



DEMOCRATIC GOVERNANCE & RIGHTS UNIT TRANSFORMATION POLICY

Transformation has been expressly recognised as a foundational value by the Constitutional Court, and is found in the text of the preamble to the Constitution.

Ngcobo J stated in *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism & Others*:

“South Africa is a country in transition. It is a transition from a society based on inequality to one based on equality. This transition was introduced by the interim Constitution, which was designed ‘to create a new order based on equality in which there is equality between men and women and people of all races so that all citizens should be able to enjoy and exercise their fundamental rights and freedoms’. This commitment to the transformation of our society was affirmed and reinforced in 1997, when the Constitution came into force. The Preamble to the Constitution ‘recognises the injustices of our past’ and makes a commitment to establishing ‘a society based on democratic values, social justice and fundamental rights’. This society is to be built on the foundation of the values entrenched in the very first provision of the Constitution. These values include human dignity, the achievement of equality and the advancement of human rights and freedoms.”

According to Klare, [t]ransformative constitutionalism connotes an enterprise of inducing large-scale social change through nonviolent political processes grounded in law.

I have in mind a transformation vast enough to be inadequately captured by the phrase ‘reform,’ but something short of or different from ‘revolution’ in any traditional sense of the word. In the background is the idea of a highly egalitarian, caring, multicultural community, governed through participatory, democratic processes in both the polity and large portions of what we now call the ‘private sphere.’ 32 – 81

Understanding transformation in the context of the judiciary and judicial governance is a key part of the work of DGRU. It is clearly not just about numbers, although numbers have a critical role to play in measuring whether an environment is conducive to

transformation. It is also not just about implementing the legislative framework of the Employment Equity Act, Skills Development Act, Promotion of Equality and the Prevention of Unfair Discrimination Act, and the Broad Based Black Economic Empowerment Act, although these are critical tools for talking about and advancing transformation.

We have to recognize any organisation is located within society. We cannot stop the real world at the door and create a work community apart from our society, and the workplace is not a democracy. But we can aim to advance a “highly egalitarian, caring, multicultural community, governed through participatory, democratic processes.”

How do we do that?

The first thing we have to do is recognise power. Foucault contends that ‘power is everywhere’, diffused and embodied in discourse, knowledge and ‘regimes of truth’. Power is often accompanied by privilege, and where formal structures do not speak to the power of privilege, people can be promoted and disempowered at the same time.

We also have to recognize privilege. The intersectionality of privilege and disadvantage make for complex power relationships which must be clearly seen to be ameliorated. These are generally not formally codified, and may even be denied in order to maintain a false solidarity.

This understanding of transformation in the DGRU is built around the understanding that many groups of more marginalised people need to be supported in analysing their power and privilege deficits and addressing them.

A key issue in equality in the workplace is the issue of gender. More specifically, we focus on the issue of unpaid care work being highly gendered, where women are still primary care givers in relation to children, the elderly and the disabled. This role directly impacts the amount of time women have available to work, and in particular work after hours, and travel, often a key to advancement in the workplace. In countries where women spend twice as much time as men in caring activities, they earn only 65% of what their male counterpart earns for the same job. This drops to 40% when women are spending five times the amount of time on unpaid care work (for full-time employees).¹ Mothers living with one or more of their own children under seven did an average of 80 minutes of child care per day, compared to only 13 minutes for fathers.²

¹ https://www.oecd.org/dev/development-gender/Unpaid_care_work.pdf

² Delaney A, Jehoma S and Lake L (Eds), 2016. South African Child Gauge 2016, Children’s Institute, University of Cape Town

We therefore focus particularly on ensuring that care work is recognised as an important and socially valuable task, and adapt our working patterns accordingly. Where we require staff to work after hours or over weekends we offer paid childcare for staff who are primary care givers, so they can participate fully in all work activities.

We allow family responsibility leave, and recognise that care work will deal with both children and older persons. We are flexible around work from home, and try to facilitate it where it is helpful. We also offer to the extent possible flexible work hours. We offer time in lieu off, where parents travel. The University has the option of a crèche on campus, which we encourage people to use.

Where women employees experience harassment in the workplace they can expect support from their line management, and time off and other accommodations to lay a complaint as appropriate. Where gender based violence affects women employees they can expect time off and other accommodations to lay a complaint as appropriate.

Once we do that as best we can, we can then try to build as flat an organisation as is compatible with the organisation around us.

We must identify and eliminate employment barriers, including unfair discrimination, and implement measures designed to further diversity in the workplace. We must make reasonable accommodation for people from designated groups in order to ensure that they enjoy equal opportunities and are equitably represented in our organisation. We must ensure the equitable representation of suitably qualified people from designated groups in all occupational levels in the workforce; and retain and develop people from designated groups and to implement appropriate training measures. Skills development and a learning organisation approach should be treated as a necessity, and all processes should take this into account. Skills transfers must be recognised as coming from all parts of the organisation.

Lines of responsibility and accountability must be clearly drawn, and work allocated on a fair and open basis. Transparency in salaries and the budget generally is the practice. Work plans are collectively reached and agreed, with clear criteria for good performance open and agreed. Performance is measured in a way in which everyone understands, and an emphasis is placed on remedial action rather than punitive action.

Appointment processes are open. The skills that are needed are identified up front, and the interview process should be open and conducted by a panel of people who are diverse. It should be a stated and implemented practice employing people so that there is equitable representation of suitably qualified people from designated groups.

Staff leaving the organisation should be asked to participate in an exit interview to establish how well the organisation is doing on these issues. There should be a

succession plan, which lays out a deliberate and conscious project for transformation of the organisation in the terms outlined above.