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**UTILIZING PRINCIPAL AGENT AND PRINCIPAL
STEWARD THEORIES TO ASSESS THE EFFICACY OF
PUBLIC PRIVATE PARTNERSHIPS IN DELIVERING
BLACK ECONOMIC EMPOWERMENT**

By

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A thesis submitted for the degree of

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In the Department of Construction Economics and Management

Faculty of Engineering and the Built Environment

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DECLARATION

I declare that the contents of this thesis are entirely my own work, except for the specific and acknowledged references to the published work of others made in the text.

To the best of my knowledge and belief, it contains neither material previously published by another person nor material to which a substantial extent has been accepted for the award of any other degree of the university.

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ABSTRACT

When the African National Congress (ANC) assumed power in 1994, its main economic policy was to overturn over three Hundred (300) years of black economic exclusivity which were intensified by the institutionalization of racism through *Apartheid* in 1948. The new dispensation adopted the policy of Affirmative Action which had been practiced in other parts of the world and contextualized it to South Africa through Black Economic Empowerment (BEE). The policy was designed to permeate every aspect of state and the private sector, especially companies which deal with government as providers of goods and services. The new government realized that because of former *Apartheid* privileges the established companies contain high specialist knowledge tacitness and management acumen, which would need to be utilised to benefit the new black-owned companies and assist in their development. Through the Targeted Procurement Policy the government compelled the established companies to unbundle their work packages to accommodate, small black-owned Affirmable Business Enterprises (ABEs) as sub-contractors or Joint Venture partners. This relationship between the government and the established companies is a typical Principal Agent (PA) relationship, and has quintessentially been beset with moral hazard and adverse selection problems militated by asymmetric information favoring the established companies.

The identification of the construction industry as the flagship empowerment environment was due to its peculiarities of yielding more employment for a given capital flow and the low entrance barriers advocating for its amenability for a far-reaching BEE inclusiveness. However, the opportunistic behaviours of established companies indicated through strategic misrepresentation of the true BEE beneficiaries has hampered the effectiveness of the BEE implementation. It is in this context that Public Private Partnerships (PPPs) were identified as a

suitable vehicle to provide an incubatory environment to nurture the up-and-coming black owned Small, Medium and Micro Enterprises (SMMEs).

This research uses PA theory to assess the efficacy of the PPPs in mitigating different forms of fronting which are indicative of opportunistic behaviours by established companies. The research also evaluates the effectiveness of the PPP environment in according ABEs access to complex and idiosyncratic information due to a PPP's longevity and strict monitoring regimen. A critical case is deployed in this study using the basic tenets of PA theory as lenses to study the behaviours of three major parties; the government, BEE beneficiaries and established companies. The limitations of Principal Agent theory are augmented by the introduction of Principal Steward (PS) theory to account for agent (established companies) post-contractual behavioural "anomalies" not accommodated in the classic PA theory postulation. The observed bipolar agent character yields a new theory encompassing both the PA and PS theories demonstrative of a positive agent character transition akin to a Steward, which is yet intrinsically containing basic agent characteristics. This character transition is found to have been induced by robust PPP contractual arrangement, which in the end benefits BEE.

DEDICATION

TO MY MUM AND DAD

My tirelessly hardworking mother Mrs. 'Maboithatelo Paulin Khatleli and my father Mr. Khoanyane Khatleli who still remains the most brightest man I have ever had the privilege of knowing all my life. Thank you for exemplarily showing me the benefit of hard work, tenacity and self-belief. To you both I dedicate this work for which I have pleasantly toiled for, during long solitary hours.

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ABBREVIATIONS and ACRONYMS

AA	Affirmative Action
AAPF	African American Policy Forum
ABE	Affirmable Business Enterprise
ADB	African Development Bank
ANC	African National Conference
BBBEE	Broad Based Black Economic Empowerment
BBC	British Broadcasting Corporation
BEE	Black Economic Empowerment
BEECOM	Black Economic Empowerment Commission
BMF	Black Management Forum
CIDB	Construction Industry Development Board
CIDB	Construction Industry Development Board
DPW	Department of Public Works
DTI	Department of Trade and Industry
EEOC	Equal Employment Opportunity Commission
GEAR	Growth, Employment and Redistribution
HDI	Historically Disadvantaged Individual
HEFMA	Higher Education Managers Association of Southern Africa
ICT	Information and Communications Technology
IDC	Industrial Development Corporation
ILO	International Labour Organization
IMF	International Monetary Fund

NCPPP	National Council for Public-Private Partnerships
NEP	New Economic Policy
NPWP	National Public Works Programme
OBC	Other Backward Classes
OECD	Organization for Economic Co-operation and Development
OFCC	Office of Federal Contract Compliance
OPEC	Organization of Petroleum Exporting Countries
PA	Principal Agent
PAC	Pan Africanist Congress
PDI	Previously Disadvantage Individual/ Institution
PPP	Public Private Partnership
PS	Principal Steward
RDP	Reconstruction and Development Programme
RFP	Request for Proposals
RFQ	Request for Qualification
SEBC	Socially and Educationally Backward Classes
SEDA	Small Enterprise Development Agency
SMME	Small Micro Medium Enterprise
SSC	State Security Council
UDF	United Democratic Front
UNDP	United Nations Development Programme
USSR	Union of Soviet Socialist Republics

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1 INTRODUCTION

1.1 BACKGROUND

South Africa's history of racial segregation and economic stratification can be traced back to the arrival of the first Dutch settlers in the Cape of Good Hope in 1652 (Worden, 2007). The first people to suffer from these settlers' expansion into the hinterland of South Africa were the indigenous San people of the Cape, whose transhumant animal husbandry way of life was disrupted by the gradual abrogation of their traditional grazing lands (Hart, 1967). Within 150 years of Dutch settlement the San were completely dislodged from their lands and incorporated on a servitude role in the Dutch settlers' economy (Guelke, 1989). This situation persisted until the takeover of the Cape Colony by the British in 1795, as part of the territorial windfall occasioned by the British victory in the Napoleonic wars (Legassick, 1989). The British administration brought with it structural economic changes which led to discontent among the Dutch settlers, notably due to the removal of tied labor system and the abolition of slavery in 1834 (Ross, 1999).

The disgruntled Dutch who acquired the name of Trekboers, dispersed in the general easterly direction to escape British control, and settled in the present day Kwazulu-Natal, Orange Free State and Transvaal (now Gauteng) (Muller, 1975). The Trekboers expansion into the interior of the sub-continent led to a struggle over land resources between African polities who occupied these territories and the new Afrikaner arrivals exacerbating the complexity of power and territorial struggle triggered by *lifaqane* (Gluckman, 1960; Guy, 1980). The British in turn took interest in the interior of the sub-continent and gradually the independent African polities were either annexed, subjugated or driven to the periphery of rich land resources (Ross, 1999).

The discovery of Diamonds (1869) in Kimberly and Gold (1886) in the Transvaal intensified the power struggle between the British and Trekboers culminating in

the Anglo-Boer war of 1899-1902 (Shillington, 1987). The ensuing British victory paved the way for the creation of the unified South African state in 1910 (Mbenga, 1980). Thus the protracted jostling for resources resulted in the complete conquest of South Africa by two major players; the British imperialists who were the ultimate Anglo-Boer victors and the Trekboers who were now collectively identified as the Afrikaners (Marks & Trapido, 1979). Existential pragmatism chiefly predicated on Afrikaner appeasement immediately led to the formalization of black racial economic exclusivity (Worden, 2007). It was in this context that the African National Congress (ANC) was formed, to provide a unitary voice protecting political rights of all black people in the country (Worden, 2007; Ross, 1999).

When the mainly Afrikaner-supported National Party came to power in 1948 it legitimized a long-standing philosophy of white supremacy through its policy of *Apartheid* (Worden, 2007). *Apartheid* led to the general black resistance and instability in the country, until political prisoners were freed in 1990 paving the way for democratic elections in 1994 (*Ibid.*). When the ANC came to power in 1994 it identified Black Economic Empowerment (BEE) as a major vehicle for addressing the economic injustices of *Apartheid* (Reed, 2004). The legitimacy of Affirmative Action (AA) policies is to regulate the allocation of scarce positions in many areas including education, employment, or business contracting in order to increase the representation of persons from particular population subgroups that were previously unfairly excluded (Fryer & Loury, 2005). Similarly in South Africa the main aim of BEE is to encourage and facilitate the meaningful participation of black people in the economy of South Africa (Ramphela, 1995) It includes and deploys measures such as employment equity, skills development, targets for ownership and management and preferential procurement (DTI, 2004). The South African government has particularly identified Public Private Partnerships (PPPs) as a suitable vehicle for delivering BEE, because their long-term nature is considered ideally suited to provide an incubatory environment for fledging black owned companies (National Treasury, 2004). In PPPs and other procurement methods empowerment of black owned SMMEs is ceded to white-owned

established companies, thus creating a Principal Agent relationship between the government (principal) and white-owned companies (agents). This research deploys Principal Agent theory to assess the efficacy of PPPs in delivering BEE.

1.2 DEFINITION AND JUSTIFICATION OF AFFIRMATIVE ACTION

According to Ramphele (1995) there appears to be as many interpretations of AA as there are interpreters, as Adam (2000) also posits that the concept has not been authoritatively defined in legislation or international covenants. The term AA is imported from the United States where it is targeted at mostly black and Latino minorities (Weiner, 1993) rather than the majority, and in that context tends to be perceived mostly as a moral issue bordering on charity (Adam, 2000). Typical definitions of AA include “policies that are intended to benefit historically subordinated racial groups and that do so by using race as a basis for allocating burdens and benefits” (Kennedy, 1993, p. 68). Eide (1992, p. 9) calls it “preferences given to members of a group typically defined by race or gender and is held to be justified because members of that group have in the past been discriminated against, not because of their individual characteristics, but because they belonged to the group concerned.” According to Samarasinghe (1993, p. 45), it is “any public program or policy either implemented by the state or by the private sector, that is designed to help a particular ascriptively designated group in society, obtain share of resources that it would not be able to obtain otherwise.” Weiner (1993, p 82) put it succinctly as “policies which aim to reduce racial inequality.” (Innes, 1993, p. 4) elaborates it as “not necessarily a single policy or strategy; rather there can be a number of different ways of implementing affirmative action.” Thus it can realistically be treated more as a set of measures to achieve the desired end. The preponderance of race in the above definitions appear to negate the importance of gender and other criteria, whereas in reality the definitions should cooperatively be regarded to depict AA as a set of formal interventions intended to open doors to corporate statuses and general economic opportunities to the previously marginalized members of the society.

Justification of Affirmative Action

Rosenfeld (1991) argues that defining AA without reference to justice and equality is impossible. AA can be “supported on moral, legal and responsibility grounds” (Thomas et al, 1996). According to Coleman (1983) the concept of justice in AA can be divided into two categories: firstly distributive justice, which is an obligation to extend particular actions to beneficiaries – in other words giving them the chance they should have had (Coleman, 1983). Secondly, correctional justice which is an equitable conduct for the purpose of achieving equality where there is equal treatment of all irrespective of background or race (Rawls, 1971). It is in this context that AA refers to programmes (Greenawalt, 1975) which lift the previously discriminated to a greater participatory role with the ultimate aim of reversal of earlier discriminations. In a way it is a social “auditing system” (Tomasson et al, 1996), which alerts organizations about discrepancies between qualified citizens and the utilization of such citizens in the organization whilst demanding the correction of racial imbalances depicted by the system. The body of AA encapsulates the demolition of racial segregation and social imbalances (Ross, 1973). As such AA should be seen as a synonym for positive action (Parekh, 1992), which calls for actions that help sufferers of past discrimination. The intention of AA is to restore diversity in situations where past discrimination excluded such diversity, hence its intrinsic association with social justice and creation of fair balances. In South Africa it is explicitly deployed as a “tool for justice” (South Africa, 1997) to rectify past discriminatory practices whilst at the same time contributing to meet the demand for equity and equality. AA is thus an active attempt at integrating and restructuring society.

1.2.1 Affirmative Action Lessons from Other Countries

United States

The issue of racial equality has been central to the American *realpolitik* discourse and as early as the Declaration of Independence in 1776, section 2 of the 1789

constitution acknowledges discrimination as part of historical legacy (Kluger, 1975). The American civil war centered around the issue of black slavery and white supremacy, the aftermath of which in the 1860s saw the 13th, 14th and 15th amendments to the constitution proffering equity between blacks and whites (*ibid.*). Although there was always resistance to tangible existential equality (Anderson, 2004), the practical exigencies of American involvement in the Second World War triggered the desegregation of the war industry through the Executive Order 8802 signed by President Franklin D. Roosevelt which prohibited government contractors from practicing employment discrimination based on race, color or national origin (EEOC, 2008). The word “Affirmative Action” was first used by President J.F. Kennedy in 1961 in Executive Order 10925 which sought to sanction all contractors who contravened prohibitions to discriminate on account of race (Edwards, 1987). Executive Order 11246 of 1965 is regarded as the primary source of AA (Weiss, 1997), as it required all the federal contractors to “take ‘affirmative action’ to ensure that applicants are employed and that the employees are treated fairly during employment, without regard to their race, creed, color or national origin” (EEOC, 2008). Thus it can be seen that in the United States AA programmes since their conception in the 1960s were at the behest of government agencies and state legislature. Their implementation throughout the seventies and eighties has been bedeviled by the legal challenges and policy strategists continually grapple with new issues (Badgett, 1995). To date there is evidence that amidst challenges there are a lot of positive developments.

India and Malaysia

AA has been practiced in other countries with mixed successes and constraints reflecting the historical background and geo-political dynamics within those countries. The policies have generally been criticized for their ineffectiveness and/or unfairness, especially because they appear to generally benefit the well-connected elite within the target community. Of the countries which have implemented AA India has the largest programme. Instigated by Britain at independence to include subsidies, scholarships, reservation of government jobs

and special political representation for lower castes in the society, it now caters for more than 300 million (Kumar, 1992) people out of a population of 1.15 billion. The AA programmes are an intervention to restructure the traditional compartmentalization of different castes into different economic and political functions (Wood, 1987). India's AA is uniquely caste-based and not race-based and is usually referred to as compensatory discrimination for the benefit of those who have been marginalized by centuries of past injustices and repression (Boston & Nair-Reichert, 2003). The general complaint in India has always been that the beneficiaries are always the well-off groups within each caste, who would have been hired anyway, while the uneducated rural poor do not benefit at all from AA programmes (Borooah, 2007). On the positive side AA has created a group awareness and political mobilization among the lower castes, as they are now regarded as a crucial constituency for any government, whose concerns need serious consideration (Adam, 2000).

AA policies are nuanced by local peculiarities in diverse countries where they are implemented, but the common factor in nearly all the countries is that the beneficiaries are economically and socially disadvantaged and politically subordinate (Guan, 2005). Malaysia differs from these countries in that the group benefiting from AA also has the political power to legislate it (Adam, 2000; Lim, 1985). There is also a striking similarity to the South African context because the policy benefits the majority, and also because the racial differences coincide with economic ones. At independence in 1957 the Malay assumed complete political control in the country, and they had had their special rights being the indigenous community conferred on them by the British colonial administrators as early as 1874 (Lim, 1985). These special rights ensured the "protection" for Malays to practice peasantry and fishing without any hindrance, however this "protection" left them behind the Chinese and Indian communities who migrated into the country to take advantage of the capitalist economy created by the British (*ibid.*). In the 1960s there was widespread public debate over Malay economic backwardness and the worrying segmentation of the economy along the ethnic lines (Shamsul, 1997). AA measures implemented at the time were largely

ineffective and inadequate, leading to increasing impatience among the Bumiputra (indigenous Malays) about the slow pace of the economic reform. This disgruntlement culminated in the ethnically charged riots of 1969 (Guan, 2005).

The riots compelled the government to introduce the New Economic Policy (NEP) which was intended to be effective from 1971 -90 (Guan, 2005). At its heart the NEP encapsulated a concerted AA scheme to launch the Malays into the mainstream of Malaysian economy and to restrict the scope of laissez-faire capitalism and allowing greater state intervention to advance the general Malay welfare (Shamsul, 1997). The implementation of the NEP led to explosive growth in the civil service, with Malays recruited at a ratio of 4:1 to other groups, however this did not squeeze out the non-Malays as there was strong economic growth (Adam, 2000). A strong Malay middle class emerged as a direct result of the initiatives in the public and educational sectors over which the government had more control (Guan, 2005; Adam, 2000). While the NEP fostered the growth of the Malay middle class it however led to a more class-differentiated Malay community (Guan, 2005; Shari, 2000). It is this intra-ethnic inequality within the Malays that has led to a lot of criticism of the NEP, mostly because the benefits seem to be disproportionately channeled to the well-connected and the rich in the Malay community, who would do well even without the assistance of the NEP (Jomo, 1989; Guan, 2005). This criticism about the AA programmes implementation seems to be a reflection of similar sentiments in the United States and India, and it is the purpose of this study to see if the South African approach can improve on some of these drawbacks by particularly concentrating on the utilization of PPPs.

Other African Countries: Zambia, Zimbabwe and Namibia

Although there are other countries in Africa that have embarked on AA policies to reverse the economic inequalities brought by colonization, three which neighbor South Africa will be discussed as their proximity might be instructive because of similar historical experiences. At independence in 1964 in Zambia, about 97% of all high-ranking government officials were white, and the new government

approach was a forceful approach, which promulgated laws entitling black Zambians a rightful occupation of all positions in public and private sectors (Lungu, 1980). The nationalistic approach which according to Madi (1997) was inspired by communalistic policies like Julius Nyerere's "Ujamaa" and the Chinese "cultural revolution", led to the abrupt departure of many expatriates leaving many positions vacant which were filled by less-qualified locals to the detriment of the merit principle. The government's overriding economic policy was the indigenization of economic control, which inevitably targeted the flagship copper mining industry through nationalization, unionization and Zambianisation of the workforce (Daniel, 1979). The indigenization of other private industries was met with limited success because the policies were based on citizenship and not on race and non-African Zambians could not be legally dislodged from their traditional business preserves (Berveridge, 1951). While Zambia was forceful and nationalistic on one hand, Zimbabwe on the other hand opted for a softer approach.

Zimbabwe like Zambia initially targeted the civil service such that an almost white civil service at independence in 1980 had 95% of senior positions occupied by blacks in 1984 (Mokgoro, 1996). Between 1981 and 1990 the civil service had expanded by 185%, largely through the infusion of inexperienced and corrupt officials, and once the Africanisation of civil service was achieved there were no further initiatives to reduce racial economic inequalities (*ibid.*). The government approach to the private sector was to appeal to their sentiments and good-will to help their fellow human beings with no clear policies to restructure the economy, and the white wealthy minority did little to reciprocate the government's reconciliatory overtures (Muzondidya, 2005). The belated cry against an illusory transformation by blacks led to coercive land grabs and white farms evictions and general authoritarianism (Raftopoulos & Savage, 2004) which has conflated with other blunders leading to a self-inflicted economic decline to an extent that Zimbabwe is largely regarded as a failed state (Financial Times, 2008b). The Zimbabwean approach has largely suffered from a lack of clear vision and well articulated AA policies.

Namibia is a unique case in that after a long war of liberation independence came as a result of a negotiated decolonization settlement, thus limiting government policy to the terms of the settlement agreement. Paramount in this settlement is the protection of property rights and guaranteeing of jobs for all civil servants, which appears to have perpetuated the economic *status quo* (Melber, 2006). However replacement of retiring, transferring or resigning civil servants with African candidates has gradually managed to change the face of the public service such that six years after independence 70% of the management posts in the public posts were held by previously disadvantaged individuals (*ibid.*). Beyond this little has changed in the general populace and notably in the mid-1990s Namibia had the largest Gini coefficient at 0.701 when compare to any country in the world (UNDP, 1997). The Gini coefficient measures the extent to which the distribution of income in the economy deviates from a perfectly equal distribution (World Bank Group, 2008). Thus the negotiated settlement in Namibia appears to have stifled the government's policy options exacerbating economic racial disparities even amidst a changed economic climate representative of the majority of the general Namibian populace.

1.3 APPLICATION OF AFFIRMATIVE ACTION IN SOUTH AFRICA

Affirmative Action in South Africa

Madi (1993) contends that jobs reservations in South Africa can be traced as far back as the 1890s, and as such they should not be regarded as a new invention, although the earlier drives were more black exclusion practices rather than legal policies. However, AA in its modern conceptualization has been practiced in earnest in South Africa since 1922 following the "Civilized Labor Policy" which was initiated by the white miners' strike, who were disgruntled by a move for an annulment of white job reservations and wage parity with the blacks (Lester, 1996). The assumption of power by the National Party in 1948 saw the perfection of the most expensive, most extensive and most coercive AA in the world – *Apartheid* (Madi, 1993). Throughout the 1950s to the 1970s all the *Apartheid* laws were meant to favor whites in general and the Afrikaners in particular (*ibid.*).

AA in the context of black advancement started in the in the mid-to-late 1970s, as a direct response to the Sharpeville Massacre of June 16th 1976 which was a consequence of brutal police response to a political march by Soweto youth to voice their disgruntlement about *Apartheid* (*ibid.*). The massive disinvestment that followed because of the international outcry, compelled the companies that stayed to voluntarily demonstrate that they are contributing to “black advancement” (Thomas *et al*, 1996) by promoting black career advancement and embarking on social responsibility programmes (Madi, 1997)

These early initiatives have synonymously characterized the implementation of AA in South Africa with employment of quotas and targets based upon proposed formulas (Thomas *et al*, 1996; BMF, 1993). This has traditionally meant the recruitment and advancement of blacks and women up the ranks of the organization, as well as their appointment as non-executive directors at board level (Madi, 1997), which Thomas *et* (1996) claims clusters blacks at the top with little value to the company because they don’t become part of serious decision making. This “minimalist” approach (Edigheji, 1999) was the norm up until its partial adoption by the new dispensation, after which there has been a gradual shift to a new phase of AA implementation (Iheduru, 2004) because of the new implementation paradigm. This shift was triggered by discontent with the traditional AA implementation that was seen as black middle class-creation project (Freund & Padayachee, 1998), with little impact on the Widespread economic trickle-down.

The new phase according to Edijheri (1999) is “maximalist” as it seeks to attain a comprehensive restructuring of the institutions and society rather than simply replacing white individuals with black ones in executive positions. The first AA phase in South Africa was known as Black Economic Empowerment after 1994, but after a widespread criticism Broad Based Black Economic Empowerment (BBBEE) was instead instituted, and seeks to broaden empowerment across the private economy by using policies such as ‘preferential procurement’ (Butler, 2005). According to Butler (2005) BBBEE came about as a result of the pressure

to make empowerment less dependent on the goodwill of the previously advantaged, but rather to make it spearheaded by government proactivity in making it more 'broad-based'. The department that has spearheaded this drive is the Department of Public Works (DPW) (Strategic Procurement Systems, 2002). By targeting the Affirmable Business Enterprises (ABEs) (Watermeyer, 2000), this department has tried to redress the structural problems of the South African construction industry.

1.4 THE CRITICAL ROLE PLAYED BY THE CONSTRUCTION INDUSTRY TO EFFECT SOCIO-ECONOMIC CHANGE

Governments have long recognized that the construction industry is uniquely able to impact on social and economic activities from Roosevelt's New Deal in the US to National Socialism in Germany. According to McCutcheon (2001) and Watermeyer (2000), the construction industry is an efficient industry for generating employment for a given capital flow, especially when labor-intensive methods are deployed. Government procurement has been observed to realise socio-economic objectives, especially when "preferencing" procurement is used as was the case in the late 1940s where it was an integral part of the Marshall plan in rebuilding Europe after WWII (Shezi, 1998). In South Africa change has been sought by the promotion of business linkages between large and small black-owned companies through joint ventures and sub-contracting, where large contractors are required to unpack or unbundle their contracts into smaller contracts in order to secure the involvement of targeted enterprises and/or engage these "targeted enterprises" as joint venture partners or structure the work to provide opportunities for targeted labor (Watermeyer, 2000).

Internationally it has been recognized that Small Medium and Micro Enterprises (SMMEs), as opposed to large scale enterprises, tend to choose labor-intensive methods that they can afford, and that developing them places a significant portion of expenditure in local communities, thus enhancing employment creation (Larcher, 1999, 1998; Tajgman and de Veen, 1998). Because of the low barriers to entry, demand for labour in construction industry is very elastic and a lot of

people can be absorbed for a greater empowerment effect (Tajman & de Veen, 1998).

Specific Role of Established Companies to Effect Change

The specific nature of the South African Targeted Procurement Programme is such that the responsibility for the successful empowerment of the SMME in the economy is effectively ceded to the private sector (South Africa, 1997). The main contractor in most contracts functions as the implementation agent on behalf of the national government in achieving the long-term objectives of upgrading SMMEs economy in general and in particular the construction sector (*ibid.*). This is poignant in the South African situation where the previously advantaged white owners of established companies still have, capital, skills and experience skewed in their favour. Imbalances inherited from the apartheid era in the ownership structure in construction industry thus prompted the government to restructure this industry in line with the social and economic imperatives for the reconstruction (*ibid.*). Rogerson (2000) argues that the best empowerment results occur where partnerships are formed between established (white-owned) construction businesses and emerging PDI-owned enterprises. In the context of the construction industry empowerment means less dependency on the dominant white-owned businesses (Havemann, 1999). The government is implementing this policy amidst the competing public needs from limited resources, especially because public procurement in most countries (including South Africa) accounts for a bigger share of economic activity (Maskin & Tirole, 2008). An arguably, “recent” development to address this challenge has been the development of Public Private Partnerships (PPPs) in industrialized countries and emerging economies during the 1990s (*ibid.*). This is simply because PPPs have been practiced for a very long time even before the modern times as discussed elsewhere in the document

1.5 PUBLIC PRIVATE PARTNERSHIPS (PPPs)

A typical PPP is a scenario where the non-public partner is required to raise private finance, and bear substantial risk for a project, where the revenue derives from some combination of government payments and user fees (Maskin & Tirole, 2008). PPP arrangements have been set up for large scale schemes in transportation, medical care, telecommunications, energy, water systems and even orphan (for rare diseases) drugs (*ibid.*). The term “partnerships” according to McQuaid (2000) covers vastly different concepts and practices and is used to describe a wide variety of types of relationships in a myriad of circumstances and locations to such an extent that Lyons and Hamlin (1991, p. 55) claim that the “methods for carrying out such (private-public) partnerships are limited only to the imagination”, as there are infinite range of partnership activities, and economic development offices are increasingly becoming innovative in their use of the concept (McQuaid, 2000).

In general terms any collaboration between public bodies, such as local authorities or central government and private companies can be referred to as a public-private partnership (NCPMP, 2005; Akintoye *et al*, 2003; BBC, 2003). This partnership involves cooperation – i.e. ‘to work or act together’ – and according to McQuaid (2000) can be defined as organizations in the public and private sector cooperating for mutual benefit. They are sometimes referred to as collaborations among business, non-profit organizations and government in which risks, resources and skills are shared in projects that benefit each partner (Stratton, 1989; Akintoye, 2003) as well as the community (Stratton, 1989). The implementation of PPPs is predicated on the notion that there is a strong potential for synergy by working together. Principally as McQuaid (2000, p 11) posits the ‘sum is greater than the parts’, because none of the individual players have all the necessary skills and resources necessary to develop (Croft, 2005) the infrastructure for which there might not be commercial viability.

Although the variety of PPPs arrangements are boundless they broadly come in two types; concession PPPs and availability-based PPPs (World Bank Group, 2008). In a concession PPP the government mandates the private party (counterpart) to design, build, finance and operate for a fixed period of time, an infrastructure owned by the government (*ibid.*). Although the private party is usually expected to assume all the demand risks, sometimes the government underwrites the minimum level of usage World Bank Group, 2008). Typical examples in this arrangement would be roads, railways, urban transport schemes, ports and airports (*ibid.*). The availability-based PPPs are similar to concessions PPPs in the structuring of the agreement and the upkeep of the infrastructure, however in this case payments come directly from the public authority and not from the user, and this payment is made when and to the extent that a public service and not an asset is made available (World Bank Group, 2008). In this arrangement the demand or usage risk remains with the public authority (*ibid.*). Availability-based PPPs are among the safest form of project financings with visible income streams and relatively benign penalty regimes (Projectfinance, 2008). This arrangement is useful in non-“self-funding” projects such as prisons, government buildings and rural roads, where payment is based on the availability of the accommodation facility, equipment or system and not on the volume of usage (World Bank Group, 2008).

Akintoye *et al* (2003) argues that PPPs could be used to redress ethnic income differences as in Malaysia (Akintoye *et al*, 2003). This factor is very pertinent to the South African situation. The South African Broad Based Black Economic Empowerment Act (2003) states that PPPs offer a valuable opportunity for strong and sustainable Black Economic Empowerment (BEE Act 53 of 2003). Since by their very nature PPPs are long term they provide a good vehicle to empower the previously disadvantaged people in this country (National Treasury, 2004) through a steady flow of income. This satisfies the main objective of the BEE which is to assist the previously disadvantaged groups to participate in the mainstream of the economy (Manchidi & Merrifield, 2005; PPP Quarterly, 2002). PPPs are particularly viewed as an important tool in the policy of BEE, as they

are considered a useful route in capacity building in South Africa (Lezzard, 2004). Zarenda, 2001) backs up this view by arguing that their large-scale nature accommodates widespread inclusiveness, which makes them invaluable for BEE. This inclusive nature of PPPs can accommodate the black-owned SMMEs which need a very stable environment to be nurtured. However the enormity and complexity of these arrangements, and the scarce skills in the government to monitor and regulate the contract once construction and delivery has begun, might lead to a Principal Agent problem (OECD, 2006). The next session explores Principal Agent theory and its relevance to this research.

1.6 *PRINCIPAL AGENT THEORY*

The Principal Agent (PA) theory or “agency theory” is a branch of economics concerned with a relationship problem between contracting principals and agents, where “agency” specifically refers to a situation where the agent acts on the behalf of the principal (Denhardt, 2003). This prevalent problem is pertinent when the employee or contractor (agents) has an informational advantage over the principal and has divergent interests to the principal (Eisenhardt, 1989). The PA problem is a problem because it is hard to solve (Wessels, 2006). Since both parties’ efforts tend to be unobservable there is always a problem of correctly devising a contract that guides the interaction (Greve, 2008). With the PA problem the principal and the agent have divergent interests, and since each cannot monitor what the other is doing, the resultant output is less than optimal (Wessels, 2006). The focus of the theory is on determining the most efficient contract given assumptions about people (e.g. self-interest), organizations and information (Eisenhardt, 1989). So the main theme of the principal agency theory is dealing with the problems encountered when co-operating parties not only have incongruent goals but divisions of labor too, making it difficult for the principal to monitor and verify the agent’s behaviour (Jensen & Meckling, 1976; Nilakant & Rao, 1994; Zajac & Westphal, 1994; Eisenhardt, 1989). The theory is predicated on three fundamental assumptions; firstly that both parties are rational individuals who are self-interested, secondly that the agent is both effort and risk

averse and thirdly that the relationship is beset with a problem of information asymmetry (Baiman, 1990; Jenson & Meckling, 1976; Levinthal, 1988). The theory posits that the existence of even one of these conditions creates a potential for an agency problem (Baiman, 1990; Eisenhardt, 1989; Nilakant & Rao, 1994).

Self-interest can be mitigated by installing monitoring mechanisms to protect the principals, from the agents' divergent interests pursuit (Elloumi & Gueyie, 2001). A large body of literature (e.g. Bromiley, 1991; Sinha, 1994) has demonstrated that since agent employment security and income are inextricably tied to the firm (principal), agents would under normal circumstances exhibit risk aversion in decisions regarding the firm in order not to lower risk to personal wealth- i.e. losing their job (Wiseman & Gomez-Mejia, 1998). This is more pertinent in the technical prescriptions where infringement might lead to contract termination, thereby using the agent's risk aversion to induce goal congruency. For the purpose of this research asymmetric information and its implications on the agent contractual performance is going to be investigated further, because on BEE implementation superior informational advantage appears to favour the contractors (agents).

Information Asymmetry

Information asymmetries are usually created where the agent has superior and specialized knowledge than the principal regarding task execution and where the agent is permitted a lot of managerial discretion (Gomez-Mejia & Balkin, 1992; Rajagopalan & Finkelstein, 1992). Whenever asymmetric information exists it may lead to "opportunism" by the agent and researchers in this field have been most concerned in describing the governance mechanisms that solve this problem (Jensen, 1983; Eisenhardt, 1989). Opportunism is described by Williamson (1975, p. 9) as 'pursuing one's self-interests with guile'. BEE stipulation requires that contractual "set asides" be a preserve of the PDIs, however "guile" in the form of BEE beneficiary misrepresentation that abounds in government procurement in South Africa may be a manifestation of information

asymmetry favouring the agents (contractors). According to PA theory the two forms of opportunism which are important aspects of agency theory are those of “moral hazard” and “adverse selection” (Eisenhardt, 1989).

Moral Hazard (post-contractual opportunism)

“Moral Hazard” happens once the two parties have entered into a contract, and is a risk that one party will act to the detriment of the other within the contract (Wessels, 2006). Jensen and Meckling (1976) argue that if both parties are utility maximisers, there is a good reason to believe that the agent will not always act in the best interests of the principal. “Moral Hazard” is sometimes called “hidden action” because the agent’s adverse actions are always hidden from the principal (Greve, 2008). The inability to monitor each other in any kind of Principal Agent relationship will inevitably lead to a “moral hazard” problem (Maskin & Riley, 1984). The fact that the empowerment of PDIs in South Africa is ceded to white-owned established companies in South Africa demonstrates the enormity of the task, which the government on its own cannot effectively be able to implement. The reported sidelining of PDIs in contracts may be indicative of an endemic BEE “moral hazard” in government procurement as the PDIs are not benefitting from their participation in these projects.

Adverse Selection (Pre-contractual opportunism)

“Adverse Selection” is a direct result of asymmetric knowledge, leading to the agent to hide information that is relevant to the negotiation and signing of a contract (Greve, 2008). Under this condition the principal cannot ascertain if the agent accurately represents his true ability (Eisenhardt, 1989). As a result an adverse selection is made due to poor information and consequently this leads to selection of a bad agent (Wessels, 2006). For Surowiecki (2004) and Venkatesh (2003), the “adverse selection” problem, which is also referred to as “hidden information”, normally occurs when one party knows more than the other, such that the principal is at the agent’s mercy or vice versa. Whereas “moral hazard” is about post-contractual action hidden from the principal, “adverse selection” is about pre-contractual information hidden from the principal (Greve, 2008). In

South African government procurement presenting PDIs as legitimate BEE beneficiaries during tendering, only to divert the financial benefits to unqualified beneficiaries post-contractually may be demonstrative of adverse selection.

1.7 DEVELOPMENT OF A RESEARCH RATIONALE

PPPs present governments with opportunities to increase efficiency but since contracting involves an agent, problems of adverse selection and moral hazard will typically arise (Slyke, 2007). The only way to explain this interaction and understand it better is through PA theory, because it represents a complex problem of human action where the very act of framing the problem concurrently defines the solution. PA describes the interaction of unequal partners doing business in an environment of information asymmetry as is the case in government contracting. Opportunism is a “wicked problem” (Rittel & Webber, 1973) and as a result there is no true-or-false solutions to opportunistic behaviour only better or worse solutions. PA articulates the different aspects of observed behavioural tendencies in contracting and was thus applied to the South African PPP environment.

The scenario of PPPs and of the construction industry in general where the government is the principal and the contractor is the agent is a typical economic PA Theory relationship, which is invariably bedeviled by the concomitant problem of opportunism. Misrepresentations of the true BEE beneficiaries in contract documents can all be encompassed under an umbrella term of “fronting”, which according to the *ICT Draft BEE Charter (2005)* means “any entity, mechanism or structure established in order to circumvent the BEE requirements as required under various government policy instruments”. “Fronting” is seen by the ANC (2001) as an opportunistic dishonesty that tends to advantageously use government redress programmes for self-interested parties. According to DTI (2001) it cannot be confined to one practice as it covers any practice or initiative that contravenes or is against the spirit of any law, provision, rule, procedure, process, system, policy, practice, directive, order or any other term or condition

pertaining to BEE. This represents a deliberate or attempted circumvention of the BBEE Act and the Codes, through misrepresentation of facts, regardless of whether such claims are made by a company that purports compliance or by a third party (*ibid.*). Since this practice is rife particularly in the construction industry this research seeks to investigate whether the PPPs have adequate mechanisms to mitigate these “fronting” opportunistic practices (Department of Trade and Industry, 2005).

Shi *et al* (2007) acknowledges that there are currently limited studies on the moral hazard problem occurring in PPP projects. Where some research is done on the subject of PA problem specifically in government PPP concessionary projects, the PA theoretical framework has not been applied where there are secondary socio-economic objectives over and above the primary objectives of infrastructure provision. The work done on the traditional projects and general government contracting with regard to the PA problem does provide a foundation from which to investigate any nuances in the behaviour of the agents in the presence of additional soft project output requirements. At the heart of the research is the acknowledgement that the asymmetric information that abounds in contracting favors the agent and leads to opportunistic behaviour.

Work done by Pongsiri (2004) has attempted to demonstrate how a partnership model pertaining to PA relationship can be used to explain how contracting parties behave in order to minimize the problems associated with their opportunistic behaviours. Kettl (1993) has tried to demonstrate that PPPs have introduced three issues into the focus; firstly government is relying on private partners to do the public work, secondly PPPs produce highly variable relationships that differ from project to project and thirdly the government’s role has changed from the traditional producer of goods and services to a supervisor of agents who do the actual work. Raganelli and Fidone (2007) in their work on reducing moral hazard in public works PPPs have established that the government and the private partner as rational operators have divergent interests. The government, continues Raganelli and Fidone (2007), has two

questions; firstly that of selecting the best contractor and secondly guaranteeing the precise carrying out of the contract. With reference to the first question public type procedures are employed to identify the best contracting partner.

Regarding the second one Raganelli and Fidone (2007) suggest that insight be drawn from the economic literature on the theory of incentives, which suggests a careful study into the construction of correct contract architecture. The provision of a good quality public works should comply and meet the private interest of attaining corporate profit (*ibid.*). This research investigates whether the private party is contractually incentivised enough to provide a good public infrastructure in an environment where an extra BEE socio-economic requirement is included in the contract execution formula, without necessarily shirking on neither.

Research Questions

In order to investigate whether PPPs are a suitable vehicle to efficacious delivery on BEE the questions were framed in the following fashion:

- What Principal Agent problems exist in PPPs and in traditional procurement?
- How can the principal use his influence to improve BEE delivery in PPPs given their long-term nature?
- Are there underlying reasons that could militate towards PPPs being a better platform to interrogate the Principal Agent relationship in delivering BEE?
- How does the efficiency of the Principal Agent relationship in PPPs in delivering BEE compare with traditional procurement methods?

1.8 RESEARCH PROPOSITION

In scientific research, a hypothesis is a definite statement that posits that there is a relationship between variables (Salkind, 2007). According to Mateo and Kirchhoff (1999) it is a statement of the expected relationship between variables. However in this research a directional proposition is proffered so that when a

systematic enquiry is undertaken it is predicated on a tentative basis, which could be disapproved by the research data. In this way it is discipline (Bouma, 1993) and a sense of direction is infused in the way the formal enquiry is conducted.

1.8.1 Primary Proposition

PPPs offer a better environment than other procurement methods where the Principal Agent problems can be mitigated in the delivery of BEE

1.8.2 Secondary Propositions

- *Principal Agent problems exist in both PPPs and in the traditional procurement methods..*
- *Since the relationship between the principal and the agent is long-term, the principal is better placed to learn and equip himself throughout the life of the project to institute measures that will ameliorate the Principal Agent problems.*
- *The relationship of the parties in a PPP is an ideal Principal Agent relationship, the proper understanding of which can yield maximum BEE benefits.*
- *Because of an ideal Principal Agent relationship in PPPs, they are more likely to yield key BEE elements*

1.9 RESEARCH METHODOLOGY

In any research the adopted methodology must be able to support its legitimacy based on a fundamental guiding philosophy. This argument must take cognizance of the fact that there is no such thing as perfect research, however the awareness of the guiding rules of research helps the researcher in defending the outcomes of the research (Descombe, 2002). Of the two research paradigms of Positivism and Phenomenology, the latter was chosen for this research. The

unsuitability of the quantitative positivist approach is chiefly because the whole research exercise could just amount to a 'quick-fix', involving little or no contact with people or the 'field' (Silverman, 2006). As this research is about understanding the behaviour of agents in order to find ways of ameliorating the Principal Agent (PA) problem, so there has to be some interaction with the agents at the 'field'. Silverman (2006) argues that sometimes if statistical correlations are used in the context of naturally occurring interaction, they may be based on the variables that are arbitrarily defined. After-the-fact speculations that follow the meanings of these created correlations can involve the very common-sense processes that positivism tries to avoid (Cicourel, 1964). The pursuit of 'measurable' phenomena can mean that unperceived values creep into research by taking on board highly problematic and unreliable concepts such as 'discrimination' and 'empowerment'.

1.9.1 Research Method Justification

In this research case study method was chosen as the primary method because case studies are the preferred method when 'how' and 'why' questions are being asked, when the researcher has minimal control over activities, and when the main focus of the inquiry is on a contemporary phenomenon in the real-life every day context (Yin, 1994; Benbasat *et al*, 1987). A single 'critical' PPP case study of a referral hospital in Durban Kwazulu Natal was chosen. In this case the PA is used as a theoretical framework to study the behaviors of established companies in their compliance to implementing the BEE policy. This project was the largest PPP project in South Africa at the time of commencement and it included the largest number of BEE players at all levels, from shareholding, management down to sub-contracting. Because of its size, longevity and wide inclusivity of Previously Disadvantaged Institutions (PDIs) it was regarded the suitable case to study the efficacy of PPPs in implementing BEE.

1.10 GUIDE TO THE THESIS

The thesis is structured as described below:

Chapter 1: This chapter set the scene for the whole research by introducing and giving a broad over-view of issues in this research.

Chapter 2: This chapter introduces the concept of Affirmative Action, explores its evolution internationally and contextualizes the history of its application within South Africa. The second part of this chapter reviews the importance of the construction sector to BEE and problems that arise with in and introduces Public Private Partnerships (PPPs) and their role in giving effect to the South African policy of Black Economic empowerment (BEE).

Chapter 3: Principal Agent (PA) theory as a description of the prevalent relationship problem between contracting principals and agents is explored and its utility and relevance to explain the behaviour of established consortia in PPPs. Is introduced.

Chapter 4: This chapter discusses a range of research paradigms and an argument is made for the adoption of a phenomenological research design utilising cases studies as the methodology adopted for this research. Case study method is reviewed and the argument for a single case study of a critical case is defended.

Chapter 5: Presents the case study of IALCH and reports on the data gathered from the field through open interviews with project stakeholders identifying potential behaviours to be subsequently analyzed through the PA theoretical framework.

Chapter 6: Discusses the observed behaviours identified in Chapter 5 through the theoretical parameters of the PA theory. The chapter also identifies the limitations of PA theory to adequately explain all the post-contractual agent behaviours. In doing so, analysis suggests that these observed behaviours

reflect a different behavioural phenomenon unanticipated by the research. Consequently these behaviours, which are anomalous to the PA are explored through the Principal Steward (PS) theory. Reflections are made on the possible synthesis of the two theories to provide a foundational basis, which explains all the observed behavioural nuances of the agent.

Chapter 7: This chapter revisits the research questions and propositions posed at the start of the research and evaluate these in the light of the observations and research findings. It draws conclusions and reflects on the contribution of this study to the corpus of knowledge on PPP efficacy in delivering BEE. It further provides recommendations for future research and suggests which findings have implications for procurement practice. Figure 1:1 below gives an overview of the research

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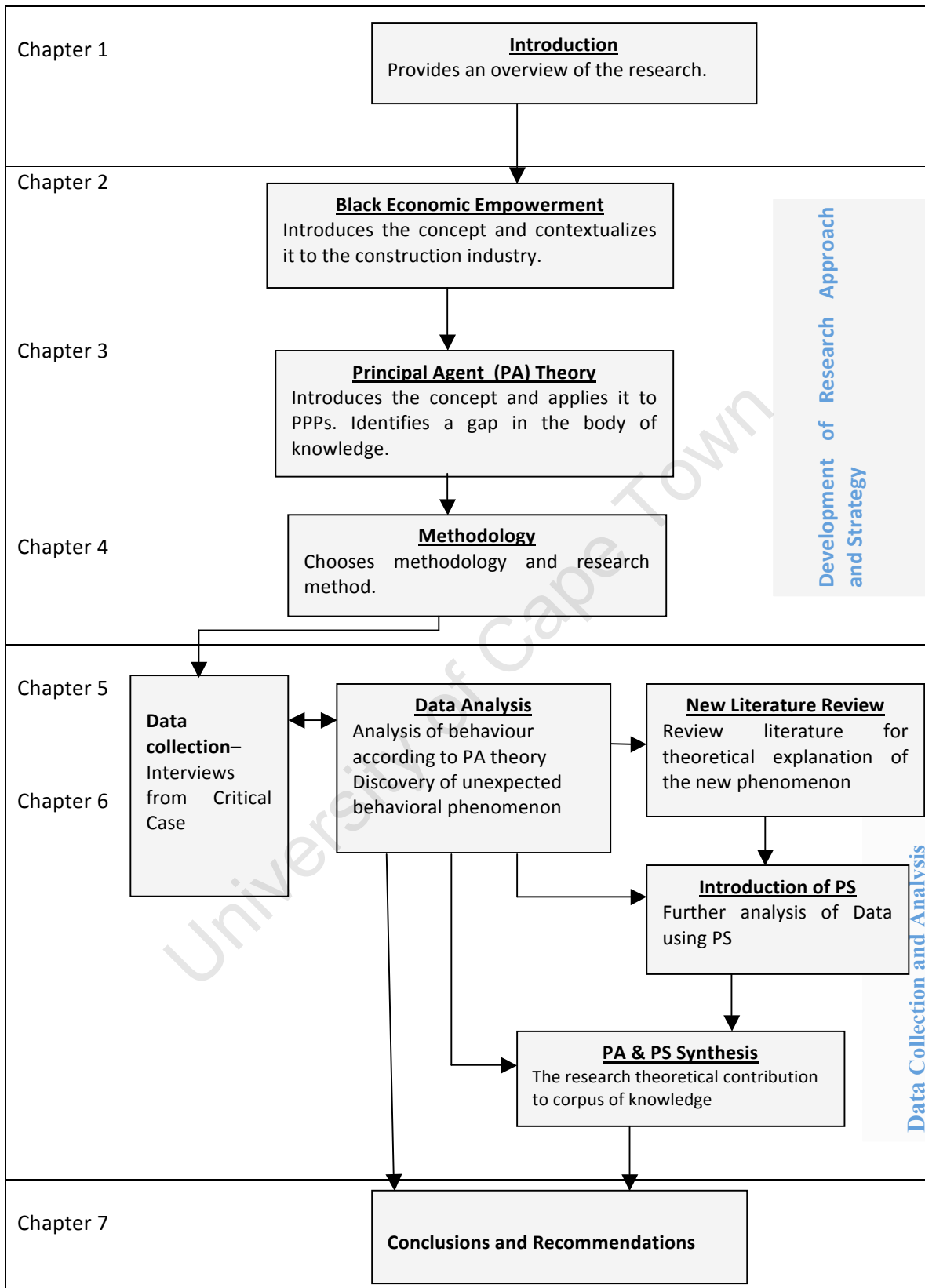


Figure 1:1 : Thesis Layout

2 BLACK ECONOMIC EMPOWERMENT

2.1 INTRODUCTION

The history of racial segregation and economic exclusion in South Africa that necessitated black Affirmative Action (AA) is explained in detail in Appendix 1. Institutionalized racism was only started in 1948 through the introduction of *Apartheid* as an all-encompassing policy regulating the social, economic and political conduct of blacks. The main economic tenet of *Apartheid* was to confine blacks to a state of perpetual peripheralisation from the mainstream economic activity. However the international outcry that followed the government's crackdown on black resistance especially after the Soweto uprising led to the rethink of the policy and the formal systematic introduction of blacks into the economic mainstream through AA. This chapter starts by first articulating the concept of (AA) which has contextually and theoretically evolved into Black Economic Empowerment (BEE) in South Africa. It starts by tracing the origins of this concept and interrogating its introduction and application in other countries whose history and political similarity make such enquiry relevant to the South African situation. The issue of the justification and importance of this policy is also discussed to see its role in maintaining sustainable economic role.

The importance and role of the construction industry in achieving the primary intentions of the AA policy are discussed. The chapter ends by taking the discussion to the introduction and discussion of the Public Private Partnerships (PPPs) and differentiating them to the classic privatization of public assets. The PPPs' role and usefulness in the attainment is laid out as they make up the environment chosen for the enquiry of this work.

2.2 Introduction, Definition, Relevance and Justification of Affirmative Action

When the African National Congress (ANC) came to power in 1994, their main economic policy was to correct the past injustices described above by

broadening opportunities for the previously oppressed and disadvantage groups in South African society through Affirmative Action (AA) (Waddy, 2004). The concept of AA originated in the United States and is an umbrella term encompassing all actions aimed at redressing historical inequalities in a country (Nzimande & Sikhosana, 1996). South Africa's history of segregation and apartheid is such that by 1994, the minority whites legally owned the majority of capital and land, hence the AA aim of establishing congruence rather than the current divergence between ownership and equity. The exclusion of Africans from ownership or self-benefiting participation in the economy came about as a result of a deliberate policy of successive governments, at the invocation of white entrepreneurs and backed by repressive security apparatus (Sachs, 2000). This exclusion has prevented the economy from reaching its full potential. To achieve that potential the new South African government from 1994 has sought to implement policies that would grow the economy, develop and economically empower all previously disadvantaged people in the country, because the government considers these three as interrelated processes. In the words of president Mbeki:

"...The empowerment we speak of is an inclusive process and not an exclusive one. No economy can meet its potential if any part of its citizens is not fully integrated into all aspects of that economy. Equally it follows that an economy that is not growing cannot integrate all its citizens into that economy in a meaningful way." (Mbeki, 2003)

Affirmative Action Defined

The concept of Affirmative Action has yet to be authoritatively defined in legislation or international covenants (Adam, 2002). There seem to be as many interpretations of the term as there are interpreters (Ramphela, 1995). Unfortunately for South Africa, the term is imported from the United States where it was intended to deal with disadvantaged minorities, especially Blacks and

Latinos (Weiner, 1993) rather than a majority population and in that context tends to be perceived as a moral issue, with a somewhat paternalistic character bordering on charity (Adam, 2000).

Typical definitions of AA include “policies that are intended to benefit historically subordinated racial groups and that do so by using race as a basis for allocating burdens and benefits” (Kennedy, 1993, p 68). Eide (1992, p 9) calls it “preferences given to members of a group typically defined by race or gender and is held to be justified because members of that group have in the past been discriminated against, not because of their individual characteristics, but because they belonged to the group concerned.” According to Samarasinghe (1993, p 45), it is “any public program or policy either implemented by the state or by the private sector, that is designed to help a particular ascriptively designated group in society, obtain share of resources that it would not be able to obtain otherwise.” Weiner (1993, p 82) put it succinctly as policies “which aim to reduce racial inequality.” In the same vein Thomas *et al* (1996, p 7) calls it simply “a short-term strategy to open the corporate doors for previously disadvantaged people.” Innes (1993, p 4) elaborates it as “not necessarily a single policy or strategy; rather there can be a number of different ways of implementing affirmative action.” Thus it can realistically be treated more as a set of measures to achieve the desired end. The above definitions severally elevate race as a predominant criterion without necessarily negating gender and other identifications as common influences in the application of the AA. Cooperatively they depict AA as a set of formal interventions intended to open doors to corporate statuses and general economic opportunities to the previously marginalized members of the society.

AA can be “supported on moral, legal and responsibility grounds” (Thomas *et al*, 1996, p.6). Ronsenfeld (1991) argues that defining AA without reference to justice and equality is impossible. While Coleman (1983) posits that the concept of justice in AA can be divided into two categories: firstly distributive justice, which is an obligation to extend particular actions to beneficiaries – in other

words giving them the chance they should have had (Coleman, 1983). Secondly, correctional justice which is an equitable conduct for the purpose of achieving equality where there is equal treatment of all irrespective of background or race (Rawls, 1971). It is in this context that AA refers to programmes (Greenawalt, 1975), which lift the previously discriminated to a greater participatory role with the ultimate aim of reversal of earlier discriminations. In a way it is a social “auditing system” (Tomasson *et al*, 1996), which alerts organizations about discrepancies between qualified citizens and the utilization of such citizens in the organization whilst demanding the correction of racial imbalances depicted by the system.

The body of AA encapsulates the demolition of racial segregation and social imbalances (Ross, 1971). As such AA should be seen as a synonym for positive action (Parekh, 1992), which calls for actions that help sufferers of past discrimination. AA intension is to restore diversity in situations where past discrimination excluded such diversity, hence its intrinsic association with social justice and fair balances creation. In South Africa it is explicitly deployed as a “tool for justice” (South Africa, 1997) to rectify past discriminatory practices whilst at the same time contributing to meet the demand for equity and equality. AA is thus an active attempt at integrating and restructuring society.

2.2.1 History of AA in the United States

As early as the Declaration of Independence in 1776 in America, section 2 of the 1789 constitution acknowledged discrimination as part of the historical legacy. In the century that followed, the American Civil War centered around the issue of black slavery and white supremacy (Kluger, 1975). After the civil war in the 1860s the 13th, 14th and 15th amendments to the constitution granted the same freedom to blacks as whites. The amendments completely abolished and prohibited slavery. These gains were reversed in 1877 with the election of President Rutherford B. Hayes, who restricted the liberties of Blacks in the Southern and Border States. The constitutional protections were further undermined by the Supreme Court ruling in the Plessey vs. Fergusson (1896)

case which enforced the “Jim Crow” laws and the “Jim Crow” way of life which advocated segregation between blacks and whites in all aspects of life (Anderson, 2004).

Things started to change on the eve of American involvement in the Second World War when President Franklin D. Roosevelt signed Executive Order 8802, which sought to desegregate the war industry by prohibiting all government contractors from practicing discriminatory employment based on race, color or national origin (EEOC, 2008). The word “Affirmative Action” was used for the first time in Executive Order 10925 signed by President J.F. Kennedy in 1961, which established the Equal Employment Opportunity Commission (EEOC), giving it authority to impose limited sanctions on government contractors for violations of the prohibitions to discriminate on account of race. It was later in 1972 that the Equal Employment Opportunity Act granted the full enforcement powers to the EEOC (Edwards, 1987)

Of all the Executive Orders issued to quell racial tension (Weiss, 1997) in the 1960s, Executive Order 11246 of 1965 is the primary source of AA. It required federal contractors to “take affirmative action to ensure that applicants are employed and that the employees are treated fairly during employment, without regard to their race, creed, color, or national origin” (EEOC, 2008). Two years later women were included in the Order. In the context of the Order, to take “affirmative action” meant to consciously take steps in ensuring that the practice of discrimination against blacks was halted. The Order required a positive action because discrimination was so entrenched that it had been accepted as a way of life (*ibid.*). The Order came soon after the Civil Rights Act of 1964, which prohibited discrimination in a broad array of private conduct including public accommodations, governmental services and education (*ibid.*). One section of the Act, referred to as Title VII, prohibits employment discrimination based on race, sex, color, religion and national origin. Title VII applies to private employers, labor unions and employment agencies and it prohibits discrimination in

recruitment, hiring, wages, assignments, promotions, benefits, discipline, discharge, layoffs and almost every aspect of employment (*ibid.*).

In the United States AA programmes from their inception in the 1960s have been implemented through the efforts of government agencies and state legislature. They were usually codified in Title VII and several Executive Orders as seen above, with enforcement residing with the administrative, judicial and economic powers of the United States government (Van Jaarsveld, 2000). Through the use of the Office of Federal Contract Compliance (OFCC) the government was empowered to terminate contracts with any company that violated equality policies (Fisher, 1990). Throughout the seventies and eighties economic and legal challenges have bedeviled the implementation of the AA programmes, and have brought new issues to the attention of policy strategists (Badgett, 1995).

2.2.2 Affirmative Action in Other Countries

The policy has been practiced in other countries with mixed success and constraints reflecting the historical background and geo-political dynamics within those countries. The methods vary widely between individual countries, and have almost invariably been criticized for their ineffectiveness and/or unfairness. Despite these concerns Waddy (2004) points out that few people question the central logic of AA. Initially in this research the experiences of two Asian countries, India and Malaysia, will be investigated as they have striking similarities to the South African situation in that the target beneficiaries also comprise the majority of the population in the country. As a result they can provide insight and guidance in the formulation of South Africa's own version. Later on in this section AA approach in other neighboring countries to South Africa who attained liberation before South Africa is also going to be investigated.

2.2.2.1 Affirmative Action in India - Affirmative Action Based on Caste

Background to India's AA

India arguably has the largest AA programmes in the world. Its AA policies were bequeathed by Britain at independence and include subsidies and scholarships, reservation of government jobs and special political representation for the low castes in the society (Kumar, 1992). The scope of its various policies has over the years been steadily enlarged such that they now cater for about more than 300 million people (*ibid.*) out of a population of 1.15 billion.

India is a highly stratified society with segments of the population compartmentalized into different castes, which traditionally determined their economic and political role in the society (Wood, 1987). The caste system has existed for over three thousand years and dates back to the ancient Hindu scriptures called the Rig Vedic. Hinduism consists of four castes arranged in a strict hierarchy. People who do not belong to any of these four castes are outcasts and untouchables for Hindus, because having any close contact with them is considered contaminating for anyone belonging to a caste (Mahar, 1972). The Vedic term for caste is "Varna" which just means color and any caste has its specific rights and responsibility in the society (Boston & Nair-Reichert, 2003). The highest "Varna" is the Brahman, which comprise the priests and educated people in the society. Next in line is the Kshatria who consist of the rulers and aristocracy. The "Varna" that follows is the Vaisias who are landlords and businessmen. The last "Varna" in this four-tiered ranking is the Shudras who are peasants and the working class. The members of the first three "Varnas" are by tradition considered to be "twice born", and they have access to religious education and have to go through ceremonies that entitle them to certain special spiritual rights denied the Shudras. This arrangement dictates every significant aspect of an individual's life (Boston & Nair-Reichert, 2003).

Indian Social stratification and AA

The Indian constitution has a preamble that proclaims equality of status and opportunity for all citizens, however three groups are targeted for special advantages and protection in Article 46 of the Directive Principles of State Policy: “The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation” (Wood, 1987). Although any form of discrimination both generally and specifically in government employment and government-aided education institution is prohibited, a qualifier is added which provides: “for the advancement of any socially and educationally backward classes of citizens or for the scheduled Castes and the Scheduled Tribes” (*ibid.*). The scheduled castes include about 135 million people listed (i.e. scheduled) as untouchable by the Indian Act of 1935. This number accounts for 15.75% of the total population by 1991 census. They are, by any poverty measurement, living in the worst deprivation of all Indians (Mahar, 1972; Beteille, 1993). They usually work in degrading jobs like cleaning and sewage (Boston & Nair-Reichert, 2003).

They are one category, albeit the worst, of the three lower classes of Indian community who do not belong to the caste categorization. The second being the Scheduled tribes who are the aboriginal people of India, living deep in jungles, forests and mountains of India away from the main population. These are sometimes referred to as the Adivasi and they have never accepted the caste system (Boston & Nair-Reichert, 2003; Adam, 2000; Kumar, 1992). The third and the most recent group is called the Other Backward Classes (OBC) or the Socially and Educationally Backward Classes (SEBC) and they comprise of the Shudra “Varna” and the other former untouchables who converted from Hinduism to Islam or Christianity. There is an ongoing debate as to who qualifies to be included in this group as there are many different groups lobbying to be included in this category (Beteille, 1993).

AA in India is uniquely caste-based and not race-based, hence the Indian government's insistence that it does not fall within the purview of international discourse on race-based discrimination. It is usually referred to as compensatory discrimination, whose sole purpose is to compensate those who are not even at the lowest level of India's four-tiered system for centuries of past injustices and repression (Boston & Nair-Reichert, 2003). Hard hit are the untouchables who are variously referred to as the "Harijans" or "Dalits", who have suffered many disadvantages because of segregation past and present but not as a direct result of isolation, as is the case with the tribal communities. Although they reside in almost every part of the country, they invariably occupy the lowest position in the economic hierarchy (Beteille, 1993).

The 1950 constitution of India reserved 15% of educational and civil service seats to scheduled castes and 7.5% to scheduled tribes. Article 340 of the constitution provides for appointment of a commission to "investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labor and to make recommendations as to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any State..." . The first such commission headed by Kaka Kalelkar submitted its report on March 30 1955. This commission prepared a list of 2399 backward castes/communities for the whole country and classified 837 as the "most backward" (Boston & Nair-Reichert, 2003). The commission recommended that the relevant factors crucial in classifying backward classes are their traditional occupation and profession, the percentage of literacy or the general advancement made by them, also the estimated population of the community and their distribution throughout the State or their concentration in certain areas. The central government of India did not accept these recommendations (*ibid.*).

In 1963 the Supreme Court of India ruled that total reservation could not exceed 50%. Because of the failure of the first commission the Morarji Desai government

officially decided to set up another commission in January 1 1979 (Stern, 2003). This commission was headed by a parliamentarian B.P. Mandal and came to be known as the Mandal commission. It was sanctioned under the same Article 340 of the constitution. Its terms included determining the criteria for defining the socially and educationally backward classes, to recommend steps to be taken for the advancement of the socially and educationally backward classes of citizens so identified (*ibid.*). When it submitted its report on the 31st December 1980, it had recommended 49.5% of total reservations to the Scheduled Castes, Tribes and Other Backward communities (*ibid.*). The Commission used 11 “Indicators” or “Criteria” for determining social and educational backwardness and these were grouped under three broad heads, namely Social, Educational and Economical (Boston & Nair-Reichert, 2003).

Since the Scheduled castes and tribes make up 22.5% of India’s population, the commission recommended that 22.5% of government jobs be reserved for them (Boston & Nair-Reichert, 2003). Due to the fact that the Supreme Court had put a limit of total reservations at 50%, the Commission recommended that 27% be reserved to the Other Backward Classes (OBCs), although their total numbers comprise 52% of the total population (*ibid.*). The 27% was applicable to all government services as well as the technical and professional education institutions. If any member of the OBCs obtains employment through open competitive application they would not to be included in the 27% adjustment (*ibid.*). The reservations were not to end at initial placements but were supposed to be utilised in promotion considerations with unfilled quotas being carried over for three years. This policy was also supposed to apply to all private sector institutions that receive government assistance, including universities and colleges. The commission also recommended the formation of a separate Ministry for Backward Classes and the reevaluation of the reservation scheme after 20 years. In 1990 Prime Minister V.P. Singh finally decided to implement the Mandal Commission recommendations (*ibid.*).

Landmark Judgment

The government decision was challenged in what is considered to be a landmark case in India's AA programme. In *Indira Sawhney and Others vs. Union of India and Others* the Supreme Court of India in 16 November 1992 (Stern, 2003), held that caste may still be used as a criterion for determining backwardness. In the case of non-Hindu OBCs not a single criteria was identified and but the government was permitted to use other criteria to identify backwardness. The court ruled that backwardness need not necessarily be defined socially and educationally, although it acknowledged that Article 16(4) of the Indian constitution referred mainly to social backwardness (Boston & Nair-Reichert, 2003).

Debates Surrounding AA in India

The complaint in India has always been that the beneficiaries of the reservations are always well-off groups within each caste. These are usually skilled workers who in most cases would have been hired anyway, while the rural poor for whom higher education for most is beyond reach do not benefit at all (Borooah, 2007). To curb this problem the Supreme court in the above cited case directed the government to specify the basis for applying the relevant and requisite socio-economic criteria to exclude socially advanced person/sections, dubbed the "creamy layer", from other backward classes in order to ensure that reservation benefits flow to the needy among the OBCs (Stern, 2003). The court ordered that in order to achieve this, an "economic means test" has to be adopted by the government to ensure that the more advanced members of the OBCs did not benefit from the reservation schemes (Boston and Nair-Reichert, 2003).

The debate around the AA in India does not end on the issue of the "creamy layer", but as with many other countries where AA is applied the arguments for and against are; whether or not role models provided by AA are important, the relevance of "historical injustice" and its effects on efficiency among others (Kumar, 1992). The "upper class" sentiments in the US are reflected in India (Boston & Nair-Reichert, 2003), where this group consistently complain that reservation policies place the leadership of the country in the hands of people

who came to prominent positions not by merit but by policy and hence they are likely to be incompetent to do their jobs successfully. There is also resentment and anger from the younger generations of the “upper class” who feel sidelined by their non-backward community status. The mostly cited criticism is that positive discrimination has not resulted in substantial upward mobility of the lower classes, especially in rural areas. The critics justify their claim on the grounds that social *status quo* is still maintained where the upper castes continue to retain their high position in the social hierarchy, and the OBCs remain low in the social order years after AA was initiated (*ibid.*). Beteille (1993) argues that AA through the caste quotas makes them to be irreversible while they were meant to be transitional and a temporary measure. Beteille (1993) goes on to say it is considered a cheap way of uplifting the majority of the population by successive Indian governments hence its continual renewal. A more meaningful approach would have required a re-structuring of the whole of Indian society, for instance removing disability and creating capabilities would have required a good elementary education, accessible and affordable to all (*ibid.*). This would have been very expensive to the government and hence job reservation is seen as a cheap solution (*ibid.*).

On the positive side AA has created group awareness and political mobilization among the Schedule Tribes and Castes (Adam, 2000). They now form a crucial constituency for any government in India and their concerns are taken seriously in the national agenda. It is in this sense that AA has played a positive role in enhancing political participation and feelings of political efficacy among the previously disenfranchised (*ibid.*). Beteille (1993) states that AA has managed to change the perception that other sectors of the Indian community have of the untouchables and Scheduled Tribes, in that regard it should be regarded as successful (Beteille, 1993). There is general agreement on the positive role the economic growth has on the success of AA, with Adam (2000) lamenting the impact of slow economic growth in hampering the overall success of the programme because there were fewer funds to spend on education and other social services. Although Beteille (1993) earlier on laid the blame on the

distribution front inadequate economic distribution, arguing that the growth could still have been adequate to cater for those needs.

2.2.2.2 Affirmative Action in Malaysia - Affirmative Action Based on Ethnicity

AA in preference of the majority

While AA policies vary substantially across many nations in respect of the beneficiary groups, the common factor in nearly all the countries is that the beneficiaries are groups which are economically and socially disadvantaged and politically subordinate (Guan, 2005). The Malaysian context is unique from the other cases discussed above in that the group benefiting from AA also has the political power to legislate it (Adam, 2000; Lim, 1985). There is also a striking similarity to the South African context because the policy benefits the majority, and also because the racial differences coincide with ethnic ones. The other important similarity to South Africa is that the minority Chinese still wield the economic power, whilst political power has passed to the Bumiputra, translated “sons/princes of the soil” – the indigenous people of Malaysia (Guan, 2005; Adam, 2000). Another unique feature of Malaysia AA is that it is constitutionally sanctioned under Article 153, which exclusively warrants preferential treatment to Malays and other native groups, safeguarding their “special position” in modern Malaysian society (Guan, 2005).

This “special position” had already been recognized by the British prior to independence in 1957. The British had started a form of preferential treatment by selecting Malays to be the elite administrative service in the government. In 1948 an article of the Federation of Malaya Agreement reflected this, stipulating that the Malay Ruler should:

“...safeguard the special position of the Malays and to ensure the reservation for Malays of such proportion as he may deem reasonable of positions in the public service and of scholarships, exhibitions and other

similar educational or training privileges.... And,of [business] permits and licenses.” (Guan, 2005)

Malaysian Social Structure

The concept of Malay special rights originated from the British colonial rule of the Federated Malay States in 1874. The underlying philosophy was that although Malaysia was now a British colony the myth that Malays were the rightful owners of the country could be maintained by giving them special status and protection (Lim, 1985). At the time there was a huge influx of foreigners from China and India, coming to work in the production of tin and sugar/rubber respectively, and these foreigners threatened to disrupt the Malay peasantry lifestyle (*ibid.*). It was in this context that the concept of “protection” was created, where the colonized Bumiputra could still be allowed to practice peasantry and fishing without any interference and hindrance (*ibid.*). This “protection” prevented them from engaging in modern economic activities and left them behind while economic growth advanced. Their ruling elites retained their symbolic sovereignty with handsome economic remuneration. This protection buttressed sentiments of “special position” status because the Bumiputra consider themselves the premier citizens of Malaysia- “sons of the soil” (*ibid.*).

Independence in 1957 brought to power Malays who constituted a slim majority. The post independence government comprised of three distinct groups, the Malays who are Muslims (50%), the Chinese (39%) who are Buddhist and Hindu Indians and others (10%) (Manning, 2001; Puthuchery, 1993). The Chinese migrated to Malaysia in large numbers in the 19th century to work in tin mines, but quickly took advantage of the market economy created by the British and over time became an urbanized wealthy merchant class. The Indians came at around the same time as the Chinese, as laborers to work in rubber and sugar plantations. The peak of their migration was in 1910 during the rubber boom, and over the years they transformed themselves into government bureaucrats in the cities although they still have a strong presence as laborers on agricultural

estates. The Malays were divided into aristocrats living in cities and a large uneducated proportion living in rural areas through subsistence farming (Manning, 2001; Puthucheary, 1993; Klitgaard & Katz, 1983). In time Malaysian society divided into the rich Chinese living in cities, Indian bureaucrats and laborers in the cities and plantations respectively and poor rural Malays. The Malays and the Chinese came to think of themselves as competing races, with continual resentment and stereotyping on both sides. Ethnic caricatures were long standing fueling the tension between the two: Malays were said to be lazy and un-enterprising, had a short time horizon, and had the attitude of *tidak apa* ("it cannot be helped"), whereas the Chinese were highly motivated toward education and business, the "Jews of Asia" (Klitgaard & Katz, 1983). These stereotypes were reinforced by the clear differences in behaviour, education and economic well-being. In these controversies the Indians were often left out. The Chinese had developed and gained control of most of Malaysian industry and commerce that wasn't foreign owned. In brief it could be said that the Chinese had the wealth, whereas the Malays had the political power and control of the police and the army (Manning, 2001; Klitgaard & Katz, 1983)

New Economic Policy (NEP)

In the 1960s there was widespread public debate over Malay economic backwardness and the worrying segmentation of the economy along the ethnic lines (Shamsul, 1997). AA measures implemented at the time were largely ineffective and inadequate, leading to increasing impatience among the Bumiputra about the slow pace of the economic reform. This disgruntlement culminated in the ethnically charged riots of 1969 (Guan, 2005). It was unsurprising that the government White Paper on the 13th of May 1969 singled out Malay economic grievances as the one major cause of the riots. This gave birth to the New Economic Policy (NEP) implemented from 1971-90 (*ibid.*). This policy sought to correct the mistakes of the ineffective policies of the past and comprised a comprehensive system of ethnic preferential policies, programmes and instruments that benefited the Malay community. At its heart the NEP encapsulated a concerted AA scheme to launch the Malays into the mainstream

of Malaysian economy and to restrict the scope of laissez-faire capitalism and allowing greater state intervention to advance the general Malay welfare (Shamsul, 1997).

This policy could be likened to the South African National Party's strategy of creating jobs for poor whites in the civil service after 1948 (Adam 2000). The major difference is that in South Africa the state extended patronage to its constituency, while in Malaysia the government could legitimize its policy through popular support and on the grounds that the targeted portion of the citizenry was in fact the poorest (*ibid.*). Puthuchearry (1993) argues that it could still be supported from more formal grounds because when the constitution of Malaysia was drafted it was clear that the Malays did not form a distinct demographic majority, at about 50% they were the largest community but not the majority. So it was entrenched in the constitution that the special rights for the economically disadvantaged was a democratic right and a social justice, and could not be changed by the whims and fancies of future governments. Secondly, the case was not only based on socio-economic grounds but on the notion that the Malays had a 'special position' as the original people of the country – 'sons of the soil'. Thirdly, the preferential policies established by the colonial regime which were meant to be temporary, had to be inserted in the Federation of Malaya constitution guaranteeing the continuation of these policies. It was argued by many Malays that any attempt to remove these preferences would be tantamount to taking away something from this group. The special rights of the Malays were therefore crystallized and while the legitimate rights of the other communities were protected. The colonial government before independence implemented these provisions in a way that while no one was completely satisfied, neither side felt completely deprived (Puthuchearry 1993).

NEP Success and the Creation of a Malay Middle Class

The implementation of the NEP led to explosive growth in the civil service, with Malays recruited at a ratio of 4:1 to other groups, however this did not squeeze out the non-Malays out as there was strong economic growth (Adam, 2000). The

expansion in the civil service was due to the setting up of various new departments and agencies designed to move the Malays from the agricultural sector to the lucrative urban occupations, where their upward economic mobility could be enhanced (Puthucheary, 1993). A strong Malay middle class emerged as a direct result of the initiatives in the public and educational sectors over which the government had more control (Guan, 2005; Adam, 2000). The private sector for the most part resisted the AA programmes, however, the economic growth of non-Malays measured in terms of ownership slowed while the Malays increased their stake in the economic front, but with general economic growth of between 7-8 % both sides considered themselves winners (Adam, 2000). Adam (2000) suggests that such developments in South Africa would lead to the property owning black middle class. Please see Table 2:1 below on how the Malays society moved as a direct result of AA policy.

Table 2:1: Incidence of Poverty in Malaysia (%)

	1970	1990	1999
Rural	58.7	21.8	10.0
Urban	21.3	7.5	1.9
Overall	52.4	16.5	5.5
Bumiputra	65.9	20.8	10.2
Chinese	27.5	5.7	2.6
Indians	40.2	8.0	1.9

Adapted from: Malaysian Plans, 1991, 1996, 2001 (Guan, 2005)

As can be seen in the table above there has been a huge reduction of poverty in Malaysia since the NEP was implemented. Adam (2000) posits that this is a rare case of complete success in AA implementation, as the economic position of the Bumiputra was significantly shifted upwards. This was what the architects of NEP had in mind as they sought to restructure the Malaysian society to correct the economic imbalance, so as to reduce and eventually eliminate the

identification of race with economic function (Klitgaard & Katz, 1983). This restructuring has also led to ethnic integration; as prior to the NEP there was prevalent ethnic segregation along geographical location, residential neighborhood, economic activities and occupations and education institution. In the past for instance, the Chinese mainly resided in urban centers and worked in nonagricultural sectors while the majority of the Malays resided in rural areas and worked in the agricultural sector. Following the introduction of the NEP the push and pull factors led to an influx of Malay emigrants into all urban areas such that all urban centers in Malaysia are now ethnically heterogeneous (Guan, 2005).

Puthuchery (1993) submits that this would not have been possible without the willingness and the cooperation of the non-target groups to give AA policies encapsulated in the NEP a chance to succeed. The government for its part introduced the programmes gradually to enhance acceptance, implementing five-year reviews to assess progress and to institute necessary amendments (Guan, 2005; Shari, 2000). The Chinese businesses were required to make structural adjustments to accommodate joint ventures with the Malay companies, and government involvement was warmly embraced by foreign firms as they saw the government as providing security and making them mutual beneficiaries of special concessions meted out to companies with Malay ownership (*ibid.*). In general terms the main aim of narrowing the inter-ethnic gap between Malays and the Chinese was achieved (*ibid.*).

Criticisms of AA in Malaysia

While the NEP fostered the growth of the Malay middle class it however led to a more class-differentiated Malay community (Guan, 2005; Shari, 2000)). However the Malay government has always been clear that it seeks to bridge the ethnic gap but not necessarily make all the Bumiputra rich;

“The NEP ... was not concerned with making all the bumiputeras earn equally, or share equally, the wealth distributed amongst them ... The intention of the NEP was to create in the bumiputera community the same

division of labor and rewards as was found in the non-bumiputera communities, particularly the Chinese. ... The equitableness was not to be between individuals, but between communities.” (Roslan, 2001)

The Gini ratios seem to confirm this point: within the Bumiputra it was 0.34 in 1957, it rose to 0.46 in 1970 as income inequality increased. It fell slightly to 0.45 in 1973, but rose again to 0.46 in 1984 (Manning, 2001). However, this development has led to a growing support to stop making ethnicity a determining factor for the beneficiaries but instead, to make income a criterion (Guan, 2005).

It is this intra-ethnic inequality within the Malays that has led to a lot of criticism of the NEP, mostly because the benefits seem to be disproportionately channeled to the well-connected and the rich in the Malay community, who would do well even without the assistance of the NEP (Jomo, 1989; Guan, 2005). This discontent within the Malay community was accentuated after the 1997 Asian financial crisis, when the government channeled considerable financial resources to bail out prominent Malay businessmen, but was perceived to have done little to the poorer segments of the community especially among the small and medium businesses although they were severely hard done by (Guan, 2005). Even under normal circumstances the upper/middle class and the lower classes of Malays always clash because they vie for the same positions. For example the Malay chamber of Commerce representing smaller businesses accuses the government of favoring big business, while Malay workers' organizations struggle against low wages set by their own ethnic entrepreneurs, as well as Chinese factory owners (Adam, 2000). The general discontent with the slanting of the NEP towards the more affluent Malays has been confirmed by studies undertaken by among others Tzannatos (1991), who showed that the more needy poorer sections of the community are sidelined.

This is attributed to the fact that the NEP has not shifted from its initial goal of ethnic equality when it was first conceptualized (Guan, 2005). When the NEP was first established the ethnic inequality was the most glaring form of inequality

in the society when the majority of Malays lived in poverty and the rural sector. Currently new problems, situations and challenges have arisen which the policy in its current ethnic emphasis cannot effectively address (*ibid.*). Hence the strong advocacy even among the Bumiputras for an emphasis on socio-economic rather than ethnic background (Tzannatos, 1991). This, it is hoped (Guan, 2005), will dampen the ethnic polarity in the society that has led to the formation of ethnic enclaves in the business sector. The ethnicised state programmes and institutions to expand Malay representativity in employment, business, and education have carved Bumiputra enclaves in certain economic and education sectors (*ibid.*). Conversely, the Chinese and Indians when confronted with systematic discrimination have formed ethnic enclaves of their own, as survival strategies (*ibid.*). These sidelined groups accuse the programmes of preferential treatment of Malays in employment, business and education to have compromised the principles of meritocracy and equal opportunity (*ibid.*). Puthuchery (1993) argues that in fact efficiency does not seem to have been hampered by the NEP. Although the critics claim that the rise in international price of rubber and oil palm, combined with the discoveries of rich oil reserves in the 1970s helped to absorb some of the inefficiencies arising from the NEP. According to Puthuchery (1993) this would be hard to verify. However most critics of the ethnic preferential policy would not advocate doing away with it, but, rather, that it needs to be modified, this despite the fact that the programme was initially meant to run from 1971 to 1990 (Guan, 2005).

2.2.3 Affirmative Action in South Africa

Early Days of AA in South Africa

AA has been practiced in earnest in modern South Africa since 1922 after the white miners strike, following which the “Civilized Labor Policy” was instituted to appease them which, according to Lester (1996), was inspired by the communist ideals. The strike action came after the Chamber of Mines in 1921 announced that because of the falling gold prices and rising costs the color bar for all semi-skilled work would be eliminated, thus facilitating the employment of cheaper

black labor in jobs previously reserved for whites (*ibid.*). The 1925 Wage Act then followed which instituted a salary hierarchy meant to favor white miners. This, in turn, was followed by Mines and Works Act of 1926, which *inter alia* reserved certain jobs for whites (Worden, 2007; Madi, 1993). Madi (1993) contends that there were job reservations in existence as far back as the 1890s, and as such the National Party government did not invent apartheid laws it simply perfected and institutionalized them. From the early 1950s through the 1970s all the apartheid laws were meant to favor whites in general and the Afrikaners in particular. According to Madi (1993) the Afrikaners perfected the world's most expensive, most extensive and most coercive AA - Apartheid. The empowerment of the whites by definition and application meant the subjugation the black people.

Initial AA attempts for Blacks in South Africa

AA, in the context of black advancement (Madi, 1993), started in the mid-to-late 1970s. In South Africa one of the most interesting phenomenon about AA is the continual changing of the names ascribed to it as it variously represented the socio-political psyche of the local business community or their understanding and /or reading of the political economy in South Africa (*ibid.*). In simple terms nobody wanted to offend the apartheid government so names were chosen carefully. After the Sharpeville Massacre of June 16th 1976, there were a lot of sanctions imposed on, and disinvestments from, South Africa. The term "black advancement" was used by those companies who chose to stay as a way of justifying their stay in South Africa, as they were under pressure to address the issue of black economic advancement with determination (*ibid.*). For the US companies the voluntary Sullivan Principles were introduced by the respected black minister, Reverend Leon Sullivan (*Thomas et al*, 1996) for companies to:

- Introduce and implement fair and equal treatment of blacks in the workplace. By eradicating discriminatory practices that prevented their training, development, career advancement and recognition.

- Contribute towards social responsibility programmes particularly those projects targeted at black people and other non-whites (Madi, 1997).

Since the 1970s black business was gradually permitted in the townships through the granting of licenses (Lipton, 1986). However, Joint Ventures with these black entrepreneurs by whites were out of the question as in most cases such arrangements would be illegal. However it was beginning to be clear to most blacks that despite the excitement around the introduction of “Black Advancement” programmes there were no meaningful developments in the boardrooms or the business sector in general (Madi, 1997). The government of the day kept sending conflicting signals on its stance on the black economic advancement. When interviewed in 1986 Chris Heunis the Minister of Constitutional Affairs, whose department was responsible for this task eruditely responded that “the whole political concept of consociationalism is predicated on the existence of groups which should be entitled to a measure of segmental autonomy” (Financial Mail, 1986). The whole scheme was ultimately shelved (Madi, 1997) because the majority of whites demonstrated discomfort with the term “black” in “Black Advancement” as it had connotations of reverse racism.

Another factor in its failure is that it was implemented immediately after the 1976 Soweto riots, which were largely influenced by Steve Biko’s Black Consciousness Movement, and as such the “Black Advancement” scheme was seen as too political (Madi, 1997). The unrealized expectations of black management aspirants led to the formation of the Black Management Forum (BFM) which was advocating for the speedy progress of the black economic advancement (*ibid.*). A new term, “Equal Opportunity” coined by management gurus in the US and UK came into being soon after. This was a reflection of Ronald Reagan’s and Margaret Thatcher’s respective conservative governments’ views on minorities’ corporate advancement. This new approach was premised on the notion that fairness exists when all people are given equal opportunity to succeed or fail, unlike the “reverse discrimination” of AA and black advancement.

Madi (1997) relates that this novel conceptualization found a ready audience in South Africa in the 1980s.

New Terminology in a Changing Political Climate

The lifespan of “Equal Opportunity” was brief as the unexpected release of political prisoners and unbanning of political parties on 2 February 1990, heralded a new political climate (Madi, 1997). The bolder term of “Affirmative Action” resurfaced. Madi (1997) postulates that if it had not been of the abrupt political change in February 1990, there was another term that was about to have come into vogue, but it received limited attention because of the transforming political environment. This was called “Managing Employee Diversity”, and it also had its origins in the US where it was propagated by an African American management consultant named Roosevelt Thomas Jnr. who touted it as an approach more pertinent to the 1990s compared to the others whose time had lapsed (*ibid.*). AA was slowly replaced by a new term “Black Economic Empowerment” (BEE) since 1994. Even this too ultimately had to add a new prefix “Broad-Based” to be seen to be accommodating to women, Indians, coloreds and the disabled (*ibid.*).

The past approaches in South Africa when implementing AA have always been synonymous with the employment of quotas and targets, based upon proposed formulas (Thomas *et al*, 1996; BMF, 1993). This method according to Madi (1997) has involved the recruitment and advancement of blacks and women up the ranks of the organization, as well as their appointment as non-executive directors at board level. Thomas *et al* (1996) claims the danger has been that AA appointees end up being clustered at the top, where they are put in less critical positions where they are just given titles but are excluded from serious decision making, where value is added to the company. Although this upward mobility of blacks in companies is encapsulated in the new view of AA, Madi (1997) argues that on its own it does not represent what is now referred to as empowerment.

2.3 JUSTIFICATION OF AFFIRMATIVE ACTION IN SOUTH AFRICA

In the context of South Africa the logical question to ask is; now that democracy is attained, is there a need for AA? Asking this question (Price Waterhouse, 1996) assumes that freedom addresses all the imbalances in the system, whereas this is not so. The mere removal of obstacles to equality does not necessarily make people equal (Ramphela, 1995). Additional measures to attain equality of opportunity in the true sense of the word are both necessary in South Africa and recognized as legitimate in international human rights law (*Ibid.*). Apartheid legacy (Ramphela, 1995; Adam, 2000) has bequeathed South Africa with one of the highest levels of inequality in the world. This is reflected in the low levels of black participation in the economy (BEECom, 2001). Soon after the advent of democracy in South Africa, the richest 20% of South Africa population earned 63% of the country's income while the poorest 20% earn 3% of the country's income (Madi, 1997). Thus the levels of inequality as measured by the Gini co-efficient of 0.61 is second only to Brazil's 0.63. The allocation of the country's resources favored mostly white men who are a minority of a minority (Ramphela, 1995). Since this inequality was enforced through the use of the state and law, the level and correlation between race and social class is unsurpassed anywhere else in the world (Eide, 1992). The protracted system of race-biased accumulation of the country's resources has led to an environment where wealth, income, education and power have all coincided with each other. The section of the society that has been at the top in power has had the best education, the most income, the most wealth and everything else (Beteille, 1993).

The justification of AA can be argued along the grounds that institutions need to compensate for their biases and exclusionary effects of their evaluative criteria and practices (Thomas *et al*, 1996). AA is particularly relevant where a person's class, race or gender operates as a group status that impedes equality of opportunity, as it affords the person opportunities that they might not have

otherwise had. Kennedy (1993) calls it a prophylactic measure, because of the under-enforcement of anti-discriminatory laws, as there are invisible discriminations that the legal system cannot detect or suitably deter. Edwards (1995) posits that to correct the wrongs of the past it may once again be necessary to let race count, because trying to progress without the aid of AA (Carter, 1991) is tantamount to denying that black people have been retarded by racism. Equal treatment according to Edwards (1995) may not (probably will not) stop inequalities that are a direct result of past unequal treatment, and this call for the different treatment of different groups, in order to achieve greater inter-group equality. To achieve equal opportunity for all members of society, special help will often be needed to those from a position of comparative disadvantage. Continuing with this reasoning Edwards (1995) claims that AA can be justified under two further conditions. Firstly, the minority groups – who in the South African context are also economic minorities – have the same kind of needs as the majority plus further, special needs. Secondly, the sum of ordinary and special needs put the minorities in a position of greater need than the needy in the majority, whose want would require allocation of resources. An example of a formidable barrier submitted by Edwards (1995) is poor grasp of the English language by minorities. This might have little to do with the execution of the job but if it is put as a prerequisite for admission into a job, it will heavily prejudice minorities (*ibid.*).

The dilemma of promoting AA and advocating for equity

There is, however, a dilemma (Edwards, 1995) between promoting equality of opportunity in a society on the one hand and compensation on the other hand. If compensation for harm resulting from past (and present) discrimination is not acceptable as a reason for promoting AA, the question of what caused the disadvantage in the first place is still not addressed. The relative disadvantage of minorities was occasioned by, among others, negative discrimination. The dilemma is whether to leave the costs and benefits of this negative discrimination unattended, or to adopt the quixotic ameliorations of need-based positive action – AA. To address this challenge Edwards (1995, p 25) poses this rhetorical

question: “isn’t the basic demands of justice that harm be remedied and that rights overridden be recompensed, other than to ameliorate some of the disadvantage that is a consequence?” The results of continuing with discrimination are disillusionment among ethnic minorities and women, social and political unrest, the most critical one in the employment context, the misuse and/or waste of human resources (*ibid.*). This view is reiterated by Wilkinson (2007) who claims that evidence from the United States shows that when left on their own, institutions in such areas as college admissions, hiring decisions and loan approvals always take choices that are perpetually discriminating against blacks. This in the end hurt not only the victims, but also the whole nation, as the riots of the 1960s demonstrated (*ibid.*).

Continuing with that argument, Thomas *et al* (1996) postulate that without AA beneficiaries would be fewer if the preferences did not exist. This is based on empirical studies in the US, which have shown that African American candidates with identical credentials are treated more negatively than their white counterparts (*ibid.*). AA therefore includes a stress (Singh, 1996) on allowing individuals from disadvantaged groups to be given a head start and maximizing the opportunities now legally available to them. Subjective assessments (Thomas *et al*, 1996) of factors such as ‘fitting in’ ‘personality’ and ‘self-confidence’ always serve gender and race prejudices. Many women and blacks have relatively few experiences of being taught or trained by people like themselves, and are compelled to bear the tensions and complexities of working in environments where there are few people who share their experiences (*ibid.*). Personal interviews, job evaluations and recommendations all have an inescapable subjective element, which for the most part works for the better-off white men (*ibid.*).

A well-structured AA policy will identify even those within the minority groups who are severely handicapped. For instance black women in South Africa are a very special case (Suzman, 1993). They have a triple disadvantage. First they are black, second they are women and thirdly they are black women. The third is

very important because tribal set-ups treats them as perpetual minors (*ibid.*). They have no contractual capacity; if their husband dies they have no share in the estate, all of it goes to the eldest son or if there is no son to the closest male relative (*ibid.*). In order to be fair to women they have to receive a special treatment to uplift their status in the new South Africa. Thus “treating people fairly does not mean treating them the same” (Thomas *et al*, 1996, p. 23)

Group Inequalities and Justification of Affirmative Action

There are reasons for under-representation and under-utilization of members of the affected groups in many important sectors of the economy (Edwards, 1995). The first is that people from the minority groups don't have the equal opportunity to compete for and obtain the coveted positions and statuses (*ibid.*). This is a result of individual inequality of opportunity or group inequality of opportunity. The second reason might just be greater social and economic disadvantages people from those groups are subjected to. So the dominant reason for the minorities' under-representation is lack of equal opportunity especially when there are discriminatory barriers (direct or indirect, intentional or unintentional) (*ibid.*). In simple terms group inequalities are a direct result of discrimination and disadvantage (*ibid.*).

However, chiefly because of under-exposure among other reasons, people's choices and preferences might result in systemic differences in the distribution of people in the different fields in the economy, even when complete equality of opportunity is achieved (Edwards, 1995). The motive behind AA is to address the under-representation or under-utilization of minorities in certain professions and statuses, and their over-representation among the unemployed. It further seeks to emancipate them from a compounded form of deprivation called “racial disadvantage” (*ibid.*). The idea of AA then, is to encourage institutions to develop realistic criteria for the job at hand and then to find a reasonably diverse mix of people qualified for it (Adam, 2000). The setting of numerical goals is necessary to prevent discriminatory organisations from taking the easy way out and say we

“couldn’t find anyone qualified” – then going back to hire the white male they wanted in the first place (*ibid.* p. 51).

Adam (2000) contends that the two different conceptions of equality, one individual-based and the other group-based, complicates the whole debate especially when the notions of equality of result versus equality of opportunity are introduced into the discourse. But Thomas *et al* (1996) addresses this succinctly by saying AA policies accords the right to equal treatment of working class people, women, and blacks in a society setting where numerous social structures and institutional practices all conspire to deny their interests, equal consideration and respect. In this dispensation, the right to equal treatment of white men is not violated, as the policies are simply designed to counteract institutional practices that privilege their interests (*ibid.*). It is with the above philosophical underpinnings that the American leadership guidance provided insight and direction in the implementation of AA in South Africa, and the African pioneers’ experiences discussed below enlightened policy makers in South Africa of the policy’s proper administration.

2.4 DIFFERENT TYPES OF AFFIRMATIVE ACTIONS

2.4.1 Affirmative Action in Other Parts of Africa

The word “Affirmative Action” was never used in most parts of Africa (Singh, 1996) wherein “Africanisation” and “indigenisation” remained the instruments through which these states hoped to redress inequalities created by colonialism. Although the examples of indigenisation can be found around Africa three examples of countries surrounding South Africa will be utilised: Zambia, Zimbabwe and Namibia. According to Lungu (1980) africanisation meant “the process of replacing expatriate civil servants by nationals” it also meant the “training and development of this personnel. a change in the spirit of service in accordance with the policies of new governments” (Lungu, 1980: p.1). Africanisation was also justified on political, economic and security grounds (Adu, 1969). According to Rood (1976) it is merely a transfer of jobs rather than the

transfer of ownership, though the term is sometimes used in a broad sense to cover indigenization and even nationalisation. On the other hand indigenisation is a process deployed by governments to restrict participation to citizens in certain industries and usually force aliens to sell (*ibid.*). The target is usually small and medium enterprises that citizens of emerging nation states believe they can manage successfully (*ibid.*).

Zambia –The Kragdadige (Forceful) Approach

At independence in 1964, 97% of the highest Division Grade 1 positions in the government in Zambia were occupied by whites, a the result of a non-existent African training and development policy before independence (Lungu, 1980). Zambia then adopted a forceful approach and promulgated laws that all power should rightfully reside with black Zambians at all levels in the public and private sectors. The typical setup soon after independence would be a white technocrat who is overshadowed by a black learner, who took over after a short period of time (*ibid.*). This new policy led to the abrupt departure of many expatriates, with a resultant scenario where there were more vacancies than could be filled.

Although the government had committed to the merit principle in 1964 the post of permanent secretary was excluded from the merit system and the president could make direct appointments along partisan lines (Mokgoro, 1996). The Constitutional Amendment Act of 1969 empowered the state president to declare any post political, and the trend was such that the entire senior ranks of the public service were placed outside the Public Service Commission in 1972 (*ibid.*). Lungu (1980) observes that the relationship between Africanisation and the merit principle has not always been a positive one. Although in India where the British merit legacy was retained at independence there has been ineffectiveness in dealing with issues of national development. In China, where the civil service is highly politicised, developmental effectiveness is amongst the best in the developing world (*ibid.*).

On the economic front the government resorted to indigenisation of the control of the economy. The Zambian economy has always heavily depended on copper mining, which was developed as a foreign controlled enclave. It was for this reason that it was a target of unionisation, Zambianisation and nationalisation (Daniel, 1979). This was a direct response to the reluctance of the British to completely relinquish powers on key areas critical for any emerging nation state, as seen in the following utterance in the British House of Commons: “Don’t forget that the form of political power and the content of real power are different things. We are after the latter... The vital thing is that security, mines, and foreign relations and the judiciary should remain under our real control whatever nominal power and position is given to the Africans” (House of Commons, 1961: 13). Thus the government focused on Zambianisation and mine expansion, by compelling the mining companies to convert existing European expatriate contracts to a three-year limit. On the other hand Africans were promoted to middle level posts by training the locals and fragmenting existing jobs, and thus creating a new labor aristocracy. The grand plan in all these was to, (1) eliminate the European miners’ monopoly while securing an adequate supply of skilled labor; (2) expanding the mines’ output while “Zambianizing” the labor force, without undue wage increases; and (3) mobilizing the mine workers to support national development (Daniel, 1980).

The Zambian economy during the time of independence was typical of most African colonies: Europeans and/or Americans at the top holding the large industries, Asians in the middle doing much of wholesale and retailing and the bottom rung occupied by Africans in farming, market petty trading and rudimentary services. Nationalisation of the sole extractive copper industry was comprehensive as the government assumed 51%, this was extended to other industries like the urban transit industry, banks, newspapers, insurance and hotels (Rood, 1976). Indigenisation was initially achieved by revoking all licenses in retail trade, lorries, buses and taxi industries without 75% Zambian ownership (Rood, 1976; Beveridge, 1974). There was very limited success in these policies, which were intended to eliminate foreigners in the retail trade, because reforms

were applied on the basis of citizenship and not on race and this opened a lot of loopholes as there were a large number of non-Africans in Zambia who had acquired citizenship (Beveridge, 1974). However Madi (1997) claims corruption was the main source of the failure of Zambian empowerment initiative. In contrast Zimbabwe sought empowerment through a soft approach that that was predicated on sentimentalism.

Zimbabwe –The Good Vision/Feel-Good Approach

Madi (1997) postulates that this has been the approach of many nations seeking to uplift backward sections of their populace from past articulated discriminations, and most of the time they have been met with grave disappointments. In this approach as was the case in Zimbabwe, the “haves” are appealed to, to show patriotic fervor by not discriminating against their fellow citizens and it is hoped that by so doing they will help the “have-nots”. The disappointment with this approach has led to the belated cry of indigenisation of the economy. In Zimbabwe soon after independence in 1980 the legal status of racial distinctions (Muzondidya, 2005) and their institutional supports were erased. In the economic sphere, justice and reconciliation was sought through black economic empowerment, the Africanisation of the public service and the active development of the black middle class (*ibid.*).

The government initiated a massive lateral entrance (Mokgoro, 1996) at all levels of the civil service such that an almost white civil service at independence in 1980 had 95% of senior positions occupied by blacks by 1984. This inexperienced and mostly corrupt workforce did not provide the effective delivery of service to the electorate, even though the civil service had expanded by 185% between 1981 and 1990. Although people who had moved to positions of influence were politically agreeable, lack of cooperation from the private sector, lack of expertise and corruption prevented the reduction of racial inequalities in the country (*ibid.*). After the three-year drive to Africanize the civil service that was sanctioned by the 1980 Presidential Directive (Chikuhwa, 2004), there was no other significant government initiative on black economic empowerment for a

number of years and the mere presence of these black managers and workers did not amount to empowerment of the general populace. The white minority in Zimbabwe, for their part, did not reciprocate reconciliatory overtures (Muzondidya, 2005) made by blacks, and thus the hoped for political reconciliation proved illusive. In the meantime the absence of concerted pressure from the government and the general populace for economic reform, the privileged whites with massive capital investments did little to contribute to the redressing of the racial economic inequalities in the Country (Banana, 1996). It was this laissez-faire attitude towards reform that perpetuated the prejudices and destructive social relations that existed before independence (Huyse, 2003). This “culture of contentment” by whites according to Huyse (2003) led to dire economic and social inequality, most visible in the skewed distribution of land and prosperity in white suburbs in cities like Harare.

However from 1992 black business lobbies such as the ‘Indigenous Business Development Council’ (IBDC) were started, comprised of people who had worked in the private and public corporate sectors and had left to start their own business (Chikuhwa, 2004). They used their business insight and political connections to pressure the government to create an enabling environment for black business people to enter the mainstream of the economy in order to break the monopoly of the white minority (*ibid.*). The government, under pressure to be seen to be doing something to redress economic imbalance, resorted to violence particularly on the issue of land as the bulk of productive farmland remained in white hands. The patterns of coercion characterized by the ruling party militia land grabs and white owner evictions, and authoritarianism have intensified to the point of a crisis (Raftopoulos & Savage, 2004). The critical land issue was not a concerted government effort to attain real empowerment but was used for political gain in the 2000 and 2002 elections (Africa Research Bulletin, 2008).

This, and other blunders catapulted by the 1997 government’s ‘100% empowerment drive’ has led to a self-inflicted economic decline (Financial Times, 2008b) to the extent that Zimbabwe is currently regarded as a failed state in need

of urgent international rescue. The government has also passed the country's indigenisation legislation in March 2008 on the eve of general elections that were scheduled for 29th March 2008. The law provides that foreign owned companies and those owned by people not disadvantaged during colonial times (whites and Asians) to sell 51% of their shares to indigenous (black) Zimbabweans. The government has however stated that not all foreign-owned companies will be forced to sell 51% of their shares, rather the minister will prescribe on the basis of capital and employment levels (*ibid.*). Thus Zimbabwean AA program seems to be disjointed, intermittent and characterized by periodic political appeasements rather than a well thought-through policy with clearly defined long-term goals and objectives.

Namibia

Namibia attained independence from South Africa in March 1990, as a result of a negotiated decolonisation settlement. The controlled change perpetuated existing socio-economic inequalities (Melber, 2006) in that the country's constitution endorsed the status quo in terms of its protection of property rights and guaranteeing all civil servants their jobs. This made it hard for the new government to drastically change the civil service like in other countries, such that black workers were only introduced when the white incumbents retired, were transferred or resigned (Jauch, 1998). As the new appointees could not have gained experience anywhere else since they were not allowed to work in the colonial civil service under apartheid, the Public Service Commission dropped the experience requirements in jobs but retained the qualification standards (Melber, 2006). Within six years of independence 70% of the management posts in the civil service were held by people from disadvantaged groups (*ibid.*). Beyond that, little has changed since independence although the Namibian constitution allows for the redressing of the imbalances (Melber, 2006; Jauch, 1998). The Gini coefficient of 0.701 in the mid-1990s made Namibia the country with the highest unequal distribution of wealth anywhere in the world (UNDP, 1997). The deep internal economic divides run along both regional-ethnic as well as class structures (Winterfeldt, 2002). Geographical disparities exacerbated by

the legacy of a migrant labor system throughout the 20th century promoted rural-urban divide and led to the marginalisation of whole areas with dire lasting effects which still exist today (Frayene, 2005; Tvedten, 2004).

Nevertheless AA in Namibia has made great strides in education and women's empowerment. Soon after independence the government guaranteed free and compulsory primary education and up to '28% of the annual budget was allocated to education, however 80% of that was spent on salaries hampering the acquiring of vital resources' (Namibia Ministry of Education and Culture, 1993: p. 35-37) The local government elections' gender quota in 1992 increased women representativity to 30% of all the representatives at the local level, far higher than other tiers of government where few women are represented (Jauch, 1998). On the business front AA and BEE have resulted in a slight diversification of the class structure, with new office bearers and other former freedom fighters as the chief beneficiaries (Melber, 2006).

A similar translation of AA into further privileging the new elite (Melber, 2005) can be witnessing in an ongoing and very limited redistribution policy of land reform. The former blatantly racist power structures and property relations have gradually been replaced by a color-blind class creation agenda (Melber, 2006), favoring what Adam *et al* (1997) calls in South Africa "comrades in business". These "liberators" have used their political and public service offices secured at and since independence to profitably cash on the country's resources through blatant corruption (Melber, 2006). A trace of corruption cases since independence shows that Namibia, although a small economy, has extensive corruption, mostly involving government agencies entrusted with huge national resources but furnished with the weakest controls (Maletsky, 2005). The Namibian constitution protection of property rights has been used to perpetuate pre-independence economic disparities, with the civil service as the only realistic arena where the majority government can exercise its power in speeding change. A corrupt political elite has arguably squandered the few opportunities that present

themselves in the private sector, and this has led to the stagnation of the policy beyond the initial civil service gains.

2.4.2 Affirmative Action Implementation in South Africa

AA in South Africa has gone through some transformation as prior to 1994 it was practiced under a poignantly racist regime and its ambitions were limited to what the state would consider tolerable. This has resulted in the transition of the view of the ultimate goals of AA in the new non-racial dispensation that came after 1994.

Old view – Minimalist

The traditional view of AA in South Africa since the 1970s has been to concentrate on the promotion of recruitment and advancement of blacks and women up the ranks of companies, as well as their appointment to key posts, usually as non-executive directors on company boards (Madi, 1997). Even after 1994 this was the dominant view but Iheduru (2004) posits that there has been a gradual shift to a new phase over the first ten years of democracy. The first phase labeled “minimalist” by Edigheji (1999) only concerned itself with altering the racial composition of privileges and exploitations. It was therefore viewed by some as a black class-creation project (Freund & Padayachee, 1998) The dominant characteristic of the purely compliant early BEE deals after 1994 was acquisitions rather than wealth creation (Hauki, 2001). The strong emphasis on equity transactions limited empowerment to a small group of blacks that was already economically well off (*ibid.*). Iheduru (2004) argues that this voluntary first phase failed to produce a sustainable increase in ownership and control of business by blacks.

New View – Maximalist

The new view still accommodates the characteristics of the old view but seek to encompass the following: the ownership level, the corporate advancement, the SMMEs (Small, Micro and Medium Enterprises) and the out sourcing level (Madi, 1997). The first phase after 1994 was known as Black Economic Empowerment

(BEE) but after a widespread criticism Broad Based Black Economic Empowerment (BBBEE) was instituted, which seeks to broaden empowerment across the private economy by using policies such as 'preferential procurement' (Butler, 2005). BBBEE definition proffered by the Black Economic Empowerment Commission (BEECom) is as follows:

'Black Economic Empowerment should be viewed within the broad scope of empowerment processes including job creation, rural development, urban renewal, poverty alleviation, specific measures to empower black women, skills and management development, education, meaningful ownership, and access to finance for households for the purpose of conducting business' (BEECom, 2001).

According to Butler (2005) BBBEE came about as a result of the pressure to make empowerment less dependent on the goodwill of the previously advantaged, but rather to make it spearheaded by government proactivity in making it more 'broad-based'. Edijheri (1999) posits that this phase is 'maximalist', seeking to attain a comprehensive restructuring of institutions and society rather than simply the replacement of white individuals with black ones in executive positions (Edijheri, 1999). It promotes a developmental approach through the fostering of SMMEs that are seen as playing a pivotal role in the economy (Radebe, 2006). It is also accompanied by a shift from passive investment companies, towards full-time involvement at the operational level particularly at the grass-roots level where it is believed job creation, skills transfer and value adding could be actuated by small, entrepreneurial companies (Hauki, 2001). This is pertinent because SMMEs absorb almost half the people formally employed in the private sector and contribute about 37% to the country's GDP (Southafrica, 2005). It is in this context that the government has decided to explore intensely Public Private Partnerships (PPPs) as an alternative to traditional procurement in a quest to leverage empowerment, especially in the provision of infrastructure (CIDB, 2004), as the government views PPPs as offering valuable opportunities for strong and sustainable BEE (National

Treasury, 2004). Theoretically speaking it is difficult to separate the terms BEE and BBEE as the latter is only used to show the scope and the extent of the policy reach and does not represent a fundamental shift in its intention, so for the rest of this discussion BEE will still be used but in its more encompassing meaning.

2.5 INTENSIONS OF AFFIRMATIVE ACTION (BEE IN SOUTH AFRICA)

2.5.1 Beneficiaries of AA

(a) Creating a Black Middle Class

The notable success of AA in the United States has been the enlargement of the black middle class (Kennedy, 1993; Larson, 1999). Although the bottom one third has not benefitted, police, fire-fighters, carpenters and other skilled crafts have been assisted by it in their advancement (*ibid.*). Some of the businesses that were created compete independently. The *African American Policy Forum* (AAPF) (2008) argues that although a lot of criticism on AA is that it benefits the middle class, the very middle class was created by the AA policy itself. By opening the educational doors for an entire generation of poor and working class Blacks; people who had been locked out because of color benefited irrespective of their class (*ibid.*). This argument is extended by (Nanda, 2006) who posits that it is the best way to provide upward social mobility to historically oppressed population groups.

In South Africa the economic empowerment of black South Africans and the creation of a robust black middle class is, according to Macdonald (2005), intended to stabilize the South African society by bridging the wealth gap. Great strides have been achieved in this regard. According to *the Human Sciences Research Council* HSRC (2008) in 1994 29% of the middle classes were black and in 2000 the proportion had increased to 50%. This growth far exceeds overall growth of the middle classes from 8.8% of the population (approx. 2.5 million) in 1994 to 11.9% in 2000 (approx. 5.3 million) (*ibid.*).

Macdonald (2005) identifies three waves of direct BEE beneficiaries; the initial one being the black elite which is comprised of the politically well-connected individuals and dynamic individuals who took full advantage of the new economic opportunities that were presented post-1994. The second was the emergence of the black professionals the 'buppies' (black up-and-coming professional persons) of the 1990s, which has now been followed by the third wave, which is by far the largest and is comprised of the 'bappies' (booming, aspirational and previously poor) who are taking advantage of the booming economy and moving up the social ladder (*ibid.*).

UCT Unilever Institute (2007) reported that the black middle class grew by 30% in just over a year between 2005 and 2006. The black middle class has also expanded annual spending power from R130 billion at the end of 2005 to R180 billion at the beginning of 2007. Although the black middle class was only 12% of the South African black population at the beginning of 2007 they accounted for over half (54%) of all black buying power; this compares favorably with 10% accounting for 43% of black buying power just 15 months earlier (*ibid.*). Macdonald (2005) attributes this growth to an increase in the number of black employees in the white-collar public sector jobs and a marked increase in the number of black people employed in the private sector and an increase in the black business enterprises. The above successes in the creation of a sizable black middle class came at the back of BEE race identity-based redistribution (Nanda 2006), which appears to have overlooked a concomitant aggravation of black underclass squalor. The frustration in this class were manifest in the xenophobic attacks in May 2008 sending a 'dire warning' that the ever increasing number of immigrants from the rest of the continent are putting pressure on the poor as they compete for scarce jobs and public services (Financial Times, 2008a).

(b) Creating and Offering Jobs to the poor

The unemployed in South Africa are also mostly uneducated and unskilled; their despondency poses a serious challenge to the government as they make up the

majority of the black people who have yet to enjoy the benefits of the liberation from apartheid. South Africa under *apartheid* dispossessed black people and limited their ability to accumulate assets, such that in the immediate post-apartheid era, the economic scenario in the country was such that the poor were disproportionately found among households that shared similar endowments and were facing similar constraints to the use of those endowments (Carter & May, 2001). The policies of segregation and discrimination left a lingering legacy of inequality in education and skills, and in the final years of apartheid, low economic growth (Woolard, 2002). Low skills always translate into unemployment and poverty which are currently major problems facing the country (Haddad & Adato, 2002). This is seriously hampering the attainment of 'better life for all' aspirations, which according to Mbeki (2008) is only achievable when a country is able to harness the energies of its people and put them to productive use. Mantashe (2008) claims that since 1994 substantial progress in transforming the economy to benefit the majority has been made, although the combined challenge of unemployment, poverty and inequality remains.

Challenges to job creation

Loots (1998) laments that five years after the advent of democracy that economic growth, which is generally regarded as the creator of employment, had not been able to create sufficient employment opportunities for the ever-growing South African labor force. This scenario exists despite the pervasive notion that a high-quality economic growth ensures the expansion of income-generating employment opportunities (*ibid.*). Ten years later any prospects of massive job-creation has been dented by the recent global economic crisis which will affect economic growth and pose challenges for job creation and other goals (Mantashe, 2008). According to Mahadia (2003) the problem started once the country's global economic integration was initiated; South African firms had to rationalize and re-engineer their activities to be internationally competitive and improve productivity and this adversely affected the low-skilled workers who could not be so easily absorbed in the labor market. The situation was so critical that in just 10 years between 1990 and 2000 over 1 million formal jobs were lost

(Cant & Erdis, 2005). The problems in creating jobs are also leveled at the macro economic policies adopted by the government since 1994.

South Africa, like all transitional societies, experienced the emergence of a new ruling elite ushered in by the nascent democracy (Habib & Padayachee, 2000), and this had a huge bearing in the economic policy arena. Habib and Padayachee (2000) argue that the ANC has been experiencing what the former Soviet Union societies and Eastern European states went through where new policy-makers initially enthusiastically embraced market oriented 'shock therapy' reform packages; policies met in those countries with despondency and trepidation due to unexpected transitional social and economic costs, and slow improvements in living standards. In some countries elsewhere in the world undergoing similar changes the policies were actually imposed by powerful international institutions (e.g. World Bank, IMF), potential foreign investors and local capital (*ibid.*). Most of the time the newly ascendant elites discarded previously held developmental approaches still supported by their grassroots constituencies in order to implement the globally dominant neoliberal agenda of the *Washington Consensus* (*ibid.*). This economic policy direction in both the Eastern Europe and other developing countries elsewhere, weakened the prospects of consolidated democracies in different ways (*ibid.*).

Aliber (2003) identifies the economic policy shift of the ANC as following this pattern, as on the eve of the first democratic elections the ANC planned to transform the country using the Reconstruction and Development Programme (RDP) policy. The central theme of the RDP policy framework was the overarching need to reduce the poverty afflicting a large share of the country's 40 million people, thereby redressing the inequalities and injustices of the past (ANC, 1994). According to Aliber (2003) the RDP was largely impressionistic because apart from massive infrastructure investment the RDP document gave little indication of its broader strategy. In November of 1994 the RDP white paper was publicized the content of which was not dissimilar to the original policy framework document but with arguably a more 'business friendly' and fiscally

conservative bent (Bond, 2000). In 1996 amidst criticism about its meaning as the economic policy document the office of the RDP was closed and its staff transferred to other departments (Aliber, 2003). Later that year a new economic framework called Growth, Employment and Redistribution (GEAR) was introduced by the Department of Finance (*ibid.*).

While not incompatible with the goals of the RDP, GEAR is a neoclassical macroeconomic recipe for economic growth that eclipsed the RDP as the central economic program of the government (Bond, 2000). Because of its emphasis on fiscal restraint, the expressed commitment to controlling inflation and interest rates, as well as the promise of relaxed foreign exchange controls, GEAR was applauded and embraced by business leaders (*ibid.*). However critics labeled GEAR a neoliberal sell-out by the ANC (Bond, 2000), as well as an inappropriate tool for solving the South African pressing economic challenges, principally unemployment and poverty (Adelzadeh *et al*, 1998). RDP continued to be associated with an assortment of government activities targeted at poverty reduction, but according to Aliber (2003) the charge leveled from both outside and inside the government was that the RDP was dead.

The GEAR economic policy is premised on three basic pillars: fiscal discipline, exports and labor market flexibility (Mahadia, 2003). Unfortunately on the labor front, new laws that have since been promulgated have imposed rigidities on the labor market, fueling suspicions (*ibid.*) that overburdened employers have opted for capital-intensive methods of production, thus aggravating unemployment even further. Flexibility in the labor market, which encapsulates changing the production function, is pivotal in maintaining a firm's competitiveness (*ibid.*) as it responds to changes in demand, technology and legislation. (Barker, 1999) argues that in the classical economic model, flexibility in the labor market is fundamental in the fight against unemployment. According to Lewis (2002) in economies where wages are rigid, demand, technological and legislative shocks are manifested by high levels of unemployment since employers are unable to adjust wages downwards to counter competitive pressures and their only

response is to hire less labor. Such economic realities have played themselves out since 1994 and the government has responded with a series of tactics to improve its overall strategy.

Strategies to Combat Joblessness – way forward

To combat these problems the government has intensified the National Public Works Programme (NPWP) established in 1994, whose main purpose was to reduce unemployment through the creation of productive jobs by the building, rehabilitation and maintenance of physical assets (Haddad & Adato, 2002). According to Mahadea (2003) public works programmes (PWP) of short duration can have an immediate impact on job creation, and these can have various multiplier effects in generating indirect employment in other sectors, more so as the South African government is increasingly spending more on infrastructure programmes. However, a major drawback about PWP is that they are not sustainable in the long run (*ibid.*) simply because they do not generate adequate returns as in the case of private-driven, market-oriented programmes. Since they are financed by the government this translates into the draining of the *fiscus*, a reduction of spending on other pressing needs or a rise in taxation with crowding-out, debt servicing and other attendant disincentive effects (*ibid.*) all of which may ultimately impact adversely on job creation and economic growth.

The second strategy has been the promotion of SMME entrepreneurship. According to Rogerson (2004) the increasing focus on the promotion of SMMEs is to achieve economic growth through competitiveness on the one hand and employment generation and income redistribution on the other. The importance of SMMEs as a critical sector in employment and income generation (Cant & Erdis, 2005) is increasingly being recognized the world over. In South Africa this is even more pertinent because the more than a million jobs the non-agricultural formal sectors shed between 1990 and 2000 has contributed to the continued high unemployment rate (*ibid.*). The SMME sector is widely regarded as the driving force in economic growth and job creation in both developed and developing countries (*ibid.*). South Africa has come to recognize the importance

of this sector and in achieving the country's national objectives and is committed to its growth (*ibid.*). Mahadea (2003) argues that the long-term solution to the South African unemployment and growth problem lies in the consolidation of existing entrepreneurship and in the stimulation of a new entrepreneurial class involved in SMMEs including the informal sector. The vigorous exercise of entrepreneurship which is underpinned by millions of viable enterprises can create millions of jobs (*ibid.*). Schlemmer and Levits (1998, p 80-81) argue that the 'optimal route' to employment is through the critical mass of the informal sector and small businesses with active public-private support.

2.5.2 Importance of Affirmative Action to South Africa

AA in the South African context has a unique urgency because the intended beneficiaries are the numerical majority (Adam, 2000; Madi, 1993). Commentators have always argued that if this is not implemented with the necessary urgency the potential danger of political turmoil will be accentuated (Ramphela, 1995; Madi, 1993). The widespread xenophobic attacks on foreigners in May 2008 were largely blamed on the neglect of the poorest of the poor; and the frustration they experienced seeing other fellow blacks becoming extremely rich at their expense (Lehulere, 2008). Black people generally feel that their poverty was generated politically and as such it should be redressed through political means (Adam, 2000; Ramphela, 1995; Madi, 1993). Moshapelo (2001) summarizes these views he states "first the rationale for black empowerment is premised by the fact that we have only achieved half of the liberation struggle, political liberation minus economic liberation. This is a recipe for a disaster of volcanic proportions" (Moshapelo, 2001).

As with Malaysia, in the South African context the BEE policy is not simply a moral initiative correcting the imbalances of the past but it is rather a pragmatic growth strategy that is aimed at realizing the country's full economic potential (SouthAfrica.info, 2008). The apartheid policy of excluding blacks from meaningful participation in the economy created poverty and a lopsided

economy; a distortion that led to zero GDP growth in the 1970s and an average 3.4% growth in the 1980s (*ibid.*). BEE is therefore being implemented to meet the needs of all economic citizens (people and their enterprises) in a sustainable manner (DTI, 2003). According to DTI (2003) there cannot be any meaningful growth in the economy if any part of the populace is excluded; as such the BEE strategy is associated with growth, development and enterprise development and not merely distribution of existing wealth. The strategy as the names suggests, is broad-based and it aims at situating black empowerment within the context of a broader national empowerment strategy focusing specifically on historically disadvantaged majority including the youth, women, the disabled and rural communities (*ibid.*)

2.5.3 Removal of Barriers and the Merit Principle

Removal of Barriers

AA seeks to adjust the entry and promotion requirements to remove bias against particular cultures and value systems, which have in fact no bearing on vocational performance (Price Waterhouse, 1996). This could be unconsciously executed as recruitment committees and established businesses have affinity to individuals with similar outlook (Adam, 2000). Thomas *et al* (1996) argues that AA is justified because these biases have to be compensated for. Carter (1991) posits that even when applying AA the merit principle should be maintained by searching the best among the best and “not the best among the blacks”. In South Africa the barriers are removed through the Broad-Based Black Economic Empowerment Act (2003), Employment Equity Act (1998) and Preferential Procurement Act (2000).

The Merit Principle

According to Price Waterhouse (1996) there has to be a redefinition of merit, to go beyond the immediate ability to do the job but the potential to do the job in the future, given the appropriate training and motivation of the candidate. Adam (2000) argues that overprescribing standards without taking due cognizance of

the educational injustices of apartheid will make the country less competitive. Carter (1991) observes that there is a trend to recognize soft-skills like motivation, initiative, and tenacity or drive as equally qualifying competencies for black managers. Carter (1991) goes on to assert that with the right motivation many of the hard skills can be learned at work. Less qualified people could still do the job without using strict academic qualifications which are, according to Carter (1991), are a white male invention intended to maintain a Eurocentric hegemony. Thomas *et al* (1996) muses that since a lot of black managers were denied decent university degrees or business experience the focus should be on their future personal contribution not their historical work experience. Edwards (1995) posits that the merit principle is not as pristine as is often thought, and that is why there should be a scope for preference policies and AA. If previously disadvantaged people are not treated as “exceptional” and the liberal view of merit is upheld, Adam (2000) opines that there will always be a tendency to legitimize all the decisions not based on AA as meritocratic. Determinations of merit are often very subjective (*ibid.*), since most employers naturally hire people they can best relate to, who are often of similar backgrounds, and such decisions cannot be said to be based on pure objective meritocracy.

Carter (1991) argues that as much as it is possible to turn away highly qualified whites in preference of less qualified blacks – with the resulting harm; it is also possible by the same preferences to select the highly qualified blacks from a pool of all excellent candidates. Anybody given the mandate to select can claim to be doing the latter while they are in fact doing the former, but the latter is not impossible to do either (*ibid.*). Despite the misgivings about the appointment, if the employer is genuinely seeking to pursue the second option, the lack of qualifications should not contribute to the misgivings (*ibid.*). However, Carter (1991) concludes by postulating that human analysis is not adequately sensitive to detect the difference between the two options.

Edwards (1995) postulation on this is no different but emanates from an alternative perspective; it is an argument that maintains that all procedures that

override the requirements of “justice” either in the merit principle or the needs principle could be called preferential treatment. These practices could include the hiring or promoting of less qualified minorities over a better qualified majority – in South African context the economic majority - or it could involve the allocating of resources of state to minorities in a volume that is not equitable to the ones allocated to the less needy majority (*ibid.*). According to Edwards (1995, p.21) “merit” is a serious contender as a material principle of justice, to override “merit” may well be unfair, but it is doubtful that it can be labeled unjust. AA procedures do not override the demands of justice or fairness in respect of either merit or needs principles, what they do instead is to identify beneficiary groups by –it has to be admitted—morally arbitrary criteria such as race, and thereafter at least in theory everything else lies within the ambit of justice and fairness (*ibid.*). However in practice the two often overlap as it has been shown above.

2.6 IMPLEMENTATION OF AFFIRMATIVE ACTION

2.6.1 AA Implementation

Ramphele (1995) points out that AA is not necessarily a panacea for all the past wrongs in South Africa, rather a creative economic management by leaders is crucial in leading the country to a better future. AA’s pivotal role is to create an affirming environment but success still resides in the personal drive and hard work of AA beneficiaries. According to Adam (2000), South Africa, as a latecomer to AA, has a good chance of avoiding the mistakes made elsewhere, although its unique situation makes the uncritical emulation of successes impractical. The government has elected to use as its major tool preferential procurement in all sectors wherever possible in a quest to bridge the economic racial divide.

2.6.2 Preferential Procurement Policy

Preferential Procurement, sometimes referred to as Affirmative Procurement or Positive Procurement, is a Finance and Public Works joint ministries initiative

designed to reform public sector procurement in South Africa (SEDA, 2005). It is a strategy devised to enhance the participation of the Historically Disadvantaged Individuals (HDIs) and the Small, Micro and Medium Enterprises (SMMEs) in the public sector by creating a favorable environment for them (DTI, 2001). While the BEE drive is central to the government policy planning (DTI, 2005), Preferential Procurement is a pivotal strategic tool within a broad BEE government policy (SEDA, 2005). Manuel (1997) stipulates that the government took the opportunity of its status as the largest buyer of construction services in the country to ensure that its procurement policy supports its overall economic objectives.

2.6.3 Objectives and Goals of Preferential Procurement

The socio-economic objectives that the South African government is aiming at include access to tendering information and the simplification of tender documents, breakout procurement, awarding of tenders in terms of a development objective mechanism, affirmative SMME participation, promoting employment-intensive practices, and affirming marginalized sectors of society in construction projects (Polity, 2005). In building on these objectives the main aim of implementing Preferential Procurement and making it fundamental to all procurement activities is to:

- a) Advance the development and sustainability of SMMEs and Historically Disadvantaged Institutions (HDIs); (Shilowa, 2006; National Treasury, 2005; DTI, 2001);
- b) Promote women and the physically handicapped people (National Treasury, 2005; (South Africa, 1995) Promote local enterprises in specific provinces, in a particular region, in a specific local authority, or in rural areas (Treasury, 2005, DTI, 2001);
- c) Support the local product (Treasury, 2005, Indicator South Africa, 2001; DTI, 2001);

- d) Redress skewed employment and ownership patterns through black economic empowerment (CIDB, 2004);
- e) Create new jobs; Creation of Opportunities for job creation and poverty alleviation (Community participation) (Treasury, 2005; CIDB, 2004);
- f) Stimulate Skills Development and Transfer (IDC, 2006; DTI, 2001), and;
- g) Fast track economic growth (IDC, 2006)

The government envisages that this strategy will assist in the inclusion of the informal business sector into the mainstream economy and uplift disadvantaged communities (DTI, 2001).

Importance of Preferential Procurement to SMMEs

Brown II (2004) and (HEFMA, 2005) argue that the black majority who were precluded from meaningful participation in the economy would be assisted by a well-structured preferential policy, particularly one that concentrates on the SMME sector which they currently dominate. Management IQ (2004) posits that Preferential Procurement entrenches BEE beyond the political and business elite to a broader community base. Morgan (2003) asserts that it is the most powerful and accessible empowerment tool the South African government has (Mbeki, 2005) viewed it as the seedbed of job creation, entrepreneurship and sustainable wealth generation and considered it the lifeblood of the economy. Brown II (2004) contests that without the development of SMMEs, the economy stagnates, employment declines and all these ultimately lead to a lowering of the standard of living.

According to HEFMA (2005) the South African SMMEs are of immense importance, as around 250,000 medium and small companies contribute some R220 billion annually to GDP, with small and 'survivalist' operations adding a further R72 billion. According to (SAIBL, 2004) there is plenty of credible evidence that many black-owned SMMEs companies are increasingly benefiting from preferential policies adopted by large corporations, mostly through outsourcing and other procurement arrangements. Thus preferential procurement

becomes the critical tool in spreading the economic inclusiveness of the previously marginalised and supporting the emerging black-owned SMMEs. The construction industry specifically could benefit from preferential procurement because the government is the largest procurer in the country.

2.6.4 The Role of the Construction Industry in Preferential Procurement

The construction industry is a national asset (Kganyako, 2005) and the economy depends on the physical infrastructure delivered by this industry. Dodge (2005) concurs that infrastructure plays a key role in creating an efficient, productive economy. Infrastructure investment is the key to generating long-term economic growth (Talent, 2003), by promoting efficient and productive flow of goods and services. Any clusters of industrial, manufacturing and technology companies located in major centres exist and function better with quality water, sewer, transportation and municipal and social services provided by the construction industry (Talent, 2003; Dodge; 2005). The industry is mostly characterised by average wages and labor intensive activities and as such could develop to the advantage of SMMEs and HDIs through preferential procurement (Capegateway, 2004). Inclusion of SMMEs may even enhance rural areas enterprises, because the construction industry can accommodate most of the semi-skilled people residing in these areas (HEFMA, 2005). The centrality of the construction industry in driving economic development and its accommodative peculiarity to large numbers of low-skilled entrants makes it a suitable vehicle for empowerment implementation.

2.7 IMPORTANCE OF THE CONSTRUCTION INDUSTRY TO AFFIRMATIVE ACTION/ BBBEE

2.7.1 Construction Industry and Easing of Social Problems

Governments have long recognized that the construction industry is uniquely able to impact on social and economic activities from Roosevelt's New Deal in the US to National Socialism in Germany. Rwelamila (2002) posits that if properly

managed the construction industry can assist the national economies with recovery and contribute towards the easing of social problems. This observation is supported by McCutcheon (2001) and Watermeyer (2000), who submit that the construction industry is an efficient industry for generating employment for a given capital flow, especially when labor-intensive methods are deployed. According to Shezi (1998) government procurement has widely been utilised to realise socio-economic objectives, notably the application of 'preferencing' procurement in the 1930s as an integral part of the marshal plan in rebuilding Europe after WWI. However Keddeman (1998), Watermeyer, 1999 and (De Veen, 2002) warn against implementing "make-work" projects, which are purely for the creation of employment opportunities with little economic benefit for the assets created. To justify consideration (Watermeyer, 1999) employment-intensive construction must be technically feasible and technically efficient. Devising alternative creative ways of offering massive employment in South Africa is very importance because the handful of monopolies in the construction industry can only offer a limited number of jobs.

2.7.2 The Nature of the South African Construction Industry and the Improvement of the Status Quo

The South African construction industry reflects other leading oligopolistic markets in that it is dominated by five major players, who do a bulk of the work themselves or sometimes with international joint venture partners (Business Monitor International Ltd, 2006). According to Monama (2004)) these companies have been slow in increasing black participation and management in the industry except in the area of enterprise development. The South African construction industry has for a long time been in recession, and this has led to the shrinking of its capacity, which now manifests itself in the shortage of skilled labor, outdated machinery and the closure of some building firms (Economist Intelligence Unit, 2005). Although there is a clear revival underpinned by increased infrastructure investment in the country, *Economist Intelligence Unit* (2005) observes that it has not been easy for black-owned companies to penetrate the market at the highest level, due to exclusionary cartelisation which has resulted in an impenetrable

environment for new black-run contractors. This scenario has prompted the government to seek to align this industry with the general restructuring of asset ownership in the country.

The drive to achieve a changed public procurement regime in South Africa has been led by the Department of Public Works (Strategic Procurement Systems, 2002). By targeting the Affirmable Business Enterprises (ABEs) (Watermeyer, 2000), this department has tried to redress the structural problems of the South African construction industry. This it has sought by promoting business linkages between large and small black-owned construction companies through joint ventures and subcontracting, in an arrangement where a large white-owned construction company is contractually expected to set aside a certain percentage of the work for 'targeted enterprises' (*ibid.*). Large contractors are thus required to unpack or unbundle their contracts into smaller contracts in order to secure the involvement of targeted enterprises and/or engage these 'targeted enterprises' as joint venture partners and/or structure the work to provide opportunities for targeted labor (*ibid.*). Work done by (Gounden, 2000) has demonstrated that where the contract is properly structured, joint ventures and subcontracting benefit the smaller companies in transferring expertise. Another study undertaken by Manchidi and Harmond (2002) demonstrated that impediments to gaining better benefits from these kind of partnerships are usually poor targeting, inadequate prior planning at community level and the absence of tight monitoring and evaluative procedures (Anon, 2002; Manchidi and Harmond, 2002). The Department of Public Works (DPW) two pronged approach is on one hand to accommodate black-owned SMMEs in large contracts that they would not otherwise solely undertake. On the other hand the aim is to reduce the high unemployment by absorbing the targeted black unskilled labour during construction procurement delivery.

2.7.3 Specific role of established private companies as empowerment agents

The nature of the South African Targeted Procurement Programme is such that the responsibility for the successful empowerment of the SMME in the economy is effectively ceded to the private sector (SouthAfrica.info, 2008). The main contractor in most contracts functions as the implementation agent on behalf of the national government in achieving the long-term objectives of upgrading SMMEs economy in general and in particular the construction sector (*ibid.*). This is poignant in the South African situation where the previously advantaged white owners of established companies still have, capital, skills and experience skewed in their favour. Apartheid-inherited imbalance in the ownership structure in construction industry thus prompted the government to restructure this industry in line with the social and economic imperatives for the reconstruction (*ibid.*). Rogerson (2000) argues that the best empowerment results occur where partnerships are formed between established (white-owned) construction businesses and emerging PDI-owned enterprises. Berry *et al* (2000) posits that a truly participatory economy can be achieved when SMMEs from disadvantaged backgrounds graduate from micro to SMEs, because growth will bring with it an increased competitiveness which will decrease the undesirably high black-owned SMMEs mortality rate.

2.7.4 The Role and Importance of SMMEs empowerment in Construction Industry

In the context of the construction industry empowerment means less dependency on the dominant white-owned businesses (Havemann, 1999). Lack of finance has for a long time turned SMMEs to labor-only contractors with minimal profit because of many unfair packages they get and this contribute very little to empowerment (*ibid.*). However, the South African government believes that these emerging construction-related SMMEs can contribute significantly to the realisation of key economic and redistributive objectives (South Africa, 1998). It is for the attainment of this goal (Rogerson, 2000), that the government is spearheading investment led entrepreneurship.

The government is taking inspiration from other countries' experiences as studies by the ILO (2002) and Toole *et al* (2002) have shown that the division of work into smaller work packages provides better access to public infrastructure programmes by SMMEs. According to the Department of Public works DPW (2002) the government is adopting these interventions to support the emerging contractors so that they 'indeed emerge', with the ultimate goal of eradicating any identifiable disparities between the emerging and established contractors, operating in the same markets. Internationally it has been recognized that SMMEs, as opposed to large scale enterprises, are liable to choose labor-intensive methods that they can afford, and that developing them places a significant portion of expenditure in local communities, thus enhancing employment creation (Larcher, 1999, 1998; Tajman & de Veen, 1998). Because of the low barriers to entry, demand for labour in construction industry is very elastic and a lot of people can be absorbed to a greater empowerment effect (Tajman & de Veen, 1998). Several studies (Tendler & Amorim, 1996; Tendler, 1997) show that public procurement supporting SMMEs must be linked to an associated support structure in order to achieve local economic development. The established companies in the private sector have been identified as veritable partners in supporting and grooming these emerging SMMEs in South Africa.

2.7.5 The Role of the Corporate Sector in Implementing BBEE in Alternative Procurement

Traditionally, infrastructure provision has been regarded as the sole responsibility of the state and has been financed mainly through taxes and loans via the budget allocation of the country (Manchidi & Merrifield, 2005; Smith, 2004). The South African government is faced with the global challenge of governments struggling to pay for their immediate infrastructure requirements (Chege, 2003). According to Manchidi and Merrifield (2005) in South Africa this has necessitated the need to seek alternative financing methods, while at the same time considering the deficit reduction proposed in the government's GEAR strategy. GEAR advocates for the co-operation with the private sector in addressing the infrastructure backlog, and the limitations of the fiscus has influenced the

government's commitment to the application of the Public-Private partnerships (PPPs), based on cost recovery pricing where practical and fair (ADB , 2005; Verschueren, 2005; Streeter *et al*, 2004). ADB (2005) advocates for a greater involvement by governments of the private sector in development and growth as this involvement can bring about a greater positive impact. Verschueren (2005) argues that this can be achieved by the implementation of successful Public Private Partnerships. The global trend of private involvement in infrastructure provision appears to be an approach suited for South Africa immediate needs.

2.8 PUBLIC PRIVATE PARTNERSHIPS

2.8.1 Introduction of Public Private Partnerships (PPPs)

Public procurement in most countries accounts for a substantial share of economic activity (Maskin & Tirole, 2008). The dilemma with most states has been how to continue to deliver high-quality public services at the lowest possible cost to the taxpayer and user (*ibid.*). An arguably, 'recent' development to address this challenge has been the development of PPPs in industrialized countries (e.g. the UK's Private Finance Initiative [PFI] launched in 1992) and emerging economies during the 1990s. PPP arrangements have been set up for large scale schemes in transportation, medical care, telecommunications, energy, water systems and even orphan (for rare diseases) drugs (*ibid.*). In each case, the government invariably engages the private partner to a dual task of developing the project and also operating and servicing it (*ibid.*). The term "partnerships" according to McQuaid (2000) covers vastly different concepts and practices and is used to describe a wide variety of types of relationships in a myriad of circumstances and locations to such an extent that Lyons & Hamlin (1991, p. 55) claim that the "methods for carrying out such (private-public) partnerships are limited only to the imagination", as there are infinite range of partnership activities, and economic development offices are increasingly becoming innovative in their use of the concept (McQuaid, 2000). Whilst each partnership is a product of a particular historical, economic, social and political context, McQuaid (2000) posits that they however manifest common features.

Definitions of Public Private Partnerships

A typical scenario in these partnerships is that the non-public partner is expected to raise private finance, and bear substantial risk for the project and the revenue usually derives from some combination of government payments and user fees (Maskin & Tirole, 2008). The fundamental structuring of these partnerships informs the basic assumptions underlying their definitions (Osborne, 2000), hence the common thread in the phraseology of these definitions. The World Bank Group (2008) submits that the term (PPP) does not have any legal meaning and can therefore be used in a wide array of arrangement where the private and the public sectors are working together somehow. In general terms any collaboration between public bodies, such as local authorities or central government and private companies can be referred to as a public-private partnership (NCPPT, 2005; Akintoye, 2003; BBC, 2003). This partnership involves cooperation – i.e. ‘to work or act together’ – and according to McQuaid (2000) can be defined as organisations in the public and private sector cooperating for mutual benefit. When taking a purely economic development perspective, Sellgren (1990) simply defines partnership as a scheme implemented by the involvement or funding from more than one agency, one public and the other private. They are sometimes referred to as collaborations among business, non-profit organisations and government in which risks, resources and skills are shared in projects that benefit each partner (Stratton, 1989; Akintoye, 2003) as well as the community (Stratton, 1989). The last point is extended by Morutoa (2004) who asserts these partnerships should incorporate local communities and capacitate them to establish their own businesses. The developmental goals of these partnerships are underpinned by the philosophy driving them and the peculiarities of the countries’ history.

The History of Public Private Partnerships (PPPs)

The history of infrastructure provision is rich with institutional variation and experimentation (Jacobson & Tarr, 1996). The early references of private infrastructure provision (Roth, 2006) can be traced from the mythology of Ancient Greece’s Ferryman *Charon*, who is said to have charged a toll to ferry dead

people across the river Acheron to the land of the dead; to concrete historical evidence in the ancient world. Garrison and Levinson (2006) postulate that it was easy to transfer the idea of tolls for service from ferries to bridges, and then from bridges to roads. Aristocles *Oeconomicus* recounts of tolls in the Arabia and other Asian kingdoms (Pritchett, 1980). Before the 4th Century B.C. India's earliest known political philosopher Kautilya, mentions tolls in the *Arthashastra*, his treatise on statecraft, economic policy and military strategy (Lay, 1992). During the time of Augustus of Rome, Strabo's *Geographies* mentions tolls manned by the Salassi Tribe on the little St. Bernard's Pass (Roth, 2006). During that time of Augustus elsewhere in the Roman Empire bridges and ferries were tolled, with the collection of taxes contracted to private companies; the supply of water to major cities was also franchised to private contractors (Policy Solutions, 2006). Although the Roman concept was that public roads should be free, landowners that could offer shortcuts or bridges sometimes built toll roads (Crandall, 2006).

The precursor to the modern 'concessions' as PPPs are sometimes called, can be traced back to the Roman Empire's postal service EESC, 2005. During the reign of Emperor Augustus the Empire took responsibility for the transportation of mail throughout the realm, in what was termed the "vehiculatio" and the local authorities were responsible for the "stationes" i.e. postal stations (*ibid.*). These postal stations were tendered out to private operators who were mandated to construct, maintain and operate the these huge "post houses" for five years – a "lustrum"- which was a typical Roman empire contract in the area of land ownership (including "precaria" contracts) (*ibid.*). Not only was mail distribution based on concession contracts where responsibility was ceded to the private operators, but the system was extended to the building of ports, thermal baths, market places and entire roads (Policy Solutions, 2006; *ibid.*). After the predominant public and occasional church provision and maintenance of infrastructure, it would take twelve centuries for this type of contract to re-emerge (EESC, 2005).

In the nineteenth century limited public finances meant the railway networks in Europe were built entirely through concessions (EESC, 2005; Sperber, 2005), utilizing private franchising (Policy Solutions, 2006). EESC (2005) posits that the arrangement was extended to water, gas and electricity, household refuse collection and later telephones; such that in most countries in Europe procurement law stems from the law of concessions. Privately owned communications and transport infrastructure and private finance were major contributors to the industrial revolution in the period 1760-1830 and included -on top of others mentioned above- post and telegraphs, canals and toll roads (Policy Solutions, 2006). The ILO (1999) argues that despite the widely held view that large infrastructure services have traditionally been provided by the state, there is ample proof to attest to the fact that private enterprise has actually been in the forefront of utilities provision. However, Jacobson and Tarr (1996) state that there have been numerous shifts towards and away from private involvement in its different forms, in the provision of different infrastructures over the past 150 years. In addition Jacobson and Tarr (1996) postulate that the functioning of both the private and public ownership arrangements has been affected by contingencies of political, institutional, and organisational development; with much change occurring at which level the government furnishes infrastructure or oversees the privately owned service providers.

The main drivers of change have been in many instances the pragmatic judgment of political leaders and other important constituencies with a concern that existing ownership and regulatory arrangements inadequately served economic development goals (Jacobson & Tarr, 1996). According to *Policy Solutions* (2006) the substantial rise in the role of government infrastructure provision stems from complex circumstances, which include market failure, private capital shortage, concerns about equity and improvements in the understanding of economics in the late nineteenth century and twentieth century. Jacobson and Tarr (1996) assert that ideological views and ideals have also shaped outcomes in this public/private ownership discourse. Thus where there are deeply ingrained suspicions of concentrated economic and political power in

the hands of the state like in the United States, private infrastructure ownership has thrived (*ibid.*) whereas on the other hand socialist ideals in France and Britain led to the nationalisation of electric utilities after World War II, only to revert to private ownership under the Conservative government in Britain in the 1980's and early 1990's as a direct result of different ideological and economic considerations (*ibid.*). The 1990s has seen the establishment of PPPs across the world as a key public policy tool in the general provision of infrastructure, and according to Osborne (2000) they have been seen as cost-efficient and effective mechanism particularly in the development of socially inclusive communities.

2.8.2 The Philosophy of Public Private Partnerships

The implementation of PPPs is predicated on the notion that there is a strong potential for synergy of some form by working together. Principally as McQuaid (2000, p 11) posits the 'sum is greater than the parts', because none of the individual players have all the necessary skills and resources necessary to develop (Croft, 2005) the infrastructure for which there might not be commercial viability. This links with the second argument in which McQuaid (2000) postulates that the involvement of the public sector precludes the pursuance of purely commercial goals, as this ushers in, some level of social partnership and thus excludes a purely commercial transaction. Lastly the public sector is enticed by the reality that it will not be equally involved at all stages, although initially it would have been instrumental in the development and delivery of a strategy or a set of project objectives (*ibid.*).

All these came about because of a changed paradigm in the way in which governments view and envisage the role that the private sector could play in infrastructure provision. Akintoye *et al* (2003) state that the increasing backlog in service delivery and infrastructure provision and the scarcity of funds available to governments make PPPs viable alternatives. The private sector is now being utilised to finance some of the service delivery needs (EC, 2003; Akintoye *et al*, 2003). The basic principle of PPPs according to Ahadzi and Bowles (2004) is the

transformation of government departments from owners and operators of assets, to purchasers of services provided by the private sector. The private sector becomes long-term providers of services after they have assumed the responsibility for the design, construction, financing and operation of assets (*ibid.*). This role should be distinguished from an arms length relationship that the government has with any private company in a purely commercial transaction.

2.8.3 Differences between Public Private Partnerships and Privatisation

Privatisation in its broad meaning, according to Savas (2000) includes any substantial private sector involvement in infrastructure and service provision, and could include contracting out, franchising, deregulation and PPPs. Whereas in the view of Beecher (2000) privatisation can be understood as moving along a continuum of options from “completely public” to “completely private”.

The World Bank Group (2008) posits that the PPPs are more lying on the privatisation part of continuum between complete privatisation (maximum involvement of the private sector) and short-term term service contracts (minimum involvement of the private sector). In countries with many state owned enterprises, including developing, post-socialist and Western Europe countries, privatisation is the transfer of the state enterprise ownership in whole or in part into private ownership (Savas, 2005). The defining difference between PPPs and privatisation (World Bank Group, 2008) is accountability; under a PPP arrangement the public sector retains ultimate accountability to the citizen for the provision of a public service, whereas under privatisation, accountability for delivery is transferred to the private party. The distinctions between the two are further explored in below.

Discussing Privatisation

The privatisation of state assets and utilities has been premised on the notion that governments should alter their traditional way of operation and rely more on the private institutions to provide goods and services (London, 2002). This

development has been sparked by evidence of weaknesses of in-house government provision (World Bank Group, 1995). Hemson (2004) lists ten points showing the weaknesses of the public sector and its lack of efficiency in delivering goods and services; low scores on production costs, efficiency, labor costs, capital costs, consumer input, innovation and flexibility, decision-making, condition of equipment, interruption of service and responsiveness to cost control. Given these weaknesses Shleifer (1998) is one of many economists questioning the case for any state ownership at all, even if social goals of government involvement are factored in. Savas (2000) believes government employees are inherently inefficient, but competition in the private sector provides the government with a tool to meet the rising demands for services in a cost effective manner. However privatisation in its extreme form is fraught with challenges that work against it.

Criticizing Privatisation

The critical concerns about privatisation are both pragmatic and theoretical (or ideological, or philosophical), the pragmatic concerns cluster about the kinds of failures that sometimes occur under privatisation (Table 2.2). The public perception on privatisation (Hemson, 1998) is one of excessive executive pay and share options, excessive returns to shareholders, under-investment and a raw deal to customers. By doing so privatized industries have shown a tendency to embrace and demonstrate all the worst manifestations of corporate excess (Hemson, 1998). The deal sometimes short-changes the public because the assets to be divested are undervalued from the start, due to negligence or lack of expertise or corruption (Savas, 2005) giving scope to many abuses. Martin (1993) asserts that a study of many privatisation examples in the US concludes that corruption has been an endemic feature of contracting-out at state and local level. This manifests itself by failure to conduct a proper competitive procurement or sale, or unnecessarily opting for sole-source procurement (Savas, 2005) where the privatized party is effectively granted a monopoly.

Table 2:2 : A comparison between Privatisation and PPP

Privatisation	Public Private Partnership
Government and company (or consortium) are involved in a purely Principal Agent relationships	Government and company (consortium) are in joint decision making and production
Government defines the problem, specifies the solution and selects a private company that can produce results in a cost-efficient way.	Both parties are involved in joint processes early on in order to develop products that contribute to both their interests
Benefits of contracting out arrangements especially concern efficiency (quicker and cheaper)	Benefits of partnership arrangements especially concern increasing effectiveness (synergy and enrichment of output)
Keys to success are unambiguous definitions of goals, projects, rules of tendering, rules of selection and rules of delivery	Keys to success are an interweaving of goals, establishing rules for ongoing interaction, developing rules and tailor-made assignments concerning joint effort and production commitments
Based on the principles of project management because there is a clear principle, clear goals and well-defined project specifications	Based on the principles of process management because the joint goals, the art of financing, realisation and utilisation remain subject to joint decision making
Contractual transparency regarding rules of tendering, selection and delivery and rules of inspection are crucial for a good relationship	Mutual trust is crucial for lasting relationships between partners who maintain their own interests, ways of working, accountability and financing principles

Adapted from: Klijn and Teisman, 2000

Where this has occurred it has translated into corruption, patronage and other unhealthy relationships (Cohen *et al*, 1997), such as companies winning contracts from municipalities and making electoral contributions to leading politicians. Hemson's (1998) extends this point by further observing that the companies benefiting from privatisation and contracting-out render financial support to politicians supporting privatisation and all manner of what Cohen *et al* (1997) term 'pin-stripe corruption' and conflict of interest is thus manifested. The

'unprofessional' relationships usually lead to poor monitoring and the providers opportunistically cut corners and lower service quality (Savas, 2005). After privatizing, a competitive environment is not maintained by delegation (e.g. contracting and franchising), this leads to the incumbent provider acquiring and exploiting the monopoly status, thereby only replacing the public monopoly (*ibid.*). These developments in the United States have undermined all the civil service systems of local government established to eliminate local patronage and corruption (Hemson, 1998). In the third world privatisation has been associated with austerity and impoverishment, the extraordinarily bleak 'crossing of the desert' on the way to the promised land of prosperity (Hemson, 1998). This is because privatisation is a key feature of the World Bank's model of "structural adjustment" which has led to high unemployment in Central America and Caribbean countries, and also the implementation of policies that resulted in the destruction of human capital in terms of the worsening of schooling, infant mortality and malnutrition (Martin, 1993). Hemson (1998) argues that most improvements in Britain claimed for privatisation took place when the companies were still in the public sector. PPPs on the contrary, can be structured such that they address the specific local needs and there is a whole array of different permutations and arrangements, to curb some of the problems mentioned above.

Different Type of Public Private Partnerships

Although the list of PPPs arrangements is endless they come broadly in two types, Concession PPPs and Availability-Based PPPs (World Bank Group, 2008). In a concession PPP the government mandates the private party (counterpart) to design, build, finance and operate for a fixed period of time, an infrastructure owned by the government (*ibid.*). Although there are many different project stages, the government only deals with one private party, because only one tender will have been submitted by the bidding consortium for all the activities from start to finish (Deloitte, 2008). Although the private party is usually expected to assume all the demand risks, sometimes the government underwrites the minimum level of usage (World Bank Group, 2008). Typical

examples in this arrangement would be roads, railways, urban transport schemes, ports and airports (*ibid.*).

The Availability-Based PPPs are similar to concessions PPPs in the structuring of the agreement and the upkeep of the infrastructure, however in this case payments come directly from the public authority and not from the user, and this payment is made when and to the extent that a public service and not an asset is made available (World Bank Group, 2008). In this arrangement the demand or usage risk remains with the public authority (*ibid.*). The Availability-Based projects enjoy a relatively benign payment regime that is not sensitive to volume risk (van Vries Robbe & Ali, 2006). Availability-Based PPPs are among the safest form of project financings with visible income streams and relatively benign penalty regimes (Project finance, 2008). This arrangement is useful in non-“self-funding” projects such as prisons, government buildings and rural roads, where payment is based on the availability of the accommodation facility, equipment or system and not on the volume of usage (World Bank Group, 2008). According to the World Bank (2008) governments find these types to be very effective in ensuring that public facilities are delivered on time and on budget, are properly maintained and are able to deliver public services in the context of restrained resources. Although pioneered in the UK as part of the PFI, it is now increasingly used by countries including South Africa (*ibid.*).

Although the main types have been described above there are a number of common arrangements, depending on what the government requires. Some of the common arrangements are Build-Own-Operate (BOO), Rehabilitate-Own-Operate (ROO) –and this is where the infrastructure is not returned to the public sector (World Bank Group, 2008), Design-Build-Finance-Operate (DBFO), Build-Own-Operate-Transfer (BOOT), Build-Operate-Transfer (BOT), Develop-Operate-Transfer (DOT), Rehabilitate -Operate-Manage (ROM), Build-Transfer-Operate (BTO), Design-Build-Finance-Manage (DBFM) (Akintoye, 2003; NCPPP, 2005). Because of a wide range of permutations available the National Treasury (2004) points out all the different definitions are equally applicable; because in

the final analysis good partnerships define themselves on the role they play in the development of the country (National Treasury, 2004). In South Africa all the different PPP combinations are implemented because of the social-economics benefits that they bring into the country apart from pure infrastructure provision.

2.8.4 Benefits of Public Private Partnerships

The bulk of economic literature on policy has largely acknowledged that the government does certain activities best, the private sector others, while the not-for-profit and voluntary sector performs still others. (HM Treasury, 2000; Zarenda, 2001). The introduction and attraction of PPPs relates to the fact that much of these traditional functions become blurred, and unlike nationalisation and privatisation which are at the extreme ends of the public/private cooperation continuum, PPPs offers a new form of organisational arrangement (Turner & Wirth, 2003; Zarenda, 2001). David (1996) argues that in theory the policy should be accepted not just because it is a trendy third way but because it combines the best of both. The logic for accepting this policy should thus rely on a mutual interaction that focuses on the strengths of the public and private sectors (Zarenda, 2001).

In trying to bring the public and private sectors together, the government hopes that the management skills and financial acumen of the business community will create better value for money for taxpayers (Gouvernement du Québec, 2006; EC, 2003; BBC, 2003). For many services Stainback (2000) and the OECD (2006) submit that the private sector can provide services faster and cheaper. Privately developed projects are generally planned and constructed more quickly than publicly financed projects because there is an incentive to generate revenue as soon as possible (Manchidi & Merrifield 2005; PPP Quarterly, 2002). The government benefits at this stage as it makes no payment for construction, as the procurement is for services, not structures (Transports Quebec, 2006; Manchidi and Merrifield 2005). The other general benefits related to the ones above are listed below.

- *Leverage Development*—PPPs can provide new capital and leverage the available public funds to develop or repair additional infrastructure, and ameliorate the problem of infrastructure deficit, which retards economic growth (Hakim *et al*, 1996). This leverage can lead to more projects realized sooner than when the government is the sole financier and this increased project delivery can lead to faster economic development and tax base growth (Manchidi and Merrifield, 2005).
- *Efficient Development and Operations*—Through the use of design-build construction schedules, flexible contracting and procurement, and other innovative practices a PPP may develop new facilities more rapidly (Hakim *et al*, 1996). Prospective private operators in the consortium may also apply specialized expertise, technology and operating flexibility to increase the operational efficiency (OECD, 2006; Hakim *et al*, 1996).
- *Project Revenue Enhancement*—Apart from reliance on toll fees PPPs may also develop innovative revenue sources, such as real estate development and parallel uses of the right-of-way (Hakim *et al*, 1996)
- *Increased Public-Sector Revenues*—New revenues for government can be created where there is an agreement for profit sharing if the private developer's rate of return exceeds a predetermined level (Hakim *et al*, 1996)
- *Risk Allocation*—PPPs allow the risk transfer to the private sector that would otherwise be borne by the public sector and ultimately the taxpayer (OECD, 2006; Hakim *et al*, 1996). The risk sharing on the other hand could allow some projects to be undertaken that neither party would be willing to undertake alone (Hakim *et al*, 1996).

The above benefits are purely economic benefits but it has been observed that there are other social spin-offs to be gained from undertaking PPPs. This is more pertinent to a country like South Africa, which is trying to use procurement to address racial economic imbalances.

Public Private Partnerships and Social Benefits in South Africa

Akintoye *et al* (2003) argues that PPPs could be used to redress ethnic income differences, as was the case in Malaysia (Akintoye *et al*, 2003). This factor is very pertinent to the South African situation. The South African Broad Based Black Economic Empowerment Act (2003) states that PPPs offer a valuable opportunity for strong and sustainable Black Economic Empowerment (BEE Act 53 of, 2003). Since by their very nature PPPs are long term they provide a good vehicle to empower the previously disadvantaged people in this country National Treasury (2004) through a steady flow of income. This satisfies the main objective of the BEE which is to assist the previously disadvantage groups to participate in the mainstream of the economy (Manchidi and Merrifield, 2005; PPP Quartely, 2002). PPPs are particularly viewed as an important tool in the policy of BEE, as they are considered a useful route in capacity building in South Africa (Lezzard, 2004). Zarenda (2001) backs up this view by arguing that their large-scale nature accommodates widespread inclusiveness which makes them invaluable for BEE. This inclusive nature of PPPs can accommodate the black-owned SMMEs which need a very stable environment to be nurtured.

Public Private Partnerships and black SMME sustainability

There is general acceptance in South Africa that black participation in the economy where it exists is at micro and small business level where there are low levels of sustainability (CSC, 2005; Shilowa, 2006). Black owned companies do not penetrate those sectors that are more capital and knowledge intensive and the situation is exacerbated by the absence of financial and other support mechanisms for black SMMEs (CSC, 2005). But BEE as defined by the government is a strategy aimed at substantially increasing black participation at all levels in the economy (SEDA, 2005). PPPs are inherently suited for achieving BEE objectives and SMMEs sustainability because:

- Their long term nature provides an opportune instrument to grow black equity and black management over time (National Treasury PPP Unit, 2008); National Treasury, 2004b);

- Risk is clearly identified, clearly costed and appropriately allocated, so black participants know in advance what they are committing to (National Treasury PPP Unit, 2008);
- The formation of private consortia in the form of special purpose vehicles (SPV) for many PPPs facilitates long-term beneficial partnerships between new black enterprises and experienced, resourced companies - both as equity partners and in project management, and both at the Private Party SPV and sub-contracting levels (National Treasury PPP Unit, 2008);
- Where government is the buyer of a service, and insofar as the service is provided to the agreed standards, there is a secure revenue stream to the Private Party, reducing risk to new black enterprises (National Treasury PPP Unit, 2008; National Treasury, 2004b);
- Principal equity sponsors in a PPP are often also the primary sub-contractors, building incentives for optimal risk management;
- PPPs provide significant subcontracting opportunities for black enterprises, where early cash flow benefits can be derived as delivery commences;
- PPPs have far-reaching broad-based BEE potential: through the sub-contracting and procurement mechanisms they can involve a full spectrum of large, medium and small enterprises, and bring tangible local economic development benefits to targeted groups of people (PPP Quarterly, 2005);
- Return on equity to the Private Party is competitive where risk is properly assumed. There is an increasingly strong demand for black professionals as transaction advisors to both public institutions and private parties in PPPs (IPFA, 2005)
- PPPs develop skills; and create jobs (National Treasury PPP Unit, 2008; IPFA, 2005).

All the above points cover all the different levels envisaged by the new view of AA, from job creation, accommodation of black SMMEs entrepreneurs to black corporate involvement. On the SMMEs development front PPP opportunities can range from very small enterprise (requiring low capital investment and limited enterprise experience) to large-scale developments (involving higher risk and significant operator experience), providing entrepreneurial avenues for a full spectrum of black enterprises (National Treasury PPP Toolkit For Tourism, 2005). PPPs also provide a valuable vehicle for galvanising and coordinating all governments endeavours to support SMMEs especially in areas of private party financing, legal and business advice and skills development (*ibid.*). However the enormity and complexity of these arrangements, and the scarce skills in the government to monitor and regulate the contract once construction and delivery has begun, might lead to a Principal Agent problem (OECD, 2006).

2.9 SUMMARY

The international outcry that followed the Soweto uprising led to the rethink of the apartheid policy by the South African government and resulted in a limited inclusion of blacks in the mainstream economic participation. This was the birth of Affirmative Action in South Africa. It was however given different names which changed with the transforming political environment: first it was called “Black Advancement” then “Equal Opportunity” in the late 1980s, but after political prisoners were released in 1990 a bolder term “Affirmative Action” became the norm. The term Affirmative Action was replaced by “Black Economic Empowerment” (BEE) following the advent of a new ANC political dispensation in 1994.

The previous *Apartheid* era AA implementation dealt with the incorporation of few blacks into executive positions but did little else to alter the racial structural composition of companies. The new policy under the ANC is meant to drastically alter more than three hundred years of economic exclusion by altering the structural composition of economic participation and property ownership. The

policy has since adopted a further extension to its name, as it is now known as “Broad-Based Black Economic Empowerment” (BBBEE), in order to accommodate women, coloreds, Indians and the disabled. The South African government as the largest buyer in the country (involved in every sector) has decided to use procurement to effect its main economic policy of BEE. The government is utilizing preferential procurement as its main tool to create a favorable environment for black-owned SMMEs and enhance their participation and growth in business. Public Private Partnerships (PPPs) have been particularly singled out, as a procurement method that could yield empowerment results efficiently.

The PPPs that this research is concentrated on are in the provision of infrastructure in construction industry. Construction industry has been used to achieve socio-economic objectives in times of need and it is still touted as the most efficient industry for generating employment for a given capital flow, especially when labor intensive methods are applied. The long-term nature of PPPs, which combine construction and operation of the infrastructure facility under one contract, are deemed to be able to provide an effective incubatory environment to grow the up-and-coming black-owned SMMEs. Through the use of the Preferential Procurement Act, which applies to PPPs as well as to other procurement methods, the main consortium is bound to unbundle the work and sub-contract to the black-owned SMMEs. However the reliance of the government on the established white-owned companies to act as its empowerment agents in imparting skills and business acumen to the black-owned SMMEs could result in the undesirable consequences of the Principal - Agent problem. The next chapter discusses Principal Agent theory.

3 PRINCIPAL AGENT THEORY

3.1 INTRODUCTION

The last chapter introduced BEE and PPPs and discussed these at length. The purpose of this chapter is to introduce a third concept of Principal Agent (PA) theory that is equally critical to this research. After introducing and discussing the PA concept at length, its applicability to the PPP environment with regards to BEE will be explored. Although pre-contractual and post-contractual opportunism abounds in the shirking from the intended and stipulated implementation of BEE by the main actors in construction and other industries, until now there has been no systematic scholarly investigation of ways and techniques to study this phenomenon and curb its unwelcomed accretion. This thesis develops an argument that this represents a gap in the existing body of knowledge. It concentrates its investigation within the construction industry PPP environment by using the PA theoretical framework and to assess the comparative efficacy of these PPPs in BEE delivery.

The purpose of the literature reviewed in this chapter will be to present the historical background of PA theory. Then the PA problem will be discussed together with the mechanisms established in the corpus of this theory to mitigate its ill-effects. The review will then look at the PA problem as it exists in PPPs whilst contextualizing this to the BEE delivery challenge in the construction industry in South Africa. The role of the contract in streamlining BEE delivery therefore will be at the centre of the discussion of PPP efficacy in delivering BEE. This theoretical section forms the basis of the subsequent field research conducted on the consortium engaged on the PPP project that was identified as the case study.

3.2 DESCRIPTION OF PRINCIPAL AGENT PROBLEM

The Principal Agent theory or “agency theory” is an economic theory concerned with the relationship between principals and agents, where “agency” refers to a situation where one party (the agent) acts on behalf of another (the principal) (Denhardt, 2003). The PA “problem” occurs whenever a principal delegates ‘authority’ to an agent to act in his or her interest (Surowiecki, 2004; Sheil, 2003; Venkatesh, 2003). The PA theory initially arose as a subject of study in a business management environment associated with behavioural studies of employer-contract or employer-employee interactions but it can also be applied to public and non-profit settings as well (Pratt & Zeckhauser, 1985; Harris & Raviv, 1978). A conventional list of examples would include master and servant, landlord and tenant, lender and borrower (Ross, 1973; Spence & Zeckhauser, 1971). Apart from the usual scenario where the running of the company is deputized by shareholders to a CEO, on a daily basis people hire lawyers to handle their affairs, stockbrokers to manage their investments, and doctors to look after their health (Surowiecki, 2004; Sheil, 2003).

These kinds of relationships play an especially large role in an economy in which knowledge is increasingly specialized and where deferring to the judgment of experts makes sense (Surowiecki, 2004). Early work on this subject centered on dilemmas of dealing with incomplete information in insurance industry contracts (Spence & Zeckhauser, 1971; Ross, 1973). The theory was soon broadened to dilemmas associated with contracts in other contexts (Jensen & Meckling, 1976; Harris and Raviv, 1978). Because some research in this area utilises experiments in small group interaction, there is a close relationship to game theory, as some Principal Agent writers explicitly recognize (e.g. Gratto *et al*, 2002). The problem usually refers to the difficulty employers (the principal) have in ensuring that employees (agents) in making day-to-day decisions, act in the best interest of their employers (Gratto *et al*, 2002; Sappington, 1991). This general and prevalent problem is called the Principal Agent problem and is more

pertinent when the employee or contractor has an informational advantage over the principal and has divergent interests to the principal (Eisenhardt, 1989).

The PA problem is a problem because it is hard to solve (Wessels, 2006). Denhardt (2003) extends the example of the lawyer to demonstrate a practical PA problem; where the lawyer has multiple incentives in a case where he/she represents the principal, the primary one being to win the case (also the principal's) alongside the incentive to maximise billable hours (the lawyer's other goal). Wessels (2006) calls this a dual problem of (1) the principal hiring the agent and setting up a contract so that the agent will do what the principal wants and (2) the agent setting up the contract in order for the principal to pay for the work the agent does. According to (Greve, 2008) the key problem in the agency relationship is to devise a contract that motivates the agent to work efficiently at the same time ensuring that the principal remunerates the agent's effort correspondingly. Since both parties efforts tend to be non-observable there is always a problem of correctly devising a contract that guides the interaction (*ibid.*). With the PA problem, the principal and the agent have divergent interests, and since each cannot monitor what the other is doing, the resultant output is less than optimal (Wessels, 2006). The focus of the theory is on determining the most efficient contract given assumptions about people (e.g. self-interest), organisations and information (Eisenhardt, 1989). So the main theme of the principal agency theory is dealing with the problems encountered when co-operating parties not only have incongruent goals but divisions of labor too, such making it difficult for the principal to monitor and verify the agent's behaviour (Jensen & Meckling, 1976; Nilakant & Rao, 1994; Zajac & Westphal, 1994; Eisenhardt, 1989).

The theory can be summed up as being underpinned by three fundamental assumptions:

1. Firstly both parties have to be rational individuals who are also self – interested;

2. Secondly the agent is both effort and risk averse.
3. Lastly there is an assumption that there is a persistent problem of information asymmetry (Baiman, 1990; Jensen & Meckling, 1976; Levinthal, 1988).

The presence of any one of these conditions creates the potential for an agency problem (Baiman, 1990; Eisenhardt, 1989; Nilakant & Rao, 1994). Self-interest can be mitigated by installing monitoring mechanisms to protect the principals, from the agents' divergent interests pursuit (Elloumi & Gueyie, 2001). A large body of literature (for example Bromiley, 1991; Sinha, 1994) has demonstrated that since agent employment security and income are inextricably tied to the firm (principal), agents would under normal circumstances exhibit risk aversion in decisions regarding the firm in order not to lower risk to personal wealth- i.e. loss of their job (Wiseman & Gomez-Mejia, 1998). This is more pertinent in the technical prescriptions where infringement might even mean contract termination, thereby using agent risk aversion to induce goal congruency. For the purpose of this research asymmetric information and its implications on the agent contractual performance is going to be investigated further, because on BEE implementation superior informational advantage appears to favour the contractors (agents).

3.2.1 Information Asymmetry

Information asymmetry, sometimes called asymmetric information, is a situation where the agent has more information than is available to the principal (Gomez-Mejia & Balkin, 1992). The Principal Agent theory is concerned with accountability while correcting for opportunistic behaviour that result from asymmetric information (McDonald, 1997; Moe, 1996; Bogart, 1995; Kearns, 1994; Frey, 1993; Smith & Lipsky, 1993; Sappington, 1991; Donahue, 1989; Eisenhardt, 1988, 1989; Savas, 1987; Jensen & Meckling, 1976; Alchian & Demsetz, 1972). Information asymmetries are usually created where the agent has superior and specialized knowledge than the principal regarding task

execution and where the agent is permitted a lot of managerial discretion (Gomez-Mejia & Balkin, 1992; Rajagopalan & Finkelstein, 1992). Managerial discretion accompanies environmental and strategic complexities that together create operational contexts with multiple decision options, low task programmability and ambiguous cause-effect relationships (Rajagopalan & Finkelstein, 1992; Gerhart & Milkovich, 1990; Eisenhardt, 1988).

The asymmetry in information can originate both from internal or external sources (Siller-Pagaza et al, 2006). The internal information would have evolved during the development of the project or any enterprise (*ibid.*). The external information originates out of the firm and is in most cases in the public realm as it comprise matters such as patents, new products and laws among others (*ibid.*). However, only the agent has the ability to gather together both the internal and external information in order to make the best possible contribution to the enterprise (*ibid.*). Whenever asymmetric information exists it may lead to “opportunism” by the agent and researchers in this field have been most concerned in describing the governance mechanisms that solve this problem (Jensen, 1983; Eisenhardt, 1989). Opportunism is described by Williamson (1975, p. 9) as ‘pursuing one’s self-interests with guile’. BEE stipulation requires that contractual “set asides” be a preserve of the PDIs, however “guile” in the form of BEE beneficiary misrepresentation that abounds in government procurement in South Africa may be a manifestation of information asymmetry favouring the agents (contractors). The two kinds of opportunism which are important aspects of agency theory are those of “moral hazard” and “adverse selection” (Eisenhardt, 1989).

Moral Hazard problem (post-contractual opportunism)

“Moral Hazard” happens once the two parties have entered into a contract, and is a risk that one party will act to the detriment of the other within the contract (Wessels, 2006). Jensen and Meckling (1976) argue that if both parties are utility maximisers, there is a good reason to believe that the agent will not always act in the best interests of the principal. This will happen because the principal may not

be aware of the extent of the work he has delegated leading to “moral hazard” sometime referred to as “hidden action” (Venkatesh, 2003). It is called “hidden action” because these adverse actions are hidden from the principal (Greve, 2008). Under this condition the principal cannot be sure if the agent has put maximum effort in doing the job assigned (Eisenhardt, 1989). For instance the employee may be acting in such a way that the company’s profits are not maximized, the person tasked to buy raw materials, may not be scouting around for the best possible quality and price in the market (Venkatesh, 2003).

The inability to monitor each other in any kind of Principal Agent relationship will lead to a “moral hazard” problem (Maskin & Riley, 1984). The more autonomy the agent enjoys in performance and the greater the information the agent possesses and the greater the specialized knowledge to perform the task, the greater the chances for the occurrence of the moral hazard (Holmstrom, 1979). But at the heart of this problem is that the agent is specifically needed because the tasks are too complicated or costly for the principal to perform him or herself, and as such the principal is obliged to hire an agent with specialized skills and knowledge (Sappington, 1991). The fact that the empowerment of PDIs in South Africa is ceded to white-owned established companies in South Africa demonstrates the enormity of the tasks, which the government on its own cannot be able to effectively implement. The reported sidelining of PDIs in contracts may be indicative of an endemic BEE moral hazard in government procurement as the PDIs are not benefitting from their participation in these projects. This problem might stem from the fact that people who have not bought into the spirit of BEE were selected to execute the contract.

Adverse Selection (Pre-contractual opportunism)

“Adverse Selection” is a direct result of asymmetric knowledge, leading to the agent to hide information that is relevant to the negotiation and signing of a contract (Greve, 2008). Under this condition the principal cannot ascertain if the agent accurately represents his true ability (Eisenhardt, 1989). As a result an adverse selection is made due to poor information and consequently this leads to

selection of a bad agent (Wessels, 2006). For Surowiecki (2004) and Venkatesh (2003), the “adverse selection” problem, which is also referred to as “hidden information”, normally occurs when one party knows more than the other, such that the principal is at the agent’s mercy. Whereas “moral hazard” is about post-contractual action hidden from the principal, “adverse selection” is about pre-contractual information hidden from the principal (Greve, 2008). This information asymmetry is very common and it can lead to an opportunistic behaviour where, the party that knows a lot takes the advantage of the knowledge and uses it unfairly to gain advantage (Surowiecki, 2004; Maskin & Riley, 1984). Classic examples are sellers of used cars (the ‘lemon’ problem) who seek out uninformed buyers and try to pass off their cars as good, or insurance buyers who are sick and who seek to buy health insurance from sellers who cannot tell who is sick, impoverishing the insurance company with high claim payout later on (Wessels, 2006). In South African government procurement presenting PDIs as legitimate BEE beneficiaries during tendering, only to divert the financial benefits to unqualified beneficiaries post-contractually may be demonstrative of adverse selection.

3.3 HOW TO MITIGATE THE PRINCIPAL AGENT PROBLEM

Before the start of the formal relationship (*ex ante*) the principal is not in a position to know the true “quality” of the agent in relation to performance dimensions such as productivity, soft skills and education; as these are “hidden characteristics” (Keil, 2005). Many of these agent problems can be eliminated by introducing competition among the candidate agents, to determine who the best prospect is (Spence, 1973). Competition helps in that the agent can “signal” his type to the principal which may assist in solving the problem of “adverse selection” (*ibid.*). Another way of avoiding the “adverse selection” especially in long-term relationships is by “screening” the agents (Stiglitz, 1975). The principal would still not know the real characteristics and capabilities of the agent but

uncertainty over important “anchors” like indices (data¹ such as track records, economic situation, number of employee) or signals (e.g. guarantees given by agent, special qualifications, certificates, etc.) would at least be known very early, and this would reduce the information asymmetry (Keil, 2005).

3.3.1 Inducing Signalling

According to (Spence, 2002, 1973) to engage the agent in a contract is like purchasing a lottery ticket, because there is so much uncertainty around the capabilities of the agent at the time of contracting and the cost of this lottery is the remuneration paid to the agent. The principal’s problem is to offer a contract that induces the agent to reveal his true type (Jamison, 1998). “Signalling” is based on the idea that the agent chooses an action that credibly signals their private information (Keil, 2005). The agent’s problem is to take some visible action that the principal will correctly interpret as revealing the agent’s true type (Jamison, 1998). An example of a signaling problem is a CEO (the agent) taking an extraordinary action to signal his type to his Board of Directors (the principal) (Hermalin & Weisbach, 1998).

At the time of application what the principal observes is a plethora of personal data in the form of observable attributes and characteristics, which might include education, previous record, race, sex, criminal record and host of other data (Newcombe, 2000; Spence, 1973). These observable datum can be divided into two distinct types; one that is immutably fixed and the other which is alterable; for instance race and sex are generally thought to be unalterable whereas educational level can be altered by the investment of time, money and effort. Spence (1973) refers to unalterable attributes as “indices” whilst the ones subject to manipulation by the agent as “signals”. The costs incurred by the agent in manipulating the signals are referred to as “signaling costs”; when the principal is

^{1 1} Data here refers to all the information pertaining to the agent that the principal gathers in order to make a decision on the suitability of the agent for the job

confronted with an applicant agent he uses the “signals” to formulate the subjective assessment of the lottery he has in front of him (*ibid.*).

The signaling approach relies on the heterogeneity of employees with regards to their abilities to work hard, sometimes called “unobserved human capital” (Huang & Capelli, 2006). Under this view some prospective agents are better than others as they may be willing to work hard for the same pay and/or are less inclined to shirk their responsibilities, requiring less monitoring and supervision as a result (*ibid.*). However, applicants that are not hard workers have an incentive to pretend that they are, especially if regimes of low monitoring make it easier for them to shirk and if the jobs pay premiums of the kind that might be associated with having better workers (*ibid.*). The above model relies on self-selection: it is premised on the belief that potential applicants typically sort themselves out such that those with a propensity to work hard will apply whereas those who lack “unobserved human capital” associated with hard work will not apply (*ibid.*). To curb the shortcoming of this assumption “screening” of applicants is deployed.

3.3.2 Screening

Information asymmetry means that the agent possesses private information about himself or the object of exchange (product or service) that the principal does not have. To ameliorate this problem the principal would screen the agent’s appropriateness and suitability for the assignment (Rothschild & Stiglitz, 1976). Rather than requiring applicants to sort themselves out, the employer can use proxies or other clues to identify which applicants have the “unobserved human capital”, such as a strong work ethic (Huang & Capelli, 2006). Through a process of prequalification, pre-specified criteria can be used to evaluate the prospective agents, thus *ex ante* the principal can identify who can act in the principal best interest and those who fail to meet the minimum criteria are eliminated (Mishra *et al*, 1998). The most common screening process most people are familiar with at the work place is an interview (De Loof, 1995), but there are also reference letters, obtaining the agent’s past histories through credit bureaus or through hiring detectives, and written tests to uncover work attitudes and personality

types (Huang & Capelli, 2006). If the focus is on the firm, each competing firm (agent) can be investigated based on its prior implementation experience, financial position, vendor certification of its individual consultants and other important factors (Hancox & Hackney, 2000; Martin, 1993; De Loof, 1995). The reputation of the consultants assisting the firm is also important (Wathne & Heide, 2000). Lastly inquiry can be made about the firm's expertise and commitment in terms of technical skills, business process knowledge, infrastructure support, target date adherence, and after sales service in prior implementations (Stein, 1998).

Screening applicants involve costs and firms decide on how much to spend on screening, as there are trade-offs between screening and efforts to monitor agents: Greater use of screening can lead to a more conscientious work force that can perform at a given level with less monitoring, oversight, and performance-related incentives (Huang & Capelli, 2006). Employers prefer conscientious and ethical employees and screening assists in their identification, but once workers with these characteristics are identified, they contribute value by reducing the need for monitoring costs, saving money for employers (*ibid.*). Employers may be motivated to retain these conscientious workers, by paying them higher compensation through rent sharing arrangements (*ibid.*). Therefore before they reach this stage principals would have used screening to sort out good agents from bad ones before delegating to them (Strom, 2000). If the dominant agency problem is adverse selection, then *ex ante* mechanisms of screening have clear advantages (*ibid.*). The proposition that follows from the above could then be that *the greater the screening (pre-qualification) efforts the less the adverse selection.*

These two mechanisms of signalling and screening are what the principal uses to contain agency losses *ex ante*, the remaining mechanisms to be discussed below operate *ex post* and they are utilised to contain agency losses once a contract has been entered into. The media reported prevalence of PDI peripheral involvement in projects could be signalling weak screening mechanisms in

traditional procurement methods that fail to identify veritable BEE-committed bidders and also fail *ex ante* to induce appropriate BEE implementation signals. It could also mean that the government's oversight mechanisms are weak resulting in agents' BEE clawback to maximize their own utility.

3.3.3 Monitoring

The choice of an oversight mechanism largely depends on the nature of agency problem. If the moral hazard is the greatest concern after contract signature, then there is a stronger case for *ex post* control through monitoring (Strom, 2000). Monitoring forces the agent to share with the principal information that the agent might otherwise not share (*ibid.*). Hidden information (adverse selection) and hidden action (moral hazard) represent the main sources of uncertainty and vulnerability for the principal (Arrow, 1985; Eisenhardt, 1989), and this legitimizes monitoring *ex post*. By monitoring the agent the moral hazard problem is mitigated, in simple situations complete monitoring is possible; however in most cases observation is either impossible or prohibitively costly to the principal (Holstrom, 1979).

According to Lawther (2000) there will always be shirking in a PA relationship. Möllering (2006) extends this argument by asserting that what seems to be an ideal exchange is actually full of uncertainty and vulnerability from the principal's point of view as the agent's attitude towards risk differs from the principal's. With this view in mind Jensen and Meckling (1976, p. 308) maintain that, the principal 'has a good reason to believe that the agent will not always act in the best interest of the principal.' However, House (1984) argues that all monitoring, even the use of imperfect monitoring, will improve outcomes. Since contracting is an ongoing process, monitoring is a key feedback mechanism (Hefetz, 2004). The monitoring process should start with service specification and continue with oversight and assessment of service delivery, and when monitoring is weak the output from the agent is likely to be lower than expected (Sclar, 2000; Siegel, 1999). The principal can engage in "oversight" of the agent either through direct monitoring (police patrol oversight) or by enlisting the aid of third parties (fire

alarm oversight). The third party alternative can be implemented by introducing “procedural checks and balances” so that one set of agents is authorised to monitor and veto decisions made by other agents and report back independently to the principal (Kiewiet & McCubbins, 1991).

According to agency theory the agent pursues his own interests even if they are contrary to the principal’s goals. This goal incongruence and the desires to maximise own utility will induce the agent to shirk on some actions that would be in the best interest of the principal (Bergen *et al*, 2001; Tuttle *et al*, 1997). Monitoring is an important governance mechanism to assure the principal that the agent’s behaviour is aligned to the principal’s (Phelps, 1996). Since it is implemented at the post-contractual stage it assists the principal to ratify or appreciate the agent’s actions, at the same time it creates a social pressure on the agent and increases the probability and extent of the agent’s compliance (Blau & Scott, 1962). Monitoring controls agent behaviour and curbs post-contractual agent opportunism (Eisenhardt, 1989).

Work done by Fama and Jensen (1983) has shown that Boards of Directors use monitoring to control and assess managers who make important decision in large organisations (Fama & Jensen, 1983). Governance mechanisms or devices normally deployed to monitor agents include auditors, supervisors and other structural arrangements (Shapiro, 2005). It has also been established by Kirby and Davis (1998) that unmonitored agents exhibit greater commitment to and allocate more funds to failed strategies than their monitored counterparts (Kirby & Davis 1998). In formal terms it could be said that *the greater the monitoring the less the moral hazard*. Thus the shirking on BEE implementation in South Africa could be regarded as a manifestation of weak monitoring mechanisms in the projects.

The Measurability and programmability of tasks

Programmability of the tasks is very important if the moral hazard problem is to be lessened. Some tasks by their very nature are easier to programme while

others not so; for instance a retail sales clerk can be expected to have served 'x' number of customers within an hour whereas the productivity of hi-tech entrepreneur is very difficult to assess (Eisenhardt, 1989). In practice this means that complex jobs will not generally be evaluated through explicit contracts (Prendergast, 1999). The reason is that such tasks often take a long time to produce, involve team effort and in the end produce soft, difficult to measure outcomes (Eisenhardt, 1989).

A clear specification with a clear performance evaluation is therefore preferable when contracting, with all the relevant attributes of a good or service, including latent ones associated with citizen (public) voice (Poister & Streib, 1999; Eggers, 1997). In order to guarantee success of the project, performance measurement demands that professional monitoring systems must be put in place (Perrin, 1998). Sanderson (1998) asserts that by and large performance measurement is usually criticized for failing to measure the two most important aspects which are core to good governance process, these being citizen voice and engagement (Sanderson, 1998). Warne and Hefetz (2002, 2003) extend this observation by pointing out that contracting governments give more attention to technical efficiency measure but not to citizen voice. Although it is fair to accept that some activities might be difficult to measure, the introduction of incentives in a contract will always induce better performance from the agents, and thus align the principal/agent goals.

3.3.4 Incentives

In agency theory the principal uses incentives to induce the agent to do something that the agent would not otherwise want to do (Jamison, 1998). It may be possible under certain circumstances for the principal to induce the agent to behave exactly as the principal would if the principal had the necessary skills and knowledge (Laffont & Martimort, 2002; Foss, 1998). The objective is to specify the payments so that they depend on the observed outcome of the task such that the agent is the residual claimant of his own effort (Foss, 1998). For instance the

manager will more likely maximise his efforts if he has a stake in the company (Möllering, 2006). According to PA theory “moral hazard” is based on an imperfect surrogate of the desired behaviour (Tuttle *et al*, 1997). If the incentive structure is not properly structured this gives the agent a motive to shirk and let his own economic interest diverge from those of the principal (Brown & Adams, 2000). If the incentive structure is properly structured there will be no incentive to shirk because when the agent hurts the principal he hurts himself too (Surowiecki, 2004; Venkatesh, 2003; Basu & Lederer, 2000).

Aligning incentives through an appropriate reward structure greatly reduces the conflicts of self-interest between the principal and the agent and helps to curb agent opportunism (Eisenhardt, 1989). Greve (2008) posits that agents as rational maximizing individuals have certain distinct tastes, like the desire to limit taking risks or any costly effort. In this scenario it is the principal’s job to anticipate the rational responses of the agents and to design a set of incentives such that the agents find it in their own interests (given the incentive system) to take the best possible set of actions (*ibid.*). For instance, incentive structures in outsourcing contracts help to align the motives of the agents and the principals to facilitate project success (Bower *et al*, 2002). If incentives are structured well such that there is a balance between penalties and rewards, there will be an increased desired on the agents part to meet the terms of the contract, this kind of behaviour is consistent with the principal’s best interest (Bryson and Sullivan, 2002). The traditional options for aligning agents goals with the principals are; commissions, bonuses, piece rates, equity ownership, stock options, profit sharing, sharecropping and deductibles (Shapiro, 2005). The proposition for incentives is that *the greater the incentive alignment, the less the moral hazard*.

3.4 PRINCIPAL AGENT PROBLEM IN PUBLIC PRIVATE PARTNERSHIPS

Eisenhardt, (1989) cites many scholars who have utilised Principal Agent theory from different disciplines; accounting (Demski & Feltham, 1978), economics (Spence & Zechauser, 1971), finance (Fama, 1980), marketing (Basu *et tal*,

1985), political science (Mitnick, 1986), organisational behaviour (Eisenhardt, 1985, 1988; Kosnik, 1987) and sociology (Eccles, 1985; White, 1985). According to Yescombe (2007) asymmetric information which is at the centre of Principal Agent theory may arise in any public procurement, giving rise to the potential for excess profits for a private sector supplier. Correspondingly even in a PPP arrangement there is a Principal Agent problem, which will arise when there is goal incongruence between the government and its contractors (Agents); the private sector sees a business opportunity and the government wants the benefits offered by the private sector but at the least cost (Hefetz, 2004). A large body of literature including work done by Megginson and Netter (2001), strongly supports the view that privatizing publicly owned enterprises improves both efficiency and profitability.

PPPs present governments with opportunities to increase efficiency but since contracting involves an agent, problems of adverse selection and moral hazard will typically arise (Slyke, 2004). Governments essentially “hire” private agencies to provide goods and services on their behalf; therefore, goals of government and contractors must be aligned (Evans *et al*, 2005). Although private firms unlike the public sector are independent of the government control, governments in situations of national distress have compelled the private firms to better utilise their resources for the “social interest” (Sappington & Stiglitz, 1987). In South Africa, consortia are required to render socio-economic benefits as part of PPP deliverables, as the government uses the BEE vehicle to redress racial economic imbalance bequeathed by apartheid. Although there is some work about PPPs in South Africa, their efficacy in harnessing the PA problem in BEE delivery has not yet been scholarly and systematically investigated.

Nature of Black Economic Empowerment PA problem in South African construction Industry

The scenario of PPPs and of the construction industry in general where the government is the principal and the contractor is the agent is a typical economic PA Theory relationship, which is beset by the attendant problem of opportunism.

Opportunism may manifest itself pre-contractually in various forms of strategic misrepresentation of the true beneficiaries of the BEE contractual “set asides”, or post-contractually through tokenism, which is characterized by superficial inclusion of historically disadvantaged individuals (HDIs) with peripheral roles in the execution of the contract. All these can be encompassed under an umbrella term of “fronting” which according to the ICT Empowerment Charter (2005) means “any entity, mechanism or structure established in order to circumvent the BEE requirements as required under various government policy instruments”.

Fronting is seen by the ANC (2001) as an opportunistic dishonesty that tends to advantageously use government redress programmes for self-interested parties. According to DTI (2005) it cannot be confined to one practice as it covers any practice or initiative that contravenes or is against the spirit of any law, provision, rule, procedure, process, system, policy, practice, directive, order or any other term or condition pertaining to BEE. This represents a deliberate or attempted circumvention of the BBEE Act and the Codes, through misrepresentation of facts, regardless of whether such claims are made by a company that purports compliance or by a third party (*ibid.*). Fronting and “tokenism”, which represent superficial inclusion of historically disadvantaged individuals, may be regarded as strong manifestations of opportunism in the construction industry as far as BEE implementation is concerned. Although fronting is usually taken as an umbrella term, it was decided for this research to label pre-contractual fronting as “Window-Dressing” while post-contractual fronting will be called “tokenism”.

Window Dressing (pre-contractual opportunism)

This type of fronting is normally deployed pre-contractually as a way of sending the correct signals to the government about a company’s commitment to economic transformation. Usually black individuals or groups front for white establishments, the practices sometimes called ‘rent-a-black’ schemes are purely used to secure government contracts for white-owned construction companies (ANC, 2001). At the executive level this practice manifests itself by the planting of black directors at the top, in predominantly white companies just to score points

on tenders (Bayat *et al*, 2005). Rogerson (2004a) explains that PDIs (Previously Disadvantaged Individuals) businessmen are not always victims, as some might not have office or staff but they set themselves as ‘tender winners’ and then subsequently pass the job on to an established contractor. When this is not detected it leads to adverse selection at the detriment of the objectives of BEE. Table 3:1 below list all the common practices of window-dressing in South Africa.

Tokenism (post-contractual opportunism)

Whereas window dressing may lead to BEE adverse selection, tokenism may be taken as a moral hazard that exists *ex post*. Tokenism is shirking on the requirements of BEE and it sometimes takes place without knowledge of PDIs. Sometimes it takes place either with the complicity of PDIs or they just go along as it improves their economic situation although in the greater scheme of things the structural nature of the economy remains unchanged, as there is no real empowerment of the intended individuals. Usually according to Andrews (1998) it means appointing black candidates to positions way beyond their level of expertise and using that appointment as a symbol of the company’s commitment towards BEE.

The DTI (2005) classifies tokenism practices into three categories, the first one being one of symbolic appointees who are mostly under-qualified blacks discouraged or inhibited from participating in the core activities of an enterprise. Regardless of their qualifications or purely through the company’s prejudice, PDIs are discouraged or inhibited from substantially participating in the stated areas and/or levels of their purported post (*ibid.*). This practice is particularly insidious because of the appointee’s inability to satisfactorily perform his/her duties or of never being treated in a way a white person similarly situated would, often reinforces the racial prejudice that black people would never be up to the job (Andrews, 1998). This leads to the second category of “benefit diversion”, where the economic benefits received by the company because of its BEE status do not flow back to the black people in the ratio specified in the contractual documents (DTI, 2005).

Table 3:1: Construction Industry Opportunistic practices

<i>Pre-contractual opportunism</i>	<i>Post-contractual opportunism</i>
<ul style="list-style-type: none"> ▪ Fronts on paper: where the documents are legitimate, but the “owners” are unaware of being shareholders (e.g. black maids, gardeners), have no control in the company and do not manage any aspect of the company 	<ul style="list-style-type: none"> ▪ Company fronts: contractors claim to be black owned or black empowered, but when they are awarded the contract they subcontract a major portion of the works to a white contractor. On paper the majority shares are owned by blacks with whites owning a minority shares, however the minority shareholders are the majority shareholders in the subcontracted company
<ul style="list-style-type: none"> ▪ Fictitious companies: where the fictitious black company is established just to win a contract, only for a white company to be subcontracted all the works. The “skeleton” company is used for invoice purposes but all funds accrue to the subcontractor. ▪ The black people identified by an enterprise as its shareholders, executives or management in reality have roles of responsibility that differ significantly from those of their non-black peers; ▪ The black people who serve in executive or management positions in an enterprise would in reality be paid significantly lower than the market norm. ▪ There is no significant indication of active participation by black people identified as top management at strategic decision making level. 	<ul style="list-style-type: none"> ▪ Fronts in Joint Ventures (JV): a non-BEE contractor forms a JV with a BEE emerging contractor, only to find that the BEE partner has no meaningful role, or responsibilities in the JV, if given any responsibility it is usually in the provision of labor. ▪ A BEE subcontractor only conducts peripheral functions and does not perform the core functions reasonably expected of other, similar, enterprises ▪ A BEE enterprise relies on a third-party to conduct most core functions normally conducted by enterprises similar to it ▪ A BEE subcontractor cannot operate independently without a third-party, because of contractual obligations or the lack of technical or operational competence ▪ Black contractor compelled to accept the subcontract at lower rates while the main contractor charges the government much higher rates ▪ Black sub-contractor used primarily as a conduit of money to a white contractor whom he is compelled to in turn subcontract.

Adapted from Moloi, 2006 & DTI, 2005.

The third category is one of “opportunistic intermediaries” where white owned companies make an agreement with a view to leveraging the opportunistic

intermediary's favorable BEE status in circumstance that include substantial limitations or restriction on the identity of the opportunistic intermediary's suppliers, service providers, clients or customers. It also includes the maintenance of a black business operation in a context where it is improbable considering the black business resources. Finally, it involves the opportunistic intermediary accepting unfair and unreasonable terms and conditions which are not negotiated at arms-length. Table 3:1 lists all the common practices of tokenism in South Africa. It is in this context that the South African government has identified the potential of Public Private Partnerships (PPPs) as a suitable vehicle for developing BEE in the country (National Treasury, 2004).

3.5 CURRENT RESEARCH CONCERNING PRINCIPAL AGENT PROBLEM IN PPPS

Shi *et al*, (2007) acknowledges that there are currently limited studies on the moral hazard problem occurring in PPP projects. Where some research is done on the subject of PA problem specifically in government PPP concessionary projects, the PA theoretical framework has not been applied where there are secondary objectives over and above the primary objectives of infrastructure provision. South Africa's unique historical legacy has compelled the country's government to impose the country's socio-economic imperatives as mandatory project deliverables alongside the traditional output expectations. The gap in the corpus of knowledge regarding this aspect of PA in concessions has initiated this research. The work done on the traditional projects and general government contracting with regard to the PA problem does provide a foundation from which to investigate any nuances in the behaviour of the agents in the presence of additional soft project output requirements. At the heart of the research is the acknowledgement that the asymmetric information that abounds in contracting favors the agent and leads to opportunistic behaviour.

Work done by Pongsiri (2004) has attempted to demonstrate how a partnership model pertaining to PA relationship can be used to explain how contracting parties behave in order to minimize the problems associated with their

opportunistic behaviours. Kettl (1993) has tried to demonstrate that PPPs have introduced three issues into the focus; firstly government is relying on private partners to do the public work, secondly PPPs produce highly variable relationships that differ from project to project and thirdly the government's role has changed from the traditional producer of goods and services to a supervisor of proxies who do the work. Because the contractors doing the work do not fall under the government's direct chain of authority, their response to government expectations can only be shaped by the incentives devised by the government (*ibid.*).

Incentives play a crucial role in mitigating the moral hazard problem, which Metzger (2003) in his work on government delegation, has argued has always been a danger in that the private actors will exploit their position in government programs to advance their own financial or partisan interests at the expense of program participants and the public. This is to be expected because in work done by Raganelli and Fidone (2007) on reducing moral hazard in public works PPPs, the government and the private partner as rational operators have divergent interests. The government, continues Raganelli and Fidone (2007) has two questions, firstly that of selecting the best contractor and secondly guaranteeing the precise carrying out of the contract. With reference to the first question public type procedures are employed to identify the best contracting partner. Regarding the second one Raganelli and Fidone (2007) suggest that insight be drawn from the economic literature on the theory of incentives, which suggests a careful study into the construction of correct contract architecture. There also has to be a foresight utilizing the adequate contract clauses of incentives and sanctions on how to induce the contractor to correctly comply with the contract. In PPPs (*ibid.*) the provision of a good quality public works should comply and meet the private interest of attaining corporate profit.

Assymmetric Information

Coase (1937) in his seminal work submitted that in the real world, competition is not perfect and information is often lacking. Simon (1945: p.79), another Nobel

laureate, extended this argument by stating “it is impossible for the behaviour of a single, isolated individual to reach any high degree of rationality.” Simon (1945) further elaborated that if individuals cannot be expected to be highly rational, then the organisations they work for can scarcely be any better. This results in rationality being a bounded (limited) phenomenon (*ibid.*). The central importance of both Coase’s and Simon’s contributions was in defining information and the ubiquitous barriers in obtaining it, as the major challenge that organisations must overcome (Kettl, 1993). Governments frequently contract out under the premise that the contractor knows more and can deliver a better performance than the government could. This acknowledgement means the government might not know enough to choose the best contractor and it also gives the contractor more opportunity to shirk (*ibid.*). Kettl (1993) points to the regularity of newspaper reports testifying to the frequency and gravity of this problem and goes further to submit that the PA theory suggest that this is unavoidable.

Kettl (1993) showed in his work that the problems of asymmetric information inherent in the PA relationship pose significant problems for any government that contracts out. It means the results are inevitably suboptimal; it further imposes costs, especially in monitoring, which in the end makes the whole transaction more expensive (*ibid.*). Raganelli and Fidone (2007) posited that governments are less informed compared to the private sector due to shortage of personnel and scarcity of suitable instruments enabling correct access to the information. This distorted distribution of information occurs both before the stipulation of a PPP contract and in its execution phase. The existence of asymmetric information entices the private partner to pursue its own interests that might be in conflict with the government’s, and this renders the relationship necessarily incomplete (*ibid.*). If this impediment of asymmetric information which breeds moral hazard were absent (Raganelli & Fidone, 2007), then the optimal contract would require the agent to make the effort considered most socially convenient for the principal, given only the respect of a constraint of acceptance of the contract by the agent: “Individual rationality”.

Screening

However following on from Coase (1937), in the real world rationality is bounded. Kettl (1993) maintains that no matter how thorough the search, the government can never be sure that it has hired the best possible contractor. The government, like all principals, want to hire the best agents, however agents know more about their qualifications than principals can ever discover (*ibid.*). As a result a contractor that wins any bid is likely to have flaws the government will only discover later. This inadvertent *ex ante* adverse selection exposes the government to an inferior contractor who appears more diligent or competent than they really are (Uttley, 2006). Renda and Schrefler (2006) propose the best way to ensure that output quality is at least comparable to what would be expected in case of in-house public provision, is to clearly set out quality standards and indicators during tender procedure. A precise definition of quality standards does not only help in avoiding adverse selection, it also minimizes the attraction of low quality bidders (*ibid.*). However, Kettl (1993) demonstrates that government's screening of contractors that informs its choice can never be perfect and some loss of efficiency and effectiveness (loss of utility) is inevitable. The basic reason for seeking to implement screening is to try to mitigate moral hazard problem later on during project execution.

Moral Hazard

Sclar (2000) has argued that given the high inherent risk of moral hazard in public contracting and the large amounts of taxpayers money at stake, there is no place in the field for business organisations with low moral standards. Raganelli and Fidone (2007) acknowledged that deviant behaviour by the concessionary can take a variety of different forms, in consideration also of the difficulty, in many cases, of control and verification by the government. Uttley (2006, p. 86) describes this *ex post* moral hazard as the exploitation of the contract by the concessionaire by doing 'as little work as it can get away with, all the while sending information back to the government that suggest it is performing at an acceptable level'. In point of fact the quality of the project and of the work in general and of the ways of carrying it out are usually known only to

the private partner/agent (Raganelli & Fidone, 2007). It is in this context of PPPs that the presence of information asymmetries between the parties can give rise to concealed actions (moral hazard) by the concessionary, contrary to the interest of the government, or in any case too costly for verification of the state of progress (*ibid.*). Raganelli and Fidone (2007) maintain that the solution is contained in the PA models and more specifically by the theory of incentives. Stipulating contracts with incentives induces the agent to behave virtuously, by allocating rights of intervention and financial flows and controls, both during the phases of project execution and after its completion. Although the incentives can induce cooperation from the contractor the government must still take an initiative by monitoring what the contractor is doing on a regular basis.

Monitoring

Principals seek to mitigate shirking by monitoring their agents, but Kettl (1993) argues that no matter how much monitoring a principal does, some shirking persists and every dollar spent on monitoring is money diverted from the principal's basic mission. However Jacoby and Mansuri (2009) in their work to link observed contractual forms in sharecropping to models of PA relationships, found that the share-tenants who are monitored by their landlords are as productive as owner-cultivators whereas unmonitored sharecroppers yield 18% less on average. Kettl (1993) observes that information asymmetry present in choosing the best agent carries over even more significantly in monitoring performance.

Kettl (1993) extends the observation that it is imperative for principals to know what agents are doing, yet even if they receive reports, and complaints, observe the work directly, and study the agents' general work habits, principals will never be in a position to be fully informed about agents' private activities. Agents on the other hand have strong incentives to protect themselves – to pass on only the good news and hide the bad ones and to try to discourage anyone from looking too closely at their work. Renda and Schrefler (2006) observe that linking service provision at the operational stage of a PPP project to some form of payment or

premium, means an indirect form of public involvement particularly if output/outcome indicators to monitor the private agent's performance also act as incentive schemes. One form of deterrent for deviant ways of acting ascribable to moral hazard is the provision of mechanisms of greater transparency *vis-à-vis* consumers by according them avenues for reporting any defects or irregularities in general (Raganelli & Fidone, 2007). Apart from this, the problem is compounded by the fact that good monitoring systems are hard to design, as there is always a danger that the principal will be inundated by paperwork (Kettl, 1993). So too is the development of a good feedback system which does not interfere with the agent's work (*ibid.*). If principals scrutinize agents' operations too closely the principal/agent dividing line can disappear. This is compounded by the fact that monitoring is costly (Shi *et al*, 2007). At the same time agents cognizant of the fact that monitoring is difficult for the principal can underperform, knowing that they will not be detected (Kettl, 1993).

In what Kettl (1993) calls "the monitoring problem", the principal must try to find a balance between the extent of shirking they will tolerate and the amount they must pay in monitoring costs to achieve that level. However, if principals do not make any attempt to look deeply enough, scandals and potential disaster can go undetected. Kettl (1993) concludes his contribution regarding this matter by acknowledging that asymmetric information poses a significant problem for any government that contracts out, as it replaces old problems of public delivery with new ones. Feaver (2003) acknowledges two schools of thought. One school hold that agents work best under "optimal" monitoring, where the incentives to shirk are minimized and the effort remains cost-effective, whereas the other holds that monitoring is inherently inefficient and it is therefore best ensuring a consilience of the principal's and the agent's goals (*ibid.*). In the end the critical point in determining the effectiveness of monitoring is the complexity of the contract. In simple contracts as demonstrated by Jacoby and Mansori (2009) monitoring can have recognizable impact. In complex and large contracts like PPPs the foregoing observations have demonstrated that optimal performance hinges on other mechanisms other than monitoring.

Incentives

Taking into account the monitoring challenges the government faces as a principal, the government must draft a contract that induces the contractor as an agent to behave as the government wishes (Kettl, 2009). Pongsiri (2004), in his work on PPP projects in the oil exploration industry, points out that the crucial question is what should be the optimal incentive scheme for the government (principal) to lay down for the agent to prevent shirking and opportunistic behaviours. Vickers and Yarrow (1988) address this by saying in the first place the scheme must be attractive enough for the agent to be willing to participate in the venture with the government. Secondly, the contractor will behave in a self-interested way given under the incentive scheme (*ibid.*). Designing inducements and sanctions is at the core of every relationship between the principal and the agent (Kettl, 1993). In government contracting the sanctions tend to be more substantial and more clearly spelled out, as government officials attempt to design payment and penalty clauses to get the contractor to deliver the desired product on time and at a mutually agreeable cost.

Another hurdle to reducing shirking is that although principals supply incentives to induce the agent's work (Kettl, 1993), agents always have additional interests that they seek to satisfy first. Kettl (1993) extends this argument by saying to one degree or another, shirking of duties is inevitable in PA relationships, because shirking could simply mean the agent does not work as hard as the principal believes is essential. Moreover, shirking tends to be asymmetrical as agents have more opportunities and incentives to shirk than principals have to control them (*ibid.*). Conflicts of interest from the minor to the major are the result, this according to Kettl (1993) is the greatest danger because the government can never know everything about its agents, it might discover serious potential conflicts of interest very late, if they get discovered at all. In government contracting, such information asymmetry is endemic (*ibid.*). In order to remedy this disincentive of the contracting firm fulfilling the mandate of the public sector principal Sclar (2000) proffers an alternative approach identified as "relational contracting". The concept thrives in PPPs and plays on the mutual self-interest of

contract participants (*ibid.*). As an alternative to ordinary contracting, the relational contract is heavily based on mutual interdependence. Sclar (2000) demonstrates that by showing that aligning the incentives of the private sector with the public interest mandate of public service delivery, as measured in terms of costs and benefits, service delivery would undoubtedly improve. This is offered as a viable solution to the emerging fiscal and legitimacy crises in the public sector (*ibid.*). All these incentives must be clearly stipulated in the contract, which in the final analyses is the instrument that inspires and directs the relationship between the two parties.

Contract

Kettl (1993) submits that if the government as a principal does not lay down clear legally enforceable goals specified in the contract, there are no clear standards against which to measure the contractor's performance. However defining these goals is at once a very important and very elusive element in the PA relationship (*ibid.*). Renda and Schrefler (2006) submit that public parties can generally rely on extensive experience developed through traditional public procurement contracts, to produce well-crafted tender requirements. In a contracting relationship it is of utmost importance that the goals are specified far more clearly in advance, and reduced to a legally enforceable language (Kettl, 1993). It is from these goals that the efficiency of the contract is going to be determined. Bindemann (1999) has argued that a contract would be efficient if it cannot improve one party's terms without making the other party worse off. Governments usually have hard times making sanctions stick because of frequently fuzzy goals (Kettl, 1993), and unclear goals give contractors an always-ready defense against charges of poor performance. Uttley (2006) submits that PPP reduces incentives for *ex post* supplier opportunism because contracts are configured to create forms of 'gainshare' or 'incentivisation' that provide 'value-added' benefits to both the government and the concessionary.

Spitzer (2007) proffers as the "truth" that what is measured is prioritized, and what is not takes a lesser priority. Renda and Schrefler (2006) found that during

the construction stage of a PPP contract, reliance on previous experience in public procurement contracts and use of accurate output indicators are the only operational means of control. In PA relationships Anderson *et al* (2008) have observed whenever there are aspects of an organisation's performance that cannot be easily expressed in numerical terms but which are equally critical to the organisation's achievements, benchmarking can be implemented to measure performance in order to influence behaviour. By using benchmarking, the principal reinforce the message and communicate more clearly, the policies it wants the agent to pursue (*ibid.*). The principal can define performance indicators for this purpose that will be utilised to assess behaviour and achievements of the agent, in pursuing the objectives defined by the principal (*ibid.*). If these performance indicators are clearly communicated (*ibid.*), followed up regularly, also in periodic agent's performance reviews, the chances are the agent will be more inclined to take the policies more seriously. Alternatively, as proposed by Renda and Schrefler (2006), when the *ex ante* specification of applicable quality standards is unfeasible because of the peculiarities of the service/asset output then "competitive dialogue" procedures may present a viable and manageable alternative for the public sector. The use of competitive dialogue is on the increase (*ibid.*) particularly for highly complex public contracts, where the public party does not have predefined standards/options on how to deliver the service. It works by inviting bidders to propose their own solution during competition, and this guarantees the government access to creative and innovative approaches and from these the government can utilise its prerogative of defining expected output characteristics (*ibid.*). These observations have a particular resonance to BEE implementation on South African concessions.

Even when goals are clear, when implementation is the agent's private information, hidden action (moral hazard) could creep in, necessitating the principal to insert an additional constraint to try to reduce this impediment. Raganelli and Fidone (2007) call this the "incentive compatibility constraint" and they submit that this induces the agent to put the level of effort deemed optimal by the principal, when the principal is unable to observe the effort directly. This

constraint is one of index-linking the payment of contractor in favor of the observable quality of the work once it has been carried out (*ibid.*). Raganelli and Fidone (2007) also submit that the duration of the concession acts as a compliance-inducing instrument, it that by lengthening the time of management of the concession the amount of cash flow expected of the project is increased. The concessionary (agent) could be induced to put a high effort if there is a clause that especially allows for the extension of the concession, provided there is a correct fulfillment of contract resulting from periodic verification conducted every X number of years (*ibid.*).

Conclusion

Contracting out government work always creates a moral hazard problem better explained by the PA model, which advocates for the pivotal role played by incentives in mitigating hidden action. However agents always respond to incentives in addition to those established in the contract (conflict-of-interest problem) and principals can never be able to detect and deter all shirking during the contract implementation (the monitoring problem) (Kettl, 1993). Competitive Contracting replaces traditional authority-based public management, with all the problems of government performance that critics have long since identified (*ibid.*). Contracting however introduces new problems, and for the competition prescription to work it must answer a series of questions that flow from the conflict-of-interest and monitoring problems (*ibid.*).

Malkonen (2008) submits that PPP contracts may be appropriate instruments to mitigate agency problems in the public sector. Raganelli and Fidone (2007) assert that the PA theory provides recourse in likening the relationship between the government and the private partner to that of the principal and agent, and this enables the distorting effects of the existence of information asymmetries to be evidenced. These distortions according to Raganelli and Fidone (2007) can happen both in the phase prior to the conclusion of the contract, and in that after it has been stipulated and their existence harm the relationship. A mechanism of incentive-sanctions for the private party (agent) linked to the observable quality of

completed work is able to implement the optimal level of commitment by the private partner and this produces no inefficiencies (*ibid.*). This view is extended by Pongsiri (2004) who proclaims that in sum the PA model has contributed to the understanding of various kinds of mechanisms to minimize-opportunistic behaviours. Although the success of PPP arrangements depend on the performance of existing pioneer projects, Renda and Schrefler (2006) demonstrate that the preliminary conclusions from Europe show that as the PA theory suggests, PPPs can be successfully applied only to those sectors where service quality can be clearly specified, measured and guaranteed. In order to make the model workable the government must design a contract that balances incentives and risk sharing as well as rewards and punishments in a way that induces maximum effort from the private partner.

3.6 SUMMARY

The Principal Agent theory is a micro-economic theory that has been applied widely to many fields covering many disciplines. The theory helps employers to better understand how to induce goal congruency between themselves and their contractors (employees). Every employer would like to hire a diligent contractor (agent), and once formal relationships are established with the contractor, the employer would like to be certain that the contractor is doing only the contracted work and not shirking (doing something else). The contractor would like to get the project and so has an incentive to appear more diligent during the interview than he/she really is, and this complicates the task of picking the suitable hard working contractor, and in PA theory this is called adverse selection (hidden information). Once he/she has secured the project, the contractor has an incentive to do as little work as he can get away with, but he/she would be sending information to the employer that indicate the contract performance is at a desired level. This behaviour is referred to in PA theory as moral hazard (hidden action) and it frustrates the employer's efforts of controlling the contractor's (employee) effort. Thus the PA theory is concerned in investigating ways the employer can utilise in shaping the relationship so as to ensure his contractors are carrying his/her

wishes in the face of the adverse selection and moral hazard problems that attend any agency situation (Feaver, 2003). Feaver (2003) explains the underlying principle of the theory as being; all principals want work to occur for minimum pay and all agents want to be paid for minimum work.

Adverse selection can be minimized by instituting stringent screening mechanisms whilst moral hazard can be mitigated by monitoring the agent's performance throughout the duration of the contract. In simple contracts monitoring can improve performance considerably but in complicated contracts shirking is to be expected especially where delivery is private information of the contractor. This asymmetric information leads to conflicts-of-interest as the contractor (agent) can use his superior knowledge to pursue other goals, which are in the contractor's best interest and not necessarily beneficial to the employer. The role of incentives offered to the agent become critical in stimulating congruency between the principal and agent goals especially when the agent is made the resultant beneficiary of his own effort, but at the centre of the debate over PA theory is the selection of the most efficient contract to achieve the congruency of the principal/agent goal. The desirable contract is the one that maintains the delicate balance between incentives and sanctions meted on the agent to induce optimal performance that is mutually beneficial. On construction projects the contract takes centre stage as it is most important tool that guides and influences the behaviour of the contractor. PPPs in particular have been singled out as being the most suitable arrangement where the PA theory can be applied to greater effect in mitigating agency problems. The following observations were made with regard to the research in PA problem in PPPs:

1. The quality of the project work activities in general, and ways of carrying it out, are known only to the private partner (agent) in PPPs.
2. This Asymmetric information in PPPs contributes to sub-optimal delivery. It also contributes to the increase of project costs by

necessitating the implementation of monitoring mechanisms in an effort to mitigate it.

3. Asymmetric information abounds because of lack of personnel and proper instruments enabling correct access to information, in the government.
4. Because of bounded rationality it would be unrealistic to expect socially convenient effort from the private party in PPPs in the absence of stringent monitoring mechanisms.
5. Asymmetric information creates conflict-of-interest and this is a sign of incomplete contracts in PPPs.
6. Monitoring is costly and ineffective.
7. Contract goals must be specified clearly, in advance and reduced to legally enforceable language.
8. Benchmarking is crucial for aspects of performance not easily put in numeric form.
9. Incentive compatibility constraint, which index-links the payment of contractor to the observable quality of works once it is completed, restricts the creeping in of hidden action (moral hazard) where there is asymmetric information.
10. PPP contracts may be appropriate instruments to mitigate agency problems in the public sector.
11. PPPs can be successfully applied to those sectors where service quality can be clearly specified and measured.

In conclusion, this chapter has investigated the relevant literature with regard to the PA theory and interrogated its applicability to the PPP procurement

approach. It has been observed from many researchers that PPP provide a suitable platform to mitigate agency problems, especially if the outcomes can be measured and clearly stipulated. BEE is an expected output in the South African PPP arrangement. The next chapter will justify the methodology that was adopted in applying the PA theory in investigating the PPP efficacy in the delivery of BEE.

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4 RESEARCH METHODOLOGY

4.1 INTRODUCTION

Research is the systematic inquiry to attain knowledge. It is a disciplined way of coming to know something about either oneself or one's own world (Bourma, 1993). Apart from settling disputes it is an effective way of satisfying one's curiosity about the nature and operation of some aspect of the universe (Cooper & Emory, 1995; Bouma, 1993). Four different types of studies can be classed as research namely; reporting, description, explanation and prediction. Methodology, which is the process of doing research in order to gain knowledge, must be well laid out and clear to the researcher for the inquiry to be effective.

“Knowledge can be defined as a description of the state or operation of some aspect of the universe upon which a person or group is prepared to act” (Bouma, 1993, p. 2).

Any methodology must define the research process in enough detail for the outcomes of the research to have credibility with the readers of the research report. The adopted research methodology itself must be able to support its legitimacy based on some fundamental guiding philosophy. There are different methodologies based on different philosophies and they reflect the underpinning paradigms of the researchers. In this chapter the different paradigms and their merits and demerits are discussed and this will be followed by a discussion that justifies why a particular methodology was followed for this research and why it was found to be appropriate. The chapter then goes on to describe various research tools chosen to gather data and an explanation is given of their appropriateness. In essence this chapter details the methodology adopted and seeks to offer a justification for its adoption and ends by explaining the instruments and procedures intended for data collection and their inherent limitations.

4.2 DIFFERENT RESEARCH PARADIGMS

There is no such thing as perfect research. However there are guiding rules, the awareness of which can assist the researcher in doing a competent job which can be defended and justified if the quality of the outcomes is questioned (Descombe, 2002). These rules are informed by the paradigm the researcher has adopted.

The concept of paradigm in the sociology and history of science was first introduced by Kuhn (1962). There are two major paradigms in conducting research; positivist and constructivist/phenomenological (*ibid.*). The positivist paradigm is rooted in the world of natural science, which has a rich history of rigor in the approaches adopted to formulate new theories, or test existing ones about the nature or the operation of particular aspects of the universe (*ibid.*).

Science has been successful at providing explanations of how the world works; the natural sciences – physics, chemistry, biology and medicine - have all contributed immensely in increasing humanity's wealth of knowledge (Descombe, 2002). The advances in these fields have been so great that it might appear that there are no boundaries to what is possible to do or to know utilizing science and its methods of investigation (*ibid.*). It is that success rate that has compelled researchers from other fields, such as social research particularly in its formative years, to try to adopt the same kind of practices and reasoning that natural science has successfully employed (*ibid.*). Such aspirations are still rife within sections of the social research community (*ibid.*). The proponents of this approach believe that by implementing the tried and tested scientific methods, diagnosis of social, economic and psychological problems can be done, and informed advice can be presented to political leaders for appropriate solutions (*ibid.*). The application of scientific methodology is not necessarily bad, unless there is a blind faith in its superiority as the sole avenue of conducting any credible research (*ibid.*). It has to be acknowledged that it still remains the dominant model for research in most areas, such as medicine, geology,

chemistry etc. and the arguments that one currently exists in a 'postmodern' world in which the old model of scientific discovery is outdated is perhaps a little premature (*ibid.*). Although the rigor of scientific method which is underpinned by investigative pillars like, 'precise measurement', 'careful record-keeping' and 'keeping an open mind' are still regarded as fundamentals of a good research, there is a growing interest in pursuing a phenomenological approach in research (*ibid.*).

Kuhn calls this development a shift in the way research is conducted (Kuhn, 1962). Qualitative as opposed to quantitative research must be taken to be a part of this emerging paradigm, which includes lessons taken from theoretical physics and mathematics (Lincoln & Guba, 1985). This naturalistic form of inquiry, which is comprehensive in its scope and emphasizes elaborateness in detail plays a pivotal role in the recognition of the qualitative research as a legitimate way of conducting research (*ibid.*). Acceptance within the research community is slowly being achieved after a rigorous articulation of the methodology of qualitative research; and it did this by taking lead from and understanding the changes within the 'hard' sciences, which have relied heavily on the 'traditional' positivist approach (*ibid.*). This emerging phenomenological approach or paradigm is based on a very different set of underlying assumptions that differ from those that underpin the positivist approach. These different assumptions will be separately discussed below.

4.2.1 Positivism

The positivist way of approaching research is fundamentally different from the phenomenological paradigm both in the general approach to research and particular practices within this particular tradition. The positivist approach is generally concerned with generating a hypothesis, testing it and generalizing the findings of the research to a wider population (Maykut & Morehouse, 1994). It is also identified with complex mathematical formulae that are seen to be important for their own sake and the tests for significance of the outcomes are confused to be indicators of importance of this method (*ibid.*). Positivists believe that there is

reality somewhere out there to be studied, captured and understood (Denzin & Lincoln, 1998).

The main philosophical standpoint of positivist approach is that an observer or the observer's instruments are objective. The truth about the nature of any segment of the universe can be found by dividing it into its simplest parts. Numbers are regarded as the primary source of data and the mathematical formulations that are employed to analyze this data play a prominent role in enriching humanity's understanding and expansion of knowledge.

4.2.2 Phenomenological Approach

Although it has been explained above that there is an alternative way of doing research, which is different from the 'traditional' scientific approach it should be clear that this alternative phenomenological paradigm is equally scientific, although it is easy to assume that science is confined to the world of experiments and large random samples (Maykut & Morehouse, 1994). In other words there is not one scientific method, but at least two scientific methods (*ibid.*). A phenomenological approach is holistic, with a primary focus on human experience and sustained contact with people in their natural experience (Munhall, 2001; Streubert & Carpenter, 1999). This sometimes calls for a high level of researcher involvement in the setting and the data presentation with this approach is very descriptive and/or narrative (*ibid.*). So a phenomenological researcher will ask the question:

“What is the essence of this phenomenon as experienced by these people? The phenomenologist assumes there is an essence that can be understood, in much the same way that the ethnographer assumes that cultures exist. The phenomenologist investigates subjective phenomena in the belief that essential truths about reality are grounded in people's lived experiences” (Polit & Hungler, 1997, p. 203)

The dichotomy between this approach and the positivist can be appreciated in terms of an orientation towards a realist vs. an idealist worldview (Power and Knapp, 1990). Whereas positivists who are realists, believe the world can be perceived more or less directly. Phenomenologic idealists argue that our perceptions of the world are mediated through a series of distorting lenses and can only be known subjectively (*ibid.*). Whereas realists posit a material world that exists independent of any observers, idealists always argue that the world, in one way or another, exists only or fundamentally in our minds (*ibid.*).

A more common and perhaps apt term in opposition to realism is constructivism (Gergen, 1999) or sometimes anti-realism (Okasha, 2002), neither of which reject outright the idea of a 'real' world, but argue that knowledge and meaning of the world is a human construction. These two research persuasions are sometimes referred to as positivism and interpretivism, reflecting the differing aims of research as, on the one hand, to directly perceive and measure the world and on the other, to offer a more or less subjective interpretation of it (Rolfe, 2006). So this qualitative/naturalistic/interpretive paradigm which is known as phenomenology advocates the acquisition of knowledge through the study of the lived experiences of the subjects, as it is difficult according to this view to separate the known from the knower. In other words, the study of subjects in their natural setting and interpreting the data found through the experiences of the subjects is how humanity can gain knowledge and understanding. This belief about the relationship between the object and the subject forms the basis of the epistemological or ontological orientation of phenomenologists.

4.2.3 Levels of Understanding

Porter (1996 p. 113- 122) describes research as being founded on four main levels of understanding:

Level 1: Ontology – What is reality?

Level 2: Epistemology – What counts as knowledge?

Level 3: Methodology – How can we understand reality?

Level 4: Methods – How can evidence be collected about reality

The first, ontological level is concerned with the subject matter of the research. The matter that is at the center of the inquiry, it asks a basic question; what is the nature of reality? The second is the epistemological level and it basically explores what counts as knowledge of the real world. The third level is methodological, and examines the whole process of gaining an understanding of reality. What are ways and channels to pursue to increase our cognitive insight into the matter under investigation? The fourth one enables the researcher to collect 'evidence' about the world (Porter, 1996). This last one investigates and justifies the right tools to use to gather evidence. In everyday experiences if one wants to know more about water for instance, a jar and a bucket could be used to draw water for analysis; but if one wants to analyze and know more about sand, then a shovel and a wheel barrow might be better tools to use. Going back to the levels of understanding in the context of this study, in level 1 one might ask what constitutes 'reality' of the PA problem in PPPs with regard to BEE? Level 2 – What should we regard as the knowledge of PA problem in PPPs? And Level 3 -- Are there means at our disposal for accessing knowledge of agent behaviour that will count as PA problem in PPPs? Lastly, how can we collect evidence of reality of PA problem with regard to BEE? Although in research all these levels could be grouped under the umbrella term of methodology. But in order for a research to have methodological clarity (Maggs-Rapport, 2001), there are decisions that need to be made that must be based on informed choices. The next section compares the two research paradigms in order to justify the one ultimately taken.

4.3 A COMPARISON OF THE TWO PARADIGMS

The way one understands the nature of reality directly affects the way one sees oneself in relation to knowledge. In other words the epistemological position influences how one conceives knowledge. Positivists believe that knowledge can be separated into parts and examined individually; if that is the case then a researcher can stand apart from the subject of the experimental inquiry. The

phenomenological view on the other hand is of the view that knowledge is constructed, and as a result the knower or researcher cannot completely be separated from what is known because knowledge is co-constituted. In other words the phenomenological approach sees the world as complex and interconnected, thus research must seek to maintain this complexity if any explanation emanating from that research is to be trustworthy. It follows that the phenomenological position regards information as being arranged in heterarchies or a web of meaning. This differs to the positivist view which regards information as being arranged in hierarchies, that means some things will always be on top (super-ordinate) and other things will always be at the bottom (subordinate) (Maykut & Morehouse, 1994). Closely related to the arrangement of sources of information is the relational functioning of elements within these two structures. The phenomenological position advocates for fluidity in the interactions of elements within a structure while the positivist view advocates mechanical forms of relationships (*ibid.*).

The mechanical relationships in the positivist view can be likened to a one-way flowchart, whereas the phenomenological view advocates for a holographic form of relationship (Maykut & Morehouse, 1994). A holographic reproduction is a three dimensional reproduction. This means that the two positions present a distinct difference regarding the nature of change. The positivist approach sees the sources of change as determined and potentially identifiable, because to change mechanically is to change by replacing individual and discrete parts (*ibid.*). The phenomenological approach sees change as indeterminate and therefore not identifiable. This is because rather than being a mechanical model the phenomenological position is morphogenetic (*ibid.*). Morphogenesis advocates for an organic change where one subtle change is affected by the next change in a connected and organic manner. It therefore follows that research results from these different approaches will be presented differently. In positivist approach findings are presented as linearly causal, that is, A causes B. In the phenomenological approach causality is mutual, that is, A and B cause each other, in other words the cause and effect are indistinguishable and inseparable

from each other. In fact continuing with the analogy of a three-dimensional holograph, to alter or distort one part of the holographic image is to change the entire image, because of the interconnectedness of the individual parts that build up the whole (*ibid.*).

Table 4:1 below provides a synopsis of the difference between these methods.

Table 4:1: Research paradigms and characteristics

<i>Research Characteristics</i>	<i>Positivist Paradigm</i>	<i>Phenomenological Paradigm</i>
World view	Simple	Complex
Organisation of info	Hierarchic	Heterarchic
Forms of relationships	Mechanical	Holographic
Sources of change	Determined	Indeterminate
Explanation	Linear causal	Mutual causal
Nature of change	Assembly	Morphogenesis
Observer perspective	Objective	Perspectival

Adapted from Maykut and Morehouse 1994

Although the two methods are not necessarily competing and indeed they can at times compliment each other, they are at the same time very different. The first distinction between the two is the observer's perspective. As mentioned above the positivist view regards the observer as objective, but in the phenomenological position the observer's view is perspectival, in other words the observer has a singular perspective. Data in positivism are numbers, conversely the phenomenological approach is characterized by the close examination of people's words, actions, and documents to determine any pattern of meaning coming out of this data. The researchers within these two distinct paradigms will ask different questions and by necessity approach research in different ways (Maykut & Morehouse, 1994). As will be argued in the following section, for this project a phenomenological approach was preferred over the positivist approach.

4.4 JUSTIFICATION OF ADOPTED PARADIGM FOR INVESTIGATING PA PROBLEM IN PPPS

The phenomenological approach was selected for this problem because the study of the behaviour of agents in PPPs settings is fundamentally a study of human behaviour. Human behaviour is a very complex dynamic area, which cannot easily be investigated mechanically with only numbers as a sole source of data. The researcher has to be embedded in the environment of the subjects in order to have a deeper meaning of the data and must gain the perspective of the subjects about aspects of the subject under investigation. The positivist approach could explain the prevalence of the phenomenon or the frequency of its occurrence with the assistance of the statistical techniques, but the principal reason for undertaking this research is to have a deeper and richer appreciation of the underlying reasons. It is also chiefly to find a pattern in the data gathered and make appropriate propositions based on the contextual data and the research subjects' perspectives. A qualitative approach was deemed to be better suited to yield the desired results because the intention is to find meaning from the research subjects' perspective and the artifacts found in their environment. The following description in this section will dissect the qualitative approach in order to qualify its deployment.

From the onset it should be clear that the choice about the research method should depend on what one is trying to find out with the research rather than about what is good (i.e. in this case qualitative) and bad (i.e. quantitative) (Silverman, 2006). The phenomenological paradigm was selected in this research because its qualitative approach is holistic in orientation and it treats the phenomenon as a whole system as it searches for patterns that lie with the boundaries of the research environment.

Although is the phenomenological method application is very taxing and exhaustive it incorporates as many different parts of the structure that affect each other as possible. This produces a coherent account from a number of different individual episodes, depicting the dynamics of a social process under scrutiny.

This is a reflection of an empathetic understanding, not necessarily sympathetic, structure of the environment as seen through the eyes of the participants (Cupchik, 2001). An empathetic approach is one where an attempt is made to understand phenomena holistically from the perspective of the participants (*ibid.*). This phenomenological grounding is constructive in that meaning is generated from a world understood by researchers but who generally come from outside that world (*ibid.*). However, on the one hand to the extent that the researcher comes from outside the environment, there is bound to be speculative leaps in the search for solid coherent account of the phenomenon. On the other hand if a quantitative approach could be adopted, the questions asked will be a pale shadow of the original phenomenon as they will be too restrictive, although precision will be gained, it will be at a loss to subtlety (*ibid.*). A positivistic approach that relied on quantitative analysis will fail the researcher by not bringing up the understanding of the 'meanings' that are embedded in an environment (Filmer *et al*, 1972). This is where qualitative research becomes useful because it is by definition stronger on long narratives than on statistical tables (Silverman, 2006). Thus the quantitative approach is not going to be suitable in providing an adequate discernment.

4.4.1 Criticism of Quantitative Approach

The unsuitability of the quantitative positivist approach is chiefly because the whole research exercise could just amount to a 'quick-fix', involving little or no contact with people or the 'field' (Silverman, 2006). As this research is about understanding the behaviour of agents in order to find ways of ameliorating the Principal Agent (PA) problem, so there has to be some interaction with the agents at the 'field'. Silverman (2006) argues that sometimes if statistical correlations are used in the context of naturally occurring interaction, they may be based on the variables that are arbitrarily defined. After-the-fact speculations that follow the meanings of these created correlations can involve the very common-sense processes that positivism tries to avoid (Cicourel, 1964). The pursuit of 'measurable' phenomena can mean that unperceived values creep into

research by taking on board highly problematic and unreliable concepts such as 'discrimination' and 'empowerment'. Glaser and Strauss, (1967) posit that while hypothesis testing is important, a purely statistical logic can make hypothesis development a trivial matter and fail to help in generating hypotheses from data.

While quantification of data may sometimes be useful in revealing basic social processes there is also the danger that it can also conceal much. Quantitative research is rightly concerned in establishing correlations between variables, it can tell us a lot about inputs and outputs. For instance in the case of PPPs, how many subcontractors were involved in the project and how many managed to be on their own in the following projects without assistance from their main contractor counterparts. This is a purely 'operational' description of the phenomenon and quantitative research does not have the resources to describe how the phenomenon is locally constituted. It cannot give an insight into the attitude of the agents (consortia) towards empowerment and therefore enrich the understanding of how the agents behave the way they do. However there are criticisms leveled at qualitative research as well.

4.4.2 Criticism of Qualitative Approach

Qualitative research is usually accused of being subjective and political, while quantitative research is purported to be objective and value-free (Silverman, 2006). Some funding agencies, according to Denzin and Lincoln (1994, p. 4) go as far as saying qualitative researchers are 'journalists or soft scientists' whose work is 'termed unscientific, or only exploratory, or entirely personal and full of bias'. This originates from the issue of reliability of the research, especially, the problem that arises with how events or activities are categorized during analysis (Silverman, 2006). When subjects' activities are audio or video recorded and transcribed, the reliability of the interpretation of these transcripts may be weakened by failure to note trivial but often crucial, pauses, overlaps or movements. Silverman (1989) also introduces a second criticism closely related the one of bias above, in what is termed 'anecdotalism'. Qualitative researchers are accused of basing their research reports based on few telling examples of

the phenomenon without any attempt to analyze the less clear or contradictory data (Silverman, 1989). The complaint of anecdotalism questions the validity or the truthfulness of qualitative research. The following section counteracts these two main accusations.

Countering Qualitative Approach Criticism

The accusation of subjectivity or bias can be addressed by looking closely at this issue of objectivity. According to positivists, objective has come to mean true, factual and real. The corollary to this is that subjective means partially-true, tentative, and less-than-real. Taking a closer look at the word a different sense and meaning could be constructed from the word. An object is a thing, an entity; it can also be described as 'other,' in other words to make something an object is to make it into 'other'. To be objective then is to be cold and distant. Within this argument framework, subjective takes on a different action and meaning. Phenomenologically speaking, subjective then becomes synonymous with agency or, put in other terms, with the actor's perspective put through his words. To be subjective, therefore is to 'tend to' the subject. The purpose of the qualitative research is to get at the world of the agent or subject, through the speech pattern and behaviour of the agent and the specific context in which this behaviour occurs (Maykut & Morehouse, 1994). To use another basic argument, even if the research methods applied by the researcher are 'hard' quantitative ones, they can never be purely objective. Humans are unable to process information without some degree of embedded subjective interpretation. Quantitative data, like qualitative data, is interpreted and often manipulated by the researcher and therefore incorporates subjective acts within what is a supposedly pure objective analysis (Westmarland, 2001).

To counteract the second accusation of anecdotalism, it should be remembered that the extended immersion in the field, which is typical of qualitative research, leads to a certain preciousness about the validity of the researcher's own interpretation (Lynch, 1984). The main goal of qualitative research is to discover patterns, which emerge after close observation, careful documentation, and

thoughtful analysis of the research topic. Qualitative research is not concerned about sweeping generalisations but contextual findings, and this process of discovery is critical to qualitative approach philosophy (Maykut & Morehouse, 1994). The blame that qualitative researchers selectively report on 'telling' examples can be put squarely on journal editors who continually demand shorter and shorter articles (Lynch, 1984). What could be happening with qualitative researchers is something that can happen in much the same way to natural sciences where, for instance, laboratory assistants have been shown to select 'perfect' slides for their professor's important lecture (*ibid.*). While the qualitative researcher will not have to confront statistics, the tasks of understanding and presenting qualitative research is as demanding as the task of understanding statistics (Maykut & Morehouse, 1994), so the accusation of anecdotalism falls away. What should inform the choice of either quantitative or qualitative method is the understanding of the requirement of the research question, rather than a lack of conviction about the 'scientific' adequacy of either method. Hence a discussion about differences between the two is necessary, and how the strengths of both could be combined to achieve greater academic rigor.

4.4.3 Synthesising the Qualitative and Quantitative Approaches

In the context of sociology the major difference between the qualitative approach and quantitative approach is in the data collected. Qualitative research places emphasis on understating by taking a closer look at people words, actions and records and this is considered data. The quantitative traditional approach looks beyond these words, actions and records to their mathematical significance through the use of statistics. A major difference is not the counting or lack of counting of words, actions or documents but rather the meaning given to the words, actions or documents as interpreted through statistical analysis as opposed to meaning emanating from the data which is often presented in the subjects' own words. Why words? Words are the product of how people interpret the world. Most people come to understand their situation through words, 'we create our world with words, we also explain ourselves with words and If need be

we defend and hide ourselves with words' (Maykut & Morehouse, 1994, p. 18). The challenge with qualitative research is to find patterns within those words (and/or actions) while staying very close to the world as the subject's originally experienced it (*ibid.*). If the situation is presented mathematically the whole experience will be stripped of its meaning as that meaning was experienced by the participants (*ibid.*). At the end of the day there is some good in going either the quantitative way or the qualitative way given the intention of the research.

The choice between qualitative and quantitative approach when doing research is not a question of either/or. The two could even be combined in order to address the research topic. Another way of gaining from the strengths of quantitative method when doing qualitative research is to use simple, quantitative tabulations as a means of achieving greater validity (Silverman, 2006). This is because both the positivist and the phenomenological scholarly communities express a deep concern for ecological validity in research. That is, the extent to which a finding reflects an event or process in the world in a meaningful way. This they do while bearing burdens to their doctrinal commitments. If the two approaches are independently applied they might not adequately address the needs of the inquiry. On the one hand, in the case of positivism, precise operational definitions can so deplete a studied phenomenon of its richness and texture that it all but disappears in the rush to actuarial prediction. On the other hand, phenomenologists can so link a phenomenon with a particular interpretive context that it runs the risk of being isolated within a collective solipsism (Silverman, 2006). In the words of Cupchik (2001) 'the two communities have different albatrosses dangling from their epistemological necks'. In the case of positivists, too much measurement can transform meaning into nothingness. For phenomenologists in their constructivist approach, the priestly use of impenetrable esoteric language can generate meaning, but only to the initiated few (Cupchik, 2001).

Inquiry can be treated as a kind of action engaged by researchers in the process of generating knowledge (Megill & McCloskey, 1987). This systematic and

systemic activity extends to all phases of the research project. From noticing a phenomenon, to framing the research problem, decisions about method, the collection and analysis of data, the interpretation of findings and their communication in written and sometimes oral forms (*ibid.*). Reconciliation must therefore begin with a shared notion of a social phenomena 'in-the-world' and therefore of what is 'real'. What is real is what people experience like 'giving birth'. Although would 'eating' be a better example that most would identify with. But just as people can share the 'facts' of everyday 'reality', even while differing in interpretations of their meaning, positivist and constructivist 'realities' are not necessarily foundationally incompatible (*ibid.*).

In the light of the above discussion, this section can be summed up with an observation that an insistence that any credible research should follow a purely quantitative logic would simply rule out and nullify the study of many interesting phenomena. Most of the phenomena that is of interest relates to what people do in their day-to-day lives, whether in homes, offices or other public and private places. A balanced view in a scholarly inquiry should accept the strengths, as well as the limitations of quantitative research. To simply call oneself a qualitative researcher settles very little (Silverman, 2006). Especially if the description is used merely as a sort of negative epithet – simply saying one is not a quantitative researcher (*ibid.*). As Grahame (1999) puts it:

“the notion that qualitative research is non-quantitative is true but uninformative: we need more than a negative definition” (Grahame, 1999, p. 4).

In other words qualitative research is not about avoiding or downplaying quantitative mechanics and statistical techniques of the kind used in survey research or epidemiology for instance (Silverman, 2006). It should rather be utilised because its holistic approach is better suited in investigating certain phenomena about daily experiences better than a purely quantitative approach. In this research qualitative research is adopted primarily because of the strength

of indwelling which uses humans to study humans and also its use of humans as instruments of analysis. This human-as-instruments has certain strengths given the ability of one human to empathize with another and if accorded adequate insight, to be able to articulate the experiences of the one studied (Polanyi, 1969). Although this is the preferred approach it would not be a blind strict loyalty to qualitative approach, and imperatively excluding even the minimal use of quantitative techniques, which could increase robustness of the inquiry.

4.5 QUALITATIVE RESEARCH

For a researcher to firmly ground the research within a particular methodological discipline it is imperative to be able to defend that choice (Maggs-Rapport, 2001). Qualitative research in the human sciences represents a diverse set of techniques and philosophies that underpin research practice (Silverman, 2006; Mason 1996). Different disciplines approach qualitative research in different ways. For example social anthropology has a long association with ethnography (Spradley, 1980), and it emphasizes the importance of the researcher's immersion in the data through fieldwork and observation. In this research, which deals with PA problem in PPPs qualitative research was adopted because of its strengths in interrogating the dynamics of human behaviour and interactions. The qualitative approach is likely to be more effective because it adopts a posture of 'indwelling' in the research environment.

4.5.1 Indwelling

A posture can be defined as a state taken by one person at a particular time in relation to other persons or thing. To indwell means to exist as an interactive spirit or principle – to exist within an activating spirit, force or principle. This literally means live within (Polanyi, 1969). In research it means to understand the person's point of view from an empathic rather than sympathetic position. While information gathering is a common task for all research, the fundamental difference between quantitative and qualitative research persuasions is in the methods and tools deployed for the collection and analysis of data. The

traditional quantitative researcher claims to achieve objectivity by looking and utilizing reliable and valid non-human instruments for data collection (Maykut & Morehouse, 1994). Quantitative research is focused on finding causal relationships, which are described in terms of observation statements, verification and prediction. On the other hand qualitative research explores human behaviour and the search for understanding through people's actions. Thus the researcher observes and records events and relationships through text and dialogue. Once this data is analyzed, it may be used to throw some light on participants' thoughts or 'relationships', clarify a specific human experience or improve understanding of a complex phenomenon (Porter, 1996). PA in PPPs with regards to BEE is about human relationships. This is a complex dynamic phenomenon, which was the intention of this research to explore through a qualitative approach. This was achieved by adopting indwelling as a posture and the human-as-instrument for the collection and analysis of data.

4.5.2 Human-as-Instrument

'Human-as-instrument' is a concept coined by Lincoln and Guba (1985) to illustrate the unique position taken by qualitative researcher and it adds on the Polanyi's (1969) concept of indwelling. A person that is acting as human-as-instrument, is the only instrument which is flexible enough to capture the complexity, subtlety, and the constantly changing situation that is the human experience. Qualitative research is about human experiences and situations (Lincoln & Guba, 1985). In a PA study of PPPs the empowerment agents have their experiences and the intended beneficiaries their own experiences as well in this situation and that is one reason why this research adopted qualitative research to study these experiences. According to Lincoln and Guba (1985) this simply means that the person with all of her/his skills, experience, background and knowledge, as well as biases is the primary, if not the exclusive source of all data collection and analysis. A human instrument is responsive, adaptable and holistic. On top of that a human investigator has a knowledge-based experience for clarification and summary on the spot. Most importantly a human investigator

can explore the atypical and idiosyncratic responses in ways that are not possible for any rigid instrument constructed prior to the commencement of the inquiry. Quantitative researchers assume the world can be broken into simpler parts, enabling observation by less-complex non-human instruments. This is because they view reality including human behaviour as quantifiable, as objective and as divisible into still smaller parts without distorting the phenomena being investigated.

The reality of human behaviour is that it is not predictable nor is it pre-determinable. Polanyi (1969) puts the complexity of human observation in these terms:

"As we proceed to survey the ascending stages of life, our subject matter will tend to include more and more of the very faculties on which we rely for understanding it. We realize then that what we observe about the capacities of living beings must be consonant with our reliance on the same capacities for observing it" (Polanyi, 1969 p. 365).

In other words the subject is as complex as the observer. This refutes the notion that static one-dimensional instruments can adequately capture human beings and their situations. If then, one cannot capture humans and human situations with a single instrument or a single observation, what is the researcher to do? The answer from the point of view of the phenomenological perspective is indwelling (Maykut & Morehouse, 1994). This again is the research framework adopted in this research as the PA phenomenon is investigated in PPPs. The complexity of human behaviour makes indwelling indispensable in learning significant aspects of reality (Lincoln & Guba, 1985). These complexities cannot be figured out, cannot be understood by one-dimensional, reductionist approaches; they demand the human-as-instrument and they also demand indwelling. In one sentence it could be restated that the human instrument is the only data collection instrument, which is multifaceted enough and complex enough to capture the important elements of a human person or activity.

Sections 4.4 and 4.5 above have both discussed the justification of adopting a phenomenological approach in this research. Although the data in this research will be mostly qualitative, this was compared against quantitative data collection methods to see how the two could be combined to bring sufficient rigor in the inquiry. The synthesis of the two data collection methods was explained after weakness and criticisms of each approach were discussed. Synthesis was introduced in order for qualitative method to be bolstered by a quantitative method, not because of the inadequacy of the former, but because of its limitations given the complexity of the research. The following section discusses the research strategies that will be deployed, and the justification of a selected method.

4.6 RESEARCH METHOD JUSTIFICATION

Having discussed the choice of research paradigms, it is necessary to discuss the choice of research methods. These are the tools researchers gather information with. It is therefore imperative that the right tools are deployed if the research question is to be adequately addressed at the end of the research. Before the methods are selected researchers should be aware of what they are trying to research, or the essence of the research question. Fetterman (1998) argues that in essence, the problem or its definition should be the driving force behind the research exercise. The problem must precede the selection of a research method to avoid the trap of having a method in search of a problem – a situation that produces very frustrating and imprecise results.

There are fundamentally two types of research questions in social science: (1) What is going on (descriptive research)? (2) Why is it going on (explanatory research)? (de Vaus, 2001). These questions are pertinent in this research because the problems in this research are essential socio-technical.

4.6.1 Descriptive Research

Although sometimes simply dismissed as 'mere description' good descriptive research has added immensely to our understanding and knowledge of the shape and nature of our society. Descriptions can either be concrete or abstract (de Vaus, 2001). A relatively concrete description can for instance simply describe the racial mix of company owners in PPP projects. An abstract question in this context might be 'is there a higher racial tolerance in PPPs than in ordinary contracts'? By demonstrating the existence of social problems competent description can challenge accepted assumptions about the way things are, and can, provoke action. In other words it can provoke the 'why' questions of explanatory research. If the research is engaged in a mindless fact gathering, what Mills (1959) calls 'abstracted empiricism', then unfocused surveys or case studies can report trivial information and fail to provoke any 'why' questions or any basis for generalisation. This however, is a function of ill-defined research which leads to inconsequential descriptions, rather than a blanket indictment of descriptive research itself (Mills, 1959).

4.6.2 Explanatory Research

Explanatory research focuses on 'why' questions. The way research design is developed is fundamentally affected by whether the research question is descriptive or explanatory. It greatly affects what information is collected. If a problem is identified and there is a decision to research that problem normally a researcher will have a 'hunch' about the source of the problem. So answering the 'why' questions involves developing causal explanations (de Vaus, 2001). Causal explanations argue that phenomenon X is affected by factor Z. So in the context of this research it will be investigated, from the participants' point of view, as to what extent the environment (PPP) influences the implementation of the BEE using the agents (white owned consortia). Parts of the research have some descriptive elements, that is establishing that empowerment agents (white-owned consortia) behave differently in PPPs than they do in ordinary contracts. The rest

of the research through interviews tries to find out why' this was so. In order to achieve this, the right research tools were identified and their utilisation justified.

4.6.2.1 Research Methods

There are four research methods that could be applied in the study of organisational operations; action research, ethnography, grounded theory and case study. They are normally deployed where researchers want to understand individual and group experiences at work (Cassel & Symon, 1994) and where research questions focus on organisational processes and outcomes. Yin (1994) stipulates three major reasons that should influence a choice of a research strategy see (Table 4:2 below).

Table 4:2 :Different Research Strategies

<i>Strategy</i>	<i>Form of research question</i>	<i>Requires control over behavioural events?</i>	<i>Focuses on contemporary events?</i>
Experiment	How, why	Yes	yes
Survey	Who, what , where, how many, how much	No	yes
Archival analysis	Who, what, where, how many, how much	No	Yes/no
History	How, why	No	no
Case study	How, why	No	yes

Adapted from Yin (1994) – Relevant situations for different research strategies.

Yin (1994) cites the main reasons for selecting a research method as firstly the type of question posed; a 'what' question for instance would be better addressed by a survey other than a case study. The second reason is the extent of control a researcher has over the behavioural events of subjects/participants. In an experiment, there is control of the behaviour of the subjects whereas by definition this does not exist at all in a case study. Lastly a focus on contemporary as opposed to historical events plays a major role in deciding which method to use

(Yin, 1994). The research methods are discussed below to determine their suitability.

Action Research

Action research's most fundamental tenet is that to make research relevant, researchers should try out their theories with practitioners in real situations and real organisations. In action research, research informs practice and practice informs research synergistically (Avison *et al*, 1999). Within a mutually acceptable ethical framework, action research combines theory and practice, in other words researchers and practitioners, through change and reflection in an immediate problematic situation (*ibid.*). It is an iterative process where these two groups of people work together on a particular cycle of activities, including problem diagnosis, action intervention and reflective learning (Avison *et al*, 1999). Explicit criteria set at the beginning of the research is used to judge its outcome, as are ways to manage alterations in this criteria as part of the process of problem diagnosis, action intervention and reflective learning. In this process there is a delicate balancing act to avoid the whole operation just becoming an action but not research or simply a research that is not necessarily action research (*ibid.*).

Unlike most research that provides descriptive theory, action research is basically prescriptive theorizing (see Table 4:3 below). It is a kind of research that is targeted at improving both practitioners' and organisational performance. It prescribes how an organisation should work, and not only simply finding how it works and why it works in a certain way. It is more like a consultative initiative because behavioural change in the organisation is expected and that becomes part of the success of the research (Tsang, 1997). The purpose of this research is to provide a description and assessment of the prevalence of the PA problem in PPPs *vis-a-vis* ordinary contractual arrangements. The aim is therefore to improve the body of knowledge about this phenomenon as it exists in PPPs, but not to play an active role in conjunction with the practitioners (consortia) in

ameliorating it. As such this method was not considered to be appropriate for this kind of research.

Table 4:3: Dichotomy Between Descriptive and Prescriptive Theorizing

	<i>Descriptive writings on organisational learning</i>	<i>Prescriptive writings on the learning organisation</i>
Key question	How does an organisation learn?	How should an organisation learn?
Target audience	Academics	Practitioners
Objective	Theory building	Improving organisations performance
Source of information	Systematic data collection	Consulting experience
Methodology	Rigorous research methods	Rough case study and action research
Generalisation	Aware of the factors limiting the generalizability of research results	Tendency to overgeneralize a theory to all types of organisations
Outcome of learning	Potential behavioural change	Actual behavioural change
Relationship between learning and performance	Can be positive or negative	Taken to be positive

Adapted from Tsang, 1997

Ethnography

Ethnography emanates from the descriptive research of non-literate peoples, as part of the term 'ethno-from ethnic' suggests (Radcliffe-Brown, 1952). One of the earliest classics in this genre is a work by Whyte (1943), which was investigating the social structure of an Italian slum in Boston Massachusetts, in the USA. However this method has since grown from the study of indigenous/isolated peoples, to include any study whose research question generally concerns the link between culture and behaviour and/or how cultural processes develop over time. In order to address these research questions, ethnographers often live among the people they are studying for a considerable amount of time. While in that environment ethnographers engage in 'participant observation', in that they

participate as much as possible in ordinary daily lives of the participants while learning as much as they can about that culture and environment. As Fetterman (1998, ix) puts it, 'is more than a 1-day hike through the woods. It is an ambitious journey through the complex world of social interaction' (Fetterman, 1998). The fieldwork in this kind of research has been represented as both a scientific 'laboratory' and a personal 'rite of passage'. These two metaphors capture precisely this genre impossible attempt at fusing objective and subjective practices. The researcher treats the field as a scientific laboratory, which can be observed objectively, at the same time the very same researcher has to be 'initiated' into the culture and be part of it. This poses fundamental problems for any science that seeks to move predominantly from the particular to the general. In this case personal truths of experiences can be used as examples of typical phenomena or as exceptions to collective patterns (Roth, 1989).

The main aim of ethnography is to find how cultural values influence behavioural patterns at the participants' environment. In the context of this research culture is not a major concern although it would be interesting to find out how it influences the agent in the project. The prolonged period of time in trying to have a thorough understanding of the 'culture' of participants in the projects militates against the use of this method. Subjectivity could creep in and compromise the validity of the outcomes as the researcher juggles between the dual role of being a participant and an outsider. Hamilton (2007) had this problem in 'Muck and magic', "I had to work at becoming a 'stranger', learning to become a virtual outsider by visualizing the everyday discourses of working life as 'data' (Hamilton, 2007 p. 488). For the reasons stipulated above this approach was not utilised.

Grounded Theory

Grounded theory has its foundation in the seminal work of Glaser and Strauss (1967) and the more recent developments of the method of Strauss and Corbin (1998a, 1998b). Glaser and Strauss, and to a great extent Strauss and Corbin emphasize theory generating through the construction of conceptual categories or properties from data rather than the other way round. This makes this

approach inductive, which means it moves from the specific to the more general. According to Glaser (1998), what distinguishes this method from others is that the theory generated is explicitly emergent as it is discovered in the data. The method does not test a hypothesis, rather is sets to find out what theory accounts for the research situation as it is. It provides an understanding of the research situation by discovering the theory implicit in the data. This mode of qualitative study (Strauss & Corbin, 1997) has spread from its original use by sociologists to the other social sciences, and to practitioner fields like accounting, business management and education.

The test to establish the generality and factualness of a concept is through comparative analysis, where incidents are categorized, their properties identified and then models are constructed. The careful execution of these set of steps according to Strauss (1998a), is thought to “guarantee” a good theory as the outcome. It is maintained by the architects of grounded theory that the quality of the theory can be evaluated by the process by which a theory is constructed. This contrasts with the scientific perspective that how a theory is generated is irrelevant; whether through dreams, analogies or sheer luck, the quality of a theory is determined by its ability to explain new data.

Grounded theory specifically attempts to investigate the real world mainly through the use of interviews as the source of data. It does this by discovering concepts ‘grounded’ in the data. Those concepts “grounded” in the data are used to build theory; this is because data analysis involves searching for concepts behind the actualities, recorded in the data (Allan, 2003). The approach taken in this research is interpretivist, in that the interest is trying to find how people make sense of the world around them, and discovering the motives that lie behind people’s actions. The PA manifests itself by peoples’ actions and to understand the motives behind those actions an interpretivist approach is appropriate. To be able to do that and ‘empathize’ with participants’ views, the tools of grounded theory was considered to be very useful in this research as its medium of interrogating phenomena is through the use of interviews. Interviews played a

prominent role in this research as it was chiefly people and their behaviour the research was concerned about and that can only be known through talking to them. This method, originally called 'constant comparative data analysis technique' is useful in creating theory which is the main criticism against case study, were it to be deployed alone in this inquiry. The premier criticism against case study is the one of the lack of generalizability of case study findings. Thus a decision was taken to combine the two methods if needs be as research unfolds, with the case study as an overarching method and grounded theory embedded in it.

Case Study

Case studies are defined in very many different ways and there is no standard definition. However a definition compiled from a number of sources will help explain the modus operandi of this method. A synthesis from a number of writers runs in the following fashion:

A case study examines a phenomenon in its natural setting, employing multiple methods of data collection to gather information from one or a few entities (people, groups or organisations). The boundaries of the phenomenon are not clearly evident at the outset of the research and no experimental control or manipulation is used. (Bonoma, 1985; Kaplan, 1985; Benbasat, 1984; Yin, 1984; Stone, 1978).

As can be seen from Table 4:1 above, case studies are the preferred method when the 'how' and 'why' questions are being asked, when the researcher has minimal control over activities and when the main focus of the inquiry is on a contemporary phenomenon in the real-life every day context (Yin, 1994; Benbasat *et al*, 1987). The same is also true if there is no strong theoretical base for the research, i.e. if it is a theory building research project. "A rich and natural setting can be fertile ground for generating theories" (Benbasat *et al*, 1987 p.370). There are however, traditional criticisms to this method that is why great care must be taken in designing case studies (Yin, 1994).

Case studies require multiple data collection methods, whose results will hopefully converge in establishing construct validity. Stake (1995) and Yin, (1994) identified at least six and they are as follows:

- Documents
- Archival records
- Interviews
- Direct observation
- Participant-observation
- Physical artifacts

Documents could be letters, memoranda, agendas, administrative documents, newspaper articles or any piece of evidence that is considered germane to the inquiry. In the interest of triangulation of evidence, the documents serve to corroborate the evidence from other sources. Documents are useful for making inferences about events. When these documents are communications between parties in the study, the researcher is just a vicarious observer, if this stance is maintained (Tellis, 1997) the investigator will avoid being misled. Archival documents could be records, organisational records, lists of names, survey data and other related documents. Interviews are one of the most important sources of case study information, and they could be open-ended, focused and structured/ survey. Direct observation happens when a researcher visits the site. The visit could be casual in the course of collecting data or as part of a formal protocol to measure and record behaviours. These visits provide additional information about the topic under investigation. If research observations are made during these visits Glesne and Peshkin (1992) recommend that researchers should be as 'unobtrusive as the wallpaper'. Participant-observation and physical artefacts would not be of much help in this study; Participant-observation is useful in the studies of neighborhoods and groups. Its main disadvantage is that apart from requiring a huge investment in time, the researcher could well alter the normal behaviour and course of events in the group, which might produce spurious outcomes. Physical artifacts are things like

tools, instruments or physical evidence that may be collected during a field visit (Tillis, 1997). The very nature of this inquiry makes this source of evidence not to be of much relevance. Yin (1994) supports this position that not all sources are relevant for all cases.

Most of the above data collection methods could be used in examining contemporary events, when relevant behaviours cannot be manipulated. They all provide useful information in the form of documents, interviews and observations which could all be used in one case study at the same time. This allows the investigator to gain a holistic and meaningful appreciation of the characteristics of real-life events – such as individual life cycles, organisational and managerial processes (Yin, 1994). It is for this reason that a case study was found relevant to investigate PA in PPPs as the investigation is going to yield a holistic picture of this dynamic phenomenon. However it has to be accepted as articulated by Yin (1994) above that there is a lot of criticism meted against a case study as a method. In the following section these criticisms will be discussed, justification will be made why they are mostly unfounded and at the same time justification of the adoption of case study method will be made. It was intended in this research to adopt case study as the main method of enquiry, but to accommodate the use of tools from grounded theory should the emergence of unanticipated phenomena during data analysis occur.

Utilising Grounded Theory methods within a Case Study

The tools of grounded theory are primarily concerned with analyzing interview transcripts, whereas case study methodology has the freedom to use other forms of data including interviews. However there are criticisms to both methods. Grounded Theory is criticized for the bias that is claimed to be prevalent in interviews. Case studies are also criticized for a number of reasons (see section 4.6.3 below). In this instance it was decided that case study would be adopted at the methodology, providing the framework for collecting the data, but that grounded theory tools for analyzing the data would be utilised. What unfolded during the research process was that case study was used primarily to assess

the manifestation of the PA behaviour among established consortia members (agents). When the shortcomings of the PA theory were observed in explaining the totality of the agents' behaviour, grounded theory methods could then be deployed as a supplementary analysis within the case study in identifying the presence of the unanticipated phenomenon and in the building of theory to explain the presence of that phenomenon.

When precautionary measures are taken to mitigate weaknesses in these two methods separately, it is proposed that their combined strengths will bolster their case against their traditional detractors. In other words the proposed approach is to have the case study as a main method but using grounded theory in the 'critical case' to generate theory, which will arguably give the 'critical case' even a wider acceptance. This approach is supported by Allan (2003) as being valid where the phenomenal being investigated is a contemporary one in a real-life context, where the boundaries between phenomena and context are not clear. It is argued here that such a situation exists in this research. As seen above in an argument presented by Benbasat *et al.* (1987) and will even be clearer below. (Section 4.6.3), that the idea of generating theory in case study is not novel.

However, it is also worthwhile for this research to briefly discuss also the tensions between these two methods. Yin (1994, p. 13) suggested that the case study 'benefits from the prior development of the theoretical propositions to guide data collection and analysis' whereas Glaser and Strauss (1967) insisted that a grounded theory approach should have no pre-conceived ideas or hypothesis. One of the criticisms of a case study as a research method is that one cannot generalize its findings but Yin (1994) defends an alternative position that case studies do lead to building theories applicable to the world at large. While grounded theory specifically attempts to investigate the real world, usually through interviews, it discovers the concepts grounded in the data and uses those concepts to build theory. Drawing from both of these methods, according to Allan (2003) minimizes the criticism of case study's lack of generalisability. There is therefore no anomaly between the use of a case study methodology with the

use of grounded theory tools in analysis, especially because, as Allan (2003) notes, both research methods collect data using interviews.

4.6.3 JUSTIFICATION OF THE LEGITIMACY OF CASE STUDY AS A METHOD

Flyvbjerg (2006) calls the following criticisms misunderstandings or oversimplifications of the case study method:

1. General, theoretical (context-independent) knowledge is more valuable than concrete, practical (context-dependent) knowledge
2. One cannot generalize on the basis of an individual case; therefore, the case study cannot contribute to scientific development
3. The case study is most useful for generating hypothesis; that is, in the first stage of a total research process, whereas other methods are more suitable for hypothesis testing and theory building.
4. The case study contains a bias toward verification, that is, a tendency to confirm the researcher's preconceived notions.
5. It is often difficult to summarize and develop general propositions and theories on the basis of specific studies.

4.6.4 General Theoretical Context-Independent Knowledge vs. Practical Context-Dependent Knowledge

In order to understand why in the conventional view the role of context-dependent knowledge found in case studies is criticized, it is important to grasp the role of cases and theory in human learning in general. According to Flyvbjerg (2001), research on learning shows that the type of context-dependent knowledge found in case studies help researchers, to develop from rule-based beginners to virtuoso experts. Secondly in the study of human affairs there appears to exist only context-dependent knowledge, which presently rules out any possibility of epistemic theoretical construction (*ibid.*).

Phenomenological studies of human learning demonstrate that adults take a qualitative leap in their learning process from beginner rule-governed use of analytical rationality to fluid performers of tacit skills (Flyvbjerg, 2006) in what Bourdieu (1977) calls virtuosos and Dreyfus and Dreyfus (1986) calls 'true human experts'. Flyvbjerg (2006) contests that people are experts in a number of everyday activities whether social or technical, like giving a gift or riding a bicycle. With giving a gift for instance we get to know when to give it and what gift is suitable to whom. Only few people reach the level of expertise in specialized fields like playing chess or flying a fighter jet. However common to all these experts is that they operate on the basis of intimate knowledge of several thousand concrete cases in their areas of expertise. Thus context-dependent knowledge and experience are at the very heart of expert activity. It is that very same knowledge that lies at the heart of a case study as a research and teaching method. It is in experience gained from cases that one can move from a beginner to an expert. If all training was based in context-independent knowledge and rules, such as the one found in textbooks and computers, people would remain at the beginner level in the learning process. This is where the limitations of analytical rationality lie; and this is inadequate for an exercise of a profession, research and for practitioners (*ibid.*). In teaching, well-chosen case studies help in bringing competence compared to context-independent facts and rules which just bring students to the beginner's level (Christensen, 1987). Nevertheless rule-based knowledge is not to be discounted as it is important in all the areas especially to beginners. But Flyvbjerg (2006) argues that to make it the highest goal of learning is regressive. Although there is a need for both approaches, the highest levels of learning are reached by the person's own experiences. Thus for research the closeness of a case study to real-life everyday experiences and its multiple wealth of details has two benefits. Firstly it gives a nuanced view of reality, and it yields a rich detail of human behaviour, which cannot meaningfully be understood as simply the rule governed acts, found at the lower levels of the learning process and theory. Secondly, cases are crucial for researchers own learning process in developing skills needed for good research. Concrete

experiences in case studies are achieved via continued proximity to the studied reality and via feedback from those under study. Lastly, the main point in connection with the learning process is that there does not, and according to Campbell (1975), cannot exist any predictive theory in social science. Social science has not succeeded in producing general context-independent theory, it can only offer concrete context-dependent knowledge. The case study is especially well suited for that purpose. That is why it was chosen to be a method in this research, because it gives that intimate in-depth knowledge that helps the researcher to capture the minute nuances of a complex phenomenon such as human behaviour, as PA problem is.

4.6.5 Lack of Generalizability of Case Study Findings

There is a prevalent view that one cannot generalize on the basis of one case, and this has always been considered devastating to the case study as a scientific method. Giddens (1984) for instance argues that the case study outcomes can only be acceptable if they are repeated across a number of cases (Giddens, 1984). According to Flyvbjerg (2006) this view is both appropriate and valuable, but it would be incorrect to assert that this is the only way to work, just as it is incorrect to conclude that it is impossible to generalize from a single case study. It basically depends on the case and how it was chosen. This applies to the natural sciences as well as the study of human affairs (*ibid.*).

To support this point Flyvbjerg (2006) takes Galileo's rejection of Aristotle's law of gravity. Galileo's rejection was consisted primarily on a conceptual experiment and later on a practical one. It was not based on a wide range of observations carried out in large numbers. Although the Aristotelian view of gravity held sway for 2000 years, it operated in a counter-intuitive way for Galileo. Galileo reasoned: if two objects with the same weight are released from the same height they will hit the ground simultaneously. If the two objects are stuck together the 'new' object's weight will be double the first individual two and it will hit the ground faster than the two separate objects. Galileo had a problem with this view

and the only way to settle this in his mind was to remove weight as determinant factor for acceleration in free fall. Although it is still debatable whether Galileo actually performed the famous experiment from the top of the tower of Pizza or not, the fact of the matter is that the issue was settled by a single experiment - a case (*ibid.*). Galileo's experimentalism did not involve a large random sample of trials of objects falling from a wide range of randomly selected heights under varying wind conditions and so on. Galileo's views were not fully accepted though, until half a century later with the invention of a vacuum pump (*ibid.*). Here two objects; a piece of lead and a feather were allowed to drop inside a vacuum tube at the same time, and they both hit the bottom at the same time. After this Aristotle's view could not be held any longer. But the matter was solved by a single experiment; an 'individual' case because of the clever choice of the extremes, a metal and a feather. This experiment might be called a 'Critical Case', in other words if Galileo's thesis held for these materials, it could be expected to be valid for all or a larger range of materials. Carefully chosen experiments (cases) and experience were also critical to the development of the physics of Newton, Einstein, and Bohr. The case study also played a pivotal role in the works of Darwin, Marx, and Freud. In the social science in the same manner (Flyvbjerg, 2006), the strategic choice of a case may greatly add to the generalizability of a case study. On the relationship between case studies, large samples and discoveries Beveridge (quoted in Kuper and Kuper, 1985, p. 95) had this to say: 'more discoveries have arisen from intense observation than from statistics applied to large group'. However this observation (Flyvbjerg, 2006) should not be taken to mean that the case study is always appropriate or relevant as a research method or large random samples are without value.

Generalisation, whether on the basis of large samples or single cases, is overrated as the premier source of scientific progress. Thomas Kuhn (1987) posits that what is an important precondition for science researchers is that they possess practical skills for carrying out their work, not any form of self-declared adherence to the hypothetico-deductive model of scientific inquiry. One of the skills they should possess is generalisation. Generalisation is one of the many

ways by which people gain and accumulate knowledge, but it does not mean that any knowledge which cannot be formally generalized cannot enter into the collective process of knowledge accumulation in a given field or even society.

A purely descriptive, phenomenological case study without any attempt to generalize can be of great value in this process. This is not to criticize and condemn formal generalisation, as it is sometimes the only and effective means of scientific development. The main point here is that there are limitations when formal generalisation becomes the only legitimate method of scientific inquiry. Eckstein (1975) has shown that if predictive theories would exist in social science then the case study could be used to test those theories just as other methods would. Walton (1992, p. 129) similarly observed that 'case studies are likely to produce the best theory'. According to Popper (1959) case studies are ideal for generalizing using the type of test called "falsification," which in the social science is part of critical reflexivity (Popper, 1959). Falsification is one of the most rigorous tests (Flyvbjerg, 2006) to which a scientific hypothesis can be subjected. If just one observation does not fit the proposition, the proposition is considered not valid generally and must therefore be either revised or rejected. Popper used in his seminal work this now famous example: 'all swans are white', and proposed that just one observation of a black swan was enough to falsify this proposition and stimulate further investigation and theory building. Because of its in-depth approach a case study is well suited for identifying 'black swans', because what appear 'white' may turn out to be 'black' on closer examination (*ibid.*).

4.6.6 Case Study only Useful for Generating Hypotheses

This misunderstanding about case studies derives from the previous misunderstanding that one cannot generalize on the basis of individual cases. It logically follows that if one cannot generalize on the basis of just one case, then the case studies are just useful in the initial stages of a research where a hypothesis is just generated. Eckstein (1975) contradicted this conventional

wisdom by asserting that case studies 'are valuable at all stages of the theory-building process, but most valuable at that stage of theory-building where least value is generally attached to them: the stage at which candidate theories are tested' (Eckstein, 1975, p. 80). The testing of the hypotheses is directly related to the question of 'generalisability' and in turn this relates to the question of case selection (Flyvbjerg, 2006).

Generalizability of cases studies can be increased by the strategic selection of cases (Ragin, 1992, Rosch, 1978). When the objective of the research is to obtain the greatest amount of information on a given problem or phenomenon, a representative or a random sample may not be the most appropriate approach. The typical or average cases are not the richest sources of information, but atypical or extreme cases are. This is because atypical and extreme cases reveal more information because they activate more actors and more basic mechanisms in the situation studied. Both from an understanding and an action-oriented perspective, it is often more important to clarify the deeper causes behind a given problem and its consequences than to describe the symptoms of the problem and how frequently they occur. Randomly selected cases will seldom produce this kind of insight; it is more appropriate to select few cases chosen for their validity (Flyvbjerg, 2006). The extreme cases are well suited for getting the point across in an especially dramatic way (Freud's, 2003; Foucault's, 1979). The lead and feather example cited above could be taken as a classic example of a critical case. In order to test whether different objects fall with equal velocity, the selection of materials provided the possibility to come up with a generalisation characteristic of critical cases: "if it is valid for this case it is valid for all (or many) cases." The same generalisation in its negative form could go like this: "if is not valid for this case, then it is not valid for any (or only few) cases."

But the major problem is, how does a researcher identify a critical case? This is equally difficult when answering a similar question, 'what constitutes a critical case'? According to Flyvbjerg (2006) this just requires experience as no

methodological principles exist by which one can identify a critical case. The best advice in locating a critical case is to look for either “most likely” or “least likely” cases. Those are the cases capable of either incontrovertibly confirming the proposition or irrefutably falsifying it (Flyvbjerg, 2006). A classic case of “least likely” case is Michels’s (1962) study of oligarchy in organisations. Here Michel chose a horizontally structured grassroots organisation with strong democratic ideas, an organisation one would logically think would have a low probability of being oligarchical. A test in this research would be “If this organisation is oligarchic, so are most others.” Conversely a “most likely” case is Whyte’s (1943) study of an Italian slum in Boston cited above. This society according to existing theory should have demonstrated a stark disorganisation, but in fact showed quite the opposite. If organisation exists here where it was expected not to exist then social organisation exists everywhere, or in most areas as discussed before. So from the above explanation it is clear that case studies can generate and test a proposition, which leads to theory creation. That puts them on par with other strategies as a legitimate scientific method.

4.6.7 Case Studies Contain a Subjective Bias

Another criticism towards this method is that case studies have a bias toward verification in that they give a researcher more room to use the method to confirm the preconceived notions. If this were true then case studies would have a doubtful scientific value. The bias towards verification is everywhere (Flyvbjerg (2006), but the accusation against the case study and other qualitative methods is they ostensibly give more room for subjective and arbitrary judgments than other methods. This stems from the fact that they are seen as less rigorous than quantitative, hypothetico-deductive methods. Experienced researchers like Flyvbjerg (2001, 1998), Geertz (1995), Ragin (1992), Wieviorka (1992) and Campbell (1975), have shown that this critique is fallacious, that this form of study has its own rigor, albeit different, but no less strict and thorough than the rigor of quantitative methods. The main advantage of case study is that it can

'close in' on real life situations and test views directly in relation to phenomena in practice.

The very researchers cited above who have conducted intensive, in-depth case studies typically report that their preconceived views, assumptions, concepts, and hypotheses were wrong and that the case material has compelled them to revise their hypotheses on essential points. According to these experiences cited above it is falsification, not verification that characterizes the case study. The issue of subjectivism and bias is a universal problem prevalent in all methods, not just case study or other qualitative methods. Specifically the element of subjectivism will be significant in the choice of categories and variables for a quantitative or structural investigation, such as a structured questionnaire used across a large number of cases. According to Flyvbjerg (2006) there is a high probability that firstly, this subjectivism will survive without detection throughout the study. Secondly, that this subjectivism will affect the results simply because the quantitative/structural researcher does not get as close to those under study as does the case-study researcher, and is less likely to be corrected by the study subjects "talking back."

If the researcher's work is to understand and learn about the phenomenon that is the subject of research, then research is simply another form of learning. Like all the other processes for the phenomenology for human learning, the most advanced form of understanding is only achieved when researchers place themselves within the context being studied. It is only through this way, the researchers can understand the viewpoints and the behaviours that characterize social actors. In other words a prerequisite for advanced understanding, which is close proximity, is undoubtedly afforded by the case study. Thus Beveridge's (1951) assertion cited earlier on, that intense observation in a case study environment leads to more discoveries, than statistics applied to large groups. With that crucial point of departure in the learning process, it becomes clear why researchers engaged in case studies end up casting off their preconceived notions and theories (Flyvbjerg, 2001; Beveridge's, 1951). The intimacy of a case

study and a variety of data collection methods and processes available in a case study, are adequate to give an 'advanced' knowledge about the human behaviour in the PA problem, and this justifies its utility.

4.6.8 The Difficulty of Developing General Propositions and Theories from Case Studies

Critics of the case study see the narrative contained in case studies as a drawback, yet it is through good narratives that complexities and contradictions of real life can be tackled. Most researchers admit that such rich narratives can be difficult even impossible, to summarize into neat brief scientific formulae, general propositions and even theories (Mitchel & Charmaz, 1996; Benhabib, 1990; Rouse, 1990; White, 1990; Roth, 1989) but to the case study researcher a "thick" and hard-to-summarize narrative is not a problem. It is, rather, considered as a sign that the study has uncovered a particularly complex problem. To counter the absence of a summary, it is worth asking the question whether the summary is always ideal or desirable. According to Flyvbjerg (2006) Narrative inquiries do not – indeed, cannot- start from explicit theoretical assumptions, they instead begin with an interest in a particular phenomenon that is best understood through a narrative. They then engage in developing descriptions and interpretations of the phenomenon, essentially from the perspective of participants, researchers and others (Flyvbjerg, 2006). A number of researchers have observed that is an ancient method and perhaps our most fundamental form of making sense of experience (Mattingly, 1991; Carr, 1986; Ricoeur, 1984; Novak, 1975).

Labov and Waletzky (1966) argue that when a good narrative is finished, "it should be unthinkable for a bystander to say, 'so what?'" (Labov & Waletzky, 1966, p. 37-39). Nehamas (1985) posits that every good narrator is continually warding off this question. It is not necessarily pointless to have a narrative that does not have a moral that can be briefly stated. If the narrative is rich it actually does not allow the question to be raised at all. What would have happened is that

the narrative has already supplied the answer before the question is asked; “the narrative itself is the answer” (Nehemas, 1985, p. 163-164).

For the reasons articulated in the preceding sections, it is clear that the case study is a necessary and sufficient method when investigating a complex subject such as human behaviour. The case study as a method holds up well when compared to other methods in the gamut of social science research methodology. The difference between qualitative and quantitative methods touted about in the bulk of literature is spurious. Both approaches are legitimate means of conducting research but it is the context and the question of the research that will determine the method. The advantage of large samples is one of breadth, whereas on the other hand their problem is one of depth. For the case study the situation is the reverse. The intention here was to gain an intimate knowledge of how organisations deal with BEE in PPPs and in order to find out how the PA problem plays out in this context. The only way to gain this kind of knowledge is to use a case study as a vehicle to start with that context-dependent knowledge, which leads to advanced knowledge of this phenomenon.

4.6.9 Validity and Reliability Design Tests

The demand on case study researchers to address the validity of the evidence they have gathered is no different from conventional inquiry (Polkinghorne, 2007). In conventional inquiry, the issue is the question of how well the scores produced by instruments are representative of the intended construct. In a narrative research such as a case study, the concern would be the clarification of what the narrated text is intended to represent (*ibid.*). Validity is explained in the following manner by Hammersley and Atkinson: ‘By validity, I mean truth: interpreted as the extent to which an account accurately represent the social phenomena to which it refers’ (1992, p. 57). In other words the reader of the research must be convinced that the narrative is depicting the truth of the matter not just the opinion of the researcher. In this research four tests were conducted to ensure validity.

1. Construct validity: according to Ruane (2005) a claim to construct validity is actually a claim to have accurately measured what was set out to be measured at the beginning of the research (Ruane, 2005). In this research construct validity was achieved by using multiple sources of data to assess whether there was any convergence in the findings.
2. Internal validity: internal validity, which is also known as causal validity, is basically concerned with the overall research design capability of detecting causal relationships when they exist. It means that the research is capable of genuinely demonstrating that changes in one entity are due to the changes in another (Ruane, 2005). Yin (1994) brings to the fore a second issue of inference every time an event cannot be directly observed. The argument is that inferences cannot be made until there has been a proper cross-referencing of all the sources of data to make the inference airtight. In this study apart from using multiple sources of data all the interview transcripts will be submitted back to the interviewees to increase accuracy and validity.
3. External validity: this deals with the problem of knowing whether a study's findings are generalizable beyond immediate case study (Yin, 1994). This is basically asserting that knowledge claims gained from the case study are generalizable (Polkinghorne, 2007). The traditional view has always been that with case studies you cannot, because of their bias to verification but as discussed above generalisation, in most cases can still emanate from a case study. The best way to achieve that is to select a critical case, because with a critical case by applying falsification (or verification) of the hypothesis reasonable generalisation can be achieved. Although this will not necessarily be universal, given the fact that in the construction sector there is no homogeneity of projects. But taking into account that PPPs are operating within a strict legislative framework one can reasonably predict that the findings could be replicated elsewhere where the same rules are applied. External validity was achieved by

selecting a critical case in PPPs. A critical case would be a project where the PPP BEE requirements are explicitly stipulated in bidding documents and have been adhered to. That is the “most likely” case, unlike the “least likely case” where the PPP BEE requirements are not elaborated and there are no legal requirements except the goodwill of the consortia in empowering PDIs.

4. Reliability: According to Hammersley and Atkinson (1992): “Reliability refers to the degree of consistency with which instances are assigned to the same category by different observers or by the same observer on different occasions” (Hammersley & Atkinson, 1992, p. 67). The objective here is to ensure that if a later researcher were to conduct the same study all over again, this later investigator should arrive at the same findings and conclusions. This is only achieved by systematically documenting all the processes and procedures used in arriving at the outcomes of the research. This thorough documenting minimizes the errors and biases of the researcher and increases the auditability of the research (Yin, 1994). A case study protocol was adopted and followed in this research in order to systematically approach the inquiry in a way that will leave a trail to any later repeat investigator.

4.7 CASE STUDY DESIGN AND PROCEDURE

The identification of a case is linked to the design of the study, as well as the specific properties of the actual case (Flyvbjerg, 2006). This is because logic must be maintained throughout the structuring of the research. This means that data to be collected must be able to fit within the created framework. In this section the design of the actual collection of data is described. The case units chosen are described, the analytical strategy, the case selection procedure, and the type of information relevant to this study are also discussed.

4.7.1 Unit of Analysis

There are two approaches in the case study method. One can either use a single case or multiple cases (Yin, 1994). Sometimes multiple cases are taken as a completely different approach in their own right when doing case studies. In this research a single case study was adopted. A single case was identified because of the depth of information embedded in its complexity. PPPs are highly regulated contracts so any contract administered under these strict regulations should be useful in shedding the light on the PA problem.

4.7.2 Analytical Strategies

1) Analyzing qualitative data involves examining, categorizing, or otherwise recombining the evidence, in a quest to address the initial propositions of the study. Is a good practice for every investigation to start with a general analytical strategy (Yin, 1994), as this prioritizes on what to analyze and why.

The following main strategies are usually used to analyze case study data:

- Pattern-matching
- Explanation-building
- Time-series
- Program logic models

In this research pattern-matching was deployed as a dominant analytical technique. This type of logic compares an empirical pattern with a predicted one. Internal validity is enhanced when the patterns coincide. Since this is a descriptive study the pattern was predicted prior to data collection. Yin (1994) encourages researchers to make every effort to produce an analysis of the highest quality. In order to accomplish this, he presented four principles that should be at the center of the researcher's attention.

- Show that the analysis relied on all the relevant evidence
- Include all major rival interpretations in the analysis
- Address the most significant aspect of the case study

- Use the researcher’s prior, expert knowledge to further analysis
- 2) Again, analysis specifically directed at the interviews with an intention of formulating a theory out of that type of data is summarized in Table 4:3 above. This draws from the Grounded Theory approach and which was only to be deployed if the need was perceived to arise (e.g. the identification of emergent or unanticipated phenomena) and operates almost in reverse to the traditional way of conducting scientific inquiry. This is because rather than beginning with developing a hypothesis, data in the form of interviews collected first. This data is then immediately transcribed as early as from the first interview. From this data key points are marked with a series of codes (Maykut & Morehouse, 1994), which will be extracted from the transcripts. In order for the codes to be more workable, those that portray similar concepts are put together under the same category. From this point the categories are cross-checked to see if there is no similarities between them, those that contain very close concepts are combined. The conceptual thread that runs through the categories is the basis of a theory from data. This is a form of reverse engineering, from the traditional approach where a theoretical framework is first chosen, and then applied to the studied phenomenon as the research proceeds.

Table 4:4: Four Stages of Analysis in Grounded Theory

<i>Stage</i>	<i>Purpose</i>
Codes	Identifying anchors that allow key points of the data to be gathered
Concepts	Collections of codes of similar content that allows the data to be grouped
Categories	Broad groups of similar concepts that are used to generate a theory
Theory	A collection of explanations that explain the subject of the research

4.7.3 Case Selection Procedures

The selection of a case is important in achieving the mission of the research. There are several important points to consider and they are summarized below.

A) Critical Case

The project used for this research was one of the few that were concluded before the PPP legislation in BEE was promulgated. Since there was not much in the way of prior experience to draw from, the government institutions decided to put stringent BEE requirements in order to test the practicality of such requirements and the market responsiveness thereof. When the *code of practice for BEE in PPP* (2004) was finally promulgated it had much lower BEE percentage prescriptions than this project's. For instance the BEE shareholding was set at 30% in the codes whereas this project required 40% BEE shareholding. The BEE requirements are fully met in this project from the shareholding level, sub-contractors and sub-subcontractors. The project's operational longevity of seven years qualifies it to be one of the oldest in South Africa enabling a proper tracking of BEE success, its high BEE prescriptions makes it amenable to high empowerment outcomes and its broad PDI inclusiveness (12 PDI sub-contracts) all present it as a 'critical' case. It was also decided to go for a project that included a wide range of skills and disciplines. It was thought that a case like this would be 'critical' enough as it includes a wide range of players both as agents (members of the consortia) and also a wide range of beneficiaries of BEE. The outcome of the analysis from this case would justify a question that says: "If this is not valid for this case, then it applies to no case" (see Table 4:5 below). In other words the outcomes would be strong enough to nullify the proposition at the beginning of the inquiry.

BEE is a process and this project was chosen among other reasons for the fact that it has been running for a long time and offers an environment where the effectiveness of the policy can be studied. The PPP projects in South Africa are from very many sectors and have different time spans. However according to the Treasury PPP Quarterly (1st Quarter, 2009) the projects signed in terms of Treasury regulation 16, as of 15th January 2009 are 19, and IALCH is the oldest of them all and, at R4.5 billion, the second largest after Gautrain (R23.09 billion) and which only commenced construction in 2006. They range from highly specialized fields like pharmaceuticals, fleet management, eco-tourism and

accommodation provision. As of 19th January 2010 the National Treasury (2010) have 84 projects in different stages of completion ranging from those at inception stage through to those that are fully operational. IALCH project longevity of operation and its size militates for its utility in assessing the PPP efficacy in BEE delivery.

Table 4:5: Strategies for The Selection of Samples and Cases

<i>TYPE OF SELECTION</i>		<i>PURPOSE</i>
A.	Random selection	To avoid systematic biases in the sample. The sample size is decisive for generalisation
	1. Random sample	To achieve a representative sample that allows for generalisation for the entire population
	2. Stratified sample	To generalize for specially selected subgroups within the population.
B.	Information-oriented selection	To maximize the utility of information from small samples and single cases. Cases are selected on the basis of expectations about their information content
	1. Extreme/deviant cases	To obtain information on unusual cases, which can be especially problematic or especially good in a more closely defined sense.
	2. Maximum variation cases	To obtain information about the significance of various circumstances for case process and outcome (e.g. three to four cases that are very different on one dimension: size, form of organisation, location, budget).
	3. Critical cases	To achieve information that permits logical deductions of the type, "If this is (not) valid for this case, then it applies to all (no) case."
	4. Paradigmatic cases	To develop a metaphor or establish a school for the domain that the case concerns.

Adapted from Flyvbjerg, 2006.

B) Project Access and location

Access to projects was established through personal contacts. In studying this topic over three years and researching on the same topic for a MSc degree, the

researcher had come into contact with a number of people working in both academia and industry. PPPs are a new area in South Africa and many role players in industry encourage research, assisting researchers as far as they can because they see research as being mutually beneficial to the research community and to them as practitioners. The location of the project was not an issue. However, because of the limited number of PPP projects in the operational phase, it was clear from the beginning that potential case studies would be located around South Africa.

4.7.4 Researcher/Interviewee Noise and Bias

Interviews formed a critical part of this research and through them respondents relate their lived experiences. It was not expected that their stories were going to be objective 'facts' but they were rather authentic accounts of subjective experiences. That is why as much as possible it was intended "to formulate questions and provide an atmosphere conducive to open and undistorted communication" (Holstein & Gubrium, 1997, p. 116). The intention was to obtain rapport with respondents and to avoid manipulating them (Silverman, 2006). This can be achieved by not asking leading questions that give respondents little room to fully express themselves in a way that articulates their personal experiences (Ruane, 2005). The only way to achieve this is by engaging in *epoche*. According to Katz (1987): '*Epoche* is a process that the researcher engages in to remove, or at least become aware of prejudices, viewpoints, or assumptions regarding the phenomenon under investigation. *Epoche* helps enable the researcher to investigate the phenomenon from a fresh and open view without prejudgment or imposing meaning too soon' (Katz, 1987, p. 36 -37).

Interviewees can also give contaminated information. This could be the result of noise (Ruane, 2005). Noise basically refers to non-patterned error in the measurement (in this case interview) process. It is a situation where there is no set direction to the error involved in the measurement process (*ibid.*). Sometimes respondents overstate certain things and sometimes they understate. If the respondents are tired, inattentive or inexperienced they will be responsible for

some amount of error in the measurement/interview process (*ibid.*). Noise, in research like this, can also be introduced by the researcher presenting poorly constructed interview questions and other poorly constructed measures of soliciting data. Excessively complicated measures, poorly designed measures or measures with vague directions can all contribute to noisy measurement (*ibid.*). According to Ruane (2005) noise has a “forgiving” characteristic in that the overstatements and understatements in the end cancel each other out. But since noise can come from very many sources, the main task of the researcher is to keep the noise levels as low as possible, to produce a “cleaner” data (*ibid.*).

Not all measurement error is as forgiving as noise is (Ruane, 2005). Error sometimes can be patterned, in other words the measurement processes are consistently in one direction as opposed to the other. In this situation the measurement processes are consistently overestimating or consistently underestimating the true value. This patterned error is known as bias. It is very difficult for bias to cancel itself out in the long run, so it is more problematic and undesirable to the research than noise. Bias just like noise can either come from the researcher or from the respondents. It can be built into the measurement instrument; in this case for instance questions can be phrased in such a way that a respondent is “lead” more to certain kind of responses over others. Though that might not be what they genuinely feel. The choice of a subject especially if it is sensitive one might unwittingly introduce bias. In a sensitive topic like BEE in South Africa, there might be a tendency for respondents not to answer honestly but to give answers that they think the researcher would want to hear. This phenomenon is known as the “social desirability bias” and can distort findings in the direction of social expectations.

To curb the problems mentioned above as many people as possible from the leading members of the consortia were interviewed particularly from senior and middle management because they are the ones who are best placed to hold a view of what is going on, and what the legal requirements of the contract regarding BEE are. The evidence they gave was corroborated by data from

companies, which are not related to them and also those who are coming from completely different disciplines in the consortia. All the beneficiary shareholders and managers were interviewed to gain an understanding of their BEE experience in PPPs. A greater participation was considered to be critical for this category of respondents as most of them might not be very educated, so their expectations might not be what the regulations stipulates in as far as BEE is concerned. Special questions were designed for this category of respondents and through feedback it was found whether they really understood what the question required. This was done to remove complications from the questions, so that noise would be lessened. One has to recognize that in the context like South Africa where the economy is stratified along racial lines there is always going to be resentment from one side of the color bar and denial from the other, such that in the end bias from the respondents' perspective was going to be difficult to do away with completely. More so because there is a distinct dichotomy in the ownership of companies in South Africa in general, PPPs included. The BEE government agents (leading consortia) are almost all white and all the beneficiaries are coming from the PDIs.

4.7.5 Research Procedures

In this section of the research an overview of the relevant steps, requirements and tasks necessary for the good conduct of the this case study is elaborated.

1. A background to the research that includes a proposition for the research problem.
2. A literature review of BEE, PPPs and PA problem. All these areas are contextualized into the construction industry.
 - a. Define BEE and how critical the construction industry is in this policy.

- b. Elaborate PPPs as procurement method with a bias to the construction industry.
 - c. Defined the PA problem and contextualize it to the construction industry PPPs.
 3. Provide a case study interview design protocol
 - a. Develop a case study protocol that contain the instrument but also the procedure and general rules that will be followed in using the instrument
 - b. Provide an outline of the case study including the objective and particularities of the case
 - c. Develop procedures and general rules for the data collection on location.
 - d. Develop case study questions related to the research hypotheses
 - e. Design a guide for the case study report.
 4. Perform the research:
 - a. Select a PPP project which has a wide range of disciplines and has the largest number of BEE beneficiaries
 - b. Identify potential sources of data. For this research leading members of the consortia will be interviewed as well as all (most) the BEE beneficiaries if possible.
 - c. Carry out the case study interviews to collect data

5. Case study analysis procedures:

In this research pattern matching of the participants' answers and documents, which form part of the data was the dominant analytical technique. The chosen

strategy was to follow the theoretical proposition that led to our case study. The objectives and initial design of this study was based on propositions, which in turn reflected the research question, the literature review and new insights. A variety of different kinds of data was collected and all the gathered information was analyzed, the analysis was concerned with finding a pattern in the data that was going to fit in with the initial 'hunch' that led to this study in the first place.

The second approach was to concentrate on analyzing transcribed interviews separately using grounded theory. This was done in order to triangulate the findings of the above method and in support of a claim that the case study is a triangulated strategy (Tellis, 1997). The application and combination of several research methodologies in the study of the same phenomenon is called triangulation. Tellis (1997) assertion that a case study is a triangulated strategy addresses the issue that the results obtained by a case study are better verified by a different method to increase validity. Stake (1995) states that all protocols used to ensure accuracy and alternative explanations are called triangulation. This arises from the ethical need to confirm the validity of the processes. According to Yin (1984) this could be achieved by multiple sources of data, which was achieved by using other methods, including interviews initially in this study. It can also be achieved by deploying different methodologies (Feagin *et al*, 1991).

The grounded theory analysis includes searching for concepts behind actualities by looking for codes, then concepts and finally categories (Allan, 2003). The coding process was done whenever a word or a phrase that is related to empowerment, attitude of agents towards empowerment and the mandate of the project to empower PDIs is mentioned. This is then described in a short phrase; a descriptor phrase called a code. A method adopted is one recommended by Strauss and Corbin (1998a, p. 65-68) where coding is done by 'microanalysis which consists of analyzing data word-by-word and coding meaning found in words and groups of words (phrases)'. The codes that convey similar concepts are grouped together in one category. After assessing the contents of the categories sub-categories are created or completely new categories are formed.

The old ones might be redundant to the research in which case they will not be used. The theme that emanates from these categories is generalized into a theory that is grounded in data.

4.8 CASE STUDY PROTOCOL

4.8.1 Case Study Protocol Importance

A case study protocol is important because it firstly (Yin, 1994) reminds the investigator what the case study is all about. It also forces the investigator to anticipate several problems that might appear including that of how the case study report might be completed. It is also a major tactic in increasing the reliability of a case study, as it provides a track and a trail. Yin (1994) suggests that it should include the following sections:

- An overview of the case study project (project objectives and auspices, case study issues, and relevant readings about the topic being investigated);
- Field procedures (credentials and access to the case study site, general sources of information, and procedural reminders);
- Case study questions (the specific question that the case study investigator must keep in mind in collection of data, table shells for specific arrays of data, and the potential sources of information for answering each question), and;
- Case study report guide (outline, format for the narrative, and specification of any bibliographical information and other documentation).

4.8.2 Case Interview Structure

It was decided in this research to adopt an 'open interview guide' instead of an 'interview schedule'. An interview guide or "aide memoire" is a list of topics themes or areas to be covered in semi-structured interview. This is normally

created ahead of conducting the interview, but it is constructed in such a way that it allows flexibility and fluidity in the topics and areas covered. It is an acknowledgement that flexibility cannot be achieved with a rigid list of interview questions. On the other hand the interview schedule is the guide that the interviewer uses when running a structured interview. It is basically made of two components. A rigid set of questions structured to be asked exactly as worded and instructions to the interviewer as when to proceed through the questions (Lewis-Beck, Bryman, & Liao, 2004) . Thus the interview schedule is used when the researcher is interested in standardizing the process and making the experience the same for all the respondents (Ruane J. M., 2005).

In this research interviewees were basically asked to relate their BEE experiences and the extent of their involvement in the project from its inception. Instead of writing a set of detailed questions and probes, broad interview questions were posed where the interviewee is given the freedom of full expression with only occasional probes from the interviewer to give the interaction some form of direction and purpose (Patton, 1990). With this posture the intention was to discover what was important to the interviewees, within the broad boundaries of the interview topics and questions, and pursue these new discoveries in the interview (Maykutt & Morehouse 1994). The rationale was that interviewees would be better placed to highlight important points about BEE in PPPs and the researcher can only get insights from the interview interaction.

4.9 SUMMARY

The main intention of this chapter was to introduce and discuss different research paradigms and critically discuss the methodology suitable for this research. A case study was identified as a suitable method to study the manifestation of a PA theory in a PPP hospital project. However the use grounded theory tools was advocated as appropriate to bolster theory building should the PA theory not be adequate to explain all the behavioural manifestations of the agent.

Consequently a phenomenological approach with a case study method that utilises grounded theory tools was chosen.

University of Cape Town

5 DATA ANALYSIS

5.1 INTRODUCTION

This chapter presents the Inkosi Albert Luthuli Central Hospital (IALCH), a referral hospital located in Durban Kwazulu Natal. The analysis of the project concerns the BEE initiatives adopted by the government and implemented by the IMPILO consortium who are the concessionaires on this PPP project. Secondly, it examines the behaviour of the consortium as a direct response to the government requirements and analyses those behaviours through the lens of Principal Agent theory and later principal steward theory. Chiefly in the Principal Agent theory, opportunism in the form of adverse selection and moral hazard are analyzed. During the implementation of the project, the analysis will concentrate on whether the consortium (agent) has made any shift towards steward behaviour in the implementation of BEE. All throughout the project the beneficiaries' posture with regards to empowerment will be under focus. Finally the role of monitoring in inducing compliance will be analyzed throughout the project operation.

The factors mentioned above encapsulate the main tenets of Principal Agent theory and are used as a guide to evaluate BEE implementation success/failure in the project. Consequently the chapter is structured around the main areas of analysis of adverse selection analysis (ASA), moral hazard analysis (MHA), monitoring analysis (MA), beneficiaries' behaviour analysis (BBA), empowerment analysis (EA) and agent behaviour shift analysis (ABSA). The analysis boxes describe the conclusions of the analysis from the project as it progressed, and each box represents any of these factors as and when they are applicable. The boxes are to be read sequentially to have a broad picture of the concept as evolves. Thus at certain instances some analysis boxes will not be utilised if their applicability at that particular stage is not suitable. This approach to analysis has successfully been applied by Rintala (2004) for his PHD thesis on the economic efficiency of PFI (UKs PPPs) projects. In Rintala's (2004) work the opportunity

analysis (OA), incentive analysis (IA) and solution analysis (SA) were utilised among others in three case studies to assess the economic benefits of PFIs in comparison to traditionally procured projects. The particular focus of Rintala (2004) study was the effects of PFI procurement on the heating and ventilation design solutions of the project-facilities. It was that study that provided a lot of inspiration and also guided the identification of that particular analysis approach as suitable, because in this research there are also important theoretical factors that have to be evaluated at each phase of the project to assess the impact of the PPP approach on the BEE delivery.

5.1.1 Research Analysis Overview

The analysis is structured in such a way that it takes the reader through the early stages of the project when the project was conceptualized by providing the background of the project and the legislative environment in which it was conceptualized and implemented. The analysis then looks at the tender stage and its input on the empowerment of the PDIs. The main focus on the BEE beneficiaries is on the women amongst the consortium shareholders and the management of the two women-run companies who comprise the women's group in the consortium. The PDI sponsor company is not regarded as an emerging black-owned enterprise because he has been involved in other PPP projects as a shareholder and could be regarded as already empowered. After the tender stage the internal contract arrangements and their contributions to enhancing the practical participation of BEE beneficiaries are discussed.

The operations stage of the project is divided into the early days and latter period of operations. The early operation days are ascribed as such because it was a time when a lot of contractual practicalities were first appreciated by the women PDIs. It was also a time when a lot of misunderstandings between women PDIs and other consortium partners were dealt with and this resulted in the practical BEE posturing of established companies and women's group PDIs alike for the rest of the project. The 'later operations' stage followed and was guided by initial BEE posturing adopted by established companies and women's group PDIs. It is

also the stage of the project where the results of the implementation strategies can be systematically studied because they run for a long time. Furthermore it is a stage that provided a lot of data into the benefits and efficacy of the PPPs in BEE delivery. The last section of the analysis provides a reflection on the benefits of the project through the eyes of the BEE beneficiaries and government officials and provides new insights into the improvements that could be put in place for new PPP projects to enhance BEE benefits.

All the data is based on the transcribed interviews from respondents, which were transcribed in their totality after twelve hours of interviewing. During the transcription process the *Nvivo* software programme was used to code all the necessary excerpts from the transcriptions into different categories that ultimately followed the same pattern of the project phases explained above. Each category was compared for its similarity with other categories and where there was not much difference the categories were merged to form a sub-category within a particular project stage. The categories that were substantively different but fell under a particular project stage were used to form new sub-categories. All the sub-categories were analyzed using the lenses described above to assess the BEE outcomes, agents' (established companies) behaviour in BEE implementation, beneficiaries' behaviour and the PA problem (opportunism) mitigation mechanisms with regards to BEE. The analysis was used to test the applicability and suitability of the PA theory in explaining established companies' behaviour in PPPs. Any deficiencies were augmented by the incorporation of the PS theory, and the development of a new theory, which is explained in detail in the next chapter. There were booklets and videos about the operation of the facility that the writer was exposed to although in the end they did not add materially to this research, as they were concerned about the technical operations. The analysis itself starts by giving a project background and the legislative environment in which it was formulated.

5.2 BACKGROUND

5.2.1 The History of IALCH

At the time this project was formulated the Kwazulu Natal provincial government and the national government were recovering from the huge over-expenditure incurred by the previous Apartheid regime. In response to the constraints that this imposed on public expenditure, the National Treasury had started investigating innovative ways of providing government infrastructure without necessarily over-spending the limited allocations. When it was found that R800m was needed upfront in order to build a modern referral hospital in Durban, the Provincial Treasury similarly tried to look for other innovative ways of financing the scheme. One of the provincial treasury officials who instigated this approach related the project background in the following words:

“From conceptualisation actually.... You see at Treasury we were coming from a situation where we were recovering from huge over expenditures, in previous years. And we started looking at ways and means of building government infrastructure without necessarily spending the scarce allocations. Which in itself was a serious balancing act because you needed to balance up what you deliver versus the available resources and we found that at the time to deliver this level of infrastructure or project or infrastructure you would have needed upfront something in the vicinity of 800 mil. ...And National Treasury on the other hand had just spend a bit of time and resources in PPP but related to road infrastructure. And when we engaged with National Treasury and colleagues at the National Treasury they felt that we could try and look closely at this PPP we then decided to give it a go. At the time we needed cooperation of National Treasury, National Health, Provincial Treasury and Provincial Department of Health. So the four of usthen we were together. Why we needed National Departments is that on the policy space there was a bit of a vacuum. Particularly on the medical management side, because here you would have a private party that will more or less have unfettered access to

records including people's medical records. So you needed just to see how you deal with those kinds of aspects. And we also needed the National Treasury because it was the first time a province would do a PPP. But also there were certain restrictions in terms of the law at the time. It was only a National Treasury which could approve a PPP project without reference... in other words the province couldn't do it without reference to the National Treasury. So that is why we needed the National Treasury, so they literally had to approve the project in each of the stages as we went along. Now the hospital had actually been built already at the time. The basic infrastructure was there... the brick and mortar were there". [Government official-T]

The fact that the structure of the building was already put up when the decision to take a PPP approach was taken was regarded as an anomaly by the official but in actual fact there a lot of PPPs where the government transfers infrastructure to the private sector just for operation. They however had to pay money for a condition audit before the consortium could agree to take over responsibility for the new building.

"The fact that the buildings were secured using Traditional Procurement did not give us an opportunity to optimize on the benefits of a PPP. You could look at it that way, but you could also look at it at the way that says well given...it being the first PPP maybe that was the best way to start. Because the issue of managing risk would have been better managed if you have a project that ...at least the walls were there. However it has its own difficulties in that the PPP private party refused to accept risk on the building that was already standing. They had to do awhat they would call a condition audit. Which would then give them a sense of what is the condition of the building they are taking. They asked us to spend a bit of money to fix it here and there so that they can take it and accept risk. So that is how we got around the issue of building being built with the traditional project from the beginning". [Government official-T]

The novelty of this approach to the procurement of hospital services meant the National Treasury had to approve each and every stage of the project as it progressed. Prior to this a substantial amount of preliminary research was undertaken by the provincial Department of Health particularly on experiences gained in other countries. The UK Private Finance Initiative (PFI) model was a source of inspiration for the implementation and execution of IALCH. A high-ranking envoy of Health MEC and the Health Chief Finance Officer (CFO) were sent to London in 1996 to assess similar work that had been undertaken in the UK. In 1999 a larger delegation comprised of high-ranking Provincial Health and Provincial Treasury officials was also sent to the UK to carry out further research into this Initiative

After consultations between Provincial Health and Treasury departments a decision was taken to implement a PPP arrangement for the provision of a hospital where patients would be admitted only on referral basis, with direct ER admissions on extreme cases. The approach adopted here at IALCH was that the government would be responsible for all clinical staff (doctors, nurses, medical specialists) but all the support services, medical equipment and consumables would be supplied and maintained by the private party. This site which is situated not far from the N2 highway is easily accessible and it is about 20 minute drive from Durban CBD see Figure 5:1 and Figure 5:2 below.

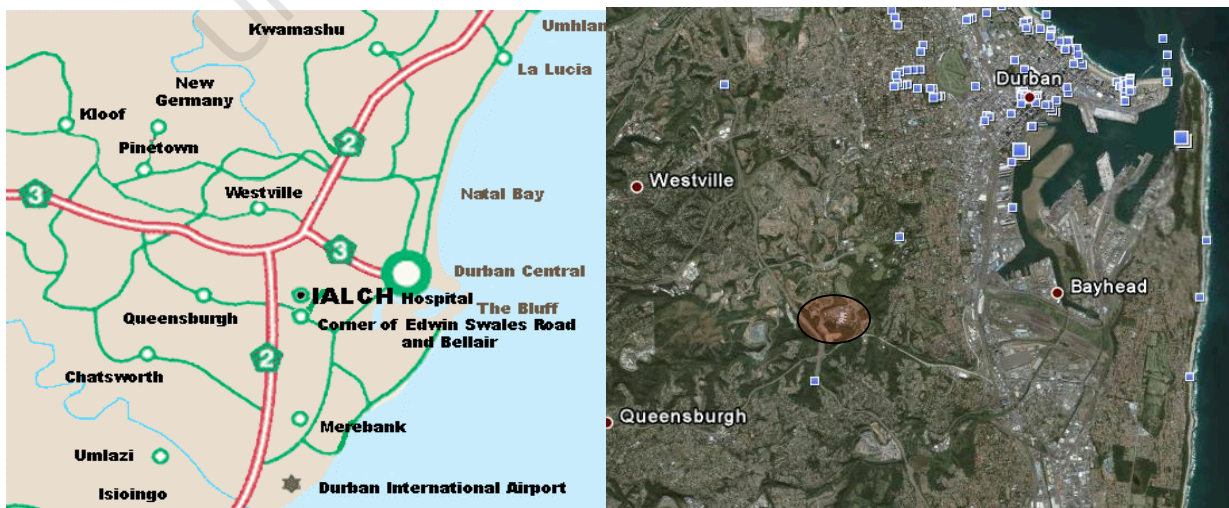


Figure 5:1: Map and picture of Durban [adapted from googlemaps]



Figure 5:2: Aerial view of the hospital [adapted from googlemaps]

5.2.2 BEE Legislative Framework During IALCH Implementation

The overarching BEE legislation in South Africa since 1996 has been the *Constitution of the Republic of South Africa Act No. 108 of 1996* (South Africa, 1996). Chapter 13 of the constitution, which deals with finance under section 17, deals specifically with procurement and it is framed in the following manner:

- 1) When an organ of state in the national, provincial and 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.

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

The constitution made general provisions and specific legislation had to be promulgated in the country to deal with mechanisms of implementing this constitutional stipulation. Thus in 2000 the *Preferential Procurement Policy Framework of 2000* was promulgated. The main intention of the act was to give effect to the means of procurement policy contemplated in section 217(2) of the constitution cited above. The Preferential Procurement Policy served as a basis for selecting the suitable consortium for IALCH project. The legislation required that an organ of state must determine its preferential procurement policy and implement it within the following framework.

- a) A preference point system must be followed.
- b)
 - i. For contracts with a Rand value above a prescribed amount a maximum of 10 points may be allocated to specific goals as contemplated in paragraph (d) provided that the lowest acceptable tender scores 90 points for price.
 - ii. For contracts with a Rand value equal to or below a prescribed amount a maximum of 20 points may be allocated for specific goals as contemplated in paragraph (d) provided that the lowest acceptable tender scores 80 points for price.

The Act stipulates that among others the Act may include specific goals such as they appear under section 1 (d):

- i) Contracting with persons, or categories of persons, historically disadvantaged by unfair discrimination on the basis of race, gender or disability.

Section 1 (e) requires that any specific goal for which a point may be awarded, must be clearly specified in the invitation to submit a tender. Hence a cited stipulation at IALCH that the contract must accommodate new entrants: *“I’ll tell you where we were involved since we were newcomers, and a lot of the requirements of the tender were that the consortium should accommodate new entrants”* [Women’s Group participant-M]. There was also a clear stipulation that women be invited to participate in this project as their gender represents a category that was previously discriminated from the mainstream economic activities, especially black women who were previously secluded under apartheid. All the PDIs who were invited were supposed to be included at all levels of the contract. One of them attested to that in these words: *“when I read the tender document it said BEE parties had to be involved at all levels both management and operational”* [Women’s Group participant-M].

During the time when this project was tendered the National Treasury were busy formulating *Codes of Good Practice for BEE in PPPs* which were later promulgated in 2004. The codes are more suitable for the PPP climate but the ideas that drove the formulation of these codes were tested and implemented at IALCH. The government officials who were involved at the time took IALCH as a test case for the practicality of these codes.

“We were very interested in setting future policy. So I would say the major outcome of this for us is the BEE targets in major areas. So that is in ownership, in employment, in sub-contracting value, in even quite detailed stuff like black women in management et cetera. These targets were achievable and as a result with projects like Albert Luthuli we then were with confidence issued the Code of Good Practice in 2004” [Government Official-D].

The main areas of emphasis that eventually informed the structuring of the *Code of Good Practice of BEE in PPPs of 2004*, were black equity, black management and employment, sub-contracting of black owned enterprises and Local socio-

economic Impact. Black equity meant active equity (as opposed to passive equity) where black shareholders were expected to have direct day-to-day participation in the management and operations of the project. “Black management” in this context is means the practical ability of black managers to direct the cause or direction of the business and management policies or practices of that enterprise. Employment equity was informed by the *Employment Equity Act, No. 55 of 1998*. Section 2 of this Act stipulates the purpose of the act in the following manner:

- 2)
 - (a) Promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and
 - (b) Implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels in the workforce.

The purpose of this act was to forge compliance and give effect to the constitution. It basically drives for a racially representative workforce, which mirrors as much as is practically possible the racial composition of the peoples of South Africa. At IALCH the interpretation of the act meant that black people had to be represented at all levels of the contract structure. At shareholding level, sub-contractor level and sub-sub-contractor level black people had to be represented either through employment in established companies or through ownership of black enterprises and/or as employees at sub-sub-contractor level as contracts managers. This is attested to by one of the BEE beneficiaries: *“when I read the tender document it said BEE parties had to be involved at all levels both management and operational”*. [Women’s Group participant-M].

Another area of focus was the sub-contracting of black-owned enterprises. At IALCH *“a lot of the requirements of the tender was that the consortium accommodates new entrants”* [Women’s Group participant-M]. So the PDIs were

expected to play a role as sub-contractors at operational level in both second tier and third tier. All the companies that were not owned by the PDIs consortium shareholders had to be BEE companies. A company is regarded as a black business enterprise when 50.1% of the company is beneficially owned by black people and within which black people exercise substantial management control. The same requirements of employment equity and BEE management stipulations still applied for the employees from these sub-contractor companies assigned to work at IALCH.

On the issue of local socio-economic impact the companies had to devise strategies that will promote positive local socio-economic impact from the project to benefit the most marginalized members of the local community (i.e. disabled, youth, and the aged) within a targeted area of project operations. The main aim of this element was to ensure that the project is tangibly experienced in the neighborhood in which it was operating. Chiefly among the requirements of local socio-economic impact at IALCH was that 60% of all unskilled workers at the hospital should come from within 100km radius of the hospital.

The IALCH project was thus implemented amidst the afore-mentioned legislative climate and the bidders had to comply with all these in a competitive climate with other consortia. The requirements of the Acts discuss above were implemented in all the stages of contract procurement discussed below. The Provincial and National governments through their counterpart departments of Health and Treasury put BEE at the center of project delivery using available legislation while at the same time the National Treasury was working on a directly suitable *Codes of Good Conduct For BEE in PPPs* which were later promulgated in 2004.

5.2.3 PPPs Tendering Process

The tendering process at IALCH was initiated by the issue of a Request for Qualification (RFQ). This was a document issued by the Provincial Treasury to invite all the interested bidders in this project to submit their profiles for pre-qualification. It was a stage where besides the technical adequacy the

companies were also assessed on the basis of their BEE status. If the company was found to be technically compliant but had submitted an inadequate BEE document, they would be disqualified at this stage and not been shortlisted in the companies that were invited to bid in this project later.

The next stage immediately following the one above was a stage where the government issued the Request for Proposals (RFP). At this stage the bidders had to elaborate their approach to contract implementation and in detail describe the methods they would adopt to accommodate the PDIs and their skills transfer strategies. Because of the level of detail required at this stage a longer time (i.e. 6 months or above) is given than the RFQ stage. At this stage the government would be acting with a lot of insight on what the private sector is expecting from the project as they were requested to comment on the project requirements on the previous RFQ stage. The intrinsic nature of PPPs of including a lot of different players in the project means a lot of companies have to come together to form a consortium and enter into a lot of agreements that governs their relationships for the duration of the project. This necessitates the use of a lot of professional advisors in the form of legal advisors, financial advisors and others who all come under the umbrella term of transaction advisors. The government in turn relies on the advice of its own contracted transaction advisors as there are a lot of unique specialized elements that would not necessarily be adequately dealt with by government's own procurement officials. The issue of BEE was emphasized in the RFP documents and the government ensured that there is no ambiguity on its centrality in this project. When all the bids were submitted the government evaluated the bids and nominated a successful bidder.

When a successful bidder was nominated the government entered into the next stage of Negotiations. This stage is very important as good negotiators can make gains and induce some claw-backs on bid requirements in an environment where there is no competition from the other bidders, although the normal practice is to have the next preferred bidder as a reserve in case there is a deadlock in the negotiations. To keep the reserve team together they are normally paid for the

duration of the negotiations. Negotiations in PPPs can sometimes drag on for months (up to 6 months) as the contract details are elaborated and aligned with the expectations from both sides. At IALCH the government was very emphatic at this stage that no dilution of the BEE elements would be accommodated. BEE was brought to the centre of project implementation and all the established companies comprising the consortium were clear that any infringement on this issue could easily jeopardize the contract irrespective of the soundness of the technical implementation of the project. Thus the government took charge of the project structured to ensure its alignment with its BEE economic policy.

5.2.4 Government Initiative in Project Structuring

The government through the national and provincial departments of Health and Treasury had to rely on what had been done overseas, in the UK PFIs and follow the experiences of few PPP projects that had been completed then. The government's main intention was not just to procure a hospital using private funding but it was also to take that opportunity to deliver a world-class referral hospital that could compete with any in the private sector. After the PPP route was decided upon the government's secondary socio-economic implementation strategy was to ensure that there is a substantial BEE involvement in the project from the start and that is what they did in formulating the bidding documents and emphasizing in negotiations. This project served as a blue print of the later PPP projects as the government was keen to see if their BEE targets were practical and achievable. It was intended to provide a lot of insight into the BEE practicalities in PPPs but at the same time, the government wanted to get it right the first time. Thus IALCH project was used as a platform to empower the previously disadvantaged individuals/institutions (PDIs). The government considered this as central to the whole project and any infringement on this issue could lead to a technically compliant bid being rejected, as the BEE policy conflated infrastructure provision with empowerment. The empowerment goal and the mechanisms to achieve it are going to be traced in this analysis, by filtering through the behaviour of three critical players in this endeavor; the

established conglomerates, the government and the PDIs (particularly the new women entrants). The analysis will just concentrate on the tender stage, negotiations stage, internal negotiations and share apportionment after award and operations stage in all its phases till now -2009.

5.3 TENDER STAGE

The IMPILO consortium which finally won the 15-year concession project to operate IALCH is headed by a black CEO. The CEO through his company Vulindlela Holdings had earlier been involved in the Mangaung maximum prison PPP project in Bloemfontein and the experience gained served as a platform for their interest in this project. Vulindlela invited all the other eventual members of the IMPILO consortium and could be regarded as consortium sponsors. This is how the CEO describes his role:

“My role....I mean... I was heavily involved form the project inception. I brought together most of the parties that ended up forming IMPILO consortium I mean all the relevant elements I can safely say that I was the common denominator I knew or I got to know almost everyone in the group before the others...even before the group was formed. We were fortunate even then in that we were not new. We have had some involvement in PPPs. I mean we had closed the privateprison in Bloemfontein”. [IMPILO Consortium shareholder-T]

Vulindlela invited the Siemens Group to partner as medical equipment suppliers and they also invited AME to supply and maintain the IT infrastructure in the hospital. AME innovative contribution has set a milestone in hospital operation not only in South Africa, but the rest of Africa by delivering the first paperless hospital in Africa; most of the patients' medical records are kept and accessed electronically. Drake & Skull was also invited to take charge of all the Facility Management (FM) activities in the project. There was a strong requirement in the tender document for women to be involved in this scheme at all stages, as consortium shareholders, sub-contractors and sub-sub-contractors so Vulindlela

invited two companies owned and run by women, which were basically new entrants in PPPs. One was Mbekani, a company owned by a qualified medical doctor who left medicine to pursue business interests. Prior to being involved in this project, she had completed an MBA, and was working at an investment bank. However she was also nurturing her fledging businesses. Her business interests now range from property, pharmaceuticals and casinos. Mbekani is one of her companies and is involved in IALCH in running the Central Sterile Supply Department (CSSD) together with Theatre Sterile Supply Unit (TSSU). The other company Omame is an investment company started by a group of young professional women, who had a keen interest in business. At the time of the tendering of IALCH their interest was in investment although they had dabbled in catering for weddings, funerals etc. But they could largely be considered to have been a start-up company at that stage.

5.3.1 Invitations to PDIs

Vulindlela invited the two women companies with Vulindlela's CEO having known the key players socially. The response was positive as the women saw this as an opportunity to be involved in a large high profile project and as an opportunity for them to grow their businesses. Together, Vulindlela, Mbekani/Omame (women's group) and international players formed a consortium called IMPILO, and the structure was as shown in Figure 5:3 below. At this time the consortium had all the BEE requirements as stipulated by the government; the sponsor was a PDI, and there was women representation. Siemens the German company, which specializes in medical equipment, created Siemed specifically for this project, so Siemed could be regarded as a subsidiary of Siemens. Drake and Skull (D&S) is a UK Facility Management (FM) company with a strong South African presence. AME is an Austrian Information Technology (IT) company, which introduced the first paperless IT system in South Africa through this hospital.

It would appear that social acquaintances are the way most PDIs get involved in PPPs as one of the established shareholders managers elaborated.

“Let me give you an example of what we did at other PPPs, We went out and we approached people ok. we knew that there was a requirement on the BEE side and we needed to have a partner to get this contract that we tendered for. So we approached people, and how we approached people there was no specific criteria at a time. In terms of how we will identify people it was more about directors CEOs in our board, that would say we know people that are already involved with empowerment projects.” [IMPILO Consortium shareholder-D]

“But really the criteria was more that we would identify people, instead of say advertising or tendering, and saying we are looking for partners. In my experience ... that hasn’t ever happened.” [IMPILO Consortium shareholder-D]

One of the women directors attested to that view:

“Yes we knew him before that is how we got involved..... Socially”.
[Women’s Group participant-O]

The second one gave a similar view:

“I happened to know Vulindlela director through a relative of mine, and I was already inclined towards business”. [Director Women Group-M]

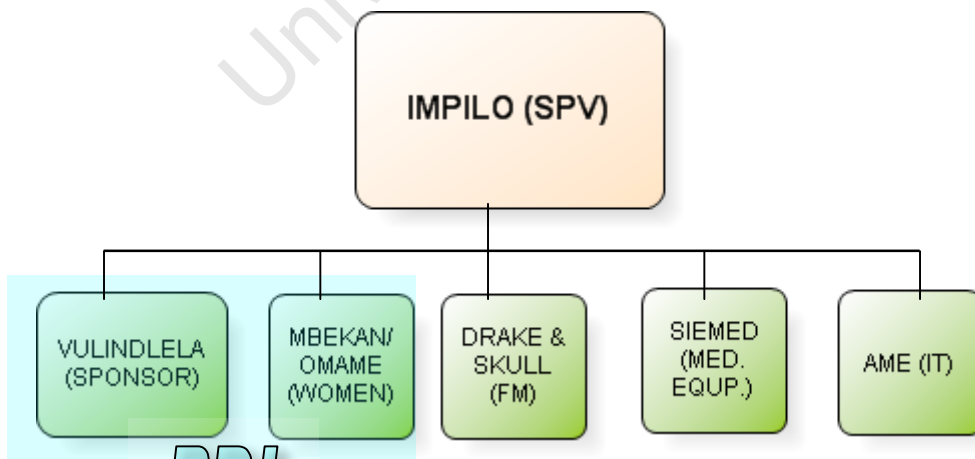


Figure 5:3: Consortium structure during tendering

ADVERSE SELECTION ANALYSIS (ASA/1)

It appears that in PPPs PDIs get involved through personal acquaintances and connections; there is no systematic way of involving the PDIs. In traditional procurement, PDIs get to compete in a transparent manner. But where the formation of consortia is required when bidding for jobs using the traditional forms of procurement the connections could still be playing a bigger role. Although there is nothing wrong with this since all good business people have/make good connections it might lead to adverse selection where the major players might collude with PDIs to window-dress BEE. It also does not give PDIs enough time to prepare to get into the scheme and strategize to their own advantage, especially if they are a new enterprise they might not have adequate time to prepare for involvement, as it is natural to grab an opportunity with a hope that it would yield a lot without actually interrogating the implications of that involvement.

5.3.2 Tender Documents Compilation

The tender process involved an elaborate structuring of the financial models and the integration of the project processes. All the strategies were organized with a sole purpose of presenting a winning bid accommodating all the government's requirements including BEE. The first stage was the Request for Proposal Qualification (RFQ) stage where the tenders were checked for their initial technical profile and their BEE qualification. This stage was fairly brief and as it dealt with mainly ensuring the commitment of bidders to the project. Even if a consortium could be found technically compliant at this stage they would be disqualified if they did not include PDIs in a format and role required by the government. Once this was done the next stage was the Request for Proposals (RFP) stage. This was the stage where a lot of work that comprise the bid package was structured. Immediately after their invitation, the PDIs started attending meetings where bidding documents were compiled. Since they were new businesses this was a very new experience for them.

One of them said:

“In terms of writing and collecting all the information that is required for the tender our role was limited. We were not involved in terms of collecting information and actually sitting down and putting together a tender”. [women’s Group participant-O]

Again a following comment was made:

“We were sort of playing an observatory role. But we use to observe quite a lot. Before they qualify, you observe for a while and you are given a time where they teach you and they sort of evaluate you but the first part is observation. But we were accommodated in that way”. [women’s Group participant-O]

But in order for the women PDI shareholders to understand what was happening and to equip themselves they had to do a lot of reading and consultation.

“Sitting in that office and just observing and seeing how they were putting together a tender ...you know... interacting with the big managers it helps you to understand what it takes to put a tender”. [Women’s Group participant-M]

“So we had to do research as to the policies...what are the policies, what do we need and all that goes with that. So we had to submit all these to the bid”. [Women’s Group participant-M]

“At that time I really didn’t know what was happening. They were talking big numbers and they were talking big things, but what I did was to consult a lot after hours to understand. ‘what is this? What is happening here?’ and slowly things were getting clearer in terms of this is your financial model. Because they were talking big words like hedging this and hedging whatever” [Women’s Group participant-O]

Apart from reading and observing the women PDIs had to identify and decide the role they were going to play in the consortium.

“We had to give input as to what role we were going to play. Because there was an understanding that if you are just sitting at the equity level [first tier] there is no cash flow. So you would have a nice equity on paper but you won’t be generating any money,... and yet there is a deposit that you pay for the loan that you get. So we had to find a way of getting involved at FM level”. [Women’s Group participant-O]

“So we then talked to FM company in terms of ‘here are the services that the hospital is going to needok, obviously D&S has filled in Cleaning... actually I think cleaning wasn’t filled in... but all the nice ones are taken by some people. So you sit there two women companies .Mbekani and Omame”. [Women’s Group participant-M]

“So the decision was not based on an economic or business sense, it was to say what can we do, what do we understand where we will have no competition”. [Women’s Group participant-M]

After the roles were identified the women PDIs had to contact the other big players in order to see where they could be accommodated.

“Through the help of the sponsor we started interacting with these guys on forming joint ventures ... which were going to be vehicles for implementing that which we had presented during our tendering stage. There is an important role that was played by the sponsor here. The sponsor facilitated those JVs because as newcomers we knew we wanted to be on the FM side but we had no skills. So I was sort of anxious and I was asking ‘how are we going to do this?’ ‘how exactly are we going to implement this?’... I am still thinking about you know my profession. If somebody were to ask me to do something in my profession I would know exactly what to do”. [Women’s Group Participant-O]

“There we were new.... we just knew there is BEE... and when there is BEE there is money that is involved. You gonna be involved with big guys. you know it is a big contract. But when it got to the nitty gritty in terms ...

ok fine. 'you are in this consortium here are these big guys how do you make money here?'. So the sponsor facilitated those roles. He facilitated a JV between ourselves and ... he didn't facilitated on our behalf but he spoke to D&S and he said 'listen these women are in the FM arena, what is it that can be done in that basket of services that are going to be provided by the service providers through an FM company'. So he sort of delegated to D&S. so we had a meeting with D&S during the tendering process ... D&S sort of said we have already battled to convene the big players because the key thing they kept on bombarding to us which actually diminished our self-esteem is that 'this is a high-risk project what can you do, you don't know anything'. [Women's Group participant-O]

"The big guys . this is what they used to say. 'this is a high-risk project, you don't know anything ... you know. 'this is high-risk project' and of course we sort of had a scanned information about FM. We would say 'we will learn we will bring professional women we've .you know... proven ourselves in our professions surely that should count for something in terms of potential. We do have the potential and the enthusiasm, and we are prepared to learn and we can learn quickly we just need a platform and we just need people who can trust us'". [Women's Group participant-O]

Being accommodated was a big challenge because the other big players in FM activities like cleaning where the women PDIs were going to be involved were reluctant to enter into a JV with the women because they already had their own BEE arrangements internally. But the role of the sponsor here was very invaluable because he told them:

"Well if you don't take these women then you gonna loose the opportunity because these women are shareholders and the government is insisting on us demonstrating how shareholders especially BEE shareholders are

benefiting from this. So if you are saying you are coming with your own BEE parties tough". [Women's Group participant-O]

"Bidvest although they had their own BEE parties because they wanted a piece of the cake they said we will accommodate them. So we started having discussions with Bidvest of which it was tough because you know we didn't know exactly what we were doing... we were just pulled around. and it was just said here are the Bidvest parties negotiate with them. 'Negotiate what?' during the tendering stage. 'negotiate what?' well one had to draw a lot from big guys the consultants. 'Exactly what exactly are we supposed to be negotiating?" [Women's Group participant-O]

"We had to speak to the likes of the sponsor 'ok once we are around the table, what are the key areas that we have to locate? And also consulting relevant officials from the government side. They were very strong on BEE at the time. So we spoke to the sponsor. That is when I started reading a lot on BEE. 'no no you just don't shoot from the hip you have to have certain guidelines that are going to guide you. I started reading ... that time the blueprint of BEE was very faint. We knew that it was ownership. you know that when we sit around the table that one thing that you have to negotiate is shareholding. 'How much shareholding are we going to have?' but with a lot of reading at the time then I began to see. that it is not about shareholding you have to negotiate the roles in terms of skills transfer, preferential procurement wasn't that big and then corporate social investment at the time, and negotiate what sort of programmes are you going to have and which areas are you going to contribute". [Women's Group participant-O]

"But the big thing was shareholding and skills transfer so we were able to negotiate shareholdings with some of them and skills transfer with some of them which was a big tick for us. That was during the tendering stage. So we had agreements with Bidvest that if we get the tender we are going to

work together to provide cleaning and linen; we had an agreement with Fedics that if we get the tender we are going to work together in doing service accommodation at the residences at the hospital. We had an agreement with Archtech that if we get the tender we gonna work together and manage the crèche there at Luthuli. That was the operational side..”

[Women’s Group participant-O]

BENEFICIARIES BEHAVIOUR ANALYSIS (BBA/2)

From the start of the tendering process the women PDIs were honest with everyone and with themselves about their lack of experience. They then went on to consult knowledgeable people within the consortium and outside. The PDI project sponsor seems to have played a big role in assisting and setting up processes that resulted in the formation of JVs involving the PDIs. The fact that both groups of women PDIs are professional women seem to have been an advantage because they did a lot of reading around the field areas that they were not familiar with.

EMPOWERMENT ANALYSIS (EA/1)

At the tendering stage there was no economic empowerment. But there was empowerment which came in different forms; the skills transfer that the women PDIs gained from sitting in meetings when the bids were compiled and watching the negotiations between big companies within the consortium. Although they were not part of the complicated financial models they noted the areas that are important in these kinds of financial arrangements and they were able to take those skills for future use. Sitting down and concluding JV arrangements after inquiring which areas to concentrate on when negotiating increased their skills in concluding and being part of the business deals themselves.

AGENT BEHAVIOUR SHIFT ANALYSIS (ABSA/1)

From the beginning the involvement of women PDIs was resisted by all, because of the high project standards that are set by the government. None of the companies seems to have been interested in taking on a start-up company which did not have any money at stake in terms of investment. However since this was a compliance imperative Bidvest took them on, although they had their own internal BEE arrangement. This the agent (Bidvest) did to comply with the demands of the principal (government). The shift of Bidvest to take on Mbekani/Omame was to comply with the bid requirements but at the same time it was congruent with the government policy of empowering women- as part of the PDIs. The monetary incentive of being involved in the project may have been the chief reason for Bidvest to compromise in order to increase their utility, but at the same time it was not at the government own utility's (BEE) expense because at this stage any posture would have resulted in disqualification.

5.3.3 Government Input During Tendering

This was one of the first PPP projects where the government was determined that there should be a substantial BEE involvement. So from shareholding, management to practical day-to-day involvement PDI s were supposed to as much as is practically possible to have a representativity that reflects their composition in the demographics of South Africa at large.

“At the time of this project we did want to see very high participation by BEE entities in the project. We would have liked the BEE element to be slightly higher than it is now. Say for the fact that there were certain restrictions that were associated with the project the terms that worked against empowerment people. For instance starting with the Bid Bond, just to raise money for a Bid Bond if you are a BEE participant it is a very difficult hindrance.” [Government official-T]

“The RFP we had done was clearly making sure that there is at least 40% BEE participation in the SPV”. [Government official-C]

“Codes were not promulgated but there were a lot of guidelines. That gave you some idea of what it should be. When the codes came out they were much lower than what we pushed for”. [Government official-C]

EMPOWERMENT ANALYSIS (EA/2)

Although by the admission of government representatives there were other issues working against a higher PDI involvement like the Bid Bond, the government put the 40% requirement as a test for market appetite in the PPPs. A higher PDI involvement would have meant inexperienced people were given charge of a highly technical and highly specialized project. However it was a good test case to see that the PDIs are given an adequate involvement in the PPP projects.

5.3.3.1 Tender Negotiations with Government

The government officials were watching the behaviour of PDIs from the start of the proceedings on how they were behaving and how they were involved in the project negotiations and deal structuring. This was instigated by the government’s intention of fostering practical PDI involvement in PPPs in order to enhance skills transfer.

“But you do get that impression. Which is different with the sponsor and his involvement with some of the others .eh....he really got involved in putting this lot together....I am pretty sure he is gaining the experience you see him busy” [Government Official-C].

“And in fact my recollection is that it was a very strong involvement. In the negotiations they were very active participants, who would have come under the BEE requirement it was a very satisfactory engagement, because what we had been quite concerned about is that there would be

some form of window dressing....you know there would be like a whole row of white faces then 2 black people at the end who would say nothing. And certainly my recollection is that it was not that way at all. I think the sponsor was a very strong participant in the negotiations” [Government Official-D].

“In the Albert Luthuli deal, very significant role [played by PDIs]. But unfortunately this thing goes with the nature of the BEE player. It also goes with the kind of ability to understand one of the skills that are needed in a PPP transaction”. [Government Official-S]

The government was not very much involved in the commercial agreements that the PDIs were concluding with large companies. They were however aware that there were shortcomings in the PDIs ability to participate in the financial discussions.

“We find that the majority of our people are not quite at home with issues of finance. And the majority of negotiations in a PPP are around finance. Whether is finance in relation to the project agreement or whether in relation to finance itself, whether is finance in relation to the sub-contracts. And you find that although people want to participate the speed with which the discussions are taking place does not allow a person who is not necessarily having finance as a basic skill”. [Government Official-S]

“Government is not in the business ...you know what I mean...it is a facilitator through a BEE code. But it is not in the business of saying regardless of whether you provide service or not,..... I mean we are not mothers to companies”. [Government Official-D]

“The jargon is exclusionary....even for some. I mean it would take you seriously going back to school just getting in touch with the jargon and being able to participate in the discussion. And most of these things are driven by these very complicated financial models. That tends to just shut

out everybody, because it is IT-based, and it is project finance-based and it is numbers-based. Which is a legal combination for people that you are seeking to empower. You will find that people understand better the legal agreement and the issues associated with the contract, most people ... you will find that in the case of a hospital ...for instance the ...most people will know the instruments that are necessary and those kinds of things but beyond that you will find that they would not contribute significantly”.

[Government Official-S]

Assistance was offered by the government through the Development Bank of South Africa (DBSA- A government financial institution which helps development projects in Southern Africa), which proved inadequate and in the end the PDIs depended on the sponsor and the goodwill assistance of others members.

“In that team....they had hired their own advisors. At some point they had hired a person who was given by the DBSA to assist them with the financing. It wasn't a very successful appointment. I think that guy was as lost as they were. He happened to come in from outside of South Africa and wasn't really familiar with South African systems.... But eventually (they) were carried by the advisors that were advising the larger group...but even in that consortium the sponsor had done a project with prisons. He had already done that one which had assisted him to pay his school fees. So in a way he became the advisor of the rest of the BEE team”. [Government Official-S]

The PDIs played their role during this period by putting their views across during presentations although it was not easy for the other partners to easily allow them to just present.

“Ya... this was very fascinating because again... people saw that we are part of the team .ok. You will think that it goes without saying that when you've got women shareholders they will be part of team but we had to

fight to be part of a team that was presenting, in terms of having a role in presenting”. [Women’s Group participant-O]

“We presented....Ya.... it is a part that was very important to us because we were presenting the BEE part. We had to be sure of what we were presenting. We had to be comfortable of what we were selling you know. So we were comfortable with the boards sides...you know.... because during the collation of information it was clear that we were going to be directors. The part that was missing was this one [second tier of PPP contract], although we mentioned that we were still negotiating the management side. And the operational side was clear .you know, as we presented to government. So that part was very pronounced during the tendering stage, our role as the presenters. So it was the sponsor who presented, one of the ladies introduced us and the bank did their part, FM did their part, we did the BEE part”. [Women’s Group participant-O]

“And what was also profound about the presentation is that it is very easy for BEE companies to say that there are women in there, and you never see them. We were new entrants and we were there so the message that I was driving to government is that help us grow we are here we want to grow. And our partners have shown commitment and also they want us to grow by giving us this contract. .you know. you will be helping us to grow if . that was the thing”. [Women’s Group participant-O]

During the negotiations the government was very particular on the BEE details that it wanted emphasized during the presentations. Whenever those details were not clarified meetings were disbanded in order for the issues to be corrected. This showed the seriousness of the BEE issue and the centrality which the government wanted it to play.

“Did government help,.... did it help in terms of our partners taking it seriously... it did. .it did. So it was known that when we present BEE is gonna be there. It helped in terms of ensuring all the BEE information is

always there. You don't collect it only when it is needed you ensure that you have all your ducks in a row. And it didn't end there. The responsible government official did a paper and he looked at the scorecard at the time and said I want all the BEE reports to follow this format. You must tell me in terms of the ownership in terms of the 40% how far you are, in ensuring that you get 40%" [Women's Group participant-O]

"On the monetary side he [the leading Treasury Department negotiator] wanted the flow of money, he wanted to know how it flows to BEE companies. Because in terms of reporting, companies were reporting that if you own 40% then you are getting 40% of the project. Then he said no I want the trickle down. How does it trickle down to BEE, because it does not mean you own 40%, because if government pays in money; money is going to pay for operations. It is only the profits that get paid to BEE, our partners wanted to know what exactly should they put on the report. Should they put 40% which is your ownership or the actual money that goes" [Women's Group participant-O]

"He [the leading Treasury negotiator] said I want to know the actual money. Because we know that most of the BEE companies they are not involved in operations, so you can't assume because they own 40%, they have 40% of what government pays. He said no. I want the actual, the profit. So companies started reporting on those profits at that time" [Women's Group participant-O]

ADVERSE SELECTION ANALYSIS (ASA/3)

The government was quite wary of the issue of window dressing even during negotiations and was aware that it could lead to adverse selection if allowed. But for this project there was a strong PDI participation at this stage and the PDI sponsor was very active and aware of the pertinent BEE issues and assisted the others in this regard and the experience gained in the previous PPP where he was involved proved invaluable. The over-dependence of the other PDIs in the project sponsor and advisors of other consortium members was not the best idea especially when it comes to finer financial details which they were clearly not conversant with. An independent advisor solely responsible for guiding them into attaining a gainful deal would have spotted pitfalls that would work to the detriment of an ideal utility maximization.

The issue of not being involved at the second tier stage [sub-contractor level] is one area where an experienced advisor would have fought strongly for. Although the PDIs mentioned this weakness during their presentation it would appear that they did not appreciate its gravity at the point of negotiations. The government however fought for a proper demonstration of a profit and financial trickle down of 40% to PDIs. This issue could have been drowned in financial jargon and ended up being compromised if it was not clarified adequately on time.

MONITORING ANALYSIS (MA/2)

The behaviour and the treatment of the PDIs seem to have been on the spotlight in as far as the government is concerned. The introduction of an advisor by DBSA was a result of recognition of a need by the PDIs, although in the end it did not assist much but the government showed willingness and determination to monitor empowerment and come up with remedies to rectify PDIs deficiencies. The presence of a strong PDI sponsor player and the fact that the women were professionals might have made the job lighter. Although the government was not really involved in how the deal was structured within the consortium itself, at least on the issues of a trickle down of the project profits they wanted to make sure that it was transparent and detailed.

EMPOWERMENT ANALYSIS (EA/3)

The greatest achievement at this stage for PDIs was playing an active part in a multi-million rand project. Although their strongest contribution at this stage was presenting the BEE issue, this on its own gave them enough confidence and self-belief in the sense that they had a role, taking into account the centrality of the BEE issue in the project. Even if the technical issues were all complied with, the deal would not have gone through if the BEE issue was compromised. So their contribution was beneficial to the securing of the deal for the consortium.

AGENT BEHAVIOUR SHIFT ANALYSIS (ABSA/2)

The issue of elaborating financial flows to the PDIs as emphasized by the government did a lot to demonstrate that BEE is not just a superficial requirement, but that it has to be incorporated into the technical financial details. That demonstrated the seriousness with which the government regarded the issue and shifted the posture of the consortium (agent) to regard it as an important issue like all the expected contractual deliverables.

5.3.4 Internal Negotiations and Shareholding Apportionment

Internal consortium structure negotiations as is probably the nature of things were very heated and it was at this time that the members of the consortium took part in agreeing on the specific duties and details of involvement of the PDIs. With the other parties it was not a problem because they were basically invited because of their specialties in different fields, so they knew what was expected of them but the women PDIs had to negotiate and understand their involvement. It was at this stage that the apportionment of shareholding was decided. The decision taken at this stage resulted in the structure shown in Figure 5:4 below. This was the stage that women PDIs should have prepared intensively for or could have had a better advice on, in order to choose the most gainful approach.

“We were awarded the tender... I am just trying to think... because the percentage split was towards the end. And you can imagine we are not bright business people who’ve been in it for a long time. This is what ...2000, 1999... and there is also this trust you know. And at the final stage the split in the shareholding at the equity level at IMPILO, is that we are supposed to have 40% BEE across the board that was part of that deal. So when we got to splitting that 40% went to BEE... 7% went to Omame, 7% went to Mbekani, 26 % went to Vulindlela, which is fine because the sponsor did most of the work. 60% was split amongst the white companies, which is ok.

Then we came to the next level where you had to have 40% as IT, you have to have 40% as medical equipment, you have to have 40% as FM”.
[Women’s Group participant-M]

“You look at this structure.. ... you look at it .this is IT, this is Medical equipment... this is FM [second tier below IMPILO] now which has got a whole basket of services here [third tier] (see Figure 5:5: Final consortium structure). When we were negotiating we were at this level [third tier—sub-sub-contractor]. Now we are here at IMPILO [first tier] and here [third tier]

now what was missing was this area [second tier]. Because when I read the tender document it said BEE parties had to be involved at all levels both management and operational. You could say largely this is operational [third level service provision] but the way this consortium is structured, it is a management level, once you look at FM side they are managing these operations these are the guys who are really operating. So it is really operation but operation at a different level. So we were here [third tier] and then government kept on saying we want you to be involved at this level as well [second tier] because what happens is that money is paid by government to these companies [second tier] and they decide the fees of these companies [third tier]. So you have to have a proper knowledge of what happens in these consortiums at all levels. Ok. so the tenders went in and we were not involved here [second tier]". [Women's Group participant-O]

"It is the way it was structured .you see here [second tier] it was Vulindlela 40%, Vulindlela 40% ... and with D&S saying their BEE partners are going to be their representative from national [countrywide partners]" [Women's Group participant-O]

"No you will actually form a company the 2 women entities and own 40% of this soft services company. I had a problem with that because when money comes from government to IMPILO it is not labeled. It is FM, if you are not sitting there [second tier] the money that will come to soft services... guess what ... it will be determined by this guy. So we are short changed. Because you can't say 'why are you giving me R100, it is supposed to be R300?' Why, because you don't know what came here [second tier]. 'Even if you guys give us 5% as hard services, we just need to have our eye there'. We didn't succeed, not only that, FM is about the whole thing; Soft services is just the contracts ...you know like.... cleaning and what have you. When it comes to hard services it is the buildings, it's the maintenance of machines and stuff like that. Now I have a problem if

you say this women's group can only learn the cleaning.... its insulting, we tried ... at a certain stage we decided that 'you know what the relationships are getting quite bad so let's leave it'" [Women's Group participant-M]

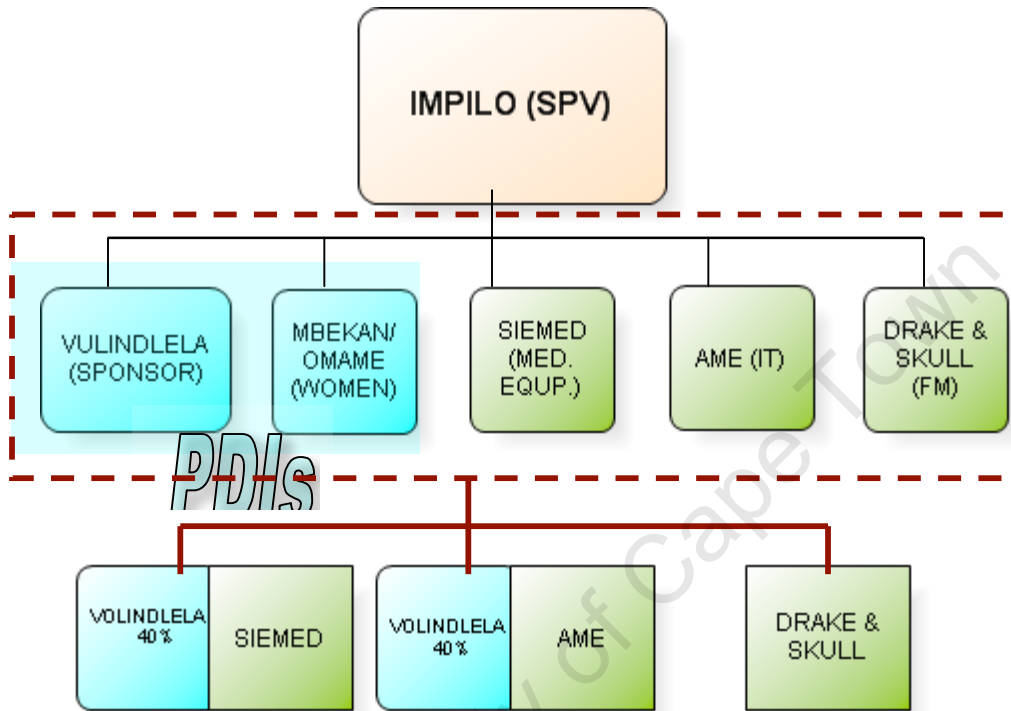


Figure 5:4: Consortium structure soon after tender award

ADVERSE SELECTION ANALYSIS (ASA/4)

This is a stage that there is clearly an adverse selection on the part of the government. The exclusion of women PDIs altogether at level two [second tier] was not going to result in effective empowerment. The PDIs being professional business women who had studied the contract were aware of this but it would appear that they did not fight hard enough for their inclusion at this level. The fact that complete tender documents were handed in without this matter being adequately and finally resolved internally meant that it was always going to be difficult to reverse what was submitted to the government and would normally be regarded as an internal agreement. The inclusion of women only at the first and third tier has got its problems. The first tier is basically for investors who can afford to have their returns deferred for a number of years. The women were supposed to be empowerment beneficiaries and would be better served by immediate flow of financial proceeds from their involvement in order for them to attain economic empowerment.

Being involved at the third tier means the company is basically managed by the one above it in terms of determining the pay and looking at a broader picture of operation. The women PDIs being start-up operations were given simple tasks and although by their admission they needed help even in performing those tasks to the required standards, they still do not understand the FM operation in its totality (see 5.7.4). The other problem is that the government pays for the full occupancy and yet the facilities are never fully utilised and occupied by the patients. The operator however pays the sub-contractor the amount they deem fit, not necessarily the proportional pro-rata apportionment of patients' occupation at that point in time. This is a direct result of not being involved at the second stage in order to observe what is happening, and this exclusion is against the spirit of the policy.

MONITORING ANALYSIS (MA/3)

The government was very clear in its documents on what it expected from the deal, it terms of PDI involvement at all levels. However the acceptance of the bid whereas other PDIs were excluded from the second tier, could mean an inadequate monitoring. However on the other hand the government might have looked purely at a PDI representation not necessarily an inclusive representation. With that view there is no technical infringement although it could be argued that there was a moral oversight, because the BEE policy is for a fair and equitable economic distribution and participation in the republic.

AGENT BEHAVIOUR SHIFT ANALYSIS (ABSA/3)

All the established members of the consortium seem to have been complying with the BEE contractual requirements up until the moment before contract award. Whether they sensed that that the contract has been secured or they thought that the government would not notice is not clear. But at this point in time there was a clear issue of non-compliance especially where there was complete women's group exclusion, at the second tier. This behaviour could only be interpreted as a move to maximize utility at the expense of the principal's (government) goal of fair empowerment of PDIs. The natural behaviour of the agent to maximize utility at the least cost and the disproportionate leverage of one PDI player (project sponsor) conflated to work against the maximum involvement of women PDIs. At this stage there was a clear sign that opportunism was taking place, and had the government intervened during evaluation the situation could have been reversed.

5.4 IMPILO INTERNAL CONTRACT CLUSURE

5.4.1 Joint venture (JV) Formation and Duty Allocations

The negotiations for joint ventures were going on even before the tender was awarded. The Women PDIs were aware that they would not be able to perform the duties required for Facility Management without the assistance of well-

established companies, so these negotiations were started ahead of award so that all the role players would be in place were the consortium awarded the tender. When the tender was approved and soon after the contract negotiations with the client, the women's group together with D&S formed a JV company called Umongi which was essentially an FM company tasked with the duty of managing all the FM soft services around the hospital. The Omame group also formed JVs with other companies experienced in cleaning, property management and education. These companies were in turn answerable to Umongi, which was reporting to D&S at the end of the day. At the time when the deal was concluded the organisational structure was as Figure 5:5 below. There were other independent companies involved in different kinds of soft services and they are all listed in below. Mbekani was also independently sub-contracted by Siemed to run the Theatre Supply Unit (TSU) which supplies sterile surgical equipment to operation theatres, they are also responsible for the running of the Central Sterile Supply Department (CSSD), which is a department tasked with supplying the wards and clinics with sterile instruments. They also provide milk feeds for babies in the wards whenever needed.

“Remember I said that during the tendering stage I said we were involved in identifying them together with D&S. But because the FM contract is for D&S a lot is by D&S. they had to identify companies that they had a relationship with, companies that had a track record using their experience and all that. How we got involved was that now that you have identified those companies, we realize that we cannot perform the service on own, in spite of the government's wishes for us to be practically involved. That led to the formation...let me get to the operations ... that led to the formation of Umoja.

Umoja is Bidvest 49% and Omame 51%. Now those are the companies as we are going to operations. Now this company does cleaning, steaming linen and laundry management. That is no-1.

Number 2 you have Omame Fedics at 60% / 40%. Its the management of service accommodation.

No -3 is Omame Archtech and it is also 60%/40%. It is the crèche at Albert Luthuli". [Women's Group participant-O]

"So they were approached by the chairperson of IMPILO consortium because D&S applied to get into this contract but because the requirement says they need to have a BEE partner then these two were approached to come together with D&S so they are now this company, its called Umongi. Its 60% D&S and 20% Mbekani and 20% being Omame. And then they formed Umongi Facilities Services". [Women's Group participant-T]

"I have always been independent' and so was my partner. We want to dirty our hands, we don't want to sit there and just be partners. Because you do not learn and you are not in control of anything. So that is why we said we will run this. the areas allocated to us ...its our thing. You are likely to mess up because you haven't done it before but guess what, you learn and you make it better". [Women's Group participant-M]

The women PDIs actually tried on a number of occasions to be involved with hard services as well but they were never successful. Hard services is essentially all the mechanical and technical side of FM, i.e. maintenance of lifts, machines, stand-by generators, the upkeep of the building structure etc. Soft services deal with value-added services that are not necessarily core to the hospital business but enhance the effectiveness of day-to-day operations but do not necessarily affect the hospital's technical functionality.

"FM is about the whole thing; Soft services is just the contracts ...you know like.... cleaning and what have you. When it comes to hard services it is the buildings, it's the maintenance of machines and stuff like that. Now I have a problem if you say this women's group can only learn the cleaning.... its insulting, we tried ... at a certain stage we decided that 'you

know what the relationships are getting quite bad so lets leave it”.
[Women’s Group participant-M]

Government actually played an active part in ensuring that the women were involved.

“So here [third tier] I would say in terms of negotiating facilitating this structure, because government was involved. I actually went to government and say can you help us to be involved at this level [third tier]. And government called D&S and say ‘D&S come up with a structure that accommodates women.’ Which led to the formation of Umongi”. It is a women’s group plus D&S. D&S has got 60%.you know one of the government requirement was 40% BEE. Yes. Omame and Mbekani they have 20/20. [Women’s Group participant-O]

The women PDIs also negotiated for the secondment of their staff at D&S which was approved and this helped in enhancing skills transfer.

“Now those are the operating companies. Now you will remember that one of the things during this stage that we put on the table to those companies was that in terms of the BEE scorecard, ownership being involved at the operational level, preferential procurement and so forth. We want skills transfer, now at that time... Retrospectively we should have fought for the role of Omame the company. But we fought for the role of individuals that they transfer skills to individual shareholders. So what happened was we seconded some of our shareholders to these companies. At this level the contracts manager came from Omame”. [Women’s Group participant-O]

Table 5:1: FM sub-sub-contractors

NO	Company Name	Activity	Contracts Manager Gender	Job Experience At Commencement	Staff Complement	Company Ownership
1	UMOJA CLEANING SERVICES	CLEANING	FEMALE/B	None (lawyer)	300	W/G
2	FEDICS	CATERING	FEMALE/B	2	35	PVT
3	UMOJA LINEN	LINEN	FEMALE/B	2	34	W/G
4	LUTHULI JUNIOR COLLEGE	CRECHE	FEMALE/W	10+	14	W/G & PVT JV
5	FEDICS/OMAME	ACCOMODATION	FEMALE/B	4	9	W/G & PVT JV
6	TDD LANDSCAPE	LANDSCAPING	FEMALE/B	5	20	PVT
7	UMONGI FACILITIES SERVICES PORTERING	PORTERING	FEMALE/B	5	70	W/G
8	MBEKANI HEALTH & WELLBEING	STERILE SUPPLY DPT.	FEMALE/B	10+	62	W/G
9	BARLOW STORES	WAREHOUSING	MALE/B	5	25	PVT
10	ENVIROSERVE WASTE	WASTE	MALE/B	None	6	PVT
11	UTI MOUNTIES	MAIL	MALE/B	None	5	PVT
12	ENFORCE SECURITY	SECURITY	MALE/W	22	93	PVT

Legend: Pvt=Private; W/G =Women's Group; B=Black; W= White

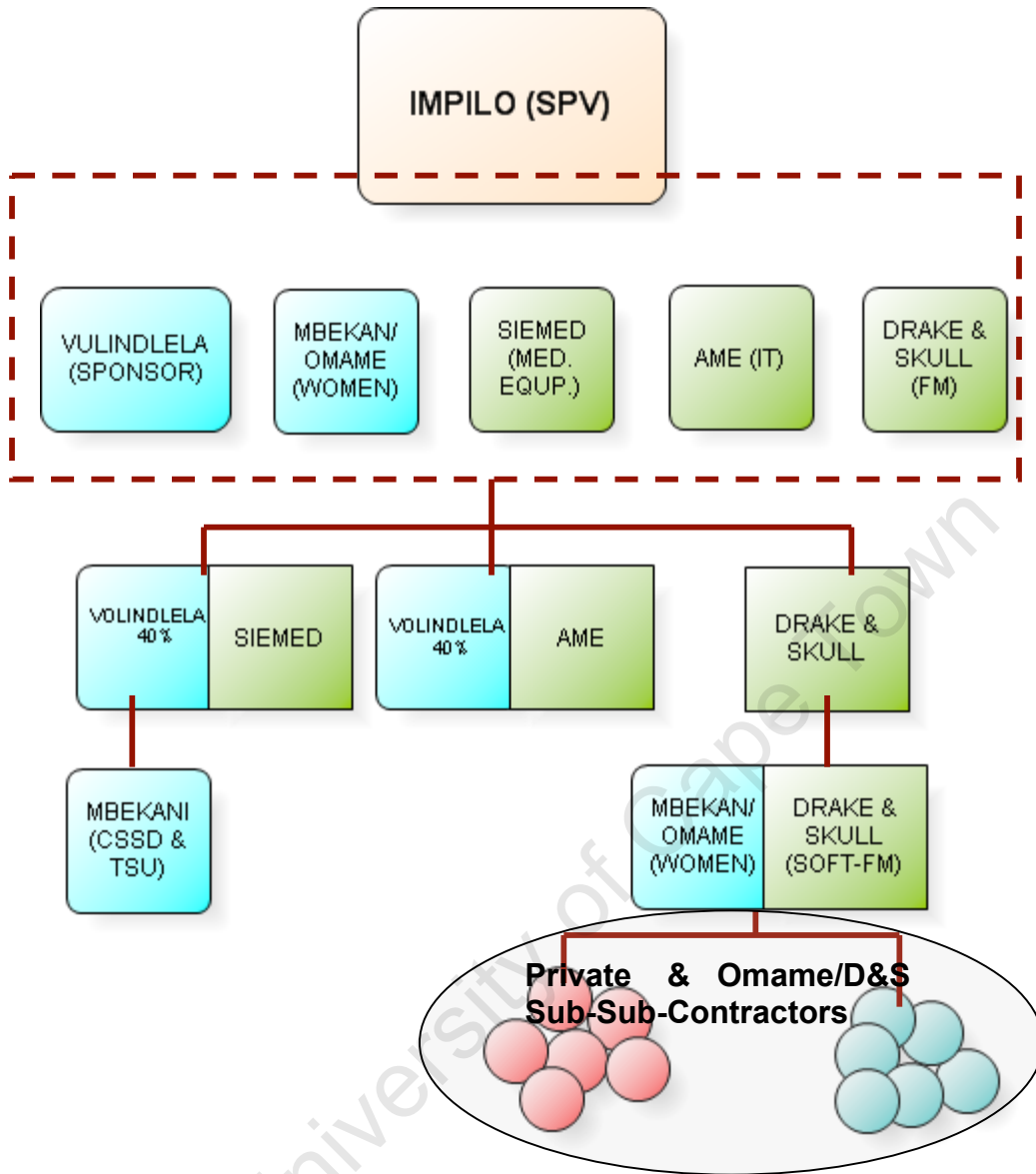


Figure 5:5: Final consortium structure

MONITORING ANALYSIS (MA/4)

Government seems to have been very responsive even at this stage to any compromise of the spirit of the BEE policy, which was essentially the involvement of the PDIs at all levels in order for them to learn and garner appropriate skills.

BENEFICIARIES BEHAVIOUR ANALYSIS (BBA/4)

The women requested the assistance of the government in bolstering their claim for involvement at the third tier. Once this was accepted by D&S the two parties worked together in identifying and approaching potential partners. The over-reliance on D&S at this stage meant that D&S only approached the companies that were in their own conglomerate (see 5.4.2 Lack of Leverage During Negotiations, page 10). Although that might not have contravened any regulations, however other BEE companies who operate in those areas and who are experienced were precluded from consideration.

EMPOWERMENT ANALYSIS (EA/5)

The involvement in seeing the deals and formation of JVs to the end and learning in the process was a valuable lesson for the PDIs. It has given them confidence that they could correct the mistake they made here in the future. If this was a traditionally procured project the PDIs would not have been party to any negotiations mostly and they would just be given an apportionment or a task to do during operations without actually having a proper feel of how the deal was structured and concluded. The role played here by the women PDIs has been more empowering in giving them invaluable lessons that only experience and involvement can impart.

AGENT BEHAVIOUR SHIFT ANALYSIS (ABSA/4)

The other sub-contractors of IT and Medical equipment had very sophisticated operations which could not be sub-contracted except for the supply of sterile surgical instruments by Mbekani. However the FM side's complete exclusion of PDIs on the hard services seems to have been harsh and opportunistic. It is an area that could have been entered into even later once the new companies had settled in, because the idea is to mentor rounded FM operators, not just soft services specialists. There are a lot of skilled PDI people whose skills could have been sought by the women PDIs to work in this project and this could have given PDIs a fuller experience of being bona fide FM operators in the future. However it would seem that the agents (consortium) would always posture themselves to comply only when there is strong enough emphasis by the government on any one particular issue and would not independently do what is in the fuller benefit of the PDIs. Their position on this matter might not be interpreted as opportunistic it could just be that it was not the area that was emphasized by the government, which might have just been preoccupied in seeing an active involvement by the PDIs, and left some details to the agent (consortium) who naturally shirked.

5.4.2 Lack of Leverage During Negotiations

The women PDIs did not have money as beginners to pay for the bid bond and this was used against them whenever a complaint was raised against what they perceived to be an unfair arrangement.

“When we went to complain they would be like so, ‘how much did you pay for the guarantee’? How much were we going to pay....so I tell you to be black...you can’t talk you can’t complain, those guys have put in their money”. [Women’s Group participant-M]

The main established FM partner who has sub-contracted the women PDI group has been in business for a long time and they were too experienced and the PDIs felt that they sometimes had to compromise to get the work done because

the established company at the end of the day have their own BEE partners outside the IALCH.

“So that has been a juggle with BEE companies and these big companies and there are a lot of factors that are contributing towards that. You have empowerment partners,... I am sure that putting myself in the shoes of those empowerment partners.... they would be saying ‘why are you not growing us, why are you growing those people? We’ve bought these shares and we own probably 20% of this company’”. [Women’s Group participant-O]

“Bidvest is just a monopoly when it comes to providing FM, because they do everything. They do your cleaning, they do your linen they do everything”. [Women’s Group participant-O]

“Ya. what Bidvest does .like I said Bidvest is a monopoly. It’s a big company. Bidvest has a stream of operational companies ...a stream. Their cleaning company is Prestige; their Linen Company is Boston; their security company ...but it is not involved with us” [Women’s Group participant-O]

“Its still Bidvest. they are all owned by Bidvest. But operationally it is its Prestige. So the company that will operate that cleaning contract will be Prestige but the contract will be with Bidvest”. [Women’s Group participant-O]

ADVERSE SELECTION ANALYSIS (ASA/6)

The inequality of two parties that have to form JVs and work together means that there would always be a manifestation of a power relationship. This would be more so when there is a diminished government involvement with its interventionist leverage, to essentially fight for the BEE policy. In internal commercial agreements where the women PDIs were left on their own to negotiate with established companies an issue of the payment of Bid Bond was always brought up. This went against the BEE policy because the policy is essentially to assist PDIs who cannot be expected to pay a Bond. Although the largest contributor to the bond has more leverage in other deals, in BEE projects this has to be considered as an infringement on the spirit of the BEE policy and if it has been used to advance certain favorable contractual arrangements for the established companies; then this should be interpreted as an adverse selection by the government on the BEE issue.

Bidvest appears to be a part of a big conglomerate and to maximize their own utility they invited companies within their own group. Although this naturally has to be expected from any agent who is essentially seeking to maximize their own benefits, it has however shut worthy beneficiaries of the BEE policy who are equally involved in the FM business and who were not given the chance to take part and who might even have a high BEE involvement in their structures. So in this regard there appears to have been an adverse selection on this matter.

MONITORING ANALYSIS (MA/5)

Again on this point the government involvement seems to have been removed. And the agent (FM operator) took advantage of this. The companies forming JVs with women PDIs should have been subjected to the same scrutiny like all the other companies who were tendering with the government. However on the other hand government might not have wanted to be too disruptive in allowing a smooth running of business, once they have set the parameters they deemed crucial. Which is the practical involvement of PDIs.

BENEFICIARIES BEHAVIOUR ANALYSIS (BBA/5)

The beneficiaries at this stage seem to have been concerned with securing good individual deals for themselves and setting up structures for their new companies. And although there were things that might have not been favorable to them, they were probably taking this as a step to learn and do it better next time.

AGENT BEHAVIOUR SHIFT ANALYSIS (ABSA/5)

The agent at this time never actually infringed on the policy or acted surreptitiously opportunistic against it, but they were just increasing their utility as business people. The involvement of PDIs in the general sense was not actually compromised. So there appears not to have been any shift in as far as the agent is concerned.

5.4.3 Restrictive contractual Clauses

During the internal negotiations the spirit within the two women PDIs was to build their companies and cooperate as much as possible with the established companies. This led to the signing of the restrictive clauses that they now seem to regret.

“There is a clause that D&S can tender for another job in KZN without us. But we are not allowed to tender without them. But we can tender on our own outside KZN, but not within KZN. But as for themselves they can tender anywhere. And although it is something you don’t have prove of, there are projects that they get that they have tendered as Albert Luthuli BEE. But nobody from us gets involved, D&S people only get involved. The site is run by D&S, everything that is done here is done by D&S”. [Women’s Group participant-T]

“No what we signed.... in KZN we are partners.... right. In KZN according to the agreement they don’t go to other BEE partners because we are partners. But in other provinces they can and we can, but that hasn’t happened”. [Women’s Group participant-M]

“You see what was driving us was the spirit of building a company ..if I come to you and say lets form a company and you have your own company. And you say lets not compete. If we have a vision of working together I don’t see it as malicious if somebody says that, ‘don’t compete with me’, because you want to grow together anyway. That was the spirit at the time,.... no,..... lets work together and if you are going to work together lets grow this company then. I put my screws here you put yours here. If again we are going to go our separate ways I am going to sleep one day I am wearing this hat the next day I have the other hat... you also confuse the market as well. So we agreed that lets use this as our vehicle”. [Women’s Group participant-O]

“But what happened is that we are the only people who had that spirit they did it for the sakethat is just my thinking...for the sake of having a contract and having their foot at the door at Albert Luthuli. But in spirit and terms of the vision it wasn’t really their vision they knew they were going to continue on their own with their own BEE parties. The mistake that our lawyers made was that it was not quid pro quo. we are the only people

who were to abide by the this and the big companies were not expected to abide". [Women's Group participant-O]

When the respondent was asked if it was clear in the document that this particular clause is not *quid pro quo*, the response was:

"Is there, but you need a lawyer to say ...that this it is quid pro quo. To say if BEE partners are going to compete. Why are you going to compete? You find that for the past few years we've been out of the market". [Women's Group participant-O]

It appears the negative impacts of this particular clause are being felt already. There was a widespread lament of this disadvantageous oversight.

"No it wasn't a good deal... no I can tell you now, it wasn't a good deal, because what it does is you have these blind lawyers that say we are going to grow together with this company and then when the contract comes. They.... have to weigh in 'are we going in as Albert Luthuli partners or are we going in as ourselves?' If we are going in as ourselves the [internal BEE] shareholding takes only 15% you know. And here the shareholding is 49%. and who do we really want to grow? What is the benefit of growing this company? Its gonna grow and at some point compete with us. so lets put in this one [internal BEE]'....so you put in this one. And when you ask questions we also want to bid for this... 'You can't bid because we have already put in our bid. So you are gonna be competing with us'. We've been fighting this thing for a long time." [Women's Group participant-O]

"And if it comes to an end then we are back to square one. ... you know... the company hasn't grown enough to have its own contracts and have its own identity". [Women's Group participant-O]

When the issue is raised in meetings with the operators it's always given a hard shoulder and the legal route appears to be the only way.

“This BEE I tell you, it is difficult. When you raise these issues you must be prepared to go the legal route and fight, and who has got that time. It’s like ‘ok what is your problem, 40%/ 60% lets go to a vote’”. [Women’s Group participant-M]

“So if they had a strong lawyer with them, that lawyer might have said to them ‘Hey guysyou know...I reckon you don’t sign this restraint of trade’” . . [Government Official-D]

ADVERSE SELECTION ANALYSIS (ASA/7)

Although the respondents differ on their interpretation of the ‘restraint of trade’ clause it would appear that the clause itself is restricting both parties. But the agreement is being flouted by the FM operator who has financial leverage, and the PDIs seem to be stuck at IALCH and they can’t grow for the rest of contract tenure. Thus inducing unsuspecting new entrants to sign a restrictive clause such as this appears to have compromised their growth.

BENEFICIARIES BEHAVIOUR ANALYSIS (BBA/6)

The inexperience of the women PDIs coupled with a weak advice induced them to agree to this clause which appeared to be mutually profitable to the established companies and the PDIs as well. It would appear to have been a legitimate proposal agreed to in good spirit and the renegeing on this by established companies is simply because of their financial muscle to afford a good legal advice. And the PDIs simply have to accept the situation because they do not simply enjoy the benefit of a substantial financial endowment. The lesson is instructive to be better prepared in the future regarding seemingly harmless obscure clauses which might turn out to be malignant.

AGENT BEHAVIOUR SHIFT ANALYSIS (ABSA/6)

The leverage of the established companies allow them to renege on a prior agreement and flout the contractual clauses with the full knowledge that putting up a legal fight would be too hard for the PDIs, because of the costs involved. Again it is here demonstrated that the agent acts opportunistically in a situation where there is no government intervention. Contractual penalties are non-existence on this matter as far as the government is concerned as it is a private commercial agreement. The agent pursued this route to maximize their utility at the expense of the PDIs who will find it difficult to do likewise because of the possibility of a financially injurious legal battle.

5.5 EARLY DAYS OF OPERATIONS

The early days of operations phase were very challenging to the women PDIs, because they were trying to settle in as new business people. At the same time the high standards that they found at IALCH meant that they had to get organized timeously and comply with the contractual requirements because there are heavy penalties in this self-monitoring contract. However it was also during this time that a lot of things that they unwittingly assented to became clearer and that created a lot of tension between them and the established companies.

5.5.1 Underpayment of PDIs

There was a general tendency among the established companies to try to underpay the PDIs. This included unfair payment mechanisms in the contract and this was realized earlier on during operations by the PDIs. These early experiences introduced them to the vicissitudes of the business world.

“People expectations are not always matched with the reality that is in the agreement. So at the beginning there were serious tensions, even among BEE people”. [Government Official-S]

There was an attempt by the operator not to pay the PDIs the rightful *pro rata* amount paid by the government as it could reasonably be expected.

“And the government agreed to a fee per month that is split according to the three tiers. One goes to FM company, based on what we had put and the assumption from day 1, we were paid for 100% occupancy....right. So the government didn’t say ...ok... we are going to do a check, 50% ...no. It is better administration for them 100% from day one. If there are 900 beds we are assuming there are 900 bodies on the beds ...right. So that is the service fee that has been paid from day 1. And the escalation is CPIX linked and its quarterlyright. So when we started we employed the staff and did everything else. And for two years we didn’t have a contract, because now we had to have a contract with the operator... as a supplier to them ...and agree a fee. And then we see ourselves to finish, but we didn’t have a contract. They were dilly dallying and we didn’t have our money. Because my argument was as follows; if you are getting R100 with the assumption that it is 100 patients, for this particular service there is nothing that you have done to keep that R100 and give me R10 and control my budget....are you with me? Because if I have given you a budget based on what I am going to do. And then the number of people I am going to employ and all that . Then don’t hold it back. Then we had those fights. I tell you I could show you scares, so for 2 years we didn’t have a contract with the operator, and for 2 years they were withholding the money and saying no we would pay your employees. So you have a business where the person that you are supplying a service to, pays for those 2, 3 or 10 or whatever number of employees. And why are you in business by the way? [Women’s Group participant-M]

There was also a discrepancy in the CPIX adjustments for payments where the operator gets quarterly adjustments for their payments whereas the PDI company gets their payments adjusted annually.

“So we got to Umongie...Umongie is struggling and for me its an artificial struggle because we lost the battle. It is FM [second tier] here who decides ‘how much I [i.e. FM] pay to Umongie.’ FM gets CPIX adjustments quarterly, Umongie gets it annually”. [Women’s Group participant-M]

Legal recourse had to be sought on one occasion where money could not be paid by the established company. However painful these lessons have been, the two women PDIs consider them invaluable in assisting them in their approach in future business endeavors.

“And how... we have leant a lot...I can speak for myself. I still trust people...but I also protect myself. It has gone further because I have had many lessons after that... that if you don’t have the same value system just go home....don’t form that partnership. It is not going to work. I don’t care who says what. you see there is more to life than money... the pain of fighting a relationship that is flowed because you just don’t have the same value system. There is nothing better in any partnership, it’s the same value system, I will still sign an agreement with [people] but your signature is worth much...you know....so that is what I have learnt. [Women’s Group participant-M]

ADVERSE SELECTION ANALYSIS (EA/6)

The behaviour of the agents (operators) here is no different from the other behaviours observed above that whenever the arrangement is considered private between the women’s Group PDI and established companies, they behave opportunistically to take advantage of PDIs inexperience. The above cited experiences are circumventing the fair cash outflows to the PDIs and as a result they are against the spirit of the policy and this is an adverse selection as far as the government is concerned.

BENEFICIARY BEHAVIOUR ANALYSIS (BBA/8)

The general education standards of the women PDIs and the amount of homework they were doing as they progressed with the project assisted in them sporting a number of issues that were disadvantageous. The protracted fight for what they considered legitimate monetary claim demonstrate that they really understood that the intention of their involvement was being compromised. Going further to seek legal recourse again demonstrate that they understood the legal basis of their involvement in this scheme. However on this particular occasion there is no reference of any effort to seek government intervention, These early fights however were observed to have set a tone for their relationships with the established partners as it became clear that they clearly understand their rights.

AGENT BEHAVIOUR SHIFT ANALYSIS (ABSA/7)

The agent (operator) on this occasion was concerned with utility maximization and only changed their stance when legal recourse was sought. Even then the whole amount of was not paid. So this is again an example of a natural agent behaviour which according to the PA theory, is self-centered opportunistic behaviour which maximizes agent utility at the principal's expense. In essence the stance of the agent was never really changed they just did not want to be involved in damaging legal battle.

5.5.2 Centrality of BEE

The start of operations would be a good barometer for the government to see if the centrality of BEE was understood and adhered to by all. The government side is convinced that in the final analysis the outcomes generally seem to reflect what they had hoped for. There seems to be a general agreement that government's principal requirements were adhered to.

“Sure, I think they understood clearly that it is was the government non-negotiable requirement. So there was no effort to try to kind of side-step it.

Ah. what I saw in the negotiations was a good team working together. I had no doubt that behind the scenes they had fights like cat and dogs. That's very common you know... in essence what you are deciding is the next 15 years of commercial reality. But what we saw ...lets say... a good and balanced outcome of those...whatever was happening behind the scenes". [Government Official-D]

"BEE in terms of the role of government you could also analyze that BEE was a separate standing item. Each and every company, they had to supply and improve BEE information". [Women's Group participant-O]

The contract also emphasized strong local area improvement as part of BEE delivery. It appears as if most companies are adhering to that requirement.

"They are from the community. Because the way that this contract is run is that we can only employ people from Cator Manor community. Everyone around this community here, Cator Manor, Mayville and Chesterville, that's the agreement that we have. Well when they come they have to have a letter from the councilor that they come from here and the copy of their ID and proof of address". [Contracts Manager-UC]

"And according to the hospital policy we had a percentage that we had to adhere to, ... a specific percentage that we had to employ from around the area. That was the requirement. When you advertise you always make sure that when you start screening people or from the candidates we always make sure that you've got some from the local community. .Before you go out to Umlazi, Kwa Mashu and other communities". [Contracts Manager-MHW]

"So we also have issues where you find that in terms of employment we are supposed to get 60% of employment from the local community and then the 40% can come from anywhere. The 60% must come within the

100km radius of the area, and then the 40% can come from anywhere else.” [Women’s Group participant-T]

“They are all from the community. I would venture to say 60% is from the community. Very few I know are from Umlazi and Kwamashu but the rest is Chesterville, Cator Manor, Mayville all the surrounding areas”. [Contracts Manager-ES]

There are also bursaries to help local kids in order to bring about empowerment and develop skills in the community.

“So we’ve got projects where we’ve got bursaries, at IMPILO level. So we have projects like the bursaries because we felt that because it is a 15 year contract we can’t for the whole of this time just be sitting herebecause the community here . they are not educated. So we need to rectify that. So what we’ve done is we’ve come up with a bursary scheme, where we are educating the kids from the local community, from the local high schools. Where we are working with two institutions which is Mangosuthu Tech and Durban University of Technology. We give money to them, and from their database they pick up the kids that have got the Cator Manor address and then we pay for those kids. And then when its time for them to go for experiential learning we accommodate them here in our different companies until they are finished. Then we are hoping that the courses that they do it’s the things that they will be able to be employable in the hospital. Because we are trying to sort out that issue that people here are not educated. So you find that the only positions that they get is to be the cleaners, security people and catering. We want them to be also employed in bigger positions we have like engineers and the like”. [Women’s Group participant-T]

ADVERSE SELECTION ANALYSIS (ASA/8)

There is generally a good compliance on issues of employment equity, and local socio-economic impact. These are the issues the government would have looked for in the evaluation of tenders so it should be expected that their centrality was emphasized during the negotiations and as result there is adequate compliance. It is less likely that given their centrality to this project that the consortium would have tried to side step them. And the compliance on these issues has trickled down to the sub-sub-contractors in this project.

EMPOWERMENT ANALYSIS (EA/7)

The area around IALCH is a very poor area with a high level of unemployment and allocating 60% of semi-skilled and unskilled jobs to the local community has contributed in uplifting some families from the poverty through the earning of a steady income. The provision of bursaries has also empowered the young people who might have been precluded from attaining adequate tertiary education because of financial constraints.

5.5.3 Staff and Racial Mix

The centrality of BEE seems to have been understood by all the major players in the consortium, and this practice has trickled down even to sub-sub-contractors especially when it comes to employment equity. The staff of the majority of the companies is equitably reflective of all the racial groups in the country.

“The primary function that you could say we are involved is making sure that our BEE figures and our BEE requirements is that the contract says that the principal sub-contractor for medical would have 25 people. And now on those 25 people in the first year there would be a certain BEE component. Second year BEE component and so and so on across the board. Up until the starting of 40% and then another one 15%? and another one of 55% of BEE component and every quarter we send those

figures to IMPILO and say the project requires [this] and this is where we are. ...from IMPILO they are send on....we don't deal directly with the Department of Health, it is actually through IMPILO he sends it off to whatever parties he has to send it off to. ...perhaps it is checked, I trust it is checked. If there are any problems they would come back to us and say ...but we are well within what is required according to the numbers and the percentages. It is a big project, so we won't ever grow in numbers. As in staff because there are no additional services that are being added on to by the Department of Health, so we had approximately 26 people, at the beginning of the project. We picked up a little bit slowly because there was a roll-out. You, you know the hospital did not just switch on at once. There were certain departments that weren't life and. we could start with 4 engineers and 6 engineers. and increase until we got to the levels of 26 people effectively. And our figures for staff will remain the same. it will just depend sometimes we might have more of a BEE component in admin and slightly less in technical, and otherwise a year or two we might have slightly more in technical and slightly less in admin. But we don't focus on finding a BEE employee we advertise and when people come along we pick the best. unless there is going to be a major problem whereby ...we are really going to fall off with respect to BEE. If we need to be 40% and were are 55% BEE compliant we then find the right person for the job. The right person for the job to deliver service to the Department of Health. So we make sure that ...because if we get penalized . we get penalized financially and we will have a major challenge. [IMPILO Consortium shareholder-G]

The government officials seem to be satisfied with employment equity on the highly technical subcontractor jobs despite the challenges of finding the qualified black **staff**.

"There they have achieved quite a lot whether you call that BEE ...eh...or employment equity. So I would imagine it is probably correct, I do know

that they have got problems in employing expert staff, plainly because of the shortage in the country not just black IT people, IT people in general. All over the place good IT people go to the big places, and this is not that big to ...you've to have quite a lot of expertise. So they might have a bit of problems there. Siemed might have the same problems with the technical side. I know that they have trained some local people ...what they then do they send them to other countries... is not necessarily coming back here. So. eh....but I am pretty sure they are achieving that.... because otherwise they would have been penalties coming through". [Government Official-C]

In most sub-sub-contractor operators, because there is less technical qualification required from the staff there is more black participation at that level than at all levels. This is apparently the legacy of Apartheid. In highly technical and managerial levels where no black candidates were available the position are occupied by white people.

"Its only black .its only black. I think I've got one colored lady who is also the manager here.... but its only black. And the contracts manager of specialized services is a white guy. But we are both under management not staff ". [Contracts Manager-UCS]

"I have got nine people here all of them black". [Contracts Manager-FO]

"I've got 1 black teacher, I've got 1 white teacher, and then the other 4 are Indian teachers. And I've got myself in the principal seat. [white]. I've got 1 white teacher and 1 caregiver who is a white lady in the baby room. And then the other 6 black ladies are class assistants who have opportunities to become teachers and one of them is on the way there, because the company developed her in that direction. And then the others are at the moment class assistants, I've got 1 cleaner and 1 cook". [Contracts Manager-LJC]

“There is five of us here. Supervisor, admin clerk, two mail runners and 1 driver. All of us are PDIs. Basically the percentage is quite high because the majority of workers are drivers and mail sorters. It’s more of a lower income set up. So most of our staff is from disadvantaged communities”. [Contracts Manager-UTIM]

“When we first started here, we had two whites, eventually they resigned, and we also had about 6 Indians but they moved on. At this point in time we’ve got 1 colored, basically it’s all African. And according to the hospital policy we had a percentage that we had a specific percentage that we had to employ from around the area ... Cator Manor. That was the requirement”. [Contracts Manager-MHW]

“We manage the linen for the whole hospital. We are here to manage the linen, we’ve got about 34 staff who are divided into 2 departments. We’ve got this department which is called a dirty linen department they only deal with all the linen that has been used from theatres and clinics. With us on site we don’t have any Indians or colored’s its only blacks but all the management is Indian and white. Top management yes. But our management like my manager my operation manager she is an Indian and she report to a GM who is white but here on site its 100% black . We had Indians but they don’t stay with the kind of job that we are doing. They don’t stay I think is more of the hard work, like pushing trolleys and you have to count linen the whole day. And its more of a sweaty job its not like the office comfortable job”. [Contracts Manager-UL]

“Including myself we are looking at 93. Ok. its myself white. as a contracts manager... I’ve got one white lady and the rest are all black male and female”. [Contracts Manager-ES]

EMPOWERMENT ANALYSIS (EA/7)

Again it appears that the issue of employment equity has really trickled down from sub-contractors to every sub-sub-contractor. A walk around the hospital in general reflects the racial composition of South Africa. Again this particular area is not very much different from the one above in the sense that the agent could not avoid proper compliance without jeopardizing the chances of securing a contract. The general dearth of black professionals in the country constrains the securing of technical staff from that segment of the community.

5.6 OPERATIONS

After the initial struggles the role players settled in, and the deliverance of the project became an overriding concern. For most players this was their first time to work in a PPP setup and they were as a result asked to voice their views on the standards found here at this project.

5.6.1 PPP Standards

The PPP mechanisms of service level agreement and penalty regime seems to be keeping the standards high at this hospital and the new players regard this as a positive influence on their careers.

“No actually it was my first time here at Albert Luthuli, the other hospitals that I have worked for I think it is because there were no private partners in those hospitals. Whereas here at Albert Luthuli we’ve got private partners so I would say this is the first time I get this kind of monitoring. For each and every service provider even the DOH themselves they have procedure for each and everything that is going around here, that you have to adhere to, there are standards that are set. There are quality improvement programmes that are done by everybody, by all departments”. [Contracts Manager-F]

“Honestly in other hospitals yes...sometimes we take short cuts because nobody is monitoring us...Ya”. [Contracts Manager-F]

I think also the penalty regime...is what keeps the standards as well for people to do any work. Because you know you gonna get the penalties if you don't do the work. So as much as it is a very difficult system it is there for a reason and that has really helped". [Contracts Manager-UCS]

"Standards don't change. The standards are always the same. It's the people. Not the standards. Here the expectation is too high because we are the service provider". [Contracts Manager-MHW]

"Personally I enjoy myself here because I am under pressure 24/7... and that is how I thrive I need to be under pressure then I am at my happiest. You are not going to find a more difficult site than this one. That I can assure you ...I have no doubt". [Contracts Manager-EF]

The general standards induced by the PPP have trickled down to the IALCH general operational standards. This was cited as positive contributor in developing high levels of professionalism.

"What I have discovered is that you get exposed to different levels of the operations but in other hospitals that I have worked in you only concentrate in the area where you are working. Here you get exposed to lots of different other operations within the entire hospital. So you get to liaise with other service providers and also you get Department of Health (DoH), you know that is why you are able to stand on your own. You can actually push your plans forward on your own in terms of bettering yourself". [Contracts Manager-F]

"Yes it has, ...it has. Because it becomes a part of our daily standards here and by keeping up to high standards everyday it becomes a part of you. And it grows you ... definitely.... because the experience elsewhere the standards are not kept to scratch because of people not being supervised on a daily basis". [Contracts Manager-UTIM]

“It helps you to ensure that all the time you adhere to the standards. Doing the right thing the first time, because that is the best. If you get used to doing the things the right way you won’t have problems”. [Contracts Manager-MHW]

“Without IALCH I wouldn’t be where I am. I think we are the best.... if we can be the best here we can be the best anywhere”. [Contracts Manager-UL]

The respondents drew parallels with other government hospitals after they have experienced the high standards and a conducive environment at IALCH.

“Albert Luthuli...I think it is a special child. Seeing that it is a government hospital and yet it is so different from the other hospitals. Here at Albert Luthuli everything is organized... done according to order”. [Contracts Manager-F]

“I wouldn’t say patients are expecting too much I would say because of the environment here at Albert Luthuli they sometimes treat this hospital as a private hospital. Whereas it is still a public hospital so they will expect to get the same experience that they are getting at the private hospital here”. [Contracts Manager-F]

“And if you go to Inkosi Albert Luthuli....it could compete with any private hospital. Now if you go to a public [hospital] it’s a mess....you just feel sad that the majority of the population that is all they can afford. its just ...its terrible....Ok I get emotional...[laughter]”.[Women’s Group participant-M]

“Because the service that is provided is excellent, It is always on time. I think you have seen our hospital how clean it is....had it been done by somebody else who is not contracted it wouldn’t be what it is now”. [Women’s Group participant-M]

“It’s helped to keep the standards of the hospital, because they is a very high expectation at Albert Luthuli. And to have service providers actually running the hospital I mean you don’t You just look at other government hospitals that maybe don’t have service providers. And you have people that are working there that are maybe employed by the government. And see how those hospitals are like. I mean you look at Prince Musheni Hospital in Umlazi, you look at King Edward Hospital. It’s a mess ...it’s a mess”. [Contracts Manager-UCS]

“Because really if you go to other hospitals its really a shame. So we are really doing a good job to maintain this hospital for so many years to keep it to this standard. So I think we are really doing a great job. Even though there are challenges...definitely there will be challenges but we are trying to excel. Everyday...anytime of the day you just have to lock a call... I think we are efficient”. [Contracts Manager-UL]

BENEFICIARIES BEHAVIOUR ANALYSIS (BBA/9)

The experience of working with private service providers have managed to induce a culture of high standard among the PDI contracts managers and most seem to have embraced this opportunity, and this has given them the confidence and self-believe to work anywhere. The hospital is regarded as a private facility because of the consistent high standards.

EMPOWERMENT ANALYSIS (EA/8)

The high standards maintained at this hospital are delivered through the PDIs and this is empowering and it has demonstrated to the PDIs especially in this case the contracts managers what they are capable of achieving. Giving them this opportunity where their role is at the centre of the delivery has increased their sense of self-believe and professional confidence. Whereas in other non PPP projects PDIs might play peripheral roles, here they were observed manning offices and actually taking charge of the daily activities.

5.6.2 Government BEE Monitoring

Government monitoring is here discussed by the individuals who were/are working in the government and those who were/are involved in the project. By and large the government officials seem to be relying on the self-monitoring mechanism in the project to enforce compliance. The self-monitoring mechanism works in the way described below by one respondent.

“Yes there are penalties because ... we’ve got a help-desk system whereby if the client needs anything. Lets say they need clean sheets they lock the call with the help-desk then help-desk will inform us and we will radio [one of our staff]. We’ve got a two way radio system whereby you pick the staff and Say ward A sister Nonvula requires whatever. Please make sure that she gets that service. After 30 minutes if the call is not addressed you get an escalation to say its been 30 minutes the client is still waiting. After 45 minutes you get another escalation to say 45 minutes then something is wrong. After that it goes to 100% that means something is really wrong.

“We get escalation like we as management we are not on the floor, but we get this feedback that say the service is efficient or not. If not you start to get the escalation. That is where you address it with the supervisors as well” [Contracts Manager-UL]

It is the efficiency of this system which monitors even the BEE issue that the government officials seem to be reliant upon. At the end of every month the BEE reports are submitted to IMPILO before they are passed on to the government. Any company which has defaulted on the BEE issue would automatically get penalties and suffer heavy financial loss. This makes BEE compliance a performance imperative to all the companies. Thus, the perceived confidence among the government officials that it is not easy for established companies to shirk on BEE in this project.

“People can’t cheat too much in a PPP contract because of the strictures that are there and these things are audited. But they will always take . . .eh. sort of chances here and there”. [Government Official-S]

“The best thing that happened with Albert Luthuli is that most of the requirements are actually contracted. Good fences make very good neighbors. So you disagree on the margins but the majority of stuff that you needed to do is documented in the contract”. [Government Official-S]

“Well the contract is a self-monitoring contract. How good is that with the BEE I don’t know”. [Government Official-C]

“Your agreement must make sure that its well monitored. I am pretty sure that this one as far as BEE is concerned has got very good provisions. A lot of it has been taken up nationally. Because there were no rules, no PPP rules. .nothing, but it was very much from scratch. But if your contract is good. and you make sure that you do get things... you do have some self-control in it” [Government Official-C]

When the government officials were asked to comment about the presence of a permanent monitoring body within the government they gave the following responses. However it seems that the responsibility should however be with Department of Health which is in charge of all the project deliverables although the Treasury is taking charge to rectify the oversight.

“There was a period here [Treasury] that nothing was being done, we have revived it now. So in the next few months we will be able to give those reports. At Health at the moment there is no monitoring ”. [Government Official-C]

“At the moment we are only starting with the PPP unit. We are starting monitoring the reporting of the PPP, at Treasury, ...but it should be monitored at Health”. [Government Official-C]

“It is really a line function department which must then manage it, when we sit at Treasury we don’t get a feeling these things are tightly monitored”. [Government Official-S]

The officials were asked if they believe that the private sector is not cutting corners on BEE they gave the following responses, which shows they rely on the strength of the PDI players to sound the alarm.

“The project Sponsorhe is too strong, he would push it. I am pretty sure. I would be very hesitant if it was sleeping partners that you never see, but he is involved. There is no doubt in my mind, he is involved. [if] there is a meeting he is there. He is really involved. The two ladies are directly involved. I am pretty sure....if it didn’t add up there, certain things that had be bought through them in terms of the rules to make sure that they build their capacity and operators ignored them. And they came to say ‘these guys are not following the rules’. And that’s taken up in the next meeting with the Liaison Committee between partners and the hospital”. [Government Official-C]

“Not deliberately....like any other regulation like the speed limit. If you are sure that there is no traffic cop you will go to 140..and it is not that you are generally a criminal but its that because nobody is watching and your car is capable of getting to 140 you would”. [Government Official-S]

So the belief in the strength of the PDI players and the recognition that private parties would try to circumvent the provisions of the policy could have been based on experiences such as the ones cited below by one of the PDI players.

“So I fought that again I actually eventually.... I don’t how many times I went to Pietermaritzburg,... because my argument was as follows: ‘Government you put this together with an objective of empowering people that are black...do something. Here is a problem,... you know, it wasn’t easy”. [Women’s Group participant-M]

However there was one official who claimed he used to conduct spot checks on the hospital while he was still at the department although that experience does not appear to be shared by others players.

“Oh yes we do that. When I was in government I used to enjoy that bit ... because when you walk in the hospital and you test. and you see people wearing a different uniform and you ask which company do you come from? And they say this and this...and you say I don't remember us approving this company. What [used] to happen [is] then you ask questions. and they say you remember in that meeting we said . . we've got difficulty with this company so we swapped them with this one and this is the background of this company. So yes we do that”. [Government Official-S]

“I have never heard a situation where they've come to do BEE spot checks. Because I was responsible for BEE report when I was in the women Group PDI, I used to compile a BEE report which actually explained each and every service provider, who the owners were, even the staff, how many black people... you know the whole thing. You know we would submit that to IMPILO”. [Women's Group participant-O]

“I think they need to monitor the so-called BEE companies. Like if the FM operator is saying it is developing Women Group PDI they need to be more hands-on to see if these people are being developed and to do the spot-checks that you were talking about. Because they can't just accept what they are given without even having to investigate if this is happening”. [Women's Group participant-O]

There was again a general feeling that the government monitoring and interpretation of the requirements of the policy were dependent on individuals and that there was a general lack of capacity and monitoring continuity in the government.

“There is no continuity. The person that took over from me....went through the whole thing....but I still have to tell them you can't do that. Go and read that part of the agreement. There is no buying-in from the new management into this whole project. This is the problem you are going to pick up. We don't have the knowledge going forward with it. In the mean time you loose control ...you don't really know what you are supposed to do. If you've lived with the contract and it is better a group of people.... not one person, a group. You can go further. But I personally think we are not managing the contract”. [Government Official-C]

“I thinkwe are making ...too many laws and trying too few people to implement all of those laws....I think the BEE framework is too complicated. How the poor BEE people understand it I don't know. Now you have got to police that.....now you haven't got people to police it. So that is it in the broader sense....what the problem probably is ...it's a total new area...and its only when there are mistakes you realize. oh my God we should have done this ...you don't really have good contract management.... readily available”. [Government Official-C]

“Ah....which I think is unfortunate even if they do put conditions and sometimes monitoring becomes a bit of a problem. It depends on the person seating on the other side of the table. ah. unfortunately government like most institutions personalities change. And also what I have seen is that although there is a ... BEE legislation and Codes they are interpreted differently by different arms of government and they are implemented differently by different arms of government. So you don't find uniformity across government. You don't find uniformity in terms of monitoring; you don't find uniformity in terms of punitive measures that are put in place. They differ significantly. You are also finding that these projects are long-term projects and the tendency is to stick to the minimum that is required by the bid. And that minimum remains like that for 15, 25

years. So there is no way in which a BEE company can create capacity and be able to do it on their own”. [IMPILO Consortium shareholder-T]

“There was one official who used to drink and eat this thing he used to eat this thing he knew everything in and out. And even in meetings when there is tender coming out he would want to ensure that, is it a BEE company and all that. So when he left it changed ... We still do a quarterly report though”. [Women’s Group participant-O]

“I think there is lack of capacity. And also the attitude that says. Let me make you an example .take for instance Inkosi Albert Luthuli.... the frontline face of the government is the hospital management followed by DOH. Who should be doing the monitoring of the performance of the contract? Rightly it should be the management of the hospital not the Department [of Health]. Because you can never manage removed, although it’s their project but its removed. It has representatives on site but I doubt if they see themselves as the custodians of the project. I doubt if they see themselves as fully charged with responsibility of monitoring BEE. They would probably be saying operationally yes, ..because it affects us directly but on other terms it’s the department that should be raising those things” [IMPILO Consortium shareholder-T]

One of major lesson from the project is that every sub-contractor must be tight up with the SPV if there is going to be a proper monitoring of BEE. This, the government officials acknowledged would create bulky contracts but they however saw as the best way of monitoring practical empowerment.

*“Its fairly comprehensive. the problem that I had is how did you really measure you know. whether BEE is taking place. At 40% you could clearly see it is taking place. Omame is a business they were running a business.....and the lady who is doing CSD she is doing it. So that is easy to do. But when you go lower down [*private sub-sub-contractors*] then it looks like BEE firm but it is not.... or may not be. Which is the general*

problem that I find with BEEs..... I would have loved to have seen for instance practical BEEs. Instead of there being a Fedics it would have been a BEE catering company. The Fedics itself may be having their own BEE scorecards... but that you can't see ... because that's not the report line. The report line is at the top and who are your sub-contractors? Ok...and they've got to conform to certain things but it is very difficult to go through in details to see if they have achieved everything that you wanted [them] to achieve. Eh... I think you probably could have achieved more in certain areas, very difficult in certain area like equipment and IT". [Government Official-C]

"That is part of the agreement. Whereas at the airport [King Shaka International airport PPP project], we have a contractor that is doing piling.... because it is a construction project, it has got nothing to do with the papers that you have signed. So it could be a white company ... for all we know. But here if you are going to change Mbekani as a sub-contractor that is doing sterile services, you've got to change that agreement otherwise the penalties kick in....although your contracts tend to be large in size and so on and detailed[however] you end up having everyone empowered in the contract. But it is better for monitoring the effects and the impact of BEE in these kinds of projects". [Government Official-S]

MONITORING ANALYSIS (EA/9)

The government has not been able to adopt a systematic monitoring as stipulated in the contract due to lack of capacity and lack of staff continuity. This has created an overreliance on the self-monitoring governance mechanism. The effectiveness of that has been based on the absence of any major complaints from the PDIs.

The lack of a dedicated monitoring office on site which scrutinizes BEE has also been cited as a weakness of the monitoring mechanism.

The government on its side has learned that in order to be able to properly monitor all the PDIs in the contract. Every PDI at all the levels must be linked to the SPV so that there is a direct link with the government to enable a proper BEE scrutiny.

5.6.3 Sub-Contractor Empowerment

The contract is structured in such a way that the FM operator is the one dealing with all the sub-sub-contractors, bar one. There are twelve sub-sub-contractors in total. Only one falls under the medical equipment operator with the remaining under the FM operator. The majority of the contract managers to these sub-sub-contractors are PDIs, and they were asked to relate their experiences with the FM operator. Firstly the operator manager [from D&S] was given a chance to relate their approach to BEE.

“What the FM operator has done is they’ve said .ok. we will bring you in as our BEE partners and you will run those services but we will be able to mentor you in the process over the lifespan of the contract. The inception of the contract is [from] 2002 right to 2017. So [it] is a 15 year contract. So for the 15 years we said we will mentor Umongi and the system in terms of uplifting the skills base and being able to manage the contracts of this magnitude, and then from there the idea is that by [the] time that they leave here, they would have already acquired more contracts outside of this contract”. [IMPILO Consortium shareholder-D]

“On the mentoring for ...example lets look at Umongi. This is our offices here ...Umongi sits in our offices. They wear uniforms that say Umongi but they sit in our offices and they have access to all our systems they have access to all our documents. They have access to our IMS system, our Integrated Management System. They know how we manage the site and they have access to those resources to be able to manage the facility, their services. So we really... although we are two different companies we really work as one and the mentoring process is an ongoing day to day mentoring process. We are very involved in what they do, even with the service providers we at FM operator sit in on their meetings and we give them feedback and we guide them. And we have regular meetings where we share ideas and share knowledge and they are really integrated into our system and we don't see them as a separate entity. Its FM operator and Umongi we all see ourselves as one. [IMPILO Consortium shareholder-D]

“And they are comfortable and confident that they can manage it. So we are sort of sitting here and saying we are the big brothers looking after Umongi. They've got a big scope here, I mean a lot of service and a lot of work they do. a lot of their employees...are people from the community. And they've got varying levels of education, ...skills...so it is very challenging. So we act as a bigger organisation in FM operator but we have this very strong bond with our BEE partner....ok. that is basically the model that we as an FM operator have adopted at all of our PPPs”. [IMPILO Consortium shareholder-D]

“So we tend to ...in our model. we take on a partner and sort of mentor and grow them to a stage where they can go on,. on their own. So Umongi is actually a registered facility management company like we are”. [IMPILO Consortium shareholder-D]

The women group PDI agrees with the fact that they have unfettered administrative and operational control.

“Ja. with the soft stuff. They actually let us do everything....they actually let us do everything in terms of soft services. We are running our own show...you know. even .in everything. Even managing the contractors that we have we do it ourselves. There is no interference in terms of that”.

[Women’s Group participant-T]

Although in the quotation above they were speaking specifically of Umongi as the FM operator partner, all the sub-sub-contractors experiences seem to uphold the veracity of that claim. For the contracts managers of the sub-sub-contractors, it is basically the support they get from the FM operator.

“I have this contract from FM operator. If I have a problem there I contact the managers of the FM operator to help me, there is no problem on that front”. [Contracts Manager-ES]

“I’ll say FM operator looks after us”. [Contracts Manager-FO]

“Yes...we work as partners . that is what we are with FM operator. at the end of the day if our company is not performing well it affects all of us service providers. If we’ve got anything that we feel we are unable to do, we always refer it to them. If they can help us in any way they do”.

[Contracts Manager-MHW]

“Yes ... we are sub-contracted to FM operator. Their management is very supportive as well. And the client the DoH they are also.... We are like a team. We are working as a team. With one mission to please the patient and we are given that opportunity to like excel where you are and if you are doing well you get appreciated and you do more, you strife. . With FM operator we work hand-in-hand with them. We really work hand-in-hand with them. They are really supportive they are supportive”. [Contracts

Manager-UL]

The FM operator had recently embarked on a computer literacy drive for everyone under FM at the FM operator own cost.

“Yes they help actually they have introduced a computer course by another computer company within the hospital and FM operator did address the other service providers including us. And we are now studying basic computer skills through that”. [Contracts Manager-UTIM]

“At the moment we have the facility of the ICDL which is a computer training which is done by FM operator to empower all the service providers from the bottom to the top, which is a good thing. Everyone will finally have their run... which is a good thing from FM operator”. [Contracts Manager-UL]

EMPOWERMENT ANALYSIS (EA/9)

The supportive, interactive approach taken by the FM operator has managed to take a company that did not exist before the commencement of this project to a very efficient soft services FM operator, which is learning from a leader in the industry. The skills transfer appears to have worked very well with this kind of approach.

All the sub-sub-contractors contracts managers consider themselves to be a team with the FM operator and as such they are able to thrive professionally in a conducive environment for PDIs.

The initiative of making everybody working under FM operator to be computer literate shows the commitment and initiative to create staff that can work in this modern establishment, where computer literacy is a huge advantage. The trainees are going to take the skills even beyond this project.

AGENT BEHAVIOUR SHIFT ANALYSIS (ABSA/8)

Once the conditions of the PDIs involvement were set out and the operational responsibilities allocated, the FM operator shifted the approach from being a complying agent meeting the minimum requirements to a steward who goes an extra mile to empower the PDIs. The interactive management style and the support given to every sub-sub-contractor have created an environment where the PDIs feel that they are part of the team and this has led to professional growth. The fact that there is no complaint on the operational involvement of PDIs as agreed on the contract and the fact that there are extra innovative interventions to improve PDIs skills is demonstrative of a behaviour shift towards that akin of a steward.

5.6.4 Quality Inspectors Influence

The way the FM operator keeps the standards upheld is through the use of Quality Inspectors, whose job is to go around the hospital everyday systematically checking that there is no infringement of the contractual obligations by sub-sub-contractors. Their positive supportive and yet firm approach, has created a sense of awareness of the high delivery standards expected of all involved in the operation of this hospital. It's not only them that have an influence but the self-monitoring mechanisms which carries penalties for any default has helped in keeping the performance standards high. As a 60% shareholder the FM operator is at the end of the day accountable for the overall FM performance and they have taken quality inspection as their prodding tool to uphold high standards. The following were the views of contracts managers on the impact of Quality Inspectors.

"There is this lady that comes here all the time. If there is something wrong that smells bad she is always making comments. All the time.... sometimes there is another lady if there is something which is not right she calls me Eih 'I have seen this and that' and I always respond ok".

[Contracts Manager-ESR]

“They do that on the daily basis from them, from their quality inspectors who are on site they go around the hospital in making sure that we are adhering to the standard that was put forward. So that at the end of the day we get e-mails from them to say we went to this place and these are findings. Every week once a week on Friday we’ve got meetings with them... FM operator and their quality department where we discuss all the issues that came about, during the week. And we come up with ways of resolving those”. [Contracts Manager-F]

“It’s good in that it keeps you awake all the time to make sure that your service is up to standard. I have grown in a lot of ways. Compiling reports.... because from time to time you have to compile reports. So I have grown in that because compiling reports is not an easy thing because you cannot just wake up one morning and put together a report. You have to go in depth and do your investigation properly and make sure that you are giving a report that you will be able to implement because it is one thing to put together a report and giving it to a client who is not going to even monitor it. Whereas with FM operator the reports that you give to them they monitor them and make sure that you are implementing the actions plans that you put in that report”. [Contracts Manager-F]

“The supervisors come around and they look at maintenance, they look at the cleaning. And they come back to me and report what their findings are”. [Contracts Manager-FO]

”So when we have meetings I am there. They have people that also evaluate us, they would say... not that it has ever happened...about the penalty clause I have never had that. Twice a year the company takes a private survey which I must find out what is the problem not that it is always negative. Its very much positive..so if there is a problem I must correct it. They’ve their quality people that come around, two ladies that

come around to check that everything is fine. What we are doing and so on” [Contracts Manager-LJC]

“Ja. you see us as service providers we are run by a head company FM operator which sub-contracts all the work to us and everything is being monitored every second of the day. So all service providers are keeping up to whatever their service standards they need to keep up to. Their Quality Inspectors usually come every ... in a week maybe 2 or 3 times. They have people whose job is to do this everyday ...they walk around the whole hospital. They walk around with a board inspecting every office in the whole yard. Ya it is done on a daily basis....maybe they may not end up coming here everyday but they are patrolling the whole hospital. So maybe every few days they will end up coming past just to make sure everything is in order”. [Contracts Manager-LJC]

We’ve got Quality Controllers from FM operator, so they are much involved. They come on regular basis . they take a walk. they are all over the hospital. They can come in now. For instance they can say ward AB you were supposed to have done this and that and its 8:00 o’clock and that hasn’t happened. And you say it did happen and then you take a walk to that ward and check if it really happened and the client is happy. And if there is any concerns that need to be brought up and we address all the issues on a daily basis. Yes they are very helpful. [Contracts Manager-UL]

“Quality people have been very supportive because if there is something that you can’t see in the ward but because with them they are on the floor. So they bring up the issues and on our side we try to be as efficient as possible and give feed-backs”. [Contracts Manager-UL]

“Well on the daily basis I would say they do walk about and obviously should they find something wrong within our operation, I will receive an e-mail from them and I need to reply to that. As far as I know I get calls on a

daily basis sometimes weeks go past before I get a call... you know....complaints from them”. [Contracts Manager-ES]

Although most respondents were appreciative of the role the inspectors play in ensuring that they stick to their contractual mandates. They were equally candid about the defaults that their companies had had. This resulted in penalties being meted after an elaborate warning system that was explained in section 5.6.2 above.

“We have had penalties yes. ... whereby the call would reach 100% yes. It happens once in a blue moon... but it does happen I am not gonna lie, it does happen.” [Contracts Manager-UL]

“Lately in the last four weeks there has. you know ... there was..... let me put it this way. the client felt that there was under-performance from our side so you know they were on ...but for the last three weeks ... its been quite”. [Contracts Manager-ES]

EMPOWERMENT ANALYSIS (EA/10)

The role of the Quality Inspectors appears to be central to the maintenance of high standards in this hospital. This has contributed in molding a highly professional cohort of PDI contracts managers.

The call center logging system has created a very responsive service provision because of adverse penalties that are meted if there is delay in addressing queries. This too is credited with building world class PDI professionals.

AGENT BEHAVIOUR SHIFT ANALYSIS (ABSA/9)

The performance of PDI contracts managers is a reflection of the FM operator own performance because they are ultimately accountable as 60% shareholders. This has inspired them to take a very supportive approach through Quality Inspectors in dealing with and skilling PDI contracts managers.

5.7 REFLECTIONS ON THE DEAL

5.7.1 On Proper Involvement of PDIs

The contract has been in operation for seven years and looking back through the years, several people who were involved in its formulation as it now stands were asked to reflect on it and offer objective assessment. The strong feeling was that there should be involvement of PDI at all levels.

“If you are going to make money at all, it is towards the end if you do...right. So if you are not playing at level two, just go home. It is a waste of time. If you have luck you play at level 2, you play at level 3...you are fine ...you see”.. [Women’s Group participant-M]

“BEE parties who are not involved either in operations or on the construction side have actually ...no reason being involved in PPPs. Because their return on equity is ...especially if your cost of funding is third party cost...is nothing”. [IMPILO Consortium shareholder-T]

“One of the key lessons that we have learned is that it is better to have BEE participants at all levels. You would have... the SPV would be divided into your contracting companies... your main sub-contractors and your sub-sub-contractors”. [Government Official-S]

The issue of having a strong PDI player who might be compromising others was also cited because the individual needs of other smaller PDIs would not adequately be addressed especially when they are new entrants.

“It was for that reason that I think it became easier for him to carry others along. Its got its own problems because if you were to talk others they would tell you that he got himself a better deal than others. But those are perception people end up having if you lead, whether he did get a better deal is for them...because they were negotiating among themselves”. [Government Official-S]

“The problem with PPPs or anything, especially on the BEE side because we are learning, once you have control in one area, then it is doomed because everyone else become compromised”. [Women’s Group participant-M]

“Yes...yes. its flawed. It is so flawed. You see if...you can’t be equal partners. We understand that. Its not a socialist country but give enough so that.... as there is a lion share, that is why I ran in the first place while others were walking. But these also are empowered. Because if BEE is about transforming the face of the economy in this country its never going to work if there is one player for PPPs and that other person for that thing. 10, 4, 5 spread the cake, but don’t compromise the big players... because the other thing is that government sometimes go to the extreme ... they will actually give you tenders and you have cashflows and you think you are ok...And they would say she has got too much now...and they dump you completely and give someone else. Make this business sustainable...because if it is not sustainable it is a reflection on blacks; that they can’t sustain businesses. Make sure that this is the piece of the cake it is sustainable ...the cashflows are sustainable because you pay on time...please. Because they don’t. And they kill these businesses”. [Women’s Group participant-M]

“So I think Treasury... the responsibility of the government is not to punish the major players. You also don’t want to punish people who succeed, but just make sure there is a balance. Assuming ... I am just making a scenario.... assuming that 10 people come. It is another PPP now and there is potential here. Give that person a chance. In an unlikely event that there is no potential of the 9 take this one but make sure there is a balance, with the one that must learn. So that next time they are on their own. But the truth of the matter is there is no way that out of 10 you will always pick up the same one unless, unless there is something else”. [Women’s Group participant-M]

“If you do BEE you must believe in it or don’t do it. It is easier not to do it than to do it, than to give pretenses. Because when you give it pretenses, you don’t only undermine the policy but you pay more. Because there is a premium that you are always paying for BEE, so if you haven’t done it properly you are paying that premium for nothing. So there is really a need for those that are doing BEE projects or trying to promote BEE to be true to the projects. Secondly there is a cost element to it. If you pretend that you empower people there is a social cost which is not really measured in fiscal terms and that social cost because ...over time you want to create business people that would be loyal to your course not as an individual but as state and government. Because if you have people that say I am in business because government created a programme that works, they are unlikely to be disloyal to the republic, In the true sense of patriotism. So the reason why state and government would do this policy is really to satisfy that which separates private administration to public administration. Because you have to write and articulate policy and write up policy and implement policy to satisfy a particular gap in society. And importantly, to monitor implementation of that policy in order to attain the proposed results. So government has a job not only to balance the budget but primarily to ensure that this policy of BEE is actually properly implemented”. [Government Official-S]

EMPOWERMENT ANALYSIS (EA/11)

Full empowerment for the women's Group PDIs was not realized especially because they were not involved at level two which carries more responsibility and financial benefits.

The situation where one of the PDIs is much stronger than others seems to compromise the collective interest of the PDIs. This might give false pretenses of the intentions of the policy and end up tarnishing its ideals. The exclusion of PDIs from certain segments of the project creates a situation where they feel their inclusion is a mere compliance with no genuine effort for full empowerment. There should be a concerted drive to fairly empower as many of the PDI as is practically possible. It was felt by respondents that those goals might have not been fully achieved at IALCH, by the exclusion of women at the second tier and not accommodating them in hard services provision.

5.7.2 The Commitment of the Private Sector to BEE

The commitment of the private sector also was under the spotlight. Because of the experiences of many different parties there were a lot of opinions about the attitude towards BEE of the established companies.

"I think so. Its difficult to say yes it is .its compliance. But you do get that impression. When are they gonna change I doubt it, if you ask me whether there have bought into it? Yes and No....I think they have bought in it completely as far as they are forced to do in terms of the agreement. Once you change the agreement tomorrow they might not do ...[laughter]...do you understand what I am trying to sayThey are forced they have, ...they have bought into it. But when you walk out you've got nothing to do with it". [Government Official-C]

"I don't know of any B contractor in South Africa that does BEE because of the love of it. It's primarily compliance....eh.... at best is something that will win me a contract if I do it well. But is not something that people do it

as the first business meritorious kind of approach. I mean I hear people say it's a business imperative, I am yet to see that. I am yet to see somebody who says look I am making money, I don't necessarily need to sell my business but because there is BEE in the country and I understand and agree with it I am selling my business. I am not necessarily going to make a super profit". [Government Official-S]

"No they haven't bought into the spirit.... those that have really bought I don't know where they are. It's a matter of what is in it for me in that company ...of which is not wrong. ...but it defeats the long-term purposes of business. if I get into business I want to have that long-term vision I think BEE kills that... I think BEE is just like a short-term thing to get a contract and that is it, which requires us to go back to being on our own. and starting up companies". . [Women's Group participant-O]

"The industry would say. Why should we build up our own competition? But the question is why then BEE in the first place? The reason behind it is to actually do exactly that". .[IMPILO Consortium shareholder-T]

The general feeling of the PDIs is that from conception the established companies just wanted them in order to win the contract, and as a result they feel used.

"If you are going to lead....they don't want people who are going to make noise....you know. And the less experienced the better. Imagine if we were experienced it will be a very different story that I am telling you now. So there are always going to be those dynamics".[Women's Group participant-M]

"I think the problems in terms of BEE when we....as African people we were not very glued up about these things, and we were just taken to say come you will be partners with these people.....There are such clauses....of which you look at the fact that when we get into these BEE

deals there is a lot that we don't know. We are getting in there for them to assist us but they are also abusing the fact that you don't know much. And then they put us in the corner. Ya.....because we were not very glued up in all these things. So this is what we are discovering years later when we are already inside the whole system". [Women's Group participant-T]

"Another challenge that we have as BEE company is this issue of a common vision about BEE. I don't think the conglomerate showed 100% commitment to BEE. It is BEE to get the contracts, I think they understand that in order to get the contract they need the black shareholding and that is where it ends. So being those black shareholders you feel... sort of... they use us just as the means to". [Women's Group participant-O]

"I am still thinking about you know my profession. If somebody were to ask me to do something in my profession I would know exactly what to do. I know this is what you do A,B,. this is what you do. There we were new. we just knew there it is BEE... and when there is BEE there is money that is involved. You gonna be involved with big guys. you know it is a big contract... but when it got to the nitty gritty in terms ... ok fine. you are in this consortium, here are these big guys 'how do you make money here?'" [Women's Group participant-O]

"I am beginning to see a lot of an attitude that says that BEE is a necessary evil lets deal with it that way. We are basically ticking boxes and which is unfortunate and the unfortunate part is most of our people are desperate just to get involved". [IMPILO Consortium shareholder-T]

ADVERSE SELECTION ANALYSIS (ASA/11)

It appears that the collective observation of the PDIs and government officials is that there is an intrinsic negative attitude by established companies towards BEE. And that department makes the PDIs to generally feel that they are just used when they discover the true intentions of the established companies.

The many occasions of adverse selection cited above informs the collective opinion of the PDIs that established companies would just do the minimum required by the contract on BEE. This lack of maximization of the agent effort on BEE is intended to increase the utility of the agent, but at the end of the day it negatively affects the principal empowerment goals. However, this is done in such a way that there is no defaulting on the contractual requirements as the bare minimum requirements are met. From there the ignorance of the new PDI entrants is exploited.

5.7.3 PDIs Under-Preparedness and Lack of Capacity

The under-preparedness of the PDIs when they enter the PPP deals also work against them, because there is too much expectation without probing earlier on about what they would get out of these deals.

“And then they forget the primary objective of getting into business, which is to make money. And hope that by involvement they will make money. Instead of making sure that they know whether they are going to make money, how and how much”. [IMPILO Consortium shareholder-T]

“If I were to advice anybody who is new and who want to get into BEE spaces I would say contracts. Understand the legal side. Because with watertight contracts you wouldn't have a lot of problems. And getting an experienced lawyer, and not just a lawyer who is experienced commercially, but a combination of commercial law and BEE. You need somebody who understands BEE. You need somebody who understands the scorecard in and out. Because commercial law is another aspect because there are certain things which are fine when you look at them

from the commercial law aspect but which are not necessarily ah... facilitating BEE". [Women's Group participant-O]

"As African people we were not very glued up about these things, and we were just taken to say come you will be partners with these people". [Women's Group participant-T]

"And I have also learnt that you have to pay money to get money out of anything. You need professional help. right... go to lawyers because we are not alone...don't sign agreements...go to lawyers to look at it: 'is it saying what I want it to say?' and read it. I have really learnt a lot and also agreeing upfront... you don't say 'hang on you want me, what percentage, lets talk equity upfront'. There is this attitude 'I invited you so you must just follow diligently'. But the point is there is a reason you invited me. Let's see what its worth in equity. So those are the things that I have learnt....you know... it's a difficult ..." [Women's Group participant-M]

"I think also we have capacity constraints as BEE, capacity to manage these projects that we get involved in, capacity to make proper assessment of things, capacity to play a meaningful role in them. Because, we probably cannot afford the capacity that is necessary to do that". [IMPILO Consortium shareholder-T]

BENEFICIARIES BEHAVIOUR ANALYSIS (BBA/9)

Inexperience and economic hardship are a source of PDIs rush to get involved into the PPP arrangements without properly assessing the economic benefits of their involvement and this makes them to be easily taken advantage of.

The big lesson taken from the experience by the PDIs is the importance of a good legal advice in these contracts.

5.7.4 Challenges at Independence

The PDIs feel that after 7 (seven) years they are now empowered in some respects but they are still restrained by the restrictions of the original agreement, which is perceived to be one-sided.

“When you look at it, it could have been a lot better had we bitten the bullet right at the beginning and setup our own companies and have operations with marketing and the [full] wares of a company. You know....[a company] that has control,... [where] you can see and you can manage your expenses. But here you can’t because everything is managed by this other company. But from the point of view... then take that cash and see how best you can use it maybe in other areas. Like you can see from the point of view we started in point A we are now in point B. we could have been somewhere else but we are in point B so if you measure it by movement from point A to point B, we have moved”.
[Women’s Group participant-O]

“Its just that with this BEE thing is not as ideal as when you look at it from far, when you are actually inside then you know what is happening. So there is a lot of growth that is happening with Umongi. But the problem is that FM operator is a bit reluctant to let go. And also the fact that our company is supposed to be having more sites, .you know. Its seven years now. But its still only here....you know. And also the service providers in terms of procurement we do our own procurement but they have to approve that service provider. And as it is you find that most of the service providers that we are using they are FM operator service providers”.
[Women’s Group participant-T]

“They are not ready because they don’t have the infrastructure per se. Because in facility Management when you get a contract.... it will be both soft and hard [services], and our company is more glued up on soft services because it is what we have been managing all along. So what will

happen in terms of hard services. so that is why for now they can't... It means . PDI companies should have more people that are educated in terms of the hard services ...you understand. And also have the knowledge from the upper level you know. how to run the hard services. We have an idea on how to run it but now . we need in-depth [knowledge]. But if were to acquire the hard services expertise we could go [on] and tender by ourselves. But the problem is that clause". [Women's Group participant-T]

There is a view that future PPP contracts should be structured in such a way that mid-way the PDIs should slowly take over the operations in order to create fully fledged PDI operators in the country.

"Their contract needs to say we need to see within a certain time... maybe instead of all these 15 years the FM operator doing everything, and Umongi only doing soft services. Maybe they should have said, maybe after 7 years we want to see Umongi even more involved with hard services and we want to see FM Operator being less and less involved". [Women's Group participant-T]

"If I am going to be used in a 25 years concession, why can't the operator be bought mid-way so that it becomes a BEE operator and that operator then has the ability to bid elsewhere on its own". [IMPILO Consortium shareholder-T]

"It is impossible at the moment. It is impossible ... they can argue and by the mere fact that you are involved you are a shareholder in this and you sit on the board,... you are involved in management. The work has not been split such that my company does this section of the work that one does that section of the work and I can claim that this is the section of the work that I do. No. .Entrepreneurship does not mean, is not professional services where you use you own skills, you know. As entrepreneurs we use other people's skills. We employ skills. Now if I am going to end up

owning an operator 100% mid-tem, then that operator is mine, I direct it, I know everything. If I have to bid for another hospital project, I know exactly [what is involved] and I can stand on my own and I can point to that project. I am not pointing at [mere] involvement I am pointing at what I do". [IMPILO Consortium shareholder-T]

EMPOWERMENT ANALYSIS (EA/10)

There appears to have been empowerment of the PDIs to the point where they feel that they have to be given complete control of the project management and operations. Now the original agreement binds them to work as sub-contractors to the established companies until the end of the contract, and that has actually led to the suggestion by some that future contracts should give PDIs an increasing involvement in the operations as the project progresses until they have taken over the operations in totality.

5.7.5 Empowerment Assessment

The women empowerment group was asked to offer the summary of their experiences after the years they have been involved in this scheme.

"But it is has been so so worth it. ... there is ownership there. You've learned employing people... paying them... strike.... we've heard it all. As I said I tend to use different legal entities. I started a company with other professionals and we invested in a big pharmaceutical multinational company. Which is a good investment. I sit on their board to represent this group that I invested with... Its doing well .I have learnt. You know.... because everything is about learning also and I have been involved in different things". [Women's Group participant-M]

"I won't lie to you when you look at the broader scheme of things and the level of the place I think it has benefited us a lot. depending on how you look at it. We were able to get our foot in the door, and for us we used it to our benefit. No-1 when you are bidding for other things even though they

may not be in the same area you now have a track record. you've been there, you have done that, you have burnt, you understandyou know.... what BEE is about and whatyou know to look out for. And how then to structure BEE contracts on the financial side it has helped us to have a base. First and foremost there are very few black companies which have got such an opportunity as ours, and so the mere fact that we have been involved gives us a track record". [Women's Group participant-O]

The role of international players has done a lot in increasing the professionalism of those who work with them.

"One of the things I probably should have mentioned is the professionalism that we see even from the international partners that we have in this project. And of course the service level agreement helps it a lot. You compare Luthuli to any government hospital; it is different. It's like you are in a private hospital, so you could say it is the service level agreement but the involvement of the private parties as well. They come with a different culture, different management styles and ya... it really helps to jack up the performance of each and every company". [Women's Group participant-O]

The government officials also have observed the development of the PDI players at IALCH.

"The project sponsor after the PPP project, it has actually become his business. I don't know if he is doing any other business other than this. The other doctor has grown from ... She was a medical doctorbut from Albert Luthuli exercise she has moved forward she got so hooked up into cooperate sector. She really has become a big business woman. I didn't think she has ever touched the needle after Albert Luthuli". [Government Official-S]

"I think I would safely say that all the BEE partners I know from Albert Luthuli have grown exponentially. The [two] ladies have benefited out of this project. They started actually like being invited from nowhere the other one was just a psychologist running her own practice. But now she has signed up quite a few successful contracts after Albert Luthuli". [Government Official-S]

"The PDI sponsor can start a D&S. He can't start a Siemens. But why can't we start it....even if it is just part of D&S.... You know the engineering side I don't know if the project sponsor can do that ...why can't you run the kitchen, why can't you run the cleaning. ...That is the way how I can see it ...and now that you've the experience here. Same can happen with the number of say the jailscorrectional services one.... those are great opportunities". [Government Official-C]

"I think if there is another PPP, the IALCH project sponsor would play a major role in getting the team together which shows that I think we've achieved something". [Government Official-C]

EMPOWERMENT ANALYSIS (EA/11)

From being complete novices in business, the two women have garnered enough experience and business acumen that they feel confident that they are now fully-fledged business people. Pairing with multinational conglomerates, who come with a completely different culture and business approach has grown them and given them a rounded professional molding.

The government officials involved in this project believes the major players have grown substantially and they can handle at least the FM soft services independently in a new project.

The PDI project sponsor in this project is actually now just concentrating on structuring new PPP deals and is running a PPP investment business and this is cited as a major achievement of the BEE drive in PPPs.

5.7.6 Contracts Managers Empowerment

There was general feeling among contracts managers that beyond IALCH they would like to see themselves owning their own businesses or attaining upward professionally mobility outside IALCH.

“I would like to see myself owning my own company one day. Ehmm... I had planned to start a catering company with other people that I know. And I believe the experience that I’ve gained working here will contribute 90% towards that”. [Contracts Manager-F]

“Yes I am thinking...from my side if I loose my job now. and I am ready to start my own business. I have actually learnt a lot here”. [Contracts Manager-ESR]

“Ahmmm.... It has helped to gain experience and it has helped me to realized how much one can do even opening your own company. And you have realized that doors are there they are opened”. [Contracts Manager-MHW]

“My dream is to run my own B&B. Because I have been to the Hotel, I’ve been to the convention centre, right now I am here. If I can look at those experiences I think I can have my own B&B. What is lacking right now I have to have some courage...courage is the only thing that I am missing. Because if I can go out there ... I know I can get someone else who can help me. It’s just that I have to have some courage that is all”. [Contracts Manager-FO]

“This year I have enrolled with DUT (Durban University of Technology), I am doing project management. To better myself here and maybe to grow beyond IALCH. yes . that is my vision. When I started here I had just matric and basic computer course and hard work. Hard work. That is why I have actually enrolled because now there is no growth within IALCH and so the next step for me is maybe to join another organisation with my

qualification and experience. Because it is not gonna be easy to go out and be a manager for whatever organisation. Yes I have got good experience but I have to have a backup of [a] qualification.I think we are the bestif we can be the best here we can be the best anywhere”.

[Contracts Manager-UL]

EMPOWERMENT ANALYSIS (EA/12)

The majority of PDI contracts managers would like to move on and establish their own business because of the experience they got at IALCH. Those who are not thinking of starting their own business would like to go outside and get better jobs. This is a sign of the professionalism and the confidence that has been instilled in the contracts managers in this project.

5.8 SUMMARY

This chapter took the reader from the moment the two women who were managers of two women-led companies were invited to join the IMPILO consortium. Their involvement in this project was traced throughout the tendering process until the operations stage. Utilizing the PA lenses mentioned in the beginning the actions of the established members of the consortium and the reactions of the women PDIs towards empowerment were assessed. During the operations stage the reactions and experiences of the PDI contracts managers were also assessed, as they were also the beneficiaries of the BEE policy. At the different stages of procurement, flags were raised utilizing the PA theoretical framework, and these flags were later used to form the base of discussion and interpretation of the data in the following chapter. Whereas the current chapter essentially used the PA theory elements to analyze principal, agent and beneficiaries behaviours the next chapter discusses those behaviours and interprets them.

6 DISCUSSION AND INTERPRETATION OF DATA

6.1 INTRODUCTION

This research explores the behaviours of the established consortium members (agents) and the BEE beneficiaries with regards to the implementation of the BEE policy requirements. The interventionist actions of the government (Principal) in providing an enabling environment for the policy implementation were closely analyzed. Since the PA theory was used as a theoretical guidance all the observations were initially channeled through the principles of that theory. Where the tenets of the PA theory were found to be limited in providing an explanation of the observed behaviour, this was analysed further and the phenomenon which was explained through recourse to the Principal Steward (PS) theory, which could be regarded as a counterweight to the PA theory in that it explains behaviour in non-business settings. The utility of both of these two theories is pivotal in gaining an understanding of the totality of observed behaviours, which, as will be shown, became the rationale for attempting a synthesis of the two theories into a more encompassing new theory, which could accommodate both phenomena and explain the behavioural shifts. Taken on their own the limitations of each of the two aforementioned theories inadequately articulated the behaviour within their parameters.

The critical discussions in this section center on the core categories used as areas of analysis delineated in Chapter 5 above. The discussions will be structured under the headings of adverse selection, moral hazard, monitoring, beneficiaries' behaviour, empowerment and agent behaviour shift. These discussions are used to assess the applicability and fit of PA theory in PPPs with regards to BEE implementation and the utility of the PS theory in the molding of the synthesis.

6.2 ADVERSE SELECTION

According to the PA theory human beings (agents) are rational, self-interested, opportunistic (Eisenhardt, 1989) and calculating individuals who seek to attain

rewards and minimize punishments, particularly financial punishments (Donaldson & Davis, 1993). This behaviour manifests itself whenever there is an absence of rigorous monitoring and/or where there is any asymmetry of information favoring the agent. The government was very particular about 'true' PDI involvement in this project, but since this was one of the first PPP projects it has inevitably shed a light on the reactionary behaviours of agents (white-owned established consortium members). The centrality of BEE was emphasized in this project and all the contractual requirements were adhered to by the consortium. However the selection of PDI players in the consortium created a situation where their inexperience enabled them to be exploited by the established companies. This aligns with the PA theory, in that the consortium identified deficiencies in the women PDIs' proper appreciation of complex contracts and used this information asymmetry to favour the established companies to the detriment of the new start-up PDIs even though this opportunistic behaviour was executed in such a manner that the basic principles of the contract were not infringed upon. Had the established companies contravened any of the contractual requirements, like employment equity they would have suffered financial loss, and hence compliance with these requirements was paramount and was adhered to.

The women PDIs were unprepared for involvement in a project of this magnitude, and had to learn as they went along. Several pitfalls emanating from this lack of preparedness were observed. Firstly, there was no proper establishment of the equity apportionment and roles to be played by the women PDIs in advance, and this created a number of challenges as the project progressed. The absence of independent legal and financial advisors was detrimental to the women PDIs' participation, and the self-centered nature of agents in established companies was clearly manifest. The established consortium partners maximized their own utility by disallowing any participation by the women PDIs at the second tier of the supply chain where greater financial control and operational management is exhibited. This exclusion maintains a power relationship where the women PDIs would never develop a full appreciation of the operation of a facility of this nature and would have continued dependency on the established companies.

The established companies induced the women PDIs to sign an apparently mutually beneficial “restriction of trade” agreement, which the established companies did not adhere to but to which women PDIs could not contravene for fear of the legal implications. This created a situation where the established company can bid for other projects in KZN but where the women PDIs are restricted from doing so. This maximizes the established company’s utility at the expense of the women PDIs. This arose as a result of complex legal phraseology, which an experienced legal advisor would have been able to identify and probably advised the women PDIs on its negative implications at a later stage.

The invitation and engagement of sub-contractors from the same conglomerate closed down opportunities for other potential PDI FM companies to become involved. These companies might have had adequate experience elsewhere and would have benefited from being involved in a PPP and of having a steady cash flow for the tenure of the project, in supporting their growth and development. However, when viewed as a profit-maximizer the FM operator (agent) could not be expected to act otherwise as they behaved as a rational being. Any other behaviour would have had to be imposed by legal stipulations. Seen together, this demonstrates that the consortium (agent) will comply with all the contractual requirements to obtain business. However, should there be any weaknesses in the contractual arrangements, these are exploited to maximize the agent’s profit, provided such maximisation does not contravene the government’s (principal’s) stipulated contractual specifications.

This pure compliance attitude results in a situation where PDIs feel like they were co-opted solely to meet the requirements of the bidding documents. Such behaviour is in accordance with the PA theory in respect of the intrinsic nature and behaviour of the agent. Any mitigation of this behaviour relies on the incumbency of the government to increase the rigor of the requirements and for the PDIs to better equip themselves prior to involvement in the PPPs in order that they may fully attain the benefits of the BEE policy. However adverse selection

only happened where there was no government oversight due to the novelty of this procurement system then and the inexperience of the PDIs beneficiaries. In all other matters relating to BEE the government constructed a reasonably robust document, which advocated for the active and meaningful participation by new PDIs entrants. The consortium demonstrated that it had bought into the policy in so far as there is a business case for incorporating BEE in the implementation of the project, but otherwise all the intrinsic hallmarks of self-seeking profit-maximizing tendencies, expected of business enterprises were exhibited by the established companies.

6.3 MORAL HAZARD

The view of the PA theory is that an agent as a rational player will always seek to maximize his/her utility with the least possible expense (Jensen & Meckling, 1976). This problem becomes acute where the principal does not possess full information about the extent of work that is delegated to the agent. In PPPs “moral hazard” is used to describe the situation where self-interested providers break the required standards of honesty and reliability as defined by their contract for project implementation and where the circumstances allow them to get away with it (Kasper & Streit, 1998). In IALCH the details of the bidding documents were very elaborate on the BEE issue and were also emphasized during negotiations. The insistence on the stipulations of the trickling down of the money to be paid to the women PDIs is one example of the extent of detail the government’s wanted. This was deemed necessary for the efficient monitoring of properly specified outcomes. However, (Donahue, 1989) asserts that since it is impossible to observe the agent at all times, it is possible that even a capable organisation will shirk from its responsibilities and divert resources to other tasks or simply to profit. This is confirmed by the argument of (Nordtveit, 2005) who posits that “moral hazard” has been a common problem in PPPs, since it has proved difficult to ensure contract compliance.

Contrary to these views, the observations at IALCH and the interviews held with role players refutes this argument, largely due to the self-monitoring nature of the contract. Although weak monitoring can lead to moral hazard, the self-monitoring mechanism on this project is very robust on project deliverables and on the issue of BEE. The BEE quarterly reports and the auditing of the financial trickle-down by auditing firms has created a situation where any form of moral hazard would be disadvantageous to the established companies. One respondent attested to the existence of vetting of BEE reports because he was summoned to the central consortium (IMPILO) offices, to clarify certain BEE issues. *“I was ... once I have been here I was once called to a meeting at the management building. Ahmm... they questioned me with regards to our BEE staffing”*. [Contracts Manager-ES]

The centrality of this issue for government and the heavy penalties on non-compliance created a situation where the BEE policy is regarded as a critical part of the overall project deliverables, which cannot be compromised. During the analysis in Chapter Five no single incident of moral hazard was observed and consequently the issue does not arise in the analysis. This finding contradicts the observation of (Nordtveit, 2006) that moral hazard always is to be expected in PPPs because government inefficiencies make it difficult to ensure contract compliance. What this project demonstrates is that provided project outcomes are clearly articulated in the bidding documents, performance measurements are clarified and emphasized during negotiations and robust monitoring mechanisms are put in place, substantial compliance can be achieved in PPPs.

6.4 MONITORING

To mitigate the moral hazard problem the actions of the agent have to be monitored. In simple situations complete monitoring is possible; however in most cases observation is either impossible or prohibitively costly to the principal (Holmstrom, 1979). Monitoring is very critical as it controls agent behaviour and curbs post-contractual agent opportunism (Eisenhardt, 1989). Since contracting is an ongoing process monitoring is a key feedback mechanism (Hefetz., 2004). According to (Sclar, 2000) the monitoring process should start with a service

specification and continue with government oversight and assessment of service delivery. When monitoring is weak the output from the agent is likely to be lower than expected. The government BEE monitoring in IALCH appears to have been robust from the issuing of the tenders until the contract negotiations. Even during the negotiations a deficiency of the proper appreciation of the financial intricacies, was notable in the women PDIs and the services of an advisor were sought by the government from the DBSA.

“At some point they had hired a person who was given by the DBSA to assist them with the financing. It wasn’t a very successful appointment. I think that guy was as lost as they were. He happened to come in from outside of South Africa and wasn’t really familiar with financial systems here But eventually they were carried by the advisors that were advising the larger group. But even in that consortium the project sponsor had done a project with prisons He had already done that which had assisted him to pay his school fees. So in a way he became the advisor of the rest of the BEE team” [Government official-C].

Although ultimately this was not a successful appointment, it showed the government’s commitment in ensuring that PDI involvement is not token, but substantive and meaningful. However the fact that the project sponsor was a PDI made the monitoring at this stage somewhat lighter because it was someone who had been involved in PPPs and who understood what was required. This meant that there could not be a wholesale sidelining of PDIs because the very leader of the consortium was a PDI and he had an experience working in a PPP project before, and its financial arrangement peculiarities were not entirely new to him.

The government’s insistence that the financial benefits should trickle down to the third tier women PDIs and that this be clearly defined showed a thorough scrutiny of the tender documents and a desire to achieve tangible BEE financial goals. However the major issue that appears to have been missed by government

scrutiny was the exclusion of the women PDIs from the second tier [sub-contractor level]. This is the level where money from the SPV flows directly into, whereas the third level is merely apportioned money from the second level which might not reflect what is fairly due, since the government always pays for 100% occupancy. It is also at this level that operational and managerial control resides, and thus would have been a better position to place the PDIs in order for them to gain a wider appreciation of the operation of a PPP.

However the government officials involved in IALCH noticed this oversight. *“One of the key lessons that we have learned is that it is better to have BEE participants at all levels”* [Government Official-S]. Although technically there is no blanket PDI exclusion at level two since the project sponsor is represented at this level, it appears in retrospect that the government’s understanding is now that any PDI who is involved at the first tier should also be involved at least at the second tier, to gain fully from the economic and operational benefits.

However on the third level of the supply chain, government showed a more robust response when advocating for the inclusion of women. The government approached the FM operator to accommodate the women PDIs which led to the formation of a company called Umongi. The involvement at third level is a significant contribution to empowering women in understanding operational requirements at the ‘coal -face’, and has contributed in imparting many skills to other PDIs working as contracts managers. On most of the detailed internal arrangements of the consortium the government stance was removed providing an opportunity for the FM operator to involve a number of related/sister companies from the conglomerate that the FM operator was part of.

The BEE status of these companies was inadequately scrutinized by the government officials. In retrospect one government official reflected: *“But when you go lower down then it looks like BEE firm but it is not.... or may not be”* [Government Official-C]. Although these firms claimed to be BEE the government found that it could not adequately verify with the same amount of scrutiny they

did to the other companies, which were directly involved in the consortium. This created a problem in that the contractor could even change its BEE structure mid-way and it becomes difficult to verify the BEE status of the company as they were not directly contracted at the SPV level. *“So the numbers that were promised in the contract you can actually see through the life of the project, if you have locked anybody including the sub-sub-contractors in a contracting arrangement. From the beginning to the end of the term or period. And the monitoring mechanisms that you have put in place is more difficult if its not founded originally in the contract. and your sub-contractors are not visible in the contract. So that is the lesson that we have learned in the last two that we have done”.* [Government Official-S].

If those companies, which ended forming the JVs, were scrutinized for their BEE status and were linked to the SPV any tampering with the BEE profile would result in penalties. This was illustrated by the following example: *“if you are going to change Mbekani as a sub-contractor that is doing sterile services, you’ve got to change that agreement otherwise the penalties kick in...although your contracts tend to be large in size and so on and detailif you end up having everyone empowered in the contract. But it is better for monitoring the effects and the impact of BEE in these kinds of projects”* [Government Official-S]. This oversight might have precluded a lot of PDI companies already involved in FM operations who could have gained from being involved in a PPP and benefiting from its steady cashflow offered by a PPP contract.

In general the government monitoring was strong during tendering and negotiations but during operations, by their own admission, institutional weaknesses have meant that continuity has not been ensured. Individuals who were strong and conversant with the contractual requirements have moved on and their replacements do not seem to have been as technically capable. Even newly-trained project managers are not being retained in the civil service as once they complete their training they are recruited by the private sector. A new provincial PPP office, which will be responsible for monitoring all the PPPs in the

province is being established. However there seem to be confidence even in the present climate that the self-monitoring contractual mechanism at IALCH will be able to mitigate any contravention of the contractual requirements. The strong character of the PDIs appears to be relied upon for the reporting of any BEE infringements as they had a track record of doing this in the past. All the PDIs, including the contracts managers, confirmed that BEE monitoring by the government is almost non-existent, with compliance maintained by the entrenchment of BEE as a contractual deliverable. Arguably this self-monitoring structure of the contract has contributed more to the BEE compliance than the government's practical initiatives. Thus demonstrating the importance of a robust contractual agreement with robust monitoring regimen.

6.5 BENEFICIARIES' BEHAVIOURS

The unexpected and rushed invitation for PDIs to participate in the PPP gave them little time to fully prepare themselves for what they were to take on. The two women PDIs undertook an honest introspection with regards to their inexperience and adopted a consultative posture from the start of their involvement. The PDI sponsor and other role players from the government provided guidance and intervened throughout the tender process. However, it was observed that the assertiveness, general high standard of education and hard work demonstrated that the two women PDIs needed to be taken seriously and be fairly accommodated in the consortium. This was evident in the way they fought for their inclusion in the bid presentation team before the government, a move that required them to research and thoroughly acquaint themselves with the BEE policy in procurement as it then existed. This input not only portrayed them as active members of the consortium to assessors but also bolstered their confidence, and demonstrated to all parties their willingness and initiative to empower themselves.

Although the women PDIs pushed very hard for gainful participation throughout, they were compromised by their exclusion from participation in the second tier.

However given their overall inexperience and lack of financial assets, they still managed to get reasonably good deals on other areas. They achieved this amidst a hostile environment, which was exacerbated by not being able to contribute to the bid bond, which normally provides leverage in negotiations. In addition, the lack of resources to access professional advice on legal and financial matters also resulted in the women PDIs having to agree to contractual arrangements that compromised their full financial empowerment.

The experience of performing well at a world-class institution amidst the most stringent controls has demonstrated that these two women PDIs have been able to embrace the opportunities presented and of becoming world class companies. The benefit of working alongside international partners who are leaders in their own fields has given them the impetus to develop further in their professions and to broaden their views beyond IALCH. Although at the beginning economic hardship and inexperience hampered advantageous involvement, as the project progressed hard work, assertiveness and the presence of a responsive government assisted in achieving most of what the BEE policy intended.

6.6 EMPOWERMENT

As soon as the women's group PDIs was invited to take part in the consortium they were integrated into all the deliberations although their role at this stage was primarily observatory. This enlightened the newcomers on the modalities of concluding knowledge-intensive deals. The observational experience was very empowering and its redolence could be evocatively utilised in later business opportunities. Soon after this experience the women's group PDIs had to sit down and arrange Joint Ventures (JVs) with other companies who they would partner with in sub-contract arrangements with the FM operator. Although the deals were done in a controlled environment where 40% shareholding was the government's stipulation, playing an active part in structuring the finer details of the deal was an empowering experience for these PDIs. The government for its part was testing the appetite of the market in PPPs with that level (40%) of PDIs

shares apportionment, and this was used as a blue print for later PPP projects. The active role played by women PDIs in presenting the BEE component of the consortium proposal was a valuable experience demonstrating their initiative to be active members of the consortium and the willingness to garner the benefits of practical tutelage. All these *ex ante* experiences were invaluable and provided non-monetary empowerment to the women PDIs and they were very insightful on matters that would otherwise not be clear if the procurement mechanism was not as elaborate and as intensive as PPPs are, in terms of their intrinsically long tendering processes. The IALCH PPP demonstrates how PDIs gain extensively by being a part of an elaborate tender process, where observation, research and practical involvement can empower new PDI entrants on the vicissitudes of a complex tender process.

6.6.1 Employment Equity and Local Socio-Economic Impact

At IALCH 60% of unskilled jobs are allocated to the local people within 100 km radius of the hospital. The majority of the beneficiaries of this approach are people from the surrounding townships of Cator Manor, Gatesville etc. These are highly impoverished areas and this project has contributed to alleviating families out of poverty by providing a steady income from stable employment. The requirement to produce an identity document, proof of address and a letter from the ward councilor appears to work as a vetting mechanism to assess whether people are bona-fide residents of the designated beneficiary areas. The similar approach applicable for awarding scholarships at local universities ensures that genuine recipients are granted financial assistance from this impoverished area. It was observed that the racial composition of the staff at the hospital is reflective of the population of South Africa albeit with a bias to white employees occupying highly technical jobs and blacks predominating at the low-skilled end of the qualifications continuum. This is to be the expected legacy of apartheid, where blacks are still disproportionately under-represented in certain highly technical fields.

The requirement for local socio-economic upliftment and employment equity was observed to have been more easily achieved on this project, than would have been the case in an older pre-existing hospital facility. Most of the blacks in middle management were brought into this project as a move by their companies to comply with contractual requirements. Those who did not have management experience received mentoring before assuming full management control. An insistence on their active role by the government meant they had to be properly mentored and trained because their performance would determine the delivery of their companies as stipulated in the service level agreement.

A new long-term project in IALCH has contributed in providing steady jobs to previously unemployed locals, it has provided bursaries to needy learners to further their education and generally achieved employment equity in a highly technical, world-class project. A short-term procurement method would not have managed to invest as much on the training of locals to prepare them for involvement in the project. An established project would take time to achieve employment equity because of the challenges of restructuring an existing company. The longevity of this PPP agreement had one other positive spin-off where locals gain from proximity to this establishment, where the facility of a world-class crèche intended for staff also accommodates the general public for those who can afford the fees. A majority of the children were from PDI families, and they are gaining a high quality pre-school education that will assist them in their future school careers. In IALCH PPP the socio-economic impact and employment equity have been achieved, as a direct result of the longevity of PPPs and stipulations of the BEE policy.

6.6.2 IALCH High Performance Standards and Empowerment

The service level agreement at IALCH requires that high performance standards be maintained at all times. The call centre has specific response times for various queries and does not allow any form of shirking in service delivery. The deployment of Quality Inspectors by D&S and the ad hoc and yet systematic nature of their inspection visits at various departments in and around the hospital

keeps everyone alert and ensures they act professionally at all times. At the same time the structure of the IALCH PPP agreement is emphatic and specific about BEE centrality. This meant that many PDIs were involved at the management and operational level in the project. Many sub-sub-contractors' contracts managers are PDIs and the majority of those contracts managers are women. Thus the FM operator to whom the majority of sub-sub-contractors are answerable to, adopted a very interactive and supportive management style to impart skills, and sought to create an environment conducive to promoting personal professional excellence.

This management approach has created very efficient and competent PDI contract managers who have learnt the operational skills of running a complex world-class facility. Although the exclusion of women PDI companies at the second tier might have compromised a more-rounded development of PDI companies, much has been achieved in taking start-up outfits and turning them into competent companies ready to operate on their own whenever an opportunity presents itself. The confidence demonstrated by the contracts managers in the following statements demonstrated that they are people who feel they can face the challenges anywhere because of the mentoring obtained at IALCH. *“Without IALCH I wouldn't be where I am. I think we are the best.... if we can be the best here we can be the best anywhere”* [Contracts Manager-UL]. *It has helped to gain experience and it has helped me to realize how much one can do even opening your own company. And you have realized that doors are there they are opened”*. [Contracts Manager-MHW]. The high performance standards in this PPP have created efficient and confident professionals who have acquired skills and are keen to move beyond IALCH for their personal economic enhancement.

6.6.3 PPP and Creation of Entrepreneurs

After seven years of being involved in a high performance project, the women PDI feel they can achieve the same level of delivery, independent of the established companies especially in respect of the soft services of FM. This

strong feeling is demonstrated despite the women PDIs exclusion at level two where they could have had a broader appreciation of operational control. This situation they felt was exacerbated by a disproportional leverage exercised by a PDI sponsor, which ultimately meant that their share of economic proceeds was compromised.

However despite the challenges the experiences gained in this project were considered invaluable. The interviewees were among the first PDI companies to be fully involved in a PPP project of this nature at operational level. The benefit of working alongside international players with different working cultures and professional discipline have boosted and imparted values that might not otherwise have been gained. The challenges have been used as lessons for future endeavors and one lady who owns Mbekani has established other businesses as an entrepreneur, despite her background being initially in medicine. The project sponsor in this project although this was his second project is now bidding for and running PPP projects as a specialized business. Thus the experience at IALCH has created PDI entrepreneurs who are now capable of fulfilling a critical role in the economy.

6.7 AGENT BEHAVIOUR SHIFT

All the established companies exhibited a willingness to comply with the BEE contractual requirements as stipulated in the bidding documents. Although the two firms supplying the Medical equipment and IT did not have PDI sub-contractors working under them other than one working under the medical supplier, they had to comply with BEE requirements by adhering to the stipulations of the employment equity. With eleven subcontractors, the FM operator was inevitably the subject of much of the discussion in this section. During the post-contract award stage, the FM operator demonstrated a pronounced behavioural shift due their main contractor status charged with the ultimate responsibility of instigating contractual compliance. This scenario put the FM operator at the centre of greater scrutiny in matters dealing with skills transfer

and professional enhancement of PDI contracts managers and PDI staff in general. The Principal Agent Theory was utilised to explain this behaviour and where limitations of the theory were encountered because the behaviour was inexplicable, the introduction of the Principal Steward (PS) Theory attempts to provide recourse in formulating a theoretical postulation.

It was observed that in PPPs the agent lost some of the classical tendencies and demonstrated new tendencies that cannot be properly articulated by the PA theory as postulated by Eisenhardt (1989) and others. Although the new behaviour is not a complete behavioural transition it demonstrated the existence of a new phenomenon that is traditionally not pronounced in traditional procurement methods although its existence might be renounced outright. This new behavioural phenomenon which show tendencies akin to a non-profit seeking altruist, required a theoretical explanation in order to contrast it with the established economic theory of PA. This was more pertinent because altruistic behaviour was demonstrated by enterprises that one would expect to be normally utility-maximizing. Thus the Principal Steward (PS) theory was brought to the fore to offer a theoretical explanation of this agent behavioural transition. This theory is discussed below where it is also compared to PA theory,

6.7.1 Revisiting the Principal Agent (PA) Theory

The Principal Agent (PA) theory or 'agency theory' is a major theoretical framework utilised in 'contracting-out' literature (Eisenhardt, 1989). This is because it is regarded as providing a lens to better appreciate the accountability of the contracted provider. The agent is normally contracted with for reasons of reducing costs and/or his/her superior expertise. The principal may decide that there is a lack of expertise or adequate resources in-house to produce a good or a service, and that the expense of employing or breeding the expertise internally far outweighs contracting out. Once the decision is made to hire in expertise both parties agree on the terms and conditions of contract, including contract processes, deliverables, service level agreements, monitoring and performance-reporting requirements, remuneration mechanisms and penalties that would be

meted on the agent for pursuing own goals above the principal's (Slyke, 2007). At IALCH the government provided detailed documents during RFQ, RFP and negotiations stages delineating expected contractual deliverables including BEE, because government policy is to use procurement as a tool to achieve racial economic restructuring. Most established companies are white-owned and are relied upon to undertake the responsibility of empowering new and up-and-coming black-owned business enterprises, thus creating a Principal Agent relationship between the government (principal) and established companies (agents). PPPs were particularly singled out for BEE because the longevity of their tenure makes them a good vehicle to empower the PDIs in South Africa (Treasury, 2004).

According to the PA theory, agents are usually motivated by personal goals and focus on extrinsic tangible rewards, which invariably have a measurable market value (Davis, *et al*, 1997). PA theory views agents and principals as competing utility maximizers and works on the assumption that actors have bounded rationality and can always act opportunistically (Eisenhardt, 1989). (Williamson, 1975, p. 9) describes opportunism as "a lack of candor or honesty in a transaction, to include self-interest with guile". This opportunism is a result of the difficulty and cost involved in monitoring all the activities of the agent. The Principal's first problem which is pre-contractual is adverse selection or "hidden information", and this refers to a situation where an agent has hidden information about his/her ability, or true intent in the execution of the contract which may not be congruent with the principal's best intentions. After the contract has been entered into the second challenge facing the principal is moral hazard or "hidden action", and this is a situation where the principal cannot ensure whether the agent has put maximum effort in the execution of the contract (Arrow, 1984).

The two challenges are encapsulated under information asymmetry, which always bedevils agency relationships, especially when it favors the agent. When the agent knows more about the product or service than the principal there is a high potential for the principal to purchase a product or service of low quality,

which is invariably in variance with the agreed-upon contractual expectations. The basic tenet of the agency theory is that there is always a conflict between the power (bureaucratic and political) and budget/wealth-maximising behaviour of the principal and the utility-maximising behaviour of the agent (Pastoriza & Arino, 2008). Through the PA theory the principal should always adopt a posture that clearly demonstrates suspicion, because the agent is never to be trusted. To reduce uncertainty associated with the unobservability of the agent's actions, the principal has to introduce a mix of incentives and sanctions, information systems and monitoring mechanisms.

The incidents cited above where the established companies did not act with candor and honesty towards the inexperienced PDIs were acts of opportunism. Enticing the PDIs to sign a contract prohibiting the FM operator and the women PDIs from competing with each other in KZN and then renegeing on that agreement was opportunistic. The driving rationale for such a decision could have been based on the knowledge that a legal protest would be costly against PDIs, whereas on the other hand the move would result in utility maximisation for the established companies. The issue of the FM operator inviting companies from within their conglomerate to form JVs with women PDIs was also utility maximizing. This was so even though it was not infringing on any regulation since there was no stipulation against such a practice, as much as it could have benefited other PDIs who were not necessarily the consortium shareholders. The structuring of the contract such that women PDIs payments are CPIX adjusted annually whereas the FM operator's and other operators have theirs adjusted quarterly was utility maximizing and was inhibiting the PDIs to have a full economic benefit of being involved in the project. The withholding of one of the PDIs payment for two years, for their protest against an unfair monetary apportionment which should have been allocated on a pro rata basis, was unfair because it was hampering their cash flow as a new enterprise while at the same time financially benefiting the established company. All these took place because the government's stance of respecting private business arrangements, created a situation where the "unobservability" of these actions, not only hurt the new PDI

entrants but created a situation where the government was also paying for a service of a lower quality in the form of reduced BEE benefits to the PDIs. It therefore follows from the above deliberation that whenever there was a reduced observability from the government there was a tendency on the established companies to reduce the BEE benefits to the PDIs to maximize their own utility in a manner that is incongruent with the spirit of BEE.

Opportunism was also observed where there was a lack of oversight on the government's side to enforce PDI involvement in particular structures and activities of the contract. The exclusion of the women PDIs from participating at level two (second tier) of the contract hampered their full involvement and participation. It also created a situation where the financial trickle down due to them is susceptible to abuse and tampering by players who are involved at level two. The exclusion of PDIs to partake in hard FM services has created a situation where they are not full-fledged FM operators despite seven years of involvement in the contract. Their gradual introduction into this field would have benefited them since initially they did not have the required expertise, and the adequate management capacity in-house. This observation seems to be in line with the view of the PA theory that the principal and the agent are two competing utility maximizers, with bounded rationality who can always act opportunistically whenever the opportunity arises.

The fact that the government did not push for the PDIs inclusion and participation induced the established companies to resist their participation on these areas. This disadvantaged the women PDIs' full operational tutelage, and reduced their maximisation of gainful participation in the project. The above observations demonstrated that the principal/agent goal conflict endemic in typical PA relationships such as PPPs, engenders a situation where the weakness/oversight of the government (principal) in the utilisation of its intervention leverage, encourages the utility-maximizing consortium (agent) to always opportunistically exploit the situation at the detriment of BEE beneficiaries. However there are other behaviours by the consortium (agent) in particular the FM operator which

could not be properly explained by the PA theory, as a result a diametrically opposed theory of Principal Steward (PS) theory was utilised to ultimately provide a theoretical synthesis.

6.7.2 Principal Steward (PS) Theory

Principal Steward (PS) Theory was presented as an alternative to agency theory by Donaldson and Davis (1991 & 1993) to challenge the prevailing assumption about human motivation that was derived from PA theory described above. Rather than the pursuit of divergent personal goals, PS theory assumes that individuals and organisations strive for collectivist ideals. The theory examines the relationships and behaviours often discounted in organisational economic theories and could be regarded as a management alternative to PA theory. Whereas PA theory is always identified as critical to managerial behaviour (Ross S. A., 1987), PS theory can be regarded as its counterweight concentrating on organisational behaviour and was developed specifically for that purpose (Davis, Schoorman, & Donaldson, 1997).

In PS theory a steward places greater value on cooperation over defection and other self-servicing tendencies, even when his/her own goals are not perfectly realized. This view differs sharply with the original disposition of PA theory where the intentions of the agent were never to be trusted. PS theory proposes that initially the transaction costs for a PS may be higher compared to a traditional PA relationship (Slyke, 2007). This is because of the increased investment in time on the part of the principal by involving the steward in problem formulation, joint decision-making, information exchange and steward's needs assessment, in order to achieve a collective management environment with the steward (*ibid.*).

PS views the steward's motivation as being driven by intrinsic rewards, such as reciprocity and mission alignment, rather than solely by extrinsic rewards. In contrast to the agent, the steward values collective goals over individual goals, in that the steward observes the success of the organisation as his/her own. This portrayal of the steward distinguishes the two theories as the agent in PA theory

is viewed as having extrinsic motivations whereas in the PS theory stewards motivations are not so easily quantifiable, such as growth, achievement and duty (Pastoriza & Arino, 2008). This directly affects the way the two are monitored. Whereas the agent is watched closely, the steward never uses private information surreptitiously for self-interests but for goal alignment, and as a result he/she is being monitored less and receives rewards of enhanced reputation and involvement in goal setting and programme evaluation (Slyke, 2007).

Once the IALCH was operational and after the initial challenges during this stage, the behaviour of the FM operator changed and acquired characteristics akin to a steward. *“It has improved quite a lot from the first day I started working here....initially it wasn’t that good, I would say we’ve ironed out some of the challenges the... relationship has grown. At least now we know that we are able to conduct them whenever we are met with challenges. I would say it was . from my experience When I started working here I felt we were working against each other more than working together. Between FM operator and ourselves, but those challenges were addressed and ironed out”*. [Women’s Group Participant-F]. Another contracts manager expressed a similar sentiment about the way they are treated by FM operator, *“Yes....we are sub-contracted to FM operator.... their management is very supportive as well. And the client the DoH they are also.... We are like a team. we are working as a team. With one mission to please the patient and we are given that opportunity to like excel where you are and if you are doing well you get appreciated and you do more, you strife”*. [Women’s Group Participant-UL]. The operator seems to be extolling cooperation more than defection on BEE implementation. The general attitude of entrenching professionalism and maintaining standards seems to be centered around a spirit of cooperation rather punitive supervision and alienation of PDIs. The Quality Inspectors who are daily on the ground, although they are firm in their disposition towards adherence of standards, this is founded on team-building than being condemnatory disciplinarians:

“They do on the daily basis from them, from their quality inspectors who are on site they go around the hospital and make sure that were are adhering to the standard that was put forward. So that at the end of the day we get e-mails from them to say we went to this place and these are the findings. Every week, once a week on Friday we’ve got meetings with them... FM operator and their quality department where we discuss all the issues that came about, during the week. And we come up with ways of resolving those” [Women’s Group Participant-F].

“Yes on regular basis .. they take a walk... they are all over the hospital. They can come in now....And if there are any concerns that need to be brought up and we address all the issues on a daily basis. Yes they are very helpful”. [Women’s Group Participant-F].

“That’s their jobI mean for everything. They walk around every time you see them leaving and coming back to the office with their book. They do help because when they come across something.....although we are together walking around. They would come back or may be send an email to you and we sit down and discuss how we are going to solve this problem”. [Women’s Group Participant-UFSP].

Apart from building a team spirit and engaging the PDIs in problem-solving in an interactive manner the FM operator has adopted skills transfer strategies that have demonstrated a behaviour of a truly committed unselfish steward. The sharing of the FM operator’s integrated management service (IMS) with the PDIs has generated an environment where all information is easily accessible to the PDIs for their proper tutelage and efficient execution of the contract. The acceptance of the secondment of the women PDIs management staff at the FM operator’s other sites is imparting invaluable experiential professional enhancement. This would seem to mostly benefit the PDIs and thus indicative of a tendency to cooperate with the government on BEE rather than adopting a purely self-serving attitude on contract implementation. The introduction of a

computer literacy training for all the sub-sub-contractor staff at all levels looks unfamiliar to a normal profit maximizing company, because it is solely meant to equip the PDI staff to be fully integrated in this highly computerized facility. However the computer skills they acquire can be utilised even beyond IALCH. All these initiatives demonstrated an operator who has collectivist ideals about PDI empowerment indicative of a steward, rather than a profit-maximizing self-serving agent.

Although the behaviours described above are akin to steward characteristics there isn't a complete fit with the broader PS theory. According to the PS theory the steward will pursue the principal's goals even when his/her own goals are not perfectly realized. The FM operator is in this project to maximise their profit, although imparting skills involves some costs, but those costs would not be so great as to infringe on the profit-maximisation tendencies expected of a normal business enterprise. There is an observed attitude to cooperate and not defect and behave opportunistically on BEE, but this observation is not indicative of an isolated innocent cooperative behaviour with no mutual benefits. According to the PS theory the steward places collective goals over individual goals but in a contract structure where 40% of shareholding is in the hands of start-up PDI companies requiring a huge operational and management responsibility on the part of the steward, then it is in the interest of the of the FM operator as the 60% shareholder to ensure that they adopt a cooperative disposition to develop the PDIs in order to achieve performance parity in contractual delivery. While BEE is being achieved in the process there is clearly a direct operational benefit for the FM operator, which shows that the PS theory does not adequately accommodate or explain their behaviour.

The other characteristics of a steward according to PS theory do not adequately address the normal behaviour of a profit-maximizing business enterprise. The agent in PA theory is said to be driven by extrinsic motivations like monetary reward, whereas a steward in a PS theory is motivated by the less easily quantifiable motivations of achievement and duty. The FM operator and other

operators are in this contract for profit attainment and have undertaken to adhere to all contractual requirements stipulated by the government including BEE, only if such adherence does not compromise their profit attainment. As much as they might corporately share the core values of the BEE policy, they would still require a level of profitability to justify their involvement in a PPP arrangement. The PS theory asserts that the steward never uses private information for self-interests but for goal alignment with the principal but the incidents described above indicates that at times the same players have demonstrated characteristics akin to an agent in a PA relationship. Thus the preceding discussions lead to an observation of established companies' dual agent/steward personality at different stages of the project requiring a further interrogation of the two theories and their applicability in PPP contracts. Before these two theories are assessed in section 6.7.6 below, the critical role of monitoring and trust in explaining the contractor behaviour is first scrutinized.

6.7.3 Oversight Utility in PA and PS Theories

Monitoring and oversight are integral to PA and PS theories (Lambright, 2009).

6.7.3.1 Monitoring and the Principal Agent Theory

Both PS and PA depend on the use of monitoring, trust, reputation, incentives and sanctions in the contract in order to establish goal congruence between the contracting parties. PA theory argues that a robust monitoring regime will raise the agent's productivity and has to be applied provided the associated transaction costs are low. Although it has its critics the PA theory has contributed to a better understanding of different aspects of organisational function. Its traditional proponents assert that its main assumptions can be relaxed given the context, length of time, programmability of the service/product and the level of cooperation that exist between the contracting parties (Eisenhardt, 1989). Principals who provide unambiguous incentives, like contract renewal and stability, discretion and flexibility in program implementation, and vigilant monitoring that employs formal and informal mechanisms would experience less

agent opportunism and goal incongruence (*ibid.*). If from the onset the principal invests in entrenching lasting contractual relationships in the proper use of, and enforcement of, the agency mechanism, the potential for enhanced alignment is increased and over time this could lead to reduced transaction costs. The agent gains by increasing the trust bestowed on him/her and an enhanced reputation, which could free up resources previously allocated to meet reporting requirements.

There is a huge investment at IALCH in ensuring a lasting robust PA relationship particularly in elaborating on the BEE outcomes, in order to lessen the ambiguity that might have led to conflicts later on during project execution. The RFQ, RFP and negotiation stages emphasized the BEE requirements and the modus of delivery. The project is lucrative and all the role players are keen to be involved when the government reviews the contract in seven years time when the project ends its fifteen (15) year tenure. All these considerations might impose positive pressure to induce contract compliance. According to the PA theory the duration of the contract is very important in avoiding moral hazard; long-term contracts prevent opportunistic behaviour *ex post* and promote commitment and efficient conduct *ex ante* (Laffont & Tirole, 1990). This is extended by Eisenhardt (1989) who argues that the longer the term of the contract, the lower the incentive for the agent to shirk, because even if he were to shirk the level of his mediocre effort will be exposed over time (Eisenhardt, 1989). That might partially explain the adherence to BEE contractual stipulations by the agent, however the role of a self-monitoring system in IALCH has a greater practical influence in enforcing compliance as attested to by established companies, than mere contractual longevity. Eisenhardt (1989) however fail to fully explain how the revision/relaxation of theoretical assumptions in a context of principal/agent cooperation and long-term contract, could be accommodated in the traditional tenets of the PA theory. This necessitates the introduction of a new theoretical explanation of those anomalies not adequately accommodated in the traditional PA theory dispensation.

6.7.3.2 Monitoring and Principal Steward Theory

The PS heavily relies on the significance of the principal's and steward's initial trust disposition, in the belief that trust leads to the realisation of collective interests. Trust and incentives are deployed to achieve alignment, and monitoring is not coercive but is intended to direct the contracting parties towards a proper relational alignment (Slyke, 2007). The notion of trust, which is never considered a virtue in PA theory, is critical in PS theory, because the steward attitude towards the contract is regarded as being personal (psychological) rather than purely economic. Increased monitoring could be perceived by the steward as a lack of trust and can be demotivating for him/her (Bruno, 2000). Reduced monitoring for fear of creating the "crowding out effect" dominates when the relationship is personal or psychological, while the "disciplining effect" of monitoring dominates in the abstract relationship of a normal PA transaction, which is theoretically impersonal in character. The notion of trust needs to be interrogated in order to elucidate the unique characteristic of PS's lack of rigorous monitoring.

6.7.4 Trust

Mayer *et al* (1995) describes trust as the willingness and risk of being vulnerable, on the part of both actors, to the possibility that one actor in the contract may pursue his/her own self-interest to the exclusion of the collectively agreed upon goals of the contract. It is a major psychological and social process that lies at the root of the development, maintenance, change or discontinuance of contractual relations (Rousseau, 1995). There are different types of trusts, but in contracting, strategic trust is a very useful concept as it is based on the knowledge and experience with the other party and a legitimate mutual expectation of reciprocity (Slyke, 2007). While the PA theory assumes the agent is always inward looking and as such can never be trusted, the PS theory assumes that the steward has noble intentions and can be trusted. Trust is never regarded the default position of principals in the PA theory, and it is found no to

be predominant disposition assumed by government officials as the citations below demonstrate.

“I don’t know of any B contractor in South Africa that does BEE because of the love of it. It’s primarily compliance....eh.... at best is something that will win me a contract if I do it well. But is not something that people do it as the first business meritorious kind of approach”. [Government official-S]

“Like any other regulation like the speed limit. If you are sure that there is no traffic cop you will go to 140 ...and it is not that you a generally a criminal but its just that because nobody is watching and your car is capable of getting to 140 you would. So there would be those tendencies, because people can’t cheat too much because in a PPP contract because of the strictures that are there and these things are audited. But they will always take. ...eh. sort of chances here and there”. [Government official-S]

“If you ask me whether there have bought in? Yes and No....I think they have bought in completely as far as far as they are forced to do in terms of the agreement. Once you change the agreement tomorrow they might not do....[laughter]...do you understand what I am trying to say They are forced they have, they have bought into it. But when you walk out you’ve got nothing to do with it”. [Government official-C]

The following discussion demonstrates that a purely abstract relationship consistent with PA theory where trust is not a natural disposition can evolve over time, to an involvement-oriented steward-like relationship. The metamorphosis into the new character is mainly moulded by contractual stipulations and the interactions of contracting parties, and it is indicative of a willing compliance and demonstrates the steward-like characteristics although the ubiquitous PA traits depict government tender-stage weakness/oversight in adverse selection mitigation. The theoretical explanation of this new phenomenon is proffered below.

6.7.5 PA/PS synthesis in PPP Delivery

Proponents of either PA or PS theories have deliberately tried to portray them as the “one best way” to the understanding of organisational behaviour (Davis *et al*, 1997). However a blending of the two can enrich the understanding of the natural behaviour in reality. Agents are not static but can when necessary deviate from an agent position towards being stewards (*ibid.*).

Under PA theory the ‘model of man’ is a rational, self-interested actor who seeks to maximize his own utility, and the company is considered a nexus of contracts that are able to motivate, reward and supervise agent’s efforts (Pastoriza & Arino, 2008). Conversely, PS theory is humanistic in its approach and does not adopt such simple and reductionist managerial propositions and as such does not proffer sharp and testable propositions. The rational economic man of PS theory is ordered such that individual’s behaviour is preceded by pro-organisational behaviours (Davis *et al*, 1997). The agent might have higher-order motivations, better disposition to identify with the objectives of the firm, value commitment and greater use of personal power as a basis for influencing others to share the firm’s vision (*ibid.*). The decision for an agent to make the transition to become a steward is firstly driven by the interaction both parties to the relationship have. Secondly, the psychological and cultural background of each party plays a major role in an individual’s choice in deciding to be either an agent or make a transition into becoming a steward.

What is of interest to researchers in this field is the underlying mechanisms that make an individual opt towards one position or the other, or to find the role played by psychological and situational factors in influencing the agent to transcend his/her own self-interests and resolve internal inter-motivational conflicts. Agents are not naturally altruistic but there are situations where serving the interests of the principal benefits the agent in the long run and is as good as serving ones own interests (Pastoriza & Arino, 2008). Davis *et al* (1997) describes such a situation as where a principal has shown that he/she is also a steward and reciprocation by the agent results in a PS relationship. Should one

of the parties not reciprocate, then mechanisms are put in place to monitor the behaviour of the other and the relationship is a typical PA relationship. If the principal is betrayed by a lack of reciprocity from the agent, the relationship over time develops to a typical PA one as both parties end up behaving like agents. This places great importance on the initial interactions. In a situation where the principal behaves like an agent and the agent does not show any steward characteristics, there is a low risk of betrayal, as the principal would have put in place control measures to curb opportunism.

Pastoriza and Arino (2008) argue that the preceding argument is static and does not accommodate the fact that in a choice of agency versus steward relationship, agents are capable of learning as they interact with principal throughout time. There are a number of different elements that influence the choice to become an agent/steward beyond pure rationality, and the principal plays an important role in that learning process. It is likely in most contracts that at the first stage PA is the most likely explanation of the behaviour of the parties, however the transaction cost could decrease due to increased cooperation between the parties especially as the agent understands the principal's motives (*ibid.*). This means the PA theory offers little explanation after the alignment of the interests has been achieved, because there will emerge benefits that could be associated with PS relationship as there will be fewer contracts revisions and strict monitoring. The observations made above during the IALCH operations, after all the contractual obligations had been mutually agreed to, demonstrated an emergence of a completely new agent disposition which could not be adequately addressed by the PA theory as it depicts an agent who has tendencies demonstrative of a steward.

The dynamics of the interaction between the two parties largely determines how and why an individual decides to act as an agent or as a steward. According to Pastoriza and Arino (2008), the PA theory relies on rather reductionist assumptions on the one hand whilst on the other the PS assumptions are too simplistic. Everyone acts with some degree of selfishness together with some

degree of altruism. It is therefore impossible to find a person who is purely a steward or purely an agent. The reality is that each person is located on a continuum (*ibid.*). For any action by the principal (active agent-AA) a reaction is induced in the agent/steward (reactive agent -RA) and this could lead to one of three results:

Extrinsic results - observable outcomes

Intrinsic results - unobservable outcomes within the AA that comes as a result of the response of the RA. They are inferable as they affect future decisions of the AA in relation to RA

Transcendental results – outcomes that happen within the RA (whoever he/she may be) as a result of the AA action. They are identical to intrinsic results but are caused by the other party.

The intrinsic result is the learning the AA gets in the interaction, whereas the transcendental result is the learning the interaction produces in the agent. This learning can be operative, where it is the acquiring of new skills, or relational where one party learns about the motives and intentions of the other party as they interact. These interactions reflect the underlying motivations. Part of the relational learning is to learn about the position on the agent/steward continuum adopted by the other party. This is because an individual will consistently make certain decisions because they are interested in an extrinsic result, an intrinsic result or a transcendental result. Depending on which one they choose they will be acting out of extrinsic, intrinsic or transcendental motivation. Under normal circumstances Pastoriza and Arino (2008) argue that any motivation to act is a combination of all three motivations. Any decision to act more like an agent or steward depends on the relative weight of the three motivations each person has. Someone with a tendency towards stewardship will include a good measure of transcendental motivation in their acts. A chain of actions and reactions between the two parties eventually leads to forging of a contractual relationship and its position in the agent/steward continuum. If this logic is applied what started as a

steward-agent relationship, will evolve into a steward-steward relationship, if the principal who behaves as a steward produces positive relational learning in the agent. If he/she fails it will end up as agent-agent relationship, even though the motivational quality of the active agent (AA) is towards stewardship, the relationship with the reactive agent (RA) will essentially be an agency relationship.

It is one thing to abstractly understand the most appropriate attitude but quite another to embrace it. Because of selfishness it is easier to embrace an agent role whereas being a steward is more difficult; for an agent to act under a selfish motivation is spontaneous, but to choose a transcendental result does not naturally lead to spontaneous action. This requires a high level of rationality in thought and action (Pastoriza & Arino, 2008) to understand that there is virtue in pursuing someone else's goal. Virtuousness is described by Pastoriza and Arino, (2008, p. 14), as the "capacity to control the spontaneous impulse to pursue our own goals, in order to pursue the transcendental results that rationality tells us are worthy of pursuing." So two parties who enter a relationship with a long-term perspective can deviate from their original position as either stewards or agents as a result of their interaction. In other words agents can learn to become stewards by repositioning their internal motivation, from extrinsic towards transcendental motives although this was not their original spontaneous disposition.

6.7.6 Contextualizing the PA/PS theoretical synthesis in IALCH

According to Pastoriza and Arino (2008), the initial principal behaviour and/or gestures are the initial triggers of a responsive behaviour from the agent. In IALCH the consortium would not have incorporated start-up PDI's if the government had not stipulated their involvement in this lucrative contract. The profitability of the project triggered amenability towards the PDI inclusion even among players that would not have otherwise assented to outside PDI incorporation in JVs.

“When BEE started all these big companies were told to have empowerment partners and they did. Bidvest has got Dinatla....which owns 15% of Bidvestand in terms of the scorecard they are fine. But the problem is regionally... when it comes to KZN region they cannot claim the 15% empowerment of Bidvest as its own. So when they come to the regions, these companies are forced to have regional partners. So they do these to get the contract but not with the long-term view because it does not make business sense to them to have long-term relationship when they have national partners” [Women’s Group participant-O].

“Bidvest although they had their own BEE parties because they wanted a piece of the cake they said we will accommodate them [Mbekani/Omame]” [Women’s Group participant-O].

Prior to approaching Bidvest another company had been approached but they refused to take on the regional PDIs players and they lost out on the opportunity. *“Company X said ‘no nowe have our own BEE, we won’t take them.’ D&S was like ‘well if you don’t take these women then you gonna loose the opportunity because these women are shareholders and government is insisting on us demonstrating how shareholders especially BEE shareholders are benefiting from this. So if you are saying you are coming with your own BEE parties tough” [Women’s Group participant-O].*

Apart from IALCH project being a long-term contract with a steady cash flow for fifteen years there is also a possibility of renewal with the same players after the initial fifteen year project tenure, when the government undertakes its review and assessment of the overall project performance including BEE. The fact that the government undertook to pay for 100% occupancy irrespective of patient occupancy contributed in making a project a lucrative engagement for any profit maximizing enterprise.

“From day 1, we were paid for 100% occupancy....right. So the government didn’t say ...ok... we are going to do a check, 50% ...no. It is

better administration for them 100% from day one. If there are 900 beds we are assuming there are 900 bodies on the beds ...right” [Women’s Group participant-M].

Although it is a lucrative contract there are a number of mechanisms put in place to monitor contractor performance. The self-monitoring nature of the contract drastically reduced the possibility of uncontrollable shirking. The periodic BEE reports sent by IMPILO to the government and the government’s BEE spot-checks which are contractually sanctioned were all intended to ensure that there is continuous BEE compliance. These monitoring mechanisms coupled with very heavy penalties for non-compliance assisted in entrenching the centrality of BEE and ensuring its compliance. So compliance for BEE was not based on contractor rationality but it was a direct reciprocity towards a firm governmental stance on BEE policy. This position was demonstrated in early interactions that set the tone for all contractual deliberations.

According to Pastoriza and Arino (2008) the initial disposition and attitude of the principal is critical in influencing the ultimate positioning of the agent in the agent/steward continuum. The bounded rationality of the consortium at IALCH was to fully comply with all the clearly articulated BEE stipulations in the contract on one hand, while on the other they decided to adopt a more agent-like stance on private commercial agreements with the PDIs where there was limited government oversight. The FM operator for instance agreed to take women PDI managers on a secondment basis, in order to enhance training and skills transfer. The FM operator also arranged their office setup to enable an interactive engagement with the women PDIs where there is complete access to the operator’s IMS (integrated management system). However on the private commercial agreements, they induced the women PDIs to sign a mutual ‘restriction of trade’ agreement, which the FM operator have since reneged on several times. The women PDIs’ payments are annually CPIX adjusted, whereas the FM operator’s payments are adjusted quarterly disadvantageously benefitting them from any financial windfall. Furthermore, the Medical equipment supplier for

a while refused to pay a *pro rata* monetary apportionment to Mbekani to the detriment of a steady cash flow to a fledging PDI company. The above discourse clearly demonstrates that the natural disposition of the established members of the consortium is towards agency tendencies. These tendencies are propagated continuously even during operations in the areas where there was no governmental (principal) intervention. So any observed apparent metamorphosis of agency characteristics into steward tendencies is only when it serves the long-term interests of the agent to comply although that is not their instinctive initial disposition. The acquired adherence to the BEE requirements was maintained even when there was an apparent government incapacitation on BEE monitoring.

The dual character discussed above is in line with Pastoriza and Arino (2008) postulation that everyone acts with some degree of altruism and some degree of selfishness. It is impossible to find a pure steward or a pure agent, the dynamics of the contracting parties determines how and why an individual decides to act more as an agent or more as a steward. The oversight of the government in intervening on certain BEE issues exacerbated women PDIs marginalisation in some particular areas, while the government's emphatic insistence on other issues bred a steward-like BEE implementation disposition from established companies in other areas. This posture was brought about by several interfaces encapsulated in the principal (active agent-AA) and agent (reactive agent-RA) chain of interactions as postulated by Pastoriza and Arino (2008) above.

According to Pastoriza and Arino (2008) the AA and RA interactions result in the final contracting parties' disposition. In IALCH the government initiated the adoption of BEE and the accommodation of women PDIs as part of the contract requirements. This was an active action by the government the reactive action response from the consortium was to accommodate them as shareholders and this resulted in an extrinsic result clearly observable in reality. The instruction to further come up with a structure that accommodates women at the third tier was another active action by the government, which was assented to by the FM operator as a form of reactive action (RA). "*And government called D&S and said*

'D&S come up with a structure that accommodates women, which led to the formation of Umongi'" [Women's Group participant-O]. Somehow during the tender stage interactions it occurred to the government that the financial trickle down to the women PDIs is not clear enough and hence the government insisted on being given a detail trickle down of financial flow to the women group PDI. "On the monetary side he [government official] wanted the flow of money he wanted to know how it flows to BEE companies... because in terms of reporting companies were reporting that if you own 40% then you are getting 40% of the project. Then he said no I want the trickle down. How does it trickle down to BEE? Because it does not mean you own 40%. Because if government pays in money; money is going to pay for operations. It is only the profits that get paid to BEE, our partners wanted to know what exactly should they put on the report. Should they put 40%, which is your ownership or the actual money that goe? He said I want to know the actual money. Because we know that most of the BEE companies they are not involved in operations so you can't assume because they own 40%, [they get] 40% of what government pays. He said no. I want the actual, the profit. So companies started reporting on those profits at that time" [Women's Group participant-O]. This was part of the government's intrinsic results (relational learning) that were brought up by observing the tender documents of the consortium and their vagueness on this particular issue, and this led to the decision to make it more elaborate.

There are other initiatives during the operation stage of the contract that are demonstrative of transcendental motives of the agent after a number of interactions with the principal. The sharing of office space with the FM operator and availing the IMS for use by the women PDIs demonstrate a desire to give more relative weight to transcendental motivation. The positive team spirit created between the FM operator and sub-sub-contractors, the supportive Quality inspectors, secondment of women PDIs managers to other sites of the FM operator and the free computer literacy training offered to all the sub-sub-contracts staff are all demonstrative of transcendental actions depicting a very steward-like behaviour. Although there are a number of agent-like tendencies

demonstrated and discussed above regarding unfair remunerative practices by established companies, it appears that when it comes to skills transfer in particular the FM operator also demonstrated steward-like tendencies by placing more relative weight on transcendental motivation.

This metamorphosis of character was brought about by a chain of actions and reactions between the two parties which in the end placed the agent more on the steward side of the continuum on issues relating to skills transfer on the other hand, and more on the agent side of the continuum in matters relating to fair financial apportionment. This finding confirms Patrora and Arino (2008) in so far as they refute the existence of a pure agent or a pure steward. It however demonstrates that an agent positive reciprocity which shifts its behaviour towards the stewardship end of the agent/steward continuum is heavily dependent on the relative weighting of the principal's own active actions. According to this finding it is possible to have an agent who is selfish on issues not adequately emphasized and contractually stipulated, and who is also at the same time more altruistic on issues that were particularly contractually emphasized and reiterated during tender stage interactions. This makes the agent's transcendental motivations directly dependent on the principal's extrinsic and intrinsic actions.

6.8 PPP EMPOWERMENT EFFICACY

The PPP project process at IALCH initially bears all the hallmarks of an agency relationship as depicted by the core categories utilised in chapter 6 above. The inclusion of BEE as a project deliverable in a context of skewed skills and economic racial bias favoring the predominantly white previously privileged members of the population, meant that the empowerment agents had to transcend their self-interests and internal inter-motivational conflicts of protecting their economic status in implementing a legal BEE policy requirement. This scenario is intrinsically shrouded with agency pervasiveness. The emergent bipolar inclinations as the project progressed, demonstrated divergent behaviours that could approximately be explained through the PA and PS

theories. The PA theory was useful in explaining the interaction between the agent and the Principal during the tender stages. However, the positive behavioural anomalies in agent behaviour during the operation stage could not be accommodated within the parameters of the PA theory and recourse was sought from PS theory. The simplicity of PS theory with regards to its one-sided rigidity on steward positive behaviour also failed to account for the totality of observed agent's operation-stage tendencies. It was consequently concluded that both theories had limitations in adequately explaining agent behaviour at different stages of the contract in isolation.

A synthesis of the two theories as postulated by Pastoriza and Arino (2008) adequately addresses and accommodates the deficiencies demonstrated in the two theories, when viewed in isolation. The IALCH project has confirmed the behaviour of agents (consortium) to be a shifting response to the principal's (government) stipulations and initial disposition, running on an agent/steward continuum rather than discrete immovable dispositions. What emerges is a guardian who is instinctively an agent but who acquires some steward tendencies provided adequate active actions are initiated by the principal to instigate transcendental motives. The selective coding of core categories has revealed an esteemed level of empowerment and skills transfer not normally found in traditional procurement. This was directly connected with unique PPPs characteristics of robust self-monitoring mechanism, a prolonged tendering process which assist in the elaboration of outcome processes, the longevity of the project which entrenches a culture of contract compliance and an incetivising remuneration arrangement.

6.9 SUMMARY

This chapter utilised the data that was analysed in chapter 5 and discussed it using PA and PS theoretical filters. The conclusions emanating from the discussion assisted in the formulation and consolidation of a new theoretical outlook that was embedded in the data. The weaknesses of the existing

theoretical framework were discussed within the context of the PPP procurement method and a suitable theoretical formulation was articulated. It was demonstrated that PA theory alone is inadequate in addressing the intricacies of principal and agent relationship post-contract award in the project. The use of PS theory had a limited utility at operations stage and hence an existing theoretical synthesis combining the two was used in developing an emergent theory that could adequately explain the anomalies not covered by existing theories. The next chapter discusses the conclusions and recommendations emanating from this research.

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7 CONCLUSIONS, RECOMMENDATIONS AND FUTURE RESEARCH DIRECTIONS

7.1 INTRODUCTION

The implementation of BEE policy in South Africa has been beset with challenges and weaknesses in institutional monitoring. The construction industry has been particularly plagued by the diversion of preferential procurement benefits through pervasive misrepresentation practices. This research recognizes the critical role played by established white-owned companies in imparting skills and enhancing the economic position of PDIs. Government's reliance on these white-owned companies for implementing BEE creates a Principal Agent relationship. By founding the theoretical investigation of the research on the PA theory, the efficacy of PPPs in ameliorating the challenges of implementing BEE was investigated. The weakness of the PA theory in explaining the behavioural nuances of the consortium at the operations stage was augmented by the introduction of, and theoretical synthesis with, the diametrically opposed PS theory. What emerged from this synthesis was a bipolar consortium whose behavioural tendencies justified the unification of these theoretical dualities without eliminating either pole or reducing one pole to the other. The synthesis of PA/PS theories served as a base for the development of an improved theoretical explanation of the behaviour of the consortium in its implementation of BEE on a PPP. It is through this theoretical framework that the efficacy of PPPs was analyzed and understood.

The success of this research should be judged in its adequacy in explaining the practical achievement of PPPs in stifling tendencies that have diluted BEE intentions in contract implementation. The comprehensive articulation of the behavioural changes of the established companies in their response to the government's demands and contractual stipulations on BEE elucidates the success/failure of the PPP in implementing BEE.

7.2 FINDINGS OF THE RESEARCH QUESTIONS

At this stage of the research it is necessary to review the research findings in relations to the research questions that triggered this investigation. The individual research questions and findings are discussed below:

What Principal Agent problems exist in PPPs and in traditional procurement?

The endemic PA problems faced by the construction industry can be encapsulated in the problems of Fronting and Window-dressing. Window dressing gives a tenderer the appearance of true BEE compliance whereas the intended beneficiaries are receiving minimal gains from their inclusion in the tender documentation. Fronting is any *ex post* practice that places the PDIs at strategic positions with little practical/operational control or responsibility in the company, or any practice that deceptively ascribes a role to PDI companies when in reality their involvement is peripheral and superficial. Findings of open interviews held with all the managers/shareholders of all the major participants in the IALCH PPP project demonstrated that there are PA problems in PPPs but that these emerge in the form of adverse selection. The PPP structure and self-monitoring system is robust enough to mitigate the problem of moral hazard so there were no observations of either window dressing or fronting at IALCH during its operational phase.

Open-ended Interviews conducted with the shareholders of the PDI companies where they recounted their experiences, demonstrates the presence of subtle, adverse selection on matters that the government would consider to be private commercial agreements within the consortium. This phenomenon was predominant whenever there was reduced oversight by the government on the established companies' reactive actions towards BEE. It was observed that when the established companies were not closely watched they would reduced the BEE benefits to the PDIs in order to maximize their own utility in a manner that is incongruent with the spirit of BEE. The novelty of the PPP procurement system at the time of IALCH project commencement, and the inexperience of the PDIs,

resulted in adverse selection on the implementation of BEE in some areas. The lack of experienced professional advice available to the PDIs also contributed to the PDI's accepting disadvantageous contractual arrangements which stifled their economic empowerment.

How can the principal use his influence to improve BEE delivery in PPPs given their long-term nature?

It was observed from the case study that the existence of a profitable long-term contract triggered amenability towards the inclusion and training of PDIs. Government's insistence on the accommodation of new entrants and the longevity of the IALCH project triggered the inclusion and appropriate training of the PDIs which enhanced their empowerment. The aspirations of socio-economic impact at IALCH were better planned and served as a direct result of the longevity of the PPP agreement and the stipulations of the BEE policy.

The gradual transfer of management and operational responsibility from the established firms to the PDIs was cited as the most positive improvement that can be made on the current PPP structures. The static nature of the PDIs' participation in the project would normally confine them to a perpetual state of dependence on the established companies, even when enough practical experience has been gained from being involved in the daily operations of the project. However, the government recognised immediately after the contract close of the IALCH deal that it would be beneficial for the PDI shareholders to be involved at all the levels of the PPP contractual operations, in order to gain a complete knowledge of the operations. The operational exclusion of PDIs at highly technical areas at IALCH meant that they have a limited knowhow in the complex knowledge-intensive areas of the project. Thus bolstering the advocacy for a gradual take-over of all the operations over the project tenure in order to mould rounded PPP operators.

“Are there underlying reasons that could militate towards PPPs being a better platform to interrogate the Principal Agent relationship in delivering BEE?”

It was observed at IALCH that BEE compliance is maintained because BEE is a contractual deliverable and is not an adjunct government policy requirement. The self-monitoring mechanism had more impact on contract compliance and showed itself to be durable even when government’s monitory initiatives collapsed. IALCH also demonstrates that PDIs gain from participating in the prolonged tender process, where observation, research and direct involvement can impart the necessary knowledge on the vicissitudes of a complex tender process. This experience and knowledge equip the PDIs to know the contract outputs, their rights and realistically align their expectations. Empowering knowledgeable beneficiaries was observed to assist in the government oversight role, as the beneficiaries continually reported perceived unfair practices which are incongruent with the spirit of the policy.

“How does the efficiency of the Principal Agent relationship in PPPs in delivering BEE compare with traditional procurement methods?”

The prolonged tendering process in IALCH PPP created a long chain of interactions that demonstrated the centrality of BEE and clarified the expectations of BEE output to the bidding consortia. The length of the tender period reduced the information asymmetry over the intentions of the agent (consortium) in implementing BEE. The short tender period characteristic of traditional procurement practices allows the awarding of the contract to a bidder who might not have completely bought in to the BEE policy and might therefore deliver inferior BEE outcomes and may not be detected by weak monitoring mechanisms. The long-term nature of IALCH created a situation where the established companies had to metamorphose their agent character and adopt tendencies that were more akin to stewards in their training of PDIs to fully achieve operational parity. In traditional procurement the emphasis is on having the PDIs at strategic positions, which could encourage fronting as there is little in

the way of practical mechanisms to ensure the active participation of the intended beneficiaries of BEE.

7.3 REVISITING THE RESEARCH PROPOSITION

From the onset the rationale of this research was predicated on the notion embodied in the main proposition:

PPPs offer a better environment than other procurement methods where the Principal Agent problems can be mitigated in the delivery of BEE

The utilisation of the PA theory in this research as the principal theoretical framework was based on the assumed universality of the self-centred nature of employer/employee relationships. Whereas the PA theoretical analysis works for most relationships where the agent (employee/contractor) works for material gain, it was found that the theory is limited when applied in situations where material gain is not the sole post-contractual remunerative goal of the agent. However the utility of this theory proved invaluable in analysing and understanding the pre-contractual behaviour of the agent. The PPP contractual structure and tender processes were found to be adequate to stifle the ill-effects of pre-contractual agent opportunism. There was an observed absence of post-contractual BEE agent opportunism at IALCH which could directly be ascribed to the effectiveness of the PPP self-monitoring mechanism, demonstrative of the PPP efficacy in comparison to the traditional procurement methods. More especially because with PPPs the contract is contextualised to each particular project to meet its unique challenges with regard to BEE. The traditional procurement methods deploy generic contracts which cannot cover every scenario, and this is exacerbated by a lack of robust continuous BEE monitoring.

7.3.1 Revisiting the sub-propositions

The following sub-propositions were postulated at the beginning of the research:

There are Principal Agent problems in PPPs and also in the traditional procurement methods and they have to be identified and collated.

The robust nature of the scrutiny of PPP tenders was observed to stifle the occurrence of the traditional PA procurement problems of Window-dressing and Fronting. At the same time it led to the emergence of even more subtle aversion of basic BEE ideals. The prevalence of this was observed where the inexperienced new PDI entrants unwittingly entered into disadvantageous private contractual arrangements with experienced consortium partners. The following pre-contractual opportunistic behaviours were identified at IALCH:

- Precluding PDIs to enter strategic and operational areas of the project (i.e. second tier and highly technical areas)
- Structuring disadvantageous payment methods that restrict PDIs optimal economic benefits (annual CPIX payment adjustments for PDIs' and Quarterly adjustments for established companies).
- Introduction of apparently mutually beneficial agreements that can easily be contravened by economically powerful parties ("restriction of trade" agreement precluding the consortium partners from competing against each other in the designated province).

Since the relationship between the principal and the agent is long-term, the principal is better placed to learn and equip himself throughout the life of the project to institute measures that will ameliorate the Principal Agent problems.

The structure of the PPP agreement does not allow scope for amendment during operations, limiting post-contractual intervention by the principal (government). However the RFQ, RFP and protracted negotiation stages during tendering allows the principal (government) to learn of the agent (consortium) implementation intentions and also to emphasise the centrality of particular issues. The active actions of the principal which triggers the reactive actions of the agent instil on the agent the intentions of the principal and breed transcendental motivations which benefit BEE implementation.

The long-term and lucrative nature of a PPP project makes the agent (consortium) amenable to BEE implementation. Furthermore a long chain of

principal/agent interactions demonstrate the principal's BEE intentions which are consequently reciprocated by the agent transcendentalism to resolve inter-motivational conflicts. The principal's (government) overriding BEE intrinsic motivations were observed to be reflected in the metamorphosis of the agent's post-contractual character, which expressed steward-like characteristics.

The relationship of the parties in a PPP are an ideal Principal Agent relationship, the proper understanding of which can yield maximum BEE benefits.

The government and consortiums' pre-contractual relationship in PPPs perfectly fits with the PA theory. However, the agent's transcendental post-contractual behaviour cannot adequately be explained within the confines of the classic agent characteristics proffered by the PA theory. This undermines the applicability of the theory throughout the project in its pure form as propagated by Eisenhardt (1989) and others. The positive post-contractual behaviour of the agent (consortium) in BEE implementation could adequately be attributed to rigorous screening processes to mitigate adverse selection. However the overall post-contractual steward-like tendencies surpassed the theoretical purview of the PA theory, and could only be partially explained by the PS theory. The resultant PA/PS synthesis was necessary to generate a better theoretical explanation. It was however found that the PA theory still provides a foundation for understanding the PPP's mechanisms that are most likely to yield efficacious BEE implementation.

Because of an ideal Principal Agent relationship in PPPs they will yield more of the key BEE elements than the other procurement methods

This research established that the government/consortium relationship does not reflect a pure PA relationship, because PA theory does not adequately explain the totality of the agent behaviour throughout the project. However adopting the new grounded theoretical development which builds on PA/PS synthesis and on the work done by Pastoriza & Arino (2008), a better theoretical framework is outlined which better explains the government/consortium relationship. The PA theory however, provides the skeletal underpinning of the new theory, the

adoption of which would lead to the structuring of PPPs to yield even better BEE benefits. The new theory suggests that PPPs are better platform for efficacious BEE implementation. Chiefly, because there is no single BEE moral hazard incident observed during the project operation, demonstrating the efficacy of PPPs in mitigating PA problems *ex post*. The new theory also explains the generally positive attitude towards BEE by the consortium, which surpasses the normal expected compliance parameters by an agent, demonstrative of a behavioural transition induced by the PPP contractual strictures and environment.

7.4 CONCLUSIONS

The PPP tendering mechanisms are found to be more rigorous than traditional procurement methods' but not foolproof in mitigating adverse selection in BEE delivery. The compliance of the consortium to the BEE stipulations at the time of tender is directly related to the level of government oversight in instigating congruence with the ideals of BEE. Any weakness in contractual stipulation and/or direct government tender stage intervention is likely to be exploited to maximize the agent's profitability from the project. Any opportunistic actions that contravened BEE ideals were executed in such a way that there is no technical infringement of the contractual specifications. Despite the intrinsic hallmarks of self-seeking profit-maximizing tendencies demonstrated by the consortium's general behaviour, it was established that PPPs have robust screening processes that induce increased compliance in BEE delivery. The active meaningful PDI participation in PPPs is a direct result of the centrality of BEE in the PPP contractual requirements.

The case study demonstrated that in comparison to traditional procurement methods substantial BEE compliance in PPPs is largely due to clarity in the articulation of project outcomes, unambiguous performance measurements and effective self-monitoring mechanisms. Compliance is also maintained by ingraining BEE as a contractual deliverable, the renegeing on which automatically

becomes punishable via the self-monitoring mechanism utilised in the project. The effectiveness of the self-monitoring mechanism maintains and upholds BEE compliance even when government's monitory initiatives falter through lack of capacity etc. However the continued government involvement and responsiveness at all stages served to bolster the PDI ability to resist disadvantageous practices that are detrimental to empowerment.

During the bidding stage the PDIs gained from being a part of the elaborate tender process, where observation, research/consultation and involvement empowered the new PDI entrants on the vicissitudes of dealing with a complex tender process. The observational experience was empowering and its redolence could be evocatively utilised in future business opportunities. During the operations stage the high standards demanded on the PPP has developed efficient and confident PDI professionals who have acquired valuable skills by working with international and local industry leaders. The PPP's high standards have also fostered a spirit of entrepreneurship, which has supported the emergence of successful and competitive PDI-owned businesses capable of playing a crucial role in the PPP market and other business ventures. The general BEE positivity among PDI players is a direct result of a supportive environment fostered by the PPP agreement which has succeeded in developing a cadre of ambitious, upwardly inclined professionals.

The profitability and longevity of PPP projects triggers amenability towards PDI inclusion by the established firms. Any resistance against their stipulated involvement can lead to a consortium losing out on a steady cash flow over a number of years, and this creates a strong incentive for the proper inclusion of PDI's in the project. The longevity of the PPP projects is also beneficial to socio-economic impact and employment equity. The long-term nature of the project assists in the proper assessment, planning and implementation of socio-economic needs of the local community. Recruiting and training PDIs who are going to be of a long-term benefit to the companies enhances PDI empowerment and lessens resistance to their recruitment.

The high level of service delivery expectations in the PPP and the fact that big established companies have to deliver through PDIs, makes the skilling and uplifting of PDI standards a business imperative. In order to deliver service at a required level big experienced companies adopt a posture that creates a harmonious working relationship with PDIs in order to enhance project output. A mixture of penalties and constructive monitoring assists the PDIs with fine-tuning their skills and gives them enough confidence to develop independently outside of the project. The resultant high level of cooperation and interaction between the big companies and PDIs reduces any BEE moral hazard.

7.4.1 Theoretical Contribution

This research demonstrates the importance of the PA theoretical framework in the analysis of PPPs efficacy in implementing BEE. It also highlights the utility of PS theory in the theoretical discourse of employer/contractor relationship. The adoption of the PS theory was necessitated by the positive post-contractual behavioural tendencies of the agent. It was however observed that neither theory could independently account for theoretical behaviour anomalies of the agent, which appears to spill over the traditional purviews. The synthesis of the two theories advocated by Pastoriza & Arino (2008) was adopted to explain the metamorphosis of the general character of the agent who demonstrated a shift toward steward-like tendencies. This new theoretical development demonstrates the importance of interpreting the agent behaviour as a shifting phenomenon based on a continuum with pure agent behaviour and pure steward behaviour positioned at each end. It also rejects the view of the agent compliance paradigm as being a discrete, immovable inclination.

This synthesis of the two theories as propagated by Pastoriza and Arino (2008) assumes that a relative increase in either agent/steward tendencies necessarily leads to the gradual diminishing of the opposite behaviour. This research, however, demonstrates that there is a consistent retention of certain agent behavioural tendencies, even when there is an apparent character metamorphosis to adopt steward tendencies. This observation of existential

character polarity is a further theoretical development building on the work by Pastoriza & Arino (2008), and is one of this thesis's critical contributions to knowledge. The recognition of the existence of this duality of character means that the predominance of one tendency does not necessarily subsume the other. The contribution of this research can be judged in enhancing awareness in the identification of this character duality, because the pre-contractual identification and mitigation of undesirable agent behaviours can enhance BEE in PPPs even more.

7.5 RECOMMENDATIONS

The title of this research could be misleading as it gives the impression that the PA theory is the sole theoretical framework utilised throughout the research. However it has to be accepted that initially it was thought to be the sole relevant theoretical analysis suitable to address all the PPP contract phases. However the nuanced character interface at the commencement of contract operations which discovered shifts in agent behaviour necessitated the introduction of the PS theoretical perspective. The PA has widely been utilised in very many fields and has been very successful in providing adequate explanations of agent behaviour in those areas where it was deployed. However the peculiarities of a PPP environment at different phases has necessitated a theoretical conflation with PS theory to adequately account for the agent behaviour. However the following areas still need to be further investigated.

- The government needs to have a permanent provincial PPP unit manned by experienced staff with a thorough understanding of PPP projects. The current over-reliance on the self-monitoring mechanism to prevent BEE shirking does not address PDI operational challenges, which need government intervention.
- The gradual introduction of PDIs into knowledge sensitive and highly technical fields should be promoted in PPP projects. The PPP project should also have a provision for PDI take-over of the whole project

operation and management provided their empowerment is to the government satisfaction. The perpetual sub-contractor status that PDIs play on projects would never lead to a development of major PDI industry players in PPPs, capable of leading at first and second tiers.

PPP contracts should include a mechanism allowing for mid-term reviews to counter any BEE inhibiting practices or agreements. New entrants into the PPP arena are susceptible to disadvantageous agreements because of the lack of expertise and access to technical and legal resources, but the PPP should allow such agreements to be revised in a way that the PPP does not become unattractive to major players.

7.6 FURTHER WORK

Further work is needed in understanding the nature of, and power relationship dynamics in private commercial agreements between PDIs and established consortium partners. This research has established that further regulation of the principles governing these agreements in PPPs is needed. It is in these agreements where the government has a limited oversight that adverse selection takes place to the detriment of optimal PDI empowerment.

This project is led by a PDI sponsor and that might have contributed to a lot of positive results in BEE implementation. A comparative study is needed where the sponsor is not a PDI to assess the role of a sponsor in instigating beneficial BEE optimal implementation.

The IALCH project was done before the *codes of good practice for BEE in PPPs (2004)* were promulgated. When the codes came out their requirement for BEE shareholding were lower at 30% as opposed to 40% in this project. A comparative study would serve to clarify if that has somehow affected the general BEE benefits under the current legislation.

Some work needs to be done in projects that have characteristics that mirror PPPs; longevity, good financial incentives, strong BEE centrality ingrained as a

contractual deliverable and robust government oversight to see if similar results could not be attained. The main reason is that PPPs cannot always be chosen by the government but their unique characteristics which benefit BEE could be emulated and implemented in projects that are traditional procured.

There are manifestations of relational contracting in the operation of this contract but the contract itself was not designed as a relational contract. These manifestations could not go unnoticed and unrecorded by the writer. Although relational contracting as a concept on its own could not be extensively interrogated without unnecessarily broadening the scope of the research in a way that might refocus it, to the detriment of initial theoretical considerations which are still considered to be relevant. The writer has decided to embark on the study of the contribution of relational contracting in enhancing BEE implementation innovation.

7.7 CONCLUSION

Opportunism in the form of fronting and window-dressing has bedeviled the implementation of the BEE policy since its earliest days and has been a challenge to those tasked with using procurement as a tool to empower the PDIs. This research has utilised the PA theoretical framework to first understand the general agent behaviour, and contextualized this within the PPP environment. The peculiarities of a PPP procurement method could not provide a perfect fit with the PA theoretical stipulations, and recourse was sought from the PS theory. The synthesis of the two theories provided a foundation for a development of a proper theoretical understanding of agent behavioural 'anomaly' found in PPPs. This unique behaviour was found to be positively favoring BEE. This research has identified measures that can be taken to maximize the manifestation of this positive character transition by the agent. The research has also demonstrated that such transition could better be induced where there is longevity of the tender process, longevity of project tenure, unambiguity of project deliverables, robust monitoring regimen, well-articulated incentives for the agent (consortium) and

responsive government disposition to the needs of PDIs. It has been established that PPPs provide a platform where all these elements can be properly accommodated. Thus advocating for the deployment of PPPs, to adequately garner the benefits of procurement in attaining BEE. Where PPPs cannot be practically be deployed it is proposed that structuring the projects to emulate key PPP characteristics mentioned above could still yield desirable BEE outcomes in procurement.

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APPENDIX 1

ECONOMIC HISTORY OF SOUTH AFRICA

INTRODUCTION

EARLY PEOPLES OF SOUTH AFRICA AND FIRST EUROPEAN CONTACT

To understand and contextualize Black Economic Empowerment (BEE) in South Africa, it is important to first trace the economic history of the country. The geographical area that is now recognized as South Africa was, by the 17th C. occupied by a number of indigenous black people who were pastoralists and subsistence farmers, who had originally migrated from East-central Africa (Worden, 2007). In addition to those of East-Central African descent were the San who predated this migration and who lived primarily as hunter-gatherers (Wilcox, 1976). Within the San was a semi-nomadic pastoralist subgroup called the Khoikhoi who resided in the cape peninsula (*ibid.*). These were the first people to come into contact with Europeans in South Africa (Hart, 1967).

In May 1488 a group of Portuguese sailors led by Bartholomew Dias looking for a way around Africa to the Far East, rounded the southern tip of Africa (*ibid.*). Contact was established with these indigenous people, more so because Dias saw valuable herds of livestock at Cape Agulhas (*ibid.*). However it was not until two hundred years later that the Dutch East India Company (also known by its Dutch acronym VOC –*Vereenigde Ooste-Indische Compagnie*) decided to set up a station to supply its ships, with fresh vegetables and meat, that a permanent European settlement was established in the Cape (Elphick, 1977). A group of 82 men and 8 women were dispatched from Holland led by Johan Anthonisz “Jan” van Riebeeck and his wife Maria de la Quellerie. They came in three ships (*Reijer, Dromedaris, Goede Hoop*) and landed on the 6th April 1652. The VOC

had no aims for the conquest of the land or administration of the territory other than to provide vital supplies to the company's passing ships on their way to the spice rich Far East. In fact van Riebeeck's specific instructions were to build a fort, erect a flagpole for "signaling" the passing ships and to build pilot boats to escort them safely into the bay (*ibid.*).

Trading with the Khoikhoi had started in the 1590s when the Dutch and English ships began to put in regular stops at Table Bay *en route* to the Indies from Europe (Elphick, 1977). It was because of this prior trading relationship that in 1652 the Dutch initially never intended their settlement to go beyond the peninsula (Worden, 2007; Ross, 1999). The original intention was to continue to trade, albeit intensively with the Khoikhoi for cattle and sheep, and to establish a strong agriculture, based on market gardens with orchards and vegetable patches (Guelke, 1989). Van Riebeeck soon found out that the Khoikhoi were not often willing traders and that intensive agriculture on unimproved ground and the building of fortifications demanded more labor than was anticipated (*ibid.*).

Within the first month Van Riebeeck had requested the directors of VOC for slave labor. The first slave load from Angola and Guinea arrived at the cape in 1658. Subsequent slaves were from Madagascar, Mozambique, East Africa up to Zanzibar, Mauritius, India, China, Malaya and Batavia (Jakarta, Indonesia) (Armstrong & Worden, 1989; Bradlow & Cairns, 1978). Their numbers grew steadily from 200 in 1658 to more than 6000 in 1672. To solve the trading problem with the local Khoikhoi trading expeditions were sent further inland to trade with other Khoikhoi clans (Worden, 2007). In 1657 a class of 9 free-burgers (*Vrijburgers* –independent farmers) was released from the company's employ to ameliorate agricultural shortfall; they were given land on loan or freehold to farm along the Liesbeeck river and were supposed to sell their produce to the VOC at a fixed price. In time their numbers grew and they spread to other parts of the Peninsula notably establishing the settlement that became Stellenbosch (*ibid.*).

SETTLER EXPANSION INTO THE SOUTH AFRICAN INTERIOR

Expansion did not stop but continued further inland and in doing so amounted to a piecemeal conquest of the Khoikhoi and San lands (Worden, 2007; Ross, 1999). A combination of superior technology in the form of firearms and horses and the use of bureaucracy meant that the Khoikhoi were permanently displaced from land where they had practiced transhumant animal husbandry for years (Guelke & Shell, 1992). Within 150 years of European settlement the Khoikhoi had almost completely been displaced from their land and those who could not move further inland were incorporated in the settler economy of the Dutch (*ibid.*). From here the settlers moved North and East and their movement was largely unchecked from the 1720's and 1730's until they encountered the numerous Xhosa (Bantu) agriculturists in the vicinity of the Great Fish River in 1779 (Guelke, 1989). This first migration generally defined the boundaries of the Cape colony for some time (Worden, 2007; Legassick, 1989). In 1795 the British took control of the Cape as part of the 'spoils' of the Napoleonic wars (*ibid.*). Although there was a brief interlude from 1803 where the Dutch Batavian administration took over, the British gained permanent control in 1806 (*ibid.*).

The most immediate and significant change introduced by the British was the internal ordering of the colony (Keegan, 1996). A tied labor system was removed, with the restrictions on the Khoikhoi labor lifted in 1828 by Ordinance 50, giving them more mobility and freedom to choose employers, and slavery was abolished in 1834 (Ross, 1999; Crais, 1986). These developments, which challenged the fundamentals of Dutch settlers' way of life, were not welcomed and 15,000 Eastern Cape Dutch pastoralists left the colony in what became known as the "Great Trek" (Muller, 1975). These migrants or Trekboers (later called 'Voortrekkers') contributed in the early formation of a collective "Afrikaner" ethnicity, as the South African Dutch were later to be called (*ibid.*). According to Muller (1975) this migration came to be seen in the 20th C. as the seminal event in South African history as it provided the symbolic images crucial to the

development of the ethos of Afrikaner nationalism (*ibid.*) that would ultimately give rise to *apartheid*.

The migration of the Trekboers landed them in present day Kwazulu-Natal, Orange Free State, Gauteng (former Transvaal) and Northern Cape (Gluckman, 1960; Guy, 1980). These areas were occupied by African Bantu polities, which were undergoing a process of social upheaval called Difaqane (*ibid.*). Difaqane resulted from the social re-organisation of the Zulu kingdom by King Shaka in the early 1820s (*ibid.*). This process was cataclysmic and highly destructive for the existing African Bantu polities over a wide area, as chiefdoms sought to evade or resist Shaka's forced amalgamation into his kingdom (Omer-Cooper, 1966). The main polities around this time were the Sotho, the Swazi, the Ndebele, the Pedi and the Tswana (*ibid.*), who the Afrikaners were later to interact with, and they had roughly delineated territorial boundaries.

First contacts between the Afrikaners were mostly cordial and symbiotic as the Afrikaners needed land for their herds and the locals needed firearms (Worden, 2007). Nevertheless, all the relationships would ultimately turn sour due to the Afrikaner need for absolute ownership of the resources and to establish territorial advantage to oppose British rule and influence. Thus conflict, cooperation and complex interaction between trekkers and others marked the history of mid-nineteenth-century South Africa (Worden, 2007). For instance from the early nineteenth century, ivory and hide hunters and agents of Cape merchants had established a small settlement in Port Natal (later Durban) with nominal allegiance to the Zulu kingdom (Slater, 1980). When the Afrikaners arrived in 1838 they formed an alliance with the traders and disaffected African cultivators in the region (*ibid.*). Together they defeated the Zulu leader Dingane at the battle of Blood River, declared a new republic of Natalia and claimed rights to the land between the Tukela and Mzimkulu rivers (*ibid.*). The Afrikaners were, in turn, dislodged by the British in 1843 when Natalia was annexed, ostensibly because the Afrikaners were still practicing slavery and also to curb Afrikaner rivalry in the use of Port Natal (Richardson, 1986; Ballard, 1989).

Large-scale British commercial plantations emerged and thrived through the use of indentured labor from India in the 1860s (*ibid.*). The Afrikaners left and joined their compatriots at the Transvaal who had arrived there earlier through different routes (*ibid.*). They established a regional centre at Potchefstroom, drove the local Ndebele further north and were granted independence by the British as the “South African Republic” at the Sand River Convention of 1852 (Worden, 2007).

The area controlled by the South African Republic was north of the Vaal River (Worden, 2007; Ross, 1999). South of Vaal to the Orange River there were complex alliances and conflicts between Afrikaners and Bantu polities. For instance Afrikaners partnered with the Rolong of Thaba-Nchu to drive the Ndebele out of their land in 1836-7 (*ibid.*). On the other hand they were renting land from the Griquas (European and Khoikhoi/slaves descendents migrants from the Cape) further East. In the area between the Caledon and Orange they were in continual fight in the 1840s with Moshoeshe of the Sotho, who was disrupting lines of trade with the Cape (*ibid.*). In 1848 the area between Vaal and Orange was annexed by the Cape Governor, Sir Harry Smith and named “Orange River Sovereignty” (*ibid.*). He tried to further restrict Moshoeshe’s cultivation and pasturage on this land, but was defeated by him in all occasions (*ibid.*). The neutrality that was proffered by the Afrikaners to the British in these British-Sotho wars was rewarded by the grant of independence of the Afrikaner South Africa Republic (*ibid.*). Further resistance by Moshoeshe led to a truce and a withdrawal of the British from this region (*ibid.*). However, by the Convention of Bloemfontein of 1854, the Afrikaners gained nominal control of this region and renamed it the Orange Free State (*ibid.*). This control was nominal because Moshoeshe was still assertive about his grazing and cultivation rights on the land (Worden, 2007; Ross, 1999).

DIAMOND/GOLD DISCOVERY; AND TOTAL BRITISH CONTROL OF AFRICAN POLITIES

Griqua and Tswana Suppression

In the 1850s the British appeared to withdraw from asserting direct political control of the South African interior (Worden, 2007). However, from the 1870s an aggressive thrust into the whole sub-continent was adopted (*ibid.*). In a space of two decades, Basutoland, Griqualand West, the South African Republic in the Transvaal, the Transkei and Bechuanaland were either annexed or conquered, and finally the Zulu and Pedi were defeated and their lands brought under imperial control. The event that influenced this drive was the discovery in 1869 of diamond fields in Kimberly (*ibid.*). The British soon took a pre-emptive interest in the area by backing the Griqua and Thlaping claims to the diamonds fields, ostensibly to protect these polities against the Afrikaner republic's encroachment. In 1878 the Thlaping, the Griqua together with the San rebelled against British colonialism. This rebellion was quelled and their cattle confiscated.

The peoples of these polities were confined to rural locations where they were obliged to pay hut taxes to the British authorities (*ibid.*). In 1880, Griqualand west was handed over to the Cape colony, while British expansion in the area went on unabated with the annexation of Southern Bechuanaland in 1884-5 in a disguised move to protect them against the German interests, who were now in control of South West Africa (Namibia) and to stem Transvaal encroachment into the area (Shillington, 1987). The main reason was to secure timber, grain and labor supply to Kimberly (*ibid.*). In 1895 the British handed this region to the control of the Cape Colony, which was under the premiership of the mining magnate Cecil Rhodes (*ibid.*). In 1896 the Thlaping rebellion was suppressed with further confiscation of their land and loss of cattle due to culling ostensibly to curb rinderpest, imprisonment of their leadership and indenturing of the majority of the population as laborers, which led to heretofore unforeseen impoverishment (*ibid.*). This destroyed the last vestiges of any Southern Tswana autonomy (*ibid.*).

Subjugation of the Pedi

The experiences of the Tswana were paralleled by the experiences of the Pedi. Counter claims over land between the Pedi and the Afrikaners led to a number of skirmishes, which the Afrikaners failed to win (Delius, 1983). The Afrikaners had to pay tribute to obtain Pedi labor and claims in the 1860s to collect rent from other African communities compelled them to migrate to the Pedi polity to seek protection (*ibid.*). In all these attacks the Afrikaners were assisted by the Swazis, and the Swazis also had independent claims on Pedi territory but were repelled on all occasions (Worden, 2007). These skirmishes weakened the Transvaal and it was in this context that the Transvaal was annexed by the British in 1877 (*ibid.*). This move was opposed by many Afrikaner farmers but welcomed by mining, mercantile and banking sectors in the Transvaal who desired access to a confederated South Africa. The British soon bolstered their own claim to Pedi lands by demanding war indemnity and hut taxes from the Pedi which were hard to come by at a time of drought and cattle shortage (*ibid.*). In 1879 with the help of the Swazis, the British saw the Pedi as standing in the way of colonial land and labor policy and attacked them. Their conquest was final and the subjugation of the people of these regions continued even after the Afrikaner were handed back control of the Transvaal in 1881 (*ibid.*).

The Defeat of the Zulu

The defeat of the Pedi came in the immediate wake of the defeat of the largest African polity, the Zulu state. This came after a growing resentment amongst Natal settlers over their failure to extract labor from the African population compelling them to import indentured labor from India (Worden, 2007; Guy, 1982). The Zulu were militarily strong and were less easily subdued and the Natal colony had entered into an uneasy alliance, which recognized the Zulu state and supported their claims to land against the Transvaal (*ibid.*). After the defeat of the Transvaal, this position changed as the British saw a corridor between Transvaal and Natal as important for the movement of migrant labor from the North (*ibid.*). Shepstone, the British statesman encouraged the British High Commissioner Sir Bartle Frere to lay claim to this corridor, which he did. He

immediately amassed troops and accused Cetshwayo the Zulu king of violating the colony's borders (*ibid.*). After the Zulus refused the disbandment of their army and accepting a British resident in 1879 war ensued.

After a catastrophic defeat at the battle of Isandlwana, the British managed a victory only after receiving massive reinforcements (Worden, 2007.). Cetshwayo was exiled in Cape Town and his kingdom was divided into smaller chiefdoms, governed by people with no traditional authority (*ibid.*). After defeat the Zulus were subjected to heavier taxes, labor demands, crop seizures and land destruction. Collectively, these led to the final Zulu popular resistance of the Bambatha rebellion of 1906-8. This was the final show of resistance to colonisation by the Zulus (Marks, 1986) and ended in their ultimate defeat.

Control of the Xhosa

The Xhosas living on the fringes of the Cape colony did not escape British subjugation. In 1878, Frere invaded the Transkeian territories after the Cape Colony's intervention in a dispute between the Mfengu and the Xhosa (Worden, 2007; Ross, 1999). In the 1880s these two polities were placed under the indirect administration of colonial-appointed magistrates and were then formally annexed (*ibid.*). Even Pondoland, which was initially left out, was finally incorporated into the Cape colony in the 1890s (*ibid.*). At the same time numerous attacks were carried against the Basotho by the colonial authorities on the suspicion that they were amassing guns with the wages of migrant labor. The Sothos refused to pay taxes and cede their guns to the Cape administration and in a war that broke out in 1880 the Cape colony invaders once again failed to subjugate Moshoeshe (*ibid.*). However Moshoeshe did ask for "protection" directly from Britain, resulting in Basutoland becoming a "British Protectorate". At this time Basutoland was already supplying labor for the colonial authorities, and there was nothing to be gained by treating the Sotho like the Zulus. As a result, in Basutoland the local chiefs retained much of their traditional authority and this facilitated the establishment of Lesotho as an independent country although wholly surrounded by South Africa.

Although varied in their approach the British had by the end of the 1880s, managed to exert control over a large number of African Societies, either directly or indirectly through their colonies in the Cape and Natal (Worden, 2007). This British control, particularly in respect of the interior of South Africa, led to immense growth in Afrikaner nationalism and resentment (Bonner, 1983). After the defeat of the Pedi the British army presence was removed from the Transvaal, but created a vacuum that allowed an Afrikaner rebellion led by farmers (boers) who succeeded in defeating the British civilian occupiers (*ibid.*). After a final showdown in Majuba in 1881 the British decided to withdraw. This development gave the Transvaal under President Kruger to harass whatever was remaining of the African polities. Thus the Rolong Tswana in the West, the Venda to the North and the Swazis to the East eventually had their land taken from them and in the case of the Swazis heavily reduced (*ibid.*). Afrikaner dominance in these areas however was short-lived although Africans suffered a permanent loss to their land.

THE DISCOVERY OF GOLD AND THE ANGLO-BOER WAR

The most important development in the history of South Africa was the discovery of gold in the Transvaal, which made the Transvaal the most economically valuable region in South Africa. In 1886 the discovery of shallow-level gold led to a sudden rush, which depleted all the reserves (Worden, 2007; Davenport, 1991). By 1895 deep-level gold production predominated, but this needed major capital investment not only from mining houses in Kimberly but from Europe, particularly Britain (*ibid.*). However Transvaal was still in the hands of a hostile Kruger government. Without direct influence and control over the Transvaal, the British economic and political dominance in South Africa was incomplete and impossible (Davenport, 1991).

A hastily organized coup in 1895 arguably supported by the mining companies and Cape governor Cecil Rhodes, who ordered a small force of troops from Bechuanaland (Blainly, 1965; Mendelsohn, 1980), failed to topple Kruger. This

failed coup exacerbated tensions and brought the situation in the Transvaal to wider international attention (Henshaw, 1998). While on the one hand Britain learnt the lesson of poor planning in local initiatives and appointed the known expansionist Milner as the Governor of Cape (*ibid.*), on the other hand Kruger consolidated an alliance with the Orange Free State and approached Germany and Portugal for assistance (*ibid.*). Portugal alerted the British to these approaches since they were in turn looking to grow the strategic importance of their port at Delagoa Bay (now Maputo) to the South African interior over Port Natal and Cape Town (*ibid.*).

In 1899 Kruger recognizing that his forces would soon be outnumbered, launched a pre-emptive strike and declared war on the British asserting independence from what he perceived to be bullying British tactics (Nasson, 1999). He received immense support from the Afrikaner community especially the poor, reeling from a harsh drought and rinderpest epidemic, who saw him as the defender of their homeland (*ibid.*). Despite early success by the middle of 1900 massive British troop reinforcements had helped the British to reverse the tide and capture Bloemfontein, Johannesburg and Pretoria. In theory all that the Afrikaners had ever called their homeland was occupied and their guerilla commandos were forced to surrender through intensive British military control over the Highveld (Warwick, 1980). The signing of the treaty of Vereeniging in 1902 ended this costly war. Over 22,000 British troops died, mostly from disease, over 30,000 households in the republics and Northern Cape were destroyed by the “scorched earth” tactics of the British and about 26,000 Boer women and children and 14,000 black internees died in the British concentration camps (*ibid.*).

THE CREATION OF THE UNION OF SOUTH AFRICA

This defeat by the British of the Transvaal and Orange Free State paved the way for the creation of a unified South African State in 1910. The mayhem of the war led to a general flouting of land tenancy restrictions and the desertion of farms by

some Afrikaners during the war saw some Africans reclaiming their land back (Mbenga, 2002; Kirkler, 1993). The impact of these gains by Africans was immediate, with both white farmers and mine owners complaining about their inability to obtain sufficient labor (Worden, 2007). This rolling back of settler land control was limited in extent and short-lived, as the period between the war and 1905 was Milner's intensive "reconstruction" period (Marks & Trapido, 1979).

This was marked by an intensification of colonial labour and land control and a process of "social engineering", albeit with African resistance, to appease the interests of a growing capitalist economy (Kirkler, 1993). Continuing African resistance ultimately compelled the state to import cheap indentured labour from China to work in the mines, which undercut African demands for high salaries and improved working conditions (Richardson, 1982). Milner also resettled Afrikaner farmers to the land as well as introducing new British immigrants, while at the same time opposing any land tenancy for Africans and "was determined to transform all black tenants into wage labourers" (Marks & Trapido, 1979, p. 70). Thus the political developments in the aftermath of the South African war marked the end of the protracted process of the conquest of South Africa by settler and imperial powers. From that point onwards it was apparent that there were only two major role players in South African politics, the British imperialists and the Afrikaner farmers.

The terms of the Treaty of Vereeniging had turned the Afrikaner republics into British colonies, with promises of internal self-government as soon as possible (Worden, 2007). However after the war, Economic and political stability required the co-option of Afrikaner politicians into the central organ of government rather than leaving them confined in self-governing Afrikaner provinces. After the Afrikaner parties had won elections in 1907 in self-governing parliaments in both republics (Het Volk in the Transvaal and Orangia Unie in the Free State), these governments came together with those of Natal and the Cape to form the Union of South Africa in 1910 (*ibid.*). The Union had major central government power, with regional concessions in the location of key administrative functions; Cape

Town became the legislative capital, while Pretoria the administrative and Bloemfontein the legal. The main intention now was white unity in the face of black resistance, especially in the aftermath of the Bambatha rebellion, and to allay the fears of Afrikaners by structuring a political union where white interests were upheld. White supremacy was entrenched in the constitution and the Act of Union formalized the conquest of the land. It was only in the Cape where there was a non-racial franchise, although it was circumscribed by high qualification for property ownership (Worden, 2007; Ross, 1999).

FORMATION OF THE AFRICAN NATIONAL CONGRESS

After the Unification of the republic, it was apparent to all Africans that they had to speak with one voice to secure their political rights and survival. In 1912 at a conference held in Bloemfontein, the Native National Congress (later in 1923- the African National Congress) was inaugurated (Worden, 2007; Ross, 1999). The majority of its leaders were drawn from the missionary educated Christian elite, most of whom were Christian ministers. For decades their protests were ineffective because of their reliance in the tradition of petitions and delegations. However the congress served as a symbolic national forum for Africans' opinions and grievances (*ibid.*). The change of leadership and the formation of the Congress Youth league in 1943 changed the emphasis towards direct action such as boycotts, strikes and union mobilisation (Gerhart, 1978). This was bolstered by the election of youth leaguers into the executive of the African National Congress (ANC), namely Anton Lembede, Walter Sisulu, Oliver Tambo and Nelson Mandela (*ibid.*). These men with time became the stalwarts in the politics of South Africa in the second half of the 20th Century, as they continued the black struggle launched in 1912.

THE EARLY SEGREGATION LAWS

At the heart of the Africans' dissatisfaction was racial segregation, not just subordination, in the spheres of work, residence and government (Cell, 1982), formally initiated in 1905. The South African Native Affairs Commission (SANAC)

of 1903-05 appointed by Milner took at heart the testimony submitted by an influential Afrikaner politician Louis Botha (later the first prime minister of the Union) in outlining policies for Africans (Worden, 2007). The commission proposed separation of land ownership, the establishment of “Native locations” in towns, regulation of labour influx to the cities with pass laws, differential wage level, mission-based schooling for African rather than state education, administration in separate Native councils, and no extension of the Cape’s non-racial franchise to other parts of the Union (*ibid.*). Although some of these were already practiced in different parts of the country it was the first time they were formally articulated and combined into an overarching general policy, and were put into practice in the legislation of subsequent decades (*ibid.*).

Most notable were the Mines and Works Act (1911), which imposed the color bar, the Native Land Act (1913), which segregated land ownership, the Native Urban Areas Act (1923), which enforced residential segregation in towns (Worden, 2007). According to Ross (1999) segregation in view of the new Union government was not designed to split the country apart, but merely to maintain its hierarchies (Ross, 1999). In particular the Native Land Act of 1913, established a clear legal distinction between African reserves (e.g. Transkei and Zululand) and white farming areas and ordained that no land could be shifted from one category to the other (Ross, 1999; South African Native Land Laws, 1915). The Native reserves, which later became Bantustans were land reserved for exclusive African use and they were officially defined and delimited after 1910. They amounted to about 7% of the entire area of South Africa, and the Native Trust and Land Act (1936) released more land for purchase by or on behalf of Africans to increase this to 13% (Lacey, 1981). The reserves were heavily populated and poorly endowed in natural resources, and most of their land was not arable. This combination of factors compelled most Africans to seek employment in the broader South Africa where they were considered temporary migrants by the South African authorities (Niewenhuysen, 1966).

THE RISE OF THE NATIONAL PARTY AND “APARTHEID”

In the meantime, poverty and class differentiation in the 1930s within the Afrikaner population caused the opposition National Party to mobilize Afrikaners across divisions of region and class. It first tried to woo them away from trade unions dominated by English speakers with their socialist ideas considered inimical to Afrikaner unity (Vincent, 2000). It also encouraged the development of Afrikaner-owned business and capital in order to stem an overwhelming domination of the English speakers in these fields. Afrikaner nationalism was now better prepared to deal with the realities of an industrialized society, contrary to the previous promotion of an idealized rural and pre-industrial society. In 1939 SANLAM (an Afrikaner insurance conglomerate) underwrote an “Act of Rescue Fund” to support fledging Afrikaner business interests (Giliomee, 1983). The intention was to counteract foreign-dominated capital and monopolies, which were blamed to have caused proletarianisation and class division among the Afrikaners (*ibid.*).

In the 1943 elections, the National party emerged as the official opposition against the ruling United Party and the Labour Party coalition. Between then and 1948 a number of parliamentarians crossed the floor and joined the National party. They mostly lamented the breakdown of segregation, which had led to an increased African urban influx, relaxed pass laws and the lack of robust action to stem increasing black protests (Nuttall, 1996; O’Meara, 1976). Although the National party had mainly emphasized Afrikaner ethnic identity in the 1943 campaign, after 1945 it stressed a need for a firm “native policy”, owing to the views of earlier segregationists to keep the cultures distinct because of the overt notions of the purported scientifically proven white race supremacy (Dubow, 1992). The National Party’s Sauer Report of 1946 recommended consolidation of the reserves, rigorous controls over African urban settlement, segregated facilities for coloured’s and Indians and the abolition of the heretofore white representatives of Africans in parliament. This policy, named “apartheid”, was still ambiguous in its interpretation by several constituencies within the party but it

had a tremendous electoral support and helped the National Party to win the 1948 general election (Worden, 2007).

THE NATIONAL PARTY POLITICAL DOMINATION AND BLACK RESISTANCE

Early Apartheid Laws and the Writing of the Freedom Charter- the 1950s

This victory was to prove critical to the politics of South Africa as the National Party would remain at the helm of government from 1948 until 1994. The second half of the twentieth century was dominated by *apartheid* and the resistance it evoked. Until 1994 each decade can be viewed broadly as being distinct in its content and implementation of this policy. The first decade was concerned with codifying all practices and strengthening segregation laws that had been relaxed in the 1940s in response to the rapid industrialisation of the economy and urbanisation of society. Thus prohibition of “mixed marriages” (1949) and the Immorality Act (1950) extended the banning of sex between whites and Africans outside marriage to prohibition of all sexual contact between whites and non-whites, coloreds and Indians included (Worden, 2007).

The Population Restriction Act (1950) enforced the classification of people into four racial categories: white, colored, Asiatic (Indian) and Native (later ‘Bantu’ or African) (*ibid.*). Every sphere of human activity was affected as the Group Areas Act (1950), comprehensively and forcefully extended the principle of separate racial residence (Mabin, 1992). The removals were often done under the pretext of slum clearance and the adoption of modern town planning theories that advocated massive urban re-structuring (Parnell & Mabin, 1995). This justification notably affected the Indians in Pretoria and Durban city centers and the coloreds in Cape Town’s District Six (Bickford-Smith *et al*, 1999). The Natives Resettlement Act (1954) empowered the state to override local municipalities and remove Africans to separate townships by force. The first casualties of Native

Resettlement were the residents of Sophiatown, whose inhabitants were relocated to Soweto in 1955 (Worden, 2007).

The Reservation of Separate Amenities Act (1953) enforced social segregation in all public amenities, such as transport, cinemas, restaurants and sports facilities. Educational apartheid was enforced in schools (1953), technical colleges (1953) and universities (1959) (Christie & Collins, 1984). The Bantu Education Act (1953) phased all independent missionary institutions by placing all African schools under the Department of Native Affairs; missionary institutions were seen as breeding grounds for independent African thinking and protest (*ibid.*). The curriculum introduced by the Act deliberately only prepared students for a life of manual labour in service of white industry. At the same time African schooling was neither free nor compulsory although it was for whites, creating a perpetual supply of unskilled black labour (*ibid.*). All these legislations were opposed at every level of black civil society, using many of the tactics advocated in the ANC Programme of Action of 1949 such as boycotts, stay-aways, strikes and civil disobedience.

The Suppression of Communism Act (1950) gave the Minister of Justice the power to ban any person or organisation viewed as “communist”, a broad definition, which included any form of opposition to apartheid (Lodge, 1987). A joint ANC and Communist Party mass defiance campaign against the discriminatory laws, led to the arrest of 8000 people, in the meantime the ANC’s membership surged from 7000 to 100,000 between 1951-53 (*ibid.*). In order to speak with one voice against segregation, the ANC linked up with the Congress of Democrats, the Indian Congress movement and with the South African Colored People’s Organisation in 1953 to launch a National Congress of the People (Ross, 1991; Worden, 2007). A “Freedom Charter” was drafted after collecting and incorporating all the grievances and demands, collected from local committees (*ibid.*). In June 1955 this was accepted unanimously by 2844 delegates who gathered at Kliptown near Johannesburg, and was later endorsed

by all the member organisations (*ibid.*). 'Charterism' became the ANC ideological foundation, and remained the benchmark to apartheid opposition into the 1990s.

Apartheid Entrenchment, Suppression of Opposition and the Establishment of Homelands – the 1960s

The 1960s were the years of the entrenchment of state control and the devising of new methods of dealing with opposition. The 1960s have therefore been labeled the years of apartheid second phase (Worden, 2007). The catalyst for the government policies was a reaction to the Sharpeville Massacre, where Robert Mangaliso Sobukwe, the leader of the Pan Africanist Congress, a radical offshoot of the ANC, called all the Africans around South Africa to present themselves without their passes at all the local police stations and demand to be arrested. On the 21st March 1960, in Sharpeville Southwest of Johannesburg a crowd of 20,000 Africans surrounding a police station manned by only 20 officers, created a panic amongst the officers and who opened fire killing 69 people (Worden, 2007; Time, 1960). This was a turning point in many respects in the history of South Africa (Ross, 1999), after solidarity strikes and stay-aways the government declared the state of emergency and banned both the PAC and the ANC and detained most of their leaders. As a retaliatory move the government made attempts to remove all rights of urban residence from Africans, including those previously accepted under section 10 of the Natives (Urban Areas) Amendment Act of 1955 (Posel, 1991).

This followed the Promotion of Bantu Self-Government Act (1959), which set up eight (later extended to ten) distinct self-governing "Bantu Homelands" allocated along geographical tribal origins (Worden, 2007). Most of them consisted of fragmented small patches of land interspersed by white farmland whose white owners had rejected consolidation because they would have lost their land. Kwazulu Natal for instance consisted of eleven patches of territory while Bophuthatswana had seven (Ross, 1999). The formal establishment of homelands was followed by forced relocations, as the Group Areas Act produced urban removals and dispossessions. The Group Areas Act was extended to

forcibly remove a sizable number of African tenants, freeholders and squatters on 'white' farms, many of which were now redundant because of the heavy mechanisation of farm activities (Lodge, 1983). According to (Murray, 1992) the massive relocation of Africans by the government was a clear sign of the state power over African lives.

To contain the uprisings within homelands, the "Broederbond", a conservative clique in the Apartheid parliament proposed a bill which would have given preferences to industries relocating to or near these areas, but was opposed by commercial and industrial employers, but the evictions continued nonetheless (Worden, 2007). To circumvent an opposition to setting up of businesses inside the homelands and purportedly increasing the emergence of a stable and dangerous proletariat, the government later succeeded in encouraging business to set up on the border of homelands and have access to cheap labour. The rationale of separate development was "political independence with economic interdependence" (Giliomee, 1985). Apart from the initial disturbance of Sharpeville, the 1960s seem to have been a decade of relative calm and growth as the GDP grew by 5% p.a. and the average real wages increase at a steady level narrowing the gap between blacks and whites (Feinstein, 2005). Relative economic stability, imprisonment of opposition black leadership, as well as state oppression, may well explain the relative lack of oppositional protest during the 1960s.

World Inflation and Resurgence of Political Unrest – the 1970s

This reprieve from political upheaval was to last until 1973 when there was a sudden rise in the price of gold and a hike in inflation caused by the OPEC increase in the price of oil. The sudden recession that followed provided a backdrop for renewed labour unrest, with numerous strikes taking place around major urban centers in the country particularly Durban and the rest of Natal (Hirson, 1979; Friedman, 1986). Hirson (1979) argues that the increase in work militancy fueled the township revolts that started in Soweto in June 1976. The schools in particular for the first time took part in strikes.

A sop to the conservative “Broederbond” (Ross, 1999) in South African parliament by appointing their chairman Dr. Andries Treurnicht as the Under-Minister for Bantu education triggered the student revolt. Treurnicht decreed that half the subjects in African schools, notably mathematics, be taught in Afrikaans, and this was deemed by Africans to lower the quality of education and was considered a pure demonstration of state power, as few teachers could teach mathematics let alone Afrikaans (Worden, 2007). On the 16th of June 1976 a crowd of 15,000 protesting students went on a rampage when two of their number were shot dead by police. An enlarged picture at the United Nations of a mortally wounded 12 year old Hector Peterson being carried on the street, in the ensuing mayhem of police brutality (Worden, 2007) became an iconic reminder of the South African freedom struggle. The violence spread across the country, although government initial reaction was repression, with time it started the move away from the strict fundamentalist apartheid (*ibid.*).

In the late 1970s a number of factors drove change in the policies of the South African government (Moss, 1980). The labour unrests of the 1973-1977 caught the government off guard. After the Soweto student uprising it was evident that repression alone was not enough to contain African revolt. Attempts were made by the government to develop a black middle class, and to woo township residents from sympathizing with the exiled ANC and PAC (Worden, 2007). At the heart of this new thinking were the needs of the now dominant manufacturing sector with its complex technologies requiring permanent semi-skilled labour. Traditional dependence on migrant unskilled labour fostered by segregation and apartheid, whilst useful in the earlier development and growth of industry, were no longer suitable (Lipton, 1988; Feinstein, 2005). A final factor explaining the reforms (Worden, 2007), was the negative response and the threat of sanctions in the aftermath of Soweto; this, coupled with independence in the Portuguese colonies of Mozambique (1975) and Angola (1975) and slightly later the British colony of Zimbabwe (1980), meant the Southern African government needed to change its public image and its policy strategies.

Total Strategy – the 1980s

The outcome was a series of developments in the early 1980s called the “total strategy”. The government at this time was convinced that it was under attack from a “total onslaught” of communism under the USSR leadership, with the ANC as their minions (Ross, 1999). This explanation was justified by the presence of prominent communists in the ANC leadership, notably Chris Hani and Joe Slovo (*ibid.*). To counteract the activities of the revolutionaries both inside the country and in exile, “total strategy” sought to combine effective security measures with reformist policies aimed at removing grievances that could easily be exploited by the communists (Swilling & Phillips, 1989). It aimed at restructuring the society in a fashion that was conducive to the better functioning of industry (Swilling, 1988). Thus it combined the economic interests of business, the political interests of the government and the security interests of the army and police (*ibid.*). In order to create ideological hegemony with big business formal links with industry were established at the 1979 Carlton Conference in Johannesburg, where the government pledged its support for free enterprise and orderly reform in the face of perceived “Marxist” onslaught (Greenberg, 1987).

Two government commissions in 1979 had proposed changes to favor stable business development (Maylam, 1990). The Wiehahn report influenced by the recalcitrant strikes of the mid 1970s recommended that African rights to join trade unions should be recognized. The Riekert Commission advocated the dismantling of white job reservation on the one hand, whilst on the other hand maintaining influx control (*ibid.*). Another report; the de Lange report on education (1981), emphasized the need for a semi-skilled black labour (Chisholm, 1984). This called for compulsory primary education for all as well as black technical training at secondary and tertiary level. Multiracial private schools were allowed, although the recommendation for a single education authority was rejected. The “total strategy” was now steering the country towards class stratification (Hyslop, 1988) as opposed to racial differentiation. Other “petty apartheid” restrictions (Worden, 2007), were lifted like availing public amenities

for universal access in large cities, where hotels, restaurants, and theatres could be accessed by all who could afford.

The second phase of “total strategy” was introduced after Africans demonstrated that their main priority was political representation and not token acceptance by whites (Murray, 1987). In 1983 a “tricameral” constitution created separate parliamentary assemblies for whites, colored and Indian members of parliament. Whereas the government would monopolize all other matters in this new system, separate racially categorized issues of education, health and community administration would be administered by these separate chambers (*ibid.*). It was seen as a means of whites sharing power without losing control and it was rejected by most Indians and colored voters. It did not however include Africans, whose permanent stay in the townships was slowly being recognized by the introduction of Community Councils (1977) and the extension of these councils through the Black Local Authorities Act (1982) (*ibid.*). The army through the State Security Council (SSC) was used extensively to quell the ever-increasing civil disobedience in the townships, to weaken the ANC/PAC underground networks and to deliberately destabilize neighboring countries for accommodating the ANC (Davies & O’Meara, 1984).

In 1983 the formation of the United Democratic Front (UDF) served as a proxy ANC voice in South Africa, it called for the rejection of the apartheid state, boycotting of the “tricameral” system and the acceptance of the Freedom Charter principles (Swilling, 1988). The massive recruitment led to wide support from local community organisations across the country, particularly the Eastern Cape and the Transvaal (Gauteng). By 1985 this bore fruit in a series of local campaigns including bus and municipality rent boycotts, school protests and worker stay-aways (*ibid.*). Responsive state repression fueled further violence and opposition. On Sharpeville day in Uitenhage in the Eastern Cape, the police opened fire on a funeral procession killing 20, triggering violence throughout the country that ended in the declaration of a state of emergency by the government (Seekings, 1988). Albeit with a brief reprieve in 1986, emergency regulations

remained in place for a long time (*ibid.*). Civil government in most townships was in total collapse as government-recognized local councils were replaced by unofficial organisations calling for “people’s power”. Throughout the 1980s the male youth political assertiveness which had hitherto been expressed through gangs entered the arena, depicting deep-rooted frustration with the political situation in the country (Glaser, 1998; Ross, 1999). This was unfortunately mostly depicted in the tit-for-tat attacks between the UDF supporters and Inkatha Freedom Party (a Zulu dominated party), and the latter was later found to have received funding and training from South African security forces (Sapire, 1992).

By the end of the 1980s the tactics of “total strategy” of the mid-1980s had been utterly thwarted. The three-tier parliament (Tricameralism) and African Urban Councils were rejected with demands for full political participation. The campaign to win hearts and minds was ineffective with thousands of Africans in detention without trial and the army enmeshed in township violence (Lester, 1996; Lodge & Lasson, 1991). A stalemate was broken in 1989 when Prime Minister Botha was forced to step down by his own cabinet ironically for his public rebuke of F.W. de Klerk’s (Transvaal leader of the National Party who consequently replaced him) plan to visit the ANC in Lusaka. Resistance to government took a new course during 1989, when the UDF combined forces with a Confederation of South African Trade Unions (COSATU), to form the Mass Democratic Movement (MDM). The MDM ran a well coordinated campaign of civil disobedience to challenge segregated facilities such as hospitals, schools and beaches and their success was assisted by a toned-down police attacks during de Klerk’s reign (Lodge & Lasson, 1991).

End of Apartheid and First Democratic Rule - the 1990s

In the opening of the parliament on 2nd of February 1990 president de Klerk unexpectedly announced the unbanning of the ANC, PAC and the South African Communist Party (Lester, 1996; Worden, 2007). In the succeeding weeks, many political prisoners were released notably, Nelson Mandela. In 1991 important segregation pieces of legislation were repealed, including Group Areas Act, the

Land Act and the Population Registration Act (*ibid.*). Later that year the apartheid government decided to enter into formal negotiations with a number of parties, including the ANC at the much publicised Convention for a Democratic South Africa (CODESA), committing itself to a new constitution which would grant democratic rights to all in a single unitary state (*ibid.*).

This was a clear shift from a dual reform-repress strategy of the 1980s, where the government was hoping to co-opt black urban “insiders” (through the tricameral parliament and Black Local Authorities) to ensure smoother development while retaining white economic and political superiority (Stadler, 1987; Lester, 1996). The government’s own rhetoric of reform had raised expectations that a deteriorating economic situation could never meet. The widening gap between expectations and reality triggered a popular mobilisation led by UDF, linking local and national political and economic grievances (Price, 1991). The extent of the challenge was causing a concern to both the initiators and beneficiaries of “total strategy”, particularly because of the increase in capital flight out of the country. President de Klerk thus came into the scene as the leader of the reformist bloc within the National party, which was genuinely aware of business interests and recognized the need for meaningful negotiations with legitimate black representatives, most notably the ANC (Lodge, 1992; Lester, 1996). The negotiations with unbanned political movements which followed, with their epiphenomenal violence and embedded mistrust and suspicion about government intentions, finally led to a new democratic constitution and the election of an ANC-led democratic government in 1994 (Worden, 2007; Lester, 1996).

SUMMARY

The indigenous Khoikhoi inhabitants of the Southern tip of Africa were disenfranchised, dispossessed and oppressed almost immediately from the first Dutch European settlement in the Cape in 1652, well before the formation of South Africa as we know it to-day. The new European settlers not only displaced

the original inhabitants from their land in the Cape but introduced slaves mostly from East Asia. The victory of Britain during the Napoleonic wars dislodged the Dutch and brought in new British colonial masters in the cape, who changed the structural composition of the political economy introduced by the Dutch by granting limited rights to the Khoikhoi and abolishing slavery. The disgruntled Dutch farmers moved further inland in the eighteenth century to escape British control and to maintain their racial hierarchical way of life. This mass movement otherwise known as the *Great Trek* led to the further jostling for land resources with a lot of black Bantu polities who inhabited wide and isolated parts of the hinterland. The incursion of the Dutch or *Afrikaners* as they were now called complicated an already volatile climate because of the *lifaqane* troubles instigated by King Shaka, and this led to the weakening of once thriving independent Bantu polities. The discovery of rich diamond and gold mineral deposits at Kimberly and the Transvaal respectively in the mid to late nineteenth century brought in a renewed British interest in the interior of South Africa. This interest and scramble for mineral resources resulted in the subjugation of all African polities and the incorporation of the newly established Afrikaner republics, into one political entity and thus redefining the borders and politics of South Africa for a long time to follow.

Once any form of African independence was eliminated, racial segregation was widely practiced in the newly formed South Africa republic. The disgruntled Africans had few options rather forming a political movement in the form of the ANC in 1912. However, segregation since then was widely practiced and entrenched by law, and manifested itself in land segregation, blacks limited economic participation and political disenfranchisement. The coming to power in 1948 of the Nation Party bolstered an already well-established practice of racial intolerance, and only granted it a political legitimacy through the philosophy and policy of Apartheid. The aftermath of the introduction of Apartheid led to the most turbulent political climate in the history of South Africa, as the ANC adopted a militant posture through the formation of its armed wing –“*umkondo we sizwe*”, and the mobilisation of the masses in the townships. This political violence took

different shapes and forms in all of the decades following the introduction of Apartheid. The global energy crisis of the early 1970s started the unprecedented political unrest resulting in the 1976 Soweto student uprisings and the police brutality that attempted to quench it. It was only with widespread international condemnation, nationwide civil unrest, capital flight out of the country and the generally changing geo-political climate in the region, that the white regime finally deemed it rational to engage in talks with all peoples of South Africa. In 1994 when the ANC assumed office it had to redress 342 years of systematic disempowerment of black people in South Africa. The following chapter is going to elaborate on the concept of Affirmative Action (AA) which is employed by the South African government as a tool to effect economic redress for the consequences of the apartheid system.

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