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EMPOWERMENT

Reassessing objectives

A far-reaching review of BEE policy **must be undertaken**

In the early years of BEE, I initiated the ongoing monitoring of black corporate ownership and, in particular, the level of shareholder control that was being achieved.

Sentiments would rise and fall in response to marginal changes in this gauge of empowerment performance.

For some years, there has been no consistent record of the trends in black shareholding. The results of my recent research for my book may well charge up emotions once more, for black corporate control has all but slipped into oblivion.

The market capitalisation of listed companies that are controlled by BEE shareholders is less than 3%, which is the lowest in 13 years, and the number of black-controlled companies on the JSE has halved over the past decade.

The high mark was almost 7% towards the end of 1998, just before the Asian market crisis fully affected SA.

I reviewed the major transactions from 1995 to 2008, divided into two periods — the first up to 2003 and the second from 2004 — when the extensive BEE policy framework was first put in place, most importantly the BEE codes of good practice and transformation charters in mining and the financial services sectors.

What emerged is a much stronger emphasis on black control in the early years of BEE than post-policy. Almost 30% of all major deals in the pre-policy period transferred control of corporations to black investors, while the figure is 10% for the later period.

The profile of the leading BEE investors provides the second surprise. Most do not fit the general perception of a small group of "usual suspects" playing at enrichment rather than empowerment.

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Kgalema Motlanthe Transfer but not transformation

The large transactions were dominated by 15 companies, the majority of them professionally managed broad-based investment groups or companies with significant broad-based shareholding. Most were founded in the first three years of BEE. The broad-based investment companies showed the greatest inclination to invest in or start up new ventures.

Does this retreat in black control matter? Policy doesn't require it — 25% BEE ownership is sufficient, with no incentive offered in the codes to overreach that.

The codes have resulted in a significant escalation in the value of BEE ownership transactions, with black shareholding spread much more broadly than ever before.

Between 1996 and 2003, the value of disclosed transactions was about R90bn, and this figure increased to around R350bn between 2004 and 2008.

To get a reading of current direct BEE shareholding levels, I returned to the JSE and looked at the companies listed on the top 40 index, which make up about 65% of the total market capitalisation of the JSE. In this case, the total value of direct BEE shareholding is marginally under 20% — better than I expected.

> **BEE ownership has absorbed most capital to redress imbalances**
> ***Politically connected get the lion's share***

Shareholder control, however, is important from one perspective: its role in encouraging BEE companies to become productive investors. Anyone in control should be making strategic decisions that have productive implications, and not simply asset trading.

Therefore, the absence of black control in the post-codes era suggests that BEE ownership is much less about productive value to the economy and much more about the redistribution of wealth.

There is nothing inherently wrong with the principle of redistribution, given the huge racial imbalances in individual wealth that exist due to apartheid.

However, this is a complex matter, which if not planned deliberately and

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handled carefully may easily go astray, benefiting the wrong people and ultimately exacting an overall cost to society. This is precisely what is happening at an increasing pace with BEE.

Deputy president Kgalema Motlanthe characterises the dichotomy as "transfer rather than transformation".

As he elaborates: "By transfer I mean the ceding of existing assets to individuals in a manner that does not in any way alter the economic structure. By transformation I mean the creation of new markets, new investments, new drivers of domestic demand in the economy."

The mining sector offers a good example of redistribution gone wrong, where there is the look and feel of the spoils of war being divvied out to political insiders under the legitimate guise of black empowerment.

The public is getting an inkling of this from the current dispute between Kumba and the department of mineral resources over the latter's allocation of licences to unknown BEE parties.

This is an example of a pattern that has emerged in the allocation of prospecting rights to BEE firms that are usually no more than shelf companies, intent only on trading these rights with established mining houses.

This is the highly opportunistic, rent-seeking face of BEE, which in itself is not illegal, but is still very far from the objectives of BEE policy. It readily takes place because there are no adequate checks in the system.

A key concern is the lack of transparency in licence allocations, which inevitably opens the door to abuses. Remarkably, there exists no comprehensive publicly available source of information, like a Google map of SA's registered mining and prospecting rights and their holders.

This means that the mineral assets available for redistribution are likely to be accessible only to those "in the know" — those who have access to department of mineral resources officials or are politically well positioned. I don't see communities in areas of high mining potential being actively supported by the state to obtain licences. I have seen benefits removed from communities to favour politically powerful individuals.


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No gain Communities near mines waiting for BEE

The mining charter is under review, with pressure for more BEE ownership. However, if the system of licence allocation is not thoroughly transformed, more BEE preference will simply translate into political patronage and abuse, with the mining houses continuing to acquiesce for fear of losing access to mineral reserves.

The financial sector charter offers another view of the problems associated with BEE ownership as a key source of wealth redistribution. It has become moribund because of a demand for a higher level of direct black shareholding (from 10% to 15%).

Is this a justifiable demand? Maybe, but it can be adequately addressed only if we have a full picture of the racial distribution of wealth, including not just direct black shareholding, but indirect shareholding and other forms of individual wealth such as housing and land ownership.

The financial sector charter is the only one that took all these facets into account and highlighted the trade-offs that exist. There is not enough money to go round — more capital put into BEE ownership means less available for black housing or land reform.

This raises the question as to where redistribution priorities should lie. To date, BEE ownership has absorbed by far the greatest amount of capital to redress imbalances — estimated between R500bn and R600bn, as against less than R150bn on affordable housing and land reform.

Should this trend continue, or should priorities change? We can't say for certain until we have a full picture of individual wealth and the racial imbalances. Until then, the case for more BEE ownership cannot be justifiably argued.

BEE ownership needs to be productive, which suggests a far-reaching policy review to see how this can be done. Too much money is going into changing the country's shareholder profile for us not to be concerned about its efficient use — and to justify a shift away from the asset-trading, redistributive character of BEE.

Jenny Cargill

❑ *Cargill is author of* Trick or Treat: Rethinking Black Economic Empowerment

"By transformation I mean the creation of new markets, new investments, new drivers of domestic demand in the economy"

– KGALEMA MOTLANTHE

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