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A Model to Complement Legislation in Accelerating Employment Equity in South Africa

Tshesane, Tabea Dominica Maphale

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A Model to Complement Legislation in Accelerating Employment Equity in South Africa.

Tabea Dominica Maphale Tshesane

2281001

2281001@students.wits.ac.za

A research report submitted to the University of the Witwatersrand, Wits Business School in fulfilment of the requirements for the degree of Doctor in Philosophy

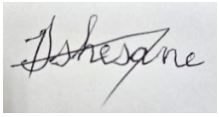
Johannesburg, 2024

ABSTRACT

The inception of the Employment Equity Act No 55 of 1998 has created expectations of redress in the labour market, expectations that have been hard to realise. The labour market has been slow to transform and affirm persons from designated groups, creating impatience on the part of the public and legislators. This slow pace of transformation if not addressed, threatens to destabilise race relations and may result in major discontent in the democracy of South Africa. The resultant behaviour of a discontented public may be detrimental for South Africa at an economic, social and political level. Unless the political freedom results in economic redress, where the majority of South Africans could participate in the labour market, all the gains of the democracy may be viewed as insignificant. A model that would complement the Employment Equity Act could lead to the much-needed acceleration of equity in the workplace which this qualitative research seeks to develop. Through interviews conducted with key figures that have been involved in legislating and/or implementing the Employment Equity Act as well as thought leaders in this field, data was gathered for the model that was developed. It is therefore envisaged that this model, if applied in the current labour market context, would lead to an acceleration and sustenance of transformation and redress as envisioned in the Constitution of the Republic of South Africa.

DECLARATION

I, Tabea Dominica Maphale Tshesane, declare that this research report is my own work except as indicated in the references and acknowledgements. It is submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy at the University of the Witwatersrand, Johannesburg. It has not been submitted for any degree or examination in this or any other university.

Name: Tabea Dominica Maphale Tshesane Signature: 

Signed at Pretoria……

On the 12…….. day of January…… 2025.

DEDICATION

To dad, Solomon Serema Tshesane, my role model, the one who challenges me to reach my fullest potential. You will always be someone I look up to. Thank you for teaching me to stay with the course when chasing my dreams.

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Gracious and merciful God, you have shown me favour beyond measure. Indeed, you have proved once more that your word is true. “I can do all things through Christ who is my strength” Philippians 4:18

Dr Christoph Maier, you made me believe in me when I did not believe in myself. You encouraged me and helped me to see more possibilities about how I could articulate my work. Thank you for your support.

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LIST OF ACRONYMS

AA	Affirmative Action
ANC	African National Congress
BBBEEA	Broad Based Black Economic Empowerment Act 53 of 2003
BCEA	Basic Conditions of Employment Act 75 of 1997
CEE	Commission for Employment Equity
DG	Director General
EAP	Economically Active Population
EE	Employment Equity
EEA	Employment Equity Act 55 of 1998
IES	Inspectorate and Enforcement Services Directorate
LRA	Labour Relations Act 66 of 1995
MEC	Mineral Energy Complex
NDR	National Democratic Revolution
PEPUDA	Promotion of Equality and the Prevention of Unfair Discrimination Act of 2000 Act No 4

RDP	Reconstruction and Development Programme
SDA	Skills Development Act 97 of 1998

CHAPTER 1. INTRODUCTION

The establishment of capitalism in South Africa was tainted by racial exploitation of the indigenous Black people, using them as cheap labour to achieve the capitalist agenda (Maharajh, 2011). Stewart (2017) states that South Africa was expelled from the United Nation (UN) in 1970, but Maharajh (2011) maintains that this did very little to contribute to a transformed economic and political agenda that would bring about a fair and just country for Black people. The UN felt that the expulsion absolved them of all responsibility and reasoned that they would not be associated with a country that threatened international peace and security as well as washed their hands off a country that was committing crimes against humanity (Maharajh, 2011). The interventions that led to the desired change were to be long-term, vicious and bloody, championed mainly by the Black people themselves, this eventually led to the fall of apartheid (Terreblanche, 2002).

Post apartheid, South Africans inherited a polarised country that was desperately divided in many ways. On the one hand, it was a South Africa of the haves, those who lived in a first world economy, with all their basic needs met, while on the other hand, it was characterised by abject poverty and deprivation for the majority of South Africans (Terreblanche, 2002). It remains a country with sharply divided and opposed realities, and as such, finding common ground about redress of the economic ills of the past, results in varied and irreconcilable opinions. Apartheid left devastating racial inequalities in the labour market, and deeply entrenched systemic discrimination that has dire consequences for the majority of citizens.

At inception, the Employment Equity Act No 55 of 1998 (hereafter referred to as the EEA), promised to remove barriers related to access to the labour market and to promote the development and advancement of Black people, women and persons with disabilities in the workplace (Republic of South Africa, 1996b). The targeted recipients are not defined by class but rather race, gender and disability.

There are those who believe the racial categories outlined in the EEA are considered "offensive" as they reinforce racial thinking and racialization, ultimately undermining the very non-racialism they are intended to promote. (Chetty; Friedman & Erasmus, 2008; Solidarity Trade Union, 2021). Another one of the criticisms of the EEA has been that it has empowered a few people, by creating a small population of Black middleclass that has advanced in the labour market to positions of authority and influence and are earning significantly more than the majority of the targeted benefactors of the EEA (Gqubule, 2021; Kovacevic, 2007). Gqubule (2021) states that it remains debatable whether the empowerment of this minority Black group is sustainable or not, as the bulk of them have been described as the vulnerable middleclass, due to their dependency on every check at the end of the month to survive. Leibbrandt (2018) and Zizzamia et al. (2019) also contend that the Black middleclass is under immense threat as they are highly dependent on their monthly income and that one missed check at the end of the month, dramatically alters their status. Thus, the EEA is seen to not be offering sustained change. It is also perceived as not benefiting the majority of the people that it is designed to benefit (Makanda, 2019; Malope, 2019, September 1). Arguments thus continue about the real impact of the EEA and whether the Employment Equity Amendment Act 4 of 2022 (Amendment Act) will on its own yield better results (Chetty, 2023).

To further the objectives of equality in the labour market, the President assented the Amendment Act on 12 May 2023 (The Presidency, 2023). While the Amendment Act is hailed as seeking to bring desirable change in the labour market because it imposes targets and incentivises organisations that implement the principles contained therein, other bodies such as the Democratic Alliance (a majority opposition political party in government) and Solidarity (a Union that represents in the main Afrikaans people) want the Amendment Act declared unconstitutional and effectively scrapped, and have gone as far as lodging court papers to this effect (Chetty; "Solidarity vs the President of the Republic of South Africa J661/23," 2023). Terreblanche (2002) suggested that White indignation should be rejected as unwarranted arrogance or disguised racism, and the bravado of people who have no sense of history or social responsibility towards those who have been exploited and victimised. In his writings, he further argues that their failure to see how they benefited and how this exploitation should be redressed is hypocritical (Terreblanche, 2002).

The tracking and reporting of progress in workplace transformation is driven by the Commission for Employment Equity (CEE), which is an advisory body established in terms of Section 30 of the EEA. The updates of the state regarding workplace transformation are reported in the CEE Annual Reports. The first report was launched in 2000 (Department of Labour, 2015). In subsequent reports, the trend of the slow pace of transformation emerged and has been confirmed by reports of lived experiences of Black South Africans, women and persons with disabilities (Merten, 2019; Mputa, 2016; Perlman, 2019). Annually, there is on average a one percentage point (1% point) increase in favour of designated groups specifically at Top and Senior Management (Department of Employment and Labour, 2022a).

Table 1 below provides the National Economically Active Population (EAP) which according to the EEA should be reflected at all occupational levels of the labour market. The EAP is defined as people between the ages of 15 and 64 years, who are either employed or seeking employment (Department of Employment and Labour, 2022a).

Table 1: National Economically Active Population by Gender and Race in 2022

Population Group	Male	Female	Total
African	**43.4%**	**36.6%**	**80%**
Coloured	**4.9%**	**4.4%**	**9.3%**
Indian	**1.7%**	**1.0%**	**2.7%**
White	**4.5%**	**3.5%**	**8.0%**
TOTAL	**54.5%**	**45.5%**	**100.0%**

Source: Statistics South Africa: Quarterly Labour Force Survey, Quarter 3, 2022

Table 1 demonstrates that Africans are the most highly represented racial population in the labour market. The Coloured population is the second highest followed by the White population, with the Indian population having the lowest representation. In terms of gender, the male representation exceeds that of females by approximately 9%

(Statistics South Africa, 2023, Q1). On an annual basis, the CEE uses the EAP as a benchmark to gauge progress towards workplace transformation.

Table 2: Trend analysis of the demographic representation of employees across the Labour Market from 2001 – 2022

Occupational Level	Period	White	African	Coloured	Indian	Male	Female
Economically Active Population	2022	8.%	70%	9.3%	2.7%	54.5%	45.5%
Top management	2001	87%	6%	3%	4%	87%	13%
	2022	62.9%	16,9%	6.1%	11.2%	73.5%	26.5%
Senior Management	2001	81%	9%	5%	5%	80%	20%
	2022	50.1%	26.4%	8.2%	12.3%	62.8%	37.2%
Professionally qualified	2001	56%	33%	6%	5%	62%	38%
	2022	30.0%	48.4%	9.9%	9.3%	51.8	48.2%
Skilled	2001	18%	61,7%	18%	6%	60%	40%
	2022	16.2%	65,3%	11.6%	5.3%	50.6%	49.4%

Source: Data Analysis from the Annual CEE Reports from 2001 – 2023[1]

The above table demonstrates movement in the different racial and gender groups between 2001 and 2022 in the labour market. It is evident from this table that progress in terms of movement of designated groups is gradual especially at top and senior management levels. It presents a bleak picture for transformation in as far as

[1] The data on foreign Nationals per occupational level has been excluded from the Table as it does not form part of the analysis

representativity is concerned both in terms of race and gender. For instance, between 2001 and 2022, the African population has increased by a mere 10.9%, while the female population has increased by 13.5% in the same period at Top Management.

According to the CEE Annual Report of 2017, the CEE laments the increase of foreign nationals at the unskilled occupational level. This increase in foreign nationals at this level has resulted in a reduction of job opportunities for Black South Africans at entry level into the labour market (Department of Labour, 2017). The trend, which was first identified in 2015 suggests that employers prefer foreign nationals to South Africans at the Unskilled Occupational Level. In the Foreword of the 2017 CEE Annual Report, the Chairperson of the CEE indicated that it was greatly concerned by this trend as it results in discrimination of South Africans at entry level, and exacerbates the increase in the unemployment of South Africans (Department of Labour, 2017). According to this report, employers argue that foreign nationals tend to be more responsible employees in comparison to their South African counterparts. They further argue that foreign nationals are willing to earn less, and are not averse to working longer hours (Commission for Employment Equity, 2017). The injustice and exploitation that comes with the working conditions of foreign nationals, is said to perpetuate a narrative that promotes xenophobic attacks in the country (Kirsten, 2021; Swart, 2021). Swart (2021) asserts that the riots that took place in July 2021 in Kwa-Zulu Natal exposed the levels of discontent associated with unemployment and inequality in the country, citing that the unemployment rate stood at 32% at that time. Swart (2021) further argues that inequality in South Africa has become worse in the 2020's than at the dawn of democracy.

While the focus on numbers is an important debate in gauging the impact of the EEA, substantive equality is also a meaningful indicator. Substantive equality which is covered in Chapter II of the EEA can be tracked through the disputes of unfair discrimination lodged to the Commission for Conciliation Mediation and Arbitration (CCMA) on an annual basis. The number of disputes lodged with the CCMA suggest that employees continue to have a lived experience of discrimination in the workplace.

Table 3: Breakdown of the 1777 EEA-linked referrals received by the CCMA from 01 April 2021 - 31 January 2022

Table A: Referral Issue	No of Referrals
Prohibition of unfair discrimination - Arbitrary ground	1087
Equal pay for work of equal value - Arbitrary ground	359
Sexual harassment	80
Prohibition of unfair discrimination - Race	49
Prohibition of unfair discrimination - Pregnancy	33
Prohibition of unfair discrimination - Age	28
Protection of employee rights	23
Prohibition of unfair discrimination - Disability	22
Other forms of unfair discrimination (gender, race, age, culture etc)	96
TOTAL	1777

Source: CEE Annual Report 2021-2022

The above table illustrates the number and type of disputes declared at the CCMA between April 2021 – January 2022 related to the EEA. The single highest type of dispute related to the EEA is discrimination in the workplace based on arbitrary grounds. The second highest were cases related to Equal Pay for Work of Equal Value on arbitrary grounds. Discrimination in the workplace is mostly alleged, when the process of making decisions around job opportunities, career events such as training and development, remuneration as well as how work is organised are considered flawed (Department of Labour, 1996b).

The number of disputes declared at the CCMA is currently the only objective measure available to the CEE to measure substantive equality in the labour market (Department of Employment and Labour, 2018a). This measure of substantive equality is however, not necessarily the most accurate as declaring disputes is often perceived as a career limiting move, as it is metaphorically a declaration of war with the employer. Employers often make working conditions even more difficult for employees who dare to declare a dispute at the CCMA.

Saunders et al. (2007, p. 139) confirms this by citing Parker (2002), "Parker starts by acknowledging just how difficult and almost unthinkable is it to be against something like management, which shapes so completely our everyday lives in today's world". Thus, if hardly any disagreement is registered in any form, it does not necessarily follow that discrimination is not present in places of work (Blades, 1967; Saunders et al., 2007).

The resistance to employment equity in the labour market is not overt and the battle lines remain invisible. Rather, such resistance is felt by those who are in the workplaces, or those seeking employment (Department of Labour, 2019a; Ramphele, 2008). Some employers, covertly fight the implementation of employment equity while paying lip service to the need for transformation. As Magasela (2018; para 1) succinctly puts it: "The world of work is another terrain of struggle. The war is not openly declared, and the battle lines are blurred. The forces of change, driven by the principles of democracy, justice, equality, freedom and rights, have delivered you to the organisation among unwilling partners to the changes". What seems certain, is the reality that those that are being expected to affirm the designated groups have absolute power in determining the fate of employees on matters of recruitment, promotion, training and setting the tone of the culture of their organisations (Ramphele, 2008).

The legislation demands transformation, but it is powerless in changing the subtle power dynamics around these matters. Unless the employers buy into the spirit of the law, transformation of the labour market will take more than a lifetime (Dupper et al., 2013; Ramphele, 2008).

1.1 Purpose of the research

The purpose of this qualitative research is to develop a model that complements legislation in the acceleration of employment equity in South Africa. The model will facilitate an alternative way of thinking about the pace of transformation and offer an alternative to a begrudging, minimalistic compliance approach to achieving transformation in the labour market.

It is envisaged that the model will be applied to complement the current legislation and aid proper application and implementation of the EEA.

1.2 Context of the research

The vehicle used to achieve liberation of the South African Black population, namely the negotiated settlement was riddled with contradictions and has created challenges to a much needed aggressive approach of achieving economic transformation (Bowman, 2019). The negotiated settlement dictated a less aggressive approach to the said economic transformation, which meant that the African National Congress (ANC) could not introduce economic policies such as nationalisation, that would allow for economic emancipation of the majority in alignment to the tripartite alliance ideology. Whilst the new South Africa, which was spearheaded by the ANC government, showed signs of a desire for a developmental state through its economic policy, the Reconstruction and Development Programme, which was initiated in 1994, by 1997, the tone had been dampened and all indications were that a more neo-liberal approach would be taken, a move which would maintain the status quo, through a new economic policy, the Growth, Employment, and Redistribution (GEAR) Strategy.

The difference between the two approaches, that is RDP and GEAR, is that the RDP was based on the model of Growth through redistribution, while GEAR was based on a model of redistribution through Growth. RDP prioritised redistribution, maintaining that the redistribution of wealth would facilitate economic growth, while GEAR was premised on the model that growth of the economy would facilitate redistribution. The differences in focus defined what was to be prioritised, redistribution or economic growth (Maharajh, 2011).

“White monopoly capital” would continue to drive the economy of the country by neo-liberal principles (Bowman, 2019; Mosala et al., 2017; Terreblanche, 2012). The phrase “White monopoly capital” is often used in the context of debates about the economic power of White people and businesses in South Africa. This term highlights the historical context of White economic dominance and racial subjugation, which is especially relevant to a South African perspective. This is increasingly part of academic and social discourse and is foundational to larger conversations regarding race, capital, and equity (Reddy, 2024). Reddy (2024) and Abbobaker (2019) argue that the concept may be a simplistic explanation for the nuances of race, class and the interconnected worlds of the elite. Reddy (2024) argues that while the concept has its roots in old anti-apartheid rhetoric, it was popularised by the Bell Pottinger Public Relations (PR) drive around 2016, in an attempt to nullify the allegations of state capture in South Africa. Situating the concept predominantly within the Bell Pottinger PR campaign can be misleading, however, because it negates the real impact of white domination pre and post-apartheid within the economic sphere. Malikane (2017) argues that by 1962, the South African Communist Party had already started using this concept regularly. He states that the vision for equality cannot be removed from the class struggle, which is rooted in colonial and economic oppression of the black majority founded on apartheid principles, whose impact still lingers beyond the South African democracy which was established in 1994. He argues that to this day, the economic power dynamics are rooted in the social, racial and economic inequalities birthed through apartheid and the discriminatory economic practices that were legitimised through the apartheid policies. Giving up the acknowledgement of this class force of “White monopoly capital” he argues, is seeking to lurch on to an ideal state which is currently just a dream for the majority of South Africans (Malikane, 2017). While former President Mbeki argues in Dlamini (2017) that the concept should be framed outside of race as “monopoly capital”, his perspective appears to be questionable, given the fact that economic power has not significantly moved to any other racial group in South Africa.

White economic dominance has been unequivocally reported in all the recent employment equity reports (Department of Labour, 2023, 2022, 2021). White dominated enterprises are often powerful enough to surreptitiously dictate economic policies in the country. Hence, Terblanche (2012) opined that, from the outset, the

model proposed in pursuing economic transformation in South Africa was dictated by the White capitalists, who for the duration of the apartheid system had been central to the disenfranchisement of the Black people in South Africa. As a result, the aggressor became the dictator of how economic transformation was going to take place (Terreblanche, 2012). The negotiated settlement was a compromise to appease "White monopoly capital" and in particular, the Mineral and Energy Complex (MEC) who have been the major capitalists driving the economy and politics of South Africa (Bowman, 2019; Terreblanche, 2012).

"White monopoly capital" within the context of this study is generally used to convey the position of the source, the source being an (academic) author or one of the respondents of the empirical study. ~~refers to enterprises that control the industries in which they operate, limiting and controlling access to markets for smaller enterprises through market domination power (Olifant, 2017; Terreblanche, 2012).~~ The researcher chooses to use this concept in the research document to heighten the awareness of broad tensions of employment equity within the socioeconomic and political debates, as well as to acknowledge the prevalent lens through which the issue of employment equity is viewed, which is often racially and politically charged.

Other writers such as Michiea and Padayacheeb (2019) corroborate this:

> Our view on balance is that South African-based business (along with the late apartheid state and its key economic institutions) played the most significant role in influencing ANC thought on economic policy through moral suasion and efforts such as the scenario planning exercises in successfully punting a market friendly approach to post-apartheid economic policy (p.5).

In their other publications, these authors argue that the ANC made certain concessions during the negotiations with the apartheid government, which made it difficult for them post-apartheid, to implement the economic policies designed to ensure economic transformation (Michiea & Padayachee, 1997).

Thus, realising that the dream articulated in the constitution, which is to remedy past injustices and create an equitable country, has become difficult for the ANC

government (Dube, 2020; Republic of South Africa, 1996a). Through the Equality Clause, the constitution enabled the enactment of legislations around the eradication of discrimination in all its forms, and this was to ensure, in this instance that institutionalised discrimination in the workplace would be systematically eroded.

These legislations, particularly the labour legislations, introduced a transformation agenda and resulted in the quest for equality in the workplace, driven through government institutions (Dupper et al., 2013).

Derived from Section 9 of the Constitution, legislations that drive transformation in the labour market are:

- The Employment Equity Act (EEA) 55 of 1998
- The Labour Relations Act (LRA) 66 of 1995,
- The Basic Conditions of Employment Act (BCEA) 75 of 1997, and
- The Skills Development Act (SDA) 97 of 1998

The Broad Based Black Economic Empowerment Act 53 of 2003 (BBBEEA), is also one of the pieces of legislation seeking to achieve economic transformation in South Africa. However, it does not fall under labour legislation. The BBBEEA will be discussed in more detail in the literature review.

While the EEA is based on the Canadian Model of Employment Equity, the South African context is unique, in that the legislation seeks to redress the majority of the population, unlike in Canada (Canham, 2014). A country that comes close to the South African scenario is Malaysia, where the indigenous Bumiputera are the majority, and beneficiaries of the economic redress through employment equity legislation, as well as policies mirroring the BBBEEA (Gomez, 2003; Lim, 1985; Saad, 2012). Hence, this study will interrogate in more depth the Malaysian transformation and draw lessons from it in the literature review.

At the level of application, the compromise in terms of the EEA, meant that the execution of the EEA would be couched within the self-regulation prescript. This limits the level of influence that government can have in shifting the needle for

transformation of workplaces. “During the Director General Reviews conducted to assess substantive compliance with the EEA, it became evident that most of the employers used self-regulated targets as a shield to circumvent the law by setting low targets as there are visible incentives or sanctions for not complying with the intentions of the law” (Department of Labour, 2018, p. 5).

Section 53 of the EEA, which empowers the Minister of Employment and Labour to issue compliance certificates, was not promulgated, leaving the spirit of implementation of EEA to be less prescriptive and more self-determined (Republic of South Africa, 1998a). While it is believed that the EE Amendment Act which includes the decree of Section 53, will lead to an acceleration of transformation, the researcher posits that more will have to be done to avoid evasion of the law which remains a threat to the effective implementation of the EEA.

Since the advent of the EEA, work has gone into ensuring compliance by employers, specifically designated employers. The Department of Employment and Labour, in furthering its objectives of ensuring compliance, has mandated its Inspectorate and Enforcement Services Directorate (IES) with the enforcement and oversight role of the implementation of the EEA. Over the years, the effectiveness of the IES has been questioned and the issue of understaffing has been offered as a major reason for the cause of poor enforcement (Department of Employment and Labour, 2019b). In his 2019 budget speech, the Minister of Employment and Labour, Minister Nxesi announced that a budget of R628 million had been allocated to the IES, while R1.2 billion had been allocated to the implementation of the Employment Equity Certificate, which is proposed in the Amendment Act (Department of Employment and Labour, 2019b). It was hoped by the Department, that this increase in budget would lead to better enforcement under the EEA and accelerate the pace of transformation in the workplace.

Behind the controversy and contestation of employment equity are deep seated conflicting values that touch on the position taken by those who resist its implementation. The Department of Employment and Labour issued a media statement in which they indicated that employers prefer to budget for fines attached to non-compliance than comply with the law (Department of Employment and Labour, 2022b). The Department has previously argued that even an exponential increase in

the fines is unlikely to lead to compliance (Department of Labour, 2018). This legislation on its own cannot bring about the desired change, as employers have found ways of circumventing it. The change in behaviour needs to be addressed by more than legislation, and interventions implemented need to ensure less of the begrudging compliance (Cerna, 2013).

The researcher is proposing that a multipronged approach that supports legislation can lead to the acceleration and ultimate achievement of the objectives of the EEA. The proposed model seeks to address this.

1.3 The research problem

Government's approach to dealing with the slow pace of transformation has been to regulate it even further, by either amending the law or by reviewing ways of monitoring and enforcing compliance. Louw (2015, p. 596) suggests that the 2013 amendments to the EEA were nothing more than "sticking band aid to an amputated limb". Continuing to amend the law as and when it is challenged by application, does not necessarily bring the country closer to the desired goals. What may be needed is more than legislation, some intervention that will lead to effective application of the legislation (Cerna, 2013; Rabeau, 1999).

The policy tools continue to perpetuate the policing approach, which strengthens the resolve to resistance and the continuation of pursuing a minimalist approach to compliance by the detractors (Rabeau, 1999). Badat (2023) refers to this as a rule-based approach to compliance, which is inflexible and rigid, and may not necessarily lead to the desired change. Levitsky and Murillo (2009) contend that there is a temptation to assume that once rules are put in place, then people will automatically follow them.

"In other words, instead of taking root and generating shared behavioural expectations, formal rules are widely contested, routinely violated, and frequently changed" (Levitsky & Murillo, 2009, p. 116). In other instances, it is argued that the EEA drives the achievement of equitable representation of designated groups in organisations, without achieving substantive equality (Coetzee, 2015).

The literature on the progress of employment equity in South Africa, has not offered solutions to address the micro (individual), meso (organisational level) and macro (national level) solutions that address the slow progress of legislation. Booysen (2007) proposes organisational interventions, which amongst others include dealing with the corporate culture, confronting the fear of White managers in organisations as well as addressing the inconsistent application of Employment Equity, while Horwitz and Jain (2011) suggest organisational level solutions that deal with Human Resources development and application of the Skills Development Legislation amongst others. Bezuidenhout et al. (2008), on the other hand, put forward solutions that are more at a macro-level, and primarily legislative in nature as opposed to dealing with the related dynamics which reside with employers, leading to major resistance of dealing with the EEA. The above researchers have been noted as the ones focusing primarily on employment equity, while there may be others that talk more to economic empowerment in its broader sense (Gqubule, 2021).

Furthermore, an understanding of the latent power dynamics and consequent obstacles resulting from these power dynamics, as articulated by authors such as Terreblanche (2012) and Kelly et al. (2007) appear to be critical in remedying the impasse to employment equity. It is in understanding how these power dynamics operate, and in confronting their impact, that meaningful progress can be attained. Horwitz and Jain (2002) also cite power as negatively impacting the effective implementation of employment equity but have not isolated it and offered solutions to it. In this study, the researcher analyses and details the latent power dynamics and offers a model to address them. There appears to be a gap in literature that deals with all three levels of obstacles to the acceleration of employment equity in the South African labour market in an integrated way.

The model that this study designed addresses the micro, meso and macro level obstacles to the effective implementation of employment equity. An integrated approach will lead to synchronicity of effort and an intentional remedying of the barriers that exist, resulting in a holistic approach to an apparent complex problem of economic transformation in the labour market.

1.4 The research objectives

With reference to the research problem as indicated above, the objectives of this research are as follows:

- Primary research objective

To develop a model that complements legislation in accelerating employment equity in South Africa.

- Secondary research objectives

1. To unearth the obstacles to employment equity in the current legislative framework.
2. To identify the latent power dynamics that maintain the status quo in the South African workplace on issues of employment equity.
3. To establish principles that are central to the acceleration of employment equity in South Africa.

1.5 Significance of the study

According to Terreblanche (2002), Gqubule (2019), Bezuidenhout et al. (2008) and Magasela (2018), to name a few authors, a large portion of the historically disadvantaged individuals of our country, have not experienced much benefit from the impact of the political transformation in South Africa that promised equity in employment. This research seeks to raise the academic debate as to which model and intervention at both national and organisational level should be adapted to create such a benefit.

The significance of this research into the model, nature, and level of intervention, contributes to the debate on how to create equitable employment, which should result in movement towards equitable representation and treatment of underrepresented designated groups. The debate that is envisioned out of the research should move beyond the discourse on the implementation of affirmative action to redress historically

created imbalances embedded in employment policies, procedures, and practices. Furthermore, it should address substantive equality as well.

The importance is that it also transcends the binary view of a model of either government driven initiatives or employer initiatives (Bezuidenhout et al., 2008; Horwitz & Jain, 2011), towards cooperative national and organisational interventions. It presents a collective and united effort for discourse on transformation, thus, such a collective model is likely to result in a vibrant economy, with increased commitment from all stakeholders, as it will change the narrative to stakeholder accountability as opposed to one role player being held accountable for all failures of economic transformation. The research therefore aims to lift the level of academic and practical debate to a nation building agenda, as opposed to an 'us' and 'them' narrative.

The research is also pertinent in that it hones in on the role of power in the pace of transformation. The findings offer possible explanations on how power impacts progress in the implementation of employment equity and how such power can be used meaningfully to expedite much-needed transformation. This research proposes a model of intervention at national, organisational and governmental levels to facilitate meaningful influence on the transformation of the labour market, based on the power base of the different role players (Glover, 2015).

1.6 Delimitations to the research

This research interrogates the pace of employment equity from a race criterion only to make its scope manageable. While the EEA defines its beneficiaries as Blacks (African, Coloured, and Indian), Women and Persons with Disabilities, focusing on all these groups will lead to challenges in terms of the scope and size of the research.

The research will not focus on the unique dynamics and peculiarities of the challenges faced by women and persons with disabilities as the issue of racial inequality will be the primary focus. This is purely to make the content of the research practicable.

The EEA seeks to ensure redress at all occupational levels, this research will however, limit itself to representativity at the top two occupational levels (Top and Senior Management). It is at these two occupational levels where major redress still needs to

take place for the Black population. The Department of Employment and Labour (2024) cited the representation of the Black population at Junior and Middle Management occupational levels as 83,3% and 68,6% respectively, a strong indication that the EAP is getting closer to being achieved at these levels. However, at Senior and Top Management, the same report indicates 48,5% and 34,9% representation for the Black population. This while the total EAP for the Black population is at 92,3% (Department of Employment and Labour, 2024).

This is what informed the researcher to focus on Top and Senior Management occupational levels for this study. Similarly, the researcher will restrict the scope of economic empowerment to employment equity, and not necessarily to other areas that may be covered by the BBBEEA and other societal sentiments.

The researcher is cognisant that the ultimate aim of employment equity is to redress past economic disadvantages and this must ultimately lead to poverty alleviation (Gqubule, 2021). It can be argued that economic redress cannot be separated from issues of unemployment and poverty and that equity and inclusion in the workplace are intrinsically intertwined with these, however, the element of poverty alleviation is outside the scope of this research. The research focuses mainly on workplace equality, and as a result, poverty alleviation will not be addressed as part of this study.

1.7 Definition of terms

The terms which are used in the research are aligned to the South African language and legislative concepts used in the EEA No 55 of 1998.

Affirmative Action: refers to “measures designed to ensure that suitably qualified people from designated groups have equal employment opportunities and are equitably represented in all occupational levels in the workforce of a designated employer” (Republic of South Africa, 1998; s15(1)).

Discrimination is differentiation based on differences between one thing and another. Within the context of the EEA, it is further qualified into fair and unfair discrimination. Fair discrimination is differentiation that results in differences in treatment based on whether a person belongs to a group of previously disadvantaged people under the

apartheid regime. The EEA lists several grounds that allow for fair discrimination. These are referred to as listed grounds in the employment equity field. Discrimination becomes unfair if it is not permissible by law (Republic of South Africa, 1996a, 1998a).

Diversity: Diversity denotes differences or variety between people, based on visible and invisible differences. Maier (2002, p. 124) refers to it "as the kaleidoscope perspective of the individual" which is the emphasis on the intersectionality of identities within and between individuals, some which are obvious, while others are not.

Employment Equity: It is a principle that promotes equal opportunities and fair treatment to all in the workplace by eliminating unfair discrimination and implementing affirmative action measures to redress the disadvantages in employment, experienced in the past by members from designated groups (Republic of South Africa, 1998b). Unlike equality, which views people as fundamentally at an equal footing, employment equity recognises that historically, in the S.A context, some people have enjoyed privileges that others have not, and as a result reasonable accommodation needs to be put in place for the less advantaged to compete successfully.

Empowerment: In simple terms means being given the power and the clout to do something. April et al. (2007) argues that there are two dimensions to reverse (powerlessness, or abuse of power). Thus, in the workplace, both the right to and the ability to do, must exist for a person to experience being empowered.

Inclusivity and Inclusion: Inclusivity and inclusion mean embracing all. In a workplace, inclusivity is about creating an environment in which all individuals, despite their diversity, feel included and have a lived experience that suggests that the environment is accepting and allows for maximum participation (Canham, 2014; Dupper et al., 2013).

Model: "A representation of an idea, structure or process used to explain a phenomenon that cannot be easily experienced" (Pokapū, 2018 , para:1). Models help people to understand what they do not know.

Substantive Equality: is about "breaking the cycle of disadvantage associated with membership of a particular group; promoting respect for equal respect and dignity, thereby reducing stereotypical representation of their own culture; providing positive

measures of individuals as members of the group; and facilitating integration and full participation in society" (Smith, 2014, p. 614). The researcher posits that substantive equality is a lived experience and can only be attested to by those who are experiencing it in the workplace. It is subjective and can be measured through a recounting of the beneficiaries' experiences.

Transformation: Poutiatine (2009) posits that transformation is a voluntary process of change, where the participant has a sense of agency and actively allows for a radical shifting of realities within themselves and their environment. When transformation takes place, it becomes impossible to change back to the original state. It is often referred to as second order change, where the old is abandoned and new paradigms are embraced and lived out.

1.8 Assumptions

The researcher worked on the assumption that the respondents making up the sample would respond to the interview questions with honesty, based on their personal views and experience. Their familiarity with the subject matter is believed to have added invaluable insights on the topic, and as such it is hoped that they brought their authentic selves to the interview, without fear or favour (Creswell, 2014; Tenny & Brannan, 2022).

While the respondents hold senior positions in their organisations, the fear of victimisation cannot be ignored as the nature of the research and the research questions demanded a level of transparency that may require the divulging of sensitive information (Commission for Employment Equity, 2017). It is therefore assumed that the respondents were not deterred by this fear to disclose such sensitive information. The researcher assumes that they were sufficiently comfortable with the commitments made around anonymity.

The objectivity of the respondents' inputs is also assumed based on their level of maturity and experience in the field. However, the researcher is also cognisant of the fact that objectivity is impacted by people's experiences and can therefore never be totally guaranteed (Friedman & Erasmus, 2008).

The researcher also assumed that participants would be easily accessible and willing to engage on the subject matter. Considering that the population of this research is senior decision makers in government, private sector and educational institutions, this availability was in some cases limited due to time or scheduling constraints (Creswell, 2014).

Consequently, not all participants were able to take part in a second interview where the accuracy of data was discussed, and additional input sought.

Another assumption was that many of the latent power dynamics are not captured in literature. Most of the literature focuses on the power dynamics at organisational level (Horwitz & Jain, 2011), while this research focused on collective power dynamics of employers, vis-a-vis their position with the legislators and government officials.

Linked to the issue of power, the researcher assumes that the level of anonymity assured to the participants at the data collection phase of the research, enabled respondents to answer and to make contributions to the research without fear of how the powerful in their organisation and within the employment equity field would respond to their inputs should their identity be known.

CHAPTER 2. LITERATURE REVIEW

2.1 Introduction

It would be futile to continue discussing the progress of the EEA without contextualising the political history of South Africa. This chapter will therefore give an account of the discriminatory practices during apartheid and the progression of employment equity that followed. Within this progression, a brief account of the transformation laws and how they fit into the South African Constitution will be provided. Specific focus within the Constitution will be on the Equality Clause, which is an enabling clause to the EEA amongst the other transformation laws. The EEA will then be positioned within different contexts that affect its application. These contexts include business's positioning of employment equity, the role of power as well as the impact of other transformation legislation on the EEA.

An account of the international experience on the implementation of employment equity will then be scrutinized, using four countries which are, United States of America (USA), Malaysia, Canada and Namibia. While the first three have been way ahead of South Africa in implementing employment equity (Thomas & Ely, 1996), Namibia will also be focused on since its history on discrimination is similar to that of South Africa. Commonalities between the countries will be discussed as well as implementation difficulties around employment equity. Lessons will then be drawn from the comparisons of the different countries' approaches to the subject.

Ensuing will be an in-depth review of literature on the EEA application and implementation in South Africa, thereafter an interrogation is undertaken of the role of the different agents of the EEA implementation and enforcement. A critical analysis of these agents and the functions will be discussed, and the chapter will be concluded by positioning the objectives of the research in the literature review and thus the need for the study within the context of available literature.

2.2 A Historical perspective of Employment Equity in South Africa

The concept of employment equity emerged in the South African Labour Market in the 1970s as a result of pressure that was put on the South African government and employers by the United States of America (USA) companies, through the Sullivan Code (Bezuidenhout et al., 2008; Botha, 1995; Human, 1996). The Sullivan Code prescribed that USA based companies that operated locally, should eradicate all forms of discrimination in their workplaces, yet South Africa at that time was still run by an apartheid regime (Bezuidenhout et al., 2008; Botha, 1995; Human, 1996). The objective of the Code was to advocate for the removal of all forms of discrimination, especially in the sphere of race, but its application was more geared towards creating access, as opposed to removing policies that entrenched discrimination in the workplace (Bullard, 'n.d'; Gallagher, 1985). In seeking to create access in the workplace, the Code was aligned to affirmative action, where people who were discriminated against in the apartheid era, could gain access to certain, more senior occupational levels within the workplace of these USA companies.

One of the shortcomings of the Code according to the proponents of the disinvestment movement cited in Gallagher (1985) is that it created an artificial reality of equality within signatory companies, while discrimination and brutality continued to take place daily in South Africa by the apartheid government. These critics believed that the impact of the implementation of the Code was insignificant and called for disinvestment as a much harsher measure to ensure transformation. Reverend Sullivan also acknowledged this shortcoming, suggesting that the Codes on their own cannot change racist Whites (Bullard, 'n.d'; Gallagher, 1985). Many critics suggested that the Sullivan Code made the US companies look favourable, without them significantly committing to the fight against apartheid (Bullard, 'n.d'; Gallagher, 1985; Mangaliso, 1997; Mangaliso & Mangaliso, 2013).

The researcher contends that in effect, what was happening, was that the workplace environment remained hostile to affirmative action candidates even within the USA companies, as the role players were still racially segregated South Africans who lived in polarised societies, with entrenched values, stereotypes and a power imbued by the law on White people to oppress the Black. It is hard to believe that the Code on its

own would have been able to manage the resultant attitudes and the power dynamics that were playing out, given that these workplaces were a microcosm of the society in which they found themselves. At another level, even if Black executives, led and directed activities within the organisation, their influence was limited to just that, and nothing more. Once they stepped out of the organisation, they returned to the environment that still defined their existence as inferior. Their White colleagues remained their oppressors and they would still have to refer to them as “baas” (a word that suggests superiority and authority, specifically a White man in charge of Black people), thus the experience of being affirmed was limited (Mangaliso, 1997).

Mangaliso and Mangaliso (2013) argue that the activities of multinationals in South Africa, although participating in the Sullivan principles tended to prolong the existence of apartheid instead of shortening it because their presence stimulated the South African economy, something that still rewarded the apartheid regime. They assert that when change occurred, it was painstakingly slow. Furthermore, the Sullivan Code, placed employment equity in the realm of a social construct and as a result could not enforce its prescripts extensively (Botha, 1995). It was only with the introduction of the Comprehensive Anti-Apartheid Act in the late 1980s, that change started becoming a necessity as this act, according to these authors led to a large number of multinationals disinvesting in the country (Mangaliso & Mangaliso, 2013).

At a political level, the struggle for freedom from oppression of the Black majority by a White minority in South Africa was driven through the National Democratic Revolution (NDR). The NDR is an ideology that united the Tripartite alliance which was made up of the South African Communist Party, Congress of the South African Trade Unions and the African National Congress (Mosala et al., 2017, 2019).

The Freedom Charter which was based on the NDR ideology articulated the ideals that were sought after by these organisations, when it was penned in 1955, and it became a roadmap for the operationalisation of the political and socio-economic freedom that the organisations sought to realise (Mosala et al., 2019).

ROAPEadmin (2018) argues that in fighting the apartheid system, which was based on a capitalist ideology, the NDR offered an acceptable alternative, one that sought to break the system that perpetuated inequalities.

ROAPEadmin (2018) buttresses that Capitalism by its nature, produces inequality, thus, the NDR offered a Marxist alternative, which attacked the perpetuation of capitalism and therefore of a class system. While this at the time was an appropriate strategy, which allowed even the White working class to align with the struggle, it did not deal adequately with the core of apartheid, which was oppression based on racial grounds. As ROAPEadmin (2018, p. 6) stated: “Marxism in South Africa is unable to offer an analysis of how a history of racial oppression and being Black frames how people relate to various struggles beyond the workerist approach”.

At its 1991 national conference, the party leaders distanced themselves from the idea of nationalization, emphasizing a new focus on attracting international corporate investment and Western governmental support for a "democratic economy." This shift coincided with continued collaboration between the apartheid state and corporate entities to promote the privatization of essential public enterprises, undermining the interests of the broader populace (McKinley, 2023). As a result, in 1994, at the dawn of democracy in South Africa, a number of realities had shifted and the operationalisation of the ideology of NDR was abandoned. More interestingly, workers’ movements such as COSATU, were also joining the “party” by securing corporatist deal-making with domestic corporate capital and state, a move they claimed was in the interest of the workers, while the workers had very little to do with the decision. Any anti-capitalist struggle going forward would in this way be contained within this boundary (McKinley, 2023), Habib and Padayachee (2000, p. 253) argue that “ideological and economic resources are two elements that define the balance of power in the economic arena”.

Historical events such as the fall of the Communist Bloc in 1989/1990 created a challenge for the ANC to continue promoting the communist ideology and as a result, most of the prominent leaders within the ANC at the time, started to withdraw their support for this ideology in favour of a more neo-liberal approach to economic policies. And while the ANC was instrumental in the fall of apartheid, the economic policy dilemma persisted and framed the negotiated settlement that would follow. Furthermore, in terms of economic resources, South Africa was highly dependent on local and foreign investment to activate the economy, and that led to the balance of power being more favourable to the business community.

In both cases, the situation was most suited for an economic policy that would drive the neo-liberal agenda (Habib & Padayachee, 2000; Terreblanche, 2012).

President Mandela's autobiography demonstrates a clear change in stance away from the Marxist thinking, and the sentiment was commonly shared by the ANC leadership. The end of the Cold War is cited therein as an influence for a shift in this thinking (Mandela, 1995). Mandela (1995) confirmed that economic inequalities were a result of apartheid, that the system had to be transformed, but that in this transformation process, every effort must be made to facilitate foreign investment for sustainable economic growth. He proposed a mixed economy that not only facilitates addressing inequalities, but promoted private enterprise. Hirsch (2015) alludes to this change, and its impact on economic transformation in South Africa.

The ANC led government had to accede to the retention of economic power by the business community since the government needed funding from the business community to fund the country's debt. "The structural balance of power then conditioned the choices of the political elites, and thereby influenced the substantive nature of South Africa's post-apartheid democratic order" (Habib & Padayachee, 2000, p. 260). Most authors argue that this was the trade-off that led to a perpetuation of inequality and poverty for the majority of Black people in the country, an imbalance that continues to make redress extremely difficult, as economic power in the country is in the control of, mainly, the White business community, whose interest is not in sharing this power (Habib & Padayachee, 2000; Malema, 2016; Mosala et al., 2017, 2019; Terreblanche, 2012).

The "White monopoly capitalist", who are the ones in power, are then the ones who determine how economic power is to be distributed and shared, not the government. Consequently, to think that government can enforce compliance to employment equity is unrealistic. Those who hold the economic power dictate how such power is shared and used (Terreblanche, 2012).

According to Terreblanche (2012) the ANC government is weak because it integrated its economy into the global capitalist economy, which means it gave away the country's sovereignty. The result of this compromise is that the ANC government can, therefore, not dictate trading terms in implementing and enforcing the EEA or the

BBBEEA. Terreblanche (2012) argues that it has given away the power to dictate terms of business operations.

Öztürk and Jarbandhan (2020) posit that economic power gives the owners of resources, de facto political power to push for political and economically favourable conditions for themselves, thus perpetuating the disadvantage of those who are already disenfranchised. These authors propose that this dynamic is what makes transformation difficult. This supports what Terreblanche (2012) maintains happened in South Africa, and what continues to preserve the White minority's economic power. Mosala et al. (2017) argue that some results have been achieved by the economic empowerment legislation. The results achieved are an establishment of a Black middle class, made up mainly of the cadres, a move that just maintains a colonial economic system.

They further contend that the legislation has created a Black middle class opposed to addressing inequality for most of the Black people. One group of people in the minority is being replaced by another minority group. The ANC settled for the neo-liberal approach, arguing that economic growth would lead to reduced inequality (Habib & Padayachee, 2000; Mosala et al., 2017). Stiglitz (2015) cites Piketty and Saez (2003) as saying that economic growth does not reduce inequality because a trickle-down economy disadvantages those who are of the low-income group, instead of offering them a solution out of their disadvantage.

Through the Reconstruction and Development Program (RDP), the ANC government drove the agenda of redistributing wealth, but this was to be done without nationalisation. "The RDP is an integrated, coherent socio-economic policy framework" (Republic of South Africa, 1994, p. 5) whose foundation is the Freedom Charter. The RDP document went through 6 drafts and was subjected to widespread consultation. Ultimately, those who finalised the document were not necessarily experts, but people who would be involved in its implementation (Republic of South Africa, 1994).

"Democracy will have little content, and indeed, will be short lived if we cannot address our socio-economic problems within an expanding and growing economy" (Republic of South Africa, 1994 ;para: 6). This statement, made in the RDP document was a

clear indication that the ANC was going to follow a more liberal route for macro-economic development which focused on the growth of the country's economy and therefore by implication, companies and a trickle down economy principle, as opposed to a radical economic transformation approach of nationalisation, as suggested in the Freedom Charter (Mosala et al., 2017). Other macro-economic policies that were pro neo-liberalism followed the RDP. The Growth, Employment and Redistribution (GEAR) strategy was the first economic policy to replace the RDP, shortly after the cabinet announced the shutdown of the RDP office. This was followed by a stern statement from the Minister of Finance at the time, Mr. Trevor Manuel and the then President, President Nelson Mandela, who declared the GEAR policy non-negotiable (McKinley, 2023). Subsequently, the Acceleration and Shared Growth Initiative for South Africa (ASGISA), National Growth Path (NGP) and National Development Plan (NDP) all came short of dealing decisively with the issue of inequality. They embraced the neo-liberal principles of transformation and therefore a capitalist approach to the economy which could not by its very nature deal with inequality (Cronin, 2005; Mosala et al., 2017).

All the while, the Labour Relations Act of 1956 had enabling clauses to institute discrimination claims against employers, but it was the interim Constitution which came into effect on 27 April 1994 that was accepted as the first policy document to outlaw discriminatory practices and to specify grounds under which discrimination would be considered lawful, and in some cases, unlawful. Prior to this, no anti-discriminatory labour legislation was considered a suitable tool for redress, not even the Labour Relations Act of 1956 could do this, despite its enabling clauses for the promotion of equality (Dupper et al., 2013; Republic of South Africa, 1956). Much later, in 1994, the interim constitution became an enabling document for effective contestation of cases of discrimination. The new democratically elected dispensation finalised the Constitution, as well as other policy documents that put discrimination at the centre of debates in the labour market.

The White Paper on the RDP referred to Affirmative Action in September 1994 and more broadly focused on economic redress. Under the subtopic, "Building the Economy", one of the issues that was identified, because of apartheid was that Black people and women were excluded from economic participation and control. The major

solution to this, amongst others was to end all discrimination, for example those based on race, gender, disability, religion and language (Republic of South Africa, 1994). This opened the path for enactment of legislation that would deal with both workplace discrimination and economic exclusion redress. The three pieces of legislation that would be anchored on this became the Employment Equity Act No 55 of 1998, Promotion of Equality and the Prevention of Unfair Discrimination Act (PEPUDA) of 2000 Act No 4 as well as the Broad Based Black Economic Empowerment Act No 53 (BBBEEA). While the EEA and the BBBEEA are linked to economic redress, PEPUDA is a piece of legislation that addresses equality within the public and private sector as well as amongst individuals. In the next section, the link between the EEA and BBBEEA is captured.

2.3 BBBEEA and EEA as Transformation Law

Dupper et al. (2013) suggest that anti-discrimination law can fail if applied alone because it is unable to bring disadvantage properly under scope. He states that disadvantage in this context means material, psychological and social inequalities. On their own, anti-discrimination laws cannot address inequality, as they cannot affect this realm of reality. The structures and environments created by the discrimination had far reaching effects in the lives of the designated groups and simply creating a conducive environment for equal opportunities within the workplace is not going to automatically create the equality that is sought by the EEA. For example the sense of inferiority created by the apartheid regime in the minds of Black people cannot just be removed by the creation of anti-discriminatory legislation such as the EEA. Bezuidenhout et al. (2008, p. 35) attest that “equity in the labour market is not only dependent on policies that have been developed to target the area specifically, like the EEA. It is more complex than that, …” (p. 35).

There is some truth to the argument made by Bezuidenhout et al. (2008) that equality in the labour market cannot just be achieved through policy. Regulators have often debated what approach to use in seeking to achieve the desired outcomes in terms of their legislation. Burgemeestre et al. (2009), argue that there are two styles of regulatory approaches to achieve compliance, both within the accounting and legal environment and that these vary just in the degree of stringency. In the rule-based

versus principle-based approach, the rules are specific and prescriptive with little discretionary power, while the principle-based approach to compliance is more abstract and based on discretion (Burgemeestre et al., 2009). The rule-based compliance approach is more detailed and process heavy, with clear compliance standards, whereas the principle-based approach is more open to interpretation and flexible in application (Badat, 2023). Determining which approach will yield the desired results in terms of economic equality within the South African context is proving to be challenging. By and large, the EEA is currently based on the rule-based approach; Sections 16, 17, 19 and 24 of the EEA amongst others, prescribes specific rules that define what is compliance and any deviation from this is non-compliance.

The rule-based compliance approach however, results in a tick-box exercise by most employers, where the process is followed but the requisite results are not a product of the process. The principle-based approach, while more likely to yield desired results, has a limitation in the South African context where the flexibility and uncertainty can possibly create room for debate and a capitalising on the vagueness that it promotes. “Principles tend to give more space for interpretation to both subjects and auditors” (Badat, 2023), and in a country as averse to economic transformation as South Africa, enforcers will have a difficult time just relying on a principle-based approach to compliance.

Moreover, there exists structural and institutional constraints that cannot be dealt with effectively by the anti-discrimination laws. These create a gap for employers to flout the law without possible recourse. Dupper et al. (2013) therefore argue that there is a need for other strategies to deal with the challenges of discriminatory employment. The issuing of the s53 certificate, is not only dependent on compliance in annual reporting, but has checks and balances to mitigate the risk of non-compliance especially in areas of substantive equality.

The issuing of the s53 certificate has other dependencies such as the absence of awards made against employers for discrimination disputes at the CCMA or the Labour Courts. Employers that have an award of discrimination against them in the CCMA or Labour Court will be identified as non-compliant employers and will be denied EE certificates that enable them to do business with government and state-owned enterprises. Furthermore, the s53 also recognises companies that pay

minimum wage, in line with the National Minimum Wage Act No 19 of 2018. The researcher believes that these compliance criteria will go a long way in getting profit conscious employers to overcome their resistance to implementing employment equity. The promulgation of s53 does not however, mean that discriminatory practices will not continue in the workplace. Some discriminatory practices may remain unreported due to fear of victimisation and ignorance of employee rights. Added to this, the cost of declaring disputes is high, not only from a litigation perspective but also from a consequence perspective (Israelstam, 2019; Republic of South Africa, 2000).

Jobs are lost once disputes are declared and the opportunity to get another job is minimised if employers know that an individual has declared a dispute with a previous employer. The fact that disputes are not declared with the CCMA and Labour Court does not necessarily mean that there is no discrimination and s53 as discussed in the amendments, may not be able to curb discrimination in its totality. There could be other factors such as fear of victimisation that make employees fear declaring disputes (Israelstam, 2019).

The BBBEEA, is another piece of legislation that seeks redress at an economic level. It is a transformation-based legislation, and its implementation supports the EEA. The purpose of the BBBEEA is to address the effects of the apartheid system by promoting the economic participation of Black people, women, persons with disabilities and youth in the mainstream South African economy. So while the EEA deals with the labour market, the BBBEEA deals with issues of ownership in the economy as well as economic self-determination (Horwitz & Jain, 2011). It introduces voting rights as an effective tool in economic self-determination. Voting rights give people the power to make decisions at board level in business entities, this is the most powerful level of decision making in organisations. The BBBEEA is said to have achieved better results since the “carrot and the stick” approach is woven into its implementation (Horwitz & Jain, 2011).

The BBBEEA has changed the debate of economic redress from employment equity to economic ownership. It has gone a long way in ensuring economic transformation and has been critical in shifting the use of words like affirmative action and equity to words like transformation, that are all encompassing. With the EEA and the BBBEEA,

concepts like economic participation and empowerment as espoused in the RDP and in the Constitution became a reality.

The Republic of South Africa (2013a: s2(a)) articulates its objective as “promoting economic transformation in order to enable meaningful participation of Black people in the economy”. The BBBEEA utilises a scorecard, which permits organisations to secure business with the government. It is within the same ambit of control as the Federal Contract Program found in Canada and the Office of the Federal Contract Compliance Program (OFCCP) of the USA. All of these seek to enforce compliance with contractors doing business with the government.

For an organisation to have a good BBBEE scorecard, the organisation needs to demonstrate a contribution in the following elements:

- Ownership – ownership in the form of shares and voting rights in the hands of designated groups.
- Management Control – participation of designated groups in control and decision making, demonstrated by positions occupied by Black people at managerial level from board to junior level. This element is directly linked to the EEA in that it measures progress at the top four occupational levels, thus measuring progress in affirmative action.
- Skills Development – training of Black people, women, persons with disabilities and youth. “Skills Development must contribute to the achievement of the country’s economic growth and social development goals that will enrich the creation of decent work and sustainable livelihoods” (Republic of South Africa, 2013a, s5.1.1).
- Enterprise and Supplier Development – preferential procurement, supplier and enterprise development of entities that have Black ownership (referred to as beneficiaries). This element focuses on the prioritisation of beneficiary owned entities for preferential procurement opportunities and the development of these entities to make them more economically viable and competitive (BEESA, 2009).
- Socio-Economic Development – this element is focused on assisting beneficiaries to access activities that generate a sustainable economic and consequent economic independence. Inputs made by companies must have quantifiable monetary and / or non-monetary contributions that result in the

development of beneficiaries. Examples of contributions are: community training programmes that can lead to the acquisition of skills, education programmes, resources for business startups as well as the provision of skilled expert assistance in areas where they may be needed to develop communities (BEESA, 2009).

The “carrot and the stick” in this Act, hinges on the right to do business with government and public entities. Lustgarten (1986) has made an argument which deals with the effect of law from one dimension by saying “…it is anything but obvious that punishment, or its threat, is the most effective means of moulding behaviour” (p. 78). Though at the time he was not referring to these pieces of legislation, these comments remain relevant in this context. Carrots rather than sticks, or perhaps a judicious combination, are likely to prove more persuasive. This seems to yield better results. Currently the EEA only has punitive measures in the form of fines. It’s only recently, with the promulgation of s53 in the EEA Amendment Act, that good compliance is being rewarded and it is hoped that it will yield better results.

The s53 is addressing a similar issue as the BBBEEA, where it prohibits employers that are non-compliant with the EEA from doing business with government and public entities. Thus doing business with government becomes an incentive (carrot) for compliance (Department of Labour, 2018b). The success of the BBBEEA has been in its ability to make the BBBEE certificate a licence to trade even between businesses, as the non-compliance of a supplier would impact on the scoring of a client’s certificate. Furthermore, working with compliant BBBEE companies increases access to benefits such as getting funding and tax relief (The Department of Trade, n.d).

As mentioned above, the BBBEEA has other low hanging fruit elements that organisations can work with, to make their scorecard favourable without necessarily transforming their internal environment and eliminating discrimination at that level. These elements are supplier and enterprise development and socio-economic development. Horwitz and Jain (2011) refer to these elements as indirect forces of compliance, suggesting that these indirect forces may tip the scale of compliance away from addressing discrimination directly. These indirect forces of compliance are interventions that happen outside of the organisational environment, and do not touch on issues of power and control as covered in the equity ownership, as well as

management control elements of the scorecard. They argue that employers find it too easy to direct funding into these elements while remaining unchanged (Horwitz & Jain, 2011). The impact is not necessarily threatening their economic well-being, and this often leads to a way out of dealing with the elements that lead to the economic participation of designated groups directly in these employers' organisations.

It is important to mention that the skills development element of the scorecard promotes a culture of training, primarily for designated groups and results in reparations in the inequality of education and training (BEESA, 2007; Department of Trade and Industry, 2013b). It is a feature which is key for occupational advancement and progression towards upward movement into managerial levels by designated groups and thus addresses redress and aids affirmative action (Moleke, 2006). Equity ownership talks to the ownership of shares and voting rights that are owned by previously disadvantaged individuals, while management control talks to voting rights and control within the organisation. The direct link to economic redress in business is clear here. "By 2010, employment equity as an element declared that in management control of the BBBEEA, it was said to be the poorest performing" (Department of Labour, 2010, p. iv).

2.4 Interrogating the fit between the Equality Clause and the South African Employment Equity Act

The South African Constitution has what is referred to as the Equality Clause and this is captured in section 9 of the Constitution. It reads as follows:

(1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
(2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status,

ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

(4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.

(5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair." (Republic of South Africa, 1996a : s 9).

Whenever the constitutionality of the EEA is under question, the above section, is used as a yard stick (Louw, 2015; "Solidarity v Minister of Labour and Others ", 2019; "Solidarity vs the President of the Republic of South Africa J661/23,," 2023; South African Human Rights Commission, 2018). Some understanding of this section, and the philosophical perspectives on the concept of equality, affirmative action, discrimination, and justice are critical to the discussion of behaviour change that leads to effective implementation of the EEA.

The concept of rationality has become fundamental to the implementation of the EEA and its alignment to the Equality Clause. Benn (1959) is cited in Faundez (1994, p. 3) as giving the following illustration of rationality: “If A and B are exactly alike but one is given more of a good than the other, the discrimination in their treatment is arbitrary and hence inconsistent with justice. Conversely, unequal treatment between A and B would not be regarded as unjust if there is a justifiable ground for such unequal treatment”. Out of this rationality principle, the South African courts or the CCMA would assess the constitutionality of an affirmative action measure within institutions by testing three specific areas:

- Does the AA measure target the designated groups as defined by the EEA in seeking to redress these individuals or group?
- Are the AA measures designed to protect or advance the designated groups or individuals from these groups?
- Are the AA measures advancing substantive equality for the designated groups or individual? (Louw, 2015).

The rationality test connects formal equality and substantive equality. Formal equality is about ensuring that people in the same circumstance be treated the same as articulated in s 9 (1) of the Constitution. The substantive equality test on the other hand, acknowledges differences between people and attempts to remove systemic advantages of those who have benefitted from the discrimination of designated groups (Louw, 2015). It is easy for people to consider formal equality as fair because it does not at face value disadvantage anyone. However, substantive equality, calls for a discrimination against those who have been previously advantaged, and as such is often not easy to accept. Most court cases around the EEA are on substantive and not formal equality (Louw, 2015; Simons, 1979).

Another test that is often used in court in testing the defensibility of an AA measure is based on the fairness approach. It checks whether AA measures are proportional and fair. It connects to the Convention 111 of the International Labour Organisation, whose one principle is that AA may not unduly trample on the rights of the non-designated groups or individuals (International Labour Office, 1958). In the words of Louw (2015), this is to ensure that individuals from non-designated groups do not become “collateral damage” Louw (2015, p. 603) . This links to the question of whether it is appropriate to use race and gender as classifications for reparation by the EEA, given how the apartheid regime misused these. Organisations such as the Solidarity Trade Union, continue to challenge the constitutionality of the EEA, as they argue that it breaches s 9 (1) of the Constitution (Solidarity Trade Union, 2021). They contend that in this current form the EEA leads to unjustifiable preference of individuals based on their race and it further perpetuates the racial segregation of South Africa as a society.

These sentiments are shared by a few authors (Louw, 2015; South African Human Rights Commission, 2018). Using Rawls’ theory of justice, Allen (2004) asserts that “a society could find that race and ethnic information is pertinent to legislative efforts to secure equal basic constitutional liberties. It could also find that affirmative action programs and minority business set aside are called for by the first principle of justice and pass muster with the second” (p. 1694). Rawls’s theory of justice will be unpacked in this paper, to explain the principles alluded to by Allen (2004).

2.4.1 Contentions in the definition of equality according to the EEA

Louw (2015) extensively interrogated the statistical focus of the EEA and proclaims that the EEA moved from the definition of equality as per the Constitution and has introduced a new yardstick for measuring employment equity, which is based on demographic representation. He raises a fundamental question of whether the EEA seeks to eliminate discrimination and promote equality or whether it seeks to ensure representativity in the workplace. “Inherent in this whole exercise is an implied assumption that had it not been for past unfair discrimination, all groups would have been "equitably" represented in our modern-day workplaces (in the sense of being represented in line with such a group's numerical representation in the population – again, note the implied assumption of a link between the two)”(Louw, 2015, p. 625). While this research does go beyond representativity to take into consideration the disputes declared at the CCMA around discrimination in the workplace (which talks to equality of treatment in the workplace– Chapter II of the EEA), this question is very relevant to this paper, in that the researcher primarily focuses on the pace of employment equity, a pace which is measured on representativity at the different occupational levels.

Louw (2015) contends that an individual who benefits from AA (who is Black, a woman and/or disabled) and another non-designated individual, probably a White person, a male or a person without a disability, broadly speaking are comparators of each other in terms of the Equality Clause and as such individual circumstances should be brought into play to assess whether reparation is needed. Furthermore, Cowan (1978) is cited in Faundez (1994) as saying the group membership as a criteria is overly inclusive, thus benefitting some individuals who were not necessarily discriminated. Sowell (1989) corroborates that those who benefit the most from AA are the ones who circumstantially need it the least.

The yardstick of representativity, which relies on the Economically Active Population (EAP) according to Louw (2015) is contrary to the objectives of the Equality Clause. It’s interesting to note that while Louw (2015) objects to the use of demographic representativity as a benchmark for equality in the form of the EAP as a standard, he acknowledges that he cannot think of a more robust way of measuring progress towards equity in the workplace. He proposes criteria that extends beyond race as

important in defining who should benefit from redress, criteria such as “personal circumstances, socio-economic conditions, the real need for protection and advancement, etc.” (Louw, 2015, p. 632), but then fails to provide a way of measuring progress or even the extent of disadvantage using this criteria. For example, in a recruitment process, how would one measure disadvantage from a curriculum vitae to identify who should be affirmed? How would one know who to select using personal circumstance as a criterion for affirmative action? This approach would require recruiters to venture into an almost impossible task.

The South African Human Rights Commission (2018) in their evaluation of the Constitutionality of the EEA use the same argument as Louw (2015), but also fail to come up with a practicable alternative to the demographic representativity benchmark. Maharajh (2011, p. 236)retorted that: “All aspects of South Africa’s turbulent past had been historically determined by the hegemonic constructs of gender, race, and class. These categories were deployed for the primary purpose of maintaining accumulation regimes framed within a general discourse of capitalism as the dominant mode of production” (p. 236). As such, to use any other construct, would not result in reparation of those who were discriminated against.

Fiss (2004) argues that once the anti-discriminatory principle is shifted from a group to an individual, then there is likely to be an ill-fit. Some individuals have not experienced the level of discrimination that would be equitable to the level of amends they would receive through AA. It is also true that some White people may have received harsher forms of discrimination though they are not entitled to reparation.

Approaching the anti-discrimination debate from an individual standpoint opens a whole new contentious field. The group-disadvantage principle, he argues is best suited to deal with redress within the South African context (Simons, 1979). This position was supported in the answering affidavit from the South African Legal Information Institute (2019, p. 6) “A fundamental aspect of affirmative action, as developed in South Africa’s equality jurisprudence is that its focus is the advancement of groups or categories of persons that have been previously and systematically disadvantaged by unfair discrimination”.

When considering the position of an individual either adversely or positively affected by affirmative action it must be in the context of the broader class or category of persons to which that person belongs, and whether they are from a group that has suffered past and continued discrimination or advantage". James Nickel is cited extensively in the work of Faundez (1994) as a supporter of the group advantaging principle. He posits that advantaging members of a group that was previously disadvantaged should not be considered victimisation of the other group. Instead, it is closely linked to the concept of compensatory justice in that resources and opportunities are being made available to reduce the harm coursed to those who come from a group of the previously disadvantaged.

Irrespective of individual circumstances "the differential treatment is not based on an irrelevant characteristic, but on the fact that members of that group were treated unfairly because of their race" (Faundez, 1994, p. 4) . It is in advantaging the members of that group that reparation is afforded to the group. It is therefore not obligatory to consider the individual circumstances of a member of that group. Faundez (1994) claims that this is the most administratively feasible way of dealing with the reparation matter. Administrative efficiency thus becomes the most practicable way of dealing with reparation (Faundez, 1994). Mullen and Okimoto (2015) argue that compensatory justice achieves more than just administrative feasibility as proclaimed by Faundez (1994). Compensatory justice creates a sense that the system is fair, in that there is a material outcome that seems measurable and can be used for an argument to restore broken relationships (Mullen & Okimoto, 2015).

The focus on the group takes on a different form of measuring success. It brings in the debate of measuring numbers and it is the researcher's view that the demographic representation then becomes defensible as it looks at the group as the beneficiary and measures the extent of benefit to that group. In fact, Louw (2015) argues that the under-representativity of designated groups in the labour market can justifiably be considered to be an indication of barriers in recruitment, training and development as well as promotions.

This point is made by the Republic of South Africa (2005), and is made in an effort to explain why demographic representativity is a measure of success for the EEA. It is important to note that the South African EEA is modelled according to the Canadian

Employment Equity Legislation, and this legislation uses demographic representativity as a benchmark for success in employment equity (Department of Labour, 1996b; Jain et al., 2010). This is a significant point to remember when engaging on the representativity issue. The researcher contends that the Constitution is in no way restrictive in how equality should be measured, and this does not make the use of other paradigms illegitimate.

On the issue of demographic representativity, where the EAP is used as a benchmark for employment equity, the researcher concludes that the approach followed in the South African EEA is balanced. While it regards demographic representativity as key, as articulated in Chapter III, it still aligns itself to the principles articulated in the RDP and the Constitution that deal with structural discrimination, via the first pillar of the EEA, which is the prohibition of unfair discrimination, through Chapter II. This pillar proposes practical ways of removing all barriers that inhibited the progression and advancement of Black people, women and persons with disabilities.

2.4.2 Justice, the Equality Clause, and the Employment Equity Act

Faundez (1994) raises some philosophical and moral questions around affirmative action, which forms a critical part in most employment equity legislation, including South Africa's EEA. He questions if affirmative action is consistent with justice and whether it promotes reverse discrimination.
He further interrogates the rights of groups and how these compare to individual rights especially from the relativity of the degree of discrimination at an individual level (Faundez, 1994). These, and many similar questions plague the employment equity field and account largely for the contestations around it (Allen, 1998; Louw, 2015; Simons, 1979; South African Legal Information Institute, 2019). Some of these questions have been dealt with in the section above. This section will focus on the EEA and justice, as well as address the question of reverse discrimination within the context of justice according to Rawls.

Justice and equality are not interchangeable concepts even though they are often perceived as such. Justice according to Rawls is fairness (Bentley, 1973). Equality on the other hand as captured in the South African Constitution, does allow for fair

discrimination, which in simple, basic terms may be considered unfair outside the context of laws that define such “fair discrimination” as fair. One of the most debated theories of justice within the employment equity space is Rawls’s theory of justice. Rawls’s theory of justice was not a response to a racial, gender and disability debate but rather a conceptual and normative framework for thinking about justice as a desired ideal for a society (Allen, 2004). It can therefore be applied to any situation in which there is discrimination, to define what justice would look like and what should possibly be done to advance that justice. The researcher has chosen this theory, as it best fits the principles of the equality clause in the South African Constitution as well as the application of the EEA.

Rawls theory is premised on two principles. The first principle is that all individuals have a right and permanent claim to equal liberties and these liberties should be equally accessible to all. Important in this principle is the fact that the exercising of one’s right to liberties should not deprive another of the equal right to those liberties. He refers to these rights and liberties as primary goods, and this in simple terms can be explained as human rights. This is called “The Greatest Equal Liberty Principle” (Allen, 2004; Allen, 1998; Constitutional Rights Foundation, 2007; Said & Nurhayati, 2021).

The second principle states that all primary goods are to be shared in a classless manner, unless the least advantaged benefit from the inequality (Allen, 1998; Said & Nurhayati, 2021). The first part of the second principle is called the “Equal Opportunity Principle”, while the latter part of the second principle, is known as the “Difference Principle” (Said & Nurhayati, 2021). It suggests that there may be a need to distribute unequally to the benefit of the disadvantaged with the aim of redress. This Difference Principle is in some ways contradictory to the Greatest Equal Liberty Principle and it is often argued that the two cannot co-exist (Allen, 1998; Said & Nurhayati, 2021). Said and Nurhayati (2021) postulate that Rawls contends that if these principles are conflicted, then the Greatest Equal Liberty Principle must be prioritised.

Rawls conducted a thought experiment in which the individuals who formed part of the sample had to think of themselves in a situation where they would have no knowledge of what position they hold in society and in that position, had to describe what they

would consider as just for all people. This he called the “veil of ignorance”, which created what he called the “original position”. The original position is a starting point for negotiating, with no preconceived ideas of one’s personal circumstances in society, in arriving at a collective decision of what justice is. He maintains that the original position removes all sense of power and bias. He postulates that under the “veil of ignorance” people would choose what would benefit the least privileged and this would amount to a sense of what is fair for all. He insisted that this would result in a fair distributive principle and that would then be considered to be justice (Allen, 1998; Said & Nurhayati, 2021). According to him all rational agents would choose his principles discussed above.

Within the context of AA, Rawls’s Difference Principle suggests that even individuals who have benefitted from unfair discrimination in the past, would consider it fair to be disadvantaged, to the extent that it benefits the victims of their advantage. Allen (1998) states that the conceptualisation of justice in Rawls’ principles is consistent with the idea of reparation as a way of ensuring fair distribution of goods in society.

While Rawls does not isolate the issue of race, gender or disability in his theory, he promotes a society in which injustice is critically looked at, and reparation in favour of the disadvantaged is sought without fear or favour. In the South African context, the characteristics listed would become a priority of reparation. The allegation often made about reverse discrimination in AA has somewhat been addressed in Rawls’s theory of justice, even though not directly (Cardo, 2023). By implication, the principles of this theory suggest that in the “original position” all people would view reparation as fair, it therefore, stands to reason that it would not be reverse discrimination. The first time AA was contested on the grounds of reverse discrimination, was in the Bakke Vs University of California matter in 1977. In this case, the complainant Bakke argued that he was experiencing reverse discrimination as he was being excluded from medical school based on a Special Admission program that catered for 16 out of a 100 admissions of minority students into the medical program (Regents of the University of California v. Bakke -No. 7811).

The argument advanced by Bakke was that while the General Admission program, which allowed for equal access to admission was based on meritocracy, the 16 spots for admission that had been reserved for the Special Admission program, allowed for

minority students with lower scores than Bakke to gain admission and thus argued, that this quota system was unconstitutional as it created an absolute barrier ("Regents of the University of California v. Bakke -No. 7811,," 1978). Both these issues (meritocracy and absolute barriers) are often raised within the debates of the South African EEA. The issue of meritocracy in South Africa became a burning issue with the advent of the EEA (Kenny, 2020).

Rawls would argue that the principle of reasonable accommodation as an affirmative action measure, is congruent to maximising benefits to the least advantaged, which is inherent in his second principle. Reasonable accommodation concerns itself with making appropriate and reasonable adjustments to a criteria or work environment to remove undue burdens on the least advantaged in order for them to access their rights and to enjoy their fundamental freedoms (Republic of South Africa, 1998a, 2005).

Reasonable accommodation is a measure of affirmative action incorporated in the South African EEA. Thus, considering potential over achievement or experience in a selection process would be considered reasonable accommodation. It does not amount to the lowering of standards, in that it considers other factors that would ensure success in a role, such as potential. In some cases, it would go as far as providing additional resources or support to ensure substantive equality for an affirmative action candidate (Republic of South Africa, 2005). “Equity requires changing the rules so that their application is fair” (Republic of South Africa, 2005; s 5.2.3). Turning to the question of quotas as flagged in the "Regents of the University of California v. Bakke -No. 7811," (1978), the EEA is designed to outlaw quotas. South Africa has ratified Convention 111, which prescribes that quotas would be considered illegal and as such, the EEA explicitly discourages the use of quotas in employment equity plans (Department of Employment and Labour, 2018a; Department of Labour, 2018b; Republic of South Africa, 1996b, 2005). Case law has also confirmed the EEA’s position on this matter ("Solidarity and Others v SA Police Services and Others (JS 469/12) ", 2015; "Solidarity v Minister of Labour and Others ", 2019).

Sowell (1989) argues that Blacks’ poor academic performance is in no way a product of their disadvantage and discrimination, and that seeking to answer these questions of poor performance in this way is rather presumptuous. “What is virtually impossible

to know are the patterns that would exist in a non-discriminatory world—the deviations from which would indicate the existence and magnitude of discrimination" (Sowell, 1989, p. 23). Simply put, he states that "we do not know and cannot know" (Sowell, 1989, p. 24) what the major causes of these differences are. He therefore argues that the drive towards reparation is misplaced in all countries where it is applied. This implied racially colour-blindness proposed by Sowell (1989) has inherent challenges in it, in that it perpetuates individually-based racial biases and as Skinner-Dorkenoo et al. (2023) contends, individual-based racial biases promote the creation of societal biases. Furthermore, the Sowell (1989) argument disqualifies the work done by Elliott (1970), wherein she proves that discrimination impacts on the confidence and academic performance of pupils, as well as the performance of workers in their line of duty.

Elliott (1970) was also able to demonstrate the impact of labelling and discrimination on the performance of individuals. When individuals are labelled, they perform better than when they are labelled in inferior terms. This work brings into disrepute the position that (Sowell, 1989); Sowell (2022) takes on the impact of discrimination on academic performance. And as Skinner-Dorkenoo et al. (2023, p. 396) proclaimed: "Promoting racial colour-blindness at a societal, institutional or even interpersonal level can reduce individual-level awareness of systemic racism and increase susceptibility to racially biased messages".

The argument of "we do not know and cannot know" is invalid in the South African context. Thompson and Wilson are trusted authors on South African history, and are quoted in Giliomee (2012, p. 70) as saying that the inferior educational system designed by the apartheid regime for Blacks was based on the "assumption of an inferior potential in African minds" and was "explicitly designed to prepare Blacks for an inferior place in society". Therefore, we can assume that when tested on a higher standard exam at tertiary, Blacks – specifically Africans, would perform poorer than their White counterparts. Their minds were not trained to interrogate intellectual content to the extent that the White individuals were, because after all, they would not get jobs that would require them to do so. It was considered by the Minister of Education then, Minister Verwoerd as a waste to train Blacks (Bantus) in competencies they would not need (Giliomee, 2012). The apartheid regime designed

job reservation policies that kept the Black race out of certain jobs, in order to reserve these for Whites, all in the name of dealing with the “poor White problem” (Kenny, 2020). “Job reservation, more generally called the ‘colour bar’, described a set of regulations and practices that limited certain jobs, occupations and skill categories to Whites and excluded Blacks” (Kenny, 2020, p. 501). This assertion is also confirmed by Horwitz and Jain (2011), who comment on the institutionalisation of job reservation through legislation. Therefore, to argue that reparation is misplaced, is not accurate especially given that the analysis by Sowell (1989) indicates that the reasons are multifaceted and unknown. Furthermore, this debate stands against preferential treatment in access as well as reasonable accommodation.

It literally discounts the notion of equality as well as the validity of Rawls’ second principle. It renders the theory of social justice as absolutely non-sensical (Sowell, 1989, 2022). Sowell (2022) further asserts that the proponents of AA are more willing to engage on the moral justification of AA than they are about its consequences. The consequences he posits are undesirable. In his writings he argues that the consequences have been: benefits being accrued to undeserving benefactors, a propensity towards fraudulent claims of being benefactors, racial polarisation and an escalation of racial tensions as well as an enforcement of a policy that was meant to be temporary into a permanent state (Sowell, 2022). It can be argued that in the same way that Sowell claims that “we do not know and cannot know”, his assumptions about the consequences of AA are arbitrary. Multiple variables could be contributing to the consequences he claims are a result of the AA policy.

The argument that Sowell (2022) advances becomes somewhat unreasonable when he declares that there is a similarity between AA and putting Germans in concentration camps just because Germans did the same to the Jews. This is untenable in terms of the principle of social justice, which emphasises liberties and fundamental freedom for all. Sowell’s arguments primarily echo the sentiments of the benefactors of apartheid and tend to define reality from a position of privilege. They are mostly suited to the contentions of individual/s such as Louw (2015) and Solidarity in ("Solidarity v Minister of Labour and Others ", 2019) who are against the preferential treatment policies (Lebuso, 2019, September 19; Louw, 2015; "Solidarity v. Minister of Labour and others," 2019).

Foucault's theory of power becomes an interesting vantage point to analyse Sowell's writings. He maintains that the discourses that disqualify preferential treatment are a discourse of the powerful and the powerful are the ones who own the discourse in defining what truth is. Foucault argues that the historical context within which ideas are conceptualised should not just be taken as background information but must be critically analysed within the context of how such ideas emerged (Chaudhuri, 2018; Glover, 2015; McHoul, 2015). The Bakke vs the University of California case was instrumental in shaping the discourse that disqualifies employment equity.

The backlash from the Bakke case was powerful enough for Canada to reconsider its model of implementation of employment equity (Jain et al., 2012; Martin, 1995). In the same way, the Sowell narrative is a construction of what is truth by the powerful. Sowell is an author, an economist and a political philosopher and as per Foucault, a key definer of truth being a member of the educated elite (Glover, 2015). Sowell is considered a free-market capitalist, who rejects liberal social engineering arguing for minimal influence by government. Secondly, he is according to Bracey (2007), one of the most cited Black conservative intellectuals with major influence in American politics. The people in power decide what is truth and this is what Foucault refers to as the politics of truth. It is produced by institutions through the powerful in those institutions (Chaudhuri, 2018; Glover, 2015). The power impacts on the construction of truth, and this discourse which is advanced by Sowell (2022) is a narrative of the powerful at the expense of the lived experience of the discriminated against (Glover, 2015; Shiner, 1982).

Along with this, Bourdieu's (1986) theory of social capital and habitus would suggest that Sowell's narrative is one of an individual who has economic, social and cultural capital, all of which have put him in a position where he has access to opportunities and as a result, fails to understand how disenfranchisement may maintain the status of lack for the designated groups. As an economist and a political philosopher who has worked himself to a position of an elite, he has gained cultural capital which not only gives him social status because of his education and the opportunities that come with it but has also gained social capital which gives him access to networks that avail opportunities for economic and social progression. Thus, he is blinded by his habitus,

which is his current reality, from understanding the impact of these on one's ability to navigate various social fields, including educational institutions and job markets (Bourdieu, 1986). Habitus, according to Bourdieu (1977) refers to how individuals' backgrounds, experiences, and social positions influence on their actions and perceptions within any realm of society, including the perception of the labour market. It can therefore be postulated based on Sowell's habitus, that he has a biased view of how the world is organised around equity.

As Skinner-Dorkenoo et al. (2023) put it "The effects of individual-level biases can also be seen at the community and interpersonal levels. The same history and culture can be represented differently depending on who is curating and constructing the representation" (p. 395). The issue of power in the employment equity debate will be dealt with more extensively in the next section.

2.5 Employment Equity and issues of power

Horwitz (2011) concludes that there are many factors that drive the successful implementation of transformation legislation and suggests that structural inequalities such as glass ceiling, power and organisation-gendered systems accompanied by misogynistic cultures and behaviours impact on the achievement of the imperatives of the EEA. The researcher agrees to a large extent with his conclusion, as well as those of other writers in this field (Bezuidenhout et al., 2008; Booysen, 2007) and believes that, at the heart of the issue related to the slow pace of transformation, is the element of power and power dynamics.

"Our case studies have also shown that formal organograms, and change in the demographic profile of a workforce, do not necessarily translate into real changes of power" (Bezuidenhout et al., 2008, p. 64). This assertion is supported by April et al. (2007) who argue the matter from a gender discrimination perspective. They suggest that power has a huge role to play in arguments such as the glass-ceiling and state that the power play and resultant oppression that follows, is more as a result of fear and insecurity as opposed to a need to oppress (April et al., 2007). Bezuidenhout et al. (2008) contends that the law cannot penetrate and shape these dynamics. Lustgarten (1986) looks at the law as a remedy for resolving racial inequality but

maintains that the law cannot be the only remedy to issues of inequality. He contends that the law itself, especially English Law which South African law is premised on, comes short of offering impactful solutions to discrimination. He asserts that governments should look at alternative approaches for dealing with redress and consider methods that do not necessarily replace the law but support it. This assertion has also been made by Rabeau (1999), Moleke (2006), Ramphele (2015) and Booysen (2007). However, most studies, though recognising the limitations of the anti-discriminatory or transformational laws, still tend to offer solutions that are predominantly technical approaches, centred in the law as opposed to an approach that would supplement the law (April et al., 2007; Booysen, 2007; Coetzee, 2015).

Foucault argues that power is everywhere and it is diffused in language and discourse (Chaudhuri, 2018; McHoul, 2015). Power is not wielded by groups of people because they have sovereignty. Rather, it is embedded in what we accept as truth and knowledge. The powerful define what constitutes truth and they veer the discourse in a particular direction. The 'battle for truth' does not sit outside of those who are in power, who define what truth is. He postulates instead that truth is based on definitions as articulated by those who have power (McHoul, 2015). The economic power which remains in the hands of the White minority, enables them to define as per Foucault what is acceptable, sayable, and true in the labour market. The employers, who themselves have not been in a position of the disenfranchised cannot relate to the experience of being disenfranchised and thus their dominant language is business, and what makes business sense.

Bourdieu (1986) would also argue that due to the habitus of the employers, they cannot relate with the "reality" of the employees. While Foucault would argue that they, due to their power, veer the direction of discourse of employment equity, Bourdieu would argue that their economic, social and cultural capital enables them to retain their social status, while the employees remain disenfranchised due to their lack of the different forms of capital. Power in this case, while not sovereign is retained due to availability of the different forms of capital. Particularly, access to social capital reinforces social inequalities, as those with more robust social networks typically have better access to resources and opportunities (Bourdieu, 1986; Lin, 2000).

While the CEE launches all the annual reports with banners that have the phrase “real transformation makes business sense”, the meaning attached to transformation has not been embraced by the employers and captains of industry, who have objected that this statement is not true (Malope, 2019; Practices, 2007). The language of the business community is the language of power within the context of employment equity. The labour market considers employment equity to be contrary to the needs of business (Bhorat et al., 2002). Therefore, anything that is contrary to business is not supported. The power is maintained by the begrudging compliance, where processes are followed to look right without necessarily following the spirit of the law. This is consistent with the inherent weakness of a rule-based approach to compliance (Badat, 2023; Department of Finance, 2016). The discourse of employment equity is thus one of non-compliance and enforcement as the major themes as opposed to a narrative of a joint venture in achieving the prescripts of the Constitution.

The powerful White minority then continues to regulate thought, and conversely, thought regulates power. The power base of the government in economically empowering Black people, and women as articulated in the Republic of South Africa (1998a) has never been mutually agreed upon and has never translated into real power in the economic space. “Power is both reflexive, then impersonal. It acts in a relatively autonomous way and produces subjects just as much as, or even more than, subjects produce it” (McHoul, 2015, p. 37). Using their power to influence outcome, employers have resisted the transformation agenda and governments remain ineffective in enforcing the necessary change. Laws are treated with disdain and every attempt is made to sabotage the efforts for redress. Terreblanche (2012) discusses, in depth, the dynamic around the South African search for economic freedom and how this economic freedom was compromised in the negotiations around the democracy. He asserts that though the new dispensation brought with it political liberation, the economy of the country remained in the hands of the oppressors, who define what is economically acceptable and what is not.

2.6 Employment Equity viewed through the lens of a business case

Kelly et al. (2007) argue that transformation is seen as part of social justice and as a challenge to power relations. This argument sits at the heart of the transformation law

which seeks to redress the ills of the past, where the White minority were in power and controlled the politics and economy while the majority were oppressed and could not control their destiny (Republic of South Africa, 1996a).

It is against this background that the concept of diversity and diversity management started becoming popular in the South African workplace. The idea was to present a business case that allowed employers to see the advantage of the transformation law and recognise that these laws would positively impact their financial bottom line (Brazzel, 2003). The social justice debate, is often perceived as punishment of the minority by the majority who now have political power and as such, the diversity management argument seems more compelling for the minority in that their economic power is somewhat protected in this way (Brazzel, 2003).

In sharing the historical background of diversity management, Brazzel (2003) suggests that there were two major polarised reasons that co-existed at its introduction into the USA labour market in the 1990s. The first one was a response to the heightened pressure that employers were getting from the civil rights movements and the court rulings to incorporate equal opportunity in their decision-making and management processes. Secondly, it was because of the recognition that to remain competitive, employers needed to benefit from the value of having a diverse workforce which brings with it diverse solutions to workplace operations. Both reasons lean towards the two positions of social justice and economic benefit (Brazzel, 2003). From an economic benefit perspective, incorporating diversity management in corporate decision-making and management practices is key to leveraging the competitive advantage of having a diverse workforce.

It facilitates the process of tapping into the collective intellectual power of a team and increases employee engagement which in turn increases customer satisfaction (Köllen, 2021; The Joshbersin Company, 2021; Thomas & Ely, 2002). There are extensive arguments in literature that if the diverse inputs of the different individuals are utilised effectively, it increases morale, creativity and innovation, reduces absenteeism and turnover, creates access to various markets and introduces a variety of problem-solving opportunities (Booysen, 2007; Coetzee, 2015; Maier, 2005; The Joshbersin Company, 2021; Thomas & Ely, 2002; Williams, 2014). The CEE also

shared this sentiment by promoting their annual reports under the theme “Real transformation makes business sense” (Department of Labour, 2017, 2019a).

Maier (2002) challenges the concept of managing diversity and maintains that it is inadequate for maximising the benefits of diversity amongst workforces. He promotes leading diversity and defines it as “the rational, emotional and spiritual guidance and facilitation of the social construction of a reality that reveals, accommodates and utilises a variety of kaleidoscopes” (Maier, 2002, p. 187). In this definition, the rational, emotive and spiritual dimensions are integrated into dealing with a diverse workforce. Maier (2002) maintains that embracing inclusivity using the human wholeness acknowledges the complex nature of human beings and taps into the nuanced nature of human qualities and the benefits they bring.

The benefits are not only at organisational level. South Africa as a country would compete effectively as a global player if embracing inclusivity was considered a serious agenda. It is important that the benefits are not only in having the right number of designated people at different occupational levels for moral and political reasons, but also having an inclusive environment in which diversely effective ways of working, are employed to the benefit of the organisation. Thus, a faster pace and genuine transformation can lead to South Africa’s economy becoming more competitive. National Treasury (2017) states that, inclusive growth drives vitality and prosperity for the region and individual citizens.

What is critical to understand however, is the underlying reason for engaging and managing diverse workforces, because these reasons will dictate whether the efforts lead to real or superficial transformation. Baker (1986) is cited in Brazzel (2003, p. 9) as stating four major reasons for managing diversity as: “fear (avoiding workplace unrest), law (compliance to the law to avoid legal suits), values and ethics (doing the right thing) and profits (enhance effectiveness and competitive advantage)”. It is in merging these and understanding the value of each perspective that real transformation takes place. Some literature also discusses the negative impact of a diverse workforce, but Köllen (2021) concludes that the negative effects are a result of poor diversity management.

There has been a strong move towards Diversity, Equity and Inclusion (DEI) since the 1990s (Brazzel 2003). This has been prompted by the need to create environments where individuals feel respected and valued, a move that merges the four reasons stated in Brazzel (2003). Golden (2024) also states that the transition to DEI was based not only on ethical reasons but also for business success. More than just dealing with racial and gender issues, DEI actualises the implementation of the kaleidoscope concept as muted by Maier (2002). DEI highlights the intersectionality of individual identity, a key outcome of the research by Maier (2002). Jaiswal (2024) argues that while inclusion finds its roots in the medieval era, it found its full expression in the mid-1990s where it was conceptualised in the workplace, in education and in public service.

By 2020, when social movements such as #MeToo and #BlackLivesMatter became more prominent, DEI became a vehicle within organisations for honest and in-depth dialogue around diversity and inclusion (Golden, 2024). Golden (2024) further states that the trends in 2020 have led to a proactive inclusion of DEI into the corporate strategy, a very progressive move in driving workplace transformation.

Wolbring and Nguyen (2023) emphasise the importance of context in the crafting of DEI strategies. They argue that strategies and policies should be crafted and driven based on the needs and peculiarities of the communities and societies within which corporates operate amongst other factors. These authors further advocate for rigorous stakeholder engagement in arriving at appropriate interventions. Throughout the debate on DEI, the positive impact on the financial performance is emphasised (Garg & Sangwan, 2021; Hoang et al., 2022; National Treasury, 2017). The EEA seeks to create an inclusive labour market environment in which all citizens can participate in the economy and benefit from the proceeds of that participation. However, there is a definite business case to be made for the EEA, especially in terms of the impact of effective DEI strategies in creating a return on investment for the employers. Research indicates that enhanced employee engagement and a clear outcome of effective diversity, equity, and inclusion (DEI) practices, results in satisfied customers, which in turn positively influences financial performance (Harter et al., 2009; Sorenson, 2013; The Joshbersin Company, 2021).

2.7 Behaviour changes and the Employment Equity Act

Rabeau (1999) maintains that the purpose of legislation is to transform behaviour, and in line with this assertion, the EEA Amendment Act seeks to achieve the desired change in behaviour that would lead to an acceleration of employment equity. It does so through invoking sections that would, with all things being equal, result in higher representation of persons from designated groups as well as lead to substantive equality in the workplace. What makes the Amendment Act different from the previous EEA No 55 of 2014, is that compliance has been extended to include an assessment of discrimination in the workplace, by tracking discrimination disputes through the CCMA as well as monitoring compliance to the Minimum Wage Act which prescribes that employers must pay their employees nothing less than the minimum wage that is prescribed. Furthermore, the Amendment Act seeks to change behaviour by rewarding this extended level of compliance through an EE Compliance Certificate. This was discussed in more detail in Section 2.3 above.

The nature of most equality policy instruments is rooted in models of compliance and enforcement. The result of a model that is rooted in compliance and enforcement is a "begrudged sense of compliance rather than a deeper commitment and organisational learning" (Horwitz, 2011, p. 19). These policy instruments, which are common within the sphere of employment equity presuppose, that change will be resisted by its implementers and therefore, dictates the need for inspectors and enforcers. Chapter III of the EEA deals with a number of sections which focus specifically on enforcement and compliance, an approach that leans towards policing businesses (Republic of South Africa, 1998a). Schedule 1 of the EEA goes into depth in stipulating exact fines that will be meted against organisations that do not comply. As a result, the enforcement is supported by agencies that are mandated to impose punitive measures on businesses that are considered non-compliant and hefty fines are legislated to achieve this compliance.

"The overall approach and philosophy of the regulating department or agency has a significant impact on how policy instruments are selected. If we can draw a caricature of the extremes, we may shed some light on the existence of an organisational culture predisposed to a regulatory reflex. That is, if the prevailing organisational culture is rooted in an attitude that those subjected to regulations are fundamentally evil and

must be stopped at all costs, then the resultant behaviour of the regulator will be based on a policing mentality". (Rabeau, 1999, p. 19).

This is embedded in a rule-based approach to compliance. It is this underpinning principle of legislation and other policy instruments that sets the tone for how businesses respond to the imperatives of the EEA. Some businesses argue that the EEA, like other labour legislation in South Africa, is onerous (Bhorat et al., 2002; Thomas, 2002). The subsequent resistance plagues policy makers and drives them towards seeking more stringent means to ensure compliance, thus creating a need to review and tighten legislation around employment equity. In his interview with Eyewitness News, Andile Nomlala, the then President of the Black Management Forum (BMF) maintained that even harsher measures are required.

Mr. Nomlala contended that executives of organisations that do not comply must be criminally charged, an assertion that is also premised on the belief that the policing methodology will yield results (Mohlakoana, 2019). Criminally charging and prosecuting executives would, however, result in individual as opposed to organisational liability. While this may result in some form of individual behavioural change, it would be burdensome for the executives responsible as it would in some cases require them to contend with structural and systemic obstacles that are outside of their realm of authority. The EEA currently doesn't have a clause that would enable criminal prosecution of executives of non-compliant companies. It would require further amendments to the EEA. In the current legislation, fines and the inability to acquire an EE Compliance Certificate are the only punitive actions that can be taken by government, and these are directed at the organisation itself and not the individuals within the organisations (Department of Employment and Labour, 2020b).

Hussain et al. (2018) maintain that organisations are often invested in the status quo and any change which has the potential to bring uncertainty is often resisted. Within the South African context, the inequalities of the economy are a creation of an apartheid policy framework which protected the interests of the minority who were the major benefactors of the policies and as such, any change presents a threat to their benefits. The economic system made up of employers works to maintain what presents certainty and an ensuing sense of financial security for these employers, and thus the resistance to the EEA (Terreblanche, 2012).

Kurt Lewin introduced what he calls the force-field analysis to examine the change and stabilizing forces that operate in organizations and other human systems. Lewin developed a change model consisting of three phases to describe how change can be achieved (Brazzel, 2003; Hussain et al., 2018). The first phase is Unfreezing, which focuses on reducing restraining forces. Phase two is the Moving phase, which involves changing attitudes, beliefs, actions, behaviours, and structure. The third phase is Refreezing, which entails achieving a new status quo with a balance of driving and restraining forces (Brazzel, 2003; Hussain et al., 2018).

Forces that drive for change, such as legislation and the enforcement of legislation are often counteracted by restraining forces, leading the system back to equilibrium and maintaining the status quo. Leaders according to Lewin, have a crucial role of championing this change, and must make every effort to facilitate movement through the three phases by educating, communicating, emotionally supporting, involving, incentivizing, and even coercing their followers through the change process. He refers to leaders as the change agents “for behavioural integration in tasks and social dimensions” (Hussain et al., 2018, p. 124). It can be argued that the use of legislation as the only tool for change does not allow government as a leader to accomplish the full championing role described by Lewin.

At an organisational level, leaders would have to embrace the championing role and facilitate transformation through the tactics described above. However, if the leaders themselves are resistant to the prescripts of the EEA, then it follows that the organisation will remain in a frozen state as the restraining forces will exceed the changing forces. Again, this brings the debate back to the issue of power and its importance in transformation.

The legislation, while seeking to achieve behaviour change through punitive measures and rewards, does not seem to have attained this critical mass change in the labour market. This is corroborated by the results captured in Table 1 and 2 found in Chapter 1 of this paper and begs the question: “What Change Management processes have been implemented to achieve equity and if any, why are the results not evident?” Clearly, the South African policy makers are relying heavily on legislation to create behaviour change, and in taking stock, the results suggest that a different approach should be considered.

It may be useful to consider different regulatory approaches to contextualise the EEA, the Amendment Act and the results achieved up to now as well as those that the Amendment Act seeks to achieve. The current rule-based approach, which is evident in the EEA No 55 of 1998 and EEA No 47 of 2014 and their supporting regulatory tools have thus far been the most predominant approach employed by regulators.

It is characterised by a highly prescriptive, rule bound process with detailed steps to compliance and well-articulated compliance standards. It promotes the process flow that allows for activities that have a start and end route, and the conclusion of each activity pronounces progress towards compliance. However, the step-by-step process, may not necessarily yield results as the objective, is to comply to rules and not necessarily drive outcome. While the intention is to drive outcome, the process flow outlined, creates an opportunity for a tick-box exercise, which leads to malicious compliance (Badat, 2023; Burgemeestre et al., 2009). The tick-box exercise has become common practice, and s20 Managers and Transformation Specialist argue that what is presented in the CEE Annual Reports is mainly malicious compliance (Commission for Employment Equity, 2017).

There is an emerging trend to look beyond just a rule-based approach to compliance, and to consider other more effective ways to ensuring the achievement of desired results by regulators. Some of the emerging approaches include:

- The principle-based approach, which introduces flexibility in the application of regulatory tools. This approach allows for interpretation in the application of regulatory tools/ legislation, and a principle-based and legally compliant response which leads to the desired outcome (Badat, 2023).
- The outcome-focused approach focuses on regulators defining the desired outcomes and allowing employers to decide how these will be achieved depending on the unique circumstances within their organisations (Badat, 2023). Hodges (2023) engages outcome-based cooperation principles to this approach and then proposes what he calls outcome-based cooperative regulation. This approach he asserts, is based on research of how people behave and unlocks opportunities for more success in organisations as it promotes a collaborative approach between regulators and the regulated organisations. Both the regulators and the regulated collaborate on what the

desired goals are, and together prioritise what should be tracked and prioritised to achieve maximum desired outcomes.

- The Department of Finance (2016) refers to a more nuanced approach to the outcome-based approach. They refer to it as the risk and outcome-based regulatory approach, which proposes that outcomes identified for enforcement and monitoring in regulatory planning should be informed by the primary risk areas, that is where the highest risk of non-compliance is (Department of Finance, 2016).

While the Amendment Act does seem to lean towards some outcome-based elements such as payment of minimum wage as an outcome of employment equity, it still retains some rule-based elements. Furthermore, there is some flexibility added to the achievement of sector targets, which also leans towards a principle-based approach in considering particular organisational circumstances in meeting these targets (Badat, 2023). In this regard, employers have the leeway to set their own pace of how they get to the sector targets, through their plans and can provide justifiable reasons in situations where they have not been able to meet the set sector targets. The combination of approaches is a positive move as it allows for the regulator to deal with employers based on their level of maturity to compliance, as well as their unique circumstances. The CEE and the DoEL engaged employers in setting the sector targets. This has some resemblance of outcome-based cooperative governance.

There was also extensive consultation with the NEDLAC (National Economic Development and Labour Council) which is a process of cooperative governance. However, the process has some glaring gaps and may not fully meet the requirements to qualify as an outcome-based cooperative compliance approach (Department of Employment and Labour, 2018b). For example, in an outcome-based cooperative compliance approach, the regulator should collaborate with the regulated entities and other stakeholders to outline priorities, clearly stipulating what desired outcomes look like and then direct all efforts of enforcement towards the prioritised activities agreed upon in the collaboration process. This however, the researcher maintains works best in environments where the common vision is clearly spelt out and agreed upon by all stakeholders.

The reporting system is under review to promote some outcome-based elements, but there remains a need for an overhaul of the enforcement processes to align with the approaches. This will be discussed in more detail in Chapter 5. It is argued that an outcome-based approach, leads to behavioural change, that is behaviour that will drive compliance (Badat, 2023; Department of Finance, 2016; Hodges, 2023), and if this approach were to sit central to the regulatory framework of the EEA, it would most likely accelerate employment equity.

2.8 Lessons learnt based on different country models of Employment Equity legislation

Highlights from the United States of America (USA), Malaysian, Canadian and Namibian legislation will be shared below along with the challenges they experience. Similarities and lessons learnt will then follow the international review. While this section will deal with Canadian history on employment equity in detail, as it is the model on which the South African EEA is based, it will focus on the Malaysian experience as it is the one most similar to the South African journey internationally (Horwitz & Jain, 2011). Malaysia like South Africa is seeking economic redress for most of its citizens. Namibia, although also seeking redress for the majority, has benchmarked itself against South Africa and as such much of its history will not necessarily be covered from the perspective of lessons learnt (Commissioner Usiku, 2015).

2.8.1 The history of the United States of America (USA) on Employment Equity

The USA has a history of racial discrimination that was born from the days of slavery (Elliott & Hughes, 2019). Black slaves were subjugated to White control with the advent of African slavery around 1619, where they worked mainly in tobacco and cotton farms. Slavery was a form of labour exploitation (Elliott & Hughes, 2019). The debate on the abolition of slavery in the public domain and in parliament was rife around 1791, and the first anti-slavery committee was established by the British Quakers in 1783 (Curry, 2007). However, by 1856, slavery continued to gain traction

because amongst others, the first Supreme Court case labelled slaves as property and not as citizens of the USA.

“In 1856 the first Supreme Court case on the issue of slavery was decided. Abolitionists saw the decision in Dred Scott v Sandford17 as a disaster. The Court held that in terms of the Constitution, a slave was property and not an American citizen” (Deane, 2009, p. 78).

It was only at the end of the Civil War in 1865 that the Congress of the United States proposed amendments to the Constitution, which resulted in three major changes, which were: an end to slavery practices, extended rights to the slaves and the right to vote (Deane, 2009). These Amendments, which were referred to as Amendments thirteen, fourteen and fifteen were eventually promulgated in 1870. Some major and minor changes to legislation and practices took place resulting in some gains for the African minorities in the USA. The next major shift in anti-discrimination legislation was because of the Civil Rights Movement.

This non-violent civil disobedience was the method used to ultimately dislodge institutionalised racism, discrimination and inequality (Curry, 2007; Deane, 2009). Madolo-Mtegha and Mtegha (2019) state that the aim of the Civil Rights Act was to ensure that the Black and Hispanic American groups, who were in the minority were empowered to attain equality in all spheres of life.

The outcome of the pressure of the Civil Rights Movement, is legislation known as the Civil Rights Act of 1964, which, according to Deane (2009), made it unlawful for employers to discriminate against individuals based on their race, colour, gender, religion or nationality. The regulations of the Civil Rights Act applied to employers with at least 25 employees and brought upon the establishment of the Equal Employment Opportunity Commission (EEOC). The mandate of the EEOC includes the administration of and enforcement of the rights enshrined in the civil rights Act (Horwitz & Jain, 2011). Where disputes cannot be resolved, the EEOC is empowered to file lawsuits.

In 1965, a federal government agency called the Office of the Federal Contract Compliance Program (OFCCP) was mandated to ensure that contractors with more than 50 employees and those with specified government contracts with financial

turnovers of $50 000 or more per annum were implementing affirmative action (Madolo-Mtegha & Mtegha, 2019). The major differences of the USA and the South African employment equity legislation are firstly, that the USA legislation seeks to redress minority groups as opposed to South Africa where the majority is being affirmed and redressed. Secondly, the legislation focuses more on increasing representativity of the Black and Hispanic American minority groups and women, while the EEA in South Africa seeks to redress the Blacks, Women and Persons with Disabilities (Republic of South Africa, 1998b; United States of America, 1972). Thirdly, the EEOC has an enforcement function, which the South African equivalent, the CEE, does not have. Included in this mandate is the ability to litigate on behalf of individuals and the general public, as well as advisory, monitoring and evaluation functions (United States of America, 1972).

Several court cases challenging the implementation of the policies of affirmative action have led to a dampened application of the legislation, which at this point has left the discretion of implementation of affirmative action to the corporates.

The number of court cases, according to Madolo-Mtegha and Mtegha (2019), attests to the level of contestation associated with the affirmative action policies in the USA. Madolo-Mtegha and Mtegha (2019) argue that the implementation of affirmative action is still affected by racial biases, and this results in a slowing of the pace at which affirmative action is implemented in the USA.

While South African legislation makes the implementation of affirmative action compulsory for employers that have 50 or more employees, it leaves the discretion of practical application at company level. Employers get to decide the pace at which they wish to bring in persons from designated groups at the different occupational levels in their organisations (Horwitz & Jain, 2011; Madolo-Mtegha & Mtegha, 2019). This flexibility, in the researcher's view, which is built into the South African EEA complies to Convention 111 and 100 and does tend to result in low levels of compliance to the law as these Conventions push for flexibility and outlaw quotas, which force compliance in terms of representativity within employer organisations. There is within the EEA in South Africa, a Section 53 clause which deals with government contracts. This clause was inserted in the original EEA in 1998 but was not promulgated till the 2020 EEA Amendments. Thus, while the OFCCP deals with the matter of state

contracts, the South African EEA does not in its current form make provision for this. The BBBEEA remains the only legislation that governs compliance of contractors with state owned entities in as far as representativity of the designated groups is concerned. This area is dealt with in the Management Control element of the BBBEEA (Madolo-Mtegha & Mtegha, 2019).

One of the weaknesses of the anti-discrimination legislation in the USA cited by Thomas (2002) is the fact that substantive equality is not dealt with as a key area of concern. Johnson (1997) is cited in Thomas (2002) as saying that there is currently a move by some states towards abolishing affirmative action as it is seen to be counterproductive and as having outlived its usefulness. The discourse on the success of anti-discrimination legislation in the USA remains rife and Deane (2009) argues that victories of the legislation and judiciary in this space are not enough to overcome the entrenched patterns of discrimination in the country.

The USA as a country remains divided against racial lines. Systemic racism characterised by police brutality, pay disparity, housing and health facilities, unequal education systems and educational facilities as well as financial exclusion continue to plague the USA (Dua et al., 2021; Florant et al., 2020). The White majority continue to enjoy privileges that communicate that they are in power. The death of George Floyd at the hands of the Minneapolis police on 25 May 2020, as well as that of Daunte Wright, another Black man aged 20, who was fatally wounded in a shooting on April 2021 have been cited as cases in point for wilful deprivation of civil rights to minorities especially Blacks in the USA (Minneapolis Associated Press, 2022). In response to these and other brutalities against Black people, the Black Lives Matter movement gained momentum after its establishment in 2012 and it has subsequently had its influence permeating the labour market (Schulz, 2017).

A number of companies have come out in support of the Black Lives Matter movement, but where these companies' message on the movement was not supported by an ethos that embraced diversity and inclusivity, the companies experienced a backlash (Schulz, 2017). One of the key messages from Schulz (2017) is that employment equity remains a contentious and polarising agenda in the USA to this day.

2.8.2 Malaysia's history on Employment Equity

Racial and ethnic identity has played a key role as far as discrimination is concerned in Malaysia, which led to the formulation of policy to address the discrimination particularly in the economic sphere (Guan, 2005; Lee, 2015; Madolo-Mtegha & Mtegha, 2019). Malaysia, which was a British Colony, saw an influx of the Chinese and Indian populations in 1920. These migrants were initially intent on staying for three to five years just to accumulate wealth and intended to return to their native homes thereafter. This intent however changed, because of the positive conditions for economic empowerment which the Chinese and Indians found for themselves in Malaysia. As a result, they ended up settling permanently. The Chinese and Indian populations ended up recreating their social and cultural traditions through institutions of learning, linguistic usage and recreation (Madolo-Mtegha & Mtegha, 2019).

Malaysia gained its freedom from the British in 1957 but remained an unequal society with the Chinese and Indian groups at the helm of economic power while the Malays had notional political power which did not translate into substantive freedoms. The entrenched social strata continued, resulting in unrest and violent protests in May 1969. This led the government to develop a transformation policy called the New Economic Policy (NEP) in 1971 (Madolo-Mtegha & Mtegha, 2019; Saad, 2012). The Bumiputera (the indigenous Malays who are referred to as the Sons of the Earth) were to be affirmed in education, employment, land and political participation (Madolo-Mtegha & Mtegha, 2019; The Equal Rights Trust in conjunction with Tenaganita, 2012; Thomas, 2002).

The two main objectives of the New Economic Policy (NEP) were to alleviate poverty and restructure the society by eliminating the identification of race with economic privilege (Madolo-Mtegha & Mtegha, 2019). Malaysia's economic transformation, like South Africa's, was based on affirming much of the population (Guan, 2005; Lee, 2015; Madolo-Mtegha & Mtegha, 2019). What is different, however, is the fact that Malaysia has not ratified the conventions related to anti-discrimination in the workplace (The Equal Rights Trust in conjunction with Tenaganita, 2012). These conventions, Convention 111 and 100 prescribe to ratifying countries that they may not use quotas as a way of redress in their EE Planning. The Malaysian NEP prescribes quotas (Thomas, 2002). The fact that these conventions were not ratified, enabled the

Malaysian government to enforce a 30% quota as part of the measure to redress the ownership of large businesses in Malaysia to be in the hands of the Bumiputera.

This NEP was also an ambitious social engineering plan of creating national unity by eradicating poverty irrespective of race and ethnic groupings (Gomez, 2003). A national vision was set in motion, and it sought to create a united Malaysia nation. Efforts were made to integrate the different ethnic groups and have them galvanise behind the national vision in which ultimately all citizens would experience substantive equality with strong economic participation especially economic participation of the Bumiputera. There was a social contract which was driven by a psychological commitment from all sides to achieve the nation building and the Bangsa Malaysia which means “One Malaysia” (Gomez, 2003; Saad, 2012). Saad (2012) argues that the process was focused on Nation Building, and he defines it as a quest for stability through several initiatives that sought to create political, economic, and social stability.

The economic power bases began to change due to an increased focus on ownership to a national quota of 30% in commercial and industrial activities in the hands of the Bumiputera. This was coupled with instituted, focused and deliberate training and an insisted on racial representativity in Urban and Rural Sectors (Gomez, 2003; Madolo-Mtegha & Mtegha, 2019). State-owned enterprises were also used as vehicles for acquisition of business equity for the Bumiputera, while education and skills development became a priority as it was seen as a key driver for the economic emancipation of the indigenous Malays (Gomez, 2003). By 1981, that is within ten years of the introduction of the NEP, the amount of Bumiputera interest in corporate holdings had grown from 2.4% to 12.5%. A dynamic Bumiputera middle-class emerged as a result of the NEP and there has been evidence of successful implementation of Affirmative Action. This has been achieved despite challenges such as fronting, the breakup of inter-racial business partnerships and government official patronage of ownership (Madolo-Mtegha & Mtegha, 2019). By 1991, 20 years later, Bumiputera stock ownership had increased to 20% (Gomez, 2003). Though the target of 30% ownership was not met, there was remarkable progress in terms of economic empowerment.

Where ownership was genuine and free of fronting arrangements, the NEP, while focusing on business ownership by the Bumiputera, successfully led to an increase in

the representation of the Bumiputera at the Top Management level of organisations in which they had economic interest (Gomez, 2003). The model drove the number of their representativity at this level. This way, Affirmative Action was effectively managed through the introduction of substantive equality, where the Bumiputera had genuine decision-making power in the economy.

There are five significant and distinct interventions that drove the transformation in as far as Malaysia is concerned. First, there was a concerted effort from government to drive the vision of economic transformation (Gomez, 2003; Madolo-Mtegha & Mtegha, 2019; Shamsul, 1997). The different functions of government seem to have played a role in the process. For example, state funding, which is driven from a totally different department of government as compared to the Affirmative Action agenda was used to facilitate ownership transactions.

While different government departments operated within their mandates, all efforts were aligned with the agenda to transform the economy. Another example of this alignment can be seen in how, education and training was also aligned towards achieving a critical mass of professionally qualified Bumiputera who would then lead the large corporates hence actualising Affirmative Action (Gomez, 2003; Madolo-Mtegha & Mtegha, 2019). Seemingly, there was a collective effort from role players in government to achieve this agenda. Infrastructure development in the rural areas was achieved through major business interest in the hands of the Bumiputera, thus promoting opportunities for them to be key role players in the economy. This would have been a function of a different government department, but still driving the same goal. The principle of “all hands-on deck” was clearly key in this process (Gomez, 2003; Guan, 2005; Madolo-Mtegha & Mtegha, 2019; Shamsul, 1997). In dialoguing about the transformation, government was very clear that they were seeking to achieve a transformation of the society as opposed to just economic transformation per se and this drove the approach that was taken. All elements of society were considered.

Tun Dr. Mahathir bin Mohamad, the 7th Prime Minister of Malaysia from July 1981 to October 2003 and then again re-elected in May 2018 to March 2020 was instrumental in driving the economic empowerment agenda of the Bumiputera.

> From the outset of his premiership, Mahathir voiced his intention to create an ensemble of dynamic' entrepreneurial Malay capitalists. Mahathir's reasoning for the need to hasten the development of Malay capital was that, in 1981, ten years after the implementation of the NEP, although the government had managed to increase the amount of corporate holdings held in the name Bumiputera from 2.4% to 12.5%, little progress had been made in developing Malay businessmen in control of large corporations (Gomez, 2003, p. 71).

The NEP agenda was clearly a government broad strategy and was driven from the highest authority in the country. This is the second, significant principle that can be observed from the Malaysian transformation process (Gomez, 2003; Shamsul, 1997).

The third principle that can be gathered from Mahathir's leadership, as described in the statement above, is that Affirmative Action was not seen as a separate issue to ownership. There was a clear intention to ensure that ownership was closely related to a transformation of the control of entities that the Bumiputras had acquired shareholding in. This is a significantly impactful strategy to economic transformation as it ensures that barriers to Affirmative Action and by implication substantive equality were removed. The more the Bumiputras became executive members of their organisations, the more diverse the demographics of those organisations would be. Furthermore, because their participation in the organisations was at a level of management and control, they could co-create more inclusive workplaces.

The fourth principle is a very clear nation building agenda that united all citizens around a common goal. While the non-Bumiputera may not have found it easy to embrace sharing economic power, they recognised that the status quo meant national unrest and violence. There was also a strong commitment by government to drive economic growth as opposed to just empowering the majority Bumiputera. There was, however, another interesting political arrangement that may have led to a sense of unity around this vision. The leading party also mimicked the unity that the country was aspiring for. Three political parties each representing a different ethnic group (Malay, Indian and Chinese) formed a coalition party called the United Malays National Organisation (UMNO) and therefore all citizens possibly felt represented (Gomez, 2003; Saad, 2012; Shamsul, 1997; Wan Husin, 2011).

Finally, there was a well thought out strategy for achieving economic power and it was based on a deliberate plan to drive the vision. As a result, the vision was specific, measurable, and achievable based on the number of interventions that were designed to make this a focus, realistic for the same reason and had specific time frames and goals. Jesudason (1989) is quoted by Shamsul (1997) as saying that the plan included details on the institutional structures that would be required to develop Malay entrepreneurs, the funding institutions that would be used as part of the process as well as how professionals and specialists of different fields would be created through training initiatives. Additionally, the plan was supported by targets that had to be achieved within a certain period.

The five interventions mentioned above secured success for Malaysia. In summary these five interventions are:

- Government accountability and synergy across departments in ensuring economic transformation.
- Control of large corporates by the Bumiputera with training and development sitting at the centre of gaining management control.
- Ownership of businesses by the Bumiputera was prioritised and employment equity was to be a by-product of ownership.
- Economic transformation positioned as a nation building agenda.
- A well-articulated vision.

This country remains a strong benchmark for South Africa given the similarity in circumstances and the success they have had. Shamsul (1997) and Gomez (2003) postulate that the political agenda of equality from its colonialists was at the time of Malaysia's independence in 1947 prioritised more than the economic agenda. This is similar to South Africa's situation at the time of the transition to democracy and South Africa can learn from how Malaysia transitioned to the economic agenda and were successful in it (Terreblanche, 2012).

Some authors focus on the challenges experienced in Malaysia, specifically issues of political patronage of the economic transformation process, corruption and the empowering of the already empowered. Shamsul (1997) suggests that fronting was one of the key modus operandi in the awarding of most state contracts. Some of the

UMNO politicians were awarded contracts based on them being Bumiputera, but they would then subcontract the Chinese to do the work. There are also authors that suggest that the inter-racial partnerships were to a large extent not sustainable because of a variety of reasons, including conflict based on cultural differences (Gomez, 2003; Shamsul, 1997). Wan Husin (2011) argues that the goal of nation building is hardly achieved as inter-racial unity was still very delicate at the time of his writing.

He claims that the one Malaysia concept, which is an integrated Malaysia, is impossible to achieve given that the Bumiputera are currently considered privileged based on some concessions that have been made. While these may be factual criticism of the process, the researcher believes that they by no means disqualify the success of the Malaysian NEP. Poverty statistics fell from 58,6% to 21,1% within twenty years, the percentage of registered professionals increased by 25% and capital ownership by the Bumiputera increased by 20% in the same period. The researcher is therefore pondering on whether the successful and accelerated implementation of employment equity in South Africa requires a similar strategy to the one used in Malaysia, obviously with some tweaking based on the uniqueness of the South African context.

2.8.3 Canada's history on Employment Equity

In 1960 the Canadian Bill of Rights was enacted to prohibit discrimination on the bases of race, national origin, colour, religion, and sex. The rights to equality were further captured in the Canadian Human Rights Act of 1978, and this Act specifically promoted and protected the rights of minorities. The Canadian Human Rights Act promoted voluntary compliance to programs that promoted employment equity. Due to the voluntary nature of the prescripts, not much traction was secured by this Act (Agocs, 2002; Jain et al., 2012; Thomas, 2002).

In an attempt to ensure the enforcement of the rights to non-discrimination for the groups mentioned above, the Employment Equity Act (EEA) was promulgated in 1986. This was done at a federal state level and was subsequently followed by the Federal Contracts Program which focused on state contracts, ensuring compliance from employers that engaged in business with government (Agocs, 2002; Jain et al., 2012;

Thomas, 2002). As the EEA was implemented at a federal state level, the researcher will hone in on the implementation of this Act within the Ontario State, to share the experiences of its implementation and to compare it with the South African EEA. When Canada crafted and implemented the legislation on employment equity, it was using the USA's experience as a case study and sought to find ways of eliminating some of the fundamental challenges the USA experienced in implementing affirmative action.

Affirmative action as a government policy in the USA was subjected to a backlash, resulting in court challenges for what was termed reverse discrimination of those who were not its beneficiaries. Affirmative action within the context of the USA debate was considered to be driving numerical targets without due consideration of merit to the exclusion of the White majority in that country (Agocs, 2002; Bakan & Audrey, 2007). Backlash in this context, according to Bakan and Audrey (2007) is defined as a resistance coupled with active campaigning against a policy. It is often accompanied by court action which seeks to reverse or to adapt the application of the policy. "Backlash arises as the result of a 'boomerang' effect, where the desire to provoke progressive change unleashes a greater and more powerful regressive force" (Bakan & Audrey, 2007, p. 147).

Thus, in the Canadian state of Ontario, for example, the ruling New Democratic Party (NDP) resorted to using the concept of employment equity as an alternative paradigm to Affirmative Action. Employment Equity was perceived and coined as a way of recognising that socio-economic differences do exist between different racial and gender groups due to past discrimination, and that they need to be remedied. The policy was then designed to eliminate employment practices that created barriers of entry and advancement of the designated groups (minority groups and women) as well as creating an inclusive environment. The NDP at that time was cognisant of the possible backlash and as a result, took a very moderate position on the issue of redress that the policy itself ended up being mediocre and relatively unimpactful in achieving the desired end.

Great compromises were made in the process. Flora MacDonald, who was the Minister of Employment and Immigration at the time, later on reflected on the process of the formulation of the policy, saying that she sought to get some small wins because she recognised that there was huge contestation around the legislation and wanted to

moderate this backlash (Bakan & Audrey, 2007). Some authors contend that this type of compromise led to a dulling of the impact of the legislation (Agocs, 2002; Bakan & Audrey, 2007). The hesitancy and compromise further led to a repealing of the legislation a year after it was enacted.

Thomas (2002) asserts that progress in terms of employment equity in Canada is slow and that the most affirmed group remains White women. The basic standards of the Ontario Employment Equity Act according to Jain et al. (2012) are the following:

- The beneficiaries of the EEA are the minority groups (Women, Aboriginal people, Persons with Disabilities and Visible Minorities).
- Smaller employers are not expected to report on numerical goals on employment equity.
- Employers are expected to develop their own plans with flexible goals designed to meet their unique circumstance. These plans drive the activities of the employer around issues of employment equity and the reports submitted annually must indicate positive measures implemented to eliminate discrimination and progress towards the planned goals. No quotas or targets are enforced by government itself.
- The numerical goals that employers set for themselves in their plans should account for how progress in terms of representativity will be tested at each occupational level. These goals are compared to the statistical data which is considered a benchmark against which each employer should measure themselves. In Canada, the statistical benchmark is the workforce availability rate figures (the EAP) which are determined annually through the Canadian Census Labour Force.
- The EEA prescribes that employers should consult with employees around the EE plan, measures to reduce discrimination and the reports to be submitted to the EE Commission.
- Employment equity measures should not lead to undue hardship for non-designated groups. For example, non-designated groups were protected from being dismissed to create appointment opportunities for designated groups.

South Africa has adopted the model used in the Employment Equity Act of Canada, where employers are expected to report numerical progress based on self-regulation.

The above standards are found in the South African EEA, with minor changes to manage the local dynamics.

Moreover, the process of remedying a breach of the EEA in South Africa, is also aligned to that of the Canadian legislation (Jain et al., 2012). In both countries the disadvantage of self-regulation has been that progress is slow and there is no systematic way of accelerating equality within the confines of the law. "A reliance on labour market voluntarism to rectify this imbalance will not suffice" (Deane, 2009, p. 76). Issues of inclusivity are also not given the attention they deserve because the reporting of progress overemphasises numerical elements as opposed to the lived experience of employees (Thomas, 2002).

The Federal Contracts Program, which was also established in 1986, monitors compliance to the EEA prescripts for employers that are doing business with state owned entities. Where these employers are not complying with the agreed upon goals of the Federal Contract Program, they stand to lose their contracts with state owned entities. A similar legislation exists in the South African context in the form of the BBBEE Act. Thus, a similar model is applied in response to dealing with systematic discrimination in the workplace (Agocs, 2002; Jain et al., 2012). The BBBEEA, however, goes beyond the scope of discrimination in the workplace. It covers other elements of economic empowerment for designated groups (Republic of South Africa, 2013a).

2.8.4 Namibia's history on Employment Equity

Namibia has gone through several phases of colonisation. In 1920, after being a German colony for over thirty years, it fell under the South African government administration. Apartheid policies were extended into Namibia in 1948, then called South West Africa, and these led to discrimination based on race and ethnicity as was the case in South Africa. On 21 March 1990, Namibia gained its independence after a bitter war with the South West African People's Organisation (SWAPO) (South African History Online, 2019; Thomas, 2002). The history of employment equity in Namibia is based on lessons from the South African's enactment and implementation of the EEA. The Employment Equity Act in Namibia was passed in 1998, the same year that the South African EEA was passed.

The objectives of the EEA in Namibia are to achieve equity as well as to prohibit an act in the workplace that seeks to discriminate against designated groups. The EEA also seeks to remove all unfair barriers to the advancement of the Black majority in Namibia (Republic of Namibia, 2010, p. ii). Since the Namibian and South African government were the same Afrikaner apartheid regime prior to democracy, it follows that most of the challenges to equality were the same and as such the lessons learnt in the South African context would be valuable to Namibia. There is, however, one fundamental difference between the two Acts. While the South African CEE's mandate as per the EEA is primarily that of advisor to the Minister, the Namibian Employment Equity Commission (EEC) has an implementation and oversight function, which empowers it to also administer punitive measures against employers and is prescribed in the Namibian EEA (Republic of Namibia, 1998). This allows for swift action from an agency that is mandated to ensure effectiveness of the Act. This ability to enforce bears fruitful results for the EEC as it puts in its purview the ability to control consequences to non-compliance and to follow through on consequence management. This mandate enables the EEC to have certain powers to enforce, a role which under the South African EEA is given to the Inspectorate and Enforcement Service (IES), a directorate under the Department of Employment and Labour (Republic of South Africa, 1998b).

2.8.5 Summary of lessons learnt through international experience

The South African employment equity legislation has up to 2023, followed similar principles in its implementation of the Act with regards to self-regulation as a modus operandi for implementation of the EEA as the countries mentioned above. The self-regulation principle is a common theme amongst all the countries mentioned in terms of legislation on employment equity except for Malaysia. These legislations trust in the good faith of employers to implement the legislation without having to be dictated to on how and at what pace to effect transformation in the workplace. A challenge that has arisen in all these countries in terms of progress is that the pace of transformation is slow (Botha, 1995; Thomas, 2002).

Malaysia's approach to employment equity has been different in that the government imposed quotas, which has enabled accelerated employment equity and economic

empowerment of the majority (Gomez, 2003). The imposition of quotas, while contrary to the ILO Conventions 111, liberated the Malaysian government to chase targets set in terms of economic empowerment, and this has led to a steady progress towards the desired results (Gomez, 2003; The Equal Rights Trust in conjunction with Tenaganita, 2012). The challenge for South Africa, is that it has ratified Convention 111 and that means quotas can never be imposed on designated employers. However, South Africa has been able to move from self-regulation to imposed sector targets set by the Minister of Employment and Labour based on advice from the CEE (Republic of South Africa, 2022). The Amendment Act governing this has however not been implemented yet.

The main difference between quotas and targets, is that quotas are inflexible and mandatory and as a result must be achieved by employers at all costs. South Africa's sector targets, however, allow for flexibility, which is what differentiates them from quotas. This flexibility allows designated employers to cite justifiable reasons stipulated in regulation 15 of the Employment Equity Amendment Regulations for non-achievement of the targets (Department of Labour, 2018). Furthermore, the second tier of flexibility is in the provision that employers still have the power to consult with their employees to set annual employment equity targets, which will lead to the achievement of the sector targets (Commission for Employment Equity, 2023; Department of Labour, 2018; Republic of South Africa, 2022). Quotas are stricter but as discussed, non-compliant to ILO prescripts. South Africa is yet to determine the effectiveness of sector targets after the implementation date of the EE Amendment Act is propagated.

Thomas (2002) suggests that in countries where there is economic growth, progress in the space of affirmative action is higher. Countries like Canada are said to be doing better than South Africa for this reason (Thomas, 2002). This argument, although plausible can be questioned and should be interrogated further since a comparison of statistical analyses in the CEE annual reports have demonstrated over the years that good economic growth does not necessarily equate to an acceleration of employment equity (Department of Labour, 2006, 2010, 2015, 2017, 2019a). One of the realities is that while most countries that are implementing employment equity are redressing the minority, South Africa is redressing the majority and this may have other elements that

are not being considered such as the impact of the lived experience on the majority, and how those influence investor and employer sentiments.

Thomas (2002) further raises the issue of management commitment to employment equity as one of the indicators of success. She refers to Zimbabwe as one country in which success was achieved in companies where management was committed to employment equity. This is also supported by findings of the CEE in their stakeholder engagements (Commission for Employment Equity, 2017). This seems to be more the case in the South African context. The power to create change in the companies really resides with the leadership of the organisations as they set the tone in terms of the culture of the organisation as well as their definition of what is acceptable or not. Katz (1982) is cited by Thomas (2002) as asserting that established groups prefer to maintain the status quo rather than change it to a less favourable reality for themselves. This issue again brings into question whether self-regulation can be relied on in an environment where employers do not show commitment.

Canada and USA have as part of their employment equity strategies, looked at ways of dealing with systemic discrimination, and South Africa has followed their example. Measures such as training and development are effective in advancing employment equity and have been encouraged to promote equity. South Africa has in the EEA also integrated these as part of affirmative action measures (Thomas, 2002). However, what seems to be lacking is a more rigorous evaluation of the implementation of these programs other than relying on what is reported by employers, in all the above-mentioned countries including South Africa. From a South African perspective, monitoring and enforcement within the IES does not include a procedure for ensuring that periodic evaluation of these measures is taking place.

As a result, the CEE must rely on an honest reflection of the barrier analysis in the reports sent by employers and over the years the extent of an honest barrier analysis remains unproven (Department of Labour, 2017). The major similarity is that none of these countries have reported a progressive pace of transformation in the labour market, indicative that progress is slow. It is worth investigating whether the policing approach to the employment equity legislation may be a factor that leads to the gradual pace of implementation of employment equity. It is after all, something that they all share. A question worth asking is whether this leads to begrudging compliance?

Secondly, could it be that there is a need for a complementary model in all these countries that would accelerate the pace of employment equity?

In all these cases, with the exception of Malaysia, the power to implement employment equity lies with the employer and the literature suggests that there is resistance to implement it (Botha, 1995; Thomas, 2002). Hence, the power dynamic cannot be ignored. The powerful dictate the terms of change and that explains why in Malaysia, where the power is vested in government which dictates quotas, employment equity is robustly driven and pursued by employers. While this is still an enforcement and policing approach, it leaves no room for self-regulation, and thus makes it different from the countries stated above. More information around the power dynamic needs to be unearthed to arrive at a robust model that can address this, especially in countries that are restricted by the prescripts of Convention 111. There are similarities between the different countries cited above, but it can be argued that South Africa has its own peculiarities in terms of the implementation of employment equity. The struggle with political will and a commitment from all parties involved, have their own unique South African elements that may call for a nuanced approach.

2.9 The Institutional framework for the South African Employment Equity Act

The researcher has included this literature review to highlight the theoretical intents of the institutional framework and to demonstrate the flaws that arise from this in the application of the law. While this section focuses primarily on intent, later in this document, it is evident that there are some challenges in application as articulated by the participants. This section, therefore, sets the scene for the insights identified through the data collection phase of this research.

Pelizzo and Stapenhurst (2012), examine the vital importance of legislative oversight in strengthening democratic governance. These authors contend that effective oversight is crucial for holding the executive accountable, promoting transparency, and creating sustainable change. It is with this assertion in mind that the researcher is convinced that an interrogation of the legislation in identifying why such legislation is effective or not remains incomplete, unless such an interrogation is accompanied by an examination of the institutional framework that governs implementation of such legislation.

An analysis of the institutional framework, enables the reader to have a deeper understanding of the challenges in implementation and enforcement and thus the need to incorporate this into this chapter of the study.

Legislation that seeks to accomplish behavioural change can only be achieved if the institutions are considered effective in dealing with non-compliance and effectively implement consequence management (OECD, 2014). Levitsky and Murillo (2009) suggest that rules that are written down on paper, do not automatically result in a change in behaviour just because they are documented, they need to be supported by strong institutions. Institutional strength they assert, is based on two factors; the stability of the institution and its ability to enforce the rules (Levitsky & Murillo, 2009). It therefore becomes critical to examine the institutional framework within the employment equity space when looking at sustainable behaviour change that is brought about by rules. The roles the different institutions that interface with employment equity play, are important to understand in contextualising the EEA operations. There are primarily three types of institutions that operate in the South African employment equity space. These are institutions that:

- Formulate policies and play an advisory role around the EEA.
- Drive monitoring and enforcement of the EEA.
- Resolve disputes.

These institutions are discussed below.

2.9.1 The Commission for Employment Equity (CEE)

The CEE is an advisory body. In the initial conception of the institutional framework to support the EEA, the CEE was referred to as the Employment Equity Advisory Council (Department of Labour, 1996b). This was later then referred to as the Commission for Employment Equity and that is the name referred to in the Employment Equity Act No 55 of 1998. The mandate of the CEE, according to s30 of the EEA is to advise the Minister on:

- Codes of Good Practice issued by the Minister in terms of section 54.
- Regulations made by the Minister in terms of section 55; and

- Policy and any other matter concerning this act.

In addition to the functions in subsection (1) the Commission may –

- Make awards recognising achievements of employers in furthering the purpose of this Act,
- Research and report to the Minister on any matter relating to the application of this Act, including appropriate and well-researched norms and benchmarks for the setting of numerical goals in various sectors; and
- Perform any other prescribed function (Republic of South Africa, 1998a).

Included in this mandate is also monitoring the progress of the EEA in the labour market (Department of Labour, 1996b). The CEE comments on the state of progress around employment equity in the country through an annual report and further proposes solutions that will deal with anomalies or patterns in employment equity, that may lead to disintegration of the labour market functioning and ultimately the disintegration of the South African society.

2.9.2 The Directorate for Employment Equity

This directorate is responsible for guiding the process of formulating and implementing policies related to the EEA as well as providing support to the Commission (Department of Labour, 1996a). The CEE and the Directorate for Employment Equity are responsible for driving amendments to the EEA, providing guidance to employers and employees on the implementation of the EEA through Regulations, Codes of Good Practice and Technical Assistance Guidelines. While the CEE is made up of part-time commissioners, the directorate has full-time bureaucrats who manage the operations of the CEE and drive the engagements with stakeholders on a continual basis (Department of Labour, 1996b).

2.9.3 The Enforcement Agents

The Inspection and Enforcement Services (IES) within the Department of Employment and Labour; the Commission for Conciliation, Mediation and Arbitration (CCMA), and the Labour Court are responsible for the maintenance of boundaries and standards in,

what is determined to be, acceptable behaviour. They fit the classification of regulatory agencies in some ways as they would be covered in the following definition: “A regulatory agency is a governmental body that is created by a legislature to implement and enforce specific laws. An agency has quasi-legislative functions, executive functions, and judicial functions” (Study.com, 2015, 1:02).

2.9.4 The Inspection and Enforcement Services

The IES audits companies to verify that standards and boundaries are complied with, in the normal course of business. This is a monitoring and evaluation role (Department of Labour, 1996b). The verifications would take the form of a DG Review, which is a systematic process of investigating compliance or a random check. The Inspectors have, over the years, been working on all labour legislation, and therefore, have not specialised in the field of employment equity. This function is therefore executed by officials who do not necessarily have expertise in the employment equity space. Secondly, their scope of work is broad, including basic conditions of employment as well as health and safety issues. The biggest complaint against the IES is that there is a shortage of inspectors. This, coupled with the lack of specialisation, is said to be compromising the functions of the IES (Department of Employment and Labour, 2019b). A further result of this is also poor monitoring to ensure effective enforcement in the employment equity space.

2.9.5 The Commission for Conciliation, Mediation and Arbitration; and the Labour Court

The Commission for Conciliation, Mediation and Arbitration (CCMA) and Labour court’s primary function is to adjudicate disputes declared by employees in relation to the contravention of standards and boundaries set out in the EEA and other labour legislations. The CCMA forms an integral part of the system of the EEA implementation. Its main function is labour dispute resolution with the main purpose of promoting social justice and fairness (Rapatsa, 2018; Republic of South Africa, 1995). The CCMA hears labour disputes declared mainly by employees based on several labour laws, with the EEA being one of them.

Commissioners preside over the hearing and make rulings and sanctions on the matters (Republic of South Africa, 1995). What is concerning though is that in seeking to maintain standards, the law does not facilitate equitable solutions to discrimination cases. The remedying of wrongdoing by employers has certain limitations. Awards made in favour of employees are often financial. This means that in most cases the employee walks away from the employer-employee relationship with money but their job is not restored as the courts or the CCMA cannot compel an employer to reappoint an employee against their will (Lustgarten, 1986).

In most cases, this is not ideal as awards are often less than the financial benefit of being employed in the long-term (Lustgarten, 1986; Masunungure, 2019). Secondly, employees are often not equipped to represent themselves competently and to navigate the technical nuances of litigation. “The element of skill also means that each potential loophole will be explored in depth – or is it breadth? – delaying tactics adopted and the likes” (Lustgarten, 1986, p. 77). Often in these cases, the employees become discouraged and run out of funding to continue the legal battle against an employer with financial muscle, as employers use every technicality in the book to get the employee totally discouraged and disarmed. This perpetuates the power and control that employers have over the situation and employees often walk away from the cases before they are concluded (Commission for Employment Equity, 2010; Masunungure, 2019).

While the Labour Courts can make financially substantial awards for employees who have been discriminated against, the Labour court processes require employees to use legal experts, mainly advocates and this process is expensive and often unaffordable for most employees (Israelstam, 2022). The CCMA, and Labour Courts seem to wield power but in practical terms, the power still vests with the employer, as employers may remedy disputes based on the outcome of the disputes of the employees, on a case-by-case basis without addressing the actual barriers in the workplace. The different agents that are responsible for regulation, enforcement and adjudication of the EEA are all left wanting in some way in providing awards for employees that ensure that remedies for discrimination are fair and impactful. There is a powerlessness that the legislation is unable to address. As a result, the progress of the EEA is slow because employers continue to flout the law knowing that there are

no material consequences other than fines for which they can continue to budget for (Commission for Employment Equity, 2017).

2.10 Conclusion

The purpose of the literature review was to demonstrate the complexity of equality as a legal and philosophical concept. The review focused on the definitions and differences in interpretation as well as the complexity of the measurement of this equality. The arguments resulting from the intricate nature of the concept was discussed, leading to an exploration of how these have helped to frame employment equity in different countries. The analysis of the different country's perspectives on employment equity led to a discourse on the influence of international experience on employment equity in the South Africa legislation. The chapter provided the similarities and differences as well as challenges experienced in the different countries mentioned. Furthermore, transformation legislation has been discussed in terms of its impact on economic redress and the challenges associated with the implementation of both the BBBEEA and EE were shared. Power as a strong factor, that restricts the effective implementation of the EEA has been dealt with, as well as what is meant by a business case for diversity and inclusion.

In exploring the impact of legislation on behaviour change, the literature review further analysed the short comings of legislation and to take some position around what else is needed to make the law effective. However, a few areas remain unanswered, and these are summarised below.

The literature review has not been able to articulate a mechanism to accelerate employment equity in the labour market because legislation independently is not able to achieve this acceleration. While some researchers offer solutions at an organisational level (Horwitz & Jain, 2011; Leonard & Grobler, 2006), these cannot in the researcher's opinion, be applied to create overall labour market change. The impact of power does not appear to have been discussed in depth and solutions to this are not forthcoming in literature. Latent power dynamics remain a factor that maintains the status quo but is not fully addressed.

The literature shares the power play between legislation and its enforcers and the powerful employers who can define what is doable and what is not, despite what has been legislated (April et al., 2007; Booysen, 2007). The researcher could find no intervention that dealt with addressing this area. It seems that this remains a gap in knowledge. In the literature review, there seems to be a deficit in terms of the identification of key principles that are central to the acceleration of employment equity. This research intends to fill these gaps, and asks the following questions to align with the objectives stipulated in the chapter:

- What would a model that complements legislation in accelerating employment equity in South Africa look like?
- What are the obstacles to employment equity in the current legislative framework?
- What are the latent power dynamics that maintain the status quo in the South African workplace on issues of employment equity?
- What principles are central to the acceleration of employment equity in South Africa?

Empirical research will be conducted to answer these research questions and fulfil the objectives of the research.

CHAPTER 3. RESEARCH METHODOLOGY

According to Kivunja and Kuyini (2017), research methodology is a system of methods used in the process of research to cover research design, approaches and procedures used in an investigation that is well planned to observe something. This covers elements such as, how the study is cogitated, data will be collected, analysed and interpreted. Paradigms, assumptions, and ethical issues will also be discussed in this chapter.

3.1 Research paradigm

Inherent in every argument or discourse are paradigms. Paradigms or worldviews form the base for the way we think or view the world and thus our interpretation of events in the world (Guba & Lincoln, 1994). According to these authors, paradigms not only affect content, but affect the methodology that the researcher chooses, and how the data is deconstructed in the analysis phase. Kivunja (2017, p. 29) cite Lincoln (1990) as defining paradigm "….as alternative world views with such pervasive effects that …permeates every aspect of research inquiry…". Lather (1986) describes a research paradigm as reflective of the beliefs of the researcher and the world that s/he lives in or wishes to live in. This worldview drives how a researcher perceives and interprets events in the world and thus how such perceptions are conveyed to others. It therefore becomes pertinent that focus is given to this paradigm as it influences how data is collected, analysed and interpreted (Rossman & Rallis, 2003). Creswell (2014) uses the concept of worldview which he defines as the basic ideas of the world. When investigating paradigms and worldviews, it can be concluded that the two concepts mean the same thing and the researcher will use the word worldview to refer to paradigms going forward in this chapter. Creswell (2014), focuses in detail on five worldviews, which are positivist, and postpositivist which includes, constructivist, transformative and pragmatic.

The positivist worldview is that the truth is objective and can be empirically observed and measured. Positivists tend to focus on verifying theories and follow a scientific method in doing research (Creswell, 2014; Saunders et al., 2007). This worldview is most suitable for quantitative studies.

It would not be suitable for this study because the theoretical base of this research already takes a position that the truth is not objective. Neither would the transformative worldview as it advocates that research should not just yield information and knowledge, but that it should have an action agenda (Creswell, 2014). This worldview suggests that research is intertwined with politics and a political change agenda, and as a result, research must extend its influence towards action that empowers the participants to change their own circumstances. The transformative worldview holds that the constructivist worldview is lacking because it does not deal with the plight of the marginalised people (Creswell, 2014). This research limits its results to information gathering and expanding knowledge. The objectives of this research as outlined in section 1.5 do not extend its purpose to action, and thus this worldview would not be well suited, as it would force the research to pursue the action agenda.

The pragmatic worldview would also be inappropriate for this research as it does not commit itself to any worldview. Truth is based on what works at that time in this worldview (Creswell, 2014). It focuses on practical outcomes of research without taking a philosophical position. Creswell and Clark (2017) argue that this worldview is most suited for mixed method research and not necessarily purely qualitative research. For this reason, a pragmatic worldview would not be well-matched to this research as it is purely qualitative research.

The primary theory that is used as a theoretical framework, which defines her worldview for this research is Foucault's theory on Power. Foucault's theory on Power suggests that power is always in a state of flux and is not sovereign. This theory further suggests that with power comes the authority to define truth. Ultimately, what is truth is truth because people believe that it is truth. Foucault refers to this as the politics of truth (Foucault, 1970; McHoul, 2015).

The secondary theory that is used in this research is by Bourdieu, and it focuses on social capital and habitus, illustrating how social structures and individual agency shape social positions and interactions within society. Social capital refers to the resources accessible to an individual, while habitus encompasses the ingrained dispositions, skills, and attitudes developed through life experiences. Together, these factors position individuals or groups along a spectrum of power and privilege.

Conversely, those lacking social capital often find themselves at a disadvantage, missing out on the associated power. Furthermore, social capital is influenced by economic privilege, which Bourdieu terms economic capital, and is frequently accompanied by cultural capital—the advantages that come from education and the status it confers (Bourdieu, 1977, 1986; Lin, 2000).

Both theories provide a robust analysis of employment equity by highlighting the complex interrelationship between power, social structures, and individual agency. They reveal how these elements can be navigated and challenged in the pursuit of employment equity in the workplace. In this context, both power and social capital can be leveraged to access equity.

A compatible data analysis theory to Foucault's theory of power is Critical Discourse Analysis (CDA), which Kivunja (2017) refers to as the constructivist or interpretivist worldview. In terms of CDA, "…the 'battle for truth' is not for some absolute truth that can be discovered and accepted, but is a battle about the rules according to which the true and false are separated and specific effects of power attached to the true…" (Anonymous, 2010, para. 5). Similarly, CDA examines how language can simultaneously reinforce and challenge power structures, making it a valuable tool for analyzing social capital and habitus in the context of employment equity. This approach aligns with the idea that social networks play a crucial role in wielding power and legitimizing social equality.

This means that through social interactions, meaning is created and based on experience through the lens of power. This research sought to develop a complementary model to legislation for the acceleration of employment equity. The research unpacked the experiences of employment equity implementation by those who interact with the relevant legislation as the researcher aimed to co-create with her participants a model that would be effective in the acceleration of employment equity. Thus, the truth as defined by these role players that form the sample used, play a critical role in identifying the truth through their experiences in the workplace. Saunders et al. (2007) refers to this co-creation as nominalism and this is what CDA will unpack as part of the data analysis.

The constructivist worldview aligns with both Foucault's theory on Power, Bourdieu's theory of social capital and habitus, as well as CDA in that it suggests that reality and truth are socially constructed and that there is no objective, neutral reality or truth (White, 2004). People make sense of their world through social interactions and meaning is therefore always subjective and based on personal experience and because human behaviour is multi-layered it cannot be predetermined. Researchers using this worldview seek to find out the different perspectives of phenomena and the approach is about getting into the head of participants so as to understand their meaning in context (Creswell, 2014; Guba, 1994; Kivunja, 2017; Saunders et al., 2007).

The constructivist worldview, which is the worldview employed in this research "… assumes a relativist ontology, subjectivist epistemology, naturalist methodology and balanced axiology" (Kivunja, 2017, p. 33). Saunders et al. (2007) go further to explain the concept of social constructivism and argue that through social interactions meaning is constructed intersubjectively and that furthermore, reality and meaning are in a constant state of flux, based on the meaning attached through social interaction. This is aligned to the position that Foucault and Bourdieu takes on the issue of power, and thus fits with the theory underpinning this research (Bourdieu, 1977, 1986; McHoul, 2015). Ontology, Saunders et al. (2007) assert, concerns itself with assumptions about the nature of reality. It studies the beliefs of the researcher about the nature of existence.

A relativist ontology means that the researcher believes that reality is multi-layered and can be explored through social interactions (Kivunja, 2017; Saunders et al., 2007). This ontology is well suited to constructivism and to the theories that will be employed in this research.

Epistemology concerns itself with assumptions about knowledge (Guba & Lincoln, 1994; Saunders et al., 2007). It answers questions like "how do we know what we know?"(Saunders et al., 2007, p. 135). In the paragraphs above, the researcher acknowledges that she subscribes to the notion that there is no single truth, and that truth is co-created in social relationships. Therefore, an epistemology that assumes that knowledge is made up of a subjectively constructed reality would match the

worldview and theoretical position of the researcher. The subjectivist epistemology is therefore most aligned.

A naturalist methodology allows the researcher to utilise data that is gathered through discourse, reflective sessions, interviews as well as text messages (Guba & Lincoln, 1994; Kivunja, 2017). In this case, the researcher is also considered a participant observer as she cannot claim that her interventions do not in any way influence the outcome of the data collection process. The inquirer is cast in the role of participant and facilitator in this process (Guba, 1994). This presents potential limitations but will be dealt with in section 3.9 below titled “limitations of the research”.

Axiology is about ethical issues that need to be considered in embarking on the research. One of the key questions that is asked from an axiology point of view is “Should we try to be morally neutral when we do research, or should we let our values shape research?” (Saunders et al., 2007, p. 135). Another pertinent question that Saunders et al. (2007) asks, is how the researcher should deal with the values of the participants in the research. These questions seek to address axiology, in that they deal with the ethics that govern the research process and how data should be viewed from a moral standpoint. They demand an acknowledgement of the fact that the results cannot be considered objective as they are affected by the values of both the researcher and the participants. Hence, as stated above, the axiology that is most appropriate for a constructivist worldview is a balanced axiology.

A balanced axiology assumes that the results of the research cannot claim objectivity but will reflect the values of the researcher and for this reason, it is critical that the researcher declares her values (Guba & Lincoln, 1994; Saunders et al., 2007). The researcher does believe that she brings into this research her own meaning which has been created through her personal experiences and the social interactions that she has engaged in. It is also for this reason that the researcher shares her intimate connection with the subject matter under Section 3.8: Reflexivity.

3.2 Research design

Research designs are the types of inquiries that are used for providing a specific focus to the research. They provide a framework of how information was collected and

analysed. Creswell (2014) identifies three types of research designs, which are quantitative, qualitative and mixed methods.

Quantitative research focuses on observable social realities that can be measured using external data collection processes. This type of design concerns itself mainly with objective reality while, qualitative research focuses on understanding human behaviour. A qualitative approach interrogates meaning within the view of the individual being studied, as well as the purpose attached to the meaning by the actor (Guba, 1994). Qualitative studies therefore provide deep and rich insights of human behaviour. Mixed methods use both quantitative and qualitative methods of data collection and integrates the data at different stages of the inquiry (Creswell, 2014).

The selection of a research design is dependent on the nature of the problem being addressed. Problems that explore the experiences and meaning that individuals attach to social and human realities are more suited to qualitative research, while quantitative research addresses objective theories (Creswell, 2014; Guba, 1994). As already indicated in section 3.1, the focus of this study is on human behaviour and exploring the meaning attached to these.

The qualitative research design is therefore most appropriate for this research, mainly because the nature of the objectives of the research are exploratory (Castleberry & Nolen, 2018; Creswell & Clark, 2017).

Canham (2014) cites Smith (2003) as having identified three major advantages of using qualitative research. These advantages are that qualitative research enables a researcher to identify certain dynamics in human interaction as they emerge in data collection. Secondly, the researcher is a conduit in data collection and its analysis and as a result would be able to note and attach meaning to certain behaviour that is both verbal and non-verbal. Finally, the researcher is able to check understanding of what they hear their participants say in the moment (Canham, 2014). The researcher was conscious of these advantages, and they have indeed enriched the research.

Exploratory research tends to explore a subject matter that we know very little about and seek to expand on it (Castleberry & Nolen, 2018). A model that complements legislation in the employment equity space is novel and requires depth to add theoretical value to the discourse on employment equity.

There are 4 major qualitative genres to research – ethnological, phenomenological, socio-communication and case studies (Rossman & Rallis, 2003). The phenomenological genre is one that fits this study the best because it focuses on the individual, subjective experience and their experience of the world (Rossman & Rallis, 2003). This genre seeks to understand the lived experiences of people and does this through in-depth engagements. Meaning attached to experiences is interrogated to understand how constructs emerge and how a common interpretation of that experience becomes a reality (Austin & Sutton, 2014). In this research, much of the work went into understanding how lived experiences of the individuals who legislate, study and implement employment equity, frame the reality of employment equity and further inhibit or promote its acceleration. Additionally, the study concludes by identifying a model that supports the acceleration of employment equity. Thus, the phenomenological approach is best suited to achieve that end.

The ethnological genre would not be suitable to this type of study, because it is only relevant to the understanding of cultures – beliefs and values shared by a group of people. The socio-communication studies, while somewhat relevant as it focuses on how groups meaning is established and maintained, falls short in that it limits itself to what words and behaviour are symbolised and does not allow for the use of other tools of inquiry beyond naturally occurring speeches, events, and interactions. Consequently, the research would have to rely purely on data that is not necessarily designed to yield the results that this research sought to answer. Case studies also have limited relevance to this study as they limit themselves to a single event as the unit of analysis. Case studies are also either descriptive or explanatory by nature, whereas this research is exploratory. For this reason case studies were not appropriate (Rossman & Rallis, 2003).

3.3 Data collection methods

This research is exploratory, with the purpose of understanding what problems exist in the implementation and expediting of the EEA in the workplace and how to solve these problems. Although much research has taken place in the field of employment equity, none have sought to develop a model that supports legislation. What this means is that minimal data exists in this area and as such, an exploratory approach

would be most relevant to collect new data. As a result, the research will use interviews as a primary method of data collection.

Interviews in qualitative research seek to unearth, describe and attach meaning to the story of the participant (Coughlan, 2009). They cover facts in communication and are a very powerful tool for gaining insight into a person's experience and the meaning attached to that experience. This research used semi-structured interviews as a data collection tool. Semi-structured interviews are a more flexible approach of collecting data, as opposed to structured interviews, because they create room for the participant to deviate from the script and to give in-depth rich information (Austin & Sutton, 2014).

Meaning can also be explored with the participants, without worrying that the researcher is side tracked, while gaining rich data from those who have experience with employment equity (Coughlan, 2009). Seidman (2006) suggests a series of three interviews per participant; the first interview focuses on the participant's history, the second on the experience of interest and the third interview will focus on reflective dialogue.

> Making sense or making meaning requires that participants look at how the factors in their lives interacted to bring them to their present situation. It also requires that they look at their present experience in detail and within the context in which it occurs. The combination of exploring the past to clarify the events that led participants to where they are now, and describing the concrete details of their present experience, establishes conditions for reflecting upon what they are currently doing in their lives. The third interview can be productive only if the foundation for it has been established in the first two (Seidman, 2006, pp. 18-19).

Although Seidman's approach is extensive and would have probably yielded very good results for this research, three interviews would have been time consuming. Given the profile of participants that were approached for this research, it would have been impractical to conduct three interviews, due to their busy schedules. The researcher worked on a phased approach to the interview, such that some elements of the interviews recommended by Seidman were streamlined into a single interview, from a content perspective.

Through dialogue and extensive engagements, meaning was extracted, analysed and synthesised into the findings for this research (Rossman & Rallis, 2003). In this way, the participants provided historical information and explored possible diverse ways that could lead to a desired result in the state of the velocity of the implementation of employment equity. In line with recommendations by Seidman (2006) and Polkinghorne (2005) all interviews were videorecorded and the researcher also made notes to capture non-verbal communication which form a substantial base for data in the research process. The interview schedule is attached hereto as Appendix 1.

3.4 Population and sampling method

Below is a discussion of the target population and sampling techniques that were used to select the participants for the research.

3.4.1 Population

“Participants and documents for a qualitative study are not selected because they fulfil the representative requirements of statistical inference but because they can provide substantial contributions to filling out the structure and character of the experience under investigation” (Polkinghorne, 2005, p. 139). The researcher used this understanding to decide the population and the requisite sample. The population for this research is individuals who are entrusted with the task of either policy formulation, implementation of the EEA prescripts or who are thought leaders in the field of employment equity. These individuals may in terms of the roles they play, have experience in the application and implementation of the EEA.

The first category is Section 21 managers (herein referred to as s21 managers) who are defined in the EEA as custodians of employment equity. Section 21 of the EEA states that an employer must appoint a permanent employee that reports directly to the Accounting Officer / Chief Executive Officer (CEO) on matters of employment equity. These s21 managers are held accountable for the implementation of EE within their organisations. Their experience with the implementation of employment equity will contribute to the research.

The Accounting Officers/ Chief Executive Officers, according to the EEA, are also accountable for the implementation and oversight of the EEA provisions (Republic of South Africa, 1998b, s 21 (4) and s 24 (1) (a)). For this reason, CEOs of designated employers formed part of the population. This population is most suitable to this research because individuals that have the experience in implementing the EEA or who are held responsible for its success, are most likely to be knowledgeable on the implementation challenges and may have given thought to why progress is slow.

The Accounting Officers and s21 Managers were selected from the 18 Sectors as defined by the EEA Amendment Act 2022, to ensure diverse representation in the research. In each of the 18 Sectors of the economy, employers have had to implement the EEA and effect transformation.

To select samples for the population, the following criteria was applied:

- EE Managers or CEOs who are representing a designated employer that reports in terms of s21 of the EEA.
- EE Managers or CEOs who have been involved in Stakeholder Engagements with either the CEE or the Department of Employment and Labour.
- EE Managers or CEOs that have at least 5 years' experience in implementing the EEA.

The research aimed to interview at least one participant from each of the 18 Sectors identified in the EE Amendment Act 2022.

The second category of the population was members of the Labour Market Chamber of the National Economic Development and Labour Market Council (Nedlac). The Labour Market Chamber Representatives are made up of social partners, namely the Employer, Organised Labour, Government and Organised Community. The Labour Market Chamber is responsible for influencing labour market policies and ensuring the implementation thereof. These representatives have deep insights into these policies and influence the change to these policies where necessary.

Finally, a population of thought leaders on employment equity was included. These are individuals who have either written extensively on employment equity or have been part of the drafting of policy tools for employment equity.

What characterises this population, is that they do not only write on the subject matter but have extensive years of experience in the field and their views are considered by policy makers and implementors as influential in the arena. They either have sat or sit in fora that have influenced economic transformation in the country or have written numerous papers on the subject matter.

3.4.2 Sampling

The sampling method used in the research is purposive sampling. Purposive sampling, also known as judgemental, deliberate or selective sampling, is most appropriate in this research since it allows the researcher to find participants that are knowledgeable on the subject matter and can therefore provide a meaningful contribution to the research (Tongco, 2007). Whilst purposive sampling does not guarantee being representative of the population, it does guarantee rich informative data based on the depth of knowledge and experience of the participants. According to Polkinghorne (2005), the participants need to fit the very specific profile mentioned above, and in this way, be in a position to provide rich informative data based on their knowledge and experience, in order for them to add value to the research.

The researcher initially envisaged to interview between 20 - 30 participants. While Austin and Sutton (2014) quote Miles and Huberman (2009) as saying that a sample that exceeds 15 participants may make the analysis complicated and unwieldy, the researcher chose this number to enable triangulation of the experiences. In this way, data progressed beyond a single view of the experience, to a deepened understanding of the experience under investigation based on multiple inputs (Polkinghorne, 2005).

Throughout the data collection process, the researcher assessed the usefulness of the sample and adjusted the list to ensure that the most suitable participants were selected. Thus a “snowballing strategy” was engaged, where those who were interviewed were asked if they know other people that they believe could add value through their own experience (Polkinghorne, 2005). This strategy was particularly useful in identifying role players in different sectors as it emerged that there was a significant network of thought leaders amongst the different sectors. The strategy was also effective in sourcing the contact details of these role players.

Whilst the researcher had planned on a sample size of 20 - 30 participants, saturation was realised before the 30 could be reached. By the 21st participant, the researcher was convinced from reading through the different responses that no further ideas were emerging any more (Mason, 2010). Appendix 2 provides the profiles of respondents by position or context, codes used in Chapter 4 for identifying the respondents, as well as the dates and times of the interviews. In cases where respondents went through a follow-up interview, two dates will appear, the first one being for the initial interview and the second being the follow-up interview.

In coding these participants, the researcher used their area of expertise or operation to create a code name. A thought leader would have a code name that starts with TL, while a s21 Manager would have a code name that represents the sector within which they are employed. ER001 for instance, is a code name for a participant from the Education Sector, while ASAR001 is a participant from the Administrative and Support Activities Sector.

3.5 Research Instrument

As already indicated in Section 3.3 above, the semi-structured interviewing process was used and the researcher adapted the questions in order to allow for a natural flow of conversation with the participants (Austin & Sutton, 2014). All interviews were conducted via Zoom recording and in this way the researcher was able to capture non-verbal communication that emerges during the interview, to allow for rich data (Polkinghorne, 2005). At the start of the data collection, South Africa was in Level 5 lockdown because of the Covid-19 pandemic and as a result, it became more pragmatic to conduct the interviews online via Zoom as opposed to face-to-face interviewing. It was at that time illegal to conduct face-to-face meetings.

Permission was sought from the participants for the audio-visual recording of sessions using zoom technology. All participants were sent consent forms for their completion and permission was granted for such recording. After the data collection through the audio-visual recording the data was transcribed and the process of data cleaning and coding commenced (coding is covered in depth in the data analysis section 3.6). The researcher shared the themes that emerged from the interviews with some of the participants. Not all participants were available for the second session, where the

themes that emerged from the interview were discussed. Most of the participants are very busy, and it became difficult to secure the follow-up sessions with them. Only those who had the time to participate in this were taken through the process of sharing and confirming the researcher's understanding of the content as well as the themes that were emerging from the content (Austin & Sutton, 2014; Leech & Onwuegbuzie, 2007). Creswell (2014) suggests that data collection and analysis should happen simultaneously to aid in the formulation of codes and to continually interrogate the value of the questions asked. This, the researcher did while continuing with the interview process, thus interviewing and analysis were happening concurrently.

3.6 Data Analysis

Data analysis is a systematic way of bringing meaning to the data that has been collected in the research (Leech & Onwuegbuzie, 2007). It requires an organising and interrogation of the information collected, until patterns, themes, relationships and explanations emerge, that can build a theory around the subject matter (Leech & Onwuegbuzie, 2007). In this research, both Thematic and elements of Critical Discourse Analysis (CDA) were used to analyse the data.

Thematic analysis was useful in synthesising the data; to get to a point where shared and divergent meanings were established based on the inputs of the participants. It allows for the identification, analysis and reporting of patterns in the data collected (Castleberry & Nolen, 2018). The patterns that emerged through the interviews with participants, were instrumental in the formulation of the model that the researcher arrived at in the study.

On the other hand, CDA unearthed the latent issues to the impasse in accelerating employment equity and ensured that the designed model was not just superficial in its nature but had depth that was concomitant to the nature of the problem. "Critical discourse analysis (CDA) is a qualitative analytical approach for critically describing, interpreting, and explaining the ways in which discourses construct, maintain, and legitimize social inequalities" (Mullet, 2018, p. 116). CDA has three elements that can be used for analysing data; text, discursive practice and social practice (Al-Mas'udi, 2021). The researcher did not use all the categories of CDA but focused on text in the analysis of the empirical data.

The use of text in CDA is the analysis of actual content of the discourse, that is, the words and spoken words. By just focusing on text only in the CDA analysis, the analysis will remain coherent when integrated with thematic analysis.

In the theming process, the themes emerged from the content and meaning of experiences. CDA was used to look at how texts and the context of the language was used. The choice of words for example, were instructive in this analysis and it helped the researcher to arrive at a submerged meaning (van Dijk, 1998). As indicated, once the data collection process had started, the researcher began with the process of coding and continuously refined the coding as and when new data was collected.

In the constant comparison of data, the researcher could cluster data into smaller chunks that form meaningful parts. This process is called coding. In coding, data that is grouped together has a similar underlying theme. New data is compared to the existing clusters and if the data is not similar in terms of themes, then new chunks are created to accommodate new themes (Leech & Onwuegbuzie, 2007).

This allowed for refining of ideas and to ensure that the questions used in the schedule were yielding relevant data. Austin and Sutton (2014) suggest that member checking should be embarked upon during this time. Member checking is when the participants are consulted after their data has been coded to verify if the themes, arguments, and assertions made by the researcher, accurately describe the participants' intended meaning. Thus, the process of member checking was used to assist in increasing the accuracy of the meaning attached to the data. The researcher embarked on member checking while conducting the analysis to ensure that the meaning was as conveyed by the participants. This is how the researcher conducted the second interviews in cases where participants were available. ATLAS.ti was used to manage the coding process and to increase the level of accuracy, while simultaneously storing the information (Austin & Sutton, 2014).

3.7 Interpretation and Validation

Validation of data occurs throughout all the steps of the research process (Creswell, 2014). It is a process of verifying or confirming the findings from the standpoint of the researcher, the participants, as well as the reader. The researcher must maintain a

level of vigilance to protect the validity of the findings and must employ different mechanisms throughout the research process to increase the research rigor. Other words used for validity are trustworthiness, credibility and authenticity (Creswell, 2014; Guba & Lincoln, 1994).

Guba and Lincoln (1994) propose prolonged engagement as a way of increasing the credibility of the data collected and includes spending a considerable time with the literature, participants, and the data after the interview to familiarise and internalise the content and meaning of the interview. This data familiarisation process, enables the researcher to think through the data, test and confirm assumptions and to gain more understanding of the information. In this study, the researcher spent a minimum of an hour in most interviews with almost all the participants. The researcher listened and reflected to the participant the content of the interview and her understanding thereof. So, while there was a reflected schedule that was followed to give structure to the interview, the researcher probed for understanding and clarity where the responses seemed unclear.

Often the researcher would repeat what she heard the participant say, using her words to unpack what was shared by the respondent to ensure this clarity. Furthermore, the researcher spent extensive time reflecting on the data, by testing its meaning in written data she was exposed to it daily in her interaction with the subject in her day-to-day work (Guba, 1994). The researcher collected the data over a two-year period, as she immersed herself in the data, reading, analysing, and engaging with the content and literature.

This period also included the process of member checking, which as mentioned earlier is a process whereby themes as well as parts of the semi polished report are checked with participants to ensure accuracy and conformability in the way in which it is captured. This process, which tests for accuracy and increases the trustworthiness of the findings was also included to increase the credibility of the research (Creswell, 2014). See the detailed explanation of this in the data analysis section 3.6. The member checking was done via zoom and was recorded, to enable the researcher to revisit what was shared and recheck their understanding. However, only about 38% of the participants were willing or available for this process. What was apparent though was that the data was confirmed as accurate by all who went through the process, and

it can therefore be assumed that the researcher had a good understanding of the content across the contributors, which increases the reliability.

The researcher also shared a robust and detailed account of her experience during the interview by including descriptions of non-verbal behaviour such as gestures and the language used in the interviews which will be discussed more extensively in Chapter 4. While this was important for the Critical Discourse Analysis, it also provided a thick description of the interview content, which increases the transferability of the research data. Through this, the reader can see, feel, hear and touch the participant's experiences and relive the interview with the researcher, thus getting a fuller insight into the context of the interview and intensity of emotions attached to the responses (Guba, 1994).

Moreover, the use of computer–assisted qualitative data analysis software was employed in increasing the trustworthiness and credibility of the findings in that all data was stored on the system and would be open to verification and testing. The ATLAS.ti software was used for this purpose.

Guba and Lincoln (1994) argue that the trustworthiness of research is based on the research's ability to support the argument that the findings of the study are worth paying attention to. On the other hand, Elo et al. (2014) state that trustworthiness is made up of measures such as credibility, conformability, dependability, transferability, and authenticity. Thus, the researcher worked on ensuring that the findings are worth paying attention to by following the processes stipulated below:

- Credibility – To determine the true value of research, the reader must have a level of confidence that the information is true and correct (Elo et al., 2014). The researcher conducted member checking with 38% of the participants and in all cases, the participants confirmed that the understanding, and theming of the content of the interview had been done correctly and that indeed the information was true.
- Conformability - means "that the data accurately represents the information that the participants provided and the interpretations of the data are not invented by the inquirer" Polit and Beck (2012) as cited in Elo et al. (2014, p. 5). Connelly (2016) claims that the test of conformity is whether the results can be repeated

and consistent every time. The use of ATLAS.ti as well as member checking are believed to have been beneficial in ensuring conformity, in that they certified the accurate representation of the information even during the coding and theming process. The interview transcripts were exported to ATLAS.ti and while using NVivo coding, there was a level of consistency in which the software coded the information, in line with the content in the transcripts.

- Dependability - according to Connelly (2016), Elo et al. (2014) and Guba and Lincoln (1994), dependable research is one where the data is stable over time and in different conditions. To ensure dependability, the researcher recorded all sessions using Zoom, an audio-visual software, which captured the data and can be revisited whenever needed. In Chapter 4, the researcher also captured, non-verbal information that came through the interviews, to ensure that the reader gets detailed insight into the responses. All recordings are saved and kept in the cloud where they are unlikely to be lost or destroyed. Thus, data can be verified and used repeatedly to ascertain such stability.
- Transferability – Transferability is the same as generalisability in quantitative research and according to Guba and Lincoln (1994), is not something that a researcher can prove, but rather, should demonstrate that it can be applicable. The researcher has given a succinct description of the participants in Appendix 2 and shared their quotations in Chapter 4. In this way, it should be easier for the reader to decipher the contexts, and circumstances under which the study and resultant findings can be applied.
- Authenticity – According to Guba and Lincoln (1994), authenticity is achieved when the researcher can faithfully and with fairness share the realities of the data and its meaning. Through Critical Discourse Analysis, the researcher strove to share not only the contemporary meaning of words but the contexts as well as the dynamics that define the realities of the participants. This is further captured in the reflexivity process in Section 3.8 below, which states the exposure of the researcher, and her possible influence on the research.

In the following Section 3.8, the researcher has been transparent as she highlights her involvement in employment equity and how this may have shaped the findings of the research.

3.8 Reflexivity

Reflexivity can be defined as a sensitivity to the ways in which the researcher, the process of research, and the research outcome have been shaped by both the experiences and the assumptions of the researcher. It challenges the research to be mindful of the complexity of social interactions and how nothing, not even the research process, can be seen as entirely objective, in qualitative research at least. (Cooper & Endacott, 2007; Rossman & Rallis, 2003). These authors argue that the researcher through their biography, that is experiences, power, and status, interact with the subjects in the research. So, in short, the social capital of the researcher is not something we can dismiss along the research process. Moreover, the written words in any of the writing of the research cannot be perceived as objective, however entangled with the reality determined by the researcher and participants (Rossman & Rallis, 2003).

The social embeddedness of research cannot be ignored especially by any researcher using Critical Discourse Analysis. It has therefore, become critical to reflect on the fact that the researcher, is a part of a social practice and that all texts and language used are a part of a created social structure, to which she belongs and cannot therefore observe outside of this position (Mullet, 2018).

Van Dijk (1998) is quoted by Mullet (2018, p. 120) “Moreover, the trustworthiness of CDA research depends on transparent articulation of the researcher’s standpoint, both within their field and larger social contexts”.

As one of the key role players in the country in the employment equity space, it is important for the researcher to declare the interest and experiences related to this field and how it may impact on the research. The researcher has been a Commissioner of the Commission for Employment Equity (CEE) since May 2013. In 2015, the researcher was appointed by the Minister of Labour, the then Minister Mildred Oliphant as the Chairperson of the CEE. Her tenure ended in October 2020. In November 2020, the researcher was once more appointed by Minister Thulas Nxesi as Chairperson of the CEE for another 5-year term. The researcher held this position until March 2023.

According to Section 30 of the Employment Equity Act of 1998, the mandate of the CEE is to advise the Minister on codes of good practice, regulations, policy and any other matter concerning the Act (Republic of South Africa, 1998b).

The researcher has had to grapple with how to influence transformation in the labour market at an accelerated pace. Being an active and influential figure in this sphere, she can therefore not neglect her personal narrative, experience, and interest in this topic. The need for a faster pace of change in transforming the South African labour market resonates with the researcher's reason for existence because it is something that she is extremely passionate about. Andrews (2003) asserts that this context cannot be ignored and further maintains that to abandon those personal self-beginnings leads to dispassionate research. One of the objectives of the 2014 EEA amendments was to strengthen the implementation and enforcement mechanisms of the EEA. Legislation as a policy instrument, is driven from a perspective of policing the public to ensure that they comply, and in this way behaviour is changed (Rabeau, 1999). This approach creates an adversarial relationship which results in poor buy-in and no desire to change the status quo. The qualitative research that was conducted by the CEE alluded to this, with most participants confirming that employers actually budgeted for penalties associated with non-compliance (Commission for Employment Equity, 2017). It is at this point that the researcher was convinced that there must be a better way of achieving results in the implications and acceleration of employment equity. Consequently, the researcher recognizes that the exposure to and experiences within this context give rise to inherent biases.

The debate as to whether legislation does in fact change behaviour or not, has not been deliberated enough in the employment equity space. The researcher therefore sought to develop a model that can lead to a change in behaviour, tools that may be more efficient and effective than the current legislative prescripts. Over the years of involvement in the CEE, the researcher has not been convinced that legislation is the only and most effective tool that can achieve these results.

In dealing with the potential biases associated with the deep involvement in the employment equity space, the researcher spent significant time with the data, after it was collected through interviews, analysing it using the CDA elements as a way of creating a structured and more systematic way of interpreting it. The researcher read

and re-read the data and literature to ensure prolonged engagement and, in this way, confirm the accuracy of interpretation that was arrived at (Guba & Lincoln, 1994). This was done to increase the level of credibility of the data.

Furthermore, the researcher gave the participants an opportunity to review the coding that was done on their interview transcripts to assess the accuracy of coding. Participants who could avail themselves for this process were granted an opportunity to discuss the transcript and give approval of the codes. On all occasions, the participants were content with the codes. This process is recommended by Elo et al. (2014) and discussed in Section 3.7.

The researcher also subjected the data, literature and analysis to a peer review process to ensure that her biases did not compromise the quality of the findings. The researcher used fellow PhD candidates to share and reflect on possible biases during writer retreats. Merriam (2002) refers to these types of peers as external reviewers.

The researcher constantly subjected her data to other sources to ensure objectivity. Through access to the Department of Employment and Labour, data was verified, facts checked and where possible some crafters and policy formulators and enforcers engaged on some of the data that was emerging.

3.9 Limitations

The position of the researcher may be a limitation for the research. In Section 3.8 which focuses on reflexivity, the researcher has declared her participation in the employment equity field at a political level and in the public discourse on this topic. The researcher consults with companies in the employment equity space as well as the diversity and inclusion fields. The implication of this intimate involvement is that the researcher is not a neutral observer, and this may impact on the research. However, the researcher has listed under Section 3.7 and 3.8, ways in which she mitigated potential bias.

The interviews which are used as a data collection tool have their own limitations. “Because experience is not directly observable, data about it depends on the participants’ ability to reflectively discern aspects of their own experience and to

effectively communicate what they discern through the symbols of language" (Polkinghorne, 2005, p. 138). This means that it cannot be taken for granted that participants' self-report of their own experience is a mirrored reflection of the actual experience. If such reflective discernment is not done effectively, the reliability of the information can be questioned. Polkinghorne (2005) maintains that people do not have full access to their experiences, even the reflection on the experience tends to change the experience. However, the reality is that language remains the only way in which these experiences can be accessed.

Additionally, in line with the social constructivism paradigm, it can be argued that the interview with the participants were in themselves a co-created reality and not an objective reality of employment equity in its true form within the worldview of the participants (Saunders et al., 2007).

The impact of Covid-19 regulations may also have been a limitation on the research. Given that the researcher could not have physical face-to-face interviews with the participants due to the lockdown five and four stages of the regulations, it is possible that more observable, non-verbal communication may have been captured in this type of interview but was missed in the virtual meetings. Being in the same room with the participants would enable the researcher to have a more lived experience of the interview, which was minimised due to the use of technology.

3.10 Ethical considerations

In qualitative research, the researcher is also considered a research tool. Interviews require the researcher to interact with the participants at a personal level and this may create problems in ethics. Whereas other tools such as emailed questionnaires protect the identity of participants, face-to-face interviewing does not. The impersonal nature of emailed questionnaires protects the identity of participants and gives them a certain level of safety that comes with anonymity, which is not guaranteed in interviews (Creswell, 2014). Furthermore, how information is handled, stored and reported has serious implications for anonymity, confidentiality and informed consent (Sanjari et al., 2014).

While the researcher cannot guarantee anonymity since the identity of participants is known to her, the ways in which data is reported by using code names – pseudonyms, protects the identity of interviewees and confidentiality is assured by data safety.

Anonymity means that the personal information of individuals is protected and will not be disclosed unless in very specific circumstances (Sanjari et al., 2014). To ensure anonymity, the interview transcripts of the participants have been stored on the researcher's computer under files that are saved with encoded names instead of the participant's names. The audio-visual recordings were also stored with the encoded names instead of using the participants' real names. Even when integrating the data into the report, the code names of participants are used to avoid confusion. Also, identifier components have been removed from the data when reporting (Sanjari et al., 2014). Only the researcher has access to the real names of the participants.

An informed consent form was sent to the participants prior to the interview. These forms have a clause that request the participants to confirm that their participation is voluntary and that they are under no obligation to respond to any questions that they do not wish to answer. Furthermore, the form confirmed that the participants can withdraw from the process at any point if they wish to. The purpose of the study was also outlined in the form. In this way the participants had control of their involvement by ensuring that there is no intrusion and that they understand how the findings will be used (Sanjari et al., 2014).

Additionally, the researcher obtained an Ethics Clearance Certificate issued by the University's Human Research Ethics Committee, protocol number H20/06/12.

3.11 Chapter Summary and Conclusion

This Chapter provided an account of the research methodology, the research tools as well as how data was assembled, analysed and interpreted. Research measures that drive reliability and credibility of the research were also shared as well as the limitations of the study. The section on reflexivity offered a transparent account of the researcher's background and reason for the chosen topic.

CHAPTER 4. PRESENTATION AND DISCUSSION OF FINDINGS

In this chapter the findings of the study are presented. The data is analysed by using Thematic Analysis (TA) and text analysis, which is an element of Critical Discourse Analysis (CDA). While it is possible to do a presentation of the findings only with TA, CDA cannot be done with just a presentation of the data, it must be dissected to enable a critical engagement with what the participants said. “Critical discourse analysis (CDA) is a qualitative analytical approach for critically describing, interpreting, and explaining the ways in which discourses construct, maintain, and legitimize social inequalities” (Mullet, 2018, p. 116).

Therefore, one cannot achieve a systematic and distinct process of the presentation of the data without analysing it, given that through CDA the data is critically described and interpreted right from the inception of the analysis process. This compels the researcher to do both the process of presentation and analysis simultaneously. This chapter will present and discuss the findings and analysis, which are done in line with the objectives of the research. These are to:

- unearth the obstacles to employment equity in the current legislative framework.
- identify the latent power dynamics that maintain the status quo in the South African workplace on issues of employment equity.
- establish principles that are central to an acceleration of employment equity in South Africa.
- develop a model that complements legislation in accelerating employment equity in South Africa.

4.1 Obstacles to employment equity in the current legislative framework

This section addresses the first objective, which is: To unearth the obstacles to employment equity in the current legislative framework.

Below are the responses of participants to the question on the obstacles to progress.

4.1.1 Self – Preservation

An obstacles identified by the participants, is “fear of change and of the unknown”, which resulted in an attitude of self-preservation.

> And quite frankly, and I’m going to be brutally honest about this, it’s all about self-preservation at leadership level. So, you’ve got these leaders at top level, they’re only interested in the next five years. They want to cash their shares; they want to earn their short- and long-term incentives and then they go. And you hear them say it (ASAR001, 3-4).

> I do not believe that they [the employers] have those kinds of conversations. I think perhaps mostly the kinds of conversations they have are probably conversations that suggest that they are victims of something, they need to defend themselves, they need to defend their position, so they feel like they are under threat, they are a threatened species. And I think that is probably why there is too little willingness to change and all of that because I don’t think they do expose themselves that much to be able to appreciate the need to actually just be a human being (TL005, 8).

Participant TL003 articulated it as follows:

> I think that the first thing is to really popularise the real stats right, because what I feel, what I see in my consulting in all these many companies is that there is the assumed fear from White people that are saying: ‘but we are losing opportunities. My son won't have a job. My daughter won't be happy, and this applies especially more to boys. Is this not reverse discrimination? I mean reverse racism?’ But because discussions happen outside of real facts right, and then people catch the so-called fear and then they magnify it (TL003, 2).

ASAR001 uses phrases such as “quite frankly” and “brutally honest,” suggesting a wish to give a truthful opinion. This can enhance authenticity but also functions to reinforce credibility by suggesting that the participant is disclosing uncomfortable truths. This reflects a bleak reality of the discomfort with employment equity in the workplace. It is as though he’s stating uncomfortable truths that as per Foucault’s theory would not be deemed as sayable.

ASAR001 also makes reference to "the next five years" pointing to a short-term mindset common among these leaders. Such an approach places the focus on this moment in time rather than sustainable leadership, seeking only to provide short-term relief. This indicates that sustainability, which is a top management duty, is not prioritised.

The participants above, all express a victim mentality which is transmitted by the actions of the employers, and thus prompting their need for self-preservation. The victimhood mentality is further established by vocabulary suggestions; TL005 mentions phrases such as “need to defend their position”. It therefore follows why they need to protect their financial security and social capital, by treating employment equity as a threat to be overcome. TL003, specifically, addresses the fear of loss of opportunity surrounding employment and the potential loss of social capital associated with that employment.

TL004 suggests that the fear and the subsequent need for self-preservation are symptomatic of anxiety around loss of privilege. She positions her debate as follows:

> I actually don't know why a company wouldn't want to transform; I think it is the fear that your own are going to lose roles. It's a fear that because I guess if you were in a very privileged place, your whole life, change can be very scary. And suddenly, you have these people who don't look like you, who don’t speak your language, that have just suddenly come through the ranks, and I think also that you start poking at them, poking at the experience, poking at their qualifications, poking at their expertise (TL004, 5).

TL002 stated that the fear of change and subsequent self-preservation is considered understandable, yet irrational.

> Absolutely. Which human being likes change? It’s not natural for us. There is something about familiarity that is attractive to humans. It’s a given. And sometimes even dangerous. I mean you’ve heard of the Stockholm Syndrome*[2], right? (TL002, 10).

[2] The Stockholm Syndrome is a psychological phenomenon where with time, the victim starts experiencing feelings of trust and affection towards their oppressor or captor. It is based on a hostage incident that took place in Stockholm in 1973

The comments by TL002 and TL004 reveal how fear, social dynamics, and power have a significant bearing on transformation in the workplace. Both speakers articulate a common concern about the challenges of transformation, highlighting the psychological and social barriers that hinder progress.

TL002, TL003, TL004, TL005 and ASAR001, all suggest that self-preservation is a hindrance for employment equity. The White employers, tend to protect their own interests by not appointing or advancing people from designated groups, specifically Black people. The underlying power dynamics suggest that those in higher positions may fear losing their status and influence, thereby resisting transformation efforts. Booysen (2007) suggests that White employees fear displacement, as has already been indicated in the responses above.

4.1.2 Racism

According to some participants, mainly those considered to be thought leaders in the employment equity field, racism denies Black people access to jobs, upward mobility and inclusivity (TL001, TL003, TL005, TL007). Those who are in control of access to jobs, choose to deny such access based on racist beliefs and attitudes. The comments by these participants suggest that there is entrenched power and systemic discrimination in corporates. Madolo-Mtegha and Mtegha (2019) support the assertions of the participants by suggesting that racism is self-perpetuating instead of self-correcting (Arena Holdings et al., 2023; Madolo-Mtegha & Mtegha, 2019). This is consistent with Bourdieu's theory which suggests that social capital is self-perpetuating across generations, thus retaining the privilege of a particular group (Bourdieu, 1986; Huang, 2019). The Sanlam Transformation Gauge report of 2023, confirms that management control, which is an element of the BBBEE Scorecard measure of affirmative action, is the one which is slowest in making progress and it cites the primary reason for the slow pace as racism (Arena Holdings et al., 2023).

> And it just boils down to racism, really, because it's not like, in the early 90s, where companies really struggled to find, you know, 10 CAs, who worked for 15 years. And nowadays, that age group is in the mid-30s. So, and there are huge cohorts of those, you know, very professional people work for a long time, and they're not moving up the ranks. So, there is clear discrimination, and this

> should be looked at from a legal perspective to ensure that companies that do not abide by the law of the land which means that you know, you need transformation to ensure that your entity is transformed, then they shouldn't be able to do business with Government (TL004, 3).

Interestingly, TL004 mentions that "huge cohorts of those…very professional people" who are not advancing underscores a disconnect between qualifications and opportunities. This highlights a critique of corporate structures that fail to recognize or promote diversity. He recognises racism as a serious barrier to the advancement of Black professionals.

TL003 (8) echoes the same sentiment:

> In fact, in the forum that I was on last week and in the US the younger people are saying now you must stop talking about this thing of yours that you call inclusion. Now, you must call it by name, White supremacy. Call it by its name anti-Black racism that is right, that is why there is no transformation (TL003,8).

Mullet (2018, p. 119) cites Van Dijk (1993) who stated that, “discourses are also used to justify inequality through paired complementary strategies: positive representations of one’s own group, and negative representations of ‘others’”. Furthermore, there is an insistence on naming "White supremacy" and "anti-Black racism". This is an attempt to unpack, using emotively charged language - uncomfortable truths. This aligns with the idea that language shapes perceptions and can either obscure or clarify realities of power dynamics. Language is being used here to communicate what is not sayable.

In the responses below, decision makers are said to be perpetuating a narrative that says that employing Black people is risky business. Blacks and women are positioned in language as less than (negative), while Whites are superior (positive). This discourse then defines reality in the workplace (Mullet, 2018).

> But the point I’m making is that the resistance is really around that because people feel like they are being… something is being pushed down their throat, they don’t want it. So that kind of resistance. And that resistance emanates from the history of racism that we had. And if it has taken countries like the USA this long to even find it, to embrace a human being as a human being,

> then you should understand that even in South Africa it is going to take us years and years, because racism is also one of the reasons that is making transformation not to happen because the White people do not necessarily see Black people as people that can really make decisions (TL005, 7).

The sentiments echoed by TL005 are closely linked with the writings of Mohr (2021) who argues that racism dehumanises those being discriminated against and asserts that people who enjoy privilege have the prerogative to classify those who are being discriminated against as below the line of human. Mohr (2021, p.3) cites Grosfuguel (2016) who posits: “The people below the line of the human are considered subhuman or non-human; that is, their humanity is questioned and, as such, negated”.

Leonard and Grobler (2006) call the dehumanising process in milder terms, referring to it as a process that designs second-class citizenship. Mohr (2021) links capitalism with racism and states: “There is no racism without capitalism, and no capitalism without racism” (p.1). Thus, she creates a link between those who are in control of resources and capital to racism.

> Would corporate South Africa be able to take more risk with the White woman or with the African woman? And the chances are that they would take the risk with the White woman. It’s all risk because even the fact that you’ve got your qualification, there’s no guarantee that you’re going to succeed in the corporate world. When I put you in a position, I have taken a risk on you and given the opportunity (NED003, 3).

TL007, a White decision maker, demonstrates this in his contention against employment equity. He presents the issues of discrimination as logical. By promoting an “Us and Them” thinking, which creates insurmountable differences that cannot be overcome, he makes commonality of purpose and co-existence undesirable. As articulated in this quotation which was making specific reference to discrimination:

In dressing up the discrimination in justification and logic of the “we – discourse” TL007 said:

> The fact is, there are differences between people, I'm not talking White and Black, I'm talking between individuals. Me and my, let's take me and my brother,

> as an example. He has certain skills that I don't have, and I have certain skills that he doesn't have. And, and I'm someone who likes to get up early in the morning, and he's someone who likes to go to bed late at night, and I am more for example I might be, let's say, more analytical and he might be more creative. So, we're going to do different jobs. And in those jobs, we're going to, we're not going to get the same salary, because we're going to make different career decisions. And if we bring race into this, we do find that on average, White people tend to prefer certain types of jobs to a bigger extent, while Black people tend to prefer other types of jobs (TL007, 9-10).

van Dijk (1998) refers to the type of argument advanced by TL007 as discursive polarisation. He says that discursive polarisation is one of the characteristics of language used by the powerful to draw on the purported undesirable qualities of those whom they consider unworthy to be a part of them. For example, in terms of affirmative action, the differences between the races are accentuated and focused on as a reason why affirmative action would be undesirable in the workplace. In the quotation above, TL007 was suggesting that Black people cannot make the cut for top and senior managers because they do not have the skill. He presents a plausible argument of how he and his brother may not have the same skills and interests, but then makes a leap to use the same argument to make generalisations about race, that is, Black people would therefore prefer different roles based on their preferences which are dependent on a certain skill set.

The racist outlook is perceived by the participants as a barrier to the extent that it renders Black people “invisible” thus making them totally insignificant. MR001 talks about the impact of racism on relationships, and how this outlook makes Black people invisible:

> It does, hey, because power is held by a person and a person has a mindset. Many of the people that you sit around in the boardroom with, are polite, but when they get home, they may have a completely different attitude and they could actually be very racist and some of those people if they meet the same boss in a social setting, treat you as a different person. They do not particularly care about you. The thing about the invisible, Black male or the invisible Black female that when you do meet a manager in Sandton Mall, is that they can

> pass you and not recognize you because they only recognize you when you're in the boardroom but as soon as you're out there, their natural self, their social being and I don't know what the psychology term is, kicks in (MR001, 6).

The mindset that negates Black people, impacts on decision-making around access and issues of substantive equality, thus creating a low appetite to affirm Black people in the work environment.

> They would even speak their own language in social settings. So that invisible thing that is so unconscious is that people are just raised in that way, conscientized in that way!!! … So, when that person is in a powerful position, what is their natural disposition? You are a psychologist, you know that their natural disposition will be to do what comes naturally to them and how they were raised and conscientized (MR001, 6).

TL001 contends that:

> I've never come across a White South African that is mentally convicted and is implementing transformation and has the mind that this transformation that we're talking about, must not be a transformation of including Blacks, but is a transformation of making sure that when we appoint or bring on board, we are actually seeking to achieve better and more. So, so when you see economic transformation, or the so-called big delays it's just in the attitudes, I don't think the apartheid minds, the privilege and the comfort of White supremacy have all of a sudden just subsided (TL001, 3).
>
> … Who are always, what you can say, subjecting Black people under racial, you know, undertones. Because it's always the case that once racist, will always be racist will move from an organisation and still unleash the racial tendencies against Black people. Yes (TL001, 3).
>
> So, whatever we're talking about, it just applies across the networks. These networks are very, very powerful in these institutions. There's very little that you can do, particularly when you look at public sector type institutions, because normally when you say – Professor so and so is a racist, they say come on, you can't say that you know. Because, there is a history of struggle, so you just keep quiet and say: 'OK let me just do my job'. That's the challenge (TL010 , 6).

ASAR001 links issues of racism with lack of empathy and Emotional Intelligence (often referred to as Emotional Quotient - EQ). According to him, the presence of racism is associated with the absence of EQ:

> Your ability to make a decision to embrace diversity, you know, challenges your historical mindset that requires someone to dig deeper than themselves and to make…. and that desire to want to change is the first decision. And that desire to want to change is a personal decision and I just don't think that the leadership have got the EQ to change (3).

"What is missing is the connection component. So, by connection I mean empathy, EQ, you know. And EQ is the biggest missing component" (ASAR001, 2).

4.1.3 Lack of a common vision

Participants contend that what is lacking in terms of transformation and in particular employment equity is a common vision. There is no common goal that South Africa is driving towards in terms of redress and economic prosperity.

As TL005 puts it:

> I think that for me, if from the onset it had been structured in a way that says this is where we are as a country, this is where we're going to be at in 2030, this is what is going to happen. If it doesn't happen this is what is going to happen to you (TL005, 4).

She further states:

> So, the… you see the issue of self-regulation works where everyone seems to be on the same page and have the same information. So, in this case the others were like very far because they are excluded, they are poor, they are so… And the others are… [hand gestures suggesting hierarchy with exasperation] These were extremes. So, self-regulation presupposes that things are okay, they're perfect alright, and everybody has the same level of understanding and the same information to work with. So, no one needs protection in that sense. But where we were, clearly Black people were not on the same page with White people. White people are not on the same page with

> us, we do not have the same information, we do not understand things the same way and so what is going to happen in that case? (TL005, 4).
>
> So now in Malaysia they did their policy, they set their goals and targets that this is what we want the Malaysian economy to look like. We want this percentage to be to the original people of Malaysia and then we want this to be done by this time. And this must result in our economy being a high-income economy for our citizens and they've achieved that in 20 years. Yeah. So, they had a plan that was like a bible for everyone. Every individual politician that comes in operates with that plan. And it was being monitored centrally in the Prime Minister's office. So, there isn't anything else any department would do that doesn't contribute towards that (TL005, 20).

TL005's comments expose deep insights into the challenges that confront compliance. Through her critique of the existing framework, which is based on self-regulation, she advocates for a more collaborative approach to policymaking, emphasizing the need for a collectively constructed framing of the employment equity challenges and the solutions that should accompany this discourse.

By stating that Malaysia had a "plan that was like a bible," she emphasizes the importance of a unified approach to governance. The phrase "monitored centrally in the Prime Minister's office" indicates that accountability and oversight are vital for ensuring that all departments align with national goals. This comparison serves to critique the lack of similar structured plans in her own context, suggesting that without such frameworks, progress is hindered.

TL001 maintains the following on the issue of a common vision:

> Yes, and we need to as well to invest into our own internal resources. For instance, look at China, when you look at China, when you look, when you study the Asian Tigers models and so forth, then you get so fascinated by the stories, because it's a loyalty, love for their country, for their flag, for their everything that has put them where they are today. Because when you look some few decades back, at what China was like, it was never encountered amongst the economies of the world. But now it's on top. Why? Because they send their children to, to America to go study, Malaysia did the same thing. You know, South Korea did the same thing. They send them over there to

> study but with one goal: “go there, study, come back, and do what you have learned outside. So that we can take our economy forward”. But they were loyal to their country. That's why they are safe in the country, and they were supported by their government (19).

Social cohesion is a concept often referred to when dealing with matters of economic and political transformation. TL001’s proposal has the same sentiments as those of TL005. The Malaysian experience of economic transformation is often referred to as successful because of a commonly shared vision, which resulted in social cohesion (Gomez, 2003; Saad, 2012). Stanley (2003, p.7) cites Maxwell (1993) as defining social cohesion this way:

> …social cohesion involves building shared values and communities of interpretation, reducing disparities in wealth and income, and generally enabling people to have a sense that they are engaged in a community enterprise, facing shared challenges, and that they are members of the same community.

This definition puts a common vision at the centre of building social cohesion. This process is aligned to what Ramphele (2015) advocates for, where she recommends collaborative engagement between government, private sector and civil society. The participants mentioned above see this common vision as a key driver for employment equity. They suggest that for as long as different racial groups continue to focus on what seems to be important in terms of their own definition, then the transformation and therefore, employment equity agenda will never be achieved. They argue that the paradigm of the employer is predominantly capitalistic, while that of the majority African is based on collectivism.

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4.1.4 Lack of leadership, accountability and commitment

Booysen (2007) and Ramphele (2015) argue that a lack of commitment is one of the key factors for the slow pace of employment equity in the South African labour market. Employment equity as a legal imperative in business is not prioritised and handled with the requisite level of accountability. Those who are responsible for its

implementation are not held accountable and as such there is no commitment to ensure this implementation.

Accountability according to the participants should flow from the Board and the CEO to the executive team and then to line management level. The most critical level, however, is perceived as the CEO/MD and Board of Director levels (Top Management). Participants, however, suggest that this is not happening at all currently in most companies:

> "It's that type of thing. Yeah, I don't think you ever have a situation where you know an MD would have to go to a board and explain why they hadn't met their target" (TL008, 9).

> I think if your board hasn't bought into it, it won't happen. If your top and executive leadership of your institutions hasn't bought into this model and monitor vigorously it won't happen. And in every line manager performance agreement it must be clear (ER001, 11).

> So those are the things that happen, but the thing is it regresses once there isn't CEO commitment. And it was a, in every Exco meeting it was a discussion. So, we were called as the consultants to all the Exco meetings and every single Exco meeting, top management meeting we were called to give reports on what is happening. And where it hasn't worked there is no incentives. I'm not sure how to replicate that because that CEO left, and a South African CEO took over and he was completely [shrugging his shoulders in despondency] … A White CEO took over and the thing regressed after that (TL009, 12).

> And I think for me the discussion should be really at a board and CEO level, nothing else. You see the Chairperson of the board, I would want to say to the Chairperson of the board, to the CEO – this is who we discuss with, 'we have discussed with your guys at a lower level – we are not getting any results'. And I think maybe when you have those discussions it will also show the industries that there is movement, when a long time ago it was like it can't happen (RSR001, 2-3).

Accountability, the participants believe, should be a sign of commitment at the highest level. If there is no accountability at that level, then there is no commitment.

Furthermore, lack of commitment means no implementation.

> You can talk about the memo, but you also have to make sure that the policies support this commitment to employment equity and affirmative action, and also make sure that then your behaviour as leaders bring forth that commitment to the policy (TL006, 5).

Generally, participants suggest that where people are being held accountable, they tend to respond by having a level of commitment, to that which they are held accountable for. As such, this accountability goes hand in hand with commitment.

The issue of accountability is central to effective running of organisations. The hierarchical structures with clearly defined roles are designed to ensure that someone is held accountable for performance (Dalal, 2020). However, when dealing with employment equity, these structures do not seem to apply. Generally, no one is held accountable for non-delivery. While the employment equity responsibility finally lies with the Transformation Manager and the CEO of the organisation, this responsibility is often overlooked. The CEE survey also confirms these claims (Commission for Employment Equity, 2017). The numbers that relate to financial success are seen as the only delivery that is important in business.

Horwitz and Jain (2011) argue that organisations need a transformational leadership culture that will deal with more than just the compliance element of employment equity, leaders who are seeking to ensure sustainable transformation. This transformational leadership culture is what is needed to create sustainable and impactful change.

4.1.5 Discrimination is embedded in culture

According to participants, the obstacles that exist in the labour market are systemic and structural. Amongst other writers, Horwitz and Jain (2011) and Dupper et al. (2013) argue that inequalities are systemic and institutional and should not be dealt with without dealing with the systems in the institutions. Without dealing with them as systemic and structural issues, employment equity cannot be advanced.

The following are inputs on these obstacles from participants:

> And then the second leg is what we call the systemic and the systemic aspect and that's where you say organisations need to look at policies, systems, procedures and processes and you can never use, an attitudinal strategy to solve a systemic problem. You and I can go to a workshop and then we can engage in a workshop and then I say yoh, I respect that, Tabea. Yeah, respect TL003. We like each other. We suddenly see that we want the same things. And we leave that workshop. The following day I discover that you are being paid a White male salary, you are paid 30% more than me. It has nothing to do with the workshop we did yesterday. But systemically in their organisation, I look at you and say: “how come the system favours you more than me?” (TL003, 9).
>
> I used to do that and do shortfall analysis for sectors, and you could immediately see that this is not a supply side problem. Its institutional, racism, systematic, its people protecting what they have yeah (TL009, 17).

Both TL003 and TL009 expose institutionalised racism and sexism, both which are nurtured through the culture of the organisations. “However, ‘effective’ organisational change would need to move beyond legislative or institutional compliance which more often than not, elicits a begrudging sense of compliance rather than a deeper commitment and organisational learning” (Horwitz & Jain, 2011, p. 306). What the authors are saying here is that commitment goes beyond the confines of compliance and requires a level of commitment to ensure proper application of the law. Corporate cultures create a barrier for employment equity.

Culture can be defined as the systemic patterns of behaviour in the organisation. It is created through the messages people receive about what is valued and those messages come from three main sources: behaviours, symbols, and systems (Parisse-Brassen, 2017; Saylor Academy, 2012). Corporate Culture sets the tone for inclusion and access to persons from designated groups. If it is not designed to be inclusive and to value diversity, it becomes an obstacle to the achievement of employment equity.

Here are the comments that came from the participants in that regard:

> Well in my mind, one of the biggest levers are that we have to get the culture of an organisation to change, as well as ensuring that top leadership is set up

in terms of creating a culture that will enable diversity to thrive. Period! (TL006, 3).

Top leadership of the organisation is not articulating their vision for diversity and their vision in terms of the goals, even the values that they uphold as an organisation. Because at the heart of any organisation is the values that you hold dear as an organisation when it comes to how you embrace diversity, how you support people who are different from the norm. How you create a culture that will enable people to feel that they are, and people talk about merit, but a meritocracy environment can only be successful if there is a culture that is colour blind or that is even gender nonbiased. So, you've got to create that culture in that environment where the predominant narrative is that it doesn't matter who you are, where you come from – you have an equal opportunity from a career perspective to do the best that you can (TL006, 4).

And you know if those are not clear, because if you appoint people who behave in a particular culture that doesn't support the desired culture that you are looking for then you are sending an indirect message to the organisation that actually we don't care that it is a racist or closet racist or he is a sexist and he doesn't nurture or develop his people we will promote him because he delivers the numbers. You know then guess what will happen? (TL006, 4).

So, I think for me, those are the things that trip us in implementation and also the culture. If the culture of the organisation is wrong, no amount of implementation is going to happen to be honest (FS001, 7).

They should say we are aware business happened; we are aware this hasn't happened. There must be a culture within institutions that talks to how we treat each other. There's a lot of patriarchy going on. We don't talk about it in the employment equity reporting, we don't. We know it's there but if you have a culture change or culture transformation or culture management of that reports regularly and it becomes part of the employment equity reporting and boards must also monitor that, I think that would help (ER001, 11).

The participants are calling for a critical evaluation of organisational cultures in terms of the readiness for diversity, equity and inclusion. They posit that leaders are experiencing a level of cognitive dissonance between what they really desire and what

they communicate to be the acceptable culture. Patriarchy and racism are sustained while the leaders seem to turn a blind eye to them. The use of the word “closet racist” by TL006 suggests a type of disingenuousness, which enables systemic inequalities to be left unattended to.

NED001 suggests that the culture is systemic and therefore dictates what is allowed and what is not, to the extent that it would sabotage any attempt to transform the organisation.

> And they don't feel and that goes to the culture, they don’t feel welcome in that organisation. So they go, and then you get the excuse you will get is that look, we hire people, but they leave us. But they leave because the culture is not welcoming. It's not inclusive enough. They don't see people like them represented at the top (NED001, 6).

TL004 suggests that the culture is defined from Western paradigm and is thus not inclusive of anyone who doesn’t fit that mould.

> And typically, what that means is: do you…., are you presentable in the same way, in the right way, in our way? Do you speak in an eloquent way that we think is eloquent? Do you fit our appearance? And those are varied through the lens of Western or you know White South Africans, and that is why I think transformation is slow, because that very dark, big girl with big hair and a fat nose and you know, whatever it is that is completely opposite to a typical White person., will struggle (TL004, 6).

> Yes. I, for me, organisational culture, an inclusive organisational culture is a non-negotiable, right? You can bring in all the Black people that you want and the women, if the culture is not conducive, you are not going to be able to retain them, because they will come into the organisation, they'll be frustrated by the culture, the things that are said; who gets promoted because the culture determines what gets done, the unsaid rules, who get promoted, how do they get promoted? It's in the organisational culture (FS001, 14).

> So those are the barriers that I think we forget about, because it’s just like English is a medium of our organisation, we all have to speak English, we all need to do this and that. And that is also a barrier for people to go up the

> ladder. So, language becomes a barrier as well. And culture becomes a barrier as well where you are saying to what extent do we make sure that we also embrace other cultures and not use it as a barrier for them to go up the ladder – the barrier for exclusion (RSR001, 22).

Organisations set the tone for behaviour that is acceptable and that which is not. Once such behaviour becomes acceptable and repeated, it becomes the norm of the organisation and leads to certain behaviour patterns that characterise that organisation.

The behaviours are then reinforced by certain symbols and systems which give permission to the behaviours and normalise them, even promoting them as desirable (Parisse-Brassen, 2017). To change this behaviour requires profound mind shifts, a changing of the symbols and an overhauling of the organisational systems. This is how organisational cultures are built and changed. But central to this understanding of culture, is an understanding that culture is systemic and as a result is extremely powerful in defining the direction that organisations would take around issues like employment equity diversity and inclusion. The above comments suggest that the impact of culture cannot be ignored in driving employment equity. The participants cited in this section all confirm that DEI is not achievable in environments where culture is embedded in systemic inequality.

Corporate culture is extremely influential in the employment equity area (Parisse-Brassen, 2017). Most of the participants suggest that the cultures of the organisations are well entrenched and that the systems and symbols that support the culture are not aligned to the transformation agenda. The structures and symbols of the culture are predominantly defined by a western and financial standard and as such any individual who does not fit with this standard is excluded (Parisse-Brassen, 2017).

4.1.6 Employment equity as a system is broken

There is consensus amongst the participants, that one of the obstacles to an accelerated pace of employment equity is that the system of employment equity itself is broken. The areas raised around the brokenness of the employment equity system, range from the underlying assumptions that form the basis for the EEA, to the implementation of the prescripts of the EEA both at government and corporate level.

> I think this thing that White people still have the power, is the only excuse that's left for not taking responsibility for the failure of BEE, it's not White people's fault that BEE is failing, it's failing because it's a broken system. And it was broken from the beginning….And it's set up to fail, it's destined to fail, because the methods employed by the system have nothing to do with the goals it seeks to achieve. The methods employed by this affirmative action system are making Black people dependent on Government, and you're not going to make people flourish, become wealthy and become economically prosperous in a sustainable way if they are dependent on Government. So, the only excuse that's left is to blame White people and say they have the power, and they don't want to relinquish their power (TL007, 6).

The common error of calling employment equity BEE needs to be flagged at this point. While TL007 was very clear that the interview was on employment equity, he tended to refer to it as BEE. The BBBEEA and EEA are often clubbed together to conveniently paint them with one brush especially by their detractors. The EEA focuses specifically on the prohibition of discrimination and promotion of equality in the workplace, while BBBEEA focuses on the broader economic equality beyond just labour law. The five elements of BBBEEA were already discussed in Chapter 2, and employment equity forms just one of these elements. TL007 has been on numerous engagements on employment equity and in those discussions, clearly demonstrated the understanding of the differences. He represented the interests of the White conservative minority and does represent them in court of issues such as freedom of speech, land reform, employment equity and economic empowerment of the Black populations. He is highly qualified in terms of education and debates on numerous platforms right up to the ILO. This error, specifically from TL007, may reflect purposeful blurring of the lines to club the perceived failures of the one legislation into the whole transformation legislation with the intention of discrediting transformation. This context is important in helping the reader to understand the posture of the participant and the use of language which is critical in the analysis of the data in this research.

The allegation that the employment equity system is broken, suggests that it is destined to fail. Furthermore, the use of words like “excuse,” “failure,” “dependency,” and “power” reveals a clear stance which discredits the drive for economic transformation in society.

TL007 states that the methods employed in the EEA system do not support the goals that it seeks to achieve. That is what in his opinion renders this system “broken”. He suggests that the EEA has unintended consequences resulting in a level of dependency and learnt helplessness both of which are contrary to the spirit of the EEA.

> I think one of the most important things is to deregulate, the more you micromanage the economy, the more strained the economy becomes. So, deregulation makes it, deregulation leads to lower unemployment levels. And it's been like that all over the world. If you want more employment, less unemployment, you need to deregulate, but we have this problem in South Africa where the problem becomes worse, the more our contribution to the problem escalates (TL007, 17).

It is interesting that the call for deregulation is made by TL007, while the principle governing the EEA is still self-regulation. Employers have the flexibility to decide the pace of transformation that they are comfortable with. Sector targets were at the time of this interview not set, nor the EEA Amendments promulgated. To further deregulate, suggests doing away completely with the EEA.

A different perspective that was also presented around the brokenness of the system is the poor application and enforcement of the EEA.

> Yes, that's what I'm saying. And maybe a different way to put it is it should be made easier for people to start businesses and to employ people. But the more government intervenes with regulation of the economy, the more difficult it becomes, regardless of whether you are White or Black, to start a business. And the more difficult it becomes to appoint people because after all, taxation is one way of doing it. Minimum wage is another way, regulation and red tape and its requirements. All these regulations make it more difficult to start a business. And all these things contribute to a hampering of economic growth in the country (TL007, 17).

The comments by TL007 suggest an extreme form of neo-liberalism, he suggests limited government intervention, self-reliance and a free market economy which critics already argue results in inequality (McKinley, 2023; Terreblanche, 2012).

Furthermore, neo-liberalism perpetuates the prosperity of established social capital at the expense of the disadvantaged (Bourdieu, 1986).

TL007 questions the existence of the EEA and speaks from a position of “Us and Them”, further promoting division and exclusion. Also interesting, is that TL007 creates a direct link between regulations such as the EEA and a troubled economy. As a participant that represents a significant portion of those who control the economy, this language is used to maintain the current economic imbalances. The regulations and implementation of employment equity is directly linked to a stifled economy, thus blaming the market forces on one piece of legislation for the lack of achievement of something that is sought by everyone irrespective of race, gender, or disability. The language used catastrophises the implementation of EEA, leading to resistance by those who see themselves as custodians of the economy. Such language is often used to maintain the status quo, to resist enforcement of the EEA and to legitimise the power imbalances.

The other participants are questioning the structuring of the EEA and some of its underlying assumptions. One of the underlying assumptions at the inception of the EEA was that employers would in good faith embrace this legislation. As a result, the principle of self-regulation including the exclusion of s53 from promulgation became a feasible method of executing the EEA (Department of Labour, 1996b).

As corroborated by TL005 in Section 4.1.3, self-regulation requires the ability to self-reflect and correct, but that if this self-reflection and correction is not happening, then self-regulation will not result in a commonly desired outcome as espoused in the EEA. TL005 also talks about a difference in worldviews between Black and White people, using words like, “being on the same page.” The narrative that promotes pigeon-holed differences between the Black and White population is another way to demonstrate the “us and them” framing between the races, a framing that results in focus on the power imbalances. Power relations are amplified in this discourse. The assertion here is that in a society where there is a power imbalance, the powerful are using self-regulation to promote their interests as opposed to ensuring that the desired results are achieved through the EEA. The results will therefore always reflect the desire of the one who is “self-regulating”. Thus, self-regulation as a principle for the EEA, creates a broken system.

The brokenness of the system is also framed as a design problem.

> That's what I'm saying but the whole thing was just wrong from the start to finish. So, I believe that part of the reason that we are not seeing employment equity is that there were design problems in terms of the codes and I'm very happy that you are now looking at sectorial targets that companies have to do, and they must be separate from the BEE framework (TL009, 10).

> I just want to make this very interesting comment. Something that I've learned from this, is that a lot of the time we speak about issues of inclusivity. And we think that our laws are pushing for it, for inclusivity. And in fact, they are not (NED002, 23).

According to some of the participants, the brokenness of the employment equity system is not in how the legislation was formulated, but in the enforcement mechanisms.

> I don't think that our inspectors who needed to enforce the legislation have got the capacity to enforce the law. I'm not talking about numbers here [that is the capacity in the number of inspectors]; I'm talking about capacity to understand and be brave enough to take decisions that might even be challenged in court but will point us in the right direction whatever way the court decides. My problem is that many of our inspectors are afraid to take decisions and take up cases to court, afraid of failure. And if we can have a situation where we would be able to change the paradigm of our inspection and enforcement and say even if we lose a case, that decision of the court points us in the direction that we will take, we will stick…Unless you do something, you're not going to be able to identify your weakness and your mistake and that is a problem that we are having (NED003, 2).

> If you look at affirmative action, we did effectively go for a self-regulatory model that you had to have goals and targets. It was envisaged that the state could enforce against employers who had inadequate targets but effectively it's been too complex an issue for the state and so you know in theory you have the DG's powers, but they are not used. But you know to undertake an evaluation of a major business and then assess its targets and make the case that they were inadequate as you know; is I suppose beyond the capacity of you know

> of the current group [shrugging his shoulders as if to communicate despair] (TL008, 5).
>
> They are not just threatening to say if we give a compliance order…there must be regular…I don't know what type of regular…regular monitoring. It's not only after somebody has reported that you come but there must be a way of monitoring, especially when we submit reports. Do they scrutinise those reports? (ER001, 7).
>
> And those 3-year plans for me, really should be monitored. I know we report on a yearly basis, but it is just reporting. I think people need to make sure that it is not just a reporting tool, but it also becomes an empowering tool for people (RSR001, 18).

It is suggested in the above, that the inspectors feel inadequate and powerless, in the face of a dominant force of the employers. This is suggested by using phrases like, "inspectors are afraid", "lack of capacity", "resource problem", "it's been too complex for the state" which create negative processes and thinking about inspectors. The inspectors then, become part of the barrier towards the attainment of equity in the workplace. The nonverbal communication, as in shrugging of shoulders by TL008 when talking about the lack of capacity of inspectors, is interpreted as suggesting helplessness at the lack of capacity and furthermore, in this case, a sense of helplessness at the impact that this has on the outcomes of EEA.

Moreover, other participants share that the work done by the employers is not defendable and yet is met by an evident complacency and indifference. One participant, RSR001, alleges that there is a lack of processes within the system to link planning with reporting of progress. Thus, the system is considered broken. The brokenness is not just a function of procedure and process, but of lack of capacity and boldness on the part of those who are responsible for monitoring and evaluation.

To support NED003's assertions, other participants suggest:

> And so, and that just does tell you that the system is not working in South Africa, in terms of employment equity, and what is also disheartening is that this is a legalised, you know, there's a legalised effort. So it is by law that there needs to be transformation. And when the Government doesn't ensure that

> these laws are upheld, and also companies don't care, so they have obviously not also upheld their part of it (TL004, 2).
>
> So, section 53 was supposed to come in to force these people to transform so that the structure becomes okay. Then these penalties that are in the Employment Equity Act then aren't working because then you're not dealing with the un-okay practices that should not be happening. So that you do not take the country backwards (TL005, 4).

Participants used words such as disheartening and "these people". While disheartening suggests discouragement, "these people" suggests a level of antagonism. "These people" suggests an "us and them" discourse, that promotes an oppositional relationship between the employers and participants such as TL005. Employers, are viewed as "other", belonging to a different class. This type of dialogue promotes separation and a lack of meeting of the minds which is also suggested in the lack of common vision above. The words used suggest an inability to act and influence "these people". They also frame the language into a power relation with employers, that the employers are the only ones who can change things, while the participants feel unable and "disheartened" to effect change. The law as it stands according to the participants seems to render them hopeless, dispirited, discouraged or downcast. In using Foucault's theory on power, it can be argued that the use of the words above, that is hopelessness, discouragement and the likes, mean that while the employers are exerting power by maintaining the status quo through a broken system, the system itself does not provide for recourse or an active powerful role for these participants.

And in taking Foucault's argument to its conclusion as per Chaudhuri (2018) the dominant discourse veers the participants in a particular direction, in this case one of hopelessness and despondency. A good example of this is found in Skinner-Dorkenoo et al. (2023), where they attest that historical narratives affect how society engage with issues of racism for example, and that a White-affirming lens that is perpetuated through the education system becomes a reality which justifies inequality. In the above comments by participants, the narrative promoted by the powerful, through their White-affirming lens renders these participants hopeless and this White affirming narrative has become the norm and accepted reality which justifies the inequality and status quo and furthermore, that Black people have very little power to change this.

The EEA framework has been criticised for not being useful in accelerating the employment equity agenda. While there seems to be a general concern that the EEA and its system is broken, the elements that are said to be defective are different. On the one hand, from the perspective of a White participant, who works for an organisation that has positioned itself as an opponent of employment equity, the brokenness is with regards to the law itself. He sees the law as unnecessary and misguided, supressing business owners' ability to thrive economically because of "over-regulation".

On the other hand, the beneficiaries of the EEA, who are mainly Black male and female participants in this research, are more critical of the enforcers of the law whom they view as afraid and unwilling to enforce. Different explanations are in operation in how the problem is viewed. However, one theme is prevalent in the responses: the implementors and some legislators believe there is lack of agency from the inspectors – something which is symptomatic of the inequitable power relations between employers who are seen to be the drivers of employment equity and those who are either beneficiaries or law makers.

Terreblanche (2012) posits that "White monopoly capital" exerted influence on government from as far back as 1910 and continues to do so even in a democratic South Africa. He argues that politicians are at the behest of White capital, which pushes an agenda that puts profits above anything else. Thus, their interest will be served first and if any political agenda is contrary to this, it will be pushed back to the end of the priority list. South African politicians and bureaucrats are said to be succumbing to the White capital agenda and will not do anything that upsets their interest. Short (2021) in the same way argues that regulated industries have captured regulators, and this has resulted in political cronyism and ineffective enforcement.

Van der Walt (2015) corroborates that politicians and the Black elite have more power than we give them credit for. The essence of her debate is that politicians and the Black elite are in control of the state-owned entities as well as in charge of the biggest single employer, which is government. Together with "White monopoly capital", these politicians and Black elites work towards lining their pockets and the relationship is a quid pro quo one (Van der Walt, 2015). Therefore, the government and the Black elite also participate in maintaining the status quo for their benefit.

> It cannot form a reliable ally of the working class, partly because its class interests and very existence rest upon the ongoing subjugation of the working class, partly because it is part of an elite pact of class domination with private capital, and partly because its own agenda – survival and expansion – must clash with working-class interests (Van der Walt, 2015, p. 7).

The implications of these sentiments by Van der Walt (2015) are that government cannot be trusted to pursue a national agenda on its own without mechanisms that ensure deliberate oversight by the citizenry, as government officials concerns are more about self-preservation and the preservation of the power of the parties they represent than about the general population. The Black elite in state-owned entities are just a tool for maintaining the status quo as well as meeting their own agendas of self-preservation.

Levitsky and Murillo (2009) posit that the lack of institutional strength results in the inability to effect the desired change in behaviour through compliance. Levitsky and Murillo (2009) give reasons why the efficacy of institutions like the IES Directorate have no institutional strength. One possible reason according to them is that their efficacy in enforcement is reduced by the fact that their rules are widely contested and their capacity to enforce is non-existent. This is also cited by the participants as reasons for lack of enforcement of the rules. The parchment rules, in this case the EEA, are widely contested by employers. These authors argue that it is common that the formal institutions are often weakened because there is usually no political will or capacity to enforce. The participants above have cited both these reasons for the lack of advancement of employment equity.

4.2 Latent power dynamics that maintain the status quo in the South African workplaces on issues of Employment Equity

Power has been identified as a major driver of the implementation and lack thereof in employment equity by some participants, as well as in literature. Booysen (2007) speaks extensively to the impact of power on the implementation of employment equity, referring specifically to the fact that the key decision makers feel threatened by employment equity and thus resist the implementation thereof. This phenomenon will be explored in more detail in this section as it addresses the analysis of responses of

the second objective: “To identify the latent power dynamics that maintain the status quo in the South African workplace on issues of employment equity”. Again, the text element of CDA will be employed together with Thematic Analysis to get a detailed exploration of the responses.

4.2.1 Employment Equity – the struggle for justice and power

Some of the participants suggest that the implementation of substantive equality is not going to be achieved without the elements of force or a fight. Employment equity is contentious and cannot be achieved, they argue, without anger and force. Words such as rage, violence and disruption sit at the centre of the discourse in the interviews with the participants cited below:

> So, there isn’t any change that can happen without you disrupting something. And in this country, we sort of wanted to see the change but without disrupting anything. But now with employment equity, with all the transformation legislation we want to change but without disrupting anything, how is that going to happen? (TL005, 10).

> When marginalised voices get to a place of rage, if I were to use it that way, then we are in trouble. If you saw the “fees must fall” movement, it got to rage. We got to a place where our children, yours and mine, our children were saying:’… that is why this is going nowhere. You’ve been too nice. You have been approaching this thing in a too softy softy way and now, we are at the level where if we are looking for a strategy, it’s too late for that’. You know, I was addressing some audience around the “Black lives matter” movement the other day and I was saying: “if you start a story and complain about arson and complain about buildings that have been destroyed, all of us are not condoning that, but do you know on the 25th of May (George Floyd died on the May 25, 2020) nobody, nobody woke up from their houses to burn a building. No! The buildings were nice, and the businesses were operating. So, this is a derivative of something bigger. So, when something happened then people felt that this thing had been happening for too long. Now when you want to stand up and challenge, but then you start your challenge from a “Nice” you're in trouble

> because all along people gave you trust and goodwill and nothing happened (TL003, 9).
>
> And if you have an unstable social system in society, you have an unstable society which means you have an unstable people, which means you have an unstable economy, which means that you are not safe, which means crime is high, which means violence is high - because you have a whole class who are identifiable by the colour of their skin or their gender as being left out of economic activity. Now we won't have a normal society if we keep having the situation which we are having, where the minority of the population, who form just over 10%, it is under 10% in fact – of the population, having 80% of the money. We have 10% of the population having 80% of the means. Inequality is dangerous for a system that does not function. So, climb on board and let's together create a more normal life system (TL002, 10-11).

The language of aggression is evident in words such as rage, disruption, instability, violence, arson, and destroying, that were introduced in the quotations above. They make the level of frustration palpable. "The Black Lives Matter" as well as the #FeesMustFall movements that are introduced by TL003, suggest deep seated anger that is simmering under the surface (In fact, these two movements were punctuated by violence and destruction of property), and that is likely to cause disruption to the economic order. While the #FeesMustFall movement and employment equity focus on different areas—education and employment, respectively—they are interconnected in their shared goals of promoting equality and addressing historical injustices in South Africa (Hodes, 2017). These comments clearly suggest that the violent struggle for economic equality is not over. The participants' language suggests a new order where power, which according to Foucault is in a constant state of flux, is moving to the seemingly powerless (Chaudhuri, 2018; Glover, 2015; McHoul, 2015). The underprivileged are in a way, usurping power from those who have held on to it for long, but this it seems can only be achieved through aggression. This movement is creating a redefinition, a reconstruction of discourse, and a reshaping of what life looks like. The participants are suggesting that there is a new dynamic, where the majority within the South African context are moving power in a different direction.

While most of the comments above allude to social justice, the last comment by TL002 openly suggests a Rawlsian approach and definition of social justice and how it should be applied to issues of employment equity. The three principles of Rawls theory of Social Justice are suggested in the comment. These principles suggest that a fair society is one in which people have basic freedoms and such freedoms should not infringe on the rights of others; a society where there are equal opportunities and access to the same resources and opportunities without structural inequalities and; finally, that where there is an unequal society, then the systems should function to benefit the least privileged (Constitutional Rights Foundation, 2007; Rawls, 1999). TL002's idea of a normal society implies a just or a fair society as per Rawls definition thereof (Bentley, 1973). TL002 states that inequality creates an "intolerance" in society (which has been the thrust of his interview). He does see it as a big social ASAR001 issue, one that is already leading to an unstable society.

4.2.2 Political power is ineffective

One of the main issues identified by participants is that political power is ineffective and cannot be trusted with employment equity.

The participants commented as follows:

> That's what Malaysia did a few years ago, a couple of years ago when they had the Chinese that were running the Malaysian economy, and they legislated and ensured that companies transform, and government had to make sure that companies transformed to the point where Malaysians were now running companies. And, unfortunately with us because our government is not as active in ensuring that there is transformation, and I also think that it doesn't help how our government is perceived, especially now. It is so negative that because you need trust as well, that if the Government was doing the right things, it could have a better, I think it could better negotiate with those in power, economic power to transition from, you know, giving in to some of the stuff that they hold (TL004, 9).

> So, I feel that transformation is derailed by those types of things where people have got the power to change. People use the power to make personal

> connections. And those personal connections they're not written but we see them in practice. We see them in practice. There are people who you know it's not going to be written anywhere, they are not going to make you a shareholder somewhere, but you'll benefit somehow. So, we don't work, we don't use the power in the interest of the country. We don't use the power to benefit society. We use power to get and amass as much benefit as we can, whether now or in the future. I think most of the time we are a bit apologetic about driving change and enforcing change. So, we do have the power, but it's not applied in the correct space. Where we should be applying it, we are a bit apologetic about it. This is my personal view (TL005, 13).

Both the participants above talk to the issue of a corrupted power. A power that is misaligned to the objectives of transforming the economy to the benefit of those who are disadvantaged. The respondents suggest that those with political power have taken on the position of the aggressor, focusing the power to achieve their individual goals. The comments from both TL004 and TL005 suggest that the leaders that are supposed to drive transformation are not helpless but rather in Engelsted's (1999) conception of power, active participants who have intentionality and agency to drive the transformational agenda, but choose not to (Svarstad et al., 2018). This corrupted power is qualified with words such as "derailed" and "apologetic" thus emphasising the misalignment of the politicians to their mandate of EE.

While literature suggests that the Malaysian transformation journey has not been without challenges of corruption, as suggested by Enste and Heldman (2017) and Gomez (2003), it seems that TL004 implies that the South African situation is largely corrupt and not driven by the need to achieve the transformation agenda at all. "South African Police Service v Solidarity obo Barnard [2014] ZACC 23" (2014; para 33) articulates succinctly what the intent of the EEA is and government's role in executing this mandate: "Our state must direct reasonable public resources to achieve substantive equality…It must take reasonable, prompt and effective measures to realise the socio-economic needs of all, especially the vulnerable.…That ideal would be within a grasp only through governance that is effective, transparent, accountable and responsive...".

This according to the participants cited above is not the case. NED001 argues that some of the punitive measures imposed by government, especially in the transformation space are not practicable. He uses the example of how a poor BEE rating in a company that has the monopoly of services or products, does not stand in the way of government doing business with that company anyway, since there are no competitors in that space. Government is forced to use those companies, irrespective of what the BBBEEA or even the s53 prescripts of the EEA say. The way in which the transformation legislation is designed does not give the politicians and bureaucrats power to manoeuvre and to achieve results. The power is diffused by structural barriers beyond their control.

> And if you do that, you can do business with the government. If we don't do that, well we won't do business with government. That is not effective, right? That sort of is not a, it's not enough of a carrot. In fact, it was not something that government themselves foresaw that they could actually pull through, and the reason I am saying that is you are telling corporates that they will not be able to do business with government, when you know that you have no alternatives. And they know that too, that you don't have any alternatives. So, in the end, it becomes an empty threat. Right? (NED001, 9).

NED001 posits in the comment above, that while some companies for example may not be affected by punitive measures that relate to doing business with government, as they themselves are not in businesses which government would procure from, others are a monopoly and government does not have an alternative but to use them, despite their non-compliance. Short (2021) argues that the deterrents such as hefty fines, that are imposed for non-compliant companies are in themselves problematic as they are likely to bankrupt businesses, a consequence that governments are not keen on. While this claim may not necessarily be accurate of all countries, it has certainly been a concern raised in South Africa (Koeble, 2022; Panashe, 2021). Therefore, regulation by bureaucrats becomes complex when considered within the background of what NED001 and Short (2021) suggest.

The participant below further suggests that the legislation on its own does not translate into power. It's an ineffective tool. Power lies with business. He continues to say:

> Yes, so firstly, as I said the threat of sanctions is ineffective and that's a no, I wouldn't go there. And I think for me, that's where I would say focus on right? And the stick thing doesn't really work, it requires a lot of effort, it requires resources that Governments will never have (NED001, 9).

In summary, the comments and content of this section suggest that legislation is ineffective in creating effectual power that can result in sustainable employment equity and that the country cannot only rely on the legislation as the sole driver to achieve employment equity.

4.2.3 Real Power for Employment Equity is in the hands of the employer

Political power seemingly doesn't have a significant influence on employment equity implementation. Most of the participants felt that the real power is in the hands of the employers. The employers may experience a level of political pressure within the policy regulation sphere, but such pressure is hardly experienced as threatening enough to lead to a change in the status quo. Shiner (1982) posits that this is what Foucault typically refers to as a power dynamic. He claims that:

> Genuine relations of power occur in a field of struggle where various parties attempt to give structure to the action of others and the others in turn may comply, resist and/or themselves attempt to give structure to the same terrain of action (Shiner, 1982, p. 391).

According to Bourdieu (1977), habitus, which is established skills, dispositions and habits, dictate practice. This means that how people respond in different situations is informed by their habitus. Employers give structure to the actions of others, it is according to Shiner (1982) as they are used to guiding decisions in social life, often unconsciously. This is confirmed by TL001 below:

> We have all the opportunities, we have all the legislation, we have all the power, which is the political power to do these things, and other people in many quarters, they argue that economic power is more important than political power. But I argue that economic power is informed by political power, Whites wouldn't have had an advantage economically, if they didn't use the political power to put themselves meters and kilometres ahead of us (TL001, 7).

> In fact, it's all about power relations by the way because one can argue and I think it's more glaring with the state capture and its more glaring with the CR 17 campaign, that even though Blacks are presiding over government, there are still power brokers outside of Government, particularly with business, who influence the direction the government takes, and it's all about money. So, we don't have because, I mean, at the very least, understanding what I've just said in the previous question that the natural will of the White competitors, South African issues of Black and White each way and we don't need to sugar-coat it. Poverty is Black and prosperity is White. But the power dynamic says if we had patriotic government leaders, the basics of money that we control from government, which is the government spending, and even legislation in terms of implementing it effectively and efficiently, we would have at least in my belief, cut at least one 10th of the problems we have (TL001, 7).

Foucault argues that power is not state-centric. By this he means that political power does not necessarily lead to a change in social order (Shiner, 1982). Within the South African historical context, while there was an expectation that political power would lead to economic transformation, such an outcome was not achieved because power is not always state-centric. It is pervasive and illusive and may abide with different players depending on their level of influence on the discourse of the day (Chaudhuri, 2018; Glover, 2015; Shiner, 1982). A few participants articulate this reality:

> I don't think we are. I think we are most of the time a bit apologetic about driving change, enforcing change. So, we do have the power, but it's not applied in the correct space. Where we should be applying it, we are a bit apologetic about it. This is my personal view….We've actually used the power, whether it's the power that comes with the position or comes with legislation or comes with you being in the control, being a ruling party, we have not applied it to change society. [hand gestures displaying discouragement]. We have not applied it to benefit society. We have applied it for other things but not for the benefit of the general society (TL005, 14).

> And government will always come back, yes, they will make noise about you not changing, but then life carries on, right. And if you want to feel

> good, you can also after a while, you know, pull through a couple of Black faces and you say I'm doing something right. And so, it's largely about maintaining the status quo. And it goes back to what I was saying about those who've got the power have a natural inclination to protect their turf, that they are in. They don't want other people to come in and neutralise it (NED001, 9).
>
> The fact that you control the economy you are able to determine the direction of the country because of the power that you hold and there's no risk to that. Then it makes it impossible for you to move on your own. And it then also paralyses the regulators in this. Regulators are sometimes paralysed. It becomes even a problem to implement the law because precisely regulators fear power; that if the law is implemented through to its conclusion, how would they reflect as the people who are in charge to people who are in power? Now unless you are able to break that ceiling and take those risks and show powerful elite that this is the way to go, unless you are able to make them uncomfortable because that's what it's all about then nothing is going to happen (NED003, 4).

The statement made by NED003 is empirical data that coincides with Foucault's theory that power is not always aggressive and visible. Foucault and other writers posit that in some cases, it is subtle and coercive. It may be so subtle that the subject may think of her or himself as having agency, when in fact their decisions and behaviour are coerced by those in power in very insidious ways (Chaudhuri, 2018; McHoul, 2015; Shiner, 1982). Employers were accused of wielding this power by some participants:

> Yes, let me talk first about the slowing down because people look up to power. They look up to leadership. The leader doesn't have to say much. You just send a few signals and then attitude is delegated down because if the attitude of the power holder, is such that: "I don't take this thing seriously", he doesn't even have to tell everybody at every level. They pick it up like that [snapping her fingers to demonstrate immediacy]. And then immediately the culture in that organisation is that we can't take this thing seriously. That's power. It comes from up there and it becomes delegated like that. Equally, and in instances where you find the CEO who's really passionate, who's driving with

you, you will see it. You'll also see that everyone in the junior middle, whatever levels. There will be one thing. In the best way they can they'll be wanting to make an impression to implement employment equity and to look for good talent. So, it works in both ways. So power is so important in this journey of employment equity (TL003, 5).

Because in discussions that we were having, for example, around top management, you start to sense that it's about them giving away some of their power, and will they do that willingly? Because then they have to lose something. So, if I give an example, just a random example, I was just giving them examples of how we can find opportunities in constrained economies and I was saying, could we look at early retirement, for example, and there's an opportunity where one of the members of top management is 60. She's actually 60 this year, and she's a foreign national. It was as if I said something that is blasphemous or yes [laugh], and it was a no no, you can't even explore that. It's off the table. So, you see the power it's very important. The role of power is actually huge. And we can't move unless, I want to say infiltrate, I'm not sure. But there is a huge dependence on power. And who holds that power (FS001, 8).

Yes, because business has made it as if you are some kind of wounded soldier like when you raise the issue of employment equity. It's as if there's something wrong with you as if you're not smart enough, as if you don't understand how business operates. So, because remember, if we've been oppressed for so long, if I want to appear like I deserve the space on this table then I need to be talking the language that I find there on that table instead of saying that: "now that I'm on this table, let me bring the language that's been missing"; that's making this slow progress (TL003, 3).

Okay so you have, uh, the chairperson of the committee who and sometimes these people who chair these committees are big people in the executive. And so they are also your employers. You report directly to them you get constrained from being aggressive about the need to stick to the law you know, because after that then this, you know the confrontation that you would have created in the committee, will then be taken and used elsewhere where you'd

be victimized and so forth. You know, of course, we suffer from that (TL010, 2).

Participants further suggested that the resourcefulness and influence of the powerful is more effective in driving their agenda than the political influence of government.

> Unless you sit in the office of the CEO, and you're right up there in senior level. But that is a role too that should be at board level where the board is the one that's saying, look, we want by two years' time, this is the target for transformation (TL004, 13).

> Some of the things that they are already doing, is taking a stance that they litigate the constitutionality, and because they've got power and resources, they can render the processes to a standstill, right? And I think you see it with how the AfriForum for example, engages on a number of issues, right? And when you take the issue of gender-based violence, where they're saying the government is incorrect on saying gender-based violence is actually where the genocide is, but they've got the power and they've got the resources, they're able to have reach, where a normal women's NGO would not have reached, that even the USA president was taking that position and aligning to the AfriForum [referring to President Donald Trump who was president at the time of the interview]. He tells you about what power gives to people and people's resources, the type of cases that they are able to then take. They're currently boggling, the EFF in numerous court cases, because they've got power. And with power, they've got resources, right? (FS001, 8-9).

> If your own executive management has made the right decision but you find that when it goes to the board if what they are recommending is not going with the power based in decision-making in the board, it won't fly. So that power has great influence. But you know we talk about higher level, even lower-level appointments, we have political influence where especially there are unions involved. You find that the unions…they are part of all these employment equity plans process but when it comes to implementation at a certain part where it doesn't favour their candidates, they use their power in influencing HR leadership in siding with the unions. Nothing will happen that will favour you. That power base has such an influence on the implementation (ER001, 4-5).

> Oh, it's a big role. And power dynamics can be, you know, manifested in many ways. It can be political, where in our case, we would like it to be political so that the politics can change and could put pressure on companies to transform. But power in the workplace, is depicted in a different way, in this particular way: if it's White and male, it also means that you have to be that person to be or to look like that to attain power or to attain a position of power (TL004, 5).

Participants use words that suggest resistance to change (FS001, TL010), transformational change being seen as blasphemous (FS001) and the power of privilege (ER001, TL010). These suggest a strong emotional force and invoke feelings of strong push back against something that is undesirable and threatening. Participants are suggesting that this is their lived experience. The words or text really invoke deep emotions that set the tone for the implementation or lack thereof for EE.

> Ah, critical. Critical – power --- Ooh, I would add privilege next to power – absolutely. I am going to do all that I can for me to make myself, or to do the things that I believe make me happy, and I'm going to avoid the things that make me sad. Why? Because I'm in control of whatever the situation that's presented (TL002, 9).

> The second thing is the resistance again, the resistance to change. Because Black people do not own the companies, they are not the ones that are driving the change. The decisions are still being made by the owners of these companies. So, for transformation to happen it should…the mindset of those people should change. But then the mindset of those people is not… Generally, they are resisting. They feel like something is being taken away from them (TL005, 6).

Terreblanche (2012) maintains that global and local capitalism drives political agendas globally. He explains that large corporates and bodies such as the Mineral Energy Complex (MEC) dictate how the economic transformation agenda in South Africa plays out. Terreblanche (2012, p. 124) writes:

> We replaced the immoral and inhumane system of apartheid, with an immoral and inhumane political-economic system. The political side of the new dual system is pathetically inefficient and corrupt, while the economic side is too powerful, too self-centred, and too globally orientated (p. 124).

The commentary by Shiner (1982) and Terreblanche (2012), is supported by participants in articulating a sentiment that suggests that this tug-of-war, renders the policy makers powerless as they only have policy formulation capacity at their disposal. They are therefore forced to regularly amend policy in an effort to catch up with employers in strategies to avoid compliance. Thus, policy amendments become seemingly an unsuccessful reaction to the push back. This sentiment suggests that legislation on its own cannot yield desired results without other supporting initiatives such as a model that is sought by the researcher.

4.2.4 Enforcers are not administering positional power

Participants bemoaned the poor enforcement of the EEA. The following comments were captured in relation to this:

> Gone are the days of us begging people to comply. We need to drive compliance, because the best way to drive compliance to a law is make it clear when does the stick come and implement the stick when it is time. So, clap the people, and clap the people hard who don't comply with the law.…So, people are not complying with the law, and nothing is happening to them. So, guess what, more and more people are not compliant. You must crack the whip in my view (TL002, 10).

> The power starts at our own government – what message are we sending to these corporates? That is where the problem is.…So those implementers can feel that they have, they have something to fall back on. They have something that is more powerful than the CEO and the CEO would listen (RSR001,6-7).

> Positional power of the CEO makes them undermine the Inspectors: I don't keep close to the Department of Labour. I don't know the extent to which the Enforcement and Inspectorate Services [IES – Directorate in the Department of Labour] is monitoring. I can tell you two examples of Inspectors that I have seen. It was three years ago, and the Inspectors were so ill-informed, not ill-informed unassertive rather. Unassertive is the right English word. When you meet CEOs that think they are prima donnas like they know everything and then when you find an inspector who comes across like very tentative,

> doubting, they will finish you. So, I feel that they need…it's like we need to elevate the Department of Labour differently. And give it the impetus that it needs because for now, I don't think it has that (TL003, 7).

> OK, there's a political economy, I think that is taking place where we are with this concept of policy capture, you know. Gogo Aubrey Matshiqi mentions political capture a lot. The bureaucrats, DGs, Chief Directors, they do have the power to summon and enforce, and you know what they're calling, sticks and carrots, and so they do have that. The problem is if you want to quit the public sector, where are you going to go? Because you've antagonised the industry, you see. So in that sense, that's why now I'm talking about the political economy. They are looking at their long-term careers. They don't want to be antagonising the private sector because they might find themselves jobless in the public sector, so yeah, so they always want to be seen as the good bureaucrats. That's one. Two, some are corrupt. You know they're simply corrupt. Yeah, yeah, they don't enforce policies because they are receiving bribes somehow. You know? Yeah, so that is why (TL010 , 9).

TL002 uses the words "drive compliance" suggesting a move from a passive to an active posture. This implies that there is a general sense of inactivity in terms of execution of the work and the responsibility that goes with it. Other phrases like "crack the whip" and "clap the people hard" evokes strong imagery associated with discipline and punishment, suggesting that the driving of compliance requires force and an administration of consequence management, which is currently apparently lacking. This language choice indicates a confrontational approach to governance, framing compliance as a battle against non-compliance. TL010 on the other hand refers to political capture, suggesting that bureaucrats hesitate to apply the law in fear of antagonism of the employers. The inspectors are characterised as "tentative" and "doubtful", further suggesting the vulnerability of the regulatory body. Their effectiveness is compromised by both external pressures (from CEOs) and internal inadequacies. This aligns to Bourdieu's suggestion that those with social capital carry power and through it maintain the status quo (Bourdieu, 1986; Huang, 2019; Lin, 2000). A reflection of the impact of this power, currently in the hands of the CEOs is demonstrated in this statement.

The lack of enforcement according to the respondents' comments sabotage the employment equity agenda. There is a recognition that the purpose of the law is to define boundaries and to set the rules of how non-compliance to the rules will be dealt with. Participants suggest that the power behind the law is nullified by enforcers who do not enforce. This is supported by Jain et al. (2012) who in their recommendations emphasised the importance of enforcement in ensuring the efficacy of the EEA. "Institutional theory shows that legislation is unlikely to act as a regulative force and shape how organisations respond to employment equity without increased enforcement" (Jain et al., 2012, p. 17). The lack of enforcement, the participants contend, is either because of the fear of the power of employers or purely because of corruption. The lack of enforcement perpetuates the impunity by corporate South Africa in their resistance to the EEA. The power of the law and the power associated with dispensing discipline and compliance to the law is thus nullified by the enforcers.

4.2.5 The powerlessness of transformation professionals at organisation level

The EEA prescribes that: "Designated employers assign one or more senior managers to take responsibility for the monitoring and implementation of an employment equity plan, provide authority for the execution of the related tasks and take reasonable steps to ensure that the tasks assigned to the role are executed" (Republic of South Africa, 1998b, s. 24).

In most large organisations, these individuals are responsible for driving the transformation agenda, which includes delivering on the prescripts of the SDA and the BBBEEA over and above the EEA (Commission for Employment Equity, 2017). While the EEA empowers EE Managers, several factors lead to their powerlessness, and these are discussed below. However, as alluded to by the participants, in other organisations, this role is assigned to the human resources practitioner. The CEE research, found that these individuals feel disregarded in their organisations and that their roles are often not given the authority that is prescribed in the law (Commission for Employment Equity, 2017).

This was also articulated by respondents of this study:

> And I suppose also our HR, who are supposed to be business partners, because they are reliant on being rated by line and by business, for their bonuses, etcetera, then they don't then call them up and say: 'this is incorrect Mr. Line Manager, you cannot make that decision' (FS001, 8).
>
> And those people I would be fair if I may say they are not true to their profession. But when you ask them so what frustrates you the most? Most of the time they will say I can't penalise those senior managers, I can't penalise a GM at a mine somewhere, I can't penalize a factory manager somewhere. That is up to their line manager to do. Transformation Managers are being rendered powerless by line management that is refusing to transform (MR001, 8).

As stated above, in fear of losing favour, incentives as well as the fear of being victimised, implementers choose to avoid any conduct that will displease their bosses or line management. The implementers do not have power. The positioning of line managers as gatekeepers, makes them a powerful force and resisters of transformational change, which complicates the work of transformation professionals. Through this dynamic, the power of these transformation professionals is totally negated. The use of phrases like "true to their profession" and "rendered powerless" communicates the levels of frustration and powerlessness experienced in these roles. The principal-agent problem seems to play itself out here, where the implementers feel that they are going to lose incentives from their principals if they point out their errors and call them out. In delivering services to the principal, the agent seems to understand what is expected and is reluctant to displease the principal by working outside of the expectation of the principal. This relationship is not equal. The principal is the one who pays the fee and is thus the one with the final control. Thus, the agent will choose actions that are most desired by the principal (Lane, 2014; Panda & Leepsa, 2017; Ross, 1973).

The EEA dictates that the assigned manager (hereafter called the s24 Manager as per the section in the EEA that prescribes for such delegation of responsibility) responsible for driving the implementation must be senior and that this individual reports directly to the CEO or Accounting Officer in the organisation. This gives these managers

access to power as they report to the highest position of power in the organisation. However, participants are suggesting that the role is relegated to junior incumbents, thus stripping them off all power and influence. In some cases, the role is not given to juniors in the organisation, it is still given to a senior person, but all power is stripped away. This assertion is corroborated by the CEE research findings (Commission for Employment Equity, 2017). Participants said:

> It's become juniorised in terms of the people who are implementing it. And we've worked in many companies, and you'd be gob smacked about the people, the Black people they put in place to implement BEE.…They're not like senior as well. The implementers have to be senior people who've got stature in the company and can be taken seriously (TL009, 15).

> The 2000's, maybe even the later part of the 1990's, one saw passionate people, people who are passionate about their work and who fought for the work, their work to be recognized and to be given the correct space. Ja. Ja, definitely. You know, the senior managers appointed under the Employment Equity Act, Tabea, are firstly…They're formal appointments, but quite frankly they just don't have the teeth. You know, the act does talk about [the fact that] they need the resources and the authority to implement. But they don't have… You know, they don't even have a budget, most of them……But what I'm saying is there's got to be a greater authority bestowed on these senior managers to be accountable in their own right because as you say, they're just getting ridden roughshod over by CEOs and COOs and what have you. They've got absolutely no power, you know, in implementing (ASAR001, 7).

> I would first of all say for instance my role as an employment equity implementer in the institution should be given more cloud and more credence and more what… power. And because of… you know when… I think according to employment equity, it also depends on whom you meet in the Department of Labour. Some or other I've had discussions with different members of the Department of Labour. At times I feel they are also not bold enough to support us when we come to them and say I have been given this power on paper but in terms of where I am, I do not have the power to make decisions (ER001, 6).

It’s not supposed to be that way. So, I know in the spirit of employment equity originally there was that voice, but it got muzzled as the years went by. Even when you have a compliance order, and you have to respond to this thing, just ask can you show us a letter that shows that you have been given this responsibility. Well, Department of Labour has that letter but when I then have an issue, they are not there to support me and there is no strengthening of that office, in other words the employment equity office is not given enough leverage to give directive (ER001, 7).

Yes, because for me I'll be very honest with you. You find that in some other organisations, whereby Black people are given the responsibilities to say, you are now the executive, you are now the HR member of the group, HR of the division, HR director and so forth. So well, when you look at it at face value, you would think they've got power to change things in organisations. But now, when you scrub, when you dig down beyond the surface, when you analyse and start unpacking, you'll realize that this Black fellow, who's in this big position, actually does not have power. Yes, the power still rests with the owners of that company. They dictate to him or her to say who he must employ, who he must bring in these portfolios. Because if indeed these Black executives had power, we wouldn't be here today, we would be very far (TR001, 12-13).

Yeah, they've got a substantive, substantial captainship to establish a network to protect their interests. That's why, what has happened is because of pressure from institutions such as the government and others. So, they moved and incorporated Indians, making them to be over represented and then the Indians when they get in there, they become part of the networks. And then they also create their own subnetwork inside you know, and so on and so on, even if, its Colored people or African people. We see that there's a need for us to also create counter networks. We can't because we are a minority in those spaces and we are powerless in that sense. And they can simply say: “hey, we charge you for insubordination”, you know. And when you resist because there came a point where we decided that no, we're not going to attend these committees anymore of appointments because it's useless because you go there, you actually end up creating enemies. When in fact you could be sitting in your office

> doing research, consulting students, and so forth. You know so. So yeah, so we decided to pull back and then to just allow the situation to continue. So, if the lack of networking is because as Africans we are the minority in those spaces and minority as we are, we don't even occupy strategic positions of power. Yeah? So that's the thing (TR010, 4 - 5).
>
> And those that are at the top, you find there's some Africans in the executive. But the top management is then untransformed. You see, so the person is the cherry on top. And what happens underneath? They have no power whatsoever, because there are procedures. You can't jump top management to address a junior management issue. You can't move aggressively because they put the structures below, they will go to the board and then the board meets at golf clubs, and then they will come hard on you (TR010, 5).

These individuals that are referred to by the participants are assigned change agents and yet fail to achieve the change they are assigned to bring about. “A change agent is anyone who has the skill and power to stimulate, facilitate, and coordinate the change effort” (Lunenburg, 2010, p. 1).

By its very nature, change is a process of working against the grain, it is about questioning the status quo and seeking to shift the current reality to a new desired reality. As per the preceding definition, the change agent should have the skill and power to stimulate and facilitate change, and this power is not necessarily authority given with the role, but a skill. It also requires the agency to facilitate and coordinate change. And yet, these individuals seem incapacitated to do this. It is almost as if they accept the current reality and the ideological formations that govern the discourse of transformation in the labour market and/or their organisations. They seem bound by the politics and culture of their organisations. A narrative that they buy is that which is defined by the powerful. A discourse that promotes certain narratives about how impossible the task of employment equity is and how the power to change this reality rests only with the powerful.

> Ironically, despite the push for mindfulness, the leaders failed to see how linguistic practices led to mindless acceptance of dominant ideologies. Indeed, the leaders have agency, but with wicked problems individuals have a difficult

> time determining how their agency might be best directed (Fyke & Buzzanell, 2013, p. 1636).

The above assertions by participants align to the dilemma articulated by Fyke and Buzzanell (2013) as part of the findings of their research. The respondents inadvertently suggest that the change agents have no agency to bring about change because they accept the dominant ideology of what is doable, what is acceptable and what can be challenged and not challenged. The change agents restrict themselves to being granted permission to operate within the confines of the dominant narrative and paradigm, allowing the very ideologies that need changing to define the parameters of operation for them.

Change agents work against the grain and push the system to a level of discomfort so that the system begins to change. But this is not happening. Instead of promoting new ways of doing things, they seem to operate mindlessly, allowing the current parameters to restrict their activities. The researcher is in no way suggesting that the intervention of the change agent or transformation champion is the only factor that is necessary for success in implementing employment equity.

While agency has a significant impact, Lunenburg (2010) argues that the quality and workability of the relationship between the change agent and the key decision makers also play a critical role. The researcher explores this perspective through the Agency Theory. The participants suggest that the change agents (s24 Managers), are hamstrung by their need to reap rewards from the relationship with their principals (CEOs). Typically, in this relationship, there is a performance agreement which results in more incentives for the s24 Manager. The s24 Managers are therefore able to make more money if they perform and please the principals. How the performance is defined and measured, is dependent on the contractual agreement between the Principal and the Agent, but the dynamics of the relationship have a huge bearing on how these agreements play out. Since there is no guarantee of the performance of the agent, the incentive for performance is not locked into the pay for effort. It is often separated and called an incentive or a sense of inclusion into the network of the powerful. How it is paid out is variable and the relationship dynamics play a huge role on this (Lane, 2014). The result of this dynamic is often an apathetic s24 Manager who does what is acceptable to the CEO and nothing more, in return for individual benefits.

TL010 expresses it as follows:

> They choose the ones that are going to agree with whatever will go with the flow, yeah. Yeah yeah, maintaining the cycle. I like to think of alienation as you mentioned, because then, once they get appointed, you find that they are alienated from the story of the disadvantaged….Yes, or they aspire to, you know, based on their inclination, one can see that this one aspires to come into the club. You know then they take, they take you in, you know. OK. So that is what happens. With Africans who are in power, some of them do have the power but they're not using it because they know what, or why they are there for [laughs] (TL010 , 9).

The use of phrases like "go with the flow" and "come into the club" conveys a casual tone to a very serious imperative, indicating the level of casualness to a national and legal mandate. Furthermore, TL010 argues that some of the s24 Managers are silenced by the promise of sharing in the wealth and becoming part of the “in – group” of the leaders who resist employment equity. They are lured into the in – group by a promise to become more financially empowered as well as being part of the “club”. This suggests a barrier to entry, emphasising how social capital is used as an incentive to join the in-group of power.

Looking at this argument from Foucault’s perspective on power, one would argue that the s24 Manager is not a co-creator of the reality but rather that the reality is imposed upon him/her (Shiner, 1982). In the above quotation, the participant suggests that some implementers, who are primarily Black and therefore the benefactors of employment equity, are themselves not engaged in the process of defining the employment equity agenda. Thus, they are not capable of changing the narrative unless they choose to claim that power and thus define the agenda. Olatunji (2021) states that those who have lost their sense of power can never rebel until they are conscious and in the same vein can never be conscious until they have rebelled. This is the trap that some of these s24 Managers find themselves in. The rebellion would be reclaiming their power and choosing to leave the club, in favour of being true to the employment equity agenda (Fyke & Buzzanell, 2013).

TL010 goes on to argue that for the most part, these s24 Managers are appointed precisely because they share the values of the employer and aspire to be part of the

employer's club or network of influence and will therefore not compromise this ambition by pushing an undesirable agenda. They are in his words "alienated" from the reality of the Blacks (TL010, 9). Thus, TL010 is suggesting that the power base of those resisting employment equity may expand beyond the employer/employee and racial lines to a people who share values and drive the values that are important to them, which are not linked to employment equity. The principal and the agent now have a common agenda, and they drive it to the detriment of the employees that need employment equity. TL010 does however, present another reality which talks to the loss of agency in the process of pursuing the struggle for equity in the workplace. He refers to the consequences of being vocal and how it may lead to good people losing their voice in the process. This loss of voice comes with powerlessness.

> Yes, and let me talk about maybe where you feel that no, there's nothing I can do in this situation. Its when you pick, you know when you begin to see that your continued engagement with issues of transformation makes you to create enemies; so you have enemies. Now you know because news spreads around the university that this is not a good guy, you know, you talk too much [laughs]. You see. So once that thing happens because some of us fortunately, some of us we're trained politically as students. Once that thing happens, you look around, you see that now the terrain is not in your favor, you retreat. Because now they are going to hit you where it hurts the most. Which is, create some reason to get rid of you and then you get unemployed and then because the universities are so linked their network expands beyond one campus. You can't be employed in any university you see in South Africa, and unless now you move to the marginal universities which are previously Black universities. And once you are there then you know that now, you are out of the mainstream (TL010, 7).

What TL010 says above is typical of an authority that silences his adversories and those who do not share his values.

> By some way, the silencer has seized the sword completely. So, the question of holding the sword by the tip or the hilt does not arise in the first place. His voice is only accepted or hearkened to when it is not perceived to be eventful or retaliatory (Olatunji, 2021, p. 3).

The sword in this case is not always a weapon of destruction. It can also be an enticement as TL010 puts it, an enticement to be part of the “in-group”.

> When a group of people is forced, either consciously or incidentally, to jettison their beliefs and ideas in favour of or in obedience to another, then they can be said to have been silenced. This may happen through enticement, force, or volition. The moment the silencer is able to gain the full control of the people’s minds, they are doomed to be silenced (Olatunji, 2021, p. 3).

This process does not only apply to the s24 Managers, but in some instances to the bureaucrats, as already intimated in 4.2.4. TL003 further suggests that the beneficiaries themselves are powerless to change what happens in their own companies. They become the recipients of discrimination and do not have agency to deal with it. Words like “I don’t have control” accentuates the powerlessness (Commission for Employment Equity, 2017).

> And again, if I work for company X and I'm telling you that I'm feeling discriminated in my department, or there is no progress of Black people, whatever it is that I might see, and I might say. And then you find a CEO that says, ‘frankly what's happening in this country?’ Even if he doesn't directly address my issue what he is already communicating right is that: ‘you know what, you need to be serious about life’. Others would even say: ‘you need to be thankful that you have a job.’ ‘Okay, as opposed to complaining about what is happening here look at what's happening in the State-Owned Enterprises, look at what the ANC is doing’. They are talking to you about the outer layer of the centre of concern. I often say when people throw those statements at me: ‘I don't have control.’ I often say to people, ‘I know nobody at the Union Building. You can’t tell me about what the ANC is doing, I don't know them personally. I don't have control’ (TL003, 5).

> Talk about power. You critique the decision or the direction that the committee is taking which is headed by your direct line manager, but you could be constrained. And then secondly, the decision to compose the committee is made by these executives, but they compose the committee in such a way that it's in their favor (TL010, 3).

TL005 accuses some implementors of being apologetic. The choice of words suggests an inability to effectively implement what is within their mandate.

> So, we failed to implement that. And again, as I said it was that apologetic approach to things, hoping that things are going to change by themselves but then actually we should have seen from other countries like the US that it doesn't change by itself, okay? (TL005, 15).

Karl Marx captures the arguments stated in this section through his theory of alienation. Workers, in this case, the transformation professionals experience a sense of alienation from their work (Christ, 2015). Marx's theory suggests that the structure of capitalist work environments can lead to alienation, where workers feel disconnected from their work, their products, their colleagues, and ultimately themselves. This lack of belonging can contribute to dissatisfaction and a sense of meaninglessness in their work and subsequently in their lives. Participants allude to this alienation and TL010 articulates this succinctly.

4.2.6 Subversion of the law by employers

According to TL010, the law is not respected, and it is often sabotaged. The employers deliberately ignore what the EEA dictates, choosing rather to follow what works for them.

> Then the third thing. Which is, I think, the most painful thing is just the sheer and deliberate distortion or lack of reading of the law. So the chair and, the committee, they're sitting in the committee that decides deliberately not to follow the law, because they're in a powerful position. So I'll give you an example...if you go to an institution or big company you will see on paper this company is very progressive, but in practice it's not happening (TL010, 3).
>
> Only when they get someone to challenge them then they say: 'oh, I didn't know' when you tell them of it. The Act is very well thought through, the problem is the implementation, and the Act never said: 'go fetch tokens and come and put them into roles. The Act doesn't say that! But

people choose to say that, so that they render it ineffective because they misrepresent what it says (TL003, 6).

We went and interviewed them here in Bedfordview where I stay. And they had a level A, they shouldn't have got that award because they were a level A contributor to the old scorecard. And then they had 16 points for ownership on their scorecard, but they'd never done an ownership deal. They found a way… because my sister was on the board of their competitor. My sister's company commissioned research to find out why this other company was on a good level. It was important because they were looking at doing a BEE deal. 'Why are our competitors getting such good scores?' So, it seems from the research, that they found a way to manipulate that scorecard to get those 16 points for ownership. You see what I'm saying? It's not illegal but it is really against the spirit of the codes. Do you see what I'm saying? Yeah, loopholes of just jip'oing the system? (TL009, 9).

The above instances demonstrate a wilful manipulation of the law to an end that suits the employer. It suggests that the law is not respected, neither are the consequences feared. This topic links closely with the theme that suggests that enforcers of the law are not administering their positional power. It indicates that there are no consequences that need to be feared by employers.

4.2.7 The discourse of convincing employers to implement the Employment Equity Act

The EEA is a law. It was promulgated in 1998. This means that it is to be complied with and non-compliance thereto is forbidden. However, most of the discourse that emerged from the data collected implies that implementing the EEA is perceived as optional by employers.

The data indicates that there are no major consequences to non-compliance, and that non-compliance is viewed with indifference (TL010, ER001, NED003, TL002, ASAR001). The concepts that are used propose choice – words such as 'buy-in – employers must buy-in' and this has been referred to by several participants. Another

ideology that is promoted is about understanding the benefits of employment equity for the employer, again proposing that if such a benefit is not understood, the EEA will not be implemented. Understanding the business case for employment equity is seen as a prerequisite to implementation thereof (Department of Labour, 2015, 2017, 2019a). However, laws by their very nature are to be kept, with or without buy-in.

The CEE launches the CEE Annual Report annually, with a tagline that says: “Transformation makes business sense”. It seems that even in the mind of the CEE, this ‘selling’ and ‘buy-in’ of the business case is paramount to successful implementation. The narrative really shifts the responsibility of implementation from the employer to the legislators; promoting a query that says: “How are you as the people who want employment equity in the South African labour market, going to make sure that I buy into it and implement it?” The language thus excuses employers from implementing because enough is not done to get them to buy-in.

ICT001 claims that shareholders have bought into, and implemented the King Code even though it is not law and therefore, attempts need to be made to promote the same thinking in as far as employment equity is concerned.

> And then that gets trickled down to management and management act in the best interest of shareholders. And that's something we haven't done as a country, and I will give you an example. Shareholders have adopted the concept of the King Code. It's a model. It's not legislated for good governance. So, but we don't have a code on equity in the workplace, employment equity in the workplace. We don't have a code that is outside the regulation that promotes equity in the workplace, the difference, and the reason why we don't have, the King Code is written with a shareholder in mind. It says this is what, why it's good for you as a shareholder (ICT001, 5).

The King Code is not a piece of legislation, and as such does not have the same status as the EEA, which is law. However, the comparison that ICT001 makes is apt, as it points to the relative ineffectiveness of the enforcement of the law. The EEA is treated as a ‘nice to have’ - something that would actually fit within the category of the King Code. The King Code III had an application regime of “apply or explain” and in the King Code IV this regime was changed to “apply and explain” (Natesan & du Plessis,

2019). It is important to understand this shift. Mervin King argues that this shift seeks to ensure that shareholders not only comply mechanistically but comply with the goal of the Code in mind (Natesan & du Plessis, 2019, para 3). The King Code is an instrument of corporate governance and any organisation that is registered on the Johannesburg Stock Exchange (JSE) is obliged to comply to the Code. Much can be learnt from how the JSE enforces compliance to the King Code. Non-compliance of a JSE listed entity to the Code could lead to hefty fines, as well as a delisting. One of the most significant consequences of delisting, is the reduction in the liquidity of shares and this is undesirable to shareholders (Martinez & Serve, 2016).

Terreblanche (2012) intimates that the MEC has exerted exceptional influence on the governments within South Africa since 1870 in effect operating as the engine room of the government of South Africa. Corporate South Africa, specifically the MEC, continues to drive the economic and political agenda for government and anything that does not promote the interest of the corporates will not succeed. This argument to some extent explains the inclination to coax and seek to reason as opposed to dictating the direction of economic transformation to corporate South Africa and enforcing the laws that seek to achieve such economic transformation. Thus, any agenda that is perceived to be contrary to the desires of corporate S.A. is always treated with a tentativeness and an apologetic stance by the legislators, that it in effect becomes unachievable. With reference to the argument on the King IV Code, while the Code is perceived to be advancing and having an immediate impact on the shareholders interest, the EEA doesn't seem to have such a direct benefit. Thus, the need to 'sell the agenda" and to "solicit buy-in" as opposed to enforcing the agenda. The EEA thus becomes a victim of these circumstances.

Therefore, South Africa, and within the context of the EEA, the employers, are therefore presented as powerful based on the narrative above. The success of the EEA is highly dependent on, according to the participants, employers viewing employment equity as something that they need for their businesses to be successful or for the economic climate to remain favourable. This promotes the "accept and celebrate differences paradigm of diversity management" which suggest that "employees from different cultural backgrounds permit the organisation to serve its

customers better and to create niche markets that would not otherwise be available to it" (Brazzel, 2003, p. 5).

RSR001 communicates the desired narrative as follows:

> You should be saying: "so which is the narrative that the power does not understand?" The power understands us just being, we are redressing the past without saying by redressing the past you are actually bringing an added advantage to your organisation because when you have got diversity, when you have got the right representation at your planning and buying level this is what can happen to you. So that narrative is not taking place. So, the powerful do not necessarily understand how employment equity contributes towards their bottom line, 'rand and cent', and that is where it goes wrong (RSR001, 5).

Historically, the narrative of a business case for employment equity came into being around the 1980-1990s, when the economic climate tended to force employers to embrace diversity in order to remain competitive (Brazzel, 2003). Baker (1996) as quoted in Brazzel (2003) stated that "They began to see diversity programs as a way to generate greater organisational effectiveness and competitive advantage, even more than as a response to legal and value issues of discrimination and violence toward White women and people of colour" (p.9). This has primarily become the norm and the acceptable narrative for dealing with issues of employment equity. The powerful, in this case, corporate South Africa, define what should constitute truth. That is, any prescript by government, must translate into economic benefit. Otherwise, it will not be pursued.

The participants in their responses, are conceding to the fact that, unless the agenda is palatable to corporate South Africa, it will not be embraced. The focus moves away from any acknowledgement of a social justice paradigm on diversity management. It's not about righting the wrongs; it's about making you (corporate South Africa) profitable! (Brazzel, 2003). As one participant said:

> There is every suggestion to say they wanted a stable economy so that their companies can accumulate more on their own and so there's no

> suggestion that they want a better South Africa. A better South Africa to them means a better South Africa for their pockets and the better South Africa for their comfort and a better South Africa for their kids and grandkids. And that's it. And then, preservation of their wealth and privilege (TL001, 17).

While the current narrative (transformation makes business sense) which is based on the accept and celebrate diversity paradigm (Brazzel, 2003), does add value to business and to dealing with issues of employment equity, it creates a superficial solution to the real problems that face the labour market. It deals superficially with racism, sexism and all the other “isms”. The social justice paradigm to diversity management, would be more effective for embracing and implementing the social justice paradigm.

> …the organisation works to eliminate oppression based on race, gender, sexual orientation, and other differences. Racism, sexism, heterosexism and the other “isms” that are institutionalized in organisational policies, programs, norms, and structures are barriers to people being able to do their best work (Brazzel, 2003, p. 5).

It can be concluded from the above discussion, that power and the lack thereof play a significant role in the advancement of employment equity. It is multi-layered and fluid in its application based on the different contexts that affect the beneficiaries, enforcers, politicians, and employers. Its role cannot be ignored. It cannot be dealt with as a by - product, but as one of the main fundamental issues affecting employment equity.

In sections before this one which focus on power, it was an underlying theme that manifested itself even in the other obstacles discussed. A model that accelerates employment equity must deal squarely with power and address its impact.

4.3 Principles that are central to the acceleration of employment equity

McDonald (2009,) suggests this definition of principles: “A principle, then, is an originating rule that universally regulates the formation, operation, or other changes of any actuality, which as universal, applies to that kind of thing” (p. 99). They operate

across time and inform the creation as well as the changes of anything which they govern (Pennie, 2022). Principles, therefore, form operating rules, rules that govern belief systems and behaviour. Badat (2023) and Burgemeestre et al. (2009) present the principle-based approach to compliance as more likely to yield desired results as opposed to rule-based compliance. These authors argue that principle-based compliance enables strategic compliance, while promoting operational flexibility and innovation. Sound principles, according to the researcher, are central to the success of employment equity in South Africa, as they avert box-ticking and malicious compliance (Badat, 2023). Unless it can be ascertained what the rules are that will govern the system of beliefs and behaviour which will yield results in the employment equity space, then all solutions will be flawed and ineffective when implemented. Respondents were requested to state and explain principles that needed to be inherent to the model that would accelerate employment equity and in the following sub-sections, their statements and ideas are discussed.

4.3.1 Trust

Trust is a theme that emerged from the responses.

> So, the key principles for me are, trust and cooperation. So, if we work together. We are lucky we have an institution like NEDLAC, where all social partners come together to talk about what they see as important for the country. If we can use a model like that, that helps us to prioritise what is important for us. So, we have the skills for the sectors to change and then what commitments do we make, right (NED001, 13).

> So, we need that transparency to create the integrity in that system. And people must then trust that it's done for a good cause. You're not doing it to go and benefit a few politically connected people. We are doing this to benefit the country, and everybody is going to benefit (TL005, 24).

Trust, primarily of the process and the role players seem to be an important principle in the effective implementation of employment equity. Participant TL005 believes that it is critical for the citizens to believe that there is integrity in the system that is used to apply the EEA. The perceived corruption that is prevalent, specifically in government,

has eroded any faith in the government's political will, to make employment equity work. This is articulated by TL004 in Section 4.2.2 who says government is not trusted to do the right thing. Any government that is going to take the employment equity agenda forward, needs to demonstrate its trustworthiness to employers, workers and the public at large. These role players, need to feel that government will have the political power and commitment to see the transition through. Without this trust, the employment equity goal remains elusive. The trust in all NEDLAC role players for facilitating the achievement of employment equity is also seen as important to the public. They need to be trusted to do the right thing and to do it right (Masiya et al., 2019).

4.3.2 Commitment

According to the participants, commitment by those leading the employment equity agenda is critical and it does require the willingness to pay the price for what is considered important, and participants suggested that the leaders' commitment must be demonstrable.

> You need not be apologetic and if anybody that operates in your country does not want to do it then they must leave, you're better off without them. You're better off without people that do not want to go towards what the rules of this country are saying. You're better off. You should not bend your own rules to try and accommodate other people. So, for me that's the first thing (TL005, 18).

> The most important issue for these two are you've got to have commitment at the top level of organisations, both sides. That is both the regulators and industry. You've got to have commitment at the top. You've got to have budget, money set aside that is geared to address this if it's an issue of budget (NED003, 8).

TL005 and NED003 believe that leaders at the highest level of the country and organisations, need to have a commitment that is unwavering on employment equity. Anyone who wants to be a part of the country's economy needs to demonstrate their

commitment to employment equity. If this principle is not guarded, then employment equity will not be attained.

> Us sitting in the executive suite that are consuming money, are not making money. So, the people who are sitting, the general manager at a mine is the one that is saying 'hey…they expect output from me, they expect me to meet my targets and deliver so much in this time, I'm going to do it with the people who will do it for me. For as long as my head is on the block, I will make the decisions that are best for my business' (MR001, 6).

> Correct. And which would then that there would be no push, there is a pull inside of the individual as well, because they understand, they understand it. So, it's not just the push from somebody just pushing it down on them. But there is also a pull from understanding the conceptual, from understanding and the diversity as well (RES001, 30).

TR001 maintains that commitment is driven by accountability. Leaders need to be held accountable for the desired outcomes through rigorous performance management.

If this is done successfully, then they will demonstrate the requisite commitment. The Joshbersin Company (2021) put forward that accountability must be defined in quantifiable terms, in which what is expected, when and how this should be done is clear, for leaders to be able to deliver on those expectations. This sentiment is articulated by TR001, and he maintains that it is only once this is done that, we will experience a shift in the needle in terms of employment equity. He states:

> Because for me, I believe that for things to happen, there must be accountability at all levels. Yes. So, I like the idea that in other countries, employment equity now is not only the responsibility of one certain Minister, but all the Ministers are also accountable for employment equity. So, I would say that for the EEA to have teeth, all the Ministers draw from the lessons from other countries. It must become the responsibilities of all the Ministers, including the executives, to sign performance agreements. To say that we want to see these targets achieved. If the targets are not achieved, I don't see why people should

> get performance bonuses, for what? Because we're not loyal to our own people, your own country (TR001, 20).

The statement by TR001 is a plea for change in the structure and systems of government to drive delivery through commitment. It calls for a reform that will lead to systemic transformation to ensure integrity and accountability of Ministers in the employment equity agenda. Collective accountability of government is being called for here, to reshape the drive for transformation of workplaces.

Global discourse and best practice gathered through “lessons from other countries” are being cited to promote the requisite level of commitment to advance employment equity.

4.3.3 Judicial justice

The principle of judicial justice was flagged as a fundamental theme. Participants believe that justice needs to be achieved in redressing the ills of the past and where the willingness to do this is not demonstrated, decisive action needs to be taken.

> I mean the first fundamental principle for me; I don’t have a lot – probably two or three – the first is justice. You know, we must have a law, it must be clear, it must be applied consistently. If you do well, good for you, pat on your back. If you do badly, punishment. No two ways about it. Let’s stick to the law (TL002, 13).

> So, there is no way that there would be peace even in South Africa for as long as the majority of people feel disadvantaged. It will be super superficial peace that people would think they have, because that is why we are living, whether we are Black or not, living in the suburbs. That is why the level of crime accelerates (TL003, 9).

> So, these best endeavours kind of approach to legislation, fuck, you need to punish people that don’t comply with the law. That’s the only time people behave according to the law. I mean, look at corruption. People know that stealing is wrong morally, but it doesn’t stop people from stealing. The only thing that will stop people from stealing is if

> thieves are arrested and taken to jail, and their whole lives fall apart. So, when I look at that, I go I'm not going to steal – not because I'm a great guy and I'm a Christian man, I want to do the right thing morally – it's because I know I don't want to spend the rest of my life behind bars – that's simple (TL002, 3).

Participants highlight the fact that there must be fairness in the way the law is applied (TL002, TL0030). As can be seen from the above quotation, TL002 felt very passionate about this principle, and this is deduced from his strong language, where he uses a swear word to emphasise the point and the depth of emotional investment to the principle. There needs to be consistency in the way the law is applied, and consequence management needs to form part of the way in which non-compliant employers are dealt with. While lack of application of the law was seen as a barrier, these participants believe that the principle of justice needs to be an anchor for application of the EEA. Justice must be done and must be seen to be done.

4.3.4 Empathy

The simplest definition of empathy is having the ability to understand how others feel and being able to put yourself in their shoes. Empathy further takes into account the feelings and motives of others in deciding how to respond to these (Petrides et al., 2007). Respondents posited that empathy is a desirable principle or value for driving employment equity.

> And for me the principle there must be – the word that comes to mind is empathy. Put yourselves in the shoes of the people that you are trying to drive this behaviour from, and understand where they are coming from, understand what may make it difficult for them to comply, and support them and carry them over the line (TL002, 13).

> But if you actually unpack it, Tabea, its very task focused. What is missing is the connection component. So, by connection I mean empathy, EQ, you know. And EQ is the biggest missing component" (ASAR001, 2).

These participants quoted above, argue that empathy enables people to respond differently to issues as it forces people to put themselves in other's shoes. If this

principle is core to the work of employment equity, it will be difficult for enforcers and implementers of the EEA to deal with equity issues as a task orientated exercise, which promotes the tick-box mentality. Empathy will put a different perspective on the experiences of inequality and demand a more serious response from them. A principled response.

4.3.5 Social justice and sacrifice

> And you know and then the third one, the social and moral imperative social justice if people were to believe in those principles to say, you know, let's just look at social justice because I like a quote by Martin Luther saying, ‘our lives are so intricately intertwined that injustice in one place is injustice everywhere’ (TL003, 9).

Taken within the context of social justice as articulated by Rawls, that in a just society, individuals desire to achieve, is controlled by a commonly shared vision of what is justice and every member of society endorses and promotes the commonly shared vision of justice for all (Daniels, 1974). Thus, according to Rawls, a just society should seek to reduce inequalities, and this is what is articulated here by TL003.

Social justice is closely linked to the concept of social cohesion without which, there could be no social justice. Parson (2013) as quoted in Fonseca et al. (2019, p. 235) defines “social cohesion as levels of order and stability put together by shared norms and values in society”. To achieve social justice, there must be a certain level of sacrifice from the privileged. Some participants saw sacrifice as a key principle that must be embodied in the model. Their comments were as follows:

> And it must be a sacrifice for generations, two or three generations. And make sure that you equip the country to the people that have a mindset that prioritise collective development, people who will live for others, not, not people who, who want to shine at the expense of physical barriers (TL001, 17).

> And we know it’s a big problem in the world. So… So, ja, you know, that’s the issue, hey Tabea, because people must be able to even sacrifice some of their

> own career goals, their own remuneration, their own prospects because it's the right thing to do (ASAR001, 15).

Rawls maintains that in a society that prioritises social justice, people who have been privileged are willing to allow those who have been disadvantaged to get more opportunities than they, towards achieving an equitable populace. That is what ASAR001 and TL001 advance in the statements above, in that they talk about sacrifice, and further state that it is the right thing to do. Rawls's "difference principle", seeks to explicitly redress inequality by enabling the disadvantaged to get an opportunity for redress through the sacrifices of those who are privileged. (Barry, 1973; Bentley, 1973).

4.3.6 Substance over form

Substance over form is a concept that was popularised in the South African context as a response to dubious economic transfer of rights and privileges through business shares. Some business owners would transfer ownership of shares in businesses in ways that did not result in real empowerment or financial benefit of the designated individuals, while benefiting from the recognition of the transfer in terms of their BEE Rating (Department of Trade and Industry, 2013b). Substance over form then became a form of an acid test of the validity of the transactions. Participants argue that even in the employment equity space, this principle needs to be used to test the defensibility of appointments of people from designated groups into roles.

> Do you know the original one was substance over form and I'm not sure what it means in this context but substance over form has to be a measure in employment equity. And I'm not sure what other indicators that you can do to measure substance over form, but I know it from ownership what it means, from procurement what it means. Because you look at these BEE deals and you know it's not going to transfer ownership because it's got form as opposed to substance you know (TL009, 18).

TL009 demonstrated an example of form over substance with the following example in his interview:

> There was a guy at a beverage company I won't mention its name, he was a director. So, we submitted our invoice to this multinational company and then he couldn't sign this invoice. We called his number two or three [subordinate]; he was a friend of ours. And he says no TL009, you're not understanding. He might be a director, but his signing power is far less than what you are invoicing. So, you must just split the invoice twice. So, he was too embarrassed to tell us. It was so sad (TL009, 14).

TL009 is suggesting here that some designated persons are given roles without the authority attached to the role. This he asserts is form and it is not substance. The principle of substance over form is flouted. A similar example, where the principle of substance over form was contravened is shared below:

> And I had gone on holiday, I was in the States. I came back and the company that I was working for had, firstly, I was the only Black South African professional at the company at my level. And I think everyone else was non-South African Black, which is also another issue that happens in employment in South Africa, which we don't talk about. And then the others were cleaning staff, you know, and secretarial staff. So that was the composition in terms of Black staff in that company. And I came back from holiday and all of a sudden there were about eight Black South Africans who were there, one who had albinism, there was one who couldn't see, there was one who had, you know, yes, basically every type of disability, they had in all, eight people. And I just didn't understand, and I asked what's going on and then they said no, we're doing the program, so we needed designated people for the program to join like, Work Experience Program for a month or two. But then I thought, okay fine, that's interesting, it's never happened to this company. It's a good effort. And then maybe a week later, you know, the rating company came to evaluate the company, and I realized then that this is why they actually employed those people because they had to then tick the boxes because apart from me there was no one else who was a Black South African in that company (TL004, 4).

Other words that are used to imply the examples of "form over substance" used by TL004 and TL009 above; are window dressing or tokenism (Andrews, 1997; Smith, 2016). TL009 maintains that transformation overall should embrace the principle of

substance over form. Within the context of employment equity, the concept would imply that where designated individuals occupy positions, these positions must be accompanied by the requisite power and decision-making authority that is incumbent in the role. TL009 believes this is a basic principle of substantive equality within the employment equity field as well. TL004 also highlights the importance of this principle. This principle, substance over form, is beneficial to the elimination of malicious or often perverted rule-based compliance.

In the example that TL009 shares, it is evident that the director mentioned lacked the power and authority that went with the role. He had succumbed to what TL010 has previously spoken about, where some Black incumbents are brought into the system because they aspire for other benefits and not the employment equity agenda. The powerlessness of these individuals undermines the bigger agenda which they were brought in to drive. They drive the agenda of the principals and lean into the benefits associated with promoting the powerbase of the already powerful. This was discussed in more detail under section 4.2.5.

4.3.7 Patriotism

Patriotism in simple terms means a love and a loyalty for one's country (Altıkulaç, 2016). Participants posit that there is not enough patriotism in South Africa to push an agenda such as employment equity forward. Citizens are more concerned about their individual gains than about the love for the country. Below are some arguments in this regard:

> Yes, and we need to as well to invest into our own internal resources. For instance, look at China, when you look at China, when you look, when you study the Asian Tigers models and so forth, then you get so fascinated by the stories, because it's a loyalty, love for their country, for their flag, for their everything that has put them where they are today. Because when you look some few decades back, at what China was like, it was never encountered amongst the economies of the world. But now it's on top. Why? Because they send their children to, to America to go study. Malaysia did the same thing. You know, South Korea did the same thing. They send them over there to study but with one goal: 'go there, study, come back, and do what you have

> learned outside. So that we can take our economy forward'. But they were loyal to their country. That's why they are safe in the country, and they were supported by their government (TR001, 19).

> Okay. I think for me, personally, the principle, the utmost one, we must be loyal to our country. Yes. Because if we are loyal to our country, we are loyal to our communities, there's nothing that is going to go out of this community that is not going to benefit the community (TR001, 18).

Patriotism is a principle that cannot stand alone but needs to be supported by a strong social justice agenda, as well as sacrifice. The participants in a research conducted by Altıkulaç (2016, p. 31)implies that patriotism is demonstrated by "loving the country, preventing damage to the country, working for the country, protecting the interests of the country".

4.3.8 Inclusivity

The principle of inclusivity was also put forward as key to a model that would enhance the effectiveness of employment equity. In terms of the EEA, inclusivity boils down to substantive equality. Thus, participants are referring to a demonstrable, lived experience of substantive equality in the workplace.

> The most non-negotiable is like the slogan of the workers in the informal economy, nothing for us without us. It means that everything that is done, must be done in a participatory way, so that you know, in East Africa, the people in our sector say that the government shaves our heads in our absence, that's the term that they use. And it basically means, you know, it doesn't mean getting something ready, and then presenting it to, you know, dishing it up (NED002, 23).

What NED002 is referring to here, is the need for consultation with appropriate groups and individuals on matters of importance to them - "Shaving people's heads in their absence". The EEA highlights certain imperatives such as consultation with employees as fundamental to the successful implementation of employment equity. Employers are expected according to s16 of the EEA to consult with employees to

reach consensus on matters that are critical to the successful implementation of the EEA. These matters include agreement on the qualitative and quantitative analysis of the barriers within the workplace, the Employment Equity Plan preparation and implementation thereof, as well as the Annual Reporting to the Department of Employment and Labour (Republic of South Africa, 1998a). These are key tenants to inclusivity. The barrier analysis identifies structural and systemic discrimination which often manifest themselves as part of the culture. Having noted that this is already captured in the EEA, the comments by participants suggest that the spirit of the law is not embraced in implementing the EEA.

In section 4.1.5, participant FS001 is also cited as suggesting that the organisational culture can exclude others in the work environment. She states that women and Black people have often been excluded from participating effective in the workplace and end up leaving their jobs due to the lived experience of exclusion. The environment that is exclusive she argues, has unwritten rules of who gets promoted and who does not. Thus, she also maintains that inclusivity is a important principle for effective implementation of employment equity.

4.4 Model for accelerated employment equity

The primary objective of this study is to develop a model that will accelerate employment equity. The model will complement the EEA. The definition of “model” within the context of this research is : “A representation of an idea, structure or process used to explain a phenomenon that cannot be easily experienced” (Pokapū, 2018 , para:1). Below are some inputs from the participants towards this model:

4.4.1 A Model that holds leaders of business and government accountable to delivery

Participants suggested that this model should enable everyone to have the ability to hold each citizen accountable.

> …the more the community knows about the structures, the more they will know about these policies. They're going to help us in terms of engaging these companies and you know forcing these companies to comply. And I see it

> happening in communities around Limpopo. I mean, for instance, those young people who are around communities in Limpopo, they've reached what Karl Marx calls “consciousness”. This is because they are aware about what's happening. When these companies come to Limpopo, whether they're going to do mining, to mine and to do everything, they go there with the Mining Charter (TR001, 17).
>
> Hence it is important then that the stakeholders within the organisation, if you are talking about a model, we – business – have got to be held accountable by our stakeholders, and it is an accountability model rather than anything else. Where you would say it is important that the employees themselves hold the employer accountable in terms of issues of culture, in values and how the transformation agenda is being treated within the organisation. The communities where we come from and where we operate have got to hold us accountable, so the labour, the different stakeholders truly have got to buy-in into this commitment and also hold the leadership accountable (TL006, 6).

In support of the assertions of the two respondents above, TR001 was also cited in section 4.3.2, as emphasising the importance of commitment and accountability of politicians to the outcomes of employment equity.

The Joshbersin Company (2021) identified creating accountability for results as a key driver for DEI. They maintain that this is a key strategy for successful inclusion and equity in any organisation. According to their study, “accountability is really the one topic that moves companies into the highest level of maturity in Diversity, Equity and Inclusion (DEI). Without accountability at all levels and throughout the organisation, progress in DEI is not sustainable” (The Joshbersin Company, 2021, p. 19).

Malaysia has as one of its cornerstones to the implementation of transformation, accountability by all Ministers in government. In all performance management processes of the Ministers, accountability to transformation is one of the key performance indicators (Gomez, 2003; Saad, 2012). Similarly, the Rwandan economic empowerment policies are enforced through a tight leadership accountability model. Malunda and Musana (2012, p. 47) state that “Citizens actively participate in defining their preferences and priorities and are empowered to hold national government and the ministries accountable against commitments made. Local communities are also

encouraged to come up with their own solutions to problems". This has resulted in the desired economic empowerment of the citizens of these countries.

4.4.2 Social Cohesion

Social Cohesion refers to a society that collectively ensures the well-being of everybody and reduces the disparity between its members (Fonseca et al., 2019; Stanley, 2003). Respondents believe that this is critical for successful implementation of employment equity and should be a central feature of the proposed model.

Below are some of the comments that were made.

> So, there is no way that there would be peace even in South Africa for as long as the majority of people feel disadvantaged. It will be super superficial peace that people would think they have, because that is why we are living, whether we are Black or not, living in the suburbs. That is why the level of crime accelerates. As long as my walls become higher and higher, than it was last year, it's because there's a whole chunk of people who feel excluded. Those who feel that they don't have a role in the economy of their own country are going to find ways, you know in our township language, they will hustle. They are hustling. So, what we are doing is going to impact me anyway, whether I like it or not. There's a way to reach the height of my wall. So, I think that those principles are the fact that we are all looking for social cohesion all of us (TL003, 9).

> So, for me, I don't know how you can do it, but we need, South Africa needs a code along the line of employment equity, but a code of good conduct. Because outside we are racist, and that's why people, all these things happens when people are videoing or what, it's all things that are done outside traffic lights, people swearing at each other you know, the discrimination that happens outside is bad (ICT001, 5).

> But we don't say it enough. We don't see the people. We don't link these things to the people to say, "How does it touch you? Imagine if we didn't grow if the country was not inclusive. There was no sustainability. There was always a

threat in our sustainability for it to grow? Do you know it will impact on your job? Do you know it will impact on your family? (RES001, 19).

One, I think one of the things that I would actually enforce is, I'll probably work from the inside out. Almost from the business side. Get to be able to say, “if in the business we were to be a thriving business, what would we look like?” People would say how “we would look like this, we would be doing this and it's okay.” I’d then ask, What are they, who we would have, who would we have in the business? We would have this and then work backwards and say, okay now this is where this is, I’d tell them everything else that you have, you have created. My model would not be what I would come up with. I'll let everybody come up with it (RES001, 17).

So, it means that there still needs to be a bigger focus there so that you educate people while you also show them the consequences. Coz in the end what is going to work for us is for people to have buy-in and maybe that’s something we haven’t talked about its buy-in. It’s that you must show people that it’s good for all of us so that they buy into it then they become willing participants in this transformation. Yeah, so maybe that’s a new idea that we haven’t talked about (MR001, 14).

And if they buy into the vision, so even when you have the strategy that ends up as a plan that says we said but we all bought into this vision because this is where we are aiming to go. So, I think it's also that it comes back to that other question of the power and the influence and it's also when you are a leader you have an ability to actually to influence people's thoughts, vision and attitude (RES001, 18).

Social cohesion has been central to the achievement of a seamless strategy and implementation thereof in the economic transformation of Malaysia (Gomez, 2003; Saad, 2012). It promoted a sense that there was a common problem, and it required a common solution. It was and remains the spirit that drives the economic transformation of Malaysia. All people, the privileged and disadvantaged unite behind this common goal for the common good (Gomez, 2003; Saad, 2012). The participants to this research communicate the same need for South Africa as a way of getting

towards the desired result of employment equity for all. The comments of the above participants allude to that (RES001, MR001, TL003).

“The solution to this problem is to be found in actively embracing the struggle against poverty and inequality as the national struggle for economic liberation of this generation. It is only through the active engagement of all South Africa’s citizens in this war on poverty that we can rediscover the spirit of Ubuntu” (Buqa, 2015, p. 4).

Malaysia had an intentional plan that ensured that the dominant language around transformation was towards the common good of all, something those in political power in South Africa seem to have neglected, according to participants, the need to facilitate Nation Building with the narrative that would ensure a buy-in from all, irrespective of their level of advantage and disadvantage.

At the very outset of the fight for a democratic state, was the Freedom Charter which clearly stated the social cohesion agenda of the African National Congress at that time:

“….that our country will never be prosperous or free until our people live in brotherhood, enjoy equal rights and opportunities; that only a democratic state, based on the will of all the people, can secure to all their birth right without distinction of colour, race, sex or belief” (Mathews et al., 1955 , para 1)

The “Us and Them” narrative that is dominant in the employment equity space retards all progress towards this social cohesion. Participants suggest that the economically powerful continue to create a narrative that promotes and excuses inequality (see section 4.1.1, 4.2.3, 4.2.5 and 4.2.6). On the other hand, participants suggest that the social cohesion that is so needed to achieve equality is evading the workplaces. These two positions promote the “us and them” that polarise the role players, making possibilities for social cohesion difficult.

4.4.3 Interventions that are intra and interpersonal

The importance of interventions that deal with biases, prejudices and racism were emphasized as part of the solution to accelerate employment equity. The following were the comments shared around this:

> One leg of the African pot is that you can never achieve employment equity unless you look at the intra and interpersonal, how leaders engage with other people. And it's about how I hold up the mirror to say actually this thing won't work unless I buy in and sometimes, I don't buy in because of my unconscious bias or my conscious bias, but there's work that I need to do at a personal level if I'm leading any organisation and then there's work, I need to deal with those that I work with to ensure that I respect them so that all those things are taken care of (TL003, 9).

> And to normalize that anomality, there had to be laws that had been enacted and which we have tried but they are limited in their effect.…there should have been attitudes and mindsets that have been worked on over time to make sure that people understand that transformation is a non-negotiable issue. But all those things didn't happen (TL001, 6).

> And it sounds crazy, but change comes from within. You know, you can't transform an organisation. You can't transform an organisation; you can only transform the people in that organisation…. They're going to have targets and numerical targets as being, you know, hard core measurements. They…I really believe those soft skills have to be a mandatory requirement and that each CEO and each COO and each member of the executive have to attend one of those at least personally per annum (ASAR001, 9).

"Culture of apartheid was inculcated. It won't just change without intervention. We spend more time being apologetic – we don't work on the culture. We must blame the Black govt for this, especially in the economic front" (TL001, 8).

> There must be internally…internally there must be proper mechanisms like you can have a change management steering committee, a gender monitoring committee, LGBTIQ. You know you have those, but they all report to the employment equity forum and those reports go to management and out of that their board and council is aware of those areas. So, it's accountability at every level (ER001, 11).

The imagery of "holding up a mirror", used by TL003 suggests that there is a need for introspection and self-awareness in order to unearth biases and possibly even the fears identified in section 4.1.1. This suggests that transformation is not only required

at a systemic level but also at an individual level. ASAR001 refers to soft skills as a requirement for the roles of the CEO, further emphasising the need for work at a personal level. The proposed model thus needs to address individual transformation. TL001 supports this by referring to the need for mindset and attitudinal change.

What these participants are saying can be corroborated by the stance Poutiatine (2009) takes on transformation, that individuals have to be active and conscious participants of the desired change. ASAR001 aligns with Poutiatine (2009) who posits that transformation, unlike change, requires an active engagement of the individual. It cannot be forced by another agent. The individual must consent to being transformed. The individual undergoing transformation must have a sense of agency in allowing for the transformation process to shift realities within them.

An individual cannot be oblivious to a transformation process, because transformation is a process of radical shift which changes the whole worldview and cannot happen without the consent of the individual. Poutiatine (2009), Madolo-Mtegha and Mtegha (2019) and Scott (1997) argue that in transformation old ways of viewing the world have to be let go of, while the new is embraced as a possible paradigm. In line with this, ASAR001 maintains that one cannot transform an organization, but the individuals within the organization.

This means that there is a need for work that leads to radical shifting of the worldviews of employers, a shifting that requires change in culture, behavior and mindset (Leonard & Grobler, 2006; Poutiatine, 2009; Scott, 1997). TL001 pinpoints the issue of change as a cultural change, both at a corporate and country level. ER001 further corroborates what is stated by Poutiatine (2009), that the change must happen at an individual level as well as at the level of the system. Systemic structures and processes need to change. Therefore, the transformation must lead to a shift in self and a shift in how the world is viewed, implying both internal and external change.

Transformation which leads to a shift in self is based on the Analytical Depth Psychology theory which focuses on the emotional state associated with the loss of a reality that was accepted as true and the grief that comes with the loss while changing and embracing the new reality. This is the internal work. On the other hand, Scott (1997) claims that the transformation can also be framed as external, in that the shift

in frame of reference from the old to the new reality is cognitive and rational, “transforming social structures that inhibit and constrain us” (p. 43).

ASAR001 argues that the process of transformation must include interventions that deal with both perspectives grounded in the theories above. Zohar and Marshall (2000) say that it is spirituality that unifies and facilitates the dialogue between reason and emotion and allows us to integrate the intrapersonal and the interpersonal and transcend the gap between self and other. The application of theory by Lewin for managing change, seems more practical in explaining the procedural shift that needs to take place in dealing with the intra and interpersonal issues as the different phases - unfreezing, moving and refreezing phases (Brazzel, 2003; Hussain et al., 2018). This theory caters for both processes and assists in understanding both the individual and the organisation change processes in synergy.

> And then the softer one. You’ve got to accept that you are dealing with human beings and a lot of your efforts have got to be about workshopping and preaching the gospel of why employment equity is our policy. What is the land of milk and honey that we are working for? And for me the land of milk and honey we are working towards is to eradicate inequality in our country, and primarily to eradicate inequality that is based on race. Because what that does, it creates intolerance in society (TL002, 10).

Matsuda et al. (2020) offer two primary theories for learning racist and prejudiced behaviour. With the one theory they posit that racism and prejudice are a result of a typical classical conditioning process, where desired racist behaviour is inculcated through associating a stimulus with a certain thought and then a consequential reaction which in this case is fear. This uses the direct-contingency principle, where a neutral stimulus, such as a Black person is paired through messaging with an unrelated, unconditioned stimulus, which could be murder for instance, to produce classical conditioning, such as fear of Black people because they murder people of other races (Matsuda et al., 2020).

Another theory they discussed, which is the Relational Frame Theory, is used to explain how racist behaviour is learnt through Derived Relational Responding (DRR) where certain stimuli are linked to specific responses. Individuals and more specifically

children, this theory maintains, are taught to respond to Black people in a specifically racist way and thus prejudice and racism are entrenched in their behaviour (Matsuda et al., 2020). So, while in the first instance, classical conditioning is used to invoke a certain feeling that results in racist thoughts, in the second instance, racist behaviours are taught and normalised in behaviour towards people of a particular race, through observation. Either way these theories confirm the deep roots of racism and racial prejudices. As a result, the need for interventions that are focused as intra- and interpersonal interactions and behaviour are not farfetched. To change this, would not be easy and does require head and heart work. The participants, ASAR001, TL001, ER001, TL002 are proposing this as a possible element of the model for accelerating employment equity, some interventions that deal with the individual beliefs and behaviour as well as interpersonal interventions are necessary. They acknowledge that not enough work was put into working with the ideology and the human psyche in addressing the shifts that needed to take place.

4.4.4 Naming and shaming the non-compliant.

Participants felt that part of the problem is that there are no harsh measures to punish non-compliance. The idea of naming and shaming came forth as a proposed element of the model to put in place a deterrent that would accelerate employment equity. Some of the comments that came out were:

> I don't think we are capitalizing on reputational risk. Companies are fearful of reputational damage and being seen to be bad, right? I don't think we talk enough. The fact that we can go on these marketing initiatives, South Africa marketing something they'll talk about the best companies, you know, and they list the best companies in terms of brands. What stops somebody from saying: “These companies are the worst on employment equity” (TL003, 8).

> I will literally, name and shame, people that are not doing well. It will be the blacklist of all blacklists. It will be, if you are mentioned in this list, shame on you. How could you live with yourself? I would absolutely do that…. I would humiliate you – I would humiliate you proper. And you know, the humiliation would be what you would want to avoid more than the punishment, you know? (TL002, 14).

> Um… well I think generally you know even if the incentives were informal. I mean I think yes, more reward for good performance in terms of you know… And I suppose the publicity would be the one but that would have to be based on legislation (TL008, 10).
>
> The actual leaders themselves that are held in high regard engaging and making commitment, just like they are with Covid-19 etc, etc, you know. But Tabea… Ja, I mean, employers need to step up to the plate. And… And, you know, just like they've got business against crime and what have you, they need to make a stand and almost like name and shame their own constituent members that are not complying, you know (ASAR001, 6).

Phrases such as "name and shame," "shame on you," and "humiliate you" convey a strong moral judgment and a sense of accountability. To publicly say that certain leaders of industries or certain companies have done wrong by not complying to the prescripts of the law might be a very powerful tool. It might induce a new kind of standard that puts employers under pressure to conform. The CEE publishes a register of compliant companies annually, but not the non-compliant ones when they release their report (Department of Employment and Labour, 2022b). It is suggested that the negative reporting, may be more effective.

4.4.5 Ensuring that there are sector specific targets

At the time of the data collection phase of this study, the Employment Equity Bill of 2018 (B14-2020) was being debated and there were presentations of comments to the department and parliament of these comments. Participants proposed the setting of sectoral targets by the Minister of Employment and Labour. The EE Amendment Bill has since become law, though the implementation date has not been promulgated. s15(a)2 of the said EEA Amendment Act of 2022 states: "The Minister may, after consulting the relevant sectors and with the advice of the Commission, for the purpose of ensuring the equitable representation of suitably qualified people from designated groups at all occupational levels in the workforce, by notice in the Gazette set numerical targets for any national economic sector identified in terms of subsection (1)".

This section of the Amendment Act has been met with great anticipation by those who are keen to see a major shift in the needle in terms of employment equity (Department of Employment and Labour, 2018a; Republic of South Africa, 2022). However, at the time of this study, the implementation date of the Act has not been proclaimed by the President, and as such cannot be enforced. This view is also endorsed by the participants in this study. It is important to mention that when reading the comments of the participant, the reader should understand that at the time of the interviews, the Act had not been accented by the President. Participants said:

> And I think for me it is good that the Department of Employment and Labour is pushing back in terms of those targets, and I think we must even push harder" (RSR001, 2).

> I am of the view that the sectoral targets are a must. They have to have targets yes. Over the years, I've seen not only our own EEA2, but other organisations EEA2 tend to have excuse upon excuse about why people could not achieve targets that they have set for themselves (FS001, 10).

> So, I'm saying that in terms of us as a country making the impact, we must all be driving towards the same objective. What is the objective? The objective is to transform the country. So, in as much as you look at transforming your own entity, your own organisation to make sure that your organisation is diverse you need to drive your targets, not only according to how you look like but according to also how the country looks like. And the reason why I'm saying that is because in doing what we're doing to ensure that our own institutions are diverse we might actually be contributing to the country regressing (TL005, 5-6).

Some of the participants insist that these targets must be aligned between the EEA and the BBBEE-A for maximum impact.

> I feel the BBBEE targets should really be aligned to the employment equity targets or rather, the employment equity target should align to the BBBEE targets and once you start doing that, we want to have discussions because that is the other thing with implementers: they have these mixed messages. BBBEE is saying you need to be higher, this side Employment Equity we are

saying well, focus on your targets – are you reaching your targets? (RSR001, 4).

S15(a)2 of the EEA Amendment Act, is specific that it seeks to "ensure equitable representation of suitably qualified people from designated groups at all occupational levels in the workforce", and the participants do believe that this will be a useful tool to accelerate employment equity. It is therefore proposed that this forms part of the model to be proposed in this study. There is evidence that in countries where specific targets have been set in the area of employment equity and empowerment of disadvantaged communities, such target setting has prompted a significant shift towards the desired empowerment (Gomez, 2003; Saad, 2012).

4.4.6 Better alignment of transformation legislation

The policies that seek to drive transformation are experienced as disjointed. Participants responded to the question of accelerating employment equity by stating that a more aligned policy framework for transformation, especially policies on economic transformation can yield the desired results. Here are some of their comments:

> And that they… you know I think if there was a single instrument that covered all of those. And visibly you know there's a… there's not quite a full overlap because you know BEE is sort of enforced through tenders and that. But I think even though there were those… that some sectors have less incentive to get a good rating or whatever, that shouldn't have stopped there…it's the procurement framework, the BEE and the employment equity and skills development. Really you know there should be a single set of reports dealing with all of that (TL008, 6).

> Yes. There should be alignment between policies of government, so that when someone let's say, Tabea and Company now you're a big corporate, you run your big tourism company. And if you want to bring in foreign labour, you've got to go via Home Affairs and apply to bring in foreign labour. So, but you find that the legislation there at Home Affairs is not aligned to what we require in the codes (TR001, 15).

The New Economic Plan (NEP) of Malaysia in 1971 prioritised not only Affirmative Action, which is an element of the EEA in South Africa, but also ownership of commercial and industrial enterprises, thus integrating the EEA and the BBBEE-A objectives. This synchronised empowerment process effectively dealt with the consequences of economic exclusion of the Bumiputera. It led to not only promoting equity in the workplaces but increased economic ownership of the country's economy by the indigenous Malays. Furthermore, skills development was a key strategic focus, designed to emancipate the Bumiputera from the control of the Chinese and Indians in terms of economics (Lee, 2015; Madolo-Mtegha & Mtegha, 2019). An alignment of the transformation legislation in the South African context (EEA, BBBEE-A and SDA) would similarly result in fruitful advancement of the economic redress of the Blacks in South Africa, according to the participants mentioned above.

The transformation policies in our country are designed to be multipronged and to address redress from different angles. What seems to be problematic, is that these are not aligned, but rather handled under different government departments with a silo approach.

4.4.7 Intentional interventions around economic growth

Growing the economy is instrumental to job opportunities and wealth creation. While these job and wealth creation opportunities may remain skewed because of systemic discrimination, coupled with legislation that supports redistribution, economic growth would create scope for further economic redress. TL007 and TL001 articulate this as follows:

> That's not how economic growth works. If the economy grows, that means there are new opportunities. And you don't get new opportunities if you just redistribute what you have, what people currently have, that's not financial growth, or economic growth. So even if White people refuse to give up anything, that still doesn't necessarily have to be a barrier to economic growth. Because economic growth is about building businesses and starting new things and developing small businesses into big businesses and so forth. So that's not. Redistribution is also a strategy that is destined to fail, because it's not growing the economy (TL007, 6).

> I think, you see, I think employment is a by-product of business creation. I wouldn't bother myself with employment equity direct, I would bother myself by strengthening the laws that gives an opportunity for Black people to have businesses (TL001, 11).

He further states:

> And it comes with owning their own businesses, then thereafter they can decide, and they can take themselves out of poverty and they can employ whoever they want to employ. But there must be a culture and an environment in South Africa where if you are Black, and you want to open a business you are like I mean, you go to DTI, DTI would back you to have a bakery machine (TL001, 11).

A prominent theme coming from the text above is the creation of an enabling environment for economic growth and that when such is taking place, employment equity will be a by-product. Black business owners, who have come through the process of empowerment, TL001 argues, will themselves then employ other Black people, while the EEA will also enforce the employment equity agenda on other businesses.

Talking about the Malaysian experience, TL005 said:

> Every individual politician that comes in, operates with that plan. And it was being monitored centrally in the prime minister's office. So, there isn't anything else any department would do that doesn't contribute towards that. The other things that are nice and good to do but for as long as they don't go towards that goal, they take your energies, and they make you lose focus. So, they actually pulled everything towards one thing, the education system. So, everything must go towards things that they wanted to achieve, and they achieved that. And when I looked at their structure and what they did, I realized that these people moved from the 2-digit unemployment rate to a 2% unemployment rate. When you looked at it you could see that you can only do that if you knew what you wanted to do and you were consistent in doing it and you don't get side tracked and you enforce alright (TL005, 18).

While one might argue that TL007 is advancing a predominantly “White perspective” which is used to rebuff transformation, the Malaysian experience supports this notion. Economic transformation that is not coupled with economic growth has a slim chance of success. TL001, a Black business ardent supporter also shares this sentiment. The idea of economic growth while striving for economic redress created a very compelling vision for the nation, including the privileged.

> Malaysia is perhaps the best example of a country that has seen significant economic growth, which necessitated the economic roles and interests of the various racial groups to be pragmatically managed in the long term without significant loss of economic growth momentum (Madolo-Mtegha & Mtegha, 2019, p. 20).

The GDP growth of Malaysia in 2022 is cited as 8.7% (Ibrahim, 2023). The violence that ensued in 1969 was opportune in refocusing the attention of all to the need for the redress and to forge a common goal for the country. The Rwandan economy has experienced considerable economic growth despite the 1994 genocide (Bigirimana & Hongyi, 2018). A review that was conducted by the United Nations Conference on Trade and Development (UNCTAD) in 2006 has found that one of the main reasons why the investment climate in Rwanda is positive, is that the government strategy sought to promote private sector growth. Private sector growth is arguably, a sustainable way of economic stability (Malunda & Musana, 2012). This study further proves that small and medium sized enterprises are the biggest employers in that country (Malunda & Musana, 2012). It follows, therefore, that economic growth and an increase in the number of enterprises leads to more job opportunities – which in the South African context can be channelled to benefit Black people.

In 2022, Rwanda’s GDP growth was 8,2% (African Development Bank Group, 2023). Malunda and Musana (2012) suggest that Rwanda set ambitious targets in terms of economic growth for the different sectors in Rwanda’s Vision 2020. According to this report, there was intentionality on the part of government to drive and remove barriers to economic growth and as a result, the desired outcome was reached. This unwavering and decisive commitment to economic growth, the participants mentioned

above posit, is a prerequisite in South Africa and can unlock opportunities to actualise employment equity opportunities for Black South African.

4.4.8 Stipulate the business case for the transformation in the model

It is postulated that part of the problem is the lack of a strong articulation of why transformation is necessary, beyond the moral obligation or social justice debate. So, participants believe this gap needs to be filled by the model.

> Right. So, beyond legislation, yes, it's informed by legislation. We accept that right? But the model must incorporate what is the business case for transformation. Right! And I think I spoke to this earlier, when we started to say businesses cannot be sustainable, without transforming, right? Because you have to be responsive to your customer needs. And if you are, let's say if we were just a bunch of women in our organisation, but you are offering a product that is utilized by men. How do we aim to be able to understand our customer needs if we're not even a touch reflective of that? And I think it's the same for just gender for women or Black people. If we had remained as organisations being let's say White only, products like your Stokvel products being planned by banks, your E-wallet, your “please call me” at Vodacom which was created by a young Black man whose partner would run out of airtime and would want to get hold of him but couldn’t, due to lack of airtime. Someone who comes from a privilege position would not even think about running out of airtime, how is that possible, they would wonder (FS001, 13).

> And I don’t think that the majority of particularly White male leaders, appreciate the benefit of transformation. It’s a burden, it’s a thing that this government, this Black government, wants me to do. I don’t really want to do it. No-one has sold to me the commercial rationale and the business imperative of transformation. I’m not sold, I don’t need it, I do it because I have to (TL002, 5).

> Shareholders have adopted the concept of the King Code. It's a model. It's not legislated for good governance. So, but we don't have a code on equity in the workplace, employment equity in the workplace, we don't have a code that is outside the regulation that promotes equity in the workplace, the difference,

> and the reason why we don't have, the King Code is written with a shareholder in mind. It says this is what, why it's good for you as a shareholder. (ICT001, 5)
>
> You should be saying so which is the narrative that the power does not understand? The power understands us just being, we are redressing the past without saying by redressing the past you are actually bringing an added advantage to your organisation because when you have got diversity, when you have got the right representation at your planning and buying level this is what can happen to you. So that narrative is not taking place. So, the power does not necessarily understand how employment equity contributes towards their bottom rand and cent, and that is where it goes wrong (RSR001, 5).

Extensive literature has argued for the promotion of diversity and inclusion mainly promoting the business case for this position (Booysen, 2007; Brazzel, 2003; Coetzee, 2015; Thomas & Ely, 2002). However, much of the debate, especially in the public spaces on this matter centres mainly on social justice and the moral obligation (Bauer, 2021, ; Tshishonga, 2019). Within the world of work, and where the debate is designed to create mind shifts that will lead to sustainable change, participants argue that there is a need for a much more balanced debate which includes the benefits of this transformation for those who experience it as a sacrifice. The balance is about their benefit, and not the benefit of the designated groups. This transformation leads to an empowerment of their businesses (Brazzel, 2003; Maier, 2002). Participants believe that such a shift in the nature of the debate will lead to a commitment as the business case for transformation promotes dialogue around the benefits of transformation for businesses.

4.4.9 An independent full-time Employment Equity Board

TL010 proposed an Independent Board that would have power to make a significant impact on employment equity.

> So I would rather have something like a board, people who, yeah, who do not have interests, who are not conflicted somehow. Right, so it is an independent board that is going to call these companies sector by sector, you know? And we have the transformation charters. Those transformation charters must have

> an employment equity dimension put there so that when we call the big players in the sector in value chain, we can call the top 50 players in the value chain, and we can meticulously go through them. Just as we have the BEE Charters, we must have the employment equity charters. That's what needs to happen. They must be monitored by a part of people who are not in some ways conflicted. So that you can be totally transparent and honest (TL010, 9-10).

He goes on to explain why the current CEE in its structure and current operations cannot play this role.

> The problem with the CEE is that it is not going to have a sectoral approach. In the roads and transportation sector you have more than 50 big players right, then in aviation and then in maritime more. So it is a lot of work for the CEE. It needs huge capacity (TL010, 10).

There are a few prescripts for the proposed board according to TL010. It needs to be made up of people who are not conflicted, there must be transparency and honesty, as a body it needs to run independent of any other structure (he refers to it as an independent board) and finally it must have capacity and time to focus on this work, sector by sector.

The capacity of the CEE is also addressed below in this way:

> And then I think the CCMA needs to have a specialist division. If resources weren't a problem, a specialist division where they focus specifically on violence, harassment, discrimination at the workplace. And affirmative action noncompliance issues, you know (ASAR001, 12).

> While ASAR001 sees this as being within the ambit of CCMA, it is also obvious that he sees resources / capacity as a challenge for the implementation and dispute resolution of the EEA matters. This resource issue highlighted by ASAR001, flags the need to manage and increase resources for meaningful implementation of employment equity and may be seen as an extension of the proposal by TL010 of an increase in capacity for a structure that deals with employment equity. Capacity is the main issue here.

TL008, addresses that as well:

> It was envisaged that the state could enforce against employers who had inadequate targets but effectively it's been too complex an issue for the state and so you know in theory you have the DG's powers, but they are not used (TL008, 5).

TL010 sees it more than just an issue of positional power. He sees them as conflicted and corrupt:

> They are looking at their long-term careers. They don't want to be antagonising the private sector because they might find themselves jobless in the public sector, so yeah, so they always want to be seen as the good bureaucrats. That's one. Two, some are corrupt. You know they're simply corrupt. Yeah, yeah, they don't enforce policies because they are receiving bribes somehow. You know? Yeah, so that is why (TL010, 9).

TL010 talks negatively about inspectors and see them as detrimental to the EEA agenda as opposed to facilitating compliance to it. This is corroborated by TL003 and NED003 who speak about the lack of capacity of the inspectors as covered in Sections 4.1.6. They are described as 'lacking capacity' 'ill-informed', 'corrupt' and 'conflicted'. This discourse seems to disqualify them as the effective enforcers or even experts of the law.

Furthermore, this is corroborated by the general discourse in the South African debates, where they are characterised as weak, corrupt and incompetent (Commission for Employment Equity, 2017; Zonke, 2018). As such one can argue that there is a hegemony on inspectors as not useful to the advancement of the course of employment equity. While the International Labour Organisation ('n.d') spends a substantive portion on focusing on preventative and an expert service offering by Inspectors, the South African public and some of the labour legislation position sees them as watchdogs and deterrents of economic transformation in terms of the way they operate (Commission for Employment Equity, 2017). They are perceived as lacking knowledge in a specialised area such as employment equity and as such cannot play an expert role, consequently, compromising their positional power.

TL010, TL008, NED003 and ASAR001 suggest challenges in current structures, related to non-partisan operations, corruption and fear, resourcing and capacity challenges and a lack of power in the agencies tasked with implementing employment

equity. These structural, resource, political and positional challenges can be addressed through an independent employment equity body which is proposed by TL010, and its sole responsibility will be centred around effective and non-partisan implementation of the law without fear or favour. This body must be fully equipped to deal with the challenges identified, both in terms of independent, non-partisan operations, knowledge of subject matter and capacity both in terms of skill set and number of people involved. The independence of this body seems a critical issue in that it reduces the conflict of interest that is suggested by TL010.

It is worth noting that the CEE currently functions within the Department of Employment and Labour, and that this reporting line forces the CEE to comply with protocols of the Department. This subjects the CEE to the Departmental red tape and thus contradictory to the spirit of the EEA as articulated in Chapter IV of the EEA. This has created in the researcher's perspective numerous challenges for the CEE operations, one of which lack of independence. This matter will be discussed in more detail in Chapter 5.

4.5 Conclusion

This Chapter presented the findings of the research. The chapter employed Thematic Analysis (TA) and the CDA to conduct the analysis of the findings. The researcher clustered the findings into themes and interrogated the response by using some of the elements of CDA, where applicable.

The researcher presented extracts of the interviews that formed the themes that were identified, and uses in the next chapter, the content from this chapter to inform the model. The next Chapter will focus on the conceptualisation of the model to accelerate employment equity.

CHAPTER 5. PRESENTING THE MODEL

This section builds on the empirical findings presented in the preceding chapter by summarising the results and presenting a model to accelerate the pace of employment equity, based on the findings. Common themes are linked together using a pictural representation of the findings, to assist the reader understand how the data was integrated and arranged. The researcher is mindful of the influences of her social capital in how the formulation of the model cannot be viewed in isolation of her experiences and involvement in this field. Care was therefore exercised in framing the different elements and linking them to the empirical data.

5.1 Summary of the findings that impact the formulation of the Model

The structure of the chapter is designed around the objectives. It deals with each objective of the research, providing the related findings for each of them and then concluding by using the inferences to propose the model.

Below is a pictural presentation of the findings per objective identified in Chapter 1 of this study.

5.1.1 Obstacles to Employment Equity

Figure 1 below summarises the empirical findings under research objective one: To identify the obstacles to employment equity in the current legislative framework. These findings have been clustered together into manageable themes to make sense of them and enable concise identification of the elements of the model that will be proposed.

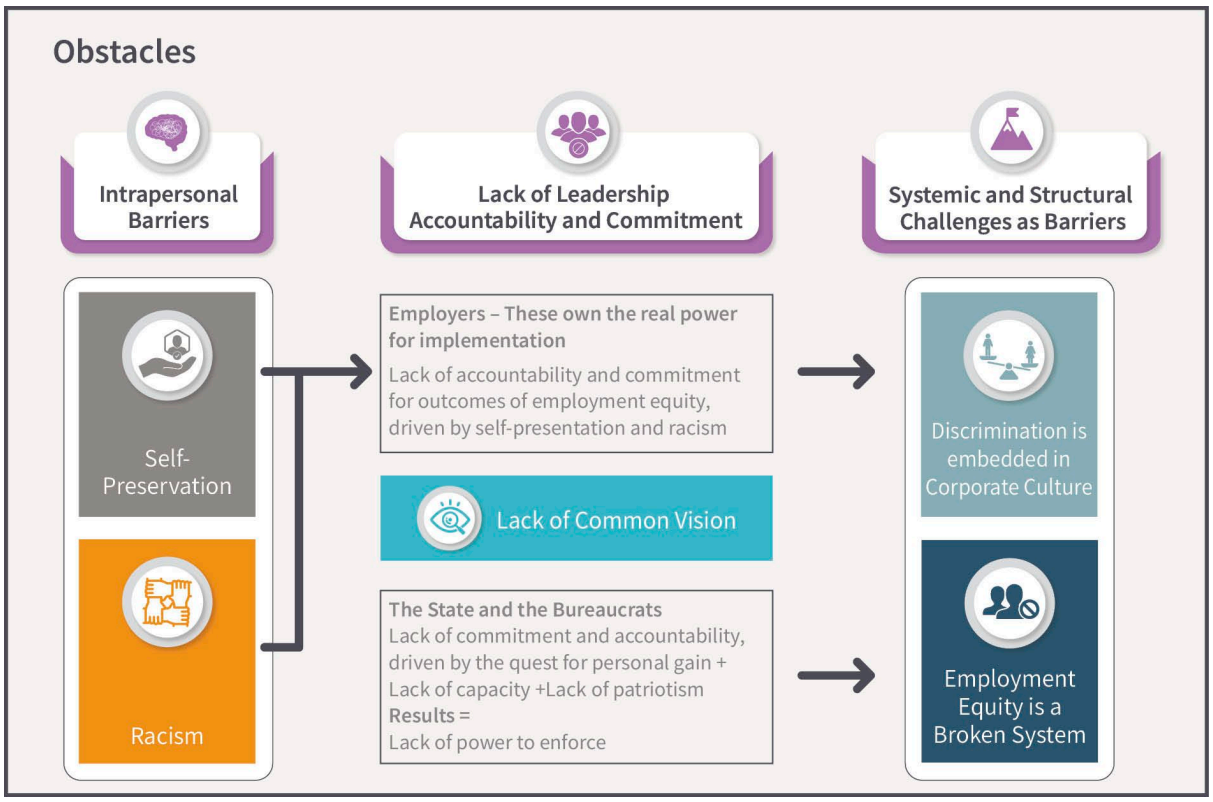


Figure 1: Graphical representation of the obstacles to employment equity, clustered according to commonality of main issue.

Based on the researcher's understanding of the empirical data, figure 1 demonstrates that the underlying themes in terms of obstacles to accelerated employment equity are:

The resistance of leaders (both in government and employers) in taking accountability and committing to the employment equity agenda. This is caused by intrapersonal issues, mainly at the employer level, that is self – preservation and racism. For bureaucrats and the state, there is a quest for personal gain, financial benefits or securing favour, and a lack of patriotism.

On the other hand, what is perceived and labelled as obstacles related to employer companies and governmental outputs, are structural and systemic issues, and they lead to the ineffective implementation of employment equity. Discrimination that is embedded in corporate cultures is a by-product of the employer's personal barriers (self-preservation and racism) and these translate into a sabotage of any efforts to affirm Black people in organisations. This finding is supported by the findings of (Skinner-Dorkenoo et al., 2023).

According to the participants, the obstacles that lead to the ineffective monitoring and enforcement of employment equity range from; bureaucrats that have no competencies to enforce, power imbalances between employers and enforcers and the enforcers who lack the understanding of the principles underpinning employment equity. The understanding of business and the link to regulation is lacking, and as a result they are said to feel threatened to enforce and mete out punitive measures where necessary. This leads to the interpretation that the employment equity system is flawed.

The lack of a common vision is a function of a system that is disjointed, where different role players want different things. Citizens want employment equity and are looking to government to provide mechanisms for it, employers are holding on to what they feel they have earned over the years, while government has never spearheaded the agenda of a national vision. Collectively, these factors create absolute barriers for a confluence of ideas around a transformation agenda. People's beliefs and fears, coupled with what seems to be insurmountable hurdles of a system that promotes a culture that pushes back on any effort to transform, creates a fertile ground for the impasse to employment equity. Without a common vision of what the country seeks to achieve and what the acceptable outcome should be, as well as a proactive addressing of White and Black fears, the labour market is under a real threat to remain untransformed.

5.1.2 Latent power dynamics that maintain the status quo in the South African workplace on issues of Employment Equity

The empirical data infers that there are numerous power dynamics at play in terms of employment equity. In line with Foucault's theory of power, which suggests that power does not reside in a single source but rather flows from a number of different directions, the data gives a number of sources of power (Glover, 2015). The findings suggest that the different subjects exert power over each other. However, the employers are cited by respondents as the main source of power that dictates the direction of transformation in the labour market, they phrase this phenomenon in different ways (FS001, TL010, TL004, TL001, NED001, NED003).

The themes cited above suggest three key focus areas as coined by the researcher based on the empirical data:

- Political Power (the State and Bureaucrats) is impotent in driving employment equity,
- Employers hold the ultimate power to effecting employment equity, and
- There is a powerlessness of transformation professionals at organisation level.

Figure 2 below is a graphical representation of the empirical data that came out of research objective two: To identify the latent power dynamics that maintain the status quo in the South African workplace on issues of employment equity.

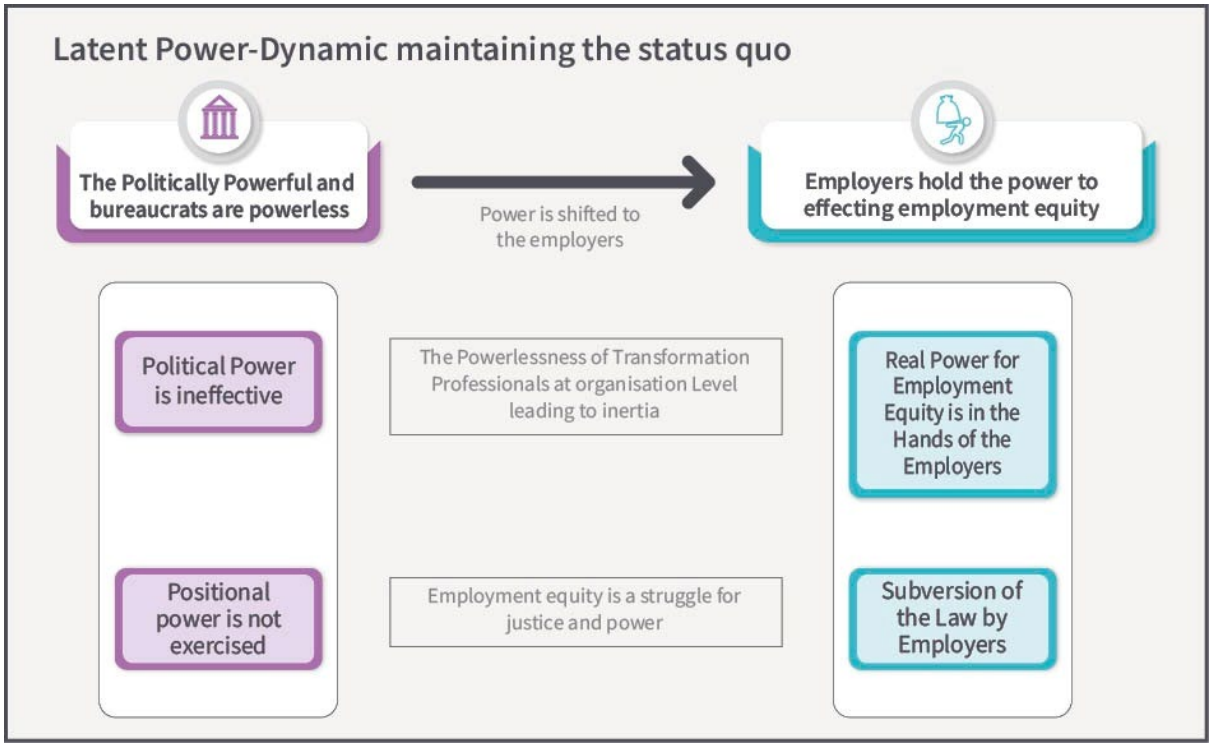


Figure 2: A summary of the areas identified for latent power dynamics in the field of employment equity.

Within the discussion of power and its impact on the pace of transformation, there is a view that regulators and politicians do not have effective positional power, and this results in them not being able to effectively enforce compliance. Inevitably this leads to the pace of transformation being dictated by employers.

This view is supported by one of the theories that is discussed by Short (2021), who posits an economic theory of regulation, which suggests that the regulated industries are in a position to buy the politicians and bureaucrats into submitting to their will. These industries, therefore, hold the key to the pace of transformation, as opposed to the politicians and bureaucrats overseeing this agenda. Some participants have suggested that the state capture is a clear indication that this theory is at play. The President and some state officials, the participants suggest, have handlers who set the agenda of the day despite the prescripts of legislation, or the mandate of the citizenry (TL005, TL010). Respondents indicate that this also plays itself out with the bureaucrats who are afraid to enforce, lest they lose favour with industry players (TL005, TL010, ER001).

Additionally, the historically constituted power base of “White monopoly capital” has been critical in shaping the types of discourse had in the South African context which tend to disempower both the enforcers and the implementers of employment equity at organisational and labour market level. Thus, Foucault in McHoul (2015) would say that the “White monopoly capital”, who in this context, holds the power, is defining what counts as truth, and in the process, incapacitating the employment equity agenda through their prevalent narrative. “White monopoly capital” in this way, can maintain the reigns and promote a narrative that is anti-transformation. The predominant language that is being promoted is one that seeks to identify a business case for employment equity, instead of it being viewed as a fight for power and justice. The notion that the EEA is for most South Africans a struggle for seeking power and justice, is not entertained in the labour market (TL002, TL003, TL005). However, there is an emerging reality that cannot be ignored.

> There is growing frustration that the rate of improvement in people’s lives does not measure up to their expectation of what the post-apartheid scenario would deliver. Businesses are going to find themselves increasingly dealing with the often-unrealistic demands of their workers, which may reflect something much larger than their immediate work circumstances. This cannot be dealt with purely at the labour relations level, but needs to be understood in the national context of a broader social consensus (Luiz, 2014 , para 3).

5.1.3 *Principles that are central to the acceleration of Employment Equity*

The figure below shares a summary of the values identified as central to the acceleration of employment equity.

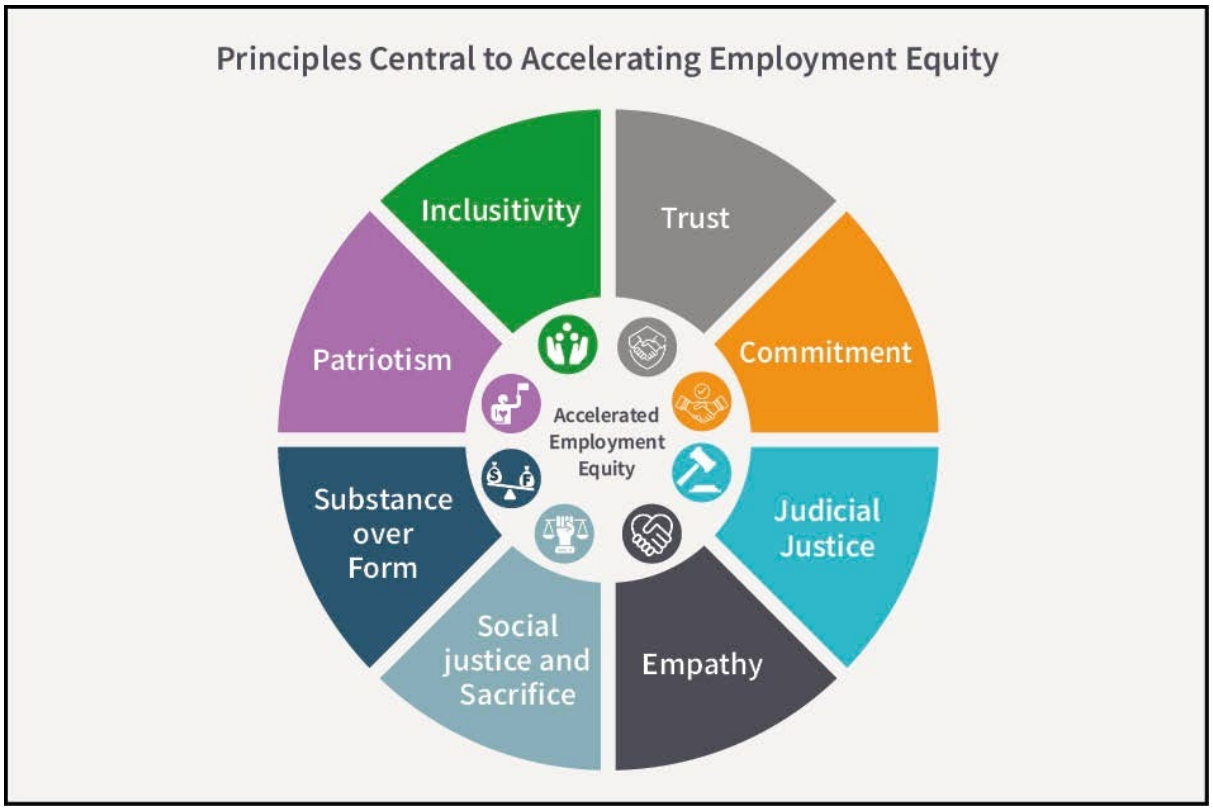


Figure 3: Graphical representation of the principles that are central to accelerating employment equity.

Badat (2023) and Burgemeestre et al. (2009) suggest that a principle-based approach to compliance is made up of high-level principles that define the standard that must be upheld in applying policies. What seems to be lacking in the current application of the EEA within employer organisations are high-level principles that set the standard, a standard that interrogates the quality of compliance. The principles, therefore, move interventions from a tick-box exercise, to testing the application of regulations against a standard. The findings suggest that the principles of commitment, empathy, and trust cannot be disassociated from a process of real engagement at a personal level for those who drive the employment equity agenda.

Thus, the engagement with employment equity needs to come from a place of personal involvement and genuine, substantial commitment with wilful application of rules and concern to achieve the desired outcome. This addresses the obstacle of lack of commitment by government and employers. It is not just about rules-based compliance which does not yield the desired outcomes. Badat (2023) argues that while a rule-based approach promotes clarity, enforceability and predictability, it does not necessarily provide the desired flexibility and simplicity that regulated entities need to carry on with their core business, without feeling that the regulations are onerous.

Poutiatine (2009) states that transformation is, second-order change. It leads to radical shifting of worldviews and paradigms, thus resulting in a change in culture, behaviour, and mind-set. Second-order change is about changing the fundamental principles and practices of the present and past, while first-order change is mainly a logical extension of the current. First-order change which is commonly associated with a rule-based approach to compliance can be reversed, while second-order change cannot be reversed (Badat, 2023). When second-order change occurs, it leads to “substance over form” which is another of the principles. “Substance over form” is about doing things with a genuine intent, and it moves away from window-dressing or even malicious compliance to real change. The findings propose “substance over form” as one of the major principles that must be incorporated into the model along with the other principles. Moreover, the researcher recognises that this principle carries with it a mandate that requires transformation at an individual level because intent is personal as it talks to resolve and determination (Gqubule, 2019).

Judicial justice as well as social justice and sacrifice as principles, require a recognition that there needs to be a commitment to doing what is right and just as opposed to ticking boxes. They promote the importance of a commitment to the fairness that is advocated for in the Equality Clause (Republic of South Africa, 1996a) and not just the promotion of a business case for transformation. These principles facilitate and promote the equality agenda articulated in the Equality Clause which connects the EEA to the Constitution, and in turn has been instructive in the quest for equality in South Africa (Republic of South Africa, 1996a). The principles by their nature promote a principle-based approach, which on its own allows for flexibility in application, while leading to the desired outcome.

5.2 The proposed Model for accelerating transformation

The Department of Finance (2016) asserts that poorly designed, implemented and enforced regulations are both burdensome to businesses and render the regulator ineffective. Managing all three of these areas, that is policy design, implementation and enforcement of the regulatory environment can be difficult, especially if the regulator is solely reliant on the goodwill of the people to comply to the regulations. Legislation on its own may harness the spirit of compliance to the rules, but such compliance may not yield the desired outcomes. It may just turn into a tick-box exercise (Hodges, 2023).

In line with the approaches to compliance by Badat (2023), Hodges (2023) and the Department of Finance (2016), the researcher proposes a model for accelerating employment equity, that merges the three compliance approaches, that is rule-based, principle-based and outcome-based responses, to create maximum returns on all efforts around the implementation of employment equity. This will assist in meeting business leaders at their point of need in effecting employment equity based on the maturity in transformation of the business. The different elements of the model address the three approaches and if applied together can yield a positive trajectory in employment equity.

In summary the approaches to compliance that will be incorporated are:

- The rule-based approach to compliance is about following what is prescribed rules and detailed processes as set out by the regulator. The regulator's approach in this case is highly enforcement driven and has clear compliance standards. This is where the promulgation and implementation of the Amendment Act becomes important as one of the elements of the model. It will drive the rule-based approach.
- The principle-based approach to compliance is more flexible, allowing for flexibility and innovation in arriving at the desired outcome. Principles become key as they drive the spirit of interventions implemented to achieve the desired outcomes. In this case, the Conscious Capitalism Philosophy which is proposed as an element of the model below becomes relevant. Over and above that, the National Indaba that the researcher proposes will create a forum where the

commonly shared principles will be co-created. These will be discussed below in detail.

- The outcome-based approach focuses on the desired end result and institutions can decide how they arrive at the outcomes, based on the peculiarities of their circumstances (Badat, 2023). Unquestionably, the path to the outcomes should remain legitimate. The Hodges (2023) outcome-based collaborative approach and the Department of Finance (2016) risk and outcome-based regulatory approach, will also be weaved into the model. The full-time Commission will address the risk and outcome-based regulatory approach. These elements of the model are shared below.

Figure 4 and 5 link obstacles and latent power dynamics identified in the empirical data with elements of the proposed Model to accelerate employment equity.



Figure 4: Obstacles to EE with recommended remedies.

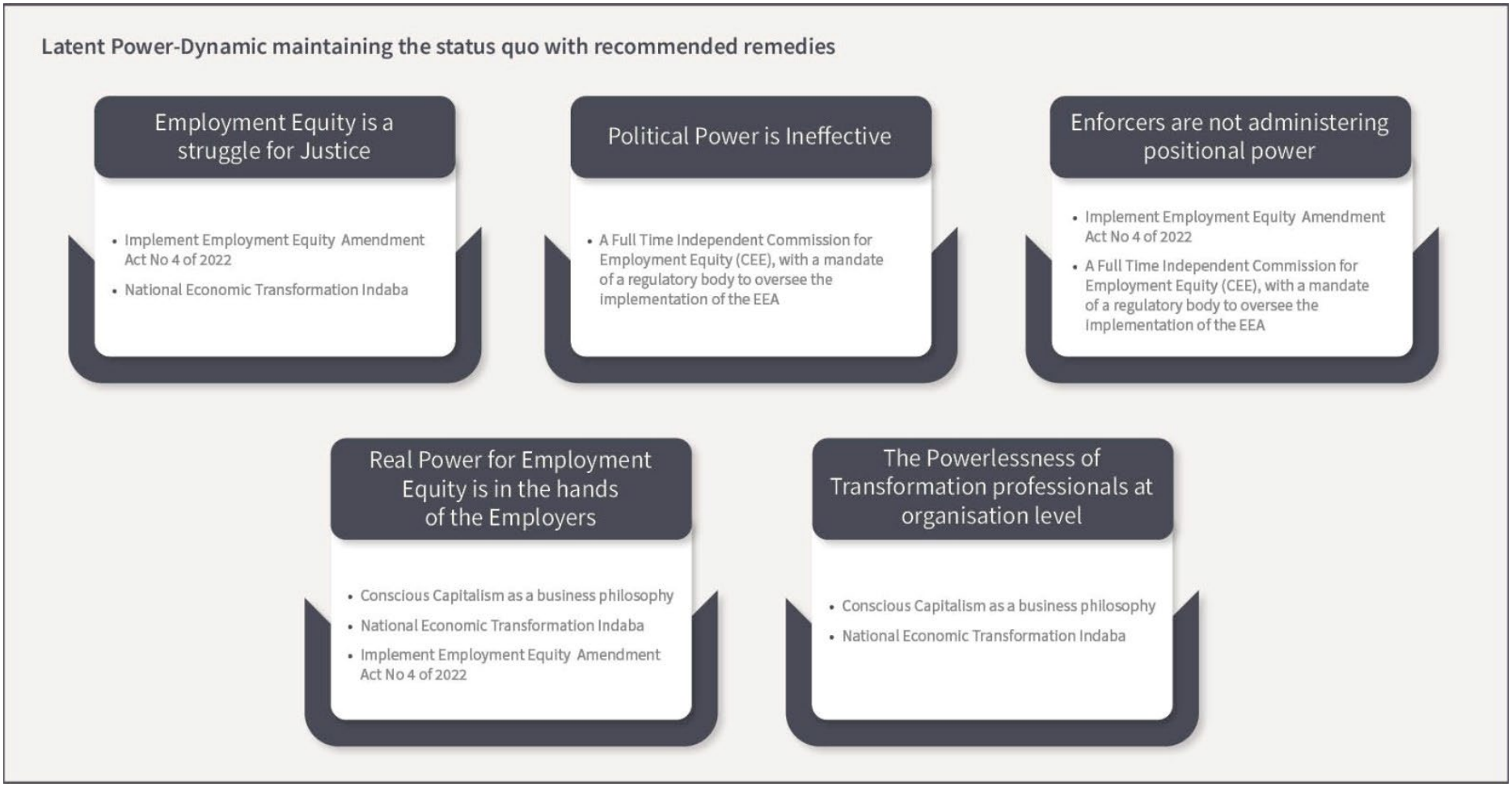


Figure 5: Latent Power-Dynamics maintaining the status quo with recommended remedies.

The above diagrams graphically represent an Employment Equity (EE) model developed by the researcher, with a flow of how the components of the model were arrived at. The different elements of the model aim to complement legislation in accelerating employment equity in South Africa. The model was developed based on unearthed obstacles to employment equity, identified latent power-dynamics as well as the proposed principles, all thought to be important by the participants. The principles identified, are believed to be central to success in accelerating employment equity.

The proposed model has several components that have been gleaned out of the empirical data. They are discussed in detail below in this order:

- Implementation of the Employment Equity Amendment Act No. 4 of 2022.
- A National Economic Transformation Indaba.
- A full-time, independent Commission for Employment Equity.
- Compassionate Capitalism.



Figure 6: A model to complement legislation in accelerating employment equity.

5.2.1 Implementation of the Employment Equity Amendment Act No. 4 of 2022

Most participants believe that the proclamation and implementation of the Amendment Act will go a long way in accelerating employment equity. The incorporation of sector specific targets in the Amendment Act are said to be a powerful way of achieving the desired results in terms of transformation of the labour market (RSR001, FS001, TL005). The incentives as well as the punitive measures attached to these targets promise to create an environment where non-compliance is not tolerated, and participants believe that this will on its own, impact on the speed at which transformation will take place. It will carve the rules, strict rules that define compliance and non-compliance in very specific terms and foster rule-based compliance.

The assented Amendment Act was, however, met with resistance from the official opposition party, the Democratic Alliance Party as well as the Freedom Front and Solidarity, and this was further evidenced by the Solidarity Union filing court papers to oppose the Amendment Act based on the objection that it was unconstitutional (Khumalo, 2023; "Solidarity vs the President of the Republic of South Africa J661/23,," 2023). Empirical data suggests that the EEA is resisted and that at implementation level, employers do not treat it as mandatory. The resistance is masked and manifests itself in obstacles such as self-preservation, racism and lack of leadership, accountability and commitment. Additionally, the data implies that the cultures in most organisations retard any attempts to realise employment equity. While the Amendment Act has been promulgated, a proclamation date has not been announced and this means that this Act cannot be implemented until this date is identified and reached. The reasons for the lack of a proclamation date remain unclear.

5.2.2 A National Economic Transformation Indaba.

As part of the roadmap to a democratic dispensation, the Convention of Democratic South Africa (CODESA), was put in place to manage the transitioning from an apartheid era to a democratic South Africa (South African History Online, 2021). Five working groups were established to address the following components:

- The new constitution
- The setting up of the interim government
- The future of the homelands
- Time period for the implementation of the changes
- The electoral system (South African History Online, 2021, para 6)

This CODESA process set in motion a foundation towards the establishment of a democratic governance in South Africa. Whilst the process was not seamless, it led to a result that was accepted as a way forward for the 29 organisations that were involved including the different political parties (Mamdani, 2013; South African History Online, 2021).

The process focused on government and interim governance. It did not create a common vision for the citizens of South Africa at an economic level. This left a gap in dealing with the social contracting process of the desired future in terms of the economic redress for South Africans but rather dealt with the political agenda only. As a result, commentators say that the Black people walked away with political and not economic power (Malema, 2016; S. Terreblanche, 2002; Terreblanche, 2012). The country's politics changed, but people didn't transform and the politics could not manage an economic transformation (Terreblanche, 2012).

> On the negative side, CODESA obscured the ways in which violence was foundational to socio-economic order. By ignoring the connection between the political and the economic, it obscured, to use the language of Marx, the ways in which extra-economic violence was key to primitive accumulation (Mamdani, 2013, p.10).

The second process that was embarked on was the Truth and Reconciliation Commission (TRC). The TRC focused on reparation related to gross human rights

violations that took place during the apartheid era. It had a cathartic effect in that it gave victims of human rights violations an opportunity to share their stories and created hope for some form of reparation and healing. Meintjies (2013) claims that the TRC process, did not yield the desired results as most of the participants never got the reparation they expected. Both processes, that is CODESA and the TRC, had a political agenda. Economic redress did not sit at the centre of their operations or philosophy.

The research found that the lack of a constructive formalised dialogue process to deal with economic redress compromised the ability to achieve a common economic vision and social cohesion. Different participants envisage this intervention as needing to happen at different platforms. ASAR001, TL002, TL006 and TL003 suggest that intra and interpersonal interventions that allow for dialogue on a common vision should be undertaken at an organisational level to create a common vision. On the other hand, TL001, RES001 and TL005 propose a societal platform for dialogue around the desired outcome. The findings indicate that there is deep rooted fear of loss by the White minority, who then become an obstacle in employment equity, while the Black majority still languish in poverty, unemployment and lack of access to economic redress. A National Economic Transformation Indaba would create a platform for that necessary discussion and out of it, a new vision for the South African economy could emerge. Within the South African literature, Ramphele has also proposed this dialogue between stakeholders (Ramphele, 2015).

The National Economic Transformation Indaba would allow for active engagement, like that of the TRC and CODESA and would yield results that focuses the energy of all citizens on economic transformation. This process according to the findings would be good for all parties and would enable for a setting of targets that not only achieve equity, but also result in economic growth (TL005). It would also be therapeutic for South Africans. South Africa needs the space where citizens can articulate their fears and dreams in a controlled manner and more importantly, a space where a common direction can be devised for economic solutions that will substantially move the labour market towards employment equity (TL005, RES001). Ramphele (2015) calls for dialogue and partnership between the government, private sector, and civil society to create a sustainable and equitable economy. She posits that cultivating trust and

engagement among citizens can enable South Africa to develop a more robust and vibrant economy. This collaborative effort she proposes is in line with the idea proposed here.

One of the lessons that South Africa can learn from the Malaysian economic transformation journey is the process of galvanising citizens and the state around a common vision to drive this transformation. Saad (2012) and Gomez (2003) postulate that Malaysia established a social contract which resulted in a psychological commitment by the nation, a commitment to build a country that had economic, social and political stability as well as a major initiative to achieving employment equity.

The outcomes of the National Economic Transformation Indaba would be captured in a report that would be used to periodically monitor progress. It would stipulate what is expected from government and should articulate a commonly shared goal by government on economic redress, which will be tracked throughout the three spheres of government and within the different government departments. Ministers would account on the progress of employment equity within the Departments they are accountable for. Expectations on employers and employees and the general population would also be articulated. Thus, it needs to have participants that are representative of all stakeholders that have a vested interest. The involvement of all stakeholders is key in this process because each stakeholder needs to commit to pursuing certain outcomes. TL001 and TL006 emphasised the importance of accountability and commitment by employers, bureaucrats and government in this process which would allow for the setting of goals and articulating areas of accountability by the stakeholders.

This would resemble an outcome of social compacting, that was achieved in Malaysia. Participants postulated that the Malaysian model would be compatible for South Africa's employment equity needs (TL005). There would be regular review workshops to monitor, track and celebrate milestones of the commonly shared vision. This would yield a principled approach towards compliance with the EEA.

At an organisational level, employers should continue to have interventions that promote a commonly shared vision on employment equity as well as diversity, equity and inclusion interventions as proposed by TL003 and ASAR001.

Courageous conversations are necessary at this level to break down barriers and address cultural and systemic discrimination.

5.2.3 An independent, full-time Commission for Employment Equity

While there would be great value in the National Employment Equity Indaba, the achievement of an effective and efficient institutional arrangement will remain a primary need for accelerating employment equity. The empirical data suggests that the institutional arrangement of the EEA in terms of policy formulation, advocacy and enforcement requires some rethinking and reworking to optimise on the Act. The findings of this research report, are that the following are issues hampering the effectiveness and efficiencies from an institutional arrangement perspective:

- The CEE is part-time and cannot execute some of the activities that would yield better results due to the amount of time and effort required to execute those activities. A full-time operational board to address this obstacle was recommended (TL010).
- Political Power, that is the state, and bureaucrats are impotent in driving employment equity. Both the state and the bureaucrats are accused of being dictated to by employers as well as being compromised by the personal agendas they pursue, instead of focusing on the employment equity agenda (TL005, NED003, RSR001, TL003). Furthermore, the bureaucrats responsible for enforcement are also not administering the power conferred to them either because they do not possess the requisite competencies to do so or are beholden to the employers (NED003, TL010, RSR001).

The CEE as a statutory body is established and staffed by the Minister of the Department of Employment and Labour (DoEL) (Republic of South Africa, 1998b). The constitution of the CEE, its mandate and reporting lines make it an independent body which is not institutionally arranged to fit within the organogram of the Department of Employment and Labour (DoEL), even though it reports into the Minister of this department. Besides, s29(1) of the EEA, specifies that this body is part-time and that the operations of the CEE are driven through the Secretariat, which is a Directorate in the DoEL. The Secretariat, which is the branch called the Employment Equity Directorate (EED), is tasked with the responsibility of providing technical support to

the CEE in terms of policy development, as well as performing advocacy, monitoring and compliance duties and managing the EE Register (Department of Labour, 2015).

While the CEE is by law independent and directly accountable to the Minister, at an operational level, it follows the DoEL processes in terms of annual planning and the planning of the CEE and the EED are intertwined (Commission for Employment Equity, 2014). Therefore, the processes that govern the operations of the CEE create unlegislated, institutional arrangements that compromise its independence.

This institutional arrangement, muddies the functioning and stature of the CEE, exposing it to the programme designs and decision-making processes that render its operations dependent on institutional structures and mechanism inadequacies (Maharajh, 2011). It further opens the CEE to interference by different role players as the reporting process requires checks and balances that are driven from within the department structures. s29(4) is a clause in the EEA that seeks to protect the independence of the CEE, and the researcher therefore, advocates for a rearrangement of the positioning of the CEE to operate independently of the DoEL processes, but directly with the Minister. The prescripts of the Protocol formulated by the CEE would therefore need to be revisited, with a deletion of some of the clauses of the protocol that locate the operations of the CEE in the DoEL (Commission for Employment Equity, 2014). The position of the researcher is motivated by comments made by TL010, RSR001 and NED003. While RSR001 and NED003 focused on the bureaucrats and politicians in their comments, the intertwined nature of the politicians, bureaucrats and CEE roles create a blurring of lines and unnecessary interference at implementation level.

For example, it is the researcher's experience that bureaucrats do at times want to influence the advice that the CEE gives to the Minister, to the extent of wanting to change decisions taken by the CEE. This takes away the independence of the CEE. TL010 's suggestion for an independent full-time board then presents a possibility of removing this influence and lack of independence. The CEE Board would be responsible for policy formulation as well as oversight of the operations of its executive arm which would drive monitoring, implementation and enforcement. While it may be argued that this centralisation of power and duties within an entity may be a risk in that it may lead to bestowing too much power in one group organisation as well as less

objectivity, the researcher maintains that each of the divisions should have a distinct separation of duty and power and be held accountable for this by an independent board as well as the Minister. The researcher advocates for the migration of the EED, to become the executive arm of the independent full-time CEE outside of the DoEL. The EED would continue with its function as defined in the DoEL official documents and as stipulated in the green paper at the conception of the EEA (Department of Labour, 1996b).

This way, the obstacles identified in the current institutional arrangements would be removed. The CEE would immerse itself more in the activities of the EEA as proposed by the findings, while the independence would remove it from the political and administrative influences of being in the DoEL. The forces that render both politicians and bureaucrats corrupt and, in some ways, impotent would then have their potency reduced by the independence and non-partisan status of the CEE. Moreover, the total emersion of the EED into the independent operations of the CEE would allow for deeper involvement with stakeholders and the ability to take on other roles of implementation that currently sit in the IES, primarily, the enforcement role.

OECD (2014) states that “Regulators are entities authorised by statute to use legal tools to achieve policy objectives, impose obligations or burdens through functions such as licensing, permitting, accrediting, approvals, inspection and enforcement” (p.17). Regulators may be located within a ministry or may be independent, with their own statutory foundations, in which case they would operate independently and report directly to the Minister. This is consistent with the recommendations of the researcher.

Respondents suggest that the inspectors are generally not competent to conduct the enforcement function as this work requires thorough understanding of the EEA and the application thereof, including an understanding of business operations (NED003, TL003). The researcher proposes the appointment of inspectors that are specialised in the blueprint of the EEA, have a legal qualification, and are trained in discrimination labour law.

They should also work in the EE space only and would in the process gain extensive experience and expertise. They would report to the CEE as opposed to the Deputy Director General of the Inspection and Enforcement Services. The fragmented

approach to policy formulation, implementation and monitoring creates a disjuncture in terms of keeping policies functional and relevant. Moreover, the policy formulation, measurement of progress and monitoring of regulatory performance is not centralised or even synergised. This disjointedness in policy and practice creates for time delays in recommending the review of policy tools. Thus, as can be seen in Figure 6, participants are alluding to the need for a full-time, independent CEE which integrates functions of the EED and EE compliance functions within the IES.

Having the processes and controls located totally outside of the department, will secure the independence of the CEE from interference by the state and employers. Thus the intent of s29(4) (c) of the EEA would be more exercisable.

5.2.4 Conscious Capitalism

Muller (2013) acknowledges the benefits of capitalism to humanity, but at the same time recognises that capitalism has major setbacks for society. The greatest of these setbacks he argues, is the benefit to the individual at the expense of the greater society resulting in high levels of inequality and insecurity. “Now and then, the question at hand is just how to maintain the temporal blessings of capitalism while devising preventives and correctives for the evils that are their eternal concomitant” (Muller, 2013, p. 48). While he rejects interventions such as employment equity as a possible solution, citing the resentment that comes with it as a major deterrent, he proposes “major welfare government spending” as a response, a response that the researcher contends is not sustainable within the South African context where a minority of 7,4 million tax payers support an estimated 29 million individuals through social grants (Roodt, 2023). This proposed reliance on government spending also perpetuates inequality in that it does not stimulate economic growth which may result in access to decent jobs (Hundenborn, 2018; Mackett, 2020). In its purest form, capitalism is individualistic, promoting individual achievement above those of the society, as it is grounded on neoliberalism and a free market (Glover, 2015; McHoul, 2015).

As such capitalism focuses on individual gain at the expense of others. This type of economic system works against the objectives of employment equity. Participants have suggested that employers are just profit orientated and show no interest in the

welfare of their employees or the communities within which they operate (NED002, TL003, ASAR001). In fact, TL005 suggests that employers see themselves as victims of employment equity, because in their minds, something is being taken away from them. Their ability to use designated employers as just a resource to make them profits, without any concern of their needs or their fair treatment makes them feel that they must preserve the status quo. TL010 suggests that capitalism creates a fertile environment for a wilful ignorance around employment equity, and a negating of the humanness of employees in the work environment.

Maharajh (2011) quotes a political commentator, John Saul, as saying that the current form of capitalism in South Africa does not liberate the disadvantaged from the class and political oppression, male domination, and political practices, contending that the current form of liberation is narrow and ineffective for the designated groups. This puts the accountability on corporate leaders, who are operating within this capitalist system, to take some of the responsibility to actualise liberation in the workplace. The power of Conscious Capitalism is also in its ability to merge a business case for transformation while elevating the human good. It therefore ensures that transformation can also be linked to a business case. It does not obliviate the need to justify a business case for transformation and thus would keep the business case posited in section 4.4.8 still central to the transformation debate.

ASAR001 argues that EQ, should form the bedrock of successful leadership if equity in the workplace is to be achieved. He along with TL003 argue that leaders set the tone, and how they arrive and present themselves impacts on how the rest of the organisation responds to legislative imperatives such as the EEA. These sentiments along with the principles proposed by participants are consistent with the tenants of Conscious Capitalism. “Conscious Capitalism is a philosophy, movement, and framework to support business leaders as they elevate humanity through good, ethical, noble, and heroic business practices” (Conscious Capitalism Inc, 2021a). Sosadia (2009) argues that Conscious Leaders have emotional intelligence and that this EQ enables them to treat their employees with care, empathy, and promote inclusivity. As such Conscious Capitalism responds to what ASAR001 and TL003 view as lacking in leaders who resist transformation.

Conscious Capitalism elevates the human element of business, recognising employees and the community within which the business operates as crucial stakeholders. Conscious Capitalism moves beyond command and control to human centrism, that is – client, employee, community and society centric approaches. Murray (2022) promotes what Dimon said on the pragmatism of Conscious Capitalism by citing that "Major employers are investing in their workers and communities because they know it is the only way to be successful over the long-term" (p.33). The perceived current racist agenda of most capitalists which is cited by participants such as TL003, TL004 TL005, TL007, ASAR001, and MR001, promotes resistance and as such, a change in paradigm to a Conscious Capitalist agenda and philosophy would address this. The view that businesses succeed when there is a human centric approach to employees, the society and community within which they operate, would present a palatable alternative to their current views. There exists extensive research that suggests that a human centric approach in the workplace promotes employee engagement, which in turn promotes customer satisfaction, the result of which is a return on investment.

Most of the participants cited above, also insinuate that these employers have a fear of the unknown and change, and this fear leads them to a position of self-preservation, which results in a short-term orientation of trying to solve the immediate problems without concern for sustainability. Conscious Capitalism promotes sustainability and takes a more long-term view of business (Mackey & Sosadia, 2014; The Joshbersin Company, 2021). Hoang et al. (2022) posits that DEI fosters a perception that there is organisational justice, and similarly the living out of the human centric approach embedded in Conscious Capitalism also promotes the perception of organisational justice. Thus, DEI and Conscious Capitalism merge through the adoption of a Conscious Capitalism philosophy in organisations.

Jose (2016) cites Narayana Murthy, Founder of Infosys Limited (who refers to what we call Conscious Capitalism as Compassionate Capitalism) as saying that the longevity of corporates is dependent upon the goodwill of the societies in which they operate. These authors share a position that businesses cannot be sustained unless they recognise the importance of other stakeholders and develop a higher purpose than just profit making. This is the basis on which Conscious Capitalism is built.

It is the recognition that for the sustainability of their businesses, shareholders need to create goodwill and build sustainable relationships in their environments, respecting the ecosystem with stakeholders. These stakeholders should be engaged because they bring value to the profitability and sustainability of the business and because business has a conscience to share in its prosperity with those that add the value. This long-term perspective is aligned to the objectives of the King IV Code which seeks to achieve sustainability in the environment, the community and employees (Deloitte, 2016). Conscious Capitalism focuses on the human element and inclusivity and this becomes a leverage for employee and community engagement, which results in increased profits to the benefit of everyone (Murray, 2022).

Mackey (2011) argues that while there is a general perception that stakeholders have competing interests, they can find creative solutions that are beneficial to all stakeholders. These stakeholders include customers, employees, suppliers, investors, government, the society and the environment (Jose, 2016; Mackey, 2011). Decisions taken should also consider the needs of these stakeholders and in so doing espouse trust and respect with the stakeholders. The empirical data from this research suggested principles that promote a culture consistent with Conscious Capitalism (Figure 3 above). The primary themes that emerged to the search for principles required to accelerate employment equity include trust, commitment, judicial justice, empathy, social justice, substance over form, patriotism, and inclusivity (see Section 4.3 above for a detailed explanation of this). All these are underlying principles under the Conscious Capitalism philosophy (ConsciousCapitalism.org, 2019; McDonough, 2019). They are consistent with the element of Conscious Capitalism which is known as creating a Conscious Culture. Thus, the outcry of participants that corporate culture works against the achievement of employment equity would be addressed (TL009, TL006, ER001, NED001, TL001, RSR001).

The principles are not necessarily documented using these specific concepts but are a golden thread that runs through the fundamentals of Conscious Capitalism. Other, interchangeable concepts such as “empowerment, transparency, authenticity, a commitment to fairness, personal growth, love and care” (Mackey, 2011, p. 85) are used. Conscious Capitalism promotes trust, loyalty and care and as a result, it promotes the building of long and healthy relationships between employers and

employees. These principles ensure a long-term commitment from employees and thus ensure the retention of their employees.

Murray (2022) shares the Whole Food Market story to illustrate the benefits of Conscious Capitalism. In 1981, the floods in Austin caused damage to the Whole Food Market equipment and stock resulting in losses of around $400,000. This was further compounded by the lack of insurance cover on their business. The community, customers, and suppliers assisted in cleaning and fixing the store and within 28 days the business was operational.

> From a practical point of view too, it is important to note that a firm's ability to operate in the market place is not just determined by its capacity to procure the necessary legal licenses, but is also dependent on securing social legitimacy (the informal approval from society to conduct its business in its chosen area of operations) (Jose, 2016, p. 45).

Kramer and Porter (2011) take this notion further by positing that businesses that become truly successful are those that operate in successful communities. They argue that there is a symbiotic relationship between businesses and their communities. A model that will accelerate employment equity needs to create a shift from a neoliberal paradigm to one that seeks to achieve the ideals of an egalitarian society (Terreblanche, 2012). "Compassionate capitalism downplayed individualism and stressed that people had to work together to realize their goals, that they had an obligation to help and uplift others" (Mondom, 2018, p. 350). The researcher shares a definition of Conscious/Compassionate Capitalism as articulated by the founder of Amway; DeVos declared that compassion, not profit, is the ultimate goal of capitalism and he defined compassion as "a feeling of deep sympathy for another's suffering or misfortune, accompanied by a desire to alleviate the pain or remove its cause" (Mondom, 2018, p. 351). This definition links up with ASAR001's assertions that businesses need leaders that have EQ, leaders that are empathetic, understand themselves and know what makes others tick (Petrides et al., 2007).

At the core of Conscious Capitalism is the principle of a higher purpose. It is more than just making profits and giving a return to the shareholders (Vargas-Hernandez &

Gonzalez, 2018). “Conscious Capitalism is more than a moral thing; it’s about doing good. It seeks excellence, human knowledge, creates beauty, solves problems and builds value of different types” (Vargas-Hernandez & Gonzalez, 2018, p. 56). Conscious Capitalism recognises that businesses exist within an ecosystem and that the reciprocity of the different players in the ecosystem cannot be undermined. It is not a system of “payback” but rather a philosophy that recognises the interdependence of all role players within the economy. It is not a matter of “gifts and counter gifts” (Rajak, 2009, p. 218) that almost justifies the existence of the business.

Conscious Capitalism recognises that power is not sovereign, moving between different role players at different times. No one role player can view themselves as having the sole mandate of coercive power. Thus, at a practical level, Conscious Capitalism would ensure that human beings, that is all stakeholders have a say in terms of what is best for the business and its stakeholders (Panayotakis, 2010). According to Mackey (2011) and Conscious Capitalism Inc (2021a) the following four principles are characteristics of businesses that have Compassionate or Conscious Capitalism as their philosophy:

- Higher Purpose: They all have a higher purpose which transcends profits. One of the underpinning beliefs of Conscious Capitalism says:

    > We believe that business is good, because it creates value, it is ethical because it is based on voluntary exchange, it is noble because it can elevate our existence, and it is heroic because it lifts people out of poverty and creates prosperity (Conscious Capitalism Inc., 2021, para 1).

    This statement suggests substance over form in business dealings within organisations that follow the philosophy of Conscious Capitalism. There is a high level of authenticity, commitment, empathy and inclusivity in the general workings of Conscious Capitalism (ConsciousCapitalism.org, 2019). While profits are important, these profits do not define the reason for existence of these businesses. Participants such as TL005 and TL002, who posit for a

common vision on employment equity and a prosperous economy would agree that this would promote a higher purpose and each employer would identify how they can make this a reality. TL005 specifically talks about the Malaysian example as such a purpose. The researcher believes that a common vision about the economic prosperity of South Africa is a purpose that would resonate with most, if not all South Africans.

- Stakeholder Orientation: There is a genuine recognition that without the consideration of stakeholder needs, the business will be unsustainable. Stakeholders according to Mackey (2011) include customers, employees, suppliers, investors, society, and the environment. The business becomes skilled at looking at their operations from a "systems thinking" perspective and seek to find a win-win solution to all challenges relating to stakeholders. Embracing stakeholder orientation would obliviate obstacles such as self-preservation and racism. The recognition that stakeholder engagement is for the common good of all would lead to a rethink about the relevance of employment equity which promotes the inclusion of all stakeholders in the business. Furthermore, Stakeholder Orientation would ensure that suppliers are empowered through the inclusivity in decision-making and would be considered an important beneficiary in the economic ecosystem. Clients, who in this case would be Conscious Capitalists, would consistently ask themselves how the decisions they make impact on growing opportunities for their suppliers (Sosadia & Mackey, 2014). As such, their own organisational growth would be a consideration for the client, and this would ultimately lead to a general economic growth in the ecosystem. It would then address the need for the empowerment of small businesses, and an intentional growth of the economic benefit, resulting in creation of more jobs. This would address some of the concerns raised by TL001 and TL007 around growing the economy instead of just affirming individuals (see 4.4.7 and 4.4.8)
- Conscious Culture: The culture of a business driven by Conscious Capitalism ideals can be defined as a Conscious Culture. At the core of the culture, are values such as "self-managing teams, empowerment, transparency, authenticity, a commitment to fairness, personal growth, love and care" (Mackey, 2011, p. 85). Discrimination is embedded in the corporate culture of

most organisations as discussed in detail in Section 4.1.5 of this research. Participants such as ER001, TL003, NED001, TL009 also alluded to this. A Conscious Culture on the other hand, creates inclusivity, empowerment, commitment, love and care which would combat a discriminatory organisational culture.

- Conscious Leadership: The leadership of these businesses display a resolute commitment to the higher purpose and vision of the organisation and demonstrate this by "walking the talk". Lack of commitment to employment equity as well as to a purpose that alleviates instead of creating pain cannot be achieved unless leaders of corporates have a deep care for all humanity irrespective of race, colour, gender and disability. ASAR001, talks about empathy and doing unto others as you would have them do unto you. These are basic values of Conscious Capitalism that are not lived by those who lead organisations that are resistant to employment equity. Other values that have been reflected in the research such as commitment, inclusivity, trust, social justice and sacrifice are consistent with the leadership style of Conscious Leaders and often lacking in leaders resistant to employment equity. Embracing the Conscious Capitalism philosophy gives employers an opportunity to authentically live out a style of leadership that can bring about transformation.

Within the South African context, the society in general does not have respect for businesses, nor do they consider themselves as a key stakeholder in the business operations (Magasela, 2018; Merten, 2019). The July 2021 riots in KwaZulu-Natal and Gauteng were a blatant display of the resentment by the public. Businesses were looted and destroyed when the initial grievance of the public was totally unrelated to those businesses. Anger spilled over to those businesses and no sense of loyalty or respect was demonstrated for them (Brandt, 2022; Erasmus, 2022). This resentment is as a result of poor trust in businesses and the perception that they only exist to exploit and create profits for their shareholders at the expense of other stakeholders (Ipsos, 2020). Furthermore, the struggle for equality, has always been linked with the fight against capitalism. Consumer boycotts which started on 21 July 1985 were a tool to fight both apartheid and capitalism. Capitalism remains an enemy of the people to a large extent, even when there is no clear picture of what the desired alternative is

(McKinley, 2023). While it may be argued that affirmative action is effective at lower management levels, particularly in junior and middle management, the public is largely aware of the racial discrimination prevalent in corporate South Africa and the overall inadequacy of effective justice within these organizations. Ramodibe (2008) illustrates that while there may be some advancements in affirmative action, genuine transformation that fosters an inclusive culture and social legitimacy is still absent.

It can therefore be argued that South African businesses largely do not have social legitimacy. Conscious Capitalism would therefore put a new perspective on employment equity. It would refocus the employers or in this context the capitalist, from seeing employment equity as a legal imperative, to seeing it as an opportunity to seek excellence, acquire and maintain a social licence built on trust with stakeholders, substance over form in that employees would be genuinely empowered, social justice and a resultant sustainability that would be embraced by stakeholders.

Narayana Murthy, Chairman Emeritus of Infosys, is quoted as saying:

> The board has to create a climate of opinion for such fairness by their actions. This is necessary if we must make compassionate capitalism acceptable to a majority of Indians who are poor. Without compassionate capitalism, this country cannot create jobs and solve the problem of poverty (Team, para 13).

He posits that it is incumbent upon employers to reconsider how they conduct business, moving more towards fairness and a people orientation, if they want their businesses to remain sustainable. He further maintains that for businesses to be sustained, the necessary reforms towards compassionate capitalism need to be made (Murthy, 2017).

Hanson (2011) refers to the concept of reputational capital, which can be demonstrated in behaviour that suggests that businesses have a social licence to operate, a licence which is a stamp of approval or interest in the business by the stakeholders. Stakeholders would then in return, be loyal and demonstrate a level of commitment similar to that shared in the Whole Food Market story above

(Ozoekwe & Konya, 2021). Progressive employers need to embrace this for the sustainability not only of their companies, but the communities within which they operate. With a move to this philosophy, employment equity is a by-product. The researcher is persuaded that this shift, with time will become less of a choice and more of an imperative. Businesses will be forced by different circumstances to take on a more humanistic perspective or face the possibility of extinction.
This is because they will always be a target of the citizenry anger, and such anger manifests itself in a variety of ways, from poor productivity, to boycotts and even looting as was seen in 2021 (Ipsos, 2020). Like the Indian majority that Murthy speaks about, the South African majority needs value-based organisations that are cognisant of their dependence on the stakeholders and that care for the sustainability of their stakeholders as much as they do for profit. These are outcome-based value driven organisations that look beyond minimum compliance to significant transformational agendas. What Conscious Capitalism promises, is a principle and outcome-based approach to employment equity as regulation (Badat, 2023). Currently, most businesses view the EEA from a perspective of a rule-based regulatory framework to compliance, which indorses a tick-box exercise response (Alter, 2015; Badat, 2023). This approach is typically a form over substance response as opposed to the proposed substance over form response to employment equity.

While O'Toole and Vogel (2011) argue that Conscious Capitalism cannot be a solution for some of the systemic problems of society, the researcher believes that this, supported by the full-time independent CEE described above, would yield extensive returns in moving the needle towards employment equity. Their contention is that some problems such as poverty and inequality are so large and so systematically entrenched that individual businesses on their own cannot solve them. The CEE would also drive a principle and outcome-based approach to regulation as opposed to just a rule-based approach. The researcher maintains that collectively, businesses through support from formations such as Business Unity South Africa (BUSA) and Business Leadership South Africa (BLSA), can drive the Conscious Capitalism agenda to a tipping point and thus promote large scale buy-in.

Finally, consumers are becoming discerning. Profits are becoming dependent on public approval of the business operations and a quid pro quo relationship between the business and the community wellbeing. Capitalists will not be able to continue reaping the benefits of their business exploits without having to account to the public. In turn, the general public will shift their buying power to those businesses that demonstrate Conscious Capitalism (Murray, 2022).

The philosophy of Conscious Capitalism forms part of the model to accelerate employment equity because it encapsulates the principles that are considered important by participants to the acceleration of employment equity. It is a principle-based approach to EEA compliance as it promotes flexibility and allows businesses to find innovative, inclusive ways of arriving at employment equity. Conscious leaders tend to display an appreciation for diversity, equity and inclusivity and drive their businesses in ways that promote the ethos of what effectively drives employment equity (Fyke & Buzzanell, 2013).

5.3 Conclusion

This chapter presented a model that has been crafted out of the empirical data of this study and set in context with literature around employment equity. The model has four components, that the researcher proposes will lead to an acceleration of employment equity in the South African labour market. The model focuses not only on government interventions but interventions at corporate and national societal levels. As a result, it adds to the conversation on employment equity in a unique way in that it addresses both the macro, meso and micro levels of employment equity.

The first component of the model proposes the proclamation of an implementation date of the Employment Equity Amendment Act No 4 of 2022. The Democratic Alliance has claimed the victory of the fact that the President was pressured by them not to proclaim the Amendment Act (Cardo, 2023). In its current form, it does not serve any purpose as it cannot be used as a policy tool yet. The Amendment Act prescribes sector targets as well as the issuing of a certificate of compliance to the EEA. It gives enforcers more power to drive employment equity in the labour market.

The second component entails crafting a common vision for employment equity, through a collective national process of an indaba, where different stakeholders would give input into the vision. This component, addresses the inputs from empirical data, which suggest that the slow progress on employment equity, is due to a lack of a commonly shared vision around employment equity and economic transformation for the country. The indaba will create an opportunity for courageous conversations at a national level, crafting a path for where we need to go and how we get there. It will also be a cathartic process, opening the citizenry up for a dignified, honest, and authentic reflection of economic transformation in the country.

The third component deals with a redesign of the institutional framework of the EEA. The desired outcome will be an independent full-time Commission for Employment Equity, which would be responsible for advice on policy formulation, enforcement and monitoring the progress of employment equity in the labour market. The independence of the CEE is crucial, as it addresses many of the contentions by participants that the employers are slowing down the pace of transformation because of the power they hold against the state and bureaucrats. Furthermore, the fact that such an authority would be staffed with highly trained individuals to enforce and monitor compliance, addresses the concern from participants that the inspectors are not capacitated to deal with leaders of organisations and lack the boldness to mete out punitive measures.

The fourth component of the model is based on the philosophy of Conscious Capitalism, a philosophy that promotes a human-centric approach to business, focusing on the inclusion of all stakeholders in business processes decision-making and ensuring the sustainability of those businesses through such inclusivity. Through Conscious Capitalism, businesses will gain a social licence to trade in communities and the operations will be sustained by a deep sense of purpose and loyalty by all stakeholders. This philosophy promotes a common vision within businesses, where every stakeholder feels a sense of ownership and becomes fully engaged in the success of the business (Mackey, 2011). The principles of Conscious Capitalism are crucial for embedding a culture of employment equity, ASAR001, inclusion and facilitating an acceleration of employment equity. The principles that were identified as critical to the acceleration of employment equity by participants, are all wrapped up in the philosophy of Conscious Capitalism.

The power of this model is that it does not only focus on the micro environmental issues, but also addresses the meso and macro -level issues, thus dealing with the impasse from different perspectives to suit the nature of obstacles to employment equity.

CHAPTER 6. CONCLUSIONS & RECOMMENDATIONS

6.1 Summary of findings

This Chapter presents a summary of the research findings, in relation to the research objectives presented in Chapter 1, as well as the value and contribution of these research objectives. It will further review the limitations of the study and then conclude by presenting recommendations for future research.

This study aimed to identify obstacles in the acceleration of employment equity, as well as establish the role that power plays in the slow pace of implementing employment equity. It further sought to identify the critical principles for the acceleration of employment equity and then craft a model to complement legislation in accelerating the EEA. This need to find a model that complements legislation, is motivated by the experiences in the labour market, where reports from the CEE suggest that employment equity, and more specifically affirmative action is painstakingly slow, specifically at top and senior management. At these two occupational levels, the CEE report a movement of, on average, 1% point in favour of the Black population since 2001 (Department of Employment and Labour, 2020a, 2021, 2022a). Authors such as Oosthuizen et al. (2019) argue that legislation alone will not reap the desired results of the EEA.

The value of this study is that its findings offer a theoretical understanding of the obstacles at a macro (national), meso (corporate) and micro (individual) level. While previous research has focused on organisation wide challenges (Horwitz & Jain, 2011; Thomas, 2002), or national obstacles and proposed solutions (Bezuidenhout et al., 2008), this study covered macro, meso- and micro-level obstacles and proposed a model to address these levels of obstacles.

6.2 Overall findings in relation to the research objectives

Below is a summary of the research objectives and the findings.

Objective one: *To unearth the obstacles to employment equity in the current legislative framework.*

Below are the findings of this objective:

- Employers are **fearful of the change** that employment equity brings at an organisational level, and thus resist its implementation. The prospect of having Black people at top and senior management running their companies makes them fearful of the loss of economic power and the privilege that comes with it. As a result, all attempts are made for **self-preservation leading to non-compliance of the EEA.**
- **White supremacy and racism** are an obstacle to employment equity. The findings suggest that racist attitudes and belief systems dictate how employers respond to the empowerment of Black people. They do not believe that Black people are worthy and able of holding senior positions in their organisations and would rather employ White people.
- South Africans do not have a **common vision** around economic empowerment and redress of the previously disadvantaged majority. The transition from apartheid South Africa to a democratic dispensation, was driven primarily from a political perspective, and no interventions were put in place to craft a commonly shared future of what economic empowerment of the Black majority would look like. Consequently, the views around this remain polarised and economic transformation remains stagnant. Thus, the pattern of the privileged holding on to what they have, while the disadvantaged majority struggle to gain equality in the workplace persists.
- **Lack of accountability and commitment by leaders** to employment equity is also responsible for the slow progress. Employment equity is rarely driven from the top management structures, and no one is held accountable for non-delivery. The financial bottom-line in companies remains a priority. Systems and processes are more geared to driving the financial bottom-line than pursuing the objectives of the EEA.
- **Most organisations have a culture of discrimination** that is made up of systemic and structural barriers that promote inequality. Unfair discrimination is embedded in the behavioural patterns, symbols, structures, and messaging and these constantly work against and sabotage any effort that promotes equity and inclusion.

- The findings further suggest that the **EEA system is "broken",** leading to a flawed application of the law. The areas raised around the brokenness of the employment equity system, range from the underlying assumptions that form the basis for the EEA, to the implementation of the prescripts of the EEA both at government and corporate level. The assumption that employers will, in good faith implement the EEA and thus self-regulate without any resistance is questioned. Furthermore, the application and enforcement of the EEA is also seen in some areas to be impracticable. The enforcers of the EEA are considered to be incapable of effectively enforcing the EEA, either due to their lack of understanding of the law or their inability to operate at a level of complexity that cultivates respect from employers.

These findings present a picture that suggests that a singular solution will not achieve the desired results as the obstacles are complex and varied. Legislation on its own cannot effectively deal with the issues highlighted above. There is a need for behavioural change, and not just enforcement and punishment of non-compliant conduct. The model must address the administrative compliance issues as well as inter and intrapersonal, external, and systemic obstacles.

Objective two - *To identify the latent power dynamics that maintain the status quo in the South African workplace on issues of employment equity.*

The findings in line with this objective are as follows:

- **Employment equity is a struggle for power and justice**. The findings suggest that economic power is unlikely to be handed over to Black people without a fight. There is a strong perception coming out of the research that economic power will never be handed over without violence and hostility. For Black people to attain equity in the workplace, there will have to be and there are already in some cases, violent events that are driven to reshape the power base of employers. While employment equity is defined as a just course, there is a recognition that the employers do not perceive it as such and continue to promote a narrative that perpetuates structural inequalities. The employers use

their power to define what is truth and to promote a language that disqualifies the importance of employment equity.

- **Political power is ineffective in enforcing compliance to employment equity**. This political power, which is held by the state, is misaligned to the needs of South Africans in achieving employment equity. Instead, politicians and bureaucrats are corrupted by the "White monopoly capital" and are more interested in personal gain, than achieving employment equity to the benefit of the South African majority.
- **Real power for employment equity is in the hands of the employer.** The findings suggest that economic power, which is in the hands of employers, supersedes the political power of the state and thus employers dictate what is doable and acceptable and what is not. Using power, employers establish a dominant language that promotes a narrative that employment equity is not useful or even good for the economy.
- **Enforcers are not administering positional power.** The positional power of employers, especially CEOs is perceived to be intimidating to inspectors. Inspectors, who have been tasked with enforcing and sanctioning employers that are non-compliant to the EEA, are fearful of these CEOs and tend to avoid being confrontational. In some cases, the inactivity of the inspectors is said to be due to lack of capacity / competencies to retain a position of strength when inspecting workplaces. Inspectors are also accused of being corruptible and open to bribery, which stuns their ability to administer the power as stated in the EEA.
- **The powerlessness of transformation professionals** slows down progress at an organisational level. Transformation professionals, who are mostly s21 Managers and mainly Black, experience pressure to prioritise other objectives that are viewed as important for business, while neglecting the employment equity agenda as it is seen as unimportant by their leaders. The findings suggest that s21 managers are fearful that they might lose their jobs if they stubbornly pursue the

employment equity agenda. The power to reward and to sanction is being used in a placid way to communicate the will of their leaders.

- **Subversion of the law by employers**. The findings suggest that employers are wilfully ignoring the EEA and choosing to sabotage this agenda as they have the power to control what agendas are prioritised in their organisations. The law is distorted to suit the needs of the employers and to undermine the employment equity agenda.
- **The discourse of convincing employers to implement the Employment Equity Act.** While the EEA is law, it is primarily viewed as optional by most employers. Employers are accustomed to viewing this legislation as optional because there have hardly been any consequences for non-compliance. The findings suggest that as a result, the Department of Employment and Labour, together with the CEE are constantly coaxing the employers to comply by promoting the EEA as a strong business case for profitability. The need to "sell the agenda" and to "solicit buy-in" as opposed to enforcing the agenda, takes away the power to mete punishment for non-compliance to the law.

Flowing out of the above findings is a conclusion that the power dynamic is skewed in favour of "White monopoly capital". Through power, the narrative that employment equity is unattainable and bad for business is maintained and communicated by businesses. The power mostly plays itself out in non-aggressive and placid ways, where the employers pay lip service to compliance, but do not really follow through with intentionality and purpose. It is argued that the employers hold the ultimate power to effecting employment equity.

The findings suggest that as per Foucault's theory of power, the powerful, who in this case are the employers, have the privilege of formulating what is acceptable and workable despite the EEA being law. Employers who hold the economic power, formulate the dominant discourse around employment equity and disempower the enforcers from effectively driving the agenda. The positional power of the politicians and bureaucrats is dampened by some factors shared above and these factors reinforce a narrative that slows down the pace of transformation in the labour market.

Objective three: *To establish principles that are central to the acceleration of employment equity in South Africa.*

The aim of objective three was to identify some of the key principles that are central to ensuring that employment equity is accelerated. The following principles were identified as central to the acceleration and successful implementation of employment equity:

- **Trust** – The findings suggest that there needs to be trust between all role players in the application of the EEA. This trust should be evident in the processes, systems and outcomes of interactions and relationships between stakeholders.
- **Commitment** – Political leaders, bureaucrats and employers need to commit to the employment equity agenda. This commitment needs to be demonstrated at the highest level of the country and organisations and must be accompanied by a high level of accountability for ensuring implementation. Ministers need to include employment equity as one of their deliverables within their sphere of influence, while employers must do the same at the highest level of the organisations.
- **Judicial Justice** – Non-compliance to the EEA needs to be dealt with through the administration of sanctions that are proclaimed in the EEA. Consequence management needs to be demonstrated from enforcers, so that non-compliance becomes a liability to employers. There also needs to be fairness in the administration of the law.
- **Empathy** – Leaders need to consider the feelings and motives of others in deciding how to respond to them. Empathy is crucial for leaders as it will become a moral compass for those responsible for driving the delivery of employment equity. The rule must be to “do unto others as you would have them do unto you”.
- **Social justice and sacrifice** - The principle of social justice must underpin the work of economic redress. In terms of social justice, a fair society is one in which the basic freedoms and rights of all individuals are respected and upheld; and where access to the same resources and opportunities exist without structural inequalities. The findings suggest that there will be a need

for those who have been privileged to give way for the underprivileged to be exposed to opportunities that promote equality. Sacrifices are going to have to be made to ensure that all citizens experience economic access and equality.

- **Substance over form** – Where Black people are put into positions, the power and authority that goes with such position must be devolved to those individuals. The spirit and the letter of the EEA must be applied without compromise. In this way, affirmative action will not just be a numbers game, but it will embrace substantive equality and a culture of inclusivity.
- **Patriotism** – Love and loyalty to the country must drive the employment equity agenda. The findings suggest that currently, those who have power to effectively actualise employment equity are more concerned about self-love and self-advancement at the expense of the people.
- **Inclusivity** – At corporate and national level, South Africans need to experience a culture that promotes inclusivity as opposed to exclusivity. This principle needs to be embedded in the structures and systems of corporates. The common saying: "nothing for us without us" needs to inform how decisions are taken and empowerment is practiced.

These principles were viewed by participants as the foundation on which successful employment equity would be achieved. The researcher is of the view that these principles need to find articulation in the proposed model for accelerating employment equity, and if done well, would add tremendous value to the model. It is important to note that the principles drive behaviour change – individual level transformation.

Objective 4: *To develop a model that complements legislation in accelerating employment equity in South Africa.*

Through empirical data and literature, the researcher developed a model that will facilitate the acceleration of employment equity in the labour market. This model will complement legislation, meaning that it will support the prescripts of the law. The model has four main components which are:

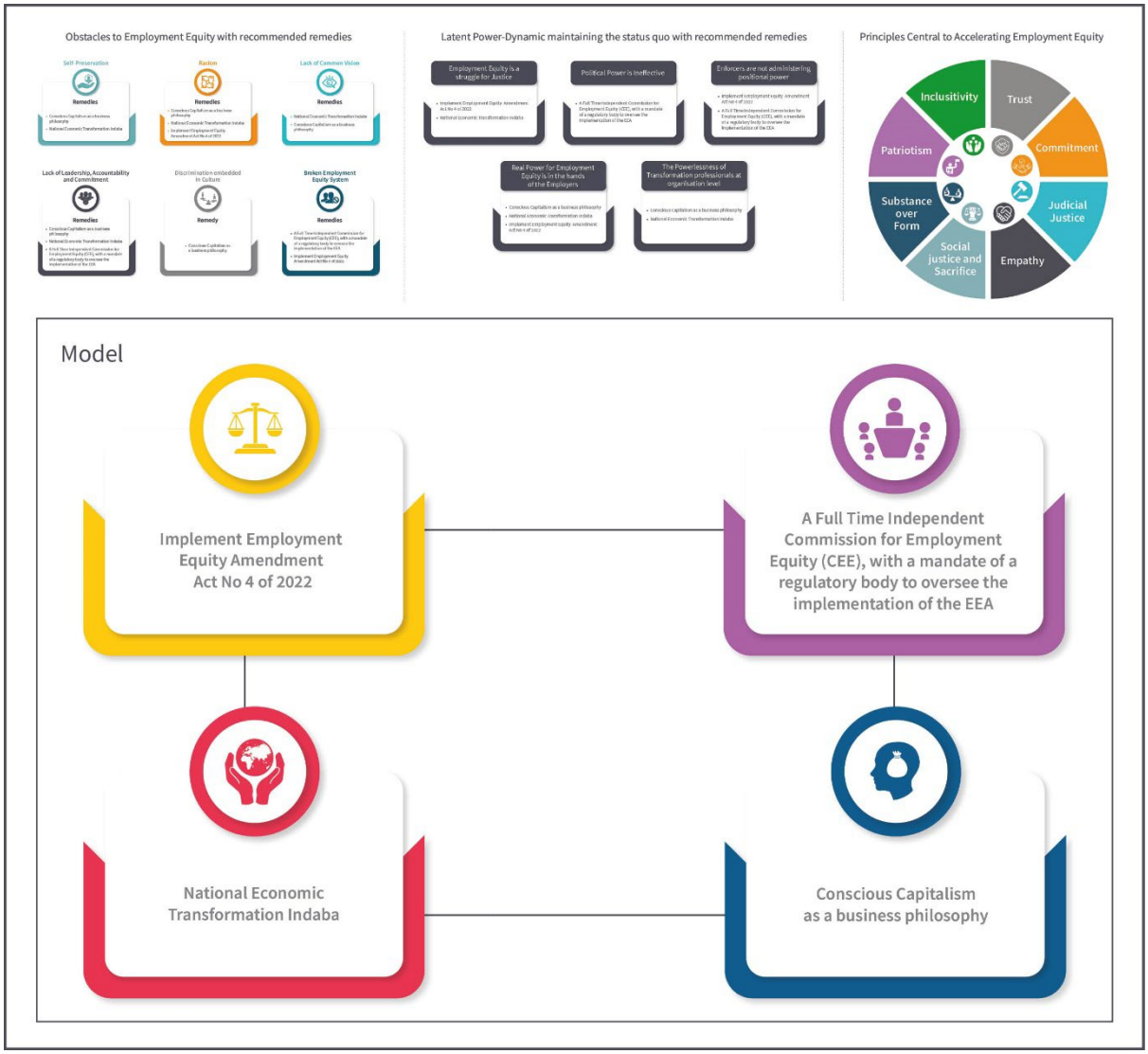


Figure 7: Graphical representation of obstacles, latent power-dynamics and principles with related remedies as well as the Model to accelerate employment equity in South Africa.

I. The country awaits a proclamation date, which is the date that will mark the official start date of the **implementation of the EE Amendment Act No 4 of 2022** (Department of Employment and Labour, 2023). The model proposes that the first step would be the proclamation date of the EE Amendment Act. This creates an environment in which non-compliance will be very costly for employers since the punitive measures will have a direct impact on the business profitability, especially for employers that seek to do business with government and state-owned entities. The s53 certificate, which is one of the most important aspects of the Amendment Act, enables

businesses to tender to do business with government, thus barring employers who do not meet sector targets from being awarded state contracts (Republic of South Africa, 2022). This amendment will hurt non-compliant employers financially, while rewarding compliant employers. It will go a long way in creating the desired change in behaviour for employers, thus accelerating employment equity. The researcher acknowledges that the declaration and implementation of the Amendment Act will foster a rule-based approach to compliance, and this is crucial as it deals with employers that resist employment equity in totality because they are not prepared to empower Black people. It will achieve judicial justice which is one of the principles recommended in the empirical data. The detailed, process heavy and standard driven approach, which when not followed will result in punitive measures is critical with regards to these employers.

II. The second leg of the model is the undertaking of a **National Economic Transformation Indaba.** The goal of the indaba would be to develop an economic transformation vision which is commonly shared. The indaba will also serve the purpose of creating a platform for courageous conversations around economic transformation, and in this way deal with fears, resentment and emotional baggage that tend to demonise the employment equity agenda. The desired outcome of the indaba would be a social contract which binds the citizens of South Africa, galvanising them around a commonly shared vision of employment equity. The underlying purpose of the indaba will be to facilitate change management through constructive dialogue so that there is a willingness to experiment with behaviour change that facilitates employment equity. A further by-product of the indaba would be to bring synergy between the EEA and the BBBEEA, as well as to commit the state and bureaucrats into clear deliverables around employment equity. This is a principle driven approach to compliance and seeks to commit the country to high level commitment and a common vision.

III. The findings suggest inefficiencies in the regulation and enforcement of the prescripts of the EEA. The implementation and enforcement of EE is regulated through different structures and institutions, each presiding over a different mandate. Thus, these institutions look at a partial picture, with no full access to the activities of the others. The findings of this research

suggest a **full-time Independent Commission for Employment Equity**, which will consolidate the functions of some of these institutions. The argument for a specialist, independent body which is impartial and made up of subject matter experts was compelling. While the current CEE is independent according to the EEA, practice conflicts with the law as the CEE is embedded into the operations of the DoEL, following its governance practices and being subject to the influence of bureaucrats. Additionally, the researcher noted that the institutional framework of the EEA hampers collaboration and effectively trouble shooting work (Department of Labour, 1996a). Each entity focuses on its mandate without proper engagement with the others to create a streamlined and effective engine of delivery.

As a third component of the model, the researcher proposes that an independent, full-time CEE should operate outside of the structures of the Department of Employment and Labour. The mandate of this newly constituted CEE would include advising the Minister on policy formulation, advocacy, compliance and monitoring the progress of employment equity as well as inspections and enforcement. This regulatory body would therefore take on the functions of the EED and the Inspectors specialising in the EEA. It would have a governing body as well as a fully functioning executive structure.

The governing body would be made up of a chairperson as well as several portfolios, some of which are already aligned to s29 of the EEA. Nedlac constituencies would be represented in the governing body as per s29 of the EEA, by one representative per constituency. New portfolios would include a member of the BEE Advisory Council to ensure alignment of the EEA and BBBEEA Codes, the Director General in the Department of Higher Education and Training who oversees the SETA to ensure that education and training is responding to the shortage in the skills pool within the labour market, as well as the CCMA Director to provide real time input on the impact of the policy tools on dispute resolutions related to the EEA. A Labour Law expert would also form part of the governing body to ensure accurate interpretation of the EEA and support the advice function on policy matters

to the Minister. The findings of the research suggest that for employment equity to be accelerated, there must be an alignment in the transformation legislation. The structure above involves role players from the BBBEEA as well as the Skills Development Act and this will ensure the necessary alignment.

The executive structure would be supported by a Policy Formulation Unit, an Advocacy, Compliance, and Monitoring Unit, an EE Registry Unit as well as an Enforcement Unit. These units would report into the CEE Director. The independence of the CEE would be ensured by removing its functions and reporting lines from those of the DoEL. All staff would be skilled with the minimum requirements of the jobs being fit for purpose. The Inspectors who are responsible for enforcement, would not only have a legal qualification, but have training in discrimination labour law. The in-depth knowledge of the inspectors will capacitate them in dealing with enforcement in a way that demonstrates competency and expertise related to the labour market issues. The researcher believes this type of structure would deal with the obstacles highlighted in the research and result in agility in governance and regulation of the EEA. It also addresses the perceived incapacity as alluded to in the empirical data.

IV. The fourth component of the model is the **adoption of Conscious Capitalism as a philosophy** for businesses in South Africa. This was motivated by the suggested principles that have a strong alignment to this philosophy. These principles include **trust, empathy, commitment, inclusivity, social justice and judicial justice**. All of these principles are embedded in the Conscious Capitalism philosophy (McDonough, 2019; Sosadia, 2009). The importance of Emotional Intelligence was emphasised as pertinent in successfully driving employment equity, which is a concept that is also aligned to Conscious Capitalism (McDonough, 2019). Conscious Capitalism is an economic and political philosophy that seeks to serve the interests of all stakeholders in business and ensure sustainability by balancing the needs and interests of all the stakeholders.

It recognises the symbiotic relationship between businesses and society. “Companies that practice conscious capitalism embody the idea that profit and prosperity go hand in hand with **social justice** and environmental stewardship” (Sosadia, 2009, p. 189). It brings in the people element in business, seeking to create an environment in which employees are engaged and feel cared for, while aiming to elevate humanity. “**Conscious capitalism** is a philosophy of doing business in a way that combines the generation of profits with socially responsible choices” (Conscious Capitalism inc, 2021b). Forward thinking corporates can inculcate the ethos that underpins Conscious Capitalism and, in this way, have companies that are inclusive and have a bigger vision than just making profits. The four tenants of Conscious Capitalism are having a higher purpose, stakeholder orientation, conscious leadership and conscious culture (Conscious Capitalism inc, 2021b; Sosadia, 2009; Sosadia & Mackey, 2014).

All these elements have within them a view that people sit at the centre of business and should contribute and control equitably, and benefit from business in an equitable way. Thus, this philosophy also aligns to the theory of power by Foucault, which emphasises that power is not static or sovereign, but that it is pervasive and in a constant state of flux. Through conscious leadership, leaders can take people to a different beneficial place (McDonough, 2019). In embracing this philosophy, leaders in corporate South Africa will gain from an engaged workforce and being on the right side of society, while maximising profits through voluntary action as opposed to coercive power cloaked in positional power, Sosadia (2009) argues (McDonough, 2019).

At the heart of this philosophy is inclusivity, diversity, and equitable participation of employees, and these drive a more principled and outcome-based approach to compliance as they define what the end goal of employment equity is. Conscious Capitalism promotes a healthy, non-discriminatory environment which enhances employment equity (Murray, 2022).

The four components of the model combined, propose solutions that are macro, meso and micro-level in nature and thus extend beyond current research that only focuses on either the macro or the micro-levels exclusively (Bezuidenhout et al., 2008; Horwitz & Jain, 2011; Jain et al., 2012). The barriers identified in the empirical data, the latent power dynamics and the recommended principles for the formulation of a model that complements legislation in accelerating employment equity have been instrumental in the researcher arriving at the model. Each obstacle is addressed through a component of the model.

According to participants, the employment equity agenda is driven through a **system that is broken**. They attest that this "broken system" results in inefficient enforcement and implementation as well as practices that are not dealing with the real problem. This obstacle requires the implementation of the **EE Amendment Act No 4 of 2022,** which can only be activated by a proclamation date announced by the President of South Africa**.** Within this amended legislation are sections that directly address the areas of brokenness such as moving from a self-regulation practice to the imposition of sectoral targets that will lead to businesses suffering the consequences of non-compliance. Judicial justice as a principle that was proposed in the research would be achieved through the implementation of the EE Amendment Act.

The **lack of a common vision**, which was cited by respondents as a barrier, is addressed in the model by dialogue through a National Economic Transformation Indaba. This indaba would give South Africans an opportunity to experience a forum like CODESA, where a common vision around the South African economy can be crafted by South Africans, while simultaneously allowing for planning that would foster accountability from corporate and government. The courageous conversations would create a safe environment to talk about fears, reservations and address unacceptable behaviour patterns that maintain the status quo. The indaba would allow for **intra and interpersonal engagement** that challenges stereotypes to foster acceptance and inclusion. The tangible outcome, being a common vision that would unlock the barriers stated above.

Self-preservation, racism and lack of leadership accountability and commitment are obstacles that are addressed through Conscious Capitalism, which promotes the agenda of a higher purpose than just making money.

Conscious Capitalism creates organisations that seek sustainability, not through **self-preservation and the discrimination** of individuals, but rather through a people-centric agenda that recognises that businesses are noble, inspire vision and are deeply caring for their employees, as well as the communities within which they operate. In caring and inspiring these people, the organisations will in return, gain engaged employees and social licences to operate. **Leadership accountability and the commitment of employers and political** figures is enhanced by their passion and commitment to the higher purpose. Thus, they do not perceive businesses as profit-making enterprises but as organisations that live a life of service and lead from the inside out (Sosadia & Mackey, 2014). It is also through Conscious Capitalism that the principles that promote the acceleration of employment equity would be achieved. For instance, by its very nature Conscious Capitalism is **inclusive, patriotic and promotes substance over form**.

Discrimination which is embedded in corporate culture is an obstacle that was also identified through the empirical data and a Conscious Culture which is a tenet of Conscious Capitalism would reverse the discrimination embedded in culture. This creates an inclusive culture, however, the work of creating a Conscious Culture would have to be embarked on in earnest. The philosophy of Conscious Capitalism promotes **social justice and sacrifice** as opposed to promoting discrimination.

6.3 Recommendations

The researcher recommends that the model that has been designed through the empirical data in this research be implemented for the effective acceleration of employment equity. This model proposes remedies at various levels within the South African labour market and if implemented is likely to yield favourable results at the appropriate levels.

Secondly, the South African government needs to earnestly reflect on the path taken on actualising employment equity in the country and consider crafting a common vision through an inclusive process. The vision should be shared with the citizens and build unity around a common cause. This initiative is likely to bear better results than those evidenced in the labour market currently. Dialogue at a national level should also be continuous around employment equity and the country should collectively monitor

progress on this, with a view of achieving equity in the workplace, using very specific target setting mechanisms and holding government and business to account on the achievement of these targets.

Thirdly, the researcher recommends intentional awareness creation by all role players (thought leaders, business owners, transformation managers, politicians, labour movements and bureaucrats) of the complexity of the employment equity challenges in the labour market and thus also a realisation that the solutions should be more varied than just the implementation of legislation on its own. Awareness campaigns initiated by the DoEL, NEDLAC, BUSA, Black Business Council, BMF, corporates and labour movements should be carried out to create paradigm shifts and initiate change in the tackling of the employment equity dilemma. Moreover, the curriculum at higher education level should be interrogated to check if it presents the full spectrum of the challenges of implementing the EEA.

Finally, it is in the interest of all businesses in South Africa to embrace the Conscious Capitalism philosophy for more successful enterprises, stable and secure communities and a sustained economy. The researcher believes that this philosophy offers a fresh perspective by bringing some of the BBBEE elements to life and that the two can be blended to achieve better results in economic empowerment.

The recommendations above call for a demonstrable commitment to employment equity and support to the current and future legislation in accelerating the employment equity agenda and expediting the realisation of a sunset clause on this legislation.

6.4 Considerations for further research

The EEA identifies Women and Persons with Disabilities as designated groups that need to be affirmed through employment equity, however these groups have not been the focus of this study. There may be a need to duplicate this study, focusing on these two groups to see if the results would differ.

Conscious Capitalism as a philosophy has been adopted primarily in the United States and most of the literature used is based on companies from the USA (Conscious Capitalism inc, 2021b). Research around the application and implementation of

Conscious Capitalism may be necessary to identify whether there would be some nuanced ways in which this philosophy could be applied within the South African context.

The proposed National Economic Transformation Indaba is a huge initiative that would require the buy-in of major stakeholders in the South African economy. If such a buy-in is not sought before the indaba is undertaken, it is likely to be sabotaged and undermined. The researcher proposes research that investigates how best to attain the necessary buy-in and support from government, business, organised labour, political parties, communities and the South African population. This initiative would be critical and historic, requiring due care in identifying the extensive preparatory work required for its success. The research would also need to investigate who the credible individuals that would be trusted by the stakeholders to facilitate this indaba are.

The negotiated settlement in achieving a democratic South Africa has in recent years been discussed but not enough information is available on what needs to be done to revisit and possibly renegotiate its terms. This settlement, was designed to maintain White economic supremacy at the expense of the South African majority and it is not useful to the employment equity agenda (Terreblanche, 2002; Terreblanche, 2012). The researcher recommends a research study into the ability to revise some of the agreements reached, which has an influence on the socio-economic factors that drive the privilege of the “White monopoly capital”, and further sabotage employment equity.

The apathy of the transformation and s21 managers is a topic that came out in the research findings. The factors that have been flagged as causes for the apathy and learnt helplessness need to be further investigated in research, with possible empowerment interventions, whether legal or behavioural identified.

Furthermore, the funding model for an independent, full-time Employment Equity Commission, which operates as a regulatory body needs to be researched and put in place. The research needs to identify the most appropriate funding model that will empower the Commission and deal with factors that may compromise its independence. There may be a need to conduct quantitative research to test the generalisability of the proposed model using a larger sample, focused on statistical reliability and validity.

6.5 Conclusion

On his birthday, Herod Antipus, the ruler of Galilee, threw a party and in his excitement after his stepdaughter danced for him and his guests, he promised to give her whatever she wanted. After consultation with her mother Salome, she came back and asked for John the Baptist's head on a platter. Herod was sorrowful because he did not desire to kill John the Baptist, but because he had made an oath to honour her request, he had to oblige (New King James Bible, 2007 , Matthew 14: 4-11).

Herod was a powerful man, though in a moment of poor judgement handed over his power to his stepdaughter and her mother. So, what stopped him from taking his power back? It must have been his ego. He could not bear to be viewed by his friends as lacking conviction. That would have been humiliating. So, he continued to be honoured by his friends, and to accede the demand of his wife. The rest of his life he lived in dread, haunted by what he had done (New King James Bible, 2007 , Matthew 14:4-11). Had Herod taken back his power, John would not have died in this manner. He was a ruler after all, he could reinstate his power. Nothing stopped him, but in his mind, he created a cognitive obstacle that crippled him.

The results of this study suggest that much like Herod Antipus, the South African government surrendered its power to ensure outcome-based compliance to the EEA to a minority of people who dictate the trajectory of economic empowerment. This comes at the expense of the freedoms of South Africans who have trusted them with government power. The research provides ways in which all stakeholders can change the power base, with government taking back its power and ensuring that it serves the people. The government can reclaim its power and avoid being haunted by a discontent citizenry and an economy that only works for the minority. May government reclaim its power and redress the imbalances in South Africa.

Government is a critical role-player in changing the narrative around the pace of transformation. It needs to reclaim its power in moving South Africa's story to a desired future. It needs to be braver than Herod Antipus. The prescripts of the Constitution cannot always be celebrated as "a good document" without producing the desired outcomes as stipulated in the Constitution.

“The Constitution belongs in the townships, not in a museum. It is a living document, a source of oxygen for the society, not a monument or waxwork” (Fisher, 2022 ; para 4). While the Constitution is hailed as one of the most progressive in the world, the commensurate progress is not accompanying the celebration (Fisher, 2022).

The labour market transformation journey in South Africa has been in progress since 1998 (26 years ago), when the EEA was promulgated. Progress has been slow in achieving the desired equity in the labour market. The researcher believes that without a more concerted effort that extends beyond legislation, transformation will remain gradual. Legislation continues to be subjected to legal contestation, which suggests that the will to transform amongst employers is not necessarily a desired ideal. The desire to maintain self-regulation by employers is, therefore, a copout position, that is used to maintain the status quo. Political parties feed on the fear of the minority groups to maintain this polarisation and score political points (Khumalo, 2023). The polarisation along racial lines is also a concern articulated by participants in this study and it is seen as an obstacle to employment equity. Unless the South African population can embark on dialogue on fearless conversations around the economic transformation in the country, the legislation will only facilitate a process of legitimised excuses for the lack of fulfilment of the Constitutional and EEA objectives to achieve equality.

Furthermore, honest and courageous conversations need to be held to dismantle negotiated settlement consequences, that have legitimised the dispossession of the Black majority. The problem is deep rooted and set on what seems to be a solid foundation of maintaining disparity. The researcher believes that the National Economic Transformation Indaba proposed in the findings may present a platform for the dismantling of the negative effects of the said settlement, which protects the rights of the White minority even as it continues to have devastating consequences for the majority of South Africans.

The need for a social licence to trade is based on the extent to which the public sentiments view businesses as good corporate citizens. Until the responsibility to transform is undertaken sincerely, businesses will continue to be targeted in cases of protestations and employers will suffer the brunt of the fury of the public based on perceptions that employers continue with business without taking the interests of the

communities within which they operate into consideration (Erasmus, 2022; Khalane, 2019; Kirsten, 2021; Merten, 2019; Perlman, 2019, August 26; Swart, 2021). This study has come up with some critical interventions that employment equity stakeholders need to consider, and the researcher believes will have benefits to the conversations regarding the labour market and economy of South Africa.

In conclusion, the need to fulfil the goals of the EEA is not dependent on one stakeholder. Power is evasive, moving from one stakeholder to the next, depending on the issues which are prevalent in the discourse in public domain. Thus, the illusion by the currently powerful White minority that control the economy that the status quo will remain, should be questioned. The time is coming when this power will be lost, and possibly with this, a total devastation of South Africa as a country.

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APPENDIX 1 – INTERVIEW SCHEDULE

Interview Schedule for research: A Model to Complement Legislation in Accelerating Employment Equity in South Africa.

Setting the context for the interview (Researcher will frame the interview using this introduction)

The purpose of the EEA is to transform the workplace by redressing past imbalances through the implementation of affirmative action and the protection against unfair discrimination that was institutionalised by legislation during the Apartheid dispensation (Department of Labour, 1997; Dupper et al., 2013). The EEA has two pillars in addressing inequality: 1. Implement Affirmative Action to achieve demographic representation of the South African Economically Active Population and; 2. Eliminate unfair discrimination in all employment processes; practices and procedures.

In terms of the first pillar, Affirmative Action, the CEE Annual Reports that Blacks are only 30,1% Top Management, at Senior Management they represent 42,3, while their representation is at 60% and 80% at Middle and Junior Management Respectively. At Top and Senior management the increase is at one percentage point (1%) in favour of designated groups.

In terms of the second pillar, which is eliminating unfair discrimination in the workplace, the CCMA reports that 2015 to 2019 over 3000 unfair discrimination disputes were referred to the CCMA per year. We know that some of the cases still remain unreported.

Question:

1. Do you think that the EE statistics are as bad as the numbers say?

2. What needs to be done to achieve the objectives of the EEA?

3. What in your experience are the obstacles to the attainment of Employment Equity?

4. What has been your best and what has been your worst experience with EE?

5. What is the role of power as a factor in the slow pace of Employment Equity?

6. How have you experience power playing itself out in either accelerating or slowing down the pace of EE in organisations?

7. How have implementers of EE rendered the law ineffective, if at all?

8. If you could give policy advice on EE, what would that advice be to accelerate EE?

9. What needs to happen to the legislation, the EEA, to make it more effective?

10. What do you think the solution to the slow pace of employment equity implementation should be?

11. Do you believe this solution is in the law or outside of the law? Explain

12. What principles (fundamental truths) do you believe should be adhered to if we are to achieve an acceleration of EE?

13. If you had to design a model[3] for accelerating employment equity, what would it look like?

Objectives

[3] a system, process, procedure, to be followed.

Primary Objective

To develop a model that complements legislation in accelerating employment equity in South Africa.

Secondary Objectives

1. To identify the obstacles to employment equity in the current legislative framework
2. To identify the latent power dynamics that maintain the status quo in the South African Workplace on issues of employment equity.
3. To identify principles that are central to an acceleration of employment equity in South Africa.

Objectives	Questions
To develop a model that complements legislation in accelerating employment equity in South Africa.	1. If you had to design a model[4] for accelerating employment equity, what would it look like? 2. What needs to be done to achieve the objectives of the EEA? 3. What principles (fundamental truths) do you believe if adhered to if we are to achieve an acceleration of EE? 4. If you could give policy advice on EE, what would that advice be to accelerate EE 5. What do you think the solution to the slow pace of employment equity implementation should be?

[4] a system, process, procedure, to be followed.

	6. Do you believe this solution is in the law or outside of the law? Explain
1. To identify the obstacles to employment equity in the current legislative framework.	1. What in your experience are the obstacles to the attainment of Employment Equity? 2. What has been a defining moment for you in your involvement in the EE Space? 3. What has been a defining moment for you in your involvement in the EE Space? (may give negative experience in which case we identify obstacles or it may give positive experiences in which case we may get principles and a model)
2. To identify the latent power dynamics that maintain the status quo in the South African Workplace on issues of employment equity.	1. What is the role of power as a factor in the slow pace of Employment Equity? 2. How have implementers of EE rendered the law ineffective, if at all? 3. If you could give policy advice on EE, what would that advice be to accelerate EE 4. How have implementers of EE rendered the law ineffective, if at all?

3. To identify principles that are central to an acceleration of employment equity in South Africa.	1. What do you think the solution to the slow pace of employment equity implementation should be? 2. What principles do you believe if adhered to if we are to achieve an acceleration of EE? 3. What needs to be done to achieve the objectives of the EEA? 4. If you could give policy advice on EE, what would that advice be to accelerate EE

APPENDIX 2 – PROFILE OF RESPONDENTS

	Date of Interview	Sample	Time of Interview	Pseudonyms
1	03 – 11 - 2020	SMME Business Owner and Director, involved in a professional body working with Transformation.	12:00	TL001
2	26- 10 - 2020	Nedlac Community Constituency Representative	16:00	NED002
3	14 – 10-2020	Nedlac Government Constituency Representative	15:30	NED003
	18 – 08 - 2021		15:00	
4	26 – 08 - 2020	CEO of an Investment Company	10:00	TL002
5	26 – 10 -2020	Nedlac Business Constituency in the Labour Chamber NEDLAC.	16:00	NED001
6	27 – 08 - 2020	Economist and Government advisor on transformation and economics	16:00	TL001
7	13 – 08 - 2020	Author, Advisor and Change Consultant in Diversity and Inclusion	18:15	TL003

	07 – 09 - 2021		18:00	
8	14 – 08 - 2020	Real Estate Services and stakeholder in Real Estate Services Regulation	16:30	RES001
	17 – 08 - 2021		14:00	
9	27 – 08 – 2020	Financial analyst, writer, scholar and economic development and transformation advisor	10:00	TL009
10	11 – 09 - 2020	Transformation Legislator and Regulatory institution representative	13:00	TL005
	31 – 08 - 2021		13:00	
11	13- 11 – 2020	Financial Sector Representative in Banking s21 Manager.	11:00	FS001
	30 – 08 - 2021		9:30	
12	10 - 11 - 2020	Retail Sector: EEA and BBBEEA specialists in this Industry as s21 manager	16:30	RSR001
	17 – 08- 2021		14:00	

13	02 – 03 - 2021	Mining Industry: Former CEO	17:00	MR001
14.	02 – 12 - 2020	Tourism: Industry EEA Sector Targets negotiator	13:00	TR001
15.	07 – 02 - 2020	ICT: industry EEA Sector Targets negotiator.	13:00	ICTR001
16	13 – 04 - 2021	Administrative and Support Activities – Transformation Advisor and retired Commissioner for CEE	10:30	ASAR001
	15 – 10 - 2021		10:30	
17	11 - 03 - 2021	Education – s21 Manager for a Public University	11:30	ER001
	23 – 08 - 2021		12:00	
18	17 – 05 - 2021	Board Chairperson in both private and public sectors: Change agent in transformation	14:15	TL006
19	26 – 05- 2021	Political leader concerned with Afrikaner interests and rights	15:00	TL008
20	01 July - 2021	Lawyer: Legal drafter Labour Legislation and policy	19:00	TL008

21	6 – Jan - 2022	Professor in Economics, specialising in monetary and political economics. Political advisor	15:00	TL010

APPENDIX 3 – ETHICS CLEARANCE CERTIFICATE

UNIVERSITY OF THE WITWATERSRAND, JOHANNESBURG

Research Office

HUMAN RESEARCH ETHICS COMMITTEE (NON-MEDICAL)
R14/49 Kabinde

CLEARANCE CERTIFICATE	**PROTOCOL NUMBER: H20/06/12**
PROJECT TITLE	A Model to Complement Legislation in Accelerating Employment Equity in South Africa
INVESTIGATOR(S)	Mrs T Kabinde
SCHOOL/DEPARTMENT	Wits Business School/
DATE CONSIDERED	19 June 2020
DECISION OF THE COMMITTEE	Approved Risk level: Low
EXPIRY DATE	08 July 2023

DATE 09 July 2020 **CHAIRPERSON** _____
(Professor J Knight)

cc: Supervisor : Dr C Maier

DECLARATION OF INVESTIGATOR(S)

To be completed in duplicate and **ONE COPY** returned to the Secretary at Room 10004, 10th Floor, Senate House, University. Unreported changes to the application may invalidate the clearance given by the HREC (Non-Medical)

I/We fully understand the conditions under which I am/we are authorized to carry out the abovementioned research and I/we guarantee to ensure compliance with these conditions. Should any departure to be contemplated from the research procedure as approved I/we undertake to resubmit the protocol to the Committee. **I agree to completion of a yearly progress report.**

_____ Date _____/_____/_____
Signature

PLEASE QUOTE THE PROTOCOL NUMBER ON ALL ENQUIRIES