

Race-based economic policies of the South African government

1. Background

The right to enjoy the fruits of one's labour is a fundamental right. It is this universal right that gives a person dignity, pride, and hope for a better future. The right to work is as basic as the right to breathe. Perhaps the pinnacle that any person can achieve in his or her lifetime, is for their work to have been of some significance. More specifically, to make a difference in the lives of others (i.e. their family, community and country).

One example of the above is when an individual conceptualised an idea, developed a business from that idea, and provided not only a new product or service to society, but provided a job to another person. This is one the best forms of self-actualisation that exists.

It is immoral for any society to inhibit its members' ability to enjoy the full benefits of their work and entrepreneurial innovations. One can accept that in societies where this right is negated, other rights will eventually be jeopardised as well.

When commenting on the race-based economic policies initiated by the South African government, it is done with full appreciation of South Africa's divided and violent history. Given the suffering and sacrifices made by so many to attain basic human dignity and freedom, it seems correct to uphold those principals of non-racialism and equality, for all South Africans.

It is against this background that the South African government's report to CERD on the 5th of December 2014 should be considered.

2. Introduction

It is a lamentable stain on the reputation of South Africa that the country has not been able to address the immense poverty and increasing rates of unemployment. Understandably, this has increased political and social pressure on the government to alleviate the plight of the poor.

It is unfortunate that to date, legislators have failed to enact truly transformative open market policies that would grow the economy in an inclusive way. This would have addressed poverty and unemployment levels.

The political reaction to this growing crises has been the demand to enact ever greater measures aimed at redistributing wealth and assets. These redistribution policies are not class-based, but race-based. These policies affects a very wide range of issues from land ownership, education, the labour market as well as business ownership.

Increasingly the colour of a South African's skin is determining not only the opportunities afforded to him or her, but also whether they will be allowed to advance in society. This is driven by legislation and policy. One such set of the policies are the so-called Broad Based Black Economic Empowerment legislation (BBBEE) and codes.

This commentary will briefly outline the real impact of these policies on ordinary citizens and thereby indicate the differences between the SA governments CERD report and the reality.

3. The CERD report

The comments contained in this document are based on a number of claims and assertions made by the South African government as in the CERD report. Article 1, C (Special measures taken to safeguards the rights of racial or ethnic groups) of the report states that:

- BBBEE is a moral imperative;
- BBBEE is a pragmatic economic growth strategy aimed to realise South Africa's full economic potential;
- BBBEE was launched to redress the inequalities of apartheid; and
- BBBEE does not aim to take wealth away from white people and give it to blacks.

These are broad and sweeping statements. It simplifies the impact of BBBEE policies and illustrates the ignorance on the part of the state to fully comprehend the immense negative social, political and economic impact BBBEE has had on South Africa.

The said legislation consists of a set of meticulously designed measurements that measure the racial composition of firm activities on every level. It utilises apartheid style racial categories and has generally only benefited a small politically-connected elite.

Scrutiny of the mechanics of BBBEE and how it practically impacts a typical South African business will underline the extent to which the South African government has introduced new forms of race-based discrimination.

3.1 The practical implication of BBBEE requirements

The South African government represents a major part of the South African economy. Through various licences, tenders and long term supply contracts, and not only legislation, it has the ability to directly influence major sections of the country's economy. As stated in the report, it seeks to use this influence as leverage to assert its BBBEE policies.

An older version of the BBBEE score card is described in the report. The score card indicates the various sections of corporate activities to be impacted by the BBBEE protocols. Practically, these regulatory codes demand that in order for companies to qualify for business from the state:

- Firm ownership should have a minimum of 26% black shareholding.
- Between 60 and 88 percent of the firm's executive management function must be black.
- An employment equity level at which 60-88 percent of employees must be black.
- Supplier's development, skills development, enterprise development and socio-economic development are other areas that demand race-based expenditure.
- It must instil a preferential procurement policy that aims to source 80% of supplies from black-owned companies.

Put differently government would ideally do business with firms under the following conditions:

- Where less than 12% of the business is managed by whites,
- Where less than 12% of the firm's employees are white,
- Where the specific firm only buys 20% of its supplies from whites owned business. In this instance any price, quality and service requirements are viewed as secondary.

In order for a company to qualify, it must at least gain a 100% BBBEE status. Once achieved, the company is expected to hold in place the specific racial quotas. If, for example, the black owner would sell off his/her shares and the black shareholding dwindle below 26%, the company would lose its BBBEE status. These companies would then have to restart their empowerment initiative again. As a consequence this is an open-ended process that recognises no previous investments made in BBBEE. As a result, the BBBEE process cannot be seen as a short term remedy but has clear characteristics of a long term race-based economic policy.

The implication of these regulations is that communities, which fall out of the preferential racial categories, are economically severely limited. If every section of the South African economy is to reflect the racial demographics of the country, it will practically ring-fence the economic opportunities available to the newly excluded race groups. This will eventually create a monopoly on supply of goods and services.

3.2 The economic cost

This submission agrees with the comments contained within Solidarity's analysis of the economic cost associated with BBBEE and other race-based policies.

3.3 The race-based discrimination

The argument that a society's economic actors should take responsibility for the externalities created by their economic activities is not new. It is important to understand that where externalities had always referred to specific negative consequences of business activities, it has recently developed a more general application. This idea has crystallised into the promotion of initiatives such as the "triple bottom line", etc.

The SA government's race-based empowerment policies have been cloaked as an externality. As a result, it describes BBEEE as "*a moral imperative*".

The government however fails to see the clear moral contradiction. On the one hand it claims that BBBEE does not aim to take wealth away from white people and give it to blacks. Yet, it aims to ensure that the economy is representative of the demographic composition of the country. As a result it enforces policies that actively seeks to directly transfer ownership from one racial group to another.

Perhaps the best way to describe the effect BBBEE has had on the life of ordinary South Africans would be to consider two practical examples. These examples are i) Shell Company service stations and ii) small and medium manufacturers.

3.3.1 Shell Company

The oil and gas company, Shell, has a significant footprint of service stations throughout South Africa. Locally it is well known that Shell was at the forefront to attain shale gas exploration licenses from the South African government. As part of Shell's attempt to obtain exploration licences they had to adhere to the governments BBBEE policies.

Much like other fuel distributors, Shell's network of service stations are owned by small private businesses. These service stations are either franchised, rented out or wholly owned by these entrepreneurs. A significant portion of service stations are owned or managed by whites. The way Shell chose to attain a higher BBBEE status was to strong-arm current owners, concession holders and franchise holders to sell 100% of their business to prospective black

buyers. If they refused, the company would stop supplying fuel to that specific service station or refuse to renew its supply contracts with the white business owners.

3.3.2 Small and medium manufacturers

South Africa's manufacturing base has diminished considerably since 1994. Partly due to international competition and stringent local regulations, many small and medium sized manufacturing companies struggle to survive. These manufacturers do employ a considerable amount of skilled and semi-skilled workers.

One way through which the South African government decided to support these firms was through a complex system of grants, incentives and subsidies. Hundreds of manufactures (black and white) have now become dependent upon state support.

It has been stated numerous times by the South African government that it aims to establish a 100 black industrialists. The broadening of the country's manufacturing base would be a welcome development. However, the establishment of these new industrialists would be achieved through the application of the broader empowerment regulatory framework, specifically the newer BBBEE codes.

These small family-owned manufacturing firms, previously attained acceptable BBBEE status, but would lose that empowerment status. The reason being that owners are forced to transfer significant ownership and majority managerial power over to new black shareholders. If they do not comply, they would lose their state subsidies and be forced to close down the business.

Estimates, from industry role players, are that up to 85% of these small and medium sized manufacturing companies would have to close. Ironically those effected the most would be the factory workers of which the majority are black.

4 Conclusion

The CERD report argues that BBBEE provides economic support to members of previously disadvantaged groups. What it does not state is the mechanisms and tactics used to achieve this. Rather than growing the economy and ensuring opportunities to all its citizens, the government aims to deprive hardworking business people of their very livelihood. All this because they are of the wrong racial category.

These race-based policies have only created a new exclusive elite. Whilst South Africa's poor are left jobless, the result of BBBEE has been the emergence of a new Russian type Oligarchy.

This is an injustice!

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