



The

Continuing the miracle into South Africa's second decade

**FW de Klerk Foundation**

# **TRANSFORMATION AND BLACK ECONOMIC EMPOWERMENT IN SOUTH AFRICA**

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# 1. BACKGROUND

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## 1.1. Defining Transformation

The term “transformation” implies fundamental change. In South Africa, “transformation” has become synonymous with the process of political, socio-economic and cultural change associated with the end of apartheid and the concomitant realignment of various societal sectors to make it inclusive of all South Africans, to rectify the injustices of the past and to reduce the inequalities brought about by our history of racial discrimination.

In both conceptual and practical terms, transformation transcends “transition” (defined as a “formal change in the political order and power-relationships in a given society”) and includes changes to the sub-structures by which the formal order is supported, including: economic activity, social interaction, cultural norms and informal power relations<sup>1</sup>.

The use of the term in political rhetoric, academic discourse, national legislation, and government policies also implicitly equates the process of transformation with the process of establishing a “just” South African society in which the founding values of the constitution (including democracy, human dignity, equality, non-racialism and non-sexism) and the constitutional rights of all citizens (which includes a broad range of socio-economic rights) are recognised in a manner which “gives expression to the ethos on which the new [South Africa] is founded<sup>2</sup>”.

## 1.2. The “Transformation Imperative”

Whilst recognising the progress which has been made with regards to political transformation and the “miracle” of South Africa’s transition to democratic rule, the attention of policymakers, civil society groupings as well as the general populace is increasingly shifting to the need for transformation in the *economic* arena.

The objectives of socio-economic transformation seem to be two-fold. In the first place there is a need to improve the quality of life of all South Africans – thus: economic transformation as the eradication of poverty, the reduction of unemployment and the improvement of access to services. In the second place, it highlights the need for a redistribution of economic resources and power – thus: economic transformation as the promotion of black participation in the economy, towards the achievement of economic equity.

The rationale behind this second objective is explicated in the DTI’s Strategy Document on Economic Transformation and Black Economic Empowerment<sup>3</sup>:

*“Apartheid systematically and purposefully restricted the majority of South Africans from meaningful participation in the economy. The assets of millions of people were directly and indirectly destroyed and access to skills and self-employment was racially restricted. The accumulation process under Apartheid confined the creation of wealth to a racial minority and imposed underdevelopment on black communities. The result is an economic structure that today, in essence, still excludes the vast majority of South Africans. It is crucial to understand the magnitude of what took place in our past in order to understand why we need to act together as a nation to bring about economic transformation in the interest of all”.*

Economic transformation is therefore deemed a necessary and natural extension of the peace process which ended white minority rule, and an essential pre-condition to the achievement of

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<sup>1</sup> Price, R.M. 1991. *The Apartheid State in Crisis: Political Transformation in South Africa, 1975-1990*. New York: Oxford University Press.

<sup>2</sup> Institute for Justice and Reconciliation. 2005. “Transformation in South Africa Today: The shape of the political, economic and cultural project to construct a new South Africa”. Unpublished Discussion Paper.

<sup>3</sup> Department of Trade and Industry. 2003. Black Economic Empowerment Strategy. [Online]: Available: <http://www.dti.gov.za> (April 2005).

socio-economic justice. It has accordingly received ample attention in the government's macro economic policy programmes (including the Reconstruction and Development Programme [RDP], the Growth, Employment and Redistribution programme [GEAR] and the Accelerated and Shared Growth Initiative of South Africa [ASGISA]) and specific legislation and policy measures designed to promote black participation in the economy. The latter includes: The Promotion of Equality and Prevention of Unfair Discrimination Act; Extension of Security of Tenure Act; Restitution of Land Rights Act; Employment Equity Act; National Empowerment Fund Act; Competition Act; Preferential Procurement Policy Framework Act; the National Small Business Act; the Integrated Human Resources Development Strategy; the Integrated Sustainable Rural Development Programme; and the National Small Business Development Promotion Programme<sup>4</sup>. Black Businesses and Black Economic Empowerment Initiatives have also been receiving financial and practical support through institutions such as the National Empowerment Fund, Ntisika, Khula, the Industrial Development Corporation, the Land Bank, the Development Bank of Southern Africa, the Isibaya Fund and the Umsombomvu Fund<sup>5</sup>.

The approach to BEE, however lacked an "overarching strategic framework" and the required re-alignment of the economy remained an elusive goal. In this context, the DTI's Black Economic Empowerment Strategy Document, the Black Economic Empowerment Act (No. 53 of 2003), and the Codes of Good Practice which gives content to original Act, have become the key mechanisms through which the government seeks to achieve the "vision of an economy that meets the needs of all South Africans in a more equitable manner"<sup>6</sup>.

## **2. DEVELOPING A BEE STRATEGY**

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When considering the government's approach to BEE it is important to take cognisance of the strategy which provides the guiding principles according to which the process is managed, and the manner in which this strategy was established.

The Broad Based Black Economic Empowerment Strategy was launched by government in March 2003. In the strategy document itself, as well as other official government communication (e.g. the SA Yearbook 2004/05), the drafting the strategy document is outlined as follows:

*"The strategy document is the outcome of an extensive consultation process within government and the private sector. It is informed by contributions of the Black Economic Empowerment Commission as well as the views of the President's Black Business and Big Business working groups. The Trade and Industry Chamber of the National Economic Development and Labour Council have also considered the matter and their inputs have been incorporated".*

Although inputs into the BEE Strategy were reportedly gathered from a broad range of stakeholders, it is the 2001 report of the Black Economic Empowerment Commission which seems to be reflected in the guiding principles and general approach to BEE adopted by the DTI, and the targets which have been set in the BEE Strategy.

### **Background of the BEE Commission**

The BEE Commission (BEECom) was established by the Black Management Forum (BMF) in terms of a resolution adopted by the forum's national conference in Stellenbosch in November 1997<sup>7</sup>. It was argued that empowerment processes and deals were at that stage dominated by organisations, including government structures, that did not recognise the "true aspirations of the marginalised black majority", and that black people should start to "direct and take charge of a new vision for BEE".

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<sup>4</sup> DTI, 2003

<sup>5</sup> DTI, 2003

<sup>6</sup> DTI, 2003.

<sup>7</sup> Black Economic Empowerment Commission. 2001. *Report of the Black Economic Empowerment Commission*. [Online]. Available: <http://www.dti.gov.za> (April 2005).

The commission therefore set out to<sup>8</sup>:

- Gain insight into the BEE process through empirical research and to make observations on the pace and results of BEE initiatives during the 1990's.
- Draw conclusions on the obstacles to meaningful participation of black people in the economy.
- Develop a powerful case for an accelerated National BEE Strategy and to make recommendations on policies and instruments required to guide a sustainable strategy.
- To develop benchmarks and guidelines to monitor the implementation of the National BEE Strategy.

The commission held a consultative conference in September 2000. The views expressed at this conference and in further discussions with stakeholders were incorporated in the final report which was released on 11 April 2001. The proposals of the Commission were adopted by the ANC's Economic Transformation Committee (ETC) on 3 March 2001.

### ***Key proposals of the BEE Commission Report***

In its final report, the BEECom proposed that BEE should:

- be an integrated and coherent socio-economic process;
- be located in the context of the country's national transformation programme, the RDP;
- ***be aimed at redressing the imbalances of the past by seeking to substantially and equitably transfer and confer the ownership, management and control of South Africa's financial and economic resources to the majority of its citizens;*** and
- seek to ensure broader and meaningful participation in the economy by black people to achieve sustainable development and prosperity.

#### **Comment**

Three of the BEE goals are generally acceptable. It is, however, difficult to see how the 'ownership, management and control of South Africa's financial and economic resources' can be substantially transferred to 'the majority of its citizens' 'equitably' and in such a manner that it does not undermine property rights and other guarantees in the constitution.

The BEECom has set clear and ambitious targets for the ten-year period ending in 2011. The commission proposed that black women should account for 35% and disabled people for 5% of all targets. Key targets include:

- The transfer of 30% of productive land to black individuals and collective enterprises;
- black equity participation in each sector of the economy should be increased to at least 25% including individuals and collective enterprises;
- black individuals, businesses and collective enterprises should hold at least 25% of the shares of companies listed on the JSE; at least 40% of non-executive and executive directors of companies listed on the JSE should be black;
- at least 50% of state owned enterprises (SOE) and Government procurement – at national, provincial and local levels – should go to black companies and collective enterprises. At least 30% of these companies should be black-owned SMEs;
- at least 30% of private sector procurement should be to black-owned companies, including SMEs and collective enterprises;
- at least 40% of senior and executive management in private sector companies (with more than 50 employees) should be black;

<sup>8</sup> Black Economic Empowerment Commission (2001).

- the National Human Resource Development Strategy should ensure that black people comprise at least 40% of the number of people in the professions and in professional training;
- at least 50% of borrowers (by value) on the loan books of National Development Finance institutions should be black-owned companies and collective enterprises;
- at least 30% of the equity of restructured SOEs should be owned by black companies and collective enterprises;
- at least 30% of long-term contracts and concessions (PPPs) within the public sector should incorporate black-owned companies and collective enterprises up front;
- at least 40% of Government incentives to the private sector should go to black companies; and
- the banking sector and Government should agree on targets with respect to accessibility of financial services (Community Reinvestment) that should ensure an increase in advances to black entrepreneurs, SMEs and black households in rural and urban areas.

**Comment:**

It is important to note that the BEE process is open-ended. It is therefore not improbable that targets could be increased as soon as the above-mentioned objectives have been reached. The Department of Trade and Industry has indicated that the BEE strategy will be reviewed in 2013, but stated that the conception that the BEE strategy promotes discriminatory practices which “should be discontinued” at some stage is misguided<sup>9</sup>.

This BEE Commission’s report laid important groundwork for the BEE Strategy which was adopted by government in March 2003. It is, however, important to note that the BEE Commission report is *not* government policy. Certain concepts and targets may have been included in the government’s strategy, but the official definition of BEE, the objectives of the BEE process and official targets for black inclusion in the economy are found in the BEE Strategy launched in 2003, the BEE Act (No. 53 of 2003), and the BEE Codes of Good Practice which has since been published by the DTI – of which the most recent drafts were released in November and December 2005.

The official definition of Black Economic Empowerment, government’s approach to BEE and the official objectives and targets of the BEE process will now be discussed.

### **3. WHAT IS BLACK ECONOMIC EMPOWERMENT?**

#### **3.1. Defining Black Economic Empowerment**

The South African Department of Trade and Industry<sup>10</sup> defines Black Economic Empowerment as:

*“an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the number of black people that manage, own and control the country’s economy, as well as significant decreases in income inequalities”.*

In the Broad-Based Black Economic Empowerment Act (No. 53 of 2003), Black Economic Empowerment is defined as follows:

<sup>9</sup> Mail & Guardian. 2005. *Government to Review BEE in 2013, 12 September 2005*. [Online]. Available: [http://www.mg.co.za/articlePage.aspx?articleid=250728&area=/breaking\\_news/breaking\\_news\\_\\_business/#](http://www.mg.co.za/articlePage.aspx?articleid=250728&area=/breaking_news/breaking_news__business/#) (March 2006).

<sup>10</sup> Department of Trade and Industry. 2003. *Black Economic Empowerment Strategy*. [Online]. Available: <http://www.dti.gov.za> (April 2005).

*“Broad-based black economic empowerment (Broad-Based BEE) means the economic empowerment of all black people including women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socioeconomic strategies, that include, but are not limited to:*

- a) increasing the number of black people that manage, own and control enterprises and productive assets;*
- b) facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises;*
- c) human resource and skills development;*
- d) achieving equitable representation in all occupational categories and levels in the workforce;*
- e) preferential procurement; and*
- f) investment in enterprises that are owned or managed by black people.”*

## **3.2. The Objectives of Black Economic Empowerment**

The success of the implementation of the BEE strategy will be evaluated against eight key objectives, which include<sup>11</sup>:

- A substantial increase in the number of black people who have **ownership and control** of existing and new enterprises,
- A substantial increase in the number of black people who have **ownership and control** of existing and new enterprises in the priority sectors of the economy that government has identified in its microeconomic reform strategy<sup>12</sup>
- A significant increase in the number of new **black enterprises, black-empowered enterprises and black-engendered enterprises**,
- A significant increase in number of black people in **executive and senior management of enterprises**,
- An increasing proportion of the ownership and management of economic activities vested in **community and broad-based enterprises** (such as trade unions, employee trusts, and other collective enterprises) and **co-operatives**,
- Increased ownership of land and other productive assets, improved access to infrastructure, increased acquisition of skills, and increased participation in productive economic activities in **under-developed areas** including the 13 nodal areas identified in the Urban Renewal Programme and the Integrated Sustainable Rural Development Programme,
- Accelerated and shared **economic growth**,
- Increased **income levels** of black persons and a reduction of income inequalities between and within race groups.

## **3.3. Government’s approach to Black Economic Empowerment**

### **3.3.1. Key principles**

The Department of Trade and Industry’s BEE Strategy is underpinned by four key principles, which further elucidate the government’s definition of Black Economic Empowerment, and the manner in which it should be implemented.

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<sup>11</sup> DTI, 2003.

<sup>12</sup> These sectors include agriculture and agro-processing, mining, minerals and metals beneficiation, clothing and textiles, automobiles and components, aerospace, information and communication technology sector, chemicals, cultural industries including media, film, music and crafts, as well as high value-added services.

### ***Black economic empowerment is broad-based***

The first principle of the government's approach to BEE is that it has to be broad-based, in the sense that it should "accelerate the deracialisation of the South African economy and fast track the re-entry of historically marginalised communities into the mainstream of the economy".

The broad-based nature of the government's approach to BEE is also evident in the balanced nature of the BEE scorecard. The scorecard does not only emphasise employment equity and equity of ownership, but also rewards BEE initiatives which focus on human resource development, the development of black enterprises and social projects initiated or supported by the industries/ businesses involved (the scorecard will be discussed in more detail in section 3.4).

The BEE process also, in principle, makes use of a broad spectrum of government policies and policy instruments, with specific emphasis on:

- government procurement programmes;
- support to small, micro and collective enterprises;
- privatisation programmes;
- the promotion of access to the productive use of natural resources and land (through the Integrated Sustainable Rural Development Programme) as instruments to deracialise of ownership;
- the promotion of access to financial services and capital to facilitate affordable ownership and increase levels of savings;
- the establishment of a legislative framework to promote uniformity in policy, establish the necessary institutional support and instruments and set guidelines to facilitate deracialisation of business ownership in the private sector;
- skills development within the framework of the Integrated Human Resources Development Strategy; and
- the promotion of partnerships between the state, the private sector, labour and civil society through social compacts and industry-based agreements.

### ***Black Economic empowerment is an inclusive process***

It is argued that an equitable economy will benefit all South Africans, individuals and enterprises, and that all sectors of the economy and all enterprises operating in South African can, and should, participate in the BEE process.

### ***Black Economic empowerment is associated with good governance***

The third principle of the government's approach to BEE is that it "must be associated with and ensure the highest standards of corporate governance. This principle is based on the conviction that the "quality and transparency of all economic activity" is a "fundamental part of [South Africa's] economic reform and transformation".

### ***Black Economic empowerment is part of our growth strategy***

The BEE Strategy is not aimed at the mere redistribution of existing wealth, but the "[facilitation of] new entrants to all aspects of the economy". It is argued that "BEE and accelerated economic growth are mutually reinforcing objectives" as "inclusive patterns of wealth accumulation" stemming from both existing *and new* economic activity generates a "multiplier effect" through investment and an "accelerator effect" through higher levels of domestic consumption.

As an overarching principle of the BEE process the DTI consistently emphasises that for "the BEE process to be sustainable, and for it to contribute meaningfully to the economic growth of South Africa, it must **adhere to sound economic principles**". Sound economic principles are

the fundamental principles that govern the efficient and effective functioning of economies and are supported by rigorous empirical testing and broad application both globally and locally.

**Comment:**

Clearly, however desirable BEE might be, it is difficult to see how it can be viewed as adhering to the sound economic principles “that govern the efficient and effective functioning of economies”. Indeed, it could be argued that BEE breaches several fundamental economic principles a) by artificially endeavoring to determine ownership levels on a racial and gender basis; b) by introducing race rather than merit, suitability and experience as a key factor in the appointment of management and other staff; c) by dispensing with price, quality and service as the main factors in procurement; and d) by shifting onto companies social responsibilities that should be addressed by government.

It has, however, been interesting to note that many prominent (white) businessmen has, in the past year, noted the contribution of Black Economic Empowerment to South Africa’s accelerated levels of economic growth and the exceptional profits of many companies on the JSE – especially where the increased spending power of the rising black middle class and the lower classes that have benefited from increases in social grants have contributed to increased sales of goods and services<sup>13</sup>.

### 3.3.2. Policy instruments

To give effect to the BEE Strategy, the government has adopted the Black Economic Empowerment Act and established a BEE Committee in the Office of the President to monitor and oversee progress with the strategy.

The BEE Strategy outlines a BEE Scorecard, which is used to measure progress with BEE on an enterprise and sectoral level. The scorecard measures three core elements of BEE, including:

- Direct empowerment through ownership and control of enterprises and assets,
- Human resource development and employment equity,
- Indirect empowerment through preferential procurement and enterprise development.

The government uses the BEE scorecard when:

- granting licences to engage in specific regulated economic activity
- granting concession to a private enterprise to operate an asset or enterprise on behalf of the state
- sells an asset or a state-owned enterprise
- enters into public-private partnerships,
- engages in any economic activity.

Businesses with higher BEE scores – who are thus considered better contributors to BEE – will enjoy preference in all the abovementioned instances.

It is important to note, that BEE compliance is voluntary, and that big companies who feel that they have enough consumers for its business to “flourish without empowerment verification” it would be “free to take the risk”<sup>14</sup>.

More details on the BEE scorecard, the quantitative targets which have been set for BEE and the different categories of BEE scores/contributors will be provided in section 3.4.

<sup>13</sup> In an interview with Moneyweb, Paul Harris (CEO of FirstRand) said that “if one looks at it holistically, I believe that BEE is one of the biggest drivers of our economic prosperity at the moment”. In his Chairman’s Review for Barloworld Limited, Chairman Warren Clewlow commented on benefits his company has gained from tapping into the hitherto under-utilised talents of particularly his black staff through skills upgrading.

<sup>14</sup> Bonorchis, R. 2005. “BEE Codes Pose a Challenge”. [Online]. Available: <http://www.busrep.co.za/index.php?fArticleId=2976280>. November 2005.



The BEE Strategy also envisioned that the government will assist and promote private sector compliance with the BEE Strategy, and contributions to the BEE objectives through co-operation with different sectors and enterprises in the development of BEE Charters which outlines:

- the BEE challenges in the sector/ enterprise
- the sector's/ enterprise's vision for achieving BEE targets
- specific mechanisms to be used to achieve BEE targets
- an assessment of the financing required to fund BEE transactions
- the institutional and management mechanisms that will co-ordinate, facilitate, monitor and evaluate the implementation of the charter.

In accordance with the terms of the BEE Act, the DTI has published a set of codes of good practice to guide the BEE processes of organisations and companies. The codes of good practice provide detail on the measurement of the different components of BEE, the desired nature and structure of sectoral BEE charters and charter processes and what the acceptable weighting and targets of each element of the BEE scorecards should be.

### 3.4. The BEE Scorecard and the Codes of Good Practice

The BEE Strategy of 2003 contained a broad-based scorecard with weightings for each of the BEE elements. Scores are awarded for seven different elements of BEE, which are weighted as follows:

Core Component	Indicators	Weighting
<b>Direct Empowerment</b>		
Equity ownership	% share of economic benefits	20%
Management	% black persons in executive management and/or executive board and board committees	10%
<b>Human Resource Development</b>		
Employment equity	Weighted employment equity analysis	10%
Skills development	Skills development expenditure as a proportion of total payroll	20%
<b>Indirect Empowerment</b>		
Preferential procurement	Procurement from black-owned and empowered enterprises as a proportion of total procurement	20%
Enterprise development	Investment in black-owned and empowered enterprises as a proportion of total assets	10%
<b>Residual</b>		
Residual element	To be determined by sector/ enterprise	10%

An enterprise's contribution to BEE is measured by its score out of 100 (based on the generic scorecard). There are 9 different contribution levels. For the purposes of preferential procurement, each BEE status band is assigned a corresponding BEE procurement recognition level. This recognition level determines the proportion of spending, which a decision maker can claim as "BEE procurement".

BEE Status	Qualification (points on the generic scorecard)	BEE procurement recognition level
Level 1 Contributor	100 or more*	135%
Level 2 Contributor	85 but <100	125%
Level 3 Contributor	75 but < 85	110%
Level 4 Contributor	65 but < 75	100%
Level 5 Contributor	55 but < 65	80%
Level 6 Contributor	45 but < 55	60%
Level 7 Contributor	40 but < 45	50%
Level 8 Contributor	30 but < 40	10%
Non compliant contributor	< 30	0%

\*Bonus points make it possible for an enterprise to obtain a score of more than 100

The initial strategy did not provide much detail on the manner in which scores should be measured. Detail of measurements and targets were expounded in the BEE Codes of Good Practice of which the latest drafts were released in two phases in November and December 2005.

The first phase includes:

- Code 000 on the framework for the measurement of BEE
- Code 100 on measurement of the ownership element of broad-based BEE
- Code 200 on measurement of the management control element of broad-based BEE

The second phase includes:

- Code 300 on the measurement of the employment equity element of broad-based BEE
- Code 400 on the measurement of the skills development element of broad-based BEE
- Code 500 on the measurement of the preferential procurement element of broad-based BEE
- Code 600 on the measurement of the enterprise development element of broad-based BEE
- Code 700 of the measurement of the residual element of broad-based BEE
- Code 800 – the Sector Codes
- Code 1000 on the measurement of broad-based BEE for qualifying small enterprises

Phase One codes are currently in final draft form, whilst the December 2005 draft of Phase Two has been the first release of the Codes involved. The process of public commentary, the collation of public comments, the release of the second draft of Phase 2 and the confirmation of Phase 2 by cabinet thus still has to take place. The Codes will only be Gazetted once both Phases have been confirmed by cabinet.

See Appendix A for an overview of the detailed scorecard for each of the BEE elements, and the targets for every subsection of the overarching 7 BEE components. BEE scores for the different elements are measured in terms of progress towards the achievement of the target.

### ***Delays in the publication of the codes***

The process of the drafting of the codes was started in April 2004. The prolonged nature of the process thus far has introduced an element of uncertainty in the BEE proceedings (including the development of sectoral and industry charters) which has had serious financial and practical implications for industries and sectors that have endeavoured to be pro-active in their attempts to comply with legislation<sup>15</sup>.

### ***Public participation in the development of the BEE Codes***

It is encouraging to note that there was strong public participation during the public commentary period following the publication of the first draft of Phase One of the BEE Codes. A total of 350 comments were received from South African corporates, SMME's and individuals<sup>16</sup>. A subsequent draft document was also discussed with a number of private sector stakeholders. Inputs from corporates, strategic sector representatives and business groupings also resulted in further amendments to the second draft published in June 2005<sup>17</sup>.

### ***Noteworthy provisions of the latest Codes***

In the Codes released in November and December 2005, the DTI attempted to address some of the original concerns with regards to the manner in which BEE was being implemented and clarify some of the concepts and measurement criteria about which there existed some uncertainty.

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<sup>15</sup> Monteiro. A. 2005. "BEE charters have to be rehashed". [Online]: Available: [http://www.moneyweb.co.za/pls/cms/cm\\_misc\\_procs.print\\_page?p\\_content\\_id=513384](http://www.moneyweb.co.za/pls/cms/cm_misc_procs.print_page?p_content_id=513384) (November 2005).

<sup>16</sup> Department of Trade and Industry. 2005a. Codes of Good Practice on Broad-Based Black Economic Empowerment – Phase One: A guide to Interpreting the First Phase of the Codes. [Online]: Available: <http://www.dti.gov.za> (April 2005).

<sup>17</sup> DTI, 2005a.

### *Creating a uniform framework*

- The generic scorecard was refined through more detailed specifications with regards to the calculation of scores for different BEE elements.
- The procedures for the development and gazetting of transformation charters and sector codes were specified.
- In terms of Statement 010 of Code 000, the definitions, weightings assigned to different BEE elements and targets for the different elements in Transformation Charters and Sector Codes have to be consistent with the generic scorecard and the Codes of Good Practice.

### *Transformation charters and sector codes*

- Transformation charters are drafted by representative bodies of specific sectors or industries, and serve as evidence of the commitment by all stakeholders to promote BEE in the applicable sector. It has to be approved by government and may be gazetted, but it is not binding upon the organs of the state or public entities
- Sector Codes are also drafted by sector representative bodies. All stakeholders in the sector have to be involved in the drafting process. The approval process for sector codes is more rigorous. Independent third parties have to verify that both the drafting process and the content of the Code is in line with the provisions of the BEE Act and the Codes of Good Practice, and draft versions of the Codes have to be released for public comment. Once approved, Sectors Codes are Gazetted as Codes of Good Practice (under section 9 of the BEE Act), and enjoy equal status with that of any other Code.

### *Improving BEE verification standards*

- In order to ensure the standardisation, comparability and validity of BEE status rankings, the BEE status of enterprises have to be confirmed by an accredited BEE Verification Agency.

### **Comment**

Delays in the accreditation of verification agencies are causing confusion and uncertainty with regards to BEE status rankings. This is particularly problematic in terms of BEE procurement, as the calculation of procurement scores has to be based on the BEE score of the companies involved.

Given the complexity of the BEE Codes, BEE Audits are also likely to be very expensive, with small companies likely to pay +-R10 000 and for a BEE Audit, and bigger corporates having to cough up +-R250 000 to have their BEE status confirmed by an accredited agency<sup>18</sup>.

### *Broadening the base of BEE*

The DTI identified a number of problems with the “first wave of BEE” transactions / deals in the late 1990’s. The following issues were highlighted as problem areas with regards to the ownership element of some BEE transactions<sup>19</sup>:

- A lack of participation by black women in BEE consortia
- The reversion of black equity into the hands of the original white owners, following the collapse of BEE deals, owing to onerous structuring and repayment terms.
- The fact that BEE ownership status of entities was often inflated when compared to the actual economic benefits flowing to the black beneficiaries, since the economic benefits were often eroded by financing restrictions.
- The lack of participation by broad-based beneficiaries such as black rural dwellers, black unemployed people, black workers, black disabled and impoverished black communities.
- The fact that deals were primarily concluded amongst a select number of BEE personalities since there was no incentive for companies to look beyond these prominent players.

<sup>18</sup> Monteiro, 2005.

<sup>19</sup> See: DTI, 2005a.

According to the Guide to the Interpretation of the Codes<sup>20</sup> “Statement 100 aims to address these issues by providing specific incentives in the ownership scorecard to ensure participation by women, black designated groups and new entrants and ensuring that only real economic interest in the hand of black people is measured”.

The modified flow through principle also encourages companies to enter into deals with groups that are not necessarily 100% black-owned, as it allows companies (when calculating their black ownership) to treat one 51%-or-more-black owned company in its corporate structures as if it was 100% black-owned (thus increasing the points awarded)<sup>21</sup>.

#### *Addressing the dangers of fronting*

The DTI has taken a strong stand against BEE fronting, with specific reference to window-dressing – including cases where black people are appointed or introduced to an enterprise on the basis of tokenism, and may be discouraged or inhibited from participation in the core activities of the enterprise – and benefit diversion – including initiative implemented where the economic benefits received as a result of the BEE status of an enterprise do not flow to black people in the ratio as specified in the relevant legal documentation<sup>22</sup>. The DTI hopes to address the fronting problem through the clarification of BEE-related definitions and principles and the provision of processes to identify and report on fronting practices.

## **4. THE ANC APPROACH TO BEE**

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When considering Black Economic Empowerment as a national policy initiative, it is important to consider the transformation approach of the ANC – as the relatively undisputed majority party in parliament. Whilst there is ample evidence that the ANC’s internal policies tend to be more populist and radical than the legislation and strategies that are eventually adopted on a national level, there are however certain elements of the ANC’s approach to BEE and transformation that are disconcerting in both its scope and implications.

In general terms, the ANC has adopted a flexible, reasonable and apparently inclusive approach to the implementation of BEE. Critics of the ANC’s approach were, however, dissatisfied with the limited scope of negotiation and consultation with representatives of the minorities and businesses whose interests will be closely affected by the process.

The ANC has pointed out that many aspects of affirmative action and black economic empowerment will be achieved simply through the enforcement of equal rights and the provision of good government and equal services to all South African citizens. Thus the provision of equal high quality education; health and social services; regional equalisation and equal protection from discrimination will go far toward the goal of black empowerment.

ANC spokesmen have also stated that affirmative action should be implemented in a manner that is

- fair and equitable;
- inclusive, to ensure that those most directly affected, whether positively or negatively, have the greatest say in implementation decisions;
- consistent with the constitution and legislation, and should not be dependent on the subjective whims or the fluctuating zeal of particular officials;
- proportionate to the ends to be achieved; and
- transparent, non-corrupt and accountable.

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<sup>20</sup> DTI, 2005a.

<sup>21</sup> O’Grady, K. 2005. “New codes to spread BEE beyond black elite”. [Online]. Available: <http://www.businessday.co.za/PrintFriendly.aspx?ID=BD4A108230>. (November 2005).

<sup>22</sup> See: Department of Trade and Industry. 2005i. Code 100: Framework for the measurement of Broad-Based Black Economic Empowerment. Statement 001: Fronting Practices and other misrepresentation of BEE Status. [Online]. Available: <http://www.dti.gov.za>. (December 2005).

***It is, however, important to recognize that Black economic empowerment is firmly rooted in the struggle against apartheid and is an integral part of the ANC's national democratic revolution.***

The political and constitutional transformation of South Africa in April 1994 represented only a part of the overall goal of the ANC's National Democratic Revolution (NDR). The NDR also requires the social and economic transformation of the country. The ANC's 1969 Strategy and Tactics emphasised that:

*"In our country - more than any other part of the oppressed world - it is inconceivable for 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 represent even a shadow of liberation."*

According to the ANC's Policy Guidelines of 1992:

*"management of both the public and private sectors will have to be deracialised so that they rapidly and progressively come to reflect the skills of the entire population. Equity ownership will have to be extended so that people from all sectors of the population have a stake in the economy and power to influence economic decisions."*

The new ANC Government insisted that a central objective of the Reconstruction & Development Programme (RDP) would be *"to deracialise business ownership and control completely through focused policies of Black Economic Empowerment"*.

The ANC also viewed black economic empowerment as a central requirement for sustained economic growth, arguing that the economy would never achieve its full potential if the majority of the population remained effectively excluded from ownership and full participation. In July 2000 the ANC identified the need for targeted strategies in areas such as the control/ownership of productive property by black people and women, including the land; and the reduction of racial and gender disparities in income and wealth; and in the building of a more egalitarian society.

#### **Comment**

One of the transformation goals of the National Democratic Revolution is to gain control over the levers of state power including ...the public service, the security forces, the judiciary... and the public broadcaster.

The ANC believes that one of the strategic tasks of the National Democratic Revolution should be to "strengthen the hold of the democratic movement over state power, and to transform the state machinery to serve the cause of social transformation". According to its 1997 Strategy and Tactics document "the levers of state power include the legislatures, the executives, the public service, the security forces, the judiciary, parastatals, the public broadcaster, and so on. Control by democratic forces means that these institutions should operate on the basis of the precepts of the Constitution; they should be guided by new doctrines; they should reflect in their composition the demographics of the country; and they should owe allegiance to the new order."

#### **Comment**

It is this extension of power over institutions which should (according to the principles of the constitution and effective democratic systems) remain independent, and the establishment of a level of allegiance over and above the principles of the constitution, which is a cause for concern when considering the ANC's overarching approach to transformation.

It is, however, important to note that the ANC has made a discussion on the continued relevance and applicability of the 1997 Strategy and Tactics document a central theme of the National Conference to be held in 2007. The *character* of the National Democratic Revolution, and specifically the approach to issues of redistribution and black economic empowerment, is highlighted as a point for discussion in the “Guidelines on the discussion of Strategy and Tactics”<sup>23</sup> document, which has been released by the ANC in preparation for the conference in 2007.

## 5. EQUALITY, AFFIRMATIVE ACTION AND THE CONSTITUTION

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It is clear from the BEE strategy, the Act and the Codes of Good Practice that the aim of the BEE project is to improve the economic position of black South Africans. The basic premise of the legislation and codes is, that in circumstances of equal competition, white South Africans (as the historically advantaged group) will be in a stronger position to maintain or improve their situation and that no redistribution of economic benefits will thus take place. It is therefore argued, that in order to promote an equitable economy, black South Africans have to be favoured in different fields (like procurement, employment, human resource development etc). It is thus argued that retributive, pro-black (in essence: unequal) treatment will result in a more equitable economy.

According to section 9(2) of the constitution, the state evidently has a right to discriminate *in favour* of certain persons to promote the achievement of equality. It defines equality as including ‘full and equal enjoyment of all rights and freedoms’. The constitution goes on to stipulate that ‘to promote the achievement of equality, legislative and other measures designed to protect and advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.’

In terms of section 9(3) the state may not *unfairly* (emphasis added) discriminate directly or indirectly against anyone on a large number of grounds, including race, gender, ethnic or social origin etc. The constitutional protection that various classes of citizens enjoy accordingly depends entirely on the concept of fairness. Fairness is not defined except that section 9(5) stipulates that discrimination is unfair ‘unless it is established that it is fair’. In addition, Section 195(1)(i) appears to lay down two additional requirements, firstly that the “public administration must be broadly representative of the South African people”, and secondly that employment and personnel management practices must be “based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation”.

What this would seem to indicate is that each act of state discrimination would then presumably have to be tested against certain criteria: Is it arbitrary? Does it promote equality? Are its beneficiaries persons or categories of persons who have been disadvantaged by unfair discrimination? Does it promote representivity? Is it based on ability, objectivity and fairness?

The manner in which affirmative actions measures may be implemented is further determined by the Employment Equity Act (No. 55 of 1998). According to Prof Pierre du Toit’s analysis of the Act<sup>24</sup>,

- affirmative action includes “measures designed to ensure that *suitably qualified* people from the designated groups (i.e. everyone except white males) have equal employment opportunities and are equitably represented in all occupational categories and levels in the workforce of a designated employer (i.e. any firm that employs more than 50 people).”
- affirmative action measures include the elimination of barriers created by “unfair discrimination”; measures aimed at increasing diversity in workforces; “preferential treatment”, including skills training, numerical goals promoting equitable representation, *but not including quotas*. The concepts of “equitable representation” and “preferential treatment” are not defined.

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<sup>23</sup> African National Congress. 2005. “Guidelines on discussion of Strategy and Tactics”, in *Umrabulo*. 23. [Online]: Available. <http://www.anc.org.za/ancdocs/pubs/umrabulo/umrabulo23/index.html> (April 2006).

<sup>24</sup> Du Toit, Pierre. 2004. *Affirmative Action and the Politics of Transformation: A Survey of Public Opinion*. The FW de Klerk Foundation. March 2004.

- the sole specific rule protecting white men appears in section 15(4), which prohibits a designated employer from setting up an “absolute barrier” to the employment of “people who are not from designated groups”.
- the exact composition of a workforce is, in terms of section 42, made subject to practical considerations such as: the national *and* regional demographic profiles of the “economically active population”; the pool of suitably qualified people from the designated groups that are available for appointment or promotion; the economic and financial circumstances of the firm; and progress already made in the implementation of equity plans.

It is also clear that contrary to the ANC’s professed goal of ‘strengthening the hold of the democratic movement over state power – including the public service, the judiciary and the security forces’, the Constitution requires a more impartial and apolitical approach. Sections 165(2) and (3) stipulate that “The Courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour and prejudice,” and that “no person or organ of state may interfere with the functioning of the courts.” Section 165(4) requires that organs of state must “assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts”. The constitution also stipulates in section 196(2) that the Public Service Commission is ‘independent and impartial’. In section 197(3) it requires that “no employee of the public service may be favoured or prejudiced only because that person supports a particular political party or cause.” Section 199(7) of the constitution states that ‘neither the security forces, nor any of their members, may, in the performance of their functions – a) prejudice a political party interest that is legitimate in terms of the constitution; or b) further, in a partisan manner, any interest of a political party.’

#### **Comment**

Whilst the constitution supports the principle of discrimination “*in favour of*” historically disadvantaged groups, the practical implications of this principle without “*unfair discrimination*” is not always clear. The scope of application of section 9(2), and the circumstances under which it could be considered “*unfair discrimination*” will have to be clarified through case-law, as individuals, businesses, organisations etc. start to take transformation-related issues to the constitutional court.

Concern about constitutionally guaranteed independence of institutions also came under the spotlight with the release of the proposed 14<sup>th</sup> Constitutional Amendment Bill which (according to former Supreme Court Judge, Jan Steyn) “constitute a dilution of the sovereignty of the judicial authority”.

## **6. PROGRESS WITH TRANSFORMATION SINCE 1994?**

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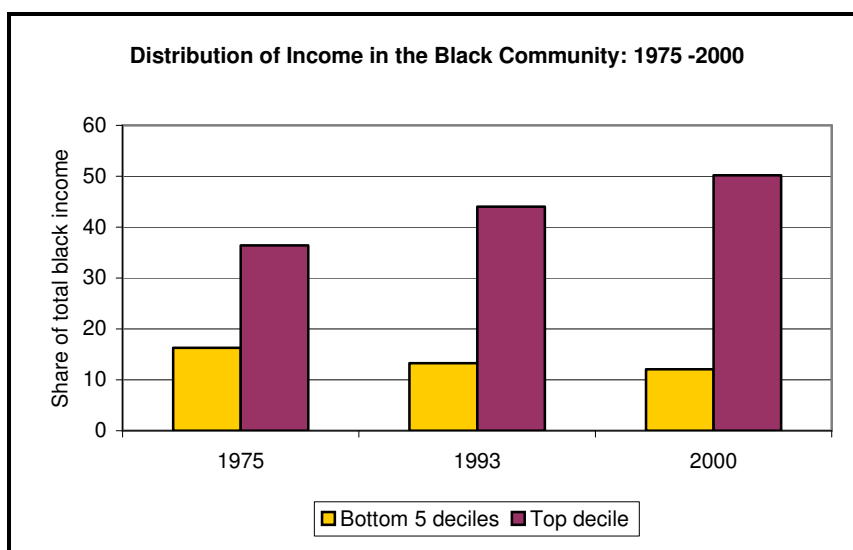
When considering the success of the “transformation project” in South Africa, we will look at both (i) the redistribution of economic resources and control, in the form of the changes to the distribution of income, employment equity, ownership and control of the economy, and (ii) the empowerment of South Africans for meaningful participation in the economy through human resource development.

### **6.1. Distribution of income**

***The gap between rich and poor has grown since 1994. This has been mirrored by a substantial increase in the income gap within the black community.***

South Africa has failed quite markedly to realise one of the central goals of the constitution and the BEE Strategy – namely, the promotion of greater equality between all South Africans.

- The HSRC reports that South Africa's Gini coefficient rose from 0,69 in 1996 to 0,77 in 2001. In 2004 57% of South Africans were living below the poverty line of R1 290 a month for a family of four.<sup>25</sup> At the R10 000 per capita per month income levels, less than 10% of Africans, 20% of Coloureds and 40% of Indians have this real monthly income or more, whilst the equivalent proportion of whites is just under 80%.<sup>26</sup>
- The Eastern Cape and Limpopo have the highest proportion of poor people, with 77% and 72% of their population respectively living below the poverty line. The Western Cape has the lowest proportion of people living in poverty (32%), followed by Gauteng (42%). In 2001, 25% of South Africa's poor lived in KwaZulu- Natal and 20% in the Eastern Cape.<sup>27</sup>
- The IJR's Economic Transformation Audit of 2004 found that the trend of increasing inequality within each population group is particularly acute within the black population. This is underscored by the Theil index<sup>28</sup> that shows a declining share of between-group inequality from 62% to 40% between 1975 and 2001, whilst within-group inequality rose from 38% to 60% during this period.<sup>29</sup> According to van der Berg & Louw<sup>30</sup>, the Gini coefficient within the black population was 0.49 in 1975; 0.56 in 1993, and in 2000 it was 0.59. The HSRC estimates an even higher Gini coefficient for the black population which rose from 0.62 in 1991 to 0.72 in 2001. The growth in inequality can probably be ascribed to the higher incomes earned by black unionised workers and more latterly by the emergent black middle class on the one hand, and growing unemployment among the lower deciles of the black population on the other.
- The main cause of black poverty is unemployment, which increased for the black population from 36.2% in 1995 to 46.6% in 2002<sup>31</sup>. Less than 10% of the total number of people in the poorest decile of the population is employed compared with more than half of the total number of people in the top income decile.
- South Africans who belong to unions are much less likely to be poor than those who do not: only 2% of trade union members were classified as poor in 2000<sup>32</sup>. Another cause of poverty is evidently family size. More than 40% of the people in the poorest decile are below the age of 15 compared with less than 0% of the top income decile.



<sup>25</sup> Mail & Guardian. 2004. [Available] online: <www.mg.co.za>, 21 July 2004.

<sup>26</sup> Leibrandt, M., Naidoo, P., Poswell, L., Welch, M. and Woolard, I. 2004. "South African Poverty and Inequality: Measuring the Changes in *Taking Power in the Economy: Gains and Directions*. The Institute for Justice and Reconciliation: Economic Transformation Audit 2004.

<sup>27</sup> Leibrandt et al.

<sup>28</sup> The Theil index is a measure that allows national inequality to be broken down into a contribution due to inequality within groups and a contribution due to inequality between groups.

<sup>29</sup> Leibrandt, et al.

<sup>30</sup> Van der Berg, Servaas & Louw, Megan. 2003. "Changing Patterns of South African Income Distribution. Towards Times Series Estimates of Distribution and Poverty". Paper delivered to the *Conference of the Economic Society of South Africa*. Stellenbosch: 17-19 September.

<sup>31</sup> Haroon Borat. 2003. Unpublished document, based on October Household Survey 1995 and Labour Force Survey February 2002, University of Cape Town. Quoted by Servaas van den Berg in *Cape Times*, 27 February 2004.

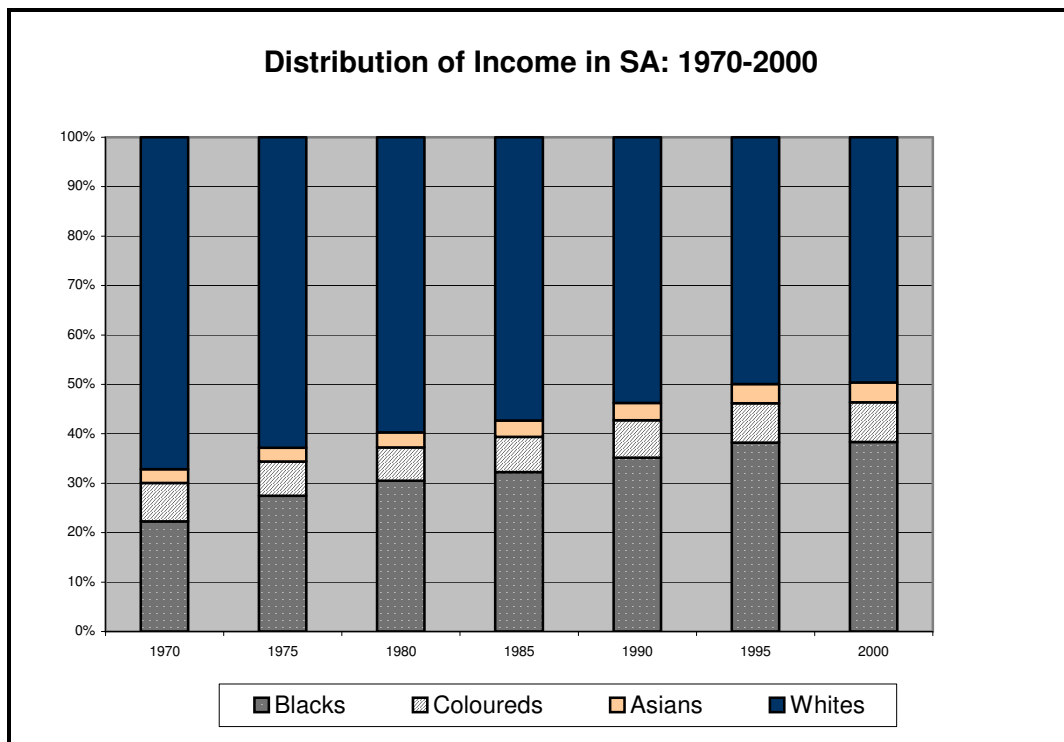
<sup>32</sup> Van den Berg, Servaas & du Plessis, Stan. 2004. *Cape Times*, 27 February.



**The redistribution of income has probably slowed down since 1994**

According to a study by Servaas van den Berg and Megan Louw<sup>33</sup> the steady redistribution of racial income that took place between 1970 and 1995, actually appears to have slowed down between 1995 and 2000 (although van der Berg and Louw warn that statistics for the period after 1996 may be unreliable).

- Between 1970 and 1995 the black share of income rose from 22.3% to 38.2% but then increased only to 38.3% in 2000.
- The white share of income declined from 67% in 1970 to 49.9% in 1995. Between 1995 and 2000 the decline in the white share of income slowed to 0.3% - to 49.6% - compared to an average decline of 3.4% for each of the five-year periods between 1970 and 1995.
- Between 1970 and 1995 coloured share of income increased from 7% to 8% and then between 1995 and 2000 to 8.1%. Indian income increased from 2.8% in 1970 to 3.8% in 1995 and then to 4% in 2000.
- The IJR’s Economic Transformation Audit<sup>34</sup> also reports that the share of income for the Black group rose strongly between 1970 and 1996, but that the long-term shift of share in income to the African group was halted between 1996 and 2001. Whilst the white and Indian shares of total income increased between 1996 and 2001 from 47% to 48% and from 5% to 6% respectively, the Black’s share of income remained at 38% during this period.
- The disparity between mean white income per person and income per Black and Coloured person widened between 1996 and 2001, after 26 years of narrowing. The disparity between incomes decreased between 1970 and 1996, whilst white per capita income increased from nine times higher than Black income in 1996 to 11 times higher in 2001. The disparity between coloured and white also increased between 1996 and 2001, while the Indian/white disparity ratio remained the same.<sup>35</sup>



<sup>33</sup> Van der Berg, Servaas and Louw, Megan. 2003. "Changing patterns of South African income distribution: Towards time series estimates of distribution and poverty." Paper to the *Conference of the Economic Society of South Africa*. Stellenbosch, 17-19 September 2003.

<sup>34</sup> Leibbrandt, et al.

<sup>35</sup> Leibbrandt, et al.

***The emergent black middle class is the largest component in an increasingly multiracial national middle class.***

Transformation is succeeding with its goal of establishing a black middle class.

- Extrapolating from data provided by van der Berg and Louw<sup>36</sup>, the top decile of the black population had a per capita income of R36 000 in 2000 – which is more than the per capita incomes of the bottom four deciles in the white population.
- Using the same data it would appear that there are about 7.5 million South Africans who have per capita incomes over R35 000 per annum. This number includes 3.5 million Black South Africans (10% of the black population); 3.25 million Whites (60% of the white population); half a million Coloureds (15% of the population); and a quarter of a million Indians (25% of the Indian population).
- In a 2003 study, Pierre du Toit and Hennie Kotzé found that what they described as ‘the new middle class’ had increased considerably between 1994 and 2000. According to them the percentage of the total population in the middle class increased from 8.8% in 1994 to 11.9% in 2000. Most of the increase was due to the rapid growth of the black middle class which more than doubled from 3.3% of the total black population in 1994 to 7.8% in 2000. This meant that blacks comprised 49% of the middle class in 2000, compared with 34% for whites (drawn from the 2<sup>nd</sup> – 4<sup>th</sup> income quintiles); 5% Indians and 12% Coloureds. In 1994 blacks comprised 29% of the middle class, coloureds 11%, Indians 7% and whites 53%.<sup>37</sup>
- According to the IJR’s Economic Transformation Audit, there is a general trend of upward mobility of Blacks into the top sections of the income distribution. The percentage of Blacks in the upper six deciles has increased between 1996 and 2001, with an increase of 7% in the second highest decile during this period. The share of Black income in the lower deciles remained fairly constant over the period which helps to explain some of the widening inequality within the Black group. The shares of coloureds and Asians, and of whites in the bottom 8 deciles, remained fairly constant during this period, while the white population experienced a decrease in the shares of the upper two deciles.<sup>38</sup>
- A study conducted by Prof Helgard van Wyk from the Bureau for Market Research (BMR)<sup>39</sup> shows that the number of black households in the high-middle and high income groups increased by 368% to 440 000 between 1998 and 2004. During the same period, the number of white households in the same category increased by 16% to 642 000. The research also shows that whilst white households in the lowest income group increased by 30%, black households in the same category decreased by 16%.
- The BMR forecasts that by 2007, black households will have a larger share of personal disposable income (46.5%) than whites (40.4%), which is a turn-about from 1960 when whites earned 69.4% of the total income and blacks a mere 23%.
- According to a survey by the University of Cape Town’s Unilever Institute for Strategic Marketing, the income of black middle class households increased by 368% between 1998 and 2004<sup>40</sup>.
- This UCT survey also showed that the emerging black middle class is responsible for nearly a quarter of South Africa’s annual cash buying power of R600 billion<sup>41</sup>.
- The latest All Media Products Survey (Amps) shows a 30% (420 000) increase in the black middle class in 2005 alone<sup>42</sup>.

<sup>36</sup> Van der Berg, Servaas and Louw, Megan. 2003.

<sup>37</sup> Du Toit, Pierre. 2004. *Affirmative Action and the Politics of Transformation: A Survey of Public Opinion*. The FW de Klerk Foundation. March 2004.

<sup>38</sup> Leibbrandt, et al. 2004.

<sup>39</sup> Visser, A. 2005. “Nie-wit Superrykes meer as Wittes” in *Die Burger*, 1 February.

<sup>40</sup> Finance24. 2006. *Super-groei vir swart middelklas*, 1 Maart 2006. Online. [Available]: [http://www.news24.com/Finance/Sake/Ekonomie/0,,1518-6-98\\_1890513,00.html](http://www.news24.com/Finance/Sake/Ekonomie/0,,1518-6-98_1890513,00.html) (March 2006).

<sup>41</sup> Business Report. 2006. *South Africa hit by black consumer boom*, 26 March 2006. Online. [Available]: <http://www.busrep.co.za/index.php?fArticleId=3175417> (April 2006).

<sup>42</sup> Finance 24, 2006.

## ***Anticipating the impact of the rising black middleclass on the distribution of income***

Data on the distribution of income is normally based on either statistics from the national census, or the so-called "October Household Surveys". These polls are not held regularly, and income distribution date therefore tends to be outdated for long periods between surveys. The latest available date on income distribution in South Africa is 2001. Given the levels of economic growth and the momentum gained by black economic empowerment and other transformation initiatives over the last five years, we may see significant changes in these statistics as new data becomes available. The rise in the black middle class, coupled with high levels of unemployment (generally associated with high levels of poverty) can be expected to reinforce the trend of rising inequality within the black group.



When considering the representivity of the South African labour market, the Department of Labour compares the participation of different racial and gender groups in different levels of management and occupation with their share of the economically active population (EAP). Black people constitute the majority of the EAP (87.6%), with Whites only constituting 12.4%. Males and females are almost evenly distributed – respectively constituting 54% and 46% of the EAP. Key findings from the 2002/3 and 2004/5 Employment Equity Reports are summarised below.

### ***Black South Africans and women are still seriously under-represented in top and senior management posts.***

The key findings of the 2002/3 Employment Equity Report prepared by the Commission for Employment Equity for the National Department of Labour were as follows:

- While blacks constituted the majority of the total workforce covered in Employment Equity Reports, their representation in key positions remained very low.
- Black people only accounted for 19% of all top management positions (of which only 4% were black females)
- Blacks accounted for 22% of all senior management positions (of which only 5% were black females)
- Blacks accounted for 31% of professionally qualified positions, with black females contributing 10% to this total
- Blacks accounted for 83% of unskilled employees
- (Black and white) Females remain under-represented in top positions, accounting for only 14% of all top management positions and 21% of all senior management positions
- Data on people with disabilities remains unsatisfactory. Available data suggests that people with disabilities represent about 1% of the total workforce. People with disabilities accounted for only about 1% of all recruits and 0.5% of all promotions.

In the Commission for Employment Equity's Annual Report for 2004/5, progress was noted in the following areas:

- The representation of black people in the three highest occupation levels (Top, Senior, Professional and Middle Management) has marginally improved and is now at 21.1% (Top Management), 25.7% (Senior Management) and 51.2% (Professionally Qualified and Middle Management).

- The representation of black females improved marginally and black women now account for 4.4% of Top management positions, 6.6% of senior management positions and 22.2% of professionally qualified employees.
- The representation of women (black and white) in top- and senior management improved to 15.1% and 23.7% respectively.

The under-representation of women in all management positions was confirmed in a 2005 census by the Businesswomen's Association<sup>43</sup>, which showed that:

- Although women represents 52.1% of South Africa's adult population and 41.3% of the worker population; only 19.8% of all executive managers, 10.7 % of all directors, and 6.2% of all chief executive officers and board chairs are women. The figure for women executive managers and directors increased by respectively 5.1 and 3.6 percentage points from 2004.
- Women held only 306 of a total of 2851 directorships, whilst 48.4% of these directorships were held by black women, 43.8% by white women, 4.6% by coloured women and 3.2% by Indian women.

***There is not enough progress with regards to black participation in professional, technical and middle management posts.***

In 2002 Black South Africans comprised:

- 65% of employees in the professions (Africans 50%, Coloureds 11%, Indians 4% and women of all races 53%);
- 50% of professionally qualified and middle management posts (Africans 40%, Coloureds 6%, Indians 4% and women of all races 38%);
- 59% of the positions in the technical and associated professions (Africans 41%, Coloureds 10%, Indians 8% and women of all races 46%);
- The IJR's Transformation Audit reports<sup>44</sup> that when the 2003 data is taken by occupational category, altogether 56% of all professionals are African (Africans, Indian and Coloured) and that 41% of professionals are African according to the 2003 Labour Force Survey. There were 74% more Black professionals in 2003 than in 1995.

In the Commission for Employment Equity's Annual Report for 2004/5, changes were noted in the following areas:

- Black South Africans now account for 65.9% of professionals (Africans 26.3%, Coloureds 15.3%, Indians 4.4%)
- Female participation in the professions decreased to 43.8%
- Black South Africans now account for 51.2% of professionally qualified and middle management posts (Africans 38.8%, Coloureds 6.5%, Indians 5.9% and women of all races 38.4%).
- The participation of black South Africans in technical and associated professions decreased to 50.6% (Africans 29.8%, Coloureds 11.9%, and Indians 8.9%)
- Female participation in technical and associated professions also decreased to 40.4%

***There are few indications that White South Africans have been disproportionately disadvantaged in employment practices – except in the area of management terminations and promotions.***

According to the Commission for Employment Equity in 2002 Whites accounted for<sup>45</sup>

- 27% of all recruitment, compared with Africans 51%; Coloureds 16%, Indians 6% and women of all races 43%;

<sup>43</sup> Mail & Guardian. 2005. *SA women hold less than 20% of top jobs*, 20 April 2005. Online [Available]: <www.mg.co.za>

<sup>44</sup> Bodibe, L. & Mhango, C. 2004. "Briefing 2: Employment Equity: Uneven Progress" in *Taking Power in the Economy: Gains and Directions*. The Institute for Justice and Reconciliation: Economic Transformation Audit 2004.

<sup>45</sup> Horwitz, F.M. & Bowmaker-Falconer, A. 2003. "Managers" in HRD Review. [Online] Available: <http://hrdreview.hsrc.ac.za> [September 2004]

- 30% of promotions, compared with Africans 53%, Coloureds 12%, Indians 5% and women of all races 31%; and
- 25% of employees, whose services were terminated, compared with Africans 62%, Coloureds 10%, Indians 3% and women of all races 26%.

The following changes were noted in the 2004/5 Employment Equity Report.

- Whites accounted for 19.1% of all recruitment, compared with Africans 59.9%, Coloureds 16.2%, Indians 4.8% and women of all races 42.5%
- Whites accounted for 23.81% of all promotions, compared with Africans 43.4%, Coloureds 27.41%, Indians 5.4% and women of all races 41.2%
- Whites accounted for 24.1% of employees whose services were terminated, compared with Africans 54.8%, Coloureds, 16.4%, Indians 4.8% and women of all races 37.6%

According to the Breakwater monitor reports approximately 65% of all managers recruited in 1999-2000 were white. During the same period white managers accounted for 70% of promotions and for 82% of the management terminations – thus opening the way to more black empowerment managerial appointments.<sup>46</sup>

***The Public service has made substantial progress in achieving employment equity goals.***

The Public Service, which employs over a million people, has predictably been a pacesetter in the implementation of employment equity.<sup>47</sup>

- Black representation in the public sector increased from 76% in 1995 to 86% in 2001.
- By 1998, 60 000 public servants – including many senior and middle level white officials – had accepted retirement packages from the Public Service. By 2002 this figure had increased to 120 000.<sup>48</sup>
- Between 1995 and 2001 the proportion of Black managers in the public service increased from 30% to 51% and that of Coloured and Indian managers, from 10 to 12%.
- During the same period the proportion of senior Black managers increased from 37% to 55%, and the proportion of Blacks in middle management from 41% to 64%.
- The proportion of women managers increased from 17% in 1995 to 35% in 1999. This figure, however, dropped between 1999 and 2001.
- By 2001 the overall composition of the Public Service closely reflected the composition of the population as a whole.

***The Public Service has experienced some management and delivery problems:***

- a quarter of the government's procurement budget is spent on consultants (who are often retrenched former public servants);
- a third of the state's 163 agencies were not in a position to present their accounts to the Auditor-General; and
- the welfare department has lost more than 15 billion rand through fraud and corruption<sup>49</sup>.

### **6.3. Ownership of the Economy**

A substantial increase in Black ownership of the economy is a central goal of transformation. After ten years of the new South Africa it is possible to reach the following broad conclusions in this regard:

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<sup>46</sup> Horwitz, et al.

<sup>47</sup> Bodibe, L. & Mhango, C. 2004.

<sup>48</sup> Giliomee, Hermann. 2004, *Die Burger*, 20 July.

<sup>49</sup> Giliomee, Hermann. 2004, *Die Burger*, 20 July.

***Efforts to increase black share ownership in companies listed on the Johannesburg Securities Exchange have been disappointing.***

- According to McGregor's 'Who owns whom in South Africa', Blacks owned only 4% of the shares on the JSE compared with 69% for Whites and 27% for foreign interests. Much of the foreign-owned equity represented former South African companies that had listed overseas since 1994.
- However, these figures do not include shares owned in listed companies by state owned corporations, or the black interest represented by pension funds, insurance companies and other institutional investors.
- Black controlled companies accounted for about 7% of market capitalisation in 1998, which then declined rapidly to 2.2% in 2002. In 2006, BusinessMap however reported that 10% of the JSE by value is currently in black hands<sup>50</sup>.
- BEE transactions involved investment portfolios rather than operational control over productive assets, since it is estimated that over 80% of the 260 'previously disadvantaged individuals' that held 367 directorships in 387 JSE listed companies in September 2002 were non-executive.<sup>51</sup>
- The Public Investment Commission, which is responsible for investments on behalf of the Government Employees Pension Fund, now has funds totalling R378 billion under its management. Even though only a third of these funds are invested on the JSE they already represent 7% – 8% of the total share value. Presumably a considerable portion of these funds is invested on behalf of black public servants<sup>52</sup>.

***Black shareholding is likely to increase during the next few years.***

- In 2005, McGregor predicts that black shareholding will increase to 6% by 2007 and that foreigners will increase their shareholding from 27% to 45%. These figures have already been exceeded.
- During 2003, black shareholding on the JSE grew by 2,3% as a result of empowerment deals amounting to more than 42.2 billion rand<sup>53</sup>. At that rate, the BEECom target of 25% black ownership of the shares on the JSE should have been reached by 2013. BEE deals to the value of R62 billion in 2004, and R55 billion in 2005 has however already speeded up this process, increasing black shareholding in the JSE by 3% during 2005.
- Black shareholding should increase quite substantially with the implementation of various sectoral charters during the next ten years.

***Thus far, the main beneficiaries of empowerment transactions have been a small number of black businessmen.***

- 60% of empowerment deals during 2003 (R25.3 billion) accrued to the companies of two men, Tokyo Sexwale and Patrice Motsepe. Tokyo Sexwale's Bathos Bonke company derived 10 per cent of the value of the ABSA empowerment deal which was valued at between R3.5 and R5 billion, compared with only 1% that was set aside for workers as part of an employee shareholder initiative.<sup>54</sup>
- Eight individuals (one of them white) will, between them, benefit by one billion rand from the recently announced Standard Bank BEE deal. Cyril Ramaphosa and Saki Macozoma will each make R192 million from the transaction.
- The directors of MTN have received 70% of the benefit arising from the empowerment purchase by their company Newshelf 664 of Transnet's 18,7% interest in MTN at the end of 2002. Phuthuma Nhleko owns 7,9% of Newshelf valued at R655 million. Three other black directors of Newshelf 664 have shares valued at R456 million each.

<sup>50</sup> Mametse, D. 2006. "Darkies not quite taking over the JSE". Moneyweb, 15 March 2006. Online. [Available]: [www.moneyweb.co.za](http://www.moneyweb.co.za) (April 2006).

<sup>51</sup> Gelb, S. 2004. "Economic Growth and Development" in *Taking Power in the Economy: Gains and Directions*. The Institute for Justice and Reconciliation: Economic Transformation Audit 2004.

<sup>52</sup> This Day, 5 August 2004

<sup>53</sup> Ernst & Young Management Services quoted in 'This Day' on 8 April 2004.

<sup>54</sup> This Day, 8 April 2004

- In November 2004 it was announced that 15.1% of Telkom would be sold to a consortium including Andile Ngcaba (Chairman of Didata and former DG of Department of Communications), Gloria Serobe (former FD of Transnet), and Smuts Ngonyama (ANC spokesman and head of the presidency) and not previously famous for his corporate finance skills). This consortium would buy the 15.1% share of Telkom owned by Thintana (the former US-Malaysian strategic equity partner). There were rumours that the Public Investment Corporation was involved in the deal.
- This situation has been the cause of considerable introspection within the Black community – and particularly within COSATU which insists that workers should derive greater benefits from the process.

***Very little progress has been made with land redistribution in South Africa.***

Although the Black Economic Empowerment Commission set the goal of transferring 30% of the productive land of South Africa to Black South Africans by 2011, little has been achieved:

- 70% of productive agricultural land remains in the hands of Whites;
- The Government's land programmes have succeeded in redistributing less than 3% of the country's land;
- In July 2004, the Minister of Agriculture, Thoko Didiza, announced a draft agricultural charter that set goals for Black South Africans to own 35% of agricultural business by 2008 and 50% of farmland by 2014. Farmers were expected to procure 70% of their inputs from black-owned companies by 2015 and to make 10% of their farmland available to their farm workers for their own crops and livestock. The proposals drew a negative response from farmers' organisations, which complained that they did not reflect consultations that had taken place, that the goals were unrealistic and created expectations that could not possibly be met.
- The government recently announced steps to make more than 15 million hectares in the former homelands available for freehold ownership.
- It remains to be seen whether the government's policy shift away from the "willing buyer, willing seller" principle will produce significantly better results.

## **6.4. Control of the Economy**

One of the central goals of black economic empowerment is to ensure that the economy is controlled by the majority of the population. Control of the economy should not be confused with ownership of shares listed on the JSE, since such companies represent only a relatively small portion of total economic activity in the country. The following developments have taken place in this regard since 1994:

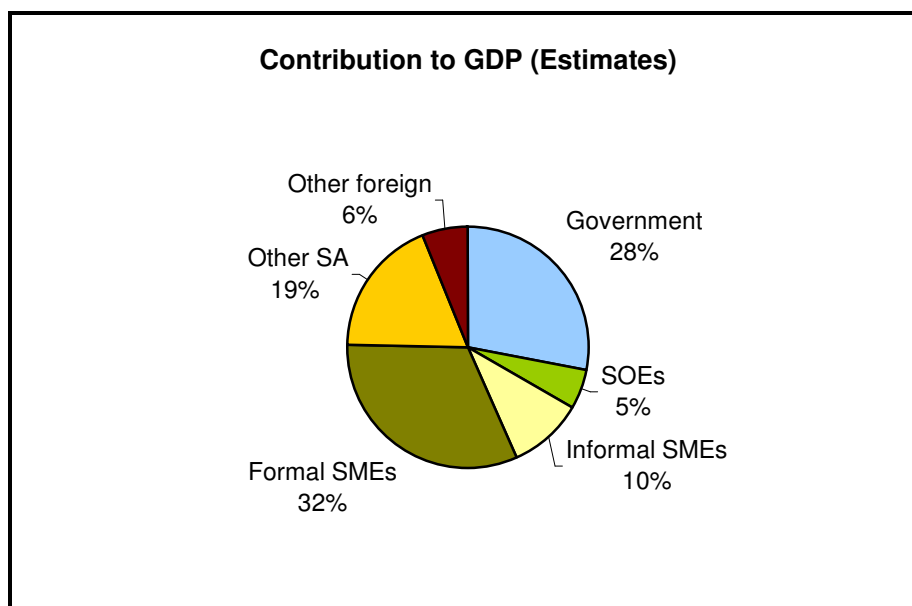
***Black South Africans have made very substantial progress in achieving control over the economy.***

- Black South Africans control virtually all levels of government and of public administration representing 28% of GDP.
- Black South Africans control and direct state economic, fiscal, commercial, labour and industrial policy.
- Small, medium and micro enterprises account for 42% of GDP and employ more than half of the people in the private sector in some 3 million enterprises.<sup>55</sup> This sector includes the informal sector which is estimated to account for 10% of GDP and which is owned overwhelmingly by black South Africans.
- Black South Africans control extensive state owned enterprises, which, together, contribute 5.4% of the GDP. Four SOEs - Telkom, Eskom, Denel and Transnet – account for more than 90% of SOE activity.
- A significant part of the remaining economic activity is controlled by foreign owned companies, including 27% of the shareholding on the JSE. Foreign direct investment amounted to R 371

<sup>55</sup> South African Government. 2004. [Online] Available: <[www/info.gov.za/yearbook/2001/economy.html](http://www.info.gov.za/yearbook/2001/economy.html)>

billion at the end of 2001<sup>56</sup> compared with a JSE capitalisation of R 1.7 trillion. However, many other foreign owned companies with extensive activities in South Africa are not listed on the JSE – especially those companies that dominate the automobile and oil sectors.

- Increased black participation in top, senior and middle management of enterprises (as discussed in section 6.2) promotes black influence in decision-making in the economy – thus extending black control over the levers of the economy.



## 6.5. Human Resource Development

It is widely recognised that the success of the transformation project in South Africa is dependent on the success of our attempts to improve the knowledge and skills of the participants in the South African economy. The following developments have taken place in the sphere of human resource development:

### ***There is a significant skills shortage in South Africa.***

Despite the high general unemployment level in South Africa there is a significant shortage of skilled workers.

- According to an analysis by Iraj Abedian of the Standard Bank there are at least 300 000 vacancies for skilled employees in the private and public sectors.
- Two-thirds of the total value of all goods and services produced in South Africa is produced by the most highly skilled sector of the economy.<sup>57</sup>
- The occupations where there were the greatest shortages in 2000 were technicians, craft workers, managers, service and sales staff, professionals and operators.<sup>58</sup>
- South Africa has an over-supply of unskilled labour whilst it is experiencing a serious shortage of skilled workers. The increase in the unemployment rate for students with tertiary education indicates that the shortage is skills-specific.<sup>59</sup>
- Between 1995 and 2002 changes in the occupational composition of employment varied between the population groups. Whilst the share of skilled workers in the African group remained at 5% during this period, the share of skilled workers within the white group increased from 23% to 33%. The share of semi-skilled workers in the African group increased

<sup>56</sup> Sixth Census of foreign liabilities, investments and assets, 31 December 2001, South African Reserve Bank.

<sup>57</sup> This Day, 19 April 2004.

<sup>58</sup> Kraak, A. 2003. "HRD and the Skills Crisis" in *Human Resources Development 2003*. Published by HSRC. [Online] Available: <http://hrdreview.hsrc.ac.za>

<sup>59</sup> Burger, Rulof. 2004. "Changing Dynamics of Employment: What Drives the Post-Apartheid Labour Market?" in *Taking Power in the Economy: Gains and Directions*. The Institute for Justice and Reconciliation: Economic Transformation Audit 2004.



from 54% to 61% whilst the share of these workers dropped in the white group from 74% to 65%.<sup>60</sup>

Occupational composition of employment by population group, 1995 and 2002

	Year	Skilled	Semi-Skilled	Unskilled
African	1995	5%	54%	41%
	2002	5%	61%	34%
Coloured	1995	4%	56%	40%
	2002	6%	60%	34%
Indian	1995	17%	75%	7%
	2002	27%	67%	6%
White	1995	23%	74%	3%
	2002	33%	65%	2%
Total	1995	9%	59%	32%
	2002	11%	62%	27%

***Despite the allocation of more resources to schools, South Africa is a poor performer in national and in world terms.***

The IJR's Transformation Audit of 2004<sup>61</sup> reveals that international tests indicate that South African students perform weakly, even when compared with much poorer countries with far fewer resources than those that were available to African schools under apartheid.

- Tests conducted in 2000 by the Southern African Consortium for Monitoring Educational Quality in 11 Southern African countries revealed that South African students performed extremely weak in literacy and mathematics. South Africa's Grade 6 reading comprehension and mathematics scored the third worst on both tests.
- South Africa scored 275 for mathematics and 243 for the science section in the Grade 8 Mathematics and Science Study conducted in 2003, whilst the mean score for all 38 countries that participated was 487 and 488 respectively.
- The Monitoring Learning Achievement Study conducted in 1995 found that South African Grade 4 students performed by far the worst of 12 African countries in terms of numeracy. The numeracy score of 30% was well below that of the second lowest country and South Africa outperformed only 3 of the 12 countries in the literacy test.
- Only 27% of all matrics passed mathematics at some level in 2002, - only 4.6 % of all matriculants passed HG whilst another 23% passed Standard Grade mathematics.
- Fewer than 22% of all matrics passed physical science in 2002.
- Only 50% and 42% of all teachers teaching mathematics and science, have studied these subjects beyond secondary-school level.

The Western Cape Education Department released statistics on the literacy and numerical skills of Grade Three learners in the Western Cape<sup>62</sup>. The study showed that only 39.5% of Grade Three pupils passed the literacy test conducted in November 2004, which increased by 3 percentage points from 2002; and only 37.3% met the numerical requirements, an increase of 4 percentage points from 2002. According to the study most of the Grade Three pupils were only as literate as Grade Ones and met the numerical levels of Grade Ones.

<sup>60</sup> Burger, Rulof. 2004.

<sup>61</sup> Van der Berg, Servaas. 2003. "Education: The Crisis in Schooling" in *Taking Power in the Economy: Gains and Directions*. The Institute for Justice and Reconciliation: Economic Transformation Audit 2004

<sup>62</sup> Merton, M. 2005. "Taakspan van WKOD gaan help ingryp by skole na studie" in *Die Burger*, 25 Mei 2005.

Kassiem, A. 2005. "Over 50% of Grade Three pupils fail at three Rs" in *Cape Times*, 25 May 2005.

***The pattern of matriculation results highlights large inequalities in performance in spite of a more equitable allocation of resources across schools.***

South Africa's pattern of matriculation results fails to reflect the major progress made towards more just allocation of resources, funds and teachers, and in opening access to all. An analysis of the 2003 matriculation results by the IJR's Economic Transformation Audit of 2004<sup>63</sup>, exposes some troubling trends.

- Inequality in terms of the quality of matric passes is still acute between different population groups. Although Blacks now constitute 71% of all matrics that passed in 2003, only 5.2% of the whole Black cohort achieved results that would gain them university entry; whilst 35.9% of the white cohort and 42.1% of the Indian cohort passed with endorsement. White students achieved 97% of the A+ (90% and higher) aggregates for the 2003 matric examination (although they represent only 13% of total candidates for the examination), and Blacks received 88% of the F aggregates and comprised 95% of candidates who failed.
- Previously disadvantaged schools continue to produce the highest number of matric failures. Black pupils that attend formerly white schools outperform Black pupils that attend previously Black schools, despite more funding allocated to the latter. The percentage of Blacks in formerly white schools that passed matric (62.4%) and passed with endorsement (26.3%) in 2003 is considerably higher compared with Black students in formerly Black schools that achieved a 54.5% pass rate and an 11.4% endorsement rate. Deracialisation and large resources shifts thus gave rise to little improvement as the matriculation pass rate in 1994 was 49% for Blacks and 97% for whites.
- Matriculation performance differs acutely between the provinces and poor matriculation performance was the most severe in the poorest provinces. Whilst Gauteng and the Western Cape had the highest matriculation pass rates at 40.6% and 40.3% respectively, poorer provinces such as the Eastern Cape and Limpopo had much lower pass rates at 21.6% and 33.6%.

***Black South Africans are acquiring post matriculation qualifications at a faster rate than other South Africans and now comprise more than 60% of university and technikon students.***

- The number of graduates from South African universities doubled from 478 198 in 1992 to 975 993 in 2001.<sup>64</sup>
- In 2003 blacks comprised 38% of all South Africans with post matric qualifications compared to 29% in 2000 - the number of blacks with post matric qualifications increased by 29%.
- The proportion of university qualifications awarded to black students increased from 37% in 1992 to 53% in 2001 while those awarded by technikons to black students increased even more rapidly from 24% to 74%.<sup>16</sup>
- The number of black students enrolling at university and technikons increased by almost 101% between 1993 and 2002. By 2002 they comprised 60% of the total – compared with 40% in 1993. The number of coloured student enrolments increased by 34% between 1993 and 2002, but their share of the total number of students declined very marginally from 5.9% to 5.8%. The number of Indian students increased by 45% during the same period and their share of the total increased slightly from 6.6% to 6.9%.
- The number of white students enrolled at university and technikons declined by 20% between 1993 and 2002 and their share of the total plummeted from 46.2% to 26.8%.<sup>65</sup>
- According to a survey conducted by the Institute for Race Relations, the number of Black graduates increased by 259% between 1991 and 2002, Indians by 104%, and coloured graduates by 27% and the number of white graduates declined by 11%.<sup>66</sup>

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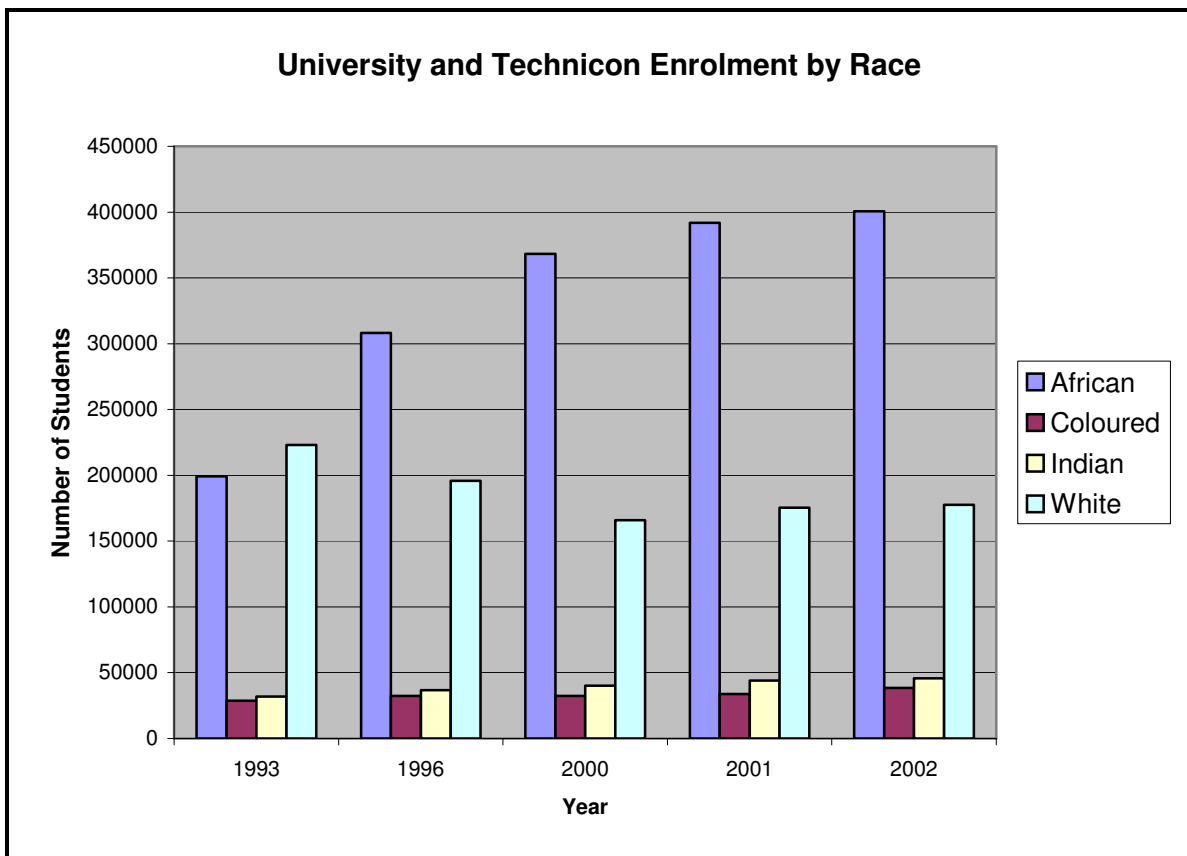
<sup>63</sup> Van der Berg, Servaas. 2003.

<sup>64</sup> SA Department of Education National Learners Database, based on statistics from the SA Qualifications Authority.

<sup>16</sup> SA Department of Education National Learners Database, based on statistics from the SA Qualifications Authority.

<sup>65</sup> Subotzky, G. 2003. "Public Higher Education" in *Human Resources Development 2003*. Published by HSRC. [Online] Available: <http://hrdreview.hsrc.ac.za>.

- The FET<sup>67</sup> college sector has also been accompanied by a substantial rise in enrolments, especially of African students. FET college enrolments of African students increased from 12% of total enrolments in 1990 to 75% in 2000. During the same period white enrolments decreased from 68% to 18%.<sup>68</sup>



***The fields of study in which South Africans are acquiring post matric qualifications do not meet the needs of the economy.***

In 2001, only 26% of enrolments in public higher education institutions were in the sphere of science, engineering and technology whereas the greatest need reported by South African companies in 2000 was for professionals, technicians, craftsmen and operators.

- In 2002, Black students (53% of all students enrolled) made up 25% of business and commerce graduates, 28% of computer science graduates, 22% of engineering graduates; 69% of public administration and 84% of education graduates. 16% of Black students obtained degrees in natural sciences as opposed to 31% of Indians, 29% of whites, and 22% of coloureds.
- Indians (9% of university students) accounted for 15% of business, commerce and management science graduates, 12% of medical graduates, and 11% of engineering graduates.
- Coloureds (5% of university students) accounted for 3% of engineering graduates, 4% of mathematical science graduates, 9% of public administration and 7% of psychology graduates.
- Whites (33% of university students) accounted for 18% of public administration graduates, 11% of education graduates, 56% of commerce and business graduates; 55% of computer

<sup>66</sup> South African Institute for Race Relations, SA Survey 2003

<sup>67</sup> The FET sector consists of all education and training from National Qualifications Framework (NQF) Levels 2-4 (the equivalent of Grades 10 to 12) and National Technical Certificate 1 to 3 in FET colleges.

<sup>68</sup> Gewer, Anthony. 2004. "Briefing 2: Further Education and Training: Restructuring and Responsiveness" in *Taking Power in the Economy: Gains and Directions*. The Institute for Justice and Reconciliation: Economic Transformation Audit 2004.

science graduates, 65% of engineering graduates, and 48% of mathematical science graduates.<sup>69</sup>

- The number of graduates in the financial sector increased from 75 178 in 1991 to 158 891 in 2001 in the accounting, business management and commerce disciplines. However, of these over 14 498 were unemployed of whom 69% were black.<sup>70</sup>

### Headcount enrolments by major field of study in public higher education institutions in 2001<sup>71</sup>

Institutions	Major Field of Study				Total
	Science, Engineering & Technology	Business & Management	Education	All other Humanities & Social Sciences	
<b>Universities</b>	98728	92147	109821	148171	448868
<b>Technikons</b>	71071	102162	12271	30994	216499
<b>Total</b>	169800	194310	122093	179164	665367
	26%	29%	18%	27%	100%

### ***South Africa is not doing well in entrepreneurship development.***

According to the 2003 Global Entrepreneurship Monitor South Africa slipped from 19<sup>th</sup> to 22<sup>nd</sup> position out of the 32 countries that were surveyed. It was the only developing country, which recorded a lower ranking in the 2003 survey. South Africa fared badly, not only with regard to entrepreneurial activity in the establishment of new businesses but also with regard to entrepreneurial activity in existing businesses. The poor performance was ascribed to inadequate education and lack of finance as well as by ineffective government support for small businesses<sup>72</sup>.

The GEM's Total Entrepreneurial Activity (TEA) index<sup>73</sup>, which measures the proportion of a country's adults who are involved in starting or running new businesses, illustrates that South Africa's TEA rate is substantially below the average for developing countries. In 2004, South Africa scored a low 5.4% compared to the average of 21.2% for the other developing countries. This poor TEA rate is largely due to South Africa's poor start-up activity rate which dropped from 4.7% in 2002 to 2.7% in 2003. During the same period South Africa's start-up ranking fell from 15<sup>th</sup> out of 37 to 24<sup>th</sup> out of 31.

### ***South Africa is experiencing a disturbing loss of skilled manpower through emigration.***

South Africa has been experiencing a brain drain since the 1990s<sup>74</sup>. At the same time, the flow of skilled immigrants into the country has slowed down.

- According to a study in 2001 by the SANSA project at UCT over 233,000 South Africans emigrated permanently to five countries - the United Kingdom, the USA, Canada, Australia and New Zealand - between 1989 and 1997.<sup>75</sup> This represents a rate during this period of almost 30 000 emigrants per annum.
- 2% of the respondents to a recent survey on the 'emigration potential' of skilled South Africans reported that they had a 'very high potential' to emigrate and 10% had a 'high potential'. It was not only whites who were potential emigrants: 1% of black respondents had a 'very high' potential to emigrate and 4% had a 'high potential' to do so.

<sup>69</sup> South African Institute for Race Relations, SA Survey 2003.

<sup>70</sup> Shubash Lalloo, Industrial Development Corporation, 6 July 2004

<sup>71</sup> Department of Education. 2003. Education Statistics in South Africa at a Glance in 2001.

<sup>72</sup> Hancock, M. & Fitzsimons, P. 2004. "National and Regional Summaries" in the *Global Entrepreneurship Monitor* 2004. [Online] Available <<http://www.gemconsortium.org/download.asp?fid=386>>

<sup>73</sup> Global Entrepreneurship Monitor. 2003. *South African Executive Report*, 2003. [Online] Available <<http://www.gemconsortium.org/download/1114779494453/GEM%202003%20Update.pdf>>

<sup>74</sup> According to Bailey (2003) the primary reasons why skilled South Africans emigrate have to do with concerns about crime and violence, poor economic growth rates, the decline in public services in the country, and lucrative job opportunities overseas. The globalising labour market for highly skilled professionals is also impacting on skills migration trends.

<sup>75</sup> Jonathan, C., McDonald, D., Williams, V., Mattes, R., Richmond, W., Rogerson C.M., and Rogerson, J.M. 2001. "Losing our Minds: Migration and the 'Brain Drain' from South Africa", 10 October 2001.

- Between 1994 and 2001, the percentage of enterprises that regarded the emigration of skilled manpower as “significant” rose from 2% to 33%.
- The sectors of the economy that were most concerned about emigration were education and health (59%), business services (47%), banking and finance (43%), computers and IT services (35%) and industrial high tech (35%).

The Southern African Migration Project<sup>76</sup> conducted research on the emigration potential of final-year students in six SADC countries<sup>77</sup>. The Potential Skills Base Survey illustrates that the emigration potential of SADC students on graduation is high and that economic factors have the biggest impact when students are considering what to do in the future.

- Whilst all students in all countries showed very high levels of patriotism and pride in their identity as citizens of their own country (80%), and felt committed to the future of development of their country; 79% of students had considered moving to another country when they graduated, and only 17% had never considered it.
- 19% had applied or were in the process of applying for work permits abroad and 11% were applying for permanent residence elsewhere and 11% for citizenship.
- South Africa was likely to be both a victim and a beneficiary of the brain drain. While students from South Africa and Botswana chose Europe as their first choice destination, students from the other SADC countries saw South Africa and Botswana as the most desirable destinations. Salaries, cost of living, ability to find the wanted job and prospects for professional advancement were considered to be better in the first choice destination.

### ***Human Resource Development by the Department of Labour***

The Department of Labour’s “National Skills Development Strategy” represents an important supplement to the Department of Education’s efforts to supply the South African economy with the skills that are needed.

The *National Skills Development Strategy* (NSDS) for the period 2001 to 2005 was launched by the Minister of Labour in February 2001. The original strategy has since been replaced by the NSDS 2005-2010 which spells out the “national priority areas according to which the projected over R21.9 billion income from the skills development levy will be allocated over the next five years”<sup>78</sup>. The strategy is based on five basic principles, including:

1. Support economic growth for employment creation and poverty eradication
2. Promote productive citizenship for all by aligning skills development with national strategies for growth and development
3. Accelerate Broad Based Black Economic Empowerment and Employment Equity<sup>79</sup>.
4. Support, monitor and evaluate the delivery and quality assurance systems necessary for the implementation of the NSDS.
5. Advance the culture of excellence in skills development and lifelong learning

The strategy has five key objectives, each accompanied by a set of indicators according to which the successful implementation of the strategy will be measured and levers through which the objective could be achieved. Key objectives include:

1. Prioritising and communicating critical skills for sustainable growth, development and equity
2. Promoting and accelerating quality training for all in the workplace
3. Promoting employability and sustainable livelihoods through skills development

<sup>76</sup> A large sample of almost 10 000 final-year students was interviewed in tertiary training institutions across the region, including universities, technikons, teacher-training colleges and nursing-training colleges.

<sup>77</sup> South Africa, Namibia, Botswana, Zimbabwe, Swaziland and Lesotho.

<sup>78</sup> Department of Labour. 2005. *The National Skills Development Strategy*. Available. [Online]: [http://www.labour.gov.za/useful\\_docs/doc\\_display.jsp?id=9976](http://www.labour.gov.za/useful_docs/doc_display.jsp?id=9976) (April 2005).

<sup>79</sup> The Strategy has three cross-cutting equity objectives which states that the beneficiaries of the strategy should be 85% black, 54% female and 4% people with disabilities.

4. Assisting designated groups, including new entrants to participate in accredited work, integrated learning and work-based programmes to acquire critical skills to enter the labour market and self-employment
5. Improving the quality and relevance of provision

The two most important delivery vehicles for the NSDS are the National Skills Fund (NSF) and the 25 SETA's (Sectoral Education and Training Authorities).

The National Skills Fund is "managed by the Department of Labour and guided by advice from the National Skills Authority"<sup>80</sup>. The fund receives a portion of skills levies paid by employers. An terms of the Skills Development Levies Act (Act 9 of 1999) all employers have to pay 1% of their payrolls to the South African Revenue Service. From this levy, 80% is directly transferred to the SETA with which the employer is registered, and the remaining 20% is transferred to the National Skills Fund.

The NSF was created to "provide funding to address issues of national importance, including job creation, small business development, special assistance to women, youth and rural people, and people with disabilities"<sup>81</sup>. Funds from the NSF is allocated to the Department of Labour's provincial offices, labour centres, SETA's and other agencies that are responsible for funding projects that meet the objectives of the NSDS (Department of Labour, 2004). The NSF has eight funding windows, which support the organised spending of funds. Funding windows include:

- Social Development
- Strategic Projects
- Learnerships
- Skills Support Programme
- Bursaries (scarce skills)
- Innovation and research
- Capacity building of stakeholders
- Promotion of the National Skills Development Strategy

Twenty-five SETA's were established by the Minister of Labour under the Skills Development Act (Act 97 of 1998) in March 2000. The SETA's are responsible for "developing sector skills plans, approving, registering and promoting learnerships, quality assuring training and administering levies and grants"<sup>82</sup>. As mentioned above, the SETA's receive 80% of the 1% levy paid by employers. SETA's pay out two kinds of grants, namely:

1. Mandatory grants on the receipt of workplace skills plans and implementation reports from employers.
2. Discretionary grants for projects that address specific sectoral needs identified in sectoral skills plans

It is important to note that the basic principle of the NSDS, is to improve the *employability* of labour through *training*. The strategy is supported by the policies of the Department of Education, which are attempting to improve the quality of primary- and secondary education, and aligning tertiary education with the needs of the economy.

In the 2003/4 period, the following notable achievements were reached as a result of the National Skills Development Strategy<sup>83</sup>.

- By March 2004, more than 430 000 workers received NQF (National Qualifications Framework) Level One Training
- More than 12 537 learners are currently involved in NQF Level One or ABET (Adult Basic Education and Training) projects
- More than 3 million workers have been involved in structured training programmes - meaning that one third of all workers (the 9 320 220 workers in the economy as a whole) covered by all 25 SETAs have been engaged in some kind of structured training programme.

<sup>80</sup> Department of Labour. 2004. *National Skills Development Strategy: Implementation Report 1 April 2003 to 31 March 2004*. Pretoria: Department of Labour.

<sup>81</sup> Department of Labour, 2004.

<sup>82</sup> Department of Labour, 2004.

<sup>83</sup> Department of Labour, 2004.

- There has been a substantial increase in the number of registered learnerships programmes – with 666 programmes registered at the end of 2004.
- More than 39 000 small businesses have been supported through SETA discretionary funding.
- Close to 50 000 small businesses are engaged in skills development initiatives.

## **7. PERCEPTIONS OF BLACK ECONOMIC EMPOWERMENT AND AFFIRMATIVE ACTION**

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An analysis of recent opinion surveys reveals that race remains one of the most significant variables in determining attitudes on most political, economic and social questions. Questions relating to black economic empowerment and affirmative actions are no exception:

A survey conducted by Research Surveys (RS) at the end of October 2004 among 500 SA adults in metropolitan areas found that:<sup>84</sup>

- 70% felt that BEE had enriched a select few (Whites 77%, Blacks 65%).
- two thirds felt BEE was necessary in order to address the wrongs of the past. (Coloureds and Indians 75%; Blacks 70%; Whites 64%).
- 65% believed that BEE had had a positive impact (Coloureds 75%; Blacks and Indians 65%; Whites 58%).
- 44% felt BEE was stifling the country's growth, 48% felt that this was not the case; and 43% felt BEE created an environment which fostered corruption (whites 52%); 48% disagreed.

### ***Black and white South Africans differ fundamentally on the question of whether affirmative action is necessary to make up for the wrongs of the past.***

- In 1997 72.3% of Blacks agreed that there was a necessity for affirmative action contrasted with only 19.6 % of whites who agreed with this proposition. The two races also appeared, if anything, to be moving further apart on this question: the previous year the figures had been 71.8% and 24.6% respectively. The white attitudes did not reflect a general unwillingness to work with black South Africans since approximately 60% of whites who disagreed with affirmative action also supported integrated schools and communities<sup>85</sup>.
- 78% of whites also opposed the idea that people from previously disadvantaged groups should be given preferential treatment in the allocation of employment opportunities. More than 60% of blacks, 43% of Coloureds and 47% of Indians agreed that such treatment was necessary<sup>86</sup>.
- Interestingly, most South Africans agreed that people who had suffered under apartheid had received sufficient financial compensation. 34% of blacks agreed and 29% disagreed while 69% of whites agreed with the proposition while only 8% opposed it.<sup>87</sup>
- In a November 2003 survey 47.4% of blacks agreed that it was fair that the people who discriminated against others during apartheid should feel what it was like to be discriminated against – compared with 14.8% of whites.<sup>88</sup>

### ***Black and white South Africans differ strongly on questions relating to land ownership***

According to a survey conducted by Markinor for Prof Pierre du Toit in February and March 2004<sup>89</sup>, 72.1% of Black South Africans agreed, or strongly agreed, with the statement that '*all the land whites own, they stole from the blacks*', while only 3.4% of whites agreed. 88.7% of whites

<sup>84</sup> Research Surveys. 2004. [Online] Available: < <http://www.biz-community.com/PressOffice.aspx?i=275>>

<sup>85</sup> Macdonald, H & Gibson, L. 2000. *An Empirical Snapshot of the Nature of Racial Attitudes in South Africa*. Submitted to the National Conference on Racism, Presented by the Institute for Justice and Reconciliation. Sandton, 30 August to 2 September 2000. <http://www.ijr.org.za/empirical/em6.html>.

<sup>86</sup> Democracy SA: Public opinion on national priority issues: HSRC March 2000.

<sup>87</sup> Lombard, K. 2003. "Revisiting Reconciliation: The People's View", *Research Report of the Reconciliation Barometer Exploratory Survey*, Institute for Justice and Reconciliation. 15 March 2003.

<sup>88</sup> Lombard, K. 2003

<sup>89</sup> Du Toit, Pierre. 2004. *Affirmative Action and the Politics of Transformation: A Survey of Public Opinion*. The FW de Klerk Foundation. March 2004.

disagreed with the statement, while only 7.7% of blacks did so. 47.6% of Coloureds and 61.3% of Indians also disagreed with the statement.

### ***Blacks and Whites disagree on the right of landowners to protect their property rights by approaching the constitutional courts***

In response to a question in the same survey 46.9% of Black South Africans agreed with the statement that '*Landowners who dispute land claims by going to court are misusing the constitution*' while only 22.9% disagreed with the statement. 66.6% of whites disagreed or strongly disagreed with the statement while only 10.8% agreed with it.<sup>90</sup>

### ***White companies and commentators have serious concerns regarding aspects of BEE***

Although they agree with many of the broad goals of BEE, companies complain that it

- creates additional onerous and costly administrative burdens – particularly for small and medium size enterprises;
- discourages entrepreneurship by increasing costs, diluting equity and management autonomy;
- undermines efficient government by removing cost-effectiveness, proven quality and service and success in open competition as the main determinants for government tenders;
- undermines property rights and accordingly discourages both foreign and local investment;
- creates enormous demand for the small pool of suitably trained and experienced black South Africans who command astronomical salaries and who are soon head-hunted by competitors;
- leads to the loss of irreplaceable skills and experience as whites are forced out of companies or emigrate because of affirmative action policies.

## **8. AFFIRMATIVE ACTION IN OTHER SOCIETIES**

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### **8.1. Affirmative Action in Malaysia**

#### ***Introduction***

Affirmative action policies were implemented in Malaysia since the 1970s to eliminate the socio-economic imbalances between Malays (Bumiputera) and non-Malays (non-Bumiputera), as brought about by colonialism. With the 13 May 1969 racial riots, the National Alliance government was finally convinced of the necessity of implementing affirmative action to create a more balanced society<sup>91</sup>. Highlights of affirmative action include:

- The government introduced the New Economic Policy (NEP) in 1970, which accorded the Bumiputera preferential treatment in order to correct the racial imbalances between the Malays and non-Malays<sup>92</sup>. A target was set that within a period of 20 years (1971-1990), Malays would own and manage at least 30% of the commercial and industrial activities of the economy<sup>93</sup>.
- The Industrial Coordination Act (ICA) of 1975 provided the state with the means to implement the equity policies.
- Opposition from the non-Bumiputera community was discouraged by Constitutional amendments which made it seditious to question provisions in the Constitution pertaining to the "special rights and privileges" of the Malays.

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<sup>90</sup> Du Toit, 2004.

<sup>91</sup> Abdullah, F.H. 1997. "Affirmative Action Policy in Malaysia: To Restructure Society, to Eradicate Poverty" in *Ethnic Studies Report*. XV (2), July. [Online] Available: <[http://www.ices.lk/publications/esr/articles\\_jul97/Esr-Abdullah.PDF](http://www.ices.lk/publications/esr/articles_jul97/Esr-Abdullah.PDF)>

<sup>92</sup> Guan, L.H. 2000. "Ethnic Relations in Peninsular Malaysia: The Cultural and Economic Dimensions" in *Social and Cultural Issues No 7*. August. Institute of Southeast Asian Studies. [Online] Available: <[www.iseas.edu.sg/sc12000.pdf](http://www.iseas.edu.sg/sc12000.pdf)>

<sup>93</sup> The ownership pattern of share capital in limited companies was to change from the ratio of 2.4: 34.3: 63.3 (bumiputera: non-bumiputera: foreign) to 30:40:30 by 1990.



### ***The development of affirmative action***

The NEP stressed national unity as the overriding objective and it contained a two-pronged development programme. The first prong aimed at reducing and eventually eradicating poverty by raising income levels and increasing employment opportunities for all Malaysians. The second prong, which was the essence of the affirmative action scheme, aimed at accelerating the process of restructuring Malaysian society to correct economic imbalances. The government set up a timetable of 20 years from the inception of the NEP for the achievement of the “restructuring targets”.

In 1991 the National Development Policy (NDP) replaced the NEP, which marked a retreat from state-interventionism and a greater acceptance of policies shaped by market forces<sup>94</sup>. The NDP placed less emphasis on setting targets for ethnic restructuring and income redistribution and more emphasis on growth- and income raising policies. The NDP, which formed part of Malaysia’s 2020 Vision, emphasised the eradication of hardcore poverty whilst reducing relative poverty.

### ***The outcome of affirmative action policies***

#### Positive Trends:

The NEP successfully improved the socio-economic positions of the long neglected and economically backward Bumiputera groups and eliminated the identification of ethnic groups with economic function. Overall income inequality as well as inter-ethnic and rural-urban inequality has declined since the mid-1970s. Malaysia achieved remarkable economic growth and development since the 1970s and it emerged as one of the most successful economies in Southeast Asia by the late 1980s. The expanding economic pie made it easier for the Chinese to accept preferential treatment of Malays, including Malay domination of Malaysian politics and the bureaucracy<sup>95</sup>. The structural changes brought about by the NEP, moreover, were accompanied by political and economic stability.

- Malaysia experienced an average annual growth rate of 6.7 percent during the NEP’s life span.
- The Bumiputera ownership of corporate wealth grew from 2.4% in 1970 to 27.2% in 1988.
- The overall incidence of poverty in Malaysia fell from 49.3% in 1970 to 22.4% in 1987.
- The total number of Bumiputera professionals in various fields increased from 4.9% in 1970 to 25.1% in 1988.

#### Negative Trends:

Despite Malaysia’s phenomenal economic growth and success in narrowing the inter-ethnic inequality gap, intra-ethnic income inequality, particularly intra-Malay inequality, has started to rise since 1990.

- Inter-Malay inequality has risen from 0.4 in 1968 to 0.4495 in 1997, according to the Gini-coefficient.

The Bumiputera preferential treatment provided for by the NEP alienated the Chinese population in general, as they felt that it discriminated against them<sup>96</sup>. As Constitutional amendments made it seditious to question provisions in the Constitution pertaining to the preferential treatment of Malays, little dialogue about affirmative action took place, and non-Malays were not allowed to express their views about these policies, which increased their sense of alienation.

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<sup>94</sup> Henderson, J., Hulme, D., Phillips, R. and Nur, N.A.M. 2002. Economic Governance and Poverty in Malaysia. [Online] Available: <<http://www.gapresearch.org/governance/MalaysiaReportMay2002.pdf>>

<sup>95</sup> Koon, H.P. 1997. “The New Economic Policy and the Chinese Community in Peninsular Malaysia” in *The Developing Economies*. XXXV-3: 262-292. [Online] Available: [www.ide.go.jp/English/Publish/De/pdf/97\\_03\\_03.pdf](http://www.ide.go.jp/English/Publish/De/pdf/97_03_03.pdf)

<sup>96</sup> This alienation was illustrated by the drop in Chinese domestic investment from 66.9% before the implementation of the NEP to approximately 30% in 1975.

## **Conclusion**

Malaysia's affirmative action policies under the NEP had successfully improved the socio-economic positions of the long neglected and economically backward *Bumiputera* groups, even though the NEP did not achieve all of its targets. The increase of intra-Malay inequality, however, cannot be addressed by focusing on race alone, but by a larger focus on eradicating hardcore poverty.

## **8.2. Affirmative Action in the United States of America**

### **Brief history**

Since the 1960's, affirmative action policies have been the primary weapon to combat racism and sexism in American society. Despite the Civil Rights Act of 1964 and the Voting Rights Act of 1965 – both of which advanced the Constitution's promise of equal opportunity- actual progress in the daily lives of people was slow and difficult. Thus, affirmative action was born and enacted. Highlights of its development include:

- ❖ In 1978 *Regents of the University of California vs. Bakke* decided that setting aside a specific number of places in the absence of proof of past discrimination was illegal, but it allowed racial preferences in admissions.
- ❖ In 1971, the Department of Labor under President Richard Nixon issued an order requiring all federal contractors to develop "an acceptable affirmative action program."<sup>97</sup>

### **Current Status**

With a tumultuous 45-year history, affirmative action continues to be a divisive issue in the United States. In 1996, California voters ended affirmative action policies within the state with the passage of Proposition 209. On the other hand, the Supreme Court in 2003 upheld affirmative action in the admission practices of the University of Michigan. Despite the controversy, affirmative action over time is correlated with increased levels of participation of minorities and women in employment, education, business and government contracts. Mostly through the use of numerical goals, timetables and even formulas, the goals of diversity are pursued. Quotas are generally not considered and regarded to be unconstitutional.

### **Positive Trends**

Affirmative action is argued to be the essential bridge between changing the law to changing the culture.

- ❖ Between 1982 and 1995, the percentage of female managers and professionals in the U.S. rose from 40.5 to 48.0 percent; blacks from 5.5 to 7.5 percent, and Hispanics from 5.2 to 7.6 percent.<sup>98</sup>
- ❖ The percentage of women joining the labour force has grown substantially, from 36 to 55 percent between 1964 and 1994.<sup>99</sup>
- ❖ Under affirmative action policies enrolment of black college students rose from, 7.8 percent in 1970 to 11.3 percent in 1990.<sup>100</sup>

### **Negative Trends**

The downside of affirmative action is associated with its weak moral justification and the perception that its benefits are not worth its costs.

- ❖ The "angry white men" syndrome sufferers accuse the system of robbing them of promotions and other opportunities.

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<sup>97</sup> U.S. Department of Labor, Revised Order No. 4, December, 1971. This Executive Order asked for "an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies."

<sup>98</sup> U.S. Bureau of Labor Statistics, Series ID: lfu112500000000, lfu112500000002, lfu112500000030, lfu112500000050, lfu112500000060, lfu112500000070, lfu112500000080.

<sup>99</sup> Poverty rate: U.S. Bureau of the Census, *Income and Poverty*, 1993. Unemployment rate: U.S. Bureau of Labor Statistics, Series ID: lfu21000002. Civilian employment/population ratio: U.S. Bureau of Labor Statistics, Series ID : lfu1600002. Income and income ratio: U.S. Bureau of the Census, Current Population Reports, Series P60.

<sup>100</sup> Affirmative Action: History and Rationale. <http://clinton2.nara.gov/>.

- ❖ At times extreme social stigma is placed on those whose success has been deemed to be unearned. While other affirmative action beneficiaries consider it insulting.
- ❖ As a by-product, divisions and animosity between different ethnic and gender groups are created.
- ❖ And even with affirmative action policies in place, its intentions are undermined by understaffing, underfunding and lacking enforcement authority.

### **Conclusion**

Affirmative action policies came into existence when it became evident that anti-discrimination statutes were not enough to correct the entrenched culture of discrimination. Though progress has been made in its 45 year history, an accurate effect of affirmative action policies is difficult to determine given other factors including, changing social conditions, economic transformations, demographic shifts. In the United States, affirmative action continues to strive for equal opportunity for all.

## **9. OVERALL CONCLUSIONS**

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1. South Africa's history of unequal development has necessitated a process of socio-economic transformation that (i) improves the quality of life of all South Africans, and (ii) promotes the redistribution of economic resources and power.
2. Black economic empowerment is a key element of the South African transformation project, and one of the central priorities of the government.
3. The BEE Strategy is the outcome of extensive consultation between the government and the private sector, with substantial inputs from the Black Economic Empowerment Commission.
4. The government's approach to BEE is broad-based – emphasising employment equity, equity of ownership, human resource development, preferential procurement, the development of black enterprises and social projects initiated or supported by the industries/ businesses involved.
5. BEE is viewed by the ANC within the context of the struggle against apartheid and the completion of the National Democratic Revolution. As such, it is part of a class/race contest in which there must inevitably be winners and losers. This is justified by the view that whites have derived their wealth and dominance of the economy through illegitimate means and BEE is necessary to redress the situation.
6. There is a tension within the constitution between measures to promote equality on the one hand and measures to prohibit discrimination against ethnic, racial and cultural groups on the other. There is a need to define more clearly what the constitution envisages with regard to equality and what its definition of 'fair' discrimination includes.
7. Despite BEE and the Government's declared intentions inequality has increased since 1994. Inequality has increased significantly within the Black community. There is an urgent need to address the plight of the poorest 50% of the population who have derived few benefits from the new South Africa.
8. During the first ten years of the new democracy black and white shares of national income do not appear to have changed significantly. If anything, the gradual redistribution of income between blacks and whites, which has been taking place since 1970, appears to have slowed down between 1995 and 2000.
9. Black economic empowerment deals have thus far benefited primarily only a handful of individuals – and there is accordingly a need for a much more broad-based approach.
10. Black South Africans have made only modest progress in terms of employment equity.
11. Black South Africans have achieved substantial control over the economy.
12. Since 1994 a black middle class has emerged which has now become the largest component in the national middle class.
13. Black South Africans have made impressive gains in university and technikon attendance since 1994. At the same time the absolute numbers and percentages of whites at universities and technikons has declined substantially. In a growing economy there simply will not be enough people with the necessary skills to fill managerial, professional and technical posts in the economy.

14. The education system is not producing sufficient skilled professionals, technicians, operators and managers. The skills base is being further eroded by emigration – including the emigration of highly skilled blacks.
15. The National Skills Development Strategy of the Department of Labour has promoted a significant increase in the number of skills development programmes.
16. Black and white South Africans have substantially different views on, and understanding of, black economic empowerment. Unless these differences are addressed there is a serious possibility of growing inter-racial alienation.
17. Uncertainty about black economic empowerment and particularly its likely effect on property rights may be – or become – an obstacle to new domestic and foreign investment.
18. Affirmative action programmes in the United States and Malaysia have made an important contribution to the upliftment of the communities concerned – but have also had unintended negative consequences.
19. There is a pressing need for a national debate on black economic empowerment to remove uncertainties and to unite all South Africans behind clear and acceptable goals.

## APPENDIX A

### The Ownership Scorecard<sup>101</sup>

Category	Ownership criteria	Weighting Points	Compliance Target
<b>Voting Rights</b>			
	Exercisable Voting Rights in the Enterprise in the hands of black people	3	25%+1
	Exercisable Voting Rights in the hands of black women	2	10%
<b>Economic Interest</b>			
	Economic interest in the Enterprise to which black people are entitled	4	25%
	Economic interest in the Enterprise to which black women are entitled	2	10%
	Economic interest in the Enterprise to which the following natural persons are entitled: <ul style="list-style-type: none"> <li>▪ Black designated groups; or</li> <li>▪ Black deemed participants in distribution schemes or employee schemes</li> </ul>	1	2.5%
<b>Realisation points</b>			
	Ownership fulfilment	1	No restrictions
	Net equity interest	7	2.5% (year 1) 5% (year 2) up to 25% (in year 10)
<b>Bonus points</b>			
	Involvement in the ownership of the enterprise of: <ul style="list-style-type: none"> <li>▪ Black new entrants; or</li> <li>▪ Black deemed participants of Broad-Based ownership schemes</li> </ul>	3	15%

### The Management Scorecard<sup>102</sup>

Management control criteria	Weighting points	Compliance targets
<b>1. Board participation</b>		
1.1 Percentage of exercisable Voting Rights held by Members of the Board who are black people to the total of all Voting Rights exercised by all members of the Board	3	50%
1.2 Executive Members of the Board who are black people	1	50%
Executive Members of the Board who are black women	1	25%
<b>2. Top Management Participation</b>		
2.1 Percentage that Senior Top Management who are black people constitute of the total number of Senior Top Management	2	40%
2.2 Percentage that Senior Top Management who are black women constitute of the total number of Senior Top Management	1	20%
2.3 Percentage that Other Top Management who are black people constitute of the total number of Other Top Management	1	40%
2.4 Percentage that Other Top Management who are black women constitute of the total number of Other Top Management	1	20%
<b>3. Bonus points</b>		
3.1 Percentage that black people who are Independent Non-Executive Board Members constitute of the total number of Independent Non-Executive Board Members	1	40%

<sup>101</sup> Department of Trade and Industry. 2005b. Code 100: The Measurement of the ownership element of broad-based black economic empowerment. [Online]: Available: <http://www.dti.gov.za> (April 2005).

<sup>102</sup> Department of Trade and Industry. 2005c. Code 200: The Measurement of the management control element of broad-based black economic empowerment. [Online]: Available: <http://www.dti.gov.za> (April 2005).

## The Employment Equity Scorecard<sup>103</sup>

Criteria	Weighting points	Compliance targets
1. Black people with disabilities employed by the Measured Entity as a percentage of all full-time employees	2	4%
2. Black people employed by the Measured Entity at Senior Management level as a percentage of employees at Senior Management level	2	60%
3. Black women employed by the Measured Entity at Senior Management level as a percentage of employees at Senior Management level	2	30%
4. Black people employed by the Measured Entity at Professionally Qualified, Experienced Specialists and Mid-management level as a percentage of employees at Professionally Qualified, Experienced Specialists and Mid-management level	2	75%
5. Black women employed by the Measured Entity at Professionally Qualified, Experienced Specialists and Mid-management level as a percentage of employees at Professionally Qualified, Experienced Specialists and Mid-management level	1	40%
6. Black people employed by the Measured Entity at Skilled Technical and Academically Qualified Workers, Junior Management, Supervisors, Foremen, and Superintendents as a percentage of employees at Skilled Technical and Academically Qualified Workers, Junior Management, Supervisors, Foremen, and Superintendents level	1	80%

## The Skills Development Scorecard<sup>104</sup>

Skills Development Element	Weighting points	Compliance targets
1. Skills Development		
1.2 Skills Development Spend on black employees as a percentage of Leivable Amount.	4	3%
1.3 Skills Development Spend on Critical Skills and/or Core Skills for black employees as a percentage of Leivable Amount.	2	2.6%
1.4 Skills Development Spend on Critical Skills and/or Core Skills for black women employees as a percentage of Leivable Amount.	2	1.4%
2. Learnerships		
2.1 Number of black employees on SETA-accredited Learnerships as a percentage of total employees	2	5%
2.2 Number of black women employees on SETA-accredited Learnerships as a percentage of total employees	2	2.5%
2.3 Number of formerly black unemployed people and/or black people formerly residing in rural areas on Learnerships as a percentage of total employees	1	1%
3. Organisational Transformational Index		
3.1 Existence of a comprehensive Black Economic Empowerment strategy, that integrates all the elements of the BEE Scorecard, assigns clear executive responsibilities, creates appropriate functioning representative committees and which has been approved by the Board of the Measured Entity and which is being implemented	Yes	1
3.2 Employment of a Skills Development facilitator	Yes	1
3.3 Existence of a policy on non-discrimination widely published within the Enterprise and which emphasizes the promotion of racial, gender, religious and cultural diversity which is being implemented. An element of this implementation must be the regular and ongoing facilitation of external diversity management training	Yes	1
3.4 Compliance with all relevant employment related legislation	Yes	1
3.5 Implementation of an effective human resource management plan which emphasises retention, career development and long-term career planning of all employees including learners and which is being implemented. Such plan must include targets against which performance is measurable.	Yes	1

<sup>103</sup> Department of Trade and Industry. 2005d. Code 300: The Measurement of the employment equity element of broad-based black economic empowerment. [Online]: Available: <http://www.dti.gov.za> (April 2005).

<sup>104</sup> Department of Trade and Industry. 2005e. Code 400: The Measurement of the skills development element of broad-based black economic empowerment. [Online]: Available: <http://www.dti.gov.za> (April 2005).

3.6 Existence of a program designed to give practical effect to the policies and programs in the items in paragraphs 5.1.3.1 to 5.1.3.5 through routine organisational social environmental audits the outcomes of which are published widely within the Measured Entity.	Yes	1
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### The Preferential Procurement Scorecard<sup>105</sup>

Criteria	Weighting points	Compliance targets
1. BEE Procurement Spend from Suppliers based on the BEE procurement Recognition Levels as a percentage of Total Measured Procurement Spend	15	70%
2. BEE Procurement Spend from Qualifying Small Enterprises based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	4	15%
3. BEE Procurement Spend from Exempted Micro Enterprises based on the BEE Procurement Recognition Levels as a percentage of Total Measured Procurement Spend	1	5%

### The Enterprise Development Scorecard<sup>106</sup>

Criteria	Weighting points	Compliance targets
1. Cumulative Non-Recoverable Contributions made by the Measured Entity as a percentage of cumulative EBITDA measured from the commencement/ Inception Date to the date of measurement.	6	2%
2. Cumulative Recoverable Contributions made by the Measured Entity as a percentage of cumulative EBITDA measured from the commencement/ Inception Date to the date of measurement.	4	3%
3. Bonus points - Measured Entities will be awarded a bonus point for Qualifying Enterprise Development Contribution which directly contributes towards increased employment levels in the preceding year.	1	-

### The Residual Contribution Scorecard<sup>107</sup>

Criteria	Weighting points	Compliance targets
1. Cumulative Rand value of Non-recoverable Qualifying Corporate Social Investment Contributions made by a Measured Entity to Contribution Beneficiaries measured as a percentage of cumulative net profit after tax measured from the commencement date of this statement or the Inception Date until the date of measurement.	5	1.5%
2. Cumulative Rand value of Qualifying Industry Specific Contributions made by a Measured Entity to Contribution Beneficiaries measured as a percentage of cumulative net profit after tax measured from the commencement date of this statement or the Inception Date until the date of measurement.	5	1.5%
3. Bonus points - A Measured Entity will qualify for the award of one bonus point for Qualifying Residual Contributions which benefit natural persons living in rural communities and/or natural persons living in the geographic areas identified in government's integrated sustainable rural development programme and urban renewal programme in the preceding year.	1	

<sup>105</sup> Department of Trade and Industry. 2005f. Code 500: The Measurement of the preferential procurement element of broad-based black economic empowerment. [Online]: Available: <http://www.dti.gov.za> (April 2005).

<sup>106</sup> Department of Trade and Industry. 2005g. Code 600: The Measurement of the enterprise development element of broad-based black economic empowerment. [Online]: Available: <http://www.dti.gov.za> (April 2005).

<sup>107</sup> Department of Trade and Industry. 2005h. Code 700: The Measurement of the residual element of broad-based black economic empowerment. [Online]: Available: <http://www.dti.gov.za> (April 2005).