

Economic Nationalism: A historical perspective on economic empowerment in South Africa with special reference to aspects of the manifestation of Black Economic Empowerment

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Introduction

The negotiated nature of South Africa's transition to democracy in the 1990s entrenched the economic inequities of the Apartheid era and posed an empowerment challenge to the ANC. Economic empowerment, as a form of economic nationalism, is not a new problem however, and historical precedent is particularly relevant in the case of Afrikaner empowerment in the early Union period through to the height of the Apartheid system.

Economic empowerment is understood in this thesis as a politically mediated process promoting the economic interests of a particular group. This process occurs within the broader frame of nationalism and is generally promoted in times of hegemonic crisis and attempts to remake the political order.

While Afrikaner and African nationalism share common political tenets the nationalist process in each case emerged and developed in different socio-economic environments. Afrikaner nationalism arose out of the great social changes caused by the Anglo-Boer War of 1899-1902 and the rapid industrialisation that followed the outbreak of World War I.¹ Largely agriculturally dependent Boers in the Boer Republics of the Transvaal and Orange Freestate were displaced through increasing commercialisation. Pushed to the urban centres into marginalised economic positions they were highly receptive to the ethno-political mobilisation of Afrikaans speakers who expanded the earlier discourses of Afrikanerbond to encompass all Afrikaners as a single nation.

¹ Trapido, S 'Landlords and tenant in a colonial economy: The Transvaal 1880-1910', *Journal of Southern African Studies*, 5, 1, (1978), O'Meara, D. *Volkskapitalisme*, (New York, 1983), Giliomee, H. 'Western Cape farmers and the beginnings of Afrikaner Nationalism, 1870 – 1915', *Journal of Southern African Studies*, 14,1, (October 1987), pp. 38-63.

African nationalism in South Africa arose as a response to the political and economic crisis developed over the decades of Apartheid policy's disenfranchisement of the African majority, and focused on the liberation of the African majority. Upon coming to power within the Government of National Unity, however, the nature of its nationalist project shifted towards the establishment of an inclusive nation, with reconciliation and redress high on the agenda.

The debates around nationalism and economic empowerment largely reflect the broader historiographical debates within South African history writing and are informed by their ideological shifts in approaches. Early Afrikaner ideologues traced the thread of Afrikanerdom back 180 years to the Voortrekkers² and called upon an underlying Volk unity that was spurred into an active nationalist response by events such as the South African War. From this perspective the rise of Afrikaner nationalism was seen to have occurred as a direct consequence to events such as the South African War, the 1914-1915 Rebellion and the Jameson Raid as they evoked an explosion of ethnic solidarity and recognition of Volk unity. Depicting the rise of the Afrikaner Volk as pre-ordained, nationalist histories highlighted the struggle of the Afrikaner to empower himself in the face of hostile British and African resistance. British domination of the South African economy was seen as the greatest obstacle to the realisation of Afrikaner empowerment. In 1948 the National Party came to power and inherited a strong economy, allowing for state intervention and the wide-scale empowerment of Afrikaners.

² See Breytenbach, J.H. Die Betekenis van die Tweede Vryheidsoorlog, (Johannesburg, 1949), Pelzer, A.N. Die Afrikaner Broederbond: Eerste 50 Jaar, (Cape Town, 1979).

A new approach to Afrikaner nationalism was brought forward by Marxist historians who promoted the use of a structuralist and class-based approach to historical analysis. A structuralist approach places nationalism within a broader framework of the operation of the state and its institutions, class formation and their political agency, and the processes of capital accumulation.³ These elements were seen to operate in relation to each other and as exerting different forms of control over each other, both overtly and obscurely. From this perspective, control of the state was an important political goal of nationalist movements.

A major contribution from the Marxist perspective came from O'Meara, whose comprehensive examination of the rise of Afrikaner nationalism through economic logics presented a detailed picture of political institutions of Afrikaner empowerment. O'Meara's location of the development of Afrikaner nationalism within the changing economic realities of South Africa highlights the importance of class based capital mobilisation and accumulation within imperially-shaped economic structures as a vehicle for the promotion of nationalist sentiment.⁴ From O'Meara's perspective, *economic empowerment* is elucidated as an integral aspect of nationalist reproduction. Tracing the twisting narrative of the rise of Afrikaner nationalism throughout the 19th and 20th century, O'Meara shows how ethnic sentiment was evoked through class-based grass roots cultural and economic institutions, and how these platforms were increasingly utilised by the Broederbond to rally political support around its Afrikaner agenda. The

³ Morris, M. 'State, capital and growth: the political economy of the national question' in Gelb, S. (ed), South Africa's economic crisis, (Cape Town, 1991), p. 34.

⁴ O'Meara, D. Volkskapitalisme, (New York, 1983).

National Party's entrance into state power with the Labour Party in the Pact Government of 1923 produced the first state-driven empowerment for Afrikaners. The Pact government's interventions in the economy featured 'civilised labour polices' which attempted to secure rights (particularly the allocation of employment opportunities and the setting of wage levels) for Afrikaner labour in the face of skilled African labour. The Pact government further promoted state corporations such as (Iskor and Eskom) and put into place tariffs on foreign goods and sectoral control boards in order to protect the interests of its voting bloc and promote national capital to loosen the hold of British mining capital over the economy.

Further Marxist contributions came from, Kaplan, Davies, Morris and O'Meara as they examined the nature of the state between 1923 and 1948, paying particular attention to the state promoted empowerment of Afrikaner interests.⁵ Examining the particular class based political and social formation that gave rise to the particular political shape of the state and its form of hegemony, Kaplan et al showed how Afrikaner interests were represented within the Pact government and how national capital was promoted in an attempt to reduce the control of British capital. The significance of the Pact period in particular as the coming to power of Afrikaner interests within a ruling coalition, lies in the economic empowerment directed from the state through the enactment of policies. This marked a shift from earlier efforts at grass-roots empowerment effected by Afrikaner cultural/political institutions.

⁵ Davies, R., Kaplan, D., Morris, M. & O'Meara, D. 'Class struggle and the periodisation of the state in South Africa', Review of African Political Economy, 7, (Sep-Dec 1976), pp. 4-30.

A significant break from this approach came when Herman Giliomee, an Afrikaner historian, showed that the rise of Afrikaner nationalism was far from inevitable, even within the context of events such as the South African War, the 1914-1915 Rebellion and Jameson Raid. Giliomee showed that a small political elite actively used these ‘precipitants’ to mobilise ethnic support and solidarity in order to win political support. This support was mobilised in particular for economic imperatives of an ethnically similar interest group of farmers, and was not nationalist in nature from the start. Giliomee identifies the earliest processes of Afrikaner economic empowerment at the Cape,⁶ as beginning in the in late 19th century. The economic imperatives of Afrikaans speaking wine and wheat farmers at the Cape and their increasing conflict with British merchants who moved their produce onto the international market drove Afrikaners to seek protection at a political level. Ethnic sentiment was promoted as a way for a Afrikaans speaking farmers to rally political support for their economic interests. Between 1850 and 1890 these farmers sought increasing protection for their products in the face of greater merchant hostility and sharp economic fluctuations. They further used ethnically framed conflicts between the district banks and the British Standard Bank to mobilise capital among Afrikaners, enabling the creation of trust funds and later, institutions such as Santam. Giliomee views the great national events such as the Boer War and national responses to international events such as South Africa’s involvement in World War I and the ensuing rebellion as *precipitants*⁷ which were deliberately politicised in order to draw support for ethnic mobilisation of capital. The precipitants by

⁶ Giliomee, H. ‘Western Cape farmers and the beginnings of Afrikaner Nationalism, 1870 – 1915’, Journal of Southern African Studies, 14,1, (October 1987), pp. 38-63.

⁷ Giliomee, ‘Western Cape farmers and the beginnings of Afrikaner Nationalism, 1870 – 1915’, p. 62.

themselves were not enough to create nationalist sentiment. Giliomee's contribution is significant in the emphasis it places on political actors' role in the creation of nationalist sentiment. At the Cape this role was played by a small intellectual elite that was ultimately instrumental in the establishment of Afrikaner institutions such as the Nasionale Pers and Santam.

Since the 1990s, historical approaches have attempted to bridge the liberal-marxist debate, taking into account both economic and social factors. Fine and Rustomjee combined a synthesis of theoretical approaches with own empirical research to give a detailed account of the interplay between social and economic factors in state-directed empowerment strategies from the Pact government to the late Apartheid era.⁸ Bridging the liberal-marxist debate, Nattrass and Seekings explored the policies of empowerment through the examination of wage levels, education and social welfare spending. Their approach takes into account social dynamics as well as economic logics stemming from their use of empirical research.⁹ Viewing the Apartheid system as distributional regime that emerged to protect white interests and secure continued economic growth, Nattrass and Seekings place great importance on the government's promotion of education and its regulation of the labour market as central spaces for empowerment.

In the early 1990s, as the ANC emerged in the dominant position from the transitional Government of Unity, the direction of the new South Africa began to take shape. Under

⁸ Fine, B. & Rustomjee, Z. The Political Economy of South Africa, (Johannesburg, 1996).

⁹ Seekings, J & Nattrass, N. Class, Race and Inequality in South Africa, (New Haven, 2005), Nattrass, N. 'Controversies around Capitalism and Apartheid in South Africa: An Economic Perspective', Journal of Southern African Studies, 17,4, (Dec 1991), pp. 654-677.

the slogan of 'national unity' the ANC focussed politics on national reconciliation and redress, and economic policy on neo-liberal ideological frameworks of growth and development. Black Economic Empowerment, was envisaged as an instrument for the transformation of the structural inequalities of the economy and the distribution of wealth away from whites into the hands of a black elite.

The ANC's efforts at transformation, redress and empowerment brought the issue of economic empowerment to the forefront once again. Dealing with the deep economic and social inequality in post-Apartheid South African society is a historical problem and as a primary tool of transformation, Black Economic Empowerment as a policy needs examination within the framework of economic nationalism. BEE's origins are located in the early empowerment efforts within the homelands in the 1950s under Apartheid. With legislative barriers preventing expansion, black business remained largely informal but increasingly organised in business associations lobbying for the creation of a more enabling economic environment for black business and the redistribution of wealth creating capacity into black ownership.¹⁰ These early forms of BEE informed ANC thinking and state-directed BEE was first envisaged in this period as a means of ensuring that blacks acquired a stake in the capitalist economy. BEE was promoted as an alternative to the socialist rhetoric of many of the ANC alliance which encompassed the Congress of South African Trade Unions (COSATU) and the South African Communist Party (SACP).

¹⁰ Sidiropoulos, E. 'Black Economic Empowerment', Spotlight, (South African Institute for Race Relations, September 1993).

Historiographical debates around BEE are focused primarily in two ways. The first is a broad empirical approach which examines BEE within the framework of neo-liberal economics espoused by the ANC since coming to power. Southall's work on the subject is perhaps the most extensive and has provided a strong basis for continued analysis of BEE. Placing BEE in political focus, Southall has described the development of BEE policy and its political and economic consequences. Further debate around BEE is most primarily promoted by the media, with economic focus newspapers leading the way. The second focus on BEE occurred within left-wing criticism of the ANC's espousal of neo-liberal economic policies and its abandonment of redistributive policies. This literature focuses on the ineffectiveness of strategies such as BEE in tackling the vast inequality within South African society.¹¹

This thesis aims to compare BEE with the economic empowerment strategies of Afrikaner nationalism in order to root discussion around Broad Based Black Economic Empowerment within a context of economic nationalism. This approach avoids narrow critiques of BEE as affirmative action and provides a fresh historical perspective to the ANC's efforts at transformation and redress. The comparison allows for insight to the different levels of success achieved by the economic nationalist strategies of Afrikaner empowerment and Broad Based Black Economic Empowerment. This thesis explores micro-studies to illustrate the complex issues raised by empowerment policies of Afrikaner (post 1924) and African nationalism (post 1994). In particular this serves to

¹¹ See Bond, P. Elite Transition: From Apartheid to Neoliberalism in South Africa, (London 2000).

offer an alternative perspective the more common broad political approaches to BEE and highlights the policy's effect at a micro-level.

In so doing it will examine Black Economic Empowerment within a broader context of African nationalism and the ANC's stated political and economic aims of redress, wealth redistribution and equitable economic and social conditions, while not losing sight of the more narrow goals of BEE itself. The ANC's approach to the transformation of the social economy of South Africa represents a national resolution in the form that Morris describes as a 'two nation' strategy. This strategy attempts to marshal the support of economic and political elites, the costs of which are passed on to the remaining sectors of the population.¹² Under the ANC's broader Growth Employment and Reconstruction (GEAR)'s market-driven the state intended to secure the support of corporate capital and international investors for the creation of an invested 'prosperity-making bourgeoisie' that would be empowered through the strategy of BEE.¹³ The ANC hoped to secure the support of business interests both nationally and internationally as well as political support by using BEE to entrench the interests of a small black economic elite rather than promoting the interests of the workers. However, in this process BEE was set in conflict with its broader objectives of large scale and 'broad-based' socio-economic transformation.

¹² Morris, M. 'State, capital and growth: the political economy of the national question' in Gelb, S. (ed), South Africa's economic crisis, (Cape Town, 1991), p. 35.

¹³ Southall, R. 'The ANC & Black Capitalism in South Africa', Review of African Political Economy, 31, 100, (June, 2004), pp. 313-328.

In order to implement this 'two nation' strategy, the ANC had to gain the consent of the tripartite alliance. The South African Communist Party (SACP) and Congress of South African Trade Unions (COSATU) represented the marginalised sector that was to be bearing the costs of the strategy. Through a discourse of nationalism and nation-building the ANC effected an essentially corporatist strategy moving from the top down to promote its neo-liberal growth model.¹⁴ Corporatism seeks to entrench the interest of influential (mostly antagonistic) socio-economic organisations within the prevailing economic structure, by granting them participatory powers in return for limited bargaining powers. It does this by promoting an ideology of the greater national interest.¹⁵ Since 1995, the ANC has sought a form of social-contract in order to promote the over arching interests of neo-liberal growth. However, this legitimation is not a resolution to the inherent contradiction within BEE, and the continuation of this tension can be seen in many ways. This thesis examines two socio-economic case studies that reveal the contradictory nature of BEE policy and the way the ANC uses state power to retain its legitimacy.

This thesis is comprised of four main chapters. The first chapter is an examination of Afrikaner empowerment. It sketches the rise of Afrikaner nationalism and highlights the integral part that economic empowerment played in its development after 1910. In the second chapter, Black Economic Empowerment is located within African nationalism and its development and growth is tracked within the public and private sector.

¹⁴ Desai, A. & Habib, A. 'Labour relations in transition: the rise of corporatism in South Africa's automobile industry', *The Journal of Modern African Studies*, 35,3, (September 1997), pp. 495-518.

¹⁵ Desai, A. & Habib, 'Labour relations in transition: the rise of corporatism in South Africa's automobile industry', pp. 495-518.

Substantive, but local, micro-studies follow in chapters four and five to ground BEE policy in socio-economic realities and examine the complex tensions inherent in its reproduction as a strategy for transformation.

An examination of BEE entails an understanding of the recent past and an exploration of contemporary history. While most historians shy away from the recent past, Stephen Ellis argues that African historians in particular need to take up the challenge of contemporary history. Ellis argues that Africa's post-liberation era, dominated by highly institutionalised forms of memory making and the dissemination of national narratives deeply rooted in decades of independence struggle, is in dire need of a grounded historical perspective. In South Africa in particular, the discipline of historical writing can ill afford to be waylaid by the relative 'recentness' of its shift to majority rule and efforts at democratic consolidation.

As a comparative study between the 1930s and post 1994, the focus on economic empowerment presented here is both historical and contemporary. Tracing economic nationalism in South Africa within both Afrikaner and African nationalist ideologies, historical rooting of the problems and challenges of contemporary society is achieved. As Ellis explains, it is 'precisely the element of chronological depth, in support of an analysis of origins and antecedents of the features of the world today, which distinguishes the writing of contemporary history from the study of current affairs or from media punditry'.¹⁶ Ellis affirms the importance for contemporary histories to devote particular

¹⁶ Ellis, S. 'Writing Histories of Contemporary Africa', The Journal of African History, 43,1, (2002), p. 12.

attention to ‘structures of political and social organisation and power relationships as they appear to today and to extend the starting-point of their data sequences’ back in time.¹⁷ Situating Black Economic Empowerment in the broader theoretical framework of economic nationalism (and nationalism in general) provides an important context and de-mythologises to the use of the past as a ‘quasi-mystical force’¹⁸ from which political power is drawn in Pan-Africanist narratives of post-colonial nation making.

Ellis’s view that archival evidence in Africa since the 1970s as likely to be ‘increasingly poorly maintained and difficult to use’¹⁹ possibly carries less weight in South Africa where bureaucratic practices are still relatively diligently performed. Contemporary court records, no less than those of the past, provide a host of detailed information and documentation. Common problems attributed to contemporary history such as the lack of archival material and the relevant newness of such material are mitigated in the research presented here by the use of court and company documents as a substantive basis for the construction of historical narrative.

A comparative perspective on Afrikaner and African nationalisms, and their respective economic empowerment strategies reveals interesting parallels, historical continuities, and divergences. While the primary emphasis of this thesis is on Black Economic Empowerment and the nationalist logics of the ANC, the historical precedent of the Afrikaner empowerment approach provides an important point of reference.

¹⁷ Ellis, ‘Writing Histories of Contemporary Africa’, p. 11.

¹⁸ Ibid, p. 25.

¹⁹ Ibid, p. 13.

Chapter I

Afrikaner Nationalism and ‘bottom-up’ economic empowerment

This chapter traces the beginnings of Afrikaner empowerment in the Cape and after 1948, when the National Party came to power over the entire country. Empowerment policies enacted by the National Party, particularly those pertaining to state corporations set the structural framework of the economy that the ANC inherited, and within which its empowerment policies were located.

The Rise of Afrikaner nationalism and empowerment

Afrikaner economic empowerment is closely tied with the rise of Afrikaner ethnic mobilisation and later nationalism. It is necessary to track both processes as they developed throughout the 20th century. Before 1870 the dominant means of economic production in South Africa was agriculture. In the British colonies of the Cape and Natal, agricultural production was export oriented while in the Boer republics of the Transvaal and Orange Free State agriculture was pastoral in nature with surplus earnings extracted through the trading of excess yield and the collection of rent from tenants (both African peasants and landless whites).²⁰ The discovery of precious minerals and the resulting boom of the diamond mines at Kimberley, and later the gold mines on the Rand opened large new markets for agricultural produce and catalysed capital accumulation through commodity production in agriculture throughout South Africa.²¹

²⁰ Denoon, D. Settler Capitalism, (Oxford, 1983), p. 118-119.

²¹ O'Meara, D. Volkskapitalisme, (New York, 1983), p. 23.

This process of accumulation was gradual and uneven, and accompanied by tremendous social changes, particularly in the Republics. The prevailing system of tenancy among the Boer landlords ensured that the means of agricultural commodity production remained in the hands of the peasantry, with the landlords mainly extracting rent from tenants. As a result the means to capitalise on the growing market surrounding the mines was either thought to be less profitable or inaccessible by the agricultural elite that held power in the state. Amongst the Boer landlords various struggles occurred between those with smaller land holdings and those with large holdings (whom Trapido calls *notables*²²). The heterogeneous interests represented within this landowner class made the passing of major legislation in favour of any particular interest group difficult. It was ultimately the Anglo-Boer war and its aftermath which pushed agriculture into capitalist production.

The British scorched-earth policy during the Anglo-Boer war (1899-1902) destroyed the livelihood of many smaller landlords²³ and together with the recession which followed, forced many Boers to move to the growing urban centres surrounding the mines to look for employment.²⁴ The flow of poor whites into the cities reached 12,000 a year by 1920²⁵ and presented a serious problem for the state as there were insufficient employment opportunities. The Carnegie Corporation Commission classified almost 300,000 urban white Afrikaans speakers as 'very poor' in 1932.²⁶ While the issue of poor whites was not a new one, by early 1920, their number had grown politically volatile. The

²² O'Meara, *Volkskapitalisme*, p. 24.

²³ With over 30,000 homesteads burned down and between 50 and 75 percent of livestock lost, the war represented considerable destruction of rural order. Breytenbach, J.H. *Die Betekenis van die Tweede Vryheidsoorlog*, (Johannesburg, 1949), p. 46.

²⁴ O'Meara, *Volkskapitalisme*, p. 26.

²⁵ Ibid.

²⁶ Ibid, p. 82.

1922 workers strike is a clear example of political upheaval due to white working class discontent. Moreover, the violence with which the strike was stopped indicates that the state saw mass mobilisation as dangerous. These developments proved to the government that the 'poor white problem' was a serious one and elicited early state-directed upliftment of poor whites in the form of public works schemes such as at the Hartbeespoort Dam.²⁷ By 1922 the Hartbeespoort Dam irrigation project employed 3400 white workers, supporting a total community of 10,000.²⁸ However, as significant as the proletarianisation of Afrikaner Boers was for the growth of Afrikaner politics, many still led a rural lifestyle.²⁹

The colonial state systematically promoted commercial farming through the establishment of land banks and a department of agriculture, the importation of cattle, and the provision of ploughing teams.³⁰ Only the biggest Boer landlords had the means to capitalise on this system, forcing a shift away from rural life for poorer farmers. The concessions made to Boers at the end of the Anglo-Boer war and the recognition that Afrikaner Boers represented a considerable force in South African agriculture caused the colonial state to seek a structural transformation in Boer agriculture towards commercial farming rather than its destruction³¹. These state-facilities were not available to African peasant farmers and the colonial state became increasingly interventionist in its attempts to secure wage labour (constituted of African peasants) to sustain white commercial

²⁷ Clynick, T. 'White South Africa's 'Weak Sons': Poor Whites and the Hartbeespoort Dam' in Bonner, P. Esterhuysen, A. & Jenkins, T. A Search for Origins, (Johannesburg, 2007), pp. 248-273.

²⁸ Clynick, 'White South Africa's 'Weak Sons': Poor Whites and the Hartbeespoort Dam', p. 251.

²⁹ By 1911, 43 percent of whites still lived in rural areas. Klopper, G.J. Die Vestigingsjare van Volkskas, 1934-1947, Raandse Afrikaanse Universiteit, (Johannesburg, 1991), p. 15.

³⁰ Denoon, Settler Capitalism, p. 119.

³¹ O'Meara, Volkskapitalisme, p. 26.

farming. This trend culminated in the Land Act of 1913, which established the native reserve system and the prohibition of African land ownership outside of the reserves.

Political representation of the Afrikaans speaking community reflected differing economic classes. The Afrikaner agricultural elite largely supported the Het Volk party and cooperated with mining interests due to their beneficial economic relations.³² The Cape-based Afrikaner Bond, which had Afrikaner support across the classes, joined Het Volk and the Oranje Unie party to form the governing South African Party (SAP) at the establishment of Union in 1910. While contested internally, the SAP retained relations with imperial capital. Disagreement over cooperation with imperial interests ultimately led to the splitting of the SAP and the creation of the National Party (NP) under Hertzog in 1914. The violent crushing of the worker strike in 1922 in the protection of mining interests alienated many supporters of the SAP, shifting them towards nationalist agendas as represented by the NP and the Labour Party.³³ The proletarianisation of Afrikaans-speaking whites is significant for its polarisation of political support for national and imperial interests in South Africa. The workers strike in particular is seen as a significant turning point that put the Labour Party/NP coalition into power in 1924.

Early economic empowerment: Mutual aid organisations

In its early stages, Afrikaner economic empowerment grew out of political forms of Afrikaner ethnic solidarity such as the Afrikaner rebellion and its crushing by the colonial regime. While eliciting a response of ethnic solidarity from much of the Afrikaans

³² Ibid.

³³ Davies, R., Kaplan, D., Morris, M. & O'Meara, D. 'Class struggle and the periodisation of the state in South Africa', Review of African Political Economy, 7, (Sep-Dec 1976), p. 8.

speaking population, it was the politicisation of these events by a Afrikaner elite lobbying which promoted nationalism. In the Cape in particular, farmers seeking to promote economic solidarity in the face of imperial merchants spawned socio-economic cooperative movements such as the *HelpmekaarVereeniging* (Mutual Aid organisation), which sought to mobilise finances for the imprisoned Afrikaner rebellion leaders.³⁴ With the help of *De Burger*, the *Helpmekaar* organisation collected almost £400,000 by 1917.³⁵ Realising the potential for capital accumulation through finance, W.A. Hofmeyer (chairman of the Peninsula Mutual Aid organisation) founded the Suid-Afrikaanse Nasionale Trust Maatskappy (Santam) in 1917 to provide assurance in the Cape.³⁶

Santam was founded in December 1917 by a group of six men who met in the Royal Hotel in Cape Town. Constituted of prominent Afrikaner political leaders in various capacities, this provisional board was concerned with establishing an insurance company. Important figures included W.A. Hofmeyer, co-founder of *Die Nasionale Pers* and secretary of the National Party, F.H. Dormehl, executive manager and secretary of *Die Nasionale Pers*, businessmen C.G. Fichardt and A.F. Benning.³⁷ The company was thus clearly established by an Afrikaner economic and political elite, with Afrikaner interests in mind. The committee members were also been actively concerned with the ‘rehabilitation’ of the Afrikaner Volk and sought to provide a service to the common Afrikaner, in particular the struggling Boer farmer.³⁸

³⁴ O’Meara, *Volkskapitalisme*, p. 59.

³⁵ Ehlers, A. *Die Helpmekaarbeweging in Suid-Afrika: die Storm- en Drangjare, 1915-1920*, (Pretoria, 1991), p. 73 –75.

³⁶ *Ibid*, p. 98.

³⁷ Scannell, J.P. *Uit die Volk Gebore: Sanlam se Eerste Vyftig Jaar*, (Cape Town, 1968), pp. 3-7.

³⁸ Scannell, *Uit die Volk Gebore: Sanlam se Eerste Vyftig Jaar*, p. 8.

The *Suid-Afrikaanse Nasionale Trust- en Assuransie Maatskappy Beperk* (Santam) was registered on 28 March 1918, and opened its doors on 1 May 1918.³⁹ At the first board of directors meeting it was decided that Santam would not incorporate life insurance into its primary services but rather create a subsidiary, *Suid-Afrikaanse Nasionale Lewens Assuransie Maatskappy Beperk* (Sanlam), exclusively concerned with the provision of life insurance.⁴⁰ The nature of Sanlam's capital accumulation was highly dependent on the sale of policies, trusts and wills to individuals, particularly rural Boers. Similarly, Santam's extension of micro-credit was also highly focused on agriculture. As a result it was important to establish a network of branches. By the end of 1918, Sanlam had opened its first branches in Bloemfontein and Morreesburg.⁴¹ In the same year, Santam acquired the African Homes Trust (established in 1898 to primarily provide housing loans for low-income groups) for R300,000, outbidding the Johannesburg based Schlesinger group by R20,000.⁴² At the end of its first financial year, Sanlam had issued insurance policies worth R2,279,288 and earned an income of R9255.55.⁴³

Within its first five years, Santam and Sanlam had experienced difficulties due to the poor economic climate of the post-war recession and the establishment of the *Vrystaatse Eksekuteurskamer Beperk* (Free-State's Chamber of Executors) together with the *Oostelike Vrystaatse Eksekuteurskamer* (Orange Free-State' Chamber of Executors) in

³⁹ Ibid, p. 12.

⁴⁰ Sanlam was registered on 8 June 1918.

⁴¹ Scannell, *Uit die Volk Gebore: Sanlam se Eerste Vyftig Jaar*, p. 16.

⁴² Ibid, p. 18.

⁴³ Ibid, p. 19.

1921.⁴⁴ Financially unstable, the Chamber of Executors was ultimately liquidated, representing a serious loss of capital for Santam and nearly causing its collapse. Surviving this crisis, Santam and Sanlam continued to expand, buying their first building in Bloemfontein and establishing services in Natal in 1923.⁴⁵ By 1926, Sanlam had set up a branch in Durban and by 1928 it had expanded operations to Windhoek.⁴⁶

The significance of Afrikaner institutions such as Sanlam, and Nasional Pers and the individuals closely connected to their creation lies in the small-scale accumulation of capital on ethnically Afrikaner lines. The small economic elite of farmers and businessmen rallied the support of Afrikaner farmers in demand for protection of their interests by the state in the face of changing imperial markets for their products.⁴⁷ The division between rural farmers (ethnically mobilised as Afrikaners) and British urban merchants was reflected in the financial sector where British banks held the credit for rural farmers and were cast in an increasingly discriminatory light when they called in debts after the recession in 1880.⁴⁸ As the Afrikaner political elite mobilised ethnic support, credit agencies such as Santam and Sanlam allowed for capital accumulation through the centralisation of dispersed agricultural savings⁴⁹. They thus not only provided basic economic surety but also provided the structure enabling the rise of Afrikaner capital (and capitalists) in the Cape. In the Orange Free State and Transvaal, similar

⁴⁴ Ibid, p. 24.

⁴⁵ Ibid, p. 26.

⁴⁶ Ibid, p. 26.

⁴⁷ Giliomee, H. 'Western Cape farmers and the beginnings of Afrikaner Nationalism, 1870 – 1915', *Journal of Southern African Studies*, 14,1, (October 1987), p. 58.

⁴⁸ Giliomee, 'Western Cape farmers and the beginnings of Afrikaner Nationalism, 1870 – 1915', p. 58.

⁴⁹ O'Meara, *Volkskapitalisme*, p. 98.

financial institutions arose catering for Afrikaner workers. The Suid-Afrikaanse Spaar- en Voorskot Bank (Sasbank) and the Afrikaner Verbond Begrafnis Ondernemings Berperk (AVBOB) allowed for small-scale capital accumulation in these areas.⁵⁰

The Pact government: State directed development and parastatals

The Labour Party/NP coalition victory resulting in the Pact government of 1923 was the first real opportunity for the white working class and the petty bourgeoisie to enact policy towards its economic development. This coalition government required compromises from both parties on political direction. Pact policy was contested, constantly shifting and often contradictory. The flux created by focusing policy on the needs and wants of various classes which stood in conflict with each other over many political and economic realities was an important disability of the Pact government. Nevertheless, the Pact government implemented the earliest Afrikaner empowerment policies through using the capacity of the state. The Pact government specifically promoted economic conditions that stimulated the growth of local production and accumulation through industrialisation with preferential conditions for local capital. A key mechanism for this process was the taxation of mining revenue to fund state-directed development.

The Pact government's intervention focused around the promotion of local industrialisation, the support of commercial agriculture and the protection of said sectors from international competition⁵¹. Protection was provided through the passing of the

⁵⁰ O'Meara, *Volkskapitalisme*, p. 101.

⁵¹ Davies, R., Kaplan, D., Morris, M. & O'Meara, D. 'Class struggle and the periodisation of the state in South Africa', *Review of African Political Economy*, 7, (Sep-Dec 1976), pp. 9-12.

Customs Tariff Act of 1925 which put tariffs on 28 items previously exempt⁵². Pressure from Boers towards greater protection in agriculture saw the beginnings of agricultural control boards (which were only passed fully into legislation in 1937) and the greater use of land banks and state subsidies to allow for accelerated commercial development in agriculture⁵³. The Pact government further oversaw the establishment of the first state corporations, notably the state-owned industrial catalyst, Iron and Steel Corporation (ISCOR) and the Electricity Supply Commission (ESCOM)⁵⁴ in 1923⁵⁵.

While conditions for the accumulation of national (and Afrikaner) capital were improved in many ways (and unexpectedly restricted in others), conditions for white workers did not improve drastically. Wage levels between 1922 and 1934 stayed relatively constant and well below pre-1922 wages⁵⁶. This is unsurprising given the Pact government's reliance on mining (by far the biggest employer) for revenue. In contrast the state acted decisively to alleviate the problem of poor unemployed whites. The 'civilised labour' policies were enacted through the creation of the Wage Board under the Wage Act of 1925 which implemented minimum wages for white labourers and created incentives for white labourers in government tenders⁵⁷.

⁵² Davies, Kaplan, Morris, & O'Meara, 'Class struggle and the periodisation of the state in South Africa', p. 9.

⁵³ Fine, B. & Rustomjee, Z. The Political Economy of South Africa, (Johannesburg, 1996), p. 128.

⁵⁴ Legislation for the creation of Eskom was already passed in 1922, but its realisation took time.

⁵⁵ Smuts had long sought to create a local Steel producer, but was reluctant to use state funding. Clark, N. L. Manufacturing Apartheid: State Corporations in South Africa, (New Haven, 1994), p. 60. Davies, Kaplan, Morris & O'Meara, 'Class struggle and the periodisation of the state in South Africa', p. 10.

⁵⁶ Davies, Kaplan, Morris & O'Meara, 'Class struggle and the periodisation of the state in South Africa', p. 11.

⁵⁷ Ibid, p. 12.

Pact policies enabled the upliftment of select groups amongst Afrikaner workers, but the poor white problem persisted and worsened with the Great Depression. As a result, the Pact government's impact is most commonly discerned as a period of rapid acceleration of the economy's industrialisation process that began during the First World War accompanied by support for the accumulation of national capital. National capital, however, did not equate to Afrikaner capital and while Afrikaans speakers increasingly swelled the numbers of the urban poor and unemployed during this period, Afrikaners' share in the capital accumulation process was still very limited. By 1938 Afrikaners owned only five percent of the economy's total non-agricultural production⁵⁸ while producing 87 percent of agricultural output⁵⁹. Furthermore, of the non-agricultural production, most was indirectly or directly linked to the agricultural sector. As a result, Afrikaner capital accumulation was still firmly based within rural agriculture, a sector notoriously temperamental and unsuited to rapid accumulation.

The United Party's coming to power in 1934 radicalised Afrikaner political opinion and accelerated Afrikaner cultural politics. With Afrikaner political power weak in parliament, Afrikaner political leadership's concerns were shifted towards extra-parliamentary entities, especially the Afrikaner Broederbond, who took up the role with vigour⁶⁰. The Bond recognised that to mobilise mass national support, the appeal of a cultural movement was insufficient and it needed to address the economic difficulties faced by its Afrikaner constituency. Between 1930 and 1939, the Bond had increasingly concerned itself with the economic plight of the Afrikaner *Volk* and its empowerment.

⁵⁸ O'Meara, *Volkskapitalisme*, p. 53.

⁵⁹ *Ibid*, 52.

⁶⁰ *Ibid*, p. 51.

One of the most important milestones until the 1939 economic congress was the establishment of Volkskas.

Volkskas: A Broederbond creation

Volkskas was not the first cooperative bank set up to cater for an Afrikaner client base, but it was the first one started with Broederbond finances and supported on a cultural-political scale. Founded in 1918 as the *Jong Zuid Afrika*, the Broederbond (since 1920) was an organisation dedicated to the promotion of Afrikaner cultural and political interest. As a true 'Afrikaner' organisation, the Broederbond sought to mobilise Afrikanerdom and the rise of Afrikaners within society. Their involvement in the promotion of Afrikaner capital was a direct response of this cultural-political aim. Afrikaner cooperative banks arose in the late 1910s and early 1920s and provided credit for people who were not deemed creditworthy by commercial banks, and their interest rates were only a quarter of that charged by money-lenders.⁶¹ The first of the Afrikaner cooperative banks was the *Ons Eerste Volksbank* which was founded out of the *Armblanke Verbond* in 1917.⁶² The *Verbond* was an organisation that facilitated employment seeking and provided small-scale credit and pension facilities. *Ons Eerste Volksbank* was started with the money put forward by 50 people (amounting to R 500) and no dividends were paid out.⁶³ By the end of 1926, the bank had 3,098 members and accumulated fixed deposits of R 55,080 with capital reserves of R 15,174.⁶⁴ *Ons Eerste Volksbank* was succeeded by two independent cooperative banks; the *Afrikaans Verbond*

⁶¹ Klopper, G.J. Die Vestigingsjare van Volkskas, 1934-1947, Raandse Afrikaanse Universiteit, (Johannesburg, 1991), p. 11.

⁶² Klopper, Die Vestigingsjare van Volkskas, 1934-1947, p. 11.

⁶³ Ibid, p. 11.

⁶⁴ Ibid.

Spaar en Vorskotkas Beperk, founded in Bloemfontein in 1918 and the *Voorskotkas van die Oranje Vrij Staatse Onderwysvereeniging Beperk* founded in 1922.⁶⁵

The idea of an Afrikaner Bank was conceived by the Broederbond at its economic congress in 1931 and its concern over foreign capital's 'stranglehold' over commercial banks.⁶⁶ Led by J.J. Bosman, the Broederbond's treasurer (who would continue to spearhead the Volkskas venture and be its first general manager), a committee was established in December that year to investigate the viability of and the necessary structures for, an Afrikaner bank.⁶⁷ The committee brought a proposal before the Broederbond's Executive Council and the *Volkskas Koöperatief Beperk*, founded on 3 April 1934, opened its doors 1 January 1935 with a shareholder capital of 12,296.⁶⁸

Volkskas was conceived as a financial institution in support of the upliftment of the Afrikaner Volk. Its creation and running was intertwined with the *Volkspaarbeweging* (Volk's Savings Movement) and facilitated the spiritual and economic upliftment of the Afrikaner people by breaking the financial constraints imposed upon them.⁶⁹ The bank would actively involve itself in the promotion of a mentality of saving and cooperative investment while stimulating economic solidarity within the Afrikaner people.⁷⁰ Founded on cooperative principles, it was envisaged that Volkskas would transform into a commercial bank once it had accumulated the necessary capital reserves and

⁶⁵ Ibid.

⁶⁶ Pelzer, A.N. *Die Afrikaner Broederbond: Eerste 50 Jaar*, (Cape Town, 1979), p. 121-122.

⁶⁷ Engelbrecht, C.L. *Die Bank van Oom Bossie*, (Pretoria, 1978), p. 17.

⁶⁸ Klopper, *Die Vestigingsjare van Volkskas, 1934-1947*, p. 53.

⁶⁹ Ibid, p. 30.

⁷⁰ Ibid, p. 29.

accompanying capitalist mentality among Afrikaners.⁷¹ This way the consolidation and growth of Afrikaner capital would allow for greater economic control for the Afrikaner Volk in the face of existing (foreign owned) banking giants such as Standard Bank and Barclays.

J.J. Bosman as a member of the Broederbond was also instrumental in the establishment of *Uniewinkels Koöperatief Beperk*, a cooperatively based chain of Uniewinkels (union stores), in 1936.⁷² These general stores provided Afrikaners with everyday supplies as well as credit facilities. Uniewinkels received strong support from both J.J. Bosman (who was general manager of Volkskas as well as director of Uniewinkels), and Volkskas, who often provided financial support to Uniewinkels in its early years.⁷³ Beginning with a share capital of R1934, Uniewinkels experienced many difficulties early on, but with the help of Volkskas managed to procure a second store in Bloemfontein in 1937. Uniewinkels was designated as the official supplier of memorabilia at the Voortrekker Eufees in 1938, despite it lacking the capacity to do so.⁷⁴ Uniewinkels advertised itself with the slogan 'In diens van ons volk' (in the service of our volk), emphasising its contribution to Afrikanerdom similarly to Volkskas.⁷⁵

An integral part of the Afrikaner culture as promoted and propagated by Afrikaner cultural organisations is a strong Calvinist religious belief. This religious doctrinal infusion of Afrikaner culture created a strong Calvinist work ethic through its interaction 'with the

⁷¹ Ibid, p. 30; Engelbrecht, C.L. *Die Bank van Oom Bossie*, (Pretoria, 1978), p. 29.

⁷² Engelbrecht, *Die Bank van Oom Bossie*, p. 40.

⁷³ Engelbrecht, *Die Bank van Oom Bossie*, p. 40.

⁷⁴ Ibid, p. 41.

⁷⁵ Uniewinkels advertisement in the Commemorative issue of *Die Huisgenoot*, (December 1938).

contingencies of daily life' (what Stokes calls 'operant religion').⁷⁶ This work ethic promoted hard, honest work with spiritual devotion and acted as a framing ideology in Afrikaner secular life. Due to the largely homogenous nature of Afrikaner ethnicity, this Calvinist ideology promoted the development and empowerment (in all aspects of life) of the Afrikaner people.

Because of its ideologically charged origins, Volkskas was heavily imbued with the language of Afrikanerdom. As its official slogan it adopted *Arbeidsaamheid* (diligence) and it regularly portrayed itself as 'uit die volk, vir die volk' (born of the people, for the people) or 'die volk se bank'⁷⁷. The bank further involved itself in Afrikaner cultural festivals and projects. At the Voortrekker Eufees in December 1938 in Pretoria (when the cornerstone of the Voortrekker Monument was laid), Volkskas had its own stall recruiting customers from the stream of Afrikaners attending. The Afrikaner identity of the bank and the fact that it made itself available to the public in such a setting was well received. The bank was urged to open branches by many visitors from smaller towns throughout South Africa.⁷⁸ Volkskas also made funding available so that visitors could prolong their stay at the festival. Volkskas had a stall once again at the six-day inaugural festival of the Voortrekker Monument in December 1949. Thereafter Volkskas attended and contributed to the Van Riebeeck Festival and Show in Cape Town in 1952 by opening a stall run by the Cape Town branch of Volkskas. In Johannesburg too, the bank

⁷⁶ Stokes, R.G. 'Afrikaner Calvinism and economic action: The Weberian thesis in South Africa', The American Journal of Sociology, 81, 1, (July 1975), pp. 62-81.

⁷⁷ Volkskas Koöperatief Beperk advertisement in Die Burger, (19 December 1938).

⁷⁸ Engelbrecht, Die Bank van Oom Bossie, p. 88-90.

celebrated the ‘300 years of progress’⁷⁹ by building a float portraying President Kruger (played by J.A. Hurter, director of the Johannesburg branch) and his wife receiving guests at their homestead⁸⁰.

Volkkas positioned itself ideologically as an Afrikaner institution. It played a central role within Afrikanerdom and put forward its economic function as serving the Afrikaner Volk and its development. Attributable both to its Broederbond connections and to its self-proclaimed desire to create an economic awareness amongst Afrikaners, this politicisation served to facilitate the consolidation of Afrikaner capital within the financial sector.

Due to the Depression, the small-scale credit and saving facilities provided by Volkkas had a great impact and were readily taken up. On its first day of operation, Volkkas accumulated R44 in deposited savings, and R1500 in fixed deposits while extending credit of R1534.⁸¹ Five months later savings had grown to R3794, fixed deposits to R17,880 and credit to R23,583.⁸² The bank used a vigorous advertising campaign based on its Afrikaner heritage and small-scale cooperative status to recruit a large client base. Not everyone viewed the rise of Volkkas amicably, however. Existing commercial banks felt that Volkkas was operating outside of its legal mandate as a cooperative bank, while other cooperative banks (such as Sasbank) attacked it for propagating imperialist

⁷⁹ The slogan ‘300 years of progress’ was also prominently displayed on the Volkkas stamp used at the festival.

⁸⁰ Engelbrecht, Die Bank van Oom Bossie, pp. 90-91.

⁸¹ Engelbrecht, Die Bank van Oom Bossie, p. 23.

⁸² *Ibid*, p. 29.

capitalism.⁸³ Nevertheless, with the backing of the Broederbond, Volkskas continued to win support and expand its Afrikaner client base. In September and October 1936, J.J. Bosman (general manager of Volkskas), accompanied by prominent Broederbond secretary I.M. Lombard, travelled around the country to gather capital and mobilise support. Intensified advertising via pamphlets and newspaper advertisements supported this personal journey. Within these two months, Volkskas managed to boost its number of shareholders by 712 to a total of 2109.⁸⁴ Volkskas continued to draw support and expand its operations, and by 1941, deposited savings amounted to R470,000, fixed deposits to R760,000 and extended credit to R1,060,000.⁸⁵

As Volkskas grew, its interest turned towards establishing itself as a commercial bank. In the first five years of its existence, it established itself as a valuable client for the commercial banks (particularly Standard Bank) due to its own banking needs.⁸⁶ However when it was granted commercial bank status on 13 July 1940, its threat as a competitor became all too clear. As a result, Standard Bank, Barclays and Nederlandsche Bank refused to recognise and transact with Volkskas as a fully established commercial bank. The three banks intermittently refused to cash in Volkskas cheques, and levied bank charges of up to 800% more on transactions with the bank than they did on transactions amongst themselves.⁸⁷ It was only by 1947, after years of negotiations, that the last issues were resolved among the commercial banks.⁸⁸

⁸³ O'Meara, Volkskapitalisme, p. 102.

⁸⁴ Klopper, Die Vestigingsjare van Volkskas, 1934-1947, p. 75.

⁸⁵ Engelbrecht, Die Bank van Oom Bossie, p. 79.

⁸⁶ *Ibid*, p. 80.

⁸⁷ Klopper, Die Vestigingsjare van Volkskas, 1934-1947, p. 122.

⁸⁸ *Ibid*, p. 156.

A significant aspect of Volkskas's expansion, particularly for a relatively small, non-commercial bank, is how rapidly it extended a network of branches across the country. The first branch was opened in Johannesburg in August 1935, and a second branch in Benoni established in October.⁸⁹ In 1937, branches were established in East-London, Durban and Cape Town. By the time Volkskas was granted commercial status, it had established 17 branches and by 1952, it had branch offices in 92 locations.⁹⁰

As such, the expansion pattern is indicative of the grassroots (often rural) Afrikaner client base, while foreign-owned banks, which serviced large (often mine-related) industries, were concentrated in the main economic centres of South Africa.

While the rapid growth of Volkskas was extraordinary (its capital reserves accumulated by a yearly average of 41.92 percent⁹¹) considering its humble origins, it was not a threat to foreign capital as represented by commercial banks, except for the fact that it held a large percentage of the Afrikaner demographic. By 1947, Volkskas still only held 3.25 percent (R25,491,668) of all commercial banks' total deposits (R784,272,000)⁹², 13.06 percent (R4,140,720) of all savings accounts (R31,704,000)⁹³, and 2.16 percent (R14,549,542) of all current accounts (R674,888,000)⁹⁴. However it did provide an important foothold for Afrikaner capital in South Africa's financial world. Volkskas provided micro-finance for poor Afrikaners and allowed for the expansion of Afrikaner

⁸⁹ Engelbrecht, Die Bank van Oom Bossie, p. 109.

⁹⁰ Ibid, p. 109.

⁹¹ Klopper, Die Vestigingsjare van Volkskas, 1934-1947, p. 74.

⁹² Ibid, p. 91.

⁹³ Ibid, p. 93.

⁹⁴ Ibid, p. 92.

businesses. Furthermore, its ideological mission allowed it to make decisions based not only on commercial success (shown by its relationship with Uniewinkels), but on long-term support for Afrikaner business.

Volkscas exemplifies the grass-roots empowerment effected by the Broederbond under the banner of Afrikaner nationalism. Broederbond support stemmed from a real concern for the plight of the Afrikaans-speaking white's economic position as well as a recognition that nationalism was empty without the provision of real socio-economic changes for the Afrikaner. This co-mingling of political interests with the concern for socio-economic welfare for the Afrikaner people culminated in the ideology of '*kultuur-politiek* (cultural politics)'.⁹⁵ Propagated through Broederbond political and cultural associations, '*kultuur-politiek*' promoted Afrikanerdom and promulgated the entrenchment of Afrikaner heritage and its rightful place within the socio-economic fabric of South Africa. The result was the promotion of Afrikaner interests within a framework of Afrikaner nationalism which carried cultural, political, economic and social aspects and destined the Afrikaner Volk for independence.

Acting through its public Federasie van Afrikaanse Kultuurverenigings (FAK), the Bond hosted the *Ekonomiese Volkskongres* in October 1939. Initially intended to deal with the poor white problem, the congress's central problem became the Afrikaner's economic position and 'how to transform it'.⁹⁶ Under the concept of *Volkskapitalisme*, the development of the Afrikaner's role in the economy was to be effected through the direct

⁹⁵ O'Meara, *Volkskapitalisme*, p. 76.

⁹⁶ *Ibid*, p. 71.

‘transformation of [Afrikaner] economic consciousness’⁹⁷ and the pooling of capital resources scattered across the Afrikaner *Volk*. To this end the Bond established a comprehensive organisational structure through which the economic life of the Afrikaner could be transformed, and established credit institutions for the accumulation of Afrikaner capital such as the *Federal Volksbelegging* (FVB).⁹⁸ The *Economiese Volkskongres* was an important step for Afrikaner economic empowerment through political mobilisation. It was further pivotal in the shifting of Afrikaner nationalism towards the early stages of a nation-building process.

National Party in power: Apartheid as Afrikaner economic empowerment

Coming to power in 1948, the National Party’s empowerment of Afrikaners could take place within the sphere of state power and from the top-down as opposed to the grass-roots methods of empowerment that it effected under a nationalist banner. Putting into practice the Apartheid programme with which the National Party campaigned, South Africa was effectively restructured into multiple ethnic nation-states with a privileged position for whites. The reproduction of the privileged position of whites and the lifting of Afrikaners into positions of power was effected through a comprehensive strategy operating on various levels. The National Party guaranteed support of Afrikaner capital within industry through the active involvement of state corporations within the country’s economy. It also controlled wage levels for both white and African labour to secure large-scale employment for whites. It also implemented a distributional regime with

⁹⁷ Turning Afrikaners into capitalist required first the de-vilification of capitalism long seen as a system of imperial oppression. O’Meara, *Volkskapitalisme*, p. 116.

⁹⁸ Ibid.

welfare policies that privileged whites and neglected Africans, and restructured the education system along ethnic lines in order to promote the education of Afrikaners.

Espousing a policy of Import-Substitution Industrialisation⁹⁹, the state under Prime Minister Verwoerd assumed a protectionist stance designed to promote local industrialisation through the erection of tariff barriers and strong state involvement through its parastatal institutions. Supplementing Iskor, Eskom and the Industrial Development Corporation (IDC)¹⁰⁰ with further strategically important institutions such as Sasol, Foskor and Krygkor, the state extended its control over industrial development. Collaborating with established mining capital like Anglo-American, the corporations entrenched the interests of both Afrikaner capital (looking to grow within the economy) and largely foreign mining capital. Collaboration and the use of state resources allowed for the rapid consolidation of Afrikaner capital within the mining industry allowing further promotion of Afrikaner business interests in the industrial sector.

Coupled with the state corporations' involvement in every industry, the state implemented labour policies that supported Afrikaner and mining capital by providing

⁹⁹ Import-Substitution Industrialisation attempts to induce rapid industrialisation by establishing a protected national economic environment that seeks to promote domestic growth (especially in the industrial sector) and independence of foreign goods. ISI is usually associated with developing countries that seek to rapidly establish a strong national industry before entering the global trade market so as to not smother a growing industry by allowing cheaper foreign goods produced by developed, more competitive international industries. ISI is generally understood to be followed by Export-Oriented Industrialisation (EOI), as has been successfully implemented by South Korea and other Newly Industrialised Countries (NICs) in the past.

¹⁰⁰ The state owned IDC was established in 1940 in order to 'facilitate, promote, guide and assist' the development of industry by private enterprise. It acted like an industrial bank, providing capital for various new firms and partnerships and launching new projects of strategic importance. The IDC was instrumental in the establishment of ISCOR, FOSKOR and Sasol. Feinstein, An Economic History of South Africa, p. 183.

large amounts of cheap African labour, while securing skilled employment for whites.¹⁰¹ Employment was based on the civilised labour policies begun under Pact government which structured wage levels around ethnicity. Regulating labour supply through the Industrial Conciliation Act of 1953 (barring Africans from being classified as employees) and the Urban Areas Act of 1952 (controlling the movement of Africans within urban areas), the state shaped labour structures along wage lines and through the allocation of employment opportunities.¹⁰²

Under the National Party, welfare policies were deeply skewed to privilege whites in order to alleviate the conditions for poor whites (primarily Afrikaners). These policies were coupled with efforts to effect the long-term empowerment of Afrikaners through the development and promotion of education amongst Afrikaner whites. This distributional regime was enabled by the high international demand for South African resources and manufactures in the post-war boom era coupled with the racially exclusive economic policies that allowed the state to cut spending on African welfare and concentrate it on Afrikaner welfare and education.¹⁰³

Described as a racially exclusive form of developmentalism with strong bureaucratic authoritarianism¹⁰⁴ the National Party's system of welfare relied on the reversal of African unemployment security in the form of the Unemployment Insurance Amendment

¹⁰¹ Seekings, J & Natrass, N. Class, Race and Inequality in South Africa, (New Haven, 2005), p. 137.

¹⁰² Seekings, & Natrass, Class, Race and Inequality in South Africa, p. 141.

¹⁰³ Ibid, p. 129.

¹⁰⁴ Ibid.

Act, requiring much higher income rates for Africans to qualify.¹⁰⁵ Coupled with the lowered wage rates under Apartheid labour policies this guaranteed minimum pay-outs of benefits to African labour. African pensions were also reduced and held steady, resulting in the stagnation of pension rates to Africans, while white pensions doubled in real value during the 1950s and 1960s.¹⁰⁶ Spending on African school feeding schemes was reduced and ultimately abolished in 1960.¹⁰⁷

As a central pillar of Afrikaner empowerment, education received a tremendous amount of attentions from the state. Taking control of the education system nationwide (in contrast to health care where it increasingly passed the responsibility to the private sector) it boosted state-spending on education, both African and white. While white education did receive more funding on aggregate than its African counterpart,¹⁰⁸ the state did not cut funding for 'Bantu education' due to its importance in securing a functional labour base (of various skill and literacy levels) for Apartheid's industrial needs.¹⁰⁹ Development of white education was especially important to the National Party in order to reproduce the privileged position of the Afrikaner, while 'Bantu education' simultaneously reproduced an unskilled labour force that would not be in competition within the labour market. Rising Afrikaner education levels matched those of English

¹⁰⁵ Ibid, p. 130.

¹⁰⁶ Ibid, p. 131.

¹⁰⁷ Ibid, p. 132.

¹⁰⁸ Ibid, p. 133.

¹⁰⁹ Hyslop, J. 'State Education Policy and the Social Reproduction of the Urban African Working Class: The Case of the Southern Transvaal 1955- 1976', Journal of Southern African Studies, 14, 3 (1988), p. 476.

speakers by the 1970s and Afrikaner representation in tertiary education increased dramatically over the same period.¹¹⁰

Conclusion

Afrikaner economic empowerment was a halting and uneven process both temporally and geographically. Beginning largely in the Cape with the protection of farmer's economic interests, economic empowerment progressed slowly through the ever-greater propagation of ethnic (Afrikaner) sentiment by political actors seeking class mobilisation. With empowerment efforts grass-roots in nature, the foundation of large scale Afrikaner economic empowerment was slowly established. Lead by the Broederbond, the Afrikaner nationalist agenda was promoted heavily until the National Party's coming to power in 1948, which enabled Afrikaner economic empowerment to take on a top-down state driven dimension with deep and far-reaching consequences for the structure of the economic and social fabric in South Africa. Significantly, the distinguishing features of Afrikaner economic empowerment were established prior to 1948. The links between the powerful secret organisation of the Broederbond, Volkshkas, savings cooperatives and Afrikaner cultural organisations formed a web of connections held together by a powerful ideological commitment centred on a Calvinist work ethic.

Importantly, Afrikaner empowerment was an organic development from grass-roots origins. Promoted by cultural and political organisations, Afrikaner economic nationalism had established a firm base upon the entrance of Afrikaner political power into

¹¹⁰ Seekings, & Nattrass, Class, Race and Inequality in South Africa, p. 135.

government. This is a key aspect of its empowerment successes, for it allowed the National Party to combine state-directed empowerment to draw on strong and deeply routed Afrikaner business interests in the private sector. It was the cooperation between private and public Afrikaner enterprise that was crucial to its success in effecting transformation in society.

Chapter II

Black Economic Empowerment: The development of a concept

This chapter sets out the ANC's ideological framework of transformation and nation building and locates Black Economic Empowerment in this context. The structural inequalities and distortions of the socio-economic fabric that the ANC inherited presented it with the profound challenges of transformation and wealth redistribution. Attempting to map out issues of transformation, equality and redress, the ANC drew on multidimensional (mostly contradictory) discourses of deep social transformation and orthodox neo-liberal economic policy (with emphasis on fiscal restraint), the tensions of which they were never able to resolve. The periodic surfacing of these tensions forced the ANC government to re-evaluate policy structures and enter into participatory processes in order to garner the support of powerful groups for Black Economic Empowerment as a transformative tool.

The beginnings of Black Economic Empowerment

In the 1960s, the growing Black Consciousness movement developing in the political vacuum of the banned black political parties (such as the ANC and PAC) was paralleled in business by the establishment of black business associations in order to oppose restrictive legislation under Apartheid and promote blacks' entry into business. The National African Federated Chamber of Commerce and Industry (Nafcoc), established in 1964, served as the biggest national organisation concerned with black economic

empowerment.¹¹¹ Opposing the host of discriminatory legislation¹¹² it sought to negotiate better business opportunities for blacks with the Apartheid government and private sector, particularly within the retail sector as it represented the biggest concentration of black business. The unyielding Apartheid legislative framework restricted black business to the Bantustans and economic opportunities in urban white areas were opened to Indian, Asian and Coloured business people in 1962 within limits (that they did not represent competition to white business).¹¹³

The emerging Black Consciousness movement in the 1960s gave rise to prominent black business leaders like Nthato Motlana¹¹⁴, a medical doctor who had established a practice in Soweto and became an important community leader in the 1970s. After various unsuccessful business ventures, Motlana established the first black owned clinic (Lesedi Clinic) in the country in 1978.¹¹⁵ He was also the founder of Sizwe Medical Aid, a medical aid scheme for blacks with a membership of 80,000.¹¹⁶ Motlana went on to co-found the Get Ahead Foundation (an association targeting unemployment through the informal sector) in 1984 and the National Association of Cooperative Societies of Southern Africa (Nacsa), which included a host of stokvels, burial societies and women's clubs in 1990.¹¹⁷ In 1994 Motlana's New Africa Investments Limited (a BEE

¹¹¹ Sidiropoulos, E. 'Black Economic Empowerment', Spotlight, (South African Institute for Race Relations, September 1993), p. 36.

¹¹² Including restrictions on the location of black businesses under the Group Areas Act of 1950 and the Land Acts of 1954 and 1955.

¹¹³ Iheduru, O.C. 'Black Economic Power and Nation-Building in Post-Apartheid South Africa', Journal of Modern African Studies, 42,1, (March 2004), p. 5.

¹¹⁴ Nthato Motlana became the African National Congress Youth League Secretary General in 1952 and stood trial for participating in the 1952 Defiance Campaign.

¹¹⁵ Coetzee, C & Pienaar, H. 'Nthato Motlana' in They Shaped our Century: The Most Influential South Africans of the Twentieth Century, (Cape Town, 1999), p. 366.

¹¹⁶ Coetzee & Pienaar, 'Nthato Motlana', p. 366.

¹¹⁷ *Ibid*, p. 366, 367.

investment company) was listed on the Johannesburg Stock Exchange and well on its way to being one of the biggest BEE companies in South Africa.

By the late 1970s, the Apartheid state had become increasingly militarised and increased its stranglehold on all spheres of black economic and social life.¹¹⁸ Nafcoc established the African Bank in 1976 in order to provide finance to black businesses that would have difficulty procuring funding from established white-owned banks.¹¹⁹ In order to address the skills shortage experienced by black entrepreneurs and businessmen and women, Nafcoc established the Masekela-Mavimbela Memorial Scholarship Fund in 1976.¹²⁰ Receiving contributions from every Nafcoc member the fund allowed for the financing of tertiary education for many of its members as well as offering short-term business management courses.

After 1976, white business called for the promotion of a black middle class to counter the influence of radical anti-Apartheid movements in South Africa. The Apartheid state attempted to use the Bantu Investment Corporation (in existence but neglect since 1958) to facilitate the development of black business in the Bantustans.¹²¹ Within the Bantustans, the creation of development corporations were aimed at facilitating a rise in middle class Africans. White business' initiative was in the creation of the Urban Foundation and the Small Business Development Corporation, both aimed at the development of black business.¹²² By the 1980s, the decades of sanctions had taken their

¹¹⁸ The Bantu Homelands Citizens Act of 1970 and the Blacks Urban Areas Amendment Act No 97 are examples of the further disenfranchisement and citizenry alienation of African people.

¹¹⁹ Sidiropoulos, 'Black Economic Empowerment', p. 36.

¹²⁰ Ibid, p. 36.

¹²¹ Iheduru, 'Black Economic Power and Nation-Building in Post-Apartheid South Africa', p. 5.

¹²² Ibid, p. 5.

toll on the Apartheid economy. White business had expanded to its limits, and, prevented from expanding internationally due to sanctions, sought access to the largely untapped black consumer power in South Africa. As a result, black business found less resistance from the white establishment and frameworks of cooperation seemed more lucrative. New black business associations included the Foundation for African Business and Consumer Services (Fabcos), established in 1989, which sought to promote black economic empowerment through funding and the secondment of skilled staff from established white business in order to promote the skilling of black businessmen.¹²³ A result of this new found cooperation between Fabcos and white business saw Shell SA provide staff to assist the Southern Africa Black Taxi Association in management structuring.¹²⁴ Fabcos also facilitated joint ventures between the formal sector and black business, the most prominent example being the creation of Future Bank in a joint project between Fabcos and Wesbank in 1991.¹²⁵ Future Bank aimed at providing finance to the informal sector, capitalising on established financial institutions' unwillingness to enter into that market. In its agreement with Wesbank, Future Bank received training from its staff and further developed operations specifically catering for the needs of informal black business.¹²⁶

At a Nafcoc conference in October 1990, its members set out its vision for accelerated black economic empowerment with particular emphasis on self-reliance, black managerial integration in the formal sector, greater black ownership in the formal sector,

¹²³ Sidiropoulos, 'Black Economic Empowerment', p. 39.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Ibid.

greater black involvement in manufacturing and improved black management training.¹²⁷

Proposed ways of achieving this vision included employee share-ownership plans (Esops), negotiations with the Chamber of Business, improved education and the setting up of leadership centers.¹²⁸

By the 1990s the Apartheid economy was in decline. Focused around a Minerals and Energy Complex (MIC) the economy in the 1990s was highly inefficient, sectorally imbalanced and largely reliant on state economic activity and resources. The protective import-substitution policy employed by the Apartheid government coupled with the prevention of upward mobility for the overwhelming majority of the workforce had left limited opportunities for sustainable growth.¹²⁹ The economy was highly dependent on the exploitation of cheap black labour to retain profitability and lagged behind in technological innovation.¹³⁰ Years of neglect meant that the workforce lacked the skills needed for technological advancement. Global factors such as the rapid decline in gold prices and oil-crisis driven recessions in the late 1980s only exacerbated the drain on state resources.¹³¹ Structurally, the economy was dominated by a handful of large conglomerates and closely connected parastatal companies. While the parastatals represented a vitally important vector for transformation, both in their scale as employers and in their link to the private sector as suppliers of services and consumers of resources.

¹²⁷ Ibid, p. 37.

¹²⁸ Ibid.

¹²⁹ Feinstein, An Economic History of South Africa, p. 119, 220.

¹³⁰ Ibid, p. 220.

¹³¹ Carmody, P. 'Between Globalisation and (Post) Apartheid: the Political Economy of Restructuring in South Africa' Journal of Southern African Studies, 28, 3(2002), p. 262. Allen, M.H. Globalization, Negotiation, and the Failure of Transformation in South Africa: Revolution at a Bargain? (New York 2006), p. 53.

While the ANC was highly aware of this fact, it was not decided on how to make use of this catalyst most efficiently.

The negotiated transition and the fall of the Soviet Union in 1989 presented challenges for the ANC's agenda. During its struggle years, the ANC's socio-economic goals had been directed by the Freedom Charter's broadly redistributive principle with a strong emphasis on equality and state provision of basic needs. Based on these ideas, the ANC expected to nationalise large sectors of the economy and provide widespread land redistribution on coming to power. While the concept of Black Economic Empowerment had solid foundations within black business organisations and black business leaders' promotion of black advancement within the economy along capitalist lines, these concepts were not readily accepted by the ANC, whose focus under Mandela's leadership was on negotiating the transition, national reconciliation and political stability.¹³² Due to its socialist struggle background, the ANC was furthermore reluctant to embrace business as a sphere of transformation.¹³³ Here it stood apart from established black business leaders and activists who were often vilified as having bought into white capitalist ways of life and becoming 'errand boys' of white business and the Apartheid state.¹³⁴

The negotiated settlement under the two Conventions for a Democratic South Africa (CODESA) and the later Multiparty Negotiation Forum (MPNF) particularly with its 'sunset clause' of an interim transitional government set the structures within which the ANC could effect transformation. In particular the wide-scale guarantee of property

¹³² Iheduru, O.C. 'Black Economic Power and Nation-Building in Post-Apartheid South Africa', *Journal of Modern African Studies*, 42,1, (March 2004), p. 6.

¹³³ 'Struggle for the ANC's ideological soul', *Financial Mail*, (7 June, 1996).

¹³⁴ Quoted in Iheduru, 'Black Economic Power and Nation-Building in Post-Apartheid South Africa', p. 5.

rights negotiated by the exiting National Party, only secured the fading of broadly redistributive ideas within the ANC. As a result, the turn towards capitalist ideas of transformation took greater root in the mid 1990s and led to the uneven entrance of Black Economic Empowerment into state policy. At the ANC's National Conference at Mafikeng in 1997, the ruling party 'endorse[d] the idea of a black capitalist class'¹³⁵ in empowering the 'black community in general and the African people in particular'.¹³⁶ The development of Black Economic Empowerment as a state policy occurred within this contested environment of broader economic policy for South Africa and as such represented a contradictory process that attempted to reconcile the socio-economic specificity of Apartheid's legacy with the accelerating global economic ideology of neo-liberalism, while simultaneously attempting to negotiate the state's role within an unstable political economy.

Policy ideas based on liberal capitalist economics started to gather much weight among prominent ANC economists such as Trevor Manuel and Alec Erwin. This coupled a realisation that 'the rising black bourgeoisie and middle strata [...were...] important motive forces for transformation'.¹³⁷ After its coming to power in 1994, the ANC has repeatedly negotiated tensions in its transformation of the economy. The formulation of the Reconstruction and Development Programme (RDP) in 1994 represented a strong shift away from the nationalist rhetoric propagated by the Freedom Charter and elicited strong resistance from the ANC's coalition partners, the SACP and particularly COSATU, who opposed any shift towards laissez faire economic policy that might be to

¹³⁵ Ibid, p. 3.

¹³⁶ ANC, 'Social transformation: fighting poverty and building a better life', quoted in Iheduru, 'Black Economic Power and Nation-Building in Post-Apartheid South Africa', p. 3

¹³⁷ ANC 'Draft resolution on ANC economic policy for national conference', (11 May 1991).

the detriment to its union members' interests.¹³⁸ COSATU's resistance, while grounded ideologically in their support for nationalisation, was also concerned with the structure of a neo-liberal South African economy:

'The goals of the Reconstruction & Development Programme will be defeated if restructuring . . . benefits a new black elite while the delivery of services is fundamentally undermined.'¹³⁹

However, by 1996, the ANC had pushed through its new economic agenda and drawn up the neo-liberal Growth Employment and Reconstruction (GEAR) policy programme.¹⁴⁰ GEAR espoused a greater reliance on 'market mechanisms, [...] maintenance of fiscal and monetary policy restraint; and opening up of the economy to international competitive forces'.¹⁴¹ The state further sought to introduce efficiency and competitiveness within the economy through the implementation of laws and institutions that limited monopolisation and encouraged competition. The Competition Act of 1998 that established the Competition Commission and the Competition Tribunal sought to enforce a new framework for ensuring competitiveness.¹⁴² This ideological shift from nationalist economic policy towards free-market ideas represented a victory of 'centrist' economic thinkers within the coalition such as then deputy president Thabo Mbeki, Trevor Manuel and Alec Erwin.¹⁴³ Importantly, this shift not only represented a change in policy formulation within the ANC, but the passing of GEAR into legislation represented

¹³⁸ 'Struggle for the ANC's ideological soul'.

¹³⁹ COSATU press statement, December 1995, quoted in 'Struggle for the ANC's ideological soul', *Financial Mail*, (7 June, 1996).

¹⁴⁰ Bernstein, A. (ed.) *Policy-Making in New Democracy: South Africa's challenges for the 21st century* (Johannesburg, August 1999) Centre for Development and Enterprise, p.83.

¹⁴¹ *Ibid*, p. 84.

¹⁴² Competition Act 1998, No 89 of 1998: *Government Gazettes* Nr. 19412 Volume 400 1998.

¹⁴³ 'Struggle for the ANC's ideological soul', *Financial Mail*, (7 June, 1996).

a victory for the ANC over its two tripartite allies, the South African Communist Party (SACP) and the Congress of South African Trade Unions (COSATU).¹⁴⁴ The shift was at least partly informed by South Africa's desire to return to the world market and privatise Apartheid's large parastatals.

Black Economic Empowerment with the framework of the ANC's Growth Employment and Reconstruction (GEAR) was based on this liberal economic thought and was inherently contradictory due to its attempts to address the structural inequities within the economy via transformation within those same structures. The ANC recognised the dominance of liberal economic thought in the global economy after the collapse of the Soviet Union as a fundamental factor of the international system of trade it was hoping to enter into.¹⁴⁵ With the major remaining socialist economic role models spearheading their own forms of capitalism in the East, the ANC had to reconsider its long-standing policy of nationalisation for a more market-oriented approach. As a result, the ANC also looked to international models and transformative precedents. One particularly striking model was the Malaysian experience of economic empowerment, which lent itself well towards deriving applicable lessons for South Africa's efforts at transformation.

Malaysia's society in the late 1950s had deep socio-economic inequality along ethnic lines, with the indigenous Bumiputra (Malay) majority living in large-scale rural underdevelopment while most of the economy was under the ownership of Indian and Chinese minority ethnic groups. As a result, the post-independence government

¹⁴⁴ 'Struggle for the ANC's ideological soul'.

¹⁴⁵ South Africa's negotiations within GATT served to illustrate the difficulties in securing concessions from a neo-liberal world trade network. See Hirsch, A. Season of Hope: Economic reform under Mandela and Mbeki, (Johannesburg, 2005).

constituting largely¹⁴⁶ Majority Bumiputra nationalist political power (in the form of the United Malays National Organisation)¹⁴⁷ had reach to reach a political compromise with the political representation of the Indian and Chinese economic power (the Malaysian Indian Congress and Malaysian Chinese Association respectively).¹⁴⁸ The result was a political ruling alliance by the three parties held together by the Communities Liaison Committee (CLC), a forum in which a process termed ‘elite accommodation’ is given space. ‘Elite accommodation’ allowed for ‘leaders of the racial groups [... to decide...] policy away from public bargaining’¹⁴⁹, and allowed the various parties to make concessions in order to secure political power and constitutional representation (in the case of the Bumiputra) and continued economic freedom (in the case of the Chinese and Indian ethnic groups).

However, transformation of society was extremely slow, and the socio-economic conditions of the Bumiputra showed little improvement while the Chinese and Indian ethnic groups experienced increased prosperity. As a result the elite accommodation alliance was strongly challenged in the 1969 where it lost its two-thirds majority (but not political power) and the outbreak of violent and bloody riots for two months thereafter made clear that the racial accommodation system was extremely fragile and more had to

¹⁴⁶ Particularly with the loss of Chinese majority Singapore and the addition of Malay majority Sabah and Sarawak.

¹⁴⁷ UMNO.

¹⁴⁸ MIC and MCA. Emsley, I. The Malaysian Experience of Affirmative Action: Lessons for South Africa, (Cape Town, 1996), p. 18.

¹⁴⁹ Emsley, I. The Malaysian Experience of Affirmative Action: Lessons for South Africa, (Cape Town, 1996), p. 18.

be done towards the transformation of Malaysian society.¹⁵⁰ As a result the New Economic Plan (NEP) took on a much stronger transformative aspect after 1970, putting emphasis on ‘the promotion of national unity through greater emphasis on social integration and more equitable distribution of income and opportunities’.¹⁵¹ The state had an active role in attempting to develop rural areas, raising income levels, raising education levels and employment. Promoting economic growth¹⁵² through liberal economic policy and securing foreign investment¹⁵³ (a lot of which stemmed from Chinese sources) was paramount and a primary vehicle for effecting the above transformations.

While the success of the Malaysian model as to all its objectives is debatable, its elite accommodation and stronger NEP have managed to create a relatively stable society through the creation of a large Bumiputra middle class which served to stabilise racial accommodation between previously socio-economically disparate ethnic groups. As a result the Malaysian economic empowerment experience at least offered a lesson of ‘pragmatism and common sense’.¹⁵⁴ While it is unclear how much of the Malaysian experience was assimilated in the ANC’s BEE policies, it is clear that the ANC was well aware of its possible relevance.

¹⁵⁰ Jesudason, J.V. Ethnicity and the Economy: The State, Chinese Business, and Multinationals in Malaysia, (Oxford, 1989), p. 69.

¹⁵¹ Emsley, The Malaysian Experience of Affirmative Action, p. 25.

¹⁵² Ibid, p. 32.

¹⁵³ Ibid, p. 108.

¹⁵⁴ Raslan, K. ‘Foreword’, in Emsley, I. The Malaysian Experience of Affirmative Action: Lessons for South Africa, (Cape Town, 1996), p. 5.

With a broader ideology of transformation in mind, the ANC recognised that the state sector was the space in which the fastest and most fundamental changes towards transformation could be achieved. Reflecting ideas of the open market, the government sought to implement large-scale privatisation (partial privatisation allowing private equity buy-in as well as full privatisation) within the state economic institutions in an effort to introduce efficiency and profitability while simultaneously generating a space for black enterprise to enter into the formal economy. The ANC's drive for privatisation was to prove its commitment to the open market and reassure international investors as well as established national capital that the economy was stable and the prospects of growth, strong.

In the period of transition, four parastatal giants dominated the state sector: Denel, Transnet, Telkom and Eskom. At the core of Apartheid state's influence over the economy, these parastatals were the primary targets of privatisation under the ANC. A two pronged strategy of privatisation and 'employment equity' sought to sell off non-core assets and transfer production to the private sector. An ethnic transformation of the state workforce would allow greater black representation.¹⁵⁵ The aim of privatisation of non-core state assets was to introduce efficiency and profitability within the state sector, the unbundling of the economy's dependencies on state resources, and make space for black private enterprise to enter the economy. The selling off of non-core state activities would provide a capital injection from equity buy-ins, provided an important source of revenue for debt reduction under the restrained fiscal policies.

¹⁵⁵ Southall, 'The ANC, black economic empowerment and state-owned enterprise: a recycling of history?' in *State of the Nation 2007*, p. 210.

The first move towards privatisation came in 1990 under the Apartheid government when it announced that the National Sorghum Breweries were to be privatised in 1991 to black capital with share capital underpinned by the Industrial Development Corporation.¹⁵⁶ By 1993 NSB was the largest black owned company in South Africa and seen as the perfect example of the privatisation of state assets to effect transformation of the economy and shift wealth into black hands.¹⁵⁷ Practicing affirmative action, 70% of NBS' board of directors and 83% of its top management was African, with 90% of its shareholders coming from African communities.¹⁵⁸ However NSB's success was short lived under years of mismanagement and corruption. Coupled with the company's inherited overcapacity and underwhelming sales brought NSB into financial trouble by the end of 1993.¹⁵⁹ Acquiring new stakeholders in 1996 in the form of United Breweries¹⁶⁰ (an Indian brewing company) did little to stem its recording of annual losses blamed on rising disposable income in African communities and the shift in drinking preferences that accompanied it.¹⁶¹ NSB was ultimately bought out by South African Breweries in a deal restructured by the Competition Commission in 2000 to give NSB a five year grace period in which to become profitable.¹⁶²

During this early privatisation phase (1997-2000), the government sold off South African Broadcasting Corporations (SABC) for R510 million to private business in 1997 and

¹⁵⁶ Sidiropoulos, 'Black Economic Empowerment', p. 14.

¹⁵⁷ Ibid, p. 15.

¹⁵⁸ Ibid, p. 15.

¹⁵⁹ Qwelane, J. 'The JQ file', Tribute, (October 1997).

¹⁶⁰ Qwelane, J. 'The JQ file', Tribute, (October 1997).

¹⁶¹ S'Thembiso Msomi, 'Sorghum deal ban will kill the industry', Sunday Times, (9 January, 2000).

¹⁶² Kooy, R. 'NSB kry tog volle beheer', Finweek, (5 May, 2000).

partially privatised Telkom, selling a 30 percent stake to private investors.¹⁶³ Within two years a 20 percent stake in South African Airways was sold to Swissair for R14 billion while a Transnet subsidiary, Connex Travel was sold for R13.5 billion and the Airports Company of South Africa (ACSA) was sold off to a mix of foreign and local capital.¹⁶⁴ As a result of privatisation between 1997 and 2004, the state received capital revenue of R28.7 billion, R12 billion of which was used to reduce national debt.¹⁶⁵ Throughout, preferential treatment was to be given to black enterprise, that is, an empowerment stake was to be set aside. However privatisation as a vehicle for BEE achieved only limited success. Telkom's ten percent empowerment stake was never fully realised and was dwarfed by the stake acquired by Telkom Malaysia and American-based SBC. Black business's procured stake of 4.9 percent in ACSA similarly paled compared to the 20 percent bought by Aeroporti di Roma, and fell far short of the intended 10 percent empowerment share. While black business did secure some important deals such as a 30 percent stake in Transnet's Viamex Fleet Solutions, overall the rapid privatisation achieved limited transfer towards black empowerment and largely benefited foreign capital. Furthermore, the almost wholesale selling off of state assets to foreign capital and the continued political opposition to this trend particularly from COSATU, forced the ANC to re-evaluate privatisation as a tool towards transformation. This led to greater recognition of the capacity of the state sector to serve as a catalyst for transformation. This recognition culminated in the new policy document¹⁶⁶ which argued for the state to

¹⁶³ Southall, 'The ANC, black economic empowerment and state-owned enterprise', p. 208.

¹⁶⁴ Ibid.

¹⁶⁵ Gumede, W. Thabo Mbeki and the battle for the soul of the ANC, (Cape Town, 2005), p. 108.

¹⁶⁶ 'An Accelerated Agenda Towards the Restructuring of State-Owned Enterprises', Ministry of Public Enterprises, (2000).

play a much stronger role in the development of the economy using in particular the vast resource that are the parastatals.

While privatisation was intended to streamline the state sector on a broader level, within the parastatals themselves, the focus lay on profitability and employment equity. These goals were themselves contradictory. The largest four parastatals in the state sector, which provided over 94 percent of its net income¹⁶⁷ all attempted to become profitable and the measures they adopted were to down-scale its workforce to achieve greater efficiency in core production, and used revenue from the selling off of non-core assets to offset the costs of restructuring and running debts.¹⁶⁸ The obvious consequence was that the reduced workforce had a more limited ability to instate employment equity. Transnet cut employment by 50,000¹⁶⁹ while Denel cut its workforce by 10,000¹⁷⁰ to reduce operating costs and limit net losses. Both parastatals were further burdened by large debts, with Transnet in particular (the largest of the four parastatals) having accumulated a massive debt of ten billion rand in its pension fund that it was simply unable to reduce.¹⁷¹ Even after the management of the pension fund was handed over to private investment companies, Transnet continued to fluctuate between losses and narrow profits. Perhaps the best example of the difficulties experienced in the restructuring and privatisation of the parastatals is the case of South Africa's arms industry lead by Denel.

¹⁶⁷ Southall, 'The ANC, black economic empowerment and state-owned enterprise: a recycling of history?' in *State of the Nation 2007*, p. 206.

¹⁶⁸ *Ibid.*, p. 211.

¹⁶⁹ *Ibid.*

¹⁷⁰ Batchelor, P. 'South Africa's Arms Industry: Prospects for Conversion' http://www.idrc.ca/fr/ev-68067-201-1-DO_TOPIC.html, IDRC Accessed 07/09/2010

¹⁷¹ Southall, 'The ANC, black economic empowerment and state-owned enterprise: a recycling of history?' in *State of the Nation 2007*, p. 211.

Problems of restructuring: The case of Denel

Arising in the 1960s under Verwoerd's policy of self-sufficiency in the face of increasing UN sanctions, Armscor¹⁷² quickly became the parastatal head of a large South African arms industry catering primarily to the needs of South Africa's ever growing military needs. The slow warming of the Cold War in the late 1980s had a significant impact on the world arms market. The effect was especially dramatic on the South African arms industry and particularly Armscor, after the de Klerk government's policy shift towards demilitarisation in 1989/1990. Concretely, the scaling down of the arms race meant that the international arms industry underwent extensive restructuring to the effect that the largest corporations bought out the smaller ones that found it difficult to secure business in the post Cold War era, ultimately resulting in a concentration of the international arms industry. From 1990 to 2005 the five largest arms manufacturers internationally increased their share of the top 100 arms manufacturers' total arms sales output by 10 percent, from 33 to 43 percent.¹⁷³ Of these top five, only one arms manufacturer, British Aerospace Systems (BAE) is not based in the United States.¹⁷⁴

It was in this changing economic environment that the South African arms industry needed to compete in order to ensure its survival as an industry. As South Africa entered the transition period, the Defence Budget experienced large cuts by the NP government as it sought to weaken the military power to be handed over to a black government. The

¹⁷² Originally only an arms procurement board for the SADF.

¹⁷³ 'Concentration in the arms industry: data on mergers and acquisitions' http://www.sipri.org/contents/milap/milex/aprod/m_and_a_jv.html/view?searchterm=Concentration%20in%20the%20arms%20industry SIPRI Accessed 07/09/2010.

¹⁷⁴ Ibid; Engelbrecht, L. 'Tough Calls for Denel if it is to Survive' *African Armed Forces*, (1 Aug 2006). 'In 1992 there were over 30 defence contractors in the US alone. Now [in 2006] there are five.'

NP initiated the cessation of active military involvement in the region and cut defence spending.¹⁷⁵ The combination of these elements dealt a considerable blow to the South African arms industry, forcing cutbacks within the industry and the retrenchment of skilled workers, causing various domestic industries linked to arms development and production to down-size or exit the arms industry.¹⁷⁶ This reduced defence spending and policy of disarmament continued throughout the transition period with a profound effect on skilled (white) labour. Employment within the arms industry declined 'by over 90 000 between 1989 and 1995, including over 10 000 in the public sector'.¹⁷⁷ Taking into consideration that some towns such as Simon's Town were exclusively dependant on the defence industry due to the presence of military bases and arms manufacturing plants, this decline of the arms industry had a significant impact on local and regional economies. Furthermore, it is important to note that the impact of declining employment was regionally specific and not uniformly spread across the nation, creating regional economic and political destabilisation.¹⁷⁸

The actual privatisation process of Armscor began with the National Party, and ended under the direction of the ANC government. The result saw Armscor was stripped of all its manufacturing subsidiary companies, leaving it as a state board controlling the supply

¹⁷⁵ Batchelor 'South Africa's Arms Industry'; 'Eyeing the Market' Financial Mail, (16 August 1991). Between 1989 and 1995 the Defence Budget declined by more than 50%.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid. Employment within the arms industry as a percentage of total employment within the country declined from 2% to 1%. While this is not a particularly large percentage, it is significant due to it being mostly skilled labour.

¹⁷⁸ Ibid. Almost 80% of Armscor's retrenchments occurred within the Pretoria-Witwatersrand-Vereeniging (PWV) region, with approximately 20% occurring in the Western Cape. However due to the heavy industrialised nature of the PWV region, it was better able to recover from this negative impact than the other affected regions.

of arms to the South African National Defence Force¹⁷⁹ (SANDF).¹⁸⁰ The manufacturing subsidiary companies were merged under the name Denel, and privatised in April 1992, although the state retained majority share, effectively owning the company¹⁸¹. Some whites were outraged, calling the entire process a farce and claiming that white voters were tricked into voting pro-reform on the referendum of 1992 under the impression that Armscor would be substantially privatised, and not kept in government hands. This development, the *Patriot* (a right wing Afrikaans newspaper) claimed, put the white skilled labour force under substantial risk of losing their employment.¹⁸² Nevertheless, the process of privatisation and the unbundling of these conglomerates was an important step in the ANC government's plans of economic restructuring and served multiple purposes. The conglomerates needed to be broken up, not only because they were archaic white power structures, but also because they represented an interconnected web of protected inefficiencies.

Once Denel was created in 1992 through the merger of the various manufacturing and research subsidiaries previously under Armscor, it was confronted with the difficult task of internal restructuring. With the ANC's restructuring and dissolution of much of the SANDF, including large cuts to the defence budget,¹⁸³ Denel lost a large part of its primary (internal) market. It was also not possible for Denel to simply sell its products on

¹⁷⁹ Omar, A. 'Weighing the International options on a nation's arms procurement' *Business Day*, (17 September 1996).

¹⁸⁰ The South African Defence Force (SADF) was reshaped into the South African National Defence Force (SANDF) to illustrate its new role in a new democratic South Africa, and remove the stigma attached to the title of SADF due to its role played in the perpetuation of the Apartheid system.

¹⁸¹ Batchelor, P. 'Conversion: The Case of Denel' http://www.idrc.ca/fr/ev-68072-201-1-DO_TOPIC.html, IDRC Accessed 07/09/2010; Swart, H. 'Krygkor sal beslis nie geprivatiseer word nie, sê Jeo Modise' *Die Burger*, (16 August 1996).

¹⁸² 'Stadsrade Uitverkoop' *Patriot*, (9 July 1993).

¹⁸³ Batchelor & Willett *Disarmament and Defence Industrial Adjustment*, p.68. Governmental defence expenditure fell from R11 435 million in 1989 to R6 589 million in 1993.

the international arms market due to its convoluted and inefficient corporate structure, highly localised products and the fact that some inherited facilities were commercially unviable.¹⁸⁴ In light of this, Denel took corporate restructuring measures, reorganising itself into ‘five industrial groups - Systems, Manufacturing, Aerospace, Informatics and Properties, and Engineering Services’.¹⁸⁵ Furthermore, Denel attempted to change its production methods to more marketable ones through strategies of conversion and diversification.¹⁸⁶ Some industries decided on the conversion route and switched production modes in order to produce civilian products that could be sold on both international and domestic civilian markets. A prime example of this was the military satellite and missile launch system manufacturer Houwteq, and its conversion strategy as it turned to producing low-earth orbit civilian satellites after 1992.¹⁸⁷

Others attempted to use diversification to tap into the same civilian markets for technology products. Companies that used this approach include missile and air defence systems manufacturer Kentron, electro-optical equipment producer Eloptro and rifle and shotgun manufacturer Musgrave. Kentron diversified to include production of traffic engineering systems and plastic glass-fibre products, while Eloptro began producing glass-moulding and night vision equipment for civilian purposes and Musgrave diversified to add production of cricket bats and motor vehicle parts.¹⁸⁸ Overall, Research & Development generally concentrated on the development of civil sector technology or

¹⁸⁴ Batchelor ‘Conversion: The Case of Denel’.

¹⁸⁵ Batchelor & Willett Disarmament and Defence Industrial Adjustment, p.92.

¹⁸⁶ Batchelor ‘Conversion: The Case of Denel’.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid; Alberts, J. ‘Ready, aim, fire’ Financial Mail, (29 May, 1992).

converting military technology for civilian business purposes, while diversifying military production to increase marketability both foreign and domestic.¹⁸⁹

However, despite restructuring towards better marketability, Denel experienced deep financial problems. While Denel managed to increase civilian sales by 40 percent between 1992 and 1995, overall the parastatal was still posting annual losses.¹⁹⁰ Denel's management structures were slow to adapt to a competitive market after prolonged operation in a protective domestic market. The process of adapting to a new, commercially competitive role was difficult and cumbersome. Furthermore, various companies that had a role to play in the domestic arms market and Armscor's protected structure were simply not commercially viable on the open market. As a result, Denel needed to resort to the selling off of businesses, cost cutting and the retrenchment of employees.¹⁹¹ Externally, Denel had to compete with the many foreign arms industries that had consolidated themselves into a few enormous conglomerates after the collapse of the Soviet Union and the resulting downturn in global arms markets following the end of the arms race.¹⁹² Furthermore, Denel was slowed down by the government's lack of a clear policy directive concerning the domestic arms industry in South Africa.¹⁹³ Denel continued to post annual losses, only posting a profit in 1997 and 2001. This alarming trend came to a head with a recapitalisation of Denel by the state under Finance Minister

¹⁸⁹ Batchelor & Willett Disarmament and Defence Industrial Adjustment, pp. 92 – 96.

¹⁹⁰ Batchelor 'Conversion: The Case of Denel'.

¹⁹¹ The decline in employment by over 90 000 between 1989 and 1995 in the industry as stated before (see footnote 46), includes the retrenchments by Denel. Accurate figures as to the total number of retrenchments within Denel seem to be unavailable.

¹⁹² 'Concentration in the arms industry: data on mergers and acquisitions' http://www.sipri.org/contents/milap/milex/aprod/m_and_a_jv.html/view?searchterm=Concentration%20in%20the%20arms%20industry SIPRI Accessed 07/09/2010.

¹⁹³ Batchelor & Willett Disarmament and Defence Industrial Adjustment, p.206.

Trevor Manuel to the amount of R2bn in 2006¹⁹⁴ after recording a loss of R1.6bn. According to Denel's annual report, the record loss of R1.6bn in 2005 occurred due to the 'failure to achieve sales target, increase in provision in contract losses and adverse impact of the exchange rate'.¹⁹⁵ The R2bn capital injection had some asking why it was necessary to invest so much capital in order to keep a foundering industry afloat.¹⁹⁶

A primary obstacle for the successful internal restructuring of the parastatals such as Denel was the conflict in the competing goals of restructuring: profitability and equitable employment. As seen in the case of Transnet, moves towards profitability were not necessarily reconcilable with efforts for equitable employment and even less with the broader ideology of creating equitable economic conditions. With the state unwilling to shoulder the financial burden of commercialisation, it came down to the employees having to absorb the cost cutting necessary for profitability through downsizing and retrenchment. It was for this same reason that COSATU was continually in opposition to privatisation, even after securing a compromise to make the process more consultative.¹⁹⁷

Between 1995 and 2000 the biggest step towards transformation came perhaps not from the state, but from the private sector and the listing of major South African assurance companies on the Johannesburg Stock exchange as shareholding entities. The demutualisation of Sanlam and Old Mutual in 1998 and 1999 respectively into a publicly

¹⁹⁴ Mametse, D. 'R2Bn cash injection for ailing Denel' Citizen, (16 February, 2006); Katzenellenbogen, J. 'Arms maker Denel thrown R2Bn lifeline' Business Day, (16 February, 2006); Cokayne, R. 'Denel's cost savings cut annual loss to R1.38bn' Star, (20 October, 2006).

¹⁹⁵ Mametse, D. 'R2Bn cash injection for ailing Denel' Citizen, (16 February 2006); Katzenellenbogen, J. 'Arms maker Denel thrown R2Bn lifeline' Business Day, (16 February 2006).

¹⁹⁶ Harris, J. 'Pouring funds down parastatal drains' under 'Regulation Updates May 2006'. <http://www.freemarketfoundation.com/ShowArticle.asp?ArticleType=regulation&ArticleID=1173> Accessed 29/10/07.

¹⁹⁷ Ibid, p. 207.

listed company unlocked billions of Rand to the South African public through the issuance of shares to its policy holders and to the open market. Predicted at the time to unlock around R15 billion into the economy over two years,¹⁹⁸ the listings represented the redistribution of wealth from the heights of South African business to the middle and lower income classes.¹⁹⁹ While this was not an altruistic endeavour since the listed companies gained tremendous value by being listed, particularly with the newly passed legislation allowing the listing of South African companies on foreign stock exchanges, the demutualisation of companies like Old Mutual and Sanlam represented major transformative shifts in the economy.²⁰⁰

A shift to stronger state-policies of BEE

Early efforts at privatisation demonstrated the difficulties in securing a black empowerment share and avoiding the selling off of assets to foreign interests. Furthermore they highlighted the contradictory processes of the transformation of the economy on a broader scale and the internal restructuring of the parastatals (particularly in the case of employment equity). Of greatest concern to the ANC government was the dismal performance of its parastatals even though they were largely successful in transforming their workforce to be more equitable. Repeated losses by Denel, Transnet and Telkom did not produce investor confidence or reassure the private sector that the state would provide an economic environment for growth. While control of the state sector allowed for important inroads into the economy for black business through

¹⁹⁸ Hazelhurst, H. 'Election and the economic cycle', Financial mail, (15 August, 1998).

¹⁹⁹ 'Demutualisation and empowerment', Financial Mail, (14 August, 1997).

²⁰⁰ Sikhakhane, J. 'Demutualisation to whose mutual benefit?', Financial Mail, (7 August, 1998).

preferential procurement, these were insufficient for a comprehensive restructuring of the economy. Most importantly however, the ANC's BEE strategy had little impact on the private sector dominated by white owned enterprise. The ANC's reliance on market mechanisms to produce growth and economic opportunities for black business did little to dilute white capital's control over the private sector due to the reproduction of racial inequalities within the economy's structure.

When a number of leading political figures, including Cyril Ramaphosa (Secretary General of the ANC), Tokyo Sexwale (Premier of Gauteng) and Saki Macozoma (ANC Member of Parliament), resigned from their posts in political office in 1997 and took up business ventures in the private sector, the BEE policy came under criticism and elicited calls for more active state involvement in determining empowerment policy within the private sector.²⁰¹ Recognising that a change in policy was needed, the Black Business Council set up the Black Economic Empowerment Commission (BEEC) in 1997 and tasked it with investigating BEE policy and propose changes towards its future. The BEEC's report presented in 2001 proposed greater and more focussed state intervention for the creation of an enabling environment for black business, including the passing into law of transformation guidelines and targets.²⁰² Specifically the report called for a Black Economic Empowerment Act, clearly setting out a comprehensive policy of BEE with legislative transformation targets for the private sector. The report further proposed the establishment of an Investment for Growth Accord, National Empowerment Funding Agency and an Empowerment Framework for Public Sector Restructuring to facilitate the

²⁰¹ Sikhakhane, J. 'Venturing beyond the pale', *Financial Mail*, (20 August, 1999).

²⁰² Southall, R. 'Black empowerment and corporate capital', in *State of the Nation 2004-2005*, (Cape Town, 2005), p. 464.

transfer of public and private assets to black enterprise as well as the creation of entrepreneurial black business.²⁰³ While the ANC viewed these recommendations with some misgiving, particularly with regard to their potential to scare-off foreign investment, the suggested shift towards stronger state involvement in the implementation of BEE within the private sector seemed a necessary transition from its market-reliant BEE policy.

In December 2002, at the 51st National Conference, the ANC adopted the BEEC's proposal in principle, and drew up a transformation charter setting out timelines and legislative proposals and guidelines for the implementation of a comprehensive BEE policy. In a much stronger financial position due to the years of fiscal policy restraint, the ANC committed to greater state intervention in the economy and stricter policy formulation and enforcement for the broader transformation of the economy. The policy framework culminated in the Broad Based Black Economic Empowerment Act which was passed in 2003. This act sets out the state's vision for Broad Based Black Economic Empowerment (BBBEE) as:

‘An integrated and coherent socio-economic process that directly contributes to the economic transformation of South Africa and brings about significant increases in the number of black people that manage, own and

²⁰³ Southall, ‘Black empowerment and corporate capital’, in State of the Nation 2004-2005, p. 464.

control the country's economy, as well as significant decreases in income inequalities'²⁰⁴

Upon the release of the BBBEE transformation charter, the private sector responded to the government's proposed aims for transformation by attempting to largely pre-empt state legislation towards black economic empowerment within the private sector by drawing up their own charters. These charters intended to provide a mechanism for private business to show willingness to cooperate with the state's goals of transformation and attempt to pre-empt potentially harmful dictated terms. While such chartered cooperation required concessions from established business, failure to respond to black economic empowerment was a greater potential risk. Such pro-active cooperation further allowed private enterprise to negotiate the process of economic empowerment and allow its own needs to be recognised. The charter movement was ultimately an expression of private enterprise's recognition of the political requirements of economic change and the realities of operating in such an environment.

Drawing up a charter for transformation in 2002, the liquid fuels sector was the first to adopt a framework for the transfer of ownership and equity into black hands. All the companies signing the charter committed to the transfer of 25 percent of its equity by 2010.²⁰⁵ In the mining sector, the leaked government proposal that set transformation ownership targets at 51 percent within ten years caused an uproar among mining companies and a sharp fall in investor confidence, wiping R11 million off the major

²⁰⁴ No 53 of 2003: The Broad-Based Black Economic Empowerment Act 2003, Government Gazettes Nr. 29617 Volume 500, 2003.

²⁰⁵ Southall, 'Black empowerment and corporate capital', in State of the Nation 2004-2005, p. 466.

mining companies' share prices in 2002.²⁰⁶ After lengthy negotiations with government, the mining sector agreed on a milder charter which set the ownership target at 26 percent over ten years but required a 40 percent representation at managerial level within five years. The mining charter also introduced a scorecard approach to transformation targets which included criteria such as black representation at all levels, worker development, housing and community development.²⁰⁷ A watershed initiative from the private sector (called the Brenthurst Initiative) was revealed by De Beers in 2003 and was particularly influential in proposing a scorecard approach to performance and linking these to tax incentives. It further proposed the establishment of empowerment funds in the form of employee share options and increased pension fund investments by private business.²⁰⁸ While the ANC rejected this proposal overall, and in particular the creation of tax incentives, it did reduce tax disincentives in relation to BEE performance in the following year. It also introduced tax exemption for employment share schemes in 2004.²⁰⁹

Other economic sectors followed the liquid fuels sector, adopting the scorecard approach and releasing their own charters. The financial services industry entered into negotiations with the DTI in 2003. A contested equity transfer target of 25 percent by 2010 was ultimately approved, however this only required ten percent direct ownership and ten percent through indirect control such as pension schemes.²¹⁰ Further terms included representative targets at all levels, procurement expenditure of 50 percent to black companies, the allocation of empowerment financing and social responsibility

²⁰⁶ Ibid, p. 467.

²⁰⁷ Ibid.

²⁰⁸ Bidoli, M. 'Gauging the Sweet and Sour of Tax incentives', Financial Mail, (7 November 2003).

²⁰⁹ Bidoli, 'Gauging the Sweet and Sour of Tax incentives'.

²¹⁰ Ibid.

expenditure.²¹¹ Health care, maritime and information and technology sectors followed in late 2003 and 2004 with BEE charters. As a result, transformation charters became the primary vehicle through which BEE policy was enacted and promoted. It must be noted however, that not all industries have issued transformation charters, with the brewing industry, dominated by economic giant South African Breweries, being a notable exception.

Private sector engagement in perspective

Due to the active involvement of private enterprise in the transformation of South African business, the envisioning of Black Economic Empowerment as a state driven project in the face of antagonistic private business was to be re-evaluated. Interesting parallels exist between corporatist strategies within labour markets of industrial sectors and the pre-emptive nature of the charter movements. The corporatist nature of the negotiation process that entrenched essentially antagonistic interests in a framework of participatory cooperation can be discerned in the charter movement.²¹² However, this partnership between business and the state was significantly consolidating the power of dominant political and economic forces to the exclusion of large sectors of the population represented in particular by COSATU and the SACP. As a national liberation movement coming to power under a banner of the Freedom Charter which emphasised equal rights and wealth for all, and promoting a policy of redress and economic transformation for broad-based wealth, the ANC's Black Economic Empowerment policy ultimately sought

²¹¹ Southall, 'Black empowerment and corporate capital', in *State of the Nation 2004-2005*, p. 469.

²¹² See also Desai, A. & Habib, A. 'Labour relations in transition: the rise of corporatism in South Africa's automobile industry', *The Journal of Modern African Studies*, 35,3, (September 1997), pp. 495-518.

to secure the support of politically and economically important elites, exacerbating the marginalisation of the lower classes. The ANC was unable to resolve the underlying tensions between its broader aims of transformation and wealth creation (of which BBBEE is seen as a vital instrument), and the consolidation of black capital creation within elites through its BEE policies. When confronted with the contradictions, legitimacy was sought through corporatist strategies of participatory inclusion or the blunt use of political power.

The linkages between the ANC and private black enterprise are well developed due to the crossing over of political figures into business in the late 1990s as well as through the preferential procurement policies extended towards private business by the state sector. In the consideration of procurement deals and the tendering of contracts in general, preference was to be given to black owned companies. While this elicited criticism from entrenched suppliers to parastatals early on, preferential procurement was nevertheless an important tool for the restructuring of business networks to represent more equitable conditions and allow for black enterprise to break into previously excluded sectors of the economy. This process was not without its problems however. While it led to the concentration of black enterprise within the space created around state enterprise (as was intended by the ANC), it also represented a dependency on the state. Furthermore, the aegis of preferential procurement did not necessarily encourage the establishment of sustainable enterprise, but rather exploitative short-term business. These linkages together with the state's increased involvement in promoting BEE within the private sector since 2003 have led to accusations of cronyism from the liberal media.

Conclusion

The ANC was faced with numerous challenges in its nation-building process. The negotiated nature of the transition set the terms for its restructuring of the economy while international acceptance of neo-liberalism in the face of the fall of the Soviet Union forced it to further reconsider principally distributive policies as reflected in the RDP programme. Focusing its Black Economic Empowerment within and through the state sector, the ANC achieved limited success and was forced to adopt a much more interventionist approach to BEE within the private sector where it was largely pre-empted into participatory processes with industry through the charter movement. While its goals of diluting white capital's hold over the private sector were largely effective, its establishment of a wealth-creating black business elite raised tensions between its aim of redress and broader transformation of the economy, and the needs of the poor. The implementation of BEE established the state as a site of economic activity through which BEE could be enforced through preferential procurement and tendering along economically empowered criteria. However, this has also entrenched linkages between black business and the state, reinforcing empowered business's dependency on the state. Broad Based Black Economic Empowerment was thus largely focused on the upper strata of economic activity, promoting the interests of the black business elite over those of the poor sector of society.

CHAPTER III

Confronting the structuring of an industry

While most of the literature on Black Economic Empowerment focuses on the big BEE deals as in the mining industry, very little has been written about the effect of BEE on a micro-level. In order for such an examination to be successful however it requires a suitable entry-point. There is perhaps no better field for this purpose than the gaming industry. Legalised outside of the homelands under the ANC government, the gaming industry was very clearly structured with the aim of producing wealth and the redistribution thereof. This incredibly lucrative industry making yearly profits in the billions not only provided ample opportunity for taxation, but also profitable opportunities for black business to buy into and for general wealth distribution via preferential shares to Historically Disadvantaged Persons (HDP). Furthermore, the legalisation of the gaming industry provided opportunity for linkages with other industries and the creation of small and medium enterprises, further sustaining growth and continued redistribution. Localised in the Western Cape, this chapter examines the gaming industry and its structure and, in particular, the company Intshinga Holdings Limited (IHL). Intshinga Holdings is particularly instructive for it is an example of so many Black Economic Empowerment holding companies that constitute the broad base of the wealth pyramid in the gaming industry and the ones to which the redistribution is intended to 'trickle-down' to.

The gaming industry illustrates the problems with state-directed Black Economic Empowerment legislation as a tool for the transfer of wealth. While BEE legislation within gambling sets up complex empowerment requirements in terms of equity ownership and preferential share options to poor communities (its primary vehicle for comprehensive wealth redistribution to the poor), it neglects to put into place accountability structures and relies on pre-existing legislation for the enforcement of good conduct and corporate governance within these investment holding companies. The Intshinga case shows how the locking up of share value within investment holding companies (via un-tradeable shares) benefits only the operating ventures at the top of the constructed capital pyramid, while providing marginal benefit to the individual share holder, and in particular poor communities involved in these empowerment ventures.

Intshinga Holdings Limited is a black empowered public holding company situated in the Western Cape. Founded in 1994 as a private investment company (Intshinga Investment Ltd) by Julian Ross, it was incorporated as a public investment holding company in 1997.²¹³ IHL's starting capital was R10,000 issued in 1 million shares of R0.01 each.²¹⁴ As an empowered company, its self-stated aim is to serve as a 'vehicle through which Historically Disadvantaged Persons (HDP) could participate in the growth of the gaming and hospitality industry in South Africa'.²¹⁵ To that end the company, as a founding partner, acquired a 3.74 percent stake in Grand Parade Investments as its primary investment in 1998. In 1999 it diversified and procured a 0.48 percent stake in Zama Resources Corporation, an empowerment consortium with investment interests in various

²¹³ Certificate of Incorporation, Intshinga Investment Holdings, 29 April 1997.

²¹⁴ Articles of Association, Intshinga Investment Holdings, 29 April 1997.

²¹⁵ Memorandum of 30 March 2002, issued by Intshinga Investment Holdings.

resources including coal, forestry, oil & gas and others. In 2001, IHL further acquired a 0.10 percent stake in UniPalm, an empowerment group with interests in telecommunications and energy.

As an empowered investment holding company, Intshinga was established in the Western Cape gaming sector after gaming was legalised and licensed in 1996. Incorporated as a public company in 1997, IHL grew steadily through the return on its investments in Grand Parade Investments (GPI) and it appeared to have a solid future as an empowerment investment company, creating wealth for its shareholders. By 2009, however, IHL was essentially dissolved, deregistered and all its shares unbundled so that shareholders would hold GPI shares directly. With a Board of Directors featuring some prominent political figures, attorneys and adept businessmen, IHL's dissolution is a remarkable development. The story of Intshinga Holdings Limited reveals deep inherent problems with the Black Economic Empowerment legislation at company level that inhibit real transfer of wealth and do not foster long-term, productive capital that promotes growth and development.

In the Apartheid era, gambling was only permitted in the homelands where it was dominated by Sun International. At the transition to majority rule, Apartheid gambling legislation was still in effect. Allowing gambling establishments only in the homelands, and under strict licensing, the Apartheid government received a welcome stream of revenue from the heavily taxed gambling industry monopolised by Sun International. The ANC announced its new National Gambling Bill in the mid 1990s, allowing gaming

establishments in previously inaccessible areas. South Africa's demand for gambling was estimated to be worth between two- and three billion Rand, and government's total license allotment of 40, required comprehensive restructuring from Sun International's South African business.²¹⁶ Consolidating the distributed shares held by the previous homeland development corporations (still held by provincial governments) into Sunbop shares, Sunbop was transformed into Sun International South Africa (SISA).²¹⁷ Since the government's National Gambling Bill placed great importance on Black Economic Empowerment on multiple levels, SISA needed empowerment partners within each province to be able to tender for a gambling license.

Through negotiations with black investors, Grand Parade Investments Limited (GPI) and AfriSun Leisure Investments Limited (AfriSun) were created and incorporated in 1997 as empowerment stakeholders in SISA's Western Cape subsidiary Sun West International Limited. Both GPI and AfriSun were 51 percent black owned through the creation of share vehicles that established two classes of shares; ordinary shares ('O' shares) and low voting shares ('N' shares), the ordinary shares representing lower funding, but greater voting representation than the 'N' shares.²¹⁸ As a result, black economic representation within SunWest International amounted to 51 percent. In its empowerment bid, SISA further stood as surety for empowerment partners' share loans and held large numbers of 'N' shares in reserve for its empowerment shareholders that could gradually be procured

²¹⁶ Halse, M.A. 'The old order changeth', Financial Mail, (10 November, 1995).

²¹⁷ Halse, M.A. 'The old order changeth', Financial Mail, (10 November, 1995).

²¹⁸ Final Report of the BEE Audit Committee of the National Gambling Board, National Gambling Board, (12 April, 2004).

to increase their capital involvement.²¹⁹ In 1999, SunWest's tender was successful and it received a license to operate in the Western Cape area focussing on the Grand West Casino and Entertainment World. Sun West International's second large investment interest came to fruition in the Table Bay Hotel in the Victoria & Alfred Waterfront.

Grand Parade Investment as the bigger empowerment partner within Sun West held an effective voting stake of 34 percent, while Afrisun Leisure Investments held a 17 percent stake. In 2001, the preferential share offer to previously disadvantaged persons raised capital for GPI to acquire an 8.53 percent capital stake in Sun West.²²⁰ By June 2003, GPI had increased its economic stake in Sun West to 20 percent.²²¹ Grand Parade Investments further holds a 5.67 percent stake in National Casino Resort Manco Limited, which holds 50 percent of the casino management contracts nationally, as well as a 50 percent stake in the Western Cape Casino Resort Manco.²²²

As stipulated in the gambling legislation, separate management companies, to which the casinos pay fees based on revenue and on profit, were required to manage the licensed casinos.²²³ With a mandatory 50 percent to be owned by black empowerment shareholders, the management companies were to pay its shareholders dividends. National Casino Resort Manco Limited's Western Cape Casino Resort Manco Limited held the management contract for Sun West's Grand West Casino and Entertainment

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Ibid.

²²² Final Report of the BEE Audit Committee of the National Gambling Board, National Gambling Board, (12 April, 2004).

²²³ Ibid.

World. Intshinga Holdings Limited (IHL) was invested primarily in Grand Parade Investments with limited other investments in its portfolio. As a result it was firmly entrenched in the success of GPI and the Western Cape gaming industry in general.

In 2002, Intshinga Holdings Limited increased its issued share capital to R100,000 by 9 million shares of R0.01 each, and provided a private offer to existing shareholders at 400 cents per ordinary share with a minimum subscription of 1000 shares and a maximum of 500,000 shares.²²⁴ The very fact of IHL's empowerment status and share provision to previously disadvantaged persons meant that while many of the shareholders benefited from the offer, it inevitably led to the concentration of ownership amongst those who had the biggest capital resources available to them, excluding most importantly, the previously disadvantaged persons. After the share issuance, Intshinga Holdings Limited had 150 shareholders, with majority ownership falling to a few individuals mostly on the Board of Directors. Chairman, Alexander Abercrombie held 28.86 percent. Founder and managing director Julian Ross owned 19.28 percent of IHL shares. Director Mphathi Nyewe, held 20.4 percent of IHL shares. Another notable shareholder was Khoi-Qwa Fishing Development Company at 9.5 percent ownership. These four shareholders held a 78 percent stake in the company, the remaining mainly black, shareholders constituting the last 22 percent.²²⁵ This concentration of voting control in the hands of a few individuals (who are also on the Board) had a significant impact on the running of the company and the representation of shareholder's interests.

²²⁴ Special Resolution of 30 April 2002, Intshinga Investment Holdings.

²²⁵ Share register, 2002, Intshinga Investment Holdings.

As Intshinga's investment value increased with the value of Grand Parade Investment's, the board of directors entered into an escalating power struggle over direction and essentially control over the company. The personalised conflicts are an expression of the director's increased representation of personal interests rather than the effective running of an investment holding company for the benefit of all shareholders towards continued growth. Between 2002 and 2003, IHL did not hold any Annual General Meetings, or published any interim or annual financial reports to its shareholders, despite these being statutory procedure dictated by the Companies Act.²²⁶ Alexander Abercrombie, a notable attorney must have been keenly aware of the requirements of directors stipulated in the Companies Act, and thus the above omissions seem particularly self-interested and represent deliberate neglect of the interests of IHL.²²⁷ In 2006, 'in lieu of the loyalty of the directors to the Company and, particularly, the formation and enhancement thereof' the directors sought the granting 150,000 share options to them at three Rand per share at the Annual General Meeting.²²⁸ The resolution was approved together with another that authorised the directors to develop and propose an executive share option plan for the directors based on each year of completed service on the board of directors as well as their operational and advisory capacities.²²⁹

²²⁶ Companies Act, No. 61 of 1973.

²²⁷ When asked why no interim annual financial reports were published, the directors explained that there had been no notable business conducted during that period and thus did not warrant the publishing of statements. Minutes of the Annual General Meeting of members of Intshinga Holdings Limited on 2 June 2006.

²²⁸ Minutes of the Annual General Meeting of members of Intshinga Holdings Limited on 2 June 2006.

²²⁹ The resolution passed with the amendment that the created share option plan committee take into consideration that any such scheme would dilute the value of shares to existing shareholders. Minutes of the Annual General Meeting of members of Intshinga Holdings Limited on 2 June 2006.

When director Danny Jordaan resigned in June 2006 due to increased pressures of work as the CEO of the South African Football Association (SAFA), he was not replaced and the number of directors fell down to four, concentrating board control even further and increasing tensions between the remaining members over investment decisions. Board decisions seemed to be split between Julian Ross and Mphathi Nyewe on the one side, and Alexander Abercrombie and Charles MacDonald on the other. On 17 September 2007, MacDonald proposed a special resolution for consideration at the Annual General Meeting (AGM) on 12 October 2007 to have both Ross and Nyewe removed as directors, bringing the conflict to a head and leading Ross to initiate litigating procedures.²³⁰

Ross applied for an interdict preventing his own and Nyewe's removal as directors, claiming misconduct, breaches of company law and intent to take control of IHL for MacDonald's own purposes.²³¹ Ross argued that the resolutions for the removal of Ross and Nyewe were in breach of statutory procedure under the Companies Act for they were issued by MacDonald alone, whose percentage of shares held at two percent was insufficient (5 percent is required) to requisition the company to circulate his proposed resolution. Ross further disputed the timeousness of the proposal as it was lodged only 32 days (less than the 5 weeks required) before the AGM at which it was to be heard.²³²

Ross's affidavit describes Abercrombie's dubious intention of pledging all of Intshinga's shares in Grand Parade Investments in return for a two million Rand bank loan without

²³⁰ Julian Theodor Ross vs Intshinga Holdings Limited, In the High Court of South Africa, Case Nr. 14448/ 07.

²³¹ Affidavit by Julian Theodor Ross, Julian Theodor Ross vs Intshinga Holdings Limited, In the High Court of South Africa, Case Nr. 14448/ 07.

²³² Ibid.

shareholder or board approval.²³³ It further describes Abercrombie's efforts in October 2006 to get the board to sign a voting pool agreement with other GPI shareholders, a request that was opposed by Ross and Nyewe. Ross's discovery of the fact that Abercrombie nevertheless signed the voting pool agreement on behalf of IHL in December 2006 caused the issue to be raised at the following board meeting in January 2007, during which Abercrombie with support of MacDonald disputed the accuracy of the previous meeting's minutes, claiming that the agreement was ratified by the board.²³⁴ Ross's suspicion of Abercrombie's intentions was heightened when he discovered that Abercrombie had appointed himself as Company Secretary without board discussion or approval.

At the board meeting on 22 August 2007, Ross and Nyewe raised their concerns over MacDonald's suitability as a director and expressed their reservations over his possible re-election at the next AGM. Once again, Ross and Nyewe were at loggerheads with Abercrombie and MacDonald over the direction of the company. Nevertheless, they agreed that the board should increase to five members once again, and that nominations would be considered from both sides. Subsequently, a dispute arose surrounding the nominees, Abercrombie claiming Ross's nominees were provided after the cut-off date. The dispute escalated as the two parties disputed the minutes of the meeting, each signing different sets.²³⁵

²³³ Ibid.

²³⁴ Ibid.

²³⁵ Affidavit by Julian Theodor Ross, Julian Theodor Ross vs Intshinga Holdings Limited, In the High Court of South Africa, Case Nr. 14448/ 07.

Since 2003, Grand Parade Investments showed excellent growth, raising its economic stake in Sun West in 2007 to 26.41 percent, with an increase in share value by over 600 percent. Most significantly, GPI listed on the Johannesburg Stock Exchange on 6 June 2008 under 'General Finance', allowing its shares to be traded at market values. Upon GPI's listing in 2008, Intshinga Investment Holdings' directors proposed the unbundling of all IHL shares into direct Grand Parade Investment shares, unlocking value for shareholders due to the tradeable nature of GPI shares as well as its increased value upon listing. The unbundling would essentially dissolve IHL as the GPI shares held would be distributed directly to IHL shareholders. Approved at a Special General Meeting on 18 September 2009, the unbundling procedure was implemented after 9 October 2009.

The board of directors of Intshinga Holdings Limited was clearly in contravention of the Companies Act on numerous occasions, most particularly in their neglect to issue and make available to shareholders, interim and annual financial statements for IHL, as is required by law. As the directors had intimate knowledge of the Companies Act, such contravention is deliberate and self-interested. While the director's followed due process diligently within its first years of operation, once their control of the company was concentrated via the issuance of nine million further shares, their neglect in performing the functions for the continued operations of IHL coupled with personal conflicts between directors led to escalating tensions. The continued power struggle between directors over the control of the company marginalised the smaller shareholders whose interests ceased to be looked after due to the errant running of the company. It further stagnated any growth Insthinga could experience due to the lack of any decisive growth

direction the company was taking. The ex-directors continue to be prominent figures in political and business circles, with Abercrombie in particular becoming a non-executive director of Grand Parade Investments, a director at Cliffe Dekker Hofmeyr attorneys and being appointed a judge of the High Court of South Africa.

As this chapter illustrates, the gaming industry in the Western Cape as elsewhere in the country, is by legislation and by disparate economic resources, a complex web of business ventures and capital investments. BEE legislation forced SISA to create businesses at various tiers with subsidised empowerment partners due to the limited capital resources available to, and small size of, the black business community. The structure is a lucrative investment for all parties involved and the industry remains stable although with relatively limited long term growth through diversification (due to the limited amount of licenses), providing for a solid vehicle for economic empowerment and transformation. This is particularly the case with the many possibilities for empowerment capital to increase its economic stake within the companies through reserved shares and various financing options made available directly and indirectly by SISA. Heavily taxed, the industry also provides substantial revenue for government. In its own terms, the empowerment structure within the Western Cape gaming industry seems successful, and it has indeed led to vast accumulation of wealth for some invested entities. However, as the case of Intshinga Holdings Limited reveals, capital accumulation stays largely near the top of the structure and does not necessarily penetrate down to the black investor with limited capital resources.

While the gaming industry has shown remarkable stability and produced impressive revenue at the top, capital-intensive tier, the wealth distribution process as envisaged by government has severe limitations when viewed at a micro level. Due to the structure of BEE within the gaming industry, previously disadvantaged persons only have viable access to the wealth creation process through the buying of shares in public investment holding companies such as Intshinga. However, due to the unlisted nature of such companies and their investment holdings, the value of shares is determined with difficulty. Furthermore, as the shares are not tradeable, their value is essentially locked, and thus represents unproductive capital. While the value of shares might rise significantly, in order to unlock the value held, the company needs to either list on Johannesburg Stock Exchange, or resort to mechanisms such as unbundling – like Intshinga chose to do. However, the process of unbundling essentially dissolves the investment holding company, preventing any further growth. As a result, the investment holding company is not a sustainable growth vehicle that promotes the development and diversification of black business or deepens the penetration of black capital within existing business structures.

The history of Intshinga reveals the limits of BEE legislation at a micro level. While the law dictates terms on a broader level that appear to promote transformation, the government's structures for checking accountability do not go beyond the level of the National Gambling Board's audit of licensed gambling operators. Government relies on the Companies Act to guide the governance of BEE investment holding companies such as IHL. Without the proper accountability structures however, the task falls to the

shareholder to hold the company to account with regard to abuses and misconduct. This can involve expensive and lengthy legal action. Those investors making use of special BEE share offers generally do not have the resources to pursue such a course.

CHAPTER IV

The case of a poor rural community up against a broad based BEE company

The second case is one that exemplifies the contradictory nature of BEE policy in attempting to affect transformation and wealth redistribution through orthodox liberal economic policy. As BEE companies win procurement tenders from the state, they often come into conflict with communities who ultimately become disadvantaged due to the state's support of BEE policy against the interest of previously disadvantaged poor communities, which are ultimately the intended beneficiaries of transformation. Within the Western Cape the two prominent cases are the state's support of BEE interests to the detriment of the community in the Richtersveld²³⁶ and the here discussed case of Maccsand's sand mining activities to the detriment of a community's restitution claim.

Communities disadvantaged by BEE policy have been described as BEE's 'powder keg'²³⁷ for good reason. These conflicts²³⁸ are important for an analysis of BEE for they provide insight to the state's own perceived role and support of particular interests and the public legal battles that these cases showcase provide legal precedent for future determinations. Moreover, the state's support of particular interests in these cases not only puts it in contradictory positions pertaining transformation and BEE, but also

²³⁶ McNulty, A. 'A power keg', Financial Mail, (August 27, 2010).

²³⁷ Jennie Cargill, founder of BEE consulting company BusinessMap, quoted in McNulty, A. 'A power keg', Financial Mail, (August 27, 2010).

²³⁸ Between 2001 and 2004 in industrial fisheries alone, 40 cases of litigation against government were brought forward by communities who were disgruntled at the entrenchment of quotas in favour of the big players (many of whom have BEE partners) in the Medium Term Rights allocation of 2001. Ponte, S. & Sittert, L. 'The chimera of redistribution in post-apartheid South Africa: Black Economic Empowerment (BEE) in industrial fisheries', African Affairs, 106,424, (2007), p. 451.

national political power against provincial political power, with the state's tendency for top-down ruling from national heights becoming increasingly clear.

The case of Macassar centres on a yet unresolved legal battle between representatives of the Macassar (previously Sandvlei) community and a Black Economic Empowerment company, Maccsand. The complexities of the drawn-out court proceedings hide deep tensions between community and state, and political contradictions within the ANC government itself. Black Economic Empowerment, while not visibly central to the Macassar issue, is at the centre of the dispute over land and mineral rights at Macassar. The case is discussed in some detail in this chapter as it highlights the complex legal process involved in making way for BEE on the one hand and the insecurity of poor communities' claim to land restitution, on the other. In this instance the BEE initiative depended on the negation of a subsistence community's rights to land. On the face of it, the BEE company operating in the Macassar area was a model.

In 1997, the Darries Group,²³⁹ consisting largely of Darries family members from the Sandvlei community, officially incorporated Maccsand as a close corporation with Black Economic Empowerment status. Its membership of previously disadvantaged individuals was over 85% and over 50% of the business ownership was constituted of three members of the Darries family, F. Darries, Y. Darries, and M.G. Darries.²⁴⁰ Operations were further run by M.G. Darries in the positions of 'Management, Marketing & Securing

²³⁹ The Darries family name is one of the oldest within the Macassar community.

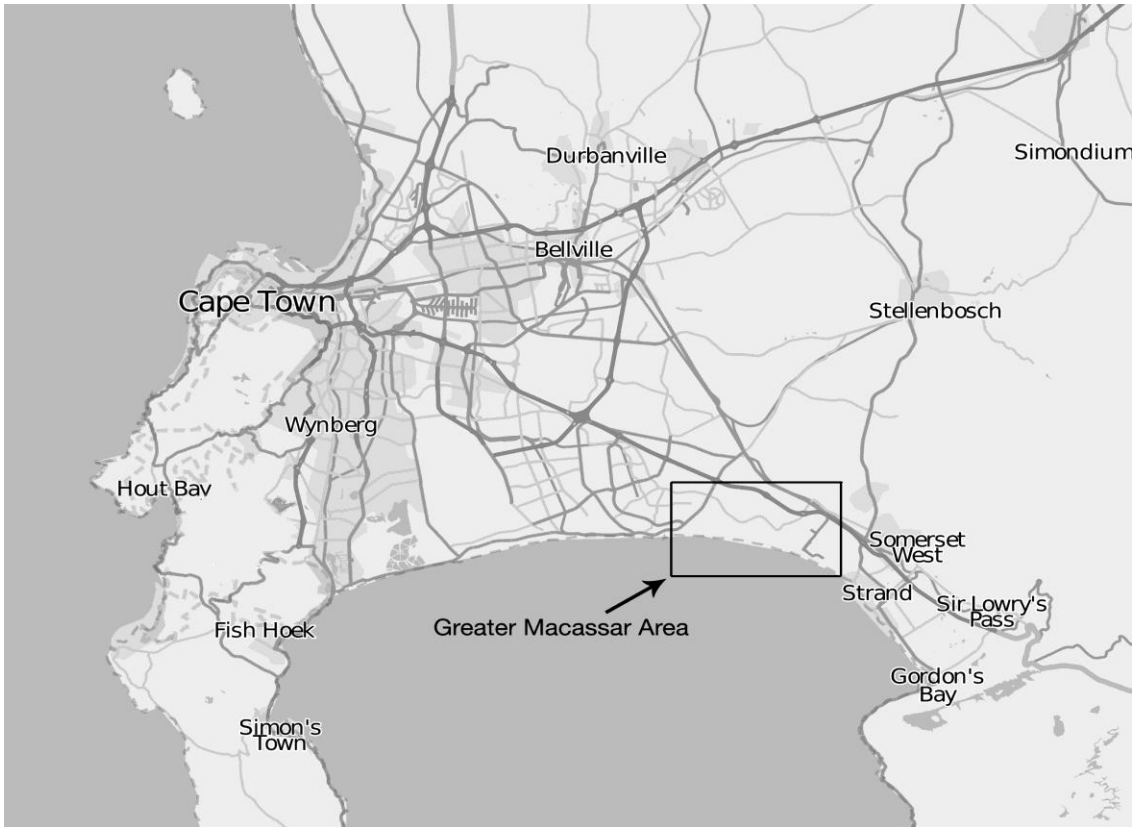
²⁴⁰ 'Maccsand Business Plan', published by Y. Mohamed & Associates CA(SA), Court Records, In the Land Claims Court of South Africa, Macassar Land Claims Committee vs Maccsand, Case Nr: LCC 37/03.

Contracts’ and F. Darries as the head of ‘Mining Operations’.²⁴¹ The Department of Minerals and Energy Affairs granted Maccsand’s mining license on 6 January 2001, establishing it as the only BEE mining company in the Western Cape.²⁴²

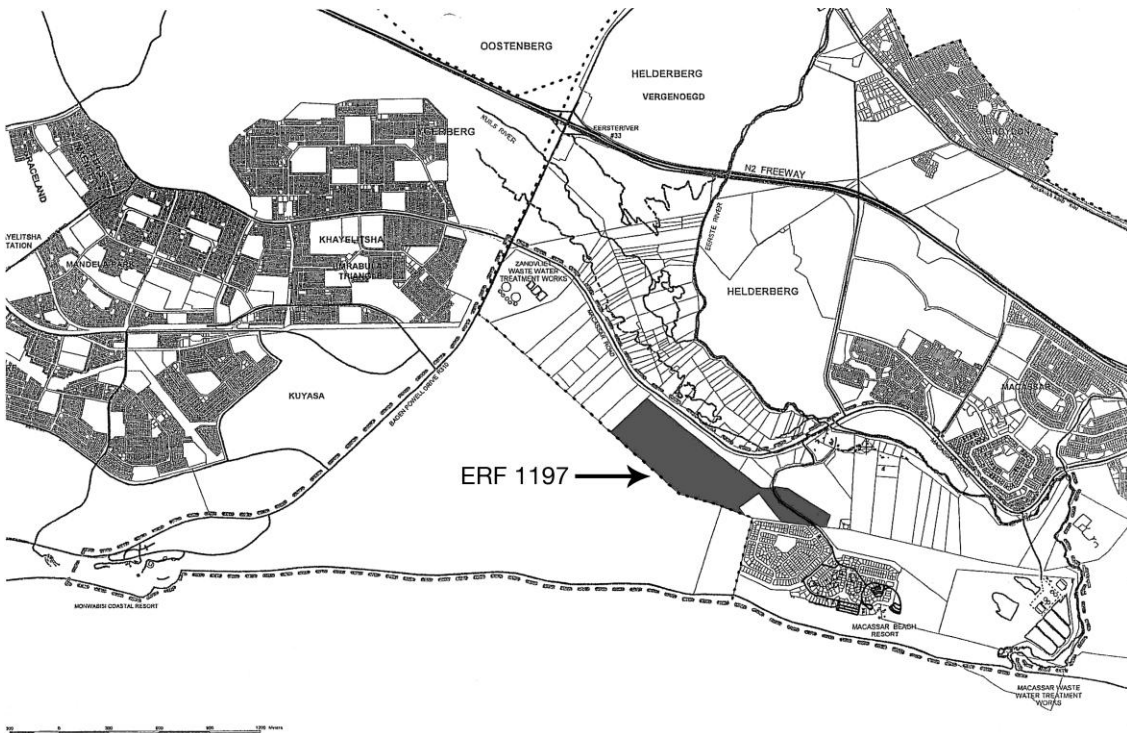
Maccsand sought to mine sand on a piece of land (erf 1197) in Macassar that was also the subject of a land restitution claim by a subsistence farming community which has resided there since the 1860s. The land in question is the property of the state, but, with respect to the BEE initiative, different legal and administrative jurisdictions seem to be in conflict with each other, specifically over issues of: mining, zoning, and environmental concerns.

²⁴¹ Ibid.

²⁴² Mining License ML 1/2000, Court Records, In the Land Claims Court of South Africa, Macassar Land Claims Committee vs Maccsand, Case Nr: LCC 37/03.



Map 1. The Western Cape Peninsula



Map 2. The Macassar Area and Erf 1197

The Macassar community

The greater Macassar area is located in the Western Cape along the Eerste River and is one of historical and environmental significance. The presence of the Eerste River and the Macassar dunes makes the area environmentally unique and the location of a Kramat is of heritage significance to the South African Islamic community.

The land under claim from the Macassar community (Erf 1197) is designated as a part of the commonage constituted of various Erven – including 1195, 1196, 1197, 1198, 1991 and 544 Macassar. The history of this piece of land is intertwined with that of Apartheid's expropriation of land under the Group Areas Act. The official existence of the community's commonage was removed from records in the course of implementing this act. The post-Apartheid government's efforts at restitution allowed for the community to lay claim to the lost commonage in the mid 1990s.

What is now known as Erf 1197 was part of the land purchased by Pieter Laurens Cloete on 22 July 1831 and registered under the name Zandvliet.²⁴³ In 1862 Cloete created a series of lots (lots 25 to 63) along the Eerste River and sold these to freed slaves from the farm Zandvliet. Some of these lots (35 to 39 constituting Erf 1177 Macassar) were sold to Abdul Wahab on behalf of the Mahamedan Congregation in 1862,²⁴⁴ and lot 54 was sold

²⁴³ In the Land Claims Court of South Africa, Macassar Land Claims Committee vs Macassand, Case Nr: LCC 37/03, Court Records, Title Deed of Pieter Laurens Cloete, D/T 60 July 1831, 'Farm Zandvliet No 664'.

²⁴⁴ In the Land Claims Court of South Africa, Macassar Land Claims Committee vs Macassand, Case Nr: LCC 37/03, Court Records, Deed of Transfer in favour of Abdul Wahab, 6 March 1862.

to Christiaan Heuwel in 1867.²⁴⁵ The farm Zandvliet was later sold to Gerhardus Johannes Brand in 1865 and ownership was transferred once again in 1885 when Johannes Phillip Faure bought it.²⁴⁶

On various title deeds the existence of the commonage was noted both in writing and in accompanying diagrams. The title deeds describe the lots as bounded in the south by commonage, and the accompanying diagram shows and clearly ascribes the commonage to lots 35 to 63 and determines its area as ‘164 Morgen 4.5 sq. roods’.²⁴⁷ A map dated 16 July 1892 further indicates the commonage within the boundaries of the Zandvliet farm.²⁴⁸ Aside from the legal confirmation of the existence of the commonage on title deeds and administrative documentation, the commonage existed much more importantly as a communal area for the Zandvliet community. Due to the largely illiterate members of the community and the every-day nature of the usage of the commonage, there is no written documentation of the land’s utilisation. However, the history of the commonage and the community’s use of it are passed down within the community from generation to generation both orally and through the continuation of learned practices. As a result, oral history allows for a valuable insight into the nature of the community and its usage of the commonage.

²⁴⁵ In the Land Claims Court of South Africa, Macassar Land Claims Committee vs Maccsand, Case Nr: LCC 37/03, Court Records, Title deed of Christiaan Heuwel, 261/1867.

²⁴⁶ In the Land Claims Court of South Africa, Macassar Land Claims Committee vs Maccsand, Case Nr: LCC 37/03, Court Records, Title deed of Johannes Phillip Faure, D/T169, 1885.

²⁴⁷ In the Land Claims Court of South Africa, Macassar Land Claims Committee vs Maccsand, Case Nr: LCC 37/03, Court Records, Deed of Transfer in favour of Abdul Wahab, 6 March 1862, Title deed of Christiaan Heuwel, 261/1867.

²⁴⁸ ‘Eerste River Drift Sands’, dated 16 July 1892, Cape Archives AGR 51, Vol. 203.

The use of the commonage was of immense importance to the Sandvlei community. Due to the proximity of the plots to the Eerste River, in times of flood, the homes of the community were often under threat. The commonage served as an important refuge when the river was in flood, and some members even relocated their homes entirely onto the commonage.²⁴⁹ The Sandvlei community was economically dependent on subsistence farming, and the commonage was a large tract of land on which the community grazed cattle and other animals, especially in the winter months.²⁵⁰ The area was also used for various subsistence activities including: cutting wood, keeping poultry, growing vegetables, making charcoal, collecting herbs, hunting and trapping and provision of drinking water for both animal and human consumption.²⁵¹

The Sandvlei community had shared rules of access to the commonage that were exclusive to their community and did not allow access to outsiders. Once again these rules were not written down, but were created and passed on by the elder generation of the community and constituted a shared understanding and consideration of all the members of the community.²⁵² These rules included the stabilisation of the sand dunes, positioning of houses and the use of the land for grazing and the water for

²⁴⁹ Evidence of the homes on the public commonage is clear in the records of the Community Development Board's proposed purchase of the Zandvliet property. A representative of the CDB notes that there were 'coloured persons' living on the area designated as 'public commonage' and that if Faure had no claim on these, then the compensation must be reduced by the appropriate corresponding amount. L4572-562-7, No 104536 Community Development Board records.

²⁵⁰ Affidavit of Carl Wilters, Court Records, In the Land Claims Court of South Africa, Macassar Land Claims Committee vs Maccsand, Case Nr: LCC 37/03.

²⁵¹ Affidavit of Carl Wilters, Court Records, In the Land Claims Court of South Africa, Macassar Land Claims Committee vs Maccsand, Case Nr: LCC 37/03.

²⁵² Carl Wilters, interview with the Land Commission, Land Commission Documents, (17 August 2007).

consumption.²⁵³ The community kept track of its members and communicated the rules during meetings and in sermons at the local Methodist church built on part of the commonage in 1879.²⁵⁴ The church was an integral institution for the community allowing for the creation of common rules and practices, and reinforcing communal cohesion. While the existence of the commonage was only peripherally recognised by the local administration over the decades, the commonage and the community's access to it was central to sustaining the community's way of life economically and culturally. As a result, deprivation of that commonage had a profound effect on the community's continued reproduction.

Cessation of the commonage and community restitution claim

The Group Areas Act of 1950 achieved racial segregation by designating areas of land to particular racial groups and using forced removals in order to enact it. Under the Act, the Apartheid state held the pre-emptive right to 'buy' land held by non-whites and its primary vehicle for this process was the Community Development Board.

Upon the designation of the Macassar area as a 'coloured' group area in 1964²⁵⁵ the Community Development Board sought to buy Zandvliet. This development prompted Faure to register a new diagram of the consolidated farm of Zandvliet that he had drawn up. In the process, the commonage was erased and simply included in the greater consolidated Zandvliet area. With the registration of the new diagram and title, the older

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ Proclamation 345 (b), Government Gazettes, (24 December 1964).

diagrams were cancelled and the commonage officially ceased to exist.²⁵⁶ As a result, when the Community Development Board purchased portion 108 of the Zandvliet farm in June 1975, the commonage was officially lost. While this initially made little difference to the community's continued use of the commonage, this changed when the Macassar road, completed in 1983, physically severed the community from the commonage. Thereafter the commonage was fenced in to prevent access by...

With South Africa's transition to an inclusive democracy in 1994 a new legislative framework, including the Restitution of Land Rights Act,²⁵⁷ sought to address injustices such as those effected under Apartheid's Group Areas Act. Under this Act the Commission on Restitution of Land Rights was given power to investigate any claims of restitution. On 3 March 1997, J.A. De Wet lodged a restitution claim against Erf 1197 Macassar on behalf of the Sandvlei community.²⁵⁸ After the death of De Wet, C. Wilters was elected chairman of the Macassar Land Claims Committee and continued to represent the community and their restitution claim. The community's claim to Erf 1197 Macassar was finally gazetted on 5 June 2002 in the name of the Macassar Land Claims Committee.²⁵⁹

Maccsand and the legal battle in the Land Claims Court

Maccsand (a BEE compliant company) was interested in mining sand from Erf 1197 Macassar, and, after receiving its mining license from the Department of Minerals and

²⁵⁶ Diagram 5113/74 'Consolidated farm Zandvliet' Community Development Board records.

²⁵⁷ Restitution of Land Rights Act, Act No. 22 of 1994.

²⁵⁸ Land Restitution Claim form, signed by J.A. De Wet on 3 March 1997, Court Records, In the Land Claims Court of South Africa, Macassar Land Claims Committee vs Maccsand, Case Nr: LCC 37/03.

²⁵⁹ Notice 932 of 2002, Macassar Community Claim, Government Gazettes, 2002.

Energy, the company applied to the National Housing Board for a fixed term mineral lease agreement in order to allow the actual extraction of resources from Erf 1197. Since the area's zoning designation was one of agricultural use, Maccsand needed to launch a zoning departure application with the Helderberg Administration, before beginning mining operations. M.G. Darries applied for the requisite zoning departure and was informed by the Chief of Town and Regional Planning for Helderberg Urban Planning, Housing and Development via letter in January 2000 that the processing of the departure might take up to seven months and that mining is not allowed until the actual rezoning has been approved and communicated.²⁶⁰ The processing of this departure was put on hold by the Helderberg administration after they were notified of the Macassar Land Claims Committee's claim to Erf 1197 lodged at the Commission on Restitution of Land Rights. However, by the end of 2000 the Macasser community had become concerned at the visible development of mining activities on Erf 1197. The community sought legal advice and representation to put a stop to the mining activities. Legal proceedings began and the case was finally brought before Judge Moloto in the Land Claims Court on 4 August 2003.²⁶¹

Rehana Khan Parker & Associates representing the Macassar Land Claims Commission appealed to the Land Claims Court for an interim interdict against Maccsand in order to stop the continued exploitation of land under claim by the Macassar community. The legal issues surrounding Maccsand's continued mining were manifold. Firstly, due to the

²⁶⁰ Letter from G. Visser to Maccsand dated 14 January 2000, Court Records, In the Land Claims Court of South Africa, Macassar Land Claims Committee vs Maccsand, Case Nr: LCC 37/03.

²⁶¹ In the Land Claims Court of South Africa, Macassar Land Claims Committee vs Maccsand, Case Nr: LCC 37/03.

fact that Erf 1197 had a restitution claim lodged against it, under the Restitution of Land Rights Act, the land was not allowed to be sold, leased, rezoned or developed without one month's written notice of the intention to do so was given to the regional land claims commissioner.²⁶² Secondly, Maccsand's mining activities without the receipt of a zoning departure certificate from the Helderberg administration was in contravention of the Land Use Planning Ordinance (LUPO).²⁶³ Under LUPO, all land is zoned and designated a particular land use. In the case of Erf 1197, it was zoned under the Section 8 Zoning Scheme Regulations as an agricultural zone, which is the default zoning for all areas that have not been given a particular land use under Section 7 Zoning Regulations.

Thirdly, permission for the departure of land use was required from the Department of Environmental Affairs and Planning, something Maccsand had neglected to seek. Effectively, Maccsand's mining of Erf 1197 was in contravention of the Environmental Conservation Act of 1989.²⁶⁴

Maccsand's defence centred around trying to have the case thrown out on procedural irregularities. Among these was the fact that the papers were served at the address of one of Maccsand's members rather than at the company's official place of business. Furthermore, the Macassar Land Claims Committee's case could not be deemed as one of urgency due to their building of the case over a six-month period. The Committee also failed to join certain parties that had a direct interest in the matter to the court proceedings. It was further disputed that the Macassar community was indeed a

²⁶² Section 11(b) of the Restitution of Land Rights Act, Act No. 22 of 1994.

²⁶³ Land Use Planning Ordinance, Act No. 15 of 1985.

²⁶⁴ Environmental Conservation Act, Act No. 73 of 1989.

community in any legal sense. Lastly, Maccsand's defence disputed the Land Claims Court's jurisdiction over the matter, as the issue at hand was one of illegal mining.

On ruling on the matter, Judge Moloto chose to focus on the land claim and the mining's detrimental influence this claim. In his judgement he declared that any procedural irregularities were not grave enough to void the claim made by the community, and was satisfied that the community had *locus standi*. Furthermore Moloto ruled that the community might indeed have a clear right to the property²⁶⁵ and that the mining on Erf 1197 was causing irreparable harm to the claim of the MCLCC if it were to be successful. Moloto granted an interim interdict against Maccsand on 28 August 2003, preventing it from mining sand on Erf 1197 Macassar until the restitution of the land had been finalised.

After Judge Moloto's order was given, Maccsand submitted an application for leave of appeal, and continued its mining activities. Upon the community's discovery of this fact, Moloto judged the interim interdict as un-appealable and found Maccsand in contempt of court during a telephonic conference involving representatives of Maccsand and the MLCC on 26 September 2003. As a result Maccsand was effectively barred from mining for a year until its appeal against the entire order of Moloto was heard before the Supreme Court of Appeal on 16 November 2004.²⁶⁶

²⁶⁵ The determination of the claim was still outstanding and not a matter for the court to decide at this juncture. However, evidence of a possible clear right does influence the balance of convenience by accepting less inconvenience on its party, and as a result was a relevant aspect in this case.

²⁶⁶ In the Supreme Court of Appeal, Maccsand vs Macassar Land Claims Committee. Case Nr. 594/03.

The Supreme Court of Appeal

Maccsand's appeal sought Moloto's order to be rescinded or modified to allow further mining. Its representatives argued that the decision whether or not to allow mining (under the interim interdict) was in fact a separate issue from Macassar Land Claims Committee's restitution claim, as the restitution granted by the Courts was not necessarily the specific land claimed, but might be financial compensation or the transfer of ownership of other state owned land. This, they argued, held particular weight in consideration of the new Minerals and Petroleum Resources Act (MPRA)²⁶⁷ under which control and ownership of resources no longer vests in the property, but in the state. As a result, Maccsand argued, even if the restitution claim were to be successful, this would not give the community a right to the sand resource on the land. It further argued that it was never given due notice of the contempt consideration and as a result were not given an opportunity to address the issue and prove their non-malevolence and wilfulness. Maccsand further insisted that the Department of Minerals and Energy Affairs legally endorsed its mining operations via its issuance of the requisite mining license and approval of Maccsand's Environmental Management Programme (EMP).²⁶⁸ It claimed that the Macassar Dunes Management Plan (MDMP)²⁶⁹ had designated the area within which Erf 1197 is located as suitable for mining, further endorsing Maccsand's mining activity

²⁶⁷ Mineral and Petroleum Resources Act, Act No. 28 of 2002.

²⁶⁸ The Environmental Management Plan is a required component of any application for a mining license. Maccsand never provided its EMP during the proceedings in the Land Claims Court before Moloto, but claimed it was in accordance with the plan and had already rehabilitated Strip A.

²⁶⁹ The Cape Metropolitan Council initiated the drawing up of the Macassar Dunes Management Plan in 1997 in order to establish a comprehensive spatial management plan for the Macassar area concerning mining, conservation and urban development. After a comprehensive and consultative process, the MDMP was released in draft form in 2001 delivering an in depth appraisal of the Macassar area and detailed frameworks for the sustainable development of the area.

under a structure plan for the Macassar area adopted in principal by the Helderberg administration.

A panel consisting of Supreme Court Judges Farlam, Cameron, Nthiyane, Jafta and Patel heard Maccsand's appeal and Judge Patel delivered its judgement on 30 November 2004. In its judgement the panel only concerned itself with the order given by Moloto and so made no deliberation on any possible illegality of Maccsand's mining activities outside of the judgement of Moloto. The Judges found that the interim interdict in this case was appealable as the interdict ultimately had a final effect²⁷⁰ due to the slow progress made by the Commission for the Restitution of Land Rights in finalising the restitution claim due to an admitted lack of funding.²⁷¹ With consideration towards the new MPRA and its resulting divestment of mineral ownership from property ownership, the panel found the balance of convenience not as strongly in the MLCC's favour as Moloto did in the Land Claims Court. The panel further found Moloto's granting of a cost order irregular as the matter heard before Moloto was not the final hearing of the restitution claim and as such any cost order would be premature and unjust.²⁷² The Supreme Court of Appeal upheld but amended the order given by Moloto in such a way as to allow Maccsand to continue mining on strips B and C²⁷³ on condition that a sum of R120,000 was set aside into a trust fund for the rehabilitation of the mined strips as required by the Minerals Act of 1991 and that Maccsand remained in compliance with its approved EMP. Crucially, the Supreme

²⁷⁰ According to precedent, interim interdicts are generally considered unappealable due to their effect not being final and thus still open to alteration in the final court hearing. It was on this premise that Moloto found Maccsand in contempt of his order.

²⁷¹ Judgement of Patel, In the Supreme Court of Appeal, Maccsand vs Macassar Land Claims Committee. Case Nr. 594/03.

²⁷² Ibid.

²⁷³ As per Maccsand's General Site Layout Plan dated March 1997.

Court gave Maccsand leave to approach the Land Claims Court for a further variation of the order to allow the mining of further strips should the MLCC not proceed with its restitution claim within one year, ‘or as soon as the mining of strip B and C and the rehabilitation thereof is complete, whichever event should occur first’.²⁷⁴ The Supreme Court further upheld with costs Maccsand’s appeal against the contempt of court order given by Moloto and set aside the interim interdict’s cost award until the finalisation of the restitution claim.

The Supreme Court of Appeal’s judgement on the matter between the Macassar Land Claims Committee and Maccsand effectively allowed Maccsand to continue mining indefinitely, while the MLCC’s relative success towards ultimate restitution of Erf 1197 was lost and incurred the costs of Maccsand’s appeal, taxed at R408,582.14.²⁷⁵ Representing a poor community, the committee had no way of paying these costs. As a result, the Sheriff of Kuilsriver and Strand seized all moveable goods of the six members and prepared to put them to public auction.

Immediately, the MLCC applied to the Land Claims Court to have the writ against the committee set aside. Hearing the matter on 1 June 2007, Judge Gildenhuys found that the Land Claims Court had no jurisdiction to order the writ of a higher court (the Supreme Court of Appeal) unlawful.²⁷⁶ He further argued, as Maccsand’s counsel had pointed out,

²⁷⁴ Judgement of Patel, In the Supreme Court of Appeal, Maccsand vs Macassar Land Claims Committee. Case Nr. 594/03.

²⁷⁵ Court records, In the Land Claims Court of South Africa, Macassar Land Claims Committee vs Maccsand, Case Nr: LCC 37/03.

²⁷⁶ Judgement of Gildenhuys, In the Land Claims Court of South Africa, Macassar Land Claims Committee vs Maccsand, Case Nr: LCC 37/03.

that the individual committee members were named in the original application by the MLCC and were thus liable to the cost order.²⁷⁷ As a result, Judge Gildenhuis denied the application and ordered the costs of appeal to be paid by the Macassar Land Claims Committee. After a lengthy process, the MLCC received the necessary financial aid from the Legal Aid Board to pay the requisite costs.

Before the writ of execution was ordered against the MLCC members, the Committee had applied for a second interdict to be ordered against Maccsand in November 2006. This interdict was based on the strengthened claim of the Macassar community to Erf 1197, due to the Committee for the Restitution of Land Rights' detailed investigation into the claim. Effectively, the MLCC was proceeding with the claim for restitution, proving they had not assumed a 'we do nothing' position and once again attempted to have Maccsand's mining stopped due to the harm caused to the community's claim. Heard before Gildenhuis the application was dismissed for not carrying any substantive new arguments or evidence, and the Supreme Court of Appeals' judgement was upheld.

By June 2007, Maccsand was close to having mined out strips B and C and sought the Court's support to mine further strips of land. The MLCC sought for a postponement and the joining of the Department of Environmental Affairs to the matter as an interested party.²⁷⁸ Judges Gildenhuis and Pienaar found insufficient grounds for a postponement. As to the joining of the Department of Environmental Affairs, Gildenhuis and Pienaar

²⁷⁷ Judgement of Gildenhuis, In the Land Claims Court of South Africa, Macassar Land Claims Committee vs Maccsand, Case Nr: LCC 37/03.

²⁷⁸ Matter heard by Gildenhuis and Pienaar 14 June 2007, In the Land Claims Court of South Africa, Macassar Land Claims Committee vs Maccsand, Case Nr: LCC 37/03.

found Maccsand's possession of an approved mining license, which requires an approved Environmental Management Programme, as sufficient evidence for the granting of interim relief. The joinder of the Department of Environmental Affairs was denied as it would raise 'complex legal and factual issues, which are best decided after full argument in subsequent hearings'²⁷⁹.

As for the restitution claim and its impact on Maccsand's mining operations, Gildenhuis and Pienaar once again relied on the framework set out by the Supreme Court of Appeal and judged that while the MLCC's restitution claim had *prima facie* right, though open to doubt, restitution of the original land was not guaranteed. Furthermore, under the new Minerals and Petroleum Resource Act, even if the restitution of Erf 1197 in particular were to succeed, the community would still not hold the right over the sand resources. In light of these facts, Gildenhuis and Pienaar once again judged the balance of convenience to be skewed if Maccsand was not allowed to continue mining, as its financial survival depended on the mining of Erf 1197. On 14 August 2007, Gildenhuis and Pienaar preserved the Supreme Court of Appeal's order with the variation that Maccsand be allowed to mine strips C to F, on the condition that they remained in compliance with the approved EMP. Once again, Maccsand was given leave to approach the Court for a further variation as soon as the mining and rehabilitation thereof was complete.²⁸⁰

²⁷⁹ Judgement of Gildenhuis and Pienaar on 14 June 2007, In the Land Claims Court of South Africa, Macassar Land Claims Committee vs Maccsand, Case Nr: LCC 37/03.

²⁸⁰ Judgement of Gildenhuis and Pienaar on 14 June 2007, In the Land Claims Court of South Africa, Macassar Land Claims Committee vs Maccsand, Case Nr: LCC 37/03.

Upon the given order, the MLCC applied for leave to appeal the decision given by Gildenhuis and Pienaar in the Land Claims Court on 5 September 2007, claiming that Maccsand had not been in compliance with its approved Environmental Management Programme and that their rehabilitation of mining strips included the filling of building rubble, a practice strictly prohibited. The matter was heard on 5 October 2007 before Judge Gildenhuis to whom the progress of rehabilitation was within reason for the process may take years to complete after the end of mining activities. Furthermore, Maccsand's legal obligation to rehabilitate the area as dictated by the approved EMP remained under the Department of Mineral and Energy Affairs' oversight, and its support of Maccsand's application for variation was in Gildenhuis' view sufficient evidence to rebut the MLCC's claims. In light of these arguments, Gildenhuis denied the application for leave of appeal on 8 October 2007. In the meantime the Macassar community continued to wait for the Land Claims Court to rule on its application for the restitution of land. It is a possibility that the state may intervene by offering the community alternative land for the mined out Erf 1197.

Conclusion

Maccsand's legal battle with the Macassar community over its continued mining is a complex issue with a twisting narrative. At the heart of the issue lies a community's claim to a piece of land deeply integrated into its history and communal way of life and the exploitation of the same land by Maccsand, a BEE company some of whose members originate from the same community. The significance of the case lies in the way the state repeatedly supported Maccsand as a Black Economic Empowerment company against the

claim of a poor community's claim to subsistence farming land. In this case, business interests were promoted through selective disregard of the spirit of the post-Apartheid constitution and environmental laws, and the effective denial of the rights of poor. The state, in the form of the Department of Minerals and Energy Affairs and others, actively supported Maccsand's mining within a framework of promoting black economic empowerment. Also, Maccsand secured valuable government contracts as the large infrastructural projects in the Cape Metropolitan Area, in preparation for the hosting of the 2010 World Cup, came into full operation.²⁸¹

In the long court proceedings surrounding the matter, the state's own stance on mining and land restitution are contradictory and reflect the lack of coordination between departments with different responsibilities. This lack of coordination indicates the tensions within the state as departments are confronted with conflicting policies and jurisdictional unclarity. In the Maccassar case, the Department of Environmental Affairs was confronted by mining in breach of zoning and environmental laws supported by the Department of Minerals and Energy Affairs, whose appeal to the economic incentive of BEE appeared to take precedence. In the same way, tensions between provisional and national government structures are reflected, as the Helderberg Administration's responsibility for the enforcement of local zoning laws being infringed upon by national state structures (particularly the DMEA). In the meantime, the Courts continue to act as arbiters of government policy, both extending and delimiting the boundaries of BEE interests vis-à-vis those of other, less empowered, communities. Clearly even Broad

²⁸¹ Maccsand supplied valuable building sand for the government-tendered construction projects such as the new Cape Town Stadium.

Based Black Economic Empowerment is no guarantee that the interests of the poor will be served.

Maccsand, as the Western Cape's only BEE mining company, seemed to have benefited (or attempted to justify its own presence) from the competing jurisdictions of the state, and as the legal battle continued, Maccsand seemed to win ever greater support from the state. Throughout the continuation of the legal struggle, Maccsand (aside from a one year period) was allowed to continue its sand mining operations until the present— ultimately to the detriment of the Macassar community. While the court cases have focused on the interdiction of mining activities, the Macassar community's restitution claim is still to be resolved before the Land Claims Court. While the latest proposed settlement would provide the Macassar Claims community with large areas of land and represent a legal victory for the Macassar Land Claims Committee, the Macassar issue seemed to illuminate the ANC government's willingness to undermine the law in favour of economic imperatives and in particular in this case, BEE.

Maccsand has come into further conflict with provincial laws in a separate sand mining case whereby Maccsand was once again mining sand in environmentally sensitive, agriculturally zoned municipal area in Mitchells Plain.²⁸² Once again obtaining a mining license from the DMEA via an undisclosed tender process, Maccsand ignored environmental and municipal zoning laws in its mining activities. In this case however the Western Cape High Court ruled in favour of the City of Cape Town and the Western

²⁸² Breytenbach, K. 'Court Stops BEE company from mining sand in Mitchells plain', Cape Times, (August 23, 2010).

Cape MEC in August 2010, finding that the mining license does not exempt the BEE mining company from complying with any other relevant laws pertaining the actual land being mined.²⁸³ The High Court ruling came soon after a Constitutional Court ruling that stated that national or provincial spheres of government could not ‘give themselves the power to administer municipal affairs’.²⁸⁴ Once again the state supported Maccsand’s BEE status and the mining license under the MPRA to legitimise their mining activities in contravention of other applicable laws.

²⁸³ Breytenbach, ‘Court Stops BEE company from mining sand in Mitchells plain’.

²⁸⁴ Ibid.

Conclusion

Afrikaner economic empowerment began around the turn of the century with small-scale accumulation of capital along ethnic line via community and political initiatives. In its earliest phase, this ethnic mobilisation of capital allowed the scattered wealth of the Afrikaner farmers to be consolidated into financial institutions which could thereafter promote the interests of Afrikaners in general and provide vehicles for economic empowerment. The ever-growing development of Afrikaner politics found voice in the National Party, which ultimately succeeded in winning state power in 1948. Once in power the National Party was able to make use of established Afrikaner capital as a platform for wide-scale empowerment of Afrikaner through state directed socio-economic policies.

Black Economic Empowerment developed slowly from the 1960s, being pushed by black business leaders and black business associations in an effort to combat restrictive Apartheid legislation on black business. While these business leaders represented political elites, they stood aside from the exiled ANC who was leading the African liberation movement and constituted the largest African political sphere. The Socialist nature of the ANC until the 1990s and the pro-business stance from black business leaders meant that the concept of BEE only entered into government policy once the ANC had turned towards liberal economics and a focus on growth. Even so, BEE's entrance into policy was halting uneven, focusing at first on the state sector and passing broad BEE legislation only in 2003. Since then it has largely been negotiating the

detailed setting of BEE goals and benchmarks with the private sector as established business responded with initiatives of their own.

The ANC faced the difficult task of addressing the huge structural inequalities in the stagnating economy it inherited. With the collapse of the Soviet Union and the growing acceptance of neo-liberal economic ideas in the world trade system, the ANC turned to market-oriented policies to establish an economic growth path, while simultaneously seeking to address transformation and redress with broader society. As the pro-business concept of BEE long operated in opposing discourse to the ANC's political development, it lacked a solid foundation of ethnic capital and the relevant ethic on which to build a strong black middle class.

The Black Economic Empowerment path the ANC took up was highly 'top-down' as it sought to use the state's capacity to transfer wealth and wealth creating production to black ownership. Unlike Afrikaner empowerment, which was much more 'bottom-up' the ANC upon coming to state power did not have a strong foundation of black nationalist capital to base its Black Economic Empowerment efforts on. The ANC was dependent on use of state control to initiate wealth transfer and forcibly create a space for black business to operate in an economy dominated by white and international interests. While the policy of Black Economic Empowerment came under much scrutiny and criticism from political and business analysts, it remained a necessary and important tool for instating equitable conditions and redress.

The ANC's top down approach to transformation via BEE has shown success in diluting the wealth of established white and foreign business, but showed limited success in enacting broad-based wealth creation and fundamental transformation due to the inherent tensions within BEE as a transformative policy. Afrikaner economic nationalism by contrast had much more small-scale, organic roots, which allowed for the creation of ethnic capital and business. It is important to remember that racially discriminatory legislation made the empowerment of an ethnic minority substantially easier for the National Party. However, BBBEE entrenches a path whereby the costs of a market-oriented strategy is passed onto the poorest sector of society, while simultaneously projecting itself as a fundamentally transformative 'broad-based' strategy.

The micro-studies of Maccsand and Intshinga Holdings provide an alternative perspective to the common broadly political approaches to BEE and its transformative power. The micro-studies show in particular how the ANC struggled to reconcile the contradictions inherent in its Broad Based Black Economic Empowerment strategy. The state's promotion of BBBEE interests over those of the poor communities is indicative of its reluctance to engage with the contradictions in its policy in a deeply constructive way. Over ten years after its establishment, the success of BEE as a transformative strategy remains uncertain.

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