

Hintergrundpapier

Nr. 21 / November 2010

The pitfalls of addressing historic racial injustice: An assessment of South Africa's Black Economic Empowerment (BEE) policies

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For 46 years, from 1948 and 1994, the National Party governed South Africa through the policy of apartheid, which enforced racial segregation by law between "white" and "non-white" ("black", "coloured" and "Indian") inhabitants. Apartheid curtailed the rights of "non-white" citizens and maintained minority rule by the white population. Sixteen years since the inception of democracy, the long-term negative effects of apartheid still shape South African society and politics. For the ruling African National Congress (ANC), **Black Economic Empowerment (BEE)** is the policy and regulatory framework of choice to redress past injustices and ultimately transform the economy to be representative of the demographic make-up of South Africa. While there is no question that the inequalities of apartheid have to be addressed, BEE policy remains one of the most controversial topics in South Africa's public debate

Executive Summary

Black Economic Empowerment (BEE) policy is meant to reverse the consequences of 350-years of race-based inequality and discrimination permeating all aspects of life of South African society, long before segregation was formalized through the policy of Apartheid in 1948.

What does BEE want to achieve?

BEE seeks to redress past injustices by ultimately transforming the economy to be representative of the demographic make-up of South Africa. This is to be achieved through the introduction of an elaborate system of legislation and regulations via associated sector charters and codes of good practice which all actors in the economy have to adhere to.

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The main categories of measuring an entity's compliance/adherence are:

- *Direct empowerment through ownership and control of enterprises and assets;*
- *Management at senior level;*
- *Human resource development and employment equity;*
- *Indirect empowerment through: preferential procurement, enterprise development and corporate social investment.*

It is expected that by transforming the economy through BEE, the outcome would be a reduction in inequality (which has an impact on poverty levels), an increase in job creation and, ultimately, economic growth. Therefore, BEE policy is perceived as the solution to all of South Africa's social and economic problems; not only is it to contribute to the racial transformation of the economy but it is also to stimulate economic growth, create jobs and eradicate poverty.

Has BEE been successful in achieving the desired outcomes?

The simple answer is 'no, except for a handful of beneficiaries with direct links to the African National Congress (ANC)'. Since the introduction of BEE policies, data shows that South Africa is no less unequal than it was in the early 1990s. High unemployment rates still prevail (especially among Africans) and economic growth is too low to have a significant impact on job creation.

In fact, BEE has had a number of unintended consequences that have hampered economic growth and have exacerbated the conditions that it was meant to improve. The exorbitant transactional and compliance costs have stifled innovation and business development, and have created an environment that is preoccupied with how to comply, and stay compliant, rather than focusing on sustainable job creation and development. Such a business environment makes South Africa a relatively unattractive investment destination.

What would one have to do to achieve BEE goals?

Only through a policy that focuses on education, training and skills development, coupled with policies that are conducive to business growth and foreign investment, can South Africa achieve its justifiable BEE goals.

Black Economic Empowerment

1. Introduction

For 46 years, from 1948 and 1994, the National Party governed South Africa through the policy of apartheid, which enforced racial segregation by law between "white" and "non-white" ("black", "coloured" and "Indian") inhabitants. Apartheid curtailed the rights of "non-white" citizens and maintained minority rule by the white population. In 1958, black people were deprived of their South African citizenship and became citizens of one of ten tribally based self-governing homelands, or *bantustans*. The segregated public services in the fields of education, health care etc. provided to black people were by far inferior to those of the white population.

Sixteen years since the inception of democracy, the long-term negative effects of apartheid still shape South African society and politics today. There is no question that the inequalities of apart-

heid generated through the systemic economic and other exclusion of race groups have to be addressed. For the ruling African National Congress (ANC), Black Economic Empowerment (BEE) is the policy and regulatory framework of choice to redress past injustices and ultimately transform the economy to be representative of the demographic make-up of South Africa. However, BEE policy remains one of the most difficult, complicated and sensitive topics in South Africa's public debate. It is one of the major ANC policies impacting a range of issues from poverty eradication to economic growth and black empowerment.

In recent years the policy has come under attack from both whites and blacks. Some whites have labelled BEE as 'apartheid in reverse' and some blacks have become critical of its intentions as they see a select, politically connected few benefiting while the majority of blacks (especially Africans) remain 'underpowered'. Some argue that it is in fact BEE policy that is creating greater inequalities – especially within the African (black) community. This public debate can be summarized in 'two groups': the first group argues that BEE policy has a negative impact on economic growth, entrepreneurship, job creation and ultimately poverty eradication because the policy fails to tackle the root problems, i.e. a failing education system and an inadequate skills development program. The second group argues that the reason for its hitherto failure is its improper implementation and modest targets and therefore stricter enforcement is required to speed up the transformation.

This is obviously a simplification of the two lines of argumentation. Also, it does not mean that there is a clear dividing line between those in government and those that are not. On the contrary, there has been severe criticism from the ANC's tripartite alliance partner Congress of South African Trade Unions (COSATU)² especially concerning the prevalence of corruption in BEE deals ('crony capitalism')³, nepotism in appointments, cost implications for business, especially small and medium-sized enterprises (SMEs,) and foreign investment. Even the ANC secretary-general, Kgalema Motlanthe, cautions that BEE should not be a cost to the economy by saying:

*"Black economic empowerment should be linked directly to the expansion of the economic base and the restructuring of society. Rather than being a cost, black economic empowerment should become the driver of new growth." – Kgalema Molanthe, ANC secretary-general, ANC Today, 4-10 March 2005*⁴

Thus, shedding light onto one of the major unintended consequences of BEE: its economic cost.

What are the effects of BBE policy and how do they relate to the *desired* outcomes?

There are many questions to be addressed and assessed. For instance, is BEE the correct policy for South Africa to meet its desired outcomes of poverty eradication, economic growth and empowerment? Are the unintended consequences worth the achievements made? Furthermore, one has to consider the broader repercussions of BEE policy in infringing on property rights and creating a bigger role for the state to intervene and to perpetuate dependence on the state to escape poverty.

² South Africa's government consists of the so-called tripartite alliance made up of the ANC, COSATU and the South African Communist Party. However, only the ANC appears on ballot papers.

³ A term originated in the Philippines where most of the lucrative deals went to people close to President Marcos. This is also true in South Africa where many presidential advisers and 'cronies' feature prominently in BEE deals.

⁴ Ann Bernstein and Sandy Johnston, ed. *Can black economic empowerment drive new growth?* (Johannesburg: CDE, 2007) Centre for Development and Enterprise In Depth.

This paper seeks to give an informative background look at BEE and its implementation as well as explore the main criticisms and possible alternatives or 'tweaks' to truly set South Africa on a sustainable economic growth path which will eradicate poverty in the general population. Only sustainable growth can provide the resources necessary for sustainable redistribution and transformation in the long run.

2. The historical background of BEE

Black Economic Empowerment (BEE) is a central pillar of the African National Congress (ANC) strategy for economic transformation. It has been a consistent theme in ANC policy for several decades, as stated in the 1969 'Strategy and Tactics' policy document:

"In our country – more than any other part of the oppressed world – it is inconceivable for the liberation to have meaning without a return of wealth and land to the people as a whole. It is therefore a fundamental feature of our strategy that victory must embrace more than formal political democracy. To allow the existing economic forces to retain their interests intact is to feed the root of racial supremacy and does not present even a shadow of liberation."⁵

The 1992 ANC Policy Guidelines detail policies required to transform the South African political and economic landscape in areas such as housing, land, health, social welfare and education. All these policies aim at creating an enabling environment to empower the black majority and in essence create an African middle class, especially against the backdrop that the Indian community managed to prosper, to a certain degree, despite racial discrimination.⁶ The guidelines explained that the instruments used to 'de-racialise' the economy must apply to management in both the private and public sectors and that equity ownership was to be extended to people from all sectors of the population.

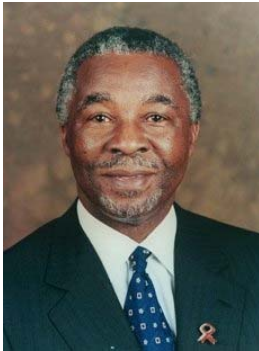
In 1994 the drafting of the Reconstruction & Development Program (RDP) by the ANC government of Nelson Mandela allowed for a more comprehensive framework for addressing the issue of BEE, naming the key development challenges for the new South African government as: job creation, human resource development, development of infrastructure and changes in ownership patterns and the reduction of inequality in society. These key challenges outlined in the RDP document remain the guidelines for South Africa's socio-economic policy today. While advocates of the RDP argue that the program oversaw significant advances in dealing with South Africa's major problems e.g. access to clean water, land reform and housing, the critics argue that real improvement on the ground has been far more modest than the government claims.

Under Mandela's successor Thabo Mbeki the ANC government started speaking openly about the need to build a black bourgeoisie and took legislative steps to enforce BEE targets by calling for affirmative action quotas in business and the transfer of business operations into the hands of black South Africans. To the ANC, BEE policy is perceived as the 'strategic solution' to many of the challenges outlined in the RDP and as an important policy tool in eradicating poverty. Mbeki's

⁵ African National Congress (ANC), *Black Economic Empowerment Document*, <http://www.anc.org.za>.

⁶ Johnson attributes this to the Indian community's strong entrepreneurial and educational traditions which allowed them to build their own schools and family businesses during apartheid. He further goes on to say that those best endowed with the Protestant ethic have always been East European Jews and Indian Muslims and Hindus. R.W. Johnson, *South Africa's Brave New World – the beloved country since the end of apartheid* (England: Penguin Books, 2010) p.385.

1998 "Two Nations" speech before the National Assembly⁷, explains the motivation for this push for enforcing BEE programs. He stated that while progress had been made, not enough had been done to improve the lives of poor black South Africans. Thus, a divided South Africa and two separate nations, one rich and white, the other poor and black, had been created.



Thabo Mbeki

BEE's objective is not only to transfer economic power to the previously disadvantaged, but also to ensure that black people in general are incorporated into South Africa's mainstream economy. However, especially during the Mbeki era (1999 to 2007), this goal was far from achieved in reality. Evidence shows that only a handful of the so-called black elite were enriched through BEE deals, and were thus also labelled by Jeremy Cronin Deputy General Secretary of SACP as 'BEE-llionaires' (*Business Report* 03.10.04). The policy was enriching the already empowered blacks, especially those with connections to the ruling ANC government.

Consequently, criticism of BEE was prevalent in the media and from the political opposition, as well as from within government. To address this deepening frustration, the Mbeki administration went back to the drawing board in an attempt to 'readjust' the direction that BEE was taking and formulated an integrated and a more coherent socio-economic policy. As a result, the pressure on a wide array of economic sectors to adopt 'transformation' charters in 2000 increased.

The BEE Transformation Charters⁸

BEE Transformation Charters were established to formulate long-term targets to increase ownership, participation and training for blacks in the different sectors of the economy. Industry and company based charters were portrayed as a form of private public partnerships in advancing BEE.⁹ Government did not expect every industry and company to develop a charter. Only those that were extensively conducting business with government had to develop charters. The first two transformation charters were the Mining Sector Charter and the Financial Sector Charter.

To elaborate on one example, the Mining Sector Charter was a result of the publishing of the Mining Bill, which put all mineral rights in the hands of the state, including expropriation and de facto expropriated also all existing mining rights.¹⁰ Obviously, many pointed out that this would stifle investment and do huge damage to the industry – which was ignored. The state would grant twenty-five year mining licenses to investors that were revocable at any time if the minister believed that any of the many BEE conditions were not met. In theory, this made all mining companies having to reapply for the right to continue to mine. In reality, the charter boiled down to the

⁷ Statement of Deputy President Thabo Mbeki at the Opening of the Debate in the National Assembly, on "Reconciliation and Nation Building, National Assembly Cape Town, 29 May 1998.

⁸ Transformation Sector Charters (also referred to as Sector Charters) had to be developed for each industry, for example the property sector or the marketing sector, then submitted to the Department of Trade and Industry which then assessed if it was aligned with the Broad-based BEE and Codes of Good Practice which will be introduced later in the paper.

⁹ 'Private sector' is interpreted in a broad since to include businesses, trade unions and community-based organizations.

¹⁰ Introduced during Thabo Mbeki's term, the Mineral and Petroleum Resources Development Bill in essence was an alternative to nationalization, which nationalized the underlying mineral rights and turned mining concessions into leases.

simple fact of "no BEE partner, no license". The introduction of the charter thus left mining companies racing to find black partners. In some cases they were accused of 'fronting', which describes the co-option of relatively powerless but handsomely rewarded blacks to 'decorate' a company's image. Basically, business were determined to avoid legislation that would directly intervene in the companies' ownership structure or operational system, especially with government announcing overall target of placing at least 35 percent of the economy into black hands by 2014, and therefore complied voluntarily.¹¹

The Ministry of Mineral Resources itself became a vast patronage machine, handing out lucrative opportunities to BEE compliant companies. Mining executives knew that continuing to argue or taking the government to court would be counterproductive. Ultimately, the new BEE moguls – greatly benefiting from this new bill – were expected to contribute heavily to ANC funds and to support the President unconditionally. Since this new found wealth was politically derived, it remained within a small and closed circle of ANC cronies.

BEE practices in the mining sector exemplify the general state of affairs before the drafting of the Broad-based Black Economic Empowerment (B-BBEE) Act in 2003, implemented in 2004. The Act included provisions for the establishment of a BEE Advisory council, Codes of Good Practice (the Codes), and Transformation Charters for other sectors of the economy. The Act can be interpreted as the government's reaction to the increasing criticism of the previous BEE policy and its glaring inability to have any positive impact on the vast majority of black South Africans. Broad-based empowerment aims at assuring that the redistribution process is associated with economic growth. The introduction of seven categories (the Codes) to determine a company's compliance enhanced the complexity of the process and have officially shown that 'empowerment' can be determined by looking at other factors. However, unfortunately, black ownership and blacks in top management remain to be the two most important indicators of transformation.

3. Broad-Based Black Economic Empowerment (B-BBEE)

For the first decade of South Africa's democracy, BEE initiatives focused primarily on increasing black South Africans' participation in equity ownership and management. While these still remain key policy objectives, B-BBEE initiatives (via associated sector charters, codes of good practice and other legislation) also aim at addressing income inequality and development through employment equity, preferential procurement, enterprise development, skills development and other socio-economic programs. Basically, B-BBEE is the legislation by which government conducts the overall BEE process, making it fundamentally more about economic growth and inclusive economic empowerment. The act itself is intended to encourage transformation by 'broadening the beneficiaries' and including women, workers, youth, people with disabilities and people living in rural areas – hence the name 'broad-based'.¹²

¹¹ Johnson, 395.

¹² In effect, everyone is now included in some way or another, except white males.

The Codes of Good Practice (the Codes)

B-BBEE is based on seven 'pillars' of participation which can be measured within a company. These are:

- ownership (equity) in the entity by black persons;
- equitable transformation in representation (staffing) employment equity targets;
- management control of entities by black persons;
- skills development and the transfer of skills to black employees;
- preferential procurement (purchase of supplies) from black-owned entities;
- enterprise development of black enterprises; and
- socio-economic development investments.

The methodology used to measure B-BBEE compliance is known as the Codes. The Codes were gazetted in February 2007, following the release of a number of drafts to the public. They are intended to bring clarity and uniformity to measuring compliance. The 100 page document details the extensive different requirements according to the type of firm. However, it offers some flexibility for global and multinational companies in how to structure their empowerment deals. Generally though, representation or direct empowerment does not only mean ownership but must go hand-in-hand with controlling power i.e. ability to appoint or remove directors by the majority shareholder.

The Codes assist and guide the 'priority' sectors of industry: agriculture, transport services, automobiles, information and communication technology, engineering and construction. They recommend that companies seek to achieve clear targets for ownership, management, skills and enterprise development as follows: BEE equity levels require that 25% of voting rights be black people; black management 40%; employment equity 50%; skills development 6%; equity procurement 50%; enterprise development 8-10%; and residual elements (such as corporate social investment) 3%. However, sectors may have different targets provided that they are not below the generally prescribed ones. For example the financial sector's target for ownership is 25% by 2010. The tourism industry's target for ownership is 21% for 2009 and 30% for 2014. Any deviation from these targets would have to be based on economic rationale.¹³

In practice this means a company/person who seeks to do business with the government or is dependent on governmental licenses must demonstrate their level of B-BBEE compliance as calculated in terms of the scorecard contained in the B-BBEE Codes. But this does not mean that companies who do not seek to do business with government do not need to comply; on the contrary they will need to comply because their customers will want to improve their own B-BBEE points by procuring goods and services from empowered enterprises. One of the controversial portions of this legislation is the reservation of certain government contracts for black South Africans and around 80% of all new jobs in government are mandated to go to blacks¹⁴.

¹³ Roger, Southall, "Black empowerment and present limits to a more democratic capitalism in South Africa," *State of the National 2005-2006* (Human Sciences Research Council):175-201.

¹⁴ Michael Ellement, *South Africa: from black economic empowerment (BEE) to broad-based black economic empowerment (BBBEE)*, (2002) <http://www.Helium.com>.

The following is a generic scorecard showing the respective weightings of the seven 'pillars':

Element	Weighting
Ownership	20
Management Control	10
Employment Equity	15
Skills Development	15
Preferential Procurement	20
Enterprise Development	15
Socio-Economic Development	5

A scorecard is made for each of the seven elements. Skills development and training are to be achieved through private resources of the company. The transformation charters, discussed earlier, would illustrate in detail the sectors' goals with respect to the seven elements. For example, the 2008 targets for the financial sector in terms of employment equity were: senior management 20%-25%; middle management 30% and junior management 40%-50%, and for skills development 1.5% of the annual payroll to be spent on skill development of black employees. This illustrates how the weightings on the scorecard determine where a sector or company allocates its resources. The following is an example of a scorecard to measure ownership¹⁵:

Category	Ownership indicator	Weighting points	Compliance Target
2.1	Voting rights:		
2.1.1	Exercisable Voting Rights in the Enterprise in the hands of black people	3	25% + 1 vote
2.1.2	Exercisable Voting Rights in the Enterprise in the hands of black women	2	10%
2.2	Economic Interest:		
2.2.1	Economic Interest of black people in the Enterprise	4	25%
2.2.2	Economic Interest of black women in the Enterprise	2	10%
2.2.3	Economic Interest of the following black natural people in the Enterprise:	1	2.5%
2.2.3.1	black designated groups;		
2.2.3.2	black Participants in Employee Ownership Schemes;		
2.2.3.3	black beneficiaries of Broad based Ownership Schemes; or		
2.2.3.4	black Participants in co-operatives		
2.3	Realisation points:		
2.3.1	Ownership fulfilment	1	Refer to paragraph 10.1 of Statement 100
2.3.2	Net Value	7	Refer to Annex C paragraph 4 to Statement 100
2.4	Bonus points:		
2.4.1	Involvement in the ownership of the Enterprise of black new entrants	2	10%

¹⁵ The DTI issued the B-BBEE Verification Manual on 18 July 2008, for purposes of accreditation and verification of B-BBEE-related reporting by the South African National Accreditation System (SANAS) and Black Economic Empowerment (BEE) Verification Agencies. On 17 February 2009 the first 11 verification agencies were accredited.

2.4.2	Involvement in the ownership of the Enterprise of black Participants:	1	10%
2.4.2.1	in Employee Ownership Schemes;		
2.4.2.2	of Broad-Based Ownership Schemes; or		
2.4.2.3	Co-operatives.		

Jorge Araujo, Ana Milovanovic and Umunyana Rugege, "Broad-Based Black Economic Empowerment", *Investing in South Africa 2009-2010* (Johannesburg: Webber Wentzel Attorney)

This illustrates that in terms of the ownership scorecard a measured company can score up to 20 points (23 if they attained bonus points). For instance, of those 20 points 2 points are awarded for ensuring that 10% of the Exercisable Voting Rights are in the hands of black women. If only 5% of the Exercisable Voting Rights are in the hands of black women, the enterprise will only be awarded one point since it is only halfway towards meeting the target.

However, in some cases the calculation may not be so straightforward and more than one formula – specified in the Codes – has to be worked through in order to calculate the points scored for the measured company in respect of each of the indicators. Basically, the number of points for each indicator (element) will be added and the total will equal the points scored in respect of that component. Then the sum of all the components determines the company's BEE score. Companies are required to be audited on an annual basis by a certified BBEE Verification Agency to get their verification or 'scorecard' in addition to a 'BEE procurement recognition level', which a customer of the measured company will use to determine its own BEE procurement. The higher the company scores on compliance the better chance for winning contracts.

An example of a BEE status level which is recorded on the certificate:

BEE status	Qualification	BEE procurement recognition level
Level one contributor	at least 100 points on the Generic Scorecard	135%
Level two contributor	at least 85, but less than 100 points on the Generic Scorecard	125%
Level three contributor	at least 75, but less than 85 points on the Generic Scorecard	110%
Level four contributor	at least 65, but less than 75 points on the Generic Scorecard	100%
Level five contributor	at least 55, but less than 65 points on the Generic Scorecard	80%
Level six contributor	at least 45, but less than 55 points on the Generic Scorecard	60%
Level seven contributor	at least 40, but less than 45 points on the Generic Scorecard	50%
Level eight contributor	at least 30, but less than 40 on the Generic Scorecard	10%
Non-compliant contributor	less than 30 points on the Generic Scorecard	0%

Generally, a good contributor to BEE is a firm with a score of 65% and above; a satisfactory contributor is a firm with a score of 40% to 64.9% and a limited contributor to BEE is a firm with a score of below 40%. The above calculation examples show how complicated, time-consuming and expensive the evaluation of B-BBEE compliance is.¹⁶

¹⁶ There is of course another snag to the system. Since the very pillar of Apartheid, the Race Classification Act has been abolished since 1990, the question arises: Who is black? Or white for that matter? For close on fifty years apartheid apparatchiks spend enormous resources to determine who was black and who was white – and could not come to clear and consistent applications.

The Advisory Council



As stated earlier, the B-BBEE Act makes provisions for an Advisory Council¹⁷. The new Council was appointed by President Jacob Zuma (picture) in December 2009 with the objective of ensuring that the B-BBEE system is 'no longer embroiled in controversy'. President Zuma stressed that 'B-BBEE must be an essential element of macro-economic strategy and a major contributor to building links between the first and second economies.'¹⁸

The Council includes 19 members: the president (chairperson), ministers of trade and industry, labor, economic development, the minister of women, children and persons with disabilities, and representatives from different constituencies (trade unions, business organizations and academics). The Council's function is to:

- advise government on B-BBEE,
- review progress,
- advise on draft codes of good practice and transformation charters and
- facilitate partnerships between organs of the state and the private sector.

Some of the challenges that the Council is expected to deal with are abuses in the empowering process through practices like 'fronting' as well as weaknesses in the verification and accreditation process. One of the issues emanating from a roundtable at Small Business Project (SBP) was whether the president in appointing members may choose those in line with government policy, despite stipulations within the Act that the president must have regard to appropriate expertise, appoint representatives from different constituencies and follow a consultative process. Others questioned to what degree the Council will be accountable to the public or whether it is merely going to be another 'government department'.

On 20 May 2010, the Council convened and established four sub-committees to review and make recommendations on some of the challenges in the Codes and assess what is working and what is not¹⁹. The four sub-committees deal with:

- The ownership and structuring of B-BBEE deals;
- Enterprise development and access to finance and procurement;
- Human resource development; and,
- Legislation, charters, compliance and enforcement.

The sub-committees have the option to out-source expert opinion and commission research which is a way of ensuring that recommendations are based on sound empirical research. Furthermore, it is understood that these sub-committees are the first step towards the long-term goal of setting up an 'empowerment tribunal' which is one of the tenets of the 2009 ANC's election manifesto. For instance, within the ownership subcommittee the Council could interrogate transactions – not

¹⁷ No. 53 of 2003: *Broad-Based Black Economic Empowerment Act, 2003*, Republic of South Africa. Vol 563 (Cape Town 9 January 2004).

¹⁸ Small Business Project (SBP) roundtable entitled "Is BBBEE an effective route to inclusive development and economic growth in South Africa?" on 26 May 2010. A roundtable sponsored by FNF and attended by experts in the field as well as a member of the B-BBEE Advisory Council.

¹⁹ SBP roundtable (SBP is a think tank partner of the FNF in South Africa www.sbp.org.za)

necessarily to stop them, but to influence and to ensure that its 'characteristics', according to the Act, are truly broad-based and empowering.

Currently, the Council is considering criminalizing fronting as a solution to its growing prevalence. For example, there are cases where a domestic worker unknowingly finds herself as a director of a company. However, some cautioned against the passing of another law because it would duplicate common law which recognizes fronting as fraud. Moreover, Keith Levenstein (EconoBEE chief executive) pointed out that one of the problems leading to the prevalence of fronting was that government tenders only took into account the requirements of the preferential procurement framework and most tendering companies were not asked to provide BBBEE scorecards.²⁰ Others questioned whether the Department of Trade and Industry had the capacity to implement any new legislation regarding fronting in addition to its other duties. There is no question that this form of corruption has to be addressed – since the current fines are not a deterrent – but it also draws attention to some of the flaws in the implementation and for that matter of the policy itself.

4. Criticism of B-BBEE

The following section will address some of the main issues of contention around B-BBEE policy and whether it is truly the appropriate vehicle to sustainable empowerment, economic growth and poverty eradication as well as list a few suggested alternatives by some of the opinion-makers in South Africa.

Corruption:

Corruption (and nepotism) is one of the most common reasons for the failure of B-BBEE policy. It is rampant at the tendering processes at local, provincial and national level – which results in a culture of 'tenderpreneurship' at the expense of the poor, black majority. It has the detrimental impact of sidelining qualified firms; creating a negative perception of the business environment and failing to support an environment conducive to the real development of emerging/black businesses. Moreover, it contributes to the widening of the income divide especially within the African community – creating a few 'super-rich' and the majority living in dire poverty.

James Myburgh explains the unintended consequences of a policy like B-BBEE by referring to P.T. Bauer's analysis some thirty years ago where he draws some very relevant conclusions:²¹ When a society embarks on centralized transformation, one of the first consequences is the worsening of the inequality of power between rulers and ruled. When power corrupts rulers with their ability to allocate resources as they wish, cronyism soon follows their looting and self-enrichment. This is demonstrated in the arbitrary manner in which the ANC allocates jobs, tenders and mining licenses and how this patronage is consistently used to benefit a narrow class of 'cronies'²².

Corruption in economic activities and specifically B-BBEE deals has politicized South African society. Too often, being a member of the 'right' party (namely the ANC) and in some cases the 'right' faction within the 'right' party is all that is required to close a deal or get appointed. Skills and

²⁰ Donwald Pressly, "Fronting must be criminal act-dti" *The Star*, 19 August 2010.

²¹ James Myburgh, "BEE: Dead or Alive" Politicsweb, 05 February 2010.

²² For example the recent Sishen/ArcelorMittal mineral rights deal which has failed to apply for a "new order" mining license for its share of the Sishen iron ore. Instead the license was granted to a politically connected company. This case highlights that cronyism and patronage remains rife in BEE deals with business relationships traced to the top of the Zuma government; in this case directly to the president's son, Duduzane Zuma.

qualifications have become irrelevant. Transparency International's *Corruption perceptions index*²³ scores South Africa in the medium corruption range. However, its ranking has deteriorated significantly in the past decade, from 34th position in 2000 to 55th in 2009 out of 180 countries.

Cost:

The *cost* of B-BBEE in the form of transactional and compliance costs are two examples of the onerous impact of the BEE policy on business and the economy. A recent book by Jenny Cargill²⁴ – *Trick or Treat: rethinking black economic empowerment* – focuses on the many fault lines in the Codes with respect to ownership and makes a clear case for redirection. Her thorough analysis and understanding of the complexities of B-BBEE and more specifically the Codes will hopefully generate new ideas on how to redirect B-BBEE.

The estimated transactional cost of B-BBEE deals over the past decade have totalled between R550bn (€55bn) – R600bn (€60bn) a figure far more than the R140bn (€14bn) spent on investment in land redistribution and low-income houses! This appalling figure begs the question of how much of South Africa's scarce resources should have, or should be spent, on share ownership for black people in the future, as opposed to education, health, jobs or housing. It is also an indication that there is little attempt to align ownership with other elements of the economic transformation policy and productive investment. The focus on redistribution through ownership rather than productive investment is not effective or equitable. Especially when considering the fact that the majority of blacks do not have access to deals and those that do, often have to take on a huge debt to buy their shares. This perpetuates the cycle of 'high-risk' deals that fall through or shareholders that end up selling – selling is significant cost to the business which will be elaborated on below – some of the shares to repay the debt.

Furthermore, the highly leveraged structures that were put in place to facilitate B-BBEE transactions came under huge pressure during the 2008 global financial crisis, as assets did not generate enough cash flow /profit to support the financing and as the principals of these BEE 'vehicles' were unable to raise finance. As a result, the B-BBEE process is perceived by the market as an on-going source of 'value leakage' rather than a once-off quantifiable transaction. Considering the cost and devaluation, Cargill calls for economical alternatives to black empowerment by directly 'donating' shares. This would be less costly considering that the cost for the big four banks is 2.5%-3% of their market capitalization (measurement of size of a business) to transfer 10% of their equity to black shareholders; which implies that giving them 3% free would have the same economic value as trying to sell them 10%.

The cost of B-BBEE compliance is a significant burden on business, especially if black empowerment partners sell their stakes; does the company get full-credit for a deal done or must it start again to ensure that it is always compliant?²⁵ If firms have to keep doing empowerment deals forever, the cost to the economy will be incalculable. Hilary Joffe of the *Business Day* argues that some of the alternatives to stop this 'never-ending' cycle – like forbidding black shareholders from selling their shares or insisting that shares be sold only to black people – would simply not work. The first alternative would make the shares worthless, since untradable, and the second alternative would devalue the shares because they would have to be sold at discount price since the pool of

²³ This survey is not an objective measure of corruption and is based on the perception of individuals in business across the world.

²⁴ Jenny Cargill, *Trick or Treat: rethinking black economic empowerment* (Auckland Park: Jacana Media, 2010). Cargill is founder of BEE consulting company BusinessMap.

²⁵ Hilary Joffe, "Could SA's BEE billions have been better spent?" *Business Day*, 6 July 2010.

black investors who can afford to buy them is very small. Therefore, in both instances the company or the shareholder loses. The government must reconsider how empowered deals are processed. But, the prospect of the government rethinking these policies is slim, especially when considering the recent comments by the Mineral Resources Minister, Susan Shabangu, who clearly stated that any company that sold its empowerment stake would have to do another deal. And this is merely a glimpse into the workings of the massive costs entailed in the transactions of empowerment deals.

Preferential Procurement Regulations (2009) has added to the compliance cost of businesses. The regulation is intended to bring government procurement guidelines in accordance with B-BBEE Act (2003) and the associated Codes. Preferential procurement policies by state-owned and private sector enterprises are intended to channel their preferential procurement towards black-owned firms. This act has contributed to the considerable cost because of its 'knock-on' effect. For example, when a company measures itself by the Codes and complies with a charter, it has to ensure that its suppliers contribute towards their own preferential procurement record. Then the B-BBEE status of those suppliers will have to be verified; those suppliers will have to ensure their suppliers are verified and so on; with the government's decision in awarding contracts at the end of the verification line.

This never-ending process has transferred the 'burden' or the responsibility of monitoring for B-BBEE compliance to the private sector. It is basically a way of discriminating against those suppliers that are not B-BBEE compliant, which is one way of ensuring general compliance in the economy. This specifically has had a significant impact on small businesses, especially those who are below the threshold for compliance because of their size. An additional cost due to the procurement regulation is the price associated with penalties when companies are forced to break long-term contracts with suppliers, who they are happy with, to find others that are BEE compliant. This process has cost some of South Africa's leading companies an estimate of R1 billion in recent years, but companies believe if they had not done so they would have been out of business within five years. This seems to suggest that businesses have come to view B-BBEE related costs as part of the cost of doing business in South Africa.

Moreover, the 'pressure' of compliance can kill creativity in that companies operate mechanically in the same fashion to tick off their score card requirements. It has become something that companies have to bear, like a tax or getting a 'license'. Empowerment transactions are not a once-off cost but rather have become a continuous cost as companies work on staying compliant with the additional regulations. This can impact the efficiency of companies and impact South Africa's global competitiveness.

It is unfortunate that something as complex as incorporating a large portion of society that was previously excluded on the basis of race has been reduced to mere arithmetic.

Small and medium enterprises

Small business and micro enterprises (SME) is an important driver of economic growth and a significant contributor to job creation. This section will briefly look at small business development as a requirement of B-BBEE as well as the impact of B-BBEE policy on existing small businesses.

The definition of an SME differs according to industry. In terms of the Financial Charter, a black SME is defined in two ways: a black company is a company with a turnover from R500.000

(€52.000) per annum to R20 million (€2 million) per annum and is more than 50% owned and controlled by black people. Otherwise it is considered a black empowered company. In the Tourism Industry Charter black SMEs are defined as enterprises with a turnover of up to R10 million per annum and with more than 50% direct ownership and management of blacks. The Financial Charter, exempts SMEs from the requirements of the charter if they have fewer than 50 staff members and less than R10 million (€1 million) of investments; unless they choose to be bound voluntarily. In the Tourism Charter a small business is one with an annual turnover of less than R5 million (€500.000) and with a staff of less than 50 employees. The Tourism Charter exempts a business with a turnover of R5 million (€500.000) and less per annum from the ownership requirement. This is an illustration of the different rules according to industries and the ambiguity around the role of small businesses whether white-owned or black-owned in BEE. However while white-owned small

business in the tourism industry is exempt from ownership requirement it is obliged to adhere to other aspects of the scorecard unlike black-owned small business. Whilst these exemptions may help alleviate the burden of regulatory compliance for the smaller SMEs, it results in their discrimination in terms of preferential procurement.

B-BBEE does make provisions for enterprise development. However, most of the energy is spent on redistribution of already existing firms rather than developing new black-owned enterprises; this is a result of the weight given to ownership compared to enterprise development. The Department of Trade and Industry guideline for development of new black controlled enterprises has a weighting of 10% of the possible points while the tourism industry proposes 14% and the financial sector is putting more emphasis, rightly so, on this component by a weight of 22%. This further shows that BEE allocates a greater weight to the redistribution of existing enterprises as opposed to the development of new black-owned enterprises. However, there is validity in the question of how realistic it is to expect companies with a turnover of more than R35 million (€3.500.000) to get involved in enterprise development (even if it has a weighting of 10%) when the task of simply running their own business is already onerous enough.

A qualifying small business has the option of choosing to be measured in terms of 5 of the 7 elements of B-BBEE. Micro enterprises (turnover of less than R300.000 est. €30.000) qualify for B-BBEE compliance exemption; however they have the option to be a participating firm which would secure them a 100% procurement recognition level. It is obvious that the policies towards small business follow the general redistributive nature of B-BBEE that is the predominant preference towards ownership and management, while skills and enterprise development are secondary. Furthermore, it appears that the 'small business BEE project' is geared towards medium to larger small businesses because they have more resources for redistribution as opposed to micro enterprises. This preference to accommodate, to a certain degree, larger small businesses rather than micro businesses has received some criticism for excluding an important contributor to future growth and employment.

Small businesses have been hard hit by B-BBEE policies from another angle, that of procurement. Having to comply with a target of 50% BEE procurement with respect to suppliers is almost impossible because many small businesses rely on small suppliers who are in many cases individual traders or crafts people. This inability to comply prevents many small companies from qualifying for government tenders and specifications. This is unfortunate, since public procurement processes can be a major stimulus for small business growth. Another issue is the substantial cost associated with getting verified by a government accredited assessor which has raised concerns around verifica-

tion costs and the cost of setting up complicated management and tracking systems against various indicators.

The complexity of the regulatory laws leads to dependency on external consultants, aside from lawyers and auditors, to assist in deciphering and implementing the compliancy requirements. Hence, an additional cost burden results. According to a survey by Small Business Project (SBP), the highest area for use of consultants is labor regulations. Small business noted that rather than introducing new regulations, current regulations need to be better implemented, enforced and communicated. With that being said, it is important to look at how such issues will impact business in general and sectors specifically, i.e. is it likely to harm or help business development in South Africa and the growth of a middle-class. There is a risk that small businesses might try to remain below the compliance threshold, and /or remain informal which would weaken their potential and ability to contribute to growth.

Education and Skills Development:

The current policy has not produced the desired result; poverty continues to be prevalent among the black community and white males still hold a disproportionate share of the highest positions in the private sector. *Education and Skills development* is where government should be directing its resources to achieve the desired outcomes of poverty eradication, economic growth and job creation among blacks rather than to the redistributive policy of B-BBEE. Though B-BBEE makes provisions for skills development, it is given little importance.



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To tackle unemployment, one has to look at education, skills, access to opportunities and a reliable health system. Some analysts are critical of the benchmarking used by government, rather than assessing the amount spent or allocated producing the desired results. In fact departments regularly under-spend their budgets. A re-thinking of the education system and a change in the perception that everyone has to attend university are unavoidable. However, those students that choose to leave school at grade 10 should be encouraged to do apprenticeships to gain technical skills that will assist them in finding jobs.

Considering the current state of education and levels of unemployment, some commentators go as far as suggesting that companies should take a more proactive role in providing literacy and numeracy training for all their employees, as well as programs to certify artisans and training opportunities. Peter Bruce, editor of the *Business Day* argues that the issue of education is a matter of political will and courage. According to the ANC's last election campaign, education is one of the five priority areas. But this does not say anything about where government resources will go. As Bruce further explains 'you can't have five priorities – you can only have one'. And education should be it.

Acute skills shortages (among all races) are among the most pressing development issues in South Africa. Some argue that the skills shortage is getting worse because most of the skilled people – whites – are no longer freely employable because of the employment equity. Empowerment must be rooted in education and skills development. South Africa is caught in a vicious circle because

there are not even enough teachers to train new teachers. Some suggest that South Africa should import skills as a short-term solution.²⁶

B-BBEE policy in the form of affirmative action has had a significant impact on the loss of skills, experience and institutional memory especially within South Africa's public service. Appointments based on political patronage have actively harmed performance and reduced efficiency in some areas of the public sector. There should be a move away from the 'deployment' strategy and towards better placement and training programs. Affirmative action and the 'deployment' strategy make the public servant accountable to the ruling party rather than the citizens.²⁷ Inefficient public services can hamper economic growth. This policy to a certain degree has created civil servants who feel that given their political loyalty, their competence has little or no bearing on their employment and performance. There must be a focus on merit and performance.

Efficiency of B-BBEE:

Despite the requirements of B-BBEE, black presence in the higher levels of the private sector remains low. For example, in 2005 of South Africa's 21,092 accountants 543 were African, 341 Coloured's and 1,482 Indian.²⁸ In 2008, less than 25% of top and senior management was black, against some 80% in government (some argue this has resulted in the inefficiency of the public sector). This further illustrates that even with the stringent B-BBEE policies in place, South Africa is not meeting its targets. Furthermore, it supports the argument that education and skills development is where the government should focus to achieve sustainable transformation. Government continues to set targets as if unaware of the skills shortage and the poor education system and persists to pressure companies to be compliant with B-BBEE (affirmative action).

In July 2010 Labor Minister Membathisi Mdladlana said that tougher penalties and more stringent measures lie ahead for those companies that ignore employment equity. This was said in the light of the latest report of the 10th Commission for Employment Equity (CEE) which shows that white males still hold 60.6% of top management positions in the private sector as opposed to 10.1% African males. (However, the government sector is more representative in terms of race and gender.) The newly appointed chairperson of the Employment Equity Commission, Mpho Nkeli, is calling for stiffer penalties for non-compliant companies. Currently, fines range from R500.000 (€50.000) for the first offence to R900.000 (€90.000) for non-compliance for three consecutive years.

With the proposed new legislation there will be an introduction of specific equity targets with specific timelines and a fine will be calculated as a percentage of a company's turnover. Nkeli argues that current legislation makes it difficult to prosecute non-compliant companies and she hopes that the new legislation will make it as "easy as issuing and paying a traffic fine". Nkeli is adamant that lack of skills is not a convincing reason for the low number of blacks in top management but attributes it to racism and discrimination in the private sector. In addition to more frequent department-led visits to companies for spot checks on employment equity, a campaign to "name and shame" companies that are non-compliant and "name and praise" those which do

²⁶ Only 32.7% (2007) of the South African population (all race groups) have completed grade 12.

²⁷ 'Cadre deployment' - party loyalists are dispatched to do the ruling party's bidding in the public service, local government administration and independent state institutions, has entrenched the ANC's power and created a closed circle of party cronies.

²⁸ Johnson, 432

comply will be introduced. Analysts, however, believe that punishment will not necessarily lead to more compliance.

Yet again this is a demonstration that the government fails to see that the root causes of continuous inequalities are bad education and lack of skills and that this is where government should focus, rather than introducing stringent measures which lead to the appointment of unqualified people in order for companies to avoid fines. In addition, the possible introduction of fines is likely to damage investment, consequently slow down growth and increase unemployment. A focus on the deficiencies of the South African education system and the introduction of reliable skills development programs are essential to achieve the overall objectives of B-BBEE.

Poverty eradication and economic growth:

Poverty eradication and economic growth are two major desired outcomes of B-BBEE. However, Ann Bernstein and Antony Altbeker from the Centre for Development and Enterprise make the case that South Africa can only rid itself of stubborn poverty through rapid growth. Given the amount

of resources the South African government has spent on social grants (beneficiaries are up from 2 million in 1999 to 14 million in 2009!), on 40% of schools offering free schooling (soon to be 60%), and government introducing subsidies for water, transport and electricity, in addition to the billions spent on BEE, far too little has been achieved in terms of poverty alleviation and BEE has even been counter productive for economic growth.²⁹

South Africa is no less unequal than it was in the early 1990s and may actually be more unequal now. Bernstein and Altbeker note that reducing poverty and inequality are two different goals and may require different strategies. Poverty can only be alleviated through higher economic growth and an inclusive job-intensive strategy. In a period of sustained high economic growth large numbers of jobs can be created in a short period of time. Yet, this sustained high growth at times increases inequality in the short term and any attempts to reduce this inequality through public spending has a negative effect on economic growth. South Africa remains one of the most unequal societies in the world despite being a highly redistributive developing country with high public spending on education, housing, healthcare and social grants. This 'anomaly' is a result of B-BBEE policy which is a significant contributor to widening inequality.

Private sector training should be expanded but it is understood that this approach will take time to actually see a reduction in inequality. Also, it will not help those people whose education has been compromised. If South Africa continues its redistributive policies through the increased welfare spending, extended public works and more spending on BEE – even if properly implemented – the result can only be a marginal difference. If poorly implemented, the money will just benefit the non-poor. Increased spending on redistributive policies has negative effects on South Africa's growth potential. Every rand spent on BEE is a rand less spent on fixing schools, and ports. Bernstein and Altbeker recommend that South Africa should draw from the success of other countries such as Brazil – previously known for being one of the most unequal societies – which followed a policy of rapid economic growth with modest welfare expenditure and has seen a drop of poverty from 30% in the late 1990s to about 16% today – coupled with a fall in inequality.

²⁹ Ann Bernstein and Antony Altbeker, "Rapid Growth the Only way to rid SA of stubborn poverty," *BusinessDay*, 31 August 2010.

State intervention:

The South African government perceives *state intervention* to be necessary or rather the only option to rectify the inequalities of apartheid. Because the state intervened on behalf of whites, it is only fair that the new government should intervene on behalf of blacks. This kind of approach has to a certain extent eliminated any chance that the government may be receptive to alternative options for the empowerment and inclusion of blacks into the economy. BEE, as Cargill puts it, "*constitutes the single biggest exercise in social engineering seen since formalized apartheid was introduced in the fifties.*"³⁰

A certain degree of state intervention can be expected when considering Section 9[2] of the 1996 Constitution that provides for divergence from the principle of equality before the law in that 'legislative and other measures' may be taken to advance persons 'previously disadvantaged by unfair discrimination.' However, it is the extent of state intervention that has undermined rather than promoted many of its own objectives. Surveys by various institutions demonstrate the close correlation between economic prosperity and economic and political freedom, and that open economies are more prosperous than closed ones. South Africa, despite its mineral wealth and despite the fact that industrial development began about 130 years ago, ranks only 94th out of 162 places in the Human Development Index for 1999; out-ranked by Malaysia (56th), Paraguay (80th) and Turkmenistan (83rd).³¹

John-Kane-Berman, chief executive of the South African Institute of Race Relations (SAIRR), argues that if the South African state would stick to its duties and give priority to promoting employment without having race-based policies, black former victims of apartheid would be the main beneficiaries of employment-promoting policies because most of the unemployed and the poor are black. The state should be neutral, but when it acts to further the interests of particular races or classes or parties then it obviously violates the principle of neutrality. It is evident that state intervention in the form of BEE is a leverage instrument to achieve its labor market redistribution aims. This overrules the market system in remunerating and allocating skills and factors of production to a mere percentage.

According to SAIRR's review of income and employment indicators there is evidence that the white community might have developed a greater sense of entrepreneurship and independence because of the various discriminatory empowerment and affirmative action policies. While the many African South Africans hope that government-driven affirmative action and empowerment policies will offer them the opportunity to escape poverty. However, a decade of evidence shows that other than the establishment of a small African middle class most of the Africans have been left behind. This has led to some to call for granting the government authority to nationalize private business in order to hand this 'wealth' over to the poor. This is another unintended consequence of BEE policies.

The Financial Sector Charters, as explained earlier, are a perfect example of how state intervention manifests itself. It basically requires banks to make funding available for the acquisition of equity by black-owned companies, this means that black investors would get shares without having to pay for them and the financiers would get enhanced returns. However, some argue that the funding structure is underpriced because if they were priced for heavy debt with the absence of collat-

³⁰ Cargill, 27.

³¹ John Kane-Berman, *Empowerment: the need for a liberal strategy* (Johannesburg: ,2002)

eral the deals would never have been done. Because of political pressure – and in reality state intervention to bring black South Africans into the top ranks of the corporate sector –, banks went ahead. State intervention in the form of BEE ownership, the Codes and the manner in which it is financed is based on a principle known as a moral hazard because it relies on borrowed money.

Paul Krugman notes, *'Borrowed money is inherently likely to produce a moral hazard, in any situation in which one person makes the decision about how much risk to take, while someone else bears the cost if things go badly wrong.'*³² This is clearly demonstrated in the performance of the mining industry which has experienced a continuous decline since the introduction of the mining charters in 2002. While other comparable mining countries continue to outperform South Africa, despite it being the richest country in the world in terms of commodity endowment.³³ State intervention through B-BBEE extinguishes any inkling of entrepreneurial spirit and any understanding of the importance of starting small and working-hard.

Alternatives and perspectives:

Many opinion makers and figures in business are trying to make the most of what is possible within the current framework. The following are a few alternatives from different perspectives.

Tandem franchising is a creative solution developed by entrepreneur and franchising consultant Eric Parker as a possible solution to one of South Africa's most difficult economic challenges: how to boost B-BBEE at the individual level while transferring skills and creating jobs. The concept puts a promising B-BBEE candidate (emerging franchisee) and an experienced mentor together in a joint venture. This type of franchising, he believes, is the answer to how to transfer necessary skills to individual B-BBEE candidates and how to fund those candidates. SA Breweries has already adopted a tandem franchising strategy.



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In practice this would work as follows: the promising franchisee buys an initial minority stake in the venture, say 10%. S/he and the mentor (typically of the franchisor's management team) operate and manage the business together until the franchisee is able to run it single-handedly. The franchisee continues to follow the successful formula to grow the franchised business and create jobs. The basic premise is that the franchisee's equity share will increase over time and that the mentor will be rewarded based on the performance and achievement of profit targets. The franchisee acts as an assistant manager for the first year (as an example) and earns a salary. All dividends go into a fund to allow the franchisee to buy more equity. The mentor may be a qualified manager or even an existing franchisee and doesn't have to be an entrepreneur but must have all the skills required for the specific business and receive an appropriate incentive. The mentoring program must be well structured and allow for continuing monitoring with specific objectives and timeframes that are to be quantified and communicated. This is a solution for companies to be B-BBEE compliant while truly transferring skills and achieving real broad-based participation, additionally also dealing with the issue of the low number of business start-ups in South Africa.

³² Cargill,37

³³ Bank of America Merrill Lynch, *South Africa: the environment is getting worse not better*, 12 July 2010 Report.

Young South Africans are not exposed to successful entrepreneurs. A program like tandem franchising can help in overcoming such shortcomings by exposing potential franchisees to the workings of a business environment and financial management skills, and enabling them to finance ventures, while they otherwise would have difficulty accessing money through conventional channels. The challenge is to achieve inclusive growth – instead B-BBEE is reduced to the Codes of Good Practice.

Peter Bruce, Editor of *Business Day*, argues that South Africa needs a different economic model that would democratize the economy and business transactions. He refers to the German example of having trade unions on company boards, elections for the Chief Executive and companies that are 15% owned by the workforce. Would this be a better alternative to achieve the goals of B-BBEE policy? Cargill contends that the ANC is highly dependent on the current character of rent-seeking BEE ownership to meet its financial needs and without other sources of political funding it is highly unlikely that they would challenge the current formulation of BEE ownership. This basically eliminates any hope that a different strategy will be followed by the current government.

Others too continue to be critical of B-BBEE and its overall approach. For example, Duma Gqubule³⁴, says even if South Africa were to meet its entire scorecard target, this would still have a very limited impact on development for the following reasons:

- Regardless of racial categories, only 7.4% of the population are in management positions.
- Only 12% of the labor force work in big companies – the Codes don't apply to the other 88% who work in small businesses.
- Over 70% of the population is unemployed or underemployed and earning less than R2500 per month – so the Codes wouldn't apply to them.³⁵

This argument further supports the opinion that B-BBEE's approach to transformation, economic growth and poverty alleviation is fundamentally ill-conceived and is far removed from the realities on the ground. Other opinion-makers, such as Bobby Godsell³⁶ see that the terminology of B-BBEE as misleading and unhelpful to the future of South Africa.

Godsell goes on to explain that South Africa should be talking about the *transformation* of its society as the key to economic growth. The focus should be on embracing all the talents that employees have to offer rather than focusing on just a few, on real empowerment, real ownership, real responsibility and that leadership should be exercised by individuals with real skills, real budgets and real power (who must attend their board meetings – 'no more ghost directors'). South Africa needs to keep an eye on the end goal or state that it wants – a diverse but *non-racial* society. Gqubule takes the argument further by saying that if South Africa is to build a democracy one has to question the categorization of South Africans in racial terms as African, Coloured, Indian and White. *What does it say about an end goal of a non-racial society when one has a government continuously characterizing its policy through race categories?*

³⁴ Duma Gqubule is widely published financial journalist, analyst and advisor on issues of economic development and transformation.

³⁵ Small Business Project (SBP) Roundtable, *Is BBBEE (broad-based black economic empowerment) an effective route to inclusive development and economic growth in South Africa?* on 26 May 2010 at SBP offices.

³⁶ Bobby Godsell is currently Chairman of Business Leadership South Africa (BLSA), an association of CEOs and Chairmen of the 70 largest corporations and multinational investors in South Africa in addition to being appointed by President Zuma to the new National Planning Commission in April 2010.



Source=<http://www.flickr.com/photos/15237218@N00/3287062971/> Mamphela Ramphele

Some even see B-BBEE as an obstacle to open debate. Dr Mamphela Ramphele³⁷ suggests that B-BBEE may "unintentionally create disincentives for critical independent voices". She explains: "access to preferential procurement and other BEE benefits is often heavily influenced by public officials who might withhold approval of competitive bids for goods and services from those seen to be too critical of the powers that be."³⁸ Critics, such as Moeletsi Mbeki³⁹, believe that B-BBEE undermines the ANC's longstanding policy of nonracialism and perpetuates a sense of 'victimhood'.

Debate on the shortcomings of transformation and B-BBEE policy, ranging from the impact on the economy to distorting black identity, are growing among civil society, business and individuals. However, the current government does not show any signs of possible rethinking of the current policy.

Conclusion

As stated in the introduction, the purpose of this paper is to provide an informative background of B-BBEE and its implementation, as well as to explore the main criticisms related to its implementation. Furthermore, some of the complexities around compliance were revealed and some light was shed on the degree of the negative unintended consequences of its implementation.

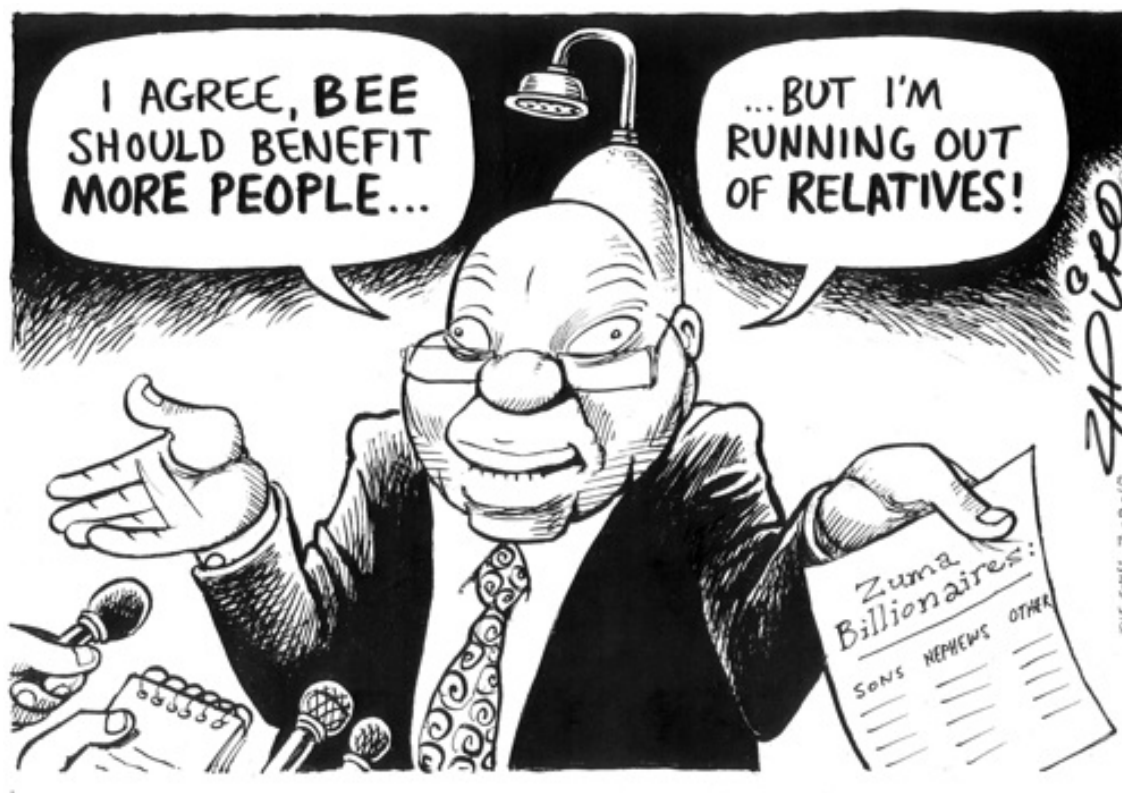
A policy that puts emphasis on ownership and employment equity rather than on skills development and enterprise development, and uses the same racial classification and discriminatory policies (demonstrated in employment equity) of the past can not be expected to achieve sustainable transformation. Moreover, economic growth and poverty eradication require the development of *new* black-owned businesses, a functioning education system and an economy that is free from onerous regulations such as B-BEE.

South Africa has to look at a new discourse for economic transformation rather than to get bogged down in 'counting points' as the way to transform. There has to be a move away from the thinking that B-BBEE is the be-all and end-all for South Africa's major challenges. The compliance mindset imposed by the Codes has removed personal and organizational responsibility which is needed for social transformation. New alternatives and solutions have to be developed to prevent the unintended consequences of B-BBEE.

³⁷ Ramphele is a South African academic, businesswoman and medical doctor and was an anti-apartheid activist

³⁸ Cargill, 216.

³⁹ Mbeki is a political economist and the deputy chairman of the South African Institute of International Affairs, an independent think tank based at the University of the Witwatersrand. He is the younger brother of former President Thabo Mbeki. He has been a frequent critic of the older Mbeki.



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