IRR

South African Institute of Race Relations

The power of ideas

ECONOMIC EMPOWERMENT FOR THE DISADVANTAGED

A Better Way to Empower South Africa's Poor

South African Institute of Race Relations
The power of ideas

July 2018

Published by the South African Institute of Race Relations (IRR)
2 Clamart Road, Richmond
Johannesburg, 2092 South Africa
P O Box 291722, Melville, Johannesburg, 2109 South Africa
Telephone: (011) 482–7221

ISSN: 2311-7591

Editor-in-chief: Frans Cronje

Author: Marius Roodt

Typesetter: Martin Matsokotere

Cover design by InkDesign

ECONOMIC EMPOWERMENT FOR THE DISADVANTAGED – A NEW FRAMEWORK THROUGH WHICH TO UPLIFT THE POOR

South Africa: a history of exclusion

South Africa has a history of racial exclusion and oppression. Apartheid policies excluded large numbers of South Africans from participating fully in the country's economy and destroyed human and social capital. With this legacy it is not surprising that following the end of apartheid in the early 1990s the new government looked to policies such as affirmative action (AA) or employment equity (EE) and black economic empowerment (BEE) to level the playing field. It is instructive that the Afrikaans term for 'affirmative action' is *regstellende aksie* – directly translated as 'corrective action', and it implies it is a policy to make right what was wrong. This is a noble objective and it would be difficult to argue with a policy that seeks to right the wrongs of the past. However, BEE and EE policies have failed in most cases to do this. Those that have benefited from these policies have been those who are already fairly advanced on the social ladder – people with a good education or social connections. Although there has been much progress since 1994 in reducing poverty, this has generally been on the back of the expansion of social grants, rather than expanding opportunities for mobility for most South Africans.

> *The evidence is clear: a relatively small proportion of people have been able to benefit from the South African economy, which unfortunately locks out many people.*

The evidence is clear: a relatively small proportion of people have been able to benefit from the South African economy, which unfortunately locks out many people. The latter – overwhelmingly black, and denied opportunities in the past – have been doomed to remain economic 'outsiders'.

If one looks at poverty, one can see that the proportion of people living in poverty has declined over time. In 2006, some 67% of people were living in poverty.[1] By 2015, this had declined to 56% (although in terms of actual numbers, the number of people living in poverty had remained fairly static, at about 30 million).

Breaking this down by race, black (African) people are far more likely to be living in poverty than coloureds, Indians, or whites. In 2015, the proportion of black people living in poverty had declined to 64%, as compared to 77% in 2006. This is a significant decline, but the proportions of other races living in poverty in South Africa are much lower. The proportion of coloureds living in poverty in 2015 was 41%, while six percent of Indians were living in poverty that year, along with only one percent of white South Africans. The high level of black people living in poverty can partly be explained by our history, but it also reflects the failure of the government to create the environment for an economy that is more inclusive and creates more work.

For example, unemployment (on the strict definition) has risen for all races, but once again it is black South Africans who suffer from the highest levels. In 2017, the proportion of black people who were unemployed was 31%, having risen from 27% a decade earlier. Unemployment rates for other races were lower – the proportion of coloured people unemployed in 2017 was 24% (21% in 2007), 13% of Indians were unemployed in 2017 (11% in 2007), while six percent of white people were unemployed in 2017, compared to four percent in 2007.

The higher one's level of education, the less likely the prospects of being either unemployed or to be living in poverty. In 2015, the proportion of people living in poverty who had higher than a matric qualification was 8.4%. For people whose highest level of education was a matric, the proportion of people living in poverty was 36%, rising to 58% for those with some secondary schooling, and to 69% for those with only primary education. The lower the level of education, the more likely the chances of living in poverty.

A similar phenomenon is observed when it comes to the impact of education on employment. The higher one's level of education, the greater the likelihood of being employed. According to Statistics South Africa (Stats SA), the proportion of people with a tertiary qualification who were unemployed in 2017 was 13%. This rose to 28% for those who had completed their secondary education, while unemployment among those who had some secondary education was 35%. Once again, the better educated have a greater chance of being employed, and a lower chance of living in poverty.

> *Only one percent of black respondents said that a government priority should be speeding up affirmative action, with other issues, such as employment, education, and crime, being identified as priorities by a far higher proportion of black respondents.*

There are some differences in the levels of unemployment for black and white graduates (those who hold university degrees). Black graduates have an unemployment rate of about nine percent, while the unemployment rate of white degree holders is about three percent. This can partly be explained by the different employment rates for those who have attended historically advantaged institutions (HAIs) – universities that were established for whites in the period before 1994 – and historically disadvantaged institutions (HDIs) – those reserved for black South Africans. The likelihood of being employed if a graduate had attended an HAI was approximately the same for black and white South Africans.[2]

Data from an IRR survey conducted in 2017 showed that EE was low on the list of South Africans' priorities, including black South Africans. Only one percent of black respondents said that a government priority should be speeding up affirmative action, with other issues, such as employment, education, and crime, being identified as priorities by a far higher proportion of black respondents. An earlier survey – conducted the previous year – had also found that only three percent of black South Africans felt that more BEE and EE would help improve people's lives, with jobs and education once again being identified as far more important issues.

The 2016 survey also asked respondents whether BEE and AA had helped poor black people. Some 51% of all respondents said that it had. A point to note is that 50.6% of black respondents said that it had helped poor black people – a little lower than respondents from the other race groups (54% of coloured and Indian respondents and 55% of white respondents were of the opinion that the policy had helped poor black South Africans). When it came down to the level of the individual the trend was also different. Only 13% of black respondents said that they had personally benefited from a BEE deal. Fifteen percent of Indian respondents indicated that they had benefited from a BEE deal, along with some ten percent of coloureds, and, perhaps bizarrely, just over five percent of whites who had been questioned in the survey.

Most South Africans were also opposed to affirmative action in hiring. In the 2018 survey (which had been conducted in 2017), some two-thirds of all respondents said that the best person should always be appointed to a position, regardless of race. Some 85% of coloured respondents felt that this should be the case, compared to 84% of white respondents, and nearly three-quarters of Indian people surveyed. The proportion of black people who felt that the best person should always be appointed to a position – regardless of race – was 62%.

The South African government has done relatively well in expanding basic services to all South Africans, as well as increasing the number of people in education (although the quality of education can be poor). Nevertheless, people (black or white) who are educated (especially to degree level) are more likely to be employed and be able to benefit from the economy. BEE beneficiaries are not poor unemployed South Africans, but those with degrees or with connections. Empowerment is not broad-based – it has not improved the lot of unemployed people in Gauteng, or those attending dysfunctional schools in rural Limpopo or the Eastern Cape. BEE is failing and it will continue to do so without a policy rethink.

> *BEE is not broad-based – it has not improved the lot of unemployed people in Gauteng, or those attending dysfunctional schools in rural Limpopo or the Eastern Cape.*

Indeed, an analysis of trends since 1994 shows that a dogged focus on race is misplaced. It is no longer an inherent predictor of disadvantage. For example, there are now more black South Africans receiving degrees than whites. In 2015, the total number of black South Africans that received an undergraduate degree was over 87 000, compared to fewer than 23 000 whites. There are also far more black South Africans attending university than before. In 1995, less than half of all university students were black – today over 70% of all South African students are black. The increase in the number of black South Africans receiving degrees and attending university is one of the unheralded successes of post-apartheid South Africa.

Over the twenty years up to 2016, the incomes of black South Africans rose substantially (although that is the case for all of the country's race groups). Average per capita incomes (at current prices) for black South Africans rose from R6 000 in 1996 to R34 500 in 2016, an increase over the twenty-year period of 470%. White South Africans saw their per capita incomes rise from about R45 000 in 1996 to R226 000 in 2016, an increase of 407%. However, income inequality (as measured on the Gini coefficient) has risen among black South Africans, while falling for other population groups. This would suggest that the increases in income among black South Africans has not been equitably spread. It is likely that those with high levels of education or already existing connections in government or business are the ones who have benefited from the opening up of the South African economy. The Gini coefficient measures inequality from 0 to 1. A Gini measure of 0 would indicate that everyone in a given population has equal income, while a measure of 1 would indicate that one person has all the income.

South Africa as a whole has a high level of inequality – using the Gini measure, inequality has risen from 0.61 in 1996 to 0.63 to 2016. Breaking down inequality by race group shows that white South Africans have the lowest levels of intra-race inequality, with a Gini measure of 0.43 in 2016 (down from 0.48 in 1996). However, black South Africans have the highest levels of intra-race inequality, with a Gini measure of 0.58 in 2016, an increase of nearly 10% from 0.53 in 1996. Coloured South Africans had a Gini of 0.55 in 2016 (from 0.51 in 1996) and the Gini of Indians was 0.49 (a decline from 0.51 compared to 20 years previously). As long as ago as 2010, intra-African inequality was flagged by the Human Sciences Research Council as the major contributor to inequality in South Africa. Intra-African inequality contributed 33% to overall inequality, as against 21% for intra-white inequality.[3]

This increase in Gini would imply that any increase in incomes for black South Africans has been skewed to those at the upper end of the income distribution – those who are already earning fairly high salaries.

Those who are still being left behind – in terms of poverty and unemployment – are poor black South Africans. They are those without degrees and contacts, or high-level skills to sell. They, a majority of South Africa's population, remain 'outsiders' for whom the promise of freedom has not (yet) been fulfilled.

Is there a solution? The answer, as will be shown here, is yes.

> *Those who are still being left behind – in terms of poverty and unemployment – are poor black South Africans. They, a majority of South Africa's population, remain 'outsiders' for whom the promise of freedom has not (yet) been fulfilled.*

Many people are critical of BEE

Many influential South Africans, both within the government and outside of it, have been critical of the policy of BEE.

Moeletsi Mbeki, a political analyst and brother of former president Thabo Mbeki, has pointed to the problems in BEE policies for some time. In 2009, he said that BEE was simply entrenching the divide between rich and poor (the growth in intra-racial inequality among black South Africans backs up this view). He said that it had also entrenched a culture of cronyism and entitlement.[4]

Even the governing African National Congress (ANC) and its allies acknowledge that BEE in its current form does not work. As long ago as 2012, one of the ANC's tripartite alliance partners, the South African Communist Party (SACP), said that BEE had not worked and had simply benefited a small elite (which the above figures seem to support).[5]

The SACP also admitted that BEE had been responsible for much of the increase in inequality in South Africa. A 2017 editorial in the party's magazine, *African Communist*, pointed out that inequality amongst black South Africans was growing, saying that 'the assumption that enriching a select BEE few via share-deals, or measuring empowerment progress in terms of direct individual black percentage ownership of the JSE, or (worse still) looting public property in the hands of state owned corporations in the name of broad-based black empowerment is resulting in the very opposite – increasing poverty for the majority, increasing racial inequality, and persisting mass unemployment.'[6]

Former President Jacob Zuma, shortly after taking office, said in 2010 that the BEE policy had resulted in a few individuals benefiting, with little change for the majority of black South Africans.[7]

Other senior members of the ANC have also criticised the policy. In 2010, the then minister of finance, Pravin Gordhan, said: 'BEE policies have not worked and have not made South Africa a fairer or more prosperous country.'[8] Gwede Mantashe said in 2012 (when he was the ANC's secretary-general) that preferential procurement was costly and that paying more for goods just because they were supplied by a black business had to come to an end.[9]

Another critic of BEE was Mathews Phosa, a former ANC treasurer-general and premier of Mpumalanga. In 2015, he said that the current BEE policy was not truly broad-based. He was of the opinion that only a small number of black South Africans had benefited and this had been largely through tenderpreneurship, with most black people struggling to enter the formal economy. Phosa also argued that sustainable jobs were being lost due to compliance costs and the costs to companies of bringing empowerment partners on board. He also stated that empowerment should be broader and based on education and skills.[10]

In 2016, Mr Phosa reiterated that a handful of people had been empowered at the expense of the majority of South Africans.[11]

Reflecting the fact that a relatively small number of well-connected individuals have been the primary beneficiaries of BEE is that it is estimated that most of Mamphela Ramphele's fortune is due to having been given shares in companies, so as to ensure that they met BEE requirements. The Star reported in 2013 that some R40 million of Ms Ramphele's fortune was due to being given shares in businesses.[12] Ironically, one of the policy platforms of Ms Ramphele's ill-fated political party, Agang, was a criticism of BEE. The party said that BEE had benefited a small elite and had also resulted in high compliance costs.[13]

> *"The role of government is to create a conducive business environment where owners, whether black or white, who can afford risk capital, can participate in equity transactions." – Hage Geingob.*

South African policy makers should take note of a recent decision by the Namibian government to scrap BEE requirements in that country. A clause in the New Equitable Economic Empowerment Framework Bill initially required all business to be at least a quarter owned by black Namibians (or racially disadvantaged people, in the wording of the bill). The President of Namibia, Hage Geingob, said that the requirements would not translate into broad-based empowerment. The Namibian Chamber of Commerce and Industry had criticised that particular section of the bill and had warned that it would result in capital flight. Mr Geingob was quoted as saying, quite rightly: 'The role of government is to create a conducive business environment where owners, whether black or white, who can afford risk capital, can participate in equity transactions.'[14]

The role of mining in South Africa

The mining sector has not been immune from BEE demands. Given the history of South Africa and the key role that mining played in racial discrimination since at least the 19th century, some would argue that the mining industry carries a particular burden. This may be true, but restrictive laws which are undermining an industry which still plays an important role in the South African economy is not the way to go about it. South African mining has thus far had three charters which seek to increase black participation in the industry – the first in 2002, the second in 2010, and the third (ill-fated) charter, released in 2017.

Although the role of mining has declined in recent years, in 2015 it still accounted for seven percent of South Africa's total GDP (compared to over twenty percent in the early 1980s).[15] Taking into account the effect of economic multipliers, the true contribution of mining to South African GDP is far larger.[16] In some provinces it is a major contributor to the economy. In four of South Africa's provinces its total contribution is over 10% – in the Northern Cape it is 18.1%, Mpumalanga 20.2%, and in Limpopo it accounts for just shy of a quarter of the total provincial economy. In North West it accounts for a whopping 29.8% of the province's total GDP. It is also a major employer in that province with nearly 150 000 people working in the mining sector in 2016, accounting for nearly 40% of total employment there.[17] Although mining's total contribution to the GDP of South Africa's richest province, Gauteng, is fairly small (2.4%) it is still a major employer. Some 15% of Gauteng's workers are employed in the sector. Other provinces with a large proportion of people working in mining are Limpopo (10%) and Mpumalanga (22.2%). Including economic multipliers, then, the total contribution of mining is closer to 17%.[18]

A number of South Africa's major urban areas (outside the eight metropolitan municipalities) are also heavily reliant on mining. Despite the relative decline in mining in Gauteng, six of South Africa's sixteen biggest urban areas still rely on mining for a major chunk of economic activity. These are Rustenburg (North West), Thabazimbi (Limpopo), Sasolburg (Free State), and the three Mpumalanga towns of Middelburg, Secunda, and Witbank.

> *The number of people employed in the mining sector in 2017 was just under 500 000. About five percent of South Africans work in the mining sector.*

The number of people employed in the mining sector is still fairly high. In 2017, the number of people working in the sector was just under 500 000 (although this does constitute a decline from mining's peak share of employment in 1987, when 700 000 people worked in the sector). About five percent of South Africans work in the mining sector. Including indirect employment, the number of people employed in mining is about 1.3 million.[19]

Mining also accounts for a large share of exports – about 25% (rising to 40% when beneficiated minerals are included).[20]

At the same time, mining has done well in transferring value to previously disadvantaged South Africans. Between 2000 and 2014, the value of BEE transactions in mining was estimated at about R205 billion. Mike Teke, a former President of the Chamber of Mines, said BEE deals had transferred at least R159 billion to entrepreneurs, employees, and community trusts.[21] According to a BEE audit conducted by the DMR itself, some 90% of mines had increased average black ownership to over 30%, exceeding the DMR's own requirement. However, the DMR put black ownership of the sector at 20%. The department declined to recognise deals where black shareholders had sold their shares (thus diluting or even completely liquidating the BEE shareholding) and did not recognise deals which did not have employee or community shareholding. The second requirement, however, was only introduced in 2010, in the second iteration of the Charter. This meant that the 2010 Charter also applied to retrospective deals – a problematic outcome.[22]

Research conducted by the Chamber of Mines, covering the twelve-year period up to the end of 2014, showed that the sector had done remarkably well in transferring ownership. According to the Chamber, 'meaningful economic empowerment participation by HDSA has been 38% on average'. The sector with the highest ownership participation of HDSAs was manganese, at over 40%. The platinum sector had also done well, at 38%. This is significant because platinum accounts for the majority of mining employment (41%) and is South Africa's biggest export earner.[23]

The mining sector also makes the single biggest contribution to corporate social investment (CSI) in South Africa. According to a report by an economic consultancy, Eunomix, companies from this sector accounted for nearly half of all CSI spend in the country.[24]

Furthermore, the owners of mining companies are not robber barons, sitting in plush offices in Manhattan or the City in London. Rather they are institutional investors, often pension funds. When mining companies do well, ordinary people benefit – their pensions and savings grow. According to Mr Teke, up to 95% of shareholders in larger companies are held by institutional investors.[25] At the same time, the state – through the Public Investment Corporation (PIC), which manages the pension funds of government employees, and the Industrial Development Corporation (IDC) – owns about 15% of local mining assets.[26]

> *The South African mining industry had been in decline for some time. The sector is now smaller in real terms than it was in 1994, partly because of poor policy decisions and support provided to the sector.*

The Mining Charter: Helping or hindering?

Despite the progress made, the DMR attempted to unilaterally impose the third Mining Charter on the industry in 2017. This was widely criticised by many as being harmful to the industry. As the Chamber of Mines pointed out, the South African mining industry had been in decline for some time. The sector is now smaller in real terms than it was in 1994, partly because of poor policy decisions and support provided to the sector. Other sobering statistics include the fact that over the past five years the industry has shrunk by an average of 0.2% a year (compared to overall economic growth of 1.6%), while gross and net investment has declined.[27] The industry had suffered a cumulative loss of R30 billion in 2015, while nearly two-thirds of platinum operations were loss-making in 2017.[28] Since 2009, mining employment, investment, and mining as a proportion of GDP have all declined.[29] The Chamber also said that all new investments were 'frozen' because of regulatory and policy uncertainty, meaning the industry was likely to continue to decline. Further reflecting this is South Africa's decline on the Fraser Institute's ranking of the attractiveness of mining jurisdictions. In 2003, South Africa had been ranked the 28th most attractive (out of 47 jurisdictions) for mining investment. In 2016, it had declined to 84 out of 104 jurisdictions.[30] There was something of a recovery in 2017 – ranking 48th out of 91.[31] However, South Africa's recovery was not because of an improvement in mining policy, but rather because of the country's mineral potential. In 2017, South Africa's ranking on the mineral potential index (one of two pillars of the Fraser Institute's index) was 21 out of 91. On the other pillar – the policy perceptions index – South Africa is ranked 81st, and above only Zimbabwe and the Democratic Republic of Congo in Africa.[32]

The decline in the South African mining industry is against a backdrop of the country still enjoying large reserves of mineral wealth (which is reflected in South Africa's high ranking on the Fraser Index's mineral perceptions pillar, compared to its policy perceptions index). As long ago as 2010, Citibank reported that South Africa had mineral resources of US$2.5 trillion – the highest in the world. Australia and Russia were rated as the next wealthiest countries in terms of mineral resources, each with reserves of about US$1.6 trillion.[33]

The third Charter was seen as possibly hastening the end of South African mining as a significant contributor to the country's economy. The third Charter is seen as a wishlist more than a policy document, and 'filled with populist, but not practical, statements'.[34]

Some have even argued that the Charter may have been drawn up for a more sinister purpose, rather than simply being a poorly drafted piece of policy, given that it was a document drawn up with no engagement with the sector, and by people with little understanding of mining (which may have led to its flaws). *Business Day* quoted an anonymous 'influential figure' in the mining sector as saying that it was a 'nefarious and incompetent' piece of policy, aimed at seeing the transfer of assets to cronies, rather than to 'genuinely empower broader' South Africa.[35]

Bobby Godsell, a former CEO of AngloGold Ashanti, who had been involved in drawing up the first Charter, noted that while the first Charter had been a collaborative effort between the government, industry, and labour, the third Charter was a unilateral document. As Godsell noted: 'Without the support of those who supply investment funds to mining, this new charter appears doomed to fail.'[36]

It is hard not to agree with this assessment when analysing the third Charter. For example, the third Charter widened of the definition of disadvantaged South Africans to those who were naturalised after the end of apartheid in 1994. This was a clear attempt to ensure that the Gupta brothers could benefit from a transfer of mining assets.[37]

> *The Third Charter was seen as possibly hastening the end of South African mining as a significant contributor to the country's economy.*

The third Charter also put a minimum requirement that 30% of shareholding in mining companies needed to be held by black investors. However, as noted above, the DMR and industry have different definitions of what constitutes black ownership, leading to further conflict and uncertainty in the sector. Using Chamber estimates, the mining industry has done fairly well in transferring ownership, while DMR figures would show the opposite. A definition which is agreed on by both parties needs to be crafted as a matter of urgency.

The third Charter also only gave mining companies only a year to top up their BEE levels to 30%. The original 2004 Charter had given mining companies until 2009 to reach an empowerment level of 15%, and until 2014 to reach an empowerment level of 26%.[38] Allowing such a short timeframe could only have led to something of a firesale, meaning assets could be snapped up cheaply, possibly allowing politically connected cronies to benefit.[39]

The original mining Charter – first released in 2004 – had also given companies the right to develop their own BEE plans, in terms of setting proportions of the number of black people at various management levels. The 2017 Charter instead set targets for companies – hardly in the spirit of co-operation and partnership in which the original and second charters were developed.[40]

There were a number of poorly thought-out clauses, including some likely to be illegal. The Charter required that one percent of a company's turnover be paid to black shareholders, over and above any dividends due to them.[41] This would discriminate between different classes of shareholders in a way that is inconsistent with the Companies Act, making this illegal.[42] The Charter also required all BEE debt that had not been paid off ten years after the loan was initiated, to be written off by whoever had supplied the financing – whether the mining company or a bank.[43]

The 30% BEE target was also to be made up as follows – 8% to employee share ownership schemes, 8% to communities, and 14% held by a black entrepreneur.[44] The large proportion to be held by BEE entrepreneurs is not in the spirit of broad-based transformation, and will likely only lead to more crony capitalism, rather than seeing a spread of benefits.

Other racially defined prescriptions which come out of the Mining Charter include the requirement that prospecting rights will only go to those with a minimum black shareholding of 51%. Mining companies will also have to put "significant resources into creating and sustaining the 51% black-owned companies from which 26% of all mining goods and 80% of all relevant services will have to be bought each year'.[45]

Following the election of Cyril Ramaphosa as President of the ANC and subsequently the country, it appeared that there was a light at the end of the tunnel (although subsequent events have shown this light could well be the headlight of a train rather than a new dawn for mining).

The requirement that companies fulfil a 30% black shareholding, and that previous deals would not be recognised in maintaining the 30% shareholding, was the most controversial element of the third Charter. Previous versions of the Charter had not explicitly stated that previous deals, where empowerment shareholders had subsequently sold out, could not be included in determining a company's BEE shareholding proportion. The Chamber of Mines approached the High Court to get clarity on the issue of 'once empowered, always empowered' once and for all. In April 2018, the High Court granted a declaratory order that the concept of 'once empowered always empowered', was valid – in other words, previous BEE transactions should still be recognised, even if the original BEE shareholders sold out.[46] As noted above, the third Charter had originally stated that companies which did not maintain their 30% BEE shareholding had 12 months in which to top it up once again.

> *The High Court found that the 2010 Charter itself may have been unlawful, as it was beyond the powers of the mining minister, as defined by the Mineral and Petroleum Resources Development Act.*

The court also found that the 2010 Charter itself may have been unlawful, as it was beyond the powers of the mining minister, as defined by the Mineral and Petroleum Resources Development Act (MPRDA), a sentiment shared by a number of legal experts.[47]

The judgment was, unsurprisingly, welcomed by the Chamber, whose legal counsel had argued that the clause was unconstitutional as it 'was vague and uncertain and would steer away investment.'[48]

However, the DMR have applied for leave to appeal the judgment, and claimed that it was concerned that the judgment would hamper efforts to sustainably transform South Africa.[49]

There is some scope for a successful appeal, considering that there was a dissenting judge. However, even the dissenting judge, Thina Siwendu, argued that although the top-up principle was sound, it would still cause economic damage. She acknowledged that in a competitive global environment, mining companies were facing a number of challenges, and that the requirement to keep the shareholding of previously disadvantaged South Africans at a certain level would affect future investments. She also said that the transaction costs of continually having to top up the shareholding of previously disadvantaged South Africans would be 'prohibitive'. At the same time, she noted that 'locking' in previously disadvantaged South Africans to BEE deals would also be detrimental to those who were supposed to benefit from these deals. If people couldn't sell when they wanted to, for example when company share prices are high, there would be little benefit to being a beneficiary of BEE deals.[50]

What is striking is that this is what was said by the judge who felt that the top-up principle should be implemented Considering the DMR is appealing the judgment, despite the evidence that it is a poorly thought-out piece of policy, would seem to imply that ideological imperatives have also trumped reality for the department.

Subsequently a revised version of the third Mining Charter was released by Mr Mantashe in June 2018. Although there were some improvements to the original third Charter, the revised version still had some issues. For example, it scraps the 51% ownership requirement for new prospecting rights, gives more recognition to the 'continuing consequences' principle, and slightly reduces earlier procurement and employment equity quotas. It also scraps the 100% compliance requirement for skills development and mine community upliftment, instead confining this onerous demand to the ownership element alone.

However, it still targets an ownership target of 30%, reneging on earlier assurances by the Department that the ownership target would remain at 26%. There is also a risk that mining companies could lose their mining rights if they fail to maintain a 100% score on their ownership obligations for a certain period.

These continued regulatory uncertainties will further hamper investment in this important South African industry.

> *A new way of empowering people is clearly needed, and one that should move away from race.*

If BEE is not working what can we replace it with?

BEE, as it is currently constituted, has failed. The results of the various iterations of the Mining Charter have also been mixed. Depending on the metric used, the mining industry has either failed miserably in transforming, or done a fairly decent job. A new way of empowering people is clearly needed, and one that should move away from race.

On balance, the lives of the majority of South Africans (and black South Africans in particular) have improved measurably since 1994. Far more people than ever before have access to services, such as housing and sanitation, and the number of black South Africans at university, for example, has increased rapidly. That said, there are still far too many people (and once again, particularly black South Africans) who are locked out of the formal economy. BEE in its current form does not help these 'outsiders', but rather entrenches patterns of exclusion.

The Mining Charter is an example of this. The various charters and BEE policies in mining have done little to uplift ordinary South Africans, but have rather seen a decline in the industry (and a corresponding loss of jobs) while making some people millionaires – not because of their expertise but because of the colour of their skin.

At the same time, the various prescriptions of the Mining Charter will have the effect of seeing declining investment in mining, which will have consequences for ordinary people working in mining. As compliance and regulatory hurdles rise, companies will spend far more money on meeting these standards, rather than investing in their businesses and employees, having consequences for future profitability and sustainability.

What is the answer? As Mr Phosa suggested in his criticism of BEE, a broader system of empowerment is necessary, one which does not use the blunt instrument of race to decide disadvantage.

The IRR has devised a policy proposal to move away from BEE to a system which looks to empower all those who are disadvantaged, and not only on the basis of race. This can also be tailored to specific sectors, including mining.

How would a general policy of economic empowerment for the disadvantaged (EED) work?

EED would shift away from a focus on numerical targets, but rather look to provide the inputs which would improve the lives of poorer people. This policy would focus on four 'Es' – rapid economic growth, excellent education, more employment, and the promotion of vibrant and successful entrepreneurship.

Under an EED policy, the current BEE scorecard would be replaced by an EED scorecard. This revised scorecard would see businesses earn points for contributions of different kinds. Points would be awarded for the investments a company makes, the profits it generates, the jobs it sustains or creates, the goods and services it buys from other suppliers, the innovation it helps to foster, and the contributions it makes to tax revenues, export earnings, and foreign currency inflows.[51]

An EED approach – rather than a BEE approach – would encourage investment, rather than discourage it, which would increase employment, as well as stimulate growth.

An EED approach – rather than a BEE approach – would encourage investment rather than discourage it, which would increase employment, as well as stimulate growth. At the same time, EED would create opportunities for all South Africans, rather than a politically connected few.

A system of vouchers will also be an integral part of EED. Means-tested South Africans, earning below a certain amount, would be entitled to government-funded vouchers, which they could use to access education, healthcare, and housing. For example, people would be granted education vouchers, up to the prescribed value, which they could use at the school of their choice. This would be funded by redirecting the education budget, rather than increasing it. This would provide children from lower-income families with the educational choice which many middle-class people take for granted. This would also have an effect on failing state schools, which many children have to attend because they have little other choice. Without this captured market, poor state schools will have to improve and ensure that they are facilities of choice for parents, so as to benefit from the vouchers that families have been granted.

The vouchers would work in a similar way for housing and healthcare – people would no longer have to solely rely on government services. This would not only give people more choice, but would also, in all likelihood, result in delivery of improvements in housing, education, and healthcare.

How could this policy of EED be tailored to mining?

Using an EED scorecard for mining, companies in the sector would earn EED points for contributions in four areas – economic, labour, environment, and the community. The EED contribution for the economic component would be ranked most highly, as this is the pillar which would attract investment, increase the growth rate, generate jobs, and provide procurement opportunities for a host of businesses supplying goods and services to the mines. Nevertheless, the importance of the other three components would also be recognised.

How would EED points be allocated?

Under the EED pillar for economic contribution, companies would earn points for maintaining and expanding production; beneficiation of minerals; ensuring that net operating profits are sustained or increased; declaring dividends; making fixed capital investments; ensuring and increasing procurement from South African companies; and investing in research and development (R&D). Bonus points will also be awarded for innovations (such as developing a new drilling technique) and for maintaining outputs when economic conditions are poor.

On the labour pillar, points will be awarded for maintaining and increasing their workforce; raising salaries and providing additional employee benefits; improving mine safety and underground conditions; and providing employees with the opportunity to undergo additional skills training, or other education. Points will also be given for encouraging employees to become involved in employee share ownership programmes.

On the third pillar – the environment – a number of avenues will be available to secure points. Points will be allocated for contributing to environmental rehabilitation funds; reducing electricity consumption; reducing water consumption through recycling; rehabilitating land damaged through mining; and working to reduce their environmental footprint.

> *Economic empowerment of black South Africans is necessary, and it is within our grasp, if we follow the right policies.*

The pillar of community contributions will be linked to a voucher policy, as envisaged by EED, and described above. Mining companies would be given points in the EED scorecard through topping up the vouchers of community members, especially in terms of housing. Points would also be given for improving buildings in shack settlements, and providing low-cost, but adequate housing to migrant workers. These workers often prefer to take a 'living-out' allowance rather than living in formal mining-supplied housing. This allowance supplements their income, and is often sent to support families in their home towns. However, this means that migrant workers elect to live in cheap housing, which is often informal, with all the associated issues and risks. EED points will also be allocated to mining companies which come up with innovative housing, sanitation, and other service delivery solutions for their workers and surrounding communities. EED points would also be provided for mining companies which topped up healthcare and education vouchers of surrounding communities.

Conclusion

South Africa has a long history of exclusion and dispossession, the consequences of which still affect the country today. Looking for ways to correct these historic wrongs is morally correct. However, doing this in ways which will harm the economy and lead to poor South Africans losing work and income is ultimately counterproductive.

BEE as it is currently constituted has failed ordinary South Africans. Although there are fewer people living in poverty today than at the end of apartheid, this is not because of BEE. This is because of economic growth and the expansion of social grants. A small elite has benefited from BEE, and this is clear from the increase in inequality amongst black South Africans. Economic empowerment of black South Africans is necessary, and it is within our grasp, if we follow the right policies.

The Mining Charter is a symbol of poorly implemented BEE. Although the initial goals behind the first Charter were noble, by the third Charter, the mask had slipped. While the original Charter was designed as a way for the industry, government, and labour to work together to enable everyone to derive maximum benefit from our mineral wealth, the third Charter was simply a manifesto for looting disguised as a policy document.

This is the predictable outcome when empowerment is simply predicated on race, without looking for a truly broad-based outcome. A policy of EED will result in empowerment which helps to bring in the economy's 'outsiders', while at the same time encouraging economic growth. Coupled with a voucher policy which will provide poorer South Africans with real choice, a policy predicated on EED rather than BEE will see an improvement in the lives of most South Africans. This will be different from the current situation, where most South Africans have experienced only an incremental improvement in their living standards, with a small group netting vast benefits.

Implementing a policy of EED will not be difficult, and it should be done as a matter of urgency if we truly want 'a better life for all'.

References

1 Using the upper-bound poverty line as a measure – people falling below the upper-bound poverty line. In 2006 the upper bound poverty line was an income of R575 per person per month, rising to R992 in 2015.

2 *Mail & Guardian*, 13 May 2016, *https://mg.co.za/article/2016-05-17-black-graduate-numbers-are-up* and 'Graduate Unemployment and Higher Education Institutions in South Africa', Stellenbosch Economic Working Papers, August 2016, *https://www.ekon.sun.ac.za/wpapers/2016/wp082016/wp-08-2016.pdf*

3 *Politicsweb*, 16 February 2017, *http://www.politicsweb.co.za/opinion/inequality-is-no-longer-just-about-race--african-c*

4 *Mail & Guardian*, 19 June 2009, *https://mg.co.za/article/2009-06-19-moeletsi-mbeki-black-empowerment-has-failed*

5 *Independent Online*, 24 June 2012, *https://www.iol.co.za/business-report/economy/sacp-ancs-bee-policy-needs-attention-1326275*

6 *Politicsweb*, 16 February 2017, *http://www.politicsweb.co.za/opinion/inequality-is-no-longer-just-about-race--african-c*

7 *The Economist*, 31 March 2010, *https://www.economist.com/node/15824024*

8 *Mail & Guardian*, 18 January 2013, *https://mg.co.za/article/2013-01-18-bee-is-flawed-and-should-be-scrapped*

9 *Mail & Guardian*, 18 January 2013, *https://mg.co.za/article/2013-01-18-bee-is-flawed-and-should-be-scrapped*

10 *BusinessTech*, 18 September 2015, *https://businesstech.co.za/news/business/98793/bee-isnt-doing-what-its-supposed-to-former-anc-treasurer/*

11 *@Liberty*, Issue 31, April 2017, Institute of Race Relations

12 *The Star*, 23 August 2013, *https://www.iol.co.za/news/politics/ramphele-made-r40m-from-failed-bee-1566894*

13 *The Star*, 23 August 2013, *https://www.iol.co.za/news/politics/ramphele-made-r40m-from-failed-bee-1566894*

14 *BizNews*, 12 April 2018, *https://www.biznews.com/africa/2018/04/12/cyril-namibia-scraps-bee-clause/*

15 Statistics South Africa, 3 April 2017, *http://www.statssa.gov.za/wp-content/uploads/2017/04/Mining_pic1.png*

16 The SA Mining Industry, South African Minerals to Metals Research Institute, *http://www.sammri.com/?page_id=33*

17 *Facts and Figures 2016*, June 2017, Chamber of Mines, *http://www.chamberofmines.org.za/industry-news/publications/facts-and-figures/send/17-facts-and-figures/442-facts-and-figures-2016*

18 *South African Mining: Restoring the Dream*, 8 September 2017, Chamber of Mines, *http://www.notourcharter.co.za/component/jdownloads/send/30-publication/105-south-african-mining-restoring-the-dream*

19 *South African Mining: Restoring the Dream*, 8 September 2017, Chamber of Mines, *http://www.notourcharter.co.za/component/jdownloads/send/30-publication/105-south-african-mining-restoring-the-dream*

20 *South African Mining: Restoring the Dream*, 8 September 2017, Chamber of Mines, *http://www.notourcharter.co.za/component/jdownloads/send/30-publication/105-south-african-mining-restoring-the-dream*

21 *@Liberty*, Issue 37, February 2018, Institute of Race Relations, *https://irr.org.za/reports-and-publications/atLiberty/files/liberty-mining-and-people-the-impact-of-mining-on-the-south-african-economy-and-living-standards*

22 *News24*, 8 July 2016, *https://www.fin24.com/BizNews/anthea-jeffery-time-to-take-mining-charter-from-bee-to-eed-20160706*

23 Statistics South Africa, 3 April 2017, *http://www.statssa.gov.za/wp-content/uploads/2017/04/Mining_pic3.png* and *Fin24*, 26 March 2018, *https://www.fin24.com/Companies/Mining/shrinking-platinum-sector-adds-to-ramaphosas-economic-challenge-20180326*

24 Eunomix, 14 March 2016, *https://eunomix.com/cmsAdmin/uploads/eunomix-research_-the-impact-of-platinum-mining-in-rustenburg_march2016_001.pdf*

25 *@Liberty*, Issue 37, February 2018, Institute of Race Relations, *https://irr.org.za/reports-and-publications/atLiberty/files/liberty-mining-and-people-the-impact-of-mining-on-the-south-african-economy-and-living-standards*

26 *@Liberty*, Issue 37, February 2018, Institute of Race Relations, *https://irr.org.za/reports-and-publications/atLiberty/files/liberty-mining-and-people-the-impact-of-mining-on-the-south-african-economy-and-living-standards*

27 *DMR's Revised Charter and the Struggling Mining Sector*, Chamber of Mines, *http://www.notourcharter.co.za/component/jdownloads/send/30-publication/79-economic-impact-assessment-dmr-s-revised-charter-and-the-struggling-mining-sector*
28 *South African Mining: Restoring the Dream*, 8 September 2017, Chamber of Mines, *http://www.notourcharter.co.za/component/jdownloads/send/30-publication/105-south-african-mining-restoring-the-dream*
29 *South African Mining: Restoring the Dream*, 8 September 2017, Chamber of Mines, *http://www.notourcharter.co.za/component/jdownloads/send/30-publication/105-south-african-mining-restoring-the-dream*
30 *South African Mining: Restoring the Dream*, 8 September 2017, Chamber of Mines, *http://www.notourcharter.co.za/component/jdownloads/send/30-publication/105-south-african-mining-restoring-the-dream*
31 Fraser Institute, *Annual Survey of Mining Companies, 2017*, *https://www.fraserinstitute.org/sites/default/files/survey-of-mining-companies-2017.pdf*
32 Fraser Institute, *Annual Survey of Mining Companies, 2017*, *https://www.fraserinstitute.org/sites/default/files/survey-of-mining-companies-2017.pdf*
33 *Politicsweb*, 4 October 2016, *http://www.politicsweb.co.za/news-and-analysis/mining-what-botswana-can-teach-us--irr*
34 Fluxmans, 20 June 2017, *http://www.fluxmans.com/new-mining-charter-good-bad-ugly/*
35 *Business Day*, 9 October 2017, *https://www.businesslive.co.za/bd/companies/mining/2017-10-09-news-analysis-mining-versus-the-state-in-australia-and-sa/*
36 *Business Day*, 19 June 2017, *https://www.businesslive.co.za/bd/opinion/2017-06-19-bobby-godsell-without-support-of-investors-the-new-charter-appears-doomed-to-fail/*
37 *News24*, 20 June 2017, *https://www.news24.com/Columnists/MaxduPreez/how-the-guptas-helped-write-the-mining-charter-20170620*
38 *Financial Mail*, 1 June 2017, *https://www.businesslive.co.za/fm/fm-fox/2017-06-01-industry-calls-for-clarity-on-mining-charter/*
39 *Business Day*, 15 June 2017, *https://www.businesslive.co.za/bd/business-and-economy/2017-06-15-mining-charter-calls-for-30-black-ownership2/*
40 *Business Day*, 19 June 2017, *https://www.businesslive.co.za/bd/opinion/2017-06-19-bobby-godsell-without-support-of-investors-the-new-charter-appears-doomed-to-fail/*
41 *Business Day*, 22 June 2017, *https://www.businesslive.co.za/fm/features/2017-06-22-analysis-zwanes-mining-charter-lunacy/*
42 *Politicsweb*, 13 September 2017, *http://www.politicsweb.co.za/opinion/mining-charter-iii-the-key-legal-issues*
43 *BusinessLive*, 24 June 2017, *https://www.businesslive.co.za/bt/business-and-economy/2017-06-24-text-it0-bd0-mode0mining-charter-takes-from-peter-to-pay-paul-but-wheres-profit--text/*
44 R*eviewed Broad Based Black-Economic Empowerment Charter for the South African Mining and Minerals Industry 2016*, Department of Mineral Resources, *https://www.gov.za/sites/default/files/40923_gon581.pdf*
45 *@Liberty*, Issue 33, September 2017, Institute of Race Relations, *https://irr.org.za/reports-and-publications/atLiberty/files/a-new-approach-to-empowerment-in-mining-1*
46 *Fin24*, 4 April 2018, *https://www.fin24.com/Companies/Mining/just-in-court-grants-declaratory-order-on-once-empowered-always-empowered-bee-transactions-20180404*
47 *BizNews*, 11 April 2018, *https://www.biznews.com/thought-leaders/2018/04/11/nobody-likes-bee-topping-principle-mining-anthea-jeffery/* and *Financial Mail*, 22 June 2017, *https://www.businesslive.co.za/fm/features/2017-06-22-analysis-zwanes-mining-charter-lunacy/*
48 *Fin24*, 24 April 2018, *https://www.fin24.com/Companies/Mining/dmr-appeals-ruling-on-bee-top-up-in-mining-charter-20180424*
49 *Fin 24*, 24 April 2018, *https://www.fin24.com/Companies/Mining/dmr-appeals-ruling-on-bee-top-up-in-mining-charter-20180424*
50 *BizNews*, 11 April 2018, *https://www.biznews.com/thought-leaders/2018/04/11/nobody-likes-bee-topping-principle-mining-anthea-jeffery/*
51 *@Liberty*, Issue 31, April 2017, Institute of Race Relations