

Proposed formulation Re: AFFIRMATIVE ACTION

- 1 The constitution shall embody measures to ensure a balanced restructuring of the public service, the organs of security and all state and para-statal institutions. *Reasonable!*
- 2 Measures taken to eliminate the inequalities produced by past discrimination *or disadvantage* and to provide equal opportunity for all, shall not be regarded as being in conflict with the principle of equal rights and non-discrimination.

Motivation

It would be ironical indeed if the equal rights clause in the constitution and the principles of non-racism and non-sexism were used to prevent the advancement of black people and of women. We are not against the merit principle but we cannot allow it to be used to perpetuate white and male domination from generation to generation. Special measures will be needed to ensure that the civil service, the army, the police force and the prison service draw on the life experiences and talents of the whole population. These bodies must be seen to represent the whole nation and not just this or that section. Furthermore urgent attention will have to be given to opening up middle and senior positions in the para-statals. The question of access to equity capital and the opening up of middle and senior positions in the private economic sphere will also require careful and sensitive attention.

The objective is not to push unqualified persons into positions of responsibility simply on the basis of colour or gender. It is, firstly, to ensure that opportunities are given for advancement to those who are already qualified but who have been kept back because of colour or gender. Secondly, it opens the way for assistance in obtaining appropriate qualifications to be given to person from groups that have been denied equal opportunity in the past.

In this sense, although the constitution will be completely colour blind and gender free in relation to basic civil and political rights, it will not ignore the effects of past discrimination in relation to social, educational and economic opportunities. Similarly, there will have to be special programmes to enable victims of past statutory discrimination to have access to land.

An appropriate affirmative action clause should be placed in the bill of rights to avoid the situation such as occurred in the United States where the courts were used to invalidate legislative or other actions specifically designed to promote the advancement of victims of past discrimination. At the same time, the clause should not be so wide as in any way to undermine the basic rights and liberties embodied in a bill of rights.