

BEE CHAMBER

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Social Inequality and Equity in South Africa:

The Impact of B-BBEE Since Its Inception

Systemic racial discrimination and economic marginalisation have plagued South Africa's history, largely as a result of the apartheid era, which made inequality official.

The South African government implemented the Broad-Based Black Economic Empowerment (B-BBEE) policy in 2003 as a response to these pervasive inequalities. By encouraging Black South Africans to participate economically, this programme sought to right historical wrongs. It is crucial to evaluate how B-BBEE has affected social inequality and equity in the country more than thirty years later.

Historical Context of Economic Inequality

Economic policies aimed at the white minority were created during apartheid, which resulted in notable differences in employment, education, and wealth. Due to their systematic marginalisation, Black South Africans experienced deep-seated poverty and restricted access to financial resources. With the end of apartheid in 1994, efforts to eliminate these disparities began, and B-BBEE emerged as one of the key policies, if not the Key policy in this process.

Objectives and Framework of B-BBEE

The B-BBEE Act of 2003 and supporting B-BBEE legislation established a legislative framework to promote economic transformation. The policy employs a scorecard system, where companies earn points across these elements, influencing their B-BBEE status and access to government contracts.

Its primary objectives include:

- **Promoting Equal Representation:** Ensuring diverse representation in management and skilled positions.
- **Facilitating Skills Development:** Investing in training to enhance the competencies of Black individuals.
- **Supporting Enterprise & Supplier Development:** Assisting Black-owned businesses through mentorship resulting in the promotion of sustainable access to the economy, in the form of monetary and non-monetary support.
- **Advancing Socio-Economic Development:** Contributing to initiatives that benefit marginalized communities and is largely the result of creating a link between the beneficiaries and access to the economy, but the initiative created.

Goals and Structure of B-BBEE

A legislative framework was developed in 2003 by the B-BBEE Act to encourage economic transformation.

Companies gain points for completing these components under the Legislated Scorecards, which affects their B-BBEE status and ability to obtain not only contracts but trading within the economic atmosphere of South Africa.

Its primary objectives include:

- **Increasing Black Ownership and Control:** Encouraging Black South Africans to own and run businesses is one of its main goals;
- **Promoting diverse representation** in management and specialized or skills jobs to enhance competencies;
- **Promoting Skills Development:** Putting money into education and training to invest in Black people's abilities;
- **Fostering Enterprise Development:** Providing monetary and non-monetary support to Black-owned entities through mentorship that promotes sustainable access to the economy;
- **Promoting Socio-Economic Development:** Supporting programmes that are monetary and non-monetary in nature to help underprivileged groups and/or individuals.

Achievements of B-BBEE

- **Growth of the Black Middle Class:** One of the notable successes of B-BBEE has been the expansion of the Black middle class. This development has had a profound impact on the South African economy. To be considered middle class in South Africa, an individual needs to earn between R15,000 and R50,000 per month.
- **Increased Black Ownership:** The policy has facilitated significant ownership transfers, with Black Ownership in Johannesburg Stock Exchange-listed companies reaching notable levels. However, the exact figures are subject to debate due to varying measurement methodologies.
- **Enhanced Skills Development:** B-BBEE has incentivised companies to invest in training programmes, leading to a more skilled Black workforce. This focus on education and skills development aims to create sustainable economic opportunities.

Challenges and Criticisms

Despite its achievements, B-BBEE has faced several criticisms:

- **Limited Beneficiaries:** According to critics, the majority of Black South Africans have not been impacted by B-BBEE, which has largely benefited a small elite. Once, Archbishop Desmond Tutu asked, "What is Black empowerment when it seems to benefit an elite that tends to be recycled rather than the vast majority?"
- **Persistent Inequality:** With a per-capita spending Gini coefficient above 0.60 since 2015, South Africa continues to rank among the most unequal nations in the world. Poverty and inequality continue to disproportionately affect Black people, especially women.
- **Fronting and Misrepresentation:** Some businesses have been involved in fronting, which is the practice of appointing Black people to jobs in order to comply with B-BBEE legislation without giving them real authority, responsibility, or financial advantages. This maintains inequality and undercuts the goals of the policy.
- **Economic Impact:** Concerns have been raised about the effect of B-BBEE on foreign direct investment. Some studies suggest that the policy may deter investment due to perceived regulatory burdens, though findings are mixed and highly context dependent.

Recent Developments and Reforms

In response to these challenges, there have been calls to reform & adapt the B-BBEE framework from inception to the current economic climate. Proposed amendments have aimed to introduce additional incentives and potential impact to improve corporate participation and curb exploitation of the system. The focus has shifted towards enhancing Transformation is the broader concept within the Framework of B-BBEE instead of extreme emphasis on one element of the scorecard.

B-BBEE has played a pivotal role in addressing the economic disparities entrenched by apartheid. While it has achieved notable successes, significant challenges remain. To foster a more equitable society, it is essential to refine the policy to ensure broader participation, genuine empowerment, and sustainable economic inclusion for all Black South Africans.



Nadiya Hattia

Service Desk Senior Consultant

Nadiya Hattia is a Service Desk Senior Consultant at the BEE Chamber. She holds a Bachelor of Laws degree and is an admitted Attorney of the High Court. In 2017, her legal focus shifted from the High Court to the B-BBEE space. Applying her legal acumen to B-BBEE provided her with unique leverage to become a Senior B-BBEE Consultant. Of all the measured elements, she believes Preferential Procurement is the vessel that can make a significant difference in a transforming South Africa. Nadiya's strengths lie in the culmination of formal studies, experience and a proven track record within the framework of B-BBEE that are key for the successful implementation of desired outcomes.

B-BBEE Verification Rules And Guidelines

All business entities apart from those eligible for automatic recognition undergo a formal B-BBEE Verification with an Accredited B-BBEE Rating Agency. These B-BBEE Rating Agencies need not only apply the correct rules and interpretations under the B-BBEE Legislation but also adhere to strict rules outlined in the Verification Manual and the South African National Accreditation System (SANAS)

What Role does B-BBEE Rating Agencies play in B-BBEE?

The role of B-BBEE Rating Agencies is to assess, verify and validate disclosed and undisclosed B-BBEE information submitted by organisations/ companies to reach a decision regarding their B-BBEE Status level. Decisions taken should be based on the B-BBEE Codes of Good Practice as well as on the relevant B-BBEE Sector Code of Good Practice issued in terms of Section 9 (1) of the B-BBEE Act and other related legislation.

B-BBEE Rating Agencies are accredited by SANAS to measure/assess the B-BBEE status of companies. To obtain and maintain this accreditation, these agencies are bound by SANAS's R47-03 document which stipulates the rules for the accreditation of B-BBEE Rating Agencies. It clarifies the roles of B-BBEE Rating Agencies and the criteria for them to be Accredited.

R47-03 Rules of which Business Entities should be aware of

The R47-03 sets clear guidelines for B-BBEE Rating Agencies so that organisations will know what is important to them regarding their B-BBEE status but also so that they will understand what Rating Agencies are allowed to do and what not:

- B-BBEE Rating Agencies are not allowed to verify the status of any organisation if any of its employees have consulted that organisation within the previous four (4) years.

'consultancy' means the provision of any service that assists a measured entity to implement a B-BBEE Strategy or any element of a B-BBEE Strategy. This includes implementation not limited to Ownership, Management Control, Skills Development, Enterprise and Supplier Development and Socio-Economic development or any element prescribed in terms of a B-BBEE Sector Code of Good Practice. With reference to avoidance of conflicts of interest, any service of a consulting body / or consultancy performed by any personnel of the B-BBEE Rating Agency that was provided to the measured entity and the same measured entity is verified by the B-BBEE Rating Agency would be considered a contravention of the requirements of this document. Consultancy includes but is not limited to specific solutions and assisting the measured entity to implement the proposed solutions.

Examples of consultancy include, but are not limited to the following:

- (a) coaching or facilitating the B-BBEE process on behalf of the measured entity towards the development and implementation of activities leading to B-BBEE compliance.
- (b) preparing or producing manuals, handbooks, or procedures.
- (c) participating in the decision-making process regarding the management system.
- (d) giving specific advice or scenarios on the development and implementation of the management system for eventual verification; and
- (e) conducting a scenario planning/gap analysis plan for the Measured Entity

B-BBEE Rating Agencies may carry out the following duties without them being considered as consultancies or necessarily creating a conflict of interest:

- (a) verification, including information meetings, planning meetings, examination of documents and follow-up of non-conformities
- (b) arranging training and participating as a trainer – this is not considered to be consultancy work provided that, where training relates to the B-BBEE process, it shall be confined to providing generic information and advice that is freely available in the public domain, i.e. the trainer should not provide specific solutions; giving guidelines to the measured entity as to what they need to comply with are not considered consultancy
- (c) making available or publishing on request information on the basis of the B-BBEE Rating Agency's interpretation of the requirements of the Verification Standard
- (d) activities prior to verification aimed solely at determining readiness for verification. however, such activities should not result in the provision of recommendations or advice that would contravene the above examples of consultancy and the B-BBEE Rating Agency should be able to confirm that such activities do not contravene these provisions and that they are not used to justify a reduction in the eventual duration of the verification processes
- (e) adding value during verification visits, e.g., by identifying opportunities for improvement, as they become evident during the verification, without recommending specific solutions.
- (f) B-BBEE Rating Agencies may also not verify an organisation/company which is regarded as a "related party" to the organisations/companies being verified or which has a vested interest in the organisation to be rated and the other way around.

'Related party' means a party that is linked to the B-BBEE Rating Agency by common ownership or directors/ management, contractual arrangements, common elements in the name, informal understanding, or the means such that the related party has a vested interest, (Vested interest is, however, not limited to the following: special interest, concern, stake, investment, agenda, stakeholder, supporter, skills development partners, Third-party facilitators of Enterprise & Supplier Development, relationships/ agreements in referral of clients etc.) in the outcome of an assessment or has a potential ability to influence the outcome of an assessment.

- B-BBEE Rating Agencies are not allowed to have any equity interest in the organisation/company; nor are they allowed to have any voting rights in the organisation/company which they will be rating.
- B-BBEE Rating Agencies may not be a party to any debt-creating agreement between itself and the organisation/ company to be rated if such an agreement could potentially influence their decision. B-BBEE Rating agencies cannot, however, be precluded from entering into such agreements if such agreements are part of the organisation's/company's normal business and if such agreements do not provide more favourable conditions than those normally provided to the General Public.
- A legally enforceable agreement needs to be entered into between the B-BBEE Rating Agency and the organisation/ company to be measured prior to the commencement of the verification process.
- Payment for Verification Service needs to be made directly from the organisation to the B-BBEE Rating Agency.
- B-BBEE Rating Agencies are not allowed to pay any commissions for client referrals to any person and or organisation.
- B-BBEE Rating Agencies must publicly make known the B-BBEE Status Level granted to and the Reports prepared for an organisation.

The Verification Certificate must contain the following details:

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| <ul style="list-style-type: none"> (a) The name and identifiable physical location(s) of the measured entity (b) The registration and VAT number of the measured entity (c) The dates when the B-BBEE score was calculated as well as the period for which the score would be regarded as valid (initial issue date and revision date, if applicable) (d) The expiry date of the Verification Certificate (e) A unique identification number, including revision number if applicable (f) The standard and/or normative document, including the issue and/ or revision used to evaluate the client (amended codes / specialised or respective sector codes) (g) The name and /or mark/logo of the B-BBEE Rating Agency (h) The scorecard against which the measured entity has been verified (Generic / QSE) (i) The Broad-Based BEE status level (j) The SANAS Accreditation Symbol on the Verification Certificate (k) The B-BBEE procurement recognition level. | <ul style="list-style-type: none"> (l) Score per element including total (m) Black ownership percentage (n) Black Female ownership percentage (o) Black designated group percentage (p) Black Youth percentage (q) Black Disabled percentage (r) Black Unemployed percentage (s) Black People living in Rural areas percentage (t) Black Military Veterans percentage (u) Modified flow has been applied yes or no (v) Exclusion principle used yes or no (w) Financial Year end used (x) Discounting principle used yes/no (y) Empowering Supplier yes/no (z) Name and signature of the technical signatory <p>(aa) Amendments to the certificate are to be clearly documented.</p> <p>(bb) Consolidated certificate to state as such and refers to attachment of the Measured Entities that are consolidated with registration and vat numbers</p> | <p>(cc) In terms of the reflection of the level and points on the B-BBEE Verification Certificate, the following is applicable.</p> <ul style="list-style-type: none"> • Participated in Y.E.S Initiative yes/no • Achieved Y.E.S Target and 2.5% Absorption yes/no • Achieved 1.5 x Y.E.S Target and 5% Absorption yes/no • Achieved Double Y.E.S Target and 5% Absorption yes/no <ul style="list-style-type: none"> • The B-BBEE Rating Agency must, moreover, provide the names of all persons involved in the verification and make background information on each member available to allow them to object against any team member. • All verifications must be done according to a Verification Plan. • The Verification shall take place at the site(s) of the organisation unless otherwise advised by SANAS. • B-BBEE Rating Agencies should have a clear Complaints and Appeal Procedure that needs to be communicated to the measured organisations. |
|---|---|---|



Managing Director / Technical Signatory / Nominated Representative

Mariska Harding completed her BCom Law, LLB, LLM (General Private Law) Dip Aipsa degree at the University of Pretoria. She practiced Law for 5 years after which she took interest in B-BBEE and since gained 11 years' experience in B-BBEE and has good knowledge of the B-BBEE Codes of Good Practice and all sector codes. She completed the National Standardised B-BBEE Management Development Programme (NQF7) at the University of the Witwatersrand in 2018, and is currently the Managing Director and Technical Signatory of Authentic Rating Solutions (Pty) Ltd.

Authentic Rating Solutions (Pty) Ltd is a SANAS Accredited BBBEE Rating Agency with a remarkable, dedicated and knowledgeable staff compliment. After more than a decade in the industry, Authentic continues to provide professional and friendly service, focusing on fast turnaround times without compromising the validity and integrity of the issued BBBEE Certificates.

Unlock Growth Potential with *BEE Chamber's ESD Expertise*

Maximise your B-BBEE investment with strategic ESD guidance. We help you invest meaningfully for long-term sustainability.

The Value

Make ESD count by integrating it strategically with your business proposition, ensuring a meaningful and sustainable investment. With our guidance, you can integrate ESD seamlessly, transforming beneficiaries and meeting B-BBEE targets effectively.

The How

Our ESD framework encompasses strategic alignment, needs analysis, and development plans, all managed with transparency. We ensure compliance and provide verification evidence, simplifying the ESD process.

The Gain

Experience sustainable growth as a result of our strategic ESD approach, fostering innovation and development.

Choose BEE Chamber. Choose to make a difference.

Contact Us

If you would like to talk to us about a customised ESD solution for your company
Please contact us on services@bcc.co.za



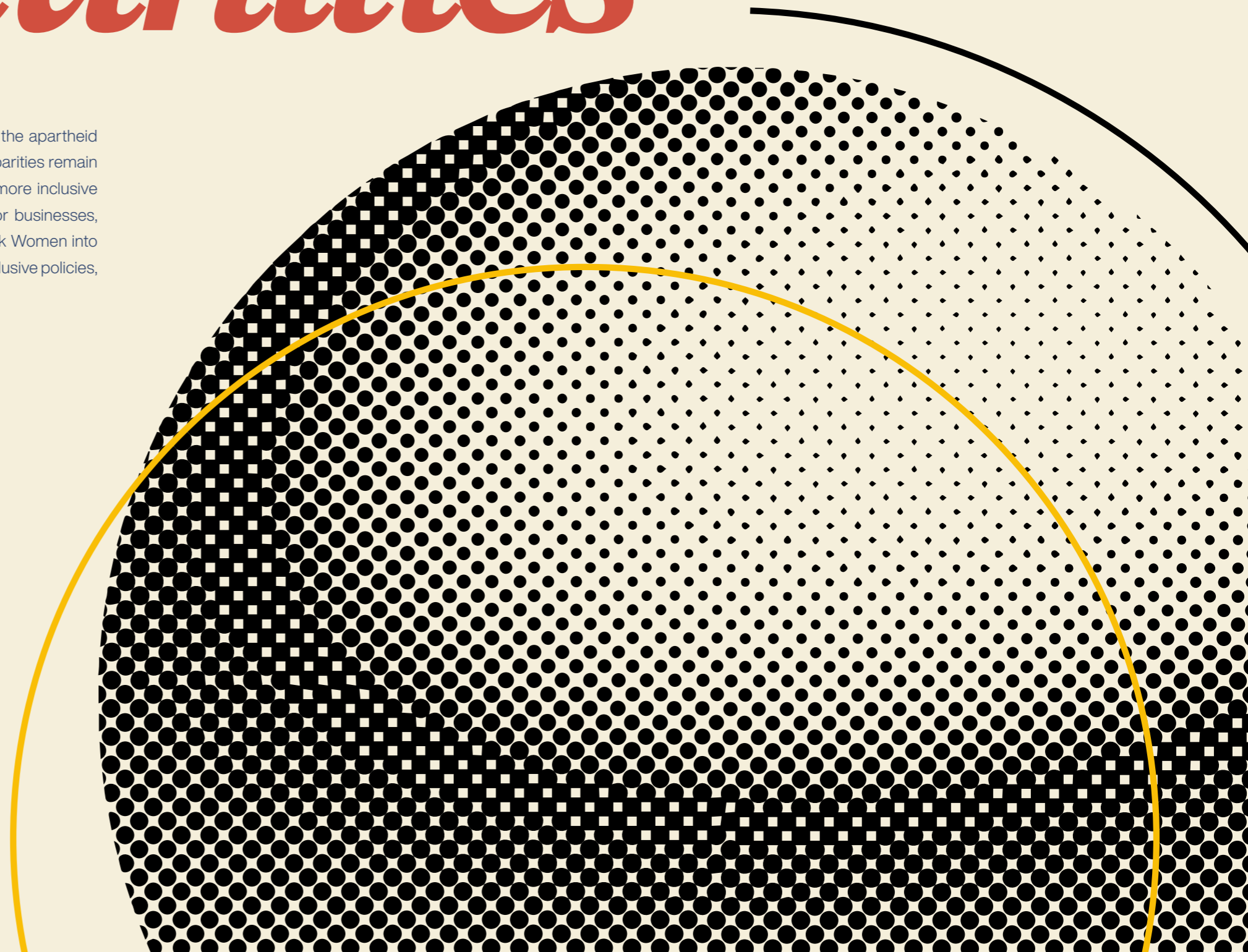
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Integrating Black Women into Managerial Positions:

Challenges and Opportunities

South Africa's history is deeply rooted in systemic inequalities, particularly those arising from the apartheid regime. Despite the strides made since the advent of democracy in 1994, socio-economic disparities remain pervasive, with Black Women disproportionately affected. As our country seeks to create a more inclusive economy, integrating Black Women into managerial positions has become a critical focus for businesses, government, and civil society. We explore the challenges and opportunities of advancing Black Women into leadership roles within the South African context, emphasizing the transformative potential of inclusive policies, corporate accountability, and societal support.



The Legacy of Exclusion

The apartheid regime institutionalised racial and gender discrimination, Black Women to the lowest tiers of the economic hierarchy. Historically, Black Women were confined to poorly paid domestic and menial labour, with limited access to education and professional opportunities. While the democratic government implemented policies like the Employment Equity Act (EEA) and Broad-Based Black Economic Empowerment (B-BBEE) to redress these imbalances, systemic barriers persist.

The legacy of exclusion manifests in numerous ways, including:

- **Limited access to quality education:** Many Black Women still face unequal access to education, particularly in rural areas where infrastructure and resources are lacking.
- **Socio-economic disparities:** Black Women often shoulder the burden of poverty and unemployment, limiting their ability to pursue managerial roles.
- **Cultural and gender biases:** Patriarchal norms and stereotypes undermine Black Women's aspirations for leadership, perpetuating the notion that management is a male-dominated sphere.

Challenges in Integrating Black Women into Managerial Positions

Despite the clear benefits, systemic challenges hinder the progress of Black Women in leadership. These include:

1. **Workplace Discrimination:** Discriminatory practices remain pervasive in many organisations. Black Women often face double discrimination based on both race and gender, encountering microaggressions, tokenism, and exclusion from informal networks critical for career advancement.
2. **Limited Mentorship and Sponsorship:** Access to mentorship and sponsorship is crucial for career progression. However, Black Women frequently lack mentors or role models within senior management who can advocate for their growth.
3. **Unequal Opportunities for Skills Development:** Black Women are often excluded from leadership development programmes or are offered fewer challenging assignments, limiting their exposure to critical decision-making roles.
4. **Work-Life Balance:** Societal expectations often place disproportionate caregiving responsibilities on Black Women. Without adequate workplace support, such as flexible work arrangements and childcare facilities, Black Women face additional barriers to career progression.
5. **Stereotypes and Biases:** Black Women are often subject to harmful stereotypes, such as being perceived as "angry" or "unapproachable." These biases can lead to unfair performance evaluations and missed opportunities for promotion.

The Business Case for Diversity

Research consistently demonstrates that diverse leadership teams drive better organisational outcomes. Companies with inclusive cultures report higher employee engagement, improved decision-making, and stronger financial performance. For South African businesses, the inclusion of Black Women in management is not just a moral imperative but a strategic advantage.

1. **Improved innovation and creativity:** Diverse perspectives foster creativity and innovation, essential for businesses navigating complex markets.
2. **Market representation:** Black Women's inclusion ensures that companies better understand and cater to South Africa's diverse consumer base.
3. **Regulatory compliance:** Adhering to EEA and B-BBEE requirements positions companies favourably in terms of procurement and reputation.
4. **Global competitiveness:** International investors increasingly value diversity as a metric of sustainability and ethical governance.

Policy and Legislative Framework

South Africa has established a robust legislative framework to address inequalities in the workplace.

Key policies include:

1. **EEA:** The EEA mandates affirmative action measures to promote equitable representation of Black People, including Black Women, in all occupational levels.
2. **B-BBEE:** B-BBEE incentivizes companies to prioritize diversity in their ownership, management, and workforce composition.
3. **Labour Relations Act (LRA):** The LRA promotes fair labour practices and safeguards against workplace discrimination.

While these policies have driven progress, gaps remain in their implementation and enforcement. Companies often adopt a compliance-driven approach, focusing on meeting quotas rather than fostering genuine inclusion.



Strategies for Advancing Black Women in Leadership

To address the challenges and unlock the potential of Black Women in leadership, stakeholders must adopt a multi-faceted approach. Key strategies include:

- 1. Transformational Leadership and Accountability:** Senior executives must champion diversity and inclusion as a strategic priority. This includes setting measurable targets, tracking progress, and holding managers accountable for fostering equitable workplaces.
- 2. Mentorship and Sponsorship Programmes:** Organisations should establish mentorship programmes that pair Black Women with experienced leaders who can guide their career development. Sponsorship—where senior leaders actively advocate for Black Women's advancement—is equally critical.
- 3. Leadership Development Initiatives:** Companies should invest in leadership training tailored to Black Women's needs, equipping them with the skills and confidence to excel in managerial roles.
- 4. Cultural Transformation:** Building inclusive organisational cultures requires addressing unconscious biases, promoting anti-discrimination training, and celebrating diversity as a strength.
- 5. Workplace Support Systems:** Flexible work arrangements, parental leave policies, and on-site childcare facilities can help Black Women balance work and family responsibilities more effectively.
- 6. Collaboration with Educational Institutions:** Partnerships with universities and technical colleges can create pipelines for talented Black Women to enter the corporate sector, supported by scholarships, internships, and graduate programmes.

The Role of Civil Society and Advocacy Groups

Civil society organizations and advocacy groups play a pivotal role in promoting the inclusion of Black Women in leadership. Organisations like the Black Management Forum (BMF) and Women in Leadership (WiL) provide platforms for networking, mentorship, and advocacy, empowering Black Women to overcome systemic barriers.

Integrating Black Women into managerial positions in South Africa is both a moral imperative and a strategic necessity for businesses aiming to thrive in a competitive and diverse market. While considerable progress has been made, much work remains to dismantle systemic barriers and foster genuine inclusion.

By prioritising diversity, embracing transformative leadership, and addressing socio-economic challenges, South Africa can unlock the potential of Black Women leaders, driving economic growth and social cohesion. As businesses, government, and society at large work together, the vision of an equitable and inclusive workplace can become a reality, setting a powerful example for the rest of the world.

Anathi Swazi

Senior B-BBEE Consultant/Facilitator

Anathi Swazi is an accomplished Senior B-BBEE Consultant/Facilitator at the Chamber with a strong track record in sustainable transformation, client relationship management and strategic consulting. With extensive experience of 6 years in the industry, Anathi has played a pivotal role in driving sustainable transformation strategies, helping clients achieve and exceed their B-BBEE objectives. Anathi is well-versed in all areas of B-BBEE, from the B-BBEE Act to all published Codes of Good Practice. He holds a Bachelor of Commerce in Accounting, along with certifications in the B-BBEE Management Development Programme and Project & Programme Management. Passionate about diversity, equity, and business excellence, Anathi is committed to driving meaningful change South Africa's economic landscape.



Elevate Your Business

with the BEE Chamber's YES Programme Management

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The Value

YES is more than a programme, it's a catalyst for enhancing your business profile a creation of jobs and improving and B-BBEE rating, setting you apart in the marketplace.

The How

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The Gain

Position your business at the forefront of industry standards while cultivating a future-ready workforce.

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Contact Us

If you would like to talk to us about a customised YES solution for your company
Please contact us on services@bcc.co.za



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04

A WATERTIGHT B-BBEE VERIFICATION PROCESS

The Broad-Based Black Economic Empowerment (B-BBEE) verification process is no easy task, a B-BBEE Rating Agency must be pertinently qualified, committed, experienced, competent and impartial to embrace the vital role they play in the verification of a Measured Entity.





In terms of the Verification Manual of 2008, Verification is defined as “the process and activities conducted by a verification agency to assess, verify and validate the score awarded to a Measured Entity is a result of individual scorecard elements supplied by a Measured Entity, and to evaluate BEE transactions in order to provide an indicative B-BBEE score and Certification based on the principles of the Broad- Based BEE Codes of Good Practice.”

B-BBEE Rating Agencies are mandated to follow a prescribed process using the standard verification methodology as defined in the Department of Trade, Industry and Competition (the dtic) Verification Manual, the Broad Black Economic Empowerment Act, 2003, the B-BBEE Codes of Good Practice 2007 or the Amended B-BBEE Codes of Good Practice 2013, South African National Accreditation System (SANAS) R47-03, Clarification notes as amended from time to time and where applicable the relevant Sector B-BBEE Codes of Good Practice.

B-BBEE Rating Agencies are required to implement a verification process policy in line with the requirements set out in the aforementioned legislation. An unregulated verification process would lead to “cherry picking” of obligations, which subsequently leads to the failure of the system as a whole.

The provisions of the Verification Manual provide the requirements of the verification process which B-BBEE Rating Agencies must adhere to. An unregulated process may open the doors to a disarray, as the intention of Verification “is to reduce the risk of misstatement of individual scorecard elements to an acceptably low level, and to provide an assurance of the integrity of the information on which the Verification is based.”

The purpose is to independently verify and certify the B-BBEE scorecard of a measured entity. This will be in line with the verification methodology guidelines issued by the dtic and the B-BBEE Rating Agency’s internal guidelines.

The implementation of a policy ensures that the B-BBEE Rating Agency offers the most ethical and efficient service available in the industry.

The implemented internal policy which keeps the B-BBEE Rating Agency in check needs to be finely tuned in a manner that allows a balance to be struck between the B-BBEE Rating Agency’s role and minimum prescribed requirements set out in the Verification Manual. The manner in which the B-BBEE Rating Agency exercises their responsibility is largely reliant on this internal policy.

Before a verification can begin, the B-BBEE Rating Agency is required to meet the standards of ethical conduct, set out Chapter 6 of the Verification Manual, which requires that a B-BBEE Rating Agency must be:

- Impartial, the B-BBEE Rating Agency must be objective and free from any conflict of interest which ensures integrity and independence. B-BBEE Rating Agencies require their employees to complete and confidentiality and impartiality declaration, this allows the agency to perform the verification without restraining factors or undue.
- Competence, have the required ability to apply knowledge and skills effectively. Be competent to undertake the work to which they are appointed. The B-BBEE Rating Agency has competence and ability to perform the service. The location and number of the applicant’s operations, the time required to complete verifications, and any other points influencing activities, or the verification process shall be considered (language, safety conditions, threats to impartiality, etc.). Based on this review, the B-BBEE Rating Agency shall determine the competencies it needs to include in its verification team. This is an important requirement to be met, if they are incompetent in any aspect it will result in an unsuccessful verification.
- Responsibility, to carry out a factual, thorough evaluation of a measured entity’s B-BBEE status. The challenge that arises is measured entities tend to ignore the fact they are responsible for confirming the requirement for B-BBEE Verification and place this burden on the verification agency when they are unable to provide sufficient evidence to support a claim.
- Openness, access to or disclosure of information, which in turn leads to confidence of the integrity and credibility of the verification process.
- Confidentiality, keep privileged information confidential used to support the verification outcome.
- Resolution of complaints, valid complaints must be addressed and resolved in a reasonable manner.

The B-BBEE Rating Agency must appreciate the responsibility they are vested with.

Abuse of the process will give rise to the assumption that verification process is merely a conditional phase before the company obtains their B-BBEE Verification Certificate. B-BBEE Rating Agencies are required to establish and implement quality control procedures which must be documented.



Chapter 8 of the Verification Manual requires the B-BBEE Rating Agency and Measured Entity to agree on the terms of engagement. The terms agreed upon must be recorded in writing, this document will also include the standard terms and conditions that the B-BBEE Rating Agency usually applies. The terms should also outline the responsibilities of each party. Furthermore, the terms of engagement must include provisions that require the measured entity to supply any necessary information for the verification and for the measured entity to conform to the requirement for verification.

The agreement to the terms of engagement requirement makes available a crucial safeguard in giving effect to balance of competing interests between the various parties.

Chapter 10 of the Verification Manual outlines the Verification Methodology; before proceeding with the verification, the B-BBEE Rating Agency shall conduct a review of the request for verification to ensure that the information is sufficient for the conduct of the review.

On acceptance of the terms of engagement, the measured entity should be informed of the analyst allocated to perform their verification,

In order to analyse the type of verification the Measured Entity is required to submit data for the elements they are claiming, and the Financial Year End being measured. The quality of the information provided is to be examined for accuracy and completeness by the B-BBEE Rating Agency.

Without the correct and accurate data, the B-BBEE Rating Agency is unable to determine the size of the measured entity, scope and complexity, and time required for the verification. The burden to provide the correct information and evidence in support thereof lies with the measured entity and not the B-BBEE Rating Agency. The role of the B-BBEE Rating Agency is to assess, verify and validate the information.

When the file is complete, it is then handed over to the Technical Signatory for final review and sign off. The Technical Signatory is not involved in the rating procedures to ensure independence which ensures the decision is based on an impartial evaluation of information and evidence.

The Technical Signatory reviews the file and notes any concerns in detail. Once all issues have been addressed, the verification analyst can submit the file and report to be signed off by the Technical Signatory. The date of completion of the verification is the date upon which the Technical Signatory approves the verification and signs the verification certificate and report.

It can be seen that the B-BBEE Rating Agency's responsibilities and functions are linked to the Measured Entity's responsibility to ensure that they have conformed to the requirement of a B-BBEE Verification. The duty to assess, verify and validate the Measured Entity is linked to the Measured Entity's responsibility to develop and implement their B-BBEE targets. This link of duties calls for the expertise of a highly regulated process, which will ensure the smooth running of the entire Verification Process.

In general B-BBEE Rating Agency must acknowledge that they have an imperative function to perform in the B-BBEE verification process; therefore, they are required to perform their duties in an unsullied and professional manner.

The B-BBEE Rating Agency must ensure all documentation is received, and any missing information is identified and communicated to the client. Samples are sent and only after all data and evidence has been received.

An onsite visit can be scheduled and a verification plan which entails the scheduling, conduct and timeframes required, considering the size of the measured entity, scope, complexity of its structure, products and processes, previous verification is determined. It will include the agreed dates, time, and location of the onsite visit (this will be sufficient time to allow the names and background of each member of the verification team to be communicated to the Measured Entity).

All primary people involved in the verification are recorded on an attendance register, the onsite visit is conducted at Measured Entity's head office. The verification team verifies the accuracy of documents provided by the measured entity and interviews the required number of staff. The B-BBEE Rating Agency must also ensure that all claims are for the same Financial Year End.

The verification analyst must analyse the information and check to see whether the required documentation has been provided, any missing information is identified and sent to the client. After the onsite, only supporting documentary evidence for claims data already submitted will be accepted.

A B-BBEE Rating Agency must have a central role in the B-BBEE verification process as the Measured Entity relies on them to maintain a balance between their interests and achieving a verification result.

Hence at the very summit of this discussion culminates the point that, for the verification process to be fruitful and give effect to the purposes for which it was developed, there must be strict compliance with the prescribed requirements.



Misba Hoosein
Technical Signatory

Misba joined Premier in 2019 and has been in the B-BBEE industry since 2017.

She is an Admitted Attorney with a Masters in Commercial Law and holds a Senior Technical Signatory position within Premier.

Premier Verification is a SANAS Accredited B-BBEE Rating Agency. We are proudly rated as a level 2 B-BBEE with 51% Black Female Ownership. We are a SANAS Accredited Verification Agency, and we perform verifications on the DTIC Scorecard and on the majority of the Sectors Charters Scorecards. We believe that B-BBEE should play a vital role in companies corporate strategies to create economic growth in South Africa. True and successful transformation is the key to long term success.

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The Value

By joining the BEE Chamber's membership programme, you gain access to essential tools, templates, and ongoing educational opportunities tailored to B-BBEE Practitioners. Our comprehensive suite of resources and expert insights ensures you can manage and optimise B-BBEE processes effectively, keeping you compliant and informed.

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Interview with Khuzani Mabena

The BEE Chamber interviewed one of our remarkable Bursary Students and the following is some insight of what we found out about Khuzani Mabena.



Tell us a bit about yourself in terms of your background, age, family life, where you from, etc?

My name is Khuzani Mabena, and I 30 years old. I was born and raised in Witbank, South Africa, in a supportive and loving household. I come from a family with two wonderful parents and three older siblings—two sisters and one brother. Growing up in such a close-knit family has shaped who I am today, as they have always encouraged me to pursue my dreams and provided me with the strength to overcome challenges. My background has instilled in me the value of hard work, determination, and the importance of community, which I carry with me in everything I do.

What inspired you to study at the Tshwane University of Technology and pursue a career in Technology?

I was inspired to study at Tshwane University of Technology because my older brother studied Electrical Engineering there, and he always spoke highly of the quality of education and the positive impact the campus has on both students and society. His experience motivated me to pursue my own studies at the same institution, knowing that I would be receiving a solid education in a place that fosters growth and innovation. I have always had a passion for technology and problem-solving, and I believe that pursuing a career in technology will not only allow me to make a difference in the world but also build a future for myself and others.

How has receiving a Bursary through the BEE Chamber impacted your life?

Receiving a bursary through the BEE Chamber has truly transformed my life. It has lifted a significant financial burden, allowing me to focus entirely on my studies without worrying about how I would cover tuition or other expenses. The support has also boosted my confidence and motivation, knowing that an organisation believes in my potential and is invested in my future. This opportunity has opened doors that might have otherwise been closed and has empowered me to pursue my goals with determination and purpose.

What technological trends or innovations are you most excited about, and how do you plan to contribute to them in the future?

I am excited about Artificial Intelligence (AI) and machine learning technological innovation because I would like my innovation to constantly adapt to the user's behaviour and routine to offer security and peace of mind. These technologies have the potential to create solutions that are intuitive, responsive, and truly personalised. I plan to contribute by developing systems that leverage AI to learn from user interactions, ensuring they become smarter and more effective over time. My goal is to combine technology with everyday needs, creating tools that not only solve problems but also enhance the quality of life for individuals.

What are some of the biggest challenges you have faced in your studies, and how have you overcome them?

One of the biggest challenges I have faced in my studies at Tshwane University of Technology, where I am pursuing Electrical Engineering, has been managing the demanding coursework alongside other responsibilities. The complexity of the subjects often requires a lot of focus and time, which can be overwhelming. I have overcome this by developing strong time management skills, creating a structured study schedule, and seeking help when needed—whether from lecturers, peers, or additional resources. Staying disciplined and focused on my goals has also helped me push through tough times.

You have recently won the Tshwane University of Technology Innovation Competition for 2024, how was your experience that led up to this?

Winning the Tshwane University of Technology Innovation Competition for 2024 was an incredible experience and a validation of my passion for using my gifts and talents to create a better future for the current and next generation. Leading up to the competition, I was deeply focused on designing and building a wearable technology aimed at reducing the number of kidnappings in South Africa. This project is close to my heart because I want to make a real impact on the safety and security of our communities.

At the same time, I am in the process of starting my own company to bring innovative solutions like this to life and ensure they reach the people who need them the most. The journey has been challenging but rewarding, as it has allowed me to combine my technical skills with my vision for a safer, better world. Winning this competition has motivated me even more to continue pursuing my goals and turn my ideas into reality.

How do you stay up-to-date with the rapid changes in technology and keep improving your skills outside of formal education?

I stay up-to-date with the rapid changes in technology by actively engaging with online resources, such as tech blogs, webinars, and tutorials. Platforms like YouTube and LinkedIn Learning are invaluable for learning new skills and understanding emerging trends. I also participate in tech forums and online communities where professionals share insights and innovative ideas.

Beyond that, I work on personal projects to apply what I learn, which helps me stay sharp and build hands-on experience. Reading industry publications and attending workshops or tech expos whenever possible also keeps me informed about the latest advancements. This combination of continuous learning and practical application allows me to grow my skills outside of formal education.

What role do you think diversity and inclusion play in the field of technology, and how can the industry become more inclusive?

I believe diversity and inclusion play a critical role in the field of technology because they bring together different perspectives, ideas, and experiences, which drive innovation and create solutions that cater to a wider range of people. When teams are diverse, they are better equipped to understand and address the needs of various communities, leading to more impactful and inclusive technologies.

To make the industry more inclusive, we need to actively create opportunities for underrepresented groups by supporting initiatives like mentorship programmes, scholarships, and inclusive hiring practices. It is also important to foster an environment where everyone feels valued and empowered to contribute. Representation matters, so seeing people from different backgrounds succeed in technology inspires others to believe in their potential and pursue their dreams in this field.

What advice would you give to other students who are interested in pursuing a career in technology, especially Black People?

My advice to other students, especially Black People, who are interested in pursuing a career in technology is to believe in your potential and never underestimate the value you bring to the industry. The tech field is vast and full of opportunities, so find your passion and commit to learning as much as you can about it.

Do not be afraid to step out of your comfort zone—challenge yourself, ask questions, and seek mentors who can guide and inspire you. It is also important to network with like-minded individuals and take advantage of programmes, bursaries, and competitions that support young talent.

Remember, representation is powerful. By pursuing a career in technology, you are not just building your future - you are paving the way for others to follow. Stay focused, work hard, and keep pushing forward, even when the path gets tough.

What do you envision for your career five years from now, and how are you preparing to get there?

Five years from now, I envision myself as the founder of a successful tech company that specialises in innovative solutions designed to improve safety and enhance lives. I see myself leading a team of passionate individuals, continuing to develop cutting-edge wearable technologies, like the one I am working on to reduce kidnappings in South Africa.

To get there, I am focusing on building a strong foundation now. I am honing my technical skills through my studies in Electrical Engineering at Tshwane University of Technology and staying updated on the latest technological advancements. I am also learning about entrepreneurship, attending workshops, and seeking mentorship to understand how to successfully run a business.

Every step I take is aligned with my long-term goals, and I am committed to turning my vision into a reality by combining hard work, innovation, and persistence.

How do you balance the technical side of your studies with the ethical and social implications of technology in today’s world?

I balance the technical side of my studies with the ethical and social implications of technology by always considering how my work will impact people and society. While focusing on developing technical skills in Electrical Engineering, I also take time to reflect on how the solutions I create can address real-world challenges without causing harm.

I stay informed about ethical debates in technology, such as privacy, data security, and accessibility, and I incorporate these considerations into my projects. For example, with the wearable technology I am designing to reduce kidnappings, I ensure that it prioritises user safety and respects their privacy.

Engaging in conversations with peers, mentors, and professionals about these issues helps me gain different perspectives and make more informed decisions. For me, it is about creating technology that not only works but also serves a positive purpose in the world.

What is your key message to Young People that are looking to obtain Bursaries and pursue further studies?

My key message to young people who are looking to obtain bursaries and pursue further studies is to stay focused, be persistent, and believe in your potential. The journey might seem tough at times, but every challenge you face is an opportunity to grow. Do let financial barriers hold you back - there are numerous bursaries and scholarships out there, and with determination, you can find the support you need to achieve your dreams.

Take the time to research opportunities, apply for as many as you can, and never underestimate the power of hard work and perseverance. Most importantly, stay true to your goals, and remember that education is one of the most powerful tools you can use to shape your future. Your dreams are within reach, so keep pushing forward, and the opportunities will follow.

Empower Dreams:

BEE Chamber's Bursary Programme Management for a Brighter Future

Our Bursary Programme management not only assists in developing young talent but also positions your company as a leader in social responsibility and B-BBEE compliance.

The Value

By utilising the BEE Chamber's Bursary Programme Management service, companies can streamline bursary administration, enhance their corporate social responsibility profile, access future skilled talent, and ensure compliance and B-BBEE verification ease, all contributing to sustainable business growth and societal impact.

The How

Our team expertly manages all facets of bursary administration, including rigorous candidate selection and verification. We ensure seamless execution, leaving no stone unturned from evidence collection to financial management, all tailored to your company's needs.

The Gain

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Addressing Unemployment Through B-BBEE in South Africa

Unemployment remains one of the most significant socio-economic challenges facing South Africa. With a high unemployment rate, particularly among Black South Africans, Government has implemented various policies to address economic inequalities.

One such policy is the Broad-Based Black Economic Empowerment (B-BBEE) framework, designed to redress the economic imbalances created during apartheid by empowering Black People and businesses.

The Impact of B-BBEE on Unemployment

1. Job Creation Through Enterprise Development

B-BBEE encourages businesses to support Black-Owned enterprises through enterprise and supplier development initiatives. This leads to the growth of small and medium-sized enterprises (SMMEs), which are crucial in creating jobs. When Black-Owned businesses flourish, they contribute to employment opportunities within their communities, reducing dependency on social grants and improving overall economic well-being.

2. Skills Development and Capacity Building

A major component of B-BBEE is the requirement for companies to invest in training and skills development programmes for Black employees. By providing scholarships, internships, and on-the-job training, B-BBEE equips Black South Africans with critical skills that enhance their employability. Skilled labour leads to better job opportunities, economic mobility, and higher productivity within industries.

3. Increased Black Ownership and Participation in Key Sectors

Through B-BBEE, Black entrepreneurs gain access to funding and procurement opportunities, enabling them to participate in sectors that were historically inaccessible. The mining, financial services, construction, and ICT sectors have seen significant transformation, leading to more jobs for Black South Africans and increasing representation in strategic industries.

4. Employment Equity and Workplace Transformation

B-BBEE & Employment Equity Legislation require businesses to implement employment equity strategies, ensuring diverse and inclusive work environments. This means that companies must hire and promote Black professionals, ultimately reducing racial disparities in employment and improving overall representation in senior management roles.

5. Investment and Economic Growth

As B-BBEE fosters inclusivity, it enhances investor confidence and encourages Foreign Direct Investment (FDI). A stable and inclusive economic environment leads to the expansion of industries, further contributing to job creation. Multinational corporations operating in South Africa are also required to comply with B-BBEE policies, thereby boosting local employment.

Benefits of B-BBEE to the Economy

1. Economic Transformation and Growth

B-BBEE contributes to a more equitable distribution of wealth by integrating Black South Africans into the mainstream economy. A transformed economy with diverse business ownership and employment opportunities fosters sustainable growth and long-term economic stability.

3. Increased Tax Revenue

As more Black-Owned businesses and employed individuals contribute to the economy, the government benefits from increased tax revenue. This revenue can be reinvested in public infrastructure, education, healthcare, and other essential services, ultimately improving the quality of life for all South Africans.

4. Encouragement of Innovation and Entrepreneurship

B-BBEE fosters an entrepreneurial culture by providing financial support and incentives for Black-Owned startups. When entrepreneurs receive funding and mentorship, they develop innovative solutions that contribute to industry growth and job creation.

2. Enhanced Consumer Spending Power

With more Black South Africans employed and earning stable incomes, consumer spending power increases. This boosts demand for goods and services, leading to business expansion and further employment opportunities. The ripple effect strengthens overall economic activity.

5. Reduction in Social Inequality

By addressing economic disparities, B-BBEE helps reduce social tensions caused by wealth and employment gaps. When Black South Africans have equal access to economic opportunities, society becomes more cohesive and politically stable, encouraging further economic development.

Benefits of B-BBEE for Black People

1. Improved Employment Opportunities

Through Employment Equity and Skills Development programmes, Black South Africans gain access to jobs in various sectors. This leads to financial stability, improved living conditions, and reduced reliance on social grants.

2. Wealth Creation and Business Ownership

B-BBEE enables Black People to own and manage businesses, fostering wealth creation and financial independence. Ownership of enterprises allows Black entrepreneurs to build generational wealth and contribute to their communities' economic growth.

5. Representation in Leadership and Decision-Making Roles

Through Employment Equity measures, more Black professionals attain leadership positions in corporate South Africa. This enhances diversity in decision-making processes and ensures that policies reflect the interests of the majority population.

3. Education and Skill Enhancement

Companies investing in Skills Development under B-BBEE empower Black South Africans with the expertise needed to succeed in the modern economy. Education and training programmes provide long-term benefits by creating a more skilled and competitive workforce.

4. Access to Funding and Procurement Opportunities

B-BBEE ensures that Black-Owned businesses have access to government and corporate procurement opportunities, levelling the playing field and allowing them to compete with established enterprises.

Recommendations for Strengthening B-BBEE

To enhance the effectiveness of B-BBEE in reducing unemployment and fostering economic growth, the following strategies can be implemented:

- **Stronger Enforcement Measures:** Government should intensify monitoring and penalties for businesses that engage in fronting.
- **Enhanced Support for SMMEs:** Providing financial and technical assistance to Black-Owned SMMEs can accelerate their growth and job creation potential.
- **Continued Focus on Skills Development:** Investing in education and training programmes will ensure that Black South Africans have the necessary qualifications to compete in the job market.
- **Incentives for Compliance:** Encouraging companies to exceed B-BBEE targets through tax benefits and rewards can promote broader participation in economic transformation.
- **Public-Private Partnerships:** Collaborations between the government and private sector can enhance the effectiveness of B-BBEE programmes and create more employment opportunities.

B-BBEE plays a critical role in addressing unemployment and economic disparities in South Africa. By promoting Black entrepreneurship, Skills Development, and Employment Equity, B-BBEE contributes to a more inclusive economy. While challenges remain, strengthening the implementation of B-BBEE policies will ensure long-term economic benefits for Black South Africans and the country as a whole. By fostering sustainable growth, reducing inequality, and enhancing opportunities, B-BBEE remains a key tool in building a prosperous and equitable South Africa.

Challenges and Criticisms of B-BBEE

While B-BBEE has achieved significant progress, it has also faced criticisms and challenges:

- **Fronting and Tokenism:** Some businesses manipulate B-BBEE requirements by appointing Black individuals in nominal positions without meaningful empowerment.
- **Implementation Barriers:** Smaller businesses often struggle to comply with B-BBEE due to financial constraints and administrative burdens.
- **Slow Pace of Transformation:** Despite efforts, economic transformation has been gradual, with some sectors still lacking significant Black ownership and participation.
- **Perceptions of Reverse Discrimination:** Some argue that B-BBEE creates barriers for Non-Black individuals seeking employment and business opportunities.



Yuneal Padayachy
Chief Support Officer

Yuneal Padayachy is the Chief Support Officer at the BEE Chamber. He previously served as the Accreditation Manager for the B-BBEE Programme at the South African National Accreditation System (SANAS). Before taking up his role at SANAS, he played a critical part in the B-BBEE Policy Unit at the Department of Trade, Industry & Competition. He was responsible for drafting and developing B-BBEE Legislation for implementation and played a key role in establishing the Youth Employment Service or otherwise known as YES Initiative.

Opinion on H & I Civil & Building (Pty) Ltd v The City of Cape Town

A recently reported Court judgement in the Western Cape High Court, H & I Civil & Building (Pty) Ltd v The City of Cape Town Case No 59/24, has a potentially chilling impact on the Broad-Based application of Black Economic Empowerment by Organs of State and Public Entities.

The judgment represents a missed opportunity to meaningfully advance the potential of public procurement in South Africa in broadening the reach of Broad-Based Black Economic Empowerment (B-BBEE). While the Court upheld The City of Cape Town's (City) right to implement a preferential procurement policy, it ultimately failed to adequately scrutinise the policy itself, effectively shielding it from meaningful judicial oversight.

The case challenges a new preferential procurement scoring system introduced by the City, which allocates preference points based on factors like Women, Black, and Disabled ownership, and support for small and micro-enterprises. The applicants, construction companies, argue the new system is unlawful, irrational, and excludes them from competing fairly. They claim it disregards their existing B-BBEE status and unfairly favours other companies. The City defends the new system, arguing it is necessary to address historical disadvantages and promote economic transformation in line with constitutional principles. They maintain the system is lawful and rationally designed. The Court dismissed the application, finding the applicants' arguments to be without merit.

Key Findings:

The Court upheld the City's right to determine its own preferential procurement policy within the framework of the law. The Court rejected the applicants' argument that the new system unfairly disadvantages them and that the City was obliged to prioritise their existing B-BBEE status.

In essence, the Court upheld the City's right to implement a preferential procurement policy that prioritizes specific goals, such as supporting women-, Black-, and disabled-owned businesses, even if it may impact the competitive advantage of some existing contractors finding it to give sufficient effect to Section 10 of the B-BBEE Act.

This critique will delve into the shortcomings of the judgment, focusing on its narrow interpretation of the law as it relates to the B-BBEE Act.

1. A NARROW INTERPRETATION OF THE LAW:

The judgment demonstrates a narrow interpretation of the interplay between the Preferential Procurement Policy Framework Act (PPPFA) and the B-BBEE Act. The court emphasised the City's autonomy in determining its own procurement policy, effectively minimising the role of the B-BBEE Act and its sectoral codes in guiding this process. This interpretation undermines the very purpose of the B-BBEE Act, which seeks to promote Broad-Based Black Economic Empowerment across all sectors of the economy, including Public Procurement.

The judgment states that the B-BBEE Act "does not prescribe to an organ of state how the B-BBEE Codes are to be applied in the development and implementation of a procurement policy." This interpretation overlooks the fact that the B-BBEE Act and its Sectoral B-BBEE Codes of Good Practice provide a crucial framework for understanding and addressing historical disadvantage and promoting equitable participation in the economy. While the PPPFA grants organs of state discretion in designing their procurement policies, this discretion cannot be exercised in a manner that undermines the objectives of the B-BBEE Act.

The Court should have more rigorously examined whether the City's new scoring system adequately considered the principles and objectives enshrined in the Construction Sectoral B-BBEE Codes of Good Practice. For instance, the judgment could have inquired more deeply into whether the City's chosen "specific goals" adequately reflected the broader objectives of the Code, such as promoting meaningful Black Ownership, Control, and Management in the Construction sector.

FURTHERMORE, THE JUDGEMENT PLACES SIGNIFICANT RELIANCE ON SECTION 10(1)(B) OF THE B-BBEE ACT, READ WITH SECTION 2 OF THE PPPFA, JUSTIFYING IT BY REFERENCING THE AFRIBUSINESS-JUDGEMENT:

[162] Section 10(1)(b) of the B-BBEE Act recognises, it is for an organ of state to determine how the B-BBEE Codes are to be applied in the development and implementation of its procurement policy.

As was held in Afribusines, it is however for the organ of state and that organ of state alone, to create a system of preference in terms of a preferential procurement policy which section 2(1) of the Procurement Act obliges that

organ of state to determine and implement. Similarly, the competence to prescribe industry specific B-BBEE Codes and the factors to be determined in the evaluation of a measured entity's B-BBEE score, lies with the Minister, not an organ of state. The scope of operation of the powers and functions conferred by the Procurement Act and the B-BBEE Act are in my view conceptually distinct by deliberate design.

THE COURT ALSO DISMISSED THE APPLICANT'S RELIANCE ON THE ACSA-JUDGEMENT:

[171] The Applicants relied extensively on the judgment of the Supreme Court of Appeal in ACSA in support of their argument that in relation to the procurement of construction works, the Construction Sectoral Code enjoys primacy over earlier legislation such as the PPPFA. In my view, ACSA is not authority for this proposition.

[172] In ACSA, it was the minority judgment, per Molamela JA (Tshiqi JA concurring, which held that it was impermissible for an organs of state to be allowed to, without the Minister's input, design its own unique criteria that deviate from those laid down in the sector codes, as to do would render the uniformity sought to be achieved by the strategies envisaged in the B-BBEE Act, nugatory. The majority judgment per Ponnann JA (Cachalia and Wallis JJA concurring), expressly did not reach this conclusion. The majority held that it was unnecessary to consider the other grounds that had been held by the High Court to be decisive against ACSA, one of which was that the impugned Request for Bids ("RFB") was in breach of B-BBEE Act and the Tourism Sector Code of Good Practice

IN DOING SO, THE COURT IGNORED THE INTERPLAY BETWEEN THE ACSA AND AFRIBUSINESS-JUDGEMENTS, WITH THE LATER QUOTING THE FORMER APPROVINGLY:

As discussed above, the Minister's motivation to promulgate the 2017 Procurement Regulations emanates from Cabinet's decision that the public sector preferential procurement system needed to be aligned with the objects of the B-BBEE Act. The Supreme Court of Appeal held in ACSA, that it is undisputed that the Procurement Act and the B-BBEE Act constitutes the legislative scheme envisaged in section 217(3), giving effect to section 217(2). Accordingly, the 2017 Procurement Regulations, with the same objects as the B-BBEE Act, are consistent with section 217(2) and the Procurement Act.

WHILE THE ABOVE EXCERPT DERIVES FROM THE MINORITY JUDGEMENT, IT WAS AFFIRMED BY THE MAJORITY JUDGEMENT:

What section 217(2) seeks to achieve is consonant with the transformative nature of our Constitution. And its provisions dovetail with those of section 9(2) of the Constitution. Without provisions of this nature, true or substantive equality would forever be pie in the sky for the vast majority of South Africans and the transformative agenda of the Constitution would be unrealisable. Talking about the transformative nature of our Constitution, Madala J said in Du Plessis: "[The interim Constitution] is a document that seeks to transform the status quo ante into a new order, proclaiming that— 'there is a need to create a new order in which all South Africans will be entitled to a common

South African citizenship in a sovereign and democratic constitutional State in which there is equality between men and women and people of all races so that all citizens shall be able to enjoy and exercise their fundamental rights and freedoms." 84 Although said about the interim Constitution, this is equally true of the Constitution. [100] Section 217(3) of the Constitution then provides that "[n]ational legislation must prescribe a framework within which the policy referred to in [section 217(2)] must be implemented". The debate between the first judgment and this judgment is not about these transformative imperatives. We both agree on them. And we must.

THE CONCLUSION TO BE REACHED IS THAT THE B-BBEE ACT, AND THEREFORE SECTION 10 THEREOF, GIVES EFFECT TO THE CATEGORIES OF PREFERENCE IN THE ALLOCATION OF CONTRACTS; AND THE PROTECTION OR ADVANCEMENT OF PERSONS, OR CATEGORIES OF PERSONS, DISADVANTAGED BY UNFAIR DISCRIMINATION AS PER 217(2) OF THE CONSTITUTION. ONE WOULD THEN NEED TO UPHOLD THE LEGALITY OF THE B-BBEE ACT WHEN INTERPRETING ITS PROVISIONS, ESPECIALLY IN RELATION TO THE POWERS GRANTED TO THE MINISTER IN TERMS OF SECTION 9(6) AND 10(2):

SECTION 9(6) OF THE B-BBEE ACT READS AS FOLLOWS:

If requested to do so, the Minister may by notice in the Gazette permit organs of state or public entities to specify qualification criteria for procurement and other economic activities which exceed those set by the Minister in terms of subsection (1)

SUBSECTION 1 REFERRED TO IS 9(1):

In order to promote the purposes of the Act, the Minister may by notice in the Gazette issue codes of good practice on black economic empowerment that may include:

The empowering provision thus envisions permission granted to organs of state / public entities to specify qualification criteria over and beyond those found in an applicable Code of Good Practice. This is supported by the definition of 'exceed' found in the B-BBEE Regulations:

"exceed" as contemplated in section 9(6) of the Act, in addition to the requirements of the Codes of Good Practice means - forty (40) percent sub-minimum targets set out in the Codes of Good Practice for each priority element of equity ownership, skills development and enterprise and supplier development; and targets set out in each of the five (5) elements of the Codes of Good Practice;

Of particular importance is the wording 'in addition to', meaning that the application of the Code of Good Practice is not suspended or altered, it is to be complimented with additional criteria.

SECTION 10(2) OF THE B-BBEE ACT READS AS FOLLOWS:

(2)

- (a) The Minister may, after consultation with the relevant organ of state or public entity, exempt the organ of state or public entity from a requirement contained in subsection (1) or allow a deviation therefrom if particular objectively verifiable facts or circumstances applicable to the organ of state or public entity necessitate an exemption or deviation.
- (b) The Minister must publish the notice of exemption or deviation in the Gazette.

SUBSECTION 1 REFERRED TO IS 10(1):

(1) Every organ of state and public entity must apply any relevant code of good practice issued in terms of this Act in

- (a) determining qualification criteria for the issuing of licences, concessions or other authorisations in respect of economic activity in terms of any law;
- (b) developing and implementing a preferential procurement policy;
- (c) determining qualification criteria for the sale of state-owned enterprises;
- (d) developing criteria for entering into partnerships with the private sector; and
- (e) determining criteria for the awarding of incentives, grants and investment schemes in support of broad-based black economic empowerment.

The empowering provision thus envisions permission granted to organs of state / public entities to be exempt from applying an applicable Code of Good Practice or to deviate from one or more of its provisions. This is supported by the definitions of 'exemption' and 'deviation' found in the B-BBEE Regulations:

"exemption" means relief from implementing the Codes of Good Practice as granted by the Minister in terms of section 10(2) of the Act;

"deviation" means a deviation of the organ of state or public entity from the Codes of Good Practice in terms of section 10(2) of the Act;

THE TEST OF WHETHER SECTION 9(6) OR 10(2) FINDS APPLICABILITY CAN BE WORDED AS FOLLOWS:

Does the organ of state seek to apply a code of good practice issued in terms of Section 9(1) as is as per Section 10(2) and then add additional requirements to it? Or;

Does the organ of state seek to apply an amended version of a code of good practice issued in terms of Section 9(1) as per Section 10(2) or not apply it at all?

If the answer to (1) is 'yes', Section 9(6) applies. If the answer to 2 is 'yes', Section 10(2) applies.

The City is an organ of state. In applying only Black Ownership criteria in its procurement policy the City deviates from the subsection 10(1) requirement that Every organ of state and public entity must apply any relevant code of good practice issued in terms of this Act in developing and implementing a preferential procurement policy.

It therefore should have applied to the Minister of Trade, Industry and Competition for an exemption in terms of Section 10(2). The judgement therefore strips the Minister of his powers, assigning it to the organ of state.

2. INSUFFICIENT SCRUTINY OF TRANSFORMATIVE OBJECTIVES:

The judgment uncritically accepted the City's chosen approach without adequately considering alternative approaches that could have more effectively promoted the objectives of the B-BBEE Act and the Construction Sectoral Code. For example, the Court could have explored whether the City adequately considered mechanisms to incentivize broader black economic participation beyond mere ownership, such as:

- **Employee share ownership programmes:** The judgment dismissed the applicants' concerns regarding the exclusion of employee share ownership programmes from the scoring system. However, a more nuanced analysis could have examined whether the City adequately considered mechanisms to recognise and incentivise such programmes, particularly in light of their potential to promote broader employee ownership and empowerment.
- **Skills development and training:** The judgment could have explored whether the City's policy adequately incentivized investments in skills development and training programs for historically disadvantaged individuals within the construction sector.
- **Supply chain development:** The judgment could have examined whether the City's policy adequately incentivised the development of black-owned small and medium enterprises (SMMEs) within the construction supply chain.

By failing to adequately consider these alternative approaches, the judgment missed an opportunity to encourage more innovative and impactful procurement policies that could have more effectively promoted the objectives of the B-BBEE Act.

The H & I Civil & Building (Pty) Ltd judgment represents a missed opportunity to provide clearer guidance on the interplay between the PPPFA and the B-BBEE Act in the context of public procurement. The Court's narrow interpretation of the law and its limited scrutiny of the City's policy may have unintended consequences, potentially hindering the realisation of a truly transformative and equitable procurement system in South Africa. In doing so, it strips the Minister of Trade, industry and Competition of crucial powers bestowed on him to guide the 'integrated and uniform approach to Broad-Based Black Economic Empowerment policies' envisioned by Section 11(2) of the B-BBEE Act.



Jacques Manus Technical Director

Jacques has a wealth of experience in the B-BBEE Industry. After completion of his LLB-degree in 2006 he joined SEESA BEE as a Legal Assistant in 2007. 2008 saw him move to AQRate Verification Services as a Verification Analyst. In 2009 he became a Technical Signatory at AQRate. He left AQRate after 5 years in 2013, joining the Oceana Group, a JSE-listed company, as its Transformation Specialist. His 3 years at the Oceana Group saw it awarded as the Most Empowered Company in 2013, 2014 and 2015. In 2016 he started a 7-year journey in the BEE Policy Unit of the dtic. Here he helped draft various codes of good practice and Practice Note 1 of 2021 while also serving on/ providing support to several committees such as the BEE Advisory Council, the State-Owned Enterprises Procurement Forum and the Joint Technical Committee. Jacques rejoined AQRate in 2023 as its Technical Director.

AQRate is one of South Africa's leading B-BBEE Rating Agencies, they specialise in the ratings of large corporate and listed entities but have clients from all sizes and from various industries. AQRate services most of the JSE listed clients.

The Professional Verification Team members all have competencies comprising of Legal and or Auditing qualifications and has a combined Industry experience of 193 Years.

AQRate Verification Team Members have assisted in drafting several of the B-BBEE Codes of Good Practice:

- Construction Sector Code
- Tourism Sector Code
- Forestry Sector Code
- Baseline document for the Financial Services Sector Code
- 2019 Amended Codes of Good Practice



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