

BEE Informed:
A Diagnosis of Black Economic
Empowerment and its Role in the Political
Economy of South Africa

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Abstract

The study investigates the South African phenomenon called black economic empowerment (BEE). Drawing on the historical record and theories in the fields of public policy, institution theory, and political economy, the roots of BEE are traced to the late apartheid era where it is shown to have emerged as an institutional response to events taking place in the transition to democracy. The study then tracks the development of the institution in the post-1994 era as it expanded through the medium of formal policymaking processes.

Whereas BEE is widely presented as an initiative of the ANC government, the study draws on public policy theory to demonstrate how it has largely been driven by organisations outside of government. Further, that the character of the various BEE policies has reflected a situation of inadequate economic growth, combined with changes in the pattern of power relations in the post-apartheid era.

While the study supports the need for interventions by the state to effect change in the economic order, it finds that BEE policies have been badly designed and implemented and have had little positive developmental impact. Moreover, with government coming under increasing pressure to deliver on its promise of 'A Better Life for All', amid wholly inadequate levels of economic growth, BEE policy is increasingly being used as a vehicle for the redistribution of rents rather than the creation thereof.

Dedication

I dedicate this work to my parents, Pat and Marion Lindsay. Your love, sacrifice, and dedication laid the groundwork for a wonderful and fulfilling life.

Declaration

I declare that this thesis is my own, unaided work. It is submitted for the degree of Doctor of Philosophy at the University of the Witwatersrand, Johannesburg. It has not been submitted before for any degree or examination in any university.

Donald Lindsay

Date

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It would be simply impossible to acknowledge all the people who played a role in a work such as this but to all those who did, and whom I fail to mention, please know that I recognise and value your contribution.

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List of Abbreviations

ANC	African National Congress
BBC	Black Business Council
B-BBEE	Broad-Based Black Economic Empowerment
BMF	Black Management Forum
BEE	Black Economic Empowerment
BEECom	Black Economic Empowerment Commission
BUSA	Business Unity South Africa
CEE	Commission for Employment Equity
CONTRALESA	Congress of Traditional Leaders of South Africa
COSATU	Congress of South African Trade Unions
DAFF	Department of Agriculture, Forestry and Fisheries
DBSA	Development Bank of South (and later, Southern) Africa
DOL	Department of Labour
DMEA	Department of Minerals and Energy Affairs
DMR	Department of Mineral Resources
DRDLR	Department of Rural Development and Land Reform
DTI	Department of Trade and Industry
EEA	Employment Equity Act
FABCOS	Foundation for African Business and Consumer Services
FSP	Farmer Support Programme
GEAR	Growth Employment, and Redistribution economic strategy
GTM	Grounded Theory Method
HDSA	Historically Disadvantaged South African
IAD	Institutional Analysis and Development framework
IMF	International Monetary Fund
LAO	Limited Access Order
MEGA	Mpumalanga Economic Growth Agency
MAC	Manufacturing Advisory Centre
MPRDA	Minerals and Petroleum Resources Development Act
MMR	Mixed Methods Research

NAFCOC	National African Federated Chamber of Commerce and Industry
NDP	National Development Plan
NGO	Non-governmental organisation
NIE	New institutional economics
NLA	Native Land Act
NP	National Party
NSB	National Sorghum Breweries
NUM	National Union of Mineworkers
OAO	Open Access Order
OIE	Old institutional economics
PPPFA	Preferential Procurement Policy Framework Act
SABTA	South African Black Taxi Association
SACP	South African Communist Party
SACCI	South African Chamber of Commerce and Industry
SCTP	Social Construction of Target Populations framework
SLP	Social and Labour Plan
SME	Small and medium enterprise
UF	Urban Foundation

Chapter One

Introduction and background to the study

1.1 Introduction

South Africa's transition to majority democracy in 1994 was unquestionably one of the good news stories of the late 20th century. Apartheid had been declared a crime against humanity by the United Nations in 1973 and the world had rallied behind the cause of the African National Congress (ANC) in its efforts to bring majority rule and democracy to a country that had become an international pariah (Welsh, 2009; Ellis, 2013). On 11 February 1990, with little public warning, the white minority government announced the unbanning of the ANC and the South African Communist Party (SACP), and the release of Nelson Mandela from prison. The world later cheered as representatives of the white apartheid regime sat around the table with their liberation movement opponents and negotiated a relatively peaceful transition of political power (Friedman, 1993; Sparks, 1994). Majority democracy subsequently dawned for South Africans on 27 April 1994 when the 'Rainbow Nation' was born, full of promise and goodwill, and with the iconic Nelson Mandela as President.

Two decades after these halcyon days, the ANC government grapples with the enormous challenge of delivering on the dream that it promised in 1994 under the rubric of 'A Better Life For All' (ANC, 1994b). While there have been significant achievements in some areas, such as a 59% increase in the provision of formal housing, a more than 100% increase in the number of electricity connections, and an 82% increase in the number of people with access to piped water (SAIRR, 2013:668), there has been little improvement in the economic circumstances of most black people.

The overall rate of unemployment in South Africa has increased by 16,8% (expanded definition¹) in the period from 1994 to 2013, mostly affecting blacks for whom unemployment has more than doubled from 3 216 000 people in 1994

¹ South Africa uses two measurements of unemployment, the official and expanded definition. The official definition excludes people who have given up looking for employment. The expanded definition includes them.

to 7 086 000 in 2013 (SAIRR, 2013:266). Black representation in the small business sector, the next most accessible source of wealth creation after employment, has been equally dismal. Government and non-governmental organisation (NGO) statistics (FinScope, 2010; Stats SA, 2013b) indicate that the profile of black small business has remained overwhelmingly survivalist in nature since 1994, with only 14,6% of an estimated total of five million small and medium-sized companies having a turnover in excess of R6 000 per month in 2013. The research also notes a general decline in the level of entrepreneurial activity, with the number of businesses having fallen by 37% from 2005 to 2013.

Despite some expansion in the size of the black middle class and a massive increase in spending on social welfare schemes, average levels of annual household income have continued to reflect entrenched racial disparities. Between 1996 and 2012, the average annual income of white households rose by 323% off a base of R125 495, while that of African blacks rose by 196% off a much lower base of only R29 827 (SAIRR, 2013:324).

Against this background, it is unsurprising that the government constantly trumpets its commitment to various policies of black economic empowerment (BEE) (ANC, 2007, 2010; Zuma, 2011; ANC, 2012b; Zuma, 2013) which are also given much prominence in the National Development Plan (NDP) (NPC, 2011) and New Growth Path (EDD, 2010) economic strategy frameworks. Indeed, a veritable plethora of legislation has been passed to address the objectives of BEE in, inter alia, the areas of employment and skills training (RSA, 1998b, 1998d), government procurement and licencing (RSA, 2000b), small business development and financing (RSA, 1996c, 1998c), and the administration of the policy (RSA, 2002a, 2007, 2012a). In spite of this espoused commitment and the vast body of policy, plans, programmes, research, and commentary, the abovementioned evidence suggests that BEE policies have not achieved much, other than to become a highly controversial and divisive subject in South African society.

This study originally set out to explore impediments to the implementation of one specific BEE policy instrument, that of Broad-Based Black Economic

Empowerment (B-BBEE) (RSA, 2004a). It soon became evident, however, that although B-BBEE is presented by government as its overall, coordinating BEE policy instrument, B-BBEE cannot easily be separated from the broader BEE policy framework that includes policies on the ownership of business, employment equity, land reform, and small business development. As one researcher at a government workshop on industrial policy, in the late 1990s, put it:

Since the introduction of the concept of Black Economic Empowerment (BEE) into the South African socio-economic and political lexicon in the late 1980s, the concept has become an amorphous, slippery catch phrase for politicians, journalists and academics of various ideological persuasions (Edigheji, 1999:2).

Despite all the ensuing discourse and policymaking, little has changed and BEE remains an ill-defined concept that means different things to different people. To some, such as the politician/businessmen Tokyo Sexwale and Cyril Ramaphosa, BEE has been the path to untold riches (Butler, 2008; Naidoo & Hill, 2010) and, perhaps unsurprisingly, therefore, it is sometimes perceived as the only viable route for growth in the minds of many aspirant black business people (Barron, 2014; Qubeka, 2015). Established business generally espouses the view that it understands the necessity for BEE but also regards it as a significant impediment to growth and efficiency (Sunday Independent, 2010; Mashaba, 2012; Nel, 2014). Many commentators on the left consider it to be a project of elite enrichment that was foisted on the post-apartheid state by powerful apartheid-era elites (Bond, 2005:39), or as a policy that, however well-intentioned, has “benefitted only the aspirant African petit bourgeois” (Terreblanche, 2002:47).

Of course government, as well as the many parties involved in the management of BEE policy, present it as an enlightened, progressive intervention intended to facilitate necessary change in the structure of the South African economy. But for many citizens, both black and white, it is just seen as a hugely ineffective policy that epitomises the corruption and cronyism that has

become endemic in post-apartheid South Africa (Lodge, 1998; Auditor General, 2012; Khoza, 2012; Auditor General, 2014; Paton, 2015).

Black Economic Empowerment (BEE) has not, however, proved to be the fatal blow to South Africa's oligarchs that Nelson Mandela and black nationalists of his era once envisioned. In fact, it strikes a fatal blow against the emergence of black entrepreneurship by creating a small class of unproductive but wealthy black crony capitalists made up of ANC politicians, some retired and others not, who have become strong allies of the economic oligarchy that is, ironically, the caretaker of South Africa's industrialisation (Mbeki, 2009:61).

There is also much confusion regarding the boundaries between the various BEE policies. For example, the employment conditions for a resident farm worker may be covered by a range of policies including the Employment Equity Act (EEA), the B-BBEE Act, the Skills Development Act, and even the Land Reform (Labour Tenants) Act. Du Toit, Kruger & Ponte (2008), similarly, explore the experience of workers on wine farms in the Western Cape where employee share ownership programmes, established under the land reform policy framework, were undermined in the process of addressing the requirements of the B-BBEE Act. As will be explored in detail in Chapters 4 - 7, the B-BBEE Act has been responsible for introducing great confusion into the broader BEE policy framework.

The central question that this thesis seeks to answer, therefore, is 'What is BEE?'. With the answer in hand, and bearing in mind the apparent fact that BEE has not been successful in achieving the espoused objective of the economic empowerment of black people, the study then tries to understand what function BEE plays and what the forces are that sustain it.

Chapter layout

The next section provides a working definition of BEE, followed by a review of terminologies applied in the study. The remainder of the chapter comprises the rationale for the study and an exploration of the researcher's background

and the circumstances that gave rise to this research project. A table describing the layout of the thesis is provided at the end of the chapter.

1.2 A working definition of BEE

Most South Africans, and anyone close to matters South African, will likely have an opinion regarding the meaning of the term BEE. Indeed, there is no shortage of speculative literature on the subject by erudite academics, dedicated policymakers, and skilled BEE practitioners. However, as will be explored in the body of this study, no tenable definition of BEE exists. The reader is, therefore, asked to suspend his/her personal interpretation for the moment and accept the following working definition constructed through a synthesis of Acts of Parliament, policy documentation, commonly held beliefs, and literature relating to the empowerment policies of government.

Working definition

BEE constitutes a policy framework that encompasses various policies and programmes of the South African government, the private sector, and civil society. These assorted policies have as their ostensible objective the promotion of equal access to economic activity and a reduction in the levels of poverty and inequality. These policies include, inter alia:

- Broad-Based Black Economic Empowerment and the various industry-specific transformation charters
- Employment Equity
- Land reform and agricultural development policies
- The transformation project in the public sector
- The various Acts and programmes established to assist in the financing and support of black business such as the Small Business Development Act, National Empowerment Fund Act, Competition Act, Preferential Procurement Policy Framework Act, the Skills Development Act, the

Promotion of Equality and Prevention of Unfair Discrimination Act, and the Co-operatives Act.

- Private sector initiatives including Anglo Zimele, Barloworld Siyakhula, Sasol Inzalo, SAB Zenele, etc.

1.3 Terminology

1.3.1 BEE versus B-BBEE

In this study, unless otherwise specifically stated, the term BEE is used as a collective noun to refer generically to the various policies and programmes that constitute the BEE phenomenon. Where a particular policy is mentioned such as B-BBEE, land reform, or employment equity, that specific policy name is used.

1.3.2 Gender, disability and BEE

It is important to note that most BEE policies make reference to the economic empowerment of women and disabled people as well as black people in general. However, reading this thesis would be cumbersome if it was to constantly address the issues as they pertain to each category of beneficiary.

Therefore, while reference will be made, for the most part, to blacks, the reader should bear in mind that the policies also seek to address the particular empowerment needs of women and disabled people and thus, in some instances, they may be slightly different from the examples presented.

1.3.3 Racial terminologies

It is common cause that writing on South African society presents unique challenges in terms of racial terminology. The word 'black' in South Africa is generally taken to mean a person who is an indigenous black African, of Indian or Asian descent, or who is of mixed racial ancestry. In some instances, it will be necessary to make reference to specific racial identities but, unless otherwise stated, the word black will refer to all racial constituencies other than white.

Extensive reference is made to 'blacks' and 'whites', as opposed to black people and white people. The author is sensitive to the dehumanising effect of such terminology and would be more comfortable using a complete descriptor

such as a black person or white people. This would, however, make for difficult reading and the shortened form is therefore applied.

1.4 Why this research project is important

BEE is presented as a key pillar of government policy (Zuma, 2012), and there is little that one can do in South Africa that is not touched or influenced in some way by this far-reaching policy framework. Yet there has been scant in-depth analysis on the nature of the phenomenon itself, how it came to be, or the manner in which it functions in society. This section details some key issues in the political and economic life of South Africa that underpin the need for a better understanding of the BEE phenomenon and thus the rationale for this study.

1.4.1 Policy formulated in a knowledge vacuum

The apparent lack of any overarching conception of BEE means that the various elements of the policy have been formulated in something of a vacuum. Multiple government departments pursue similar and often-conflicting BEE policy projects and there is little apparent acknowledgement as to the extent to which these policies overlap, a problem that is getting worse as new empowerment policy frameworks are introduced and others strengthened. For example, the agriculture sector has land reform and various other policies focused on economic empowerment in rural areas (RSA, 1994b, 1996b; DRDLR, 2009; DAFF, 2012; RSA, 2012a; DRDLR, 2013b). Trade and industry has B-BBEE, small business, competition, and co-operative development policies (RSA, 1996c, 1998a, 2004a, 2005). Labour has affirmative action and skills development policies (RSA, 1998b, 1998d), while the Treasury has preferential procurement policy (RSA, 2000b).

Even though there is a strong focus on gender in many of these existing policy frameworks, the Department of Women, Children and People with Disabilities is currently promoting its own BEE policy framework with the Women's Equality and Gender Equity Bill (RSA, 2013e). The recent creation of the Department of Small Business Development will inevitably also see the strengthening of empowerment policy focused on the small business and co-

operative sectors that are currently of secondary interest to the Department of Trade and Industry (DTI) (Fredericks, 2014).

Perhaps the most surprising issue relating to the oversight and management of BEE policy, however, is the fact that despite it being an economic empowerment policy, it is neither under the control of, nor is it coordinated by, either of the government departments whose primary responsibility is economic policy, namely, the Economic Development Department or the Department of Finance.

1.4.2 Dissention and fracturing in the business community

In September 2011, President Jacob Zuma (2011) addressed a conference of associations representing black business. The catalyst for the conference had been a perceived lack of transformation within the structures of the umbrella business organisation, Business Unity South Africa (BUSA), but the event also reflected a deep level of dissatisfaction with the pace of transformation in the business sector.

The Black Management Forum (BMF), formed in 1976 to advance the interests of black managers, had been the catalyst for this schism and was the first body to exit BUSA. The BMF leadership stated at the time that “BUSA has dismally failed to work towards its vision . . . to be a unified and fully representative organisation that contributes to a vibrant, transforming and growing economy in South Africa” (BMF, 2011c).

The State President exhorted the various associations to reconsider their decision to leave BUSA stating that the government needed a single business body with which to communicate. The President admitted that B-BBEE had “not yet benefitted a wide enough segment of our society”, but affirmed the commitment of government to “economic transformation as a primary goal of this era in the democratisation of our country” (Zuma, 2011). The delegates were unimpressed and subsequently ratified a proposal for all black business associations to withdraw from BUSA and re-establish the Black Business Council (BBC) (Khuzwayo, 2011), an organisation formed in the early post-apartheid era

to represent the interests of small black business but which had become dormant due to a lack of support.

The BBC was successfully re-launched in 2011 and continues to represent the interests of black business people. With the appointment of new leadership at the BMF in 2012, however, the decision by that organisation to exit BUSA was reversed and it is now a member of both BUSA and the BBC. This should not be interpreted as a sign that problems facing black business have been solved, but rather reflects a differing perspective by the new leadership on how the problem of inadequate representation might best be addressed.²

1.4.3 Policies are not achieving their stated objectives

The black business community was not the only party to express dissatisfaction with the performance of BEE-related policies. Statutory bodies, trade unions, civil society organisations, and other business associations were all voicing their discontent with diverse aspects of the policy framework.

Some months prior to the abovementioned Presidential event, the Commission for Employment Equity (CEE), a statutory body tasked with the administration of the national programme of affirmative action, published its annual report which found that “Progress over the years [since 1994] has been gradual and slow with Whites continuing to dominate in the three uppermost occupational levels. . . . Notwithstanding the fact that Blacks account for approximately 86% of employees contained in reports received, they only accounted for 16.9% at the Top Management level and 35.9% at the Senior Management level” (CEE, 2011:22). The report went on to demonstrate that such progress as had been achieved occurred mainly within the public sector. At the time, the Congress of South African Trade Unions (COSATU) said that it was “a national disgrace that we have done so little after 17 years of democracy to reverse the racial imbalances we inherited from the days of apartheid” (Craven, 2011).

The BEE project had also failed to address the problem of growing unemployment among black South Africans who had borne the loss of more than

² Interview with Bonang Mohale, President of the BMF. Johannesburg. 21 January 2013.

two million jobs between 1994-2011 (SAIRR, 2010). The prospect of further job losses remained strong in the face of structural impediments to economic change locally and a weak global economic outlook (Gordhan, 2010; Marais, 2011).

In the agriculture sector, the land reform project seeks to address the heritage of dispossession and alienation of black people from land under colonialism and apartheid (Hall, 2007). Land reform was one of the first socio-economic change projects undertaken by the post-1994 government, but it has also failed to achieve its objectives. This was clearly recognised by the Minister of Rural Development and Land Reform when he acknowledged that “the land reform programmes implemented to date have not been sustainable and have not provided the anticipated benefits to the recipients of the programme” (Nkwinti, 2010:8).

The underperformance of these and other efforts at economic reform and the advancement of the black population are reflected in national development indicators, such as those reviewed in the introduction to this chapter. These provide incontrovertible evidence of the inadequate performance of black economic empowerment.

1.4.4 Policies are contributing to the fracturing of the political fabric of the country

By 2011 it had become evident that popular tolerance of the lack of economic change was ebbing. The worsening circumstances of black South Africans were fuelling widespread calls for nationalisation of private sector assets (Janse van Vuuren, 2011; Prinsloo, 2011) and changes to the system of property rights (SAPA, 2010; Pressly, 2011). The then leader of the African National Congress Youth League, Julius Malema, was publicly calling for an “economic war . . . to reclaim what is ours from the white minority” (Reuters, 2011). Malema was expelled from the ANC and has since gone on to form his own political party, the Economic Freedom Fighters (EFF), which describes itself as “a radical and militant economic emancipation movement” and cites the expropriation of land without compensation and nationalisation of mines and banks as key pillars of its policy framework (EFF, 2013).

The threat of the EFF should be seen in the context of the ANC's continued inability to deliver on the expectations of the black electorate, especially amid persistently high levels of poverty and inequality, with little prospect of the economy achieving such levels of economic growth as might address the underlying problem. Against this background, and disastrous events such as the shooting of striking miners by police at Marikana in 2012 (Alexander, 2013), the newly-formed EFF came from nowhere to win 6,35% of the votes in the 2014 general election. Since then, the party has pursued an overtly racist and populist policy position that is destructive but which is fed by the apparent inability of the ANC to effect meaningful change in the circumstances of most black people.

The results of municipal elections in 2011 and increasing incidents of social unrest in poor black-dominated areas of the country also bear testimony to the level of discontent with the economic status quo (Magome, 2011; Malefane & Ngalwa, 2011). The populist rhetoric and scenes of civil unrest are, in turn, having a negative effect on investor sentiment and local business confidence, thus exacerbating an already problematic situation (Rau, 2011; Grant Thornton, 2013).

1.4.5 Failure to contribute to macro economic development objectives

The question of political stability being impacted by the lack of economic development is no longer the taboo subject it was in the era of President Thabo Mbeki (Russell, 2007), and a recent report by the international business consultancy, Grant Thornton (2013), found that "Sixty seven percent of South African privately held businesses are putting off investment decisions owing to uncertainty about the future political direction of the country. A further 48% are looking at investing offshore rather than in SA while 27% are contemplating selling their businesses and 14% are seriously considering emigrating". The International Monetary Fund (IMF) similarly found, in its assessment of the country in October of the same year, that "the balance of risks is tilted firmly to the downside" (IMF, 2013).

Bonang Mohale, the CEO and Chairman of Shell South Africa and current president of the BMF, is highly critical of the ANC government's apparent lack of

capacity in the area of economic policy management. In Mohale's opinion, there has not yet been any meaningful discourse on the subject of economic policy, and he likens the party's pursuit of the levers of economic power to "a dog that chases a car. The car stops and the dog does not know what to do with the car".³

Referring to B-BBEE, Mohale asserts that while important, the policy should not be playing the central role it is. He asserts that,

Until we confront the [economic policy] monster head on, we are playing on the fringes. . . . B-BBEE is about playing on the fringes [and it is] poorly managed. It is being abused by people that have less than wholesome intent. As a result it is seen to be benefitting the very few elite and those that are connected to government, whereas its purpose was to percolate the benefits to the majority of the people so that the 15 million that are on some sort of [social] security . . . can lift themselves up.

1.4.6 Institutional effects of BEE on society are not well understood

Aside from the failure of BEE and, indeed, economic policy in general to adequately address the needs and expectations of constituencies across the social spectrum, there is also the question as to what effect BEE has on political and economic processes. There is a large body of literature that explores the impact of public policy on the institutional structures of society (Kingdon, 1995; North, 2005; Ostrom, 2005; Sabatier, 2007b; Acemoglu & Robinson, 2012), and the general consensus of this literature is that the outcome and results of any policy instrument are almost impossible to accurately predict, such is the complex environment in which policy operates. For this reason, the performance of a policy such as BEE must be considered in terms of both its espoused objectives and also its broader, unintended consequences.

For example, it is widely acknowledged that even before BEE became part of the formal policy framework of government in 1994, BEE-type programmes and concepts were used to facilitate relations between the established business community, the new government elite, and even organised labour (Adam, Van

³ Interview with Bonang Mohale, President of the BMF. Johannesburg. 21 January 2013.

Zyl Slabbert & Moodley, 1997; Terreblanche, 2002; Verhoef, 2003; Southall, 2005). These initiatives went beyond being mere relationship-building exercises and, as will be demonstrated in this thesis, laid the foundation for the rules of access to elite structures in post-apartheid society. An exploration of BEE can, therefore, provide important insights into the workings of the contemporary political economy.

1.4.7 Cost-benefit of policy unknown

No comprehensive assessment has as yet been made regarding the cost incurred in the implementation of BEE policies. However, it is known that R497 billion was invested in B-BBEE-related mergers and acquisition activity between 1995 and 2008 (Presidency, 2010), and there is much evidence to indicate that bad planning and poor policy decisions in the transformation project in the public sector have been the source of inefficiencies and corruption in government, resulting in the loss of billions of Rand every year since (Auditor General, 2012; Business Day, 2012b; Grant Thornton, 2013). In addition, the project of rural development and land reform, intended to foster economic development among rural communities, has seen billions of Rand wasted as a result of inefficiencies in programme implementation as well as through costs incurred in running a dedicated ministry with an annual budget in excess of R10,2 billion (Nkwinti, 2010; DRDLR, 2013a).

Aside from these funds and resources, spent directly on BEE programmes, much more has been absorbed in the design and implementation of these oft-conflicting policies, for example in fees paid to the burgeoning BEE consultancy sector, and the salaries of government and private sector employees involved in policy process.

It may be the case that this spending, however inefficient and seemingly unproductive, will prove to have been necessary in the long run, but the amounts are still vast and represent an enormous drain on the productive capacity of the country. If BEE policy can be better understood and administered, then the consumption of scarce human and financial resources can be managed more productively.

1.5 Background to the study

This section covers the author's professional background and the circumstances that gave rise to the study. It is, therefore, presented in the first person.

I worked as a consultant in the BEE field from 2001 to 2008, assisting a wide range of companies to address the enterprise development element of the B-BBEE policy framework. This was an interesting period in the history of BEE. In late 2000, the first BEE Charter had just been signed which would set guidelines for transformation in the petroleum and liquid fuels sectors (SAPIA, 2000) while, by 2001, the final touches were being put to the Mining Industry Charter. Also in 2001, the government-approved Black Economic Empowerment Commission (BEECom) presented its report on the status of socio-economic transformation in the country and its recommendations for the future management and formalisation of BEE policy (BEECom, 2001). Up to this point, the economic transformation project had developed in haphazard fashion and a variety of policies and programmes had been put in place as a result of both government and private-sector initiatives.

Amid these changes, the consultancy company in which I was the founding partner, Katlego Syzygy (Pty) Ltd., began consulting to Anglo American Zimele (Zimele), the empowerment and small business development division of the multinational Anglo American Corporation. The soon-to-be promulgated Minerals and Petroleum Resources Development Act (MPRDA) (RSA, 2002b) would require that mining companies reapply for their operating licences. The application process would include the submission of proposals on how mining houses planned to assist in the socio-economic transformation of the country, and the Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry (the Mining Charter) was a key guideline in this regard. Section 100 of this Act (RSA, 2002b:86) specifically required the development of:

A broad-based socio-economic empowerment Charter that will set the framework, targets and time-table for effecting the entry of historically disadvantaged South Africans into the mining industry, and allow such

South Africans to benefit from the exploitation of mining and mineral resources.

Zimele had a central role to play in the mining rights application process for Anglo American. The division had been running a successful small enterprise development scheme since 1989, both founding and funding business opportunities for black entrepreneurs within the supply chains of the various companies that comprised the Anglo American group. Zimele thus had a product to satisfy a key requirement of the MPRDA. The division had also developed relationships and knowledge that would prove useful to the broader transformation project within Anglo American itself.

While my company was not involved in the broader corporate response of Anglo American to the MPRDA, it was directly engaged with the operation of Zimele and thus was close to the evolving policy formation process. Later on, through Zimele, my company also participated in meetings between government and business at which the minutiae of the forthcoming B-BBEE policy framework were being debated and discussed.

Through this relationship with Zimele I found myself at the forefront of transformation policy development, and it was indeed an exciting place to be. The post-apartheid BEE policy framework had been developing in an arbitrary and highly controversial fashion since the early 1990s (Edigheji, 1999) and one encountered very mixed emotions working in the field.

For my part, I was intrigued by the notion of BEE policy. It appeared to be a progressive initiative that sought to confront some of the most difficult issues relating to the socio-economic transformation of South African society. No other country, with the possible exception of Malaysia (Gomez & Jomo, 1999), had attempted such a project and there was the sense of being involved in something historic. I also had firsthand experience of early BEE initiatives as a senior manager, and later director, at Kagiso Khulani Supervision Food Services, a major player in the foodservice industry and a pioneer in the introduction of black partners to ownership and operational structures of corporate South Africa.

Zimele was a unique organisation in the early 2000s, not just in terms of scale and experience but also because of the extent to which the Zimele model accommodated key requirements of the Mining Charter. It soon became apparent that the model also addressed key requirements of the forthcoming B-BBEE Act (RSA, 2004a). Anglo American had always been willing to share the Zimele concept with other organisations but, to date, no other company had taken Anglo American up on their offer or, if they had, they had failed to successfully implement the model.

Considering the evolving legislative context and the increasing pressure on companies to conform with BEE policies, I decided to refocus my company. In 2004, with the blessing of Anglo American and along with my newly introduced partners, we began to market our own version of the Zimele model to large corporates. Thus began a period of learning regarding the challenges inherent in the implementation of BEE policy within business, and indeed the broader project of managing socio-economic change.

It had seemed to me and my partners that, in formulating specific policy and legislative instruments, government was simply responding to the demands of business and civil society for a more managed and equitable approach to the objective of economic transformation. The business community had participated willingly in the various policy development processes, providing knowledge and resources on a vast scale over a period of several years. It came as a great surprise to us, therefore, when we encountered high levels of resistance to the implementation of the B-BBEE policy framework within individual businesses, including some that had been vocal sponsors of the policy development process.

Market research, conducted internally by our company and externally by a private sector organisation (Financial Mail, 2004), suggested that two years after the MPRDA had been promulgated and one year after the promulgation of the B-BBEE Act, few companies had even begun to address B-BBEE within their operations. The common response we received from prospective clients was that the detail of the B-BBEE Act had not been sufficiently finalised and company leadership could not, therefore, consider formulating policy at that stage.

This was a wholly misinformed position that demonstrated how the leadership of these organisations had simply not applied their minds to the available documentation. As early as 2001, there was more than enough detail available to inform high-level strategic planning and, by 2003, sufficient information had become available that would allow companies to interpret the trajectory and parameters of B-BBEE policy and thus to align corporate strategy accordingly. This lack of preparedness appeared to us like a marketing bonanza waiting to happen. We assumed that it would just be a matter of time until companies, under increasing pressure to conform with B-BBEE, would beat a path to our door; but we were mistaken in this assumption.

Ongoing research by government and private sector institutions demonstrated the limited extent to which companies sought to conform with the various requirements of B-BBEE policy (Financial Mail, 2004, 2005; Consulta, 2007; Financial Mail, 2007, 2008, 2009) and we, ourselves, soon became well-acquainted with the circumstances that underlay this low level of compliance.

By 2004, we had found that while most large firms had assigned a person to be in charge of BEE policy, such individuals were typically junior or new to the company, having frequently been employed specifically to head up the organisational response to BEE. These recruits were commonly attached to human resources departments, or assigned to newly created departments that were established to oversee the corporate BEE programme. In such ancillary positions these incumbents inevitably lacked the power and influence necessary to manage a change project of the scale involved (Kotter, 1966), and we quickly came to realise that such appointments were indicative of a lack of top-level strategic involvement in, and thus commitment to, BEE policy implementation.

Furthermore, we learned that even top-level executive involvement was not always a sufficient measure of commitment, as many companies were introducing new faces to their boards and executive teams in order to appear compliant with various BEE policies or, at least, to demonstrate commitment thereto. Only the most established and powerful executives could be relied upon to have the necessary influence to effect change of the nature required and we

realised that, with few exceptions, this meant the direct involvement of either the Chief Executive Officer or Chief Financial Officer. In the event that the B-BBEE project was not under the direct administration of such individuals, the client organisation had likely done little to address policy and would therefore not be in a sufficient state of readiness to require our product offering.

Even when such powerful individuals were leading the B-BBEE policy project, it was not easy or straightforward to work with clients. Policy compliance required fundamental adjustment to corporate strategies and operations which, in turn, presented major operational, human resource and financial challenges. Policy compliance thus required considerable courage and commitment, as the effective implementation of BEE impacted everyone from the shareholder to the lowest grade of employee, as well as suppliers and customers. The risk of such change having a negative impact on corporate performance, and thus the career of the manager involved, was very real.

Executives in charge of BEE policy implementation also experienced conflict on a more personal level. In the mid 2000s, most established businesses were led by white people who were naturally circumspect when it came to the implementation of policies that effectively sought to challenge the dominant position of this sector of the population. However much these executives believed in the ideal of a more equitable South Africa in the long term, in the short to medium term BEE often meant advancing the economic interests of black people over their personal interests and those of their white peers.

I frequently witnessed otherwise pragmatic and experienced business leaders becoming confused and directionless when it came to BEE. Some seemed to be of the opinion that it was an entirely new phenomenon to which business best practice could not be applied, while others balked at applying it because they felt it to be so alien to their entrenched business instincts.

There is an extensive body of literature that attests to the difficulty of managing change (Kotter, 1966; Chang & Evans, 2005; North, 2005; Eggertsson, 2009; Dutt, 2011), and I had much experience consulting in this area. It seemed to me that with my experience and knowledge, I could help bridge the apparent

gap between the ideology of BEE policy and the pragmatic instincts of the business executive. Mamphela Ramphele (2008a:8) identified what I then believed to be a major impediment to the implementation of BEE policies when she expressed the opinion that “it is not that people do not want to transform, but they may not know how to do the right things”.

In many instances when action was taken to implement policy, my experience was that key decision-makers were frequently ill-informed as to the requirements of BEE policy, and proposals were thus often approved on the basis of emotion and notions of political correctness rather than pragmatic business reasoning. This inadequacy to understand and manage BEE sometimes resulted in the wastage of corporate resources on a grand scale and caused unnecessary stress to those involved. The subsequent failures would also receive wide publicity (Lund, 2010; The Economist, 2010b; Prinsloo, 2011; Radebe, 2011c; SAPA, 2012a), while success stories were rarely publicised.

The slow pace with which business was embracing BEE inevitably gave rise to the perception, in some quarters, that the white leadership of business did not want to change (Ensor, 2011a; Paton, 2011; Odendaal, 2012). This was not my experience. While I did encounter individuals with belligerent and even racist views, the vast majority of people with whom I came into contact accepted the need to address BEE in their organisations. However, they were often very uncertain about how to go about it and nervous that they would damage the organisations for which they were responsible.

These circumstances made for a difficult and unfulfilling work experience. I was trying to provide a service for which clients were ill-prepared and which constituted a grudge purchase for most. I was constantly confronted with the need to justify BEE, both on a professional and a socio-political level, and often felt more like an advocate of government ideology than a business consultant.

The notion had been with me for some time that there was something fundamentally problematic about the formulation or implementation of BEE and more specifically, the B-BBEE policy framework with which I was involved. I had been thinking that this apparent conflict would make an interesting topic for the

PhD thesis that had always been on my agenda; and then the international financial crisis of 2007/8 hit.

This event affected my consultancy as clients cut back on what many of them perceived to be a peripheral business expense. By this stage I was the sole operating partner in the company and was faced with the weighty prospect of sourcing new customers in a difficult business environment, in addition to servicing the remaining client base.

Over the previous twelve months, I had been conducting a survey of all the large companies in Gauteng Province with regard to their state of readiness to accommodate our product offering (see Appendix 2) and the results had not been promising. Based on the seniority and calibre of people in charge of B-BBEE policy implementation within the surveyed companies, it was apparent to me that the vast majority had done little more than manipulate the situation to present an appearance of conformity. At the time, B-BBEE compliance could be achieved by addressing various optional elements of the policy framework, and many of the companies surveyed had sought to achieve the requisite level of compliance without addressing the more complicated enterprise development element with which we worked. Also, few had firm plans to address it in the near future.

I was tired of the challenge of constantly having to justify the need for companies to address B-BBEE and tired of the emotional burden involved in helping people to accept and face change. Therefore, I began to actively research the possibility of conducting doctoral research on BEE.

To my great surprise, I found that there was little empirical research on B-BBEE, despite the centrality of the project to the process of change in South Africa. I followed up this initial research by sending interview requests to three or four of the most active authors in the field, to discuss the possibility of doing doctoral research. The only one who replied was Professor Roger Southall at The University of the Witwatersrand, perhaps not surprisingly, the most widely published author on the subject at the time. Professor Southall's enthusiastic support for the project sealed my decision and, in the early months of 2009, I

finally closed down Katlego Syzygy and registered with Professor Southall and the Department of Sociology.

I hope the reader finds this thesis interesting and informative. It has been a project that I have found truly absorbing, enriching, and very worthwhile. It is my heartfelt desire that the research output should contribute to a better understanding of BEE and thus to the positive development of South African society.

1.6 Organisation of the thesis document

The thesis is organised into nine chapters, followed by a bibliography and appendices. The content and objective of the chapters that follow is outlined below:

Table 1.1: Chapter layout

Chapter	Subject	Objective
1	Introduction and background to the study	Provide insight into the circumstances that gave rise to the study and the background of the researcher. Introduce the purpose of the research and the rationale that validates the research question.
2	Research design and methodology	Explore the research design process, the philosophical orientation of the research, and the detail of the methodology applied. The chapter also contains a statement on ethics and the chapter overview.
3	Theoretical framework of the study and review of literature	Review of the bodies of theory applied in the course of the study including historiography, change management, economic development, institution theory, business-state relations theory, and public policy. Relevant supporting literature is also reviewed.
4	The background to BEE	Explore received beliefs as to the origins of BEE in the early 1990s; issues relating to ideology and history in South Africa and how this has coloured what is known about BEE; the rationale for BEE policy, and the role of ANC in early development of BEE.
5	BEE in the post-apartheid era - Part 1: Formative processes and B-BBEE policy review	Exploration of the background to BEE policy development in the post-1994 era and the influence of Constitutional provisions. The B-BBEE policy framework is reviewed in detail.
6	BEE in the post-apartheid era	Exploration of empowerment policies in the liquid

Chapter	Subject	Objective
	- Part 2	fuels and mining sectors, employment equity and small business policy.
7	Land reform and rural transformation policy	Review the history and political economy of rural areas and the homelands prior to exploring land reform and agricultural development policies.
8	Interpreting BEE	Analysis of the findings of the study against the selected theoretical frameworks.
9	Conclusions and recommendations	The researcher's suggestions as to further research and recommendations regarding BEE policy.
-	Appendices	
-	Bibliography	

Chapter Two

Research design and methodology

2.1 Introduction and chapter layout

This chapter contains a detailed discussion on the research design and the methodology applied in the study. The first section details the design aspects and explores the philosophical assumptions that underlie those decisions. This is followed by presentation of the research question, a discussion on the methods applied in the gathering and analysis of data, and consideration of the issue of ethics in research.

2.2 Research design

2.2.1 The challenge of designing an emergent-type study

The literature on research design and methodology is replete with detailed advice on how to plan and implement a research project, much of which, even in the qualitative field, is presented in very definite terms as something to be done in advance and usually in linear fashion. For example, Babbie (2010:91) in his highly-regarded book, *The Practice of Social Research*, advises the researcher as follows:

You need to determine what you're going to observe and analyze: why and how. . . . Although the details vary according to what you are going to study, you face two major tasks in any research design. First, you must specify as clearly as possible what you want to find out. Second, you must determine the best way to do it.

Mouton and Marais (1996:33) similarly highlight the primacy of research design as a means “to plan and structure a given research project in such a manner that the eventual validity of the research findings is maximised”. Many books, for example Crotty (1998) and Creswell (2013), begin with references to the importance of personal philosophical assumptions and beliefs on research design but then continue with a detailed analysis of the categories into which such beliefs must be fitted. Even more comprehensive guidance follows as to the

range of methodological frameworks one may choose from and how exactly to comply with the rules of these methodologies.

This sort of methodological guidance would have fitted well with the original research objective, which had been to explore impediments to the implementation of B-BBEE policy in the private business sector. The study would likely have been an ethnography, detailing behavioural and cultural impediments to policy implementation within the business sector, or a phenomenology, focusing on the policy framework itself and the development of a more general body of theory regarding problems of policy implementation (Babbie, 2010).

In the case of this study, however, the research objective had to be extensively and continually reviewed as it became apparent that B-BBEE policy, which was the intended focus of the study, could not be accurately defined or readily separated from other economic empowerment policy frameworks such as employment equity or land reform. Even the term BEE could not logically be limited to the notion of putting people in the way of wealth-creating activities, despite being widely applied in such fashion (Nxumalo, 1999; Iheduru, 2004; Turok, 2006; Andrews, 2008). It also became evident that, despite its pervasive application, the term empowerment (Perkins & Zimmerman, 1995) had received scant attention from the academy while there had been little or no consideration given to broader developmental issues such as gender relations, education, and politics viz a viz their relationship to BEE.

It thus became increasingly obvious that the first task of the study would have to be the development of a logical conception of BEE. Only then could B-BBEE, and all the other empowerment policies, be delineated and studied in an appropriately valid and reliable fashion (Creswell & Plano Clark, 2007).

Considering the lack of research conducted into the nature of BEE and the untested assumptions that pervaded much of the BEE policy framework, it was unsurprising to find that research in the field was of little help. In the initial phase of the study, the researcher identified 33 people whom it was assumed would be able to contribute to the study (see Appendix 1). This list included the

Minister of Trade and Industry and the Chief Director in Charge of Black Economic Empowerment in that Department, neither of whom agreed to be interviewed. Requests for meetings were also sent to leaders of trade union and business organisations, and authors, columnists, and journalists who wrote on BEE-related matters. The researcher found that interviewees generally displayed a limited understanding of BEE or were locked into their own partisan conceptions of what it should be. There was evident confusion and dissatisfaction with the various BEE policies and the outcomes thereof, and this greatly influenced how people approached the issue. Above all, this early venture into the field demonstrated that people, across the spectrum of business, government, and civil society, were reluctant to express opinions about BEE and, more importantly, reluctant to participate in the study.

This was especially surprising in the case of government, as it seemed logical that bureaucrats and politicians would have welcomed a study into a policy that was continually espoused as being of critical importance but which government itself had acknowledged was not working as expected (Nkwinti, 2010; ANC, 2012b; Odendaal, 2012; Zuma, 2013). However, interview requests were consistently ignored or passed on, without notice, to a junior person who was invariably unable to provide the information required. During some government interviews, bodies of research data were occasionally referred to but when the author requested access to this data, and even when such requests were agreed to, they were never fulfilled. Attempts to follow up usually resulted in the author being referred to other people who would, similarly, just not respond.

One such incident occurred toward the end of the study. In October 2013, the DTI organised a high profile summit to mark the first ten years of B-BBEE and to discuss plans for the way forward. Various speakers at the conference, including President Zuma, made reference to DTI research that had supposedly been conducted nationally and which represented the most comprehensive research, to date, on the performance of B-BBEE policy (DTI, 2013). This data would have been important to the study and so an email request was sent to the

Chief Director of the B-BBEE Secretariat at the DTI on 29 July 2014. No response was received.

The researcher had scheduled interviews with this person in the past but had always arrived to find the meeting delegated to her subordinates. One of these subordinates was now the Director of the Secretariat and an email was sent to him on 8 August 2014 to which the author received an immediate, warm response. The Director assured the author that the requested information would be dispatched forthwith. It never arrived, however, and a follow-up request was sent to him on 14 August. On 17 August, the Director replied with an email to a third party to please respond to the author's request, on his behalf. Nothing was ever received.

Attempts to speak to representatives of organised labour, the key sponsor of employment equity legislation, were also unsuccessful, despite the author's attempts to leverage close relations between the Department of Sociology and various trade unions.

Business representatives, while generally happy to be interviewed, were, for the most part, reluctant to express views on BEE and universally unwilling to participate in any form of ethnographic research. Only at a much later stage in the study, when it had become more acceptable to be openly critical of BEE policy, were some business people more open with the researcher regarding their sentiments.

Amid this disappointing field experience, the researcher continued to mine the available literature, data, and policy frameworks and to conduct such interviews as were possible. He also continued to grapple with the literature on research design in an attempt to find a suitable methodology for the study.

Without realising it, the researcher had in fact been pursuing a classic grounded theory method (GTM) (Glaser & Strauss, 1967; Charmaz, 2006) approach. GTM evolved as a means to facilitate the study of phenomena about which little is known and it involves the collection of all or any possible data on the subject under enquiry (Corbin & Strauss, 2008). Themes are identified in the

data that are then explored against the background of possible interpretive theoretical frameworks.

In the case of this study, institution theory (Chang & Evans, 2005; Hodgson, 2005; Ostrom, 2005; Searle, 2005) proved to be especially useful in that it provided a benign interpretive framework on which to hang the disparate elements of data that were being uncovered, while theories in the fields of political economy (Clark, 1998; Basu, 2003; North, 2005; North, Wallis & Weingast, 2009), public policy (Feldman, 1989; Kingdon, 1995; Sabatier, 2007b), community psychology (Perkins & Zimmerman, 1995; Rappaport, 1995; Levine & Perkins, 1997), and business-state relations (Brautigam, Rakner & Taylor, 2002; Taylor, 2007; Handley, 2008) emerged as also having relevance. The recent economic history of South Africa was also of importance (Lipton, 1986; Sparks, 1994; Marais, 1998; Terreblanche, 2002; Turok, 2008; Welsh, 2009) and, in seeking to understand why this history had not received more attention, the researcher made a small detour into the area of historiography in South Africa (Stolten, 2006b; Lipton, 2007).

The study thus developed two distinct streams of focus while gradually evolving to apply more of a mixed methods methodology (Creswell & Plano Clark, 2007). One stream sought to address the macro environment, the historical circumstances that underpinned the rationale for the various BEE policies, the forces that supported and developed the policies, and their role and influence on the broader political and economic order. The other stream focused specifically on the policies themselves, their origins and development path, objectives and structure, performance, and how they interacted with the broader policy framework of society.

In this fashion, a study that was envisaged at the outset as a straightforward phenomenological or ethnographic exploration of impediments to the implementation of B-BBEE policy, evolved into a GTM-based process of discovery about a pervasive social phenomenon that, contrary to much received opinion, was a natural product of the institutional framework of South African society and no one's particular creation. Attempts to rein in the research process

within some restrictive design framework, even if possible, could only have blinkered the project and thus obscured access to the new insights that have been the product of this journey.

2.2.2 The first design framework – grounded theory method

Investigation of the research methodology literature provided the insight that it is not unusual in the social sciences for research to be of an emergent nature and that, in such situations, design decisions are often only possible after a process of preliminary enquiry and data collection (Corbin & Strauss, 2008). This insight led the researcher to the body of literature on GTM, which greatly alleviated concerns regarding the apparent unsuitability of the more traditional types of research design.

GTM was developed specifically to facilitate research into social phenomena about which there is little pre-existing data or theory (Glaser & Strauss, 1967). The method involves a process of developing and drawing conclusions from within the body of evidence that is being gathered and then testing the validity of these conclusions against appropriate bodies of theory or through further processes of research (Charmaz, 2006; Corbin & Strauss, 2008). The initial step in a GTM study involves something of a shotgun approach whereby any data or theory that might possibly be useful is collected and analysed. Eventually, concepts emerge that appear to address the research problem and various processes, such as the comparison and triangulation of data, are then applied to test support for the validity of these observations (Ibid.).

GTM studies are typically initiated by researchers who have a unique insight or interest that has not been subject to prior study (Corbin & Strauss, 2008). The unique insight in this instance resulted from the researcher's experience as a director in a company involved in early BEE programmes and, later, as a consultant on B-BBEE policy (see Chapter 1). In keeping with the tenets of GTM (Thomas & James, 2006), data had been gathered from multiple sources, inter alia, interviews, literature reviews, reportage, and analysis of policy documents. This body of information had then been evaluated and compared as a basis for developing conceptual frameworks to advance the study.

As the project developed, however, it proved impossible to adhere to the detail of the GTM methodology.

Much GTM research involves the study of relatively small groups of people in particular social situations and the GTM methodology literature reflects this characteristic (O'Connor, Netting & Thomas, 2008). Charmaz (2006:Loc.103) asserts that while “researchers’ perspectives, purposes and practices influence how they will make sense of a method . . . explicit guidelines [for GTM] show us how we may proceed”. However, such was the broad conceptual nature of much of this research project, it was both impossible and of questionable benefit to try to adhere to the strict guidelines laid down for the interpretation of data under the rules of GTM. This was of concern to the researcher, for while there is a large body of literature concerning the manner in which GTM is evolving to suit the needs of researchers, much of this literature questions the validity of research that does not adhere strictly to established methodological guidelines (Finch, 2002; Clarke, 2003; Thomas & James, 2006; Idrees, Vasconcelos & Cox, 2011).

The author was also concerned because of the controversial nature of the phenomenon under investigation in this instance, which required that he be able to demonstrate strict adherence to a reliable and valid research methodology. Babbie (2010:3) states this challenge succinctly: “the key challenge for social sciences researchers is to demonstrate *how* we know what we know rather than *what* we know”. However, it was apparent that while the GTM design model had been useful in supporting the initial phase of the research project, it was unsuited to the task of linking and interpreting much of the data that had been gathered.

2.2.3 The second design framework – mixed methods

Creswell (2013:Loc.423) observes how the traditional focus on particular methodological paradigms and associated research methodologies has been influenced by professional practice within “the highly specialised world of academia [whereas] students and beginning researchers need choices that fit their research problems and suit their own interests in conducting research”. This insight was helpful and the search for a more appropriate design to carry the study forward gradually opened up the world of mixed methods research

(MMR). This approach has evolved quickly since the late 1980s in response to the needs of researchers in fields such as demography and development economics where, as Greene (2008:7) observes, “there was a need to link social behaviour to wider social systems to meaningfully make interpretive sense of localized phenomena”.

There is some debate as to what defines a MMR approach but Teddlie and Tashakkori (2010) note that these differences of opinion generally revolve around debates on whether MMR comprises a mixing of research concepts and philosophies that, in turn, result in a mixing of methods, or if it simply involves the mixing of research methods whether or not under a unifying conceptual framework. Greene (2007:129), for example, advocates the view that “the process of developing a thoughtful and appropriate mixed methods design is more an artful crafting of the kind of mix that will best fulfil the intended purposes for mixing within the practical resources and contexts at hand”. Others such as Creswell (2010) advocate a more structured approach which they view as necessary for managing the development of MMR and also as being in the interests of validity.

Amid the complex debates about the MMR approach, Teddlie and Tashakkori (2010:286-289) identify a number of characteristics common to all MMR theorists as follows:

- Qualitative and quantitative methods can successfully be applied in complementary fashion.
- Research may be conducted within the framework of a single or multiple research paradigms or worldviews.
- Diversity is emphasised at all levels of the study, be it at the conceptual or methodological level.
- An emphasis on the complementarity of alternative research design elements as opposed to the either-or debates that characterise more traditional research approaches.

- An iterative, cyclical approach to research that acknowledges the value of both iterative and deductive methods in the same study. Also the notion that there can be multiple possible entry and exit points for a study.
- A focus on the research question as a key factor in the design of studies.
- A set of basic signature designs and analytical processes that characterise the way MMR studies are conducted.
- A tendency toward balance and compromise within the mixed methods community.
- MMR studies commonly make extensive use of graphic explanations such as tables, charts and diagrams.

Considering these characteristics, much MMR is conducted against the background, or in combination with, a pragmatic worldview or research paradigm (Greene, 2008; Feilzer, 2010). As Bietsa (2010) observes, the decision to use a MMR approach is likely to be a pragmatic one since it involves a rejection of procedurally or ideologically-oriented design approaches in favour of one that focuses on the research ends. However, it is not the case that every pragmatist will select the MMR approach or that all MMR is conducted according to a pragmatic worldview (Teddlie & Tashakkori, 2010).

As discussed more fully in the following section, the researcher ascribes to a pragmatist-constructivist philosophy. Furthermore, the MMR approach provided a methodological framework for the project that could comfortably accommodate the rationale for the study, its emergent character, multiple themes, and theoretical complexity.

Regardless of which approach is applied, the question of validity is always paramount. Research theorists stress the importance of the researcher's philosophical assumptions and the necessity of reviewing and acknowledging these assumptions as the basis for selecting and managing the research design

process (Crotty, 1998; Babbie, 2010; Creswell, 2013). These two issues are dealt with in the following sections.

2.2.4 Validity

The importance of validity to the research process was an abiding concern and the researcher sought to apply best practice when conducting interviews, analysing literature and policy documentation, and in the development of concepts that facilitated the advance of the study (Crotty, 1998; Babbie, 2010; Creswell, 2013). Even when it appeared that the study was not being conducted according to any pre-ordained design framework, every effort was made to ensure the transparency and logic of the data collection and analysis process. The researcher also pursued opportunities to present papers and submit articles for review by way of testing the evolving theories within the academic community (Lindsay, 2010a, 2010b, 2011a, 2011b, 2011c, 2011d).

2.3 Philosophical assumptions underlying the study

Social science research seeks to explain and inform the truth or the facts underlying aspects of human life (Babbie, 2010); in this case, the truth and facts about BEE and the nature of its influence on South African society. However, there exist various perspectives on what constitutes, or is acceptable as, truth and fact and the methods that should be applied in any evaluation thereof. These perspectives are referred to as epistemological and ontological assumptions and they influence how a study will be originated, designed, and conducted (Creswell, 2013).

Research is also subject to the influence of systems of values and beliefs, at play in the broader research environment, that may affect the direction or findings of the study. These are called axiological assumptions and their possible influence should also be considered at the outset of the study (Crotty, 1998).

2.3.1 Epistemological assumptions

The epistemological assumptions that underlie a research project influence what can be known or learned about the subject under investigation and what the resulting research output can be taken to mean (Bietsa, 2010).

Epistemological assumptions exist along a continuum. At one extreme is the positivist position which holds that there exists an objective reality, independent of human existence, and that research should seek to discover such objective truth untainted, as far as possible, by human involvement. At the other extreme is the subjectivist perspective which views truth and knowledge as being inextricably entwined with human existence and, as such, something that can only be gleaned through the medium of an exploration and subsequent interpretation of human belief systems.

The position of the researcher along this continuum is influenced by his or her life experience, professional circumstances, the research environment, and donor demands, to mention but a few factors (Babbie, 2010). Bietsa (2010) stresses the importance of giving due consideration to the issue of epistemological assumptions at the outset of a research endeavour and criticises the adoption of fixed paradigmatic design frameworks that dictate linkages between epistemological assumptions and particular methodological approaches. As will be apparent at this stage, this critique resonated strongly with the experience of the researcher.

2.3.2 Ontological assumptions

Ontology “relates to the nature of reality and its characteristics” (Creswell, 2013:Loc.681). In research, ontological assumptions influence the framing of the subject under investigation and guide decisions regarding how best to gather and analyse data.

Bietsa (2010:102) usefully highlights a dichotomy between mechanistic and social ontologies. A mechanistic ontology is one that locates the research subject in “deterministic terms . . . as [part of] a system in which there are causes and effects”. A social ontological perspective, by comparison, is one that seeks to explore the subject itself in a context of “meaning and interpretation”. These variables are evident in the manner in which BEE has typically been framed in the literature versus the framing that is developed in this study.

Much of the research conducted to date on BEE positions the phenomenon in mechanistic fashion as a particular policy framework of government. There

exists in this literature little or no justification for this characterisation, and the focus of enquiry is largely on the effects of the particular policy under review. The result has been a large body of literature focused on questions relating to, inter alia, outcomes of a particular policy framework, as in Cargill (2010), or the effects BEE policy has had on processes of societal change, as in Iheduru (2004) or Jeffery (2014). Du Toit, Kruger and Ponte (2008) explore issues relating conflict between different economic empowerment policies and their effects on rural communities, while Andrews (2008) and Acemoglu, Gelb and Robinson (2007) review the economic development potential of the B-BBEE policy framework.

Some research has sought to better understand the BEE phenomenon itself and could therefore be said to have been conducted from a social ontological perspective. Examples of this genre would be Verhoef (2003) and Butler (2011) who delve into the historical antecedents to B-BBEE policy, and Southall (2004a, 2005, 2006, 2008) who has raised many questions around the political and economic influences of BEE. However, while these authors have been instrumental in opening the door to further research, none questioned the ontological confusion that pervades the subject of BEE.

The common representation of BEE as a set of rules is problematic. While a public policy might appear to only constitute a set of rules or guidelines, it is actually the manifestation of a complex institutional process that does not stop or cease to be influential with the promulgation of a particular policy (Kingdon, 1995; Ostrom, 2005). Furthermore, if one does not recognise and understand the institutional forces that gave rise to a particular policy, there is little chance that the policy can be successfully implemented and managed.

The typically simplistic, uninformed framing of BEE is apparent in government's approach to the ongoing process of policy reform. Since BEE is evidently viewed as an inert set of rules, the assumption is that policy failure is the result of some or other party not adhering to the tenets of the policy framework. Attempts to address the problem, therefore, take the form of

changes to the framework of rules that extend or tighten the conditions surrounding policy implementation (RSA, 2011a, 2013e; Du Toit, 2014).

The social ontological perspective adopted in this study places BEE at the centre of the analysis. The case is made for it to be viewed as the product of complex institutional forces on the one hand and, on the other, as having itself developed a complex institutional form. This framing transcends notions of BEE as a well-intentioned change initiative and provides a medium not only for better understanding the nature of the phenomenon, but also its influence on the broader institutional framework of society.

2.3.3 Axiological assumptions

Axiological assumptions are contingent influences that emanate from the researcher himself and the broader research environment, and that come to permeate the research process (Creswell, 2013).

The researcher's personal history, covered below, has influenced the character and direction of the study, but so too have multiple other belief systems. For example, the study faces a singular challenge in that it seeks to advance an alternative interpretation of BEE than that which appears to exist in the minds of the leadership of government, business, organised labour and, likely, most South Africans. This made for an often challenging and combative research experience when presenting papers or discussing the subject of BEE with interviewees. It would be naïve to assume that these experiences have not had an influence on the design of the study and, particularly on the potential threat of challenges to its validity, by parties whose interests are not served by the eventual outcome.

The apparent lack of interest in the study on the part of government and organised labour, and the reaction of representatives of these organisations to research papers at conferences, inevitably raised questions in the researcher's mind as to the intent of these bodies with regard to BEE. The determinedly leftist ideology, dominant in the Department of Sociology at the University where this study was conducted, also had a noticeable effect on the researcher; on the one hand opening his mind to the value of such ideologies but, on the other,

highlighting the danger of an often dogmatic adherence to a particular ideological position.

These axiomatic influences have frequently been responsible for exposing new avenues for study, for example in the case of a seminal interview at the outset of the project. During this meeting, the candid Michael Spicer,⁴ then Vice President of Business Leadership South Africa (BLSA), made it clear that BEE had been a key instrument in the formation of a new business-state relationship in the early 1990s, initiated and sponsored by the established business community. Spicer also made no bones about the fact that the relationship was an overtly cronyist one and designed to be so. Although quite shocking, the detail of these revelations compelled the researcher to review some basic assumptions as to the ethics and intent underlying BEE and also opened the door to a theory journey that led to the interpretation of BEE as an institution rather than a policy.

Creswell (2013) highlights the importance of a candid exploration of the researcher's philosophical assumptions, both to highlight possible areas of bias, and to help readers of the research output better understand the context of the study. The researcher fully supports this view, not only in the interests of sound research design but also because of the contested and difficult terrain of discourse on the subject of BEE.

2.3.4 An exploration of the philosophical assumptions of the author

This has not been an easy project. It sought to develop knowledge on a subject that is highly controversial and that typically elicits very emotional responses from people across all sectors of South African society. The subject is loaded with the trappings of the past, and racially based assumptions abound regarding who can legitimately express an opinion or conduct meaningful research in the field. Billions of Rand have been invested in BEE programmes and a burgeoning consultancy industry has evolved to assist in the implementation of the various policies. Important reputations, not least of members of the governing ANC, have also been constructed around BEE over the last twenty years. Perhaps for these reasons I was more than once asked, after

⁴ Interview with Michael Spicer, Business Leadership South Africa. Johannesburg. 9 September 2009.

presenting papers at conferences and seminars, if I was not afraid to publicly voice the things that I was.

It is important to note that I emigrated from South Africa in 2013 and completed this project in 2015 from my new home in Brazil. My reasons for emigrating were founded upon my learning as part of this thesis, most especially theories on economic development. I was 53 and concerned that South Africa would not have the capacity, in the foreseeable future, to address the problems of poverty and inequality that underlie its social ills. I began to feel unsafe and concerned that I would feel even more so as I got older. The time was at hand to decide whether I would stay or set up a new life elsewhere. I opted to leave and, after a hiatus of six months during which I settled into my new life, I returned to the study, confident that I had made the right choice.

I must acknowledge that my life experience has been very different from the majority of South Africans who have been subjected to prejudice and cruelty on a level that I cannot begin to comprehend. I am writing as someone who benefitted fully from the privileges accorded to white people under the apartheid regime, with little consideration or interest for the circumstances of the majority of the population whose subjugation made my extraordinary lifestyle possible.

I recognise that my philosophical perspectives were moulded primarily by my upbringing in a comfortable Irish middle class home in the 1960s and 1970s where the determinedly liberal democratic views of my white, protestant parents were mixed with the social democratic ideology of the government of the day.

It was on the back of a predominantly liberal worldview and a lack of information as to the character of the South African polity that I was able to emigrate there with an uncluttered conscience in 1984. Upon arrival, my ideological perspectives found resonance with the reigning ideology of the white liberal community and, more especially, that of the business sector in which I worked for the next 24 years.

The radical political changes that took place in South Africa in the early 1990s certainly made me more aware of the true nature of the society in which I had chosen to live. I acknowledge, however, that I really only came to appreciate the full import of colonialism and apartheid in the early 2000s, initially through my MBA studies and my work as a consultant in the BEE sector, and later as the result of the learning that accompanied this doctoral project.

Today, I like to think of myself as having learned from this experience and describe my political orientation as that of a social democrat. I believe that capitalism has proven itself as the best vehicle for economic development, despite its comfortable relationship with the colonial and apartheid administrations in South Africa, and contemporary problems caused by the blurring of boundaries between government, civil society, and business. No other economic ideology has such proven capacity to improve the circumstances of people at the rate that capitalism has done. Having said this, the record of capitalism has also shown, not least in South Africa, that markets must be subject to oversight by a government that is itself subject to the will of the majority of citizens.

My ideological perspectives are tempered with a healthy dose of pragmatism. I believe that while there is a moral obligation on the business sector to contribute to the transformation of South African society (a process that most BEE policies are designed to facilitate), private enterprise cannot reasonably be expected to prioritise social development without some form of incentive from the state.

The power of the South African government to discipline the private sector is, however, limited by the mobility of private capital, the acknowledged capacity limitations of government, and the lack of a functional, trusting relationship between the business community and the state. The cronyist relationships that have developed between government, business, and civil society elites in the post-apartheid era have also been shown to run counter to broader developmental requirements of South African society, nowhere more glaringly

than in the circumstances surrounding the massacre of mineworkers at Marikana Mine in 2012 (Alexander, 2013).

I would describe my epistemological orientation as that of a pragmatist-constructivist. Pragmatism in research design involves a focus on outcomes, rather than process (Bietsa, 2010) while constructivism asserts the formative influence of life experience on personal belief systems (Charmaz, 2006). I believe in the primacy of a focus on outcomes, rather than process. Principles are important to me but they are best applied in the development of objectives. Process is important and should certainly be subject to principle, but both the process and the principles involved must be coordinated with outcomes. I cannot see the logic in starting with process and assuming it will somehow lead to a particular desired outcome. I see this latter ideology as having great influence in contemporary South Africa, especially in a government where dogged adherence to certain ideological positions, in the absence of meaningful discourse on desired outcomes, is all too common.

I perceive the world and society as the product of human beliefs and of the interaction between people. I do not deny the existence of physical phenomena and a 'real' world, but I have seen enough to know that one has to start from the perspective of what people believe such phenomena to be or to represent. There are different levels of meaning in the minds of people and I believe that where there is a desire to alter belief systems, this must be done with a deep appreciation of what people currently believe and why they believe it.

This pragmatic-constructivism has likely been reinforced by many years spent working in the business services sector where success is commensurate with one's ability to function in a conceptual world, interpreting perceptions and managing relationships. Working in this environment I learned never to assume that people interpret phenomena in the same way, regardless of how concrete or tangible those phenomena may appear to be.

Finally, I acknowledge how the last six years have influenced my philosophical perspectives. Moving to a full-time PhD programme from my life as a businessperson has had an immense impact. In the academy, I was

confronted by a world with a different culture and values set to the business milieu I had left. Not only were my beliefs constantly challenged through my everyday interactions in this new environment, they were also informed through the processes of challenge and learning that have been an integral part of the PhD programme.

I consider myself to be an exceptionally fortunate individual but I believe that good fortune is wasted if one does not try to make use of it in the service of others. It means less to me, therefore, that this thesis might result in the awarding of a doctorate than that the study might help advance prospects for a country and nation that I hold in the deepest regard.

2.4 Key elements of the research design

2.4.1 The research question

The following research question emerged through the dual application of GTM and MMR approaches and it necessarily has two parts. The study seeks to understand the influence of BEE on prospects for development but this requires that the problem of inadequate conceptualisation first be addressed. The question is as follows:

What is BEE and what is the nature of its role and influence in the political economy of South Africa?

2.4.2 The MMR typology applied in the study

As previously discussed, the GTM was applied in the early stages of the study but gradually gave way to the MMR approach. Mixed methods researchers use the term 'typology' to refer to the various subsets of MMR design, and this study evolved very much in line with the multiphase design typology that Creswell and Plano Clark (2007:100) define as one that occurs "when an individual researcher or team of investigators examines a problem or topic through an iteration of connected quantitative and qualitative studies that are sequentially aligned, with each new approach building on what was learned previously to address a central programme objective".

A planned multiphase research project comprises a series of mini research projects, each with its own question to be answered and each leading into the next. The exact design of each phase and the methods applied would be dictated by the particular question to be answered (Ibid.).

This typology conforms closely with the manner in which the research project was actually conducted and the methodology will be presented in this fashion. Three distinct phases can be identified which are outlined in Table 1.1:

Table 1.1: Outline of the three phases of the research process

	Phase 1	Phase 2	Phase 3
Research question	What is the state of readiness of the business community to implement B-BBEE policy?	What are the impediments to the implementation of B-BBEE policy in the private sector?	What is BEE and what is the nature of its role and influence in the political economy of South Africa?
General description	<p>This first phase comprised the body of data gathered by the author while working in the field, prior to the formal commencement of the study. While it may appear unorthodox to consider this a phase of the research process, this data was responsible for the researcher deciding to initiate the study. These data, along with other quantitative surveys of B-BBEE policy performance, were also used in the main study to demonstrate the ongoing problems with policy implementation.</p> <p>The anecdotal knowledge gained by the researcher in this phase also has great relevance to the study. This insight was to prove vital at various stages throughout the project, for example, when assessing the validity of statements and pronouncements emanating from within the academy, government, business, and civil society. It was also very necessary considering the paucity of empirical data that existed when the study was being initiated. Without this knowledge and experience</p>	<p>The second research phase coincided with the process of developing and submitting a doctoral research proposal. The initial intent had been to conduct research into impediments to policy implementation in the business community. However, in the course of the proposal preparation process, several key factors came to light that served to redirect the project:</p> <ul style="list-style-type: none"> • There had been surprisingly little interest in the subject of BEE in the academy and limited work relating to the conceptualisation thereof, beyond that of BEE being a government policy. • BEE had not been adequately defined in the policymaking arena and there existed huge conflict and overlap between the various empowerment policy frameworks and their administration. • The study would have to be of a multidisciplinary nature as interpretation of the BEE phenomenon would require knowledge, inter alia, of 	<p>There were two elements apparent in this main phase of the study. The first sought to develop a conceptualisation of BEE, and the second to then demonstrate how BEE, so defined, functions in the political and economic environment in South Africa.</p> <p>The first task involved a process of exploring the substantial, but largely ignored, historical record that demonstrated the evident roots of BEE policy and, indeed, the very concept of black economic empowerment in the economic reform policies of the late apartheid era. Further analysis brought to light the existence of two distinct streams of BEE policy, one of an emergent nature and the other planned and initiated in line with standard policymaking processes.</p> <p>The second element of this phase of the research objective involved an exploration of the literature on institution theory and political</p>

	Phase 1	Phase 2	Phase 3
	to draw on, the study would doubtless have been derailed on many occasions.	<p>economics, political science, public policy, and political economy.</p> <ul style="list-style-type: none"> • BEE had clear, but mostly unexplored, origins in reform policies of the late apartheid era. • BEE had been instrumental in the development of the business-state relationship in the post-apartheid era. • Government employees and politicians responsible for policymaking, business leaders and trade union representatives, were generally unwilling to participate in the study. • There was enormous cost and consumption of resources associated with the implementation of BEE policy. 	economy in pursuit of a plausible interpretive framework.
Data sources	<p>Quantitative surveys administered by private sector agencies on the level of B-BBEE policy compliance in the private sector.</p> <p>In-house quantitative research into the management of BEE policy within large companies in Gauteng.</p> <p>Qualitative analysis and further quantitative analysis of these data.</p>	<p>An extensive review of the available literature and reportage on BEE and also of the body of policy documentation.</p> <p>Exploration of the literature on the comparative experience of Malaysia.</p> <p>This body of data was subject to content analysis and a process of comparative sense-making in the case of the policy documentation.</p> <p>Interviews were requested with a wide array of figures in government, business, labour, and civil society.</p> <p>An extensive process of literature review was conducted in the relevant fields to determine appropriate theoretical and methodological frameworks to guide the project.</p>	The historical record of the political economy of South Africa since the late 1970s provided a rich body of historical data, and interviews were conducted with subjects who had been party to this history.
Findings	The state of readiness of the market for the consultancy's product offering was low and the likelihood of sourcing new clients was therefore also limited. There existed an evident failure in the area of policy implementation in the business sector, but the cause of this failure was not immediately apparent and	<p>The concept of BEE was generally interpreted in a very simple, one-dimensional manner that was inadequate for understanding its influence.</p> <p>The study would therefore have to explore an appropriate conception of the BEE phenomenon.</p> <p>Interviews would not be a key source of data for the</p>	BEE had clear roots in the reform policies of the late apartheid era that led to the development of an institutional framework that facilitated the transfer to democracy and laid the foundations for the contemporary BEE policy framework. The new post-apartheid government instituted a

	Phase 1	Phase 2	Phase 3
	merited further research and analysis.	study as people were generally locked into limited, partisan interpretations of the phenomenon that were aligned to the interests of their particular constituencies. The study would have to be conducted according to an emerging methodological design as there simply were too many unknowns to permit adherence to a pre-existing design model. The study would be multi-disciplinary in character as BEE transcends the boundaries of politics, sociology and economics. Institution theory and theories of economic development appeared to provide a promising interpretive framework for describing BEE and the nature of its influence. Considering the resources and reputations that had been invested in BEE, the researcher could expect this to be a difficult research project that would attract much criticism and anger.	second stream of policy under the banner of BEE, but this was of an essentially different character to the original stream. The theoretical framework developed by North et al. (2009) provides a viable framework for interpreting the role and influence of BEE in the political economy of South Africa.
Resulting actions/ Outcomes	Close my consultancy business and apply to do a PhD with a view to understanding impediments to B-BBEE policy implementation.	The key avenues for the study had been identified as had the key question that needed to be addressed. The study would largely involve the development of a new body of theory on the character and influence of BEE on the political economy of South Africa.	A body of theory as to the character of the BEE phenomenon and the nature of its influence on the political economy of South Africa.

The research conducted in phases one and two was mostly background research that served to help identify the core research question. As such, it does not merit inclusion in the main body of the report. Some of these data may be useful to the reader or to future researchers, however, and thus are available upon request. A summary of the findings of the Katlego Syzygy market survey is contained in Appendix 2.

2.4.3 Methods of data collection and analysis

As is the case with GTM and MMR approaches, both quantitative and qualitative data collection processes may be applied throughout the study

(Charmaz, 2006; Creswell & Plano Clark, 2007). Therefore, it is important that the researcher provide some information on the methods that were applied.

Interviews

Interviews were conducted at the outset of the study and in the latter stages although the purpose differed during each phase. In keeping with the tenets of GTM, meetings were sought at the outset with individuals in leadership positions in government, business, and organised labour in an attempt to gain insight into the challenges facing BEE and thus to inform the objectives and design of the study (Charmaz, 2006). Purposive sampling techniques were applied in selecting interviewees (Babbie, 2010) since the objective was to speak to specific individuals who were involved in the design or implementation of BEE policies.

During phase three, interviews were conducted mainly to inform particular questions that arose in the course of the research process. However, they were also stimulated by the publication of memoirs by people who had either been associated with the BEE policy process or whose life story was relevant to the project in some way. Subjects thus included black business leaders, for example, Dr. Sam Motsuenyane (2012) and Herman Mashaba (2012), and authors such as Jenny Cargill (2010) who was an active member of the ANC in exile and who had been closely associated with the development of BEE policy.

The data resulting from these exchanges were interesting but only of peripheral importance to the study. They served mostly to highlight the need for research into BEE and to demonstrate the poor and expensive performance of the policy framework to date.

Further interviews with government policymakers and politicians were not sought for two reasons. The first was the negative experience of the researcher in trying to gain access to such figures during the early phase of the research project. The second involved an application by the researcher to participate in a joint programme on development economics run by the DTI in association with The University of the Witwatersrand and AFD, the French Development Agency.⁵

⁵ APORDE - African Programme on Rethinking Development Economics. May 2011.

Although short-listed for attendance, and promoted by the university representatives on the basis of the interim research findings, the researcher was informed that the DTI had vetoed the researcher's participation with no explanation having been given.

All interviews were semi-structured and questions were of an open-ended, general nature, designed to get the interviewee talking rather than addressing specific issues (Babbie, 2010). In keeping with the constructivist epistemology of the researcher (Charmaz, 2006), the position adopted in these meetings was that one could not presume to know the perspective of the interviewee or what information he/she may elect to share.

Contact with subjects was first established by telephone, either directly or, as was more common, through a personal assistant. This was followed up by a formal meeting request, sent via email, that provided an outline of the study and the purpose of the interview. Subsequently, upon meeting the interviewee, the rationale for the study was again explained and the subject was asked to sign the necessary approvals. The researcher preferred not to take notes as this made it difficult to concentrate on the conversation, but the interactions were recorded with the consent of the participant. The researcher always had a list of about ten questions ready but these were rarely needed. A letter of thanks was sent to each candidate. Samples of these documents are contained in Appendix 1, as is a record of interviews requested and conducted.

The interviews were initially transcribed and coded but once it became apparent that interview data would not be a primary source of data, these efforts were discontinued.

Surveys

An important survey that contributed to the research project was that undertaken in phase one by the researcher's company, before he joined the PhD programme. This survey explored the state of readiness of businesses in Gauteng Province with regard to BEE policy implementation. Although it could not be said to have been conducted with due attention to proper quantitative survey methods (Babbie, 2010), it did provide insight into the problematic

handling of BEE policy within a large sample of companies. It was also an important motivating factor in the decision to undertake the PhD study. This information was not central to the study but, for completeness, survey summary data are contained in Appendix 2.

Use was made of other quantitative surveys, primarily in phase one and, to some extent, in phase two. The annual *Top Empowerment Companies* report, compiled by the BEE consultancy Empowerdex, in association with the *Financial Mail*, a leading South African business magazine, was for many years the only widely available evaluation of B-BBEE compliance. These reported the results of listed companies in their efforts to comply with B-BBEE policy, but they were widely criticised for a lack of methodological rigour. In the absence of any other data, however, they did provide some high-level insights including consistently low levels of policy compliance and slow rates of change (Financial Mail, 2004, 2005, 2007, 2008, 2009).

A third survey instrument used was one commissioned by the DTI into B-BBEE compliance, the Baseline Survey 2007 (Consulta, 2007). This research project involved a far more comprehensive and valid evaluation than had been done before and incorporated data on business organisations across the spectrum of commercial activity and throughout the country. It was, however, focused only on the private business sector where it found the level of policy compliance to be generally very low. This outcome was not surprising and confirmed trends identified in the *Top Empowerment Companies* reports as well as the researcher's own knowledge of market conditions.

The most interesting and useful piece of information to emerge from the Baseline Survey came during an interview with a person associated with the study. This person requested that his/her details remain confidential. In the course of a discussion about the 2007 survey, the interviewee mentioned that there had been a follow-up one, conducted in 2008, but that it was under embargo by the DTI. It appeared that this subsequent survey had been extended to include government institutions, which were also obliged to comply with B-BBEE policy. The later study had found, however, that the level of policy

compliance among organs of state was even lower than that in the private sector and, as this would have been highly embarrassing to government, the report would likely never be released.⁶

As previously mentioned, the DTI had apparently conducted a further nationwide study into B-BBEE policy compliance sometime in the mid-2000s. This study was cited by government in a high level conference on B-BBEE policy reform in 2013 (DTI, 2013) but attempts by this researcher to acquire a copy were unsuccessful.

Content analysis

The analysis of policy documentation, literature and reportage on BEE has been central to the study objectives. It brought to light the limited research and conceptual confusion that has bedevilled policy management efforts which, more than anything, provided the impetus for this study.

Content analysis is a process that involves the systematic examination of a body of documentary evidence with a view to developing insight and learning about the subject of study (Babbie, 2010). While often taken to refer to a detailed exploration and comparison of bodies of written data, in this instance it constituted more a process of sense-making and conceptualisation along with the development of insight into the positions of various parties viz a viz BEE policy. This brings content analysis close to the concept of literature review (Creswell, 2013) and, indeed, these boundaries were often blurred in the course of this study.

Literary sources and policy documents were initially reviewed in order to learn about BEE and its attendant processes. However, once it became apparent that the framing of BEE in these documents was problematic and that addressing this issue would become a core objective of the study, the literature and policy documentation then became data. An example is the B-BBEE Act (RSA, 2004a) which is ostensibly the peak, coordinating policy framework for BEE. As discussed in Chapter 3, however, the apparent contradictions and lack of logic in

⁶ Confidential interview with the author. 3 November 2009.

the Act made it a subject of enquiry and opened the door to questions about public policy practices in post-apartheid South Africa.

In the literary sphere, another example is Verhoef's (2003) paper that traces the origins of BEE to a variety of initiatives by a division of the Sanlam insurance company in the mid 1980s. This paper was initially useful as a source of insight into the processes and practices that had given rise to BEE. Most large corporates had been active in the late apartheid era in developing programmes that were foundational to the later development of BEE. However, there existed little empirical data on these activities and hence Verhoef's paper was unique.

The paper also contained candid details regarding the mercantilist objectives that underlay this early Sanlam project, namely, to facilitate market development, develop black employees, and ensure that the emergent black elite would continue to support the institutions of capitalism (Ibid.). Verhoef's paper thus stimulated wider enquiry into the field of business-state relations theory (Evans, 1995; Maxfield & Schneider, 1997; Bauer & Taylor, 2005; Taylor, 2007) on the one hand, and into the apparent entry into business by members of the new political elite, on the other (Adam et al., 1997; Southall, 2004a; Mahlangu, 2012; Patel & Graham, 2012).

Among the bodies of documentary evidence that were analysed for their content were:

- Government policy documents relating to various empowerment policies
- The body of academic literature focusing on BEE as well as literary sources that provided insight into the origins of the policy
- Popular literature on BEE, comprising mostly books on how to address the BEE policy challenge
- Later books that included biographies and commentaries on the performance of BEE
- Reportage on BEE

- Speeches by public figures and business people

2.5 Ethics, confidentiality and consent

Wassenaar (2006) observes that while the subject of research ethics is rooted in consideration of the interests of research participants, the question of ethics extends beyond this to include matters such as plagiarism and the manipulation of results. In their study of the academic response to student dishonesty, Thomas and De Bruin (2012) discuss the pervasiveness of this phenomenon and the difficulties it presents for student, supervisor, and faculty. Notably, the authors highlight the point that not all supervisors may be acting ethically or responsibly and the student must, therefore, own this responsibility him/herself. Referring to a conference paper presented by McKaiser, Woermann (2012:88) observes that ethics in political and business circles in South Africa is too often seen as a collection of governance rules that must be complied with, rather than “a set of social norms that cannot be escaped, that capture a wide spectrum of behaviour, and that serve the important function of regulating good behaviour in society”.

In his study on ethics in the area of social research Wassenaar (2006) recommends that researchers apply a broad set of principles as follows:

- Research should be a collaborative partnership with the community being studied. It should be developed with their input, sensitive to their cultural values and beliefs, and the research output should be to their benefit and not just that of the researcher.
- The subject of study should be of value to society.
- The study should be conducted according to the highest methodological standards.
- Participants should be selected with due consideration for the validity of the study as well as the interests of the subjects or organisations involved.

- Potential risks and costs to participants should be minimised and contingencies developed to address potential discomforts or problems that might arise. Benefits to society are a secondary consideration to the welfare of participants.
- All research should be subject to review by a competent panel before commencement of the study.
- Researchers should ensure that participants are competent, and have been given sufficient information so as to be able to truly give their informed consent to take part in a study.
- Where studies are conducted over time, the researcher must ensure the ongoing consent of participants, and that the potential impact of the study on participants and their communities is reviewed from time to time.

All University ethics standards were complied with in the conduct of this study. Interview subjects and participants were fully briefed as to the nature of the study and the reason for their involvement. They received an information sheet in advance and written assurance of confidentiality. At interviews, participants were asked to sign a consent form ensuring their understanding of the research interaction. Written consent was also requested in the event that the interview was recorded. All requests for anonymity have been complied with.

In keeping with the abovementioned principles, the researcher has, on occasion, been intentionally ambiguous when referring to certain people or organisations, as having been uncooperative. This should not be seen as the presentation of incomplete data but rather as an attempt to avoid unnecessary embarrassment for the people concerned. In such situations, naming the individual or organisation was also not deemed necessary in advancing the objectives of the study.

The study draws heavily on secondary data and the researcher has sought to uphold the highest standards in the acknowledgement of work by other researchers, authors and journalists.

The study proposal was subject to review by the Human Research Ethics Committee (Non Medical) of the University and approval was granted on Protocol Number H100 814.

2.6 Summary

The chapter addressed the study design and the methodology. A GTM approach was initially utilised due to the lack of knowledge of the origins and development path of BEE. This method proved limiting as the study progressed and so a MMR approach was incorporated into the design. The philosophical assumptions underlying the study were examined as were the actual methods applied in the gathering and analysis of the data.

Chapter Three

Theoretical framework of the study and review of literature

3.1 Introduction

The objective of this study was to explore the origins, development path and influence of a pervasive social phenomenon. This phenomenon manifests as a framework of public policies that share the espoused objective of addressing the legacy of racially-based economic exclusion and, thereby, of facilitating greater levels of economic growth. The complexity inherent in this research objective dictated that the study would be of an interdisciplinary nature, drawing on themes from political economy, political science, economics, and community psychology, among others.

The problems of conducting interdisciplinary studies have been well documented and range from the limitations of the researcher's own knowledge resources and capacities, to the epistemological and ontological boundaries that impede communication and learning across disciplinary silos in the academy (Babbie, 2010; Bietsa, 2010; Creswell, 2010). The technical challenges this presented for the design and conduct of the study were covered in the previous chapter, but it was also challenging to identify an appropriate theoretical framework that could transcend the disciplinary boundaries and hold the various disciplinary elements of the study in tension.

The field of political economy presented an obvious context for the study as it constitutes a synthesis of political, economic, and sociological theory while drawing freely on other social sciences such as history, psychology and philosophy (Clark, 1998). Weingast and Wittman (2006:3) describe political economy as "the methodology of economics applied to the analysis of political behaviour and institutions". These authors observe that while political economy studies may be approached from a variety of perspectives, institutions frequently constitute the subject of investigation, as has been the case in this study.

Chapter layout

This chapter first explores the body of literature on institution theory, which is followed by an exploration of each of the three theoretical frameworks applied in the study, incorporating appropriate academic and grey literature in each area. The final section reviews the neglected subject of empowerment. It should be noted that, such is the nature of this study and the objective of this chapter, non-academic sources are also referenced. Such sources include newspaper and magazine articles, popular books, reports by NGOs, and government policies.

3.2 Institutions

Every time humans interact, however indirectly, there exists a socially-constructed system for the administration of this contact and of the outcomes that result (Ostrom, 2005). If such contact has been regular, specific norms of engagement will have been established, laws may govern the interaction, and there may even be physical structures where the interaction commonly takes place (Hodgson, 2006). When a government is elected, a business launches a new product, a child starts school, or even when a person goes to welcome his/her new neighbour, there exist complex institutional structures that govern these interactions.

Acemoglu, Johnson, and Robinson (2001) empirically demonstrated the centrality of institutions to economic development. Of particular relevance to the study at hand, these authors demonstrated how the particular historical development process of a country results in a unique institutional framework, which then largely determines the future development path of that polity. These institutional frameworks can be changed but, as has been witnessed in South Africa over the past four decades, the task of managing change in the institutional framework of society is fraught with risk and uncertainty (North, 1990; Chang & Evans, 2005; Ostrom, 2005).

It is beyond the remit of this study to delve deeply into the field of institution theory but it is important to note that there exists a deep schism

among economists regarding the ontology of institutions. In brief terms, the schism reflects a broader debate in the field of economics and relates to beliefs about the agency of humans in institution formation and the extent to which institutional phenomena can be disaggregated and studied in isolation from broader social phenomena (Rutherford, 1994; Hodgson, 2007).

Chang and Evans (2005:99), for example, reflect what is termed the 'old' institutional economics (OIE) view when they describe institutions as "systematic patterns of shared expectations, taken-for-granted assumptions, accepted norms and routines of actions that have robust effects on shaping the motivations and behaviour of sets of interconnected social actors". Ostrom (2005:3), on the other hand, reflects the 'new' institutional economics (NIE) perspective with her definition of institutions as "the prescriptions that humans use to organize all forms of repetitive and structured interactions, including those within families, neighborhoods, markets, firms, sports leagues, churches, private associations, and government at all scales".

As noted by Rutherford (1994), the OIE school focuses on group, rather than individual behaviour. Analyses by adherents to this school are thus generally focused at an holistic level and apply a behaviourist, rather than a rational-choice focus. The NIE approach, by comparison, focuses on the individual or specific organisation as the unit of analysis and is generally deductionist in character. As a result, NIE analysis is frequently criticised by OIE economists for being overly abstract and formal (Ibid.). However, NIE methods facilitate detailed analysis and provide clear propositions and assumptions that can be more easily and convincingly tested and, to quote Ostrom (2007:22), "it is hard to make much progress in the study of institutions if scholars define the term 'institution' as meaning almost anything". Such pragmatism is important to the research objective which envisages the present study providing a basis for further investigation of the BEE phenomenon. It is also important in terms of communicating the research outcomes in a convincing manner, appropriate for its intended audience in business and government.

The objective of this study is partly to understand the context of BEE and the nature of its influence on broader social processes. This aspect of the research objective fits well with OIE assumptions (Hodgson, 2007) and thus OIE concepts are drawn on heavily to facilitate rich interpretation of the data. However, the study is also premised on the notion that the institution of BEE is not well understood by people and organisations and, therefore, a major part of this study involves the deconstruction of BEE in an effort to diagnose its character and better understand its role and influence, an objective more appropriate to the ethos of NIE (Langlois, 1989; Rutherford, 1989).

Fortunately, there has been something of a convergence in the field of institution theory, led mainly by new institutional economists who increasingly acknowledge the influence of complex social factors on the decisions of individuals. This movement is exemplified by the leading new institutional economist, Douglass North (2005:7) who, in recent years, drew the ire of NIE colleagues when he asserted that “the immense variation in the performance characteristics of societies makes clear that the cultural component of the scaffolding that humans erect is also central to the performance of economies and polities over time”. Acemoglu et al. (2001; 2012), also assert the importance of historical development patterns on economic institutions and cite these historical social influences as the single major cause of differential development patterns across countries.

Another NIE adherent, the Nobel laureate and political economist Elinor Ostrom, focuses on the individual as the subject of economic analysis but acknowledges the complex influence of social institutions on individual choice. In the course of her work studying processes of economic decision-making within organisations and communities, Ostrom came to recognise the central role of institutions in these processes and this learning ultimately resulted in the creation of the Institutional Analysis and Development (IAD) framework (Ostrom, 2005). This IAD model is applied extensively in this study as a vehicle for interpreting the various BEE policy frameworks.

3.2.1 The question of level in the study of institutions

Weingast and Wittman (2006) observe three distinct levels in the study of institutions:

- The first, and most basic, level of study takes the institution under observation as a given and seeks to explore the impact or effects of the institution.
- The second level also regards the institution itself as a fixed variable and this type of study involves comparative studies that examine the outcomes or effects of different institutional frameworks.
- The third, and deepest, level involves the study of the institution itself, the objective being to understand the particular character of the institution, its origins, growth path, and thus the nature of its interaction and influence with broader society.

This categorisation is key to understanding the rationale for this study and indeed its importance. To date, much research on BEE has been at level one with studies focused on such subjects as policy performance (BEECom, 2001; Financial Mail, 2005; Acemoglu et al., 2007; Consulta, 2007; CEE, 2009; Cargill, 2010; FinScope, 2010), interpolicy conflicts (Lester, 2007; Du Toit et al., 2008; Satgar & Williams, 2011), limitations on policy implementation (Thompson & Woolard, 2002; Thaver, 2006; Hall, 2010; Mbonyane & Ladzani, 2011; McGregor, 2014), and the effects of policy on particular communities (SACOB, 2003; Southall & Tangri, 2006; Mbabane, 2007; Schirmer, 2009; Bank & Mabhena, 2011; Kruger, 2011). Comparative studies have looked at the experience of Malaysia with its New Economic Policy that seeks to advance that country's indigenous Malay community (Hart, 1994; Emsley, 1996; Freund, 2007; Cargill, 2010), and there have also been many studies that have explored diverse aspects of the political economy which have dealt with, or touched on, key issues relating to BEE (Cox & Rogerson, 1985; Thomas, 2002; Ntsebeza, 2005; Southall, 2013; SBP, 2014). The author is unaware, however, of any study that has, as yet, sought to investigate and diagnose the institutional framework of BEE itself.

The importance of such a ‘level three’ exploration of BEE becomes evident when one considers the billions of Rand that have been invested in BEE programmes (Sartorius & Botha, 2008; Nkwinti, 2010; Presidency, 2010; Seccombe, 2014b), and the multitude of critical, strategic decisions that have been made in accordance with the vast array of legislative acts and policies that seek to advance the objectives of BEE (RSA, 1995b, 1996a, 1996c, 1998b, 1998c, 2000b, 2002b, 2004a, 2005; DRDLR, 2009; DMR, 2010; RSA, 2013e). Transformation programmes conducted in the name of BEE in the state sector are also widely acknowledged to have undermined the capacities of government (Business Day, 2010b; von Holdt, 2010; Auditor General, 2012; Boyle, 2012; Chipkin, 2013).

The central proposition that B-BBEE policy contributes to economic development was already debunked in studies, conducted on behalf of The Treasury in the mid 2000s, by leading international economists (Acemoglu et al., 2007; Andrews, 2008), and there has been unstinting criticism from local sources of the economic effects of the various BEE policies on prospects for growth and nation building (BEECom, 2001; Bond, 2005; Hall, 2007; Business Day, 2010a; Mail & Guardian, 2010; Griffin, 2012; Kane-Berman, 2014a; Bisseker, 2015; Du Toit, 2015; The Times, 2015b). Yet, despite all the criticism, there remains widespread acknowledgement as to the importance of restructuring the economic arena in South Africa and BEE policies are constantly being reformed in an apparent effort to achieve better results. However, unless policymakers have a more informed understanding of the institutional framework with which they are dabbling, these efforts are unlikely to succeed.

3.3 Theory formation and development

As the study proposes the development of a body of theory on the institutional origins and character of BEE, it is important to first consider what theory is and how it is best formulated.

Sabatier (2007a:321) defines theory as “a logically related set of propositions that seeks to explain a fairly general set of phenomena”. He further

advances the following criteria that should be observed in the design and development of a theory:

- The theory should be logically coherent. There should be clear definition of the key elements of the theory and a consistent, logical explanation as to manner in which these elements relate to one another.
- There should be clarity as to factors that facilitate change within the subject under study. The identification of such causal drivers provides insight into the manner of development of the phenomenon under investigation and its possible reaction to change influences.
- In accordance with the tenets of scientific research, major propositions of the theory should be empirically falsifiable.
- The scope of the theory to be developed should be clearly stated and should be broad enough to accommodate all key elements in the field of study.
- The theory should be fertile. It should have the capacity to develop in terms of its own scope as well as its interpretive capacities.

Ostrom (2005:Loc. 804) has developed a useful taxonomy for managing research processes that involve the development of theory. She identifies three levels of enquiry, nested in one another, that range from the general to the specific.

- Frameworks: At the broadest level, frameworks provide a metatheoretical structure for the enquiry itself and for comparisons between diverse bodies of theory. “They help to identify the *universal* elements that any relevant theory would need to include . . . and help the analyst generate the questions that need to be addressed when first conducting an analysis”.
- Theories: Theories focus on relevant elements of the overarching framework, and thus assist in developing understanding as to the phenomenon under study. In using such established theories, the

researcher can develop informed assumptions as to the nature and effects of the focal elements of a study.

- **Models:** Models are used to study specific elements or assumptions contained in a body of theory.

As discussed above, the concept of the institution presented itself as an appropriate medium for framing the BEE phenomenon, and exploration of the literature on institution theory resulted in the identification of Ostrom's IAD theory (2005) as an ideal metatheoretical framework for the study.

Through a review of literature on the key themes of public policy, political economy, and economic change, two other bodies of theory were identified to assist in the interpretation of specific elements within this metatheoretical framework. These are, the theory on violence and social order by North et al. (2009) and the theory of the role of social construction in public policy design, developed by Ingram, Schneider, and deLeon (2007). These three theoretical frameworks are explored in the following sections of the chapter.

3.3.1 The Institutional Analysis and Development (IAD) framework

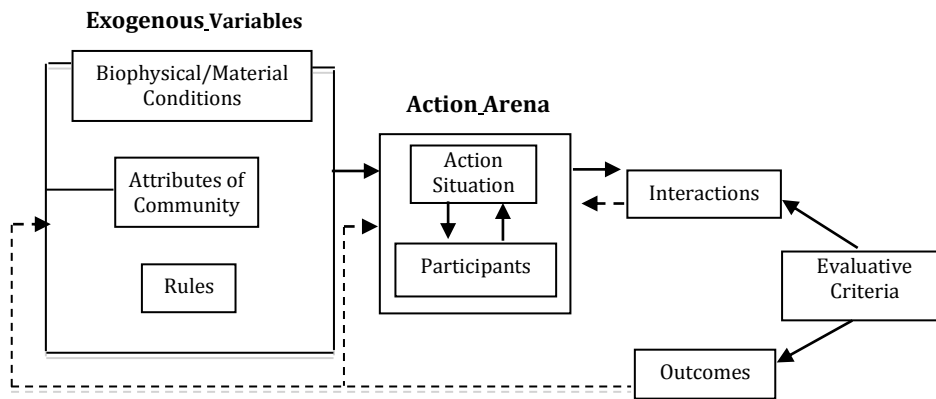
Ostrom's (2005) IAD framework provides a vehicle for the identification of key variables in an institutional process and for the interpretation of relationships between these variables.

Overview of the framework

A principle underlying the IAD framework is that all institutions are built upon, and nested within, other institutions. The IAD framework is, therefore, an abstract attempt to catch a momentary glimpse of one institutional process operating within a wider, hugely complex, interplay of institutions (Ibid.).

As may be observed in Figure 3.1 below, there are two key parts to the IAD framework, the exogenous variables and the action arena.

Figure 3.1: The IAD framework for institutional analysis



Source: Ostrom, E. (2005). *Understanding Institutional Diversity*. Princeton: Princeton University Press. Loc. 536.

The action arena constitutes the core of the model and comprises the Action Situation in which the activity in question takes place, and the various Participants involved in that process. Participants may be individuals, groups or organisations.

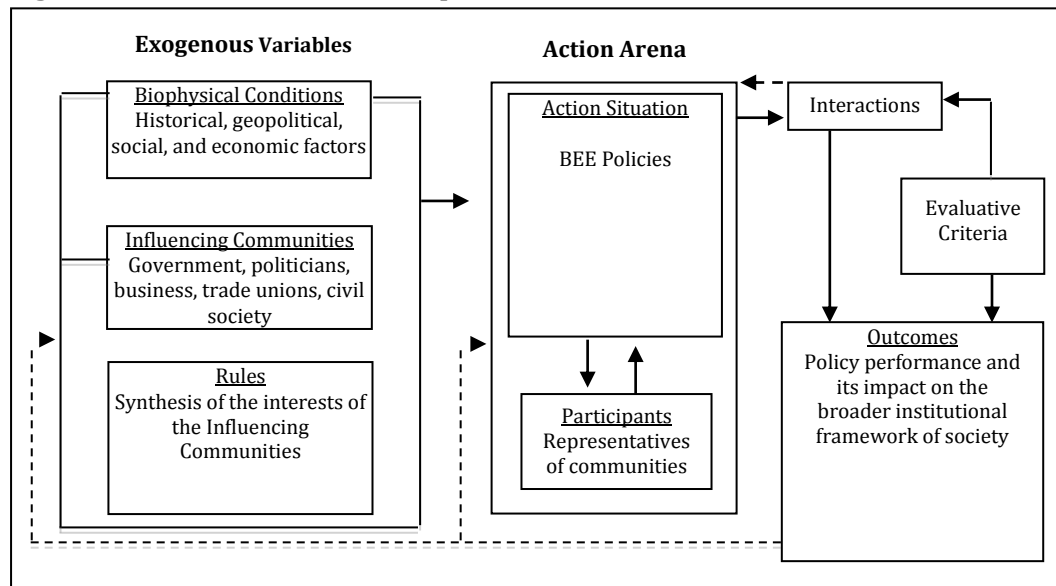
The exogenous variables in an institutional process give rise to the existence of a particular action arena and continue to influence processes within that action arena. While the range of exogenous variables can be infinite, Ostrom (2005) identifies three key groupings: the socio-political environment in which the institution is operating, the various communities and organisations that are involved, and the broader cultural ‘soup’ in which all these elements float around and interact. The model also incorporates a process of feedback whereby outcomes of activities in the action arena are fed back to all parts of the framework reflecting an institutional environment that is constantly in flux.

The study at hand has two objectives. The first is to address shortcomings in the contemporary, narrow, conceptualisations of BEE that commonly present it, simplistically, as a framework of public policies. The second is to understand the influence of BEE on the broader political economy of the country.

The first task involves locating BEE against the background of the IAD theoretical framework. The second stage involves an exploration of the manner in which the various elements of the model, applied to BEE, react to and

influence one another. Figure 3.2 presents the IAD framework adapted to the objectives of this study.

Figure 3.2: The IAD framework adapted to BEE



Adapted from: Ostrom, E. (2005). *Understanding Institutional Diversity*. Princeton: Princeton University Press. Loc. 536.

The BEE action arena

The BEE action arena is defined as the contemporary BEE policy environment. This incorporates the extant policy framework and the day-to-day processes of administration, implementation, assessment, and reform of that framework. Participants are those people and organisations that are party to these processes or who are involved in debate, discussion, evaluation, or research on the subject of BEE.

As noted earlier, most of the research conducted to date on BEE has been focused within the action arena. The starting point for such research has invariably been the view that BEE is a policy, and the researchers have typically sought to consider questions regarding the performance characteristics of a particular instruments such as B-BBEE or affirmative action (Consulta, 2007; Mbabane, 2007; Andrews, 2008), or to consider the effects of policies from the view of particular communities of participants (Southall, 2004a; Du Toit et al., 2008; Cliffe Dekker, 2011).

Exogenous variables that influenced the BEE action arena

Exogenous variables of relevance to the institutional framework of BEE include local and international social, political, and economic influences brought to bear on the leadership of society at the time of the transition; the constitution of this leadership and changes thereto; and changes in the broad framework of rules that governed society at the time.

Such is the complex nature of institutional phenomena (Hodgson, 2006), it would be impossible to account for each and every influence that gave rise to a particular institution or process within the framework of BEE policy. However, certain events and processes can be identified as having been particularly instrumental. These include the political and economic reform policies of the late apartheid era that gave rise to various programmes for the advancement of black people, albeit selectively (Lipton, 1986; Smollan, 1986; Browning, 1989); the development of the black trade union movement in the 1980s (von Holdt, 2003); and the instrumental role played by BEE in the development of a post-apartheid business-state relationship.

A few authors have sought to move out of the action arena and explore BEE in a broader context, thus providing some insight into the institutional underpinnings of BEE. Verhoef (2003), for example, reviews the history of a large insurance company that was active in developing affirmative action programmes in the late 1980s and early 1990s. Her study not only serves to empirically demonstrate the origins of BEE in the reformist practices of the late apartheid era, but also provides insight into the role played by early BEE programmes in facilitating relations between the new political and old-established business elites. Southall (2006:67) explores BEE from a political science perspective and finds that it represents “a logical unfolding of strategy . . . dictated by the ANC’s own history, the nature of the democratic settlement of 1994 and the structure of the white-dominated economy”. Finally, Butler (2011) explores the apparent historical antecedents to BEE in the late-apartheid era and notes the influence of early black advancement policies initiated by business and the unbanning of black trade unions by the government of the day.

While these authors appear not to have pursued these lines of enquiry, at least not within the context of BEE, their publications had a seminal influence on the design of this thesis in that they served to focus attention on relevant and productive issues, namely, the influence of political and economic reform policies of the late apartheid era, the influence of changes in power relations between political and economic elites, and the need to approach the study of BEE in a complex fashion, focusing concurrently on a diversity of political and economic themes.

Another important 'door-opener' work was the report compiled by Canadian International Development Agency representative, Marc Van Ameringen (1995), who was seconded to assist the ANC and its liberation movement partners with the development of policy in the period immediately after its unbanning. While it is no secret that the ANC had been taken by surprise by its unbanning, this publication laid bare the lack of preparedness, and the internal communication and capacity challenges within the liberation movement at the time. This candid record, therefore, raised many questions about the role of liberation movement players in BEE policy formation, both pre- and post - 1994.

The system of beliefs and values, or rules, that the leadership of society agree to constitutes a fundamental element of the IAD framework theory. Ostrom (2005:Loc.594) defines these rules as "shared understandings by participants about *enforced* prescriptions concerning what actions (or outcomes) are *required, prohibited, or permitted*". Drawing on Black (1962), Ostrom identifies four categories of rules, as follows:

- Regulations: Rules that are laid down by a recognised authority that seek to guide and control particular forms of action or behaviour. Regulatory rules are clearly defined and can be enforced, broken, complied with, changed or revoked. Examples would be legislative acts, policy documents or established rules for the playing of a sport.

- Instructions: These are rules that propose a particular course of action and are not enforced by any authority. Helpful advice and strategies for action would fit in this category.
- Precepts: Precepts constitute culturally-based guidelines for socially desirable conduct or action. This type of rule is especially relevant in South Africa where society is characterised by a lack of demographic homogeneity. This gives rise to a situation where there can be very diverse views on a particular subject.
- Principles and physical laws: These constitute immutable truths and testable propositions. Examples would be the geographical location of South Africa relative to Europe and the consequent negative impact on trade with European countries. Alternately, the proposition that black South Africans would likely be more in favour of BEE policies than white South Africans.

These categories of rules are not mutually exclusive, a point that is especially relevant in the case of BEE. Rules are subject to “shared systems of understanding” (Ibid.) which means that even the most minutely defined regulation will still be subject to the culturally-driven precepts of the diverse communities that constitute any action arena in South African society. An example of this would be the common criticism of government and black business that, despite having been party to the formulation of BEE policies, the established business community approaches it from the perspective of compliance and ‘ticking boxes’ (Radebe, 2010; Speckman, 2011; DTI, 2013). Meanwhile, the government and black business communities, and likely the community of unempowered black citizens, interpret BEE policy compliance as something that must result in a fundamental change in the order of society. Neither view can be faulted; each one simply represents a difference in perspective with regard to the rules of the game.

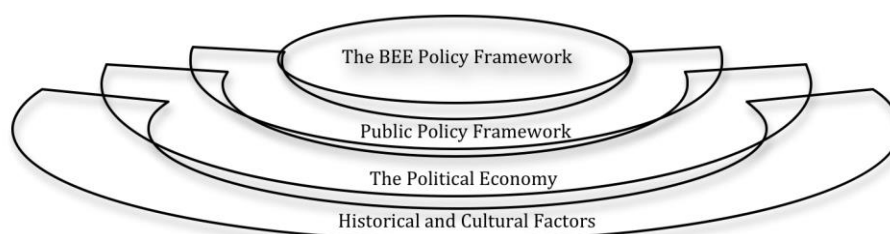
As an aid to better understanding such underlying processes, Ostrom (2005:Loc.641) proposes that researchers seek to “dig under surface behaviour

to obtain a good understanding of what rules participants in a situation are following”. These working rules will frequently differ substantially from the formal rule structure that participants claim to be following.

Of particular relevance to this study is the nested character of institutional rules of which Ostrom (2007) identifies three categories. At the top of the hierarchy are constitutional rules that are largely unwritten and invisible and which result from the interaction of high-level institutions in society. These rules set the framework for the next level where rules are consciously formulated through processes of collective action. Finally, the operational rules deal with the detail of implementation and are highly visible. Ostrom (Ibid.) contends that one cannot fully interpret rule-making at the collective action and operational levels, in the absence of consideration of the higher levels of influence.

This concept of the hierarchical and nested nature of rules, as related to the BEE environment, is depicted in Figure 3.3, below.

Figure 3.3: The hierarchical and nested structure of BEE rules



As indicated in the Figure, the BEE policy framework is nested within the broader public policy framework which, in turn, is influenced by material and social considerations in the broader political economy and, ultimately, by historical circumstances and powerful cultural influences. This study seeks to explore BEE across all these levels whereas much of the research to date has sought answers only within the highest two levels.

It is a relatively straightforward exercise to explore the detail of a public policy and even to pursue the roots of a particular policy framework through history. What is altogether more difficult, however, is to identify and understand

the historical social processes that were in play in the past and that gave rise to a particular institutional process and a specific policy instrument. Public policy formation simply involves too many actors pursuing too many agendas, in too many different contexts, and over too long a period of time for anyone to accurately portray the full origins and development path of any public policy framework (Kingdon, 1995; Sabatier, 2007a). Thus, while Verhoef (2003) presents much useful detail to support her account of the role played by the Sanlam insurance company in the development of BEE policy, this cannot explain how the model came to gain such traction in the political economy of the day, more especially when it ran so contrary to the espoused plans and values of the ANC (1990; Cargill, 2010:Ch 1). Neither does it explain how this early model survived and grew to eventually become the dominant characteristic of the overall BEE policy framework.

The way forward is to be found in the Ostrom taxonomy of theory formation that was discussed earlier in this chapter. Ostrom (2005:Loc.804) posits that, when moving beyond simple exploration of an observable phenomenon, and into the realms of supposition, “a scholar needs to select one or more theories to use in generating predictions about expected patterns of relationships”.

Two theories are applied in this study as a basis for interpreting the early origins and development path of BEE policy; the North et al. (2009) theory on violence and the development of social order, and the Ingram et al. (2007) theory on the social construction of public policy. These two theories are discussed in the following sections.

3.4 The North, Wallis and Weingast theory on violence and social order

The Nobel laureate and economist Douglass North (1981, 1990; 1994; 2005) has long been known for his work on the role of institutions as agents of economic change. In 2009, North, in association with fellow economist John

Wallis and political scientist Barry Weingast, published a new theoretical framework for interpreting the manner in which societies develop.

The North et al. (2009) theory has been generally well-received across disciplinary boundaries (Harley, 2010; Kiewiet, 2010; Garzarelli, 2011; Delanty, 2012), and even those critics who express some concerns regarding a lack of disciplinary rigour (Haaga, 2010), or a lack of empirical content (Snyder, 2010; Seeberg, 2013), acknowledge the exceptional contribution of the work. The theory has been the subject of a World Bank-sponsored research project spanning several countries (North, Wallis, Webb & Weingast, 2007), and the first collection of country case studies from this project affirmed the value of the theory as a vehicle for interpreting development patterns in a variety of contexts (North, Wallis, Webb & Weingast, 2012; You, 2012).

The value of the North et al. (2009) theory to this study lies not only in demonstrating how South Africa might improve its prospects for economic development, but also in providing a theoretical framework for understanding how BEE emerged as an institutional response to changes in the South African political economy of the late apartheid era and how it subsequently evolved with changes in the elite structures of post-apartheid society.

Brief overview of the theory

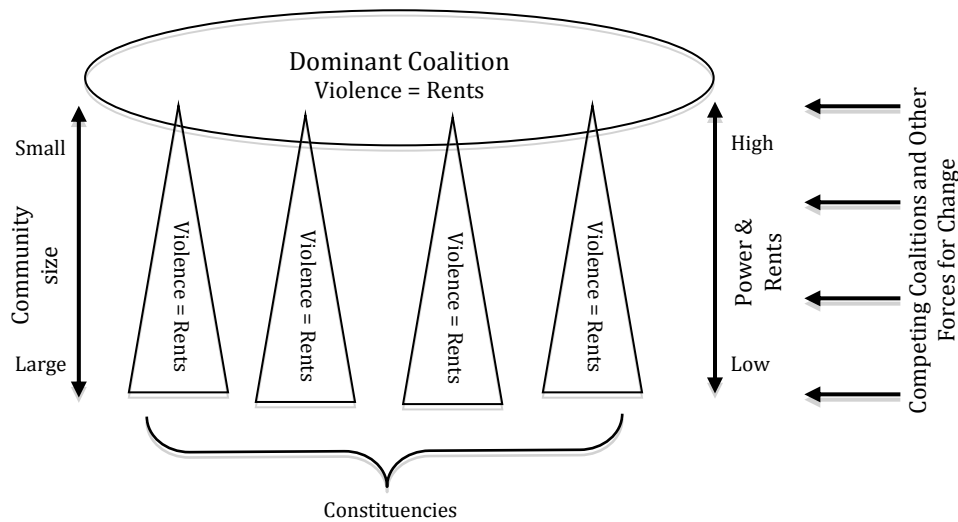
The North et al. (Ibid.) theory on violence and social order is premised on the view that violence is endemic to all human social relations. It posits that social orders emerge when leaders collectively agree to control their capacity to foment violence toward one another, in exchange for a share of such rents as the resulting social order can generate. In contrast with many other theorists such as Fischer (2006) and Williamson (2010) who frame rents as fundamentally undesirable and unproductive, North et al. (2009:30) assert that “rents provide the glue” that holds developing country polities together and that to interfere with rent-producing mechanisms can upset the delicate balance of elite relations and cause major disruption in the order of society. This assertion has great relevance to the interpretation of the BEE phenomenon.

North et al. (Ibid.) identify two forms of social order in the world today, the Natural State or Limited Access Order (LAO) and the Open Access Order (OAO), which descriptions conform broadly to the concepts of the developing and developed country model, respectively. These categorisations represent extremes on a continuum and the authors stress that most polities embody elements of both, the essential difference being the extent to which the leadership, or dominant coalition, of a polity has devolved power to the general population.

The limited access order or natural state emerged in the first social revolution. Personal relationships, who one is and who one knows, form the basis for social organization and constitute the arena for social interaction, particularly personal relationships among powerful individuals. Natural states [or LAOs] limit the ability of individuals to form organizations. In the open access orders that emerged in the second social revolution, personal relations still matter, but impersonal categories of individuals, often called citizens, interact over wide areas of social behaviour with no need to be cognizant of the individual identity of their partners. Identity, which in natural states is inherently personal, becomes defined as a set of impersonal characteristics in open access orders. The ability to form organisations that the larger society supports is open to everyone who meets a set of minimal and impersonal criteria. Both social orders have public and private organizations, but natural states limit access to those organizations whereas open access societies do not (North et al., 2009:2).

Following from this, within every dominant coalition, whether in an LAO or OAO, there exist political elites who control access to the rent-generating resources of the state, and commercial elites who are granted access to those resources in exchange for a portion of the rents generated. However, in the OAO and the more developed forms of the LAO, elite influence and control is constrained by the more devolved nature of the political order. South Africa generally conforms to the concept of the LAO, the key elements of which are depicted in Figure 3.4.

Figure 3.4: The basic LAO polity structure



It is important to note that the LAO is a nested concept and thus each constituency represented in the model above would constitute a mini-LAO in its own right, complete with a dominant coalition, its own set of constituencies, and range of external threats. At every level, and within every constituency, the basic glue that holds the social order together is the balance that is maintained between the power of a particular constituency to either foment violence, and try to take all the available rents for itself, or to participate with other constituencies and share in the distribution of such rents as the jointly-administered social order might generate. Therefore, as emphasised in the earlier quotation by North et al. (Ibid.), the ability to form organisations and to act collectively is the key instrument by which internal order is maintained in the LAO.

At the same time, the capacities of the members of the dominant coalition are finite and they inevitably have to delegate some powers and processes in order to manage the burden of administration and facilitate growth in the economy (Ibid.). This devolution requires the creation of formal institutions and organisations that can function independently of the personal control of members of the Coalition and these will, necessarily, be populated and operated by members of the non-elite. It is primarily through the medium of such elite-sponsored institutions and organisations that power and influence is devolved to non-elites in an LAO polity, and it is through this medium that they eventually develop the capacity to demand a greater share of rents and, ultimately,

inclusion in the ranks of the dominant coalition. As will be discussed in Chapter 8, this particular aspect of the theory provides an explanation for the manner in which the early form of BEE policy evolved into B-BBEE policy and why B-BBEE policy is constantly under review.

The LAO does not constitute an homogenous category and North et al. (2009) identify three stages on the continuum that reflect the extent to which the institutional framework of a polity is subject to the personal control or influence of members of the dominant coalition. These categories have been shown to correlate with development capacity, and a state can move backwards and forwards through them with consequent implications for their social and economic development.

- The fragile LAO is one in which there is instability in the structures of the leadership elite itself, the members of which have not yet managed to establish stable relationships. Society cannot function effectively amid such instability and economic development prospects, consequently, are poor. Somalia and Libya would constitute contemporary examples of such states.
- The basic LAO is one in which the elite has managed to achieve such agreement and stability as permits the formation of a state, but this state is too weak to provide the necessary institutional support for organisations to exist independently of it, or the leadership simply does not want to allow such development. Thus, while private businesses and other types of organisation may come into existence, these remain dependent for their survival on their links to the ruling coalition. Development is thus largely limited to such economic activity as can be generated by organs of state and by businesses with elite connections. Examples would be Zimbabwe, North Korea and Haiti.
- Finally, the mature LAO is characterised as one in which the state itself is structured around permanent, impersonal institutions that can survive changes in the structure of the dominant coalition. The state, furthermore, supports the development of institutional frameworks such

as permit a broad range of organisations to exist, independent of the state itself. The development potential of a mature LAO is limited only by the range and quality of its human capacity and institutions.

South Africa qualifies primarily as a mature LAO, due to the diversity and independence of its institutions. However, as observed by Southall (2013:Chapter 11 & Conclusions) in his comparative study of southern African liberation movements in power, there is much evidence to suggest a trend toward increased control over the polity by the ANC government and the increasing centralisation of power within the person of the President. Indeed, these observations were starkly confirmed during the annual State of the Nation Address in February 2015.

At this event, two members of the small, vocal Economic Freedom Fighters party refused to back down on demands that the State President respond to their questions regarding the alleged use of public funds to make alterations to his private residence. The Speaker of the House ruled their questions out of order and, when they would not be silenced, parliamentary security was called to forcibly removed all the Economic Freedom Fighters party members from parliament. It later transpired that some of these security personnel were members of the South African Police Service, dressed in the uniform of the parliamentary security corps. This led to all the members of the official opposition, Democratic Alliance, and of one other small opposition party, to also leave in the face of a refusal by the Speaker of the House to acknowledge a question regarding the unconstitutionality of police being used in this fashion. Arguably of greatest importance, in terms of the North et al. (2009) classifications, was the fact that ANC members applauded the removal and departure of the opposition members while the President, himself, recommenced his speech with an audible chuckle (Munusamy, 2015; The Times, 2015a).

It is impossible, however, to discuss the South African polity as a unitary concept since approximately 37% of the population lives under the system of traditional governance (HDA, 2013), a system that would certainly conform

more to the model of the basic LAO. Traditional governance is structured around the authority and control of particular individuals and there exists relatively little in the way of formalised processes that operate independently of the involvement of these chiefs and headmen (see Chapter 6). It is also apparent that laws such as the Traditional Leadership and Governance Policy Framework Act and amendments thereto (RSA, 2003, 2009), the now-repealed Communal Land Rights Act (RSA, 2004b), and the Traditional Courts Bill (RSA, 2012b) have been designed to strengthen rather than modernise the institution of traditional leadership, and thus shore up that constituency's position within the dominant coalition and in the distribution of rents (Ntsebeza, 2005; Claassens, 2014; Gasa, 2014).

It is beyond the ambit of this thesis to debate the direction in which the South African polity is moving, but what is of relevance is the influence of the various BEE policies in strengthening or weakening the institutional framework of society and the likely effect this could have on prospects for development. While there is much public criticism of BEE policy as a vehicle for elite collusion and enrichment (Bond, 2005; Ngcobo, 2010; *The Economist*, 2010a), it must be remembered that the basic logic of any LAO is that of a polity in which elites control all the rents (North et al., 2009). What matters, therefore, is not that elites control the stream of rents but, rather, what they do with the rents they receive.

Thus, while BEE is presented as a policy framework that seeks to facilitate the greater economic inclusion and advancement of people discriminated against under apartheid (RSA, 2004a), there exists much variance in the extent to which the various BEE policies support this objective. Some policies, such as employment equity and the enterprise development element of B-BBEE are clearly developmental in nature in that they aim to capacitate non-elites and aid their greater inclusion. Others, such as those that engender opaque ownership deals that transform politicians from paupers to billionaires inside two decades (Butler, 2008; Naidoo & Hill, 2010; *The Economist*, 2013), or policies that seek to entrench the rights of traditional leaders are patently less so.

3.4.1 The particular relevance of the North et al. theory to this study

The model of the LAO as an unstable coalition of elites, manipulating the resources of the polity for their collective benefit, has great utility for this study. The history of South Africa has been one in which consecutive governments have cooperated closely with powerful private-sector elites, less in the interests of the broad body of citizens than in the interests of that collective leadership (Terreblanche, 2002; Handley, 2008). While this was most evident amid the racial segregationist policies of the apartheid era, examples abound in the contemporary political economy where senior political figures compete for positions on corporate boards, big business bankrolls political parties, public servants neglect their duties without censure, trade unions are institutional investors, and the police are used to violently subdue labour disputes in the private sector (Bond, 2005; Radebe, 2011b; Seccombe, 2012; Alexander, 2013; Auditor General, 2014; Crotty, 2014; Mantshantsha, 2014).

The concept that access to the ability to form organisations constitutes a basic requirement for political and economic development also has considerable value. An example would be the unbanning of black trade unions in the late 1970s and the subsequent rise of that movement to a place in the post-apartheid government (von Holdt, 2003). This aspect of the theory also holds intriguing possibilities as a medium for exploring the differential performance of various BEE policies, for example the continued failure of policies that seek to uplift rural people, as opposed to the relative successes achieved with those policies that aim to advance urban dwellers (Consulta, 2007; FinScope, 2010; Hall, 2010; CEE, 2014).

Of greatest utility, however, is the potential for the North et al. (2009) theory to plausibly explain how BEE emerged in the late apartheid era in response to changes in the political order of the day, and later how it evolved in line with changes in the structure of power relations in society. These matters are addressed more fully in Chapter 7.

3.5 Public policy and the theory of the social construction of public policy design

The North et al. (Ibid.) theoretical framework is also supported by theory in the field of public policy. There is consensus among public policy theorists that while governments exert the ultimate authority over public policy formation, in democratic orders the initiative for policy typically emanates from powerful interest groups outside of government. Such initiatives are then subject to multiple influences, over a long period of time, before finally being adopted and formalised by government (Feldman, 1989; Ho, 2000; Sabatier, 2007a).

Kingdon (1995) proposes a useful conceptual model that captures the complexity and fluidity of the policy development process. The essence of this model is that policy proposals are adopted and enacted when the ongoing efforts of lobbyists happen to coalesce with momentary windows of opportunity. These windows of opportunity open arbitrarily as a result of problems and political pressures that arise in the lives of those politicians and government employees with the power to support or impede policy initiatives.

Building on this notion of the arbitrary nature of the policy process, Feldman (1989) highlights the paradoxical manner in which much quality information is developed within government to inform potential policy positions, only to be ignored in many instances at the actual point of policy selection and design. Responding to this phenomenon and, based on the experience of successful East Asian polities, Rodrik (1997) asserts that it is less the content of policies that results in success and more the manner in which the policies are enacted and administered.

These views are reflected in the public policy environment of South Africa. The late apartheid and early post-apartheid eras witnessed rapid and widespread changes in policy that were often influenced more by ideology, political expediency, and lobbying than by any master plan for development, a situation that has continued in recent years as evidenced by the debate around, and regular review of, strategic economic policy frameworks (ANC, 1994c; Van Ameringen, 1995; Treasury, 1996; EDD, 2010; NPC, 2011; ANC, 2012a; Malala, 2012; Sparks, 2012; Freund, 2013; The Economist, 2014). As explored in some

detail in this study, the situation is no different in the case of the BEE environment where ongoing policy reform and instability is so much part of the scene that it could almost be said to have become institutionalised.

The result is that the contemporary legislative and policy space is variously praised, as in the case of the Constitution (Sachs, 2007; Friedman, 2010a), or heavily criticised, as in the case of BEE policy (Andrews, 2008; Ramphele, 2008a; BMF, 2011b; Makinana, 2011; Business Day, 2012a; Louw, 2014b), but there is general criticism as to the manner in which public policy is actually administered (Vincent, 2011; Boyle, 2012; Cronje, 2012; Chipkin, 2013).

This critique generally cites human resource limitations in the public sector and allegations of corruption and cronyism (Boyle, 2009; Ndaba, 2011; Auditor General, 2012; Business Day, 2012b; Chipkin, 2013), but problems also exist with regard to the breadth and quality of information available to policymakers. Freund (2009), for example, has observed a large reduction in the volume of research in the field of critical political economy in the period since 1994, and Stolten (2007) notes a similar reduction in the study of history, both of which disciplines are critical in informing the process of societal development and economic policymaking.

Against the background of this critique it is important that this study considers the process of policymaking in the BEE arena. An understanding as to this process is also important in developing an understanding of the manner in which BEE policy effects change in the ordering of society, as is explored in the following section.

3.5.1 The Ingram, Schneider and deLeon theory on the social construction of public policy design

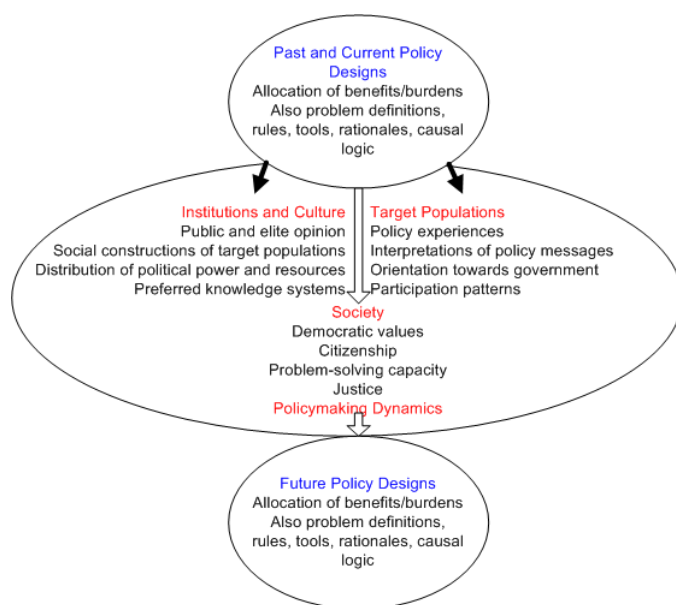
Given that public policy is the instrument by which elites manage the social order and thus the distribution of rents between themselves and their constituencies (North et al., 2009), the Ingram et al. (2007) Social Construction of Target Populations (SCTP) theoretical framework provides insight into how elites go about the process of formulating policy so as achieve or maintain the desired societal structure.

A social constructionist perspective on public policy design is premised on the assumption that when formulating public policy initiatives, policymaking elites “typically socially construct target populations in positive or negative terms and distribute benefits and burdens so as to reflect and perpetuate these constructions” (Ingram et al., 2007:92). Thus, as public policy is generally a response by government to problems that are brought to its attention by outsiders (Sabatier, 2007a), the character of a proposed policy will be influenced by the circumstances, values, and beliefs of the policy advocates and their assessment as to who should, and should not, benefit from the new policy.

Government bureaucrats and politicians are, of course, not at the complete mercy of policy advocates and will have their own beliefs and biases that influence the character of the policy framework. They also must take reigning public opinion into account. Policy advocates will, however, have sought to incorporate such preferences into the proposed intervention. As noted by Kingdon (1995:Chapter 6), one of the key attributes of the policy entrepreneur or lobbyist is that he/she be familiar with the perceptions and perspectives of policymakers to ensure that policy initiatives are packaged and promoted in a manner that fits with these beliefs, including how policymakers perceive the various communities in society.

As observed previously in discussion on the IAD framework (Ostrom, 2005), the parties involved in a policy development process, and indeed the resultant policy instrument, are subject to myriad social influences that affect decision-making and which render policy outcomes almost impossible to forecast. As per Figure 3.5 Ingram et al. (2007:96) further highlight this social contextual character of the policymaking process, noting how “past and current policy designs have shaped the entire societal context . . . the vision of citizenship, the problem-solving capacity of society, and the understanding of justice”.

Figure 3.5: The social construction of policy design



Source: Ingram, H., Schneider, A. L. & deLeon, P. (2007). Social Construction and Policy Design. In Sabatier, P. A. (ed.) *Theories of the Policy Process*. P. 96.

It stands to reason, therefore, that the task of interpreting and conceptualising a contemporary policy instrument, such as BEE, must necessarily take into account antecedent influences in the broader policy framework that, furthermore, must be considered in the social and institutional context of the day and not the obviously different context of today.

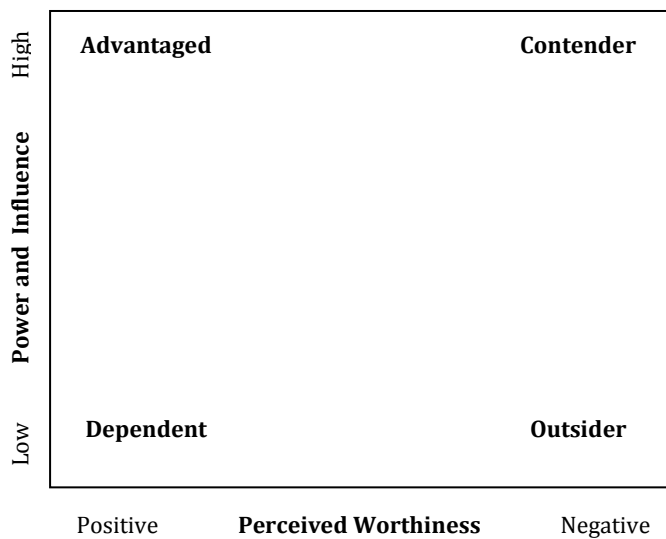
Another important principle underlying the SCTP framework is that when one community benefits from a policy, some other community will always be disadvantaged. Thus, for example, the implementation of employment equity policy will necessarily mean that a black person will sometimes be advantaged over a white person, by way of addressing previous discriminatory practices (RSA, 1998b) or, in the case of policies for the funding of black business, that funds diverted to help finance black business will mean some other project is going to suffer a lack of potential funding.

It can, however, be difficult for policymakers to determine how a particular policy will work in practice and it is not uncommon for policies to unintentionally benefit or sanction the wrong party (Ingram et al., 2007). Such problematic outcomes have been very evident in South Africa in the post-

apartheid era where much policymaking has focused on the objective of improving the economic circumstances of black people but, despite these efforts, the per capita wealth of the white community has grown at a far faster rate than that of blacks (see Chapter 1).

In developing the SCTP framework, Ingram et al. (Ibid.) identified two mediating factors that affect the way policymakers view the general population and that also guide policymakers' decisions regarding who should benefit from a new policy instrument and who not. The one factor relates to the perceived power and influence of the target community concerned and the other represents the perceived worthiness of that community, in the eyes of the policymaker.

Figure 3.6: Ingram et al. model of the social construction of target groups in policymaking process



Source: Adapted from Ingram, H., Schneider, A., L. & deLeon, P. (2007). Social Construction and Policy Design. In Sabatier, P. A. (ed.) *Theories of the Policy Process*. P. 102.

Arising from the intersection of these dimensions, Ingram et al. (Ibid.) identify four general categories into which the subjects or target groups of a policymaking process are categorised by policymakers, with each categorisation determining the manner in which a community will be viewed with respect to the formulation and implementation of new policy and thus their social and economic prospects. The categories are defined as follows:

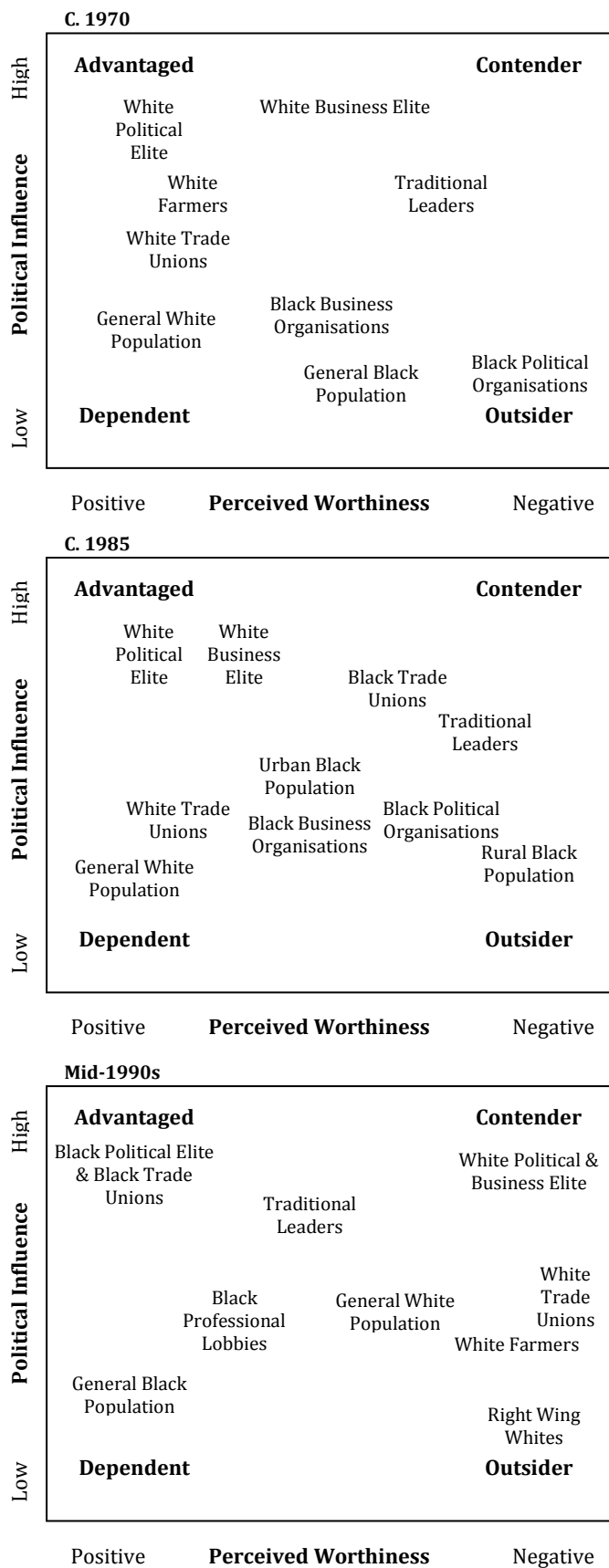
- Those framed as advantaged are powerful, influential people and organisations that are generally considered to be deserving of benefits and who are subject to few sanctions. Where sanctions are imposed on advantaged communities, they can comfortably accommodate such injunction and, in some instances, even use their power to ignore or challenge the application thereof.
- Contenders are rich, powerful people and organisations that possess such resources and influence that their support is necessary to policymakers. However, as their perceived social worthiness is low, policymakers cannot be seen to be promoting their interests. Contenders suffer much from the rhetoric of policymakers but such is their power, this rhetoric rarely translates into real sanction.
- Dependents are viewed as worthy, although they generally lack the power and influence necessary to strongly advance their interests. This weakness is offset by virtue of the fact that the support of dependents is usually important to the advantaged elite and, therefore, this constituency is normally positively constructed in the eyes of policymakers.
- The last group, the outsiders, are those perceived by policymakers to be so lacking in power and influence as not to be of any interest to the elite. Importantly, the low worthiness status and limited power of outsider groups sometimes make them a target for the negative attention of policymakers in need of a 'whipping dog'. Public opinion is also usually negative toward outsiders, and government can thus 'legitimately' reduce benefits to this group and reallocate them to dependents or to the advantaged.

In the process of formulating policy, and in framing people according to these four categories, policymakers effectively create or deny opportunity to those parties whose circumstances are affected by a particular policy. However, as most policymaking emanates from, and is managed within, the advantaged community, policy is generally formulated in line with the interests of such

groups, despite espoused intentions that often premise the welfare of dependent groupings (Ingram et al., 2007).

The diagrams in Figure 3.7 represent three periods in South Africa's history: the period around 1970 before major reform policies began to be implemented, the period around the mid-1980s when reform policies effected important, albeit incremental, changes, and the period around the mid-1990s when the new political order had largely taken shape and BEE policy development was well underway. The changed position of the various communities in the diagrams reflect changes in the elite structure of South African society, over time, and consequent changes in the social construction of the various communities in society. The diagrams provide a medium for understanding the changing nature of the public policy environment in South Africa and the drivers of much BEE policy.

Figure 3.7: Changes in the social construction of South African society



Source: Adapted from Ingram, H., Schneider, A., L. & deLeon, P. (2007). Social Construction and Policy Design. In Sabatier, P. A. (ed.) *Theories of the Policy Process*. P.102.

- Diagram 1. In the period around 1970, public policy formation was under the control and influence of a white political and economic elite who premised their policy designs on a generally positive construction of white people, white business, and white trade unions. Black people were not perceived as being as important or worthy with the result that much policy actively discriminated against their interests. One important exception to this framing was the community of black traditional leaders whose support was necessary to ensure the integrity of the apartheid system.
- Diagram 2. By the mid 1980s, elite opinion regarding black people had changed substantially, driven by the need to address widespread political and economic disruption. Government policymakers were now more prepared to take account of the status of some constituencies within the black population. Black trade unions were unbanned while health, education, housing, and labour policies were reformed, albeit mainly for urban blacks. Conditions for rural blacks generally declined. Government also altered its perception as to the worthiness of black political movements as their power increased. Public policymaking changed as a result of these reframing processes, ultimately resulting in the unbanning of the ANC in 1990, thus paving the way for a radical restructure of the South African social order, post 1994.
- Diagram 3. By the mid 1990s, huge changes had taken place in the leadership elite and political structure of South African society and the framing of target populations had shifted accordingly. The government was now black and its primary constituency was the black population. Black trade unions became a partner with the government and thus augmented their power enormously. The established white business community remained politically influential by virtue of the links it had established with the political elite, not least through the medium of BEE, and also by virtue of its continued control of the economy. However, the established business community was framed as a necessary evil in need of transformation, rather than an ally. Those parties that had established

organisational representation by the time of the transition fared better than those who had not. Thus traditional leaders and parts of the black business community were in a good position to lobby for their interests. By comparison, rural blacks who had evolved little power or organisational capacity found their interests being placed behind those of other, more powerful groups, despite government rhetoric that acknowledged their impoverished circumstances. Arguably, the biggest change in position in the post-apartheid era was that of the white commercial farming fraternity that found itself framed in very negative terms after 1994, and the object of much negative treatment at the hands of policymakers.

A general point to note about policymaking in the post-apartheid era is the extent to which race has continued to be a legitimate factor in the social constructions applied by policymakers. This is not surprising considering the history of South Africa and the fact that public policy is always heavily-influenced by the pre-existing policy framework and cultural mores (Ostrom, 2005). However, Ingram et al. (2007:105) cite research findings which suggest that “where policy tools are selected on the basis of social constructions [such as race] the resulting policy designs are more difficult to implement and less effective than they would otherwise be”. This point resonates with a particular theme in the critique of BEE policy which asserts that economic profiling would be a more appropriate basis for policy design than race (Alexander, 2007; Du Toit et al., 2008; Sartorius & Botha, 2008).

As LAO societies develop, ordinary citizens acquire the power to form organisations and to hold the governing elite to account (North et al., 2009). Being aware of this, the advantaged government elite will seek to ensure that its policies both satisfy and control the expectations of emergent elites and the broader community of dependent supporters (Figure 3.7). The underlying logic of the LAO polity is that people co-operate in return for a share of rents, and the share they can demand is in line with their power to be disruptive (Ibid.). Therefore, groups such as the BMF, traditional leaders, and large trade unions have been able to make heavy demands on the dominant coalition, while rural

communities with little power to cause significant disruption have seen little sustainable improvement in their circumstances.

This is not to say that government ignores less powerful dependent citizens. Being aware of the need to retain the votes of these weaker communities, government shares rents through such mediums as welfare payments, basic education and health care services, and discounted utilities. It also makes great use of the term empowerment.

3.6 Empowerment

The essence of the term empowerment refers to the sharing of power between the individual and the community (Rappaport, 1987; Perkins & Zimmerman, 1995). It emanates from the field of community psychology and is the subject of a vast literature in a wide variety of fields (Berger & Neuhaus, 1977; Rappaport, 1987; Conger & Kanungo, 1988; Friedmann, 1992; Fawcett, Paine-Andrews, Francisco, Schultz & et al., 1995; Perkins & Zimmerman, 1995; Rich, Edelstein, Hallman & Wandersman, 1995; Novak, 1996). Most surprisingly, the concept has received little attention in relation to BEE, which is evidenced in the paucity of literature and the normative manner in which the term is commonly conflated with notions of affirmative action, social justice, and redistribution.

Definitions of empowerment abound but Menon (2001:153) guards against “the implications of defining empowerment” which he asserts can limit understanding of the concept. Cornwall and Brock (2005:1044) also cite the problematic manner in which important concepts in the development discourse, such as empowerment, have become mere buzzwords and instruments of the “development industry”. The authors argue that these superficial framings inhibit meaningful appreciation of the underlying problems to which they refer. Bekker and Crous (1998) similarly note the problem of subjective definitions of empowerment in organisational settings.

Notwithstanding these risks, various definitions of the concept were explored in order to facilitate a better understanding of the notion of empowerment and its place in the development project in South Africa.

Perkins and Zimmerman (1995:569) define empowerment as “a construct that links individual strengths and competencies, natural helping systems, and proactive behaviours to social policy and social change”. A more expanded definition along the same lines is offered by Rappaport (1987), another psychologist, who stresses the dualistic nature of the concept.

The concept [of empowerment] suggests both individual determination over one’s life and democratic participation in the life of one’s community, often through mediating structures such as schools, neighbourhoods, churches, and other voluntary organizations. Empowerment conveys both a psychological sense of personal control or influence and a concern with actual social influence, political power, and legal rights. It is a multilevel construct applicable to individual citizens as well as to organizations and neighbourhoods; it suggests the study of people in context (Rappaport, 1987:121).

Zimmerman (2000) identifies three constituencies that are typically involved in the process of empowerment – the individual, the organisation, and the broader community. In this structure, the organisation is seen as the institutional framework that enables relations between the individual and the broader community. This conception is akin to that of Berger and Neuhaus (1977) who speak of the important role of mediating institutions in society that serve to empower or disempower individual citizens.

A key issue to be explored in this regard is the dual nature of empowerment as both a process and an outcome. Zimmerman (1995:583) describes empowering processes as follows:

. . . those where people create or are given opportunities to control their own destiny and influence the decisions that affect their lives. They are a series of experiences in which individuals learn to see a closer

correspondence between their goals and a sense of how to achieve them, gain greater access to and control over resources, and where people, organizations, and communities gain mastery over their lives.

Empowered outcomes, by comparison, refer to:

. . . specific measurement operations (whether they are quantitative or qualitative in nature) that may be used to study the effects of interventions designed to empower participants, investigate empowering processes and mechanisms, and generate a body of empirical literature that will help development empowerment theory (Ibid.).

McCarthy (2008) identifies three distinct perspectives on the study of empowerment, influenced by considerations of context and theoretical perspective. These are:

- Community empowerment. This perspective is focused in the broad socio-political arena and on questions of social justice, advocacy and issues pertaining to development. This category would include literature on public policy, development studies and politics.
- Psychological empowerment. This focuses on the factors or circumstances that give rise to individual and group feelings of being empowered or disempowered. The literature in this category is of a technical nature and focused largely within the field of psychology.
- Organisational empowerment. The focus in this perspective is on questions of organisation, power, and responsibility in the workplace and the influence of these effects on productivity and efficiency. This, the largest category, is home to the vast literature relating to organisational design and business management practice.

The evident lack of a definition of the term empowerment in any policy document or piece of legislation on BEE suggests that the term is indeed little more than a buzzword which, as Cornwall and Brock (2005:1043) assert, has been “harnessed in the service of ‘poverty reduction’ and decorated with the

clamours of 'civil society' and 'the voices of the poor'". In his book on the status of economic transformation in South Africa, Khosa (2001:2) supports this view of empowerment being used as a buzzword and adds that, "the dominant theoretical interpretations of empowerment impose limits and pander to the whim of neo-liberals".

From the foregoing discussion, the following elements of empowerment theory are deemed to be relevant to the study at hand:

- Empowerment is always a collective concept involving both a party to be empowered and an empowering party. Empowerment takes place when a link is established between two or more parties that serves to facilitate the sharing of power for the purpose of removing some pre-existing impediment or limitation (Rappaport, 1987).
- Empowerment is an institutional vehicle for the *sharing* of power and power is the capacity to influence people and situations.
- Following on this point, and of particular relevance to the discourse on BEE, there is an inherent assumption in empowerment theory that the empowered person already possesses skills and capacities but suffers an impediment to the use thereof. Empowerment is an institutional instrument that helps remove such impediments. It is not training, nor is it something that can be imposed. Empowerment cannot be effective where there is an absence of appropriate capacities to achieve an envisaged objective.
- Empowerment is never an end in itself but is conducted against the background of some personal limitation or proposed change in the social order. Such change processes commonly require the imposition of limitations on the actions or behaviour of one party, in order to create opportunity or benefits for another. Therefore, in many instances, the empowerment of one party will necessarily result in the imposition of limitations, or disempowerment, on another.

- The social context of empowerment means that issues of history and culture will always be relevant. Rappaport (1987) asserts the essentially human character of empowerment. While it is conceivable that one organisational entity may be perceived as empowering another, what is actually happening is that individuals within these organisational entities are sharing power to assist one another.

3.7 Summary

This chapter constitutes a review of the various theoretical frameworks to be applied in the study, along with relevant supporting literature. In the first place, Ostrom's IAD framework theory (2005) was presented as a medium for interpreting the character of the various policy frameworks to be explored in the study. The North et al. (2009) theory on violence and social order, and the Ingram et al. (2007) SCTP theory were reviewed as a basis for interpreting the role and influence of BEE policy on the broader political economy and on prospects for development. The chapter finishes with an exploration of the literature on the subject of empowerment.

Chapter Four

The background to BEE

4.1 Introduction

The origins of BEE are commonly ascribed to a few big business-initiated projects of the early 1990s which saw the creation of lucrative investment opportunities for well-connected black elites (BEECom, 2001; DTI, 2003; Verhoef, 2003; Acemoglu et al., 2007; Freund, 2007; Jack, 2007:Ch 1; Cargill, 2010). These projects are also presented by some as an attempt by business to exert undue influence over the path of post-apartheid economic policy (Marais, 1998:245; Terreblanche, 2002:133; Bond, 2005:39). In turn, these beliefs feed an equally ill-informed consensus that B-BBEE was an attempt to rectify shortcomings in this first phase of BEE policy formation (BEECom, 2001; Umrabulo, 2005; Chabane, Goldstein & Roberts, 2006; Jack, 2007:Ch 1).

Despite the pervasiveness of such versions of history, there has in fact been little in-depth exploration of these early, corporate-sponsored ventures or the circumstances that gave rise to them. Where such histories do exist, for example Randall (1996) and Verhoef (2003), they immediately call into question assumptions regarding a 'big-bang' explanation of the origins of BEE and, more explicitly, the notion that one or other party was captured, hoodwinked, or coerced.

The record of political and economic policy reform of the 1970s and 1980s (Lipton, 1986:Ch 3), and the outcomes thereof, also call into question the suggestion that BEE was the product of a premeditated project of elite collusion in the early 1990s. While these reforms are sometimes presented as an attempt to shore up the apartheid system, rather than to introduce meaningful change (Ibid.), this does not detract from the fact that they did have a major influence on the institutional framework of the South African political economy and, thus, provide important insights into the origins of BEE.

For example, the reforms gave rise to corporate managerial and business development programmes which not only produced many of today's black

business leaders but which also saw much innovation in the area of small business financing and incubation which models would later come to be used in the BEE deals of the early 1990s and beyond (Mtimkulu, 1980; Smollan, 1986; Jones, 1987; Mafafo, 1990; Randall, 1996; Butler, 2011; Mashaba & Morris, 2012). Improvements in black housing, education, and employment created opportunity for the greater economic involvement of millions of black people (Lipton, 1986:Ch 3; Luhabe, 2002; Terreblanche, 2002:Ch 10) which translated into the emergence and growth of black lobby groups such as the BMF and the National African Federated Chamber of Commerce and Industry (NAFCOC)(Mathebe, 1994; Maseko, 1999; Motsuenyane, 2012). In rural areas, the changing institutional infrastructure similarly gave rise to the Congress of Traditional Leaders of South Africa (CONTRALESA) (Bank & Southall, 1996) to defend the interests of homeland elites. Then there is the unbanning of the black trade union movement which must be acknowledged both for the improvement it brought about in income levels for blacks and, also, for the role it played as de facto political representative of the black community (Southall, 1986; von Holdt, 2003).

Thus, far from having its origins in a single disruptive event in the early 1990s, BEE had a long, complex gestation that must be explored in order to understand the character of this phenomenon.

Chapter outline

This chapter delves into the history of the late apartheid era to help make sense of BEE. It seeks answers to such questions as where the first wave of black entrepreneurs came from? What was the influence of the emergence of black lobby groups and the unbanning of the black trade union movement? Why did the ANC pursue a policy that was seemingly so contrary to its espoused ideology? Why is there such duplication and overlap in BEE policy and why are BEE policies constantly being revised?

The chapter commences with a discussion on the acknowledged schism in the field of historiography in South Africa and its relevance to the discourse on BEE. The political and economic circumstances of black people in the late

apartheid era are then examined, as a basis for understanding the rationale for corrective policies in the post-apartheid era. This is followed by a review of the framework of policy reforms of the 1970s and 1980s and how they laid the institutional foundations for BEE. This leads to a discussion on the first wave of BEE deals in the early 1990s, followed by an exploration of ANC policy on affirmative action and BEE.

4.2 The contentious nature of historiography in South Africa

South African historiography is characterised by a continuum that reflects ideological differences amongst historians regarding the relationship between capitalism and apartheid (Stolten, 2006a; Lipton, 2007). At the one end, liberal social scientists perceive apartheid as a racially-based political project in which business had no choice but to function as best it could. At the opposing end are radical progressive and Marxist social scientists who assert that capitalism was inextricably linked to apartheid and that apartheid is, therefore, most appropriately interpreted as a project to subjugate black people in the economic interests of a white elite. The liberal school declined in the early 1970s in favour of a radical progressive and Marxist perspective. Murray (1988:81) describes the changing historiographical environment as follows:

In the 1970s, South African scholarship veered decidedly leftward in intellectual orientation. . . . [and] a whole generation of young scholars – many studying overseas – took a radical departure from previous historiographical traditions by placing class-analytic categories and the capital accumulation process at the forefront of social analysis and historical interpretation. This “new orthodoxy” soon coalesced around two distinct poles: the structuralist Marxists . . . and the social historians. . . . The creative tensions between these two perspectives still exist today, yet without the rhetorical posturing of the late 1970s. The significance of this debate was that it drew attention away from a critique of liberation and toward the positive affirmation that capitalist development in South Africa was intimately connected to national oppression (and racial discrimination).

This dichotomy between liberal and radical progressive/Marxist historians has survived into the post-apartheid era but liberal perspectives are again coming to the fore. Challenging notions of class alliances, and now unhampered by accusations of being apologists for apartheid or supporters of racist white business, the liberal school has experienced a strong resurgence since 1994 as evidenced by the appearance of new histories of South Africa, written from a liberal perspective (Giliomee & Mbenga, 2007; Welsh, 2009; Johnson, 2010). It is also apparent that the radical progressive/Marxist school has been challenged by the manner in which the political economy of the post-apartheid era has unfolded and the way the ANC in government has come to embrace the capitalist policies it once condemned. Observing these altered circumstances and ideologies of the liberation movement, the respected academic and social activist Steven Friedman (2010b) opined that, “Twenty years ago, ANC office was a sacrifice - today it is a route to money”.

Writing in the late apartheid era, Lipton (1986:49) observed that the debate “as to whether changes taking place in SA reform or merely modernize apartheid is confused by a preoccupation with motives [of policymakers], which are often ambivalent or hypocritical, and therefore difficult to gauge, and may in any case have unintended consequences”. Pursuant to a detailed analysis of these contorted policymaking efforts and their early outcomes, Lipton concluded, somewhat prophetically, that:

The evolution of policy is likely to depend less upon the ‘hidden agendas’ some believe exist than on the unpredictable course of events and the changing interests and power of the white, black and external actors involved (Ibid., p.83).

This view is in keeping with received theory on public policy formation (Kingdon, 1995; Sabatier, 2007b), as well as the bodies of institution and political economy theory on which this study is based (Ostrom, 2005; Hodgson, 2006; North et al., 2009). There is also much evidence in the contemporary body of literature and commentary to corroborate the view that post-apartheid South Africa has turned out to be different to that assumed by the ideological school

(Mbeki, 2009; Marais, 2011; Bisseker, 2012; Lodge, 2012; Terreblanche, 2012; Borraine, 2014; Financial Times, 2014). This brings us to the particular problem that South African historiography presents for this thesis.

Support for the radical progressive and Marxist schools was fuelled partly by ideological adherence to socialism but also by the perceived need for radical change. Stolten (2006a) notes how the left was buoyed in the latter decades of apartheid by a huge surge in academic interest in the circumstances of black people, their communities, and the unbanning of black trade unions. Confirming this view, Freund (2009:20) recalls how “studying the political economy of South Africa was taken for granted as absolutely critical in building an intellectual foundation for the anti-apartheid movement”.

In this environment, where the objective of many social scientists was to demonstrate the horrors of apartheid with the objective of destroying that system, there was little interest in recording the experiences of those few black people and organisations that did manage to achieve success. It would have been counter-productive, and doubtless unacceptable, to have written in positive terms about housing and education reforms or the removal of apartheid restrictions in the workplace. The advance of the black trade union movement could not be presented in terms of the improvements made possible in the lives of millions of people in the 1970s and 1980s, nor could corporate affirmative action projects be presented as anything other than efforts to prop up the apartheid regime.

This is completely understandable and there is no doubt that those who managed to achieve a better life under apartheid were a minority who often had no choice but to work within the rules of the regime (Luhabe, 2002; Mashaba & Morris, 2012; Motsuenyane, 2012). The record of the corporates in challenging apartheid policies, while important, was not universally good (Schlemmer, 1986; Little, 1987), and it would be wholly disingenuous not to acknowledge that the contribution made, was intended, first and foremost, to resolve problems facing the business community rather than society in general.

Having said this, corporate involvement certainly played a major role in the policy reforms of the late 1970s that, in turn, brought about improvements in housing, education, and healthcare for many blacks, albeit nowhere close to the standards enjoyed by whites (Lipton, 1986; Smit, 1992; Terreblanche, 2002:75). It is also of enormous significance that these policy reforms resulted in the unbanning of black trade unions which was, arguably, the most significant change influence of the late-apartheid era. A huge range of organisations emerged or evolved during this time that would also play influential roles in the South African political economy including the black universities, the Urban Foundation (UF), NAFCOC, the BMF, and CONTRALESA (Lipton, 1986:Chs 3 & 9; Butler, 2008:Ch 6; Motsuenyane, 2012). It will be recalled from Chapter 3 that a key factor in the evolution of the LAO is the ability to form organisations and, through these vehicles, to lobby for the advancement of particular interests (North et al., 2009). South Africa, in the closing decades of the 20th century, provides an excellent example of this theory in action.

A more informed appreciation of black middle class formation in the apartheid era is essential to understanding the evolution of the post-apartheid political economy. However, this is also an issue that has been subject to ideological bias in the academy with the result that the impact of improvements in employment, education, housing, healthcare, and welfare that became available to many homeland and Section 10⁷ families in the latter years of apartheid (Lipton, 1986:Ch 3), are not well understood. Neither is there any significant information on the contribution of black advancement programmes in the careers of people such as Wendy Luhabe, Patrice Motsepe, Cyril Ramaphosa, Sizwe Nxasana, Phutuma Nhleko, Sam Motsuenyane, Herman Mashaba and thousands of others like them. Based on the contributions being made by these people today, as well as data collected in the course of this study, the author is of the opinion that South African historiography has suffered greatly from an ideological bias that wrote off swathes of productive, well-meaning citizens and their organisations as a collaborationist and dependent petty bourgeoisie.

⁷ This classification refers to Section 10 of the Native Urban Areas Act of 1952 which gave certain categories of Africans the right to remain in prescribed areas of 'white' South Africa for longer than the otherwise stipulated period of 72 hours.

The perspective of much enquiry precluded the ability of researchers to observe the positive developmental attributes of these reform policies or, dare it be said, the adaptive power of capitalism. For example, in a comprehensive and informative paper on the subject of black capitalism in the late 1970s, Southall (1980) provides rich detail on the circumstances of the black middle class in the 1960s and 1970s. However, the author is dismissive of this small emergent black elite that he describes as being collaborationist or, at best, dependent for its existence on the apartheid state. Southall has subsequently acknowledged these ideological constraints, himself, but notes that there still remains a general lack of interest in reviewing this history:

Nonetheless, even though it is true that an emergent black middle class attracted considerable interest from liberal historians, anthropologists and social observers, it is fair to say that it was dealt with spasmodically, and then very often largely as a subordinated appendage of the black proletariat. Arguably, therefore, it is only now that the history of the African middle class, notably as it participated in and shaped the African National Congress (ANC), is beginning to receive its due. In part, this is because the lot of the middle class is often deemed in 'struggle history' to have been unheroic: indeed in some tellings, the only way for the bourgeoisie to contribute to liberation was by subjecting itself to the leadership of the working class! Yet even while, today, there is a growing interest in the multi-faceted nature of the struggle against apartheid, there has been a failure to trace the holistic evolution of the black middle class (Southall, 2014:288).

Tom Lodge, author of the influential book *Black Politics in South Africa*, similarly acknowledges the influence of Marxist/Progressive ideology of the early 1980s. He asserts that were he to rewrite the book, the greater accessibility of records relating to the period, changed attitudes, and "the ANC's venal record in power" would likely result in a very different publication, not least in the manner in which it would present the black urban middle class (Lodge, 2012:503).

This historical vacuum was a key motivator for businesswoman Wendy Luhabe to write her book *Defining Moments: Experiences of Black Executives in South Africa's Workplace*. Luhabe notes the origins of the book in a perceived need to “bridge the gap” between managers and employees in general, but also to bridge “the gap between the generations of black managers and professionals who worked during each of the three decades at the end of the twentieth century” (Luhabe, 2002:3). She observes that “[a]ny learning that was transferred from one generation to another was limited and often [occurred] almost by accident It was obvious that three decades of historic corporate initiation, personal challenge, failures, the inevitable change and final political victory were in danger of being lost to future generations” (Ibid.).

The academy is not alone in presenting a selective view of the past. There are, with some notable exceptions, few black business leaders or politicians who are prepared to publicly acknowledge that anything constructive happened in the apartheid era; that they benefitted by being members of a homeland elite, or belonging to a family with Section 10 rights and thus with access to improved schooling, housing and work opportunities (Lipton, 1986:Ch 3). One rarely hears a black business leader acknowledge Anglo American, De Beers, IBM, or any one of the other large corporations of the apartheid era for having helped them with bursaries or affirmative action programmes, and no one would admit to having been studying when his/her fellow students were demonstrating in the streets. It is still tantamount to heresy to argue, as this study does, that the power acquired by the black trade union movement came partly from the fact that the white political and economic elite opted to incorporate organised black labour into the leadership structures of the political economy, (Terreblanche, 2002:Ch 9) or that the black trade union movement was part of the leadership elite of the late apartheid era dominant coalition (see Chapter 3). Yet only by acknowledging and exploring these institutional origins can one understand the contemporary political economy and, more specifically, the manner in which BEE emerged and developed.

Ironically, during the apartheid era the ANC appeared to take the black middle class and business community more seriously than the academy. In a

report, prepared for the organisation when in exile (Jordan, 1984), the 'puny' black business community is subject to detailed and informative analysis that paints a David and Goliath picture of black entrepreneurs surviving against all odds. The objective of the ANC study had been to determine whether the black business community posed a threat or presented a source of potential support for the liberation movement. The rather bizarre, unsubstantiated, finding is that, as the liberation movement had done so much to create an enabling context for this black petty bourgeoisie, black business was more dependent on the liberation movement than the movement was on it. The conclusion of the researchers, therefore, was that the black business community did not present a threat to the liberation movement. However, this research project did help facilitate relations between the ANC and black business and, the year after the publication of the report, the executive of NAFSOC met for the first time with the ANC leadership in London (Motsuenyane, 2012:130).

This historiographical critique may represent an uncomfortable truth for some but an informed, honest telling of history is necessary for a society to understand its present circumstances.

Knowledge of history helps to shape qualities of imagination, sensitivity, balance, accuracy, and discriminating judgement and provides multiple perspectives on how various elements have come together to create a society or to build a nation. History writing is an important part of a nation state's collective memory and history is not simply a product of the past, but often an answer to demands of the present (Stolten, 2006a:6).

The manner in which a narrow or contrived version of history can impede our understanding is demonstrated in the following example that explores the personal history of Cyril Ramaphosa, currently the Deputy President of the ANC and of the country. Ramaphosa has been a central figure in the recent history of South Africa, and particularly that of BEE as evidenced by the frequency with which his name appears in this study. He was Chairman of the BEE Commission (BEECom, 2001) and the beneficiary of such largesse under BEE as to have

become a dollar multi-millionaire in less than twenty years (The Economist, 2013).

4.2.1 Cyril Ramaphosa

Ramaphosa's personal history is one of determination, hard work, and sacrifice but also one of opportunism. He is an enigmatic character who cannot easily be accommodated within stereotypical conceptions of businessman, trade unionist, or politician, all of which roles he has played with consummate ability.

In an apparent attempt to present Ramaphosa in the mould of a revolutionary trade unionist, the website of the Office of The Presidency (2014) omits aspects of his life that are important in understanding his abilities and his success but which would necessarily highlight the influence of the reform policies of the 1970s and 1980s. The official biography is as follows:

Matamela Cyril Ramaphosa was born on 17 November 1952 in Johannesburg. His family was moved from Western Native Township to Soweto in 1962, where he attended Tshilidzi Primary School. He completed his high school at Mphaphuli High School in Sibasa, Venda in 1971.

He began his studies at the University of the North in 1972, where he became involved in student politics, joining the South African Student Organisation (SASO) and the Black People's Convention (BPC). He was detained in 1974 for organising pro-Frelimo rallies that were held to celebrate the independence of Mozambique. He was detained for the second time in 1976 following the Soweto student uprising.

He became the first general secretary of the National Union of Mineworkers in 1982. In 1991, he was elected ANC Secretary General and subsequently became head of the ANC team that negotiated the transition to democracy. Following the country's first democratic elections in 1994, he was elected chairperson of the Constitutional Assembly, which wrote South Africa's new democratic constitution.

He moved into the private sector in 1996, and in 2001 founded Shanduka Group. Ramaphosa holds a law degree from the University of South Africa.

He has received several honorary doctorates from local and international universities. He received the Olof Palme prize in Stockholm in 1987 and was included among the Time 100 Most Influential People in the World in 2007. He was awarded the National Order of the Baobab in Silver in 2009 for his contribution to the multiparty negotiations and for chairing the Constitutional Assembly. He was also the deputy chairperson of the National Planning Commission.

In December 2012, he was elected ANC Deputy President. He was appointed Deputy President of the Republic of South Africa on 25 May 2014.

The picture presented here is one of a revolutionary, born to the cause, who experienced a seamless transition from student union politics at university to trade union politics in the mining sector. While there is nothing untrue in this profile, a significant part of his story is missing, which part provides insight into the process by which Ramaphosa came to move from being a university student to the leader of a major trade union. This missing history is where much of the value of Ramaphosa's example lies and much is lost to society by hiding it. By comparison, Butler's (2008) comprehensive biography of Ramaphosa provides extensive insight into the man.

As with the accounts of other successful black people, such as Herman Mashaba (2012) and Sam Motsuenyane (2012), Ramaphosa's life story constitutes a social history of the late apartheid era that addresses the lacuna in the historical record with regard to the positive, if limited, beneficial outcomes of apartheid era reforms and private sector initiatives that are so important to an understanding of BEE. Had Ramaphosa been born a decade or even five years earlier, his life would likely have been very different as, in turn, might have been the history of South Africa. Having become involved in student politics, Ramaphosa was detained by the security police and imprisoned for eleven months in solitary confinement in 1974. After this, he was not able to return to university full-time and had to complete his legal studies by correspondence (Butler, 2008:Ch 3).

During his incarceration, Ramaphosa came to the attention of a British representative of Amnesty International who happened to be close friends with the Menell family, owners of the South African mining house, Anglovaal. Butler (2008:Ch 6) details the role of this family in the establishment of the UF and the influence of the Menells and the UF on Ramaphosa's subsequent development.

Despite his youth, Ramaphosa was appointed to the regional board of the UF where he came into close contact with the contemporary leadership of business, black and white civil society, academia and government (Ibid.). In 1978, there could be no better entrée to the giddy heights of economic power for a young, still-unqualified lawyer, let alone a black lawyer. Through the UF, Ramaphosa was offered a position at a prestigious law firm to complete his articles and his tenure there afforded him valuable insights into the functioning of white corporate society that would prove invaluable in his future roles as trade union leader, politician, and business mogul.

Ramaphosa's entree to the world of trade unionism came about with the 1979 removal of restrictions on the participation by black people in trade union activity. As noted by Butler (2008:Ch 10), Ramaphosa harboured a deep resentment of the treatment meted out to black people and had a long history of community engagement. He therefore saw participation in the emerging black trade union movement as an appropriate and worthy route to follow. Within two years, Ramaphosa would be nominated by the union federation he worked for to spearhead the foundation of the new National Union of Mineworkers (NUM). In the process of establishing the union, Butler (Ibid.) records how Ramaphosa sought to inform the project, not just by learning about the mining industry and the workers' issues but, also, by speaking to the managers and owners of the mining houses. In this regard, he was greatly assisted by the relationships he had established during his time at the UF.

The unbanning of black trade unions had resulted as much from lobbying by mine management as from the actions of workers (Lipton, 1986:Ch 3) but, as Butler (2008:Ch 8) notes, Anglo American had not been happy with the prospective mining unions that were emerging. Thus, when Ramaphosa met

with Bobby Godsell, the head of industrial relations at Anglo American, “Godsell was inclined to make life easy for NUM, readily conceding access to Anglo mines and later agreeing to recognise the union even when its very small membership did not really justify this action” (Butler, 2008:137).

While Ramaphosa is a household name in South Africa, many other great stories came to the attention of the researcher in the course of conducting this study. Although not as well known, if at all, their personal histories demonstrate exceptional character, determination and commitment. The list includes, people such as Dr Sam Motsuenyane, businessman, founding member and long term president of NAFSOC, ambassador and philanthropist; Herman Mashaba, businessman and business activist and a better role model for students than any Harvard Business School graduate or corporate mogul; Wendy Luhabe, self-made business woman and founder of Wiphold, an investment company collectively owned by more than 80 000 women.⁸ Most of these heroes are over 50 and many, such as Dr. Motsuenyane who is in his 80s, are even older. Many have already died. It is the heartfelt desire of this researcher that social historians will explore this rich history, replete with desperately needed heroes, before it is too late.

The approach to history presented here may appear strange to some readers and even be upsetting to others. However, the objective is not to be controversial or to try to rewrite history. Neither is it to apologise for apartheid, praise business or criticise the liberation forces. As demonstrated by Ramaphosa’s story, it is simply impossible to arrive at an adequate explanation of the origins of statesmen, political parties, business organisations, or social phenomena while attempting to expunge history or cherry pick the parts that serve partisan interests (Stolten, 2006a).

4.3 The period of enquiry

Ostrom (2005) notes the problem of infinite regress in the study of institutions, which phenomenon arises due to the fact that institutions comprise

⁸ Interview with Wendy Luhabe. Johannesburg. 11 December 2012.

systems of rules that are nested in ever higher systems of rules. In addressing this problem, she suggests that a project be bounded by a clear understanding of the variables involved, the identification of which will rely heavily on the knowledge of the researcher, and the specific objectives of a particular study.

As demonstrated comprehensively by Terreblanche (2002), subjugation and inequality have characterised the history of South Africa since 1652 and so, should time and resources permit, one could doubtless trace the origins of BEE back through the nested rule structures of South African history to the mid 17th century. As this is not feasible in this study, a shorter trajectory must be identified.

Institutions are essentially a system of social rules (Hodgson, 2006) and, prior to the mid 1970s, the system of social rules in South Africa was designed to exclude black people from the mainstream of political and economic activity. Then, in the early to mid 1970s, a rather extraordinary convergence of events served to radically alter that rule structure (Terreblanche, 2002:Ch 9). The resulting disruption opened the door to increasing levels of black participation in the economic life of the country and, as will be demonstrated, laid much of the groundwork for the future BEE policy framework. This period of fundamental change is, therefore, taken as the starting point in this examination of historical precedents to the contemporary institution of BEE.

BEE is still a fast-evolving phenomenon as evidenced by ongoing policy reform, notably in the resources, agriculture, and industrial sectors (DRDLR, 2013b; RSA, 2013b, 2013c, 2013d, 2014), and by the attendant negotiations with black business associations, investor groups, and traditional leaders (Ndzamela & Mkokeli, 2012; Hartley, 2014a; Seccombe, 2014b; Vecchiatto, 2014; Qubeka, 2015). The study, therefore, seeks to explore the BEE phenomenon up to the time of writing in early 2015.

4.4 Historical antecedents to BEE in the late apartheid era

By 1970, the apartheid policies of the South African government had evolved to be called Separate Development. Behind this new terminology was

the concept that black Africans should be accommodated in their own homeland states, which would be separate from, but equal to, a whites-only South Africa (Terreblanche, 2002:Ch 9). These nominally independent states were officially called homelands or bantustans.

Of course, equality could not be achieved in anything but the most basic of terms since approximately 15,5 million Africans, or 72% of the total population, were apportioned only 13% of the land mass of the country (Southall, 1980). Even then, the land was in unproductive pockets scattered across the territory of South Africa. Only a small number of Africans were legally permitted to live permanently within the boundaries of South Africa and, technically, as foreigners with few rights. Despite these restrictions, Horwitz (quoted in Jones, 1987) puts the proportion of the total black population living in cities in 1970 at more than 33%. The remainder of the black population would have been resident on white farms or in the homeland areas.

Formal employment in the homelands was largely limited to jobs in the public service as these economies could not support the growth of much private sector business. Chronic overcrowding also inhibited the development of agriculture (Welsh, 2009:Ch 2). Those who could find work in 'white' South Africa were subject to draconian laws that limited possibilities for advancement and artificially suppressed wage levels. In a paper exploring the status of African capitalism in the late 1970s, Southall (1980) draws on statistics from the 1970 Census that demonstrate the outcome of these barriers. Out of a total African population of 15,5 million, there were only:

- 91 996 professionals (the category 'professional' largely comprising teachers, 'medical workers' and 'workers in religion'),
- 2,306 people employed in administrative capacities,
- 95 359 clerical workers,
- 78 939 sales workers, and
- 1 015 725 service workers.

Terreblanche (2002:373) cites the size of the African labour force in 1970 as 6 943 000, equating to 73,5% of the total work force of South Africa. From the above figures, therefore, it can be observed that approximately 5 658 675 people, or 60% of the national labour force, were employed in largely unskilled positions.

Unemployment in the early 1970s was also a huge problem. While it stood at 20,2% nationally, Africans were the worst affected. Accounting for 74% of the economically active population, unemployment among this group stood at 24% (Ibid.). Trade union activity was still largely illegal for blacks, both in South Africa and in the homeland territories and inequality was growing rapidly. The average per capita income for blacks in 1970 was R3 133, compared to R45 751 for whites (Leibbrandt, Woolard, Finn & Argent, 2010) and this represented a worsening trend. While the income of all racial groups had risen in the period from 1946 to 1970, black incomes had risen by only 34%, while those of whites had risen by 74% (Ibid.).

With the passage of various racially discriminatory Acts, commercial activity in the black residential areas of 'white' South Africa had been severely restricted and black businesspeople were forced to focus their entrepreneurial efforts within their respective homeland areas. Dr. Sam Motsuenyane, businessman and long-time president of NAFSOC, recalls the challenges of the day.

We were restricted from trading also in such a way that we could present competition with white traders. The government defined the area of black trading as one, which is meant to provide bare essential needs to the black population. That bare essential needs meant that beyond candles and tea and so forth you were not allowed [to trade]. Actually there were only 26 products that we could sell in a native shop in Soweto or anywhere in the country . . . and this was, I think, the biggest restriction and impediment to black development in the business area.⁹

⁹ Interview with Dr. Sam Motsuenyane. Hammanskraal. 5 December 2012.

Development finance institutions had been created to assist in the formation and expansion of black business in the homelands but, in addition to problems of corruption and cronyism that plagued these organisations, there was basically little opportunity for meaningful investment due to the stunted nature of the homeland economies (Southall, 1980). Competition from white business was also an ever-present challenge. As noted by Motsuenyane (2012:Ch 9), not only were subsidised industrial zones created for white business on the borders of the homelands but black businesses had to source their raw materials from these whites at prices that generally rendered their entrepreneurial efforts uncompetitive.

While there can be no question as to the negative impact of apartheid restrictions on commercial activity in the homelands and townships, it is important to note that informal sector business activity was not widely acknowledged or recognised by researchers in South Africa before the late 1970s (Rogerson & Beavon, 1980). Furthermore, much township and homeland business activity was illegal and so did not lend itself to being researched or recorded.

Providing some insight into this situation, Rogerson and Hart (1986:156) record that in the late 1970s, “in Black residential areas of Pretoria, Durban and Witbank one in every five township dwellings. . . [was] functioning as a shebeen”. The authors further note that, although the first steps to the legalisation of shebeens were only taken in 1983, “The stake of the large liquor producers in the trade was such that by 1979 beers sales in shebeens totalled nationally R150 million or approximately one-third of South African Breweries’ overall market” (Ibid., p.162). Similarly informal/illegal trading by small grocery store owners, or spaza shops, and transport operators was apparent to anyone who frequented homeland or township areas in the late apartheid era.

The capacity of Africans to work their way out of this system of extreme subjugation had been severely undermined with the passing of the Bantu Education Act in 1953 (USA, 1953). This Act set the stage for education to be brought in line with broader apartheid policy that envisaged Africans doing less-

skilled work and thus requiring a lower standard of education. In 1953, when this Act was passed, per capita spend on white and black education was R127,84 and R17,08, respectively. By 1970, spend on white education had increased by 121% to R282 per person while that on blacks had fallen to an average of R16,08 (Welsh, 2009:77).

Language policy constituted another major impediment that was built into the bantu education system. All primary education had to be conducted in the mother tongue of the various African communities, but high school and tertiary education was in English and Afrikaans, with emphasis on the increasing use of the latter (Ibid.).

4.4.1 The unravelling of the apartheid economic model and resulting institutional reform

With the benefit of hindsight, and from the foregoing review, it is clear that the apartheid socio-economic model was destined to eventually self-destruct. Sustained economic growth was simply not possible with 72% of the population grossly undereducated, prohibited from participating fully in the economic life of the country, and located far from optimal centres of production.

Terreblanche (2002:324) observes that the 1960s had been one of the most successful economic periods in South Africa's history with GDP rates averaging 5,5% per annum. The really spectacular growth had been in the first part of the decade, however, with average annual GDP gains in the region of 7%. In the latter part of the decade, that average had fallen to around 5% and the decade ended with only 4,7% in 1969 (SAIRR, 2011:103). The inherent constraints of the apartheid system were, therefore, already being felt when, in the early to mid 1970s, a series of external and internal events occurred that battered the constrained apartheid economy and set the stage for a twenty-year period of adjustment that ultimately resulted in the transition to majority rule in 1994. Terreblanche describes these events and their effects succinctly:

The cluster of events (from 1973 to 1976) that precipitated the white hegemonic order's survival crisis included the 'unlawful' strike by black trade unions in 1973, the OPEC oil crisis of 1973, the downturn in the

economy from 1974 onwards, the coup d'état of General Spínola in Lisbon in April 1974, and the Soweto uprising of June 1976. In 1973 South African industry was shaken when large numbers of African workers in Durban struck illegally in support of demands for higher wages and the right to organise. The protracted nature of and wide support for the strikes demonstrated the nascent strength of African 'labour power' in a way that surprised even Africans. The 1974 coup in Lisbon and the subsequent independence of Angola and Mozambique broke the cordon sanitaire of white colonial regimes to the north of South Africa, and exposed the white minority regimes to the rest of uhuru Africa and communist penetration of the continent. The abortive invasion of Angola by PW Botha's army in 1975 and the resultant deployment of Cuban troops in Angola complicated the situation rather seriously from the NP [National Party] point of view. In the second half of the decade, the critical attitude of the Carter administration in the United States and the increased hostility of the OAU [Organisation of African Unity] and the Group of 77 succeeded in putting the 'immorality' of the apartheid regime in the international limelight (Terreblanche, 2002:307).

Other important changes taking place included the increasing wealth and education of the Afrikaner community that reduced its dependency on the state and led many to question the blatant nationalism of the NP (Welsh, 2009:Ch 3). The events in Soweto in 1976 were also a turning point in the cause of the liberation movement resulting in a strengthening of sanctions against the country, the declaration of apartheid as a crime against humanity by the United Nations, and the exodus of many young people from South Africa to the ANC's bases in Africa, Europe and elsewhere. Arguably, of most significance, however, was the recognition by many countries of the ANC as the legitimate government of South Africa, in waiting (Ellis, 2013:Ch 4).

4.4.2 Policy reform begins

Lipton (1986:Ch 3) identifies the accession to power of John Vorster as Prime Minister in 1966 as a turning point in government's strict adherence to apartheid ideology. She notes that Vorster was a considerably weaker leader

than his predecessor, Hendrik Verwoerd, and also more sensitive to international criticism of the country. These traits influenced Vorster toward reform of policy governing black participation in sport and social activities as well as that limiting access to public amenities, entertainment and lodging.

Demonstrating the unpredictability of change influences on the institutional fabric of society, Lipton (1986:56) describes how a 1971 decision to permit international multiracial sporting events in South Africa gradually filtered down to see the removal of legal impediments to the integration of sports, including rugby (the archetypal symbol of white sporting activity) by 1981. The South African Scouting movement was also integrated in 1977, with the amalgamation of its various racial chapters under the leadership of Dr. Sam Motsuenyane. Recollecting this breakthrough, Motsuenyane hailed the Scouting movement as a “platform for articulating what South Africa required for the future, a united body of men and even women . . . to lead the country”.¹⁰ However, this early example of genuine transformation also demonstrated that change would require much more than an adjustment on the part of South Africans. Motsuenyane recalled the disbelief at his appointment:

We went to a lot of places in the world where we appeared as South Africans and then they said, this is the leader, this black man is the leader? And they [the foreign hosts] said, no, he must just be a fake. He is not a leader.⁴

Meaningful advances were also made to the funding of black education and spending began to rise swiftly, albeit remaining far behind that on white education (Lipton, 1986:61).

Policy reform on the economic front was slower, mainly due to the type of relationship that existed between the Vorster administration and established business. Describing the tenor of business-government relations in the 1970s, Terreblanche (2002:73) observes that Prime Minister “Vorster was not even prepared to interact with the corporate sector”, despite the country’s economic crisis. However, limitations on blacks doing skilled work in white areas and

¹⁰ Interview with Dr. Sam Motsuenyane. Hammanskraal. 5 December 2012.

barriers to the provision of training were partially relaxed in the early 1970s, and in 1975 blacks were afforded equal status with whites in the armed forces (Lipton, 1986:59).

Only with the accession to power of P.W. Botha in 1978 did the business-state relationship began to improve and “a close partnership was established between the government, its securocrats and the corporate sector” (Terreblanche, 2002:73). Business lobbied heavily for reforms that favoured the relaxation of controls over blacks, albeit mainly in sectors where apartheid controls were particularly problematic for business. The focus was thus largely on blacks living in urban areas and, later, those employed in the mining industry (Welsh, 2009:Ch 3). Urban business also implemented advancement programmes for black employees, black business, and the broader black community (Smollan, 1986; Anglo Zimele & IFC, 2008). In rural areas, government, the private sector, and NGOs together established the Rural Foundation (Atkinson, 2007:Ch 7) to assist farm workers while efforts were also made to expand black farming in the homelands (Kirsten, Van Zyl & Van Rooyen, 1994; Vink, 1999).

The record of these early affirmative action programmes was mixed. Corporate sector programmes did not achieve their espoused objectives and efforts to develop farmers in the homelands met with limited success (Little, 1987; Schlemmer & van Antwerpen, 1990; Schirmer, 2000). It is ironic that the Rural Foundation, which worked with what was arguably the most divergent constituencies, white farmers and black farmworkers, was one project that did achieve considerable success both in terms of its specific programme objectives, and in terms of providing a model for the effective design and operation of an empowerment programme (Atkinson, 2007:Ch 7). Despite the record of mixed success, however, and the oft-forgotten contribution of these programmes, it would be unfair and factually incorrect to dismiss them as unimportant when there is so much evidence of the role they played in the development of many of today’s black leaders, and black business and labour organisations (Browning, 1989; Finance Week, 1991; Luhabe, 2002).

As already noted in this chapter, the leftist version of South African history has tended to dominate and thus little room has been created for a more nuanced telling of history, including the role of business in key processes of change (Stolten, 2006a). Undeniably, black people were cruelly and unfairly treated during apartheid, but much of the historical record of the late apartheid era presents business as having had more choice than it did. As Welsh (2009:589) observes, business may only have become actively involved in the change process as apartheid began to affect its interests but it was limited in what it could do as “the upper hand remained with government”. Although largely within the confines of its own interests, business launched a concerted programme to influence government policy in the mid-1970s and any review of the path of apartheid era reform must incorporate the story of the UF which was central to this lobbying effort.

4.4.3 The Urban Foundation

As has been the case with so many events and experiences investigated in the course of this research project, the founding of the UF is commonly condensed into a paragraph that presents it as part of an Anglo American Corporation project, indeed often as Harry Oppenheimer’s personal project, “to build up a black middle class as a bulwark against revolutionary elements, and to provide a stable community with solid materialistic values” (Sampson, 1987:116).

In reality the origins were far more complex and involved the participation of other large corporations and some high-profile representatives of the liberation movement. The idea was also rooted in a genuine concern for the welfare of black people, even if that view was more a detached intellectual appreciation of the circumstances of black South Africans, rather than any personal experience thereof. Butler examines the origins of this important organisation, and the role of the Menell¹¹ family, in detail:

The events of 1976 created space for the philosophy of constructive engagement that the Menells embraced, and Irene was fired up by the

¹¹ The Menell family was one of two founding families and, at the time, the controlling shareholder of the Anglovaal mining and industrial conglomerate, one of South Africa’s largest companies.

uprising to “mobilise resources, existing resources, that were simply going to waste, and use them to address practical problems”. Her inspiration was the ‘New Detroit’ project from late 1960s Michigan. . . .

In July 1976, Clive and Irene [Menell] floated their ideas to the Institute of Race Relations director Freddie van Wyk and *Financial Mail* editor George Palmer. Together they hatched a plan. Anglo’s ‘do-gooders’ had a conference on urban housing planned for later that year, and Irene and Clive decided to hijack it. Through Harry Oppenheimer’s personal assistant, Nick Dermont, they sold their idea to Zach de Beer, the political strategist in the Oppenheimer inner circle, and then to the old man himself. . . .

Oppenheimer and Rupert¹² partly embraced the Menell’s idea that high levels of poverty and limited social provision in peri-urban townships were amenable causes of social unrest. They decided together to convene a ‘businessmen’s conference on the quality of life of urban communities’ in place of the scheduled urban housing conference in Johannesburg’s Carlton Hotel, on 29 and 30 November 1976 (Butler, 2008:99).

Butler (Ibid.) notes that the conference was attended by members of The Committee of Ten, a grouping of leading Soweto community activists who would play prominent roles as resistance to apartheid grew. This group would be instrumental in facilitating links between the UF (i.e., big business) and the broader resistance movement and, ultimately, in 1988, to founding the Consultative Business Movement. This was a forum for “consultation and relationship building with all the key political players” and an organisation that would play a pivotal role in the later transitional negotiations process (Fourie & Eloff, 2005:41).

The Carlton Hotel conference closed with a rousing call by Rupert to white South Africans not to be cowed by the fear of a black majority, an appeal that in 1976 would likely have caused great problems for anyone of lesser power or stature.

¹² Anton Rupert was founder of the Rembrandt Group, a South African multinational. Rupert was also the leading Afrikaner businessman of his day.

We cannot survive unless we have a free market economy, a stable black middle class with the necessary security of tenure, personal security and a feeling of hope for betterment in the heart of all our peoples (Rupert quoted in Butler, 2008:101).

With its capitalist orientation and lack of focus on rural people or, initially, on mine workers, it is unsurprising that the UF received a condemnatory response from the ascendant corps of radical progressive and Marxist social scientists. Terreblanche (2002:68), for example, dismisses the UF as one of many lobbying efforts of the corporate sector with which it “persuaded the government of the day to adopt policies that would best serve its interests”. Indeed, Butler (2008:105) records how “the UF surpassed even the South Africa Foundation in promoting sanctions-busting”, and, he notes, “for the critics of the UF, it was the sanctions issue that ultimately rankled most”.

The importance of the UF to this study lies in its institutional role and the personal connections it nurtured. It linked Cyril Ramaphosa to the top echelons of business and thus nurtured relationships that have been of major political and economic influence. The UF advocated amendments to the law that greatly advanced the cause of black business and black business associations, bodies that influences would also play influential roles in the transition process and in the post-apartheid political economy (ANC, 1993b; Motsuenyane, 2012). The UF successfully pressed for freehold rights for urban blacks and raised funds for housing and electrification schemes (Lipton, 1986:160). Without doubt, however, history will most remember the UF for its role in the establishment of, and participation in, the Riekert and Wiehahn Commissions that, more than anything else, lit the fuse that would ultimately destroy the apartheid system.

4.4.4 The Riekert and Wiehahn Commissions

The economy had been performing very well in the first part of the 1960s but technological change and rapid industrialisation was quickly eroding the benefit of a cheap, largely unskilled black labour force (Lipton, 1986:Ch 6). Restrictions on black labour also had the effect of augmenting the power of white trade unions and, thus, the cost of white labour. These factors, combined with strict exchange controls and expansionist policies of government, were making it

ever more difficult for business to operate and, by 1977, the problem had become acute as internal political upheaval and international sanctions brought economic growth to a standstill (Ibid.).

Largely due to business community lobbying, Prime Minister Vorster established two commissions of enquiry to consider potential solutions to these challenges. The primary objective was to address the problem of an increasingly unstable and expensive labour force. However, realising that labour reforms would impact on the distribution and politicisation of black people, the government established a second commission to investigate reforms to laws that governed the location and mobility of blacks (Terreblanche, 2002:Ch 9). The latter commission was called the Riekert Commission of Enquiry and the former, dealing specifically with labour legislation, the Wiehahn Commission of Enquiry.

Recommendations by the Wiehahn Commission resulted in improved access to industrial training and mobility for Africans (Lipton, 1986), although the Commission is best remembered for its recommendation that all racial restrictions on black labour be lifted, including the right to form trade unions (von Holdt, 2003:Ch 1).

The core recommendation of the Riekert Commission was that controls should be eased on Section 10 Africans, resident in 'white' South Africa. Following from this, Riekert also recommended business and property rights be granted to Section 10 Africans, that their housing be improved, and that they be granted limited forms of self government (Lipton, 1986:Ch 3). Much as the Riekert Commission opened doors for urban-based blacks, it imposed heavy constraints on non-urban dwellers in a largely futile attempt to stem the inevitable flow of blacks from rural areas.

Although the apartheid edifice was already crumbling by 1979, these two Commissions could be said to have institutionalised that process. Less than two million people qualified for Section 10 rights (Lipton, 1986:71) but the pent up commercial ambitions of this small community were liberated. Major obstacles remained but they could now choose their job or trade, be openly groomed for senior management positions, and own their own houses, all of which factors

constitute major building blocks in a capitalist economy (Smollan, 1986; Maseko, 1999; Mashaba & Morris, 2012; Motsuenyane, 2012:Ch 9). Most far-reaching of all, though, was the unbanning of black trade unions, which not only brought about a large increase in wealth for millions of employed black people (Terreblanche, 2002:262) but fundamentally altered the character of the South African LAO by providing black people with de facto political representation (Chapter 8).

4.4.5 Locating the black trade union movement in the history of BEE

There can be no question but that the black trade union movement saw itself as a revolutionary force from the outset. In a 1985 meeting called to discuss the establishment of COSATU, Cyril Ramaphosa (quoted in Butler, 2008:220), opened the meeting, asserting that “the struggle of the workers on the shop floor cannot be separated from the wider political struggle for the liberation of this country. . . . [When] we do plunge into political activity, we must make sure that unions under Cosatu have a strong shop floor base not only to take on the employers but the state as well...”.

The movement lived up fully to this commitment, becoming the voice of the politically disenfranchised black population and playing an instrumental role in the transition to democracy (Van Ameringen, 1995; von Holdt, 2003; Butler, 2008:Ch 14).

However, the unions were, first and foremost, lobbyists for better working conditions and while the fortunes of black workers fluctuated in the late apartheid era (Terreblanche, 2002:Ch 9; Nattrass, 2014), the improvements in wages and worker rights were reflected in the growth of black trade union membership. As noted by Webster (1998:40), membership grew from 701 758 in 1970 to 2 890 174 in 1993 and trade union influence did not stop at the factory door. Members enjoyed access to savings and pension schemes, higher levels of safety, work-related training, and bursaries for study at external education institutions. This record stands as a shining example of true black economic empowerment on a huge scale but also provides some insight into why

other sectors of the population, namely, the rural and agricultural communities, have remained so disadvantaged in the post-apartheid era.

There are many reasons why the circumstances and prospects of black rural dwellers remain so inferior to those of their urban counterparts (Chapter 7) but limited union organisation was doubtless a major one. As demonstrated by the North et al. (2009) and Ingram et al. (2007) theoretical frameworks (Chapter 3), the ability to form groups and lobby effectively is a fundamental requirement for the development of people in society and the very limited presence of trade unions in country areas (Southall, 1986) meant that rural people lacked access to this important platform.

Southall (Ibid.) notes that some farming-oriented trade unions did emerge in the 1980s and that unions did have some success in organising workers on large agribusiness installations. However, these efforts were undermined by government policies that sought to promote mechanisation and eliminate tenant farming. As Atkinson (2007:Ch 1) also observes, despite their being a particularly downtrodden and neglected constituency, there existed a range of powerful social and geographical factors that mitigated against the organisation of farm workers into any kind of representative organisation, let alone trade unions.

For their part, farmers had less incentive to support unionisation and changes in labour policy than did their industrial and mining peers. As noted by Lipton (1986:Ch 4), the colour bar that restricted the upward movement of black people in the workplace, and which had been a major reason for labour law reform in urban areas, did not apply in the agriculture sector. Furthermore, while the issue of cost and skills did become relevant to farmers in the 1970s and 1980s, due to changes in technology and government policy on farming (Atkinson, 2007:Ch 3), the nature and scale of the problem was not as pressing for farmers as for industrialists and mining houses.

Unions were also inhibited from functioning in the homelands until the early 1990s and, even when some of these states began to permit trade union

activity, government employees, the largest sector of the workforce, were excluded (ILO, 1991:Ch 1).

There is a further reason for highlighting the contribution of black trade unions. This study seeks to interpret BEE against the background of broader political and economic processes (North et al., 2009) and, so, major changes in the pattern of societal leadership and control need to be acknowledged. As will be discussed more fully in Chapter 8, the unbanning of black trade unions fundamentally altered the structure of the late-apartheid era LAO and, more particularly, the structure of the late-apartheid dominant coalition (Chapter 3).

The dominant coalition is the supreme rule making body in society and the social order is the product of decisions made and implemented by that body (Ostrom, 2005; North et al., 2009). For this reason, it is not possible to accurately interpret the history of a society in the absence of a true appreciation as to the constitution of its dominant coalition. It is therefore necessary to acknowledge that, while its role may have primarily been that of change agent, the black trade union movement was a key player in the late apartheid dominant coalition. It simply could not have achieved what it did had it not held such an influential and powerful position.

As will be discussed in Chapter 8, this early institutional integration by the trade unions greatly facilitated the later passage of policies on employment equity and skills development, the rapid growth of trade union investment companies, and the incorporation of leading trade unionists into top positions in business and government (Southall & Tangri, 2006; Butler, 2008).

4.4.6 Black advancement programmes

It would be wholly incorrect to suggest that the doors to economic participation were flung open to black people in 1979 as the journey to economic emancipation for them was still an arduous one as recorded in the various histories of businesspeople, professionals, and trade unionists (Luhabe, 2002; Butler, 2008; Green, 2008; Mashaba & Morris, 2012). The researcher can, himself, recall many instances of discriminatory work practices in the corporate environment. For example, when working in one of the first multiracial hotels in

Johannesburg in the mid 1980s, the author, then 25 years of age and with a mere few years of work experience, was ranked senior to a manager of Indian origin, a man in his forties with far more work experience. Later in the 1990s, when employed by KKS, a company that was an acknowledged torchbearer for BEE (Randall, 1996), it was still difficult to advocate for the appointment of blacks to 'white' positions. While the company itself did try to promote black people, there was frequently a genuine concern whether clients would accept them and whether the appointee would be able to function effectively. Indeed, it was not unusual for clients to discretely make it known that they would prefer not to deal with a black representative, a request that was generally observed for fear of losing the contract.

Although local and international businesses claimed adherence to codes of conduct, during the 1980s and 1990s, that bound them to support the advancement of blacks, the associated programmes had limited effectiveness (Little, 1987). Writing in 1990, Schlemmer and van Antwerpen (p.165) made the following observation:

... with the progression of legislative reform over the past few years, such as the abolition of influx control, of formal job reservation, the opening of central business districts to commercial and industrial occupation by all races and other measures, there are no **immediate** statutory restraints on the employment of high level black manpower. Indeed, as a consequence of external economic and political pressure on South Africa, there are categorical expectations in codified form on most multinational corporations to increase rapidly black high level manpower.

Yet, in February 1988, the chairman of the National Manpower Commission, Dr. Hennie Reynders lamented the lack of progress in the advancement of blacks into high level positions in management, pointing to a notable unwillingness or inability of private firms to put ostensibly positive intentions into practice.

The authors were more positive about advances in the area of black entrepreneurship but were still of the opinion that, despite the provision of

financing and support, the remaining constraints left little prospect of “the emergence of major black organisational power and institutional leverage in the economy to counterbalance and supplement the weight and influence of English language and Afrikaans white corporate power” (p. 168).

Schlemmer and van Antwerpen’s observations are supported by the theories discussed in Chapter 3. These assert that political and economic change flows from the top leadership structures of society and reflects the objectives and power relations among the members of the dominant coalition (Ostrom, 2005; Ingram et al., 2007; North et al., 2009). Change can only come about through the overthrow of that coalition of leaders or through the existing leadership deciding to allow change to take place. Where the leadership permits such change, the extent of the change influence depends on the space created for organisation formation among the non-elite.

In the case of trade unions, the huge numbers involved and the organisational ability of union leaders were such that the labour movement could threaten the stability of the LAO and thus it could leverage a position of considerable power within the dominant coalition. By comparison, change in the business and professional sphere was often focused on specific individuals that companies identified for development or, at best, a particular selection of job opportunities such as marketing and human resources positions (Randall, 1996; Luhabe, 2002). The numbers involved did not allow the emerging business and professional elite to form such organisations, or to achieve such influence, as would give them the same leverage as the trade unions had (Ibid.). These businesspeople and their organisations, such as NAFCOC and the BMF would, however, find themselves well-placed to take advantage of opportunities in the post-apartheid era.

4.4.7 Traditional leadership and CONTRALESA

The status of land reform within the framework of BEE policy is, at best, unclear but, as discussed in Chapter 1, the position of this researcher is that rural development and land reform cannot logically be excluded from an exploration of BEE.

Most rural residents lived, and indeed still do, in homeland areas where they are subject to the authority of autocratic tribal leaders (Bank & Southall, 1996). This social system is collectivist in nature and all land, while officially owned by the South African government, is subject to the distributive control of traditional leaders. In the late apartheid era, realising the changing political scene, some of these leaders formed the representative body called CONTRALESA, which organisation successfully lobbied for Constitutional recognition and protection of the institution of traditional leadership (RSA, 1996a; Beinart, 2014). This system which governs much of the day-to-day life in the homelands is rooted in customary law (Hagg & Himonga, 2014) constitutes a basic LAO (Chapter 3) and, as such, runs counter to the ideals espoused in much of the land reform policy framework and, indeed, the very concept of empowerment (Perkins & Zimmerman, 1995; North et al., 2009; Hall, 2010:Ch 2). The institution of traditional leadership and the power it amassed in the apartheid era thus constitute important factors in understanding BEE and is addressed in more detail in Chapter 8.

4.5 BEE in the early 1990s

While this thesis challenges the view that a few big business deals in the early 1990s constitute the fount of BEE, these projects do form an important part of the story. The history behind these transactions also provides great insight into the institutional process that actually gave rise to BEE. The often-arbitrary actions behind these interventions provide some perspective on the difficult operating environment of the time and help counter unfounded critiques that write off these contributions as efforts to subvert real transformation in the political economy.

4.5.1 The Sanlam/Sankorp Project

This review is based on a comprehensive history of the project by Verhoef (2003) and an interview with Professor Peet Strydom¹³, an economist and member of the Sankorp executive at the time.

¹³ Interview with Professor Peet Strydom. George. 31 January 2013.

Against the background of structural crises that South Africa was facing in the early 1980s, the insurance giant Sanlam was suffering the effects of an internal crisis caused by a rapid and often ill-considered accumulation of assets⁷. In the mid 1980s, Sanlam owned, or was a major partner in, a diverse array of companies in the mining, financial services, engineering, motor, retail, electronics and services sectors (Verhoef, 2003). The performance of many of the companies in this investment portfolio was, to quote Strydom, “appalling” and this was having a negative impact on the results of the parent company. In 1985, in an attempt to resolve this situation, a decision was taken by the board to form a subsidiary to house all non-core assets until they could be properly assessed, reformed, and retained or disposed of. The subsidiary was called Sankorp, and it was capitalised to the tune of R2 billion by the parent company (Ibid.).

According to Strydom, Sanlam assembled a highly-skilled team to oversee Sankorp whose first task was to undertake a strategic review of the political economy, which review would guide the operations of Sankorp and inform decisions regarding the future of the companies under its control. Strydom was previously an economist with Central Merchant Bank, a Sanlam subsidiary, and had been transferred to become a member of the Sankorp strategy development team.

The team premised its efforts on the assumption that any future scenario for South Africa must assume equal participation by people of all races, in line with the demographic profile of the country. Sanlam was a symbol of great cultural and economic significance to the Afrikaner community, having been founded in 1918 with funds contributed by ordinary people who, at the time, represented a very poor section of the population (Verhoef, 2003). The intentions of the strategy team were, therefore, both controversial and progressive.

Sanlam/Sankorp drew on its own record, and that of Afrikaner business in general, to create a model on which it might base efforts to engender the greater economic inclusion of black people. Based on this history, a multi-faceted

strategy was designed that sought to address this objective on a variety of levels, ranging from employee advancement within the companies to community development projects and, ultimately, partnership in the reengineered businesses by suitably qualified candidates. It was the latter aspect of this strategy that resulted in the sale of shares to black partners in Metropolitan Life, an insurance company, as well as in businesses like the Fedics Group (foodservice company), Cashbuild (retail building supplies), and Nissan South Africa.

Verhoef (2003:31) records the pragmatic and structured nature of the project, as follows:

Sankorp realised that urbanisation and the rapidly changing political environment in South Africa demanded pro-active strategies to make black people their partners in the future of South Africa. As a strategic planning company in South Africa, Sankorp would aim to influence government on sound macroeconomic policies imperative to attract capital flows and to avoid undesirable effects from short-term unstable capital flows. Such policies would contribute towards stable macroeconomic conditions and would be sanctioned by international capital flows to stimulate domestic business development. Another prerequisite to sustained macroeconomic stability would be the elimination of anxiety and uncertainty about the political and economic future of South Africa among business leaders, of which a substantial number were executives and managers of Sankorp conglomerates and underlying companies. Sankorp's second priority was to establish closer links with black leaders in business and community affairs, especially those anticipated to control the direction of South Africa in the near future. Sankorp acknowledged that the size of its portfolio would justify cognisance of its opinion on the future of the country.

The changing environment observed by Sankorp showed that black people were increasingly demanding effective political participation, the improvement of the quality of life and training towards employment mobility. Unless large numbers of blacks would enter higher employment

categories within the following decade, the South African economy would be forced to a standstill as a result of a managerial shortage. . . . The rational strategy for Sankorp would thus be to develop specific directives for the rapid and deliberate preparation of blacks for managerial and administrative positions. . . . Sankorp would use its position as one of the largest employers in the country to seek contact with black leaders, while simultaneously improving working conditions and employment expectations for blacks via its underlying companies. Sankorp had already identified a considerable number of prima facie black candidates for such occupants in its underlying companies, but intended to achieve its goals with black employment not simply by redistributing income without limits, but to place black people in a position in the long run, to exploit employment opportunities in the market.

Strydom recalls that “Sanlam was way behind the likes of Anglo American and the Ruperts” [of the Rembrandt Group] in terms of black advancement projects and relations with the black community. “Problem number one was, we had very little, almost nothing, no access to the black community. We knew a few intellectuals at the university but in the real world of business we had no contact.”⁷

The Sankorp team established connections and formed a council of advisors in the late 1980s that included black businesspeople, academics, politicians, and businesspeople. This was a slow process, however. Strydom managed to make contact with Aggrey Klaaste, the then editor of the *Sowetan* newspaper, and Wendy Luhabe and Thami Mazwai, both established businesspeople, whom he recalls were of great help with introductions at the higher levels of black society. However, the broad-based strategy the team had committed itself to required a wider range of contacts and Sankorp used a variety of tactics including the formation of an annual choral festival that was a particular success, not least in terms of its musical objectives.

Strydom recalls how Sankorp identified Dr. Nthato Motlana, a medical doctor, businessman, and civil society leader, as a potential partner for the

Metropolitan Life project in the early 1990s. Despite already being a member of the Sankorp advisory council on black affairs, a formal business partnership with Sankorp was “a bridge too far” for the doctor. However, after attending a choral festival event, sponsored by Sankorp subsidiary Murray and Roberts, where Motlana witnessed the South African Police choir singing the liberation anthem, *Nkosi Sikelel' iAfrika*, he was sufficiently moved to accept Sankorp’s offer.

Commonly, but erroneously, conceived of as the first BEE deal, the Metropolitan Life transaction comes in for much criticism as the prototype of an effort by “white South African elites [to lay] a neoliberal ambush for their successors” (Bond, 2005:39). Based on the historical record and the recollections of Professor Strydom, these views can only be said to reflect an ideological bias that has little factual basis and that suggests a limited appreciation of the ways of the business world.

4.5.2 Projects at Anglo American

Even before Sanlam, the Anglo American Corporation had been mulling over the importance of a black middle and capitalist class as a bulwark against the threatening socialist rhetoric being espoused by the liberation movement (Sampson, 1987; Butler, 2011).

As the largest company in the country, utterly dominating the Johannesburg Stock Exchange (Chabane et al., 2006:555), Anglo American simply could not have been expected not to intervene in the political sphere when government policy was proving an increasing impediment to its performance. Its championing of the UF has already been addressed but the company sponsored many other organisations and even the Progressive Federal Party that became the official opposition in the 1980s (Terreblanche, 2002:Ch 3). Anglo executives may have been far removed from the life experience of black people, but there is no evidence that they were motivated only by the cold imperatives of capitalist accumulation. Recalling the 1970s and early 1980s under the leadership of Harry Oppenheimer, ex-Anglo American Chairperson, Julian Ogilvie-Thompson¹⁴ recollects how,

¹⁴ Interview with Julian Ogilvie-Thompson. Johannesburg. 6 December 2012.

In the Anglo American led by Harry Oppenheimer, we liked to think then and, I think we still like to think, that we were on the side of angels, or the side of people trying to get a more fair dispensation in South Africa.

In 1979, inspired by the Malaysian government's New Economic Policy that sought to modify the structure of the Malaysian economy and advance the economic interests of indigenous Malays, Anglo American founded its Litet¹⁵ division and tasked it with creating small black businesses (Anglo Zimele & IFC, 2008). As a consequence, Anglo American generated a body of knowledge regarding the challenges black entrepreneurs faced and the challenges involved in financing and developing start-up black businesses. This experience would later prove invaluable in the design of BEE deals with political figures in the early 1990s, and also in the formulation of the Enterprise Development element of the Mining Charter and B-BBEE policy frameworks.

Anglo American's involvement in matters political was not an uninformed one. In 1985, Gavin Relly, then Chairman of the company, had gone to Lusaka with a group of other businesspeople to meet the senior leadership of the ANC. In his record of this event, Sampson (1987:195) writes that the meeting was exceptionally cordial and that Relly "was clearly moved by the goodwill". However, Sampson quotes an extract from a subsequent newspaper article by journalist and editor Hugh Murray who accompanied the group and who recognised the potential impact of what these business leaders had been told by their ANC counterparts.

Predictably there remained great gaps between us. Businessmen do not embrace the prospects of nationalisation, either in practical or philosophical terms; they know as a matter of fact that economic thinking which derives from the shadowy, incompetent world of worn-out Marxism does not create wealth. On the other hand, who can deny that there are inequities in the generation and distribution of South Africa's wealth? A new society, reformed or revolutionary, would have to apply itself more

¹⁵ Known today as Anglo American Zimele.

diligently to the alleviation of deprivation in education, health and feeding (Murray, quoted in Sampson, 1987:195).

For his part, Rely returned committed to the notion that Anglo American needed to become actively involved in the process of economic change in South Africa and, by the early 1990s, the company had amassed considerable capacity and experience in black business, and employee and community development programmes (Sampson, 1987:Ch 13). This expertise was readily shared, and frequently utilized by other companies. However, as with their peers at Sanlam, Anglo American was concerned about the dearth of a black capitalist elite and so, in 1992, a subsidiary insurance company, African Life, was sold to Don Ncube, then an executive with Anglo American. Around this time, yet another opportunity arose.

Ogilvie-Thompson recalls that, driven mainly by unexpected changes in management in one of its subsidiaries, and the contemporary fashion for unbundling complex industrial ownership structures, Anglo American decided to break up its JCI Ltd. mining and industrial subsidiary into its constituent parts. Some of the mining operations were absorbed into other Anglo mining subsidiaries and some were sold to De Beers, at the time an Anglo American associate. The board then elected to use the remaining parts as platforms for black enterprise development.

The residual mining assets were housed in a company called JCI Mining which was then sold to a consortium led by businessman Mzi Khumalo. The industrial divisions, called Johnnic Holdings Ltd. was sold to another consortium led Cyril Ramaphosa. These transactions were conducted under the chairmanship of Ogilvie-Thompson, who recalls how the decision was arrived at:

We could have simply taken over JCI . . . [the various parts] would have fallen naturally [into the various divisions of Anglo American and De Beers] but we thought we shouldn't do that. What we should really do is that we should really use this as what had come to be known as black economic empowerment. That word wasn't used or coined at that stage [and] what

we were trying to do was to do what Harry Oppenheimer had done so successfully with the Afrikaner group in '64.

Together with the record of events at Sankorp, Ogilvie-Thompson's recollection challenge assertions that the intent of big business in the early 1990s was to create a cronyist elite or subvert the path of political change (Bond, 2005). The 1960s initiative, undertaken by Oppenheimer, is a recurring theme in the discourse on BEE and was discussed by this researcher with Ogilvie-Thompson, who was Personal Assistant to Oppenheimer during that time.

In 1964, when Anglo American was a symbol of the dominant English business establishment operating under an Afrikaner government, the company sold its General Mining subsidiary to Afrikaner interests, partly as a counter to the Nationalist government's critique of English dominance of the economy and partly as a tactic by Oppenheimer (Lipton, 1986:310; Verhoef, 2010). Ogilvie-Thompson recalls the manner in which this transaction came about:

When Sir George Albu [minority owner of General Mining and managing partner] died . . . [Anglo] had about 40% and so something had to be done about General Mining. Either you have to get someone else to come in and run it or perhaps Anglo should have taken it over but Harry Oppenheimer decided not to do that. He decided to, effectively, sell it to the Afrikaans (sic) group over a period.

We were very lucky in Federale Mynbou which had some good coal mines particularly in Transnataal Coal Corporation. . . . They really had two very good people in Willem Coetzer and Tommy Muller and I can remember Harry saying, "you know if we bring them into the mining industry, they as Afrikaners will be telling government the same sort of things we have been telling them but government will believe them because they're Afrikaners, just as they wouldn't believe us because they knew we were not Nationalists". . . .

That was done in two stages. First of all we were fifty-fifty and the understanding was that after a number of years we would pass the control

to them. Well, that duly happened . . . and then later on Federale Mynbou and General Mining merged into Union Corporation . . . Willem Coetzer became President of the Chamber of Mines and, in due course, was telling government the same sort of things that the old [mining] houses had told them and the government paid more attention.

General Mining evolved through acquisitions and mergers to become part of BHP Billiton, currently the largest mining house in the world by market value (Statista, 2015).

4.5.3 Projects within the black business community

The pronounced lack of awareness about the achievements of the black business community during apartheid is truly lamentable, not just because the exceptional achievement of these entrepreneurs is so little acknowledged, but also because younger generations of South Africans badly need role models and heroes (Luhabe, 2002).

Black commercial activity did not disappear under apartheid although it was extremely constrained up until the late 1970s when government began to implement reform policies that created space for meaningful black business and managerial development outside the borders of the homelands (Keeble, 1980; Mtimkulu, 1980; Smuts, 1986; Motsuenyane, 2012). As noted by Southall (1980) and later by Jordan (1984), black entrepreneurial activity had survived in homeland and some few township areas, ironically protected by laws that sought to shield black business from the potential dominance of white interests. There was also, a thriving black market in the townships, not least in the sale of alcohol (Rogerson & Hart, 1986).

With the ongoing removal of restrictions on black commercial activity in white areas from the late 1970s, some impressive ventures were initiated by the small black business community (Motsuenyane, 2012). Notable among the early enterprises was the 1975 project by NAFCOG that involved the founding of the African Bank, funded largely with contributions from ordinary members of the African community. In 1977 NAFCOG was also responsible for founding the first black-owned supermarket and shopping centre in South Africa. Reflecting on the

challenges involved, Dr Motsuenyane (2012:71), ex President of NAFSOC, recalls that “[r]aising capital for the project did not take a long time. What took long were the negotiations to secure permission and rights to build such a business centre on municipal land”.

The personal history of Herman Mashaba, who built up a hair care products empire throughout the 1970s and 1980s, is another striking example of entrepreneurial competence and fortitude in the face of extraordinary challenge (Mashaba & Morris, 2012).

From the perspective of BEE-type enterprises, however, the most significant venture to have taken place, arguably even to this date, would be the transfer of the National Sorghum Breweries (NSB) to a black-owned trust in 1990. This previously state-owned organisation comprised 21 municipally-owned breweries with a collective annual turnover of approximately R350 million. In 1987, the breweries were placed under the control of the state development banking institution, the Industrial Development Corporation, in preparation for their becoming a black empowerment vehicle (The Citizen, 1991).

Qwelane and Mngadi (1993) record how the campaign to acquire these breweries had long been a project of businessman and academic Mohale Mahanye. Along with a team from NAFSOC, Mahanye had first met with the minister responsible for NSB, in 1980, to lobby for the transfer of these assets as a basis for black business development. They were eventually transferred for a consideration of R44 million, all but 10% of which (retained by the Industrial Development Corporation) was collected from members of the public through a public share offer. An employee trust was set up to ensure workers got a 30% share and white participation was limited to 10%. No one investor was allowed to acquire more than 10% and the share offer was fully subscribed. The brewery was almost entirely run by blacks (Ibid).

Although NSB was not successful in the long term, eventually failing due to a lack of appropriate oversight, it dwarfed many of the so-called ‘major’ BEE deals that followed it, in terms of the amount of money involved, the lack of

indebtedness, and the demographic profile of the management team and broader employee body. The brewery would likely have scored a top rating on the future B-BBEE scorecard while, at the same time, developing the capacities of black people and providing a powerful symbol of black business success. Indeed, amid the current government rhetoric about the need to 'create' a corps of black industrialists, it is quite amazing that the example of NSB is not given any recognition (Zuma, 2013; Medupe, 2014; Qubeka, 2015).

Gqubule (2006:Ch 3) provides an account of many other black businesses established in the late apartheid era that are either still in existence or that have merged into larger entities. Examples include Kunene Brothers Holdings, a diversified industrials company, and Pamodzi Holdings, a diversified mining house that grew from the early efforts of entrepreneur Ndaba Ntsele who with his brother set up a building company in the early 1980s to take advantage of a boom in housing construction in the townships.

Many black employees also fought against prejudice and discrimination in the workplace to take advantage of corporate and government advancement programmes and position themselves to be the corporate leadership elite of modern day South Africa. This was not easy as Luhabe recalls in her book *Defining Moments: Experiences of Black Executives in South Africa's Workplace* .

Defining Moments shares stories of how black executives over the past 30 years overcame cultural barriers and succeeded to varying degrees in a white-dominated business world; how they became role models for others when none existed for them; how they remained committed to their own history and values while trying to adjust to an alien white world; how they uplifted their communities and own people while striving to improve themselves; and how they ventured into uncharted business territory with nothing but their instincts and courage to guide them (Luhabe, 2002:2).

Despite these achievements, it cannot be forgotten that these few entrepreneurs and managers were the exception. Gqubule (2006:98) also lays out in stark terms the limited economic participation of black people across South African society in the early 1990s:

In the early 1990s, 67 000 white farmers owned 86% of agricultural land, equivalent to 16,2 hectares per rural resident, while 13,1 million Africans lived in the remaining rural areas with less than one hectare per person. Only 2% of all bank credit to individuals, and 3% of building society loans went to black people. It was estimated that only 2% of the black population was involved in entrepreneurial activity as opposed to 12% for whites. Only 0,5% of JSE-listed companies had black directors. In 1992, less than 2% (40) of the 2 250 directors on the JSE from the top 100 companies were black. . . . There were only 2 100 Africans in top and middle management in the private sector.

The extent to which the history of home-grown black entrepreneurship has been forgotten or ignored was one of the saddest aspects of this research project, especially when interviewing people like Luhabe, Motsuenyane, and Mashaba and realising the example and guidance they could provide. Gqubule (2006:35) succinctly captures the essential problem caused by this ignorance of history:

It is indeed a tragedy that the brightest black South Africans all want to be Tokyo Sexwale or Cyril Ramaphosa [multimillionaire beneficiaries of BEE largesse]; they believe that the only way to create wealth is through buying and selling shares in white companies. This is an undeniable fact since none of my peers want to start companies that will be new drivers of demand.

4.5.4 The influence of the ANC on early BEE development processes

At this stage the reader may be wondering where the ANC, and its contribution to the institutional origins of BEE, are in this history? The short but controversial answer to this question is that there was no direct contribution from the organisation up until its unbanning in February 1990. The impact then, however, was profound.

For much of its time in exile, the ANC adhered to an ideology that foresaw the revolutionary overthrow of the apartheid state and the subsequent implementation of a socialist economic model, and strict adherence to this ethos precluded discussion on possible alternative scenarios such as eventually came

about (Cargill, 2010:Ch 1). In his book on the history of economic planning by the ANC, organisation stalwart and long-time economic policy advisor, Ben Turok (2008:30), admits that even as late as 1985 “little attention was given to economic policy”.

Thus, despite the prospect of dialogue with the apartheid government in the late 1980s, the closest the ANC came to developing strategies and policies for accession to power was a three-page document comprising broad guidelines for constitutional negotiations (ANC, 1989). As a result, when the ANC was unbanned in 1990 and catapulted into a negotiating situation, it was decidedly ill-prepared on the economic front. Such was the state of unpreparedness that then ANC Deputy President, Nelson Mandela, appealed to the Canadian Prime Minister, Brian Mulroney, during a 1990 visit to Canada, “for assistance in helping the ANC to understand economic issues better and to develop its policymaking capacity in this regard” (Mandela, 1995a:vii).

The report on the subsequent project, funded by the Canadian International Development Research Centre (IDRC), speaks of incapacity, factionalism, and self-interest among members of the liberation movement. In one of many such references, the report notes the following (Van Ameringen, 1995:53):

We [the IDRC] were particularly struck by the dearth of capacity to support leaders in the democratic movement by formulating coherent and viable perspectives on economic policy consistent with the broad policy directions contained in the movement’s key documents. The lack of capacity is not merely, or even primarily, in terms of the shortage of skilled personnel and contextual experience. No less important is the absence of an organizational structure capable of providing effective policy advice to the top levels of the relevant organizations.

In the transitional negotiations process, it was agreed that the demographic profile of the civil service and all organs of state would need to be rapidly transformed if the ANC government was to have any chance of success. The view was that a white-led civil service that had ostensibly been dependent on the

largesse of the NP government would frustrate the efforts of the new black government to effect change (Wentzel & Tlabela, 2009). The new civil service leadership had to be drawn from the ranks of the much smaller and much less professional homeland administrations. This decision not only robbed the civil service of its institutional memory but also introduced cultural and corruption-related problems from the homeland governments. Together these factors effectively undermined the capacity of the new government to deliver. The new state thus began life with an inexperienced political leadership taking the reins of the largest and most sophisticated economy in Africa, supported by a weak institutional infrastructure (Chipkin & Meny-Gilbert, 2012).

This history has great relevance to the development of BEE, not just in terms of the policymaking and management capacities of the post-apartheid government but, more importantly, because, in the view of this author, BEE should have been the central tenet of the entire ambit of post-apartheid public policy, as in the case of Malaysia's New Economic Policy (Gomez & Jomo, 1999).

The liberation movement, unfortunately, was simply too unprepared and inadequately capacitated to lobby in both economic and political policy arenas. From this point on, therefore, the die was cast. The project of effecting change in the economic arena, or BEE as it would come to be called, was doomed to be little more than a blunt political stick used to beat an enduringly uncooperative economy.

4.5.4.1 Thebe Investment Corporation

The other major role played by the ANC in the institutional development of BEE was the founding of the Thebe Investment Corporation (Thebe) in 1992. It is surprising that this organisation has not been given a higher profile and that the history of the Anglo American and Sanlam deals have remained in the limelight when Thebe was indeed the forerunner of the archetypal 'BEE deal' involving the worlds of business and politics.

Thebe was founded in 1992 with R100 000 in equity which, in just 22 years, the company has built into a portfolio of assets worth in excess of R6 billion (Moneyweb, 2012). Ex-ANC cadre, BEE specialist and author of the

authoritative *Trick or Treat: Rethinking Black Economic Empowerment*, Jenny Cargill (2010:5), describes the story of Thebe as follows:

Individuals within the ANC had aspirations and were already looking at business opportunities as the transition was taking place. Tokyo Sexwale features early on. The first BEE-type enterprise, Thebe Investment Corporation, was launched way back in 1992 from within the ANC. Owned, ostensibly by an investment trust (Batho Batho Trust), with the community earmarked as the beneficiary, a strong ANC coating stuck to Thebe. Sexwale and Vusi Khanyile (former ANC financial officer) were the main movers for Thebe, and the ANC stalwarts Nelson Mandela and Walter Sisulu were among the founding trustees.

Shortly after Cargill published her book, the *Sunday Times* carried an article asserting that the ANC had an interest in the proposed, hugely controversial shale gas fracking project in the ecologically-sensitive Karoo region of the country (Jordan, 2012). Thebe held a 25% shareholding in Shell South Africa, one of the companies promoting this project, and the newspaper argued that the Batho Batho Trust was little more than a fund-raising front for the ANC and money accruing to the Trust from its investment in Thebe would flow through to the ANC. In the article, the Trust's Chairman, Kenny Fihla, admitted that funds were transferred from the Trust to the ANC although the amount could not be ascertained.

In a subsequent interview in November 2012, the co-founder and Executive Chairman of Thebe, Vusi Khanyile, unequivocally stated that Thebe had been founded for the purpose of funding black community and entrepreneurial projects.

Well, right from the beginning, in fact preceding 1992, our experience borne out of the communities in which we grew raised a particular strategic question and the question really was you have a large number of South Africans who have been marginalised and subsequently have been underdeveloped over the years. Let's not forget that at some stage African farmers were more sophisticated and more productive than the poor

Afrikaners, who had been moved off the land. But the policies over many decades ensured that the Africans were progressively underdeveloped and made poor.

A great number of these communities were dependent on foreign funding to improve their lives and that funding was predicated on the fact that South Africa did not have a democracy. Those people did not have the capacity to change their lives. Then the strategic question came up, two actually, one was what will happen when you've got a normal society, when South Africa becomes a democracy, what will happen to this foreign funding. The second question then was if we are to look at the South African sources for funding what those sources could be, we came to one conclusion that there is only one source that generates wealth and that is a business.

Then the idea then was, is it possible to bring into the economic market a special creature of an entity, which exists for the sole purpose of improving the quality of people's lives? We hadn't seen it elsewhere but we knew something about business in South Africa and we knew a lot about community aspirations, and the strategic question was, is it possible to merge the two, that the two streams should merge such that the community development, community transformation and the empowerment of the marginalised could be fuelled by the success of business? That's how then, that's the thinking that brought Thebe about and hence at the beginning and for many years, six years thereafter the foundation that owned Thebe, that held 100% of the shares in the company, it was trying to put the community in a position of ownership (Moneyweb, 2012).

This hyperbole about assisting the community is little short of cynical, considering what had been exposed a few months before with the Sunday Times expose (Jordan, 2012). Neither is it mentioned in the interview how much Thebe's assets had grown. The Thebe website notes that the company controls an investment portfolio in excess of R6 billion (Thebe, 2015). However, in 2012

when the issue of Thebe's investment in Shell was still in the news, journalists at the *Sunday Times* established the value of Thebe Investments to be R17,85 billion, based on the price paid by the Sanlam insurance company for 8,4% of the shares then held by the Trust (Piliso & Naidu, 2010). At present, the Trust holds 47,5% of the shares in Thebe which, at 2012 values, were worth R8,48 billion. There can be little doubt, therefore, that Thebe represents an outstanding example of the late apartheid BEE model in action. The company was thus an obvious subject for study for this thesis, but this proved not be possible and of all the organisations and individuals the researcher attempted to contact and interview for this research project, the unsuccessful effort to arrange an interview with Vusi Khanyile stands out as quite bizarre.¹⁶

It is interesting that Thebe sought to obscure its role as a funder of the ANC, since the activities of another party investment fund, Chancellor House, had already been exposed in 2006 (Robinson & Brummer, 2006) and, by 2010, this second fund was functioning quite openly (Grootes & Cohen, 2010; Pressly, 2010; Terreblanche, 2010). What is evident from the actions of both these investment funds, however, is that the ANC itself has a strong vested interest in the maintenance of BEE as a vehicle for rent-seeking.

4.5.4.2 Telecoms, broadcasting, and gambling licences

In the early 1990s, the NP government was in the process of issuing new cellular telecommunications, broadcasting, and gambling licences and the ANC insisted that these licences include conditions regarding black ownership and affirmative action. The ANC's demands had clear origins in the lobbying efforts of black business and the trade unions since the major beneficiaries were trade union investment companies and, to a lesser extent, black business organisations

¹⁶ Usually, potential candidates unwilling to be interviewed made ongoing excuses, sent substitutes to interviews, or proposed dates so far in advance as to render them unattractive. Instead, the process with Thebe took the form of exaggerated interest on the part of Mr. Khanyile's personal assistant, paradoxically countered by the requirement that I would have to meet the company lawyer first.

When an interview was finally scheduled for mid February 2013, after four months of written and telephonic communication, the meeting was summarily cancelled the day before, ostensibly due to a misdirected email, sent by the researcher's supervisor to the researcher and inadvertently copied to Thebe. In an earlier part of this communication that was appended, the researcher had expressed surprise at the length of time it was taking to arrange the interview and which the researcher suspected had been an evasatory tactic. The supposedly offending part of the message stated, "I'm not 100% sure what is going on here, whether they [Thebe] are genuinely trying to help me or to make sure that I'm not out to expose something. Either way, it [the interview] could prove interesting."

Considering that the attempt to schedule this interview had taken over four months of ongoing telephone calls and emails to Mr Khanyile's assistant, and that the meeting was to be diverted via the company lawyer, it is difficult to see how Thebe could have found the content of the email so rude or inappropriate as to merit cancellation, especially when Khanyile's Personal Assistant had consistently expressed such fulsome support for the study.

and recently-formed black investor groupings (Gqubule, 2006:Ch 3; Cargill, 2010:Ch 1). The licenses also came with strict criteria for affirmative action in the selection of employees and suppliers so the thinking behind these early empowerment transactions was certainly broad-based.

While there has been some consolidation within the three sectors over the years, the resulting companies, MTN and Vodacom in the communications field, Tsogo Sun Holdings and Grand Parade Investments in the gambling industry, and eTV, Kagiso Media, and Multichoice in the broadcasting sector, have all been spectacularly successful in terms of growth and profitability. The two cellular telecoms companies, for example, had a collective capitalisation of R4,26 billion in 1993 (Cargill, 2010:13) that has risen to R570 billion in 2015 (Bloomberg, 2015).

In the absence of any reliable measure of policy performance (see Chapter 5), it is difficult to comment on the extent to which these opportunities have benefitted the broader ideals underpinning BEE. However, trade union members should have benefitted through the lucrative participation of union pension fund investment companies, and both of the cellular networks have subsequently created platforms to help the broader black community acquire their shares (Rumney, 2008). Importantly, also, while the top management teams of the companies involved, and indeed of some the trade union investment companies, are still white, there can be no question but that black people have been well-represented at senior levels and that the example of CEOs such as MTN's Phutuma Nhleko, Kagiso Media's Murphy Morobe, and the Mineworkers Investment Company's Mary Bombela provide just the type of inspiration that Wendy Luhabe (2002) believes so important for the next generation.

4.6 Conclusions

This chapter questioned received beliefs about the origins of BEE as an initiative of big business in the early 1990s, looking first at how this has been partly caused by a particular ideological bias on the part of historians, and secondly, by the sheer manipulation of facts. It has shown how BEE was the product of collusion between business and political elites whose shared interests were well served by it, the one for influence and the other for access to a

necessary stream of income. The case of Cyril Ramaphosa, ex-trade union leader, businessman, and politician was explored to demonstrate how this manipulation of history can inhibit understanding, not just about BEE but about key players involved in the project.

Also discussed was how a particular view of history, premised by historians, has hampered understanding of the role of black trade unions, traditional leaders, and the black middle class and entrepreneurial elite in the political economy of the late apartheid era and thus in the evolution of BEE.

The chapter reviewed the circumstances of black people at the time of the transition and argued that there can be no question of the need for policies to reconfigure the South African political economy to address the injustices of the past. It also argued that the record of the black advancement programmes of the late apartheid era, while worthy of credit, demonstrated that change of the nature required cannot be entrusted to the goodwill of the private sector. The chapter closed with an examination of the role of the ANC in BEE and argued that, far from having been in any way instrumental in the formulation of BEE policy prior to 1994, the organisation has been a willing partner in a private sector-sponsored project that has served as a source of funds to the party and its cadres.

Chapter Five

BEE in the post-apartheid era: part one

5.1 Introduction

The previous chapter challenged the widespread conception of BEE as originating in a few business initiatives in the early 1990s and instead highlighted the development of institutional structures, especially in the latter decades of the 20th century that survived into the post-1994 era.

This chapter picks up the story of BEE at the beginning of the 1990s, a period that saw fundamental change in the character of the South African political economy, and of the project to economically empower black people. In the 1970s and 1980s policies and programmes that sought to advance the interests of black people had not, for the most part, been designed with that particular aim in mind. Instead, the objective of such policies had been to stabilise the political environment, address skill shortages, combat sanctions, or reduce the level of labour unrest (Lipton, 1986:27; Smollan, 1986). By comparison, in the post-1994 era, new public policy initiatives were introduced that were ostensibly founded on the tenets of equality enshrined in the Freedom Charter (ANC, 1955) and which inevitably prioritised the economic advancement of black people.

Chapter layout

The chapter begins with a review of the main background issues that influenced BEE policy formation post-1994, notably the ANC's ideological position on the subject, and the impact of the organisation's lack of preparedness to assume the reins of power. Attention is focused on the selection of BEE policies to be explored in the study, leading to a discussion of broad underlying issues that cannot comfortably be separated from the discourse on BEE. These include Constitutional provisions that serve to influence BEE policy direction, and the transformation of the public sector. The remainder of the chapter explores the origins and development of the B-BBEE policy framework, the detail of the actual elements of this policy, and its performance.

5.2 The social context of the early 1990s

Before exploring these policies, it is important to emphasise the dynamic and uncertain environment that characterised South African society in the early 1990s. This history is inclined to be subsumed by media accounts of the South African 'miracle' transition and the inauguration of Nelson Mandela as President in April 1994. Ramphele (2008b:28) challenges such perceptions that frame the South African transition as a miracle which she asserts, "both South Africans and international observers have repeated so often that they have come to believe it to be true". Ramphele continues,

Our transition to democracy is anything but a miracle. The tree of freedom in South Africa was nourished by the blood of many martyrs over the years of struggle. It benefitted from the fall of the Berlin Wall and the shift in geopolitics. It is the product of careful strategic leadership by Nelson Mandela and others. Its road was paved by the extraordinary sacrifices of all those who fought for freedom at home and abroad (Ibid., p.45).

Having lived through this era, even though resident in a safe, comfortable suburb far from running battles in Johannesburg townships and mini civil wars in some homelands (Sparks, 1994; Welsh, 2009:Ch 12), the author can attest to it having been a period of enormous uncertainty and wild rumours. It was an especially challenging time in the world of business where few people were prepared to make long term plans, change jobs, or sign new contracts. One society was literally dying and another, which everyone knew was going to be very different, was being born.

Policies for the economic advancement of black people developed within this cauldron of unequal power relations, imbalances in knowledge and experience, and a general sense of uncertainty and insecurity. The high ideals commonly espoused in early policy proposals and initiatives, therefore, had to contend with entrenched and often-oppositional institutional frameworks, the demands and development needs of liberation movement organisations, and the expectations of cadres and the new black voting public. Considering these circumstances, it is unsurprising that BEE/B-BBEE developed into the complex and controversial phenomenon that it has.

5.3 Background to the development of post-apartheid transformation policies

While economic equality has always been a cornerstone of ANC policy (ANC, 1955), the political ethos of the organisation has not remained constant through time and, as the political ideology has changed, so too has the ANC's perspective on economic equality and, in turn, the question of black advancement. The ANC's first formal statement on economic policy is found in the 1943 *African Claims in South Africa* document (ANC, 1943) which exhorts the white government of the day to acknowledge "the claims of all classes, colours and races for sharing and for full participation in the educational, political and economic activities" of the country. As Turok (2008:Ch 1) notes, however, this call for the removal of impediments to the full political and economic participation of Africans did not envisage any change to the reigning economic orthodoxy.

The economic ideology of the ANC would soon be altered in line with changes in leadership and the organisation's partnering with the SACP. Cold War politics would also have a major impact as the ANC found a willing sponsor and kindred ideological ally in the USSR (Filatova, 2012; Ellis, 2013:Ch 2). As a result, the ANC's strategy was radically transformed from one of cooperation with the South African government to one that envisaged its revolutionary overthrow and the introduction of soviet-style socialism. Against the background of increasing restrictions and repression of black people in South Africa, the new, more militant and left-leaning leadership of the ANC formally adopted the Freedom Charter as its ideological vision statement (Turok, 2008:Chap 1).

The Freedom Charter calls for a democratic order governed according to "the will of all the people" and with equal rights for all. The parts of the Charter relating to the economy are especially pertinent to this study as they were, by and large, the only statement on economic policy made by the ANC prior to 1989. The clauses relating to economic activity are as follows:

The national wealth of our country, the heritage of South Africans, shall be restored to the people;

The mineral wealth beneath the soil, the Banks and monopoly industry shall be transferred to the ownership of the people as a whole;

All other industry and trade shall be controlled to assist the wellbeing of the people;

All people shall have equal rights to trade where they choose, to manufacture and to enter all trades, crafts and professions;

Restrictions of land ownership on a racial basis shall be ended, and all the land re-divided among those who work it to banish famine and land hunger;

The state shall help the peasants with implements, seed, tractors and dams to save the soil and assist the tillers;

People shall not be robbed of their cattle, and forced labour and farm prisons shall be abolished;

All who work shall be free to form trade unions, to elect their officers and to make wage agreements with their employers;

The state shall recognise the right and duty of all to work, and to draw full unemployment benefits;

Men and women of all races shall receive equal pay for equal work;

There shall be a forty-hour working week, a national minimum wage, paid annual leave, and sick leave for all workers, and maternity leave on full pay for all working mothers;

Miners, domestic workers, farm workers and civil servants shall have the same rights as all others who work;

Child labour, compound labour, the tot system and contract labour shall be abolished (ANC, 1955).

In 1989, when the prospect of political change was evident, the top leadership of the ANC drew up a set of guidelines regarding the organisation's

position on key matters. These *Constitutional Guidelines for a Democratic South Africa* (ANC, 1989) largely restated the contents of the Freedom Charter and highlighted the following policy positions relating to the economy:

The state and all social institutions shall be under a constitutional duty to take active steps to eradicate, speedily, the economic and social inequalities produced by racial discrimination.

The state shall ensure that the entire economy serves the interests and well-being of all sections of the population.

The state shall have the right to determine the general context in which economic life takes place and define and limit the rights and obligations attaching to the ownership and use of productive capacity.

The private sector of the economy shall be obliged to co-operate with the state in realizing the objectives of the Freedom Charter in promoting social well-being.

The economy shall be a mixed one, with a public sector, a private sector, a co-operative sector and a small-scale family sector.

Co-operative forms of economic enterprise, village industries and small-scale family activities shall be supported by the state.

The state shall promote the acquisition of managerial, technical and scientific skills among all sections of the population, especially the blacks.

Property for personal use and consumption shall be constitutionally protected.

The state shall devise and implement a Land Reform Programme that will include and address the following issues:

Abolition of all racial restrictions on ownership and use of land.

Implementation of land reforms in conformity with the principle of Affirmative Action, taking into account the status of victims of forced removals.

A charter protecting workers' trade union rights, especially the right to strike and collective bargaining, shall be incorporated into the constitution.

Women shall have equal rights in all spheres of public and private life and the state shall take affirmative action to eliminate inequalities and discrimination between the sexes.

While still an elementary statement of economic intent, the *Constitutional Guidelines* introduced three elements to the ANC's broad policy framework that would have far-reaching implications for economic development in the post-apartheid era. These were (ANC, 1989):

- the constitutional protection of private property rights,
- acceptance of a mixed economy, and
- recognition of the institution of traditional leadership.

This latter position, while not intrinsically economic, would have a major influence on rural economic development in later years.

There may be good reason as to why the ANC gave so little attention to matters of economic policy while in exile but such explanation notwithstanding, the organisation had little more than a brief couple of pages on the subject prior to its being unbanned and the result of this lack of preparedness cannot be underestimated when reviewing the path of post-apartheid economic policy.

Immediately upon its unbanning, the ANC held an economic strategy conference in Harare in April 1990 where the various liberation movement partners and their advisers were brought together to flesh out the constitutional guidelines previously developed by the ANC leadership. In bringing such diverse parties together for the first time, it was a noteworthy achievement that consensus could be reached at all, but the resulting discussion document (ANC, 1990) was still a hugely inadequate response to the challenge of economic transformation to which the ANC had committed itself.

Responding to the document, the ANC-aligned economist, David Kaplan praised the conference output as “representing a considerable advance in economic policy for the progressive movement” but was critical regarding the paucity of detail:

Such a process is very valuable and it should be continued and improved upon – it has not yet run its course. At the same time the very real limitation of such a process should be clearly recognised . . . Such a process can only produce a broad vision of economic policy. What such a process cannot easily do is, firstly, provide economic policies in any detail nor, secondly, suggest how such policies might actually be implemented. The validity of the first limitation is revealed in the Harare document where far and away the most effective section is the macro/overall framework. The closer the Harare document comes to spelling out specific details, the more problematic its proposals. . . . The second limitation is evident by a complete absence of attention paid to who precisely might implement this policy. There is no mention of any of the actual policymaking institutions which currently direct policy and what their role might be in the new dispensation (Kaplan, 1990:21).

The next formal statement on policy, *Ready to Govern*, was issued in 1992 and represented “a set of basic guidelines to policies we intend to pursue” (ANC, 1992:2). *Ready to Govern* sought to “highlight the strong relationship between the creation of political democracy and social and economic transformation” (page 3) and constituted a comprehensive, if very high-level, picture of the broad framework of ANC policy. Of particular import to this study, the document formally introduced affirmative action as a core policy of the ANC. Of relevance also, however, is the narrow manner in which the concept was addressed, namely, in terms of personal development and advancement instead of being the basis for operationalising the radical changes that were mooted elsewhere in the document (ANC, 1992). Thus, while *Ready to Govern* contains multiple references to proposed changes across diverse areas of the political economy, there is little to indicate that policymakers had any real grasp of the challenge involved in effecting such reform.

This apparent lack of understanding carried through to the ANC's 1994 final core policy framework, the *Reconstruction and Development Programme* (RDP) (ANC, 1994c). The RDP incorporated an extensive assessment of the challenges to be faced in restructuring the South African economy but, again, with little apparent appreciation of the change-related challenges involved and with the subject of affirmative action now being addressed as an aspect of labour policy.

This absence of understanding is confirmed in another 1994 policy document, *Affirmative Action and the New Constitution*, which acknowledged that the ANC had not as yet developed a clear conceptualisation of the form affirmative action should take in South Africa but instead asserted that all those involved recognise the “essence” of the concept which is described as follows:

[Affirmative action] meant taking special measures to ensure that black people and women and other groups who had been unfairly discriminated against in the past, would have real chances in life. In particular, it signified a concerted effort to enable them to overcome the obstacles that had been put in their way, to develop their capacities to the full and receive appropriate reward for their efforts (ANC, 1994a:1).

This document did indicate a broader perspective on the subject of affirmative action and the challenge of managing change in society. It addressed the important question as to who should be considered as having been disadvantaged under apartheid and, for the first time, linked key elements of the economic change project, namely, the transformation of the public service, land reform and rural development, employment equity, and the equitable ownership of business assets (Ibid.).

5.4 The transformation policy development process post-1994

Upon its accession to power, the ANC-led Government of National Unity wasted no time in following through on its stated intent to reform institutions across the spectrum of social and economic activity. However, these efforts were not coordinated, either under the auspices of one government department,

cluster of departments, or even within a single overarching policy framework. This lack of coordination was not the only problem.

At the operational level the rapid transformation programme in the public sector, discussed below, greatly undermined the capacities of the state to implement the new policies and there was an evident lack of knowledge as to the fundamentals of public policy theory among the new political leadership (Chipkin & Meny-Gilbert, 2012). Theorists are largely united in the belief that public policies are always built on the foundations of previous policy frameworks and their associated institutional processes (Kingdon, 1995; Delius & Schirmer, 2000; Sabatier, 2007a; Chipkin & Meny-Gilbert, 2012), and new initiatives are, therefore, more change-management projects than new beginnings. ANC policymakers were either unaware of these principles or they chose to ignore them.

The result has been a diverse, uncoordinated body of transformation initiatives (RSA, 1994b, 1994a, 1996c, 1996b, 1998b, 1998d, 1998a, 2004a, 2013c) that ostensibly share similar developmental objectives but which are constantly undermined by a combination of historical, institutional, political, and capacity issues. The institution that has evolved to become known as BEE is located within this confused and conflicting framework of policies and the objective of this, and the following two chapters is to attempt to disaggregate this complexity and arrive at a workable conception of the phenomenon that has come to be known as BEE.

The extent of policy confusion surrounding BEE was already an issue by the late 1990s, as evidenced in the following excerpt from a paper by Edigheji:

Since the introduction of the concept of Black Economic Empowerment (BEE) into the South African political lexicon in the late 1980s, the concept has become an amorphous, slippery catch-phrase for politicians, journalists and academics of various ideological persuasions. BEE is generating controversy among labour unions, business organisations, government officials and people in the street, invoking hopes, fears and scepticism from various quarters. Books, newspapers and magazine articles have been

written on the subject and conferences, seminars and workshops have been have been organised on the theme of BEE. It has also found its way into a wide range of political parties and government's documents since the 1994 non-racial and non-sexist democratic elections. Yet the concept has been elusive and ill-defined as even the African National Congress (ANC) and the government have not come up with a clear definition or a coherent BEE strategy (Edigheji, 1999:1).

Since Edigheji wrote these words, BEE has been subject to little analysis of a conceptual nature and it has become the norm for authors to side-step questions about the complex origins and lack of definition of BEE (and B-BBEE) and simply premise studies on the notion that BEE is a policy of the South African government, for example Acemoglu et al. (2007), Arya, Bassi and Phiyega (2008), Du Toit et al. (2008), Hamann, Khagram and Rohan (2008). As discussed in Chapter 4, such superficial framing obscures appreciation of the true nature and inherent complexity of the phenomenon and, thus, the ability to build valid arguments about its character and effect (Weingast & Wittman, 2006). Such framing is not a problem if a study is simply seeking to explore the performance characteristics of a particular policy, but if the objective is to understand the factors that lie behind such performance characteristics, deeper insight is required as to the influences at work.

The extent to which conceptual confusion regarding BEE/B-BBEE has remained a problem, even at the highest levels of government, is evidenced in a speech given by President Zuma (2013) to the Broad-Based Black Economic Empowerment Summit in 2013. The speech purportedly set out to review the "successes" and "challenges" of ten years of B-BBEE policy implementation but, instead, rambled on about ANC ideology regarding change in South African society and provided no data whatsoever on the overall performance of B-BBEE. Specific elements of the B-BBEE framework are referred to, in isolation, but even these are only supported with outdated data. Terms such as BEE, B-BBEE, affirmative action, and transformation are used interchangeably while unrelated references are made to diverse economic policy frameworks. The speech can best be described as a nice-sounding, but utterly confusing, narrative:

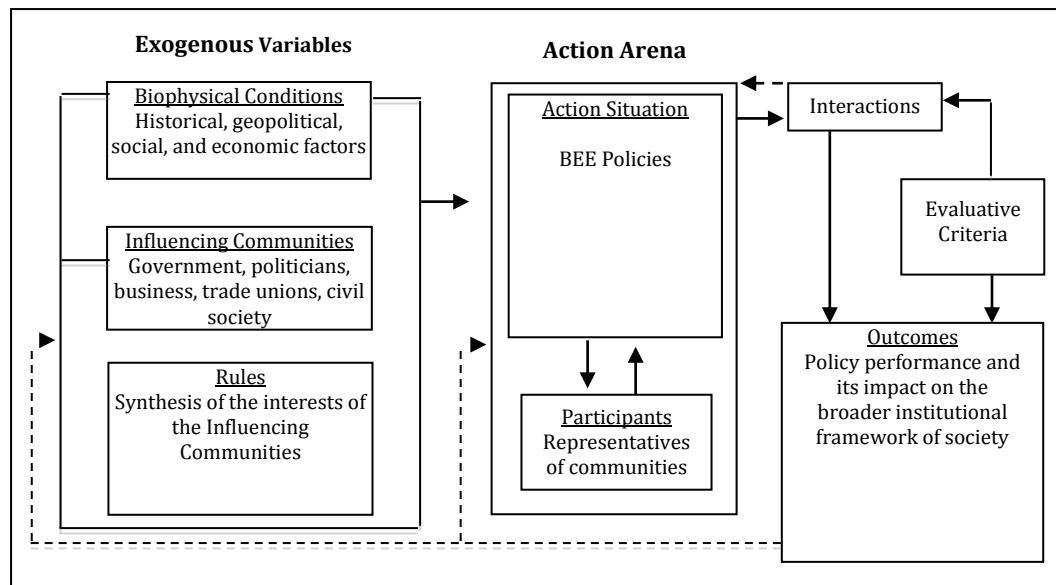
Our BEE policies are interlinked with affirmative action policies aimed at opening up the management and control of the economy by black people, women and persons with disability. The appointment of black people and women in senior management positions in the private sector has increased from less than 10% in the 1990s to over 40% today. More progress is needed, especially given that the Employment Equity Commission report each year records that white males are still at the at the higher echelons of companies. That means we need to find new methods of encouraging compliance. The Gender Equality Bill and the amendment of the Employment Equity Act are designed to improve loopholes (Ibid.).

At this stage, therefore, as part of the endeavour to diagnose the BEE phenomenon and understand its role in society, the study must address the question as to what can reasonably be termed a BEE policy.

5.5 What can reasonably be termed a BEE policy?

Figure 3.2 from Chapter 3, repeated below for the reader's convenience, applies Ostrom's IAD framework (2005) to the BEE policy environment. Drawing on this theory, BEE can be interpreted as the product of *Rules* that have been the outcome of negotiation and interaction between powerful groups in society, collectively termed *Influencing Communities*. In turn, the members of this body of *Influencing Communities* have been subject to both external influences, emanating from the broader institutional framework of society, as well as internal influences or *Outcomes* that result from activities within the policy environment itself.

Figure 3.2 (Repeat): The IAD framework adapted to BEE



Adapted from: Ostrom, E. (2005). *Understanding Institutional Diversity*. Princeton: Princeton University Press. Loc.536.

As in any public policymaking context, power relations within the leadership elite largely determine the set of *Rules* to be implemented and their exact form. These relations also influence how the elite responds to internal and external challenges that impact the particular policy-setting environment (Kingdon, 1995; Ostrom, 2005).

Some of the major BEE policy frameworks are explored in this chapter and the following two. It might seem to the reader that this analysis should start with the *Influencing Communities* and their needs and interests, since it is they who determine which *Rules* matter. However, it must be remembered that individuals who formulate policy always do so in the context of some pre-existing policy framework and thus there really is no ideal starting point (Ingram et al., 2007).

5.6 Identifying the relevant BEE policy frameworks

This study faces something of a challenge in identifying the *Rules* that are relevant to BEE since it is a fundamental premise of the study that BEE has not been adequately defined. There thus exists no clear basis for determining what constitutes a BEE policy and what does not. Ostrom (2005:Loc.380) notes that this is a common problem in the study of institutional phenomena and advises

that the theorist must sometimes fall back on his/her knowledge of a situation “to select the appropriate assumptions . . . that fit the type of situation under analysis”, adding that “sometimes we may have to be satisfied with an understanding as to the complexity of structures and a capacity to expect a broad pattern of outcomes from a structure rather than a precise point prediction. An outcome consistent with a pattern may be the best verification we can achieve in settings of substantial complexity”.

Ostrom (2005:Loc.597) further observes that, when reviewing the system of *Rules* in a particular institutional context, it is important to examine not just those that are formally stated but also those informal rules she describes as ‘rules in use’. Drawing on this advice, the following assumptions and considerations have been applied in determining which policies and programmes to review for this study:

- The objective of the study is to develop understanding of a government programme that seeks to effect change in the demographic profile of economic activity in South Africa. Therefore, all policies related to this objective were considered for inclusion, whether they were popularly considered to be BEE policies or not.
- It would have been beyond the resources of the researcher to incorporate every such policy since the economic transformation project pervades government policy. Therefore, the body of BEE-type policies were screened and specific ones selected on the basis of their influence, reach, political and/or economic importance, and cost.
- Welfare policies, including public works programmes and programmes to facilitate the development of community cooperatives, are not reviewed. Although such policies involve the greater integration of black people into the mainstream of economic activity, and as such could be considered to be BEE policies, the researcher simply did not have the resources to extend the scope of the study to incorporate these policy frameworks.

- Considering the meaning of the term empowerment (Rappaport, 1987), there would exist a good case to include education and skills development policies in a study of BEE. However, while education and skill are important factors that influence a person's ability to take advantage of economic opportunity, their relationship to economic activity is mediated by myriad other factors such as finance, geographical location, and personality. Therefore, these policy frameworks are not explored in the study.
- The researcher acknowledges that the economic empowerment of black people has been a central consideration in the development of policies on competition. These policy frameworks are not included for review, however, partly because of the capacity limitations on the part of the researcher but also as they overlap with some of the other policy frameworks that have been.
- There exist many major private sector empowerment programmes such as the Business Trust, Anglo Zimele, Shanduka Black Umbrellas, and MTN Zakhele. While these projects are very much part of the BEE process and certainly constitute a key component of the institutional framework of *Rules* that govern BEE, they are not government policies and so have not been included.

Based on the foregoing assumptions and considerations, the following legislative instruments, polices and programmes have been identified as being representative of the framework of *Rules*, essential to the development of an understanding of the institution of BEE:

- The Constitution of The Republic of South Africa
- The transformation project in the public sector
- B-BBEE and the associated codes and sector transformation charters
- Specific mining and liquid fuels industry-focused empowerment policies
- Public procurement policy

- Employment equity policy
- Small business development policies
- Land reform and rural development policies

The Constitution, the transformation of the public sector, and B-BBEE policy are the subject of the remainder of this chapter. Land reform and rural development policies are discussed in Chapter 7 while the remainder of the policies are reviewed in Chapter 6.

5.7 The Constitution and BEE

South Africa is a constitutional democracy in which *The Constitution of the Republic of South Africa* represents the supreme authority (RSA, 1996a). The process of drafting the new Constitution was complex and involved consideration of a wide range of ideologies and objectives. The result is a document that is widely lauded for its progressive and inclusive character but which reflects the challenges and contradictions inherent in a complicated societal change process, such as in contemporary South Africa. The challenge is eloquently expressed by anti-apartheid activist and retired Constitutional Court Justice, Albie Sachs,

This imperative to achieve equality in the context of great and historical inequality does pose a tricky constitutional paradox. How does one go about the restitution of political or economic rights without tramping on the toes of those who have enjoyed and who continue to enjoy those rights? The answer is that one cannot. Empowering the disempowered inevitably requires one sector of society to consciously curtail its own advantage. . . .

The objective, however, is not to establish a form of anachronistic or disjunctive compensation for past injustices. It is to rectify the way in which these injustices continue to permeate the world we live in. . . . The objective must be to overcome all forms of structured advantage. The moral purpose is thereby intrinsically and inextricably bound up with the

social function. Structured and institutional imbalances in society call for responses that, in turn, are structured and balanced (2007:10).

The following aspects of the Constitution are salient to this review of empowerment policy and are briefly presented here to inform the ensuing discussion:

Affirmative action

The systems of colonialism and apartheid not only disenfranchised black people and took their property; they also demoted black people socially and introduced severe impediments to their advancement. The following parts of Section 9 of the Constitution acknowledge this historical handicap and the need to intervene and facilitate change in this situation:

(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 (RSA, 1996a).

While Section 9 provides some guidelines as to when discriminatory practice may be considered legitimate, interpretation hinges on the words 'unfair' and 'unfairly' and many cases have been brought before the courts,

especially with regard to the implementation of employment equity legislation (SAPA, 2012b; Croucamp, 2014; Groenewald, 2014).

Property rights

The subject of property rights lies at the root of much debate on constitutional matters and BEE. On the one hand, the Constitution guarantees the rights of people who own land and property in South Africa but, on the other, acknowledges the right to restitution of property, or compensation, to those whose land was taken unfairly in the past. Thus, Section 25 of the Constitution includes the following seemingly contradictory clauses:

(1) No one may be deprived of property except in terms of law of general application, and no law may permit arbitrary deprivation of property.

(2) Property may be expropriated only in terms of law of general application -

(a) for a public purpose or in the public interest; and

(b) subject to compensation, the amount of which and the time and manner of payment of which have either been agreed to by those affected or decided or approved by a court.

(3) The amount of the compensation and the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances

(4) (a) the public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resource. . . .

(5) The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.

(6) A person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practices is entitled, to the

extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress.

(7) A person or community dispossessed of property after 19 June 1913 as a result of past racially discriminatory laws or practices is entitled, to the extent provided by an Act of Parliament, either to restitution of that property or to equitable redress.

(8) No provision of this section may impede the state from taking legislative and other measures to achieve land, water and related reform, in order to redress the results of past racial discrimination, provided that any departure from the provisions of this section is in accordance with the provisions of section 36 (1).

(9) Parliament must enact the legislation referred to in subsection (6) (RSA, 1996a).

It is difficult to see how the issue of property rights will be resolved in South Africa when one considers the deeply conflicting interests and issues. Secure private property rights are a central tenet of the capitalist system to which South Africa is committed (Demsetz, 1967). Yet there are millions of black people whose historical rights to land and property must somehow be addressed without destabilising this democratic-capitalist order. Further complicating the matter is the system of traditional leadership in rural areas where the collective ownership of land is a fundamental principle underpinning the social order (Bank & Mabhena, 2011).

Public administration

Section 195 of the Constitution (RSA, 1996a) addresses issues relating to “[b]asic values and principles governing public administration” and requires that government adhere to high standards of impartiality, efficiency, transparency, and service. While there can be little doubt that the South African government has failed badly in maintaining such best-practice standards (Chipkin, 2013; Auditor General, 2014), it has succeeded particularly well in adhering to two specific requirements contained in Section 19. Subsections (c) and (i) have had

an important impact on the project of economic reform, albeit for very different reasons.

(c) Public administration must be development-oriented.

(i) Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness, and the need to redress the imbalances of the past to achieve broad representation (RSA, 1996a).

As regards subsection (c), it will become apparent in subsequent chapters that government has sometimes focussed on the development needs of poorer communities at the expense of supporting more productive sectors of the economy.

Subsection (i) came about partly as the result of an ideological adherence to the concept of representative government, and partly due to concerns from within the ranks of the liberation movement that white civil servants would remain loyal to the racist practices of the past and thus make the implementation of reform policies difficult (Turok, 2008:ch 6; Chipkin & Meny-Gilbert, 2012). Liberation movement negotiators therefore lobbied for the inclusion of this clause that would open the door to the largest single BEE initiative to date, the transformation of the public sector.

State procurement policy

Another section of the Constitution central to economic reform is Section 217. This section lays down the requirement that state procurement policy must be conducted in an efficient and cost-effective manner but must also take into account the development needs of the country:

(1) When an organ of state in the national, provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

(2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for -

(a) categories of preference in the allocation of contracts; and

(b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

(3) National legislation must prescribe a framework within which the policy referred to in subsection (2) must be implemented (RSA, 1996a).

As observed by Bolton (2006), such a Constitutional provision is rare but the apparent logic of using the considerable leverage of government buying power to effect change cannot be disputed and the requirement is in keeping with those of Section 9. Government initiated pilot procurement projects in the early 1990s were extended to all organs of state with the passage of the Preferential Procurement Policy Framework Act (PPPFA) in 2000. This Act was passed in fulfillment of the requirements of Section 217(3).

Although very much a vanguard BEE initiative, the parameters set down in the PPPFA are now out of line with those of the B-BBEE Act and powerful lobby groups are calling for amendment to these parameters (Van Rensburg, 2013).

The institution of traditional leadership

Section 9 also impinges on another complex issue, that of traditional leadership and the rights of those leaders, which are protected under Sections 211 and 212 of the Constitution:

211. Recognition.

(1) The institution, status and role of traditional leadership, according to customary law, are recognised, subject to the Constitution.

(2) A traditional authority that observes a system of customary law may function subject to any applicable legislation and customs, which includes amendments to, or repeal of, that legislation or those customs.

(3) The courts must apply customary law when that law is applicable, subject to the Constitution and any legislation that specifically deals with customary law.

212. Role of traditional leaders.

(1) National legislation may provide for a role for traditional leadership as an institution at local level on matters affecting local communities.

(2) To deal with matters relating to traditional leadership, the role of traditional leaders, customary law and the customs of communities observing a system of customary law -

(a) national or provincial legislation may provide for the establishment of houses of traditional leaders; and

(b) national legislation may establish a council of traditional leaders (RSA, 1996a).

This particular conflict has had a significant effect on the development and implementation of land reform and agricultural development policy and, thus, has affected efforts to change the economic circumstances of rural people (Ntsebeza, 2005).

5.8 The transformation of the public sector

The project to transform the public sector cannot be left out of any meaningful conversation on BEE since it has had such a direct and major impact on the economic circumstances of so many black people. It was the first affirmative action project undertaken by the new government and, as observed by Southall (2004b), constitutes the biggest single influence on the development of the black middle class, as well as having been a major agent of change in the pattern of wealth distribution. The new opportunities and income flows made possible by this redistribution doubtless fulfilled many peoples' expectations regarding improved living standards and so can be said to have contributed to the relatively smooth transition to democracy. The redistribution of income also

sparked off a consumer spending boom that underpinned high growth rates in the early post-apartheid era which, while unsustainable in the long-term, provided a much needed confidence boost in the early years of the new dispensation.

Problems inevitably accompanied such a rapid change process and the transformation project has been widely criticised for undermining the capacities of the state, facilitating corruption, and thus impeding the ability of government to effectively implement its broader transformation project (Chipkin & Meny-Gilbert, 2012; Auditor General, 2014; Myburgh, 2014).

Bundy (2014) cautions against what he calls “intellectually lazy and often racist” assessments of the state transformation project that assert a causal relationship between affirmative action policies in the state sector and a lack of efficiency. He notes the underlying structural challenges involved in the creation of the post-apartheid state bureaucracy that necessitated combining eleven separate bureaucracies. Further complicating this task, the new, unitary administration was founded on democratic ideals and principles to which none of these eleven constituent parts ever fully ascribed. Instead, Bundy (Ibid.) attributes the problems experienced by government more to limitations on spending in the early years of the new order, along with the apparent refusal or inability of the ANC to insist on high standards of behaviour in public service.

It would be disingenuous to suggest that, in taking over the reins of government in 1994, the ANC did not recognise the importance of creating economic advantages for its electorate through its control over the organs of state. Notwithstanding this evident opportunity, however, it has been demonstrated in analyses of the subject and, in government White Papers, that the notion of representative bureaucracy was the driving principle when policy was being developed and not affirmative action (Thompson & Woolard, 2002; Milne, 2009; Chipkin & Meny-Gilbert, 2012). It is also important to bear in mind that the new government had little choice but to merge the homeland administrations with that of white South Africa and, effectively rendering the question of affirmative action a moot point.

Milne (2009:972) defines a representative bureaucracy as one “that consists of a workforce that reflects the composition of the citizens of the country”, the theory being that such an administration is better equipped to appreciate the needs of the citizenry and thus to provide a better level of service. Considering the history and demographic profile of South African society, the necessity of pursuing a policy of representative bureaucracy is completely justifiable. As observed by Milne (2009:971), it would have created “a politically untenable situation - a predominantly black government . . . faced with a largely white senior public service”.

The “Central Goals” of the state sector transformation project were cited in the 1995 White Paper on the Transformation of the Public Service:

(a) to create a genuinely representative public service which reflects the major characteristics of South African demography, without eroding efficiency and competence;

(b) to facilitate the transformation of the attitudes and behaviour of public servants towards a democratic ethos underlined by the overriding importance of human rights;

(c) to promote the commitment of public servants to the Constitution and national interest rather than to partisan allegiance and factional interests;

(d) to assist in creating an integrated yet adequately decentralised public service capable of undertaking both the conventional and, developmental tasks of government, as well as responding flexibly, creatively and responsively to the challenges of the change process;

(e) to promote human resource development and capacity building as a necessary precondition for effective change and institution building;

(f) to encourage the evolution of effective accountability and transparency in public management processes;

(g) to upgrade the standards of efficiency and effectiveness of service delivery;

(h) to create an enabling environment within the public service, in terms of efficiency and stability, to facilitate economic growth within the country (MPSA, 1995).

The White Paper (page 16) further identified eight areas of management focus that would be necessary to achieve the above objectives of which “representativeness and affirmative action” was one.

Groundwork for the state-sector transformation project had been laid in the course of the transitional negotiations process, with both the interim and final Constitutions making specific provision for such a programme (RSA, 1993:Section 212, 1996a:Section 195). Debate was then facilitated over the years with the publication of various white papers (MPSA, 1995, 1997, 1998), while the subsequent passing of the EEA in 1998 and the B-BBEE Act in 2004 further imposed legislative obligations on the state to transform its workforce and operations. Although the state has come in for much criticism regarding its strict adherence to the latter two policy frameworks (Cargill, 2010; Radebe & Sathekge, 2012; Cronje, 2014), it really had little choice. Had they not been enforced within the state’s operations, these policies would have had little prospect of success in the private sector and civil society arenas.

It is notable that the White Paper on the Transformation of the Public Service was the first policy document of the new post-apartheid administration to incorporate a concrete definition and detail of a programme designed to advance the economic interests of black people. The White Paper defined affirmative action as follows:

Affirmative action can be defined as laws, programmes or activities designed to redress past imbalances and to ameliorate the conditions of individuals and groups who have been disadvantaged on the grounds of race, colour, gender or disability (RSA, 1995b:Cl 10.3).

As regards the duration of the project, the document stated that,

Government remains committed to the objective of a broadly representative service by the end of the current decade [1999] . . . as well

as to substantial progress in the short term. . . . Recruitment and training should reflect South African society in terms of race and gender within two years of the implementation of affirmative action programmes.

Within four years all departmental establishments must endeavour to be at least 50 percent black at management level. During the same period at least 30 per cent of new recruits to the middle and senior management echelons should be women. Within ten years, people with disabilities should comprise 2 per cent of public service personnel (Ibid., Cl 10.6).

With reference to Bundy's comments above, one must be realistic when considering the change project in the public service and the potential for problems that it involved. There is no doubt that the organs of state in South Africa became less efficient, that service delivery suffered, that corruption grew, and that there was an evident lack of political will to address these problems (Auditor General, 2012; Chipkin, 2013). However, there also exists an evident lack of unemotional, informed commentary on the subject that takes into account the inevitability and scale of the project, the difficult circumstances in which it took place, the challenge in comparing data on the various public administrations, and the sheer complexity of political influences involved.

Table 5.1 provides some insight into the realities involved in the transformation of the public service. It should be noted that the data have had to be drawn from diverse sources as there appears to be little detailed data available on the homeland civil services.

Table 5.1: Change in overall size and racial composition of the public service

	1992	1993	1995	2001	2008
Total no. of employees: All homeland civil services	638 599				
Total no. of employees: Apartheid government civil service (white South Africa)		349 832			
Combined total of apartheid era administrations	988 431				
Total no. of employees: Post-1994 merged civil service			1 267 766	1 025 137	1 166 753
Racial breakdown of above administrations					
Total no. of blacks	698 919		954 994	869 630	1 051 151
% of total no. of employees	70,71%		75,33%	84,83%	90,09%
Total no. of whites	289 412		312 772	155 507	115 602
% of total no. of employees	29,28%		24,67%	15,16%	9,91%

Sources: Southall, R. (2004). Political Change and the Black Middle Class in Democratic South Africa. *Canadian Journal of African Studies/Revue Canadienne des Études Africaines*, 38 (3). 521-542; Milne, C. (2009). Affirmative Action in South Africa: From Targets to Empowerment. *Journal of Public Administration*, 44 (4.1) [Special Issue] 969-990; Chipkin, I. & Meny-Gilbert, S. (2012). Why the Past Matters: Studying Public Administration in South Africa. *Journal of Public Administration*, 47 (1). 102-112.

The first point to note in the above Table is that the apartheid-era public service was just under half the size of the collective of homeland administrations. Whatever the reputation of the apartheid administration for efficiency, therefore, any commitment to operational best practice could never have reasonably been expected to survive the deluge of homeland public servants, in light of the following assessment of these administrations by Chipkin and Meny-Gilbert:

Collectively, homeland officials were the least qualified and experienced. White senior managers often consisted of those officials that had been transferred from the South African civil service because they were below grade. These civil servants were joined by black officials, usually drawn from the ranks of the chefferie (or traditional system), who were prized for their obedience and loyalty rather than their education and competence. For the rest, homeland administrations consisted of tens of thousands of

black, poorly trained subalterns, either performing menial or basic administrative tasks.

Before 1980, there were no trained black personnel working as senior managers in the Bantustans. Bantu education and the limited opportunity for black South Africans to obtain tertiary education supplied few skilled managers to the homeland administrations. Further, the nurturing of a skilled, black bureaucratic class was a perceived threat to the apartheid state, and to the privilege of the white civil service. In the 1980s, apartheid reformers attempted to deal with the major human resources deficit in the homelands, and counter the perception that increased black employment was a threat to the survival of the state. Their efforts were unsuccessful. Yet the façade of the homelands as independent states had to be maintained. This required the active collaboration of local political elites.

As the apartheid state progressively ceded power to the homelands, so the Bantu Authority System provided more opportunities for the accumulation of wealth to the traditional elites as well as to senior bureaucrats and South African companies. Significantly, chiefs received official salaries and occupied strategic positions that often fused judicial and administrative functions – in what Mamdani famously described as a ‘clenched fist’ of indirect rule. Access to land and control over licenses and the granting of concessions, in particular, created huge opportunities for corruption (Chipkin & Meny-Gilbert, 2012:106).

Some blame for the problems experienced by the new public service must, therefore, be laid at the door of planners who failed to acknowledge the apparent impact of the merger, and not only in terms of the apparent lack of skills. Chipkin and Meny-Gilbert (Ibid.) note the paucity of scholarly research on public administration in the post-apartheid era which they assert might have helped provide greater insight into cultural and historical influences inherent in this amalgamation. One exception, they note, is the case study by Von Holdt (2010) that was conducted in the Department of Health and which highlights the

importance of considering such matters when diagnosing the challenges facing the public sector.

The researcher would argue that, considering the obviously different life experiences of the various communities that make up South African society (Terreblanche, 2002) and the vast body of literature on community psychology and organisational culture (Schlemmer, 1986; Hofstede, 1991; Schein, 1992; Smith, Dugan & Trompenaars, 1996; Hatch, 1997; Levine & Perkins, 1997; Rappaport & Seidman, 2000; Thomas, 2002; Booysen, 2007; Seedat, 2011), it is surprising that cultural influences have not received greater attention in studies on post-apartheid development.

Problems in the public service have also been attributed to the influence of neo-liberal ideologies and a consequent focus on fiscal discipline and management at the expense of the broader developmental needs of society. Wenzel (2007), for example, cites a lack of capacity and preparedness on the part of the new ANC administration that left it open to capture by big business and consultants who promoted their own policy agendas.

The implementation of GEAR [Growth, Employment and Redistribution] in 1996 shifted the reform focus from developmental and equitable service delivery for all South Africans to a careful but continuous process of downsizing and contracting out. The implication of this strategy was that rather than democratising the organs of state, a new autocracy was instituted, focused less on capacitating the state to deliver and more on cost reduction and consolidation of political power. There was a shift from state-driven, market-assisted RDP principles to a market-driven state-subsidised paradigm of mega projects for big business. . . . In light of the country's huge social needs and its limited state capability, one must ask whether the concept of a lean state makes sense (Wenzel, 2007:47-48)

The ANC's policy of cadre deployment has also received widespread criticism (Yudelowitz, 2009; Auditor General, 2014; Kane-Berman, 2014b; Sunday Times, 2014), more especially from the perspective that candidates

appointed to senior leadership positions have been appointed on the basis of party loyalty rather than competence.

5.9 Broad-Based Black Economic Empowerment

This study is being written amid major changes in the B-BBEE policy environment. The first B-BBEE Act was gazetted in January 2004 (RSA, 2004a) and the B-BBEE Amendment Act was passed in 2014 (RSA, 2014). Some of the new operational guidelines for the implementation of the amended Act were issued late in 2013 (RSA, 2013a), but many important aspects of this later legislation had still not been discussed or approved at the time of writing in March 2015. The B-BBEE policy environment is, therefore, very much in flux.

5.9.1 Background to the B-BBEE policy framework

In 1997, the BMF resolved at its annual conference to call on government to establish a commission of inquiry to address perceived inadequacies in the project to create greater economic access for black people. The resolution read:

The motivation for the establishment of the commission is that the notion of true empowerment as defined by black people does not exist, nor does a common definition or benchmark which serves as minimum requirement. Many deals are concluded by organisations, including Government structures that fall far short of recognising the true aspirations of the marginalised black majority all in the name of Black Economic Empowerment. (BMF cited in BEECom, 2001:1)

This initiative resulted in the formation of the BEECom the following year under the auspices of the BBC, the umbrella body for black business organisations. The BEECom's work was conducted against the background of ongoing developments in the empowerment policy arena and the Commission sought to incorporate these new policies in its recommendations. The various policies and programmes being formulated or implemented at the time included the:

- Competition Act (1998). A central objective of this Act was to address the highly concentrated form of the South African economy and, in the process, create greater access for black investors and entrepreneurs.
- Skills Development Act (1998). This Act seeks to incentivise employers to develop the skills and capacities of black employees.
- National Empowerment Fund Act (1998). This established a trust fund for the provision of financial assistance to black entrepreneurs.
- Employment Equity Act (1998). One of the most important policies of the empowerment framework. This Act seeks to eliminate unfair discrimination in the workplace and thus facilitate the advancement of black people.
- PPPFA Act (2000). This Act seeks to leverage the procurement and licencing capacities of organs of state to help in the development of black businesspeople and communities.
- Empowerment charter initiatives. In the mid 1990s, the key business sectors of finance, mining and liquid fuels voluntarily set about developing ‘transformation charters’. These charters sought to pro-actively and comprehensively address the black empowerment requirements in each of their business sectors.

Against the background of this dynamic environment, the BEECom recommended a radical review of the BEE policy environment to date.

The BEECom . . . proposes the adoption of an Integrated National BEE Strategy comprising a co-ordinated, simplified and streamlined set of guidelines and regulations that provide clear targets and demarcate roles and obligations pertaining to the private sector, public sector and civil society over a period of 10 years or more (BEECom 2001:8).

This Integrated National Strategy was envisaged as providing “a framework for economic growth with black participation as a fundamental pillar [that would form] part of an Economic Growth and Development Plan . . . [and] incorporate

the work done across all spheres of Government.” (BEECom 2001:9). The Commission proposed the new policy framework be called Broad-Based Black Economic Empowerment (B-BBEE) to better reflect its expanded focus.

It is apparent from the report that what the Commission had in mind was something akin to the Malaysian model of social transformation wherein all public policy has been centred around the ideal of reordering society in favour of the indigenous Malay population (Gomez & Jomo, 1999). The BEECom was of the opinion that:

BEE should be viewed within the broad scope of empowerment processes including, among others: job creation, rural development, urban renewal, poverty alleviation, land ownership, specific measures to empower black women, skills and management development, education, meaningful ownership, and access to finance for households and for the purpose of conducting business (BEECom, 2001:2).

The Commission report called for an “unapologetic and interventionist role to reduce inequalities”. It continued,

The state should therefore operate in an intelligent and responsive manner to lead the growth and developmental process. The need for a state to reshape and direct the course of economic development to suit local conditions must be emphasised. In fact, the state is not a hapless entity in relation to capital. It has direct and indirect leverage of the employment of capital and it must use this leverage in order that we build a globally competitive nation (Ibid., p.6).

To achieve this objective, the Commission envisaged the proposed B-BBEE policy as being administered centrally by a powerful oversight function located in the Office of The Presidency (Ibid.).

The BEECom report was very comprehensive and, although the subject is not overtly dealt with, the document demonstrates a good understanding as to what the concept of empowerment entails, namely the creation of an enabling environment as well as the capacitation of those involved (Perkins &

Zimmerman, 1995). Despite their sterling efforts, however, the commissioners appear to have taken insufficient account of changes that had already taken place in the broader economic policy environment which would eventually ensure a chilly reception to the BEECom report from the DTI and big business.

Frequent mention is made in the report of the ideals enshrined in the RDP (ANC, 1994c), the first core policy vehicle of the ANC and the party's manifesto in the 1994 elections. The RDP had been heavily influenced by leftist ideology and the ANC had subsequently come under great pressure to move toward a more conservative policy position (Wenzel, 2007; Turok, 2008:Ch 9). The result was the adoption of the GEAR policy, in 1996, which eschewed the kind of interventionist strategy being recommended by the BEECom.

Government's response to the Commission's recommendations was, consequently, quite muted despite the fact that Cyril Ramaphosa, a political heavyweight, had been Chairman of the Commission. Instead of being afforded a central coordinating position in the Presidency, oversight of the new B-BBEE policy was delegated to the DTI which department, pursuant to an "extensive consultation process within government and with the private sector", produced government's first policy statement on BEE/B-BBEE in 2003 (DTI 2003:5). This document, *South Africa's Economic Transformation: A Strategy for Broad-Based Black Economic Empowerment*, contained little of the strident interventionist language of the BEECom report but, equally, little of the insight, empathy, or strategic perspective.

Regardless of whether one shared the ideological orientation of the BEECom team, their report comprised a 72-page justification for their position that is well argued, referenced, and annotated. The DTI document, by comparison, reads like the output of a workshop, more or less just stating what the policy framework is to be. It comprises only 34 pages, each of which contains a blank column that occupies approximately one third of each page. There are no footnotes or annotations and little evidence of the reasoning behind the proposed elements of the policy position it advances. The following extract from

the DTI Strategy document, on the definition of BEE, bears testimony to the foregoing critique:

The challenge in defining black economic empowerment is to find the appropriate balance between a very broad definition and an overly narrow one. To define BEE too broadly equates BEE with economic development and transformation in general. The strategy is then commensurate with the totality of government's programme of reconstruction and development. To define BEE too narrowly limits it to a set of transactions transferring corporate assets from white to black ownership (DTI, 2003:12).

This statement calls into question the quality of the consultation that gave rise to the DTI document and the capacities of those involved. Considering the enormity of economic inequality in South Africa, and the expectations of people regarding a better life in the post-apartheid era, it is simply baffling that those responsible for drafting the government's policy on economic reform could have suggested that BEE could possibly be defined 'too broadly'.

In 2003, black people comprised over 90% of the population of South Africa and earned only 63% of the national income, equating to an average of R9 296 per capita, per annum. The white population comprised just under 10% of the population and earned 37% of the annual national income, equating to an average R53 514 per capita (Stats SA, 2003:6; SAIRR, 2010:81). Unemployment was similarly skewed in 2003 with a massive 4 670 000 black people unemployed as opposed to only 178 000 whites (SAIRR, 2010:41). Over 22 million black people were living in relative poverty as opposed to only 140 337 whites (Ibid.). Statistics on housing, access to sanitation, transport, electricity, healthcare and education all present a similar picture.

5.10 The lack of a definition of BEE/B-BBEE

The DTI strategy document offered a definition of BEE, the first official one, but it is patently in conflict with the ideological musings contained in the above extract. While this called for boundaries in BEE policy so as to avoid conflict

with “economic development and transformation in general” (DTI, 2003:12), the definition that follows is very general and broad-ranging:

Government defines BEE as an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the numbers of black people that manage, own and control the country’s economy, as well as significant decreases in income inequalities (DTI 2003:12)

Aside from the obvious contradictions in logic, a major shortcoming in the DTI’s framing of BEE lies in the lack of any apparent appreciation as to what the concept of empowerment entails. This concept was reviewed in Chapter 3 but there are some important elements in the theory that warrant mention here as they speak directly to the inadequacy of the DTI’s confused thinking.

Empowerment concerns the creation of an enabling environment that facilitates interaction between the individual and broader society or, to put it another way, the sharing of power between the individual and his/her communities (Rappaport, 1987). Empowerment is a psychological concept that exists in the mind of an individual or a collective of individuals. It is not something that can be done to, or for, a person but is instead a result of that person having been supported, and given the power and resources to be able to interact meaningfully with others (Perkins & Zimmerman, 1995).

Therefore, while it is important that government provides technical and financial assistance to black investors, entrepreneurs, community groups, and employees, and while it is vital that it challenges institutionalised racism and prejudice on their behalf, this alone does not constitute empowerment. This only makes government an empowering organisation. Empowerment only happens when people, themselves, are adequately prepared and possess the requisite capacity and power to interact freely in whatever community they choose (Zimmerman, 2000). The use of the term ‘empowerment’ in the DTI policy document is, therefore, ill informed and inappropriate. The concept of empowerment cannot be reduced to a few rules concerning access.

At the time the BEECom's work was published, the academic and commentator on BEE, O'mano Edigheji, expressed the opinion that the value of the Commission's work lay in it having created a coherent, holistic conception of BEE and thus a model for more effective implementation of the transformation project (Keeton, 2001). In an editorial at the time, the influential *Business Day* (2001) newspaper also welcomed the BEECom report which it said would help keep up the momentum on "developing a workable empowerment framework". However, in an enormously condescending judgement of the Commission's efforts, the editor then called for big business and government to now "step into the arena and help chart a more decisive way forward". Unfortunately, this is exactly what happened and the cost and complexity of the ensuing policy formation process ensured the exclusion of all but the most well-resourced organisations.

Through his association in the early 2000s with Anglo Zimele (Chapter 1), the researcher was involved on the periphery of these BEE policy formation processes. While broad engagement was encouraged in these discussions and workshops, they were so time-consuming and unproductive that it was only the likes of big corporates like Anglo American that could justify and sustain participation. Therefore, while the original objective of the BEECom had been to highlight the needs of ordinary black people and emergent business, the eventual outcome came to be dominated by government, big business, the BEE consultancy industry, and organised labour.

Legislation was eventually promulgated in the form of the B-BBEE Act which was gazetted early in 2004 (RSA, 2004a). The preamble to this Act states that it was intended to "provide a legislative framework for the promotion of BEE". However, the Act contains no definition of BEE. In the preamble, the term BEE is subtly replaced by the term B-BBEE which term is then 'defined' in the introduction to the Act.

The online Oxford English Dictionary (2014) defines the word definition as "a precise statement of the essential nature of a thing", but what is presented as a

definition of B-BBEE in the Act constitutes more a description of what B-BBEE is intended to achieve.

Broad-based black economic empowerment means the viable economic empowerment of all black people, in particular women, workers, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not limited to -

(a) increasing the number of black people that manage, own and control enterprises and productive assets;

(b) facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;

(c) human resource and skills development;

(d) achieving equitable representation in all occupational categories and levels in the workforce;

(e) preferential procurement from enterprises that are owned or managed by black people; and

(f) investment in enterprises that are owned or managed by black people (RSA, 2014).

The linguistic sleight of hand involved in the substitution of the term B-BBEE for BEE is important because it obscures understanding. To use a simple analogy, the word 'house' does not have the same meaning as the words 'a red house'. In referring to 'a red house', there is an implicit assumption that shared meaning already exists with regard to the concept of a 'house' and 'red' is simply a descriptor. Of course people can decide that, from now on, all houses are to be referred to as 'red houses' but this would cause great confusion when a house is actually blue or green.

Something similar has happened with BEE in its transition to B-BBEE. Policymakers by-passed the thorny task of developing a definition of the "amorphous, slippery catch-phrase" called BEE (Edigheji, 1999:2). Instead, they

added the convenient politically correct adjective, broad-based, and then provided a new description, instead of a definition, of what this revised policy framework would achieve.

Section 2 of the B-BBEE Amendment Act (little changed from the original B-BBEE Act) cites the proposed objectives of B-BBEE policy which largely repeat the 'definition' statement.

The objectives of this Act are to facilitate broad-based black economic empowerment by -

(a) promoting economic transformation in order to enable meaningful participation of black people in the economy;

(b) achieving a substantial change in the racial composition of ownership and management structures and in the skilled occupations of existing and new enterprises;

(c) increasing the extent to which communities, workers, cooperatives and other collective enterprises own and manage existing and new enterprises and increasing their access to economic activities, infrastructure and skills training; increasing the extent to which black women own and manage existing and new enterprises, and increasing their access to economic activities, infrastructure and skills training;

(e) promoting investment programmes that lead to broad-based and meaningful participation in the economy by black people in order to achieve sustainable development and general prosperity;

(f) empowering rural and local communities by enabling access to economic activities, land, infrastructure, ownership and skills;

(g) promoting access to finance for black start-ups, small, medium and micro enterprises, co-operatives and black entrepreneurs, including those in the informal business sector; and

(h) increasing effective economic participation and black owned and managed enterprises, including small, medium and micro enterprises and

co-operatives and enhancing their access to financial and non-financial support (RSA, 2014).

These objectives highlight the narrow interventionist nature of the legislation which is patently out of sync with the DTI's own vision of "an integrated and coherent socio-economic process" (DTI, 2003:12), let alone the BEECom's (2001:8) vision of "an Integrated National BEE Strategy".

The original B-BBEE Act was a simple five-page document that provided definitions and outlines for the broad administrative framework of the policy (RSA, 2004a). Key among these was a provision for the development of operational guidelines called Codes of Good Practice (Codes) (RSA, 2007) that would provide detail on the implementation and measurement of the policy. Probably due to the lack of discourse and debate on what BEE actually was, the process of developing these guidelines took a further four years and the *B-BBEE Codes of Good Practice* were only gazetted in 2007.

Despite all the years of policymaking, controversy and confusion has continued to reign regarding the practical application of B-BBEE policy and its performance. Disputes have raged as to the quality of the legislation, levels of compliance, conflicts with other legislative frameworks, unanticipated policy effects, and overall policy outcomes (Motlanthe, 2010; BMF, 2011b; Kruger, 2011; SAPA, 2011a; ANC, 2012a; Business Day, 2012a; Radebe & Sathekge, 2012; Allix, 2014; Marrs, 2014; Seccombe, 2014b).

5.11 Recent policy reforms

In response to these problems, a policy reform process was initiated in 2011 that culminated in the promulgation of a revised set of Codes in November 2013 (RSA, 2013a) and the B-BBEE Amendment Act in January 2014 (RSA, 2014). The amended Act provides for some far-reaching changes that include:

- Provision has been made for the coordination of B-BBEE with overlapping empowerment policy frameworks in the form of a 'trumping' clause. This clause provides that, in any instance where there

is conflict with another policy in an area relating to black empowerment, B-BBEE policy is to take preference.

- It is now a criminal offence to misrepresent B-BBEE credentials and organs of state have a statutory right to summarily cancel any contract or licence where the B-BBEE credentials of the supplier or applicant are found to be false.
- All organs of state are now required to participate in the implementation of B-BBEE policy within their own operations.
- The amendments provide for the establishment of a regulatory body, similar to the Competition Commission, to be called the B-BBEE Commission [a completely different entity to the earlier BEECom]. Key among the tasks of the Commission will be the development and maintenance of a national registry of B-BBEE compliance, the monitoring of compliance and verification standards, and the investigation of complaints. The Commission is also tasked with responsibility for advising government with regard to the management and development of B-BBEE policy.

The amended Codes (RSA, 2013a) introduce even further changes to the policy environment through a comprehensive revision of best practice guidelines for the implementation and measurement of B-BBEE policy. These changes are scheduled to become effective in May 2015 and are discussed in the following section which covers the operation of B-BBEE policy.

5.12 How B-BBEE policy works

With the passage of the amended B-BBEE Amendment Act, B-BBEE policy effectively now applies to every judicial entity be it a business, government department, educational institution, trade union, church, co-operative, charity, etc. (RSA, 2013a, 2014). These subject organisations are referred to as ‘measured entities’.

B-BBEE policy is currently implemented in accordance with one of two sets of Codes or one of nine sector-specific Charters. These long and complex documents, usually running to more than 100 pages, provide detailed guidelines for policy implementation, measurement, and compliance. Compliance is measured annually by private sector consultants called B-BBEE rating agencies which are themselves subject to particular Codes as well as standards set by the national regulating authority, the South African National Accreditation System (SANAS).

Measured entities must submit to an annual audit by an authorised rating agency which will then issue the measured entity with a Certificate of Compliance showing the Level of B-BBEE Recognition attained. Because the rating process requires a large amount of audited financial information, it is normally conducted soon after the financial year end of the organisation concerned.

At present measured entities with turnover of less than R5 million per annum (to increase to R10 million with the amended Codes) are exempt from compliance and automatically receive a high B-BBEE rating (RSA, 2004a). They only require a certificate to confirm their status as an Exempt Micro Enterprise (EME), which certificates are currently issued by authorised rating agents, pursuant to the presentation of an affidavit confirming the level of turnover of the EME. Under the Amended Codes, the affidavit will suffice (RSA, 2013a).

There are currently two sets of B-BBEE Codes (RSA, 2007). One is the Generic Codes of Good Practice (Generic Codes) which apply to entities with turnover in excess of R35 million per annum (rising to R50 million with the revised Codes). The other set is the Qualifying Small Enterprise Codes of Good Practice (QSE Codes) and it applies to companies with annual turnover of between R5 million and R35 million (R10 million to R50 million with the revised Codes). These two Codes frameworks have been combined under the 2013 amendments and are now referred to as The Generic Codes (RSA, 2013a)¹⁷. To

¹⁷ It should be noted that while the Codes document contains guidelines for small business, there would appear to be some expectation among BEE consultants and small business representative organisations that these revised small business Codes will again be revised in the near future.

avoid confusion, the various sets of Codes will be referred to as follows in the remainder of this study:

- The original 2007 Generic Codes of Good Practice are referred to as the 2007 Generic Codes;
- The original 2007 QSE Codes of Good Practice are referred to as the 2007 QSE Codes; and
- The amended 2013 Codes of Good Practice are referred to as the Amended Codes.

5.12.1 Codes and sector transformation charters

Both the original and the amended B-BBEE Acts provide that, where measured entities in a particular operational sector experience problems in complying with the detail of Generic Codes, they may make an application to the Ministers concerned to have a special set of Codes approved. These special sector-specific Codes are called Sector Transformation Charters (Charters). At the time of writing, the DTI website lists the following nine industry sectors that were operating according to Charters - agriculture, financial services, information and communications technology, property, chartered accountancy, transport (comprising eight sub-sector Charters), forestry, construction, and tourism¹⁸.

At present entities may elect to be measured according to the Codes or the relevant sector Charter but this option will fall away with the implementation of the Amended Codes. Under these new Codes, where a sector Charter exists the measured entity will not be allowed to be assessed against the Codes (RSA, 2013a).

¹⁸ Transformation Charters also exist in other legislative frameworks governing the mining and liquid fuels industries. These are completely separate from Charters legislated under the B-BBEE Acts.

5.12.2 Measurement of B-BBEE

All the various Codes and Charter frameworks measure B-BBEE compliance against a scorecard, as per the example of the 2007 Generic Codes in Table 5.2. Each set of Codes or Charter has a different scorecard but the principle remains the same.

Table 5.2: The 2007 Generic Codes B-BBEE Scorecard

Element	What the element measures	Weighting
Ownership	The extent to which the entity is owned and controlled by black people.	20
Management Control	This element governs issues relating to participation by black people in the top level management of the organisation.	10
Employment Equity	The contribution being made by the measured entity to employment equity policy* in the workplace.	15
Skills Development	This element of the Scorecard governs issues relating to the development of black employees.	15
Preferential Procurement	This is the engine of the BEE Act and governs the trading relationship of the measured entity with its suppliers.	20
Enterprise Development	The contribution of the measured entity to the development of qualifying small and medium enterprises.	15
Socio-Economic Development	This section measures the contributions to the promotion of economic activity in that sector of the community that is not yet active in the formal economy.	5
		100

Source: Adapted from RSA. (2007). *Broad-Based Black Economic Empowerment Codes of Good Practice*. Pretoria: Government of The Republic of South Africa. p.11.

* The requirements for compliance with the employment equity element of the B-BBEE scorecard is not the same as the compliance requirements under the Employment Equity Act which constitutes a separate empowerment policy.

The supporting Codes documents provide detailed guidelines for measuring compliance against each of these seven categories and the weighted average score is then determined according to a table such as that in Figure 5.3.

Table 5.3: Calculation of B-BBEE level status under the Generic Codes

BEE Status	Score on the Generic Scorecard	BEE Procurement Recognition Level
Level 1 Contributor	≥100	135%
Level 2 Contributor	≥85 but <100	125%
Level 3 Contributor	≥75 but <85	110%
Level 4 Contributor	≥65 but <75	100%
Level 5 Contributor	≥55 but <65	80%
Level 6 Contributor	≥45 but <55	60%
Level 7 Contributor	≥40 but <45	50%
Level 8 Contributor	≥30 but <40	10%
Non-Compliant Contributor	<30	0%

Source: Adapted from RSA. (2007). *Broad-Based Black Economic Empowerment Codes of Good Practice*. Pretoria: Government of The Republic of South Africa. p.11.

The primary driver of B-BBEE policy is government procurement and licencing policy. When selecting a supplier or deciding whether to issue a licence, government is bound, in most instances, to consider the B-BBEE procurement recognition level of the potential licensee or supplier. As per Table 5.3, an applicant that scores between 65 and 75 points (currently) equates to a Level 4 Contributor and will receive 100% of the available points that the government decision maker is allowed to allocate for B-BBEE compliance. Organisations with higher B-BBEE scorecard ratings will earn bonus points up to 135% of the available points while those with less are penalised. Applicants with scores of less than 30 on their B-BBEE scorecards are considered non-compliant and may find themselves excluded from government procurement and licencing decisions (RSA, 2004a, 2007). The Level of B-BBEE compliance is thus the main driver, or incentive, built into the system but there is also a secondary driver, designed to bring in those entities that do not ordinarily seek a direct relationship with government.

As per Table 5.1, 20% of the potential compliance points that can be scored relate to the element concerning Preferential Procurement. To earn points under this element, measured entities must themselves ensure they source goods from suppliers that also have a high B-BBEE compliance rating (Ibid.). In turn, these supplying companies must themselves procure from suppliers with a high compliance level rating, and so on. The power of government procurement

and licencing is thus channelled across the economy through the medium of supply chains. For example, an engineering company tendering for the construction of a new highway will want to ensure it has a good B-BBEE rating. It will thus be looking to its own suppliers in order to earn points on the Preferential Procurement element of its B-BBEE scorecard. In this way, when making a decision as to which company will supply its earth moving equipment, a major cost item for any construction company, the engineering company directors will pay close attention to the B-BBEE level rating of the various vehicle suppliers. In the experience of the researcher in such situations, the B-BBEE credentials of a supplier can carry as much, if not more, weight as traditional considerations of price and service.

This cascading incentive mechanism also applies to the Enterprise Development and Socio-Economic Development elements of the scorecard. In the same way as with procurement, those entities seeking licenses or procurement contracts from organs of state need to ensure that small businesses they assist (Enterprise Development) or charities they support (Socio-Economic Development) will contribute meaningfully to their B-BBEE score (Ibid.). This necessitates that beneficiary organisations ensure they also have good BEE Level ratings. It is through these mechanisms that B-BBEE compliance has become an important consideration for non-commercial institutions such as schools, NGOs and charities.

5.13 The recent policy amendments

The espoused intention of the various B-BBEE policy amendments is to facilitate greater and more genuine involvement of black people in the ownership and management of the economy (DTI, 2013). The amendments to the 2004 B-BBEE Act are of a strategic nature and deal with changes in the overall application and management of the policy framework (RSA, 2014). The amendments to the 2007 Generic and QSE Codes, on the other hand, are of a more detailed nature and seek to shore up perceived shortcomings in policy implementation (RSA, 2013a). It is important to stress the word 'perceived' here as, per the discussion in the following section on B-BBEE policy performance,

there exist very different conceptions as to what constitutes an acceptable policy outcome.

The Amended Codes radically altered the policy environment through a realignment of the scorecard elements, as well as through wide-ranging adjustments to the calculation of scorecard points (Ibid.). At the same time, policymakers eliminated the previous distinction between large and small companies by introducing one set of Codes for all companies that have turnover in excess of R10 million per annum. Tables 5.4 and 5.5 show the Amended Codes B-BBEE Scorecard and the Amended Codes Compliance Level calculation framework respectively.

Table 5.4: The Amended Generic Codes B-BBEE Scorecard

Element	What the element measures	Weighting
Ownership	The extent to which the entity is owned and controlled by black people.	25
Management Control	This element governs issues relating to participation by black people in the top level management of the organisation.	15
Skills Development	This element of the Scorecard governs issues relating to the development of black employees.	20
Enterprise and supplier development	The extent to which entities buy goods and services from empowering suppliers and to which suppliers and qualifying small and medium enterprises are assisted.	35
Socio-Economic Development	This section measures the contributions to the promotion of economic activity in that sector of the community that is not yet active in the formal economy.	5
		100

Source: RSA. (2013a). *Amended Broad-Based Black Economic Empowerment Codes of Good Practice*. Pretoria: Government of The Republic of South Africa. Clause 8.

Table 5.5: Calculation of B-BBEE level status under the Amended Generic Codes

BEE Status	Score on the Amended Generic Scorecard	B-BBEE Recognition Level
Level 1 Contributor	≥100	135%
Level 2 Contributor	≥95 but <100	125%
Level 3 Contributor	≥90 but <95	110%
Level 4 Contributor	≥80 but <90	100%
Level 5 Contributor	≥75 but <80	80%
Level 6 Contributor	≥70 but <75	60%
Level 7 Contributor	≥55 but <70	50%
Level 8 Contributor	≥40 but <55	10%
Non-Compliant Contributor	<40	0%

Source: RSA. (2013). *Amended Broad-Based Black Economic Empowerment Codes of Good Practice*. Pretoria: Government of The Republic of South Africa. Clause 8.

It will be apparent from a comparison of Tables 5.3 and 5.5 that the benchmarks for B-BBEE compliance have been ratcheted-up considerably. A company with less than 40 points on its scorecard is now considered non-compliant while the minimum requirement for 100% compliance has moved from 65 points to 80 points. As a result of these changes, it is widely acknowledged that the ratings of most entities will fall when the Amended Codes come into effect in 2015 (Peyper, 2013; Biznews, 2014; Janisch, 2014b; Nel, 2014; Steyn, 2015).

There have also been major changes within the measurement criteria that will put further downward pressure on most measured entities' B-BBEE Level Ratings while presenting severe strategic challenges to white-owned businesses in the small and medium enterprise (SME) sector (Levenstein, 2015).

It would require a separate doctoral thesis to comment on the minutiae of the B-BBEE policy framework, let alone the changes that are to come with the Amended Act and Amended Codes. Such detail is also unlikely to further the objectives of this particular study. What is relevant, however, is the question as to why a policy reform process has been initiated when there exists little reliable or comprehensive information on the performance of B-BBEE policy?

The official government rationale for policy reform was expressed as follows by Nomonde Mesatywa, Chief Director in Charge of BEE at the DTI:

Companies have been obsessed with the notion of maximum point scoring [on B-BBEE scorecards], aided by unscrupulous verification agencies. This new trajectory is about productive BEE. It's about companies diversifying their value chains, improving skills, developing suppliers and aligning to government's programme around re-industrialisation and creating black local capacity in key sectors of the economy (Lund, 2012).

Mesatywa's boss, the Minister of Trade and Industry, Dr. Rob Davies, voiced similar sentiments at a National Empowerment Summit in 2013 when he accused business of "battling to embrace and implement meaningful transformation" (DTI, 2013:11).

What is noticeable in these comments is that neither the Minister nor the Chief Director is highlighting any problem of compliance with the technical requirements of the B-BBEE policy framework. On the contrary, the results of a survey conducted by the DTI and presented at the Summit indicate considerable progress in the implementation of B-BBEE policy nationwide (DTI, 2013). Mesatywa's remark regarding business' 'obsession' with scoring points on the B-BBEE scorecard also suggests that the policy incentive mechanism was working very well.

The problem appears to be that "meaningful transformation", which the Minister described as "the creation of sustainable black companies", has not been achieved (Ibid.). This theme was also apparent in the opening speech given by President Zuma to the Summit.

[B]lack participation in the economy continues to involve share ownership schemes in the main. . . . More importantly, we are yet to see the growth of black industrialists despite government's aggressive focus on boosting the manufacturing sector. The day we see factories all over the country owned by black entrepreneurs taking advantage of our Industrial Policy Action

Plan, we will be moving towards achieving our B-BBEE goals (Zuma, 2013:2).

For those monitoring the B-BBEE policy environment, therefore, it would likely have appeared safe to assume that the forthcoming policy reform process involved little more than a reorganisation of the B-BBEE scorecard to highlight attention on specific elements of the framework. Furthermore, that the problems cited with regard to unscrupulous verification agencies would be addressed through improvements in oversight and regulation.

This could be why responses from established business to the proposed policy amendments were, initially, so muted. The peak business representative body, BUSA, issued a brief one-page list of comments on the proposed B-BBEE Act expressing the sentiment that “BUSA generally welcomes and supports the B-BBEE Amendment Bill. . . . As BUSA we view the Amendment Bill as far-reaching in terms of B-BBEE policy implementation and we think it will change the economic transformation landscape as we know it” (BUSA, 2012). The next biggest representative body, the South African Chamber of Commerce and Industry (SACCI), issued a more comprehensive list of comments. This organisation expressed firm opinions regarding structural impediments to transformation as well as the need for government to be cognisant of “economic realism” and “internationally accepted principles” relating to public policy in the commercial sphere (SACCI, 2011). The tone, however, was equally conciliatory and the document concluded with the comment that “B-BBEE plays an important part in socially inclusive economic development and SACCI hopes that the comments will lead to a more effective implementation”.

Black business associations were obviously happy to see policy changes that would benefit their members. While they maintained a low profile in the debate around the various amendments, sentiments were expressed in other fora. The BMF had provided the original stimulus for B-BBEE policy and had remained a strong advocate of policy reform. Thus, at its 35th Annual Conference, just before the publication of the B-BBEE Amendment Bill, BMF Deputy

President Thembekazi Mnyaka, expressed strong and unequivocal sentiments on the subject:

When we look at South African economic distribution, it is still far in trying to address the inequality gap, especially the majority of blacks in rural areas. Only a few people have benefited while the majority are still reeling deep in poverty. The worst part, those with sufficient resources have even taken an advantage by fronting poor people in order to get lucrative tenders. It is highly unacceptable to behave as if everything is right relating to BEE. We must find a balance to investigate BEE transgression and make sure that blacks take control of this economy (Sathekge, 2011).

Any perception that established business may have had regarding the incremental nature of the proposed amendments was shattered, however, with the publication of the proposed amendments to the B-BBEE Codes in October 2012 and their subsequent approval, with few substantial amendments, in October 2013 (RSA, 2013a). This time around, the SACCI (2012) slammed the amendments and accused the DTI of “multiple examples of mala fides” in its conduct of the policy reform process. The organisation even appended a report on research it had conducted with its members in 2012 that highlighted the extremely negative impact of various BEE policies on the operations of business.

Representatives of BUSA, the American Chamber of Commerce, and the Banking Association all expressed strong criticisms in Parliamentary hearings on the proposed amendments. The parties expressed concerns regarding vague and unclear details, the extent of authority to be granted to the BEE Commission, and the cost and administrative burdens that could only have a negative burden on business, employment and future investment by the private sector (Peyper, 2013). In an editorial on the subject, the leading *Business Day* (2013) newspaper expressed the opinion that, “rather than correcting the glaring flaws in the old codes and promoting genuine empowerment, it is likely the new version will entrench the very ‘rent-seeking activities’ Mr Davies [the Minister of Trade and Industry] warned against”.

Beyond the grandstanding and rhetoric that is, to some extent, to be expected from the various constituencies, there can be little doubt that the amendments are not going to help business in the short or medium term, or society in general. In fact, they are likely going to create serious challenges for procurement and licencing departments in government.

The South African economy has been stuck in a very low-growth situation for many years now, yet there has been a steady increase in the number of young entrants to the workplace (NPC, 2011). In this environment, the most that B-BBEE policy can achieve is a redistribution of existing wealth, assets, and jobs across racial groups and economic sectors. Also, in the absence of financial incentives for business to be involved in employee training, small business development, or social upliftment projects, as required by the policies, they really just amount to a form of taxation, thus increasing the costs of production, and serving as a disincentive to private sector investment.

Despite the main advocates of policy reform having been business associations that represent black management and emergent black businesspeople (Mandela, 1995b; Malala, 1997; BMF, 2012; Lindsay, 2012; SAPA, 2013; Van Rensburg, 2013; Barron, 2014; Qubeka, 2015), the Amended Act and Codes are only going to make the operating environment more complex, costly and difficult. There can no better example of this than the enormous task that faces the SME sector in having to now comply with the latest 112-page Amended Codes document (RSA, 2013a). It is hard to imagine how even the most experienced and educated SME business operator could be expected to address the requirements of this policy framework, without recourse to expensive consultants. But the greatest challenge for the SME sector will be in the requirements for black ownership that these businesses were previously permitted to opt out of.

Aside from these direct influences on business activity, there is going to be a seismic shift in the competitive environment as entities' B-BBEE ratings change with the amended Codes and Charter frameworks. Consequent shifts will happen in procurement, marketing, operations, human resources, and social

responsibility policies. Companies and licensees will find that their B-BBEE status no longer qualifies them to hold their licences and supplier positions. Organs of state will have to embark on a huge review of licensing and procurement decisions and these decisions will reverberate throughout society affecting smaller business and social investment projects that are beneficiaries of business largesse.

One rather frightening example of the effect of policy amendments is highlighted by BEE consultant Paul Janisch (2014b) who notes that the B-BBEE Level Rating of the country's largest casino operating company, Tsogo Sun, would fall when the revised Codes come into effect, technically requiring government to withdraw that company's casino licences. Tsogo Sun, with annual turnover in excess of R10 billion, currently holds the legally-required B-BBEE Level Rating of 2. Janisch estimates that this would fall to Level 8, and that Tsogo Sun would have little chance of recovering its necessary Level 2 rating for several years.

Government received R756 million in taxes from Tsogo Sun in the year ending 2014 and the company employs tens of thousands of people in its operations across the country (Tsogo, 2014). This is only one of the many casino licensees that would be similarly affected, and just one of hundreds of thousands of suppliers and companies, licensed by government, whose relationship with the state will have to be reviewed.

Another well-known consultant, Keith Levenstein of EconoBEE, has expressed concerns about the workability of the Amended Codes for the SME sector. He has also argued that it will be impossible for government to address the shortcomings in the amended policy frameworks, as well as conduct the necessary revisions to the nine Sector Transformation Charters, before the 1st May 2015, the legislated date for the commencement of the amended policies (Biznews, 2014). Daniel Nel (2014), President of the Cape Town chapter of the Entrepreneurs' Organisation, which represents 175 owner-run businesses in South Africa, criticised the amended policy saying it is "likely to further hamstring small and medium enterprises, which are already knee deep in red

tape and compliance". He further stated that "it is very likely that many qualifying small enterprises may decide that the new codes are simply too onerous and abandon any attempt at complying".

There is also the impact of the amended policies on the broader public policy environment to consider. Section 3b of the Amended B-BBEE Act contains the controversial 'trumping' clause:

In the event of any conflict between this Act and any other law in force immediately prior to the date of commencement of the Broad-Based Black Economic Empowerment Amendment Act, 2013, this Act prevails if the conflict specifically relates to a matter dealt with in this Act (RSA, 2014).

As shown in this study, there is huge overlap between B-BBEE policy and other legislated policies in the area of government procurement, employment equity, land reform, small business development, and rural development, to name but a few. This provision can only catalyse a huge, expensive and disruptive policy reform process in a government bureaucracy that is already facing extreme problems of competence, corruption, and inefficiency (Auditor General, 2012, 2014).

The problem may solve itself, however. In the latest version of its annual survey of national B-BBEE compliance, the international consultancy KPMG noted that, under the revised Codes, the average B-BBEE Compliance Rating for state-owned enterprises will likely fall three places from a current Level 4 to a lowly Level 7. This would actually place government's own businesses one rung below that of the private business sector (KPMG, 2014:5), a situation the Minister of Trade and Industry will likely find difficult to explain.

5.14 The performance of B-BBEE Policy

It is arguably the most extraordinary feature of the B-BBEE policy framework that, despite having just been subject to an extensive 'review', despite having given birth to a multi-million Rand consulting industry, despite the policy having become central to decision making in almost every type of organisation in

the country, and despite the fact that billions of Rand have been invested in B-BBEE-related merger and acquisition activity since 1994 (Presidency, 2010), there exists no reliable system for the measurement of policy performance.

As mentioned in Chapter 1, the DTI commissioned a national survey in 2007 called the B-BBEE Progress Baseline Report (Consulta, 2007). This was intended to be the first in an annual series of reports mapping the performance of B-BBEE policy throughout the country and across all business types. However, after the 2008 survey showed that public sector compliance lagged that of the private sector, the 2008 report was never released and the process was discontinued¹⁹. The 2007 Baseline Report remains the only published report of its kind since the inception of B-BBEE in 2003.

The DTI presented the findings of another audit at the National Empowerment Summit in 2013 which the Department claims was a follow-up to the 2007 survey. However, the report is not publicly available and, as discussed in Chapter 2, repeated requests to the DTI for a copy were unsuccessful.

Other high-profile research initiatives include the annual *Mail & Guardian* Most Empowered Companies Survey (Mail & Guardian, 2013), conducted in association with the BEE consultancy Empowerdex. This survey, undertaken since 2004, lists the 100 most empowered companies listed on the Johannesburg Stock Exchange in terms of their B-BBEE ratings.²⁰ While useful as a high-profile indicator of B-BBEE performance in a particular sector of the market, it is not generalisable to other sectors of the economy.

The international financial and advisory consultancy firm, KPMG, also produces a long-running, annual review of B-BBEE that surveys a broad cross-section of companies, including state-owned enterprises (KPMG, 2014). This report is of a more interpretive nature but the manner in which data is gathered and aggregated from disparate sources gives rise to concerns about statistical reliability.

¹⁹ Confidential interviews with the author. 3 November 2009 and 3 March 2010.

²⁰ Up to 2012, this survey was conducted in association with the *Financial Mail* and was called the Financial Mail Top Empowerment Companies Special Report.

There is a far more fundamental problem in the assessment of B-BBEE policy performance, however, that relates to the very gathering and assessment of the raw data. While the detail of any policy document could be said to be open to interpretation, Section 2 of both the original and Amended Codes documents effectively mandates the subjective interpretation of B-BBEE performance data. Thus, even aside from the problem of ‘unscrupulous verification agencies’, referred to by the Chief Director of BEE at the DTI, the very policy framework itself invites variations in measurement and interpretation, incompatible results, manipulation of scores and, thus, outright abuse.

The problematic paragraphs in the Codes documents are as follows:

2.1 The fundamental principle for measuring B-BBEE compliance is that substance takes precedence over form.

2.2 In interpreting the provisions of the Codes any reasonable interpretation consistent with the objectives of the B-BBEE Act as amended and the B-BBEE Strategy must take preference (RSA, 2013a).

It is highly ironic that these two paragraphs are followed by 106 pages of mind-numbing detail as to how performance should be measured and assessed.

A further factor affecting the reliability of the raw data is the power the measured entity exerts over the rating agent. Before recruiting the services of a B-BBEE rating agency, a measured entity will interview several candidates and will likely pick one that the entity assumes most shares its assumptions about B-BBEE and the measurement thereof. Furthermore, although conducting a B-BBEE audit has become almost as complicated as a financial audit, the rating agent does not enjoy anything like the power of a financial auditor. The verification industry has also become a very competitive environment in recent years so it is easy for measured entities to change an agent for one that might interpret the results more favourably (Janisch, 2014c). In such an environment, it is to be expected that rating agent will frequently concede to the client’s demands rather than lose business.

Notwithstanding these issues of interpretation, subjectivity, and pressure in the preparation of individual B-BBEE ratings, and government's ongoing criticism regarding the general level of B-BBEE compliance, the research presented by the DTI at the recent National B-BBEE Summit (DTI, 2013) suggests that the performance of B-BBEE policy has actually been surprisingly good. As per Table 5.6, the DTI's own data indicates that the average level of B-BBEE compliance in the private sector, with the exception of the construction industry, is Level 5.

Table 5.6: B-BBEE policy performance by industry sector

Sector	Level of B-BBEE Compliance
Agriculture and Nature Conservation	5
Catering, Accommodation and Other trade	5
Community, Social and Personal Services	5
Construction	4
Finance and Business Services	5
Manufacturing	5
Mining and Quarrying	5
Public Sector	3
Retail, Motor Trade and Repair	5
Sector Education and Training Authorities (public sector)	3
State-Owned Enterprises	3
Transport, Storage and Communications	5
Whole, Trade and Allied Services	5

Source: DTI. (2013). *A Decade of Economic Empowerment: 2003-2013. Summit Report*. Pretoria: Department of Trade and Industry. p.19.

The B-BBEE Summit report (DTI, 2013) is critical of this achievement and argues that the result was boosted by the inclusion of very small businesses, called Emergent Micro Enterprises (EMEs), which automatically qualify for a Level 4 rating. Further, that the average rating of large companies was only Level 6.

Nevertheless, this means that private sector business has achieved an impressive feat of change management in the six years since the publication of the Baseline Report in 2007 (Consulta, 2007). That earlier survey sampled 1 782 companies across the country, ranging from Johannesburg Stock Exchange (JSE)-

listed corporates to trusts and co-operatives, and found that only 19,7% of the sample had fully implemented their B-BBEE policy plans, and only 24,7% were formally measuring their B-BBEE programmes. The Baseline Report further estimated that 78,2% of the sample group was non-compliant with the requirements of B-BBEE policy.

In conclusion, if B-BBEE policy has indeed achieved its technical objectives as suggested above by the Chief Director of BEE, but not those that are considered 'meaningful' by her boss, the Minister of Trade and Industry, the question remains, what constitutes meaningful outcomes, and to what extent can the amended B-BBEE Act and Codes be expected to bring these about?

5.15 Summary

This chapter began the process of analysing the BEE phenomenon in the post-1994 era. The background to the policy framework was explored, drawing on the historical record, published reports, academic and grey literature, and policy documentation. It was demonstrated how various parties successfully lobbied for Constitutional provisions that either conflict with one another, or with the tenets of BEE policy, and which heritage has resulted in major barriers for the economic reform project. In the first of three chapters that will explore the major BEE policies, the author embarked on an analysis of B-BBEE. The origins of the policy were traced to the lobbying efforts of black business in the mid 1990s, notably the BMF. The detail of the policy was explored, including amendments, and in the process highlighting the inherent conflicts and leaps of logic that characterise B-BBEE. The chapter closed with a review of the issue of policy performance and it was demonstrated that there does not exist, nor has there existed in the past, any reliable measure of B-BBEE policy performance.

Chapter Six

BEE in the post-apartheid era: part two

6.1 Introduction

In Chapter 5, key background issues relating to BEE were explored, along with the high-profile B-BBEE policy framework. It was demonstrated how the concept of BEE cannot be captured only within the framework of B-BBEE policy. Other policies overlap it and these cannot logically be excluded from a discussion about the economic empowerment of black South Africans. Neither can they be subordinated to B-BBEE. A selection of these policies is explored in this chapter.

Chapter layout

The following policy frameworks are explored in this chapter:

- The mining and liquid fuels empowerment frameworks
- Public procurement policy
- Employment equity policy
- Small business development policy

The chapter concludes with a brief summary.

6.2 The mining and liquid fuels empowerment policy frameworks

In 1995, the then Department of Minerals and Energy Affairs (DMEA) formally initiated reviews of the energy and mining sectors (DMEA, 1995; RSA, 1995a), which appraisals eventually gave rise to the White Paper on Energy Policy (DME, 1998) and the Mineral Development Draft Bill (RSA, 2000a). In the course of these policy development processes, government stressed its broader economic transformation agenda, although with a clear accent on ownership and leadership rather than of employee and community empowerment. For example, in a letter attending delegates at the Petroleum Industry Empowerment Summit in November 2000, President Mbeki (SAPIA, 2000) left no one in any doubt as to the government's priorities when he wrote, "The issues of ownership

and control are central in these discussions of Black Economic Empowerment”. In his review of mining policy development in the post-apartheid era, Capps (2012:316) observes that while “the scope of minerals [policy] reform had been widened to encompass distinct social, as well as economic policy goals . . . [t]he most significant of these social goals was the transformation of the racial structure of mine ownership”.

The direct outcome of these reform initiatives was the Petroleum and Liquid Fuels Charter (LF Charter) and the Broad-Based Black Economic Empowerment Charter for the Mining Industry (Mining Charter). In the case of mines, there was also a requirement for companies to develop what are called Social and Labour Plans (SLPs).

6.2.1 Liquid fuels sector frameworks

The LF Charter constitutes an agreement between government and companies involved in the manufacture, storage, distribution, wholesale, and retail of liquid fuels (SAPIA, 2000). The Charter provides a basis for assessing the contribution of petroleum sector companies to transformation when they apply for operating licenses or procurement contracts from organs of state but, unlike the Mining Charter, and the Sector Transformation Charters that would come into existence under the B-BBEE Act, the LF Charter does not form part of a legislative framework. It is important to note, however, that with the passage of the B-BBEE Act in 2004, and the subsequent gazetting of the B-BBEE Codes of Good Practice in 2007, liquid fuels companies had to comply with both the LF Charter and the B-BBEE Codes (RSA, 2004a, 2007).

The LF Charter (SAPIA, 2000) (see Appendix 3) developed along a very different pathway to that of the other charter frameworks and thus has its own distinct character. Key among the differences between this Charter and the others are:

- The LF Charter is not legally binding but instead constitutes a formal statement of intent on the part of signatories;
- It only applies to the private sector. State-owned companies such as PetroSA and Mossgas are not subject to the LF Charter;

- The Charter makes reference to historically disadvantaged South Africans (HDSAs) who are defined as “all persons and groups who have been discriminated against on the basis of race, gender and/or disability”. The term HDSA is generally acknowledged to include white women;
- The LF Charter only has two specific measurement criteria. One relates to the objective that 25% of the value of companies in the sector, and 25% of the control of those companies, should have been transferred to black people by 2010. The second criterion is that 9% of all offshore development projects should be reserved for acquisition by HDSAs.

In November 2010, the Minister of Energy called for an audit of the performance of the LF Charter which was completed in 2012 (DOE, 2012). In a Parliamentary forum on the subject, the Minister referred to the findings of the audit as “disappointing”, with black ownership standing at 18,91% and with only one company having achieved the requisite 25% shareholding by HDSAs (Parliament, 2013). The Minister also criticised results in most of the other elements of the Charter framework, despite the lack of performance standards having been laid down in these other areas.

In the absence of any prescribed performance criteria, the author was curious to see how the measurement process had been conducted. A brief review of the audit report was informative and highlighted a problem common to much BEE policy. For example, the following extract from the Foreword to the *Petroleum and Liquid Fuels Charter Final Audit Report*:

The Petroleum and Liquid Fuels charter was the first empowerment charter to be crafted and signed in 2000 long before the BBBEE [sic] codes of good practice (COGP) were gazetted, in February 2007. In the intervening period there was an unwritten rule within the industry that (in the absence of clear targets and weights within the LFC) focus should rather go towards compliance with the COGP.

This LFC audit report also coincides with the busiest time in the arena of empowerment legislation. The DTI (Department of Trade and Industry) has recently announced that the very BBBEE codes are up for review to among others address the ambiguities, inconsistencies, and loopholes. The long awaited PPPFA regulations to bring the PPPFA in line with the COGP were also released on the 8th June 2011. About 6 Sector codes have also been gazetted, providing lessons of experience for such development by the DOE. The second phase, higher targets under the BBBEE codes are also meant to start operating next year.

This confirms that our decision to not only try and measure all critical aspects of the charter (in spite of the challenge of objective targets for some), whilst also incorporating BBBEE measures where they made the most sense, but also probe key empowerment criteria not currently accommodated by either framework, was a prudent choice. This allowed us to cast the net of the review as widely as possible, ready for any eventuality in terms of the turn that the revised BBBEE codes take. It also provides the foundation for the development of a sector code or equivalent arrangement for the industry, which would ensure that all ideals of the charter are accommodated within a measurable, consistent framework.

This approach has, however meant that some questions asked as part of this review had never been considered (and the related back-up information prepared) by the auditees. Some of the respondents rose to the challenge admirably, and some could, understandably, not generate the required information within the timeframe allowed by the audit, as they did not possess the required data and/or tools (DOE, 2012:2).

As a result of the audit findings, the South African Petroleum Industry Association (SAPIA) has recommended to its members that the industry seek to reformulate the LF Charter in line with the Amended B-BBEE Act and Codes framework (SAPIA, 2013). This process can be expected to take some time considering the change process underway within the B-BBEE policy framework and the radically different nature of the existing LF Charter framework.

6.2.2 Mining sector frameworks

BEE policy in the mining sector makes for a particularly interesting case study since there exists such a detailed record of the policy development process. This is likely because the issue of empowerment formed part of a broader process of revising policy on the mining industry in general, which was one of the biggest and most complex reform projects of the post-apartheid era.

6.2.2.1 Background to the policy

Mining policy reform was formally initiated by the new government in November 1995 with the publication of the *Discussion Document on a Minerals and Mining Policy for South Africa* (DMEA, 1995). What is immediately striking about this document is the section titled 'Central Tenets of the Main Parties' which briefly lists the ideological position and over arching objectives of the parties concerned. As one would expect, the government, mining industry, and organised labour are represented but, somewhat surprisingly, so is the ANC, despite the fact that the party was the leading member of the Government of National Unity in power at the time. What is also interesting is that the 'tenets' cited by the DMEA, representing the government, are so diametrically opposed to those of the ANC. The section reads as follows:

2. Central Tenets of the Main Parties

At the core of each contribution from the main parties lies a view of the role of the minerals industry in the economy and society, a view of problems and challenges confronting the industry, a view regarding goals and where the industry, in a broad sense, should be aiming to position itself for the future, and a view of the role of the State and function of agencies which bear upon the minerals industry. The key themes expressed by each will be briefly outlined. The documents are handled in the order in which they were released.

Informing the views of the ANC are these key themes: that minerals in the ground are part of the nation's wealth; that workers and the nation should get their fair share of the wealth generated; and the minerals mined should be integrated into the rest of the economy through further processing prior to export. In the range of issues dealt with by the ANC's contribution,

common themes are the need to transform the mining and minerals industry to serve the whole population; to supplement the vital regulatory functions of Government with a promotional role; to widen access and ownership to those historically discriminated against; and to improve the skills, working and living conditions of workers in the industry. It should also be noted that some issues raised are flagged for attention rather than leading to policy proposals.

The DMEA principles provide a point of departure for the elaboration of policy proposals, and as such are without explicit argument demonstrating the policy proposals that flow from the principles. Emphasis is laid on a limited role for Government intervention, market oriented and sound business principles in steering the industry to develop the country's wealth to its full potential, and maximum benefit for all the country's people.

The owners lay stress upon the need for policies that serve the mining industry, and by extension the long-term national economic interests, encompassing in the short term the success of the RDP. The need to revitalise the gold mining sector is singled out within the general theme of the need to develop new approaches to aspects of the organisation of work within the industry. The industry calls for Government to restrict its role to the provision of an enabling environment for the industry to prosper. A basic premise of the owners' views is that their needs are not in conflict with other stakeholders, and this carries over into a central theme of the need for a collaborative approach to design and implement policy by the industry's trilateral stakeholders of Government, labour and business.

In the NUM contribution the point of departure is that the living and working conditions for black employees in the mining industry constitute a national scandal and that its features that are racist, authoritarian and exploitative should not be tolerated within a democratic order. A central theme running through the document is for Government to intervene to re-frame the industry, in order to remove discrimination and promote efficiency, so as to move the industry into the 21st century. This

contribution lays stress upon the need to address the human aspects of the industry and provide for worker representation and participation (DMEA, 1995:Introduction).

This extract bears testimony to the fundamental conflicts that beset the BEE, and likely the broader, policymaking environment of the day. The trade union movement, in the form of COSATU, was a partner with the ANC in the Government of National Unity and it expresses sentiments similar to the party. In the case of the DMEA, however, and notwithstanding the ANC's commitment at the time to the principle of independent government administration (see Chapter 5), it is most surprising that this Department's ideological position was so diametrically opposed to that of the leading political party and organised labour. While the ANC and labour were advocating government intervention in the market, their agent, the DMEA, was calmly asserting the importance of "a limited role for Government intervention, market oriented and sound business principles in steering the industry" (Ibid.). As such, the DMEA was more closely aligned to the position of the mining houses.

6.2.2.2 Mining empowerment legislation

The debate on mining policy lasted seven years and culminated with the passage of the MPRDA (RSA, 2002b).²¹ Central to this Act was the principle that the mining houses should cede their ownership of mineral rights to the state and, in future, apply for 'new order mining rights' or licenses, including for the mines they were already operating. Part of the qualification for mining rights licences would be a demonstration of the mining houses' commitment to a variety of developmental and empowerment objectives. Failure to achieve these agreed targets within a set time frame could render a mining house liable to lose its operating licence. These developmental and empowerment objectives are listed in Section 2 of the MPRDA:

²¹ At the time of writing in March 2015, the MPRDA Act had already been the subject of two reviews, with a third now at an advanced stage of readiness (RSA, 2013c). The latest amendments are slated for promulgation later in 2015 but progress has been delayed by some industry players, along with the opposition Democratic Alliance, who are unhappy with aspects of the amended Act (Kolver, 2014). These objections have no direct impact on the empowerment elements of the proposed or original Acts, and as the Chamber of Mines has indicated its general satisfaction with the amended legislation (Chamber of Mines, 2014), the study takes into account the content of the proposed Minerals and Petroleum Resources Development Act Amendment Bill (RSA, 2013c).

2. The objects of this Act are to—

(c) promote equitable access to the nation's mineral and petroleum resources to all the people of South Africa;

(d) substantially and meaningfully expand opportunities for historically disadvantaged persons, including women, to enter the mineral and petroleum industries and to benefit from the exploitation of the nation's mineral and petroleum resources;

(e) promote economic growth and mineral and petroleum resources development in the Republic;

(f) promote employment and advance the social and economic welfare of all South Africans;

(h) give effect to section 24 of the Constitution by ensuring that the nation's mineral and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable social and economic development;

(i) ensure that holders of mining and production rights contribute towards the socio-economic development of the areas in which they are operating (RSA, 2002b).

Section 100 of the MPRDA then outlines how these objectives should be addressed by the parties involved:

(1) The Minister must, within five years from the date on which this Act took effect—

(a) and after consultation with the Minister for Housing, develop a housing and living conditions standard for the minerals industry; and

(b) develop a code of good practice for the minerals industry in the Republic.

(2) (a) To ensure the attainment of Government's objectives of redressing historical, social and economic inequalities as stated in the Constitution, the Minister must within six months from the date on which this Act takes effect develop a broad-based socio-economic empowerment Charter that will set the framework, targets and time-table for effecting the entry of historically disadvantaged South Africans into the mining industry, and allow such South Africans to benefit from the exploitation of mining and mineral resources.

(b) The Charter must set out, among others how the objects referred to in section 2(c), (d), (e), (f) and (i) can be achieved (Ibid.).

The response of the mining industry to these requirements was the development of the Mining Charter, promulgated in 2002 (RSA, 2002a) which, it should be noted, differs completely from either the LF Charter and the Sector Empowerment Charters that operate within the B-BBEE framework. Industry performance was assessed by government in 2009 (DMR, 2009) and, as a result of this review, the Mining Charter was amended in 2010 (DMR, 2010) with targets set to be achieved by 2014. These later targets have not been achieved and a further amendment to the Charter was underway at the time of writing. See Appendix 4 for a full copy of the current Mining Charter and Scorecard.

In addition to the requirements specifically listed in Section 100, the MPRDA was also peppered with references to the need for mining right applicants to submit a "prescribed social and labour plan" in support of various aspects of the mining licence application process. The original 2002 MPRDA contained no definition or description of what an SLP was and the concept was only defined with the later publication of the Mineral and Petroleum Resources Development Regulations (MPRDR) in 2004.

The relevant Section 46 of the MPRDR is contained in Appendix 5 and a brief perusal will demonstrate the obvious conceptual overlap between it and the Mining Charter, albeit that the SLP requirements are far more extensive. The SLP has become something of a poor relation to the Mining Charter, receiving nothing like the same profile or attention although it is every bit as

onerous for the mining houses. The attorney Peter Leon, a leading authority on both mining and BEE law, has in the past highlighted the problems associated with the SLP aspect of the legislation, noting that the guidelines were “vague” and that “different regional offices of the Department of Mineral Resources approached each SLP differently, while the approval process itself could take up to a year, involving as many as six re-submissions” (Leon, 2009).

6.2.2.3 Mining empowerment policy performance

The 2009 review of Mining Charter’s performance, conducted by the renamed Department of Mineral Resources (DMR), acknowledged that the Charter was “not without shortcomings” and that “the ambiguity inherent in the current construct of the Charter elements has given rise to various interpretations” (DMR, 2009:22). The report suggested that these weaknesses had been exploited by industry players who, in general, demonstrated “shocking levels of non-compliance” (Ibid.) and called for a revision of the Charter and, also, its greater alignment with the Codes framework of the B-BBEE Act.

Against the background of these years-long policy development processes, the circumstances of people in the mining industry have changed little. In an insightful speech, Peter Leon (2012) called for a review of the working and living conditions of mine workers and also for a “fresh look at the way Black Economic Empowerment . . . has played out in the industry”. Leon highlighted the negative incentives built into the Mining Charter policy framework that favour narrow objectives of elite formation over the broader interests of society.

The intention behind both the original and revised Mining Charter was to champion the government's BEE policy, which itself is an attempt to de-racialise the economy, by requiring mining companies, inter alia, to divest equity in favour of black South Africans . . .

The promotion of BEE in the mining sector has, ironically, become a catalyst for the populist support for nationalisation. This is because both the original and revised Mining Charter promote a form of "narrow" BEE, resulting in the enrichment of the well-connected few, as opposed to the economic empowerment of workers, as well as poor and marginalised

black communities, who should be the principal beneficiaries of BEE. For instance, while the revised Mining Charter requires BEE transactions to aim to achieve "meaningful economic participation", it also confusingly requires that these beneficiaries are vested with "effective ownership", including voting rights and management control. This seems to preclude broad-based share schemes with communities and workers as their beneficiaries, as such schemes tend to be in the form of a trust which holds shares in a mining company, and collectively exercise the voting rights attaching to the shares on behalf of the community.

The majority of South Africans who were disadvantaged by the racist economic policies of the past are simply not benefiting from the government's key empowerment policy (Ibid.).

The Minister of Mineral Resources has already expressed the view that the current 26% ownership target should be increased (Seccombe, 2014a) and, in line with this sentiment, there is also much concern that the current principle of once-empowered-always-empowered is to be done away with in the next Charter review. Subject to certain conditions, this principle allows companies to continue to recognise a shareholding by black people, even after those shareholders have sold their shares. Its removal is seen as unfair by mining house shareholders who generally had to discount share offerings to their BEE partners and, at the same time, fund the acquisitions of these shares. There is little reason to believe that this would not be the case again if the principle is revoked or a higher benchmark is set for HDSA ownership.

The debate around the once-empowered-always-empowered principle, together with the proposed amendments to the B-BBEE Act that promote ownership above the other elements of this policy (see Chapter 5), highlight government's evident focus on the interests of black investors over those of employees or the beneficiaries of corporate support programmes. This orientation is not new. Already in 2008, the economist and historian, Sampie Terreblanche, had observed how:

A strange discrepancy exists between the motivations given by the ANC and the implementation of BEE programmes by the ANC. The motivations are always on behalf of 40 million blacks, but the implementation of BEE is almost exclusively restricted to the black elite – and to a lesser extent the black middle class.

6.2.2.4 The Marikana massacre

The failure of a swathe of policy, not least empowerment, relating to the mining industry and the communities that live around mines was laid bare as the result of events at Lonmin's Marikana Mine, near Marikana in the North West Province. The problem began when a labour dispute escalated into a wildcat strike that was marred by violence and murder. After the deaths of ten people, mine management requested police assistance to help quell the violence but, on 16 August 2012, police opened fire on the striking miners killing 34 and injuring scores more. The event was the subject of a government Commission of Enquiry from which no party, neither the ANC, the unions, government, police, or Lonmin, escaped criticism and loss of credibility (Alexander, 2013). The strike did not even end.

Events at Marikana, and at the later Marikana Commission of Enquiry, have called into question the bona fides of the ANC government regarding its intentions with mining empowerment policy and, more specifically, who should actually benefit. Although the North West Province is potentially very wealthy on account of its mineral resources, it suffers terribly from corrupt, ineffective administration at the local and provincial government level. In the 2014 audit of municipalities in South Africa, presented two years after the Marikana massacre, the Auditor General did not give a single municipality in the North West Province a clean audit (Auditor General, 2014). Even more disturbing was the lack of action taken over the involvement of Cyril Ramaphosa in the massacre.

Through his various BEE investment vehicles, Cyril Ramaphosa (2014), the first General Secretary of the NUM in 1982, and long-standing member of the ANC National Executive Committee, admitted to the Marikana Commission that he “undertook to speak with government” on behalf of the Lonmin Board of Directors; that he “discussed the matter with the Minister of Police . . . [and]

stressed that the SAPS needed to take appropriate steps to ensure that they protect life and property.” Ramaphosa did this in his capacity as a Director of the Lonmin Board and as the single largest shareholder in Lonmin, a position he acquired via his various BEE investment companies. Since the shooting at Marikana, Ramaphosa has been appointed to the dual role of Deputy President of the ANC and Deputy State President, positions he has maintained without challenge since the Marikana Enquiry.

As noted by Alexander (2013), the strike at Marikana never stopped, even when shooting and labour unrest flared up again in 2014, when the same Association of Mineworkers and Construction Union (AMCU) pulled out 70 000 workers from surrounding platinum mines. The ensuing five-month strike was the longest in the history of the country.

Referring to the annual Mining Lekgotla, a forum for interaction between the top leadership in the mining industry, organised labour, and government, the Editor of *Business Day* newspaper called on delegates to stop talking in cosy elite structures that ensured they only addressed their shared interests and rather acknowledge the wider context and the breadth of action required.

Mr. Zuma, Mineral Resources Minister Ngoako Ramatlhodi, organised labour and mining sector associations would do well to take a decision to streamline their discussions under one cohesive structure. They then need to cure their addiction to large, ceremonial gatherings and rather adopt a workmanlike approach over the next five years.

The pressures facing mining companies, workers and communities are such that soon there may be another deep crisis which may be very difficult to resolve.

If the platinum sector strike showed us anything, it is that the current institutional framework has become hopelessly unresponsive to the environment in which it is being applied.

Finding solutions to that problem does not require a lekgotla with gala dinners but a commitment to taking difficult, even unpopular, decisions for

long-term survival. We hope delegates will leave Midrand with a different outlook (Business Day, 2014).

Just how cosy and elite these structures are was demonstrated by the fact that no invitation was issued to the AMCU union to attend the Mining Lekgotla. Criticising this, the authoritative *Financial Mail* noted that the Mining Lekgotla had been organised by the business-sponsored Chamber of Mines and posited that the exclusion of AMCU was an attempt to avoid upsetting the ANC-aligned NUM, AMCU's major opposition. The Editor expressed the view that "Petty political differences need to be put aside, and all the stakeholders in the resources sector need to be given the room to shape debate on the future of mining" (Financial Mail, 2014).

Again, the subject of empowerment in the mining industry is deserving of its own doctoral thesis. The purpose here has only been to highlight the nature of empowerment structures within the sector and to show how different they are from the B-BBEE policy framework. The story of mining industry empowerment also serves to demonstrate that, even with the enormous wealth and resources of multinational mining houses; a collusive relationship between government, business, and organised labour; and decades of planning and policy reform, effecting change in the structure of the economy is exceedingly hard to do.

6.3 Public procurement policy

After the change in government in 1994, the ANC wasted little time in exploring ways in which state procurement policy could be leveraged to help effect change in the economic circumstances of black people. Rogerson (2004) notes that such a practice is commonplace in many developing countries where government focus is frequently centred on programmes that aim to alleviate poverty or promote grass-roots economic activity. Bolton (2006) also observes how such practices are commonly applied in developed countries, albeit in support of objectives such as environmental protection, health and safety, and equality.

While there are a variety of Acts in South Africa that govern procurement at the various levels of government and within specific state institutions, all such Acts are subservient to the PPPFA (RSA, 2000b) and subsequent amendments thereto. The PPPFA was passed originally to address the requirement of Section 217(3) of the Constitution (RSA, 1996a) which called for the formulation of legislation that would tackle the dual requirement for “fair, equitable, transparent, competitive and cost-effective” procurement processes that also address the need for the “protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination”. The Act was subsequently updated in 2011 with the issuing of Preferential Procurement Regulations (PP Regulations) (RSA, 2011b) that, inter alia, increased monetary parameters, brought the PPPFA into line with the B-BBEE Act, and set requirements for the procurement of locally-produced goods by organs of state.

The central mechanism laid down by the PPPFA and the PP Regulations is that the B-BBEE credentials of a supplier must be taken into account when state-controlled entities are making procurement or licensing decisions. Those adjudicating these decisions are required to work with a standard scorecard that allocates a predetermined number of points to various aspects of the procurement process such as the level of experience of the supplier, price, quality, and the supplier’s empowerment profile. As regards this latter category, suppliers are split into two groups to facilitate the promotion of black small business. The first is for procurement of goods or services with a value between R30 000 and R1 000 000 and, in such cases, the B-BBEE Level Rating of the supplier accounts for 20% of the available points. The other group relates to procurement with a value in excess of R1 000 000 wherein 10% of the available points are allocated to the empowerment profile of the supplier. The government department concerned may decide whether to apply the formula in the case of procurement with a value of less than R30 000 (RSA, 2000b, 2011b).

Table 6.1: B-BBEE Points awarded under the PPPFA Regulations

B-BBEE Level Rating of Supplier	Number of Points to be Awarded	
	Procurement between R30k and R1m	Procurement in excess of R1m
Level 1 Contributor	20	10
Level 2 Contributor	18	9
Level 3 Contributor	16	8
Level 4 Contributor	12	5
Level 5 Contributor	8	4
Level 6 Contributor	6	3
Level 7 Contributor	4	2
Level 8 Contributor	2	1
Non-Compliant Contributor	0	0

Source: RSA. (2011). *Preferential Procurement Policy Framework Act: Preferential Procurement Regulations*. Pretoria: Government of The Republic of South Africa. pp.5&6.

As previously discussed in the section on B-BBEE (Chapter 5), the recently gazetted amendments to the B-BBEE Act (RSA, 2013a, 2014) will reduce the B-BBEE Level Rating of measured entities and many are concerned that when these amended Codes are put in place, some government suppliers may no longer qualify to keep tenders they have already been awarded (Janisch, 2014b; Nel, 2014). The changes to the PPPFA regulations therefore double the impact, making it even more difficult for businesses to comply with the requirements of government procurement and licencing policy. As has also been pointed out at various times in this study, government lacks the capacity to handle the increased workload that would result from such changes (Auditor General, 2012; Chipkin, 2013; Auditor General, 2014)

The amendments can be expected to particularly disadvantage the SME sector as larger corporate entities have greater control of the market, closer relations to powerful figures in government, and the resources to fund renewed marketing efforts. Noting the surprisingly low level of attention these procurement reforms had received in the press, B-BBEE consultant Paul Janisch opined that this reflected the lack of concern within big business regarding the impact of these reforms on their operations (Janisch, 2014a).

By comparison, black business organisations, which represent mostly smaller operators, remain far from happy with the PPPFA policy framework and are lobbying to have the entire Act scrapped. These organisations believe that the 10% and 20% allocations for consideration of a supplier's empowerment credentials are too low and more of an impediment to the development of black business than a benefit (Sathekge, 2011; Holmes, 2013). Both the BMF and the BBC maintain that government should instead consider a system of set-asides whereby specific projects would be ring-fenced for black businesses. However, the two organisations represent different constituencies, with the BBC being the voice of the mostly smaller black business operator and the BMF, the emergent black managerial and professional elite.

The difference in focus of these two organisations was brought to the fore when the BMF recently voted to rejoin the business umbrella body, BUSA, while the BBC steadfastly refused to join on the basis that its members' interests would again be subsumed by the corporate business sector that dominates BUSA (Qubeka, 2015). Instead, the BBC launched a constitutional challenge to the PPPFA (Van Rensburg, 2013).

Although the Treasury is reluctant to tinker with the PPPFA regulations, the emergent black business community is not without its advocates inside government. Provision exists within the PPPFA for the Minister of Finance to make exceptions to the 10% and 20% limits on points to be allocated for B-BBEE. Thus it was that in 2014 the BBC, with the support of the Minister of Public Enterprises, Malusi Gigaba, won an exemption in the case of a R50 billion tender for the purchase of new locomotives for Transnet, the state rail company (Munshi, 2014). While the PP Regulations would normally only have permitted 10% of this adjudication process to consider empowerment issues, the Treasury conceded that only 60% of the contract should be adjudicated on price, with 20% based on B-BBEE credentials and 20% on plans for subcontractor and supplier development.

While the BBC has achieved impressive gains for its members, the organisation faces a continuing uphill challenge in lobbying a government in

which most Ministers and the President have close business relations with large corporate enterprises (Paton, 2014), and who will likely not have any incentive to hive off lucrative contracts to non-politically connected small business operators. As one unnamed delegate to a BBC workshop²² on the revisions to the B-BBEE policy framework put it, “The government is going to spend R1,3 trillion on infrastructure and I’ll bet my bottom dollar none of us will see anything of that”.

Even when emergent black enterprises do manage to coordinate their lobbying efforts and access government contracts, a major problem remains regarding the bureaucracy involved and the slow payment of accounts (Allix, 2012). The extent to which government’s procurement doors are closed to black business was made apparent to the author when attending a series of workshops run by the Gauteng Provincial Government to facilitate procurement from young black businesspeople.

In 2010 the youth section of the Gauteng Provincial Government’s Department of Economic Development organised a series of workshops to promote procurement from businesses owned by young black people, and the author was invited to attend to gather data for this doctoral study. The profile of attendees was impressive. They were well educated, budding professional businesspeople, running established productive enterprises and thus ideal candidates for development support. However, just to qualify as a supplier to the Gauteng Provincial Government and be in compliance with the requirements of the B-BBEE policy framework, these emergent businesspeople had to give up half a day to be told what bureaucratic requirements they would have to satisfy in order to ‘benefit’ from the affirmative procurement policies of the Province. The irony of the situation was apparent in the dwindling number of delegates during each session but, even for those who stayed, so onerous were the requirements for participation it would likely not have been worthwhile for many of them to have even tried to comply.

²² BBC workshop on the proposed revisions to the B-BBEE Codes. IDC Centre, Sandton. 28 November 2012.

6.4 Employment equity policy

Considering that extreme worker exploitation was a key pillar of apartheid economic policy and that the black trade union movement had developed as a powerful political force in the late apartheid era (Chapter 4), it is unsurprising that the interests of workers were given priority attention by the post-apartheid government. Labour policy also had to be reviewed to bring it in line with the Interim Constitution of 1993 (RSA, 1993) which had been agreed upon by the parties to the transitional negotiations. Aside from these internal influences, McGregor (2014) further notes that, as a signatory to various United Nations and International Labour Organization conventions on discrimination, the South African government was obliged to implement policies and legislation to counter discriminatory practices not just in the labour market but across society.

To this end, the new government established a Presidential Commission in May 1995 “charged with developing the labour market policies necessary to meet the RDP’s employment-related objectives and that are consistent with the requirements of productivity enhancement and macroeconomic stability” (Lewis & Ngoasheng, 1996:Terms of Ref.). A detailed exploration of the Commission’s work, or of labour market reform in South Africa, is beyond the scope of this study but it is important to note the origins of employment equity policy as having been a key recommendation of this Commission which, it urged, should “be promulgated as soon as possible” (Ibid., Cl.425).

Employment equity policy is of interest to this study for two reasons. The first is that it constitutes an important element of the programme to economically empower black people. Secondly, in the panoply of empowerment policies, employment equity is, relatively speaking, the best designed, managed, and monitored of all the various BEE policy frameworks explored in this study. It thus provides a platform for assessing empowerment policy that is not so affected by poor policy design and management.

The EEA (RSA, 1998b) which governs the policy was amended with the passing of the Employment Equity Amendment Act (RSA, 2013b) (Amended EEA). Except where indicated, this review will incorporate the latest amendments.

6.4.1 What is employment equity policy?

The purpose of employment equity policy is described in Section 2 of the EEA (RSA, 1998b, 2013b):

The purpose of this Act is to achieve equity in the workplace by promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational levels in the workforce.

The policy covers all private sector employers with more than 50 employees, or that have a certain level of turnover, as well as all public sector employers with the exception of the National Defence Force, the National Intelligence Agency, and the South African Secret Service (RSA, 1998b, 2013b). Participating organisations, referred to as 'designated employers', are required to prepare an initial employment equity plan, in association with their employees. This plan then becomes the blueprint by which the designated employer will strive to eliminate barriers to equitable employment practice and promote the advancement of designated groups "in all occupational levels in the workforce" (Ibid.).

The term 'designated groups' is defined in Section 1 of the original Act as meaning "black people, women and disabled people" (RSA, 1998b), the Act being silent on the race of the latter two categories and the nationality of the person (Ibid.). Section 1(b) of the Amended Act (RSA, 2013b) sought to close these loopholes by adding citizenship or long-term residential conditions, but the amendments still did not address the issue of the race of women or disabled people. The definition of who can be included as a beneficiary of employment equity policy thus differs from that of the B-BBEE Act (RSA, 2004a, 2014), which renders the measurement of employment equity under the EEA incompatible with the measurement of employment equity under the B-BBEE Act.

In preparing the employment equity plan, employers must review the profile of their workforce against national population demographics and then

develop detailed plans as to how they will alter the workforce profile in line with the broader profile of society. Employers are allowed up to five years to achieve their targets, being assessed annually on their performance by the Department of Labour (DOL). The employment equity plan constitutes a legally-binding commitment on the employer who may be subject to extremely heavy fines, running into millions of Rand, for failing to achieve the agreed targets (RSA, 1998b, 2013b).

6.4.2 The performance of employment equity policy

Each year, the CEE, an advisory and monitoring body established under the EEA, publishes a report on the performance of employment equity policy (CEE, 2010, 2011, 2013, 2014). It is compiled using information submitted electronically by designated employers, as well as figures drawn from the *Quarterly Labour Force Survey* supplied by the government statistics service. The report provides a picture of the demographic profile of employees across the country, as at the end of September, as well as an exploration of projected trends that are derived from the data supplied by employers on recruitment, promotion, and training practices. Up to 2014, companies with over 150 employees had to report annually and those with less, bi-annually. Under the amendments to the EEA (RSA, 2013b), all designated employers must now report every year.

Employment equity policy has been the subject of much research and debate (Thomas, 2002; Thaver, 2006; Booyesen, 2007; Oosthuizen & Naidoo, 2010; Yudelowitz, 2011; SAPA, 2012b; De Vos, 2014; Grootes, 2014; Hermann, 2014; Mahlaka, 2014), but the actual CEE reports themselves appear to have been subject to little critique. In a review spanning the past decade, the author could find little critical analysis of the CEE annual reports in the academic literature, in editorials in the mainstream business press, or from major business representative organisations. There was some criticism of the 2014 report from the Cape Chamber of Business (Phakathi, 2014), a regional business association, and the Solidarity Research Institute (SAPA, 2014a), an offshoot of the largely-white Solidarity trade union. Both these organisations questioned the statistical

integrity of the 2014 report, as well as its focus on the lack of change at the top levels of management.

It took many years before designated employers became skilled in submitting their reports to the DOL. Ten years after the introduction of the EEA, the CEE Commissioner, Jimmy Manyi (CEE, 2009:iv), complained in his report about the extent of breaches in “procedural and substantive compliance”, even by some of the country’s biggest companies. That year the CEE reported that of 10 580 reports submitted, only 7 299 could be used (Ibid., p.5). There has also been criticism over the years from employers who felt they were unfairly accused of not being compliant with the policy (Hlongwane, 2007) but the situation has now been resolved, to the extent that compliance rates are high and the annual reports even carry information on the detail and status of disputes registered with the CEE in the course of the year.

Notwithstanding various criticisms regarding the formulation and management of employment equity policy, the success of the DOL in driving its implementation cannot be denied. From 2002 to 2012, the number of submissions received and approved by the Department increased by 215% from 6 990 to 22 012, with 94,4% of the 2012 reports having being correctly submitted (CEE, 2013:15). The 2012 report also noted that employer submissions that year accounted for a total of 6 155 334 employees (Ibid., p.1). This number approximates the total population of people employed in companies with 20 or more employees (SAIRR, 2013:351). Together these data suggest that the DOL has achieved a high level of compliance with the reporting requirements of the EEA. It has, in the process, also amassed a valuable body of information. The important question, of course, is the manner in which it will be used.

It is difficult to draw comparisons across the various CEE reports as the design and layout thereof was only standardised in 2012. Even then, because companies with less than 150 employees only needed to report every second year, the 2012 report was not comparable with the 2013 report. It has, therefore, been difficult to independently assess the performance of employment equity

policy and challenge the consistent criticisms of the Commission, unions, black business organisations and professionals concerning the lack of change in the demographic profile at higher management levels (CEE, 2008, 2009, 2010; Craven, 2011; CEE, 2013, 2014; Mangcu, 2014; Phakathi, 2014).

Thaver (2006:153) asserts that “affirmative action [policies] should be seen as an instrument for the achievement of equality . . . a means to an end and not an end in itself”. This view resonates with the theory on the concept of empowerment, discussed in Chapter 3, which premises notions of enabling people to help themselves over notions of actively intervening on their behalf. However, South Africa has a history of half-hearted, self-serving affirmative action programmes in the 1980s and early 1990s (see Chapter 4), that bear testimony to the need for government intervention. As Kennedy-Dubourdieu (2006:3) argues in her book on international perspectives on affirmative action policy, “affirmative action is not a consensual policy”. She also sends a clear message to those who complain about such policies:

. . . it has become clear for many that a prescriptive approach to discrimination is not enough. If such group differences do persist, then to do nothing – in the name of neutrality or ‘fairness’ – just perpetuates the status quo and existing disparities and disadvantage. If society wants equal outcomes, then a lever of change is necessary at times to actively achieve this equality (Ibid., p.4).

As was discussed in the section on the transformation of the public sector (Chapter 5), the drive for affirmative action in the state sector has been extremely controversial, with many voices linking service delivery problems to overly rapid gender and racial transformation projects in the public service (Wenzel, 2007; Chipkin & Meny-Gilbert, 2012; Myburgh, 2014). However, while government has indeed been censured by the courts for applying racial quotas in the selection and advancement of employees (Frahm-Arp, 2014; McGregor, 2014), in contravention of Section 9 of the Constitution (RSA, 1996a), this author concurs with Bundy (2014) who cautions against simplistic assumptions that link service delivery problems in the state sector with employment equity policy.

As with the abovementioned examples from the Cape Chamber of Business and the Solidarity Research Institute, much of the criticism levied at the DOL and CEE centres on these organisations' constant criticism regarding the lack of transformation at the top levels of the management hierarchy. This is a difficult dilemma. On the one hand, many people are concerned about the long-term effects of rushed, ill-considered affirmative action but, on the other, change of the order required does not happen without pressure from government. Table 6.2 demonstrates the extent of the employment equity challenge.

Table 6.2: The African and white share of top employment categories by sector in 2013

		Top Management	Senior Management	Professionally Qualified	Skilled Technical
Government	African	69,3%	62,8%	66,7%	78,9%
	White	15,3%	20,4%	16,8%	9,8%
Private Sector	African	12,6%	15,0%	25,1%	49,3%
	White	69,6%	64,4%	50,8%	28,5%
Non Profit Organisation	African	51,7%	44,5%	49,3%	69,5%
	White	34,3%	37,5%	33,0%	16,9%
State-Owned Enterprise	African	49,4%	45,1%	46,3%	63,4%
	White	29,9%	35,3%	35,4%	22,7%
Education	African	43,7%	36,8%	50,4%	65,5%
	White	40,8%	43,9%	31,1%	15,6%

Source: CEE. (2014). *Commission for Employment Equity: Annual Report 2013-2014*. Pretoria: Commission for Employment Equity. pp 21-47.

The data in the above Table show the percentage share of the African and white senior employee communities. Considering that Africans and whites comprise 79,8%, and 8,7% of the total population respectively (SAIRR, 2013:4), their representation in these categories is hugely skewed. It is thus evident that employment equity is a necessary intervention in South African society.

As regards the pace of policy performance, the author was able to draw data from the 2014 CEE report that provides insight into the speed with which employment equity policy has been taking effect. Table 6.3 shows the change in the percentage of positions held by Africans and whites in the top four employee categories across the country.

Table 6.3: Percentage change in the share of senior employment categories by Africans and whites in the period 2003-2013

Employment Category	2003		2013		Change	
	Africans	Whites	Africans	Whites	Africans	Whites
Top management	14,9%	76,3%	19,8%	62,7%	4,9%	-13,6%
Senior management	14,2%	72,7%	23,0%	57,0%	8,8%	-15,7%
Professionally qualified	39,0%	49,2%	38,4%	40,6%	-0,6%	-8,6%
Skilled technical	42,1%	38,2%	59,2%	22,0%	17,1%	-16,2%

Source: CEE. (2014). *Commission for Employment Equity: Annual Report 2013-2014*. Pretoria: Commission for Employment Equity. pp 15-19.

The Table shows that the white share of employment in each category is falling while, with the exception of one category, the African share of each job category has been increasing. It is also noteworthy that while whites still occupy a disproportionate share of the upper management positions, the percentage drop in the number of whites occupying the Top and Senior Management categories has been double that of African accession. This suggests that the problem with racial transformation is not so much that whites are not vacating these positions in favour of blacks, but that the vacated positions are not being taken up by Africans. There are insufficient data in the reports to permit much further insight into this matter, but one could speculate that the vacated positions are being filled by members of the Indian or Coloured communities or that the overall stock of jobs is being increased.

What can clearly be deduced from Table 6.3 and what is supported by anecdotal observation, is that it is no longer a given that the Top and Senior leadership of an organisation in South Africa will be white. It is also evident from the Table that there is a healthy spread of African employees moving up through the system, which augurs well for the future. These trends may not represent sufficient progress for the government, keen to deliver ‘a better life’ to an impatient black electorate, but they are significant in terms of the broader strategic imperative of effecting change in the attitudes and expectations of South African society.

In a comparative study of employment equity policy experience between South Africa and other countries, Thomas (2002) highlights the importance of maintaining a focus on the ideals and value of diversity and warns against

allowing employment equity to just become “a response to moral and legal compliance issues”. McGregor (2014:71) similarly stresses the point that affirmative action must be seen primarily as a response to a problem of structural inequality. As such, she argues that:

[Affirmative action] requires more than the mere representation of under-represented groups; it requires, importantly, ways of ensuring full and meaningful participation in decision-making structures. While affirmative action may change the colour and composition of the workplace in the short to medium term, its ability to bring about fundamental change to the structure of decision-making within the workplace will be more difficult and may take longer.

McGregor’s point about ‘ensuring full and meaningful participation in decision-making structures’ harks back to earlier discussion about empowerment as a concept that involves enabling people to belong and make a worthwhile and personally-fulfilling contribution in group settings.

6.4.3 Lessons from employment equity policy

The history of the design, implementation and management of employment equity policy by the DOL, in association with the CEE, serves to demonstrate that, where properly managed, an empowerment policy can make a meaningful, definable contribution. A further lesson is that policy performance must be assessed from two perspectives. On the one side, policy should be judged in terms of its inherent quality and how well it is managed by the responsible government department. On the other, it must be assessed according to how it is implemented by society.

It is mentioned in the two most recent CEE reports (CEE, 2013, 2014) that a process is underway to align the EEA with the B-BBEE Act. With the addition of the so-called trumping clause to the Amended B-BBEE Act (RSA, 2013a), employment equity policy will inevitably become subservient to this other policy framework. In the view of the author, and based on the review of B-BBEE policy in Chapter 5, this is a regrettable development and a retrograde step for the important transformation project in South African society.

6.5 Small and medium business development policy

6.5.1 Background to the policy

Small enterprise development was a key pillar of the ANC's transformation policy guidelines in the early 1990s. It was viewed as having the potential to "contribute significantly to job creation" as well as providing an appropriate platform to facilitate the development of the informal business sector and to contribute "generally to the encouragement of development in the poor and depressed areas" (ANC, 1992:14). These positions were fleshed out in the RDP policy (ANC, 1994c:4.4.7) which laid the groundwork for government support to include preferential procurement policies, the provision of focused financial and developmental support, and a competition policy that would help open up opportunity for the small business sector.

This was not an uninformed position on the part of the ANC. The organisation had conducted research on the black business community in the 1980s, noting that, while comparatively small, it represented a significant and impressive economic presence (Jordan, 1984). The black business association, NAFCOC, maintained indirect links with the ANC in exile which were cemented in 1985 with a visit to the ANC's headquarters in Lusaka by the NAFCOC leadership (Motsuenyane, 2012:Ch 9).

There also exists the record of a small business conference, arranged by the ANC and SACP in October 1993, attended by no less than 75 black business organisations. The objective of this meeting was "to review the relationship between black business people and the ANC, and to establish a common understanding concerning the appropriate strategies and mechanisms to achieve black economic empowerment" (ANC, 1993a). While evidently a political rather than a policy development event, key resolutions were adopted relating to the financing and support of black business that would later reflect strongly in the broader policy environment. Despite this background, for much of the post-apartheid era small business policy leaned very much toward a focus on micro, survivalist-type business, rather than the established small business sector.

Formal policy on small business was initiated with the publication of the *White Paper on National Strategy for the Development and Promotion of Small*

Business in South Africa in March 1995 (DTI, 1995). The White Paper opens with a florid Foreword by then Minister of Trade and Industry, Trevor Manuel, who notes the internationally acknowledged role of SMEs as instruments of employment, innovation and new market penetration. He further asserts that he and his department “are committed to doing all that we can to help create an environment in which business can get on with the job” (DTI, 1995). Despite this, what follows in the White Paper demonstrates a narrow view of the SME sector and appears to ignore the established black business community that was actually ready to get on with the job.

Government policymakers had sought input from the established business community, including the cohort of black entrepreneurs, and while these contributions are acknowledged in the White Paper (DTI, 1995), it is apparent from the document that this feedback was treated with great circumspection:

All over the world small business-support policies have become targets of active vested interest lobbying. All too often government is pressurised to help overcome constraints, even though enterprises - either individually or through joint action - could also resolve the problems. This applies in particular to segments of the small business community which are well-organised, well-articulated and skilful in the channelling of their request, thereby laying claim to a disproportionate part of the limited resources available for small business support (Ibid., Cl.2.3.4.)

The outcome was that, with little or no information on, or acknowledgement of, the existing small business sector, the White Paper constitutes little more than an abstract, high-level strategy document that reads like a generic template, instead of a policy specifically designed to address the needs of the South African business sector. It is also patently more focused on the development of grass-roots survivalist-type business rather than the already-established small business community. In fact, the document draws so heavily on international experience and best practice in the promotion of emergent business in underdeveloped countries that, reading it, one would never assume South Africa had the small business infrastructure that it had. This

was unfortunate for while the apartheid economy had been abnormally geared in favour of big business (Terreblanche, 2002:Ch 3), a strong institutional framework had developed within the SME sector, both black and white.

This was evidenced at the time by well-established representative bodies, inter alia, NAFCOC, the South African Chamber of Business (SACOB), the Afrikaanse Handels Instituut, the BMF, the South African Black Taxi Association (SABTA), the Foundation for African Business and Consumer Services (FABCOS), the network of business development agencies based in the homelands, Litet (later renamed Anglo Zimele) and other in-house corporate business development projects, the various homeland development organisations, and the Small Business Development Corporation. These organisations had evolved within the institutional framework of apartheid and undoubtedly would have needed to be reformed. Indeed, there were certainly questions of corruption and inefficiency concerning the erstwhile homeland business development organisations (Southall, 1980). All the same, they housed a vast body of knowledge and experience that could have been built on, not least the experience gained by black businesspeople who had managed to keep their businesses and representative organisations afloat during the apartheid era, against extraordinary odds (Luhabe, 2002; Mashaba & Morris, 2012; Motsuenyane, 2012).

Arguably, the most obvious example of the extent to which this capacity was ignored, and an important learning opportunity missed, is the kombi or black taxi industry.²³ Paul Browning, a transport sector consultant who worked with this industry from the 1980s, tirelessly championed it as a model of for black business development. Based on his unique insights, Browning (1989) wrote what was probably the first book on the subject of black business development in South Africa and a fundamental tenet of his thesis, that post-

²³ A private -sector, low-cost taxi service that developed during the apartheid era to compensate for the inadequate public transport services available to black people. The service has survived and developed in the post-apartheid era. Also sometimes referred to as kombi taxis after the type of minibuses that are commonly used.

apartheid policymakers would have done well to heed, was that “an informal-sector individual hawker is not necessarily the same as an entrepreneur”.²⁴

The representative organisation of the black taxi industry, SABTA, was itself a model for emergent business. Founded in 1977 by independent taxi drivers, with the support of Shell South Africa, it successfully lobbied the apartheid government for industry regulation and for permission to use larger vehicles.⁴ In 1988, SABTA merged with various other business groupings to form FABCOS, thus making much knowledge and experience available to a wide range of new entrepreneurs (Gqubule, 2006:Ch 3).

The leadership changes in SABTA in the 1990s also bear testimony to the problems created for SME representative bodies through the lack of coordination in economic development policy. For example, the incentive system created by BEE policies in the early to mid 90s led people, such as SABTA chief Jabulane Mabuza, to leave their organisations to pursue more lucrative business opportunities in the corporate sector or, in some instances, to simply leverage their executive positions for personal gain (Siybanyoni, 2009; Leadership SA, 2011). Such influences inevitably weakened the institutional framework of the black SME sector at a time when it was most needed and, ironically, when it stood to benefit most.

The ideological orientation of the authors of the White Paper, and their apparent lack of practical knowledge and experience, was also evident in suggestions made concerning the support infrastructure for small business. The authors noted that the “[t]he responsibility for support and assistance to medium, small, micro- and survivalist enterprises falls upon a wide range of organisations, associations or agencies [which] include all levels of government, a whole range of parastatals, a large number of NGOs and community-based organisations (CBOs), the full spectrum of business associations, an increasing number of private institutions and several foreign donor agencies . . . ” (DTI, 1995:Section 5). Then, with a seeming lack of any understanding as to the enormity of the task involved or the likely effect, they recommend the

²⁴ Interview with Paul Browning, Johannesburg, 8 September 2011.

dismantling of this structure and the channelling of support services via a framework of national, provincial, and local government agencies (Ibid.).

It is little short of astounding that, amid the disorder of the regime change process taking place in South Africa in 1995, not to mention the transformation project within the state sector, the supposedly-experienced development organisations advising on the policy development process could recommend dismantling this established support infrastructure and the transfer thereof to wholly-unprepared organs of state.

The National Small Business Act was subsequently passed in November 1996. This Act put in place parameters for the various categories of small business, provided for the establishment of an advisory National Small Business Council (NSBC) and the Ntsika Enterprise Promotion Agency (Ntsika) (RSA, 1996c). The NSBC was tasked with representing and promoting the interests of small business at a strategic level within government while Ntsika was to facilitate the provision of technical and financial support to the actual SMEs. Amendments to the Act in 2004 (RSA, 2004c) saw some streamlining of the policy framework and changes to the funding and support structures, the latter including the formal establishment of a network of Manufacturing Advisory Centres (MACs) under the authority of the various provincial governments.

The author worked as a consultant to some of these MACs around Johannesburg and Pretoria, in the early 2000s. While the range and quality of support services offered were quite impressive and, indeed, affordable to the small business client to the point of being generous, the bureaucracy involved in accessing the service was completely inappropriate.

The entrepreneur first had to meet with the MAC representative and request assistance with his/her project. Because the MACs outsourced all the operational work to third parties, the first job was for the MAC representative was to organise at least three consultants to visit the entrepreneur. These consultants would then submit a proposal to both the SME and the MAC and, upon receiving notice of the entrepreneur's preferred consultant, the MAC representative had to prepare a motivation that was sent to Pretoria for

approval. Even in instances where the parties all stayed the course, the process took months and, in some cases, more than a year. Projects were rarely worth more than a few thousand Rand to the consultant and the bureaucracy and time frame rendered the service largely useless for the entrepreneur. Payment was reliable, however, so many of the consultants actually financed the projects themselves and assumed the risk of receiving payment from the MAC after the service had been provided. Understandably, the MAC concept did not last long but it bore testimony to how little bureaucrats in the DTI understood the environment in which they were formulating policy.

Many of the other recommendations contained in the White Paper (DTI, 1995) were implemented under separate policy frameworks, some of which are discussed elsewhere in this chapter. These include the creation of preferential access to government licencing and tenders under the PPPFA (RSA, 2000b); provisions for less onerous compliance with labour policies under the EEA and B-BBEE frameworks (RSA, 1998b, 2004a); survivalist business initiatives under the umbrella of social welfare policy; the development of co-operative businesses (RSA, 2005); special financing mechanisms (USA, 1953; RSA, 1998c), and projects in the agriculture sector that are addressed in Chapter 8.

Major reviews of SME development strategy were conducted in 1999 and 2005, the latter resulting in the publication of the *Integrated Strategy on the Promotion of Entrepreneurship and Small Enterprises* (Integrated Strategy) (DTI, 2006) which sets out government strategy for SME development for the period up to 2015. Again, however, while this purported to be based on empirical research in the SME sector, there is little evidence of any such research in the document nor even an assessment of the specific problems that supposedly merited the policy review. Instead, the underlying rationale was presented in general terms, as follows:

The strategy acknowledges the need for focused support to designated target groups and priority geographical areas and sectors, as well as support for fostering enterprise organisation forms (such as co-operatives), and the inclusion of special institutional arrangements.

Central to strategic actions and institutional arrangements, and to the shift from uncoordinated to integrated service delivery, is the broadening of support programmes and the streamlining of support institutions. This is the fundamental guiding principle of the new “integrated strategy”. Encapsulated in this fundamental guiding principle is the resourcing of support and the monitoring and evaluation of progress in the implementation of the strategy.

The core thrust for this strategy framework makes no significant shift from the measures outlined in the 1995 White Paper (DTI, 2006:5).

Arguably, the most important outcome of this strategy review was government’s tacit acknowledgement as to the diverse character of the SME environment in South Africa and the resulting introduction of a ‘three-pillar’ conceptual framework that recognises the divergent needs of the various SME constituencies (Ibid., p.4). The appraisal thus ushered in the possibility of a broader focus that would divert some attention to the more established sections of the SME sector. As will be discussed below, however, the project brought about little improvement in conditions for any part of the SME community.

The next major policy pronouncement on small business came with the publication of the NDP in 2011, the current long-term development plan of the South African government. The overarching objective of the NDP is the reduction of unemployment to 6% by 2030 through the creation of 11 million jobs, 90% of which are envisaged as being created within the SME sector (NPC, 2011:Ch 3). In response to this requirement, and in the face of the continued inadequate performance of SME policy, the government decided in 2014 to create a dedicated Ministry of Small Business Development which began operations in 2015.

6.5.2 The performance of SME policy

It is difficult to discuss the performance of SME policy, in part due to government’s lack of clarity on where the focus of SME policy lies and in part to the absence of data on the performance of the sector. However, the biggest challenge lies in the paucity of clear performance measurement parameters.

The National Small Business Act (RSA, 1996c), together with the National Small Business Amendment Act (RSA, 2004c), provide clear guidelines on what constitutes a micro, very small, small, or medium-sized enterprise and, also, the broad spectrum of commercial activity that is considered to fall within the ambit of small business.

‘[S]mall enterprise’ means a separate and distinct business entity, together with its branches or subsidiaries, if any, including co-operative enterprises, managed by one owner or more, predominantly carried on in any sector or subsector of the economy (Ibid., Cl.1(e)).

It is a measure of the extent to which policymakers have shifted some way away from a rigid developmentalist perspective on small business that this definition no longer contains references to NGOs as business entities. Also, in a recent report on the appointment of the new Minister of Small Business Development, carried in the DTI’s *Small Business Connect* magazine (Fredericks, 2014), the Minister’s comments indicated a clear shift in focus toward addressing the concerns voiced by the more established part of the small business community.

This new trend has been widely welcomed. In its press release on the subject, the SACCI cautiously welcomed the announcement of the new Ministry and expressed the hope that it would be successful in “simplifying the SME regulatory environment, reviewing and expanding incentives for SMEs, championing the cause of SMEs with other government departments and the Presidency vis-à-vis policy development” (SACCI, 2014). Representing the more emergent levels of the black business community, the National Executive Director of the South African Black Entrepreneurs Forum welcomed the announcement, expressing the wish that “we will see an improvement in the disconnect between the developmental agencies and entrepreneurs” (Fredericks, 2014:3).

What is noticeable in the discourse on the new Ministry, however, is the lack of detail as to what exactly it is going to do. Considering the lack of data on performance in the sector, this is, perhaps, unsurprising. Despite the DTI’s

commitment in its Integrated Strategy report (DTI, 2006) to produce an annual review of SME sector development and performance, only one survey was ever conducted, covering the period 2005-2007 (DTI, 2007), the quality of which is questionable. Only secondary government data was used and, as there exists no one body of data on small business within government, information was sourced from several different agencies and reports with obvious implications for reliability and validity (Babbie, 2010). The external consultants writing the report were clearly concerned about this situation to the point that they included the following limitation in the discussion on methodology.

The total number of SMMEs [small, medium, and micro enterprises] covering both the formal and informal sectors cannot confidently be determined on the basis of the data available. The reasons are twofold:

- the LFS²⁵ does not report figures for SMEs as a separate category
- the LFS reports figures for individuals whereas the Stats SA Integrated Business Register reports figures for enterprises (DTI, 2007:xxvi).

6.5.3 The FinScope Survey

A widely referenced source of data on the SME sector is the *FinScope South Africa Small Business Survey* (FinScope survey) (FinScope, 2010), prepared by the FinMark Trust, a British development finance institution. Intended partly to be a baseline study which could be used to benchmark and manage policy in the future, this survey constitutes the most comprehensive analysis yet conducted of the SME sector in South Africa. Sadly, there is little or no evidence to indicate that this excellent report has been used by government and no party appears to have conducted a follow-up survey.

The FinScope survey (2010) identified a population of 5 579 768 SME businesses spread across the country. Noting the diversity in the form and purpose of businesses, FinScope developed an innovative Business Sophistication Measure (BSM) to help categorise and understand the variable character of the SME sector and the array of needs (DTI, 1995). The report

²⁵ The LFS is the Labour Force Survey, a quarterly analysis of the South African labour force, prepared by Statistics South Africa.

concludes that “in order to develop this vital sector, a ‘one size fits all’ policy would not be effective - interventions should be targeted in terms of the specific and unique needs of specific segments in the sector” (FinScope, 2010:54). A summary of the report data is presented in Table 6.4 while a more comprehensive listing from the report is contained in Appendix 6.

Table 6.4: Summary of data from FinScope small business study

BSM	No. of Businesses	Percentage of Total	Percentage Formally Registered	No. of Employees		Highest Educational Level of Owner			Prevalence of Entrepreneurial Orientation	Maintains Financial Records	Customer Base in Each BSM			
				>5	>10	Primary	Secondary	Tertiary			Private Individuals	Other Small Business	Other Larger Business	Government
1	1 116 447	20%	1%	0,1%	0%	38,4%	60,5%	1,0%	26%	2,7%	99,9%	1,0%	0,0%	0,1%
2	1 121 429	20%	3%	0,4%	0%	39,1%	60,0%	3,0%	40%	22,5%	99,5%	3,3%	0,1%	0,8%
3	1 111 089	20%	6%	0,4%	0%	21,5%	75,5%	6,0%	39%	45,2%	99,1%	3,6%	0,6%	0,4%
4	555 876	10%	13%	2,6%	0%	16,5%	77,6%	13,0%	50%	69,4%	99,4%	5,3%	0,5%	0,9%
5	557 651	10%	19%	2,7%	0%	11,8%	83,6%	19,0%	45%	83,1%	97,5%	13,0%	3,2%	0,2%
6	562 526	10%	54%	16,8%	0,1%	5,6%	79,0%	54,0%	62%	73,3%	98,3%	14,7%	4,3%	2,8%
7	275 872	5%	74%	15,6%	4,3%	1,9%	73,8%	74,0%	74%	91,5%	96,4%	31,4%	10,7%	7,4%
8	278 878	5%	90%	25,9%	15,4%	0,7%	42,2%	90,0%	88%	98,4%	92,6%	45,7%	27,8%	13,2%
	5 579 768	100%												

Source: FinScope. (2010). *FinScope South Africa Small Business Survey 2010*. Johannesburg: The FinMark Trust.

The first thing to note about the data in Table 6.4 is that the population of SMEs is heavily skewed toward the survivalist end of the range with 60% of companies falling within the BSM 1 – 3 categories. At first glance this may seem to justify government's focus on this segment. However, government is committed to the overarching objective of the SME sector being the engine of employment and economic development (NPC, 2011:Ch 3) and, while these emergent businesses play an important social and developmental role, such entities cannot contribute meaningfully to this objective.

An important indicator of the capacity of businesses to develop is their registration status and, while businesses can operate legitimately in the name of the owner, not being registered presents major barriers to market access and funding, and thus growth. In South Africa, formal business registration is necessary in order to access many business support and financing opportunities. Larger clients, and indeed government, also prefer to use registered companies when awarding licences, contracts and tenders. It is also in the interests of the owners of more established companies to separate their personal identity and wealth from that of their companies. The level of company registration is thus a good yardstick of business size and level of development and Table 6.4 shows that it is only in the top two BSM categories, which jointly account for 10% of all SMEs, that there is anything approaching a high level of business registration, 74% and 90% respectively.

The data on the number of employees at each BSM level also show that only levels 6, 7 and 8 employ large numbers of people and thus have the capacity to make a meaningful contribution to the employment-creation objectives contained in the NDP (NPC, 2011).

Figures on the level of education and entrepreneurial capacities of owners suggest that there is much potential on which to build. The data on the extent to which SMEs maintain financial records suggest a high level of awareness as to the basics of good business practice. However, the FinScope study notes how this potential is undermined by a lack of access to the requisite support services,

or a lack of awareness on the part of entrepreneurs as to the availability of such services (FinScope, 2010:3.4.2.2).

In addition, the FinScope report highlights the challenges to SME development resulting from the failure of government and local authorities to provide basic infrastructure, a situation mostly affecting lower BSM levels. As well, the high level of crime is viewed as the most prevalent risk in all BSM categories (FinScope, 2010:3.5.4). As can be seen from the table in Appendix 6, most of the lower level businesses are located in underprivileged areas, far from large markets and inadequate power, sanitation, and communications services present considerable barriers to their overcoming these geographical and economic impediments.

One of the most surprising findings in the study is the limited extent to which SMEs do business with the state, especially considering that access to this market is viewed as essential to their development by government (DTI, 1995). This limited vendor relationship is also reflected in the extent to which SMEs access the support infrastructure provided by development agencies, most of which are operated by the state. It is quite shocking that 74,5% of all business owners surveyed were not aware of the available support services. Again, those owners who did know about these services were mostly in the three highest BSM categories (FinScope, 2010:3.4.2.2).

Sadly, even when business owners are apprised of such facilities, they may not be of much benefit. In September 2014, an all-too-common report appeared in the media concerning the breakdown of the Mpumalanga Economic Growth Agency (MEGA), the provincial enterprise development body in Mpumalanga Province. The organisation's website indicates that one MEGA's key functions is "To provide development funding to qualifying businesses and funding for qualifying individuals for housing purposes", and further notes the target market for such assistance as being "previously disadvantaged individuals who have limited access to funding" (MEGA, 2014). Unfortunately, funding or support applications to this organisation are unlikely to be successful as the result of corruption and inefficiency.

For the last twenty years, the Mpumalanga Economic Growth Agency (MEGA) has spent almost all its funding – about R400 million in this last financial year - on its own existence. Its mandate: to provide support for small businesses, agri-projects, start-ups, empowerment schemes, poverty alleviation and first-time property owners. But for twenty years the entity has achieved extremely little of this mandate, as it lurches from one political restructuring to the next, and from one funding scandal to the other (Moore, 2014).

6.5.4 The Survey of Employers and the Self-Employed

The government does not currently publish any comprehensive statistics on the small business sector. It does, however, compile and publish the *Survey of Employers and the Self-Employed* every four years, which focuses on the informal business sector. While the data in this survey are not compatible with the FinScope data, they reflect similarly challenging circumstances and prospects for development (Stats SA, 2013b).

- More than 88% of informal business owners are black Africans;
- Most people enter the informal business sector as an alternative to the prospect of unemployment;
- Businesses in this sector have a consistently low survival rate with the total number having dropped by 37% in the period between 2005 and 2013;
- In 2013, 14,6% of companies in the survey had turnover in excess of R6 000 per month;
- There are severe infrastructural limitations to business operations at this level;
- 76% of businesses do not keep financial records primarily as the businesses are too small or because the owners do not perceive the need;
- 76% of business financing is provided by the owner with less than 21% of the balance coming from 'Other' sources that might include

government assistance. However, the survey found that virtually no external financing is used by these companies;

- Companies in the informal sector employ on average two people for every three business entities.

Therefore, while the *Survey of Employers and the Self-Employed* is not directly comparable to the FinScope survey, it confirms the evidence in that report, namely that the SME sector is overwhelmingly survivalist in nature. It further supports the assessment of this researcher that government cannot expect to achieve the employment targets contained in the NDP if it does not focus on the provision of efficient support to the more established businesses in the SME sector.

6.5.5 The SBP report

The last source of data on the SME sector is the SBP report which is the product of a consultancy that provides services to, and information on, the more established parts of the SME sector. The SBP report is based on an annual survey of 500 small enterprises that operate in the manufacturing, business services, and tourism sectors. Among the criteria for inclusion are the requirements that companies employ less than 50 people and that they have been in operation for at least two years. Based on the FinScope census, the population of SMEs fulfilling these criteria would be in the region of 1,2 million businesses. A sample of 500 companies would, therefore, be highly representative of the population of established SMEs (Babbie, 2010).

The SBP study is premised on the notion that survivalist-type enterprises cannot contribute meaningfully to the economic development objectives enshrined in the NDP, whereas a more developed SME sector can (SBP, 2014:6). The study, therefore, tracks the performance of a sample of these companies to provide an otherwise unavailable body of data to facilitate the development of the sector. Key findings of the 2014 SBP report include:

- Company growth is predicated on increases in turnover and employment. Aggregate real annual growth across the sample was about

4% while staff numbers remained largely constant. However, there was a correlation between the age of a firm and the likelihood that it would employ more people.

- SMEs face considerable challenges which appear to be driven mainly by domestic rather than global conditions. While 'government shortcomings' were identified as the underlying problem, the following specific factors were identified in order of importance:
 - Lack of skills
 - Burdensome regulations
 - Lack of finance
 - Cost of labour

6.5.6 The case of Herman Mashaba and Black Like Me

Few stories of SME success and failure are as sobering as that of Herman Mashaba and his Black Like Me hair care products business (Mashaba & Morris, 2012). Mashaba's story is an inspiring example of an entrepreneur successfully facing the challenges of the apartheid era. However, his story is also a testament to the failed SME development policies and skewed incentive structures of the post-apartheid era. These influences so changed the operating environment for Mashaba that he eventually dismissed his workforce and outsourced the operation of this famous business. Today, Black Like Me is just a brand and Mashaba has joined the ranks of the BEE investor elite.

Mashaba notes the biggest challenges to his business efforts as the increase in criminal activity, and a generally onerous regulatory environment created with the needs of big business in mind (Ibid.). However, he reserves particular criticism for labour legislation, which he ascribes to finally having snuffed out his entrepreneurial spirit and having brought about the demise of Black Like Me as a manufacturing concern. So strongly does he feel about the burden of labour legislation, Mashaba is personally funding a case against the state in which he plans to challenge the labour regulatory regime as it applies to small business. Mashaba asserts that "[a]fter complaining for the last 10-15 years about the

devastating effect of labour legislation on small entrepreneurs, particularly black entrepreneurs, there is just no way that black entrepreneurs can operate under the current labour legislation. Totally impossible.”²⁶

Sadly, there is little in the public pronouncements of the new Minister for Small Business Development to suggest any major shift in government policy or focus on the issue of SME development. In her maiden budget vote speech, the new Minister opened with the comment that “the ANC will continue to support the creation of businesses, however with strong protection against exploitation” (Zulu, 2014:2), an apparent reference to the thorny issue of labour policy reform. Then, despite referring to the onerous NDP employment development objectives for small business, the Minister reaffirmed that SME policy focus would be on the emergent and survivalist parts of the sector. In response, Leon Louw, Executive Director of the Free Market Foundation, a conservative business lobby, opined that “SA’s small-business policy is like a mother feeding a baby with one hand and throttling it with the other” (Louw, 2014a).

6.6 Summary

This chapter has been the second of three that examines a variety of BEE policy frameworks. It began with a review of those that apply to the liquid fuels and mining sectors and moved on to address others in the fields of public procurement, employment equity, and small business development. In the course of this analysis the origins, development path and performance of the various policies were explored. It was shown that, with the exception of employment equity, no systems exist for the effective control or management of any of these policies. Yet they are all subject to ongoing processes of reform which, in the absence of reliable information, have little prospect of success. Sadly, the one policy that is relatively well managed, employment equity, is currently being shoe-horned into the broader B-BBEE policy framework, which is, arguably, the most incoherent framework of all.

²⁶ Interview with Herman Mashaba. Johannesburg. 11 February 2013.

Such is the labyrinthine nature of the empowerment policy environment, this chapter has doubtless been as challenging for the reader to understand as it was for the author to write. However, after this and the previous chapter, the reader will now be in little doubt as to the horrendously complex nature of the BEE policy environment and the challenge this presents for South African society.

Chapter Seven

Land reform and rural transformation policy

7.1 Introduction

All the empowerment policies discussed thus far apply equally to rural as well as urban areas. Employees everywhere are covered by the EEA, and the B-BBEE Act makes specific reference to “people living in rural areas” as being among the intended beneficiaries of the policy (RSA, 2004a:4). Sector-specific B-BBEE Codes have been developed to accommodate the special needs of the forestry and agriculture sectors (RSA, 2008, 2012a), and work is underway on a set of Codes for the fisheries industry. Small business development policy, similarly, applies to a venture in an erstwhile homeland area as much as to one in Johannesburg. However, it is important to note that these various empowerment programmes emerged in, and then spread from, an urban milieu and were designed to operate within the framework of an existing business or organisational entity. They are not, therefore, well suited to the particular empowerment needs of rural areas which have a very different history and where farming predominates as the major form of economic activity, a very different kind of enterprise from mining, manufacturing, or retailing.

At the same time as these industrially oriented policies were being formulated and developed, another programme was unfolding that sought to address the empowerment of rural communities. Commonly referred to as land reform, it has evolved to become an acknowledged part of the BEE framework, especially as it has taken on an increasingly commercial orientation (DRDLR, 2009). However, land reform is of a fundamentally different character even though, like the other BEE policies, the structure and intent of land reform has been in flux over the past two decades (Hall, 2014). This chapter explores this rurally focused policy and attempts to locate it within the broader context of BEE.

Chapter layout

The chapter first explores the differential political economy of rural South Africa by way of providing context and an understanding of the rationale for

rural economic development policies, including land reform. The detail of these policies and their performance is then investigated, and the chapter concludes with a brief analysis of the conflict between B-BBEE and the various rural empowerment policy frameworks.

7.2 The complex political economies of rural South Africa

The Oxford English Dictionary lists the words 'urban' and 'rural' as antonyms of one another; urban being defined as "Relating to, situated or occurring in, or characteristic of, a town or city, esp. as opposed to the countryside", and rural as "living in the country as opposed to a town or city" (OED, 2014). However, the political economy of contemporary South Africa defies such unambiguous categorisation on account of colonialism and apartheid, which systems saw the displacement of millions of people from cities to rural areas as well as the attempted creation of ten new states in rural regions of the country (the homelands) (Terreblanche, 2002).

Statistics South Africa officially recognises five patterns of human settlement that shed some light on the difficulty facing policymakers who have to deal with matters relating to location. The categories are (Stats SA, 2006a):

- Metropolitan formal: The large urban areas that comprise the economic centres of activity, namely the big cities.
- Other urban formal: Large settlements that are not economic centres of activity but fall within an urban municipality; e.g. urban townships.
- Urban informal: Informal settlements that occur on the fringes of cities and peri-urban areas.
- Former homeland area: These areas combine elements of all the other categories.
- Commercial agriculture: Settlements on rural-type industries; e.g. farms and tourism, forestry, and fishing operations.

Despite having developed these categorisations, the statistical agency does not generally use them but instead only reports locational data by province or by municipal area - metropolitan, district, or local. This is not helpful when seeking to develop comparative interpretations of the urban-rural divide as provinces vary greatly in terms of urbanisation, while data on municipal areas could include such diverse locations as the city of Johannesburg and a sparsely populated rural district.

Many organisations produce data specifically about rural areas, not least the Department of Rural Development and Land Reform (DRDLR) (DRDLR, 2009), and Statistics South Africa has conducted surveys on subjects such as rural-urban migration patterns (Stats SA, 2006b). However, none of these bodies of data provides a clear, comparative, picture of the urban-rural divide.

The problem is exacerbated by the fact that there exist two very distinct forms of rural political economy in the country; namely, the erstwhile homelands, and those regions that fell within the boundaries of white South Africa. As discussed in Chapter 4, the homelands were officially reintegrated into South Africa in the early 1990s, but their boundaries and social orders effectively remain in place due to the survival of the institution of traditional leadership (Bank & Southall, 1996; Beinart, 2014). These areas remain highly concentrated centres of population that have largely resisted attempts at development and poverty alleviation (DRDLR, 2009; DAFF, 2012).

Even in rural areas that fell within the boundaries of white South Africa, the political and economic system differed substantially from that in urban areas, with the result that these regions have developed along different lines to either the homelands or the urban areas of the country. Writing in 1986, Lipton summarised the differential development path of rural 'white' South Africa:

The changes in SA society since Union [in 1910] are most dramatically illustrated by the agricultural sector. Their essence was the shift from a system which, though capitalist, had features which could usefully be called feudal – a tied, serf-like labour force on the white farms and a black agricultural sector that was kept in an undeveloped and pre-capitalist state,

so that it would not compete with white farmers and would instead serve as a source of cheap labour for white farms and mines. The political power of white farmers enabled them to shape the social organization to their needs in the crucial post-war period, when many institutional structures were established.

From about the 1960s, white farms became much larger and more mechanised. . . . [and] as farming became more capital-intensive, farmers wanted to dispense with the feudal features and shift to a 'free' labour market. This process led to improvements for workers remaining on the farms; but those moving off found their freedom to look for work impaired by labour controls which made it difficult for them to find a place where they could legally reside (Lipton, 1986:85).

While there was certainly a yawning gap between the circumstances of blacks and whites in urban areas of South Africa after 1910, the social context could not have been described as evolving along 'feudal' lines, nor did urban blacks have to live under the 'pre-capitalist' conditions of their rural counterparts.

Rural South Africa is, therefore, neither politically nor economically homogenous and has evolved in very different fashion to urban which has important implications for the post-apartheid economic transformation challenge. In the cities, transformation has largely involved redistribution and integration within a unitary political and economic system, using the established social and commercial infrastructure as the vehicle (see Chapters 4-6). In rural areas, the challenge has been altogether more complex as communities have been far more disadvantaged, while having considerably less capacity to help themselves than do their urban counterparts. Also, reform in rural South Africa has effectively involved merging several polities while, at the same time, trying to establish an economic infrastructure in the face of challenges from competing, powerful elites (Ntsebeza, 2005; Atkinson, 2007:Ch 7; DRDLR, 2009). As if the mountain were not high enough, the project has been dogged by a lack of policymaking capacity in central government, coupled with an inadequate

understanding of the circumstances of people and communities, on the ground (Atkinson, 2010; Hall, 2010).

7.3 A brief history of the rural political economy

Kirsten et al. (1994:19) identify three distinct periods in the history of 20th century rural development and agriculture policy, which they collectively describe as a “marathon history of direct governmental intervention”.

- The first period began with the passage of the Native Land Act of 1913 (NLA) and lasted until the late 1950s. The focus during these years was on the segregation of black and white farmers and the gradual undermining of black farming in white areas through the passage of laws that favoured white farmers over black.
- The second period ran from the late 1950s to the late 1970s and focused on the improvement of productivity and earnings on white commercial farms. This saw the outright prohibition on ownership of land by blacks and the removal of black farmers from their land in white areas. This phase also saw unsuccessful and destructive efforts to stimulate commercial farming activity in the homelands.
- The third and final period of structural change in agriculture policy began in the late 1970s and lasted up to the time of the transition to democracy. This stage saw a fundamental change in fiscal policy which had a major impact on the institutional framework of commercial agriculture that, in turn, contributed to a shift in relations between white farmers and the NP government. Major efforts were also made to develop black commercial farmers in the homelands.

Before exploring these phases in more detail, it is necessary to first address the defining feature of the South African rural landscape - and the kingpin of apartheid policy - the homelands.

7.3.1 The homelands

Beinart (2012) argues that the homelands are commonly presented as a relatively sudden and recent creation of apartheid. However, he asserts that while such views are not technically incorrect, they represent a foreshortened version of history that impedes appreciation of the depth and complexity of the institutions involved and, thus, the task of addressing the challenges these polities present for rural development and land reform today.

Exploring the evolution of the homelands, Christopher (1994:Ch 1) posits that, as colonial settlers spread throughout the southern African region in the 18th and 19th centuries, the indigenous African populations were either absorbed into the settler communities or forced to live in areas that were either set aside for them or which the white settlers had no interest in claiming. Thus was created the system of population control that would become the cornerstone of racial dominance and the future homeland system.

Within these new states and colonies the indigenous population remained in substantial numbers, both on the periphery, where effective settler control was only established late in the [19th] century, and in the European occupied farming area, where substantial workforces were acquired along with the land. So large were the indigenous populations incorporated within the colonial and republican state boundaries from the 1830s onwards that a new form of organizational control was introduced. Rural reserves were set aside where the indigenous population could continue to live under traditional rulers and customs but overall European supervision. In some cases the lands were granted to co-operative leaders who assisted the settlers or the governments, while in others they were demarcated to accommodate those considered to be 'surplus' to the labour requirements of the settlers.

Later, as the colonies and republics incorporated regions which were densely occupied by the indigenous population, little change was made in the land dispensation as virtual protectorate status was accorded to the indigenous social hierarchy. In all cases it needs to be emphasized that the land so set aside was regarded as belonging to the government, to be taken

away if the conditions of agreement were infringed. No indigenous land rights were recognized as the basis of a colonial or republican title deed. Conquest and annexation effectively transferred sufficient rights to the Crown or the State to ensure that all future land holdings derived their rights from those authorities (Ibid., p.17).

Beinart (2012:9) stresses the importance of a nuanced understanding of the processes involved in this subjugation of African communities. He notes that while some lost part or all of their land, others, such as the Mpondo and Venda, retained all of theirs. In some instances, as with the Ndebele and Xhosa, dispossession “helped to stoke a fierce traditionalism” while in others, namely the Tswana, the influence of missionaries and exposure to education mediated the ability of communities to adapt.

With the discovery of diamonds and gold in the late 19th century, the residents of these reserves provided the obvious source of labour for the new mines. However, there was little incentive for them to give up their agrarian way of life as the reserves were not yet heavily overpopulated and geological conditions made for difficult and dangerous working conditions in the mines. Most importantly, the mining companies could not afford such wages as would compensate Africans for leaving their communities and familiar rural lifestyle (Terreblanche, 2002:Ch 8).

The solution, developed by the mining houses in collusion with the colonial government and white land owners, was to pass a series of laws that coerced Africans to give up their traditional lifestyle and work for wages on farms and in mines and industry. As the reserves already existed, it was not difficult to manage such policies (Terreblanche, 2002:251) and mining houses, furthermore, discovered that tribal chiefs and headmen were a “convenient collaborating class for the controlled proletarianisation of Africans”. Thus, “from 1890 onwards . . . the mercantile and financial elite became the champion of the retribalisation of the Africans in the ‘native reserves’ under the control of mostly corrupt chiefs who now had to fulfil the double function of social control in the ‘reserves’ and collaboration with white employers” (Ibid.).

Then, in the early 1950s the NP government began to implement policies to address its electoral promise to solve the 'native problem'. Lipton (1986:Ch 2) stresses the need to appreciate that apartheid policies were, first and foremost, about managing a perceived threat to the survival of the Afrikaner people and that the resulting dispossession and subjugation of blacks was a strategy to achieve this and not an objective in itself. This view might appear somewhat semantic but it is important in understanding the rationale behind the byzantine framework of apartheid policy.

[T]he nationalists did not (as businessmen and liberals believed) want to halt industrialization but to control it, so as to make it compatible with the traditional hierarchical race structure and the preservation of white (particularly Afrikaner) identity. They believed this required the reinforcement of racial divisions against the social forces released by industrialization and modernization. As a result they drew sharper lines between whites and all blacks (including coloureds) and resorted to more legal intervention than hitherto (Lipton, 1986:23).

With the system of African reserves already in place, the NP set about strengthening the institutional framework of traditional governance in these areas, on the one hand, and controlling the presence of Africans in and around South Africa on the other. This era saw the passage of some of South Africa's most notorious Acts including the Population Registration, Immorality Amendment, and Group Areas Acts in 1950, the Separate Representation of Voters and Bantu Authorities Acts in 1951, the Black (Native) Laws Amendment and Black Abolition of Passes and Co-Ordination of Documents Acts in 1952, and the Bantu Education Act in 1953.

Throughout the 1950s, these policies made conditions increasingly difficult for Africans in white South Africa while other policies, implemented in the homelands, sought to make those areas a more appealing proposition for blacks. As noted by Southall (1980:40), "The objective of the bantustan strategy was not merely to 'divide and rule' but to create a collaborative petty-bourgeoisie within each of the homelands". Both policy objectives fell far short of their aims,

however, as resistance from the black community was strong. The new policies also attracted much negative international attention, not least over the marathon treason trials of the late 1950s and the Sharpeville Massacre in 1960 (Terreblanche, 2002:Ch 9). Although the government was embarrassed by events, the appointment of Hendrik Verwoerd as Prime Minister in 1958 ensured that matters would become even more difficult.

Verwoerd was a zealous adherent to the ideals of apartheid and an ardent believer in the superiority of white people, especially Afrikaners, over blacks (Giliomee, 2012:Ch 2). As a leader he brooked no opposition and, in response to events of the late 1950s and early 1960s, put in place a plan to make the homelands independent states and, on the basis of this independence, to strip Africans of their South African citizenship (Terreblanche, 2002:Ch 9). Sometimes referred to as grand apartheid or separate development, this plan involved the transfer of greater authority to homeland leaders and the development of governance infrastructure which entrenched the institutional character of the homelands and the system of traditional leadership. It also saw the forced migration of an estimated 3,5 million Africans to the homeland areas and the resulting loss of billions of Rand in African property and possessions (Hall, 2010:71).

Although the homelands were officially reabsorbed into South Africa in the early 1990s, many of the political and economic institutions of the past have remained intact, not least that of traditional leadership, key tenets of which are fealty to a hierarchical system of authority, primogeniture, communal ownership of land and, frequently, a subservient role for women (Bank & Southall, 1996). Lobbying by the powerful homeland leadership elite has ensured that traditional leadership is protected under the new Constitution, despite the apparent conflicts with various other sections such as those governing property rights and the rights of women (Claassens, 2014). The result is that the homelands today constitute de facto semi-autonomous regions (Bank & Southall, 1996; Beinart, 2012), greatly complicating the task of administration for central government, especially in the implementation of rural development policies such as land reform (Bank & Mabhena, 2011; Gasa, 2014).

The ten former homeland regions constitute approximately 13% of the landmass of South Africa and house approximately 16,5 million people or 32,5% of the total population (HDA, 2013). Poverty is endemic and there is little in the way of industrial or agricultural infrastructure.

7.3.2 Rural policy - 1913 to the late 1950s

Although not the first piece of legislation to impact the circumstances of rural South Africans, the NLA is acknowledged as a very significant event in the history of the country having been “enacted with the deliberate aim of destroying the economic independence of a large part of the African population, and coercing them into becoming a compliant and cheap labour force on the mines and maize farms” (Terreblanche, 2002:68). This Act placed heavy restrictions on the acquisition of land by Africans, outside the African reserves, and prohibited the popular practice of tenant farming by blacks on white-owned farms.

Jeffery (2014:Loc.5772) argues that the significance of the NLA is frequently overstated, noting that it did not affect the ownership rights of black people who already owned land nor did it completely prohibit the acquisition of new land by blacks. She argues that as it was either not implemented or was just ignored in three out of four of South Africa’s provinces, “The main effect of the statute was . . . to prevent Africans in the Orange Free State [Province] from continuing to hire land from white farmers under share-cropping agreements”. Jeffery further cites, as support for her argument, the fact that more than 3 200 black farmers were given permission to acquire land outside the reserves up to 1936 and that black landowners were only removed from their farmland later in the 1960s.

This view would have to be considered somewhat semantic as the Native Trust and Land Act (USA, 1936a), along with the Representation of Natives Act (USA, 1936b), quickly closed these loopholes and effectively prohibited the acquisition of any land by black people. These Acts also formally extended the prohibition to the Cape Province where certain elements of the NLA had not previously been implemented. Jeffery’s argument also ignores the broader significance of the NLA, especially the role it played in boosting the ranks of

landless people who now had no choice but to move to the homelands and seek wage labour on white farms or in mines and industry. As noted by Terreblanche, the NLA directly resulted in the sudden proletarianisation of more than one million Africans and had far reaching implications for the structural domination of the black population by whites.

The [Native] Land Act was extraordinarily successful in proletarianising the great majority of Africans and creating large reservoirs of cheap and docile African labour for white farmers and the mining industry. It was truly the rock on which not only the political alliance between a section of the Afrikaner farming elite and the British/English business elite was built, but also on which the ultra-exploitative system of racial capitalism was built and maintained until the 1970s (Terreblanche, 2002:260).

Major farming support policies were subsequently also enacted, such as the Marketing Act (USA, 1937) and the Co-Operative Societies Act (USA, 1939). While these Acts sought to support the development of farming, they specifically excluded black farmers, thus creating even further impediments to their survival in the commercial farming sector (Kirsten et al., 1994).

7.3.3 Rural policy – from the late 1950s to the late 1970s

The dual character of rural life in South Africa had become well-entrenched by the late 1950s but the next two decades saw this dichotomy reinforced to serve the ideological, political, and economic imperatives of apartheid.

The NP had been elected in 1948 on a platform of Afrikaner nationalism that promised an Afrikaner society free from foreign interference and independent of foreign capital. Key among the new party's strategies to fulfil its electoral mandate were addressing the 'native problem', and uplifting poor white Afrikaners and Afrikaner farmers (Terreblanche, 2002:Ch 9). Kirsten et al. (1994) note that a disproportionately large number of South African parliamentarians were farmers and so, even if these representatives found themselves on the opposition benches, there would have been little incentive to object to policies that favoured their personal economic interests.

The 1960s and early 1970s saw a huge drive toward increased mechanisation and productivity within the commercial agriculture sector, not just to satisfy the needs of a growing population but to offset the threat imposed by trade sanctions on food security within the country (Kirsten et al., 1994; Vink, 1999). Government support to white farmers during this period was extensive and took the form of favourable interest rates, drought and flood relief, and extensive marketing and technological support. While this assistance achieved the objectives of food security and higher net foreign exchange earnings, the results came at a cost. Not only did farmers develop a dependency on these measures and become weak and heavily indebted, but the financial burden on the state was unsustainable and the environmental impact, caused by rapid expansion, was considerable (Ibid.). Nevertheless, the increase in agricultural output achieved by the 1970s was so great it has been argued that this period represents South Africa's agricultural revolution (Wickins, 1989; Jones, 2000). Vink (1999:112) observes that even though the 1970s constituted the high point of state intervention in white commercial agriculture, and while this may indeed have resulted in huge increases in agricultural output, "the policies followed in the 1970s played a particularly strong role in the impoverishment of the South African economy [through the obsessive] pursuit of self sufficiency; discrimination within the sector; and the distortions in the price of capital and labour".

Lipton (1989:Ch 4) argues for a more nuanced view of agriculture development asserting that, by the 1970s, many farmers had already become less reliant on government largesse and less enamoured of its policies. She notes how the negative effects of restrictive apartheid labour regulations and international sanctions had become a bigger problem for agriculture than the potential loss of government support.

Until recently [the late 1970s], apartheid was vital for the interests of white farmers. . . . No other group of employers was so dependent on racial and not just class measures, because the needs of most white farmers could not, initially, have been secured by the operation of 'free' market forces, as

could those of many urban businessmen. They required massive state intervention.

Moreover, it was not only against Africans that white farmers desired political intervention. It was also against competing white interests – particularly urban employers, who offered higher wages and who also objected to the large state subsidies for white farmers and the protection imposed against cheap agricultural imports. . . .

As the interests of white farmers changed, they had less need of the apartheid policies that white political control underwrote. They also became aware of the political costs of apartheid – of the threats that international hostility could pose to their exports and internal unrest to their security. The internal problems impinged directly on farmers. First, they were in the front line in the mounting insurgency by black guerrillas. Second, the implementation of the land consolidation proposals (to reduce the fragmentation of the Bantustans), limited though these were, led to upheaval and uncertainty for farmers in the regions affected (Lipton, 1986:108).

This second period of policy reform had, unsurprisingly, very different and generally negative implications for rural blacks. As part of its plan to make the homelands more productive, the government initiated the so-called 'Betterment' programme there in the 1950s. Ostensibly intended to facilitate higher levels of agricultural production and help alleviate the problem of environmental degradation, the project was a failure.

Betterment involved forced destocking through the culling and forced sale of livestock, limited access to the commons for grazing, fencing, and restricted use of arable allotments, including selective prohibitions on ploughing. It involved further forced removals within the homelands, reduced aggregate access to land and disrupted production and social networks, leading to a decline in agricultural output and an intensification of rural poverty (Hall, 2010:89).

Blacks living outside the homelands were especially hard-hit in this period which saw the imposition of South Africa's policy of grand apartheid. This envisioned a plan to hive off the homelands as sovereign states, thus facilitating the substitution of South African citizenship for Africans with that of their particular homelands and, in this way, finally solving the 'native problem'. In the view of the South African government, this legitimised the mass removal of an estimated 3,5 million black people to the homelands, including those black farmers who had managed to keep their land up to this point (Hall, 2010:71).

The 1970s and 1980s saw another government agriculture development effort for blacks that would also end in failure. This programme took the form of large, centrally managed agricultural projects such as forestry plantations, irrigation works, fruit and tea growing enterprises, and crop and livestock farming. The administration of these ventures was generally placed under the control of the various homeland development agencies which, as Southall (1980) notes, did not enjoy a good reputation for probity or efficiency. There were many other factors, however, that mitigated against the success of these endeavours, not least that they had to compete with the extremely well-resourced and supported white commercial farming sector (Hall, 2010:93). Also, while they may have been large projects in terms of the homelands, they were not large in the context of South African agriculture in general.

In their review of the performance and prospects for these agricultural development initiatives in the relatively more advanced KwaZulu and Bophuthatswana homelands, Butler, Rotberg and Adams expressed doubts about the potential performance at the outset:

Overall, there has not been any sort of decisive improvement in food grain farming or in livestock management in the two homelands. Most gains in these two critical areas have occurred unevenly and have been concentrated in few areas and - probably - among relatively few persons. There are signs of retrogression, too, where herds are too large for grazing lands to sustain, where fencing and conservation works are not maintained, and where more and more people try to eke out a subsistence existence in

overcrowded rural locations. Success and failure often lie side by side. Tractors, trucks, and modern equipment are found in many rural areas. Several Tswana ranchers have built up herds of registered stock. In Natal, there is an emerging group of sugar cane growers making an acceptable living out of farming.

Where resources and personnel have been committed, as in sisal, phorium tenax, vegetable gardening, and stock sales, there have been some measurable gains - gains large enough to hold out some hope that with more resources and more personnel even more growth may be realized. The nagging question is whether the management of these pilot projects can be transferred to local people. Expenditures on agricultural development have been small, and the fact that measurable gains have resulted at all is noteworthy. It would therefore be surprising if cost-effectiveness studies did not show large returns to more expenditures. On balance, however, there simply has not been enough forward movement to make a real difference: cumulative growth has not been initiated in homeland agriculture. And if such growth depends on major inputs from outside, what will be the reaction of the white farming community to special prices, marketing arrangements, and subsidies? And how will the homeland urban markets be shared, and what of Soweto and the other African townships of South Africa? (Butler, Rotberg & Adams, 1978:189)

History has shown these doubts to be valid. In her review of the programme, Hall argues that the only beneficiaries were the homeland elites:

Despite substantial investments, the large estate schemes tended to fall far short of the expectations of planners, politicians, development agencies and the participants themselves, offering limited benefits and insecure rights to land, while relying largely on the labour of women and pensioners. Substantial financial losses were the norm and there was little if any evidence of wider benefits or multiplier effects in the local economy. Instead, the schemes provided profits and kick-backs to well placed elites

as well as jobs to a few residents but made little impact on the livelihoods of the majority of rural blacks (Hall, 2010:94) .

7.3.4 Rural policy – the late 1970s to the end of the 1980s

The 1980s witnessed a fundamental change in government policy on agriculture, rendered necessary by a diversity of political, social, and climatic factors (Kirsten et al., 1994). NP agriculture policy had long been premised on an obsession with keeping whites on the land, regardless of whether or not they could farm or not. However, these policy reforms now meant the state “provided farmers with sufficient support to maintain a positive outlook despite facing extremely difficult natural and economic circumstances while at the same time pushing farmers to become more competitive and less dependent on the state” (Schirmer, 2000:144).

The reforms were not universally unpopular, being supported by many secondary producers and the more successful commercial farmers (Lipton, 1986:108). However, dissatisfaction was still widespread and contributed to a split in the NP and the formation of the Conservative Party which took with it a substantial portion of the commercial farming community. As observed by Hall (2010:110), an important outcome of the policy changes was that they finally “brought to an end the institutionalised alliance of commercial agriculture and the political elite that had characterised most of the twentieth century”.

The newly-deregulated agricultural policy framework resulted in generally lower income levels for individual farmers along with higher exposure to debt, but the overall agriculture sector still managed to produce surpluses and increase exports (Kirsten et al., 1994). These achievements were made possible largely by improvements in productivity levels following earlier programmes of mechanisation, technological improvements and, in some instances, better employment practices (Ibid.).

Conditions for blacks were little improved by the new policies. Food prices increased as a result of deregulation, and the more efficient farming methods generally required fewer, more highly-trained employees (Kirsten et al., 1994). In addition, the continuing trend toward mechanisation and professionalism in

farming further raised barriers to entry for emergent farmers. Despite this, and in keeping with the government's new reformist agenda, a major black farmer development project was implemented in the mid-1980s, the Farmer Support Programme (FSP).

The FSP was a project of the newly formed Development Bank of South Africa (DBSA), a development finance institution set up specifically to assist the homeland areas. By the mid 1980s, the overall picture was one in which "agriculture in the homelands had become of negligible importance" (Schirmer, 2000:152) although there were regional variations, especially in areas far from cities where subsistence agriculture still constituted a major portion of household income.

The FSP was a major undertaking involving the development and support of potential homeland farmers through comprehensive assistance that ranged from financial support to the provision of capital goods and farming advice. In its five year lifespan, the programme reportedly reached 25 000 farmers, involved 350 000 hectares of land and, in the process, created 30 000 jobs (Hall, 2010:96). The FSP, and similar programmes operated by NGOs, did not meet with a lot of success, partly because they sought to assist in the development of commercial agriculture within the economically-constrained homeland system but, more importantly, because they failed to take adequate cognisance of the capital requirements involved and the motivation of people to be farmers (Schirmer, 2000). Those who did succeed generally had some financial resources to sustain the farming enterprise or were part of an out-grower project. This latter scheme involved the outsourcing of production by large agribusiness entities to small-scale homeland farmers, with the corporate sponsors generally ensuring provision of adequate planning, capital, and support.

One outcome of the FSP programme that would influence future land reform and agriculture policy was the formation of the National African Farmer Union (NAFU) as a branch of NAFCOC. NAFU sought to represent the interests of the new emergent farmers, and the organisation would come to play an important role in policy formation processes in the transition era, punching well

above its weight in discussions on agriculture and land reform policy (Hall, 2010:140).

7.4 The contemporary political economy of rural South Africa

As previously discussed, there is much ambiguity in South Africa regarding the definition of a rural versus an urban area, with the result that much government statistical data is compiled only on the basis of formally demarcated provincial or municipal areas. An exception to this is reporting by the DRDLR which was created as part of an attempt to coordinate the various aspects of rural development and agriculture policy (Atkinson, 2010).

Focused on the needs of rural communities, this department needed to differentiate its focus and clearly delineate its area of operation. To this end, the DRDLR developed a definition of rural areas as “sparsely populated areas in which people farm or depend on natural resources, including villages and small towns that are dispersed throughout these areas, [and] large settlements in the former homelands” (DRDLR, 2009:8).

The DRDLR’s *Comprehensive Rural Development Programme Framework* (CRDP) policy document further notes that in 2006, when statistics were still gathered on areas defined as rural, Statistics South Africa estimated the rural population to be about 20,7 million (Ibid.), although a more recent study by the Housing Development Agency, a Johannesburg-based NGO, estimates the current rural population to be 19 million (HDA, 2013). Of this population, the DRDLR estimates that there are between 10 and 15 million people “that are characterised by extreme poverty and underdevelopment” and who have an average per capita income equating to approximately only 9% of the national average (Ibid.). In South Africa in 2012, the total number of people estimated to be living in conditions of relative poverty²⁷ was 18,8 million (SAIRR, 2013:343). Taken together, these data indicate that somewhere between 50% and 75% of the rural population lives in conditions of extreme poverty and that poverty in South Africa is much more a rural issue than an urban one.

²⁷ The definition of poverty varies according to household size in South Africa, hence the use of the term ‘relative poverty’.

Of the approximately 19 million people in rural areas, an estimated 16,5 million live in the former homelands (HDA, 2013:13) and, together with other state-held trust lands, these areas collectively account for approximately 12% of the agricultural land of the country. However, land quality, climate, topography, and population density vary greatly and present major development challenges, not least in the area of agriculture (Walker & Dubb, Undated).

Walker and Dubb (Undated) further note that while white-owned commercial farming operations account for 67% of the land mass of South Africa, only 13% of this land is classed as arable and more than 30% of the total is in the arid, Northern Cape region of the country. Jeffery (2014:Loc.5882) asserts that commercial farmland classed as 'arid' more closely approximates 60% when areas of the Western and Eastern Cape provinces are also taken into account.

Despite the size of South Africa, therefore, the agriculture sector²⁸ is surprisingly small and offers limited potential for development. It is also shrinking fast in terms of the number of farms, if not output. In 1993 there were 57 980 farms, decreasing to 45 818 by 2002 (Atkinson, 2007:55). By 2012, the number of commercial farms had fallen to 40 000 with a total net annual income of only R51,5 million or R1 287 500 per farm (DAFF, 2014:9). The forestry sector has approximately 100 major companies and the fisheries sector is similarly concentrated around a few big firms (Ibid.).

Barriers to entry in the agriculture sector are, therefore, very high due to the capital investment required, the effects of climate change, long lead times to market, low levels of state support, distance to markets, and uncertainty surrounding land reform and fisheries licencing policies (Viljoen, 2005). Barriers are also high, if different, for farmers in the former homeland areas due to the predominance of collective forms of land ownership, and issues relating to the institution of traditional leadership, limitations on government spending, a lack of farmer support, poverty, little motivation on the part of potential farmers and, in many instances, the fundamental unavailability of appropriate land

²⁸ As per the mandate of the DAFF, agricultural activity is defined as including farming, forestry, and fisheries.

(Schirmer, 2000; DRDLR, 2009; Bank & Mabhena, 2011; Aliber & Cousins, 2013; Gasa & Luwaya, 2014; Hosken, 2014).

With such a small number of farms, employment prospects in the agriculture sector are limited and on a downward trend, primarily as the result of increased mechanisation, changes in the profile of farming activity that frequently result in lower levels of employment, and labour regulations that are perceived to be onerous by employers. In the period from 2001 to 2012, the number of employees in the agriculture sector fell from 979 000 to 712 000 (SAIRR, 2013:246) and by 2014, the level had fallen even further to 670 000 (Stats SA, 2014b). Therefore, while agriculture may constitute the primary form of economic activity in rural areas, it could not possibly have a significant impact on rural poverty such is the scale of the challenge. Table 7.1 shows the sources of income per household in rural areas and paints a dire picture of prospects for rural development.

Table 7.1: Source of income per household in rural areas

Variables	2002		2012		Change in Households	% change
	No. of Households	% share	No. of Households	% share		
Household and main income sources						
Salaries and wages	2 083 500	41,90	1 780 272	38,18	-303 228	-14,55
Remittances	1 121 378	22,55	621 928	13,34	-499 450	-44,54
Social grants	1 413 381	28,42	1 707 886	36,63	294 505	20,84
Farming (primary agriculture)	67 345	1,35	5 535	0,12	-61 810	-91,78
Other income sources	217 833	4,38	495 440	10,62	277 607	127,44
No income	69 440	1,40	51 983	1,11	-17 457	-25,14
		100		100		

Source: Jacobs, P. & Hart, T. (2014). Pro-Poor Rural Development in South Africa. In Meyiwa, T., Nkondo, M., Chitiga-Mabugu, M., Sithole, M. & Francis, N. (eds.), *State of the Nation: South Africa 1994-2014: A Twenty-Year Review of Freedom and Democracy*. Pretoria: HSRC Press. p.163

The Table clearly shows a huge drop in income from direct employment and remittances, and a substantial increase in dependence upon social grants, albeit not sufficient to offset the loss of employment and remittance income. With total agricultural employment only amounting to 670 000 in 2014, and being on a steady downward trajectory (Stats SA, 2014b:24), it is difficult to imagine what long-term option there can be for income generation among rural dwellers. Jacobs and Hart (2014) do not provide information as to what constitutes 'Other income sources' but, based on the small business surveys

discussed in Chapter 6, it would be reasonable to assume that this involves, at least in part, micro-business activities which are often the product of necessity, rather than entrepreneurial spirit or choice, and which thus have limited prospects for survival or growth.

With high levels of unemployment in urban and industrial centres, there should be little incentive for the rural population to migrate there in search of a better life. It is thus a measure of the desperation of rural dwellers that there has actually been a strong trend in migration to towns and cities. From 2001-2011, South Africa experienced a net internal migration of almost one million people, with the overwhelming majority leaving the rural provinces and going to the industrialised Gauteng and Western Cape Provinces (Stats SA, 2013a:12).

Another major challenge to economic development and change in rural areas is the “intense conflict and mistrust” between government, the traditional leadership that has survived in the erstwhile homelands (Bank & Mabhena, 2011:121), and many sectors of civil society (Ntsebeza, 2005; Beinart, 2014; Gasa & Luwaya, 2014; Hartley, 2014b). While duality in the administration of state is not unusual, especially in Africa, the situation in South Africa is complicated by the extent to which the institution of traditional leadership was manipulated and reinforced to serve the interests of successive colonial and apartheid administrations (Bank & Southall, 1996). The result has been the survival into the post-apartheid era of a powerful rural political elite whose influence has been bolstered by widespread perceptions, on the part of rural dwellers, of service delivery failures on the part of central government agencies.

This duality manifests in conflicts and confusion in policy formulation and implementation that are widely acknowledged to be a major impediment to development in rural areas, not least in the area of economic empowerment policy (Ntsebeza, 2005; Hall, 2010; Bank & Mabhena, 2011; Mashala, 2012; DAFF, 2014; Gasa, 2014). Issues of particular significance include the hierarchical nature of traditional leadership and the limited extent to which power is devolved from rural elites to the general population, the question of

individual as opposed to collective ownership of land, and differing perspectives on the issue of gender equality.

Such matters are central to discussions on economic empowerment because any institution that seeks to control or limit an individual's capacity to develop, especially on normative grounds such as status, ethnicity or gender, runs contrary to the very tenets of empowerment (Perkins & Zimmerman, 1995). There exists, therefore, a fundamental challenge to the BEE/land reform project in rural areas that goes well beyond issues of policy reach and the efficacy of policy implementation.

7.5 Land reform policy

7.5.1 Background to the policy development process

This section draws heavily on the doctoral dissertation of Ruth Hall (2010), who has long been involved with issues of rural development in South Africa and was deeply immersed in the land reform policy development process. Her thesis provides an insightful and detailed record of events.

As with various empowerment policies discussed thus far, other than early BEE, land reform policy has been the product of post-apartheid policymaking processes, albeit with evident historical institutional influences (Schirmer, 2000). Unlike other policies, however, the key influencer of land reform was not the ANC, organised labour, or, indeed, any party within South Africa but, instead, the World Bank (Williams, 1996; Van Zyl, Vink, Kirsten & Poonyth, 2001; Weideman, 2004; Aliber & Cousins, 2013).

The ANC was unprepared for its unbanning in 1990 and as noted by Hall (2010:128) "there is little evidence of [any] systematic planning by the ANC for future agricultural and land policy prior to 1990". Although the organisation moved quickly in an attempt to address this situation, as demonstrated extensively by Hall in her thesis, these efforts were impeded by a lack of consensus on underlying political and economic ideology within the party and some indifference regarding the importance of rural over urban matters. Adding to the confusion was the influence of powerful constituencies outside the ANC

such as the World Bank, the DBSA, academics of various ideological persuasions, organised agribusiness, homeland elites, and NGOs. The policy development process was also impacted by decisions taken in the broader arena of the political negotiations process that were not directly linked to agriculture or rural development.

The NP government had moved quickly in the early 1990s to shore up its position and pre-empt changes that might negatively affect its interests (Terreblanche, 2002:Ch 3; Hall, 2010:Ch 3). The Party repealed all legislation that restricted the rights of black people to own or purchase land and in 1991 published a White Paper on its proposed land reform policies. This policy proposal was widely viewed as having been designed to protect the interests of white farmers and was rejected out of hand by the ANC, academics, and NGOs.

While the ANC and the NP government, with their various allies, were seeking to develop and advance their individual policy positions, certain matters were being agreed to in the formal political negotiations process known as the Convention for a Democratic South Africa (CODESA), the decisions of which forum were binding on all parties involved. Most significant for the land reform project was the decision that led to Section 25 of the Constitution governing the issue of property rights (RSA, 1996a) and closing the door to any immediate threat of white-owned land being forcibly taken and redistributed by the state on behalf of landless black people. Allowance was made in the Constitution for expropriation by the state, but only in return for appropriate payment (RSA, 1996a). As a result, any proposed land reform policy would have to be based on the redistribution of state-owned land or the purchase of white-owned land by the state for redistribution to black people (Hall, 2010:Ch 4).

Bond (2005:Ch 5) asserts that the World Bank was keen to intervene in the transition process in South Africa, partly to ensure its economic ideology would be imprinted upon the new democratic order and partly because it was concerned about the leftist ideological position of the liberation movement. However, in his history of ANC economic policy development, Turok (2008:56) asserts that the ANC was traditionally “cautious” of such institutions as the

World Bank but, as South Africa was a member of the IMF and, as the ANC was the likely government-in-waiting, the organisation was obliged to cooperate with the IMF and its sister institution, the World Bank.

The picture Hall (2010:Ch 3) paints of Hans Binswanger, the World Bank representative on agricultural policy, and his team is of one of a strong-willed group with deeply entrenched beliefs rooted in an ideological pre-disposition toward market-oriented policies, but with little appreciation of circumstances on the ground in South Africa. This is reflected in a paper, published by Binswanger and his colleague Klaus Deininger, in which they present their rationale for promoting a small-scale farming, market-oriented model for South African land reform (Binswanger & Deininger, 1993). The paper draws extensively on land reform experience from post World War Two experience in Japan, 'hacienda' systems in Latin America and Asia, and postcolonial programmes in Kenya and Zimbabwe. Yet the part of the paper that explores the particular circumstance of South Africa comprises an ill-informed, detached revision of colonial and apartheid history with, literally, no data on the circumstances of people living and working in rural areas or in the agriculture sector. This lack of understanding has been a recurring theme in the literature on land reform. Atkinson (2007:4), for example, has long sought to highlight the plight of the "invisible" community of farm workers whom she argues have been "moulded, manipulated and, more recently, marginalised, by those with economic and political power". As regards input from the commercial farming community, she further asserts that "Seldom, if ever, has the central role of the commercial agricultural sector been identified as key to making land reform work" (2010:367).

Hall (2010:172) records how challenges to World Bank policy positions, based on the operational knowledge and experience of local economists, were dismissed on the basis that "they were the sons of the system and their fathers were white commercial farmers". She also notes how the submissions of NGOs, with much experience on the ground in rural areas, were also ignored on the basis that these organisations did not support the market-oriented development policies of the Bank.

In the absence of rich insight into local conditions, and likely influenced by the extreme emotions of the era, Binswanger and Deininger (1993:1466) presented the case for land reform in South Africa as follows.

Based on international experience, South Africa seems to have two options: rapid and massive redistribution of land to black and colored groups, which would involve substantial resettlement from the homelands onto land now in the commercial sector; or decades of peasant insurrection, possibly civil war, combined with capital flight and economic decline. . . . At first, such invasions will be uncoordinated and sporadic, and will concentrate in Natal and other areas close to the homelands. While Afrikaner farmer groups will be able to defend areas that are not contiguous to the homelands, and are arming themselves to do so, they will be powerless against violence committed by current and former workers and tenants. Over time, some political group will organize a well-disciplined peasant movement capable of coordinated insurrection and terrorism, using the rapidly increasing stock of arms in rural areas.

The work of the World Bank on land reform was thus coloured by the people and organisations that it chose as partners. As noted by Hall (2010:167), the Bank's representatives were mandated to only deal with "politically correct people" which effectively meant close contact with the ANC and little with the NP government or with organised agribusiness. However, the Bank did have to compromise to some extent and established close links with the DBSA which had previously been involved in the FSP in the homelands and boasted a strong team of agricultural economists. She notes, "The DBSA positioned itself successfully in relation both to the ANC and to the World Bank as the one institution combining technical know-how and local knowledge". However, DBSA economists found the ANC's views to be "left-wing and theoretical" and therefore worked with the World Bank to promote its policy position (Ibid., p.165).

While the many NGOs operating in rural areas would doubtless have fitted with the Bank's mandate to work with 'politically correct people', the NGOs typically advocated direct intervention on behalf of impoverished rural

communities and did not support the Bank's position that located black commercial farmer development at the centre of a proposed land reform policy (Ibid.).

The historical ambivalence of the ANC leadership regarding land reform policy and the organisation's lack of capacity and preparedness for negotiations has had a major influence on the path of land reform policy, as detailed extensively by Hall (2010:Ch 3). These factors eventually saw ANC policy on land reform develop a dual character that premised direct intervention with rural communities on the one hand, and the promotion of commercial agriculture as a medium for development on the other. These two streams eventually resulted in the project of land reform being split between two government departments that are today represented by the DRDLR and the Department of Agriculture, Forestry and Fisheries (DAFF), the former being responsible for rural development in general and the latter for oversight of the commercial agriculture sector (DRDLR, 2013b; DAFF, 2014).

A major error on the part of the World Bank and the ANC was not to acknowledge the institution of traditional leadership in the land reform policy formulation process. The community of traditional leaders had managed to protect much of their power and status in the course of the Constitutional negotiations (RSA, 1996a) and, while they only held sway over 13% of the land mass of the country, and even though these areas had suffered greatly from the effects of over-population and bad land management, the traditional leaders also stood in authority over the vast majority of rural citizens whom the new government sought to reach with its land reform policies. Recognition of traditional leadership had set the stage for a de facto dual system of government in the erstwhile homeland areas and, together with the survival of conservative social values, would present great challenges to the formulation and implementation of rural development policy in the future (Bank & Southall, 1996; Ntsebeza, 2005; Claassens, 2014; Gasa, 2014).

If there were losers in the formulation of land reform and rural development policy, it was certainly the poor rural dwellers and farm workers

who lacked the organisational capacity and political influence necessary to advance their interests (Atkinson, 2007; Jacobs & Hart, 2014). Although there were many NGOs that represented these parties, these organisations could not compete with the collective influence of the World Bank, the DBSA, large and emergent agribusiness, the NP government, and many within the academy and the ANC that came down on the side of market-oriented approach to land reform and rural development (Hall, 2010:Ch 3).

A somewhat unbelievable, but true, vignette highlights the confusion and lack of capacity within the ANC with regard to land reform policy development. The story relates to the setting of the now notorious and still-unachieved target of redistributing 30% of land in the first five years of democratic rule.

Rogier van den Brink, a World Bank representative, presented a paper at a conference on land reform in late 1993. In the presentation, he cited a hypothetical situation, by way of example, that envisaged 30% of the country's land being distributed in the period between 1994 and 1999. Van den Brink recalls the outcome of the presentation:

We had written it up [the hypothetical scenario] using the middle column as the example – 30 percent of land. . . . When I discussed the 30 percent, I also said that, by the way, the land market already turns over five percent a year, [so it] is really not a fantastic dream to see 30 percent of the land being distributed in five years. So there was some logic. Then one day I woke up in Washington DC and I see on the front page of the New York Times, which said the ANC is going to redistribute 30 percent (van den Brink quoted in Hall, 2010:178).

7.6 The contemporary framework of rural and agricultural development policy

Two government ministries are today responsible for rural and agricultural development policy. The DRDLR is in charge of land reform policy but also acts as coordinator of the various programmes that seek to address rural development issues, many of which fall under other government departments.

The DAFF is focused on addressing the needs of the existing commercial farming, forestry, and fisheries sectors although it has important developmental responsibilities within this overarching mandate. As Hall observes, this is an entirely artificial separation of responsibilities, rooted in political and historical considerations rather than any rational division of responsibilities (Hall, 2010:Ch 3).

The basic tenets of the land reform policy framework were first approved at the National Conference of the ANC in 1992, and subsequently fleshed out through the medium of a World Bank-sponsored project discussed above.

A national land reform programme is the central and driving force of a programme of rural development. Such a programme aims to address effectively the injustices of forced removals and the historical denial of access to land. It aims to ensure security of tenure for rural dwellers. And in implementing the national land reform programme, and through the provision of support services, the democratic government will build the economy by generating large-scale employment, increasing rural incomes and eliminating overcrowding (ANC, 1994c:21).

The three tenets are:

- Restitution, which refers to the project to return land to those who were dispossessed under colonialism and apartheid or to offer appropriate compensation.
- Redistribution, which refers to the project to increase black ownership of land.
- Tenure reform, which originally focused on the question of security of tenure for black people resident on farms but which has been extended to incorporate the issue of communal land ownership.

These categories have been subsumed within an extensive body of policy and discourse dealing with such diverse subjects as the need to protect food supply and agricultural development (Radebe, 2011a; DAFF, 2012), rural

development in general (Ensor, 2011b; DRDLR, 2013b), B-BBEE (RSA, 2004a; Williams, 2005; Sherry, 2010), gender equality (CEE, 2014), small business development (Fredericks, 2014), and welfare policy (Bank & Mabhena, 2011).

7.6.1 The empowerment policy framework of the DRDLR

Although land reform policy is primarily the responsibility of the DRDLR, it is impossible to clearly divorce the work of this department from that of the DAFF and, indeed, other departments such as the Department of Social Welfare, the Department of Small Business Development, and the DTI which also have major programmes focused on the empowerment of rural communities.

The website of the DRDLR cites the departmental mission as being “To initiate, facilitate, coordinate, catalyse and implement an integrated rural development programme”. The programme referred to is the CRDP which was adopted in 2009 and constitutes the basic strategy of the DRDLR. Each year the department produces a detailed operational strategy, in line with the objectives contained in this original plan. In 2013, the mandate of the department was further extended to incorporate a focus on the security of tenure of resident farm workers (DRDLR, 2013a).

The DRDLR Annual Performance Plan for 2013/2014 (DRDLR, 2013a) cites five programmes of action, two of which relate to the administration and capacitation of the department itself. The others are rural development, land restitution, and land redistribution.

- The Rural Development Programme. This involves interventions to develop the infrastructure of rural areas and alleviate poverty. The programme received 13% of the departmental budget in the 2013/2014 year, amounting to R1,23 billion or approximately R64,60 per member of the rural population. This is a relatively new addition to the framework of land reform policy and does not receive the level of attention of the others listed below.
- The Restitution Programme. This deals with claims for the restitution of land taken under the apartheid and colonial administrations. Claimants can opt for restitution of their land or financial compensation

if they do not want land, or where the claimed land can no longer be returned. The programme also provides settlement support for new landowners. Performance of this programme is measured both in terms of the number of claims settled and in terms of spending. In the 2013/2014 year the programme had a target of settling 438 land claims with an operating budget of R3,39 billion or 36% of the departmental budget. This equated to an average of R7,7 million per land claim. This programme originally focused on land claims relating only to the period 1913-1994 but was recently amended to cover the entire colonial era.

- The Redistribution Programme. This programme seeks to address the general imbalance in ownership of land and involves the acquisition of land for black farmers and the provision of support and development for black farming operations. Improving security of tenure for black people living on commercial farms is also a key feature. Because the programme has several elements, there are multiple metrics of performance; namely, the number of 'parcels' of land distributed and the hectares involved, the number of farms requiring recapitalisation, labour tenant applications by farmworkers, number of worker eviction cases settled, the number of jobs created under land reform projects, and the number of farmers trained. The land reform programme received 36% of the departmental budget or R3,39 billion in the 2013/14 financial year. It was tasked with 'vesting' 533 parcels of land totalling 311 917 hectares and recapitalising 344 farming operations while continuing to assist a further 386. It was further charged with settling 76 labour tenant applications and 1 005 of all reported eviction cases. Included in these objectives, the department was tasked with creating 1 446 new jobs and training 628 farmers.

To put these objectives in perspective, it is useful to consider them in the light of past performance, changes in the policy framework, and the recent reopening of the land restitution process by government.

7.6.2 Land reform policy performance

The land reform policy environment has, arguably, been the least stable of any of the BEE policy frameworks discussed, reflecting the volatility in relations between government and rural elites, the complexity inherent in the land reform process, and the lack of capacity in the delivery institutions of government (Atkinson, 2007; Hall, 2010; Jacobs & Hart, 2014). This fluid history makes it difficult to accurately assess policy performance.

The RDP originally envisaged the transfer of 30% of “agricultural land” within five years and clearly framed this objective in a context of restorative justice, equality, and poverty alleviation (ANC, 1994c:Cl 2.4). As Hall (2010) details in her thesis, however, this objective gradually evolved to focus on the productive use of land by beneficiaries which effectively excluded many poor or under resourced communities. Furthermore the introduction of laws and policies that served to shore up the institution of traditional leadership (RSA, 2003, 2004b, 2009, 2013d) undermined the original ideals regarding policy reach and equality (Schirmer, 2009; Beinart, 2014; Claassens, 2014).

Notwithstanding these challenges, the initial target of transferring 30% of agricultural land still stands and is widely used as a benchmark of land reform policy performance (DRDLR, 2009, 2013a). Within this overarching objective, though, it is important to differentiate between the performance of the restitution and redistribution programmes, since the majority of restitution claimants opted to receive money and not land (Ibid.).

In the period 1994-2012, over 6,87 million hectares of land was transferred, of which approximately 2,87 million hectares involved the restitution of land while a further four million hectares was acquired by the state under the land reform programme and redistributed to 221 341 beneficiaries (SAIRR, 2013:298-304). These 6,87 million hectares equate to 28% of the original 30% target. However, this shortfall should be seen in light of the number of restitution claimants who opted for monetary compensation instead of land.

The closing date for land restitution claims was originally December 1998, although this was recently extended to December 2018. In the first period 79 696 claims were submitted on behalf of 345 463 claimants, involving over 1,7 million individual beneficiaries (Ibid.). By 2012, 76 229, or just under 96% of these claims had been processed at a total cost of R24,69 billion. Of this, R6,56 billion was paid in compensation to those who opted not to return to the land and R18,126 billion in assistance to those who did. Land totalling 2,87 million hectares was acquired in the process of assisting this latter group, at an average cost of R4 841 per hectare (Ibid.).

The estimated cost of the newly extended land restitution process is between R129 and R179 billion (Nkwinti, 2014) and is expected to involve in the region of 379 000 claims. Based on the performance of the programme to date, grave doubts have been expressed as to the capacity of government to fulfil this commitment (Hall, 2014; Jeffery, 2014:Ch 9), and the motivation behind the extension is seen by some as part of a project to build relations between government and traditional leaders (Beinart, 2014; Gasa, 2014). Indeed the Minister concerned has admitted that his department currently has no plans to handle the influx of claims or even the necessary funding to implement the new claims process (Nkwinti, 2014).

The performance of the land redistribution programme has also been very controversial, with government already acknowledging in 2010 that much of the redistributed land was lying fallow or under productive (Nkwinti, 2010). Other criticisms abound regarding, inter alia, the capacities of government officials to manage policy, corruption, greedy farmers, high land prices, Constitutional impediments, policy focus, and political agendas (CDE, 2005; Atkinson, 2007; Hofstatter, 2009; Hall, 2010; Lund, 2010; Kepe, 2012; Aliber & Cousins, 2013; Custom Contested, 2014; Gasa & Luwaya, 2014).

It is, therefore, difficult to be optimistic about the future of land redistribution policy. In the first place, the 30% target was completely arbitrary and ill-informed but it has, unfortunately, generated great political currency and so is unlikely to be abandoned. It has also been condensed from its original 30%

of agricultural land, or approximately 30 million hectares (CDE, 2005:10), to 30% of commercial farmland which equates to some 25,8 million hectares (SAIRR, 2013:301). This number was further reduced to 24,5 million hectares (Nkwinti, 2013) to take account of land already owned by black people.

Jeffery (2014:Loc.5890) identifies a further, fundamental challenge to land redistribution, namely that about 60% or 52 million hectares of commercial farmland lies in the arid western regions of the country. These areas are not only far from where the majority of the rural, potential farming population lives, but the terrain and climatic conditions present a severe challenge to inexperienced, under-resourced farmers. Removing this arid land from the equation leaves just 34 million hectares of prime, expensive, and highly sought-after farmland for redistribution. Meeting the current land redistribution target of 24,5 million hectares, therefore, would likely require government to purchase and reallocate much of the approximately 60% of South Africa's prime agricultural land.

Questions about the ANC's ambiguous position on, and commitment to, rural development also surface. While these are often couched in terms of corruption and inefficiency (Naidoo, 2011; Jeffery, 2014:Ch 9; Louw, 2014b), more considered analyses usually acknowledge the political realities involved as, for example, in the following extract from a recent report by the UK-based think-tank, the Africa Research Institute:

Competing policy priorities have taken preference over land reform - and agriculture - since 1994. . . . Despite impassioned rhetoric to the contrary, the timidity with which successive ANC administrations have addressed rural development is striking. This lack of political will has multiple justifications. The contribution of agriculture to GDP is small. Concerns of rural voters in a country with an urbanisation level of 62% are of secondary political importance (ARI, 2013).

Notwithstanding such rationalisations, however, Hall (2010:131) tracks this apathy back to the days of the ANC in exile where she demonstrates that, even in a context of limited economic policy discourse, rural development came a distant second to matters relating to the urban environment. Hall also argues

that strong pro-commercial farming lobbies have drowned out the voice of poor rural communities and the NGOs that represented them. There is also much research showing how labour policy reforms, laws governing traditional leadership and communal land ownership, as well as B-BBEE policy have variously served to premise the interests of shareholders over farm workers and poor rural dwellers (Atkinson, 2007; Du Toit et al., 2008; Beinart, 2014; Claassens, 2014).

Aliber and Cousins (2013) provide empirical support for this commercialist critique in a paper based on a study that compares land reform programme outcomes in South Africa, Namibia, and Zimbabwe. The authors note that explanations for the limited pace and extent of land reform in South Africa typically cite such issues as low levels of new farmer support, a lack of skill on the part of beneficiaries, inadequate government budgets, an economy that is generally hostile to small-scale business of any kind, and a lack of willingness to subdivide large farms. These authors acknowledge the influence of these factors but argue that the *Livelihoods After Land Reform Study* showed that “the more fundamental problem is the South African state’s stubborn commitment to the LSCF [Large-Scale Farming Model] of agriculture . . . [combined with] a rhetorical embrace of smallholder agriculture” (Ibid., p.141).

With electoral support for the ANC declining in urban areas (Kotze, 2011), the rural vote is becoming increasingly important to the survival of the party, a fact that one could reasonably expect to result in more effective action on rural development policy. However, as discussed extensively in this study, the rural economy simply lacks the capacity to become a vehicle for meaningful development, especially as government is keen to maintain existing levels of agricultural production and earnings from the export of agricultural products. It is thus likely that government will continue to rely on social welfare payments and relationship building with traditional leaders to shore up the rural vote.

7.6.3 The empowerment policy framework of the DAFF

The DAFF website cites the departmental mission as being that of “Advancing food security and agrarian transformation in the agricultural sector through innovative, inclusive and sustainable policies and programmes”, thus

clearly positioning the activities of the department in the established business arena.

Transformation efforts of the DAFF focus on employment creation and the development and support of smallholder and subsistence farming, forestry, and fishing operations within the framework of commercial agriculture. Key among these empowerment initiatives are the following programmes (DAFF, 2014:3):

- The Food Security Production Programme. This programme seeks to harness the power of government food procurement in support of subsistence and smallholder producers. It involves the facilitation of supplier relations with government hospitals, prisons, and feeding schemes. The concept behind the programme is that government can help such suppliers become established to the point at which they are commercially competitive.
- The Strategic Plan for Supporting Smallholder Producers. This programme seeks to bring together and coordinate various programmes and initiatives from across the spectrum of empowerment and development policy that may be of use in the development of smallholder production. It also aims to be a type of think-tank on issues relating to smallholder development.
- The Aquaculture Programme. This programme constitutes an attempt by the DAFF to foster new forms of economic activity in rural areas and involves the development of fresh water fish farming projects, owned, operated, and staffed by rural communities.
- The Agro-Processing Strategic Framework. This programme seeks to take advantage of the lack of beneficiation of agricultural produce in rural areas. Food processing is a highly labour intensive activity and so is considered a model with much potential for economic empowerment in the densely populated former homeland areas.

These programmes are all relatively new and no data could be sourced on project performance. In fact, the DAFF itself notes the limited data available on

smallholder and subsistence level production (DAFF, 2012:16). However, based on the Department's own estimates of the number of small-scale emergent producers who would be best-positioned to take advantage of these schemes, the reach and impact cannot be very great. The DAFF (2012:15-24) estimates there to be only 200 000 smallholder farmers in the whole country and a mere few thousand emergent operators in the forestry sector. The Department has no data on the number of small-scale fisheries operations. Also, as discussed earlier, barriers to entry for new entrants to the agriculture sector are already high and likely to become even more so.

The DAFF *2013/2014 Strategic Plan* document notes that agricultural output has been increasing in recent years and that the sector is more productive than before. However, it also observes that this has been due to improvements in management and increased mechanisation on larger farms, rather than an expansion in the number of new entrants (DAFF, 2014). New entrants can, therefore, expect to face strong competition from established, large, efficient operators.

The heritage of reform policies of the 1990s has also resulted in exceedingly high levels of debt in the commercial farming sector. Total debt in 2007 was R39,6 million which equated to an average of one million Rand per farm (Stats SA, 2010). Of this, 33% relates to mortgages on farm property and 22% is short-term debt that must be repaid in the current year. While government now leases land to emergent farmers and thus alleviates the burden of having to finance the acquisition of land, this is not always helpful as the new farmer must still finance the farm's working capital requirement and the acquisition of equipment. If he/she does not have property against which to secure debt financing, he/she must have the necessary cash on hand. Also, while one million Rand might seem a manageable amount of debt for many suburban residents with a home mortgage, the city dweller is not dependent upon the house generating income to pay that debt. He/she likely has a job or profession that funds the mortgage payments, which job is not subject to the vagaries of climate, long-term planning, politics, and market conditions.

The reality that new farmers, even subsistence farmers, must have access to their own capital and resources was borne out in studies by Schirmer (2000, 2009). He further identified a wide range of issues that militate against people going into farming. These include a fundamental lack of interest among the youth and poor communities; the location and type of available land; shortages of water; the impact of HIV/AIDS, and a generally unfavourable policy environment both locally and internationally (Ibid.). In another study in the Eastern Cape province, Bank and Mabhena (2011) noted the deleterious effect of social welfare payments on the motivation of people to bother with subsistence production.

There would appear to be universal agreement, however, that the single biggest impediment to the development of the commercial agriculture sector, whether at the subsistence, emergent or commercial levels, has been the wholesale dismantling of the financial and operational support infrastructure by government in the 1990s that exposed an already weak agriculture sector to the full unbridled force of the market (Schirmer, 2000; Van Zyl et al., 2001; Viljoen, 2005; Hall, 2010).

Government has acknowledged these underlying problems, and the operational strategy of the DAFF (2014:13) is premised on the findings of a 2008 policy review that cited the need for the Department to address “the slow pace of [policy] implementation, limited implementation capacity within government, and limited coverage and inadequate funding of some critical programmes”. In light of recent assessments of government capacity and performance (Auditor General, 2012; Chipkin, 2013; Auditor General, 2014), the tightening of restrictions on government spending, and the delicate political relationship between government and the rural political elite, there certainly exist formidable challenges to the successful achievement of these policy objectives.

7.6.4 Conflict and overlap between urban and rural empowerment policies

It has been noted that urban-originating empowerment policies apply equally in rural areas where appropriate organisational entities exist. This can be beneficial and useful, such as in the implementation of employment equity

policy in homeland settings where it can help change mores that support and accept the subjugation of women. Small business development policies can also support the development of rural, non-farming enterprise (DRDLR, 2013a).

The record of B-BBEE policy implementation has, however, not been particularly positive. and several studies have explored how B-BBEE has undermined pre-existing rurally-focused empowerment initiatives (Williams, 2005; Ponte & van Sittert, 2007; Du Toit et al., 2008; Satgar & Williams, 2011). The bureaucratic demands of this policy framework are also inappropriate for rural areas. For example, it is simply nonsensical that a set of B-BBEE Codes had to be written for the forestry sector (RSA, 2008) which comprises approximately 100 companies, only a few of which could be categorised as large, and where the vast majority are SMEs. The FinScope (2010) survey of small business also highlighted the extreme infrastructural and educational constraints that already apply to rural entrepreneurs, even before the exigencies of B-BBEE policies are taken into account.

Despite the increasing influence of B-BBEE in rural areas, there is little evidence that the particular needs of the rural community are given much attention in the formulation and administration of B-BBEE policy. In August 2014 the new members of the BEE Advisory Council were announced, the purpose of this body being to advise government on B-BBEE policy formulation and administration. The nineteen-member council includes delegates from urban business, organised labour, and government but there is no nominee from either the DAFF or the DRLDR and none from the fisheries or forestry sector. The main agribusiness body, AgriSA, is not represented although there is one appointee from the National African Farmers Union, a relatively small organisation representing the interests of emerging black farmers (SAPA, 2014b). Considering the constitution of this Council, it is highly unlikely that issues relating to the economic empowerment of rural areas will be given serious consideration within the framework of B-BBEE policy.

7.7 Summary

This chapter set out to situate rural development and land reform policies within the broader framework of BEE. The basic argument put forward was that land reform and agricultural development policies are as much a part of the challenge of economically empowering black people as are B-BBEE, employment equity, or small business development, although this relationship is not well understood due to the different institutional environment of the rural political economy.

In the course of exploring this argument, the political economy of rural areas was examined, as were the relevant parts of the economic development policy framework. It was demonstrated that urban-oriented BEE policies can only have minimal impact in rural areas due to the lack of business or organisational infrastructure, this being the medium through which these policies operate. Meanwhile, rurally focused policies fall foul of complex historical-political structural issues, poor planning and management, and inadequate funding.

Sadly, however, regardless of how well rural development policies perform, or how much traditional leaders conform to the ideologies of central government, the fact is that the rural economy does not have the capacity to support a population of 19 million people, let alone make a dent in the extraordinary levels of poverty that characterise many areas of the countryside.

The author is of the view that rural areas of South Africa represent an unfolding human tragedy, hidden behind spurious debates on commercial agriculture policy, land reform, traditional leadership, and political ideology. The scale and intractable complexity of the economic development challenge in rural areas dwarfs that of urban areas, and there can be little doubt that welfare payments will increasingly be the major source of income for rural dwellers for decades to come.

Chapter Eight

Interpreting BEE

8.1 Introduction

The objective of this study was to address the apparent lack of an empirically-based conceptualisation of the BEE phenomenon. As explored in the previous chapters, the term has come to be applied to a diversity of policies, programmes and initiatives spanning the political and economic life of the country, from facilitating change in the demographic profile of the workforce and the ownership of business, to programmes intended to alter the pattern of land ownership and the design of social development initiatives. It was noted how BEE has come to exert such a pervasive influence that today few decisions can be made in any reasonably large organisation, in any sphere of South African society, that do not need to incorporate consideration of some or other aspect of BEE.

Despite this evident influence and the fact that BEE has been in existence now for over 20 years, the complex and diverse phenomenon has received little attention of a conceptual nature. The challenge this presents for those involved in policymaking and development is exemplified in a review of the South African political economy, presented late in 2014 by Ricardo Hausmann, the respected Director of the Center for International Development at the Kennedy School of Government at Harvard University.

Hausmann and some of his highly esteemed colleagues from Harvard University worked closely with the South African government in the mid 2000s (Rodrik, 2006; Acemoglu et al., 2007; Andrews, 2008; Hausmann, 2008) and so could be expected to have a reasonable understanding of the complex nature of BEE. However, in a paper that sets out “To understand South Africa's poor economic performance since the end of apartheid, and especially in the last decade”, Hausmann demonstrates a very superficial appreciation of the phenomenon, glibly calling for a “rebalancing” of BEE (Hausmann, 2014:1). What exactly he is referring to is unclear, however. His reference to a scorecard would indicate that he is referring to B-BBEE policy, but the context suggests

inclusion of other BEE policies such as employment equity and small business development, the important contribution of which he seemingly ignores.

There are a number of ways to achieve this higher speed limit [in economic growth], including a rebalancing of BEE. I understand that BEE is necessary to tackle the inequities of the past, but it has been implemented in a way that is biased towards making the top of society black, rather than helping those at the bottom. Too many of the BEE incentives were about shares, about board positions, about senior management, and so on, with very little emphasis on generating jobs at the lower end. BEE policy has actually accentuated skill constraints.

What is needed is a rebalancing of the scorecard to give more kudos to companies that generate opportunities at the bottom, mostly by creating the kinds of jobs that will make inroads into South Africa's employment crisis.

BEE is a correction for past sins, but growth comes from start-ups, from new firms. Start-ups in any country face typically high death rates. By diverting attention away from creating new firms and imposing costs on existing firms, BEE is probably having the deleterious effect of causing fewer of these firms to be created, and more of the firms that do get off the ground to die. This is a very serious problem (Hausmann, 2014:5).

Aside from his unclear framing of BEE, Hausmann, surprisingly, ignores the extensive body of theory on the institutional character of public policy that challenges such simplistic notions of public policy as being a lever of government that can be 'rebalanced' at will, least of all with predictable results (Kingdon, 1995; Ostrom, 2005; Sabatier, 2007a).

Such atheoretical framing of BEE is also evident in the work of local specialists as exemplified by Anthea Jeffery's recently-published book, *BEE: Helping or Hurting?* (2014) which styles itself as "the first comprehensive review of BEE policies since 1994". Jeffery has a background in law and is the author of several books and articles on the South African political economy. She is also a

senior executive in the highly-regarded Institute of Race Relations, a privately funded political economy think-tank.

While Jeffery's book is unquestionably the first publication to highlight the complexity of BEE and to deal comprehensively with the various elements of the policy framework, she overlooks much historical fact and received theory in the areas of public policy and political economy. Thus, based largely on her personal view of the South African political economy, and that of others who share her ideological perspective, Jeffery arrives at the risible conclusion that BEE constitutes a key strategy in the ANC/SACP's objective of achieving National Democratic Revolution.

Most analysts assume that BEE is simply about remedying the past and that it remains essential to fulfil this objective. However, the African National Congress and its allies in the Congress of South African Trade Unions and the South African Communist Party have a different and less obvious objective. Though they naturally play up the supposedly remedial purpose of BEE, their real aim is to use it as a cover for the national democratic revolution. Their objective is not to provide redress but rather to keep using BEE to reduce private sector autonomy, break down the market economy, and build state power and control. They also remain determined to step up BEE in the 'second phase' of the transition and are willing to jettison or bypass constitutional safeguards in order to achieve this (Jeffery, 2014:Loc.7512).

Jeffery argues that this underlying objective has remained unexposed largely due to a lack of interest on the part of the media but she asserts that it -

. . . helps explain how a supposedly limited form of affirmative action has quietly morphed into a complex set of employment equity, BEE, and land reform rules that are cumulatively eroding business autonomy, undermining property rights, crippling public service efficiency, choking off direct investment, retarding economic growth, and adding to a crisis of unemployment within the country (Jeffery, 2014:Loc.248).

A fundamental limitation for Jeffery, Hausmann, and many other authors writing on BEE is that they view public policy, including the various BEE policies, as inert instruments formulated and manipulated by government to achieve particular outcomes. As observed by Sabatier (2007a:1), and as has been demonstrated in previous chapters, the process of public policymaking is one that “involves an extremely complex set of elements that interact over time [involving] hundreds of actors from interest groups, government, researchers, journalists, and judges involved in one or more aspects of the process. Each of these actors (either individual or corporate) [has] potentially different values/interests, perceptions of the situation, and policy preferences”. It is, therefore, simply ill-informed for researchers to present BEE policy as something that can be ‘rebalanced’ by government to achieve particular economic outcomes or, in the somewhat extreme case of Jeffery, as part of a Machiavellian master plan to hijack the political economy of a mid-size developing country.

Chapter layout

This chapter draws on literature in the fields of institution, economic development, and public policy theory to develop a more logical interpretation of the origins and development path of BEE.

The chapter first applies Ostrom’s (2005) IAD framework by way of demonstrating that public policy, and BEE policy in this instance, is an artefact of an underlying process of rulemaking by the leadership elite of society. This theoretical framing is used to overcome the reigning conceptual impasse that limits interpretation of BEE to the policies themselves and, instead, directs inquiry to the leadership elite of society and the framework of rules they collectively agree to for the operation of the social order.

Having thus moved the focus of analysis to the broader political economy context, the North et al. (2009) theory on the origins and development of social order is applied to support the argument that BEE first emerged as an artefact of the political and economic circumstances of the early 1990s.

Drawing then on the Ingram et al. (2007) SCTP theory, the chapter explores the period of formal BEE policymaking that followed in the mid to late 1990s, which was in accordance with the broad policy focus of the ANC and underpinned by changes in power relations that resulted from the transition to democracy. However, this theory also provides insight into how these same changes combined with inadequate economic growth to give rise to B-BBEE policy and its subsequent domination of the BEE policy environment. The nature of the BEE phenomenon and its likely influence on prospects for the long-term development of the South African political economy are also explored.

The various theoretical frameworks applied in this chapter were discussed in detail in Chapter 3 and it may be of help to the reader to review these before proceeding.

8.2 Framing BEE as an institution

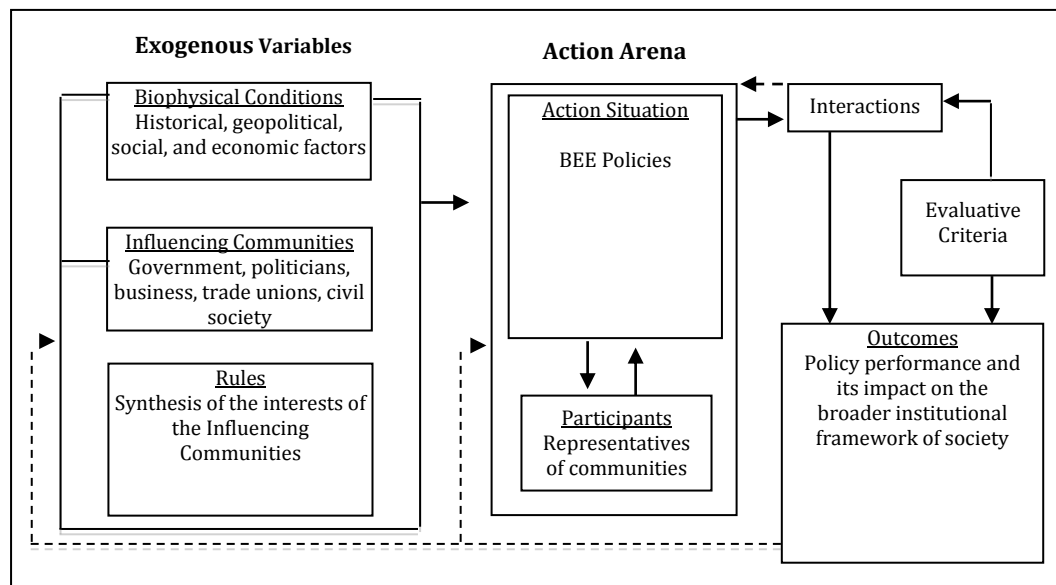
Ostrom's IAD framework (2005) presents public policy as the product of rules, negotiated between the members of a leadership elite seeking to advance their particular interests. It shows how policy also becomes subject to the influence of those involved in its implementation, as well as influences that emanate from the broader institutional framework of society. The model thus captures the complexity and dynamism of policy and the extent to which outcomes are almost impossible to predict.

In exploring the various BEE policies in Chapters 4-7, it was demonstrated that each had different sponsors and each was designed to address a specific issue within a particular context. With time they came to overlap due to a lack of coordination and management by government, coupled with intense lobbying by powerful interest groups (BEECom, 2001; Verhoef, 2003; Hall, 2010). The resultant blurring of boundaries has become one of the biggest problems for those trying to manage and implement BEE and to many researchers who have sought to interpret the phenomenon through the medium of the policy frameworks themselves (Edigheji, 1999; Verhoef, 2003; Iheduru, 2004;

Acemoglu et al., 2007; Jack, 2007; Ponte, Roberts & van Sittert, 2007; Andrews, 2008).

Viewing public policy as an institution provides a way out of this impasse as it elevates the discourse above and away from the policy instrument itself which is presented as an artefact of a broader social process. As demonstrated by the IAD model (Ostrom, 2005) in Figure 3.2 below, repeated from Chapter 3, the various BEE policies have been the product of rule-making by the South African leadership elite or *Influencing Communities* that comprise, inter alia, representatives of government, business, organised labour, and civil society. The members of this elite agreed on an overarching set of *Rules*, according to which the social order would function, and the various BEE policies constitute detailed guidelines for the operationalisation of those *Rules*.

Figure 3.2 (Repeat): The IAD framework adapted to BEE



Adapted from: Ostrom, E. (2005). *Understanding Institutional Diversity*. Princeton: Princeton University Press. Loc.536.

As with any organisational structure, there exists a diversity of interests, ideologies and objectives, and a hierarchy among the members of the elite that influence the prioritisation of certain policies over others. The ANC and black business, for example, place much emphasis on B-BBEE policy and the ownership element in particular (Zuma, 2013; Qubeka, 2015), while organised labour is more concerned with Employment Equity and Skills Development

policies (Southall & Tangri, 2006). Land reform is of particular interest to the commercial farming sector and rurally-focused NGOs (Hall, 2010), while black business is the champion of Small Business policy (Lindsay, 2012; Van Rensburg, 2013). The various BEE policies, therefore, reflect the objectives and ideals of different parties with differing levels of power and influence. Yet they all fit within the framework of a single overarching set of *Rules* that the top leadership has agreed will provide the framework for change in the demographic profile of economic activity.

It is for this reason that BEE cannot be interpreted as the sum of policies such as B-BBEE, employment equity, land reform, and small business development. While these interventions share common features, they cannot meaningfully be combined under one banner any more than can education, healthcare, housing, and social welfare policy. However, if one looks further back up the line of authority and control, it can be seen how these policies are linked by the shared objectives and ideological positions of members of the rule-making elite.

The task is to identify who these rule makers have been and how the relationship between them has given rise to, and nurtured, the various policies. Also to understand how some constituencies, such as big business, organised labour, and urban black business, have been so successful in their lobbying efforts while others, for example those representing the needs of desperately poor rural communities, the espoused focus of much government policy, have been so unsuccessful (Atkinson, 2007; Satgar & Williams, 2011; Stats SA, 2014a).

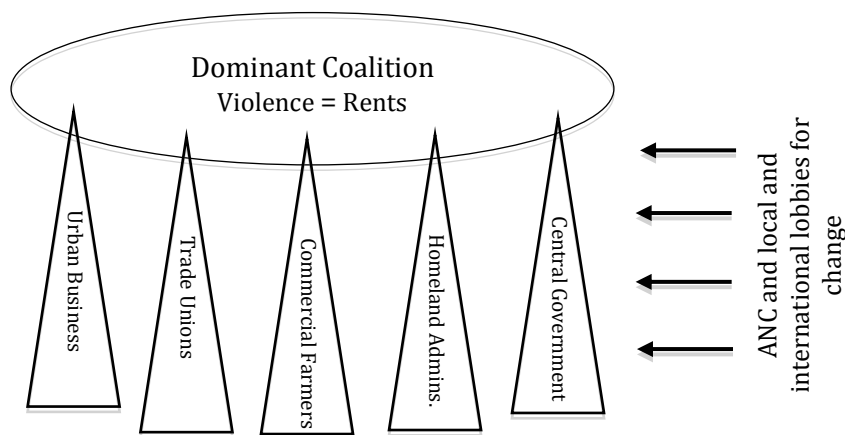
Having established that BEE is best explained in terms of elite rulemaking, the study now turns to the North et al. (2009) theory on the origins and development of social order. This theory provides a macro-level framework for interpreting the broader political and economic circumstances that gave rise to BEE, the factors that have underpinned its evolution, and the influence it may have on prospects for development.

8.3 The emergence of BEE in the early 1990s

North et al. (2009) apply the term LAO to developing world polities such as South Africa which, they assert, come into existence when powerful elites agree to reject violence and instead pool their resources and capabilities in return for an agreed share of such rents as the united polity can generate. LAOs are, therefore, unstable coalitions that are constantly under threat from myriad external influences, as well as internal influences such as changes in the form of relations between members of the elite or demands that emerge from sub-elites within the various constituencies that comprise the social order (Ibid.). While the LAO leadership, the Dominant Coalition, can do little to control the threat of external challenge to its authority and power, it typically controls the threat of internal challenge by limiting access to organisation formation by non-elites (Ibid.).

In terms of the North et al. (Ibid.) theory, the late apartheid LAO comprised a coalition of powerful constituencies, the main ones being established business, both black and white trade unions, commercial farmers, homeland administrations, and the NP government (Sparks, 1994; Terreblanche, 2002). The leadership of these various groups shared the rents generated by the South African economy in return for their agreement to eschew violence. As per Figure 8.1, although in balance, the coalition was under external pressure to change from the ANC and its local and international allies, while pressure was also being applied internally by the black trade unions and the corporate business sector who were unhappy with the limitations imposed by the apartheid system (Lipton, 1986; Sparks, 1994).

Figure 8.1: The South African LAO, in equilibrium, c. 1990



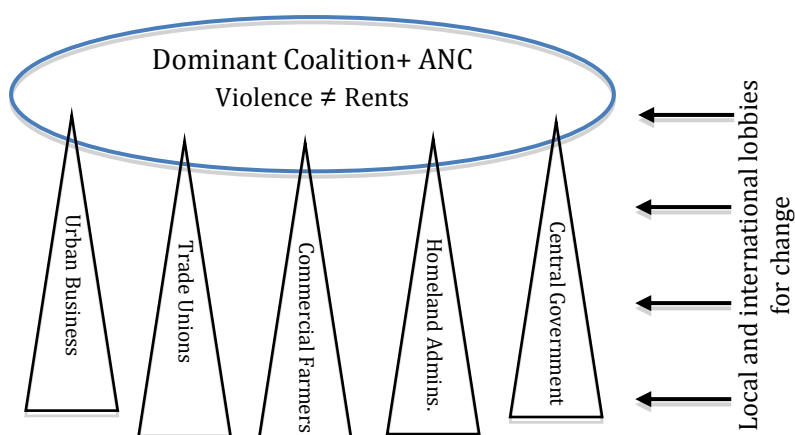
There was much diversity within the constituencies that made up the late apartheid LAO and also considerable overlap between them with, for example, black trade unionists being employees within the urban business community and government, and many government employees being businesspeople and farmers. The leaders of these various constituencies also had to cope with some very conflictual objectives, not least the leadership of the black trade unions that had to function within the apartheid political economy while, at the same time, being a major ally of the ANC and thus a key change agent (Webster, 1998).

In terms of the North et al. (2009) theory, the ANC's demand for political recognition was essentially a demand to be included in the South African LAO or, more particularly, for its leaders to be incorporated into the Dominant Coalition of the day, since the ANC's constituency was already included within various other constituencies. However, the underlying logic of the LAO is that it comprises an agreement between powerful leaders who either control access to rents within the polity or who have the capacity to produce rents from those resources. These leaders then leverage their position and that of their respective constituencies, based on their capacity to foment violence and disrupt the fine balance of Coalition relations (Ibid.).

In the early 1990s, the ANC was in the unusual position that it neither controlled access to any stream of rents nor did it have the capacity to exploit any rents (Sparks, 1994; Turok, 2008). All the organisation had at its disposal was the power to foment violence and thus disrupt the stream of rents to the

existing members of the Dominant Coalition. The ANC was therefore not in a good negotiating position and it was only when the level of disruption became sufficiently high that the leadership of the late-apartheid Coalition finally agreed to consider its incorporation. As per Figure 8.2, this gave rise to the unbanning of the ANC in 1990 and the subsequent negotiations process, during which time the South African LAO was thrown out of equilibrium since there was no balance in the violence = rents equation.

Figure 8.2: The South African LAO, out of equilibrium, early 1990s



Opinion was mixed in the late-apartheid Dominant Coalition as to whether the ANC would, or indeed should, form the first post-apartheid government, a change that would see the organisation attain control of the future allocation of rents generated by the institutions of state. This possibility was of particular concern to business elites who were worried about the redistributionist policies and rhetoric of the ANC (ANC, 1990; Bond, 2005:Ch 1). On the other hand, these policies were very much in keeping with the ideals of the black trade union movement which gave the organisation its unequivocal support (von Holdt, 2003).

For its part, the ANC was in a very difficult position. It had been unexpectedly unbanned and was ill prepared for the role it faced (Mandela, 1995a; Cargill, 2010; Davis, 2015). It had done little detailed policy development work in exile, with the result that its cadres found themselves unready to respond to the practiced challenges presented to the organisation's ideological and policy positions (Van Ameringen, 1995). The ANC was also logistically and

financially unprepared to fund the gargantuan task of establishing its operations, organising the return of exiles, providing for the welfare of its cadres, and, most importantly, fighting the forthcoming general election (Mandela, 1995a).

The organisation was not completely without resources though. Its partner, COSATU, was already an established member of the Dominant Coalition and thus able to help leverage the position of the ANC in that forum. Some influential leaders of the homeland governments were also changing their political allegiance to the ANC (Ntsebeza, 2005:Ch 1), while commercial elites were keen to build good relations with an organisation many assumed would lead a post-apartheid government. Most importantly, although ironically, the fact that the ANC was not party to the existing system of rent distribution meant that it had little to lose and could thus make good use of its capacity to foment violence and threaten the flow of rents, in this way strengthening its hand at the negotiating table (North et al., 2009).

Therefore, in the early 1990s there existed a complex hiatus in the violence = rents equation in the South African political economy. The ANC was not only disrupting the equation but also not providing a clear picture to other elites what the rules of a possible future game would be. Thus was created a classic context for institution formation in that there was an impasse in the social order for which some solution had to be found (Hodgson, 2005; Searle, 2005). This study argues that BEE emerged as an institutional response to this impasse and that its principal function was to facilitate the incorporation of the ANC into the Dominant Coalition and thus help the South African LAO return to a situation of equilibrium.

8.3.1 BEE as an institutional response to the challenge of incorporating the ANC into the late-apartheid Dominant Coalition

It was obviously not in the interests of the NP government to assist an opposing political organisation, especially when that party's success would likely mean a reduction in the power and influence of the NP. However, it was very much in the interests of business to try to help the ANC, as a change in government would likely only require a period of adjustment at most. Providing

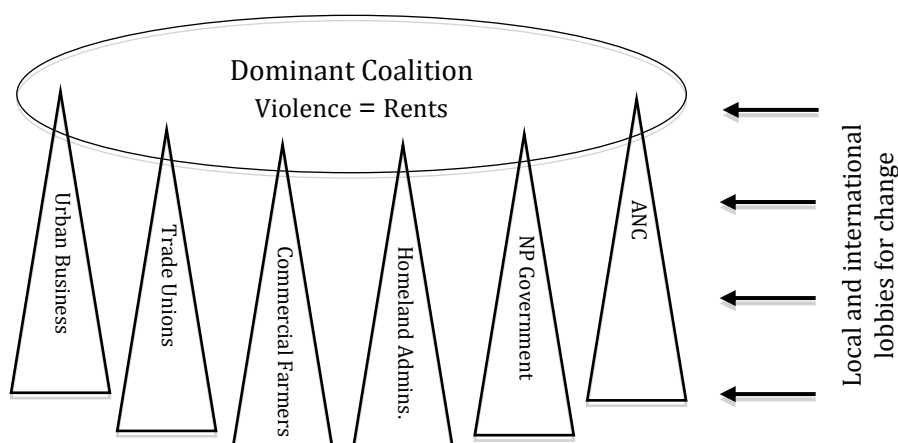
support also came with the opportunity to build relations with the potential new governing party and thus be well located to take advantage of the anticipated post-apartheid government spending boom (Sparks, 1994). The only question was how exactly to assist the ANC.

As discussed in Chapter 4, much experience had been gained in the 1980s with the development of business models designed to assist undercapitalised black entrepreneurs, and these models were now applied in the creation of investment holding companies for politically connected individuals and their organisations. Verhoef (2003) has detailed the origins of these initiatives within the Sankorp subsidiary of the Sanlam Insurance company, and a similar programme was implemented by the Anglo American conglomerate. This latter scheme involved the screening of potential beneficiaries from whom were selected top political players²⁹ including, among others, Tokyo Sexwale and Cyril Ramaphosa (Butler, 2008). Lucrative executive positions were also created by local companies including the local divisions of multinationals, such as Nestlé, which employed the United Democratic Front (UDF) leader and future Finance Minister, Trevor Manuel (Green, 2008). As discussed previously, even the ANC wasted no time in establishing its own investment vehicle in 1992, the Thebe Investment Corporation (Cargill, 2010:Ch 1). As observed by Southall (2006), such access to the levers of corporate power was actually quite acceptable to the ANC as it was in keeping with long-standing policy objectives regarding state control of the private sector economy.

The ANC was thus incorporated into a transitional Dominant Coalition through a reallocation of rents, made possible by the business sector through the medium of the early form of BEE. In this way, as depicted in Figure 8.3, balance was temporarily restored to the violence = rents equation in the South African LAO.

²⁹ Interviews with Michael Spicer. CEO, Business Leadership SA. Johannesburg. 10 September 2009 and Julian Ogilvie-Thompson. ex-Chairman, Anglo American Corporation. 6 December 2012.

Figure 8.3: The South African transitional LAO returns to equilibrium through the medium of BEE



Although this early form of BEE is sometimes criticised as being little more than a trap set by the forces of neoliberalism to ensnare the ANC (Terreblanche, 2002:Ch 2; Bond, 2005:Ch 1; Mbeki, 2009; Capps, 2012), the reality is that, had some incentive not been created for the organisation to cooperate and limit the use of violence, the negotiations process could not have continued, leaving little room for any outcome other than a stalemate or even war. However, in creating BEE, an institution was established that would have far-reaching consequences for the future functioning and development of the post-apartheid political economy. Before exploring these influences, it is necessary to first review the formal empowerment policymaking processes that took place in the early post-apartheid era.

8.4 Formal BEE policymaking in the post-apartheid era

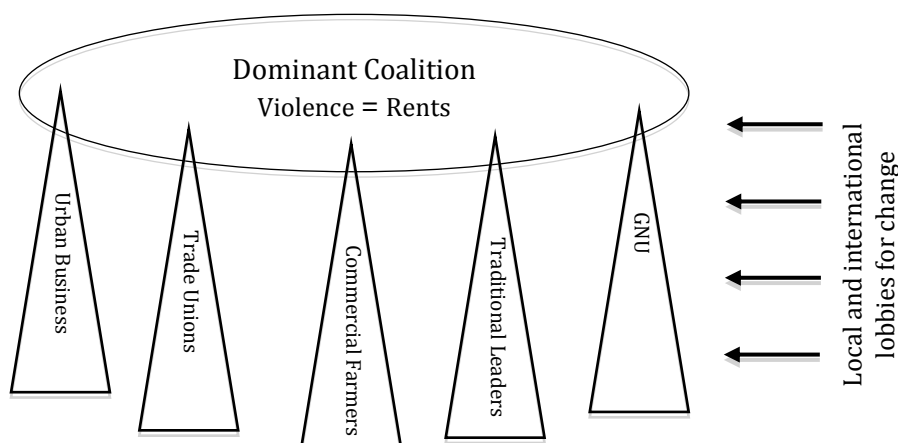
The ANC won the 1994 general election with a resounding 63% of the vote as against 20% for the erstwhile ruling party. Despite initial agreement about the formation of a government of national unity (GNU), this structure had ceased to exist by early 1997, leaving a very much transformed political elite in place. Another important change was that while the homeland administrations had officially been absorbed into the new, unitary political system, the cohort of traditional leaders remained in situ with their power and respectability strengthened through constitutional protection (RSA, 1996a), and by virtue of

the fact that approximately 16,5 million people were subject to their authority and influence (Beinart, 2012; HDA, 2013).

Urban-based business had retained much of its power while the leading black trade union body, COSATU, had become part of the tripartite ruling alliance, along with the SACP and the ANC. The commercial farming community emerged into the post-apartheid era in relatively good shape having survived a period of harsh policy reform in the 1980s and early 1990s (Schirmer, 2000; Van Zyl et al., 2001). However, this sector had done little to build relations with the new political leadership leaving it exposed to the very chill winds of the new government's efforts to implement land reform policy.

The international political and economic community was very keen to be seen to support changes in the country, and the removal of sanctions ensured a flow of new investment into the country. Importantly, all parties accepted the outcome of the 1994 elections, thus permanently restoring balance to the South African LAO, as depicted in Figure 8.4.

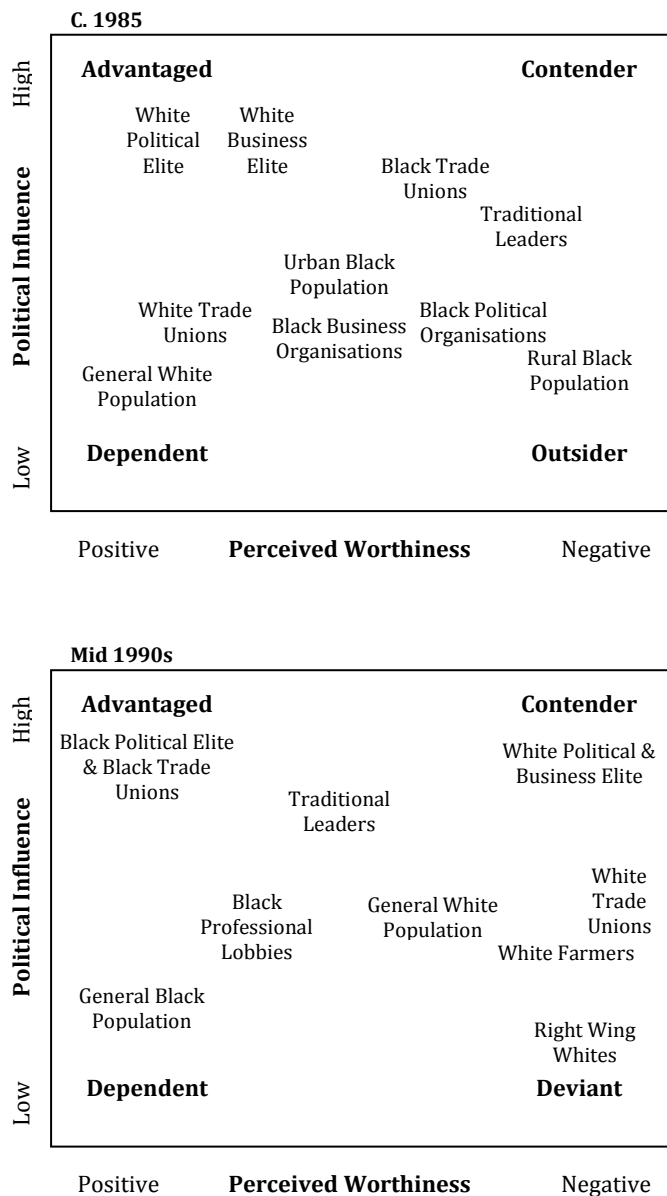
Figure 8.4: The South African LAO, c.1994



While equilibrium had been restored, there was no question that the changes in the structure of the Dominant Coalition had been little short of dramatic. In IAD terms (see Figure 3.2) there had been a radical change in the make-up of the *Influencing Communities* and it was clear that the framework of *Rules* governing society would change accordingly and, with it, the detail of the public policy framework (Ostrom, 2005). The Ingram et al. (2007) SCTP framework is particularly useful for understanding the nature and import of

such changes and how they influenced policy development in the post-apartheid era. Figure 8.5 demonstrates the change in the construction of South African society between the mid 1980s and mid 1990s (see also Chapter 3).

Figure 8.5: Changes in the social construction of the South African polity before and after the demise of apartheid



After 1994 the ANC and its alliance partners, the SACP and COSATU, became the new government and thus the gatekeepers of public policy (Ingram et al., 2007). Unlike the late apartheid period in which much public policy sought to shore up and maintain the status quo, in this new era public policy was now oriented around changing the political and economic system. However, the ANC

had emerged from exile ill-prepared to assume the mantle of government (Van Ameringen, 1995) and came to power with little more than the broadest of policy positions in the form of the Reconstruction and Development Programme (RDP). While this strategy document cites the ANC's policy position on many issues that, with time, would come to be included within the framework of BEE, such as land reform, skills development, small business development, and affirmative action, there is no apparent vision of any single overarching project of economic change of the nature that BEE would later become (ANC, 1994c). Only fleeting mention is made of BEE in one short paragraph which, while making reference to the issue of black people needing to participate more in the ownership and control of business, presents this imperative in the context of blacks developing their own business interests and not just sharing in the existing white business infrastructure.

The domination of business activities by white business and the exclusion of black people and women from the mainstream of economic activity are causes for great concern for the reconstruction and development process. A central objective of the RDP is to deracialise business ownership and control completely, through focused policies of black economic empowerment. These policies must aim to make it easier for black people to gain access to capital for business development. The democratic government must ensure that no discrimination occurs in financial institutions. State and parastatal institutions will also provide capital for the attainment of black economic empowerment objectives. The democratic government must also introduce tendering-out procedures which facilitate black economic empowerment. Special emphasis must also be placed on training, upgrading and real participation in ownership (ANC, 1994c:93).

Therefore, although the transition-era BEE model had survived into the post-1994 era in the form of a widespread social practice, and while it would eventually become integrated into the broader BEE policy framework, it is important to note that it was not part of the official public policy framework in 1994. Indeed, the new government's ambivalence about BEE was further

reflected in the GEAR macroeconomic policy plan that superseded the RDP in 1996. Not only does this document contain no mention of BEE whatsoever, it contains even less reference than the earlier RDP to empowerment programmes of any kind (Treasury, 1996).

Policy formation reflected the new structure of power relations depicted in the lower box in Figure 8.5. The immediate post-election era thus saw, *inter alia*, organised labour lobby successfully for skills development and employment equity policies, the World Bank lobby for its vision of land reform policy, black business organisations lobby for operational and financial support and preferential access to government business, and various NGOs and civil society organisations lobby for policies on co-operative development and other forms of economic development support for poor and rural communities across the country (Hall, 2010; Satgar & Williams, 2011; Motsuenyane, 2012). At the same time, the established business sector, commercial farmers, and the community of traditional leaders were using their considerable power to campaign in defence of their particular interests. Other constituencies that had not built sufficient relationship capital with the new political elite, or who could not counter the power of competing constituencies such as the corps of rurally-based NGOs, found their interests increasingly sidelined (Hall, 2010:Ch 3).

These diverse lobbying efforts would not only result in the introduction of several policies and Acts of Parliament, but also in the inclusion of key clauses in the Constitution designed to protect the interests of particular constituencies and which would later present significant impediments to the broad socio-economic change project. Table 8.1 contains a list of the key policies and legislative instruments that were passed in the first decade of democratic government.³⁰

³⁰ In the absence of any meaningful definition of BEE (see Chapter 4), these policies have been selected on the basis that they are commonly referred to as BEE policies, or on the basis that they are relevant to the project of realigning the distribution of rents within the structures of the post-apartheid Dominant Coalition.

Table 8.1: Programmes and legislation from 1994-2004 that constitute key elements of the BEE policy framework

Year	Act/Policy/Programme	Responsible Ministry	Purpose	Target Beneficiaries
Mid to late 1990s	Transformation of public service	Dept. for Public Service and Administration and others	To combine the various apartheid era organs of state while adhering to the principles of representative government and addressing discriminatory practices of the past	Public service employees and the general public using public services
1994	Restitution of Land Rights Act	Dept. of Rural Development and Land Reform	To address the heritage of dispossession of land from black people by means of restitution, and the provision of compensation and development programmes	Black people in general but particularly rural dwellers
1995	Land reform programme initiated	Dept. of Rural Development and Land Reform	To address the dispossession of black people from their land and promote rural development and welfare of rural dwellers	Black people in general but particularly rural dwellers
1996	The Constitution Section 9	N/A	The equality clause that legitimates affirmative action policies	All people disadvantaged under colonialism and apartheid
1996	The Constitution Chapter 12	N/A	Provides for the full recognition of the institution of traditional leadership	Traditional leaders
1996	The Constitution Section 25	N/A	Provides for the protection of private property rights	All citizens and organisations
1996	Land Reform (Labour Tenants) Act	Dept. of Rural Development and Land Reform	To advance the rights of tenant labourers in the agricultural sector to residential, employment and economic security	Tenant labourers on farms, the vast majority of whom are black
1996	National Small Business Development Act	Dept. of Trade and Industry	To advance the development of small business through the provision of support agencies and representative councils	All small businesses, although the view is that this sector is critical for the development of black business capacity
1998	Competition Act	Dept. of Trade and Industry	To regulate competition in the economy	The general public who might otherwise be affected by unfair business practices. The Act was also intended to help overcome the dominance of white business and create space for black business to develop
1998	Skills Development Act	Dept. of Labour	To assist in the development of workers and entrepreneurs disadvantaged under apartheid	People disadvantaged under the apartheid administration
1998	National Empowerment Fund Act	Dept. of Trade and Industry	To establish a trust fund for the provision of financial assistance to black investors	Black entrepreneurs
1998	Employment Equity Act	Dept. of Labour	To eliminate unfair discrimination in the workplace on the basis of race, gender, disability	All employees but especially those disadvantaged under the apartheid administration
2000	Preferential Procurement Policy Framework Act	Dept. of Finance	To facilitate the advancement of previously disadvantaged people through the medium of government procurement	Black business
2002	Mining Charter (Minerals and Petroleum Resources Development Act)	Dept. of Minerals	To address a range of empowerment issues specifically within the mining sector	Black people, females, and disabled people (of all races), investors, businesspeople, mine employees, and organisations and communities involved or affected by mining operations
2003	Petroleum and Liquid Fuels Industry Charter (Petroleum Products Amendment Act)	Dept. of Energy	To address empowerment issues specifically within the liquid fuels industry	Black people, females, and disabled people (of all races), investors, businesspeople, mine employees, and organisations and communities involved or affected by the operations of liquid fuels sector companies
2004	Communal Land Rights Act (repealed 2010)	Dept. of Rural Development and Land Reform	To address the question of communal land ownership under the system of traditional governance	Rural communities and traditional elites
2004	Broad-Based Black Economic Empowerment Act	Dept. of Trade and Industry	Ostensibly to co-ordinate the various elements of what had become known as BEE policy	The black population of South Africa

Despite all this policymaking activity, much attention remained focused on the transition-era BEE model that had survived into the democratic dispensation but which had not been subject to any formal policymaking process. A major factor driving the growth of this model was that it could not easily be limited to a few selected elites, which had been the original intent. Society consists of layers of power and authority (Ostrom, 2005), and the paranoia about access to future markets in the business community of the day was matched by a ready cohort of black people who were only too willing to trade their espoused influence in the corridors of power for shares and lucrative job opportunities (Cargill, 2010:Ch 2).

A report by the Presidency (2010:20) lists the value of BEE investment transactions as R12 billion in 1995, although this fell rapidly to R7 billion and R8 billion over the following two years. This sudden drop is not surprising as the South African business sector was always notoriously concentrated in the hands of a few large conglomerates (Terreblanche, 2002:Ch 3), and each one of these only needed to create a few opportunities within their complex organisational structures for selected members of the political elite. What the elite sponsors of the early BEE project had not bargained on, however, was the power that would accrue to the emergent black business and managerial class in the post-apartheid era (see Figure 8.5), and how this constituency would lobby the new government for access to the BEE model and a share of the spoils.

There was also widespread public indignation about the evident enrichment of a small politically connected elite (Edigheji, 1999; Cargill, 2010:Ch 4). Such had been the enthusiasm with which the political elite had taken to BEE, it began to appear to the public that 'the usual suspects' were benefitting from all the big deals and a strong backlash developed against what many perceived to be little more than elite opportunism. The cynical tone of much public sentiment of the day was succinctly captured in an article by *The Economist* magazine.

South Africans like to call this "black empowerment". More like "black enrichment", retort black critics. They see a small black business elite, which includes Cyril Ramaphosa, former secretary-general of the African

National Congress and now chairman of Johnnic, mimicking the white one. Like the clubby white corporate world, the same black faces appear time and again on the boards of big companies, which are keen to add a splash of colour to the annual report. The top three, Enos Mabuza, Don Ncube and Dr Motlana, now count between them no fewer than 25 directorships.

The criticism is sharp because Johnnic's new black owners, unlike those who are buying JCI, a mining house and another company Anglo [American Corporation] is selling to blacks, do not run anything much. Johnnic has stakes in some huge companies, but controls only property and one newspaper group. So, though new black directors sit in board meetings, they have little scope to prove they are other than token appointments designed, at least in part, to buy favour with the government. Hence the charge that these companies are just "taking people who are already rich and making them richer", as one black critic claimed recently (The Economist, 1997).

Advocates argued that the transition-era BEE model conformed with the RDP objective to "deracialise business ownership and control" (ANC, 1994c:93), but others countered that it did not address the true intent of the RDP, namely, that BEE should "make it easier for black people to gain access to capital for business development [or to promote] real participation in ownership" (Ibid.).

8.5 The emergence of B-BBEE policy

Despite the extreme challenges of the apartheid era, the black business and professional community had managed to establish a number of credible business and professional organisations which, individually and collectively, became powerful forces for change in the years immediately following the transition to democracy (see Chapter 4). These organisations were well placed to accommodate the huge growth in the number of black businessmen and professionals resulting from the transformation policies in the public sector and affirmative action policies in the private sector (Southall, 2004b). Also, in a classic example of the North et al. (2009) theory at work, the new government

leadership encouraged these diverse black business groupings to form collective bodies so as to facilitate better communication with government and enable support on policy matters (Mbeki, 1999). This consolidation inevitably enhanced the negotiating power of organisations such as the BBC, BMF, and NAFCOC, among many others, and they would soon use this power to leverage their position viz a viz the more resourced and dominant, although less ‘worthy’, corporate business sector.

The BMF was to become the most politicised of these business organisations in the mid 1990s. While originally founded in 1976 as an apolitical support group for black managers who had been the beneficiaries of employment reform policies in the private sector (BMF, 2011a), the organisation grew rapidly in the mid 1990s, a change accompanied by a fundamental shift in the organisation’s culture and strategy. In the words of long-standing BMF member and 2014 President, Bonang Mohale³¹, the BMF “somehow lost its centre”. From being an organisation that was focused on “the development of managerial leadership, primarily among black people, [the organisation] somehow lost its way”. Mohale was referring to the extent to which the BMF had become politicised, in the pursuit of access to rents, to such a degree that “a perception emerged that the BMF was becoming a branch of the ANC”. While government pronouncements about the importance of black business (Mandela, 1995b; Mbeki, 1999) and the support it was showing for the sector doubtless fuelled this change, there were likely three other important factors at play.

The first relates to the question of organisational culture and ethics. As noted by Chipkin (2012), the newly transformed public service had come to be characterised by a culture of underperformance, opportunism and corruption and, as the ranks of the BMF had been swelled by managers from the public service, it would be naïve to think that these values did not come to influence strategy within the organisation (Schein, 1992). The second factor relates to the lack of change in the structure of the South African economy at the time and the concomitant limits on opportunities for entrepreneurship. Despite its espoused

³¹ Interview with Bonang Mohale. President of the BMF. Johannesburg. 21 January 2013.

commitment to create opportunity for emergent black business, the new government failed to address the dominance of big business or to engender a nurturing environment for small business (see Chapter 6), leading not only to much cynicism and frustration but also to a natural entrepreneurial desire to seek out alternative opportunities for making money. The third, somewhat ironic, factor that fed the change in the culture and strategic orientation of black business organisations, was that many of the original members and leaders were absorbed into the corporate sector, either through the medium of the early BEE programme or via the imperative for corporate South Africa to quickly address affirmative action requirements at top management level (Butler, 2008; Mashaba & Morris, 2012; Motsuenyane, 2012). This left them little time to continue in their leadership positions and the door was consequently opened to a new cohort of leaders in black business organisations who ascribed to a different ideology, not rooted in personal development and work experience, but rather in the view of business involvement as the product of political patronage and easy access to rents (Mataboge, 2010).

There was thus a general change in the leadership and membership profile of the BMF, and in many other black business associations, and it was against this background that the members of the BMF voted at its annual conference in November 1997 to support a resolution calling for the establishment of a government commission to rethink BEE.

The motivation for the establishment of the commission is that the notion of true empowerment as defined by black people does not exist, nor does a common definition or benchmark which serves as minimum requirement. Many deals are concluded by organisations, including Government structures, that fall far short of recognising the true aspirations of the marginalised black majority all in the name of Black Economic Empowerment (BEECom, 2001:1).

The conference further noted that the proposed commission should address the following points:

- The lack of a national vision for BEE;

- The failure by Government and black business to provide leadership and a vision for BEE;
- Empowerment versus enrichment;
- The empowerment process being driven by white institutions;
- The lack of a coherent definition for BEE (Ibid.).

There has been little or no research into this call by members of the BMF, nor is it widely acknowledged that this event set in motion the formalisation of the transition-era BEE model and its extension to the general population under the B-BBEE Act (RSA, 2004a). However, it was a manifestly transparent attempt to gain access to rents.

The resolution had sought a policy review on the basis that ‘... the notion of true empowerment as defined by black people does not exist, nor does a common definition or benchmark which serves as minimum requirement’ (BEECom, 2001:1). While the assertion that BEE was still an ill-defined concept was valid, the suggestion that black people were not defining the process is difficult to accept, considering the huge change process initiated in the public service (see Chapter 5) and the multitude of transformational policies explored and implemented by the new black government (see Table 8.1). The very fact that the BMF was in the position it was in November 1997 stood as evidence that black empowerment, in the true sense of the word (Perkins & Zimmerman, 1995), was indeed happening.

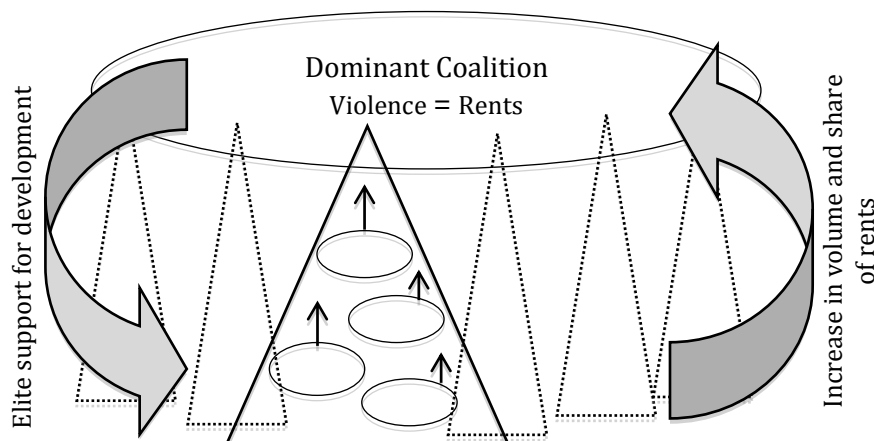
The second sentence of the resolution provides some insight into what members of the BMF were really trying to achieve. In stating that ‘Many deals are concluded by organisations, including Government structures that fall far short of recognising the true aspirations of the marginalised black majority ...’ (Ibid.), the BMF leaves no doubt that its focus was on the late-apartheid era BEE scheme that had seen politically-connected individuals incorporated into the elite rent distribution network. In the language of North et al. (2009), the BMF was seeking the inclusion of its membership into this same network.

The BEE Commission was subsequently established under the auspices of the collective representative body, the BBC, and its work led to the passage of the B-BBEE Act early in 2004 (see Chapter 5). Long before the Act was passed, however, the established white business sector anticipated the policy changes and took action. In the year following the establishment of the BEE Commission, the value of BEE deals jumped to R28 billion from R8 billion in the previous year, while a total of R480 billion worth of deals would be concluded between 1998 and 2009 (Presidency, 2010). It is safe to say that the black business community achieved its objective.

8.5.1 The institutional significance of B-BBEE policy

The LAO is characterised by elite control over the stream of rents produced by the polity and a united stance on the formation of organisations by non-elites (North et al., 2009). Incentives are created by the Dominant Coalition for the inclusion of members of the general non-elite population, to the extent that such activities increase the overall level of income (see Figure 8.6). Since the incorporation of non-elites calls for higher levels of control to protect the integrity of the Dominant Coalition, it would be contrary to the very logic of the LAO for members of the Dominant Coalition to share rents with non-elites and get nothing in return.

Figure 8.6: The normal path to economic development in the LAO

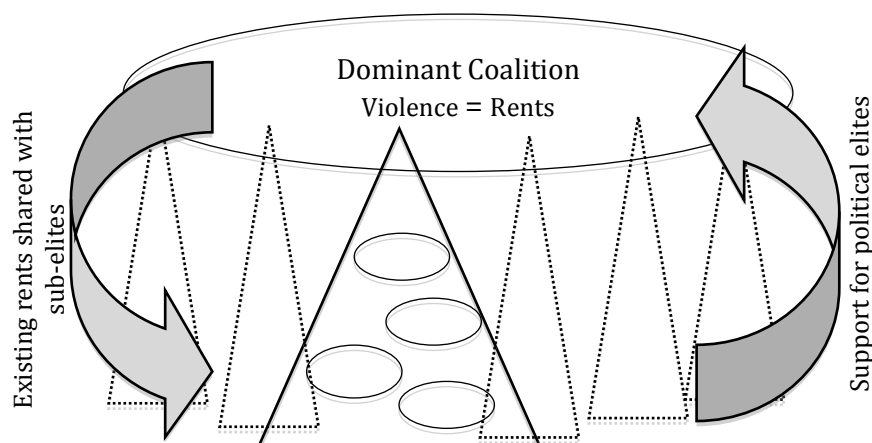


The transition-era BEE project was very much in keeping with the logic of the LAO wherein elites do not produce rents but rather share those that are produced within and between their various constituencies (Ibid.). What happened in the case of South Africa in the early post-apartheid era was that

there was a change in the structures of relations between the various constituencies and leaders of the South African LAO (see Figure 8.5). Black business organisations quickly moved to exploit their newfound status and influence to take advantage of fault lines between members of the Dominant Coalition, in order to achieve incorporation into the stream of elite rents without any commitment to productivity.

This strategy was institutionalised with the passage of the B-BBEE Act, effectively establishing a by-pass mechanism in the South African political economy and giving black people the legal right to inclusion in the existing stream of rents, as opposed to having to create rents through productive economic activity. As per Figure 8.7, the quid pro quo was endorsement by black businesspeople for the political elites who, in turn, supported the passage of B-BBEE policy.

Figure 8.7: The effect of BEE on the South African political economy



The requirement that B-BBEE transactions be broad-based and include a wide range of beneficiaries (RSA, 2007, 2013a) is, in fact, relatively meaningless as this constitutes little more than a mechanism for the ever-wider distribution of rents, still with no commitment to productivity. Furthermore, as discussed in Chapters 6 and 7, in the absence of a growing economy, adequate education, and infrastructure, the poor, often rural, beneficiaries of broad-based schemes can do little that is productive with their portion of the rents and so remain stuck in a cycle of rent-seeking activity. Equally, the now popular and widespread practice of including employees in BEE deals constitutes little more than a redistribution

of existing rents. There is limited incentive for employees to work harder or more productively, and they are often too far removed from the relevant organisational processes to have the capacity to influence profitability in any meaningful way. While it is true that there are other elements in the B-BBEE policy framework besides ownership, recent policy revisions have seen two of these elements eliminated and a reduced focus on the others in favour of the ownership component (see Chapter 5).

An obvious question with regard to B-BBEE policy is that as there were policy frameworks already in place to address employment equity (RSA, 1998b), small business development and financing (RSA, 1996c, 1998c), transformation of the rural economy (RSA, 1994b; DLA, 1997), skills development (RSA, 1998d), and preferential procurement policy (RSA, 2000b), as well as comprehensive transformation policy frameworks for the mining and liquid fuels sectors that were at an advanced stage of development, why did the B-BBEE policy project ever go ahead?

This study argues that the answer lies in the changes in power relations between the various constituencies in South African society (see Figure 8.5), combined with inadequate levels of economic expansion. With GDP growth levels averaging only 3,1% in the period between 1994 and 2004 (SAIRR, 2010:15), there was little business opportunity, let alone for the emergent black entrepreneurial and managerial class. Ironically, also, the bureaucracy associated with many of the aforementioned policies, albeit intended to address the heritage of the past, greatly disadvantaged the emergent business community (Kruger, 2011; SAPA, 2011b; Mashaba & Morris, 2012). Some other avenue for wealth creation had to be found, therefore, and it came in the form of the newly-powerful BMF's demand to be included in the same stream of rents that the political elite had been given access to in the early 1990s.

It is further argued that, amid the extensive critiques concerning excessive enrichment and cronyism among political and business elites, and with enduringly high levels of unemployment and poverty among blacks, it was unconscionable for any constituency, let alone government, to have promoted a

policy that only involved the original BEE model of the early 1990s. Therefore, to get around the problem, the laudable but politically naïve, broad-based ideal of the BEE Commission (BEECom, 2001) was officially adopted (DTI, 2003). Then, through a years-long process of ‘consultation’, the Commission recommendations were shrunk down to a checklist of seven categories that overlapped much of the existing empowerment policy framework but, importantly, also formalised and legitimised the original BEE model (RSA, 2004a).

8.6 Is BEE good or bad for South Africa?

It is a central premise of the North et al. (2009) theory that rents are the glue that hold developing world polities, such as South Africa, together. In principle, therefore, there is nothing fundamentally problematic with the concept of BEE as a vehicle for the distribution or, as some might say, the redistribution of rents.

Various studies have been conducted using the North et al. (2009) theory that confirm the centrality of the violence = rents equation to stability and development in a variety of countries (North et al., 2012). Interestingly, these studies have also found that the particular system of rent-sharing reflects the institutional character and history of each country. Thus the heritage of military dictatorship in Chile, the combination of trade union power with NAFTA policies in Mexico, and the legacy of civil war in Mozambique have all bequeathed a unique institutional framework and distinctive character to these polities resulting in their adopting different methods to balance the violence = rents equation (Ibid.). Echoing Southall (2006), BEE has similarly been a response to changing circumstances in South Africa that has been coloured by the country’s unique history. While specific people or organisations may have lobbied for, or designed, particular aspects of BEE policy or negotiated investment opportunities, they did so in response to a socio-economic environment over which they had little control and which left little room to manoeuvre. BEE is simply a part of South Africa’s reality and any suggestion that BEE should be done away with, or terminated at some date in the future, reflects a lack of

understanding of the institutional character of the phenomenon and the weight of history that underpins it.

Having said that, the development of a LAO, such as South Africa, is also dependent upon the quality of its people and its institutions and the extent to which elites create opportunity for productive wealth creation, rather than the sharing of existing rents (North et al., 2009). Experience has shown that development follows where “rents create incentives for learning and the accumulation of productive capacity [but] when the competition for rents becomes a zero-sum or negative-sum game, as in the Philippines and Zaire/DR Congo, then the decline of the aggregate pool of rents at the disposal of the government puts increasing, and perhaps eventually unbearable, strains on the ruling coalition” (North et al., 2012:12).

As discussed in Chapter 3, LAOs evolve along a continuum from Fragile to Basic to Mature; that is, from a weak, centrally-controlled and underdeveloped state to one wherein political and economic power is widely devolved and economic productivity is high. Leveraging the ownership element of B-BBEE policy to create investment opportunities for unproductive shareholders, land reform policies that give people access to farmland they cannot use productively, or the appointment of people to positions based on race rather than competency, are all examples of practices that promote unproductive rent-sharing over productive rent-creation. Such practices are characteristic of a Fragile or Basic, rather than a Mature, LAO and thus less likely to support economic development (North et al., 2009).

BEE does not have to function in such a manner and there is much evidence of it conforming to the characteristics of a Mature LAO. Anglo Zimele can attest to the creation of many productive entrepreneurial opportunities for black people in conformance with its Mining Charter commitments, while business luminaries such as Phutuma Nhleko and Patrice Motsepe have been able to take advantage of opportunities created by B-BBEE and use them as a stepping stone to true wealth creation on a massive scale. Employment equity policy has transformed the face of the South African workplace, forcing open the doors of prejudice for

many people who, like Sizwe Nxasana, CEO of Rand Merchant Bank, and Ferial Haffajee, Editor of the *City Press* newspaper, have made great contributions in their fields and to society in general. Even the much maligned land reform programme has its success stories (Weideman, 2011).

As an institution represented by a range of policies, BEE cannot be said to be either good or bad for South Africa. What matters is the design, administration, and implementation of BEE policies and sadly, as discussed in the foregoing chapters, many parties in South African society are guilty of focusing more on their narrow partisan interests than on the proper execution of their responsibilities to effect meaningful change in South Africa.

There was little alternative to BEE at the time of the transition and the concept addressed a very real problem. An incentive had to be created for the ANC to participate in the negotiations process, which the organisation could not do if it did not have access to the requisite financial resources to fund its operations and fight the forthcoming election. There was also the very real issue of meeting the remuneration needs and expectations of powerful cadres. As detailed by Ellis (2013) and Trehwela (2009), certain individuals within the ANC had amassed considerable wealth and power while in exile and had established links with powerful arms and crime syndicates. This study argues that it would have been naive to assume that such individuals would not have sought alternative means to attain wealth in the post-apartheid state, had BEE not created such access.

The sentiments of many returning exiles were doubtless similar to those expressed in 1991 by Baleka Mbete, today a leading politician and controversial BEE investor (Cohen, 2013; Nicolson, 2015). At the time of her return from exile, Mbete was already a member of the top-ranking National Executive Committee (NEC) of the ANC but she was clearly in straitened circumstances.

It's very traumatic coming back after years of exile. You are looking at friends of yours that you left, and they are way ahead of you. They've got their houses that they own and you have to start from scratch. And you

have to continue to struggle at the same level with the same vehemence as before. It's not very easy. (Nicolson, 2015)

Nor was it only returning exiles who were in a position to wield their power. In one of the more insightful interviews that the researcher conducted for this study, Michael Spicer, an erstwhile executive of the Anglo American Corporation, recalled a series of interviews in the early 1990s that were held between the top executive of Anglo American Corporation and members of the liberation movement elite.³² In one such interview an ANC cadre, recently-released from prison, suggested to the then chairman of Anglo American, Harry Oppenheimer, that he be given the De Beers Venetia Diamond Mine in Limpopo Province in exchange for his political support. Oppenheimer apparently declined but suggested an alternative package of assets for this individual who, today, is one of the richest and most politically influential men in South Africa, largely on the back of unproductive BEE-type investments. He is also a member of the NEC of the ANC.

Such instances are not exceptional and the author is of the opinion that BEE may have done more to facilitate the transition to democracy in South Africa than many realise.

8.7 Summary

In seeking to develop an interpretation of the BEE phenomenon, this chapter first applied Ostrom's (2005) IAD framework to demonstrate the institutional character of BEE policy, thus directing analysis to the actions and objectives of the leadership elite involved in policymaking rather than the policies themselves. The North et al. (2009) theory on the formation and development of society then provided an empirical background for advancing the theory that BEE first emerged as a mechanism to facilitate the incorporation of the ANC into the late-apartheid Dominant Coalition. This allowed the negotiations process to advance but, against the background of changing power relations in society and inadequate levels of economic growth, provided a vehicle

³² Interviews with Michael Spicer. CEO, Business Leadership SA. Johannesburg. 10 September 2009.

for new, aspirant black elites to also share in the stream of rents. It is argued that there was a separate, wide-ranging process of formal BEE policy development under the post-apartheid government, but that these policies became subsumed within a project, driven by the new black business elite to gain access to rents under the programme known as B-BBEE. As regards the influence of BEE policies on prospects for development, the chapter argues that, as an institution, BEE is neither an inherently malign or benign influence but that the manner of its implementation has been less developmentally oriented than it could have been.

Chapter Nine

Conclusions and Recommendations

9.1 Introduction

This thesis set out to address the question: What is BEE and what is the nature of its role and influence in the political economy of South Africa? BEE has become a pervasive phenomenon in post-apartheid South African society but has been subject to little analysis of a conceptual nature and is thus not well understood. This lack of understanding inhibits effective policy formation and feeds a corrosive discourse that is polarising the country along racial, ideological, and political lines. The study used a combined GTM and MMR approach (Charmaz, 2006) to develop an interpretation based on analyses of the major policy frameworks, the historical record of the late apartheid and post-1994 eras, the professional experience of the author, and the recollections and memoirs of various individuals. Themes that emerged in this process were then interpreted using established theories from diverse fields including economics, political economy, community psychology, and public policy (Kingdon, 1995; Perkins & Zimmerman, 1995; Ostrom, 2005; Ingram et al., 2007; Sabatier, 2007b; North et al., 2009).

Chapter Layout

The chapter first reviews the empirical findings of the study, followed by consideration of the theoretical and policy implications thereof. This is followed by recommendations for further research and consideration of the limitations of the study.

9.2 Empirical Findings

The project was initially concerned only with the B-BBEE policy framework and sought to understand why there was such apparent resistance to its implementation within the business community. B-BBEE is presented by government as the peak co-ordinating policy instrument (RSA, 2004a) but, in the preliminary process of data collection and analysis, it became apparent that the B-BBEE policy framework was a badly-designed and managed policy that

conflicted with many of the other so-called BEE policy frameworks, rather than co-ordinating them. It also emerged that, such was the limited understanding of the policy and the unwillingness of people in government, business, and civil society to engage in discourse on the subject, the study would have to venture much deeper and more broadly in order to understand what BEE was all about. There was, however, a large body of literature, commentary, and reportage and, of course, multiple BEE policy frameworks and programmes that could be mined for possible leads.

In Chapter One, the researcher explored his seven years working as a consultant in the BEE arena as well as his experience as a senior executive in a large company that was an early participant in BEE during the late pre-democracy era. He explained that it was from these foundational experiences that the idea for the study was born.

The chapter also addressed the central challenge facing the study, namely, the development of a reliable, logical conception of a much-misunderstood and controversial phenomenon. The task was further complicated by virtue of the fact that powerful people and organisations had invested personal and corporate reputations and hundreds of billions of Rand in the BEE industry (Presidency, 2010) and so were reluctant to speak candidly on the subject or, in many instances, to even be interviewed.

Methodological and design matters were addressed in Chapter Two where it was noted how the nature of the study dictated the use of a GTM (Charmaz, 2006), and later, a MMR methodology. Using this method, themes were identified in the available data that were interpreted against the background of a variety of theoretical frameworks (Creswell & Plano Clark, 2007). Having established early in the research process that BEE could not be meaningfully conceptualised on the basis of official policy instruments, the study instead explored the circumstances that had given rise to these various policies and those of the parties involved.

This preliminary analysis demonstrated the need for interpretive frameworks that could hold in tension a range of dynamic social, economic, and

political factors, and Chapter Three reviews the theoretical frameworks that were subsequently identified. It was argued that the concept of the institution provided the ideal platform for decoding the various BEE policies, as well as understanding their relationship to the broader institutional framework of society (North, 1990; Ostrom, 2005; Acemoglu & Robinson, 2006; Hodgson, 2006; North et al., 2009). Then, building on this foundation, established theories by Ostrom (2005) and North et al. (2009) were applied to diagnose the various policies and to understand their influence on society.

While these various bodies of theory were helpful in decoding the processes whereby BEE had first come into existence and later became integrated into the broader institutional framework, they could not adequately account for the manner in which the character of BEE policy had changed over time. The body of theory on public policy was thus explored to demonstrate how changes in power relations in society lead to changes in the character and content of public policy (Feldman, 1989; Kingdon, 1995; Ingram et al., 2007; Sabatier, 2007b).

Finally, while the words 'black' and 'economic' are readily understood, and even described in a number of pieces of legislation (RSA, 1998b, 2004a), there has been little investigation of the word 'empowerment' in the literature on BEE. As BEE is widely justified on the basis of the need to empower black people, the chapter also explored the body of literature on this subject (Perkins, 1995; Rappaport, 1995; Levine & Perkins, 1997).

Chapters Four through Seven reviewed a range of instruments commonly referred to as BEE policies by government, business, and civil society. These were B-BBEE, the transformation project in the civil service, certain sections of the Constitution, state procurement policy, industry-specific transformation charters, employment equity, small business financing and development, and land and agriculture reform. Tracing their institutional origins to events in the late apartheid era, these chapters explore the events and decisions that gave rise to the post-apartheid BEE policy framework and the subsequent performance thereof.

In Chapter Eight, the three key theoretical frameworks (Ostrom, 2005; Ingram et al., 2007; North et al., 2009) are applied to the foregoing analysis to develop an interpretation of BEE and to consider its possible impact on prospects for the development of South Africa. It is argued that BEE first emerged as an institutional response to complex political issues in the transition to democracy, namely, the incorporation of the ANC into the leadership structures of the late apartheid LAO. While widely copied and adopted, this early, informal arrangement, dubbed BEE, was not officially endorsed until 2004 with the passage of the B-BBEE Act (RSA, 2004a). It is further argued that, in the intervening period, the ANC had formally introduced a range of developmental and transformative policies also under the banner of BEE but uncoordinated with the earlier transition-era model. Drawing on the Ingram et al. (2007) SCTP theory, the author asserts that the later arrival of B-BBEE can be explained in terms of changing power relations in post-apartheid society that took place against a background of inadequate economic growth. The North et al. (2009) theory is then drawn on to demonstrate how BEE, in its current form, is unlikely to facilitate meaningful development.

9.3 Theoretical implications of the research findings

The main purpose of this study was to address a lacuna in understanding as to the nature of the BEE phenomenon and its influence on development prospects for society. The major outcome, therefore, is that future research on BEE can now be based on empirical theory as opposed to weak assertions about it being a government policy or a project of big business. The study should also serve as a point of departure for a deeper intellectual discourse on BEE than has commonly been the case up to now.

9.4 Policy Implications

The essence of this study has been to demonstrate that BEE policy is an artefact of a radical process of change that took place over the last five decades in the South African political economy. It cannot be adequately interpreted as a big business initiative in the 1980s (Verhoef, 2003) nor as a policy of the post-

apartheid government (Hausmann, 2014). In a growing, well-educated society, BEE could have been a vehicle for the realignment of access to the wealth creating mechanisms of the economy. However, in the reigning context of sub-optimal growth, low levels of education, and poor government administration (Chipkin, 2013; Auditor General, 2014; Borraine, 2014), BEE has become little more than a vehicle for the redistribution of existing wealth.

In providing an empirical interpretation of the BEE phenomenon, the study has the capacity to inform future processes of BEE policymaking. However, since public policy in a democratic order is generally led by powerful constituencies outside of government (Kingdon, 1995), and as the current policy environment largely serves the interests of many such sections of the elite constituency, it is unlikely that this research will be used in policy development processes in the near future.

9.5 Recommendations for further research

The key objective of this project has been to provide an empirical conception of BEE that can facilitate understanding and provide a sound basis for further research into the phenomenon. However, so pervasive is the subject of BEE in South African society, it is difficult to speculate on what specific projects might follow from this study.

In general terms, however, future research endeavours can now rise above divisive analyses that focus on notions of justice and retribution, employment demographics, critiques of government capacity, or accusations of an uncooperative corporate business sector. Using this study as a foundation, future explorations of BEE can also apply the institutional approach and develop more broadly-focused and informed theories that take into account the complex dynamics inherent in the public policymaking process.

It would be unrealistic to expect that the highly problematic B-BBEE policy framework would ever be done away with, such are the powerful political and economic interests that underpin it. However, there is a need for greater understanding as to the influence of this particular policy on prospects for

development and, especially, the extent to which it is more aligned to the Basic rather than the Mature LAO (North et al., 2009).

It is also important that the conflicts between the various BEE policies be better understood, especially in rural areas where the needs are so great and where policy conflicts hurt the most vulnerable (Atkinson, 2007; Ponte & van Sittert, 2007; Du Toit et al., 2008).

History is being rewritten very quickly in post-apartheid South Africa and it is becoming increasingly difficult to acknowledge the effort and contribution of black businesspeople during the apartheid era. These were stories of great determination, tenacity, and resourcefulness and it would be a loss to society if they are not recorded for posterity. Similarly, the history of the black middle class has been subsumed in a narrative that presents this community as downtrodden and irrelevant. Yet the evidence suggests otherwise and it would be valuable to have a more nuanced understanding.

On a more strategic level, and reflecting on the experience of conducting this study, the researcher would also propose that there be more research on BEE by cultural anthropologists, public policy theorists, and community psychologists.

Ostrom (2005:Loc.638) argues that social scientists must “dig under surface behavior to obtain a good understanding of what rules participants in a situation are following”, as such ‘working rules’ frequently differ significantly from the formal rules structure that participants attest to be following. The contradictions between the espoused and actual policy positions of the ANC government are legion and it is of little value to endlessly conduct research that repeatedly highlights this problem. It would be of far greater value to research government organisations and the working rules frameworks that underlie policymaking behaviour within the South African government.

Taking this point further, there is an evident need for more research into the changing cultural profile of South African society. Those living in South Africa or those with personal knowledge of the country will be aware that the cultural differences between the various groups in society are sometimes very

great. One only has to read the comments section of any online newspaper to see how these variations are increasingly becoming the point of departure for aggressive, divisive, and damaging discourse on political economy matters. These contentious perspectives are rooted in deeply held systems of values and beliefs that are not adequately acknowledged but which need to be surfaced, acknowledged, and understood. The author is of the opinion that it is only through such a process that South African society can achieve the equilibrium necessary for government to be able to steer the country toward a more productive future.

Public policy theorists have also neglected BEE. Analyses rooted within this field could help alter the dominant, often-inflammatory view that BEE policy has been driven from within the ANC government, when in fact public policy in a democratic society is driven mainly by interest groups working outside government (Kingdon, 1995). A more informed understanding might help alleviate much of the criticism that is aimed, sometimes unfairly, at the ANC while also shedding light on the actions of parties in business, organised labour, and civil society whose self-serving lobbying around BEE has largely escaped public attention.

Finally, there is a great need for politicians and policymakers to understand what constitutes empowerment and what the state of empowerment is in contemporary South Africa. The concept essentially involves the transfer of power to those lacking it and then helping beneficiaries use this power to their own benefit and that of the broader community (Rappaport, 1987). Inherently cronyist policy frameworks such as B-BBEE, or employment policies that simply create access to wealth and position, cannot, and should not, be termed empowerment.

9.6 Limitations of the study

Without question, the most significant limitation on this study has been the lack of input from people who have been involved, or who are involved, in the process of developing and administering BEE policies. Sadly, the ranks of

government, political parties, and organised labour were largely inaccessible to the researcher and, while valuable data was gathered from particular individuals in the business world, such interviews served to garnish the project rather than define it.

Although it became apparent at the outset that those who did consent to being interviewed had a superficial understanding of BEE that was usually limited to their particular circumstance or role in the policy process, it was still very useful to have had the opportunity to discuss and debate the research. Had the researcher had such opportunity with politicians, senior government bureaucrats, trade union leaders, and a wider cross section of business people, this would likely have resulted in a very different research output.

Notwithstanding this lack of primary data, it was this very lack of access that encouraged the researcher to seek out other avenues to proceed along and, ultimately, to source and adopt the very useful GTM. Had it not been for these initial impediments, the study would likely have been a qualitative exploration of operational impediments to the implementation of B-BBEE policy and this more in-depth, and informative, analysis may never have been written.

9.7 Conclusion

And so, a logical, empirical answer has been provided to the question: What is BEE and what is the nature of its role and influence in the political economy of South Africa? It is not the only answer, nor maybe the best possible, but to the knowledge of the researcher, it is the only one at present. As with all learning, the findings of this study will benefit from being shared, analysed, debated, tested, and critiqued. The author would welcome participation in such fora in the interests of a more democratic, equitable, and prosperous South Africa.

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