# Sociological and Legal Issues in Nigeria's Pervasive Corruption: The Criminalization of the State and the Citizenry in Nigeria

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*Abstract*

*The objective of this paper is to review the sociological and legal issues of corruption in Nigeria. The growth of corruption on a major scale, the plundering of national resources, the privatization of state institutions, the development of an economy of plunder, the growth of private armies, all of these features of public life in Nigeria suggest that the State itself has become a vehicle for organized criminal activity. Corruption indicates that the whole society is criminalized, that crime and exploitation pervade the paneled offices of government, business and professionals, as well as, the littered streets of the slums. The corruption criminals not only commit crime themselves, but they participate and promote the crimes of the poor/powerless. The Penal Code and the Criminal Code in Nigeria both of which contain enactments which are designed to deal with crime and corruption do not appear to have had any restraining influence on the criminal activities of those who are hell-bent in perpetuating the crime of corruption. Corruption criminals are roaming our streets in open defiance of the legal order because the law, the prosecuting agencies and the courts have failed in their duties. The paper recommends that the spectrum of Nigeria's anti – corruption coalition needs to be broadened, refocused, and coordinated. A legalistic and sociologically holistic, inclusive, participatory, integrated approach that will concretely address the problem of corruption in Nigeria must be articulated and practiced.*

*Keywords: Sociological, Legal, Corruption, Criminalization, Citizenry, Nigeria*

## 1. Introduction

Corruption is one issue that consistently takes centre stage in Nigeria's socio-political discourse. Since independence, successive Nigerian leaders have hinged their intervention in politics to their desire to fight the menace and secure a better future for the country and its people. However, despite its dominance in the national political debates, the nation remains helpless as its economy and entire polity groan under the devastating impact of corruption's deadly claws (Ogboru, 2007). The World Bank reports that as a result of corruption, 80 percent of the oil revenues that accrue to the Nigerian State and indigenous investors benefit only 1 percent of the population (UNDP, 2006). The United Nations ranks Nigeria 159th out of 177 countries on its Human Development Index (UN, Human Development Report, 2006). Most Nigerians are poorer today than they were at independence in 1960 (Uwadibie: 2006). Since 1995 Transparency International (TI) publishes the Corruption Perceptions Index (CPI) annually ranking countries by their perceived levels of corruption, as determined by expert assessments and opinion surveys Nigeria is ranked 143 out of 182 countries in corruption perceptions index (Transparency International, 2011).

## 2. Definition

Corruption has no uniform definition (Chinhamo and Shumba, 2007). This is so because what is regarded as corruption depends on the actors, the profiteers, initiators, how and where it takes place. It also depends on the existing laws and regulations guiding certain actions. Some countries define corruption in the broadest form while others legislated on the narrow definition of the term. The social and cultural contexts and the time dimensions also make a unique definition difficult. There are also levels of corrupt practices. As a result of the fluidity and the evolving nature of the concept, the United Nations (UN) has adopted a descriptive approach and criminalization of the act to describe what act is corrupt. The UN clearly highlighted bribery, embezzlement, illicit enrichment, abuse of office, laundering of proceeds of corruption, obstruction of justice, etc, as corrupt acts (UN, Human Development Report, 2006).

The World Bank defines corruption as the abuse of public power for private benefit (UNDP, 2006). Mushtaq Khan

(1996) views corruption as the behaviour that deviates from the formal rules of conduct governing the action of someone in position of public authority because of private motives such as wealth, power or status. The Corruption Perceptions Index (CPI) generally defines corruption as the misuse of public power for private benefit or the abuse of entrusted power for private gain (Transparency International, 2011).

The Independent Corrupt Practices Commission Act (2000) defines corrupt acts to include bribery, fraud and other related offences. Osoba (1996) sees corruption as a global phenomenon, intelligible only in its social context, and refers to it as an anti-social behaviour conferring improper benefits contrary to legal and moral norms, and which undermines the authorities' capacity to secure the welfare of all citizens. Duke further defines two aspects of corruption to include: the corruption that is caused by a lack of opportunities at the lower level and the corruption which is driven by greed on the part of the elite and those in position of authority. When someone in position of trust confiscates the resources of the people entrusted to him for his personal use, that is not just corruption, but it is outright *crime* (Duke, 2006).

In effect, the motivation for corruption is to take undue advantage of position of trust which is not limited to pecuniary issues. It is also not limited to the public sector. The act is criminal when considered along with the existing legislations on the subject in Nigeria.

## 3. Dimensions of Corruption

In philosophical, theological, or moral discussions, corruption is spiritual or moral impurity or deviation from an ideal. In theological or political debates, certain viewpoints are sometimes accused of being corruptions of orthodox systems of belief, which is to say, they are accused of having deviated from some older correct view. In a moral sense, corruption generally refers to decadence or hedonism. In economical sense, corruption is payment for services or material which the recipient is not due, under law. This may be called bribery, kickback. In government, it is when an official makes decisions that are influenced by vested interest rather than their own personal or party ideological beliefs. Political corruption is the abuse of public power, office, or resources by elected government officials for personal gain, e.g. by extortion, soliciting or offering bribes (Chinhamo and Shumba, 2007). It can also take the form of office holders maintaining themselves in office by purchasing votes by enacting laws which use taxpayer money. Governmental corruption of judiciary is broadly known in Nigeria because the budget is almost completely controlled by the executive. The latter undermines the separation of powers, as it creates a critical financial dependence of the judiciary. It is important to distinguish between the two methods of corruption of the judiciary: the government (through budget planning and various privileges), and the private (Barenboim, 2009).

Scholars (Legvold, 2009; Znoj, 2009) distinguish between centralized and decentralized systemic corruption, depending on which level of state or government corruption takes place; in Nigeria, both types occur. Systemic corruption (or endemic corruption) is corruption which is primarily due to a weakness of an organization or process. Systemic corruption is the complete subversion of a political or economic system. It can be contrasted with individual officials or agents who act corruptly within the system. Factors which encourage systemic corruption include conflicting incentives, discretionary powers; monopolistic powers; lack of transparency; low pay; and a culture of impunity. Specific acts of corruption include bribery, extortion, and embezzlement in a system where corruption becomes the rule rather than the exception.

## 4. Causes and Correlates of Corruption in Nigeria

Corruption is not a recent phenomenon that pervades the Nigerian state. Since the creation of modern public administration in the country, there have been cases of official misuse of resources for personal enrichment (Eccker, 1981). The rise of public administration and the discovery of petroleum and natural gas are two major events seen to have led to a litany of ignoble corrupt practices in the country. Over the years, the country has seen its wealth withered with little to show in living conditions of the average human being. A Nigerian political leader, Obafemi Awolowo raised a salient issue when he said, since independence our governments have been a matter of few holding the cow for the strongest and most cunning to milk, under those circumstances everybody runs over everybody to make good at the expense of others (Tignor, 1993).

The pervasive corruption has also been blamed on colonialism. According to this view, the nation's colonial history may have restricted any early influence in an ethical revolution. Throughout the colonial period, most Nigerians were stuck in ignorance and poverty. The trappings of flash cars, houses and success of the colonists may influence the poor to see the colonist as symbols of success and to emulate the colonists in different political ways (Eccker, 1981). Involvement in the agenda of colonial rule may also inhibit idealism in the early stage of the nascent nation's

development. A view commonly held during the colonial days was that the colonists property (cars, houses, farms etc.) is not *our* property. Thus vandalism and looting of public property was not seen as a crime against society. This view is what has degenerated into the more recent disregard for public property and lack of public trust and concern for public goods as a collective national property.

Thus in Nigeria corruption became the principal means of private accumulation during the decolonization period, in the absence of other means, and came to shape political activity and competition after independence (Osoba, 1996). All subsequent regimes, military and civilian, have been pervaded by corruption. Aided and enhanced by oil revenues, this has created a deepening crisis of kleptocracy, shown in is most extreme form since 1984. It results in a combination of scandalous wealth among the ruling class with growing poverty, misery and degradation among the mass of Nigerians. Political life has become dominated by winner-take-all factional struggles, political cynicism and violence, while the economy and social institutions have been driven into decay. Corruption has thus become a way of life in Nigeria, one which existing governments neither wish to, nor can, control.

Some writers (Wraith and Simpkins, 1983) have posited about the different potential factors of flagrant and pecunious graft that exists in the country: many blame greed and ostentatious lifestyle as a potential root cause of corruption. To some, societies in love with ostentatious lifestyle may delve into corrupt practices to feed the lifestyle and also embrace a style of public sleaze and lack of decorum. The customs and attitudes of the society may also be a contributing factor. Gift giving as expressions of loyalty or tributes to traditional rulers may be fabrics of the society.

Also, a political environment that excludes favors towards elites or wealthy citizens may also be influenced by corruption. Wealthy elites may resort to sleaze in order to gain power and protect their interest. However, the bottom line surmised from the views of most Nigerians is that corruption is a problem that has to be rooted out. In Nigeria another major cause of corruption is ethnicity called tribalism in Nigeria. Friends and kinsmen seeking favor from officials may impose difficult strains on the ethical disposition of the official. Many kinsmen may see a government official as holding necessary avenues for their personal survival or gain (Wraith and Simpkins, 1983).

A culmination of use of official resources for private gain may lead to further pressures on incoming officials from other kinsmen. However, the fact is, the importation of modern rules on inter-ethnic political relationships is a recent colonial and western initiative that may take time to become the norm, deep allegiance to other ethnic groups for administrative decisions early on was sometimes viewed suspiciously, and an early institutionalization of a unitary system in the country, may also have led to a further familiar groupings induced corruption. Nevertheless, a modern practical approach to leadership and relationships has gradually taken a prominent role in the political process. The necessity for practical inter-dependence and cooperation is at the forefront of yearnings for good governance in the country (Eccker, 1981).

## 5. Nigeria's Corruption Burden and the Law

Nigeria is a state that is founded on the philosophy of the Rule of Law wherein all persons and institutions are subject to the same legal treatment. This idea of the rule of law has been expressed in many ways but the starting point for its discussion is the Constitution, which has boldly set out the juristic parameters of the concept as it applies to the Nigerian State whose nature, philosophy and other characteristics are equally embedded in the 1999 Constitution. Specifically, Section 1 (1) of the 1999 Constitution provides that the constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria (FRN, 1999 Constitution).

The constitution does not contemplate a situation where any person, natural or artificial, can claim any exception before the law. It has to be a situation of anarchy and wholesale illegality in which an exception or a preferential treatment is dispensed in favour of anyone, including the so-called *high-profile* criminal. Our laws have no provisions for *high-profile* criminals because a criminal is a criminal, irrespective what we think of him. It is the failure of the system that has created that monster category of law-breakers in Nigeria (Ikhariale, 2012). The question is: does the Nigerian constitution make exceptions for the so-called high-profile corruption cases? The simple answer is no, because all accused persons are equal before the law for reasons of prosecution and other fair legal processes. Letting criminals off the hook simply because they are considered high-profile is a direct invitation to anarchy and manifest impunity. More importantly, it gives the false impression that crime pays.

In recent times, questions have been raised about the ability of the country's courts to effectively dispose of pending high profile corruption cases. The claim by the Chief Justice of Nigeria (CJN) that the Attorney General of the Federation (AGF) is undermining this time-honoured doctrine of the rule of law by its failure to carry out prosecutorial duties that the office is constitutionally obliged to perform is a huge point, no doubt. If criminals are roaming our streets in open defiance of the legal order, it is because someone has failed in his duties. According to the learned CJN, the court

cannot on its own prosecute criminal cases; there must be the willingness of all prosecuting agencies to prosecute cases brought before the courts, especially high-profile cases of corruption and all others. The CJN was very specific in her allegation of the existence of inequality in the dispensation of criminal justice in the country and she listed the office of the AGF as the principal culprit in this charge (Ikhariale, 2012). Nigeria is condemned to anarchy if high-profile criminals expectedly are let go in lieu of just and appropriate punishments, while petty offenders are given cruel and disproportionate punishments.

The sociological study of corruption crime provides some support for the view that there is one law for the rich and another for the poor (Surtherland, 1983). Earlier legislations like the Penal Code applicable in the Northern Nigeria and the Criminal Code in the South, both of which contain enactments which are designed to deal with cases of official corruption by public servants do not appear to have had any restraining influence on the criminal activities of those who are hell-bent in perpetuating the crime of corruption. Although these laws 'decorate' our statute books, over the years, not a single case of corruption is known to have been prosecuted in the regular or superior court of record (Akanbi, 2004). There is a consistent bias in the administration of criminal justice under laws which apply to corruption crime which involved only the powerful. Official statistics underestimate the extent of corruption crime to a far greater degree than they underestimate the extent of conventional crime: exposures of scandals in government and business show that corruption crimes are far more widespread and pervasive than are generally realized. This point of view makes the case that crime is a social problem that pervades society, and it includes both the rich/powerful and poor/powerless citizens. Corruption indicates that the whole society is criminalized, and that crime and exploitation pervade the paneled offices of government, business and professionals, as well as, the littered streets of the slums (Legvold, 2009).

Thus the corruption criminals not only commit crime themselves, but they participate and promote the crimes of the poor/powerless. This negative consequence of the endemic corruption continues to impede development and threaten security of lives of the citizenry. Poverty, unemployment, insecurity of life and property and decaying infrastructure are the common features which are largely attributable to the high incidence of corruption which has reached an endemic level.

## 6. Implications for Nigeria

The poor ranking of Nigeria by Transparency International shows that she is neck-deep in corruption (Transparency International, 2012). On the other hand, Ghana is ranked number 69 and South Africa, number 64 least corrupt nations in the world. That is to say, Ghana and South Africa are by far less corrupt than Nigeria. And this is why they have better social services than Nigeria. Worthy of note also is the fact that New Zealand is the least corrupt nation in the world, followed by Finland, Denmark, Sweden, North Korea. That is to say, the Nordic countries are very transparent and consequently, are very highly developed. There is a degree of corruption among the industrialized nations of Western Europe and elsewhere. However Botswana, Chile, Argentina and Venezuela are less corrupt than some of the industrialized nations of the world. In other words, transparency, discipline, honesty and accountability in social and public life, are not the monopoly of the industrialized nations of the world. Inspite of the efforts of the anti-corruption institutions in Nigeria, especially the Economic and Financial Crimes Commission (EFCC), the Independent Corrupt Practices and Other Related Offences Commission (ICPC) and the National Extractive Industries Transparency Initiative (NEITI), the level of corruption is still of very serious concern and remains the greatest challenge (Wikipedia, 2012; UNDP, 2006).

## 7. Conclusion

Corruption is an endemic disease that has eaten up every facet of the Nigerian society; the worst enemy that has crippled the nation, reduced the citizens to poverty and deprived the nation of any sustainable development. The Corruption Perception Index (2012) by the Transparency International (TI) rated Nigeria as 35th most corrupt country in the world. The breakdown of the report shows that Nigeria and Nepal are on 139th position with a score of 27 each while North Korea, Afghanistan and Somalia are at the bottom of the table with a score of 8 each. The 2012 corruption perception index result is a call on government across the world to prioritize the fight against corruption (Ameh, 2012).

The causes of corruption in Nigeria in a nutshell include: weak Government institutions; poor pay incentives; lack of openness and Transparency in public service; absence of key anti-corruption tools; ineffective political processes; culture and acceptance of corruption by the populace; absence of effective political financing; poverty; ethnic and religious difference; and resource scramble. The evils that corruption portends are many. Corruption stunts growth and development, creates political instability, destroys socio – economic life of a nation, undermines the legitimacy of the state, makes fiscal planning almost impossible, places the wealth of the nation in the wrong hands and leads to uneven distribution of the wealth and perquisites of life. Indeed, it is a truism to say that the cost of corruption to the nation is

devastating and ravenous.

The fight against corruption in Nigeria is not working because of factors such as: insincerity of Government; plea bargaining and Negotiation, highly placed officials caught of corrupt practices are made to part with some of their looted funds and are thereafter set free; low deterrence - the punitive measures for corrupt practices need to be strengthened; lack of virile political and social movements to tackle corruption - the mass of the people are yet to be mobilized in the fight against corruption; lack of access to public information - a lot of secrecy still pervades Government documents and this underlies the need for the passage of the freedom of Information Bill presently before Nigeria's National Assembly; insecurity of Informants - there is a need to enact laws to protect informants as well as reward them; low public participation in Governance; corrupt Electoral system; nepotism; systemic disorder; and weak Government Institutions.

In the light of the adverse and detriment consequences of corruption highlighted in this paper, Nigeria needs to strengthen her legal system and the policing system, not the Nigeria police force, but ways of tracking corruption such as, the accounting system and auditing system to curtail corruption. Nigeria also needs to rethink over her fiscal policy to provide opportunities for the people to be economically empowered: a fiscal policy geared towards creating jobs and productivity (Duke, 2006).

There is no doubt also that the process of bringing high profile corrupt officers to book is not as straightforward as many Nigerians suppose it should be. There is congestion of cases or made to be so, particularly criminal cases, in the regular courts at various levels. As it stands, the much talk about *special court* for corruption cases, as being discussed by the leadership of the Supreme Court, may be one way out, as the benefits are self-evident. The initiative, no doubt a novelty, will enhance the war against corruption by facilitating speedy conclusion of corruption cases within a reasonable period. Second, it will restore public confidence in the anti-corruption war and the judicial system under which it is being prosecuted. However, like all public policies and programmes, the success of the initiative will depend on the implementation (Barenboim, 2009; Ikhariale, 2012).

Combating corruption requires a popular participatory democracy able to monitor and hold to account those in charge of the state and the treasury (Osoba, 1996). However, the change from being a corrupt and greedy people can only come about if all and sundry are prepared to be part of the new beginning, a new orientation and are prepared to imbibe a new culture of transparency, probity, and accountability as is the case with Hong – Kong which today is acclaimed to be a *clean* country and a reference point for all. Experiences from other countries teach that for an anti – corruption programme to succeed there must be total involvement of the citizenry (Akanbi, 2004; Wraith, R. and Simpkins, 2012).

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# The Employment Equity Act (EEA) as an Instrument for Employment Equity in the South African Labor Market

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*Abstract*

*This paper seeks to critically examine the Employment Equity Act (EEA) as an instrument of achieving employment equity in post apartheid South Africa. Special emphasis will be placed on the policy of affirmative action. In this article we will attempt to illustrate how focusing on affirmative action and failure to implement policies could pose a threat to the achievement of equity in the South African labour industry. This paper was prepared by means of a literature survey wherein various previous literatures were interrogated including the actual Act in concern. In a nutshell it can be argued that the EEA as a piece of legislation has managed to augment equality in opportunities at the same time addressing the past imbalances. However there are concerns that affirmative action may pose a challenge as it is presented in discriminatory language and if handled carelessly may undermine merit, leading to disenfranchisement of deserving individuals. Another concern is that it could be used as a front by the political elite to harbor elements of corruption and nepotism to the disadvantage of the poor of the poorest amongst designated groups.*

*Keywords: Employment equity; Affirmative Action; Equality; Discrimination; Industrial Relations.*

## 1. Introduction

South Africa is one of the countries that have experienced one of the most cruel and oppressive political system in the world in the form of apartheid. The release of Nelson Mandela in 1990 and the subsequent birth of a new democratic South Africa in 1994 have enabled the emergence of human rights standards and labour practices that advocate for the principles and the practice of equity and fairness. This culture of equity and fairness has been institutionalized through legislation such as the Employment Equity Act (Act 55 of 1998) which is aimed at addressing the imbalances of the past. During the era of apartheid, blacks, women and the disabled were systematically marginalized in the labour practices. Ellman, (1963) argued that, though evidence pointed to the growing importance of women in the world of business, a very limited number occupied significant positions compared to their male counterparts. Drawing from the above assertion, it is evident that the issue of gender fairness in employment has been a debated issue since the sixties. Previous studies indicated most of the influential positions in the work place were held by males, specifically white males. Marginalized groups such as blacks, women and the disabled occupied positions of less influence, lower status and lower pay (Humphries & Grice, 1996; Jackson, 2001). Thus the purpose of the Employment Equity Act (EEA) has been to enable fair labour practices in ensuring that blacks, women and the disabled are accorded equal opportunities in the workplace. In this literature survey, we will critically examine the EEA as an instrument of achieving employment equity in post apartheid South Africa. Special emphasis will be placed on the policy of affirmative action. In this article we will attempt to illustrate how focusing on affirmative action and failure to implement policies could pose a threat to the achievement of equity in the South African labour industry.

## 2. Contextualizing Apartheid Equality at the Workplace

It is essential to have an understanding of some of the salient features of the apartheid regime in order to clearly

understand problems of equity in the South African labour environment. The oppressive apartheid system through its regulations and some of its most unjust historical events negatively tainted many societal concepts, amongst others, the concepts of group classification, group rights, ethnicity, race, minority rights, and self-determination. Apartheid was deeply characterized by its central policy of 'divide and rule'. This unjust policy was aimed at ensuring white survival and hegemony. This was achieved through the division of the non-white population along racial and ethnic lines an act that was aimed at weakening this group (Kashula & Anthonissen, 1995; Bennett, 1995).

Consequently, the corresponding majority was divided into a host of minority groups, which could no longer pose a threat to the white minority (including both the Afrikaners and the English population). Given the above arguments, one can argue that the apartheid system could also be safely described as a scheme to disempowering the non-white population while giving privileges to the white population, and especially the white Afrikaner population. Consequently, other scholars described the apartheid system as a pervasive system of affirmative action for the white population and especially for the Afrikaners (Sachs, 1992; Sonn, 1993). We therefore argue that the systematic marginalization and racial segregation of women and the non-white population before 1994 created a skewed playing field in the labour industry. As a result women and non-white populations failed to benefit from financially rewarding positions in the workplace as they were often pushed to the peripheries and reduced to manual labourers who could not occupy any positions of significance. With the emergence of democracy in 1994 stringent measures had to be taken in order to redress the misfortunes and imbalances of the past. Just like other established and emerging democracies South Africa was forced to enforce a level playing field in the work place to achieve equity, this prompted the introduction of new legislation consistent with universal human rights standards.

## 3. South African Trends on Equality

The New Constitution of South Africa guaranteed everyone the fundamental right to equality. The elimination of unfair discrimination and the adoption of positive measures to redress social imbalances were important components to this end, and thus the Employment Equity Act was a necessary step towards the achievement of the constitutional goals. The Employment Equity Act was incrementally promulgated into law in 1999. Human (1996) indicated that South African organizations were playing the numbers game. They did not realize that affirmative action is the process of creating equal employment opportunity and that it required fundamental changes to the human resource culture. Human (1996) argued that affirmative action and employment equity both encompassed, and were encompassed by, the concept of managing diversity. As a result there was an urgent need for the government to draft legislative interventions. Women marched to the Union Buildings in 1956 and they sang a song: "Wathint' Abafazi, Wathint' Imbokotho, Uzakufa!" When translated it means you have tampered with the women. You have struck a grinding stone. The then Minister of Labour said that the Employment Equity Act gave the women another grinding stone – another powerful tool. According to him the Act was a pledge to spare no effort in the struggle for gender equity (Mdladlana, 1999a). On 29 July 1999 Steve Tshwete (at a function to launch Affirmative Action Programme in the Police Force) made the following comment: "We do not only want to see leaders emerging from the male section. We want to see women being given positions in the command structures". He also said that South Africa has not yet arrived – where men and women were treated equally (Mdladlana, 1999b). Using the Breakwater Monitor results of 1998, Thomas, (2002) indicated a lower percentage of only 14% of managers were women.

Human (1996) indicated that in South Africa, which has a strong patriarchal attitude, male managers doubted the business abilities of women. These attitudes led to practices, which inherently put women at a disadvantage through deeply entrenched stereotyping of gender. According to a report released in 1999 by the Gender Commission, most companies preferred employing men to women because of a lack of gender policy, lack of trust in women, cultural views and resistance by male employees (Mdladlana, 1999a). The report also indicated a variance in income between men and women, for the same job. Thomas (2002) supported this viewpoint by indicating that male wages were 43% higher than those of similarly qualified females in the same sectors and jobs. The ideology of male superiority was a system of beliefs that set a male standard, which became the yardstick with which women were judged when they entered male-dominated posts.

So, the glass ceiling still remained. The term "glass ceiling" indicated those invisible barriers that kept women from rising above a certain level in organizations (Jackson, 2001). It seemed that gender discrimination was so deeply embedded in organizational life that it was part and parcel of the organizational culture (Cassell, 1996). Burke and Mattis (2000) noted that even when women do all the right things and had the right competencies; they were still blocked from the inner most circles of power and corporate board level. It seemed as though, internationally, the Equal Employment Opportunity legislation had not worked that well. Legislation had brought the discrimination to the fore, but could not curb

systemic discrimination. In South Africa, the Employment Equity Act was seen as a tool to ensure the upward mobility of women, other designated groups and those who are physically challenged in the labour market and to break the glass ceiling that had prevented women from growing and having the same access to job opportunities as their male counterparts (Mdladlana, 1999a).

## 4. Measures to Address Inequality in the Workplace

### 4.1 Legislative interventions

Many countries around the world have adopted various legislative interventions in an attempt to address the question of inequality in the workplace. The most popular among the many interventions are the Equal Employment Opportunity (EEO) and Affirmative Action (AA) policies which have been introduced in various countries across the globe to address this issue about fairness and discrimination in the workplace. Despite these attempts, Hamphries & Grice, (1995) argued that inequality continued to persist. Post 1994 South Africa also adopted the equal Employment Opportunities (EEO) and Affirmative Action (AA). This was a very important undertaking given that the South African labour environment had been severely polarized. While democracies such as South Africa sought to address the inequality debacle, Mavin, (2001) argued that male career models and approaches did not disappear from the scene, however they remained. In addition he argued that women were being disadvantaged when they stepped out to meet family responsibilities. In many societies women are regarded as the center of the family and usually expectations are very high for them to take charge of family responsibilities. This is one of the areas of debate where feminists have often attacked the patriarchal model of society. According to Marvin, (2001) women were subtly forced to choose between upward mobility in career and family stability in the home, or later alone starting a family. South Africa as an emerging economy has therefore shown its commitment to addressing inequality by adopting supportive legislation to abolish this very pertinent issue in the labour environment.

The Employment Equity Act (EEA) No. 55 of 1998 of the Parliament of the Republic of South in Section 2 describes its purpose as follows.

To achieve equity in the workplace by:

a. Promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and

b. Implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels in the workforce.

According to Thomas, (2002) International and national Employment Equity Legislation, is aimed at ensuring the equitable representation of women and other designated groups in all occupational categories and levels in the workplace. Within these legislations and related literature various concepts of Employment Equity are used constantly. It is our opinion that perhaps it would be useful to investigate what equal employment opportunity encompassed. According to Toumishey, (2001), Employment Equity is often seen as a long-term programme to ensure that all employees have a fair chance in the workplace. The EEA prohibits direct and indirect discrimination on a number of grounds, including:

- Race, ethic or social group, colour and culture
- Gender, sex, pregnancy and sexual orientation
- Disabilities and HIV status
- Religion, conscience, belief and language ( Section 6 of EEA)

Other scholars have acknowledged that amid challenges of inequality evident in the male dominated workplace and a society that has internalized a culture of segregation and discrimination owing to dark forces of the past, Employment Equity will only be achieved when no person is denied employment opportunities or benefits for reasons that are not related to their abilities (Thomas, 2002, Toumishey, 2001).

### 4.2 Affirmative Action.

In the South African context, Affirmative Action is an important instrument through which Employment Equity is hoped to be achieved. Some scholars have argued that Affirmative action is seen as a short-term strategy by which equality (employment equity) in the workplace would be achieved as it is anticipated that this will help in the active elimination of systemic discrimination (Thomas, 2002, Toumishey, 2001). Systemic Discrimination, one could argue, occurs when

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groups of people, for instance women, are excluded from the workplace for reasons not related to inherent requirements of the job. In many cases this unfortunate phenomenon results from entrenched policies and practices that are part of the normal operation of employment systems that unintentionally discriminate (Toumishey, 2001). Human, (1996) saw Affirmative Action as the process whereby equal employment rights were created, cutting across all Human Resource (HR) practices such as selection, recruitment, induction, development, and many others. The above statement is supported by Chapter 3 of the EEA that advocates for the 'designated groups' as we have seen are black people, women and people with disabilities. This referred to a more holistic focus such as diversity management. According to McWhirther, (1996) the most legitimate justification for engaging in affirmative action is the need to compensate for specific past instances of race and gender discrimination by particular organizations. There is need to remedy 'societal discrimination' because some organizations may have engaged in intentional discrimination in the past and so have other entities in society. The justification for affirmative action is the need to create more diversity in particular organizations. McWhirther, (1996) argues that Affirmative action programmes have certainly increased the labour force participation rate for women and blacks.

However it could be argued that though affirmative action is a redress policy for the sins of the past, it still uses discriminatory language. Perhaps emphasis must be placed on that it is a temporary measure to level the playing field until such a time when proper policies devoid of any discriminatory language of any sort could be adopted. At present much as Affirmative action serves a worthy purpose it poses a threat of excluding deserving and valuable talent in preference of meeting the quota of designated groups.

According to Thomas, (1997) diversity management is a planned, systematic and comprehensive managerial process for developing an organizational environment in which all employees, with their similarities and differences, could contribute to the strategic and competitive advantage of the organization, and where no one was excluded on the basis of factors unrelated to productivity. The main issue in equality is ensuring fair treatment for all. As long as one has the qualification and experience for the job they should be rewarded on merit. As we have alluded before, there is a need to guard against compromising quality in the name of affirmative action and there should be great effort put to ensure that people are not discriminated based on factors that have nothing to do with the inherent requirements of the job. Both Affirmative Action and diversity management should lead to equal employment opportunities, which was the ultimate goal. It remains important to remember that to avoid creating reverse polarization affirmative action should only be treated as a stepping stone towards a level playing field.

Zelnick, (1996) regards affirmative action as a racially discriminatory practice against whites and other favored ethnic groups. It favors the less qualified over the more qualified and therefore a systematic attack upon objective merit selective criteria. According to Zelnick, (1996) while affirmative action has exhibited positive strides in that it increases black enrollment at selective universities, companies and also expands somewhat the pool of black entrepreneurs it has brought little employment, educational or income benefits to those in most need of help. Perhaps to add on this flip side, in certain instances the policy is exposed to elements of corruption, nepotism and the advancement of the interests of the political elite. However the EAA section 15 states that affirmative action measures are intended to ensure that suitably qualified employees from designated groups that have equal employment opportunity are equitably represented in all occupational categories and levels of the workforce. Much as this is the written law, the South African labour environment is also prone to illicit cultures such as deployment of cadres by the political elite. This severely disenfranchises well deserving individuals of all races and genders. Zelnick, (1996) further argues that affirmative action has been broadened for political purposes to include beneficiaries who lack the historical claim of blacks for relief.

While the EEA and the policy of affirmative action are well intended and seek to address a worthy cause, the poor implementation suggests that these are based on political empowerment and not on economic empowerment. Contrary to the view of the ANC Department of Economic Policy (1990), affirmative action does not exhibit a temporary nature. It does not appear as a transitional method of bridging the equality gap as was once claimed by the ANC Department of Economic Policy. In March 2007, the then Minister of Labour, perhaps the most fervent advocate of Employment Equity (EE) and Affirmative Action (AA) stated that AA will never be removed from the statute books. One can argue that the EEA discriminates one group and prefers another group. It could also be argued that this piece of legislation is an employment discrimination law, albeit a legal discrimination. It adopts the doctrine that the end justifies the means. It argues that if the intentions are noble then the means to attain those ends must also be noble. It fails to accommodate the least privileged of blacks and women as they often lack political connections. It tends to increase the economic status among blacks and women of those already relatively advanced in comparison to the poorest of the poor. Though Affirmative action is well intended given the injustices of the past and the need to level the playing field, as long as there is persistent poor implementation and failure to define the cut-off date for this policy, there is no justification that all forms of affirmative action do not violate the principles of equal opportunity before the law and thus do not contravene the rule

of law.

## 5. Conclusion

In this article we have examined the Employment Equity Act (EEA) No. 55 of 1998 as an instrument to bring employment equity in South Africa. Special emphasis was given to the policy of Affirmative Action (AA). As much as The South African government has sought to redress the historical legacy of workplace discrimination by introducing the Employment Equity Act (1998), there are still grey areas that need to be addressed especially with regards to the implementation of this piece of legislation. It is evident that the EEA is well intended and has made great strides in enforcing workplace equality in that it has ensured that the blacks , women and all the previously disadvantaged have been accorded a somewhat equal legal claim to the opportunities in the employment sector. This in itself has entailed good strides at enlarging the sphere of fairness, although there are still some concerns over whether the issue of employment equity is really practiced as well as the fairness of affirmative action. In a nutshell it can be argued that the EEA as a piece of legislation has managed to augment equality in opportunities at the same time addressing the past imbalances. However, there are concerns that affirmative action may pose a challenge as it is presented in discriminatory language and if handled carelessly may undermine merit, leading to disenfranchisement of deserving individuals. Another concern is that it could be used as a front by the political elite to harbor elements of corruption and nepotism to the disadvantage of the poor of the poorest amongst designated groups.

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