

**THE BARRY STREEK LECTURE  
BY FW DE KLERK  
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**THE STRUGGLE FOR EQUALITY**

It's a great honour for me to be able to deliver this year's Barry Streek Lecture.

For most of our careers Barry and I were on different sides of the great South African political divide. However, I would like to think that after 2 February 1990 there was some convergence and that in later years we shared a common determination to support the constitutional values on which our new society has been founded.

Today - 6 September - is an auspicious day in our history. It was on this day in 1939 that South Africa declared war on Germany. It was on this date that Dr Verwoerd was assassinated - and this was also the date of South Africa's last discriminatory election.

It is perhaps appropriate on such a day for us to step back from the rough and tumble of our daily political debate to consider the progress that we have made - or have failed to make - with the promotion of equality. It is one of the key values on which our new society has been established and I am sure was also one of Barry's core values.

Barry Streek was a passionate supporter of the ideal of social justice - not only in his writing but also in his actions. In 1984 he established the Social Change Assistance Trust to improve the quality of life and living standards of poor rural communities. So I am sure that he would have approved of the idea of examining where we are with equality 18 years after the establishment of our new society.

I believe that it is also appropriate to consider this topic because questions relating to equality are seldom far from the heart of our political debate. Indeed, few topics elicit such impassioned - and often uninformed - comment.

For example, the horrifying killing of 34 miners two weeks ago at Marikana was immediately interpreted as yet another manifestation of South Africa's inequality crisis by the media, and by local commentators and academics.

The message was carried throughout the world that the dispute had arisen because miners were earning only R4 000 per month and were demanding that their wages should be more than trebled to R12 500. In fact, the average cost to the company of the miners' package is R11 400<sup>1</sup>. This could easily have been established by the print and TV journalists.

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<sup>1</sup> Statement by Lonmin, 24 August 2012, "Lonmin Seeks Sustainable Peace at Marikana"; Lonmin website

They could also have informed the public that in terms of the existing labour agreement Lonmin workers will qualify for an increase of up to 10% in October<sup>2</sup>. This would bring the total package of striking rock-drill operators well above R12 500.

However, such facts would not have fitted into the inequality paradigm and the 30-second sound-bites that pass for informed analysis.

The total package of Lonmin rock drill operators on a purchasing power parity basis is almost US \$2 000 per month.<sup>3</sup> According to the International Labour Organisation, this is substantially higher than the average wage in countries like Israel, Poland and the Czech Republic, and twice as high as the average wage in competitor countries like Chile and Malaysia.<sup>4</sup> It is also higher than the median wage of white South Africans - that is, the wages of 50% of white workers - which in December 2009 was R 9 500 per month.<sup>5</sup>

The relevant wage divide is not, as the media would have it, the gap between Lonmin workers and their Chairman in London - however unacceptable this might be: it is the fact that Lonmin workers have incomes that are 20 times higher than their unemployed neighbours in Marikana.

This fact lies at the heart of the inequality problem that we face.

The achievement of equality together with human dignity are the core founding values of our Constitution. However, there is little agreement on the notoriously illusive meaning of equality. Former Constitutional Court judge, Laurie Ackermann, links it to the “common and immeasurable human worth” or dignity of people. This accords with the Constitutional Court’s view that equality of human dignity lies at the heart of the concepts of equality and non-discrimination.

The Constitution provides some guidance in helping to define equality:

- In the first place it proclaims that, “Everyone is equal before the law and has the right to equal protection and benefit of the law”. This means, above all, that nobody should be subjected to unfair discrimination of any kind.
- Secondly, Section 9.2 states that, “Equality includes the full and equal enjoyment of all rights and freedoms.”

It is often argued that there must also be equality in the distribution of wealth. Indeed, when most observers refer to the degree of equality or inequality in a society they almost invariably have in mind the degree to which material benefits are distributed.

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<sup>2</sup> Statement by Lonmin, 5 DEcember 2011, “Details of wage Agreements With Unions”; Lonmin website

<sup>3</sup> Using PPP inflator of 1.32 x official US\$ exchange rate;

<sup>4</sup> As quoted by BBC News, 29 March, 2012: “Where ar you on the global pay scale?”; BBC website

<sup>5</sup> Statssa: “Monthly Earnings of South Africans, 2010”; 30 November, 2010: Statssa website

Such equality is measured by the Gini index which reflects the distribution of income on a scale where 0 indicates perfect equality - where all citizens would have exactly the same income - to 100 - where all the income in a country would be bestowed on a single individual.

South Africa's dismal failure to achieve greater income equality is reflected in the fact that our Gini index has deteriorated from 66 in 1996, to 70 in 2008.<sup>6</sup> This makes us, according to the World Bank, the second most unequal country in the world after Namibia<sup>7</sup>. Inequality has also increased within all our population groups - from 54 to 62 among black South Africans, and from 43 to 50 among whites.<sup>8</sup> This means that even whites have much higher levels of inequality than the levels in developed countries.

There is, of course, little possibility that, given mankind's varied talents, proclivities and circumstances, there is any prospect that any society will ever be able to attain a condition of absolute material equality. The last one that tried was Pol Pot's regime in Cambodia.

Even supposedly communist countries like China and Vietnam have only middling Gini indexes (China - 42 and Vietnam - 38) which put them in the same range as the archetypal capitalist United States with 41. The most equal countries in the world are Japan, Sweden and Denmark - all of which have Gini indexes of 25<sup>9</sup>. In these countries the top 10% earn only six times as much as the bottom 10%.

By contrast, the top 10% in South Africa earn 110 times more than the bottom 10%.<sup>10</sup>

It was with this degree of inequality in mind - much of it the result of discriminatory policies of the past - that the framers of the Constitution drafted Section 9(2). It provides that "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."

Section 9(2) has subsequently become the fountainhead of all the ANC's affirmative action and black economic empowerment programmes. In 2004 it was further defined by the Constitutional Court in the landmark case of *Minister of Finance vs Van Heerden*. The Court ruled that "*If a measure properly falls within the ambit of section 9(2) it does not constitute unfair discrimination*".<sup>11</sup>

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<sup>6</sup> Dr Max Price; Presentation to the Cape Town Press Club, 27 August, 2012; "What has happened to inequality and poverty in post-apartheid South Africa?"

<sup>7</sup> "List of Countries by Income Inequality"; Wikipedia; [http://en.wikipedia.org/wiki/List\\_of\\_countries\\_by\\_income\\_equality](http://en.wikipedia.org/wiki/List_of_countries_by_income_equality)

<sup>8</sup> Dr Max Price; *loc.cit*

<sup>9</sup> "List of Countries by Income Inequality"; *loc. cit.*

<sup>10</sup> Dr Max Price; *loc. cit.*

<sup>11</sup> *Minjster of Finance and Other v Van Heerden* (CCT 63/03) (29 July 2004);

In so doing it arbitrarily dispensed with sections 9(3) and 9(5) which state peremptorily that “the state may not unfairly discriminate directly or indirectly against anyone on one or a number of grounds, including race...” and that “discrimination ... is unfair unless it is established that the discrimination is fair.”

The judgment seriously diluted the non-derogable right to non-discrimination and undermined the foundational value of non-racialism. Ironically, it also diluted the right to equality. Indeed, the whole constitutional settlement rested squarely on sections 9(3) and 9(5) - the proposition that future majority governments would not discriminate unfairly against minorities and thus negate or dilute their access to all the other rights and protections in the Constitution.

However, in the face of increasing national inequality there is good reason to conclude that the government’s affirmative action and BEE policies have failed to address inequality - and might even have aggravated it. This is because most affirmative action and BEE occur in the top 10 to 15% of the income pyramid and have little or no impact on the bottom 85% of our society.

Indeed, unbalanced affirmative action, which has contributed to the collapse of service delivery in municipalities and key government departments, has undoubtedly limited the access of people to “full and equal enjoyment of all rights and freedoms”. It may thus have *diminished* the level of equality in our society.

In addition, income and education levels no longer coincide with race.

Whites are still the most privileged community in terms of both income and education levels. Nevertheless, the situation is changing. In 1995 whites accounted for 69% of those in the top earnings decile. By 2007 their share had diminished to 43%.<sup>12</sup> By 2009 there were more than 930 000 black, coloured and Indian South Africans who earned more than 800 000 whites.<sup>13</sup>

Also, the Gini index of 50 within the white community means that there is about the same level of inequality within the community as there is in most Latin American countries. 25% of whites earn less than R5 000<sup>14</sup> per month and 34% do not have matric<sup>15</sup>. This means that there are some nine million black, coloured and Indian South Africans who have higher incomes and education levels than more than a million whites.<sup>16</sup>

It is accordingly difficult to see how the remedial measures envisaged in Section 9.2 can be implemented without taking into account the actual circumstances of the

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<sup>12</sup> Dr Max Price: *loc. cit.*

<sup>13</sup> Statssa; “Monthly Earnings of South Africans. 2010; *loc. cit.*

<sup>14</sup> Statssa; “Monthly Earnings of South Africans. 2010; *loc. cit.*

<sup>15</sup> Statssa; “Community Survey, 2007”; 24 October, 2007

<sup>16</sup> Extrapolated from Statssa; “Monthly Earnings of South Africans, 2010” and Statsaa “Community Survey, 2007”; 24 October, 2007 *loc. cit.*

individuals involved - particularly when it comes to affirmative action appointments or promotions.

Clearly, when black, coloured or Indian candidates from the privileged education and income group are “advanced” over white candidates from a less privileged education and income group, the result does not “promote the achievement of equality”. It is simply unfair racial discrimination and points to the injustice and irrationality of using race as the determinant of advantage and disadvantage.

Section 9(2) is now also seen as the constitutional basis for the ideology of demographic representivity which underlies the ANC’s National Democratic Revolution. Its ultimate goal would be demographic and gender representivity at all levels of the private, public and non-governmental sectors.

The future prospects of South Africans would once again be arbitrarily determined by their race and gender - and not by their individual merit. The ideology is firmly based on racial discrimination and would accordingly undermine the rights, of those affected, to equality.

On this basis the Department of Correctional Services is doggedly refusing to promote coloureds in the Western Cape because they exceed their national demographic quota of 8.8%. They are told that if they want to be promoted they will have to move to other parts of the country where they are under-represented.

Affirmative action and black economic empowerment, when fairly applied, may play a role in helping to promote greater equality within the top 15% - 20% of income earners. However, it is becoming increasingly clear that they are not the most appropriate ‘legislative and other measures’ ‘to promote the achievement of equality’ in the broader population.

What then are the roots of the increasing inequality in our society?

A recent study by the World Bank<sup>17</sup> provides some answers. According to the study, inequality of opportunity among children is affected by personal and family-related factors such as:

- The gender and ethnicity of the child;
- household composition - whether both parents live in the household and the number of children up to the age of 16;
- the education level, gender and age of the household head; and
- whether the household is located in urban townships, informal settlements, other urban areas, or rural areas.

Other factors that can impact on equality include access to quality basic services

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<sup>17</sup> World Bank; “South Africa - Economic Update: Focus on Inequality and Opportunity”; July, 2012; [http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/08/01/000333037\\_20120801020508/Rendered/PDF/715530NWP0P1310lete0with0c;](http://www.wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/08/01/000333037_20120801020508/Rendered/PDF/715530NWP0P1310lete0with0c;)

such as education, health care, essential infrastructure including water, sanitation, and electricity, and early childhood development.

In terms of these criteria, white children have enormous advantages: 83%<sup>18</sup> come from two-parent households with relatively small families. They live overwhelmingly in urban areas and have access to good education and health services.

By contrast, only 30% of black children come from double-parent families. In poorer communities and in rural areas most have several siblings. 859 000 are double orphans and 98 000 live in child-headed households. The great majority of black children live in rural areas, informal settlements or townships. Very few have access to decent schools and health care.<sup>19</sup>

No wonder they struggle with inequality in later years. They also find it much more difficult to get jobs when they leave school.

Apart from these social factors, one of the principal causes of inequality is the catastrophic failure of our education system. Our children fare very badly in Grade 3 and Grade 6 numeracy and literacy tests. 60% leave school without a matric and those who pass matric do so with an average mark of less than 40%. Only the 13% who obtain university entrance have reasonable qualifications - and many of these come from private schools and former model-C schools.<sup>20</sup>

Unemployment - exacerbated by poor education - is the other principal reason for our failure to promote equality. Unemployment levels are far more serious than official statistics indicate. The official unemployment rate at the end of the second quarter of 2012 was 24.9%. However, if the two million workers who have given up their search for jobs are included, the expanded unemployment rate climbs to 36.2%.<sup>21</sup>

The real problem is the very low labour absorption rate particularly among black South Africans. Only 36.8% of black South Africans between the ages of 15 and 64 are in employment - compared with 63.2% among whites. Only 34.5% of the potential workforce is involved in formal employment - and only 19% pay PAYE or SITE taxes.<sup>22</sup>

The main inequality divide in South Africa is no longer between blacks and whites but between unionized and employed workers on the one hand - and the 40% of the population that are unemployed on the other. It is a divide that lies at the heart of

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<sup>18</sup> South African Institute of Race Relations; Lucy Holborn and Gail Eddy; "First Steps in Healing the South African Family", p. 2, March 2011; <http://www.sairr.org.za/services/publications/occasional-reports/files/first-steps-to-healing-the-south-african-family-final-report-mar-2011.pdf>

<sup>19</sup> South African Institute of Race Relations; *loc.cit*

<sup>20</sup> Department of Basic Education; February, 2012; "Education Statistics in South Africa, 2010"

<sup>21</sup> Statssa; "Monthly Earnings of South Africans. 2010; *loc. cit.*

<sup>22</sup> Statssa; "Monthly Earnings of South Africans. 2010; *loc. cit*

our inequality challenge. It is also the divide that Cosatu is determined to defend by vigorously opposing any efforts to make the labour market more flexible.

The government should accordingly be concentrating its efforts to promote equality on job creation and the provision of decent basic education, training, security, housing and health services.

A recent study by the South African Institute of Race Relations<sup>23</sup> shows that existing state programmes are already having a marked effect on improving the basic living conditions of the poorest segments of the population. The study is based on an analysis of recent Living Standards Measures (LSMs). LSMs categorise people - not according to income - but according to objective criteria such as whether they are urbanised, own motor vehicles or major appliances, or have running water or a flush toilet. LSM 1 is the lowest or poorest category and LSM 10 the highest.

The study revealed that between 2001 and 2011 there was an impressive improvement in the living conditions of the poorest segments of our society. During this period the percentage of people living in the lowest four LSMs diminished from 52.6% to just 24.4%. This improvement is ascribed almost entirely to the enormous increase in social transfers in the past 10 years. This includes the provision of children's allowances, disability payments and pensions to 15.6 million people - more than 30% of the population. State transfers now comprise the largest income component for the bottom 30% of the population.

The improvement in living standards also reflects the provision of more than three million state houses and greatly enhanced access to mobile phones, electricity, water and sanitation services. Between 2001 and 2011 per capita social spending increased from R4 993 to R10 207 in 2008<sup>24</sup>. Increased social expenditure has undoubtedly had a significant impact on living standards - but not on income levels.

The problem is that such transfers are unsustainable - and hold the danger of creating a permanent dependency culture.

The long-term solution to the problem of inequality lies in vastly improving our education and training system and in creating jobs. These are precisely the factors that have been identified and addressed by the National Planning Commission in the National Development Plan. However, the solution also lies in addressing the underlying social factors identified by the World Bank.

My recommendations for the promotion of equality are accordingly as follows:

1. Fix the education system. Next year the budget will be R207 billion<sup>25</sup>. Together with other education expenditure this amounts to almost R16 000 per pupil and

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<sup>23</sup> South African Institute of Race Relations; "Living Standards on the Up"; 31 January, 2012; <http://www.sairr.org.za/media/media-releases/Living%20standards%20on%20the%20up.pdf>

<sup>24</sup> Dr Max Price; *loc.cit.*

<sup>25</sup> National Treasury; Estimates of National Expenditure, 2010

student.

2. Create jobs by establishing a far more flexible labour dispensation - particularly for first-time job-seekers and by offering incentives to small and medium size businesses to employ people.
3. Ensure sustained and accelerated economic growth, *inter alia* by implementing the National Development Plan.
4. Abandon race-based and divisive ideologies based on demographic representivity. Shift the accent in affirmative action programmes from race to relative disadvantage.
5. Launch a nationwide campaign to encourage fathers to accept their responsibilities to their children. We need an environment in which every child that is born is wanted and will be nurtured and loved by two parents.
6. Challenge the *Van Heerden* Judgment in the Constitutional Court and restore the foundational value of non-racialism and the non-derogable freedom against unfair discrimination.
7. Place greater accent in black empowerment deals on share schemes for employees rather than enriching people with political connections.
8. Vastly improve service delivery by stopping cadre deployment and by appointing people to key jobs solely on merit.
9. Take real steps to root out corruption - which is eviscerating our ability to provide decent and affordable services to the people. Start by re-establishing the Scorpions and by cleaning out the National Prosecuting Authority.
10. Make it a national priority to improve our Gini index to 45 in the next fifteen years.

This may sound impossible.

But if we cast our minds back to the 1994 we South Africans should remember that we specialize in the impossible! And I am sure that Barry Streek would have agreed!