

# **Empowerment and Apartheid's Lingering Legacy: Evaluating the Effectiveness of B-BBEE Policy**

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***Abstract:** This paper evaluates state intervention through South African government policy by assessing the implementation of the Broad-Based Black Economic Empowerment (B-BBEE) Act. First introduced in 2003, this Act has played a significant role in advocating corporate social responsibility in aims to amend the discrimination Black South Africans faced during times of apartheid (formally 1948-1991). I argue that this lingering historical bias from apartheid continues to inhibit Black South Africans from a socio-economic standpoint today; however, B-BBEE as it stands today falls short of its potential to provide increased opportunity and empowerment among all races. Thus, a reformed version of B-BBEE is compulsory to increase economic empowerment for Blacks.*

## **I. Introduction:**

The unemployment rate for Black South Africans stands at 43% today—a staggering five times larger than that of their White South African counterpart’s unemployment rate of 8% (Chartbook of Economic Inequality, 2017). This discrepancy is due in large part to the outlasting effects of the oppressive and bigoted apartheid system. Though officially terminated in 1991, the prevailing structural biases from the apartheid-era widely effect Black South Africans’ quality of life today. Over twenty years have passed, and Black South Africans continue to experience the highest levels of poverty, unemployment, and lack of access to basic services—perpetuating the battle Black South Africans must overcome against societal structures. The South African government has actively implemented legislation in efforts to form an intercultural South Africa centered around both social inclusion and economic equality; however, socio-historically constructed racial biases continue to deprive Black South Africans of the same capabilities to succeed that White South Africans have had access to for decades.

While the South African economy has seen growth in measures such as Gross Domestic Product (GDP) over the past twenty years, statistical evidence shows that there have not been significant advances in attaining equal economic and social equality among Black and White races. Despite regime change, Blacks are not better off in the democratic society in which they live today because of these outlasting biases. While state intervention is a promising purported solution to ameliorating this rampant inequality, there is much room for improvement in policymaking agenda.

This paper specifically evaluates state intervention through government policy by evaluating the implementation of the Broad-Based Black Economic Empowerment (B-BBEE) Act, which has played a role in vigorously endorsing corporate social responsibility in aims to

redress the oppression Black South Africans continue to face today through increasing economic empowerment. While there is widespread consensus that the Act's objectives of empowerment and equality are worthy, it is focal to distinguish the purported function of this Act from its tangible outcomes in the context of current economic and structural factors in place. Though the intent of B-BBEE is to move towards increased equality in the labor market, the policy has struggled in effectively achieving equality in employment opportunities on a general scale.

Though race-based policies such as B-BBEE are paramount for providing equal employment opportunities in a society that still contains traces of historical racism, I argue that the Act fails in two distinct ways. Firstly, the policy is extremely controversial, receiving criticism of susceptibility to corruption and nepotism within the African National Congress (ANC) as well as perpetuating racism itself. Lastly, the policy refrains from achieving substantial growth in skills and vocational development—a critical factor in advancement for both the Black South African demographic and the country's economy overall. Although the foundation of B-BBEE is widely accepted, as it addresses the maldistribution of access during the apartheid era, the degree to which South Africa can accomplish its intended goals raise complex moral disputes around the policy's implementation. This paper seeks to evaluate the shortcomings of B-BBEE in addressing lingering injustices from the apartheid era in order to generate a more functional method in addressing racial economic inequality in South Africa today.

The framework for the paper is as follows. Section II turns to the importance of establishing the current state of the South African economy, citing statistical data centered on worsening unemployment rates and persistently devastating levels of inequality for Black South Africans. In addition, it advocates the significance of economic agency for all citizens. In order to understand the historical context that led to the current economic and social conditions,

Section III traces a historical analysis of apartheid-era biases and economic trends that have contributed to this lack of improvement. This section will also explore possible counterarguments to the notion of historical biases, assessing the degree to which the global actors played a role through imposed economic sanctions. Section IV moves on to explicitly defines key terms in understanding how the Act is facilitated within South African B-BBEE compliant entities. Section V then utilizes a normative stance to justify state intervention in addressing issues of racial inequality that persist in the workforce in South Africa today by connecting ANC’s language of empowerment in B-BBEE legislation to both Amartya Sen’s capability framework and John Rawls’ concepts of the “veil of ignorance” and fair equality of opportunity. Next, Section VI distinguishes the intentions of B-BBEE with its palpable outcomes, focusing explicitly on the degree that corruption and lack of skills development plays in the Act’s ineffectiveness. Finally, Section VII will provide conclude the paper, suggesting a reform of B-BBEE so that it further emphasizes vocational training and skills development and inhibits possible political nepotism or corporate fronting. I will conclude that while race-based policies are essential in redressing historical biases, it is imperative to ensure the B-BBEE policies are modernized and efficient to best address racial inequality.

## **II. The Current Economic State: Inequality and Unemployment**

In order to understand the objectives of B-BBEE, it is first imperative to establish the current economic situation in South Africa—particularly as it pertains to Black South Africans. Though there are long running disputes on the best way to evaluate the economic well-being of a country today, many begin by looking at the GDP. South Africa’s GDP stands today at \$280.27 billion USD or \$4,578.73 billion Rand, and their GDP per capita stands at \$6,617.91 USD (Withnall, 2016). While GDP growth increased by 68% between 1993 and 2008, escalating from \$134

billion to \$287 billion, the total population also grew 22% (Leibbrandt, 2009). This expansion in population growth has essentially eliminated any GDP per capita growth, leading to a “jobless growth” (Butler 48), as can be seen in the drop in employment rate from 1994-2000. Though the GDP has risen steadily since times of apartheid (See Figure 1), simply evaluating the economic growth of the country is not enough. This measure does not address if this wealth accrued has been equitably distributed throughout the population.

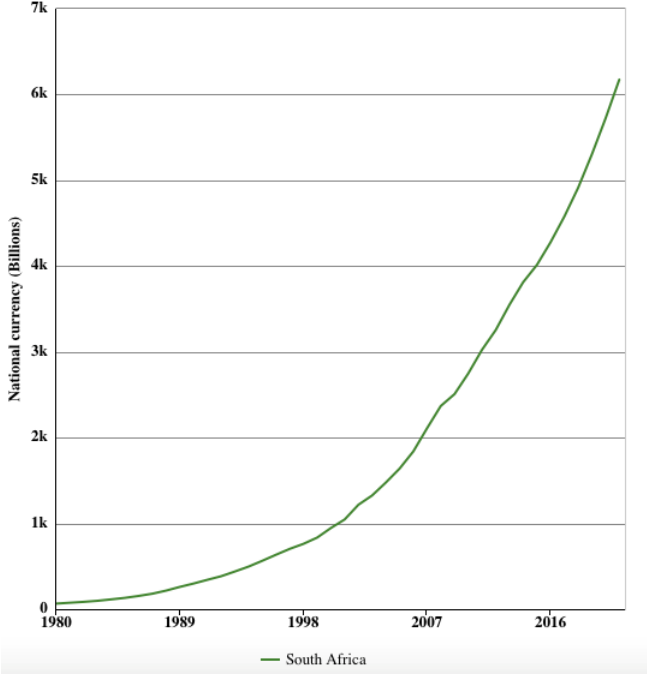
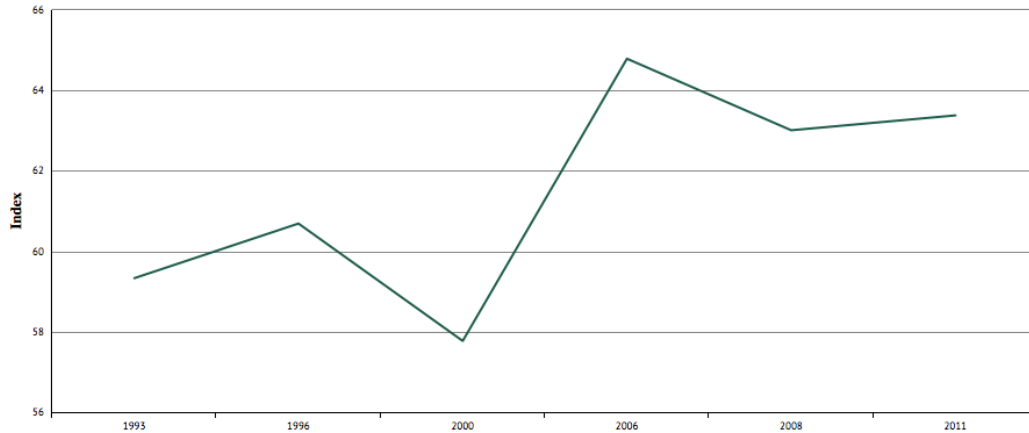


Figure 1: GDP Growth in Rand (Knoema, 2016)

Thus, it is crucial to evaluate the Gini index of a country to assess a more realistic view of how this wealth is distributed. South Africa’s Gini coefficient, measuring the degree of income inequality in the nation, scores a 0.63 out of 1 (Knoema, 2016).



*Figure 2: Gini index for South Africa (Knoema, 2016)*

Since 2000, there has been a dramatic rise in inequality among class levels in South Africa, peaking at 0.64 in 2008 (though this was in part due to international contractions experienced in 2008) and leveling over the past nine years. Though this may income inequality is an issue of class, it is also wholly an issue of race in a post-apartheid society. Though South Africa's current population is compiled of 79% Black South Africans, 8.9% White South Africans, and 2.5% Indian or Asian ethnicity, Black South Africans experience a disproportionate majority of this inequality (Elibiary, 2016). This section explicitly focuses on income inequality and unemployment rate discrepancies as illustrations of racial inequality, though I acknowledge unequal access to education opportunity for Black South Africans post-apartheid as an interrelated with employment opportunity.

Today, White South African families earn six times more than Black families earn on average. A Black families' annual income is R60,000 whereas a White family earns an annual income of R360,000 (Business Tech, 2016). The country remains to have one of the most unequal income distribution patterns on the globe: approximately 60% of the population earns less than R42,000 per year (approximately \$7,000 USD), while 2.2% of the population earns more than R360,000 per year (around \$50,000 USD). Of that 2.2%, the majority are Black South

Africans (Business Tech, 2016). Though inequality was reduced in some part during the first few years after apartheid’s end, Black South Africans consistently fall well below White South Africans in average earnings (Figure 3).

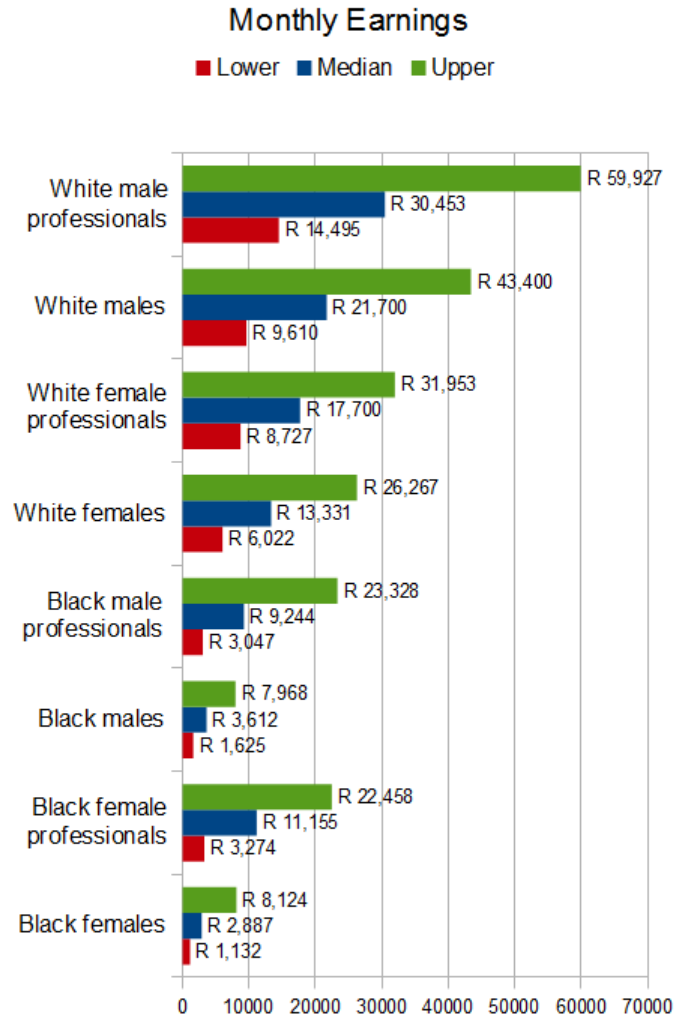


Figure 3: Monthly Earnings Between White and Blacks (Pew Research, 2014)

Moreover, when assessing Black versus White South African professionals’ income, it is apparent that Whites earn on average a large sum more than Blacks—despite their equally high level of knowledge, experience or skill level (Business Tech, 2016).

The rising middle and upper class only compiles a small percentage of the total Black South African population, while the majority of the race remains the poorest part of South African society (Business Tech, 2015). The poorest of South Africans remain Black due to the political barriers in place decades ago that inhibited them any sort of economic agency of their own. Despite the fact that the modern economy is compiled of a numerically dominating Black population; economic growth has been limited for Blacks due to past lingering societal biases. It is also important to note that there are evident disparities in gender earnings (Figure 3), but those reach beyond the scope of this paper.

The alarmingly high unemployment rate in modern South Africa serves as one of the strongest illustrations of inequality between Black and White South Africans today. The unemployment stands at approximately 27.03%, skills development training is poor, and access to basic infrastructure and services is lacking (IMF, 2016). Moreover, the IMF predicts the unemployment rate will increase even higher by 2021. The expanded unemployment rate, which includes discouraged workers, lies at approximately 35% (IMF, 2016).

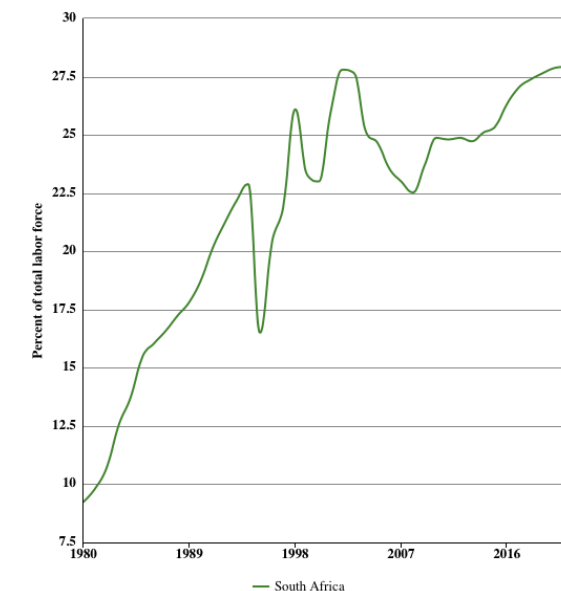


Figure 4: Overall Unemployment in South Africa (Knoema, 2016)



During the apartheid-era, unemployment rates remained high for Black South Africans, as they were stripped of all agency to borrow money, start businesses, and at times forced to live and work away from home and their families. These injustices have endured beyond this era as is illustrated through current rising unemployment rates for Black South Africans. Income disparities and educational attainment enforced during times of apartheid have been difficult to overcome, and provide a strong foundation of inequality in the workforce today.

The unemployment rate for Black South Africans stands at approximately 43% as of 2014 (Chartbook of Economic Inequality, 2017). This largely disproportionate number of Black South Africans is due to outlasting racial discrimination: “The unemployment problem has deep roots in apartheid era maldistribution of access to assets and skills” (Butler 72). As noted in Figure 5, the unemployment rate for Black South Africans has remained steadily higher than that of White South Africans since the end of apartheid in 1994. While White South African unemployment was approximately 8% in 2014, Black South African unemployment rate stood at a colossal 40% (Statistics South Africa, 2015). This statistic is five times higher than the White unemployment rate, yet the Black South African population outnumbered the White South African

population by almost nine times.

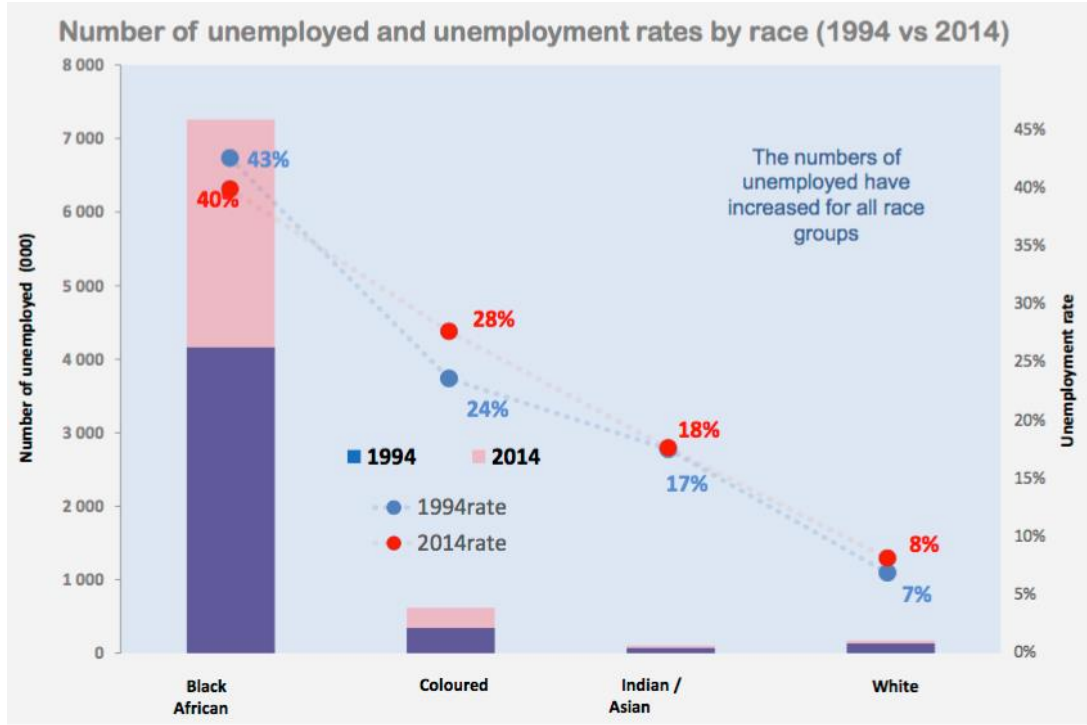


Figure 5: Unemployment Rates by Race (Statistics South Africa, 2015)

The unemployment rate for Black South Africans increased from 23% in 1991 to 48% in 2002 (Von Fintel, Dieter, and Rulof Burger, 2015). Although the unemployment rate today for Blacks has dropped to 40%, this statistic still constitutes almost half of the entire population unemployed (Von Fintel, Dieter, and Rulof Burger, 2015). Mmusi Maimaine, a leader of the South African opposition party Democratic Alliance, illustrates the high degree that race plays in income level in South Africa, arguing that Black South Africans are “disproportionately withheld from opportunities that most white people take for granted” (AFK Insider, 2015). This is manifested in the disparities in unemployment rates between White and Black South Africans, and the lack of accessibility Black South Africans have in attaining equal employment. Because White South Africans own most of the wealth in the country and hold the majority of the high skill level positions in the workforce (Van Der Berg, 2014), historical biases from apartheid have

successfully seeped into the democratic state. Just twenty years after apartheid, many White business owners hold onto archaic societal convictions—regardless if this is done consciously. Because of this, Black South Africans continue to face discrimination in the workforce.

Though evaluating economic inequality among Black and White South Africans is essential, it is also necessary to evaluate the repercussions this inequity has on a citizen's personal freedoms. Amartya Sen's capability approach focuses on the moral significance of an individual's capability to achieve the type of life they believe has value (Sen, 1999). A crucial component of this achievement is through economic agency, a fundamental right for every human to control their own labor and property (Sen, 1999). In the current democratic state led by President Jacob Zuma, citizens should feel free to work, produce, consume and invest in any way they see fit; yet, vestiges of economic exclusion for Black South Africans have outlasted the apartheid era. This outlasting exclusion, coupled with modern political corruption has led to an underperformance in the South African economy (Van der Berg, 1989). These uncertainties have resulted in distrust in the government and, consequently, distrust in policy implementation. All of these factors, combined with inefficient state-owned enterprises have contributed to economic vulnerability and racial inequality today.

### **III. Historical Tracing of Economy**

It is essential to understand the history of apartheid due to the fact that its legacy is still having effects in the form of undeveloped human capital today, as well as lingering stagnated economic growth (that may be due in part to economic sanctions). Apartheid's legacy is relevant as it is part of the cause—it affects what is politically feasible moving towards equality among Black and White South Africans. In examining the historical context, it is evident that certain attitudes about racial equality and relationships among races are still influenced by the

discrimination Black South Africans faced during apartheid. In turn, this lingering discrimination can lead to an unwillingness to adhere to certain policies, which plays a role on how South African government should go about redesigning their policies.

Along with an understanding of the economic state, a historical context of apartheid in South Africa is necessary in understanding the difficulty Black South Africans have had in escaping the structural biases that pervade modern society. Apartheid, an Afrikaans word meaning “apartness (Hoogeveen, 2006),” describes the ideology of racial segregation that served as the foundation of white supremacy in South Africa from 1948-1994. With the enactment of apartheid laws in 1948 under the National Party, racial discrimination became institutionalized. Race was intertwined with every aspect of social life, and the Population Registration Act of 1950 required all South Africans to be racially classified into one of three categories: white (Afrikaners), black (African), or colored (mixed or Asian descent) (Hoogeveen, 2006).

The apartheid regime also entailed policy of separate development, where Black South Africans were stripped of their citizenship and became powerless. These were created to rid urban South Africa of its black citizens and cede it to a superior white class (Burger, 2006). The National Party instituted mass removals, which were justified by granting the townships “independence” within their homelands, when in reality, this transition created a massive economic dependence on a purported superior white race. Black South Africans were manipulated into subservient positions economically, socially and politically so that Whites could take advantage of a seeming disposable income and use it in their own favor (Burger, 2006). The system of apartheid entailed complete segregation and labor domination, displacing Blacks from their social communities and stripping away any sense of employment security.

This lack of economic agency and employment security led to a prevention in skill development and educational attainment for Black South Africans. They were forced to work wherever was most beneficial for Whites, whether this be mining or other low-skill level occupations with little compensation. This oppression has outlasted generations, and still today provides a disadvantage to the Black South African population in terms of education and employment access. Yet again, this past structural injustice shows how Black South Africans are still experiencing hardship analogous to that faced under apartheid.

The oppression, adversity and injustice the Black South Africans endured ultimately solicited a response the international community in the form of economic sanctions. These sanctions made it increasingly difficult to maintain the white supremacist regime. Disinvestment from South Africa was enacted in 1986 by the United States, pressuring the South African government into negotiations that ultimately led to the dismantling of apartheid (Lavery, 2013). While other countries were involved, the involvement in Western countries like the US triggered a dramatic decline in the international exchange rate, making the inflation rate spike to 15% per year (Knight, 1990). In turn, these sanctions weakened the South African economy and significantly raised unemployment rates. Yet, these global sanctions did not contribute to the striking levels of racial inequality among employment rates. This further supports the notion that it is enduring racist sentiment from the apartheid system that plays the largest role in employment inequality among Black and Whites.

This stagnated economic growth due to international sanctions and uncompetitive local industries led to the ultimate reform of government. After decades of oppression and violence, the racial tyranny seen during the era of apartheid ended with a negotiated transition to a non-racial democracy. Mandela won the presidency against F.W. de Klerk in 1994 (DeSilver, 2013),

and set forth an initiative to end racial discrimination. As a first initiative for equality, Mandela's African National Congress (ANC) instituted the Reconstruction and Development Program (RDP), aimed at addressing the many economic and social problems facing the country at apartheid's end. This initiative proposed job creation through public works, and recognized the lack of access the general Black population faced. In the years following the end of apartheid, South Africa enjoyed a lift in sanctions, an expanded and booming economy, and a rise in incomes; despite this growth, however, unemployment and inequality persisted.

There have been several other ANC initiatives to address employment inequity, though none have been successful. By understanding the precise ways in which initiatives such as Growth, Employment, and Redistribution report (GEAR) and the New Economic Growth Path (NGP) have failed, it is easier to not only comprehend the on-going efforts in countering outlasting racial biases in society, but the degree to which this inequality remains a problem. In June of 1996, the ANC adopted GEAR under President Mbeki to further link economic growth rates and social objectives. GEAR argued that South Africa should enact neoliberal policies that promote global oriented growth and calls for measures like wage moderation to encourage economic growth. It had the aim of wealth-trickling down to the poor, and was adopted without consultation with any unions. Unions in South Africa such as The Congress of South African Trade Unions (COSATU) have been highly critical of GEAR, arguing that it reinforces economic conditions of apartheid, and is not in the best interest of the working class (Southall and Tangri, 2005). COSATU, who "represent the suppressed working class against the government to obtain equality" (Southall and Tangri, 2005) argued that GEAR entrenches unemployment and has so "far delivered few pay-offs in return for its conservative macro-economic position" (Butler 50).

Still, another attempt to foster economic growth was NGP, launched by President Jacob Zuma in 2010. While the ANC viewed this as reinforcing their commitment to prioritize employment creation, unions such as COSATU were displeased (Southall and Tangri, 2008). They argued that NGP “failed to locate itself within the historical positions of the ANC on economic policy” (Business Perspectives, 2014). Understanding the history of oppression and inequality within the South African government is crucial in the formation of policy today. The lingering bias from the times of apartheid have largely contributed to the discrimination in the workforce between White and Black South African populations. In order to most effectively address this structurally rooted inequality, the South African government must remain introspective and critical of their past in order to strengthen new empowerment policies such as B-BBEE.

#### **IV. Background of B-BBEE Act**

Now that the current economic state has been established within a historical framework, I will lay out the basic objectives of the Broad Based Black Economic Empowerment (B-BBEE) Act, as its effectiveness can only be properly evaluated with an explicit understanding of the logistics. By examining precise language and history of the Act, evaluation of the current form of the policy is made more efficient. As aforementioned, the Department of Trade and Industry (DTI) introduced Black Economic Empowerment (BEE) under Act 53 in 2003. The ANC viewed this policy as a necessity for sustained economic growth, arguing that the economy would never achieve its full potential if the majority of the population (Black South Africans) remained excluded from full participation and ownership (Department of Trade and Industry, 2016). In 2013, Amendment Act 46 of BEE was passed, establishing “B-BBEE” as “broad-based” by extending empowerment to all Africans, Colored and Indians South African citizens as “Black

South Africans” who suffered from past apartheid injustices (Department of Trade and Industry, 2016). The Act stands as the apex of the ANC’s strategy for economic transformation today, working towards an increase in labor participation and economic equality for Black South Africans.

The Department of Trade and Industry defines Black Economic Empowerment (BEE) as:

“BEE is an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the number of black people that manage, own and control the country’s economy, as well as significant decreases in income inequalities (Department of Trade and Industry, 2016)”

The BEE Commission argues for an integrated and coherent socio-economic process in aims to “redress imbalances of the past by seeking to substantially and equitably transfer and confer the ownership, management, and control of South Africa’s financial and economic resources to the majority of its citizens” (Elibiary, 2016). B-BBEE works directly and openly to overcome past injustices experienced by Blacks, and reverse the high unemployment and inequality they face today. The Act attempts this by increasing the number of Black South Africans that manage, own and control productive assets, facilitating ownership and management by communities, workers and cooperative, human resource and skills development, and achieving equitable representation in all occupational categories and levels in the workforce (Department of Trade and Industry, 2016). It also strives to give preferential procurement to entities that are owned or managed by black people, meaning that it measures the extent to which a company purchases its



qualifying goods from B-BBEE compliant suppliers<sup>1</sup>.

B-BBEE compliance is measured using the Codes of Good Practice, formed in 2007 as an attempt to build a clear framework for compliance measurement (Elibiary, 2016). The adoption of the codes emphasizes increased participation of Black South Africans in the workforce specifically through ownership and management equity; however, it also focuses on addressing income inequality and development through skills development and enterprise development. Entities are awarded broad-based BEE status according to points they achieve on their BEE scorecard provided by the DTI. The categories include ownership and control (20%), management (10%), employment equity (10%), skills development (20%), preferential procurement (20%), enterprise development (15%), and socioeconomic development (5%), seen explicitly in Figure 7 (Department of Trade and Industry, 2016). Depending on how economic entities are awarded on their scorecard, they are rated excellent, good, satisfactory or a limited contributor to broad-based BEE<sup>2</sup>.

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<sup>1</sup> The implementation of B-BBEE in South African business places is overseen by the B-BBEE Advisory Council, appointed by President Jacob Zuma in 2009. The council, compiled of nineteen members, is meant to advise the government on B-BBEE, review progress, advise on draft codes of good practice and transformation charters and facilitate partnerships between state and private sectors.

<sup>2</sup> It is important to note that Figure 1 illustrates a generic scorecard used for large enterprises, which are the entities predominately measured for B-BBEE compliance. The other two categories of businesses are Qualifying Small Enterprise (QSE) and Exempt Micro Enterprises (EMEs). A business qualifies as a QSE when they have a turnover between ten and fifty million rand, and is measured using a slightly modified, less onerous scorecard. EMEs are businesses that are exempt from measurement in terms of the DTI's Codes, and make a turnover of less than five million rand.

| <b>Element</b>                         | <b>Weighting</b> | <b>Code series reference</b> |
|--|------------------|------------------------------|
| Ownership                              | 20 points        | 100                          |
| Management control                     | 10 points        | 200                          |
| Employment equity                      | 15 points        | 300                          |
| Skills development                     | 15 points        | 400                          |
| Preferential procurement               | 20 points        | 500                          |
| Enterprise development                 | 15 points        | 600                          |
| Socio-economic development initiatives | 5 points         | 700                          |

*Figure 7: Elements and weighting of B-BBEE scorecard (Kruger, 2014)*

Transformation or Sector Charters are also included in these Codes of Good Practice, which are used to assist the “priority” sectors of the industry such as agriculture, transport services, engineering and construction (Department of Trade and Industry, 2016). The purpose of these charters was to formulate long-term targets to increase ownership, participation and training for Black South Africans in various sectors of the economy. Various stakeholders compiled a sector code for their designated industry that worked within the policies of B-BBEE, explicitly stating their goals with respect to the seven pillars and their objectives in fulfilling them (Department of Trade and Industry, 2016). For example, 2008 targets for the financial sector for employment equity were: senior management 20-25% Black, middle management 30% Black, junior management 40-50% Black, and skills development 1.5% (Ardington, 2008). B-BBEE’s specification to detail within different spheres of the economy is prudent and should not be discounted in the policy’s evaluation.

Within each of the seven elements, an additional scorecard is made that illustrates the different categories and indicators an entity must fill in order to achieve points based on a weighted system. An example of the “ownership” element is illustrated in Figure 8.

| Element   | Category                 | Indicator  | Weighting Points | Interim Target | Compliance Target |
|---|--------------------------|--|------------------|----------------|-------------------|
| <b>OWNERSHIP<br/>(Code 100)</b>                           | <b>Voting Rights</b>     | Exercisable Voting Rights in the Enterprise in the hands of black people   | 3                |                | 25%+1 vote        |
|   |                          | Exercisable Voting Rights in the Enterprise in the hands of black women  | 2                |                | 10%               |
| Measures effective ownership of companies by black people | <b>Economic Interest</b> | Economic Interest of black people in the Enterprise  | 4                |                | 25%               |
|   |                          | Economic Interest of black women in the Enterprise   | 2                |                | 10%               |
|   |                          | Economic Interest of the following black natural people in the Enterprise:<br>- black designated groups<br>- black participants in Employee Ownership Schemes<br>- black beneficiaries of Broad-Based Ownership Schemes; or<br>- black participants in Co-operatives | 1                |                | 2.5%              |

*Figure 8: Score Card, Ownership Pillar (DTI, 2016)*

Subsequently, the number of points for each element are added together and the sum of all seven categories points generates a company's B-BBEE compliance score or recognition level (Figure 9). Companies are required to be audited annually by the certified B-BBEE Verification Agency to receive their verification scorecard. The higher a company's compliance score, the better chance they have for winning contracts. In general, it is thought that a firm with a score of 65% or above is a good contributor, and a limited contributor with a score below 40% (Department of Trade and Industry, 2016).

| Contribution Level        | Qualification                                   | BEE recognition Level |
|---------------------------|---|-----------------------|
| Level One Contributor     | = 100 points on the Generic Scorecard           | 135%                  |
| Level Two Contributor     | >= 85 but < 100 points on the Generic Scorecard | 125%                  |
| Level Three Contributor   | >= 75 but < 85 points on the Generic Scorecard  | 110%                  |
| Level Four Contributor    | >= 65 but < 75 points on the Generic Scorecard  | 100%                  |
| Level Five Contributor    | >= 55 but < 65 points on the Generic Scorecard  | 80%                   |
| Level Six Contributor     | >= 45 but < 55 points on the Generic Scorecard  | 60%                   |
| Level Seven Contributor   | >= 40 but < 45 points on the Generic Scorecard  | 50%                   |
| Level Eight Contributor   | >= 30 but < 40 points on the Generic Scorecard  | 10%                   |
| Non Compliant Contributor | < 30 points on the Generic Scorecard            | 0%                    |

*Figure 9: Contribution Level Rating (DTI, 2013)*

Though compliance is voluntary, there are high incentives for B-BBEE compliant entities. For instance, the system ensures that Procurement managers and consumers directly buy from compliant entities since that enhances the consumer's own BEE Scorecard under the "Preferential Procurement" element (Kruger, 2014). The private sector is incentivized to buy from these corporations who become compliant, thus granting entities increased access to corporate markets. Additionally, the government and public sector only conduct business with companies that are fully B-BBEE compliant so it is in the corporations' best interest to comply.

#### **V. Moral Justifications for an Act centered on Black Economic Empowerment**

As seen in the empirical evidence provided in Section II, Black South Africans continue to be economically oppressed and socially stigmatized due to structural remnants from the apartheid era. Because of this structurally-stemmed oppression, there is a moral obligation for the state of South Africa to redress injustices made towards Black South Africans. The most effective method in "leveling the playing field" of employment equity and economic opportunity

between Black and Whites is through a modernized and reformed version of Black Economic Empowerment. This language of empowerment found in South African legislation is elucidated through John Rawls' concepts of fair equality of opportunity and Amartya Sen's capability framework.

The language of B-BBEE legislation is conducive to bolstering economic autonomy and fostering increased well-being for Black South Africans. Through language centered around empowerment and fairness, the policy provides a structural framework within which Black South Africans can use their own agency to become stronger and confident in claiming their basic rights entitled to them by the Constitution. The justifications for empowerment were made clear in the ANC's legislation since the end of apartheid in 1994, stressing the need for continued efforts in fulfilling claims made by the democratic Constitution:

"In our country –more than any other part of the oppressed world –it is inconceivable for liberation to have meaning without a return of wealth to the people as a whole. It is therefore a fundamental feature of our strategy that victory must embrace more than formal political democracy. To allow the existing economic forces to retain their interests intact is to feed the root of racial supremacy and does not represent even a shadow of liberation (SAHO, 2015)."

To refrain from "feeding the root of racial supremacy," the B-BBEE Act continues to fight to promote empowerment for Black South Africans through active political change. In the content of this quote, the ANC recognizes the necessity to give wealth back to the Black South African people—a task that can only be accomplished through increased empowerment. Efforts such as GEAR and NGP mentioned in Section III failed to effectively translate empowerment from legislation into action. In order ensure sustainable advancement among Black South African

opportunity, it must be coupled with empowerment and autonomy. While opportunity provides individuals with the capability to achieve certain goals, empowerment denotes an increase in individuals' autonomy in representing their own interests. Enabling empowerment provides the formerly oppressed Black population a richness in self agency and ability to succeed. Because Whites were privileged by the former apartheid structure centered on racial segregation and oppression, it is imperative that Black empowerment policies work towards equality.

Sen's focus on the individual's capability to pursue a dignified quality of life is essentially a form of freedom of self-determination and agency that is analogous to B-BBEE's empowerment. Furthermore, Sen emphasizes the need for economic resources in order to live one's life, which are B-BBEE's objectives of providing resources and economic and material resources to accomplish one's life. B-BBEE's fundamental objective of "advanc[ing] economic transformation and enhance the economic participation of black people in the South African economy" (Department of Trade and Industry, 2016) is analogous with Sen's promotion of economic agency. Both self-determination and economic agency tie together Sen's capability approach and B-BBEE's empowerment.

Sen defines *capability* as the various combinations of functionings, or beings and doings that a person can achieve (Sen, 2009). Sen expands on this concept, stating "The focus here is on the freedom that a person actually has to do this or be that—things that he or she may value doing or being" (Sen, 2009). By having the resources to attain certain functionings, individuals are then able to achieve a level of utility to which Sen argues all individuals are entitled. Thus, by providing empowerment to opportunity in the form of increased employment access and labor participation, B-BBEE aims to provide an escape from structurally enforced denial of capabilities. This allows for increased economic autonomy for Black South Africans to pursue

their conception of the good life. Sen defines an individual with agency as “someone who acts and brings about change, and whose achievements can be judged in terms of her own values and objectives, whether or not we assess them in terms of the external criteria as well” (Sen, 1999). In the wake of apartheid, B-BBEE policies aim to generate the ability for individuals to act on what they value or reason to value through employment opportunity. Thus, by providing a framework within which Black South Africans are given increased capabilities to achieve various functionings, policies such as B-BBEE allow for increased economic agency.

The significance in the role of the South African government ensuring social justice is further illustrated through both the country’s Constitution and Sen’s focus on social opportunity. The preamble of the Constitution encompasses its intent of “establishing a society based on democratic values, social justice and fundamental human rights” (Constitution of South Africa, Section 1). In a post-apartheid South Africa, achieving this social justice was especially pertinent for Black South Africans. While Black South Africans are all granted basic liberties, it is morally obligatory for state actors to reverse the prior repressive apartheid structure by working towards increased opportunity and empowerment. Sen focuses on the role of social opportunity, expanding the realm of human agency and freedom as both an end itself for the individual, and as a means of further expansion of freedom for others (Alkire, 2013). That is, “social opportunity” entangles individuals’ agency together, refusing to view individuals’ opportunities in isolated terms (Sen, 2009). This language suggests that an individual’s fate depends greatly on the relations with others—particularly state institutions. Thus, the opportunities either constrained or nurtured by social circumstances and public policy are of great importance since institutions have the ability to enact social change for the better of the state overall. In South Africa’s case, it is crucial that policies such as B-BBEE continue to be recognized and cultivated

in an attempt to redress past grievances and provide equality of opportunity for all—regardless of race.

B-BBEE's language of empowerment can be illustrated with John Rawls' concepts of fair equality of opportunity, as both language of equality and opportunity are echoed in support of B-BBEE. In unpacking Rawls' liberty principle, which entails equal basic rights and liberties to each individual in a society, it is evident that a policy centered on increasing a formerly oppressed demographics' opportunity is morally requisite. The South African Constitution heavily weaves language of inclusiveness and opportunity throughout, stating that the nation "...is founded on the following values...human dignity, the achievement of equality...non-racialism and non-sexism..." (South African Constitution, Section 1). The ANC advocates opportunity among all races, particularly working to ensure that this opportunity will be *equal*. Rawls' provision of egalitarianism complements the ANC's initiatives of ridding historical biases and moving forward to empower Black South African individuals. He advocates redirecting a state's resources and providing them to the worst off: "we can choose a constitution and legislature to enact laws all in accordance with the principles of justice initially agreed upon" (Rawls, 1971). Similarly, the ANC advocates providing equal employment opportunities to Black South Africans to which White South Africans have access, so that Blacks may rule their lives with the same degree of self-determination and agency as Whites. By these standards, efforts in empowering Black South Africans who remain disadvantaged by past structural injustices is imperative in producing an equal society—something that all individuals should want in the original position.

Similar to B-BBEE, Rawls' "veil of ignorance" emphasizes language of opportunity and fundamental equality. Behind Rawls' constructed veil, an individual determines the morality of



political and social issues at a purported “original position” (Rawls, 1971). By starting at this original position, one views issues from the least biased perspective as possible, thus coming as close to fairness as possible: “The original position is the appropriate initial status quo, and thus the fundamental agreements reached in it are fair” (Rawls, 1971). By fighting for this “appropriate status quo” the government, in this case the ANC, is fighting for the highest level of justice possible in modern South African society. In this ideal world, Black and White South Africans alike have a stake in the economy as well as power to influence economic decisions. Beneath the veil, “no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like.” (Rawls, 1971). Thus, in Rawlsian terms, an unbiased individual is not to make choices based on self-interest but, rather, decide what would provide the highest degree of equality and opportunity. In the context of post-apartheid discrimination, then, it is evident that no human being would approve of economic, social or political exclusion and discrimination based on skin color. Likewise, an individual behind the veil would denounce denying basic liberties from Black South Africans, such as access to employment or human agency allowing them to pursue their version of a dignified quality of life. The subjugation faced by Black South Africans in the form of social and economic prejudices that persisted for nearly five decades in South Africa are objectively unjust and biased when viewed behind the veil, and thus deserve rectification.

Rawls also equates justice as fairness, augmenting the South African Constitution’s assertion for equality for all citizens. That is, to achieve a just society is to achieve one with complete fairness. In these terms, the apartheid state would be the complete antithesis of just—seeing as the state oppressed Black South Africans in all realms—politically, economically, and

socially. In an attempt to compensate for the past wrongdoings, the new democratic Constitution fights for fairness among all citizens. In Section 9, it states: “everyone is equal to a full and fair enjoyment of rights, promoting the achievement of equality,” (South African Constitution, Section 9) asserting the need for fair opportunity among all races. It also explicitly states “the need to protect persons who have been disadvantaged by unfair discrimination” (South African Constitution, Section 9). By fighting for fairness through policy intervention, equal access to employment opportunities would be given to all individuals in society regardless of race. This working for fairness will in turn provide a more just society overall.

## **VI. Shortcomings of the Act**

The foundations of B-BBEE are morally justifiable, however, it is evident that there has been a disconnect between translation from concept to application of the policy. South Africa still faces challenges in achieving economic and social inequality, and race remains a significant indicator of income level today in South Africa (Business Tech, 2015). Blacks remain on a lower playing field in society, and equality of opportunity is statistically lacking. In 2008, less than 25% of top and senior management was black, against some 80% in government. Additionally, White males still hold 60.6% of top management positions as opposed to only 10.1% Black males (Business Tech, 2015). Explicitly, the Act has neglected to benefit the whole Black population, rather benefiting a small minority of the demographic. It has also failed to provide substantive skills development which hinders not only equality and economic agency, but overall economic growth. For these reasons, I assert that the current form of B-BBEE should be modernized and reformed in attempt to best address racial economic inequality in South Africa.

One of the most prominent reasons B-BBEE has been criticized is the common corruptions and nepotism that exists on both a local and national level. The B-BBEE process has been politicized, giving particular advantage to the minority of Black South Africans who are close to members of the ANC (Figure 10).



*Figure 10: Cartoon of Zuma depicting the corruption within the ANC*

Many Black South Africans have complained that the policy is only geared towards benefitting a small percentage of politically connected Black South Africans leaving a majority disempowered. According to expert Dr. Anthea Jeffrey, B-BBEE only benefits approximately 15% of the Black South African population, much less than its intended goal (Jeffrey, 2015). Thus, only a small percentage of beneficiaries to the ANC actually benefit from these policies and the highest unemployment and inequality prevails among Blacks. Worker unions such as COSATU have been explicit in its opinion that ANC’s strategy with BEE promotes a “patriotic bourgeois” and encourages elite empowerment (Southall and Tangri, 2008), further illustrating the discontent with the implementation of the policy.

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<sup>3</sup> South Africa now ranks 64 out of 176 on a level of corruption—increasing from 55<sup>th</sup> out of 176 in 2009 according to the Corruption perceptions index.

One of the most explicit manners in which B-BBEE has fostered corruption is with the advancement of fronting. Cyril Ramaphosa, a prominent South African politician and activist, argues that the South African business community and government needs to find a way at addressing fronting (Dludla, 2016). Fronting occurs when entities claim compliance and deliberately circumvent the B-BBEE Act and Codes by misrepresenting facts in order to appear more appealing to potential consumers and government actors. Ramaphosa claims that this fronting is a “gross abuse of economic transformation and that government should put in place measures to penalize transgressors of transformative legislation” (Dludla, 2016). The policy was initially formed with the intention that entities would embrace the spirit and intent of B-BBEE, it has become a significant challenge today and entities can be fined up to 10% of their turnover or 10 years in prison (Business Report, 2016). Ramaphosa called B-BBEE one of the most important measures that the democratic government had put in place to address the economic injustices of the past, but notes the clear weak points that need addressing. Rather than entities investing in corporate social responsibility in order to ameliorate unequal opportunity, many entities lack transparency and the struggle for economic equality subsequently diminished.

Despite blatant corruption within the current system, there have been continual efforts to remodel the Act so that exploitation is tapered. In July 2010, Labor Minister Membathisi Mdladlana responded to this by stating that tougher measures should be put into place for companies that ignore employment equity (Taunyane, 2016). The current chairperson for the Employment Equity Commission, Mpho Nkeli, reinforces the need for stricter penalties for non-compliant companies. In detail, the B-BBEE Commission was recently established in 2016 to investigate the issue of fronting as an ethical and criminal matter (Taunyane, 2016). The Commissioner of the B-BBEE Commission, Zodwa Ntuli is addressing the challenges of

fronting head on in attempt to ensure an ethically permissible B-BBEE (Politics Web, 2014). The efforts being made in ridding B-BBEE of corruption furthers the notion that rather than terminating the policy altogether, a reformed version of B-BBEE would be most helpful in attaining racial economic equality.

To make a lasting change towards ameliorating high unemployment and inequality among Black South Africans, it is also important to look at factors such as access to skills and education through the Act. As mentioned in Section III, Black South Africans have been systematically oppressed and inhibited access to education and employment opportunities. Moreover, Black South Africans make up a disproportionate amount of the low-skilled workforce—approximately 84% at the end of apartheid and growing to over 86% today (Figure 11). The skills development aspect of the B-BBEE Act attempts to redress this issue, though it is given less attention than deserved. Acute skills shortages are some of the most pressing issues in South Africa today, yet most entities spend the least amount of energy on skills development, instead concerning themselves with checking off scorecards (Wilkinson, 2015). The business advantages associated with B-BBEE compliance has resulted in a filled out scorecard taking precedent over actual merit and performance. As noted in Figure 3, there has been little change in skill level progress among races, specifically among Black South Africans.

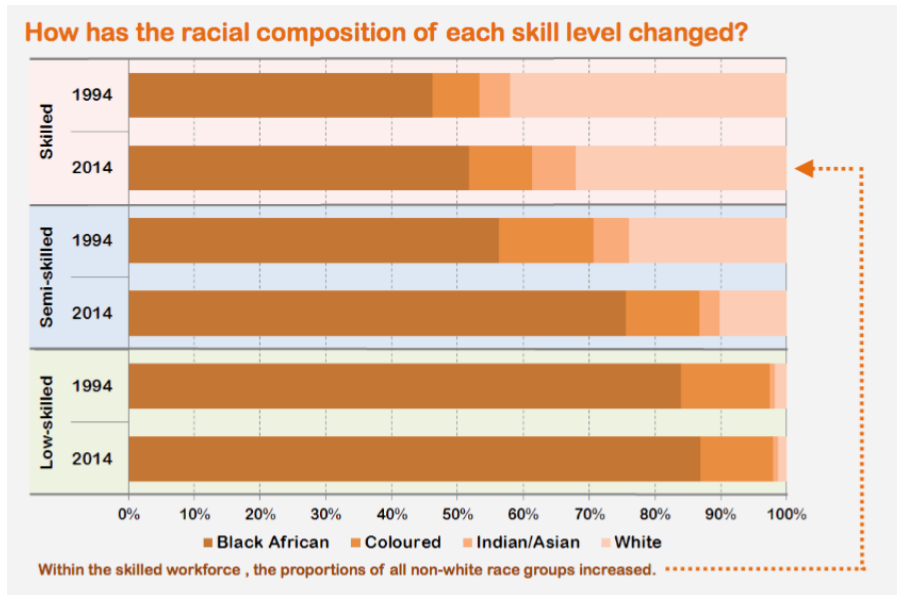


Figure 11: Racial Composition of Skill Level over time (Statistics South Africa, 2014)

There is an evident need for higher attention paid to skills development sector of the B-BBEE seven elements. Employment Equity Commission Chair Nkeli also argues for increasing skills development as well as addressing the racism and discrimination in the private sector. Nkeli and other leaders are working towards ways to instill more legitimate measures of skills development into the workplace (Taunyane, 2016). Rather than abandoning the policy all together and moving towards different objectives, the South African state should continue to evaluate methods in reforming B-BBEE as its objectives are too relevant to disregard.

One shortcoming of B-BBEE that is often discussed is that it somehow distorts the black identity by acknowledging and perpetuating the color-line divide. Critics such as South African political economist Moeletsi Mbeki believe that B-BBEE undermines the ANC's policy of non-racism and perpetuates a sense of "victimhood" (Business Report, 2015). However, over twenty years after apartheid has ended, Black South Africans do remain the victims to societal biases. Rather the prescribing certain titles to demographics in society, B-BBEE acknowledges the reality of the situation, which is that Blacks are statistically unequal and given less opportunity in

today's society than Whites. The South African state intervened on behalf of white well-being during the National Party's tenure from 1948 until 1994, thus it is logical for the current state to address black well-being in the newly democratic state in aims of achieving equality.

Others such as chief executive of the South African Institute of Race Relations (SAIRR) John-Kane-Berman, make the argument that if the state focused on promoting employment without race-based policies, then Blacks formerly oppressed from apartheid would remain the main beneficiaries of these employment promoting policies because the majority of the unemployed and poor are Black (Jeffrey, 2015). While this may be true, B-BBEE acknowledges the suppression that the Black demographic has experienced over time. For society to ignore these past injustices would be unethical and irresponsible. Still, other critics acknowledge the empowerment policy as "reverse apartheid" (Elibiary, 2016). To insinuate that B-BBEE somehow enacts reverse discrimination upon a White South African demographic is to suggest that Black and Whites lay on the same plane, and the policy attempts to debunk Whites to an inferior status to their Black counterpart. Rather, B-BBEE aims to redress inequality and suppression initiated by structural biases so that Blacks may have an easier path in climbing their way to a more elevated level. Thus, while B-BBEE has evident shortcomings in preventing corruption in the form of fronting and lack of skills development, the motivations behind the policy and the promise behind a modernized policy deems it worth pursuing.

## **VII. Recommendations Moving Forward**

When determining the effectiveness of B-BBEE Act, it is obstructive to think of a solution in terms of binaries—that is, a comprehensive acceptance or rejection of the Act. While many proponents of terminating the policy argue that the policy reinforces the color-line and, in turn, promotes reverse discrimination, I contend that a modernized and reformed version of B-BBEE

is paramount in redressing historically-rooted biases within a White-dominant South African economy. While a race-based policy such as B-BBEE is crucial in redressing these past structural injustices, Section VI clearly shows the policy faces significant criticisms. Thus, I argue a modified version of B-BBEE be proposed that embraces a stronger emphasis on vocational training and skills development coupled with anti-corruption legislation, as these factors are conducive to both overall economic growth and social justice.

Though many scholars evaluate the solution for B-BBEE in binary terms, either asserting that the policy should be terminated altogether or advocating strongly for the main tenets behind B-BBEE, a precise shift in implementation is necessary both for social cohesion and political propriety. Many argue that rather than acknowledging the color line, twenty years into a post-apartheid democratic regime, it is time to put a “sunset” or termination clause on the B-BBEE Act to put an end to any corruption and entrenchment occurring that has evolved from the policy (Kruger, 2014). Others advocate a policy surrounding the economic empowerment for the disadvantaged should be put in B-BBEE’s place (Jeffrey, 2014). They contend that the country’s most disadvantaged and impoverished individuals are predominately Black South Africans, so they would be just as much aided from an empowerment policy directed towards a more general poor rather than acknowledging the color line.

While this may be true, the stain that apartheid has left on the country of South Africa is far from faded. South Africa’s government has an ethical responsibility to redress injustices experienced by Black South Africans, and therefore must continually work towards instilling policies that are supportive of empowerment and equality among races, as B-BBEE has done. However, after fourteen years of a contentious opinions on the policy, it is imperative that the ANC and DTI consider a reform geared more towards empowerment built on skills development



and anti-corruption. It is the interest of South African society overall to pursue a race-based policy like B-BBEE due to the underlying racism that still exists in South African society today. Though many may argue that the Act is antiquated and acknowledges the color-line, I contest that color distinction is significant due to the historical context of apartheid society. Providing empowerment for the demographic group that has been systemically and historically discriminated against for almost half a century is not only apt, it is vital in attaining equality.

Conceivably in time, South Africa may find it necessary to put a “sunset clause” on the B-BBEE policy—in the prospect that society should reach a point in time where it does have a need for policy working towards equality. However, in the current South African state, racial distinctions among inequality, opportunity, and capabilities are irrefutable. Thus, the most feasible and morally justifiable method in addressing these injustices is through a modified version of Broad-Based Black Economic Empowerment.

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