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SOLIDARITY

Non-Racial by 2030

Part of the Solidarity Movement

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Executive Summary

South Africa cannot become truly non-racial while the state continues to use apartheid-style racial classification as the organising principle of economic and labour-market policy. South Africa still faces severe poverty, unemployment, youth exclusion, weak asset ownership and limited access to opportunity. However, after three decades of democratic government, policy should increasingly help people because of their actual circumstances rather than their racial classification. South Africa should therefore transition from a race-based policy to a needs-based policy by 2030.

The current racial dispensation has failed to deliver broad-based prosperity. Broad-based black economic empowerment (B-BBEE) was introduced ostensibly to correct apartheid-era exclusion by increasing black ownership, management control, skills development, enterprise development, supplier development and socio-economic development. Yet, it has evolved into a costly compliance system that benefits a few at the expense of millions.

Annual B-BBEE compliance costs are estimated at between R145 billion and R290 billion, or roughly 2% to 4% of GDP. These costs divert resources away from investment, expansion, wages, technology and job creation, while also increasing complexity for small and medium-sized firms. The result is a system that often protects incumbents, discourages entrepreneurship and acts as a non-tariff trade barrier to foreign investors.

The economic consequences are serious. B-BBEE has distorted procurement, encouraged fronting and elite capture, and weakened investment confidence. While there have been gains in black ownership, management representation and skills spending, these gains have been modest relative to South Africa's unemployment and poverty crises.

The Zondo Commission's findings strengthen this concern by showing how empowerment and procurement rules were manipulated into pathways for corruption and politically connected enrichment. A policy that enriches a narrow group while weakening growth prospects for the broader population cannot be sustained.

Employment equity has followed a similar path. Originally, the Employment Equity Act (No. 55 of 1998) was framed as a remedial law to eliminate unfair discrimination and promote affirmative action without creating quotas or absolute barriers. Over time, it has become more prescriptive. The 2025 Employment Equity Regulations represent the most aggressive phase of this evolution, imposing sectoral numerical targets across 18 sectors and several occupational levels.

The economy cannot realistically grow into these targets. To meet them through growth alone would require average growth of 38% across sectors over five years, despite weak formal employment growth. The practical result is replacement pressure: Approximately 69 796 white males and 111 568 women of all races would have to be replaced across job levels to meet the minister's targets.

At grassroots level, race-based legislation has produced visible absurdities and injustices: workers blocked from promotion; youth opportunities filtered through B-BBEE rules; sports teams punished despite winning on the field; the allocation of Covid-19 relief on the basis of empowerment criteria; and citizens being treated increasingly as racial categories rather than individuals. These examples show that although the majority of South Africans do not want racial legislation, race has seeped into everyday life at grassroots level where it damages social cohesion and harmony.

The proposed solution is a phased transition toward needs-based empowerment. The first and most important step is to declare a clear end date for race-based legislation.

Affirmative action, properly understood, must be temporary. Without a hard-end date, South Africa will remain trapped in permanent racial administration. The second step is to phase race-based legislation into class-based legislation focused on poverty, unemployment, youth unemployment, investment and economic growth.

For B-BBEE, equity equivalence should become the default for multinational investors, allowing them to make developmental contributions instead of transferring ownership.

For local firms, employee share ownership schemes should become the preferred route for ownership recognition, measured by genuine broad employee ownership rather than racial criteria.

For employment equity, the government should implement the settlement mediated by the International Labour Organisation (ILO) between Solidarity and the South African government, a settlement it already signed. That settlement required a more holistic approach to employment equity, including consideration of skills availability, inherent job requirements, natural turnover, recruitment and promotion trends and business circumstances. It also protected employees from losing their jobs merely to satisfy employment equity targets. The 2025 regulations depart from this settlement by elevating the economically active population (EAP) as the primary reference point and omitting the explicit protection against termination.

Finally, the definition of “designated group” should be changed to include people from households earning less than R350 000 per year, people who are unemployed and receive no income or support, and people born after 1994. This would align empowerment with poverty, unemployment and youth exclusion directly.

The overall purpose is clear: For South African citizens to lead better lives, the focus should be on real and sustainable economic growth rather than on race-based redistribution. South Africa should start to focus on the scoreboard rather than the team photo.

Current Racial Dispensation

Broad-based Black Economic Empowerment

Broad-based black economic empowerment (B-BBEE) was introduced as a policy instrument ostensibly to correct the economic injustices created by apartheid. Its stated purpose is to broaden participation in the South African economy by increasing black ownership, management control, skills development, enterprise and supplier development, and socio-economic development. However, the central question is whether B-BBEE, as it has developed in law and practice, has produced broad-based economic empowerment at a cost South Africa can afford.

The outcomes suggest that it has not. B-BBEE has imposed a large and recurring compliance burden on the South African economy, distorted investment and procurement decisions, encouraged elite capture and weakened the conditions needed for growth and employment. Although it has contributed to some measurable gains in ownership, management representation and training expenditure, these gains have been modest relative to the scale of South Africa's unemployment, poverty and low-growth crisis. A policy that raises the cost of doing business in a country with mass unemployment must be judged not only by its intentions, but by its opportunity cost. On that basis, B-BBEE has failed to deliver.

B-BBEE has evolved through several phases. The early phase of black economic empowerment in the 1990s relied heavily on voluntary ownership transactions. These deals created a small class of politically connected beneficiaries but had limited reach. Southall (2007)¹ and Tangri and Southall (2008)² have shown how this period was marked by elite ownership deals that often did little to broaden economic participation. During the 2000s, the policy became more formalised through the Broad-Based Black Economic Empowerment Act (No. 53 of 2003) and the Codes of Good Practice. The 2007–2013 period expanded the policy into a broader scorecard system, incorporating ownership, management control, employment equity, skills development, preferential procurement, enterprise development and socio-economic development. Since 2013, amendments to the codes have made compliance more demanding, with greater emphasis on priority elements, subminimum requirements and stricter verification.

This evolution matters because B-BBEE is no longer a narrow transformation policy. It has become a broad regulatory system that affects ownership structures, procurement relationships, employment practices, training budgets, supplier selection and corporate strategy. Formally, the B-BBEE scorecard is voluntary in some contexts, but in practice, it is commercially coercive. Firms that do not comply risk losing access to government contracts, large private-sector supply chains, licences, partnerships and procurement opportunities. In this sense, the policy operates as a de facto market-entry and market-access condition and a non-tariff trade barrier to international firms.

¹ Roger Southall. Ten Propositions about Black Economic Empowerment in South Africa. *Review of African Political Economy*. 2007. Vol. 34(111):67-84. DOI: 10.1080/03056240701340365

² Tangri, R., & Southall, R. (2008). The Politics of Black Economic Empowerment in South Africa. *Journal of Southern African Studies*, 34(3), 699–716. <https://doi.org/10.1080/03057070802295856>

The direct compliance costs are substantial. Using B-BBEE Commission compliance data, sectoral spending patterns and reasonable extrapolations for non-reporting firms, annual B-BBEE compliance costs are estimated at between R145 billion and R290 billion. This amounts to approximately 2% to 4% of South Africa's 2019 GDP. Ownership and enterprise and supplier development each account for roughly R40 billion to R85 billion annually. Skills development accounts for about R40 billion to R60 billion. Management control costs are estimated at R20 billion to R50 billion, while socio-economic development costs are estimated at R5 billion to R10 billion. These figures exclude many indirect costs, including lost productivity, delayed investment, administrative complexity, legal uncertainty and the diversion of management attention away from productive activity.

These costs are often defended as necessary investments in transformation. Some are indeed more productive than others. Skills development, for example, can strengthen human capital if training is well designed and linked to genuine workplace needs. Enterprise and supplier development can support emerging firms if it creates real market access and productive capacity. However, the existence of potentially beneficial categories does not mean the total compliance burden is economically efficient. Much of B-BBEE expenditure is not determined by market demand, productivity gains or consumer value, but by the need to satisfy a regulatory scorecard. That difference is critical. Expenditure that would otherwise not have occurred, or that would have been allocated differently in a freer market, carries a real opportunity cost.

At firm level, the effect is straightforward. A company that must spend additional money on ownership structures, consultants, verification, procurement premiums, training targets and enterprise-development contributions has less capital available for expansion, technology, research, wages or price reductions. In a simplified financial model of a JSE-listed company with R10 billion in revenue, an additional R150 million in B-BBEE-related operating expenses can reduce EBITDA by 10%, net profit by 15% and market capitalisation by 15%, assuming a constant valuation multiple. That is not merely an accounting inconvenience. It affects investor confidence, retained earnings, expansion plans and the company's ability to create jobs.

The burden is especially severe for smaller firms. Large firms can absorb compliance teams, consultants, verification processes and procurement restructuring more easily. Small and medium-sized enterprises often cannot. Yet even firms that are not formally required to submit full B-BBEE reports are drawn into the system through supply chain pressure. If a large company's score depends partly on the status of its suppliers, smaller firms must often obtain certificates, restructure ownership or accept costly compliance processes to remain competitive. This raises barriers to entry and favours established businesses with the resources to manage compliance. The result is perverse: A policy designed to broaden participation can end up protecting incumbents and discouraging entrepreneurship.

Procurement distortion is one of the most damaging effects. In a competitive economy, procurement should reward price, quality, reliability, innovation and delivery. B-BBEE changes these incentives by encouraging firms to select suppliers partly because of their scorecard contribution. The problem is that the policy deliberately shifts procurement away from neutral commercial criteria. Over time, this increases costs across supply chains, weakens productivity and creates incentives for fronting,

intermediaries and politically connected procurement structures. Bowmans (2019)³, Krige and Venter (2022)⁴, and various B-BBEE Commission reports^{5 6 7} have highlighted the risks of fronting and compliance manipulation. These are not accidental abuses of the system; they are predictable outcomes of a regulatory structure that attaches commercial value to racial classification and ownership form.

B-BBEE also affects investment. Investors seek stable rules, secure property rights, predictable returns and operational control. B-BBEE introduces uncertainty into ownership, procurement and management decisions. Foreign and domestic investors must assess not only market demand and production costs, but also compliance obligations that may change over time. The 2013 amendments and subsequent enforcement trends demonstrate that B-BBEE requirements can become more stringent as the policy evolves. In an economy already burdened by logistics failures, crime, municipal collapse and policy uncertainty, B-BBEE adds another layer of risk. The World Bank (2021, 2024)^{8 9} has repeatedly highlighted South Africa's weak investment and low-growth environment. B-BBEE is not the only cause, but it is one of the policy-made burdens that worsens the investment climate.

The macroeconomic implications are serious. South Africa's economic performance has deteriorated over the period in which B-BBEE became more expansive and compliance-heavy. The country's real GDP growth averaged 2,7% between 1994 and 2000; improved to 3,8% during the 2001–2007 upswing; weakened after the global financial crisis; and averaged only about 0,9% from 2013 to 2024. Unemployment rose from 15,6% in 1995 to 31,9% in 2024. This cannot be attributed solely to B-BBEE. South Africa has suffered from electricity shortages, state capture, rigid labour markets, failing infrastructure, weak education outcomes and poor governance. But B-BBEE has contributed to the cumulative policy burden that makes growth more difficult. When measured by its outcomes rather than its intentions B-BBEE has failed to create employment, wealth or reduce inequality – in fact it has most likely worsened each of these metrics.

³ Bowman, A. (2019). *Black economic empowerment policy and state-business relations in South Africa: the case of mining*. *Review of African Political Economy*, 46(160), 223–245.

<https://doi.org/10.1080/03056244.2019.1605587>

⁴ Krige, K., & Venter, Z. (2022). The economic costs of B-BBEE: A sectoral analysis. *South African Journal of Economic and Management Sciences*, 25(1), a4321. <https://doi.org/10.4102/sajems.v25i1.4321>

⁵ B-BBEE Commission. (2016). *Annual Report 2016/17*. Pretoria: B-BBEE Commission. Available at: <https://www.bbbeeecommission.co.za/wp-content/uploads/2017/10/B-BBEE-Commission-Annual-Report-2016-17.pdf>

⁶ B-BBEE Commission. (2020). *National Status and Trends on Broad-Based Black Economic Empowerment*. Pretoria: B-BBEE Commission. Available at: <https://www.bbbeeecommission.co.za/wp-content/uploads/2020/07/National-Status-and-Trends-on-Broad-Based-Black-Economic-Empowerment.pdf>

⁷ B-BBEE Commission. (2022). *Annual Report on National Status and Trends on B-BBEE*. Pretoria: B-BBEE Commission. Available at: <https://www.bbbeeecommission.co.za/wp-content/uploads/2022/07/B-BBEE-NATIONAL-STATUS-AND-TRENDS-ON-B-BBEE-TRANSFORMATION-JULY-SP-Final.pdf>

⁸ World Bank. (2021). *South Africa Economic Update: Building Back Better*. Washington, DC: World Bank. Available at: <https://www.worldbank.org/en/country/southafrica/publication/south-africa-economic-update-building-back-better>

⁹ World Bank. (2024). *South Africa Overview*. Washington, DC: World Bank. Available at: <https://www.worldbank.org/en/country/southafrica/overview>

Solidarity and the Free Market Foundation estimate annual compliance cost to be between 2% and 4% of GDP – most definitely not trivial. Even a portion of this cost, if redirected towards more productive investment, expansion or job creation, would have significant economic consequences.

A conservative estimate is that B-BBEE-related costs and distortions have reduced growth by 1,5 to 3 percentage points annually. Over two decades, this compounds into a very large GDP shortfall. The estimated cumulative shortfall is approximately R3,6 trillion.

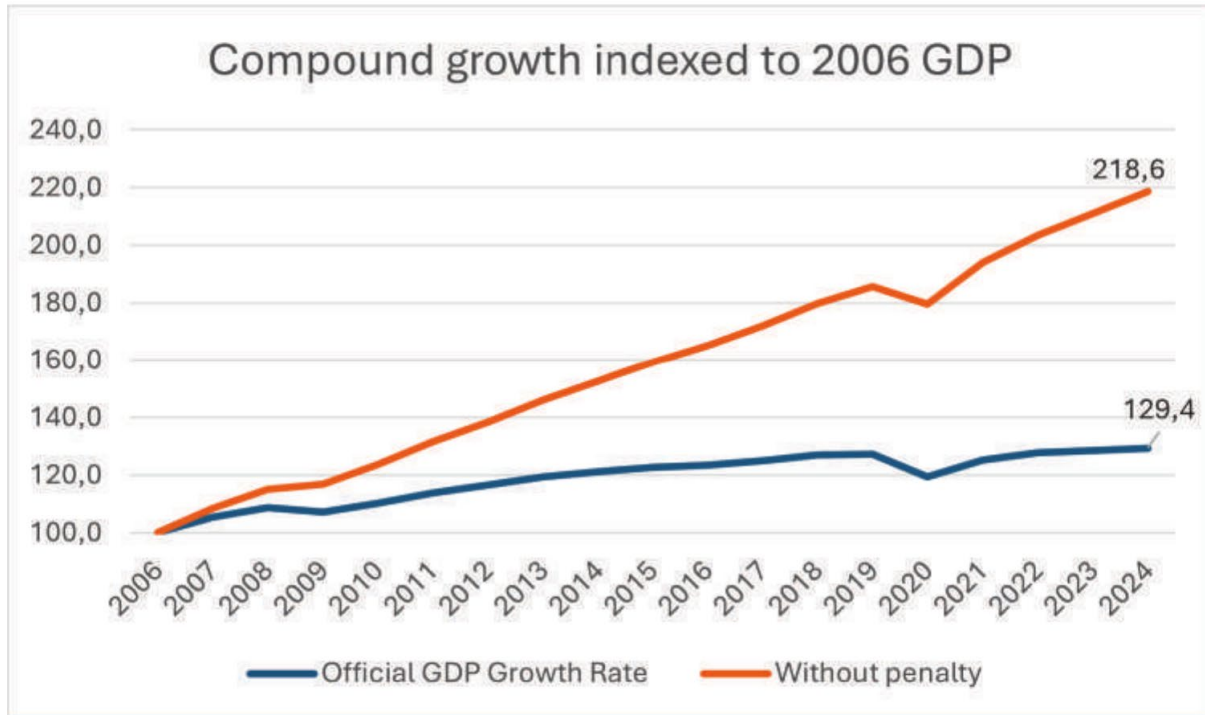


Figure 1 - GDP growth comparison with and without race laws

Using Okun's law as a lens, a sustained reduction in GDP growth is associated with a higher unemployment rate. South Africa's low employment elasticity means that growth does not translate into jobs as powerfully as it should, but lower growth still worsens unemployment. In employment terms, the implication is stark: millions of jobs may have been lost or never created because the economy grew too slowly.

A counterfactual exercise suggests that, had South Africa grown 3% faster per year from 2007 to 2024, nominal GDP would have been about R11,8 trillion rather than R7,3 trillion in 2024. South Africa's global GDP ranking would have been far stronger, and its GDP per capita would have placed it more securely among upper-middle-income countries. More importantly, unemployment could have been closer to 17% rather than 31,9%, with roughly 3,8 million more people employed.

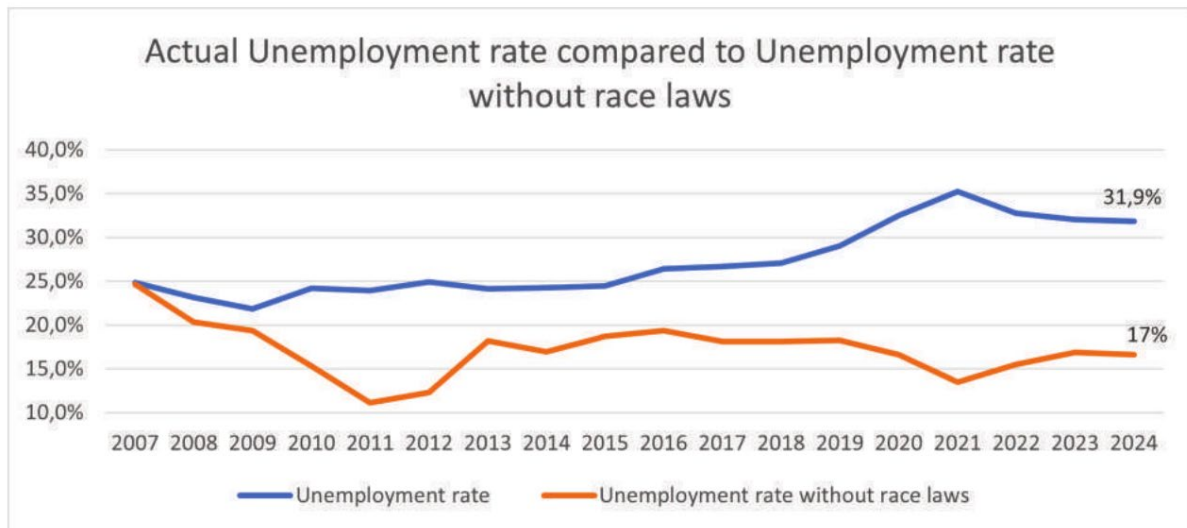


Figure 2 - Unemployment comparison with and without race laws

These estimates are necessarily imperfect, but they illustrate the scale of the opportunity cost. In a country where unemployment is the central driver of poverty, dependency and social instability, policies that suppress growth have devastating human consequences.

B-BBEE's defenders often point to achievements in black ownership, management and the growth of the black middle class. These gains should not be dismissed. B-BBEE Commission data show increases in black ownership and senior management representation. Skills-development spending has expanded training opportunities in sectors such as mining and finance. Enterprise and supplier development has assisted some black-owned small businesses. The black middle class has grown significantly since 1994. These are real developments.

The problem is proportionality and causation. First, many of these gains may have resulted from broader social and economic changes after apartheid, including urbanisation, education expansion, public-sector employment and normal market integration, rather than B-BBEE alone. Second, the gains have been concentrated. South Africa still has extreme unemployment, persistent poverty and widening inequality within the black population. Leibbrandt et al. (2009)¹⁰, Orthofer (2016)¹¹ and subsequent inequality research show that intra-group inequality has become increasingly important. If the top 10% of black earners receive a very large share of black income, then racially defined empowerment can coexist with mass black poverty. In practice, B-BBEE has often empowered a relatively small politically connected and professional class, while millions remain excluded from work altogether.

Elite capture is therefore not a marginal criticism; it is central to the policy's failure. High-profile ownership transactions, preferential procurement arrangements and advisory structures often benefit those with political access, legal sophistication or existing capital. Ordinary unemployed South

¹⁰ Leibbrandt, M., Woolard, I., Finn, A., & Argent, J. (2010). *Trends in South African income distribution and poverty since the fall of Apartheid*. OECD Social, Employment and Migration Working Papers, No. 101. OECD Publishing. <https://doi.org/10.1787/5kmms0t7p1ms-en>

¹¹ Orthofer, A. (2016). *Wealth inequality in South Africa: Evidence from survey and tax data*. REDI3x3 Working Paper 15. Southern Africa Labour and Development Research Unit, University of Cape Town.

Africans do not benefit from a procurement premium paid to a connected intermediary. Nor do they benefit when a firm delays investment, automates instead of hiring, or exits a market because compliance has become too costly. A policy that enriches a narrow group while weakening the growth prospects of the broader population cannot be described as broad-based in any meaningful economic sense.

The Zondo Commission's findings strengthen this conclusion: State capture showed how empowerment and procurement rules could be manipulated into a pathway for corruption, rent-seeking and politically connected enrichment rather than genuine broad-based development¹²

International comparisons reinforce this concern. Affirmative-action and identity-based policies exist in countries such as Malaysia, Brazil, India, Namibia and the United States, but South Africa's model is unusually far-reaching in its application to private ownership, procurement and enterprise structures. Malaysia's New Economic Policy, a preferential policy system for the Bumiputera, and indigenous people of Malaysia produced some advancement for the Bumiputera, but scholars like Lee (2022)¹³, Gomez (2020)¹⁴ and Mason and Omar (2003)¹⁵ have also linked it to patronage, dependency and elite enrichment. India's reservation system focuses more heavily on education and public-sector access. The United States has largely pursued anti-discrimination and limited affirmative-action measures rather than a comprehensive private-sector scoring regime. Namibia's attempts at broad-based empowerment have also been criticised for risking elite capture. South Africa's model stands out because it embeds racial classification deeply into private commercial decision-making.

The legal environment compounds the problem. South Africa has accumulated a large body of race-related legislation, with B-BBEE forming only part of a broader framework that includes employment equity, procurement rules, sector codes and transformation charters. The Employment Equity Act (No. 55 of 1998), Competition Act (No. 89 of 1998), Preferential Procurement Policy Framework Act (No. 5 of 2000) and Public Procurement Act (No. 28 of 2024) all interact with the wider transformation agenda. This creates a dense compliance environment in which firms must constantly assess racial targets, ownership credentials, supplier status and scorecard implications. The result is not a lean developmental state, but a bureaucratic compliance state.

The hidden costs are as important as the visible ones. Firms spend money on verification, consultants, legal advice, internal reporting and compliance administration. Managers spend time on scorecard optimisation rather than production, innovation or customer service. Human-resource decisions may be shaped by compliance targets rather than merit, experience or operational need. Procurement officers may face pressure to prioritise supplier credentials over commercial value.

¹² https://www.gov.za/sites/default/files/gcis_document/202201/judicial-commission-inquiry-state-capture-reportpart-1.pdf?utm_source=chatgpt.com

¹³ Lee, H. (2022). Malaysia's New Economic Policy: Fifty Years of Polarization and Impasse. *Southeast Asian Studies*, 11(2). https://www.jstage.jst.go.jp/article/seas/11/2/11_299/_pdf

¹⁴ Gomez, E. T. (2020). New Economic Policy @50: Looking back and forward. *Economic History Malaysia*. <https://www.ehm.my/publications/articles/new-economic-policy-50-looking-back-and-forward>

¹⁵ Mason, R., & Omar, A. (2003). The 'Bumitera Policy': Dynamics and Dilemmas. *Kajian Malaysia*, XXI(1 & 2). <http://web.usm.my/km/KM%2021,2003/21-i.pdf>

Entrepreneurs may avoid formalisation because formal markets bring regulatory burdens. These effects are difficult to quantify, but they shape behaviour across the economy.

The ultimate question is whether B-BBEE helps South Africa solve its deepest problem: mass unemployment. On the evidence, it does not. South Africa does not primarily suffer from a shortage of redistribution mechanisms. It suffers from a shortage of productive firms, competitive markets, reliable infrastructure, skilled workers, investment, entrepreneurship and job creation. A genuine empowerment strategy should focus on growth first: improving education, fixing electricity and logistics infrastructure, protecting property rights, reducing red tape, liberalising labour markets, supporting small business formation, fighting corruption and expanding access to capital on commercially sound terms. Such reforms would benefit poor South Africans disproportionately because they would expand opportunity rather than ration access to existing positions.

In a growing economy, redistribution can occur alongside rising employment and broad opportunity. In a stagnant economy, redistribution becomes a contest over limited positions, contracts and rents. South Africa has chosen too much of the latter.

The policy's central failure is that it tries to engineer empowerment through compliance rather than prosperity through growth. If empowerment is to be genuinely broad-based, it must be measured not by ownership points, procurement certificates or management ratios, but by how many South Africans can find work, build businesses, acquire skills, accumulate assets and live independently of political patronage. By that standard, B-BBEE has imposed costs far greater than its benefits. South Africa needs a new empowerment paradigm: one rooted in growth, employment, property ownership, education, entrepreneurship and equal treatment before the law.

Employment Equity

Employment equity in South Africa began as part of the post-1994 legal project to eliminate unfair discrimination and promote affirmative action in the workplace. The Employment Equity Act (No. 55 of 1998) was enacted to promote equal opportunity and fair treatment, while also requiring affirmative action measures to redress disadvantages experienced by designated groups and ensure their equitable representation in occupational categories and levels¹⁶. From the outset, however, the Act contained an important distinction: Affirmative action could include preferential treatment and numerical goals, but not quotas, and it could not be used to create an absolute barrier to the employment or advancement of people outside designated groups.¹⁷ Over time, that original framework became more prescriptive. The 2013 amendments tightened the language around equitable representation in occupational levels, and the Employment Equity Amendment Act (No 4 of 2022) later empowered the minister to set sectoral numerical targets.¹⁸ The Employment Equity Regulations, 2025 represent the most aggressive phase of this evolution: Employment equity has

¹⁶ <https://lawlibrary.org.za/akn/za/act/1998/55/eng%402003-02-20>

¹⁷ https://lawlibrary.org.za/akn/za/act/1998/55/eng%402014-08-01/provision/chp_III_sec_15

¹⁸ <https://www.gov.za/documents/employment-equity-act>

become a system of centralised demographic planning, where employers are increasingly pressured to align their workforces with state-determined race and gender targets.

The latest Employment Equity Regulations represent one of the most intrusive attempts yet to regulate the composition of South Africa's labour market by race and gender. Their stated purpose is familiar: to accelerate transformation, correct historical exclusion and ensure that workplaces more closely reflect the economically active population. Yet, policy must ultimately be judged by outcomes, not intentions. When measured against South Africa's actual economic crisis – mass unemployment, weak growth, skills shortages and a stagnant formal employment base – these regulations are not merely impractical. They are economically destructive.

The core problem is simple. In April 2025, the Minister of Employment and Labour published sectoral numerical targets under the Employment Equity Act. These targets apply across 18 sectors and four occupational levels: top management; senior management; professionally qualified and middle management; and skilled technical employees. Employers are expected to align their employment equity plans with these five-year sectoral targets.¹⁹ Analysis shows the economy cannot realistically grow into these targets. The only possible route to compliance with the minister's targets in many sectors and at many occupational levels would have to be replacement: Existing employees would have to make way for employees of another race or gender.

That finding must be understood against the background of the 2023 settlement agreement reached between Solidarity and the Department of Employment and Labour. The settlement followed Solidarity's complaint to the International Labour Organisation and was mediated through the Commission for Conciliation, Mediation and Arbitration (CCMA). The government's own communication at the time confirmed that the matter concerned employment equity and affirmative action, and that the parties had reached an "amicable" settlement.²⁰ The settlement recognised that employers could not simply be forced to mirror the economically active population in every workplace. It required a broader and more realistic approach, taking into account factors such as the available skills pool, the inherent requirements of the job, natural staff turnover, recruitment trends, promotion patterns and business conditions. It also made clear that no employee's employment may be terminated as a result of the application of employment equity.

The 2025 regulations materially depart from that understanding. Although they still refer to various factors employers may consider, they elevate the economically active population to the dominant reference point. The difference between "must take into account" and "may take into account" is not merely technical. It changes the practical burden on employers. The regulations also omit the explicit protection contained in the settlement agreement that no person may be retrenched or replaced as a consequence of employment equity. That omission is not accidental in its effect. Once the economy cannot grow into the targets, and once the no-retrenchment safeguard disappears, replacement becomes a realistic mechanism through which compliance pressure will operate.

¹⁹ <https://www.labour.gov.za/DocumentCenter/Pages/Employment-Equity-%28EE%29-Regulations-.aspx>

²⁰ <https://www.gov.za/news/media-advisories/employment-and-labour-signs-settlement-agreement-trade-union-solidarity-sa-28>

The first question, therefore, is whether South Africa can meet the targets through growth. The answer is no. To reach the minister's figures without replacing anyone, sectors would need an average growth rate of 38% across the next five years. This is not a modest adjustment. It is a fantasy when measured against South Africa's actual employment performance. According to CCMA figures, reported employment has shown virtually no net growth over the past decade, with the total number of employees reported in 2023 still below the 2018 level. Stats SA's labour-market data confirm the broader weakness: Official unemployment stood at 31,9% in the fourth quarter of 2024, with 8,0 million people unemployed and expanded unemployment at 41,9%.²¹

The required growth levels in specific sectors are even more unrealistic. At top management level, Public Administration would need to grow by 77% and Water by 67% to bring representation into line with the minister's figures. At senior management level, Public Administration would need growth of 174%, Water 60%, Electricity 49% and the Arts 48%. At the professionally trained level, Electricity would need to grow by more than 300%, Public Administration by 184%, Administrative Support by 146% and Water by 123%. At the skilled level, Electricity, Construction, Professional Services and Agriculture would all need growth of more than 100% in certain categories. These are not plausible targets in an economy struggling to achieve even modest growth.

This matters because employment equity debates often focus on top management. That focus is misleading. Top management accounts for only about 0,8% of total employees. Senior management accounts for only about 2%. The occupational levels that will be affected most heavily by the new regulations are not elite boardrooms, but the professionally trained and skilled categories. These correspond broadly with ordinary middle-class workers – teachers, nurses, technicians, administrators, tradespeople, clerks, supervisors and trained professionals. The burden of these regulations will therefore not fall mainly on the wealthy or the politically connected. It will fall on people who have built modest livelihoods through work and skill.

The replacement calculations demonstrate the scale of the problem. Across all sectors and job levels, approximately 69 796 members of the non-designated group – simply put, white males without disabilities – would have to be replaced to meet the minister's figures. This follows from the Employment Equity Act's definition of "designated groups" as black people, women and people with disabilities who meet the relevant citizenship requirements.²²

At top management level, the number is 3 036. At senior management level, it is 7 449. At the professionally trained level, it is 26 022. At the skilled level, it is 33 289.

The largest absolute numbers occur not in the most senior layers of the economy, but lower down the occupational structure. This confirms that the regulations reach deeply into the middle of the labour market.

However, the most revealing result is that white males are not the only group negatively affected. The minister's figures would also require the replacement of approximately 111 568 females across all race groups. The reason is that the regulations do not merely seek to increase the representation

²¹ https://www.statssa.gov.za/?PPN=P0211&SCH=73895&page_id=1856

²² <https://www.labour.gov.za/DocumentCenter/Forms/Employment%20Equity/EEA%203.pdf>

of designated groups in general. They impose specific race and gender outcomes that often clash with the actual distribution of men and women across sectors and occupations.

In sectors such as Health and Education, where women are strongly represented, the targets can imply that large numbers of women are “overrepresented” according to the state’s formula. In Health alone, about 76 000 women would have to be replaced. In Education, about 65 000 women would have to be replaced. At the skilled level, roughly 58 000 women in Education, 51 000 in Health, 31 000 in Finance and 30 000 in the Arts are implicated by the replacement calculations.

This exposes the absurdity of central demographic planning. Labour markets are not spreadsheets. Men and women do not distribute themselves evenly across every occupation and sector. People make different study choices, career choices and life choices. Skills pipelines differ by industry. Regional labour markets differ. Firm sizes differ. Turnover differs. The available pool of suitably qualified candidates differs. By forcing employers to work backwards from demographic targets, the regulations ignore the real structure of the labour market.

The regulations are especially damaging because they punish firms for realities they did not create. An employer in a specialised technical sector may face a limited skills pool. A rural business may draw from a different local labour market than a national demographic formula assumes. A hospital or school may employ many women because women have historically entered those professions in larger numbers. A mining or construction firm may employ more men because of the nature of the available workforce and occupational choices. These differences may have many causes, but they cannot be corrected by threatening firms with turnover-based penalties.

The economic consequence is uncertainty. Firms now have to draft employment equity plans under the shadow of state-imposed targets and possible fines. The 2025 framework requires designated employers to prepare five-year employment equity plans aligned with the sectoral numerical targets, while compliance certificates and assessments are linked to progress against these targets.²³ This alters appointments, promotion and retention decisions.

It encourages employers to treat race and gender not as one factor among many in a lawful employment equity framework, but as compliance risks to be managed. It diverts management attention from productivity, expansion and service delivery towards demographic engineering. In a country already suffering from weak investor confidence and low growth, this is precisely the wrong burden to impose.

The regulations will also discourage employment. If appointing a worker increases future compliance exposure, firms will be more cautious about hiring. If expanding a business creates new demographic obligations, some employers may prefer automation, outsourcing, informalisation or simply slower expansion. The state assumes that employment can be rearranged without affecting the total number of jobs. That assumption is wrong. The more risky and costly formal employment becomes, the less of it there will be.

The most damning finding is that even if every single white male identified for replacement were replaced by an unemployed black person, black unemployment would fall only from 36,98% to

²³ <https://cms.law/en/zaf/publication/employment-equity-sectoral-targets-and-the-employment-equity-regulations-2025-are-here-what-every-employer-needs-to-know>

36,64% as per numbers indicated in Q4 of 2024. That is a reduction of just 0,34 percentage points. In other words, the immense disruption of these regulations would barely move the unemployment needle. This single fact reveals the failure of the entire approach. South Africa's problem is not that the existing workforce is insufficiently rearranged; it is that millions of people are outside the workforce altogether.

Employment equity regulation focuses obsessively on the colour and gender of those who already have jobs. It pays far too little attention to those who have no job at all. A policy that threatens existing workers, burdens employers and barely reduces unemployment cannot credibly be defended as a solution to poverty. It is redistribution within scarcity, not the creation of prosperity.

True redress requires economic growth. It requires a larger formal economy, better schools, functioning municipalities, reliable electricity, efficient ports and railways, lower barriers to small business formation, safer communities, stronger property rights and a labour market that encourages hiring. It requires more firms competing, investing and expanding. It requires skills development rooted in actual demand, not demographic formulas. It requires the state to fix the conditions under which employment is created, rather than attempting to centrally plan who should hold the limited number of existing jobs.

The 2025 employment equity regulations show that the problem is not merely that the minister has chosen the wrong targets. The deeper problem is the belief that government can engineer prosperity by regulating workforce composition. South Africa cannot be racially audited into growth. It cannot be fined into employment. It cannot replace its way into prosperity.

The focus must shift from demographic control to economic expansion. The millions without work do not need more racial arithmetic. They need a growing economy that can absorb them into productive employment.

Grassroots

"We do not, however, want to become a nation of groups all walking around with calculators doing head counts and demanding special programmes for this group or that." ²⁴

The ANC's 1994 policy document warned that affirmative action, if badly managed, would "redistribute resentment, damage the economy and destroy social peace," and explicitly cautioned that redress should not replace one injustice with another or become a mechanism for enabling "a new elite to emerge."

Three decades later, grassroots South Africa increasingly reflects precisely those dangers.

The most damaging consequence of race-based legislation is not found only in boardrooms, procurement offices or government gazettes. It is found at grassroots level: in the worker who is told that he cannot be promoted, the young person who is excluded from a youth employment

²⁴ https://www.anc1912.org.za/policy-documents-1994-affirmative-action-and-the-new-constitution/?utm_source=chatgpt.com

programme, the child whose sports team is punished, the business owner who is denied crisis relief, and the student whose future is filtered through racial arithmetic. South Africa's racial dispensation was created in the name of redress, but its practical effect has been to carry racial classification into the ordinary decisions of everyday life.

Workplace: Department of Correctional Services

The first grassroots effect is seen in the workplace. The court case, *Solidarity and Others v Department of Correctional Services and Others* [2016] ZACC 18, showed how employment equity, when applied mechanically, can harm the very minorities it claims to protect. Coloured applicants in the Western Cape were denied appointments or promotions because the department used national demographic targets rather than properly accounting for regional demographics. The Constitutional Court found that the department had failed to take both national and regional economically active population profiles into account when setting targets and assessing representivity, and that several refusals to appoint constituted unfair discrimination and unfair labour practices.²⁵

This case matters because it exposed the human reality behind employment equity formulas. These were not abstract categories on a spreadsheet. These were people who had applied for jobs, had often been recommended by interview panels, and were then blocked because of a racial target. The lesson is clear: Once the state starts governing opportunity through racial categories, individuals can be sacrificed to demographic neatness.

Promotion and merit: The Renate Barnard case

The Renate Barnard case, *Barnard v South African Police Service* [2014] ZACC23, revealed the same principle in another form. Barnard, a captain in the South African Police Service, repeatedly applied for promotion and was recommended as the strongest candidate, but was not appointed because her promotion would not advance the SAPS's employment equity plan. The litigation became one of the defining employment equity disputes of the democratic era. In practice, it showed that a competent individual could be denied advancement not because she lacked merit, but because her appointment did not fit a racial plan.²⁶

Youth Employment Service: Race enters entry-level opportunity

Youth unemployment is one of South Africa's deepest crises, and yet even youth employment initiatives have been drawn into racial classification.

The Yes4Youth initiative was marketed as a youth job-creation programme linked to B-BBEE scorecard benefits, allowing companies to improve their B-BBEE level through youth placements.²⁷ In principle, youth employment should be the least racially divisive area of public policy. Any unemployed young person, regardless of race, should be seen as part of the national emergency. In practice, the programme has been linked to empowerment incentives, meaning that even entry-level opportunity is filtered through race-conscious compliance logic.

²⁵ <https://collections.concourt.org.za/handle/20.500.12144/3805>

²⁶ <https://repository.up.ac.za/items/3b1cfb8d-80f8-487f-9636-599d81b0f44e>

²⁷ <https://www.yes4youth.co.za/yes-b-bbee>

Initially, the Youth Employment Service openly barred white youth from participating.²⁸

After public pressure the programme's website now allows white unemployed young persons to register – however, companies still only earn points on the B-BBEE scorecard if the unemployed young person they give an internship to is black.²⁹

Government thus has decided that businesses should be rewarded for helping to reduce black youth unemployment rather than white youth unemployment.³⁰

Sport: Quotas on the playing field

Sport should be one of the few places where young South Africans can meet one another through shared effort, discipline and excellence. Yet racial quotas have entered even school-level competition. In 2023, the Western Province Under-16 rugby side lost its place in the main match in the Grant Khomo Week after injuries forced changes that left the team with too few black players. SuperSport Schools announced that the team had been barred from playing in the final because it did not adhere to SA Rugby's strategic transformation plan, which required at least 12 players of colour in a matchday squad of 23.³¹

The incident illustrates the cruelty of quota thinking at grassroots level. Children who had won their matches on the field were punished because the team's racial composition no longer met administrative requirements. The Western Cape government criticised the decision, warning that sport should not take opportunities away from young people because of circumstances outside of their control, such as injuries.³²

Unfortunately, several such incidents have been reported at grassroots level in South Africa. The Mpumalanga Sunbirds netball team was disqualified from a semifinal in the 2020 Telkom Netball League because they had the wrong racial composition of players for a quarter of a match, the absurdity of it being that they had fielded too many black players and thus fell afoul of the league's racial regulations.³³

More recently, the Eastern Cape Warriors cricket team won a game that would have qualified them for the playoffs in the CSA One-Day Cup, but cricket administrators then stripped the team of all their league points because the team had fielded the wrong type of black player. Not only was the Warriors team disqualified from the playoffs, but a significant fine was imposed on them.^{34 35}

²⁸ <https://mybroadband.co.za/news/government/282585-why-government-jobs-website-does-not-let-unemployed-white-people-apply.html>

²⁹ <https://www.yes4youth.co.za/corporate-partners>

³⁰

[https://www.yes4youth.co.za/hubfs/Useful%20links%20amendments/YESGAZETTE%20\(1\).pdf?hsLang=en](https://www.yes4youth.co.za/hubfs/Useful%20links%20amendments/YESGAZETTE%20(1).pdf?hsLang=en)

³¹ <https://ssschooolsplus.co.za/wp-lost-their-place-in-main-match-of-grant-khomo-week-due-to-not-adhering-to-regulations/>

³² <https://www.westerncape.gov.za/cas/article/sport-should-not-penalise-youth-quotas>

³³ <https://www.pressreader.com/namibia/new-era/20201030/282059099505049>

³⁴ <https://thestar.co.za/sport/cricket/domestic/2025-03-10-warriors-wow-to-fight-points-deduction-fine-for-breaching-csas-transformation-requirements/>

³⁵ <https://www.theherald.co.za/sport/cricket/2025-03-10-warriors-booted-out-of-one-day-cup-eliminator/>

At grassroots level in South Africa race-based legislation has reached the point where a team can win on the scoreboard but then loses when it comes to the team photo.

Crisis relief: race-based rules during Covid-19

During the Covid-19 lockdown, tourism businesses across South Africa faced severe hardship. Instead of treating disaster relief as emergency support for all affected businesses, the Department of Tourism included B-BBEE status in the scoring criteria for the Tourism Relief Fund. AfriForum and Solidarity challenged this. The Supreme Court of Appeal later held that the minister had acted unlawfully and invalidly because she had believed in error that she was required to use B-BBEE criteria and had failed to apply her mind properly to the relevant criteria.³⁷

This episode shows how race-based policy can follow citizens even into moments of national crisis. Lockdown damage was not race-specific. Businesses did not lose income according to B-BBEE level. Employees did not lose wages according to ownership scorecards. Yet, relief was filtered through racial empowerment criteria. At grassroots level, this meant that business owners and employees who were already suffering could be pushed further back in the queue for aid because they had the wrong skin colour.

Conclusion: South Africa wants to be truly non-racial

According to the latest research of the South African Institute of Race Relations (SAIRR), South Africans do not need or want more racial classification. They need jobs, safety, good schools, functioning municipalities, reliable electricity, affordable transport and a growing economy.³⁸

The tragedy of race-based legislation is that it focuses the state's energy on rearranging (or selling) access to scarce opportunities rather than expanding opportunity itself. At grassroots level, that means ordinary South Africans are made to compete for limited places under strict racial rules.

³⁶ <https://www.theherald.co.za/sport/cricket/2025-03-10-warriors-booted-out-of-one-day-cup-eliminator/>

³⁷ <https://www.citizen.co.za/news/south-africa/courts/court-finds-tourism-relief-fund-was-unlawful-and-invalid/>

³⁸ https://irr.org.za/reports/irr-polling/polling-report_1_2026.pdf

Non-racial by 2030

For South Africa to finally meet the requirements set out in section 1 of the Constitution and be truly non-racial³⁹ it has to stop using apartheid-style racial classifications.

South Africa still experiences severe socio-economic challenges that require some form of intervention.

However, in order to truly help those in need rather than those in greed, measures should use socio-economic indicators as criteria rather than skin colour.

A rough roadmap for transitioning from government help based on skin colour to help based on circumstances is mapped out in the rest of the document.

End date for racial classification

In the settlement agreement mediated by the International Labour Organisation (ILO) between Solidarity and the South African Government, affirmative action is defined as "...a coherent packet of measures, of a temporary nature in line with the Constitution, aimed specifically at correcting the position of members of a target group as defined in the Employment Equity Act in the workplace, in order to obtain effective equality."

This definition is in line with international best practice regarding temporary special measures.^{40 41}

It thus follows that a temporary programme such as affirmative action (and by extension most of South Africa's race-based dispensation) has to end – otherwise it would be a permanent measure that flies in the face of international standards.

The first and most important step in transitioning from race-based measures to needs-based measures is simply to announce an end date for race-based measures in South Africa.

Without a hard end date the goalposts will constantly shift, ultimately resulting in a permanent racial dispensation – a country that will always be "walking around with calculators doing head counts and demanding special programmes for this group or that."⁴²

³⁹ <https://www.gov.za/documents/constitution/constitution-republic-south-africa-1996-chapter-1-founding-provisions-04-feb>

⁴⁰ https://digitallibrary.un.org/record/522746/files/A_59_38%28PartI%29-EN.pdf

⁴¹

https://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20%28English%29.pdf?utm_source=chatgpt.com

⁴² <https://www.anc1912.org.za/policy-documents-1994-affirmative-action-and-the-new-constitution/>

Phased Approach

Although the best possible solution would be to simply stop using apartheid-style racial classification as South Africa transitions away from a race-based dispensation, a hard cut-off is not feasible at the moment. Therefore, a staggered approach needs to be adopted when phasing out race-based legislation.

Thus an intermediate phase is to phase out race-based legislation and transform it into class-based legislation with a specific aim to enable economic growth and attract foreign investment.

Any shift to a class-based system needs to focus expressly on reducing poverty, unemployment and specifically youth unemployment

B-BBEE

Equity Equivalence Programme

Equity equivalence is a mechanism within South Africa's B-BBEE framework that allows qualifying multinational companies to meet the ownership element of B-BBEE without transferring equity to local shareholders. In ordinary B-BBEE compliance, firms are expected to score ownership points through black South African shareholding.

For many multinational companies, however, this requirement clashes with global ownership structures, shareholder rules, investment mandates and policies. Equity equivalence recognises this difficulty and allows a company to make an approved contribution in lieu of direct equity transfer.⁴³

In practical terms, equity equivalence shifts the emphasis from ownership transfer to developmental contribution. Instead of requiring a foreign company to sell a percentage of its South African operation to black shareholders, the company may invest in programmes that advance enterprise development, skills development, infrastructure, research and development, technology transfer, socio-economic development, or sustainable job creation.

This mechanism already exists in South African law and policy. It is not a foreign import or a loophole. It is contained in the B-BBEE Codes of Good Practice and has been recognised by government as a legitimate way for multinationals to contribute to empowerment objectives.

The real question is why South Africa has made it so difficult, slow and exceptional, when it should become the default mechanism for foreign investors.

The current situation is unsatisfactory. South Africa has tentatively moved towards softening the regulatory burden for foreign investors through the Equity Equivalent Programme, but the programme remains narrow and administratively onerous. A parliamentary portfolio committee briefing in 2022 indicated that only 22 companies had been approved for the Equity Equivalent Investment Programme. That is an astonishingly small number for an economy that urgently needs foreign direct investment, technology transfer, infrastructure investment and job creation.

⁴³ <https://www.thedtic.gov.za/financial-and-non-financial-support/b-bbee/equity-equivalent-programme/>

The Information and Communication Technology (ICT) sector illustrates both the problem and the opportunity. In 2025, Communications and Digital Technologies Minister Solly Malatsi gazetted a policy direction on equity equivalent investment programmes in the ICT sector. The policy direction was framed as part of the Government of National Unity's effort to attract investment through regulatory reform and to provide policy certainty for broadcasters, internet service providers, mobile networks and fixed or mobile network operators. Government's own statement acknowledged that existing licensing rules require at least 30% shareholding in the hands of historically disadvantaged individuals, and that these rules do not adequately allow companies to contribute to transformation through alternatives to traditional ownership.⁴⁴

That statement is important because it concedes the central point: Ownership transfer is not the only way to contribute to transformation. The same government communication explains that equity equivalent investment programmes can support local suppliers, enterprise and skills development, job creation, infrastructure, research and innovation, digital inclusion, and funding for SMMEs. In other words, equity equivalence can direct compliance spending towards the very areas where South Africa most urgently needs progress.

South Africa's race-based legislation has become a non-tariff barrier to entry. Foreign investors already face serious concerns about electricity reliability, logistics, crime, policy uncertainty, weak growth and administrative inefficiency. Adding ownership transfer requirements makes the South African market still less attractive. Broader analysis shows that South Africa's GDP per capita has stagnated, unemployment remains extremely high, and race-based policy has failed to reduce poverty or unemployment meaningfully.

The South African government has repeatedly stated that foreign investment is critical for South Africa to address its socio-economic problems.⁴⁵ In this context, making market entry harder for foreign investors is irrational. South Africa needs capital, technology, competition and jobs.

If a multinational is forced into an ownership transaction, the benefit may accrue to a small group of connected shareholders. This has been one of the recurring failures of race-based empowerment policy: It has often produced elite enrichment rather than broad-based development. Equity equivalence can be structured differently. Properly designed, it can channel resources into poverty reduction, youth employment, training, small business development, digital inclusion, and infrastructure and technology transfer. These are measurable and socially valuable outcomes that are needs-based rather than race-based.

Multinationals should be defaulted into the Equity Equivalent Programme. The South African government should do away with all the onerous qualification criteria for multinationals and rather move to a situation where equity equivalent is the default – with the South African government having to advocate why a multinational should not be defaulted into the Equity Equivalent Programme.

⁴⁴ <https://www.gov.za/news/media-statements/minister-solly-malatsi-publishes-policy-direction-equity-equivalent>

⁴⁵ <https://www.gov.za/blog/all-us-have-duty-promote-foreign-investment>

The principle of “once empowered, always empowered” should also apply to equity equivalence so that firms have certainty and are not trapped in recurring compliance cycles that discourage long-term investment.

Employee Share Ownership Schemes

Under the current B-BBEE framework, ownership points are usually pursued through race-based shareholding structures, empowerment partners, trusts or special-purpose vehicles. In theory, this is meant to broaden ownership. In practice, it has too often concentrated benefits among a small politically connected or financially positioned elite, while ordinary workers remain wage-earners without meaningful participation in the wealth they help create.

A better model is available: employee share ownership plans, or ESOPs. These structures allow employees to own a stake in the company where they work. Properly designed, ESOPs align the interests of workers and shareholders, encourage productivity, create long-term savings and distribute the benefits of growth more broadly across the workforce. Instead of using ownership policy to transfer equity to a narrow group of outside beneficiaries, ESOPs can make ownership a lived reality for thousands of ordinary employees, thus moving away from race-based policies to needs-based policies by empowering employees directly.

For South Africa to move towards a regulatory environment where ESOPs become the default mechanism through which local companies earn ownership points on the B-BBEE scorecard one crucial reform is needed: ESOPs should not be judged primarily according to race-based ownership criteria. They should be judged according to whether they expand genuine employee ownership, especially among lower- and middle-income workers.

This change would not require Parliament to amend the B-BBEE Act itself. The B-BBEE Codes of Good Practice are subordinate legal instruments issued by the minister under section 9 of the B-BBEE Act. In other words, if government wanted to make ESOPs the preferred or default route for ownership points, it can be a fast regulatory amendment of the Codes of Good Practice rather than through a lengthy parliamentary process.⁴⁶

The current B-BBEE ownership model assumes that racial ownership transfer is the same as broad-based empowerment. If a transaction enriches a small number of well-connected individuals, it may technically improve a company’s scorecard, but it does little for the worker on the shop floor. Ownership policy should be judged not by the race of a few shareholders, but by whether it expands capital ownership among people who would otherwise remain excluded from asset formation. Removing race as criterion for ESOPs would ensure that ESOPs are a good vehicle for needs-based empowerment.

Internationally ESOPs are used extensively as vehicles for empowering employees.

In the United States, ESOPs are primarily treated as broad-based retirement, succession and wealth-building vehicles. The National Center for Employee Ownership estimates that, using the most recent available data, there are 6 609 ESOPs at 6 411 companies, covering 15,1 million participants and holding more than \$2,1 trillion in assets. The point of the American model is not racial

⁴⁶ https://lawlibrary.org.za/akn/za/act/2003/53/eng%402015-10-24/provision/sec_9

compliance, but broad employee participation in ownership, usually through a trust structure that accumulates shares for employees over time.⁴⁷

The United Kingdom offers another useful comparison through employee ownership trusts. The British government defines employee ownership as a model where all employees have a “significant and meaningful” stake in a business, including both a financial stake and a say in how the business is run. In the UK model, employee ownership is therefore linked not only to capital participation, but also to employee engagement, consultation, governance and workplace voice.⁴⁸

These examples highlight the difference between a race-based ownership model and a worker-ownership model. In the United States, the focus is on retirement wealth and employee participation. In the United Kingdom, the focus is on all-employee ownership, financial stake and employee voice.

In South Africa’s demographic context, broad ESOPs would still benefit majority black employees. But they would do so without requiring the state to sort workers into inherited racial categories before deciding whose ownership counts. It would also directly increase wealth creation among middle- and lower-income earners and help with retirement planning and saving – which is a growing crisis in South Africa.^{49 50}

A well-designed ESOP also supports productivity. When employees share in the upside of a company’s success, they have a stronger interest in efficiency, innovation, cost control and long-term sustainability. This does not mean every worker suddenly becomes a manager or that normal workplace tensions disappear. But it does create a shared stake in the future of the firm. It changes the tone of empowerment from compliance to participation. Employee ownership can become a bridge between work and wealth.

This is especially important in South Africa, where race-based legislation has often produced resentment rather than solidarity. A non-racial ESOP model would avoid forcing workers into competing racial categories. Instead of saying that one group must be empowered at the expense of another, it would say that employees as a class should share more fully in the value they help create.

Redress should focus increasingly on actual disadvantage: income, unemployment, lack of assets, age, education, geography and family circumstances. A cleaner ESOP framework could therefore give additional recognition to schemes that disproportionately benefit lower-paid workers, younger workers, workers without prior assets, or workers in communities with high unemployment.

For companies, ESOPs offer a more stable and legitimate route to compliance. Many firms currently treat B-BBEE ownership as a costly transaction that must be structured, financed, verified and periodically renewed. ESOPs are not automatically simple, but they can be designed as durable institutions rather than once-off compliance events. A company that gives employees a real stake in its growth is making a long-term investment in workplace stability and social legitimacy.

A reformed B-BBEE framework should therefore place ESOPs at the centre of ownership scoring. Companies should receive full or substantial ownership recognition where they establish broad-

⁴⁷ <https://www.esop.org/>

⁴⁸ <https://www.gov.uk/employee-ownership>

⁴⁹ <https://www.moneyweb.co.za/financial-advisor-views/the-retirement-crisis-in-south-africa/>

⁵⁰ <https://jefjournal.org.za/index.php/jef/article/view/176>

based employee ownership schemes that meet clear criteria: real economic benefit, meaningful participation, transparent governance, long-term vesting, protection against abuse, and broad inclusion across the workforce. The emphasis should be on whether employees actually receive value, not merely whether a structure satisfies racial paperwork.

There should also be safeguards. ESOPs must not become symbolic vehicles where employees are nominal beneficiaries but have no realistic prospect of receiving dividends, capital growth or voice. The rules should require independent trusteeship, regular reporting to employee-beneficiaries, understandable communication and fair treatment of workers who leave, retire or are retrenched. The goal is not to create another compliance industry, but to build a credible path to worker ownership.

South Africa needs a new empowerment settlement. The old model has focused too much on redistribution among the already connected and too little on expanding ownership among ordinary workers. International practice shows that employee ownership can be a mainstream tool for savings, productivity, succession, social cohesion and broad wealth formation.

Employment Equity

Solidarity Settlement Agreement

The settlement agreement between Solidarity and the South African government on Employment Equity was significant because it placed clear limits on how affirmative action and sectoral targets may be implemented in South Africa.

Its importance lies not only in the substance of the agreement, but also in the process: Solidarity referred the dispute to the International Labour Organisation (ILO), after which the ILO recommended that the Commission for Conciliation, Mediation and Arbitration (CCMA) facilitate the dispute between Solidarity and the Department of Employment and Labour.⁵¹

This gave the settlement an international labour-law context and confirmed that employment equity must be applied in a nuanced, non-absolute and temporary manner, rather than as rigid racial quotas. Government itself described the agreement as an “amicable” settlement and the then Minister of Employment and Labour called it a significant moment in social dialogue and employment equity.⁵²

In practical terms, the settlement mattered because it recognised that employers must be able to consider factors such as skills availability, the inherent requirements of the job, natural turnover and business circumstances, and that no employee should lose employment merely to satisfy employment equity targets. More importantly, it ensured that employers who have justifiable reasons for not meeting government-set quotas are protected from penalties.

It therefore marked an important attempt to pull South Africa’s employment equity regime back from mechanical racial engineering towards a more holistic, internationally defensible framework.

Unfortunately, the South African government has effectively reneged on the Solidarity settlement by publishing regulations that preserve the appearance of flexibility while removing or weakening the safeguards that made the settlement meaningful.

Predictably this has led to court action being instituted against the published regulations by Solidarity with the outcome still pending at the time of writing.

Some of the main differences between the settlement mediated by the ILO and the governments newest regulations are:

Economically Active Population

The economically active population was not supposed to be used mechanically. Employers had to be allowed to consider a broader range of factors, including the available skills pool, inherent job requirements, natural staff turnover, promotion and recruitment trends and business circumstances.

⁵¹ <https://www.gov.za/news/media-advisories/government-activities/employment-and-labour-signs-settlement-agreement>

⁵² <https://www.labour.gov.za/Media-Desk/Media-Statements/Pages/SA-Government-and-Solidarity-Trade-Union-Settlement-Agreement-is-within-the-framework-of-the-Constitution-and-the-Employmenten.aspx>

The newest regulations, instead, make the economically active population (EAP) the primary reference point for employment equity objectives. The settlement required that other factors “must” be taken into account, while the newest regulations weaken this to language that employers “may” take them into account – but they must use the EAP.

Protection from Termination

Most importantly, the settlement expressly provided that no person’s employment may be terminated as a result of employment equity, while the new regulations expressly omit that protection. The result is that, although government publicly celebrated the settlement as a major moment in social dialogue, government then chose to ignore the settlement it had signed.

The 2025 regulatory framework reopens the door to rigid demographic enforcement, replacement pressure and penalties for employers who fail to meet state-determined race and gender targets.

Logically then – in phasing out race-based criteria for needs-based criteria would be for the South African government to implement the settlement mediated by the ILO which the government had already signed and gazetted.

The settlement expressly moves away from strict race-based criteria to a more practical and holistic approach to employment equity.

Implementing an internationally mediated settlement which the South African government already signed, would most definitely not require any legislative changes. In fact, it simply requires government to withdraw the published regulations that renege on the settlement mediated by the ILO.

Designated Group Definition

In the initial Employment Equity Act the definition of “designated group” is used to determine who should benefit from the provisions in the Act. Ultimately, the Act used apartheid-style classifications and excludes white males only as the non-designated group.

Almost 30 years later race as proxy for disadvantage has become increasingly problematic. South Africa currently has a median age of 28⁵³, which implies that more than half of the country’s population was not born when the ANC came to power in 1994. Race is no longer the major proxy for wealth anymore, with class now being a much better indicator.

Using race as indicator has had limited or no effect on alleviating poverty, reducing unemployment and inequality.

South Africa remains one of the most unequal countries in the world, with a Gini coefficient of 0.67 in 2020. More importantly, the nature of inequality has changed. Inequality is no longer primarily between population groups, but increasingly within them, with intra-group inequality contributing 69% of total inequality in 2019.⁵⁴ This means that a race-based proxy increasingly misses the real

⁵³ <https://www.statssa.gov.za/publications/03-00-22/03-00-222024.pdf>

⁵⁴ <https://www.statssa.gov.za/publications/Report-03-10-19/Report-03-10-192017.pdf>

distribution of disadvantage. It can benefit those who are already relatively well positioned while failing to reach the poor, unemployed and assetless.

Figure 2.8: Gini coefficient (income per capita) by population group (2006, 2009, 2011 and 2015)

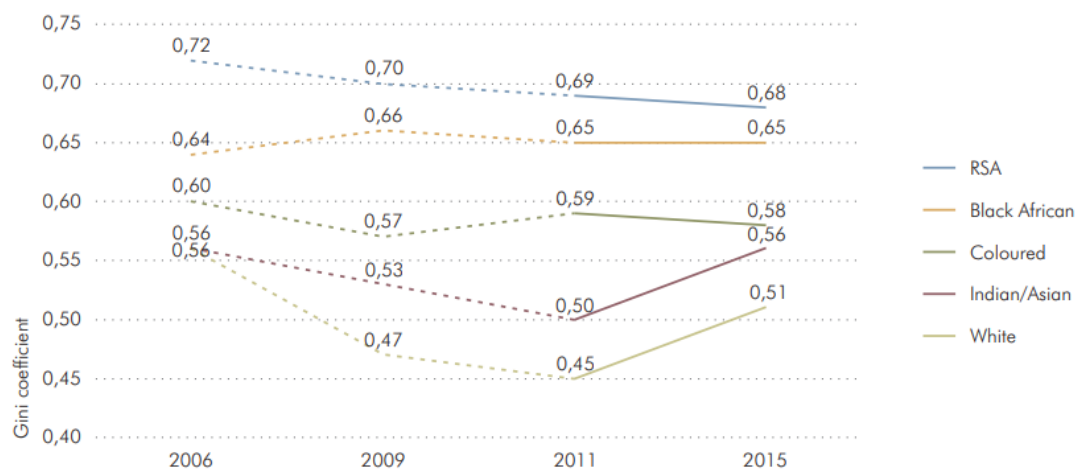


Figure 3 – Gini coefficient by population group source⁵⁵

South Africa's GDP per capita has stagnated over the past three decades and, when measured in US dollars, remains below its 2007 level. This means that the economy has not generated the sustained growth needed to lift millions of people into secure work and higher incomes. A policy framework that continues to classify people mainly by race rather than by class is failing to address the material conditions that actually determine poverty. The central question should therefore no longer be whether a person belongs to a historically disadvantaged racial category, but whether that person currently lacks income, assets, work, skills or access to opportunity.

⁵⁵ <https://www.statssa.gov.za/publications/Report-03-10-06/Report-03-10-062015.pdf>

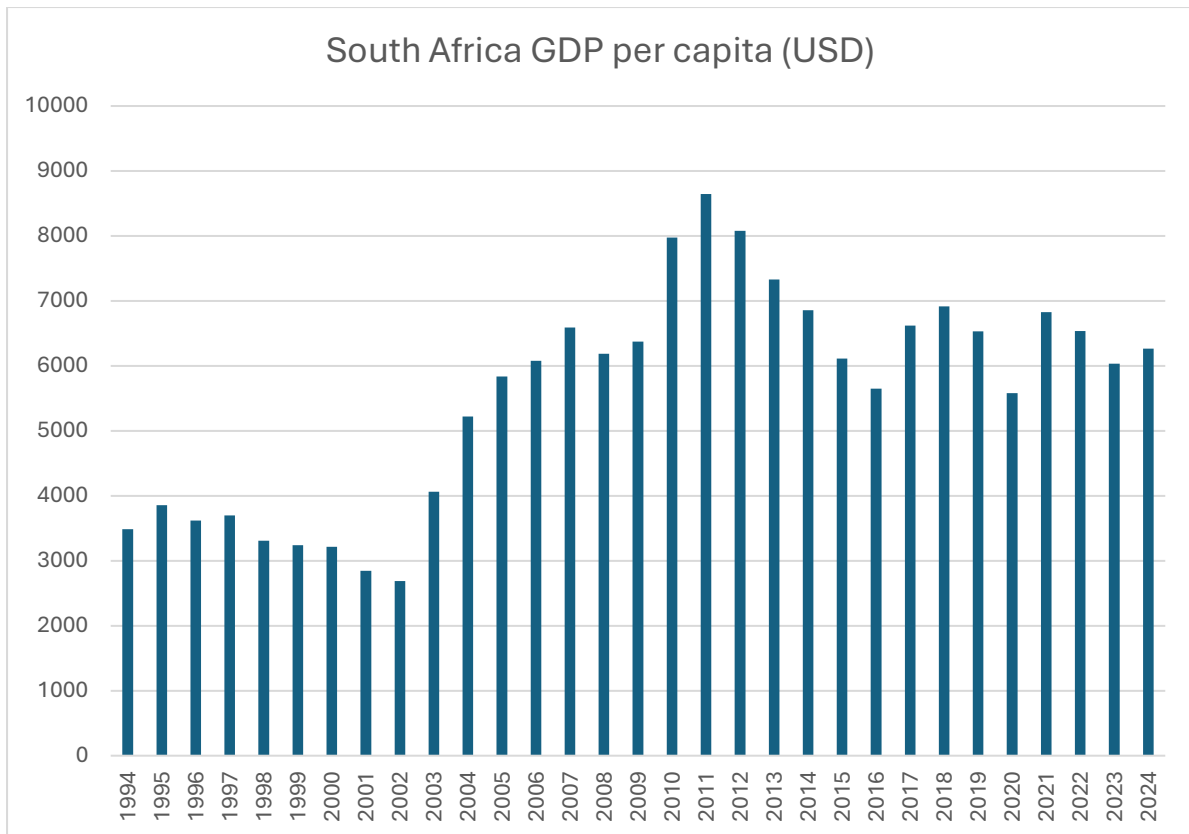


Figure 4 - South Africa GDP per capita (USD)⁵⁶

Unemployment is, however, the clearest failure of the existing model. South Africa’s unemployment rate remains among the highest in the world, at 31,9% on the narrow definition and 41,9% on the expanded definition.

In fact, black unemployment has increased despite legislation expressly aimed at increasing black economic participation.

This is decisive – if the purpose of empowerment is to improve the lives of those excluded from the economy, then the primary criteria should be linked to exclusion from work, not merely racial classification. The ultimate exclusion from the economy is being unemployed.

Using race rather than employment status along with other socio-economic criteria is more divisive and more vulnerable to elite capture.

⁵⁶

<https://data.worldbank.org/indicator/NY.GDP.PCAP.CD?end=2024&locations=ZA&start=1994&view=chart>

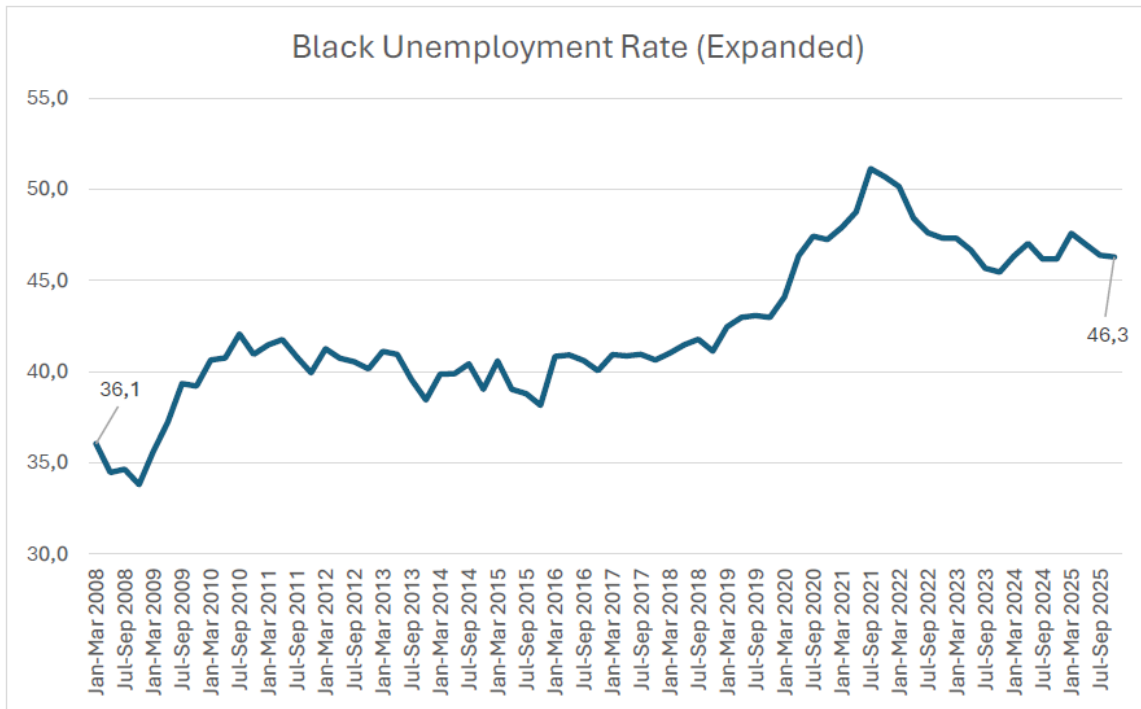


Figure 5 - Black unemployment rate expanded Q4 2025⁵⁷

The definition of “designated group” in the Employment Equity Act should be changed because it still relies on apartheid-style racial classification as the main proxy for disadvantage, even though South Africa’s present crises are poverty, unemployment and youth exclusion.

A class-based and needs-based definition would better align empowerment with measurable hardship: low household income, unemployment, absence of support, youth status and lack of access to capital or skills.

As part of the staggered approach to phasing out race-based criteria an elegant solution would be to change the definition of designated group from simple apartheid-style racial classification to the following:

- People whose households currently earn less than R350 000 per annum (as per current NSFAS guidelines for study loans).⁵⁸
- People who are currently unemployed, do not receive any form of income, social grant or UIF payment (as per the government Social Relief of Distress Grant guidelines)⁵⁹
- People born after 1994

The possible impact of changing the definition to no longer include apartheid-style racial classification would be that businesses would be incentivised to reduce poverty (household income as criterion), unemployment (employment status as criterion) and youth unemployment (age as criterion).

⁵⁷ <https://www.statssa.gov.za/publications/P0211/P02114thQuarter2025.pdf>

⁵⁸ <https://www.nsfas.org.za/content/bursary-scheme.html>

⁵⁹ <https://srd.sassa.gov.za/>

Summary

South Africa cannot be truly non-racial while the state continues to rely on apartheid-style racial classification as the organising principle of legislation.

South Africa still has deep socio-economic problems that require targeted intervention, especially poverty, unemployment, youth unemployment, weak asset ownership and exclusion from opportunity. The question is whether those interventions should continue to be based primarily on skin colour, or whether they should be based on measurable need. South Africa should transition from race-based policy to a needs-based policy by 2030.

The first and most important step is to declare a clear end-date for racial classification. Affirmative action, properly understood, must be temporary in nature. This was also recognised in the settlement agreement mediated by the ILO between Solidarity and the South African government in which affirmative action was defined as a coherent package of measures of a temporary nature, aimed at correcting the position of a target group in order to obtain effective equality. Without a clear end-date, temporary redress becomes permanent racial administration. The goalposts will continue to shift, and South Africa will remain trapped in a system where government, businesses and citizens constantly count race rather than measure actual need.

The transition should be phased rather than abrupt. South Africa still faces high levels of poverty, unemployment and youth exclusion.

South Africa should, therefore, move in stages from race-based measures towards class-based and needs-based measures. The purpose of this intermediate phase should be clear – policy must reduce poverty, reduce unemployment, address youth employment, attract investment and enable economic growth. Success should no longer be judged by whether it rearranges racial representation in scarce opportunities, but by whether it reduces the real economic distress faced by the country's citizens.

For B-BBEE, the first proposed measure is to make equity equivalence the default option for multinational investors. At present, B-BBEE often requires foreign companies to transfer ownership to local shareholders, even where this conflicts with global ownership structures, shareholder rules or investment mandates. Equity equivalence already exists within the B-BBEE framework and allows multinationals to make approved developmental contributions instead of transferring equity. This should become the default for foreign investors. Contributions should be channelled into poverty reduction, youth employment, training, small business development, infrastructure, technology transfer and socio-economic development. This would reduce B-BBEE as a non-tariff barrier to investment while directing compliance spending toward needs-based outcomes South Africa urgently needs.

For local companies, employee share ownership schemes should become the preferred route for earning ownership recognition. The current ownership model too often benefits a small number of politically connected or financially positioned shareholders, while ordinary workers remain wage-earners without meaningful capital ownership. ESOPs provide a better model. They can allow

employees to own a stake in the companies where they work, share in value creation, build assets, improve retirement security and participate more directly in the productive economy.

Crucially, ESOPs should not be measured primarily by race-based criteria. They should be assessed according to whether they create broad, genuine employee ownership, especially for lower- and middle-income workers. In South Africa's demographic context, such schemes would still benefit large numbers of black employees, but without requiring government to classify workers by race before deciding whose ownership counts.

On employment equity, the immediate reform should be for government to implement the settlement agreement mediated by the ILO, an agreement it already signed with Solidarity. That settlement moved away from rigid demographic enforcement and required a more holistic approach. Employers should be able to consider the available skills pool, the inherent requirements of the job, natural turnover, recruitment and promotion trends, and business circumstances. The settlement also protected employees from losing their jobs merely to satisfy employment equity targets. Implementing this agreement would not require new legislation; it would require government to withdraw the regulations that departed from the settlement and to honour the framework it already accepted.

The most important legislative reform is to change the definition of "designated group" in the Employment Equity Act. The current definition still relies on racial classification, even though South Africa's main challenges are now poverty, unemployment and youth exclusion. Race has become an increasingly poor proxy for actual disadvantage. South Africa's inequality is now largely within population groups, unemployment remains extremely high, and black unemployment has worsened despite decades of race-based intervention. The definition should therefore be amended to identify people according to need. The proposed categories are: people from households earning less than R350 000 per year, people who are unemployed and receive no income, social grant or UIF payment, and people born after 1994. These criteria would directly incentivise businesses to reduce poverty, unemployment and youth unemployment.

The overall approach is therefore a practical roadmap toward a non-racial dispensation. It does not deny the need for intervention.

The answer to South Africa's socio-economic crises is not to do nothing, but to do something else. The current race-based approach has failed.