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The costs of B-BBEE COMPLIANCE

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"There are no solutions in economics, only trade-offs." – Thomas Sowell

THE COSTS OF B-BBEE COMPLIANCE

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Executive Summary

Broad-Based Black Economic Empowerment (B-BBEE), enacted through the B-BBEE Act (No. 53 of 2003), ostensibly aims to address apartheid era economic disparities in South Africa by mandating compliance with a scorecard, evaluating five elements: ownership, management control, skills development, enterprise and supplier development (ESD), and socioeconomic development (SED).

Some other countries also have policies aimed at redress, but unlike in South Africa, these policies are generally to eliminate injustice and discrimination, and not to advance specific groups at the cost of others. Malaysia and Namibia are notable exceptions, as are university admissions policies in a few countries. In comparison to other countries, South Africa's racially motivated policies are by far the most intrusive.

This study estimates annual compliance costs with B-BBEE at R145–290 billion, equivalent to 2–4% of South Africa's 2024 GDP of R7,3 trillion. This is based on 2019 compliance scores from the B-BBEE Commission's 2020 report, supplemented by Statistics South Africa, Johannesburg Stock Exchange (JSE) data, and industry reports. Ownership and ESD each contribute to R40–85 billion, skills development to R40–60 billion, management control to R20–50 billion, and SED to R5–10 billion, with non-reporting entities (58% of JSE-listed firms and many SMEs) included via extrapolation assuming lower compliance rates (30–40% for SMEs).

These costs, particularly in high-intensity sectors like mining and finance, have imposed a substantial economic burden, potentially reducing GDP growth by 1,5–3% annually and contributing to 96 000–192 000 fewer jobs per year, as analysed through Okun's law and South Africa's low employment elasticity (0,3–0,5).

While B-BBEE may have contributed to an increase in black ownership and supported some skills and SME development, these gains are overshadowed by elite capture, limited grassroots impact and persistent inequality, as evidenced by a 2020 Gini coefficient of 0,62.

The policy's economic distortions, including reduced investment and capital flight, suggest significant harm with little evidence of proportionate progress towards its transformative objectives. This should raise serious questions about its efficacy and sustainability going forward.

The result of the loss in GDP growth that is caused by these racially motivated policies is, among others, the loss of 3,8 million jobs and South Africa's falling far behind other economies that used to be comparable to our economy. This results in a reduced quality of life for the overall majority of the population to the benefit of a small politically connected elite.

Section I: Historical overview

Introduction

Broad-Based Black Economic Empowerment (B-BBEE) was introduced in South Africa as a cornerstone of the government's economic transformation agenda, ostensibly aimed at addressing the deep-rooted economic inequalities created by apartheid. While B-BBEE policies may have contributed to increased black ownership, employment and skills development, they have also imposed significant financial burdens on businesses, particularly those listed on the Johannesburg Stock Exchange (JSE). This analysis critically examines these costs in relation to their economic impact, drawing connections between different waves of B-BBEE policies and macroeconomic outcomes.

South Africa's B-BBEE policies, implemented since 1994, are said to redress the economic inequalities perpetuated by apartheid by promoting equitable participation of "black" South Africans (statutorily including African, Coloured, and Indian citizens) in the economy. These policies have evolved through four distinct phases, each shaped by the socioeconomic context and macroeconomic performance of the time.

This report begins by critically examining the evolution of B-BBEE, its objectives and its challenges, while integrating key macroeconomic indicators – GDP growth, unemployment and inflation – for each period (1994–2000; 2000–2007; 2007–2013; and 2013–present). It then proceeds to a more formal economic and financial analysis of the costs associated with the said policies and attempts to evaluate such costs in light of the putative benefits they have brought. It is important to note, even at this early juncture, that the focus of this paper is solely on the direct "costs of compliance" at current levels and it does not attempt to quantify the indirect costs associated with the loss of potential investment which would constitute an undetermined but near certain and likely significant counterfactual opportunity cost.

The analysis draws on scholarly sources, policy documents and empirical data to evaluate B-BBEE's contributions and shortcomings, particularly in the context of South Africa's economic performance. While B-BBEE has advanced economic participation from black citizens in South Africa, issues such as elite capture, limited grassroots impact and economic constraints highlight the need for reform to achieve true economic "transformation".

It should be noted at the outset that whilst much of the content of this paper is centred on developing a plausible means by which to quantify the impact of B-BBEE policies in South Africa, such attempts at quantification of economic phenomena can (and often do) obfuscate matters more than they serve to elucidate the underlying principles at play.

In this respect, and here I also refer to economic epistemology more broadly, I often find myself harkening back to a statement by the 20th century British philosopher Bertrand Russell, who once argued that there are two kinds of logic: deductive and bad.

Consequently, almost all foundational economic truths have been arrived at through logical deduction: the law of supply and demand, the notions of marginal utility, opportunity costs, trade-offs, price theory and numerous other economic truisms all derive from clear and distinct economic reasoning and not from empirical measurement.

Similarly, just as we can deduce that a transaction in which both parties are free to conduct business without external interference will leave both parties better off than they had been prior to the exchange (value, after all, we know to be subjective in economic terms), so too, does one know that whenever a third party seeks to impose its own will on either or both of the parties it will lead to a loss of utility for one or both of the initial actors.

Politics, unlike economics, often involves weighing and sometimes even constructing zero-sum games in which the gains accumulated by one are attributable to the losses incurred by another. B-BBEE and exclusionary or redistributionist policies generally create such a false binary that forces citizens to contend with the socioeconomic fallout that accompanies the artificial dichotomy.

However, just as many of the self-evidently true axioms listed above have had to rely on consistent empirical affirmation to retain political and practical sway, this paper attempts to reaffirm the logical necessity of the previously stated principle by providing an empirical grounding for the distortionary impact of near-ubiquitous market interference by a government imposing its own ideals on an economy which has been buckling under the enormous weight of such yokes.

Evolution of B-BBEE policies and macroeconomic context

First wave: Early BEE (1994–2000)

Macroeconomic context:
During the 1990s, South Africa's economy transitioned from apartheid era sanctions to global integration. Real GDP growth averaged 2,7% annually, reflecting modest recovery but falling short of the 6% target set by the Growth, Employment and Redistribution (GEAR) Strategy introduced in 1996 (SARB, 2001). Unemployment rose sharply from 15,6% in 1995 to around 23% by 2000, driven by structural shifts and limited job creation (Stats SA, 2000). Inflation, initially high, was brought under control, averaging 7,8% as the South African Reserve Bank (SARB) stabilised monetary policy (SARB, 2001).

Policy developments:
Early Black Economic Empowerment (BEE) initiatives focused on transferring ownership stakes in white-owned firms to black investors through voluntary, private sector deals, such as stakes in Anglo American and Sanlam (Southall, 2007). These transactions, often financed by high-leverage loans, benefited a small, politically connected black elite, including figures like Cyril Ramaphosa (Tangri & Southall, 2008). The lack of a legislative framework and focus on ownership alone, many would argue, limited broader inclusion, with minimal skills transfer or operational involvement (Southall, 2007).

Policy changes and economic outcomes:
BEE's early focus on voluntary ownership transfers, without a legislative framework, led to significant but narrow economic outcomes. High-profile deals increased black ownership in major firms, with black investors holding stakes in companies like Anglo American, contributing to a marginal rise in black wealth (Southall, 2007). However, the reliance on leveraged financing, coupled with high inflation (7,8% average), resulted in financial distress for many black investors, limiting the sustainability of these gains (Tangri & Southall, 2008). The policy's elite focus failed to address rising unemployment (15,6% to 23%), as it did not prioritise job creation or skills

development. Modest GDP growth (2,7%) also constrained broader economic inclusion (Stats SA, 2000; SARB, 2001).

Critique:
In a context of rising unemployment and modest GDP growth, the elite focus of early BEE failed to address widespread economic exclusion. High debt burdens on black investors, exacerbated by inflation pressures, undermined sustainability, highlighting the need for a more structured approach (Tangri & Southall, 2008). The initial phase of BEE focused on ownership transfers and equity participation. This period was marked by high-profile transactions such as Johnnic (1996) and M-Cell (1998), which created significant black wealth but primarily benefited a small, politically connected elite (Southall, 2007).

Second wave: Formalisation of BEE (2000–2007)

Macroeconomic context:
The early 2000s saw improved economic performance, with real GDP growth averaging 3,8% annually, peaking at 5,6% in 2006, driven by global commodity demand and domestic consumption (SARB, 2009). Unemployment declined from 30,3% in 2001 to a low of 22,7% by 2007, reflecting job creation of 1,8 million jobs, though the labour force grew faster (Bhorat & Oosthuizen, 2006). Inflation averaged 5,4%, likely stabilised by the SARB's adoption of inflation targeting in 2000 (SARB, 2009).

Policy developments:
The BEE Commission's 2001 report advocated a multi-dimensional approach, leading to the B-BBEE Act of 2003, which introduced a scorecard, measuring compliance across ownership, management, skills development and other pillars (BEE Commission, 2001; Republic of South Africa, 2003). Sector charters (e.g., mining, finance), tailored BEE targets and the 2007 Codes of Good Practice standardised compliance (Department of Trade and Industry, 2007).

Policy changes and economic outcomes:
The introduction of the 2003 B-BBEE Act and the 2007 Codes of Good Practice marked a shift to a multi-dimensional approach, ostensibly attempting to broaden economic outcomes significantly. The scorecard system promised to incentivise firms to increase black management and ownership, leading to a notable rise in black senior managers (from 10% in 2000 to 15% by 2007) and black-owned firms in sectors like mining and finance (Department of Labour, 2007; Ponte et al., 2007).

Robust GDP growth (3,8% average) and declining unemployment (30,3% to 22,7%) facilitated these gains, as economic expansion created opportunities for black professionals and businesses (SARB, 2009; Bhorat & Oosthuizen, 2006). Sector charters are thought to have driven industry-specific transformation, with mining firms reporting increased black procurement spending (Ponte et al., 2007). However, benefits remained concentrated among elites, and compliance costs burdened SMEs, limiting grassroots impact (Mebratie & Bedi, 2013). Stable inflation (5,4%) supported business planning, but did not translate into widespread poverty reduction.

Critique:
While B-BBEE increased black representation in management and ownership, benefits remained concentrated among elites, with limited trickle-down effects (Ponte et al., 2007). The robust GDP growth and declining unemployment provided a favourable environment, but the policy's complexity burdened smaller firms, and its elite bias failed to fully leverage economic gains for broader empowerment (Mebratie & Bedi, 2013).

Third wave: Broad-Based Empowerment (2007–2013)

Macroeconomic context:
Economic growth slowed, with real GDP growth averaging 2,2% annually, impacted by the 2008 global financial crisis, which led to a -1,5% contraction in 2009 (SARB, 2009). Unemployment rose from 22,7% in 2007 to 29% by 2009, with employment growth stagnating post-recession (Stats SA, 2009). Inflation averaged 6,8%, peaking at 11,5% in 2008 due to global commodity price spikes, before moderating later in the period (SARB, 2009).

Policy developments:
This wave sought to emphasise broad-based empowerment by prioritising enterprise and supplier development to support black-owned SMEs and community upliftment (Department of Trade and Industry, 2007). The B-BBEE Advisory Council, established in 2011, enhanced oversight and stricter verification aimed to curb the growing phenomenon of "fronting" (Republic of South Africa, 2011).

Policy changes and economic outcomes:
The emphasis on enterprise and supplier development, coupled with the 2011 B-BBEE Advisory Council, aimed to broaden economic participation, with mixed outcomes. Policy changes encouraged large firms to procure from black-owned SMEs, which plausibly contributed to the creation of over 10 000 black-owned enterprises by 2013. This outcome was particularly pronounced in construction and retail (B-BBEE Commission, 2016). However, the 2008 financial crisis and sluggish GDP growth (2,2% average) constrained these gains, with the 2009 contraction (-1,5%) reducing corporate investment in B-BBEE initiatives (SARB, 2009). Rising unemployment (22,7% to 29%), limited job creation through SMEs, and high inflation (6,8% average) increased operational costs, particularly for small businesses (Stats SA, 2009). Efforts to curb fronting improved compliance in some sectors, but persistent enforcement gaps allowed superficial practices to continue, diluting economic impact (Mebratie & Bedi, 2013).

However, verification costs increased significantly, with large firms spending substantial amounts annually to meet compliance requirements (B-BBEE Commission, 2022). In fact, skills development requirements added an estimated cost of R10 billion annually across JSE-listed companies, supporting training for black employees (Department of Trade, Industry and Competition, 2019). Finally, supplier development costs reached R5–8 billion annually, significantly increasing operational expenses in sectors such as construction and retail (Krige & Venter, 2022).

Critique:
The focus on SMEs was promising, but high unemployment and economic slowdown limited its impact. Fronting persisted due to inconsistent enforcement, and administrative burdens affected smaller firms disproportionately, undermining entrepreneurship goals (Mebratie & Bedi, 2013). The economic downturn exposed B-BBEE's reliance on favourable macroeconomic conditions and highlighted the need for resilience and flexibility in policy design (Ponte et al., 2007).

While this phase succeeded in expanding the scope of empowerment superficially, it imposed substantial financial burdens on businesses without delivering commensurate macroeconomic benefits. Furthermore, the increased compliance costs likely contributed to lower overall investment and growth.

Fourth wave: Strengthened compliance, higher costs (2013–present)

The 2013 amendments to the B-BBEE Codes introduced priority elements, including ownership, skills development and enterprise development, with each carrying severe tangible penalties for non-compliance for the first time.

Macroeconomic context:
Economic performance weakened significantly, with real GDP growth averaging 0,9% annually from 2013 to 2024, constrained by electricity shortages, infrastructure bottlenecks and the 2020 COVID-19 lockdown contraction of -6,3% (World Bank, 2024). Unemployment climbed to 31,9% by Q4 2024, with youth unemployment at 59,6%, reflecting structural labour market issues (World Bank, 2024). Inflation averaged 5,1%, with recent declines to 2,8% in October 2024 due to a stronger rand and lower fuel prices (SARB, 2024).

Policy developments:
The 2013 Amended Codes prioritised ownership, skills development and enterprise/supplier development and, most significantly, initiated the process of introducing minimum compliance thresholds (Department of Trade and Industry, 2013). The B-BBEE Commission, established in 2016, sought to tackle what it had identified as

fronting and non-compliance, while recent policies targeted youth, women and rural communities more narrowly (B-BBEE Commission, 2016, 2020).

Policy changes and economic outcomes:
The 2013 Amended Codes and the 2016 B-BBEE Commission, as well as the looming threat of penalisation, strengthened compliance, leading to measurable but limited economic outcomes. Stricter ownership and skills development requirements increased black equity in listed companies initially before again reverting in the aftermath of the pandemic lockdowns and expanded training programmes, with over 100 000 black youth trained in technical skills by 2020 (B-BBEE Commission, 2020).

However, low GDP growth (0,9% average) and high unemployment (31,9% by 2024) constrained job creation, with youth unemployment at 59,6%, limiting the policy's impact on inclusive growth (World Bank, 2024). The focus on youth and women increased female black board representation to 20% by 2020, but rural communities saw minimal benefits (B-BBEE Commission, 2020). Stable inflation (5,1% average, falling to 2,8% in 2024) supported compliance planning, but compliance costs continued to burden SMEs, meaningfully reducing their competitiveness (SARB, 2024; Mebratie & Bedi, 2013). The Commission's enforcement reduced fronting cases by 30% from 2016 to 2020, but elite capture persisted, with high-profile deals dominating headlines (B-BBEE Commission, 2020).

B-BBEE compliance costs represent a significant share of operating expenses for JSE-listed firms, particularly in mining and finance (Krige & Venter, 2022). Such high compliance costs have contributed to capital flight and reduced foreign direct investment (FDI), with the JSE under-performing relative to global peers over the past decade.

Critique:
Stricter enforcement improved compliance, but low GDP growth and high unemployment constrained any conceivable impact on poverty and inequality. Compliance costs continued to burden SMEs, and elite capture persisted, with high-profile deals overshadowing grassroots efforts (B-BBEE Commission, 2020). Despite policy interventions, black ownership on the JSE remains limited, with compliance challenges persisting (B-BBEE Commission, 2022).

The intensified focus on ownership and skills development, while presumably well-intentioned, has placed significant financial pressure on businesses without yielding the desired macroeconomic outcomes. The continued high unemployment and inequality levels suggest that the policy's costs may outweigh its benefits. The following section will attempt to concisely summarise the objectives, highlight challenges and evaluate the performance of B-BBEE policies in achieving their goals.

Critical analysis of B-BBEE policies

Objectives of B-BBEE policies

B-BBEE is said to seek to transform South Africa's economy through the following objectives:

1. Redressing historical inequalities: Addressing apartheid era exclusion from education, employment and assets (Republic of South Africa, 2003);
2. Promoting ownership and control: Increasing black representation in business ownership and executive roles (BEE Commission, 2001);
3. Enhancing skills development: Building a skilled black workforce to overcome educational disparities (Department of Trade and Industry, 2007);
4. Fostering entrepreneurship: Supporting black-owned SMEs through procurement and enterprise development (Department of Trade and Industry, 2013);
5. Encouraging inclusive growth: Reducing income inequality and poverty, particularly for marginalised groups (B-BBEE Commission, 2020);
6. Driving sustainable transformation: Ensuring meaningful empowerment through partnerships (Republic of South Africa, 2003);
7. Strengthening competitiveness: Aligning empowerment with national development to enhance global standing (Department of Trade and Industry, 2013).

These objectives are ambitious, and their success depends not only on macroeconomic conditions and effective implementation, but also relies on the notion that they themselves are not undermining these objectives by distorting the market and generating massive inefficiencies which hamper overall economic growth and performance.

Achievements

One could justifiably argue that B-BBEE has made some strides. Black ownership in listed companies increased significantly by 2020, and black senior management representation grew steadily from 2000 to 2020 (B-BBEE Commission, 2020; Department of Labour, 2020). Skills development programmes have expanded training access, particularly in mining and finance, while enterprise development has supported thousands of black-owned SMEs (B-BBEE Commission, 2020). One should, however, be careful not to assume that black advancement has come only or primarily as a result of policy interventions, as this would unduly negate the agency and ability of black South Africans to advance themselves at their own initiative. Additionally, these gains were most pronounced during the high-growth period of 2000–2007 when declining unemployment facilitated broader participation. It is, therefore, still open to debate whether the above outcomes were achieved thanks to the policies or despite their adoption.

Challenges and critiques

B-BBEE faces significant challenges, exacerbated by macroeconomic constraints which, it is argued, these policies undermine rather than promote black empowerment:

1. Elite capture: High-profile deals have enriched a politically connected black elite, undermining public trust and equitable distribution of benefits (Tangri & Southall, 2008). This was evident across all periods but particularly stark during low-growth phases (2013–present).
2. Limited grassroots impact: With unemployment rising from 15,6% in 1995 to 31,9% in 2024, and poverty at 63% in 2023, B-BBEE has failed to significantly reduce systemic inequality, especially in rural and informal economies (Stats SA, 2020; World Bank, 2024).
3. Compliance burdens: The complexity and cost of compliance, evident since the 2003 Act, affects SMEs disproportionately, contradicting entrepreneurship goals and dynamism, particularly during low-growth periods (Mebratie & Bedi, 2013).
4. Economic trade-offs: Critics argue B-BBEE deters foreign investment due to regulatory demands. Investor concerns about complexity persist, especially post-2013.
5. Macroeconomic constraints: Low GDP growth (0,9% average, 2013–2024) and high unemployment have limited B-BBEE's ability to achieve inclusive growth, with economic stagnation amplifying structural inequalities (World Bank, 2024).

The following section briefly outlines the current trends in one of the key pillars of BEE policy, namely, the establishment of a black middle class and the amelioration of inequality in South Africa.

The black middle class and inequality

B-BBEE operates in a challenging economic environment, with structural issues such as electricity shortages and labour market rigidities constraining growth (World Bank, 2024). The policy's iterative adaptations, such as the B-BBEE Commission and focus on the youth, demonstrate a degree of responsiveness. However, its effectiveness is hindered by macroeconomic volatility – high growth in 2000–2007 enabled progress, while post-2013 stagnation exposed limitations. Addressing elite capture, enforcement gaps and grassroots exclusion is critical to aligning B-BBEE with its objectives.

Since 1994, the black middle class in South Africa has expanded from under 1,7 million in 2004 to an estimated 4–6 million by the early 2020s, propelled by democratic reforms and increased access to education and employment. However, this growth masks persistent inequality – intergroup gaps with whites have narrowed modestly, whereas intragroup disparities within the black population have widened significantly.

This could be explained by government policies, notably BEE, largely favouring a politically connected elite over broad-based upliftment, with economic stagnation and mismanagement further undermining progress.

The black middle class's post-1994 rise is notable. Intergroup income gaps have narrowed, and the reduction in the pre-1994 restrictions has significantly reshaped society. Yet, government actions – marked by cronyism, inefficiency and overreliance on state control – have fuelled intra-black inequality and stalled broader progress. The enduring intergroup wealth disparities can be far better attributed to an ineffective overreliance on redistribution, as opposed to a discriminatory market failure. Three decades of ANC rule have built a fragile middle class, not a “transformative” one.

Intergroup income inequality has declined since 1994, with the white-to-black income ratio dropping from 10:1 in 1993 to 5:1 by 2018, as per World Bank data. The income Gini across racial groups fell from 0,67 to 0,62 by 2020, but government land reform and wealth redistribution efforts have been sluggish and bureaucratic, yielding minimal, though often negative, impact. There are, however, numerous potential confounding variables which should be taken into account when doing rough comparisons of average income between population groups. Factors such as age, education and geography likely play a significant (but not dispositive) role in determining the outcome of overall inequality between population groups:

Age: Controlling for age likely reduces the income gap moderately, as younger black South Africans (median age 28) are less established than older whites (median age 38+).

Education: Adjusting for education explains more, given whites' 2-to-3-year schooling advantage and higher tertiary attainment (70% vs 25% for black youth).

Geographic distribution: Black South Africans are more rural (35% vs 5% for whites), where jobs and infrastructure are scarce, while white people cluster in urban economic hubs such as Gauteng and the Western Cape.

Consequently, whilst it is true that the abovementioned factors certainly do not account for all of the inequality observed between population groups, they also cannot be ignored as significant drivers in addition to residual inequality derived from the legacy of apartheid. The data surrounding intragroup inequality, however, is potentially cause for growing concern, particularly within the black population.

Within the black population, inequality has soared, with the Gini coefficient rising from 0,54 in 1994 to 0,62 by 2018, outpacing the white Gini coefficient (0,45). The top 10% of black earners now claim 55% of black income (up from 40%), while the share of the bottom 50% shrank to 10%.

Since 1994, South Africa has seen a modest decline in inequality between population groups, as racial barriers softened and a black elite emerged, yet the majority of black South Africans and other historically disadvantaged groups remain mired in poverty and exclusion. Meanwhile, inequality within groups has surged, driven by unequal access to jobs, education and wealth accumulation. The result is a dual economy where overall inequality has either stayed flat or worsened, with intragroup disparities now the dominant force. This suggests that while the racial lens of inequality has blurred slightly, class-based divides within each race have sharpened, perpetuating South Africa's status as a global outlier in economic disparity. Structural reforms – beyond redistributive policies – would be needed to shift these entrenched patterns.

Conclusion

It could be argued that since 1994, B-BBEE has evolved from elite-driven ownership transfers to a comprehensive framework for economic transformation, shaped by South Africa's macroeconomic trajectory. The four waves – early BEE, formalisation, broad-based empowerment and strengthened compliance – reflect ostensible efforts to address apartheid's legacy amid varying economic conditions, from 2,7% GDP growth in 1994–2000 to 0,9% in 2013–2024. However, while B-BBEE may have acted to increase black economic participation, its impact is curtailed by elite capture, limited grassroots reach and economic challenges such as high unemployment (31,9% in 2024) and persistent inequality. Finally, we must also assess the countervailing impact of these policies on economic performance to determine whether, like the protagonist in Alexander Pushkin's celebrated story, *The Queen of Spades*, we are "in a position to sacrifice the necessary in the hope of gaining the superfluous". Or, could it be argued that while B-BBEE imposes significant costs, it nonetheless enhances corporate financial performance through improved stakeholder relations and market access (Zondi & Ngwakwe, 2023)?

Against the backdrop of the above historical overview of the evolution of B-BBEE in South Africa, we can now proceed with the formal analysis of the costs associated with compliance, viewed not only in financial terms but also in terms of economic output and, crucially, also considering their impact on job creation. First, however, the next section examines how redress is attempted in other countries in order to provide a comparison to South Africa.

Section II: Race and identity-based economic policies in other countries – how does South Africa compare to them?

Introduction

No other country has such far-reaching policies as we have in South Africa, although some limited comparisons can be drawn to countries such as Malaysia, Namibia, Brazil, India and the United States of America. More importantly, comparisons could be drawn to countries that did not restrict their economies along racial, ethnic and gender lines, in order to illustrate where South Africa may have been economically, had we not implemented these restrictive policies. These comparisons are drawn in the final chapter of the report.

In this section, however, the policies of some functional countries following such policies aimed at redress are discussed. Zimbabwe, for instance, could not be said to be functional and is therefore not discussed.

This section draws upon scholarly articles, papers from the World Bank and other global financial entities, news articles and comments from pressure groups. The discussion is not meant to be exhaustive, but only to provide an overview of some of the most commonly discussed examples from across the world.

Malaysia

Malaysia's New Economic Policy (NEP), introduced in 1971, is often referred to as the Bumiputera policy. It aims to advance the economic interests of native Malaysians and their descendants, often at the cost of other groups, specifically those of Indian and Chinese descent. Quotas and other privileges are reserved for Malays, even regarding ownership and shareholding of private business, as well as access to education, licences and permits, land ownership, etc. These rights and privileges are conferred in terms of Article 153 of the Malaysian Federal Constitution, which states that the protection of Malay privilege is the administrative responsibility of the King (Horii, 1991).

Although many Chinese entrepreneurs view the policy negatively, some regard it as necessary to ease interethnic tensions after much political turmoil in the late 1960s and early 1970s. Among Indians, however, fears abound that this already marginalised group is being marginalised further by the Bumiputera policy (Mason & Omar, 2003).

Economic outcomes of this policy are clear, especially viewed in terms of the distribution of wealth in Malaysia. According to research by Khalid & Yang (2019), this policy has led to income distributions and real income growth rates that favour Bumi populations disproportionately, especially at the cost of Chinese and Indian members of the middle classes. The most favoured group is the Bumi middle class. However, overall inequality has come down remarkably between 2000 and 2014. The upper classes, however, are still majority Chinese. The policy has thus produced mixed results.

Recently, this policy has been subject to criticism, as many view it as a means to enrich a select few, whilst excluding others. The Malaysian Prime Minister, Anwar Ibrahim, defended the policy, but warned people not to exploit their Malay and Bumiputera identities as a cover to enrich themselves. He said that people doing so would be prosecuted (Mahpar, 2025).

Recently, opposition to these policies has intensified, with most minority groups feeling excluded from opportunities and taking mostly grievance-based stances (Lee, 2022), and others stating that this policy, which once promoted harmony, is now causing divides (Mills & Van der Merwe, 2019).

Although the NEP seems to have been fairly successful in creating a Bumiputera middle class, it has not been successful in transforming the entire Malaysian economy, as equity ownership especially illustrates. Bumiputera ownership of equity remains similar to 1970 levels. "Between 2003 and 2020, all Malaysian prime ministers have openly or tacitly acknowledged, at one time or another during their leadership, that they are aware that preferential treatment based on ethnicity should be discarded or at least scaled back. However, all have lacked the political will to implement radical reforms," according to Gomez (2020), who also notes that: "The impact of affirmative action on enterprise development thus raises a crucial question: Has this policy merely fostered unproductive rent-seeking and suppressed a dynamic domestic entrepreneurial base that could have helped generate growth?"

Brazil

In Brazil, affirmative action policies were largely limited to quotas in the education sector. Brazil has a long history of racial divisions, being the last country in the Americas to abolish slavery in 1888. Brazil has the largest black population outside Africa, with 54% of its 209 million population being of African descent (Mileno, P. 2018). To address the inequality that stems from the legacy of slavery, quotas were instituted in 2001 for blacks in employment at certain government ministries. In 2002 and 2003, many universities adopted similar quotas. Although the quotas were challenged in court, the court found in favour of racial quotas. In 2023, racial quotas were switched to quotas referencing income levels, public school attendance and other socioeconomic factors, with some provisions remaining for descendants of communities that were founded by runaway slaves (Francis-Tan & Tannuri-Pianto, 2024).

Currently, no formal employment equity laws in Brazil require appointments made on a racial basis, although there are some drives by individual businesses to give preferential treatment to black applicants (Trindade, Montibeler & Fabiani, 2024)

India

India's 1947 constitution, as amended and accepted in 1949, expressly makes provision for affirmative action, however it is not along racial lines, but to alleviate oppression of the "Scheduled Castes". In India, affirmative action is often referred to as "compensatory discrimination" or "reservation policy" and specifically aims to address the position of those belonging to the caste of the untouchables (Varn Chandola, 1992).

Members of these castes are referred to in legislation as "Scheduled Tribes (STs) and "Scheduled Castes" (SCs), as well as "Backward Classes" (BCs) and an "Economically Weaker Section (EWS)", all of which now qualify for preferential treatment under India's reservation policy. Members of STs and SCs were historically excluded from education and employment. Positions in public employment, education and political representation are therefore reserved for members of these classes. (Pant & Chaudhuri, 2022).

United States of America

With few exceptions, affirmative action policies in the USA attempt to ban racial and gender discrimination, rather than enforcing quotas or reserving positions for members of certain classes. It started with President John F. Kennedy's Executive Order that aimed to ensure that federal contractors do not discriminate on the basis of race, colour, religion, sex or national origin. In 1965, President Lyndon B. Johnson expanded this prohibition on discrimination to all who employ more than 15 people. Subsequently, presidents Nixon and Carter expanded these programmes, requiring government contractors to conclude good-faith agreements to the effect that they would not discriminate against applicants and to make efforts to employ more females and members of minorities. Although the Reagan administration attempted to repeal some of these orders, this administration also developed the Minority Business Enterprise Development Plan.

President George W. Bush signed into law the Americans with Disabilities Act of 1990 as well as the Civil Rights Act of 1991 (American Association for Access, Equity and Diversity, 2025). These policies generally have the aim of promoting opportunities for women and minorities by prohibiting discrimination rather than enforcing quotas or setting targets for representativity.

One notable exception is in the education sector, where many colleges and universities use race as a determining factor in their admissions processes. In 2023, the US Supreme Court ruled that race could no longer be used as a factor in university and college admissions. This decision was criticised by the then President Joe Biden as well as the then Secretary of Education Miguel Cardona, who stated that the court "took away a very important tool that university leaders used to ensure diversity on campus". It was, however, welcomed by organisations such as the Asian American Coalition for Education (Debusmann, 2023).

Affirmative action in the US remains a contentious topic, as a study by the Pew Research Center (Gramlich, J., 2023) illustrates. According to this study, 79% of Americans have heard of affirmative action, 36% of whom view it as a good thing, 29% as a bad thing and 33% said they did not know. However, when asked about the specific aspects of affirmative action, the respondents were much less likely to approve of policy proposals. When asked whether colleges should consider race and ethnicity in admissions decisions, 50% of respondents disapproved, while 33% approved of taking into account the race and ethnicity of college and university applicants. In response to the question of whether employers should take applicants' race and ethnicity into account, 74% said that only qualifications should be taken into account, even if this results in less diversity, while 24% said that race and ethnicity should also be considered. When analysed along party lines, 90% of Republicans and 62% of Democrats said that employers should not consider the race and ethnicity of applicants.

Namibia

As Namibia shares much of its history with South Africa, the countries face many of the same problems. In Namibia, the labour force participation rate is a meagre 53,8%, and unemployment is 36,9% according to 2023 data (Namibia Statistics Agency, 2025). Unemployment is just one of the many similarities in the harsh economic realities South Africa and Namibia face. Similarly, both countries chose to attempt to remedy these economic ailments through similar policies. Employment equity, with a focus on affirmative action, is applied in both countries, and in Namibia broad-based black economic empowerment (B-BBEE) is called the National Equitable Economic Empowerment Framework (NEEEF), which was implemented in 2015. The Namibian economy grew at a steady rate of between 5% and 6,1% from 2010 to 2014, after which it fell to 0,3% in 2016, and Namibia saw negative growth in 2017 and 2019 (Statista, 2025).

Even before the introduction of the NEEEF, criticism was levelled against Namibia's affirmative action policies. The criticism mainly deals with the breakdown of meritocracy and the excessive strain it places on the Namibian economy, strain no economy with a broad unemployment rate of more than 50% should bear (EPRA, 2025). Similarly, research by the Danish Institute for International Studies (Melber, 2006) concluded that "Public procurement and other outsourcing activities by those in control over the state agencies turn 'affirmative action' and 'black economic empowerment' into a self-rewarding scheme based on 'struggle credibility' among the activists of the erstwhile liberation movement. However, 16 years into independence, the skewed class character of Namibia's society has not changed fundamentally. Co-optation into the ruling segments of an already existing socio-economic system is far from social transformation. Both Affirmative Action and Black Economic Empowerment continue to cultivate human and natural exploitation for the benefit of the few at the expense of too many".

How do these policies and legislation compare to South Africa's model?

Unlike most policies that aim to benefit a specific group or class in other countries across the world, South Africa's model is by far the most intrusive. It does not aim to balance out a specific injustice, as is the case in Brazil and India, or to improve peaceful relations, as in Malaysia. Rather, it aims to blindly advance the interests of black South Africans, which, together with the ANC's policy of cadre deployment, refers mainly to those connected to the ANC. Namibia follows a similar model with, at face value, disastrous economic growth outcomes.

Although often a topic of debate in the US, affirmative action in the US is very limited in its scope and where it is applied. However, it is widely viewed as an attack on meritocracy and is now being phased out. Likewise, in South Africa, this attack on meritocracy is often a major point of criticism when it comes to university admissions. This specifically applies to medical schools across South Africa which all adhere to some form of a quota system. It was reported in 2017 that the academic average threshold for medical student admissions at the Nelson R. Mandela Medical School at the University of KwaZulu-Natal (UKZN) was 90,86% for Indian students; 87,66% for white students; 83,16% for black African students; and 75,5% for coloured students (Padayachee, 2017). In 2024, it was reported that the UKZN still applies a strict quota system in terms of which 69% of spots are reserved for black students; 19% for Indian students; 9% for coloured students; and 2% for white students (Khan & Perumal, 2024). Similarly, other universities use quota systems for the admission of students, specifically for courses such as medicine.

As can be seen from the UKZN example, it is clear that merit suffers where strict race quotas apply. This is why Brazil is phasing out such quotas at most universities, and the Supreme Court of the United States has found it unconstitutional in the USA. Although merit should always be the key consideration, research by Gauld (2012) finds that affirmative action based on other metrics, such as the income and wealth levels of students' high schools, or whether they come from urban or rural backgrounds could also ensure a racially and geographically diverse student body, without referencing race in applications.

The same criticisms that are often levelled against broad-based black economic empowerment and affirmative action in South Arica are levelled against similar policies in Malaysia, and especially in Namibia. As with college admissions in Brazil and the US, the problems are that merit suffers and efficacy is sacrificed. However, when it comes to economic privileges the problems are much worse. As has been shown, broad-based black economic empowerment policies created a class of rent-seeking individuals in Malaysia, while resulting in minority groups, especially Indians, making much smaller economic gains compared to the Malaysian majority.

In 2007, Freund (2007) argued that the creation of a new black elite would be a desirable outcome of BEE policies. He compared South Africa's system to that of Malaysia and noted that such an elite would be imperative to drive economic growth. Since then, research found that BEE, later referred to as B-BBEE, had little impact on real labour market outcomes (Burger & Jafta 2010) and that it failed to redistribute wealth but rather formed a very small black capitalist class which aligns political and economic power, whilst also souring relations between big business interests in the mining sector and the state (Bowman, 2019). Similar negative impacts were also found in manufacturing, without much tangible transformation or empowerment taking place (Goga & Avenyu, 2022).

In South Africa, as in Namibia, empowerment policies have also been shown to reduce foreign investment. The World Bank (Morisset & Baez, 2025) notes that the "hard complex conditions associated with Black Economic Empowerment policies" are a direct cause of hesitancy to invest in South Africa and should be relaxed or shifted to focus on Equity Equivalence Investment

Programs". The same report states that "The burden on institutions has become excessive – not only for businesses and citizens but also for public administration. South African policymakers have attempted, often with good intentions, to correct market or historical failures by intervening through hard regulations, such as black empowerment policies, local content and collective labour bargaining and direct support programmes for specific groups, such as grants, tax rebates, and labour training. Today, these interventions have become so cumbersome that they smother the implementation capacity of the public administration, especially local officials, and creates opportunity for corruption."

Conclusion

Even when redress policies are implemented to right a specific wrong, as in the case of Brazil and India, or to appease populations and ensure peace, as in Malaysia, the government should be honest and self-reflective enough to realise when such a policy has run its course and negative outcomes start to outweigh any possible net benefits. In South Africa, the negative impact on economic growth through the cost of compliance, and the brakes it applies to technological adoption by scaring off foreign investment and creating market uncertainty, now far outweigh any benefits of redress. It has also been shown that these policies only benefit a select few, without bringing many tangible positive results for the majority of people in South Africa.

The following two sections illustrate the impact these policies have on the South African economy.

Section III: Assessing the costs of B-BBEE compliance

Introduction

Broad-Based Black Economic Empowerment has been a cornerstone of almost all policy developed by South Africa's ruling party since 1994[1] and claims to embody attempts to redress economic inequalities inherited from apartheid. It is primarily by way of the B-BBEE Act of 2003 that this scheme requires companies to comply with a scorecard system that evaluates their contributions to economic transformation across five elements: ownership, management control, skills development, enterprise and supplier development (ESD), and socioeconomic development (SED). Compliance involves financial outlays, such as equity transfers, training programmes and community investments, which can significantly impact company budgets and the broader economy. However, the exact spending figures for each category are not publicly aggregated, posing challenges for precise estimation.

This study aims to estimate the annual compliance costs for South African companies across the five B-BBEE categories, using the B-BBEE Commission's 2020 report, which provides 2019 compliance scores for large entities (revenue > R50 million) and qualifying small enterprises (QSEs). These scores serve as proxies for spending effort, supplemented by economic data from Statistics South Africa (Stats SA) and Johannes-burg Stock Exchange (JSE) reports, as well as industry-specific insights. The analysis also accounts for non-reporting entities, which constitute a significant portion of the economy, through reasonable extrapolations.

Literature review

The literature on B-BBEE compliance costs is limited, with most studies focusing on the policy's broader economic impacts rather than on detailed cost breakdowns. Sector-specific analyses provide some insights: the Minerals Council South Africa (2020) reported R325 billion in B-BBEE deals in mining by 2015, while the Financial Sector Charter Council (FSC) noted R50–100 billion in ownership transfers in finance (Financial Sector Transformation Council, 2020). These figures, however, focus on specific elements such as ownership and do not cover the full scorecard.

The B-BBEE Commission's annual *National Status and Trends on Broad-Based Black Economic Empowerment Reports* offer valuable data on compliance scores, which reflect the level of effort in each category. For instance, the 2020 report, covering 2019, shows high scores in SED (75,81%) and skills development (55,91%), suggesting significant investment, but lower scores in management control (39,05%), indicating moderate effort (B-BBEE Commission, 2020). These scores, while not direct financial metrics, provide a basis for estimating costs when combined with economic indicators such as payroll and NPAT. The lack of comprehensive, category-specific cost data in the literature underscores the need for this study's estimation approach, which leverages available compliance data and industry reports to fill this gap.

[1] *See Annexure A for an illustration of the effect of broader B-BBEE policy on competition policy in South Africa; see also Annexure B for a brief overview of general "race law" in South Africa.*

Methodology

This study employs a multi-step methodology to estimate B-BBEE compliance costs across the five categories, addressing both reporting and non-reporting entities.[2]

Data sources

The primary data source is the B-BBEE Commission's 2020 report, which provides average compliance scores for 2019 for large entities and QSEs (B-BBEE Commission, 2020). These scores indicate the percentage of targeted points achieved in each category, serving as proxies for spending effort. Economic indicators, such as a R2,5 trillion economy-wide payroll and R900 billion NPAT for 2019, are sourced from Stats SA and JSE data (Statistics South Africa, 2022). Industry reports from the Minerals Council South Africa and FSC provide additional context on sector-specific spending patterns (Minerals Council, 2020; Financial Sector Transformation Council, 2020). The analysis covers approximately 50 000 entities, including JSE-listed firms and SMEs with revenues above R10 million, which are subject to B-BBEE requirements.

Estimation approach

The estimation process involves several steps. First, compliance scores from the 2020 report are used to gauge the level of effort in each category. Higher scores suggest greater spending relative to the theoretical maximum required by the scorecard. Second, theoretical maximum costs are calculated based on scorecard requirements: for example, 6% of payroll for skills development (R150 billion for a R2,5 trillion payroll) and 3% of NPAT for ESD (R27 billion for a R900 billion NPAT). Third, actual costs are estimated by adjusting these maxima according to the compliance scores and reported spending where available (e.g., R12 billion by JSE firms on skills development in 2019). Finally, non-reporting entities, which include 58% of JSE-listed firms and many SMEs, are accounted for by assuming lower compliance rates (30–40% for SMEs, per B-BBEE Commission estimates). Large firms are estimated to contribute 50–70% of total costs, with smaller firms contributing the remainder.

Extrapolation for non-reporting entities

The 2020 report notes that only 42% of JSE-listed entities submitted compliance reports in 2019, down from 43% in 2018 (B-BBEE Commission, 2020). Non-reporting entities, particularly SMEs, are assumed to have lower compliance levels, reflected in the combined large and QSE scores (e.g. 48,88% for Ownership). The total cost range (R130–260 billion) incorporates these entities by scaling economic indicators to include their contributions, adjusted for partial compliance.

Limitations

The study faces several limitations. First, the reliance on compliance scores as proxies may not fully capture financial outlays, especially for ownership, which involves structural changes such as equity transfers. Second, the 2019 data may not reflect current economic conditions, particularly post-COVID-19 lockdown. Third, estimates for non-reporting entities rely on assumptions which may introduce inaccuracies. Despite these challenges, the methodology provides a robust framework for estimating costs in the absence of comprehensive data.

[2] *This reflects a similar approach to that of Krige & Venter (2022) whose estimates for non-reporting entities are based on compliance patterns observed in high-intensity sectors.*

Results

The 2020 B-BBEE Commission report provides average compliance scores for large entities in 2019, which form the basis for cost estimates (B-BBEE Commission, 2020). The scores are presented in Table 1, alongside combined scores for large entities and QSEs.

Table 1 : Average B-BBEE compliance scores for 2019

B-BBEE Element	Large Entities (%)	QSEs (%)	Combined Large & QSEs (%)
Ownership	56,80	35,55	48,88
Management Control	39,05	37,70	38,54
Skills Development	55,91	37,24	48,81
Enterprise & Supplier Dev.	53,33	47,72	51,20
Socio-Economic Development	75,81	55,47	68,07

These scores indicate varying levels of effort, with SED showing the highest compliance (75,81%) and management control the lowest (39,05%) among large entities. The following sections detail the estimated costs for each category, incorporating both reporting and non-reporting entities.

Ownership

Ownership requires companies to achieve 25%+1 black ownership through equity transfers or equivalent programmes. With a compliance score of 56,80% for large entities, significant effort is evident. Historical B-BBEE deals from 1994 to 2015 totalled R500–950 billion (inflation-adjusted), with annual deals post-2003 averaging R20–50 billion, such as Sasol's R21 billion Inzalo scheme. JSE firms achieved 30% black ownership by 2020, implying R1–2 trillion in equity shifted since 1994, amortised at R30–60 billion annually for large firms. Including smaller firms, which contribute smaller deals, total ownership costs are estimated at R40–85 billion, representing approximately 27,5% of total B-BBEE spending. This estimate aligns with the moderate score increase from 48,88% (combined) in earlier years.

Management control

Management control mandates 50–60% black representation in executive and senior management roles, with a compliance score of 39,05% for large entities. Costs include recruitment fees (10–20% of salary), salary premiums (20–30% for scarce talent) and training. Black management rose from 10% in 1994 to 40% in JSE-listed firms by 2020, reflecting moderate investment. Industry reports suggest 1–2% of payroll is spent on diversity programmes, equating to R5–10 billion for JSE firms (R500 billion payroll) and R10–20 billion for QSEs and others. Total management control costs are estimated at R20–50 billion, or about 14% of total B-BBEE spending, consistent with the low compliance score.

Skills development

Skills development requires spending 6% of leviable payroll on training black employees, interns, or unemployed individuals, with a compliance score of 55,91% for large entities. The economy-wide payroll is R2,5 trillion, thus the theoretical maximum is R150 billion, but compliance is approximately 30–50%. JSE firms spent R12 billion in 2019, suggesting R10–20 billion for large firms. QSEs and others, with a lower score of 37,24%, contribute R20–40 billion. Total skills development costs are estimated at R40–60 billion, or about 27,5% of total B-BBEE spending, reflecting the significant effort indicated by the 55,91% score.

Enterprise and supplier development (ESD)

ESD mandates spending 3% of NPAT (1% enterprise, 2% supplier) on black-owned SMEs, plus 80% procurement from black suppliers, with a compliance score of 53,33% for large entities. JSE firms (NPAT R900 billion) face a theoretical maximum of R27 billion, but actual spend was R11,5 billion in 2021. Procurement premiums (5–15%) add R30–60 billion, based on R2 trillion private sector procurement. QSEs and others contribute R10–20 billion, given lower compliance (47,72% for QSEs). Total ESD costs are estimated at R40–85 billion, or approximately 27,5% of total B-BBEE spending, aligning with the 53,33% score.

Socio-economic development (SED)

SED requires spending 1% of NPAT on black community projects, with a high compliance score of 75,81% for large entities. The theoretical maximum is R9 billion (1% of R900 billion NPAT), but actual spend was R3,2 billion in 2021. Large firms contribute R3–5 billion, while QSEs and others add R2–5 billion, reflecting lower compliance (55,47% for QSEs). Total SED costs are estimated at R5–10 billion, or about 3,5% of total B-BBEE spending, supported by the high 75,81% score.

Total compliance costs

Summing the estimates across all categories, the total annual B-BBEE compliance cost for South African companies is estimated at R145–290 billion. This range accounts for both reporting and non-reporting entities, with large firms contributing 50–70% (R80–150 billion) and smaller firms the remainder. The distribution of costs is shown in Table 2.

Table 2: Estimated annual B-BBEE compliance costs (2019)

B-BBEE Element	Estimated Cost (R billion)	Percentage of Total Spend
Ownership	40–85	~30%
Management Control	20–50	~10%
Skills Development	40–60	~25%
Enterprise & Supplier Dev.	40–85	~30%
Socio-Economic Development	5–10	~5%
Total	145–290	100%

Sectoral variations

Compliance costs vary significantly by sector, reflecting differences in B-BBEE intensity. High-intensity sectors such as mining and finance allocate 50–60% of their B-BBEE spending to ownership and ESD, with mining spending R10–50 billion and finance R5–20 billion annually (Minerals Council, 2020; Financial Sector Transformation Council, 2020). Moderate-intensity sectors, such as manufacturing and construction, focus 60–70% on skills development and ESD, with manufacturing spending R10–30 billion and construction R5–15 billion. Low-intensity sectors, such as information and communication technology (ICT) and tourism, prioritise skills development and SED (50–60%), with ICT spending R2–5 billion and tourism R1–3 billion. These variations reflect sector-specific regulatory pressures and economic roles.

Discussion

The estimated compliance costs of R145–290 billion annually highlight the substantial financial commitment required for B-BBEE compliance, representing 2–4% of South Africa's R7,3 trillion GDP in 2024. Ownership and ESD account for the largest shares, driven by equity transfers and procurement premiums, which can strain company budgets and affect profitability. The high compliance scores in SED (75,81%) and skills development (55,91%) suggest significant investment in community development and human capital, which may yield long-term economic benefits through enhanced workforce skills and social stability. However, the lower score in management control (39,05%) indicates moderate effort, possibly due to challenges in recruiting and retaining black talent.

The findings have important implications for policy and business. For policymakers, understanding the scale of compliance costs can inform debates about balancing transformation goals with economic efficiency. Critics argue that B-BBEE imposes high costs, potentially deterring investment and contributing to economic stagnation (World Bank, 2021). Supporters, however, emphasise B-BBEE's role in reducing inequality and fostering inclusivity, as evidenced by the rise in black ownership. For businesses, these estimates provide a benchmark for budgeting and strategic planning, particularly in high-intensity sectors such as mining and finance.
The methodology used in this report, while robust, has limitations. The reliance on compliance scores as proxies may not fully capture financial outlays, especially for ownership, which involves structural changes such as equity transfers. The 2019 data may not reflect current economic conditions, particularly post-COVID-19 lockdown, which likely affected compliance budgets. Estimates for non-reporting entities rely on assumptions about compliance rates, which may introduce inaccuracies. Additionally, indirect costs, such as lost productivity or investment, are not included but could amplify the economic impact, as noted in prior studies.

Despite these limitations, the study fills a critical gap in the literature by providing a comprehensive estimate of B-BBEE compliance costs. It underscores the need for more transparent reporting and detailed cost analyses to better understand the policy's economic implications. Future research could explore firm-level data or incorporate more recent B-BBEE Commission reports, such as the 2021 report, which noted a decline in compliance submissions (B-BBEE Commission, 2022).

The analysis suggests that B-BBEE has imposed significant financial burdens on businesses without delivering proportionate macroeconomic benefits. Despite decades of policy intervention, black ownership and employment equity remain limited, while overall economic growth has slowed. Policymakers should consider more targeted, cost-effective approaches to economic inclusion to avoid further eroding business competitiveness and investment attractiveness.

Financial model of compliance costs and economic impact

To quantify the financial burden more clearly, consider the following simplified financial model for a typical JSE-listed company which is included for illustrative purposes:

Table 3: Simplified financial model for typical JSE-listed company

Financial Metric	Without B -BBEE Costs	With B -BBEE Costs	Impact
Revenue	R10 billion	R10 billion	-
Gross Profit Margin	30%	30%	-
Gross Profit	R3 billion	R3 billion	-
Operating Expenses	R1,5 billion	R1,65 billion	+R150 million (10% increase)
EBITDA	R1,5 billion	R1,35 billion	-R150 million (-10%)
Net Profit Margin	10%	8,5%	-1,5%
Net Profit	R1 billion	R850 million	-R150 million (-15%)
Market Cap (P/E 15)	R15 billion	R12,75 billion	-R2,25 billion (-15%)

Impact on GDP growth and job creation:
A lens through Okun's law and South Africa's employment elasticity

The financial burden of B-BBEE compliance represents a significant economic commitment with implications for South Africa's GDP growth and employment dynamics. To contextualise these costs, this section examines their impact through the framework of Okun's law, which posits a relationship between GDP growth and unemployment changes, and South Africa's GDP growth to employment creation ratio, which reflects the economy's ability to translate growth into jobs. By expressing compliance costs as a share of GDP and analysing their effect on growth and job creation, this analysis underscores the trade-offs between B-BBEE's transformation goals and its economic costs.

Okun's law suggests that a 1% increase in unemployment is associated with a 2–3% shortfall in GDP growth relative to potential output (Okun, 1962). In South Africa, this relationship is less straightforward due to structural constraints, such as high unemployment (34% in 2024, per Statistics South Africa, 2022) and low labour market flexibility. Estimates for South Africa suggest an Okun's coefficient of approximately 0,5–1, meaning a 1% rise in unemployment corresponds to a 0,5–1% reduction in GDP growth (Fedderke & Mariotti, 2002). The B-BBEE compliance costs, equivalent to 2–4% of South Africa's R7,3 trillion GDP in 2024, could thus exert a measurable drag on economic growth, potentially exacerbating unemployment challenges.

The compliance costs, primarily driven by ownership (R40–80 billion) and enterprise and supplier development (R40–80 billion), divert resources from productive investments such as capital expenditure or research and development, which could otherwise enhance economic output. For instance, if half of the R145–290 billion is absorbed as reduced profits or passed on as higher prices, the remainder (R72–145 billion) represents foregone investment. Over the period from 2003 to 2024, with South Africa's average GDP growth at 1,5% (Statistics South Africa, 2022), a sustained 1,5–3% growth reduction due to compliance costs could accumulate to a R1,8 trillion–R3,6 trillion shortfall in GDP, aligning with earlier estimates of B-BBEE's economic impact (World Bank, 2021).

However, B-BBEE's skills development (R40–60 billion) and socioeconomic development (R5–10 billion) components could mitigate some of this drag by enhancing human capital and stimulating demand. Skills spending, for example, has supported 500 000 learners since 2003, with 10–20% securing employment, potentially adding 50 000–100 000 jobs annually (Department of Trade, Industry and Competition, 2019). This could boost GDP by 0,1–0,3% through increased productivity and consumption, partially offsetting the compliance cost burden. Nevertheless, the net effect on GDP growth is negative, with estimates suggesting a 1,5–3% annual reduction, consistent with prior analyses of B-BBEE's economic distortions.

South Africa's GDP growth to employment creation ratio, or employment elasticity, further complicates the picture. This ratio measures the percentage increase in employment for a 1% increase in GDP. In South Africa, employment elasticity has been low, averaging 0,3–0,5 from 1994 to 2024, meaning a 1% GDP growth typically yields only a 0,3–0,5% rise in employment (Bhorat & Tian, 2018). This reflects structural issues, such as a capital-intensive economy and skills mismatches, which B-BBEE aims to address but may exacerbate in the short term. If B-BBEE compliance reduces GDP growth by 1,5–3%, applying an elasticity of 0,4 suggests a 0,6–1,2% reduction in employment growth. This translates to 96 000–192 000 fewer jobs annually, given a labour force of 16 million employed persons in the current economy (Statistics South Africa, 2022).

Conversely, B-BBEE's job creation potential, particularly through ESD and skills development, could offset some losses. The R11,5 billion spent on ESD in 2021 supported black-owned SMEs, potentially sustaining 50 000–100 000 jobs (B-BBEE Commission, 2022). If these gains are sustained, they could reduce unemployment by 0,3–0,6%, or 48 000–96 000 jobs, partially counteracting the negative impact. However, the net effect on employment is likely negative, which aligns with earlier findings that B-BBEE's costs probably outweigh immediate job creation benefits.

The interplay of Okun's law and South Africa's low employment elasticity underscores the challenges of B-BBEE's economic costs. The policy's compliance burden, while advancing transformation, constrains GDP growth, which, given the economy's limited job creation capacity, translates to modest employment losses. These losses are tempered by B-BBEE's investments in skills and black entrepreneurship, but the overall impact highlights a critical trade-off.

Conclusion

Broad-Based Black Economic Empowerment has evolved since 1994 from elite-focused ownership transfers to a complex framework ostensibly intended to redress apartheid's economic legacy. While B-BBEE has facilitated some black ownership and skills training, these achievements are marred by elite capture, enforcement gaps and negligible impact on systemic inequality, with intra-black disparities worsening (Gini 0,62 by 2018).

This study estimates annual compliance costs at R145–290 billion, with ownership and enterprise and supplier development each at R40–85 billion, skills development at R40–60 billion, management control at R20–50 billion and socio-economic development at R5–10 billion, representing 2–4% of South Africa's 2024 GDP. These costs, derived from 2019 compliance scores and economic indicators, disproportionately burden high-intensity sectors such as mining and finance, while non-reporting entities are accounted for through conservative extrapolations.

The economic toll is stark: a potential 1,5–3% annual GDP growth reduction and 96 000–192 000 fewer jobs yearly, as modelled via Okun's law and South Africa's low employment elasticity, exacerbate stagnation in an economy already strained by 0,9% average GDP growth (2013–2024) and 31,9% unemployment in 2024.

The policy's high costs, which almost certainly encourage capital flight and deter investment, appear to outweigh its limited and uneven benefits, casting doubt on its ability to deliver meaningful transformation. Policymakers must urgently reassess B-BBEE's design, prioritising cost-effective, inclusive approaches over a framework that risks entrenching economic harm without clear evidence of achieving its lofty objectives.

Section IV: Further assessing the economic impact of compliance costs and redress measures on the South African economy

1

Introduction

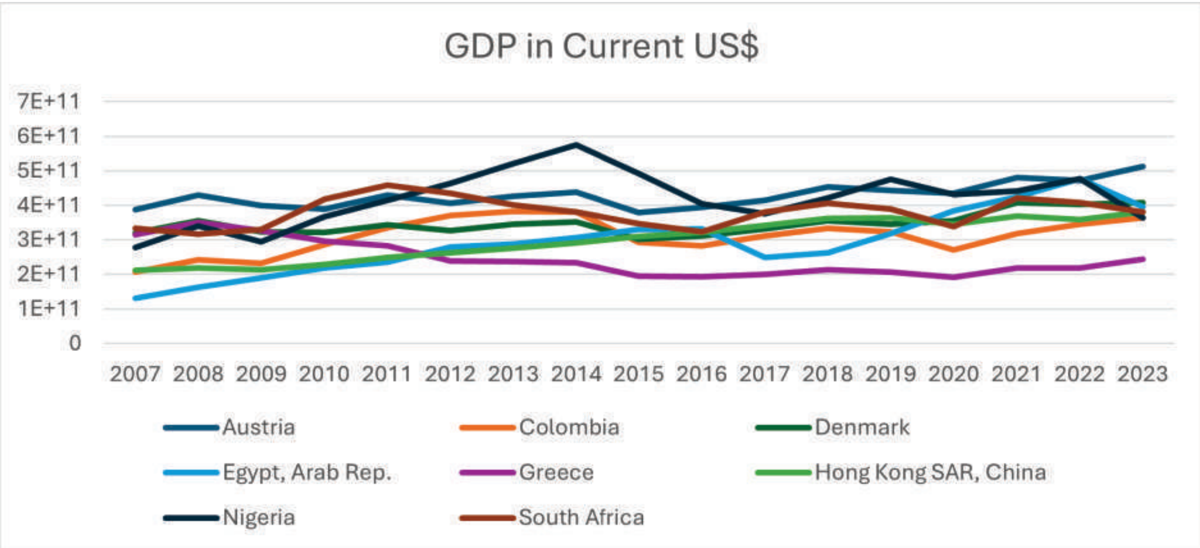
In order to illustrate the impact of B-BBEE-costs, it is important to note the actual state of South Africa's economy and how it had changed over the years. For this, the period of 1994 to 2023 is discussed when international comparisons are made, and when South Africa is analysed in isolation up to the most recent available data is used. Specific emphasis is placed on the period of 2007 to date, as this is the period during which South Africa's race-based policies have been intensified.

All GDP data is in current US$, unless otherwise stated and international data was retrieved from World Bank databases unless otherwise stated.

South Africa's economic position in comparison to peers through the years

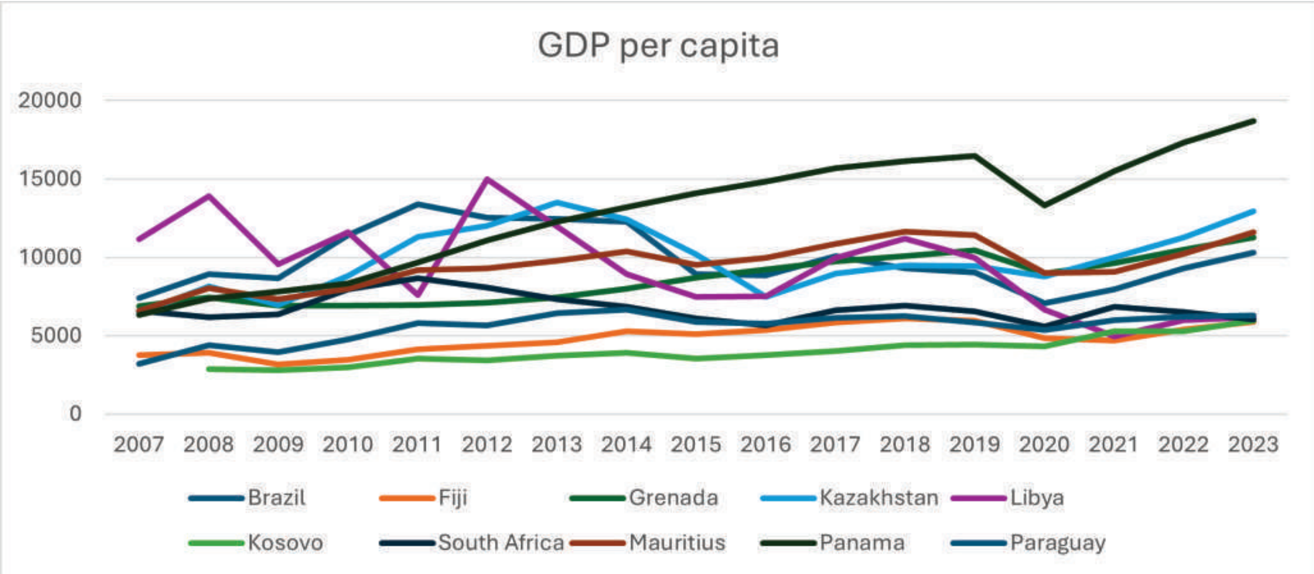
In terms of GDP, South Africa ranked 65th in 1994 when all countries and regions are included. South Africa fell to 70th position in 2007 and then to 84th in 2023.

In 1994, South Africa's economy was of a similar size to that of Denmark, Thailand and Hong Kong. In 2007, our peers were Iran, Austria, Denmark and Greece. In 2023, the size of the South African economy was comparable to that of Egypt, Hong Kong, Nigeria and Colombia.



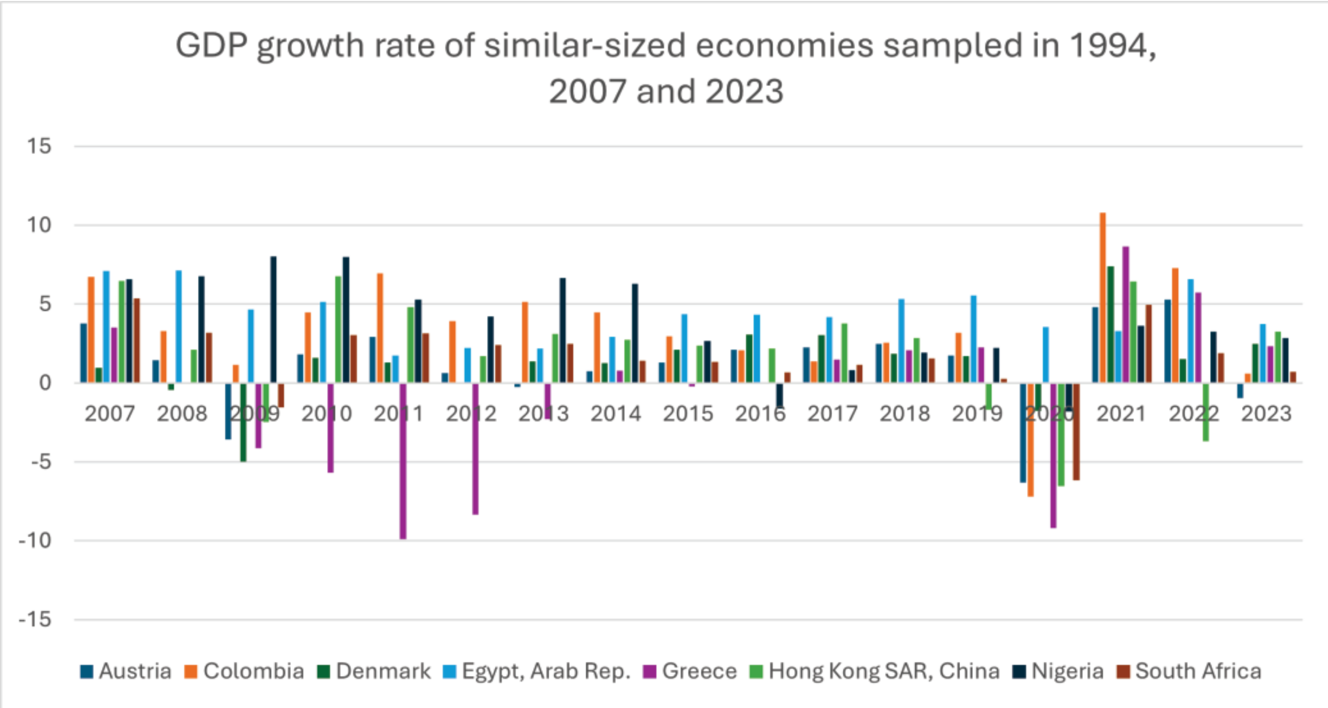
As this strange grouping together of countries may suggest, GDP by itself does not tell us much about how well things are; it simply indicates the size of the economy at a given time and in comparison to other countries. The size of an economy is far less important than what it consists of and by how many people it is shared. The trend, however, is important. If a country drops 24 places in 29 years, it provides some information on what that trend is indicating. GDP per capita is a better indicator of how well things may be.

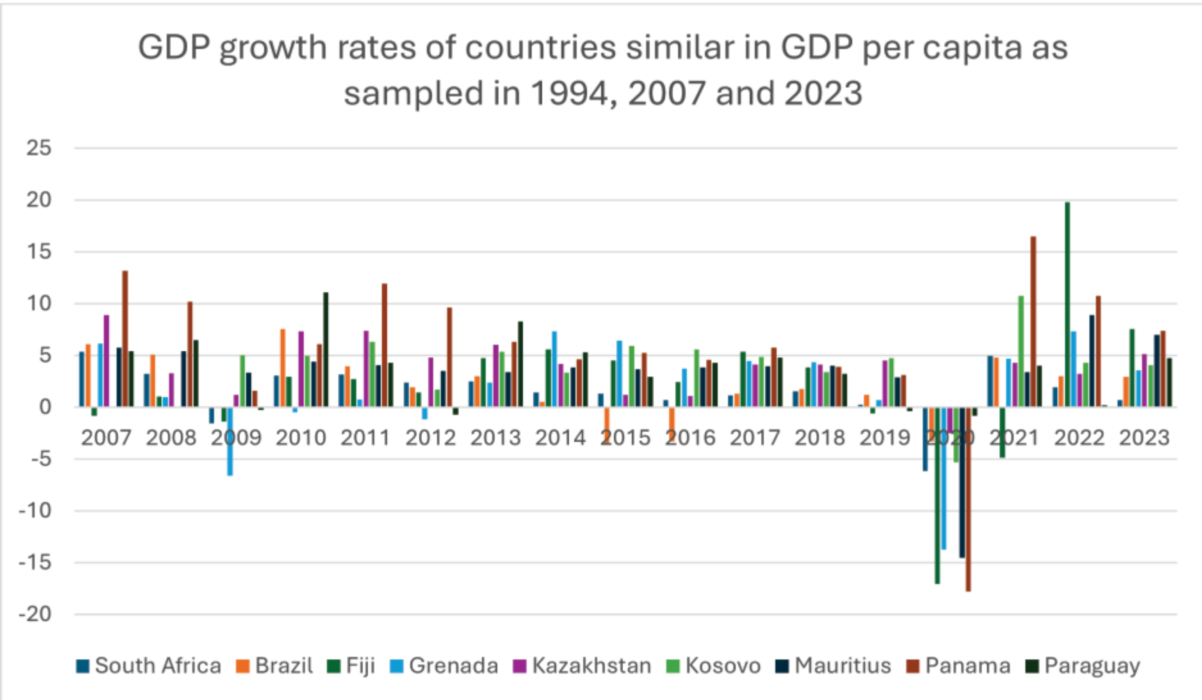
When looking at GDP per capita, each resident's proportional share of the GDP, South Africa ranked 87th of all countries and regions in 1994, similar to Brazil, Mauritius and Panama at the time. In 2007, South Africa's position dropped to 105th, similar to Mauritius, Grenada and Kazakhstan. In 2023, South Africa held the 139th position, comparable to Kosovo, Paraguay, Libya and Fiji.he overall impact highlights a critical trade-off.



This chart not only illustrates overall, but not generalisable, similarities in living conditions in different countries, but also shows how quickly things can change. In this comparison South Africa starts roughly in the middle, but ends up towards the lower end by the end of the period. During the same period, Panama was able to triple its GDP per capita and Kazakhstan, Kosovo and Paraguay doubled theirs. Libya and South Africa, however, are the only two countries on this list that show a decline in GDP per capita, with South Africa declining by 9% and Libya by 45%.

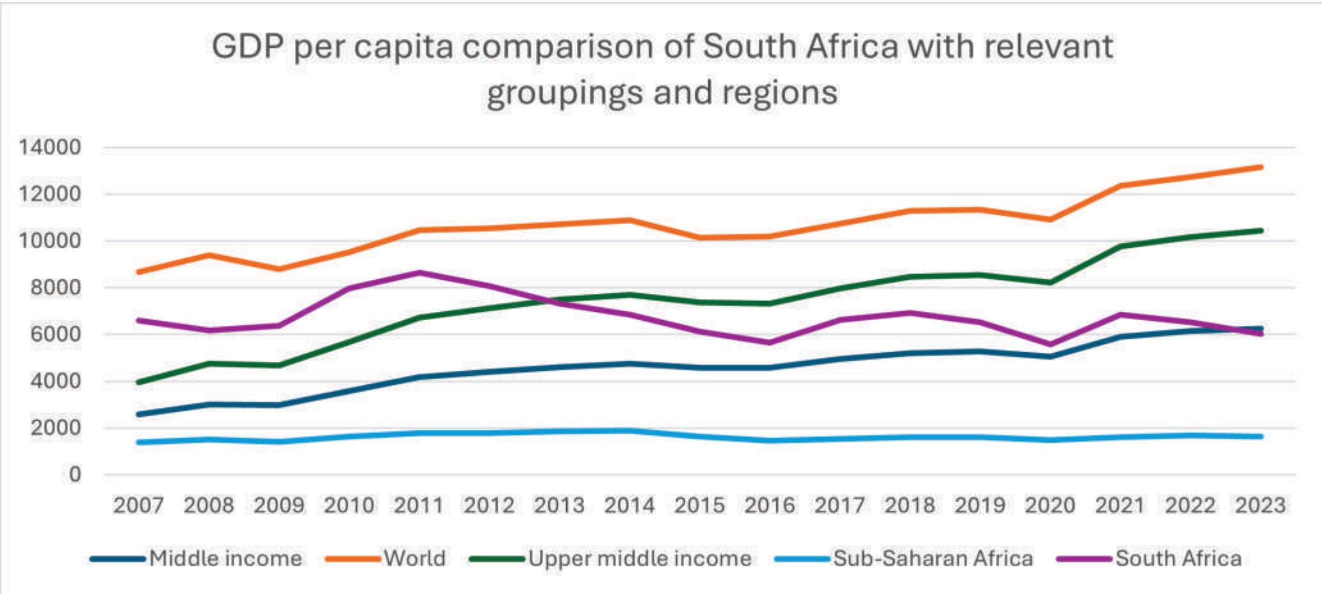
This brings us to GDP growth rates. As long as GDP growth outpaces population growth, GDP per capita increases. If GDP growth outpaces inflation, real growth occurs. It is, however, always a good indicator of how "in tune" a country's economy is with global realities, depending on whether its growth pattern matches that of the rest of the world. This is dealt with in the following subsection, but in the next two graphs, South Africa is compared to its peers through the years.


GDP growth rate of similar-sized economies sampled in 1994, 2007 and 2023
15
10
5
0
-5
-10
-15
2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023
Austria Colombia Denmark Egypt, Arab Rep. Greece Hong Kong SAR, China Nigeria South Africa

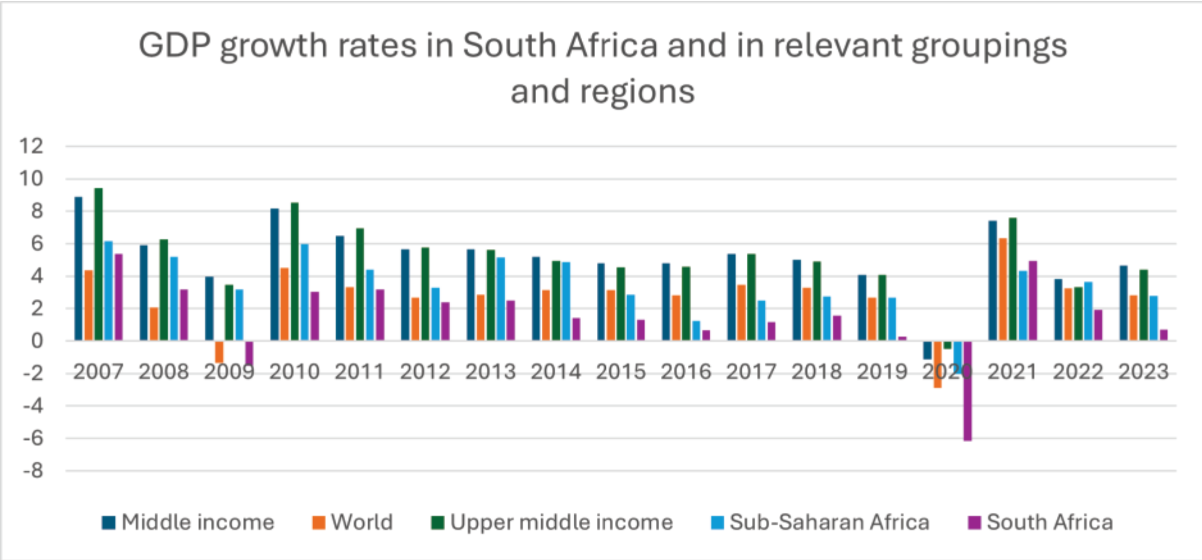

GDP growth rates of countries similar in GDP per capita as sampled in 1994, 2007 and 2023
25
20
15
10
5
0
-5
-10
-15
-20
2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023
South Africa Brazil Fiji Grenada Kazakhstan Kosovo Mauritius Panama Paraguay

South Africa's economic position in comparison to relevant regions and economic groups

In this subsection, South Africa is compared to regions and economic groupings. It is compared to the world, Sub-Saharan Africa, middle-income countries and upper middle-income countries. Although South Africa is still classified as an upper middle-income country, it now ranks between middle-income and lower-middle-income when comparing GDP per capita. This comparison is useful to illustrate how conditions may have changed over the years in the case of the average of countries that are generally viewed as comparable to South Africa, and to assess whether South Africa has weathered the economic storms well or not.



As can be seen from this graph, South Africa's economic position declined during a time when the rest of the world grew at a fairly steady pace. While the rest of the world recovered fairly quickly from the Covid-19 pandemic, South Africa lost ground, as GDP per capita was lower in 2023 than in 2019 before the pandemic hit.

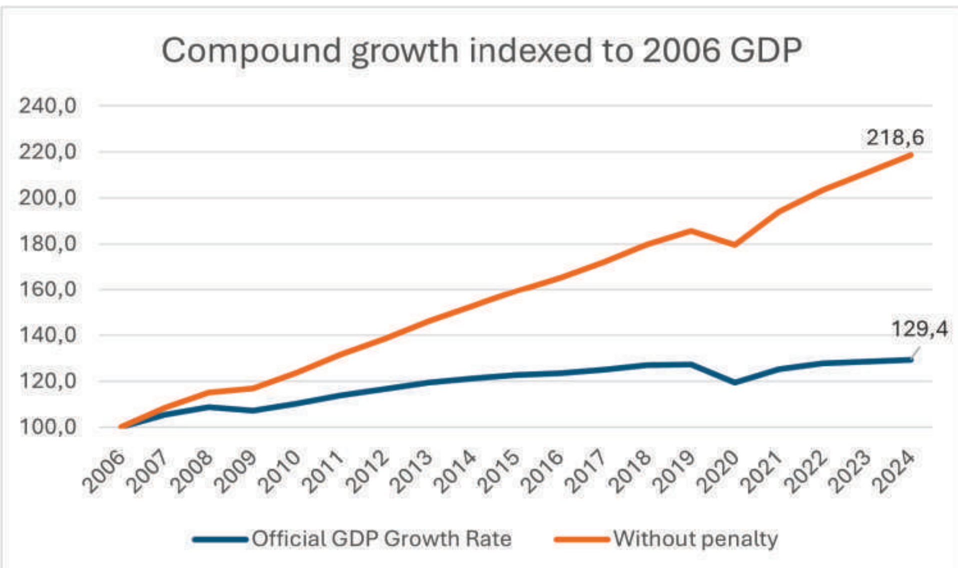


Over the period of 2007 to 2023, South Africa consistently displayed sluggish growth compared to its peers. It consistently underperformed compared to all comparable groupings and regions, with the exception of 2007 to 2009 when it slightly outperformed the world average but still lagged behind direct peers. In 2021 it also slightly outperformed Sub-Saharan Africa, but only because South Africa's economy contracted by much more in 2020 during the pandemic. Thus, for 15 out of the 16 years during this period, all South Africa's direct peers have outperformed it. Clearly, something must be seriously wrong.

How would South Africa have fared, had it not been for the race laws penalty?

In the previous section it was calculated that South Africa forfeits between 1,5 and 3% of GDP growth annually due to B-BBEE compliance costs, henceforth referred to as the race laws penalty. As other costs, such as capital flight, reduced efficiencies and misappropriation of executive time are not quantified in this report, we will use the upper end of our estimate to calculate where South Africa's economy might have been, had it grown 3% faster per year from 2007 to 2024.

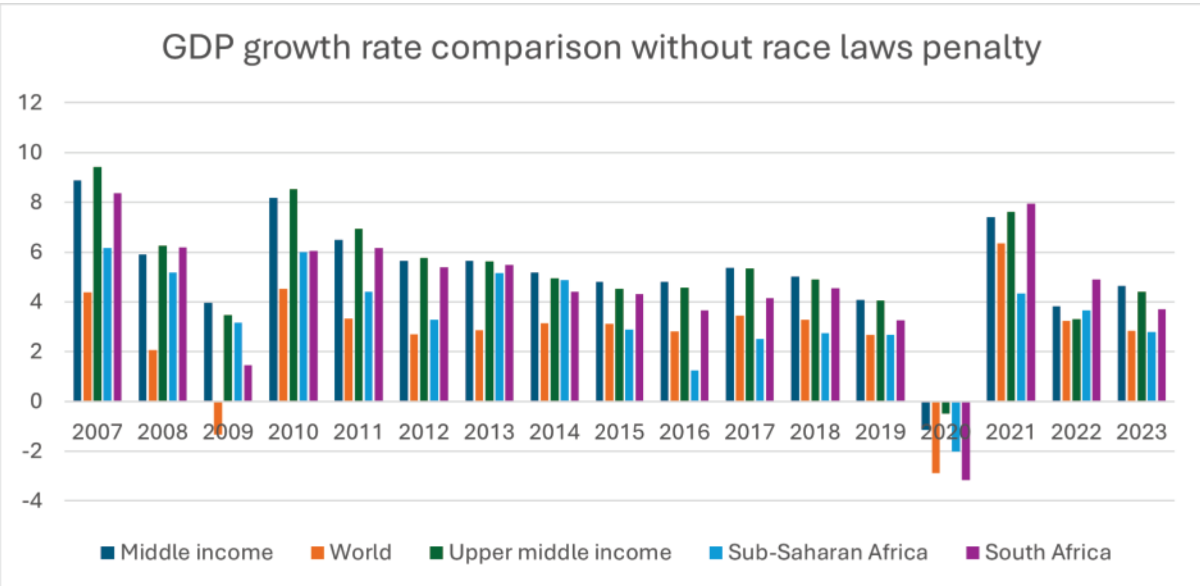
The following graph shows that GDP would have been 118,6% larger than in 2006, rather than the meagre 29,4%.



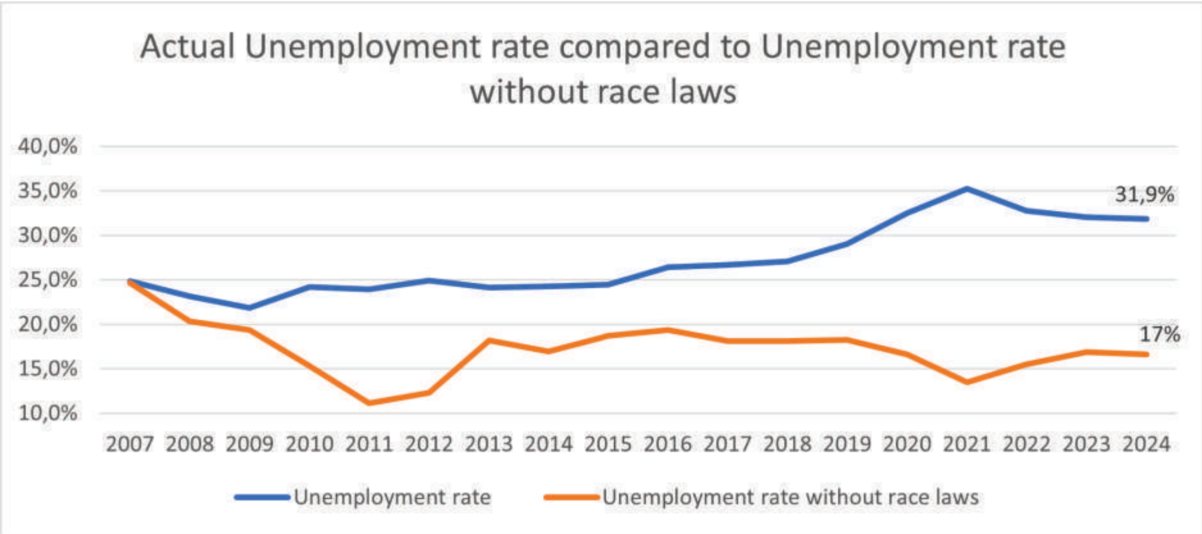
According to the latest GDP figures released by Stats SA, the nominal gross domestic product at market prices was R7,3 trillion at the end of 2024. If the South African government had not decided to organise the economy according to race, the nominal GDP would have been R12,3 trillion. South Africa has thus sacrificed 69% of GDP growth or R5 trillion worth of annual economic activity since 2007.

Had this growth been realised without the imposition of the race laws penalty, South Africa's GDP would have ranked 67th in terms of total size of the economy, which is a drop of 2 places, instead of a drop of 14 places over this period. GDP per capita would have come in at $10 526, which would have ranked South Africa 103rd instead of 139th in the world. This would mean that South Africa would have been just ahead of Brazil, rather being comparable to Kosovo. Such a GDP would also solidly qualify South Africa as an upper middle-income country, rather than making analysts question whether the country should be downgraded to lower middle-income.

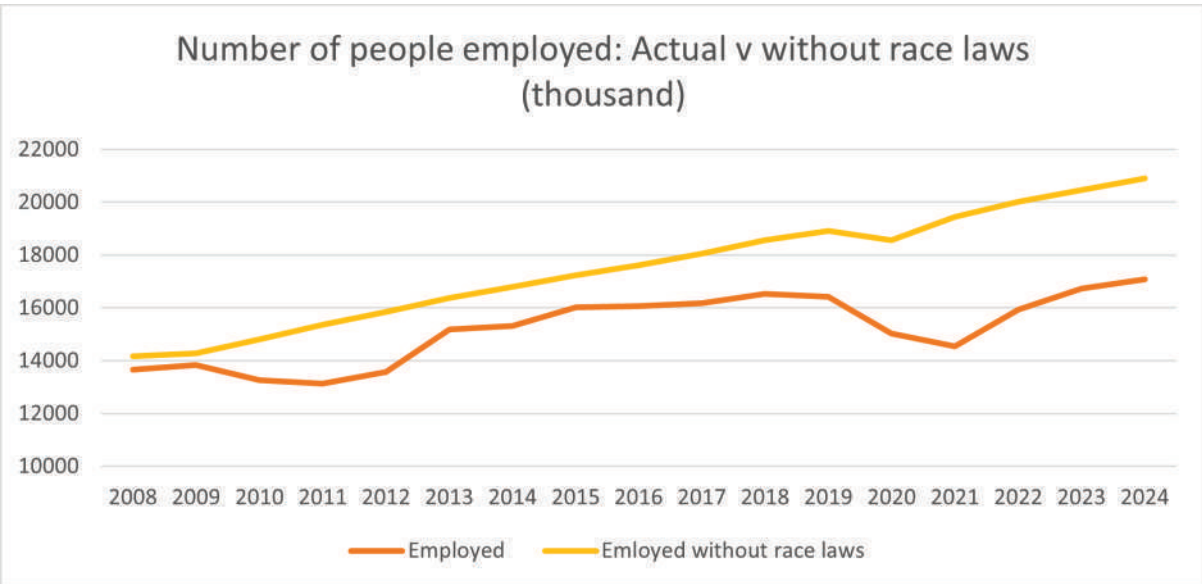
In comparison to the relevant regions and economic groupings, South Africa's GDP would have grown fairly in line with that of its overall geographic peers, if it had not had to pay a race laws penalty in foregone GDP growth. On average, South Africa would have grown by 4,5% annually, which is still 0,7% behind the middle- and upper middle-income groupings during this period. However, it would have grown a full percentage point faster than Sub Saharan Africa and 1,8% faster than the world on average. The graph below illustrates how South Africa need not have fallen behind its peers and that not losing 3% annually would have made for a much more compelling graph.



Much more important than rankings and abstract numbers is the impact on employment that it would have had. Had GDP grown by an extra three percent per year, South Africa's unemployment rate would have been much smaller. By applying Okun's law, one could extrapolate 2007 labour force data and measure exactly where South Africa would have been, had we grown by an extra 3% per year. As the graph below shows, the unemployment rate could have improved from 23,2 percent in 2008 to 17%, rather than having worsened to 31,9%.



The actual number of employed people is currently 17,1 million. However, without race laws it would have been 20,9 million. This means that 3,8 million people are currently unemployed as a direct result of the loss in GDP growth caused by race laws.

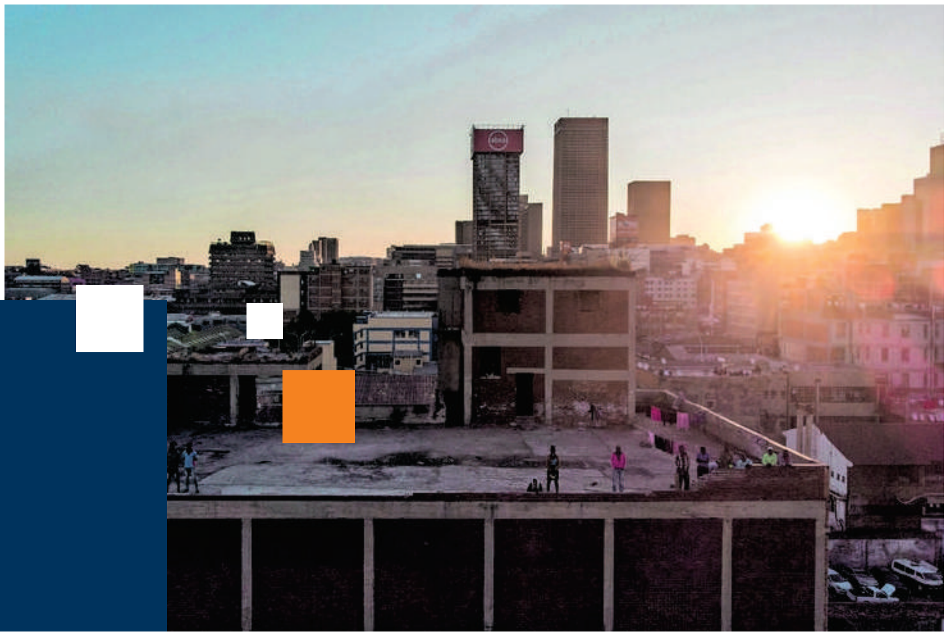


Conclusion

What stands out when reading this analysis, is that the loss of economic activity is not the result of an omission, but it is rather the result of a carefully thought-out plan – the direct costs of B-BBEE compliance are open for all to see. The indirect costs, or second round effects, such as the cost of 3,8 million jobs, are less visible, though. The same is true for the amount lost as a result of investments that never occurred because policy uncertainty deterred investors.

Had it not been for B-BBEE and other such laws, South Africa's economic growth would have been more comparable to that of other middle-income countries, as well as to that of the rest of the region. Instead, South Africa has fallen far behind many countries that used to be comparable to South Africa.

As with policies aimed at redress in other countries, the time has come for all to see that these policies have served their purpose in South Africa, even if they have never achieved what was promised. If creating a small group of wealthy elites who are loyal to the ANC was the purpose, then it has achieved its purpose. For all other South Africans, it has had a devastating effect. What could be more devastating than robbing 3,8 million people of a chance to become self-sustaining and live a dignified life?



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Annexure A:
Competition law and public interest: BEE

Competition law in South Africa is regulated by the Competition Act (No. 89 of 1998). This Act mainly regulates mergers of a certain size and general abuse of dominant positions by a company that is dominant, as per the prescripts of the Act.

When deciding on the outcome of a proposed merger, the Competition Tribunal must also consider public interest considerations. These public interest considerations include, among others, factors such as the share of ownership or the continued employment of historically disadvantaged individuals (HDIs) in whatever business is being evaluated in the merger.

When an acquiring firm is not owned by historically disadvantaged persons (HDPs), and the firm it is acquiring is owned by HDPs, the loss of ownership by the HDPs is considered as part of public interest considerations. To illustrate the point, I will briefly discuss the facts of the Shell–Tepco merger:

In *Shell South Africa (Pty) Ltd and Tepco Petroleum (Pty) Ltd 2002* the Competition Tribunal considered the fact that Tepco, which was owned by HDPs, was being sold to a company in Shell, which does not have HDP ownership. This consideration was sufficient for the Competition Commission to not recommend the approval of the merger to the Competition Tribunal. The Tribunal approved the merger though and appealed to the Competition Commission not to be overzealous.

The point made by the Tepco case and by other cases referred to in this report, is that a consideration about the racial makeup, or the historical suffering of the people who are selling a company or those who are acquiring a company, is factored into a decision about whether a certain merger will be approved or not.

Method of identification:

Merger application the outcomes of which were heavily influenced by public interest considerations concerning either HDI ownership or continued HDI employment.

HDI: Historically disadvantaged individuals

Cases

1. *Burger King South Africa Acquisition (2021):*
   The Competition Commission prohibited the sale of Burger King South Africa to private equity firm ECP Africa, marking the first instance where a merger was blocked solely on public interest grounds. The decision was based on concerns that the transaction would reduce ownership by historically disadvantaged persons (HDPs) from 68% to 0%. The Commission emphasised that such a reduction would negatively impact the promotion of a greater spread of ownership among HDPs.

The Competition Commission's decision was subsequently submitted to the Competition Tribunal. The latter approved the merger but subject to conditions which included the implementation of an employee share ownership scheme for a 5% stake in Burger King for HDP employees in their employ. This was done in order to offset the lack of HDP ownership, given that the commission had made a lack of HDP ownership the basis for rejecting the merger.

ECP Africa Fund IV LLC; ECP Africa Fund IV A LLC And Burger King (South Africa) RF (Pty) Ltd; Grand Foods Meat Plant (Pty) Ltd 2021

2. Anglo American Holdings Ltd and Kumba Resources Ltd (Case No. 46/LM/Jun02):
In this case, Anglo American sought to acquire Kumba Resources. The Industrial Development Corporation (IDC) intervened, arguing that the merger would consolidate ownership within a historically white-owned company, thus hindering the spread of ownership to historically disadvantaged persons (HDPs). The Competition Tribunal, however, found insufficient evidence that the merger would preclude increased HDP ownership in Kumba and approved the transaction with conditions to address competition concerns.

In this case, dating back to 2003, the Tribunal approved the merger despite the IDC having raised concerns about the spread of HDP ownership resulting from the deal. Yet, the case still serves as an example of BEE considerations being heard by a court concerning a merger.

Anglo American Holdings Ltd and Kumba Resources Ltd / Industrial Development Corporation (intervening) (46/LM/Jun02) [2003] ZACT 45 (4 September 2003)

3. Vodafone Group and Venfin:
Vodafone's acquisition of a South African company faced objections on the basis that the stake should be sold to a BEE acquirer instead. The Competition Tribunal stated that it would be overly ambitious to require parties to sell interests to a person or a class of persons of the Tribunal's choosing, emphasising a deferential view towards public interest issues when other regulatory instruments address them.

This case illustrates how the Tribunal has precedent of having BEE influenced arguments being made towards it and rejecting them. In this case, the BEE argument about HDP ownership of the acquiring firm was dismissed.

Vodafone Group PLC and Venfin Limited (110/LM/Nov05) [2006] ZACT 16; [2006] 1 CPLR 405 (CT) (23 February 2006)

4. Walmart/Massmart Merger (2011):
Walmart's acquisition of Massmart faced scrutiny over potential impacts on local suppliers and employment. The Competition Appeal Court approved the merger with conditions, including establishing a supplier development fund to support local suppliers, especially those owned by historically disadvantaged individuals (HDIs), and commitments to protect existing jobs.

This case is instrumental in showing the fundamental shift which occurred and ultimately led to the Burger King case. The cases from before the former Minister of Trade and Industry in South Africa, Mr Ebrahim Patel, took office and the cases that followed after he had taken office, such as this one, are instructive in showing the shift in jurisprudence.

In this case, the conditions of the merger were contingent on a commitment to support local suppliers, especially those who have been historically disadvantaged.

Wal-Mart Stores Inc and Massmart Holdings Limited 2011-05-31

5. PepsiCo Inc's (Simba) Acquisition of Pioneer Food Group Ltd (2020):
PepsiCo's acquisition was approved with conditions aimed at promoting BEE. These included implementing a BEE ownership plan involving an employee share ownership programme, commitments to local procurement and the establishment of a development fund to invest in education, small and medium enterprises (SMEs), enterprise and agricultural development, with a significant portion reserved for emerging farmers and education for historically disadvantaged individuals.

Simba (Pty) Ltd v Pioneer Food Group Limited (LM108Sep19) [2020] ZACT 88 (15 May 2020)

6. *Clicks/Netcare Pharmacies Merger (2016):*
The merger between Clicks and Netcare Pharmacies was approved with conditions that included commitments to promote BEE by increasing procurement from BEE-compliant suppliers and supporting the development of HDIs within the pharmaceutical sector.

Clicks Retailers (Pty) Ltd and Netcare Pharmacies (Pty) Ltd and Netcare Pharmacies 2 (Pty) Ltd (2016-11-10)

7. *Edcon Acquisition (2019):*
The acquisition of Edcon was approved with public interest conditions focusing on employment preservation and commitments to support local suppliers, particularly those owned by HDIs, to promote BEE objectives.
A quote from a media release about the acquisition reads as follows:
"The Edcon Group and the Economic Development Department (EDD) had agreed upon certain conditions aimed at promoting BEE, local procurement and preserving employment and the Commission has recommended that the merger is approved subject to such conditions".

http://www.compcom.co.za/wp-content/uploads/2019/08/EDGARS-ACQUISITION-APPROVED-WITH-CONDITIONS.pdf
New Holdco v Edgars Consolidated Stores Ltd (LM270Mar19) [2019] ZACT 30 (13 June 2019)

8. *AB InBev/SABMiller Merger (2016):*
The acquisition of SABMiller by Anheuser-Busch InBev was approved subject to extensive public interest conditions. These included commitments to protect employment, promote local production, support small beer producers, invest in capacity development for emerging and commercial farmers and invest in enterprise development benefiting SMEs and HDIs.

Anheuser-Busch InBev SA/NV and SABMiller PLC (2016-06-30)CONDITIONS.pdf

New Holdco v Edgars Consolidated Stores Ltd

9. *Walmart/Massmart Merger (2011):*
Walmart's acquisition of Massmart faced scrutiny over its potential impacts on local suppliers and employment. The Competition Appeal Court approved the merger with conditions, including establishing a supplier development fund to support local suppliers owned by historically disadvantaged individuals (HDIs), and commitments to protect existing jobs.

Minister of Economic Development and Others v Competition Tribunal and Others, South African Commercial, Catering and Allied Workers Union (SACCAWU) v Wal-Mart Stores Inc (110/CAC/Jun11, 111/CAC/Jul11) [2012] ZACAC 6; [2013] 1 CPLR 37 (CAC) (9 October 2012)
(This is the Competition Appeal Court Case in which the details of the fund ordered by the Tribunal were set out).
Walmart Stores Inc v Massmart Holdings Ltd (73/LM/Dec10) [2011] ZACT 41; [2011] 1 CPLR 145 (CT) (29 June 2011)
http://www.compcom.co.za/wp-content/uploads/2016/11/CC201603-Mandiriza-T-Sithebe-T-and-Viljoen-M-2016-An-expost-evaluation-of-the-Walmart-Massmart-merger.pdf
(This link is to a report authored by the Competition Commission. The report investigates and shows the results of the fund for HDI SMME development and was ordered as part of approving the merger.)

10. *Chevron South Africa Sale (2018):*
The sale of Chevron South Africa included conditions to ensure the transaction resulted in increased ownership by BEE entities, as well as commitments to support local procurement and promote the development of SMEs owned by HDIs.

Glencore South Africa Oil Investment (Pty) Ltd v Chevron South Africa (Pty) Ltd (LM1850ct18) [2019] ZACT 21 (25 April 2019)
https://www.comptrib.co.za/open-file?FileId=51308
(This is a link to the media summary about this merger released by the Competition *Commission)*

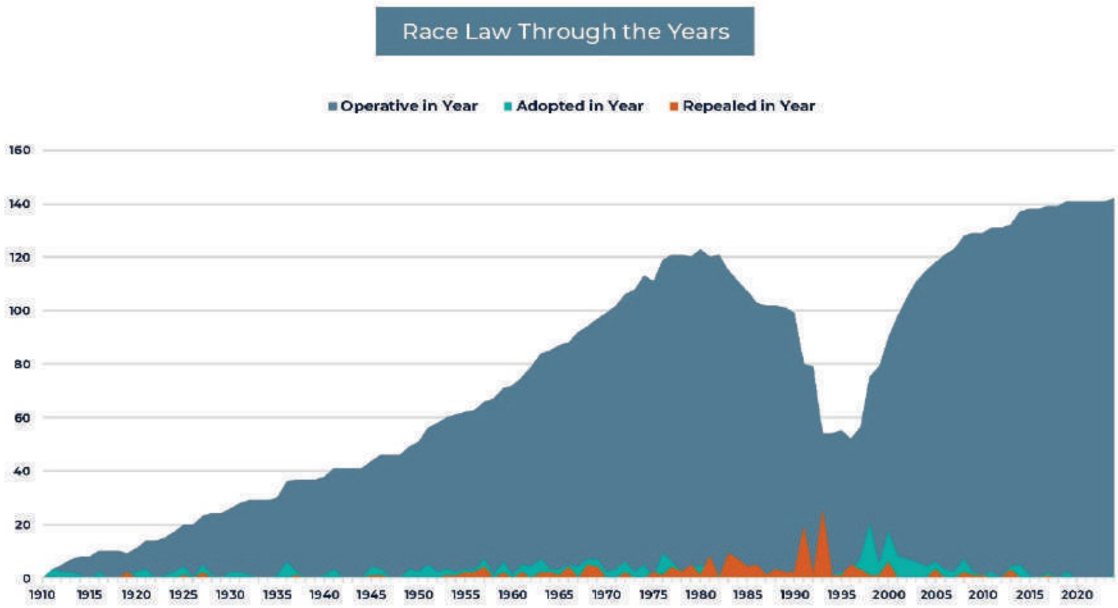
Prepared by Zakhele Mthembu, Free Market Foundation, Policy Officer

Annexure B:
Race law in South Africa

South Africa's legal dispensation is, evidently, an intensely racialised one.

The Index of Race Law[3] records that since 1910 the South African Parliament has adopted a total[4] of 317 Acts of Parliament that in some manner make or keep a person's race, skin-colour, or ethnicity legally relevant. Of these laws, 117 have been adopted since 1994 by ANC-dominated parliaments. A total of 142 Acts of Parliament are, or have been,[5] racial at some point, and are still operative law today.

The principle that applies for inclusion in the Index is that any legal provision that makes (originally), or keeps (from a pre-existing race law) a person's race, skin colour, or ethnicity a legally relevant consideration, renders the law it forms part of a race law. No law is included in the Index of Race Law by mere virtue of the word "black," "white," or "race," etc., appearing in the text – but always based upon a legally operative provision that renders race a tangible applicable consideration. The Index also does not weigh laws according to severity, benefit, or harm, nor does it compare the laws it indexes to one another:



Not all race laws are alike.

The most common post-1994 provision of race law is one that requires that a given committee, board, commission, etc., of government, must reflect the racial demographics of the country (the principle of "representivity"). In other words, these provisions are inward-looking within the state apparatus. This has, in our estimation, opened the door to corrupt and nepotistic appointments that disregard competence and general merit to an unacceptable degree, especially in the public sector. These laws are, however, not very economically relevant.

[3] https://racelaw.co.za/index-of-race-law/
[4] On the strength of the current state of research, subject to revision in light of new information
[5] Nine (9) of the 142 Acts have been deracialised.

Nonetheless, the following four are notable race laws that have significant private sector impact, and concern direct outward state interference in the economy:

- The Employment Equity Act (No. 55 of 1998)
- The Competition Act (No. 89 of 1998)
- Broad-Based Black Economic Empowerment Act (No. 53 of 2003), herein referred to as the B-BBEE Act
- Public Procurement Act (No. 28 of 2024)

The B-BBEE Act in particular, despite being only a "one race law" nominally, has become a cornerstone for institutionalised racism in South Africa after 1994. Virtually every sector of the economy has a "BEE Sector Code" or some similar ministerial regulation that often sets out in minute detail how racial "transformation" must occur in that space. There is the South African Mining Charter for the minerals and mining industry, a Legal Sector Code for attorneys and advocates (litigators), and so on.

A brief note on the "voluntariness" of complying with the B-BBEE Act and its many derivates is necessary.

On paper, the B-BBEE scoring system remains an opt-in phenomenon, but this formalistic and superficial analysis obscures its insidious de facto applications, as well as the various legislative and judicial interpretations of the content which have followed its promulgation.

A BEE "journey" tends to begin when a large enterprise seeks to do business with the state. The state, invariably, will require that business to have a high BEE score. There are things this business can (and likely will) do to increase its own score internally, such as changing the racial demographics of its ownership and shareholding, its workforce and management, and establishing corporate social investment initiatives.

However, another way of increasing its score, is for the business to have suppliers and contractors who themselves score highly on BEE. In other words, if another, potentially smaller business, seeks ("voluntarily") to contract with the larger business, the latter will often require that the smaller business also increase its BEE score, so that it may cascade upwards and increase the larger business' score. To increase its score, the smaller business, in turn, will require the same from its own suppliers and contractors.

In this way, the BEE system perpetuates itself throughout the length and breadth of the economy, covering virtually all notable commercial enterprises even if they do not wish to do business with the state. On paper, therefore, BEE compliance is "voluntary,"[6] but in reality, not complying with BEE scoring would tend to exclude many companies from economic activity per se.

The Employment Equity Act, the Competition Act, the B-BBEE Act, and the Public Procurement Act, and their derivatives (policies, regulations, plans, directives, etc.), make it next to impossible, in our estimation, for any business (foreign or domestically-owned) operating in South Africa to not, at some juncture, be required to make commercial determinations at least in part on the basis of racial considerations. In other words, it is almost impossible to believe in and practise non-racialism in South Africa's business environment. In fact, through its application of these and similar laws the government has mandated discrimination as a precondition of doing business with the state. In doing so, it has virtually outlawed the practice of non-racialism among broad swathes of the South African economy.

These laws, in their current form, are not constitutionally required.

Far less invasive, far more pro-economic liberty laws, laws that nonetheless address the constitutional imperatives of redress could be designed.[7] However, the existing laws are nothing more or nothing less than a manifestation of the ANC's underlying Marxism-Leninism – a desire for control. The pretext of "racial transformation" is a convenient mask for this desire, because the ANC knows that it is (or has been historically) difficult and unseemly, especially for international observers, to question.

Prepared by Martin van Staden, Free Market Foundation, Head of Policy.

[6] *Increasingly, the state is moving away from this faux "voluntary" model to one of direct BEE enforcement, whereby a business must score a certain minimum number of BEE points before it can be granted a permit or licence to operate.*

[7] *See for instance the Free Market Foundation's pro-poor, pro-growth reform agenda: LibertyFirst.co.za*

Annexure C:
The hidden costs of black economic empowerment

South Africa's legal dispensation is, evidently, an intensely racialised one.

This annexure examines the indirect costs of broad-based black economic empowerment (B-BBEE) compliance that extend beyond the direct financial outlays documented in the main report. These hidden costs encompass administrative overheads, strategic distortions and systemic effects that accumulate across the economy but remain largely unquantified in policy assessments. Drawing on industry reports and compliance data, this analysis identifies how B-BBEE requirements generate costs through operational complexity, market inefficiencies and strategic realignment pressures.

Administrative and institutional costs

B-BBEE compliance has created substantial administrative infrastructure across the South African economy. Companies typically establish dedicated departments, engage specialised consultants and undergo regular verification by accredited agencies. Medium to large enterprises allocate 2-4% of annual revenue to these activities, including legal fees, audit costs and internal overheads (Baker McKenzie, 2023).

Annual verification processes cost between R50 000 and R500 000, depending on organisational size and complexity (International Finance Corporation, 2019). These compliance demands frequently divert executive attention from core operations, particularly affecting small and medium enterprises where management resources are limited. The cumulative effect represents a significant drain on operational efficiency across sectors.

Artificial restructuring to achieve compliance creates additional costs. Legal and restructuring expenses tied to fronting arrangements constitute an estimated 15–20% of BEE transaction values (Empowerdex, 2019). Such arrangements often prioritise scorecard enhancement over operational efficiency, creating structures that serve regulatory rather than business purposes (Centre for Development and Enterprise, 2022).

Market and strategic distortions

Scorecard incentives influence procurement and hiring strategies directly, often leading to decisions based on compliance points rather than price, quality, or strategic fit. This regulatory-first approach can undermine market efficiency as suppliers and partners are selected for their empowerment credentials rather than for performance capabilities.

These distortions cascade through supply chains as larger firms require suppliers and subcontractors to meet similar standards to maintain their own ratings. This extends compliance obligations to smaller enterprises that might otherwise be exempt, effectively making B-BBEE adherence a requirement across sectors (Zevoli Group, 2023). This can create disproportionate administrative burdens for small enterprises, leading some to exit markets or merge with larger compliant entities, potentially increasing market concentration (Institute of Race Relations, 2022). Such pressures are particularly pronounced for SMEs attempting to access formal markets, where verification costs can constitute a significant barrier to entry (International Finance Cor-poration, 2019).

Human capital and social impacts

B-BBEE's demographic representation requirements create complex talent management challenges. Competition for candidates meeting both demographic and technical criteria significantly increases recruitment costs, with executive search fees for senior positions rising substantially in affected sectors. Accelerated promotions, driven by scorecard targets rather than optimal skill development, increase training demands and supervision requirements.

These dynamics contribute to workplace tensions that reduce productivity and increase human resources interventions. The emphasis on demographic representation can create perceptions of unfairness that affect employee morale and retention across all demographic groups, imposing organisational costs through reduced engagement and elevated legal risks (Bee123, 2023). Research indicates that such workplace tensions are particularly acute in sectors with stringent transformation requirements, where skills shortages exacerbate competition for qualified candidates (Institute of Race Relations, 2022).

Innovation and competitiveness effects

Compliance complexity affects entrepreneurial activity disproportionately, with many small enterprises delaying formal incorporation or remaining in informal sectors to circumvent immediate B-BBEE obligations. This limits their access to formal markets and restricts growth capital availability (International Finance Corporation, 2019).

For established firms, B-BBEE verification requirements can extend innovation cycles and delay time-to-market for new products. The administrative burden diverts resources from research and development activities, creating opportunity costs that may hinder long-term competitiveness and technological advancement in key sectors (Strat Law, 2023). These challenges are compounded by the fact that many emerging enterprises lack the administrative capacity to navigate complex compliance frameworks whilst simultaneously developing their core business capabilities (Centre for Development and Enterprise, 2022).

Synthesis and policy implications

The hidden costs of B-BBEE compliance create a complex web of economic effects extending far beyond direct implementation expenses. Administrative overheads, market distortions, talent management challenges and innovation constraints combine to impose substantial indirect costs on the South African economy (Institute of Race Relations, 2022).

These effects accumulate across sectors and firm sizes, with particular impact on small and medium enterprises that form the backbone of economic growth and job creation. The evidence suggests that B-BBEE's transformation objectives must be weighed against these cumulative economic costs which shape strategic decisions and market behaviour in ways not captured by formal policy evaluations. The International Finance Corporation (2019) notes that such regulatory complexity particularly disadvantages SMEs which often lack the resources to manage comprehensive compliance programmes whilst maintaining operational competitiveness.

Rather than providing normative judgements, this analysis highlights how indirect effects shape economic behaviour and competitive dynamics. Policymakers and business leaders require this broader perspective to make informed decisions about transformation strategies and their long-term economic implications for South Africa's development trajectory.

Conclusion

The hidden costs of B-BBEE compliance represent a significant but underexamined dimension of South Africa's transformation policy framework. These indirect effects – spanning administrative burdens, market distortions, talent management challenges and innovation constraints – compound the direct compliance costs identified in the primary analysis, creating a comprehensive economic impact that extends across all sectors and firm sizes.

Understanding these hidden costs is essential for evidence-based policy evaluation and for designing transformation approaches that achieve inclusion objectives whilst minimising economic friction. As South Africa continues to refine its transformation strategies accounting for both visible and invisible costs will be crucial for sustainable economic development and competitive positioning in global markets.

Prepared by Myrtle Endley, Solidarity Research Institute, Researcher.

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