

Office
copy

NEW AGENDA

South African Journal of Social and Economic Policy

DANISA
BALOYI

RODDY
SPARKS

Martin
Kingston

CYRIL
RAMAPHOSA

VUYO
JACK

BEE
THE STATE
VS
BUSINESS

Neva
Makgetla

MICHAEL
KATZ

Lionel
October

Ben
Turuk

STAN
SANGWENI

RSA R19.95 (incl VAT)
Other countries R17.50 (excl tax)



NEW AGENDA

ISSUE 22

SECOND QUARTER 2006



Words alone don't teach people. They cannot hold our hand or give encouraging smiles. They don't lean over our shoulder and correct our mistakes. Nor do they guide us with experience. Words alone aren't nearly enough. That's why we're doing things like organising science expos, experiential workshops and teacher training, as well as providing books and science equipment. Because we'd far rather do something about it, than just talk about it.

sasol
reaching new frontiers



EDITORIAL BOARD

PROF BEN TUROK (CHAIR) is a Member of Parliament and visiting professor at the University of Durban Westville. He is a veteran of the ANC. He has published many books on development economics and politics in Africa and was the founder of the Institute for African Alternatives in the UK and Africa.

DR MARCUS BALINTULO is Vice-Chancellor of the Cape Peninsula University of Technology.

PROF PIETER LE ROUX is an economist and director of the Institute for Social Development at the University of the Western Cape. He has published on South African economic problems and on debt and social policy.

PROF VIVIENE TAYLOR is at the school of Humanities at the University of Cape Town. She is an adviser to the Minister of Social Development. She is also a consultant to the United Nations and was responsible for the UNDP Human Development Report for South Africa.

MR LANGA ZITA is a Member of Parliament and Chairperson of the Portfolio Committee on Environmental Affairs and Tourism.

MR DAVID DLALI is a Member of Parliament. A former trade unionist, councillor and University of Cape Town council member, he has a postgraduate diploma in Employment Law and Social Security at UCT.

MR HAROON BHORAT is director of the Development Policy Research Unit (DPRU), School of Economics, University of Cape Town.

PROF ROB DAVIES is Deputy Minister of Trade and Industry. He was formerly Research Professor and Co-Director of the Centre for Southern African Studies at the University of the Western Cape and is an authority on the Southern African Development Community and on international trade.

Published by

Institute for African Alternatives
PO Box 12491
Mill Street
8010

(Aided by the Friedrich Ebert Foundation and United Nations Development Programme)

The views expressed by contributors are not necessarily those of the Editorial Board or IFAA.

Website

<http://www.ifaasa.org>

Administrator

Berri Marks
Tel: (021) 403-2593
Fax: (021) 461-9390
E-mail: bturok@anc.org.za

Production by

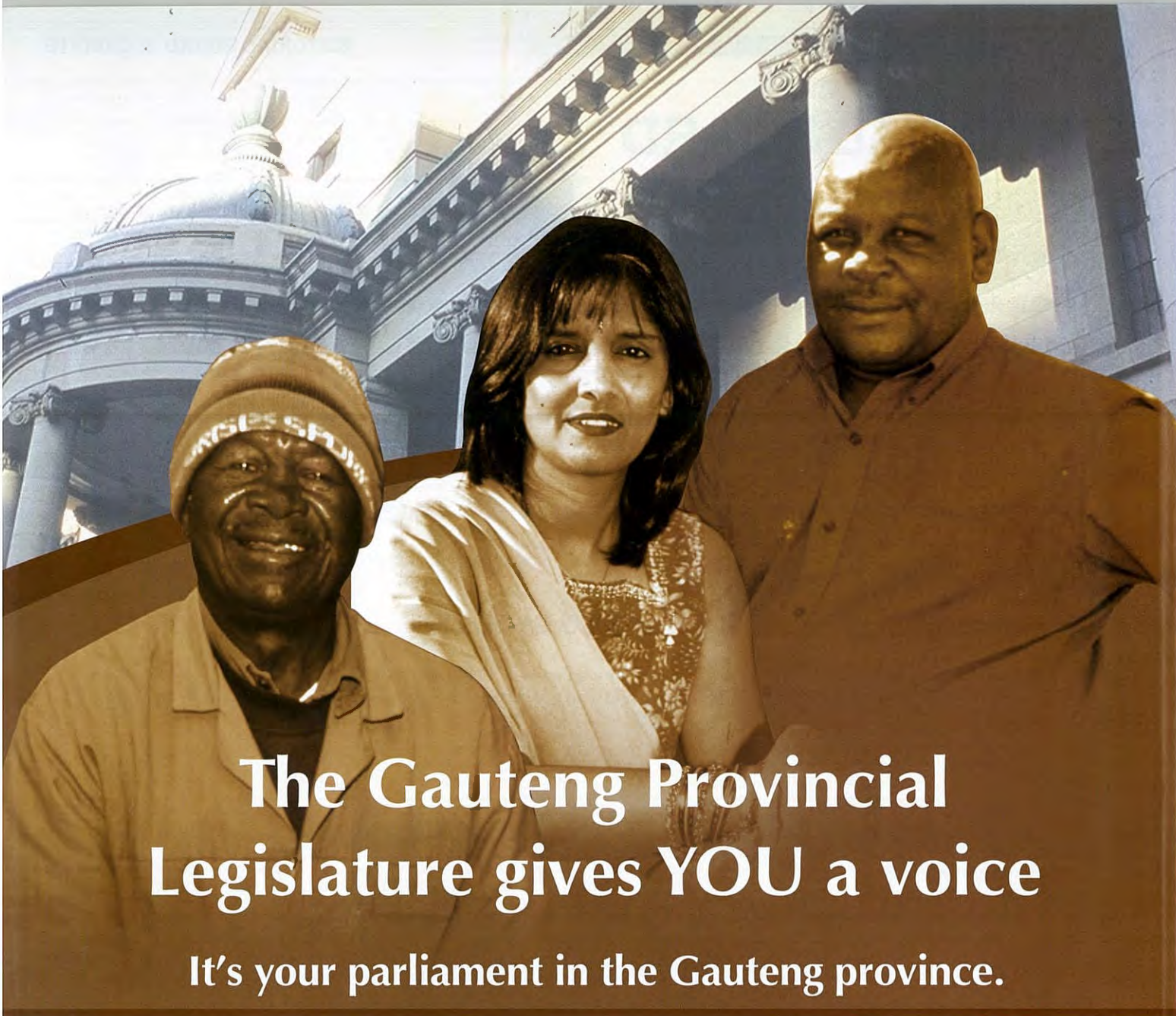
Picasso Headline
PO Box 12500
Mill St, Gardens, Cape Town
Tel: (021) 462-1023
Design Studio Manager
Hedley Snyman
Designer
Joanne Bell

Advertising Sales and Marketing Team

Sales Manager	Robin Carpenter-Frank
Project Manager	Trinity Maholela
	trinitym@picasso.co.za
Sales Consultant	Luthando Maqungo

NEW AGENDA

Copyright: Picasso Headline and the Institute for African Alternatives (IFAA). No portion of this magazine may be reproduced in any form without written consent of the publishers. Picasso Headline is part of Johnnic Communications Magazine Division. The publishers are not responsible for unsolicited material. **New Agenda** is published quarterly by Picasso Headline Reg: 59/01754/07. The opinions expressed are not necessarily those of the IFAA or Picasso Headline. All advertisements/advertisements and promotions have been paid for and therefore do not carry any endorsement by the IFAA.



The Gauteng Provincial Legislature gives YOU a voice

It's your parliament in the Gauteng province.



It oversees provincial government, makes
provincial laws, and ensures public participation.

Contact us on: (011) 498-5555 or visit our
website: www.gautengleg.gov.za



GAUTENG
LEGISLATURE
Your View ~ Our Vision

ISSUE 22 – CONTENTS

LETTERS OF SUPPORT

6

BEE

BEE EXPERTS ROUND TABLE

10

OBITUARY: LYNDA LOXTON

15

THE DIFFERENT WAVES OF BEE

VUYO JACK

19

A BANKER'S PERSPECTIVE ON BEE

MARTIN KINGSTON

25

UNDUE INFLUENCE BY BUSINESS:
THE PUBLIC SERVICE

STAN SANGWENI

29

THE CRITICAL ROLE OF WHITE EXECUTIVES

RODDY SPARKS

36

BEE AND THE FOREIGN INVESTOR

MICHAEL KATZ

41

BEE AND THE IMPACT ON THE ECONOMY

NEVA SEIDMAN MAKGETLA

47

BEE TRANSACTIONS: UNINTENDED CONSEQUENCES

BEN TUROK

59

CHARTERS AND CODES OF BEE

POLO RADEBE

69

EMPOWERMENT FINANCING

LANCE KATZ

72

BEE OVERVIEW

ANTHONY BUTLER

80

BLACK EMPOWERMENT AND PARASTATALS

ROGER SOUTHALL

88

OTHER

BOOK REVIEWS

98

BOOKS RECEIVED FOR REVIEW

112

DEPARTMENT: LAND AFFAIRS

land affairs

accelerating
land delivery

land redistribution
agricultural development
tenure reform
land restitution

ACCELERATING LAND DELIVERY FOR SUSTAINABLE DEVELOPMENT

for sustainable development

spatial **planning** & information
land **surveys**
deeds registration
mapping



land affairs

Department:
Land Affairs
REPUBLIC OF SOUTH AFRICA

LETTERS OF SUPPORT



MINISTER OF FOREIGN AFFAIRS REPUBLIC OF SOUTH AFRICA

Private Bag X152, Pretoria, 0001/120 Plein Street, Cape Town, 8000



MINISTRY: INTELLIGENCE SERVICES REPUBLIC OF SOUTH AFRICA

PO Box 1037, Menlyn, 0077. Tel: (021) 367 0700, Fax: (021) 367 0749
PO Box 51278, Waterfront, 8002. Tel: (021) 401 1800, Fax: (021) 461 4644

Dear Professor Turok

Support for the *New Agenda* journal

The *New Agenda* journal has played a critical role in promoting socio-economic progress and better standards of life for all. Since its first publication in June 2000, the journal has continuously promoted and unwaveringly defended the struggle for economic and social advancement of all peoples. It has shown that, with worsening poverty and a deepening environmental crisis around the globe, fundamental change is urgent. This is reflected in the vibrant and rigorous debate that this journal is encouraging.

Critical ideas coming out of the debates have given this journal great influence in the social and economic arena, thus laying the foundation for a rich dialogue that can assist governments in meeting their development objectives. Building on pre-existing national and international experiences, the journal contributes to global policy-making on a wide range of social and economic issues. In this way, it nurtures alternative policy ideas and a more inclusive approach to the problems affecting the world at large. It is important that the journal should take forward the debates for Africa's socio-economic development and reflect on this in the future.

Over the past five years, this journal has shown that, with an investment of just 0.5% of their incomes, the industrialised countries can assist to cut extreme poverty by half in the wider world by 2014.

May this journal continue to provide time and space for discussion on serious and relevant policy issues. On behalf of the Ministry of Foreign Affairs, I support your positive and progressive contribution to nurturing a better Africa for a better world.

Keep up the good work.

Nkosazana Dlamini Zuma
Minister of Foreign Affairs

This is to express my deep appreciation for *New Agenda, The South African Journal of Social and Economic Policy*. I am a regular reader and find many of its articles stimulating and refreshing.

As a minister, one is often in the centre of major policy reviews and assessments and although I am extremely proud of our achievements I am also conscious of the long road ahead if we are to create the South Africa we dreamed of. Transformation is a difficult process as there are new and old interests which do not always share our vision.

New Agenda does much to examine our challenges, especially in the socio-economic domain, and it does so in a careful manner. South Africa's path to political democracy has rightly been a focus of world interest. Our grappling with socio-economic issues is equally important, especially as many other developing countries face similar challenges.

I trust that *New Agenda* will continue with this important task.

Ronnie Kasrils
Minister for Intelligence Services

FROM CABINET MINISTERS



**MINISTRY OF DEFENCE
REPUBLIC OF SOUTH AFRICA**

PO BOX 47, Cape Town, 8000
Tel: (021) 787 6073, Fax: (021) 465 5870

Dear Com Ben Turok,

I am writing to express my deep support for the efforts you and the board of *New Agenda* are making to keep the journal in circulation.

For the past three years many of us have watched with appreciation your efforts to encourage in-depth discussions on social and economic policy issues. Yours is a valuable public education journal and I wish to do everything to keep *New Agenda* in circulation.

Regards and best wishes for this New Year!

Sincerely,
MGP Lekota
Minister of Defence



**MINISTRY: SOCIAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA**

Private Bag X885, Pretoria, 0001. Tel: (012) 312 7900, Fax: (012) 325 7071
Private Bag X9153, Cape Town, 8000. Tel: (021) 465 4011, Fax: (021) 465 4469
Website: www.welfare.gov.za

Dear Comrade Ben Turok,

Statement of support for New Agenda: The South African Journal of Social and Economic Policy

This brief note is to express my appreciation for the considered attention which *New Agenda* devotes to the social and economic policy issues facing our country and the African continent. The journal plays a vital role by providing a mechanism through which social science researchers, policy-makers and policy advocacy groups can engage in intellectually stimulating debate. The fact that leaders of the business, trade union and faith sectors regularly join in on these debates is testament to both their vitality and influence. In both my professional and personal capacities, I make a point of reading *New Agenda* every quarter in order to both keep abreast of developments in the marketplace of ideas and assess the considered policy stances of key interest groups.

New Agenda plays a crucial role in our participatory democracy by raising issues of public concern, by alerting government to problems in service delivery and by articulating the concerns and interests of communities and civil society structures. It is my wish that *New Agenda* reaches all corners of our country and encourages young researchers and intellectuals to join the public debate on the important social and economic policy issues facing our country and the African continent.

Sincerely,
Dr Zola Skweyiya, MP
Minister of Social Development

METROPOLITAN HEALTH GROUP EMPOWERMENT PARTNER IN HEALTHCARE



BLUM KHAN
CHIEF EXECUTIVE OFFICER
METROPOLITAN HEALTH GROUP

Metropolitan Health Group (MHG) is one of South Africa's leading providers of medical scheme administration and managed care solutions. With 19 medical schemes under management, ranging from blue-chip companies, state-owned enterprises and government departments, including the Government Employees Medical Scheme (GEMS), the company has grown significantly in the past few years.

Towards the end of 2005, MHG was awarded the contract to administer GEMS, which is set to service over a million government employees countrywide. MHG's wholly owned subsidiary, Qualsa, was awarded the medicine clearing house contract. GEMS will bring medical cover to the more than 380 000 public servants not covered by any formal scheme.

MHG, a truly African company with a strong empowerment record, provides innovative solutions which are tailored to clients' needs. Central to MHG's business philosophy is the focus on client needs through dedicated business units, thus providing unique products at a competitive price. The company provides a fully integrated service and is the leading IT solutions provider in the industry.

MHG is committed to ensuring that the vast majority of South Africans have access to quality healthcare and are given an opportunity to play a meaningful role in the health sector. To this effect, in June 2005, MHG raised its BEE ownership to 30% after Kagiso Trust Investments (KTI) acquired 17.63% direct stake in MHG. In addition, more than R68 million was spent on the procurement of goods and services from BEE suppliers, accounting for more than 40% of the total procurement spend by MHG in the past year.

MHG also invests in Enterprise Development. Because the set-up costs in the industry are a barrier to entry, the company has embarked on a franchise

model that allows new entrants to use its flexible world-class systems to offer administration services to the market. This enables new players' entry with advanced systems from the outset. At present, the franchise system benefits franchisees as well as 150 000 beneficiaries (scheme members). The franchisees are black owned.

The company was awarded an EmpowerDEX A rating last year, a first in the industry, and MHG's track record in developing people has earned it the "Investors in People" status through its many employee development and learning initiatives.

MHG's highlight in 2005 was the implementation of POLMED's administration and managed care business. POLMED is the medical scheme for the South African Police Services (SAPS) employees. After being awarded the business in October 2004, MHG put together a brand new business unit within seven weeks involving a dedicated building in Pretoria gutted and refitted with new furnishings, IT systems and interiors. At the same time a huge recruitment drive was initiated using innovative technology applications creating opportunities for many to acquire knowledge and skills pertinent to the changing healthcare industry in this country.

Apart from its investment in promoting BEE, the company is also engaged in supporting the community through a range of Corporate Social Investment (CSI) initiatives.

MHG supports the global Mercy Ships project, a non-profit organisation that has operated a fleet of hospital ships in developing nations since 1978. Moving from port to port, this global charity provides free healthcare services, food, education and training to the poorest cities in Africa and around the world.

MHG is also involved in numerous other CSI projects ranging from individual employee contributions to sponsorships of deserving causes.

MHG is a subsidiary of Metropolitan Holdings Limited. Its managed healthcare services are provided by its wholly owned subsidiary, Qualsa.

WHAT DO THESE LEADING BRANDS HAVE IN COMMON?

AFROX
MEDICAL AID SOCIETY

Bankmed



GOLDEN ARROW
EMPLOYEES' MEDICAL BENEFIT FUND

THE FOSCHINI GROUP
Medical Aid Scheme

ENGEN

gems
Government Employees
Medical Scheme



OpenPlan
Medical Scheme
Mediese Skema



SIGMA
HEALTH FUND MANAGED BY SIGMA LTD

sappi
Medical Aid Scheme

Holcim
South Africa Medical Scheme



METROPOLITAN
MEDICAL SCHEME

REMEDI
MEDICAL AID SCHEME
YOUR HEALTH - YOUR FUTURE - YOUR FUND

Pick n Pay
MEDICAL SCHEME



transmed

METROPOLITAN
HEALTH GROUP



They are clients of Metropolitan Health Group, leading provider of administration to employer groups and medical schemes of blue-chip and multinational corporations, parastatals and government departments.

info@mhg.co.za www.mhg.co.za

REPORT

BEE EXPERTS ROUND TABLE

JOHANNESBURG, 4 APRIL 2006
(Assisted by the Friedrich Ebert Stiftung)

A high-level round table with senior decision- and policy-makers from government, business, labour, academia and parliament was held in Johannesburg on 4 April 2006. The purpose was to discuss recent developments on black economic empowerment (BEE). The meeting was informal and closed. This report highlights some of the main issues discussed. The full papers presented at the meeting will be published in this issue of **New Agenda**.

PARTICIPATION

Mrs Danisa Baloyi, Executive Director, National Black Business Caucus
Mr Unathi Bongco standing in for Prof Richard Levin, Director-General, Department of Public Service and Administration
Prof Anthony Butler, University of Cape Town
Mr Shauket Fakie, Auditor-General, South Africa
Mr Vuyo Jack, Chairperson, Empowerdex
Mr Lance Katz, Executive Director, Thesele Group
Mr Martin Kingston, Chief Country Officer, Deutsche Bank
Dr Neva Makgetla, Chairperson, COSATU Policy Unit
Mr Lionel October, Deputy Director-General, Department of Trade and Industry
Mr Cyril Ramaphosa, Executive Chairperson, Shanduka Group
Ms Polo Radebe, Head of BEE, Department of Trade and Industry
Mr Mo Sattar, standing in for Mr Roddy Sparks, CEO, Old Mutual
Prof Stan Sangweni, Chairperson, Public Service Commission
Mrs Gloria Serobe, Chairperson, WIPHOLD
Prof Roger Southall, Distinguished Research Fellow, Human Sciences Research Council
Prof Ben Turok MP (Chair and convenor)

The following invitees were unable to attend but wish to participate in further deliberations.

Prof Michael Katz, lawyer (paper supplied)
Mr Leslie Maasdorp, economist
Mrs Raisibe Morathi, Deputy President's Office

THE ISSUES CANVASSED

BEE is a unique programme for South Africa with unusual

features in the international experience. It has two major dimensions: (a) deracialising of ownership and control of the SA economy; and (b) affirming the historically disadvantaged majority economically.

These requirements arise from a historically created condition of disempowerment of black people. The programme must be seen as an essential long-term investment for the country rather than short-term cost. Indeed the cost of not doing BEE may be much higher.

At the same time, it is necessary to examine rigorously how the implementation of BEE will add value to the economy.

THE ROLE OF GOVERNMENT

There is an unfortunate tendency to conflate the role of government and the private sector in the implementation of BEE. The role of government is to facilitate the empowerment of the people across the board, while the role of the private sector is to enable black people to participate in business.

Government has facilitated the creation of the sector charters and has drawn up BEE codes. These are meant to introduce "soft regulation" and provide guidance to the country. It is not the intention to overly interfere unduly with the private sector, but those businesses that seek government work will have to show compliance with specified targets. In the process of advancing BEE targets, state-business relations will have to observe good governance, be transparent and exhibit sound ethics and behaviour.

The codes show that affirmative procurement is essential in the dealings of both state institutions and the private sector. In both cases, skills development is necessary so that a sound basis is laid for broad participation in a growing economy with a much larger human resource base. This is as necessary at the lower occupational levels as at professional and managerial levels.

THE ROLE OF BUSINESS

BEE has been given a bad image by "fronting", which occurs mainly at the middle and higher levels of firms. It is often impossible to find the real beneficiaries of procurement and financial transactions.

If actual transformation is to take place in business, it is necessary to distinguish four elements – ownership, control, management and skill levels. Each must be examined rigorously to ensure the maximum effectiveness of empowerment interventions.

Whether ownership is a priority for BEE was discussed extensively. Some held that ownership is the most important initial requirement since it provides leverage for other things to follow. A qualification made was that ownership had to be at least 50.1 percent to be effective. Others felt that what really matters is control, which is exercised primarily by the executive team of a company and not by the shareholders. In the case of the parastatals, ownership rests with the state but actual decision-making lies with the CEO. Similar considerations apply to all large corporations.

It is vital that power relations are well understood in corporations in order to assess the potential for compliance with BEE. Currently there is huge resistance in the corporate world and compliance with the codes is seen as a mere ticking of the boxes in order to gain points on the scorecard. This has led to a great deal of frustration among black businesspeople. Means must be found to overcome resistance to transformation by white executives in the private sector in the interests of the country.

It was argued that, where black firms have benefited from BEE provisions, best practice occurs where the owners actually work in the firm and appoint black managers directly, as they are likely to be more proactive. Ownership is essential but the beneficiaries must be willing to be engaged directly.

Where companies are still white owned and controlled, they should be encouraged to establish transformation committees, headed by the CEO, which report regularly to the board.

BROAD-BASED BEE, OR DEAL-MAKING, OR BOTH?

There was consensus that the main focus of BEE is empowerment, not enrichment, and the “broad-based” element requires maximum attention. That was the finding of the original BEE Commission. But broad-based empowerment cannot occur without a huge effort in training and skills development, by both the state and business. It also includes many kinds of broader ownership. Broad-based BEE must be located in a rigorous development strategy and programme and government must give urgent attention to this aspect.

However the focus on “broad based” should not divert attention from the need to restructure the existing private sector, although this is a huge challenge. Conventional forms of ownership in the private sector may be used for the accumulation of capital for investment or, less desirably, for consumption. But in either case, there is “no free lunch”: BEE beneficiaries are subject to the laws of value in economics and any “deal” will require someone to pay for it. Finance providers may wish to assist with BEE deals but they are obliged to price the risk into transactions.

In the current spate of headline deals, huge unrealisable expectations are being raised as some individuals rush to “get rich quickly.” The official targets for BEE gains are much too high, as shown by the modest R200 billion empowerment to date, out of total private sector assets of R5 trillion. Even then, much of the R200 billion is locked in debt. Worse still, many of the BEE transactions are so structured that should interest rates rise and stock exchange values fall, large losses will be incurred by many investors. The current rise in share values only has meaning if the stocks are sold and this is often circumscribed in BEE deals.

It was argued that women are still at a huge disadvantage due to discrimination in business practices. Too often women are treated as an “add-on” and not respected in their own right. They are often asked, “Who are you bringing with you?” as though they have nothing to contribute themselves. Nevertheless, many young black women are entering the professions and business as well as government and they will advance, especially if government provides the necessary support.

OBSTACLES TO IMPLEMENTING BEE

The main obstacle to the advance of black business is the lack of substantial capital and the absence of resources to be used as collateral. This is where a partnership with a large existing company may assist.

This deficiency does not exist in the parastatals, which have the financial backing of government and huge resources themselves. Their power, due to concentrated ownership, confirms the point made earlier. Their potential to advance BEE in all its forms across the economy is large, including procurement from small black enterprises, though studies are needed to examine compliance with BEE codes. This is an additional argument for avoiding privatisation, which has in any case not worked elsewhere in Africa.

The state is now actively encouraging procurement from small companies and this is bound to have a big impact. However, questions have been raised by labour about the practice of government departments outsourcing services, especially at local level, as this may have a negative impact on their own employees.

BEE IMPACT ON PUBLIC SERVANTS

Since BEE encourages wider participation of black people in the economy and especially in the corporate world, how does this impact on the public service? Does the involvement of senior public figures and officials in the private sector carry any dangers of corruption? Clearly, public figures and officials currently in office are bound by rules and regulations, though not all are being fully observed.

And what about persons who leave public life? It is understood that such individuals who accept directorships in business may be required to use their inside knowledge and their networks to exert influence in favour of their new business partners.

This may well lead to a conflict of interest, which needs to be managed. The meeting was informed that conflicts of interest are unavoidable, but may or may not lead to corruption. **The key principle is that private interest must not affect public duties.** This means that public officials cannot "do business with themselves" in other private sector roles. They cannot pursue private interests "in their own patch".

Hence, there are requirements for disclosures, declarations and recusals. There are also restrictions on the passing of information, or even access to such information. Other administrative measures are also possible. What is needed is strict implementation by law of the codes of conduct and the inculcation of a drive toward integrity. However, tender boards also have a major responsibility to ensure that beneficiaries are assisted by links with state officials.

All this means that there must be a clear separation between government and business. If this is not the case, cronyism and parasitic use of the state may arise that will drastically undermine our democracy.

POLITICAL DIMENSIONS

The promotion of BEE raises the relationship between the state and business on the one hand, and the relationship between the state and the ruling party on the other. There is a need for transparency in both, and a free press is vital to monitor this.

On relations between the state and business, it is the clear intention of the state to create a black business class in South Africa. But there must be adequate separation between the two, and the state must not be "captured" in the process.

On the other hand, although the ANC is the ruling party, the degree of political influence on economic decisions requires transparency to avoid suggestions of undue or improper influence. This is a highly complicated issue, however, since the ruling party has the right to lay down broad economic policy. The involvement of public representatives and, indeed, of party officials in economic structures is also a matter best dealt with transparently.

Since the South African state is committed to the creation of a black business class, there is an expectation that this class should endorse democratic values, behave responsibly and make a positive contribution to the broad social agenda of the state.

The meeting felt that BEE has made many gains that are generally not recognised, as abuses attract media headlines more than concrete achievements. We therefore need a study of the impact of BEE to date to arrive at a balanced view.

The meeting strongly endorsed the objectives of deracialising ownership and control in the economy and affirming the historically disadvantaged majority in our society.





**Before we proceed
we look left and right.**



At The South African National Roads Agency Ltd (SANRAL) we continuously strive to find the balance between the economic and social benefits of road-based transport on the one hand and the protection of the environment on the other. As the provider of South Africa's world-class national road network, we therefore ensure that both the local communities, as well as the fauna and flora are protected before we proceed with any new road project.

BEE addressing social inequities in a market economy.

BROAD-BASED BLACK ECONOMIC EMPOWERMENT (BEE) is a result of the South African government's commitment to redressing the inequities of the past and the creation of an inclusive society. Such social goals are not to be achieved at the expense of business investment. In fact, BEE is an integral part of South Africa's growth strategy.



BEE's social and economic goals are closely intertwined. Poverty eradication and the reduction of inequalities are high social priorities, the achievement of which would create an environment characterised by the certainty required for high levels of business investment. Policies of job creation and economic inclusion help the building of a better society and also provide business with the opportunity to harness the full potential of South Africa's human capital. Likewise, policies of empowerment through, for example, the encouragement of black-owned SMEs, are socially progressive, and also foster entrepreneurship and innovation, improving overall competitiveness.

BEE has been designed with investment in mind. **the dti** has been and will continue to work in partnership with the private sector to design and implement innovative, business-principled schemes, adding value to economic activity and establishing a path to prosperity for all.

Private Bag X84, Pretoria 0001, RSA | **the dti** Customer Contact Centre
Local: 0861 843 384 | International: +27 12 394 9500 | Web: www.thedti.gov.za



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA



OBITUARY

LYNDA LOXTON

Lynda Loxton, who passed away on the 15th of March 2006 as a result of an accident on a train in Cape Town, was a very valued colleague and an outstanding journalist who assisted **New Agenda** on many occasions. We depended on her for advice, for editorial assistance, and for her enormous experience as a reporter on business matters and the economy in **Business Report**. We feel her loss immensely. Parliament is the less without her.

Lynda Loxton's supreme quality, apart from her competence, was her integrity. Although she was a writer working within the domain of business, her sympathies were always clearly for the underdog, for the poor and the disadvantaged in our society. She wrote in a very balanced manner so that her columns were appreciated by all.

At parliament, she had to attend many portfolio committee

meetings to report on them and the numerous documents that pass through parliament. She did so with an unsurpassed professionalism and rigour. The activities at parliament are always complex and often sensitive. A journalist has to be able to finesse between various interests and to screen out irrelevant material and platitudes to give a balanced and true picture of what actually transpired at meetings. Making use of all her experience, Lynda Loxton did this in an extremely professional way. The media will miss her greatly and it will be quite a while until a journalist of equal capability and experience can take her place.

New Agenda extends our condolences to her mother, Mrs Mimi Wyss, and to the rest of her family. We mourn with them.

BT





BLOEMFONTEIN • BOTSHABELO • THABA NCHU

... playing a leading role in promoting empowerment in various contexts within its municipal boundaries.

BACKGROUND

The Mangaung Local Municipality is situated in the Free State Province in the central interior of South Africa. This local municipality was formed at the end of 2000 by amalgamating the Transitional Local Councils of Bloemfontein, Botshabelo, Thaba Nchu and two Rural Councils. Mangaung, the sixth largest city in South Africa, covers more than 6 300 square kilometers and hosts a population of more than 850 000 people – approximately 23% of the Free State province's population. It is the vision of the Mangaung Local Municipality that by 2015 the city is recognised nationally and internationally as a safe and attractive place to live, work and invest in.

The name Mangaung, meaning 'Place of the Cheetahs', accentuates the vibrant, dynamic and energetic character of the institutional, economic, social and cultural life of the area and its people. This vibrancy, dynamism and energy are also reflected in the leading role that this local municipality is playing in promoting empowerment within its municipal boundaries.

EMPOWERING LOCAL COMMUNITIES

In order to serve as a catalyst for future development and to ensure service excellence, Mangaung Local Municipality compiled an Integrated Development Plan (IDP). The following key drivers of change and critical points of leverage are highlighted in this IDP:

- promoting economic growth
- building community resilience and self-reliance
- service excellence
- common purpose and civic leadership

Mangaung Local Municipality's commitment to the true spirit of democracy is confirmed by the fact that this local municipality is recognised internationally for its best practice model in the development of its IDP. The model implemented in the development of the municipality's IDP is

founded on an all-inclusive partnership designed to encourage constructive participation by all citizens in planning their futures. By empowering local communities to identify their own developmental challenges and giving them the platform to develop creative solutions, the Mangaung Local Municipality generated some of the highest participation levels during the IDP process in keeping with the Batho Pele (putting people first) principles. Furthermore, the Mangaung Local Municipality has shared its model of community based planning with other developing countries, thus establishing mutually beneficial collaboration with municipalities in Zimbabwe, Ghana, Uganda, Bolivia and Brazil.

The IDP includes improving social development initiatives, particularly those seeking to empower women, youth, the disabled and rural communities through regeneration programmes in areas of greatest need, building community capacity through ward committees and other structures, and promoting inclusively and social cohesion through the arts, culture, sports and recreation.

In pursuing its strategic objectives, Mangaung has made great strides in the following areas:

- Being awarded A (long term) and A1 (short term) credit ratings by the Global Credit Rating Agency bears testimony to Mangaung Local Municipality's strong institutional and financial status.
- Municipal legislation requires municipalities to review mechanisms of service provision whenever they, amongst others, either prepare or review their IDP or whenever municipalities undergo restructuring. Since both of these reasons were applicable to the MLM, accordingly reviewed all services and diagnostic studies were completed. The review of municipal services in conjunction with the National Government decision to restructure the electricity distribution industry (EDI) into six (6) Regional Electricity Distributors (RED's) further spurred MLM on to look at establishing

a municipal business entity. The completion of the process itself and the launching of CENTLEC (Pty) LTD further confirms the MLM as trail-blazers for change.

ECONOMIC EMPOWERMENT

The Mangaung Local Municipality recognises the urgent need for creating an enabling environment for economic growth, job creation and investment promotion. Resultantly, the development of the municipality's Economic Development Strategy has been guided by the vision to create a world class African city with a **broad-based inclusive** local economy within a **sustainable, dynamic, business-friendly environment** that is not only attractive to investors, but also benefits all the people of Mangaung. The Mangaung Economic Development Strategy enjoys the support of various stakeholders in the business, tertiary and provincial government sectors.

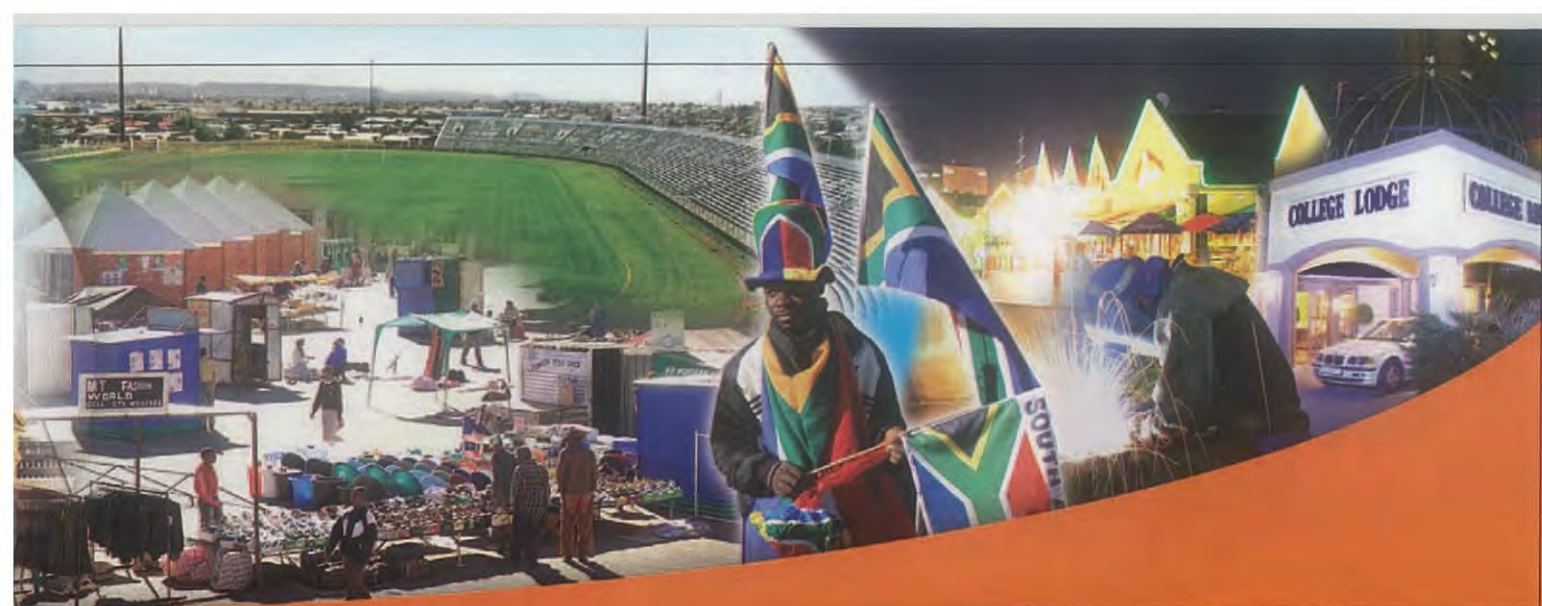
The approach that the MLM is advocating in order to achieve the vision of the Economic Development Strategy, is based on the following 4 strategic thrusts:

- Economic diversification
- Employment creation
- Creation of an environment conducive to economic growth
- Developing into a regional economic centre

The MLM has also aligned its procurement policy to the objectives of the IDP so that it can address past imbalances by actively encouraging historically disadvantaged communities to participate in the mainstream economy and use procurement as a tool to stimulate and promote local business development.

SUPPLY CHAIN MANAGEMENT

MLM through its Economic Development Strategy supports broad-based Black Economic Empower-



City on the move

ment (BEE). Apart from its progressive procurement policy that makes opportunities for previously disadvantaged individuals, the MLM in accordance with the Municipal Finance Management Act is also in the process of developing a comprehensive Supply Chain Management policy that further promotes the ideals of BEE. In order to discourage the practice of fronting, ongoing discussions are taking place with the local business chamber in an attempt to facilitate a process whereby their members understand the objectives and aims of broad-based BEE. Efforts to develop SMMEs are likewise focused on creating opportunities for marginalised groups including women, the youth and the disabled.

AN AREA OF OPPORTUNITIES

The consumer market in Mangaung and its immediate vicinity is surprisingly extensive. In addition to local residents, it includes the enormous buying power of thousands of Lesotho citizens, with farmers from the surrounding rural areas also boosting the retail market at month-end. It is estimated that more than 50% of the millions pumped into Lesotho from abroad is spent in Mangaung, representing a market of several million people.

The MLM is constantly seeking investors for several investment projects in a variety of fields, among which:

- chemical industries
- agro-processing
- leather processing
- electronics
- motor vehicle parts
- farming equipment
- the logistics sector
- tourism sector

Botshabelo, with 130 factories, is the largest of five industrial areas in the area. High-quality

products, mainly textile related, are marketed locally and abroad. Other manufacturing sectors represented are furniture, shoes, clothing and textiles, bricks, engineering, metal and plastics.

As the Free State economy is strongly reliant on agriculture, producing high-quality maize, wheat and red meat, Mangaung offers vast potential for agro-industries such as food, wool and leather processing. Support in the form of training and research is provided by institutions such as the Faculty of Natural and Agricultural Sciences at the University of the Free State and Glen Agricultural College.

Ample land is available for industrial development and established industrial areas offer reliable infrastructure. The area offers existing standard factories or fully serviced sites for new developments. Electricity and water resources are sufficient to serve a vast industrial area, and the biggest water supply scheme in Africa is nearby. A stable labour force provides a full complement of skilled, semi-skilled and unskilled workers.

VISITING MANGAUNG

Mangaung's open spaces reflect the openness of its people - friendly, warm and quietly dignified. The city incorporates a unique blend of rural tranquillity and vibrant city life. An unexpected game reserve in the inner city, beautiful rose gardens, botanical gardens, suburban parks, a zoo, game reserves and sports facilities are part of the rich diversity on offer within the boundaries of the Mangaung Local Municipality. With its impressive architectural, historical heritage and arts festivals, Mangaung is also a prominent cultural centre.

Its central location has established Mangaung as a perfect conference destination with modern, world class, well-equipped facilities and accommodation ranging from star rated establishments

to intimate guesthouses. Mangaung hosts numerous national and international conferences and sports events annually. Theatres, restaurants, pubs, jazz clubs, and shopping and entertainment complexes provide relaxation for delegates and visitors during their stay. Crime levels are low and the city has everything a metropolis can offer, including the personal service, hospitality and warmth often lacking in larger centres.

Given the potential of the tourism sector to sustain economic growth and job creation, the local municipality is actively involved in promoting Mangaung as a national and international destination to both tourists and the sports community. Against this background the municipality also played an important role in South Africa's successful bid for the 2010 World Cup Soccer tournament.

The Mangaung Local Municipality has therefore succeeded in rapidly positioning itself as an effective development-focused local authority intent on leading the drive towards empowerment by providing efficient services and addressing the needs of its communities. This has been achieved by building a sound foundation of financial, organisational and municipal governance structures and embarking on innovative, customer-focused initiatives in service delivery, local economic development and transformation.

Mangaung a city on the move!

For further information:

The City Manager
Mangaung Local Municipality
PO Box 3704
Bloemfontein
9300

Tel: +27 (0) 51-405 8101
Fax: +27 (0) 51-405 8108
e-mail: cmanager@civic.mangaung.co.za



Some argue that variety is the spice of life. Others view it as the soul of enjoyment. For those living in or visiting Mangaung, it is both...

BLOEMFONTEIN • BOTSHABELO • THABA NCHU

Few other urban areas in South Africa can compete with Mangaung when it comes to the surprising variety of activities that is on offer to residents and visitors alike. Activities that come with artistic, cultural and educational enrichment. Additionally, the fact that this is a relatively low risk crime area renowned for its warm hospitality, unpretentious people and less frenetic lifestyle, makes Mangaung an ideal destination for those who do not only want to explore a new environment, but also desire to rediscover themselves in the process.

Mangaung boasts a wealth of attractions for local residents and visitors alike. Its rich history spans over more than 150 years and is reflected in the architecture and places of interest that can be found throughout Bloemfontein, Thaba Nchu and Botshabelo. These sites are complemented by a landscape characterised by rolling plains and isolated hills.

With the large cultural diversity in the Mangaung area, excellent opportunities exist for the people of this area to showcase their best at annual festivals and other celebrations. There is also a range of entertainment events all year round. Events range from theatre, ballet, opera and other music productions to art, museum exhibitions and craft markets. All of this adding spice and soul to living in and visiting Mangaung. The newly completed Windmill Casino and Entertainment Complex opened its doors in 2005 and is currently one of the biggest visitor attractions.

SHOPPING AND ENTERTAINMENT

Mangaung offers the keen shopper a wide variety of shopping opportunities. These range from upmarket and luxurious shopping malls to roadside hawker and curio stalls where indigenous African art and craft can be purchased.

Several jazz clubs and taverns in Mangaung are well known for their warm atmosphere and quality music. Entertainment, including casinos, restaurants and musical shows are also available.

ART SCENE

Performing arts activities in Mangaung are presented by dedicated institutions, such as the Free State Performing Arts Council (PACOFs). Performances in different genres, from drama, ballet and cabaret to performances of classical music, pop and musical theatre, are on offer daily in easily accessible venues all over the city.

Art exhibitions are presented at venues such as Oliewenhuis Art Museum, the Johannes Stegmann Art Gallery and the Mmabona Cultural Center in Thaba Nchu.

ECO-TOURISM

Some of the eco-tourism opportunities in the Mangaung area include the Maria Moroka Game Reserve, Rustfontein Dam Nature Reserve, Franklin Game Reserve, Free State National Botanical Garden, an Orchid House, a Fragrance Garden for the Blind and the Bloemfontein Zoo.

A visit to the Predator Park at the Soetdoring Nature Reserve not far from Bloemfontein, rewards visitors with a close-up encounter with wild lions.

HISTORICAL SITES AND MUSEUMS

Some of the historical sites in Mangaung include President Brand Street that showcases several historical buildings depicting the early history of the former Orange Free State Republic; the National Women's Memorial and War Museum commemorating the death of women and children in concentration camps during the Anglo Boer War (1899-1902); the National Museum exhibiting an extensive fossil collection and Mapikela House that had been home to Thomas Mapikela, who was elected chairman of the South African Native National Congress (later the ANC) at its founding meeting in Bloemfontein in 1912. Several private museums such as the world-renowned Choet Visser Rugby Museum can also be visited in the city, while trails such as the Tolkien trail gives visitors an overview of the world famous writer, JRR Tolkien's childhood years in Bloemfontein.

MARKETS, FESTIVALS AND SHOWS

Mangaung also offers a variety of regular arts and crafts markets such as the monthly Kings Park arts and crafts market where people from all over the country sell their handmade products at hundreds of stalls on the first Saturday of every month. Apart from smaller scale initiatives, the following events represent highlights on the Mangaung arts,

entertainment and cultural scene: The Mangaung Cultural Festival (MACUFE) is an international festival showcasing the best in local and continental art and culture; the Volksblad Arts Festival presented annually on the campus of the University of the Free State; a Vuka Jazz Festival at Loch Logan showcases an exciting line-up of artists. In October every year enthusiastic gardeners, professional and amateur, show off their prize blooms in perfectly breathtaking displays of roses in full bloom at Bloemfontein's Rose Festival. The week-long annual Bloemshow is one of the largest agricultural shows in South Africa, attracting visitors and exhibitors, even from neighbouring countries.

CONFERENCES AND SPORT EVENTS

Its central location has established Mangaung as a perfect conference destination with modern, world-class, well-equipped facilities and accommodation ranging from star rated establishments to intimate guesthouses. The high quality sports facilities also lend itself to hosting National and International sporting events.

Come and enjoy a city on the move - Visit & Enjoy Mangaung!

For further information:
The City Manager
MANGAUNG LOCAL MUNICIPALITY
PO Box 3704 • Bloemfontein 9300

Tel: +27 (0) 51-405 8101
Fax: +27 (0) 51-405 8108
e-mail:
cmanager@civic.mangaung.co.za

UNPACKING THE DIFFERENT WAVES OF BEE

BY VUYO JACK

The author is a founder and executive chairperson of Empowerdex

FIRST WAVE OF BEE

Black economic empowerment (BEE) in South Africa has evolved over the last twelve years of democracy. There are two waves of BEE that we have seen and the emergence of a third wave is on the horizon.

In the history of BEE, 1993 is an important year that marked the beginning of the first wave. In this year, Sanlam, via Sankorp, sold its controlling interest in Metropolitan Life (MetLife) to Dr Nthato Motlana's BEE consortium, which became New Africa Investments Limited (Nail). Through a voting pool agreement with Sankorp, Nail was able to exert effective control over MetLife while having a 10 percent stake, with the Industrial Development Corporation (IDC) providing some financing for the deal. This enabled Nail to be the first black company to list on the JSE Securities Exchange. Rather than having a focused strategy, they acquired assets that became available. By 1997, when the voting pool with Sankorp was cancelled, Nail increased its stake in MetLife to 51 percent. Nail was able to amass assets such as in MTN, African Merchant Bank (AMB), Theta (now African Bank Investments), and media interests (The Sowetan, Radio Jacaranda and a radio advertising firm, Radmark), amongst others.

Nthato Motlana, at the helm at Nail, was joined by Dikgang Moseneke, Cyril Ramaphosa and Zwelakhe Sisulu. When Ramaphosa joined Nail, he brought along a group of investors, including several trade union funds, called the National Empowerment Consortium (NEC), which helped Nail buy industrial conglomerate Johnnic from Anglo American Corporation. Nail grew to become one of the largest black-owned publicly traded companies. By the end of 1998 - a peak year for the bull run on the JSE - Nail had a market capitalisation of nearly R6 billion. The successful launch of Nail was a catalyst for other black consortiums to get into the BEE arena in the late 1990s.

SPV PHENOMENON

However, the biggest question concerned the sustainability of the funding mechanisms used in the deals concluded during this period. Most black people do not have the capital or adequate collateral to offer in the BEE deals. The need for innovative financing mechanism gave birth to the special

purpose vehicle (SPV), which ensured that, over time, black people would be able to pay off the loans used to buy their shares in the established companies. In an SPV, the financier provides funds to the SPV in exchange for a combination of equity and debt instruments. The BEE company gets the voting rights, but the financier enjoys the performance of the underlying shares, up to a certain hurdle rate, usually expressed as a percentage of the prime lending rate. Above the hurdle rate, the returns go to the BEE company. The structure worked well in a bullish market where there was a steady flow of cash inflows to cover the repayments of debts.

THE BURST OF THE FIRST WAVE

In the second half of 1998, there was a downturn in the markets: the interest rates started to increase and the dividends from the underlying investments failed to cover the debt instruments' hurdle rates. As a result of this and poor capitalisation, many BEE companies and consortia went under. For example, the Johnnic BEE shareholders faced this problem, especially towards the end of the financing period. The Ucingo consortium, which held Telkom shares, saw funders take over their shares when they were unable to meet their funding obligations.

On the other side of the coin, there was a successful realisation of value for different black parties. Mzi Khumalo made a neat profit on the shares in Harmony Gold that his consortium (Simane) held. WIPHOLD realised value by disposing of the shares they held in Bidvest and Alexander Forbes. All these exits were not necessarily welcomed by the companies involved because it meant that they would again have to enter into empowerment deals to retain BEE credits. Harmony Gold, Bidvest and Alexander Forbes have subsequently found new black partners, but have also put lock-in mechanisms in place to ensure that the partners will not dilute their BEE credits. The bottom line for any financing transaction is that, for every risk that is taken by the different parties, there must be a commensurate return attached to it. The advisors to the BEE dealers themselves chased "deal flow" as their fees relied on the size of the deal. The structuring of the deals in the first wave of BEE was therefore not robust enough to withstand the vagaries of the markets, and the sustainability of BEE deals was

not necessarily a prime consideration. Needless to say, the appetite for BEE deals waned in the late 1990s, until the emergence of the mining charter, which unleashed a number of BEE deals in the mining sector and had a ricochet effect on other sectors, leading to the second wave of BEE.

THE SECOND WAVE OF BEE

The burst of the first BEE bubble gave rise to reflection on how BEE could be accelerated in a meaningful manner. In November 1997, the Black Management Forum (BMF), proposed the establishment of a Black Economic Empowerment Commission (BEECom). The formation of the commission was spurred by the lack of common definitions, benchmarks and standards for BEE that had led to opportunism and fronting. The ANC, at its congress in Mafikeng, endorsed the position of the BMF and the mandate of the commission, under the leadership of Cyril Ramaphosa. In 2001, BEECom released its landmark report, which affirmed a broad-based approach to BEE, that is, a change from the exclusive focus on ownership to the other elements, such as employment equity, skills development and preferential procurement, amongst others. The BEECom report set the scene for the government's **BEE Strategy** document, released in 2003, and the draft codes of good practice on broad-based BEE (BBBEE), released by the Department of Trade and Industry (dti) in December 2004.

Around the time of the BEECom report, what is now known as the "charter festival" was ushered in by the Petroleum and Liquid Fuels Charter, which was groundbreaking when it was signed in November 2000. This charter brought the spirit of the political charter of the 1950s into practical use in an economic environment. It is important to note that the Department of Minerals and Energy set the tone that would take the country by storm in years to come through their Energy Policy White Paper, which formed a basis of the Petroleum Charter. In 2002, the mining charter waltzed in, setting the global markets spinning with its wide-reaching transformational impact on the South African mining sector. This charter proposed an equity ownership target of 26 percent, which, for the first time, gave potential black shareholders some leverage in the decision-making processes of mining companies.

The Mining and Petroleum Charters introduced the concept of broad-based BEE in a practical manner for other sectors to follow. The impact of the Mining Charter can also be seen in the increase of BEE deals in the resources sector of the JSE. Numerous other charters have been formulated, but the two charters that have the force of law are the Mining Charter and the Liquid Fuels Charter. In March 2006, there were more than 30 charters being contemplated by the different sectors, ranging from financial services to property to agriculture and ICT.

"BIG LEVERAGED BUYOUT" OF THE SOUTH AFRICAN ECONOMY

The other interesting facet of the second wave of BEE is the financing mechanism of BEE deals. The use of SPVs that linked the payment of the debt to the price of the shares stopped, but SPVs continue to be used without any linkage

to the underlying share price. The new SPVs utilise dividend payments to pay off the deal-financing debt incurred by BEE parties. The critical variables in the financing of BEE deals are still the cost of financing, the security required and the terms attached to that security. The entire financing mechanism in the second wave of BEE has been aptly described by one American MBA student as "one big leveraged buyout (LBO) of the economy in South Africa". This is somewhat true because there is not much black capital to purchase most of these stakes in established companies. Therefore, debt is the most accessible capital that can be utilised for BEE deals.

Passive ownership of shares is frowned upon in the second wave of BEE. There is now a great expectation for black people to have hands-on involvement in the investments they make through BEE deals. Therefore, there is a rise in shareholder activism, which encourages the broad base of shareholders to take an active interest in how their voting rights can be utilised to drive change within companies. The broad-based ownership phenomenon has also spread like wildfire. Employee share-ownership schemes, which include both black and white employees, are utilised as BEE vehicles. The backlash against only a few individuals benefiting from BEE deals is felt as strongly as ever in this second wave of BEE.

Will the second wave of BEE ensure that at least 25 percent of the economy will be in black people's hands in the next ten years? The ownership element will not, on its own, succeed in fulfilling this target because of the high debt leverage of the big LBO approach to BEE deals.

A third wave of BEE is starting to manifest itself in a manner that will make a remarkable difference in the future of South Africa.

THE THIRD WAVE OF BEE

The seed for the third wave of BEE was planted with the advent of the preferential procurement strategy in 1997. Preferential procurement is what made BEE a business imperative. Before the passing of the Broad-based BEE Act in 2004, the Employment Equity Act and Skills Development Act were enacted in 1998. The effect on companies was major but the buy-in was not as strong as the government would have liked. Some companies even budgeted for the fines of not meeting the requirements of these acts. For others, the skills development levy was (and is still) seen as the tax that needs to be paid as part of doing business, without worrying too much about the underlying training that is required under the act.

The 1997 green paper on public sector procurement reform, released by ministers Trevor Manuel and Jeff Radebe, came up with a novel idea that would revolutionise the way business is done in South Africa. This idea took advantage of the leverage government has in procurement to drive economic development and SMME development. In 2000, Minister Manuel tabled the Preferential Procurement Policy Framework Act, which attempted to bring focus to transformation issues and also allocated points to the

functional areas of the procurement process, such as quality and price. This resulted, for example, in the "80/20 system" where, in contracts less than R500 000, 20 points are allocated to transformation issues and 80 points to functional areas of the contract.

In the recent past, black businesses relied on contracts from the public sector for their survival. Within the private sector, the market access for black businesses was limited. An analysis of the financial statements of the top 100 JSE-listed companies in 1992 and 1997 shows that there was a low level of interest in buying from black business. Only 3 percent of them mentioned their policy on preferential procurement in 1992, and 4 percent in 1997. It is only in 2002 that 42 percent of the top 100 publicly disclosed their policy on preferential procurement. However, when it comes to actual spending, only 1 percent of the companies spent some money with black businesses in 1992 and only 4 percent in 1997 and 2002. These statistics show that there has not been an increased focus on acquiring goods and services from black businesses in the private sector. Then came the broad-based BEE (BBBEE) strategy in 2003, which firmly underscored the importance of preferential procurement and allocated it a weighting of 20 percent.

TRICKLE-DOWN IMPACT OF PREFERENTIAL PROCUREMENT

Preferential procurement is important because it has a trickle-down effect. For example, a public sector entity may say that companies that want to conduct business with it need to show the contribution they have made to BBBEE, including how much they have bought from black companies and those companies that contribute meaningfully to BBBEE. These first-tier suppliers then need to see how much their suppliers buy from BEE companies in order for them to get preferential procurement points on their BEE scorecard. The chain goes down numerous tiers until it affects all companies within the economy. Suppliers that do not contribute to BEE and also don't buy from BEE companies present a threat to their clients who will not be able to score any preferential procurement points by buying from them.

The implication of the trickle-down effect of preferential procurement is that it increases the market access of black companies and ensures their sustainability by decreasing heavy reliance on the public sector. In reality, we have seen the power of procurement leverage in operation and this ensures that all industries in South Africa are involved in BEE.

KEY CHARACTERISTICS OF THE THIRD WAVE OF BEE

The distinguishing factor of the third wave of BEE is that black people start their businesses from scratch and grow them through the procurement and enterprise development opportunities that arise from BEE. This model is mainly driven by the following factors:

- immediate cashflow arising from the procurement opportunities is better than the cashflow from ownership deals that could take numerous years before accruing to black people
- starting their own business enables black people to have

hands-on involvement in the operation of the business and gives them the ability to create their own culture within it

- there is a greater ability to unleash their entrepreneurial potential in starting and running their own business
- the enterprise development element of BBBEE is a tool that helps the business start up from the "valley of death" that most businesses experience in their first two years of operation. Enterprise development enables the startup enterprise to receive operational and financial capacity assistance in order to make it more sustainable.

The fact is that this approach to BEE is much more painful and may be slow to come to fruition. The "law of the farm" is inherent in this model: it will take time for the productive capacity of the new business to be developed before the fruits of such capacity can be harvested. This may result in accelerated economic empowerment and sustainability once the "valley of death" is passed. The biggest payoff of the third wave is job creation and the development of black skills. The key drivers of this black enterprise creation will tend to be younger people or people who may not have extensive business or political networks. They will be starting to build those networks from scratch to open the doors to opportunities, which would require tremendous skill. The key to the success of these new black enterprises lies in the receptivity of existing enterprises to provide opportunities to the new ones.

The ultimate test of the third wave of BEE is whether the black entrepreneurs and businesspeople will be able to replicate their experience of starting and/or running their own business anywhere else in the world. If the answer is yes, then BEE would have achieved its aim, but if the answer is no, then BEE would have failed in one of its objectives.

Furthermore, the consolidation stage of the third wave of BEE could facilitate mergers of black businesses with existing enterprises. An early example of this can be seen in the merger of Business Connexions, started by the Mopothlane brothers, with Comparex to create one of the sizable IT companies in South Africa.

THE ROLE OF THE FINANCIAL SERVICES CHARTER

The empowerment financing proposed in the Financial Services Charter, of R122.5 billion over five years, translates to approximately 10 percent of the wealth managed by the financial services industry, using July 2003 amounts. This is quite encouraging for the following reasons:

- this may be in line with, or even exceed, the desired targets of the Growth and Development Summit
- it alleviates some of the empowerment deal financing crunch, which ranges between R162.4 billion and R355.6 billions (using the JSE as a base), to be able to reach 25 percent black ownership targets
- the financing that is available for low-cost housing, infrastructure and black agriculture represents market access opportunities for black construction companies and black farmers. This forms a good complement to the construction and the AgriBEE charters.

These proposals ensure that approximately 10 percent of the financial services' asset allocation is dedicated to developmental financing over the next five years. The question is whether this is enough to satisfy the financing needs. The answer is probably "no, it is not enough", but it does help to address the empowerment financing shortage. It is heartening to see that the committed amount may actually increase.

The allocation of the funds will be based on market shares, which could use funds under management as a benchmark. This would effectively have two consequences. The first is that more responsibility is placed on those financial services companies that have more funds under management. Secondly, the entities that are currently setting aside funds for empowerment financing may meet their allocated target much sooner, thus scoring highly in the first years of the charter.

The different types of financing have different impacts on economic growth. There is financing of equity deals, which results in shares shifting from white people to black people, without necessarily creating new jobs or new opportunities. But this financing is necessary to ensure that the equity ownership profiles of companies change over time. Furthermore, financing the acquisition of operational assets by black people has much more impact on the economy as it may result in job creation and facilitate more robust participation by black people in the mainstream of the economy. Infrastructural finance has a multiplier effect on the economy and thus proves to be a good catalyst for growth. Financing the operational capacity of black small- and medium-enterprises (SMEs) is critical to economic growth due to the number of jobs that may be created and because the size of this sector makes it a potential backbone of the South African economy.

Analysis of the financing shows that black empowerment deals will have a 41 percent allocation: low-cost housing, 34 percent; infrastructural projects, 20 percent; small black business, 3 percent; and black agriculture, 1 percent. There is a bias towards the second wave BEE LBO-type of financing because it involves buying into white-owned businesses that have a longer track record and there is, therefore, a lower risk to the financiers. Furthermore, the allocation to the financing of BEE deals may be diluted if it includes deals within the financial services sector. There is a potential underweighting (3 percent) of financing earmarked for the small black businesses that tend to have less business experience and are therefore seen to be highly risky by financiers. Small black businesses mostly need financing for the acquisition of assets and for the working capital that could drive their growth and build up operational capacity to ensure sustainability over the long term.

There is a hopeful assumption that small black business financing is underweighted because the financial services companies will continue to finance the assets acquisition and operational capacity of these businesses as part of their day-to-day business. This would also include financing the

working capital needs of black businesses that may not be SMEs. A further assumption is that the financing of small black business under the charter will have more favourable terms in order to facilitate an accelerated repayment of the capital portion of their loans without compromising the sustainability of these businesses.

There are a number of hopes that are generated by the Financial Services Charter:

- that the financing of BEE deals will result in a lower cost of financing for black people participating in the transactions
- that the terms attached to the financing will facilitate the faster accrual of greater economic interest by black people for their own benefit after paying off the interest and capital portion of the loans
- that the usually onerous security requirements over the shares or equity instruments will result in black people having real unencumbered ownership much sooner.

THE STAGES OF EMPOWERMENT FOR ESTABLISHED WHITE-OWNED COMPANIES

The last ten years have seen most established companies going through different stages of empowerment, starting off with the **denial** stage where there is no awareness of the importance of empowerment from both a business and socio-economic perspective. The companies believe that BEE does not affect them. When the preferential procurement effect hits them and they realise that they have to contribute to BEE, they then go to the next stage of **anger**, where they vent their frustrations with the BEE policies as being reverse discrimination. For most of the last ten years, established companies were at these stages. From around 2003, most companies moved towards the **bargaining** stage because they could not sustain their anger without any negative impact on their bottom line. This is the stage where we see a flurry of BEE deals and initiatives that may not be sustainable in the long term.

Most companies in South Africa are still in the bargaining stage of BEE, where the bottom line for them is, "What is the least that I can do, regardless of ultimate effect and quality, that would earn us most points on the BEE scorecard?" This attitude is reflected in the level of fronting that takes place, and the unsustainability of BEE deals and initiatives that are being implemented. When the sustainability of the BEE initiatives collapses, the **depression** stage is ushered in, where deep reflection takes place and the meaning of true transformation sinks in at all levels in the company. This is when full acceptance starts to make its way within a company. The **acceptance** stage is when the BEE initiatives are robust and sustainable, where there is a realisation that BEE is a long-term process that requires a good investment over time. The depression and the acceptance stages are still coming in the next few years for most companies in SA.

THE STAGES OF EMPOWERMENT FOR ASPIRANT BLACK BUSINESSPEOPLE

The opposite of the same coins are the stages that the black shareholders go through. The black shareholder first

experiences the **innocence** stage, where magical thinking around BEE occurs. Tales of quick wealth accumulation, of easy access to capital solely based on one's connections, auras of being a maverick dealmaker and other fascinations abound in this stage of innocence. There is an inherent "irrational exuberance" in the number of deals and initiatives entered into during this stage. Landing that one big deal is usually interpreted by the black dealmaker as "I'll be sorted for life with this deal." The glitter and glamour of innocence crumbles when the deals fall through or do not result in cash flowing to the black partners or when facing the stark reality that you are never settled for life.

The illusion of childhood gives way to the period of **pain** when the black people clearly see some of their inadequacies when they participated in the BEE deals and initiatives that have gone awry. In this stage, the pain shakes the black shareholders at the core of their being. Reality crashes down on them with an awakening message that there is no such thing as a free lunch in business, especially in BEE.

After the painful stage, the lessons of adulthood begin with the building up of the tools and knowledge required to function optimally within the first economy. Black people reflect on the gaps identified in the pain stages to ensure that some of the mistakes are not repeated again. In the **knowledge** stage there is an intrinsic humility demonstrated as black people divest themselves of the untenable magical thinking around BEE and take a more pragmatic approach to business. Once the knowledge and the appropriate tools are absorbed, the **action** stage follows where the knowledge and the tools are applied to function optimally in the first economy. This is when black people acquire the strength to follow through and face the realities of the first economy head on. In this action stage, there is plenty of evidence of alignment between what they believe, what they say and what they do.

The knowledge and the action stages culminate in the final stage of **wisdom**, where black people realise what they are

capable of, without needing external validation or approval. Another great sign of this stage is that people are selective in the deals they get involved in, as they seek those BEE deals and initiatives that speak to their ideals and that would accelerate the realisation of their vision. There is a great level of rare authenticity exhibited by the people who have reached this stage. This is a stage where black businesspeople have found their voices and are not bashful of expressing them. This is a stage when there is integration into the mainstream economy and where black people are able to bring others in great numbers into the fold of the mainstream economy because they have a sustained ability to do so.

In the first ten years of democracy, black people vacillated between the childhood innocence and pain stages, while the established white companies were languishing in the denial and anger stages. Currently, most black people are moving towards the knowledge stage, while others may be at the action stage and their white counterparts may be at the bargaining stage of BEE. Some of the players involved in the early pioneering deals, like Nail and Johnnic, have gone through the different stages and earned their business stripes. The movement towards the progressive stages by both blacks and whites is a good signal for the future of our country.

CONCLUSION

As a reflection of the greatest achievements and lessons learned, such as the increased focus on broad-based BEE which concentrates on all elements of the scorecard and the focus on the advancement of black women, while still leaving space for white South Africans to contribute to the economy, the next decade bodes well for South Africa. There is a glimmer of hope in that we are starting to see the sparks of a sustainable single economy in the foreseeable future. Using the quantum physics paradox of light being both a wave and a particle, there is hope that BEE will be a sustainable particle that may take on wave characteristics to move the transformation of the South African economy to greater achievements.





health

Department:
Health
REPUBLIC OF SOUTH AFRICA

STRENGTHENING HUMAN RESOURCE PLANNING FOR A SKILLED HEALTH WORKFORCE

BY GREG GORDON

Population growth and related demographics as well as other complex health drivers play an important role in the planning of human resources for health. With urbanisation on the increase, the health system faces the tough task of attracting health professionals to rural and other under-served areas.

The location of almost all health education and training institutions in urban areas influences the choices made regarding their employment by young professionals.

Even though provinces have tended to focus on providing study assistance to students from rural communities, there are conflicting views concerning whether this strategy ensures that these students willingly return to work in their communities after graduation.

Says Dr Percy Mahlathi, deputy director-general at the Department of Health: 'Of concern is the challenge of attracting prospective students to the health sciences. Recruitment strategies therefore have to extend to pre-higher education student life, whilst recognising the urge for young people, including those from rural communities, to experience urban life as well as international travel and experience. Utilising the size of the population in rural areas as a basis for argument, it is clear that the availability of health professionals in provinces with large rural communities is a serious issue.'

He says with the majority of provinces being rural and bearing in mind the challenge of staffing health facilities in these areas, new strategies need to be employed at provincial level so as to encourage health professionals who operate specifically at primary healthcare level in the private health sector also to provide services in the public health facilities.

'Vital to this approach is an increased and sustained level of production of health professionals over a period of time. Such strategies will include most of the professional

categories, in order to avoid gaps in planning that ultimately affect service delivery seriously and negatively.'

Most countries in the world are facing an increase in the burden of disease and the challenge of adjusting their health systems to cope. Complicating this is the phenomenon of migration of health personnel, negatively affecting mainly developing countries.

Says Mahlathi: 'Reviewing the trends in the production of South African health professionals and reversing them is obligatory. By so doing the country should be able to reassess not only the need for training but also the way in which its health workforce is trained. Overall, various pieces of legislation affect human resources generally, with some being more specific to health.'

The 1997 White Paper for the Transformation of the Health System in South Africa came to be the first pivotal policy document guiding transformation in the health sector. It established a number of important principles to guide human resource planning, production and management.

Following this groundbreaking policy document, the Health Sector Strategic Framework 1999-2004 and the 2004 Strategic Priorities for the National Health System 2004-2009 were published by the National Department of Health,

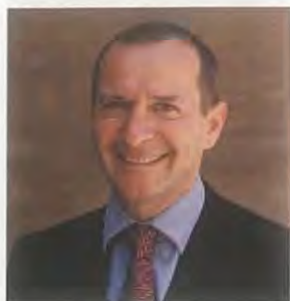
highlighting human resource development as a priority area.

In 1999 the Forum of Statutory Health Councils established a Continuing Professional Development Programme. This introduced the principle that all registered health professionals must update their skills on an ongoing basis by means of a range of professional development activities, including organisational activities, self- and group study, publications, teaching and the acquisition of additional qualifications.

* Taken from the *Sunday Times*



Deputy Director-General for Human Resources,
Dr Percy Mahlathi



THE ROLE OF AN INVESTMENT BANK IN BROAD-BASED BEE TRANSACTIONS – A BANKER'S PERSPECTIVE

BY MARTIN L KINGSTON AND LISA CHIUME

The authors are, respectively, executive chairman and associate at the Deutsche Bank

The principles underlying BEE in South Africa are simple: transfer approximately 25 percent of the economy's wealth to black shareholders through the sale of equity or assets within a specified timeframe; increase black participation in the mainstream economy, thus transforming the face of corporate South Africa; and increase the extent to which black people influence the flow of capital and achieve the growth objectives of the South African government as espoused in the Accelerated and Shared Growth Initiative of South Africa (ASGISA). On the face of it, the objectives are indeed simple. The devil, however, lurks in the detail. It is in this detail that investment bankers and corporate financiers across South Africa have been immersed since 1994 when BEE-related corporate finance activity picked up.

The momentum and quantum of BEE transactions have increased significantly since 1994. Some companies recognised early on that BEE would define the way that businesses operate in South Africa and implemented empowerment transactions in the mid-1990s. However, it is the formulation of sector charters and BEE legislation – such as the Mining Charter in October 2002, the Financial Sector Charter (FSC) in October 2003 and the Department of Trade and Industry's Codes of Good Practice on Broad-based BEE (the codes) in December 2004 (Phase 1) and December 2005 (Phase 2) that have added impetus to the wave of empowerment transactions announced in the period 2002-2005.

In its **BEE 2006: BEE Charters and Deals**, the BusinessMap Foundation estimated that the value of empowerment transactions announced increased from R12 billion in 2002 to R55 billion in 2005. Whilst the value of transactions announced in 2005 is lower than the R62 billion of 2004, the number of transactions announced increased from 250 in 2004 to 350 in 2005. Several landmark empowerment

transactions were concluded during the year, including:

- Anglo American/Kumba Resources and Eyesizwe Mining forming the largest empowered mining group to date with a value of R16 billion
- De Beers' R3.6 billion empowerment transaction
- the empowerment of Old Mutual plc's South African subsidiaries (Old Mutual South Africa, Nedbank and Mutual & Federal) valued at R7.2 billion.

The introduction of an empowerment shareholder is a complex process, not dissimilar to a typical mergers and acquisition transaction. However, the empowerment process is complicated by the need to meet the commercial objectives of the company introducing an empowerment shareholder and also to mitigate the limited financing capacity of the typical black empowerment partner. Complex funding structures are often designed and implemented in order to address both the concerns of the company's existing shareholders regarding potential value leakage and dilution and the requirements of government and other key stakeholders tasked with advancing broader empowerment objectives.

It is in developing a co-ordinated approach that addresses all of these elements, whilst creating a transaction structure that is sustainable and results in value creation for both the empowered company and its black empowerment partner that the role of an investment banker in implementing BEE transactions becomes key.

DEFINING THE ROLE OF AN INVESTMENT BANK IN A BEE TRANSACTION

Sector charters such as the FSC and the Mining Charter detail several pillars of transformation, including ownership, employment equity, management control, skills development, preferential procurement and enterprise development. While recognising that transformation is a holistic process

incorporating all of these pillars, an investment bank's role focuses primarily on the more visible ownership element of empowerment. The targets for equity ownership differ across the sector charters, ranging from 10 percent direct black ownership in the FSC to 26 percent ownership in the mining sector and 25 percent in terms of the codes.

With few exceptions, most companies operating in South Africa, regardless of size, listed or unlisted, will need to implement an empowerment transaction. Empowerment is not a legal requirement as much as it is a commercial imperative. The tangible cost of not being empowered will be felt by companies who rely on government and public sector business and licences in order to do business and are measured on their empowerment status. Further, the procurement lever of empowerment extends to private sector companies who prefer to interact with empowered suppliers as this will impact positively on their own empowerment status as well as the status of the supplier. The intangible cost of remaining unempowered in a changing society will be measured through public and stakeholder perception of a company slow to embrace the transformation imperative. This has created the situation in which most companies, previously considered white-owned, are willing sellers of equity or assets in their businesses to black empowerment partner(s).

Thus in any BEE transaction, there is a sell-side and a buy-side element. The sell-side involves the company selling an equity stake in its company or a subsidiary/asset to an empowerment partner. The buy-side involves the potential empowerment partner bidding or being selected, through a "beauty parade" process, to acquire this potential equity stake or subsidiary/asset.

Investment banks generally prefer sell-side advisory roles, premised on the higher probability of successfully concluding a transaction. The buy-side carries additional risk due to the lower certainty of success inherent in a bidding process where a large number of empowerment partners may bid to acquire the same assets. Beyond providing an advisory service to the buy-side, an investment bank's role may extend to the provision of financing for empowerment partners.

COMPONENTS OF A SELL-SIDE ADVISORY ROLE

The overarching role of an investment bank throughout an empowerment transaction process is to provide strategic guidance to a client, from conceptualisation of a transaction structure through execution to the final implementation phase. Due to the diverse nature, needs and strategic objectives of businesses operating in South Africa, as well as, indeed, the differences between the designers of empowerment transactions, no single formula exists for "how" empowerment transactions should be implemented. Over time, however, as the empowerment process evolves, bankers are able to draw on the best and the worst of transactions concluded to date. Certain common ingredients arise.

The components of a successful sell-side advisory role that

Deutsche Bank has identified and implemented in various transactions include:

- the provision of strategic input to the company's decision to embark on a BEE transaction, by articulating the commercial (and political) rationale for the transaction
- designing and establishing a transformation committee. Before embarking on an empowerment transaction, a company typically needs to have formulated a company-wide transformation strategy. This is optimally driven by a centralised body/unit, e.g. a transformation committee. This committee is a sub-committee of the board of directors and is chaired by the Chief Executive Officer (CEO) or an independent non-executive director of that company. Several large South African corporations, including Anglo American and Impala Platinum, have constituted transformation committees to drive their transformation initiatives.

The typical terms of reference for a transformation committee include:

- providing leadership of the transformation agenda. Leadership should entail the highest level of the organisation sending a message to employees of a solid commitment to transformation and the empowerment process
- ensuring that there is a uniform and co-ordinated approach to the transformation process. This is especially significant in organisations with diverse business operations. Implementation of transformation across such an organisation should not create conflicts and contradictions
- achieving compliance with the requirements of the relevant empowerment legislation and/or sector charter(s). Mere compliance, however, is not the objective: empowerment extends beyond a "tick box" exercise and charter targets should be viewed, as far as possible, as the minimum requirement
- positioning the company for the long term in South Africa. The process should initially provide a company with a competitive advantage over its competitors who have not embarked on such a process. Sustaining this advantage should lead to long-term value creation, despite competitors concluding their own BEE transactions
- identifying and, if possible, removing the internal and external impediments to effective transformation. The transformation committee is a key facilitator to effective implementation of a transformation process.

Transformation issues should not be separated from, but rather form an integral part of, the overall business strategy, and in some cases, should provide impetus to broader business growth. The transformation committee's focus should thus be on interventions that seek to develop a corporate structure that will increasingly be reflective of South Africa's demographics whilst at the same time achieving commercial business objectives:

- designing a viable and sustainable empowerment proposition. The creation of a sustainable empowerment proposition is driven by several key decisions, such as the level in the business (e.g. holding company or

subsidiary level) at which empowerment shareholding is to be introduced, or the assets (operating level) to be empowered. A **holding company transaction**, usually at the listed company level, is simpler to implement and provides an exit mechanism for the empowerment partner, but results in dilution to existing shareholders. An **asset level transaction** provides an empowerment partner with direct access to the underlying cash flows, thus maximising their debt-funding capacity. However, an asset level transaction is often more complex and time-consuming to implement, as it may require a detailed assessment or restructuring of the business in order to identify the South African assets to be empowered

- a sustainable empowerment transaction should be linked to overall business objectives. For example, in the case of the BEE transactions for Old Mutual plc and its South African subsidiaries (Old Mutual South Africa, Nedbank and Mutual & Federal), elements of the empowerment proposition were linked to the specific business needs of each subsidiary. Old Mutual South Africa and Mutual & Federal put in place schemes that will facilitate an increase in the number of black brokers and distributors for each business. Nedbank implemented a retail scheme aimed at increasing its black retail-banking customer base and market share
- designing a sustainable financing proposition for the mutual benefit of the seller and the buyer. The objective is to find a balance between the cost to the company and value leakage to existing shareholders - shareholders generally accept that the cost of empowerment to them is approximately 3-4 percent of market capitalisation - and a financing structure that meets all the requirements of the relevant sector charter(s) or the codes with minimum risk to the empowerment partner. The key principles in structuring a financing proposition are therefore to maximise value and minimise leakage, conflict and execution risk
- identifying all key and relevant stakeholders and designing an appropriate engagement strategy for each. Every company has stakeholders (major suppliers, customers, employees, investors, trade unions and government departments) who facilitate the company's ability to do business in South Africa. Effective communication with these stakeholders is a key enabler of their acceptance of a company's transformation process
- understanding changing BEE requirements and being at the forefront of policy formulation. BEE legislation is evolving as the government continues to refine its thinking and hence BEE policies. An essential role for an investment bank to play is as the primary interface between government departments, such as the Department of Minerals and Energy and the Department of Trade and Industry, and the bank's corporate and institutional clients. This enables the bank to communicate any changes in policy from the government to its clients and, in turn, to feed back to the government the practical and commercial ramifications of policy implementation
- project management. The time and resource commitments required by the implementation and subsequent administration of an empowerment transaction are

often underestimated. An optimal transaction makes significant demands, often to the level of the CEO and the board of directors. Complex transactions, such as the Anglo American restructuring of its Kumba Resources investment, can take up to two years from inception to the day that shareholders vote to approve the transaction. During this period, the investment bank plays a key role in project management activities, including leading key design workstreams and acting as a primary interface between the company and potential empowerment partners.

SELECTING A VALUE-ADDING EMPOWERMENT PARTNER

A company has two choices when selecting an empowerment partner. The company can either select a pre-identified "sweetheart partner" or follow a more rigorous open tender or auction process to identify and engage a partner that best matches the business needs of the company. The latter process involves developing criteria against which to assess the appropriate partner, including capability, operational capacity and its ability to provide a long-term commitment and degree of exclusivity to the company. The key objective should be to form a business partnership that helps reposition the empowered company in South Africa and strategically positions it to capitalise on the business opportunity.

With the criticism that followed the repeated inclusion of the "usual suspects" in earlier empowerment transactions, the release of the codes has seen a shift towards the involvement of "new generation" empowerment players and a broader base of beneficiaries. Increasingly, the empowerment consortium comprises a lead empowerment partner(s); a company's management and employees through employee and management share ownership programmes; black women and broad-based groupings; as well as a community element. There is no blueprint for each consortium component's equity weighting in a transaction: the deal specifics will drive this weighting.

The empowerment partner process is not without its complexities. It is a time-consuming process that requires extensive negotiations to align the interests of both principals and often involves managing large groups of broad-based shareholders. A key concern is the capacity and the capability of the empowerment partners to not only form long-term business partnerships but to meet and deliver on the "value-add" expectations of the companies being empowered. This value-add is usually in the form of new business generation and the empowerment partner helping to drive internal and external company transformation.

The interests of both parties are often best aligned through an incentivisation mechanism, such as a service level or performance agreement. The Old Mutual South Africa, Nedbank and Mutual & Federal transactions include performance agreements in terms of which the empowerment partners can reduce the interest rate on funding from the base interest rate by achieving certain performance targets. Conversely, the interest rate can be increased if such

targets are not met. Sanlam included a "value-add formula" that can see the empowerment partner's shareholding in Sanlam increase to 12 percent from 8 percent, based on new business generated.

THE FINANCING DILEMMA: DESIGNING AN APPROPRIATE FUNDING MECHANISM

The financing of empowerment transactions is the single most complex element of the transaction for both the principals and the bankers tasked with designing these structures.

Assuming that 25 percent of the economy needs to be empowered, Deutsche Bank estimates that approximately R1.3 trillion will be needed to finance empowerment transactions. There are only a handful of empowerment companies that can provide, or have the ability to raise, capital for new investments, and the capital markets have limited capacity. Thus, bankers have had to develop innovative methods of funding these transactions. These structures have led to the "smoke and mirrors" criticism of empowerment financing structures due to the often small shareholding that accrues to the empowerment partners at the end of the funding period, as detailed further below.

The reality is that unless empowerment partners are able to pay full value upfront for the stake acquired, taking into account the initial cost in the form of a price discount or preferential funding terms, the actual value transferred to black people will be substantially less than the R1.3 trillion estimated.

The sources of funding for BEE transactions have to date been predominantly third party funds (debt) from the banking market, vendor support provided by the company itself and equity funding, as well as funding provided by the Industrial Development Corporation (e.g. Anglo American/Kumba Resources) and the Public Investment Corporation. The financial services sector, in particular the banks, with the sector's commitment to provide R75 billion in empowerment financing, is in the unique position of having to fund its own empowerment transactions as well as transactions across the economy.

One alternative financing mechanism is to use derivative structures, such as options (e.g. the Bermuda-style options Absa offered to its empowerment partner, Batho Bonke). Usually these options are offered to the empowerment company at no cost. Option structures, however, run the risk of not being measured as a true transfer of ownership (i.e. voting and economic interests) to black people. The FSC measures broad-based ownership arising from options by the extent that the options have been exercised, whilst the codes include the value of the option rather than the face value of the underlying security in the measurement of ownership.

A typical sustainable funding structure will rely on cash flows generated by the investee company to repay the debt funding. The funding would be for a cash-generating asset rather than listed equity. This structure is sustainable

because it relies on factors within the control of management to generate cash, such as management ability and decision-making, business plans and knowledge of the market, which facilitate quick responses to changing market conditions. The investment in the underlying asset can be converted to equity by converting the vested value in the asset to shares in the holding company on a relative value basis.

In contrast, a funding structure for the acquisition of equity (listed and unlisted) depends on the outperformance of the share price, in the case of listed companies, in order to fulfil the equity ownership. In most instances, this performance is expected over a short period of time (the funding period) and needs to be of the magnitude of a 100 percent increase - and above - in the share price. In addition, repayment of the debt is dependent on the dividend policy of the company. Dividends, when paid (dividend yields), could be much lower than the debt-servicing repayment, resulting in a repayment gap. In the event of the share price not achieving this outperformance, at the end of the financing period the empowerment partners will own a substantially lower equity portion than the intended level, at best, or nothing. A key concern is the fact that the shares may ultimately vest in the financiers and banks who would have obtained the shares as collateral for providing the financing, further reducing the empowerment partner's ultimate shareholding and the empowered status of the investee company.

POST-TRANSACTION ACTIVITY OF A BANK

As most transactions involve equity ownership rather than an asset acquisition, a bank's role in a transaction may continue even after the transaction participants have reached agreement on the equity transaction:

- the transfer to the empowerment companies of the listed shares, which are the subject of the transaction, takes place through a trade in the market carried out by an investment bank
- with the lapse of time, and as the value of shares increases, empowerment companies may, subject to the terms of the funding structure:
 - sell the shares in order to realise value and the proceeds can be used to partly settle the debt, invest in other opportunities or be distributed to shareholders
 - hedge using derivative structures and lock in value that has accrued above the initial purchase price
 - monetise the BEE investment. Where value has accrued but cannot be realised due to the terms of the empowerment transaction, an empowerment partner may raise capital and use this as collateral for the capital provider.

WHAT NEXT FOR INVESTMENT BANKS?

Despite the recent reduction in the value of empowerment transactions being concluded, BEE corporate finance activity will continue to feature in the South African investment banking landscape, at least until the need for regulated empowerment falls away. Changes in BEE policies such as the codes could require companies to conclude "top-up" transactions to meet the higher targets of the codes. An

opportunity exists for the creation of a secondary market for the trading of BEE shares. This could facilitate early exit for empowerment companies or the trading of BEE shares at the end of lock-ins related to funding periods and the tenure of charter measurement periods.

Investment banks are best placed to continue to play a key role in these transactions due to:

- their exposure to a wide range of clients and transactions and thus an understanding of the elements of a successful transaction
- their ability to act in a structuring and trading capacity as well as a provider of capital
- their ability to manage funds directed at empowerment
- their capability to provide intellectual capital, objectivity and analytical ability.



COUNTERING UNDUE INFLUENCE BY BUSINESS ON BEE: THE PUBLIC SERVICE FRAMEWORK

BY PROF S S SANGWENI

The author is the chairperson of the Public Service Commission

Citizens are applying rapidly increasing pressure on their governments to deliver services efficiently, effectively and speedily. It has become clear to many governments that they cannot address or resolve delivery issues alone. Partnerships with private sector and non-governmental agencies are needed if the rising demands of citizens are to be met. This recognition and the move towards co-operation, has led to increased interaction between the various sectors.

While I have been requested to comment on how the government monitors undue influence by business on black economic empowerment (BEE) contracts, my current work experience is confined to the public service. Within my work terrain, public service means, specifically, provincial and national departments and excludes local government bodies, which fall outside the ambit of the Public Service Act. Despite these confines, one cannot ignore the increased interaction that is taking place between the public and private sectors. This is expressed through the business conducted between the sectors as well as the fluidity of employment. Given the rapid pace of transformation in South Africa, such activity is not unusual. However, this article will argue that it is at these interfaces that relationships must be managed and guided. It is at these interfaces that conflicts of interest can and have, arisen.

This article provides some appreciation of the conflicts of interest debate, but more specifically comments on the measures in place within the public service to deal with

the undue influence that can be exerted by business in the private sector. Given the realities of perceived, potential or actual conflicts of interest, this paper asserts that the best way to manage these is through a strong integrity drive.

Considering that no regulations existed prior to 1994, a fairly comprehensive legislative and regulatory framework has been put in place to regulate ethical conduct and prevent conflicts of interest arising. Essentially, such frameworks help to guide the conduct of public servants and protect them from undue influence. However, the test of a successful framework is in its application and management. How effectively is it applied? More importantly, what type of integrity-basis determines the actions of decision-making public servants to ensure that such decisions are in the public interest rather than their own personal interest?

This article explores these questions through an examination of the legislative and regulatory framework of the public service that seeks to limit undue influence of business. This discussion also identifies areas where this framework requires improvement. The framework currently consists of legislation dealing with corruption and public financial management and regulations that focus on procurement practice, the conduct of public servants and financial disclosures by senior managers. As such, this article is not a theoretical exploration of the subject but an analysis of the existing framework based on my own experience and involvement in this area.

It is important to point out from the start that this paper is presented in my personal capacity. However, in my current position, I head the Public Service Commission (PSC) which plays an important role in assisting the public service to achieve a culture of good governance, underpinned by the values and principles of public administration contained in the Constitution of the Republic of South Africa. Such work experience has given me the opportunity to be at the forefront of public administration and more particularly, the debate on ethics and conflicts of interest.

UNDERSTANDING CONFLICTS OF INTEREST

Conflict of interest can be defined as "a conflict between the public duties and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of his/her official duties and responsibilities" (OECD guidelines 2003:24).

This is, however, a rather narrow approach, as the interaction between the private and public sectors has made the issue of conflicts of interest much more complex. While conflicts of interest in the past involved traditional sources of influence, such as nepotism, gifts and hospitality, in recent years they have arisen where:

- a public official has private business interests in the form of partnerships, shareholdings, board membership, investments and government contracts
- a public official leaves to work in a private company, or a chief executive officer takes up a key position in a government department with a commercial relationship with his/her former company
- a public official has affiliations with other organisations (e.g. an official sits on the board of a non-profit organisation that receives funding from the official's department).

The key question about conflicts of interest is whether a public official is in a situation where their private interests might improperly influence the way they do their job.

"Undue influence" for the public servant has two dimensions: current and future influence. A current influence would be a situation where a public servant is given a gift, such as a bottle of whiskey at Christmas. While this could be above-board, more times than not it is given to exert some type of influence on him. Even if the public servant innocently accepts, he may feel unduly pressured to assist the gift-giver at a later stage, even if it means allowing him or her to jump the service queue. There is seldom such a thing as a free lunch.

The second dimension is somewhat more complex and has a future influence: the public servant takes an official decision now as she looks ahead to her future personal plans. For example, the official is in a position to make decisions or has knowledge regarding the strategic direction of the department and uses her position or knowledge to obtain future employment from a company in business with the department.

While it is necessary to put in place legislation to prevent these situations, the challenges must be responded to on the basis of public service integrity. Foundations must be laid down to inculcate ethical conduct, so that when a public servant is faced with a "tug-of-war" between the influence exerted and his integrity profile, he will always be guided by the integrity pull.

SERVICE DELIVERY AND BEE

Public administration is guided by the value of providing citizens with the maximum of satisfaction at a minimum cost. The efficiency thrust has been largely motivated by the need to rid government of inefficient and ineffective bureaucracy. However, the operations of government are many and to ensure effectiveness and efficiency in the carrying out of its responsibilities is no easy task.

Following the 1994 elections, the main priority for the South African government was the transformation of service delivery. Various pieces of legislation and policies outlined the new vision and the steps for fundamentally transforming service delivery. The normative framework for public service behaviour is clearly set out in the 1997 White Paper on Transforming Public Service Delivery (Batho Pele White Paper). The challenge to the public service was to deliver services to all citizens in a fast, efficient, simplified and seamless manner. In order to achieve this, given the backlogs that the government faced, it had to look at alternative service delivery mechanisms.

BEE, as a government strategy, seeks to facilitate the absorption of historically disadvantaged sectors of our society into the national economy. It promotes black ownership and control of enterprises. But BEE is also a mechanism adopted by the government to ensure that services are rendered to the public by companies representing the demographics of this country.

The public service also has a responsibility to ensure that it promotes BEE through its procurement processes. Given the economic imperative of BEE, the public service is a major contributor to the economy through the contracts that it offers for outsourced services and for the completion of specific projects. The Department of Trade and Industry estimates that R100 billion of public sector expenditure is for goods and services. While this covers the broader public sector, the public service is a significant contributor. This kind of economic leverage brings into the line of scrutiny those who administer many of these contracts, namely the public servants.

When regulating procurement in line with the principles of BEE, the public service should not lose sight of the fact that one of the objectives of BEE is to ensure poverty reduction. BEE therefore does not seek to enrich a group of privileged individuals. This ideal of BEE should be achievable through the application of preferential procurement, provided that the procurement processes and the public servants managing them are above reproach. While it can safely be assumed that the vast majority of public servants are

honest, the possibility that some may be susceptible to influence from business in the procurement process cannot be ignored. A report of the auditor-general, tabled in March 2006, shows that a total of 50 233 non-designated employees and 1 678 MECs and designated employees, spread among national and provincial departments, were identified as directors or members in companies and close corporations. A sound integrity framework that is enforceable and applied consistently must therefore inform the conduct of public servants.

Despite the varied successes of BEE, one of the major problems experienced in effectively implementing BEE has been with "fronting". This tactic, where predominantly white owned and managed businesses use influential black partners as "window dressing" in order to obtain contracts under the banner of BEE, has proven difficult to address.

Another problem in managing BEE from the perspective of the public service is that many of these companies have been formed by former public servants who still have influence within the departments from which they come. In such cases, there is the potential for conflicts of interest arising out of past and present relationships.

PUBLIC-PRIVATE PARTNERSHIPS

Like many other countries, South Africa has embraced public-private partnerships (PPPs) as a way to improve service delivery. The introduction of the Reconstruction and Development Programme (RDP) in 1994 provided the approach that the new government would take in its engagement with the private sector. This policy document advised that the government must consider joint ventures with the private sector, amongst others, to carry out its goals. In the preamble to the RDP White Paper, then-president Nelson Mandela stated, "Government will need active partnership with civil society ... with business and labour." This gave the go-ahead for public-private partnerships in South Africa. The Department of Finance released regulations and a strategic framework for PPPs in 2000.

Undoubtedly, different types of partnerships exist. The main category includes co-operation between a public sector body and a private sector body. PPPs have been variously described as "formal relationships", "joint initiatives" and "a relationship between public and private sector in which the latter provides public services on a shared risk basis for profit". However, not all public-private collaborations should be labelled partnerships or should be assumed to improve services.

The meaning of "partnership" can be very ambiguous. Clearly, within partnerships there can exist differences in quality, basic inequalities in the relationship and different levels of influence and power relations. Recently and more controversially, some ventures referred to as partnerships between public and private sector are seen to be little more than "strategic sponsorships". It is therefore important not to subsume varied interactions between the public and private sectors under the term "partnership". Walt cautions

that this not only results in the nature of the relationship being obfuscated (where "public-private partnerships" are nothing but corporate sponsorship in cash or kind), but, because the term "partnership" is value-laden, it could give an erroneous impression of equality and that all sides are working for a common goal.

Public managers would be naïve to see public-private collaborations in strictly altruistic terms; sometimes they can purely be a case of self-interest. This is not a problem provided the parties work together to fulfil a mutually agreed objective and a distinction is made between partnership and sponsorship, for example. Incorrectly defining the collaboration can damage the integrity of the public organisation. The question that arises is: can the goals of public service and those of the private sector be reconciled to the benefit of all involved?

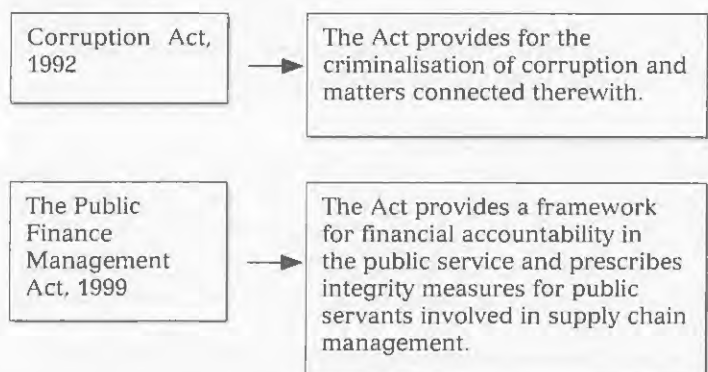
In the final analysis, the outcome of BEE and PPPs should be in the broader public interest. There should be no undue influence on public servants and no actions should be guided by personal interest. Given that the different dimensions of BEE and PPPs give rise to different types of relationships, the public service cannot have the "ears and eyes" to guide every transaction or interaction. There is, therefore, a need to rely to a large extent on the integrity and ethical conduct of the individuals acting on behalf of the public.

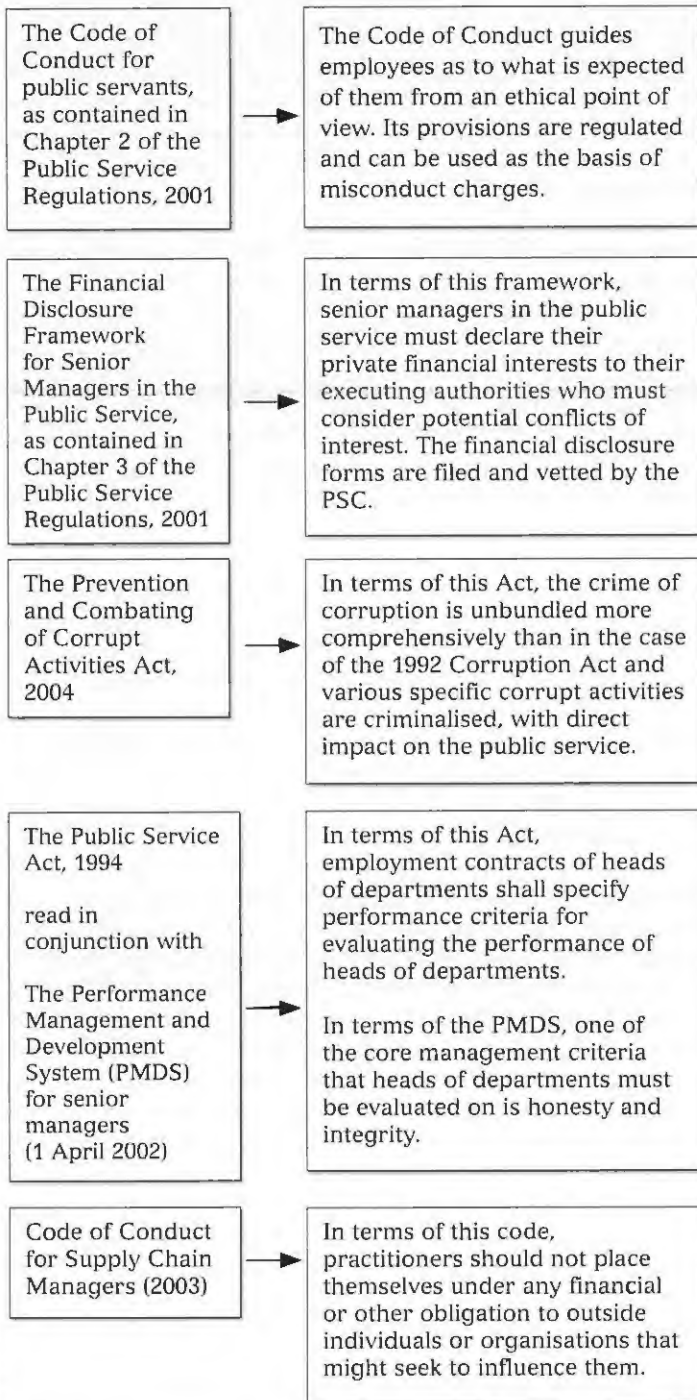
MEASURES GOVERNING THE INTEGRITY FRAMEWORK

Legislation and other provisions relevant to the integrity framework in the public service have been given prominence as far back as 1992. In order to ensure that public servants are not unduly influenced by business in the execution of their duties and specifically to manage perceived, potential and real conflicts of interest, two instruments of note have already been incorporated in the Public Service Regulations, namely a Code of Conduct for public servants (1999) and a Financial Disclosure Framework for members of the senior management service (2001).

Figure 1 provides an overview of some of the measures that have been put in place to guide integrity and to prevent corrupt practices in the public service.

Figure 1: Measures to implement an integrity framework in the public service





The discussion of the measures put in place will illustrate that the focus of legislation is predominantly on addressing corruption while the codes and frameworks as mentioned are more focused on promoting integrity.

CRIMINALISING CORRUPTION

The conduct of business and public servants must withstand scrutiny in terms of the provisions of the Prevention and Combating of Corrupt Activities Act, 2004. In terms of this Act, the crime of corruption is defined and various specific corrupt activities are criminalised. This Act covers, among other things:

- corrupt activities relating to public officers and agents
- offences of receiving or offering of unauthorised

gratification

- offences of corrupt activities relating to contracts and to procurement and withdrawal of tenders.

In relation to procurement and withdrawal of tenders, the Act, in section 13(1), criminalises the **acceptance** of offers for gratification as inducement to either directly or through the exertion of influence award tenders to a particular person. By the same token, section 13(2) criminalises the **giving and offering** of any gratification as inducement to award a tender to a particular person. The Act therefore addresses corrupt activities in obtaining tenders on both the part of the public servant and that of business.

Significantly, the Act also recognises that conflicts of interest in the case of public servants may give rise to corrupt activities. In this regard, the Act provides as follows:

17(1) Any public officer who, subject to subsection (2), acquires or holds a private interest in any contract, agreement or investment emanating from or connected with the public body in which he or she is employed or which is made on account of that public body, is guilty of an offence.

(2) Subsection (1) does not apply to:

- a public officer who acquires or holds such interest as a shareholder of a listed company
- a public officer whose conditions of employment do not prohibit him or her from acquiring or holding such interest
- in the case of a tender process, a public officer who acquires a contract, agreement or investment through a tender process and whose conditions of employment do not prohibit him or her from acquiring or holding such interest and who acquires or holds such interest through an independent tender process.

Although exceptions are provided for, the public service holds that the private interests of public servants should not interfere in any manner with their official duties. Section 30 of the **Public Service Act, 1994**, determines that, unless it is otherwise provided for in his or her conditions of employment:

- every officer and employee shall place the whole of his or her time at the disposal of the State
- no officer or employee shall perform or engage himself or herself to perform remunerative work outside his or her employment in the public service, without permission granted by the relevant executing authority or an officer authorised by the said authority.

Legislation of this nature is very important as it sets clear parameters as to what is unacceptable. However, it becomes effective only after the criminal action has taken place and is uncovered. It is reactive rather than preventative. While legislation such as this is necessary and has a very specific purpose, the adage that "prevention is better than cure" applies. Such a proactive approach requires that the public service put guidelines and mechanisms in place that would promote integrity. As is evident from the above discussion and that which follows, South Africa has put in place both a comprehensive legislative and infrastructural framework.

CODE OF CONDUCT FOR PUBLIC SERVANTS

The cornerstone for the establishment of an integrity framework in any public service is a Code of Conduct for its public servants. The Public Service Commission was responsible for the development of the Code of Conduct for public servants in South Africa that was incorporated in the Public Service Regulations with effect from 1999. The Code of Conduct acts as a guideline to employees for what is expected of them from an ethical point of view. Compliance with the code should enhance professionalism and help to ensure confidence in the public service.

Although the Code of Conduct was drafted to be as comprehensive as possible, it is not an exhaustive set of rules regulating standards of conduct. However, heads of departments, by virtue of their responsibility for the efficient management and administration of their departments and the maintenance of discipline, are obliged to ensure that the conduct of their employees conforms to the basic values and principles governing public administration and the norms and standards prescribed by the Act. Heads of departments should also ensure that their employees are acquainted and abide by the Code of Conduct.

The primary purpose of the code is a positive one: to promote exemplary conduct. Notwithstanding this, an employee shall be guilty of misconduct and may be dealt with accordingly, if she or he contravenes, or fails to comply with, any provision of the Code of Conduct.

Given the emphasis of this paper on "undue influence", it is important to pause and consider the provisions of the Code of Conduct that are applicable to conflicts of interest and also address the conduct of public servants when engaged with business. In terms of the Code of Conduct, an employee "does not engage in any transaction or action that is in conflict with or infringes on the execution of her or his official duties" and "will recuse herself or himself from any official action or decision-making process which may result in improper personal gain and this should be properly declared by the employee". This would be the case where, for example, a BEE entity in which the public employee's brother holds shares was under consideration for a tender.

These provisions require the public servant's actions to be free of any real conflicts of interest. As indicated, a conflict of interest arises when there is "a conflict between the public duties and private interests of a public official, in which the public official has private capacity interests which could improperly influence the performance of his/her official duties and responsibilities". The code also addresses the need for public servants to declare conflicts of interest and recuse themselves from taking part in related decision-making. These provisions therefore address undue influence by businesses offering public servants personal gain. As indicated earlier in this paper, the acceptance of gifts may also lead to a conflict of interest for an official. The code guards against this by stating that an employee "does not use her or his official position to obtain private gifts or benefits for herself or himself during the performance of her

or his official duties nor does she or he accept any gifts or benefits when offered as these may be construed as bribes." This regulation is particularly pertinent as the receiving of gifts may create a sense of obligation towards the giver which in turn may cause a conflict of interest to arise for the official.

Public servants, by virtue of their positions, have access to information that, especially within the area of procurement, could be used advantageously by business. The code therefore provides that an employee "does not use or disclose any official information for personal gain or the gain of others". If the official does so, he/she will be guilty of misconduct and is liable to a charge.

Conflicts of interest emanating from personal relationships are also addressed by the code: an employee "refrains from favouring relatives and friends in work-related activities and never abuses her or his authority or influences another employee, nor is influenced to abuse her or his authority".

Finally, the code addresses the need for all actions of public servants to be in the public interest. The code specifically provides that an employee "strives to achieve the objectives of her or his institution cost-effectively and in the public's interest". The conduct and decisions of public servants must therefore be above reproach and must be seen as such.

CODE OF CONDUCT FOR SUPPLY CHAIN MANAGERS

The area of supply chain management is fraught with possibilities for undue influence by business. In terms of the Public Finance Management Act, the National Treasury is required to issue a Code of Conduct for supply chain management practitioners that should be adhered to by all officials and other role players involved in supply chain management. This Treasury code of conduct, issued in December 2003, provides, among other things, that practitioners should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Post-employment restrictions are placed on practitioners through the Treasury code as it provides that they should not take improper advantage of their previous office after leaving an official position. The problem of former public servants establishing companies that deal with their previous departments is relevant here. Past and present relationships with officials still employed within these departments may create conflicts of interest.

The Treasury code also addresses the confidentiality and protection of information that is the property of government or its suppliers. Providing such information for personal gain is a liable offence in terms of the Prevention and Combating of Corrupt Activities Act.

With reference to the possible influence of business, the Treasury code specifies that no person may interfere with the supply chain management system of an institution or

amend or tamper with any bid after its submission. This is designed to assist practitioners to guard against external influences and to address these when they are identified.

The Treasury code therefore has an inward- and outward-looking approach. The conduct of public servants (practitioners) is addressed and so is the potential influence of business. The National Treasury has also put in place mechanisms to ensure that persons who tender (business) declare their relations with persons employed by the State, including a blood relationship. This declaration must be signed together with the other bid documents.

FINANCIAL DISCLOSURE FRAMEWORK

The persons at the forefront of decision-making in the public service - those most likely to be targeted for undue influence by business - are at the level of senior manager service (SMS) in departments. Senior managers are entrusted with public funds. As such, they need to maintain the highest standards of professional ethics. Their integrity and that of their departments must be beyond question. This does not, however, suggest that public servants below SMS level are not entrusted with public funds or are immune to influence.

The findings of the auditor-general, referred to earlier, reflect the degree of involvement of non-designated officials in directorships, memberships of companies and close corporations. While the figure of 50 233 is disconcerting, this should not be viewed as an indictment of the integrity efforts of the public service. On the contrary, this young public service has recognised the significance of disclosures and has incrementally begun to deal with the issue. Historically, a mechanism for disclosure did not exist. For the first time in 2001, directors-general and deputy directors-general were required to disclose their financial interests. In May 2001, the minister of public service and administration extended the financial disclosure framework to include all members of the SMS.

The Public Service Commission (PSC) was instrumental in developing and managing the financial disclosure framework for senior managers. In terms of this, all senior managers in the public service have to disclose their financial interests regarding, among others, shares, directorships, property and remunerated work outside the public service. The PSC was given a critical role with regard to the management of the financial disclosure framework and in particular, to identify areas of conflicts of interest. Briefly, this role involves the following:

- the PSC administers the financial disclosure framework
- it scrutinises the information as disclosed by senior managers
- when it finds that a registered interest of a senior manager conflicts or is likely to conflict with the execution of any official duty of that employee, it verifies the information regarding that interest and consults with the employee in question
- if, after such verification and consultation, the PSC is of the opinion that there is a conflict of interest or that conflict of interest is likely to occur, it refers the matter to

the relevant executing authority

- the executing authority must then consult with the employee concerned and take appropriate steps, including, but not limited to: disciplinary action or the granting of a waiver to the employee in respect of a future conflict of interests
- the executing authority must report back to the PSC within 30 days and state whether steps were taken and, if no steps were taken, state the reasons therefore (this refers to the monitoring role of the PSC).

There is little doubt that such a mechanism has promoted both transparency and accountability. This in turn has created a heightened awareness among public servants and the broader public. It is fair to say that given the "newness" of the system, much emphasis has been placed on the rate of compliance and this has paid dividends. Since the inception of the framework, the rate of disclosures has always been between 70 and 80 percent. At the end of February, 2006, an average of 72 percent of senior managers had declared their financial interests.

This has, however, meant that insufficient attention has been given to detecting potential or actual conflicts of interest and to ensuring that senior managers are not unduly influenced by their private interests in businesses when conducting their official duties. Clearly, some changes are required to streamline the current system in its approach to conflicts of interest to, among others, improve the return rate of the financial disclosure forms. To this end, the PSC has made proposals including, among others:

- allowing designated officials to submit their financial disclosure forms directly to the PSC and simultaneously forward a copy to the executing authorities
- allowing electronic submission of financial disclosure forms
- imposing a penalty should any designated manager fail to declare his/her financial interests. Section 3H of the Public Service Regulations clearly stipulates that any manager who does not comply, or wilfully provides incorrect or misleading details, will be guilty of misconduct. Section 3H has never been applied by departments
- making compliance with the financial disclosure framework part of the performance contract of a designated official
- construing directorships/partnerships as work outside the public service for which approval ought to be obtained.

Attention to the above would undoubtedly tighten the current framework and improve compliance. Compliance remains a critical integrity block and forms the cornerstone for promoting professional ethics. Such compliance speaks to the leadership ethos of senior managers in the public service. They must lead by example as their behaviour and conduct conveys the seriousness with which such matters will be taken by staff under their management. On the other hand, non-compliance threatens the capacity of the state to be fully transparent and accountable.

Disclosure of financial interests is intended to promote integrity in the public service, prevent conflicts of interest and to keep honest public servants honest. The PSC will soon release a report on managing conflicts of interest that is premised on the notion that potential conflicts of interest are not in themselves "something to be ashamed of", but that the focus must be on the management of such conflicts and protecting officials from corrupt practices.

ACCOUNTING AUTHORITIES IN PUBLIC ENTITIES

The Public Finance Management Act, 1999, also addresses the fiduciary duties of accounting authorities of public entities. Public entities do not fall within the definition of the public service and are therefore not within the mandate of the PSC. However, the Act provides a good practice example of how undue external influences of business on employees of a public sector institution can be addressed through legislation.

The Act states that the accounting authority of a public entity must act with "fidelity, honesty and integrity and in the best interest of the public entity in managing the financial affairs of the public entity". In addition, section 50(2) provides that an accounting authority may not "use the position and privileges of, or confidential information obtained as accounting authority ... for personal gain or to improperly benefit another person."

Significantly, the Act also prescribes that a member of an accounting authority must disclose to the accounting authority any direct or indirect personal or private business interest that that member or any spouse, partner or close family member may have in any matter before the accounting authority or withdraw from the proceedings of the accounting authority when the matter is considered, unless the accounting authority decides that the member's direct or indirect interest in the matter is trivial or irrelevant.

The significance of this provision is that it includes the declaration of the interests of spouses, partners and close family members as these may also give rise to real conflicts of interest. This is in contrast to the financial disclosure framework for senior managers in the public service, which only provides for the disclosure of own interests. The fact that these requirements are legislated may give rise to higher levels of compliance than to those requirements that are regulated, as is the case with the Code of Conduct for the Public Service and the financial disclosure framework.

DEPARTMENT HEADS

The Performance Management and Development System for senior managers in the public service provides that heads of departments (HODs) must enter into performance agreements with their executing authorities. In terms of the Public Service Act, the employment contract should include the specific criteria for evaluating the performance of a head of department.

Based on these agreements, HODs are evaluated for their performance in terms of agreed key result areas and, more

relevant to this discussion, in terms of the core management competencies applicable to senior managers in the public service. There are eleven core management competencies against which HODs are evaluated. One of these criteria is honesty and integrity. It therefore inculcates this value into the performance management process. While honesty and integrity are not a prescribed core management criterion for the rest of senior managers, it can be confidently assumed that in areas such as supply chain management, this criterion is commonly used.

CONCLUDING REMARKS

We have to start with a presumption that most public servants in South Africa are honest! However, our anti-corruption strategies have given little focus to the protection of honest public servants. Therefore, there is a need to put in place a system that keeps our honest public servants honest by avoiding undue influence from business.

Within the PSC there has been an ongoing debate on how the integrity framework within the public service can be improved. One of the main themes that has emerged is the need for the establishment of a comprehensive framework to manage conflicts of interest. Such a framework should build on existing systems.

While there are measures in place to manage conflicts of interest, there is a need to ensure that these are integrated and to roll out their application to everyone in the public service. Currently, conflict of interest disclosures are limited to senior managers through the financial disclosures framework. Ways to oblige all staff to disclose perceived, potential or real conflicts of interest should be explored. The PSC is currently considering options to recommend the introduction of such a comprehensive conflict of interest management framework and will, during the course of this year, be consulting with all relevant stakeholders on this matter. Clearly, such consultation must engage the BEE process given the interactions highlighted in this report.

REFERENCES

- Auditor-General (2006) *Audit Report on the Declarations of interests by Ministers, Deputy Ministers and Government Employees*, tabled in Parliament on 17 March 2006
- Muller, M (2003) "Public-Private Partnerships in Water: A South African Perspective on the Global Debate" in the *Journal of International Development*, 15:8. Wiley Publishers, South Africa (Republic); Government Printer: Cape Town
- (1994a) *Public Service Act, 1994*
- (1994b) *White Paper on Reconstruction and Development*
- (1997) *White Paper on Transforming Public Service Delivery*
- (1999) *Public Finance Management Act, 1999*
- (2000) *A Strategic Framework for delivering public services through public private partnerships* (Department of Finance)
- (2001a) "Code of Conduct for the Public Service", *Public Service Regulations, 2001*
- (2001b) "Financial Disclosure by Heads of Department and certain other employees", *Public Service Regulations, 2001*
- (2003a) *Code of conduct for supply chain managers*, 5 December 2003

(Department of Finance)

(2003b) "Performance Management and Development", *Senior Management Service Handbook* (Department of Public Service and Administration)

(2006) *Draft State of the Public Service Report*. Pretoria. 2006 (Public

Service Commission)

Walt, G (2000) "Using private money for public health: the growing trend towards partnership" in the *Report on the HAI Europe/BUKO Pharma-Kampagne Seminar*, November 2000. <http://www.haiweb.org/campaign/PPI/seminar200011.html>



THE CRITICAL ROLE OF WHITE EXECUTIVES: AN OPINION

BY RODDY SPARKS

The author is the outgoing managing director of Old Mutual SA

The economic and social future of South Africa is intricately and inexorably linked to the future success of black economic empowerment (BEE). Apartheid excluded the majority of its citizens from the formal economy and removed all productive resources and advanced skills from their control. After the democratic elections of 1994, steps were taken by government to improve the extent to which the majority of South African citizens could become better participants in the economy. The reason for this has both a rational and moral component. First and foremost, it is a moral imperative, redressing the iniquities of the past and providing the catalyst through which an equitable South African society can be built. Further, the future stability of the economy, as well as the general prosperity of the country, will be critically impeded - to the detriment of all South Africans - if the majority of South Africans are not included in the mainstream economy.

More than ten years after this fundamental tenet was first enunciated in the interim constitution, it is undeniable that, to a large degree, white executives continue to dominate the corporate world. As a result, white executives are at the vanguard of making possible the government's policy of black economic empowerment. Their current position of power and influence within the ranks of business provides them with the means to either accelerate or impede empowerment and transformation.

THE MATTER OF MINDSET

This state of affairs throws to the fore the matter of

mindset, that is, how white executives in particular, and by implication, white businesses, see empowerment and their role in its realisation, in the future of this country and a host of related matters.

Mindsets develop over years, through experiences, convictions and education. Sadly, most white executives' philosophies were forged in separation. This separation was forced upon them in the same way in which it was foisted upon other sectors of apartheid society. In this way, they have developed their notions among other whites, mostly, and for whites (sometimes). It is as a result of this separation, I argue, that white executives have very little understanding of what empowerment means, at an emotional level, to most black people. Too often white executives, like myself, remain fixed in a world that makes sense to them; structuring finance and deals, meeting targets and debating the various strategic imperatives of empowerment. However, by doing so, the critical aspect of coming to terms with the emotional relevance of empowerment is not adequately debated.

I have come to believe that it is important for white executives to step beyond the rational worlds they currently occupy, to first understand why empowerment is far more than merely a business strategy for growth, or why it is imperative for the future success of the economy. Important as these rational, intellectual arguments are to the broader empowerment debate, empowerment represents far more to most black people. It represents hope, stability and, for very many, the opportunity to manifest a dream of improving their lives.

BEYOND COMPLIANCE

With this as a starting point, white executives have in place the first building blocks for transformation, as empowerment targets will thus be imbued with a spirit of more than mere compliance. Targets become what they should be - measures of success for celebration, and where there are shortcomings, for correction. Targets move from a source of reputation management to a benchmark of general transformation.

Mindset, however, remains the key driver of transformation and empowerment. Without a transformed mindset, one that recognises the true place and effect of empowerment, transformation will be hindered by its hollowness. The regulatory landscape around us provides signals of this. The preamble to the Financial Sector Charter (FSB) demonstrates that empowerment depends on a mindset that actively embraces transformation. Similarly, focusing on the mere numbers of employment equity will provide the necessary grounds to ensure that the reputation of particular companies will not be tarnished. However, it does not provide the emotional framework from which a truly equitable society can be developed.

Perhaps the critical aspect of fostering a new mindset is for white executives to understand that they effectively hold the key to economic growth, to creativity and nation-building. If they embrace the notion that empowerment has the potential to deliver economic growth, to create an infrastructure that addresses the needs of the impoverished and to create training and jobs, the future of this country will be significantly bright. There will be less chance of this if they try to effect empowerment that is devoid of understanding, emotion and personal commitment.

ENGAGEMENT FOR TRANSFORMATION

How can white executives move to accepting an empowerment mindset that is steeped in the necessary grounding of understanding and commitment? Academics tell us, as does our own experience, that mindsets are formed over time, through repeated exposure. Clearly, "experiential" workshops have had a place in creating safe environments for debate and learning, but it is only through repeated and extracted engagement with those around us that our opinions change.

I submit that company executives ought to spend more time engaging with their staff, both black and white, in a concerted effort to sway the opinion of the statistically-powerful white workforce. Further, executives should continue to encourage difficult conversation: both with their staff members, on topics like employment equity and BEE, but also with other stakeholders, including customers and shareholders. The content of these conversations, provided by the leaders of these organisations (who happen to be the same white executives), must cover a plethora of uncomfortable topics.

This includes the notion that white individuals at all levels of work embrace the concept of transformation at a deeply personal level. Genuinely communicating the concept that white people have, for more than 300 years, been provided with advantages to the detriment of black people and that white individuals are currently in their positions of power as a result of these advantages, is vital.

In this way, white executives communicate that white individuals have four concomitant roles in the near future. Firstly, they ought to be champions of transformation. This is a logical extension of accepting, deeply, that they have been significantly privileged in the past. Secondly, they must take on board the role of coach and mentor. As a result of their privilege, they have been given opportunities and imbued with skills that black individuals are only now being provided the chance to master. By acting as mentors, they will accelerate the rate at which black individuals will receive the skills necessary to succeed in their respective careers. Thirdly, white individuals must act as integrators, actively ensuring that they do not extricate themselves from the future of South Africa. Finally, and most contentiously, white individuals must act as forfeiters, realising that they will, for a period of time, have to make various sacrifices to their career to provide opportunities for black individuals.

PATIENCE AND EMPATHY

Another difficult topic will be debating with black individuals, who have become impatient with the pace of change, that they too should commit to the current rate of transformation. This will be equally contentious, especially taking into consideration the disadvantaged history of black South Africans. However, given the notion that a rigorous, clear-cut approach to transformation will benefit all members of society, irrespective of race, both these arguments can be suitably articulated to both groups.

In this way, both groups of society will be making an investment in the future of South Africa, the yields of which will be far greater than any current sacrifice and will accrue to all, irrespective of race.

Through this approach - which is inclusive, open and in line with provisions recognised in the FSB as steps towards creating a non-discriminatory and transformational leadership - the mindset shift will begin to occur. In the words of Atticus Finch, in Harper Lee's *To Kill a Mockingbird*, we must learn to walk a mile in another man's shoes if we are to understand his world. True empowerment is severely compromised if we cannot, or will not, take this approach. To attempt to transform the economy and society without this empathetic approach will, to use business parlance, be inefficient, unfocused and sadly ineffectual.





state information technology agency

AGE OF HOPE:

contributing to youth skills development and empowerment

Contact Details:

Ph: (012) 482-3000

E-mail: moira.blom@sita.co.za

Website: www.sita.co.za

Reflecting on Youth Month, the victories that have been scored by the youth since the advent of our fledgling democracy are significant especially in the Information and Communication Technology (ICT) sector. SITA, with its partners, embarked on a learnership/Youth Internship Programme (YIP) with an intention of bringing on board to the ICT sector young people, especially those from historically disadvantaged backgrounds.

This was necessitated by the skewed realities that still remain in our country given our grim past. We can today say, in the Age of Hope, there is living proof about this organisation, that it has offered real opportunities that have made a huge difference in the lives of young people.

SUCCESSES IN BRINGING THE YOUTH INTO THE ICT SECTOR

SITA has over the past few years yielded 804 IT professionals in different areas including but not limited to business analysts, programmers, network controllers and desktop support, end user trainers, functional application trainers, functional application support, administrative support, database administrators and mainframe operators over a short period of time.

More than 79% of all these professionals have managed to get full-time employment in government and at SITA. We have even placed others with private sector organisations.

The internship is a 12-month programme consisting of one to five months training followed by a practical workplace

experience at SITA and government departments for the remainder of the period.

We are proud to announce that of all the SITA internship and learnership graduates, 52% are young women and we are on course to exceed the targets set by government in the empowerment of women with our next intake this year.

In taking stock of what we have achieved in contributing to youth development and empowerment in the ICT environment, we allow those who took advantage of YIP to tell their stories (see photos on the next page).

OPPORTUNITIES STILL AROUND

On this, the 30th anniversary of Youth Day, SITA calls on all unemployed graduates with BSc, BComm, other IT related qualifications as well as those with degrees and diplomas with IT courses obtained at accredited tertiary institutions, to apply for the SITA YIP.

WHEN?

All applications should reach SITA before the end of August 2006.

HOW?

Please find our application forms on the SITA website: www.sita.co.za or alternatively contact the project manager, Ms Moira Blom at (021) 482-3000 or moira.blom@sita.co.za.

What successful former YIP candidates say...



DANIEL RALEFETA

I entered the learnership programme in June 1999 and worked for SITA as a permanent employee in September 2000 in the South African Military Hospital Service as a web developer. I left SITA in 2003 to work for AST as a web developer and trainer. At AST, I was deployed to work for Kumba Mining Resources. I came

back to SITA in 2005 as a web mentor for YIP. YIP gave me dignity, employment in this highly sought after ICT industry and it further opened opportunities and doors for me. I think it has to be expanded and more graduates, especially from historically disadvantaged backgrounds, should be given this chance.



CLYDE PHILLIPS

The YIP contributed to my development from the start as I was accepted as a COBOL intern in 1999. Subsequent to that, SITA took me to do Oracle development and after this I was a permanent employee in October 2000. I moved on to the enabler systems, new technology, within SITA, where they sent me to Pretoria Technikon to

do a webmaster course in Open Source. Post this, I was trained as a mentor and today I am a specialist: analysts in the defence environment within SITA. Currently I am doing my MBA (final year). I thank SITA for the confidence it

had, and still has, in me and others that have gone through this hands-on training. I know a lot of my colleagues and trainees that I mentored that have since moved to greener pastures. The meaning of reaping the fruits of freedom – from Solomon Mahlangu who was hanged by the apartheid military junta fighting for the youth – is pellucid to me.



MS THULI MOIMA

I joined the learnership programme as an Oracle developer in 1999 after being so frustrated with my Social Sciences degree. Through the learnership I went to Oracle database administrator and worked at SITA for two years then moving to work as a consultant at Accenture, where I was placed at

CELL C. Now, I am doing private consulting at Wits University, Ekurhuleni Municipality as an Oracle implementation specialist. I am also a trainer at Oracle University. This programme got me off the ground and taught me skills to deal with hardcore issues in the workplace environment. As an independent consultant, I am grateful and wish that the programme could get more resources for expansion as the demand is quite large for young people to enter this fast growing industry. SITA should ensure that people from rural and far out provinces other than Gauteng should also be brought on board to get this training.



SITA



AN INSTITUTE committed to TRANSFORMING FINANCIAL MANAGEMENT in the PUBLIC SECTOR

The Institute for Public Finance and Auditing (IPFA) was established in 1996 as a professional body for staff employed in all finance disciplines in the public sector with the aim of promoting professionalism of practitioners as well as improving financial management throughout the sector.

The Institute provides a professional home for its members by focusing its activities on their professional needs. This includes setting the standards of education and training, enforcement of professional behaviour through a code of conduct and ethics and providing professional qualifications. These qualifications have been registered on the National Qualifications Framework and are linked to the four levels of membership in various public sector finance disciplines.

The transformation of financial management in the public sector is one of the major challenges facing the Institute and involves among other things, the implementation of generally recognised accounting practice, uniform expenditure classifications and uniform treasury norms and standards.

With the planned migration to accrual accounting, the 'Accounting Standards Board', as prescribed by the PFMA, is responsible for setting the standards of 'generally recognised accounting practice', while National Treasury is responsible for implementing those standards.

IPFA represents the sector by commenting on these standards, annual budget preparation guidelines and formats, standards and policy documents, specimen financial



Ms Zahra Cassim, IPFA Chief Executive

statements and other documents issued by National Treasury.

The Institute further ensures that the practical application of standards, new policies and procedures within departments and entities is facilitated by holding focus group sessions with members, practitioners and stakeholders to discuss the issues that affect implementation.

The Institute responds to the needs of the individual employed in public finance by providing technical advice, education and training, and opportunities for lifelong learning. This ensures that they are on par with their counterparts in the private sector and are kept up to date with developments in

the dynamic world of public finance.

Since its formation in 1996, the Institute has sought to achieve its mission of professionalising finance staff and improving financial management through various initiatives that may broadly be classified as 'capacity building'. In October 2005, IPFA reached the point at which a number of these activities could be channelled more effectively through a separate entity, and hence the Institute, in collaboration with its sister organisation in the United Kingdom, the Chartered Institute of Public Finance and Accountancy, opened a subsidiary company, **Public Finance iQ (PFIQ)**.

While the Institute wholly owns the company and any surplus generated will be used to fund the professional body activities, every measure has been taken to ensure that the two bodies will operate in their different capacities as separate legal entities.



For further information on IPFA or PFIQ, please call (012) 470-9450 or visit www.ipfa.co.za and www.pfiq.co.za.



BEE AND THE FOREIGN INVESTOR

BY PROF MICHAEL KATZ

The author is South Africa's leading authority on taxation

The debate on the impact of black economic empowerment (BEE) on foreign investment in South Africa has often been confused and misdirected. An attempt is made in these brief observations here to provide a better perspective on the relevant issues. This paper is a summary of some of the salient points that are contained in a chapter prepared by the writer in a book that is to be published in the near future.

SOUTH AFRICA AS A FAVOURABLE FOREIGN INVESTMENT DESTINATION

There is a fundamental failure to realise that BEE is only one issue in a multitude of factors that informs the decision of a foreign investor in the choice of location for investment. The fundamental question is whether South Africa is a favourable destination for foreign investment. Thereafter, I analyse the impact of BEE on the investment decision that foreigners must take with regard to South Africa.

I do not propose in this paper to deal with the issue of how favourable a destination South Africa is for foreign investment. I would simply point out that, to determine whether South Africa is a favourable destination, and how competitive it is with other developing economies, the normal criteria for assessing an investment destination must be used. The general consensus is, however, that South Africa is currently regarded more favourably as a foreign investment destination than it has been for decades.

A balancing of the positive and negative features of South Africa as a destination for foreign investment would on any objective analysis yield favourable results. Has South Africa been rewarded with high levels of foreign investment? The most recent indications are favourable. The investment by the Barclays Group in ABSA (R31 billion for 51.1 percent of Absa) and Vodafone in VenFin (R21 billion for VenFin's 15.1 percent stake in Vodacom) are two of the more high-profile transactions. It does not appear that BEE policies deterred either of these two prominent international groups from making sizeable investments in South Africa.

Speaking at an investment roadshow held in Zurich on 30 January 2006, the South African ambassador to Switzerland, Dr Konji Sebati, said: "As 2005 ended, the media reported a highly positive piece of news from several different surveys about our country - the excellent economic growth we experienced in 2005, in fact, the seventh year of non-stop growth; the high percentage of South Africans optimistic about the future of the country; the news that South Africa emerged as the sixth top destination in the world; and the report that ranked South Africa 28th in the world, higher than many developed countries, on the burden of business regulations and doing business in South Africa."

BEE AS A FACTOR IN DECISIONS OF FOREIGN INVESTORS

What are the issues that arise in the evaluation by foreign, and in many cases also local, investors of the impact of BEE?

Firstly, there are two distinct categories of principles and rules relating to BEE objectives and policies:

- **the ownership requirements:** the requirements relating to ownership and management control by BEE participants and, more particularly, the measurement of ownership and management control
- **the non-ownership requirements:** factors such as preferential procurement, employment equity, skills development, residual (industry-specific and corporate social investment initiatives), and also the qualifying small enterprise provisions.

Secondly, in dealing with costs of compliance with BEE requirements, it is sensible to distinguish between:

- the costs of implementing the requirements of broad-based BEE
- the costs of BEE compliance.

THE APPROACH OF FOREIGN INVESTORS

Based on numerous discussions with, and submissions by, foreign investors, one can confidently submit that they support the objectives of BEE. There is general agreement

with the social objectives and the imperative of redistribution to ensure that the ownership of the economy corresponds with the demographic structure of South Africa.

There is also general consensus that the Codes of Good Practice formulated by the government are a necessary and important instrument in promoting BEE, and furthermore, that the government has been sensitive, approachable and diligent in the formulation of the codes. There is support for the philosophy behind the drafting of the codes - namely that they are based on objectively measurable criteria.

A number of concerns are nonetheless being expressed, particularly relating to the implementation of BEE. In this regard, the concerns are much more related to the ownership and management control aspects (i.e. the ownership requirements) rather than to the non-ownership requirements. Mrs Polo Radebe, the acting chief director in the BEE unit of the Department of Trade and Industry, is quoted as saying, "Most multinationals would want to comply with the code generally. The main issue has been ownership."

The main concerns that have been expressed may conveniently be grouped into the following categories:

- lack of certainty
- lack of clarity
- lack of consistency
- inability to comply
- cost of compliance
- exposure to legal challenges based on alleged breach of director's duties
- problems relating to corporate governance
- the choice of appropriate BEE partners.

Lack of certainty: the major concern appears to be whether the requirements that are promulgated from time to time will be the final requirements, or whether they will be superseded by new requirements. There are two separate issues. First, the codes which are currently being considered must be finalised as a matter of urgency. Whilst there is an appreciation that the subject matter of the codes is complex, uncertainty will continue until they are finally promulgated. Secondly, and perhaps even more importantly, there must be some assurance that, if there is compliance with the current requirements, there won't be new additional requirements at some undetermined future time. Certainty is a prerequisite for business confidence. Its absence in a particular potential investment destination can have adverse consequences.

The absence of **clarity** in the formulation and interpretation of the various requirements is an adverse factor. The complexity of the requirements in their totality absorbs considerable managerial time and effort, and adversely affects planning. The cost of doing business is clearly a very important factor, particularly in a developing economy. High costs of doing business in a particular economy make that economy less competitive. Bureaucracy adds to the cost of doing business.

Following closely on the canons of certainty and clarity is the canon of **consistency**. There are still a number of conceptual and drafting inconsistencies in the requirements. For example, in the Financial Services Charter the rule is "once empowered always empowered". The Mining Charter has a different rule in this regard. There is also inconsistency in the so-called "see-through" principle. In addition, ownership targets differ considerably. The Financial Sector Charter has 25 percent by 2010, with a minimum of 10 percent direct and 15 percent indirect. The Mining Charter has 15 percent by 2009 and 26 percent by 2014. The Petroleum and Liquid Fuels Charter has 25 percent and 9 percent for exploration. The ICT Charter has 30 percent or rand value of equity greater than R7.5 billion. These are only a few examples of inconsistencies in the various codes.

The problem of **compliance** has been the most hotly debated issue in discussions on the impact of BEE on the foreign investor. Some multinationals have put forward a number of impediments to their giving up equity in their local subsidiaries; they contend that it is impossible to deviate from the wholly-owned subsidiary model. In support of this, they draw attention to the following issues which they believe can only be effectively achieved in the context of a wholly owned subsidiary:

- complex transfer pricing policies between the local subsidiary and the relevant group supplier
- global policies relating to procurement of suppliers
- global policies in respect of other matters
- protection of intellectual property and technology know-how.

It should be pointed out that there are multinationals that do comply with ownership requirements. In consequence, some people may question why all multinationals can't comply. This may be an over-simplistic response as it must be recognised that different multinationals have different policies and requirements. To its credit, the government has shown an understanding of these issues and, in recognition of this fact, the codes now permit an alternative compliance to the requirement of BEE ownership.

The cost of compliance is also cited as one of the most significant factors concerning foreign investors. This issue was dealt with by Vuyo Jack, one of the most competent commentators on BEE issues ("Yes, BEE is costly, but it has DIVIDENDS", **Business Report**, 22 January 2006). In his realistic analysis of compliance costs, Mr Jack writes:

"It is important to ask: What are the additional costs incurred by the enterprise, over and above their normal running costs, that are necessitated by the introduction of broad-based BEE? This is relevant because we have to identify the marginal costs that are incurred directly due to BEE initiatives.

"The quantifiable costs attached to ownership would typically be the costs of advisers and lawyers; transaction taxes; printing and publishing costs. They are very easy to determine.

"Next is the economic cost - the dilution of the black shareholders' equity and the opportunity costs of facilitating BEE transactions.

"A definition of economic cost is not easy to quantify as it differs from company to company. With listed companies, the economic costs of BEE transactions range between, on average, 3 percent and 4 percent.

"However, research on the effect of BEE deals on share prices indicates that companies show an 11.4 percent abnormal positive return in the 41 weeks - 20 weeks before and 20 weeks after - around a BEE deal. (The research isolates other factors in order to determine the effect solely of BEE deals on the prices.)"

It should be observed that most of the costs of compliance are not peculiar to foreign investors; they impact almost identically in the case of local investors. The only real difference is that the foreign investor will weigh these costs together with all the other factors referred to above when deciding where to locate its foreign investments.

Some foreign investors, coming from jurisdictions characterised by shareholder activism, are concerned that they will face a **legal challenge** from their shareholders, and whether they can justify exposing their company to the cost and dilution arising from a BEE transaction. This really shouldn't be a concern, even in jurisdictions that subject directors to the most stringent tests of fiduciary duties and the duty of care and skill. There is no justification for isolating the costs of BEE compliance alone; the proper approach would be to balance all the positive features (including expected returns) against all the potentially negative factors (including costs of BEE compliance). If the result of such analysis, in the discretion of the reasonable businessperson, is favourable, no court is likely to penalise the directors and management for embarking upon such investment.

Another aspect that has been raised, in the case of broad-based empowerment, concerns issues of **corporate governance**. The concern in this context is that the BEE directors on the board of the investee company, who represent the broad-based BEE consortium, find it difficult to obtain a "mandate" from their "principals" and this has the consequence of diminishing the effectiveness of the board. It is sometimes feared that these issues could reduce the company to a state of paralysis. This concern is certainly

not incurable and requires a proper separation between ownership and control. The constitutive documents of the company (the articles of association) and shareholder agreements must be properly drafted to avoid this possible difficulty.

Finally, foreign investors have, on occasion, expressed difficulty with the **choice of an appropriate BEE partner**. An official in the European Chamber of Commerce commented that foreign firms are wary of being forced to hook up with unknown empowerment partners. This concern is easily addressed by the foreign investor appointing suitable local advisers to assist it to select an appropriate BEE partner.

CONCLUSION

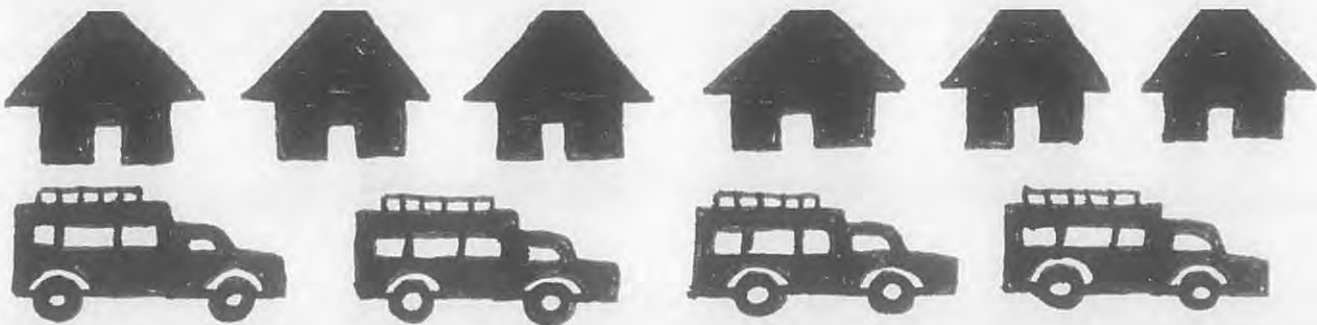
This paper does not deal with a number of important issues, such as the importance of the involvement of senior executives of the foreign investor in the implementation of the BEE transaction, and recognition in the codes of the ownership concerns of foreign investors.

It is submitted that compliance with BEE requirements in principle enjoys support from foreign investors. They are aware of its importance, particularly in the context of making South Africa's democracy sustainable. Insofar as there is a cost of compliance with BEE requirements, it must be borne in mind that any such cost is only one of the factors that must be taken into account together with all other relevant factors. Investment in any jurisdiction has its own costs.

Naturally, to the extent that any costs of BEE can be mitigated in the drafting of the requirements, so much the better. The attainment of certainty, clarity and consistency is a worthy objective and it will certainly go a long way to allay any remaining concerns of foreign investors.

It should also be borne in mind that there is a view, which is increasingly held, that BEE transactions, if properly structured, can be very favourable for the company concerned.

As more and more BEE transactions take place, and a track record of well-structured BEE deals with appropriate anchor partners develops, any remaining foreign investor concerns will considerably diminish. The Codes of Good Practice, based on objectively measurable criteria, will continue to play a significant role as an important catalyst in this process.





APRM

African Peer Review Mechanism



CITIZENS ENGAGED IN THE APRM PROCESS

CONSULTATION AND MOBILISATION PROCESS

The APRM process, through the National Governing Council (NGC) and Provincial Governing Councils (PGCs), embarked on a mobilisation and consultation process. This process was conducted through district and sectoral workshops, provincial and national sectoral conferences. Community Development Workers (CDWs) and ward committees assisted in facilitating consultation at the district and community levels through small focussed group discussions.

To enhance the research process, approximately 190 institutions involved in the areas of research and advocacy were invited to apply for accreditation to become research partners. These institutions include higher education institutions, Chapter 9 institutions, government research agencies, non-governmental organisations (NGOs) and independent research institutions.

The NGC has partnered with the South African Broadcasting Corporation (SABC) to take the APRM process to the people in the form of Outside Broadcasts by the different SABC radio stations. The nature of the Outside Broadcasts is such that the public is invited to attend and participate in the events, which are broadcasted live on the 19 SABC radio stations. The objective is, among others, to create awareness and a broader sense of ownership of the APRM process as well as profile progress made on the APRM process by highlighting the various submissions that have been received so far.

As these events form part of the consultative process adopted by the NGC, members of the public are encouraged to interact with members of the PGCs and the well-known radio personalities on issues raised through the APRM

process. Also, songs dedicated to the APRM process, which were compiled by well-known South African artists including Jabu Khanyile, Steve Kekana and Babsie Mlangeni, are being promoted during these events.

SEMINARS HELD TO DEVELOP THE COUNTRY SELF-ASSESSMENT REPORT (CSAR)

Research seminars were held on the 4-7 April 2006 to review the draft technical reports, which were compiled by four technical support agencies that are contracted by the NGC. The draft technical reports are based on hundreds of submissions received from stakeholders such as organised labour, organised business, provinces, national government departments, women's organisations, youth groups, parliament, religious groups, civic organisations, research institutions, and the broader public through community development workers.

Each seminar was attended by experts from civil society and government. Central to the CSAR are the Programmes of Action (POA), which were developed out of the submissions from members of society. The POA will guide implementation of issues, concerns and challenges raised through the APRM process. Both the CSAR and POA will also create an opportunity for the sharing of best practices and areas that the country is performing well in.

The first seminar was co-hosted by the Institute for Democracy in South Africa (IDASA) and focused on democracy and good political governance. It considered the challenges associated with meeting the promise of our sophisticated and progressive Constitutional dispensation.

The second seminar focused on corporate governance and was co-hosted by the African Institute for Corporate

Citizenship (AICC). Compliance and enforcement were themes that came up repeatedly.

The third seminar, co-hosted by the Institute for Economic Research on Innovation (IERI), addressed governance issues in socio-economic development. There was a high level of consensus on challenges facing South Africa and linking the two economies was seen as a major priority if poverty is to be overcome.

The last seminar, co-hosted by the South African Institute for International Affairs (SAIIA), focused on economic governance and management.

SECOND CONSULTATIVE CONFERENCE IN KLIPTOWN

As a follow-up to the first national consultative conference that took place on the 28-29 September 2005, the second National Consultative Conference of the APRM took place from 4-5 May 2006, at the Walter Sisulu Square of Dedication at Kliptown, Soweto. The conference was led by the Minister for Public Service and Administration Geraldine Fraser-Moleketi in her capacity as the focal point and chairperson of the APRM National Governing Council.



Democracy and political governance



Socio-economic development



Corporate governance



Economic development

The conference deliberated on South Africa's draft CSAR and POA. The two-day conference attracted representatives from sectors such as government, civil society, business, labour, women, religious groups and youth.

Addressing the conference, Fraser-Moleketi said 'The self-assessment process has revealed much for us all to be proud of. This is not just about what we in government have achieved but what we as a country have managed to do in an incredibly short space of time, coming as we have from a very dark past. The goal of the APRM, for all of Africa, is to help Africans help themselves. We are showing ourselves, and the world, that we are not those whose mindset

assumes that we need external assistance in order to grow. The APRM helps us measure how we are doing, against an African agenda. We are here today because we, as Africans, are doing it ourselves'.

Delegates at the conference reviewed the draft CSAR and draft POA through various commissions that focused on the four thematic areas of the APRM. The main result achieved was an overall, high-level commitment to the report and its contents. There was, however, acknowledgement that certain additional issues needed to be included and some amendments should be made to some parts of the report. There was also a very strong acknowledgement of the efforts made by the NGC and PGCs to ensure that the process is inclusive and participatory.

FINALISATION OF THE CSAR AND COUNTRY REVIEW TEAM VISIT

The NGC, through the secretariat, is in a process of revising and finalising the CSAR and identifying priorities for the POA. The final CSAR and revised draft POA will be submitted to the APRM Country Review Team in June 2006.

The POA will be costed between June and September 2006

and will be consulted with stakeholders to ensure agreement on the roles of various stakeholders in its implementation.

The country review team, led by Prof Adebayo Adedeji, will visit South Africa in July 2006. The team will be in the country for approximately two weeks. The main objective will be to consult with stakeholders and to review the accuracy and completeness of the country self-assessment report (CSAR).

The Country Review Team will submit South Africa's Review Report to the APRM Forum of Heads of State and Government Implementation Committee (HSGIC) towards the end of 2006.

For further information on the APRM, visit the APRM website: www.aprm.org.za
or contact them through e-mail: info@aprm.org.za

HIGHLIGHTS OF LIMPOPO LEGISLATURE'S SUCCESSES

The launch of the Commonwealth Association Branch consolidated relations and cooperation with international communities. It also assisted the Legislature to promote and advance parliamentary democracy, knowledge and understanding of governance and international cooperation.

Without any shadow of doubt, the Commonwealth event held at Lebowakgomo on 13 March 2006, was a milestone achievement of the Limpopo CPA Branch. During the event, Lebowakgomo became a hub of activities as many students, teachers and politicians and other invitees attended the event. The branding of the CPA was much visible at the venue and other parts of Polokwane.

Last year, the Legislature in partnership with the National Parliament, celebrated the 50th Anniversary of the Freedom Charter in Sekhukhune. This event created an opportunity for people in the province to participate directly in the national parliament process, as venues in all the provinces were linked electronically to the main venue in Kiptown.

Many people commended Limpopo Legislature for having organised the NCOP



Honourable Speaker Dr TS Farisani

event, which took place in the Greater Tzaneen Municipality, as one of the most successful events. Many disadvantaged people were given the opportunity to participate in national legislative processes during this occasion.

During the 2005/6 financial year, the Legislature successfully organised public hearings, oversight visits, special parliaments, international visits and sittings.

The Legislature accedes to the African Peer Review Mechanism (APRM) and follows the footsteps of counterparts in Africa. Issues of HIV/AIDS fall within the priorities of the Legislature. Honourable Members have increased their awareness of HIV/AIDS through workshops arranged by the European Parliamentarians for Africa (AWEPA), which took place in Durban, Stellenbosch and Cape Town.

In an effort to promote international relations and cooperation, the Speaker of the Legislature, Dr Tshenuwani Farisani undertook visits to Swaziland and Lesotho. The Legislature signed a memorandum of agreement with Kwara State House of Assembly (Nigerian Provincial Parliament). The memorandum will enable the two provinces to promote bilateral exchanges and friendly relationships.



Deputy Speaker C Mabuza

Physical Address
Limpopo Legislature
Government Complex
Lebowakgomo

Postal Address
Limpopo Legislature
Private Bag X9309
Polokwane, 0700

Tel: (015) 633-5071 • Fax: (015) 633-8119





BEE AND CLASS FORMATION

BY NEVA SEIDMAN MAKGETLA

The author is chairperson of the COSATU
(Congress of South African Trade Unions) Policy Unit

Suppose we could come back to South Africa twenty years from now and visit northern Johannesburg. In one vision of black economic empowerment (BEE), we would expect to see a boom around Sandton, with young black executives and entrepreneurs joining or perhaps even displacing the well-off whites who today crowd the cafes and the stock exchange. But the bustling, luxurious scene would still remain a world away from the poverty in Alexandra township just down the road.

In the contesting vision of BEE, South Africa's future lies, not in integrating Sandton, but in developing places like Alexandra into prosperous working-class communities with skills, jobs, decent housing and infrastructure, and - through their pension funds, employee stock ownership plans (ESOPs) and community trusts - a share in major enterprises across the economy. In this vision, Sandton itself, even if more representative, should no longer stand out as a bastion of wealth in a sea of poverty.

The contestation over BEE is rooted in a conceptual confusion that in turn reflects growing class differentiation in the black population. Everyone agrees that BEE involves shifting economic power to black people. But does that primarily mean bringing black entrepreneurs into existing structures of ownership, or broadening ownership and undertaking other measures, such as skills development and provision of basic services, that will empower the majority?

To date, the government has responded to this contest by requiring that companies both support new black investors and entrepreneurs and undertake skills development and employment equity. This package is supplemented by assurances that more representative capital should lead to greater domestic investment, innovation and diversification, ultimately creating more employment and services for the poor.

But the compromise is continually under attack. In particular, many government officials and businesspeople try to bolster the share of incentives for black ownership at the cost of more broad-based elements such as employment equity and improved services for the poor. This emerged

clearly in engagements over the draft Codes of Good Practice under the Broad-Based BEE Act (2005).

This paper analyses how government strategies have sought to address the racial inequalities left by apartheid since 1994. For each strategy, it briefly evaluates the impact on overall inequalities and on the formation of a black capitalist class. Despite some improvements, progress remained disappointingly slow in terms of both overall economic inequality and for the increasingly vociferous black upper class. In this context, the final section explores government's regulations on broad-based BEE as an uneasy compromise between using state power to improve conditions for the majority and using it to entrench a black capitalist class in the existing, exclusionary economic structure.

BEE AND THE APARTHEID LEGACY

State action to support black economic empowerment responded to the very slow progress in overcoming the economic inequalities imposed under apartheid, despite the elimination of racial laws. On the one hand, despite extraordinary social and political advances after 1994, most black South Africans faced rising unemployment, falling real wages and relatively slow growth in basic services, especially in the former homeland regions. On the other hand, the leading companies in the private sector remained predominantly white, with virtually no expansion in black ownership or management outside the public sector.

A series of measures under colonial rule and then apartheid aimed explicitly to disempower Africans, compelling them to accept low wages from white employers. These measures had several dimensions:

- the apartheid state purposefully limited African households' access to capital and wealth. Most obviously, a series of laws dating back over a century pushed people off their land. But the state also constrained black people's access to capital, commercial and industrial sites, and credit. At the same time, the state used subsidised credit and other services as well as procurement to support white entrepreneurs
- the state neglected household infrastructure like water and electricity as well as transport in black communities,

making it virtually impossible for Africans to set up viable small enterprises

- the state established effective obstacles to African participation in education and formal training, as well as some types of work and most managerial positions
- in many industries, notably agriculture and domestic work, the labour laws allowed employers to fire black workers without giving reasons and to suppress union organisation
- the state constrained Africans' access to institutions and relationships needed for formal economic activity, such as the financial sector, marketing firms, state procurement, and so on.

This complex of measures - some dictated by the law, some institutionalised but informal - entrenched deprivation in African communities. At the same time, it ensured that whites owned and managed most enterprises in both the state and private sector.

Between 1994 and 2005, the democratic government aimed to address the inequalities left by apartheid. But except for limited efforts at land reform and the use of the general tax system, it did not actively redistribute assets. Nor did it demand that the private sector do much to support economic equity.

The democratic government adopted several core strategies to enhance equality:

- it ended discrimination in public services, including social services, welfare grants and infrastructure, and increased the share of spending in black communities
- it undertook to improve skills development and supported employment equity as well as workers' right to organise unions and strike
- it prohibited legal discrimination in economic activity, including lending, marketing and employment
- it increased the representation of black people in management in the public service and parastatals
- it established various programmes to support small and micro enterprises.

Taken together, these strategies proved inadequate to bring about fundamental changes in the deep-seated inequalities left by apartheid, especially given very high unemployment from the mid-1990s. As far as the data allows, we here first summarise trends in the distribution of income and assets between 1994 and 2004. The following sections look at implementation of the strategies aimed at improving equity.

TRENDS IN INEQUALITY

In 2005, a debate emerged about the extent of poverty in South Africa. That debate tended to obscure the agreement amongst most analysts (see Van den Berg et al, 2005; Ardington et al, 2005) that between 1994 and 2004:

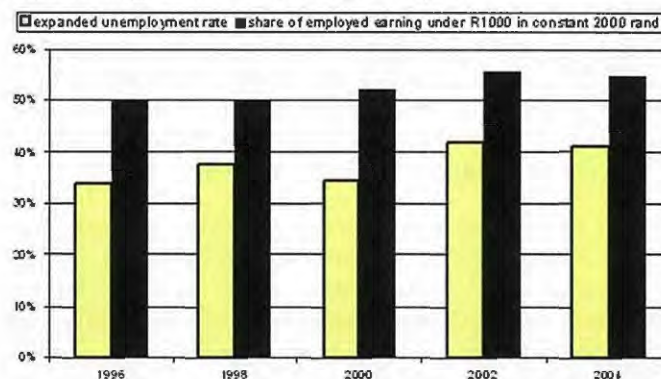
- overall economic inequality showed very little improvement
- black people substantially increased their share in the higher-income group, without coming anywhere close to representivity.

Here we first examine overall inequality, and then the representation of black people in the economic ruling class.

In the early 2000s, South Africa remained one of the most inequitable countries in the world. The top 10 percent of the population received 45 percent of the national income, while the poorest 20 percent got 2 percent (Statistics South Africa 2002).

As the following table shows, between 1996 and 2004 unemployment (using the broader definition that counts as unemployed people who want a paying job but have given up actively looking for one) hovered persistently around 40 percent. Meanwhile, the share of employed people earning under R1 000 a month in constant 2000 prices remained almost unchanged at around 45 percent.

Table 1. Expanded unemployment rate and share of employed people earning under R1 000 in constant price



Note: The broader definition of unemployment counts as unemployed people who would take a job immediately, but who are too discouraged to continue to search for paid employment. R1 000 is calculated in constant 2000 prices. The LFS gives incomes in bands. Where the value of R1 000 in 2000 prices falls inside a band, a linear proportion is used. Source: Data for 1996 and 1998 calculated from Statistics South Africa. October Household Survey. Relevant years. Databases on CD-ROM. Pretoria. Data for 2000 to 2004 calculated from Statistics South Africa. Labourforce Survey. September of relevant years. Databases on CD-ROM. Pretoria. Constant incomes calculated using CPI.

Unemployment and low incomes remained concentrated in the African population, and especially amongst African women. In 2004, unemployment for Africans, using the broad definition, was 48 percent, compared to 28 percent for coloureds and Asians and 8 percent for whites. Two-thirds of the unemployed were Africans under the age of 30, who faced an unemployment rate of 60 percent. For African women, the overall unemployment rate was 56 percent, compared to 7 percent for white men. Almost three-quarters of African women under 30 were unemployed (calculated from Statistics South Africa 2004).

The black population also continued to suffer the lowest incomes. In 2004, estimates suggest that 40 percent of African employed people earned under R1 000 a month (in 2000 prices), compared to 20 percent of coloureds and

Asians, and 5 percent of whites. Again, African women were the worst off, with well over half earning under R1 000 a month. Moreover, only 60 percent of African families reported wages, salaries or profits as their main source of income, compared to 80 percent of whites, coloureds and Asians. The other households relied on social grants, family remittances, charity and pensions (calculated from Statistics South Africa 2004).

The falling share of remuneration in national income after 1994 also indicated persistent inequalities. Between 1994 and 2004, remuneration fell from 50 percent to 45 percent of the national income, while net operating surplus climbed from 26 percent to 32 percent (TIPS 2006). Studies suggested, too, that within remuneration, the gap between the highest and lowest salaries began to widen in the 2000s (see Crotty 2006).

Data on the distribution of assets is harder to come by, although very inequitable distribution of income generally indicates even more inequitable ownership of capital and land (see UNDP 2004, pp 70). Indicators of asset inequality in South Africa included:

- small and micro enterprises remained stunted, and the country had only a rudimentary co-operative movement. These sectors lagged far behind the norm for developing countries (see Orford et al, 2004)
- income from profits - and by extension from productive assets - was far more unequally distributed than income from wages and salaries. In 2004, 4 percent of the self-employed, whose income essentially represented profits, earned over R11 000 a month, compared to 2 percent of the employed. But 40 percent of the self-employed - virtually all African - got under R500 a month. In contrast, only 15 percent of wage earners fell into this income category (calculated from Statistics South Africa 2004)
- in 2004, 4 percent of the self-employed earned over R11 000 a month, compared to 2 percent of the employed. But 40 percent of the self-employed - virtually all African - got under R500 a month. In contrast, only 15 percent of wage earners fell into this income category (calculated from Statistics South Africa 2004).

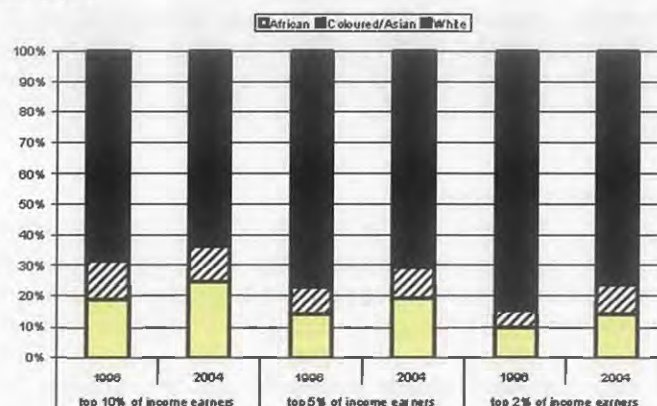
In short, ten years after the transition to democracy, the majority of the population remained heavily disempowered in economic terms. Their disempowerment emerged in lack of capital and other assets, high unemployment and low pay. Poverty and joblessness hit hardest at Africans, and especially African women.

At the same time, potential black entrepreneurs - effectively meaning black people with formal qualifications and/or political experience plus some capital - still found themselves largely shut out of the economy, and in particular the private sector. This emerged in the substantial under-representation of black people in the high-income group, management, and the top end of the self-employed.

As the following table shows, in 2004 Africans constituted

only a quarter of the top 10 percent of income earners and about a seventh of the highest-earning 2 percent. This was an improvement on 1996, but not by much. In contrast to their small share amongst high-income earners, Africans made up almost three-quarters of all paid employees in 2004.

Table 2. Representivity in the high-income group by race, 1996 and 2004

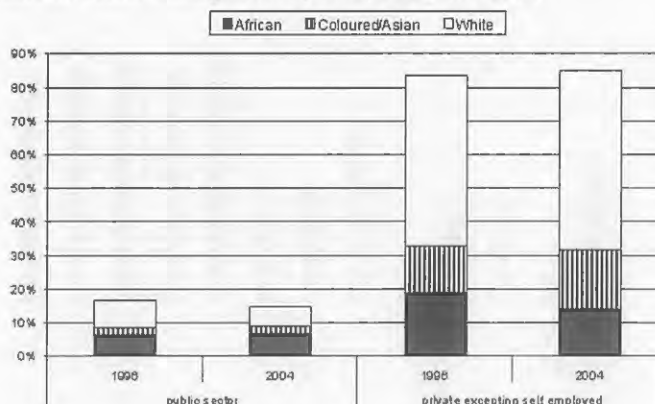


Source: Calculated from Statistics South Africa, October Household Survey for 1996, and Labourforce Survey for September 2004. Databases on CD-ROM. Pretoria.

African women, who constituted just under a third of all working people, comprised only one in 15 of the top 10 percent of income earners. In contrast, white men accounted for under a tenth of working people, and almost half of the 10 percent with the highest incomes.

The continued under-representation of black people in the high-income group was matched by their low share in senior management, especially in the private sector. In both the public and the private sector, white managers remained in the majority. Between 1996 and 2004, their reported share of private management positions reportedly grew slightly, although black managers gained ground in the public service, local government and parastatals.

Table 3. Senior management by race, 1996 and 2004



Source: Calculated from Statistics South Africa, October Household Survey for 1996, and Labourforce Survey for September 2004. Databases on CD-ROM. Pretoria.

Again, the position of African women was particularly poor. Just over one senior manager in 20 was an African woman, while two out of five were white men. Moreover, over a quarter of African women in senior management worked in the public sector, compared to an average of 10 percent for all senior managers.

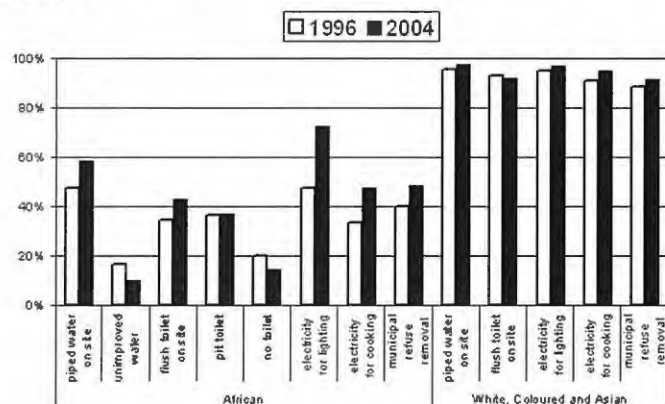
In short, the shift to democracy neither improved overall economic inequality substantially, nor opened doors to economic power for the black elite, especially in the private sector. The rest of this section examines how and why the main government strategies to promote greater equity fell short.

GOVERNMENT SERVICES

The Reconstruction and Development Programme (RDP) expected the extension of government services to historically deprived black communities to provide a central instrument in empowering the majority. It argued that improvements in basic infrastructure and social services would establish the basis for black people to engage with the economy, as workers and through home-based enterprise. Yet substantial growth in basic services in black communities after 1994 did not have much apparent impact on income generation. The main reasons appeared to have been the contractionary fiscal policy of the late 1990s combined with programmes that made no effort to maximise economic benefits.

The most accessible indicator of growth in government services was household infrastructure, which was assessed from 1995 by regular household surveys. As the following table shows, virtually every aspect of household infrastructure improved, with electricity making the greatest advances toward equity. Still, even in 2004, less than two-thirds of Africans had piped water on site, under half had a flush toilet, and about three-quarters had electricity for lighting. In contrast, even before 1994 more than 90 percent of white, coloured and Asian households had access to improved water, electricity and refuse removal.

Chart 1. Access to household infrastructure by race, 1996 and 2004



Source: Calculated from Statistics South Africa. 1996. *October Household Survey*. Database on CD-ROM. Pretoria; and, Statistics South Africa. 2004. *Labourforce Survey*. September. Database on CD-ROM. Pretoria.

It is more difficult to quantify improvements in education, health, policing and welfare. Formally, all institutions in these sectors were banned from discriminating; in practice, the historic distribution of infrastructure and personnel meant substantial inequalities remained.

The following section indicates the persistent inequalities in education, which were equalled in policing and health. The main exception was welfare grants, which represented the most redistributive form of government spending.

After 1994, the government equalised grants to Africans - who had previously lagged far behind white and coloured beneficiaries - and extended them to virtually all older people without a private pension, as well as many children. The share of African households getting some kind of grant rose from 17 percent to 45 percent between 1996 and 2004 (calculated from Statistics South Africa 1996 and 2004). At the same time, however, the state reduced the amount of the grants in real terms. Through the late 1990s, increases in individual grant categories did not keep up with inflation. Thereafter, while the grants themselves rose at inflation rate, the bulk of new take-up came from the child grant, which provided under R200 a month compared to over R900 for the old-age pension.

In sum, government spending was substantially redistributive after 1994. Nonetheless, it did not come close to overcoming the huge inequalities in infrastructure and services left by apartheid. Moreover, in contrast to the hopes of the RDP, it did not lead to a substantial upsurge in employment and economic engagement by the black population.

Three inter-related factors contributed to this outcome: First, mass unemployment and poverty amongst the black population limited the scope for redistribution. Most African households earned too little to contribute to the cost of maintaining services, much less installing them. This situation vastly increased the fiscal burden of government services.

Second, the budget cuts under the Growth, Employment and Redistribution Policy (GEAR) meant that through the late 1990s redistribution took place in a very constrained envelope. In real terms, government spending per person dropped by 1 percent a year from 1997 to 2000. Thereafter, it increased fairly rapidly, at between 5 percent and 10 percent a year. Still, the fiscal restraints of the late 1990s ruled out the massive extension in government services required for the RDP strategy.

Third, faced with limited budgets, government service departments focused on short-term improvements in living standards rather than expanding economic opportunities. For instance, houses were built very far from employment opportunities to save on the cost of land; to get public healthcare often meant standing in day-long queues, making it almost inaccessible for working people; and the supply

of basic free water and electricity remained far too low to support home-based enterprises. Moreover, the treasury consistently refused to adopt a policy of local procurement, which would have strengthened the economic stimulus from government spending.

In these circumstances, improvements in government services could not achieve the aims set under the RDP. They certainly enhanced the quality of life for many black households and went far toward cushioning the impact of massive unemployment. But they did not bring about equity or strongly enhance the capacity of poor households to engage with the economy. These shortcomings did not, however, affect the black high-income group, which mostly moved into historically white suburbs or the better-served areas of the townships.

EDUCATION AND SKILLS DEVELOPMENT

Education is particularly important for economic empowerment, since it lays the basis for individuals' engagement in the economy. But changes after 1994 probably did more to improve representation in elite institutions than to ensure more equitable, quality education overall.

Three sets of data indicated distressing inequalities in education through the mid-2000s.

To start with, access to resources remained inequitable, with the historically white schools - now, in many cases, attended predominantly by black learners - enjoying better infrastructure and more educators. In part, this reflected the fact that they could charge higher fees, both increasing their revenues and effectively excluding poorer students. As the following table shows, progress in improving school infrastructure remained slow. Virtually all the disadvantaged schools were African; the worst off were almost exclusively primary schools in the former homeland areas. The pace of improvements may have picked up since 2000, but no new data has been published.

Table 4. School Infrastructure, 1996 and 2000

Indicator	1996	2000
learner:classroom ratio	43:1	39:1
Percentage of schools with:		
No toilets	55 percent	17 percent
No telecommunications	60 percent	36 percent
No water	35 percent	28 percent
No electricity	68 percent	43 percent
Poor buildings	16 percent	35 percent

Source: Brochures for the School Register of Needs Surveys, 1996 and 2000. Downloaded from www.education.gov.za in March 2005.

In contrast, the government equalised educators between schools, based on the teacher-learner ratio, in the late 1990s. Even then, historically white schools were able to employ additional educators privately. In 2004, private

educators made up 10 percent of all teachers in Gauteng and the Western Cape, which held the majority of historically white schools, but hardly featured in the other provinces.

In these circumstances, the matric pass rate remained much higher for learners from historically white schools than for those from African areas, and particularly the former homeland regions. As the following table shows, in 2003 over half of white candidates passed matric with exemption, compared to just over one in ten Africans.

Table 5. Matric pass rate by race, 2003

	wrote	passed with endorsement	passed without endorsement	pass rate with endorsement
African	349,900	42,100	186,800	12%
Coloured/Asian	48,600	14,200	28,700	29%
White	46,900	23,800	22,000	51%

Source: Answer by National Department of Education to parliamentary question from H. Zille in May 2005. I am grateful to James Myburgh for sending me the information.

Finally, tertiary education, and in particular the professional schools and elite universities, remained disproportionately white. This situation resulted from the higher matric pass rate for traditionally white schools as well as the imposition of fees. In 2004, the annual university fee at Wits or UCT was well over twice the median expenditure for an African household.

Table 6. University graduations by race and type of institution, 2002

	African	Coloured	Indian	White	Total
Historically advantaged university	37%	4%	7%	51%	100%
Historically disadvantaged university	88%	6%	6%	1%	100%
UNISA	43%	4%	9%	45%	100%
Total	49%	4%	7%	40%	100%

Source: Altman, Miriam. 2004. *Meeting Equity Targets: Are there enough graduates?* Pretoria. HSRC.

The government adopted a national skills strategy from the late 1990s that sought to overcome historic inequalities in access to education. The skills strategy had three pillars: introduction of a skills levy at 1.5 percent of wage costs for larger companies; establishment of industry-wide training schemes; and a system to certify skills gained through experience, since so many black people had been barred from formal learning.

As Table 7 shows, despite the new system, in the early 2000s, black people and especially lower-level workers and women, were still less likely than whites to enjoy training opportunities. Only senior management proved an exception.

A further problem emerged around recognition of prior learning, which was crucial for overcoming past

discrimination. In most industries, it proved practically impossible for workers to gain formal qualifications, no matter how great their experience. For one thing, they were required to add theoretical components, at considerable cost in terms of time and resources. For another, most employers still did not give time off for training. And many industries simply never set up systems to evaluate and certify the skills of workers below the professional level.

Table 7. Access to skills development by occupation, race and gender, September 2003

Main occupation	African		Coloured/ Asian		White		% of total employment
	men	women	men	women	men	women	
Legislators, senior officials and managers	16%	38%	21%	34%	26%	30%	7%
Professionals	19%	27%	24%	28%	24%	30%	5%
Technical and associate professionals	22%	21%	25%	26%	31%	26%	10%
Clerks	15%	19%	16%	20%	27%	24%	10%
Craft and related trade workers	16%	17%	20%	12%	32%	23%	12%
Service workers and shop and market sales workers	35%	13%	24%	16%	30%	25%	12%
Plant and machine operators and assemblers	8%	8%	10%	6%	26%	17%	10%
Elementary occupation	6%	5%	8%	6%	27%	23%	22%
Skilled agricultural and fishery workers	5%	3%	11%	23%	19%	26%	3%
Domestic workers	5%	2%	0%	3%	n.a.	0%	9%
Total	14%	10%	16%	15%	28%	26%	100%

Note: Figures show percentage of respondents in each group who said they had access to skills development, without giving a time frame. Source: Calculated from Statistics South Africa. Labourforce Survey September 2003. Pretoria. Database on CD-ROM.

In sum, access to education, training and formal qualifications remained racially biased even a decade after democracy. Well-off black families could get their children into the best schools, but the majority remained relegated to under-resourced institutions and barred from university by poor secondary results and high fees. This outcome in itself meant that, absent state intervention, the economy would largely replicate historic inequalities for the foreseeable future.

EMPLOYMENT EQUITY AND LABOUR RIGHTS

A further strategy to enhance equity was to require

employment equity and protect labour rights. The Employment Equity Act had little visible impact at all, however. In contrast, the union movement succeeded in improving standards in organised industries. Still, these measures could not bring about more equitable access to wealth or increased employment opportunities.

The Employment Equity Act was passed in 1998. It went beyond a simple ban on discrimination to require employers to address systemic obstacles to advancement by historically disadvantaged groups. The Act sought explicitly to ensure greater equity in all skilled occupations, not just amongst senior managers and professionals. In this, it sought to address the near-absolute lack of career mobility for elementary and semi-skilled African workers, which had been entrenched under apartheid.

In the mid-2000s, senior managers and professionals remained highly unrepresentative. Indeed, as the following table indicates, the structure of employment by race showed virtually no changes after the Act was passed.

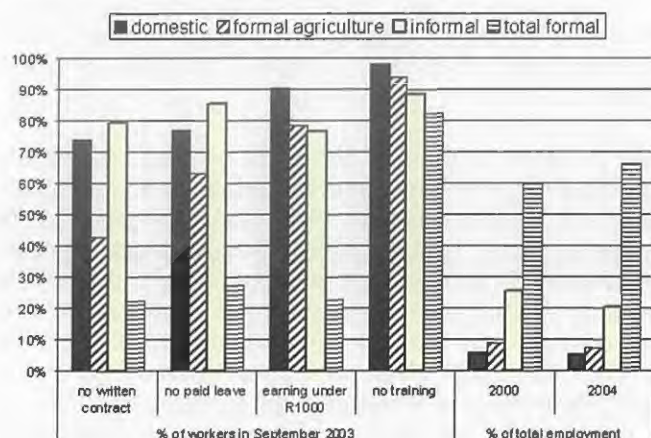
Table 8. Occupations by race, 2000 and 2004

	African		Coloured/Asian		White	
	Men	Women	Men	Women	Men	Women
2000						
senior management and professionals	18%	11%	10%	5%	37%	19%
technicians and clerical workers	20%	26%	6%	12%	12%	23%
skilled production and service workers	52%	25%	9%	4%	8%	2%
elementary	41%	39%	10%	7%	2%	1%
domestic	4%	86%	0%	10%	0%	0%
total	37%	32%	8%	7%	9%	7%
2004						
senior management and professionals	20%	11%	10%	4%	37%	17%
technicians and clerical workers	20%	27%	8%	12%	12%	21%
skilled production and service workers	57%	20%	9%	4%	8%	2%
elementary	51%	32%	9%	5%	2%	1%
domestic	4%	86%	0%	9%	0%	1%
Total	40%	28%	8%	6%	10%	7%

Source: Calculated from Statistics South Africa, Labourforce Surveys for September 2000 and 2004. Pretoria. Databases on CD-ROM.

In contrast, the passage of a suite of laws to protect labour rights led to a substantial increase in union density and much greater protection for African workers. Union members generally enjoyed higher pay than non-members, as well as benefits like pensions and health plans. But in major sectors - notably retail, agriculture and construction - unionisation remained low. In these sectors, employers often ignored laws setting basic conditions, such as providing a written contract or paid leave.

Chart 2. Adherence to labour laws by sector



Source: Calculated from Statistics South Africa, Labourforce Surveys, September 2000, 2003 and 2004. Databases on CD-ROM.

The labour laws may not have helped the unemployed directly, but they did have an important indirect effect. In 2004, 12 percent of the poorest 50 percent of households, measured by expenditure, survived primarily on remittances by family members (calculated from Statistics South Africa 2004).

The labour laws and employment equity sought to provide career mobility and rights to workers that had been historically denied under apartheid. The labour laws, in particular, did a great deal to give African workers a voice and the power to improve pay and working conditions. But they did not reach the unemployed, and they generally did not address the needs of new African entrepreneurs.

SMMES

The state introduced a range of measures to support small, medium and micro enterprises (SMMEs), including land reform, dedicated financial schemes, and training. These strategies had the potential for shifting asset distribution, developing a new class of small black capitalists and perhaps even a co-operative movement. As the presidency's initial ten-year review document pointed out, however, these programmes all proved largely ineffective (PCAS 2003, p 40).

Land reform had perhaps the greatest potential to improve the asset base of the poorest households, which apartheid had left in the overcrowded and destitute homelands. In the mid-2000s, the government officially retained the RDP target of getting 30 percent of arable land into black hands. However, the extent of land reform in the early 2000s suggested that this target would not be reached for the next 50 years.

In the first decade of democracy, well under 5 percent of land changed hands under land reform programmes. Estimates suggested that the budget for land reform would have to multiply at least by five to achieve the official aim (People's Budget 2005, p 19 ff). In addition, post-settlement support remained limited and rather chaotic, as

responsibilities fell between different tiers of government (Hall et al, 2003).

Other government programmes to support small and micro enterprise fell similarly short of the mark.

The shortcomings in government programmes to support small and micro enterprise reflected, above all, the overall hostile environment. South Africa's production structure remained geared primarily toward minerals and beneficiation - sectors that do not generally provide fertile ground for small-scale operators. Financial and retail networks developed over centuries to support large-scale (white-owned) companies and small groups of rich (white) people. They did not easily extend services and support to new, small (black) entrepreneurs. Finally, apartheid had left new black entrepreneurs largely without capital, formal business connections and, in many cases, experience.

In the mid-2000s, small and micro enterprise in South Africa still lagged far behind other middle-income countries (Orford et al, 2005). Most small black entrepreneurs ran only survival strategies - generally hawking - with two out of five earning under R500 a month (calculated from Statistics South Africa 2004). Meanwhile, in many years, government funding for small enterprise showed substantial rollovers.

PUBLIC SECTOR EMPLOYMENT

Given the weakness of other strategies to promote the black elite in the private sector, the public sector proved the crucial route for advancement. By the mid-2000s, black people had made considerable progress into management in both the public service and the parastatals. In effect, state capital became the main form of black capital.

Black representation in senior management and professionals in the public sector rose from 53 percent to 61 percent between 1996 and 2004. In the latter year, 19 percent of all African senior managers were in the public sector, compared to 7 percent of all whites in top management (calculated from Statistics South Africa 1996 and 2004).

The major national parastatals - especially Transnet, Eskom and Telkom - proved particularly important for new black capital. They accounted for the lion's share of parastatal investment, which comprised 12.5 percent of national gross fixed capital formation in 2005 (calculated from SARB 2006, p S-122).

Although they retained some social responsibilities, the government sought to commercialise the parastatals and to privatise them at least partially. This approach both opened the door to investment by black consortia, and gave black executives control over substantial sections of the economy.

Employment in the state supported the creation of a black capitalist class in two ways. First, it gave many educated black people a chance at a high-level, well-paid job, while doors remained firmly shut in most of the private sector. Second, experience and connections in the state sector made

black candidates more attractive to white-run companies in the formal sector. In the mid-2000s, almost all leading black capitalists had started with a position in the state.

The role of the state in forming a new elite did little to address overall inequality. The public sector was disproportionately represented amongst the highest income earners, with a quarter of those in the top 10 percent but only a seventh of total employment (calculated from Statistics South Africa 2004). The wage gap in the public service and the parastatals tended to rise from the late 1990s, after an initial effort to raise incomes for the worst-paid workers.

THE MOVE TO BROAD-BASED BEE (BBBEE)

Analysis of government strategies to address the apartheid legacy in the economy demonstrates that they failed either to achieve a qualitative change in economic inequality or to open a path for most potential black entrepreneurs. The question becomes how current proposals for broad-based BEE will likely affect these outcomes. To answer that question, this section examines the Broad-based BEE Act and the regulations issued under it, which will probably not be finalised until the end of 2006.

The Act itself reflected contestation over the concept of BEE. The concept itself only came to the fore with the publication of the report of the BEE Commission, a grouping of predominantly black businesspeople. (Before that, it hardly existed in the policy discourse within the ANC or the state.) The commission report initiated the strategy of defining BEE as both improvements in overall equity (without any quantification) and specific targets for increased black participation in management and ownership (BEEComm 2000).

This dual strategy was adopted in the ANC's resolutions on BEE at its 51st National Conference in Stellenbosch in 2002, with an added emphasis on collective ownership by working people and communities. The ANC resolved:

... the indicators for success [of BEE] are overall equity in incomes, wealth, increasing levels of black participation - including black women and youth - in ownership, the extent to which there is operational participation and control of the economy and the extent to which there has been transfer and possession of skills and a retention of assets by the BEE beneficiaries.

To ensure that BEE is broad based, supportive of collective ownership programmes by working people and communities, in the form of collective enterprises and cooperatives, supportive of the creation of an entrepreneurial class, the accumulation of assets by the poor and with a focus on the development of rural economies...

That an essential component of BEE is the involvement of black businesspeople, especially women, in the ownership, control and management of productive capital in all sectors of the economy as well as skilled occupations.

In pursuing this objective the ANC will work with the emergent black capitalist class to ensure joint commitment and practical action to attain increased investment, job creation, employment equity and poverty alleviation (ANC 2002).

The government's policy document on broad-based BEE responded to the ANC resolutions and the BEE Commission report and laid the basis for legislation. It argued that the new policy would add, "a comprehensive black economic empowerment strategy that draws together the various elements of government's transformation programme in a more coherent and focused way" (dti 2003 p 11). The policy identified three main elements in broad-based BEE:

- increased black ownership in the formal sector
- development of new small and micro enterprises, effectively making the economy as a whole more equitable and competitive
- skills development and employment equity, which would mean formal workers generally benefited as well.

Despite these three pillars, the main emphasis continued to be on increased black ownership and control, with little mention of improving overall income distribution or supporting collective ownership (dti 2003 pp 12-13). Entirely missing from the policy framework were:

- any discussion of how BEE should support formal employment creation, except as a function of support for new enterprise. Yet unemployment was the critical cause of marginalisation for most black people. This gap has led to considerable contestation about BEE measures that could destroy jobs. This can happen, for instance, where black importers gain precedence over local producers. Similarly, when privatisation or outsourcing is used to set up new black-owned enterprises, it often leads to the loss and/or downgrading of existing jobs
- specific measures to support the provision of goods and services for the black community where relevant, for instance in the financial and health sectors. This has hampered efforts to negotiate improvements in these areas within the relevant industries.

The Broad-based BEE Act formalised the policy document by listing as its objectives:

- promoting economic transformation in order to enable meaningful participation of black people in the economy
- achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises
- increasing the extent to which communities, workers, cooperatives and other collective enterprises own and manage existing and new enterprises and increasing their access to economic activities, infrastructure and skills training
- increasing the extent to which black women own and manage existing and new enterprises, and increasing their access to economic activities, infrastructure and skills training
- promoting investment programmes that lead to broad-

based and meaningful participation in the economy by black people in order to achieve sustainable development and general prosperity

- empowering rural and local communities by enabling access to economic activities, land, infrastructure, ownership and skills
- promoting access to finance for black economic empowerment.

As a result of engagement at NEDLAC and parliament, the Act laid more emphasis than the original policy of the Department of Trade and Industry (dti) on overall economic transformation, broad-based ownership and skills development. In addition, it required that sectoral BEE charters include all stakeholders, including workers and consumers.

The Act provided that every department should "as far as reasonably possible" take into account an enterprise's BEE status in providing licences, procurement and any other business. This obviously lent the BEE process great clout. It also opened government processes up to considerable uncertainty, since the extent to which a department had to take BEE into account seemed quite unclear.

Based on the Act, in 2005/6, the dti circulated draft Codes of Good Practice to define precisely how a company's BEE performance would be judged. These codes were extensively negotiated with business and, at NEDLAC, with labour and community representatives. Often, in this context, the interests of labour and black business came into open conflict.

Four examples illustrate the contestation:

- the special codes on small enterprise effectively increased the importance of black ownership and set targets for employment equity and skills development for lower-level workers. Under the definition of small enterprise, however, almost half of all formal employees would work in this sector
- the draft codes gave only limited bonus points for collective ownership, despite the strong support from the ANC resolutions and the Act itself. Moreover, dti officials argued that collective ownership should take second place to the development of an entrepreneurial class. They initially wanted to exclude retirement funds - the main form of capital owned by working people - from any BEE incentives, and only agreed to reconsider the issue after direct pressure from the labour movement
- although the codes gave points for employment equity, most of them rewarded greater representivity amongst senior management and professionals than amongst skilled professions. That contradicted the explicit effort of the Employment Equity Act to foster career mobility for the majority of black employees
- the balance between points for black enterprise and for local production continued to form a point of contestation. The dti was unwilling to give points simply for local production - and job creation - by white enterprise, although it did try to introduce limits on

imports for qualifying companies.

CONCLUSIONS

The contestation over broad-based BEE reflected the inadequate response of the private sector to persistent inequalities, and the difficulty of prioritising state action in the context of growing class differentiation in the black community. The government's explicit policy was that it could not support empowerment for black capital alone. But the extent to which it broadened the definition of empowerment remained hotly contested.

In effect, government has a fixed amount of influence over the private sector. If it imposed substantial costs to bring in black owners, it could not push as hard for new investment, employment creation, or skills development for the majority of employees.

From this standpoint, the failure to integrate BEE with broader economic initiatives remains a major concern. From the national budget to the State of the Nation Address to the accelerated ASGI-SA, BEE remained at best a marginal consideration and at worst was misinterpreted. Generally, it appeared as a further measure to support small enterprise and low-income housing. Major policy documents seemed studiously to ignore the implications for ownership - probably the most expensive effect of the BEE exercise.

REFERENCES

- Altman, M (2004) *Meeting Equity Targets: Are there enough graduates?* Pretoria. HSRC
- ANC (1994) *Reconstruction and Development Programme*. Johannesburg. Downloaded from www.anc.org.za, 2001
- ANC (2002) *Resolutions of the 51st National Conference*. Johannesburg. Downloaded from www.anc.org.za, March 2006
- Ardington, C, D Lam, M Leibbrandt and M Welch (2005) *The Sensitivity of Estimates of Post-Apartheid Changes in South African Poverty and Inequality to Key Data Imputations*. Pretoria. CSSR Working Paper No 106. Downloaded from www.sarpn.org.za, July 2005
- Department of Education (2000) *Brochure for the 2000 School Register of Needs Report*. Downloaded from www.education.pwv.gov.za, 2002
- Hall, R, P Jacobs and E Lahiff (2003) *Evaluating Land and Agricultural Reform in South Africa: Final Report*. PLAAS/UCT. Cape Town. Downloaded from www.sarpn.org.za, September 2005
- Mbeki, T (2006) *State of the Nation Address 2006*. Downloaded from www.gov.za, March 2006
- Mlambo-Ngcuka, P (2006) *Background document on a Catalyst for Accelerated and Shared Growth in South Africa*. Media briefing. Pretoria
- National Treasury (2006) *Budget Review 2006*. Downloaded from www.treasury.gov.za, February 2006
- PCAS (2003) *Toward a Ten Year Review*. Pretoria
- People's Budget Coalition (2005) *The People's Budget 2006/7*. Downloaded from www.naledi.org.za, March 2006
- SARB (2003) *Long-term data series on national accounts and international transactions*. Downloaded from www.resbank.gov.za, August 2003
- SARB (2006) *Quarterly Economic Bulletin*, March 2006. Pretoria. Downloaded from www.reservebank.co.za, April 2006



LIMPOPO

PROVINCIAL GOVERNMENT
REPUBLIC OF SOUTH AFRICA

DEPARTMENT OF
ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM

DEPARTMENT OF ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM

GENERAL OVERVIEW OF THE PROVINCES ECONOMY AND PERFORMANCE OF THE ECONOMY

Limpopo Province is a province imbued with some of nature's most beautiful treasures; the warm hospitality of its people, a natural environment rich in fauna and flora and replete with some of the world's largest platinum deposits, a land steeped in myth and mystique, a cultural heritage dating back to the Stone Age and an economy that is fast outpacing national growth norms. Bordered on three sides by Botswana, Zimbabwe and Mozambique, the province is ideally situated for trade and business links with the rest of Africa, providing an ideal gateway through air with its Gateway International Airport and by rail and road freight. It is this 'regionality' that drives the new provincial brand promise of the province being 'the heartland of southern Africa: development is about

people', and forms one of the key areas of the Provincial Growth and Development Strategy

Tourism and conservation have also been the immediate winners in this integrated approach, with trans-frontier parks and border gates now offering seamless access at entry points to cater for this lucrative market. It therefore comes as no surprise that the new provincial branding locates itself in this context of regional integration as one of the main thrusts of the provincial comparative advantages. Small wonder therefore, that the province is known as the heartland of southern Africa, where development is about people! With the signing of the Limpopo-Shashe TFCA Memorandum Of Understanding, the province will cement its relationship with the region, and also firmly assert its role as a hub of regional development.

As a department whose mandate is to grow the



LIMPOPO

PROVINCIAL GOVERNMENT

REPUBLIC OF SOUTH AFRICA

DEPARTMENT OF

ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM



MEC for the department, Hon OC Chabane.

provincial economy, the implementation of the Provincial Growth and Development Strategy is of primary importance as it aligns the economic goals of the province on a large scale, thus providing investors with an authoritative source of information and resources about the provincial economy.

Over the past few years the province, through decisive political leadership and fiscal management, has implemented policies and programmes that have grown the economy, even surpassing the national average! The provincial economy at current or rather nominal rates grew from R34.343-billion in 1996 to R93.188 in 2004. This indicated an upward trend of economic growth (almost three times that of 1995). The province recorded economic growth decline from 6.5% to 2.7% for the years 2001-2004 respectively.

THE ECONOMIC PERFORMANCE OF LIMPOPO FOR 2004 IS ATTRIBUTED TO:

The primary industry that declined by 2% from 3.0% in 2003 to 1% in 2004 (agriculture forestry and fishing declined by 6.3% from -0.8% in 2003 to -7.1% in 2004; mining and quarrying declined by 1.5% from 3.4% in 2003 to 1.9% in 2004).

The tertiary industry rose by 0.2% from 2.8% in 2003 to 3.0% in 2004 (wholesale and retail trade, hotels and restaurants increased by 1.7% from 1.5% in 2003 to 3.2% in 2004; transport, storage and communication declined by 1.6% from 3.9% in 2003 to 2.3% in 2004; finance, real estate and business services increased by 0.9% from 5.0% in 2003 to 5.9 in 2004; personal services declined by 2.7% from 3.9% in 2003 to 1.2% in 2004 and general government increased by 0.4% from 1.0% in 2003 to 1.4% in 2004).



LIMPOPO

PROVINCIAL GOVERNMENT

REPUBLIC OF SOUTH AFRICA

DEPARTMENT OF
ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM

The tertiary industry rose by 0.2% from 2.8% in 2003 to 3.0% in 2004 (wholesale and retail trade, hotels and restaurants increased by 1.7% from 1.5% in 2003 to 3.2% in 2004; transport, storage and communication declined by 1.6% from 3.9% in 2003 to 2.3% in 2004; finance, real estate and business services increased by 0.9% from 5.0% in 2003 to 5.9 in 2004; personal services declined by 2.7% from 3.9% in 2003 to 1.2% in 2004 and general government increased by 0.4% from 1.0% in 2003 to 1.4% in 2004).

All industries registered a growth rate of 7.0%, 4.4%, 2.7% and 2.7% for the years 2001 to 2004 respectively, which has been decreasing steadily but stabilised for the years 2003 and 2004.

Limpopo's agricultural sector is also a major contributor to the economy and produces some of the country and world's best produce in oranges, tomatoes and other products. Like the rest of the country, production has been minimally affected by pending land claims and climatic conditions which slowed down growth but is set to climb once these claims are finalised and conditions improve. The province is looking into more beneficiation along the value chain to be conducted locally, thereby creating more jobs and skills to maintain this shift in balance. In mining, the province is also speeding up the drive towards encouraging the relocation of, as much as possible, the basket of services in the mining industry to the province, and thereby reap the benefits of local beneficiation.

The province has implementing agencies in the financial and non-financial support and investment facilitation areas. These are Trade and Investment Limpopo (TIL), Limpopo Business Support Agency (LIBSA), Limpopo Enterprise Development Corporation (LIMDEV) and the Limpopo manufacturing Advise Council (LIMAC now SEDA Limpopo). The agencies offer specialist advise and services from the small entrepreneur to Fortune 500 companies and other growing entities with up to the minute support on how to do business in the province and the support structures available to the business community.



Contact details:

Physical Address:
20 Hans Van Rensburg Str
Polokwane
0700

Write to:
Head of the Department
Private Bag X9484
Polokwane, 0700

Ph: (015) 293-8300

Website: www.limpopo.gov.za



BEE TRANSACTIONS AND THEIR UNINTENDED CONSEQUENCES

BY PROF BEN TUROK MP

The author is a member of the South African parliament and editor of *New Agenda*

The transactions of black economic empowerment (BEE) have taken centre stage in the debate about South Africa's future. There are accusations of cronyism, enrichment, parasitism and other pejorative labels. These transactions need to be analysed objectively to assess what is really going on, and they have to be seen in the broader trajectory of government objectives.

The African National Congress (ANC) has been pursuing a "democratic revolution" for fifty years. The main content of this has been the removal of white minority domination and the promotion of the liberation of black people, especially the black African majority. For much of this time the expectation was that the democratic revolution would open the road to some form of socialism. But the world has changed and the system of capitalism has acquired immense resilience throughout the world. Hence the ANC and its government are seeking other means to empower the black African majority in the economy.

Even a cursory examination of the BEE charters and codes reveals a profound determination to deracialise the economy and ensure that black Africans in particular have a powerful presence throughout the economy, including in its largest corporations. This amounts to a social revolution by administrative means. The immediate prospects are that it will succeed. However, there are unintended consequences, given that the values of capitalism are now hegemonic throughout the society and a new black business class is in formation. Although most of these individuals have political credentials, they are now focused on gaining personal wealth through equity ownership accumulation and capital growth in private companies, leaving the redress of social issues to the state.

At the heart of the BEE process is a frantic deal-making in which black businesspeople seek to enter the previously exclusive terrain of white capital. This paper attempts to examine these "empowerment transactions" and their unintended consequences for the political economy of South

Africa. Whether the government will be able to sustain its commitment to the goals of a shared economy and society in the light of these developments is the subject of another debate.

THE ISSUES

Recent reports show that the unfolding of the BEE process is causing some concern. There seems to be a great deal of turbulence in the business world as some BEE parties acquire shares in various companies while others move into short-term business opportunities. Since the country is committed to BEE and a great deal of effort is going into creating charters and codes, it is in the public interest that we develop a better understanding of what is going on in these empowerment transactions.

The deracialisation of top positions in large companies is a widely accepted goal, but one would like to know whether this is mere tokenism or whether real power and influence is actually acquired by the black partners. Or whether black influence is being acquired, and at what price? We also need to understand whether middle-level black professionals are also given opportunities for advancement and exposure under the black empowerment process. Do the black partners acquire net assets (equity) in the process, and is this immediate or is there a delay of many years? Is it the case that only a handful has actually been enriched while the rest have only acquired massive debts in the hope of rich pickings in the future? What are the actual material benefits for those who become directors of large companies?

We need to know what commitments follow from their roles as BEE partners. Assuming that the companies concerned are not acting out of charity, what benefits do these companies expect from their divestment of shares to BEE partners? Is it political influence, access to government departments, or what? It is the lack of clarity about these matters that prompted *Time* magazine to put Cyril Ramaphosa on its cover (6 June 2006) with the caption "THE NEW RAND LORDS: Capitalists or Cronies?"

Finally, many of these individuals are highly talented and hold a long record of public service, first in the liberation struggle, then in various roles in the public domain. Yet they appear to be wholly engrossed in deal-making to boost their personal business affairs and have given up any public role. Most no longer contribute to providing direction to the country as a whole, and it is a great loss. But for those who would choose to remain active in the political life of the country, what degree of political freedom do they retain, as BEE partners, to keep their struggle values?

It may be that the whole exercise needs review so that the country loses fewer of its most distinguished black personalities to the pursuit of - perhaps illusory - enrichment. Of course, it can be argued that we need black businesspeople in the top echelons of business to deracialise it and influence its direction, but experience thus far gives little support that the present method is effective.

THE BACKGROUND

BEE was designed as a mechanism for the deracialisation of wealth and economic power in South Africa. This was in line with the Freedom Charter's objective, that "The People Shall Share in the country's wealth". But the means of doing so were always unclear, perhaps envisaging the model of the social democratic countries of Europe, which uses some public ownership, some semi-autonomous parastatals, a welfare state, heavy taxation of the rich, scope for strong unionism to raise workers' wages, co-operatives, etc.

The government realised that these aspirations were unlikely to come about without state intervention. However, rigorous measures, such as nationalisation or prescribed assets, were thought to be unrealistic. Instead, Deputy President Phumzile Mlambo-Ngcuka, when she was the minister for minerals and energy, began the process of drawing up BEE empowerment charters. Several other sectors have now followed suit, though each industry has followed a different path.

The Mining Charter seeks to give "real benefits to all" and to realise "the promise of a non-racial South Africa". It seeks to encourage black economic empowerment and transformation at the tiers of ownership, management, skills development, employment equity, procurement and rural development. "The transfer of ownership must take place in a transparent manner and for fair market value." It proposes that ownership of a business can come through a majority shareholding, joint venture or partnerships, or broad-based ownership. The ultimate 10-year objective is to achieve a 26 percent share of ownership by historically disadvantaged persons. The government is to play an important role in overseeing and facilitating the process and there are many reporting requirements.

The Financial Sector Charter (FSC) follows a similar route, but stresses that participation by sector participants is voluntary. However, there is currently a process underway to gazette the FSC as a transformation charter, and subsequently as a sector code aligned to the Codes of Good Practice. No

company operating in South Africa is legally compelled to comply with BEE requirements - with the exception of the mining sector through the Mining Charter and other sectors with regulatory requirements that have a legal effect.

The decision to implement a BEE transaction is based on the commercial and competitive imperative of doing so. The "stick" thus becomes the tangible impact on a business of not being empowered through such factors as the loss of business, as well as stakeholder and public perception of a company slow to transform. There are many detailed clauses, including a targeted procurement strategy to enhance BEE, which means that companies should procure through black companies.

There are many aspects to the FSC, including a targeted procurement strategy to enhance BEE by procuring from black companies, a commitment to joint ventures, debt-financing and equity investment in BEE companies. There is a target of 33 percent black people on the board of directors by 2008 and a minimum of 25 percent black people at executive level by 2008. Another requirement is for "appropriate risk-mitigating measures and risk-sharing arrangements between government and its development finance institutions and the private sector". The many targets and reporting systems, if implemented, will bring about a social revolution in business.

The Tourism Charter is even more detailed, with complex scorecards. **The Petroleum and Liquid Fuels Industry Charter** deals with procurement issues as well as state tender matters. **The Maritime Transport and Services BEE Strategy** raises more long-term issues about the performance of the economy, including creating a larger market, legislative and fiscal restrictions as well as commitment by parastatals and public sector organisations. There is much emphasis on "accelerating procurement from black-owned and empowered enterprises".

In short, in each of these charters, the concessions to enable BEE are combined with some hard-nosed negotiations for concessions from government for the private sector. The targets are very ambitious, and may well run up against limitations of human capacity. They can only be achieved if there is a huge change of attitude in business to the role of black people in general.

The Codes of Good Practice issued by the Department of Trade and Industry are even more ambitious and extremely complex. It will take a small army of lawyers and accountants to interpret them for business and the general public. How parliament is to exercise oversight remains to be seen.

DERACIALISING THE ECONOMIC HEIGHTS

The **Sunday Times** survey of wealth and corporate ownership (21 December 2005) shows that there has been little transfer of wealth to black individuals and companies despite BEE and the charters.

Of the "top earners", only the names of Jacob Modise

(Johnnic Holdings), Phuthuma Nhleko (CEO MTN), Sizwe Nxasana (FirstRand Bank) and Irene Charnley (MTN) can be identified as previously disadvantaged people. That is four out of seventy.

Of the "wealthiest", we recognise Patrice Motsepe, Desmond Lockey, Tokyo Sexwale, Reuel Khoza, Marcel Golding, Anant Singh, Jens Montanana, Saki Macozoma and Mikki Xayiya as obviously previously disadvantaged people. That is nine out of 157 persons.

Why is this so? What is really happening? Are we seeing any real deracialising of wealth and economic power? Or is it all smoke and mirrors?

One investment analyst has suggested that "everyone is now in the game" but that many corporations see BEE as an unpleasant and unnecessary tax compliance cost. He says that black people without capital are hastily and rashly either fronting, borrowing from ruthless lenders, or otherwise getting in way over their heads. The stock exchange will need to rise over 500 percent for some of these aspirants to realise anything. So, while a few have made it and have net assets, much is a mirage.

He also believes that the government is sitting back and allowing it to happen, not taking seriously enough the potential for massive failures if interest rates rise and debt cannot be paid off.

Such concerns are sufficiently serious to be examined rigorously and objectively, without ideological overtones.

DEAL-MAKING

It is vital that we have a clear understanding of what is happening in our economy, who is benefiting, and whether there are any real prospects of transformation at the top of the pile. If we do not do so, some people will be making unsubstantiated accusations of elite self-serving practices, of rapid class polarisation, of the entrenching of a new capitalist class and so on. Others will continue to bemoan the enrichment of the black elite. The true state of class behaviour will remain a mystery.

KEY QUESTIONS

Some of the key questions that need answers are:

- What is the extent of actual net wealth and assets held by the black business elite?
- What actual economic muscle do they have?
- To what extent has BEE actually empowered these people?
- What is their ideological orientation?
- What prospects are there that they will use their wealth/power to transform the economy?
- To what extent has BEE opened the way for sharing/redistribution of the country's wealth?
- What conflicts of interest has this created and at what cost?

In an article in *Business Day* (16 Jan 2006), Tim Cohen

argues that "the vast majority of shareholders in the original deal (Johnnic) were left with nothing." Yet Johnnic was a treasure trove of assets with a total market cap of R8.5 billion in 1996. The purchase price was R50 per share, i.e. a 6 percent discount. Cohen concludes that the price was on the high side, and that very few of the assets were under direct control of management. It was a "classic apartheid-era mess". He goes on to say that the lenders held all the aces since the deal was essentially debt-financed. It was "theoretically value-creating"; using "convertible cumulative redeemable preference shares, funders took none of the downside and gave very little of the upside. There was no upside anyway." And so "the saga produced little success, since companies are hard to run if their investors are hopelessly indebted to the banks."

What is required is a thorough understanding of the mechanisms of share transfer to BEE beneficiaries, what the actual benefits amount to, and the consequent obligations on the potential beneficiary. To what extent are they obliged to use their former and ongoing connections in the ANC and government to win procurement orders, get contracts and influence government programmes? Is the treasury happy with this process and does the auditor-general approve? Is there a conflict of interest for senior public servants and ministers due to the involvement of relatives?

On the other hand, many of the key individuals involved in these deals are quite confident that they can make a difference. In the *Time* article, Macozoma said, "With five or six of us spread out through the economy, that can make a difference in a fundamental way."

Why do companies do it? Not all the black partners have business experience. There is a view that there are considerable penalties: "Most BEE transactions destroy shareholder value." (*Business Report*, Jan 10, 2006). Some argue that they find it essential to bring black faces to the top for image reasons.

Time magazine (June 6 2005) said, "As South Africa's biggest companies rushed to meet their BEE requirements, they often turned to the same small group of black capitalists, offering to sell or grant equity stakes at favourable terms, often financed by the companies themselves, in return for connections, expertise and links to the marketplace."

Cyril Ramaphosa took a different line. He argued that "black South Africans need to get their hands on capital or they won't be able to build anything - first you become a financial investor to accumulate capital ... then you acquire skills ... then you acquire control of companies and begin to be an operator, running a proper business." (ibid)

Mvela Resources, another major empowerment company seems to be reviewing its role. It now wishes to control the assets it has invested in (*Business Report*, Jan 10 2006). In another report (*Business Day*, Jan 10 2006) Mvela appears to contemplate selling its 15 percent stake in Gold Fields, because it does not own a controlling stake. But then

ownership would "only vest in five years time". Mvela's investor-relations manager stated that Mvela Resources would have about R2 billion debt by 2009, "which could be repaid by selling some Gold Field shares." An analyst said, "Mvela Resources was not yet entitled to the shares and it would not be easy to enter into any arrangements to sell them at this stage."

EMPOWERMENT TRANSACTIONS

To guide our investigation we will start with several propositions:

- BEE in the form of a transfer of shares is a mechanism for delayed transfer of wealth linked purely to expedient company performance, with no downside or cost to the company
- wealth transfer from historically white companies requires total loyalty and commitment from new black junior partners
- this loyalty requires crony conduct with government
- the ANC may be compromised by such conduct on the part of respected personalities.

A typical case might be as follows. A large company decides that it is politically expedient to take on a black partner. It identifies a suitable person with a high public profile. It offers this person a stake in the company equity and requires a small payment. The individual has no funds and so takes a loan from a bank that is secured by the shares. The actual transfer of the shares is made conditional on the performance of the company and the value of shares on the stock exchange. Also, there is a time frame of, say, five years before the actual transfer can take place. In the meanwhile, the individual may be offered a seat on the board for which he will draw non-executive attendance fees, and will benefit from dividends. In return for these immediate benefits, he has to assist with obtaining government tenders and generally improving the company's image as one committed to BEE. In other words, he is controlled by "golden handcuffs". The company remains in the control of the main shareholders who dictate its overall economic policy. If for some reason the individual leaves his position, he will typically lose his investment stake and any benefit that may already have built up - it's all or nothing.

There are many variations on this model, including ones where the beneficiary has to put his or her personal assets, such as a house, as security. One important feature is that the beneficiary is given enough funds to acquire a lifestyle commensurate with the new status. This leads to the impression that a new black capitalist class has emerged. In fact, there is a high degree of "capture", which undermines the individual's capacity to play a significant role in the economic transformation of the country.

Our early enquiries indicated that there are at least three types of BEE candidates for empowerment transactions, each with a distinct role:

1. **Entrepreneurial groups.** These may include former politicians with a high public profile; others who are well-connected with the government; and skilled

professionals with expertise at running businesses who are also deal-makers. They often put together finance and run companies where appropriate. Wheeler-dealers who operate opportunistically are also part of this category.

2. **Trade union investment groups.**

3. **Broad-Based groups,** for example non-governmental organisations (NGOs), foundations, etc.

Of these, the entrepreneurial groups are thought to have led a great deal of activity with some success, while the broad-based structures are said to have created little value and may be ineffective. Johnnic was such a scheme, in that it embraced many diverse entities.

The essence of empowerment transactions is that a group or individual with little capital wishes to acquire a stake in some existing company. The usual route is:

- set up a company (or a trust)
- establish a "special purpose vehicle" (SPV)
- seek to acquire shares in an existing company, e.g. "XX".

Let us assume that the price of one share is R18. Where does the funding come from, since the trust has little ready cash?

We can assume that the trust has some personal savings and can pay R1 per share. The bulk of the remainder comes from a bank, insurance company or any funding institution that is willing to advance finance, that puts up R12 per share (this is similar to a bank overdraft). The remaining R5 is contributed by company XX. This contribution may be in the form of a discount, a loan, or a guarantee to some other funder providing a loan.

The BEE trust is, of course, beholden to others in the deal, especially the facilitating company XX, without whose intervention there is no hope of a deal. So, BEE deals depend on the willingness of the facilitating company XX.

Company XX and the SPV measure the degree of risk against the expectation of a financial return. The greater the risk, the greater the cost of funding will be. The key question is: What value is added by the empowerment deal? Or, what can this group bring to the party?

Company XX has to judge whether the deal is worthwhile and who can put it together. It may be a former politician. This is because there is government pressure for visible empowerment. But empowerment that is only cosmetic can be costly, and the company needs to remain profitable.

In the early days of BEE, business was not under much pressure to make empowerment deals. If a firm wished to improve its image, it might give a black company a small discount for share purchases. In such cases, it was the banks that advanced the money, thereby taking most of the risk. Banks therefore demanded high interest rates on the loans. In 1995, national bank rates were high, at 16 percent, and the banks wanted 25 percent interest on these loans to cover their risk.

The borrower depended on dividends or share value appreciation to repay the loan.

However, the stock market crashed in 1998 and remained flat until 2003. There was no share appreciation and interest rate repayments were high. With a few exceptions, the whole BEE experiment collapsed.

Since 2003, the prime lending rate has fallen to 10 percent, and the banks are asking up to 17 percent for loans. Furthermore, the JSE has risen by some 100 percent since January 2003 and shares have appreciated substantially. This makes for a rosy scenario. It is cheaper for company XX to fund the deal, as the risk premium is only 3 percent, and the share price must only rise by 7 percent (rather than the previous 25 percent). It helps economic growth and therefore share values rise. This has led to a huge increase in the number of companies acting as facilitators.

However, should interest rates rise again, and if there is a fall on the stock exchange, BEE will stall.

There is a built-in safeguard for the BEE group in that the SPV loan is "ring-fenced". This means that the bank or finance house will face the loss and not the BEE group who only paid a small amount upfront (R1 per share in our example).

WHAT'S IN IT FOR THE COMPANY?

Public attention has thus far mainly been on the beneficiaries. But what's in it for company XX? One would expect that while some businesses may wish to gain some social responsibility points, it is profit that really counts. So what value does BEE compliance bring?

Since much effort has gone into creating charters and codes, there is somewhat more inducement now for compliance with BEE intentions. It is, of course, possible to do so in a token way, but there is too much public interest for blatant violations of the process. Furthermore, enormous pressure from aspirant black candidates is building up social momentum. Business as a whole will have to give some ground. Good points can be scored there.

BEE deals can bring new opportunities for established companies, for instance, in mining, and this has already happened.

The BEE partners that are favoured are those with inside knowledge of government. These personalities also have easy access to ministers and top officials, with the golf course a favourite contact point. There is a great deal of socialising among top people in government and business, and informal talk may be a great asset. In the United States it is called "schmoozing" and it brings in a great deal of business. (The *New York Times* reported, "Golf is acquiring the whiff of scandal, its exclusive fairways and cosy clubhouses redolent of improper commerce between money and influence." Ramotena Mabote says, "The golf course has become the extension of the boardroom ... it is at the end of the game (the 19th hole) where the real deal-

making happens" (*Sunday Times*, 29 January 2006).

BEE partners are also much more adept at internal transformation, that is, to meet representivity criteria, and to change the corporate culture of businesses. This is invaluable in the current climate.

BEE partners are also able to bring new knowledge of the market culture, especially with respect to the new black middle strata. They bring new business insights, new kinds of experience and skills.

However, the actual value added to a company depends on the proper criteria being put in place initially, and the correct choice of a partner. Many an initial high expectation has failed to materialise because the wrong partner was chosen, the terms laid down were bad and the relationship managed inappropriately. This is clearly a matter for expert management.

What is clear is that it is completely inadequate to place an ineffectual BEE partner on the board of directors for window-dressing purposes when that person cannot fulfil the duties involved, or to offer that person share options which are unrealistic. Too many new supposed beneficiaries come into a deal for the fast buck and not for commitment to the success of the company.

The Report of the Auditor-General on the declaration of interest by ministers, deputy ministers and government employees (January 2006), which has caused a storm, reinforces the points made above that there are major hazards for companies seeking to bring public sector persons on board. There are also the concerns about the integrity of our public representatives and the public service.

INTERNATIONAL INVESTORS

Presently, there is considerable concern by international companies about BEE for fear that they will have to surrender equity to local partners. However, Code 100, Statement 103, of the **Codes of Good Practice** deals with the recognition of ownership contributions made by multinational companies. This code makes provision for an "equity equivalent" consisting of a public programme, or scheme of government, which allows a multinational company points under the ownership scorecard. Local multinational enterprises will have to show that they "will suffer substantial commercial harm" if they implement BEE. Various other obligations may also be introduced.

FOR FURTHER ENQUIRY

The issues that require detailed investigation in these transactions are as follows:

- What is the package offered?
- What is the share incentive scheme?
- How is the scheme paid for?
- What are the terms of the scheme?
- How is it linked to the equity value of the company?
- What are the potential conflicts of interest?
- What is the effect on the national interest?

- What government contracts are affected?
- What legislation is affected?

THE ESSENTIAL CHARACTERISTICS OF THE SYSTEM

The beneficiary, who may be a manager or director of the company, is dependent on the success of the company because he or she will not be able to cash in his or her shares until the conditions are met. The shares are not ordinary shares at market value, but cheaper options that come with conditions.

The shares are "sweet equity" as they are acquired with a down payment from a bank (or no down payment). If sold, or the director resigns, she or he will only get back the deposit, and not, in many cases, the initial stake, hence the "golden handcuff".

POLITICAL CONSEQUENCES

Serious questions arise about how BEE impacts on the political system. On the assumption that the number of actual beneficiaries of BEE who hold senior positions in the ANC is very small, it may be further assumed that their influence on the political direction of the movement is small.

On the other hand, there is a new tendency for ANC office-bearers to become shareholders in various companies under BEE schemes and this could create dual loyalties towards the ANC and the companies. It may also have an impact on the ideological outlook of the individuals concerned.

REFERENCES

Legislation and regulations

Charters for the following sectors: Mining, Financial Sector, Tourism, Petroleum and Liquid Fuels, Maritime Transport and Services. Department of Trade and Industry (dti), 2006

Codes of Good Practice on Black Economic Empowerment Phase One and Phase Two. dti, November 2005

Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Organisation for Economic Co-operation and Development. Daffe/IME/BR (97) 20.

Corruption Act No 94, 1992

Preferential Procurement Policy for the Western Cape. Western Cape Provincial Government (undated)

Prevention and Combating of Corrupt Activities Act, 2004

Public Finance Management Act, 1999

Preferential Procurement Regulations, 2001

Preferential Procurement Policy Framework Act No 5, 2000

Treasury Regulations, 21249, 31 May 2000

New Agenda, Issue 17, 2006

Other publications

Balshaw, T and J Goldberg (2005) Cracking Broad-Based Black Economic Empowerment. Human & Rousseau

Fakie, S (2006a) "The Auditor-General's Good Governance: Independence, Transparency and Accountability" in New Agenda, Issue 21

Fakie, S (2006b) The Auditor-General Report on the declarations of interest by Ministers, Deputy Ministers and Government Employees, January 2006

Hendrik, A (2004) An Assessment of Financial and Supply Chain Management Outcomes in Western Cape Public Hospitals. MA Thesis, University of Stellenbosch

Jack, V (2005) "Empowerment Partnerships" in New Agenda, Issue 20

Kganyago, L (2006) "Ready To Spend: Interview with the Director General, National Treasury" in New Agenda, Issue 21

Mbeki, M (2004) "The Private Sector and Political Elites" in New Agenda, Issue 16

Ngculu, J (2005) "African Nationalism in the ANC" in New Agenda, Issue 17

Tsele, M (2005) "Bewitched by Wealth" in New Agenda, Issue 20

Turok, B (2005) "Black Capitalism" in New Agenda, Issue 20



when it comes to
German engineering,
Italian style and French flair
nothing beats the Japanese



Subaru Legacy

A combination of exceptional All-Wheel Drive handling, outstanding performance and refined styling ensured the Subaru Legacy was voted Car of the Year, Japan 2004, All-Wheel Drive Car of the Year, Germany 2004, Car of the Year, New Zealand 2004 and All-Wheel Drive Car of the Year, China 2005. Experience Japan's innovative technology with the Subaru Legacy.

Drive one and you will understand.

www.subaru.co.za



Barloworld Motor

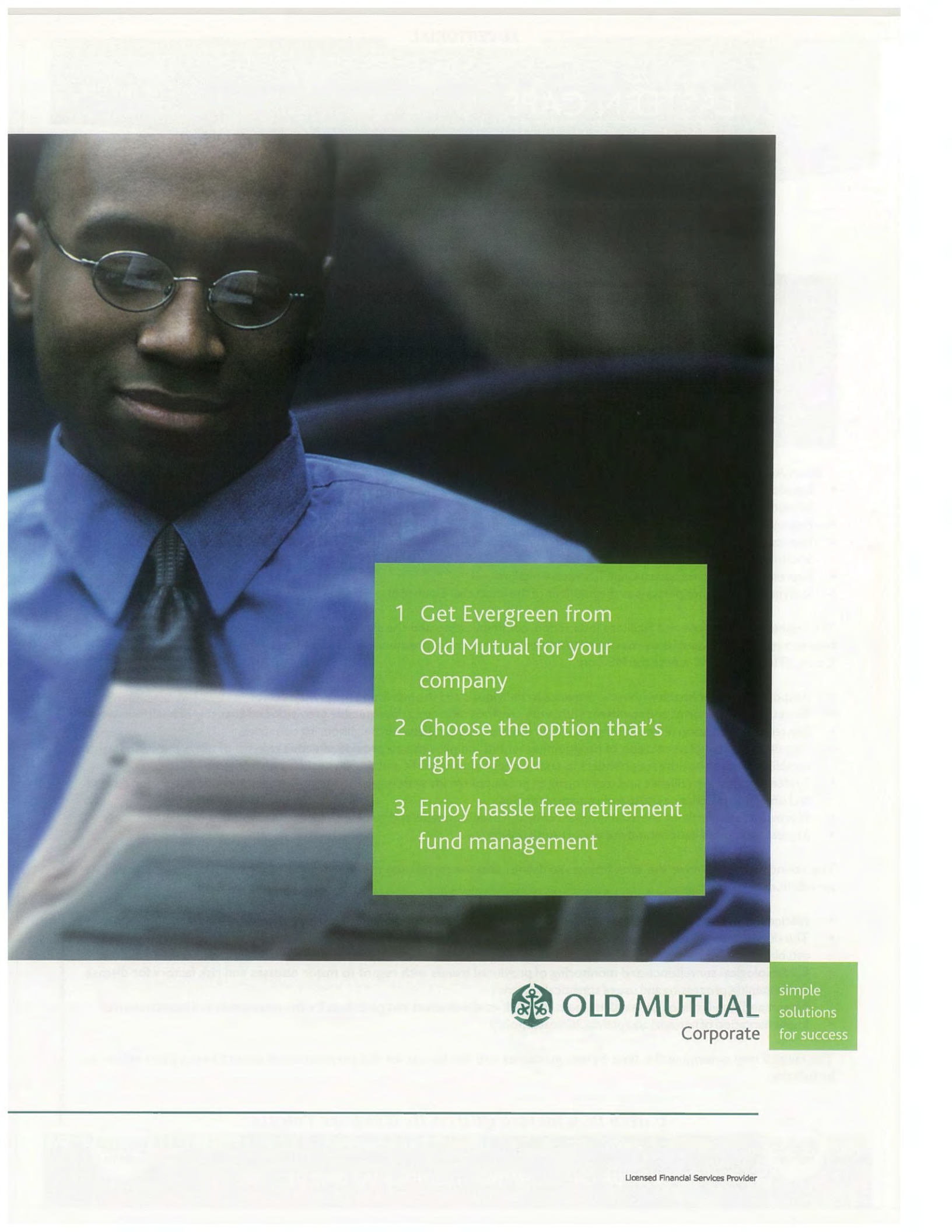


How to get a retirement fund that accepts you're an individual

Evergreen Retirement Fund tailors a retirement plan according to your employees' needs.

For advice contact your Corporate Consultant or your Broker or call 0860 383 747
www.oldmutual.co.za



- 
- A man with glasses and a blue shirt is looking down at a document. The background is dark and out of focus.
- 1 Get Evergreen from Old Mutual for your company
 - 2 Choose the option that's right for you
 - 3 Enjoy hassle free retirement fund management



OLD MUTUAL
Corporate

simple
solutions
for success



Province of the
EASTERN CAPE
DEPARTMENT OF HEALTH

The Honourable MEC for Health Mrs Nomsa Jajula ESTABLISHES HEALTH CONSULTATIVE FORUM



The Member of the Executive Council, Mrs. N. Jajula established a Provincial Health Consultative forum (PHC) in terms of section 28 of the National Health Act, 2003.

The health provincial health council consists of:

- The MEC for health
- Members of the Eastern Cape Provincial health Council
- A representative from Eastern Cape Aids Council
- A representative of the Eastern Cape Health Portfolio Committee
- Representative of the Health Faculty of each of the following universities: Nelson Mandela Metropolitan University, Walter Sisulu University and Fort Hare University.
- Representative from each of the Social needs cluster: Department of Education, Social department, Sport, Arts and Culture, department of Safety and Liaison.
- Representative of Health Portfolio Committee from Each Local municipality, A representative of the Eastern Cape Coalition for non profit organizations
- Representative from each of the following private health care organizations: Netcare, Afrox
- Representatives from each donor partners: Futures Group, Atlantic Philantropies, TASC II Consortium, Development Bank of South Africa
- Representative of the Eastern Cape Traditional healers
- Such number of other persons as the member of the Executive Council may consider appropriate.

The council will promote and facilitate interaction, communication and the sharing of information on provincial health issues between representatives of the provincial department and municipal organisations as identified by the Member of the Executive Council. The council will advise the MEC on:

- Responsibilities for health within the province by individuals and the public and the private sector
- Target, priorities, norms and standards within the province relating to the equitable provision and financing of health services
- Efficient co-ordination of health services within the province and between neighbouring countries.
- The design and implementation of programmes within the province to provide effective referral of users between health establishments or health care providers to enable integration of public and private health establishments
- Epidemiological surveillance and monitoring of provincial trends with regard to major diseases and risk factors for disease and obtaining, processing and use of statistical returns
- Norms and standards for the establishment of health establishments and guidelines for the management of health districts
- Implementation of national and provincial health policy

The council will determine the time frames, guidelines and the format for the preparation of district health plans within its jurisdiction.

- Efficient co-ordination of health services within the province and between neighbouring countries.
- The design and implementation of programmes within the province to provide effective referral of users between health establishments or health care providers to enable integration of public and private health establishments
- Epidemiological surveillance and monitoring of provincial trends with regard to major diseases and risk factors for disease and obtaining, processing and use of statistical returns
- Norms and standards for the establishment of health establishments and guidelines for the management of health districts
- Implementation of national and provincial health policy

The council may determine the time frames, guidelines and the format for the preparation of district health plans within its jurisdiction.



Ikamsa eliqagambileyo!

UNITED IN ACHIEVING QUALITY HEALTH CARE FOR ALL

24 HOUR CALL CENTRE - TOLL FREE No: 0800 0323 64



Ikamsa eliqagambileyo!

TRADE AND INDUSTRY'S CODES OF GOOD PRACTICE

BY POLO RADEBE

The author is Director of BEE at the Department of Trade and Industry. This article previously appeared in *Enterprise*

WHAT ARE THE CODES OF GOOD PRACTICE AND THEIR AIM?

In March 2003, the Department of Trade and Industry (dti) publicly issued a document entitled *South Africa's Economic Transformation: A strategy for Broad-Based Black Economic Empowerment (BBBEE)*. This document sought to outline the government's approach to the definition and measurement of BEE as well as the policy instruments that would be utilised to achieve the government's objectives. While this provided much needed guidance by government from a policy point of view, there was still debate about how to implement this broad-based strategy on BEE. The BBBEE Act was then promulgated in April 2004 with the intention of providing a legal framework for the implementation of this strategy. One of the requirements of this act was that, in order to promote the purpose of the act, the minister could provide further interpretation and guidance to BBBEE through the issuing of codes of good practice on BBBEE.

The dti has responded to this requirement of the act by issuing various draft codes of good practice since December 2004. It is intended that these codes will serve as a guide to the interpretation as well as the implementation of BBBEE initiatives.

The main aim of the codes is to ensure that there is consistency and harmony in the implementation of BBBEE initiatives in the whole economy so as to ensure that all such initiatives further enhance the government's ability to achieve its objectives. These codes will further ensure that BBBEE is no longer viewed as the transfer of assets from white people to black people, but more about achieving transformation through an integrated and coherent process. The codes further seek to facilitate changes in business behaviour and also provide a systematic and quantifiable approach in measuring transformation in the economy.

The strategy document referred to above introduced the generic scorecard, which covers all the elements of broad-based BEE: Ownership, Management Control, Employment Equity, Skills Development, Preferential Procurement, Enterprise Development and Residual. The first phase of the codes, issued as a draft document for public comment in December 2004, merely covered the first two elements of the scorecard - ownership and management control

- which is where the most urgent clarification was needed at the time. The second phase, issued for public comment in December 2005, then covered the remaining elements of the scorecard. Due to comments received through the public commentary process of the first phase, it became clear that further guidance was needed on issues such as the treatment of multinationals, fronting, complex company structures, state owned entities, S21 companies and small and medium enterprises within the context of BBBEE. The second phase therefore also covers some of these areas that needed specific attention which were not covered in the first phase.

THE LEGISLATIVE PROCESS

The first phase of the codes has already gone through all the regulatory processes of public comment as well as finalisation. This finalised document, which has also been endorsed by the cabinet was publicised on November 1 2005. This document is the one that will be gazetted together with the finalised document of phase two of the codes.

The second phase has gone through a public commentary period and everyone who is interested could submit their comments to the dti up until the end of March 2006. Based on the comments received, the department will incorporate these comments and finalise the document with the view of obtaining cabinet endorsement for final gazetting. Phases one and two will be gazetted at the same time meaning that they will become legally effective immediately after gazetting.

The dti will then embark upon a rigorous communication and marketing campaign to ensure that all our stakeholders fully understand how to apply these codes. We will also be continuously monitoring the implementation of the codes in order to assess whether they are having the requisite impact. This is when the role of the Advisory Council on BEE will start kicking in. They will advise the government on the implementation and impact of the codes on the overall economy.

ADDRESSING THE SECOND ECONOMY

The main distinguishing feature between the first and the second phases of the codes is that the first phase concentrated more on transforming the existing economy,

which is often referred to as the first economy. On the other hand, the second phase concerns itself mainly with elements of the scorecard that talk directly to the second economy issues. This phase is seen as being the key to unlock a lot of opportunities for aspiring black entrepreneurs through the skills development, preferential procurement and enterprise development elements of the scorecard. The lenient approach that has been adopted towards compliance by small, very small and micro enterprises also responds to the issue of lessening the regulatory burdens that such enterprises have to face. We also see the second phase codes as having the potential, through the residual element of the scorecard, to assist in bringing the majority of our citizens who are still on the fringes of our economy into the economic mainstream. The areas covered by the second phase are further elaborated upon below.

Like all economic citizens of South Africa, small enterprises are expected to contribute towards the transformation of our economy. Normally, business entities would be required to comply with all seven elements of the BBEE scorecard. Taking into consideration the need to lessen the regulatory burden on small enterprises, as well as to encourage compliance with BBEE requirements within this sector, a much more flexible approach was adopted towards the treatment of small enterprises within BBEE. Small entities can now choose to comply with only five out of the seven elements of BBEE. Furthermore, the way in which they are expected to comply with the chosen elements is also not as stringent as the requirements in the generic scorecard.

Micro enterprises, which have been defined as those entities with a turnover of less than the VAT registration limit (currently R300 000 per annum), have been exempted from the requirement to comply with BBEE. In simpler terms, such entities will not be required to fill in the BBEE scorecard and will be given an automatic BEE compliance level. This is to ensure that they are not disadvantaged in obtaining procurement opportunities. In fact, small and very small (defined as "qualifying small enterprises" in the codes), as well as micro enterprises, have been allocated specific preferential procurement targets, in order to ensure that large enterprises are compelled to acquire goods and services from them.

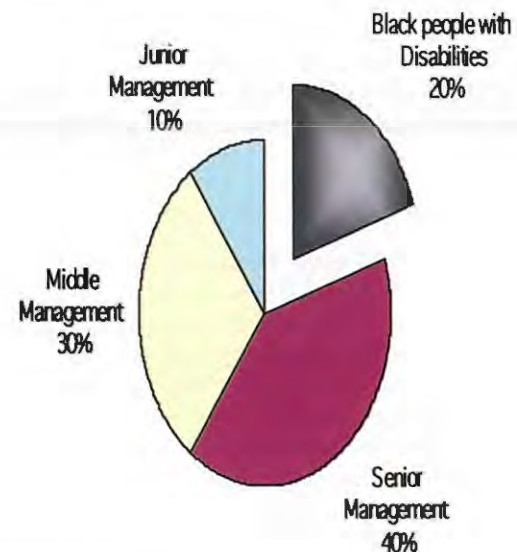
EMPLOYMENT EQUITY

The code on employment equity measures initiatives to achieve employment equity in respect of all measured entities in the workplace. As a principle, this code seeks to ensure alignment with the Employment Equity Act.

The statement provides targets for the inclusion of black people at occupational levels other than top management and semi-skilled and unskilled levels.

The statement also emphasises the importance of black women within employment equity, through the allocation of half the points to the inclusion of black women in middle to senior management positions.

Criteria	Compliance targets
Senior management	60%
Senior management (Black Women)	30%
Middle Management	75%
Middle Management (Black Women)	40%
Junior Management	80%



SKILLS DEVELOPMENT

The code on skills development measures the initiatives implemented by employers that target the promotion of competencies of black people within an organisation. It also measures the amount of contributions made by the measured entities towards the development of black employees. It specifically emphasises the need for employers to provide skills training in what are referred to as "core skills" and "critical skills".

This code is also in line with the National Skills Development Act (1998), National Skills Development Strategy and Skills Development Levies Act.

It further specifies the basis for the measurement of the organisational transformation contributions to BEE, which is a qualitative aspect to transformation within the organisation.

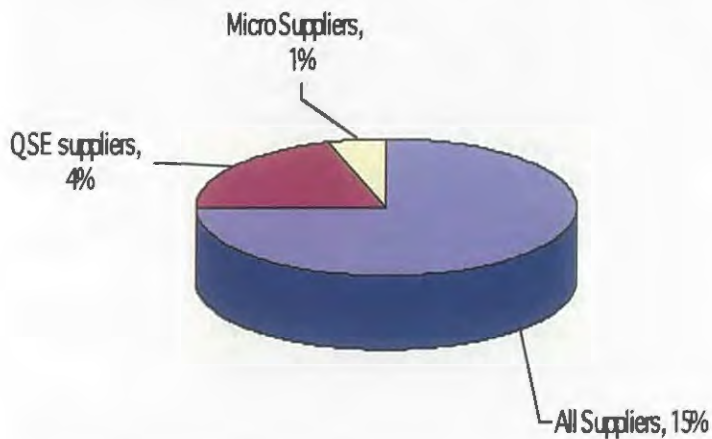
The target for skills spending is 3 percent of the leviable amount (payroll) over and above the normal 1 percent of the leviable amount (payroll) skills levy that employers are expected to pay as per the Skills Development Levies Act. Over and above this, specific targets have been set for the skilling of black people with disabilities as well as the inclusion of black people on learnerships that have been accredited by the relevant sector SETA (Sector Education and Training Authority).

PREFERENTIAL PROCUREMENT

This statement measures the extent to which enterprises procure from companies that are BEE compliant. This also includes micro enterprises and qualifying small enterprises

(QSE). Preferential procurement scorecard targets and weighting are included in the table.

Weighting Allocation of Preferential Procurement to:	
All suppliers (including QSE and Micro):	15%
QSE Suppliers	4%
Micro Enterprises	1%
Total	20%
Target:	
All Suppliers(including QSE and Micro):	70%
QSE Suppliers	15%
Micro Suppliers	5%



It is evident that quite a substantial amount of the points for preferential procurement go towards procurement from small, very small and micro enterprises.

The code further provides the key measurement principles to be applied when calculating preferential procurement contributions to BBBEE.

ENTERPRISE DEVELOPMENT

The code on enterprise development gives incentives for specific initiatives to assist and/or accelerate the development, sustainability and ultimate financial and operational independence of beneficiary entities through the expansion of those beneficiary entities' financial and/or operational capacity. These beneficiary entities would consist of mainly medium, small, very small and micro enterprises.

The code goes further to give an enhanced incentive for enterprise development initiatives that are targeted specifically at micro enterprises, those initiatives that will result in job creation as well as those that are targeted at creating enterprises to produce goods that were not previously available in South Africa. Projects to develop initiatives in rural communities and in any geographical areas identified by government as urban/rural development nodes are also given additional incentives.

The code encourages both monetary and non-monetary contributions to enterprise development initiatives. These

contributions could be in the form of provision of mentoring, financial assistance, preferential credit terms, provision of guarantees, use of infrastructure for free or at reduced rates and any other initiatives that are intended to enhance the ability of aspirant BEE compliant suppliers to become sustainable in the long term.

RESIDUAL ELEMENT

The code on the residual element specifies initiatives intended to directly provide black people with a means to become economically active. The underlying principle of this code is to encourage initiatives intended to facilitate access to the economy by black people and is inclusive of both corporate social investment and industry-specific contribution.

Some of the examples cited in this code as corporate social investment initiatives for BEE purposes are:

- development programmes for women, youth, people with disabilities, people living in rural areas and other target groups
- support of health and HIV/AIDS programmes in the community
- support for community education facilities, programmes at secondary and tertiary level, bursaries and scholarships
- community training, skills development for the unemployed and adult basic education
- environmental initiatives that focus on conservation, awareness, education and waste management
- arts and culture initiatives that support development programmes and development of new talent
- sport initiatives that support development of sports programmes.

This is not intended to be an exhaustive list of initiatives that can qualify under BEE; rather, it demonstrates that such initiatives to provide black people with the opportunity of participating positively in the South African economy will be able to qualify for points on the BEE scorecard.

WAREHOUSING

The code on warehousing funds seeks to specify the key measurement principles associated with ownership by, and contributions to, warehousing funds, for the purposes of facilitating BEE transactions. It is important to note that no such funds currently exist and this code is merely providing a framework within which these funds can be set up and endorsed by government should the need arise.

A "warehousing fund" is defined as a fund established by an enterprise, organs of the state or a public entity, for the specific purpose of holding an equity interest in another enterprise from exiting black participants, for a fixed duration of time, with the obligation of ultimately transferring that equity interest into ownership by the intended black participants, and should be approved by the minister of trade and industry.

The main purpose of these funds is to ensure that, when black investors wish to exit their investments in companies, the remaining shareholders are not penalised for this exit,

when the intention is to have another black partner replace the exiting one. It also helps to reduce the tendency of companies entering into deals with BEE partners to lock them into these transactions for extended periods of time. The warehousing period will merely provide a tool that will allow the affected enterprise to maintain their points on ownership while finalising a new transaction with another BEE partner. It also has to be borne in mind that a company can only retain its ownership points if they have already entered into a tri-party agreement between the warehousing fund, the affected enterprise and the new BEE partner. The mere existence of such a fund does not guarantee an enterprise ownership points; the above condition has to be met before these ownership points can be allocated.

MULTINATIONALS

The final element of the codes addresses the role of multinationals within the context of BEE, which has been the subject of much debate in the recent past. While it has always been acknowledged that such entities are also expected to contribute towards the transformation of our economy, it has also been accepted that a flexible approach has to be adopted when it comes to their compliance with the requirements of BEE. In this regard, a code statement has been released as part of phase two, which attempts to provide such a flexible approach. A flexible approach is by no means a lenient approach.

Multinationals are still expected to sell at least 25 percent of the equity in their South African operations to black South Africans. The flexibility is that they are allowed to sell equity equivalent to 25 percent of the value of their South African operations offshore. This means that, if a multinational has operations in South Africa and its primary listing is on an overseas stock exchange, it has the option of either selling 25 percent of its South African operations directly or selling equity in its offshore operations or the overseas stock exchange, as long as that equity is equivalent to the value of 25 percent of its South African operations.

Further flexibility allows, where a multinational for various reasons is unable to sell any equity to black people in South Africa, for it to obtain equity ownership points based on initiatives that qualify as "equity equivalent initiatives". Such equity equivalents would also need to have a value of 25 percent of the South African operations. For a multinational to be allowed this option it would have to first satisfy the following criteria:

- the multinational business must own and control the entire equity in the local multinational enterprise
- the multinational business must be subject to a global policy
- the multinational business will suffer substantial commercial harm if it were to implement transactions to give effect to BEE ownership requirements.



EMPOWERMENT FINANCING: DEMYSTIFYING THE MYSTIQUE AND DEBUNKING THE MYTHS

BY LANCE KATZ

The author is executive director of Thesele Group

It is difficult to discuss black economic empowerment (BEE) without touching on the topic of empowerment financing.

Why is empowerment financing so integral to BEE? The answer lies in the objectives of BEE itself: to redress economic apartheid and to bolster the participation of previously disadvantaged individuals (PDIs) in the economy. By definition, PDIs did not have the opportunity to amass a substantial capital base with which to participate in the

economy. For them to participate now, they therefore need access to capital, that is, empowerment finance.

If ABC empowerment company with a limited (if any) capital base wishes to acquire a 10 percent share of XYZ listed company with a market value of, say, R1 billion, then ABC will have to raise R100 million of empowerment finance for the transaction.

The JSE Securities Exchange has a total market value of

around R2 trillion. If 10 percent of the JSE is to end up in "black" hands this equates to a financial transfer of some R200 billion which will require empowerment financing of many times that number. This excludes financing related to unlisted companies, property, infrastructure etc. Empowerment financing is big business!

THE ALCHEMY OF BEE

From a pure economic-theory perspective, empowerment financing poses a big challenge. How does a BEE group with no capital, assets or income (and therefore, theoretically no ability to take financial risk) access substantial amounts of capital to conduct a transaction? Imagine trying to buy a mansion with no money of your own, no assets to give as security to the bank and no income to repay the bank loan. Impossible! Yet this is precisely what the wizardry of empowerment financing seeks to achieve.

So what are the "magic" ingredients?

First and foremost there is a political and legislative imperative surrounding BEE. Companies are required to introduce BEE shareholders. Financial institutions are required to fund BEE transactions.

Then there is often a commercial imperative. BEE shareholders may be able to add explicit and direct value to a company, particularly in the context of the broader political, social and economic transformation of South Africa. Equally, financial institutions are looking to generate superior returns on their capital and BEE transactions often present lucrative investment opportunities.

Finally, there is a broader social imperative for our economy to transform in the interest of social stability and sustainable economic growth. BEE is an integral aspect of this transformation.

The above factors set up a complex dynamic between companies who are seeking to introduce BEE shareholders (also known as target companies), financial institutions who are seeking to fund BEE transactions and the BEE groups themselves who are seeking to access opportunities and finance. The precise nature of any particular funding arrangement depends on the balance of power between these three stakeholders in the context of the relevant transaction.

There are two critical elements to any BEE financing arrangement:

- the price at which the BEE partner acquires shares in the target company relative to the market price of those shares
- the interest rate which the financier charges the BEE partner (commonly referred to as the funding rate).

The target company typically offers the BEE shares at a discount to market price. The discount offered varies from transaction to transaction, although a discount of around 10 percent is quite common. Much wider discounts have been

offered, and there have been some transactions done with no discount at all.

The funding rate depends on a number of factors, including:

- the overall level of interest rates in South Africa. The dramatic fall in the level of interest rates in South Africa over the last five years has seen a corresponding fall in funding rates on BEE transactions
- the perceived riskiness of the target company shares. The more risky the target company shares, the higher the funding rate. Remember that, since the BEE company has no capital of its own to provide as security to the financier, the target company shares being acquired by the BEE partner are often the sole source of security to the financier
- the discount being offered to the BEE partner by the target company on the shares acquired. The higher the discount, the lower the funding rate, since the discount acts as a buffer to protect the financier from financial loss in the event that the market price of the target company shares falls in value
- any additional security provided to the financier from the target company or its shareholders. It is increasingly common for the target company to structure the BEE transaction in such a way as to reduce the financier's risk on the transaction. This will then reduce the funding rate.

SHEDDING SOME LIGHT

Suppose that ABC empowerment company wishes to acquire a share in XYZ target company. The market price of a share in XYZ is R100 per share. XYZ does not pay dividends. Shareholders in XYZ derive their investment return through the capital appreciation (growth) in the share price over time.

Now consider the following four alternative funding structures:

STRUCTURE 1:

XYZ offers ABC the share at a discount of 10 percent, i.e. a purchase price of R90. The financier agrees to fund the transaction at a funding rate of 23 percent per annum. The funding has to be repaid at the end of five years.

STRUCTURE 2:

XYZ offers ABC the share at a discount of 10 percent, i.e. a purchase price of R90. The financier agrees to fund the transaction at a funding rate of 14 percent per annum. In addition, the financier gets 50 percent of the profits on the share. The funding has to be repaid at the end of five years.

STRUCTURE 3:

XYZ offers ABC the share at a discount of 20 percent, i.e. a purchase price of R80. The financier agrees to fund the transaction at a funding rate of 17 percent per annum. The funding has to be repaid at the end of five years.

STRUCTURE 4:

XYZ offers ABC the share at market price, i.e. a purchase

price of R100. However, the majority shareholder in XYZ agrees to guarantee the financier's return. The financier agrees to fund the transaction at 10 percent per annum. The funding has to be repaid at the end of five years.

The table below summarises the four structures:

	Structure 1	Structure 2	Structure 3	Structure 4
Discount percent	10%	10%	20%	0%
Price	R90	R90	R80	R100
Funding rate	23% p.a.	14% p.a.	17% p.a.	10% p.a.
Loan amount after five years	R250	R175	R175	R160
Guarantee	No	No	No	Yes
Financier profit percent	N/a	50%	N/a	N/a

Note that the loan amount after five years is the original loan (price paid) rolled up with compound interest at the funding rate for five years.

Which is the best funding structure for ABC, the BEE partner?

If ABC were only focused on the price of the transaction then they would select Structure 3 (R80), then Structures 1 and 2 (both R90), and last, Structure 4 (R100). But this would be the wrong conclusion.

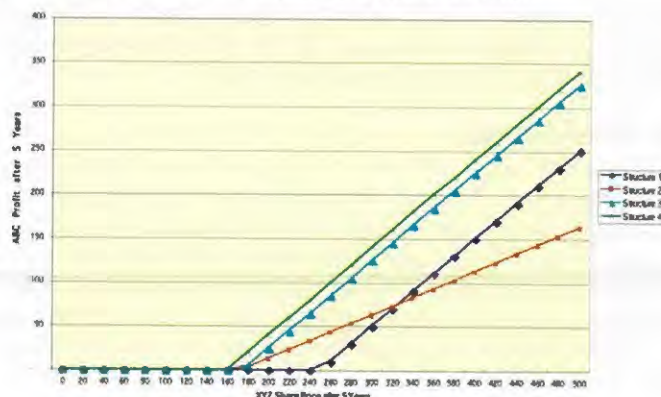
It is important to look at the total funding structure and, in particular, the combination of price and funding rate. This combination is best assessed in this example by looking at the loan amount to be repaid at the end of the funding term. We can see that, by this criterion, Structure 4 (R160) would be preferred, then Structures 2 and 3 (both R175), and last of all, Structure 1 (R250).

On closer inspection we will see that Structure 2 is in fact manifestly worse than Structure 3 since, although the accumulated loan in both instances is R175, under Structure 2, ABC is compelled to give away 50 percent of its profits to the financier whereas, under Structure 3, there is no participation by the financier in the profits.

We then need to ask whether Structure 2 is worse than Structure 1. The answer to this question is: "It depends!" Although Structure 1 has a much higher funding rate than Structure 2, it does not give the financier any of the profits. If the XYZ share price performs exceptionally well, i.e. it ends up above R325 at the end of five years, then ABC would be better off under Structure 1 than Structure 2. If the share price of XYZ ends up above R175 but below R325 then ABC would be better off under Structure 2. Any choice between Structure 1 and Structure 2 should therefore take into account the view that ABC has on the share price of XYZ as well as the appetite that ABC has for risk.



The graph below shows, for each structure, the profit for ABC at the end of five years (y-axis) based on different share prices for XYZ at the end of five years (x-axis).



Note that ABC has no downside loss if the share price of XYZ does not perform well or falls. The loss potential is taken by the financier in the case of Structures 1, 2 and 3 and by the majority shareholder of XYZ through the provision of a guarantee in the case of Structure 4.

Which is the best funding structure for the shareholders of target company XYZ?

Purely on the basis of price we may conclude that Structure 4 is best for the shareholders of XYZ (R100), followed by Structures 1 and 2 (both R90), and last Structure 3 (R80).

The majority shareholders of XYZ may disagree with this assessment since they are being required to put up a guarantee to the financier. Therefore, although XYZ is getting a higher price for their shares, it is coming at an implicit cost to the majority shareholders.

One of the other important considerations for the shareholders of XYZ should be the sustainability of the transaction for their BEE partners. It is all well and good for XYZ to fetch a high price for their shares but if the resulting funding structure is not viable for their BEE partner they may find that their partner is disillusioned or, worse yet, that at the end of five years they have the financier as a shareholder rather than ABC.

Which is the best structure for the financier?

Each of the structures presents a different risk-reward profile for the financier. No structure is better or worse than any other. It depends entirely on the risk-return perspective of the financier.

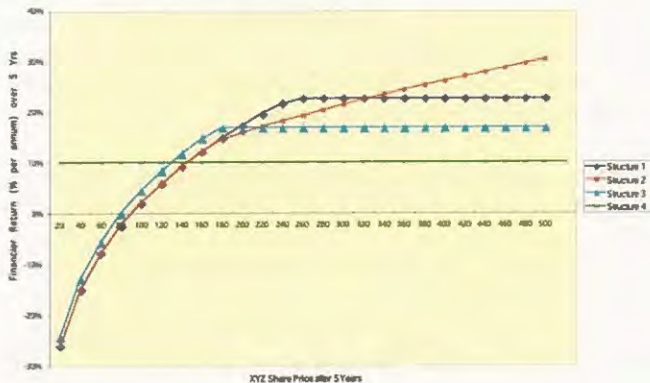
If the financier is risk-averse (does not like to take risk), he/she will prefer Structure 4 where the majority shareholder in XYZ provides a guarantee to the financier. This explains the lower funding rate in Structure 4. Next best, from a low-risk perspective, would be Structure 3 as the financier has a buffer of the R20 discount to protect the financier against downside losses in the event that the XYZ share price falls.

But which is more risky for the financier between Structure 1 and Structure 2? The lower funding rate of Structure 2 would seem to suggest that the financier views this structure

as lower risk. However, a careful assessment will show that, in fact, Structure 2 is more risky for the financier. Both Structures 1 and 2 have the same downside loss potential since they both have a buffer of just R10 in the discount provided. Yet the structures have very different upside potentials. In moving from Structure 1 to Structure 2, the financier gives a lower funding rate in exchange for a profit participation i.e. the financier is taking a view on the profit potential of the XYZ share. If the XYZ share price is above R325 at the end of five years then the financier would be better off under Structure 2. However, if the share price is below R325 at the end of five years then the financier would be better off under Structure 1. Thus, Structure 1 is a lower risk alternative for the financier.

Of course, if the financier is risk-seeking, then the above arguments apply in reverse and the financier would prefer Structure 2, then Structure 1, then Structure 3 and least of all Structure 4.

The graph below shows, for each structure, the investment return achieved by the financier (y-axis) based on different share prices for XYZ at the end of five years.



RIDING THE STOCK MARKET ROLLER COASTER

What should be apparent from the previous discussion (as depicted in the graphs) is that much of the success of BEE depends on the performance of the share price of the company in which the BEE partner has acquired a stake.

If the share price performs badly, the financier (or guarantor) will walk away with a few bruises and the BEE partner will walk away empty-handed, back where they started.

If the share price performs moderately well, then the financier may get an acceptable level of return, but the BEE partner may still walk away empty-handed or perhaps with a small profit, depending on the funding structure.

It is only in circumstances where the share price performs exceptionally well that the BEE partner achieves a large level of profit on the transaction.

The performance of individual share prices is heavily dependent on the performance of the stock market as a whole. Although there may be exceptions to this, in the

main, "a rising tide carries all ships" and vice versa.

Between 1998 and 2003, the stock market as a whole performed poorly. As a consequence, many BEE transactions that had been concluded between 1994 and 1998 expired "out of the money": the financiers made lower than expected returns and the BEE groups made no profit.

Many commentators (wrongly in my view) blamed "greedy financiers" or "the BEE process" for the damage. Whilst there may have been some poorly conceived or structured transactions, the real villain was none other than the stock market and the unfortunate timing of the original transactions.

Since 2004, the stock market has performed exceptionally well. It is therefore no surprise that transactions concluded since 2000 are showing a healthy return for financiers and a substantial profit for BEE groups.

Many commentators (wrongly again, in my view) credit this success to new improved funding structures and a more robust BEE process. Whilst structures and processes may well have improved (marginally, if at all, in my view), the real hero of the recent success is the very same villain of old: the stock market and the now fortunate timing of transactions.

You will recall that earlier in this article I stressed that BEE groups in general have little (if any) capital of their own, hence the need for BEE in the first place. As a consequence, BEE transactions require a substantial amount of loan finance (also called "gearing" or "leverage"). A consequence of the highly geared/leveraged nature of BEE transactions is that their success or otherwise depends heavily on the overall success of the economy, the stock market and asset prices.

OF SPVS AND OTHER THINGS

The Special Purpose Vehicle (SPV) is one of the most misunderstood and victimised "creatures" of BEE. It is simply a company or trust established for the specific purpose of enabling the BEE group to acquire shares in a target company and to raise the necessary empowerment funding for the transaction.

In the aftermath of the 1998-2003 period, the SPV was blamed as a wicked financing tool which had undermined the aims and objectives of BEE. Nothing could be further from the truth.

The SPV serves a very real and important purpose for all of the stakeholders in BEE and it is necessary precisely because BEE groups lack capital and need to raise significant sums of empowerment funding to make their transactions work.

The SPV acts like an antiseptic. It prevents "germs" spreading from one empowerment transaction to the next. This is best explained by way of an example. Consider a BEE group that has made the following two transactions:

TRANSACTION 1:

Borrowed R100 to acquire shares in company X whose shares jump suddenly to R150.

TRANSACTION 2:

Borrowed R100 to acquire shares in company Y whose shares fall suddenly to R30.

If the BEE did not use SPVs to structure its affairs, then it would have assets of R180 and liabilities of R200. The BEE group would be insolvent!

However, by housing each transaction in a separate SPV, the BEE is sanitised from the bad effects of Transaction 2. In SPV1 (used to house Transaction 1), the BEE group has a profit of R50. In SPV2 (used to house Transaction 2), there is a shortfall of assets relative to liabilities of R70. SPV2 is insolvent (not the BEE). The financier to SPV2 loses R70 and the BEE company walks away from SPV2 empty-handed but not insolvent. Overall, in fact, the BEE company has a combined profit of R50.

What about the financiers? If there were no SPVs, then each of the financiers would have to split the assets of the BEE partner and each would get R90 (i.e. a loss of R10 each). Through the use of SPVs, the financier to Transaction 1 is protected from the ill effects of Transaction 2 and would receive a full R10 back. The financier to Transaction 2 takes a big loss of R70 and would receive only R30 back. Financiers like SPVs because they enable them to take a precise view on the risks of their particular transaction and not to worry about other transactions the BEE group has made or wishes to make in the future. An additional spin-off for the BEE group from this argument is that the group has significant flexibility in making transactions, as it does not have to get approval from the financiers for its previous transactions.

SPVs have enabled BEE groups to move with great flexibility into large transactions well beyond the capacity of their own capital basis. They have shielded BEE groups from insolvency and they have protected responsible financiers.

This has also benefited target companies who are more assured of their BEE partner's long-term solvency and able to sanitise their own transaction from any adverse spillover effects of their partner's other transactions.

It is no surprise that, despite the bad press that SPVs have received, they continue to be used to great effect in BEE financing.

IN A NUTSHELL

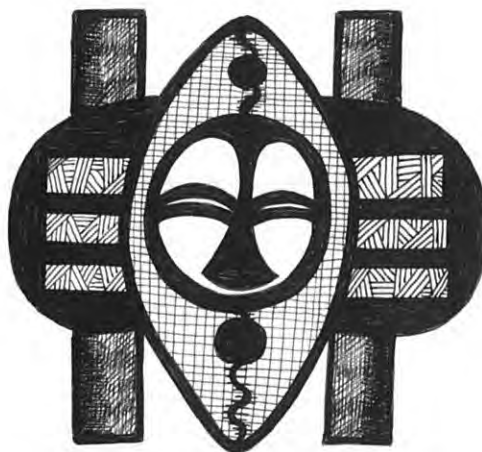
Empowerment funding is not rocket science - although there are many who make you believe it is so. In the final analysis, empowerment funding is about tackling the difficult challenge of enabling those without capital to grow capital.

This challenge is partially resolved by the willingness/necessity of financiers to make capital available and the willingness/necessity of target companies to facilitate their BEE transactions through a discount and/or some other form of vendor support (such as a guarantee).

The funding structure can have a material impact on the long-term result of the transaction. Stakeholders should take care to ensure that the funding structure used is optimal, taking into account the interests of all the parties concerned. Most importantly, stakeholders should try and ensure that their transactions are sustainable and are not reliant on extreme events to make them work.

However, there is little hope of escaping the vagaries of the market, no matter how well structured a transaction is. The long-term success of BEE is heavily dependent on the economy, the stock market and the performance of individual companies and assets. It could be argued that, at a macro level, BEE is an integral component of ensuring the broader economic success on which BEE itself depends.

Next time someone close to you takes a potshot at poor old SPV as the villain of BEE, make them aware that the SPV is the friend of BEE and not its enemy.





MAFIKENG INDUSTRIAL DEVELOPMENT ZONE

YOUR **NEW** INDUSTRIAL DESTINATION IN **SOUTHERN AFRICA**

The North West Provincial Government is establishing an Industrial Development Park adjacent to the Mafikeng Airport, in the capital of the North West Province.

Mafikeng has a variety of first-class facilities including the airport with its 4.6km runway.

This will be a first-class facility with an international, multi-modal (air, rail and road) non-scheduled cargo port associated with manufacturing, trade facilitation and relief operations into Africa.

Mafikeng is located on the east-west and north-south crossroads into southern Africa. There is abundant land and a large labour pool.

Positioning your business within a multi-modal transport hub with the associated electronic trading floor and infrastructure will provide you with the benefit of effectively and efficiently distributing your products into Africa and the rest of the world.



MAFIKENG

INDUSTRIAL DEVELOPMENT ZONE (PTY) LTD

The Industrial Development Zone at Mafikeng in South Africa will redeploy Mafikeng International Airport (MIA) as the North West Province's international port of entry. MIA is promoted as a hub for non-scheduled international air cargo services.

An IDZ is defined as a purpose built industrial estate that is linked to an international port containing a Customs Secure Area (CSA), where such an area is designated for the purposes of encouraging export manufacturing.

The investment theme and Sectoral Investment Programme (SIP) of the Mafikeng IDZ is to become a world-class hub for the manufacturing of hi-tech electronic components and systems, mineral beneficiation and processing of agricultural products.

The proposed establishment of an IDZ and the redeployment of the Mafikeng International Airport (MIA) represent a significant step in the North West Province's strategy for the restructuring of the provincial economy.

This strategy is based on the realisation that the province's natural resources such as minerals and agriculture are depreciating sectors with limited beneficiation taking place at present. The provincial government has recognised the imperative to start initiatives to place the province on a long-term development path that is sustainable and economically viable. Such a sustainable development path can only be achieved if the province can succeed in becoming nationally and internationally competitive.

The North West Province has identified for itself a future niche in manufacturing, agri-processing, mineral beneficiation, trade facilitation, tourism and the transport sector. This is due to its well established industrial capacity at major development nodes such as Rosslyn, Rustenburg and so on, access to resources and strategic central locations in southern Africa, namely in the middle of the Maputo-to-Walvis Bay Coast-to-Coast Platinum Spatial Development Initiative (SDI), as well as on the main south-to-north Corridor (Western Frontier Corridor) from Kimberly to Taung to Vryburg to Mafikeng to Lobatse via Botswana, to the central markets of the South African Development Community (SADC).

The Anchor Projects that have been identified to receive

priority during the Greater Mafikeng Development and Growth Initiative Programme are the following:

- Obtain port of entry/export designation for the airport.
- Negotiate an Industrial Development Zone (IDZ) operator licence.
- Aviation maintenance especially for Russian manufactured aircraft.
- Minerals park.

THIS IDZ PROGRAMME IS AIMED AT THE FOLLOWING NATIONAL AND PROVINCIAL PRIORITIES:

- Job creation
- Infrastructure provision
- Poverty alleviation
- Skills development
- Good governance
- Crime prevention

The total value of the investment projects is approximately R6 256.3-million (at current prices), which amounts to approximately 0.7% of South Africa's GDP in 2000. The unique theme conceptualised for the IDZ at Mafikeng focuses on three strategic sectors.

FIRST FOCUS AREA:

To promote the IDZ as a manufacturing hub for electronic components, wireless tracking and tracing equipment, systems and services for the South and southern African markets. The downstream manufacturing and associated distribution rights comprise the following sub-sectors within the Information Communications and Technology (ICT) sector:

- electronic and digital products: DVDs, high-density tapes, disks, computer chips and so on;
- telecommunications: hardware and software;
- satellite communications: hardware and software;
- electronic maps: hardware and software for real time routing, scheduling and monitoring;
- electronic data interchange: systems for paperless transactions and e-commerce; and
- electronic order board order consolidation and bulk buying for SMMEs in mining and wholesaling for export transactions.



MAFIKENG

INDUSTRIAL DEVELOPMENT ZONE (PTY) LTD

The electronic manufacturing sub-sector forms an integral part of what is defined as strategic investments by the National Treasury of the Department of Finance.

SECOND FOCUS AREA:

To promote the establishment of a minerals beneficiation park within the IDZ at Mafikeng. The mineral beneficiation programme targets the following manufacturing, wholesaling and retailing sectors:

- cutting and polishing of precious and semi-precious stones;
- manufacturing of platinum jewellery;
- manufacturing of gold jewellery;
- cutting and polishing of granite and marble;
- wholesale and retail selling of precious and semi-precious stones; and
- skills development.

Mineral beneficiation forms an integral part of the economic growth and development policies of the province and the national government.

THIRD FOCUS AREA:

To promote the processing and refinement of agricultural products such as:

- meat processing and packaging; and
- refinement and packaging of vegetable oils, including the promotion, production and use of bio-energy (alternative fuels).

By establishing and adding these specialised manufacturing and technical capacities to the manufacturing and professional services sectors of Mafikeng, North West Province and South Africa, we can make a significant contribution towards economic growth and development, complement the existing knowledge base, promote economic diversification and local specialisation opportunities in the sectors and sub-sectors listed above.

The geographic spread, sectoral and market linkages of the strategic sectors of manufacturing, mining and agriculture are the main considerations, rationale and drivers in support of the investment theme and manufacturing silos to be promoted within the Industrial Park at Mafikeng in the rural hinterland of the North West Province.



For more information on this exciting venture please contact the MIDZ office
Tel: +27 (0)18 384-4148 | Fax: +27 (0)18 384-4149 | E-mail: info@midz.co.za



BLACK ECONOMIC EMPOWERMENT: AN OVERVIEW

BY ANTHONY BUTLER

The author is associate professor in the Department of Political Studies at the University of Cape Town

Black economic empowerment (BEE) is the centrepiece of government strategy to ensure that black South Africans can become full participants in the economic life of their country. BEE is intended to bring greater racial equity to the ownership and control of South African business, and to provide the wider economic opportunities essential for sustainable economic development.

It is the depth of three centuries of economic disempowerment that necessitates an empowerment that is equally broad and far-reaching. Africans were ultimately confined to Bantustans, restricted to unskilled or semi-skilled work, prohibited from asset accumulation, and prepared for a life of labour by "Bantu Education". All black South Africans were denied the basic social infrastructure - clinics, transport, housing, water and energy - required to lead a dignified and productive life.

This article deals primarily with the origins, rationale and potential implications of the government's strategy of broad-based empowerment. This policy aims to transfer significant ownership, management and control to black citizens, especially to women; to widen and diversify ownership; to support skills and business development; and to create new opportunities for access to finance. While BEE is ambitious and wide ranging, it should be remembered that it is only one element in an overall government strategy that includes deracialised institutions, a growing economy, land reform and improved public service delivery to realise socio-economic rights.

FOUR VISIONS OF ECONOMIC EMPOWERMENT

An apparent social consensus about the need for BEE conceals divergent opinions about underlying objectives, acceptable means and potential longer term implications. Broad-based BEE melds four distinct projects: to build a black middle class through employment equity and enterprise development; to create a black bourgeoisie; to manage "elite enrichment"; and to deracialise big business without undermining it.

Building a black middle class

Former president Nelson Mandela's empowerment strategy

prioritised employment equity, the transformation of the state, the seizure of parastatal and regulatory power, and the nurturing of small and medium sized business. Wider private sector transformation was deferred, and the private economy remained for many African National Congress (ANC) members a hostile realm responsible for an "investment strike" and "malicious acts of capital flight". Nevertheless, ANC rhetoric concealed diverse approaches to private business. As Mandela (1990) has observed, the ANC is a coalition in which some members "support free enterprise, others socialism. Some are conservatives, others are liberals. We are united solely by our determination to oppose racial oppression."

Pro-black small-enterprise policy dated back to the National Party's (NP) post-1976 recapitalisation of the Bantu Investment Corporation, to homeland development subsidies, and to white business initiatives such as the Urban Foundation and Small Business Development Corporation. Both the NP and its liberation movement enemies, however, saw a black middle class as a deliberate bulwark against black radicalism (Iheduru 2004: 4-5).

Mandela's government injected new dynamism, creating a National Empowerment Fund to channel privatisation proceeds, using government and parastatal buying power to force suppliers to develop a "clear and satisfactory" BEE strategy, and creating new capacity-building institutions such as the Department of Trade and Industry (dti) agencies Ntsika and Khula, which have slowly become competent primers of black business growth. As Radebe (2006) recently observed, the "developmental" approach to BEE through the fostering of small and medium sized businesses is once again fashionable, and it has recently been bolstered by the announcement of tax breaks and an overhaul of business development institutions.

In the middle of Mandela's term, government was obliged to adopt a controversial economic stabilisation programme (GEAR). Meanwhile, "voluntary" empowerment became unfashionable as an emerging market crisis exposed the unsustainable financial structuring of most BEE deals and savaged black ownership on the JSE. As Iheduru (2004) observes, many in the ANC and black business began

to press for a proactive strategy less dependent on the questionable good faith of white business. The deployment of ANC cadres to business accelerated.

Creating a black bourgeoisie

Thabo Mbeki has consistently argued that "non-racialism in politics has to be accompanied by non-racialism in the economy" (1994: 2). By the time he became state president, however, he was associated with the more specific argument that "as part of the realisation of the aim to eradicate racism in our country, we must strive to create and strengthen a black capitalist class" (Mbeki 1999).

This position probably owes something to the histories of Afrikaner and Malay empowerment. Afrikaners' long march towards equality with English-speakers began in the 1920s when organised farmers pressed successfully for tariff protection, state research support and direct subsidies (O'Meara 1983). After the NP's 1948 election win, Afrikaner nationalists turned to affirmative procurement, targeted state contracts, and employment creation in the parastatals. They also built ethnic insurance companies and banks, and transformed their language and educational institutions into instruments of collective advance. Thabo Mbeki's imprisoned father, Govan Mbeki, highlighted Afrikaners' determination to establish "business enterprises which were to be the main pillars around which in the future large concentrations of Afrikaner enterprise were to take shape".

Thabo Mbeki has also expressed sympathy with Malaysian empowerment. In 1970 the United Malays' National Organisation launched its historic programme to transfer equity from the 37 percent of ethnic Chinese who dominated the economy to the Malays and Indians who made up 50 and 11 percent of the population respectively. Twenty-year targets were set for the transfer of 30 percent of commercial and industrial enterprises. In an interesting parallel with Afrikaner empowerment, Mahathir bin Mohamad, Malaysian prime minister from 1981-2003, insisted that stakes in privatised state assets should not be given as "hand-outs" to the poor, but should rather be directed towards those capable of retaining and building upon them - already wealthy Bumiputera (sons of the soil) (cited in Herbst 2005).

The triumph of Malaysian empowerment has been tarnished by the Malay elite's rent-seeking behaviour and its dependence on government favours. Mahathir himself has lamented the Bumiputera policy's creation of empowerment speculators or "Ali Babas" trading in state contracts and licences (Cargill 2005: 25). The ANC, moreover, is painfully aware that South Africa lacks the rate of savings, the skills development, and the foreign direct investment that fuelled three decades of rapid Malaysian economic growth.

The case for a black bourgeoisie also turns on the need to build productive relations between business and politics. It is reasonable to believe that a black elite can open up more honest and direct lines of communication between politicians and businesspeople, and nurture the confidence upon which long-term investment is based. In an analogy

with the political deal-making of transition, Ramaphosa describes BEE as "another revolution ... it is not grab and run - it is taking place in as orderly a way as our political transformation ... The ethos and culture of the negotiated deals that have a transformative component are remarkable" (quoted in Reed 2003: 11).

Policing elite enrichment

The subtle influence of the South African Communist Party (SACP) on ANC policy should not be underestimated. Seeming SACP outrage about "fat cats" is nothing new: the path-breaking deal of the BEE era - the Johnnic transaction - elicited an immediate condemnation of "elite enrichment" by the SACP and the Congress of South African Trade Unions (COSATU). Indeed, the SACP has been gnawing on the BEE enrichment bone very consistently across more than four decades.

As early as 1969, communist intellectuals introduced into the ANC's pivotal **Strategy and Tactics** document the demand that "our nationalism must not be confused with the classical drive by an elitist group among the oppressed people to gain ascendancy so that they can replace the oppressor in the exploitation of the masses" (ANC 1969). The influence of this analysis can be felt in Nelson Mandela's (1997) promise that South Africa would never see "the formation of predatory elites that thrive on the basis of looting of national wealth and the entrenchment of corruption".

The SACP's long-range goal was international socialism, but its immediate strategic objective was to ensure that national liberation would not preclude the later realisation of the socialist revolution. As Joe Slovo (1988) expressed it, "the real question" was how to achieve the "intermediate" stage of national liberation without "blocking the route onwards to the next destination". SACP intellectuals observed that post-colonial liberationists elsewhere had thrown off colonial oppression only to become a parasitic elite themselves, looting state resources and ruthlessly suppressing trade unions and communist parties.

SACP concerns about "compradorist" and "parasitic" BEE, however, sometimes seem unjustly targeted at black consumption, as in Jeremy Cronin's complaint that the black middle class "is not involved in primitive accumulation, so much as primitive consumption" (Cronin 2005). Tripartite alliance critics complain that the black bourgeoisie has acquired capital through special share deals, fronting, and access to state power, but the left has not yet furnished a credible alternative vision for black empowerment.

The big business model

Big business, a key driver behind the political transition, was aware that sustainable growth in the 1990s would depend on rapid re-entry to international capital markets and enhanced competitiveness. This reality forced business into an "implicit bargain" with the ANC as early as 1990. The liberation movement committed itself to macroeconomic stability and international openness, while business agreed to narrow inequalities in wealth and income and to pursue

"capital reform" to open ownership and management to black citizens. Given the negotiated nature of the transition, business hoped this process would be gradual and market-oriented.

While the ANC has delivered its side of this implicit bargain, business has arguably not done so. The creation of a black stratum of owners and managers means that it is "no longer possible to characterise big business as 'white', or to distinguish on racial lines between public positions of leading business figures or organisations" (Beall, Gelb and Hassim 2005: 693).

However, the rate of deracialisation of ownership has been disappointing. Big business, perhaps inevitably, has pursued offshore listing and the cultivation of a compliant black business class more energetically. On Moeletsi Mbeki's account (quoted in Reed 2003), the white oligarchs "are now trying to deracialise their club by buying black members into their oligarchies". The empowerment process has been summarised even more harshly by Kevin Wakeford (2004) as "characterised in the main by crony capitalism, fronting, enrichment and debt-burdened deals".

BROAD-BASED BEE

A stalled empowerment process was restarted by the 2001 report of the Black Economic Empowerment Commission (BEECom). The need for a commission was first mooted at the Black Management Forum's November 1997 conference. It became imperative in 1998 as collapsing deals slashed black JSE capitalisation.

BEECom's quasi-official status allowed it to "think the unthinkable", proposing an investment-for-growth accord, the creation of a national procurement agency, and the appropriation of public sector pension funds. Such heavy state intervention threatened to promote unproductive deal-making and to harden negative business attitudes.

BEECom's intellectual heart, however, was a compelling motivation for "broad-based" empowerment, to be realised primarily through a "balanced scorecard" that would make empowerment transparent for business and citizen alike. The Broad-based BEE Act of 2003 that BEECom inspired brought together capital deracialisation, employment equity, business development, preferential procurement, and skills enhancement - and all in a framework of voluntary compliance flexible enough to accommodate the full diversity of South African businesses. Its key instrument is a "balanced scorecard" that measures every enterprise against wide-ranging criteria for broad-based empowerment (see table).

Each element of the scorecard is clarified by "codes of good practice" - some finalised and others released by the Department of Trade and Industry (dti) for public comment in late 2005. These codes deal in some detail with employment equity, skills, procurement, enterprise development, the status of transformation charters and a framework for BEE rating agencies. Once gazetted, the codes will be binding on all state and public entities, and will be applied in all

decisions involving procurement, licensing, concessions, public-private partnerships and the sale of state-owned assets. Few if any private companies can escape the codes' wider impact, moreover, because the requirements of the procurement component will cascade down public sector supply chains.

The "generic scorecard" will purportedly complement the various sectoral "transformation charters" already negotiated or under negotiation. It seems more likely that the latter are now dead in the water because they are unlikely to pass the test of substantial compatibility with the new codes.

OWNERSHIP TRANSFERS

Most of the BEE controversy continues to surround ownership. The first voluntary phase of empowerment failed to produce a sustainable and substantial increase in black ownership and control of South African business. Ramaphosa (2004: 73-8) explains that BEE activity was by no means negligible in this first phase, but deals were mostly financed through "special purpose vehicles" (SPVs) established solely to facilitate the purchase of equity in an established target company. SPVs used shares as collateral against loans, and the 1998 emerging market crisis saw the banks rapidly wind most of them up. The 1998 crash reduced BEE ownership of total JSE market capitalisation from 7 percent to perhaps 2.2 percent (Beall, Gelb and Hassim 2005: 693), and the past seven years have seen only a slow return to these former highs.

The shortage of black capital has been both the motivation and the downfall of BEE (Cargill 2005: 22). Black businesspeople lack capital and therefore must borrow it from third parties and often at high cost. They acquire high-risk equity using financial structuring that leaves them vulnerable in the event of economic downturn.

While today's transactions are bigger and more numerous than in the first phase of BEE - mining licences and the financial services charter precipitated large deals and the obligation to empower is now explicitly set out in sectoral charters and BEE codes - it remains arguable whether the new generation of transactions will prove any more sustainable than their predecessors. Banks have re-entered the BEE lending market, but they now refuse to carry significant risks. Vendor companies increasingly "facilitate" transactions, providing loan guarantees, price discounts, or internal vendor financing at below market rates, an effective "subsidy" from established business to BEE investors (Cargill 2005: 23).

Financial structuring "innovations" promise more durable deals, reducing the direct debt obligations carried by the BEE investors, using option schemes or deferred shares to align the interests of all parties, or circumventing funders' wariness about accepting shares as security by buying into underlying assets. Continuity has been the hallmark of most recent deals, however, and the small number of companies that accrued unencumbered equity in the first wave of empowerment continue to benefit most from

attractive vendor financing models. Finance for newcomers remains scarce, and deals continue to depend heavily on the appreciation of target companies' share prices. Vuyo Jack warns that "while 2005 was a great year for BEE deals, many companies paid high prices and used debt to finance these deals" (quoted in Jack 2006).

BEE companies face escalating debt-service requirements across the terms of their debt. In most cases, company earnings will be insufficient to cover interest and capital repayments, obliging them, as Cargill (2005: 23-5) observes, to sell down shares at the end of the term. The balanced scorecard introduces "realisation points" to ensure that the value accruing to empowerment actors is genuine. Points are awarded according to the degree to which BEE investments are "realised", measured in terms of the net value of the shares (current equity less current liabilities). Cargill argues that realisation points in effect oblige vendors to underwrite the success of their BEE transactions and to assume all investment and interest rate risk. Vendors already carry high BEE facilitation costs, and the additional underwriting and valuation expenses will raise the investment hurdle and so reduce overall investment.

Jack (2005: 30) observes that even "net equity" is merely "paper wealth", in that lock-in provisions usually prevent the sale of the shares, in order to prevent dilution of black equity that would lead to a loss of BEE credentials. The need for lock-in exposes the fundamental tension between vendors' desire to maintain high black shareholding levels and empowerment shareholders' yearning to sell shares to repay debt and realise value from their investments.

Some critics fear that the ownership scorecard will create a swathe of dysfunctional empowerment partnerships. Jack (2005: 27-30) distinguishes three partnership models, the most desirable of which are **operational partnerships** allowing vendors to "build meaningful relationships with black individuals who are operational within the industry". **Broad-based partnerships**, by contrast, such as development trusts, union funds, or employee share schemes, usually lack any economic rationale, are tied to vague beneficiaries, are administratively costly and bring benefits only over an inordinately long period. **Influential partnerships**, Jack's third variety, usually operate through diversified investment holding companies, and their key asset is political influence. As we shall see, such partnerships based around influence pose special challenges. Nevertheless, as BEE activity accelerates, it is broad-based and influential partnerships that will predominate. While such an outcome is far from ideal, it reflects the reality that capital is the priority for black entrepreneurs and operational experience will simply have to come later for most of them.

ECONOMIC AND BUSINESS CONCERNS

The impact of BEE on growth is beyond the scope of this paper. Nevertheless, it is notable that government's 6 percent growth target is already obstructed by a drastically inadequate savings rate of 12 percent of GDP. The transfer of shareholdings to black South Africans may eventually

tie up as much as R450 billion (Cargill 2005). Cronin (2005) meanwhile complains that "different consortia, alliances and personalities [are] all competing for slices of existing action" rather than "galvanising a national development effort".

BEE will discourage some of the foreign investment that might otherwise compensate for the savings shortfall. Government's much-vaunted flexibility towards multinational corporations demands that the corporations justify their case - for example, in terms of a need to protect intellectual property - and also requires them to deliver compensatory "equity equivalents". Most importantly, international business may fear the lack of any clear BEE timeframe. Investors cannot confidently predict that 10 years hence empowerment obligations will not be renewed or even dramatically intensified.

Domestic and foreign businesses alike are presumably not reassured by attacks on the very idea of "BEE costs". Two of the most "empowered enterprises" in South Africa today, Eskom and Telkom, are rightly celebrated for their achievements in employment equity, preferential procurement and business development. Nevertheless, in the private business sector, these scorecard darlings are associated with escalating administered prices, abused monopoly powers and cowed regulators. Political sensitivities have made it impossible to learn lessons - positive as well as negative - from these empowerment pioneers.

One further concern is that BEE may result in an explosion of "fronting". Black managers will be employed but discouraged from participating in the operations of the business. Meanwhile, "benefit diversion" will leave broad-based black partners penniless. Wakeford (2004) observes that fronting is likely to migrate down the supply chain to small and medium sized companies where it will be harder to detect because "fat and underperforming" big business will try to hide its own poor ownership, skills, and employment equity performance by boosting empowerment procurement ratings.

The codes of good practice oblige verification agencies to identify and report on fronting. In theory, the dti's South African National Accreditation System will withdraw accreditation from agencies that do not comply, but it remains to be seen how effective the new oligopoly of BEE verification agencies will prove to be in this - or any other - of its mushrooming responsibilities.

There are numerous other scorecard controversies: enterprise development is poorly understood by business; the status of foreign and small businesses remains murky; and corporate social investment seems an inefficient vehicle to promote benefit diversion and high facilitation costs. Business generally complains that broad-based BEE is altogether too intrusive and places a heavy regulatory burden on them.

The biggest question at the level of the individual firm, however, is whether it will bring significant substantive

change at all. Reg Rumney observes that "it is quite easy for any white company to abide by the legislation and still not comply with the spirit of BEE ... Legislation won't work on a problem of this scale" (quoted in Reed 2003). It is the potential political counter-reaction to the failure of BEE, rather than its possible success, which has the most disturbing implications for the future of South African business.

BEE AND THE STATE

Empowerment is focused on business, but it has major implications for a state stretched very thin by the dual challenges of internal transformation and universal public service delivery. Cronin (2005) has lamented that "established and emerging capital have succeeded in exerting considerable dominance over the state" - a conclusion that businesspeople might celebrate all too quickly. The character of the relationship between state and business is crucial in determining whether the state advances narrow and selective interests or the wider good of the economy.

Over the longer term, empowerment actors might exert unwelcome influence over "industrial policy", which could quickly become a life support system for politically well-connected companies. Given a drastic shortage of empowerment finance, moreover, public sector and parastatal pension funds might be mobilised in support of risky empowerment investments.

Benign sectoral policy influence might be replaced with the *ad hoc* deployment of state capacity. Eskom has served as an instrument of South African external policy since 1994, for example, and it has been understandable and largely desirable that the state has reciprocally acted as an instrument of Eskom Enterprise's foreign policy (which in many respects is more ambitious than that of government). It would be quite undesirable, however, if South African intelligence systems and political capital were routinely put at the disposal of mining companies with high-risk investments in sub-Saharan African countries - simply because of their close business relationships with government ministers or officials.

In domestic policy, Muller (2006) observes that we are trying too hard "to create internal opportunities for our new economic elite". He speculates that the East Coast transmission line that would have averted the Cape's current power crisis would not have been delayed if it did not threaten the profitability of a new BEE power generator in the Eastern Cape.

Collateral damage to fragile regulators is another concern. The 2001 battle for the third cellular licence between Cell C and Nextcom first demonstrated that regulatory institutions, individual regulators and peripheral institutions such as the public broadcaster can become casualties in battles between well-connected empowerment groups. Oil and armaments transactions have provided further possible negative pointers: their scale, technical complexity and secrecy making them the world over a first choice for entrepreneurs seeking to secure nest eggs or build war

chests. Here BEE vehicles were allegedly the instruments of personal enrichment, and media houses and the public broadcaster were purportedly used to tarnish rivals and to destroy the careers of scrupulous officials and regulators.

The further issue of "revolving doors" has been highlighted by the deal-making of the former communications director-general, Andile Ngcaba. The circulation of talented individuals between state and business is desirable, of course, bringing mutual understanding and aiding the internal transformation and corporate culture of both sectors. Nevertheless, new regulations ensuring appropriate time delays and confidentiality requirements urgently need to be formulated.

BEE AND THE FUTURE OF THE ANC

It is perhaps wishful thinking to hope that the empowerment of ANC cadres might create a more benign class of businesspeople. Capitalism structurally limits the ability of owners and managers to act in the interests of the oppressed. Influence will move more pervasively in the opposite direction, and it is arguable that business empowerment has already wrought radical changes within the ANC. Highlighting deals involving Manne Dipico, Popo Molefe and Valli Moosa, Msomi (2005) even asks if the ANC might not already be "mortgaged to private capital". Procurement scandals have meanwhile raised the spectre of alleged "retro-kickbacks" to party funds.

Cronin (2005) observes that "political tensions within the state and ANC leadership are 'resolved' (i.e. managed) by allowing some to be 'deployed' into the private sector. However, the converse of this is that the leading financial and mining conglomerates are increasingly reaching into the state and the upper echelons of the ANC and its leagues - actively backing (betting on) different factions and personalities, and seeking to influence electoral outcomes and presidential succession."

ANC secretary general Kgalema Motlanthe (2005) has argued that "the central challenge facing the ANC is to address the problems that arise from our cadres' susceptibility to moral decay occasioned by the struggle for the control of and access to resources. All the paralysis in our programmes, all the divisions in our structures, are in one way or another, a consequence of this cancer in our midst." Any legal and regulatory framework for BEE may be exploited for private gain unless there are more successful ANC initiatives to police the activity of its own cadres. It remains an open question whether a liberation movement already changed by its interaction with economic power will continue to be able to steer empowerment in a benign direction.

Such challenges, of course, are not caused by broad-based BEE, but empowerment vehicles can be used as masks behind which patronage and corruption can spread. It is positive that the current empowerment framework does not seem to provide any new vehicles for the abuse of public or political office. Hopefully, it will indeed spread more widely

the burden of managing the abuse of public authority that currently falls to the ANC.

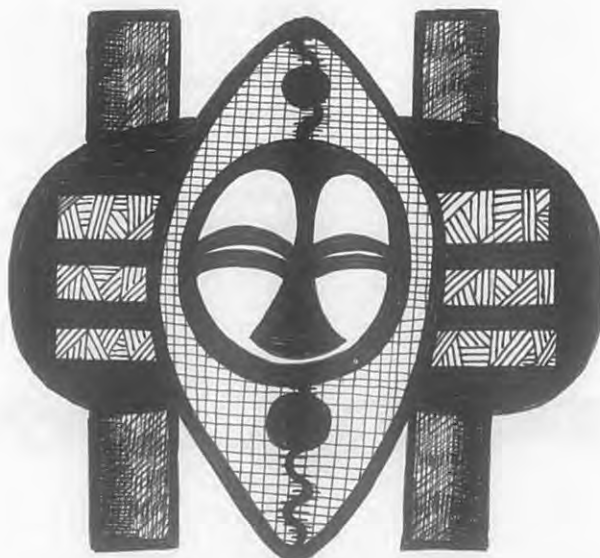
CONCLUSIONS

We should be realistic about the limits of government power. Black economic advance will be driven primarily by the actions of individuals. Black entrepreneurs will look to exercise their new-found freedom to make deals. Established businesses will meanwhile seek out the skills and connections that black partners can bring, and many of them will hunger for access to government contracts and the ear of powerful decision-makers. A successful BEE policy will be one that encourages more intense interaction between black business, established capital and the state, but that also establishes clearer rules to manage such relationships. By so doing, it will create a more transparent and plural politics of competing interests.

Empowerment remains a political and moral imperative that holds out the hope of a dynamic economy built upon the full participation of all South Africans. Business sometimes complains that the scorecard will create an insupportable regulatory burden, while critics counter that its requirements will be dangerously easy to evade. It remains to be seen whether the government's pragmatic approach has succeeded in minimising unnecessary costs while imparting to the empowerment process the momentum it urgently needs.

REFERENCES

- African National Congress (1969) *Strategy and Tactics of the African National Congress* (ANC, April-May)
- Beall, J, S Gelb and S Hassim (2005) "Fragile stability" in the *Journal of Southern African Studies*, 31, 4, 681-700
- Cargill, J (2005) "Black corporate ownership: Complex codes can impede change" in S Brown (ed) *Conflict and Governance: Economic Transformation Audit 2005* (Cape Town, Institute for Justice and Reconciliation), 21-27
- Cronin, J (2005) "The people shall govern", archived at the Communist University of Johannesburg, 5 November, available at <http://amadlandawonye.wikispaces.com/2005-11-05,+Cronin,+The+People+Shall+Govern>, accessed on 21 March 2006
- Herbst, J (2005) "Mbeki's South Africa" in *Foreign Affairs*, November/December
- Iheduru, OC (2004) "Black economic power and nation-building in post-apartheid South Africa" in the *Journal of Modern African Studies* 42:1 (2004), 1-30
- Jack, V (2005) "Empowerment partnerships" in *New Agenda*, No 20, 4th Quarter, 27-31
- Jacks, M (2006) "Rising danger" in *Financial Mail*, 24 February, 16
- Mandela, N (1990) Interview in the *Washington Post*, 26 June
- Mbeki, T (1994) "This seed must grow into a tree" in T Mazwai (ed) *Black Business Pioneers* (Houghton, Black Enterprise)
- Mbeki, T (1999) "Speech at the annual national conference of the Black Management Forum", Kempton Park, November 20, available at <http://www.anc.org.za/ancdocs/history/mbeki/1999/tm1120.html>, accessed on 13 March 2006
- Motlanthe, K (2005) "ANC Secretary General's Organisational Report", ANC National General Council, June
- Msomi, T (2005) "ANC mortgaged to private capital" in *City Press*, 27 November
- Muller, M (2006) "Switching on SA's energy regulators" in *Business Day*, 7 March
- Radebe, S (2006) "Try the other button: SME and not BEE is emerging as the economic acronym politicians are favouring" in *Financial Mail*, 24 February, 49-51
- Ramaphosa, C (2004) "Black empowerment: Myths and realities" in F Sicre (ed) *South Africa at 10* (Cape Town, Human and Rousseau), 72-84
- Reed, J (2003) "South Africa's 'cappuccino effect': Will economic empowerment do more than create a sprinkling of black tycoons?" in *Financial Times*, 5th November, 11
- Wakeford, K (2004) "Empowerment must be an investment, not a cost" in *Business Day*, 9 September



THE GENERIC SCORECARD

Element	Weighting	Indicator Category	Indicator	Indicator Weighting	Target
Ownership	20%	Voting Rights	Exercisable voting rights by black people	3 pnts	25% + 1 vote
			Exercisable voting rights by black women	2 pnts	10%
		Economic Interest	Economic interest in the enterprise to which black people are entitled	4 pnts	25%
			Economic interest in the enterprise to which black women are entitled	2 pnts	10%
			Economic interest in the enterprise to which black designated groups are entitled	1 pnt	2.5%
		Realisation Points	Ownership fulfilment	1 pnt	No Restrictions
			Net Economic Interest	7 pnts	25%
			Achieved accordingly:		
			10% of the Target (Year 1)		
			20% of the Target (Year 2)		
			40% of the Target (Year 3-4)		
			60% of the Target (Year 5-6)		
			80% of the Target (Year 7-8)		
			100% of the Target (Year 9-10)		
		Bonus Points	Ownership by broad-based BEE schemes or new entrants	3 pnts	Bonus per each level of 5%
Management Control	10%	Board Participation	Exercisable voting rights by black people	3 pnts	50%
			Members of the board who are black people	1 pnt	50%
			Members of the board who are black women	1 pnt	25%
		Top Management Participation	Black senior executive representation	2 pnts	40%
			Black women senior executive representation	1 pnt	20%
			Black other executive representation	1 pnt	40%
			Black women representation as other executives	1 pnt	20%
		Bonus Points	Black independent director representation	1 pnt	40%



Employment Equity	10%		Percentage of black people with disabilities in full-time employment in relation to other full-time employees	2 pnts	4%
			Percentage of black people at senior management level	2 pnts	60%
			Percentage of black women at senior management level	2 pnts	30%
			Representation of black people in professionally qualified and experienced specialists and mid-management	2 pnts	75%
			Representation of black women in professionally qualified and experienced specialists and mid-management	1 pnt	40%
			Representation of black people in professionally qualified and experienced specialists and mid-management	1 pnt	80%
Skills Development	20%	Skills Development	Skills development spend on black employees	4 pnts	3%
			Spend on critical/core skills for black employees	2 pnts	2.6%
			Spend on critical/core skills for black women employed	2 pnts	1.4%
			Spend on black employees with disabilities	1 pnt	0.3%
		Learnerships	Number of black employees on SETA-accredited learnerships as percentage of total employees	2 pnts	5%
			Number of black women employees on SETA-accredited learnerships as percentage of total employees	2 pnts	2.5%
			Number of unemployed and/or rural black on learnerships as a percentage of total employees	1 pnt	1%
		Organisational Transformation Index	Have a comprehensive BEE strategy	Yes	1%
			Have employed a skills development facilitator	Yes	1%
			Have a policy on non-discrimination and diversity management training	Yes	1%
			Complies with all employment related legislation	Yes	1%
			Have implemented human resource management programme	Yes	1%
			Have a programme designed to give practical effect to BEE and human resource management plans and a commitment to routine organisational social environmental audits	Yes	1%
Preferential Procurement	20%		Procurement spend from BEE suppliers	15 pnts	70%
			Procurement spend from qualified small enterprises	4 pnts	15%
			Procurement spend from exempted micro enterprises	1 pnt	5%

Enterprise Development	10%		Cumulative non-recoverable contribution to enterprise development as a percentage of profit before interest, tax, depreciation and amortisation	6 pnts	2%
			Cumulative recoverable contribution to enterprise development as a percentage of profit before interest, tax, depreciation and amortisation	4 pnts	3%
		Bonus Point	Qualifying enterprise development contributions that directly increase employment levels in preceding year	1 pnt	
Residual Element	10%		Cumulative rand value of non-recoverable qualifying corporate social investment contributions as a percentage of net profit after tax	5 pnts	1.5%
			Cumulative rand value of qualifying industry specific contributions as a percentage of net profit after tax	5 pnts	1.5%
		Bonus Point	Qualifying residual contributions benefiting black people in rural communities or geographic areas identified by government	1 pnt	
Elements	100%				



BLACK EMPOWERMENT, PARASTATALS AND PERFORMANCE

BY ROGER SOUTHALL

The author is a distinguished research fellow at the Human Sciences Research Council (HSRC)

Black economic empowerment (BEE) is normally taken to describe the post-1994 South African government's policies designed to promote black control and ownership over the overwhelmingly white private sector. However, this restriction of BEE's scope to the private sector has a number of disadvantages. One is that it ignores the extent to which the government has viewed the "transformation" of state-owned enterprises

(SOEs) as a major aspect of its implementation of the "national democratic revolution" (NDR) whereby the racial imbalances of the economy in favour of whites are corrected. A second is that a failure to appreciate the extent of the government's strategy to "transform" the SOEs will lead to an understatement of progress made towards the increase of effective black ownership and control. A third is that narrowing the concept of BEE to the private

sector fails to put South Africa's current experience into the wider context of post-colonial developments on the African continent where, on the whole, governments have seen the extension of state power (inclusive of parastatals) as key to their political survival. It follows that if we are to attain an adequate understanding of the efforts of the democratic government to render the political economy more "representative", then it is essential that a focus upon the "transformation" of SOEs must accompany our thinking about racial redress within the private sector. This paper offers a preliminary attempt to do that, while arguing that the ANC government's attempts to "transform" the parastatals need to be located within the context of the debates about decolonisation.

THE PARASTATALS AND AFRIKANER EMPOWERMENT

The origins of South Africa's parastatals lie in the inter-war period with the establishment of institutions such as the Electricity Supply Commission (Eskom) in 1922 (which was to progressively take over the supply of electricity from private concerns culminating in the industry's full nationalisation in 1948) and the Iron and Steel Corporation (Iscor) in 1928. These early SOEs were integral to the first National Party (NP) government's pursuit of an import-substitution industrialisation strategy. This envisaged the development of a domestic manufacturing sector (much of it in mining related industries such as fertiliser, chemicals and explosives) behind high tariff walls, while linking to this the extension of state aid to white farmers and employment and wage protection to "poor whites".

Subsequently, following the capture of power by Malan's reformed NP from Smuts' United Party in 1948, the state sector underwent a major expansion. Under the auspices of the Industrial Development Corporation (IDC), new parastatals, such as the Phosphate Development Corporation (Foskor) in 1952, the South African Coal, Oil and Gas Corporation (Sasol) in 1954, and the Southern Oil Exploration Corporation (Soekor) in 1965, were established and existing ones such as South African Railways & Harbours (SAR&H) and Eskom were extended. As a result, the public sector's share in gross fixed investment rose from 6.2 percent to 11.5 percent between 1946 and 1973, while its share of capital stock increased from 3 percent in 1946 to 13 percent in 1979. Thereafter, the public sector expanded even further through the development of a state-led armaments industry with the creation from the 1960s of bodies like Armscor, Atlas Aircraft Corporation, the Atomic Energy Board and Ucor (the Uranium Enrichment Corporation).

There is widespread agreement that the massive expansion of the state sector was for purposes of "ethnic mobilisation". Under the NP, the extension of the state sector was accompanied by the appointment of Afrikaner businessmen to state economic boards, just as Afrikaners were favoured for the public service and management positions within the parastatals. By 1968, there were twice as many Afrikaners in government as in 1948; by 1976, some 60 percent of the white labour force in the public service and parastatals were Afrikaners; and by 1979 more than 35 percent of

economically active Afrikaners worked for government and filled over 90 percent of the key positions. Furthermore, direct financial assistance to Afrikaner companies via such entities as the IDC, the switching of government accounts and the allocation of government contracts to Afrikaner-run banks and businesses, alongside the expansion of the parastatals, all served to ensure the integration of Afrikaner capital on favourable terms into corporate capitalism.

Indeed, in many ways, "this class force was the major beneficiary of NP rule" (O'Meara 1996: 80). In 1948, there were very few Afrikaner business undertakings of any significance, but by 1970 the Afrikaner finance company Sanlam was second only to the Anglo-American Corporation as the largest concentration of non-state economic power in the country, whilst two other Afrikaner undertakings, Rembrandt and Volkskas, had joined the small group of conglomerates which dominated the economy. "Largely as a consequence of NP policies, Afrikaner control of private industry rose from 6 percent in 1948 to 21 percent in 1975. If the state corporations are included, industrial output under the 'control' of Afrikaans-speakers was calculated to have risen to 45 percent of the total by 1975" (O'Meara 1996:80). Meanwhile, public investment was central to the government's industrial decentralisation policy and its pursuit of separate development.

Fine and Rustonjee (1996: 162) stress that this symbiosis between state and capital provided for the greater co-ordination of industrial development. Yet the crises of apartheid - growing industrial unrest, political turbulence and international isolation - were to foreclose the possibilities of a cohesive industrial strategy. The government's move, after 1979, towards a deracialised labour policy and the incorporation of emergent black trade unions into the state regulated industrial relations increased divisions between *verkrampste* (conservative) and *verligte* (enlightened) Afrikaners, while, ironically, the very success of NP policy led to increasing complaints about the growth of the state sector and the dangers of "creeping socialism" (Wassenaar 1977). However, more important was the growth of antagonism to state ownership as the political transition to majority rule loomed, a stance which drew sustenance from the growing international influence of neo-liberalism and the need to curb a soaring public debt.

Between 1970 and 1985, more than 64 percent of all net fixed investment was made by the public sector. However, by the late 1980s, the government was proclaiming that a "drastic decrease" in and deregulation of the state's economic involvements had become "imperative" (SAIRR 1987-88: 345). This new approach was embodied in President PW Botha's announcement in February 1988 that large state undertakings such as the South African Transport Service (SATS - the successor to SAR&H), telecommunications services, and Eskom would be re-organised to become profit-making, while some major road networks and SOEs such as Iscor, Foskor and the Mossel Bay gas project would be privatised. The first major privatisation was accomplished with the sale of shares in Iscor in October 1989 (although

the state retained a significant minority interest through the IDC).

Initiatives were now put in place to commercialise other entities in order to prepare them for later privatisation, the major move being the incorporation of SATS into a new state company called Transnet, which was placed in charge of five subsidiaries: Petronet (pipelines), Autonet (roads), Railnet (later Spoornet - railways), Portnet (harbours) and South African Airways (SAA). By this time, however, the government's ambitions were running up against a mix of difficulties. For instance, most sectors of industry opposed the privatisation of Eskom as they feared it would lead to an increase in tariffs; and there were fears that, in practice, privatisation would mean handing over state assets to English-speaking capital. Yet more influential was the marked hostility of the African National Congress (ANC) and Congress of South African Trade Unions (Cosatu), which viewed privatisation as leading to high costs of service delivery to black workers as well as to wide ranging job losses. However, once in government, the ANC's position would become more ambiguous.

POLITICS, PARASTATALS AND PERFORMANCE IN AFRICA

It is not surprising that when the ANC took up office in 1994 that it sought to borrow from NP experience after 1948, and regarded the parastatals as ripe for "transformation". Just as the NP announced its mission as liberating Afrikaners from British imperialism, so the ANC's theory of the NDR proclaimed the necessity of the black majority to vanquish the "internal colonialism" of the post-1910 white minority-ruled state. From this perspective, ANC strategy has much in common with the Africanisation initiatives undertaken by African governments during the early years of independence. However, while it shared with African governments their emphasis upon the capture of state power as the foundation for economic decolonisation, it had the advantage that it could learn from their experience.

Nearly all African countries witnessed a significant expansion of their parastatal sectors after independence. Over one-half of the public enterprises existing in sub-Saharan Africa in the early 1980s were created in the 1960s and 1970s. Public enterprises became central to African states' development strategies, as securing control over key sectors - mining and agricultural exports, transport and communications, manufacturing and much domestic agricultural trade - became a key objective for many regimes, especially those which proclaimed a radical, anti-imperialist agenda, often under the fashionable sobriquet of "African socialism". The era was, after all, one when "statism" was a major feature of development thinking, modelled on both social-democratic engineering in post-war Western Europe and the then apparently solid advances of Soviet-style centrally planned economies in Eastern Europe.

Generally speaking, colonial states had been heavily interventionist, and had looked to public enterprises to service private industry, achieve economies of scale, improve techniques of production and implement the prevailing

strategy of import-substitution industrialisation. Yet, over time, African parastatals were to earn the reputation of having become grossly inefficient, as losing lots of money, and distorting market mechanisms through unrealistic pricing, political access to credit and sheer incompetence. The evidence is that the overall performance of Africa's state-owned sector was disappointing.

Many public companies have shown net losses and in nearly all countries public enterprise deficits are large, and have contributed to spiralling national debt. In a number of Francophone African countries ... net deficits were roughly 4 percent of GDP in the early 1980s. In Cameroon at the same time, subsidisation of losses incurred by the parastatal sector amounted to CFAF150 billion a year, roughly 7 percent of GDP. Similar results were evident in Anglophone countries. In Ghana in 1982, the total operating deficit of state-owned firms amounted to over 3 percent of GDP - equivalent to total government spending on education, health and welfare. In fact, public enterprise sectors in many African countries have been permanent loss makers. Moreover, African state corporations have contributed very little to government revenues; instead, they have constituted a major burden on domestic budgets (Tangri 1999: 22).

The reasons for parastatals' poor performance are diverse. There are, of course, a host of economic reasons, ranging through inappropriate pricing policies, chronic management problems and poor investment decisions. Tangri also cites the patrimonial nature of African states as undermining efficiency, a context wherein public enterprises become a vehicle for the dispensation of political patronage, resulting in overstaffing, awards of contracts to cronies and followers, diversion of investments to favoured regions, toleration of corruption and so on. However, alongside such reasons for failure were, first, clear evidence that some parastatals had been run into debt or incapacity by foreign firms providing inadequate advice or outdated and inappropriate machinery, and second, being badly hit by external shocks, notably the oil crises of the 1970s which were coupled with declining demand for African exports due to world recession, as well as high interest rates.

Given the centrality of public enterprises to African economies, it was inevitable that, in the 1980s, when international agencies such as the World Bank and United States Agency for International Development (USAid) turned their attention to addressing the "African crisis", they advocated wide-ranging privatisation as integral to their formula of "structural adjustment". Initially, African governments were resistant, favouring the imposition of closer, centralised controls upon what were deemed to be errant parastatal managements. There was realisation, too, that privatisation could well mean sale of state assets to foreign owners, or to local business interests over which governments had limited control.

Consequently, when African governments succumbed to pressure, and privatisation initiatives gained momentum, the takeover of public enterprises by leading politicians

and bureaucrats became common. Furthermore, while privatisation may have enjoyed its successes, the cure as often made the illness worse. For instance, structural adjustment agreement limitations on public spending sometimes led governments to run up arrears with major public enterprises, contributing to their collapse. Overall, while aware that patrimonial governance remains prevalent throughout Africa, international agencies bent on reform have proved unable to do much about it. An immediate conclusion is that solutions based on ideology are not likely to bring about viable reform.

That privatisation is no automatic panacea is demonstrated by Grosh (1991) who undertook a detailed study of public enterprises in Kenya between 1963 and 1988. Assessing performance according to return on investment, efficiency, returns to consumers and returns to suppliers, she arrived at six broad conclusions:

- there was a wide range of performance among Kenyan public enterprises, ranging from excellent to abysmal. The fact that so many firms performed well for substantial periods of time indicates that the conditions for good performance are attainable within the context of the politics and administrative capabilities of an African state
- there are important correlations between performance measures, allowing surprisingly easy classification of firms into successful and unsuccessful categories
- public enterprises have generally been allowed to cover costs through flexible pricing. In contrast, politically-driven inflexible prices have led to higher unit costs and have hobbled parastatals when competing with private firms
- many of the problems observed arose after 1978, reflecting the descent of African economies into crisis continentally. General economic problems have been passed on to public enterprises via undercapitalisation, foreign exchange shortages and so on
- public enterprises are often required to undertake investments or provide services that are motivated by distributional rather than commercial criteria, and this will often depress performance in terms of profit, efficiency and competitiveness
- the use of overall financial returns gives a deceptively negative summary statistic of public enterprise performance.

Policy towards parastatals in the 1980s, argued Grosh, seemed to ignore such evidence and was predicated on the assumptions that most problems were caused by corrupt and inefficient management. However, while such managers were to be found in Kenyan parastatals, many other factors were the primary causes of the problems observed.

These various considerations provide a useful basis for an assessment of the ANC's approach towards parastatals since 1994.

THE ANC, EMPOWERMENT AND PUBLIC ENTERPRISE, 1994-2006

The ANC inherited a public sector of uncertain size in

1994, but it is probable that state-owned enterprises (SOEs) exceeded 300 in number and employed in excess of 300 000 people. They ranged from primarily financial bodies like the IDC, the Public Investment Commission (which served as fund manager for different public service pension schemes) and the Development Bank of Southern Africa (DBSA) (whose particular role under apartheid had been to fund industrial decentralisation projects in the homelands), through a number of significant industrial undertakings to a variety of utility companies. Overall, however, the public sector was dominated by the "big four" SOEs (Transnet, Denel, Telkom and Eskom). In 1999, the *Financial Mail* reported that, together, they comprised approximately 91 percent of estimated total assets of the top 30 SOEs (R130.8 billion), provided 86 percent of their turnover (R76.9 billion) and 94 percent of their net income (R7.9 billion), and employed 77 percent of their employees.

Black empowerment in the parastatals

During the early post-1994 years at least, it appears that little attention was paid to the restructuring of the parastatals, except insofar as they were to be prepared for privatisation. Nonetheless, the agenda of transformation that centred around the two issues of staffing and procurement was fairly swiftly extended to the SOEs. An immediate example is provided by Transnet, the largest and most diverse of the parastatals.

Transnet's first four black executive directors were installed in early 1996. Appointed for five years to join Anton Moolman, managing director (MD), they included Saki Macozoma who stepped down as an ANC MP to become deputy MD and Mafika Mkwana, chief executive of Metrorail, who was placed in charge of Spoornet. Macozoma was immediately viewed as heir apparent to Moolman and as leading a drive for "transformation". They were soon followed by further black appointments at senior and lower managerial levels: a third of the 60 new senior managers who had been appointed by late 1996 to initiate the latest "shake-up" were black. Despite assurances that the restructuring process would be consultative ("everybody", from cleaners upward, would be involved), there was immediate concern among the mostly white management that they would be replaced by inexperienced black appointees.

It was not long before tensions between an old guard and new black management broke out, with fears surfacing in the press that political correctness was running counter to "sound market principles". The increasing priority given to procurement from black companies was cited as compromising profitability, black managers were presented as unable or unwilling to stand up to trade unions, and there was complaint about the award of "massive" salaries to senior management. These developments were accompanied by the departure of a considerable number of white technical staff, and by a flurry of resignations by senior whites. Moolman himself retired in mid-1996, to be immediately replaced by Macozoma.

Macozoma conceded that low morale was partially

responsible for Transnet's relapse into the red (a R253 million loss in the year ending March 1996 after the corporation had returned its first extremely modest profit in 1994). He admitted a lack of skill among black professionals, but urged the necessity of appointing blacks to senior appointments and then sending them on management courses. Too many employees had hitherto been "cocooned in an Afrikaans white world", rendering the culture of the organisation unacceptable to blacks. There were assurances that whites and "other minorities" would be treated fairly, but a newspaper headline soon spoke of a "race war" at Transnet, while allegations of credit card fraud made against a senior black executive were portrayed by the South African Railway and Harbour Workers' Union as a "witch hunt" conducted by his white predecessors. Notwithstanding union support, the black director was found guilty and fired, followed swiftly by the dismissal of another of the original seven black directors for "gross misconduct". The "big bang" approach to transformation, declared **Business Day** (23.10.96), badly needed to be re-thought.

Central to Transnet's empowerment drive had been its aggressive shift of procurement contracts to black-controlled companies. This had come about, in part, in response to direct prompting from the Department of Public Enterprises (DPE), but it also reflected Macozoma's explicit commitment to transformation. Under his auspices, Transnet had adopted the goal of setting aside 50 percent of its procurement expenditure for black companies. Black businesses acquired only R800 million worth of procurement deals from Transnet in 1995-96, but by the end of 2000-2001, this had increased to R2.2 billion, and a year later to R3.45 billion. Subsequently, Transnet awarded a single R2.4 billion tender to a consortium of seven empowerment companies to supply it and all its subsidiaries with 60 percent of its fuel needs over the next 36 months. Some displaced suppliers argued that Transnet unfairly awarded contracts to black companies who lacked competence, experience and financial viability. In contrast, black companies themselves objected that preferential procurement was being awarded to white companies using BEE fronts. Despite such travails, Transnet stuck to its guns and stressed the responsibility of parastatals for promoting black business. By 2002, BEE managers had been appointed in all the company's 34 divisions and subsidiaries, with BEE and small business growth being proclaimed a strategic tool to increase market share, sustain capitalism and eliminate poverty.

Transnet's procurement drive was matched by continued "right-sizing" and affirmative action. Between 1996 and 2001, some 23 000 people had "voluntarily" left the company and 200 had been retrenched. Some 63 percent of Transnet's then total of 76 272 workers were from "historically disadvantaged groups". By 2002, the proportion of blacks in senior management had risen to 51 percent and in middle management to 41 percent, with targets for increasing these being established for subsequent years. Although executives worried that this left a "cappuccino" problem whereby whites continued to be overrepresented at senior and middle levels, the worst of the racial tensions seem to have been overcome.

The problems and achievements of Transnet have been repeated elsewhere. Overall, Eskom, Denel and Transnet deployed a combined BEE procurement budget of R9 billion in 2001-02. Meanwhile, the rapid transformation of personnel has been uniform, as have been the tensions that have gone with it. By 2005, for instance, 69 percent of Eskom's 30 000 staff were black, as were 58 percent of its managers, while the company reported that its preferential procurement spending had amounted to R28.9 billion over the last six years. Similar changes at Denel were accompanied by the rapid exit of skilled staff, mostly middle-aged white men, and extensive reports of demoralisation.

Even a brief review suggests that progress towards "representivity" in at least the major SOEs has been achieved with remarkable speed and ease. Yet this has not been without cost. The offering of retrenchment packages to whites is widely said to have drained scarce skills, at artisanal as well as at managerial levels, often leaving SOEs to some degree incapacitated. And there can be little doubt that rapid transformation added to the challenges of rendering parastatals efficient and profitable.

Parastatals' restructuring under the ANC

Unfortunately, the state of knowledge about parastatals lacks depth and specificity. Hitherto, with the important exception of Christie's (1984) detailed analysis of Eskom's role in the industrialisation of South Africa, research has primarily concentrated upon broad overviews of: the general role which the public sector has played in economic development and service delivery; SOEs' contribution towards Afrikaner empowerment; their contribution towards the growth of "state capitalism"; and their role in the maintenance of apartheid. Furthermore, during the years of transition, when analysts were discussing the relative merits of nationalisation versus privatisation, their work was largely theoretical and comparative, rather than dealing with the condition of the state corporations on the ground. Generalisation about the latter is therefore dangerous. However, by the late 1980s and 1990s, the SOEs were widely viewed as overstuffed, "bloated", a haven for Afrikaner management of dubious quality, inefficient, mainly loss-making, and profitable (if at all) only through the exercise of monopoly powers. It followed that they were ripe for a dramatic shake-up, whether via commercialisation or privatisation. Whether or not this perspective was a parody, few would doubt that the legacy the ANC inherited was a difficult one.

This is undoubtedly one reason why during its early years in power the ANC leaned towards privatisation. Of course, the story is more complicated than that, for, as has often been told, during the transition years the incoming ANC was subject to a multiplicity of influences - from the international financial institutions, foreign governments and high-paced reformists (including Oliver Tambo and Thabo Mbeki) from within its own ranks - to abandon its Freedom Charter-based commitment to nationalisation. Hence although the **Redistribution and Development Programme**, with which the ANC fought the 1994 election, paid homage to the "enabling role of the state", it also spoke about reducing the

public sector in order to "enhance efficiency".

This cleared the way for the later adoption of the more free-market oriented Growth, Employment and Redistribution (GEAR) policy in 1996, which recorded a significant shift in favour of privatisation via: strategic equity partners for enterprises like the Airports Company of South Africa, SAA and Telkom; the sale of enterprises which were not deemed to be strategic (e.g. Sun Air and Transkei Airways); and the internal restructuring of other enterprises to allow them to become more competitive. However, for a host of reasons - only limited interest on the part of potential private sector buyers, opposition from trade unions, caution about sale of the "family silver" to foreign companies, concern that at least significant portions of state assets should end up in black hands, lack of financing for black buyers, and unforeseen difficulties (such as the collapse of Swiss Air in 2001, and the subsequent return to state hands of the 20 percent of SAA which it had purchased in 1999) - the pace of privatisation was extremely slow, and the outcome was far less spectacular than the government had originally anticipated.

This was to result in the adoption by the DPE of a document entitled **An Accelerated Agenda Towards the Restructuring of State Owned Enterprises** in August 2000. Among its key points were that the establishment of SOEs under apartheid had skewed development paths, and that since 1994 many state corporations were struggling to overcome unsustainable debt burdens, underinvestment, and unmanageable corporate structures. Furthermore, public ownership of some SOEs - due to their enormous debt - was all but nominal, with effective power lying within the purview of international financiers. Nonetheless, SOEs represented massive financial, investment, labour and technology resources and dominated Sub-Saharan Africa's transport, communication, power and defence-related technology sectors. Government's restructuring of SOEs therefore had to be far more than a simplistic process of privatisation. Although the promotion of competition should remain an integral aspect of restructuring, the state had to play a developmental role in addressing the legacies of apartheid.

Restructuring should involve a variety of options. These should include full and partial privatisation to access additional capital, markets or technology, involving joint ventures, employee participation schemes and community participation where appropriate. Any equity sales should maximise the best return to the national fiscus, yet should not be at the expense of the poor and their access to services. Finally, the document also put forward major plans for the restructuring of the big four which, *inter alia*, included proposals for extensive corporatisation, the commercialisation of many entities as a step towards their outright sale or entry into strategic equity partnerships, the concessioning off of others, making other enterprises available, including SAA, for an initial public offering (IPO), and the outright sale of various non-core units. Public Enterprises Minister Jeff Radebe added that the privatisation of state assets would be completed by 2004,

with a large portion of the sale revenue of about R40 billion consisting of direct foreign investment.

These targets were only to be very partially met. According to Gumede (2005: 108), the government privatised some eighteen enterprises between 1997 and 2004, raising about R28.7 billion, of which some R12 billion was used to pay off national debt, while Hassen (2005), citing Radebe directly, suggests that about R35.5 billion was realised, of which R22.5 billion was absorbed by the National Revenue Fund between 1997 and 2003. The specificity of the figures matters rather less than the reality that the pace of privatisation was, in practice, severely constrained - not just by continuing opposition from the unions (who consistently feared job losses) but by the sheer difficulties of turning the major state corporations around. This can be illustrated by reference to key SOE performances.

SOE performance

Detailed research is needed before it becomes possible to reach an informed assessment of the performance of SOEs since 1994 along the lines pursued by Grosh for Kenyan public enterprises. Nonetheless, a cursory review suggests that the performance of individual parastatals has ranged from reasonable to abysmal. For instance:

Eskom, regarded as the flagship amongst the parastatals, has undoubtedly been the best performing of the big four. Apart from meeting ambitious equity employment and procurement targets, Eskom has consistently recorded profits. Furthermore, between 1994 and 2000, it claims to have increased the proportion of electrified homes from 36 to 40 percent, and had committed itself to targets which focused upon the greatly extended provision of electricity to rural households (only 41 percent of which had been connected by 2001). By early 2005, it had secured approval from cabinet for a five-year R93 billion expansion, to be funded initially by its own cash flow but gradually augmented from the local and foreign capital markets, which would add 5 000 megawatts to its existing installed capacity of 42 000 MW. Facilitated by the revival of three previously mothballed power stations (Camden, Grootvlei and Komati), this would also entail the establishment of a pump storage scheme in the Free State and two open-cycle gas turbines, at Atlantis and Mossel Bay, with additional power to come from seven other gas turbines in terms of a R1.8 billion deal concluded with Siemens in July 2005. Beyond that, Eskom was also considering the establishment of a new coal-fired power station in Limpopo, increased hydro-power from Inga in the Democratic Republic of Congo, and possibly nuclear power from a fleet of pebble bed reactors. Against this, Eskom continues to face constant battles to collect payments and arrears (from municipalities and poor communities as well as from other regional governments' public utilities), while it has also taken a recent large knock by having to re-absorb Eskom Enterprises, a subsidiary formed in 1999 to drive its expansion into Africa, after a heavy loss of R719 million in 2003 signalled its overexpansion. Eskom is also widely criticised for its poor planning, its ignoring of renewable energy options, and its alleged misuse of monopoly powers.

Transnet (and its predecessors) had seen its workforce cut back from around 155 000 to 116 000 between 1990 and 1992 in its bid to become commercially viable. Even so, it only recorded its first profit in 1994, and that was a desperately slim one of R200 million on a turnover of R15 billion and assets of R40 billion. Although some subsidiaries had become profitable, Transnet as a whole was weighed down by an accumulated deficit on its pension fund, which although reduced from R10 billion in 1990 to R4.6 billion in 1994, continued to soak up operating profits. Thereafter, whilst various efforts were made to restructure Transnet (including proposals for privatisation of various subsidiaries), the operation continued to veer between losses and limited profitability, with management complaining that subsidiaries were starved of capital because of the need to service the pension fund deficit. By 2004, Transnet was in a state of some considerable crisis. Revenue had grown 5.7 percent from R41.3 billion to R43.6 billion during 2003-04, far less than the 14 percent growth of the previous three years; operating profit had fallen from R5.1 billion to R187 million; its gearing (the ratio of debt to equity) was an excessive 83 percent; and total debt had risen from R40 billion in 2000 to R63.7 billion in 2004.

Within this context, Spoornet, the rail subsidiary, had long faced the quandary - common to publicly owned railways in the modern era - of having to maintain various unprofitable lines open for reasons of social benefit, while having to face heavy competition on freight traffic from commercial road haulers. Meanwhile, SAA, another major subsidiary, had lurched from one crisis to another, the most notorious instance being its bringing in a supposedly high-flying American CEO, Coleman Andrews, who proceeded to earn himself early termination (and the largest golden handshake in South African corporate history) for signing a R4 billion Boeing B737 deal that the airline could not afford. Thereafter, SAA would have been driven into bankruptcy, had it not had the state's backing, after it gambled on the declining value of the rand by converting its hedge funds into dollars, only for an unforeseen rise in the currency's value to result in the airline suffering a massive R8.77 billion loss and a whopping R15 billion trading deficit in 2003-04.

The variable performance of the parastatals can be further illustrated by financial figures reported by the DPE for the SOEs for which it is responsible for the financial year ending in 2004:

SOE aggregated performances, 2003-04 (Rm)

	Transnet	Eskom	Denel	Arriva. kom	Alexkor (Diamond mining)	Safcol (Forestry)	Aventura (Resorts)
Turnover	43 637	32 646	4 442	1 728	265	682	138
Profit/(Loss) after tax	(6 323)	3 417	(377)	56	36	37	(5)
Dividend	Nil	569	Nil	Nil	Nil	50	Nil

As Grosh has indicated, the performance of public enterprises needs to be assessed by a variety of factors that go well beyond their immediate financial results. Nonetheless,

there is enough evidence here that the performance of key SOEs remains worrying.

A developmental state?

The ANC's commitment to the idea of the "developmental state" became prominent from the beginning of Mbeki's second presidential term. Building upon **An Accelerated Agenda**, this envisaged a more active role for the parastatals, the latter's importance reflected in the appointment of one of the government's most vigorous ministers, Alec Erwin, to head the Ministry of Public Enterprises following the 2004 general election. Hitherto, he declared, the performance of the SOEs had been anything but satisfactory. However, together they represented hugely strategic resources: with a turnover of R83.7 billion in 2004, combined assets of R175 billion and employing 136 000 people. If properly restructured they could be transformed into "drivers of growth and development". The shift in strategy indicated aspirations towards a much stronger, more interventionist state. Erwin announced in his 2004-05 budget speech that his policy was based around four pillars: the hiring of performance-driven CEOs; the rationalisation of large conglomerates to create focused businesses; the elaboration of a massive R165 billion investment programme to address chronic backlogs; and the harmonisation of SOE strategies. The SOEs were to operate to the same standards of profitability and efficiency as the private sector, which would be invited to participate, where appropriate, in strategic partnerships to bring in capital and know-how. Overall, some 26 "non-core" assets would be sold off, and "staggering turnarounds" were held to be already happening.

The new shift reflected the combination of "restructuring" with "transformation", that is, of extending state control and ownership over hugely strategic sites of the economy. It was to result, significantly, in the appointment of Maria Ramos, previously a much celebrated director-general in the Treasury, to head Transnet, and Ian Liebenberg, from the private sector, to head Denel. Both were given strong political backing to take on vested interests and to bring about corporate restructuring and renewal. This signified that, at topmost levels at least, the commitment to viability and efficiency was more important than colour. Certainly, the early efforts of Ramos (who was able to announce a profit for Transnet of R6.8 billion in 2004-05) have earned widespread plaudits, although plans under her leadership to sell off "non-core" assets are presently running into widespread and militant union opposition.

Some early conclusions

The broad thrust of this analysis is that, in many ways, the ANC government is recycling both South African and post-colonial African history, with the parastatals being viewed as important instruments for extending black control over strategic sectors of the economy, for increasing employment opportunities for an expanding black middle class, and indeed - via procurement, and carefully structures privatisations and public-private partnerships etc - for promoting BEE in the private sector. As under the pre-1994 governments, the parastatals are also viewed as playing a

major role in driving industrialisation and growth and, as in wider Africa, where there was no indigenous capital-owning bourgeoisie, continued state ownership is viewed in many regards as preferable to selling out to foreign or, in the South African case, white interests. Yet, as the government clearly recognises, the challenge is for the SOEs to perform both efficiently and profitably.

Further research is likely to endorse the government's own assessment that the performance of the parastatals since 1994 has been unsatisfactory. The argument will be put forward in some quarters that one reason for this is that the empowerment thrust has led to under-qualified and inexperienced blacks being put into key professional and technical positions, this matched by a corresponding loss of white skills and expertise. The extent to which this has occurred is clearly contentious, and not amenable to uninformed judgement. Any serious evaluation would want to look, *inter alia*, at the extent to which similar arguments were made about Afrikaner empowerment after 1948, how other African countries coped after independence, the disastrous impact of apartheid educational policies on the majority of the population, and the clear need for blacks to "catch up", gain experience, share equal opportunities and so on. Clearly, "empowerment" represents an additional challenge that the SOEs have to meet in improving their present performance, alongside those of tackling the cumbersome parastatal legacy which the NP left behind.

The government's recent advocacy of a "developmental state", incorporating a vigorous determination to restructure the SOEs, echoes the words of the Kenyan government's famous Sessional Paper No. 10, "African Socialism", which sought to achieve a trade-off between promoting rapid growth and equitable distribution:

The most important of these policies is to provide a firm basis for rapid economic growth. Other immediate problems such as Africanisation of the economy, education, unemployment, welfare services, and provincial policies must be handled in ways that will not jeopardise growth ... if Africanisation is undertaken at the expense of growth, our reward will be a falling standard of living (cited by Grosh 1991: 15).

Kenya - whose colonial, settler-based, state-interventionist

economy was not dissimilar from that of South Africa today - was thereafter to achieve some of the highest growth rates in Africa, and even today, the economy has remained one of the more vigorous on the continent. Yet today's Kenya has also become a byword for patrimonial politics, disappointed hopes and corruption, with misuse of state finances and resources (including parastatals) having become rampant. No mention has been made here of quite a number of scandals which have afflicted South Africa's parastatals since 1994. Suffice it to say that the mere mention of "Oilgate" - the media's label for a transaction in which R15 million was advanced by PetroSA to an empowerment company, Imvume, which in turn donated the money to the ANC in the run-up to the 2004 election (at apparent loss to the taxpayer) - gives a strong indication that unless the transformation and restructuring of parastatals is accompanied by an appropriate commitment to corporate governance and public accountability, Kenya's eventual fate could well become that of South Africa.

This paper has been completed under the auspices of a wider HSRC Project on "Race and Redress in South Africa" financed by the European Union's (EU's) Conflict and Governance Facility. It also draws upon a paper to be published in the HSRC's annual State of the Nation volume for 2006-07.

REFERENCES

- Christie, R (1984) *Electricity, Industry and Class in South Africa*. Albany: State University of New York
- Fine, B and Rustomjee, Z (1996) *The Political Economy of South Africa: From Minerals-Energy Complex to Industrialisation*. London: Hurst and Company
- Grosh, B (1991) *Public Enterprise in Kenya: What works, what doesn't and why*. Boulder and London: Lynne Reiner
- Gumede, W (2005) *Thabo Mbeki and the Battle for the Soul of the ANC*. Cape Town: Zebra Press
- Hassan, E-K (2006) *Policy reversals for Efficiency, not Equity: State Owned Enterprises Restructuring in South Africa*. Naledi, mimeo
- O'Meara, D (1996) *Forty Lost Years: The Apartheid State and the Politics of the National Party, 1948-1994*. Johannesburg: Ravan Press; Athens, Ohio University Press
- South African Institute of Race Relations (SAIRR). Various years. *Race Relations Survey*. Braamfontein: SAIRR
- Tangri, R (1999) *The Politics of Patronage in Africa: Parastatals, Privatization and Private Enterprise*. Oxford: James Currey





**PARTNERSHIP.
PURPOSE.
PROGRESS.**

Pfizer – benefiting communities in Africa and around the globe

At Pfizer we have a proud tradition of ensuring that the communities in which we live and work benefit from our value of **community**, which has been one of our most cherished and deeply-rooted values since our inception in the USA in 1849 and South Africa in 1954.

As a global leader in pharmaceuticals Pfizer scientists work daily to discover and develop innovative, value-added products that improve the quality of life of people around the world and help them enjoy longer, healthier and more productive lives. The company is a leader in human pharmaceuticals, with particular strength in the treatment of central nervous system disorders, cardiovascular diseases, bacterial and viral infections, women's health, oncology and ophthalmology.

However, beyond medicines, we are taking actions to build a healthier world. We are reaching out to more people to work as partners, so that we can measure our success not only by our business results, but by our performance as a good corporate citizen.

Access to medicines and care

Our commitment to pharmaceutical access extends back over half a century. During World War II, Pfizer developed the first successful process to mass-produce penicillin, which was donated to civilians and soldiers on the beaches of Normandy. In the 1950s, Pfizer helped support the development of polio vaccine. Today, we continue to build on this tradition of extending a helping hand.

Diflucan® Partnership Programme (DPP)

Our flagship partnership was first launched in 2000 with the SA Ministry of Health. The Programme helps to ensure proper diagnosis and care for patients who cannot afford treatment of two fungal opportunistic infections commonly associated with HIV/AIDS; cryptococcal meningitis and oesophageal candidiasis. Diflucan® is made available free and without limit on time or value, to state facilities and NGOs. The donation is coupled with a training programme ensuring that healthcare professionals are able to correctly diagnose, treat and manage the infections. Based on the success of the Programme in SA, Pfizer extended the DPP to all developing countries with an HIV/AIDS prevalence of more than 1%. Today, 45 countries in Africa, Asia, Latin America and the Caribbean are participating in the Partnership. To learn more, please visit www.diflucanpartnership.org.

Infectious Diseases Institute (IDI), Kampala, Uganda

This successful partnership with Makerere University, the Academic Alliance Foundation, Pangaea Global AIDS Foundation, the Infectious Diseases Society of America and Pfizer has seen the opening of a modern treatment and training institute at Makerere University. The centre trains 250 African doctors annually in the latest advances in HIV/AIDS prevention, diagnosis and treatment. The trainees return to their countries to teach local health care providers. The centre is ultimately expected to provide appropriate care to 85000 patients. At present, the IDI has several operational research projects underway focusing on adherence, development of clinical guidelines, studies on Delivery of Antiretroviral Therapy (DART) and treatment of Kaposi's sarcoma.

Soweto Hospice and Mapetla Day Care centre

The Hospice Association of the Witwatersrand was founded in 1979 to provide care to the terminally ill. In 1998, as the AIDS pandemic accelerated the Association opened a Hospice in Soweto. They started with a home-care nursing service. Day care followed in 1999, with an in-patient facility and training centre added in 2000 and 2002 respectively. A second day care centre was opened in 2003 in an abandoned school at Mapetla. Pfizer is an active partner of the Hospice, providing support for the day care centre at Mapetla, for weekly skill upgrading of Community workers and community education at schools, churches, clinics and squatter camps, as well as support for 5th Year Medical student training. In 2005, Pfizer supported the building of a new and bigger hospice facility in Diepkloof, Soweto.



Support Grant

Simon Mdakane was highlighted on the cover of Pfizer's Annual Report in 2002 as one of the patients being treated for a fungal infection through the Diflucan Partnership Programme at the Soweto Hospice. Pfizer maintained a good relationship with Simon and formed a grant to enable him, along with his family, to obtain health care and access medical treatment and antiretroviral medicines. After the death of Simon and his wife in 2003, Pfizer continued to support their surviving daughter and the Children's Home where the daughter was placed until she passed on in March 2006.

Pfizer and Tswelopele Tshepho Centre

Pfizer and Tswelopele Tshepho have partnered to develop an HIV/AIDS poverty bracelet, the proceeds of which ensure access to treatment for disadvantaged South Africans.

Tswelopele Tshepho Centre for Excellence is a not-for-profit organization, guarding the ray of sunshine and hope in the lives of patients with HIV/AIDS. From the proceeds of the bracelets, patients registered at the Centre are afforded all ARV medicines, blood work, doctor consultations and pre and post-diagnosis counselling.

The Medical Director at the Centre stated: "The initiative is already reaping rewards for our patients, who are receiving direct benefit from the partnership. Their lives have been changed by this forward-thinking approach to treatment and funding and we are very thankful."

University of KwaZulu Natal Nelson R. Mandela School of Medicine

Pfizer was the largest single partner in the development of the unique HIV/AIDS Virtual Information Systems Gateway (electronic library) and the Molecular research facility at the University's Medical School. This international clearing-house will assist in streamlining the research process, support researchers and encourage research in HIV/AIDS, honing the ability to access, retrieve and disseminate information to scientists across the world and allowing researchers to conclude research more quickly and accurately, leading to wider publication and further local and international recognition.

Access to our talent and expertise

Global Health Fellows

The Fellows programme started in 2003 and aims to place Pfizer colleagues for up to 6 months in fully paid assignments with NGOs and other organisations around the world to provide all levels of assistance in fighting the HIV/AIDS pandemic and other major threats to human life. Fellows span the range of disciplines at Pfizer and are placed with local NGOs in Africa, Asia, Eastern Europe and Latin America, dependant upon the needs of the host organisation. While on assignment, colleague employment contracts remain in force. To date, 90 Pfizer Fellows have been seconded around the globe.

Fostering colleague participation

Gifts matching

While Pfizer's partnership with external organisations has benefited millions of people around the world, it is not always up to those outside to make the only difference. Today, many employees give generously of their time, talents and money to community organisations. Pfizer is proud to match any charity work done by any colleague to a monetary amount per project per year.

In 2005, Pfizer Inc. contributed over \$650 million toward improving the quality of life for people around the world. In SA and Africa, the investment in the community was well over R100 million. Finding solutions to global health problems requires the combined expertise of many organisations and individuals with the knowledge and commitment necessary to make a difference. Working with governments, businesses and non-profit organisations Pfizer is building partnerships for a healthier world.

**For more information call (011)320-6000
or e-mail: lebogang.taunyane@pfizer.com**

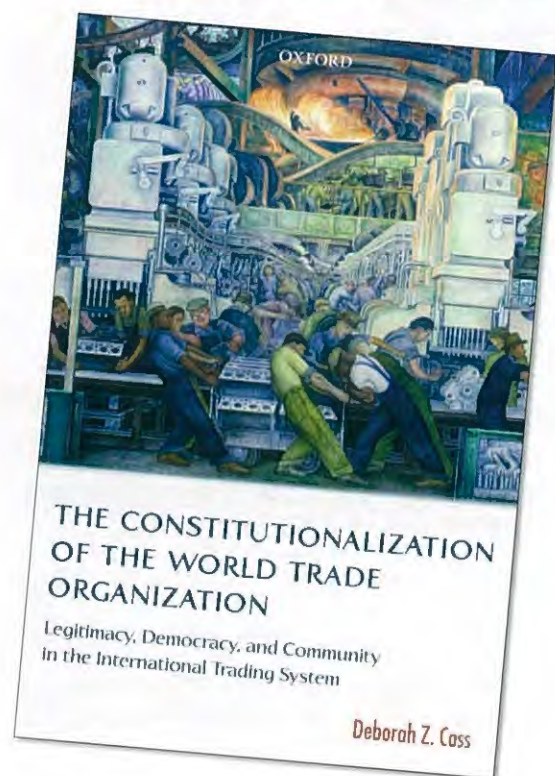


THE CONSTITUTIONALIZATION OF THE WORLD TRADE ORGANIZATION: LEGITIMACY, DEMOCRACY, AND COMMUNITY IN THE INTERNATIONAL TRADING SYSTEM

DEBORAH Z CASS

Oxford University Press: Oxford, UK, 2005. 266 pp

REVIEWED BY DR MATAYWA BUSIEKA (INTERNATIONAL AND AFRICAN AFFAIRS, DEPARTMENT OF PUBLIC SERVICE AND ADMINISTRATION)



It is often hard to budge the truism of the benefits of free trade and the efficiency of free markets at the core of the globalisation concept. The suave argument says that when everyone opens up their borders to the goods and services of all other countries (i.e. abandoning protectionist policies), everybody ultimately wins. That is the theory of globalisation. The reality, unfortunately, is somewhat different. It is clear that the greatest challenge facing many developing countries is unfair international trade.

This book should be viewed in this context. The treatise is an intense interrogation of the constitutionalism of the World Trade Organisation (WTO) framework. It investigates and weighs the WTO claim to a constitutional disposition, as it is currently structured. This investigation is timely in

view of the recent onslaught on globalisation by the more collective forces of the developing world. In the face of accusations of appalling insensitivity to the interests of a vast constituency, the question the WTO's claim to global legitimacy is a most sobering one.

The book energetically critiques the idea of globalised constitutionalism, which the author cites as the cause of the rapid contraction of states' capacity to decide on matters of national interest. The author opts to venture and finds herself bemoaning the way that tenets of private law are employed in constitution-making processes for an international economic order. She makes no bones in arguing that this is another sorry product of a skewed global normative construct. This latter postulation readily brings to mind the old, yet unresolved, dispute regarding the standing of domestic law vis-à-vis contracted international obligations. The book cleverly compartmentalises an obviously complex debate into "rights" and "values", and proceeds to deliver razor-sharp argument that cuts deep and reveals the misaligned global constitutional nomenclature.

The book incisively gnaws at the validity of the WTO constitutional order in the face of imploding forces, such as the decline of the state as the repository of constitutionalisation processes and the enigmatic yet unavoidable phenomenon of interstate dependency - not to mention the variable mix of governance models that are popping up every other while.

Developing countries produce cheap, mainly raw, materials that do not fetch good returns in the international market. In contrast, the developed countries refine these products and later sell them to the developing world at a prohibitive premium. The negative effects of globalisation are commonplace in many developing countries. This grim reality creates a big challenge for the developed countries that have the responsibility to make globalisation work for everybody. Third world countries justifiably reason that, if globalisation is free commerce, it is free only for Western

- often really just American - corporations. It is on this score that the book interrogates the orientation of the WTO's ethos on legitimacy, community and democracy.

Should democracy not then be preferred to the more problematic notion of constitutionalism? There is no doubt that global poverty constitutes the most challenging structural fault in the contemporary world economy and in global human society. Logically, this means that the correction of this fault has to be at the centre of the politics, policies and programmes of progressive politics.

It is clear that most poor countries have had their suspicions of the intentions of the United States ever since the WTO

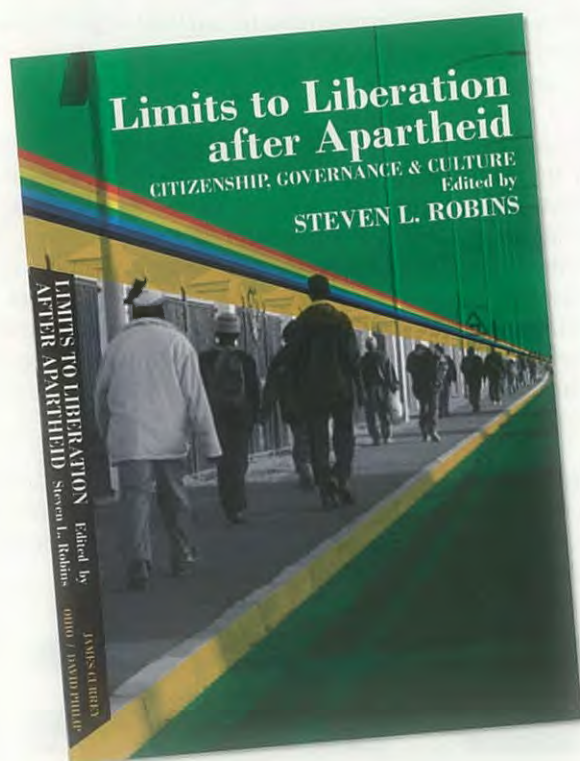
idea was germinated in the General Agreement on Tariff and Trade (GATT) in 1947. This development happened soon after the US had pushed for the commencement of the now much-maligned International Monetary Fund and the World Bank. The current animated forays by such powers to reach out to the most downtrodden third world countries through debt relief, more palatable trading regimes and increased overseas aid give the book relevance. The author's critique of the complex global trade configurations that touch on the WTO's constitutionalisation presents the book as an important source of insight into the normative dilemmas of globalisation. The book is a must-read and an eye-opener for those accustomed to the theatrics of the WTO merry-go-round that masquerades as democracy in practice.

LIMITS TO LIBERATION AFTER APARTHEID: CITIZENSHIP, GOVERNANCE AND CULTURE

STEVEN L ROBINS (ED)

James Currey: Oxford/Ohio University Press: Athens, Ohio/David Philip: Cape Town, 2005. 246 pp

REVIEWED BY JEREMY CRONIN, MP



This collection of essays on post-apartheid South Africa brings together insights drawn from a variety of academic disciplines, but mainly social anthropology. While there is considerable diversity across the collection, all the contributions explore the paradoxes of our "new" South Africa, and all engage with the limitations of a globally hegemonic neo-liberalism.

Many of the contributions explore these limitations by looking at the tension between individual-rights assumptions linked to the market - citizens as buyers and sellers - and the reality, or at least affirmation, of cultural collectives and cultural plurality.

In his introduction, editor Steven Robins refers to his own study of a Khomani San land claim. The successful claim founders in practice, with the supporting NGO torn between the donors' contradictory desires for "authentic Bushmen" on the one hand and liberal democratic forms of citizenship and accountability on the other.

In their article, John and Jean Comaroff build on the case of Mrs Kedibone Elizabeth Tumane, of Mononono in the

North West province, who defied local tradition by refusing to sprinkle the herb mogaga on her path when walking abroad in communal space following the death of her husband. She was shunned within her village, and leading figures in the community insisted that she should move away for this infringement of custom. The case went to the courts and became a major talking point in the province. The court's rulings, however, proved powerless to remedy Mrs Tumane's very real isolation within her village. An exaggerated emphasis upon liberal rights, the Comaroffs conclude, can obscure "the most brutal of truths: that power produces rights, not rights power..."

Many of the fascinations of the collection are linked, like this, to the close observation of localised space and human interaction. Much of the localised space studied in this collection happens to be in and around Cape Town. Those who hate the pomposity and socially excluding nature of Century City, on the immediate outskirts of Cape Town along the N1 freeway, will appreciate Rafael Marks' devastating critique, "Palaces of Desire: Century City and the Ambiguities of Development". He writes, "There are no low-cost housing projects here, or public schools or libraries, only those aspects of urban life that can be conveniently repackaged, reprocessed and re-imaged". With its "cacophony of bastardised architectural 'styles', the development is a postmodern simulacrum ... the ultimate real fake. Yet its ramifications are anything but fake."

Marks notes how the construction and maintenance of the feeder roads and services for this entirely privately-owned and for-profit monstrosity have been subsidised by government. "[H]alf the cost of Sable Way, a slip road off the N1 providing the main access into the complex, was paid for by the public authorities, a sum of money representing nearly one-quarter of the province's total housing and local government budget." (At the time, the budget was under the control of the former NNP).

Elaine Salo has a wonderful chapter on adolescent women and gangsters in Rio Street, Manenberg, on the Cape Flats. Sean Jacobs and Ron Krabill observe the same Manenberg, but from slightly more distance, as it was reflected through the media following a serious August 1999 wind-storm (that the media called a "tornado"). The storm left many Manenberg residents homeless. It also left other families in neighbouring African communities homeless, but they were largely ignored by the media. Jacobs and Krabill note how Manenberg's residents receive concerned, if somewhat patronising, attention as victims in the immediate aftermath of the disaster. But what about that other tornado, they wonder, the market-driven construction of Manenberg as a community of mythical middle-class, nuclear-family households - and, therefore, of inevitably "defaulting

clients"? This construction has resulted in wide-scale water and electricity cut-offs - a social tornado, as devastating as the natural one, that provokes little media attention, still less sympathy.

The vexed question of "coloured" ethnicity is tracked in Shannon Jackson's "Coloureds don't Toyi-Toyi", which contains several insightful participatory research gems, including a T-shirt spotted at a gathering, emblazoned with the words "liewer Khoi-Khoi as toyi-toyi" (rather Khoi-Khoi than toyi-toyi). But here, and in some of the other essays, academic jargon can become overwhelming: "the habituation of these liberal ideals through the combined control of the individual body, the built environment and the abstracted domains of civic life has left today's coloureds suspended in a kind of permanently tensed hypervigilance about public representations of their own interiority".

That could surely have been said more simply.

But whatever the opaqueness, Jackson's later conclusion is appropriate and forms an important theme in the book. It concerns the shortfall between the allure of individualised fulfilment as a rights-bearing citizen and market-bound consumer, and the material conditions in which many communities actually live.

In the face of this reality, at least two of the contributions deliberately refute the pessimism of, for instance, Naomi Klein's *No Logo, No Space, No Choice, No Jobs*. Salo, in her study of Manenberg youth, and Andrew Spiegel in his pursuit of the etymology of the word "spaza" (as in "spaza shop") show how poor communities might be victims of global market forces, but they are not just victims. They are also agents who use the resources of the local, the vernacular and the indigenous to partially appropriate and redefine both themselves and the meanings of the globally dominant discourse.

Spiegel argues that the word "spaza" is probably derived from the Zulu *ukuphazamisa* - "to dissemble and thereby to bewilder and mislead." He also shows that it is used as a qualifier for more than just a humble house-turned-"shop". It is often applied to all kinds of playfully aspirant entities, like cheap tackies that are "spaza-Nikes". While these guerrilla tactics in the domain of language - the strategies of the trickster - do not usurp the overall domination of neo-liberalism, they certainly challenge it and create space for poor communities to define themselves.

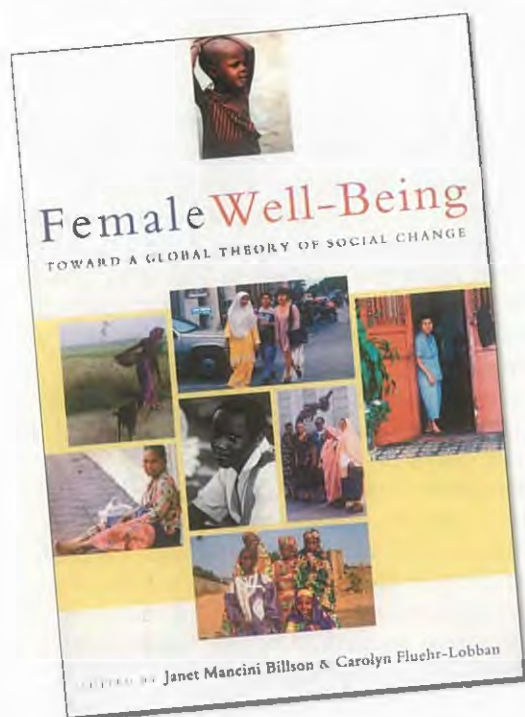
The collection invites us to appreciate that self-ironising spaza shops and spaza-Nikes are a far greater cultural asset to the new South Africa than the strained pomposity of a "globally competitive" Century City.

FEMALE WELL-BEING: TOWARD A GLOBAL THEORY OF SOCIAL CHANGE

JANET MANCINI BILLSON AND CAROLYN FLUEHR-LOBBAN (EDS)

Zed Books: London, 2005. 432 pp

REVIEWED BY JANE BENNETT (AFRICAN GENDER INSTITUTE)



There is no doubt that the phrase “female well-being” has the potential to conjure up sentimental images of femininity, ensconced in claims to “difference”, at best and at worst, simply whining. It is, however, a phrase well-rooted in critical sociological work on international connections between poverty, gender and the meaning of “quality” within life. Following from the work of Deepa Narayan (*Voices of the Poor: Crying Out for Change*, 2000), it is broadly understood that “well-being” should be imagined as a complex reality, deeply informed by material resources but far from defined by these. “Well-being” thus encompasses access to basic resources (water, housing, food) and to adequate employment, and also issues of bodily integrity (safety from violence, good household relationships), freedom of choice and action, and social citizenship as critical to the possibility of living a good life.

In this book, Mancini Billson and Fluehr-Lobban are concerned with the well-being of women within a global profile of massive social change across the past century. Their collection seeks a framework through which to imagine a global “female” and to respond to the oxymoronic sense that, while the twentieth century has seen major shifts towards gender justice, the lives of women remain often

beleaguered by intransigent, even irrational, inequalities.

This ambitious task is approached by using the categories of social-analysis work as lenses into “well-being”. Eleven case studies are presented, written by country teams in Bangladesh, Colombia, Canada, the United States, Croatia, Japan, Thailand, Sudan, South Africa, Iceland and the United Kingdom. Each case study has obviously been written under strict guidelines from the editors; their formats are very similar as they contextualise trends in literacy, infant mortality, access to political power, education, maternal mortality and employment within very general sketches of the country’s twentieth-century history. Introductory and concluding chapters by the editors bookend the case studies, offering a rationale for the approach and attempting to synthesise the diversity of information generated through the case studies.

In its own terms, the collection is interesting. The wealth of baseline information (presented in accessible tables, and heavily reliant on public policy documents, many of which are available through the internet - a strength) overwhelmingly presents a picture of complex legal, economic and social gender inequality. In an era where one can easily encounter the view that “women’s struggles are over; all that has been dealt with”, the starkness of Billson and Fluehr-Lobban’s conclusions are useful.

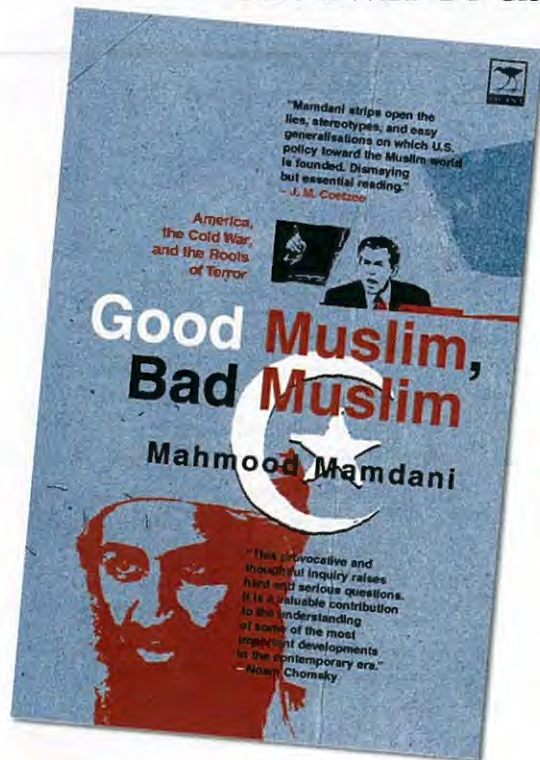
The decision to address so broad-ranging a theme, however, and to include exploration of vastly different countries (Sudan and Japan; Bangladesh and Iceland ...) has inevitable impacts on the scholarly depth of the collection. The realities of lives (women’s and men’s) become flattened under the homogenised “female,” despite some authors’ efforts to remind the reader that the category is a desperately thin way of understanding the lives of people who are multiply located through caste, race, class, sexuality, religion, age, and so on.

This collection is a rich compendium of information, and the ambition of the editors should also be applauded. Why shouldn’t it be possible to theorise globally? We do, however, know some of the replies to that: global theory lacks nuance, and to lose nuance is to lose imagination and the miracle; one “female” is never, in the end, another; and where gigantic strides against injustice have been made (such as those which changed women’s access to formal economies), these have required intricately contextual and politicised strategies whose significance cannot easily be universalised.

GOOD MUSLIM, BAD MUSLIM: AMERICA, THE COLD WAR, AND THE ROOTS OF TERROR

MAHMOOD MAMDANI

Jacana Media: Johannesburg, 2005. 304 pp
REVIEWED BY CIRAJ RASSOOL (HISTORY, UWC)



This is an important study of political violence, and how it has been understood and explained, especially in moral, cultural and historical terms. It is especially concerned to understand the September 11, 2001 (9/11) attacks on the United States and to critically analyse explanations that have rested on notions of a “clash of civilisations” and that have resorted to essentialised ideas about culture and “Islamic terrorism”. Ugandan by birth, Mahmood Mamdani’s previous research studied various aspects of African history and political economy: the post-colonial state in Uganda, the creation of “citizens” and “subjects” in colonial and post-colonial Africa; whether and how settlers become natives in African history; and how victims became killers in Rwanda’s genocide. Based at Columbia University in New York since 1999, after an academic career in Tanzania, Uganda and South Africa over three decades, Mamdani was drawn to trying to understand how culture and religion had become politicised and how this was expressed in the rise of political Islam.

For Mamdani, 9/11 and the emergence of terror as a central element in Islamist politics needs to be explained in

relation to historically-shaped political encounters. Refuting the association of extremist religious tendencies with political terrorism, Mamdani argues that terrorism needs to be understood as “a modern political movement at the service of a modern power”, whose roots can be traced to the Cold War. After their defeat in Vietnam, United States foreign policy shifted to a series of proxy wars as a means of rolling back political power obtained by former guerrillas in southern Africa and central America. But it was Afghanistan that was the “high point” of the Cold War, in which the US provided military support for the growth of the mujahideen and for the recruitment of Islamists from the Muslim world and further afield. The Afghan jihad “was in reality an American jihad”, argues Mamdani, which had been cast as an international Muslim struggle. After the Soviet withdrawal in 1989, the Taliban became a focus of support by the US and Pakistan as a means of restoring “law and order”, with terror unleashed by the Taliban on the Afghan people “in the name of liberation”.

The invasion of Afghanistan and Iraq occurred less than two years after 9/11 as US methods of low-intensity war gave way to “high-intensity direct warfare”, an approach that sought to complete the “unfinished business” of the Cold War. More than being about oil, Mamdani suggests that the occupation of Iraq needs to be understood for its political significance in providing an opportunity for the political map of the Middle East to be redrawn. This is connected to policies that sought to turn Palestine into an apartheid-like bantustan and that meted out collective punishment and racial branding upon Palestinians as the Zionist project in Israel continued to unfold under the political and ideological umbrella of the US. Mamdani argues that the “war on terror” indeed has common ground with the political terror of 9/11, in the American disregard of collateral damage, in its seeking collective punishment and in provoking vengeance. Instead, what is needed, he suggests, is for a “moment of injury” to be turned into a “moment of freedom”. 9/11 provides an opportunity for the United States to reflect upon its place in the world and to begin to learn that it “cannot occupy the world”. This would also entail that the US begin to memorialise its own “monumental” foundational crimes of genocide of Native Americans and slavery of African Americans. Indeed, argues Mamdani, “civilisation cannot be built [upon] forgetting”.

MAKE A SKYF, MAN!

HAROLD STRACHAN

Jacana Media: Johannesburg, 2004. 260 pp
REVIEWED BY TIM JENKIN



There are two things you need to know about **Make a Skyf, Man!** if you are planning to read this book. The first is that you have to be an English and Afrikaans-speaking South African; the second is that you have to treat it as a novel, not as a historical account of a prison experience in the 1960s.

If you are not a South African there are great chunks of this book that will just not make sense to you, and if you are looking for an accurate, non-fiction account of prison life in the 1960s, you won't find it here. There are many other books dealing with the same subject more accurately.

I made the mistake of starting to read it as a factual account and then couldn't help asking why the author wrote it at this time and not immediately after he was released from prison. After all, the political message is pointless now that the brutal regime he describes is gone. When you catch on that the author is not trying to be too accurate and that the political message is quite secondary now, then it reads as a humorous, satirical narrative. The language is that of a campfire storyteller rather than a historian, braided with prison *taal* in the tradition of Herman Charles Bosman. You can even hear the South African accent coming out of the text.

One can't help feeling sympathy for Strachan all the way through, from his amateurishness as a bomb-maker and underground activist, through his messy trial, his frustrating prison experience and finally to the discovery that there was another man in his wife's life. He seems to have received such a rough deal when, with retrospect, he was doing something quite noble in challenging the apartheid monster. But that's life and there are no rewards for being noble.

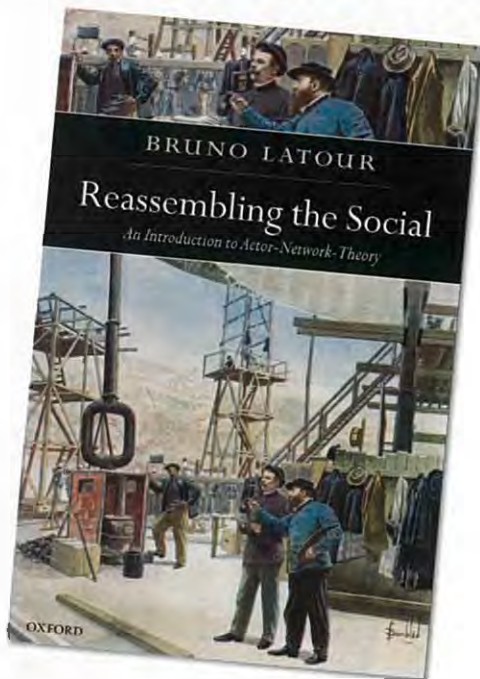
His treatment of the ideological Stalinists of the time is amusing, showing how some of our great leaders were driven totally by ideology rather than common sense. Are there still people like this today, or do they look back and laugh at it all like Strachan does?

REASSEMBLING THE SOCIAL: AN INTRODUCTION TO ACTOR-NETWORK-THEORY

BRUNO LATOUR

Oxford University Press: Oxford, 2005. 301 pp

REVIEWED BY JOHANN MOUTON (SOCIOLOGY, STELLENBOSCH)



Bruno Latour is a French sociologist of science, best known for his books *We Have Never Been Modern*, *Laboratory Life*, and *Science in Action*.

In *Reassembling the Social*, Latour is deliberately polemical. The central argument is his denial of the existence of something called "the social". Latour is critical of the way in which the concept of the social has become a sort of "black box" which we use to bracket all sorts of connections that should be explored in more detail. The orthodox position in much of recent social theory, as he describes it, includes among its tenets the following:

- there exists a social "context" in which non-social activities take place
- the social is a specific domain of reality
- the social can be used as a specific type of causality
- the full effect of the social is only visible to social scientists' disciplined eyes.

Latour argues that the word "social", as used by social scientists, has become laden with assumptions to the extent that it has become a misnomer. It has become a word that designates two different things: a process of assembling and a type of material, distinct from others. Latour sets out

to show why the "social" cannot be constructed as a kind of material or domain, and disputes attempts to provide "social explanations" of other states of affairs. While these attempts have been productive in the past, the very success of the social sciences means that they are no longer so. According to Latour, we have to return to the original meaning, redefine the "social" and allow it to trace connections again. It will then be possible to resume the traditional goal of the social sciences. This approach, a "sociology of associations", has become known as Actor-Network-Theory.

Part One reopens the questions that recent sociology has ignored or foreclosed on (Latour labels them "sources of uncertainty"): What are groups? What is action? What are objects? What's the relationship between nature and society? What does it mean to write?

In the second part, Latour addresses the problem of moving between the local and global in social theory by effectively denying the existence of either.

So, what is Latour's main conclusion: can the social be reassembled? His reply: "[T]he question of the social emerges when the ties in which one is entangled begin to unravel; the social is further detected through the surprising movements from one association to the next; those movements can either be suspended or resumed; when they are prematurely suspended, the social as normally construed is bound together with already accepted participants called 'social actors' who are members of a 'society'; when the movement toward collection is resumed, it traces the social as associations through many non-social entities which might become participants later; if of a common world, what I have called a collective; but if there are no procedures to render it common, it may fail to be assembled; and lastly, sociology is best defined as the discipline where participants explicitly engage in the reassembling of the collective." (p 247)

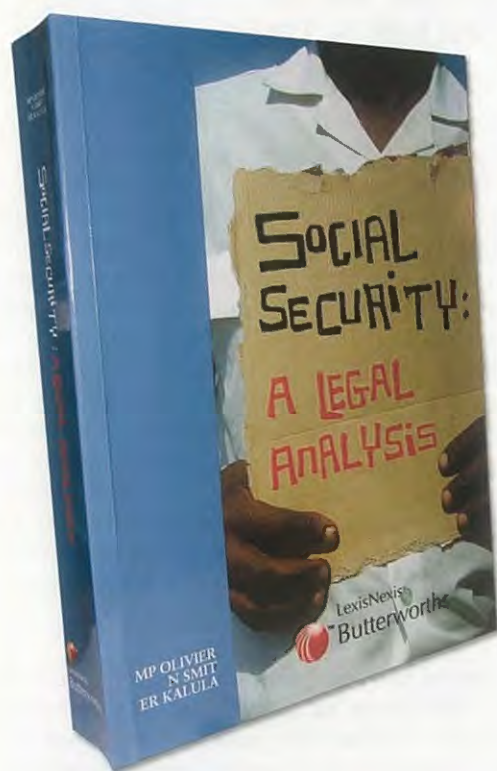
As these concluding comments show, Latour has again not shied away from taking on the "big" epistemological and philosophical questions of the social sciences and sociology in particular. As usual, he is innovative and daring in his analyses and proposals, which makes reading this book in itself eminently worthwhile!

SOCIAL SECURITY: A LEGAL ANALYSIS

MP OLIVIER, N SMIT, ER KALULA (EDS)

Butterworths: Durban, 2003. 759 pp

REVIEWED BY SAM KOMA (REGENESYS SCHOOL OF PUBLIC MANAGEMENT)



Social security: A legal analysis is the work of well-established and notable academics in the field of social security both within and outside South Africa. The field of social security is presently undergoing challenging and interesting stages of development and reform, informed by the South African government's continuing efforts to create a comprehensive system of social security for the benefit of vulnerable and marginalised groups. This book comprehensively covers an array of issues pertinent to social security from legal, economic, social and administrative perspectives.

The book begins with the socio-economic context and an analysis by GCZ Mhone, which touches on demographic trends, education level and labour market status amongst others in South Africa.

This is followed by MP Olivier's reflection on the concept of social security. It offers an inclusive concept of social security, taking into account evolutionary and innovative developments related to social security.

The legal framework and the scope and ambit of existing social security in South Africa is considered next. The authors give an overview of the strengths and weaknesses of the existing social security framework. This relates to both the social insurance and social assistance schemes provided by the government.

"Scope of Coverage", by Olivier and Kalula, looks at the administrative and institutional frameworks governing social security provisioning by both government and private institutions. The authors further describe the common problems associated with service delivery and the administration of social security schemes.

The different sources of social security financing, including both contributory and non-contributory systems, are also addressed. More importantly, the constitutional provisions relating to the budget process and allocations are provided.

Another chapter elucidates the role played by various forms of informal social security, the reasons for reliance on this system and a framework for the integration of informal social security into the formal system. This chapter gives an enriching and wider perspective on issues related to informal social security within the broader field.

Indirect social security, its link with the Constitution, and in particular the Bill of Rights, is introduced and superbly elaborated with the relevant sections pertaining to indirect social security rights and their practical applications.

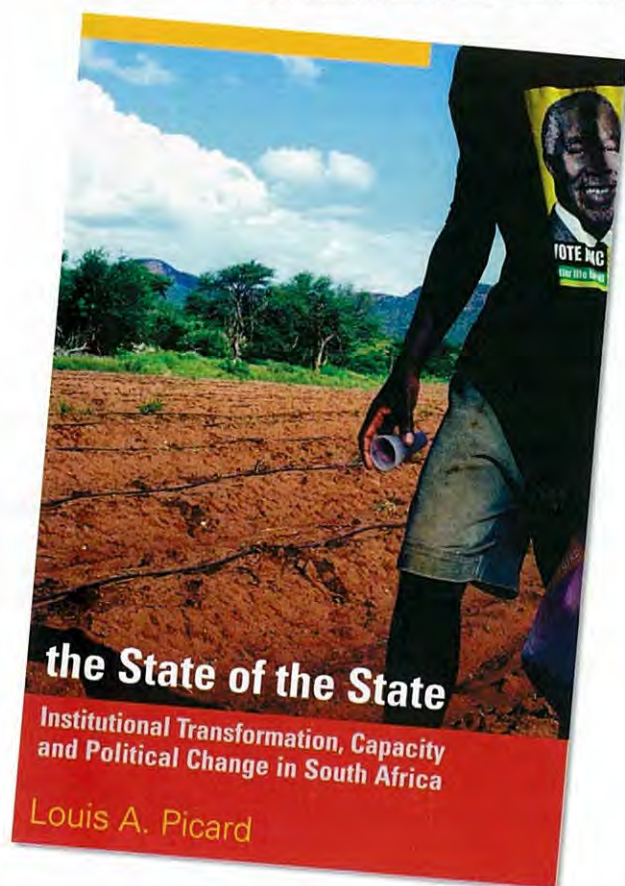
This book further reflects on critical issues such as: the constitutional framework; international and regional (SADC) standards; instruments and structures governing social security provisioning; and reform developments of the South African social security, healthcare, unemployment insurance and others.

In view of its wide-ranging topics, this book is worth recommending to academics, researchers, students and practitioners involved in the field of social security provisioning and other related fields. More fundamentally, the book offers well-researched and thoughtful observations, particularly in the context of South Africa and the region.

THE STATE OF THE STATE: INSTITUTIONAL TRANSFORMATION, CAPACITY AND POLITICAL CHANGE IN SOUTH AFRICA

LOUIS A PICARD

Wits University Press: Johannesburg, 2005. 390 pp
REVIEWED BY PETER T JACOBS (ECONOMICS, UWC)



these problems. A few commentators on the left claim that the post-apartheid state's macroeconomic policies, modelled along the lines of World Bank/IMF thinking, are subverting the ability of public institutions to deliver essential social services to the poor. At a general level, several questions arise from these contesting perspectives of state institutions. How has the administration of the South African state evolved from colonial times to the 21st century, especially in terms of objectives and operations? What connections exist between public sector institutions and other spheres of society (economy, etc)? With regard to these questions, what lessons can be learned from comparable experiences in South Africa and other African states? Which theories of "institutional structures and processes" can best explain the state of African public institutions?

These are among the questions addressed in Louis Picard's timely book, *the State of the State*. This meticulously-researched book examines the goals and workings of South Africa's state administration under four presidencies from 1982 to 2005. It subdivides this period into PW Botha's apartheid administration of the 1980s; the "long transition" dating from February 2 1990 until the local elections in 2000; and the early part of the second Mbeki administration.

The author gathers evidence to defend a provocative proposition at the heart of this book. African states, if seen as "institutional states", Picard argues, are "complex structures and processes" rather than unitary actors – a complex and fragmented system of various interest groups within which the bureaucracy is embedded to serve "their own immediate interests". It suggests a more nuanced and richer understanding of public institutions than viewing the state as a "unitary actor" or in terms of the apolitical and technocratic discourse often found in development management thinking.

Picard suggests that a new generation of bureaucrats inherits the institutional legacy "the group dynamics and interests" of previous generations. This includes ongoing competition between branches of the civil service bureaucracy for control over resources and power. Therefore, in terms

Twelve years after the end of apartheid, lively public debates about service delivery, ranging from access to healthcare to housing and electricity, are taking place in South Africa. In the 2006 local government elections, these issues stood at the centre of exchanges, often threatening to flare up in violent clashes between political parties and communities. Explanations for the country's appalling service delivery record invariably amount to questioning the objectives and workings of state institutions, past or present. Those who assert that the "legacy of apartheid" or the "lack of institutional capacity" is to be blamed essentially imply that these are problems inherited from the "old regime". In sharp contrast to this "backward-looking view", others, from both the right and left of the political spectrum, point at corruption among post-apartheid public servants as the cause of

of this conceptual framework, African states have been non-developmental or utter failures because successive post-colonial bureaucratic elites have internalised the goals, structures and processes of colonial administrations.

Applying this conceptual framework to the PW Botha administration leads to the interesting conclusion that dynamics within the apartheid institutional state were responsible for its end. The apartheid state of the 1980s, in line with an institutional legacy going back to British colonial rule in South Africa, used the civil service to oppress and exploit the black majority, which meant designing and maintaining a social multiplex of separate development controlled from Pretoria. All tiers and divisions in the public sector offered "jobs for pals" with virtually no regard for human resource development, affirmative action, institutional efficiency or discouraging corruption. In the various homelands, where white civil servants enjoyed a monopoly in the top echelons of the public administration hierarchy well into the De Klerk administration, a black elite based on tribal affiliations was gradually co-opted into the civil service. This bloated institutional state based on racial discrimination - severely weakened by skills shortages, internal political rivalry, pressures from big capital and so on - swallowed unsustainably huge portions of gross domestic output and thus imploded under its own weight.

When Picard examines developments in state administration during the "long transition", it is possible to dispute his cut-off dates in favour of a clearer line between the De Klerk and Mandela administrations, but not the thrust of his major findings. While negotiating a new political dispensation during this transition, a thorough overhaul of the public sector remained a marginal concern, to be tackled after 1994, for both departing and incoming politicians. As white civil servants vacated the civil services, many departing with skills for the private sector, employment of blacks increased, especially drawn from ANC loyalists in the party's headquarters at Shell House. The political agreements etched in the interim constitution and the integration of homelands into nine provinces co-opted many civil servants from old homeland administrations. In

this context, a highly restricted definition of "affirmative" triumphed, which Picard ascribes to the "Africanist" traditions in the ANC, yet the lack of an "institutional and organisational development approach to public sector reform" remains.

Persistent public sector strikes and corruption scandals seem to suggest that the Mbeki presidency has done very little to break with this institutional legacy of public administration, despite initial verbal commitment to that effect. A new black elite has emerged that uses public institutions and private businesses as a revolving door to accumulate wealth; corruption has become the rule rather than the exception, whereas whistleblowers can be axed. Today, South Africa is a non-racial liberal democracy in which the "the unemployed and working poor did not fare so well".

In this book, the "legacy of apartheid" acquires a meaning broader than its conventional use in political circles. It is hard to dispute that the post-apartheid state has inherited a ruined economic and social landscape. However, the new civil service bureaucracy has internalised the goals and workings of the apartheid institutional state. Patronage-based state administration is certainly an obstacle to economic and social development.

This well-substantiated and tightly reasoned critique of civil service structures and processes is not an argument for shrinking the public sector. On the contrary, it argues for "human resource development, institutional development, and democratic governance" in the public sector to enhance its developmental goals in practice. In Picard's own words: "For the state to be able to serve society, the bureaucracy must see itself as part of the institutional system and must operate beyond narrow group interests."

Anyone interested in understanding how institutional legacies set the goals and workings of today's public sector will find the analysis in this book a *tour de force* and a fascinating read. All social scientists grappling with the problems of third world development today must read this book.

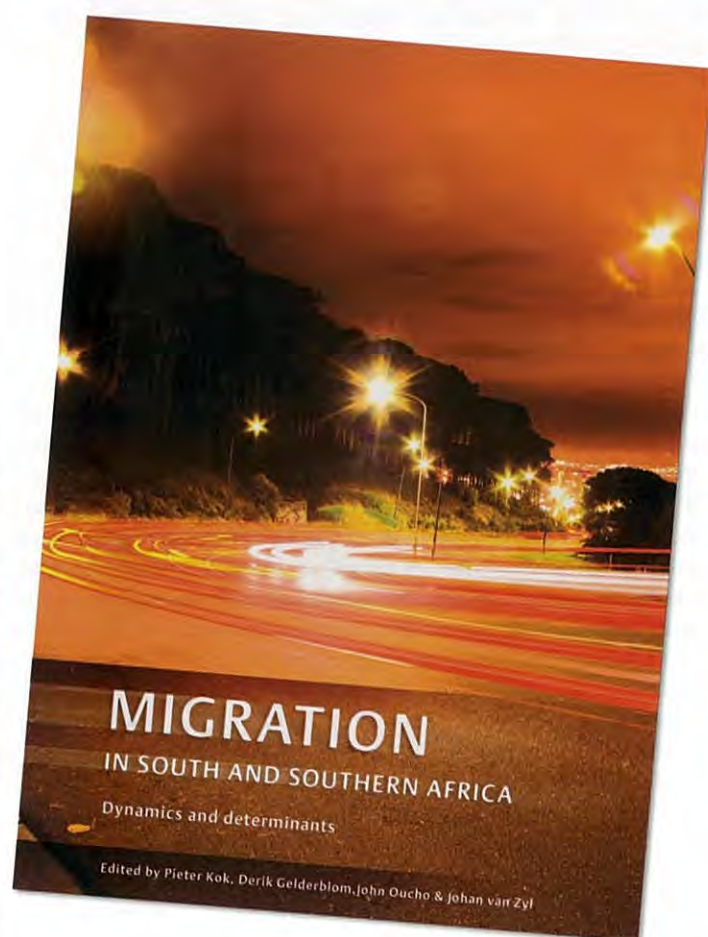


MIGRATION IN SOUTH AND SOUTHERN AFRICA: DYNAMICS AND DETERMINANTS

P KOK, D GELDERBLOM, J OUCHO AND J VAN ZYL (EDS)

HSRC Press: Cape Town, 2006. 364 pp

REVIEWED BY ANA DEUMERT, UNIVERSITY OF CAPE TOWN



The pace of human migration has grown in volume and complexity over the past decades. Cross-border movements (generally South to North, but increasingly also South to South) are on the increase, with currently about 3 percent of the world's population living and working in a country other than where they were born. Migration, however, is not necessarily a transnational movement, and persistently high levels of rural-urban mobility are characteristic of many low- and middle-income countries. **Migration in South and Southern Africa** provides important data and analyses of both types of movements (i.e. to and within South Africa), based on the 2001-2002 HRSC migration survey, and can

be read as a follow-up to **Post-apartheid patterns of internal migration in South Africa**, the 2003 work by Kok et al, also published by HSRC Press.

The first part of the volume, titled "The context of migration from a continental and regional perspective", includes four background chapters, preceded by a comprehensive introduction. A number of crucial issues are raised: the importance of remittances to development (Kok et al); the circular nature of migration in Africa (Ouchó); regional policy responses to cross-border migration since the late 1990s (Wenzel and Tlabela); and an overview of cross-border and internal migration patterns in the region (Anderson).

The second part, "Findings from the South African survey data" focuses on the 2001-2002 HRSC survey data. Roux and Van Tonder look at the health implications of migration, which tend to be considerable for less-educated migrants who struggle to establish themselves in the new, urban environment. Wenzel et al describe migrant profiles (both internal and cross-border) using a number of social and economic variables, including gender, employment status, education, migration motivation and previous knowledge about the destination area. Cross compares rural-rural, rural-town and rural-urban migration with regard to migrant motivations and migrant profiles (particularly age and education). Gelderblom and Adams take up the important issue of migrant networks - social connections linking origin and destination areas - as facilitators of the migration process. De Jong and Steinmetz analyse migration intentions (i.e. an individual's intention to move within the next year/ the next five years) and the social profile of such prospective migrants. The final chapter by Gelderblom ("Towards a synthetic model of migration") provides a critical discussion of central concepts in migration theory.

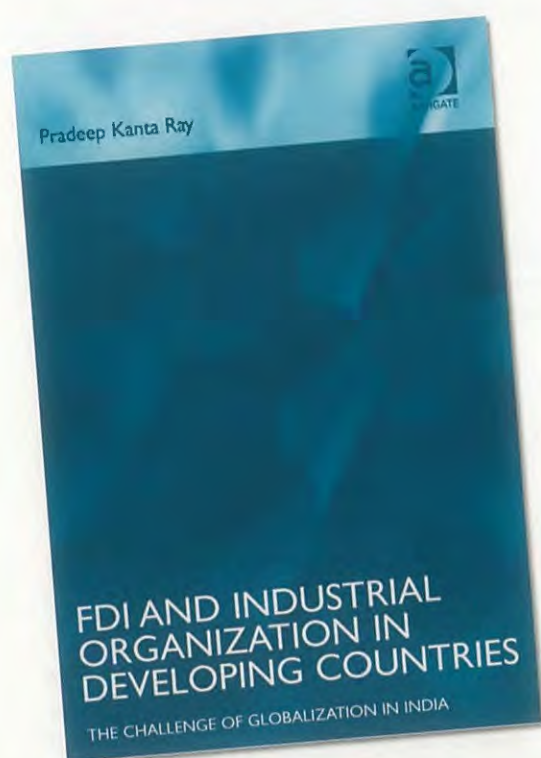
The volume is highly recommended for its focus on methodology, including a chapter by Van Zyl on evaluation procedures used to assess the quality of the HRSC migration data and four appendices that further support the methodological focus.

FDI AND INDUSTRIAL ORGANIZATION IN DEVELOPING COUNTRIES: THE CHALLENGE OF GLOBALIZATION IN INDIA

PRADEEP KANTA RAY

Ashgate: Hampshire, UK, 2005. 278 pp

REVIEWED BY HARRY ZAREDA (SCHOOL OF ECONOMIC AND BUSINESS STUDIES, WITS)



This important book represents an extension of substantial work done by the author for a doctoral thesis at the University of Western Australia in 1999. Its conversion into a more accessible book is to be welcomed, as it will enable a wider readership to get to grips with many highly contemporary issues of foreign direct investment (FDI) and industrial policy in a competitive, liberalising and globalising world.

Using case studies of the telecommunications, electronics and pharmaceutical industries in the latter years of the last century, the prime focus of the study is India's experiences of the relationship between transnational corporations (TNCs) and indigenous enterprise. However, several critical policy aspects here will be relevant to many emerging countries. These relate also to the role of government in its efforts to encourage industrialisation through nurturing and guiding this relationship so that mutual weaknesses are redressed and individual strengths are reinforced.

In the era of liberalisation, deregulation and privatisation, much conventional wisdom suggests a "negative interventionist" approach for government. What the author highlights in this impressive set of arguments is that a **positive** interventionist stance is essential to ensure that national capital and FDI are non-mutually exclusive, complementary engines of development. It is the role of national policy-makers to identify the sectors of the economy where FDI could generate a positive interrelationship with local capital and to construct policies to channel such investment into those sectors.

The author compares industrial development and policies towards FDI in India with those in other Asian countries and argues that the enormous socio-economic and institutional differences in India lend further credence to his particular interventionist approach. Ray's arguments are solidly backed by detailed case studies of the respective industries. The final third of the book is comprised of a set of econometric studies of the various industries which assess some behavioural characteristics of TNCs in adapting to local conditions; establish the nature of various inter-firm linkages; and demonstrate how issues relating to intellectual property rights for TNC affiliates operating in developing countries have been handled.

Both the case studies and the econometric studies confirm the central argument of the book, that, for a country such as India, unless both commercial enterprises and the policy regime "radically gear up their institutional and policy reforms in line with the breathtaking pace of developments in global industries, growth may be short-lived and unsustainable."

While it is important to understand the reasons for India's success in high-tech industries and pharmaceuticals, the future challenge is to realise the enormous potential of other light and mature industries such as textiles, clothing, processed foods, handicrafts and so on. This well-argued and comprehensive study of recent industrialisation trends in India has enormous relevance to other emerging countries grappling with industrialisation policies.

ANOTHER WORLD IS POSSIBLE, IF...

SUSAN GEORGE

Verso: London, 2004. 259 pp

REVIEWED BY BEN TUROK



Susan George is one of the most well-known names in international campaigns on Third World issues. Her books, *A Fate Worse than Debt*, *How the Other Half Dies* and *The Debt Boomerang*, made an enormous impact and ensured that her presence was sought at international gatherings where these matters were discussed. She has continued with this work even when others have flagged, and this new work justifies her reputation as a fearless and consistent fighter for the betterment of people in developing countries.

The present book builds on her previous work, but reiterates her powerful earlier critique of the IMF and World

Bank's imposition of the structural adjustment programmes that have brought so much ill fortune to the developing countries, especially in Africa.

This book also focuses on the activists worldwide who are associated with the World Social Forum (WSF), which has aroused so many hundreds of thousands of people in protest against globalisation and for an alternative shape of the world system. She makes some large claims for the successes of the WSF, though there are also some criticisms.

What is particularly striking is her rejection of conventional party politics and the institutions in which they operate. For this reviewer, this case is unconvincing, even though it is accepted that conventional party politics, and the parliamentary terrain in which it is mostly conducted, leaves a great deal to be desired. No doubt, there is a desperate need to re-examine the way conventional politics is played out throughout the world. But there is also a danger in a total rejection of conventional party politics, including its parliamentary dimension, in favour of an amorphous populism that has only vague policies and no structure. Indeed, critics at the WSF have pointed out that the apparent lack of structure in the WSF itself actually means that a small group of people take all the major decisions without consultation.

Susan George claims to be a revolutionary, but a close reading shows that her political programme is a social democratic one. She does hit out at capitalism, international inequalities and global exploitation, but her policy pronouncements in the later chapters reveal a lack of rigour and an absence of a coherent and consistent programme.

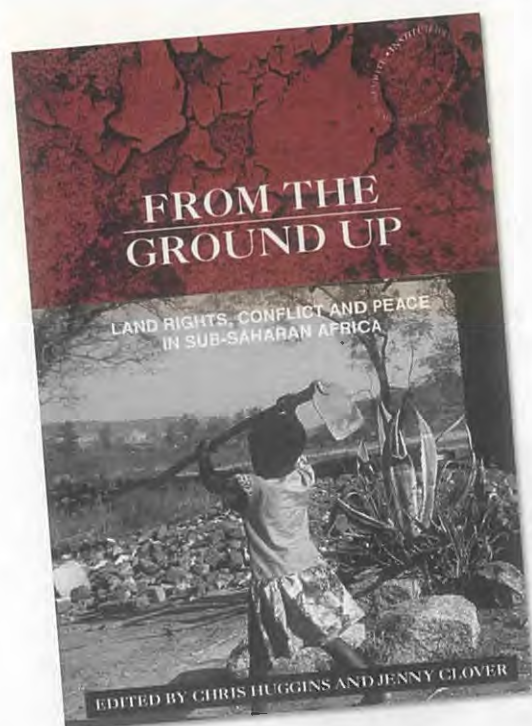
Nevertheless, she answers many of the concerns of activists and provides a lively debate, which is refreshing and most valuable.

FROM THE GROUND UP: LAND RIGHTS, CONFLICT AND PEACE IN SUB-SAHARAN AFRICA

CHRIS HUGGINS AND JENNY CLOVER (EDS)

Institute for Security Studies: Pretoria, 2005. 392 pp

REVIEWED BY DR EDWARD LAHIFF (PROGRAMME FOR LAND AND AGRARIAN STUDIES, UWC)



From the Ground Up is a welcome addition to the literature on land rights and related political processes in sub-Saharan Africa. Growing out of a collaboration between the African Centre for Technology Studies (ACTS) in Kenya and South Africa's Institute for Security Studies (ISS), this collection presents work by scholars from Africa and Europe, working largely from a security studies perspective. The emphasis throughout is on the complex links between contestation over land and other natural resources, poverty, environmental change and violent conflict, both within and between African countries. The central argument of the book is set out clearly by the editors in the introduction:

Inequality between groups is one of the foremost causes of violent conflict. Structurally, these may be related directly back to the allocation and distribution of resources, including the scarcity of land and the compromising of land tenure rights.

The collection focuses specifically on countries either affected by conflict or in the process of post-conflict recovery, a category that currently includes 16 of Africa's 54 countries.

Geographically, the emphasis is on the Great Lakes region - particularly the Democratic Republic of the Congo, Burundi and Rwanda - but useful studies of Angola, Eritrea and Zimbabwe are also included.

From the Ground Up is divided into two parts: three broad conceptual essays that address the central themes of this collection - land reform in post-conflict countries of Africa (Huggins and Ochieng), the changing nature of customary tenure (Pottier) and environmental security (Clover); plus four country case studies. While the initial chapters provide useful context and much insight into current land issues on the continent, the country case studies are the real strength of this collection.

Vlassenroot and Huggins' chapter on land, migration and conflict in eastern DRC presents an in-depth analysis of the central importance of control over land in fuelling conflict in that country throughout the past century. The study of refugees and land access in Burundi, by Kamungi, Oketch and Huggins, provides a detailed account of the origins of conflict in that country and the challenges posed by the resettlement of large numbers of displaced people in the context of extreme poverty, land scarcity and ongoing political uncertainty. Musahara and Huggins' chapter on land reform in post-conflict Rwanda, like the other case studies, situates current conflicts within their historical context, and highlights the importance of the current land reform programme to the achievement of lasting peace and stability in the country. Clover's study of land policy in Angola since independence, and particularly since the peace accord of 2002, sets out the challenges now facing the country in the context of widespread poverty, displacement of people and the granting of generous concessions to local elites.

Together, these studies serve to highlight the continuing importance of land to the livelihoods of the majority of African people, and the ongoing tensions between customary tenure systems and a variety of more formal systems introduced by colonial and post-colonial regimes. A minor annoyance is the lack of an index, but this does not detract significantly from the obvious value of this collection. It presents a wealth of information that will be of great interest to scholars and policy-makers from a range of disciplines interested in peace and development in Africa.

BOOKS RECEIVED FOR REVIEW

The following titles have been received at the **New Agenda** offices. Interested reviewers should contact mwnewagenda@mweb.co.za

Camay, P and AJ Gordaon, eds (2005) **Poverty Reduction through Improved Regulation: Perspectives on South African and International Experience.** CORE. 509 pp

Chisholm, L et al (2005) **Educator Workload in South Africa.** ELRC/HSRC. 206 pp

Gibson, JL and A Gouws, eds (2003) **Overcoming Intolerance**

in South Africa: Experiments in Democratic Persuasion. Cambridge UP. 262 pp

Peltzer, K et al (2005) **Educator Supply and Demand in the South African Public Education System.** ELRC/HSRC. 140 pp

Vizard, P (2006) **Poverty and Human Rights: Sen's "Capability Perspective" Explored.** Oxford UP. 275 pp



The pull of 291 kilowatts



You're smiling inside and out



A WORLD APART



The surge of the 4.2 litre
supercharged engine



The responsiveness of the Brembo brakes

Drive responsibly off-road.

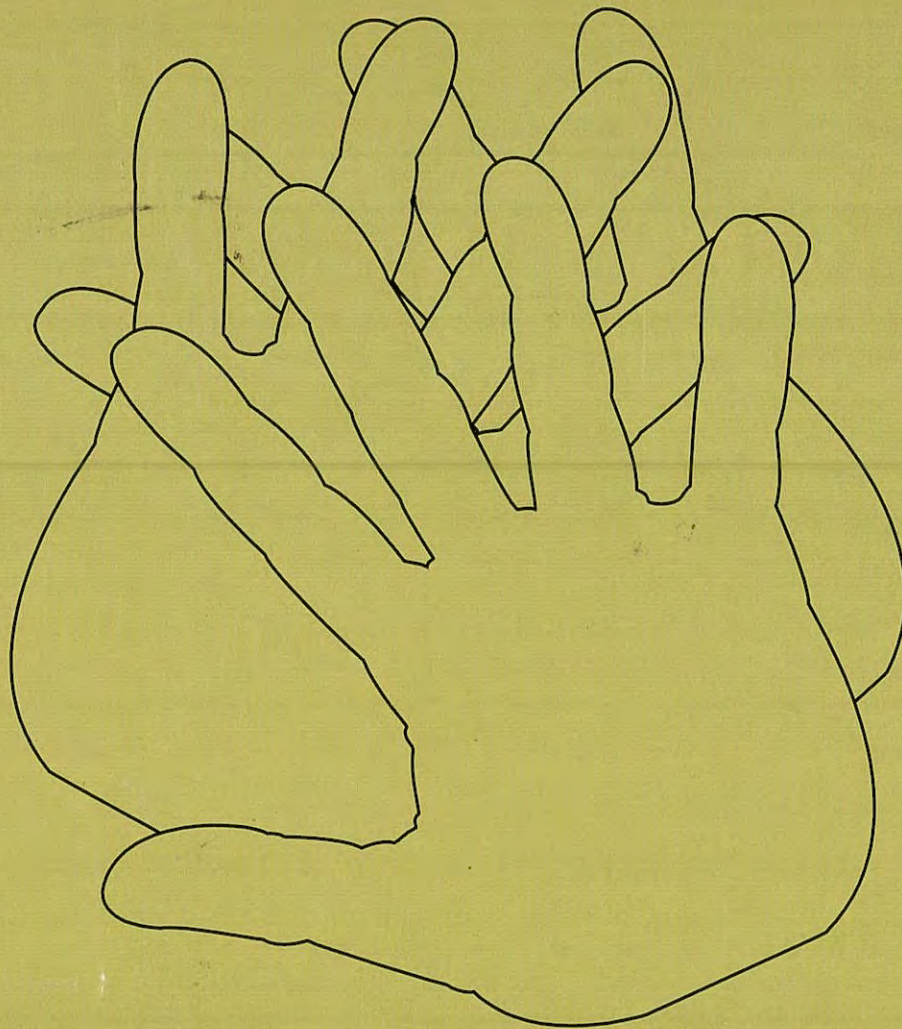
www.landrover.co.za



THE RANGE ROVER FOR 2006 Supercharged.



GO BEYOND



FOR OVER 10 YEARS OUR APPROACH TO BUSINESS HAS BEEN HANDS ON

AS SAFIKA HOLDINGS, WE'VE HAD A HAND IN THE EVOLUTION OF ENTREPRENEURSHIP IN THE NEW SOUTH AFRICA. WE'VE HAD A HAND IN THE TRANSFORMATION OF OUR BELOVED COUNTRY. WE'VE HAD A HAND IN TURNING SEEMINGLY IMPOSSIBLE CHALLENGES INTO EXCITING, LUCRATIVE OPPORTUNITIES. WE'VE HAD A HAND IN REALISING POTENTIAL AND IN REWARDING HARD WORK. WE'VE HAD A HAND IN TURNING BUSINESSES INTO BRANDS THAT ARE RECOGNISED, VALUED AND ADMIRER. MOVING FORWARD, WE'LL ENSURE THAT THESE BUSINESSES REMAIN IN THE RIGHT HANDS.

AFTER ALL, OUR STORY IS HANDWRITTEN.