Chapter 2

The Challenge of Black Economic Empowerment

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INTRODUCTION

In August 2012, the South African Police Service opened fire on miners who had gone on a wildcat strike to demand higher wages at the Marikana platinum mine owned by the Lonmin Corporation in the North West province. Thirty-four miners were killed and many more were injured during the shooting. The Marikana incident drew huge attention from local as well as international media. It was reported as an incident of suppression by the African National Congress (ANC) government which could be compared to that of the apartheid government. After this incident, the strike by the miners spread to other mines, and several mines were forced to temporarily halt their operations[1]. The violent strike action also spread to other occupations, most notably among the truck drivers in Gauteng and farm-workers in the Western Cape, some of which have continued into 2013[2].

The Marikana incident, though undoubtedly catastrophic and unparalleled with regards to the number of casualties and police action, should not be seen as an isolated event. Wage struggles by striking workers are almost annual events in South Africa. In spite of some progress in the provision of public services, such as water and sanitation, electrification, and the construction of public housing for the poor since 1994 (Statistics South Africa 2007), the ANC government has not been able to meet the expectations of

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1 "Zuma Announces Inquiry into Marikana Shooting," *Mail and Guardian Online*, 17 August 2012; "'Miner Spring' may Lead to More Unrest," *Mail and Guardian Online*, 6 September 2012; "Demands Escalate as Strikers Go for Broke," *Mail and Guardian Online*, 19 October 2012.
2 "Farm Workers' Strike: Violence was a Long Time Coming," *Mail and Guardian Online*, 16 November 2012; "Farmworkers' Strike: No Silver Bullet for Rural Unrest," *Mail and Guardian Online*, 15 January 2013.

Makino, Kumiko, and Chizuko Sato, eds. *Public Policy and Transformation in South Africa after Democratisation.* Spot Survey 33. Chiba: IDE-JETRO, 2013.

its people. During the Mbeki administration (1999-2008), protests and demonstrations by the poor began to increase. In 2008, the grievances of poor people exploded in the form of xenophobic violence against migrants from the rest of the African continent, who were clearly victims of scapegoating. Jacob Zuma succeeded Mbeki in 2009 as president by gathering support from workers and poor people. Since then, the Zuma administration has repeatedly emphasised job creation and the provision of public services for the poor as its policy priorities. Nonetheless, strike actions and public protests have intensified rather than decreased under the Zuma administration[3].

In the background to the increased protests and strike actions, one can point to widening income inequality and its changing nature in South African society after democratisation. The Gini coefficient in 1993 was 0.66, which was one of the highest in the world, and this was considered most eloquent evidence of the racial discrimination and inequality created during apartheid. It has however increased to 0.68 in 2000 since the end of apartheid and to 0.70 in 2008 (Leibbrandt et al. 2010: 32-33, Table 2.6). While the income gap between the white and black[4] populations is still not negligible (Leibbrandt et al. 2010: Table A.3.2), inter-racial inequality has been on the decline. In contrast, intra-racial inequality has widened and become increasingly visible within the black population (Seekings and Nattrass 2005: 304-306, Tables 9.1, 9.2, 9.3). This was partly due to the rapid growth of black middle and affluent classes, while the unemployment rate remained at around 25%[5]. After 1994, the number of black people in professional jobs and management positions increased, especially in the public sector (civil servants), through the employment equity policy that has aimed to redress racial inequality and to promote black economic empowerment (BEE). This has resulted in the emergence of a new black middle class, often called "black diamonds", who are increasingly seen as an important consumer market. In addition, numerically small, but socially influential black capitalists and tycoons are also created through BEE share transactions (Seekings and Nattrass 2002: 12-16; 2005: 308-313; Southall 2004). The intensification of popular protests in the late 2000s is perhaps a reflection of the deepening sense of relative deprivation felt by the poor in post-apartheid South Africa.

This chapter explores the development of BEE policy and practice since 1994 and discusses its key features, achievements, prospects and challenges. While BEE has certainly contributed to the emergence of black middle and affluent classes, thus deracialising the South African economy, it has also attracted a large amount of criticism from various stakeholders and remains one of the most controversial of the government's policies. On the one hand, the large corporate sector, still dominated by white capitalists and managers, tends to see BEE as an obstacle to economic growth, even

[3] "A Massive Rebellion of the Poor," *Mail and Guardian Online*, 13 April 2012.

[4] Based on the definition of the BEE policy, this chapter employs "black" as a general term referring to all three groups classified as "other than white" in the apartheid racial registration, i.e. "coloured", "African" and "Asiatic (Indian)".

[5] "Jobless Growth," *The Economist*, 3 June 2010 (http://www.economist.com/node/16248641, accessed 5 July 2012).

if its political necessity seems to be accepted (CDE 2007). On the other hand, most scholars, political commentators as well as organised labour, criticise the narrow definition and limited outcome of BEE, which so far has favoured a tiny minority of black elites with strong political connections (Southall 2004: 538; Tangri and Southall 2008: 701; Mbeki 2009: chap 3; Marais 2011: 144). Even though the economic empowerment of black people is one of the key items on the social and political agenda of democratic South Africa, the question of how to achieve it is far from settled. In this context, this chapter aims to shed light on the progress and further challenges of meaningful empowerment for black people through tracing the development path of BEE policy and practice up to the present.

This chapter consists of three sections. The first and second sections discuss the key features of two distinctive phases of BEE policy and practice in South Africa. The first phase started in 1993 just before the first democratic elections and was led by the white corporate sector, which wanted to co-opt black elites as their allies. While this early phase largely set the direction and established the meaning of black empowerment in the country, it was soon heavily criticised for its limited effect. From 2000 onwards, the second phase of BEE kicked in. This phase can be characterised as increased state intervention in the economy in order to accelerate the BEE process. In the third section, I will highlight both the achievements so far and the criticism of BEE in an attempt to provide a balanced assessment. In conclusion, I will summarise the main argument of this chapter and speculate about the prospects for policy change in the post-Mangaung period.

1. THE FIRST PHASE OF BEE: PRIVATE DEALS AND EMPLOYMENT EQUITY IN THE PUBLIC SECTOR, 1993-2000

The development of BEE policy and practice in South Africa is divided into two phases. The first phase is characterised as the white corporate sector-driven process, which began just before the first democratic elections, when several large companies sold some of their shares to black investors. Although the *Reconstruction and Development Programme* (RDP), the first election manifesto of the ANC, which was published on the eve of the first democratic elections in 1994, clearly stated the deracialisation of "business ownership and control" "through focused policies of black economic empowerment" as its "central objective" (ANC 1994: 93), the ANC did not have concrete policies on how it was going to achieve this. Against this background, the BEE process was initiated by the white corporate sector that wanted to create black capitalists and managers who were sympathetic to its needs. In 1993, Sanlam, an Afrikaner-controlled insurance company, sold a 10% stake in its subsidiary (Metropolitan Life: Metlife) to a black consortium called Metlife Investment Holdings (Methold, now known as New Africa Investment Ltd: NAIL) (Marais 2011: 140)[6]. Following this, a number of mainly large corporations on the

[6] "History of Sanlam," Sanlam website (www.sanlam.co.za), accessed 24 October 2012.

Johannesburg Stock Exchange (JSE) concluded similar share transactions with black investors and consortia in the mid-1990s (SAIRR 2010: 336). The BEE deals of the mid-1990s were part of the process known as the "unbundling" of the large conglomerates which reorganised themselves by focusing on their core business, while simultaneously discarding unproductive operations (Marais 2011: 141; Nishiura 2008: chap 4). Black investors were timely recipients of the subsidiaries of these disintegrating conglomerates. This form of share transaction, where white-owned enterprises sell part of their or their subsidiary's share to black investors or consortia came to be known as BEE share deals or BEE deals, and it became a common means of incorporating black elites into the mainstream of economic activities and creating black capitalists and managers in post-apartheid South Africa. More recently, BEE share transactions by which BEE entities sell their shares are also called BEE deals or BEE transactions (Wu and Moodley 2009).

Another initiative taken by the white corporate sector during this period was the appointment of black directors in its boardrooms. In 1992, there were only 15 black directors out of a total of 1,173 directors in the top 100 JSE-listed companies. By 1997, the number of black directors had increased to just below 100. By the end of 2003 the number of black directorships (posts) increased to 432. These were held by 307 black persons (Vuyo et al. 2004: 1-3), and this number rose to 558 in 2006, 24.9% of all directorships on the JSE (Wu, Serrao and Matjakana 2006). In 2010, the number of black directorships increased to 951. These were held by 770 black persons (Empowerdex n.d.[2011?]). Most black directors occupied non-executive positions and often particular individuals sat on more than one board. This, in practice, meant that large white corporations actively sought out a small number of black individuals who were considered to have good connections with the ruling party. For example, Cyril Ramaphosa, once a prominent trade union leader who led political negotiations in the early 1990s between the National Party government and the ANC and later became a symbol as a BEE tycoon, occupied 7 JSE-listed company non-executive directorships in 2006. Another well-known example is Tokyo Sexwale, the first premier of Gauteng province, who became a business tycoon and then returned to politics as the Minister of Human Settlement under the Zuma administration. He occupied 2 JSE-listed company executive and 4 non-executive directorships (Bridge et al. 2007).

The BEE deals produced a number of new black-owned and black-controlled firms where black people owned a large amount of the shares, but many of them did not really own them in the sense that they had incurred debts to the financial institutions for the loan that had been taken out to purchase these stocks. In many cases, a mechanism known as special purpose vehicles (SPV) was created in order for people to raise enough capital to realise the BEE deals. SPVs, in essence, were companies established for the sole purpose of promoting the purchase of stocks of a target corporation by the BEE group. It was usually a loose, ad hoc consortium of several stakeholders, including prominent black businessmen and women, investment companies, and employees' trusts or community trusts. In order to repay the loan to the financial institutions, the price of the shares owned by the black companies had to remain high, as they were relying on the dividends. However, the share prices at the JSE plummeted at the end of 1998 following the South-East Asian economic crisis. This revealed the real weakness of black companies, and it became difficult for them to find a financial institution that was willing to finance BEE deals or new black companies. As a result, many new black companies and investors were forced to go out of business (BEE Commission 2001: 6, 24-25; Seekings and Nattrass 2002: 13; Freund 2007: 665).

The failure of these early BEE deals was spectacular, but we should not forget that out of these early BEE deals emerged several leading black-controlled companies and black tycoons in some industries where the government had regulatory powers in giving operational licences. In particular, the deregulation of the following industries played an important role in the growth of black companies: the information and communications technology industry (ICT), including mobile phone companies, the media broadcasting industry (television and radio) and the gambling (casino) industry. In these industries, the government actively promoted black ownership and control by making it compulsory for corporations to have BEE partners if they wanted to be granted new licences (BEE Commission 2001: 36, 43; Seekings and Nattrass 2002: 13). For instance, the Mineworkers Investment Company benefited from its shares in Primedia, Hosken Consolidated Investments had shares in the YFM (the Youth radio station) and e.tv, and Kagiso Trust Investments in Kagiso Media. However, it should also be emphasised that the regulatory power of the government was not a sufficient condition for the growth of black corporations. Perhaps more importantly, the tremendous growth of these relatively new and therefore unconventional industries was a key to the success of the new black corporations (Cargill 2010: 11-15).

While the private sector was responsible for the birth of new black corporations, black directors and tycoons during the 1990s, the government managed to exercise its power in promoting affirmative action in the workplace where it could, i.e. in the public sector. While black billionaires stand out in society, their numbers are very small. The majority in the new black middle class are, in fact, public sector workers, including teachers and nurses, and professional workers in private corporations (Seekings and Nattrass 2002: 13; 2005: 309-310). It is arguable that the Employment Equity Act of 1998 played an important role in promoting their emergence. The purpose of this Act is to eliminate any discriminatory employment practices against specific groups (black, women and persons with disabilities) and to enhance their representation in the workplace. It supports the principle of affirmative action and encourages a company to employ qualified people from these groups. It also stipulates that companies have to formulate an employment plan in accordance with the principle of the Act, and submit it and report on its progress to the Commission for Employment Equity that was created by the Act. Large companies with 150 or more employees are obliged to do this every year, while smaller companies with less than 150 employees have to do so every two years (CEE 2011).

The report of the Commission for Employment Equity (2011)[7] clearly shows that employment equity is most advanced in the public sector. While the racial composition of the economically active population is 73.6% African, 11% Coloured, 3.2% Indian and 12.1% White, the percentage of Africans in top management positions in the public sector accounts for 66.6% (81.9% for black people as a whole[8]), in senior management positions for 57.7% (72.3% for all black people), in professional and middle management positions for 58.9% (77.9% for all black people) and in technical and junior management positions for 71.6% (92.3% for all black people) (CEE 2011: 5, 25). Given that the percentage of black people in both top and senior management positions in the public sector was a mere 6% in 1994 (Southall 2004: 533-534), these differences are remarkable. Southall (2005; 2007) also alerts us to the fact that the majority of the directorships of state-owned corporations are occupied by black people.

In contrast, the employment equity figures for the private sector show a completely different picture. The percentage of Africans in top management positions in the private sector is a mere 9.6% (the figure is 11.1% for black people as a whole), in senior management positions 12.6% (28.7% for all black people), in professional and middle management positions 22% (41.3% for all black people) and in technical and junior management positions 41.2% (62.8% for all black people) (CEE 2011: 26). There are also some differences among the different sectors and industries within the private sector. The Commission for Employment Equity (2011: 11) singles out retail, motor trade/repair services and wholesale trade services as the least progressive sectors. In contrast, the gambling industry, where the government has strong regulatory power through the provision of licencing, seems to take employment equity more seriously. Sallaz (2009: 223-229) gives an interesting insight into the mind-sets of casino managers in Gauteng province in the late 1990s to early 2000s. These managers were required to draw up an empowerment plan, employ black people, and report on the progress of the plan to the provincial gambling board in order to obtain and keep their casino licence. Apparently, white managers take this obligation very seriously, as the provincial gambling board often conducts surprise visits and can impose a fine or even revoke the licence if it discovers a discrepancy between the plan and the actual workforce.

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[7] Since smaller companies with less than 150 employees are required to submit their employment equity report only every second year, they do so in every year that ends with an even number. This means that the Commission for Employment Equity's reports published in the year that ends with an odd number analyse the reports submitted by both the larger and the smaller companies, while those published in the year that end with an even number do so only for the reports submitted by the larger companies.

[8] As stated in the footnote 4 above, this chapter uses "black" as a general term referring to "coloured", "African" and "Asiatic (Indian)".

2. THE SECOND PHASE OF BEE: WIDENED DEFINITION AND EXPANDED TARGETS FOR BEE AND INCREASING STATE INTERVENTION, 2000 TO THE PRESENT

Criticism of the limitations of private sector-driven BEE and the lack of a state policy or state control over the process was soon voiced by aspirant black businessmen (Tangri and Southall 2008: 703-705). In late 1997, the national conference of the Black Management Forum (BMF) passed a resolution calling for a revisit of the BEE process, which had been conceptualised, controlled and led by the private sector, and for drafting a new vision for BEE by black people. In the following year (1998), the Black Economic Empowerment Commission (BEE Commission) was set up under the Black Business Council (BBC), an umbrella body representing 11 black business organisations. The BEE Commission was tasked to develop a clear and consistent vision and strategy for BEE, and Cyril Ramaphosa served as its chairman. The report submitted by the BEE Commission in 2000 criticised the narrow definition of BEE and advocated a broadening of the definition and the targets for BEE:

> There is often a tendency in South Africa to define BEE narrowly and to equate it with the development of a black capitalist class...... BEE should be viewed within the broad scope of empowerment processes including, amongst others: job creation, rural development, urban renewal, poverty alleviation, land ownership, specific measures to empower black women, skills and management development, education, meaningful ownership, and access to finance for households and for the purpose of conducting business (BEE Commission 2001: 1-2).

Referring to the experience of Afrikaner capitalist development under the National Party government, the BEE Commission justified the increasing role the government was expected to play in the economic development of the country. It also drew inspiration from the experiences of East Asian countries, not least Japan and Malaysia, emphasising the role of developmental financial institutions that were regulated by the government in fostering local (disadvantaged) entrepreneurs (BEE Commission 2001: 10).

It is striking that the rational for BEE was drawn from an historical precedent of affirmative action for Afrikaners in the 1940s. There is nothing new in political intervention in the economy in order to favour certain groups of people in South Africa. Ramphele (2009: 246) thus notes that "English-speaking business people took steps to empower Afrikaners, facilitating their access to economic resources." In a similar vein, Cargill (2010: chap 3) states that the preferential employment of Afrikaners in the civil services and in the newly-created state-owned companies in key industries, such as transport and energy, contributed to the economic uplifting of Afrikaners[9]. However, both authors also emphasise the important role played by self-help projects and funding

[9] Freund (2012) also sees the National Party government as a historical precedent for the developmental state in South Africa. The idea of the developmental state is also increasingly used to describe growing policy intervention by the South African government in the economic sphere.

schemes by Afrikaners themselves, in particular Afrikaner-managed financial and insurance companies, such as Sanlam and Volkskas, which provided financial assistance to Afrikaner entrepreneurs, before the National Party came into power in 1948.

Black business was not the only body unhappy about the narrow definition of BEE. Broadening the definition and targets of BEE was also the government's response to pressures from the left, in particular the trade union movement. Rumney (2007: 10) sees BEE as a product of a "trade-off" between the government's embrace of neo-liberalism in its macro-economic policy, *Growth, Employment and Equity (GEAR)*, announced in 1996, and criticism against that neo-liberalism by the left. The Congress of South African Trade Unions (COSATU), part of the tripartite alliance with the ruling ANC, was critical of both GEAR and of the fact that earlier BEE transactions made a tiny minority of black people billionaires, while the majority of the population did not see any benefits. The inclusion of the broader definition of BEE in the BEE Commission's report was apparently realised by heavy lobbying activity from COSATU and the South African Communist Party (SACP) (Gumede 2005: 230). In addition, Gumede (2005) also emphasised the role played by Mbeki and Mbeki's belief in BEE.

> [Mbeki] is extremely touchy about internal criticism of BEE. He considers its success to be one of the foundations of the legacy he plans to leave as the post-apartheid leader who brought economic benefits to the previously disadvantaged. …. Mbeki has taken the failure of [the first phase of] BEE, which he spearheaded from the start, very hard. To him, failure on the black economic front means failure in the fight against racism. … He went so far as to suggest that failure of BEE would amount to failure of the ANC's historic mission of a non-racial society (Gumede 2005: 224, 230).

Although Mbeki was known as a pro-business president who regularly consulted with black and white business leaders on policy matters (Gumede 2005: 215-217), and the white business body was clearly against the increasing government intervention in the BEE process, ultimately Mbeki accepted the call from the BEE Commission (Tangri and Southall 2008: 705). It was during the Mbeki administration that the ANC succeeded in consolidating its political power and that the content and practice of the government's BEE policy were formulated. The broader definition of BEE proposed by the BEE Commission was accepted by the tripartite alliance at a policy workshop in early 2001, which was later adopted by the ANC's national conference at the end of 2002 (Gumede 2005: 231). At the same time, consultations with the private sector were held in the President's Black Business and Big Business Working groups set up by Mbeki and at the Trade and Industry Chamber of the National Economic Development and Labour Council (NEDLAC), the South African version of a corporatist body where representatives of the government, business, organised labour and civil society discussed important policy matters (DTI 2003: 5).

In early 2003, the Department of Trade and Industry (DTI) published *South Africa's Economic Transformation: A Strategy for Broad-Based Black Economic Empowerment* (the BEE strategy document) which described the overall framework and strategy of the government's BEE policy. After listing existing legislation[10] and institutions[11] that provide legal and financial support to black companies and BEE projects, the BEE strategy document laments the fact that there is no overall strategic framework to promote BEE and then states the government's intention to introduce this through a BEE bill. It also gives the government's definition of BEE as "an integrated and coherent socio-economic process that contributes to the economic transformation of South Africa, and brings about significant increases in the numbers of black people that manage, own and control the country's economy, as well as significant decreases in income inequalities" (DTI 2003: 10-12, 15). This definition is important as it equates the goal of BEE with that of economic transformation and expects BEE to become a driving force in realising a more equal society.

The BEE strategy document also reveals the government's intention to introduce a scorecard consisting of seven elements (ownership and management control of a company or asset, human resources development [later renamed as skills development], employment equity, preferential procurement, enterprise development and socio-economic development) in order to measure the contribution to BEE of individual business entities. It further spells out how the government intends to use the BEE standard thus measured by a scorecard. For instance, it states that the government considers the BEE level of an entity when it grants a licence in certain regulated industries, such as gambling and mining, when it sells state-owned corporations or assets, or when it engages in public-private partnerships. Moreover, it articulates the intent that the government and state-owned corporations adopt a procurement policy that favours BEE compliant companies. Thus, the BEE strategy document makes it clear that the government will intervene in economic activities in order to accelerate the BEE process in the private sector. Nonetheless, it has made certain concession to white business by stating that each sector or company can come up with its own empowerment charter or plan to achieve the BEE targets suitable for the particular circumstances of each sector or company (DTI 2003).

The BEE policy was subsequently passed into legislation as the Broad-Based Black Economic Empowerment Act, Act 53 of 2003 (BBBEE Act), which was promulgated in early 2004, and the operational guideline of the BBBEE Act was published in early 2007 as the Codes of Good Practice on BEE. While the Act defines who should benefit from BEE, the Codes sets out how the government measures the BEE level of individual entities in detail. The Act defines "black people" not only in racially generic terms, which include African, Coloured and Indian people. It also refers to people broadly defined as

[10] This includes the National Small Business Act (1996), the Preferential Procurement Act (2000), the Competition Act (1998), and the Employment Equity Act (1998).

[11] This includes the National Empowerment Fund, Khula, and Industrial Development Corporation (IDC).

the socially-disadvantaged, including "women, workers, youth, people with disabilities and people living in rural areas" (Republic of South Africa 2004). On the other hand, the Codes give technical details on how each of the seven elements in the BEE scorecard, which was proposed in the BEE strategy document mentioned above, will be calculated (Republic of South Africa 2007; DTI 2007). Compared to the earlier period of BEE, which was led by private corporations, these two pieces of legislation broadened the definition of BEE in two senses: one, as to who should be the beneficiaries of BEE, and, two, as to how BEE should be achieved. It should also be noted that the measurement of the BEE level of each entity became a very technical and complex process, usually done by professional firms specialising in the BEE verification business.

Table 1 is the BEE generic scorecard announced in the Codes. The calculation of the points in each element is divided by several categories and respective targets. For instance, the ownership element, which is allocated 20 points, is calculated on the bases of the voting rights of black men and women, the stock ownership of black men and women, the inclusion of an employees' share scheme, and so forth. Each company is classified into nine categories of BEE status from level one contributor (highest) to non-compliant (lowest), depending on the number of points the company acquires. While a level one contributor obtains 135% BEE recognition when it applies for a public procurement, a non-compliant contributor gets 0% recognition. All companies operating in South Africa are expected to contribute to the goals of BEE, but multi-national companies can be exempted from requirement in the ownership element, i.e. giving part of their shares to black people, by adopting alternative measures that are sanctioned by the Ministry of Trade and Industry[12].

Table 1 BEE Generic Scorecard

Element	Points
Ownership	20
Management Control	10
Employment Equity	15
Skills Development	15
Preferential Procurement	20
Enterprise Development	15
Socio-Economic Development	5
Total	100

Source: DTI (2007: 4, 12).

Since the BEE status of each entity that is calculated by the scorecard is to be used by the government in granting a public procurement, it is particularly important for companies that are interested in these procurements, such as companies in the

12 "Equity Equivalent Programme for Multinationals" (http://www.thedti.gov.za/economic_empowerment/equity.jsp, accessed 25 January 2013).

construction industry, to comply with BEE requirements. In addition, the government expects that preferential procurement based on BEE standards will become important in transactions between private companies throughout the supply chain. This is because even if a company is not involved in the public procurement process, its transaction partner may be interested in getting higher BEE status in order to obtain a public procurement. In this way, the government hopes to spread the pressure of BEE compliance to the entire economic sphere (Republic of South Africa 2007; DTI 2007).

As mentioned, the BEE Strategy document left room for industry players to set their own BEE goals and targets in accordance with the unique circumstances of each industry. This is also a characteristic aspect of the BEE policy of the South African government, and it reflects the strength of industry and the influence of large corporations in the country. While the DTI came up with a generic scorecard to measure the BEE compliance level of individual business entities for the public procurement process, major stakeholders in several industries began to negotiate the contents of industry-wide transformation charters. These industry charters become public documents when they are publicised in the government gazette under the terms of Section 12 of the BBBEE Act. They are announcements of industry players' commitment to transformation and BEE and as such they do not have a legally binding status. On the other hand, each industry can also gazette its transformation charter under the terms of Section 9 of the BBBEE Act. In this case, a sector charter obtains a legal status as a Sector Code of Good Practice, which has the same status as the BBBEE Codes of Good Practice discussed above (DTI 2007).

According to the DTI website, nine industries (Tourism, Construction, Forest, Transport, Chartered Accountancy, Property, Information and Communication Technology: ICT, Finance, and Agriculture) gazetted their own Sector Codes between 2009 and 2012. In addition, the Marketing, Advertising and Communication (MAC) sector gazetted its transformation charter[13]. Thus, it is arguable that, to date, not many industries have shown their eagerness to tackle the question of transformation actively. However, those industries that have gazetted Sector Codes tend to set higher targets for their BEE compliance. For instance, both the construction and the ICT industries set the target rate of black ownership at 30%, not the 25% required by the BBBEE Act. In the tourism industry, where small companies predominate, only those who have an annual turnover of less than 2.5 million rand, not 5 million rand as specified by the Act, are exempted from complying with the BEE targets. The financial industry has added the provision or facilitation of financial services to black people or black-owned companies as the eighth element in its own BEE scorecard (Hamann, Khagram and Rohan 2008: 31-35).

The mining industry occupies an exceptional position in the South African BEE process (Southall 2005: 466-468; Hamann, Khagram and Rohan 2008: 28-31). Mainly due

[13] "B-BBEE Sector Charters" (http://www.thedti.gov.za/economic_empowerment/bee_sector_charters.jsp, accessed 25 January 2013).

to the fact that the government can intervene vigorously through its regulatory power of granting licences, it has the most effective BEE codes. The Mineral and Petroleum Resources Development Act, Act 28 of 2002, which came into effect in May 2004, is essentially the transformation code of the mining industry. The Act stipulates that owners of old mining rights would lose their mining rights, unless they converted them into new mining rights within five years (by May 2009). One of the major conditions imposed on the old mining rights holders to convert to new mining rights was to comply with the ownership requirement of the mining charter. The mining charter stipulated that each mining house has to realise 15% black ownership by May 2009, which has to be increased to 26% by May 2014 (Wu and Moodley 2009).

A lot of mining companies rushed to find black partners in order to sell their shares. According to Wu and Moodley (2009), 115 BEE transactions, including sales by BEE entities, were reported in the newspapers between 2004 and 2009, and their market capitalisation amounted to just under 102 billion rand. More than 70% of these transactions were cases where BEE companies obtained mining company shares. Just over 10% of the transactions involved joint ventures between BEE companies and existing mining companies, while 21 transactions were cases where BEE companies sold their shares or mining assets. The number of BEE transactions in the mining industry amounted to about 19% of the total BEE transactions of JSE-listed companies during this period. Thus, the Mineral and Petroleum Resources Development Act has undoubtedly contributed to increasing black ownership in the South African mining industry.

Yet it was not a flawless process. In particular, the majority of the BEE transactions in the mining industry characteristically excluded mine workers from the deal-making process. Only 7% of the number of BEE transactions in the mining industry between 2004 and 2009 included schemes by which employees could become direct shareholders. Furthermore, only 10% included broader community schemes as part of their deals. Thus the direct involvement of employees or broad-based community empowerment schemes are not common in the mining industry. This is because the mining companies prefer to deal with black investors as their BEE partners, as they are believed to be better equipped to acquire mining right and develop a mine (Wu and Moodley 2009). The exclusion of mine workers and their surrounding communities from the BEE deals, however, began to produce negative consequences. When the Marikana incident took place in August 2012, some media were quick to highlight the contrast between the black beneficiaries of the BEE deals in the mining industry and the mounting grievances of the miners who were left out of the process[14]. Cyril Ramaphosa, who is widely perceived as a symbol of a successful BEE businessman and owns shares in several mining companies, including Lonmin, the owner of the Marikana platinum mine, also became a symbol of the "filthy

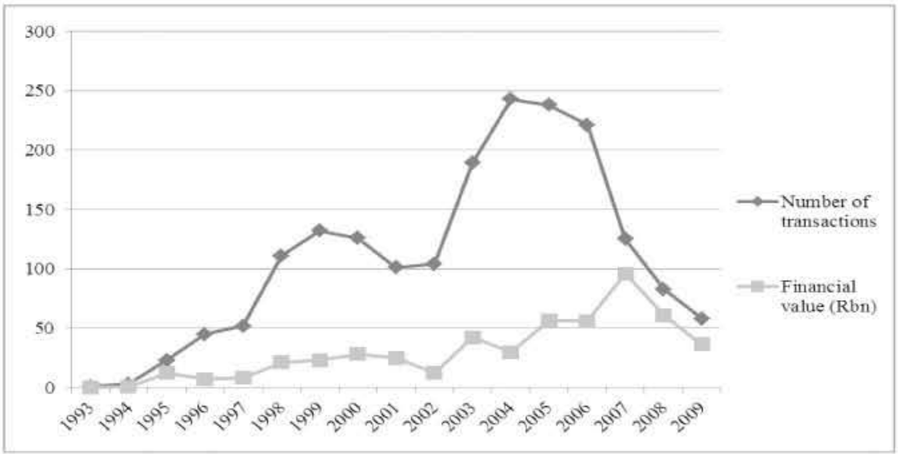
[14] "Lonmin Violence: It's D-Day for the Unions," *Mail and Guardian Online*, 17 August 2012; "NUM: A Union's Striking Fall from Grace," *Mail and Guardian Online*, 6 September 2012.

rich"[15] who do not reflect upon the predicaments of the mine workers and their surrounding communities[16].

3. DERACIALISING THE ECONOMY: THE IMPACT OF INCREASING GOVERNMENT INTERVENTION IN THE BEE PROCESS

It is safe to say that increasing state intervention in the BEE process through the legislation of the BBBEE Act and its Codes of Good Practice, together with the enactment of industry-wide transformation charters, has accelerated the incorporation of black people into the mainstream of economic activities. Even though it is not easy to gather reliable numeric evidence to measure the impact of the increasing interventions and pressure by the government on the progress of BEE, the following three indices all seem to testify to this.

Figure 1 Number of BEE Transactions and Their Financial Value on the JSE, 1993-2009



Sources: BEE Commission (2001: 24) for 1993-1994, SAIRR (2010: 336) for 1995-2009.

The first index is an increase in the number of BEE transactions. Figure 1 shows the number of BEE transactions and their market capitalisation on the JSE from 1993 to 2009. Although the number of BEE transactions on the JSE decreased from 1999 to 2002 after the South-East Asian economic crisis, it has surged since then, especially

[15] It is said that Phumzile Mlambo-Ngcuka, Minister of Minerals and Energy of the first Mbeki administration, stated at that time at "a gathering of black businessmen that they should not be ashamed of wanting to be 'filthy rich'" (Sole 2010: 197).

[16] Ramaphosa was elected as the deputy president of the ANC at the national conference in Mangaung in December 2012, which means that he will most probably become deputy president of the country after the next general elections in 2014. After the ANC Mangaung conference, it was widely speculated in the media how Ramaphosa would reconcile his existing business interests and his newly-assumed political role. In late January 2013, it was reported that Ramaphosa will quit the boards of two large corporations and one of them is Lonmin. "Ramaphosa Quits Mondi and Lonmin Boards," *Mail and Guardian Online*, 23 January 2013.

around the time when the BBBEE Act came into being. The amount of market capitalisation of BEE transactions was also higher in the late 2000s than in the late 1990s. This is mainly due to several large BEE transactions in the mining and financial sectors between 2003 and 2007. The proportion of BEE transactions in the total number of transactions on the JSE in value terms has also been more significant after 2003. From 1994 to 2002, it was usually around 5-15% of the total, except in 1995 when it amounted to 38.7%. It surged to 38.9% in 2003 and to 42.2% in 2004. After that, it has remained around 23-26% (SAIIR 2010: 337).

The second index is the proportion of black share ownership on the JSE. Although this is probably most frequently mentioned in order to describe the degree of black ownership of the economy, it is not easy to find reliable, consistent figures over a certain period of time. For instance, according to M'paradzi and Kalula (2007: 18-20), black ownership increased from less than 1% of market capitalisation of the JSE in 1993 to 18% in 1997. The problem is that we do not know whether these figures include shareholdings by institutional investors such as pension funds. Institutional investors have a non-negligible presence on the JSE, as the *Mail and Guardian Online* reported in late 2011 that out of 17% of market capitalisations of the JSE that were owned by black people, more than half (9%) were in fact owned by institutional investors[17]. Comparing these figures between 1997 and 2011 makes us think that the black ownership of JSE-listed corporations has not increased significantly since the late 1990s, even though the number of BEE transactions has increased in the 2000s. However, as the proportion of black ownership on the JSE is also influenced by the size of the corporations whose shares black people own, this proportion might have been much larger if major corporations, such as SABMiller and Anglo American Corporations, had not been allowed to change the venue of their first-listing from the JSE to the London Stock Exchange.

The third index is the improvement in the BEE scorecards of large corporations. In the mid-2000s, only 24.7% out of the 1,782 firms surveyed by a local think-tank had an official BBBEE scorecard (Consulta Research 2007)[18]. This situation seems to have changed dramatically in the last three years (especially since 2009). The BEE scorecard of top empowerment firms, collected and announced by Empowerdex Inc, a company specialising in the BEE verification and certification business, in the *Financial Mail* (a Johannesburg-based weekly business magazine), shows significant improvements (Table 2). It is possible that the improved scorecards are merely a reflection of technical

[17] "Black Shareholders Own 17% of JSE," *Mail and Guardian Online*, 4 October 2011. Prominent institutional investors with a BEE character include the investment wings of major trade unions, such as the National Union of Mineworkers (NUM) and the Southern African Clothing and Textile Workers' Union (SACTWU), which began investing their assets in stock markets in the early 1990s. However, it is pointed out that the individual members of these trade unions rarely receive tangible benefits from their investment activities (M'paradzi and Kalula 2007: 40).

[18] According to this study, the private firms surveyed gave three major reasons that have prevented the progress of BEE: (1) the perception that only a small number of privileged black people benefit from it, (2) the lack of necessary skills among newly qualified employees, and (3) a high turnover rate among black people in the private business sector (Consulta Research 2007).

manoeuvring in the calculation of points rather than of any genuine change in the workplace. Not just the scores of several companies but also the overall points of the BBBEE scorecard have improved on average in the last three years. Nonetheless, there seems to be no doubt that private corporations operating in South Africa are feeling increasing pressure to comply with the targets of BEE (Takazaki 2012).

Table 2 Progress of BEE Scorecard by the Top 20 Empowerment Companies, 2005-2011

Rank	Company	Sector	2011	2010	2009	2008	2006	2005
1	Standard Bank of SA	Financials	92.83	75.77	72.4	70.08	34.47	34.55
2	Sekunjalo Investments	Financials	92.27	90.8	64.51	57.4	76.44	64.47
3	Nedbank	Financials	89.5	86.4	82.45	67.81	48.1	n.a.
4	Kelly Group	Industrial Goods & Services	88.73	78.28	82.28	57.56	n.a.	n.a.
5	Hosken Consolidated Investments	Financials	87.78	82.12	84.63	76.8	25.85	30
6	Adcorp Holdings	Industrial Goods & Services	87.06	88.05	88.71	81.69	66.49	58.17
7	Old Mutual	Financials	86.99	69.3	69.21	50.45	n.a.	39.09
8	Pretoria Portland Cement	Basic Industrials	86.65	75.17	n.a.	n.a.	n.a.	n.a.
9	Tongaat Hulett	Food & Beverages	86.49	78.23	76.17	75.64	34.36	33.41
10	Kagiso Media	Media	86.25	86.25	64.56	37.88	42.65	54.88
11	Group Five	Basic Industrials	85.78	78.77	60.79	55.27	63.68	6.67
12	Aveng Group	Basic Industrials	84.41	n.a.	64.14	65.59	21.59	18.45
13	Sun International	Travel & Leisure	84.04	71.95	69.14	67.54	70.04	54.79
14	Wilson Bayly Holmes-Ovcon	Basic Industrials	83.91	n.a.	n.a.	n.a.	n.a.	n.a.
15	Brimstone Investment Corporation	Financials	83.82	83.84	62.67	n.a.	60.44	65.32
16	Metropolitan Holdings	Financials	83.79	76.75	69.35	73.01	43.95	61.69
17	Oceana Group	Food & Beverages	83.31	71.76	71.31	70.93	40.76	32.52
18	Barloworld	General Industrials	82.89	75.24	17.31	n.a.	n.a.	35.5
19	Optimum Coal Holdings	Basic Resources	82.65	n.a.	n.a.	n.a.	n.a.	n.a.
19	Netcare	Health Care	82.65	77.98	75.42	n.a.	n.a.	n.a.

Sources: Empowerdex (various years).

A closer look at the BEE scorecard also shows that progress is uneven among different industries as well as among different BEE elements. Based on their analysis of 228 JSE-listed companies, Wu, Serrao and Matjakana (2006) report that BEE is most advanced in medicine and pharmaceuticals, services, transport, and the IT sectors. For these industries, the public sector is a very important client. Thus, the government policy of preferring BEE-compliant companies when it grants tenders is exerting real pressure on private companies. As for the progress of different elements in the scorecard, the same report reveals that while certain progress has occurred in four elements (ownership, skills development, enterprise development and corporate social investment: CSI), progress is least in two elements (employment equity and preferential procurement), which could potentially broaden the number of beneficiaries of BEE.

This confirms observations by many scholars and political commentators that the actual progress of BEE is still largely confined to BEE deals and the appointment of black directors (usually non-executive directors) in the boardrooms, in spite of the spirit of the BBBEE Act. As a result, the beneficiaries of BEE programmes are still confined to a small segment of the black population. This is the most common and significant criticism of the current BEE process in South Africa (Freund 2007: 672). Archbishop Desmond Tutu, COSATU, the SACP, and several ANC leaders, including Kgalema Motlanthe and Trevor Manuel, all criticised BEE as "simply recycling an [already-empowered] elite" (Southall 2006: 177; Tangri and Southall 2008: 709). Ponte, Roberts and van Sittert (2007: 947) state that "[d]espite its 'broad-based' characterization, 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." The names of these four businessmen appear repeatedly in both the concluded BEE deals and the literature that is critical of BEE (Ramphere 2008: 248-249).

Thus, South Africa seems to have encountered the same problem of crony capitalism as Malaysia in implementing affirmative action policy. This issue has long been raised by Moeletsi Mbeki, a prominent political commentator and the brother of former President Mbeki, who sees the relationship between the new black elites and the South African state as corrupt and problematic (Mbeki 2009: 69-73; Ramphere 2008: 247-249; Seekings and Nattrass 2005: 345). It has been noted that there are problems of corruption and abuse of power by politicians and officials in the Department of Mineral Resources in granting mining rights (Cargill 2010: chap 4), but the mining industry is not an exception. The increasing intervention by the government in the BEE process, in particular, the direct connection between public tenders and BEE, seems to have opened up opportunities for both government officials and private companies to utilise BEE for personal gain (Marais 2011: 143). Increasingly, BEE deals have been "negotiated to preserve a company's ability to secure government contracts and licenses" (Tangri and Southall 2008: 707). The extent of corruption is difficult to measure, but the following numbers cited by Sole (2010: 197) are alarming: in 2009 "more than 2000 government officials were doing business directly with the government and had directly or indirectly benefited from government tenders worth more than R600 million."

Last, but not least, a critical voice is growing against a government that seems to have decided to equate economic transformation with BEE. Scholars question the character of the black capitalist class and argue that it is not necessarily a progressive force. Thus, Southall (2006: 198) notes that although BEE deals may represent "welcome progress towards a deracialisation of corporate structures, it offers little indication of serious movement towards a capitalism that is more democratic." BEE firms operate on the same business principles as any other companies in that there is the demand that they maximise profits, therefore they "are indistinguishable from 'white' firms" (Marais 2011: 142-143). There is no reason to believe that BEE firms will boost small business or create more employment opportunities (Seekings and Nattrass 2005: 344-345; Freund 2007: 670; Southall 2006: 197). Stripped of surplus capital and struggling with debt to finance their operations, emerging BEE firms could even resort to more exploitative labour practices in order to establish themselves in the corporate world (Du Toit, Kruger and Ponte 2008).

CONCLUSION

BEE is one of the key items on the social and political agenda in democratic South Africa. Its goal has increasingly been seen as synonymous with economic transformation, yet its process and results have attracted growing criticism within South African society. This chapter discussed the development path of BEE policy and practice since the 1990s, tracing its prominent features and highlighting both its progress and its problems. Although the BEE process was initiated by the white corporate sector amid a lack of concrete policy directions on the part of the newly-elected ANC government in 1994, it was quickly taken up by the government under President Mbeki who saw BEE as "the ANC's historic mission of a non-racial society" (Gumede 2005: 230). It was during the Mbeki administration that the ANC achieved a two-thirds majority in the national parliament and the government's BEE policy strategy was formulated. Thus the second phase of BEE since the enactment of the BBBEE Act has been characterised as increasing state intervention in the BEE process through the introduction of the BEE scorecard and the utilisation of public procurements as an incentive for private companies to comply with BEE goals.

Importantly, the second phase of BEE aimed to broaden the beneficiaries of BEE from a tiny minority of a black elite with political connections to the wider population. This was the fundamental demand put forward by black business people through the BEE Commission as well as by black workers represented by COSATU. In particular, COSATU and SACP, which are political allies of the ANC, grew frustrated under the Mbeki administration, which seemed to marginalise their influence in the policy-making process. COSATU's dissatisfaction over the contents of BEE was part of the reason why it decided to support Zuma in his bid for power in the campaign for the ANC leadership in December 2007 (Tangri and Southall 2008: 714). Zuma was elected as ANC president at its national conference in Polokwane and became the South African president after the general elections in 2009. Mbeki resigned from the presidency in September 2008 and those who supported him at the Polokwane conference split from the ANC and formed a new political party called the Congress of the People (COPE). Thus, it is arguable that BEE, which Mbeki pursued from the bottom of his heart, provided the fatal blow to his political career.

Whether Zuma can avoid the same mistakes as Mbeki remains to be seen, but Zwelinzima Vavi, secretary-general of COSATU, who is believed to be very popular among ordinary members of the trade union movement and who helped Zuma to defeat Mbeki at Polokwane, has been increasingly critical of the growing number of incidents of political nepotism and "tenderpreneurs" under the Zuma administration. Significantly, in spite of the configuration of political support that backed Zuma for the ANC presidency in Polokwane, the Zuma administration has opted not to change the direction of the Mbeki administration's policy in most fields, apart from its HIV/AIDS policy (Makino 2013) and South Africa's diplomatic stance on the Zimbabwe crisis. Although the political power struggle within the ANC was repeated at a national conference in December 2012 in Mangaung, this time it was more about the personality of the ANC leadership, not least that of its president, and little discussion was held on policy matters. Since Zuma was re-elected as ANC president, it is most likely that he will have a second term as the president of the country after the next elections in 2014. It seems implausible to expect that BEE will become a truly broad-based policy under his administration.

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