IS BLACK ECONOMIC EMPOWERMENT UPLIFTING SOUTH AFRICA’S PREVIOUSLY DISADVANTAGED COMMUNITIES AND PEOPLE?

A Study of the Impact of the Implementation of the BBBEE Code of Good Conduct by the Top 40 JSE Listed Companies in South Africa

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This thesis is not confidential. It may be used freely by the Graduate School of Business.

I wish to thank the management and staff of the Public Investment Corporation for the support and guidance provided to me while I conducted this study.

I certify that except as noted above the thesis is my own work and all references used are accurately reported in footnotes.

Signed:
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ABSTRACT

This study evaluates the effect of black economic empowerment on the groups of South Africans that were denied certain opportunities historically. It uses the framework in the form of the Codes of Good Practice to assess the level of compliance by the country’s largest corporations with the principles of black economic empowerment. The results show that the levels of compliance are very low in respect of each element assessed. As the result, it is concluded that the principles, in their current application, are not adequately benefiting the target group.

KEYWORDS: Black economic empowerment, previously disadvantaged individuals, preferential procurement, skills development, enterprise development, socio-economic development, Codes of Good Practice
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1 INTRODUCTION

1.1 Research Area and problem

Upon obtaining its freedom from minority oppression, the South African Government identified a need to economically empower the majority of its citizens due to the previous regime having excluded to a large extent people who have come to be defined as black, from economic participation. These people were also largely prevented from economic and intellectual growth. Given that Census 1996 estimated the total population at 40.5 million; it meant that the plan had to cater for the economic empowerment of approximately 80% of the population. This 80% came to be known Previously Disadvantaged Individuals (PDI’s) or more recently Historically Disadvantaged South Africans (HDSA’s) and one of the new governments key challenges became transforming the economy of South Africa so that PDI’s would become empowered. This empowerment programme came to be known as Black Economic Empowerment (BEE). The dti’s paper South Africa’s Economic Transformation: A Strategy for Broad-Based Black Economic Empowerment (1995) defined the objectives of BEE as follows:

• “increasing the number of Black people who have ownership and control of the economy;

• Increasing Black ownership and control in priority sectors such as agriculture, mining, minerals and metal beneficiation, clothing and textiles, automobiles and components, aerospace, information and communications technology, chemicals, cultural industries including media, film, music and crafts, as well as high value-added services;

• significant increase in the number of new Black and new Black-engendered enterprises;

• significant increase in the number of Black people in executive and senior management positions;

• increased ownership of economic activities vested in communities and broad-based groups;

• increased ownership of land and productive assets by Black people;

• accelerated and shared economic growth in South Africa; and

• increased income levels of Black people and reduced income inequalities.”
It is important at this stage to define the key terms related to the area of empowerment. The dti Strategy Document (1995) defines broad-based BEE as “an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the numbers of black people that manage, own and control the country’s economy, as well as significant decreases in income inequalities.” This definition was later enhanced by the Broad-Based BEE Act no. 53 of 2003 to “the economic empowerment of black people, including women, youth, people with disabilities and people living in rural areas through diverse but integrated socio-economic strategies that include, but are not restricted to –

a) Increasing the number of black people that manage, own and control enterprises and productive assets;

b) Facilitating ownership and management of enterprises and productive assets by communities, workers, co-operatives and other collective enterprises;

c) Human resource and skills development;

d) Achieving equitable representation in all occupied categories and levels in the workforce;

e) Preferential procurement; and

f) Investment in enterprises that are owned or managed by black people.”

It can therefore easily be gauged that the BBBEE Act (2003) definition aligned very closely with the objectives of BEE as set out in the dti Strategy Document (1995). This definition formed the basis for the development of the Broad-Based Black Economic Empowerment Act (53/2003): Codes of Good Practice on Black Economic Empowerment (2007) by the dti. These Codes (2007) provided the guideline for implementing BBBEE and went further to providing a generic BBBEE Scorecard by which entities could rate their ability to implement the requirements of the BBBEE Act (2003). It would appear however that the provision of a generic scorecard has lead to the implementation of BBBEE being reduced to a scoring exercise while the spirit behind the BBBEE Act (2003) remains misunderstood.

It is also evident that the definition of the term was strongly enhanced to be more encompassing yet at the same time, more limiting given the experiences that government had encountered in its
attempts to implement BBBEE in the years between 1995 and 2003. These experiences as well as the steps government took to change the direction of BBBEE will be considered later in this paper.

As stated previously, the focus of BBBEE is to empower PDI’s however; the term itself was not defined in the Constitution or in any of the reports or legislation pertaining to BBBEE. The Department of Health, in a regulation published in 2003 defines PDI as “persons who were previously disadvantaged by unfair discrimination and who, in terms of section 9(2) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), may be protected and advanced to achieve equality and, for the purposes of these regulations, includes the following designated groups:

(a) Men of African, Asian or coloured descent;
(b) women, irrespective of descent; and
(c) disabled persons, irrespective of descent”

This given that the BBBEE Act (2003) defines black people as “a generic term which means Africans, Coloureds and Indians” would imply that PDI’s are black people and, women and disabled people of all ethical and racial backgrounds.

As the result of being excluded from economic participation, most often PDI’s had not been allowed to progress through an organisation or industry to the same extent as their white male counterparts. They had also been rewarded with significantly discounted remuneration relative to their white male colleagues. As the result, they had been denied the opportunity to earn sufficient income to allow them to save adequately to meet future financial obligations be this in the form of a deposit on a house, education for their children or retirement. In a sense PDI’s were denied any opportunity to improve their quality of life or attain any form of financial freedom.

As can be seen from both the objectives of the dti Strategy Document (1995) and the BBBEE Act (2003) definition of BBBEE, the spirit entwined in the concept of BEE would appear to be to create a society in which all people are able to work towards achieving a level of financial self-sustainability that provides them with a means to fulfil their basic needs and thus removes the burden placed on government to meet the gap between people’s income and the poverty line. I therefore consider the thinking behind the legislation to be noble however the implementation thereof has generally attracted criticism. The reason for the criticism appears to stem from
publicised implementation having only empowered a few black individuals and elevated them to the status of the financially elite. This is what is referred to as the “first wave” of BEE transactions by Jack (2007).

Following on from the dti Strategy (1995) and BBBEE Act (2003), the dti issued the Broad-Based Black Economic Empowerment Act (53/2003): Codes of Good Practice on Black Economic Empowerment (2007) (Codes). This guideline appears to attempt to rectify the misgivings of earlier empowerment initiatives in that it attaches a weighting to each aspect of BBBEE referred to in the BBBEE Act (2003). By doing so it attempts to direct the BBBEE initiatives so that these are not too heavily concentrated on specific aspects of the BBBEE Act (2003) while ignoring other aspects. As much as the transfer of company ownership to PDI’s may have been the focus of initial BBBEE initiatives, this aspect carries a weighting of only 20% in terms of the generic scorecard. Thus even black owned enterprises do not by virtue of ownership comply completely with the Codes.

The problem I intend to tackle with my research is to ascertain whether this populist view that only a few black individuals benefitted from the promulgation of the BBBEE Act (2003) holds true for the majority of empowerment initiatives and for BBBEE in general, or whether the execution of BBBEE by the Top 40 JSE Securities Exchange (JSE) listed companies has created the opportunity for a large number of previously disadvantaged South Africans to progress financially and become empowered to improve the quality of their lives.

1.2 Research questions and scope

The title of this paper refers to “uplifting” of previously disadvantaged communities and people. As the “communities and people” referred to are those that fall into the definition of PDI, going forward they shall be referred to as PDI’s. Further, it may appear that the term “uplifting” is vague. The Oxford English Dictionary defines “uplift” as “raise” or “being raised; mentally elevating influence”. Further Wiktionary.org defines uplift as “to raise something or someone to a higher physical, social, moral, intellectual, spiritual or emotional level.” This aligns to the expected outcome of this paper and that is to determine whether PDI’s as the result of the government’s focus on BBBEE have enjoyed an economic improvement to their lives. The improvement in the social aspect of their lives it is assumed would flow from the economic improvement. The specific determinants will be dealt with later in this section and the tests to ascertain whether PDI’s have been uplifted will be detailed under the Research Methodology section.
If one is to rely on the popular media, it would appear that this research is pointless as the answer is already abundantly clear. The focus of the media has been on empowerment transactions wherein a few carefully selected, and politically well connected individuals, have been invited to participate in transactions that have resulted in approximately 25% ownership in a particular entity being transferred to different groupings among these individuals. The 25% stems from sector charters which various government departments developed in consultation industry players for those sectors of the economy that fell under their control. This was later formalised as the compliance target in terms of the Codes (2007). This was government’s way of intervening in driving transformation in industry that did not appear to be forthcoming. Jack (2007) refers to these transactions as the “first wave” of BEE.

Although holdings of varying percentages were sold to black individuals, control was not always ceded. The Codes (2007) attempt to rectify this earlier shortcoming by attaching a compliance level of 40% to 50% of PDI management control to the BBBEE Scorecard. Further, the strongest criticism of these transactions was that a few, already economically empowered individuals became extremely wealthy and South Africa witnessed the emergence of a black elite. From the definition of BBBEE, it is evident that this was not aligned to government’s strategy of alleviating the problems around economic empowerment that had been created by the previous regime. As alluded to previously, this could have been the reason for the definition of BBBEE changing from the one arrived at by the BEE Commission to the one that was legislated in the BBBEE Act (2003). This “first wave” of BEE was a quick fix approach that was taken by companies in an attempt to not fall foul of then current and forthcoming legislation and was fortunately in many instances not sustainable. Given that the same individuals were approached for different transactions, they often took profits by selling their stake and moved on to the next transaction. As the result, the original BEE transaction was unwound and companies ended where they had started. As these transactions were limited in terms of its ability to empower, one does not need to do any further research to conclude that it failed to achieve the objective and did not uplift PDI’s.

It became apparent in what Jack refers to as the “second wave” of BEE transactions that corporate South Africa, and their existing shareholders, had realised that there was no quick fix when it came to unwinding decades of preferential ownership. Transactions were then structured so as to be more inclusive of a broader base of PDI’s and this took different forms. There were trusts to whom the required stake was sold and this trust held shares on behalf of employees that were PDI’s. There
were transactions done where members of the poorest communities in areas where the company operated where allowed to purchase shares which were paid for via future dividends. There were also empowerment transactions which were opened to the general public wherein any PDI could subscribe for shares in a particular empowerment transaction. As the result, ownership by PDI’s became more diluted. However, only in instances where the empowerment shareholders are represented by a body that is granted seats on the company’s board of directors do the participants in the transaction have any control in the company. This control is necessary in order to exert influence and drive the transformation of the company at all levels.

Having engaged in the empowerment transaction, the company may have chosen not to execute any of the other aspects of the BEE definition and would have therefore limited their impact on the larger society as well as the ability of the PDI ownership to have enforced any development of staff within the ranks of the entity.

In this regard, the most recent approach to BBBEE, or as Jack (2007) refers to it, the “third wave”, is the focus on preferential procurement. This is aimed at developing black entrepreneurs and creating a catalyst for growth of black businesses. The initial stimulus came from government developing requirements that public sector spend should primarily focus on procuring product from black owned or BBBEE compliant suppliers. Given the quantum of government spend annually, this should provide sufficient motivation for companies to transform to the extent that they are aligned with the requirements of the BBBEE Act (2003). The requirement has gone further as in determining the BBBEE scorecard of a company, the focus does not end with the company itself but goes further to interrogate the company’s suppliers and their compliance with the BBBEE Act (2003) as well. The anticipated result of this drive is that black South Africans need not be dependant on white owners of business to provide them with employment but are rather able to start and develop their own businesses. As opposed to other attempts at BEE, this approach should also be more sustainable for as long as the entrepreneur focuses on their business and provides good quality product and service, the demand from government will continue.

This “third wave” coupled with the recent publication of the Codes (2007) provides a means by which to test the effectiveness of BEE and whether it is uplifting PDI’s by providing them with opportunities to progress financially. In order to answer the research question, I intend to review the top 40 JSE listed companies and determine the extent of their compliance with the Codes (2007). However, as alluded to earlier, there is the risk that the introduction of a generic scorecard by the
dti may have resulted in the execution of the principles of the BBBEE Act (2003) being converted into a scoring exercise. Further, the sector charters pre-date the Codes (2007) and these are not necessarily aligned. To base the research on the scores obtained may produce an inaccurate result. I therefore intend to use the aspects of the generic scorecard defined in the Codes (2007) to review the underlying information for each of the Top 40 companies to determine their success in meeting the objectives of the BBBEE Act (2003). The Codes (2007) define the scorecard in terms of the categories, weightings and compliance targets contained in the table below (Consulta Research (2007)).

*Table 1: Breakdown of the Codes of Good Practice*

<table>
<thead>
<tr>
<th>Element</th>
<th>Weighting</th>
<th>Compliance Targets</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ownership</td>
<td>20%</td>
<td>25% + 1</td>
</tr>
<tr>
<td>Management Control</td>
<td>10%</td>
<td>40% to 50%</td>
</tr>
<tr>
<td>Employment Equity</td>
<td>15%</td>
<td>43% to 80%</td>
</tr>
<tr>
<td>Skills Development</td>
<td>15%</td>
<td>3% of payroll</td>
</tr>
<tr>
<td>Preferential Procurement</td>
<td>20%</td>
<td>70%</td>
</tr>
<tr>
<td>Enterprise Development</td>
<td>15%</td>
<td>3% (NPAT)</td>
</tr>
<tr>
<td>Socio-Economic Development</td>
<td>5%</td>
<td>3% (NPAT)</td>
</tr>
</tbody>
</table>

Source: Consulta Research (2007) (adapted)
The approach would be to review the publicly available data on each of the Top 40 JSE listed companies, and draw from this data, information pertaining to each element of the scorecard. I will not necessarily use the weightings and scoring mechanisms provided by the Codes (2007) as the end point of the investigation however. My reasoning for this as stated previously is a concern around their validity. Instead I will toExtent possible interrogate each aspect and draw a conclusion around this. Further, I will not delve into all the detail provided on each aspect by each company but rather conclude at a high-level. For example, if a large number of companies are employing white women to meet their employment equity requirements, I would conclude that this is largely the case without providing all the available information in this regard. To do so would merely be a repetition of already available information and add little value to the argument.

1.3 Research Assumptions

As one is unable to cover every facet of a particular topic in just one research paper, one is forced to make certain assumptions at the beginning of the exercise. The first such assumption is that should all the identified requirements selected for testing be met, it would be assumed that PDI’s are either being uplifted or not. To elaborate on this, should the characteristic for testing be indentified as corporate spend and the minimum limit for this be set at 35% in the current year on black owned or black empowered suppliers, then if the share of corporate meets this minimum requirement, it would be assumed that there has been uplifting of PDI’s. Should this appear to be unconvincingly implied however, any other available characteristics will also be tested. It may however be too onerous to investigate how these funds paid to black owned or black empowered companies are applied if at all possible. Following on from this assumption, the results obtained will be applied to the objectives and definition of BBBEE. If this test evidences compliance with the definition or objectives, it will be assumed that the PDI has been uplifted.

Another assumption in this regard would be to assume no fronting. Fronting, as defined by Jack (2007), is the “tendency to use non-executive directorships as hollow appointments purely for compliance purposes.” I will further expand that definition to include the use of non-active black partners in a business venture merely to meet the BEE requirements in order to obtain work. I will assume that this is not practiced in any of the sample drawn as again, to investigate true active interest or the level of participation by non-executive directors is too onerous if at possible. Given that there have been accusations of both these scenarios in the media, this is a brave assumption but one I consider necessary.
It has also been assumed that the companies identified have disclosed all information pertaining to BBBEE initiatives in the annual reports and in their sustainability reports. Although active searches of company websites will be performed to obtain any additional information, the two reports mentioned will largely form the basis of my review. However, this may result in a false truth emerging as only compliant companies may choose to disclose such information and the false conclusion that a higher level of compliance exists than actually does may be arrived at. The converse is also true.

Further, given that the Codes (2007) are fairly recent, companies may have chosen a non-aligned path to implementing BBBEE. Cognisance will have to be taken of this and where this is identified it would be disclosed but may still negatively impact the outcome of the review.

A further assumption will be that any interest in one of the companies identified that is held by a state-owned enterprise (SOE) will be assumed to be BEE in nature as either government funds, or the funds of government related entities, would have been used in acquiring the shareholding. Further, it would mean that the SOE, which should have the interests of the broader public at heart, would engage based on the influence afforded to it by its shareholding in a manner that upholds the spirit of the BBBEE Act (2003).

1.4 Research Ethics

All research undertaken will be aligned and comply with the principles identified in the MBA Research Guide and the Commerce Faculty Ethics in Research Policy. Specifically, all data, processes, policies and principles encountered during the course of conducting this research will be treated with the utmost confidentiality and used for the benefit of the paper. No part of this research will be used commercially with the objective of securing personal financial gain.

This research will be conducted in line with the principles set forth by Bryman and Bell (2003) and undertake:

- Not to cause any harm to participants
- Ensure that any information used will be done with the consent of the contributor which is implied given that the information is publicly available
- Will not invade the privacy of any participant
- Will undertake not to deceive any contributors in anyway
- All data sourced/obtained will be treated with the utmost confidentiality
- Any conflicts of interest with my current position and/or company will be dealt with swiftly and appropriately

Should I at anytime be uncertain of whether an event that has occurred or is likely to occur transgresses the principles listed above, I will immediately revert to my supervisor or in his absence, MBA Administration.
2 LITERATURE REVIEW

2.1 Discussion

The basis of BEE stems from various pieces of legislation, sector charters and guidelines that have been promulgated or published over the last fifteen years in South Africa. The techniques of introducing BBBEE have been both direct, as is the case in respect of the transfer of ownership, and indirect, as is the case with the implementation of procurement initiatives. Before assessing the success of the strategy, one has to understand from the literature available the various forms empowerment transactions take. Although at a literary level, it may emerge that certain forms are more attuned to achieving BBBEE, it is not my intention to provide any direction as to which method or form is best suited. I may however, depending on the strength of the arguments provided in the literature, draw a conclusion that certain forms are more aligned to achieving upliftment than others.

Although there is legislation available in this subject area, the phenomenon is a very South African one, and we are therefore almost entirely limited to literature produced in South Africa. This stems from the overriding objective of BBBEE to transform the South African economic landscape that has been tarnished as the result of the racially focused policies of the previous regime. As the result, the availability of literature on this topic is very limited. This limitation is further amplified by the specific nature of the research topic. Further, although almost every South African holds a view on BBBEE, there are a few published experts in the field and my focus has been on these writers and supported further by other research papers.

The Constitution of the Republic of South Africa of 1996, in section 217, was possibly the first step taken in legislating transformation in the conduct of business in South Africa towards the empowerment of PDI’s. This section states:

1) When an organ of state in the national, Provincial or local sphere of government, or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.

2) Subsection (1) does not prevent the organs of state or institutions referred to in that subsection from implementing a procurement policy providing for –
a) categories of preference in the allocation of contracts; and
b) the protection or advancement of persons, or categories of persons, disadvantaged by unfair discrimination.

3) National legislation must prescribe a framework within which the policy referred to in subsection (2) may be implemented.”

Other departments in time took this a step further like the Public Finance Management Act of 1999 and Treasury Regulations that made it a requirement of all departments and entities under the control of National Treasury to have a procurement policy that aligned to the Constitution. This requirement was further cemented in the promulgation of the Preferential Procurement Policy Act of 2000 which applied rules related to the amount of spend (Jack, 2007). The thinking behind all these documents followed the same vein in that it was recognised that the sheer magnitude of government spending was sufficient to drive transformation in the private sector through public spending.

Mohamed & Roberts (2008) discovered evidence to the contrary in their study. Given that the twenty three companies they surveyed supply to government, mining or petroleum sector, all of which either had legislation or sector charters in place, these had appeared to have had no impact on driving transformation in these supply chain linked industries. It would appear therefore that indirectly driving transformation through preferential procurement policies has not been effective in the metal and engineering industries. Mohamed & Roberts (2008) found that this weak link between preferential procurement and transformation was even weaker in relation to foreign owned suppliers. It was interesting to read however, that a number of companies in these sectors sourced more than 20% of its product from BEE suppliers. However these suppliers predominantly provide non-technical product and services which again highlights a severe lack of support and development of black people in respect of specialist industry skills.

Hoffman (2008) was also critical of the BBBEE Act (2003) in that it only makes it mandatory for government and government-controlled entities to comply with preferential procurement and that private sector were given the option to voluntarily comply. The intention gauged from Jack (2007) and Mohamed & Roberts (2008) was that without being too imposing, government was attempting to create a link between government spend and private sector transformation. However, Mohamed & Roberts findings support Hoffman’s view that this link is weak and ineffective. Her criticism of
BBBEE however appears to be unfounded in that she is likening the result of what Jack (2007) termed the “first wave” to the outcome of BBBEE which is a common occurrence.

The results obtained by Mohamed & Roberts (2008) and Hoffman (2008) correlate to the findings of this study. The tests performed in this study have evidenced that the drive to indirectly empower using the Preferential Procurement Policy Act (2000) has failed because South African corporations are still ignoring this requirement to a large extent. Only one company in the sample tested was complying with the preferential procurement requirements. Further, as driver to transformation within the private sector, the Preferential Procurement Policy Act (2000) has also failed as the tests of compliance with the BBBEE Act (2002) via the tools provided in the Codes (2007) has evidenced that compliance among South Africa’s Top 40 JSE listed companies is more the exception than the norm. This leads to the conclusion that corporations do not feel pressured to transform.

According to Jack (2007), there were three imperatives for driving transformation. The first was a moral issue which seeks to correct the imbalance created by the apartheid government which had not permitted blacks to enjoy the benefits of economic participation. The second imperative was a social issue which seeks to create political stability by improving the lives of black people especially those that currently live below the poverty line. It can not be expected that these disadvantaged individuals will continue to support the capitalistic growth of the current elite while struggling to feed their families and living in sub-standard conditions. The third imperative is economic growth. The current unemployment of 21.9% translates into 1/5 of the country’s capacity being un- or underutilised. This retards our ability to reach our growth targets and as the result the entire country is achieving a less than optimal growth rate.

To assist with adherence to the government’s procurement policy and to aid with transformation and ultimately the development of black staff, the Employment Equity Act of 1998 (EE Act) and the Skills Development Act of 1998 were promulgated. These acts sought to guide and drive the transformation of South Africa’s work force in a more equitable spread of black and white staff across all spheres of companies. However, the downfall of the EE Act and the markets perception of legislation that was to follow the completion of the BEE Commission was that corporate South Africa acted too hastily and without sufficient foresight. Black staff were placed in token positions to create the façade that companies were implementing what they perceived as government wanting. Too often these individuals failed due to their being inadequately prepared for their new
role, or were not given any real responsibility and therefore merely window-dressed the real control of the company. As the result employment equity was viewed as a failure.

Mohamed & Roberts (2008) also found that employment equity requirements were to a large extent ignored within firms in the metal and engineering industries and the lack of surveillance and monitoring appeared to increase the complacency in respect of compliance. This was further echoed at management level where 80% of managers were white males. Hoffman (2008) is also critical of black ownership and management and claims that the principle is based on it creating “artificial demands to fill numeric quotas” and that the pool of managers from which to choose is very limited given apartheid policies.

However, Arya, Bassi & Phiyega (2008) found that in the case of ABSA, this was not so and that the company was transforming its workforce to align with the requirements of the EE Act (1998). Arya et al (2008) were able to report that in 2006 ABSA’s staff complement was constituted as follows:

- 56% of all employees are black
- 22% black senior managers
- 28% black middle managers
- Black junior managers account for 35% of the class of manager

Hoffman (2008) is not incorrect in her judgement; however, she blames the mechanism for poor implementation by white-owned business. Mohamed & Roberts (2008) also blame government for the lack of surveillance and monitoring which they view as the impediment to compliance. Without having tested their concerns during this study it is not possible to empirically support or refute their claims. However the results of this study do support their findings that the EE Act (1998) has not been successful in driving the equitable transformation of the workforce. Although Arya et al (2008) was satisfied that their findings evidenced the success of the EE Act (1998), this study has found that the use of overarching statistics is misleading in that it combines both management and non-management levels of staff which hide the lack of an adequate number of PDI’s at management level. Further it camouflages the preference being given to white women especially in the financial services sector.
I further agree with Hoffman (2008) that the pool of managers from which companies have to choose is very limited but the problem here does not lie with government but rather with the private sector who are failing to adequately comply with the skills development element of the Codes (2007) and are therefore unable to grow and develop black staff to fill these roles.

With regard to the ownership aspect of BEE, companies hastily committed to empowerment transactions with a few select individuals that they perceived as being politically well aligned. This is referred to as the “first wave” of BEE by Jack (2007). Numerous such BEE transactions failed to transform companies and thus failed to achieve what government had set out to achieve. A number of deals were unwound as BEE partners took profits and committed to the next transaction. This resulted in the emergence of an elite black group within South Africa who became very wealthy in a short space of time.

In agreement with the implicit view expressed by Jack (2007), Hoffman (2008) describes the empowerment initiatives prior to BBBEE as “failures”. She goes further to describe the current transformation policies as being racist in that they are race dependant and accuse the government of once again instilling racial barriers. Hoffman (2008) claims that blacks have become disempowered due to the transformation drive being flawed in that it focused on black ownership and management, compliance with BBBEE is not mandatory, the emergence of the black elite and “the continuation of a small class of economic dominance”.

She is quite correct that the “first wave” failed in that it produced a small group of black elite, but the BBBEE Act was specifically designed to empower more PDI’s without any of them reaching the wealth heights achieved during the “first wave”. This failing is also true of Hoffman’s (2008) fourth criticism of government’s transformation efforts which is that it will continue to create and maintain a small class of economic dominance. As was identified during this study, compliance with the ownership element of the BBBEE Act (2003) is still inadequate however the drive now is focused on broad-based empowerment as opposed to the earlier narrow based empowerment initiatives referred to by Hoffman.

Following on the report of the BEE Commission, the dti Strategy Document was published. This was the first government document that highlighted the inequalities of the past apartheid regime and exhibited government’s thinking as to how the implementation of BBBEE could remedy this. The document also detailed the objectives of BEE as follows:
• “increasing the number of Black people who have ownership and control of the economy;

• Increasing Black ownership and control in priority sectors such as agriculture, mining, minerals and metal beneficiation, clothing and textiles, automobiles and components, aerospace, information and communications technology, chemicals, cultural industries including media, film, music and crafts, as well as high value-added services;

• significant increase in the number of new Black and new Black-engendered enterprises;

• significant increase in the number of Black people in executive and senior management positions;

• increased ownership of economic activities vested in communities and broad-based groups;

• increased ownership of land and productive assets by Black people;

• accelerated and shared economic growth in South Africa; and

• increased income levels of Black people and reduced income inequalities.”

It went on further to define BBBEE as “an integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the numbers of black people that manage, own and control the country’s economy, as well as significant decreases in income inequalities.” Further, the dti document proposed the following key principles as detailed in Jack (2007):

• “The policy should be broad-based

• All enterprises in South Africa should be able to participate in the economic transformation

• The policy should be based on the highest standards of good corporate governance

• The policy should form part of the country’s growth strategy, so that economic growth and BEE are complementary

• New partners of wealth accumulation should be promoted

• Deracialisation of the economy should be achieved

• The policy should promote the production of value-added goods and services”

All the documents referred to above finally culminated in the promulgation of the BBBEE Act of 2003. What this Act sought to do was combine the thinking and recommendations of the
legislation, white papers and reports that preceded it, as well as take into consideration the actions in response to previous documents and provide a comprehensive guide to corporates and how to engage in transformation. It was further supported by the promulgation of sector charters that provided even further guidance on transformation.

Horwitz et al (2002) in Arya, Bassi & Phiyega (2008) further confirms that the policy of apartheid which the previous regime promulgated through legislation led to an under-skilled workforce. Arya et al (2008) further indentifies that the Financial Sector Charter (FSC) focuses six perspectives; viz. human resource development, procurement and enterprise development, access to financial services, empowerment financing, ownership and management control and corporate social investment. It is clearly evident from this that the FSC has translated the requirements of the legislation, reports and guidelines discussed above into a practical implementation guideline which can assist financial services companies in transforming their operations to empower PDI’s.

In order to ensure that transformation strategies are successful, companies need to exhibit the seriousness of their intentions and such initiatives must be supported at highest governance levels within the company. ABSA, as detailed in Arya et al (2008), went so far as to create a Group BEE Division which reported directly to a Group Executive Committee (EXCO) member and a Group EXCO sub-committee chaired by the Chief Operating was the transformation oversight monitor. This exhibited that the company was serious about and intent on transforming to meeting the requirements of the BBBEE Act. This however did not mean that there was no resistance to transformation, and as detailed by Arya et al (2008), ABSA introduced a communication and education drive to allay such resistance. ABSA then tackled each transformation perspective separately while still under the oversight of the transformation sub-committee.

Transformation committees are now fairly common place and unlike in the ABSA example, most companies have now constituted these as sub-committees of the Board. Nonetheless, even with these committees in place, the speed of transformation and the level of compliance with the Codes (2007) are still inadequate.

Arya et al (2008) are able to evidence the results of ABSA’s approach to embracing transformation with the following statistics for 2006:

- 43% of their total procurement was from BEE suppliers
• Introduction of an incubator fund to finance black entrepreneurs
• Opening of 681,000 new accounts through increasing their footprint nationally
• Financing over ZAR 12bn in empowerment transactions
• Sale of 10% of the company to a black consortium comprising 1.2 million beneficiaries
• Spending 0.6% of post tax operating profit on healthcare, education, environment, etc

It would appear at a prima facie level that ABSA’s embracing of transformation via the FSC and their genuine understanding of government’s intention and objectives in respect of BBBEE has proved very successful in achieving this goal.

This study, although not refuting the findings of Arya et al (2008), did not take comfort from these numbers without applying these to some frame of reference which in this case was the targets prescribed by the Codes (2007). Having done so, it would appear that the view maintained by Arya et al (2008) that ABSA was the prime example on implementation of the BBBEE Act (2003) does not hold true and that the organisation, like many of its counterparts, is far from compliant.

Unfortunately, not all South African companies accept the need for transformation or the dependency on them to make it work which resulted in Mohamed & Roberts (2008) finding that the response by companies in the metal and engineering industries has been rather to contest transformation. They seem to blame some of the resistance by these industries to transformation on the lack of a sector specific charter. As the result, players in these industries have had to adopt transformation principles directly from legislation and this has made implementation more challenging. Given that these are two of South Africa’s largest sectors in which twenty-five locally owned companies operate, it is concerning that Mohamed & Roberts (2008) found that only six companies were black-empowered. They further found that the Boards of all twenty-five were still dominated by white males with this race and gender group accounting for 76% of board membership. All these factors lead Mohamed & Roberts (2008) to conclude that the identified drivers of transformation were indeed weak links to achieving empowerment of PDI’s.

Like ABSA, AngloGold in 2002 stated its support for transformation expressly indicating that it would be better for all South Africans (AngloGold Annual Report 2002 in Hamann, Khagram & Rohan (2008)). However Hamann et al (2008) also go on to state that in the negotiation between government and the private sector over empowerment initiatives (I assume this to refer empowerment transactions involving transfer of ownership to black people), the focus tends to be
on each party drawing the most economic benefit it can with little to regard to the poor (PDI’s). Based on the types of BEE transactions we witnessed during the early years of transformation, one would be hard-pressed to find a convincing counter argument. However, the “first wave” is now over, and in the “third wave” as reflected in the BBBEE Act the emphasis is definitely not a adding numbers to the black elite. Another point illustrated by Hamann et al (2008) was the effect of the leaking of the draft mining charter on the share price of Anglo Gold. The share price dropped significantly because of the uncertainty created by the earliest sector charter amongst investors. Their point that investors do not necessarily buy into the uncertainty and costs related to transformation is a valid one and raises the challenge of at what point do we place the needs of South Africa’s population before that of a company’s profitability. Fortunately we have not again witnessed that sort of reaction to subsequent sector charters being released. However I would argue that the onus lies with both government and the private sector for educating shareholders in respect of the need for transformation policies to correct economic imbalances. To a large extent, it may even be argued that long standing shareholders have already reaped the benefits of the shareholding during the apartheid era and should not be willing to bear some cost for this corrective action.

Overall, Hamann et al (2008) have found that the government’s initiatives with the sector charters have been successful as businesses in the respect sectors appear to be making the effort to take ownership for implementation which was also exhibited in the case of ABSA in Arya et al (2008). Hamann et al (2008) also stress the need for development of charters for other sectors on the basis that sector charters have been successful where implemented. This is also the view of Mohamed & Roberts (2008) who found that the absence of a sector charter resulted in no or very little consideration being given to transformation within those sectors.

Although Arya et al (2008) and Hamann et al (2008) praise the introduction of sector charters while Mohamed & Roberts (2008) canvass the need for more sector charters, these charters did not necessarily achieve the goals set out in the BBBEE Act (2003). To this effect, the dti promulgated the Codes in 2007 which are not applicable and binding on all sectors of the economy. Companies in sectors where a charter already exists may choose to still align with the charter however their alignment with the Codes (2007) is also required. Government should however have promulgated the Codes (2007) much sooner so as to have provided companies with guidelines as to what the BBBEE Act (2003) was trying to achieve. This view is also supported by Ponte, Roberts & van Sittert (2007) who claimed that without a “major shift in conceptions of (and policy for) BEE,
meaningful ‘empowerment’ is unlikely to take place. They have based their conclusion on the inability of BEE to stimulate the job market and the resultant increase in unemployment which could also result from economic conditions. Their view is also that expecting the private sector to voluntarily transform is too ambitious. They have also argued that the links between preferential procurement and transformation are weak.

2.2 Conclusion

It is evident that the “first wave” of BEE came under varying degrees of criticism and I would agree that this was deserved given that it focused on narrow-based economic empowerment and lead to the emergence of a black elite without compensating the majority of PDI’s for their economic suffering under the apartheid era. government identified this shortcoming and in the report of the BEE Commission, the dti Strategy Document and finally the BBBEE Act, took steps to correct this initial error and remove the incentive for the private sector to continue in this manner. Unfortunately, government is still held accountable for the outcome of the “first wave”. It would further appear that the enhancements to legislation to provide for real transformation in the “third wave” is sometimes not taken cognisance of and that any matter BEE related is viewed as being focused on enriching a few black South Africans at the cost of PDI’s.

There also appears to be a tremendous support for sector charters as a driver to transformation especially as government has not imposed preferential procurement directly on the private sector. Examples of transformation and empowerment within companies in industry sectors where a sector charter exists are glaringly obvious and so is the ability of companies in these sectors to embrace the transformation needs of the country. As the result the limited evidence appears to point to BBBEE being successful in these areas. On the contrary, it would appear, again from limited evidence, that sectors without sector charters pay no heed to transformation and continue largely as they always have. This highlights the failure in the efforts by government to quietly coerce the private sector into transformation via preferential procurement. The common call appears to be that this strategy is not working and that sector charters should be developed for all sectors.

It also seems that the full spectrum of the transformation drive is not being considered and that the attempts to stimulate entrepreneurship via the preferential procurement policy are being ignored.
3 RESEARCH METHODOLOGY

3.1 Research approach and strategy

I expect that the research approach taken would be deductive in nature as I would be working from within a defined body of knowledge and testing whether a particular hypothesis holds true. The intention is to build a hypothesis and test this against the data I gather.

Further, my approach is qualitative in nature and involves the review the top 40 JSE listed shares by market capitalisation and the determination of the extent to which each of these companies has complied with the BBBEE Act (2003) by reviewing their current compliance with the Codes (2007). The review will entail the following steps:

1) An assessment of the current ownership and the determination of the percentage of this that currently lies with PDI’s. Further, an assessment of whether such shareholding is held by a broad base of PDI’s or a few select individuals. A review of current Board of Directors (Board) composition will also be undertaken.

2) An assessment of the extent to which the management committee of the company is made up of PDI’s

3) An assessment of the employment equity information. I will specifically be assessing the extent to which the employees are representative of South Africa’s current demographics. However, the review will extend to every level within the company to assess whether there is an equitable weighting at each level.

4) A review of the current expenditure incurred on the development of skills within the organisation and whether such expenditure is equitably spread across all race groups and levels of the organisation.

5) An assessment of consideration given by the company to preferential procurement and the extent of this relative to its total expenditure in respect of procurement.

6) The companies commit to developing both its PDI owned suppliers as well as the development of businesses within previously disadvantaged communities in the vicinities within which it operates

7) Finally, a review of the company’s expenditure and projects that relate to socio-economic development. These are often referred to as socially responsible investment (SRI) and the two terms will be used interchangeably going forward.
3.2 Research design, data collection methods and research instruments

The Top 40 JSE listed companies by market capitalisation will be identified. Thereafter, their annual reports, and if available their sustainability reports, will be sourced from either their company websites or INET Bridge. If these documents are not available at either location, hard copies of the reports will be requested from the company. These documents will then be reviewed and all data relevant to the seven elements of the Codes (2007) referred to in section 3.1 above will be extracted. As the companies will be assessed in light of each element separately, it is not envisaged that their BBBEE scores will be calculated. Further, as explained previously, the use of a single score may be misleading. The determination sought is one of each company’s success in embracing each element of the Codes (2007) and thereby the BBBEE Act (2003) to further determine whether broadly, PDI’s and communities in need are benefitting from this legislation.

No interviews directly with staff of the identified companies will be necessary as the information sought should appear in the company’s annual report or sustainability report. Where neither document contains sufficient data to perform the assessment on, a conclusion in this regard will also be drawn.

3.3 Sampling

The sample being subjected to review is pre-determined by virtue of the companies’ position on the JSE. As this is not a static list with market capitalisation being influenced by demand for the counter at a point in time, the companies used in this study will be those that featured on the JSE’s Top 40 as at 01 October 2009. The latest available annual reports and sustainability reports have been used for the selected companies. As the financial years ends of companies differ, the dates of the reports used do differ however; in all cases the latest available reports issued by the company have been used. The companies making up the sample being reviewed are:

- African Bank Investments Ltd
- ArcelorMittal SA Ltd
- Anglo American plc
- Anglo Platinum Ltd
- AngloGold Ashanti Ltd
- Aspen Pharmacare Holdings Ltd
- African Rainbow Minerals Ltd
- ABSA Group Ltd
- BHP Billiton plc
- Bidvest Group Ltd
- Compagnie Financiere Richemont SA
- Discovery Holdings Ltd
- Exxaro Resources Ltd
- FirstRand Ltd
- Gold Fields Ltd
- Harmony Gold Mining Company Ltd
- Impala Platinum Holdings Ltd
- Investec Ltd
- Investec plc
- Kumba Iron Ore Ltd
- Liberty Holdings Ltd
- Liberty International plc
- Lonmin plc
- MTN Group Ltd
- Nedbank Group Ltd
- Naspers Ltd
- Old Mutual plc
- Pick n Pay Stores Ltd
- Pretoria Portland Cement Company Ltd
- Reinet Investment S.C.A
- Remgro Ltd
- RMB Holdings Ltd
- SABMiller plc
- Standard Bank Group Ltd
- Shoprite Holdings Ltd
- Sanlam Ltd
- Sasol Ltd
- Tiger Brands Ltd
- Telkom SA Ltd
3.4 Research criteria (e.g. validity and reliability)

Given that the elements upon which the review will be based are drafted into legislation, it is assumed that these will not change over the short term and therefore remain in place to be reviewed against into the foreseeable future. As the scoring mechanism proposed in the Codes (2007) will not be used, future research should do the same in order to remain comparable. The compliance targets may also change over time and this will have to be considered if future research is to be compared to this study.

As mentioned earlier, the JSE Top 40 stocks do not remain constant and amendments to the sample above will need to be judged on their own merit. This may lead to subsequent studies producing a differing conclusion. Further, the disclosure requirements of companies listed in the Top 40 may also change as there is presently not legislation or guideline available as to the extent and content of disclosure with regard to BBBEE. Amendments to disclosure in this regard may also impact on the conclusions drawn in subsequent studies.

Having said this however, the current study should produce a similar result if re-performed on the same base information and using the same guidelines. Thus the research is considered valid and reliable.

3.5 Data analysis methods

As stipulated above, the model used for data analysis was to draw the data from the relevant reports and compare this to the guidelines detailed in the generis scorecard contained in the Codes (2007). To the extent possible, the data drawn was compared to the compliance target provided by the Codes (2007) however where the use of a single number or rating was viewed as possibly misleading, the data was further analysed against other criteria to assess the true position.

3.6 Limitations of the study

Further to the information provided under section 1.3 above, it is assumed that one is unable to cover every facet of a particular topic. As the result the paper will be limited to the information included in annual reports and sustainability reports produced by the company selected. Further,
company websites will also be mined to produce any additional information that may influence the outcome of one or more of the assessments referred to section 3.1 above. Should the company have complied but merely chosen to not disclose information in this regard, the outcome of the assessment will differ from reality. Further, other initiatives embarked upon by the company that do not fall within the guideline provided by the Codes (2007) will not be assessed. Following on from this, the results obtained will be applied to the objectives and definition of BBBEE. If this test evidences compliance with the definition or objectives, it will be assumed that the PDI has been uplifted. Both these factors could limit the result of the research in that further investigation may have lead to a different outcome.
As was expected the extent to which selected companies disclosed information pertaining to their compliance with the BBBEE Act (2003) in their annual reports and sustainability reports either directly or with reference to a sector charter of the Codes (2007) varied tremendously. There was an expectation that some companies would merely disclose empowerment ratings or a single number without providing any detail as to how that number was arrived at. These companies will still be dealt with under the sections below. The following companies however either made vague references to the existence of BBBEE legislation or failed to mention it at all:

- ArcelorMittal SA Ltd
- Compagnie Financierie Richemont SA
- Discovery Holdings Ltd
- Investec Ltd
- Investec plc
- Liberty International plc
- Lonmin plc
- Naspers Ltd
- Old Mutual plc
- Reinet Investment S.C.A
- RMB Holdings Ltd
- SABMiller plc

The reasoning behind the non-disclosure may in respect of some of the companies above make perfect sense. Although they may have had their formative roots in South Africa, they have for some period now for all intents and purposes operated predominantly outside South Africa. Their target markets are exclusively or largely outside South Africa and if they were to cease any operations in South Africa going forward it would have a negligible impact on their profitability and sustainability. Although one may feel that there should exist a level of indebtedness to still to their original base, there is no reason for these companies to feel obliged to contribute to our development and growth as a community.

Having said this however there are some for whom a market does exist outside our borders however they still retain a huge dependency on the success of their local operations to remain in business,
Indeed were it not for the local business they would have ceased to operate by now. The impression gauged by their actions is that having listed on another stock exchange concurrently with their JSE listing; they yearn to be viewed as an international player and not a South African one. Thus to become caught with South African specific issues would not further their goals. Interestingly, Investec is one of these companies who beyond embarking on an empowerment transaction in which they sold 26% of the company to select group of PDI’s appear uninterested in any further compliance with the BBBEE Act (2003). This is interesting because more than 50% of their client base is still within South Africa as is more than 50% of the shareholding.

Some of these companies could be assessed for the ownership element of the Codes (2007) but it would add little value to the exercise as this accounts for only 20% of the scorecard and it was the ownership element that was so misleading to the attainment of the spirit of the BBBEE Act (2003) in the first place. It would therefore be best to exclude these companies from the analysis going forward. This elimination reduces my sample to 28 companies.

4.1 Research Findings

4.1.1 Ownership

BBBEE ownership was the first bastion of BEE and even amongst the companies that have neglected to include any significant mention of BBBEE on their last annual report or sustainability report there are those that sought a sort term solution to the requirements of the BBBEE Act (2003) by selling a take in their businesses to Black South Africans. Jack (2007) refers to this as the “first wave” of BEE and his criticisms of these initiatives are detailed above. Hoffman (2008) supported Jack’s criticisms albeit not directly by also highlighting the failings of what she has termed “narrow based” BEE. However, given that this narrow based approach to BEE still qualifies those companies that embarked on this path to qualify in terms of the Codes (2007) in terms of ownership, one would expect that this relatively easy to achieve element of the Codes (2007) would be in place at all the remaining companies in the sample.

The result fell well short of the expectation however. The graph below reflects the findings in this regard.
The results were unexpected given the expectation that many companies would have taken the easy route in achieving compliance with this aspect of the Codes (2007). The distinction between BBE and BBBEE is draw in terms of the PDI’s that enjoy the benefits of the shareholding with transactions involving a few select PDI’s being classified as BEE. It is important to note here that the Codes (2007) do not make this distinct however I view it as important in determining the answer to my research question. It should further be noted that the companies were measured against full compliance with the element of ownership which is 25% + 1 which given that the Codes (2007) were only promulgated in 2007 has not allowed a long period of time in which to implement. However, the focus on BBBEE has been in place for some time now and the progress in light of this is below expectation.

It is of interest that the two companies that are BBBEE compliant; namely Aspen Pharmacare and Exxaro, neither introduced their current ownership structures in response to the Codes (2007) but rather had these in place prior to the Codes (2007) being promulgated. It is further of interest that one of the companies that did not comply at all, lists BBBEE and the legislation relevant to this as a risk to retaining certain rights in its annual report.
4.1.2 Management Control

In determining compliance with this element of the Codes (2007), data was drawn on the constitution of Board members, both executive and non-executive, in order to gauge the percentage of these management bodies that were comprised of PDI’s. In order to align with the BBBEE Act (2003), foreign nationals were excluded from consideration as PDI’s. The data yielded is represented on Figure 2 below and reflects a perfectly even spread over the 40% target between those companies in the sample that are already compliant and those that are not.

Figure 2: Compliance with Management Control Element of Codes (2007)

![Figure 2: Compliance with Management Control Element of Codes (2007)](image)

The target in the Codes (2007) is a range of 40% to 50%. I chose to use the lower limit of the range as the increased percentage between the lower limit and upper limit merely translates into points which I am ignoring for purposes of this study. Using a limit of 45% would have resulted in a 40:60 spread between compliance and non-compliance whereas a limit of 50% would have increased this spread to 36:64. With regard to those companies that are not compliant, the level of compliance ranges from 0% to 38%. Whereas with companies that are compliant, the range extends to 68%.

4.1.3 Employment Equity

This element has probably been the most contentious of all the elements of the BBBEE Act (2003) with criticism thereof stemming from both sides of the BEE line. Further anecdotal criticism has
taken the form of accusations that the current execution of employment equity principles have been biased towards white women and that black staff and employed in large numbers at lower organisational levels to add bulk to PDI statistics without being given any real developmental opportunities within companies.

Weary again that I did not want to fall foul of an accurate conclusion due to being mislead by the statistics, I chose to interrogate the staffing numbers beyond statistics provided. This proved to be a challenge as only eleven of the remaining twenty eight companies produced sufficient data in their annual reports and/or sustainability reports to make this exercise possible. The result is that the data represented on Figures 3 and 4 below represent on 28% of the original sample of companies selected. The adverse impact of the reduction of the sample by virtues of the limitation of data on the conclusions drawn was extensively considered. However, it was decided that the lack of data or the presentation of only high level statistics may have been intentionally done to cloud reality and create a overly favourable picture of progress made with regard to this element. I therefore decided to proceed with the limited data available.

Using the data that was available for the eleven companies that chose to disclose the detail, the percentages that PDI staff contributed to the total staff complement was calculated. This is represented by the blue lines in Figures 3 and 4 below. I went further to remove the effect of white women on PDI percentage of staff employed by each company. The percentage of PDI staff of the total staff complement excluding white women in reflected by the red lines in Figures 3 and 4 below. The green line in both graphs below represent the average target compliance level of 62%. This is the average between the highest and lowest target levels provided for by the Codes (2007) which are 80% and 43% respectively.

It was decided that to aggregate all levels of staff may again not provide a true reflect of the current level of compliance with the employment equity element. To this effect the staff complement were divided into Management (which comprises Top, Senior and Middle Management) and Staff other than Management (which comprises all other permanent employees). The positioning of the graphs relative to the average compliance level of 62% is drastically different for each of these graphs. Given that the recommended compliance should be effected at all levels within an organisation, the graphs reflect that with regard to management positions, there is very little compliance.
Further, the graphs reflect that companies are much heavier weighted towards PDI’s at lower levels. It has also emerged that PDI numbers are strongly weighted towards white women and in some cases they account for half the PDI’s employed.
4.1.4 Skills Development

Figure 5: Compliance with Skills Development Element

As with the employment equity element, the mining of skills development data within the sample of remaining Top 40 JSE listed companies was also impacted by disclosure. Only seventeen of the remaining twenty eight companies included sufficient disclosure in their annual reports and/or sustainability reports to enable the testing of their compliance with the target per the Codes (2007). Although several of the companies that could not be tested provided substantial detail on their current training programmes, this detail spoke more to the numbers of employees being trained and the training facilities without providing sufficient detail on the cost being incurred in this regard to perform the test. In order to test the compliance, it was required that the expenditure incurred on skills development of PDI’s be disclosed as well as the total employee costs for the year. The percentage of expenditure on PDI skills development relative to the total labour cost was recalculated and compared to the 3% target provided for in the legislation. The results of this exercise for the seventeen companies are reflected in Figure 5 above.

As is evident from Figure 5, only 6 (35%) of the companies tested were compliant with the target during the previous financial year.
4.1.5 Preferential Procurement

The recommended target advised by the Codes (2007) in respect of company procurement from BBBEE compliant suppliers is 70% of total procurement. Again, in order to ascertain the level of compliance with the Codes (2007) in this regard, only companies that disclosed sufficient information to enable the recalculation of their compliance could be used. In this regard, only thirteen of the remaining twenty-eight (46%) companies provided sufficient data in the annual reports or sustainability to enable this exercise. The results of the recalculation are reflected in Figure 6 below. As is evident, from the chart only one company (8%) is currently fully compliant. This is indicated green in the chart below. Further the level of compliance ranges from 37% to 70%. More than half of the companies tested (54%) do however procure goods and services from BBBEE compliant suppliers. The level of compliance for companies is indicated in green or yellow in the Figure 6.

Figure 6: Compliance with Preferential Procurement Element

![Preferential Procurement Chart]

4.1.6 Enterprise Development

Again, like with all other tests the ability to recalculate the extent of an entities contribution to enterprise development, only companies providing sufficient detail in the sources of information used could be tested. This test involved calculating the percentage contributed to developing other
businesses that could contribute to the company’s supply chain relative to its net profit after taxation. Of the reduced sample of twenty eight, only twelve (43%) companies disclosed sufficient data in this regard. Ten of these companies also reflected in the sub-sample used to test compliance with the preferential procurement element. This may indicate either a commitment by these ten companies to developing BBBEE suppliers in order to facilitate procurement from BBBEE suppliers or merely that they consider such disclosure to be relevant and important. Without further information in this regard one is unable to conclude on the reasoning. The results of these recalculations are reflected in Figure 7.

**Figure 7: Compliance with Enterprise Development Element**

The test found that only three companies contributed 3% of their net profit after tax towards developing enterprises. These are reflected in green in Figure 7. It further evidenced that 67% (eight of the twelve companies) contributed 1.5% or less of their net profits to enterprise development. Extrapolating this over the original sample would imply that only 8% of the Top 40 JSE listed companies are complying with the enterprise development element of the Codes (2007).

4.1.7 **Socio-Economic Development**

The last element of the Codes (2007) is the companies’ contribution to socio-economic development. The compliance level required is a contribution 1% of net profit after taxation. The expectation of the BBBEE Act (2003) in this regard was that companies would contribute towards
developing the people and economies in the areas within which the company operated. In order to test this, the companies’ disclosed contribution in this regard was recalculated as a percentage of their respective net profits after taxation. It was found that seventeen of the remaining twenty eight companies disclosed sufficient data around their contribution to socio-economic development to make the recalculation possible.

**Figure 8: Compliance with Socio-Economic Development Element**

![Figure 8: Compliance with Socio-Economic Development Element](image)

Figure 8, which reflects the results of the recalculation, shows that eight (47%) of the companies tested are at least complying with the requirement per the Codes (2007) with four of these contributing in excess of the required 1% annually. Company contributions ranged from 0.30% to 5.70 %. Projects in this regard covered a fairly broad spectrum with an emphasis on education stemming across all levels.

### 4.2 Research Analysis and Discussions

#### 4.2.1 Ownership

Given that the first BEE transactions were finalised in the early 1990’s, the findings in respect of Black ownership are surprising. Only 28% of the companies in the sample had achieved a level of PDI ownership that qualified in terms of the Codes (2007) even though that this element together with Preferential Procurement carry the highest weightings in terms of BBBEE scoring.
Although some companies have crafted rave reviews about their success in respect of the BBBEE ownership element of the Codes (2007), they are only partly compliant at this stage. Further, some of the companies in this segment are at ownership levels as low as 1% which raises doubts about their commitment to achieving this objective given that there has been intense discussion around this topic for over 15 years now. The argument supporting this low level of Black ownership is that the company is limiting this benefit to its employees. In many cases the number of employees ranges in the ten of thousands and had their shareholding been of any significance would have resulted in the objective already being achieved.

It is encouraging however to note that 71% of the sample are partly compliant and that a large portion of these have initiatives in place already to increase the number of PDI ownership in the future. In fairness to some companies that are non-compliant, the percentage of PDI ownership in this category does range from 1% to over 20%. In the case of companies at the top of the range, they are close to achieving the target shareholding but fell just short of qualifying as compliant.

Of the three companies that do not comply at all, two are multinationals that historically benefitted from the resources available in South Africa at the time but that now have significant operations in other countries. This reverts to the moral issue which is not covered as part of this discussion. It is interesting that the third is a retailer which relies extensively on PDI’s for revenue and profits. It would appear that the motivation to become compliant does not exist as the PDI’s who support it would not reduce their consumption due to the company not complying with the Codes (2007).

Given that of the companies sampled only two have empowerment transactions that are broad-based, it would appear that although sentiment in terms of who should benefit from this element of empowerment has changed from narrow based to broad-based, it has still not been a huge contributor in empowering a large number of PDI’s.

4.2.2 Management Control

Given the outcome of the ownership review, it is interesting that the level of compliance is far greater with regard to the management control element of the Codes (2007). One would have expected the outcomes of the two studies to mirror each other to some extent with the expectation that Board appointments stemmed from the transfer of ownership. This does not appear to be the case. Instead it appears that a large number of companies in the sample have been more embracing
of this element of BBBEE Act (2003). I would have considered, and for a long time this was one of the arguments against BEE, that established companies, as those in the sample are, would have been more inclined to part with a percentage of their equity without any interference from the new shareholders than part with seats on the Board. My thinking, and indeed the populist view for a while, has been that in sacrificing Board seats to PDI’s, the Board would lose some control of the direction of the company. The new Board members may have priorities that differ from the existing priorities of the entity and this would thus cause serious conflict. I view the appointment of PDI’s to Boards over dilution of equity as more positive step on the part of the companies in the sample.

In respect of those companies that are not yet compliant, attaining compliance may be as simple as ensuring that the next appointment to the Board is a PDI. It would therefore be very easy to achieve which raises the concern as to why it has not already been done. A common argument in this regard has been the lack of PDI’s that have the requisite experience and qualification to add value to the governance structure. This may also be the reason for many PDI’s being present on several company Boards. However, a number of the individuals that are present on the Boards studied are not necessarily well versed in the sector in which the particular entity operates which leads one to conclude that they are appointed more for their business acumen than their specific industry experience. This holds true for individuals of all races.

Given that a number of PDI’s are Board members of different companies, the total number of PDI’s in Board positions are fewer than the positions themselves. Again this talks to Hoffman’s (2007) view on narrow based empowerment. By offering the same individuals’ positions on numerous Boards, the total number of PDI’s benefitting from this element of the Codes (2007) are reduced. Further, a number of those being appointed are already wealthy business people and this does therefore not lead to the upliftment of a broader spectrum of PDI’s. The only case supporting the conclusion that the presence of these individuals on the Boards of these companies could possibly lead to the upliftment of the broader community of PDI’s would be based on their holding as priority the needs of PDI’s. However, the counter argument to this is that had they held this view, they would have been more supportive of other PDI’s as opposed to themselves being appointed to these Boards thus increasing the number of PDI’s engaged at this level.
4.2.3 Employment Equity

The separation of management from staff other than management in analysing the fulfilment of the employment equity element proved to have merit in that it has clearly emerged that there is a biased towards employing PDI’s at lower levels of these companies. This could correlate to education and experience criteria however the boundaries of this study do not extend to incorporate those aspects. Nonetheless, it would appear that PDI’s are still not being employed as aggressively at all levels with the companies analysed. This being said, it would lead one to conclude that for the companies analysed, employment equity may have contributed marginally to the upliftment of PDI’s but the effect would not be of the significance that would lead one to conclude that employment equity itself, or the execution thereof by the companies under scrutiny, has lead to the upliftment of the broader previously disadvantaged communities.

This conclusion may lend support to the argument that this is being camouflaged by the other 17 companies that either provided no data in this regard or data in the form of high-level statistics. Their overarching comments on their progress and success in implementing the element of employment equity which are supported by broad statistics on the number of PDI’s employed may be concealing that a significant quantum of this employment is at lower levels within their organisations.

As can be seen from the evidence in Figure 3 especially, it may also be clouding the further identity of the race and sex of the PDI given the inclination to appoint white women disproportionately. Indeed, scrutiny of Figure 3 reveals that that in some instances, the proportion of white women employed to all other sub-categories of PDI’s is equal. Granted, this is the poorest example of the execution of employment observed, however the best observed example is one in which white women constitute 21% of all PDI’s at manager level. Given the hesitancy of the other 17 companies to reveal the numbers that they should have on hand given the regulatory requirement to submit these with the Employment Equity Plans to the Department of Labour, it may be reasonable to suggest that this could be the best example from the entire sample of companies. Given the observed evidence, it further substantiates the argument that employment equity, although possibly having benefited some PDI’s, namely white women, it does not appear to have contributed significantly to the upliftment of all PDI’s.
4.2.4  Skills Development

One of the reasons for companies not being able to promote staff into more senior roles has been the lack of suitably skilled staff. It would therefore be expected that in order to meet employment equity targets in the medium to long term, companies would be spending a substantial amount of resources on training current staff so that they may in future occupy more senior positions. Given that only 35% of the companies that could be tested were complying with the minimum skills development compliance element of 3% of total staff costs, it does not appear that this is the case. Except for one of the companies tested, all the companies in the sample had met the previous skills development expenditure guideline of 1% of total staff costs. This aligns to the incentive from government on the 1% spend. However, there appears to be resistance from most companies to extend themselves beyond the incentivised 1% expenditure.

On the other hand, three of the companies in the sample had spent well beyond the 3% guideline with two of these having spent twice that. One would infer from the results that with most companies, the expenditure incurred on skills development is not in the spirit of developing their current staff for future responsibility but rather to either benefit from the skills development incentive from government or eventually comply with the requirements of the Codes (2007). This lack of commitment on the part of South African corporates to develop the skills within their current labour force is short sighted as it reinforces the current skills shortage and results in those few PDI’s with skills currently remaining very expensive to recruit.

In respect of this element, it would not appear that the value envisaged in the spirit of the BBBEE Act (2003) is being adequately executed and as the result, PDI’s are not being uplifted in this regard.

4.2.5  Preferential Procurement

As detailed in Jack (2007), this element of BBBEE was governments attempt to move empower of PDI’s away from being narrow-based and towards benefiting and empowering a broader base of PDI’s. Although not applied as mandatory to non-governmental organisations, the thinking was to indirectly guide private entities towards compliance by insisting that government entities only procure goods and services from suppliers that are compliant with the requirements of the BBBEE
Act (2003). It would appear from the results of the test though that this more subtle approach has failed.

Only one of the companies tested was compliant with the requirement that 70% of the expenditure on procurement being disbursed to entities that comply with the BBBEE Act (2003). On the assumption that those companies that did not disclose any information in this regard in their annual reports and sustainability reports are not compliant, this extrapolates to 2.5% of the Top 40 JSE listed companies complying with the requirement. Even though seven of the companies tested did fall within the 50% to 70% with regard to the portion of procurement expenditure being applied to BBBEE compliant entities, this is still far from sufficient for this approach to be successful.

As discussed earlier, this is probably the best avenue available to empowering PDI’s as it allows entrepreneurs the ability to access markets in order to develop their businesses. Their success creates the opportunity for them to increase employment as their businesses grow. It therefore reduces the burden on both other companies and government to create employment. Further, it reduces the dependence on government to support unemployed people and their families thus reducing the burden on the fiscus.

Unfortunately, it does not appear that this view is shared by the majority of the companies in the sample. Alternatively, the results may be skewed by effort required to ascertain whether suppliers are BBBEE compliant. As the focus in this regard would be small entities, they would not have the resources available to acquire a rating from a BBBEE rating agency given the cost attached to this. In order to establish the BBBEE rating of the supplier would therefore require the company to assess their suppliers’ level of compliance using their own resources. This can be onerous and expose the company to some level of risk in incorrectly assessing the level of compliance. Given this, it is understandable why companies would steer clear of such an exercise and therefore be unable to reflect a higher expenditure on BBBEE suppliers. A further limitation could be the availability of BBBEE complaint companies that are able to provide an adequate contribution to the companies supply chain. Having said this however, none of the companies in the sample reflected these as a reason for their not attaining the required compliance level.

The results of the test applied to the sample of companies clearly reflect the failure to date of preferential procurement in directing expenditure on good and services of the Top 40 JSE listed entities into the pockets of BBBEE compliant suppliers. As the result, it would appear that PDI’s
are not being afforded the opportunity to penetrate markets to which they previously not granted access. The effect of this is that businesses either owned by or that employ a large number of PDI’s are experiencing the financial success they would have had compliance with preferential procurement been greater. As the result of this, it would appear that largely, PDI’s are not significantly benefitting from this element of the Codes (2007)

4.2.6 Enterprise Development

This element of the BBBEE is very closely aligned to the preferential procurement element. The thinking is that given the historic economic climate in South Africa, it would not be possible for companies to achieve the required level of compliance with the preferential procurement element without also having to contribute to the development of Black owned and managed business. As Black South Africans were not given the opportunity under the previous political regime to develop businesses and broad industry knowledge, they would also not be in a situation to capitalise on the opportunity presented by preferential procurement due to their not having historically operated businesses.

In this regard, the target compliance detailed in the Codes is that companies spend 3% of their net profit after taxation on developing enterprises or companies that are owned and managed by PDI’s and that are BBBEE compliant. It is the intention that these smaller entities would form part of the companies supply chain and thus help it achieve its preferential procurement targets both now and in the future. Given the intention, it would be expected that there would be more companies in the sample tested that complied with the enterprise development element than with the preferential procurement element.

Of the twenty eight companies in the sub-sample, only twelve included sufficient information in their published reports that were reviewed to enable testing. It was promising however that three of the companies tested complied with the expenditure on enterprise development stipulated in the Codes (2007) and there were a total of four companies that exceeded the previous sector guideline of 1.5%. This may reflect that companies are still in the process of developing their sources of preferential procurement which they could tap into in the future. This bodes well for preferential procurement going forward and could improve the success of that BEE initiative in the future.
Unfortunately, of the eight remaining companies tested, seven had contributed less than 1.5% towards enterprise development in their last financial year. This indicates that although there is improvement from the spend on preferential procurement in respect of this element, it appears that companies still do not adequately view enterprise development as necessary. As the result, they do not appear supportive of the preferential procurement element either and at best maybe we can expect mere compliance into the future as opposed to any genuine drive to uplift PDI’s to the extent that they are able to function in an efficient and effective manner to grow their business interest and to some extent empower themselves going forward. Although PDI’s are not entirely incapable of developing business ventures on their own, assistance from established companies in terms of enterprise development and as a consumer of goods and services is required in order to fast track the development of these businesses.

However, the extent of expenditure on enterprise development may have been due to economic downturn since 2008 and companies will be willing and able to increase the contribution in this regard once they have recovered from this.

4.2.7 Socio-Economic Development

This is the least weighted element of the Codes (2007) yet it was interesting to discover that of the businesses tested, 47% were compliant with the 1% of net profit after taxation expenditure stipulated in the Codes (2007). Almost all companies in the sub-sample of twenty eight expressed some commitment to this aspect of BBBEE. Indeed of the companies tested only five of the seventeen were well below the required 1%. The focus of the spend tended to be on the youth and education was a common area on which many corporates were focused. It may be that corporate South Africa views the solution to our current and future problems lies in the education of our people, and specifically our children. This is a valid argument and while may be a longer route to take towards empowering PDI’s and ensuring their success in the future, it is difficult to fault the approach.

Having said that however, it would appear that one of the objectives of the BBBEE Act (2003) is to force a change of culture and mindset. The change being forced is for corporate South Africa, which has always been the domain of white South Africans, to accept that there are capable, skilled Black South Africans who also deserve the opportunity to progress within corporate structures. The challenge then to exclusively using education as the tool for empowerment is that it will not
empower PDI’s if they are unable to secure employment at the levels to which they have been theoretically skilled. The inability to secure such employment would stem from the mindset of corporate South Africa not having changed to accept the capabilities of PDI’s. Effectively using the employment equity element would have allowed management at these large companies to experience the value and worth of suitably skilled PDI’s.

Further, much of the focus of socio-economic development expenditure has been on feeding poor communities and providing shelter. This is admirable but may be less necessary in future if PDI’s are empowered in terms of the BBBEE Act (2003), as the progression of a family member could result in that individual assuming responsibility for their family thus reducing the dependency on hand outs from both the private sector and government.

4.3 Research Limitations

The greatest limitation with performing the tests envisaged in order to answer the research question has been the lack of adequate disclosure of information in the sources that were used, namely company annual reports, company sustainability reports and company websites. As such disclosure is not mandatory it is understandable that many companies chose not to provide the detailed information which would have enabled the testing undertaken. However besides being useful for this exercise such disclosure would allow the readers of such information insight into magnitude of a particular company’s expenditure with regard to the various elements of the BBBEE Act (2003).

Instead companies chose to disclose their contributions to these elements as percentages of other factors which could not be reconciled to the targets prescribed by the Codes (2007). Although these disclosures appear impressive in relation to the items they were compared to, they do not provide any indication as to the company’s level of success in meeting the compliance targets nor the level of the commitment to BBBEE. Companies went further to provide immense detail on the initiatives they were undertaking and the level of success being achieved without providing any frame of reference by which to understand their contribution. Furthermore, there were instances in which expenditure on different elements of the BBBEE Act (2003) were combined which made it impossible to ascertain the commitment to a specific element.

Lastly, as declared earlier, there were those companies that elected not to disclose any information which made the difficult task impossible. It may have been useful to conduct surveys of or
interviews with the relevant staff of the selected companies but given the time allowed for the exercise and the size of these companies in the South African economy this was not practical.

As the result of the limitations above, conclusions drawn from the tests performed may not be an entirely accurate reflection of reality. However, these conclusions are accurate in terms of the sources of information used and this provides the basis for them.
5 RESEARCH CONCLUSIONS

In keeping with the rest of the paper, it would appear best to assess the success of the implementation of the BBBEE Act (2003) through the use of the Codes (2007) in terms of each of the elements detailed in both these pieces of legislature.

5.1.1 Ownership

Even though the ownership element of BBBEE has dates back to 1993 (Sanlam, 2009) the Top 40 JSE listed companies have still largely failed to achieve compliance with this target. This is not to say that the transactions that occurred in the first decade of BBBEE would have satisfactorily answered the research question in the affirmative given these were predominantly narrow based BEE transactions, however with this element having been topical for such a long period of time, one would have expected the compliance to be significantly higher if not at 100%.

Nonetheless, in the case of ownership, both the legislation and the execution appear to be hugely flawed and even with 100% compliance with the Codes (2007), the empowerment of a large number of PDI’s would not necessarily have been achieved. The failing was that in the first tranche of empowerment transactions, the focus was on empowering a select group of well connected black individuals. As both Hoffman (2008) and Jack (2007) discovered, these transactions failed because they did not include a sufficiently large number of PDI’s and focused the empowerment on a narrow base of individuals. A number of these transactions are still in effect and as the result, the credentials claimed by many companies in terms of the ownership aspect do not satisfy the research question.

Fortunately, these early failures were not ignored and the majority of more recent and even future BEE transactions are focused on achieving the broad-based characteristic of empowerment. However as is reflected in Figure 1 above, the extent to which these broad-based initiatives have met with the ownership criteria is almost insignificant at this stage with only 7% of the Top 40 JSE listed companies achieving compliance. It becomes even more difficult to understand the hesitancy on the part of companies to dilute the shareholding of current shareholders and issue more shares to PDI’s following the success of previous offerings to PDI’s. One has only to recount the long queues at post offices during the recent BBBEE share offerings by Top 40 companies to gauge the popularity of such transactions. This is further evidenced by these having been many times over
subscribed. This again reiterates that PDI’s are not seeking handouts (even though traditionally schemes involving PDI’s are at discounts to current market values) but rather seeking opportunities to become involved in the economy. Although it is more encouraging that 71% of the companies tested have partly achieved the objective, to date PDI’s have largely not benefitted from the ownership element of the BBBEE Act (2003). This element may have a role to play in the upliftment of PDI’s and previously disadvantaged communities in the future once there is greater compliance and once the benefits vest but as things stand it has not resulted in their being uplifted.

5.1.2 Management Control

Although there was an expectation that this element of BBBEE would closely correlate to the ownership aspect in terms of compliance, the results of the review performed revealed this to be one of the areas with the highest levels of compliance with 54% of the sub-sample of twenty eight achieving compliance. Compliance in the case of management control is at least 40% of the Board of the relevant company being made up of PDI’s. It was also only one of two (the other being ownership) elements where the entire sub-sample could be used in determining the level of compliance.

There are two perspectives from which to view the expected effectiveness of this element of the Codes (2007). The first being that the presence of PDI’s to this extent on the Board of a company should bring into focus the needs of other PDI’s within the organisation and within the larger community in which the company operates. The second effect would be the empowerment of PDI’s to the extent to which they are actively involved in managing and governing the company.

The level of compliance indicates that companies are more open to including PDI’s within their governance ranks than they are to liquidating their current shareholding in favour of PDI’s. Indeed, of all the elements of the Codes (2007), the level of compliance with this element was the highest. This is positive in that one would have expected companies to be more willing to sell off a portion of the business to a group of inactive “silent” partners who enjoyed the benefits of ownership without meddling in the management or governance of the organisation. In this way the direction in which the company was being steered would have remained on course and control would have continued to rest with those who had historically controlled it. It should be considered positive for BBBEE that management are willing to dilute this control and allow PDI’s to infiltrate their ranks. As the result one would have expected that the PDI’s on the relevant boards to have driven these
companies to becoming more focused on the empowerment of a broader grouping of PDI’s both internally and externally.

As this study has reviewed one year’s performance against the Codes (2007), no comparison against prior years was considered and hence no improvement or deterioration in this regard recognised. However, in absolute terms, it would appear that the presence of PDI’s on the relevant boards has not concentrated the focus on compliance with BBBEE principles. Since half the boards reviewed have in at least a 40% PDI membership, for this element to have achieved objective, at least half the companies in the sub-sample should have been compliant with each other element of the Codes (2007). This is clearly not the case and in effect the PDI’s that were allowed access to this management function have failed in the execution of their responsibilities to other PDI’s.

Another failing in this regard has been the presence of the same PDI on several boards. This would imply that this element has also become a victim of narrow based empowerment with little impact on the broader PDI population. Although there is a relatively high level of compliance with this element of the Codes (2007), it has also failed in significantly uplifting the broader spectrum of PDI’s.

5.1.3 Employment Equity

The bulk of companies in the sub-sample tested were willed with self praise on their ability to meet the employment equity targets to date in respect of their total workforce. However it was considered more informative to divide this workforce into management and non-management staff and assess compliance separately.

In respect of non-management staff, Figure 4 above clearly evidences that this praise in well earned with only one company falling short of the target employment average of 62%. This is due to that company also employing a large number of foreigners who are disqualified from inclusion in the calculation of employment equity compliance. Indeed the level of compliance at this level in the case of more than half the companies tested was in excess of 80% which is the upper limit of the compliance target provided by the Codes (2007). This indicates that a substantial number of PDI’s are enjoying success in obtaining employment and that this element of BBBEE has been successful in empowering PDI’s. Further interrogation of the data provided revealed that in some instances the employment levels were made up almost entirely of black PDI’s. As white women were also
victims of the discriminatory employment practices of the previous political and economic regime, this appears to be a continuation of the same malpractice and therefore a denial of empowerment opportunities to them in these companies. Some of these companies are in the mining industry and the reason for the low employment rates of white women at this level may result from there being a lack of interest by this group of PDI’s in positions in this sector. However in other industries the opposite bias seems to apply in that there is a disproportionate leaning towards the employment of white women over all other PDI groups. This appears to be especially the case in the financial services industry where white women make up between 25% and 31% of the PDI’s being employed at this non-management level. The reason for the bias towards employing white women in the financial services industry is unknown but is again an unfair practice in that all PDI’s were previously discriminated against and should be afforded equal employment opportunities for this element of BBBEE to achieve its desired effect.

At the management level the employment equity compliance was significantly less prevalent with only two of companies being tested meeting the compliance requirement. It would therefore appear that the overall compliance with the employment equity element of the Codes (2007) is heavily weighted towards the non-management levels within companies. This would imply that PDI’s are not being afforded the opportunity to function at management levels within the Top 40 JSE listed companies and that these companies are using the overall employment statistics to camouflage this. It may also be the reason for many companies given that only eleven of the sub-sample of twenty eight companies revealed sufficient information to enable the retesting of their compliance while the others provided an overall compliance statistic.

The preference for employing white women over other PDI’s continued to surface in the analysis at the management level. The most equitable results achieved in this regard were white women constituting 20% of the PDI workforce and this rose to 53% in the least equitable companies.

In order for the benefits of employment equity to be attained, the execution of the principle has to be equitably applied across all levels of employment within a company and across all groups that constitute PDI’s. This is not being done. As the result the benefits that should stream to all PDI’s and into previously disadvantaged communities is not doing so. Although some PDI’s are being uplifted as the result of the employment equity element of the BBBEE Act (2003), the breadth of this is again too narrow to contribute significantly to the upliftment of the broader PDI community.
5.1.4 Skills Development

This element of BBBEE is closely linked to the employment equity aspect. In order to enable fulfilment of the employment equity requirements in the future, companies should be investing in the development of skills amongst their current workforce so that these staff members may be promoted to positions of more seniority and responsibility in the future. The outcome of the test performed does not evidence alignment of this thinking with the current investment in this regard by the companies tested. Only 35% of the companies tested were complying with the minimum expenditure of 3% required in respect of skills development.

As with employment equity, companies were filled with self praise on the efforts they had exerted towards improving the skills of their current staff. Annual reports and sustainability reports spoke volumes on the number of staff being trained and the facilitates in place to enable this however only seventeen of the twenty eight companies in the sub-sample provided sufficient detail to enable empirical testing of their claims.

With the current levels of compliance being low, it would appear that there is little intention of rectifying the imbalances identified under section 5.1.3 above. One would expect that the argument for the lack of compliance with employment equity targets at management levels within organisations is that the PDI’s do not possess the skills to fill these positions. However if PDI’s are not being trained to at least potentially develop these skills, the imbalance will continue into the future.

Another possible argument against non-compliance with employment equity targets at management level could be the high cost of recruiting PDI’s with the requisite skills from the limited pool that currently exists. This is a fair argument however, this premium paid would be eradicated as the size of the pool grew and this growth is only possible if those PDI’s without the skills currently are afforded the development opportunities to acquire these.

The reason for the hesitancy on the part of companies to invest in their future by investing in their current workforce is unknown. However it would appear this is the most cost effective manner by which to achieve future compliance targets. The current expenditure being incurred on skills development appears to be well short of the expenditure required and as the result the benefit of the objective as laid out in the BBBEE Act (2003) is not being obtained by PDI’s on a sufficiently broad scale. Again, even though there are some PDI’s that are benefitting from company
expenditure on skills development, the extent is currently not sufficiently broad to benefit the larger PDI community. As the result this broader community is not achieving the upliftment that should stem from the development of skills amongst them and the objective of the BBEE Act has failed to materialise upon execution.

5.1.5 **Preferential Procurement**

The supply chain approach to BBBEE in the form of preferential procurement has also failed to achieve its objective and therefore failed in uplifting the broader PDI community. Although not a mandatory requirement on private sector entities, this element carries the joint highest weighting in terms of BBBEE scoring as defined in the Codes (2007). Further, preferential procurement is mandatory for organs of state and it was conceived that this would be sufficient motivation for the private sector to comply. However neither this weighting nor the indirect approach through public owned enterprises appears to have been successful. The level of compliance stemming from the test performed yielded the lowest result of all elements tested with only one compliant entity being fully compliant. This company is coincidentally 50% owned by government and government owned entities.

Preferential procurement theoretically is arguably the most effective manner by which to increase empowerment PDI’s. It was envisaged that the demand for product and services by the state and large privately owned corporations would stimulate the emergence of BBBEE compliant providers of these goods and services. This would expand the country’s economic base by creating more businesses within existing industries and the increased competition would create value in the form of savings along the companies supply chains. The creation of new businesses would create a demand for labour and the success of these businesses would increase that demand over time. This would result in the upliftment of PDI’s without any risk to government or private corporations beyond the expenditure incurred in the form of enterprise development and government incentives. Further, the success of these initiatives would reduce the burden on the fiscus as there would be fewer people dependant on government for their income.

The preferential procurement element of BBBEE has to date however failed to empower a broad section of PDI’s. Even though within the test sample more than half the companies were in the 50% to 70% range of procurement from BBBEE compliant suppliers this is not sufficient to build sustainable small and medium enterprises to the extent that these are able to provide the levels of
employment required to achieve significant upliftment across the broader PDI community. Given the lack of commitment to preferential procurement by private companies, this element has also failed to uplift PDI’s.

5.1.6 Enterprise Development

This element of BBBEE is very closely linked to that of preferential procurement. In the case of preferential procurement, an argument for the exceptionally low level of compliance could be the lack of suitable, reliable suppliers that are BBBEE compliant. In this regard, this element of the BBBEE Act (2003) provides for companies to contribute towards the development of small and medium enterprises from which they could procure the required goods and services in the future. In effect developing entities that could form a part of the companies supply chain in the future. The importance of enterprise development extends beyond the BBBEE Act (2003) and is also encapsulated within the principles of the Global Reporting Initiative.

As expected, the instances of compliance with this element in terms of the Codes (2007) was higher that for preferential procurement however the extent of compliance is still insufficient with only three of the companies in the test sample attaining the target compliance level. As much as PDI’s may possess the potential to develop their own businesses in order to feed the supply chain of large corporations over time, their success in doing so could increase significantly with assistance form these corporations. Further this assistance may result in the time lag in the small and medium enterprise supplier being able to come to market being substantially shortened. The inadequate expenditure in this regard during the period under review could have been a function of the economic downturn with companies focused more on their own sustainability and survival than on the development of new or existing suppliers.

Nonetheless the combination of the result of testing on this element combined with the results on preferential procurement reflect that even though this combination may arguably be the most effective way to achieve the BBBEE of PDI’s that is being sought, there appears to be a lack of commitment on the part of corporations to assist in this regard. The elements cannot succeed without the commitment from the private sector even though it may be driven by government and without this assistance the objectives envisaged in attaining the broad empowerment of PDI’s through this mechanism will not be achieved. The ownership of the supply chains to large
corporations will still not lie in the hands of PDI’s and at best PDI’s could at best only hope to be empowered in respect of the other elements of the BBBEE Act (2003).

5.1.7 **Socio-Economic Development**

This last element of the BBBEE Act (2003) carries the lowest weighting in respect of the Codes (2007). It also, given the breadth of actions that qualify in terms of compliance, possibly the easiest of the elements to comply with. It can potentially also be the most empowering and least empowering of all the elements of the BBBEE Act (2003). Companies are able to claim as a contribution to socio-economic development anything from provision of soup kitchens to building of universities. They do not need to be directly involved in the provision of the product and can simply make a monetary contribution in this regard. Yet only 47% of the test sample was in compliance with the 1% of net profits after taxation expenditure required as a target. Again other companies spoke volumes about the initiatives in which they were involved without disclosing sufficient information to test the level of compliance.

Some expenditure that qualifies, although greatly appreciated by its recipients, provides a short term benefit without empowering the beneficiaries in any way. Other contributions, like education, are possibly more empowering than any of the other elements of BBBEE. In this regard it was encouraging to identify that a large part of the expenditure was incurred in relation to education which was elaborated upon under section 4.2.7. However at the risk of sounding ungrateful, the extent of the current expenditure is still well short of sufficient to empower a large enough section of PDI’s. It is a valid argument that in the case of socio-economic development corporations are actually assisting government in the performance of its function. These corporations pay the taxes and the provision of the services in respect of this element should be undertaken by government. Without detracting from this, the upliftment of the communities in which corporations earn their livelihood is essential to ensure that these corporations are able to continue to do so into the future. Like all other South Africans, corporations will also benefit from social and political stability which the upliftment of all PDI’s would go a long way to ensuring.

It would appear however that this view is not shared by corporate South Africa which is evidenced by there hesitancy in expending funds in this regard.
5.1.8 Final Comment

Hoffman (2008) quotes Madi (1999) as saying “the most empowering thing for most black South Africans would be a job”. This is a difficult argument to falter especially as it would be true for many jobless South Africans. However this cannot be sustainable because once employed, the yearning could quickly turn to being adequately employed or employed at the levels at which they were trained. This could further extend to once employed, the desire to develop careers and to have development opportunities available could quickly surpass the initial desire to simply be employed. To stop at just being employed would imply that all black South Africans lack ambition and drive. This is not true. As a black South African who has worked with many other well skilled, competent black South Africans I know this is not true. It is also a fallacy that all black South Africans are looking for handouts and the easy road to success. Instead most black South Africans, and indeed most PDI’s are looking for fair opportunity. This is the spirit with which the BBBEE Act (2003) was crafted. To create an environment in which there are opportunities for PDI’s to exploit the opportunities which for years have remained the exclusive domain of white South African males.

It would appear from the research conducted into the manner in which the Top 40 JSE listed companies have interpreted and implemented the Codes (2007) that they have failed in their execution and not achieved the objectives of the BBBEE Act (2003). Although some of these companies have managed to achieve the target objectives as laid out in the Codes (2007) it would appear that the intention of and the commitment to the BBBEE Act (2003) is still being missed and that BBBEE is still very much a target driven compliance exercise. It would appear further that smoke and mirrors have taken precedence over reflecting the true state of progress in empowering PDI’s and that companies have chosen to achieve some level of compliance using whatever means possible. Many companies reviewed have quoted significant compliance levels in terms of sector charters and have preferred to use elaborate exercises to create the impression of a commitment yet when one drills down to the detail it reveals that the claims of success are not matched by hard facts.

Throughout this paper it may appear that there is a lack of appreciation for the efforts made and the resources committed by the Top 40 JSE listed companies to empower PDI’s. This is also not true. Any effort to empower PDI’s must be commended for in most cases this is a step towards improving the life of the PDI. The study has evidenced that the majority of the companies in the sample have made some contribution to the upliftment of PDI’s. Unfortunately these contributions
are largely far short of the levels at which they are marked and the overall result is that the majority of PDI’s do not appear to have benefited from BBBEE in terms of its current form and execution and that BBBEE has largely only benefitted a small percentage of the 80% of South Africans who are defined as PDI’s.
6 FUTURE RESEARCH DIRECTIONS

With the limitations that were encountered by the approach taken to researching this question, it would appear that more value may be attained by future research in this regard by taking a more specific approach. This more specific approach could entail reviewing a particular company against its ability to comply with the Codes (2007). This may however provided a very blinkered view on the success of the BBBEE Act (2003) in contributing to the upliftment of PDI’s as was the case with the study performed by Arya et al (2008) and therefore be misleading. To avoid this future study could be extended to a specific sector of the South African economy and to assess the level of compliance within that sector with the Codes (2007). This would provide a broader view than is possible with using a single corporation but again could be influenced by factors within the sector that result in sector players reflecting an affinity to some aspects of the BBBEE Act (2003) over others. The existence of sector specific charters already for certain sectors could also influence the outcome of the study. A third approach may then be to draw a sample of companies across various sectors and to test their compliance with the Codes (2007).

Whichever option is explored, it would be important to break the layer of publicly available information in order to adequately interrogate the underlying information and principles which affect the particular entities level of compliance.

There may also be value in future in performing a comparative study at a later point in time to assess the progress made by the same entities in complying with the Codes (2007). Given that the Codes (2007) have only been promulgated since 2007, this study may not have allowed sufficient time to implement new or adjust current initiatives in order to attain compliance. This may especially hold true for the financial services and mining sectors as these did already have sector charters in place that do not align completely to the Codes (2007).

Finally it may be viewed that this study assumed to boldly that the implementation of the elements of the Codes (2007) would result in the upliftment of PDI’s and that this is not necessarily true. In this case, it may be useful to explore the benefit received by specific PDI’s or groups of PDI’s from the principles of BBBEE and whether these benefits did indeed result in their being uplifted. This is a very broad approach and the exact approach to the study would have to be refined in light of practicality at the time.
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APPENDICES

Appendix 1 – Recalculation Workbook