

SA needs new PPPFA and BEE approaches

Supreme Court of Appeal ruling on the Preferential Procurement Policy Framework Act has cast further legitimacy doubts on B-BBEE

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Finance minister Tito Mboweni is heading to the Constitutional Court to defend the Preferential Procurement Policy Framework Act. Picture: ESA ALEXANDER

The public policy debate on BEE and black entrepreneurship in postapartheid SA has been reduced to three main approaches. First, an emphasis on what Ponte and others describe as the “managerialisation” of BEE – “the treatment of BEE as a separate technical entity to be managed according to the principles of corporate social responsibility and auditing”. This paradigm mainly focuses on the Broad-Based BEE Act, codes of good practice and regulatory compliance.

The second approach examines share transfers, ownership demographics, governance and dividend accumulation in large-scale B-BBEE transactions completed since 1994 (especially between 2000 and 2010). This literature explores the experiences and market activity of BEE pioneer companies, which are popularly referred to as the “Fab Four”: Mvelaphanda, Shanduka, Safika Holdings and African Rainbow.

A third approach dissects class formation debates on creating an independent black capitalist class, which uses economic rents for productive activity and not rent-seeking or neo-patrimonialism. The emphasis here is on the politics of transformation, corruption and so

called “tenderpreneurs”. This last strand has unfortunately captured the public discourse, especially in light of the evidence provided in state capture analyses.

It is widely accepted that BEE generally, and B-BBEE policy frameworks specifically, are faced with a serious legitimacy crisis. The latest ruling by the Supreme Court of Appeal on the Preferential Procurement Policy Framework Act (PPPFA) has cast further legitimacy doubts on B-BBEE, with some members of the public calling for a total scrapping of both policies.

Finance minister Tito Mboweni is heading to the Constitutional Court to defend the PPPFA, and he will surely be supported by various socioeconomic transformation lobby groups ([“Mboweni defends BEE rule on procurement”](#), April 29). We posit a measured middle ground in the national conversation through our political economy intervention.

In February 2020, the Mapungubwe Institute for Strategic Reflection (Mistra) published a book entitled *Beyond Tenderpreneurship: Rethinking Black Business and Economic Empowerment*. This publication, edited by Ayabonga Cawe and Khwezi Mabasa, examined what underlies the B-BBEE policy framework legitimacy crisis by exploring the following questions: what is the socioeconomic impact of BEE? What lessons can be drawn from varied black entrepreneur experiences?

Policy reform debates

The main aim was to contribute to B-BBEE policy reform debates through a different, or fourth, approach, which embeds B-BBEE in broader political economy discourses on postapartheid economic restructuring. This type of analysis departs from the three approaches described in my introductory remarks in several ways. It shifts our discourse from a limited focus on shareholding transfers, demographic ownership trends, good governance and share dividend accumulation.

We can only achieve “returns to a broader base” of beneficiaries through employee stock ownership plans (Esops), trusts and other broad-based ownership structures if we adopt a policy approach that locates B-BBEE in economywide impacts, industrial diversification and wider conceptions of social redistribution. In other words, establishing or reforming broad-based ownership structures without considering altering market structures, sector configurations, and investment patterns will not produce the desired socioeconomic outcomes.

I am not totally dismissing the need for transforming operational control or demographic ownership in different such schemes or any other entity involved in a B-BBEE transaction, but it is important to highlight that these two factors are not sufficient for guaranteeing “returns to a broader base”. I am positing an alternative view articulated in Mistra’s publication, which calls for achieving returns to a broader base through the following four core arguments:

First, creating a conducive macroeconomic environment for achieving the wider socioeconomic impacts in B-BBEE policy implementation. Researched evidence suggests that fiscal, monetary, competition and industrial policy frameworks shape the success and failures of B-BBEE transactions. These policies determine the nature and depth of returns to parties involved in empowerment deals. We need to ensure that decisions taken in these policy areas complement achieving a broader B-BBEE beneficiary base.

This necessitates prioritising B-BBEE impacts when considering major macroeconomic policy reforms. For example, most empowerment transactions are financed through third party debt and the costs of servicing these loans are determined by monetary policy. Therefore, debates on an appropriate monetary policy framework have a significant impact on B-BBEE transaction outcomes.

Competition policy

Similarly, competition policy and market access determine pricing among different entrepreneurs. Black businesses often fail the competitive market pricing tests, and this trend is mistakenly reduced to price collusion co-ordinated in corrupt middlemen networks. But this perspective overlooks how market access and scale influence pricing options.

Competition policy also shapes B-BBEE market activity through regulating mergers and acquisitions as seen in the much-lauded Coca-Cola deal, with a 15% worker ownership stake and increases in supplies from black sugar cane farmers. There are additional examples in the fiscal and industrial policy areas that illuminate how macroeconomic policy choices shape B-BBEE success or failures.

The second argument relates to broadening our understanding of black enterprise development and market transformation. SA’s empowerment policy is primarily aimed at advancing share transfers and demographic ownership changes within the JSE-listed companies. I accept this rationale given its centrality in SA’s

economy. But we must equally think about BEE and enterprise development outside the listed market space. Most formal fully black-owned enterprises, which largely fall within the SMME classification, are not listed companies. Research indicates that they are confronted with structural political economy barriers. These include, but are not limited to, markets access, finance, technological upgrading and regulatory constraints.

In addition, the B-BBEE policy frameworks have overlooked the informal economy. This is astonishing because demographic data indicates that black African entrepreneurs are leading informal economic activity. B-BBEE policy interventions have largely treated black entrepreneurs as a monolithic social group without due consideration for differences in enterprise size, access to capital, sector participation and business strategies.

Returns to a broader base require looking within and beyond the JSE-listed space and a comprehensive black enterprise support strategy for non-listed economic activity. This includes a dedicated focus on the informal economy. The calibrated market transformation approach is more suitable for addressing other intersectional inequalities such as race, gender and urban/rural divides.

Third, we need to think about B-BBEE beyond the confines of what Ashman & Mohamed describe as a finance-led minerals-energy complex. We cannot broaden returns or ownership within the limits of existing market structures. Research on the major empowerment transactions concluded between the early and late 2000s indicates that they occurred in three main traditional sectors: mining, finance and energy. The limited socioeconomic impact and minimal market structure changes of these large-scale transactions is documented in several BEE publications.

Achieving returns to a broader base requires thinking about black entrepreneurship and empowerment through an industrial diversification, market structure reform and technological upgrading lens. One example of this is the renewables sector, which is in its early product-and-innovation lifecycle. Another example is the ongoing debate on digitisation and its impacts on services sectors such as transport within the context of platform economy business models. B-BBEE and black enterprise development can be leveraged to produce greater economy wide social returns in developing the transitions towards low-carbon and digital economies.

Lastly, the design of B-BBEE deals, financing frameworks and performance indicators need to be reformulated. This is essential for attaining broad-based participation and restructuring of the economy. Empowerment transactions must be structured on the basis of (and in response to) operational and business productivity concerns. These two elements should be prioritised over narrow financial indicators such as share price movements, interest rates and dividend policies.

Outlier transactions

The case studies in our book provide concrete examples on how to achieve this by highlighting some outlier transactions, especially in the area of Esops and trade union investment companies. In these cases, Esops and union investments were not limited to dividend payouts, but rather extensive political economy considerations such as worker control, industrial diversification and addressing structural socioeconomic inequalities. This includes building alternative investment patterns and ownership structures within the political economy.

We need to think about different frameworks for measuring a good empowerment deal or investment that produces greater social returns. This is where I depart from the fixation with the B-BBEE codes, which constrain us to a strict quantitative discussion on points and accounting procedures. SA needs to reimagine how it examines B-BBEE transactions, with an emphasis on the deeper structural issues raised in my input.

Overall, the discussion on broad-based ownership should not be disembedded from these wider political economy factors. The operational control and demographic changes within these structures will produce minimal socio-economic gains if we separate them from these fundamental economic restructuring imperatives. Share allocation, dividend accumulation and management dynamics must be complemented by deeper meaningful structural change to attain returns to a broader base.

We must also explore international case studies from Malaysia, the US, East Asian developmental states and India on how to pursue broad-based socioeconomic redress. The evidence from these international case studies suggests that successful policy implementation rests on the macro-policy and political context that shapes socioeconomic redress.

Another crucial lesson is the ability of states to ensure that rents are used for broadening socioeconomic returns and economic

restructuring. Alice Amsden refers to these measures as reciprocal control mechanisms, which have been poorly enforced in our B-BBEE policy implementation efforts. The state's regulatory role and active participation in markets is essential for achieving returns to a broader base.

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