employment opportunity for women and minorities; ending their oppression; addressing, redressing and rectifying previous and existing discriminatory practices, racial imbalances and inequalities in the workforce; promoting diversity; levelling the playing field; aiming at effecting equal (occupational) opportunities (a form of state-sponsored social mobility); and replacing white incumbents with members of the African community (Adam 2000, 52; Boston and Mair-Reichert 2003, Electronic collection; Kruger and Moiler 2000, Online; Mabokela 2000, 1089; Mello 2000, 32; *Notice reaffirming affirmative action goals in light of Adarand decision*, quoted by Cao 2003, electronic collection; Wagner 1989, electronic collection). Although an argument can be made for affirmative action as an intervention or a tool to pursue various ends, it is certainly not an end in itself. The official documents reveal the following ends (purposes) for affirmative action to pursue in the South African context:

- speed up the creation of a representative and equitable Public Service and to build an environment that supports and enables those who have been historically disadvantaged by unfair discrimination to fulfil their maximum potential within it (Republic of South Africa 1998a, executive summary ch. 2, i.)
- enhance the capacities of the historically disadvantaged through the development and introduction of practical measures that support their advancement within the Public Service (Republic of South Africa 1998a, executive summary ch. 2, ii.)
- inculcate in the Public Service a culture which values diversity and support the affirmation of those who have previously been unfairly disadvantaged (Republic of South Africa 1998a, executive summary ch. 2, ii.)
- speed up the achievement and progressive improvement of the numeric targets set out in the *White Paper on Transformation in the Public Service* (Republic of South Africa 1998a, executive summary ch. 2, ii.)

- ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer (Republic of South Africa 1998b, sec. 15).

The purposes (ends) of affirmative action as an intervention in the Republic of South African context thus seem to be (1) the creation of a representative and equitable public service (see statement 3 in Table 1), (2) the enhancement of the capacity of the historically disadvantaged, (3) the achievement of numeric targets (see statement 3 in Table 1), (4) ensuring equal employment opportunities (see statement 2 in Table 1), and (5) equitable representation (see statement 3 in Table 1).

According to the literature review, affirmative action may be seen as a means to an end (Kruger and Moiler 2000, online). As such, it can be described as an intervention that is visible in the form of compensatory programmes, laws or activities; universal criteria; the recruitment, employment, and advancement of qualified members of historically disadvantaged groups; preferential treatment of certain individuals or groups; organisational audit, and the monitoring of policies (Kruger and Moiler 2000, Online; Mabokela 2000, 108–109; Mello 2000, 32; Williams and Norris 1990, 5). The South African Government uses the following means to pursue the ends of affirmative action:

- laws, programmes or activities designed to redress past imbalances and to ameliorate the conditions of individuals and groups who have been disadvantaged on the grounds of race, colour, gender or disability (Republic of South Africa 1995, sec. 10.3)
- additional corrective steps which must be taken in order that those who have been historically disadvantaged by unfair discrimination are able to derive full benefit from an equitable employment environment (Republic of South Africa 1998a, executive summary ch. 1, v).

Representativeness as a concept is closely related to the concept ‘affirmative action’ as affirmative action programmes are usually accompanied by guidelines on the representation of the various population groups in the public service. These guidelines usually include targets or quotas to be met. The extent to which these guidelines are followed will probably determine the duration of affirmative action programmes (Klug 1991, 331).

Table 2 shows that one of the ends of affirmative action programmes is to increase representativeness in the public service. Affirmative action should be seen as a means to an end, namely representativeness. Representativeness could be achieved by means of either a quota system or targets (Mello 2000, 37–38). Keeping in mind the chain of statements (Table 1), it can be argued that the final end is not representativeness, however, but equal employment opportunities (Mello 2000, 33–34).

It seems that representativeness, as reflected in the extent to which quotas or targets have been met, is used to evaluate the success or failure of public service transformation. In this regard Thomas and Woodart (2002, 12) refer, for example, to the transformation on a non-managerial level that ‘appears to have resulted in a broadly representative public service’. Thompson and Woodart (2002, 15) go on to refer to the overall picture of the representativeness of women in the public service, stating that ‘it appears that the public service is a long way off from achieving the 44,6% female representation suggested by their representation in the economically active population’.

Representativeness as a criterion to measure the success of the transformation of the public service to an equal employment service, probably comes from the *White Paper on the Transformation of the Public Service* (Republic of South Africa 1995, Sec 10.1), which states that representativeness ‘is one of the main foundations of a non-racist, non-sexist and democratic society, and as such is one of the key principles of the new Government’. Bearing in mind the earlier discussion on equality and equal employment opportunities, one tends to question the wisdom of this emphasis on statistical representativeness.

By referring to the principles of ‘inclusiveness, diversity, responsiveness and equality’, among other things, the *Green Paper on a Conceptual Framework for Affirmative Action and the Management of Diversity in the Public Service* (Republic of South Africa 1997b, ch. 3) has a much more inclusive view of representativeness, in fact, than the mere reaching of quotas or numerical targets. Taking into consideration that, according to the Constitution (Republic of South Africa 1996, sec. 9), *equality* implies the enjoyment of rights by ‘everyone’, the mere reaching of numerical targets and quotas will not necessarily guarantee equality. These rights are supposed to be promoted and protected by the various institutions of the state. Equality is shown to imply the equal enjoyment of public services rendered by the institutions of the state to everyone, but specifically to the previously disadvantaged communities. Equality will only be possible if, among other things, public managers follow the realistic guidance of the Public Service Regulations by using targets not only for achieving representativeness, but also for ‘training of employees per occupational category and of specific employees, with specific plans to meet the training needs of persons historically disadvantaged . . .’ (Republic of South Africa 2001a, reg. III D.1). In other words, representativeness as a criterion for equal employment opportunities must be counterbalanced by the rights (Republic of South Africa 1996, ch. 2) of everyone in the country, as promoted and protected by those very same public institutions that are supposed to be characterised by representativeness.

The phrase *previously disadvantaged* once again emphasises the object of affirmative action as a means to achieve representativeness. The next section will focus on the concepts *historically disadvantaged groups* and *designated groups* in

order to determine which persons are supposed to be advantaged by affirmative action programmes or the principles of *equal employment*, *equality*, and *employment equity*.

## 2.4 *Historically disadvantaged groups and designated groups*

Nearly all the articles, books, and official documents consulted for this article refer to the concepts *historically disadvantaged persons*, *designated groups* or slightly different formulations. It is noteworthy that the authors do not use the two concepts simultaneously. They use either one or the other. Of the authors listed in the list of sources, only Cao (2003) and Tinarelli (2000) use the concepts ‘designated groups’ or ‘designated persons’. Of the official documents consulted, only the Employment Equity Act (Republic of South Africa 1998b) applies the concept ‘designated groups’. This Act also uses the concept ‘designated employer’. The majority of authors and official documents appear to prefer the concepts ‘historically disadvantaged groups’ or ‘previously disadvantaged groups’.

Officially, in terms of the *Employment Equity Act* (Republic of South Africa 1998b, sec. 1), ‘designated groups’ means ‘black people, women and people with disabilities’. According to the Act (Republic of South Africa 1998b, sec. 1), ‘black people’ is a ‘generic term which means Africans, Coloureds and Indians’. In a survey on ‘affirmative action and popular perceptions’, Adam (2000, 4855) found a strengthened perception that black Africans deserve preferential treatment over other previously disadvantaged minorities. This perception rests on the view that the Indian and Coloured middle groups enjoyed some privileges denied to other Africans under apartheid (Adam 2000, 48–55).

Smith (1992, 242) states that affirmative action discriminates in favour of members of the designated groups, not because they are black or female, but because they are disadvantaged. If his remark is true, it would be more correct and equitable to define the designated group for affirmative action as ‘individuals disadvantaged on the grounds of race, gender and disability’ (Republic of South Africa 1997b, ch. 1; Mello 2000, 32). The implication of this definition would be that when candidates are considered for appointment or promotion, only those who can prove that they are disadvantaged on the grounds of race, gender or disability will be regarded as part of the designated group. This definition would then exclude those individuals, although black, female or disabled, who came from another country or who had an advantaged background. The logic of this argument is echoed by the Preferential Procurement Regulations, 2001 (Republic of South Africa 2001b, 1(h)) which assigned the following meaning to the concept *historically disadvantaged individual* within the context of procurement:

‘Historically Disadvantaged Individual (HDI)’ means a South African citizen –

(1) who, due to the apartheid policy that had been in place, had no franchise in

national elections prior to the introduction of the Constitution of the Republic of South Africa, 1983 (Act No. 110 of 1983) or the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) ('the Interim Constitution'); and/or

- (2) who is a female; and/or
- (3) who has a disability:

Provided that a person who obtained South African citizenship on or after the coming to effect of the Interim Constitution, is deemed not to be an HDI.

Klug (1991, 328) singles out the following three criteria for a disadvantaged group: '(1) they are a social group; (2) the group has been in a position of perpetual subordination; and (3) the political power of the group is severely circumscribed'. These criteria seem to violate the principle of individual rights in favour of group rights (Mabokela 2000, 109). I agree with Smith (1999, 242) that it is difficult to account for the morality of affirmative action which requires discrimination based on group membership. Although it might be true that the majority of the designated groups may be previously disadvantaged, it may also be true that some of the members of the designated groups cannot be regarded as previously disadvantaged.

Bearing in mind the view that affirmative action is supposed to be temporary in nature (Table 2), it may also be asked whether there is not an age cut-off point for the designated groups. Can an individual who was born after 1994, or went to school after 1994, really be regarded as disadvantaged in terms of the meaning of the Employment Equity Act (Republic of South Africa 1998b)? This brings one back to the characteristic of affirmative action identified in section 2.3 above. The following questions still remain: will affirmative action programmes be able to meet their purpose or reach their ends? How temporary are affirmative action programmes? Is there an age cut-off point for designated groups?

### 3. A conceptual model

From the foregoing it is evident that various concepts are used in official and academic discourses on affirmative action in general and the transformation of the South African public service in particular. If what is meant by the different words is not clear, people will not be able to understand one another clearly and assess the progress being made with the various interventions.

There can be no doubt of the importance of equality and the notion of equal employment in the discourse on public service transformation. Equality and fundamental equal employment opportunities seem to be the end of all the interventions in this regard. Four criteria, prerequisites or standards have been identified to assess all interventions in this regard, namely equity, justice, merit and representativeness. Merit is closely related to equal opportunities as an end. The literature also shows that in order to apply merit as a criterion in, say, appointments

**Table 3:** A framework of the main concepts used in the discourses on public service transformation

Concepts	Object	Means	Prerequisites/ Criteria/ Standards	End
Equality				X
Equal employment				X
Equity			X	
Justice			X	
Merit			X	
Affirmative action		X		
Representativeness			X	
Designated groups	X			
Historically disadvantaged persons	X			

and promotions, equity and justice first need to be in place. The position of representativeness in relation to merit is not so clear. It can be argued that when the specific intervention (e.g. appointment procedures) has passed the test of equity and justice, merit will be of more value than representativeness. Affirmative action has been shown to be a means to achieve equality and equal employment in the public service. Affirmative action seems to aim, legally, at the enhancement of the ‘designated groups’. Although the designated groups are defined as *blacks*, *women* and *disabled*, it seems crucial from an equity and justice perspective, that the individuals in the designated groups must be qualified as people who are historically disadvantaged persons. From a logical point of view, it makes sense that not all members of the three designated groups will be people who are historically disadvantaged persons. On the other hand, not all historically disadvantaged individuals are part of the designated groups, for example, those white men who are historically disadvantaged individuals, not because of their skin colour, gender or physical conditions, but due to the choices they made in the past on the ground of conscience.

Finally, what is the cornerstone of any assessment of the success interventions, such as affirmative action programmes, to achieve equality and equal employment in the public service? It seems that the most popular assessment criterion is representativeness. Why choose only one criterion if there are no less than four? I believe it may be possible to have true equality and fundamental equal employment opportunities based on merit, equity and justice, without having a staff component

that is a hundred per cent representative of the country's population composition. At the same time, it may be possible to have representativeness without having an equitable, just and merit-based staff component and without real equality.

Equality as an ultimate end of the Bill of Rights (Republic of South Africa 1996, ch. 2) seems to entail more than just representativeness as only one criterion for equal employment opportunities. Equality means the equal enjoyment of the rights and freedoms guaranteed by the Constitution. If we accept this, it means that equal employment opportunities (statements 4 and 5 in table 1) must be balanced by the right of the citizens of the country 'to full and equal enjoyment of all rights and freedoms' (see statement 6 in table 1). Transformation in the South African public service is a reality. In order to achieve real equality in the country, a more inclusive set of assessment criteria than just representativeness will be necessary to evaluate the successes and shortcomings of the interventions used in this regard.

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