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TO BEE OR NOT TO BEE?

SOUTH AFRICA'S 'BLACK ECONOMIC EMPOWERMENT' (BEE), CORPORATE GOVERNANCE AND THE STATE IN THE SOUTH

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“Black Economic Empowerment” (BEE) in South Africa

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Abstract

Black Economic Empowerment (BEE) has been a major policy thrust of the democratic governments in South Africa since 1994 in attempting to redress the effects of apartheid. This paper explores the historical precedents to BEE in South Africa, its origins, and its points of contact with the experience of 'empowerment' in Malaysia. The authors review the different steps taken by the South African government in promoting empowerment over the past 12 years, together with some of outcomes to date. They also draw from three case studies of sectors where government has different degrees of leverage over the process of BEE – industrial fisheries, metals and engineering, and wine.

The paper highlights that the new 'broad-based' configuration of BEE has become a managerial and technocratic process that may thwart the overall objectives of 'empowerment' in at least four ways. First, it is moving the debate from a political terrain, where redistribution is in theory possible, to a managerial terrain, where discussions are technical and set within the limits of codification, measurement intervals and systemic performance. Second, by so doing, it is partially shifting the responsibility for promoting change and for bearing the consequences of failure away from elected government and towards a generic 'system' that has a life of its own. An emerging industry of accountants, technocrats, auditors and certifiers are the foot soldiers of this system, but bear no responsibility. Third, BEE is now based on such levels of complexity that it implicitly legitimizes 'outsourcing' of its management from government to the private (auditing) sector, thus reinforcing a further weakening of the state and facilitating a next round of 'outsourcing' of previously political and now managerialized functions. Finally, BEE managerialism is forwarding the idea that (some level of) redistribution is actually possible in a neo-liberal economic policy setting, thus disenfranchising more radical options in policy-making.

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1. Introduction

Since 1994, South Africa has embarked in a series of programmes aimed at empowering groups and individuals that had been negatively affected by the previous system of apartheid. This has been attempted directly by government through efforts to deliver better public services and housing, and indirectly through the process of Black Economic Empowerment (BEE). BEE as a concept emerged in the early 1990s, with the initial focus in practice on increasing 'black'[1] ownership of shares in major corporations. Following accusations that BEE was simply enriching a small number of well-connected black politicians and businesspeople in the context of persistent poverty, in more recent years government and business have re-packaged the concept as 'broad-based BEE'. Under this umbrella, ownership is only one of seven main criteria upon which the empowerment credentials of businesses in South Africa is assessed – the others being management representation, employment equity, skills development, preferential procurement, enterprise development and corporate social investment.

BEE can be viewed as a political effort directed at a combination of sometimes contradictory objectives. It can be thought of as a project of re-distribution of productive resources to the benefit of groups (or, more specifically, individuals) previously disadvantaged by the system of apartheid. It can be understood as an intervention facilitating the socio-economic functioning of a society that for historical reasons would be otherwise doomed for large-scale civil strife. It can be seen as a process seeking the formation of a black capitalist class that provides legitimacy to the instalment of a 'rainbow' neo-liberal economic and political system and, as a consequence, the survival of the dominant 'white capitalist class' despite its legacy. Finally, it can be seen as an African nationalist project. Although in policy documents 'previously-disadvantaged groups' are defined to include various groups of black people (and in some documents, also women and disabled people), the African National Congress (ANC) has also interpreted BEE to relate particularly to the need for empowering 'Africans' (ANC, 2002).

The notion of BEE in South Africa can be traced as far back as the Freedom Charter of 1955, which states that 'the people shall share in the country's wealth' and that 'the land shall be shared among those who work it'.[2] The identification of BEE as a central element in addressing the apartheid legacy was reflected in the ANC's Reconstruction and Development Pro-

[1] For definitions of population groups, see Section 2.

[2] See www.anc.org.za/ancdocs/history/charter.html

gramme (RDP) developed prior to the first democratic election in 1994 and adopted when in government. The RDP stipulated the need to 'deracialise business ownership and control completely through focused policies of Black Economic Empowerment' (ANC, 1994). Among other things, the RDP was seen as a programme which sought to mobilize all people and the country's resources toward the final eradication of apartheid and the building of a democratic, non-racial and non-sexist future.

Progress was slow, however, and on 29 May 1998, South African President Thabo Mbeki opened the National Assembly debate on 'Reconciliation and Nation Building' with what became known in South Africa as his 'Two Nations' speech:

> A major component part of the issue of reconciliation and nation building is defined by and derives from the material conditions in our society which have divided our country into two nations, the one black and the other white. We therefore make bold to say that South Africa is a country of two nations. One of these nations is white, relatively prosperous, regardless of gender or geographic dispersal. It has ready access to a developed economic, physical, educational, communication and other infrastructure … The second and larger nation of South Africa is black and poor, with the worst affected being women in the rural areas, the black rural population in general and the disabled. This nation lives under conditions of a grossly underdeveloped economic, physical, educational, communication and other infrastructure. It has virtually no possibility to exercise what in reality amounts to a theoretical right to equal opportunity, with that right being equal within this black nation only to the extent that it is equally incapable of realisation. This reality of two nations, underwritten by the perpetuation of the racial, gender and spatial disparities born of a very long period of colonial and apartheid white minority domination, constitutes the material base which reinforces the notion that, indeed, we are not one nation, but two nations.
>
> - Thabo Mbeki, 29 May 1998.

In his address, Mbeki argued that national unity and reconciliation between black and white South Africans were impossible dreams if socio-economic disparities, which prevented black South Africans from exercising their citizenship rights to an equal extent to white South Africans, were not rapidly overcome. BEE has been firmly located as integral to addressing the ongoing apartheid socio-economic legacy, specifically with regard to measures impacting on private, white-owned and -controlled, business.

At around the same time, and following a resolution taken at the Black Management Forum (BMF) National Conference in Stellenbosch in November 1997, the Black Economic Empowerment Commission (BEE Commission) was formed under the auspices of the Black Business Council in May 1998. The mandate of the Commission was to develop an accelerated National BEE Strategy that would provide concrete recommendations for the future of black business. The BEE Commission submitted its long-awaited report, the Integrated National BEE Strategy, to President Mbeki on 11 April 2001. The emphasis of the report was that South Africa would not be able to achieve high levels of economic growth and development without the intervention of the state towards the facilitation of BEE. The BEE Commission report thus situated empowerment as part of a development strategy in response to the observation that unregulated market forces reinforced the existing inequalities. It argued that '[t]he state should therefore operate in an intelligent and responsive manner to lead the growth and development process. The need for the state to reshape and direct the course of economic development to suit local conditions must be emphasised'(BEE Commission, 2001: 8).

Between 1994 and 2000, the post-apartheid government enacted a raft of legislation aimed at correcting past injustices. This included legislation addressing education, skills development, procurement and employment equity. While this undid apartheid legislation, the transformation outcomes required to redress the apartheid legacy were much more substantial. In addition, trade liberalisation, privatisation, and tight macroeconomic policies oriented to reducing the government deficit and inflation failed to stimulate much needed employment growth, with fundamental implications for the participation of black people in the 'formal' economy. Unemployment increased to around 40 per cent, with the unemployed being almost entirely unskilled and black.[3] Employment and earnings did increase in highly skilled occupations, but disproportionately benefiting white South Africans – given their historically privileged access to education, training and skilled positions of employment (Bhorat and Hinks, 2005).

This has led to a situation where political pressure for 'effective BEE' has mounted in face of the perceived slow pace of change, whether measured in terms of black ownership or more broadly in terms of 'meaningful participation' by black South Africans in the economy. At the same time, 'slow' should be read in the context of 350 years of colonialism, segregation, and apartheid, and the absence of a post-apartheid policy of radical redistribution. As we will show later, in the Malaysian example of 'transformation', a much longer time window was set to

[3] See Bhorat (2006). The unemployment rate is calculated from the expanded definition, which includes discouraged work-seekers in the labour force.

achieve a lower level of 'disadvantaged' ownership with an arguably more level-playing field to begin with. In addition, redistribution is harder to achieve in a context of the poor economic outcomes from the essentially orthodox economic policies followed by the South African government from the second half of the 1990s.

In this paper, we examine processes and outcomes of BEE in the context of historical precedents both within and outside South Africa. Within South Africa, we focus first on Afrikaner nationalism and then on African nationalism. Internationally, we draw on the Malaysian experience with 'empowerment' not only because the ANC took it as a model for their own version, but also because it teaches lessons on the relationship between redistribution, growth and broader economic policy-making. We also draw some brief parallels with Tanzania, where the government has tried to re-dress the perceived 'illegitimacy' of ownership of assets and control of markets by 'foreigners'.

BEE, despite its specific South African character, should be understood in relation to wider phenomena that are taking place more globally: (1) the rise of Corporate Social Responsibility and self-regulation, which affect spheres previously reserved to the state (e.g. social and environmental regulation) (Blowfield and Frynas, 2005; Graham and Woods, 2006); (2) the increased codification and managerialization of these aspects through the development of codes of conduct, standards, labels and certifications (Ponte, 2006); (3) the general movement in the corporate world towards outsourcing (Gibbon and Ponte, 2005); and (4) the emergence of a body of multilateral, plurilateral and bilateral trade and investment agreements which specifications may be in conflict with BEE provisions (Mortensen, 2006).[4]

Observing that the external environment matters does not entail justifying the (many) failures of BEE. However, if corrective actions are to be taken or suggested, one should distinguish between intentions, practices, constraints and consequences. Rent-seeking and capitalist accumulation critiques of BEE provide simplistic, one-dimensional views of a complex process where relations between state, black capital and white capital are fluid; and where the formalization of BEE in codes, scorecards and technical instruments may be carried out in the best intention of providing relatively transparent and fair tools, but which consequence is actually the contrary. For these reasons, we take a non-normative approach to what 'black' or 'economic empowerment' should be, or how they should be defined, but rather observe how these

[4] Given the focus on internal dynamics in this paper, we will touch upon these points only briefly in the conclusion as a way of defining a further research agenda.

terms – and the practices they are linked to – are interpreted, used and justified, the power relations that underpin certain uses, and the consequences that these uses have.

Analytically, the paper is divided in two main parts. The first part looks at issues of definition (Section 2), historical precedents in South Africa, Africa and Malaysia (Section 3), and the general progress of BEE legislation and implementation mechanisms in general (Section 4). The second part (Section 5) succinctly assesses BEE across different dimensions (ownership, control, procurement, employment, wages, and education). It also draws from three case studies examining industries characterised by different degrees of state leverage in shaping outcomes of transformation: the industrial fisheries sector, where government has strong leverage through the allocation fishing rights; the metals and engineering sector, where influence is indirect rather than direct (e.g. through procurement by State-Owned Enterprises or by corporations operating in industries, such as mining, where licences are allocated by government); and the wine sector, where government has weak leverage points (it is not important in terms of procurement, and does not own the land). This is followed by a conclusion (Section 6).

2. Definitions: 'Narrow vs. Broad', 'Black vs. HDSA', 'Empowerment'

It has been common for commentators to talk of BEE in narrow and broad terms (see, for example, Southall, 2005). Narrow definitions are generally restricted to ownership and control of private formal business. Broad definitions extend to 'meaningful participation' in economic activity,[5] and hence cover skills development, education, black small enterprise growth, procurement and employment. The BEE Commission in its report broadly defines BEE as 'an integrated and coherent socio-economic process within the context of the national transformation programme which is aimed at redressing the imbalances of the past by substantially

[5] One problem here is that the notion of 'meaningful participation' is in the eyes of the beholder. It is not only the result of an individual reflection (see more on this below), but depends on broader political economy factors. In other words, from the point of view of capital, being part of a vast reserve army of labour can indeed constitute 'meaningful' participation.

and fairly transferring the ownership, management and control of South Africa's financial and economic resources to the majority of its citizens' (BEE Commission, 2001).

The objectives of BEE may also be defined in terms of how the ANC measures the success of BEE as set out in their 2002 conference resolutions. Five indicators are used: (1) ownership; (2) operational participation and control within firms; (3) transfer of skills to blacks, particularly in senior positions; (4) contribution of firms to employment creation; and (5) whether schemes lead to an overall reduction in poverty and income inequality. Most recently, the Department of Trade and Industry's Broad-Based BEE (BB-BEE) strategy has laid out four key principles, namely that: BEE is broad-based; is an inclusive process; is associated with good governance; and is part of South Africa's growth strategy (DTI, 2003).

There are also important definitional questions around the beneficiaries of empowerment. Some of the legislation (such as the skills development and employment equity acts) identifies 'historically disadvantaged' South Africans (HDSAs). This includes women and disabled persons (of all races).[6] However, more recent legislation (notably the Broad Based Black Economic Empowerment Act) and some of the charters are specifically related to the empowerment of blacks. Although the Broad Based Black Economic Empowerment Act defines 'black people' as 'a generic term that means Africans, Coloureds and Indians,'[7] the Codes define 'black people' as:

> African, coloured or Indian persons who are natural persons and: are citizens of the Republic of South Africa by birth or descent; or are citizens of the Republic of South Africa by naturalisation before the commencement date of the Constitution of the Republic of South Africa Act of 1993; or became citizens of the Republic of South Africa after the commencement date of the Constitution of the Republic of South Africa Act of 1993, but who, but for the Apartheid policy that has been

[6] The ability of firms to meet targets for 'historically disadvantaged' groups through the promotion of white women appears to be a circumvention of the spirit of BEE – when one examines the impacts of apartheid laws on different groups, resources and ability to effectively participate in the economy. The gender aspect of BEE merits much better handling than our rather limited treatment in this paper. However, while not denying the relative disadvantage of women against men within the same population groups under apartheid, the gap between 'black' men and women and 'white' men and women was of a different substantial and qualitative nature.

[7] No. 53 of 2003: Broad-Based Black Economic Empowerment Act.

> in place prior to that date, would have been entitled to acquire citizenship by naturalisation prior to that date.[8]

The emphasis on South African citizenship is important as without it, foreign companies could staff their offices with black managers from the company's home country and still fulfil the requirements of the Codes. This would presumably go against the spirit of BEE which is aimed at assisting black *South Africans* to access the formal economy. For example, although the Financial Sector Charter includes South African citizenship within the definition of 'black', it also states that 'in paragraphs 5 and 11 the term shall include permanent residents of the Republic of South Africa.'[9] At the same time, the ongoing discussion on possible exceptions to some rules for multi-national corporations (MNCs) suggests that the 'national rule' can be sacrificed to the altar of international investment and WTO rules.

To engage with BEE means addressing what is meant by 'empowerment' in the South African historical context of redressing the effects of apartheid. At the same time, it is also essential to spell out differences over possible understandings of empowerment as a general concept. One way of doing this is by reflecting on economic empowerment as a process of expanding the real freedoms and opportunities that people enjoy. If we take as a point of departure Rawls' concern with addressing deprivation defined in terms of the availability of 'primary goods', these are defined to include 'rights, liberties and opportunities, income and wealth and the social basis of self respect' (Sen, 1984: 279). Sen argues for a further move beyond 'primary goods' to the realization of certain primary powers (or 'basic abilities'), for example, the power to fulfil one's nutritional requirements, clothing, shelter, and movement (1984: 281). Elsewhere, this is expressed in terms of capabilities, with the recognition that '*relative* deprivation in terms of incomes can yield *absolute* deprivation in terms of *capabilities*' as capabilities are related to the ability to attain a certain 'social functioning' or 'taking part in the life of the community' (Sen, 1999: 89, emphasis in original). Concern with capabilities derives from an interpretation of positive freedoms. 'Concern with positive freedoms leads directly to valuing people's capabilities and instrumentally to valuing things that enhance these capabilities. The notion of capabilities relates closely to the functioning of a person. This has to be contrasted with the

8 'Statement 000: The Organisation of the Codes of Good Practice, the Elements of Broad Based Black Economic Empowerment and the Generic Scorecard,' in 'Code 000: Framework for the Measurement of Broad Based Black Economic Empowerment' (Final Draft), (DTI, December 2005: 2-3).

9 Financial Sector Charter, p. 2.

ownership of goods, the characteristics of goods owned, and the utilities generated' (Sen, 1984: 324).

A focus on capabilities does not necessarily imply an individualistic approach. Economic policy, location, institutional setup, and class, gender and race identities shape people's ability to exercise decision-making which affect themselves and others. Therefore, a focus on capabilities also includes attention to latent as well as observable conflicts of interest, and to 'non-decision-making' – that is, where people are excluded from decision-making by virtue of their identity, position or institutional arrangements (see Lukes, 1974). The importance of understanding the implications of power for market outcomes is well recognised. Markets are not just allocating mechanisms but have a fundamental disciplining role, with institutional arrangements and strategic behaviour, all being part of contested exchange (Bowles and Gintis, 1993). Exchange, distribution of value added, access to resources are not only disciplined through regulation, but also through larger conventions that are underpinned by common principles shaped largely outside the realm of the state and even of special interest groups (Boltanski and Thevenot, 1991). Therefore, what is 'empowerment' in a certain moral order, does not constitute such in another. Empowerment through nationalisation of assets is obviously not the same as increasing the share of blacks in shareholding or in the composition of corporate board of directors.

Empowerment allows (some) people to think that they can attain a certain set of outcomes and, in this sense, it is about having an 'entitlement.'[10] At the same time, what kinds of outcomes and how to attain them may be outside of their control. Apartheid bequeathed assets and income-earning abilities on white people. Empowerment therefore needs to take into account that 'unfreedoms' can arise through inadequate opportunities. A crucial set of opportunities are those for employment (Sen, 1999). This is particularly important given the evidence that 'unemployment has many far-reaching effects other than loss of income, including psychological harm, loss of work motivation, skill and self confidence, increase in ailments and morbidity (and even mortality rates), disruption of family relations and social life, hardening of social exclusion and accentuation of racial tensions and gender asymmetries' (Sen, 1999: 94) 'Empowerment' thus requires the removal of major sources of 'unfreedoms' such as poor

[10] This is quite distinct from entitlement in the meaning of Nozick, which is closely associated with the protection of property rights, and which: assigns to owners of non-labour productive resources the fruits of owning those resources; accepts free exchange as just irrespective of the inequality in the distribution of means of production; and accepts the legitimacy of inheritance (and gift) (Sen, 1984).

economic opportunities, the lack of skills development and the opportunity to actively participate in the labour market.

3. BEE in Historical and Comparative Context

Despite the assumed novelty of BEE, the policies of the post-apartheid South African state have historical precedents nationally and internationally. In South Africa, the assistance given under apartheid to poor whites in the interwar years, and to Afrikaner capital in particular, furnished the ANC government with a homegrown model of state manipulation of the economy to benefit a particular social group. Indeed, the ANC itself had espoused a similar strategy of black *volkskapitalisme* from at least the mid-1950s. Internationally, BEE has much in common with a similar economic project, the New Economic Policy (NEP) implemented in Malaysia between 1971 and 1991. The rapid growth achieved by Malaysia also fits well with the South African government's claim that BEE is not simply about an equitable restructuring of the economy, but also about releasing South Africa's economic potential so as to increase growth and economic development.

An alternative set of reference points could have been found in the experiences of other African countries with policies and programmes to promote 'local' or 'indigenous' ownership and economic advancement. But the attraction of examples from countries such as Kenya[11] and Nigeria[12] to the new ANC-led government in 1994 was substantially diminished by their economic performance since 1980. Indeed, if anything, the adoption of the neo-liberal GEAR macroeconomic strategy in 1996 was influenced by the perceived failure of many African states in terms of economic development. The comparison of the protected South African

[11] Kenya's successive governments have promoted local farmers, petty bourgeois and capitalists in relation to settler and multinational farmers and businesses. In the period between 1965 and 1980 commerce and industry (including agri-business) in Kenya grew strongly, with manufacturing recording an average annual growth of 10.5 per cent (Southall, 2006b). A vigorous debate has taken place over the role of Kenyan business identified as Asian/Indian in this growth (see Himbara, 1994. among others). Himbara argues that the 'localization-Africanization-Kenyanization-indigenization' policies were aimed at Indian citizens as well as at settler and foreign business. Yet, they had the effect of encouraging Indian capitalists to venture into more complex activities ultimately increasing the significance of their role.

[12] On the indigenization debate in Nigeria, see Williams (1976).

economy to Latin American states was also used negatively to argue against an interventionist economic policy agenda (see Joffe et al., 1995). African and Latin American countries did not therefore figure highly on the list of examples that the ANC government sought to emulate. By comparison, the example of Malaysia stood out as combining a clear set of goals and policies to advance the economic position of identified previously disadvantaged groups with rapid economic growth and poverty alleviation. In the next sub-sections, we examine in some detail the historical precedents of BEE in South Africa (Afrikaner nationalism and African nationalism) and elsewhere (Malaysia), and draw some analytical lessons on how to interpret BEE from the experience of the 'politics of ownership' in Tanzania.[13]

AFRIKANER NATIONALISM

Accelerated white urbanisation in the first quarter of the twentieth century created a growing concern on the part of successive governments (after 1910) about the danger posed by 'poor whiteism' and 'miscegenation' to the maintenance of minority rule in South Africa. The Pact government of Afrikaner nationalism and organised white labour (1924-32) sought to address the problem by offering industry tariff protection as reward for employing 'civilised' (i.e. white) labour. Radical Afrikaner nationalists, however, dismissed the 'civilised labour' policy as a panacea that still delivered Afrikaners as cheap labour into the hands of English and Jewish capitalists and as trade union members into the care of socialists. They proposed instead to harness Afrikaner savings and spending power to build a *volkskapitalisme* to contest control of the national economy with the 'Jingo and Jewish bosses' and socialist union leaders. This economic project made little headway until the 1948 election, when the victory of the 'purified' National Party gave Afrikaner nationalists control of the state.[14]

Rapid Afrikanerisation followed, and the state's revenue resources and looming economic presence in the national economy were systematically deployed to foster an Afrikaner capitalist class. State business was directed to Afrikaner banks, and the state's activities in areas such as post, communications, electricity and transport were used for the advancement of Afrikaners through direct employment and procurement (Fine and Rustomjee, 1996; Iheduru, 2004).

[13] On the Namibian experience with BEE, see Melber (2006).

[14] However, Afrikaner farmers had successfully pressured government to provide subsidised capital, protection and subsidies in the interwar years (Iheduru, 2004).

The rate of change in ownership fostered by these steps was significant. Afrikaner ownership in the commercial sector already stood at 25 per cent by 1949, up from 8 per cent in 1939. But, in 1949, Afrikaners controlled only 1 per cent of the mining sector. By 1960, in just eleven years, this figure stood at 22 per cent (Fine and Rustomjee, 1996). Procurement of coal by electricity utility Eskom was a key factor in this change. The use of pension funds was also prominent in the growth of Afrikaner capital, providing a capital base for the growth of Afrikaner conglomerate groups. Ironically, given such Afrikaner ethnic chauvinism, the late apartheid state was also the first to pursue a policy of black economic empowerment, albeit in a very limited fashion and to conservative ends (the reform but maintenance of white minority rule). Prior to the 1980s, black businesses had developed in the strictly limited areas where apartheid allowed blacks to operate, although differential provisions widened economic disparities between the different black population groups identified by the apartheid regime. In 1962, regulations allowed Indians and Coloureds to engage in economic activity in urban areas if it did not compete with white businesses (Iheduru, 2004: 5). In 1963, increased restrictions were placed on African business, effectively limiting it to small-scale trade in daily consumer products such as soap, bread and tea.

The Bantustan system fostered client ethnic capital around rural nodes of traditional authority (Mare and Hamilton, 1987). Development corporations were established in the main 'homelands' with the support of the apartheid state and its Development Bank of Southern Africa, some of which ultimately became provincial institutions in democratic South Africa, such as the Eastern Cape Development Corporation. The Coloured Development Corporation did likewise among coloureds (Goldin, 1987), while the urban townships were hotbeds of petty commerce and, in particular, minibus taxis (Khosa, 1990). The old strictures on the emergence of a black middle class and black wealth accumulation, in particular through the reservation of certain jobs for the white minority and rules that prevented the majority from owning property in most areas (Hirsch, 2005), came to be seen as directly contributing to the radicalization of black opposition and the deepening civil war of the 1980s. Black entrepreneurs were also belatedly allowed some latitude in the 1980s, as the National Party was influenced by Thatcherism to some version of free market economics (Hirsch, 2005).

This was the context of the expansion of the National Federation of African Chamber of Commerce (NAFCOC), formed in 1964. In the late 1980s, the apartheid state tried to trade the lifting of certain restrictions on black business in return for NAFCOC's engagement with it (Maseko, 1999). NAFCOC's regional chambers also worked with apartheid 'homeland' administrations, receiving loans from apartheid institutions established to promote business in the 'homelands' (Malikane and Ndletyana, 2006). There was some resultant expansion of black entrepreneurial activity in the 1980s, but the limitations on substantial growth remained severe, including in accessing markets and finance.[15] Another late apartheid initiative was the Federation of African Business and Consumer Services, established in 1988 to represent the interest of small African business. FABCOS initiated the 'black rand' project to encourage the circulation of money within the black population as, '[s]tudies had shown that money did not circulate even once in the black community before going out, compared with other SA communities where money circulated 10 times.'[16] Both of these organisations which claimed national coverage were largely dismissed by ANC and UDF activists as 'errand boys' of white business (Iheduru, 2004).

Apartheid's own version of black economic empowerment received mixed responses from struggle organisations such as the Mass Democratic Movement (MDM), the African National Congress (ANC) and the Congress of South African Trade Unions (COSATU) (Edigheji, 2000). However, it has been argued that it indicated 'a new way in which the apartheid system could be dismantled and a new social and political order developed' (Browning, 1989: 15). As the white minority regime was forced to release its stranglehold on the country and South Africa moved tentatively towards democracy, BEE shed many of the negative connotations that had previously been attached to it and was rapidly adopted as an instrument through which to forward the economic, political and social interests of black South Africans (as reflected in the RDP). The belief was that by fostering a black capitalist class, this would facilitate a 'trickle-down' effect, improve the socio-economic position of all black South Africans, and thereby strengthen South Africa's economy. This argument had long been a platform in the economic policy of the ANC and the neo-liberal climate of late apartheid / post-apartheid South Africa was uniquely conducive to its forceful reassertion as national policy. In practice, in its first apartheid incarnation, BEE was about fostering a small client capitalist class, not 'black people' – whatever the populist rhetoric.

[15] With regard to finance, *stokvels* mushroomed. These were savings clubs whose origins can be traced back to the latter part of the nineteenth century, when they were mainly burial societies (Verhoef, 2001). Formal loan schemes were also launched to serve the needs of the emerging black business class. The African Bank had been registered as a black-owned institution in 1975, with major mainstream banks holding 25 per cent and the balance held by NAFCOC and about five thousand individual shareholders (Chabane et al., 2006).

[16] Mzimkulu Malunga, 'Insight – Black Business, the Basotho Hat and the Black Rand', *Business Day*, 28 October 1999.

AFRICAN NATIONALISM

On 26 June 1955 in Kliptown, 2884 delegates attending the Congress of the People adopted the Freedom Charter. Ever since there has been continuous debate about the kind of society the drafters of this visionary document intended to bring about. At the 1955 African National Congress (ANC) congress held in Bloemfontein, Nelson Mandela denied the charge by the Africanists that the Freedom Charter was a socialist design (Hudson, 1986). Mandela argued that the Freedom Charter in calling for the dispossession of white monopoly capitalists and the transfer of ownership to 'the people' meant for the first time the possibility of black ownership of mills, factories and private enterprises (Hudson, 1986). Despite the objections of the Africanists, the ANC adopted the Freedom Charter in 1956. Present-day commentators have argued that current broad-based black economic empowerment (BB-BEE) is in effect the Freedom Charter come full circle (Brown, 2005). Brown further suggests that the various empowerment charters being drafted in the different sectors of the economy to some extent embody the 'spirit of the Freedom Charter' (Brown, 2005). As we will argue below, this is far from the case.

Programmes dedicated to the 'charterist' approach were adopted prior to 1994 by the two most prominent black business organisations, NAFCOC and the BMF. In 1990, NAFCOC adopted a black economic empowerment programme which it christened the '3-4-5-6 programme' in reference to the targets it had set to be achieved by 2000. These were: 'Blacks should hold 30% of seats on boards of companies quoted on the Johannesburg Stock Exchange, Blacks should hold 40% equity, 50% of inputs should be sourced from Black enterprises; and 60% of managerial posts should be held by Blacks' (Edigheji, 2000: 3-4). Following suit, in 1993, the BMF adopted an 'affirmative action blueprint' calling for the following targets to be attained by the year 2000 (BEE Commission, 2001): 30 per cent of senior managers should be black; 20 per cent of executive directors should be black; and 30 per cent of non-executive directors should be black.

The BEE Commission, the Broad-Based Black Economic Empowerment Act (BEE Act), the Department of Trade and Industry (DTI) BEE Strategy Document, and many of the 'transformation charters' trace a state commitment to BEE to the Reconstruction and Development Programme (RDP) adopted by the post-apartheid government in 1994. The RDP stated that:

> The domination of business activities by white business and the exclusion of black people and women from the mainstream of economic activity are causes for great

> concern for the reconstruction and development process. A central objective of the RDP is to deracialise business ownership and control completely through focused policies of Black Economic Empowerment. These policies must aim to make it easier for black people to gain access to capital for business development. The democratic Government must ensure that no discrimination occurs in financial institutions. State and parastatal institutions will also provide capital for the attainment of BEE objectives. The democratic Government must also introduce tendering out procedures, which facilitate BEE. Special emphasis must also be placed on training, upgrading and real participation in ownership.

Prior to the implementation of the RDP, workshops were held between representatives from the ANC and black business from 29-31 October 1993 at Mopani Lodge in the Kruger National Park. The main elements of the Mopani Memorandum of Understanding were that black business should establish mechanisms of co-ordination with the ANC and other relevant parties, affirmative action legislation should be introduced, and a black business caucus should be established in order that black business may make a greater impact on various public forums regarding policy formulation. The agreement also called for a review of the objectives of state institutions in order to make them more responsive to the needs of black business – as well as the restructuring of public corporations and parastatals in order to make them more representative of the South African population (Chabane et al., 2006).

The framework and terminology adopted in the RDP related to redressing the effects of apartheid and thus the term 'historically disadvantaged' has gained widespread use, including in the Mining and Liquid Fuels BEE Charters and in the Employment Equity and Skills Development Acts. Although the term is defined to include black people, women, and disabled people, the ANC has interpreted BEE to relate particularly to the need for empowering African people within the 'black community in general' (Iheduru, 2004: 3, citing ANC 2002). This is at least partly based on the fact that different race groups had different economic opportunities under apartheid, including significant differences in the nature and quality of education and the levels of education spending. It is also important to recognise that the racial categorisation process as set out in the Population Registration Act of 1950 closely tied the judgements to hierarchies of social class and status (Posel, 2001: 55). The Act stipulated that the evaluation of racial category would take into account a person's 'habits, education and speech, deportment and demeanour in general' (Section 1(2) of the Act as cited in Posel, 2001: 56). The two-way links between race and social standing and opportunity under apartheid are reflected in Mbeki's two nations speech, where one of these nations is 'white, relatively prosperous, regardless of gender or geographic dispersal' and the 'second and larger nation of South Africa is black and poor, with the worst affected being women in the rural areas, the black rural population in general and the disabled.'

MALAYSIAN BUMIPUTRA EMPOWERMENT

Malaysia and South Africa have both experienced a colonial past that affected the distribution of skills and economic power. Malaya became independent from the British in 1957 as Malaysia. Similarly to 1994 South Africa, Malaysian independence was characterised by a disjuncture of political and economic power. Whilst Malays dominated the political sphere, Chinese business (as well as foreign investors) dominated the economy (Esman, 1987). However, unlike South Africa, the Chinese and the Malay populations were of relatively equal sizes at the time of independence.

Under British colonial rule, Malays and other indigenous groups, referred to collectively as *bumiputra*, were ruled through a system of 'indirect rule' that, as in many African countries, claimed to be preserving the 'traditions' of the ruled (Esman, 1987). The majority of Malays remained in rural areas, working on agricultural land, while immigrants from China and India, being subject to laws which prevented their acquisition of land or employment in the civil service due to their status as 'foreigners,' were employed as miners and eventually started to move into the formal and informal economies. Over time, they gained considerable education and skills to fit the modern economy in comparison to the majority of the *bumiputra* (Esman, 1987; Stoever, 1985). Thus, whilst *bumiputra* enjoyed a noticeable presence in the colonial civil service due to the system of indirect rule, the Chinese and Indians (especially the Chinese) were a far greater force in the private sector, in urban areas in particular (Milne, 1976).

Post-independence Malaysia was characterised by the presence of significant inter-ethnic tensions. Violence broke out in the wake of the May 1969 general elections, when the United Malay National Organisation (UMNO)-led coalition only narrowly managed to achieve victory over the opposition. Riots broke out amongst Malays who attacked Chinese and Indian citizens, leaving two hundred people dead and six thousand homeless (Emsley, 1996). In response, the Prime Minister Tunku Abdel Rahman, suspended the constitution and declared a state of emergency under which Malaysia was ruled by a National Operations Council for the next two years (Stoever, 1985). In 1971, parliamentary democracy was restored in Malaysia and simultaneously, the government announced the launch of the New Economic Policy (NEP). The government argued that redressing economic imbalances would diffuse ethnic tensions and thus strengthen 'national unity' (Jomo, 1990). Between independence and 1969, UMNO, in alliance with the Malayan Chinese Association and the Malayan Indian Congress, introduced various measures to economically assist the *bumiputra* (Sowell, 2004). However, these measures had not fundamentally altered the balance of power in the Malaysian economy, with Chinese Malaysians remaining in control. In the early 1970s, the economy was approximately 2 per cent Malay-owned, 22 per cent Chinese-owned and 61 per cent foreign-owned (Chopra, 1974)

The New Economic Policy aimed at increasing the wealth and economic participation of the *bumiputra* through, firstly, eradicating poverty *regardless* of ethnicity, and, secondly, deracialising the Malaysian economy by putting in place preferential policies to facilitate 'interethnic redistribution' within the economy (Jomo, 1990). The NEP aimed over twenty years to restructure the economy so that it was 30 per cent *bumiputra*-owned, 40 per cent 'other' Malaysian-owned (i.e. Chinese- and Indian-owned), and 30 per cent foreign-owned. In addition, management positions were to be 30 per cent *bumiputra* and some business sectors were given industry-specific targets. The objectives of the NEP were not to be attained through expropriation, but rather through encouraging foreign investment and economic growth with the benefits disproportionately allocated to the *bumiputra* (Esman, 1987). The government estimated that an annual growth rate of 7.1 per cent per annum would be necessary for achieving the NEP's goals (Stoever, 1985). In this way, it was thought to be possible to increase the prosperity of the *bumiputra* without actually reducing the wealth of other sections of society.

The Malaysian government introduced a number of controversial policies to achieve goals of NEP. Firstly, it sought to redress the shortage of skilled *bumiputra* by introducing new admissions and language policies at educational institutions – with a focus on specific areas such as business, economics and the sciences (Milne, 1976). Malay was enforced as the language of instruction in all state educational institutions, with Chinese only being accepted as a language of instruction in elementary schools (Esman, 1987). Secondly, it introduced preferential admissions standards at Malaysian universities based on ethnic groups. In terms of increasing the number of skilled *bumiputra* in the population, the policy was successful. Between 1970 and 1988, *bumiputra* representation in the 'eight prized professions' (doctors, lawyers, engineers, veterinary surgeons, dentists, accountants, surveyors and architects) rose from 5 per cent to 25 per cent (Jomo, 1990).

The preferential hiring of *bumiputra* in the civil service and government organisations was continued. Furthermore, due to the lack of sufficient *bumiputra* capital to 'kick start' the transformation process, government assisted *bumiputra* in the acquisition of shares through setting up state-run organisations such as PERNAS (a finance and resource exploitation company) and PETRONAS (the state-run oil company). These bodies bought foreign or domestic enterprises and ran them until a suitable number of skilled and financially viable *bumiputra* became available to take them over or purchase shares (Esman, 1987). Thus, the state represented *bumiputra* capital until sufficient *bumiputra* capital existed. In addition, tax incentives and preferential financing facilities were used to encourage *bumiputra* business (Stoever, 1985). Affirmative action hiring practices were encouraged to assist in the achievements of state-specified targets (Milne, 1976).

Foreign companies were *not* exempt from the measures being introduced, as is currently being discussed in South Africa. Under the NEP, foreign companies who entered Malaysia post-1970 were required to have a minimum of 51 per cent local ownership. It was also obligatory for a foreign company to have a plan demonstrating how it intended to reach the government's ethnic management and ownership targets. There were some ways of gaining exemptions from the NEP's conditions, contingent on the geographic location of a company in Malaysia and whether it 'could present viable and convincing reasons to the government' (Stoever, 1985: 94). However, in the early 1980s, a slump in the oil market led to recession in Malaysia and, with the aims of the NEP heavily dependent on foreign investment, many of the restrictions placed on foreign investors started to be relaxed to encourage greater investment (Sodhey, 1987). In addition, the state relaxed the requirements for work permits for certain categories of foreigners (Sodhey, 1987: 1089). Steadily, foreign investment once again rose, coupled with a remarkable average economic growth between 1986 and 1991 of 8.3 per cent (von den Mehden, 1992: 111).

The policies of the NEP led to a steady change in the ethnic make up of Malaysian capital. The *bumiputra* increased their control of the economy from 2.4 per cent of corporate equity in 1970 to 20.3 per cent in 1990. Other Malaysians held 46.2 per cent and foreigners the rest (von den Mehden, 1992: 112). Although not meeting the target, this was a significant increase in ownership given that foreign direct investment was promoted at the same time. More significantly, the incidence of poverty among the *bumiputra* decreased from 56.4 per cent in 1970 to 23.8 per cent in 1990 (Rasiah and Shari, 2001). Strong economic growth was experienced, ensuring that all its citizens shared the benefits of growth relatively equally.

Initially, the NEP was criticised for enriching a minority of *bumiputra*. Accusations of corruption were also rife, as power in the economic and political spheres began to converge (Chopra, 1974; Jomo, 1990). Questions were raised about the sustainability of *bumiputra* businesses if state support were to be withdrawn (Esman, 1987). In addition, many companies complained that the actual targets were difficult to fill, as there was a shortage of *bumiputra* who held the requisite skills to fill the relevant management positions (Stoever, 1985). When the NEP terminated in 1990, the targets of '30 – 40 – 30' had not been met, but the preferential policies for *bumiputra* did not come to an end either. Rather, the NEP was replaced by the New Development Project, which was subsequently replaced by the Vision Development Project. It is also inherently difficult for governments to remove such policies given the incentives for the now strong constituencies to defend them (Stoever, 1985).

What can be learnt from the Malaysian experience for South Africa? First, that South Africa is trying to achieve much larger aims much more rapidly (see below) than was attempted in Malaysia at a time when restrictions on domestic economic policy were much less stringent than is currently the case. And second, that 'empowerment' interventions without a clear redistributive element and expansionary economic policy will work only partially (see also Klasen, 2002) even with high rates of growth – and generally to the advantage of an emerging capitalist class.

THE 'POLITICS OF OWNERSHIP' IN TANZANIA

The debates on indigenization and the politics of ownership in Tanzania did not have an impact on South Africa's BEE model. As mentioned above, South Africa refused to look at other African experiences due to the discredited status of economic policy making (and affirmative action) in the continent. Yet, it does provide lessons for an analysis of BEE in South Africa that is devoid of too easy characterisations in terms of rent-seeking and 'neo-patrimonialism'. Rent-seeking analyses of African political economies argue that by interfering in markets – for instance by granting monopoly privileges in the manufacturing sector – African governments generate opportunities for earning rent. These lucrative opportunities create incentives to bribery and corruption, as economic actors compete to win the favour of the officials and politicians at whose discretion the rent-earning opportunities are granted. The literature on rent-seeking is frequently married to analyses using the concepts of 'patrimonialism' and 'neo-patrimonialism'. In the Africanist literature, patrimonial authority is often figured as a pyramidal form of personal rule in which the ruler, chief or patron, maintains the loyalty of his staff, followers or clients, by means of patronage benefits. The discretionary power to permit clients the right to operate in uncompetitive markets, and to thereby earn economic rent, constitutes one lucrative source of patronage, as does the ability to delegate that discretion to lesser officials and politicians (see Ponte, 2004). Thus interference in markets is construed in this literature as a cynical and unprincipled strategy for granting private fortunes and maintaining personal power. Interpretations of this kind seek to link BEE (as well as *bumiputra* empowerment in Malaysia) to the emergence of 'crony capitalism' (Southall, 2005; 2006a).

Over the past two decades Tanzania has introduced a series of economic and political reforms with the aim of increasing competition in markets and elections. But a spate of apparently anti-liberal policy measures taken in the late 1990s and early 2000s has prompted some observers to argue that a process of 'reform reversal', used for purposes of patronage, cronyism and rent-seeking, is taking place in the country (e.g., Cooksey, 2003). However, in work analyzing the Tanzanian coffee industry, Ponte (2004) showed that while interference in markets and ownership structures is not free from considerations of patronage, it needs to be understood also a form of action undertaken on grounds of principle – such as the principle that 'indigenous' people should benefit from economic reforms. Ponte (Ibid.) shows that some 'anti-liberal' practices may be better explained through the lens of the 'politics of ownership'. This politics, in its current configuration in Tanzania, seeks to re-empower 'local' interests as a result of 'foreign' domination of specific markets.

In Tanzania, the politics of ownership embeds elements of nationalism and indigenization. However, it goes beyond both concepts in the definition of legitimate 'local interests' and in the defence of these interests. This indicates that, in different historical periods (and in different places), perceived threats to 'local', 'indigenous' or 'ethnic' ownership may come from different configurations of 'identity markers'. Thus, in the immediate post-colonial period, the politics of ownership in Tanzania was played primarily through nationalist practices (assertion of citizenship, nationalization of assets, monopolization of markets). When, later on, Asian Tanzanian interests were perceived as threatening, the politics of ownership was expressed through 'indigenization' arguments (empowering African Tanzanians). Finally, when ownership of key assets and control of markets fell in the hands of large foreign companies as a result of liberalization and privatization, 'localism' was reasserted as a reaction to an overlap of 'white' and 'foreign' identities. As different groups gain access to different assets and markets, the perception of 'local interest' shifts – that is, the formation and political manipulation of 'identity markers' are characterised by overlaps, contradictions and historical change. Thus, the politics of ownership (including BEE) may be read as a relatively low-key attempt by the state to defend perceived 'local', 'national' or 'racial' interests, and not necessarily (or not exclusively) for the (re)distribution of resources for private gain.

4. The Development of BEE since 1994

In this section, we examine the progress of BEE over the past decade. We distinguish between two phases of empowerment. In the first phase (the second half of the 1990s), empowerment was characterised by ownership deals that took place while legislation (not specifically referred to as 'empowerment' legislation) was enacted to address issues of employment equity, labour rights and skills development, but in the absence of an over-arching framework. In the second phase (the 2000s), specific empowerment charters, notably for mining and liquid fuels, were accompanied by a BEE Act and associated codes, and by procurement legislation and the use of procurement as a lever by the state and state-owned enterprises.

FROM THE RDP TO EMPLOYMENT EQUITY, SKILLS DEVELOPMENT AND PROCUREMENT

At the same time as black conglomerates seemed to be emerging in the 1990s, the ANC-led government embarked on a raft of legislative measures mainly aimed at undoing apartheid laws and institutions. This included the Schools Act, the Employment Equity Act of 1998, the Skills Development Act of 1998 and the Skills Development Levies Act of 1999. The Employment Equity Act required firms with more than fifty employees to take actions to bring about a more representative employee profile and to file employment equity reports every year (for those with more than 150 employees) or every two years for smaller firms. Under the regulations of the Skills Development Act, an employer in consultation with the workforce must appoint at least one skills development facilitator (SDF). In addition to acting as an advisor to the employer regarding employee skills development, the SDF is also responsible for assisting the employer with drawing up Workplace Skills Plans (WSPs). Firms require Workplace Skills Plans in order to claim back the 1 per cent skills development levy charged on payroll.

The National Small Business Act in 1996 aimed to provide an enabling environment for small business development, and was accompanied by the creation of a number of organisations targeted primarily at assisting black entrepreneurs in their business ventures. Small, medium and micro enterprises (SMMEs) were identified in policy and legislation as being an important part of generating employment and broadening the growth of the South African economy, given the existing high levels of concentration (see Chabane et al., 2006; Sanchez, 2006). The main institutions to support such firms were the Ntsika Enterprise Promotion Agency, set up in 1995 by the DTI to provide non-financial assistance, and Khula, a state-owned enterprise that supplied wholesale finance to SMMEs through various intermediaries.[17] Khula has assisted in the granting of loans, capacity building and provided credit guarantees for SMME entrepreneurs who lack sufficient funds to pursue their business plans. In addition, the already existing Industrial Development Corporation (IDC) which had been established in the 1940s and had historically been used to advance the economic interests of white Afrikaans-speaking South Africans, was restructured to focus on BEE, with a special 'Entrepreneurial Finance Division' being established specifically to assist black entrepreneurs and to encourage greater black ownership of South Africa's economy. However, the IDC's financing of BEE only became of any significance from 2000 onwards (Mondi and Roberts, 2005). Funding for acquisitions of equity stakes by 'historically disadvantaged persons' was also supported by the creation of a National Empowerment Fund, set up under the National Empowerment Fund Act of 1998.

Despite these measures, progress in terms of the estimated share of black business in the economy was very slow. This was partly because the government lacked a coherent overall strategy for BEE and did not fully appreciate the challenges (Hirsch, 2005). It was also because the government rapidly moved away from the developmental and somewhat interventionist approach set out in the RDP to concerns with ensuring that government policies did not harm 'business confidence' and were perceived as 'market-friendly'. These concerns were consistent with policies that made firms aware of empowerment issues, but eschewed direct sanctions or levers to achieve governmental goals. Instead, ownership changes were assumed to occur 'naturally' in the private sector – as finance was now available to historically disadvantaged business people, and as conditions were established for SMME growth.

Contractionary macroeconomic policies and pressures for industrial restructuring meant that employment equity moved backwards, while the pattern of ownership change also reversed as the stock market fell. As BEE seemingly floundered, the Black Business Council, an umbrella group of eleven prominent black organisations, appointed Cyril Ramaphosa to head a Black Economic Empowerment Commission (BEE Commission, 2001: 1). The suggestion of appointing a commission to consolidate what exactly was meant by BEE and to indicate future directions had been made at the November 1997 BMF National Conference. Delegates had complained that the advancement of BEE was hampered precisely because there was no common understanding of what it constituted (Ibid.). The BEE Commission was promoted by the

[17] These institutions have recently been merged to form the Small Enterprise Development Agency (SEDA).

emerging black capitalist class and their ANC network. It was envisioned as a vehicle through which to address their specific perception of the flaws of BEE, as well as to provide a coherent understanding of the definitions and processes associated to it (Ibid.). In other words, emerging black capital and their ANC network sought a clarification, codification and managerialization of BEE. This eventually took the process (possibly unintendedly) partly away from the political debate and towards technical and system performance discussions.

The Commission took two years to release its findings and recommendations. During this period, uncertainty hung over the concept of BEE and tensions mounted as both the private sector and government looked at the Commission to provide a coherent vision and recommendations for the faltering BEE process. However, this period also saw much discussion of the content of BEE, a substantial focus being the importance not only of ownership, but also of *control* – which was perceived as having much greater effect on the everyday running and decision-making processes of companies. This new emphasis was backed by influential private sector figures such as Dikgang Moseneke, MD of NAIL.[18]

The draft report of the BEE Commission was finally released in March 2000. Immediately, it caused a flurry of criticism. This was mostly focused on its recommendation that the state become significantly involved in the implementation and monitoring of BEE. Although the head of the commission, Cyril Ramaphosa, dismissed criticisms of the draft by stating that it represented the views of individuals rather than the commission as a whole, the strong intervention of the state into the private sector that the draft report recommended was retained when the final commission report was released in July 2000.[19] Although emphasising the need for private sector cooperation, the final report made it clear that it would be the state that would play the primary role in driving and monitoring BEE. This suggests that the BEE Commission report was not simply a vehicle for continuing the accumulation project of the emerging black capitalist class, but also an instrument for exerting increased control over white capital by the ANC.

The 'second phase' of BEE began with the release of the BEE Commission's report and its recommendations for a greater focus on 'broad-based BEE' (BB-BEE) and a call for greater state involvement. The report was based on two theoretical understandings of the South African state. Firstly, it drew from a tradition of historically-based economic analysis which

[18] Nicola Jenvey, 'Empowerment should shift from ownership to control', *Business Day*, 11 October 1999.
[19] Patrick Wadula, 'Empowerment Draft Report Causes Rucus', *Business Day*, 30 March 2000.

identified the decline of apartheid as having come about through a series of economic crises created by the apartheid government's marginalisation of the majority of South Africans from the formal economy. It then argued that South Africa remained in a mode of crisis due to the continued marginalisation of black South Africans (BEE Commission, 2001: 4). Secondly, it located post-1994 South Africa within a world characterised by the processes of economic globalisation and the rise and spread of a neo-liberal model of policy-making. Arguing that unregulated market forces reinforced existing inequalities and thus structural racism, the report called for state intervention to combat the negative effects of greater market integration:

> The country cannot … sustain high levels of economic growth in the absence of deliberate measures by the State to facilitate the meaningful participation of black people in the economy … The state should therefore operate in an intelligent and responsive manner to lead the growth and developmental process. The need for the state to reshape and direct the course of economic development to suit local conditions must be emphasised. In fact, the state is not a helpless entity in relation to capital. It has direct and indirect leverage of the employment of capital and it must use this leverage in order that we build a globally competitive nation (BEE Commission, 2001: 6).

As part of the recommendation for the state to control the BEE process, the Commission called for an 'Integrated National BEE Strategy' that would provide coherent and standardised guidelines, targets and regulations for the implementation of BEE over what it envisioned as a ten year (although possibly longer) period (Ibid.: 8). Most significantly, as part of this strategy, the report recommended that the government pass a National Black Economic Empowerment Act 'aimed at creating uniformity in policy and establishing the necessary institutional support and instruments with which to drive the BEE strategy. The Act should define BEE and set uniform guidelines that will facilitate deracialisation of economic activities in the public and private sector' (Ibid.: 8). The report recommended that the Act allow government to create a National Empowerment Commission (NEC) to supervise the implementation and administration of the Integrated National BEE Strategy (Ibid.: 37). In addition, it was recommended that the Act require the creation of Industry Empowerment Charters in line with the targets and guidelines as defined by the Act.

The BEE Commission was also influential in popularising the concept of Broad-Based BEE (BB-BEE). It identified early BEE transactions as based on a narrow conception of BEE that saw it not as a far reaching process of transformation, but rather as a movement of equity from white hands to black hands. The Commission rejected this narrow view of BEE, declaring that:

> BEE must be people-centred strategy, in word and in deed … It must influence the life of a woman running a spaza shop in an outlying rural area, a worker in a factory in Germiston and the black manager in the corporate head office in Sandton ... The commission is therefore proposing a broader definition of BEE against which a workable and sustainable BEE programme can be designed and implemented as part of a new Growth Plan for the economy (BEE Commission, 2001: 2).

To a certain extent, the BEE Commission Report's 'broad' orientation had already been foreshadowed by the government's consideration of more direct levers to steer empowerment. First, in 2000, the government passed the Preferential Procurement Act, which allowed the state to exercise preferential procurement policies for historically disadvantaged persons. As this encompassed all three tiers of government (national, provincial and local) and state-controlled institutions such as electricity and transport parastatals, such provisions were expected to have a major impact. While there are claims that this has been the case (Iheduru, 2004; Southall, 2006a), the evidence is, at best, mixed. In sectors such as metals and engineering, for which the electricity and transport parastatals together with mining are major markets, procurement has had surprisingly little impact to date (Chabane, 2006; Mohamed and Roberts, 2006; see also below).

THE INDUSTRY CHARTERS

The empowerment charters cover quite different agreements in terms of their legal standing, provisions, participants and the interests that have driven them. At one extreme are the charters for mining and liquid fuels, which are essentially government-led, embodied in legislation and with concrete sanctions. At the other extreme are a range of industry charters (for example, tourism and financial services) concluded on a voluntary basis through tripartite negotiation involving business groups, organised labour and government. These set targets but have no sanctions if targets are not met – nor are firms committed to the charters if they have not explicitly signed up.

The first industry charter, released in November 2000, was the 'The Charter for the South African Petroleum and Liquid Fuels on Empowering Historically Disadvantaged South Africans in the Petroleum and Liquid Fuels Industry' (also known as 'the P&LF charter'). Driven predominantly by the Energy Policy White Paper and applied to the whole private sector, it presented a strategy for increasing the involvement of 'Historically Disadvantaged South Africans' (HDSA), defined as 'all persons and groups who have been discriminated against on the basis of race, gender and disability'.[20] The objective was for HDSAs in a ten-year period to own and control 25 per cent of 'the aggregate value of the equity of the various entities that hold the operating assets of the South African oil industry.'[21]

The P&LF Charter was followed by the 2002 'Broad-Based Socio-Economic Empowerment Charter for the South African Mining Sector' ('the Mining Charter'). The draft of the Mining Charter was leaked to the press on 19 July 2002. In the next two days, R56 billion were lost from South African mining stocks as international investors reacted adversely to the draft charter's statement that black ownership in the mining sector should amount to 51 per cent.[22] Despite this setback, the charter process went ahead, and its final version was released later that year. In the final version of the charter, mining companies committed to achieving 26 per cent HDSA ownership of the mining industry assets in ten years.

The P&LF Charter and the Mining Charter were given regulatory weight in the Mineral and Petroleum Resources Development Act. This critically established the state's ownership of mineral rights, and therefore enabled the granting of 'new order' licenses to be the key lever to achieve BEE goals. In addition, the impetus for firms to qualify under the Charter essentially set up a 'race' on empowerment grounds such that no firm wanted to be seen as being behind and therefore to risk government viewing their applications in poor light. As a result, mining firms are on course to exceed the targets well in advance of the set dates. The implication is that where government has real leverage (through licenses, quotas, buying power) and applies political will, ownership targets can be reached more easily (which is different than to say that empowerment has been achieved).

The Mining Charter also clearly embraced the second generation BEE vision of broad-based empowerment. In a format that would become well known, the Charter positioned itself as a mechanism to overcome 'historical and social inequalities' and listed and explained various mechanisms through which it was believed the mining industry could achieve this. It identified seven 'pillars' of black economic empowerment (BEE): Equity / Ownership, Human Resour-

20 P&LF Charter, p. 2.

21 P&LF Charter, pp. 2- 3.

22 Hilary Joffe, 'Making Money Out of Empowerment', *Business Day*, 23 August 2005.

ce Development, Employment Equity, Beneficiation, Housing, Affirmative Procurement and Community Development. Indeed, government has endorsed the mining charter as a model of broad-based empowerment on the basis that they include measures believed to impact on poverty alleviation along with the expected accumulation of wealth by the main BEE players (Mlambo-Ngcuka, 2005). The Charter was accompanied by a 'scorecard' listing five- and ten-year targets for the industry. Individual companies would be able to ascertain their progress towards the listed targets by measuring them against the scorecard. Unlike later charters, the Mining Charter had relatively few concrete quantitative targets, other than ownership and representation at management level, with many of the categories being accompanied with a 'yes' or 'no' target rather than specific measurements. This was criticized and most of the later Charters would include specific percentages for measuring different scorecard categories as well as specifications for how these percentages were arrived at. On the one hand, the simplicity of the Mining Charter lent itself to manipulation. On the other hand, it allowed the employment of relatively straightforward monitoring systems where the state could maintain a certain degree of direct control.

As with the P&LF Charter, the Mining Charter's target group was not black South Africans specifically, but HDSAs – defined as 'any person, category of persons or community, disadvantaged by unfair discrimination before the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) came into operation.'[23] Again, this focus meant that the beneficiaries of the charters were not necessarily black South Africans, but could possibly be white women. The Mining Charter and the P&LF Charter can thus be characterised as substantially different from the later charters such as those for tourism, financial services and the information, communication, and (ICT) technology sectors, which focused specifically on *black* economic empowerment. There was thus a noticeable movement in the conception of the transformation charters from a focus on historically disadvantaged persons to a more specific racial focus.

The later Charters were published in the wake of the release of the Department of Trade and Industry's (DTI) Strategy document on BEE in March 2003,[24] and the passing of the 2003 Broad-Based Black Economic Empowerment Act in 2003 (Act No. 53 of 2003). Both of these stipulated that *black* South Africans, not HDSAs, were to be the beneficiaries of state-assisted

[23] Mining Charter, p. 2.

[24] The Strategy was the product of inputs from the BEE Commission, the President's Black Business and Big Business working groups and NEDLAC's Trade and Industry Chamber.

empowerment. However, the later Charters were also quite different in that they had a voluntary framework lacking clear sanctions or levers to be used by the state to ensure compliance, thus more closely matching the international model of Corporate Social Responsibility (CSR).[25]

The Financial Sector Charter concluded in 2003 is a good example. The banking sector only seriously began to engage in the process of negotiations when faced with the Community Re-investment Bill tabled by the Ministry of Housing in mid-2002. This Bill was drafted along the lines of the US Community Reinvestment Act of 1977, setting minimum targets for banks' lending to low-income communities backed up by criminal sanctions and fines (Moyo and Rohan, 2006). It was also accompanied by a concerted 'Campaign for the Transformation of the Financial Sector' led by the South African Communist Party and the Congress of South African Trade Unions, which included strike action and marches in a 'Red October' campaign. To head off the Bill (which never become law), the banks participated in a financial sector summit in August 2002 in which the industry committed itself to develop a BEE charter. A set of targets were identified for human resource development, procurement, access to financial services, empowerment financing, ownership of financial services, shareholder activism and board representation, and corporate social investment. These are to be met by 2014 with a review scheduled for 2009 (Moyo and Rohan, 2006). Despite being effective from 1 January 2004, many issues were still being finalised at the time of writing – including the definition of 'BB-BEE' and the measurement of ownership. Furthermore, and tellingly, groups that do not sign up to the Charter, such as the huge retirement fund industry, are not committed to it. While Moyo and Rohan (2006) applaud the financial sector's 'innovation' in agreeing to the Charter, this case study provides a striking demonstration of how BEE proceeds when there is no clear government sanction in place, even though there is activism by seemingly influential stakeholders such as COSATU.

THE MOVE TO THE EMPOWERMENT ACT AND CODES

As with the BEE Commission, the DTI Strategy document embedded South Africa's history within an economic framework, claiming that '[t]he defining feature of Apartheid was the use of race to restrict and severely control access to the economy by black persons' (DTI, 2003: 6). It also clearly identified BEE as a method of counteracting the negative effects that a free

[25] Recent analyses of CSR in the South African context can be found in Appels et al. (2006), Fig (2005), Lund-Thomsen (2005), and Sonnenberg and Hamann (2006).

market system and globalisation could exert on already substantial socio-economic inequalities. This characterisation is significant, for increasingly BEE could be seen as a means of inserting state control into the market under the rubric of a form of identity politics that was considered highly legitimate due to South Africa's history of economic, social and political discrimination against its black citizens. The Strategy argued that the reason 'first phase' deals had had 'limited success in bringing about a substantial increase in the number of black people owning, controlling and managing significant and important part of the economy' was that no coherent strategy existed to 'co-ordinate and focus the efforts in this area' (DTI, 2003: 11). The Strategy document set out a plan to address this problem, explaining the government's vision of BEE and the instruments that would be used to encourage and implement it, namely legislation, private sector charters and scorecards.

The 2003 Broad-Based Black Economic Empowerment Act (BEE Act, No 53 of 2003) legislated certain aspects of the BEE Commission and the DTI strategy. Most importantly, it mandated the creation of 'Codes of Good Practice' to standardise the definitions, targets and weightings used for the purposes of BEE. It also created the means for: (1) the setting up of a BEE Advisory Council to oversee the BEE process and advise government on the issue; and (2) for state recognition of industry charters. In the wake of the BEE Act, several business sectors drew up 'transformation charters'. These included the ICT sector, the financial services sector, the maritime transport and service industry, the forward and clearing industry, the tourism industry and the agricultural sector. Although these subsequent charters were more in line with the DTI strategy, the BEE Act and the recommendations of the BEE Commission, they were created in the absence of the Government's Codes of Good Practice. The drafting of the Codes only began in March 2004, and the final version of Phase One of the Codes was released in November 2005 (DTI, 2005).[26] This poses a severe challenge for these charters, for although some of them have been gazetted, it is possible that many will have to be re-evaluated in light of the release of the final draft of the Codes.

The Codes of Good Practice constitute one of government's potentially most powerful means of intervening in the functioning of the private sector. The Codes embody the standardised framework for BEE that was suggested by the BEE Commission and the DTI Strategy document. This has been done through the establishment of a 'Generic Scorecard' that outlines the state-approved indicators of BEE as well as the weightings of these indicators. These are:

[26] 'The Codes Process', http://www.empowerdex.co.za/content/Default.aspx?ID=24 [last accessed 12 February 2006]

- Ownership: 20%
- Management Control: 10%
- Employment Equity: 10%
- Skills Development: 20%
- Preferential Procurement: 20%
- Enterprise Development: 10%
- A Residual Element: 10%[27]

Each of these items has a set of targets and a weighting in order to make up the score. For example, the skills development indicator has 13 sub-components, with points allocated to each that add up to 20. This makes BEE into an arithmetic process of rating. The DTI claims that (DTI, 2005: 4):

> The Codes provide a standard framework for the measurement of broad-based BEE across all sectors of the economy. This means that no industry will be disadvantaged over another when presenting their BEE credentials … The intention of the Codes of Good Practice is therefore to level the playing field for all entities operating within the South African economy by providing clear and comprehensive criteria for the measurement of broad-based BEE.

The legal standing of the Codes suggests that they could increase the power of government vis-à-vis the private sector, especially where licensing and procurement are key aspects. The guide to the first phase of the Codes states that: 'The Codes of Good Practice will be binding on all state and public entities. This means that, as per Section 10 of the BEE Act, government must apply the Codes when entering into decisions affecting procurement, licensing and concessions, public private partnerships (PPPs), and the sale of state-owned entities' (DTI, 2005: 6-7). In order to successfully compete for the above business transactions, companies will have to fall in line with the generic scorecard. In addition, in order to prove their compliance with the Codes, companies have to be able to produce evidence that those they procure from, or engage with in any meaningful economic activity, have also complied with the codes.

[27] 'Chapter One: Background to, Intention & Application of, the Codes of Good Practice' in 'The Codes of Good Practice on Broad Based Black Economic Empowerment – Phase One: A Guide to Interpreting the First Phase of the Codes' (Final Draft), (DTI, 2005: 4). The 'residual element' allows for industry specific targets.

Otherwise, these companies' BEE rating can not be verified.[28] This is supposed to create a 'chain of compliance'[29] whereby the Codes could become enforced along the value chain as companies that wish to ensure a good BEE rating censure those who fail to do so. At the same time, the 'documentarisation' of BEE may also lead to a predominant focus on processes and management, rather than overall objectives, as other experiences in standardization and certification of social and environmental concerns suggest (see among others, Klooster 2005; Ponte 2006). Furthermore, these leverage instruments will be fairly weak in practice in sectors where the state does not allocate quotas and licenses, and where it is not a major buyer (see section on the wine industry below).

Currently, government possesses the power of accrediting BEE verification agencies. A company's BEE score can only be viewed as legitimate if it has been verified by a state-approved verification agency and furnished with a BEE verification certificate.[30] Verification by a legitimate agent is the key to a company having its BEE rating recognised. Similarly, a company must have knowledge of the BEE accreditation status of those it conducts business with in order for its own standing to be assessed. Accreditation can be used as power leverage by the state, but it can also be turned into a technical exercise with accreditation agencies as 'gatekeepers'.[31] It is not coincidental that the codes were developed by the firm seeking to be the lead rating agency (EmpowerDex) – although no government verification agency has yet been approved.

Although it would be reasonable to interpret the BEE process as an attempt by the state to increase its power to intervene in the private sector, in practice the increased complexity of the provisions developed under codes and charters, coupled with decreasing state capacity to engage meaningfully in the details of these provisions, means that 'state control' is increasingly exercised via 'outsourcing' of the development, monitoring and auditing of BEE-related provisions to an emergent industry of consultants and auditors. This way, the state does not formally relinquish its driving seat in the process of empowerment, but at the same time exerts

[28] 'Chapters Two to Four: Code 000 – Framework for the Measurement of Broad-Based Black Economic Empowerment' in 'The Codes of Good Practice on Broad Based Black Economic Empowerment – Phase One: A Guide to Interpreting the First Phase of the Codes' (DTI, 2005: 14)

[29] Caryn Sternslow, 'Understanding how Empowerment Works', *Business Day*, 8 August 2005.

[30] 'Chapters Two to Four: Code 000 – Framework for the Measurement of Broad-Based Black Economic Empowerment' in 'The Codes of Good Practice on Broad Based Black Economic Empowerment – Phase One: A Guide to Interpreting the First Phase of the Codes' (DTI, 2005: 14.)

[31] Furthermore, international 'best practice' is for accreditation itself to be 'outsourced'.

this control 'at a distance' within codified, standardized, and audited processes where responsibility is more diffuse.[32]

Finally, despite the complexity of the codes and their systematic measure of 'empowerment', their 'spirit' can be side-stepped through the gazetting of industry charters under section 9 of the BEE Act, which allows them to have the same legal standing as the Codes.[33] Although the majority of the post-2003 charters roughly correspond to the Generic Scorecard, none of them perfectly matches it, and many differ in important aspects of BEE – such as the actual definition of 'black'[34] as well as the application of the Charters and scorecards to multi-national corporations. The emphasis on South African citizenship is important as the 'spirit' of BEE is to assist black *South Africans* to access the formal economy. The omission of the citizenship requirement is present in the Maritime Transport and Services Charter. In addition, although the Financial Sector Charter includes South African citizenship within the definition of 'black', it also states that 'in paragraphs 5 and 11 the term shall include permanent residents of the Republic of South Africa'.[35] These paragraphs deal with the targets for management, skills development and sectoral control, which together make up 50 per cent of the generic scorecard. Thus, a possible loophole in the form of permanent residence rather than citizenship being a requirement for measurement means that the percentages reflected in financial sector companies' scorecards may not accurately reflect the number of South Africans who have been empowered through the implementation of the Financial Sector charter.

Many of the charters have also created specific exemptions and allowances for foreign investors. Thus, the ICT Charter states that 'the Council may upon application permit any company, including a multinational company, specifically defined terms of release from complying with

[32] Several contributors to the workshop where this paper was first presented pointed out that there are wide differences among government departments when it comes to formulation and monitoring capacity.

[33] This is made possible under Code 800 of the first phase of the Codes of Good Practice. However, in order for a charter to be gazetted under section 9, it must first be recognised by the Minister of Trade and Industry as being sufficiently aligned with the Codes. In addition, even if a charter has received legal standing, if there is any confusion on the interpretation of the Charter or Codes, the Codes of Good Practice 100 through 700 will trump the industry specific charter. Thus, the present standing of the existing charters is unclear.

[34] In fact, there is even some friction between that BEE Act and the Codes. The BEE Act defines 'black people' as 'a generic term that means Africans, Coloureds and Indians'. The Codes define 'black people' as: 'African, coloured or Indian persons who are natural persons and: are citizens of the Republic of South Africa by birth or descent' (DTI, 2005: 2-3).

[35] Financial Sector Charter, p. 2.

the equity requirements of this charter'.[36] Similarly, the Financial Sector Charter allows exemption from certain of the ownership targets. Exemption from these will not harm a company's overall BEE score. The obvious driving force here is to prevent withdrawal of much needed foreign investment. With the imposition of the Codes, it appears unclear as to whether or not such exceptions will be seen as acceptable by the state. However, there are indications that exemptions for MNCs will be granted in certain cases, especially since the Codes themselves set out alternative measures for MNCs to meet the generic scorecard targets without necessarily yielding ownership of the company.[37]

Because of the discrepancies between the charters and the codes, unless they have been gazetted under section 9 of the BEE Act already, there is a possibility that some of them may have to be revised if business sectors wish their related charters to become legally binding. The only exceptions to this are the Mining Charter and the P&LF Charter, to which the government is bound to by already existing legislation.[38]

5. Evaluating BEE

Black economic empowerment has been portrayed as essential to address the socially unsustainable status quo in South Africa (Klasen, 2002; Iheduru, 2004). It has also been proposed as part of the settlement reached between the new ruling elite and white capital to ensure proper-

[36] ICT Charter, paragraph 7.F.3.6: pp. 68-69.

[37] Statement 101 of Code 100 provides for alternative (yet fairly complicated) means to achieve the generic scorecard BEE ownership score without transferral of equity. This enables a company that does not wish to meet the ownership requirement in the ordinary manner, to conduct what is referred to as a 'qualifying transaction' with an 'associated enterprise' that meets a number of different requirements explained in paragraph 5 of the statement. These include, but are not limited to, 'the creation of sustainable business or business opportunities for black people; and the transfer of specialised skills or productive capacity to black people; and not result in unnecessary job losses' (DTI, 2005: 'Statement 100' in Code 100). Then using an equation provided for by the codes, the Measured Enterprise can calculate its Ownership 'Equivalency Percentage.' This process is clumsy and fairly complicated, but does enable foreign investors to some degree sidestep the 20 per cent ownership target.

[38] The Mining Charter and scorecard are embedded in the 2002 Mineral and Petroleum Resources Development Act. The P&LF Charter is embedded in the 2003 Petroleum Products Amendment Act. See 'Charters or Codes?' http://www.empowerdex.co.za/content/Default.aspx?ID=21 [last accessed 12 February 2006]

ty rights and stave off expropriation (Malikane and Ndletyana, 2006; Mbeki, 2006). In this section, we evaluate the impact of BEE so far, firstly in relation to employment, wages and education, and secondly in relation to corporate ownership and control. This is followed by an examination of three case studies (industrial fisheries, metals and engineering, and wine).

EMPLOYMENT, WAGES AND EDUCATION

Implementing BEE in South Africa entails redressing apartheid's legacy in the education system. But possible changes in extreme inequality and high levels of poverty also depend on economic opportunities deriving from employment and wages. The performance in these indicators, however, has been dismal – with poverty alleviation dependent largely on greatly expanded social grants targeted at the poor (van der Berg et al., 2005). With regard to education, there have been moves on the spending side to bring public spending in historically black schools in line with that in historically white schools. The number of teachers paid by the State per thousand students has been equalised at 31 (van der Berg, 2005).[39] However, greater freedom for school governing bodies to determine additional fees still means that there are an additional 12 teachers per 1,000 students (i.e. a total of 43 per thousand students) in historically white schools. There are still high differentials in performance between historically white and black schools, determined by matriculation pass rates (van der Berg, 2005; 2006). Teacher skills and training, school governance, as well as textbook availability are still problematic (van der Berg, 2006).

The 'meaningful participation' of blacks in the economy has been heavily limited by the employment outcomes since 1994. Employment creation has been dismal, and has failed to keep up with the growth of the labour force, entailing rising unemployment. At the same time, industry restructuring has seen firms shifting employment to more skilled (often white-held) jobs (Bhorat and Hinks, 2005). As a result, the unemployed are almost entirely black and unskilled / semi-skilled. The unemployment rate is highest for African women at 56 per cent in 2004, compared to 7 per cent for white men (Makgetla, 2006). The lack of meaningful employment creation has impacted heavily on young entrants to the labour force. The unemployment rate of Africans under 30 years of age stood at 60 per cent in 2004, and almost 75 per cent of African women under 30 were unemployed (Makgetla, 2006).

[39] Note that different levels of teacher qualification mean that this does not meant that there is the same average expenditure level, per student.

These developments are also reflected in earnings and wage trends. In 2004, 39 per cent of South African workers earned less than R1000 per month and 65 per cent earned less than R2500 per month (Valodia et al., 2006). These are almost entirely African and coloured workers, who account for 97.9 per cent of those earning under R1000 and 95.2 per cent of those earnings under R2500. The proportion of African and coloured workers in these low wage categories has actually *increased* since 2000, when 92.5 per cent of those earning under R2500 per month were of these race groups. Viewed in another way, 74.4 per cent of African workers earn less than R2500 per month, compared with just 11.9 per cent of white workers.[40]

From the mid-1990s to 2003 the wage gap has risen due to the falling real wages of low skilled African workers, and increased wages of highly skilled workers (where whites are disproportionately represented), with semi-skilled categories experiencing stagnant real wages (Altman, 2006). The gap between the wages of African and white workers has also increased at the low and semi-skilled levels, while at the highly skilled and managerial levels the wages of Africans has to some extent caught up with those of whites. The public sector has played an important role in narrowing the wage gap (i.e. the private sector pattern would be worse than otherwise observed) (Altman, 2006; citing Woolard, 2002). Indeed, in the private sector, the share of Africans in senior management *declined* from 1996 to 2004 while the share of Coloured / Asian combined increased substantially and the share or whites increased slightly (Makgetla, 2006).[41]

In terms of one of the most important aspects of people's ability to 'meaningfully participate' in the economy – work and wages earned – BEE therefore appears to have gone backwards. It has been argued, however, that there have been substantial increases in the black middle class (Burger et al., 2003; van der Berg et al. 2005). For example, taking a cut-off income of R40,000 per annum or greater (in 2000 prices) van der Berg et al. (2005) find that the share of Africans[42] has increased from 12.3 per cent in 1994 to 24.7 per cent of this group in 2004. Makgetla finds a similar proportion of Africans in the top 10 per cent of income earners (which is approximately the proportion earning above R40,000 per annum in 2004). But, given the overwhelming majority of Africans in the population, the proportion of Africans earnings

[40] Makgetla (2006) finds similar results. The proportion of the employed earning less than R1,000 per month (in constant 2000 prices) has increased from 1996 to 2004; 40 per cent of African employees earned less than R1,000 per month in 2004. In addition, 40 per cent of the self-employed (virtually all African) earned less than R500 per month.

[41] The calculations are based on data from the Statistics South Africa October Household survey for 2006 and Labour Force Survey for September 2004.

[42] van der Berg et al. (2005) define this group as 'black' (i.e. excluding Coloured and Indian).

above R40,000 is 3.3 per cent in 2004, up from 1.3 per cent in 1994 (van der Berg et al., 2005). Southall (2006a: 21) also makes reference to the growing visibility of the black middle class. While the growth of the proportion of Africans in this group is high, this only serves to indicate the very low base from which this growth is occurring and should not hide the very slow (or even lack of) progress in the private sector, as highlighted above.

CORPORATE OWNERSHIP AND CONTROL

It is clear that a degree of change has taken place in ownership of the South African economy in the last decade, including large deals in the financial sector and mining. However, the pace of change has been sluggish and has gone in reverse in some years (Jack, 2006; Chabane et al., 2006). Also, one should examine the terms governing transactions where black business people bought stakes in formerly white-owned companies, and the extent to which increased black ownership represented the gains of just a few individuals. Despite apparent government commitment to BEE, it was predominantly the private sector that played a leading role in implementing BEE deals in the early 1990s. In this 'first phase' of BEE, the proportion of black business groups on the Johannesburg Securities Exchange climbed to 9.6 per cent in 1998 (Table 1).[43] The first concrete BEE deal is believed to have been Sanlam's 1993 sale to Methold of 10 per cent of its stake in Metropolitan Life (BEE Commission: 2001: 5).[44] In the following years, various deals classified as 'BEE transactions' were made. The biggest were a result of Anglo-American's unbundling (reflected in the significant fall in its control of JSE listed companies over the 1990s) and the sale of identified assets to black investors. These included Anglo-American's sale of a stake in African Life to a consortium headed by Don Ncube. Anglo-American also sold off JCI (a mining firm) and Johnnic (an industrial group) after setting aside for itself what proved to be the most successful component, Amplats (the world's largest platinum company). While Cyril Ramaphosa's National Empowerment Consortium bought Anglo's R4 billion stake in Johnnic, New Africa Investments Limited's (NAIL) bid for JCI was defeated by a higher offer from another black group, Mzi Khumalo and African Mining. Another major deal included Sanlam's sale of a Metropolitan Life stake to NAIL (Chabane et al., 2006).

[43] Note that *McGregors* (2006) applies discretionary judgement as to when groups have 'significant black influence'.

[44] Another source identifies the government's sale of National Sorghum Breweries to 'black business interests' in 1991 as the first empowerment deal. See Hilary Joffe, 'Making Money Out of Empowerment', *Business Day*, 23 August 2005.

In this first phase, many deals were based on Special Purpose Vehicles for their financing – which depended on strong share performance. This was starkly revealed in the wake of the 1998 Asian stock market crash. Essentially, as the small number of black consortiums involved in most of the BEE transactions lacked capital, they depended on highly-geared financing structures.[45] This meant they were very vulnerable to lower stock performance and poorer returns than expected – and indeed to possibly having overpaid for the assets. The re-integration of South Africa in the global economy and the overseas listings of some of the major conglomerate groups, led by Anglo-American, had placed pressure on these groups (largely from overseas shareholders) to focus on more clearly identified areas of 'core business'. One way of doing this was to sell assets no longer deemed 'core' to black business groups, claiming credit for being engaged in empowerment transactions, while at the same time organizing finance for these groups at full commercial rates. It was also a period when real interest rates were very high as government implemented a tight monetary policy (Roberts, 2004a).

Table 1: Main groups, by control of JSE Capitalisation (% of total)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Anglo-American	44.2	42.4	33.7	38.2	43.3	37.1	28.5	22.6	17.4	22.3	23.6	27.3	20.2	22.3	18.7	17.3
Sanlam	13.2	13.2	15.6	12.0	10.5	12.7	11.4	11.0	11.1	12.0	13.2	10.0	6.3	3.8	2.7	1.6
SA Mutual	10.2	10.4	14.2	10.7	9.7	11.2	10.2	11.4	8.8	10.7	11.0	10.8	12.0	6.9	4.5	4.5
Rembrandt	13.6	15.2	14.6	15.5	13.0	7.8	10.6	9.9	9.0	10.4	11.0	9.6	10.0	8.1	7.9	7.8
Directors	6.7	5.4	5.4	5.6	7.0	11.4	10.0	10.6	14.4	11.4	8.9	9.2	7.4	6.1	5.8	8.2
Liberty/Standard Bank	2.6	3.7	4.7	6.2	7.2	7.3	11.1	11.9	9.5	4.9	5.2	5.3	6.0	4.3	4.7	4.3
Black groups[2]							6.3	9.3	9.6	4.7	5.7	5.3	3.5	4.7	6.3	5.8
Foreign	2.1	1.9	2.2	2.4	2.2	4.1	4.1	4.0	3.9	4.0	3.9	3.6	10.1	17.9	18.5	14.2
State														1.5	2.2	2.5

Source: McGregors Who Owns Whom in South Africa 2006
Notes: [1] McGregors undertakes their own assessment of control on the basis of direct and indirect shareholdings. Due to the extensive cross-holdings which have typically characterised South African conglomerate groups, especially up to and including the 1990s, it may reflect relatively small direct shareholdings.
[2] Black groups include those companies that *McGregors* judges to have significant black influence.

The highest profile failure was JCI, while Johnnic switched its focus to services, especially mobile telecommunications. NAIL ran into trouble over large payments to the four main executives, despite trading at substantial discount to the net value of their holdings. Two of

[45] Jenny Cargill, 'Filling Cracks in BEE Edifice' *Business Day*, 13 October 2005.

these executives resigned. One of them was Nthato Motlana, who had founded NAIL and built it through acquisitions into the major BEE company of the time (for a review of these developments, see also Hirsch, 2005). As a result, the proportion of the JSE market capitalization identified as controlled by black (influenced) business groups actually *fell* from 9.6 per cent in 1998 to just 4.9 per cent in 1999 (Table 1). Once again, South Africa's history of discrimination appeared to override its attempts to transform, as indebted black business people were unable to finance their debts. The image it portrayed was that BEE was unsustainable and lacked direction and coherence.In this 'first phase', the term BEE came to be used fairly loosely, applied to almost any deal which saw a transfer of ownership in any form, whether meaningful or not, to black South Africans. The deals made focused specifically on ownership rather than including elements such as skills development or seeking to address broader social issues such as gender inequality. It was the racial appearance of the deals, rather than their substance in actually transforming the racially discriminatory structure of the South African economy, that constituted the crucial qualification for being referred to as a 'BEE deal'.

The second phase of BEE is generally associated with the impact of the Mining and Petroleum & Liquid Fuels charters, as well as the pressure brought to bear by the Preferential Procurement Act of 2000. The negotiations of charters for other sectors meant that the momentum was maintained as, for example, the major banks sought to do empowerment deals. In this phase, a much greater proportion of mergers and acquisitions had a BEE dimension in terms of both the number of deals and the value of Merger and Acquisition (M&A) activity. The proportion of M&A identified as having to do with BEE grew from between 10 and 15 per cent of the total number in the period 1998-2002, to between 24 and 32 per cent in 2003-2005.[46] By value of M&A, BEE transactions accounted for less than 10 per cent of the total from 1998 to 2002, while from 2003 to 2005 the value of BEE deals were between 20 and 30 per cent of the total.

Despite its 'broad-based' characterisation, politically well-connected figures such as Cyril Ramaphosa, Patrice Motsepe, Tokyo Sexwale and Saki Macozoma have remained at the forefront of empowerment deals throughout the 'second phase' of BEE. These 'comrade capitalists' (Iheduru, 2004) have rapidly acquired much wealth and prestige, becoming symbols of a new and growing class of wealthy, successful black South African capitalists. Their business deals and individual wealth has been the focus of much media attention (see, among others, the *Sunday Times* 'Rich List' and the feature on black 'oligarchs' in the *Mail & Guard-*

[46] These are taken from data published annually by Ernst & Young in *Mergers & Acquisitions: A Review of Activity*.

ian).[47] According to McGregors' *Who Owns Whom*, in 2005 there were 8 black entrepreneurs in the top 50 directors in terms of the value of their shareholdings on the JSE. These are led by the Elephant consortium, with a R4 billion stake in former state utility Telkom, and Patrice Motsepe, due to his R2.9 billion ownership of African Rainbow Minerals. Others include the former Premier of the Gauteng Province, Tokyo Sexwale, but also the Royal Bafokeng Nation and the Mineworkers Investment Corporation (the investment arm of the National Union of Mineworkers). The Royal Bafokeng's wealth derives from the ownership of land with some of the world's richest known platinum deposits. The Mineworkers Investment Corporation (MIC), owned in turn by the Mineworkers Investment Trust, has built its wealth through the astute investment of workers' pension funds.

The wealth of black business moguls is predictably still small in comparison to that held by the families that have dominated South African business in the 20th century (see Fine and Rustomjee, 1996; Chabane et al., 2006). The highly concentrated ownership and control of South African economy has been primarily associated with family-run conglomerates led by the Oppenheimers' Anglo-American Corporation and the Rupert's Rembrandt. While the Oppenheimers have relinquished control of Anglo-American in the past decade (focusing their wealth in the now de-listed De Beers), Rembrandt remains controlled by the Rupert family.

The concentration in overall ownership and control is mirrored in the concentration found in individual industries. Typically one, two or three firms dominate any given industry or sector – with their positions entrenched through vertical relationships upstream into sources of inputs and downstream into distribution and marketing (Roberts 2004b). This means that it is difficult for new firms to enter and grow without doing it through acquisition of one of the existing dominant players. These poor opportunities were reinforced by the broadly stagnant economic performance over the 1990s. With very weak demand growth, firms are limited to competing for the existing customer base. There are some exceptions, notably in services such as mobile telecommunications, media, information technology and healthcare. These sectors have also seen the growth of some of the most successful black business groups including MTN (in telecoms), Kagiso Media, MIC's significant media holdings, and Business Connexion (in IT). By comparison, there have been some major failures in black business ventures where they have gone head-to-head with established dominant firms in mature industries. The most spectacular of these have been in beverages with the failure of Vivo beer against the various

[47] See the *Mail & Guardian*, 11 to 17 August 2006, 'Anatomy of fast money'.

brands of South African Breweries and of New Age Beverages in bottling and distributing the Pepsi brand.

The Competition Act which came into force in 1999 is sometimes seen as part of empowerment legislation on the grounds that it aimed to 'pry open this nepotistic business culture' (Iheduru, 2004). It includes empowerment objectives in its preamble and aims, stating that one of the purposes of the Act is 'to promote a greater spread of ownership, in particular to increase the ownership stakes of historically disadvantaged persons' (section 2(f)). In providing (in the preamble) that 'all South Africans have equal opportunity to participate fairly in the national economy', it can also be seen as tackling the power of the white-owned and controlled big business groups through provisions addressing abuse of dominance and restrictive business practices (Chabane, 2003). In practice, BEE deals have most often arisen in the context of anti-competitive mergers, which companies seek to justify on the grounds that they contribute to greater black ownership. Proposed mergers that have included BEE grounds for seeking the approval of the competition authorities include a combination of two of the big three private hospital groups (Afrox and Mediclinic) and a merger of liquid fuels interests of the largest petroleum refiner Sasol with one of the other major companies, Engen. Both of these were prohibited by the Competition Tribunal. However, the competition authorities have not been particularly successful in prosecuting cases of prohibited practices related to the abuse of market power (see Roberts, 2004b; Chabane et al., 2006).

The broad-based approach to empowerment is meant to embrace the growth of black small and medium enterprises, as part of what some commentators see as a 'third wave' of BEE (see, for example, Jack, 2006; Sanchez, 2006). Yet, the continued high levels of concentration at industry- and sector-level suggest scepticism about the prospects for such developments. Rather, a greater threat to established South African business interests seems to be the increased entry of foreign firms, including developing country multinationals such as Tata (see also Chabane et al., 2006).

LESSONS FROM CASE STUDIES

Fisheries

The South African state has different degrees of power to force real or imagined redistributive efforts in different sectors of the economy. Fisheries, along with energy, telecommunications, and mining, is one of the sectors where the allocation of licenses, exploitation rights and quotas makes the state theoretically more likely to be successful in achieving BEE. It is also a primary test of the redistributive intentions of the state: the hake deep-sea trawl is an industrial fishery regulated via a conservative allocation of quotas; therefore, extractive growth can not be used to distribute extra resources; resources need to be redistributed from the same pool.

Viewed historically, the current process of BEE in South African fisheries is but the latest in a long series of ethnic makeovers by corporate capital in response to state pressure. What is unique about the current conjuncture is thus not the state's use of access rights to leverage the position of its preferred 'previously disadvantaged' ethnic constituency with incumbents,[48] but: (1) the formalisation of the practice into standards, measurement matrixes, and official policy; (2) its extension from the inshore to the deep-sea sector; and (3) the attempt of changing the internal ethnic composition (shareholding) of incumbent players.

Ponte and van Sittert (2006) examine the redistributive processes in deep-sea hake trawling fishery (the most important fishery in the country) through a historical analysis of the princip-les, frameworks, narratives and management systems that have been used to identify certain groups as 'legitimate fishers' since its inception in the late nineteenth century. They place this evolution as a background for an understanding of the first long-term fish rights (LTRs) alloc-ation of 2006, which was probably the last real possibility for the government to enact a mean-ingful redistribution of quotas – given the current high political status of BEE processes in the country and the fact that the next quota allocation is only scheduled to take place in 2020.

Ponte and van Sittert (2006) show that in the 1990s the gradual redistribution of quotas to a new group of 'legitimate' fishers (coloured clients in the late apartheid regime, and African nationalist-aligned coloured and black capital after 1994) was more limited in the hake deep-sea trawl sector than in other fisheries. Also, the attempted 'external transformation' of the industry (via the entrance of new players) basically stopped in its tracks in the late 1990s. With the start of the medium- and long-term right allocation processes of the 2000s, the rhetorical principle of 'external transformation' was finally dropped in favour of 'internal transformation' ('blackening' of established players; larger quotas to well-performing black players) under the umbrella of the so-called tripod of equity, sustainability and economic stability. Ponte and van Sittert conclude that the reallocation process of long-term rights in 2006 was more meaningful than in previous rounds, but it was far from revolutionary and came at the cost of solidifying a now enlarged oligopoly and opening up a secondary market for rights that will result in further consolidation. This is likely to take place in favour of the existing large companies that have

[48] By 'incumbents', we mean fish industry players that were already active at the time of re-negotiation of the 'legitimacy' of a particular ethnic profile. Usually, these players belonged to a 'previously advantaged' group.

the marketing thrust and/or control the financial strings in joint ventures with smaller companies. Ponte and van Sittert also suggest that, given the current rate of loss of scientists and managers at the regulatory agency that manages fisheries resources, there will be limited capacity to properly monitor the use and possible abuse of quotas in the near future.

Modest redistribution and the possibility of reconsolidation and 'rewhitening' of the industry are also indirectly legitimized through the award of the Maritime Stewarship Council (MSC) label for 'sustainable fisheries' to the hake trawl industry in South Africa (Ponte 2006). On the basis that conservation and resource management are easier to achieve with a smaller number of players, MSC certification was played as a tool against the re-distribution of quotas away from main, white-owned, quota holders to the possible benefit of 'black'-owned smaller quota holders and new entrants within the deep-sea hake sector. It was also used as a tool to avoid re-distribution of quotas away from the large, mainly white-owned, deep-sea trawling sector to the advantage of the mostly 'black'-owned longlining sector (Ponte 2006).

Finally, Ponte and van Sittert (2006) highlight that the state's capacity to shape capital in sectors such as fishing, where it enjoys the leverage of gatekeeping, is more limited than it appears to be – given the extreme concentration of ownership in the South African economy (see also Chabane et al. 2006). Incumbent capital in the hake industry, far from constituting discrete ethnic (white) 'fishing capitals' unique to the sector, are more accurately conceived of as local manifestations of monopoly capital combines, whose interests are multi-sectoral and operations multi-national in scope. They argue that monopoly capital in South Africa, in keeping with international trends over the past few decades, has migrated up the value chain away from direct to indirect control over primary production through brand ownership. Under these circumstances, it is ultimately less important who catches the hake, so long as they do so according to monopoly capital's specifications.

BEE-driven reform of the fishing industry can thus be read as doubly conducive to the interests of incumbent capital. First and most obviously, it has largely confirmed their historical share of access rights and, by effectively privatising all access rights, allowed for their future more flexible and efficient redistribution via the market in response to changing environmental, economic and social conditions over the next fifteen years. Secondly, and far less apparently, by treating the fishing industry as a discrete sector and prioritising primary production (access rights) over others forms of control over the resource, BEE-driven reform has obscured and so left untouched monopoly capital and even assisted it in its migration up the value chain by providing a convenient cover for the outsourcing of risk and primary production to nascent black capital. That large hake fishing companies have been major loss leaders for the past few years underlines the extent to which BEE reform can be seen to have produced a double pyrrhic victory: (1) the betrayal of the masses, as widely denounced and decried by the populists and socialists; and (2) the much less obvious but no less detrimental saddling of black capital with the volatile, high risk, loss-leading primary production sector, which was outsourced by incumbent monopoly capital under the banner of redistribution, but is still effectively controlled by it through downstream control over logistics, distribution, marketing and branding.

Metals and Engineering

The metals and engineering industries are at the heart of the South African economy and were key to industrial development under apartheid due to their strong linkages with mining and energy. The importance of demand from mining and liquid fuels corporations, as well as from state-owned enterprises in energy and transport, means that firms in the metals and engineering industries have been subject to procurement pressures due to BEE charter provisions and the Preferential Procurement Act. These industries therefore provide a good case to test the possible 'snowball effect' of procurement by firms that operate in sectors where government has applied direct levers, such as mining. These possible responses include changes in ownership, management and employment equity.

The metals and engineering industries have been subject to the pressures of trade liberalisation and restructuring that have affected South African manufacturing industry as a whole. This has placed firms under increased competitive pressure and required investment in improved capabilities (including physical machinery, skills and work organisation). Such pressures are particularly challenging in South Africa given that under apartheid blacks were limited to unskilled and semi-skilled jobs, while skilled and management positions were reserved for whites. Mohamed and Roberts (2006) studied 25 large and medium firms in the metals and engineering industries to assess changes in terms of employment equity and skills development, and the links between them. They question the extent to which firms have sought to train their workforce to overcome the apartheid legacy and, at the same time, to promote employees drawing from the whole of their workforce.

The importance of key customers subject to charters or procurement legislation had influenced six of the firms which identified themselves as being 'black-empowered' in terms of ownership, with five firms just aiming to reach the 25 per cent threshold to qualify. But, the impacts on ownership were mitigated by the fact that nine firms were 100 per cent foreign-owned and thus not subject to the same expectations. While the firms identified as empowered had slightly greater representation of black males and females at board level, the largest difference was in the proportion of white females, with an average share of 23 per cent compared to 9 per cent for all 25 firms. Notwithstanding the limited moves to empowered ownership, firms reported little negative impact from non-compliance with BEE standards. This was largely because firms in this sector supplied products with specific technical requirements and had not experienced threats from competing firms which were empowered due to the generally low level of black participation in the industry.

In terms of the firms' own procurement spending, there has been a clear move to source non-technical services such as cleaning, catering and security from BEE suppliers. A small number of firms reported major spending with BEE suppliers for technical and material inputs. Closer examination revealed that the patterns with respect to services reflected a trend to outsourcing non-essential services in order to reduce costs. BEE thus provides a cover for moving to the contracting of services, often from former employees, who now have lower pay and less secure employment as a result. This was reinforced by the low rating given to BEE in the defining procurement trends over recent years. The investigation of material and technical inputs revealed another disturbing trend, but this time in terms of reporting and representation. The three firms reporting a majority of BEE spending in this area were found to be sourcing from Mittal Steel SA, BHP Billiton and Aveng. The first two are large multinational companies, while the empowerment status of Aveng (a large conglomerate) appears to largely accrue from a stake of approximately 15 per cent held by the Public Investment Commission.

The foreign-owned firms in the surveyed group were as likely to have BEE procurement as the locally-owned firms, with foreign firms generally highlighting the importance of procurement in presenting an image of empowerment where ownership structures could not change. Furthermore, Mohamed and Roberts find almost no change in employment profile of the firms over recent years. Data filed for mandatory employment equity reports reveals that at the top management, middle management, skilled professional and semi-skilled levels the share of black people *declined* from 2002 to 2004.[49] Only at the unskilled level has the share of black people increased overall, with black females increasing their share very substantially and the share of black males declining. The increased share of white employees outside of the unskilled category is due to an increase in the share of white females, while the share of white men has generally declined, but only marginally. This was apparently part of a deliberate strate-

[49] This is consistent also with Makgetla's findings for the private sector as a whole based on Statistics South Africa survey data (Makgetla, 2006).

gy, confirmed in interviews with industry associations, to meet targets for 'historically disadvantaged South Africans' which include white females.

A similar picture of continuity emerges in terms of training, despite it being identified by government as an important area for policy initiatives. Indeed, the requirements of the Skills Development Act of 1998, including that firms appoint 'skills development facilitators' and file 'workplace skills plans', are widely ignored or only paid lip-service. Shop floor, predominantly black, workers have received training which is largely limited to occupational health and safety issues. White employees received the lions-share of training budgets and much more extensive training due to their dominance at the higher skill levels. In some cases, the fear that black employees would be poached was given as a reason for not investing more in training them.

Mohamed and Roberts' study thus reveals inertia in the realm of procurement and skills development. The 'snowball effect' of BEE from sectors where the state has direct levers is mostly absent, since it would require a monitoring capacity that is not currently in place. In such circumstances, firms are able to use BEE as part of their public relations efforts, in particular boasting about their own procurement spending, with apparently little fear of being unmasked. Despite widespread rhetoric by commentators from business and government that skills shortages are part of the apartheid legacy holding back the South African economy, there is no evidence of a coherent firm response linking employment equity and skills development as part of improving firm competitiveness and creating a 'post-apartheid workplace'.

Wine

The wine industry is possibly one of the toughest sectors to test the political willingness to implement BEE in South Africa. It is to a very high degree white-owned and managed; it produces a beverage that is either exported or mostly consumed by whites domestically; and it is a sector where the state has little direct leverage (if one considers the slow and conservative extent of land reform in the country) and almost no procurement. Yet, in November 2003, the South African press reported to the world that the South African wine industry was at last entering 'the new South Africa'. For years, this industry had been a byword for white power and black exploitation – famous for the grim working conditions, poor wages, degrading institutions like the 'tot' system,[50] and authoritarian, racist white farmers. The South African

[50] The practice of giving alcohol as part of the remuneration package; it was abolished in law in the 1960's, but has survived into the 21st century on many farms.

Wine and Brandy Company, a body created by the Kooperastiewe Wijnmakers Vereniging (KWV), for decades the conservative bastion of Afrikaner power in the sector, held a consultative conference on 'Black Empowerment' in the wine industry. In contrast to the past, when talk of change was the jealous prerogative of white, male industry insiders, a wide range of industry stakeholders were invited, and the conference itself was dominated by new black faces and voices. A Wine Industry Plan was presented, in which black empowerment figured as a central element. The then Director General of Agriculture was present to welcome the plan and laud the new direction. It seemed that the leadership of an industry until then intimately entangled with racial oppression, was about to break from the past.

Kruger, du Toit and Ponte (2006) examine the political economy of 'black economic empowerment' (BEE) in the wine industry, and argue that far from representing a decisive break with the past, it is in important ways deeply continuous with it. They argue that the South African wine industry has for the most part reacted to pressures for equitable change by trying to contain or sideline them, and that recent shifts, for all their appearance of a radical departure, represent a continuation of this strategy. In particular, they show how the adoption of a discourse of BEE has allowed an ideological sleight of hand by which the terms and conditions for debates about change in the industry have been placed on more conservative terrain. Furthermore, they argue that this more conservative agenda will soon be embedded in official frameworks such as the Wine BEE Charter and the technical monitoring tools associated with it. The ways in which the racial terminology of BEE has been (mis)used has allowed the mostly white Afrikaner industry to form alliances with key members of the black elite that has come into power in the new South Africa. This new configuration has appropriated aspects of ostensibly transformative discourses to contain and capture the transformation agenda, and to marginalize issues that would address the fundamental structural relations of power that are at the root of black farm workers' poverty and marginalization. In a twist of irony, this is happening at the same time as Wines of South Africa, the institution in charge of generic promotion of South African wine abroad, has embarked in a new marketing initiative based on the image of the Cape Peninsula as a biodiversity hot-spot. 'Diversity is in our nature', says the main slogan of this campaign – sitting rather uncomfortably with two facts: first, that the industry is not diverse in its human nature, especially at the managerial and ownership levels; and second, that grape growing is a mono-crop cultivation method that destroys rather than enhances biodiversity.

The combined focus on 'nature' for the export market and 'BEE' for the internal transformation process allows the industry to avoid facing potentially more dangerous options (such as land redistribution, import boycotts, and better working conditions for grape pickers) to redress current and past race-based imbalances. An essentialist racial discourse, pivoting on a history-blind and dislocated notion of 'blackness' thoroughly divorced from the *real* historical conditions under which poor workers of colour have been exploited, has been used to displace the ideological agenda away from impoverishment of the many to the enrichment of the few. At the same time, marketing and codification technologies are deployed to move the terrain of restructuring from a political realm to a managerial one – branding, advertising, image building on the one side; codes of conduct, BEE charter, scorecards, auditing on the other. In a way, these tools are allowing the standardization and de-politicization of labour and social relations in the wine industry, characterized by slavery and exploitation in the past, and by more or less benign paternalism in more recent history.

6. Conclusion

While the idea of Black Economic Empowerment (BEE) can be traced back at least to the Freedom Charter, its practice in the present remains highly contested, and subject to different definitions. There is widespread agreement that BEE is an essential part of redressing the legacy of apartheid. However, there are important differences on how, and on what terms, this should be achieved. Apartheid fundamentally curtailed effective participation in the country's economy and society through systematic discrimination in education, ownership, access to resources, and opportunities. But, since 1994, the share of blacks in the lowest income categories has remained entrenched. The bias away from low-skilled labour under economic restructuring has meant that those deprived of a decent education by the apartheid regime appear to have no better income opportunities now than previously. Indeed, the evidence is that their position in these terms has substantially worsened.

In translating the ambitions of BEE to redress the apartheid legacy through policy-practice, the ANC-government was denied the option of simply following the blueprint of either *volkskapitalisme* or one of the post-independence models of economic indigenisation elsewhere in Africa. Therefore, what the ANC required was a successful market-driven model of endogenous economic preferment and for this it took inspiration from Malaysia. South Africa's Reconstruction and Development Programme (RDP) appeared on paper to place BEE at the centre of a redistributive strategy. However, the actual focus on a market-friendly, non-interventionist and neo-liberal set of economic policies in practice left little space for manoeuvre in terms of redistribution. Also, legislation on employment equity and skills development, which was aimed at improving representation and training of blacks within firms, did not succeed because it lacked effective sanction.

The realisation that change was slow and largely marginal was coupled in the 2000s with stronger intervention in the mining and liquid fuels industries. Together with the BEE Commission's report, the mining and liquid fuels charters appeared to lay the basis for a more proactive empowerment strategy as embodied in the Broad-Based BEE Strategy and Act. It is important to highlight that the BEE Commission was not only a private initiative championed by the emerging black capitalist class, but also a vehicle for the ANC to potentially exert more control over white capital.

These developments have been accompanied in the last few years by a sharp increase in BEE-related mergers and acquisitions which have coincided with better performance of the stock exchange. Given the financing required for acquisitions, only over the longer term will it be possible to evaluate the actual changes represented in the deals made, as the acquisitions have in principle been made at market prices and do not represent any more equitable distribution of capital. Indeed, most of the ownership changes made in the first phase of BEE turned out to be deals more favourable to white conglomerates than to new black businesses. At the same time, during the BEE period the biggest South African multinationals – Old Mutual, SAB, Liberty Life, Anglo-American, De Beers – have localized their headquarters outside South Africa, presumably putting their major assets beyond the reach and recall of the post-apartheid state. Also, the state has been careful not to compromise property rights (with the possible exception of the Mining Charter), and mechanisms have been largely voluntary, without concrete sanctions in place for non-compliance.

While it is too early to properly assess the 2003 Act and the related Codes for its implementation, the continued pursuit of separate industry charters suggests that business and the state continue to both compete and collaborate in setting the agenda for empowerment. Yet, state power may be on the wane. It is quite possible that the Mining Charter will in fact be the outlier in having stipulated changes to the industry, along with concrete sanctions for non-compliance. The lever underpinning the 2003 Act is effectively procurement by the state and State-Owned Enterprises (SOEs). But the size of the latter varies across sectors and is likely in time to be under pressure for downsizing or privatization.

Government has made much in public pronouncements of the broad-based aspects of BEE, such as skills development. The reality is somewhat different from the rhetoric, again suggesting that progress will be slow in the absence of more concerted government action and enforcement (see Mohamed and Roberts, 2006). In recent charters, the ability of firms to meet targets for HDSAs through the promotion of white women appears to be a circumvention of the spirit of BEE – when one examines the impacts of apartheid laws on different groups, resources and ability to effectively participate in the economy. Of even more significance is the conceptual move from thinking in terms of the most disadvantaged groups by apartheid, and thus in terms of equitable participation for all, to a focus on the race of the *individuals* in question. The latter approach allows the promotion of a small black capitalist class, which is the least dangerous outcome for established white business.

In a broader perspective, regulatory practices, such as BEE, that aim at reversing historical disadvantages for certain groups can not be simply characterised by clientelistic and rent-seeking objectives – as much of the Africanist literature does (for a fuller discussion, see Ponte, 2004). A less normative way of looking at how past wrongs have been addressed in post-colonial Africa is to see governments using questions of principle to redefine the parameters of competition to the advantage of 'local' or 'disadvantaged' players – whether on the basis of ethnicity, nationality, race, gender, 'indigenous status', class, or a combination of the above.

This suggests the following in relation to South Africa: (1) that BEE is more than a simple project of 'black capitalist class formation' – in other words, that race (and gender and nationality) are integral parts of the intended (if not achieved) redistributive processes; (2) thus, that BEE is not about creating a de-racialised society, despite the official proclamations; (3) that, at the same time, the objective of race-based empowerment is not simply to create tools for patronage, rent-seeking and clientelism – although it may have that effect; and (4) that BEE 'discourse' can not be simply ascribed to a smokescreen that hides the real interest of corporations, but should be seen an 'orderly system of knowledge and practice that embodies particular ways of interpreting and acting on the world' (Hamann and Kapelus 2004; as in Sharp, 2006: 215).

The current phase of BEE is characterized by the creation and refinement of measurement and codification systems, their progressive standardization and their (partial) legalization. This evolution proceeds parallel to other international processes of similar nature, such as the development of codes of conduct and 'best practice' models under the Corporate Social Responsibility (CSR) agenda, and the increasing transfer of social and environmental concerns from public regulation to self-regulation – including private or semi-private certification and labelling schemes (see, among many others, Blowfield and Frynas, 2005; Giovannucci and Ponte, 2005; Graham and Woods, 2006; Ponte and Gibbon, 2005). What is important to underline here is that the instruments of redistribution used in these instances rarely question the essential nature of market reforms and neo-liberal economic policy.

In South Africa, the increased complexity of the provisions developed under codes and charters, coupled with decreasing state capacity to engage meaningfully in the details of these provisions, means that 'state control' is increasingly exercised via 'outsourcing' of the development, monitoring and auditing of BEE-related provisions to an emergent industry of consultants and auditors.[51] This way, the state does not formally relinquish its driving seat in the process of empowerment, but at the same time exerts this control as a 'guarantor' within codified, standardized, and audited processes where responsibility is more diffuse. The managerialization of BEE is likely to lead to a predominant focus on process and system management, rather than overall objectives. In current international practices of auditing and certification, it is perfectly possible to match procedures, indicators and management goals and at the same time openly fail to match the 'spirit' of the basic principles upon which a certification system was built (Klooster 2005; Ponte 2006; Power 1997). The focus on systemic management is also likely to shape the way the concept of empowerment itself is perceived and how it is implemented. In a way, the concept of 'system management' is currently deployed in similar ways in which 'the market' was used in the 1980s and 1990s to justify liberalisation policies in Africa and elsewhere – both concepts allow the diffusion of responsibility.[52]

The additional attractiveness of the process of managerialization is that it allows BB-BEE to be sold to a disparate set of interested parties. First, the 'broad' part caters to labour and populist demands for a 'more meaningful participation' of blacks in the economy. Second, less focus on equity reassures white capital that radical redistribution of assets will not take place. Third, the systemic character of the process effectively lifts it from 'populist and unpredictable' grabs. Fourth, the latent 'stakeholder' character of BB-BEE allows it to be accepted as an instrument of (relative) change even within the broad dictates of neo-liberal economic policy. Finally, exceptions and relaxation of rules for multinational companies (MNCs) can prevent

[51] In the BEE process, outsourcing can also help to match employment and procurement profiles, in addition to being a 'good business model'. By contracting former white employees to provide high-skill services, the employment profile of a company from a BEE perspective improves, other things being equal. And, by outsourcing non-essential and low-skill services such as security and cleaning to former black employees, companies can boost their BEE procurement spending.

[52] Handley (2005) uses exactly this device to understate the responsibilities of the ANC in adopting neo-liberal policies in the 1990s.

possible attacks to the legitimacy of the process from the point of view of international investment and trade rules.

Political battles, state-capital-labour disputes, NGO and academic attention on BEE have so far focused on procedures, content, indicators and measurement devices of charters, codes and implementation mechanisms. While this is obviously important, we want to close this paper by highlighting four systemic, structural and discursive shifts that the BEE process is allowing: (1) it is moving the debate from a political terrain, where redistribution is in theory possible, to a managerial terrain, where discussions are technical and set within the limits of codification, measurement intervals and systemic performance; (2) by so doing, it is partially shifting the responsibility for promoting change and for bearing the consequences of failure away from elected government and towards a generic 'system' of which the emerging industry of accountants, technocrats, auditors and certifiers are the foot soldiers, but bear no responsibility; (3) it is developing a system so complex that it implicitly legitimizes 'outsourcing' of its management from government to the private (auditing) sector, thus reinforcing a further weakening of the state and a next round of 'outsourcing' of previously political and now managerialized functions;[53] and (4) it is forwarding the idea that (some level of) redistribution is actually possible in a neo-liberal economic policy setting, thus disenfranchising more radical options in policy-making.

[53] In other words, the state does not seem to have the capacity to monitor and enforce these complicated BEE scorecards. The arms deal and numerous other procurement scandals at all levels of government from national to municipal, plus the Kebble saga suggest that BEE will implemented by unofficial mechanisms not mandated by the acts and codes.

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