

IMPLEMENTATION OF AFFIRMATIVE ACTION AND BLACK ECONOMIC EMPOWERMENT (BEE) IN THE CONSTRUCTION INDUSTRY

Desmé Human¹

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¹ Desmé Human, Honours QS student, Department of Quantity Surveying and Construction Management
University of the Free State, Bloemfontein, South Africa,
Telephone: 051 4013546 or 082 5306448 (mobile)
Contact address: email: dhuman@nws.co.za or beukesa.sci@ufs.ac.za

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Abstract

The aim of this research paper is to investigate the implementation of affirmative action and black economic empowerment (BEE) in the construction industry in South Africa. The paper also addresses the effect of this implementation on the construction industry. The role of government, political aspects (policies) and different tools for making the implementation easier will be addressed.

A literature study including government documents has been done as well as a questionnaire about implementing affirmative action and BEE in their companies were distributed to professionals in the construction industry in Bloemfontein.

The general feeling towards black economic empowerment was mixed. Professionals in the industry felt that black partners are taken in only to comply with the *Broad-Based Black Economic Empowerment Act* and not as a means of improving the company. The overall opinion of respondent companies is positive that not enough skilled 'black' people are present in the construction industry and that the Construction Industry Development Board's (CIDB) contractor grading system will be an implementation for public sector contracts. It is further the opinion of these professionals that different conditions and rules should apply to Small-business entrepreneurs.

1. INTRODUCTION

BEE is define 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 number of black people that manage, own and control the country's economy, as well as significant decreases in income inequalities" (South Africa. Council for Scientific and Industrial Research [CSIR], 2004: 2).

According to the *Broad-Based Black Economic Empowerment Act (BBBEE act)* (Act No 53 of 2003) 'black people' is a generic term that means Africans, Coloureds and Indians (South Africa. CSIR Boutek, 2004: 17). The meaning of 'broad-based' is "women, workers, youth, people with disabilities and people living in rural areas" (Metcalf, 2004: Online). The objectives of the *BBBEE Act*, broadly, are to:

- Promote meaningful participation of black people in the economy;
- Alter the racial composition of management;
- Increase ownership and management by communities and workers;
- Increase ownership and management by black women;
- Promote investment programmes that facilitate black ownership and management; and
- Promote access to finance (South Africa. CSIR Boutek, 2004: 17)

2. THE HISTORY OF BEE AND AFFIRMATIVE ACTION IN SOUTH AFRICA

South Africa is undergoing a most profound political transformation, for never in its history – before 1652 or after 1652 – has a proper, representative democracy exists which embraced all the people of this land (Patel, 1994: 1).

To change the view and perspective of the people of South Africa, a drastic measure needed to be taken to change the democracy and racial differences. It was therefore necessary for the government to find a solution in bridging the gap between 'White' and 'Black' in an effective way that will influence both parties.

Political activity in the early part of the twentieth century was characterized predominantly by attempts at healing the rift between English and Afrikaans-speaking South Africans, while the latter part of the century began to focus on the relationship between black and white South Africans. The 1980's saw the gradual inclusion of coloured and Indian South Africans in (a form of) government, and the 1989 address of former president F.W. de Klerk in which the notion of a fully representative government was broached for the first time. In 1990, the stage was set for negotiated political future with the release of Nelson Mandela and other political prisoners (South Africa. CSIR, 2004: 8).

The historical exclusion of black South Africans from participating freely in the economy resulted in a society marked by vast discrepancies and disparities. Any attempt to progress towards a shared economy that could meet the needs of all people of South Africa required that the gulf between 'Black' and 'White' in terms of skills and opportunities be reduced, and in as short a time as possible.

The introduction of the principle of empowerment and affirmative action into the Republic of South Africa (Act 108 of 1996) promoted the adoption to advance certain categories of persons, disadvantaged by unfair discrimination. The Government has since 1994 implemented a series of Acts to set right what was unfair and wrong.

In September 2000, six years after the first democratic election, the Black Economic Empowerment Commission (BEECom) released its draft discussion document that called for the introduction of legislation to support BEE as well as the creation of a number of overseeing agencies (South Africa. CSIR, 2004: 8). The Government set up various sector charters that must be adopted to increase BEE in a specific sector.

3. FORMAL EDUCATION AND SKILLED PROFESSIONALS SITUATION IN SOUTH AFRICA

Current registration trends with The South African Council for the Architectural Profession reveal a consistent number of graduates and registrations. A similar trend is evident with the South African Council for the Quantity Surveying Profession. Statistics by the South African Council for Scientific and Industrial Research (2004: 5) show that a shortage of graduates exists from tertiary institutions, particularly with regard to engineers. There is a shortage in South Africa of high-level professional and managerial skills.

The legacy of *apartheid* has had an impact on the young black people of South Africa - according to Census 2001, almost one in every five South Africans aged 20 years or over has received no formal education. Fewer than 1 out of 10 South Africans has a tertiary qualification and 22% of South Africans in whole has received a form of education (South Africa. CSIR, 2004: 5).

One of the causes of the low enrolment rate at higher education institutions is the lack of scholars matriculating, and the lack in matriculates passing with endorsement (to satisfy the entry requirements for universities). With the lack of education in South Africa it is clear that the goals the Government set out for a period of ten years will not be accomplished, and that instead of placing people in positions they are not qualified to fill, they are only making the 'education gap' bigger.

4. THE INTRODUCTION OF A BEE AND AFFIRMATIVE ACTION CHARTER FOR THE CONSTRUCTION INDUSTRY

Minister Stella Sigcau announced the start of the development of a Charter for the construction industry in October 2004 (Njobeni, 2006: 2). A charter is defined as: "A set of principles that form the constitution of an organization" (Maori Land Court, [n.d.]; online). The establishment of a charter took a major step forward during April 2005, when an indaba, attended by many stakeholders in the industry, government and private, large and small, corporate and individual were held. Their task was to deliberate the structure and the scorecard requirements by a charter in a diverse and uncertain industrial sector (Constructing a Charter, 2005: 36).

The objectives of the charter for the construction industry are:

- Achieve a substantial change in the racial and gender composition of ownership;
- Address skills development;
- Enhance entrepreneurial development;
- Increase the procurement of goods and services from BEE companies;
- Bring to an end the malpractice of fronting;
- Devise a mechanism to bring about the formalization of labour-only contractors;
- Encourage adherence to triple bottom-line accountability, fair labour practices and principles of good corporate governance; and
- Lay the foundation for the integration of construction sector associations (Construction Sector Black Economic Empowerment Charter, 2005: 4).

4.1 The scorecard system

The scorecard of the Construction Charter Draft is not yet fully set out and therefore the BEE scorecard will be discussed. The Scorecard is a mechanism to ensure that the private sector comply with the implementation of BEE in the company by meeting a series of targets under the various *BBBEE Act* headings. Where specific charters are developed, the rems set out in those charters will apply. The Code of Good Practice only applies to black people. The scorecard provides targets for the number of black people, black women specifically that must be employed to the various levels of the company (Black Economic Empowerment: Online 2005/2006).

The use of a common scorecard by different stakeholders provides a basic framework against which to benchmark the BEE process in different enterprises and sectors. The scorecard also allows government departments, state-owned enterprises, and other public agencies to align their own procurement practices and individual BEE strategies. The scorecard further facilitates the process of setting measurable targets for BEE, for BEE ratings and other measurement purpose (South Africa. Department of Trade and Industry, 2005: 21).

The scorecard will measure three core elements of BEE:

- Direct empowerment through ownership and control of enterprises and assets,
- Human resource development and employment equity,
- Indirect empowerment through preferential procurement and enterprise development (Cliffe Dekker Attorneys, 2005: Online).

Government will use the total score to rank enterprises according to their progress in achieving broad-based black economic empowerment. The following are samples of categories of preference:

- Total score of 65% and above – good contributor to broad-based BEE
- Total score of 40% to 64.9% – satisfactory contributor to broad-based BEE
- Total score of below 40% – limited contributor to broad-based BEE

These rankings will be used to guide the direction of government support towards its BEE objectives. Preferential procurement policies and the qualifying criteria for government incentives and support schemes will be reviewed and, where appropriate, amended on a case-by-case basis to reflect these rankings. Government will also encourage the private sector to develop similar ranking systems in sector and enterprise charters and to use these rankings in their procurement systems (South Africa. The Department of Trade and Industry, 2005: 24)

5. PROCUREMENT IN THE CONSTRUCTION INDUSTRY

In 1997, government issued a *Green Paper on public sector procurement reform*. This policy document recognized that government, as the largest buyer of goods and services in the economy had the responsibility to leverage this purchasing power in support of its economic policy objectives of broad-based black economic empowerment, small enterprise development, and labor-intensive construction. Mechanisms were introduced to give effect to a preferential procurement policy. These include *inter alia* the following:

- The tendering process was made more accessible to black people,
- Tenders were 'unbundled' into smaller tenders to allow smaller enterprises to tender for work; and
- A point system was introduced to award tenders on the basis of the combination of price and preference for targeted groups (South Africa. The Department of Trade and Industry, 2005: 23).

The construction industry had to adapt to these changes and therefore a Construction Draft is put together to promote the implementation of BEE in the Construction Industry.

The CIDB was established to stimulate sustainable growth, reform and improvement of the construction industry.

According to the *Construction Sector's Black Economic Empowerment Charter's First draft* (2005: 9) the construction sector has only implemented preferential policies in response to government tender requirements, with the consequence that the initiatives have not promoted long-term sustainability of enterprises. The sector therefore commits to substantially increase procurement from suppliers with goods accreditation in terms of the *BBBEE Act*. To this end specific minimum targets have been identified as follows:

X % of total procurement of each company from BEE-accredited suppliers X years

In addition to the above targets each company must undertake to:

- Develop and implement targeted procurement policies, including, *inter alia*, accessibility to tendering opportunities, early payment cycles and other supply side inventions for SMME's;
- Implement mechanisms to counter fronting and the abuse of targeting arrangements;
- Measure suppliers in terms of their relevant sector charters where these exist and in terms of the dti scorecard where they do not; and
- Target where possible, black SMMEs from local communities to enhance benefit to these communities while at the same time ensuring that the sustainability of existing black enterprises is not hampered (Construction Sector Black Economic Empowerment Charter, 2005:9).

The construction sector consists of a large low skilled labor force and limited number of highly skilled professionals, which are in short supply. Despite of this, companies in the construction sector are not adequately investing in skills development. Consequently, the parties should undertake to:

- Increase the level of retention through comprehensive structured workplace training career path development, proper guidance and effective succession planning;
- Implement measurable mentorship programmes;
- Establish structured interaction between the sector and tertiary institutions to foster appropriate skills transfer;
- Spend x% of payroll, over and above the skills development levy, on direct training costs on staff in general, of which x% must be on black staff in general x% of that on black women.
- Develop black youth through leaderships and the granting of bursaries;
- Comply with the *Skills Development Act* (Construction Sector Black Economic Empowerment Charter, 2005: 9).

The national Construction Registers Service has been established to shape and reflect progress in the capability and transformation of the construction industry in South Africa. The service includes:

- The national Register of Contractors, which registers all contractors who undertake construction work for the public sector. The Register supports risk management, reduces the administrative burden associated with the award of contracts, and promotes the performance and development of contractors.
- The national Register of Projects, which registers all public and private sector projects above a prescribed value. The Register provides information on the nature and distribution of projects and promotes the performance of public and private sector clients in the development of the construction industry (CIDB, 2005: Online).

The Construction Registers Service forms part of the CIDB's mandate to create a regulatory and development framework that builds:

- The total construction delivery capability for South Africa's social and economic growth; and
- A proudly South African construction industry that delivers to globally competitive standards (CIDB, 2005: Online).

6. RESEARCH

The effectiveness of current implementation of BEE in the construction industry must be examined.. For this purpose a questionnaire with 9 questions about implementing affirmative action and BEE in their companies were distributed to professionals in the construction industry in Bloemfontein. Taking into consideration that there could be a wide range of expected or possible responses, questions that were open-ended were kept to a minimum. For 3 questions, a 5 point Likert scale was appropriate and scaled responses were developed. Professionals were asked to respond to 3 questions on a basis of "yes" or "no" and for the remaining 3 questions respondents had a choice between possible given options.

7. FINDINGS

The findings of the questionnaire as well as the analyses of the findings are as follows:

It is evident from table 1 that in most companies the response on the attitude towards BEE was positive.

Table 1: Attitude towards BEE

Company responses:	Rating					Total
	1=Negative	2	3	4	5=Positive	
Number of respondents	0	0	2	4	4	10
Percentage of total	0.0	0.0	2.0	4.0	4.0	100
Average rating	4.2					

The results in table 2 in relation to the implementation of BEE indicate that all respondents to an extent indicated that they implement BEE. 8.0% of responding companies indicated "yes" in relation to implementation of BEE.

Table 2: Implementation of BEE

Ranking	Responding companies	Percentage of total
Yes	8	8.0
No	2	2.0
Total	10	100

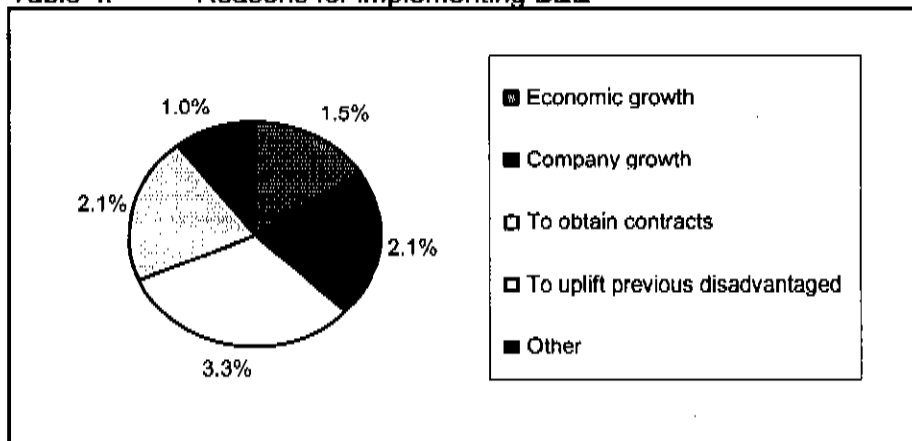
The results in table 3 indicate that 3.85% of the companies implement BEE by forming a joint-venture with a black company, 3.11% of responding companies implement BEE by taking in a Black partner, 1.52% companies implement it by taking in a Black women partner and 1.52% of companies do not implement BEE at all.

Table 3: Methods used by companies to implementing BEE

Method	Ranking by responding companies	Percentage of total
Joint-Venture	5	3.85
Black Partner	4	3.11
Black women partner	2	1.52
Other	2	1.52
Total	13	100

It is evident from table 4 that the 19 companies responded to the question "why do companies implement BEE?" differed. 3.3% of the companies implemented BEE to obtain contracts, 1.5% implement BEE for economic growth, 2.1% for company growth, 2.1% implement BEE to uplift previous disadvantaged people and 1.0% of responding companies did not indicate any reason.

Table 4: Reasons for implementing BEE



Source: adapted from Lloyd-Townsend, 2006: 50

The majority response in relation to upliftment of historically disadvantage individuals was that BEE is not a solution in regard with the upliftment of historically disadvantage individuals and that BEE does not effect the upliftment of historical disadvantaged people as indicated in Table 5.

Table 5: Upliftment of historically disadvantage

Company responses:	Rating					Total
	1= very little		5= very much			
	1	2	3	4	5	
Number of respondents	1	3	3	1	2	10
Percentage of total	1.0	3.0	3.0	1.0	2.0	100
Average rating	3.0					

From the results in table 6 which suggests what method of upliftment can resolve previously disadvantages, it is evident that the respondents felt that upliftment of previously disadvantaged persons can be resolved by job creation, skills development and education opportunities in the construction industry but that Joint-ventures and including a Black partner is not a solution.

Table 6: Methods of upliftment which can resolve previously disadvantages

Method	Ranking by responding companies				
	1= very low		5= very high		
	1	2	3	4	5
Job creation	5				
Skills development	5				
Education opportunities in the construction industry	5				
Black partnership	3				
Joint-Ventures	3				
None of the above	2				

It is evident from table 7 that 6.0% of responding companies indicated that the construction industry benefit from BEE and 4.0% of companies responded that companies do not benefits from BEE.

Table 7: Construction industry benefits from BEE

Ranking	Responding companies	Percentage of total
Yes	6	6.0
No	4	4.0
Total	10	100

The results in table 8 indicate that 90% of the respondents felt that there are not enough skilled persons available to fill the requirements of BEE.

Table 8: Enough black skilled persons

Ranking	Responding companies	Percentage of total
Yes	9	9.0
No	1	1.0
Total	10	100

Respondents indicate in the general comments section that the use of mentors to assist contractors is a way to ensure development for BEE. The professionals in the industry are willing to share skills and expertise with disadvantaged professionals and that the improvement of the building industry is rooted in the successful training of professionals and contractors. Skills development, education and proper internship are a solution to empowering previously disadvantaged persons.

8. RECOMMENDATIONS

Although participant responded positive towards BEE and showed willingness to share skills with previous disadvantaged people, it is evident that the majority felt that BEE is not a solution to uplift disadvantaged people and that there are not enough skilled black professionals in the construction industry to achieve the requirements of BEE.

According to the South African Department of Trade and Industry (DTI) (2005: 24) can no economy grow by excluding any part of its people, and a economy that is not growing cannot integrates all of its citizens in meaningful way. Skills shortage in the construction industry is a big problem, and because of BEE the skilled 'White' people are excluded. Black economic empowerment is therefore a political implementation. There is a danger, recognized by the government, that BEE will simply replace the old white elite with a new black one, leaving fundamental inequalities intact (Alexander, 2005: Online).

8.1 Recommendations to better BEE

The following recommendations to better BEE are important:

- South Africa needs more entrepreneurs not a replacement of white entrepreneurs with black ones.
- The Act should not favor a miniscule section of the population. The new urban-rich black elite seem to be getting richer at the exclusion of the overwhelming majority.
- The Government should focus on the education of upcoming young people, rather than forcing unskilled people into positions they are not capable of performing. People should be trained, and empowerment must focus on empowerment through knowledge.
- Fronting needs to be controlled and eliminated - the option of a Joint Venture should rather be considered.
- The Government should set a time limit for the implementation of BEE. BEE is for previously disadvantaged people, but in today's economy, it is not only black people that are disadvantaged. The young upcoming people of today, was not part of the *Apartheid* era.

9. CONCLUSION

This research project confirms that affirmative action and black economic empowerment is only implemented for political reasons and to make it successful it needs to be reconsidered. It must be implemented in a way to rather acknowledge the skills of a person and not on the color of a person's skin. A strategy to include all the races in South Africa should be implemented to ensure substantial growth in South Africa's economy. It is necessary that the construction industry implement a strategy to uplift skills and development of people. There is a huge demand in professionals in the construction industry and to supply to this demand, an approach to introduce, train and involve young upcoming people in the industry must be considered.

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