



Continuing the miracle into South Africa's second decade

**The
FW de Klerk Foundation**

Affirmative Action and the Politics of Transformation: A Survey of Public Opinion

A study commissioned by
the F W de Klerk Foundation

August 2004

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First Published 2004/09

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Foreword

South Africa's first decade was marked by the successful democratic transformation of our constitutional system. During this period we consolidated our young democracy; we held three free national elections and witnessed the seamless transfer of office from President Mandela to President Mbeki.

At the same time, more than half our population derived very little tangible benefit from our new democracy. According to the Human Sciences Research Council 57% percent of South Africans were still living below the poverty line of R1 290 a month for a family of four in 2004.

Our second decade will understandably be characterised by social and economic transformation as we attempt to grapple with the deep inequality in our society. A central element in this process will be the government's black economic empowerment programme which seeks to promote greater equality between black and white South Africans in all sectors of the economy and society. One of the main factors in determining the success of black economic empowerment will be the degree to which all South Africans – black and white – can unite to achieve clear and reasonable goals. Unfortunately, there have been persistent indications that black and white views are deeply divided on questions relating to BEE and affirmative action.

The Foundation accordingly asked Professor Pierre du Toit of the Department of Political Science of Stellenbosch University to write a study for us on white and black attitudes to affirmative action and transformation based on an opinion survey that was conducted earlier this year. The results broadly confirm that there are significant differences of opinion between blacks and whites on these questions. In our view, these divergent perceptions must be addressed through communication and compromise if we wish to avoid further alienation and if we wish to achieve necessary and reasonable transformation goals.

The views expressed in the study are Professor Du Toit's and do not necessarily reflect those of the Foundation.

Dave Steward
Executive Director
Cape Town, September 2004

Summary

This project entails an assessment of the politics of negotiation in South Africa. South Africa's negotiated constitution can be taken as the major outcome of this process. All contracts tend to run their course and after ten years of democracy it is appropriate to revisit this social contract that was negotiated at Kempton Park.

A special focus of this study is on affirmative action, in part because it is central to the issue of unemployment, generally accepted as South Africa's most pressing problem. The rules for dealing with conflicts over employment provide one of the most stringent tests for the negotiated constitutional order.

The report contains data on public opinion on a number of issues pertaining to affirmative action. The survey was conducted by Markinor, commissioned by the author. The data were assembled through 3500 interviews conducted between February and March 2004. The interpretation of the data is that of the author and does not reflect the views of Markinor or of any other institution.

The study found that South Africans disagree over a number of aspects pertaining to affirmative action, but that there are also significant areas of agreement. There are intense differences over whether the overall effect of these equity measures is to reduce able-bodied white men to second-class citizens in their own country. Most white South Africans think so, most black South Africans are indifferent to the issue. South Africans are also in disagreement over whether litigation on matters relating to affirmative action amounts to fair use of the Constitution, or whether this programme/policy should be seen as misusing the Constitution.

There are significant areas of agreement among the general public. As far as the detailed application of affirmative action measures go, most South Africans endorse the idea that young people who enter the job market for the first time should be exempted from these rules. Likewise, almost two thirds of South Africans share the view that, in order to ensure that young people get the best education possible, teachers should be appointed on merit only.

The findings can be interpreted as supportive of the following conclusions:

- South Africans disagree with one another about what the Constitution stands for; and therefore
- about the nature of the negotiation process that produced this Constitution.
- South Africans therefore do not have any national consensus on political transformation.
- There is enough common ground among South Africans to draw up a code of good conduct for the application of affirmative action rules.
- Such a code is much needed if a large part of the South African labour force is not to have their human dignity impaired.

- A new definition of empowerment is needed and public support for one does exist.

Two more general conclusions are made:

- The first is that the data presented here are part of an overall argument that affirmative action should be applied differently in future, and not as an argument that the policy should be terminated;
- The second one is that there is no national consensus on the basic presuppositions of the constitutional order. In order to establish such a consensus, the social contract will have to be re-negotiated.

1. Introduction: South Africa After Ten Years of Democracy

“Our single most important challenge is therefore to help establish a social order in which the freedom of the individual will truly mean the freedom of the individual.... Our definition of the freedom of the individual must be instructed by the fundamental objective to restore the human dignity of each and every South African”.¹

These were the key elements in the speech with which newly inaugurated President Nelson Mandela opened South Africa’s first democratic parliament on 24 May 1994. In the speech he not only set the policy targets for the new government of the next year, but he also elaborated the broader vision of the entire new democratic regime.

Individual freedom and human dignity can then be taken as relevant reference points/yardsticks for assessing the first decade of democracy. Such an assessment, in turn, provides the context for analyzing survey data on the issues of affirmative action and land redistribution, the specific focus of this report.

1.1. What went Right

Firstly, we managed to run three national elections with success. The 1994 election was the least secure and a number of administrative errors occurred, but the subsequent ones in 1999 and 2004 proceeded far more smoothly.

Secondly, concurrent with the consolidation of electoral politics, we saw a marked decline in overt political violence. Political fatalities reached a high point in 1993, when 3794 people died. This rapidly declined to 325 in 1999 and to 57 by 2002. The continued occurrence of farm attacks, many with fatal consequences, is a possible exception in this regard.²

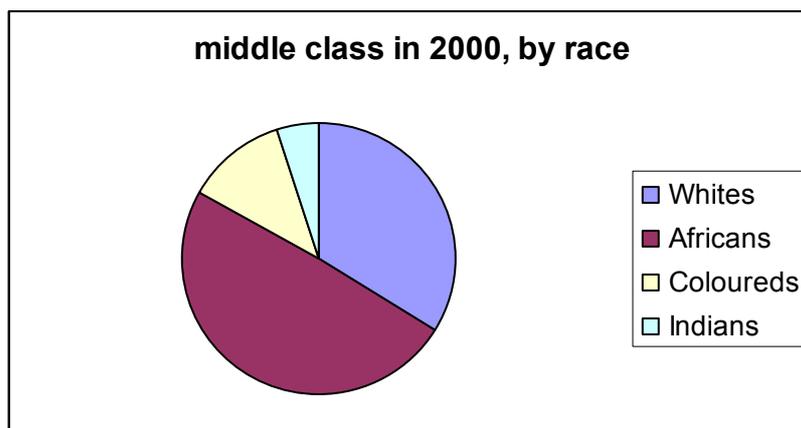
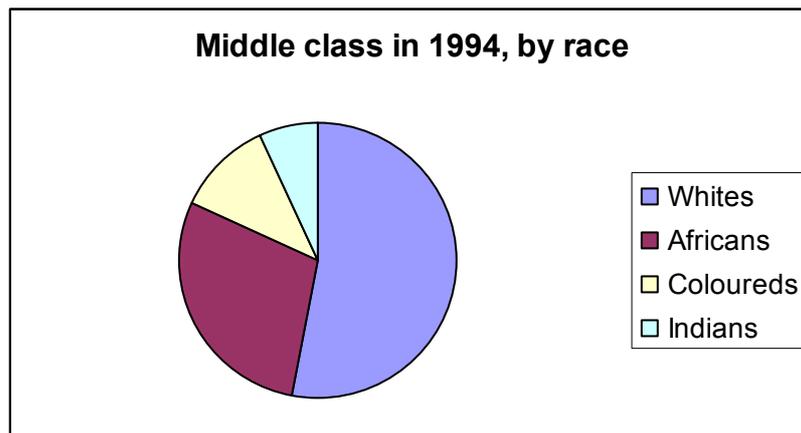
Thirdly, sustained moderate economic growth was achieved in this decade. From 1995 to 2002 annual GDP in real terms grew by between 0,8% and 4,3 percent.³

Fourthly, the provision of hard services to communities that were previously deprived of access increased substantially. Since 1994 about 1,6 million houses have been built, access to piped water has been extended to an additional 17,3 million people, and sanitation to an additional 6,7 million. More than 700 clinics were built and 3,8 million houses were electrified.⁴

Fifth, a stable parliamentary system has been established. The party-list system of proportional representation we use as an electoral system very often leads to a very fragmented party system, creating unstable ruling coalitions. This has thus far been averted in South Africa, although the very opposite, a dominant party system, delivers stability but also single-party dominance.

Finally, and of crucial significance for the theme of this report, substantial redistribution of wealth across racial lines has been taking place in the last decade. One indicator of this is found in the changing racial composition of the middle class.

In 1994 whites comprised 53% of the middle class, Indians 7%, Coloureds 11% and Africans 29%. By 2000 the white share was down to 34%, Indians 5%, Coloureds 12%, and Africans up to 49%.



It is important to note that this racial redistribution of wealth was measured in 2000, less than two years after the passage of the Employment Equity Act, the major directive of affirmative action.

What the above data do not show is the size of the middle class within the overall South African society. In 1994 the middle class comprised only 8,8% of the entire population, and by 2000 this had increased to only 11,9%. In 2000 exactly one third of the white population group maintained a middle-class standard of living, as did 15,6% of the Coloured population, 20,7% of Indians, and 7,8% of Africans.⁵

Every one of these listed successes can be interpreted as contributing to the human dignity of South Africans, both individually and collectively, and they have thus contributed to the realization of the vision of President Mandela.

1.2. What went Wrong

There were, however, some equally notable failures of governance in the first decade of democracy and they also impact on the realization of dignity, and negatively so.

The major failure of governance is found in inability of the government to address the compound development issue with its dimensions relating to poverty, inequality, crime, AIDS and unemployment. Although every one of these factors impacts on the others, each one can be highlighted individually.

Firstly, there is little indication that the impact of AIDS can be moderated, let alone turned around, in the immediate future. One measure of the overall effect of AIDS on society is that of life expectancy, which stood at 56 years in 2000. One estimate is that this will decline to 41 years by 2010, largely due to the impact of AIDS.⁶

Secondly, violent crime remains at a very high level. In the first ten years of democracy close to a quarter of a million South Africans (about 230,000) have been murdered. More than 300,000 have survived such attacks and are recorded as victims of attempted murder. Another million or so became victims of robbery with aggravating circumstances.⁷ Not surprisingly, after ten years of democracy fewer than one out of every four South Africans feels safe to walk around in the open after dark.⁸

Poverty remains pervasive. Despite the very successful extension of service delivery, especially those that relate to hard services, by 2001 there were still more than 22 million South Africans (about 48,9% of the total population) living in poverty.⁹

The rise of the African middle class has contributed to a narrowing of the income differences between racial groups, but it has also led to an increase in inequality within the racial groups.¹⁰ The old apartheid correlation of the white and rich confronting the black and poor no longer holds true. South Africa is at risk of creating a new division: a new increasingly affluent multi-racial upper class against a new equally multiracial underclass sinking into deeper poverty.

Finally, in the midst of this problem of development lies the issue of unemployment, inextricably linked to poverty and inequality, and also to crime and AIDS. In 1994, with the advent of democracy, unemployment stood at about 30% (with the wide definition). By 2002 it had risen to 41%.¹¹

Every of the above failures of governance impacts adversely on human dignity. If a South Africa characterized by individual freedom and dignity is to emerge, this is going to happen within a context where South Africans are drawn into an intensely competitive contest for economic survival and prosperity. The rules of the game that shapes this contest are therefore of decisive importance to the consolidation of the new democratic regime. These rules need to find

all-round acceptance as being fair, legitimate and even-handed. Central to this body of rules are those of affirmative action.

2. The Negotiated Constitution, Transformation and the Politics of Redistribution

South Africa's constitutional order was the product of negotiations, which inevitably required the negotiators to find mechanisms for addressing the legacy of the past. They anticipated that, given the historical legacy of inequalities, rules pertaining to equality and redress would have to be established. Some of the most important ones would be those that have bearing on employment. The interim 1993 constitution provided a first set of rules, soon to be superseded by the 1996 Constitution. The most relevant were sections 9 (on equality) and 195 (on employment criteria in the public service).

Section 9 (1) presents the more or less standard formulation that "(e)veryone is equal before the law and has the right to equal protection and benefit of the law". This is immediately followed by the proviso (section 9(2)) that "(e)quality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken." These two subsections form one of the constitutional cornerstones of the government's affirmative action policies.

The other cornerstone is provided by section 195, which deals with the composition of the public service. Section 195(1)(i) reads that the "(p)ublic administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation." For the purposes of this section, the domain of the public administration is defined very broadly, including every level and sphere of government, and public enterprises.

The Constitution provides the platform for redress, but did not itself stipulate the mechanisms for doing so. The cumulative impact of the inequalities that had built up over decades of apartheid was considered to be so huge and so deeply cemented into the structure of South African society – and hence so difficult to dismantle – that, even after the formal transfer of power to the ANC, the then Vice-President Mbeki was prepared to describe South Africa in terms of his two-nation thesis:

"We therefore make so bold as to say that South Africa is a country of two nations. One of these nations is white and relatively prosperous, regardless of gender or geographic dispersal... except for the persistence of gender discrimination against women, all members of this nation have the possibility of exercising their right to equal opportunity.... The second and larger nation of South Africa is black and poor... this nation...has virtually no possibility of exercising what in reality amounts to a theoretical right to equal opportunity,

that right being equal within this black nation only to the extent that it is equally incapable of its realization.... And neither are we becoming one nation. Consequently, also, the objective of national reconciliation is not being realized... the longer this situation persists...the more entrenched will be the conviction that the concept of nation-building is mere mirage, and that no basis exists, or will ever exist, to enable national reconciliation to take place".¹²

This statement was made in Parliament on 29 May 1998. Five months later, on 12 October 1998, the Employment Equity Act (No. 55 of 1998) was assented to by Parliament. It put the above constitutional principles into effect in the following way:

- In the preamble, the Act puts it that the historical disparities in employment, occupation and income in the national labour market have become so pronounced, that those at a disadvantage will be unable to redress these disparities under conditions where the discriminatory laws are simply repealed. They are unable to do so on their own and can be described in the terms used in this paper, as *weak* (at a *competitive disadvantage*) and therefore in need of help, in the form of preferential treatment.
- The weak are described as the “designated groups”, designated for preferential treatment. These are “black people, women and people with disabilities”. “Black people” in turn, has become a generic term for “Africans, Coloureds and Indians.”
- The remaining category of South Africans in the labour market is therefore white men. They are referred to in the Act as “people who are not from the designated groups”. These non-designated persons are clearly considered to be *strong* (at a *competitive advantage*) and not in need of preferential treatment.
- Preferential treatment takes the form of affirmative action measures, which are “measures designed to ensure that suitably qualified people from the designated groups have equal employment opportunities and are equitable represented in all occupational categories and levels in the workforce of a designated employer” (section 15(1)). “Designated employers” are any firm that employs more than 50 people, or with a financial turnover exceeding a specified amount, and any municipality or organ of state¹³.
- Measures relevant to this objective include the elimination of barriers created by “unfair discrimination”; measures aimed at increasing diversity in workforces; “preferential treatment”, including skills training, numerical goals promoting equitable representation, but not including quotas.
- Some key concepts are left undefined. These include the concepts of “equitable representation” and “preferential treatment”.
- The sole specific rule protecting white men appears in section 15(4), which prohibits a designated employer from setting up an “absolute barrier” to the employment of “people who are not from designated groups”. Some flexibility is brought into this rule by section 42. The

exact composition of a workforce is made subject to practical considerations such as: the national *and* regional demographic profiles of the “economically active population”; the pool of suitably qualified people from the designated groups that are available for appointment or promotion; the economic and financial circumstances of the firm; and progress already made in the implementation of equity plans.

The way these rules of competition have been applied by firms and state institutions has varied. In a number of instances individuals have taken employers to court and some cases have been won. Both white and black litigants have been on the winning side, but a clear pattern and acceptable standard of interpretation and application of both these constitutional and derived legal principles has yet to emerge. An appropriate way of doing this is to establish a code of good practice for the implementation of this Act (the Act makes provision for such a code to be established), but at the time of writing (August 2004) this has not yet been done. While there appears to be a fair amount of agreement on these principles, at the policy level the rules of affirmative action remain a contested terrain.

Some of the issues that have surfaced are:

- Whether affirmative action measures should have a cut-off date (at least in principle) or not;
- Whether white women should be removed from the ranks of the “designated group” or not¹⁴;
- Whether young people entering the job market for the first time should be subjected to these rules or not;
- The impact of affirmative action on education;
- The division of the working class into two separate categories.

In addition, on the basis of the public debate thus far, this researcher sensed that, underlying the above specific issues, may be three additional and more fundamental matters. These are whether South Africans are in agreement with one another over:

- the meaning and status of the constitutional order within which the rules of affirmative action are embedded;
- the meaning and status of the negotiated transition that produced the transition to democracy and the 1993 and 1996 constitutions;
- the meaning, substance and status of “transformation”, the metaphor guiding public policy making in the current government.

The above issues served to provides the basis for the research questions put to respondents in the survey of public opinion conducted in March 2004.

For the purposes of this research project I bought into the M-BUS survey run by Markinor, which was conducted during February and March 2004. This consists of a nationally representative survey of both the rural and urban population: 2000 respondents from the urban and 1500 from rural populations. All respondents are over 16 years of age and the data were

acquired through personal interviews. Men and women are equally represented in the sample. The findings are weighted and projected onto the national demographic profile, on the basis of which they can be asserted to be nationally representative. Therefore, in this report the respondents and the general South African population will be used as interchangeable terms. What applies to the respondents, it can be assumed, applies with equal validity to the South African population as a whole. All sample surveys are subject to statistical error and the results for this poll have to be evaluated against this background. Depending on the response rate, the sample error for the poll as a whole is between 0,72% and 1,66%. The potential accuracy of this particular survey can be gauged from the fact that, on the basis of polling results, it was predicted that the African National Congress would gain 68,6% of the vote in the 2004 national election. This was correct to within one percentage point!

In the survey respondents are asked to respond to specific statements. These statements contain the concepts of “designated groups”, “non-designated groups”, “blacks”, “whites”, “Africans”, “Coloureds” and “Indians”. These terms are used with exactly the same meaning as is assigned to them by the Employment Equity Act, No. 55 of 1998.

3. Public Opinion in 2004

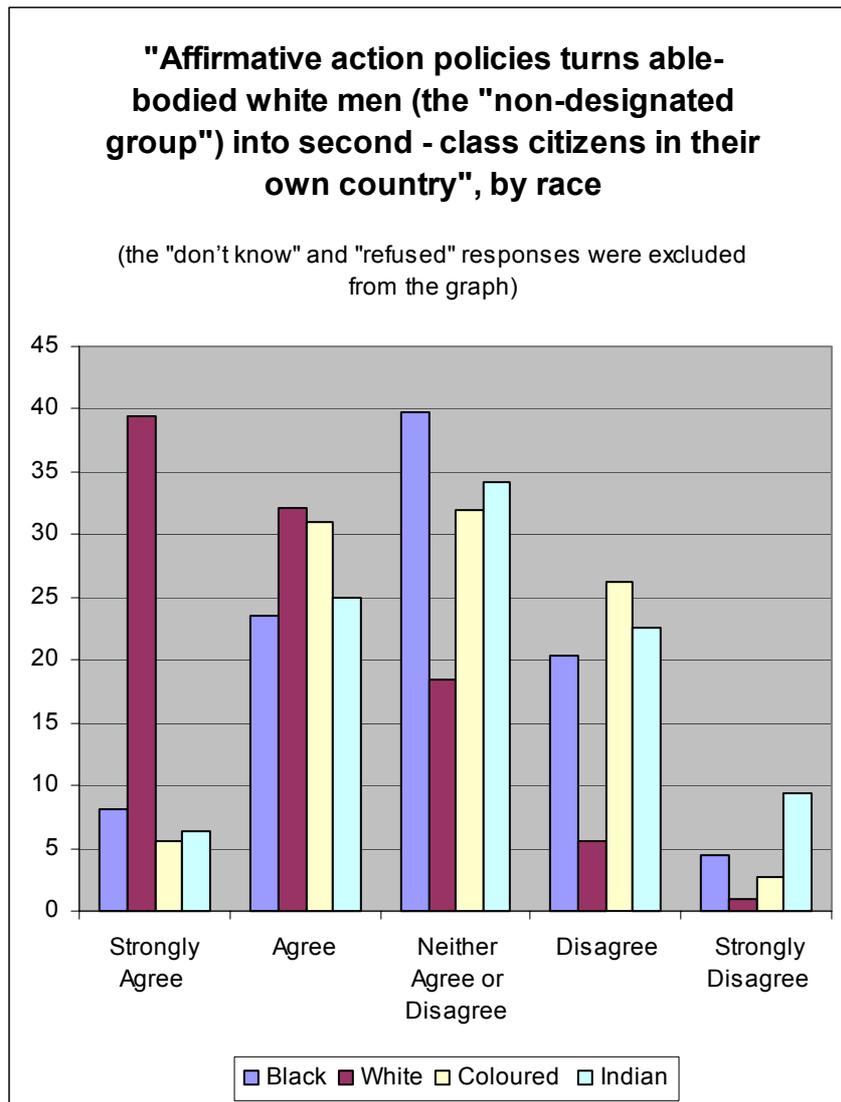
Public opinion on the aspects of affirmative action surveyed here does not show a consistent pattern of either convergence or polarization. On some themes South Africans tend to disagree, on others they tend towards agreement. The first set of opinions is presented in paragraph 3.1, and the second in paragraph 3.2.

3.1. The Lack of a National Consensus on Transformation

- **Second-class citizens?**

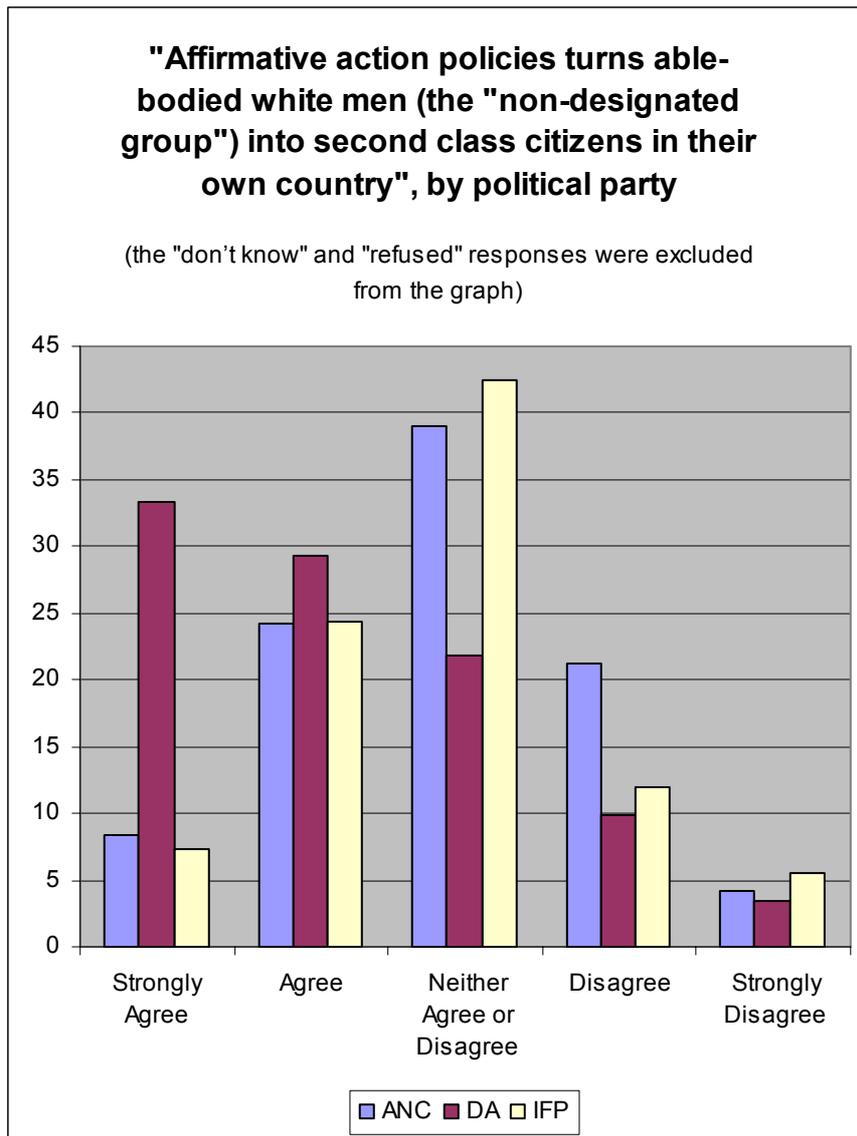
This survey found that there are many aspects of affirmative action that South Africans disagree on. These include whether there should be a cut-off date, at least in principle, for such measures, and the question of whether white women should be excluded from the ranks of the “designated” group. The survey then tried to find a composite measure with which to gauge the overall sentiment towards these policies. This was presented in the following statement: “Affirmative action policies turn able-bodied white men (the ‘non-designated group’) into second-class citizens in their own country”. On the whole South Africans are divided on the issue whether those who are on the losing side of affirmative action rules are so badly off that they, in effect, if not in law, become second-class citizens. More than one third (36.1%) of the respondents in the survey do not express any clear opinion (they neither agree nor disagree). Just over one third (37.5%) agree/agree strongly, and the remaining 22.9% disagree or disagree strongly.

GRAPH 1



There are however, significant differences between the various racial groups, as can be seen from **GRAPH 1**. A substantial majority of White South Africans (71.4%) concur with this statement. What is noticeable from the graph is the intensity with which they hold this opinion. A larger percentage *strongly agree* (39.4%) with the view that able-bodied white men are reduced to becoming second-class citizens than those who merely *agree* (32.1%). The other three race groups are largely indifferent to the issue, with between 30% and 40% from each group not taking up a position, and the remaining respondents distributed evenly in agreement or disagreement. This indifference is understandable, as the statement does not address their own experience of affirmative action. And, after all, they are not on the losing side of the rules of affirmative action.

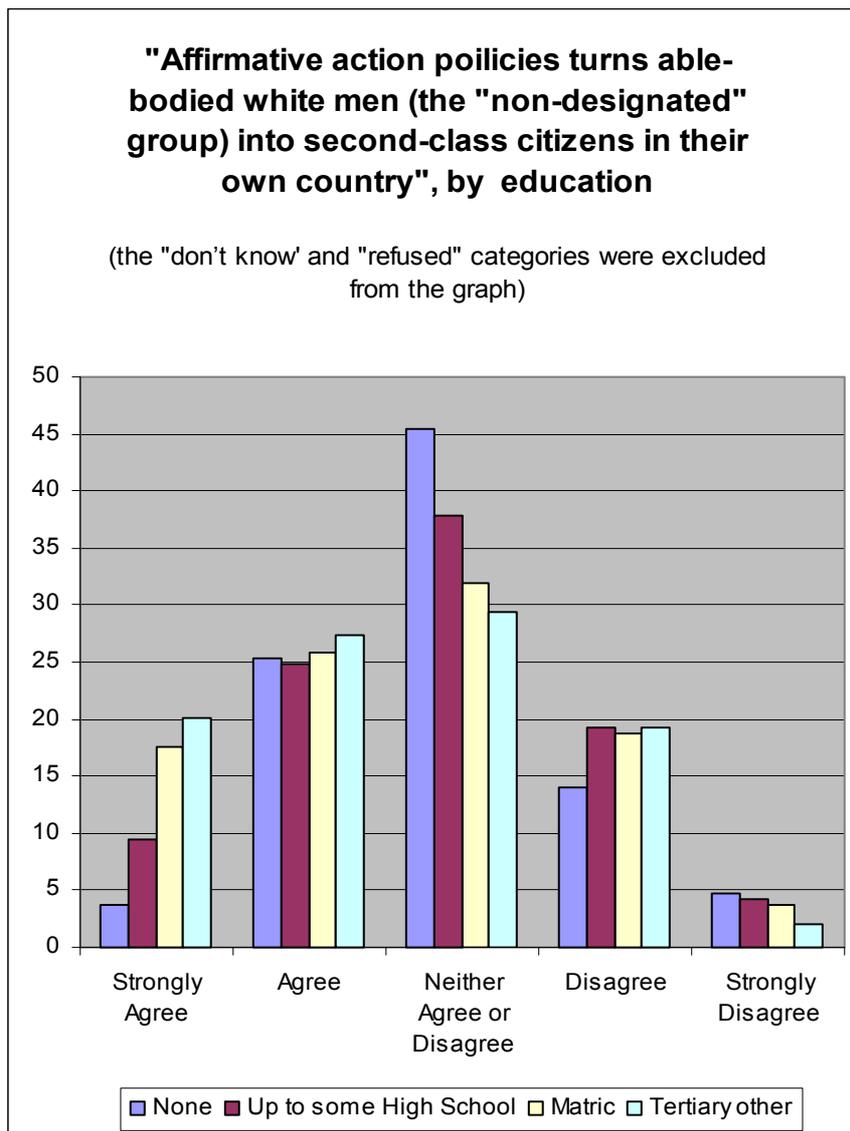
GRAPH 2



It is important to note that the above responses do not measure *approval* or *disapproval*. It may well be that an individual who registers an opinion that white men are reduced to second-class status is also of the firm conviction that this state of affairs is the appropriate and preferable outcome of affirmative action. It is also equally possible that a respondent who indicates agreement with this statement may also abhor this outcome, and strongly perceive it as an unacceptable result of affirmative action.

The response pattern presented in graph 1 repeats itself when the findings are arranged according to party preference (**GRAPH 2**). Supporters of the DA are in agreement with the statement, and intensely so. By contrast, large pluralities (relative majorities) of respondents who support the ANC (39%) and IFP (42.4%) do not express any firm position. Smaller groups indicate agreement and even smaller groups indicate disagreement. It is noticeable that the response patterns of the IFP and ANC supporters match one another closely.

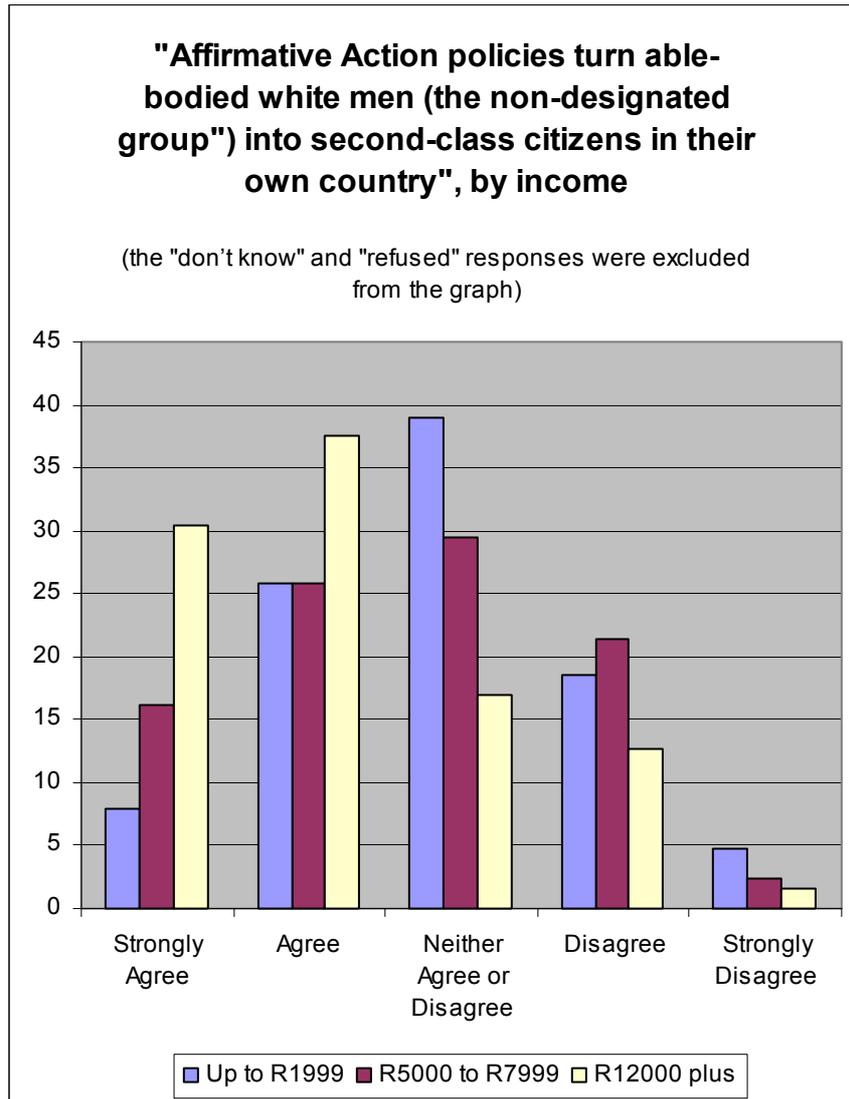
GRAPH 3



In **GRAPH 3** the results are presented according to the educational achievement of the respondents. A very large percentage (45.5%) of those with the lowest levels of education holds no opinion on this matter. Support correlates slightly with higher levels of education.

In **GRAPH 4** the results are shown according to the levels of income of the respondents. Again a large percentage (38.9%) of those with low income levels does not indicate an opinion. Strong endorsement of the statement is found in the ranks of the highest income group.

GRAPH 4



In summary, public opinion in South Africa is not (yet?) heavily polarized on the overall negative effect of affirmative action in South Africa. About one third of the respondents do not hold any opinion on this issue. Within the white racial group, however, an intensely held perception has formed among a large majority that affirmative action reduces white men to second-class citizens in their own country.

- **Litigation**

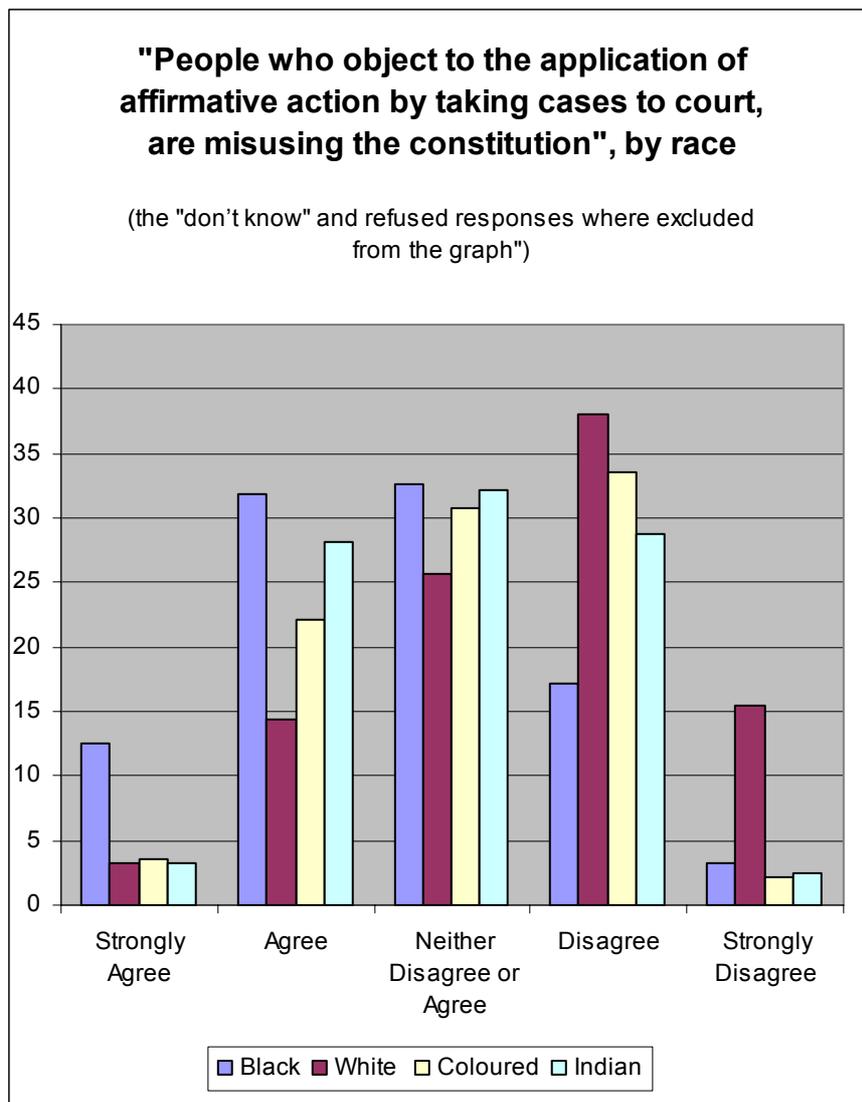
Even if such negative perceptions do exist, then surely our current constitutional order provides ample avenues for redress, or does it? In general our Constitution is considered to be one that embodies the principles of rule of law as found in a constitutional state. Nobody is above the law and everyone's actions can be scrutinized by a court of law. Sections 38 and 39 of the Constitution confirm the role of the courts in dealing with conflicts over rights and with the interpretations of the meaning of rights. Special courts have been set up for these purposes. From this follows the presumption that

litigation is considered to be part and parcel of the normal conduct of democratic life. How valid is this presumption, when it comes to matters concerning affirmative action?

In the survey respondents were asked to agree or disagree with the following statement: "People who object to the application of affirmative action by taking cases to court are misusing the constitution". (This statement was selected on the basis of a discussion at a conference at the University of Potchefstroom in July 2003, where representatives of Solidarity trade union and the Black Management Forum exchanged views on the issue framed in these terms).

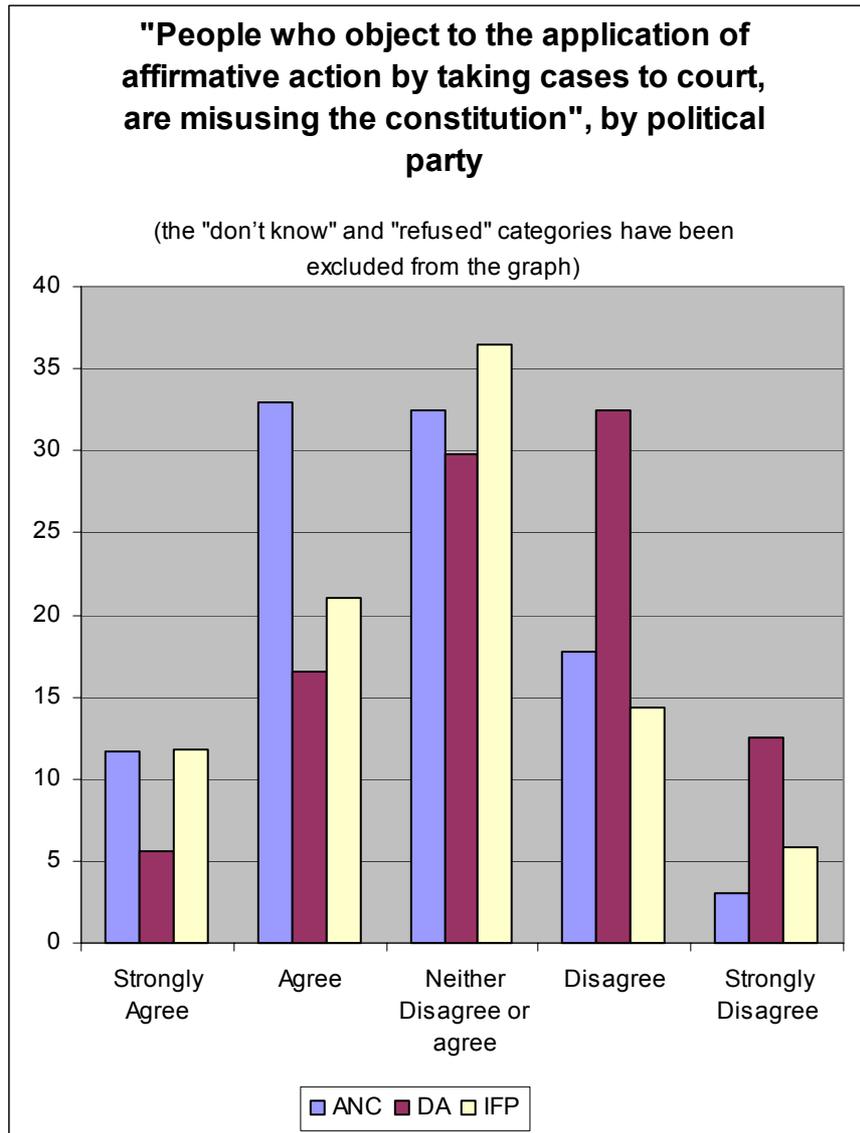
Again we find public opinion to be divided on this issue. Almost one third (31.5%) of all the respondents do not hold any firm point of view (they neither agree nor disagree with the statement). Almost four out of every ten (38.8%) concur with the statement, and the remaining quarter (26.5%) disagree or disagree strongly.

GRAPH 5



The distribution of opinions according to the racial classification of the respondents, as presented in **GRAPH 5** reveals some significant differences. A large plurality (relative majority) (44.3%) of African respondents endorses this statement (agree/strongly agree), while an absolute majority (53.4%) of White respondents disagree or disagree strongly. The Coloured and Indian respondents do not follow either of these response patterns and tend to occupy a position between the Africans and Whites.

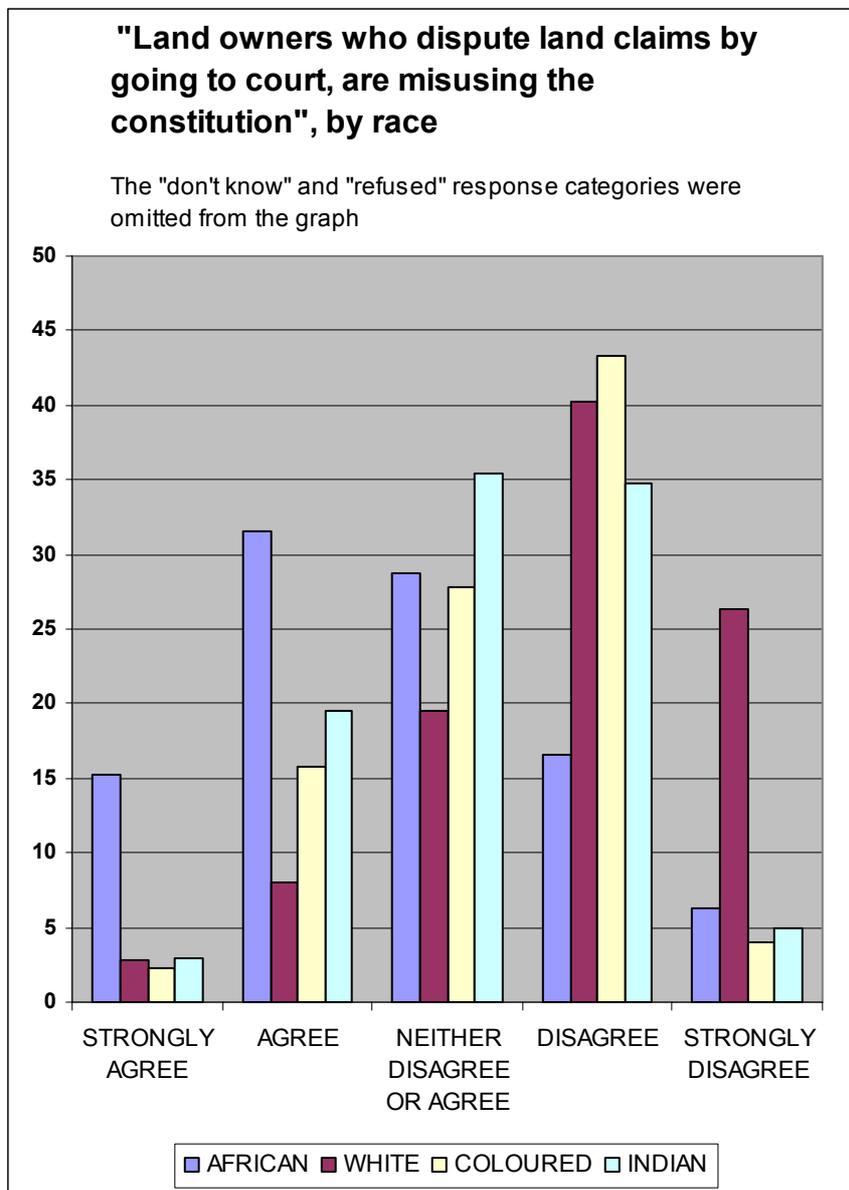
GRAPH 6



This pattern of polarization also holds across political party lines, as can be seen from **GRAPH 6**. The graph shows that 44.7 % of the respondents who support the ANC also agree or strongly agree with the statement, as opposed to 45% of the DA supporters, who disagree or disagree strongly. It is noticeable that the IFP supporters do not tend to mirror the views of ANC supporters on this issue. A substantial plurality (36.5%) neither agrees nor disagrees with the statement.

The implications of the wide divergence of opinion on what amounts to “use” and what amounts to “misuse” of the Constitution will be taken up in paragraph 4 of this report.

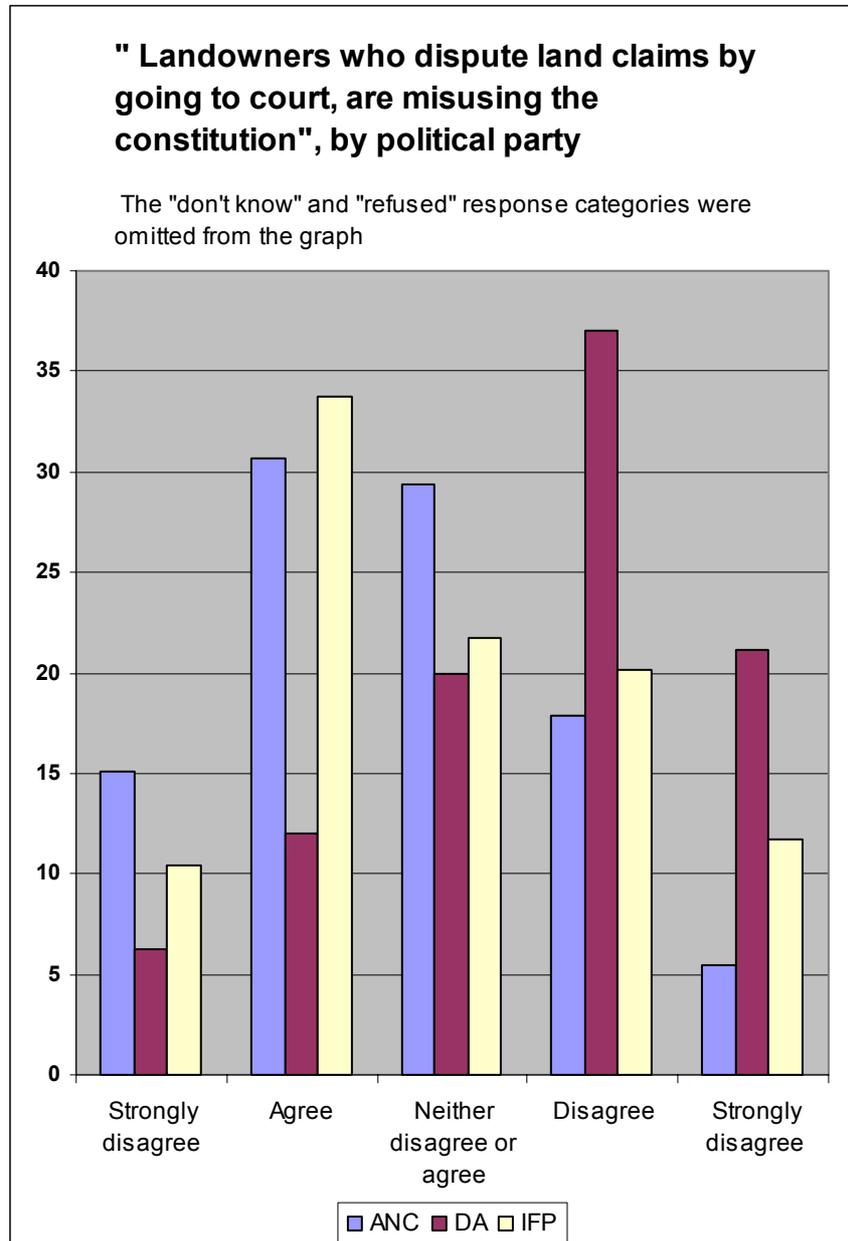
GRAPH 7



In order to underscore the importance and significance of this issue, the survey shows how the differing perceptions as to the use/misuse of the Constitution apply to other issue areas. Most pertinent is the question of land redistribution. In the survey respondents were presented with the following statement: “Landowners who dispute land claims by going to court are misusing the constitution”. The public is divided into three distinct blocks, roughly equal in size: 27.6% do not express an opinion, 38.9% are in general agreement, and 31.4% are in disagreement. Large differences of opinion are to be found between the different racial groups, as is shown in **GRAPH 7**. A large plurality (46.9%) of African respondents go along with this statement, as

opposed to exactly two thirds (66.6%) of whites who disagree or strongly disagree. The response patterns of the other racial minorities are interesting. Almost half (47.3%) of the Coloured respondents tend to go along with their white counterparts, as do about a third (39.7%) of the Indian respondents.

GRAPH 8



This response pattern holds over political party lines as well, as is shown in **GRAPH 8**. The IFP (44.1%) and ANC (45.9%) supporters tend to support this statement, while a large majority (58.1%) of DA supporters disagree or disagree strongly.

3.1. A Basis for Co-operation

- **Youth**

Younger people in South Africa find themselves in a very distinct position with respect to the rationale for affirmative action. In the preamble of the Employment Equity Act this rationale is based on the discriminatory effects of apartheid, and the resulting disparities in employment, occupation and income. These are seen to be so profound that the repeal of apartheid laws in and of itself is not considered to be adequate to effect redress. Those who in the past were the victims of apartheid were then (in 1998, when the law was enacted) considered to be so weak in competing for employment that preferential treatment in the form of affirmative action was deemed necessary.

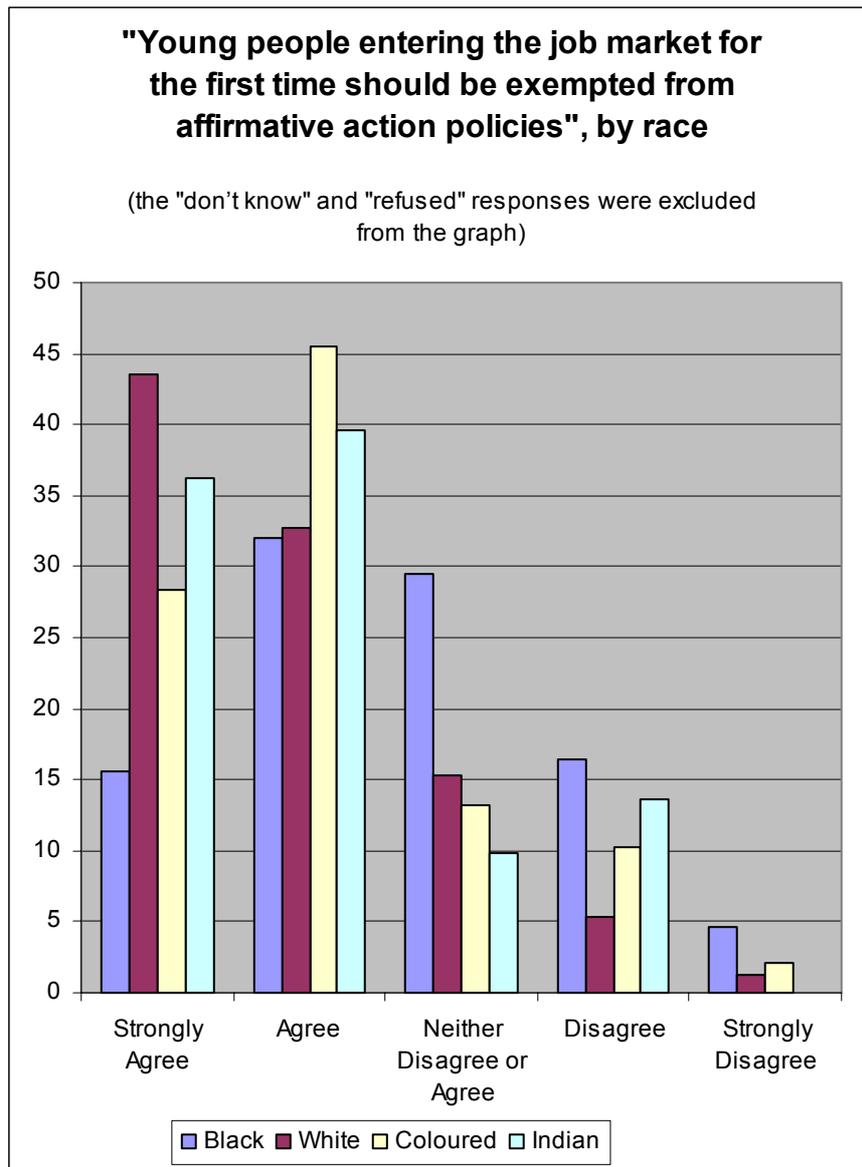
Many of the youths entering the labour market in 2004 were born about twenty years ago. They have little experience or recollection of apartheid, and some may have been beneficiaries, but certainly not active supporters of the system. Many if not most of them shared all their years at school with members of other race groups, and probably have acquaintances, if not friends, across the colour line. They had little experience of the resistance against apartheid, nor of the negotiated transition to democracy.

It is therefore a debatable point whether they ought to be included in the ranks of either the “designated” group or the “non-designated” group, with the corresponding preferential treatment or penalties associated with each respectively.

In the survey I probe this matter by asking people to respond to the following statement: “Young people entering the job market for the first time should be exempted from affirmative action policies”. Most respondents (54.4%), and by extension, the majority of South Africans tend to agree with this statement. Less than one in every five (18.3%) disagree with the statement, while the remaining quarter (25.7%) do not take any position.

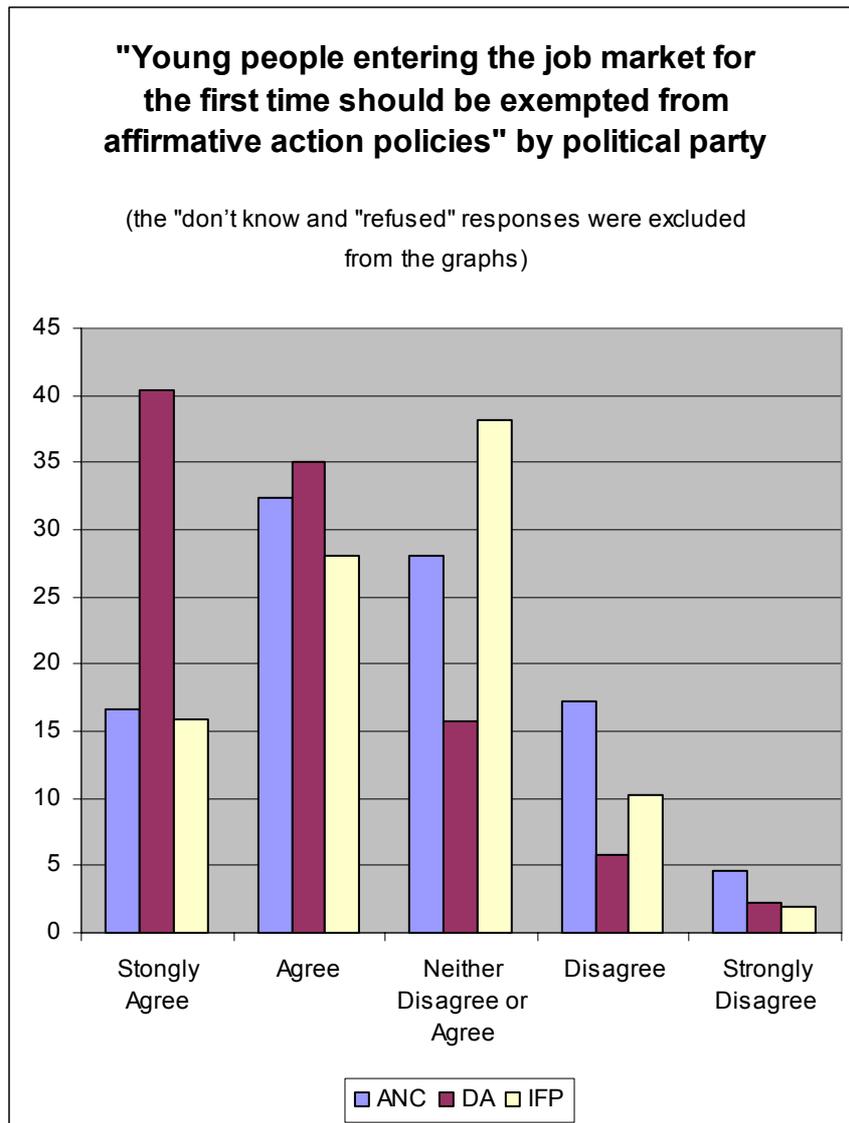
This is major point of agreement and it holds across the racial dividing lines in South African society as can be seen from **GRAPH 9**.

GRAPH 9



Almost half (47.6%) of the African respondents concur with the statement (agree/strongly agree). The minority groups are overwhelmingly in favour of such an exemption: 76.3% of whites agree or agree strongly, as do 73.9% of Coloureds, and 75.9% of Indians. Less than one third from any race group do not hold any opinion on this matter and only small percentages from each race group express views against the statement (21.5% of Africans, 6.6% of Whites, 12.5% of Coloureds, and 13.6% of Indians).

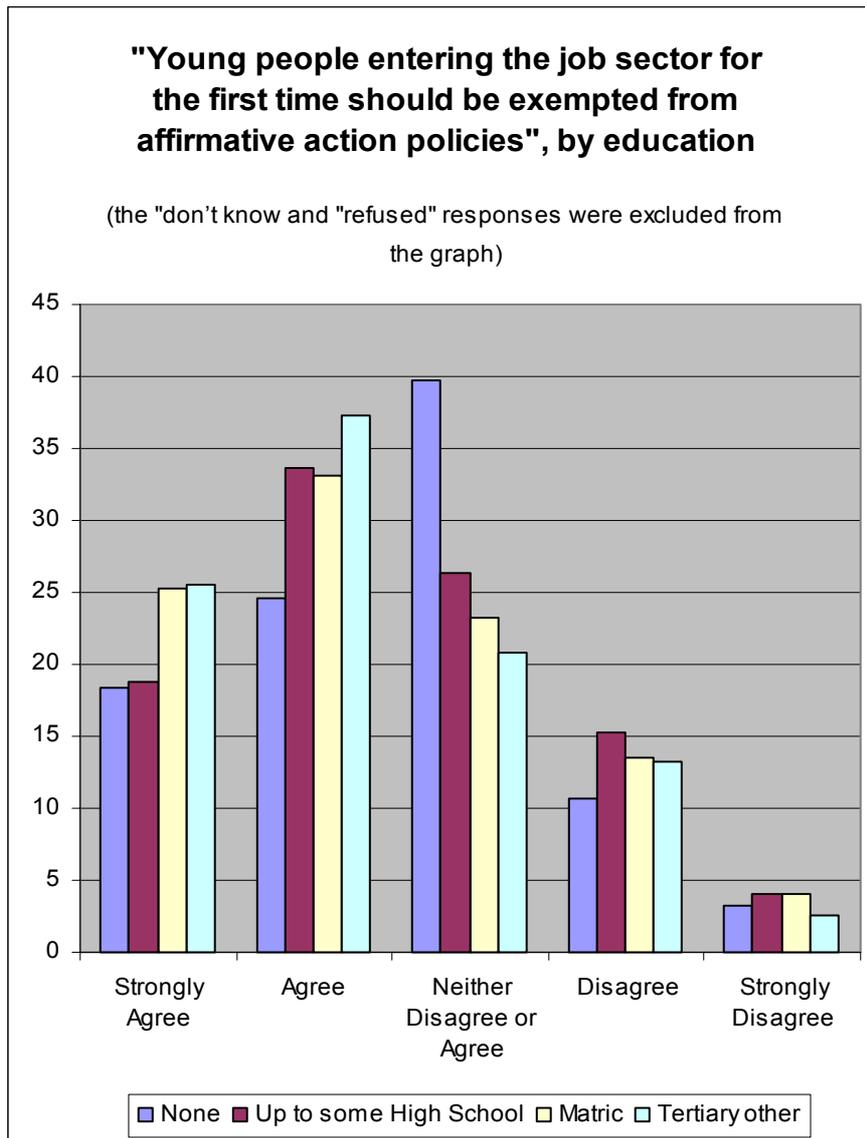
GRAPH 10



This endorsement also holds across the political party divisions. **GRAPH 10** shows that almost half (49.1%) of ANC supporters agree or strongly agree with the statement, just on three-quarters (75.5%) of DA supporters do so as well, as do a large plurality (43.9%) of IFP supporters.

It is interesting to note the levels of support from the smaller political parties, not shown in the GRAPH. Supporters of the UDM who agree or strongly agree stand at 61.4%, the FF Plus 64.2%, the PAC 57.9%, and the NNP 72.9%.

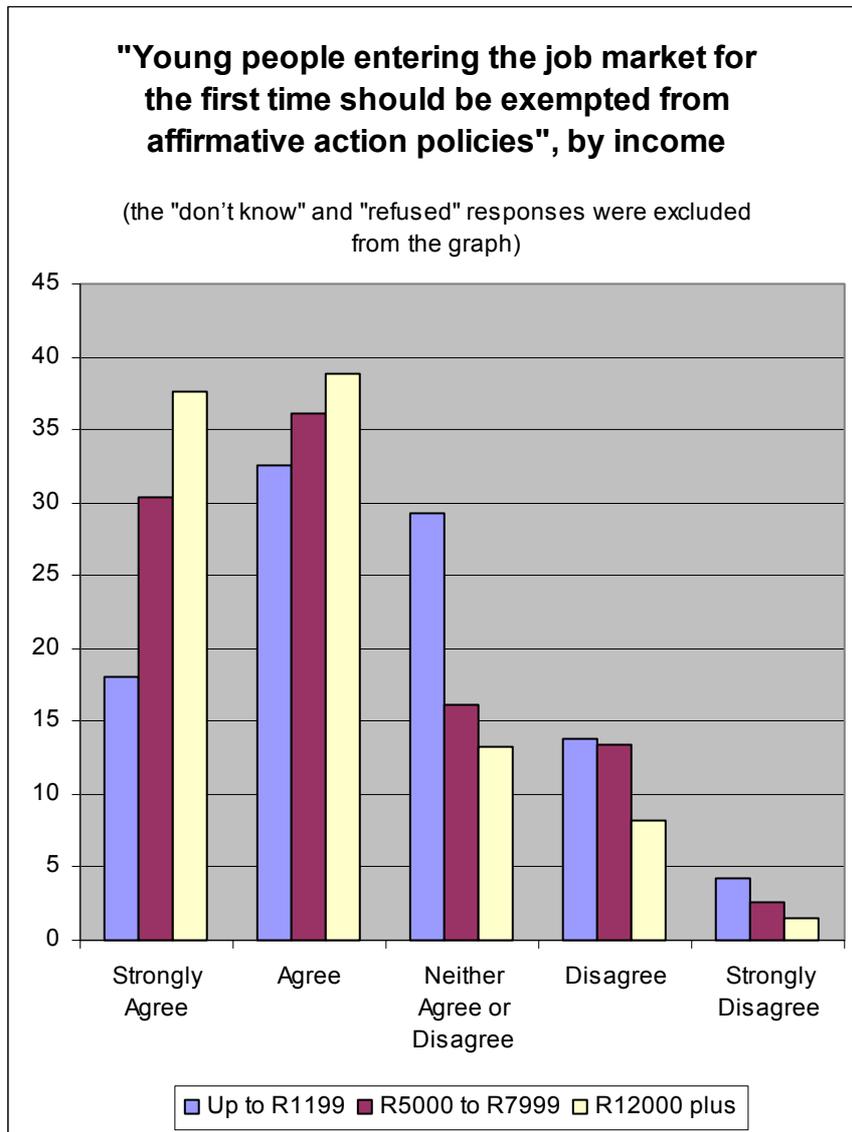
GRAPH 11



In **GRAPH 11** it can be seen that high levels of support for the statement that young people entering the job market for the first time be exempted from affirmative action policies are found among respondents at all levels of education. This starts with those who have no formal education (43%) and increases steadily to those with tertiary education (62.8%).

This pattern persists within different income groups as well, as can be seen from **GRAPH 12**. Respondents, ranging from affluent to poor, all endorse this statement. At the lowest income level (below R2000 per month) support is at 50.7%, increasing to the highest income bracket of R12000 per month and above, where it stands at 76.5%.

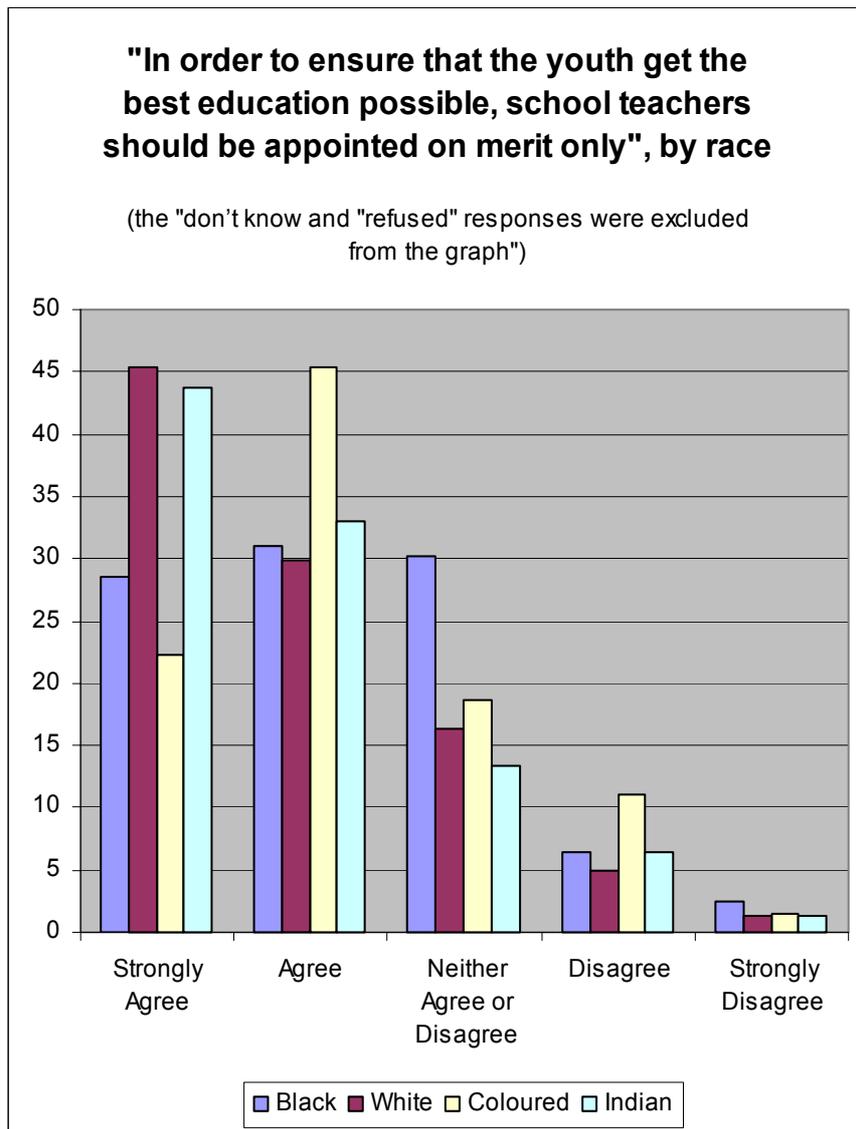
GRAPH 12



- **Education**

At issue here is to what extent people rate the values associated with affirmative action, such as racial and gender equality, above other valued goods, such as quality education. Quality education is a function of many determining factors, one of which is the calibre of education personnel. Should these values be in conflict, where the achievement of the one can only be at the expense of sacrificing the other, which set of values is ranked highest? The following statement confronts the respondents with such a choice: "In order to ensure that the youth get the best education possible, school teachers should be appointed on merit only".

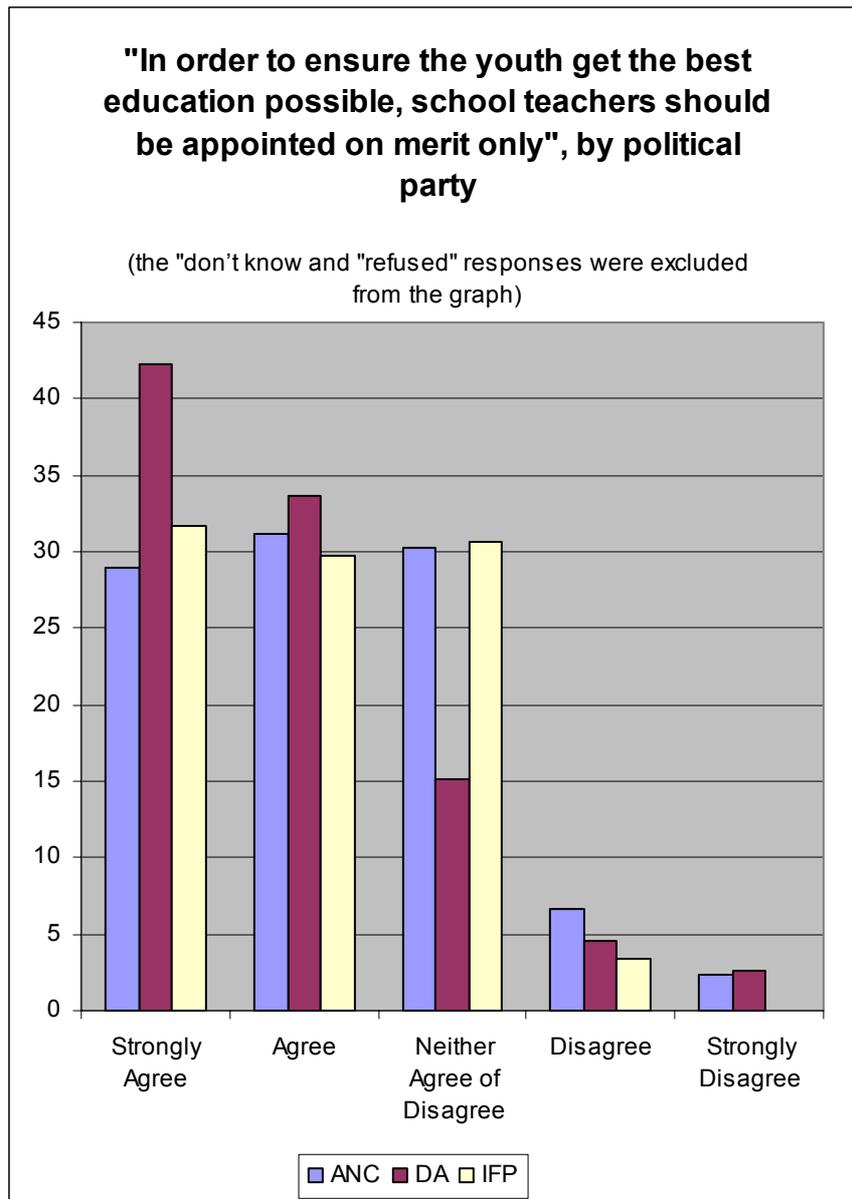
GRAPH 13



Almost two thirds of South Africans endorse this statement. In the survey 62.9% of respondents indicated that they either agree or strongly agree. Only 8.9% indicated that they disagree or disagree strongly.

This endorsement is also maintained over racial, party income and educational divisions.

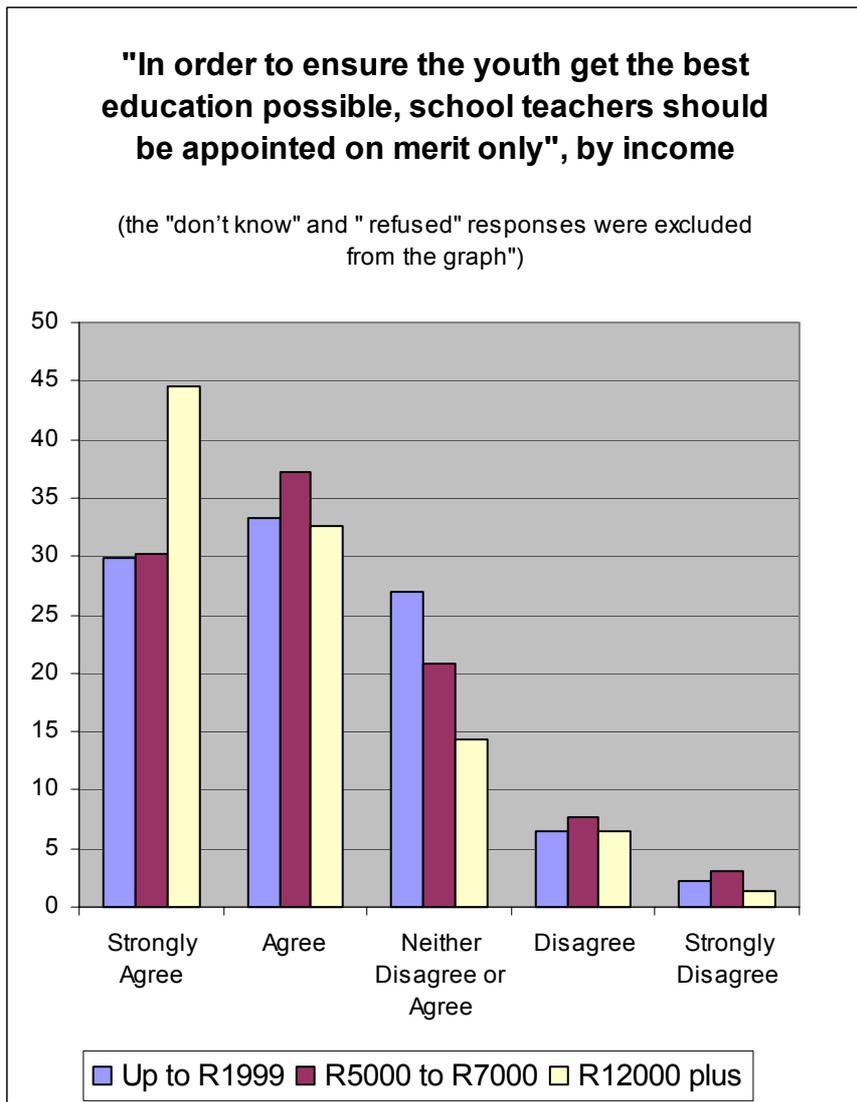
GRAPH 14



More than half of the respondents from each racial group support this statement, shown in **GRAPH 13**. From the ranks of the Africans, it stands at 59.7%, Whites 75.2%, Coloureds 67.6% and Indians 78.8%. The graph also illustrates the intensity of the support for this statement among Whites and Indians. In every group there are larger percentages who *strongly agree* than who merely *agree*.

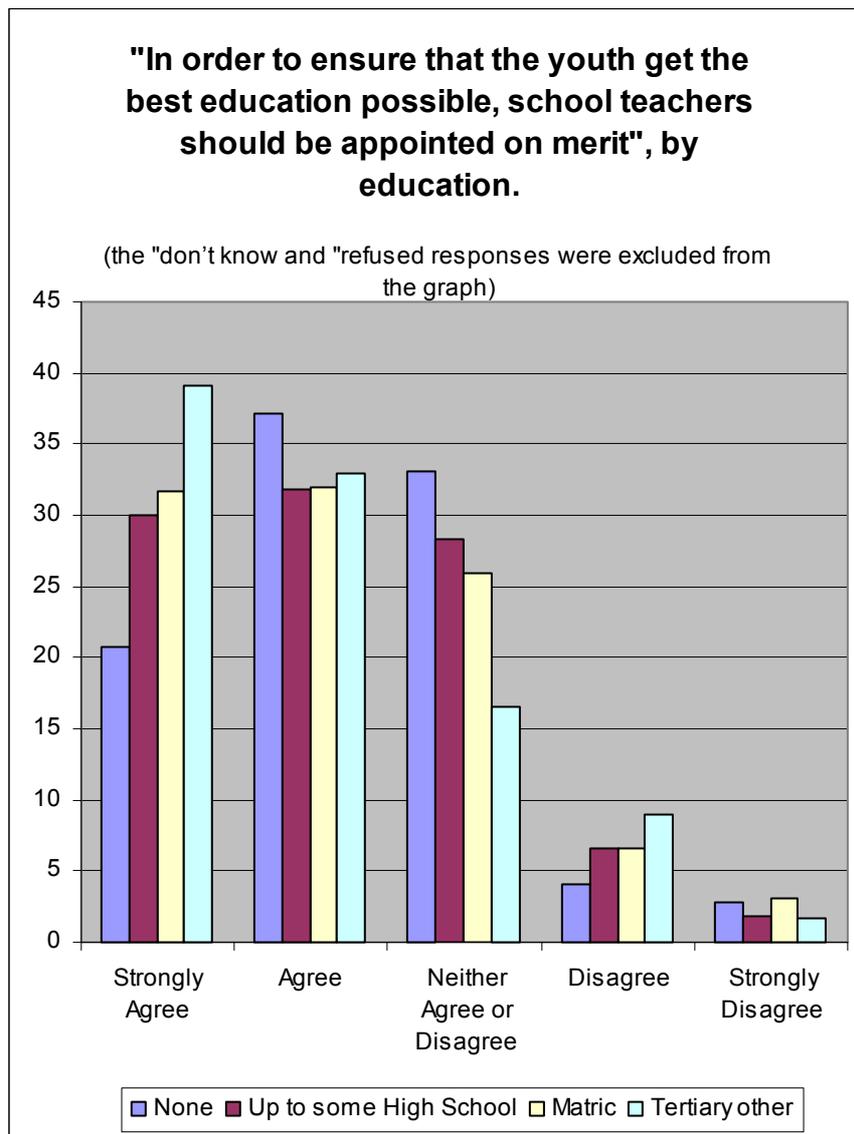
Almost two-thirds (60.2%) of ANC supporters agree or agree strongly, as do 75.8% of DA supporters, and 61.4% of IFP supporters (see **GRAPH 14**). The graph also reveals the intensity of support from the ranks of DA supporters. A higher percentage agree strongly (42.3%), than those who merely agree (33.6%). From the other smaller parties high levels of support can also be found: UDM 78.1%, FF Plus 79.4%, PAC 55.1%, and the NNP 68.1%.

GRAPH 15



GRAPH 15 shows support is found among low-, medium- and high-level income respondents, and **GRAPH 16** again shows that support for the statement is strong despite different levels of education among respondents.

GRAPH 16



- **Working class identity and solidarity**

A final aspect of affirmative action that was examined in the survey goes to the heart of the matter: the re-categorization of South Africa into two groups: those who are in the ranks of the “designated” group and those who find themselves in the “non-designated” group. The first group is diverse in terms both race and gender (leaving aside the few physically disabled white men). The second is comprised of able-bodied white men only. Does this group classification serve as an accurate description of the structural condition of domination and exploitation that obtained under apartheid? Were able-bodied white men the only beneficiaries of apartheid? Does this group classification represent authentic interest groups, as they present themselves in the job market? Do these groups represent communities of interest, or collectivities with some other structural common denominator, or some or other spontaneous unifying factor? Or is this two-fold group classification similar to the classification

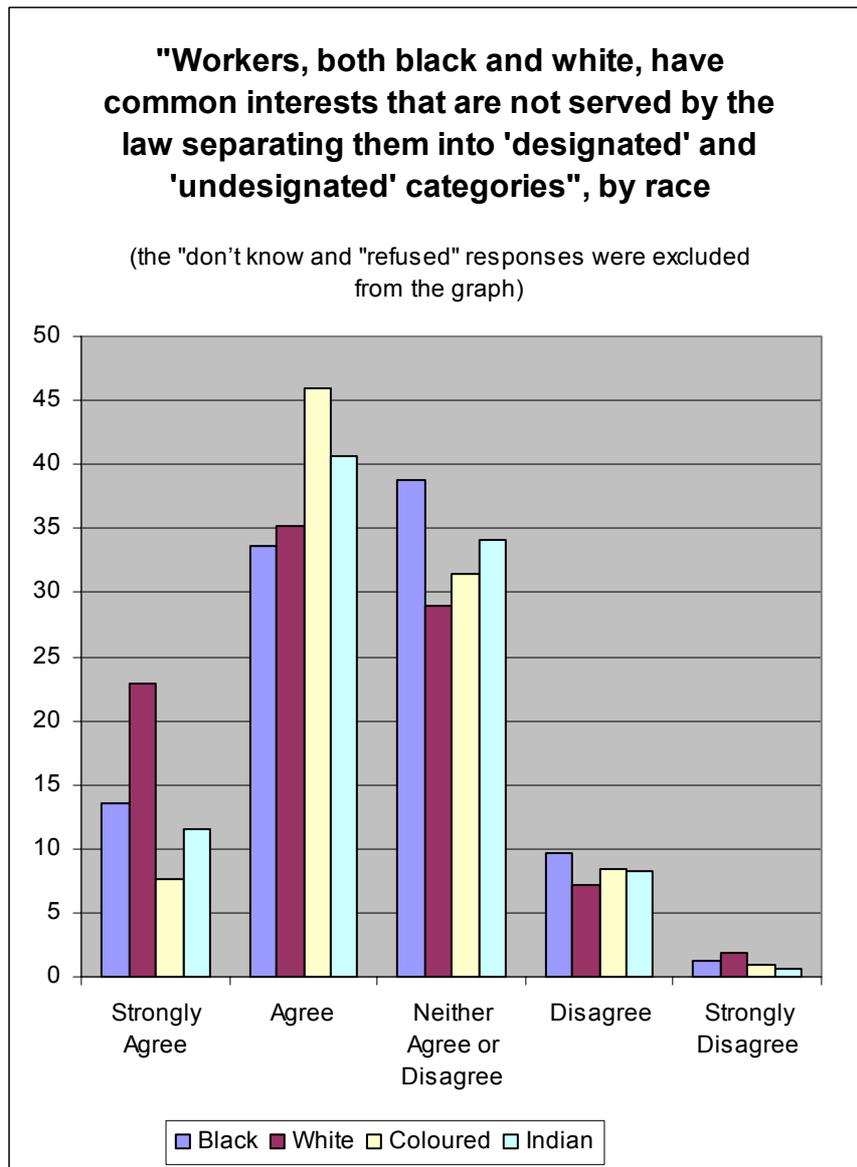
wrought under apartheid, namely an ideological construction in which people are grouped together on the basis of some abstract idea that is then written into law. To what extent does this reclassification of South Africa respect the social and emotional ties that bind people, such as is found in communities, families and marriages, and over the ascriptive identities of race and gender?

In the survey a start is made at probing into these issues. One aspect that is taken up is the presumption that economic interests can be adequately described in terms of the racial classification used by the Employment Equity Act. Respondents are presented with the following statement: “Workers, both black and white, have common interests that are not served by the law separating them into ‘designated’ and ‘undesigned’ categories”.

Slightly more than one third (36.7%) of the respondents did not register an opinion. Almost half of the respondents (49.3%) agree with the statement, or agree strongly. Only 10.5% indicated that they disagree or disagree strongly.

As can be seen in **GRAPH 17**, support for the idea of working-class solidarity across racial lines is found in all four race groups: 47.1% of Africans, 58.1% of Whites, 53.7% of Coloureds and 52.1% of Indians agree or agree strongly with the above statement.

GRAPH 17

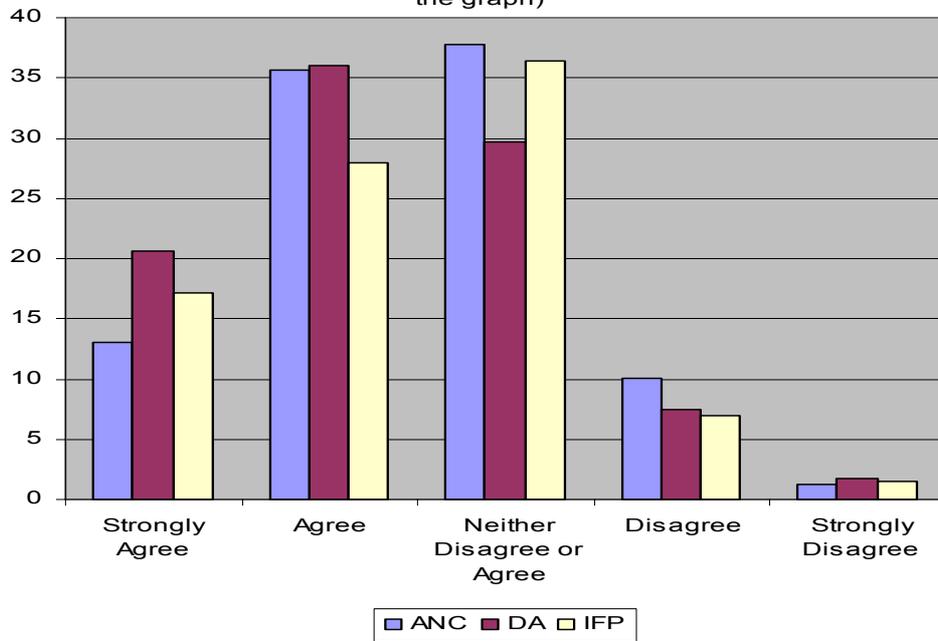


Support is also found within the different political parties. A large plurality (49.8%) of ANC supporters do, as do absolute majorities among the DA (59.3%) and the IFP (50.2%). (See **GRAPH 18**.) The idea of working-class solidarity is not only a working-class conviction. It finds support across the various income levels of South African society. As **GRAPH 19** indicates, support from the poorest South Africans (earning up to R2000 per month), who agree or agree strongly that the Employment Equity Act makes a contrived, artificial division of the working class of South Africa, stands at 45.4%. Among the middle income category (R5000 – R8000) support rises to 58.7%, and in the higher income bracket of R12000 per month and above, it increases further to 65.6%.

GRAPH 18

"Workers, both black and white, have common interests that are not served by the law separating them into 'designated' and 'undesigned' categories", by political party

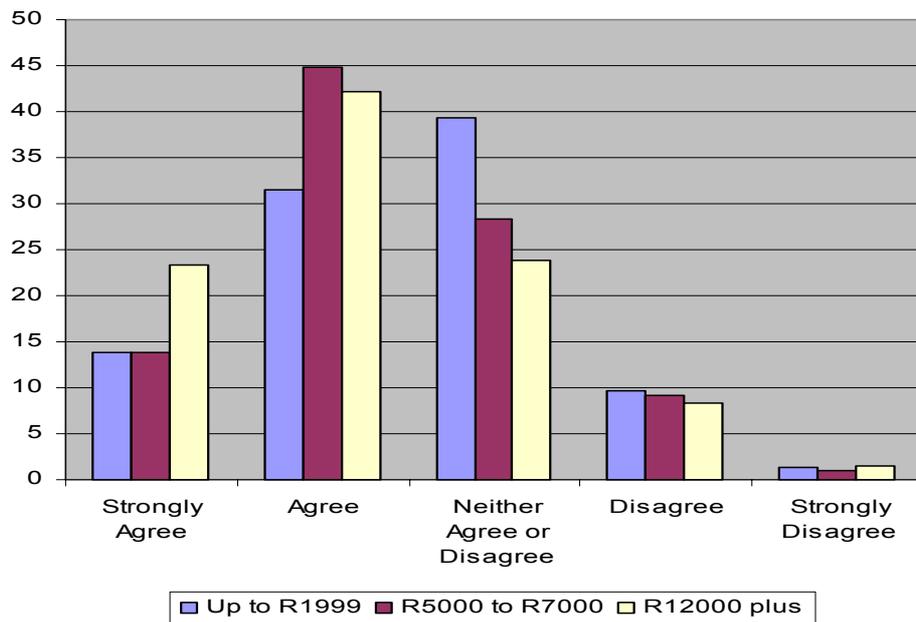
(the "don't know" and "refused" responses were excluded from the graph)



GRAPH 19

"Workers, both black and white, have common interests that are not served by the law separating them into 'designated' and 'undesigned' categories", by income

(the "don't know" and "refused" responses were excluded from the graph)



4. Analysis

4.1. Areas of Disagreement

- **The meaning of the Constitution**

The significant differences of opinion between African and White South Africans over whether taking disputes over affirmative action to court (**GRAPHS 5 and 6**) amounts to use or misuse of the Constitution confirms that the constitutional order on which the democratic regime is based does not rest on a general national consensus of public support. The fact that even stronger polarization is found with respect to the question of taking land disputes to court (**GRAPHS 7 and 8**) strengthens this interpretation. The contrasting positions about what counts as use and misuse of the constitution in order to defend human rights are separated by a chasm of contested meanings. For the first group, the Constitution represents an end in itself, as do the human rights embedded in it. For the second group, the Constitution, with its charter of human rights, is merely a means to some further, higher, more valued end. In the South African case this end is vaguely defined as “transformation”. In the absence of such a national consensus a stable human rights doctrine and culture is unlikely to emerge. What is more likely is that the very rules for dealing with disputes over human rights will continue to be challenged and disputed. Such ongoing conflicts will have the debilitating effect of draining the capacity of South African society to deal with the developmental challenges outlined in paragraph 1.2 of this report.

- **The absence of a national consensus on transformation**

Transformation, the current popular metaphor for development, is likely to succeed only if there is a national consensus on its substance, meaning and goals. Such a consensus can only derive from a general agreement about the nature of the negotiated transition to democracy, the meaning of democracy itself, and the meaning of the Constitution. The data show that there is no agreement on the meaning of the Constitution, and from this it can be inferred that there is no general agreement on any one of the other two issues either.

- **Human dignity**

Former President Mandela’s yearning for a democratic South Africa in which the principles and practices of individual freedom and dignity apply to all is unlikely to be realized as long as significant numbers of South Africans perceive themselves as second-class citizens (**GRAPHS 1, 2, 3 and 4**).

Apartheid, conceived as a system of racial domination, had two defining structural characteristics. The first was a set of group definitions, written into the Population Registration Act, in terms of which the South African Population was classified into “race groups”. These hard legal definitions divided South Africans into categories, with an edge that cut through family ties, interpersonal relationships of loyalty, affection, obligation, historical community identities, interests and other social and personal common denominators. Race became the salient criterion of group identity. The second

defining structural feature of apartheid was the systemic privilege accorded to one group at the expense of the others, once again, irrespective of the personal and interpersonal relations between individuals, families and communities.

The current way in which the Employment Equity Act and its attendant rules of affirmative action are applied puts South Africa at risk of reintroducing crucial aspects of these two structural features, albeit with a different content. South Africans are again classified into groups, again by force of law, this time in terms of race and gender. As with apartheid, ascriptive criteria prevail over the personal, interpersonal and social ties that bind and separate people. As with apartheid, families, marriages and communities are separated, irrespective of the shared obligations, commitments, and intimate affections that may bind white women and men. Notwithstanding the limited exemptions provided for in sections 15 and 42 of the Act, the law, as in the case of apartheid, is just not able to allow for differences in individual circumstances, whether of affluence, poverty, and social class. Black workers and white workers are considered to be two vastly different sets of people, one qualified for preferential treatment, the other not.

Affirmative action, as it is currently applied, reduces white men to second-class citizens by depriving them of their dignity. This process is not dissimilar to that which obtained under apartheid. There is an inherent indignity in having your career prospects being determined by the ascriptive properties with which you are born, instead of the acquired personal qualities that define you as a unique individual. Under apartheid it was race, now it is race and gender that trump personal qualities such as perseverance, dedication, loyalty, commitment, ambition. This is inherently discriminatory, as defined by Martin Luther King. In his famous declaration he envisioned a society free of discrimination as one where "...my four little children will one day live in a nation where they will not be judged by the colour of their skin, but by the content of their character"¹⁵.

Affirmative action in its current form (despite the limitations in sections 15 and 42) is at risk of institutionalizing a discriminatory system based on race and gender. White men suffer the indignity of being judged on the basis of what they are (white, and men) instead of who they are (in terms of unique acquired personal qualities). In order to rectify this outcome, affirmative action needs to be applied differently. (NOTE: the argument is not that affirmative action should be abolished). The key to this is to develop a code of good practice (allowed for in section 54 of the Employment Equity Act) that meets the requirements of section 10 of the Constitution.

4.2. A Basis for Moving Forward

- **A new definition of empowerment**

The data presented in **GRAPHS 17, 18, and 19** shows that ordinary South Africans just do not subscribe to the assumptions underlying the group classification written into the Employment Equity Act. Substantial support is

found within current public opinion for the idea that working-class identity and solidarity transcend the boundaries of race and gender. Working-class initiatives that entail co-operation across the arbitrary divisions that separate South Africans into “designated” and “non-designated” groups have the support of 49.3% of all South Africans. Only 10.5% of the general public do not agree that working-class interests transcend the divides of race and gender.

With this the *rationale* for specific *black* empowerment also falls away. If the public do not recognize a black working class, distinct from a white working class, but rather, by extension, endorse the idea of a single South African working class, then why would they subscribe to the empowerment of only one racially defined section of that unit? Empowering the powerless, irrespective of race, would find more support among the general public.

- **A code of good conduct**

The objective of such a code should be to bring affirmative action rules into line with the requirements of section 10 of the Constitution. The data presented in this report on public opinion on the entry of young people into the labour market (**GRAPHS 9, 10, 11 and 12**) and on the appointment of school teachers (**GRAPHS 13, 14, 15, and 16**) show that there are aspects that can be included in such a code that carry the endorsement of many, if not most, ordinary South Africans. This support is wide and substantial, extending across the boundaries of race, political party allegiance, income and education.

- **Re-negotiating the social contract**

Some of the issues raised in this paragraph, such as the drawing up of a code of good conduct, can be dealt with adequately in the established channels of decision making, as part and parcel of the ongoing democratic process.

One that needs to be dealt with on a different level, however, is that of the absence of a national consensus on transformation. In order to build this consensus, all the major stakeholders in South Africa will need to (again, or will it be for the first time?) talk through the following questions:

- What was the essence of the negotiations of 1990-1994? Was it to negotiate for the capitulation of one party and unconditional victory for the other? Or was it to find a win-win solution for all parties?
- What is the essence of negotiations? Is it the pursuit of war by other means? Or is it conflict settlement, rather than an ongoing process of conflict behaviour by a different means?
- What is the nature of contract and of the constitutional contract of 1993/1996? Does it bind all parties to certain basic principles that can be revised only with the free consent of all the original stakeholders? Or is it a fleeting reference point, which creates a new set of relationships and new stakeholders, who then can modify the original agreement as they see fit?

- What is the cement that brings parties to commit themselves to the process and outcome of negotiations? Is it power, is it good faith, or is it goodwill?
- If it is goodwill, what is its source? Does it lie in the admission of one party that a great historical wrong was committed by one over the other, and that this then obligates the perpetrator to show goodwill towards the victim?
- If so, does the victim acquire a permanent moral ascendancy over the perpetrators, cementing them into a permanent relationship of inequality?
- Can such an unequal relationship ever provide a source for collaborating in a durable common political enterprise?
- If not, how is equality re-established?
- Is such equality a necessary condition of a mature, stable democracy, or can democracy proceed with some citizens in moral subservience, effectively second-class citizens?

These questions need to be talked through to very core, if we are to build a national consensus on transformation. This requires nothing less than the renegotiation of the social contract of 1993/1996. This does not mean that we have to re-invent the constitutional wheel, so to speak, but thorough preventative maintenance is needed in order to consolidate what we already have and to prevent early erosion. And we can and should do it with our own unique indigenous process of conflict resolution: *Bosberade*, *Lekgotlas*, and *Imbizos*. What we need to do is to invest the social contract with unique substance.

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- ¹ Nelson Mandela, *State of the Nation Address*, Cape Town: Parliament, 24 May 1994, mimeo.
- ² John Kane-Berman (ed) *South Africa Survey 2002/2003*, Johannesburg: South African Institute of Race Relations, 2003, pp. 439, 440.
- ³ *Ibid.*, p. 38.
- ⁴ Servaas van den Berg, "Poverty, inequality and social delivery: has democracy brought progress?", paper presented at the BER conference on *Outlook for the South African Economy*, Sandton, 18 June 2004, mimeo.
- ⁵ Carlos Garcia Rivero, Pierre du Toit and Hennie Kotzé, "Tracking the Development of the Middle Class in Democratic South Africa", *Politeia*, Vol. 2, No. 3, 2003, pp. 6-29.
- ⁶ Kane-Berman, *South Africa Survey 2002/2003*, pp. 13, 15.
- ⁷ These calculations are my own and should be treated as rough estimates. It is exceedingly difficult to find accurate crime statistics, after the government placed a moratorium on the release of such data in 2000. I have calculated these data from the various editions of the *South Africa Survey* over the last ten years.
- ⁸ Elsabé Brits, "Suid-Afrikaners al banger – studie", *Die Burger*, 2 Julie 2004., p. 4.
- ⁹ Kane-Berman, *South Africa Survey 2002/2003*, pp. 181, 182.
- ¹⁰ Herma Forgey *et al.*, *South Africa Survey 2000/2001*, Johannesburg: South African Institute of Race Relations, p. 374.
- ¹¹ Elizabeth Sidiropoulos *et al.*, *Race Relations Survey 1994/1995*, Johannesburg: South African Institute of Race Relations, 1995, p. 487; John Kane-Berman, (ed) *South Africa Survey 2002/2003*, Johannesburg: South African Institute of Race Relations, 2003, p 160.
- ¹² Quoted in Terrence Corrigan, *Mbeki: His Time Has Come – An Introduction to South Africa's New President*, Johannesburg: South African Institute of Race Relations, 1999, pp. 29, 30.
- ¹³ For the purposes of this Act, the National Defence Force, the National Intelligence Agency and the South African Secret Service are excluded from the category of organs of state.
- ¹⁴ Ashley Smith, "Call to oust white women as group to be advanced", *Cape Times*, May 2 2003.
- ¹⁵ Angela Partington, (ed) *The Oxford Dictionary of Quotations*, Oxford: Oxford University Press, revised fourth edition, 1996, p. 397.