'Black Economic Empowerment'

Business and the State in South Africa

Ponte, Stefano; Roberts, Simon; van Sittert, Lance

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To BEE or not to BEE? 'Black Economic Empowerment', Business and the State in South Africa

Stefano Ponte, Simon Roberts and Lance van Sittert

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. In this article, we explore the historical precedents to BEE in South Africa, review the different steps taken in promoting it, and assess some of its outcomes to date. We argue that BEE can take only limited forms because of the economic policy constraints in which it has been incorporated. Moreover, these forms have an increasingly managerial logic that further restricts what can be achieved. Short of a major shift in conceptions of — and policy for — BEE, meaningful 'empowerment' is unlikely to take place.

INTRODUCTION

Since 1994, South Africa has embarked on a series of programmes aimed at empowering groups and individuals who 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,[1] with the initial focus in practice on increasing 'black'[2] ownership of shares in

[1] The identification of BEE as a central element in addressing the apartheid legacy was reflected in the ANC's Reconstruction and Development Programme (RDP) developed prior to the first democratic election in 1994 and adopted when in government (ANC, 1994). Some

major corporations. Progress was slow, however, and on 29 May 1998, Thabo Mbeki opened the National Assembly debate on 'Reconciliation and Nation Building' with what became known in South Africa as his 'Two Nations' speech. 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 the same extent as white South Africans, were not rapidly overcome (Mbeki, 1998).

Mbeki's speech, and more general accusations that BEE was simply enriching a small number of well-connected politicians and business people in the context of persistent poverty, eventually led government and business to re-package 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 are assessed, the others being management representation, employment equity, skills development, preferential procurement, enterprise development and corporate social investment. These criteria have underpinned the 'second phase' of BEE (from 2000 onwards), when a number of industry empowerment charters, a Broad-Based BEE Act and a series of codes of implementation have been generated.

BEE is a political effort directed at a combination of contradictory objectives. The 1994 Reconstruction and Development Programme (RDP) interpreted BEE as a project of re-distribution of productive resources to the benefit of groups previously disadvantaged by the system of apartheid (ANC, 1994). But in many regards BEE has been a process that provides enhanced opportunities for black individuals (rather than groups) to improve their position via affirmative action. This is done by allocating extra resources created by higher economic growth, rather than by redistributing existing resources. Sometimes, the African National Congress (ANC) has spun BEE as an African nationalist project. Although in some policy documents 'previously-disadvantaged groups' are

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observers (with whom we disagree, see below) argue that BEE can be traced as far back as the ANC's 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' (ANC, 1955).

[2] Some of the legislation equates 'black' to 'historically disadvantaged South Africans' (HDSAs) — this includes women and disabled persons (of all races). More recent legislation is specifically related to the empowerment of blacks. In terms of citizenship, some legislation defines 'black people' as 'a generic term that means Africans, Coloureds and Indians' (Republic of South Africa, 2003: 2). Other legislation limits 'black people' to South African citizens, excluding non-citizens resident in the country (DTI, 2005).

defined to include various groups of black people (and generally also women and disabled people), the ANC has also interpreted BEE to relate particularly to the need for empowering 'Africans' (ANC, 2002).

BEE has been framed by some as facilitating the socio-economic functioning of a society that, for historical reasons, would otherwise be doomed to large-scale civil strife (Iheduru, 2004; Klasen, 2002). By others it has been characterized as a process seeking the formation of a black capitalist class (Randall, 1996; Southall, 2005, 2007). This black capitalist class is thought to be providing legitimacy to the instalment of a 'rainbow' neoliberal economic and political system and, as a consequence, to the survival of a dominant 'white capitalist class' and the defence of property rights (Malikane and Ndletyana, 2006; Mbeki, 2006). Finally, warnings have been raised on the inter-linkages between the black capitalist class and the ANC and government, which provide the conditions for the possible emergence of a corrupt and nepotistic governance system (Southall, 2004, 2007).

Although a vibrant media debate has emerged in South Africa (and to a lesser extent elsewhere) on the BEE process, little academic analysis has been carried out so far.[3] In corporate management circles, BEE is portrayed in fairly depoliticized and technical ways, and the links between BEE, economic policy and the space for redistribution have not been explored in detail. In this article, we examine BEE through the lenses of discussions on the 'developmental state' — in particular in relation to the disconnect between BEE and economic policy in South Africa, and the failure by the ANC government to deal with existing corporate structure and the control of the 'commanding heights' of the economy. We also argue that the disconnect between BEE and economic policy is amplified by what we call the 'managerialization' of BEE — the treatment of BEE as a separate, technical entity to be managed according to the principles of corporate social responsibility and auditing.[4]

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[3] For academic analyses specifically focused on BEE, see Edigheji (2000), Freund (2006), Iheduru (1998, 2004) and Southall (2005, 2007). For popular audience and corporate management approaches to BEE, see Browning (1989), Gqubule (2006), Hamann et al. (2007) and Madi (1993, 1998).

[4] Due to space limitations and the BEE overview character of this article, we provide only brief sketches of the process of managerialization here. For more details, see case study material on industrial fisheries (Ponte and van Sittert, 2007), metals and engineering (Mohamed and Roberts, 2006), and wine (du Toit et al., 2007).

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, in case study material (du Toit et al., 2007; Mohamed and Roberts, 2006; Ponte and van Sittert, 2007) we have highlighted that BEE is facilitating four systemic, structural and discursive shifts in South Africa:

(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' in 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;

(4) it is forwarding the idea that (some level of) redistribution is actually possible in a neoliberal economic policy setting, thus disenfranchizing more radical options in policy-making.

Our critique addresses BEE as a process, rather than as a principle. As principle, BEE could be read to provide venues for radical redistribution and for justifying an aggressive social development policy. This would entail a holistic approach to policy making, including land, social policy, and skills development. But because of GEAR-inspired macro and micro policies, the operating process becomes 'get the economy right, then we do BEE'. As BEE is applied in the context of neoliberal economic policy and of more general constraints (including mobility of capital and investment, risk rating), it can only take specific forms and achieve limited results. The failure to deliver meaningful change in areas that need it most (land, skills development, employment) and where it would be most feasible (fisheries, for example; see Ponte and van Sittert, 2007) are testimony to this.

THE DEVELOPMENTAL STATE AND BEE

Debates about BEE in South Africa cannot be understood separately from those about the role of the state. On the face of it, BEE fits well within a model of a 'developmental state' engaged in 'transforming' the economy, as was indeed characterized in the ANC discourse. The concept of a 'developmental state' is associated with Chang's analysis of East Asian rapid industrialization (Chang, 1996). While this is not the place to engage in the debates on East Asian development, we note the importance of distinguishing between the sets of economic policies pursued by various countries attaining rapid growth (see Amsden, 2001) and the political economy considerations as to why such policies are adopted. Within the East Asian economies, the state has commonly been identified as relatively autonomous from different interests, such that it could support 'development' goals. For example, Wade (1995) argues that state intervention was critical to economic performance in these countries, but that the technocrats did not act in the interests of vote-seeking politicians, and successfully picked out industries for selective support.

In emphasizing the need for the state to be autonomous, the developmental state thesis risks ignoring the formation and direction of state institutions by conflicting political and economic forces (Fine and Stoneman, 1996). BEE illustrates the importance of recognizing the need to understand how different groups work to further their interests through the state and its various institutions. The outcomes are often a confusing blend of these interests and the mechanisms used, with sometimes unintended consequences. This requires dissecting rhetoric devices and discourses from the actual policy levers applied and the interests ultimately benefiting from BEE.

In the South African context, debates on the relationship between growth and redistribution in the early 1990s were 'resolved' in favour of what has been termed the 'growth and redistribution approach' (or 'trickle down'), over an activist economic policy stance focused on redistribution and restructuring that had been put forward by the Macro-Economic Research Group of ANC aligned academics (MERG, 1993). The MERG approach was heavily criticized by South African academics, notably Nattrass (1994) as not paying due attention to 'business confidence' and the need to attract foreign investment. Sender (1994), on the other hand, argued that such emphasis on 'business confidence' was based on a superficial

empirical understanding of the role of the state in development (such as in the East Asian economies).

The move away from the Reconstruction and Development Programme (RDP) and the adoption of the government strategy Growth, Employment and Redistribution (GEAR) set the economic policy framework for the first decade of economic policy in democratic South Africa. The similarity of GEAR to the *Growth for All* document (SAF, 1996) produced earlier by the South African Foundation (SAF), which represents South Africa's fifty largest companies, illustrates the extent to which the neoliberal case for a market-oriented economic strategy was accepted by government (Habib and Padayachee, 2000; Marais, 1998; Michie and Padayachee, 1997). GEAR framed government as being fundamentally constrained by 'market responses'; it aimed at a reduction in the government budget, tight monetary policy, privatization of state assets and trade liberalization. It is in the context of this largely self-imposed policy straight-jacket that we examine the process and outcomes of BEE in the following sections.

BEE IN HISTORICAL 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 inter-war years, and to Afrikaner capital in particular, furnished the ANC government with a home-grown 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. 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 such as Kenya (Himbara, 1994) and Nigeria (Williams, 1976) to the new ANC-led government in 1994 was substantially diminished by the poor economic performance of African countries in general since 1980. Indeed, if anything, the adoption of the neoliberal macroeconomic strategy GEAR in 1996 was influenced by the perceived economic development failure of many African states. The comparison of the protected South African economy to Latin American states was also used

negatively to argue against an interventionist economic policy agenda (see Joffe et al., 1995). Therefore, African and Latin American countries did not figure highly on the list of examples that the ANC government sought to emulate.

In contrast to these experiences, the New Economic Policy (NEP) implemented in Malaysia between 1971 and 1991 stood out as combining a clear set of goals and policies to advance the economic position of 'previously disadvantaged' groups with rapid economic growth and poverty alleviation. Yet, while paying lip-service to the 'Malaysian model' of BEE, the South African government proceeded to implement it with complete disregard to the expansionary economic policies that made the success of NEP possible.[5] Thus, despite the discursive links of BEE to the Malaysian experience, in practice not much was made of it. In the following discussion, we briefly examine the domestic historical precedents to BEE — Afrikaner nationalism and African nationalism.

Afrikaner Nationalism

Accelerated white urbanization 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 organized white labour (1924–32) sought to address these problems by offering industry tariff protection as reward for employing 'civilized' (that is, white) labour. Radical Afrikaner nationalists, however, dismissed the 'civilized labour' policy as a panacea that still delivered Afrikaners as cheap labour into the hands of other white capitalists and 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

[5] On the Malaysian experience, see Emsley (1996), Esman (1987), Jomo (1990) and Stoever (1985).

state.[6] Rapid Afrikanerization 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).

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. In the mining sector, however, Afrikaners controlled only 1 per cent in 1949. 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.

The relevance of Afrikaner nationalism for a discussion of BEE is that economic advancement of Afrikaners rested on interventionist economic policies, co-ordinated with the strategic use of parastatals and the leverage they could exert on private business. The strategic use of different branches of the state was quite different from the current approach to BEE, which emphasizes the corporate independence of parastatals and their arms-length relation with the ANC government.

African Nationalism

On 26 June 1955 in Kliptown, 2884 delegates attending the Congress of the People adopted the Freedom Charter (ANC, 1955). 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 ANC congress held in Bloemfontein, Nelson Mandela denied the charge brought by Africanists that the Freedom Charter was a socialist design (Hudson, 1986). Mandela argued that the Freedom Charter — by calling for the dispossession of white monopoly capitalists and the transfer of ownership to 'the people' — opened up for the first time the possibility of black ownership of mills,

[6] However, Afrikaner farmers had already successfully pressured government to provide subsidized capital, protection and subsidies in the inter-war years (Iheduru, 2004).

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 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'. This sense of continuity is misleading, as we will explain in more detail below.

Under apartheid, black businesses developed in the strictly limited areas where blacks were allowed to operate, while 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 the establishment of development corporations 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; Mare and Hamilton, 1987), while the urban townships were hotbeds of petty commerce and, in particular, minibus taxis (Khosa, 1990). The old constraints 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 in the 1980s. Black entrepreneurs were thus belatedly allowed some latitude in the 1980s, as the National Party was influenced by Thatcherism to some distorted version of free market economics (ibid.).

Programmes supposedly inspired by the 'Freedom Charter' were adopted prior to 1994 by the two most prominent black business organizations, the National Federation of African Chamber of Commerce (NAFCOC) and the Black Management Forum (BMF). Both of these organizations claimed national coverage, but were largely dismissed by ANC and United Democratic Front (UDF) activists as 'errand boys' of white business (Iheduru, 2004). In 1990, NAFCOC adopted a 'black

economic empowerment programme' aiming at specific targets on equity ownership, managerial representation and procurement to be achieved by the year 2000 (Edigheji, 2000: 3–4; Maseko, 1999). Following suit, in 1993, the BMF adopted its own 'affirmative action blueprint' calling for managerial representation targets in companies (BEE Commission, 2001).

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. The belief was that fostering a black capitalist class would facilitate a 'trickle-down' effect, improve the socio-economic position of all black South Africans, and thereby strengthen South Africa's economy.

Although the term 'black' is defined in some policy documents 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 the racial categorization 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). African nationalism in South Africa is then 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.

THE DEVELOPMENT OF BEE SINCE 1994

We distinguish between two phases of empowerment over the past decade. In the first phase (1994–2000), empowerment was characterized 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 (since 2000), specific empowerment charters were accompanied by a Broad-Based BEE Act and associated codes, and by procurement legislation.

Phase 1: From the RDP to the BEE Commission Report (1994–2000)

In the second half of the 1990s, in addition to replacing the RDP with GEAR, the ANC-led government embarked on a raft of legislative measures mainly aimed at undoing apartheid laws and institutions. This included the Schools Act of 1996, the Employment Equity Act of 1998, the Skills Development Act of 1998 and the Skills Development Levies Act of 1999. Despite these measures, progress in terms of the estimated share of black business in the economy was slow.[7] This was partly because the government lacked a coherent overall strategy for BEE (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'. Without direct sanctions or levers to achieve governmental goals, ownership changes were assumed to occur 'naturally' in the private sector, as finance was now available to historically disadvantaged business people.

Contractionary macroeconomic policies and restructuring under liberalization, however, meant that employment equity moved backwards, while the pattern of ownership change also reversed as the stock market fell in the late 1990s, revealing the flaws in the Special Purpose Vehicles used to finance early BEE deals (discussed below). As BEE seemingly floundered, the Black Business Council, an umbrella group of eleven prominent black organizations, appointed Cyril Ramaphosa to head a Black Economic Empowerment Commission (BEE Commission, 2001). The BEE Commission 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. In other words, emerging black capital and their ANC network sought a clarification and codification of BEE. This eventually took the process (possibly unintendedly) partly away from political debate and towards technical and system performance discussions.

The Commission took two years to release its findings and recommendations. This period saw much discussion of the content of BEE, a substantial focus being the importance not only of ownership, but also of control. The final commission report,

[7] '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.

released in July 2000, made clear that the state had to 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 BEE Commission Report was based on two theoretical understandings of the South African state. Firstly, it drew from a tradition of historically-based economic analysis which identified the decline of apartheid as having come about through a series of economic crises created by the apartheid government's marginalization 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 marginalization of black South Africans (BEE Commission, 2001: 4). Secondly, it located post-1994 South Africa within a world characterized by the processes of economic globalization and the rise and spread of a neoliberal model of policy making. Arguing that unregulated markets reinforced existing inequalities and thus structural racism, the report called for state intervention to combat the negative effects of greater market integration.

Phase 2: From the Early Industry Charters to the Broad-Based BEE Act and Codes (2000–06)

The BEE Commission was influential in popularizing the concept of Broad-Based BEE (BB-BEE) that characterizes the second phase of BEE.[8] The early empowerment charters were the first industry-specific initiatives that embedded this approach. The first industry charter, released in November 2000, covered the Petroleum and Liquid Fuels (P&LF) Industry. It presented a strategy for increasing the involvement of 'Historically Disadvantaged South Africans' (HDSA).[9] 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

[8] Some aspects of BB-BEE had already been included in the Preferential Procurement Act of 2000, which allowed the state to exercise preferential procurement policies for historically disadvantaged persons.

[9] HDSAs here are defined as 'all persons and groups who have been discriminated against on the basis of race, gender and disability' (Republic of South Africa, 2000: 2).

oil industry' (Republic of South Africa, 2000: 2–3). The P&LF Charter was followed by the 'Mining Charter' (Republic of South Africa, 2002),[10] in which mining companies committed to achieving 26 per cent HDSA ownership of the mining industry assets in ten years.

These two charters were given regulatory weight in the Mineral and Petroleum Resources Development Act. Critically, this Act established the state's ownership of mineral rights, and therefore enabled the granting of 'new order' licences to achieve BEE goals. The impetus for firms to qualify under the Charter essentially set up a 'race' on empowerment grounds, as no firm wanted to be perceived as lagging behind in view of their applications for licences. 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 licences, quotas, buying power) and applies political will, ownership targets can be reached more easily.[11]

The Mining Charter, in particular, clearly embraced the vision of BB-BEE. In a format that would become well known, the Charter identified seven 'pillars' of BB-BEE: Equity/Ownership, Human Resource Development, Employment Equity, Beneficiation, Housing, Affirmative Procurement and Community Development. 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 by 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

[10] A 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 (Joffe, 2005).

[11] The power of granting licences is not on its own sufficient for the state to steer BEE. For a case study on industrial fisheries, where the state has failed to do so, see Ponte and van Sittert (2007).

direct control. This contrasts with subsequent efforts to codify and managerialize BEE which resulted in weakened state control.

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 (DTI, 2003), and the passing of the 2003 BB-BEE Act (Republic of South Africa, 2003). Both of these stipulated that black South Africans, not HDSAs, were to be the beneficiaries of state-assisted empowerment. While the charters for mining and liquid fuels were essentially government-led, embodied in legislation and with concrete sanctions, the more recent industry charters (for example, tourism and financial services)[12] were concluded on a voluntary basis through tripartite negotiation involving business groups, organized labour and government. These set targets but have no sanctions in case of non-compliance — nor are firms committed to the charters if they have not explicitly signed up to them. This way, they more closely match the international model of corporate social responsibility (CSR).[13]

The Codes of Good Practice (DTI, 2005) which were mandated by the BB-BEE Act, have been aimed at standardizing the definitions, targets and weightings used for the purposes of BEE through the establishment of a 'Generic Scorecard' that outlines indicators and their weightings.[14] The legal standing of the Codes would suggest that they could increase the power of government *vis-à-vis* the private sector — especially where government licensing and procurement are key aspects. At the same time, the processes of codification, third-party certification and accreditation work in exactly the opposite direction. 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 (DTI, 2005: 14). This is supposed to create a 'chain of compliance' 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. Together with the other indicators, this is to be assessed by government-accredited BEE verification agencies that have

[12] The Financial Sector Charter concluded in 2003 is a good example of this new generation of charters (see Moyo and Rohan, 2006).
[13] 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).
[14] The weightings are: ownership (20 per cent); management control (10 per cent); employment equity (10 per cent); skills development (20 per cent); preferential procurement (20 per cent); enterprise development (10 per cent); and an industry-specific residual element (10 per cent) (DTI, 2005: 5).

the power to furnish a BEE verification certificate (DTI, 2005: 14). This codification and managerialization of BEE is likely to lead to an increased focus on processes and on system compliance, rather than on overall objectives — as other experiences in standardization and certification of social and environmental concerns suggest (see, among others, Klooster, 2005; Ponte, 2007). Although the future accreditation of verification agencies can be used as power leverage by the state, it can also be turned into a technical exercise with these agencies becoming 'gatekeepers'.[15] It is no coincidence that the codes were developed by the firm seeking to be the lead rating agency (EmpowerDex). Finally, these leverage instruments will be fairly weak in sectors where the state does not allocate quotas and licences, and where it is not a major buyer (see, for example, du Toit et al., 2007 on the wine industry).

EVALUATING BEE

Employment, Wages and Education

Implementing BEE in South Africa entails redressing apartheid's legacy in the education system and addressing the extreme, racially-based inequality and high levels of poverty which, in turn, depends on economic opportunities deriving from employment and wages. The performance in these indicators 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 has been equalized at thirty-one teachers per thousand students (van der Berg, 2005).[16] However, greater freedom for school governing bodies to determine top-up fees still means that there are an additional twelve teachers per thousand students in historically white schools. There are still high differentials in performance between historically white and black schools, as determined by matriculation pass rates (van der Berg, 2005, 2006). Teacher skills and training, school governance, as well as

[15] Furthermore, international 'best practice' is for accreditation itself to be 'outsourced'.
[16] Note that different levels of teacher qualification mean that average expenditure level per student may be different in different schools.

textbook availability are still problematic in historically black schools (van der Berg, 2006).

The 'meaningful participation' of blacks in the economy has been heavily limited by employment outcomes since 1994. Employment creation has been limited, and has failed to keep up with the growth of the labour force, resulting in rising unemployment. At the same time, industry restructuring has seen firms shifting employment to more skilled (generally white-held) jobs (Bhorat and Hinks, 2005), so that the unemployed are almost entirely black and unskilled or 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 thirty years of age stood at 60 per cent in 2004, and almost 75 per cent of African women under thirty were unemployed (ibid.).

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 (approximately $140 and $360 respectively) (Valodia et al., 2006). These are almost entirely African and coloured workers, who account for 98 per cent of those earning under R1000 and 95 per cent of those earnings under R2500, a slight *increase* from 2000. Viewed in another way, 74 per cent of African workers earn less than R2500 per month, compared with just 12 per cent of white workers (ibid.).

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 (disproportionately white) workers (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 have to some extent caught up with those of whites, due largely to conditions in the public sector (Altman, 2006; citing Woolard, 2002). In the private sector, the share of Africans in senior management actually declined from 1996 to 2004, while the share of Coloured/Asian combined increased substantially, and the share of whites increased slightly (Makgetla, 2006).

Corporate Ownership and Control

Despite some large BEE deals in the financial sector and mining, the pace of change overall has been sluggish and has gone into reverse in some years (Chabane et al., 2006; Jack, 2006). Furthermore, land has for the most part remained outside the equation.[17] It is also worth examining the terms governing transactions in which black business people have bought stakes in formerly white-owned companies, and whether increased black ownership has represented more than the gains of a few individuals.

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).[18] In the following years, various deals classified as 'BEE transactions' were made (Chabane et al., 2006). Up to the late 1990s, the financing of many deals was based on Special Purpose Vehicles, which depended on strong share performance. This was starkly revealed in the wake of the crash of the Asian stock market in 1998. Essentially, as the small number of black consortia involved in most of the BEE transactions lacked capital, they depended on highly-geared financing structures (Gqubule, 2006). 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. This was also a period when real interest rates were very high as government implemented a tight monetary policy (Roberts, 2004a). With the unravelling of many BEE deals, the proportion of the JSE (Johannesburg Securities Exchange) market capitalization identified as controlled by 'black-influenced' business groups actually fell from 9.6 per cent in 1998 to just 3.5 per cent in 2002, recovering to only 5.1 per cent by 2006 (McGregors, 2007).

The momentum for BEE deals was reignited in the 2000s, following the enactment of the Mining and P&LF charters, as well as the pressure brought to bear

[17] On the land issue, see (among many others) Ntsebeza and Hall (2006).
[18] Joffe (2005) identifies the government's sale of National Sorghum Breweries to 'black business interests' in 1991 as the first empowerment deal.

by the Preferential Procurement Act of 2000. In this period, a much greater proportion of mergers and acquisitions (M&As) had a BEE dimension, in terms of both the number of deals and the value of M&A activity. The proportion of M&As identified as connected to BEE grew from 10–15 per cent of the total number in the period 1998–2002, to 24–32 per cent in 2003–05, with similar patterns measured in value terms (Ernst & Young, various years).

Despite 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. They have rapidly acquired much wealth and prestige, becoming symbols of a new and growing class of wealthy, successful black South African capitalists. But the wealth of black business moguls is predictably still small in comparison to that held by the families that dominated South African business in the twentieth century (see Chabane et al., 2006; Fine and Rustomjee, 1996). Concentration at the sector level also means that it is difficult for new firms to enter and grow except through acquisition of one of the existing dominant players,[19] although there have been some exceptions to this, notably in rapidly growing services such as mobile telecommunications, media, information technology and healthcare.[20]

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). One of the purposes of the Act is to promote a greater spread of ownership. 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 issues have most often arisen in the context of anti-competitive mergers blocked by the competition authorities, such as 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. Companies sought to justify such deals on the grounds that they contribute to greater

[19] Major failures in black business ventures have occurred when they have gone head-to-head with established dominant firms in mature industries. The most spectacular of these were in beverages, with the failure of Vivo beer against the various brands of South African Breweries, and of New Age Beverages in bottling and distributing the Pepsi brand.
[20] These sectors have seen the growth of some of the most successful black business groups, including MTN, Kagiso Media and Business Connexion.

black ownership. However, the competition authorities have not been particularly successful in prosecuting cases of prohibited practices related to the abuse of market power (see Chabane et al., 2006; Roberts, 2004b).

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). However, the continued high levels of concentration at industry- and sector-level give rise to some scepticism about the prospects for such developments. 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).

CONCLUSION

Black Economic Empowerment in South Africa is a highly contested process 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 regarding 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. In translating the ambitions of BEE to redress the apartheid legacy into policy practice, the ANC government denied itself the option of following the blueprint of either Afrikaner nationalism or one of the post-independence models of economic indigenization, despite the discursive references to the Malaysian model.

South Africa's RDP appeared on paper to place BEE at the centre of a redistributive strategy. However, the subsequent application of the GEAR framework entailed an actual focus on a market-friendly and non-interventionist set of economic policies that left little room for manoeuvre in terms of redistribution. Trade liberalization, privatization and tight macroeconomic policies failed to stimulate much-needed employment growth, with fundamental implications for the participation of black people in the 'formal' economy. Furthermore, in the context of the prevailing economic policy climate, big business has cast BEE as a 'risk' which threatens investor confidence. While policy statements such as the BEE Commission

Report have located BEE as part of a broad programme of redistribution, the actual policy response has been to locate BEE in voluntarist and consensual terms, without concrete sanctions in place for non-compliance, and in structures effectively governed by the private sector.

In the last few years, there has been a sharp increase in BEE-related mergers and acquisitions, which has coincided with better performance of the stock exchange. Given the financing required for acquisitions, a longer-term view is needed 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 1990s 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.

Legislation on employment equity and skills development, aimed at improving representation and training of blacks within firms, did not succeed because it lacked effective sanction. Since 1994, the share of blacks in the lowest income categories has remained high. 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 before BEE. Indeed, the evidence is that their position in these terms has substantially worsened. Furthermore, it has proven far easier for firms to link up with an appropriately 'black empowered' group through a joint venture or sale of equity than for firms to concretely change the way they operate in training, staff advancement and procurement — even though at the national level such changes are in the collective interest. In the absence of meaningful employment growth, the pressures embodied in the legislative framework for employment equity and training have had, and will continue to have, little impact. Procurement could have been a concrete lever on private business as well. The findings reviewed here (see also Mohamed and Roberts, 2006) indicate that this has not been the case so far, as empowerment has become largely an issue of representation.

Far from being part of building a 'developmental state', the complexity of the provisions developed under codes and charters, coupled with low 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. In this way, the state does not formally relinquish the driving seat in the process of empowerment, but at the same time exerts its control 'at a distance' within codified, standardized, and audited processes where responsibility is more diffuse.

As we have shown elsewhere (Mohamed and Roberts, 2006; Ponte and van Sittert, 2007; du Toit et al. 2007), the latest 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 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).

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, 2007; 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. The concept of 'system management' is currently deployed in ways reminiscent of the use of 'the market' in the 1980s and 1990s to justify liberalization policies in Africa and elsewhere. Both concepts allow the diffusion of responsibility and the de-politicization of policy making.[21] The combination of market and management allows a full separation of economic policy from redistribution, while at the same time giving the illusion that government is heavily engaged in (and in control of) BEE.

[21] Handley (2005) uses exactly this device to understate the responsibilities of the ANC in adopting neoliberal policies in the 1990s.

In this article, we have argued that BEE can take only limited forms because of the economic policy constraints in which it has been incorporated in South Africa. These forms have an increasingly managerial logic that further restricts what can be achieved. Short of a major shift in conceptions of (and policy for) BEE, meaningful 'empowerment' is unlikely to take place. What BEE has become instead is a 'tool for all seasons' that can be sold to a diverse set of interested parties. First, the 'broad' label 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 increasingly managerial character of the process effectively lifts it from 'populist and unpredictable' grabs. And 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 neoliberal economic policy.

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Stefano Ponte is Senior Researcher at the Danish Institute for International Studies (spo@diis.dk). He conducts research on the changing role of Africa in the global economy. He is co-author of *Trading Down: Africa, Value Chains and the Global Economy* (Temple University Press, 2005; with Peter Gibbon) and *The Coffee Paradox: Global Markets, Commodity Trade and the Elusive Promise of Development* (Zed Books, 2005; with Benoit Daviron). He is currently working on the political economy of food safety standards, environmental and social labels, and corporate codes of conduct, with specific reference to agro-food exports from African countries.

Simon Roberts was until recently Associate Professor of Economics at the University of the Witwatersrand, South Africa, where he conducted research on industrial development and competition policy. He has published on these topics in the *Journal of African Economies*, *Industrial and Corporate Change,* the *Journal of International Development*, the *South African Journal of Economics*, and *Development Southern Africa*. He is now Chief Economist at the South African Competition Commission (simonr@compcom.co.za).

Lance van Sittert is Associate Professor in the Department of Historical Studies, University of Cape Town (cdude@humanities.uct.ac.za). He has conducted research on environmental history and post-apartheid fisheries reform. He was guest editor of

the *Marine Policy* special edition, 'Fisheries Reform in South Africa, 1994–2004' which appeared in 2006.