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## **An assessment of Employment Equity and Broad Based Black Economic Empowerment developments in South Africa.**

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### **Abstract**

**Purpose:** This general review article provides an assessment of employment equity, Broad Based Black Economic Empowerment (BBBEE) and associated human resource management policies in South Africa. Policies and practices, and progress in representation of formerly disadvantaged groups are evaluated.

**Design:** general review using descriptive primary and secondary data and qualitative organizational factors

**Findings:** The pace of representation and diversity at organisational levels is incremental rather than transformational. Conclusions for policy makers and organizational leaders are drawn, taking into consideration socio-historical, political and demographic context of this jurisdiction.

**Social implications:** The findings and conclusions are pertinent for public and organizational policy and practice

**Key words:** Employment discrimination, employment equity, organizational culture, black economic empowerment, diversity policy and managerial practice.

### **Introduction**

The South African government has sought to redress the historical legacy of workplace discrimination through the introduction of the Employment Equity Act (EEA) (1998) and other legislative and institutional interventions. Through its relatively recent democratic trajectory with the first inclusive election occurring in 1994, South Africa became a parliamentary democracy, adopting policies that involve government intervention for the prevention and elimination of unfair employment discrimination against racial groups, women and persons with disabilities. The construct of Employment Equity as the basis of South African legislation through the EEA

(1998) is based on the Canadian jurisdiction, though it has borrowed from other jurisdictions too, including affirmative action provisions in United States legislation. This article provides an overview of the distinctive features of the employment equity (EE) framework adopted and its more recent inclusion under the broader policy framework of Broad Based Black Economic Empowerment (BBBEE). The latter is based on the Broad Based Black Economic Empowerment Act (BBBEE) (2004), Industry Charters (2004) and BBBEE Codes (2007). This article evaluates the development of EE and BBBEE considering the demographic characteristics and developments of the South African labour market and enabling legislative frameworks. This article provides an assessment of the labour market in South Africa, the legislative framework of Employment Equity and BBBEE, and the effectiveness of the legislation, including some of its benefits and limitations and an evaluation.

We provide a background to the employment equity legislation evaluate policies and practices, assesses progress and conclude by posing propositions for consideration by South African policy-makers and managers as they strive to continue to develop proactive policies and new initiatives in accommodation of designated groups such as racial groups particularly African blacks, mixed groups and Indians in South Africa, women, and people with disabilities.

### **An Institutional perspective - legislative features of Employment Equity and Broad Based Black Economic Empowerment**

The analytical approach adopted for the article is that of institutional analysis of regulatory and institutional mechanisms used to redress past unfair economic and employment discrimination. The analysis and concluding sections consider the limitations of this ‘discrimination and

fairness’ and ‘access and legitimacy’ perspective in favour of a more transformative approach Booyesen and Nkomo (2010), Thomas and Ely, (1996) and April and Dreyer (2007).

From an institution building perspective, the post-Apartheid state in South Africa in the 1990s and in 2000’s, enacted some of the most progressive legislative measures including the Labour Relations Act (1995), Employment Equity Act (1998) (EEA) , Skills Development Act (1998), and Promotion of Equality Act. South Africa has patterned its Employment Equity Act and a part of the Constitution Act, such as section 9 (2) of the Bill of Rights in its Constitution of 1996 after Canada and passed the Broad-Based Black Economic Empowerment Act (BBBEE) in 2003. The Civil Rights Acts of 1964 and 1991 in the United States are similar to the key thrusts of this article in seeking to redress historical unfair discrimination and promoting equality of opportunity. The EEA (1998) in South Africa specifies a number of grounds which constitute unfair discrimination.

The institutional armoury against unfair discrimination is now quite formidable. For example, Chapter 2 of the Employment Equity Act prohibits unfair discrimination against designated employees. These include black people, women and employees with disabilities. Legislative prohibitions against unfair discrimination are also intrinsic to South Africa’s Constitution (1996). Chapter 2 (the Bill of Rights) contains an equality clause, and like the Employment Equity Act. Additionally, Schedule 7 of the Labour Relations Act (1995) considers unfair discrimination either directly or indirectly as an unfair labour practice. Grounds include race, gender, ethnic origin, sexual orientation, religion, disability, conscience, belief, language and culture. Labour laws have been at the forefront of the post-apartheid government’s determination to remove unfair discrimination. The Promotion of Equality and Prevention of Unfair Discrimination Act

(1999) seeks to prohibit discrimination in both civil society and in employment practices. The draft Constitution adopted by the Constitutional Assembly on May 8, 1996 was approved by the Constitutional Court in November of 1996. Section 9 (2) of the Bill of Rights in the Constitution states in part: “To promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken”. Similarly, section 2(2) of Schedule 7 of the Labour Relations Act of 1995 stipulates that “an employer is not prevented from adopting or implementing employment policies and practices that are designed to achieve the adequate protection and advancement of persons or groups or categories of persons disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of all rights and freedoms.” More explicitly, section of the EEA sets out the purpose of the Act to achieve equity in the workplace by: “(a) promoting equal opportunity and fair treatment in employment through the elimination of unfair discrimination; and (b) implementing affirmative action measures to redress the disadvantages in employment experienced by designated groups, in order to ensure their equitable representation in all occupational categories and levels of the workforce. The legacy of workplace discrimination against blacks, the majority population, is systematically being eroded, albeit slowly South Africa still has one of the biggest gaps between rich and poor (Bhorat & van der Westhuizen (2008).

Whilst the discourse on workplace discrimination has been dominated by race, gender issues have more prominent with labour court rulings on unfair discrimination against women (such as *Whitehead vs. Woolworths* 2004). According to the Commission on Gender Equality (CGE) women constituted the major segment of the SA population but accounted for only a third of the labour force. They were mainly concentrated in service, retail and manufacturing sectors. Across

all sectors, women were mainly to be found occupying jobs associated with stereotyped domestic roles, thus gender equality within the workplace, according to the CGE was underpinned by job segregation and perceived roles associated with gender group (CGE, 1999). As previously mentioned, given the historical race-based inequalities in the labour market, the primary focus of the EEA (1998) and BBBEEE has therefore been on race and to a lesser extent on gender affirmation. White women are included in the category of designated groups and whilst also incurring gender discrimination their relative position in relation to Black women remains relatively privileged. Race continues to reflect historical divisions including cutting across the gender issue. The continuing discourse on some kind of hierarchy of disadvantaged tends to reinforce this. This notion of a hierarchy of relative disadvantage is especially pronounced in the argument that Coloured and Indian people were and continue to be more advantaged than Black Africans. The legal definition of designated group which includes these three groups together remains a legal rather than social construct. The latter reflects the geographical diversity of ethnic groups in provinces such as Kwazulu Natal and the Western Cape.

Statutory intervention is considered necessary by the state to influence supply-side skills formation and structural change in the labour market. In addition to the basic construct of employment equity, both jurisdictions refer to the term 'designated groups'; relating to specified targeted groups in the legislation. Obviously the composition of these groups differs given demographic and historical differences in different jurisdictions. The law applies to government agencies and private sector employers with the EEA applying to companies employing 50 or more employees or those with a specified financial turnover as well the government departments and agencies throughout the country. BBBEE and its employment equity provisions pertains to organizations with a turnover of R35 million or higher, though small businesses with a turnover

of R5 million or higher may have certain less stringent provisions (Balshaw & Goldberg 2008, p. 35). The EEA (1998) requires an employer to firstly, set numerical goals and timetables and devise strategies to address under-representation of designated groups in occupations and organizational levels and to recruit, retain, train, develop and promote qualified designated groups; secondly to identify and eliminate discriminatory job barriers by undertaking a thorough review of its staffing policies.

These practices include restrictions unrelated to job performance including religion, inflated job experience, possible bias in psychological tests, job interview panel composition and glass ceilings in promotion opportunities. There is a legislative requirement on an employer to (1) develop and lodge a five-year employment equity plan with the relevant government labour department. Employment Equity plans include adopting positive measures to remedy the effects of past discrimination through pro-active recruitment selection, training and promotion of the historically disadvantaged individuals, (2) to take reasonable accommodation measures such as accommodation of religious observances and offering flexible working hours and adopting policies which prohibit unfair discrimination including sexual harassment, (3) Employers are required to conduct an internal and external workforce analysis of its workforce and qualified “economically active population” in all occupational categories and levels in the context of South Africa including directorships of company boards (King 2006).

Employers are also required to consult with employee representative or bargaining agents in case of unionised employees. Union density in South Africa is around 25 percent, though higher in the public than private sectors (Horwitz (2006). Employers are also required to provide information on their equity plan to all employees. Whilst employee participation is well researched internationally there is limited research on its specific application to the area of

employment equity, particularly as it applies in the South African labour market. Horwitz, Jain and Mbabane (2005) found that although incremental progress has been made in enhancing racial and gender representation in the South African workplace, this was not strongly supported by consultation by employers with trade unions. Union participation in equity planning appears to be largely 'information giving' or at a 'rudimentary consultation level' with inputs being sought but little workplace partnership in employment equity planning and human resource development issues; this in spite of section 16 of the Employment Equity Act requiring reasonable steps to consult and reach agreement. Employment equity does not require an employer to take a measure that might cause undue hardship; neither to hire and promote an unqualified designated group employee nor create new positions in its workforce. In South Africa an employer is prohibited to make any decision that will establish an absolute barrier to the prospective or continued employment of non-designated groups. However, this practice this is questionable especially in a recessionary economy where labour market entry opportunities are more limited for all groups especially the youth. Compliance and monitoring is mandated with labor inspectors of the Department of Labor required to conduct employer audits. There are also contract compliance provisions where contract compliance is a required by the EEA (1998). Importantly in recent years obtaining contract with state departments or work with companies which have such contracts, BBBEE legislation has a somewhat complex scorecard approach in which a firm acquires a BBBEE points scores. Organisations who fail to reach certain scores may not be able to tender for contracts or fail in their contract bids because they would not be considered 'BBBEE compliant'.

The public discourse around unfair discrimination, redress and empowerment tends to centre around race and increasingly on the evolution of a multi-racial middle and especially upper class

elite. This occurs especially in the` critique of BBBEE, which some argue has enriched a few but has failed to successfully empower the majority in the labour market or indeed the underclass of a large unemployed sector estimated to be as high as 23 percent. Notwithstanding the regulatory compliance aspects of BBBEE, Borat and van der Westhuizen (2008) argue that increasing inequality has occurred given the still largely poorly skilled labour market majority, ill-equipped for the workplace skills needed in an increasingly globalised and interconnected economy. This has raised a rigorous debate on the effectiveness of BBBEE as a legislative intervention to create a fairer distribution of wealth and opportunity. This notion is reinforced by findings of black middle managers who still experience stronger racial than ethnic identity in the work place (Op't Hoog, Siebers and Linde (2010: 60-81).

### **The relationship between Employment Equity and Broad Based Black Economic Empowerment**

BBBEE is seen as necessary to remedy the economic imbalances perpetuated during apartheid (Mparadzi and Kalula 2007). When the first democratic election was held in 1994, discussion occurred about appropriate strategies to pursue BBBEE. This subsequently resulted in the active involvement by the public and private sector organizations through multiple initiatives aimed at extended economic power to the black population (Mparadzi and Kalula (2007). A BBBEE Commission was established to identify barriers to black participation and to propose a viable BBBEE strategy. The Commission released a comprehensive report in 2000, prescribing an integrated strategy which incorporated employment equity. It recommended national legislation to facilitate economic empowerment which resulted in the Broad Based Black Economic Empowerment Act. BBBEE is a process aimed at strategically transforming the South African



economy by inter alia spreading equity holdings to incorporate previously disadvantaged South Africans, re-organising management structures and ensuring greater participation of the majority in the economy to achieve economic justice (Osode (2004). BBBEE is governed by several legal instruments including recent scorecard measures of performance for different economic sectors such as financial services.

The BBBEE regulatory framework is based on the Constitution provision (s 9(2) which provides for the right to equality and makes provision for legislative instruments aimed at achieving this in order to remedy historical inequalities. Designated groups defined in the legislation as in the case of employment equity are ‘black people’ defined as Africans, Coloureds and Indians. Chinese South Africans have been included in this group following a High Court decision which concluded that they had been historically discriminated against under Apartheid. Other designated groups include women and people with disabilities. Codes of good practice have been issued by the Department of Trade and Industries and were gazetted in February 2007. The structure and content of the codes include seven sub-elements of BBBEE. These are grouped into three categories (DTI 2004):

1. Direct empowerment – Ownership and managerial control
2. Human Resource Development – Employment Equity and Skills development
3. Indirect Empowerment – Preferential procurement, enterprise development and socio-economic development & Sector specific contributions.

These codes are of a legally binding nature given that they are regulatory instruments issued by the Minister of Trade and Industries in terms of the power to gazette legislative instruments derived from provisions of the BBBEE Act. They may therefore be considered as ‘delegated legislation’ (Mparadzi and Kalula op cit p.11).

Ultimately however it is submitted that the implementation of BBBEE is a strategic firm level decision made considering access to business opportunities, resource capacity, growth potential market forces and survival necessities. In practice codes are implemented by ‘carrot and stick mechanisms facilitated by accredited BBBEE rating agencies. An allied an important facet of BBBEE are BBBEE transformation charters which are sector specific regulatory instruments voluntarily developed by stakeholders in a particular industry together with government departments. These reflect an economic sectors commitment to BBBEE and are also gazette ‘for general information’ in terms of s12 of the Act. They aim to guide transformation; set benchmark standards for compliance the organizations in a particular sector should meet (DTI 2005). The charters are voluntary partnership agreements that bind only private sector signatories (Balshaw and Goldberg (2008).

It may be asked what is the relationship between employment equity legislation, its rationale and that of BBBEE? Whilst employment equity legislation remains important the broader economic empowerment legislation includes equity provisions but is wider ranging in its aim of changing the social structure of South Africa through redress of firm ownership and business access of the majority Black populace. Whereas employment equity legislation focuses mainly on employment opportunity redress in workplace practices, the latter Act (BBBEEA) was enacted to provide to Black people economic opportunities to “manage, own and increase financial and managerial control in the South African economy, as well as attain significant decreases in income inequalities.” (Department of Trade and Industry 2003). Broad-based Black Economic Empowerment (BBBEE) “incorporates the earlier attempts to known as Reconstruction & Development Program (R&DP) for socio-economic transformation as well as the need for transfer of ownership, management and control“(BEE Commission Report, 2001; Mbabane,

2007). Use of the legislature to give effect to economic empowerment supports the notion that the ‘political franchise’ may have been necessary but is not necessarily sufficient to advance broader participation in the economy by the disadvantaged. Similarly, reliance on market forces alone would also not be sufficient to stimulate economic participation/enfranchisement. Employment Equity legislation on its own is one with its workplace orientation whilst also considered necessary to promote changes in the social mobility of the workplace but is not considered sufficient to address broader social inequality; hence the public policy intervention of BBBEE. Overcoming the historical legacy of labour market discrimination and development and mobility are important underpinning assumptions of the nexus between Employment Equity and BBBEE.

### **Mobility, development and changing profile of the labour market**

The South African population was 48.5 million in 2007, with 77% Africans, 11 percent Whites, 9 percent Coloureds and 3 percent Indians (Statistics SA - Community Survey cited in SAIRR Fast Facts, February 2008.) Comparatively it was estimated that 52 percent of the total population was female. In 2007, 4.3 million people were unemployed, or some 25, 5% of the economically active population (Statistics SA Labour Force Survey, SAIRR Fast Facts February 2008, and Table 1). Historically, apartheid created inequality in access to education, skills, professional and managerial work for blacks (including for Coloured and Indian people). Job discrimination in South Africa was institutionalized by laws including job reservation clauses and restricted access to skilled jobs, preserving them for white employees under the Mines and Works Act and the then Industrial Conciliation Act of 1904 and 1952 respectively. All such legislation was abolished following recommendations by the Wiehahn Commission of Inquiry in

1979. The Labour Relations Act (1988) made discrimination on the grounds of race or gender an unfair labor practice.

In 2005 already the Public Service Commission report acknowledged that racial targets had largely been attained with African indeed 'over-represented' in the public sector's senior echelons. Statistics South Africa's Household survey found that 42 percent of legislators, senior official and managers are black. In top management positions in the private sector white male representation declined by 22 percent. In addition to nine occupational categories, employers are also required to group employees into six occupational levels, ranging from 'Top management' to 'Unskilled and defined decision making'. Statistics South Africa's Household survey showed that total number of black males in top management positions increased by 45 some 8 percent from 2001-2007. This data also shows a decrease of 24.1 percent in white male professionally qualified and experiences specialists and middle management employees and an increase in black representation in this category of 24 percent, with a significant increase in black female representation in this category of some 71 percent over this period. This suggests that there have been significant changes in the representation profile in South African organization in both public and private sectors, with employment equity legislation therefore having positive effects. This is analysed in further depth below with an evaluation of data from the (2009/2010) Commission for Employment Equity Annual Report.

**Insert Table 1 here.**

Table 1 shows that Black managers represent 32% of all employees at the top management level while Whites consisted of 64 % at this level. Whilst still constituting a majority in this group, the effect of employment equity is evident in this changing profile, with white managers declining in the representation in senior executive and middle management groups. Underlining the disproportion in racial representation at the top management level, black representation is approximately 36% of the economically active population (EAP) while white representation is about 5 times higher than their EAP of 12.2%. As shown in greater detail in Figure 1 gender differences occur across racial groups at the top management level. This is also evident at senior

management and professional levels (Figures 2 and 3). The EEA (1998) groups all women together as a designated group. However, White women constitute 9.3% of all women at top management level across all sectors and Black women 8.3% but white women have higher representation of some 10.2% in the private sector. Black women have higher representation (28%) in the public sector as compared to 3.6% of White women in this sector at this level.

**Insert Figure 1 here.**

At senior management level (Figure 2), Black women also constitute a higher percentage (25%) in the government sector as compared to 9.5% of White women at this level in the public sector. But White women represent 17% of private sector senior managers compared to Black women who constitute only 8.3% of women at this level. These figures show that Black women are more significantly represented at senior and top management levels in the public sector than the private sector though significant differentials continue between men and women. Figure 3 shows a similar pattern in respect of professionally qualified employees,

**Insert Figure 2 here**

Figure 3 shows that as with senior and top management positions, men dominate the professional categories though significant differences occur by race and gender. The combined Black designated group (African, Coloured and Indians) reflects a Black majority in professional categories (55%) as compared to 27.4% of Whites in the all employer group. This would at face value appear to be a positive development, though it should still be assessed against their relative representation of economically active population (EAP). This would mean that Black professional employees remain under-represented in terms of their proportion of the EAP. White men and women are still more significantly represented (57% combined) in the private sector

professional skills group. African employees are largely recruited at lower occupational levels

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e.g., unskilled), it is also noteworthy that white males are a minority in terms of representation at all levels.

**Insert Figure 3 here.**

The above discussion and data suggest that employment equity legislation has affected the establishment of institutions to further the implementation of employment equity in respect of race, gender, people with disabilities and other categories identified in the EEA (1998). However, 'effective' organizational change would need to move beyond legislative or institutional compliance which more often than not, elicits a begrudging sense of compliance rather than a deeper commitment and organizational learning. The upward mobility of black managers and women has in the past been limited by social closure. South Africa's re-entry into the international business community has increased awareness about its relative competitiveness in the manufacturing and services sectors. A key group responsible for exercising leadership for organisational transformation are the directors of organisations. The next section considers their role in this regard.

**Director roles in transformation**

Recently, statutory and governmental tender requirements have been towards employment equity and diversity at all levels. Several black directors have been appointed to boards of directors. Although there has been progress on employment equity in organizations, the rate of progress in South Africa has been incremental. There is a concentration of managerial control through a system of interlocking directorates where the same person(s) serves on the boards of several corporations. Noteworthy however, this 'interlocking directorate class' is becoming more multi-racial in its composition. Black directorships of listed companies have inched up to 24% (Jack,

2008). This is likely to change significantly given the legislative interventions for black economic empowerment which is broad based, includes share ownership and requires compliance with sector BBBEE charters. Out of 487 black directors there are 357 who hold only one directorship position. By 2008 there were only some 118 black directors out of 1023 executive directors on boards of listed companies, and fewer than 25 female directors, several of these holding multiple directorships. By April 2008 there were 18 black chief executives but fewer than 12 chairmanship positions held by black executives. However some notable top CEO posts of major firms are now held by black executives. Phuthuma Nhleko is at the helm of MTN one of the largest telecommunications companies globally with a market capitalisation of more than R200 billion. Nonkululeko Nyembezi-Heita is the most powerful black female heading ArcelorMittal in South Africa. However there is according to Jack (2008) a tendency to appoint black people to non-executive director roles rather than executive directorships. These demographic data are important in understanding the context of pipeline talent for future CEO and chairmanship roles in South African firms. The stark implication is the paucity of black chairmen which though improving has seen the role still largely limited to a group of experienced white chairmen, several of whom occupy this role in multiple organisations. This reflects a so-called interlocking chairmanship cadre which is gradually 'loosening up' and becoming more inclusive. It is also submitted that in recent years certain Chairmen have tended to cling to prolonged and too frequently renewed tenure in these positions limiting change/transformation in their organisation. Following pressure from shareholders and external pressure groups, including on occasion governmental investment agencies with investments in these firms; this has seen Chairman ousted in some companies such as Barloworld with much adverse publicity. Though managerial and professional development progress may be increasing incrementally, Botsis (2007) notes that this occurs in a context where 20.5 million people live on less than R 3 000 a year, reflecting a continuing massive underclass.

### **Joined up public policy and Broad Based Black Economic Empowerment**

The need for a more comprehensive and coordinated and joined-up public policy was recognized by the government in the enactment of the Broad Based Black Economic Empowerment Act of 2003. Since the enactment of the BBEEA, the economy and enhanced economic growth through private sector and state driven has ensured increasing Black participation in the

mainstream economy. BBBEE as a work in progress has made incremental strides. There are according to Mparadzi and Kalula (2007) two ways of assessing BBBEE progress. One is to consider the number and nature of BBBEE deals/transactions over the years; a second indicator of BEE progress is the extent of equity ownership. The section below assesses progress in these two respects.

The Johnnic deal was the first large and visible buy-in by black business men and was regarded as a pioneering phase of BBBEE development (Kennedy 1997). From 2000 saw deals in the mining sector involving companies such as Anglo Coal and BHP Billiton and Eyesizwe which created the fourth largest coal producer in South Africa. In financial services large deals were concluded by the Old Mutual and Nedbank.

**Insert Table 2 here.**

The period 2007-2008 was a watershed for BBBEE financial transactions. (Khuzwayo 2008). The value of BEE transactions concluded climbed to R 96 billion up 71 percent from 2006 according to Ernst & Young's annual mergers and acquisitions (M&A) report. Some 153 BEE transactions occurred over this period with a higher value than in the preceding two years. Mergers and acquisitions has become an important activity as a basis for BEE transactions. The largest transaction has been the sale of 10 percent of Sasol the synthetic fuels company, to black people, selected BBBEE groups and employees. This was the largest empowerment deal yet valued at R17.9 billion. This transaction increased to R26 billion in 2008 with 4 percent of the empowerment stake made avail to the company's employees at all levels; 1.5 percent to a foundation aimed at improving the country's maths and science education and 1.5 percent to selected empowerment partners. Three percent was to be sold to the black public at a small discount. It is anticipated that this deal would bring in between 100 000 and 2000 000 new shareholders into the company. This suggests that the concept of BBBEE is 'maturing' in the sense of the broad base of this particular scheme which with that of insurance giant Old Mutual is held to be one of the most 'progressive'. The second largest transaction had been the planned purchase of a controlling stake in Mutual and Federal one of the country's largest insurance companies by Royal Bafokeng Holdings at R8 billion in 2007. The third largest empowerment transaction in which a substantial stake in Holcim was valued at R7.5 million sold to the Afrisam BEE consortium. Besides the increasing influence of BBBEE itself commentators haven noted



that the nature of these transactions has changed from 2007 to reflect a 'second-phase BBBEE' which included the restructuring of existing empowerment transactions and the expansion of existing BEE business. (Ernst & Young Report 2008). An important milestone was the publication in 2007 of long-awaited codes of good practice for broad-based BBBEE by the Department of Trade and Industry. As previously mentioned 'the emphasis on broad-based black economic empowerment reflected the strong view that the benefits of South Africa's transformation effort were being felt by too small a proportion of the country's black population' (Khuzwayo 2008). The publication of the codes created clarity regarding several aspects of empowerment. The question of company size was addressed with smaller forms with turnover lower than R5 million being exempt from the legislative provisions. Medium-sized firms worth revenue between R 5 million and R 35 million are affected to a lesser extent in having to comply with 4 out of 7 provisions. The largest transactions are shown in Table 3 below.

**Insert Table 3 here.**

Table 4 below shows that the services sectors show the highest use of preferential procurement, an aspect of BBBEE seeking to effect supply chain development of black business suppliers to larger firms with the general services and financial sector being the most significant.

**Insert Table 4 here.**

The above data indicate an increase in BBBEE activity over the past 5 years suggesting that both legislative intervention and social pressures were having an impact in increasing black owned share of the economy. The codes have a points system to measure participation in the seven main categories: share ownership (20 points), managerial control (10 points), employment equity (15 points), skills development (15 points), preferential procurement (20 points), enterprise development (15 points), and socio-economic development (5 points). There are incentives for deals with new entrants into the ownership category. In terms of s10 of the Act every organ of state and public entity is required to consider and apply this code in determining the qualification criteria for the issuing of licenses, concessions or other authorizations in terms of law, developing and implementing a preferential procurement policy, determining the qualification criteria for the sale of state owned enterprises and developing criteria for entering into public or private partnerships. A carrot and stick approach has been adopted to ensure compliance with the codes since adherence to these BBBEE standards stipulated in the codes enhances prospects of

success in tenders for government work, in applications for licenses, in authorizations for projects or in the granting of concessions (Osode op cit p.114). Where private sector firms do not necessarily transact directly with the state or its agencies, the ‘cascade effect’ pressurizes them to towards compliance given the supply chain effect of supplier compliance in order to secure business. Financial services for example may also be reluctant to lend to non-compliant firms given their obligations of their BEE charter. Hence forces for compliance are often indirect notwithstanding the non-binding status of codes on private sector entities (Mparadzi and Kalula op cit p 15).

An indicator of BBBEE progress is the extent of equity ownership. There has been a notable increase in black equity ownership and control of South African companies. Between 1993 and 1997 black ownership increased from under 1 percent to 16-17 percent in market capitalization of the Johannesburg Stock Exchange (JSE) (Kennedy 1997). Further patterns of equity ownership between 1997 and 2003 are reflected in graph 2. This graph shows that there is an overall pattern towards increased black control on the JSE, though the number of BBBEE firms on the JSE with more than 25 percent ownership is small. Although the number of black controlled firms on the JSE has been below 20 percent, as indicated below, since 2007 further progress has occurred. A limitation of listed company equity ownership data is that they provide merely a telescopic view of BBBEE performance as statistics in the enlisted environment are not considered (Mparadzi and Kalula 2007).

The Empowerdex 2008 survey of Top 40 Johannesburg Stock Exchange (JSE) listed companies indicates that participation by the top 6 consortiums prior to BBBEE codes was dominate at 70 percentage points but after that the codes figure dropped to just less than 10 percentage points. Direct participation by black employees has grown exponentially from 5 percentage points prior to the codes to over 70 percentage points after the codes were introduced. Similarly, the participation by BBBEE schemes has grown from some 35 percentage points prior to the codes to just under 70 percentage points after the codes. The participation of women’s groups has grown from 40 percentage points before the codes to just under 60 percentage points after the codes. By 2006 black directors held 25 percent of board positions on the JSE (some 558 board positions) with approximately 50% of all JSE companies having entered into a BEE transaction. Less than 30 percent had more than 25 percent ownership however (Khuzwayo 2006). Jimmy

Manyi former Chair of the Employment Equity Commission has argued that ‘a new mindset is needed given that the procedural element of the codes is in its teething stages noting that established businesses are reluctant to use black suppliers who lack a demonstrable track record (2009).

This is pertinent as an element of the codes relates to enterprise development in which less progress has occurred. Manyi goes on to argue that ‘it would be dishonest to say that BEE has not delivered. Maybe we could argue about the quantum of delivery. How else could one justify the mushrooming of black millionaires who 15 years ago did not have a balance sheet? But a missing ingredient in this burgeoning middle class is visible plough-back projects that would signify and confirm the acceptance of responsibility that we have in climbing the economic ladder. It would be wrong for those who have climbed this ladder to think that they did on their own without the help of legislation such as the BBBEE Act and employment equity’ (op cit p. 19). Evidence of a growing black middle class is further supported by The Unilever Institute at the University of Cape Town (2007) which found that some 2.6 million black people about 10 percentage the black African adult population could be considered part of this social group which includes civil servants and legislators in a broad net. This group increased by over 30 percent in the period 2006-2007 making up 54 percent of black purchasing power. Arguably a social consequence of this is increasing earnings differentials and inequalities as the social structure in South Africa becomes increasingly multiracial.

### **Analysis of Employment Equity and BBBEE developments**

The following section considering the regulatory or institutional context of equity and organizational compliance requirement; this in the context of recognizing that ‘effective’ organizational change needs to move beyond legislative compliance which more often than not, elicits a begrudging sense of compliance rather than a deeper commitment and organizational learning.

South Africa has the anomaly of an oversupply of unskilled and semi-skilled labour and a shortage of high level skills, especially technical and managerial skills. The Employment Equity

Act in SA has been in effect for some 15 years. The legacy of apartheid will take some time to overcome. Although progress has been made in enhancing racial and gender representation in the workplace in SA, this is an incremental process which has to be supported by coherent human resource development priorities through the implementation of the Skills Development legislation and changes in the organizational culture. This is vital at both public policy and organizational levels. The biggest labour market priority should in the first instance be that of human resource development and education in skills and competencies needed in a society in transition; this is quite fundamental given the skills shortage in priority skills required in the South African economy which has grown at around 5% over the past five years, though more recently with the global recession has shrunk putting pressure on maintaining the momentum of affirmative policies to redress past labour market inequality.

According to Moleke (2006), the government as an employer, accounts for most progress in racial representation and advancement of black people in the labor market, although there are disparities in the distribution at different skills levels. Employment equity measures have included a national integrated human resource development strategy, legislated de-racialisation of business ownership in the private sector, national targets-which include land distribution and ownership, equity participation in economic sectors. These overall measures, along with the progress in implementing employment equity, will greatly improve the chances of majority Blacks to have their just share in the South African economy. BBBEE Codes and Scorecard by Department of Trade & Industry (DTI) December 2005; February 2007) emphasizing several elements of skills development; seek to economically empower designated groups through share ownership and purchase interventions, though a criticism of the impact of this development is that this is to date an uneven process with the majority not benefiting directly.

The government has initiated an important skills development process through ASGISA (Accelerated Skills and Growth initiative) and JIPSA (Joint Initiative on Priority Skills Acquisition) focusing on identifying and funding priority skills formation. These initiatives occur

in the context of the country's accelerated growth and priority skills plans. Transformation and Employment Equity, have begun to economically empower the majority supply in key priority areas such as engineering and health care have been identified, but scarce skills retention remains a critical problem, given the 'pull factors' pertaining to the current mobility of talent in global labour markets and 'push factors' including violent crime (Horwitz 2007). Supply side outputs from universities of Black engineering and business graduates are unsatisfactory. Degree completion rates by Black students is less than half the white completion rate, negating the gains made in black enrolment access and equity, even where black enrolment in first year exceeds that of white students in many institutions (Scott, Yeld and Henry 2007). With some exceptions, several of the sector training authorities (SETAS) appear not to be meeting their statutory skills development mandate in spite of sufficient funding; and are currently being reviewed by government with a view to integrating some of them and enhancing operational and delivery efficiencies. Employment equity and skills development are interrelated and interdependent processes given that equity cannot effectively occur without skills formation.

The linkages between entrepreneurship development, employment and economic growth have been identified (Global Entrepreneurship Monitor (GEM) 2005). Research on small, medium, and micro-enterprises (SMMEs) and the education and skills development of 'survivalist' business entrepreneurs shows that there is a positive relationship between educational and skills training of an entrepreneur and propensity for that enterprise to create employment (von Broembsen and Wood 2005). The GEM project found that tertiary-educated adults have a greater potential to create jobs than those who have not completed high school. Support for SMME job creation is therefore vital, but particular support for training and development of entrepreneurs or potential entrepreneurs may be a key contributor in the propensity of SMMEs to create employment beyond 'survivalist' self-employed micro-enterprises to formal small businesses. The conversion of such firms from 'a survivalist' stage to formal small enterprises is in a part, related to the knowledge, skills and education of these start-up owner managed firms. Von Broembsen and Wood (2005) conclude that level of educational attainment of an entrepreneur is the best predictor of job creation potential of a firm. They argue that the bulk of new jobs will arise from a small proportion of owner-managed firms that create 20 or more jobs. The evidence from the GEM project is that the likelihood of such firms arising from survivalist entrepreneurial activity, or among entrepreneurs who have not at least completed secondary education, is low

(op cit, p.29). The above researchers argue that the South African schooling system is failing to provide the vast majority of its learners with the basis knowledge and skills needed to start a business. They find there are large inconsistencies in the provision of entrepreneurial education and skills in schools, with the probability of learners in black schools largely in poorer urban and rural areas, acquiring critical entrepreneurial skills and attitudes is as much as 50 percent lower than for their counterparts in predominantly white or multi-racial schools. The greatest weakness was found to be in financial arithmetic. Educator commitment to teaching of entrepreneurship subjects like business ventures, enterprise dynamics, financial literacy and hands-on planning skills are a function of materials and resource availability.

Education and training is therefore a key determinant of a country's entrepreneurial capacity and represents a concerning skills gap based on historical inequality in education provision not yet adequately addressed. This would appear to have created a job or employment expectation culture rather than an entrepreneurial one - with the former manifested by an expectation held by the vast majority of school leavers and graduates who seek employment rather than to create employment by establishing their own business. Whilst other African emergent markets such as Nigeria and Egypt experience higher levels of entrepreneurial activities much of this too is reflected in a failure to convert or grow from micro-survivalist endeavours to formal successful small business enterprises that create further employment. Just as there is an attrition rate in larger organisations not retaining scarce skills, SMMEs experience attrition in the large proportion (over 50 percent) who fail in their first two years, or who are unable to grow into more sustainable formal enterprises.

Mpho Nkeli the Acting Chairperson of the Commission for Employment Equity argues that 'Employment Equity is the worst performing pillar of BBBEE (CEE Annual Report 2010, p.iv). She advocates changes to the EEA to give EE a distinct measure during the tender process for government contracts and further measures to enhance compliance and introduce more severe penalties for firms which flaunt the law. It is debatable whether further legislative regulation will foster support from employers or rather further grudging compliance. Booysen (2007) posits that the rate of progress of diversity and representation in organizations is not only a supply-side skills development question, but one which relates to the persistence of a prevailing White-male

oriented organizational culture, lack of communication and shared understanding of employment equity, low leadership commitment, and inconsistency in employment equity implementation. The latter also acknowledges the role of White employees' fear of displacement and lack of meaningful engagement. Kelly, Wale, Soudien, and Steyn's (2007) critical analysis can be applied to understand diversity and the debate surrounding workplace changes or transformation that pertain to differences and discrimination.

Three dimensions are considered in this regard: categories of difference, engagement of difference, and sites of change. Dominant paradigms often do not adequately consider the alignment of dimensions, providing for deep transformative practice. The discourse on diversity has followed various frameworks (e.g., Thomas and Ely, 1996), which refer to (1) the discrimination and fairness perspective (arguably the dominant paradigm in South African discourse), an (2) access and legitimacy perspective, and a (3) learning and effectiveness or transformative perspective. Booyesen and Nkomo's (2010) work supports the more inclusive tenets of the 'learning and effectiveness' paradigm (p.235). These researchers submit that the diversity management paradigm tends to be 'stuck' at the level of compliance, rather than organisational culture transformation. We would further concur that the institutional analysis model with its focus on compliance also limits a transformational agenda. This is an important issue in the discourse on employment equity and diversity, as it tends to result in a tendency for attitudinal entrenchment driven by legislative and regulatory requirements for conformity to rules and a 'tick box mentality' engendered by regulatory code compliance. The social closure that has limited the upward mobility of black managers and women appears to be changing, albeit incrementally.

The discourse on employment equity, BBBEE and diversity needs to also acknowledge the role of white fear of displacement and lack of meaningful engagement of white employees. As argued by Booyesen and Nkomo (2010), dominant paradigms often do not adequately consider alignment of dimensions providing for deep transformative practice. Nkomo and Stewart (2006) argue that the 'business case' for diversity (and employment equity) is premised on a need to make the politically overt practices of employment equity more palatable for white male managers by stressing their 'economically' viable premise. But the continued centrality of race in this

discourse is underlined by the finding that Black middle managers continue to experience 'race' (rather than ethnicity) as identity in the work environment (Op't Hoog et al 2010, p. 60).

## **Conclusions**

Legislative or institutional regimes may reflect a 'carrot and sticks' outcomes compliance rather than commitment approach. April and Dreyer (2007) conclude from qualitative research findings that structural inequalities such as a glass ceiling, power and organization-gendered systems and accompanying misogynistic cultures and behaviors, impact on organisational change the work that executives do, work-life balance, high level skills development and career life cycle factors. This is supported by the work of Booysen and Nkomo (2010), Moleke (2006) and Op't Hoog et al (2010) who stress the need for a more inclusive culture in which diversity is valued, supportive employment practices, an integrated attraction, holistic human resource development and retention strategy and effective talent identification and management. Following Kelly et al (2007) we note that comparative evaluations of employment equity systems whilst having descriptive and instructive value especially in terms of institutional or regulatory perspectives, have inherent limitations, given the different historical, socio-cultural and power dynamics which characterize the social fabric of a society and its organizations. They also are limited by the essentially different 'space and time' dynamics of evolving and changing social systems even within a country. The upward mobility of an increasingly non-racial upper middle class is arguably a positive development in South Africa. Alongside this development though, is a continuing and indeed increasing inequality in relation to the labour market majority who are still inadequately educated and skilled for the needs of a globally competitive modern economy. The labour market suffers from a fundamental paradox – an over-supply of an under skilled underclass and a severe shortage of intermediate skilled artisans (estimated at nearly 40 %).



Whilst the recent growth in the building and construction industry associated with the 2010 world football cup has resulted in both the importation of foreign specialised skills, this is a short-term measure. Positively though, this has also seen an associated up-skilling of local workers in building and construction and allied sectors. It cannot however be taken for granted that this will be sustainable given the gradual shrinkage of intermediate-level artisanal skills over the past two decades. Government is acutely aware of this and human resource development initiatives aimed at trying to remedy this are occurring, the outcome of which will not however be immediately apparent in the short-term. It is clear that economic empowerment has to be premised on a transformation of education and skills capacity building. Without this, the ability of the state to deliver effective public services to the labour market majority will languish.

At the top of the pyramid whilst the number of black chairman is increasing, a recent survey found that because there is a perceived paucity of experienced and credible chairman, company directors consider performance criteria for chairmen to be less evident than in other countries (Kakabadse et al, 2010). Post-apartheid economic regulatory policies have seen Broad-Based Black Economic Empowerment (BBBEE) legislation (Act 53 of 2003) aimed inter alia at redressing past racial discrimination and advancing representation of black managers into senior management positions. Recent codes and scorecards have underpinned legislative provisions with charters and scorecards aimed at both numerical and cultural change and transformation in the profile of organisations and the composition of stakeholder bodies such as boards. These codes include provisions on management controls, ownership and governance, human resource development and skills, preferential procurement, enterprise development and socio-economic development (Balshaw & Goldberg (2008). Arguably this approach may be an overly

mechanistic rather a transformative process although measures of progress in these areas may well be needed.

Further empirical research is needed to identify effective processes to assist managers to lead and institutionalise the more rigorous and difficult process of transforming organisational culture from a traditional largely male one to a more inclusive and representative culture is a larger challenge. Qualitative case study research would have potential value in this regard. A question germane to our assessment is the extent to which directors and senior executive's exercise leadership of this kind. A more engaging and transformative leadership culture would require senior executives of companies to be seen to be more visibly engaged in leading organisation change, the transformation of organisational structures including main boards, corporate culture and human resource capacity building.

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## Appendices

**Table 1: Percentage Representational changes in the designated population groups in top management 2001 to 2009/10**

<i>Top Management</i>						
	2001	2003	2005	2007	2009/10	EAP*
Blacks (Total)	25.1	23.8	27.2	28.8	32	87.8
Whites	74.9	76.3	72.6	68.2	64	12.2
Africans	8.0	14.9	17.9	18.8	20.3	73.5
Coloured	13.2	4.0	3.75	3.9	5.0	11.3
Indians	3.9	4.9	5.6	6.1	7.0	3.0

Source: 2008 and 2010 CEE Annual Reports.

Note: EAP means Economically Active Population. In 2010 employment of foreign employees in top management positions was 3.9%.

Note the South African Commission for Employment Equity Reports provide on females, Africans, Coloureds, Indians, and White males and include persons with disabilities and foreign nationals. South African data on females, Africans, Coloureds, Indians, and White males include persons with disabilities and females include foreign nationals.

**Table 2: BEE Values and Volumes 1995-2007**

<b>Period</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>
<b>Number</b>	23	45	52	111	132	126	101	104	189	243	238	221	153
<b>Value (Rbn)</b>	12.4	7.0	8.3	21.2	23.1	28.0	25.1	12.4	42.2	49.9	56.2	56.0	96

Source: Ernst & Young M&A Report 2008.



**Table 3: Largest BEE transactions in period 2006-2007**

Description	Transaction Value (Rm)
1. Sasol sold a 10% stake to black investors, staff, community groups and its educational foundation	17.9
2. Acquisition of 85% of Holcim Cement by black-owned AfrisSam Consortium	7.6
3. Anglo American Capital created Newco Anglo Inyosi Coal and BEE Consortium Inyosi Consortium, acquired 27% stake in Inyosi	7.0
4. Northam acquired 100% of Booyendal contract from Mvela	6.25
5. Anglo American sold 26% of the local operations of its engineering and steel division, Scaw Metals to BEE consortium and staff	5.3
6. Mvelaphanda Resources acquired Anglo Platinum's entire 53.1m shares in Northam (22.4% interest)	4.0
7. Impala Platinum implemented employee share ownership plan – Morokotso Trust to hold 2.6% of shares on behalf of 28 000 workers	3.7
8. Anglo Platinum sold 51% of the Lebowa Platinum mine to Anooraq Resources	3.6
9. Anglo Platinum announced employee share ownership plan to benefit some 43 000 employees	3.3

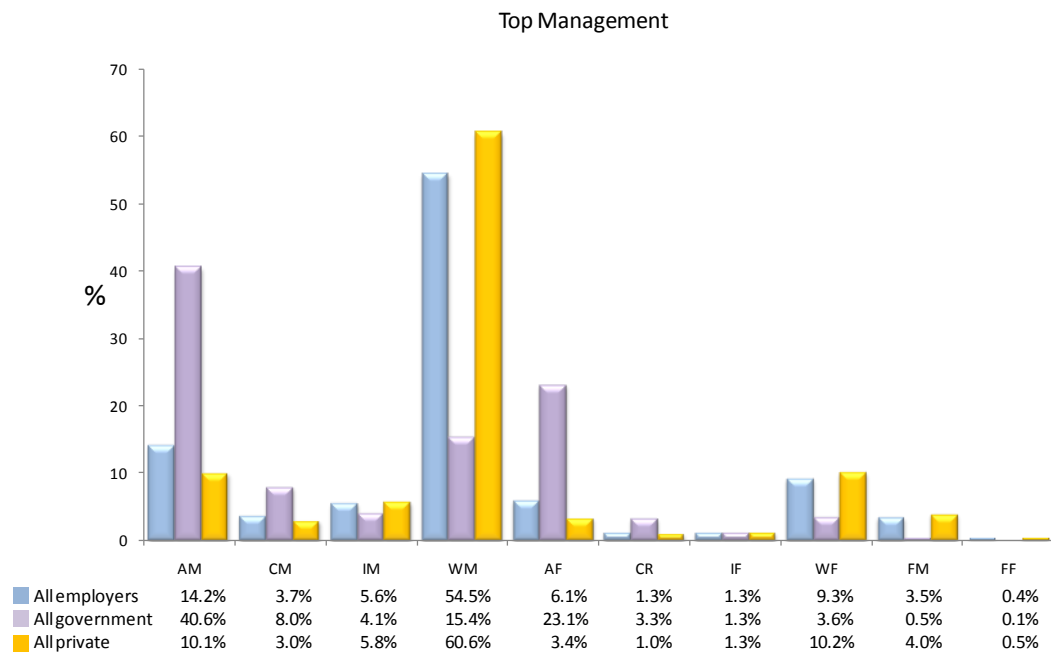
Source: Ernst & Young M&A Report 2008.

**Table 4: Preferential Procurement by sector**

<b>Sector</b>	<b>Percentage</b>
Financial	30.2
Services	23.6
Resources	14.6
Transport	8.1
Telecommunications	6.0
Basic industries	5.3
Retail	3.5
Food & beverage	3.3
Tourism	3.3
Manufacturing and general industry	1.3
Information technology	0.7
Healthcare and pharmaceuticals	0.3
Media	0.2

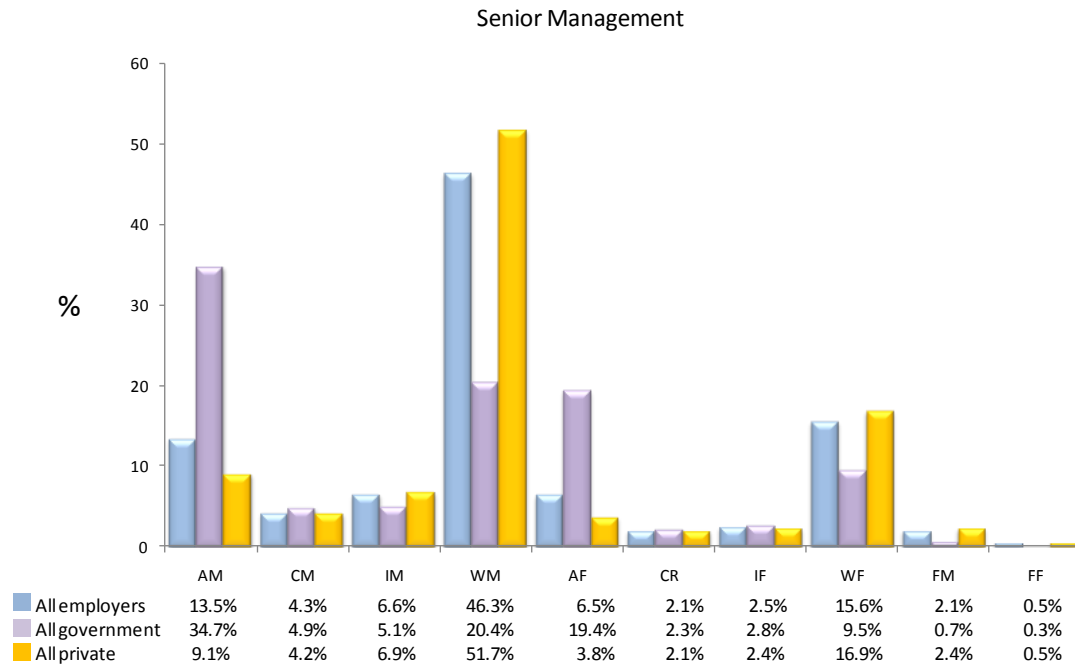
Source: Empowerdex survey of 228 JSE-listed companies, June 2006.

**Figure 1: Workforce population distribution for Top Management for all employers**



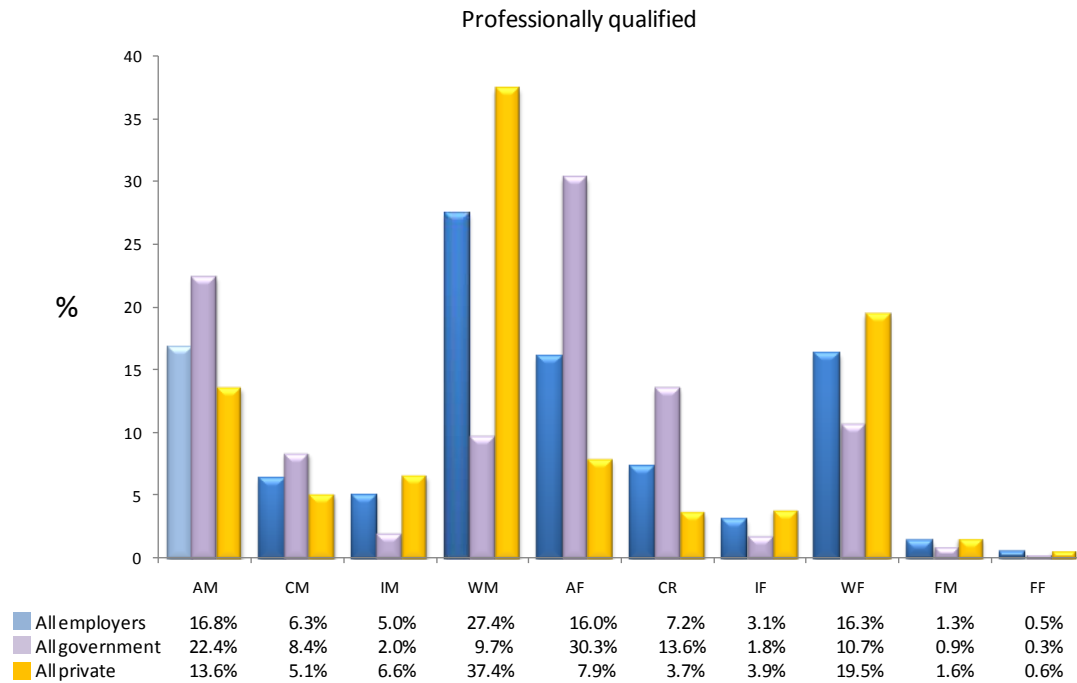
Source: 10<sup>th</sup> CEE Annual Report 2009-2010

**Figure 2: Workforce population for Senior Management for all employers**



Source: 10<sup>th</sup> CEE Annual Report 2009-2010

**Figure 3: Workforce population distribution for Professionally Qualified for all employers**



Source: 10<sup>th</sup> CEE Annual Report 2009-2010