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A NEW EMPOWERMENT STRATEGY TO LIBERATE THE POOR

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BEE helps the few and harms the many

Shortly before the 8th May 2019 general election, public enterprises minister Pravin Gordhan said that both he and President Cyril Ramaphosa were agreed on the 'urgent' need for 'a new model for BEE': one that generates 'more inclusive growth' and so benefits the many rather than the few.[1]

Mr Gordhan has long recognised that BEE does not help the poor. Back in 2010, as finance minister in President Jacob Zuma's first administration, Mr Gordhan said: 'South Africa's BEE policies...have not worked... BEE policies have not made South Africa a fairer and more prosperous country. They have led to small elite group benefiting, and that is not good enough.'[2]

In 2012 the National Planning Commission echoed this concern, saying 'empowerment had to be about more than changing the colour of a narrow elite'. In 2016 Mathews Phosa, a former ANC treasurer general, added that BEE had empowered 'a handful of people' at the expense of most South Africans.[3]

In 2017 the South African Communist Party (SACP) warned that the 'intra-African inequality' which BEE had fostered was 'the main contributor to South Africa's extraordinarily high Gini coefficient' of income inequality. Added the party: 'Enriching a select BEE few via share deals...or (worse still) looting public property...in the name of broad-based black empowerment is resulting in....increasing poverty for the majority, increasing racial inequality, and persisting mass unemployment.'[4]

> *Shortly before the 8th May 2019 general election, public enterprises minister Pravin Gordhan said that both he and President Cyril Ramaphosa were agreed on the 'urgent' need for 'a new model for BEE': one that generates 'more inclusive growth' and so benefits the many rather than the few.*

In 2018 DA leader Mmusi Maimane was trenchant in his criticism of BEE, saying: 'The DA decisively rejects policies that enrich and re-enrich a connected elite at the expense of the poor majority... It has enabled corruption...[and] disempowered the poor majority by deterring investment and job creation, and by making state spending extraordinarily inefficient. It is not a policy *for* the poor, it is a policy *at the expense* of the poor.'[5]

Impractical and ever-shifting BEE requirements

BEE harms the great majority of South Africans by choking off investment, reducing growth, and adding to the crisis of unemployment. Potential foreign investors are particularly concerned about its onerous and shifting rules. In 2017, for instance, the local subsidiaries of American companies identified the BEE ownership requirement as the most difficult challenge they confronted in doing business in South Africa. In second place were various 'sector specific regulations', while 'policy uncertainty' ranked third. Verbatim comments by these firms highlight the negative ramifications of BEE rules:[6]

- 'the cost of doing BEE is increasing every year';
- 'the new [2014] BEE codes are impossible to attain as a small company';
- 'we are spending a huge amount of man hours trying to...understand the BEE regulations, never mind the amount of time we spend actually complying'; and
- 'no one plays a game where the goal posts keep moving'.

Unrealistic ownership requirements

BEE ownership requirements, even at the 25% level set more than a decade ago, are impossible in practice for listed companies to meet. This emerged in 2017 from a research report compiled by independent analysts for the National Treasury. This shows that foreign investors own 38% of the JSE's market capitalisation, while institutional investors (often in the form of retirement funds) own 48%. Between them, foreigners and South African institutions thus own 86% of JSE-listed South African companies.[7]

Only 14% of JSE-listed shares are directly owned by individuals, trusts, or firms and are thus (notionally) available for BEE ownership deals. This casts doubt on the practicality of the 25% BEE ownership target in the generic codes, let alone the 30% required by the 2018 mining charter for new mining rights (see *A possible case study in mining*, below) and the 51% demanded by some SOEs as a 'pre-qualifying' criterion in the tendering process.[8]

BEE ownership targets overlook this high level of institutional ownership and seem to assume that shares in listed companies are mainly owned by wealthy white individuals. This might have been true many decades ago – and particularly so in the days of the mining magnates dubbed the Randlords – but it overlooks modern realities.[9]

Among unlisted companies, BEE ownership requirements overlook the importance of family businesses. 'The basic building block of any economy,' writes commentator Ben Levitas 'is the family business. These micro-enterprises are what employ the most in any economy. Mess with this "atomic unit" and you undo the whole structure of the economy... It is difficult enough to start a business and just as difficult to sustain one, and the family provides the most resolute foundation structure.' Now, however, BEE requires that business partners be chosen 'to meet arbitrary and external racial quota criteria'. It also signals that those who have invested, struggled, and finally succeeded in establishing successful businesses are likely to lose control of them at some point in the future.[10]

> *'The basic building block of any economy is the family business. These micro-enterprises are what employ the most in any economy. Mess with this "atomic unit" and you undo the whole structure of the economy.'*

BEE ownership requirements are also inordinately complex to navigate and costly to fulfil. They constitute an implicit 'tax' on business, which comes on top of an already high corporate tax burden and helps deter the direct investment the country so badly needs. Companies pay 28% in corporate income tax, which is high compared to many other countries. Put the BEE compliance burden on top of this – and the overall costs will rule out any direct investment unlikely to generate returns high enough to cover them. The upshot – especially for potential foreign investors with many more attractive jurisdictions to choose from – is that 'numerous investments that could have been made just don't get made', says commentator Dirk de Vos.[11]

A frequent changing of the goalposts

Frequent changes to BEE rules add to the compliance challenge. The initial generic codes that were gazetted in 2007 for an anticipated ten-year period were unexpectedly replaced in 2014 with new codes that have significantly altered key requirements: especially on ownership and preferential procurement. These changed rules have since filtered through to a host of sector codes, which have often had to be substantially rewritten to fit with them.

The 2013 amendments to the Broad-Based Black Economic Empowerment Act of 2003 (the 2003 BEE Act) have also made it possible for government departments and SOEs to stipulate a 51% BEE ownership requirement as a condition for the granting of licences and permits. A similar BEE ownership level can also be set as an essential 'pre-qualification' criterion for companies seeking to do business with any organ of state.[12]

The interpretation of seemingly established BEE rules can also change overnight. In April 2019, for example, the BEE Commission established under the 2013 amendments to examine all 'major' BEE transactions (those worth R25m or more) unexpectedly announced that many long-standing ownership deals involving empowerment 'trusts' were not compliant with BEE rules. These deals would have to be restructured, failing which affected companies could face major penalties for 'fronting'. (Under the 2013 amendments, such penalties include fines of up to 10% of annual turnover and/or prison terms of up to ten years.)[13]

The broad-based trusts thus criticised by the commission were generally entered into many years ago. Their beneficiaries are commonly community organisations, employees, or the children of employees, who are given access to bursaries and other benefits. These trusts are intended to help spread the benefits of BEE more widely, and are also important in boosting BEE ownership scores. But BEE commissioner Zodwa Ntuli is adamant that the trusts do not comply with ownership rules because their beneficiaries do not have voting rights or receive the same benefits as other shareholders (they get bursaries, rather than dividends, for example). These defects must be cured, stresses Ms Ntuli, or affected firms run the risk of their 'ownership structures being found to be fronting and [of having] criminal penalties imposed'.[14]

The commission's stance shows how readily BEE goalposts can be changed with retrospective effect. Yet no policy statement on the matter has been issued by the Cabinet or approved by Parliament. Instead, as *Business Day* comments in an editorial, 'both corporate South Africa and the developmental and educational trusts that have until now benefited from investments made on their behalf have been left guessing as to what constitutes compliance'.[15]

> *The preferential procurement rules intrinsic to BEE have proved particularly damaging. Under these rules, many tendering decisions are no longer based on the established (and vital) criteria of price, quality, and capacity to deliver on time. This erodes efficiency, while opening the tender system up to abuse.*

Damaging BEE procurement rules

The preferential procurement rules intrinsic to BEE have proved particularly damaging. Under these rules, many tendering decisions are no longer based on the established (and vital) criteria of price, quality, and capacity to deliver on time. This erodes efficiency, while opening the tender system up to abuse. The problem is particularly acute within the state, where the overall procurement budget – among all three tiers of government and state-owned enterprises (SOEs) – amounts to some R800bn a year. The enormous sums in issue have encouraged many officials and politicians (as the ANC acknowledged back in 2009) to 'inflate tenders for personal profit, award tenders to companies that fund political campaigns, and accept bribes and kickbacks from service providers'.[16]

Thousands of ANC members at all levels of government seem to have drawn financial benefit from corruption of this kind. So too have the ruling party and its allies. As one BEE contractor (speaking on condition of anonymity) told *The Star* in 2012, businessmen seeking state contracts are expected to pay 'mandatory kickbacks' to corrupt officials and to 'donate huge sums' to the ruling alliance. Said the businessman: 'You pay to be introduced to the political principals, you pay to get a tender, you pay to be paid [for completed work], and you must also "grease the machinery". From time to time, you are called upon to make donations to the...ANC. There are also donations to the ANC youth league, the women's league, and the SACP.' Those who fail to make the necessary payments, either in cash or 'in kind' – by giving subcontracts to the relatives of public servants and politicians – effectively find themselves excluded from state contracts worth many millions of rands.[17]

The overall costs of the price mark-ups and the corruption add up. So much so that in October 2016, shortly before he retired as the Treasury's chief procurement officer, Kenneth Brown warned that between 30% and 40% of the state's total annual procurement budget was 'tainted by fraud and inflated prices'.[18]

On an annual budget of R800bn, this suggests that at least R240bn in state spending is affected in this way in every year.

The best way to counter these abuses is to put an end to preferential procurement and find better ways to promote new businesses. Instead, however, the Treasury has yielded to pressure from the DTI and BEE proponents and stepped up procurement obligations. This has been done under regulations which were gazetted under the Preferential Procurement Policy Framework Act of 2000 (the 2000 Act) and took effect in April 2017.[19]

Under the procurement rules initially laid down under the 2000 Act, a 90:10 formula was applied to state tenders worth R500 000 or more. This meant that 90 points were allocated on price and 10 points for BEE status, effectively allowing a BEE firm to charge 10% more and still win a contract. A 80:20 formula – which in practice allowed BEE firms to charge 20% more and still win tenders – applied solely to contracts below R500 000. This threshold was subsequently doubled to R1m.[20]

However, the 2017 regulations have now raised the ceiling for the 80:20 formula from R1m to R50m, an increase of close on 5 000%.[21] This shift has greatly expanded the scope for damaging price escalation. The problem would be less acute if the BEE price premium paid by the state was in fact limited to the 10% or 20% mooted in the Act. In practice, it is often far higher – and can readily lead to prices that are twice or even four times the norm.

Mr Gordhan acknowledged this in 2010, when he said that the government was paying more for everything than a private business would: 'R40 million for a school that should have cost R15m, R26 for a loaf of bread that should have cost R7.' In 2012 Gwede Mantashe, then ANC secretary general, said much the same when he urged BEE companies to 'stop using the state as their cash cow by providing poor quality goods at inflated prices'. He also queried what benefit there was in the government buying a R7 bottle of water for R27 because it 'wanted to create a middle-class person who must have a business'.[22]

In 2012 Gwede Mantashe, then ANC secretary general, said much the same when he urged BEE companies to 'stop using the state as their cash cow by providing poor quality goods at inflated prices'.

In what has since proved to be one of the most damaging changes, the Treasury 2017 regulations also require 'a minimum of 30% of the value' of state contracts to be sub-contracted to small black firms when the value of these contracts exceeds R30m (or the tender stipulates this requirement). These provisions have greatly increased the scope for uncompetitive tendering. They have also given rise to violence and intimidation by groups determined to obtain their 30% 'share'.[23]

Using violence to buttress the 30% demand

By April 2018 it was already evident that some BEE businessmen were willing to intimidate, burn and even kill for the 30% of sub-contracts to which they saw themselves as entitled under the Treasury regulations. They also seemed to assume that the '30% rule' applied equally to the private sector's procurement contracts.[24]

Just how far this sense of entitlement goes was first illustrated by events in Durban, when the Delangokubona Business Forum allegedly began brandishing guns and threatening violence to buttress its demand for a 'share' in major construction contracts. The forum's intimidatory tactics, as *Business Day* reports, stalled a R1.8bn revamp of Tsogo Sun's SunCoast Casino complex, along with a R132m hotel being built in the inner city and a R4.2bn project at the Oceans Umhlanga site.[25]

In April 2018 the forum, acting together with the Umkhonto we Sizwe Military Veterans Association and a local taxi group, also reportedly brought a multi-million N3 highway project outside Durban to a halt. The R275m Hammarsdale interchange was supposed to have been completed by November 2018, but threats from the forum and its allies halted construction by workers fearing for their lives. The group demanded a 30% stake in this development, saying local black business had to be given their 'fair share of local projects'.[26]

The demand for a 'fair share' of contracts likewise lay behind the killing of six mineworkers from the Modikwa Platinum mine near Burgersfort in Limpopo, also in April 2018. The six were burnt to death in a petrol-bomb attack on a bus which was taking more than 50 mine employees back home. More than 40 mineworkers were injured in the attack and the death toll could easily have been higher.[27]

A local official from the National Union of Mineworkers, Phillip Mankge, blamed the deaths on local business people trying to 'gain access to contracts'. This assessment was echoed by a traditional leader, Chief Masiya Mohlala, who said that 'conflict among people competing for mining tenders in the area was the root cause of the problem, with desperate unemployed young people being used to instigate violence against competitors' businesses'.[28]

In the past year, the problem has grown far worse. In February 2019 *The Citizen* reported that armed 'community forums' – widely referred to as the 'construction mafia' – were prevalent on virtually all construction sites, where they commonly issued threats, brandished guns, and put a halt to all building work. Aveng and its joint venture partner, Strabag International GmbH, were prevented from working on the R1.6bn Mtentu Bridge project in the Eastern Cape for more than 84 days by groups wielding AK-47 assault rifles. Thereafter, in February 2019, they invoked a '*force majeure*' clause in their contract with Sanral and terminated the agreement, saying they were no longer able to proceed because the intimidation was a factor beyond their control. (The following month, the Pretoria high court rejected the validity of the *force majeure* claim, but the company is appealing against this ruling.) Commented Aveng chief executive Sean Flanagan: 'Our German partners say they have worked in 80 countries, including Afghanistan and Baghdad (Iraq), but have never experienced anything like this.'[29]

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In similar vein, a R2.4bn German oil storage investment project being built by WBHO Construction in Saldanha Bay (Western Cape) was halted after properties and plant were burnt down by armed gangs demanding their 'share' of the work. Images of the Saldanha Bay project (as Lynley Donnelly reported in the *Mail & Guardian*) 'revealed a scorched landscape, with rows of vehicles roiling in flames and torched buildings'. According to the South African Forum of Civil Engineering Contractors (Safcec), roughly 110 engineers and other highly skilled technical personnel have left the country as a result of these incidents, which the police have proved powerless to end. Safmec chief executive Webster Mfebe notes that the exodus accelerated after a Durban construction company owner was shot dead, reportedly for refusing one such group a stake in a project.[30]

By April 2019 more than 180 infrastructure and other construction projects across the country – with a cumulative value of more than R63bn – had been hindered by often violent disruptions triggered by local community or business forums demanding a 30% stake in projects. State infrastructure projects were the worst hit, but private sector projects were not immune. According to Roy Mnisi, executive director of Master Builders South Africa, a business forum will typically arrive on a site to demand a 30% stake in a project. Occasionally, it may represent legitimate local contractors with genuine skills to offer. Mostly, however, it 'simply demands "protection fees" – essentially 30% of the project – to prevent other similar forums from arriving on site and stopping work altogether'.[31]

BEE and scarce skills in SOEs and municipalities

The employment equity element in BEE has helped to drive skilled managers and engineers out of SOEs and municipalities and replace them with individuals lacking the same experience and capacity. Under the revised generic codes, targets for black representation among senior and middle management (at 60% and 75%, respectively) cannot easily be met when roughly half the black population is under the age of 25, some 80% of public schools are dysfunctional, and a mere 5.4% of black people hold the tertiary qualifications often advisable or essential for these important posts. The resulting skills shortage has often been compounded by cadre deployment, with people appointed to senior positions in the public service or the SOEs for their political loyalties, rather than their proven capacities.[32]

In 2015 political analyst Moeletsi Mbeki warned that SOEs, irrespective of how many bail-outs they received, would never become more efficient because they were 'so badly managed by political appointees'. Added Professor William Gumede of Wits University in January 2019: 'The best people are often not recruited or promoted [to SOEs]. Senior management and boards are often appointed for patronage, political and corrupt reasons rather than for competence. Incompetent boards and management often appoint family, friends and allies to middle and lower management, cascading the zone of incompetence downwards in the organisation.'[33]

At Eskom – which is now crippled by unsustainable debt, inadequate maintenance, and repeated breakdowns at its ageing fleet of coal-fired power stations – human error is so common that it accounts for 40% of plant breakdowns. It may also have been a key factor in two explosions early in 2019 which put two units (at Duvha and Lethabo) out of service. Mr Gordhan has recently acknowledged that much of the malaise at the parastatal stems from the fact that 'good people were lost and incompetent people put in their place'. He has also spoken of enticing back some of the white engineers who were earlier pushed out. Yet Eskom still plans to reduce its white personnel – including experienced engineers and managers – even further. Despite an electricity crisis that threatens to destroy the economy, BEE is still seen as the overarching priority.[34]

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The same phenomenon is evident throughout the floundering public service. A BEE-induced exodus of skilled managers and engineers from many municipalities has been particularly serious, however, because it has crippled their capacity to manage their wastewater treatment plants. Hundreds of these plants have broken down, while close on 4 billion litres of raw or partially treated sewage are being discharged into the country's rivers and dams every day. Along the Vaal River, as a local business chamber commented in April 2019, sewage is now being spilled 'at record levels' into 'townships, suburbs, central business districts, schools, clinics, council buildings, apartment blocks and roads'.[35]

According to water expert Anthony Turton, strategic advisor at TouchStone Resources, 'South Africa is suffering from an "induced" deficit of engineering and other technical skills, and especially so at municipal level. This shortage can be traced directly to the government's determined pursuit of narrowly defined racial targets at the expense of broader issues such as service delivery and economic growth. Were it not for this factor, the engineering skills available would suffice to meet present needs. Hence, if the government were willing to deracialise the appointment of technical skills, the current shortage would be overcome.'[36] Again, however, BEE continues to trump all other considerations.

BEE overlooks the most important business contributions

BEE overlooks the vital contributions that business makes to gross fixed capital investment, FDI, employment, salaries, tax revenues, export earnings, and innovation. These are by far the most important inputs the private sector can make to economic growth, rising prosperity, and the upward mobility of all South Africans. Yet the BEE scorecard ignores them all.

A few statistics provide at least some insight into the extent of the business contribution. Fixed capital investment averaged some R625bn a year (in constant 2010 prices) from 2015 to 2017, of which business contributed more than 63% – or by far the lion's share. Moreover, whereas fixed capital investment by the government and SOEs decreased markedly in 2018, fixed investment by the private sector went up in that year.[37]

In 2018 the private sector provided formal employment to close on 8 million people and informal jobs to roughly 2.3 million more. Private sector employment thus far outstripped that provided by the government, with formal and informal businesses contributing some 70% of all jobs.[38]

In 2017, according to Statistics South Africa's annual financial statistics, the private sector paid out close on R1.3 trillion in salaries to employees. This figure is also an under-estimate, as this statistical analysis leaves out agriculture, financial intermediation, insurance, private educational institutions, and various other businesses.[39]

Business also contributes significantly to tax revenues. In the 2017/18 financial year, for instance, the private sector paid some R220bn in corporate income tax, plus R28bn in dividend withholding tax. It also made major contributions to total VAT receipts of close on R300bn, as well as the amounts collected via the fuel levy (R70bn) and customs and excise duties (R86bn). Private sector jobs also underpinned some 70% of the personal income tax (about R460bn) collected that year.[40]

In addition, business generates the bulk of South Africa's merchandise exports, which exceeded R1 150bn in 2018. Among the country's 'top' exports (valued at some R430bn) were a variety of mineral products – many of them already beneficiated into concentrates, alloys, and powders – along with motor vehicles and a number of agricultural products. These sales into foreign markets helped reduce the country's trade deficit and sustain the value of the rand.[41]

Business also adds by far the most to the country's GDP each year. In 2018, for instance, GDP amounted to R4 874bn in current prices. Of this, the great bulk of gross value added (roughly 70%) came from the private sector.[42]

> *Figures of this kind underscore the magnitude of the private sector's contributions to growth, investment, employment, tax revenues, and export earnings in South Africa. Yet the enormous contribution that business makes to prosperity and upward mobility is generally ignored in the BEE scorecard.*

Figures of this kind underscore the magnitude of the private sector's contributions to growth, investment, employment, tax revenues, and export earnings in South Africa. Yet the enormous contribution that business makes to prosperity and upward mobility is generally disparaged or overlooked by the ANC alliance. As Pick n Pay chairman Gareth Ackerman told Chris Barron of the *Sunday Times* in October 2018, 'the government narrative is that the private sector is doing little or nothing for the country'. Yet Pick n Pay, for one, has invested R5bn over the past four or five years and created 14 000 jobs in the last three.[43]

The Remgro contribution, for example, is also substantial. Said chairman Johann Rupert in December 2017: 'The value created by Remgro from 1994 to 2017 topped R327bn in capital growth and almost R30bn in dividends. Along with corporate cousin Richemont, dividends and distributions repatriated to South Africa topped R81.5bn, while excise duties and taxes amounted to R197bn.' Added Mr Rupert, 'We pay tax, we have 152 000 employees working for us, we create jobs, we bring money back to South Africa and we don't take it out' – but there is little recognition from the ruling party for any of these benefits.[44]

The Pick n Pay and Remgro contributions make a real difference to the economy – and to the lives of all those involved in these enterprises. But the current BEE scorecard ignores these important factors. Instead, it saddles business with shifting and onerous ownership, employment equity, and preferential procurement requirements that cannot easily be fulfilled, add substantially to operating and compliance costs – and yet do very little to help the great majority of black South Africans.

The 'entire focus' of BEE is 'misplaced', said Professor Ricardo Hausmann of Harvard's Kennedy School of Government during a return visit to South Africa in 2016. (Professor Hausmann is a former Venezuelan planning minister who chaired the international growth panel earlier established by former finance minister Trevor Manuel.) South Africa's real problem, he says, lies in 'the millions of people who are unproductive and unemployed'. Hence, 'the real inequality the country suffers from isn't so much between blacks and whites but between those with jobs and those without'.[45]

Hence, the true challenge is not to 'change the asset ownership for a few rich blacks in the country' but rather to 'empower the millions'. If this is to be achieved, Professor Hausman adds, the government must shift away from its 'obsession with making the top of society black' and concentrate rather on 'making the bottom of society better'. This means that the most important need is to create many more businesses, rather than to keep 'tinkering with ownership and trying to transform the few enterprises' the country already has.[46]

If many more businesses and jobs are to be created, this requires a new focus for empowerment policies – one that recognises the private sector's vital economic contributions and which gives business incentives to expand. A new approach must also find practical ways to reach down to the grassroots and provide the poor with the inputs they most need to get ahead.

Shifting from BEE to EED

Professor Gumede has recently urged a different approach to empowerment, saying:[47]

- that 'current BEE...has often been manipulated for corruption reasons';
- that BEE interventions should be based on socio-economic disadvantage, 'rather than colour', as 'blacks will automatically be the largest beneficiaries' in any event;

> *"The real inequality the country suffers from isn't so much between blacks and whites but between those with jobs and those without'. Hence, the true challenge is not to 'change the asset ownership for a few rich blacks in the country' but rather to 'empower the millions'.*

- that 'rich blacks should be treated the same way as rich whites – as advantaged'; and
- that 'the current BEE model, which enriches a few politically connected political capitalists, should immediately be abolished'.

The IRR has for some years been developing an alternative approach to empowerment which is very much in line with Professor Gumede's recommendations. This approach would be far more effective than current BEE policies in helping to liberate the poor. This alternative strategy is called 'Economic Empowerment for the Disadvantaged' or 'EED', and it has three key features.

A scorecard rewarding the key business contributions

First, EED would reward firms for their vital contributions to investment, growth, employment, innovation, and development. Under a revised EED scorecard, businesses would earn (voluntary) EED points for:

- maintaining or expanding production and/or sales;
- sustaining or increasing operating profits;
- providing or expanding jobs;
- undertaking or increasing gross fixed capital expenditure;
- helping to attract inflows of foreign investment, both direct and indirect;
- contributing to tax revenues through their own tax payments and via the income and other taxes paid by their employees;
- helping to generate export earnings or attract foreign currency inflows, where this is feasible;

- allocating resources to research and development (R&D) or otherwise contributing to innovation and new technologies;
- providing training and skills development for all staff;
- maintaining appropriate health and safety standards for employees;
- employing and promoting people on an expanded concept of merit, which takes account of disadvantage;
- contributing to venture capital funds for the benefit of small and medium enterprises (SMEs), both new and existing; and
- helping to fund specialist private sector agencies able to provide sound financial, management, and other skills training and mentoring to SMEs.

The voucher element in EED

Second, EED would reach down to the grassroots by equipping the poor with the sound schooling, housing, and healthcare they need to help them get ahead. Some R620bn has been budgeted for schooling, healthcare, and housing/community development in the current financial year. But the state's centralised and top-down delivery system is so mismanaged and inefficient that outcomes are generally extraordinarily poor.

Roughly 78% of South Africa's Grade 4 pupils cannot read for meaning in any language, while 61% of Grade 5 pupils are unable to add and subtract whole numbers. Not surprisingly, thus, some 60% of pupils drop out of school or fail their final examinations. In the housing sphere, 'RDP' homes are tiny and often badly built, while delivery has flagged to the point where the housing backlog (at 2.2 million units) is bigger than it was in 1994 (1.5 million). In public health care, most hospitals and clinics are so badly managed that only about 15% adequately meet minimum standards on such essentials as infection control and the availability of medicines.[48]

> *In December 2018, 93% of black respondents in an IRR field survey (up from 86% in 2016) supported the idea of education vouchers. Black support for healthcare vouchers came in at 91% (up from 83% in 2016), while support for housing vouchers was strong as well, at 83% in both years.*

EED recognises that current budgets – already bigger than in many emerging markets – cannot be increased. The key need is rather to get far more bang for every buck. This can be done by redirecting much of the revenue now being so badly spent by bureaucrats into tax-funded vouchers for schooling, housing, and healthcare for the poor. Low-income households provided with such vouchers will have real choices available to them. Schools and other entities will also have to compete for their custom, which will help to keep costs down and push quality up.

In the schooling sphere, dysfunctional public schools would have to up their game, while many more independent schools would be established too. In the housing arena, people could stop waiting endlessly on the state to provide and start building or upgrading their own homes. In the health sphere, people could join low-cost medical schemes or take out primary health insurance policies, giving them access to sound private care.[49]

Unlike BEE, these vouchers would truly empower the poor – as ordinary South Africans seem well aware. In December 2018, 93% of black respondents in an IRR field survey (up from 86% in 2016) supported the idea of education vouchers. Black support for healthcare vouchers came in at 91% (up from 83% in 2016), while support for housing vouchers was strong as well, at 83% in both years. In addition, 85% of black respondents (up from 74% in 2016) said these vouchers would be more effective than BEE in helping them to get ahead.

Tax funded vouchers for schooling, housing, and healthcare are thus a crucial element in the EED proposal and would extend its reach to the poorest and most marginalised. Business could contribute to this grassroots empowerment and earn voluntary EED points for:

- helping to improve the quality of provision in these three key spheres (for example, by funding teacher training, increasing awareness of innovative low-cost housing options, or helping to fund the private training of many more doctors and nurses);
- participating in public-private partnerships aimed at maintaining and expanding essential infrastructure; and/or
- topping up the vouchers of people in the poorest households, where this is feasible.

A non-racial focus in keeping with the Constitution

Third, EED – like the social grants system – would rely on a means test to determine disadvantage and stop using race as a proxy for this. EED would thus extend to disadvantaged whites, but this group is so small (only 0.16% of those living in poverty) that the benefits of EED would still go overwhelmingly to black South Africans. By contrast, to cite Professor Gumede once again, 'rich blacks would be treated the same way as rich whites – as advantaged' and hence as not in need of a further leg up. At the same time, EED's non-racial approach would resonate with the Constitution's founding values and bring an end to obnoxious race classification.[50]

A possible case study in mining

The 2018 mining charter is better in many ways than its 2017 predecessor, as gazetted in June that year by the then mining minister, Mosebenzi Zwane. But the 2018 charter still has many fundamental defects. It pushes up the BEE ownership requirement to 30% for new mining rights, as well as on the transfer or renewal of existing rights. Its procurement obligations are entirely unrealistic, for the 51% black-owned companies needed to supply a host of complex capital goods – and provide a high proportion of accounting, legal, transporting and other services – simply do not exist. By limiting the extent to which foreign suppliers can be used, these rules also breach South Africa's binding obligations under key World Trade Organisation (WTO) agreements and are inconsistent with the Constitution.[51]

> *EED would thus extend to disadvantaged whites, but this group is so small (only 0.16% of those living in poverty) that the benefits of EED would still go overwhelmingly to black South Africans.*

In addition, mining companies risk the cancellation of their mining rights if they do not maintain 100% scores on their ownership and community development obligations for the duration of these rights (usually 30 years). To avoid losing their rights, they must also maintain at least a 50% pass mark on all their other onerous BEE obligations. These obligations go far beyond those imposed in the generic codes, which give firms credit for partial performance and punish them comparatively lightly (by reducing their level of BEE contribution by one level) if they fail to reach 40% scores on ownership and two other 'priority' elements.[52]

The legal status of the 2018 mining charter is also now in flux. In March 2019 the Minerals Council South Africa (formerly the Chamber of Mines), which represents 90% of the sector by value, challenged the charter's validity on various grounds.[53] The entire charter is arguably also *ultra vires* the Mineral and Petroleum Resources Development Act (MPRDA) of 2002, which took effect on 1st May 2004.

Section 100 of the MPRDA empowers the mining minister to 'develop a broad-based socio-economic empowerment charter' and obliges him to do so within six months of the statute's coming into effect. Section 100 does not give the minister any power to amend, repeal or replace this charter. The initial 2004 charter is, of course, the document that was lawfully developed and brought into force under Section 100. On the clear wording of this section, mining minister Gwede Mantashe has no power to amend this charter, let alone repeal and replace it, as the 2018 document purports to do. The entire 2018 charter is thus prima facie invalid.

This uncertainty about the legal status of the 2018 charter provides an opportunity to embark on a pilot study of how an alternative EED strategy could work in mining. The general EED scorecard earlier outlined would need to be adapted for the mining sector, so that it assesses and gives mining companies EED points for their contributions in the economic, labour, environmental, and community spheres.

In the economic sphere, mining companies would earn EED points for making fixed capital investments; maintaining and expanding production; helping to grow the wider economy through upstream procurement; adding value to minerals extracted by milling, smelting, or otherwise processing them; and contributing to tax revenues, export earnings, R&D spending, and successful innovation.

On the labour pillar, mining companies would earn EED points for maintaining and expanding employment; paying salaries and contributing to PAYE; taking steps to improve the health and safety of mineworkers; promoting skills development; helping to find innovative and cost-effective housing solutions for migrant workers not wanting permanent homes in mining areas; and assisting employees where necessary with financial counselling and debt management.

In the environmental sphere, mining companies would earn EED points for contributing to environmental rehabilitation funds; guarding against water and dust pollution; reducing electricity and water consumption; minimising waste (including waste rock); rehabilitating areas disturbed by mining where this is practicable; and helping to develop innovative ways of managing environmental impacts.

As regards community development, mining companies would earn EED points for helping to upskill teachers in local schools; finding effective ways to improve the quality of schooling through e-learning; contributing to the development of low-cost housing options for community members; and helping to meet community water needs through the effective treatment of mine waste water. Further EED points could also be earned by seconding staff (or retired personnel) to work with municipalities in mine communities to help solve operational problems, manage wastewater plants, and sustain or expand local clinics.

> *Uncertainty about the legal status of the 2018 charter provides an opportunity to embark on a pilot study of how an alternative EED strategy could work in mining. The general EED scorecard earlier outlined could easily be adapted for the mining sector.*

The Minerals Council could develop an EED charter for its members within the parameters outlined here. Mining companies could then start scoring themselves on their EED contributions to growth, investment, jobs, revenue, innovation, health, safety, sound environmental management, and the upward mobility of the poor in mine communities.

As part of this pilot study, the likely impact of tax-funded vouchers for schooling, housing, and healthcare within a particular mine community could also be modelled. As part of this assessment, mining companies in the relevant area could outline the additional contributions they would be able to make to the upward mobility of the poorest if a voucher system was introduced.

As part of the pilot study, opinion polls could also be commissioned in one or more mining communities to test people's views on the voucher option. Such polls would supplement the IRR field surveys, which have already found high (and accelerating) support for the voucher system among the general population. These opinion polls could also test whether people in mining communities think the voucher system would be more effective in helping them to get ahead than current BEE policies.

EED is for real empowerment, whereas BEE has failed

For the past 25 years, South Africa has been chasing down the wrong policy path on BEE. As both Mr Gordhan and the president agree, there is now an 'urgent' need for a new empowerment model that promotes 'inclusive' growth and is effective in helping the poor to get ahead.

EED offers the best way of achieving this new model. It would free the country from the BEE leg-iron, lift business confidence, and promote investment and employment. It would also bring immediate and concrete benefits to the poor, while helping to draw them into an expanding economy. Its focus on disadvantage rather than race would simultaneously reduce racial polarisation and halt the capture of empowerment benefits by a relative elite.

In this vibrant new environment, direct investment would begin to soar. Business and entrepreneurship would thrive, and jobs would rapidly expand. The skills of all South Africans would be used to the full, while new skills would soon be generated to help meet growing demand. With the need for labour increasing, wages would go up as well – not because of government fiat or violent strikes, but in response to market forces. People would finally have real chances to climb the economic ladder in an economy growing so fast (at 6% or 7% of GDP a year) that it would virtually double in size every ten years.

More than anything else, the voucher system and the wider EED approach would help put an end to what Mr Maimane has described as the present 'insider/outsider' dichotomy. Wrote Mr Maimane in January 2017:[54]

> At present, 16 million people in our country are dependent on the welfare of the state, and a further 9 million are without a job. That's 25 million South Africans who are left out. Empowering those individuals economically is true radical transformation. Until we create an economic environment whereby those 25 million South Africans have access to the economy, transformation remains cosmetic and ineffectual.
>
> It is the poor who need help. It is the unemployed, the shack dwellers, the subsistence farmers, the social grant recipients, the single mothers, the child-headed households and the homeless who rely on government for their survival. And they have been let down... Economic transformation which is truly radical would see the economy being opened up to those who have been left out.

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Most South Africans understand and endorse the need to end the current insider/outsider dichotomy and give the disadvantaged a real chance to get ahead. Since BEE offers no tangible prospect of achieving this, it is time to shift to EED instead.

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