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Studies

Corporate Social Responsibility (CSR) and Black Economic Empowerment (BEE) in South Africa

A case study of German Transnational Corporations

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German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE)

The German Development Institute / Deutsches Institut für Entwicklungspolitik (DIE) is a multidisciplinary research, consultancy and training institute for Germany's bilateral and for multilateral development co-operation. On the basis of independent research, it acts as consultant to public institutions in Germany and abroad on current issues of co-operation between developed and developing countries. Through its 9-months training course, the German Development Institute prepares German and European University graduates for a career in the field of development policy.

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Studies / Deutsches Institut für Entwicklungspolitik
ISSN 1860-0468

Die deutsche Nationalbibliothek verzeichnet diese Publikation in der Deutschen Nationalbibliografie; detaillierte bibliografische Daten sind im Internet über <http://dnb.d-nb.de> abrufbar.

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data is available in the Internet at <http://dnb.d-nb.de>.

ISBN 978-3-88985-494-0

© Deutsches Institut für Entwicklungspolitik gGmbH

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Abbreviations

AA	Affirmative Action
AHK	Southern African-German Chamber of Commerce and Industry
AICC	African Institute for Corporate Citizenship
ANC	African National Congress
BA	Business Association
BBBEE	Broad-Based Black Economic Empowerment
BEE	Black Economic Empowerment
BIT	Bilateral Investment Treaty
BMF	Black Management Forum
BUSA	Business Unity South Africa
C	Code
CEO	Chief Executive Officer
COPE	Congress of the People
COSATU	Congress of South African Trade Unions
CSI	Corporate Social Investment
CSR	Corporate Social Responsibility
DA	Democratic Alliance
DEG	Deutsche Investitions- und Entwicklungsgesellschaft
DSB	Dispute Settlement Body
DTI	Department of Trade and Industry
ED	Enterprise Development
EE	Employment Equity
EEA	Employment Equity Act
EME	Exempted Micro Enterprise
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
HDI	Human Development Index

HDR	Human Development Report
HPBI	Hewlett Packard Business Intelligence
IDC	Industrial Development Corporation
IFP	Inkatha Freedom Party
JSE	Johannesburg Stock Exchange
JSE-SRI	Johannesburg Stock Exchange – Social Responsibility Index
KfW	Kreditanstalt für Wiederaufbau
MC	Management Control
NBI	National Business Initiative
NEDLAC	National Economic Development and Labour Council
NGO	Non-Governmental Organisation
NT	National Treatment
para.	Paragraph
PGWC	Provincial Government of Western Cape
PP	Preferential Procurement
PPP	Public Private Partnership
PPPPA	Preferential Procurement Policy Framework Act
O	Ownership
OECD	Organisation for Economic Cooperation and Development
QSE	Qualifying Small Enterprise
RSA	Republic of South Africa
s	Section
S	Statement
SAHRC	South African Human Rights Commission
Samaf	South African Micro-Finance Apex Fund
SANAS	South African National Accreditation System
SD	Skills Development
SED	Socio-Economic Development
SMME	Small, Medium and Micro Enterprises

TNC	Transnational Corporation
UCT	University of Cape Town
UN	United Nations
UNDP	United Nations Development Programme
WTO	World Trade Organization
ZAR	South African Rand

Summary

1 Objective and background

This report examines the role of Corporate Social Responsibility (CSR) and Broad-Based Black Economic Empowerment (BBBEE) approaches in South Africa for the country's transformation process towards a more sustainable and equitable development. The main focus of the empirical analysis is on the contribution of German Transnational Corporations (TNCs) and their various stakeholders.

The background to this survey is the fact that more than fifteen years after the end of apartheid and the beginning of the political transformation the socio-economic structures are still highly unequal. While the historically disadvantaged people received full political power, the country's economic basis is largely owned and managed in favour of the previously advantaged white minority. In this context the government of South Africa in cooperation with key stakeholders, including public and private companies started a number of new activities. These activities included not only a revision of the former/traditional CSR agenda and additional "affirmative action" regulations but resulted in the elaboration of a very complex framework called "Broad-Based Black Economic Empowerment Act".

With the specific focus of this study on German TNCs and their stakeholders this survey is also contributing to overcome a specific research gap with respect to the opportunities and challenges regarding the implementation of BBBEE.

While the conceptional approach of BBBEE, including the CSR dimension is largely supported in South Africa it has to be taken into account that the topic of this report remains a very sensitive and controversially disputed issue. Against this background the survey is focussing on the following issues:

- Overview and analysis of the socio-economic background in South Africa
- The concept of "Affirmative Action" and CSR/Broad-Based Black Economic Empowerment approaches

- The BBBEE Legal Framework, verification mechanisms and challenges
- BBBEEE and CSR – opportunities and challenges from the stakeholder’s perspective
- BBBEEE and CSR – activities and perspectives of German TNCs operating in South Africa

2 Methodological approach and survey design

This study is based on an extensive review of the most relevant documents and literature with respect to CSR and BBBEE and on data the authors collected in South Africa from mid-February to the end of April in 2010.

Direct Interviews and background discussions were conducted with:

1. Representatives of 40 German TNCs registered as members of the AHK (Southern African-German Chamber of Commerce and Industry)
2. Most relevant Stakeholders, including representatives from:
 - Government and Constitutional Institutions
 - Political Parties
 - Business organisations
 - Civil Society Organisations and
 - Donor Agencies
3. Experts from academic institutions with specific expertise on CSR/BBBEE in South Africa.

Yet, it is important to note that the survey is based on the perceptions offered by the interview partners and should be regarded as statements, proposals and tendencies identified by the interviewees rather than an independently verified factual account of corporates and stakeholders. However, with respect to the companies’ statements an important “reality check” was the comparison between statements by corporate representatives and the BBBEE scorecard verified by specialised accredited agencies.

After the first chapter, which is dedicated to the introduction of the report, the second chapter describes the socio-economic background of South Africa as the basis of the current inequalities and economic disparities. Chapter three discusses the concept of Affirmative Action, provides an overview about different approaches of business self-regulation and describes the link between CSR/CSI and BBBEE. Chapter four describes the regulatory framework of BBBEE and addresses the main challenges. The fifth chapter presents the activities and positions of the various stakeholders towards BBBEE and in chapter six the empirical data about German TNCs perceptions and contributions with respect to CSR/BBBEE are documented. The seventh chapter provides concluding remarks and future perspectives.

3 Socio-economic background in South Africa

South Africa is a multi-cultural and multi-ethnic country which after the end of apartheid the new political government declared as “Rainbow Nation”. However, until today the initiated transition in 1990 remains deeply hampered by the legacy of the Apartheid regime. This transition process itself was mainly a political transition while the socio-economic structures remain almost untouched.

In fact, the social disparities are increasing, racial tensions widespread and the majority of black people remain marginalized and poor, living in townships with poor education and high unemployment rates. This trend is demonstrated by the figures of the UNDP Human Development Report according to which South Africa is one of the world’s few countries where the Human Development Index (HDI) declined after the political transformation and democratisation. In addition, South Africa is one of the countries with the highest Gini-coefficient, which is the most important indicator for measuring the economic disparities of a society. The available data also show for example that the unemployment rate in South Africa in 2009 for the white population is only 4.8 percent while for the previously historically disadvantaged population the figure reaches 28.8 percent.

On the background of these socio-economic inequalities the discussion about ways and means to overcome the “economic” Apartheid got high

on the agenda in South Africa. These debates included approaches with respect to affirmative action, legal regulations as well as activities in voluntary business self-regulation, e.g. corporate social investment and/or corporate social responsibility (CSR) to empower the previously historical disadvantaged population.

4 Overcoming economic apartheid: Approaches to Affirmative Action, compulsory regulation and voluntary commitment

In order to overcome the legacy of Apartheid South Africa decided to strategically empower the previously historically disadvantaged population. One element in this context is the concept of Affirmative Action (AA). In fact, this approach is not new, on the contrary the idea behind this approach can be dated back far into history of human mankind. In this context already Aristoteles pointed out that equality before the law does not necessarily lead to equitable outcomes. In his own words: *“Justice is equality, but only for equals; and justice is inequality, but only for those who are unequal”* (Aristotle 1944).

Today Affirmative Action (AA) approaches are implemented in various countries, regions and contexts (including e.g. gender issues). In general this concept distinguishes between “formal equality” and “substance equality”. While from the perspective of “formal equality” all human beings are born with the same rights and duties and shall therefore be treated equally, from the concept of “substantive equality” the former approach, which focuses on abolishing discriminatory measures only, is not sufficient. Instead, from the perspective of “substantive equality” equal opportunities are needed and require specific interventionist activities.

For South Africa this approach became a central element of the country’s transformation strategy. The relevance of AA becomes obvious in, the historical, constitutional and legislative foundations as well as the interface between compulsory and voluntary efforts with respect to the BBBEE Act.

While in the South African Constitution the term AA is not explicitly but more implicitly included a look into the legislative framework shows that affirmative action regulations are widespread. This includes in particular the following legislative regulations:

- Employment Equity Act 55
- Skills Development Act 97
- Skills Levy Act
- Preferential Procurement Policy Framework Act
- Broad-Based Black Economic Empowerment Act

While the above mentioned legal regulations can be considered as rather isolated measures, tackling single problems and being more enabling than prescriptive the BBBEE Act is much more comprehensive, providing an overall strategy to solve the multilayered problem of economic apartheid.

Embedded Affirmative Actors – TNCs and the place of CSR/BBBEE

While Affirmative Action is very prominent in public services, public procurement and admission to schools and universities, this approach also applies to the private sector and impacts TNCs in various ways. However, on the other hand it has to be taken into account that for private company's and TNC operations to achieving returns to their investors is the main credo. The contribution of TNCs to achieving equitable development and macroeconomic and social stability which in South Africa is implied by the concept of substantive equality is not self evident. These differing interests do not always align, nor are "win-win" outcomes inherently given. Against this background South Africa's economic environment is characterised not only by governmental regulation and voluntary self-regulation but by various forms of hybrid co-regulation. Elements of all these approaches (s. Figure 2, p. 36) are implemented in South Africa and the BBBEE strategy being one of those.

However, despite the wide-reaching legal foundations of BBBEE those TNCs which are not engaged with the South African government in procurement relationships and not acting as suppliers to companies seeking tenders from the state are not by law required to contribute to BBBEE. These regulations fall into the realm of "soft law" which has no mandating power.

Yet, “soft law” often has significant signalling power for individual and institutional stakeholders as it is often indicative of the projected evolution of “hard law”. In addition, the strong presence of state owned enterprises (SOEs) in South Africa which are legally mandated to reach BBBEE targets, including the attainment of certain BBBEE levels from their suppliers, is another incentive for following the BBBEE principles. Furthermore, as the South African government is the largest producer of goods and services in the country there is an additional strong impact as the result of so called “cascade and domino effects”. Due to the inclusion of preferential procurement from BBBEE suppliers those companies that do not directly supply the public sector get under pressure from their corporate customers who compete for government tenders. Given this incentive scheme also many German TNCs for example are implementing specific CSR activities which can be classified as being BBBEE compliant.

For TNCs without procurement relationships with the state or specific supplier relations with state-business BBBEE amounts to a component of their CSR activities. While these activities under the Apartheid rule were often considered as mainly philanthropic initiatives and a kind of “fig leaf” for their business under the Apartheid regime today linking BBBEE, CSR and sustainable development is often seen as a contribution to poverty alleviation and thus promoting South Africa’s long-term political stability and attractiveness as an investment destination. From this context CSR/BBBEE is meant to achieve the uplifting of previously disadvantaged communities and raise them up into the formal, primary economy where opportunities exist and economic growth is taking place (s. Figure 3, p. 38).

At the same time, due to the voluntary nature of many multi-stakeholder regulatory arrangements and the lack of sanctions applied to the companies which prefer “free riding” in South Africa a number of companies have sought the “easy way out” of participating in the national transformation by engaging in what has come to be called “fronting” or “window-dressing”, i.e. using numerous accounting tricks or by taking a few employees from historically disadvantaged communities on their corporate boards without giving them relevant responsibilities, thus scoring easy points and getting good BBBEE levels without actually

transforming their company. The realisation that the widespread voluntary dimensions within the co-operative governance have often hindered the transformation has meanwhile redesigned the discourse about BBBEE in South Africa. In the last few months a new rhetoric of corporate accountability has come into use by relevant politicians and stakeholders suggesting that the BBBEE framework should be tightened and sanctions raised.

5 The BBBEE Act as the regulatory framework with its opportunities and challenges

The BBBEE Act of 2003 is a comprehensive regulatory framework which combines different Affirmative Action instruments in South Africa. The framework contains a variety of legal and regulatory measures as well as specific verification and certification mechanisms. Major challenges of BBBEE are malpractices in the certification process, various aspects of the scorecard weighting system which is measuring the BBBEE compliance of companies and numerous difficulties with respect to the general implementation process.

In South Africa the right to equality enshrined in the Constitution is the basis for BBBEE and according to a Constitutional Court decision the right to equality is interpreted in the sense of substantive equality.

The BBBEE Act defines the objectives of BBBEE in broad terms and serves as a framework for all BBBEE measures. The beneficiaries of the BBBEE Act are black people, meaning Africans, Coloureds and Indians who are South African citizens by birth or by decent or who were naturalised prior to the commencement of the Constitution in 1993. Also included are black people who became South African citizens after the commencement of the Constitution but who would have been naturalised before were it not for the Apartheid laws that prohibited the naturalisation of certain persons. All groups benefit from the BBBEE without consideration of age or generation. The mere affiliation with one of these groups is sufficient, regardless the evidence of individual discrimination.

The BBBEE Act provides for the establishment of the Codes of Good Practices which contain the details and instructions how the specific

elements of BBBEE are measured. Regarding the scope of application the Act implies that the Codes are binding for all organs of state and public entities, meaning that they have to be applied by the government when a decision in the following areas is required:

- Licensing, concession or other authorisations;
- procurement;
- sale of state owned enterprises; and
- Public-Private Partnerships.

In addition, the Codes are supplemented and applied by specific scorecards which measure the BBBEE compliance of companies. These scorecards are based on seven elements of BBBEE for which the companies can earn specific points. These seven elements are classified in three categories (s. Table 3, p. 44) and have different criteria and weightings.

Again, it has to be pointed out that BBBEE is not legally binding for private companies, i.e. they will not be legally sanctioned if they do not contribute to BBBEE. However, for private companies the BBBEE status becomes relevant in particular in the context of government tenders, applications for licences, granting concessions and Preferential Procurement and last not least via the supply chain. Depending on the importance of BBBEE points for the specific business private companies will take into account the BBBEE weightings and their recognition level.

Furthermore, South Africa released a specific BBBEE Strategy: This strategy outlines four principles that define BBBEE as being:

- Broad-based,
- inclusive,
- part of good governance, and
- part of the economic growth strategy.

As this strategy does not have legal consequences this document is mainly functioning as an underlying guideline.

Verification and certification

The BBBEE compliance of companies has to be certified. For this process countries can choose between external certification and self-assessment. Specific verification agencies issue a BBBEE scorecard certificate which is valid for twelve months. These certificates can be issued by any verification agency approved by the South African National Accreditation System (SANAS). External verification is not mandatory, but it enhances the credibility of the scorecard. As the rating process requires an internal rating administration this procedure can be quite costly, depending on the complexity of the company's structure.

Opportunities and challenges of the BBBEE legal framework

Opportunities and challenges of the BBBEE legal framework are mainly linked to the implementation process. Among the most important aspects are:

- Goals and implications of the BBBEE elements:
 - High ranking of the ownership element
 - Financing BBBEE transactions
 - By-passing BBBEE and fronting
- Compatibility with other legal regulations
- Multinational companies

While the BBBEE legal framework with its specific scorecard elements were intended to contribute to the transformation of the South African economy by strengthening black economic empowerment towards a more broad-based concept until today the implementation remains far behind expectations. On one hand companies try to avoid the ownership element and on the other hand the financing of BBBEE transaction for the benefit of historically disadvantaged people or communities largely failed because of the lack of sufficient savings or no access to adequate financial resources.

At the same time by-passing and fronting became a widespread possibility for companies to by-pass and circumvent the BBBEE requirements and thus resulting in an artificial “black façade”.

Besides, BBBEE has an impact on other legal regulations with regard to both, e.g. national and international law. On the national level there is potential incoherence with some Affirmative Action legislation, in particular with the PPPF Preferential Procurement Policy Framework Act (PPPFA) and regarding the international level BBBEE is in conflict with rules of the World Trade Organization (WTO) as well as with some provisions laid down in Bilateral Investment Treaties (BITs). Concerning the WTO the BBBEE Act is challenging the basic principle of National Treatment (NT) and with respect to the BITs potential conflicts could arise when looking at the BBBEE provisions in the ownership element and also the NT principle.

Regarding the implementation of the ownership element transnational corporations (TNCs) enjoy special treatment. Notwithstanding the requirement that all companies operating in South Africa should make contributions towards the objectives of BBBEE there are exceptions for TNCs. For many TNCs complying with the ownership element is not possible due to specific company structures e.g. if subsidiary companies must remain fully owned by the holding company or if family owned business does not allow to sell shares. Accordingly these corporates are restricted with respect to transferring shares to black partners.

Yet, within the BBBEE framework, under certain conditions TNCs are able to earn ownership points, either as: “Equity Equivalents” or as “Equity Offshore”. Equity equivalents are specific compensatory measures for the support of historically disadvantaged people or communities or any other programmes that promote socio-economic development within the South African economy. The value of these programmes may be measured against 25% of the value of the TNCs operations in South Africa or against 4% of the total revenue from its operations in the country. However, as most TNCs see these targets as very high and also rather bureaucratic until today only very few companies initiated such Equity Equivalent programmes.

Another compensatory instrument for TNCs is the Equity Offshore mechanism. In this context the ownership element for the benefit of the historically disadvantaged people is provided by offering shares at

TNC headquarter level. This mechanism has been implemented for example by TNCs such as Merrill Lynch and Cisco.

6 BBBEE/CSR: Opportunities and challenges from the perspective of stakeholders

All major stakeholders acknowledge the basic value of BBBEE and the concept's vital contribution to the national transformation project. Yet, they identify opportunities and challenges and voice their concerns with regard to various structural deficiencies around the concept and gaps in the implementation of BBBEE.

Stakeholders perception regarding companies' and institutions' responsibilities

One of the most prominent criticisms coming from stakeholders, acknowledged also by the Department of Trade and Industry (DTI), is that BBBEE has not achieved its broad-based objective. Instead of reaching the broader population BBBEE has mostly benefited some well educated and politically connected previously disadvantaged individuals.

Despite opposing viewpoints on certain issues, there is obviously a broad consensus that both companies and stakeholders need to actively engage to improve the process. It is expected that companies and relevant stakeholders engage in:

- Organizing the implementation of BBBEE in a more broad-based and sustainable way, including improvements in the measurement and evaluation of compliance;
- Addressing the obvious loopholes and major obstacles; and
- Contributing proposals of how BBBEE can serve as a business case and facilitate communication of 'win-win' scenarios of BBBEE.

According to the collected data and numerous interviews stakeholders feel that the companies' implementation of BBBEE is often seen as a 'technical matter' which means fulfilling the minimal criteria and often preventing the concept from becoming sustainable and broad-based. Some stakeholders pointed out that a lack of broad-based empower-

ment is due to some companies' narrow focus on the elements of "Ownership" and "Management Control". Against this background **collective ownership programmes** for the benefit of the historically disadvantaged people and communities were proposed. In this context among the most often heard recommendations were:

- Establishment of pension funds and community trusts and issuance of trade union shares as well as employee ownership shares;
- Compensation mechanism for the lack of black ownership through a stronger commitment in the indirect elements of the scorecard;
- Equity Equivalents as a constructive alternative to the "Ownership" element.

However, all these recommendations with respect to the ownership issue immediately raise the question of **financing**. Whereas some stakeholders feel that the existing financial mechanisms are not innovative enough and not accessible to the people on the ground, others rather identified the lacking knowledge about and the insufficient access to financing options as the root causes. Meanwhile, the DTI has acknowledged this topic and is now promoting a variety of financing mechanisms.

Some stakeholders explain the missing **trickle-down** of BBBEE as a result of inadequately implementing the score card elements with respect to "Enterprise Development" and the "Socio-Economic Development". Other actors criticise that companies are often investing in unsustainable development projects with a high "infant mortality" or which are not in line with the focal areas of the government's development strategy.

To ensure the implementation of BBBEE in a sustainable way the need for better verification and evaluation has been pointed out by numerous stakeholders. Furthermore the existing **certification and verification process** of BBBEE is regarded as being hampered by its somewhat lax and ad hoc nature. Some stakeholders noted that a better standardization of rating agencies is needed since the obvious differences in terms of quality increase the possibilities of by-passing. Others emphasised a lack of verification agencies and the skill shortages in the agencies.

In similar vein, many stakeholders raised concerns about the **lack of monitoring and evaluation**. However, it has to be taken into account that the organisation meanwhile established for this purpose, the “Black Economic Empowerment Advisory Council” which is provided for in the BBBEE Act (2003), did not take up its work until February 2010.

In any case the Business Unity South Africa (BUSA), the most important united South African Chamber of Commerce, is promoting the establishment of a monitoring and evaluation mechanism and the publication of an annual BBBEE report about progress and challenges on this topic is seen as an important first step.

Addressing loopholes and obstacles of BBBEE implementation

The DTI confirmed the lack of a comprehensive empowerment strategy, which could consolidate the different government programmes in a more coherent manner. Besides, DTI emphasised that more than 75% of the companies in the private sector are not BBBEE compliant. Yet, several stakeholders made the point that the companies are in the position to challenge the existing hindrances and to denounce possible gaps.

In this context stakeholders also identified the need for efforts to eliminate corruption and fronting/by-passing and the establishment of accompanying services and policies for the implementation of BBBEE as well as the need for a coherent alignment of procurement in the public sector.

Numerous criticisms pointed to the existence of obstacles and loopholes which act as barriers for a successful implementation of BBBEE. Criticisms regarding **corruption, nepotism and favouritism were widespread**. To combat the malpractice of corruption the DTI encourages all companies to report about these activities.

Interesting initiatives are on its way: While the DTI provides an anonymous reporting tool with respect to fronting on its webpage BUSA established an Anti-Corruption Working Group which is working on the development of a Guide on Anti Corruption Measures and an Anti-corruption Brochure for Foreign Investors.

However, the issue of corruption is obviously not only related to Public Procurement but also to empowerment deals, Management Control and other elements of the scorecard. Several stakeholders highlighted the importance to eliminate corruption in the private as well as in the public sector in order to facilitate a sustainable, effective and efficient implementation of BBBEE.

To tackle the problem the installation of an ombudsman who could contribute to resolve conflicts and ensure proper compliance with BBBEE has been also suggested.

Furthermore some actors demanded **revisions of the scorecard regarding the weighting of the elements** e.g. in particular with respect to Skills Development, Preferential Procurement and Enterprise Development as well as Socio-economic Development.

The South African trade union COSATU (Congress of South African Trade Unions) for example expressed the wish to include additional elements in the scorecard such as employment creation or support for “cooperative enterprises”. Other stakeholders explicitly emphasised the need for integrating local and rural communities and rural based individuals into the BBBEE framework as well as into the scorecard ranking.

Some stakeholders hold the opinion that the government’s **social programmes** should take more responsibility for services and contributions which are currently undertaken by the business sector. In this context it has also been highlighted that BBBEE is a very slim pillar without additional supporting instruments and accompanying measures. This problem can partly be solved through improvements in the education system, especially as the lack of skilled people and the weaknesses in the education sector are major points of concern. In particular representatives from political parties argued that BBBEE cannot be implemented in a sustainable way if the education system is not working adequately. The three opposition parties (Democratic Alliance [DA], Congress of People [COPE] and Inkatha Freedom Party [IFP]) all feel that the problem of education connected with the issue of skills shortage has not been dealt with sufficiently and that additional activities and reforms are needed.

In this context the African National Congress (ANC) proposed that the government must review the BBBEE threshold in awarding tenders as well as procuring services and the South African Human Rights Commission (SAHRC) emphasised BBBEE as a possible connecting point and support for educational measures and policies.

Another major issue centres on **BBBEE implementation in the public sector** itself. The Department of Economic Development and Tourism of the Provincial Government of the Western Cape (PGWC) pointed to the problem that the public sector is only partly compliant and that there is a major need to bring public procurement in line with BBBEE requirements. The South African government also aware of the problem therefore also calls for a stronger alignment and harmonisation of government procurement with BBBEE. To this end, the government drafted and published a preferential procurement regulation in August 2009 but which has not been approved as yet.

Realising the business case and communicating 'win-win' scenarios

While various stakeholders highlighted the challenges of BBBEE implementation they also underlined the opportunities, e.g. the **business case** that lies within CSR/BBBEE agenda. Representatives of the Black Management Forum (BMF) for example underlined that the transformation strategy in South Africa is a business imperative, representatives of the JSE-SRI (Johannesburg Stock Exchange – Social Responsibility Index) revealed that the business case for BBBEE is multi-faceted and has various dimensions ranging from better reputation for companies, increased engagement with investors to better business perspectives as a result of increasing markets in the long run. However, some stakeholders feel that the business case and the competitive advantage that can be expected from BBBEE are not sufficiently communicated and should be better promoted.

Among most stakeholders there is a widespread consensus that **more communication and exchange between relevant actors** is urgently needed. Stakeholders highlighted that dialogues and partnerships between the public and private sector need to be strengthened. In this context governmental representatives underlined the need for improved communication between black business and governmental institutions

as well as a better coordination and organisation of black business voices. Some stakeholders stressed that a lack of communication results in mistrust, misunderstandings of what BBBEE is about and what should be achieved. Also DTI underlined that the numerous difficulties in the implementation process arise from miscommunication and expressed the wish that companies would be able to better understand the core issues of BBBEE. Yet, it was also emphasised that numerous institutions and initiatives to overcome the communication gap are already in place or under preparation. Among them are e.g.:

- The Department for Trade and Industry (DTI) started to held quarterly session with TNCs, chambers of commerce and embassies to address open questions and concerns.
- BUSA is doing research for the BBBEE Advisory Council to ensure a public discourse about the shortcomings.
- The National Economic Development and Labour Council (NEDLAC), is an important institution where business voices can influence the process of drafting legislation.
- The Department of Economic Development and Tourism of the PGWC offers training courses about BBBEE and is in the process of preparing a website on BBBEE and a one-stop shop for tenders with respect to BBBEE.
- The National Business Initiative (NBI) is planning to advise NGOs to build up platforms for them to better interact with companies.

Beside these South African stakeholder's activities **German Development Cooperation agencies** also contribute with their expertise and know-how. In this context the following activities were highlighted:

- Support for dialogues and programmes with respect to supporting CSR and Public Private Partnerships (PPP)
- Support for capacity building for human resources development and skills development programmes

Regardless of the many obstacles and challenges in the process of BBBEE most stakeholders are acknowledging that the intended trans-

formation process is needed and that BBBEE implementation can be improved through the concerted efforts of all stakeholders and actors involved.

7 CSR/BBBEE – Perception and contribution of German Transnational Corporations (TNCs) operating in South Africa

The field research on CSR and BBBEE with respect to the perception and contribution of German TNCs operating in South Africa focussed on the following issues:

- CSR/BBBEE Agenda of German TNCs in South Africa
- BBBEE scorecards, activities and concerns
- Certification process
- Effects of BBBEE on companies
- Shortcomings of BBBEE and
- Drivers of BBBEE

From the perspectives of German companies in South Africa the CSR agenda is multifaceted. It includes the international CSR agenda as well as the specific South African CSR approach, i.e. mainly elements of philanthropic programmes titled as corporate social investment (CSI) and the BBBEE agenda. According to the interviews with representatives (mainly Chief Executive Officers – CEOs) from German TNCs, the BBBEE agenda is more prominent than the international CSR agenda, e.g. the majority of companies' CSR activities are guided by local expectations. This is underlined by the fact that for many companies CSR/CSI is integrated into their BBBEE policy.

Interestingly, most companies interviewed tried to avoid the „Ownership element“ as well as the “Management Control” category but scored very well in the more indirect so called broad- based elements such as “Enterprise Development” and “Socio-economic Development”. Therefore it is not surprising that German companies would prefer a revision of the existing weighting scheme more in favour towards the latter mentioned elements of the scorecard.

With respect to the current certification process most companies perceive this process as largely transparent. However, quite a number of concerns were raised with respect to the few available rating agencies, including their skill shortages and the fact that the current process is not really standardized which also results in the widespread existence of double standards. In any case a clear majority of companies prefer certification by an accredited agency, while only very few companies prefer self-assessment.

For most companies BBBEE has an impact on their operations. This includes in particular the employment structure, the cost benefit relation and the procurement competitiveness. Looking at the employment structure it became obvious that BBBEE affected the employment mainly in the lower qualified jobs while higher up the corporate hierarchy the change was less remarkable. Regarding the cost-benefit relation of BBBEE the picture looks quite impressive:

Almost half of the companies perceived the cost-benefit relation of BBBEE as positive compared to around 25% of the companies which mentioned that the costs exceed the benefits.

According to the empirical data it also became obvious that the motivation of companies for CSR and BBBEE is partly driven by moral aspects but more often by business incentives: main drivers are obviously procurement pressure and the context when interfacing with the public sector. As a result it became obvious that the overwhelming majority of the company sample perceives BBBEE as a business case.

Regarding the various shortcomings of BBBEE German TNCs pointed out the shortage of skilled people which are felt as main bottlenecks in particular with respect for better scorings in “Management Control” and “Employment Equity”. Furthermore companies interviewed pointed out malpractices of BBBEE through window-dressing, fronting and by-passing as well as the fact that in contrast to the spirit of BBBEE the trickle down effect is only minor and rather for the benefit of a small black elite.

Many German TNCs are also expecting other actors to take responsibility with respect to promoting CSR/BBBEE. Particular attention was paid to the following actors:

- Public Policy
- Business associations
- Trade unions and civil society organisations
- German development cooperation agencies

Regarding the role of public policy for making BBBEE more effective about half of the companies' representatives would welcome specific award systems, in particular labelling schemes and tax incentives to be initiated by DTI. Furthermore, company representatives argued that the government should increase incentives in the in the procurement area and inform the public if a tender will be awarded as a result of BBBEE compliance. The majority of companies is obviously missing a dialogue with the public sector and would endorse more partnerships and exchange of ideas with respect to CSR/BBBEE. For the role of business associations (BAs), including the Southern African-German Chamber of Commerce and Industry (AHK), in the BBBEE process the majority of companies has clear visions and positions about the way BAs could contribute. Accordingly the BAs should serve as a platform, support companies by improving the dissemination of know-how and "best practices" with regard to the BBBEE process as well as its implementation.

Quite a number of companies also emphasised that the BAs are needed for lobbying in the area of CSR/BBBEE. German TNCs felt that their needs and challenges should be better communicated with other stakeholders and decision making institutions, in particular the DTI as well as other relevant governmental institutions.

According to the majority of the companies' statements regarding contributions of and partnerships with civil society organisations and trade unions their ideas and approaches are considered with certain scepticism and most often ranked as not supportive. This position reflects in particular the widespread reservation of business towards the trade

unions in South Africa. Only a small minority of companies feels that Civil Society Organisations could be part of interfacing with the public sector and/or play a role as a forum for discussions to identifying solving problems in the BBBEE process.

Regarding the role of development cooperation most companies emphasised the possible contribution in research, information sharing and capacity building on the issues of BBBEE. Companies also felt that development cooperation institutions could act as a mediator between the public sector and the business world when it comes to addressing the challenges and opportunities of BBBEE, to facilitate a dialogue and open new channels of communication. In the field of training and skills development some companies saw a potential for public-private partnerships.

8 Conclusion and future perspectives

In South Africa CSR has its very own characteristics. It is strongly shaped by the country's history, e.g. the legacy of Apartheid and thus embedded into the comprehensive BBBEE agenda. The international CSR agenda and their principles, e.g. as laid down in the UN Global Compact or written down in the Guidelines of the Organisation for Economic Cooperation Development (OECD), are playing only a minor role.

In the past and continuing into the present many of the CSR activities in South Africa have been based on a philanthropic approach, e.g. voluntary social investments in the area of education, health, child care etc. However, for the private sector, including German Transnational Corporations, CSR in South Africa is no longer limited to this traditional philanthropic CSR agenda, but in fact became more and more part of the specific BBBEE Agenda.

As it could be shown in the survey, the BBBEE agenda is based on a concept at the interface of voluntary CSR and legally binding public policy. Therefore the impact of the BBBEE agenda is different for the private and the public sector. For the private sector BBBEE is largely a voluntary soft law mechanism and thus more or less implemented,

depending either on the interfacing with the public sector or on market-based incentives.

In contrast to most other known mechanisms for certification and verification of CSR activities, the major BBBEE instrument for demonstrating a company's compliance with the BBBEE agenda is a specific scorecard with seven main elements.

With respect to most German TNCs it became obvious that the two direct elements of the scorecard, e.g. those which have a specific focus on Ownership transfer and Management Control, were perceived as rather unrealistic and thus unacceptable.

However, in the indirect elements which focus on "Enterprise Development" and "Socio-economic Development", which are generally classified as being more broad-based than the direct elements German TNCs are scoring rather well.

In addition, the empirical data also underlined that procurement pressure, interfacing with the public sector and the wish of many German transnational companies to be seen as good corporate citizens ranked among the most important drivers for BBBEE.

From the perspective of German TNCs and most relevant stakeholders the ongoing BBBEE agenda remains challenging, particularly with respect to:

- Malpractices in the ongoing certification processes
- Competitive disadvantages for TNCs because of the "Ownership element", including the two alternative mechanism (Equity Equivalent or Equity Offshore)
- Skill shortages
- Limited achievements of BBBEE as a truly broad-based approach

With respect to the other stakeholders involved, additional activities to incentivise BBBEE and the need to improve the implementation were underlined from all sides; furthermore the need for better communication and more dialogues among relevant stakeholders, including Busi-

ness Associations and Development Cooperation Agencies, were pointed out.

In sum: Despite the various shortcomings with respect to the ongoing implementation of the BBBEE agenda the underlying concept is an interesting and innovative approach which has the potential of being a “business case” for companies while at the same time being an interesting innovative approach to South Africa’s transformation towards a more sustainable and equitable development.

1 Introduction

Fifteen years after South Africa's political transformation its socio-economic structures remain highly unequal. While the marginalised black majority has gained full political power, the country's economic basis is largely owned by its white citizens. This being the case, private national and transnational corporations operating in the RSA are not only following the classical CSR agenda, but are challenged by numerous legal regulations as well as voluntary incentives to redress the socio-economic imbalances. An important innovative instrument developed by the RSA government in cooperation with key stakeholders is the complex framework of Broad-Based Black Economic Empowerment (BBBEE). While this framework is legally binding on the public sector, it is a largely voluntary, market-driven instrument for the private sector, including transnational corporations, and has thus become part of their CSR agenda. While the conceptual idea of BBBEE, including the CSR dimension, is widely supported in the RSA, implementation is a very sensitive and controversial issue.

1.1 Objective and scope of the report

While there are a number of general studies on BBBEE and CSR in South Africa, the empirical focus of this study is on TNCs, and German TNCs in particular. The study thus helps to fill a specific gap in research on the opportunities for and challenges to the implementation of BBBEE. Against this background the study is structured as follows:

- Overview and analysis of the socio-economic background in South Africa
- Concept of Affirmative Action and approaches to CSR/business regulation
- BBBEE legal framework, verification mechanism and challenges
- BBBEE – opportunities and challenges from the stakeholders' perspective
- CSR/BBBEE – perception of and contributions by German TNCs operating in South Africa
- Concluding remarks and future prospects

1.2 Research methodology, data collection / analysis and methodological limits

For this survey the following methodological approach was chosen:

- Drafting of a preparatory desk study, based on the literature and documents of greatest relevance to CSR/BBBEE in the RSA, plus comments by some leading South African experts
- Sampling of the German TNCs
- Selection of relevant stakeholders
- Collection and analysis of empirical data in RSA
- Presentation and discussion of the draft report at the AHK in Johannesburg and at the German Development Institute / *Deutsches Institut für Entwicklungspolitik* (DIE)

To qualify for selection, German TNCs had to:

- be registered with the AHK;
- have an Internet presence as an indicator of its CSR and BBBEE;
- have a workforce of at least 100, since smaller enterprises are exempted from the BBBEE Act;¹ and/or
- be visibly engaged in the field of CSR/BBBEE.

The empirical data were gathered in South Africa during a research phase from mid-February until the end of April 2010. The anonymous company interviews were based on a pre-structured questionnaire and included both open and closed questions. Some questions provided the interviewee with particular options to assess. At the same time, they were given the opportunity to articulate individual interpretations and assessments. This means that there are two different qualities of responses: closed questions with a constant n value of 40, and open responses for which categories and codes were developed on the basis of the frequency of similar statements made by respondents without being prompted.

1 This concerns micro-enterprises with a turnover of less than ZAR 5 million. As it was often impossible to assess a company's turnover, the number of employees proved to be a good proxy.

For the sake of the readability of this report, the results will sometimes be discussed as approximations and without figures.²

The research project faced several methodological constraints:

- Representativeness: not given, since the case selection was not made by random sampling;
- Selection bias: non-responses and refusals by potential interviewees may not be coincidental but due to a lack of engagement or discomfort with the topic or even caused by some other reason that could not be determined by the research team;
- Sensitivity of the topic: where interviewees had a personal stake, they did not want to run the risk of losing face;
- Reliability of the answers: interviewees may be bound by their professional role and feelings of loyalty to the firm or institution and will probably argue as if representing it.

It is important to note that it was beyond the scope of the study to evaluate the accuracy of interviewees' statements. The survey is based on their *perceptions* and should be regarded as offering judgments, proposals, trends and tendencies as identified by the interviewees rather than as an independently verified factual account of corporates. Yet one check that was possible was made by comparing and contrasting statements of corporate actors with their companies' BBBEE scorecards, which had been assessed by accredited verification agencies.

1.3 Design of the report

The report is composed of seven chapters. Following the Introduction, Chapter 2 provides information on the socio-economic background in South Africa as the basis of the current economic imbalances. Chapter 3 discusses the concept of Affirmative Action in the South African context by highlighting the link between Affirmative Action and the right to equality enshrined in South African law. It also gives an overview of different approaches to business regulation and describes the link between CSR and BBBEE as a component of corporate social investment (CSI) in South

2 For example, "The vast majority of the companies interviewed are active in the field of BBBEE."

Africa. Chapter 4 describes the regulatory framework of BBBEE and addresses the main challenges. Chapter 5 presents the stakeholders' perspectives of and attitudes towards BBBEE. An empirical analysis of German TNCs' perceptions and contributions in the field of CSR/BBBEE is undertaken in Chapter 6. Chapter 7 closes with concluding remarks and future prospects.

2 Socio-economic background in South Africa

The Republic of South Africa is a multi-cultural and multi-ethnic country which the new political government under President Nelson Mandela imagined as a country of diversity and reconciliation: the 'Rainbow Nation'. However, this term does not reflect the socio-economic reality of the country, and in fact South Africa is still confronted with considerable challenges: social disparities, economic inequalities and racial tensions.

To explain the contribution and specifics of CSR and BBBEE, this chapter provides a brief overview of:

- the country's historical development, particularly with respect to the situation during 'Apartheid',
- its evolution since 1994, and
- its most recent socio-economic situation.

2.1 Historical and political development background: From apartheid to post-apartheid in the RSA

South Africa's early history was deeply marked by conflicting Dutch and British colonial interests. The rift culminated in the 'Boer Wars'³ and the incorporation of the 'free Boer⁴ states' into the Union of South Africa – or the 'Boer state' which became (de facto) independent in 1926 and experienced an impressive economic boom: the transformation of a mining and

3 After the discovery of rich gold deposits at Witwaterstrand (Boer territory) the British tried to defeat the 'independent' republics in the 'Boer Wars'. After the Boer states were defeated in 1910, the 'South African Union' – consisting of Cape Colony, Transvaal, Natal and Orange Free State – was founded.

4 The term 'Boer' is the Afrikaans word for farmer and was initially used by the British in a pejorative sense when they referred to the Dutch settlers.

agricultural economy into an industrialised and urbanised country, especially as a result of the 'big push' in heavy industry in the wartime economy and arms industry during the Second World War.

In 1948 the right-wing National Party gained exclusive power and installed a system of strict racial segregation known as 'Apartheid'.⁵ The evolution of this South African 'Sonderweg' was guided by Apartheid laws,⁶ which led to a politically, economically and socially segregated society. In the South African economy in particular, the opportunities for Blacks were severely restricted and the development of a further divide, 'economic Apartheid', was the result.

During these years the South African population was divided into 'Whites,' 'Blacks,' 'Coloureds' and 'Asians', and under the Population Registration Act 1950, these groups were forcibly separated.

However, the African National Congress (ANC),⁷ the main black opposition movement, and the trade unions gained growing political influence during the ongoing discrimination against the black majority in South Africa. Internal resistance, violent riots (e.g. the students' revolt in Soweto in 1976) and international isolation and sanctions eventually resulted in the end of political apartheid and a negotiated transition for South Africa in 1990. In 1994 the first free elections were held. The ANC won with an overwhelming majority of 62.7 per cent (the former ruling National Party obtaining only 20.4 per cent) and formed the government, with Nelson Mandela as the first black (and freely elected) President of the Republic of

5 The term 'Apartheid' was used during the National Party's election campaign in 1948. Racial discrimination was not a new phenomenon, but gained a new dimension under the subsequent rule of the National Party.

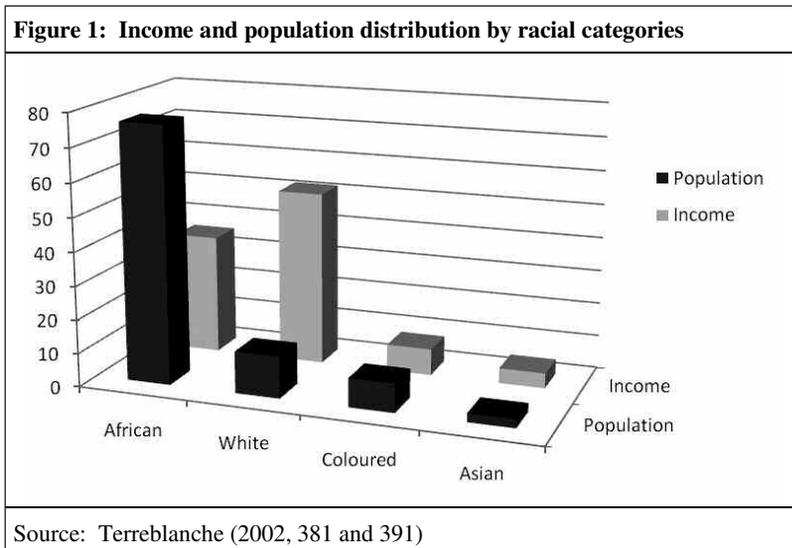
6 Natives' Land Act (1913); Native Urban Areas Act (1923); Immorality Act (1927); Prohibition of Mixed Marriages Act (1949); Population Registration Act (1950); Bantu Education Act (1953); Bantu Self-Government Act (1959), etc.

7 African National Congress: the ANC was founded in 1923, its predecessor being the South African Native National Congress (originally a Marxist organisation, founded in 1912) and considered itself the advocate of the black majority of the South African population. The armed wing of the ANC, Umkonkhonto We Sizwe, was founded by Nelson Mandela in opposition to the Apartheid regime and was banned until 1990. During the negotiated transformation of the RSA, the ANC played a central role as the political voice of 'black South Africa'. It was only natural that the ANC should become the ruling party after the first free elections in 1994 (Nohlen 2002, 45).

South Africa (RSA).⁸ The ANC is still the ruling political party in RSA.⁹ (cf. Nohlen 2002, 747 ff.).

2.2 Socio-economic structures of today's South Africa

Although the transition in RSA was initiated twenty years ago, the social and economic structures remain deeply affected by the legacy of the Apartheid regime. The transition that began in the 1990s was largely a political process, the socio-economic structures remaining almost untouched. In fact, the social disparities are growing, racial tensions are widespread and the majority of black people remain marginalised and impoverished, living in townships where education is poor and unemployment rates are high.¹⁰ The following Figure 1 shows the huge disparities in income distribution by racial categories:



8 Nelson Mandela and Frederik Willem de Klerk (the last president of the Apartheidera) received the Nobel Prize for Peace in 1993 for their efforts to ensure the peaceful political transformation of South Africa.

9 Presidents of the post-Apartheid Republic of South Africa: Nelson Mandela (1994-99); Thabo Mbeki (1999-2008); Kgalema Motlanthe (2008-09); Jacob Zuma (since 2009).

10 Unemployment rates in 2009: Blacks 28.8 per cent; Coloureds 21.6 per cent; Indians/Asians 12.7 per cent; Whites 4.8 per cent (cf. StatsOnline, 2010).

According to the figures in the UNDP Human Development Report, South Africa is one of the world's few countries where the Human Development Index (HDI) fell after political transformation and democratisation.¹¹ It also has one of the world's highest Gini coefficients, an indicator commonly used to measure economic disparities in a society.¹²

More recent data (see Table 1) show that the South African economy continues to be highly unequal in terms of income allocations.

Table 1: Income distribution by race						
Population group	R0-50K*	R50K-100K	R100K-300K	R300K-500K	R500K-750K	R750K+
Africans	83.2%	8.8%	6.7%	0.9%	0.2%	0.1%
Asians	57.8%	14.2%	20.4%	4.2%	2.4%	0.9%
Coloureds	70.8%	16.4%	10.9%	1.4%	0.3%	0.1%
Whites	37.9%	12.2%	31.5%	10.5%	4.3%	3.6%
Total	75.5%	10.1%	10.7%	2.3%	0.8%	0.6%
* Earning up to ZAR 50,000						
Source: CEE (2009, 47)						

According to the Table above, the proportion of Whites and Indians earning more than ZAR 100,000 in 2007/08 far exceeds that of any other group. At the same time, the table reveals that the proportion of Africans and Coloureds earning less than ZAR 50,000 is much larger than that of any other group. It also becomes clear that the majority of top earners (more than ZAR 750,000) are White.

The racial gap among the business elite is also very wide: only 9 per cent of the CEOs of all companies listed on the Johannesburg stock exchange are African, Indian or Coloured – the remaining 91 per cent being White.

11 UNDP Human Development Reports since 1995.

12 The Gini coefficient for the RSA is 0.59, which means that the richest fifth of society accounts for three quarters of expenditures, the poorest fifth for only 2.8 per cent (cf. Butler 2009, 86 f.).

These figures underline the enormous under-representation of the historically disadvantaged people in the economy (cf. BUSA 2010, 1). Furthermore, the available figures on top management positions show that only 13.6 per cent are occupied by Blacks, compared to 72.8 per cent occupied by Whites. In contrast, 83.3 per cent of the unskilled workers in the South African economy are Black (cf. CEE 2009, 6).¹³

Against the background of these socio-economic data, with particular reference to the obvious disparities between the majority of the formerly historically disadvantaged and advantaged sections of the population, the discussion on ways and means of overcoming “economic” Apartheid rose high on the RSA’s agenda. It covered such aspects as approaches to Affirmative Action, legislation and voluntary business self-regulation. Besides a number of new legal regulations, some specific innovative instruments were introduced, particular among them being the special form of Affirmative Action for which the BBBEE Act provides.

3 Overcoming economic apartheid: Approaches to Affirmative Action, compulsory regulation and voluntary commitment

Affirmative Action is not a new approach. On the contrary, the idea behind it can be dated back far into the history of humankind, and it is still being taken today in various regions and contexts. For the RSA this conceptual approach is of particular importance and has become a central element of the country’s transformation strategy. The relevance of Affirmative Action in South Africa is evident from the distinction between formal and substantive equality, the country’s historical, constitutional and legislative foundations and the interface between compulsory and voluntary efforts to transform the country.

13 An additional illustration are the recent unemployment rates: in 2009 the percentage of unemployed non-white Africans reached 28.8 per cent, compared to only 4.8 per cent of the white population (cf. StatsOnline 2010).

3.1 Affirmative Action

To achieve the goal of a socially and economically balanced society, South Africa has opted for the strategy of empowering groups that have suffered discrimination and been denied equal access to opportunities and resources in the past. One element of this approach is the concept of Affirmative Action. In the RSA this concept implies that attaining equality before the law is not sufficient for the previously disadvantaged majority of the population: they also require targeted intervention if they are to have equal opportunities when competing with the previously advantaged.

3.1.1 Formal and substantive equality

To understand the arguments for the right to equality on one hand and affirmative action measures on the other hand, a distinction needs to be made between formal and substantive equality. The idea underlying formal equality is that all humans are born with the same rights and obligations and should therefore be treated equally, without differentiation based on such personal characteristics as race and gender. According to this approach, where part of the population was subject to discrimination, it is sufficient to abolish all discriminatory measures for equal opportunities to be achieved. But, as Aristotle pointed out equality before the law does not necessarily produce equitable results: *“Justice is equality, but only for equals; and justice is inequality, but only for those who are unequal”* (Aristotle 1944).

This aspect is reflected in the South African concept of substantive equality, according to which, for everyone to have equal opportunities, interfering social, political and economic factors need to be considered. This approach emphasises that it is not enough to ensure freedom to compete with all others: the previously disadvantaged groups in society must be given special support¹⁴ (Schneider 2008, 30–33). Unequal treatment is thus regarded as vital and as an important means of achieving substantive equality in South Africa.

14 Substantive equality is further divided into equality of results and equality of opportunity: while equality of results calls for the equal numerical representation of all groups within a society, equality of opportunity requires that, after institutional discrimination has been overcome, each individual should be treated according to his personal characteristics and skills.

3.1.2 Historical, constitutional and legislative foundations

In South Africa the historical roots of the substantive equality approach and affirmative action can be traced back to the Freedom Charter, which was approved by the Congress of the People¹⁵ and to the specific influence of the United Nations Convention on the Elimination of all Forms of Radical Discrimination (Gas 2001, 43 f., 47 ff., 58 f.). Several of these fundamental equality values were included in the new South African Constitution. Interestingly, Section 1 of the Constitution places the “attainment of equality” directly after “human dignity” and even before the “promotion of human rights.” A review of the country’s major case-law and literature shows that the South African Constitution underlines the principle of substantive equality (Schneider 2008, 29–35). Accordingly, the Constitution prescribes various forms of Affirmative Action.

While the Constitution does not explicitly use the term Affirmative Action, Section 9, for example, formulates the idea of equality by calling for “legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination.” The most important legislation relating to Affirmative Action is listed in Table 2.

However, while the aforementioned acts can be regarded as rather isolated measures, as tackling individual problems and as more enabling than prescriptive, the BBBEE Act is a far more comprehensive instrument, offering an overall strategy for solving the multi-layered problem of socio-economic apartheid (Schneider 2008, 23; 55–58).

Despite their particular characteristics, the existing elements of Affirmative Action legislation overlap, posing the question whether institutions and companies are required to implement the legislation alternatively or cumulatively. While the relationship between the Skills Development and BBBEE Act has meanwhile been clarified,¹⁶ the inconsistency between the

15 A union of all opposition groups.

16 The ambiguity was resolved through the submission of the Codes of Good Practice stating that a company can score on the BBBEE-Scorecard Skills Development Element of the BBBEE Act only if it also complies with the propositions made under the Skills Development and the Skills Development Levies Act (Schneider 2008, 115).

Table 2: Affirmative Action legislation

Legislation	Year	Content
Employment Equity Act 55	1998	Establishing equality in the workplace through the elimination of unfair discrimination and through the attainment of the equal representation of all societal groups at all employment levels (e.g. through the promotion of affirmative hiring of “designated groups,” such as women and black people).
Skills Development Act 97	1998	Improving the education level of people formerly discriminated against through vocational training and skills development (e.g. companies are required to contribute financially to the National Skills Fund, which makes the funds available for training purposes and allows firms to claim compensation for the training costs they incur).
Skills Levy Act	1999	
Preferential Procurement Policy Framework Act 5	2000	Making public procurement more accessible to the disadvantaged (e.g. by splitting public <i>contracts</i> into small packages and awarding them on the basis of both “price” and “privileging disadvantaged groups”).
Broad-Based Black Economic Empowerment Act	2003	Achieving the constitutional right to equality, increasing the broad-based and effective participation of black people in the economy and promoting a higher growth rate, increased employment and a more equitable income distribution.
Source: Schneider (2008, 23 and 55–58)		

PPPFA and the BBBEE Act has yet to be resolved;¹⁷ however, a recent draft amendment to the PPPFA, seeking to align government procurement policy with the BBBEE Codes of Good Practice, was published by the National Treasury in August 2009 to enable the public and stakeholders to comment (Smart Procurement 2009).

While the success of Affirmative Action measures largely depends on the elimination of legislative weaknesses, implementation also depends on various additional factors, most important among them obviously being the individual's experience of discrimination, education levels, professional competitiveness, familiarity with Affirmative Action measures and personal prejudices (Kgapola 2008, 80 f., 85).¹⁸ Whatever position is adopted, Affirmative Action affects all segments of South African society.

3.2 Taking Affirmative Action in the private sector: the interplay of legal compulsion and voluntary commitment

Affirmative Action is very prominent in the public service, public procurement and enrolment in schools and universities, where education and training initiatives, quotas and "tie breakers"¹⁹ (Gas 2001, 28–35) are common.

17 The draft amendment was necessitated by the fact that companies tendering for business were being evaluated differently with regard to their Black Economic Empowerment credentials, depending on whether the buyer was from the private sector (which evaluates in accordance with BEE Codes of Good Practice) or from the public sector (which evaluates in accordance with the stipulations of the PPPFA, which means that points are allocated firstly for price at a 80/20 or 90/10 ratio (depending on the size of the contract) and secondly for the achievement of specific goals relating to "persons or categories of persons" who were "historically disadvantaged by unfair discrimination on the basis of race, gender, or disability" (Section 2 (d)(i), PPPFA 5 of 2000) (van Rooyen 2008).

18 The proponents of Affirmative Action argue that, if appropriate measures are taken, the untapped potential of the previously disadvantaged can be exploited in order to make better use of the whole labour force, it being recognised that the current Affirmative Action measures disproportionately benefit those already at the top of the group in terms of employment status. The critics argue that the principle of merit has been bypassed, which has led to sub-optimal job allocations (meaning that second-choice candidates have often been appointed) and hampered productivity (since black South Africans cannot be sure of being valued for their skills or experience) (Kgapola 2008, 59 ff., 93 ff.).

19 Preferential hiring of candidates from previously disadvantaged groups at the same level of qualification.

However, with the passing of the Employment Equity Act (EEA), the Skills Development Act, the BBBEE Act and other legislation, it is also required in the private sector and impacts TNCs in various ways.

3.2.1 Embedded “Affirmative Actors”, TNCs and the place of CSR/BBBEE

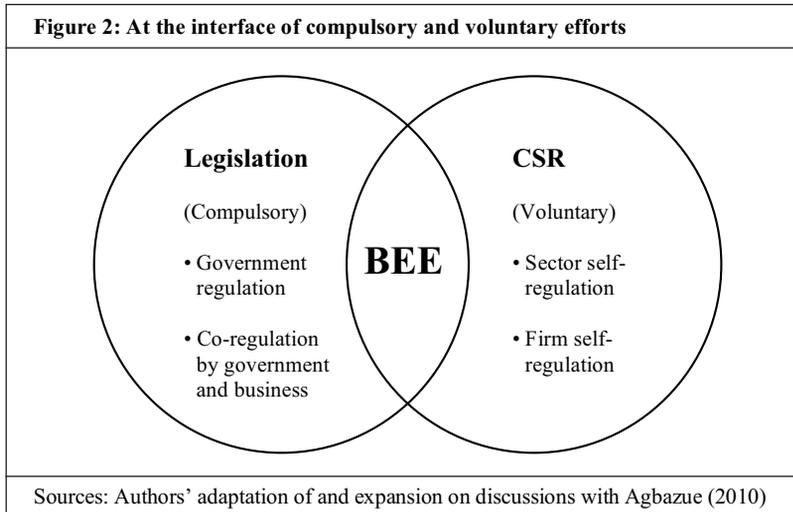
As TNCs are set up to make profits for those who invest in them, it does not go without saying that they are helping the country to achieve equitable development and macroeconomic and social stability, which in South Africa is implied by the concept of substantive equality. Owing to the ultimately microeconomic imperatives of TNCs and the larger concerns of state institutions, it is clear that ‘conflicts of interests’ are all but inevitable. Indeed, as Utting and Marques (2009, 11) point out, a major limitation of the CSR discourse is that it can be “politically naïve or expedient”. Interests do not always coincide, nor are ‘win-win’ outcomes inherently given. The following sections will look at various instruments in use in South Africa, paying particular attention to the incentives offered to ensure compliance and voluntary engagement.

3.2.2 The Affirmative Action regulatory basket

Affirmative Action, consisting of a set of targets, measures and specific inducements, can help to overcome inequalities due to past discrimination and to market failures. This requires a dynamic economic model in which the state can be a constructive and productive actor, helping to overcome inequalities and close gaps that adversely affect economic potential. The South African government has sought to achieve this with a whole toolbox of approaches, from outright legislated mandates to partnerships with the private sector and the encouragement of voluntary commitment.²⁰ There is thus a complex interplay of different levels of demands made of the private sector by various actors (and, to some extent, self-driven commitments by TNCs). Elements of *all* the approaches presented in Figure 2 below exist in South Africa to various degrees and are constantly being challenged and

20 For an account of various regulatory instruments in use in South Africa in the area of environmental regulation, see Hönke et al. (2008).

renegotiated, as various changes to BBBEE implementation and the recent introduction of the New Companies Act show.²¹



3.2.2.1 A special South African case: CSR, BBBEE and 'soft law'

While South Africa's economic environment is regulated by various pieces of legislation, the state has generally pursued a more hybrid co-regulation²² and voluntary commitment strategy, described by the King Commission as having a "light regulatory touch" (Institute of Directors 2009, 8). This is the case in South Africa partly because all legislation must pass through the

21 Indeed, the place occupied by CSR in the South African regulatory environment is contested, with some pointing to the unilateral history of corporate philanthropy in South Africa, whereas Hönke et al. (2008, 23 f.) emphasise that "[h]aving introduced [...] spending for social and community issues around their operations as a legal requirement, South Africa is an exceptional case of a country in which CSR is required by law."

22 Coregulation, or negotiated agreements between government and business, can produce synergies that lower the costs incurred by government regulatory agencies, since corporations provide information about their activities voluntarily. For developing countries with significant budget constraints in particular, such a partnership approach can free up funds for more urgent matters of concern to the government. Prakash (2000, 184) points out that corporate voluntary initiatives that go beyond what is legally mandated can mean that "[r]egulators faced with declining budgets are able to implement their mandates to enforce laws at lower costs. Citizens enjoy an increased supply of public goods (that typically governments are expected to provide) without an increased tax burden."

National Economic Development and Labour Council (NEDLAC), in which government, labour, business and civil society are equally represented. South Africa has embraced this cooperative governance model for BBBEE by allowing industries to develop sector-specific guidelines on how to implement and measure transformation.

Despite the wide-ranging legal foundations of BBBEE, TNCs not engaged with the South African government in procurement relationships and not acting as suppliers to companies tendering for government contracts are not required by law to contribute to BBBEE.²³ They fall into the realm of ‘soft law’, which has no mandatory power.²⁴

Soft law does, however, have potentially significant signalling power for the individual and institutional stakeholder in a political system and is often indicative of the projected evolution of ‘hard law.’ In addition, the strong presence of state-owned enterprises in South Africa, which are legally mandated to achieve certain BBBEE targets and to demand attainment of certain BBBEE levels from their suppliers, creates significant inducements to participate in BBBEE. The South African government is, after all, the largest procurer of goods and services in the country. Owing to the inclusion of preferential procurement from BBBEE suppliers on the scorecard evaluating corporate transformation, even companies that do not directly supply the public sector face pressure from those of their corporate customers who do compete for government contracts, causing a domino effect. Given this trickle-down incentive scheme, with its bottom-line logic, CSR has been subsumed into the business imperative that BBBEE presents to many of the AHK-member German corporations interviewed for this study in South Africa.²⁵

For those international firms *without* procurement relationships with the state or supplier relations with other corporations engaged in such ‘state business’, however, BBBEE is tantamount to one of their CSR activities, as they are not legally bound by BBBEE. In the past CSR in South Africa has primarily consisted of “philanthropic initiatives” and is heavily criticised because of its “add-on nature” (Kapelus et al. 2004, 3). This was especially so under Apartheid, when *CSR activities* served as a kind of ‘fig leaf’ for

23 From discussions with Agbazue (2010).

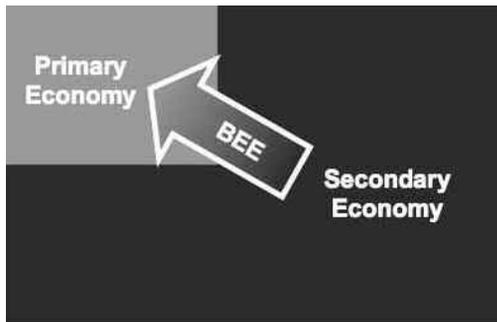
24 For a full discussion, see the following Chapter of the report).

25 Findings in Chapter 5.

corporate business. The post-Apartheid state's efforts to tie TNCs into BBBEE, which encompasses a set of measures having both mandatory and voluntary elements is somewhat at odds with the exclusively 'voluntary' nature of the international CSR agenda, but needs to be understood in the South African historical context. The African Institute for Corporate Citizenship (AICC) argues that BBBEE is seen as an *"integral part of CSR in South Africa"* and that linking BBBEE, CSR and sustainable development together will contribute to poverty alleviation and *"hence South Africa's long-term political stability and attractiveness as an investment destination"* (Kapelus et al. 2005).

It is clear that the persistence of economic Apartheid in South Africa is a major obstacle to broad-based real growth and development. The growth that has occurred since the end of political Apartheid has not led to a reduction of inequality, but rather widened the gap between rich and poor. BBBEE is meant to raise the previously disadvantaged communities into the formal, primary economy, in which opportunities exist and growth takes place (see Figure 3).

Figure 3: BBBEE as a development strategy



Source: Adapted from Agbazue (2010)

This process is expected because of the overwhelming overlap between the historically disadvantaged members of the population who stand to gain from Affirmative Action and BBBEE and those who are poor and lack the opportunities to participate in the formal labour market. From this perspective, the business world, the whole economy and the entire South African

nation would benefit if these voluntary and regulative elements were linked. It is particularly worthwhile considering the interplay of CSR and BBBEE in South Africa because, as Utting and Margues (2009, 3) argue, a major failing in how CSR is generally discussed and applied is the lack of attention paid to the “[...] *crucial dimension of social development, namely distributional justice and equity.*” Indeed, the relevance of CSR to development described above and illustrated in Figure 6 shows that South Africa’s approach to overcoming the “*historical present*” of race-based inequality may thus have some general signalling power in indicating how contingent and legally embedded CSR can help to “craft development models that are more inclusive” (ibid., 5).²⁶

Virtually all global corporate players have unilaterally issued a set of comprehensive business principles said to guide their corporate activities, and engage in philanthropic activities. While such unilateral steps have the advantage of letting corporations choose a design and approach best tailored to their own characteristics and capacities rather than subjecting them to a governmental template approach, such individual corporate self-regulation and philanthropy are often accused of merely seeking to pre-empt more demanding and rigorous government regulation²⁷ and to ‘whitewash’ corporate brands. Critics point out that corporate self-regulation has had deleterious outcomes on a number of occasions.²⁸ The South African government has, as described above, adopted the approach of not leaving the process of transforming the economy entirely to corporations, but of providing them with a semistructured legal vehicle to guide activities and incentivise engagement and compliance. Esser and Dekker (2008, 168) find that “[t]he BBBEE Act illustrates how the State, through legislation can

26 A critical question that remains is whether this encouraged focus of CSR on BBBEE in South Africa takes the focus away from or even crowds out other urgent concerns, such as the environmental sustainability of corporate practices and decent working conditions.

27 Cf. UNRISD (2004) and Balleisen / Eisner (2009).

28 The financial services industry in the United States, for example, developed highly complex financial instruments which defied the comprehension of regulators, who were quite incapable of gaining even the slightest overview of developments within this sector, which was therefore virtually left to regulate itself. Indeed, the Trading and Markets Division of the US Security and Exchange Commission’s Consolidated Supervised Entities (CSE) programme had a staff of a mere seven inspectors, who were required to “oversee the activities of investment banks that collectively controlled more than \$4 trillion in assets” (Balleisen / Eisner 2009, 137).

compel companies to have a social conscience. This compulsion by the State has interestingly enough proven to be more successful in effecting social change than mere market forces have been up to now.”

3.2.3 Incentivising corporate engagement and inducing compliance in South Africa

Incentives for corporate engagement and compliance (and, inversely, disincentives for non-compliance) depend on the rigour and scale of the sanctioning mechanisms associated with regulatory measures, the pressure exerted by civil society organisations and trade unions and the market incentives arising from the formation of purchasing preferences by a discerning consumer base.

Regulatory frameworks set the boundaries for permissible behaviour in the market. They are particularly important in cases where markets do not incentivise or even disincentivise socially responsible or desirable behaviour. As there is no automatic inducement for corporations to behave responsibly, heavy sanctions and fines often need to be threatened to force corporate actors to behave in a responsible manner. When such threats are not taken seriously because enforcement is lax, fines are negligible, etc. (that is to say, when the strictly bottom-line-oriented corporate risk-benefit calculus encourages non-compliance), legislation may fail to achieve the desired results. The South African Employment Equity Act, for example, imposes monetary fines for non-compliance, yet in the first 11 years of the Act only three companies were prosecuted (Musgrave 2009).

Given the lack of sanctions applied to such firms due to the voluntary nature of many multi-stakeholder regulatory arrangements, there is little incentive to participate actively if freeriding is not easily detected or does not have a seriously adverse effect in terms of public relations generally, inter-industry ostracisation or access to contracts, for example. This has been the case in South Africa insofar as some companies have sought the “easy way out” of participating in the project of national transformation by engaging in what has come to be known as “fronting” and “window-dressing”, by using what amount to accounting tricks or by putting a few token employees from historically disadvantaged communities on their boards without giving them the relevant responsibilities, thus scoring easy points and rising to a deceptively good BBBEE level without actually transform-

ing themselves. The virtual impunity enjoyed by companies engaging in such activities has hindered the transformation of the business community.

If, then, cooperative governance or self-regulation approaches are to be effective, governments must be credibly capable of unilaterally installing more demanding mandatory regulation in case voluntary elements fail to achieve the desired results (that is to say, if the trust placed in corporations is abused). As Utting (2005, 11) points out, “*the mere threat of mandatory regulation, at both national and international levels, has long been a crucial driver of voluntary CSR action and soft law.*” This presupposes governments’ willingness and ability to ask questions, to view company data critically and, if necessary, to redesign or scrap coregulation approaches. This realisation seems to have entered the discourse on BBBEE in South Africa. In the last few months the relevant politicians and stakeholders have increasingly used the rhetoric of corporate accountability (cf. Musgrave 2009 and Mouton 2009), suggesting that the BBBEE framework will be tightened and sanctions stiffened.

4 The regulatory framework, verification and challenges

With the enactment of the BBBEE Act 53 of 2003, a comprehensive regulatory framework combining different aspects of Affirmative Action was established.^{29, 30} The regulatory framework contains a variety of legal and regulatory measures and specific verification and certification mechanisms. The major challenges that BBBEE faces are, in particular, malpractices in the certification process, the various aspects of the weighting system and other elements of the scorecard that measure companies’ BBBEE compliance and general difficulties with implementation.

29 Cf. Chapter 3.1.

30 By 1997 the Black Management Forum, an organisation established in 1976 to influence socio-economic transformation in South Africa (BMF 2009a), noticed that Black Economic Empowerment was not being adequately pursued. Consequently, a Commission was set up by President Mbeki in 1998 with the mandate to develop a strategy for the effective achievement of BBBEE. In the report it published in 2001 the Commission recommended that legal measures be taken to facilitate empowerment (BEE Commission 2001; M’Paradzi 2006, 19). This eventually led to the passing of the BBBEE Act.

4.1 The structure of the regulatory framework

The BBBEE framework includes the following elements, each having its own legal character and scope:

- the Constitution;
- the BBBEE Act;
- the Codes of Good Practice and the Scorecards;
- the Transformation Charters and Sector Codes; and
- the BBBEE Strategy as an underlying guideline (see Box 1).

Box 1: The BBBEE Strategy

The BBBEE Strategy was published in 2003. In it, the Minister for Trade and Industry announces that he will use his economic and legal authority to promote black people (DTI a). The strategy outlines four principles of BBBEE:

- broad-based;
- inclusive;
- part of good governance; and
- part of the economic growth strategy.

As the Strategy does not have any legal consequences, it is more in the nature of an underlying guideline (Schneider 2008, 64).*

*Note: The Strategy was issued before the BBBEE Act, although section 11 empowers the DTI to adopt a strategy which – according to section 9 (2) of the BBBEE Act – must be taken into account when the Codes of Good Practice are drafted. Between 2003 and 2007, when the Codes were published in the Gazette, the strategy was not reissued, and it can therefore be assumed that the government considers the existing strategy to be the strategy mentioned in the BBBEE Act.

4.1.1 The constitution

The right to equality enshrined in the Constitution³¹ is the basis for BBBEE.³² As the BBBEE Act includes elements of Affirmative Action, it can be accused of reverse racism. This is true if the equality for which the Constitution provides is interpreted as meaning formal equality; but BBBEE is justifiable if seen as an instrument for attaining the right to substantive equality³³ (M'Paradzi 2006, 22). A Constitutional Court decision³⁴ has interpreted the right to equality in South Africa in this way.

The BBBEE Act defines the objectives of BBBEE in broad terms and so serves as a frame-work for all BBBEE measures.³⁵ BBBEE is implemented through the Codes of Good Practice – to be approved by the government – and Transformation Charters, developed by the private sector.³⁶

The beneficiaries of the BBBEE Act are *black people*, meaning Africans, Coloureds and Indians³⁷ who are South African citizens by birth or by descent or who were naturalised before the Constitution entered into force in 1993. They also include black people who became South African citizens after the Constitution entered into force, but who could have been naturalised prior to this, had it not been for the Apartheid laws that prohibited the naturalisation of certain persons (DTI b). Although the Act does not refer to such other groups as South African Chinese, they have now been declared eligible for benefits under the BBBEE Act. However, this applies only to those who immigrated to South Africa before the end of Apartheid.³⁸ All groups benefit from the BBBEE Act regardless of age or generation. Mere membership of one of these groups is sufficient, evidence

31 The Constitution of the Republic of South Africa, Act 108 of 1996.

32 Cf. Appendix: The Right to Equality in embodied in s 9 of the Constitution.

33 Cf. Chapter 3.1.

34 *Bato Star Fishing (Pty) Ltd. v Minister of Environment Affairs and Others* 2004 (4) SA 490 (CC) at para 106, with statements on the constitutional commitment to transformation (Constitutional Court of South Africa 2004).

35 The Act defines broad-based BEE as “economic empowerment through diverse but integrated socio-economic strategies” listed in section 1, but this list is not exhaustive and – against the background of the dynamics of the BBBEE process – makes it possible for the government to adopt new strategies not already included in the Act (M'Paradzi 2006, 23).

36 The Codes of Good Practice are mentioned in sections 9 and 10 of the BBBEE Act; section 12 refers to the Transformations Charters.

37 See section 1 of the BBBEE Act.

38 High Court of Pretoria, Decision June 18, 2008 (cf. Chinese Forum 2008).

of individual discrimination not being required, and there is formally no difference in the treatment of the various beneficiary groups (Schneider 2008, 94).

4.1.2 Codes of Good Practice and scorecards

The BBBEE Act provides for the establishment of Codes of Good Practice.³⁹ The Codes contain details and explain how the various elements of BBBEE are measured. They also contribute to the further specification of the broad frame of the BBBEE Act and harmonise the system. While Code (C) 000 deals with general aspects of BBBEE, C 100 to C 700 each cover one of its seven elements; C 800 specifies measurements for Sector Codes, and C 1000 those for Qualified Small Enterprises (QSEs).⁴⁰ The Codes are supplemented by and applied with the aid of specific scorecards which measure companies' BBBEE compliance. The scorecards are based on the seven BBBEE elements for which companies can earn points for being active in BBBEE. The three major categories of the BBBEE scorecard are listed in Table 3.

Table 3: Categories of the BBBEE scorecard elements		
Direct elements	Human-resource-related elements	Indirect elements
Ownership	Employment equity	Preferential procurement
Management control	Skills development	Enterprise development Socio-economic development
Source: M'Paradzi (2006, 27)		

39 See sections 9 and 10 of the BBBEE Act; henceforth referred to as the Codes.

40 Cf. Appendix: Overview of the Codes of Good Practice.

The seven elements and the practical criteria are described in Box 2; the specific weightings are shown in Table 4.

Box 2: The seven elements of BBBEE

Ownership (O) measures the level of equity and voting rights of black people in a company. Particular importance is attached to the participation of black women and black new entrants, i.e. black persons who have not participated substantially in other empowerment transactions (Yuill 2007).

Management Control (MC) encourages senior black decision-making at executive board and senior top management level;

Employment Equity (EE) measures how enterprises identify and recruit black people for professional, middle and lower management positions;

Skills Development (SD) is meant to ensure that black employees are taught skills which will help them to become more competent;

Preferential Procurement (PP) measures the extent to which enterprises obtain supplies from BBBEE contributors, micro-enterprises and QSEs;

Enterprise Development (ED) rewards companies for initiatives they take to assist and accelerate the sustainable development or expansion of other, black small and mediumsized enterprises;

Socio-Economic Development (SED) encourages initiatives intended to provide black people with the means to generate income for themselves (C 000 S 000 para.7).

Small companies are rated on a simplified QSE scorecard, which means it is for them to choose four of the seven elements with which to comply, with a 25 per cent equal weighting included. Formally, Exempted Micro-Enterprises (EMEs) do not have to comply with the BBBEE elements.⁴¹

41 EMEs are allocated a Level 4 BBBEE Status, or a Level 3 BBBEE status if more than 50 per cent of their ownership is black. EMEs are still required to produce a BBBEE certificate to give to customers to confirm that they are exempted (BEESA 2009). Of South African enterprises, 88 per cent are defined as EMEs, 10 per cent as QSEs (Vuyo 2007).

Table 4: The Generic scorecard*		
Element	Weighting	Code series reference
Ownership	20 points	Code 100
Management control	10 points	Code 200
Employment equity	15 points	Code 300
Skills development	15 points	Code 400
Preferential procurement	20 points	Code 500
Enterprise development	15 points	Code 600
Socio-economic development initiatives	5 points	Code 700
* There are different types of scorecards, the most important being the generic scorecard and the QSE-scorecard. The generic scorecard makes use of all seven BBEE elements.		
Source: Code 000 Statement 000, para 8.1.3		

Table 5: BBBEE status and level		
BBBEE Status	Qualification	BBBEE Recognition level
Level One Contributor	≥100 points on the Generic Scorecard	135%
Level Two Contributor	≥85 but <100 points on the Generic Scorecard	125%
Level Three Contributor	≥75 but <85 points on the Generic Scorecard	110%
Level Four Contributor	≥65 but <75 points on the Generic Scorecard	100%
Level Five Contributor	≥55 but <65 points on the Generic Scorecard	80%
Level Six Contributor	≥45 but <55 points on the Generic Scorecard	60%
Level Seven Contributor	≥40 but <45 points on the Generic Scorecard	50%
Level Eight Contributor	≥30 but <40 points on the Generic Scorecard	10%
Non-Compliant Contributor	<30 points on the Generic Scorecard	0%
Source: Code 000 Statement 000, para 8.2		

On the basis of overall performance, the score is then converted into a BBBEE Level, which is the most relevant aspect of BBBEE ranking for companies.

4.1.2.1 Scope

The Codes are binding on all organs of state and public entities, which means that they must be applied by government when decisions in the following areas are required:

- licensing, concessions or other authorisations;
- procurement;
- the sale of state-owned enterprises; and
- Public Private Partnerships.⁴²

As mentioned above, BBBEE is not directly binding on private companies, i.e. they will not be penalised if they do not contribute to BBBEE. Private companies have scorecards because customers expect it. BBBEE status is relevant since it increases the likelihood of success in government tendering procedures, applications for licences, authorisations for projects and the granting of concessions. Preferential Procurement is also intended as a means of ensuring BBBEE compliance in the supply chain (M'Paradzi 2006, 35).⁴³ When customers are deciding which supplier to use, they are likely to look at price, quality, service and the BBBEE Score. The more important the customer deems BBBEE points to be, the more companies will take the BBBEE Score into account (BEESA 2009).

42 Listed in section 10 a) – d) of the BBBEE Act.

43 This is also known as the “cascade effect”.

4.1.3 Transformation charters and sector codes

Transformation Charters⁴⁴ can be developed by industrial sectors to show their voluntary commitment to transformation and to itemise their sector-specific intentions and goals. As a Charter is not legally binding, the respective Code of Good Practice is the only relevant regulatory instrument that must be applied if a Charter has not been transformed into a Sector Code.⁴⁵ In that case, a Sector Code supersedes the General Code (C 000 S 003 para. 4.3; Schneider 2008, 67). Sector Codes are more specific since they can take account of the particularities of a sector, which also influences the Scorecard ranking (DTI b, 4). Many existing Charters have not yet been transformed into Sector Codes.

4.2 Verification and certification

The BBBEE compliance of companies needs to be certified. For this process, companies can choose to be rated by an external verification agency or to assess themselves. In the first case, verification agencies issue a BBBEE scorecard certificate, which is valid for twelve months. Certificates can be issued by any verification agency as long as it is approved by the accreditation body, SANAS,⁴⁶ which has to ensure that verification is independent and reliable.⁴⁷ External verification is not mandatory, but it enhances the credibility of the scorecard. However, the rating process is costly since it requires an internal administration system of a size that depends on the complexity of the company's structure.

44 Henceforth referred to as the Charters.

45 Section 12 of the BBBEE Act states that a Transformation Charter must be published in the Gazette if it has been developed by major stakeholders in that sector and if it advances the objectives of the Act, which does not give the Charters a new legal character, but enhances their credibility (C 000 S 003 para. 4.1). A Sector Code will be established if enterprises in the respective sector have the same characteristics and if the establishment of a Sector Code seems reasonable (C 000 S 003 para. 3.1.1).

46 C 000 S 020: SANAS stands for South African National Accreditation System, a company registered under section 21 of the Companies Act of 1973 and affiliated to the DTI; any other body authorised by the Minister may also undertake accreditation. See also the DTI s.a.b, 3.

47 Not all verification agencies have yet been accredited; the names of the first group of accredited verification agencies were released in February 2009; currently there are more than 20 of these agencies (BEESA 2009); some others have already received a pre-assessment letter from SANAS, which allows them to issue certificates as well.

Figure 4 shows an example of a company scorecard issued by a rating agency.

Figure 4: Example of a BBBEE scorecard certificate

Emex Trust
BEE Verification Agency

This is to certify that
DHL GLOBAL FORWARDING SA (PTY) LTD
10 Patrick Road, Jeppestown
Registration Number: 1968/003870/07
VAT Number: 4770101006

has been independently verified by Emex Trust (IT 4383/05) a SANAS Accredited BEE Verification Agency, No BVA 037 in terms of BROAD BASED BLACK ECONOMIC EMPOWERMENT act number 53 of 2003, Codes of Good Practice and the DTI Methodology.

B-BBEE CONTRIBUTOR: LEVEL 4 (≥65 but < 75)
B-BBEE PROCUREMENT RECOGNITION LEVEL: 100%
As Value Adding: FINAL B-BBEE PROCUREMENT RECOGNITION: 125%

SIZE	GENERIC ENTERPRISE	B-BBEE STATUS	WEIGHTING POINTS	ACTUAL POINTS
CERTIFICATE NUMBER:	EMCXD55C	OWNERSHIP	20	19.50
ISSUE NUMBER:	3	MANAGEMENT AND CONTROL	10	1.95
BLACK OWNED:	25.01%	EMPLOYMENT	15	2.40
BLACK WOMAN OWNED:	6.5%	EQUITY SKILLS	15	3.50
DATE VERIFIED:	Wednesday, November 11, 2009	DEVELOPMENT	20	18.57
EXPIRY DATE:	Tuesday, August 24, 2010	PREFERENTIAL PROCUREMENT	15	15
SPECIAL EVALUATION:	No	ENTERPRISE DEVELOPMENT	5	5
RE-VERIFICATION:	Yes	SOCIO-ECONOMIC DEVELOPMENT		
VALUE ADDING SUPPLIER:	Yes			
(Net profit before tax summed with its total labour cost exceeds 25% of its turnover and registered for VAT)				

EMEX SIGNATORY REPRESENTATIVE

sanas
BEE Verification Agency
BVA 133

4.3 Challenges posed by the BBBEE concept

The BBBEE Act stands for a multifaceted concept with considerable economic, social and legal implications. It must be understood as a process since the targets of its various elements are not meant to be achieved immediately.⁴⁸ In addition, the intention and willingness to comply with and implement BBBEE differ widely: for example, private companies producing niche products for which there is considerable demand can conduct their business whether or not they adopt BBBEE; others are extremely positive about the concept and would like to see it applied even more restrictively, putting more pressure on private companies.⁴⁹

This ambivalent perspective is articulated with respect less to the legal structure of BBBEE than to the implementation process. Some of these challenging aspects are:

- Goals and implications of the BBBEE elements:
 - high ranking of ownership element
 - financing BBBEE transactions
 - by-passing BBBEE: fronting
- Compatibility with other legal instruments and multinational companies in the context of the ownership element.

4.3.1 Goals and implications of the BBBEE elements

For private companies, becoming BBBEE-compliant is a long-term goal. The seven elements are intended to make the concept broad-based, since they include various levels for black economic empowerment. Although there is no “sunset clause” for BBBEE, specific targets, to be reached within five or ten years, are defined for each of the elements (cf. Bravura Consulting 2008). In this context the most challenging implications are:

- High ranking of ownership element: While the goal of the ownership element, with its target score of 25 per cent black ownership and its high priority within the scorecard weighting system, is to increase the voting

48 Specific targets and time-frames are defined for each of the elements (cf. Bravura Consulting 2008).

49 Cf. Chapters 5 and 6.

rights of black people and their economic participation in a specific company, the impact this element has on empowerment remains rather limited as regards the BBBEE's objective of becoming a more inclusive broad-based approach.

- Financing BBBEE transactions: As the historically disadvantaged people (HDP) of South Africa often lack sufficient savings or do not have access to adequate finance, they are generally ranked as high-risk clients. It remains open whether the financing instruments that have meanwhile been developed by the public and private sectors will be able to meet these challenges.
- By-passing BBBEE / Fronting: One of the principal ways of by-passing BBBEE is "fronting", a deliberate or attempted circumvention of the BBBEE requirements, with companies installing an artificial "black façade."

One fronting practice is "window-dressing," which includes the promotion of inexperienced, unskilled black people to senior management positions, or employing black people without giving them any real work to do. Another example is the creation of front companies, a contract being awarded to a BBBEE company which is sub-contracted to a white-owned enterprise, all the white minority shareholders in the BBBEE company being majority shareholders in the sub-contracted company (M'Paradzi 2006, 66).⁵⁰

4.3.2 Compatibility with other legal instruments

As BBBEE is a broad concept, it has an impact on several other legal fields at both national and international level. At national level, there is potential conflict with Affirmative Action legislation, and especially with the PPPFA Act (Schneider 2008, 115 f.).⁵¹

50 Fronting violates the principle of "substance over form" (C 000 S 000 para. 5.1), and endangers the sustainable implementation of BBBEE. How crucial it is to deal with fronting is clear from the fact that it was mentioned in the initial draft Code, which was referred back to the Ministry for revision. Subsequently, the DTI published guidelines on how to combat fronting, which allow for investigation and can lead to a temporary suspension of the Scorecard of the enterprise concerned (Schneider 2008, 114). See DTI s. a. a, 9.

51 Cf. Chapter 3.1.

At international level, BBBEE is inconsistent with World Trade Organisation (WTO) rules and with some provisions of Bilateral Investment Treaties (BITs). Where the WTO is concerned, BBBEE infringes the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS). The definition of the beneficiaries in the BBBEE Act is in obvious contravention of the major WTO principle of National Treatment⁵² (Mortensen 2006, 7; Schneider 2008, 132).

Box 3: The role of states and private companies in WTO legal disputes

No government has yet brought the case of South African BBBEE before the WTO's Dispute Settlement Body (DSB); it seems that the South African government is waiting to see how other WTO member states will act, hoping that none of them will bring the case before the DSB. A possible reason for the reluctance hitherto shown may be that bringing an action against South Africa's engagement to empower previously disadvantaged people would be severely criticised by the international community. However, several states have already publicly complained of the adverse effects of BBBEE on their own trade interests. It therefore remains to be seen whether the case is submitted to the DSB in the future (Mortensen 2006, 11, 18; Schneider 2008, 133). The USA, for example, has commented that, although it supports the goal of BBBEE, "(...) *we must ensure it is done in a way that does not disadvantage US companies*" (Statement by Florizelle Liser, Assistant US Trade Representative for Africa, in Business Report, 5 June 2003, cited in Mortensen 2006, 18).

Bilateral Investment Agreements between South Africa and other countries also harbour potential conflicts. The main aspects here are some BBBEE provisions on the "ownership element" and potential violations of the national treatment (NT) principle (Schneider 2008, 135 f.).

52 The principle underlying National Treatment is that the nationals of other countries are to be treated in the same way as one's own nationals. Article 3 of GATT requires that imports be treated no less favourably than the same or similar domestically produced goods once they have passed through customs. Article 17 of GATS and Article 3 of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement also cover the national treatment of services and intellectual property protection (WTO 2009).

4.3.3 Multinational companies in the context of the ownership element

As regards the ownership element, transnational corporations (TNCs) operating in South Africa enjoy special treatment.⁵³ Although all companies operating in South Africa are required to contribute to the achievement of the objectives of BBBEE,⁵⁴ exceptions are made in the case of multinationals since they may have global practices in place that prevent them from complying with the ownership element: owing to internal company structures and rules, subsidiary companies often have to remain fully owned by the holding company (DTI 2005, Schneider 2008, 109), or their structure as a family-owned business does not allow them to sell shares. South African subsidiaries are therefore restricted to transferring their shares to black partners.

In certain circumstances such TNCs are nevertheless able to earn ownership points, either as

- Equity Equivalents, or as
- Equity Offshore.⁵⁵

Equity Equivalents are compensatory measures, programmes for the support of black people and any other programmes that promote socio-economic advancement and development within the South African economy. The value of these programmes may be measured against 25 per cent of the value of the multinational's South African operations or against 4 per cent of total revenue from its South African operations annually over the period of continued measurement (DTI 2005, C 100 S 103 para. 4.2.1 and 4.2.2). Some argue that this target is too high, and it has yet to be seen how far enterprises will use this instrument. Only a few companies have so far developed and initiated an Equity Equivalent programme.⁵⁶ Box 4 shows DTI recommendations for possible Equity Equivalent programmes.

53 Schedule 1, Part 2, Codes of Good Practice: Multinationals are enterprises headquartered abroad, having sub-sidiary companies in South Africa as well as in other foreign countries.

54 DTI, BBBEE Strategy, para. 3.4.2.

55 C 100 S 103 para. 3.6.

56 Hewlett Packard has developed an Equity Equivalent programme under an initiative known as the HP Business Institute (HPBI). HPBI is an enterprise and skills development programme aimed at existing employees and graduates in the small to medium enterprise ICT sector and focusing on the development of scarce and critical skills in high-growth areas of the IT Industry (...). It was launched in early 2008. See IT-Online Reporter 2010.

Box 4: Recommended forms of Equity Equivalents

Enterprise Creation Programmes;

Programmes that promote social advancement as defined in the Code of Good Practice 700 Statement 700;

Economic Development Programmes;

Projects aimed at technology transfer/diffusion within the small, medium and micro-enterprise sector of the local economy beyond the multinational's core business activities;

Programmes that promote economic growth and employment creation through the development of technological innovation beyond the multinational's core business activities;

Initiatives that should lead to sustainable job creation.

Source: Adapted from DTI (2005)

However, the procedures are often perceived as very bureaucratic. An Equity Equivalent programme needs to be approved by the DTI, and once this has been done, the programme and points awarded may not form part of any other scorecard element of the multinational company.

Another compensatory measure for TNCs is the Equity Offshore mechanism. In this context the ownership element in favour of the economic empowerment of historically disadvantaged people is granted in the form of shares at TNC headquarters. This mechanism has been used by such multinationals as Merrill Lynch and Cisco (cf. Yuill 2007).

5 **BBBEE and CSR: Opportunities and challenges for stakeholders**⁵⁷

All major stakeholders acknowledge the basic value of BBBEE and the concept's vital contribution to the national transformation project. At the same time, they identify challenges and voice concerns about structural deficiencies around the concept and gaps in the implementation of BBBEE. In this way, they take on the role of raising issues that companies may not be aware of or do not consider to be their responsibility; they require that existing shortcomings be tackled and make suggestions as to how responsibilities might be shared, which often calls for an active contribution from stakeholders' side to their resolution. It becomes clear that the stakeholders' contribution to the transformation process is vital: while the perspectives between stakeholders and companies may occasionally be conflicting, there is also much common ground for dialogue and cooperation.

5.1 Stakeholder mapping: Who is involved in the process and how?

Even though the stakeholders are very diverse and have multiple perspectives, their discourses centre on a couple of recurring themes. On the one hand, they have particular views on problems and chances arising from companies' implementation of BBBEE; on the other hand, they have distinct opinions on structural problems and institutional responsibilities associated with the BBBEE concept.

The stakeholders of greatest relevance to BBBEE and CSR identified in the course of the study are the following:

- government and constitutional institutions;
- political parties;
- trade unions;

57 For the purposes of this study stakeholders are individual and collective actors involved in the formulation, interpretation and implementation of BBBEE and CSR and collective actors affected by those activities. Even though South African society and, therefore, each individual is to some extent affected by BEE, the study focuses in this regard on collective actors, given that those identified represent different views in South African society and so reflect a variety of voices in a concentrated manner.

- business organisations;
- civil society organisations; and
- donor agencies.

Appendix 3 gives a more detailed overview of the specific institutions considered by this study, their organisational features, their fields of activity and their attitudes towards BEE.

5.2 Implementation of BBBEE – How stakeholders perceive companies’ and institutions’ responsibilities

One of the most prominent criticisms voiced by stakeholders and acknowledged even by the DTI is that BBBEE has not been as broad-based as it was intended to be.⁵⁸ Instead of reaching the broader population, it has benefited only a number of well educated, politically well connected and wealthy individuals. Several stakeholders consider the realisation of broad-based empowerment is the companies’ responsibility. To this end they urge them to embrace forms of collective ownership, to ensure the sustainability of their sponsored projects and to empower local and rural communities to a greater extent. There is a broad consensus among the stakeholders that it is the companies’ responsibility in the BBBEE process to ensure efficient, effective and sustainable implementation of BBBEE.

Responsibilities have also been identified for government and other stakeholders. It has been acknowledged that, if the goal of BBBEE is to be achieved, support programmes in which government and other stakeholders target other developmental challenges facing the country (e.g. educa-

58 One of the most important debates in the BEE discourse concerns the creation of a black capitalist class. While its proponents claim that a “patriotic black bourgeoisie” is needed for economic growth and development and that it would function as a ‘door opener’ for its black compatriots (Southall 2003), the opponents argue that it is not economically sound for a business class to be nurtured by means of a political decision (Shubane / Reddy 2007, 19). Furthermore, some feel that BEE is particularly beneficial to prominent black people close to the current government, which gives it a bitter aftertaste of nepotism, corruption and arbitrariness. The debate centres on the question “What is BEE meant to achieve?” The answers to that question range from broad-based economic empowerment of the people, the establishment of a black middle class, poverty reduction and the redistribution of means of production to the enhancement of the economic activity of formerly disadvantaged people.

tion, crime, HIV/Aids) are needed to prevent BBBEE from being caught in a “black enrichment trap.” Despite opposing views on certain issues, there is a broad consensus that both companies and stakeholders need to engage actively in improving the process.⁵⁹ As further elaborated in Sections 5.2.1–5.2.3, they expect (a) the companies and (b) the relevant stakeholders, respectively, to:

- (a) implement BBBEE in a broad-based way and comply in a sustainable manner;
- (b) support broad-based implementation through regulations and amendments and ensure measurement and evaluation of the success and sustainability of compliance (Section 5.2.1);
- (a) overcome obstacles and eliminate loopholes;
- (b) align and harmonise policies with a view to overcoming obstacles and eliminating loopholes (Section 5.2.2);
- (a) gain a better understanding of how BBBEE can serve as a business case
- (b) to realise the business case of BBBEE and communicate ‘win-win’ scenarios (Section 5.2.3).

5.2.1 Broad-based and sustainable implementation of BEE

Another prominent criticism has been that many companies regard the implementation of BBBEE as no more than a ‘technical matter,’ meaning that, rather than fully embracing the concept, they are merely “ticking boxes” to meet minimum requirements and so preventing the concept from ‘trickling down’ and becoming sustainable and broad-based. Several stakeholders see companies as so applying the scorecard elements that they maximise their contribution to the BBBEE project. To this end, they propose taking the available options for effectively realising the Ownership ele-

59 COSATU believes that the government should play a stronger regulatory role in BBBEE and the empowerment of the poor. Southall and Tangri (2006, 138) conclude that COSATU envisages a more radical change than other actors, “*arguing that South Africa’s transformation should be workerled and centred less around the promotion of black capitalism and more around the creation of an economy in which collectivised social actors play a central role.*”

ment, empowering local and rural communities, tying Employment Equity to education efforts⁶⁰ and making use of the synergies of a linkage between Preferential Procurement and Enterprise Development.

Some stakeholders feel that any lack of broad-based empowerment is due to the companies' narrow focus on the Ownership and the Management Control elements, since they tend to engage overwhelmingly with individuals. The ANC has identified "*a need of collective ownership programmes by working people and communities, in the form of collective enterprises and cooperatives*" in their Resolution of Economic Transformation (ANC 2002). Such ideas might be put into practice through:

- pension funds, trade union shares, community trusts and employee ownership shares (interview with a BBBEE investment company, Cape Town, March 2010);
- compensation for a lack of black ownership through a strong commitment to the indirect elements of the scorecard, as the DTI has pointed out;
- Equity Equivalents as a constructive alternative (interview with a representative of the Western Cape Provincial Government, Cape Town, April 2010).

The question of ownership is closely connected to the question of financing. While some stakeholders feel that the existing financing mechanisms are not innovative enough and not accessible to people at grassroots level, others identify a lack of familiarity with and access to financing options as the root cause. Acknowledging this problem, the DTI is promoting a variety of financing mechanisms.⁶¹

60 The IFP suggests that companies should focus their efforts and support on such tertiary institutions as "schools of excellence" (for example in engineering or the IT sector) (interview with IFP, Cape Town, March 2010). This would enable them to help tackle the country's education problem and at the same time to benefit from an enlarged pool of skilled personnel.

61 They include the Industrial Development Corporation (IDC), a state-owned development finance institution having the financing of historically disadvantaged entrepreneurs as its core business; Khula Enterprise Finance Limited, an agency of the DTI, established in 1996 to facilitate access to credit for SMME's through various delivery mechanisms; the National Empowerment Fund, whose objective is to facilitate the redressing of economic inequality; and the South African Micro-Finance Apex Fund (samaf), and the Development Bank of Southern Africa, whose core business is financial support for infrastructure creation in addition to providing rural finance (cf. M'Paradzi 2006, 56).

Several stakeholders hold that BBBEE could be more broad-based if greater emphasis was placed on increasing the **empowerment of local and rural communities**. The Bench Marks Foundation and the SAHRC complain that many communities are being marginalised and disempowered by companies' activities. Both feel a strong need for companies to consult with communities in order to explain their approaches to them and to identify common ground. The Bench Marks Foundation encourages communities to take action, for example through their Community Perception Index, where they can state their views on companies. By bringing together both sides' perceptions, the community's needs and the companies' goals could be better aligned (Bench Marks Foundation 2008, 138). This is something that requires more government engagement with rural communities, to give them a chance to voice their concerns and to facilitate their dialogue with companies and government institutions. The Bench Marks Foundations feels that *"improvements should come about as a result of better communication, integration and power relations within and among communities, implementing institutions and government"* (Bench Marks Foundation 2008, 138).

Some stakeholders attribute the **lack of trickle-down** to the failure to implement the Enterprise Development and Socio-Economic Development elements of the scorecard properly. The Executive Director of NEDLAC complains that companies often invest in unsustainable projects which have a high "infant mortality" rate or are inconsistent with the focal areas of the government's development strategy (interview with NEDLAC, Johannesburg, March 2010). The Department of Economic Development and Tourism of the Western Cape Provincial Government therefore offers companies access to information on the development plans of municipalities (concerning, for example, the Western Cape's enterprise development fund) in order to create synergies between public and private engagement (interview with the Western Cape Provincial Government, Cape Town, April 2010).

The existing **certification and verification process** for companies' BBBEE scores has been hampered by its somewhat lax and ad hoc nature. Some stakeholders note that better standardisation of rating agencies is needed since existing differences in quality create opportunities for bypassing. Others point to the problem of a lack of verification agencies and of skilled staff in them. The DA claims that the whole process is too com-

plex and that greater account should be taken of the special needs of companies (interview with the Democratic Alliance, Cape Town, March 2010). The BMF has the support of a joint venture with one rating agency “*to enable the BMF clients’ BEE credentials to be verified with speed*” (BMF 2009a, 10).

Several stakeholders agreed that there is a **need for proper targets for black participation** in the economy. The IFP argues that there should be an exit point and strategy to guarantee that BBBEE does not become an institutionalised mechanism for safeguarding the political power interests of the ruling party.⁶² The lack of a clear time-frame for transformation is also criticised by other stakeholders. NEDLAC holds the view that “*there can be no sunset if the sun hasn’t even risen*” (interview with NEDLAC, Johannesburg, March 2010).

In similar vein, many stakeholders raised concerns about the **lack of monitoring and evaluation of impacts**. In the earlier years of BBBEE the ANC said that it had a responsibility to “*monitor progress in empowering black people, especially black women, youth, children, the elderly and people living with disabilities and ensure government arrives at quantitative targets in order to measure BEE*” (ANC 2002). However, as the organisation established for this purpose, the Black Economic Empowerment Advisory Council,⁶³ for which Sections 4-8 of the BBBEE Act provide, did not take up its work until February 2010, it has yet to be determined how monitoring and evaluation will be carried out.⁶⁴ BUSA proposes the establishment of monitoring and evaluation mechanisms within the Charter Councils (BUSA 2006). BUSA’s first step will be to publish an annual BBBEE report on progress and challenges.

62 The DTI response was that the process is meant to continue from 2007 to 2017, with 5- and 10-year targets for each element and 2017 as the benchmark year, when changes and further steps will be considered (interview with the DTI, Johannesburg, February 2010).

63 The Council’s duties include the establishment of an evaluation and monitoring mechanism and the development of means of assessing the progress of BBBEE, according to DTI spokesperson Medupe (Sibanyoni 2009).

64 A BBBEE Progress Baseline Report was published by the DTI in 2007.

5.2.2 Addressing loopholes and obstacles to BBBEE implementation

The DTI confirms the lack of a comprehensive empowerment strategy that consolidates the various current government programmes in a coherent manner. Stakeholders have identified the need for efforts to eliminate corruption, fronting and by-passing, for support services and policies for the implementation of BBBEE and for the coherent alignment of procurement in the public sector. A common criticism points to the existence of obstacles and loopholes acting as barriers to the successful implementation of the BBBEE project: according to the DTI more than 75 per cent of companies in the private sector are still not BBBEE-compliant (Mail & Guardian, April 2010). Several stakeholders make the point that companies are in a position to challenge existing obstacles and to condemn any gaps.⁶⁵

The criticisms regarding **corruption, nepotism and favouritism** have been strong. To combat corruption, the DTI encourages all companies to report any instances they encounter (interview with the DTI, Johannesburg, February 2010). BUSA has formed an Anti-Corruption Working Group, which is drawn up a Guide on Anti-Corruption Measures and an Anti-Corruption Brochure for Foreign Investors (BUSA 2010a, 5–6). While the DTI provides on its webpage a tool for the anonymous reporting of fronting,⁶⁶ some stakeholders call for stricter regulation and enforcement through fines. The DA feels that a lack of clear rules on procurement leads to corruption and the award of government procurement contracts to those who have close links with the political elite. It therefore demands greater transparency and more life-audits of politicians if there is any suspicion of corruption (interview with the DA, Cape Town, March 2010). Corruption affects not only public procurement but also empowerment, Management Control and other elements of the scorecard. Several stakeholders highlight the importance of eliminating corruption in the private and public sectors in order to facilitate the sustainable, effective and efficient implementation of BBBEE. One suggestion for tackling the problem is the appointment of an

65 BUSA's assessment proves that the implementation of the Employment Equity element has shown meagre results (BUSA 2009, 12). While the BMF admits that the issue of the skills shortage is a challenge, it stresses that this must not be used as a smoke screen. It has set up a people-search database, where companies can look for qualified black employees meeting their needs.

66 Cf. DTI s. a. c

ombudsman to resolve conflicts and ensure proper compliance with BBBEE regulations and so ensure transparency, broader implementation and objectivity (cf. DA 2009).

Some actors demand **shifts in the scorecard and in the weighting of the elements** of the scorecard which target changes similar to those specified by the companies in the empirical survey. COPE recommends moving the focus of the scorecard to socio-economic contributions by large companies, Preferential Procurement and Enterprise Development in order to promote the centrepiece of BBBEE: broad-based participation (cf. COPE s. a.), while the DA would also like to see further promotion of education and training (cf. DA 2009). COSATU even wants to include further elements in the scorecard, such as job creation and support for cooperative enterprises (COSATU 2003). Two stakeholders explicitly stressed the need for the inclusion of empowerment for local and rural communities and rural-based individuals in the BBBEE Act and the scorecard. According to the DTI, Preferential Procurement and Enterprise Development are decisive if the economy is to be driven forward (interview with the DTI, Johannesburg, February 2010). To tap the full potential of both elements, the NBI strongly encourages companies to link the two elements: it supports companies' efforts through the Enterprise Linkages Initiative – building a bridge between black enterprises and large corporations and setting up a database of certified and competitive black enterprises (NBI 2009, 52).

Some stakeholders take the view that the government's **social programmes** should be providing services and performing tasks now left to the business sector. It has also been highlighted in this context that BBBEE is a very slim pillar that needs the support of other measures. This problem can be exemplified by education, as education and a lack of skilled people are particular matters of concern. Some stakeholders argue that BBBEE cannot be implemented sustainably if the education system is not working properly. The three opposition parties, DA, COPE and IFP, all feel that not enough has been done to address the problem of education associated with the issue of the skills shortage and that reforms are needed. The SAHRC sees BBBEE as a possible connecting point and support for educational measures and policies (interview with the SAHRC, Johannesburg, February 2010).

Another major issue of alignment and harmonisation centres on **BBBEE implementation in the public sector** itself. The Department of Economic Development and Tourism of the Western Cape Provincial Government

points out that the public sector is only partly compliant and that there is a major need to bring public procurement into line with BBBEE requirements (interview with the Western Cape Provincial Government, Cape Town, April 2010). The ANC has said that “*the government must review the Broad-Based Black Economic Empowerment threshold in awarding tenders and procuring services*” (ANC 2010). The government, aware of the problem, also calls for the stronger alignment and harmonisation of government procurement with BBBEE. To this end, it drafted and published a preferential procurement regulation in August 2009, which has yet to be approved.⁶⁷

5.2.3 Realising the business case of BBBEE and communicating ‘win-win’ scenarios

Although the various stakeholders highlight the problems and challenges associated with implementation, they also underline the **business case** that lies within BBBEE. While the BMF refers to transformation as a business imperative, a representative of the JSE-SRI reveals that the business case for BBBEE is multi-faceted: “*the business case varies: reputation, increased engagement with investors, a potentially larger market*” (interview with the JSE-SRI, Johannesburg, March 2010). However, some stakeholders feel that the business case and the competitive advantage that come with BBBEE are not publicised sufficiently and should be better promoted.

All stakeholders agree that **more communication and exchanges among all actors** involved are urgently needed. They emphasise the need for dialogues and partnerships between the public and private sectors to be strengthened, reflecting the companies’ opinion in this survey. The government underlines the need for improved communication between black business and government and for better coordination and organisation of black business voices. Some stakeholders stress that a lack of communication results in mistrust, a misunderstanding of what BBBEE is about and what should be achieved, difficulties for TNCs in understanding the scope of BBBEE and how it is being implemented and poor public awareness of BBBEE in general. The DTI feels that many of the difficulties in the implementation process arise from miscommunication and wants the companies to understand the core issues of BBBEE. Some initiatives designed to overcome the communication gap are already in place or under development:

67 Cf. Government Gazette (2009).

- The DTI held a first quarterly meeting with TNCs, chambers of commerce and embassies to address open questions and concerns.
- BUSA is undertaking research for the BBBEE Advisory Council to ensure a public discourse on the shortcomings.
- NEDLAC is set up as an institution where business voices can influence the process of drafting legislation.
- The Department of Economic Development and Tourism of the PGWC offers training courses on BBBEE and is in the process of preparing a website on BBBEE and a one-stop shop for tenders relating to BBBEE.
- The NBI plans to advise Non-Governmental Organisations (NGOs) on the building of platforms for better interaction with companies.

Besides these ongoing activities of South African stakeholders, **German development cooperation** agencies also contribute their expertise and may play a supportive role. Stakeholders highlight two areas in particular:

- Support for dialogues and communication: for example, the DTI would welcome the dissemination of information and support for dialogues with TNCs;
- Capacity-building: the IFP, for example, suggests helping companies to identify focal areas of development in which they might become engaged and the compilation of information (on possible forms of engagement, for example) or a directory of NGOs with which companies might become involved.

5.3 The transformation imperative of BBBEE

Regardless of the obstacles and challenges encountered in the BBBEE process, it has been acknowledged that transformation is needed and that BBBEE can best be implemented through the concerted efforts of all the stakeholders and actors involved. The ANC maintains *“that Black Economic Empowerment is a moral, political, social and economic requirement of this country’s collective future. [...] Its benefits must be shared across society, and impact as widely as possible”* (ANC 2002). All stakeholders share the idea of BBBEE as a transformation imperative which not only has a moral and social dimension but is also seen as a *“nation-building exercise”* (interview with the BMF, Johannesburg, March 2010) and which is also necessary to guarantee the stability of the country. The

government is convinced that BBBEE and Affirmative Action are needed to reconcile society and transform it into one with equal opportunities for all. The DTI emphasises that “BEE is a journey, not a destination” – a journey in which everyone has a stake and which could make enriching experiences possible.

6 CSR and BBBEE – Perception of and contribution by German TNCs operating in South Africa

The empirical case study focuses on the following aspects of the activities of German TNCs in South Africa:

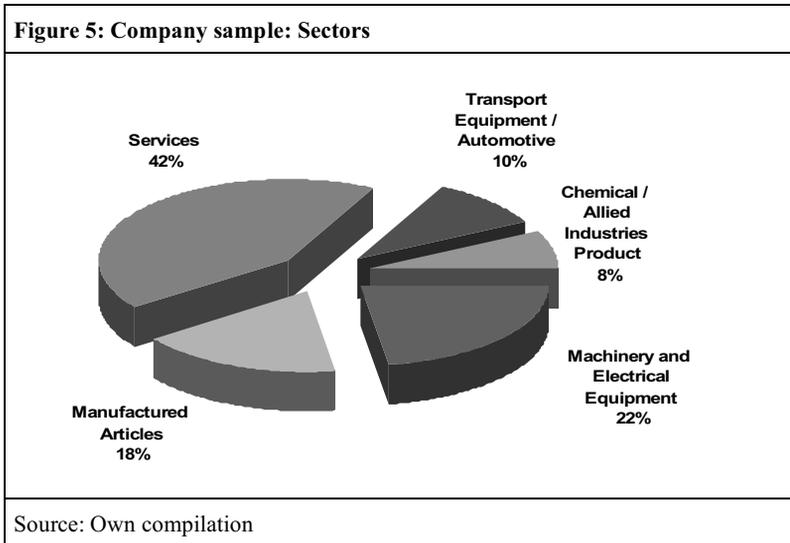
- CSR/BBBEE agenda of German TNCs in South Africa
- BBBEE scorecards, activities and concerns
- Certification process
- Effects of BBBEE on companies
- Shortcomings of BBBEE
- Drivers of BBBEE
- Role of other actors

6.1 Company sample

Of the 130-company pre-response sample, 40 companies were interviewed during the field research phase in South Africa. Most of the company representatives interviewed were CEOs, financial directors, CSR/BEE managers or other top managers. All but one of the companies interviewed are members of the AHK. They are all German-owned, partly German-owned or have close relations with German businesses.

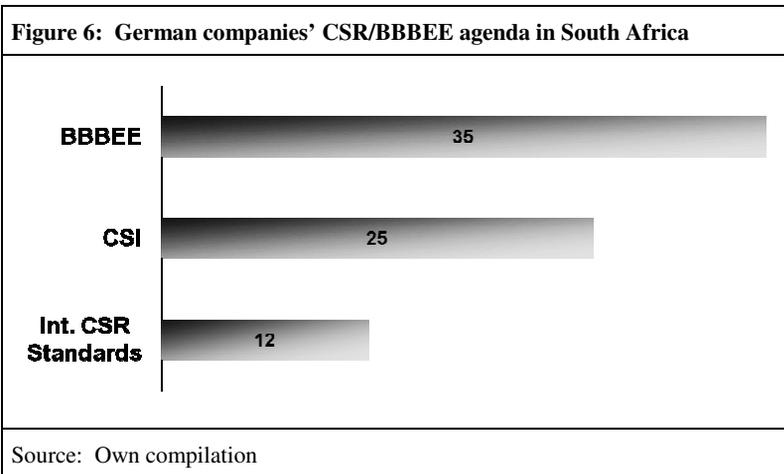
In terms of their size, most of the companies can be regarded as large TNCs, only a very few being SMEs. Of the companies, 65 per cent employ more than 100 people, 35 per cent having fewer than 100 employees. Eighty per cent have a turnover of more than ZAR 35m, and only four companies in the sample are “Qualifying Small Enterprises” (QE companies), which must comply with only three or four of the seven BBBEE elements.

Classified in accordance with the AHK division of members into sectors – Services, Transport, Equipment/Automotive, Manufactured Articles, Machinery and Electrical Equipment, Chemical/Allied Industries Products – the company sample can be broken down as follows:



6.2 CSR/BBBEE agenda of German TNCs in South Africa

From the perspective of German TNCs in South Africa, the CSR agenda is multifaceted. It includes both the international CSR agenda and the South African CSR approach, e.g. mainly philanthropic programmes, known as Corporate Social Investment (CSI), and the BBBEE Agenda. Of the 40 companies interviewed, the vast majority (35 of the 40) are active in the field of BBBEE, more than half (25) include CSI in their agenda, and for only a minority of the companies (12) does the international CSR agenda play an important role in the South African context. Figure 6 shows the different prioritisations of the CSR/BBBEE agenda in German TNCs.



It also became obvious that the CSR agenda of the majority of the companies (57 per cent) are guided by local expectations. Only a quarter of the companies' CSR agendas are developed by their headquarters overseas.⁶⁸

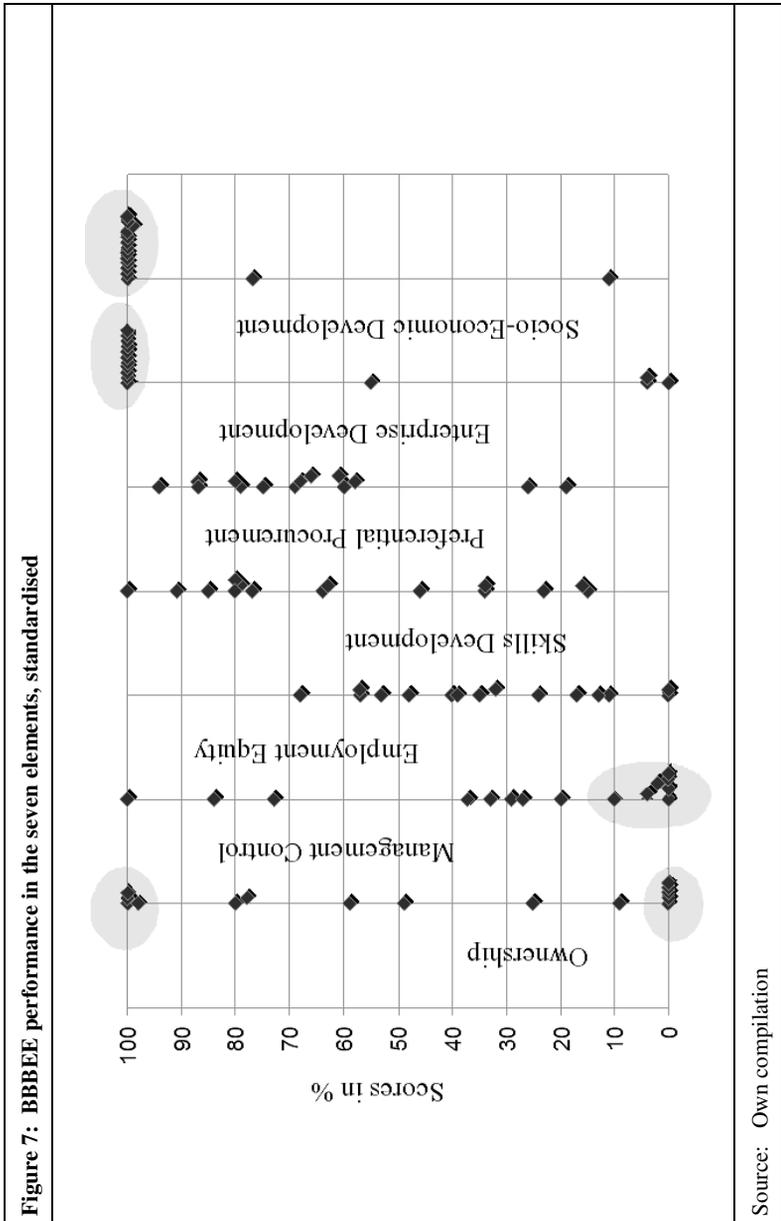
Interestingly, CSR/CSI is integrated into or forms part of the BBBEE policy of many of the companies.

6.3 BBBEE scorecards, activities and concerns

Of the 40 companies interviewed, 27 have a scorecard; 22 comply with the generic scorecard, four with the QSE scorecard, while another TNC interviewed has a sector scorecard. As a further seven are currently in the process of applying for a scorecard, most of the companies have a BBBEE agenda. Only six of the TNCs interviewed do not have a scorecard. Figure 7 shows the standardised⁶⁹ performance in the seven elements of the companies having a scorecard. It is noticeable that most of the companies in the sample score either very well or not at all in the Ownership element. Thus complying with the Ownership element is obviously "all or nothing" for TNCs.

68 The 18 per cent of the companies which are South African are not included in the response.

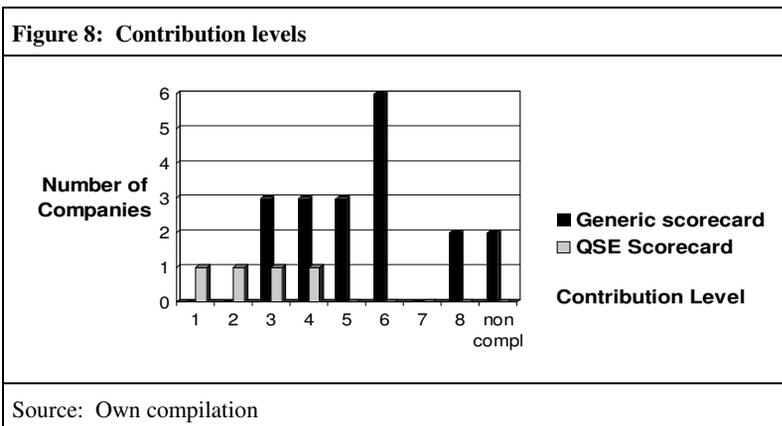
69 The maximum score that can be achieved in the Ownership, Management Control, Employment Equity, Skills Development, Preferential Procurement, Enterprise Development and Socio-Economic Development elements is between five and 20 points. The scores achieved by the companies in the various elements are standardised, which means that they are shown as percentages of the maximum possible.



6.3.1 Contribution levels of companies

Of the companies providing scorecards, 19 are ranked under the Generic Scorecard, four companies have a QSE scorecard and one is automatically considered to be a Level 4 contributor since it scores as an Exempted Micro Enterprise.

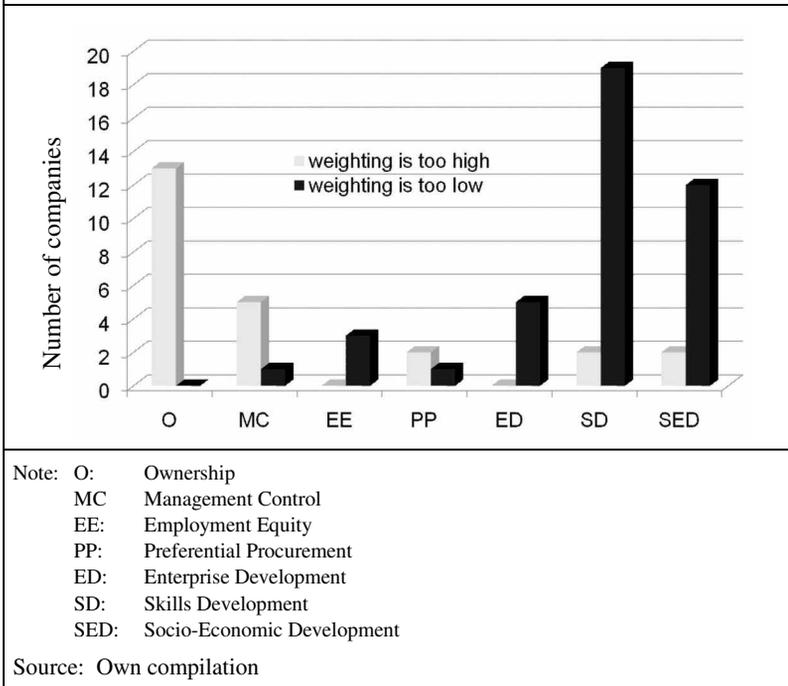
Figure 8 shows the contribution levels of the companies interviewed. It is clearly easier for QSEs to attain a high score than companies ranked in all seven elements. Some companies engaged in public procurement stated that it was important to reach at least Level 6 to obtain the business they wanted; private enterprises, too, said that they require their suppliers to have that score. Some of the companies interviewed which were non-compliant or had attained only Level 8 said that they were undertaking further activities to improve on their current score, while others, without a scorecard, but active in an industrial niche, stated that, even though they had no BBEE score, they were obtaining the business they wanted.



6.3.2 Perception of the scorecard weighting scheme

Many companies felt that the Ownership element was weighted too high, while Skills Development and Socio-economic Development were regarded as being ranked too low. The figure below shows the perception of the scorecard weighting of each element.

Figure 9: Perception of the scorecard weighting scheme

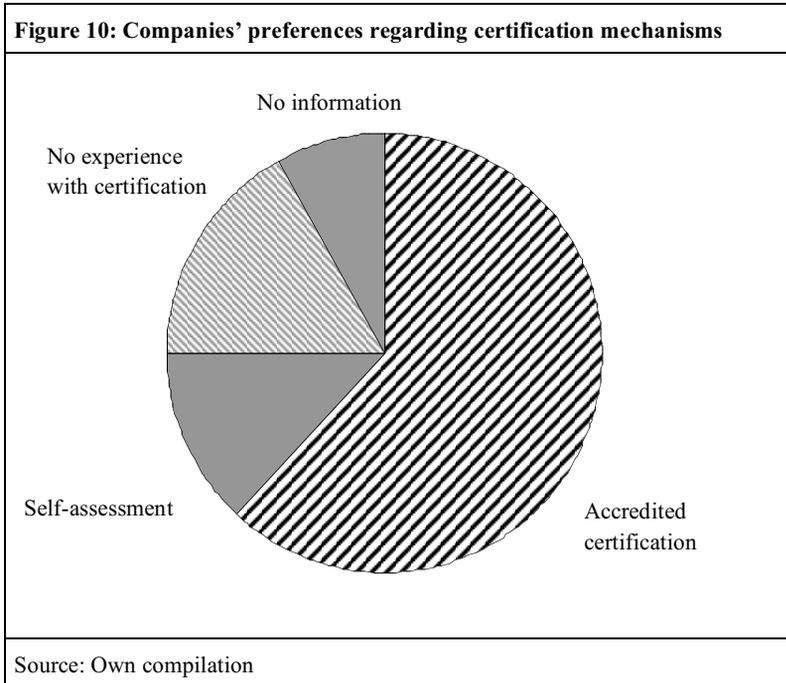


6.4 Certification process

The current certification process is considered ambivalent. Most of the companies perceived the process as transparent, but numerous concerns were also raised:

- the process is not standardised, and double standards exist;
- it is too costly;
- it is too time-consuming;
- there are too few rating agencies;
- the process is too bureaucratic and too complex;
- there are also skills shortages within the agencies; and
- some companies even perceived the process as corrupt.

However, the figure below shows that, despite all the shortcomings mentioned, 62 per cent of the companies prefer certification by an accredited agency. Only a minority of 12 per cent would prefer self-assessment.⁷⁰ Only one company in the sample provided a self-assessed scorecard.



6.5 Impact of BBEE on companies

BBEE has had an impact on most of the companies interviewed; only very few TNCs said that BBEE had not affected their operations at all. Most affected are:

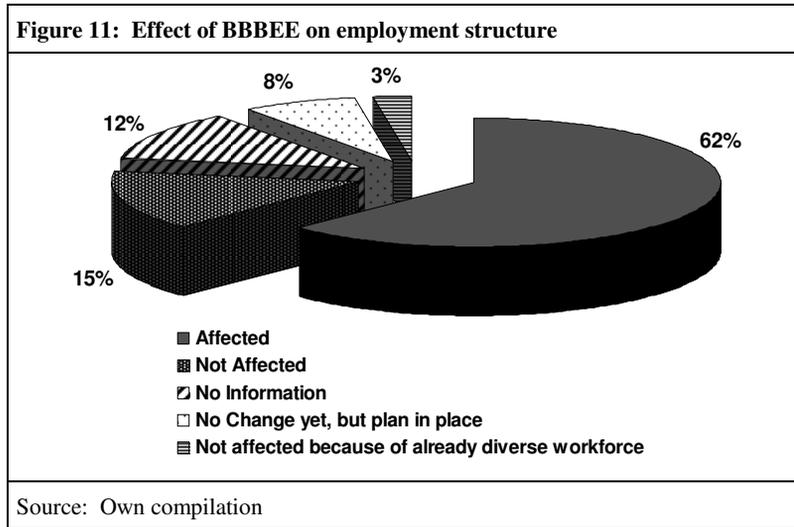
- the employment structure;
- the benefit-cost ratio;
- competitiveness in procurement.

⁷⁰ Of the companies, 18 per cent had no experience of the certification process, and 8 per cent provided no information.

6.5.1 Employment structure

BBBEE has affected the employment structure of most of the companies interviewed. As Figure 11 below shows, 62 per cent of the sample stated that complying with BBBEE had had effects on their employment structure, and a further 8 per cent already have plans to change their employment structure as a result of BBBEE. Another 3 per cent were not affected because they already had a diverse workforce.

Only a minority (15 per cent) replied that their employment structure had not been affected at all.⁷¹ It is worth noting that the higher up the corporate hierarchy, the less noticeable the change.



6.5.2 Benefit-cost ratio

The picture as regards the benefit-cost ratio is quite positive. Almost half the companies (47 per cent) perceived the benefit-cost ratio of BBBEE to be positive, only 28 per cent feeling that the cost of BBBEE exceeded the benefits. According to 15 per cent, BBBEE had no effect on the company's benefit-cost ratio.⁷²

⁷¹ No information on this issue was received from 12 per cent of the companies interviewed.

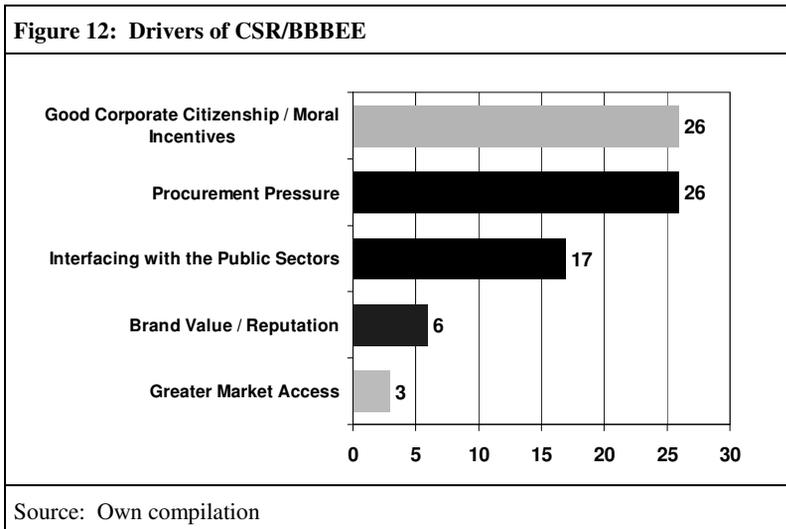
⁷² No information was received from 10 per cent of the companies.

6.5.3 Procurement competitiveness

Procurement is obviously one of the main drivers of BBBEE (cf. 5.7). Interestingly, the effects of BBBEE in this area seem to be far more positive than negative. Around 40 per cent of the sample stated that their competitiveness had improved as a result of their compliance with BBBEE, while almost half of the companies (47 per cent) did not feel that BBBEE had had any effect on their procurement competitiveness.⁷³ Only a small minority (5 per cent) believed their procurement competitiveness had been reduced by BBBEE.

6.6 Drivers of BBBEE

The main drivers of CSR and BBBEE can be subdivided into moral incentives and business motives. According to Figure 12 below, the majority of the companies interviewed have the incentive to engage in CSR and/or CSI and/or to comply with BBBEE with a view to becoming good corporate citizens. In other words, many TNCs have moral incentives to be active in the field of BBBEE and CSR.



⁷³ No information: 8 per cent.

However, several companies explicitly said that, while they had a moral incentive to engage in CSI/CSR, they did not feel the same way about BBBEE. Moral incentives seem to play a far more important role for some companies in the case of CSR/CSI.⁷⁴

As regards business-related drivers of CSR/BBBEE, the most important incentive to comply with BBBEE is the pressure exerted by procurement (cf. 6.5.3. Another business imperative for complying is that CSR/BBBEE is seen as a “must” because the companies interface with the public sector – a driver that overlaps with procurement pressure from other companies. As one company graphically put it, “We have to voluntarily comply.” This was echoed by another company’s categorical statement that “If you don’t comply, you don’t supply.”

6.7 Shortcomings of BBBEE

The following major statements on the shortcomings of BBBEE were identified by the German TNCs:

- Widespread malpractices through window-dressing, fronting and by-passing.
- Few trickle-down effects and mainly support for a very small black elite.
- Shortage of skilled people, particularly in the areas of Management Control and Employment Equity.
- High costs with unclear benefits and potential risks, including potential pressure to leave South Africa.⁷⁵

Only a minority of companies underlined the business-related drivers of reputation and an increase in brand value due to CSR and BBBEE policies. The number of respondents claiming that they expect efforts in the fields of BBBEE and CSR to give them better market access was marginal.

It therefore became clear that the overwhelming majority of the companies in the sample had a business case for BBBEE.

74 As one interviewee said: “*In terms of moral incentives, the employees of the company have much more emotion and drive in CSI than in BEE.*”

75 Smaller companies were particularly prone to this opinion.

6.8 Role of other actors

Many German TNCs also expect other actors to take responsibility for promoting CSR/BBBEE, referring in particular to the following:⁷⁶

- public policy actors;
- business associations;
- trade unions and civil society organisations and
- German development cooperation agencies.

6.8.1 Public policy actors

About half of the company representatives would welcome more reward systems and other incentives from the DTI. Both labelling schemes and tax incentives were ranked as positive and considered supportive.⁷⁷ Furthermore, company representatives argued that government should increase incentives in the procurement area and publicise the fact if a tender was to be accepted because it was BBBEE-compliant.

The majority of the companies felt that the dialogue with the public sector was deficient. They would like to see more dialogue and partnerships with the public sector. Some claimed that, although there was dialogue between the public and private sectors, insufficient heed was paid to the private sector, its views met with little response or it was unclear what happened to its input.⁷⁸

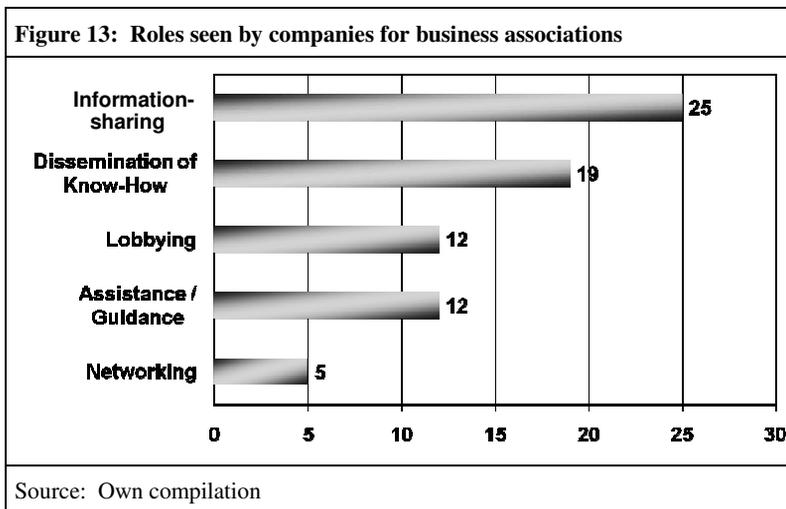
76 As the interview was designed with open questions, the interviewees had an opportunity to express their personal opinions about the possible and/or required roles of important stakeholders.

77 However, one interviewee expressed the view that market incentives would be “*a commercialisation of transformation*” and that “*other market incentives would damage the spirit and credibility of BEE.*”

78 One company with a significant presence in South Africa showed some understanding, however, arguing that, even though there should be more dialogue and partnerships, there was no reason for complaint because the BEE Council had only recently been set up. The interviewee concerned argued that interaction with the DTI on any concern or issue was always possible and stressed that he always received a response from the DTI when his company had a concern. He also felt that people complained because they did not know what to do and who to address, but that everything was in place, leading him to ask rhetorically what more could be asked for.

6.8.2 Business associations

Companies did have clear visions and opinions on how business associations (BAs) could contribute positively to the process of and perceived challenges to BBBEE (see Figure 13).



In the interviews 25 of the companies stated that information-sharing was a very important role for business associations and that they should serve as a platform. In addition, almost half of the companies (19) mentioned that dissemination of know-how should be an important role for BAs in the BBBEE process and its implementation. For example, workshops or documentations relating to “best practices” could be organised to enable BAs to play the role that companies assigned to them. Twelve companies in the sample contended that BAs should also provide guidance on and assistance with BBBEE and its implementation.

Another 12 companies mentioned that BAs are necessary for lobbying. The needs of and challenges to TNCs should be communicated to other relevant

stakeholders and decision-making institutions, particularly the DTI and other relevant government bodies.⁷⁹

6.8.3 Civil society organisations and trade unions

The contributions that civil society organisations and trade unions might make to the BBBEE process were rated rather low by most companies. The majority considered partnerships with civil society and/or trade unions to be largely out of the question. This position reflects the widespread reservations felt by the business community, especially about trade unions in South Africa.

Only a minority of companies believed that partnerships with civil society organisations and trade unions could be helpful, for example, as contributors to capacity-building or as watch-dogs. According to the CEO of one German company, civil society organisations could “be part of the interface with the public sector” and/or play a “role as a discussion forum or in identifying problems.”⁸⁰

6.8.4 Development cooperation

On the question of the perceived skills shortage in South Africa, companies emphasised the possible contribution of development cooperation organisations in capacity-building. Companies would also like development cooperation to engage in research and information-sharing in this area.

79 One interviewee explicitly referred to the ambiguities of companies working together and sharing information, a view echoed by other interviewees: “*Companies could work together in certain fields to overcome the major concerns of the country. [...] Working together would benefit all the companies and individuals. [...] However] apart from this, companies tend to be reluctant to share their good experiences, as everyone would like to be the best.*”

80 One major German company voiced the concern and critical self-reflection that trade unions do not know what the dynamics are and are familiar only with employment equity and skills development. This said was the company’s own fault – one should have involved them more. Companies, the interviewee said, owe it to their people to unpack the concept. At the same time, she argued, trade unions do not understand that transformation in the company is a process and that BEE is an umbrella for various elements. However, the representative of another large company stated that, because trade unions are organised by sector in South Africa, “*they could play a role in cooperating with industry organisations.*”

A minority of companies saw development cooperation institutions as potential mediators between the public sector and the business community when it came to addressing the challenges posed and opportunities presented by BBBEE, in which role they might facilitate a dialogue and open new channels of communication. Public Private Partnerships in the field of training and skills development were also welcomed by some of the companies interviewed.

7 Concluding remarks and future prospects

CSR in South Africa has its own specific features. It is greatly influenced by the country's history, including the legacy of Apartheid. The international CSR agenda and the principles laid down, for example, in the UN Global Compact or the OECD Guidelines, play no more than a minor role.

In the past many CSR activities in South Africa have been based on a philanthropic approach, an example here being voluntary social investment in such areas as education, health and child care. However, for the private sector, including German transnational corporations, CSR in South Africa is no longer limited to this traditional philanthropic CSR agenda, but has increasingly become part of the comprehensive BBBEE agenda.

As the survey has revealed, the BBBEE agenda is based on a concept at the interface of voluntary CSR and legally binding public policy. The impact of the BBBEE agenda therefore differs as between the private and the public sector. For the private sector BBBEE is largely a voluntary soft-law mechanism and thus implemented to a greater or lesser degree as a function of either the interface with the public sector or market-based incentives.

In contrast to most other known mechanisms for certifying and verifying CSR activities, the main BBBEE instrument for demonstrating a company's compliance with the BBBEE agenda is a specific scorecard with seven main elements.

It became clear that the two direct elements of the scorecard, i.e. those which focus specifically on Ownership Transfer and Management Control, were perceived by most German TNCs as rather unrealistic and thus unacceptable. The widespread resistance to the implementation of the ownership

element also extended to the two alternative mechanisms (Equity Equivalent and Equity Offshore).

However, German TNCs scored rather well in the indirect elements, which are generally classified as being more broad-based than the direct elements.

In addition, the empirical data revealed that procurement pressure, interfacing with the public sector and the desire of many German TNCs to be seen as good corporate citizens ranked among the most important drivers for BBBEE. Of particular interest is the fact that, despite widespread scepticism and complaints from the companies about the BBBEE agenda, the majority of the company representatives interviewed felt there was a “business case” for BBBEE.

From the perspective of German TNCs and most relevant stakeholders the ongoing BBBEE agenda remains challenging, particularly with respect to:

- malpractices in the ongoing certification processes;
- competitive disadvantages for TNCs because of the “Ownership element”, including the two alternative mechanism (Equity Equivalent or Equity Offshore);
- ongoing by-passing/fronting activities;
- skills shortages;
- lack of or limited sustainability of Enterprise Development and Socio-economic Development programmes; and
- limited achievements of BBBEE as a truly broad-based approach.

As regards the other stakeholders involved, activities other than BBBEE incentives and the need to improve implementation were underlined on all sides; reference was also made to the need for better communication and more dialogue among relevant stakeholders, including business associations and development cooperation agencies.

As most companies and stakeholders expressed the need for existing socio-economic disparities to be overcome in South Africa and felt that CSR/BBBEE activities could contribute to the transformation process, the following major steps for improving the implementation of BBBEE were highlighted:

- the BBBEE weighting system should place greater emphasis on Socio-Economic Development and Skills Development;
- more regional, rural and community-based BBBEE approaches should be initiated; and
- to ensure that BBBEE has a cascade effect, Preferential Procurement element should be promoted.

In sum, despite the various shortcomings in the ongoing implementation of the BBBEE agenda, the underlying concept is an interesting and innovative approach, which is making its own considerable contribution to South Africa's transformation strategy.

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Appendixes

Appendix 1: The Constitution of the Republic of South Africa, Act 108 of 1996, Section 9:

Equality

9. (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.
- (3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
- (4) No person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection (3). National legislation must be enacted to prevent or prohibit unfair discrimination.
- (5) Discrimination on one or more of the grounds listed in subsection (3) is unfair unless it is established that the discrimination is fair.

Appendix 2: Codes of Good Practice

Table 6: Codes of Good practice	
Code number range	General subject matter
Code 000	Framework for the measurement of broad-based black economic empowerment
Code 100	Measurement of the ownership Element of broad-based black economic empowerment
Code 200	Measurement of the management control Element of broad-based black economic empowerment
Code 300	Measurement of the employment equity Element of broad-based black economic empowerment
Code 400	Measurement of the skills development Element of broad-based black economic empowerment
Code 500	Measurement of the preferential procurement Element of broad-based black economic empowerment
Code 600	Measurement of the enterprise development Element of broad-based black economic empowerment
Code 700	Measurement of the residual Element of broad based black-economic empowerment
Code 800	Sector Codes as defined in Code 000 Statement 010
Code 1000	Measurement of broad-based black economic empowerment for qualifying small enterprises
Source: DTI ; Code 000 Statement 000, para 6	

Appendix 3: List of stakeholder interviews (in alphabetical order)

Organisation	Position in Organisation	Interview location	Date
African National Congress (ANC)	Manager International Relations	Johannesburg	04/03/2010
The African Institute of Corporate Citizenship (AICC)	Consultant and Researcher	Johannesburg	03/03/2010
The Bench Marks Foundation	Executive Director	Johannesburg	03/03/2010
Black Management Forum (BMF)	Managing Director	Johannesburg	03/03/2010
Business Unity South Africa (BUSAs)	Executive Director: Transformation Policy	Johannesburg	05/03/2010
Congress of South African Trade Unions (COSATU)	Social Development Policy Coordinator	Johannesburg	05/03/2010
Democratic Alliance (DA)	Member of the Parliament	Cape Town	17/03/2010
Department of Trade and Industry (DTI)	Deputy Director: Black Economic Empowerment	Pretoria	20/02/2010
	Deputy Director: B-BBEEE & Empowerment and Enterprise Development Division		
Deutsche Investitions- und Entwicklungsgesellschaft (DEG) / Entwicklungsbank	Country Director	Johannesburg	17/02/2010
Embassy of the Federal Republic of Germany	Head of the Economic Department	Pretoria	16/02/2010
Empowerdex	Manager for Research & Advisory	Johannesburg	02/03/2010
Friedrich Ebert Foundation	Project Manager	Pretoria	24/02/2010
Gesellschaft für Technische Zusammenarbeit (GTZ)	Responsible: Centre for Cooperation with the Private Sector	Pretoria	25/02/2010
Inkatha Freedom Party (IFP)	Member of the Parliament	Cape Town	18/03/2010
Investment Companies and BEE Consultants ⁸¹	Acting Executive Director	Johannesburg and Cape Town	01/03/2010
	Director		15/03/2010
	Investment Advisor		19/03/2010
Johannesburg Stock Exchange – Social Responsibility Index (JSE-SRI)	Head of SRI Index	Johannesburg	02/03/2010
	SRI Associate		
National Business Initiative (NBI)	Director	Johannesburg	26/02/2010

81 All companies and business related enterprises were guaranteed anonymity. Therewith the investment companies and BEE consultants cannot be named. Their input served as expert and background knowledge and was analyzed with the same methodological approach then the stakeholder interviews.

The National Economic Development and Labour Council (NEDLAC)	Executive Director	Johannesburg	04/03/2010
Provincial Government of the Western Cape (PGWC), Department of Economic Development and Tourism	Director for Economic Empowerment	Cape Town	13/04/2010
Rhodes University, Centre for Economics Journalism in Africa	Director	Grahamstown	12/03/2010
South African Human Rights Commission (SAHRC)	Head of Research, Documentation and Policy Analysis Programme	Johannesburg	17/02/2010
	Senior Researcher for Economic and Social Rights		
	Coordinator for Racism and Non-discrimination		
Southern African –German Chamber of Commerce and Industry (AHK)	Head of Department: General Services	Pretoria	04/03/2010
University of Cape Town (UCT), Graduate School of Business	Lecturer	Cape Town	16/03/2010

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