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**PORTFOLIO COMMITTEE ON LABOUR**

**PUBLIC HEARINGS REPORT: EMPLOYMENT EQUITY AND WORKPLACE  
DISCRIMINATION**

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## **PUBLIC HEARINGS: EMPLOYMENT EQUITY AND WORKPLACE DISCRIMINATION**

### **1. INTRODUCTION**

It is important for South Africa to undergo a fundamental transformation at all levels of society with the objective of ensuring greater equality and developing a more humane society. The Parliamentary Portfolio Committee on Labour is responsible for providing political oversight over the labour market, labour market interventions and ensuring compliance with key labour legislation. The Portfolio Committee decided to host hearing on compliance with the



Employment Equity Act (Act 55 of 1998) on 4, 5, 11 and 12 September 2007. The Labour Hearings on the compliance with the Employment Equity Act was designed to consult with key stakeholders, engage with the levels of compliance, evaluate the effectiveness of enforcement, identify challenges, make recommendations and recognise best practice. The Portfolio Committee notes that the Employment Equity Act focuses on both an equitable representation in the labour market and the establishment of more humane labour relations or decent working conditions. The Committee notes the urgency with regard to transforming the labour market and the need to consult with stakeholders so as to ensure a common approach and general levels of compliance. The Committee is also aware that labour market interventions are not straightforward and require particular policy choices to be made. The Committee is also sensitive to any unintended consequences of any recommendation. It is ten years since the enactment of the Employment Equity Act, which places a responsibility on the shoulders of Parliament to address compliance and the transformation of the labour market.

The Committee notes that prior to 1990 the South African labour market was characterised by a number of distortions and inefficiencies. The democratic government has since 1994 enacted progressive legislation intended to transform the labour market and begin to restore the dignity of poor and vulnerable people. As part of strengthening transformation and providing oversight it is the responsibility of Parliament to evaluate compliance with the Employment Equity Act and monitor discrimination in the workplace. The Parliamentary Portfolio Committee on Labour notes the findings of the 7<sup>th</sup> Annual Report of the Commission for Employment Equity, which highlighted the poor progress made with regard to ensuring representivity in terms of race and gender. All stakeholders have a responsibility to work towards transforming the South African labour market with the objective of ensuring greater representivity and creating a more humane working environment. Initial indications suggest that compliance has been slow and the labour market landscape has not fundamentally changed. The hearings in intended to investigate the slow pace of transformation, identify bottlenecks, engage stakeholders and make recommendations to the Department of Labour.

The Committee has engaged with the following organisations and institutions so as to get a broad range of perspectives on employment equity and workplace discrimination:

- Workplace Dignity Institute (WDI)
- Sociology of Work Unit: University of Witwatersrand
- National Department of Public Service and Administration (DPSA)
- AIDS Law Project
- Black Management Forum (BMF)
- Congress of South African Trade Unions (COSATU)
- Solidarity Union
- Commission for Employment Equity (CEE)
- South African Human Rights Commission (SAHRC)
- Women's Legal Centre (WLC) and the Rural Education Awareness and Community Health (REACH)
- Business Unity South Africa (BUSA)

The Portfolio Committee report on the hearings is presented in two Sections. Section A will provide a brief overview of the individual submissions. Section B will provide an overall assessment of the policy issues, nature of the problem, reasons and make recommendations.

## SECTION A

### 2. SUBMISSION MADE BY THE WORKPLACE DIGNITY INSTITUTE

#### 2.1 Background

The Workplace Dignity Institute (WDI) is a non-profit organisation that seeks to establish a culture of dignity and respect in the workplace in South Africa and internationally. The WDI seeks to achieve this aim through a hierarchical order of objectives. WDI's primary objectives are to:



1. Promote and facilitate the management of dignity in the workplace with all role-players;
2. To promote the responsibilities of the right to dignity at work with all role-players; and
3. To ensure that supportive services and structures are available for the victims to exercise their right to dignity at work.<sup>1</sup>

The secondary aims of the WDI are to ensure that once the primary objectives are achieved, that the desired outcomes (being dignity) will eventually spill over into the community at large. As the WDI's name might suggest, the WDI presentation focussed primarily on the prevention of violence within the workplace. WDI further suggested that, through its own research, 25% of South African workers are bullied or subjected to various forms of workplace violence.

## 2.2 Summary of the submission made by WDI

WDI suggested that workplace violence is a concept that is definable and that can be addressed directly with the adoption of a workplace violence policy. Research conducted in South Africa into workplace violence suggests that with the adoption of a Code of Good Conduct, workplace violence can be reduced by up to 75%.

Workplace violence is by no means unique to South Africa but is rather a universal trend that manifests mostly in public sector workers. WDI suggests that this is because workers in the public sector (particularly nurses and female police officers) do not have a choice of clientele, as opposed to workers in the private sector who do. The reason that WDI forwards to explain the global increase in incidences of workplace violence is the rapid expansion of economic development and industrial competitiveness. Competitiveness results in overworked workloads and stress. This is called structural violence and includes the intentional use of power and/or organisational systems and structures or laws against an individual or entity.

Sources of workplace violence include:

- **Non-compliance with Occupational Health and Safety:** the adherence to simple occupational health and safety rules and guidelines, have the ability to reduce the amount of incidences in workplace violence.
- **The Lack of Policy and Procedure:** adopting and implementing a thorough policy systematically, allows for lower incidences of workplace violence especially where that policy is communicated to the employees.
- **Organisational Factors:** the industrial structure of the organisation, organisational culture, staff workloads, as well as the management style of strategic stakeholders have the potential to contribute to higher incidences of workplace violence.
- **Individual Factors:** the employment policy of an institution has the ability to affect the amount of incidences of workplace violence. Basically, the recruitment process needs to bear cognisance of a workplace violence policy in order to ensure that incidences of violence are kept to a minimum.
- **Interpretation of the Law:** The way in which an employer interprets the law in dealing with workplace violence has a direct effect on the amount of incidences of workplace violence.
- **Exploitation:** exceptionally high work loads, unfavourable working conditions and the misuse of labour practices tend to directly affect incidences of workplace violence.

Violence in the workplace can therefore not be viewed as the sole domain of the employer. More often than not, workplace violence occurs in an emotional manner, in the form of the misuse of power, harassment, intimidation and threat. The perpetuation of emotional workplace violence is facilitated by the silence and reluctance of staff to expose incidences of workplace violence.

## 2.3 Recommendations:

<sup>1</sup> [http://www.worktrauma.org/wdi/about\\_wdi.htm](http://www.worktrauma.org/wdi/about_wdi.htm)



The main tenet of the recommendations advanced by the WDI is the introduction of dignity into the workplace, which is believed to result in the spill over into social circles. The former can be achieved by introducing and implementing a workplace violence policy at a systemic level. As has already been stated, according to research conducted by the WDI, introducing such mechanisms results in workplace violence being reduced by 75%. Other recommendations include:

- Rendering advice or assistance to victims of workplace violence in a confidential and responsible manner so as to not facilitate the onset of secondary victimisation.
- Victims and perpetrators should be given a choice as to which measures should be employed in addressing workplace violence. In rendering these measures, workers should not be forced to choose a specific measure, which could possibly be easier for the manager involved.
- Making informal procedures available where the victim of workplace violence has the opportunity to address the problem directly with the perpetrator, explaining why his/her conduct is offensive.
- The availability of, depending on the seriousness of the offence, formal procedures like lodging a grievance. Because of the more formal nature of this approach, specific consideration would have to be given to investigation and disciplinary action, criminal or civil charges and alternative dispute resolution.

Essentially, the onus lies with the employer to institute measures and policies to deal with workplace violence. He/she should embark on a continuous evaluation procedure so as to ensure the efficacy of a workplace violence policy. Moreover, it is the duty of the employer to ensure that any policy that is implemented at a systemic (lower) level, to ensure that any such policy has the desired effect.

### **3. SUBMISSION MADE BY THE SOCIOLOGY OF WORK UNIT, UNIVERSITY OF WITWATERSRAND.**

#### **3.1 Background:**

The Sociology of Work Unit (also known as SWOP) is an academic institution that disseminates information to a broad range of role players within the complex South African labour market. The basic focus of the submissions made by SWOP is the success of the Employment Equity Act (Act 55 of 1998) in addressing the key characteristics of the workplace regime and whether it is necessary to amend the principle pieces of legislation that deal with employment equity. In attempting to highlight these 'inefficiencies' SWOP used a broad range of statistical data.

#### **3.2 Submissions made by SWOP:**

It is believed that South Africa has an extremely complex labour market because of the extreme levels of segmentation due to the entrenched labour policies of the apartheid regime. The common thread of this segmentation is the racialised labour market. Nowhere is this more evident than the financial labour market that remains largely white dominated, with white and Indian males occupying the largest part of top-level management. Because of this imbalance, employment equity has been broadly focussed on top-level management, often at the expense of middle and lower levels of the labour market.

Another problem area is the large in Professionally Qualified Black Professionals. Reasons that have been forwarded to explain this trend have by and large been focussed on the upward mobility of these individuals and the inability of the market to fill those vacant positions. Moreover, inequalities still exist in the education labour market where the Department of Education has been tracking employment trends for close to 20 years. Whilst there has been an increase in the amount of black persons who are being employed, the change that has been identified is far slower than what is expected. Furthermore, very few universities have achieved favourable levels of employment equity *vis-à-vis* sex AND race. The hierarchical nature of the South African labour market further facilitates an environment of competing equities, particularly in sex and race. This has been clearly evident in



the employment of white females who qualify under the terms and references of employment equity, whilst this notion competes directly with the employment of black individuals.

### 3.3 Recommendations:

The key recommendation is that an enquiry should be launched into the efficacy of employment equity principles and how these principles have further perpetuated inequalities in the labour market. Moreover, upon recommendation of the relevant enquiry, certain amendments, where necessary, need to be made so as to ensure that problems are not further perpetuated.

Further, it is recommended that an element of class needs to be introduced into the labour market. SWOP intimated that by introducing class into the labour market, it is meant that every aspect of the labour market should be looked at, in terms of the employment equity. Whilst employment equity at present is concentrated predominantly in the upper echelons of the labour market, it is the middle to lower levels of the hierarchy that are left most vulnerable to issues of income concerns, job security and workplace related benefits. This is important, as it is impossible to introduce and employ a one-shoe fits all rule. Substantive change needs to take place sectorally, as it is evidenced by the prevailing nature of the financial labour market where the bulk of EE attention has been focussed. Methods of achieving class in the workplace could be to require companies to report on pay differentials throughout the organization so that informed decisions can be made to address job sided pay differentials. Companies could also secure benefits, like provident funds, medical aid and the like, for middle to low level workers to help address the class-related inequality. Finally, companies could establish, in co-operation with SETAS, bursary and skills development schemes to facilitate career progression within the organisation and secure a higher level of skilled staff within the organisation.

Finally, it is important to understand how equities compete and how this competition impedes on the advancement of broader employment equity. This should not only focus on the reasons for the competition, but also on the ways in which this can be addressed and how equities can be reconciled within the national labour market.

## 4. SUBMISSION MADE BY THE NATIONAL DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION

### 4.1 Background:

The Department of Public Service and Administration (DPSA) is a government department that strives to be a global leader in public service excellence by supporting the Minister of Public Service and Administration in leading public service administration, providing professional advice and support to ensure public service excellence and promoting good governance nationally, on the African continent and globally.<sup>2</sup> The core focus of the DPSA is expounded in its value statement<sup>3</sup> that lists its constitutional mandate as:

- Promoting and maintaining high standards of professional ethics;
- Providing service impartially, fairly, equitably and without bias;
- Utilising resources efficiently and effectively;
- Encouraging citizens to participate in policy making and implementation;
- Responding to people's needs and relating to stakeholders with humility and care;
- Rendering an accountable, transparent and development orientated public administration; and
- Promoting sound human resource management and representivity service.<sup>4</sup>

<sup>2</sup> <http://www.dpsa.gov.za/about.asp>

<sup>3</sup> The value statement of the DPSA is aligned with the Constitution (Act 108 of 1996) and the Batho Pele Principles

<sup>4</sup> <http://www.dpsa.gov.za/about.asp>



might assume, the DPSA is also required to apply employment equity principles in its human resources programme. This is achieved through the implementation of management plans that include organisational structures, service delivery plans, and particularly, human resource plans.<sup>5</sup>

#### 4.2 Summary of submissions made by the DPSA:

The main tenet of the submission made by the DPSA (the department) highlighted to what extent the department met its transformation targets, as set by the Parliament of South Africa. These transformation targets have also been set by the White Paper of Transformation of the Public Service of 1995<sup>6</sup> and the White Paper on Affirmative Action in the Public Service of 1998.<sup>7</sup> In terms of these set targets, the DPSA highlighted that they have already met the 75% target as set by the above-mentioned policy documents. However, the DPSA went further to highlight that these targets were purely baseline targets and represented the lowest acceptable levels of transformation.

Specific targets were also set in terms of women and people with disabilities in the public service, specifically senior management level (sms). These targets have been endorsed by the Cabinet and that target was subsequently set at 30 % by 2005. The DPSA further submitted that in terms of these targets, the DPSA has in its senior management employ, 31, 56% women. In 2005, Parliament reviewed these targets and reset them at 50%. In terms of people with disabilities, Parliament set targets at 2% of the public service workforce by 2005. By 2005, the DPSA had failed to meet this target. In subsequent parliamentary sessions, Parliament reviewed this target and extended the deadline to March 2009.

The DPSA submitted that workplace discrimination still predominates on the basis of race, gender and disability. This finding was based on advocacy sessions hosted by the DPSA in the first quarter of 2007 as well as a high-level roundtable hosted by the Minister in August of this year, where senior managers identified the workplace as discriminatory to the empowerment of target groups. Moreover, discrimination in the public service took the form of sexual harassment of both men and women, attitudinal stereotyping and insensitivity, lack of adequate facilities for people with disabilities and lack of proper child care facilities.

#### 4.3 Recommendations:

The essential element of the recommendations made by the DPSA was the putting in place of strategic frameworks and implementation guidelines, including monitoring and evaluation guidelines and annual social surveys. Particular focus areas would include:

- HIV and AIDS in the workplace, employee health and wellness framework, including the well being of persons with disabilities;
- "JobACCESS" for the recruitment, employment and retention of persons with disabilities, including the handbook on reasonable accommodation and accessibility;
- Gender equality in the public service, including women in leadership roles;
- Reworking the Human Resource Development Strategy; and
- Creating a strategic framework on employment equity compliance.

### 5. SUBMISSIONS MADE BY THE AIDS LAW PROJECT:

#### 5.1 Background:

The AIDS Law Project (ALP) is an organisation that specialises in helping people with HIV/AIDS to deal with these problems. ALP researches a variety of social, legal and human rights issues related to HIV/AIDS and uses research to develop law, policies and "best practice"

<sup>5</sup> <http://www.dpsa.gov.za/about.asp>

<sup>6</sup> General Notice 1459 of 1997.

<sup>7</sup> General Notice 564 of 1998.



recommendations related to issues of HIV/AIDS in the workplace, pregnancy, development and women. Moreover, ALP is the only organisation on the continent that works exclusively to promote equal rights and justice for people infected and affected by HIV/AIDS.<sup>9</sup>

## 5.2 Submissions made by ALP:

ALP identified that South Africa has at present a highly developed legislative framework to deal with HIV/AIDS in the workplace that has been adopted by many large private employers. However, it seems that the implementation of these legislative measures remains problematic, particularly in middle to smaller employers. Moreover, the problem is further compounded by the failure of employers to properly disseminate information regarding HIV/AIDS in the workplace, little or no participation from organised labour and the tendency to limit HIV/AIDS awareness to once off events.

The core area of concern for ALP was the legislative framework. Specific gaps in the present legal dispensation have been identified. Through this, ALP identified individual problem areas within the framework that require urgent attention. These are:

- **Access to legal services:** the most vulnerable of workers are usually the ones who are unable to access legal services, whilst trade unions are often ill-equipped to deal with issues relating to HIV/AIDS related discrimination. Moreover, non-unionised workers usually unable to find legal assistance due to the high cost implication or the lack of funding in public institutions (like the Legal Aid Board and Legal Aid Clinics).
- **Casualisation of labour:** workers who are casualised or who are employed through labour brokers, in most instances, do not fall within the labour legal framework insofar as healthcare and other benefits are concerned. The most vulnerable casualised labour sectors include migrant workers, domestic workers and farm workers.
- **Proposed amendments to labour legislation:** the private sector is placing increased pressure on the government to make amendments to legislation to allow employers more powers in the dismissal of workers. These proposed amendments will have a disproportionately harsh effect on workers living with HIV/AIDS.

## 5.3 Recommendations:

- Organised labour should mobilise to oppose the proposed amendments by large employers in order to ensure that the rights of workers living with HIV/AIDS are not eroded by the proposed amendments.
- Where necessary, civil society should take greater responsibility in educating workers regarding their rights, as well as HIV/AIDS testing, treatment and prevention.
- Civil society should also lobby for increased funding for the Legal Aid Board so as to ensure a greater capacity for dealing with civil litigation related to HIV/AIDS and workplace discrimination.
- Trade union representatives should receive training on HIV/AIDS and the law so as to assist workers in disputes relating to HIV/AIDS.
- That the NEDLAC Framework Agreement, which has not been signed by the government, be adopted and implemented. According to ALP, the agreement provides an excellent framework within which to secure rights of workers living with HIV/AIDS.
- Finally, that the adoption and implementation of a HIV/AIDS policy become a legal requirement. The monitoring of the implementation of such a policy should not in any way become onerous on smaller employers, but should be flexible enough to meet their limited resources.

## 6. SUBMISSION BY THE BLACK MANAGEMENT FORUM (BMF)

### 6.1 Background:

<sup>8</sup> <http://www.alp.org.za/print.php?sid=3>

<sup>9</sup> <http://www.alp.org.za/print.php?sid=3>





Founded in 1976, the BMF is an independent non-governmental institution that is dedicated to the advancement of black managers and the placement of these black managers on an equal platform with managers from other backgrounds and environments.<sup>10</sup> Whilst the major focus of the BMF is to ensure the advancement of black managers, its policy is based on non-racialism.

The BMF aims to be the foremost organisation in the development of managerial leadership and advancing socio-economic transformation of organisations in Southern Africa.<sup>11</sup>

## 6.2 Submissions by the BMF:

The core focus of the submissions made by the BMF was the slow pace of transformation in corporate South Africa, particularly non-compliance with employment equity and affirmative action in businesses and institutions within our country. According to the BMF, the provisions of the Employment Equity Act are continually being violated whilst the Department of Labour lacks capacity insofar as its operational and human resources capacities are concerned.

The BMF submitted that there is a range of areas of concern that need to be urgently addressed. These are:

- The Commission for Employment Equity (CEE) has failed to issue national guidelines for public and private institutions with regard to the setting of numerical targets and benchmarks for employment equity. The CEE has been mandated by section 29 of the Employment Equity Act to set these numerical targets, particularly during the first phase of the employment equity transformation process. Because of the lack of these targets and benchmarks, companies are unable to evaluate current employment equity targets for the advancement of targeted groups.
- The particular failure of the CEE to develop and institute punitive measures for the continued violation of employment equity.
- The continued focus by companies to focus on the procedural and quantitative aspects of employment equity whilst neglecting the real challenges faced by marginalized groups in their respective industries. The BMF also expressed that this skewed focus is directly linked to the lack of a pro-active approach in enforcing employment equity and non-discrimination.
- The continued inability of the Commission for Conciliation, Mediation and Arbitration (CCMA) to address "covert" discrimination in the workplace that has resulted in the lack of confidence by workers in the CCMA.
- The inconsistencies that exist within the legal framework with respect to dealing with discrimination in the workplace: the Promotion of Equality and Prevention of Unfair Discrimination Act of 2000 (PEPUDA) provides for a class action whilst the Employment Equity Act does not. Because of these inconsistencies workers who are victims of workplace discrimination are often unsure of which avenue to choose in seeking redress for said discrimination.
- The pervasive and insidious nature of discrimination, particularly in the judiciary evidenced by the recent public discourse regarding the continued individual and institutional racism within the judiciary.

## 6.3 Recommendations:

The BMF submitted a range of recommendations to address workplace discrimination. These include:

- That the overlapping mandates of public institutions that enforce section 9 of the Constitution (Act 108 of 1996) needs to be addressed so as to ensure that each of these institutions operate effectively and sufficiently address issues of workplace

<sup>10</sup> <http://www.bmfonline.co.za/>

<sup>11</sup> <http://www.bmfonline.co.za/>



discrimination. Particular institutions include the Commission for Employment Equity, the Commission on Gender Equality and the Office on the Status of Disabled Persons and other related institutions.

The establishment of a campaign under the supervision of the Department of Labour, and in co-operation with organised labour, black business and interest groups to identify and eliminate all instances of unfair discrimination in the workplace and ensure employment equity compliance. Preferably, the campaign will stretch over a two-year period with different (yet complementing) roles for the various stakeholders.

- That a link be created between the new Black Economic Empowerment (BEE) enforcement mechanisms of the Department of Trade and Industry (DTI) and the employment equity inspectorate. This link should include the extension of the roles of the BEE rating agencies to ensure that black professionals are not employed under the guise of employment equity.
- The use of Accredited Rating Agencies to conduct investigations into employment equity in the respective workplaces, in a similar fashion to auditing firms.
- Making the necessary amendments to the labour legislation so as to ensure that workplace discrimination becomes a collective issue as opposed to an individual concern, i.e. making provision for class action lawsuits.
- The establishment of a commission of enquiry to investigate racism and other forms of discrimination in the workplace. Ideally, the commission would be given a year-long mandate to review incidences of discrimination and the advancement of targeted groups in the workplace.
- That the labour legislation be amended to include a "sunset" clause for the inclusion for white women in employment equity.

## **7. SUBMISSIONS BY THE CONGRESS OF SOUTH AFRICAN TRADE UNIONS (COSATU)**

### **7.1 Background:**

As its name might suggest, COSATU is a federation of trade unions representing the main industries of South Africa. Launched in 1985, COSATU was the result of four years of aggressive talks between fellow trade unions who opposed apartheid and discrimination. Representing close to 2 million workers, COSATU expresses its strategic objectives as:

- The improvement of material working conditions of COSATU affiliates and workers in general.
- Organising the unorganised.
- To ensure worker participation in the struggle for peace and democracy principles.

### **7.2 Submission made by COSATU:**

COSATU's submissions centred around four main areas of concern, each with its own set of recommendations. These thematic are:

1. The general understanding of employment equity by workers and the attitude of management towards this legislation;
2. Specific instances of unfair discrimination being experienced by workers;
3. Employment equity processes and the extent to which these have been established; and
4. Barriers to the implementation of employment equity legislation and the enforcement mechanisms available in the legislative framework.

#### **7.2.1 Level of understanding of Employment Equity:**

Whilst the EEA requires that employers explain employment equity to their employees, the experience at the grass roots level is that the converse is indeed true. After consultation with various federated organisations, it seems that workers did not have a high level of awareness



of employment equity. Various reports from these affiliated organisations highlighted a general reluctance by employers to educate employees about employment equity and, where the employer had undertaken a process of informing employees about employment equity, employers seemed to be going through the motions rather than making a concerted effort in this regard. Moreover, shop stewards were not involved in this process because they themselves have a scant understanding of employment equity or employers exclude these shop stewards from participating in the process. In some instances, large employers outsource this function to external entities that do not have the capacity to effect change within the organisation, and often have to wait on confirmation from its head offices to conduct such training programmes.

#### **7.2.1.1 Recommendations:**

COSATU made various recommendations that, the organisation believes, will effectively address this area of concern. These include:

- Employers need to proactively institute specific programmes or meetings that aim to educate workers about employment equity. These meetings should be held on a needs basis and should include input from both employers, employees and shop stewards. The timing of these meetings is also integral to the process, as it needs to include the maximum amount of employees.
- Employers should also receive training. The Department of Labour should play an integral role by embarking on training programmes that not only highlight the requirements of employment equity, but also the spirit and purpose of the legislation. It is believed that through this measure, employers would have a more positive opinion of employment equity legislation.
- Successful examples of employment equity within the labour market should be used by the Department of Labour to highlight the positive aspects of employment equity within the workplace. It should be particularly highlighted to companies that they could be potentially more competitive by being able to draw on the full capacity of the staff complement.
- The Department of Labour needs to institute more effective enforcement mechanisms, and in so doing employees will have more meaningful participation in the employment equity process.
- Whilst the onus rests with the employer to inform staff on issues of employment equity, the Department of Labour could also extend its training capacity to train shop stewards and employees, who in turn could train other employees on issues of employment equity.

#### **7.2.2 Experiences of unfair discrimination:**

COSATU, in its submission, spelt out various forms of discrimination that is taking place in the labour market, in particular direct discrimination, indirect discrimination and discrimination against people with disabilities. The bulk of discrimination against black workers occur in the private sector, whilst white workers experience discrimination in the public sector. The forms of direct discrimination that have taken place, include physical violence, segregation in company amenities, full body searches being conducted on certain race groups only and large disparities in pay differentials, particularly with regard to women employed on the same level as their male counterparts.

Indirect discrimination also takes place, predominantly through the practice of excluding black workers from promotion or recruitment under the guise of "inherent job requirements." Large employers discriminate against black workers by not taking into consideration previous learning experience. Moreover, gender discrimination also takes place in certain sectors of the labour market where women are excluded from employment in the private security industry based on their unsuitability for the requirements of the job. Women are also being discriminated against on the basis of the absence of child-care facilities, particularly in the textile markets of the Western Cape. Where black individuals are appointed, this is often merely window dressing,



and white individuals are then employed in custodial roles to oversee the activities of those black individuals.

Disabled persons are also subject to indirect discrimination. Workplaces are not sufficiently restructured and reorganised to cater for people with disabilities. And where proposals are put forward to restructure the workplace, these proposals are often rejected based on the financial implications.

#### 7.2.2.1 Recommendations:

- Recruitment processes could be more transparent by including various designated groups, in an observatory capacity, in the recruitment process.
- To necessitate the elimination of indirect discrimination on the basis of inherent job requirements, companies should be encouraged to provide for accelerated training, development programmes and succession planning targeting designated groups for the purposes of promotion or recruitment. Moreover, efforts should be increased to establish what exactly is meant by "inherent job requirements."
- Where individuals from designated groups have been appointed in apparent "token" positions, the Department of Labour needs to undertake a process of monitoring the extent to which "tokenism" occurs without those individuals participating positively in the corporate decision making processes.
- Large employers could use SETA's to improve skills development.
- Lobbying of the Department of Labour, the Department of Justice and Constitutional Development as well as the South African Police Service to increase their capacity to oversee the implementation and protection of the rights of various vulnerable groups.

#### 7.2.3 Employment Equity Processes:

The employment equity legislative framework places various duties on employers. However, there have been various instances where large employers flout these obligations and in doing so, discriminate against designated groups. Particular areas of concern are the establishment of employment equity committees and income differentials.

With regard to employment equity committees, COSATU has observed that in many instances, these committees have not been established, and where they have been established, the members of these committees were chosen by management without consulting workers unions. Moreover, large employers find constructive means of ensuring worker participation by arranging meetings at times when workers are unavailable to make a meaningful contribution. Where established, these committees are often unable to understand their function and are often unable to move beyond general policy intervention. Workers are often not consulted with regard to employment equity decisions. In general, there remains uncertainty as to what "consultation" exactly means. Furthermore, the guidelines for consultations are not properly enforced.

The analysis of employment equity reports is often of an inferior nature. This is because these analyses are done by external consultants where the employer and employees are disengaged. As a result, employers often flout the recommendations in practice.

Income differentials within the labour market as a result of apartheid continue to exist. Whilst much effort has been made to eliminate horizontal income differentials, vertical income differentials continue to add to the growing gap between the rich and poor. Whilst the Commission on Employment Equity has been mandated to report on these income differentials, it is being hampered by incomplete reports being submitted by employers.

#### 7.2.3.1 Recommendations:

- The Department of Labour should conduct regular inspections to ascertain to what extent employment equity committees have been established and whether there is